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A MANUAL  
FOR  
COURTS-MARTIAL.

PREPARED BY  
LIEUT. ARTHUR MURRAY,  
FIRST ARTILLERY,  
LATE ACTING JUDGE ADVOCATE, U. S. A.

*THIRD EDITION.*

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## PREFACE TO THE THIRD EDITION.

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THIS work is a rearrangement and enlargement—with a view to its use by officers of both Regular Army and National Guard—of the “Instructions for Courts-martial” published by me under the direction of Brig.-Gen. Wesley Merritt, U. S. A., while on duty as Actg. Judge Adv. of the Dept. of the Missouri in 1887, and as Actg. Asst. Adjt. Gen'l of the Dept. of Dakota in 1891.

The manuscript for this edition, under title of “A Manual for Courts-martial,” was submitted to Maj. John Egan, 1st Artillery; Maj. George B. Davis and Col. Thomas F. Barr, Judge Adv. Dept.; and Col. G. Norman Lieber, Actg. Judge Adv. Gen'l, for suggestions and criticism, and was corrected accordingly. In the few instances where there was a difference of opinion, that of the Actg. Judge Adv. Gen'l was followed.

Afterwards the manuscript was corrected in accordance with the acts of last session of Congress relating to courts-martial, and then submitted to the War Department.

Letters from Majors Egan and Davis, and Col. Barr,

and the official indorsement of Col. Lieber on letter referring the manuscript to the War Department, are published below. To all of these officers my thanks are due for their suggestions and criticisms, and to Col. Lieber I am also indebted for assistance kindly given in many ways.

ARTHUR MURRAY,  
*First Lieutenant 1st Artillery.*

FORT WADSWORTH, N. Y. H.,  
Oct. 1892.

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[FROM MAJOR J. EGAN.]

FORT WADSWORTH, Oct. 18, 1892.

*Lieut. Arthur Murray, 1st Artillery :*

I have carefully read your admirable Manual for Courts-martial. I find it is up to date with all the decisions and rulings of the War Department. It is clear, concise, and contains all that is necessary in preparing the ordinary cases occurring at a post, and in conducting a court-martial. In many respects it is more complete than any book on the subject that we have. It should be in every post and company office in the Army.

J. EGAN,  
*Major 1st Artillery.*

[FROM MAJOR GEO. B. DAVIS.]

WAR DEPARTMENT, WAR RECORDS OFFICE,  
WASHINGTON, September 26, 1892.

*First Lieut. Arthur Murray, 1st Artillery.*

MY DEAR SIR: I have read, with great care, the manuscript of your compilation of regulations, orders, and decisions in regard to the practice of courts-martial, and wish to congratulate you upon the skill, thoroughness, and accuracy with which the work has been done. The various subdivisions of the subject are clearly presented, fully treated, and so conveniently and logically arranged as to be readily found by those having occasion to refer to them. Such a manual has long been needed, and cannot fail to be useful to all who have to do with the administration of military justice.

Faithfully yours,

GEO. B. DAVIS,

*Major and Judge Advocate, United States Army.*

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[FROM COL. THOMAS F. BARR.]

HEADQUARTERS DIVISION OF THE ATLANTIC,  
JUDGE ADVOCATE'S OFFICE,  
GOVERNOR'S ISLAND, N. Y., Apl. 12, 1892.

MY DEAR MURRAY: I have read your manuscript with



much interest, and think that its adoption and general distribution would be of great advantage to the service.

\* \* \* \* \*

Friendly yours,

THOMAS F. BARR,

[*Colonel and Judge Advocate, U. S. Army.*]

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[FROM COL. G. NORMAN LIEBER.]

WAR DEPARTMENT,  
 JUDGE ADVOCATE GENERAL'S OFFICE,  
 WASHINGTON, D. C., Sept. 30, 1892,

Lieutenant Murray's work is a compilation of authoritative rules and decisions relating to court-martial practice, with the addition of a collection of forms for use in such practice. It has been carefully prepared, with the manifest object of giving in small compass and convenient form the established principles which are of common application in the administration of military justice, and my examination of it has convinced me that it will be a useful guide for courts-martial reviewing authorities, and officers of the army generally.

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G. NORMAN LIEBER,  
*Acting Judge Advocate General.*

## REFERENCES.

Reference.	Book or Pamphlet.	Date.
Win. Law.....	Winthrop's Military Law.....	1886
Win. ab. Law.....	Winthrop's abridged Law.....	1887
Win. Dig.....	Winthrop's Digest Opinions Judge Advocate General.....	1880
Ives.....	Ives' Military Law.....	1879
Gl. ....	Greenleaf on Evidence.....	1888
Ins. Dep. Dak.....	C. M. Instructions Dept. Dakota.....	1879
Ins. Dep. Columbia..	C. M. Instructions Dept. Columbia.....	1880
Ins. Dep. Cal. ....	C. M. Instructions Dept. California.....	1887
Ins. Dep. Ariz.....	C. M. Instructions Dept. Arizona.....	1887
Ins. Dep. Platte.. ...	C. M. Instructions Dept. Platte .....	1890
A. R. ....	Army Regulations.....	1889
A. W. ....	Articles of War .....	1892
R. S.....	Revised Statutes.....	1874

# A MANUAL FOR COURTS-MARTIAL.

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## INTRODUCTION.

### MILITARY JURISDICTION.

“**MILITARY JURISDICTION** is of four kinds:

“1. **Military Law**; which is that legal system which regulates the government of the military establishment. It is a branch of the municipal law, and in the United States derives its existence from special Constitutional grants of power.

“2. **The Law of Hostile Occupation** (Military Government); that is, military power exercised by a belligerent by virtue of his occupation of an enemy's territory, over such territory and its inhabitants. This belongs to the Law of War and therefore to the Law of Nations.

“3. **Martial Law at Home** (or, as a domestic fact); by which is meant, military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subject to it.

“4. **Martial Law applied to the Army** ; that is, military power extended in time of war, insurrection, or rebellion over persons in the military service as to obligations arising from such emergency and not falling within the domain of military law, nor otherwise regulated by law.

“The last two divisions are applications to a condition of war of the doctrine of Necessity. They spring from the right of national self-preservation.”<sup>1</sup>

The *source of military jurisdiction* is the Constitution; the *specific provisions* relating to it are found in the powers granted to Congress, in the authority vested in the President, and in a provision of the Vth Amendment.

**Military Law** is derived from both *written* and *unwritten sources*.

The *written sources* are, the Articles of War, adopted as a part of the Revised Statutes of the United States in 1874 and since amended in some particulars; other statutory enactments relating to the military service, such as those relating to the U. S. Military Academy, the U. S. Military Prison, etc.; the Army Regulations, issued in 1889 and since frequently amended by orders from the War Department; General and Special Orders

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<sup>1</sup> Letter from Col. G. Norman Lieber, Actg. Judge Adv. Gen'l. May 7th, 1892.

issued from time to time by the War Department, and by department, post, and other commanders, etc.<sup>1</sup>

The *unwritten sources* are, the "customs of service," which, in the procedure of military courts, govern as to the routine duties of the members, and must be considered in determining upon a finding and sentence; and the "unwritten laws and customs of war" so far as these relate to certain offences defined by the 45th, 46th, and 57th Articles of War.<sup>2</sup>

The MILITARY TRIBUNALS for the administration of military law are:

1. *Courts-Martial*—for the trial of offenders against military law.
2. *Courts of Inquiry*—for examining into imputations against officers or soldiers.
3. *Military Commissions*—for the trial of offenders against the laws of war.

### ARREST.

Although military tribunals have no authority regarding the *arrest of an offender against military law* (except, possibly, under Art. 86 in a case of contempt), it is thought proper, in view of the fact that the arrest of an offender is usually the first step in the direction of his

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<sup>1</sup> 1 Win. Law, pp. 4-40.

<sup>2</sup> *Ib.*, pp. 41-45.

trial by such a court, to state briefly the law relating to the same.<sup>1</sup>

**Arrest of Officers.**—“Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer.”<sup>2</sup> Except as provided in Art. 24, commanding officers alone have power to place officers in arrest.<sup>3</sup> “An arrest may be imposed by order of the commanding officer, given by him in person, or conveyed through his staff officer, either orally or in writing. The officer upon whom it is imposed will repair at once to his tent or quarters and confine himself to the same until more extended limits have been granted.”<sup>4</sup> While in arrest, he cannot exercise command, or wear a sword, or “visit officially his commanding or other superior officer unless directed to do so. His applications and requests of every nature will be made in writing.”<sup>5</sup> At the discretion of the commanding officer, and upon written application, larger limits than his tent or quarters may be assigned him. “Close confinement will not be enforced except in cases of a serious nature.”<sup>6</sup>

“Officers will not be placed in arrest for light offences. For these the censure of the commanding officer

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<sup>1</sup> Omission of arrest does not affect the jurisdiction of a court. (Win. ab. Law, p. 56.)

<sup>2</sup> 65th A. W.    <sup>3</sup> Par. 990, A. R.    <sup>4</sup> Ib. 991.    <sup>5</sup> Ib. 995.    <sup>6</sup> Ib. 992.

will generally answer the purpose of discipline.”<sup>1</sup> A medical officer, charged with crime, need not be placed in arrest, if the service would be inconvenienced thereby, until the court-martial for his trial convenes, unless the offence is of a flagrant character.<sup>2</sup>

“When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of 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 officer be not brought to trial, as herein required, the arrest shall cease. But officers 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.”<sup>3</sup>

**Arrest of Soldiers.**—Non-commissioned officers charged with crime should be placed in arrest in quarters except in aggravated cases where escape is feared or confinement is necessary.<sup>4</sup> Privates charged with minor offences over which summary courts have

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<sup>1</sup> Par. 993, A. R.    <sup>2</sup> Ib. 994.    <sup>3</sup> 71st A. W.    <sup>4</sup> Par. 996, A. R.

jurisdiction should be placed in arrest in quarters, before and during trial and while awaiting sentence, unless in particular cases where restraint may be deemed necessary; those charged with more serious crimes should be confined in the guardhouse until tried by court-martial.<sup>1</sup> Except as provided in the 24th art., or in aggravated cases where such restraint is imperatively necessary, no enlisted man should be *confined* without the order of an officer who has previously inquired into the case.<sup>2</sup>

Non-commissioned officers *in arrest* should not be required to attend drill or perform any military duty where they would be called upon to exercise command. Privates *in arrest* may, in the discretion of the commanding officer, be required to attend drills, inspections, schools, and assist in policing in and around their barracks.

Non-commissioned officers *in confinement* should not be sent out to work. Privates *in confinement* awaiting trial will not be sent out to work with prisoners undergoing sentence; but in the discretion of the commanding officer, they may be sent out to work under charge of a sentinel, during the usual working hours in garrison, separately from prisoners undergoing sentence,

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<sup>1</sup> See sec. V, G. O. 21, A. G. O. 1891.

<sup>2</sup> Par. 998, A. R.



and perform such labor as is habitually required of soldiers.<sup>1</sup>

**General Provisions regarding Arrest of both Officers and Soldiers.**—The arrest of an officer or non-commissioned officer, or the arrest or confinement of a private, should be reported to his immediate commander as soon as practicable.<sup>2</sup>

“No . . . officer commanding 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 same time, deliver an account in writing, signed by himself, of the crime against the prisoner.” “Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing,<sup>3</sup> to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him.”<sup>4</sup>

“All persons under guard without written charges<sup>5</sup>

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<sup>1</sup> See par. 999, A. R.; also, Cir. 7, A. G. O. 1890.

<sup>2</sup> Par. 997, A. R.

<sup>3</sup> This report is usually written in “Guard Report Book;” and presented to the commanding officer by the old officer of the day at guard-mounting.

<sup>4</sup> 67th and 68th A. W.

<sup>5</sup> Charges are usually handed to the old officer of the day at guard-mounting; or in serious cases, he is notified that charges will be

will be released by the old officer of the day at guard-mounting, unless specific orders to the contrary have been given in each case by the commanding officer."<sup>1</sup> No officer or soldier put in arrest or confinement should be so restrained more than eight days, or until such time as a court-martial can be assembled.<sup>2</sup>

On the march, field and regimental-staff officers, and regimental non-commissioned staff officers, in arrest, should follow in rear of their respective regiments; medical officers, hospital stewards, privates of the hospital corps, and post non-commissioned staff officers, in rear of the commands to which they belong; company officers, non-commissioned officers, and privates in rear of their respective companies; and all persons in confinement under charge of, and with, the guards of their respective commands—unless otherwise specially directed.<sup>3</sup>

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turned in to the commanding officer as soon as they can be made out.

<sup>1</sup> Par. 1001, A. R. as amended by G. O. 38, A. G. O. 1890.

<sup>2</sup> See 70th A. W.

<sup>3</sup> See par. 1000, A. R.

## COURTS-MARTIAL.

## COMPOSITION.

COURTS-MARTIAL are composed of commissioned officers only. All officers of the regular Army, except those on the retired list<sup>1</sup> and professors of the U. S. Military Academy,<sup>2</sup> are eligible for detail for the trial of offenders belonging to the regular Army;<sup>3</sup> but no officer should be detailed for the trial of an officer superior to himself in rank when it can be avoided.<sup>4</sup>

Officers of the regular Army and of the marine corps, detached for service with the Army by order of the President, may be associated together for the trial of offenders belonging to either of these bodies.<sup>5</sup> In like manner regular officers *holding volunteer commissions* may be associated with volunteer officers for the trial of volunteers.<sup>6</sup> But with these exceptions, officers of the regular Army are not competent to sit on courts for the trial of offenders belonging to other forces.<sup>7</sup>

Officers of U. S. volunteers and of the militia, when

<sup>1</sup> See 1259, R. S.

<sup>2</sup> 1 Win. Law, p. 82.

<sup>3</sup> *Ib.*, p. 81. An "acting assistant surgeon," being a civilian, is not eligible. (Win. Dig., p. 59.)

<sup>4</sup> 79th A. W.

<sup>5</sup> 78th A. W.

<sup>6</sup> Ives, p. 29.

<sup>7</sup> 77th A. W.

this is called into the service of the United States, are competent to act as members of courts for the trial of regular officers or soldiers.<sup>1</sup> Militia officers are also competent to sit upon trials of volunteers.<sup>2</sup> But courts-martial for the trial of militia must be composed of militia officers only.<sup>3</sup>

In the U. S. military service, the following named courts-martial are authorized: 1st, the "**General Court-martial**;" 2d, the "**Summary Court**;" 3d, the "**Field-officers' Court**;" 4th, the "**Garrison Court-martial**;" 5th, the "**Regimental Court-martial**."

The **General Court-martial**, being the most important, will be first considered—the others, ordinarily called "**Inferior Courts-martial**," in the order named. But as all courts-martial have much in common in regard to their jurisdiction, procedure, punishment, etc., the text may, as a rule, be regarded as apposite to all, unless the general court is specially mentioned. Exceptions in regard to jurisdiction, etc., will be made as each inferior court is considered.

A **General Court-martial** may consist of any number of members from five to thirteen inclusive, and a judge advocate; but of not less than thirteen members when this number can be convened without manifest injury

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<sup>1</sup> 1 Win. Law, p. 85.

<sup>2</sup> Ib.

<sup>3</sup> Sec. 1658, R. S.

to the service.<sup>1</sup> When from any cause a general court is reduced below the minimum, five, the remaining members should direct the judge advocate to report the fact to the convening authority, and await further orders. In such a case, if the trial has not been entered upon, new members may be added; but if any testimony has been taken, the court had best be dissolved and a new one ordered.<sup>2</sup>

## CONSTITUTION.

The President is empowered to institute general courts-martial—1st, as commander-in-chief of the Army, under the Constitution; 2d, in the special contingency mentioned in the next paragraph; 3d, in the particular cases provided for by Sec. 1230, Rev. Stat.<sup>3</sup>

Any general officer commanding an army, a territorial division or a department, or colonel commanding a separate department, may appoint a general court-martial whenever necessary. But when any such commander is the accuser or prosecutor of any *officer*, under his command, the court must be appointed by the *President*.<sup>4</sup> In time of war, this power is extended to the

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<sup>1</sup> 75th A. W. "A decision of the appointing authority as to the number that can be assembled without manifest injury to the service is conclusive." (See par. 1002, A. R.)

<sup>2</sup> For form of order for general court, see *infra*.

<sup>3</sup> 1 Win. Law, p. 61.

<sup>4</sup> 73d A. W.

commander of a tactical division or of a separate brigade; but in this case when such commander is the accuser of any *person* under his command, the court must be appointed by the *next higher commander*.<sup>1</sup>

The Superintendent of the U. S. Military Academy has power to convene general courts-martial for the trial of cadets, subject to the conditions just stated regarding other general courts.<sup>2</sup>

“The authority which appoints any court-martial—general, garrison, or regimental—may dissolve it, and control its existence, but not the subject-matter of its deliberations.”<sup>3</sup> “In the absence of special orders or legislation to that effect, personal presence within the territorial limits of his department is not essential to the validity of commands given by a department commander to be executed within such limits, such, for instance, as the appointment of a court-martial.”<sup>4</sup>

### JURISDICTION.

Courts-martial derive their existence solely from Acts of Congress. They are courts of *limited criminal jurisdiction*; but, within their scope, their decisions, with the one exception provided by the 30th Article of War,

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<sup>1</sup> 73d A. W.

<sup>2</sup> Sec. 1326, R. S.

<sup>3</sup> Cir. 6, A. G. O. 1883.

<sup>4</sup> Ib. 8, 1886.

are final and not subject to review by any court whatsoever.<sup>1</sup>

They have *exclusive* jurisdiction over all purely military offences and *concurrent* jurisdiction with the civil courts over offences which are also crimes at common law.<sup>2</sup> In a case of concurrent jurisdiction, the military, ordinarily, gives precedence to the civil court; but "when an officer or soldier has been arraigned before a duly constituted court-martial for an offence triable by it, the jurisdiction thus attached cannot be set aside by a process of a State court, the jurisdiction of the latter being for the time suspended."<sup>3</sup>

*As regards persons*, courts-martial have jurisdiction, at all times and in all places, over officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States;<sup>4</sup> over officers and soldiers of the marines, when attached for service with the army;<sup>5</sup> over "general service" clerks and messengers;<sup>6</sup> over deserters illegally enlisted;<sup>7</sup> and over offenders, in general, to whom, owing to the commission of a crime, military jurisdiction has legally attached—as by an arrest or confinement—before their discharge from service.<sup>8</sup>

As a rule, military jurisdiction ends when a soldier is

<sup>1</sup> Win. Dig., p. 200.

<sup>2</sup> 1 Win. Law, p. 132.

<sup>3</sup> Cir. 1, A. G. O. 1886.

<sup>4</sup> 64th A. W.; see, also, G. O. 71, A. G. O. 1890.

<sup>5</sup> Sec. 1621, R. S.

<sup>6</sup> Act July 29, 1886.

<sup>7</sup> Cir. "B," A. G. O. 1889.

<sup>8</sup> 1 Win. Law, p. 107.

discharged. Among the exceptions to this rule are, discharged officers or soldiers accused of frauds against the United States ;<sup>1</sup> discharged officers granted trial after summary dismissal ;<sup>2</sup> discharged soldiers confined in the U. S. military prison.<sup>3</sup>—A soldier discharged by sentence of a general court directing confinement in the U. S. military prison is not subject to trial by court-martial for an offence committed between the date of his discharge and that of his confinement in the military prison.<sup>4</sup>

By the act of July 27, 1892, military jurisdiction has been extended to all persons who fraudulently enlist in the service of the United States, and receive pay or allowances.<sup>5</sup>

*In time of war*, this jurisdiction extends to “all retainers to the camp and all persons serving with the armies of the United States in the field though not enlisted soldiers ;”<sup>6</sup> “whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy ;”<sup>7</sup> “whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly ;”<sup>8</sup> and all persons found lurking as spies in any place.<sup>9</sup>

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<sup>1</sup> 60th A. W.

<sup>2</sup> Sec. 1230, R. S.

<sup>3</sup> Sec. 1361, R. S.

<sup>4</sup> Cir. 4, A. G. O. 1888.

<sup>5</sup> Act July 27, 1892; see G. O. 57, A. G. O. 1892.

<sup>6</sup> 53d A. W.

<sup>7</sup> 45th A. W.

<sup>8</sup> 46th A. W.

<sup>9</sup> Sec. 1343, R. S.



*As regards offences*, the jurisdiction embraces, the offences specifically defined in the Articles of War, or included under the general terms of the 61st and 62d articles ; that of allowing or aiding convicts to escape from the U. S. military prison;<sup>1</sup> that of military persons trading with the enemy ;<sup>2</sup> and that of fraudulently enlisting in the service of the United States, and receiving pay or allowances.<sup>3</sup>

*As regards time of amenability*, the jurisdiction is limited as follows : “ No person shall be liable to be tried and punished by a general court-martial for any offence which appears to have been committed more than two years before the issuing of the order for such trial, unless by reason of having absented himself, or some other manifest impediment, he shall not have been amenable to justice within that period, [and] no person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offence, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation : *Provided*, That

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<sup>1</sup> Secs. 1359 and 1360, R. S.

<sup>2</sup> Secs. 5306 and 5313, R. S.

<sup>3</sup> Act July 27, 1892 ; see G. O. 57, A. G. O. 1892.

said limitation shall not begin until the end of the term for which said person was mustered into the service.”<sup>1</sup>

“A court having once duly assumed jurisdiction of an offence and person, cannot, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine, according to law and its oath.” Thus the fact that, pending the trial, the accused has escaped from military custody, furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in his case; and the court may and should find and sentence precisely as in any other instance.<sup>2</sup>

**General Courts-martial** have, *as regards persons and with reference to other courts-martial, exclusive jurisdiction* over officers,<sup>3</sup> cadets,<sup>4</sup> and “candidates for promotion;”<sup>5</sup> also, over hospital stewards,<sup>6</sup> sergeants of the post, non-commissioned staff,<sup>7</sup> and sergeants who object to trial by inferior courts,<sup>8</sup> unless concurrent jurisdiction is granted to an inferior court by special permission of the authority competent to order a general court in each of these cases. Over all other enlisted

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<sup>1</sup> 103d A. W., as amended by Act July 11, 1890.

<sup>2</sup> 1 Win. Law, pp. 553-4. <sup>3</sup> See 83d A. W. <sup>4</sup> Sec. 1326, R. S.

<sup>5</sup> Act July 30, 1892; see G. O. 57, A. G. O. 1892.

<sup>6</sup> Par. 1563, A. R.; see G. O. 38, A. G. O. 1890.

<sup>7</sup> Par. 105, A. R.; see G. O. 29, A. G. O. 1891.

<sup>8</sup> Par. 254, A. R.

men, they have concurrent jurisdiction with the inferior courts in cases cognizable by the latter.

*As regards offences, they have exclusive jurisdiction* over all offences punishable capitally;<sup>1</sup> over those defined in the 58th article, when committed in time of war; and over those for which the limit of punishment prescribed by the President, previous convictions being considered, cannot, in any way, be brought within the limit of the punishing power of an inferior court as defined by the 83d article of war.<sup>2</sup> Over *all serious offences* for which a limit of punishment has not been prescribed, but for which the usual punishment given by custom of service exceeds the punishing power of an inferior court, general courts-martial should also have *exclusive jurisdiction*. Over all *minor offences* they have *concurrent jurisdiction* with the inferior courts; but no case should be referred to a general court that can properly be tried by an inferior one. If there be any doubt about the jurisdiction of the lower court, the matter should be referred to the authority competent to order a general court-martial in the case, for his decision.

