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VOL. 56

1945

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Judge Advocate General's Department

BOARD OF REVIEW

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Volume 56

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CM 284883 - CM 288599

(1945)

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WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 284883

UNITED STATES	)	FOURTH AIR FORCE
v.	)	Trial by G.C.M., convened at McChord Field, Washington, 29 June and 12 July 1945. Dismissal, total forfeitures and confinement for five (5) years. Disciplinary Barracks.
Second Lieutenant SPURGEON L. COLLINS (O-565071), Air Corps.	)	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates.

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant Spurgeon L. Collins, Squadron "V", 464th AAF Base Unit, did, at Tacoma, Washington, on or about 19 April 1945, with intent to defraud, wrongfully and unlawfully make and utter to the National Bank of Fort Sam Houston, at San Antonio, Texas, payable to the order of cash in the sum of One Hundred Dollars ($100.00), and by means thereof did fraudulently obtain from the National Bank of Washington, Tacoma, Washington, One Hundred Dollars ($100.00), lawful money of the United States, he, the said Second Lieutenant Spurgeon L. Collins, then and there well knowing that he did not have and not intending that he should have sufficient funds in or credit with the said bank for the payment of said check in full upon its presentation.

Specification 2: Similar to Specification 1 except that check was made and uttered to the Post Exchange, Lemoore Army Air Field, Lemoore, California, on 27 October 1944, and was in the sum of $25.

Specification 3: Similar to Specification 1 except that check was made and uttered to the National Bank of Frederick, Frederick, Oklahoma, on 10 November 1944, was in the sum of $50, and credit upon a debt in the sum of $50 was obtained.

Specification 4: Similar to Specification 1 except that check was made and uttered to the Post Exchange, Lemoore Army Air Field, Lemoore, California, on 15 November 1944, and was in the sum of $25.

Specification 5: Similar to Specification 1 except that check was made and uttered to the Anglo California National Bank, Hanford, California, on 24 November 1944, and was in the sum of $25.

Specification 6: Similar to Specification 1 except that check was made and uttered to the Security First National Bank, Los Angeles, California, on 25 November 1944, and was in the sum of $50.

Specification 7: Similar to Specification 1 except that check was made and uttered to the Post Exchange, Lemoore Army Air Field, Lemoore, California, on 30 November 1944, and was in the sum of $25.

Specification 8: Similar to Specification 1 except that check was made and uttered to the Post Exchange, Lemoore Army Air Field, Lemoore, California, on 30 November 1944, and was in the sum of $10.

The accused pleaded guilty to, and was found guilty of, the Charge and all Specifications. Evidence was received of a previous conviction by general court-martial on 13 December 1944 for wrongfully failing to have sufficient funds in the bank for the payment of 17 checks upon presentation, in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for six years. The reviewing authority approved the sentence, but reduced the period of confinement to five years; designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement; and forwarded the record of trial for action under Article of War 48.

3. Evidence for the prosecution: It was stipulated that accused made and uttered each of the checks described in the Specifications and

that, as alleged, he received the face amount of each of them, with the exception of the one described in Specification 3 for which a credit on a debt was obtained. All of them, save those described in Specifications 7 and 8, were deposited for collection and returned unpaid (R. 9-13; Pros. Exs. 1-4).

It was further stipulated that accused issued them knowing that he did not have sufficient funds in the bank to pay them when presented (R. 13). He subsequently redeemed all of them (R. 14).

4. No evidence was introduced by the defense. Accused, after explanation of his rights as a witness, elected to remain silent (R.14).

5. The Specifications of the Charge allege that, with intent to defraud, accused made and uttered eight worthless checks totalling $310 and fraudulently obtained their face amounts in cash or credit on a debt knowing that he did not have and not intending to have sufficient funds in the bank for payment. The Specifications are drawn under the 96th Article of War.

By his pleas of guilty accused admitted the material allegations of the Specifications and by his stipulations he again conceded the material facts therein set out. Since the Specifications adequately allege the offenses, the record of trial is legally sufficient to support the findings and sentence.

6. War Department records show that the accused is about 24 years and 5 months of age, having been born 4 April 1921. His education consists of four years of high school and two years study of pharmacy at the University of North Carolina. Before entering the Army on 8 March 1941 he was employed as a bookkeeper in a lumber mill and as a clerk in a drug store. He attained the grade of sergeant as an enlisted man and entered an Air Corps Officers Candidate School (Administrative Branch) from which he was commissioned, on 28 October 1942, as a temporary Second Lieutenant in the Army of the United States. On 18 May 1944 he received a reprimand under Article of War 104 for writing worthless checks.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. The Board of Review is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 96.

Abner E. Lipscomb, Judge Advocate

Robert J. Conner, Judge Advocate

Samuel D. Morgan, Judge Advocate

SPJGN-CM 284883 1st Ind 7 SEP 1945
Hq ASF, JAGO, Washington 25, D. C.
TO: Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Spurgeon L. Collins (0-565071), Air Corps.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, making and uttering eight worthless checks totaling $310 and fraudulently obtaining that amount in cash or credit knowing that he did not have and not intending to have sufficient funds in the bank for payment, in violation of Article of War 96. Evidence was introduced of a previous conviction by general court-martial on 13 December 1944 of wrongfully failing to have sufficient funds in the bank to pay a total of seventeen checks. He was sentenced to forfeit $75.00 per month for six months. He was sentenced in the instant case to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for six years. The reviewing authority approved the sentence but reduced the period of confinement to five years, designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence as approved by the reviewing authority and to warrant confirmation thereof.

Seven of the eight checks in the present case were written prior to accused's previous general court-martial on 13 December 1944, but apparently they came to official notice subsequently. Following the discovery of the additional offenses accused submitted his resignation for the good of the service but, while consideration was pending, he cashed another worthless check. Despite the further misconduct the reviewing authority again recommended that the resignation be approved, but it was returned by The Adjutant General. Accused has redeemed all of the checks involved in the case. In addition to his previous conviction referred to above the accused on 18 May 1944 was reprimanded under Article of War 104 for writing worthless checks.

I recommend that the sentence as approved by the reviewing authority be confirmed, but that the forfeitures be remitted and the confinement be reduced to one year, that the sentence as thus modified be ordered executed, and that a United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
Incl 1 - Record of trial
Incl 2 - Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, but forfeitures remitted and confinement reduced. GCMO 442, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGQ - 284981

UNITED STATES v. Second Lieutenant EDWIN L. WINEBERG (0-1646713), Corps of Military Police.	EIGHTH SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Camp Gruber, Oklahoma, 1 and 2 August 1945. Dismissal, total forfeitures and confinement at hard labor for eight (8) years.

OPINION of the BOARD OF REVIEW
ANDREWS, BIEBER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer above named and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Edwin L. Wineberg, Provost Marshall General's Officers Replacement Pool, did, without proper leave absent himself from his station at Fort DuPont, Delaware, from about 27 May 1945 to about 11 June 1945.

CHARGE II: Violation of the 96th Article of War.

Specification: In that Second Lieutenant Edwin L. Wineberg, Provost Marshal General's Officers Replacement Pool, did, at or near San Antonio, Texas, on or about 20 May 1945, wrongfully convert to his own use a 1941 Dodge Sedan automobile, value of about $1,000, the property of Nathan Nevelow entrusted to him by the said Nathan Nevelow.

CHARGE III: Violation of the 93rd Article of War.

Specification 1: In that Second Lieutenant Edwin L. Wineberg, Provost Marshal General's Officers Replacement Pool, did, at or near Tulsa, Oklahoma, on or about 31 May 1945, feloniously take, steal and carry away about eight thousand dollars ($8,000.00) lawful money of the United States, the property of Earl Matlock.

Specification 2: In that Second Lieutenant Edwin L. Wineberg, Provost Marshal General's Officers Replacement Pool, did, at or near Tulsa, Oklahoma, on or about 31 May 1945, feloniously take, steal and carry away one .38 caliber revolver, value about fifty dollars ($50.00), the property of Earl Matlock.

Accused pleaded not guilty to and was found guilty of all the Charges and Specifications. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for eight years. The reviewing authority approved only so much of the finding of guilty of Specification 2 of Charge III as involved a finding of guilty of larceny of a revolver, value more than $20.00 and less than $50.00, approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. The prosecution's evidence with reference to the Specification and Charge, Charge I, is as follows:

Accused was assigned to the Provost Marshal General's Officers' Replacement Pool, Fort Sam Houston, Texas, on 15 April 1945 (R. 7; Ex. A). By War Department Special Orders dated 11 May 1945 accused was relieved from such assignment and assigned to the 722nd Military Police Battalion, Fort DuPont, Delaware, the effective date of change on morning reports being 21 May 1945 (R. 7; Exs. A, B). Special letter instructions were issued to accused at Fort Sam Houston on 18 May 1945 authorizing him to travel by private automobile to his new station and fixing travel time at not to exceed nine days (Ex. A). Accused signed out at Fort Sam Houston at 1700 hours, 18 May 1945 (Ex. A) and departed that station on the same date as shown by the Morning Report of his organization (R. 7; Ex. C). Accused was due to report to his new organization not later than 27 May 1945 (Ex. A). It was shown by the deposition testimony of the Commanding Officer, 722nd Military Police Battalion, Fort DuPont, Delaware, that accused did not report to that organization, that accused was not present for duty at any time between 27 May 1945 and 11 June 1945, and that the request of accused by wire dated 22 May 1945 for fifteen days delay en route was denied by wire on that date (R. 11; Ex. G). Accused was carried as absent without leave effective 27 May 1945 upon the Morning Report of his new organization dated 5 June 1945 (R. 10; Ex. D). Accused was arrested and confined by civil authorities in Tulsa, Oklahoma, on 2 June 1945 (R. 61, 71) and so held by them until 11 June 1945 upon which date he was released to military control (R. 67; Ex. F). On the day of his arrest by the civil authorities, a copy of the special letter instructions (Ex. A) showing nine days' travel time granted accused to reach his new station was found among his personal effects (R. 65; Ex. P).

The prosecution's evidence relating to the Specification and Charge, Charge II, is as follows:

On 17 May 1945 accused rented a car from the "Driverless Car Company" in San Antonio, Texas, which he "returned properly" (R. 12). Again on 20 May 1945 accused came to this business establishment and rented a car. The car rented to accused on this second occasion was a "1941 Dodge fordor sedan, black, (Texas) license number AJ 4969" (R. 12, 13). Accused rented the car about 8:30 that morning and agreed to return the car about 4:00 o'clock that evening (R. 12, 13, 21). Accused signed a car rental contract which provided that the car was to be returned within twelve hours and that it was not to be taken out of Bexar County (Texas) without the written permission of the company (R. 13; Ex. H). Accused said he understood the terms of the contract (R. 14). The car was owned, free and clear of liens, by Nathan Nevelow (R. 14, 19; Ex. I). Accused made a $20.00 deposit (R. 19; Ex. H) and took this car away from Mr. Nevelow's place of business (R. 17, 21), but it was not returned at the time agreed upon (R. 14). The owner thereafter secured the aid of the police authorities in Bexar County in an attempt to find the car (R. 14, 17) and on 7 or 8 June 1945 he was advised that the car was in Tulsa, Oklahoma (R. 15, 21). On 8 or 9 June 1945 a brother of the owner of the vehicle picked it up at the Sheriff's office in Tulsa, Oklahoma, and returned it to the owner in San Antonio on 11 June (R. 15, 22, 77; Ex. K). The car had been driven 3700 miles between the time accused rented it and its return (R. 15, 16). The owner of the car, who had been engaged in buying and selling cars for over twenty years, estimated the value of the vehicle at the time of its return to his possession to be $1200 (R. 16) which is the OPA ceiling price (R. 18). A similar value was placed on it as of 20 May 1945 in Bexar County, Texas, by the owner's brother who had been in the automotive business for twenty years (Ex. K). A used car dealer in Tulsa, Oklahoma, who saw accused with a "1941 Dodge, black, fordor sedan" at his place of business on 29 May 1945 estimated that such vehicle was worth "in the neighborhood of $700" (R. 100, 101, 102).

The accused, his wife and their two children stayed at the residence of a Mrs. Kurka, San Antonio, Texas, part of the month of May 1945. On 20 May 1945, accused had a black Dodge sedan automobile there which Mrs. Kurka thought was "about a 1939 model." When asked if he had bought a new car, accused said "I certainly did . . ." Accused and his family left this residence on 20 May 1945 and did not return (Ex. J). On 21 May 1945 accused was driving a "black sedan" when he registered for himself, his wife and two children at "Cook's Courts," 5900 East 11th, Tulsa, Oklahoma (R. 23, 24, 26). On 28 May 1945, accused was seen at Neosho, Missouri, driving a black Dodge, 1941 model "four-door sedan" with a Texas license plate (R. 41). On 29 May 1945 accused twice drove a "1941 Dodge, black, fordor sedan" to a used car dealer in Tulsa, Oklahoma, and discussed the purchase of an automobile, saying that he (the accused) did not have an automobile of his own (R. 100, 101). The operator of a parking lot in Oklahoma City, Oklahoma, testified that after his noon lunch "at 11:00" on 1 June 1945 (R. 44, 49), the accused parked a "1941 Dodge, black, fordor sedan" automobile with Texas license at his lot (R. 44) and that he gave accused a parking ticket (R. 46; Ex. N). He

retained the stub corresponding with the number of this ticket (604) (R. 46;Ex. O). The accused paid rent for a week in advance (R. 47) but accused did not get the automobile (R. 45). About a week later, "the law" came and got the car. These officers had the ticket which had been given to the accused (R. 46, 47).

Other evidence established that the parking ticket given to accused was found among his personal effects after his arrest in Tulsa, Oklahoma, on 2 June 1945 (R. 55, 65) and that two members of the Sheriff's office of Tulsa County and Major Jones, Provost Marshal at Tulsa, on 4 June 1945 went to this parking lot in Oklahoma City and recovered this car (R. 55, 65, 76) which was identified as the vehicle rented by accused on 20 May 1945 in San Antonio (R. 76) and which was released to the owner's brother at Tulsa, Oklahoma, on 8 or 9 June 1945 (R. 76, 77; Ex. K).

