

MANUAL
FOR
COURTS-MARTIAL
UNITED STATES
—
1951

ARTICLE 99

- Misbehavior before the enemy:
—Running away
43. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, run away (from his company) (and hide) (—), (and did not return until after the engagement had been concluded) (—).
- Shamefully abandoning, etc., command, etc.
44. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, shamefully (abandon) (surrender) (deliver up) —, which it was his duty to defend.
- Endangering safety of command, etc.
45. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, endanger the safety of —, which it was his duty to defend, by (disobeying an order from — to engage the enemy) (neglecting his duty as a sentinel by engaging in a card game while on his post) (intentional misconduct in that he became drunk and fired flares, thus revealing the location of his unit) (—).
- Casting away arms, etc.
46. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, cast away his (rifle) (ammunition) (—).
- Cowardly conduct
47. In that —, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, was guilty of cowardly conduct, in that —.
- Quitting place of duty to plunder or pillage
48. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, quit his place of duty for the purpose of (plundering) (pillaging) (plundering and pillaging).
- Causing false alarm
49. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, cause a false alarm in (Fort —) (the said ship) (the camp) (—) by [needlessly and without authority (causing the call to arms to be sounded) (sounding the general alarm)] [—].
- Failing to do utmost to encounter, etc., enemy troops, etc.
50. In that —, being (before) (in the presence of) the enemy, did, (at) (on board) —, on or about — 19—, by (ordering his own troops to halt their advance) (—), willfully fail to do his utmost to (encounter) (engage) (capture) (destroy), as it was his duty to do, (certain enemy troops which were in retreat) (—).
- Failing to afford relief
51. In that — did, (at) (on board) —, on or about — 19—, (before) (in the presence of) the enemy, fail to afford all practicable relief and assistance to (the U. S. S. —, which was engaged in battle and had run aground, in that he failed to take her in tow) (certain troops of the ground forces of —, which were engaged in battle and were pinned down by enemy fire, in that he failed to furnish air cover) (—) as he properly should have done.

ARTICLE 100

Compelling surrender, striking colors, etc.

52. In that — did, (at) (on board) —, on or about — 19—, [(compel) (attempt to compel) —, the commander of —, (to give it up to the enemy) (to abandon

Chapter XXVIII

PUNITIVE ARTICLES

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Proof.—(a) That the accused apprehended, arrested, or confined a certain person, as alleged; and (b) that the accused was not authorized by law to do so.

177. ARTICLE 98—NONCOMPLIANCE WITH PROCEDURAL RULES

a. UNNECESSARY DELAY IN DISPOSING OF CASE

Discussion.—The purpose of this section of Article 98 is to insure expedition in the disposition of cases of persons accused of offenses under the code by providing for the punishment of those responsible for unnecessary delay in the disposition of such cases. A person can be responsible for a delay in the disposition of a case only when his duties require him to act with respect thereto.

Proof.—(a) That the accused was charged with certain duties in connection with the disposition of a case of a person accused of an offense under the code; (b) that delay occurred in the performance of the duties of the accused regarding the disposition of the case; and (c) facts and circumstances showing that the delay was unnecessary and that the accused was responsible therefor.

b. KNOWINGLY AND INTENTIONALLY FAILING TO ENFORCE OR COMPLY WITH PROVISIONS OF THE CODE

Discussion.—This section of the article is not to be construed as applying to cases of bona fide error of law or procedure made before, during, or after a trial. It is designed to punish deliberate and intentional failure to enforce or comply with the provisions of the code regulating the proceedings before, during, and after trial. See particularly Articles 31 and 37.

Proof.—(a) That the accused knowingly and intentionally failed to enforce or comply with a certain provision of the code regulating some proceeding before, during, or after a trial, as alleged; and (b) that the accused had the duty of enforcing or complying with such provision of the code.

178. ARTICLE 99—MISBEHAVIOR BEFORE THE ENEMY

a. RUNNING AWAY BEFORE THE ENEMY

Discussion.—“The enemy” includes not merely the organized forces of the enemy in time of war, but also imports any hostile body that our forces may be opposing, such as a rebellious mob or a band of renegades. Whether a person is “before the enemy” is not a question of definite distance, but is one of tactical relation. For example, a member of an anti-aircraft gun crew charged with opposing anticipated attack from the air, or a member of a unit about to move into combat may be before the enemy although miles from the enemy lines. On the other hand, an organization some distance from the front or immediate area of combat which is not a part of a tactical operation

then going on or in immediate prospect is not "before or in the presence of the enemy" within the meaning of this article.

Proof.—(a) That the accused was before or in the presence of an enemy; and (b) that he misbehaved himself by running away.

b. SHAMEFULLY ABANDONING, SURRENDERING, OR DELIVERING UP

Discussion.—This provision concerns primarily commanders chargeable with responsibility for defending a command, unit, place, ship, or military property. Abandonment by a subordinate would ordinarily be charged as running away.

The words "deliver up" are synonymous with "surrender."

Surrender or abandonment of a command, unit, place, ship, or military property by a person charged with its defense can be justified only by the utmost necessity or extremity. Surrender or abandonment without such absolute necessity is shameful within the meaning of this article.

Proof.—(a) That the accused was charged by orders or by circumstances with the duty to defend a certain command, unit, place, or ship, or certain military property; (b) that without justification he abandoned it or surrendered it; and (c) that this act occurred while the accused was before or in the presence of the enemy.

c. ENDANGERING THE SAFETY OF A COMMAND, UNIT, PLACE, OR MILITARY PROPERTY THROUGH DISOBEDIENCE, NEGLIGENCE, OR INTENTIONAL MISCONDUCT

Discussion.—Carelessness or negligence, or other conduct below the standard reasonably expected of the individual under the circumstances, constitutes "neglect" as used in the article. Intentional misconduct implies a wrongful intention and not a mere error in judgment. Under this clause may be charged any act of insubordination, neglect, or intentional misconduct committed by an officer or enlisted person before or in the presence of the enemy which endangers the safety of any command, unit, place, or military property which it is his duty to defend.

Proof.—(a) That it was the duty of the accused to defend a certain command, unit, ship, or place, or certain military property; (b) that he committed certain disobedience, neglect, or intentional misconduct, as alleged; (c) that thereby he endangered the safety of the command, unit, place, ship, or military property; and (d) that this act occurred while the accused was before or in the presence of the enemy.

d. CASTING AWAY ARMS OR AMMUNITION

Proof.—(a) That the accused was before or in the presence of the enemy; and (b) that he cast away certain arms or ammunition, as specified.