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<sup>1</sup> 83d A. W.

<sup>2</sup> Sec. III, G. O. 21, A. G. O. 1891.

## CHARGES AND SPECIFICATIONS.

A military charge corresponds to a *civil indictment*. It consists of two parts—the technical “*charge*” which designates in general terms the alleged offence, and the “*specification*” which sets forth the facts constituting the same. The requisite of a *charge* is, that it shall be laid under the proper Article of War; of a *specification*, that it shall set forth facts sufficient to constitute the particular offence.<sup>1</sup> Under the general term “charges,” any number of technical charges and their specifications may be included.

When a charge is to be preferred, the Articles of War should be examined to see if the alleged offence is specially provided for in any article; if so, the charge should be laid under that article. In drawing up the technical charge, a brief synopsis of the offence, such as “Absent without leave,” “Drunk on duty,” “Sleeping on post,” should be made, and the phrase “in violation of the — Article of War” added thereto. If the offence is not provided for in any *specific* article, the charge should be laid under one of the *general* articles, the 61st or 62d, depending on the character of the offence and the rank of the offender. If the charge is laid under the 61st article, it may be stated as “Conduct unbecoming an

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<sup>1</sup> Win. Dig., p. 145.

officer and a gentleman;" if under the 62d, the technical charge should be briefly described as "Larceny," "Burglary," "Drunkenness," etc., according to the offence, followed by the phrase "to the prejudice of good order and military discipline," or, when the offence cannot be readily briefed, the charge may be simply stated as "Conduct to the prejudice of good order and military discipline."<sup>1</sup>

When an offence is clearly defined in a specific article, it is improper to charge it under another specific article. So where the specific article in which the offence is defined makes the punishment for the same mandatory, it is an error to lay the charge under any article, such as the 62d, which leaves the punishment to the discretion of the court.<sup>2</sup>

In case of an absence from any appointed parade, drill or other exercise, but not from the limits of the post, the charge should be laid under the 33d Article of War; if absent from the post, or command, under the 32d; and sometimes, in order that the court may be able to judge of the full nature of the offence, under both, as when some duty, other than an ordinary roll-call, is neglected; *e.g.*, when a soldier, regularly detailed for guard, absents himself not only from guard-mounting, but also from his post.

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<sup>1</sup> 1 Win. Dig., p. 146; also, 1 Win. Law, p. 1042.

<sup>2</sup> *Ib.*

Soldiers found drunk on any guard, party or other duty, after having been actually placed on such duty and not, until then, discovered to be drunk, should be charged with violation of the 38th Article of War; otherwise, as when found to be intoxicated at guard-mounting or upon formation for drill, muster, etc., with violation of the 62d article.<sup>1</sup>

“Prisoners will not be joined in the same charge, nor tried on joint charges, unless for concert of action in the same offence.”<sup>2</sup> To warrant the joining of several persons in the same charge, the offence must be such as requires for its commission a combination and must have been committed in concert, in pursuance of a common intent.<sup>3</sup>

**The specification** need not possess the technical nicety of an indictment at common law. The most bald statement of facts is sufficient, provided the legal offence itself be distinctly and accurately described; this should be done, if possible, in the words of the article violated.<sup>4</sup>

In order that the accused may be left in no doubt as to the precise offence which he is called on to disprove, the *time* and *place* of an alleged offence should be stated as carefully as possible. When any doubt exists as to the

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<sup>1</sup> See Win. Dig., p. 16.

<sup>2</sup> Par. 1016, A. R.; see G. O. 29, A. G. O. 1891.

<sup>3</sup> See Win. Dig., p. 153.

<sup>4</sup> VII Op. Atty. Gen., p. 604.

exact date and locality, it may be stated that the act specified was committed "on or about" a certain date, or "at or near" a given place. In specifying such offences as "Burglary," "Robbery," or "Drunkenness on duty," however, the time and place ought to be accurately stated. In preparing several specifications under a given charge, the date and place of the alleged offence should be given in each.<sup>1</sup>

Many of the Articles of War include two or more offences. When a charge is to be laid under such an article, the particular offence committed should be stated. "Laying a specification in an alternative form is bad pleading. It is unqualifiedly wrong to charge with 'selling *or* through neglect losing,' in violation of the 17th Article of War."<sup>2</sup>

"The prosecution is at liberty to charge an act under two or more forms, where it is doubtful under which it will more properly be brought by the testimony. In the military practice, the accused is not entitled to call upon the prosecution to '*elect*' under which charge it will proceed in such, or indeed any, case."<sup>3</sup>

When charges are placed before a commander having authority to order an inferior, but not a general, court, he should examine them as to the rank of the accused

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<sup>1</sup> Win. Dig., pp. 150-153.

<sup>2</sup> Op. Actg. Judge Adv. Gen'l, June 26, 1891.

<sup>3</sup> Win. Dig., p. 147.

and the nature of the offence. Then, in accordance with what is stated on page 16, *supra*, in reference to the jurisdiction of a general court, and hereafter in reference to that of inferior courts,<sup>1</sup> *he should refer to a summary court* any charge against an enlisted man—sergeants of the post, non-commissioned staff, hospital stewards, and candidates for promotion, excepted—for an offence for which the limit of punishment prescribed, —previous convictions considered<sup>2</sup>—does not exceed the limit defined by the 83d Article of War, or for which the usual punishment given does not exceed the same limit; and *should forward to the authority competent to order a general court*, any charge against an officer, a cadet, or one of the non-commissioned officers just excepted, or any charge for an offence capitally punishable, or for which the limit of punishment prescribed, or the usual punishment given, exceeds the limit defined by the 83d Article.<sup>3</sup>

Before forwarding charges against officers or enlisted men of their commands, post commanders should make a thorough personal examination of all the circumstances

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<sup>1</sup> In reference to jurisdiction of inferior courts, see pages 94–107.

<sup>2</sup> See sec. III, par. (1), G. O. 21, A. G. O. 1891, and note 2, page 83.

<sup>3</sup> Charges against a man, reported under par. 224, A. R., as a deserter from the navy or marine corps, should be held until instructions are received from the War Dept. (Cir. 2, A. G. O. 1888).



connected with the charges. The fact that such a personal examination has been made should be indorsed upon the charges, and no recommendation for trial should be made unless the officer transmitting them is convinced that there are good grounds for sustaining the charges.

“Charges forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison or regimental court, must <sup>1</sup> be accompanied by the proper

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<sup>1</sup> All charges for offences cognizable by inferior courts-martial *must* be accompanied by evidence of all previous convictions of the soldier during his current enlistment and within two years preceding trial. “It is the duty of the officer who brings charges before a summary court for trial to submit evidence of previous convictions or to cite them when the convictions have been by the same court” (Cir. 2, A. G. O. 1893). When, therefore, charges are submitted to a summary court, a marginal or foot note of previous convictions by the same court should be made on them and certified copies of orders publishing convictions by other military courts enclosed. Evidence of convictions by civil courts should not be submitted (see note 3, page 68). If the charges are submitted to a garrison or regimental court-martial, or are forwarded to the authority competent to order a general court, authenticated extracts from summary court records (see note 4, page 68), together with certified copies of orders of conviction by other military courts, should be enclosed therewith.

Charges for offences cognizable only by general courts-martial, (*i. e.*, where the usual punishment for the offence exceeds that an inferior court can inflict), but *not*, ordinarily, punishable by dishonorable discharge, *should not* be accompanied by evidence of previous convictions, *unless* the soldier has been tried five or more times

evidence of such previous convictions as may have to be considered, in determining upon a sentence." <sup>1</sup> They will also "be accompanied by a statement <sup>2</sup> setting forth the dates of his present and former enlistments, the character upon each of the discharges given him, and the date of his confinement for the offences covered by the charges." <sup>3</sup> In case of a deserter, the medical report required by par. 121 A. R. will also be forwarded. <sup>4</sup>

After charges have been formally referred by competent authority to a court-martial for trial, the court is not authorized, in its discretion and upon its own motion, to strike out a charge or specification; nor to direct or permit the judge advocate to drop, or withdraw, such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is requisite. Where, however, by a special plea or objection, an *issue* is made by the accused as to the sufficiency of any charge and specifica-

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within preceding two years of his current enlistment, in which case evidence *must* be forwarded.

Charges for offences ordinarily punishable by dishonorable discharge *should not* be accompanied by evidence of previous convictions, *except* in case of *desertion*, in which case evidence of previous convictions of *desertion* must be submitted.

<sup>1</sup> See par. 1018, A. R., as amended by G. O. 29, A. G. O. 1891.

<sup>2</sup> See form *infra*.

<sup>3</sup> See par. 1015 A. R. as amended by G. O. 29, A. G. O. 1891.

<sup>4</sup> For form see *infra*.

tion, the court, without referring the question to the convening officer, is empowered to allow the plea or objection, and quash or strike out the charge.<sup>1</sup>

### ADDITIONAL CHARGES.

After the accused has been arraigned upon certain charges, has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, cannot be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the court and effectively to plead and defend.<sup>2</sup>

### ORGANIZATION.

A general court-martial assembles, at its first session, in accordance with the order for the court ; thereafter, according to adjournment. The members wear full-dress uniform with their swords, except in inclement weather, when the president may authorize undress uniform;<sup>3</sup> the judge advocate wears undress without his sword ; the accused, if an officer or non-commissioned officer, wears full-dress, if a private, undress, and is

<sup>1</sup> Win. Dig., p. 202.

<sup>2</sup> *Ib.*, p. 148.

<sup>3</sup> See G. O. 103, A. G. O. 1890.

without arms in any case; military witnesses wear full-dress, with their swords or side-arms. The accused should not be brought before the court in irons, unless there are good reasons to believe he will attempt to escape or conduct himself in a violent manner; but the fact that a prisoner has been tried in irons cannot, in any case, affect the validity of the proceedings.<sup>1</sup>

When the court is ready to proceed, the members take seats at a table provided for their use; the president sits at the head of the table and the other members to his right and left alternately, according to rank. The judge-advocate sits at the foot of the table; the accused and his counsel at a table provided for them and placed in a convenient position; a witness, when called, near the judge advocate; and the reporter at a table placed near the witness' chair.

The *order of procedure* is given in detail in the "Form for record of a general court-martial," *infra*. During the reading of the order for the court and the arraignment the judge advocate and the accused should stand; while the court and the judge-advocate are being sworn, all stand; when a reporter, an interpreter, or a witness is being sworn, he and the judge advocate should stand; and when either the judge advocate, the accused or his counsel addresses the court, he should rise.

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<sup>1</sup> Cir. 11, A. G. O. 1886.

## THE MEMBERS.

**Members** of a court-martial will be named in the order appointing it, in accordance with rank. They will sit according to rank<sup>1</sup> and "behave with decency and calmness."<sup>2</sup> All votes are taken in the reverse order of rank, the lowest in rank beginning.<sup>3</sup> In all their deliberations the law secures the equality of the members.<sup>4</sup>

## THE PRESIDENT.

"A **president** of the court will not be announced. The officer highest in rank present will act as president."<sup>5</sup> "Besides his duties and privileges as a member," the president "is the organ of the court to maintain order and conduct its business. He speaks and acts for the court in every instance where a rule of action has been prescribed by law, regulations, or its own resolution."<sup>6</sup> "He administers the oath to the judge advocate, and authenticates by his signature all acts, orders, and proceedings of the court requiring it."<sup>7</sup>

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<sup>1</sup> See par. 1002, A. R.

<sup>2</sup> 87th A. W.

<sup>3</sup> 95th A. W. In cases of a tie vote, upon a *challenge*, *the findings*, or a *sentence*, the accused should be given the benefit thereof; but when there is a tie upon an objection or motion of the accused, it should not be decided in his favor.

<sup>4</sup> Par. 1005, A. R.

<sup>5</sup> *Ib.* 1004.

<sup>6</sup> *Ib.* 1005.

<sup>7</sup> Reed's "Military Science and Tactics."

## THE JUDGE ADVOCATE.

“The judge advocate . . . shall prosecute in the name of the United States; but, when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself.”<sup>1</sup>

*Before the court assembles*, the judge advocate should note and report any irregularity in the order convening the court, and see that the charges are technically and correctly drawn. He may ordinarily correct obvious mistakes of form, or slight errors in name, dates, amounts, etc.; but he should not, without the authority of the convening officer, make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial.<sup>2</sup>

He should acquaint the prisoner with the accusations against him, inform him of his right to have counsel,<sup>3</sup> and to testify in his own behalf,<sup>4</sup> and furnish him

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<sup>1</sup> 90th A. W.

<sup>2</sup> Win. Dig., p. 298.

<sup>3</sup> See “Counsel,” page 31, *infra*.

<sup>4</sup> See “Competency of Witnesses,” *infra*.

with a copy of the charges, if desired. He may ask a prisoner how he intends to plead; but, when the accused is an enlisted man, he should, in no case, try to induce him to plead guilty, or leave him to infer that, if he does so, his punishment will be lighter. When, however, such a plea is voluntarily and intelligently made, the judge advocate should properly advise the prisoner of his right to offer evidence in explanation of his offence, and if any such evidence exists, should assist him in securing it.<sup>1</sup>

He should also, before the court assembles, obtain a suitable room for the same, see that it is in order, procure the requisite stationery, summon necessary witnesses,<sup>2</sup> make a preliminary examination of the latter,<sup>3</sup> and as far as possible systematize his plans for conducting the case.

*During the trial* the judge advocate conducts the case for the Government. He executes all orders of the court;<sup>4</sup> reads the convening order to the accused; swears the members of the court, the reporter, interpreter, and all witnesses; arraigns the accused; examines witnesses; keeps, or superintends the keeping of, "a complete and accurate" record of the proceedings;<sup>5</sup>

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<sup>1</sup> Win. Dig., p. 299.

<sup>2</sup> See "Attendance of Witnesses," *infra*.

<sup>3</sup> See Cir. 9, A. G. O. 1887.

<sup>4</sup> Cir. 4, A. G. O. 1885.

<sup>5</sup> For form for record, see *infra*.

authenticates—in conjunction with the president of the court—the record by his signature,<sup>1</sup> and transmits the record of proceedings to the convening authority.<sup>2</sup>

While the court is in open session, he should call the attention of the court to any illegalities in its action, and to any irregularities in its proceedings. He should act as legal adviser of the court so far as to give his opinion upon any point of law arising during the trial, when the same is asked for by the court; but he should not advance that opinion unless requested to do so.<sup>3</sup>

*Whenever the court sits in close session,* “the judge advocate shall withdraw, and when his legal advice or his assistance in referring to the recorded evidence is required, it shall be obtained in open court.”<sup>4</sup>

Throughout the trial, the judge advocate should do his utmost to get at and lay before the court the whole truth of the matter in question. He should oppose every attempt to suppress facts or to torture them into false shapes; to the end that the evidence may so exhibit the case that the court may render impartial justice.<sup>5</sup>

He should regard his duty toward the accused as not strictly limited by the 90th Article of War, and where the latter is ignorant and without counsel, especially

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<sup>1</sup> Par. 1037, A: R.

<sup>2</sup> *Ib.* 1041.

<sup>3</sup> *Win. Dig.*, p. 298.

<sup>4</sup> Sec. 2, 110th A. W.; see G. O. 57, A. G. O. 1892.

<sup>5</sup> *Ins. Dep. Columbia*, p. 46.



where he is an enlisted man, the judge advocate should take care that he does not suffer upon the trial from any ignorance or misconception of his legal rights, and has full opportunity to interpose such plea and make such defence as may best bring out the facts, the merits, or the extenuating circumstances of his case.<sup>1</sup>

If the court adjourns to meet at the call of the president, the judge advocate should notify the members of the time designated by the president, for reassembling.<sup>2</sup>

#### COUNSEL.

Commanding officers at posts where general courts-martial are convened, shall, at the request of any prisoner who is to be arraigned, detail a suitable officer of the command as counsel to defend such prisoner. If there be no such officer available at the post, the fact will be reported to the appointing authority for action."<sup>3</sup>

If the judge advocate keeps the record in *long-hand*, the counsel should be required to reduce his questions and arguments to writing; but if the court has a *short-hand* reporter, the counsel should be allowed to question witnesses and address the court orally.

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<sup>1</sup> Win. Dig., p. 299.

<sup>2</sup> Cir. 4, A. G. O. 1885.

<sup>3</sup> See G. O. 29, A. G. O. 1890.

## REPORTER.

“The employment of a reporter, under section 1203 R. S., is only authorized for general courts-martial in cases where the authority appointing the court may consider it necessary. The convening authority may also, when deemed necessary, authorize the detail of an enlisted man to assist the judge advocate of a general court-martial in preparing the proceedings of the court.”<sup>1</sup>

“When a reporter is employed under section 1203 R. S., he will be paid not to exceed ten dollars a day, during the whole period of absence from his residence, travelling, or on duty. In special cases, when authorized by the Secretary of War, stenographic reporters for courts-martial, courts of inquiry, and important boards may be employed at rates not exceeding twenty-five cents per folio for taking and transcribing the notes in short-hand, or ten cents per folio for other notes, exhibits, and appendices. Reporters will be paid by the Pay Department, on the certificate of the judge advocate.”<sup>2</sup>

“No person in the military or civil service of the Government can lawfully receive extra compensation for clerical duties performed for a military court.”<sup>3</sup>

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<sup>1</sup> Par. 1046, A. R.

<sup>2</sup> Ib. 1047. One hundred words make one *folio*.

<sup>3</sup> Ib. 1048.

**INTERPRETER.**

“Interpreters to courts-martial are paid by the Pay Department, upon the certificate of the judge advocate that they were employed by order of the court. They will be allowed the pay and allowances of civilian witnesses.”<sup>1</sup>

**CHALLENGE.**

“Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.”<sup>2</sup>

A positive declaration, by the challenged member, that he is not prejudiced against the accused, nor interested in the case, will ordinarily satisfy the accused, and, in the absence of material evidence in support of the objection, justify the court in overruling it.<sup>3</sup> If, however, the statement is unsatisfactory, or the member makes no response, the accused may offer testimony in support of his objection or may subject the challenged member to an examination by interrogatories in the same manner that a juror may be examined by criminal courts.<sup>4</sup> If the accused desires that the challenged

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<sup>1</sup> Par. 1049, A. R. See “Fees of Witnesses,” *infra*.

<sup>2</sup> 88th A. W.

<sup>3</sup> Win. Dig., p. 72.

<sup>4</sup> 1 Win. Law, p. 287.

member be put on his *voir dire*, the judge advocate may administer the oath before the court is sworn.<sup>1</sup>

Courts should be *liberal* in passing upon challenges; but they should not entertain an objection that is not *specific*, nor one upon the mere assertion of the accused, if it is not admitted by the challenged member. A challenge against a member that he is the author of the charges and a material witness, is ordinarily sufficient ground to justify the court in sustaining it.<sup>2</sup>

The court of itself cannot excuse a member in the absence of a challenge. A member, not challenged, who thinks himself disqualified, can only be relieved by application to the convening authority.<sup>3</sup>

The judge advocate is not challengeable; but in case of personal interest in the trial, he should apply to the convening authority to be relieved.<sup>4</sup>

### OATHS.

**Of Members.**—The judge advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial :

“ You, A B, do swear that you will well and truly

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<sup>1</sup> See Act July 29, 1892; published in G. O. 57, A. G. O. 1892.

<sup>2</sup> Win. Dig., p. 72.

<sup>3</sup> *Ib.*, p. 73.

<sup>4</sup> G. C. M. O. 41, A. G. O. 1875; also, G. C. M. O. 18, A. G. O. 1886.

try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner 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 that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God.”<sup>1</sup>

**Of the Judge Advocate.**—When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge advocate, or person officiating as such, an oath in the following form :

“ You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence

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<sup>1</sup> 84th A. W.; see G. O. 57, A. G. O. 1892.

thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God.”<sup>1</sup>

**Of Witness.**—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.”<sup>2</sup>

**Of Reporter.**—“You swear that you will faithfully perform the duties of reporter to this court. So help you God.”<sup>3</sup>

**Of Interpreter.**—“You swear that you will truly interpret in the case now in hearing. So help you God.”<sup>4</sup>

**Voir Dire.**—“You, A B, do swear that you will true answers make to questions put to you, touching your competency to serve as a member (or witness) in this case. So help you God.”<sup>5</sup>

Judge advocates of departments and of courts-martial, and the trial-officers of summary courts, are authorized to administer oaths for the purposes of military justice, and for other purposes of military administration.<sup>6</sup>

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<sup>1</sup> 85th A. W.

<sup>3</sup> Cir. 12, A. G. O. 1892.

<sup>2</sup> 93d A. W.

<sup>4</sup> Ib.

<sup>5</sup> Ives, p. 120.

<sup>6</sup> Act July 29, 1892; see G. O. 57, A. G. O. 1892.

The swearing of the court, the judge advocate, and reporter in case one is authorized, completes the *organization* for trial.

## POSTPONEMENT.

If any delay is *necessary*, application therefor should properly be made to the convening authority before the accused is arraigned. The court should "for reasonable cause grant a continuance to either party for such time and as often as may appear to be just. *Provided*, that if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days." <sup>1</sup>

"Upon application by the accused for postponement of trial because of the absence of a witness, it should distinctly appear, on his oath, 1st, that the witness is material, and why; 2d, that the accused has used due diligence to procure his attendance; 3d, that the accused has reasonable ground to believe, and does believe, that he will be able to procure such attendance within a reasonable time stated." <sup>2</sup>

Application for *extended* delay should, when practicable, be made to the authority appointing the court. When made to the court, and, in the opinion of the court, it is well founded, it should be referred to the

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<sup>1</sup> 93d A. W.

<sup>2</sup> Par. 1013, A. R.

convening authority to decide whether the court shall be adjourned or dissolved.<sup>1</sup>

### THE ARRAIGNMENT.

The court being organized and both parties ready to proceed, the judge advocate reads the charges and specifications, separately and in order, to the accused, and asks him how he pleads to each—"Guilty, or not guilty." The order pursued, in case of several charges or specifications, is to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest.

### PLEAS.

Ordinarily, the plea is, "Guilty," or "Not guilty," to each charge and specification; or, guilty of a specification excepting certain words, and of the excepted words not guilty; or as when charged with an offence which includes a lesser one of kindred degree, guilty to the specification except certain words, substituting therefor certain others, and to the charge, not guilty, but guilty of the lesser kindred offence.<sup>2</sup>

A plea of guilty does not necessarily shut out testimony.<sup>3</sup> In cases of discretionary punishment (see

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<sup>1</sup> Par. 1014., A. R.

<sup>2</sup> Win. ab. Law, p. 100; see, also, "Finding," *infra*.

<sup>3</sup> Win. ab. Law, p. 101.



“Punishment,” *infra*), a full knowledge of the circumstances attending the offence is essential to the court in measuring punishment and to the convening authority in reviewing the sentence. It is, therefore, proper for the court to take evidence after a plea of guilty in any such case, except when the specification is so descriptive as to disclose all the circumstances of mitigation or aggravation that accompany the offence.<sup>1</sup>

In cases where the punishment is mandatory, this full knowledge of the attendant circumstances is still more necessary to the reviewing authority, in order that he may be able to comprehend the entire case and correctly judge whether the sentence should be approved or disapproved. In *capital* cases particularly, it is most important that all the facts of the case be exhibited in evidence.<sup>2</sup>

In practice, the absence of evidence to illustrate the offence has been found particularly embarrassing in cases of *desertion*. In a majority of these cases in which the plea is “Guilty,” the record is found to contain no testimony whatever; and a full and intelligent comprehension of the nature of the offence is thus, in many instances, not attainable.<sup>3</sup>

When the court takes evidence after a plea of “Guilty,” the accused may cross-examine the witnesses,

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<sup>1</sup> Win. Dig., p. 376.