With reference to Specifications 1 and 2, Charge III, the evidence shows that on 21 May 1945 the accused with his wife and two little children rented a cabin at "Cook's Courts" in Tulsa, Oklahoma, the accused signing a registration card showing his possession of a Dodge sedan, license AJ 4872, and rental of $21.00 which accused paid in advance for a week (R. 23, 24; Ex. L). The Winebergs were "in and out" of the courts during the week (R. 25). On 28 May 1945 accused and his family were at Neosho, Missouri, at a liquor store owned and operated by one Earl Matlock who had known accused about six months (R. 28). On 29 May 1945 Matlock went to Tulsa, Oklahoma where he saw Mrs. Wineberg, wife of the accused, and the two of them attempted throughout the night to find accused. Matlock returned to Neosho, Missouri, on 30 May 1945, but again came to Tulsa on 31 May 1945 and rented a cabin at "Cook's Courts" (R. 25, 29). Mrs. Wineberg was with him at the time (R. 29). Matlock was given cabin "#56" which was "about 30 or 40 feet" from cabin "#11" which the accused had rented and used for himself and his family (R. 25, 59). Matlock and Mrs. Wineberg then drove down town and "inquired at a couple of places . . . and didn't find anything" (apparently in a renewal of their search for the accused), and then returned to "Cook's Courts" (R. 30).

About 9:00 or 9:30 that night (31 May 1945) Mrs. Wineberg borrowed Matlock's car, a "1941 Chrysler, two-door sedan, royal," to "go make a telephone call" (R. 30, 42). She returned the car about two hours later. Matlock then went to his car to get some toilet articles out of it and discovered that his "38 caliber Police Positive Special" revolver was missing from the pocket of the car. He asked Mrs. Wineberg about it and she said the only place she could have lost it was at the filling station where she placed the call so they went there and inquired but the attendant denied any knowledge of the gun (R. 30). Matlock further testified that for six or seven years he had bought and sold pistols and revolvers and done a good bit of hunting and target shooting and that this gun was of a value of at least $40.00 (R. 31). The gun was introduced in evidence (R. 31; Ex. M).

Meanwhile, between 12:00 and 1:00 o'clock on the afternoon of 31 May 1945, accused rented a cabin at another tourist court in Tulsa, Oklahoma, called the "El Reposo." Accused did not use his correct name, Wineberg, but registered under the name of "Lt. E. Smyle," the registration card which he made out at that time and showing his name as "Smyle" being identified and introduced in evidence (R. 92, 93, 96; Ex. Q). Accused said he was to meet his wife there (R. 92). "About 9:00" that evening a lady called on the telephone asking for someone whom the tourist camp operator understood to be "Steinberg." Accused said he sometimes went by that name (R. 93). Shortly thereafter a woman driving a dark "nice new-looking" sedan car came to the "El Reposo" courts and asked for "Lt. Smyle or Wineberg" (R. 93, 94, 95) and stated that she had asked for "Smyle" earlier on the phone (R. 94). A photograph, previously identified as being that of "Lula Mae Wineberg," wife of the accused, (R. 56, 95) was identified by one of the operators of the "El Reposo" courts as being a picture of the woman who came to see "Lt. Smyle" and was introduced in evidence (R. 94; Ex. R). This woman (Mrs. Wineberg) drove the car up to the cabin occupied by accused and stopped. It was not noticed how long she stayed (R. 95). Accused "checked out" of the "El Reposo" courts between 12:30 and 1:00 o'clock the morning of 1 June 1945, saying he had to go and that the cabin could be rented again. (R. 96, 97, 98).

Returning to the events of the evening at "Cook's Courts," Matlock testified that Mrs. Wineberg came to his cabin again "a little after 11:30," asked him if he wanted "a drink," and did give him two drinks of rum and soda. Upon Matlock asking her when she had taken up drinking, she said she was worried about her husband and children and wanted a drink before she went to bed (R. 31, 32). Matlock fell asleep after taking the last drink and was awakened about 6:00 or 6:30 next morning, 1 June 1945, by Mrs. Wineberg who told him his clothes were gone (R. 32). On arising, Matlock discovered that his clothes had been removed from the closet. His car keys were wedged between the cottage door and the door facing and as he reached for them, Mrs. Wineberg grabbed them (R. 32, 35). On opening the door he found his clothes on the door-step (R. 32). His wallet containing "a little over $8000 in cash" was missing from his left rear pants pocket (R. 32, 33). Matlock did not remember whether he felt to see if the money was in his pocket when he hung up his clothes before going to bed but he "would say the money was there" (R. 39). The denominations of the money were: one one-thousand dollar bill, two five-hundred dollar bills, and the balance in fifty and one-hundred dollar bills and $220.00 in twenty-dollar bills (R. 33). The wallet also contained various licenses and receipts bearing Matlock's name (R. 33).

Matlock procured a search warrant from the Sheriff's office, Tulsa, Oklahoma, for the cabin occupied by Mrs. Wineberg (R. 34, 51, 52, 73) and when two deputies from the Sheriff's office, with Matlock, searched the cabin between 9:30 and 10:00 the morning of 1 June 1945, they found Matlock's wallet between the mattress and the mattress pad on one of the beds in the Wineberg cabin. There was $5700 still in it (R. 34, 35, 53, 73).

No fifty dollar bills were in the purse but various licenses and receipts bearing Matlock's name were there (R. 53). Mrs. Wineberg was arrested and taken into custody by the Sheriff's office prior to execution of the search warrant (R. 51, 52, 73, 74, 80).

"After lunch" on 1 June 1945, accused parked the 1941 Dodge sedan he was driving at a parking lot in Oklahoma City (R. 44, 49) and put two revolvers "a .45" and "a .38" in the trunk (R. 45). About 1:30 or 2:00 that afternoon, accused called long distance from Oklahoma City to the tourist camp ("Cook's Courts") in Tulsa and Matlock talked to him (R. 36). Matlock then drove to Oklahoma City, picked up the accused, and returned to Tulsa (R. 36). Before leaving Oklahoma City, accused paid Matlock $1100 (R. 113) on an indebtedness of "about $1700 or $1800" (R. 40, 42) which was an unsecured debt for merchandise the accused had bought from Matlock (R. 42, 44). At this time, Matlock had known the accused for slightly over four months and had had business dealings with him for about three months (R. 114).

The following morning, 2 June 1945, the accused and Matlock appeared at the Sheriff's office in Tulsa (R. 53). Members of the Sheriff's office talked to accused about the loss of the money but accused said he knew nothing about it (R. 53). They allowed accused to talk to his wife (R. 53, 57, 75). Being dissatisfied with what accused told them (R. 54, 75), these officers called in Major Jones, Provost Marshal at Tulsa (R. 54, 75) who questioned accused about his military status (R. 63, 71). Accused denied being "AWOL" so Major Jones started to take him to his (Major Jones') office (R. 63, 64) and as they started out of the court-house, accused said "I took the money" (R. 54, 64), that his wife had nothing to do with it, that he got Matlock's purse and put it under the mattress (R. 75). Major Jones had not asked accused any questions about the money up to that time (R. 64). The County authorities then arrested accused and took him into custody (R. 59, 61, 64, 70), filing charges against him on 6 June 1945 (R. 60, 88).

On 4 June 1945, two members of the Sheriff's office and Major Jones went to Oklahoma City and took possession of the 1941 Dodge sedan which accused had left there on 1 June 1945 (R. 55, 65, 76, 81). They pried open the trunk on this car while at the lot in Oklahoma City and took from it "a .45 Army revolver" and "a .38" caliber revolver identified as Exhibit "M", Matlock's missing gun (R. 44, 49, 58, 66, 76).

About 10:30 o'clock on the morning of 11 June 1945, Second Lieutenant Shepperd, Provost Marshal General's School, Fort Sam Houston, Texas, "read" and "explained" the 24th Article of War to the accused and told him that he need not make any statement but if he did, it might be used against him. No threats or promises were made. Accused then told "everything that happened" (R. 103, 105). "About noon or during the noon hour" on the same day, the substance of what accused then stated was reduced to a formal statement which was signed by the accused (R. 69, 104, 105, 109). At the

taking of this formal statement, Major Jones, Second Lieutenant Shepperd, County Attorney Dixie Gilmer, Deputies Sheriff Medlin and Wards and two or three others were present (R. 54, 68, 104). Second Lieutenant Shepperd again read the 24th Article of War to accused and the County Attorney also told accused that he did not need to answer a question if he did not choose to (R. 55) and specifically told accused that insofar as releasing Mrs. Wineberg was concerned, he (the county attorney) was not "giving any promises" (R. 68, 71, 110). According to Second Lieutenant Shepperd, the accused upon these two occasions stated, in substance, that on the afternoon of 31 May 1945 he registered at the "El Reposo" courts and at approximately 10:30 that evening he went to "Cook's Courts" on the other side of town, entered cabin number 56, which was then empty, opened a window and unlatched a screen on the back side of the cabin and then took a .38 revolver from Matlock's car which was parked in the garage by the cabin. He then returned to the "El Reposo" courts where he checked out about "1:00 a.m." He then went back to "Cook's Courts", entered Matlock's cabin, and took Matlock's pants. Having difficulty in keeping the door closed, he wedged a leather key case which he had taken from Matlock's trousers in the door, then went to cabin number 11 and left the money under the mattress of a bed in that cabin, stating he felt he was "too hot with the law authorities" and due to lack of rest he was afraid he might fall asleep and be found with the money in his possession. He then drove to Oklahoma City (R. 106, 107).

The prosecution offered the so-called written "confession" in evidence repeatedly (R. 69, 71, 78, 107) but the law member reserved ruling on its admissibility until the close of all the evidence at which time the document was excluded, the law member stating that his reasons for such ruling were based upon the fact that the testimony of the Assistant County Attorney indicated that such official was still of the opinion that the accused's wife was involved in the crime and that she was held in custody until accused signed the confession and either the same afternoon or the next morning she was released from custody (R. 122, 123).

The evidence showed that the wife of accused was released from custody on her own recognizance, either the afternoon or the next day following the signing of a confession by the accused (R. 58, 83, 90), "primarily to take care of her children" (R. 82) who had been turned over to the Welfare Department when accused was arrested (R. 58). Charges against Mrs. Wineberg were not dismissed (R. 84, 87, 90, 91).

4. After being warned of his rights by the Law Member, the accused elected to remain silent (R. 122).

Mr. Matlock was called as a witness in behalf of the accused and testified that he (Matlock) was in his cabin from 9:00 p.m. to 11:30 p.m. on the night of 31 May and that when he left the cabin, between 11:30 and ten minutes to twelve, he was wearing his trousers and that he knew where his trousers were from 9:00 p.m. to 1:00 p.m. (a.m.) 1 June (R. 112). The attitude of the County authorities was that if the remainder of the

missing money was recovered "the whole thing" (the prosecution) be dropped "solely for the benefit of the Wineberg children" (R. 112, 114). Matlock and the Winebergs had been good friends prior to this case (R. 114).

Mr. Drake, an Oklahoma City tourist camp operator, testified that the accused rented a cabin and registered at his camp sometime between "12:00 a.m. on June 1st and sunrise of that morning" (R. 116). Sunrise was about "6:00" (R. 118). About 8:00 o'clock that morning, Mr. Drake went to the cabin occupied by accused to turn off the water which was running over the lavatory. The cabin was locked. He used a pass key to enter and found two children in the cabin, a little boy between two and three years old was in bed and a little baby only a few months old was lying on a blanket on the floor (R. 117). Two pistols, an Army pistol and "a .38," were also in the cabin (R. 119). Driving time between Tulsa and Oklahoma City by car is two or three hours. (R. 118). A trailer was behind the car at 11:00 (R. 117).

The owner of the car which accused took from San Antonio testified the car had a concealed governor on it so that it would be "pretty hard to get past 50" and that a trailer attached to the car would slow it to about forty miles an hour (R. 122).

Efficiency ratings of accused from 7 November 1943 to 18 April 1945 were shown to include one rating of "excellent," five ratings of "very satisfactory" and two ratings of "satisfactory."

5. The findings of the court, as approved by the reviewing authority, convict the accused of absence without leave from his station at Fort DuPont, Delaware, from about 27 May 1945 to about 11 June 1945, of wrongful conversion of a 1941 Dodge automobile, value of about $1000, of larceny of about $8000, lawful money of the United States, and of larceny of a .38 caliber revolver, having a value of more than $20.00 and less than $50.00. The evidence clearly and beyond any reasonable doubt supports such findings as approved. The evidence disclosed that accused signed a "confession" on 11 June 1945 in which he fully admitted facts showing his guilt of these offenses and that prior to such confession he had been fully and explicitly warned of his rights under the 24th Article of War. Accused was informed that he need not make any statement but that, if he did, it might be used against him. All witnesses who testified on the subject denied that any threats or promises were made to accused at the time the statement was taken. The statement was repeatedly offered in evidence by the prosecution. Counsel for the accused objected to its admission upon the grounds that it was obtained under duress and was "incorrect" as to the facts therein stated. The law member reserved ruling upon its admissibility in order to give the defense an opportunity to present evidence to support its contentions. The only fact from which duress might be inferred was that the wife of accused was confined in the county jail at the time the statement was taken and was released from custody soon after accused executed this statement. However, the County Attorney expressly told accused prior to the execution of the statement that he was

making no promises whatsoever about releasing Mrs. Wineberg. Furthermore, although Mrs. Wineberg was released from custody, the charges against her were not dismissed. The reason assigned for her release was to enable her to take care of the two small children belonging to the couple and who had been given to the Welfare Department when both accused and his wife were incarcerated.

The law member finally excluded the statement from evidence. Apparently the gist of his reasons for such ruling was that accused was induced to make the statement in order to secure the release of his wife. This conclusion was based upon speculation unwarranted by the evidence. The affirmative testimony was that accused had the advice of civilian legal counsel shortly after he was put in jail, that he first admitted he took the money even before he was arrested and that later, having been fully warned, not only once but twice, of his rights as an accused person to remain silent and specifically told that no promises were being made to him respecting the release of his wife, he fully confessed the commission of these crimes. The record is devoid of any affirmative evidence that in fact accused was induced to make this statement in the hope or belief that by so doing his wife would be released. The evidence, considered as a whole, is convincing that the confession was voluntarily made and under the general rules involving the admissibility of confessions, should have been admitted in evidence (MCM 1928, par. 116a, p. 116). However, the erroneous exclusion of such statement redounded to the benefit of accused and clearly was in his interest and not to his prejudice. Furthermore, one of the witnesses was allowed to testify, without objection, to the substance of the statement made by the accused so that the court had the benefit of knowing that the accused voluntarily had admitted his guilt. That the wife of the accused was a party to the commission of the larcenies involved herein appears probable, despite the awkward attempt of the accused in his confession to exonerate her from blame, but the independent evidence is sufficient to sustain the conviction of the accused, whether as principal or accessory. From a moral standpoint, however, his willingness to take the blame in order to free his wife is probably the only commendable conduct on the part of accused which is revealed in the whole sordid story presented by the evidence.

