

# Calendar No. 119.

64TH CONGRESS, } SENATE. } REPORT  
1st Session. } No. 127.

## ACT RELATING TO PUBLIC UTILITIES COMMISSION, DISTRICT OF COLUMBIA.

FEBRUARY 9 (calendar day, FEBRUARY 11), 1916.—Ordered to be printed.

Mr. SMITH of Maryland, from the Committee on the District of Columbia, submitted the following

### REPORT.

[To accompany S. 3998.]

The Committee on the District of Columbia, to whom was referred the bill (S. 3998) to amend an act relating to the Public Utilities Commission of the District of Columbia, approved March 4, 1913, having considered the same, report thereon with a recommendation that it pass.

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### Exhibit A

# Calendar No. 12.

64TH CONGRESS, } SENATE. } REPORT  
1st Session. } No. 130.

## REVISION OF THE ARTICLES OF WAR.

FEBRUARY 9 (calendar day, FEBRUARY 11), 1916.—Ordered to be printed.

Mr. LEA of Tennessee, from the Committee on Military Affairs, submitted the following

### REPORT.

[To accompany S. 3191.]

The Committee on Military Affairs, to which was referred Senate bill 3191, to amend section 1342 and chapter 6, Title XIV, of the Revised Statutes of the United States, and for other purposes (Articles of War), have carefully considered the same and adopt the unanimous report of the subcommittee which considered this bill and recommend that the bill do pass as amended.

A BILL To amend section thirteen hundred and forty-two and chapter six, Title XIV, of the Revised Statutes of the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section thirteen hundred and forty-two of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

"Sec. 1342. The articles included in this section shall be known as the Articles of War, and shall at all times and in all places govern the armies of the United States, including all persons belonging thereto and all persons now or hereafter made subject to military law.

#### "I. PRELIMINARY PROVISIONS.

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

"(a) The word 'officer' shall be construed to refer to a commissioned officer;

"(b) The word 'soldier' shall be construed as including a noncommissioned officer, a private, or any other enlisted man;

"(c) The word 'company' shall be understood as including a troop or battery; and

"(d) The word 'battalion' shall be understood as including a squadron.

"ART. 2. PERSONS SUBJECT TO MILITARY LAW.—The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law,' or 'persons subject to military law,' whenever used in these articles:

"(a) All officers and soldiers belonging to the armies of the United States, including regulars, army reserve, militia called into the service of the United States from the date of notice of such call, and volunteers;

"(b) Cadets, veterinarians of Cavalry and Field Artillery, and pay clerks of the Quartermaster Corps;

"(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the Articles of War for the government of the Navy prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment cases;

"(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

"(e) All persons under sentence adjudged by courts-martial;

"(f) All persons admitted into the Soldiers' Home, all inmates of the National Home for Disabled Volunteer Soldiers, and all persons admitted to treatment in the Army and Navy General Hospital at Hot Springs, Arkansas, and in the hospital at Fort Bayard, New Mexico, while patients in said hospitals; and

"(g) All persons now or hereafter declared by law to constitute a part of or to belong to the armies of the United States or to be subject to the Articles of War or to trial by courts-martial.

## "II. COURTS-MARTIAL.

"ART. 3. COURTS-MARTIAL CLASSIFIED.—Courts-martial shall be of three kinds, namely:

- "First, general courts-martial;
- "Second, special courts-martial; and
- "Third, summary courts-martial.

## "A. COMPOSITION.

"ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.—Officers of the Regular Army, of the militia when called into the service of the United States, of the Volunteer Army, and of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

"ART. 5. GENERAL COURTS-MARTIAL.—General courts-martial may consist of any number of officers from seven to thirteen, inclusive.

"ART. 6. SPECIAL COURTS-MARTIAL.—Special courts-martial may consist of any number of officers from three to five, inclusive.

"ART. 7. SUMMARY COURTS-MARTIAL.—A summary court-martial shall consist of one officer.

## "B. BY WHOM APPOINTED.

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

"ART. 9. SPECIAL COURTS-MARTIAL.—The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, that when he is the accuser or a witness for the prosecution.

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

"ART. 11. APPOINTMENT OF JUDGE ADVOCATES.—For each general or special court-martial the authority appointing the court shall appoint a judge advocate, and for each general court-martial one or more assistant judge advocates when necessary.

## "C. JURISDICTION.

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

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

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

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

"Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months' pay: *Provided*, That when the summary court officer is also the commanding officer no sentence of such summary court-martial adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority.

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

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

## "D. PROCEDURE.

"ART. 17. JUDGE ADVOCATE TO PROSECUTE.—The judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall enjoy the right to have the assistance of counsel for his defense, but should he, for any reason, be unrepresented by counsel, the judge advocate shall from time to time throughout the proceedings advise the accused of his legal rights.

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

"ART. 19. OATHS.—The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the Armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

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

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

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

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

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

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

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

"Art. 22. PROCESS TO OBTAIN WITNESSES.—Every judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions.

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

"Art. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

"Art. 25. DEPOSITIONS.—WHEN ADMISSIBLE.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing. Provided, That testimony by deposition may be adduced for the defense in capital cases.