<sup>2</sup> *Ib.*, p. 376.

<sup>3</sup> *Ib.*, p. 377.

produce evidence to rebut their testimony, offer evidence as to character, and address the court in extenuation of the offence or in mitigation of punishment.<sup>1</sup>

When the accused pleads "Guilty," and then, with no evidence taken, makes a statement inconsistent with his plea, the statement and plea should be considered together, and if guilt is not conclusively admitted, the court should direct the entry of a plea of "Not guilty," and proceed to try the case on its merits.<sup>2</sup>

If the prisoner, from obstinacy or deliberate design, stands mute, or answers foreign to the purpose, the court should proceed to trial and judgment as if the prisoner had pleaded "Not guilty."<sup>3</sup>

Instead of pleading to the merits, the accused may plead in bar of trial,—either to the jurisdiction, by denying the legal right of the court to try him, or he may offer a special plea, presenting reasons why he should not be tried on each separate specification. Such a plea in bar and any argument in its favor should be signed by the accused, appended to the record, and referred to in the proceedings as having been submitted by him. The *onus* of substantiating such pleas rests on the accused. Both sides should be heard, and the evidence *pro* and *con* recorded. If the plea in bar of trial by the court be found valid, the court should report its de-

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<sup>1</sup> Ins. Dep. Dak., p. 11.

<sup>2</sup> Win. Dig., p. 377.

<sup>3</sup> 89th A. W.

cision to the convening authority and await further instructions ; if, by the special plea, an *issue* is made, the court should act as directed on page 24; if the plea be overruled, the accused should be required to plead to the merits, i.e., " Guilty," or " Not guilty." <sup>1</sup>

" A second enlistment in the service of the United States when the first has not been fulfilled, is not void, but voidable at the option of the United States only ; so that a man who, whilst serving under such a second enlistment, commits an offence, cannot successfully plead the fraudulent character of his second enlistment in bar of trial. Paragraph 131 of the Regulations relates to soldiers *not charged with crime* who are discovered to be deserters from the navy or marine corps, and does not interpose any obstacle to the action of the reviewing authority or proceedings of courts-martial in such cases." <sup>2</sup>

#### ATTENDANCE OF WITNESSES.

" The judge advocate should summon the necessary witnesses for the trial; but he shall not summon witnesses at the expense of the Government without the order of the court, unless satisfied that their testimony

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<sup>1</sup> Ins. Dep. Columbia, p. 49 ; also, Ives, pp. 96 to 111.

<sup>2</sup> Cir. 3, A. G. O. 1890.

is material and necessary to the ends of justice.”<sup>1</sup> “He should send subpoenas, whenever it is possible, through the regular military channels.”<sup>2</sup>

To procure the necessary witnesses, the judge advocate should usually proceed as follows :

*I. For witnesses stationed or residing within the State, Territory, or District in which the court may be ordered to sit.*

If the desired witness is a *military person*, stationed at or near the place where the court is in session, the judge advocate should notify him verbally, or by a note, that he is wanted as a witness ; if a military person residing so far from where the court sits that travel may be necessary, the judge advocate should send him a summons (see form, *infra*) through the authority competent to order the travel.

If the desired witness is a *civilian*, living near the post where the court is convened, duplicate subpoenas (see form, *infra*) should be made out and one of these

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<sup>1</sup> Par. 1008, A. R. The accused is, in general, entitled to have all the material witnesses for his defence summoned; except when their testimony would be merely cumulative, and evidently add nothing to the strength of his case. As far as possible, he should be allowed a full and free defence, as the least denial to him of any proper facility, opportunity, or latitude for the same, not only serves to defeat the ends of justice, but often lends impunity to guilt. (G. C. M. O. 138. A. G. O. 1876.)

<sup>2</sup> Par. 1010, A. R.

served upon the witness by the judge advocate or by any person instructed by him ; if the residence of the witness wanted is not near the post, but still within the State, etc., the judge advocate should send the duplicate subpoenas to the convening authority, requesting service of the same.

Service is made, under the laws of the United States, by a personal delivery of the subpoena to the witness ; and *proof* of service by returning the duplicate <sup>1</sup> original to the judge advocate indorsed as explained on form published *infra*. Any person, instructed by the judge advocate or post commander may serve the subpoena; but to be *legal*, this service *must be personal*. <sup>2</sup>

Should a witness fail to appear on due and reasonable notice, the judge advocate has power to issue like process to compel any witness to appear and testify, which courts of criminal jurisdiction within the State, Territory, or District where such court may be convened may lawfully issue. <sup>3</sup> This power also includes the power to execute such process through some officer, who shall be specially charged with its execution. <sup>4</sup>

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<sup>1</sup> "The issuing of duplicate subpoenas is a court-martial practice. The ordinary practice is regulated by statute or rule of court, and generally consists in delivering a copy to the witness." (Op. Actg. Judge Adv. Gen'l, June 26, 1891.)

<sup>2</sup> Ins. Dep. Dak., pp. 16 and 17; also, par. 1009, A. R.

<sup>3</sup> Sec. 1202, R. S.

<sup>4</sup> 12 Op. Atty. Genl., p. 504.

In the case of such failure to appear, the judge advocate should attach to the record, referring to the same therein, the duplicate subpoena indorsed as explained above; then if the witness is a material and necessary one, make out a writ of attachment (see form, *infra*) against him, and apply to the department commander for designation of some military officer to serve the process. Such officer having been named, the judge advocate should formally direct the writ to him, attaching thereto a certified copy of the order convening the court, of the original subpoena, and of the charges and specifications in the case in question.<sup>1</sup>

In executing such process, it is lawful to use simply the necessary force to bring the witness before the court. Whenever force is actually required, the post commander, nearest witness' residence, will furnish a military detail sufficient to execute the process.<sup>2</sup>

If, in executing this legal process, the officer detailed for that purpose should be served with a writ of *habeas corpus* from any United States court, or by a United States judge, for the production of the witness, the writ must be implicitly obeyed and the prisoner produced with the orders or process under which he is held;<sup>3</sup> if, however, the writ of *habeas corpus* is issued by any

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<sup>1</sup> Ins. Dep. Dak., p. 17.

<sup>2</sup> See par. 1009, A. R.

<sup>3</sup> *Ib.* 1062, as amended by G. O. 38, A. G. O. 1890.

*State* court (or State judge) it will be the officer's duty to indorse and return such writ, respectfully informing the court (or judge) "that he holds the within-named prisoner pursuant to a writ of attachment issued by a lawfully convened court-martial; that he is diligently and in good faith engaged in executing said writ according to the commands of said court-martial; and that he respectfully submits for the inspection of the court (or judge) a copy of the original process under which he is acting, together with a copy of the order convening said court-martial, and of the subpoena and the charges, in the case in question. Further, that as he thus holds the prisoner under and by color of the authority of the United States, he most respectfully denies the jurisdiction of the honorable court (or judge) in the premises, and requests the dismissal of the writ of *habeas corpus* for such cause, and that, in this connection, he invites the attention of the court (or judge) to the decisions of the supreme court of the United States upon this subject given in *Ableman v. Booth*, 21 Howard, p. 506; also, *U. S. v. Tarble*, 13 Wallace, p. 397."

After having made the above return, it is imperatively the duty of the officer "to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. And, consequently, it is his duty not to take the prisoner, nor suffer him to be taken

before a State judge or court upon a *habeas corpus* issued under State authority.”<sup>1</sup>

Although a court-martial has power, under section 1202, R. S., to thus procure the *attendance* of civilian witnesses, it has *practically none*, under same statute, *to compel them to testify*. On this subject the Acting Judge Advocate General, in his report for 1887, states: “In an opinion of this office, dated August 27, 1885, it was held that, in the absence of legislation to that effect, a court-martial had no power to punish for contempt a civilian who, having been summoned as a witness and having appeared, refused to testify. An opinion to the same effect was afterwards given by the Department of Justice, and the War Department has accepted these opinions as correct.”<sup>2</sup>

*II. For witnesses, stationed or residing without the State, etc.*

“The deposition of witnesses residing beyond the limits of the State, Territory, or District in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.”<sup>3</sup> In order to avoid expense to the United

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<sup>1</sup> See par. 1061, A. R.; also, 21 Howard, p. 517.

<sup>2</sup> A bill providing for punishment of such witnesses for contempt was introduced during last session of Congress, but failed to pass.

<sup>3</sup> 91st A. W. In time of peace, desertion is not a capital offence.



States, depositions should be taken in accordance with this article, whenever they will be sufficient to meet the ends of justice.

The usual method of procedure to obtain a deposition (see form, *infra*) is as follows : —

The party, prosecutor or defendant, desiring the deposition submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross interrogatories are added, if desired; finally, the court having assented to those thus submitted, adds such as, in its judgment, may be necessary to elucidate the whole of the witness' testimony.

The interrogatories having been accepted by the court, the judge advocate should make out duplicate subpoenas requiring the witness to appear in person, at the proper place, on a —— date, before the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space for it should be left blank.

The judge advocate should then send the interrogatories and subpoenas to the convening authority, with a request that the deposition be secured.

Judge advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized

to administer oaths and take depositions.<sup>1</sup> If none of these officers are available, any other army officer may be designated to see that the deposition is properly taken; *but the oath in such a case must be administered and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.*<sup>2</sup>

Upon the return of the interrogatories with the required deposition, the latter is submitted to the court by the judge advocate. The papers should then be properly marked, appended to the record, and referred to in the proceedings, where all action upon the subject necessary for the information of the reviewing authority should be recorded.

Upon the receipt of the deposition, the judge advocate should also prepare and sign the usual "accounts for a civilian witness" (see form, *infra*) and transmit them to the witness with duplicate copies of the order convening the court. The *period of attendance* can be ascertained from the deposition.<sup>3</sup>

In *capital* cases (*i.e.*, those in which the offence is punishable by death), or in cases where the judge advocate can certify "that, under the peculiar circumstances

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<sup>1</sup> Sec. 4, 110 A. W.; see G. O. 57, A. G. O. 1892.

<sup>2</sup> G. O. 27, A. G. O. 1889. Convictions based on depositions not *properly authenticated* must be disapproved. See Cir. "K," A. G. O. 1889.

<sup>3</sup> See Cir. 3, A. G. O. 1888.

of the case, to administer justice it is not best to take the desired testimony by deposition under the 91st Article of War," the regular subpoenas should be made out by the judge advocate, certified to as above, if necessary, and transmitted to the department commander, with a request that they be duly forwarded to the desired witness, if an officer, or to the nearest post commander for service, if the witness is an enlisted man or a civilian.

An officer or enlisted man who receives a summons to attend as a witness before any military court, board, civil court, or other tribunal competent to issue subpoenas, and sitting beyond the limits of the department where he is serving, will, before starting to obey the summons, forward it through the proper channel to his department commander, that the necessary orders to comply with the military summons, or authority to obey the civil process, may be given.<sup>1</sup> "In extreme urgency, and when the public interest would be liable to suffer by delay, post commanders may authorize immediate departure in obedience to the summons. In such cases they will make special reports of the facts to the department commander for his approval. A post commander who may be summoned will be governed by these instructions."<sup>2</sup>

"Officers and enlisted men, reporting as witnesses

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<sup>1</sup> Par. 1011, A. R.

<sup>2</sup> Ib. 1012.

before a civil court, should receive the necessary expenses incurred in travel and attendance from the civil authorities. Neither mileage nor travel allowances will be paid in such cases by the War Department. If, however, it is absolutely necessary to furnish them transportation, in kind, to enable them to appear as witnesses for the Government, before a civil court of the United States, an account of such expenditure, together with the evidence that they were properly subpoenaed and did attend the court, will be forwarded to the War Department for refundment by the Department of Justice. Officers providing such transportation will notify the court, or the marshal thereof, that it was furnished to enable the witnesses to perform the requisite journeys in obedience to the summons."<sup>1</sup>

#### FEES OF WITNESSES.<sup>2</sup>

A *civilian witness* before a court-martial is entitled upon his discharge to receive from the judge advocate

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<sup>1</sup> Par. 47, A. R.

<sup>2</sup> "The Secretary of War has authority to order the employment of experts in a trial before a court-martial, and to determine the rate of compensation to be paid them; and he is not limited to the rate prescribed by the Army Regulations for civilian witnesses, who can be compelled to testify. The appropriation for 'compensation of reporters and witnesses attending upon courts-martial and courts of inquiry . . . ' provided for in the Army appropriation act for the service of the fiscal year 1892, is available for and properly charge-

a certificate, setting forth the fact of his having been summoned as a witness in the case, and the number of days of his attendance in that capacity before the court. To entitle a witness to the payment of fees, it is not absolutely essential that he should produce a formal summons or subpoena, addressed to and complied with by him, or that he should have been formally summoned in the case. A strict observance, however, of paragraph 1008 Army Regulations, would call for the issue of formal summons to witnesses on both sides, and it is the best practice for the judge advocate to cause such to be served in each instance.<sup>1</sup>

It cannot affect the right of a civilian witness to his compensation as such, that, when on the stand, he refused to testify in answer to proper questions, or that, in answering material questions, he testified falsely. Such a witness is paid for his *attendance*, and the fact that, after he has duly attended, he has committed a contempt or has been guilty of perjury, cannot impair a right not made, by law or regulation, conditional upon his good conduct under examination or upon his veracity.<sup>2</sup>

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able with the expenditure. Accounts for photographing, however, in connection with the giving of expert evidence in handwriting, cannot be paid from this appropriation."—Op. 2d Controller; see Cir. 13, A. G. O. 1891.

<sup>1</sup> Win. Dig., pp. 487-8.

<sup>2</sup> *Ib.*

The form for account of a civilian witness is published *infra*. Instructions in reference to same are given on back of form, in paragraphs 1050-1055 A. R., and in following extract from Cir. 10, A. G. O. 1889:

“A civilian witness, not in the employ of the United States, is entitled to all the allowances made to a Government employé under similar circumstances, and in addition thereto to \$3 per day for time necessarily spent in travelling and in attendance on the court.”<sup>1</sup>

In making out such accounts the judge advocate should see that the name of the witness, wherever it appears in the voucher, agrees with that given in the summons, and that the vouchers and all accompanying papers are in *duplicate*.

If “authorized items of expense” are shown in a “statement” or memorandum, this should be signed by the witness.

The certificate should state the period of attendance, if only for a single day, strictly according to the blank form, thus: “From the first day of January, 1888, to the first day of January, 1888, inclusive,” and not, as is often stated, “On the first day of January, 1888.”

The date of the summons must be prior to that of the witness' attendance before the court; that of the affida-

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<sup>1</sup> For payment of “experts” see note 2, page 50.

vit and certificate on or after the last day of his attendance; finally, the copy of the order convening the court should be certified to by some officer other than the judge advocate.

### COMPETENCY OF WITNESSES.

As a general rule, all persons are competent witnesses; the exceptions to this rule are,<sup>1</sup> those insensible to the obligations of an oath; those deficient in understanding by reason of lunacy, idiocy, infancy, or intoxication—the question of capacity rests with the court; children too young to understand an oath—more depends on intelligence than age;<sup>2</sup> wives of accused persons, except in case of bodily injury inflicted on the wife by the husband.<sup>3</sup>

By the Act of March 16, 1878, the exception that the accused party is not a competent witness has been so far set aside as to allow him, at his own request, but not otherwise, to testify in his own behalf. This act provides: "That in the trial of all indictments, informations, complaints and other proceedings against persons

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<sup>1</sup> 1 Glf., secs. 326, 430.

<sup>2</sup> See G. C. M. O. 10, A. G. O. 1886.

<sup>3</sup> The old common-law rule that persons convicted and sentenced for treason, felony, and *crimen falsi* are incompetent has been so changed by practice in the State and United States courts that such conviction would now probably be held to affect the credibility of the witness only. (Op. Actg. Judge Adv. Genl., June 26, 1891.)

charged with the commission of crimes, offences and misdemeanors, in the United States courts, Territorial courts and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him." Parties testifying under this act have no exceptional status or privileges; they must take the stand and be subject to cross-examination like other witnesses. The submission, by the accused, of a sworn statement is not a legitimate exercise of the authority to testify, conferred by the statute, and such a statement should not be admitted in evidence by the court.<sup>1</sup>

In regard to the effect of the above act upon cases in which husbands and wives may be called upon to testify against each other, Wharton states (Crim. Ev., sec. 400): "The reason for the exclusion of husband and wife, when called for or against the other, being social policy, and not interest, statutes abolishing incompetency resting on interest do not remove the common-law incompetency of husband and wife for or against the other."

Incompetency must, in all cases, be proved, not inferred. Except in case of want of religious belief, the

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<sup>1</sup> Win. Dig., p. 482.



witness may be examined on his *voir dire*; he may, in any case, be questioned not under oath.<sup>1</sup>

### EXAMINATION OF WITNESSES.

Courts-martial should in general follow, so far as apposite, the rules of evidence observed by criminal courts of the United States. They are not, however, bound by any statute in this particular, and it is thus open to them, in the interests of justice, to apply those rules with more indulgence than the civil courts; *e.g.*, to allow more latitude in the introduction of testimony and in the examination and cross-examination of witnesses than is commonly permitted by civil tribunals. The idea being that persons on trial by courts-martial are not, ordinarily, versed in legal science, and a liberal course should therefore be pursued and over-technicality avoided.<sup>2</sup>

The manner in which witnesses are to be examined lies chiefly within the discretion of the court. The great object is to elicit the truth from the witness; but the character, intelligence, moral courage, bias, memory, etc., of witnesses are so varied as to require an almost equal variety in the manner of interrogation necessary to attain that end.<sup>3</sup>

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<sup>1</sup> Ins. Dep. Columbia, p. 54.    <sup>2</sup> Win. Dig., p. 253.    <sup>3</sup> 1 Glf., sec. 431.

Before the examination of any particular witness is begun, it is customary for the court to require the others to retire. If a witness remains in court after such a request, by mistake or otherwise, the court will decide whether or not he shall be examined; but whether or not it is essential to the discovery of truth that the witnesses shall be thus examined out of hearing of each other, is a matter within the discretion of the court.<sup>1</sup>

After a witness has been sworn, the first question should be so formed as to ascertain his name, rank, regiment and station; the second, his recognition of the accused, together with the latter's name, rank, etc.; the third, when practicable, in such form that the answer may show that the witness was so placed as to personally know something about the matter set forth in the specifications; while the fourth and subsequent interrogatories should be such as to elicit all the facts, whether they consist of words or actions, that may thus have come within the witness's personal knowledge.<sup>2</sup>

**Direct Examination.**—Upon direct examination, leading questions are not allowed. This rule, however, is to be understood in a reasonable sense; for, otherwise, the examinations might be most inconveniently protracted. To abridge the proceedings, the witness may be led at once to points on which he is to testify and

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<sup>1</sup> 1 Glf., sec. 431.

<sup>2</sup> Ins. Dep. Dak., p. 13.

the facts in the case already established be recapitulated to him. The rule is, therefore, not applicable to that part of the examination which is merely introductory.<sup>1</sup>

Leading questions are those which plainly suggest the answer desired, or those which, embodying a material fact, admit of a simple *yes* or *no*. The exceptions to the above rule against their admission are: 1st, where the witness appears hostile to the party producing him, or in the interest of the other party, or unwilling to give evidence; 2d, where an omission in his testimony is evidently caused by want of recollection, which a suggestion may assist; 3d, when a witness is called to contradict another, the particular expressions may be used instead of asking witness what was said.<sup>2</sup>

When and under what circumstances a leading question may be put is a matter for the court to decide, and not a matter which can be assigned for error.<sup>3</sup> When, therefore, either party desires to ask such questions, the permission of the court should be obtained and this fact noted upon the record.

On the direct examination the questions should be material and relevant, and irrelevant questions should be excluded; yet great caution should be exercised in excluding questions on this ground, as many questions which appear irrelevant may "constitute a link in the

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<sup>1</sup> 1 Glf., sec. 434.

Ib. 435.

<sup>3</sup> Ib.

chain of proof" without bearing directly or immediately upon the charge.<sup>1</sup>

As a rule, also, the testimony should be confined to facts within the witness's personal knowledge, and matters of opinion excluded; but in matters of common observation, such as drunkenness, or manner, whether insolent, insubordinate or otherwise, etc., he may state his opinion or belief as to the state of sobriety, or as to the manner of the accused at the time specified. There are, moreover, two other excepted classes of cases in which a witness may give his opinion: 1st, when a matter of fact resting wholly on belief is in question, such as the identity of a person, or of a handwriting with which the witness is familiar; 2d, when the case involves a question of science or a knowledge of a specialty, in which case the testimony of experts is admissible.<sup>2</sup> For a witness to be competent in the latter case, it must be shown by the party producing him that he *is an expert*.

To refresh his memory, the witness may use a memorandum made at the time of the fact or action to which it refers; such a writing should be exhibited to the court to show its nature.<sup>3</sup>

**Cross-examination.**—The cross-examination should ordinarily be confined to the matter of the direct exam-

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<sup>1</sup> 1 Win. Law, p. 452.

<sup>2</sup> *Ib.*, p. 479.

<sup>3</sup> *Ib.*, p. 477.

ination; yet this rule does not apply to questions outside of the main issue, asked for the purpose of testing the motives, prejudice or credit of the witness. In view of its purpose and significance, a much greater latitude is allowed upon this than upon the direct examination; *e.g.*, leading questions being freely allowed, and matters otherwise irrelevant and collateral permitted when the object is to test the knowledge, memory or animus of the witness, and thus discredit his testimony. Collateral or irrelevant matter cannot, however, be entered into for the purpose of contradicting the witness by other testimony and thus discrediting him; though such questions as whether the witness has not, at some previous time, told a different story, or whether the witness has not previously expressed hostility toward the accused, may be asked with the above view of contradicting him in case he answers in the negative.<sup>1</sup>

**Re-examination.**—Where the witness, in the cross-examination, has made statements at variance with those made upon his direct examination, the party calling him may *re-examine* him to elicit an *explanation* of those statements, or his  *motive* in making them. This is strictly the full scope of a re-examination, and hence it is desirable that all material questions should be put upon the direct examination; but though this is the

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<sup>1</sup> 1 Win. Law, p. 487.

strict rule, the court may, in its discretion, make exceptions in the interests of justice. When, however, upon cross-examination, new matters have been introduced, the witness may be re-examined upon these subjects.<sup>1</sup>

**Rebuttal.**—Witnesses in rebuttal may be called by the judge advocate to support the character for veracity of his witnesses impeached by the accused; to impeach the character of witnesses for the defense; and to rebut any and all *new matter* introduced by the accused and not touched upon by the prosecution.<sup>2</sup>

The accused may cross examine such new witnesses, called in rebuttal, and may himself call other witnesses to fortify the character of his previous witnesses; but for this purpose only when these have been impeached by the judge advocate.<sup>3</sup>

**Examination by the Court.**—The court should, ordinarily, defer questioning a witness until his examination by the judge advocate and the accused has been completed; if a member, for any reason, as when he sees something material omitted, wishes to put a question before this time, he may suggest it to either the judge advocate or the accused.<sup>4</sup>

The questions of the court should be for the purpose of clearing up doubt upon obscure points, or of recon-

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<sup>1</sup> 1 Win. Law, p. 488.

<sup>2</sup> Ins. Dep. Cal., p. 20.