6. War Department records disclose that accused is 23 years of age and married. He is a high school graduate. In civil life he kept bees and raised turkeys for a brief period. He was inducted into the Army on 3 March 1941 and served in enlisted status until 24 April 1943, on which date he was discharged to accept a commission in the Army of the United States. He was immediately ordered to active duty as a Second Lieutenant, Signal Corps. On 1 October 1943 he was relieved from assignment to Signal Corps and assigned to the Corps of Military Police.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial.

In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence, as approved by the reviewing authority, and to warrant confirmation thereof. Dismissal is authorized under Articles of War 61, 93, and 96.

_____, Judge Advocate

_____, Judge Advocate

Donald D. Kaaman, Judge Advocate

SPJGQ - CM 284981 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Edwin L. Wineberg (0-1646713), Corps of Military Police.

2. Upon trial by general court-martial this officer was found guilty of absence without leave (16 days), in violation of Article of War 61, (Specification, Charge I), wrongful conversion of an automobile in violation of Article of War 96 (Specification, Charge II), and larceny of $8000 (Specification 1, Charge III), and a revolver (Specification 2, Charge III) in violation of Article of War 93. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for eight years. The reviewing authority approved only so much of the finding of guilty of Specification 2 of Charge III as involved a finding of guilty of larceny of a revolver, value more than $20.00 and less than $50.00, approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence, as approved by the reviewing authority, and to warrant confirmation of the sentence. I concur in that opinion.

On 18 May 1945 the accused departed Fort Sam Houston, Texas, under orders for change of station, having been assigned to an organization stationed at Fort DuPont, Delaware. He was authorized to travel by privately owned automobile and allowed nine days' travel time within which to reach his new station, where he was due to report on or before 27 May 1945. He did not report as ordered and had no permission to be absent from his new station after that date. On 2 June 1945, he was arrested by the civil authorities at Tulsa, Oklahoma, and returned by them to military control there on 11 June 1945. In the meantime, on 20 May 1945, the accused rented a Dodge automobile in San Antonio, Texas, agreeing to return it on that same date. He did not return it but, accompanied by his wife and two small children, drove the car to various points in Oklahoma and Missouri during the following two weeks. During this period the accused and his family rented a cabin in a tourist camp in Tulsa, Oklahoma, in which they stayed from time to time. One Matlock, a liquor dealer from Neosho, Missouri, with whom accused had had business dealings over a period of several months, also took a cabin at the same camp. On the evening of 31 May 1945, the wife of the accused borrowed

Matlock's car, ostensibly to go to make a telephone call but actually she drove to another tourist camp in the city where she met accused who was there registered under an assumed name. When she returned the automobile to its owner, a revolver was missing from the vehicle. During that night, Matlock's clothes were removed from his cabin and his wallet, containing $8000 was taken. The wallet, with $5700 in it, was found the following day hidden in the cabin which had been occupied by accused and his family. The revolver and the automobile which accused had rented in San Antonio, Texas, were recovered at a parking lot in Oklahoma City, Oklahoma, where accused had left them on 1 June 1945. The accused confessed the commission of these larcenies. Such a course of conduct as is evidenced in this case not only demonstrates lack of the basic fundamentals of character and behavior required of an officer of the Army but involves grave moral turpitude according to civil and military standards.

I recommend that the sentence be confirmed but that the forfeitures be remitted, that the sentence as thus modified be ordered executed, and that a Federal Reformatory be designated as the place of confinement.

4. Inclosed is a form of action designated to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
1 Rec of trial
2 Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but forfeitures remitted. GCMO 838, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 285035

8 SEP 1945

UNITED STATES v. Second Lieutenant WILLIAM H. BAILOUS (O-1636951), Air Corps.	ARMY AIR FORCES EASTERN FLYING TRAINING COMMAND Trial by G.C.M., convened at Tuskegee Army Air Field, Tuskegee, Alabama, 26, 27 and 28 July 1945. Dismissal.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 93d Article of War.

Specification: In that Second Lieutenant William H. Bailous, Squadron A, 2143d AAF Base Unit, did, at Tuskegee Army Air Field, Tuskegee, Alabama, on or about 1 June 1945, feloniously embezzle by fraudulently converting to his own use the sum of about $80.00 in currency, the property of the Officer's Mess, Tuskegee Army Air Field, entrusted to him by the said Officers' Mess and into possession of which he, the said Second Lieutenant William H. Bailous, came by virtue of his duty as Assistant Mess Officer to count the daily cash income of the said Officers' Mess.

CHARGE II: Violation of the 96th Article of War.

Specification: In that Second Lieutenant William H. Bailous, Squadron A, 2143d AAF Base Unit, did, at Tuskegee Army Air Field, Tuskegee, Alabama, on or about 1 June 1945, wrongfully cause Rosa L. Gant, a civilian employee of the Officers' Mess, Tuskegee Army Air Field, Tuskegee, Alabama, to perform personal services for him, the said Second Lieutenant William H. Bailous, during time for which she, the said Rosa L. Gant, was paid by the Officers' Mess, Tuskegee Army Air Field, Tuskegee, Alabama.

He pleaded not guilty to, and was found guilty of, all Charges and Specifications. No evidence of any previous conviction was introduced. He was sentenced to dismissal. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. Evidence for the prosecution:

On 1 June 1945 and for several months prior thereto accused was Cashier and Assistant Treasurer of the Officers' Club and Mess, Tuskegee Army Air Field, Tuskegee, Alabama (R. 33). At that time Mrs. Rosa L. Gant, a civilian seamstress, was employed by the Club at $8 per day to make slip covers for furniture in the Club (R. 14). Sometime in May 1945 accused told Mrs. Gant that he desired her "to make him some slip covers." She replied that she would make them in the evenings or otherwise on her off time. She made occasional trips to Montgomery and Opelika and he asked her to be on the lookout for slip cover material. Meantime accused arranged for her to go to the house of a Mrs. Nettie Washington and measure the pieces of furniture the covers were going on, which she did. Subsequently, she advised accused that suitable material was available at a store in Opelika. Thereafter, on 1 June 1945, accused called her to his office, handed her $80 in cash from the Club fund and arranged for two enlisted men to go with her by automobile to Opelika. The $80 figure was her estimate of the probable cost of the material, based upon her personal examination of the furniture to be covered. At the time of handing Mrs. Gant the money accused also handed her a disbursement voucher, requesting her to have it signed by the merchant from whom she purchased the material. She proceeded to Opelika with the two enlisted men, purchased a quantity of slip cover material from Hagedorn & Company and, under the supervision of one of the enlisted men, had the voucher signed by the seller. The original, signed voucher was introduced into evidence as Prosecution's Exhibit 1 (R. 14-17, 19-22, 37). The purchase price of the material was $60.67 and that amount was shown on the voucher (Pros. Ex. 1). Returning to the Field, she handed the voucher and the change of $19.33 from the $80 to the clerk in accused's office, a Mrs. Johnson. At the same time she saw that the two enlisted men, who had accompanied her to Opelika, placed the material in accused's office (R. 23, 24). She next saw the material on the following afternoon "at this house" where she commenced working it into slip covers (R. 24). Upon completing the covers she was paid the sum of $32 for her work, personally by the accused (R. 25). Her trip to Opelika, however, to purchase the material was made on Club time, as she was paid by the Club for that day's work (R. 25, 26). The trip consumed approximately four hours, extending from shortly after noon until 4 or 5 o'clock (R. 7, 9, 10).

Accused's immediate superior at the Officers' Club was Captain Theodore H. Randall, who was Treasurer of the Club. Captain Randall was absent from the Field, on leave, from 31 May 1945 until about 11 June 1945 (R. 32-34). When he returned he requested that a count be made

of the cash in the Club fund to make certain that no shortage existed. On the morning of 12 June accused and an enlisted man made a count and accused reported to Captain Randall that the case was "over" by "About $19.00" (R. 35). On 20 June and 21 June 1945, Private Freeman A. Bussey was engaged in making a monthly audit of the Club fund for the Administrative Inspector. Finding a voucher for $60.67 (identified as Pros. Ex. 1) which did not bear Captain Randall's signature he inquired of Randall whether Randall would sign it. Randall thereupon questioned accused about it and accused said "Mrs. Gant made a mistake. * * * She made the mistake of taking Club money and paying for my material" (R. 37). Pressing accused further, Randall inquired of him "if he realized he had not put the money back that it was the 21st of June and had been 20 days." Accused replied that he would not be "in position to put this money back until payday." Randall finally asked accused categorically if he had given Mrs. Gant the Club money that was used for the purchase of the material and he said "Yes" (R. 37). At this point the conversation was temporarily interrupted and accused left the room. Fifteen minutes later he returned to the room and, in walking past Randall, remarked "By the way, I am putting this money back" (R. 37).

In making his audit on 21 June Private Bussey found a shortage of $88.63. Two days later he made a recheck, ostensibly after accused had returned money to the cash box, and a shortage of $29.43 was found (R. 73, 75).

As Cashier and Assistant Treasurer of the Club, accused "was responsible for making all collections and deposits due in the bank", helped "to keep room assignments of officers straight" and he was authorized to sign clearances for officers arriving at and departing from the Field. He was assigned two sergeant bookkeepers in the office and had general supervision over all bookkeeping in the Club. He and Captain Randall were the only persons who had the combination to the safe (R. 33).

4. Evidence for the defense:

After being advised by the court as to his rights as a witness, the accused elected to remain silent.

Private First Class Willie M. Lonon, a witness for the defense, testified that on two different occasions he, at the direction of accused, had taken cloth material from the supply closet in the BOQ office to the Club proper and delivered it there to Mrs. Gant, who was operating a machine. He was not able to recall the dates on which these deliveries were made, but he knew that Mrs. Gant had been working at the Club more than two months (R. 77-79).

Captain James B. Hall, a witness for the defense, testified that he had been acquainted with accused 2½ years and that accused had always impressed him as being an officer and a gentleman (R. 82).

Captain Henry B. Perry, a witness for the defense, testified that he had been acquainted with accused six months and that "he has acted like a gentleman at all times" (R. 83).

5. The Specification of Charge I alleges the embezzlement by accused of the sum of $80 in currency, the property of the Officers' Mess, Tuskegee Army Air Field. The proof required to establish the offense of embezzlement is stated in the Manual for Courts-Martial, 1928, as follows (Par. 149h):

> (a) That the accused was intrusted with certain money or property of a certain value by or for a certain other person, as alleged; (b) that he fraudulently converted or appropriated such money or property; and (c) the facts and circumstances showing that such conversion or appropriation was with fraudulent intent."

The evidence of record fully establishes every element of the required proof. As Assistant Treasurer and Cashier of the Officers' Club and Mess accused was intrusted with all cash coming into the Club fund. He took $80 in currency from the fund and handed it to an individual for use in making a purchase of material for the private use of accused. That such private use was intended by accused at the time he took the money is amply established by the testimony of Mrs. Gant that she had already examined the furniture in a private residence on which the material was to be used for slip covers and had estimated to accused that the requisite material would cost about $80. Moreover, the fact that he requested Mrs. Gant to have the merchant from whom she purchased the material sign a Club disbursement voucher covering it (Pros. Ex. 1), coupled with the fact that he had not reimbursed the Club before the voucher was brought in question by the auditor 20 days after the money was taken, plainly warranted the conclusion that accused intended permanently to deprive the Club of the money. Nor is it material that less than the full amount of the $80 was used in making the purchase. It was estimated that the cost would be about $80 and he took that sum from the cash box to meet the expected need. Thus, in the opinion of the Board, the conviction of the Specification of Charge I is amply sustained by the evidence of record.

6. The Specification of Charge II alleges that on or about 1 June 1945 accused wrongfully caused Rosa L. Gant, a civilian employee of the Officers' Mess, to perform personal services for him during time for which she was paid by the Mess. This offense is alleged as a violation of Article of War 96. The uncontradicted testimony of Mrs. Gant, adduced in support of this Specification, is to the effect that on the date alleged, 1 June 1945, she, at the request of accused, made a personal trip to Opelika, Alabama, for him, being away from her duties at the Mess from early afternoon until about 4 or 5 o'clock in the afternoon of the same day, and that she received a day's pay from the Mess in respect of 1 June 1945. While this offense is trivial in nature by comparison with

the embezzlement offense alleged under Charge I, it nevertheless does represent a violation of Article of War 96, in that the conduct alleged was clearly prejudicial to good order and military discipline. Taken separately it might have been questioned whether this offense was serious enough to warrant its being tried by a general court-martial; but taken in conjunction with the embezzlement offense alleged under Charge I it serves the useful purpose of throwing additional light on that offense. The conviction is sustained by the record of trial.

7. The records of the War Department show that accused is 36 10/12 years of age and single. He is a college graduate and during the five years immediately preceding his entry into the service in November 1940 was employed as a bookkeeper in the Finance Department of the City of New York. He was commissioned a second lieutenant, AUS, Signal Corps, upon graduation from Officer Candidate School, Fort Monmouth, New Jersey, on 30 November 1942.

He was reprimanded and fined $75 under Article of War 104 on 12 August 1944 for overindulgence in alcohol and disorderly conduct in quarters.

8. The court was legally constituted and had jurisdiction of the accused and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of either Article of War 93 or Article of War 96.

