

3-15-1975

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### Recommended Citation

James M. Kamman *Parker v. Levy - Conduct Unbecoming an Officer and a Gentleman*, 2 Pepp. L. Rev. Iss. 2 (1975)

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## Parker v. Levy—Conduct Unbecoming an Officer and a Gentleman

### INTRODUCTION

In June, 1974 the United States Supreme Court in *Parker v. Levy*<sup>1</sup> reversed the Circuit Court of Appeals for the Third Circuit, thereby affirming the military court-martial and the district court, by holding that Articles 133<sup>2</sup> and 134<sup>3</sup>, the "General Articles", of the Uniform Code of Military Justice (U.C.M.J.)<sup>4</sup>, were not unconstitutionally vague nor were they invalid for overbreadth. By so ruling, the majority of the court chose to ignore the vast amount of scholarly criticism recently gathered against the Articles,<sup>5</sup> and instead followed a long list of precedents<sup>6</sup> giving little consideration to the vastly changed historical context.

First enacted in this country by the Second Continental Congress

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1. 417 U.S. 733 (1974).

2. 10 U.S.C. § 933 (1970) providing: "Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct."

3. 10 U.S.C. § 934 (1970) providing: "Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial according to the nature and degree of the offense, and shall be punished at the discretion of that court."

4. 10 U.S.C. § 801 *et. seq.* (1970).

5. *Avrech v. Secretary of the Navy*, 477 F.2d 1237 (D.C. Cir. 1973); Note, *Taps for the Real Catch-22*, 81 YALE L.J. 1518 (1972); Everett, *Article 134, Uniform Code of Military Justice—A Study in Vagueness*, 37 N. CAR. L.R. 142 (1959); Comment, *The General Article is Unconstitutionally Vague and Overbroad*, 18 ST. LOUIS U. L. J. 150 (1973); Comment, *The Discredit Clause of the U.C.M.J.: An Unrestricted Anachronism*, 18 U.C.L.A. L.R. 821 (1971); Hodson, *Perspective: The Manual for Courts-Martial—1984*, 57 MIL. L.R. 1 (1972).

6. *Dynes v. Hoover*, 61 U.S. (20 Howe) 65 (1857); *Smith v. Whitney*, 116 U.S. 167 (1886); *In re Grimley*, 137 U.S. 147 (1890); *United States v. Fletcher*, 148 U.S. 84 (1893); *Swaim v. United States*, 165 U.S. 553 (1897); *Burns v. Wilson*, 346 U.S. 137 (1953); *United States v. Frantz*, 2 U.S.C.M.A. 161, 7 C.M.R. 37 (1953); *United States v. Sadinsky*, 14 U.S.C.M.A. 563, 34 C.M.R. 343 (1964).

on June 30, 1775,<sup>7</sup> Articles 133 and 134 were derived from the British Articles of War<sup>8</sup>, which trace their antecedents from the Articles of War of James II, in 1688<sup>9</sup>. Enacted in the American Articles of War of 1806, the original phrase “scandalous, infamous” was omitted and in its place was substituted “any commissioned officer convicted before a general court-martial of conduct unbecoming an officer and a gentleman, shall be dismissed from the service.” The articles have thus remained unchanged since 1806.<sup>10</sup>

#### FACTS

Howard Levy, a physician, was a Captain in the Army assigned as Chief of the Dermatological Service of the United States Army Hospital at Fort Jackson, South Carolina. On June 2, 1967, Captain Levy was convicted by a general court-martial of violations of Articles 90,<sup>11</sup> 133, conduct unbecoming an officer and a gentleman and 134, conduct of a nature to bring discredit upon the armed forces, of the U.C.M.J., and sentenced to dismissal from the service, forfeiture of all pay and allowances, and confinement at hard labor for three years.

As Chief of the Dermatological Service, it was Captain Levy's duty to train Special Forces (Green Beret) aid men who would be serving in Vietnam. He refused to conduct such training, viewing it as contrary to his medical ethics, and refused to obey a written order to commence such training. The charges and specifications under which Captain Levy was charged included promoting disaffection among the troops by urging black servicemen, because they were discriminated against in this country, not to go to Vietnam, and by saying that Special Forces personnel were liars who killed innocent women and children.<sup>12</sup> After exhausting his military and civilian avenues of appeal,<sup>13</sup> Captain Levy sought

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7. W. WINTHROP, *MILITARY LAW AND PRECEDENTS*, 2d ed. at 953 (1920).