<sup>3</sup> *Ib.*

<sup>4</sup> 1 Win. Law., p. 402.

cing discrepancies in the testimony. With this in view, if the court desires to hear evidence not introduced by either party, it may properly call upon the judge advocate to procure the same if practicable. Any testimony thus introduced would, of course, be subject to cross-examination and rebuttal by the party to whom it is adverse.<sup>1</sup>

Though the above is the proper order and sequence of examination, the court may, in the interests of truth and justice, call or recall witnesses at any stage of the proceedings, both parties being present; it may permit material testimony to be introduced by either party, quite out of its regular order and place; or permit a case, once closed by either or both sides, to be reopened for the introduction of testimony, previously omitted, even though this may have been done through negligence, if convinced that this testimony is so material that its omission would leave the investigation incomplete.<sup>2</sup>

### CREDIBILITY OF WITNESSES.

A witness's credibility may be attacked: 1st, by disproving his testimony; 2d, by evidence of his general reputation for truth and veracity—particular instances

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<sup>1</sup> 1 Win. Law, p. 402.

<sup>2</sup> *Ib.*, p. 401.

cannot be inquired into, but the character of the witness as shown, and his connection with the case, may afford grounds for disbelieving him; 3d, by proof of statements out of court, contradictory to his testimony—this is not permitted unless he was asked on cross-examination, as before stated, whether, at a time and place specified, he had not made such or such a statement to a person named.<sup>1</sup>

A party cannot discredit his own witness; but if he is imposed upon, or the witness unexpectedly testifies adversely, he may contradict him by others.<sup>2</sup>

Unless the accused calls witnesses as to his own character, this cannot be attacked by the prosecution. The accused having put his character in issue, the prosecution may impeach the same.<sup>3</sup>

#### PROOF OF INTENT.

“Where an act, *in itself indifferent*, becomes criminal if done with a particular intent, then the intent must be proved and found; but where the act is *in itself unlawful*, the proof of justification or excuse lies on the defendant; and in failure thereof, the law implies a criminal intent.”<sup>4</sup>

“The frequent failure in proceedings of general

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<sup>1</sup> 1 Win. Law, pp. 492-5.

<sup>2</sup> Glf., secs. 442-4.

<sup>3</sup> See G. C. M. O. 88, A. G. O. 1886.

<sup>4</sup> See 3 Glf., sec. 18.



courts-martial to show, in cases of men tried for desertion, the intention of the accused, by which alone it can be determined whether the man is guilty of the crime of desertion (not of absence without leave merely), deprives the reviewing authority, and those to whom application is made to extend clemency, of a proper and intelligent understanding of the case.”<sup>1</sup>

“The attention of officers composing general courts-martial is therefore called to the necessity for more careful and searching inquiry into the cases of enlisted men brought before them for trial under charges of desertion. That crime may be briefly defined as an unauthorized absence accompanied by an intent of not returning. Both elements must be proved, but the second is the gist of the offence; and it follows that, in order to determine the question of intent, all the circumstances connected with the absence of the prisoner must be considered together. The entry on the descriptive list of a soldier that he has deserted is not *proof* of the crime, but merely evidence that he has been charged with its commission. Men enticed into dissipation, finding, on recovering from its effects, that they have been absent long enough to be reported deserters, prolong their absence through fear of being brought to trial for desertion, although they had from the first no intention to

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<sup>1</sup> See G. O. 91, A. G. O. 1861.

desert. Such an offence deserves and should receive proper punishment, but it is not desertion."<sup>1</sup>

#### REMARKS ON EVIDENCE.

The best evidence obtainable should, of course, always be given. The *weight* of evidence, however, does not, necessarily, depend upon the number of witnesses. A single witness, whose statements, manner and appearance on the stand are such as to commend him to credit and confidence, will sometimes properly outweigh several less acceptable and satisfactory witnesses.<sup>2</sup>

Hearsay evidence is inadmissible; but the court should be careful not to confound *original* with *hearsay*. Thus the fact in controversy may be whether such things were written or spoken, and not whether they are true, or such language or statement may be a necessary or an inseparable concomitant of the fact in issue. In such cases the writings or words are not *hearsay*, but *original* facts admissible as evidence.<sup>3</sup>

Documentary evidence is only admissible when its authenticity has been established by sworn testimony, or by the seal of a court of record, or when its authenticity is admitted by the accused.<sup>4</sup> As to proof of writings, see 1 Win. Law, p. 509 *et seq.*

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<sup>1</sup> See G. O. 91, A. G. O. 1881.

<sup>2</sup> Win. Dig., p. 254.

<sup>3</sup> 1 Gif., sec. 100.

<sup>4</sup> Ins. Dep. Cal., p. 21.

When transcripts from the records of any of the executive departments of the Government are used, they should be certified to by the chief officer of the bureau in which the originals are filed, and the authenticity of the certification verified under the seal of the department, by the secretary thereof.<sup>1</sup>

When a document contains primary evidence of a fact, oral testimony of its contents is inadmissible, unless the non-production of the document can be satisfactorily explained.<sup>2</sup>

When original documents are introduced and they are of such character that they cannot be retained, certified copies of the same should be appended to the record.<sup>3</sup>

The opinion, in writing, of the department, or other, commander of an accused, as to the merit of his case, is inadmissible as evidence.<sup>4</sup>

#### FINDING.

The finding of the court should be governed by the evidence considered in connection with the plea. The finding upon the charge should be consistent with that upon the specification.<sup>5</sup>

If the offence, as set forth in the specification, is sub-

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<sup>1</sup> Sec. 882, R. S.

<sup>2</sup> Ins. Dep. Dak., p. 12.

<sup>3</sup> Ib.

<sup>4</sup> G. C. M. O. 42, A. G. O. 1890.

<sup>5</sup> Win. Dig., p. 262.

stantially proven, the court should refrain from making immaterial exceptions or substitutions not necessary to support the charge; if exceptions are necessary, the accused may be found guilty of parts of the specification, not guilty of the remainder, and then, if the specification still supports the charge, guilty of the charge.<sup>1</sup>

If the evidence proves the commission of an offence less in degree than that specified, yet kindred thereto, the court may except words of the specification, substitute others instead, pronounce the guilt and innocence of the substituted and excepted words respectively, and then find the accused not guilty of the charge, but guilty of the lesser kindred offence. Of this form of verdict, the most familiar is the finding of guilty of absence without leave under a charge of desertion. In such a case, in its finding of guilty upon the specification, the court should in terms *except* the words "Did desert," and substitute therefor the words "Did absent himself without authority." The finding upon the charge should regularly be "Not guilty, but guilty of absence without leave."<sup>2</sup>

Another legal and now common form of finding is where an accused is charged with a *specific* offence, made punishable by an Article of War, other than the 62d, and the court is of the opinion that, while the ma-

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<sup>1</sup> Ins. Dep. Ariz., p.19.

<sup>2</sup> Win. Dig., p. 264.

terial allegations in the specification are proven, they do not fully sustain the charge as laid, but do clearly establish a breach of military discipline; in this case, the accused may properly be found guilty of the specification and not guilty of the charge, but guilty of "*Conduct to the prejudice of good order and military discipline.*"<sup>1</sup> It should be remembered, however, that the court cannot in its finding legally substitute the 62d Article of War for any other, unless the proof under the specification fails to substantiate the original charge. The *reverse* of this form of finding has never been sanctioned. Thus where a charge is laid under the general article, a finding under any other article, or, where a charge is laid under a specific article, a finding under any other specific article, would be wholly irregular and invalid.<sup>2</sup>

In a case of virtual acquittal, to use the term "Guilty" is improper; the correct expression is, "Find facts as stated, but attach no criminality thereto." "Guilty" should be employed only when the accused has been convicted of a crime deserving punishment.<sup>3</sup>

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<sup>1</sup> Win. Dig., p. 265.

<sup>2</sup> *Ib.*; also, 1 Win. Law, p. 545; G. C. M. O. 20, A. G. O. 1887; and G. C. M. O. 53, A. G. O. 1888.

<sup>3</sup> Ives, p. 153.

**PREVIOUS CONVICTIONS.<sup>1</sup>**

In every case when an offence on trial before a court-martial is of a character admitting of the introduction of evidence of previous convictions, and the accused is convicted, the court after determining its findings will be opened for the purpose of ascertaining whether there is such evidence, and if so, of hearing it.<sup>2</sup>

“These convictions must be proved by the records of previous trials,<sup>3</sup> or by duly authenticated orders promulgating the same, showing the actual offences of which the soldier was convicted,<sup>4</sup> except in the cases of conviction by summary court, when a duly authenticated copy of the record of said court shall be deemed sufficient proof.”<sup>5</sup>

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<sup>1</sup> For instructions as to when evidence of previous convictions should be submitted with charges, see note, page 23.

<sup>2</sup> G. O. 64, A. G. O. 1892.

<sup>3</sup> “It is not contemplated by paragraph 1018, Army Regulations, to authorize the introduction of evidence of convictions by civil courts.” (Dec. Actg. Secty. of War, Nov. 13, 1890.)

<sup>4</sup> “When proof is by authenticated orders, these must, in order to show the actual offences of previous convictions, set forth the specifications to the charges. To only set forth the charge, as, for example, ‘Conduct to the prejudice of good order and military discipline,’ is not giving the actual offence.” (Cir. 14, A. G. O. 1890.)

<sup>5</sup> See par. 1018, A. R., as amended by G. O. 64, A. G. O. 1892. “The proper proof of previous convictions by summary court is by au-

“The previous convictions are not limited to those for offences similar to the one for which the accused is on trial, and should not be so construed. The object is ‘to see if the prisoner is an old offender, and therefore less entitled to leniency than if on trial for his first offence.’ This information might not be fully obtained if evidence of previous convictions of similar offences only were laid before the court. It has no bearing upon the question of guilt of the particular charge on trial; but only upon the amount and kind of punishment to be awarded,<sup>1</sup> and to this end it is proper that all previous convictions should be known. As the accused is not on trial for the offences, evidence of the previous convictions of which it is proposed to introduce, the 103d Article of War cannot be held to apply.”<sup>2</sup>

#### PUNISHMENT.

**Punishment**, under the Articles of War, is either left to the discretion of a court-martial, or is made wholly

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thenticated extract from the summary court record, giving: Name, rank, company, and regiment; charge and specification; plea; finding; sentence; and action of commanding officer, with date.” (Cir. 12, A. G. O. 1891.) For instructions to summary courts regarding previous convictions, see “Summary Court,” *infra*.

<sup>1</sup> For effect on amount of punishment that may be awarded, see “Limit of Punishment,” *infra*.

<sup>2</sup> Cir. 8, A. G. O. 1886. “This rule is not changed by General Orders No. 21, current series, Headquarters of the Army.” (Op. Actg. J. A. G., Aug. 29, 1891.)

or partially mandatory. If the punishment prescribed in the article violated is mandatory, any other punishment than that prescribed is illegal. Before pronouncing sentence, the court should, therefore, in case of any uncertainty, examine the article violated to see what punishment may be legally awarded. For easy reference, those Articles of War describing offences punishable by courts-martial are published *infra*.

*For officers*, the legal punishments by courts-martial, depending on the nature of the offence, are, death; dismissal; suspension from rank or command, on full or partial pay; loss of relative rank or files; imprisonment; fine or forfeiture of pay; reprimand or admonition.

*For soldiers*, the legal punishments, depending on the character of the offence and the jurisdiction of the court, are, death; confinement; confinement on bread-and-water diet; solitary confinement; hard labor; ball and chain; forfeiture of pay and allowances; dishonorable discharge from service and reprimand; [detention of pay, see page 72;] for non-commissioned officers, also reduction to the ranks;<sup>1</sup> and for "candidates for promotion" deprivation of all rights and privileges arising from a certificate of eligibility.<sup>2</sup>

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<sup>1</sup> Par. 1019, A. R.    <sup>2</sup> Act July 30, 1892; see G. O. 57, A. G. O. 1892



“No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.”<sup>1</sup>

“Military prisoners should not be punished by being required to carry a heavy log. Some other punishment can be found equally effective and not open to the objections urged against this method. The practice will therefore be discontinued.”<sup>2</sup>

Punishment by ball and chain should be imposed only in extreme cases.<sup>3</sup>

“Sentences imposing tours of guard duty are forbidden. The performance of the honorable and important duty of guards should never be considered as punishment.”<sup>4</sup>

“Solitary confinement, or confinement on bread-and-water diet, shall not exceed fourteen days at a time, nor be again enforced until a period of fourteen days has elapsed. Nor shall such confinement exceed eighty-four days in any one year.”<sup>5</sup>

“A court-martial can direct a forfeiture or stoppage of pay, or impose a fine, only in favor of the United States. A company fund has not been recognized by law as public money, and the pay of a soldier cannot be stopped to reimburse the same for losses.”<sup>6</sup>

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<sup>1</sup> 98th A. W.      <sup>2</sup> Cir. 4, A. G. O. 1887.

<sup>4</sup> Par. 1020, A. R.    <sup>5</sup> Ib. 1021.

<sup>3</sup> Win. Dig., p. 419.

<sup>6</sup> Cir. 9, A. G. O. 1886.

“A court-martial cannot assign the pay of a soldier to any other person; nor can a soldier be required to receipt for money paid without his consent.”<sup>1</sup>

“Upon conviction of offences punishable at the discretion of courts-martial, a soldier may be sentenced to have his monthly pay, or a stated portion thereof, ‘detained’<sup>2</sup> from him for such periods as the court (subject to the restrictions of the 83d Article of War)<sup>3</sup> may direct. The amounts so ‘detained’ will be paid only on the final statements furnished enlisted men on discharge from the service. That the proper amount of punishment is the *least* amount by which discipline can be efficiently maintained, is a principle of recognized validity in the administration of military justice. It is expected that the punishment herein authorized, while of the least possible severity, will, if judiciously applied, diminish military offences by compelling, for the time being, sobriety and abstention from vicious indulgences of every kind; and that it may thus be made a potent factor in the promotion of discipline and of the welfare of the service at large.”<sup>4</sup>

“The monthly pay of a soldier ‘detained’ until discharge under sentence of a court-martial can only be forfeited when, subsequent to such sentence, he shall be

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<sup>1</sup> Par. 1035, A. R.

<sup>2</sup> See note 1, page 164.

<sup>3</sup> See note 2, page 86.

<sup>4</sup> G. O. 63, A. G. O. 1889.

expressly sentenced to such forfeiture, or to a forfeiture of all pay to become due.”<sup>1</sup>

“If a soldier for whose apprehension a reward has been paid be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, or if the sentence be disapproved by proper authority, the amount specified in paragraph 122 shall not be stopped against his pay, unless, in case of conviction of absence without leave, the sentence of the court shall so direct.”<sup>2</sup>

“No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offence of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offence may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.”<sup>3</sup>

“The 97th Article of War only limits ‘the discretion

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<sup>1</sup> Cir. 1, A. G. O. 1890.

<sup>2</sup> Par. 125, A. R., as amended by G. O. 38, A. G. O. 1890. “By direction of the President, General Orders No. 21, February 27, 1891, Headquarters of the Army, Adjutant-General’s Office (see page 75), shall not hereafter be construed as impairing or modifying paragraph 125 of the Army Regulations, as amended by General Orders No. 38, March 28, 1890, from the same Headquarters.” (G. O. 92, A. G. O. 1891.)

<sup>3</sup> 97th A. W.

of the court' as to imprisonment in the penitentiary, and it has been nowhere provided that the punishment may not in other respects be greater than the civil courts could inflict." <sup>1</sup>

The most common offences punishable by confinement in a penitentiary are, those mentioned in Article 60; robbery; grand larceny; embezzlement; forgery; burglary; arson; mayhem; manslaughter; assault and battery with intent to kill; shooting or stabbing with intent to commit murder; rape, or assault with intent to commit rape. Any of these offences, when committed to the prejudice of good order and military discipline, either in time of peace or war, are punishable as stated. <sup>2</sup>

#### LIMIT OF PUNISHMENT.

*"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offence is left to the discretion of the court martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe."* <sup>3</sup>

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<sup>1</sup> Op. U. S. Sup. Court, published in G. O. 61, A. G. O. 1882.

<sup>2</sup> Win. Dig., pp. 27-42.

<sup>3</sup> Act approved Sept. 27, 1890; see G. O. 117, A. G. O. 1890.

“ In accordance with an act of Congress approved Sept. 27, 1890, the following limits to the punishment of enlisted men, together with the accompanying regulations, are established for the government in time of peace of all courts-martial, and will take effect thirty days after the date [Feb. 27, 1891] of this order :<sup>1</sup>

I. Subject to the modifications authorized in subdivision 3 of this section, the punishment for desertion shall not exceed the following :

1. In the case of a soldier who surrenders—<sup>2</sup>

(a) When such surrender is made within thirty days after desertion, confinement at hard labor, with forfeiture of pay and allowances, for three months.

(b) When such surrender is made after an absence of more than thirty days, and not more than ninety days, confinement at hard labor, with forfeiture of pay and allowances, for six months.

(c) When such surrender is made after an absence of more than ninety days, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for eighteen months ; *Provided*, that in

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<sup>1</sup> Limit prescribed by the President ; see G. O. 21, A. G. O. 1891.

<sup>2</sup> By the *surrender* of a deserter, as the word is used in the above order, is meant a surrender in good faith. A surrender in order to share in the reward paid for apprehension, or because apprehension cannot be avoided, or for any fraudulent purpose, is not to be treated as a “ surrender ” within the meaning of the order. (Cir. 1, A. G. O. 1892.)

the case of a deserter who had not been more than three months in the service,<sup>1</sup> the confinement shall not exceed ten months.

2. In the case of a soldier who does not surrender—

(a) When at the time of desertion he shall have been less than three months in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for one year.

(b) When at the time of desertion he shall have been three months or more but less than six months in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for eighteen months.

(c) When at the time of desertion he shall have been six months or more in the service, dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for two years and six months.

3. The foregoing limitations will be subject to modification under the following conditions :

(a) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion, and also

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<sup>1</sup> The expression "in the service" where it occurs in the above order, "has reference not only to the soldier's present enlistment, but to all previous enlistments as well, service in the Navy and Marine Corps included—in other words, to the aggregate of his service." (Cir. 11, A. G. O. 1891.)

by dishonorable discharge and forfeiture of all pay and allowances when not already authorized.

(b) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians, or of any unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

II. Except as herein otherwise indicated, punishments shall not exceed the limits prescribed in the following table:

OFFENCES.	LIMIT OF PUNISHMENT.
UNDER 17TH ARTICLE OF WAR. <sup>1</sup>	
Selling horses or arms, either or both.	Three years' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Selling accoutrements.....	Four months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Selling clothing.....	Two months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Losing or spoiling horse or arms, through neglect.	Four months' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.
Losing or spoiling accoutrements or clothing through neglect.	One month's confinement at hard labor; for non-commissioned officer, reduction in addition thereto.

<sup>1</sup> See G. O. 57, A. G. O. 1892.

OFFENCES.	LIMIT OF PUNISHMENT.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect toward his commanding officer.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusing to obey or using violence to officer or non-commissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances and imprisonment for two years.
UNDER 31ST ARTICLE OF WAR.	
Lying out of quarters.....	Forfeiture of \$2; corporal, \$3; sergeant, \$4.
UNDER 32D ARTICLE OF WAR.	
<p><i>Absence without leave—</i>            Less than one hour (not including absence from a roll-call)            Less than one hour (including absence from a roll-call).</p>	<p>Forfeiture of 50 cents; corporal, \$1; sergeant, \$2.            Forfeiture of \$1; corporal, \$2; sergeant, \$3; 1st sergeant or non-commissioned officer of higher grade, \$4.</p>
From one to six hours.....	Forfeiture of \$2; corporal, \$3; sergeant, \$4; 1st sergeant or non-commissioned officer of higher grade, \$5.
From six to twelve hours.....	Forfeiture of \$3; corporal, \$4; sergeant, \$6; 1st sergeant or non-commissioned officer of higher grade, \$7.
From twelve to twenty-four hours.	Forfeiture of \$5; corporal, \$6; sergeant, \$7; 1st sergeant or non-commissioned officer of higher grade, \$10.
From twenty-four to forty-eight hours.	Forfeiture of \$6 and five days' confinement at hard labor; for corporal, forfeiture of \$8; sergeant, \$10; first sergeant or



LIMIT OF PUNISHMENT.

OFFENCES.	LIMIT OF PUNISHMENT.
<p>UNDER 32D ARTICLE OF WAR— <i>Continued.</i></p>	
From two to nine days.....	<p>non-commissioned officer of higher grade, \$12, or for all non-commissioned officers, reduction.</p>
From ten to twenty-nine days....	<p>Forfeiture of \$10 and ten days' confinement at hard labor; for non-commissioned officer, reduction in addition thereto.</p>
From thirty to ninety days.....	<p>Forfeiture of \$20 and one month's confinement at hard labor; for non-commissioned officer, reduction in addition thereto.</p>
For more than ninety days.....	<p>Three months' confinement at hard labor and forfeiture of \$10 per month for same period; for non-commissioned officer, reduction in addition thereto.</p>
UNDER 33D ARTICLE OF WAR.	<p>Dishonorable discharge and forfeiture of all pay and allowances and three months' confinement at hard labor.</p>
<p><i>Failure to repair at the time fixed, etc., to the place of parade—</i></p>	
For reveille or retreat roll-call...	<p>Forfeiture of 50 cents; corporal, \$1; sergeant, \$2; 1st sergeant, \$3</p>
For guard detail.....	<p>Forfeiture of \$5; corporal, \$8; sergeant, \$10.</p>
For fatigue detail.....	<p>Forfeiture of \$2; corporal, \$3; sergeant, \$5.</p>
For dress parade.....	
For the weekly inspection.....	
For target practice.....	
For drill.....	
For guard-mounting (by musician) .....	
For stable duty.....	

## OFFENCES.

## UNDER 38TH ARTICLE OF WAR.

*Drunkness on—*  
Guard . . . . .

Duty as company cook . . . . .  
Extra or special duty . . . . .  
At drill . . . . .  
At target practice . . . . .  
At parade . . . . .  
At inspection . . . . .  
At inspection of company guard  
detail . . . . .  
At stable duty . . . . .

## UNDER 40TH ARTICLE OF WAR.

Quitting guard . . . . .

## UNDER 51ST ARTICLE OF WAR.

Persuading soldiers to desert . . . . .

## UNDER 60TH ARTICLE OF WAR.

## UNDER 62D ARTICLE OF WAR.

Manslaughter . . . . .

Assault, with intent to kill . . . . .

Burglary . . . . .

## LIMIT OF PUNISHMENT.

Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto; Forfeiture of \$10.

Forfeiture of \$6; for non-commissioned officer, reduction and forfeiture of \$10.

Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.

Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto. Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.

Dishonorable discharge, forfeiture of all pay and allowances, and ten years' imprisonment. Dishonorable discharge, forfeiture of all pay and allowances, and ten years' imprisonment. Dishonorable discharge, forfeiture of all pay and allowances, and five years' imprisonment.

OFFENCES.	LIMIT OF PUNISHMENT.
UNDER 62D ARTICLE OF WAR— <i>Continued.</i>	
Forgery .....	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
Perjury.....	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
False swearing.....	Dishonorable discharge, forfeiture of all pay and allowances, and two years' imprisonment.
Robbery.....	Dishonorable discharge, forfeiture of all pay and allowances, and six years' imprisonment.
Larceny or embezzlement of property—* Of the value of more than \$100.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' imprisonment.
Of the value of \$100 or less and more than \$50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' imprisonment.
Of the value of \$50 or less and more than \$20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' imprisonment.
Of the value of \$20 or less.....	Dishonorable discharge, forfeiture of all pay and allowances, and one year's imprisonment.
Disobedience of orders, involving wilful defiance of the authority of a non-commissioned officer in charge of a guard or party.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a non-commissioned officer while in the execution of his office.	One month's confinement at hard labor and forfeiture of \$10; for non-commissioned officer, reduction in addition thereto.
Absence from fatigue duty.....	Forfeiture of \$4; corporal, \$5; sergeant, \$6.