Thurman N. Taffy, Judge Advocate

William H. Gambrell, Judge Advocate

Robert E. Trevethan, Judge Advocate

SPJGH-CM 285035 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant William H. Bailous (O-1636951), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of embezzling the sum of $80, in violation of Article of War 93 (Specification of Charge I); and guilty of wrongfully causing an employee of the Officers' Mess at his station to perform personal services for him during duty hours, in violation of Article of War 96 (Specification of Charge II). He was sentenced to dismissal. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

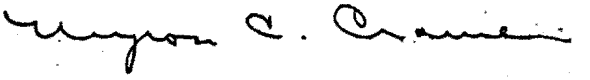
3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. I concur in that opinion. While serving as Assistant Treasurer and Cashier of the Officers' Club and Mess, Tuskegee Army Air Field, Tuskegee, Alabama, on 1 June 1945, accused embezzled $80 in currency from the Mess fund and delivered it to a seamstress employed by the Mess for use in purchasing, in a nearby town, a quantity of slip cover material which accused donated to a female friend. The trip to the nearby town to purchase the material was made at the personal request of the accused. It was made on time paid for by the Mess and consumed between four and five hours. While the offense under Charge II is relatively minor in nature, the crime of which accused was convicted under Charge I is one involving moral turpitude and brands him as unfit to continue as an officer. There appear to be no mitigating or extenuating circumstances. I recommend that the sentence be confirmed and carried into execution.

4. This officer was fined $75 and reprimanded under Article of War 104 on 12 August 1944 for overindulgence in alcohol and disorderly conduct in quarters.

The Staff Judge Advocate's Review, attached to the record of trial, contains the following statements respecting accused's general character and behavior as an officer:

> "His station commander describes him as undesirable, undependable and unreliable. He has been repeatedly subjected to administrative action for delinquencies in his personal accounts and for official misconduct."

5. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.



2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed and ordered executed. GCMO 449, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 285128

1 SEP 1945

UNITED STATES v. First Lieutenant WILLIAM M. HODGES (O-1175165), Adjutant General's Department.	NEW YORK PORT OF EMBARKATION ARMY SERVICE FORCES Trial by G.C.M., convened at Brooklyn, New York, 23 July, 2-3 August 1945. Dismissal.

OPINION of the BOARD OF REVIEW
LYON, LUCKIE, MOYSE and SYKES, Judge Advocates.

1. The Board of Review has examined the record of trial in the case of the above named officer and submits this, its opinion, to The Judge Advocate General.

2. The accused was arraigned and tried on the following Charges and Specifications:

CHARGE I: Violation of the 95th Article of War.

Specification: In that First Lieutenant William M. Hodges, Adjutant General's Department, Adjutant General's Pool, Headquarters, New York Port of Embarkation, Brooklyn, New York, was at New York, New York, on or about 7 July 1945, in a public place, to wit, "Merten's Bar and Restaurant", 156 East 34th Street, New York, New York, drunk and disorderly in uniform.

CHARGE II: Violation of the 96th Article of War.

Specification 1: In that First Lieutenant William M. Hodges, * * *, did, at "Merten's Bar and Restaurant", 156 East 34th Street, New York, New York, on or about 7 July 1945, wrongfully strike Private Frank T. Egan on the side of the face with his fist.

Specification 2: (Finding of not guilty).

Accused entered a plea of not guilty to all Charges and Specifications. He was found guilty of Charge I and its Specification, and guilty of Charge II and Specification 1 thereof, but not guilty of Specification 2. There was no evidence of previous convictions. He was sentenced to be dismissed the

service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. Evidence introduced by the prosecution to support the Charge of assault was substantially as follows:

Private Frank T. Egan was assigned to duty at the postoffice in Long Island City, New York, and on 6 July 1945 worked from 1600 hours until 2400 hours. Upon completion of his duty he went to Merten's Restaurant located on 34th Street in New York City where he met, by appointment, Mrs. Peggy Rich Tree. When Egan entered Merten's Mrs. Tree was seated at the first table from the rear end of the bar; the bar being toward the front of the restaurant (R. 15). Theretofore Mrs. Tree had spent the evening, from about 1800 hours until about 2300 hours, at her home and at her "store" (R. 52). She arrived at Merten's alone at about 2345 hours to await Egan who arrived about 0030 hours on 7 July 1945 (R. 41,47). Accused entered Merten's about the same time Mrs. Tree arrived (R. 47) and she saw him consume four or five Martinis and whiskeys (R. 25,47). Subsequently, Mrs. Tree testified that she first saw accused about the time Egan arrived and that accused was then seated at one table while she sat alone at a different table (R. 42). When Egan entered he saw Mrs. Tree seated alone at a table about eight feet from the bar and accused sitting at a table toward the rear talking with another patron of the place. Egan sat down with Mrs. Tree and ordered drinks. About half hour later the accused came uninvited to Mrs. Tree's table and, according to Egan, had some conversation with Mrs. Tree which Egan did not hear (R. 16). Mrs. Tree stated that when accused came to the table he asked Egan to buy him a drink, but as the waiter was not prompt with service accused went to the bar saying he would get the drinks (R. 42). In any event, accused left the table shortly and went to the bar. In a few moments he returned to the table bringing with him a Mrs. Anderson who was an acquaintance of Mrs. Tree and Egan (R. 17,42). Mrs. Anderson sat at the table, though she did so reluctantly (R. 18).

Egan had known accused about six weeks and during that period accused had been a constant source of annoyance to both Egan and Mrs. Tree (R. 23,31). Mrs. Tree had known accused for two or three months (R. 52) and on another occasion had to call the Military Police to prevent being annoyed by accused (R. 53). In order to keep accused from annoying her, she had previously told accused that she and Egan were married. However, when defense counsel interviewed her in preparation of this case, she also told defense counsel that she and Egan were married (R. 53). Egan and Mrs. Tree both denied from the witness stand that they were married. Egan had never seen accused with Mrs. Tree (R. 23) and had no information which led him to believe that accused had any engagement with Mrs. Tree on this night, and he did not hear Mrs. Tree tell accused that she would see him later (R. 24). Mrs. Tree testified she did not have a "date" with accused that evening, did not enter Merten's with him, did not send any messages to accused while she was in Merten's, and did not have dinner with either accused or a Miss Josephine

Allwell (R. 51,52).

When accused and Mrs. Anderson joined Mrs. Tree and Egan at their table, Mrs. Tree feared there would be some trouble (R. 31,42) and, after three or four minutes, Mrs. Tree suggested to Egan that they leave. They left and went to another tavern in the neighborhood (R. 18). They returned to Merten's about 0230 hours (R. 18) and, noting that accused's car was not parked in front as it had been formerly, they did not see accused so they entered and sat at the bar (R. 19,44). Egan was seated talking with Mrs. Tree when accused came to their place at the bar and, after placing his hands between them, elbowed Egan aside telling him to "take off" (R. 23). Accused then started a conversation with Mrs. Tree (R. 23) asking her to decide whether she was going with him or with Egan (R. 44). Egan asked accused to leave (R. 20,44) or to "Please leave, Sir," to which accused paid no attention and told Egan a second time to "shove off" (R. 45). Egan states at that point someone "escorted" accused to the rear end of the bar (R. 20). Mrs. Tree testified that accused left unescorted and returned to Mrs. Anderson who, at that time, was in the company of an Army corporal (R. 45). Mrs. Tree further testified there was some confusion in accused's party, whereupon accused suddenly returned to Egan and struck him (R. 45). Egan only knows that a few minutes after accused first left him at the bar he received a blow from behind which landed on the left side of his face and he was rendered unconscious (R. 20); he does not know who struck him (R. 25). In falling, Egan struck his head on the foot rail at the bar (R. 45,58,62) and remained unconscious for fifteen or twenty minutes, according to Mrs. Tree and Egan (R. 20,45). A patron of Merten's, Mr. George Scott, testified Egan was on the floor only a half minute or a minute (R. 62). Mr. Scott also testified he saw accused talking with Egan at the bar, and that Egan, apparently thinking the conversation had ended, turned his head and was immediately struck by the accused (R. 62). Mr. Scott then telephoned for the military police (R. 67). Mrs. Tree was occupied in helping revive Egan and did not notice accused, but saw him a few minutes later and noted his head was bleeding. Mrs. Anderson and the Corporal took accused to Bellvue Hospital and shortly thereafter the Military Police arrived (R. 42). The Military Police were on the scene before Egan regained consciousness and he did not see accused at that time (R. 20).

4. Evidence offered to support the charge of drunkenness may be summarized as follows: When accused joined Mrs. Tree and Private Egan at their table in Merten's Restaurant sometime after 0030 hours on 7 July 1945, there was an odor of alcohol on his breath, his speech was blurred (R. 21), and his gait was unsteady (R. 50). He was unshaven and without hat or tie. His shirt collar was open and the shirt was "sticking out of his pants". His shoe laces were unfastened. His uniform was wrinkled, soiled, and looked "terrible" (R. 22,23,48,59,63). When Mrs. Tree and Egan returned to Merten's at about 0300 hours the condition of accused was unchanged. His speech was still blurred (R. 21,48), uniform soiled and wrinkled (R. 48), gait unsteady (R. 50), and he was "quite intoxicated"

(R. 49) to the extent he was drunk (R. 22,49,63). Prior to trial, Egan told the investigating officer that accused was not drunk on either occasion but had been drinking (R. 26). While on the witness stand Egan testified he wished to retract that statement and now say that accused was drunk at 0300 hours but was not drunk at 0030 hours (R. 33,34).

5. Accused was examined by a neuropsychiatrist on 12 July 1945 (R. 36) and then told the psychiatrist that on 6 July he had signed out for a new post and was saying farewell to some old friends. That he was with a woman at Merten's Restaurant when a private entered the restaurant causing the woman to divide her attentions between accused and the private. Accused told the woman to make up her mind as to whether she wished to accompany him or the private. The private then "butted in" the conversation, calling accused a 90-day wonder, which caused accused to become upset and he struck the private. Seconds later some unknown soldier hit accused from behind and accused sustained cuts on his head. Accused then left the restaurant and drove to Bellvue Hospital for treatment. Accused stated he bore no malice toward the private but struck him to defend his (accused's) honor (R. 37,38).

6. Evidence on behalf of the defense may be summarized as follows: Mr. Merten, the proprietor of Merten's Restaurant, saw accused sitting at a table with Mrs. Tree about 2100 hours on 6 July 1945 and there was another couple sitting at the same table (R. 71,77). Accused was in the restaurant from about 2100 hours until 0330 hours and was sober during that time (R. 73). Mr. Merten had served accused about four glasses of beer (R. 74). Accused was properly dressed, wore a tie, and "looked very fine and respectful." (R. 81) At about 0300 hours, Mr. Merten saw "a little disturbance" at the bar and heard Egan tell accused, "I kill you, I kill you" (R. 71). Accused was then at the bar talking with Mrs. Tree but was not standing between Mrs. Tree and Egan (R. 76). Shortly after the "disturbance," accused left the restaurant with Mrs. Anderson and Mr. Merten did not again see accused until the day of trial (R. 82).

Miss Josephine Allwell (70 years of age) testified she had been a friend of Mrs. Merten for more than 20 years and sometimes helped serve patrons of the restaurant. She had been acquainted with accused for two or three months and also had known Mrs. Tree previous to 6 July 1945 (R. 85,86). On the night of these incidents she arrived at Merten's about 1700 hours and saw accused sitting at a table with Mrs. Tree and another person. She served two drinks to accused's table. About 1800 hours Mrs. Tree mentioned going to some other place for dinner and accused invited the witness to accompany them (R. 86). Witness selected a place to which they might go and she went with Mrs. Tree and accused to dinner (R. 87). They had two beers at dinner (R. 92) and then went to a place in Greenwich Village before returning to Merten's. They arrived back at Merten's sometime between 2300 hours and 2400 hours and sat at a table where accused and Mrs. Tree had another drink (R. 87). Shortly thereafter Private Egan entered

Merten's and sat at a table near where Mrs. Tree was sitting with accused and witness. Mrs. Tree went to Egan's table after first telling accused not to be impatient and that she would return (R. 88). While sitting with Egan, Mrs. Tree on two occasions called the witness to Egan's table to whisper a request that witness deliver a message to accused telling him to be patient that she would return to his table(R. 89). Mrs. Tree and Egan then left and were gone "at least three quarters of an hour." Accused remained in the restaurant and talked with Mrs. Anderson (R. 89). While accused was talking with Mrs. Anderson a corporal approached his table and "kind of annoyed" accused who bought the corporal a drink and then told him to be "on your way, young fellow." The corporal "got mad" and backed toward the bar saying, "We'll fix him tonight" (R. 90). Thereafter Egan and Mrs. Tree returned to Merten's. Mrs. Tree looked "tipsy" and Egan was gesticulating with his hands. Egan suddenly said, "I will kill him tonight. I will kill him tonight. Let me go." Mrs. Tree held him, saying, "Don't go near him." Accused then started toward Egan but changed his mind and returned to his place at the bar. Egan continued "hollering and shouting." Accused asked him, "Why don't you stop?" Egan then put up his arm and made a motion to strike accused, but accused was faster and knocked him down. Egan was up from the floor immediately (R. 90, 91,98). The corporal who had been at accused's table then hit accused causing blood to flow from accused's head. Mrs. Anderson went to the hospital with accused in accused's car. Accused was driving (R. 105). Accused was not drunk, though he did talk more than usual. He was fully dressed but did remove his tie during the afternoon while an artist made a sketch of accused (R. 93).

Mrs. Anderson testified that she had known accused about two months (R. 107), and on the evening of 6 July 1945 had been with accused about two and a half hours drinking beer. Accused had seven or eight beers during the evening (R. 111). She voluntarily accompanied accused to the table of Egan and Mrs. Tree and remained with accused after Egan and Mrs. Tree left the restaurant (R. 112). Accused was "perfectly sober" all during the evening (R. 113). She also went with accused in his car to the hospital. Accused drove. The witness does not know how to drive a car (R. 108).

7. Accused, having been fully advised as to his rights with reference to becoming a witness, elected to testify under oath. He testified he was commissioned on 24 December 1942 and assigned to the 87th Division where he remained until September 1944. He was then assigned to the 71st Division. The latter Division was alerted and accused, being over-age in grade, was transferred to the Field Artillery Replacement Center at Fort Bragg, North Carolina. He was thereafter, in January 1945, assigned to the Army Postal Service and was detailed to the Army Courier Service until 15 May 1945 when he was assigned to The Adjutant General's Replacement Pool at New York City (R. 114).