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

"Art. 27. COURTS OF INQUIRY.—RECORDS OF, WHEN ADMISSIBLE.—The record of the proceedings of a court of inquiry may be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

"Art. 28. RESIGNATION WITHOUT ACCEPTANCE DOES NOT RELEASE OFFICER.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

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

"Art. 30. CLOSED SESSIONS.—Whenever a general or special court-martial shall sit in closed session, the judge advocate and the assistant judge advocate, if any, shall withdraw; and when their legal advice or their assistance in referring to the recorded evidence is required, it shall be obtained in open court.

"Art. 31. ORDER OF VOTING.—Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank.

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

"Art. 33. RECORDS.—GENERAL COURTS-MARTIAL.—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the judge advocate, but in case the record can not be authenticated by the judge advocate, by reason of his death, disability, or absence, it shall be signed by the president and an assistant judge advocate, if any; and if there be no assistant judge advocate, or in case of his death, disability, or absence, then by the president and one other member of the court.

"Art. 34. RECORDS.—SPECIAL AND SUMMARY COURTS-MARTIAL.—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the president may from time to time prescribe.

"Art. 35. DISPOSITION OF RECORDS.—GENERAL COURTS-MARTIAL.—The judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been finally acted upon, be transmitted to the Judge Advocate General of the Army.

"Art. 36. DISPOSITION OF RECORDS.—SPECIAL AND SUMMARY COURTS-MARTIAL.—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the president may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of special and summary courts-martial may be destroyed.

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

"Art. 38. PRESIDENT MAY PRESCRIBE RULES.—The President may by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and

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other military tribunals: *Provided*, That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further*, That all rules made in pursuance of this article shall be laid before the Congress annually.

"E. LIMITATIONS UPON PROSECUTIONS.

"ART. 39. AS TO TIME.—Except for desertion committed in time of war, or for murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment by court-martial shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: *And provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.

"ART. 40. AS TO NUMBER.—No person shall be tried a second time for the same offense.

"F. PUNISHMENTS.

"ART. 41. CERTAIN KINDS PROHIBITED.—Punishment by flogging, or by branding, marking, or tattooing on the body is prohibited.

"ART. 42. PENITENTIARY SENTENCES.—WHEN LAWFUL.—Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall under the sentence of a court-martial be punished by confinement in a penitentiary unless an act or omission of which he is convicted constitutes an offense of a civil nature under some statute of the United States or of the District of Columbia, or at the common law as the same exists in said District, or by way of commutation of a death sentence, nor unless the period of confinement authorized and adjudged by such court-martial is one year or more: *Provided*, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: *Provided further*, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States.

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

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

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

"G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY.

"ART. 46. APPROVAL AND EXECUTION OF SENTENCE.—No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being.

"ART. 47. POWERS INCIDENT TO POWER TO APPROVE.—The power to approve the sentence of a court-martial shall be held to include, *inter alia*:

"(a) a power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and

"(b) The power to approve or disapprove the whole or any part of the sentence.

"ART. 48. CONFIRMATION.—WHEN REQUIRED.—In addition to the approval required by article forty-six, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:

"(a) Any sentence respecting a general officer;

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

"(c) Any sentence extending to the suspension or dismissal of a cadet; and

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

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

"ART. 49. POWERS INCIDENT TO POWER TO CONFIRM.—The power to confirm the sentence of a court-martial shall be held to include, *inter alia*:

"(a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt; and

"(b) The power to confirm or disapprove the whole or any part of the sentence.

"ART. 50. MITIGATION OR REMISSION OF SENTENCES.—The power to order the execution of the sentence adjudged by a court-martial shall be held to include, *inter alia*, the power to mitigate or remit the whole or any part of the sentence, but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

"Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the authority competent to appoint, for the command in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

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

"ART. 51. SUSPENSION OF SENTENCES OF DISMISSAL OR DEATH.—The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President.

"ART. 52. SUSPENSION OF SENTENCE OF DISHONORABLE DISCHARGE.—The authority competent to order the execution of a sentence, including dishonorable discharge, may suspend the execution of the dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command in which the soldier is held or by the Secretary of War.

"ART. 53. SUSPENSION OF SENTENCES OF FORFEITURE OR CONFINEMENT.—The authority competent to order the execution of a sentence adjudged by a court-martial may, if the sentence involve neither dismissal nor dishonorable discharge, suspend the execution of the sentence in so far as it relates to the forfeiture of pay or to confinement, or to both; and the person under sentence may be restored to duty during the suspension of confinement. At any time within one year after the date of the order of suspension such order may, for sufficient cause, be vacated and the execution of the sentence directed by the authority competent to order the execution of like sentences in the command to which the person under sentence belongs or in which he may be found; but if the order of suspension be not vacated within one year after the date thereof the suspended sentence shall be held to have been remitted.

"III. PUNITIVE ARTICLES.

"A. ENLISTMENT; MUSTER; RETURNS.

"ART. 54. FRAUDULENT ENLISTMENT.—Any person who shall procure himself to be enlisted in the military service of the United States by means of wilful misrepresentation or concealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct.

"ART. 55. OFFICER MAKING UNLAWFUL ENLISTMENT.—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

"ART. 56. FALSE MUSTER.—Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

"ART. 57. FALSE RETURNS.—OMISSION TO RENDER RETURNS.—Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct.