\* In specifications to charges of larceny or embezzlement, the value of the property shall be stated.

## OFFENCES.

UNDER 62D ARTICLE OF WAR—  
*Continued.*

- Absence from extra or special duty
- Absence from duty as company or hospital cook.
- Introducing liquor into post or camp in violation of standing orders.
- Drunkenness at post or in quarters.
- Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within ten miles of his station.
- Noisy or disorderly conduct in quarters.
- Abuse by non-commissioned officer of his authority over an inferior.
- Non-commissioned officer encouraging gambling
- Non-commissioned officer making false report.
- Sentinel allowing a prisoner under his charge to escape through neglect.
- Sentinel willfully suffering prisoner under his charge to escape.
- Sentinel allowing a prisoner under his charge to obtain liquor.
- Sentinel or member of guard drinking liquor with prisoners.
- Disrespect or affront to a sentinel.

## LIMIT OF PUNISHMENT.

- Forfeiture of \$4; corporal, \$5; sergeant, \$6.
- Forfeiture of \$10.
- Forfeiture of \$3; for non-commissioned officer, reduction and forfeiture of \$5.
- Forfeiture of \$3; for non-commissioned officer, reduction and forfeiture of \$5.
- Forfeiture of \$10 and seven days' confinement at hard labor; for non-commissioned officer, reduction and forfeiture of \$12.
- Forfeiture of \$4; corporal, \$7; sergeant, \$10.
- Reduction, three months' confinement at hard labor, and forfeiture of \$10 per month for the same period.
- Reduction and forfeiture of \$5.
- Reduction, forfeiture of \$8, and ten days' confinement at hard labor.
- Six months' confinement at hard labor and forfeiture of \$10 per month for the same period
- Dishonorable discharge, forfeiture of all pay and allowances, and one year's imprisonment.
- Two months' confinement at hard labor and forfeiture of \$10 per month for the same period.
- Two months' confinement at hard labor and forfeiture of \$10 per month for the same period.
- Two months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.

OFFENCES.	LIMIT OF PUNISHMENT.
UNDER 62D ARTICLE OF WAR— <i>Continued.</i>	
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, re- duction in addition thereto.
Lewd or indecent exposure of person.	Three months' confinement at hard labor and forfeiture of \$10 per month for the same period; for non-commissioned officer, reduction in addition thereto.

III. (1) When a soldier shall be found guilty of an offence cognizable when committed for the first time by an inferior court-martial<sup>1</sup> his punishment therefor may exceed the prescribed limit by one half, if it shall appear that during his current enlistment and within two years preceding his trial he has been once convicted of one offence or more; it may be doubled if he has been twice so convicted; and it may be increased<sup>2</sup> by one half of the prescribed limit for every such previous conviction, provided that upon proof of five or more previous convictions the punishment may be [either] that authorized for a fifth conviction or dishonorable discharge with for-

<sup>1</sup> *i.e.*, When the limit of punishment prescribed for the offence does not exceed that an inferior court can inflict in accordance with the 83d A. W.

<sup>2</sup> When the limit of punishment thus prescribed exceeds that an inferior court can inflict, the case should be referred to a general court-martial.

feiture of all pay and allowances.<sup>1</sup> When found guilty of an offence cognizable only by a general court-martial,<sup>2</sup> and on proof of five or more previous convictions within the two years, dishonorable discharge, with forfeiture of all pay and allowances, may be added to any confinement<sup>3</sup> at hard labor. And when a non-commissioned officer shall be found guilty of an offence not punishable by reduction, reduction may be added to the punishment if it shall appear that he has been convicted of a military offence within one year and during his current enlistment.<sup>4</sup>

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<sup>1</sup> In this case, if dishonorable discharge is awarded, all pay and allowances *must* be forfeited, and *no* confinement can be given. If dishonorable discharge is not awarded, the *limit*, upon proof of *any number* of previous convictions, is that authorized for a *fifth* conviction.

<sup>2</sup> *i.e.*, When the limit of punishment prescribed for the offence, or the punishment given according to custom of service, exceeds that an inferior court can inflict.

<sup>3</sup> Any confinement prescribed in this order, or awarded according to custom of service.

<sup>4</sup> The above paragraph "does not limit the introduction of evidence of previous convictions to cases when soldiers are on trial for offences mentioned in the order, but does subject it to certain other limitations. When a soldier is on trial for desertion evidence of previous desertions may go to increase his term of imprisonment; and so when on trial for an offence which, when committed for the first time, would be cognizable by an inferior court-martial, the punishment may be increased, in regular proportion, in view of previous convictions. But with these exceptions evidence of previous

(2)<sup>1</sup>

IV. This order prescribes the *maximum* limit of punishment for the offences named, and this limit is intended for those cases where the severest punishment should be awarded. In other cases the punishment must be graded down according to the extenuating circumstances. Offences not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

convictions can only be introduced under the following conditions: 1st, the trial must be for an offence not ordinarily punishable with dishonorable discharge; 2d, there must be at least five previous convictions; 3d, the only additional punishment that can be awarded in consequence of the introduction of such evidence is dishonorable discharge with forfeiture of pay and allowances." (Cir. 5, A. G. O. 1891.) For instructions as to when evidence of previous convictions should be submitted with charges, see note, page 23.

By the above paragraph, "it is prescribed that the punishment for an offence cognizable when committed for the first time by an inferior court-martial may, upon proof of five or more previous convictions, be three times as great as the maximum limit of punishment for the offence when committed for the first time; or, in lieu of it, 'dishonorable discharge, with forfeiture of all pay and allowances.' This latter punishment, if awarded at all, must be awarded in its entirety; it is a single substitute which the order provides for the sentence which might otherwise be awarded. The court has no authority to award a punishment less than dishonorable discharge with forfeiture of all pay and allowances, but in excess of the limit before prescribed." (Cir. 12, A. G. O. 1892.)

<sup>1</sup> See "Previous Convictions," page 68.

V.<sup>1</sup>

VI. The following substitutions for punishments named in section II of this order are authorized at the discretion of the court :

Detention of pay to the extent of four times the amount of the forfeiture ;<sup>2</sup> two days' confinement at hard labor for one dollar of forfeited pay ; one day's solitary confinement on bread-and-water diet for two days' confinement at hard labor, or for one dollar of forfeited pay ;<sup>3</sup> *Provided*, that a non-commissioned officer not sentenced to reduction shall not be subject to confinement ; *And provided*, that solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year. Wherever the limit herein prescribed for an offence or offences may be brought within the punishing power of inferior courts-martial, as defined by the 83d Article of War, by substitution of punishment under the provisions of this

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<sup>1</sup> See extract G. O. 21, A. G. O. 1891, page 102.

<sup>2</sup> Under this rule of equivalents "an inferior court can sentence to a detention of pay of four times the amount of one month's pay." (Op. Act. Judge Adv. Genl., June 26, 1891.) See also page 99.

<sup>3</sup> This "authorizes only the substitutions of punishment mentioned and does not authorize the reverse of the specified substitutions." (Cir. 12, A. G. O. 1892.)



section, the aforesaid courts shall be deemed to have jurisdiction of such offence or offences.<sup>1</sup>

VII.<sup>2</sup> . . . . .”

## SENTENCE.

Having ascertained, in a case of discretionary punishment, the legal limit<sup>3</sup> for the offence committed, the court proceeds to award sentence. Those members desiring to propose a sentence usually write it on a slip of paper and hand it to the judge advocate. The judge advocate reads the proposed sentences to the court, and the members vote on them in order, beginning with the lightest, until a majority agree upon a sentence. In a case where a punishment is mandatory, the members vote upon a sentence awarding this punishment. Upon a death sentence, two thirds of the members must concur, and no person can be sentenced to death except in cases expressly mentioned in the Articles of War or in sec. 1343, R. S.<sup>4</sup>

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<sup>1</sup> If the limit exceed that defined by 83d A. W., the case should be referred to a general court-martial.

<sup>2</sup> See "Jurisdiction," page 95.

<sup>3</sup> When a sentence of confinement or forfeiture is in excess of the legal limit, that part of it which is within the limit is legal, and may be approved and carried into execution." (Cir. 12, A. G. O. 1892.)

<sup>4</sup> See 96th A. W.

“When the sentence of a court-martial prescribes imprisonment, the court will state therein whether the prisoner shall be confined in a penitentiary<sup>1</sup> or military prison, being guided in its determination by the 97th Article of War.”<sup>2</sup> When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that 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.”<sup>3</sup>

Should a court, for any reason, adjudge a milder sentence than is usually awarded for a like offence, the reason for so doing should be stated, lest the punish-

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<sup>1</sup> Unless the laws of the State, Territory, etc., in which the court is convened, are at hand, it is impossible for the court to determine in all cases whether or not, under the 97th Article of War, the offender is punishable by penitentiary confinement. Therefore, in case of any doubt, the wording “in such place as the proper authority may direct,” is recommended. “Proper,” instead of “reviewing,” authority should be used; for, if no provision has been made for confinement of prisoners under sentence of courts-martial in a penitentiary within the department, the department commander is directed by paragraph 1023, A. R., to forward the record to the Judge Advocate General for the action of the Secretary of War.

<sup>2</sup> Par. 1023, A. R.

<sup>3</sup> 100th A. W.

ment appear inadequate to the offence and *an example set*.<sup>1</sup>

#### AUTHENTICATION OF PROCEEDINGS.

“Every court-martial shall keep a complete and accurate record of its proceedings. The record will be authenticated by the signatures of the president and judge advocate, in each case. . . .”<sup>2</sup>

It is sometimes held (1 Win. Law, p. 723) that, in addition to signing the sentence, the president and judge advocate should sign such a certificate as “A true and complete record. Attest: A— B—, *President*; C— D—, *Judge Advocate* ;” but this is considered unnecessary in ordinary cases. Where, however, there are material proceedings after the sentence, they should be authenticated by the signatures of these officers.

#### REVIEWING AUTHORITY.

“No sentence of a court-martial shall be carried into execution until the same shall have been approved<sup>3</sup> by the officer ordering the court, or by the officer commanding for the time being.”<sup>4</sup> “The judge advocate shall [therefore] transmit the proceedings, without delay, to the officer having authority to confirm the sentence, who shall state, at the end of the proceedings in each case, his decisions and orders thereon.”<sup>5</sup>

<sup>1</sup> G. C. M. O. 42, A. G. O. 1864.

<sup>2</sup> Par. 1037, A. R.      <sup>3</sup> See note 3, page 87.

<sup>4</sup> 104th A. W. ; see G. O. 57, A. G. O. 1892.      <sup>5</sup> Par. 1041, A. R.

Every officer authorized to order a court-martial has power to pardon or mitigate any punishment adjudged by it,<sup>1</sup> except that of death,<sup>2</sup> or the dismissal of an officer.<sup>3</sup> In time of peace, proceedings involving either of these sentences should be forwarded to the Judge Advocate General for the action of the President. The pardoning power may be exercised, if the prisoner remains in the command of the reviewing authority or his successor, not only at the time the proceedings are approved, but so long as any portion of the sentence is unexecuted,<sup>4</sup> except in case of a prisoner sentenced to be confined in penitentiary,<sup>5</sup> or in the U. S. Military Prison,<sup>6</sup> or in the Alcatraz Island Military Prison.<sup>7</sup> In latter cases only the President or the Secretary of War can exercise the pardoning power.<sup>8</sup>

While a reviewing authority may remit or mitigate a sentence, he cannot change it so as to impose a punishment of a different nature;<sup>9</sup> thus, he cannot change a sentence of dishonorable discharge awarded an enlisted man to confinement at hard labor.<sup>10</sup> Nor can any power increase the punishment of a prisoner sentenced to con-

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<sup>1</sup> 112th A. W.    <sup>2</sup> 105th A. W.; see *ib.* for exceptions in time of war.

<sup>3</sup> 106th A. W.

<sup>4</sup> See *Win. Dig.*, p. 93.

<sup>5</sup> *Cir. 11, A. G. O. 1887; ib. 5, 1888.*    <sup>6</sup> *Par. 1027, A. R.*

<sup>7</sup> See letter War Dept., Oct. 17, 1882.    <sup>8</sup> See sec. 1352, R. S.

<sup>9</sup> *Cir. 6, A. G. O. 1883.*

<sup>10</sup> *Ib. 2, 1885.*

finement in a military prison by designating a penitentiary as the place of confinement.<sup>1</sup>

“The period of time at which a dishonorable discharge is to take effect, as fixed by sentence, cannot be postponed by the reviewing officer.”<sup>2</sup> Nor can a sentence to confinement, “with or without forfeiture of pay, become operative prior to the date of confirmation. If it be proper to take into consideration the length of confinement to which the prisoner has been subjected previous to such confirmation, it may be done by mitigation of sentence.”<sup>3</sup>

A sentence which is in excess of the legal limit is invalid only as to that part of it which exceeds the limit ; so that the legal part—that is, the part which is within the limit—may be approved, and the illegal part disapproved.<sup>4</sup>

“Orders promulgating the proceedings of courts-martial must be of the same date as that of the action of the reviewing officer upon them, and those cases only will be published in a single order which bear the same date of action.”<sup>5</sup>

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<sup>1</sup> Par. 1024, A. R.      <sup>2</sup> Ib. 1031, A. R.

<sup>3</sup> Ib. 1028.      <sup>4</sup> See Cir. 12, A. G. O. 1892.

<sup>5</sup> Par. 1026, A. R.

## INFERIOR COURTS-MARTIAL.

## THE SUMMARY COURT.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter in time of peace all enlisted men charged with offences now cognizable by a garrison or regimental court-martial shall, within twenty-four hours from the time of their arrest, be brought before a summary court, which shall consist of the line officers second in rank at the post or station or of the command of the alleged offender, and at stations where only officers of the staff are on duty the officers second in rank shall constitute such court, who shall have power to administer oaths and to hear and determine the case, and when satisfied of the guilt of the accused party adjudge the punishment to be inflicted. There shall be a summary court record-book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be entered a record of all cases heard and determined and the action had thereon, and no sentence adjudged by said summary court shall be executed until it shall have been approved by the post or other commander: *Provided,* That when but one commissioned officer is present with a command he shall hear and finally determine such cases as require sum-

mary action : *Provided further*, That the President be, and he hereby is, authorized to prescribe specific penalties for such minor offences as are now brought before garrison and regimental courts-martial : *Provided further*, That any enlisted man charged with an offence and brought before such summary court may, if he so desires, object to a hearing and determination of his case by such court and request a trial by court-martial, which request shall be granted as of right, and when the court is the accuser the case shall be heard and determined by the post-commander, or by regimental or garrison court-martial: *And provided further*, That post and other commanders shall, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offences committed and the penalties awarded, which reports shall be filed in the office of the judge advocate of the department.”<sup>1</sup>

“That the commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same.”<sup>2</sup>

**Composition.**<sup>3</sup>—A summary court is composed of but one officer—the *line* officer second in rank at the post or station, or of the command of the accused. At stations

<sup>1</sup> Act establishing summary court; see G. O. 117, A. G. O. 1890.

<sup>2</sup> Sec. 5, 110th A. W.; see Act, July 27, 1892, published in G. O. 57, A. G. O. 1892.

<sup>3</sup> Act estab.

where only staff officers are on duty, the second in rank is the court ; and when but one officer is present with a command, he hears and determines such cases as require summary action,<sup>1</sup> except when he is the accuser or the accused requests a trial by court-martial.

An officer cannot act as court and accuser in the same case. When the second in rank is the accuser, the post commander *must* try the case, unless the accused demands a trial by court-martial. When the post commander is the accuser and the only officer present, the case must, necessarily, go to a regimental or garrison court-martial.—This is not confined to offences committed in the presence of the post commander.<sup>2</sup>

**Constitution.**—No order is necessary for the appointment of a summary court. The officer who acts as the court is constituted such by law for the hearing of cases within the jurisdiction of a summary court, and charges are referred to him for trial accordingly.<sup>3</sup>

**Jurisdiction.**—The summary court has jurisdiction only in time of peace.<sup>4</sup> *As regards persons*, it cannot, according to statute, legally try officers ; cadets ;<sup>5</sup> or

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<sup>1</sup> This duty is obligatory. (Op. Actg. J. A. G., March 21, 1891.)

<sup>2</sup> Cir. 1, A. G. O. 1891; also Op. Actg. J. A. G. approved by Asst. Secty. War, Nov. 21, 1892.

<sup>3</sup> "Trial officers of summary courts are authorized to administer oaths for purposes of military justice and for other purposes of military administration." (Act July 29, 1892; see G. O. 57, A. G. O. 1892.)

<sup>4</sup> Act estab.    <sup>5</sup> Sec. 1236, R. S.



candidates for promotion ;<sup>1</sup> nor, according to regulation, hospital stewards<sup>2</sup> or sergeants of the post con-commissioned staff,<sup>3</sup> unless by special permission of the authority competent to order their trial by general court-martial ; or sergeants, *if they object thereto*, except by like special permission.<sup>4</sup> Over all other enlisted men the court has jurisdiction ; but any enlisted man charged with an offence and brought before a summary court may, if he so desires, object to trial by such court and request trial by court-martial, which request must be granted as of right.<sup>5</sup>

*As regards offences*, the summary court has no jurisdiction over the offence of "fraudulent enlistment,"<sup>6</sup>

<sup>1</sup> Act July 30, 1892 ; see G. O. 57, A. G. O. 1892.

<sup>2</sup> Par. 1563, A. R., as amended by G. O. 38, A. G. O. 1890.

<sup>3</sup> Par. 105, A. R., as amended by G. O. 29, A. G. O. 1891.

<sup>4</sup> *Ib.* 254.    <sup>5</sup> Act estab.

<sup>6</sup> "In connection with the third section of the act of July 27, 1892, amending the Articles of War, etc., declaring 'fraudulent enlistment and the receipt of any pay or allowance thereunder a military offence,' 'punishable by court-martial under the 62d Article of War' (General Orders, No. 57, Adjutant-General's Office, 1892), the Acting Secretary of War decides that such offences shall be brought before a general court-martial.

"*A fraudulent enlistment* is an enlistment procured by means of a wilful misrepresentation in regard to a qualification or disqualification for enlistment, or by intentional concealment of a disqualification, which has had the effect of causing the enlistment of a man not qualified to be a soldier, and who but for such false representation or concealment would have been rejected." (Cir. 13, A. G. O. 1892.)

over offences punishable capitally,<sup>1</sup> or, under the 58th Article of War, exclusively by general court-martial. Over all other offences for which the limit of punishment prescribed by order or the punishment given by custom of the service, previous convictions being considered,<sup>2</sup> can in any way be brought within the limit defined by the 83d Art., the summary court has jurisdiction;<sup>3</sup> but when, from any cause, the limit of punishment for the offence or offences cannot be thus brought within the punishing power of an inferior court, as for example when the accused has been convicted five or more times within the previous two years, the case should be forwarded to the authority competent to order a general court-martial for his decision. If, in the opinion of the latter, the case does not call for a greater punishment than an inferior court can inflict, he may return it for trial by summary court; otherwise, he should refer it to a general court-martial.

*As regards time of trial*, the jurisdiction of a summary court is not affected by the time when cases are brought before it, the requirement of the law as to time being directory only.<sup>4</sup> The commanding officer, not the summary court, is responsible for the bringing of the accused to trial at the proper time, and a delay in

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<sup>1</sup> 83d A. W.; see, also, Cir. 1, A. G. O. 1892.

<sup>2</sup> Sec. III, G. O. 21, A. G. O. 1891.    <sup>3</sup> *Ib.* VI.

<sup>4</sup> Cir. 2, A. G. O. 1891.

the time of trial of a soldier does not invalidate the proceedings of the court or affect their legality. Nor can such delay be made a matter of defence or pleaded in bar or abatement. If, however, the accused has been long in confinement awaiting trial, it may be proper to hear evidence of the fact for consideration in mitigation of punishment; but for this purpose only. If the finding is "guilty," the court may properly give a lighter sentence, in view of the fact that the prisoner has already been punished by confinement.<sup>1</sup>

**Power.**—Summary courts have power to administer oaths;<sup>2</sup> to hear and determine cases; and, when satisfied of the guilt of an accused party, to adjudge the punishment to be inflicted.<sup>3</sup>

**Clerk.**—The necessary summary-court writing can be done through the "necessary clerks in the adjutant's office," as authorized by G. O. 129, A. G. O. 1890. In this way a clerk can be had "when actually required."<sup>4</sup>

**Procedure.**—"The accused will be arraigned and allowed to plead, according to the practice of courts-martial. If an accused does not demand a removal of his case to a regimental or garrison court-martial, or if being a sergeant he does not object to trial by inferior court-martial, or if he does not object to be tried by the

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<sup>1</sup> Cir. 2, A. G. O. 1892.

<sup>2</sup> See note 3, p. 94.

<sup>3</sup> Act estab.

<sup>4</sup> Cir. 1, A. G. O. 1891.

officer second in rank on the ground of his being the accuser, or if he does not plead guilty, witnesses will be sworn and testimony heard, the accused being permitted to testify and make a statement in defence; but the evidence and statement will not be recorded.”<sup>1</sup>

“When the summary court shall have arrived at a finding and judgment,<sup>2</sup> the ‘summary-court record’ book,<sup>3</sup> with the entries therein made in accordance with the headings to its columns, will be laid before the post commander for his action, which also will be entered in the record book, dated and signed. When a case is heard by the post commander, the proceedings will be recorded in the same book. No other record of the proceedings will be kept.”<sup>4</sup>

**Previous Convictions.**—It is the duty of the officer who brings charges before a summary court for trial to submit evidence of previous convictions or to cite them when the convictions have been by the same court; but when evidence of previous convictions is not thus submitted or cited, the officer acting as court should take judicial cognizance of what appears upon the records of his own court.<sup>5</sup>

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<sup>1</sup> G. O. 37, A. G. O. 1890.

<sup>2</sup> For forms for sentences see *infra*.

<sup>3</sup> See “Form for Record of Summary Court,” *infra*.

<sup>4</sup> G. O. 37, A. G. O. 1890.

<sup>5</sup> Cir. 2, A. G. O. 1892.

“Whenever, in determining on its sentence, a summary court shall take into consideration previous convictions, a note of the number of such previous convictions will be made on the summary-court record.”<sup>1</sup>

**Limit of Punishing Power.**—Summary courts are subject to the restrictions of the 83d Article of War. Under this article inferior courts-martial may inflict a fine of one month's pay and imprison, or put to hard labor, any non-commissioned officer or soldier for one month. This is the *limit of their punishing power*. As this limit extends to the forfeiture of the whole of a month's pay, it must include that part of a soldier's pay denominated “retained pay.” Retained pay forfeited by sentence of courts-martial must be deducted from the pay of the soldier on his final statements.<sup>2</sup>

Under the rule of equivalents given in G. O. 21, A. G. O. 1891 (see page 86), a summary court can sentence to a *detention of pay of four times the amount of one month's pay*. A sentence to a *forfeiture* exceeding one month's pay would be illegal; but “detention” is not a forfeiture or a fine. By the latter a soldier loses his money entirely; by the former he only loses it for a time. On establishing the measure of punishments published in G. O. 21 referred to, it was decided that the equivalent of forfeiture of pay should be detention

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<sup>1</sup> Cir. 5, A. G. O. 1891.