Prior to 6 July 1945 accused had been assigned to a new station at Camp Lee, Virginia, and was leaving New York City on 7 July 1945. Before leaving he wanted to see some friends and went to Merten's Restaurant where he had an appointment to meet Mrs. Tree. He met her there about 1800 hours and sat with her at a table. They were later joined by Miss Allwell and talked until about 2000 hours when they went out for dinner. They spent about two hours at dinner, then went to an O'Henry Shrine known as Pete's Tavern where they stayed for about forty minutes, returning to Merten's about 2300 hours. Accused and Mrs. Tree sat at a table while Miss Allwell assisted Merten's in serving customers. About 0030 hours Egan entered the restaurant and sat at an adjoining table. Mrs. Tree then told accused not to be impatient, that she would "get rid" of Egan. Mrs. Tree then joined Egan at his table and subsequently, on two occasions, sent messages to accused by Miss Allwell telling him not to be impatient that she would "get rid" of Egan and rejoin accused. Accused then went to the bar and engaged in conversation with Mrs. Anderson. They decided to join Mrs. Tree and Egan,which they did, but Mrs. Tree and Egan left within about five minutes. Accused and Mrs. Anderson then sat at a different table and were joined by a Technician Fifth Grade, previously known by accused. Accused invited the T/5 to have a drink, but shortly the newcomer became loud and boisterous so accused asked him to leave. As the T/5 left the table he remarked, "We'll fix him tonight." Accused and Mrs. Anderson then went to the bar and sat. After awhile Mrs. Tree and Egan entered and sat at the bar about twenty feet from accused. Accused paid them no attention until he heard Egan "yell out," "I'll kill him." Accused then saw that Egan was looking in his direction and pointing his finger at accused. The accused then started toward Egan to determine what he was talking about but, finding Egan's words were apparently in bluff, returned to Mrs. Anderson. Accused planned to leave early next day for his new station so he went to Mrs. Tree and asked her to make up her mind whether she was going with accused or with Egan. In doing so, accused told Egan to "shove off" and turned his back to Egan. Before Mrs. Tree could answer, Egan stood up and drew back his fist as if to hit accused. To defend himself the accused struck Egan first and Egan fell to the floor. Accused immediately received a "terrific" blow on his jaw which cut his mouth and forehead. Accused did not see the blow coming and was almost knocked out (R. 114-116). Accused hung on to the bar and looked up to see a T/5 "lowering" at him. He told the soldier to leave, and the soldier did (R. 127). One of the "ladies" gave accused a wet towel to stop the flow of blood from his forehead and he requested Mrs. Anderson to accompany him to the hospital. They went to the hospital in accused's car which was parked directly in front of Merten's (R. 117).

Previous to this evening the accused had seen Mrs. Tree by appointment on fifteen or twenty occasions (R. 117).

On this particular evening accused had consumed nine or ten beers (R. 121) but was quite sober (R. 117). He had not shaved since about 0800

on 6 July (R. 119) but his uniform was clean and there had been no occasion for it to become soiled (R. 121). After returning from dinner with Mrs. Tree and Miss Allwell, an artist wanted to make a sketch of accused and requested accused to remove his tie. Accused removed his tie for that purpose but replaced it (R. 118).

8. In rebuttal the prosecution introduced as a witness another patron of Merten's, Miss Katherine Coburn, who was present during the altercation between accused and Egan. She saw accused sitting at a table alone and also saw Egan and Mrs. Tree sitting at a different table (R. 132-3). She saw nothing unusual about accused's uniform (R. 136) but did see him conversing with Egan at the bar (R. 133). She was too far from them to hear what words were said (R. 135), but her view was unobstructed and she did not see Egan raise his hand as if to strike accused, but she did see accused hit Egan (R. 134).

9. From the foregoing summary of the evidence it is obvious that the testimony of the witnesses is in hopeless conflict. The court, as was its prerogative, elected to believe the prosecution's witnesses in their material testimony and to disbelieve the witnesses for the defense. The evidence discloses a situation where, in a crowded public place, a drunken officer vies with an enlisted man over a protracted period of time for the affections and attention of a woman who did not want the accused's attentions. On at least two occasions, by his own admission, accused sought to press his attentions on the woman while she was in the company of the enlisted man. The affair between the two men terminated only when the officer without warning or justification hit the enlisted man on the jaw, knocking him unconscious. Such conduct on the part of the officer under the circumstances of this case is not becoming an officer or gentleman, and is violative of Article of War 95. The witnesses for each side were, apparently very antagonistic to the witnesses of the other side. The testimony can not be reconciled. It was, however, within the court's province to find from the evidence that accused was drunk and disorderly and that he "wrongfully" struck Private Egan. The Board of Review in scrutinizing proof hesitates to weigh evidence or seek to test the credibility of the various witnesses, nor does it care to substitute its judgment for that of the courts and the reviewing authority in determining controverted questions of fact. There was ample evidence adduced by prosecution to support the findings of the court.

10. There was no evidence of previous convictions presented to the court. However, the review of the Staff Judge Advocate contains information indicating accused has been engaged in other disorderly acts while in public places. On one such occasion accused traded blows with a fellow officer while seated at a table in a New York night club, receiving a cut lip as the result. Neither has accused's official conduct been above reproach. On several occasions he has been late two or more hours in reporting for daily duty, and on other occasions has neglected his official duties while attending to personal affairs. There have been two occasions when accused

deliberately disobeyed orders so that he could complete personal matters.

11. Records of the War Department disclose that accused is 36 years of age and is married. He entered the military service as an enlisted man on 29 May 1942 and was commissioned a second lieutenant (AUS) in the Field Artillery on 24 December 1942. He was ordered to extended active duty that day. On 5 January 1945 accused was detailed for duty in The Adjutant General's Department. On 9 April 1945 he was promoted to first lieutenant (AUS). During his tour of extended active duty accused has received eleven efficiency ratings, as follows: five "very satisfactory"; five "excellent"; and one "superior."

12. The court was legally constituted and had jurisdiction of the person and the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 96 and mandatory upon conviction of a violation of Article of War 95.

Tenny G. Fox, Judge Advocate

Charles G. Fuchs, Judge Advocate

(On Leave), Judge Advocate

Charles S. Sykes, Judge Advocate

SPJGK - CM 285128 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

SEP 7 1945

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant William M. Hodges (0-1175165), Adjutant General's Department.

2. Upon trial by general court-martial this officer pleaded not guilty to and was found guilty of being drunk and disorderly in uniform in violation of Article of War 95 (Charge I, Specification), and of an assault on an enlisted man in violation of Article of War 96 (Charge II, Specification 1). He was found not guilty of Specification 2 of Charge II, alleging a further assault on the same enlisted man in violation of Article of War 96. No evidence was introduced of any previous conviction. He was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings of guilty and the sentence.

On 6 July 1945 accused was present in Merten's Restaurant in New York City when Private Frank T. Egan entered and sat at a nearby table with a Mrs. Tree. Shortly thereafter accused, uninvited, joined Mrs. Tree and Private Egan at their table. Mrs. Tree and Egan had previously been annoyed by accused so, fearing there would be some disturbance, Mrs. Tree suggested to Egan that they leave. They went to a nearby tavern where they remained until about 0230 hours then returned to Merten's. After first looking and not seeing accused, they re-entered Merten's and sat at the bar. Accused then approached them and placed himself between Mrs. Tree and Egan, telling Egan to "shove off," and requested Mrs. Tree to make up her mind whether she was going to accompany him (accused) or Egan. Private Egan asked accused to "Please leave," and accused did leave for a moment but suddenly returned and struck Egan on the jaw with his fist, knocking Egan unconscious. During this period there was an odor of alcohol on the breath of accused, his speech was blurred, his gait was unsteady, his uniform was wrinkled and soiled, he was unshaven, and, in the opinion of two witnesses, he was drunk.

4. The record of trial presents a picture of an officer being in a public place in a drunken and dishevelled condition vying with an enlisted

man for the attentions of a woman, and carrying the contest to such an extent that he struck the enlisted man an unprovoked blow. The review of the staff judge advocate indicates that accused has been disorderly in public on a previous occasion when he traded blows with a fellow officer while seated at a table in a New York night club. Instances were also cited where accused has been several hours late for his daily duties and has on occasions deviated from his assigned tasks in order to accomplish personal missions. The offenses of which accused has been found guilty constitute serious breaches of discipline and are wholly unbecoming an officer and a gentleman. I recommend that the sentence be confirmed and carried into execution.

5. Accused has been a commissioned officer since 24 December 1942. His efficiency ratings show he has been rated as "Superior" once, as "Excellent" five times, and as "Very satisfactory" five times.

6. Consideration has been given to a letter written on behalf of accused by Senator Kenneth McKellar. The letter is attached to the record of trial.

7. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

Myron C. Cramer

3 Incls
1 Rec of trial
2 Form of action
3 Ltr fr Sen McKellar

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed and ordered executed. GCMO 434, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 285158

U N I T E D S T A T E S	INFANTRY REPLACEMENT TRAINING CENTER
v.	Trial by G.C.M., convened at Camp Blanding, Florida, 6 August 1945. Dismissal, total forfeitures and confinement for two (2) years.
Second Lieutenant GORDON A. BURR (0-1845123), Infantry.	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE: Violation of the 95th Article of War.

Specification 1: In that Second Lieutenant Gordon A. Burr, Company E, 219th Infantry Training Battalion, did, at Camp Blanding, Florida, on or about 24 April 45 with intent to defraud, wrongfully and unlawfully make and utter to the Camp Blanding Exchange, Camp Blanding, Florida, a certain check in words and figures as follows, to wit:

Lexington, Nebr. 24 April 1945 NO____

LEXINGTON STATE BANK 76-143

Pay to the Order of Camp Blanding Exchange $15 00

Fifteen and no/100 DOLLARS

For #3035 /s/ Gordon A. Burr
2nd Lt Inf
01845123

and by means thereof, did fraudulently obtain from the Camp Blanding Exchange fifteen Dollars and no cents ($15.00), he the said Gordon A. Burr then well knowing that he did not have and not intending that he should have sufficient funds in the Lexington State Bank, Lexington, Nebraska, for the payment of said check.

Specification 2: Similar to Specification 1 except that check was made and uttered on 28 April 1945, and was in the sum of $20.

ADDITIONAL CHARGE I: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Gordon A. Burr, Company E, 219th Infantry Training Battalion, did, without proper leave, absent himself from his organization and station at Camp Blanding, Florida, from about 1030 29 May 45 to about 1815 29 May 1945.

ADDITIONAL CHARGE II: Violation of the 58th Article of War.

Specification: In that Second Lieutenant Gordon A. Burr, Company E, 219th Infantry Training Battalion, did, at Camp Blanding, Florida on or about 4 June 1945, desert the service of the United States and did remain absent in desertion until he was apprehended at Jacksonville, Florida on or about 11 July 1945.

As to Additional Charge II and its Specification accused, by appropriate exceptions and substitutions, pleaded guilty to, and was found guilty of, absence without leave, in violation of Article of War 61. He pleaded not guilty to, and was found guilty of, all other Charges and Specifications. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for seven years. The reviewing authority approved only so much of the Specifications of the Charge as involved findings of "guilty of the wrongful and unlawful making and uttering" of the checks "in the manner and at the time and place therein alleged" and only so much of the finding of guilty of the Charge as involved a finding of guilty of a violation of Article of War 96; approved only so much of the sentence as provided for dismissal, total forfeitures and confinement at hard labor for two years; and forwarded the record of trial for action under Article of War 48.

3. Evidence for the prosecution: Accused, a member of Company E, 219th Infantry Training Battalion, 67th Infantry Training Regiment, Camp Blanding, Florida, "negotiated" the checks described in Specifications 1 and 2 of the Charge to the Camp Blanding Facility Office of the Atlantic National Bank of Jacksonville, Florida, on the dates alleged and received the face amount of each instrument in cash (R. 8; Pros. Exs. A, B). They were presented to the drawee bank for payment on 29 April and 4 May 1945, respectively, and were dishonored because his account was overdrawn (R. 8; Pros. Ex. C). He subsequently redeemed them on 21 May 1945 (Pros. Ex. B).

About 1000 on 29 May 1945, battalion headquarters called for him, but he could not be located in his company area. Although he had no permission to be away, he did not return to the company until 1830 that evening (R. 8, 9; Pros. Ex. D). Again, on 4 June 1945, he was found to be away from his company without official permission. His unauthorized absence continued until 11 July 1945 when he was apprehended in a hotel in Jacksonville, Florida (R. 10, 12; Pros. Exs. E, F). At the time of his arrest he stated that he had just arrived in Jacksonville and was on his way back to Camp Blanding to surrender (R. 19).

4. Evidence for the defense: Accused, after explanation of his rights as a witness, elected to testify in his own behalf (R. 15). He asserted that at the time he wrote the checks in question he had no idea that they would "bounce", for Second Lieutenant George Malloy of Fort Benning, who owed accused $240, had promised to deposit that amount directly in accused's account about 1 March. As soon as he learned that the checks had been dishonored, he redeemed them (R. 15). He admitted on cross-examination, however, that prior to writing them he had received notification from the bank that his account was overdrawn (R. 17).

In explanation of his absence from his organization on 29 May 1945 he stated that he had applied for a "VOCO" to commence at 1200 that day and, thinking that it would unquestionably be granted since he had no troops at the time and nothing to do, he left camp about 1130 without waiting to obtain confirmation. (R. 16, 18). His protracted absence from 4 June 1945 to 11 July 1945 was the result of "one big binge". His wife and baby were home in Nebraska because of a death in her family and he spent most of his time in Columbus, Georgia, drinking. He telephoned Second Lieutenant William S. McClelland, his roommate, on 9 July, from Columbus, about returning to his organization and arrived back in Jacksonville on 10 July (R. 13, 16-18).

Lieutenant McClelland corroborated accused's testimony concerning the telephone call. McClelland testified that accused said he

was "considering coming back" and wanted McClelland to meet him in Jacksonville (R. 13-14).

5. Specifications 1 and 2 of the Charge, as amended by the action of the reviewing authority, allege that accused wrongfully and unlawfully made and uttered to the Camp Blanding Exchange a check for $15 on 24 April 1945 and another for $20 on 28 April 1945, in violation of Article of War 96.

