

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

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A Manual for Courts-Martial, Courts of Inquiry, and Retiring Boards, and Other Procedure
Under Military Law by War Department of United States

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WAR DEPARTMENT OF UNITED STATES

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Property of the U. S. Army Department

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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ABBREVIATIONS.

- A. R.—United States Army Regulations of 1908.
A. W.—Articles of War.
R. S.—Revised Statutes.

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WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
Washington, December 15, 1908.

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.

(8)

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Figure 1: A line graph showing the percentage of... over time from 1980 to 2000. The x-axis is labeled 'Year' and the y-axis is labeled 'Percentage'.

A MANUAL FOR COURTS-MARTIAL, COURTS OF
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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 55th 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. "A medical officer, charged with the commission of an offense, need not be placed in arrest until the court-martial for his trial convenes if the service would be inconvenienced thereby, unless the charge is of a flagrant character."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.

² *Id.*, 934.

³ *Id.*, 933.

⁴ *Id.*, 931.

⁵ *Id.*, 932.