<sup>2</sup> Ib. 1, 1892.

of pay of four times the amount of the forfeiture. So that in awarding a detention of four months' pay a summary court would be awarding a sentence which would be equivalent to a forfeiture of one month's pay, and would therefore be within the limit of the 83d Article of War.<sup>1</sup>

**Reviewing Authority.**—The commanding officers authorized to approve the sentences of summary courts have power to remit or mitigate the same.<sup>2</sup>

**Instructions for Post and Other Commanders, relating to Summary Courts.**—“The fact that the number of trials by inferior court-martial has greatly increased since the establishment of the summary court indicates that officers of the Army have the impression that under the present system they must bring every dereliction of duty before a court for trial, and that they are allowed no discretion in the matter. This is a mistake. Their discretion is the same now as it was under the garrison-court system, and they are not obliged to bring cases before the summary court which they believe ought to be disposed of with an admonition or the withholding of privileges or indulgences. The extent of the exercise of this discretion,

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<sup>1</sup> Cir. 10, A. G. O. 1892.

<sup>2</sup> Sec. 5, 110th A. W.; see G. O. 57, A. G. O. 1892.

within these limits, is subject to the control of the commanding officer.”<sup>1</sup>

By the above circular, “officers were reminded that their discretion in bringing cases to trial was not affected by the establishment of the summary court, but remained as it was under the garrison-court system; and that it is within their power to dispose of delinquencies, not meriting trial, with admonitions or the withholding of privileges and indulgences.

“The increasing number of trials by summary court and the trivial character of many of the offences tried indicate that commanding officers frequently fail to make use of this power. They are therefore reminded that it is their duty to use all reasonable means to prevent the occurrence of delinquencies rather than to punish them. In the discharge of this duty they may not only deprive unworthy soldiers of privileges, but take such steps as may be necessary to enforce their orders. It is believed that the proper use of this power will make it unnecessary to bring before the summary court many of the trifling delinquencies which are now made the subject of trial; indeed, that such trifling delinquencies will in great measure be prevented. Department commanders will see that their

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<sup>1</sup> Cir. 13, A. G. O. 1891.

subordinate commanding officers fulfill their duties in this regard.”<sup>1</sup>

“Soldiers against whom charges may be preferred for trial by summary court shall not be confined in the guard-house, but shall be placed in arrest<sup>2</sup> in quarters, before and during trial and while awaiting sentence, unless in particular cases restraint may be deemed necessary.”<sup>3</sup>

“When charges are preferred against enlisted men for offences heretofore cognizable by garrison or regimental court-martial, they will be laid before the post commander, who will cause the accused to be brought before the summary court within the statutory time.”<sup>4</sup>

“Summary courts should be open at a stated hour every morning, except Sunday,<sup>5</sup> for the trial of such cases, if any, as may properly be brought before them.

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<sup>1</sup> G. O. 73, A. G. O. 1892.

<sup>2</sup> “The status of arrest is inconsistent with a status of duty and the two cannot fully exist together; but this does not mean that a soldier in arrest cannot be required to clean up or do other work about his quarters which otherwise other soldiers would have to do for him.” (Op. Actg. J. A. G., Oct. 6, 1891.)

<sup>3</sup> G. O. 21, A. G. O. 1891.

<sup>4</sup> *Ib.*, 137, 1890.

<sup>5</sup> If it be understood that the court shall not sit Sunday, the officer charged with the duty of bringing offenders before it will comply with his duty by doing so at the first session of the court thereafter. (Op. Actg. J. A. G., Feb. 13, 1891.)



Trials should be had on Sunday only when the exigencies of the service make it necessary.”<sup>1</sup>

“The trials of men before summary courts will not be published in orders.” “Post commanders will furnish company and other commanders extracts from the ‘summary-court record’ of the trials of men of their commands, to enable them to make the proper record in company books and on rolls and returns.”<sup>2</sup>

“The names of the officers at a post who act as summary court must be reported on the post return, with dates.”<sup>3</sup>

“Post and other commanders shall, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offences committed and the penalties awarded, which reports shall be filed in the office of the judge advocate of the department.”<sup>4</sup>

#### THE FIELD OFFICER'S COURT.

**Composition.**—The field-officer's court is composed of a single officer—a field officer of the regiment to which the accused belongs.<sup>5</sup>

**Constitution.**—The law is silent as to who may detail

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<sup>1</sup> Cir. 2, A. G. O. 1891.

<sup>2</sup> G. O. 137, A. G. O. 1891.

<sup>3</sup> Cir. 2, A. G. O. 1891.

<sup>4</sup> Act estab.

<sup>5</sup> 80th A. W.

field officers as courts. In practice, this has been done by regimental commanders.<sup>1</sup>

**Jurisdiction.**—The field-officer's court has jurisdiction only in time of war. Except that this court has jurisdiction only over offenders belonging to the regiment of the field officer of which it is composed, its jurisdiction and punishing power are the same as those of a summary court.

**Procedure.**—The procedure of a field-officer's court is similar to that of a summary court. The field officer hears and determines cases and usually keeps the record himself. A form of "record book" for a summary court having been prescribed by order, the form of record for a field-officer's court should be similar thereto; but as the proceedings of the latter court must be forwarded to a reviewing authority the record should be kept on legal paper as in case of a general court-martial.

**Reviewing Authority.**—No sentence of a field-officer's court can be executed until the same has been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.<sup>2</sup> When, therefore, a regiment is a part

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<sup>1</sup> Win. ab. Law, p. 216. In reviewing manuscript, Col. T. J. Barr, Judge Adv. Dept., commented: "I think a field-officer's court should be appointed by the brigade commander."

<sup>2</sup> 110th A. W.; see G. O. 57, A. G. O. 1892.

of neither a brigade nor a post command, a regimental or a garrison court-martial should be resorted to.<sup>1</sup>

The *power* of the reviewing authority of a field-officer's court is restricted to *approval* or *disapproval* of the sentence.<sup>2</sup>

### THE GARRISON COURT-MARTIAL.

**Composition.**—A garrison court-martial is composed of three members and a judge advocate.<sup>3</sup> The remarks regarding the eligibility of officers for court-martial duty on pages 9 and 10 are apposite to garrison courts.

**Constitution.**—Every officer commanding a garrison, fort, or other place where the troops consist of different corps may appoint garrison courts.<sup>4</sup> The term "other place" includes any locality whatever where the command may be, whether in garrison or in the field.<sup>5</sup> To fulfill the requirement regarding "different corps," it is sufficient if there be on duty in the command a *single* officer or soldier of another arm of service than that of which the main body is composed.<sup>6</sup>

**Jurisdiction, etc.**—*In time of peace*, a garrison court-martial has jurisdiction only upon request of the accused when brought before a summary court,<sup>7</sup> or when

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<sup>1</sup> Win. ab. Law, p. 217.    <sup>2</sup> See 110th and 112th A. W.    <sup>3</sup> 82d A. W.

<sup>4</sup> Ib

<sup>5</sup> Win. Dig., p. 64

<sup>6</sup> Ib.

<sup>7</sup> Act estab.

the officer acting as summary court is the accuser and the only officer present with the command.<sup>1</sup> Whenever, under either of these circumstances, it becomes necessary to convene a garrison court-martial, the order appointing the court must state the fact which brings the case within the exceptions of the law and thus makes it a legal court.<sup>2</sup>

*In time of war*, the garrison court-martial has jurisdiction only in cases where the field-officer's court does not; or when the latter cannot practically be convened.<sup>3</sup>

What has been said of the jurisdiction of *summary courts* as regards persons and offences, and also of the "*limit of punishing power*" of the latter courts, applies equally to garrison courts-martial. In other respects, the general remarks before made regarding the president, members, judge advocate, organization, order of procedure, etc., of courts-martial apply to garrison courts except when the general court is specially mentioned.

A garrison court-martial cannot refuse to try charges because it deems them too serious for its cognizance. The court may return such charges with its opinion; but, should the post commander reiterate his order for

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<sup>1</sup> Cir. 1, A. G. O. 1891.

<sup>2</sup> Cir. 9, A. G. O. 1891. See "Form for Record of a Garrison Court-martial" *infra*.

<sup>3</sup> 82d A. W.; also, Win. ab. Law, p. 215.

trial, it has no option, but must obey,—the post commander and not the court being responsible to the department commander for the expediency of such trial and its effect upon discipline.<sup>1</sup>

### THE REGIMENTAL COURT-MARTIAL.

**Composition.**—The regimental like the garrison court-martial is composed of three members and a judge advocate; but in case of the regimental court only officers of the offender's regiment or corps are eligible for detail on the court.<sup>2</sup>

**Constitution.**—Every officer commanding a regiment or corps may appoint a regimental court-martial.<sup>3</sup> The word "corps" includes the corps of engineers, the ordnance and the signal corps.<sup>4</sup>

**Jurisdiction.**—With the exception that the regimental court-martial has jurisdiction only over offenders belonging to the regiment or corps from which the court is composed, what has been said of the jurisdiction, punishing power, and procedure of garrison courts applies equally to regimental courts.

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<sup>1</sup> G. O. 81, A. G. O. 1868. <sup>2</sup> 81st A. W. <sup>3</sup> *Ib.* <sup>4</sup> *Win. Dig.*, p. 63.

ARTICLES OF WAR,  
DEFINING OFFENCES PUNISHABLE BY COURTS-  
MARTIAL.<sup>1</sup>

*Parts subsequently repealed are printed in italics and inclosed in ( ); parts supplied by subsequent amendment are indicated by being inclosed in [ ].*

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or haval service of the United States, or any person who has been convicted of any infamous criminal offence, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished accordingly.

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<sup>1</sup> The word "officer," as used in the articles, means commissioned officer the word "soldier" includes non-commissioned officers, musicians, artificers, privates, and other enlisted men; the word "conviction" means conviction by court-martial. (See sec. 1342, R. S.)

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster-rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers authorized to call for such returns, of the state of the regiment, troop, company, or garrison under his command; or of the arms, ammunition, clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.<sup>1</sup>

ART. 13. Every officer who signs a false certificate,

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<sup>1</sup> "Cashiered" and "dismissed the service" are now held to be, practically, synonymous.

relative to the absence or pay of an officer or soldier, shall be dismissed the service.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof, by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15. Any officer who, wilfully, or through neglect, suffers to be lost, spoiled, or damaged any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16. Any enlisted man who sells, or wilfully, or through neglect, wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17. Any soldier who sells, or through neglect loses or spoils his horse, arms, clothing, or accoutrements, shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him.<sup>1</sup>

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other

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<sup>1</sup> See G. O. 57, A. G. O. 1892.



necessaries of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21. Any officer or soldier who, on any pretence 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 disobeys any lawful command of his superior officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost en-

deavor to suppress the same, or having knowledge of any intended mutiny or sedition, 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. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his<sup>1</sup> own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such (*corporal*) punishment as a court-martial may direct.

ART. 27. Any officer or non-commissioned officer, commanding a guard, who knowingly and willingly suffers any person to go forth and fight a duel, shall be

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<sup>1</sup> *Sic* in Rev. Stat.

punished as a challenger ; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows, or has reason to believe, that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28. Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger ; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and done their duty as good soldiers, who subject themselves to discipline.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial ; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.

ART. 31. Any officer or soldier who lies out of his

quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

✓ ART. 34. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

✓ ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offence.

✓ ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37. Every non-commissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such (*corporal*) punishment as a court-martial may direct. [No court-martial shall sentence any soldier to be branded, marked, or tattooed.]

ART. 39. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer death, or such other punishment as a court-martial may direct.

ART. 40. Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard which he is commanded 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, shall suffer death, or such other punishment as a court-martial may direct.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give 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. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.

ART. 47. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war,

suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 50. No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court martial may

direct ; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march ; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain-fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56. Any officer or soldier who does violence to any person bringing provisions or other necessaries to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories, during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

✓ ART. 58. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape or assault and battery



with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offence, by the laws of the State, Territory, or District in which such offence may have been committed.

ART. 60. Any person in the military service of the United States 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 statement ; 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 wilfully 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, equipments, 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. And if any person, being guilty of any of the offences aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

Art. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman, shall be dismissed from the service.

Art. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing Articles of War, are to be taken cognizance of by a general, or a regimental, garrison, or field-officer's court-martial, according to the nature and degree of the offence, and punished at the discretion of such court.

Art. 65. Officers charged with crime shall be arrested and confined to their barracks, quarters, or tents. . . . And any officer who leaves his confinement before he is set at liberty by his commanding officer, shall be dismissed from the service.

Art. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime 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. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

Art. 86. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or

gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Art. 110. Sec. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offence, and made punishable by court-martial, under the sixty-second Article of War.<sup>1</sup>

#### OTHER STATUTORY PROVISIONS DEFINING COURT-MARTIAL OFFENCES.<sup>2</sup>

Sec. 1343, R. S. All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death.

Sec. 1359, R. S. Any officer who shall suffer a convict to escape, or shall in any way consent to his escape, or shall aid him to escape, or in any attempt to escape, shall be dismissed from the service, and suffer such other punishment as a court-martial may inflict.<sup>3</sup>

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<sup>1</sup> See G. O. 57, A. G. O. 1892.

<sup>2</sup> Secs. 5356 and 5313, R. S., relating to offence of military persons trading with the enemy, are not quoted.

<sup>3</sup> Secs. 1359 and 1360, R. S., relate to offences committed at the U. S. Military Prison.

Sec. 1360, R. S. Any soldier or other person employed in the prison, who shall suffer a convict to escape, or shall in any way consent to his escape, or shall aid him to escape, shall, upon conviction by a court-martial, be confined therein not less than one year.

## GENERAL FORMS.

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### CHARGES.

Charge and specification preferred against Private A.... B ..., Co. ...., .... U. S. Infantry.

**Charge:** "Selling clothing,<sup>1</sup> in violation of the 17th Article of War."

*Specification:* "That Private A.... B...., Co. ...., .... U. S. Infantry, did sell the following articles of his uniform clothing, viz.: One (1) forage cap, value \$....; one (1) overcoat, made, value \$....; and one (1) blanket, woollen, value \$....; total value of articles sold, \$....

"This at ...., on the .... of ...., 18.."

C.... D... ,

*Captain .... Infantry,*

*Officer preferring charge.*

Witnesses :

1st Sergeant E.... F...., Co. ...., .... Infantry.

Private G.... H...., Troop ...., .... Cavalry.

Mr. I.... K...., Citizen.

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<sup>1</sup> See Op. Actg. J. A. G., page 21.

or,

“Losing accoutrements, in violation of the 17th Article of War.”

*Specification:* “That . . . . . did, through neglect, lose the following articles of his accoutrements, viz.: One (1) . . . . , value \$ . . . . ; and one (1) . . . . , value \$ . . . . ; total value of articles lost, \$ . . . .

“This at, etc.”

If a soldier is known to have unlawfully disposed of his clothing or accoutrements in a way not mentioned in the 17th article, the charge should be laid under the 62d article.

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**Charge:** “Disobedience of orders,<sup>1</sup> in violation of the 21st Article of War.”

*Specification:* “That Private A . . . . B . . . . , Co. . . . . , . . . . U. S. Infantry, having received a lawful command from his superior officer, 2d Lieutenant C . . . . D . . . . , . . . . Infantry, to (*insert order*), did disobey the same.

“This at . . . . , on the . . . . day of . . . . , 18 . . . .”

or,

“Striking his superior officer, in violation of the 21st Article of War.”

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<sup>1</sup> “A non-compliance by a soldier with an order emanating from a non-commissioned officer is not an offence under this article, but one to be charged, in general, under the 62d.” (Win. Dig., p. 9.) “A simple neglect to comply with a standing order is an offence under the 62d Article of War, and not under the 21st, which implies a wilful defiance of authority.” (Op. Actg. J. A. G., June 26, 1891.)



*Specification*: "That Private A.... B...., Co. ...., .... U. S. Infantry, did strike his superior officer, 2d Lieutenant C.... D...., .... Infantry, the said Lieutenant being in the execution of his office, with ....

"This at ...., on the .... day of ...., 18.."

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**Charge**: "Absence without leave, in violation of the 32d Article of War.

*Specification*: "That Private A.... B...., Co. ...., .... U. S. Infantry, did absent himself from his company, without leave from his commanding officer, from ... , on the .... of .... 18.., until....., on the..... of ...., 18..

"This at ...."

or,

*Specification*: "That Private A.... B...., Co....., .... U. S. Infantry, was absent from the 11 o'clock p.m. inspection of his company, without leave from his commanding officer."

"This at ...., etc."

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**Charge**: "Absence from parade, in violation of the 33d Article of War."

*Specification*: "That Private A.... B...., Co. .... . . . . U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the time fixed, to

the place appointed by his commanding officer for parade.

“This at . . . . on the . . . . of . . . ., 18. .”

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**Charge:** “Drunkenness on duty, in violation of the 38th Article of War.”

*Specification:* “That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, while on stable guard, was found drunk.

“This at . . . ., about . . . . on the . . . . of . . . ., 18. .”

or,

“That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, while at drill, was found drunk.

“This at, etc.”

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**Charge:** “Sleeping on post, in violation of the 39th Article of War.”

*Specification:* “That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, while a sentinel, was found sleeping on his post.

“This at . . . ., about . . . ., on the . . . . of . . . ., 18. .”

or,

“Leaving post, in violation of the 39th Article of War.”

*Specification*: "That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, while a sentinel, did leave his post before he was regularly relieved.

"This at, etc."

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**Charge**: "Quitting guard, in violation of the 40th Article of War."

*Specification*: "That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, did, without urgent necessity, quit his guard without leave from his superior officer.

"This at . . . ., about . . . ., on the . . . . of . . . ., 18.."

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**Charge**: "Desertion, in violation of the 47th Article of War."

*Specification*: "That Private A. . . . B. . . ., Co. . . ., . . . . U. S. Infantry, a soldier in the service of the United States, did desert the same at . . . ., on or about the . . . . of . . . ., 18.., and did remain absent in desertion until he was apprehended (or until he surrendered himself), at . . . ., on or about the . . . . of . . . ., 18.."

If a soldier deserts and enlists in another troop, he should be charged with desertion under the 47th Article,<sup>1</sup> and also with "Fraudulent enlistment,<sup>2</sup> to the prejudice of good order and military discipline," under

<sup>1</sup> See 50th A. W.; also, Win. Dig., p. 23, and G. C. M. O. 55; A. G. O. 1886.

<sup>2</sup> For definition of "Fraudulent enlistment," see note 6, p. 95.

the 62d.<sup>1</sup> The specification to the latter charge should read as follows:

“That Private A.... B...., Co. ...., .... Infantry, a soldier in the service of the United States, did, without a discharge from said regiment of Infantry, fraudulently enlist in Troop ....., .... U. S. Cavalry, at ... ; on the .... of ....., 18.., under the name of ....., and did thereby receive pay and allowances from the United States.”

**Charge:** “Theft, in violation of the 60th Article of War.”

*Specification:* “That Private A.... B...., Co. ...., U. S. Infantry, did feloniously take, steal, and carry away ....., of the value of \$...., the property of the United States, and intended for the military service thereof.

“This at ....., on the .... of ....., 18..”

#### VIOLATIONS OF THE 62D ARTICLE OF WAR.

**Charge:** “Neglect of duty, to the prejudice of good order and military discipline.”

*Specification:* “That Private A .... B...., Co. ...., .... U. S. Infantry, while on ....., did neglect to (*state duty neglected*).

“This at ....., on the .... of ....., 18..”

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<sup>1</sup> Sec. 3, 110th A. W.; see G. O. 57; A. G. O. 1892.

**Charge:** "Drunk and disorderly, to the prejudice of good order and military discipline."

*Specification:* "That Private A.... B...., Co. ...., .... U. S. Infantry, was drunk and disorderly in ....

"This at ...., about ...., on the .... of ...., 18.."

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**Charge:** "Conduct to the prejudice of good order and military discipline."

*Specification:* "That Private A.... B...., Co. ...., .... U. S. Infantry, having received an order from 1st Sergeant C.... D...., Co. ...., .... U. S. Infantry, the said Sergeant being in the execution of his office, to (*insert order*), did wilfully disobey the same.

"This at ...., on the .... of ...., 18.."

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**Charge:** "Assault with intent to kill, to the prejudice of good order and military discipline."

*Specification:* "That Private A.... B...., Co. ...., .... U. S. Infantry, did feloniously assault Sergeant ...., Co. ...., .... U. S. Infantry, by stabbing him with a knife, with intent to kill.

"This at ...., on the .... of ...., 18.."

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**Charge:** "Burglary, to the prejudice of good order and military discipline."

*Specification:* "That Private A.... B ...., Co. ....,

.... Infantry, did break into and enter, at night, the quarters of 1st Lieut. C.... D...., .... U. S. Cavalry, with intent to commit a felony.

“This at ....., about .... o'clock .... M., on the .... day of ....., 18..”

**Charge:** “Larceny,<sup>1</sup> to the prejudice of good order and military discipline.”

*Specification:* “That Private A.... B...., Co. ...., .... U. S. Infantry, did take, steal, and carry away

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<sup>1</sup> “As to whether an act which is a civil crime is also a military offence no rule can be laid down which will cover all cases, for the reason that what may be a military offence under certain circumstances may lose that character under others. I do not believe that, for instance, larceny by a soldier from a civilian is always a military crime, but it may become so in consequence of the particular features, surroundings, or locality of the act. What these would be cannot be anticipated with a sweeping rule comprehensive enough to provide for every possible conjunction of facts. Each case must be considered on its own merits. If the act be committed on a military reservation, or other ground occupied by the army, or in its neighborhood, so as to be, as it were, in the constructive presence of the army; or if committed while on duty, particularly if the injury be to a member of the community the offender is specially required to protect; or if committed in the presence of the other soldiers, or while in uniform; or if the offender use his military position, or that of another, for the purpose of intimidation or of other unlawful influence or object—such facts would be sufficient to make it prejudicial to military discipline within the meaning of the Article of War.” (Op. Actg. J. A. G., approved by Secty. of War, Nov. 20, 1885.)

...., of the value of .... dollars (\$. ...), the property of Corporal ...., Co. ...., .... U. S. Infantry.

“This at ...., on the .... of ...., 18..”

**Charge:** “Perjury,<sup>1</sup> to the prejudice of good order and military discipline.”

*Specification:* “That Private A.... B...., Co. ...., ... U. S. Infantry, having been duly sworn, at his own request, as a witness in his own defence before a .... court-martial, convened at ...., by .... order No. ...., dated ...., 18.., for his trial, did wilfully and corruptly testify, in a matter material to the issue, as follows:

“Question by judge advocate.....

“Answer.....

“Which testimony was false, was known by him, the said A.... B...., to be false, and was given with intent to deceive the court.

“This at ...., on the .... of ...., 18..”

---

<sup>1</sup> “. . . Wharton says (Criminal Law, sec. 1259), ‘Perjury before courts-martial is by statute made indictable in most jurisdictions; but even when a statute does not apply, the weight of authority is that it is perjury at common law.’ It is a statutory crime under section 5392 Revised Statutes of the United States. So that false swearing before a court-martial, if it possesses the other elements of perjury, is perjury, and can be tried as such by court-martial under the 62d Article of War. The rules of evidence in regard to perjury will then apply. When any of the elements of perjury are lacking the offence will properly be charged as ‘false swearing’” [e.g., when the matter is *not* material to the issue]. (Op. Actg. J. A. G., June 26, 1891.)