The evidence for the prosecution, aided by the admissions contained in accused's testimony, establishes that accused wrote and uttered the checks, as alleged, and at a time when he knew his bank account was overdrawn. Although his action in promptly redeeming the checks when notified that they were dishonored served, in the opinion of the reviewing authority, to negative the inference of fraud, his issuance of checks without any real certainty that they would be honored was nevertheless conduct to the discredit of the military service, in violation of Article of War 96. CM 249006, Vergara, 32 BR 5, 3 Bull. JAG 289.

6. The Specification of Additional Charge I alleges that accused was absent without leave from 1030 to 1815 on 29 May 1945. The Specification of Additional Charge II, as amended by the court's findings, alleges that accused was absent without leave from 4 June 1945 to 11 July 1945.

Accused did not deny his temporary absence on 29 May 1945. If he had applied for a "VOCO" on the day, as he testified, it did not entitle him to leave his station without waiting for confirmation, and since there is no showing that any action was taken on his application, the prosecution's evidence that he was absent without leave is unimpeached.

His unauthorized absence from 4 June 1945 to 11 July 1945 was competently established by the prosecution and admitted by the accused's plea of guilty and by his testimony. The record is silent as to any extenuating reasons for the prolonged absence of 38 days. His explanation that he was on a "big binge" does not palliate but, on the contrary, tends to aggravate his offense.

7. The accused is about 27 years and 6 months of age having been born 25 March 1918. He is a native of Lexington, Nebraska, where he was graduated from high school in 1936. During the succeeding six years he did office work and was also employed as an interior decorator. He was a member of the National Guard for six years prior to entering the Army in 1942 as an enlisted man. He attended an Army Administration School as an Officer Candidate and upon completion of the course, was commissioned, on 31 March 1943, a temporary second lieutenant in the Army of the United States. Since his entry into the Army he has always been classified for limited service only because of defective vision. In 1944 accused was permitted to transfer to the Infantry

and he subsequently took a special course of instruction at the Fort Benning Infantry School.

8. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. The Board of Review is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of the 61st or of the 96th Articles of War.

Abner E. Lipscomb, Judge Advocate.

Robert J. Gomon, Judge Advocate.

Samuel Morgan, Judge Advocate.

SEP 17 1945

SPJGN-CM 285158 1st Ind
Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Gordon A. Burr (0-1845123), Infantry.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, absence without leave from 4 June 1945 to 11 July 1945, in violation of Article of War 61. He pleaded not guilty to, and was found guilty of, absence without leave from 1030 29 May 1945 to 1815 29 May 1945, in violation of Article of War 61; and of wrongfully making and uttering, with intent to defraud, two checks in the sums of $15 and $20, knowing that he did not have, and not intending that he should have, sufficient funds in the bank for payment, in violation of Article of War 95. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for seven years. The reviewing authority approved only so much of the check specifications as involved findings of guilty of wrongfully and unlawfully making and uttering the checks, in violation of Article of War 96, reduced the confinement to two years, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence as approved by the reviewing authority and to warrant confirmation thereof.

Accused cashed a check for $15 on 24 April 1945 and another for $20 on 28 April 1945, at his station, Camp Blanding Florida. Both checks were dishonored by reason of insufficient funds, but when brought to his attention on 21 May 1945 he immediately redeemed them. He was absent without leave from his place of duty for approximately 8 hours on 29 May 1945 and on 4 June 1945 he initiated a prolonged absence without leave which did not terminate until 11 July 1945 when he was apprehended in a hotel in nearby Jacksonville. According to accused he had been on a "big binge" in Columbus, Georgia, during the greater part of his 38 days absence, and was returning to camp when arrested. It is asserted in the Staff Judge Advocate's Review that while away from his station accused made and uttered to various hotels and clubs some thirteen worthless checks totalling $323.70, but that this fact was not brought to the attention of the military authorities until after the instant charges had been referred for trial.

There is no report of any previous delinquencies on the part of this officer and his reputation as an officer in the past has been good. His recent conduct, however, indicates the necessity of severe disciplinary measures. I recommend that the sentence be confirmed but that the forfeitures be remitted and the confinement be reduced to one year, and that the sentence as thus modified be ordered executed. I further recommend that an appropriate United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
Incl 1 - Record of trial
Incl 2 - Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, but forfeitures remitted and confinement reduced to one year. GCMO 433, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 285190

5 SEP 1945

UNITED STATES v. Second Lieutenant LYNNE J. DOOLITTLE (0-767156), Air Corps.	ARMY AIR FORCES WESTERN FLYING TRAINING COMMAND Trial by G.C.M., convened at Hobbs Army Air Field, Hobbs, New Mexico, 4 August 1945. Dismissal, total forfeitures and confinement for one and one-half (1½) years.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 96th Article of War.

Specification: In that Second Lieutenant Lynne J. Doolittle, Air Corps, 3017th Army Air Forces Base Unit, did, at Roswell, New Mexico, on or about 10 April 1945, wilfully, knowingly, feloniously and unlawfully enter into a bigamous marriage with Colleen Margaret Lain without having obtained a divorce from his lawful, living wife, Dorothy Maud Osborne Doolittle.

He pleaded not guilty to and was found guilty of the Charge and Specification. No evidence of any previous conviction was introduced. He was sentenced to dismissal, total forfeitures and confinement for one year and six months. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The prosecution introduced evidence to show that on 17 April 1943 a marriage license was issued by the Recorder of the County of

Franklin, State of Idaho, to Lynne James Doolittle and Dorothy Maud Osborne, and on the same day these two people were married at Preston, Idaho, by William F. Koenig, a duly ordained minister of the Presbyterian Church (R. 8-10; Pros. Exs. A, C, E). It was stipulated by the prosecution and the defense that accused had been in the military service since 16 February 1943 (R. 10).

On 10 April 1945 a marriage license was issued by the County Clerk of the County of Chaves, State of New Mexico, to Lynne James Doolittle and Colleen Margaret Lain, and on the same day these two individuals were married by H. H. Nance, a minister of the Methodist Church (R. 9; Pros. Exs. B, D). It was stipulated by the prosecution, defense and the accused that Dorothy Maud Osborne who married Lynne James Doolittle at Preston, Idaho, on 17 April 1943, was alive on 11 April 1945 (R. 13; Pros. Ex. G).

On 9 July 1945, First Lieutenant Thomas K. Campbell and a Captain Davis interviewed accused during a preliminary investigation they were conducting as a result of an affidavit received from Colleen Margaret Lain. Accused was fully advised of his rights including his right to remain silent as well as the fact that any statement he might make could subsequently be used against him. After reading the affidavit of Colleen Margaret Lain accused expressed the desire to make a statement and he did so (R. 11). In his statement dated 9 July 1945 accused admitted that he married Dorothy Maud Osborne at Preston, Idaho, on 17 April 1943, and that no divorce action has since been commenced by either party against the other. He stated that he had known Colleen Margaret Lain for some five months prior to April 1945 during which time he informed her that his divorce from his first wife would not be final until 23 June 1945. He admitted that on 10 April 1945 he and Colleen Margaret Lain were married at the Trinity Methodist Church parsonage, Roswell, New Mexico, and that he lived with her thereafter until 23 June 1945. On this last mentioned date he left Colleen Margaret Lain with her family at Bakersfield pending his assignment to a new station. He also left a note for her stating "that the divorce action had been stopped." Sometime shortly thereafter he telephoned her from Seattle and informed her "that the divorce was finished", feeling at that time that he "was so deep in the hole that it didn't make any difference" what he told her (R. 13; Pros. Ex. F).

4. After his rights had been fully explained to him, accused elected to remain silent. No evidence was introduced by the defense.

5. Although the defense and accused stipulated that the copies of the two marriage licenses and of the two marriage certificates were "true and correct and bona fide" copies of the original records on file

in the office issuing the copies, nevertheless the defense objected to the admission in evidence of these copies on the grounds that there had been no showing that accused was the individual named thereon. Over objection of the defense these copies were admitted in evidence subject to being connected subsequently with accused. The eventual admission in evidence of accused's confession amply identified accused as the individual named on these marriage records.

Identity of name raises a presumption of the identity of person although the strength of the presumption depends upon how common the name is (MCM, 1928, par. 112a). This presumption is applicable to marriage licenses and certificates and where the name on any one of such instruments is identical with that of an accused it may be presumed that the document pertains to him (CM 207264, Wilson, 8 B.R. 337). Here the identity of accused's unusual name with that appearing on the marriage licenses and the certificates created a strong presumption that accused was the person named in those instruments and warranted their admission in evidence without the prior introduction of evidence to establish the identity (CM 207264, Wilson, supra). Even were the foregoing not so, the confession subsequently introduced in evidence conclusively established that accused was in fact the person named on these documents and no prejudicial error resulted from the court's action in initially admitting these documents subject to being connected subsequently with accused (CM 252389 , Davison, 34 B.R. 45).

After copies of the marriage licenses and certificates had been admitted the prosecution offered accused's confession in evidence. Defense counsel objected thereto asserting that the corpus delicti had not been sufficiently established because the prosecution had introduced no evidence to show that accused had not been divorced from Dorothy Maud Osborne. The evidence of corpus delicti need not be such as to convince beyond a reasonable doubt that the offense has been committed but need only be such as to show that the offense charged has probably been committed (MCM, 1928, par. 114a). Furthermore, in a bigamy prosecution the burden is not upon the prosecution to establish that no divorce has been granted. Divorce is a matter of defense to a charge of bigamy and the burden of proving it is upon the accused (CM 245510, Carusone, 29 B.R. 195; WHARTON'S Criminal Law, 12th ed., Vol. 2, sec. 2043). In our opinion the corpus delicti had been sufficiently established to warrant the introduction of the confession in evidence. However, even had the confession been admitted in evidence before proof of the corpus delicti, no substantial error would have resulted. A confession may be admitted in evidence subject to eventual establishment of the corpus delicti (MCM, 1928, par. 114a). The record reveals that the corpus delicti had been amply established by the time prosecution concluded its case in chief. Accordingly, the admission and retention in evidence of the confession was fully warranted.

At the conclusion of the prosecution's case defense moved for findings of not guilty of the Charge and Specification on the grounds that the prosecution had introduced no evidence to show that accused had not been divorced from his wife. The court properly denied this motion. In the first place, accused had admitted in his statement which was in evidence that no divorce had been obtained by either him or his wife. Secondly, as has already been stated, it was not incumbent upon the prosecution to establish as an essential element of its case that no divorce had been obtained. Under a charge of bigamy the matter of divorce is matter in defense and the burden is upon the accused to establish that a divorce had in fact been obtained (See citations above).

Bigamy is an offense under Article of War 96 without relation to state law, and is committed when a person enters into a contract of marriage while a former marriage of that person still exists undissolved and the spouse of that marriage remains alive (CM 278547; Wood; CM 272642, Bailey). The record here fully establishes commission of that offense and sustains the court's findings of guilty.

6. Accused is 22 years of age. War Department records reveal that accused attended the University of Washington for one and a half years where he was a member of the Reserve Officers' Training Corps. Thereafter he was employed as a salesman in an undisclosed type of entertainment business from November 1942 to February 1943. He entered military service in July 1943 and on 8 February 1944, upon completion of the prescribed course of training as an aviation student, he was commissioned a second lieutenant and assigned to duty in the Air Corps.

7. The court was legally constituted and had jurisdiction of the accused and the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. The sentence imposed is authorized upon conviction of a violation of Article of War 96.

Thomas N. Tapley, Judge Advocate

William H. Burnell, Judge Advocate

Robert E. Trevethan, Judge Advocate

SPJGH-CM 285190 1st Ind

10 SEP 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Lynne J. Doolittle (0-767156), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of bigamy in violation of Article of War 96. He was sentenced to dismissal, total forfeitures and confinement for one year and six months. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. I concur in that opinion. On 17 April 1943, accused married Dorothy Maud Osborne in Preston, Idaho, and on 10 April 1945, while Dorothy Maud Osborne was alive, undivorced and still his legal wife accused entered into a bigamous marriage with Colleen Margaret Lain in Chaves County, New Mexico.

I recommend that the sentence be confirmed but that the forfeitures be remitted, that the sentence as thus modified be carried into execution and that a United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

Myron C. Cramer

2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but forfeitures remitted. GCMO 446, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGQ - CM 285344

UNITED STATES v. First Lieutenant PATRICK T. BURDETT (0-1637564), Signal Corps.	)	EASTERN SIGNAL CORPS TRAINING CENTER Trial by G.C.M., convened at Fort Monmouth, New Jersey, 14 August 1945. Dismissal, total forfeitures and confinement for eight (8) years.

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OPINION of the BOARD OF REVIEW
ANDREWS, BIEBER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 58th Article of War.

Specification: In that First Lieutenant Patrick T. Burdett, Signal Corps Officer Replacement Pool, did, at Fort Monmouth, New Jersey, on or about 18 June 1945, desert the service of the United States and did remain absent in desertion until he was apprehended at Buffalo, New York, and returned to military control on or about 10 July 1945.

ADDITIONAL CHARGE: Violation of the 96th Article of War.

Specification 1: In that First Lieutenant Patrick T. Burdett, Signal Corps Officer Replacement Pool, did, at Neptune, New Jersey, on or about 15 or 16 June, 1945, with intent to defraud, wrongfully and unlawfully, make and utter to one A. Haas a certain check in the following words and figures, to wit:

No. A6. 16 June, 1945
Bank of America, San Francisco, Calif.
Pay to the order of Cash

Fifty & no/100 Dollars.

$50.00/100

Tony Blue
1st Lt. Sig C.

and by means thereof did fraudulently obtain from said A. Haas cash in the amount of fifty dollars ($50.00), the said First Lieutenant Patrick T. Burdett then well knowing that he did not have and not intending he should have an account in the name of "Tony Blue" in the said Bank of America, San Francisco, California, for the payment of said check.

Specification 2: In that First Lieutenant Patrick T. Burdett, Signal Corps Officers Replacement Pool, Fort Monmouth, New Jersey, did, at or near Niagara Falls, New York, on or about 17 June, 1945, with intent to defraud, wrongfully and unlawfully make and utter to one Jeanne Owen, a certain check in words and figures as follows, to wit:

No. A26 17 June, 1945

Bank of America, San Francisco, Calif.
Branch #7

Pay to the order of Cash

Fifty and no/100 Dollars.