#### "B. DESERTION—ABSENCE WITHOUT LEAVE.

"ART. 58. DESERTION.—Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

"ART. 59. ADVISING OR AIDING ANOTHER TO DESERT.—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death, or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

"ART. 60. ENTICING A DESERTER.—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct.

"ART. 61. ABSENCE WITHOUT LEAVE.—Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct.

#### "C. DISRESPECT—INSUBORDINATION—MUTINY.

"ART. 62. DISRESPECT TOWARD THE PRESIDENT, VICE PRESIDENT, CONGRESS, SECRETARY OF WAR, GOVERNORS, LEGISLATURES.—Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct.

"ART. 63. DISRESPECT TOWARD SUPERIOR OFFICER.—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct.

"ART. 64. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR OFFICER.—Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.

"ART. 65. INSUBORDINATE CONDUCT TOWARD NONCOMMISSIONED OFFICER.—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a noncommissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a noncommissioned officer while in the execution of his office, shall be punished as a court-martial may direct.

"ART. 66. MUTINY OR SEDITION.—Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

"ART. 67. FAILURE TO SUPPRESS MUTINY OR SEDITION.—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other punishment as a court-martial may direct.

"ART. 68. QUARRELS; FRAYS; DISORDERS.—All officers and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer or draws a weapon upon or otherwise threatens or does violence to him shall be punished as a court-martial may direct.

#### "D. ARREST; CONFINEMENT.

"ART. 69. ARREST OR CONFINEMENT OF ACCUSED PERSONS.—An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest. Any other person subject to military law charged with crime or with a serious offense may require, and when charged with a minor offense or in arrest, as circumstances may require, to be placed in arrest under confinement or in arrest, as circumstances may require. Any person placed in arrest under minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer who breaks his arrest or who escapes from confinement before he is set at liberty by proper authority shall be dismissed from the service or suffer such other punishment as a court-martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest before he is set at liberty by proper authority shall be punished as a court-martial may direct.

"ART. 70. INVESTIGATION OF AND ACTION UPON CHARGES.—The charge against any person placed in arrest or confinement shall be investigated promptly by the commanding officer or other proper military authority, and immediate steps shall be taken to try and punish the person accused or to dismiss the charges against him and release him from arrest or confinement. In every case where a person remains in military custody for more than eight days without being served with charges upon which he is to be tried a special report of the necessity for the delay shall be made by his commanding officer in the manner prescribed by regulations, and a similar report shall be forwarded every eight days thereafter until charges are served or until such person is released from custody; and if the person remains in military custody for more than thirty days without being brought before a court-martial for trial, the authority responsible for bringing him to trial shall render to superior authority a special report of the necessity for the delay. Any officer whose duty it is to make such investigation or to take such steps or to render such report who willfully or negligently fails to do so promptly, and any officer who is responsible for unreasonable or unnecessary delay in carrying the case to a final conclusion, shall be punished as a court-martial may direct. Provided, That in time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

"ART. 71. REFUSAL TO RECEIVE AND KEEP PRISONERS.—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct.

"ART. 72. REPORT OF PRISONERS RECEIVED.—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report he shall be punished as a court-martial may direct.



"ART. 73. **RELEASING PRISONER WITHOUT PROPER AUTHORITY.**—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

"ART. 74. **DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.**—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

"When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

#### "E. WAR OFFENSES.

"ART. 75. **MISBEHAVIOR BEFORE THE ENEMY.**—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camps, garrison, or quarters, shall suffer death or such other punishment as a court-martial may direct.

"ART. 76. **SUBORDINATES COMPELLING COMMANDER TO SURRENDER.**—If any commander of any garrison, fort, post, camp, guard, or other command is compelled, by the officers or soldiers under his command to give it up to the enemy or to abandon it, court-martial may direct.

"ART. 77. **IMPROPER USE OF COUNTERSIGN.**—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct.

"ART. 78. **FORCING A SAFEGUARD.**—Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

"ART. 79. **CAPTURED PROPERTY TO BE SECURED FOR PUBLIC SERVICE.**—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct.

"ART. 80. **DEALING IN CAPTURED OR ABANDONED PROPERTY.**—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority or to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties.

"ART. 81. **RELIEVING, CORRESPONDING WITH, OR AIDING THE ENEMY.**—Whoever relieves the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial or military commission may direct.

"ART. 82. **SPIES.**—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death.

#### "F. MISCELLANEOUS CRIMES AND OFFENSES.

"ART. 83. **MILITARY PROPERTY—WILLFUL OR NEGLIGENT LOSS, DAMAGE, OR WRONGFUL DISPOSITION OF.**—Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct.

"ART. 84. **WASTE OR UNLAWFUL DISPOSITION OF MILITARY PROPERTY ISSUED TO SOLDIERS.**—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accoutrements, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct.

"ART. 85. **DRUNK ON DUTY.**—Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to military law, except an officer, who is found drunk on duty shall be punished as a court-martial may direct.

"ART. 86. **MISBEHAVIOR OF SENTINEL.**—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct.

