

Lore of the Corps

The First Manual for Courts-Martial

By Fred L. Borch

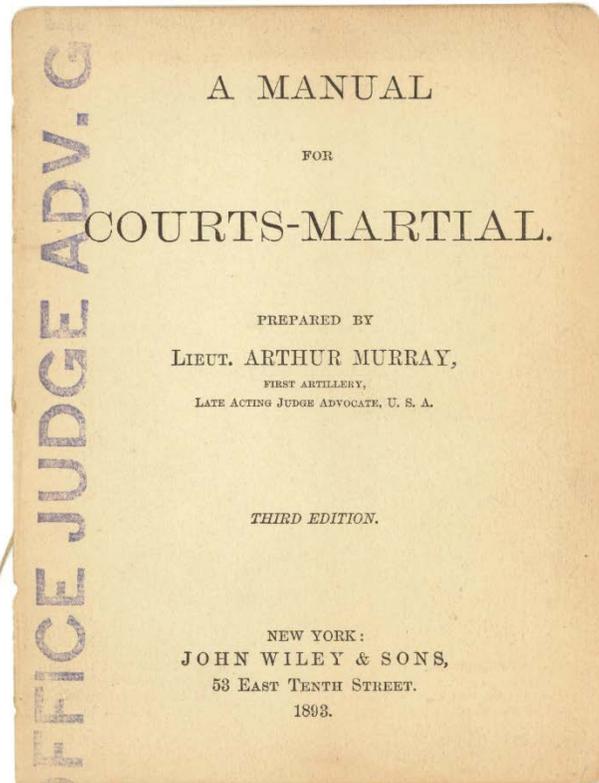
Regimental Historian & Archivist

While military legal practitioners today assume that there has always been a manual to guide those prosecuting, defending, and judging courts-martial, nothing could be further from the truth: It was not until 1895 that an official *Manual for Courts-Martial* was published by the Army. What follows is the history of that first *Manual*.

Although the Continental Congress adopted sixty-nine articles for the regulation of the Army during the Revolution, and the new U.S. Congress exercised its power under Article 1, Section 8 to enact the first American Articles of War in 1806, there was little in the way of written guidance or procedure that governed how a court-martial should operate. The 1863 Articles of War, for example, provided only that a general court-martial should consist of “any number of commissioned officers, from five to thirteen”¹ (with thirteen preferred) and that the judge advocate “shall prosecute in the name of the United States” but also “consider himself counsel” for the accused.² Persons giving evidence before the court were “to be examined on oath or affirmation,”³ and the judge advocate was required “to object to any leading questions” and to prevent the accused from answering questions “which might tend to criminate (sic) himself.”⁴ But there were no provisions in the Articles of War governing the admission of hearsay, or elements of proof in a substantive offense, much less any guidance on how to draft a charge sheet or court-martial convening orders.

It was not until 1886, when then Lieutenant Colonel William Winthrop published his two-volume *Military Law and Precedents*, that judge advocates in the field had any authoritative source. However, Winthrop’s treatise was mostly about military law; it provided no practical guidance for the line officer tasked with prosecuting a court-martial or serving as a member at a general, garrison or regimental court. To meet this need, First Lieutenant (1LT) Arthur Murray, a Field Artillery officer stationed at Fort Leavenworth, wrote “Instructions for Courts-Martial and Judge Advocates,” which was published as Circular No. 8, Headquarters, Department of Missouri, on July 11, 1889.⁵ Murray had previously served as the Acting Judge Advocate for the Department of Missouri in 1887 and consequently had considerable experience with courts-martial and the Articles of War.⁶

In 1890, Murray turned his ‘Instructions’ into a small four-inch by-five-inch “pamphlet.”⁷ He then had it commercially published by a New York firm as “A Manual for Courts-Martial.” After rearranging and enlarging his original work, Murray published a second edition in 1891 and a third edition in 1893.⁸ These were greatly improved versions of his original manual, as he had obtained input from members of the Judge Advocate General’s Department (JAGD), including Captain E. H. Crowder, Major George B. Davis, Colonel (COL) Thomas F. Barr, and COL G. Norman Lieber, the



A Manual for Courts-Martial, 1893

¹ U.S. WAR DEP’T, ARTICLES OF WAR ART. 64 (Stackpole Books 2005) (1863).