$50.00/100

P. T. Burdett
1st Lt. Sig C

and by means thereof did fraudulently obtain from said Jeanne Owen cash in the amount of fifty dollars ($50.00), the said First Lieutenant Patrick T. Burdett then well knowing that he did not have and not intending he should have an account in the said Bank of America, San Francisco, California, for the payment of said check.

Specifications 3, 4, 5, 6, 7: These are identical with Specification 2 except for the dates, amounts and name of person to whom uttered, which exceptions are, respectively, as follows:

Specification	Date	Amount	To Whom Uttered
3	28 June 1945	$200.00	Jeanne M. Owen
4	26 June 1945	$100.00	Jeanne Owen
5	4 July 1945	$200.00	Jeanne Owen
6	21 June 1945	$100.00	Jeanne Owen
7	18 June 1945	$150.00	Jeanne Owen

The accused's refusal to plead was treated as a plea of not guilty and he was found guilty of the Specifications and Charges. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct, for sixteen (16) years. The reviewing authority approved the sentence, reduced the period of confinement to eight (8) years, and forwarded the record of trial for action under Article of War 48.

3. Specification, Charge I

The accused was attached to the Signal Corps Officers Replacement Pool, Fort Monmouth, New Jersey, and was assigned to Section 161, Long Lines Outside at the Officers School (R. 6(1,2,4,8)). He was not present in class at 0745 on 18 June 1945 and never returned to class thereafter (R. 6(2,3)). The report of the accused's absence was forwarded on 18 June 1945 by his section leader and was received by Second Lieutenant Pearson, the Administrative Officer for the Officers School on 19 June 1945 (R. 6 (4,5)), whose duty it was to forward reports of unauthorized absences to the Commandant of the School (R. 6(4,5)). The Administrative Officer held the report until 20 June 1945 in order to verify whether the accused was in the hospital (R. 6 (5)). The report showed no hospitalization and so was forwarded (R. 6(5)). Between 1430 and 1500 on 20 June 1945 the witness made a physical examination of the accused's quarters but did not locate him (R. 6(5,6)). The accused was not authorized to be absent from Fort Monmouth, New Jersey on or subsequent to 18 June 1945 (R. 6(6)) and was not transferred or relieved from attending class (R. 6(2,3)). The morning report of the 9600 TSU, Signal Corps Detachment C, Signal Corps Officers Replacement Pool, Fort Monmouth, New Jersey, for 20 June 1945 shows the following entry concerning the accused:

> "Burdett, Patrick T (SC) 0-1637564 1st Lt atchd unasgd; fr dy to AWOL 18 Jun 0745" (R. 6(9); Pros. Ex. 1).

The accused was the only officer of that name who was enrolled at the Signal Corps Officers Replacement Pool on 20 June 1945 (R. 6(9)).

The accused was seen daily from 17 June 1945 to 10 July 1945 in Niagara Falls, New York, by Mrs. Owen, the manager of the Hotel Clifton (R. 6(15)). During this period the accused wore an officer's uniform with the insignia of a captain (R. 6(22,23)). Mrs. Owen cashed checks signed by the accused in the name of P. T. Burdett, 1st Lt. Signal Corps (R. 6(16-20); Pros. Ex. 3-8). On 10 July 1945 Captain Crowder, Intelligence Officer, District No. 4, Second Service Command, Buffalo, New York, and a Lieutenant Gibbs were directed to go to the

Statler Hotel in Buffalo, New York (R. 6(25,26)). They were informed that an officer, who was alleged to be an absentee and to have passed bad checks, was to meet a young lady in front of the telephone booths at the Statler Hotel at 2130 (R. 6(26)). At approximately 2130 Mrs. Owen, the young lady who had been described to them, appeared, identified herself and said that Lieutenant Burdett was in the bar dressed in civilian clothes, "a brown checked shirt, a tan and plaid sport jacket and brown trousers and no hat" (R. 6 (21,22,23,26,27)). Captain Crowder had the house detective go to the bar and bring the accused to the manager's office (R. 6(27)). The accused denied that he was Lieutenant Burdett and said that his name was "Blue" (R. 6(27,28)). When the accused could not produce a Selective Service card Captain Crowder called Mr. Cryan of the Federal Bureau of Investigation (R. 6 (28)). After Captain Crowder told the accused of his conversation with Mr. Cryan and that he would be put in jail by the Buffalo police the accused uttered an unintelligible scream and started running (R. 6 (28)). Captain Crowder and Lieutenant Gibbs grabbed him outside the manager's office before he could get away (R. 6(28)). When the accused started to run he dropped a key to room 924 of the Genesee Hotel in Buffalo (R. 6(28)). Detective Ralicki of the Buffalo Police Department took the accused from the Statler Hotel to police headquarters and locked him up for the night when he would not divulge his identity (R. 6 (32-34)). After the accused was booked at the Buffalo police station Captain Crowder went to the Genesee Hotel and found that room 924 had been rented to an Army captain (R. 6 (29)). In the room he found an officer's pink shirt, trousers and cap with captain's bars and Signal Corps insignia attached but there was nothing in the room to identify the owner (R. 6 (29)). The next morning at the police station the accused admitted that he was Lieutenant Patrick T. Burdett, that he was absent without leave from his station since 20 June 1945 and apologized for his behaviour of the night before (R. 6 (29,30,34)). Captain Crowder took accused into custody (R. 6(30)). The accused told Captain Crowder that his uniforms were at Niagara Falls but when Captain Crowder went for them he was told "they were in the cleaners and were not available" (R. 6 (31)). On the following morning, 12 July 1945, the accused gave Captain Crowder a note and Captain Crowder got his uniforms at the Genesee Hotel (R. 6(31,37,38)).

The accused was identified on 12 July 1945 at police headquarters by Frank Underwood, a clerk in the Genesee Hotel, as the man in a captain's uniform who had registered at 2045 on 9 July 1945 as "A. J. Stranski" and was assigned to room 924 (R. 6(35,36,37)). The accused had signed a registration card giving that name and a false serial number and "was paid up" until 1600 on 11 July 1945 (R. 6(31, 32,36,37); Pros. Ex. 9).

On 12 July 1945 the accused was turned over to the custody of Captain Lawson of Fort Monmouth, New Jersey, at Buffalo, New York (R. 6(30)). The same day Captain Lawson brought the accused, who was wearing civilian clothes, to Fort Monmouth and turned him over to

Captain Patock of the Security and Intelligence Division (R. 6(43,44)). The accused was then taken to the Post Hospital and admitted (R. 6(44)).

Specifications 1 to 7, Additional Charge

Alfred F. Haas, the manager of the Green Parrott Restaurant, Neptune, New Jersey, identified the accused as an officer he had known for "about one month or better" as "Tony Blue" (R. 6(10,11,14)). During this period he had seen him "about a half a dozen times" (R. 6 (14)). On the night of 16 June 1945 he was tending bar when the accused came in and asked him to cash a check for $100 (R. 6(11)). He agreed to let the accused have $50 and saw the accused write a check for $50 (R. 6(12)). The accused wrote the check in another room about 15 feet away and the witness gave the accused cash for the check (R. 6(12)). The check was dated 16 June 1945, drawn to the order of "cash" on the Bank of America, San Francisco, California, and signed "Tony Blue 1st Lt Sig C" (R. 6(12,13); Pros. Ex. 2). Mr. Haas indorsed the check "A. Haas". It was returned by the bank for "no account" (R. 6(13)). When the witness cashed the check he thought it would be honored by the bank and believed the accused to be a bona fide officer named "Tony Blue" (R. 6(14)).

Mrs. Owen was the manager of the Hotel Clifton, Niagara Falls, New York (R. 6(15,24)). On 17 June 1945 at the hotel she cashed a check for the accused in the amount of $50, drawn by the accused in the witness' presence to the order of "cash" on the Bank of America, San Francisco, California, Branch No. 7, dated 17 June 1945 and signed by him "P. T. Burdett 1st Lt. Sig C" (R. 6(16,17); Pros. Ex. 3). Between 18 June 1945 and 4 July 1945 she cashed five more checks for the accused similarly executed totalling $750, all drawn on the Bank of America, San Francisco, California, Branch No. 7, on the dates and in the amounts specified, on blank checks which the witness gave to the accused (R. 6(18,19,20); Pros. Ex. 4,5,6,7,8). She saw the accused sign all six checks and believed the bank would honor them (R. 6(16, 17,18,19)). Mrs. Owen gave the accused cash for the six checks and none of them were honored by the bank (R. 6(16,20,21)). About 15 July 1945 she first learned that one of the checks was not honored by the bank (R. 6(23)).

Clyde W. Shurtliff, pro-assistant cashier of the Bank of America, testified by deposition (R. 42; Pros. Ex. 10). He did not know the accused. He was familiar with the accounts in the Bank of America and its various branches in San Francisco, California. On or subsequent to 15 June 1945 there was no account in the records of the Bank of America or any of its branches in San Francisco, California in the names of "Patrick T. Burdett", "P. T. Burdett" or "Tony Blue".

There is no Branch No. 7 in San Francisco. Since 15 June 1945 there has been no Bank of America or branch thereof in San Francisco, California, other than that by which the witness was employed (R. 6 (40-42); Pros. Ex. 10).

4. The accused, after being advised of his rights, elected to remain silent (R. 6(45)). No evidence was submitted on behalf of the accused.

5. The evidence sustains the findings of guilty. The accused was found guilty of desertion in violation of Article of War 58, of one Specification of making and uttering a check with the intent to defraud by signing a false name, and of six Specifications of making and uttering checks upon a non-existent bank account with intent to defraud.

The evidence conclusively shows that the accused was absent without leave from 18 June 1945 until he was apprehended by the Buffalo police on 10 July 1945 and returned to military control on 11 July 1945. An intent not to return can be inferred from his unexplained absence, the distance traveled from his station, his concealment of his true identify by pretending to false names and rank, finally appearing in civilian attire, and making false statements as to his identity to the Buffalo police, military officers and persons with whom he dealt, his attempt to escape, his apprehension and failure to return to military control voluntarily, and the financing of his absence by cashing checks upon a non-existent bank account (CM 253604, Mann, 35 BR 1, 4).

The evidence also amply sustains the findings that the accused, with intent to defraud, wrongfully and unlawfully made and uttered seven checks, as specified, in the total amount of $850, one of which was signed with a false name, all drawn on a bank where he did not have an account, and thereby fraudulently obtained cash knowing that he did not have and not intending that he should have an account in the drawee bank for payment of the said checks. Such conduct is violative of Article of War 96.

The accused represented himself at his own request, and at his request the regularly appointed defense counsel were relieved of their duties (R. 3). The President of the Court protected the accused's rights by adequately explaining to him his right to defense counsel and giving him ample opportunity to change his mind (R.3-36). When the accused failed to plead to the Specifications and Charges the President of the Court correctly directed the trial judge advocate to "continue the case as though the accused had pleaded not guilty to the general issue" (R. 5c, 5d, 6). Procedure by the court on that basis is directed by the Manual for Courts-Martial, 1928, par. 70. The failure of the accused to plead does not invalidate the trial or findings (CM 106651, Bull. JAG 1912-40, sec. 378(1)). The identity

of the accused was proved as is required where he refuses to plead (CM 158904, Bull. JAG 1912-40, sec. 378(1)).

6. War Department records show that the accused is 23 years of age and married. He is a native of Texas and a resident of Sacramento, California. He finished high school in 1938 and attended the University of Texas for four months. In civilian life the accused was employed in Austin, Texas, as a salesman of auto parts from January to September 1940 and as a chainman in land surveying from May to October 1939. He served in enlisted status in the Regular Army from 12 September 1940 to 29 November 1942, attaining the grade of staff sergeant. On 30 November 1942 he was appointed a second lieutenant upon graduation from the Officer Candidate Course at the Eastern Signal Corps School, Fort Monmouth, Red Bank, New Jersey, and ordered to active duty in the Signal Corps. He was promoted to the grade of first lieutenant on 3 January 1945. He has served in commissioned status as a company officer, instructor, assistant intelligence officer, platoon officer and training officer and received seven performance ratings of excellent and one of very satisfactory to 21 November 1944.

7. The court was legally constituted and had jurisdiction of the person and subject matter. No errors injuriously affecting the substantial rights of accused were committed. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. Dismissal is authorized for violation by an officer of Article of War 58 and Article of War 96.

On Leave
_____, Judge Advocate.

_____, Judge Advocate.

Donald D. Hickman, Judge Advocate.

SPJGQ -CM 285344 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Patrick T. Burdett (O-1637564), Signal Corps.

2. Upon trial by general court-martial this officer's refusal to plead was treated as a plea of not guilty. He was found guilty of desertion in violation of Article of War 58 (Specification, Charge I) and of wrongfully making and uttering seven worthless checks, in the aggregate sum of $850, and by means thereof obtaining money in that amount, all with full knowledge that he did not have, and not intending that he should have an account in the drawee bank for the payment thereof (Specifications 1 through 7, Additional Charge), in one instance (Specification 1 of the Additional Charge) signing a false name to the check and obtaining $50 in money thereby, all in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct, for sixteen years. The reviewing authority approved the sentence, reduced the period of confinement to eight years, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. I concur in that opinion.