"ART. 87. **PERSONAL INTEREST IN SALE OF PROVISIONS.**—Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessities of life brought into such garrison, fort, barracks, camp, or other place for the use of the troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

"ART. 88. **INTIMIDATION OF PERSONS BRINGING PROVISIONS.**—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessities to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct.

"ART. 89. **GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED.**—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot shall be punished as a court-martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article one hundred and five, shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

"ART. 90. **PROVOKING SPEECHES OR GESTURES.**—No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct.

"ART. 91. **DUELING—ATTEMPTS TO COMMIT SUICIDE.**—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who having knowledge of a challenge sent or about to be sent fails to report the fact promptly to the proper authority or who attempts to commit suicide shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.

"ART. 92. **MURDER—RAPE.**—Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.

"ART. 93. **VARIOUS CRIMES.**—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury,

assault with intent to commit any felony, or assault with intent to do bodily harm, shall be punished as a court-martial may direct.

"ART. 94. FRAUDS AGAINST THE GOVERNMENT.—Any person subject to military law who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

"Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

"Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

"Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent 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, 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 signature upon knowing the same to be forged or counterfeited; or

"Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

"Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

"Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

"Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

"(Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

"ART. 95. CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN.—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

"ART. 96. GENERAL ARTICLE.—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, or conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

#### "IV. COURTS OF INQUIRY.

"ART. 97. WHEN AND BY WHOM ORDERED.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.

"ART. 98. COMPOSITION.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

"ART. 99. CHALLENGES.—Members of a court of inquiry may be challenged by the party whose conduct is being inquired into and by the recorder, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time.

"ART. 100. OATH OF MEMBERS AND RECORDER.—The recorder of a court of inquiry shall administer to the members the following oath: 'You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God.' After which the president of the court shall administer to the recorder the following oath: 'You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you, God.'

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

"ART. 101. POWERS; PROCEDURE.—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

"ART. 102. OPINION ON MERITS OF CASE.—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

"ART. 103. RECORD OF PROCEEDINGS.—How AUTHENTICATED.—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

#### "V. MISCELLANEOUS PROVISIONS.

"ART. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.—Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

"ART. 105. INJURIES TO PERSON OR PROPERTY.—Redress OF.—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

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

"ART. 106. ARREST OF DESERTERS BY CIVIL OFFICIALS.—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

"ART. 107. SOLDIERS TO MAKE GOOD TIME LOST.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or while the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

"ART. 108. SOLDIERS—SEPARATION FROM THE SERVICE.—No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs or by the commanding officer when no field officer is present; and no discharge shall be given to an enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

"ART. 109. OATH OF ENLISTMENT.—At the time of his enlistment every soldier shall take the following oath or affirmation: 'I, ———, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War.' This oath or affirmation may be taken before any officer.

"ART. 110. CERTAIN ARTICLES TO BE READ AND EXPLAINED.—Articles one, two, and twenty-nine, fifty-four to ninety-six, inclusive, and one hundred and four to one hundred and nine, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States.

"ART. 111. COPY OF RECORD OF TRIAL.—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial.

"ART. 112. EFFECTS OF DECEASED PERSONS.—DISPOSITION OF.—In case of the death of any person subject to military law, the commanding officer of the place or command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to convert such effects into cash, by public or private sale, not earlier than thirty days after the death of the deceased, and to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposit, accompanied by any will or other papers of value belonging to the deceased, an inventory of the effects secured by said summary court, and a full account of his transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers or enlisted men of the Army; but if in the meantime the legal representative, or widow, shall present himself to take possession of decedent's estate the said summary court shall turn over to him all effects not sold and cash belonging to said estate, together with an inventory and account, and make to the War Department a full report of his transactions.

"The provisions of this article shall be applicable to inmates of the United States Soldiers' Homes who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment.

"ART. 113. INQUESTS.—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

"ART. 114. AUTHORITY TO ADMINISTER OATHS.—Any judge advocate or acting judge advocate, the president of a general or special court-martial, any summary court-martial, the judge advocate or any assistant judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law.

"ART. 115. APPOINTMENT OF REPORTERS AND INTERPRETERS.—Under such regulations as the Secretary of War may from time to time prescribe, the judge advocate of a court-martial or military commission, or the recorder of a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the judge advocate of a court-martial or military commission, or summary court, or the recorder of a court of inquiry may appoint an interpreter, who shall interpret for the court or commission.

"ART. 116. POWERS OF ASSISTANT JUDGE ADVOCATES.—An assistant judge advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the judge advocate of the court.

"ART. 117. REMOVAL OF CIVIL SUITS.—When any civil suit or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section thirty-three of the act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause.

"ART. 118. OFFICERS—SEPARATION FROM SERVICE.—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof, not discharged except in pursuance of statutes now in force or which may hereafter be enacted; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction.

"ART. 119. RANK AND PRECEDENCE AMONG REGULARS, MILITIA, AND VOLUNTEERS.—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes, namely: First, officers of the



Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of the Organized Militia in the service of the United States; and, third, officers of the volunteer forces. *Provided*, That officers of the Regular Army holding commissions in the Organized Militia in the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the Regular Army; but the rank of officers of the Regular Army under their commissions in the Organized Militia shall not, for the purposes of this article, be held to antedate muster into the service of the United States.