8. *Id.* at 929, 931.

9. *Id.* at 920.

10. *Id.* at 976.

11. 10 U.S.C. § 890 (1970) providing: “Any person subject to this chapter who . . . (2) willfully disobeys a lawful command of his superior commissioned officer; . . . shall be punished . . . as a court-martial may direct.”

12. *Parker v. Levy*, 417 U.S. 733, 739 (1974). For complete charges and specifications see *United States v. Levy*, 39 C.M.R. 672, 674-75 (1968).

13. *United States v. Levy*, 39 C.M.R. 672 (1968), *pet. for rev. den.*, 18 U.S.C.M.A. 627 (1969); *Levy v. Corcoran*, 389 F.2d 929 (D.C. Cir. 1967), *appl. for stay den.*, 387 U.S. 915 (1969), *cert. den.*, 389 U.S. 960 (1967); *Levy v. Resor*, 17 U.S.C.M.A. 135, 37 C.M.R. 399 (1967), *aff'd per curiam*, 384 F.2d 689 (4th Cir. 1967), *cert. den.*, 389 U.S. 1049 (1968); *Levy v. Dillon*, 286 F. Supp. 593 (D.C. Kan. 1968), *aff'd*, 415 F.2d 1263 (10th Cir. 1969).

federal habeas corpus relief in the United States District Court,<sup>14</sup> which held that the various articles were not unconstitutional. The Circuit Court of Appeals reversed, holding that Articles 133 and 134 were void for vagueness.<sup>15</sup>

#### CIRCUIT COURT OPINION

In examining the articles, the Court of Appeals found that, within the Military Court System, Article 133 had withstood a constitutional attack predicated upon the First Amendment<sup>16</sup> while Article 134 had met challenges for vagueness in *United States v. Frantz*<sup>17</sup> and *United States v. Sadinsky*.<sup>18</sup> The cases rested their conclusions upon *Dynes v. Hoover* and the list of precedents which followed.<sup>19</sup> Thus, the Court of Appeals concluded, "that Article 134 weathered the challenge of vagueness in the Supreme Court in 1858 for substantially the same reasons adopted by the Court of Military Appeals in 1953 in *Frantz*."<sup>20</sup> Viewing the vastly changed historical circumstances, the Court of Appeals reconsidered the articles under the premise that in order to accommodate changed circumstances concepts of justice change and that *stare decisis* must bow to changing values.<sup>21</sup>

The Court of Appeals, and the Supreme Court dissenting opinion, only alluded to what vastly changed historical changes had occurred. Similarly, the cases and authorities supporting the constitutionality of the articles, based on the military custom and usage, are equally as vague.

It appears that much of the support for the articles is based upon the English and European military systems of the eighteenth and

14. *Levy v. Parker*, 316 F. Supp. 473 (M.D. Penn. 1970).

15. *Levy v. Parker*, 478 F.2d 772 (3d Cir. 1973).

16. *United States v. Howe*, 17 U.S.C.M.A. 165, 37 C.M.R. 429 (1967).

17. 2 U.S.C.M.A. 161, 7 C.M.R. 37 (1953). In fact the court gave the matter little attention, saying, ". . . to put the question is to answer it in all reasonable minds." 2 U.S.C.M.A. at 163, 7 C.M.R. at 39.

18. 14 U.S.C.M.A. 563, 34 C.M.R. 343 (1964). In *Avrech v. Secretary of the Navy*, 477 F.2d 1237 (D.C. Cir. 1973), Justice Clark found Article 134 unconstitutionally vague and overbroad under the Fifth Amendment.

19. *Supra* note 6.

20. *Levy v. Parker*, 478 F.2d 772, 786 (3d Cir. 1973).

21. *Id.* at 787, 788, citing concurring opinion in *Furman v. Georgia*, 408 U.S. 238, 304, 329-30 (1972).

nineteenth centuries—systems whose officers were gentlemen drawn from the ruling aristocracy. The military recruits came from societies accustomed to giving blind obedience to Kings. In contrast, the army of the Viet Nam era was predominantly made up of draftees content only on doing their minimum time and returning to civilian life in one piece. These draftees, like Dr. Levy, came from a society becoming ever more wary of our longest war.