² *Id.* at Art. 69.

³ *Id.* at Art. 73.

⁴ U.S. WAR DEP’T, *supra* note 2.

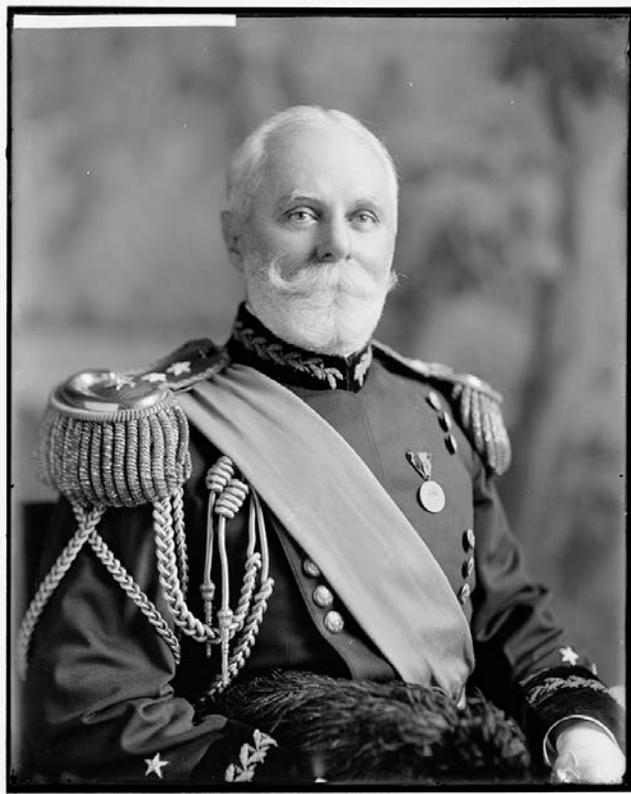
⁵ THE JUDGE ADVOCATE GEN.’S CORPS, THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775-1975, at 95 (1975).

⁶ ARTHUR MURRAY, A MANUAL FOR COURTS-MARTIAL pt. IV (3d ed. 1893), https://www.loc.gov/rr/frd/Military_Law/pdf/manual-1893.pdf.

⁷ *Id.* pt. III.

⁸ *Id.*

Acting Judge Advocate General (JAG).⁹ Since Crowder, Davis, and Barr later served at the highest ranks of the JAGD, Murray's manual was reaching an important and influential audience.¹⁰



Major General Arthur Murray

First Lieutenant Murray's 185-page *Manual* did not promise anything more than being a "handy source of legal guidance."¹¹ Moreover, the book's premise was that military law was primarily about discipline. It was intolerant of "legal niceties" in that the *Manual* advised that "the judge advocate's opinion was rendered only when asked for" by the court.¹²

⁹ *Id.* pt. VI, VII.

¹⁰ For more on Barr, see Fred L. Borch, *TJAG for a Day and TJAG for Two Days: Brigadier Generals Thomas F. Barr and John W. Clous*, ARMY LAW., April 2010, at 1-3. For a biography on Crowder, see DAVID A. LOCKMILLER, ENOCH H. CROWDER: SOLDIER, LAWYER AND STATESMAN (1955); see also Fred L. Borch, *The Greatest Judge Advocate in History? The Extraordinary Life of Major General Enoch H. Crowder (1859-1932)*, ARMY LAW., May 2012, at 1-3. For more on Davis, see Fred L. Borch, *From Frontier Cavalryman to the World Stage: The Career of Army Judge Advocate General George B. Davis*, ARMY HISTORY, Winter 2010, 6-19.

¹¹ THE JUDGE ADVOCATE GEN.'S CORPS, *supra* note 5.

¹² *Id.*

¹³ Murray, *supra* note 6, at 64.

¹⁴ *Id.*

¹⁵ *Id.* at 61-62.