"ART. 120. COMMAND WHEN DIFFERENT CORPS OR COMMANDS HAPPEN TO JOIN.—When different corps or commands of the military forces of the United States happen to join or do duty together the officer highest in rank of the line of the Regular Army, Marine Corps, Organized Militia, or Volunteers there on duty shall, subject to the provisions of the preceding article, command the whole, and give orders for what is needful in the service, unless otherwise directed by the President."

SEC. 2. That hereafter the provisions of section twenty-six of the act of February second, nineteen hundred and one, as modified for the Ordnance Department by section two of the act of June twenty-fifth, nineteen hundred and six, by acts of March third, nineteen hundred and nine, and by the act of February twenty-fourth, nineteen hundred and fifteen, shall be held to include the Judge Advocate General's Department. *Provided*, That the board of officers which is to recommend officers for detail in the Judge Advocate General's Department shall be composed of officers of that department. *Provided further*, That acting judge advocates may be detailed for separate brigades and other separate general court-martial jurisdiction, and when not immediately required for service with the geographical department, tactical division, separate brigade, or other separate general court-martial jurisdictions, acting judge advocates may be assigned to such other legal duty as the exigencies of the service may require.

SEC. 3. That the following sections of the Revised Statutes and the following acts and parts of acts are hereby repealed:

(a) Sections twelve hundred and two, twelve hundred and three, and thirteen hundred and twenty-six of the Revised Statutes;

(b) That part of an act entitled "An act making appropriation for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," approved March third, eighteen hundred and seventy-seven, which reads as follows:

"*Provided, however*, That hereafter the records of regimental, garrison, and field officers' courts-martial shall, after having been acted upon, be retained and filed in the judge advocate's office at the headquarters of the department commander in whose department the courts were held for two years, at the end of which time they may be destroyed."

(c) Section three of an act entitled "An act to amend the Articles of War, and for other purposes," approved July twenty-seventh, eighteen hundred and ninety-two;

(d) Sections one and four of an act entitled "An act to amend an act entitled 'An act to promote the administration of justice in the Army,' approved October first, eighteen hundred and ninety, and for other purposes," approved June eighteenth, eighteen hundred and ninety-eight;

(e) Section one of an act entitled "An act to prevent the failure of military justice, and for other purposes," approved March second, nineteen hundred and one; and (f) Section eight of an act entitled "An act to promote the efficiency of the militia, and for other purposes," approved January twenty-first, nineteen hundred and three, as amended by section six of an act entitled "An act to further amend the act entitled 'An act to promote the efficiency of the militia, and for other purposes,' approved January twenty-first, nineteen hundred and three, and for other purposes," approved January twenty-first, nineteen hundred and three, approved May twenty-seventh, nineteen hundred and eight.

Also all other sections and parts of sections of the Revised Statutes and acts and parts of acts in so far as they are inconsistent with the provisions of this act are hereby repealed.

SEC. 4. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of this act, under any law embraced in or modified, changed, or repealed by this act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this act had not been passed.

The bill consists of four sections. Section 1, subdivided into five parts, "Preliminary provisions," "Court-martials," "Punitive articles," "Courts of inquiry," and "Miscellaneous provisions," carries a revision of the Articles of War and is a substitute for section 1342,

Revised Statutes. Section 2 provides for placing the Judge Advocate General's Department under the detail system now applicable to the Ordnance Department. Sections 3 and 4 embody the necessary provisions as to repeal of existing law and the prosecution of offenses committed prior to the taking effect of the new legislation. This order will be observed in the report.

## SECTION 1.

Section 1 of the bill is identical, except in minor regards, with H. R. 23628, introduced in the Sixty-second Congress, second session, at the request of the War Department, on April 22, 1912, by the chairman of House Committee on Military Affairs, Mr. Hay; and with S. 6550, introduced three days later by the chairman of the Senate Committee on Military Affairs, Mr. du Pont, and with S. 1032, Sixty-third Congress.

The House committee conducted a series of hearings on H. R. 23628 between May 14 and May 27, 1912. The report of these hearings was printed, and with the report was printed a letter of the then Secretary of War, Mr. Stimson, presenting the project of revision and recommending its enactment; and likewise a very full exposition by the Judge Advocate General of the Army of the necessity for the revision, its scope and character, and the principal changes embodied therein.

The subcommittee in considering this bill had hearings at which Judge Advocate General Crowder made a clear and forceful presentation of the urgent necessity of an immediate revision of the Articles of War. These hearings and a letter from the Secretary of War to the Hon. George E. Chamberlain, chairman of the Committee on Military Affairs, United States Senate, under date of January 3, 1916, are printed as an appendix to this report. The subcommittee unanimously concurs in the view of the Judge Advocate General.

The Articles of War as a code have not been comprehensively revised by Congress since 1806, the so-called revision of 1874 being limited to the elimination of redundant provisions, the supplying of obvious omissions, the reconciling of contradictions, and the curing of imperfections in form and language. In no sense should the congressional action of 1874 be regarded as a revision of the Articles of War.

The Articles of War as originally adopted reflected the experience of our military authorities at the close of the Revolutionary War and the adaptation of the regulations governing the Continental Army to the then new Constitution of the United States.