If any person not a soldier<sup>1</sup> fraudulently enlist in the U. S. service, the charge and specification should read:<sup>2</sup>

**Charge:** "Fraudulent enlistment, in violation of the 62d Article of War."

*Specification:* "That A.... B.... did, at ....., on the .... of ....., 18.., fraudulently enlist as a soldier in the service of the United States, by falsely representing that he had never been discharged from the United States service by sentence of a military court and by deliberately and wilfully concealing from the recruiting officer, ....., the fact of his dishonorable discharge from .... on ....., pursuant to sentence of court-martial; and that he has at ....., since said enlistment, received pay and allowances thereunder."

or,

*Specification:* "That A.... B.... did, at ....., on the .... day of ....., 18.., he being a minor, fraudulently enlist as a soldier in the service of the United States by falsely representing himself to be over twenty-one years, to-wit, .... years and .... months of age; and that he has, at .... since said enlistment, received pay and allowances thereunder."

---

<sup>1</sup> For case of fraudulent enlistment by a soldier, see p. 130, and for definition of "Fraudulent enlistment," see note 6, p. 95.

<sup>2</sup> Sec. 3, 110th A. W., as amended by act July 27, 1892; see G. O. 57, A. G. O. 1892.



STATEMENT OF SERVICE.<sup>1</sup>

*Statement of service of ..... , Company ..... ,  
 ..... Regiment ..... (Required by para-  
 graph 1015, Army Regulations.)*

## FORMER SERVICE.

Date of enlistment.	Date of discharge.	Character on discharge.

Date of present enlistment ..... 18...

Date of confinement under present charges ..... ,  
 18....

.....,

*Commanding* .....

..... (Place.)

..... (Date.)

## SURGEON'S REPORT UPON ALLEGED DESERTER.

Fort ....., ...

....., 18...

SIR: In compliance with par. 121 A. R., I have the honor to report that I have critically examined .....  
 ....., an alleged deserter, and find him fit for service; (or) unfit for service on account of .....

To the .....

Post Adjutant.

*Post Surgeon.*

<sup>1</sup> Cir. 13, A. G. O. 1891. This form should "be printed on letter-size paper." (Ib.)

## RECORD OF A GENERAL COURT-MARTIAL.

PAGE 1.

*(In margin.)*

## CASE 1.

Proceedings<sup>1</sup> of a general court-martial which convened at ..... pursuant to the following order :

HEADQUARTERS DEPARTMENT OF .....,  
 ....., 18...

SPECIAL ORDERS }  
 No. .... }

A general court-martial is appointed to meet at ..... at ..... M., on ..... the ....., or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it :

*Detail for the Court.*

Major ....., 5th Cavalry.  
 Captain ....., 2d Artillery.  
 Captain ... .., assistant surgeon.  
 1st Lieutenant ....., 10th Infantry.  
 1st Lieutenant ... .., 5th Cavalry.

---

<sup>1</sup> "Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court." (114th A. W.) Applications for copies under this article should be addressed to the Judge Advocate General.

2d Lieutenant . . . . ., 2d Artillery.

2d Lieutenant . . . . ., 10th Infantry.

1st Lieutenant . . . . ., 5th Cavalry, judge advocate.

*(If less than 13 members are detailed, the order should continue :)*

A greater number of officers cannot be assembled without manifest injury to the service.

*(In case travel is necessary, the following sentence should be added :)*

The journeys required in complying with this order are necessary for the public service.

By command of Brigadier General . . . . .  
(Signed) . . . . .,

*Assistant Adjutant General.*

*(All orders modifying the detail, received before the court assembled, should be here inserted.)*

Fort . . . . .,  
. . . . ., 18....

The court met pursuant to the foregoing order at  
..... o'clock ....M.<sup>1</sup>

PRESENT.<sup>2</sup>

Major....., 5th Cavalry.

Captain . . . . ., assistant surgeon.

---

<sup>1</sup> "Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, except in cases which, in the opinion of the officer appointing the court, require immediate example." (94th A. W.)

<sup>2</sup> In the record of the proceedings of a court-martial at its organi-

1st Lieutenant....., 10th Infantry.  
 1st Lieutenant....., 5th Cavalry.  
 2d Lieutenant....., 2d Artillery.  
 1st Lieutenant....., 5th Cavalry, judge advocate.

ABSENT.

Captain....., 2d Artillery.  
 2d Lieutenant....., 10th Infantry.

*(If the cause of absence is known, it should be recorded; if unknown, this should be stated.<sup>1</sup>)*

The court then proceeded to the trial of Private.....  
 ....., Battery....., .... U. S. Artillery, who having been brought before the court, stated that he did not desire counsel; (or) requested permission to introduce ..... as his counsel; the court assenting, the counsel took his seat.<sup>2</sup>

---

zation for the trial of a case, the officers detailed as members and judge advocate will be noted by name as present or absent. In the record of the proceedings of subsequent sessions the following form of words will be used, subject to such modifications as the facts may require: "Present, all the members of the court and the judge advocate." When the absence of an officer who has not qualified, or who has been relieved or excused as a member, has been accounted for, no further note will be made of it. (Cir. 5, A. G. O. 1891.)

<sup>1</sup> It is the duty of the judge advocate to ascertain, if possible, the cause of absence. If a member is absent by order, the number and date of order should be given; if absent sick, a surgeon's certificate, furnished by absent member, should be appended.

<sup>2</sup> See 1 Win. Law. page 220.

*(If the judge advocate has authority to employ a reporter, the record will continue:)*

The judge advocate then stated to the court that he had authority to employ a reporter, and requested permission to introduce ..... as reporter for the court; which request having been granted, ..... was duly sworn by the judge advocate, and took his seat.

The order convening the court was then read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied in the negative; (or) that he objected to ..... on the following grounds:

*(In latter case insert objections.)*

The challenged member stated:

*(Insert the statement of the challenged member, who should always be requested to respond to the challenge and inform the court upon its merits. Should the accused, after this statement, desire to put the challenged member upon his voir dire, the record should continue:)*

The accused requested that the challenged member be sworn upon his *voir dire*,<sup>1</sup> ..... was then duly sworn by the judge advocate, and testified as follows:<sup>2</sup>

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<sup>1</sup> For oath see page 36.

<sup>2</sup> The form of examination should be similar to that given for witness for the defence; the accused should first ask his ques-

(*At the close of the examination of the member, the record should continue:*)

The testimony of the challenged member was then read to him, and was by him pronounced correct; (*or*) corrected as follows:<sup>1</sup>

(*Insert corrections, if any.*)

The challenged member, the accused, and judge advocate then withdrew,<sup>2</sup> and the court was closed, and on being opened, the president announced in their presence<sup>3</sup> that the objection of the accused was not sustained; (*or*) that the objection was sustained, and that . . . . . was, therefore, excused from serving as a member of the court in this case.

The accused was then asked if he objected to any other member present,<sup>4</sup> named in the order; to which he replied in the negative. The court and the judge advocate were thereupon duly sworn in presence of the accused.<sup>5</sup>

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tions, and then the judge advocate and court such as they may deem pertinent.

<sup>1</sup> See note 2, page 143.

<sup>2</sup> See "Remarks on Record," *infra*.

<sup>3</sup> See Cir. 12, A. G. O. 1892.

<sup>4</sup> Only one member at a time can be challenged, and a record of the proceedings in each case must be made.

<sup>5</sup> "Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial, and separate proceedings in each case prepared." Par. 1016 A. R.; see G. O. 29, A. G. O. 1891.

*(If an interpreter is required, he should now be sworn.)*

*(If any delay is wanted, application should now be made; in passing upon the request the court should be governed by the 93d A. W., and paragraphs 1013 and 1014 A. R. If no delay is requested, the record should continue:)*

The accused was then duly arraigned upon the following charges and specifications :

**Charge I.**—.....

*Specification 1st.*—.....

*Specification 2d.*—.....

**Charge II.**—.....

To which the accused submitted such or such special plea in bar of trial ; (*or*) pleaded as follows :

To the 1st specification, 1st charge :—“ Guilty ;” (*or*) “ Not guilty.”

To the 2d specification, 1st charge :—“ Guilty ;” (*or*) “ Not guilty.”

To the 1st charge :—“ Guilty ;” (*or*) “ Not guilty.”

To the 1st specification, 2d charge, etc., etc.

Sergeant Jones, a witness for the prosecution, was duly sworn and testified as follows :

#### DIRECT EXAMINATION.

Questions by the judge advocate :

*Q.* What is your name, rank, company, regiment, and station ?

A. John Jones, Sergeant, Co. . . . , . . . . Infantry,  
Fort . . . . .

Q. Do you know the accused ; if so, who is he ?

A. I do ; Private . . . . . , Battery . . . . , . . . .  
Artillery.

*(The succeeding questions of the judge advocate should elicit everything within witness' personal knowledge, material to the prosecution.)*

#### CROSS-EXAMINATION.

Questions by the accused :

Q. . . . .

A. . . . .

*(If the accused declines to cross-examine the witness, the record should state :)*

The accused declined to cross-examine the witness.

#### RE-EXAMINATION.

Questions by the judge advocate :

Q. . . . .

A. . . . .

#### EXAMINATION BY THE COURT.

Q. . . . .

A. . . . .

Question by a member :<sup>1</sup>

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<sup>1</sup> If a question, put by a member, is objected to and the objection is sustained, it should be *recorded as a question by a member*, and



To this question, the accused (or party objecting) objected as follows :

*(Insert objection.)*

To which the member asking question replied :

*(Insert reply.)*

The accused and judge advocate then withdrew and the court was closed, and on being opened the president in their presence announced that the objection was (*or*) was not sustained.<sup>1</sup>

*(In the latter case, the record should continue:)*

The question was then repeated by the judge advocate.

A. ....

*(At the close of the examination of each witness, the record should state:)*

The testimony of the witness was then read to him, and by him pronounced correct; (*or*) corrected as follows :<sup>2</sup>

---

*not* answered; if the objection is not sustained, it should be recorded as a question by the court, repeated by the judge advocate, and must be answered. (Ives, p. 132.) If a question is objected to by any one, at any time during the trial, the above method of recording the action of the court should be followed.

<sup>1</sup> See Cir. 12, A. G. O. 1892

<sup>2</sup> If a witness desires to make corrections after hearing his testimony read, his statement in explanation should be recorded. Changes in the testimony as originally given should not be permitted. For the sake of brevity, if a number of witnesses are examined and

*(Enumerate corrections, if any, giving page and line on which they occur.)*

*(At the close of the prosecution, the record should continue :)*

The judge advocate announced that the prosecution here rested.

*(If the court adjourns to meet the following day, the record should continue :)*

The court then, at .... o'clock ..M., adjourned to meet at .... o'clock ..M., to-morrow.<sup>1</sup>

Fort .....  
 ....., 18..

The court met, pursuant to adjournment, at .... o'clock ..M.

PRESENT : <sup>2</sup>

All the members of the court and the judge advocate.

The accused, ....., his counsel, and the reporter were also present.

The proceedings of ..... were then read <sup>3</sup> and approved ; (or) corrected as follows :

---

no corrections found necessary, a single remark, at close of examination of witnesses, that the testimony of each witness was read to him and by him pronounced correct, will be sufficient.

<sup>1</sup> The daily record is usually subscribed by the judge advocate; but this is not necessary. (Win. Dig., p. 103.)

<sup>2</sup> See note 2, page 137.

<sup>3</sup> The reading of the record of the preceding day should not be

*(Enumerate corrections, if any, giving page and line on which they occur<sup>1</sup>.)*

Corporal Smith, a witness for the defence, was then duly sworn and testified as follows :

#### DIRECT EXAMINATION.

Question by the judge advocate : <sup>2</sup> What is your name, rank, company, regiment, and station ?

A. . . . .

Question by the judge advocate : Do you know the accused ; if so, who is he ?

A. . . . .

Questions by the accused :

Q. . . . .

A. . . . .

*(The examination should be completed as in case of witness for prosecution, the judge advocate cross-examining, and the accused, if he so desires, re-examining the witness.)*

neglected; the accused should be present thereat. (G. C. M. O. 35, A. G. O. 1867; see, also, Win. Dig., p. 219.)

<sup>1</sup> The record should, as far as practicable, be free from alterations and interlineations. (Par. 1038 A. R.) If corrections are *necessary*, a marginal note, signed by the judge advocate, should show that they were authorized by the court.

<sup>2</sup> Though this is a witness for the defence, the judge advocate usually, and properly, asks the two preliminary questions establishing identity of witness and his recognition of accused.

*(Should the accused wish to testify in his own behalf, the record should continue:)*

The accused, at his own request, was duly sworn as a witness, and testified as follows :

Question by the judge advocate : What have you to say in your defence ?

A. ....

*(The examination of the accused should be conducted in the same manner as that of any other witness.)*

*(Should the accused decline to be sworn in his own behalf, the record should state:)*

The accused declined to be sworn in his own behalf.

*(If the accused has no other witness to call, the record should continue:)*

The accused had no further testimony to offer and no statement to make; (or) having no further testimony to offer, made the following verbal statement in his defence; (or) having no further testimony to offer, submitted a written statement in his defence, which statement was read to the court by the judge advocate and is hereto appended and marked "A;"<sup>1</sup> (or) requested until 2 o'clock P.M., to prepare his final defence.

---

<sup>1</sup> All documents and papers, made part of the proceedings, should be appended to the record, in the order of their introduction, after the space left for the remarks of the reviewing authority, and

*(If the court takes a recess during the time asked for, the record should continue:)*

The court then took a recess until 2 o'clock P.M.; at which hour the members of the court, the judge advocate, the accused, his counsel, and the reporter resumed their seats.

*(Or, if the court has other business before it, the record may continue:)*

The court then proceeded to other business and at . . . . o'clock P.M. resumed the trial of this case; at which hour, etc.

The accused then submitted his final defence; which was read to the court by himself, his counsel, or the judge advocate, and is hereto appended and marked "B."<sup>1</sup>

The judge advocate submitted the case without remark; (*or*) replied as follows:

*(Insert reply, if verbal.)*

(*or*) submitted and read to the court a written reply, which is hereto appended and marked "C."

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marked, so as to afford easy reference, with the consecutive letters of the alphabet. (See par. 1038, A. R.)

<sup>1</sup> The statement of the accused, or argument in his defence, and all pleas in bar of trial or in abatement, when in writing, should be signed by the accused, referred to in the proceedings as having been submitted by him, and appended to the record, whether he is defended by counsel or not.

The accused and judge advocate then withdrew and the court was closed, and finds the accused, Private ..... Battery ....., ..... U. S. Artillery :<sup>1</sup>

Of the 1st specification, 1st charge.—“ Guilty;” (or) “ Not guilty.”

Of the 2d specification, 1st charge.—“ ‘ Guilty,’ except the words ‘ .....,’ and of the excepted words ‘ Not guilty.’ ”

Of the first charge.—“ Guilty; “ (or) “ Not guilty;” (or) “ Not guilty, but guilty of, etc.....”

*(If the offence is of such character as to admit of evidence of previous convictions, and the accused is convicted, the record should continue :<sup>2</sup>)*

The judge advocate and accused were then recalled and the court opened; the judge advocate then stated that no evidence of previous convictions had been referred to the court for consideration with this case; (or) the judge advocate then read the evidence of previous convictions hereto appended and marked “ D,” “ E,” etc., which had been referred to the court for consideration in connection with this case.

<sup>1</sup> See Cir. 12, A. G. O. 1892.

<sup>2</sup> See “ Previous Convictions,” page 68.

The accused admitted the correctness of the evidence  
(*or*) stated as follows:

*(Insert statement, if any.)*

The accused and judge advocate then withdrew and  
the court was closed, and sentences him, Private ....  
....., Battery ...., ..... U. S. Artil-  
lery, .....

The judge advocate was then recalled.<sup>1</sup>

A..... B.....,

*Major* .....,

*President.*

C..... D.....,

*1st Lieut.* .....,

*Judge Advocate.*

*(If the offence is not of such character as to admit of  
evidence of previous convictions, or if the accused is ac-  
quitted, the record, after the findings are stated, should  
continue respectively:)*

And the court does therefore sentence him, etc.; (*or*)  
does therefore acquit him, Private .....  
Battery ....., ..... U. S. Artillery.

The judge advocate was then recalled.

A..... B....., etc.

*(The record should then continue:)*

The court then, at .... .M., adjourned until ....

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<sup>1</sup> See Cir. 12, A. G. O. 1892.

....M., the .... inst.; (or) to meet at the call of the president.<sup>1</sup>

(Or, on completion of the trial of the last case before the court:)

There being no further business before it, the court, at .... o'clock, ....M., adjourned *sine die*.

A..... B.....,

Major.....,

President.

C..... D.....,

1st Lieut. ....,

Judge Advocate.

(At least two blank pages should be left after the adjournment for the decision and orders of the reviewing authority.<sup>2</sup>)

(The papers forming the complete record should be

<sup>1</sup>The hour of adjournment should be stated, unless the court is authorized to sit without regard to hours.

<sup>2</sup>The practice, sometimes followed, of noting the adjournment after the blank space left for the action of the reviewing authority, is *wrong*; for when the review is dated, this leaves the adjournment, as ordinarily written, under a wrong date, or, if the adjournment is dated, the *entire* proceedings not in proper sequence as to dates. The action of the original reviewing officer is properly written upon a blank page at the end of the record, or a sheet attached thereto, below or after the sentence, *adjournment*, or other final proceeding of the court in the case. (See 1 Win. Law, p. 676.)



*fastened together at the top; the pages numbered;<sup>1</sup> and the record folded in four folds, and indorsed on the first as follows:<sup>2</sup>)*

.....  
Private, Company.....

—————  
Trial by general court-martial  
at.....;  
commencing ..... 189.....;  
ending ..... 189.....

—————  
*President,*  
*Colonel* .....

.....  
*Judge Advocate,*  
*Captain* .....

### RECAPITULATION.

*Special facts to be shown in record.*

1. All orders relating to detail should be recorded.
2. The place and hour of meeting, stated.
3. Names of members and judge advocate, present, recorded.

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<sup>1</sup> See par. 1038, A. R.

<sup>2</sup> Ib. 1039, as amended by G. O. 82, A. G. O. 1891.

4. Absentees noted and cause of absence stated.
5. Accused present—name correctly recorded throughout proceedings.
6. If accused does not desire counsel, stated.
7. If reporter is employed, duly sworn.
8. Full right of challenge allowed accused.
9. If court is cleared, judge advocate and accused present on reopening.
10. The court and judge advocate duly sworn.
11. Accused arraigned.
12. Charges correctly copied.
13. Pleas recorded, in full.
14. If interpreter is employed, duly sworn.
15. Witnesses duly sworn.
16. Testimony read to witnesses for correction.
17. Prosecution rests.
18. Court adjourned, hour recorded.
19. Court met, hour stated.
20. Presence of members and judge advocate recorded.
21. Absence of members, heretofore present, noted.
22. Accused present.
23. Record previous day read.
24. Accused sworn *at his own request*, or declined to be sworn.
25. Statement of accused.
26. Remarks of judge advocate.

27. Court cleared, judge advocate and accused withdrew.
28. Findings recorded.
29. Court reopened, judge advocate and accused present, previous convictions read.
30. Remarks of accused.
31. Court cleared, judge advocate and accused withdrew.
32. Sentence recorded and judge advocate recalled.<sup>1</sup>
33. Signatures of president and judge advocate.
34. Adjournment signed, hour stated.
35. Proceedings indorsed.

#### REMARKS ON THE RECORD.

Every court-martial shall keep a complete and accurate record of its proceedings. The record will be authenticated by the signatures of the president and judge advocate in each case. The record must show that the court was organized as the law requires; that the prisoner was asked if he wished to object to any member, and his answer to such question, and that the court and judge advocate were duly sworn in the presence of the prisoner. The record in each case will be complete in itself, and will set out a copy of the order appointing the court.<sup>2</sup>

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<sup>1</sup> See that "limit of punishment" is not exceeded.

<sup>2</sup> Par. 1037, A. R.

All orders, modifying the detail of the court, and issued after its original organization, must be incorporated in the record. In connection with this, the record should note the fact of a new member taking his seat, or a new judge advocate commencing to officiate, according to order, on a certain day.<sup>1</sup>

The entire proceedings should be spread upon the record; all orders, motions or rulings of the court; all motions, propositions, objections, arguments, statements, etc., of the judge advocate or the accused; the testimony of each witness, as nearly as possible in his own language; in short, every feature of the proceedings, material to a complete history of the case and to a correct understanding of every point of the same by the reviewing authority, should be recorded at length.<sup>2</sup>

It should appear of record that the plea of "Guilty" to a charge of desertion is understood by the prisoner as an acknowledgment of his intention to desert, and not merely of unauthorized absence; and it should not be accepted when the prisoner makes a statement at variance with his plea.<sup>3</sup>

"Although, since the passage of the act of Congress of July 27, 1892, 'to amend the Articles of War, etc.,' it is desirable that the record of a court-martial should show that when it sat in closed session the judge-advoc-

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<sup>1</sup> Win. Dig., p. 413.

<sup>2</sup> Ib.

<sup>3</sup> See G. O. 91, A. G. O. 1891.

cate withdrew (for which reason forms are given in Circular No. 12, Adjutant General's Office, 1892), it will not vitiate the proceedings if this is not expressly stated. When the record shows that the court was 'closed' the presumption is that it was closed in accordance with the requirements of the law."<sup>1</sup>

The statement referred to in paragraph 1015 of the Regulations, which does not call for a general character of the soldier, is intended simply for the information of the convening authority; it should not be introduced in evidence, nor made a part of the record of the trial,<sup>2</sup> but should be returned to the convening authority with the record of the trial.<sup>3</sup>

"The use of a 'typewriter' in writing out sentences of courts-martial is disapproved."<sup>4</sup>

A recommendation to clemency will not be embraced in the body of the sentence; but should be appended to the record after any exhibits referred to in the proceedings. Only those members who concur in the recommendation should sign it.<sup>5</sup>

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<sup>1</sup> Cir. 13, A. G. O. 1892.

<sup>2</sup> Ib. 13, 1890.

<sup>3</sup> See par. 1015, A. R.

<sup>4</sup> Cir. 12, A. G. O. 1883.

<sup>5</sup> Par. 1040, A. R.

## REVISION OF RECORD.

“When the record of a court-martial exhibits error in preparation, or seemingly erroneous conclusions on the part of the court, the reviewing authority may reconvene it for a reconsideration of its action, with suggestions for its guidance. The court may thereupon, should it concur in the views submitted, proceed, by amendment, to remedy the errors pointed out, and may modify or completely change its findings. A reopening of the case, by calling or recalling witnesses, is illegal.”<sup>1</sup>

*(If the proceedings are returned to the court for revision, its action shall be recorded as follows :)*

## REVISION.

Fort.....,  
....., 18....

The court reconvened, pursuant to the following order, or instructions, at .... o'clock ....M.

*(Insert copy of order or instructions.)*

PRESENT.<sup>2</sup>

.....

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<sup>1</sup> Par. 1043, A. R.

<sup>2</sup> If the findings and sentence are to be considered, all the members who voted upon the same should, if possible, be present. At least five members of the court, who acted upon the trial, must, and the judge advocate should, be present at a revision; but it is in

## ABSENT.

*(Insert names of absentees, and state cause, if known.)*

The judge advocate then read to the court the foregoing order or instructions of the department commander.