Today's army has abandoned many of the time honored traditions upon which military custom and usage was based. We no longer have an army segregated by color or sex. The traditional barracks has been replaced by modern college type dormitories while women are entering such previously closed assignments as aviation. Beer is being served in the mess hall while civilians do the K.P.! And how much custom and tradition is left when massive Madison Avenue campaigns are launched to convince young men and women that "The Army Wants to Join You" or that the Marine Corps "Never Promised You a Rose Garden"? Apparently, with these facts in mind, the Court of Appeals concluded that it was time for change.

The Court of Appeals found that both articles were unconstitutionally void for vagueness, failing to meet the previously established standards of constitutionality set forth in numerous cases which require that a law must be clear enough so that persons of common understanding would know what was forbidden.<sup>22</sup>

[t]he history of prosecutions under this article show that it has served as an unwritten criminal code, a catchall receptacle . . . at best the *Manual* includes but a compilation of those offenses previously determined by various courts-martial to come within the breadth of Article 134 . . . the boundless, open-ended, all encompassing quality of this article runs counter to the basic philosophy of criminal codes of all modern nations . . . these articles also have the very real capacity for arbitrary and discriminatory enforcement.<sup>23</sup>

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22. *Grayned v. City of Rockford*, 408 U.S. 104 (1972), anti-picketing ordinance; *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), vagrancy; *Coates v. Cincinnati*, 402 U.S. 611 (1971), three or more people annoying to others; *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966), jury costs assessed to an innocent defendant upon finding of some misconduct; *Gelling v. Texas*, 343 U.S. 960 (1952), prejudicial to the best interests of the people of the city; *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939): "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids . . . 'And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.'"

23. *Levy v. Parker*, 478 F.2d 772, at 790-92. See also *Avrech v. Secretary of the Navy*, 477 F.2d 1237, at 1241-2.

The Court of Appeals did not find it necessary to determine whether the exact conduct of Captain Levy was unbecoming or discrediting as defined by the *Manual for Courts-Martial*.<sup>24</sup> Since the wording of Articles 133 and 134 makes it possible to charge others without giving them sufficient warning that their conduct was prohibited, the articles were therefore found to be void for vagueness on their face.<sup>25</sup>

#### SUPREME COURT DECISION

Justice Rehnquist joined by Chief Justice Burger, Justices Blackman, White and Powell, delivered the opinion for the majority, which was primarily based upon the judicial precedents upholding the articles. The majority viewed the military as a specialized society, separate and distinct from civilian society; and thus with a separate and distinct justice system based upon military customs and traditions.<sup>26</sup> Since the unwritten law based on custom and usage gave sufficient meaning to the articles, it was immaterial whether Captain Levy had warning that his specific conduct might be punishable under the code; instead, the Court relied upon the cases of *United States v. Fletcher*<sup>27</sup> and *Swaim v. United States*.<sup>28</sup>

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24. *MANUAL FOR COURTS-MARTIAL* (1969) promulgated by executive order.

25. Citing the Court in *Coates v. City of Cincinnati*, 402 U.S. 611, at 616 (1971): "We need not lament that we do not have before us the details of the conduct found to be annoying. It is the ordinance on its face that sets the standard of conduct and warns against transgression. The details of the offense could no more serve to validate this ordinance than could the details of the offense charged under an ordinance suspending unconditionally the right of assembly and free speech."

26. *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953): "[t]he military constitutes a specialized community governed by a separate discipline from that of the civilian." *Burns v. Wilson*, 346 U.S. 137, 140 (1953): "[M]ilitary law, like state law, is a jurisprudence which exists separate and apart from the law which governs our federal judicial establishment." *Dynes v. Hoover*, 61 U.S. (20 How.) 65, 79 (1857): "[a]ll crimes committed by persons belonging to the navy, which are not specified in the foregoing articles, shall be punished according to the laws and customs in such cases at sea." *Smith v. Whitney*, 116 U.S. 167, 179 (1886); "Now this procedure is founded upon the usages and customs of war . . . the general usage of the military service, or what may not unfittingly be called the customary military law." *Martin v. Mott*, 25 U.S. (12 Wheat.) 537, 542 (1827): ". . . according to the general usage of military service or what may not unfitly be called the customary military law."