In no other line of human endeavor has the intervening century made as great changes as in warfare. The musket has yielded to the new Springfield rifle; the 6-pounders have been supplanted by the 42-centimeters; the aviation corps has taken the place of the old scouts; and in every branch of warfare science has made all but magic changes. Yet in governing, controlling, and punishing the men and officers under these radically changed conditions the military authorities have been bound by these archaic and in many instances obsolete Articles of War codified more than a century ago. The few changes that have been made by Congress have been due

to some particular phase of stressed conditions of war or the necessity of providing a remedy or of prescribing a punishment in some special case.

The enactment of the 10 new articles in the act of March 2, 1913, supplied an urgent need relative to courts-martial, but went no further.

Many of the provisions of the code therefore are physically unworkable or have of necessity been given such administrative construction as to enable the authorities to deal with the modern conditions existing to-day under the provisions prescribed more than a century ago.

A striking example of the archaic provisions of the code is article 39, which provides that a court-martial may inflict the death penalty upon a sentinel for the peace-time offense of sleeping upon his post.

The subcommittee embodies, as far as it is applicable to the present proposed revision of the Articles of War, the admirable analysis of the revision of these articles proposed in S. 1032, Sixty-third Congress.

The scope and character of the revision is sufficiently indicated by references to the more important changes, which may be summarized as follows:

(1) The subject matter of the new code has been classified under five principal headings; thus bringing together related provisions and remedying a notable defect in the existing code.

(2) Twelve separate sections of the Revised Statutes and 19 separate legislative provisions enacted by Congress since the revision of the statutes in 1874 have been incorporated in the restatement of existing articles or made the basis of new articles.

(3) Much has been done in the way of condensing and combining old articles. Examples of this may be found in new article 61, which takes the place of existing articles 31, 32, 33, 34, 35, and 40; in new article 2, which represents a consolidation of related provisions from existing articles 60, 63, and 64, sections 1361 and 1621, Revised Statutes, and six other statutes; and in new article 56, which is a consolidation of existing articles 5, 6, 13, and 14.

(4) Thirteen articles of the existing code have been omitted as obsolete for all practical purposes or as embracing matter properly left to regulations.

(5) Although 12 sections of the Revised Statutes and 19 other legislative provisions have been incorporated in the revision, the latter contains but 120 articles as against 128 in the existing code.

(6) It is the effect of the revision to extend the jurisdiction of courts-martial.

(a) As to persons—over militia called into the service of the United States from date of notice of the call (new article 2, paragraph (a)), instead of from the date of arrival at rendezvous under the call and muster in, as now provided; and over retainers to the camp and camp followers outside of the territorial jurisdiction of the United States in time of peace (new article 2, paragraph (d)), over which military jurisdiction is not extended by the existing code in time of peace, a fact that has led to some embarrassment under conditions like those which obtained in Cuba after peace was restored following the Spanish War, and also during the second Cuban intervention.]

(b) As to offenses—over the capital offenses of murder and rape committed by persons subject to military law in time of peace in places beyond the geographical limits of the States of the Union and the District of Columbia (new article 92). At present courts-martial can take cognizance of these offenses only in time of war.

(7) Greater promptness in the trial and disposition of charges is secured by (a) penalizing the failure of responsible officers to act promptly in preferring, forwarding, and disposing of charges (new article 70); (b) extending the authority to take depositions (new article 25); and (c) enlarging the powers of reviewing authorities in their action upon review of records giving the power to approve or disapprove the findings in part and to substitute a finding of a lesser and included offense (new articles 47 (a) and (b) and 49).

(8) The number of capital offenses has been reduced from 5 to 3 in time of peace and from 15 to 12 in time of war. The number of cases in which the death sentence is mandatory is reduced from 2 to 1, the single offender for whom this sentence is mandatory being the spy (new article 82).

(9) The revision (new article 43) requires the concurrence of two-thirds of the members of the court-martial to support a finding of guilty of an offense for which the death penalty is made mandatory by law. The present code (old article 96) permits a finding of guilty of such offense by a bare majority of the court, though requiring the concurrence of two-thirds of the court in the imposition of the death penalty.

(10) The statute of limitations under article 39 has been modified and simplified. It retains the two-year limitation provided by existing law for purely military offenses, except for repeated desertions in times of peace. For the excepted offense and for all civil crimes of which court-martials have concurrent jurisdiction with the civil courts it adopts the three-year limitations of the Federal courts. Desertions in time of war and capital offenses under the code are expressly excepted from the operation of the statute, as is the case in the civil statutes as to the offense of murder. In no other respect has existing law been changed.

(11) The principle of the suspended sentence is introduced in the revision. (See new article 53.)

(12) Statutory sanction is given (new article 104) to the imposition of mild disciplinary punishments by commanding officers without the intervention of a court-martial for minor offenses not denied by the accused. The imposition of such punishments has been authorized for some time by regulations, and has been the means of securing discipline without subjecting offenders to the humiliation of trial by a court-martial.

(13) The removal of civil suits from a State to a United States court is authorized where such suit is brought against officers, soldiers, or other persons in the military service of the United States, on account of any act done under the color of office or status (new article 117). The article extends to persons in the military service the same rights in respect of such suits as is now extended by law to officers of the Revenue Service by section 33 of the act of March 3, 1911 (36 Stat., 1097).