The judge advocate then withdrew, and the court was closed and revokes its former findings, and, in lieu thereof, finds the accused, etc.; (*or*) revokes its former sentence, and, in lieu thereof, sentences the accused, etc.; (*or*) respectfully adheres to its former findings and sentence; (*or*) amends the record by, etc.<sup>1</sup>

The judge advocate was then recalled.

A..... B.....,

*Major*.....,

*President.*

C..... D.....

*1st Lieutenant*.....,

*Judge Advocate.*

*(The record of revision should be appended to the original proceedings and the whole indorsed and forwarded as before.)*

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general neither necessary nor desirable that the accused should be so. (Win. Dig., p. 441.)

<sup>1</sup> The amendment can only be made by the court, when duly reconvened for the purpose, and, when made, must be *the act of the court as such*. A correction made by the president or other

## RECORD OF A SUMMARY COURT.

The following form for the "summary-court record" book has been adopted, and will be furnished by the adjutant-general of the army, with blank forms of reports required to be made monthly to department headquarters: <sup>1</sup>

## SUMMARY COURT RECORD.

No.	Name, Rank, Company, and Regiment.	Charges and Specifications.	Names of Witnesses.	When Arrested.	When Arraigned.	Plea.	Finding.	Sentence, with Signature of Trial Officer.	Action of Commanding Officer, with Date and Signature.

member, or by the judge advocate, independently of the court, and by means of an erasure or otherwise, is unauthorized and a grave irregularity. (Win. Dig., p. 441.) If omissions in the record are to be supplied, the page and line on which they occur should be stated and the corrections given in full. The original record should not be interlined, nor altered in any way.

<sup>1</sup> G. O. 137, A. G. O. 1890.



## REMARKS ON RECORD OF A SUMMARY COURT.

“There shall be a summary-court record-book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be entered a record of all cases heard and determined and the action had thereon.”<sup>1</sup>

“The specifications of charges tried by summary court may be recorded in the ‘Summary Court record’ in abbreviated form ; but, taken in connection with the charge, must set forth material facts, together with the date of offence. For instance, under a charge of ‘Absence without leave,’ it will be sufficient if the record should state, ‘From 10 A.M. to 10 P.M., October 10, 1892 ;’ or under a charge of ‘Drunkenness on duty,’ to state, ‘At drill, October 10, 1892.’”<sup>2</sup>

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<sup>1</sup> Act estab. ; see page 92.

<sup>2</sup> Cir. 12, A. G. O. 1892.

RECORD OF A GARRISON COURT-MARTIAL.<sup>1</sup>

## CASE....

Proceedings of a garrison court-martial convened at  
 ....., pursuant to the following order:

Fort.....,

....., 18....

ORDERS }  
 No. ... }

A garrison court-martial will convene at this post at  
 .... o'clock A.M., on the ....., 18  
 ....., or as soon thereafter as practicable, for the trial  
 of Private . . . . ., Company ....., .... Infantry, he  
 having objected to trial by summary court and re-  
 quested trial by garrison court-martial; (*or*) the post or  
 other commander being the accuser and the only officer  
 present with the command.

---

<sup>1</sup> The form of record for a garrison court-martial differs from that for a general court-martial only in respect to the form of the order appointing the court. The form here given is that for a simple "Guilty" case; if the prisoner pleads "Not guilty," or any other complication arises, the form for record of a general court should be followed.

*Detail for the Court.*

Captain.....

1st Lieutenant.....

2d Lieutenant.....

2d Lieutenant....., judge advocate.

By order of .....

(Signed).....,

1st Lieutenant .....,

*Post Adjutant.*

Fort .....,

....., 18....

The court met, pursuant to the foregoing order, at  
 .... o'clock ....M.<sup>1</sup>

## PRESENT.

Captain.....

1st Lieutenant.....

2d Lieutenant.....

2d Lieutenant....., judge advocate.

The court then proceeded to the trial of Private ....  
 ....., Company...., ....Infantry, who was  
 brought before the court, and having thereupon heard  
 the order convening it read, was asked if he had any

---

<sup>1</sup> If the order contains the sentence, "The court may sit without regard to hours;" the hours of meeting and adjournment need not be recorded.

objection to being tried by any member named therein ; to which he replied in the negative.

The court and the judge advocate were thereupon duly sworn in the presence of the accused, who was then duly arraigned upon the following charge and specification :

**Charge**.....

*Specification*.....

To which the prisoner pleaded :

To the Specification—" Guilty."

To the Charge—" Guilty."

The judge advocate announced that the prosecution here rested.

The prisoner stated that he had no testimony to offer or statement to make.

The accused and judge advocate then withdrew, and the court was closed and finds the accused, Private ..... Company ....., ....Infantry.

Of the Specification—" Guilty."

Of the Charge—" Guilty."

The judge advocate and the accused were then recalled and the court opened ; the judge advocate stated that no evidence of previous convictions had been referred to the court for consideration with this case ; (or) read the evidence of previous convictions hereto appended and marked " A," " B," etc., which had been referred to the court for consideration with the case.

The accused and judge advocate then withdrew, and

the court was closed and sentences him, Private . . . . .,  
Company . . . . , . . . . Infantry, etc.

The judge advocate was then recalled.

A . . . . . B . . . . .,  
  *Captain* . . . . .,  
  *President.*

C . . . . . D . . . . .,  
                                  *2d Lieutenant* . . . . .,  
                                  *Judge Advocate.*

(*A sine die adjournment should be added to the last case before the court; and the record of each case folded and indorsed in same manner as that for a general court-martial.*)

#### REMARKS ON THE RECORD OF A GARRISON COURT.

The decision and orders of the post commander properly dated and over his official signature, should follow immediately after the sentence, *adjournment*, or other final proceeding of the court in the case.<sup>1</sup>

“The complete proceedings of garrison and regimental courts-martial will be transmitted without delay, by the post or regimental commanders, to the department headquarters for file.”<sup>2</sup>

<sup>1</sup> See 1 Win. Law, p. 676.

<sup>2</sup> Par. 1042, A. R.

## SENTENCES.

As the records of proceedings show a great difference in the wording of sentences practically the same, the following simple forms are published for guidance in apposite cases :

*Reduction* : \* \* \* “ to be reduced to the ranks.”<sup>1</sup>

*Confinement* : \* \* \* “ to be confined at hard labor, under charge of the post guard, for .... ( ) days.”

*Forfeiture* : \* \* \* “ to forfeit .... ( ) dollars of his pay.”

*Detention of Pay* : \* \* \* “ to have .... ( ) dollars of his pay detained until his discharge.”<sup>2</sup>

*Confinement and forfeiture* : \* \* \* “ to be confined at hard labor, under charge of the post guard, for .... ( ) months, and to forfeit .... ( ) dollars per month for the same period.”<sup>3</sup>

---

<sup>1</sup> See par. 1019, A. R.

<sup>2</sup> “ By the phrase ‘detained pay’ ( \* \* \* ) is meant such amounts of the pay of enlisted men as, by sentence of court-martial, are to be withheld until the soldier’s discharge.” (Cir. 3, A. G. O. 1891.)

<sup>3</sup> During the first year of enlistment \$4 per month of a soldier’s pay is retained. (Act June 16, 1890 ; see G. O. 68, A. C. O. 1890.)

*Confinement and detention of pay :* \* \* \* “to be confined at hard labor, under charge of the post guard, for . . . ( ) months, and to have . . . ( ) dollars per month for the same period detained until his discharge.”

*Confinement, forfeiture and detention of pay :*  
\* \* \* “to be confined at hard labor, under charge of the post guard, for . . . ( ) months ; to forfeit . . . ( ) dollars per month for . . . ( ) months, and to have . . . ( ) dollars per month for . . . ( ) months detained until his discharge.”

*Dishonorable discharge and forfeiture of pay and allowances :* \* \* \* “to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him.”<sup>1</sup>

*Dishonorable discharge, forfeiture of pay and allowances, and confinement :* \* \* \* “to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor in such military prison (*or*, penitentiary) as the proper authority may direct, for . . . ( ) years.”

---

<sup>1</sup> The clause “or to become due,” so frequently added after “allowance due,” in such sentences is superfluous ; for the reason that the forfeiture takes effect on the date of the order promulgating the sentence, after which none but prison allowances accrue, and these cannot be forfeited by court-martial sentence.

If the period of confinement is less than one year, such a sentence should read: “ \* \* \* \* at hard labor, under charge of the post guard, for .... ( ) months.”

---

SUMMONS FOR A MILITARY WITNESS.<sup>1</sup>

Fort.....,  
 ....., 18....

To .....,  
 .... *Infantry.*

SIR: You are hereby summoned to appear on the .... of ....., 18...., at .... o'clock .... M., before a general court-martial, convened at ....., by Special Orders .... from ....., as a witness in the case of Private A.... B...., Co. ...., .... Infantry.

C..... D.....,  
 .....,

*Judge Advocate.*

---

<sup>1</sup> See Ives, p. 415.



SUBPŒNA FOR CIVILIAN WITNESS.<sup>1</sup>

UNITED STATES

vs.

} *Subpœna.*

.....  
 .....  
*The President of the United States, to.....,*  
*Greeting :*

You are hereby summoned and required to be and appear in person, on the ..... day of ....., 18...., at ..... o'clock ... M., before a general court-martial of the United States, convened at ....., by Special Orders, No. ...., Headquarters ..... dated ....., 18...., then and there to testify and give evidence as a witness for the ..... , in the above-named case. And have you then and there this precept.

Dated at ....., this ..... day of ....., 18....

.....  
*Judge Advocate of the Court-martial.*

---

<sup>1</sup> From office Judge Advocate General.

SUBPŒNA DUCES TECUM.<sup>1</sup>

## CIVILIAN WITNESS.

UNITED STATES  
*vs.*  
 ..... } *Subpœna.*  
 .....

*The President of the United States, to.....,*  
*Greeting :*

You are hereby summoned and required to be and appear in person, on the ..... day of ....., 18...., at ..... o'clock ....M., before a general court-martial of the United States, convened at ..... by Special Orders, No. ...., Headquarters ....., dated ....., 18...., then and there to testify and give evidence as a witness for the ..... in the above-named case ; and you are hereby required to bring with you, to be used in evidence in said case, the following described documents, to wit :.....

And have you then and there this precept.

Dated at ....., this ..... day of ....., 18....

.....,  
*Judge Advocate of the Court-martial.*

---

<sup>1</sup> From office Judge Advocate General.

## RETURN OF SERVICE.

*(Indorsement of preceding writs.<sup>1</sup>)*

UNITED STATES.

*vs.*

.....  
 .....,  
 ....., 18....

I certify that I made the service of the within subpoena on ....., the witness named therein, by personally delivering to him in person a duplicate of the same at ....., on the ..... day of ....., 18....

.....  
 \_\_\_\_\_  
 ..... } *ss.*  
 .....

.....  
 being duly sworn, on his oath states that the foregoing certificate is true. ....

Subscribed and sworn to this ..... day of .....  
 18...., before me.<sup>2</sup>

.....  
 \_\_\_\_\_  
<sup>1</sup> "Observe that on the back there are forms for both certificate and affidavit. The reason for this is that it is not necessary to make the affidavit unless the witness be in default and it is proposed to issue process to compel attendance. In such case the affidavit can be filled out from the certificate made at the time of service." (Actg. J. A. G., June 26, 1891.)

<sup>2</sup> After service, as indicated, the original subpoena should be at once returned to the judge advocate of the court; if the witness

## PROCESS OF ATTACHMENT.

*The President of the United States of America, to . . . .  
 . . . ., stationed at . . . . ., Greeting :*

WHEREAS, A general court-martial of the United States was duly convened at . . . . ., on the . . . . day of . . . . ., 18. . . ., pursuant to Special Orders, No. . . . ., of 18. . . ., from Headquarters . . . . ., a copy of which said order is hereto annexed, marked " A ;" and

WHEREAS, On the . . . . day of . . . . ., 18. . . ., at . . . . ., the said general court-martial having been first duly sworn, . . . . ., of the United States Army, was duly arraigned and his trial proceeded with on a certain charge, instituted at the prosecution of the United States, for the offence of . . . . ., under the laws of the United States, a copy of which charge is hereto annexed, marked " B ;" and

WHEREAS, One . . . . ., of . . . . ., in the . . . . ., was, on the . . . . day of . . . . ., 18. . . ., personally served with a subpoena (a duplicate of which is hereto annexed, marked " C "), directing him to ap-

cannot be found, the judge advocate should be so informed. If a civilian witness be summoned from a distance, paragraphs " 4 " and " 5," pages 178 and 179, should be copied on back of subpoena, to enable witness to keep a proper memorandum of expenses.

pear and testify in said cause at the time and place therein commanded; and

WHEREAS, The said . . . . . did, on the . . . . day of . . . . ., 18. . . ., fail and neglect to appear before said court, or testify in said cause as required by said subpoena, and still fails and neglects to appear and testify in said cause, he being a necessary and material witness therein, and no just excuse has been offered for such neglect;

*Now, therefore,* Under and by virtue of section 1202 of the Revised Statutes of the United States, you are hereby commanded, that you take the said . . . . . wherever he may be found within the (*State, Territory, or District where the court-martial sits*<sup>1</sup>), and him safely keep, and bring you his body, without delay, before the said general court-martial convened at . . . . ., and of which . . . . ., United States Army, is president, at the court-room thereof, on the . . . . day of . . . . ., 18. . . ., at . . . . o'clock in the . . . .noon, at the opening of said court, to then and there testify in

---

<sup>1</sup>“I am of the opinion that the courts would hold that this process does not, under the law, run beyond the State, Territory, or District where the military court sits. It is certain that if you should succeed in getting a witness before the court-martial by virtue of such process, you could not compel him to testify or punish him for contempt. It is a very defective piece of machinery.” (Op. Act’g J. A. G., June 26, 1891.)

the said cause of the United States *vs.* . . . . ., now depending, and then and there to be continued and tried.

And have you then and there this writ.

*In witness whereof*, I, as judge advocate of said court, duly appointed and sworn, have hereto set my hand and seal, at . . . . ., this . . . . day of . . . . ., 18....

C.... D....,

*1st Lieutenant . . . . Infantry, [SEAL.]  
Judge Advocate.*

## INTERROGATORIES AND ANNEXED DEPOSITION.<sup>1</sup>

### INTERROGATORIES.

<p>THE UNITED STATES <i>vs.</i> PRIVATE A.... B...., Co. ...., .... INFANTRY.</p>	}	<p>To . . . . . (<i>Name of person who is to take the deposition; if not known, to be filled up on return.</i>)</p>
---	---	---

Interrogatories to be administered under the 91st Article of War, to . . . . . (*name of witness*), of . . . . . (*residence*), in the above entitled case now pending and

<sup>1</sup> See Ives, p. 419; also II. Win. Law, p. 352.

to be tried before the United States General Court-martial, convened at . . . . ., pursuant to Special Orders, No. . . . ., from Headquarters Department of the . . . . ., of . . . . ., 18. . . . ., and whereof . . . . . is president and . . . . . judge advocate.

*Interrogatories by judge advocate (or prisoner).*

*1st Int.:* Please state your full name, occupation, and present residence ?

*2d Int.:* Do you know . . . . ., the prisoner; if so, state how long you have known him, and how you know him to be the defendant in this trial ?

*3d Int.:* Etc., etc.

*Last Int.:* Do you know anything further relating to the cause now in hearing ; if so, state it ?

*Cross-Interrogatories by prisoner (or judge advocate).*

*1st Cr. Int.:* Etc.

*Redirect Interrogatories by judge advocate (or prisoner).*

*1st Red. Int.:* Etc.

*Interrogatories by court.*

*1st Int.:* Etc.

By order of the court.

C. . . . D. . . . ,

*First Lieutenant . . . . Infantry,  
Judge Advocate.*

## ANNEXED DEPOSITION.

THE UNITED STATES }  
*vs.* } *Deposition of witness*  
 ..... } *under the 91st Article of War.*

STATE OF ..... }  
 COUNTY OF ..... } ss.

....., the witness above named, being carefully examined and cautioned, and duly sworn (*or affirmed*) according to law, to tell the truth, the whole truth and nothing but the truth relating to the above-entitled case, doth depose (*or affirm*) and say for full answers in evidence, respectively, to all and each of the foregoing interrogatories and cross-interrogatories, as follows :

*To the 1st Interrogatory by judge advocate (or prisoner).*

\* \* \* \* \*

*To the 1st Cross-Interrogatory by prisoner (or judge advocate).*

\* \* \* \* \* etc., etc.

And further deponent (*or affiant*) saith not.

.....  
 (*Signature of witness.*)

Subscribed and sworn to before me this ..... day  
 of ..... 18.... [SEAL.]

.....  
 (*Signature of civil officer<sup>1</sup> administering oath.*)

---

<sup>1</sup> Depositions may now be taken by judge advocates of depart-



## INDORSEMENT.

I, ..... , the officer designated and directed by ..... to cause to be taken the deposition of the within-named ..... , do certify that the same was duly made and taken under oath as hereinbefore set forth and contained.

.....  
 .....  
 (*Official signature of army officer directed to procure deposition.*)

---

ments, of courts-martial, and by trial officers of summary courts. (Sec. 4, 110th A. W.; see G. O. 57, A. G. O. 1892.) If the deposition is taken by either of these officers, the certificate on back of same may be omitted.

ACCOUNT OF CIVILIAN WITNESS.<sup>1</sup>*The United States,**To ..... , Dr.*

18...	ON ACCOUNT OF EXPENSES INCIDENT TO HIS ATTENDANCE AS WITNESS BEFORE A MILITARY COURT CONVENED UNDER THE ANNEXED ORDERS.	Dolls.	Cts.
	For cost of transportation, or travel fare, from ..... to ..... between ..... , 18...., and ..... 18 ...., journeying to said court, as per memorandum herewith.....		
	For cost of transportation, or travel fare, returning from said court, *between ..... 18...., and ..... , 18...., as per memorandum herewith*.....		
	For <i>per diem</i> allowance at \$3 per day and for cost of subsistence, etc., while travelling to and from said court, between the dates above specified, . . . days, as per memorandum herewith.		
	For <i>per diem</i> allowance at \$3 per day and for cost of subsistence. etc., as per memorandum herewith, during attendance upon said court, from ..... , 18...., to ..... 18...., inclusive. as per judge advocate's certificate hereon, ... days.....		

<sup>1</sup> Form 13, Paymaster General's Office, as altered by orders. In making out such accounts, judge advocates should correct forms issued by Pay Department in accordance with form here given.

Fort .....

On this .... day of ....., one thousand eight hundred and ...., personally appeared before me, judge advocate of the general court-martial convened by the accompanying order, and made oath, in due form of law, that the above account is correct; that the specified travel was performed in the customary reasonable manner; that the stated charges for cost thereof were actually incurred and paid by him; and that its performance necessarily occupied the number of days, and between the dates stated.

.....  
(Signature of witness.)

.....  
Judge Advocate.

Received at ....., the .... of ....., 18...., of ....., Paymaster United States Army, the sum of ..... dollars and .... cents, in full of the above account.

(DUPLICATE.)

.....  
(Signature of witness.)

NOTE 1.—For rules governing payment of allowances to citizen witnesses see back of this form.<sup>1</sup>

NOTE 2.—Where the return journey is paid for before performance the allowance being that made for travel to the court, the words between the \*—\* may be erased.

---

<sup>1</sup> For further instructions see page 50.

*(Back of form for account civilian witness, paymaster's brief and indorsement omitted.)*

I certify that ....., a citizen, has been in attendance as a material witness from the .... day of ....., 18....., to the .... day of .... 18....., inclusive, before a general court-martial, duly and legally appointed by Special Orders, No. ...., Headquarters ....., and holden at this place, and that he was duly summoned thereto from .....

*Date* .....

*Place* ..... *Judge Advocate.*

NOTE.—The above certificate to be given in duplicate by the judge advocate, who will also administer the oath (see other side). Should the witness be "in Government employ," those words will be inserted in the above certificate after the word "citizen."

\* \* \* \* \*

The Paymaster General is, under A. R. pars. 1050 to 1055, governed by the following rules in the treatment of vouchers for travel expenses of citizen witnesses before military courts:

1. The voucher must be accompanied with a copy of the order convening the court and with the original summons in the case, or, if the attendance was authorized by military order, with the original order.

2. The affidavit of the witness (on face of voucher) and the Judge Advocate's certificate (on back of voucher) are required in all cases.

3. Upon execution of the affidavit and certificate the witness may be paid at once his entire claim without awaiting performance of the return travel. In such case the amount allowed for the return journey will be that determined for travel to the court (exclusive of any unusual delay which may have been admitted in connection therewith).

4. The following are the only authorized items of expense, and must appear in detail upon the voucher or upon a statement annexed thereto:

- (a) Amount actually paid for cost of transportation or travel fare.
- (b) Amount actually paid for cost of transfers to and from railway stations, not exceeding 50 cents for each transfer.
- (c) Amount actually paid for cost of one double berth in sleeping-car, or on steamers where an extra charge is made therefor.
- (d) Three dollars per day for each and every day unavoidably consumed in travel to and from court, and in attendance thereon, and, in addition thereto, the cost of meals, not to exceed 50 cents each, and room,—total cost of meals and room not to exceed \$3 per day;<sup>1</sup> provided, that where meals are included in the transportation, or fare, by steamers, no per diem will be charged.

---

<sup>1</sup> See Cir. 10, A. G. O. 1889.

(e) Citizens in Government employ, in addition to items enumerated in (a), (b), (c), are entitled only to the *actual cost* of meals and rooms, at a rate *not exceeding* three dollars per day, for each and every day unavoidably consumed in travel or in attendance on the court.

5. Travel must be estimated by the shortest available usually travelled route; the charge for cost of travel, items (a), (b), (c), by established lines of railroad, stage or steamer, should not exceed the usual rates in like cases; the time occupied to be determined by the official schedules, reasonable allowance being made for customary unavoidable detention.

6. The summons, or the order for attendance, will be presumed to show in all cases, by indorsement or otherwise, if transportation in kind or commutation of rations has been furnished.

Transportation in kind will, for any distance covered thereby, be a bar to payment of item (a).

Indorsements of transportation furnished are scrutinized to ascertain if any part of item (c) has been included.

Commutation of rations will be a bar to payment of item (d).

Transportation and commutation of rations will be a bar to payment of anything.

7. No per-diem allowance can be made where the at-

tendance upon court does not require the witness to leave his station. (This applies only to citizens in Government employ.)

8. See par. 1054, A. R. (This paragraph applies only to citizens in Government employ.)

9. The only discrimination between citizens who are and those who are not in Government employ is covered by the foregoing note (e), rule 4, and rules 7 and 8. If the witness is in Government employ, the Judge Advocate's certificate should state the fact. If it does not appear in the certificate, or elsewhere in the papers, and is not known to the paymaster, it will be assumed that the witness is not in Government employ.

10. The foregoing rules apply to travel on and after September 1, 1876.

11. Compensation to citizens, in or out of Government employ, for attendance upon civil courts is payable only by the civil authorities.

NOTE.—It is recommended that judge advocates supply themselves with blank accounts for citizen witnesses, which they can procure of any Army paymaster, or by addressing this [the Paymaster General's] office. They may then \* \* perfect the papers so that the witness fee for the attendance and travel will be at once available. If no paymaster be present, the papers, thus all authenticated by the judge advocate, may be assigned with confidence that the assignee will receive his pay without hindrance when presented, or transmitted, to any paymaster.





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DEPARTMENT OF TEXAS,  
JUDGE ADVOCATE'S OFFICE,  
Received FEB 13 1893

JUDGE ADVOCATE'S OFFICE,  
SOUTHERN DEPT.