27. 148 U.S. 84 (1893).

28. 165 U.S. 553 (1897).

In *Fletcher*, the Supreme Court affirmed a Court of Claims decision which had found

In military life there is a higher code termed honor, which holds its society to stricter accountability, and it is not desirable that the standard of the Army shall come down to the requirements of a criminal code.<sup>29</sup>

In order to justify the lack of definition in determining punishable behavior, the Court of Claims in *Swaim* relied on a similar nebulous standard, saying:

The Articles of War do not define either of these offenses, nor can a court of law. What is conduct unbecoming an officer and gentleman, or what is conduct to the prejudice of good order and military discipline is beyond the bounds of exact formula, and must depend more or less upon the circumstances and peculiarities of each case . . . must be gauged by an actual knowledge and experience of military life, its usages and duties.<sup>30</sup>

In addition, Winthrop, *Military Law and Precedents*, found unwritten military law consists of "certain established principles and usages peculiar or pertaining to the military status and service . . ."<sup>31</sup> Due to the differences between civilian and military law it is impossible to equate the *U.C.M.J.* to a civilian criminal code, the military being ". . . the executive arm. Its law is that of obedience."<sup>32</sup> It therefore follows that the *U.C.M.J.* can and does impose sanctions for conduct not punishable by civilian criminal codes.<sup>33</sup> Relying on *Frantz*, the majority in *Levy* viewed Article 134

. . . not *in vacuo*, but in the context in which the years have placed it . . . Accordingly, we conclude that the article establishes a standard 'well enough known to enable those within . . . (its) reach to correctly apply them.'<sup>34</sup>

Further illumination is supposedly gleamed from the *Manual for Courts-Martial*, which restricts the limitation of Article 134 to "certain disloyal statements by military personnel,"<sup>35</sup> and decisions holding that the conduct must be "directly and palpably as distinguished from indirectly and remotely prejudicial to good order and discipline."<sup>36</sup> Since Captain Levy's conduct was clearly pro-

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29. *Fletcher v. United States*, 26 Ct. Cl. 541, 563 (1891).

30. *Swaim v. United States*, 28 Ct. Cl. 173, 228-9 (1893).

31. W. WINTHROP, *supra* note 7, at 41.

32. *In re Grimley*, 137 U.S. 147, 153 (1890).

33. 10 U.S.C. 889 (1970), disrespect toward superior commissioned officer; 10 U.S.C. 893 (1970), cruelty towards, or oppression or maltreatment of subordinates; 10 U.S.C. 912 (1970), drunkenness on duty; 10 U.S.C. 915 (1970), malingering.

34. 2 U.S.C.M.A. at 163, 7 C.M.R. at 39.

35. *MANUAL FOR COURTS-MARTIAL*, *supra* note 24, at P213c, 28-77.

36. *United States v. Sadinsky*, 14 U.S.C.M.A. 563 at 565, 34 C.M.R. 343

hibited, the Court presumed that he did not have standing to challenge the articles for vagueness merely because they might be applied in the future to another without warning.<sup>37</sup> It appears that the contention of the court was not that the military was exempted from the proscriptions of due process, but that military life peculiarly provides notice, through custom and usage, of the standard of behavior required.

The need for obedience and discipline, coupled with the many factors differentiating military society from civilian society makes the requirement of notice less than that for civilian criminal codes, the ". . . proper standard of review for a vagueness challenge to the articles of the Code (U.C.M.J.) is the standard which applies to criminal statutes regulating economic affairs."<sup>38</sup>

#### DISSENT

Mr. Justice Stewart wrote a dissent, joined by Justices Douglas<sup>39</sup> and Brennan (Justice Marshall taking no part in the decision), echoing the opinion of the Circuit Court of Appeals. Finding the wording of Articles 133 and 134 almost identical to the wording of civilian statutes which the court had previously invalidated,<sup>40</sup> Justice Stewart declared the articles vague on their face and not sufficiently narrowed by judicial construction to be saved from unconstitutionality. The majority, though, felt the sample form specifications, provided in the back of the *Manual*, for various offenses under the articles established sufficient meaning and sufficient narrowing to give the unwary notice of what conduct was prohibited. Rather than narrowing the construction, the number of form specifications provided for Article 134 has been constantly expanding from 47 in 1953,<sup>41</sup> 58 in 1967,<sup>42</sup> to 63 in 1969,<sup>43</sup> and these

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at 345 (1964); *United States v. Holiday*, 4 U.S.C.M.A. 454, 456, 16 C.M.R. 28, 30 (1954).

