

**A MANUAL FOR COURTS-
MARTIAL, COURTS OF INQUIRY,
AND RETIRING BOARDS, AND OF
OTHER PROCEDURE UNDER
MILITARY LAW**

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A manual for courts-martial, courts of inquiry, and retiring boards, and of other procedure under military law by Various

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VARIOUS

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U.S. War Dept.

A MANUAL

FOR

COURTS-MARTIAL,

COURTS OF INQUIRY, AND
RETIRING BOARDS,

AND OF OTHER

PROCEDURE UNDER MILITARY LAW.

Revised in the Judge-Advocate General's Office, and published
by authority of the Secretary of War.

FOR

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The Manual for Courts-Martial, Courts of Inquiry, and Retiring Boards, and of other Procedure under Military Law, prepared by direction of the Secretary of War for use in the Army of the United States, is approved and will be published for the information and guidance of all concerned.

By order of the Secretary of War:

J. FRANKLIN BELL,
Major-General, Chief of Staff.

(*)

A MANUAL FOR COURTS-MARTIAL, COURTS OF
INQUIRY, AND RETIRING BOARDS, AND
OF OTHER PROCEDURE UNDER
MILITARY LAW.

INTRODUCTION.

MILITARY JURISDICTION.

Sec. I. **MILITARY JURISDICTION** is of four kinds:

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

2. **The Law of Hostile Occupation** (Military Government); that is, military power exercised by a belligerent by virtue of his occupation of an enemy's territory, over such territory and its inhabitants. This belongs to the Law of War and therefore to the Law of Nations. When a conquered territory is ceded to the conqueror, military government continues until civil government is established by the new sovereign.

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

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

The last two divisions are applications of the doctrine of necessity to a condition of war. They spring from the right of national self-preservation.

SEC. II. THE SOURCE OF MILITARY JURISDICTION is the Constitution; the *specific provisions* relating to it being found in the powers granted to Congress, in the authority vested in the President, and in a provision of the Fifth Amendment.

2. **Military Law** is derived from both *Written* and *Unwritten Sources*.

The *Written Sources* are the Articles of War, adopted as a part of the Revised Statutes of the United States in 1874 and since amended in some particulars; other statutory enactments relating to the military service; the Army Regulations; and general and special orders, and decisions promulgated by the War Department and by department, post, and other commanders.

The *Unwritten Source* is the "custom of war," consisting of the customs of the service both in peace and in war.

SEC. III. MILITARY TRIBUNALS are of three kinds, viz:

1. **Courts-Martial** (including summary courts), for the trial of offenders against military law.

2. **Courts of Inquiry**, for examining transactions of, or accusations or imputations against, officers or soldiers.

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

ARREST AND CONFINEMENT BEFORE TRIAL.¹

SEC. I. ARREST OF OFFICERS.—"Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer."²

¹ Omission of arrest does not affect the jurisdiction of a court.

² 65th A. W.

2. "Only commanding officers have power to place officers in arrest, except as provided in the twenty-fourth Article of War. An arrest may be ordered by the commanding officer, in person or through a staff officer, orally or in writing."¹

3. "An officer arrested will repair at once to his tent or quarters, and there remain until more extended limits have been granted by the commanding officer. Close confinement will not be enforced except in cases of a serious nature."²

4. "An officer in arrest will not wear a sword nor visit officially his commanding or other superior officer, unless directed to do so. His applications and requests of every nature will be made in writing."³

5. "Officers will not be placed in arrest for light offenses. For these the censure of the commanding officer will generally answer the purpose of discipline. Whenever a commanding officer places an officer in arrest and releases him without preferring charges he will make a written report of his action to the department commander, stating the cause. The department commander, if he thinks the occasion requires, will call on the officer arrested for any explanation he may desire to make, and take such other action as he may think necessary, forwarding the papers to The Adjutant General of the Army for file with the officer's record, or for further action."⁴

6. "In ordinary cases where inconvenience to the service would result from it, a medical officer will not be placed in arrest until the court-martial for his trial convenes."⁵

7. "When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served

¹ Par. 930, A. R. The commanding officer of a regiment is a "commanding officer" within the meaning of the 65th A. W., even though the regiment is a constituent part of a brigade post in peace or a brigade in war, and he does not cease to be such commanding officer while part of his regiment is detached from the brigade post or brigade except only as to officers of the detached portion. (Opinion J. A. G., Jan. 29, 1910.)

² *Id.*, 931.

³ *Id.*, 934.

⁴ *Id.*, 932.

⁵ *Id.*, 933.

upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest."¹

SEC. II. ARREST AND CONFINEMENT OF SOLDIERS.

1. Noncommissioned officers against whom charges may be preferred for trial will be placed in arrest in their barracks or quarters. They will not be confined in the guardhouse in company with privates, except in aggravated cases or where escape is feared.²

2. Noncommissioned officers *in arrest* will not be required to perform any duty in which they may be called upon to exercise command. Noncommissioned officers *in confinement* will not be sent out to work.

3. Soldiers against whom charges may be preferred for trial by summary court will not be confined in the guardhouse, but will be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary.³

4. Privates against whom charges may be preferred for trial by general court-martial will be confined in the guardhouse before and during trial. While awaiting trial and sentence, or undergoing sentence, they will, if practicable, be kept apart from privates confined for minor offenses or by sentence of an inferior court.⁴

¹ 71st A. W.

² Par. 937, A. R. As to placing soldiers in irons, see page 69, par. 3, post.

³ Par. 941, A. R. ⁴ *Id.*, 940.

5. Privates in confinement awaiting trial will not be sent to work with prisoners undergoing sentence if it can be avoided; but may, in the discretion of the commanding officer, be required to attend drills or be sent to work during the usual working hours under charge of a special sentinel.¹

6. Privates in *arrest* may, in the discretion of the commanding officer, be required to attend parades, inspections, drills, school, or other military duties and to assist in policing in and around their barracks.

7. Except as provided in the 24th Article of War, or when restraint is necessary, no soldier will be confined without the order of an officer, who shall previously inquire into his offense. Arrest or confinement without trial as a punishment for an offense is forbidden. An officer authorizing the arrest or confinement of a soldier will, as soon as practicable, report the fact to his company or detachment commander.²

Sec. III. GENERAL PROVISIONS RELATING TO THE ARREST OF OFFICERS AND SOLDIERS.

1. "No * * * officer commanding a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner."³
 "Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing,⁴ to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him. * * *"⁵

2. "If there are any prisoners with no record of charges against them, the old officer of the day will report that

¹ Par. 946, A. R.

² J. L., 937 and 938.

³ 67th A. W.

⁴ This report is usually written in the "Guard Report," and presented to the commanding officer by the old officer of the day at guard mounting.

⁵ 68th A. W.