While there was no formal discussion of evidence, Murray did write that a court should always use the "best evidence obtainable" and he insisted that "hearsay evidence is inadmissible."¹³ He also advised that documentary evidence was "only admissible when its authenticity has been established by sworn testimony, or the seal of a court record, or when its authenticity is admitted by the accused."¹⁴ A *Manual for Courts-Martial* also had sections discussing credibility of witnesses,¹⁵ proof of intent,¹⁶ and findings¹⁷ and punishments.¹⁸ While there was no discussion of the elements of proof required for an offense, the "General Forms" at the back of the booklet provided sample specifications for common offenses such as larceny, desertion, fraudulent enlistment, drunk and disorderly, and conduct prejudicial to good order and military discipline.¹⁹ These sample specifications, like those in Part IV of today's *Manual for Courts-Martial* necessarily covered the elements that must be proved for a conviction.²⁰

Murray's *Manual* received high praise. Colonel Barr wrote that "its adoption and general distribution would be of great advantage to the service."²¹ As Acting JAG, Lieber explained, *A Manual for Courts-Martial* "had been carefully prepared, with the manifest object of giving in small compass and convenient form the established principles which are of common application in the administration of justice."²² Since Murray not only compiled "authoritative rules and decisions relating to courts-martial practice," but also included a "collection of forms for use in such practice," Lieber lauded the book as "a useful guide for courts-martial reviewing authorities, and officers of the army generally."²³

Perhaps 1LT Murray was a bit too successful in his writing of "The Murray Manual," because the War Department took his book and published it as *A Manual for Courts-Martial* in 1895, the first official manual for courts-martial.²⁴ While this first official version acknowledged Murray's role—it stated that the book was "prepared under the supervision of the Judge-Advocate General by First Lieutenant Arthur Murray, Field Artillery"²⁵—Murray's authorship was quickly forgotten. When the War Department

¹⁶ *Id.* at 62-63.

¹⁷ *Id.* at 65-68.

¹⁸ *Id.* at 69-87.

¹⁹ *Id.* at 125-34.

²⁰ MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV (2012).

²¹ Murray, *supra* note 6, at VII.

²² *Id.*

²³ *Id.*

²⁴ THE JUDGE ADVOCATE GEN.'S CORPS, *supra* note 5, at 94.

²⁵ *Id.* at 95.

published a second, revised edition in July 1898, it renamed the work *A Manual for Courts-Martial and of Procedure Under Military Law* and omitted any reference to an author.²⁶ What had started as a commercially printed guide for officers involved in courts-martial served as the model of every manual published by the War Department over the next fifteen years. The 1901, 1905, 1907, 1908, 1909, and 1910 editions were small, pocket-sized booklets similar to other manuals on infantry, drill and ceremonies, mess operations and other military subjects. Although the 1917 *Manual for Courts-Martial* was published in a larger format, it was not until 1921, after Congress had made significant revisions to the Articles of War, that wholesale changes were made to what 1LT Murray had originally assembled.²⁷

Unfortunately for Murray, the Army's adoption of his manual "effectively deprived him of any royalties"²⁸ he would have received from the sale of his book. But there was nothing he could do, as it was not until 1960 that an author could sue the United States for copyright infringement in the U.S. Court of Claims.²⁹

In the end, however, Arthur Murray did well as a career Army officer: He was promoted to brigadier general and appointed Chief of Artillery in 1906 and retired as a major general in 1915. Murray was recalled to active duty during World War I and served as the Commander, Western Department, until retiring a second time in 1918. Major General Murray died in Washington, D.C., in 1925, at the age of 74.³⁰

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

<https://www.jagcnet.army.mil/8525736A005BE1BE>

*Dedicated to the brave men and women who have served our
Corps with honor, dedication, and distinction.*

²⁶ WAR DEP'T, MANUAL FOR COURTS-MARTIAL AND OF PROCEDURE UNDER MILITARY LAW (1898)
http://www.loc.gov/rr/frd/Military_Law/pdf/manual-1898.pdf.

²⁷ THE JUDGE ADVOCATE GEN.'S CORPS, *supra* note 5, at 95-96.

²⁸ *Id.* at 95.

²⁹ *Id.*

³⁰ ASSOCIATION OF GRADUATES OF THE UNITED STATES MILITARY ACADEMY AT WEST POINT, ANNUAL REPORT 115-17 (1930).