37. *Parker v. Levy*, 417 U.S. at 756: "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness."

38. *Id.* at 756.

39. Justice Douglas dissented in a separate opinion based on the First Amendment privilege of free speech.

40. *Supra* note 22.

41. *United States v. Frantz*, 2 U.S.C.M.A. 161 at 163, 7 C.M.R. 37 at 39 (1953).

42. *Levy v. Corcoran*, 389 F.2d 929 at 933-4 (D.C. Cir. 1967).

43. *MANUAL FOR COURTS-MARTIAL*, *supra* note 24, A6-20 to A6-26, at 126-188.



form specifications are not intended to be exclusive.<sup>44</sup> In addition, Article 133 has been applied to such diverse charges as being found with an enlisted man's wife in a compromising situation,<sup>45</sup> charging excessive interest to an enlisted man,<sup>46</sup> dishonorable failure to pay debts,<sup>47</sup> sale of liquor to an enlisted man at an unconscionable price,<sup>48</sup> abusing one's wife in public,<sup>49</sup> and cheating at cards.<sup>50</sup> The charges under Article 134 have been equally nefarious, running the gamut from driving in violation of a civilian court decree,<sup>51</sup> indecent acts with a chicken,<sup>52</sup> window peeping,<sup>53</sup> and cheating while calling bingo numbers.<sup>54</sup> The use of Articles 133 and 134 as open-ended, catchalls has been the prevailing practice for years, Winthrop noting that ". . . in practice, the greater number of charges . . . are based upon this general article of the code."<sup>55</sup> In fact, charges and convictions leave little doubt that "an infinite variety of other conduct, limited only by the scope of a commander's creativity or spleen, can be made the subject of court-martial under these articles."<sup>56</sup>

Even if these decisions were valid in the past, the army into which Dr. Levy entered as a physician under the "Berry Plan"<sup>57</sup> was vastly different than the small voluntary, professional cadre of soldiers, most of whom had career in mind and could be said to know what was expected of them, existing prior to World War II. Therefore, Justice Stewart concluded that the circumstances should be viewed as

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44. *United States v. Fisher*, 6 C.M.R. 195 (1952); *United States v. Holt*, 7 U.S.C.M.A. 617, 621, 23 C.M.R. 81, 85 (1957).

45. *United States v. Lee*, 4 C.M.R. 185 (1951).

46. *United States v. Giordano*, 15 U.S.C.M.A. 163, 35 C.M.R. 135 (1964).

47. *United States v. Journell*, 18 C.M.R. 752 (1954).

48. *United States v. Kupfer*, 3 U.S.C.M.A. 478, 9 C.M.R. 283 (1952).

49. *United States v. Downard*, 1 C.M.R. 405 (1951).

50. *United States v. West*, 16 C.M.R. 587 (1954).

51. *United States v. Bonar*, 40 C.M.R. 587 (1954).

52. *United States v. Sanchez*, 11 U.S.C.M.A. 216, 29 C.M.R. 32 (1960).

53. *United States v. Clark*, 22 C.M.R. 888 (1957).

54. *United States v. Holt*, 7 U.S.C.M.A. 617, 23 C.M.R. 81 (1957).

55. W. WINTHROP, *supra* note 7, at 720.

56. Sherman, *The Civilianization of Military Law*, 22 MAINE L. REV. 3, 80 (1970). Some of the more interesting and tenuous charges under these articles have been reversed on appeal: Showing a lewd picture to a friend, *United States v. Ford*, 31 C.M.R. 353 (1963); passenger leaving the scene of an accident, *United States v. Waluski*, 6 U.S.C.M.A. 724, 21 C.M.R. 46 (1956); failure to prevent female from being raped by another, *United States v. Sloan*, 14 C.M.R. 375 (1954); presenting an undisciplined appearance by shaving in the afternoon and by complaining to a superior officer, *United States v. Wolfson*, 36 C.M.R. 722 (1965).