(14) Other changes, less fundamental but still important, are to be found in new article 65, which makes insubordinate conduct to

ward a noncommissioned officer the subject of a special article; in new article 38, authorizing the President to prescribe rules of procedure, including modes of proof, following the practice of United States courts of admiralty and maritime jurisdiction; in new article 37, providing that irregularities in pleading, practice, and procedure must be prejudicial to the substantial rights of the accused in order to affect the validity of the findings or sentence of a court-martial, following the practice of United States courts of criminal jurisdiction; in new articles 93 and 99, making the grant to courts-martial of jurisdiction to try certain noncapital offenses more definite; in new article 110, in which the requirement of the existing code that all the articles be read and explained to an enlisted man at the time of or within six days after enlistment is modified so as to require the reading to him of only those articles which determine the soldier's relations to the service and his amenability to the code; in new article 112, providing a simplified method of administering upon the effects of deceased persons in the military service; and in new article 113, which confers upon summary court officers the jurisdiction of a coroner respecting deaths by violence or under suspicious circumstances on reservations under exclusive jurisdiction of the United States.

(15) And in new article 114, which undertakes to vest in certain designated Army officers general notarial powers in respect of the administration of oaths, the execution and acknowledgement of legal instruments and similar papers by officers and soldiers when the Army is serving in foreign countries.

(16) There have been omitted from the revision articles 1, 10, 11, 12, 29, 30, 36, 37, 52, 53, 76, 87, and 101 of the existing code. Certain of these articles have never met any real need in our service and may for all practical purposes be regarded as obsolete; the remainder embrace only matters properly found in the Army Regulations.

#### DETAIL SYSTEM FOR THE JUDGE ADVOCATE GENERAL'S DEPARTMENT— SECTION 2.

Section 2 of the bill in reference has for its object the placing of the Judge Advocate General's Department under the detail system. The detail system of recruiting staff corps and departments of the Army was inaugurated by the act of February 2, 1901 (31 Stat., 755); but the Judge Advocate General's Department, except in so far as the grade of captain is concerned, was excepted from the operation of the system, although it was made applicable to the Ordnance Department, which, like the Judge Advocate General's Department, is a technical corps. The success of the system as applied to the Ordnance Department has led to the opinion that an identical system for the Judge Advocate General's Department is advisable. Your subcommittee is convinced that the greatest zeal and industry and the most efficient performance of duty can be secured from men who enter the law department of the Army as the result of competitive examination, and who are compelled to defend their tenure by high-grade work.

Due to the consolidation of Territorial departments in 1913 the War Department found its authority to detail acting judge advocates under the provisions of section 15 of the act of February 2,

1901 (31 Stat., 751), which authorizes the detail of an acting judge advocate "for each geographical department or tactical division of troops not provided with a judge advocate from the list of officers holding permanent commissions in the Judge Advocate General's Department," considerably curtailed, so that in the present condition of the law authority for the detail of the number of acting judge advocates requisite for the efficient administration of military justice is lacking. The concluding provision of section 2 serves to authorize the detail of acting judge advocates for separate brigades, and other general court-martial jurisdictions, and will permit of the detail of a sufficient number of acting judge advocates.

The bill here presented has the approval of the Secretary of War, of the Chief of Staff, and of the War College General Staff, except in minor provisions pointed out in the hearings. Its substantial equivalents (H. R. 23628, S. 6550, 62d Cong., and S. 1032, 63d Cong.) had the approval of the preceding administration. The revision has the endorsement of 12 general officers, who, on January 13, 1913, in a letter addressed to the Secretary of War (Cong. Rec., vol. 49, p. 2465) said:

We are \* \* \* of the opinion that the proposed new Articles of War are in every way a great and much-needed improvement upon the present articles, and that the sooner they are enacted into law the better it will be for the interests of prompt and efficient administration of military justice in the Army.

The need of this revision is urgent. If the Army is by other legislation to be placed in a better condition of preparedness it is all the more necessary that the Articles of War be revised so as to enable the military authorities to meet changed and modern conditions.

The following letter from the Secretary of War and the hearings held before your committee are hereto appended as a part of this report:

JANUARY 3, 1916.

SIR: I have the honor to transmit herewith a revision of the Army's criminal code—the Articles of War—and, because of the urgent need of this legislation, to request consideration, if practicable, at this session of the Congress.

The revision here transmitted is substantially identical with H. R. 23628, Sixty-second Congress, second session, upon which extensive hearings were had by the House Military Committee May 14 to 27, 1912; also with S. 1032, passed by the Senate February 9, 1914, and again passed by the Senate at the last session of the Sixty-third Congress as a rider to the current Army appropriation act. During the past summer the bill has been carefully considered first by a committee of the War College division of the General Staff and thereafter by the entire War College division. The revision here transmitted is that reported by the War College division. The principal changes introduced by the division are noted below with my comment.

*Article 59, Senate bill.*—This article of the Senate bill sought to authorize the President to prescribe rules of procedure, including modes of proof in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals. The War College division omits this provision in the view that its effect would be to delegate to the President the power to alter the more essential rules of evidence. I do not so construe the phrase, "To prescribe rules of procedure, including modes of proof." Should there be doubt in the minds of the committee as to the proper construction of this phrase, I recommend that it be amended so as to exclude the construction of the General Staff, and article 39 retained.