57. 50 U.S.C.A. 454 (1970), agreement to serve two years if first allowed to complete medical studies.

... manifestly a vastly 'altered historic environment' ... to presume that he and others like him who served during the Vietnam era were so imbued with the ancient traditions of the military as to comprehend the arcane meaning of the General Articles is to engage in an act of judicial fantasy ... the Dynes case and its progeny have become constitutional anachronisms, and I would retire them from service ... We deal here with criminal statutes. And I cannot believe that such meaningless statutes as these can be used to send men to prison under a Constitution that guarantees due process of law.<sup>58</sup>

### CONCLUSION

In spite of the dissenting opinions and the mounting criticism of Articles 133 and 134, it is apparent from the judicial precedents and the shift to an all volunteer military, consisting of a small cadre of professional military men who know what is expected of them by a so-called higher standard of character and conduct, that the articles will not presently be subject to constitutional attack. The alternative is an attempt, on policy grounds, to convince the military to accept one of the viable alternatives to Articles 133 and 134, a possible necessity in recruiting the high quality individuals necessary for an all volunteer army.

There seems little reason for the military to staunchly defend the use of such nebulous articles, the need for which is indeed dubious. No less esteemed a critic than the Chief Judge of the Army Court of Military Review has recommended the abolition of Article 134;<sup>59</sup> and in its place to substitute three classes of offenses under the other punitive articles.<sup>60</sup> Another possible alternative would be to draw more definite specifications for offenses now charged under Articles 133 and 134 as separate articles as is now done with the other punitive articles. The imagined need to protect against the "novel offense" would be very limited since most sources of trouble posing a problem to discipline could be accord-

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58. *Parker v. Levy*, 417 U.S. 733, 781-3, 789 (1974).

59. Hodson, *Perspective: The Manual for Courts-Martial—1984*, 57 MIL. L.R. 1, 12 (1972).

60. 10 U.S.C. 892 (1970): "Any person subject to this chapter who . . . (1) Violates or fails to obey any lawful general order or regulation; (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct."

ingly defined and codified. The articles, as they now stand, bring discredit, through their arbitrary application, upon a military justice system that is otherwise reasonable and workable. One need only visit an Officer's Club on Friday afternoon to view the possibilities of arbitrary application for such supposed crimes as drunkenness or abusing one's wife in public. In fact, high ranking dissenters, with the exception of General Billy Mitchell, have escaped court-martial while lower ranking dissenters have met exceedingly harsh sentences.<sup>61</sup>

Other laws exist under which most, if not all, of the offenses now being charged under Articles 133 and 134, could be brought.<sup>62</sup> Under most conditions, discipline could be maintained by administrative procedures such as reprimand, removal from position, dismissal or transfer.<sup>63</sup> Both General Douglas MacArthur and General Edwin Walker were removed from command and the whole history of My Lai, with the exception of Lieutenant Calley, shows the use of administrative sanctions for actions much more reprehensible than those cited against Captain Levy. A maximum sentence of six months for the various charges under the articles would go a long way to temper the inequities and harshness of justice now being experienced.

Now is the time for change to bring military justice in line with civilian standards of criminal conduct before others, like Captain Levy, will be convicted and sentenced for such nebulous offenses as conduct unbecoming an officer and a gentleman and conduct bringing discredit upon the armed forces.

JAMES M. KAMMAN

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61. *United States v. Howe*, 17 U.S.C.M.A. 165, 37 C.M.R. 429 (1967), two years reduced to one, for contemptuous words against the President; *United States v. Daniels*, 19 U.S.C.M.A. 529, 42 C.M.R. 131 (1971), ten years reduced to four years for disloyal statements; *United States v. Harvey*, 19 U.S.C.M.A. 539, 42 C.M.R. 141 (1971), six years reduced to three for disloyal statements; *United States v. Amick and Stolte*, 40 C.M.R. 720 (1969), four years each for distributing anti-war leaflets.

62. The Smith Act, 10 U.S.C. 2387 (1970); the Federal Assimilative Crime Act, 8 U.S.C. 13 (1970).

63. *United States v. Wolfson*, 36 C.M.R. 722, 723 (1965): "Article 133 is to be reserved for serious delicts of officers. The article should not be demeaned by using it to charge minor delinquencies that can be more appropriately handled by instruction, counselling or other types of administrative corrective action."