*Article 41, Senate bill, statute of limitations.*—This article of the Senate bill provided for a three-year period of limitation within which offenses, both military and civil (except capital offenses), were to be brought to trial, and provided, following the analogies of civil practice, that this period should cease to run when charges were duly received at the headquarters of an authority competent to appoint a court-martial for their trial. The War College division retains the two-year period of the

existing code for military offenses, adopts the three-year period for noncapital, common-law, and statutory offenses over which courts-martial have jurisdiction, and provides that the period shall cease to run with arraignment. The reduction in, and provides for military offenses is not of material importance, in view of the fact that soldiers have the benefit of the settled and accepted construction that a discharge from an enlistment operates to terminate amenability before courts-martial for offenses committed during that enlistment, which amenability is not revived by reenlistment. I accept the War College amendment. (War College revision, art. 39.)

*Article 94, Senate bill, drafting and attempt to commit suicide.*—Out of deference to views expressed by members of the House committee during the hearings held May 14 to 27, 1912, there was included in this article of the Senate bill a provision punishing attempts to commit suicide. The War College division has recommended the omission of this provision. I do not deem the matter of great importance, for the reason that should the law finally enacted omit this provision the offense would remain punishable under the general article, and I therefore accept this amendment. (Idem, art. 91.)

*Article 95 and 96, Senate draft.*—Under the existing code courts-martial may try persons subject to military law for civil capital offenses only in time of war. Article 95 of the Senate bill sought to extend this jurisdiction to civil capital offenses when committed outside the geographical limits of States of the Union and the District of Columbia in time of peace, the purpose being to give our soldiers on foreign station immunity from trial by courts administering an alien jurisprudence in language which they did not understand. The War College division reports in favor of extending this jurisdiction still further to include civil capital offenses wherever and whenever committed. The reason for the extension proposed by the General Staff is not apparent. It ought never to be embarrassing to the military service to have exclusive jurisdiction of civil capital offenses committed within the States of the Union and the District of Columbia, by persons subject to military law, vested in the courts-martial. The offenses being capital and against the civil as well as the military community, should be tried, I think, under all the safeguards of the civil courts and finally determined under the provisions of civil codes. (Idem, art. 92.)

*Article 96 of the Senate draft* enumerated the more important noncapital civil crimes of which courts-martial have had concurrent jurisdiction both in time of peace and war when committed by persons subject to military law, irrespective of the place of commission. The War College division has sought to combine the two articles (95 and 96), as under their revision the jurisdiction of military courts is as ample to try capital as noncapital crimes. I think these two classes of civil offenses triable by military courts should be covered by separate articles, and I recommend in lieu of article 92 of the War College draft the insertion of the original articles 95 and 96 of the Senate bill, and that the enumeration of the articles be changed accordingly.

*Article 130, Senate bill.*—This article was intended to authorize the removal of civil suits commenced in State courts against persons subject to military law on account of acts done under color of office or status. The War College division has amended the article so as to include also criminal prosecutions. I see no necessity of extending the provision of the article to include criminal prosecutions, inasmuch as under existing law in a proper case, Federal tribunals may intervene by means of the writ of habeas corpus and, when justified, discharge the defendant from custody. (Idem, art. 116.)

*Article 122, Senate draft.*—This article carried the provision that in time of war or of public danger when two or more officers of the same grade are on duty in the same field, department, or command, or of any organization thereof, the President may assign the command of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. This was a reenactment of joint resolution of Congress of April 4, 1862 (12 Stat., 617), and the authority it conferred was found to be very necessary during the Civil War period. It was introduced in the articles in the firm conviction that it ought to survive as permanent legislation. The War College has improperly and, I think, for insufficient reasons, stricken this provision from the Senate bill. I recommend that it be reinserted. (Idem, art. 118.)

I am informed that the War College division favors the placing of the Judge Advocate General's Department under the detail system of the Ordnance Department, as provided in section 4 of the Senate draft of the current Army appropriation bill, as originally passed by the Senate. I recommend that said section 4 be inserted as section 2 of the War College revision in the following amended form:

"Sec. 2. That hereafter the provisions of section twenty-six of the act of February second, nineteen hundred and one, as modified for the Ordnance Department by

section two of the act of June twenty-fifth, nineteen hundred and six, by the act of March third, nineteen hundred and nine, and by the act of February twenty-fourth, nineteen hundred and fifteen, shall be held to include the Judge Advocate General's Department: *Provided*, That the board of officers which is to recommend officers for detail in the Judge Advocate General's Department shall be composed of officers of that department: *And provided further*, That acting judge advocates may be detailed for separate brigades and other separate court-martial jurisdictions, and when not immediately required for service with a geographical department, tactical division, separate brigade, or other separate court-martial jurisdiction, acting judge advocates may be assigned to such other legal duty as the exigencies of the service may require." Very respectfully,

LINDLEY M. GARRISON,

Secretary of War.

Hon. GEO. E. CHAMBERLAIN,

Chairman Committee on Military Affairs, United States Senate.

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