The accused officer absented himself without leave from Fort Monmouth, New Jersey, on 18 June 1945. He remained absent until he was apprehended by the city police at Buffalo, New York on 10 July 1945 and returned to military control on 11 July 1945. He was seen at Niagara Falls, New York, from 17 June 1945 to 10 July 1945 in uniform but wearing the insignia of a captain. On 9 July 1945 he registered in a hotel in Buffalo, New York under a false name. At the time of his apprehension he was wearing civilian clothes, attempted to conceal his identity by giving a false name and attempted to escape while being questioned by military officers. On 16 June 1945, prior to leaving Fort Monmouth, the accused made and uttered a worthless check for $50 to a restaurant owner at Neptune, New Jersey, to which he signed the name "Tony Blue." At Niagara Falls, New York, between 17 June 1945 and 10 July 1945 he made and uttered six worthless checks, for $50, $200, $100, $200, $100 and $150, aggregating $800. He received money for all

the checks from the manager of a hotel. All the checks were drawn on the Bank of America, San Franciso, California, where the accused had no account, either in his own name or in his assumed name of Tony Blue, and were dishonored on presentation. There is no showing of restitution made or contemplated by the accused. The sentence is commensurate with the offenses, but somewhat more severe than the needs of justice require. I recommend that the sentence as approved by the reviewing authority be confirmed, but that the forfeitures be remitted and the period of confinement reduced to five years, that the sentence as thus modified be carried into execution, and that a Federal Reformatory be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

2 Incls
1 - Record of trial
2 - Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, forfeitures remitted, confinement reduced to five years. As modified ordered executed. GCMO 452, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 285373

30 AUG 1945

UNITED STATES	)	FIRST AIR FORCE
v.	)	Trial by G.C.M., convened at Walterboro Army Air Field, Walterboro, South Carolina, 10 August 1945. Dismissal, total forfeitures and confinement for one (1) year.
Second Lieutenant BENJAMIN W. ALSTON (O-2088678), Air Corps.	)	

OPINION of the BOARD OF REVIEW
LYON, LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 64th Article of War.

Specification: In that Second Lieutenant Benjamin W. Alston, "W" Squadron, 126th Army Air Forces Base Unit (Combat Crew Training Station - Medium and Fighter), having received a lawful command from Captain Kermit E. Beary, his superior officer, to fall into a detail, did, at Walterboro Army Air Field, Walterboro, South Carolina, on or about 26 July 1945, willfully disobey the same.

CHARGE II: Violation of the 61st Article of War.

Specification 1: In that Second Lieutenant Benjamin W. Alston, * * *, did, at Walterboro Army Air Field, Walterboro, South Carolina, on or about 25 July 1945, without proper leave, go from the properly appointed place of assembly for retreat formation, after having repaired thereto for the performance of said duty.

Specification 2: (Finding of guilty disapproved by reviewing authority).

He pleaded not guilty to and was found guilty of all Charges and Specifications. No evidence of any previous conviction was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority may direct for three years. The reviewing authority disapproved the finding

of guilty of Specification 2 of Charge II, approved the sentence, but reduced the period of confinement to one year, and forwarded the record of trial for action under Article of War 48.

3. For the Prosecution.

On the dates of commission of the alleged offenses, accused was a member of "W" Squadron, 126th AAF Base Unit (CCTS-M&F), Walterboro Army Air Field, South Carolina, commanded by Captain Kermit E. Beary, Air Corps. Daily retreat formations for the men and officers of "W" Squadron were held at 1700 hours on 23 to 25 July 1945, inclusive (R. 9-12; Pros. Exs. 1,2,3).

About 1600 hours on 25 July 1945, the members of "W" Squadron assembled in the Squadron area for the scheduled retreat formation. Accused was present at "the formation at that time." According to his testimony, Captain Beary is "positive" of the presence of accused. About 1630 hours, Captain Beary ordered the assembled group to "fall in," and thereafter inspected them. He was "supposed to inspect" the group for "sunglasses" and because accused habitually carried sunglasses "paid especial attention to see if he had them on." Accused was not "in ranks." Between 1600 and 1630 hours, Captain Beary had noticed several officers, including the accused, leave the assembly area and return to the "barracks." After retreat, in which the unit had participated, a roll call was taken. Accused failed to answer to his name (R. 12-14,22,23).

About 0800 hours on the following day, a formation was held for all members of "E" and "W" Squadron. Captain Beary called the troops to attention and "called off" the names of those present at retreat formation "the night before." Those whose names were called were then excused. Approximately thirty officers, including accused, remained and were informed by Captain Beary that they had missed the retreat formation. He called them to attention and gave them "Right face, forward march." He intended to give them training in the "art of soldiering" because they showed "lack of training," and the purpose of the formation was to give them "additional training." Captain Beary did not recall that he told the group anything except that they had missed the retreat formation. Accused and Lieutenant Goodrich failed to march off with the others. Captain Beary told them to "fall in." Accused remained "still" as the other officer complied. Captain Beary "walked over" and told accused "to fall in", to which accused replied, "I refuse. I'll take the 104th." He then had accused return to his barracks (R. 14-17, 20-22).

4. For the Defense.

Affidavits of three flight officers, objections to the admissibility of which were waived by the prosecution, were introduced in evidence (R. 24, 25). According to the affidavits, the accused was present with affiants at

the flight line (Tow Target Operations) from 1300 to 1700 hours on 25 July 1945 for the purpose of getting flying time (Def. Ex. A,B,C).

Second Lieutenant Fayette J. Goodrich, Air Corps, testified that after the officers who had participated in retreat had been excused from the formation at 0800 hours on 26 July, the "commanding officer" told those remaining, including witness, that they were to be drilled "as punishment" for missing retreat (R. 26,27). Lieutenant Goodrich denied that he had tarried with accused when the group marched off (R. 27-29). Flight Officer Harry S. Long, who was also present at this formation, testified that Captain Beary had informed the officers that they would be given close order drill as "punishment" for missing retreat (R. 30-33).

The accused was fully advised by the law member with respect to his testimonial rights and elected to remain silent (R. 33).

5. Rebuttal.

In rebuttal, Captain Beary testified that accused had not requested permission to get flying time at "Tow Target" on 25 July 1945, and that he is "positive" accused was present about 1600 hours on that date in the "area for the purpose of retreat formation" (R. 34,35).

6. Specification 1 of Charge II alleges that accused on 25 July 1945 left without authority the properly appointed place of assembly for retreat formation at Walterboro Army Air Field after having repaired thereto for such duty. The Specification is appropriately laid under Article of War 61.

The evidence for the prosecution is clear that at the time and place alleged the accused was present at the designated place of assembly for retreat formation about 1600 hours, the scheduled hour, and that he left the assembly area without proper authority a short time later and failed to participate in the retreat ceremony which followed. In view of the convincing and positive testimony of his squadron commander as to accused's presence and later disappearance, the court was within its province in rejecting the assertions in the "affidavits" of the flight officers as to the presence of accused with them elsewhere during the period involved. The commission of this offense by accused is shown beyond a reasonable doubt. The findings of guilty of Charge II and Specification 1 thereunder are therefore sustained by the evidence.

7. The Specification of Charge I alleges the willful disobedience by accused at Walterboro Army Air Field on 26 July 1945 of a lawful command of his superior officer, Captain Kermit E. Beary, to fall into a detail. It is laid under Article of War 64.

The evidence clearly shows that at the time and place alleged the accused disobeyed the command of Captain Beary to fall in a formation with

other officers who had missed a retreat formation on the preceding day. That the disobedience of accused of the order of his superior officer constituted an "intentional defiance of authority" (MCM, 1928, par. 134b) is shown by the definite and unqualified language which he used: "I refuse. I'll take the 104th." The defense attempted to cast doubt upon the legality of the command by the testimony of two witnesses to the effect that Captain Beary had informed the officers in the formation that they were to be drilled as "punishment" for having missed retreat on the preceding day. However, Captain Beary testified that the purpose of the formation was to give the members of the detail "additional training *** in the art of soldiering" and that he did not recall having told the group anything except that they had missed the retreat formation. Since the purpose for which the detail was formed was the "performance of a military duty," as the court justifiably believed from Captain Beary's testimony, the order requiring accused to fall in with the detail was "disobeyed at the peril of the subordinate" (MCM, 1928, par. 134b). Under the circumstances, the evidence shows beyond a reasonable doubt the guilt of accused and amply sustains the court's findings of guilty of Charge I and its Specification.

8. War Department records show that accused is 21 years of age. He was on active duty as an enlisted man and aviation cadet from 12 November 1943 to 21 April 1945 when he was commissioned second lieutenant.

9. The court was legally constituted and had jurisdiction over the accused and of the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty of the Specifications and Charges as approved by the reviewing authority and to warrant confirmation of the sentence. Willful disobedience of the command of a superior officer in time of war in violation of Article of War 64 is punishable by death.

Tracy E. Zorn, Judge Advocate

Charles A. Luckie, Judge Advocate

(On Leave), Judge Advocate

Edward S. Sykes, Judge Advocate

7 SEP 1945

SPJGK - CM 285373 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Benjamin W. Alston (0-2088678), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of leaving without proper authority the place of assembly for duty on 25 and 26 July 1945 in violation of Article of War 61 and of willful disobedience on 26 July 1945 of the command of his superior officer to fall into a detail in violation of Article of War 64. The reviewing authority disapproved the finding of guilty as to the offense of leaving the place of assembly without authority on 26 July 1945. He was sentenced to dismissal, total forfeitures and confinement for three years. The reviewing authority approved the sentence but reduced the period of confinement to one year, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and sentence, as approved by the reviewing authority, and to warrant confirmation thereof.

On 25 July 1945 the accused deliberately left without authority the place of assembly for retreat formation and failed to participate in the retreat ceremony which followed. On the following morning, he was ordered by his squadron commander to fall in with the others who had missed the retreat formation. His disobedience of this order was deliberate, intentional and unequivocal, as shown by his words, "I refuse. I'll take the 104th." The defense sought, in effect, to justify accused's refusal by attempting to show that the purpose of the formation that morning was to punish those who had missed the retreat ceremony and, hence, the order was unlawful, but the squadron commander testified that the purpose was to give the men additional training in the "art of soldiering" - a lawful purpose.

Despite the serious nature of the offense, in view of the youth of accused (21 years), his having been a commissioned officer only three months prior to committing the offense, and his previous good record, I recommend that the sentence be confirmed but that the forfeitures and confinement be remitted, and that the execution of the sentence as thus modified be suspended during good behavior.

4. Consideration has been given to a letter from Honorable William T.

Granahan, House of Representatives, dated August 25, 1945, addressed to Major General Edward F. Witsell, Acting The Adjutant General, in behalf of accused. Consideration has also been given to a letter from Mr. Granahan dated September 6, 1945 addressed to The Judge Advocate General in behalf of accused. These letters accompany the record of trial.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

MYRON C. CRAMER
Major General
The Judge Advocate General

4 Incls
1. Record of trial
2. Form of action
3. Ltr fr Hon Wm T Granahan to TAG
4. Ltr. fr Hon Wm T Granahan to TJAG

(Sentence confirmed but confinement and forfeitures remitted. Sentence as modified suspended during good behavior. GCMO 441, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 285412

U N I T E D S T A T E S	)	FERRYING DIVISION AIR TRANSPORT COMMAND
v.	)	Trial By G.C.M., convened at Memphis, Tennessee, 19 July 1945. Dismissal.
First Lieutenant IRA L. IVEY (0-727996), Air Corps.	)	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 95th Article of War.

Specification: In that 1st Lieutenant Ira L. Ivey, Administrative Squadron "B", 554th Army Air Forces Base Unit (4th Ferrying Group), was, at or near Memphis, Tennessee, on or about 10 June 1945, in a public place, to wit, the intersection of Overton Crossing Road and Raleigh Frazier Road, drunk and disorderly.

CHARGE II: Violation of the 96th Article of War.

Specification: In that 1st Lieutenant Ira L. Ivey, Administrative Squadron "B", 554th Army Air Forces Base Unit (4th Ferrying Group), did, at or near Memphis, Tennessee, on or about 10 June 1945, wrongfully appear in a public place, to wit, the intersection of Overton Crossing Road and Raleigh Frazier Road, without his shirt, and insignia of rank.

The accused pleaded not guilty to Charge I and "by direction of the Court" pleas of not guilty were entered to the remaining Charge and all Specifications. The accused was found guilty of all Specifications and Charges and was sentenced to be dismissed the service. The reviewing authority approved the sentence, forwarded the record of trial for action under Article of War 48, and recommended suspension of the sentence in the event of confirmation.

3. The evidence for the prosecution shows that, at about eleven o'clock on the Sunday morning of 10 June 1945, the automobile in which the accused was riding collided with the car of Mr. and Mrs. Leslie P. Beaver at the intersection of Raleigh-Frazier Road and Overton Cross Road, a few miles north of Memphis, Tennessee (R. 7). When the accused emerged from his car, he had on neither hat nor shirt, but immediately put on a short-sleeved undershirt (R. 8, 13, 14, 17, 24). His actions indicated that he was highly inebriated. He staggered over to the other car and, in the absence of Mr. Beaver who had gone to summon an officer of the law, proceeded to heap abuse upon Mrs. Beaver. He called her a "god-damn son-of-a-bitch and hooked-nose Jew", threatened to "stomp [her] god-damn hook-nose in [her] face", and "reached" for her, but one of the two negroes who had been riding with him intervened (R. 9). The accused then turned his attention to others who were beginning to arrive at the scene of the accident, particularly to Mr. D. C. Braswell and Mr. Milton A. Carney, both of whom lived nearby. Mr. Braswell was told to "scram", and Mr. Carney, who endeavored to protect Mrs. Beaver, was vilified (R. 25, 33). The accused inquired of Mr. Beaver, who returned shortly to the scene, "What the god-damned hell [he was] going to do about it?" His abuses and his use of the words "son-of-a-bitch" were indiscriminate (R. 19). He became angered at two deputies from the sheriff's office, who had arrived on the scene, asserted that he had fought overseas, and addressed them as "yellow Sons of Bitches back home" (R. 37). The officers placed him in the police car and one of them, in an effort to calm him, slapped him twice (R. 38). He wore no insignia and not until he took an army-style raincoat from his car was his army status revealed (R. 12). From the odor of alcohol on his breath, from the manner in which he walked, from his appearance, language, and conduct in general, the witnesses all considered him drunk at the time (R. 9-11, 14, 20-22, 25, 30, 33, 34).

4. The accused, after his rights relative to testifying or remaining silent had been explained to him, elected to make a sworn statement in his own behalf (R. 42). He had been a student at "Georgia Tech" prior to his entry in the Army in 1940. He served as an enlisted man for about a year, qualified as an aviation cadet, received his commission on 26 July 1942, and went overseas to the North African Theatre in November of that year as a member of a "B-26 Squadron". For 48 combat missions and 180 hours "close to the front lines" he received the Air Medal with Oak Leaf Clusters and was twice recommended for the Distinguished Flying

Cross but he never received it (R. 46). Since his return to the States in October, 1943, he has engaged in "ferrying" and "pre-flight training" (R. 48).

On the evening of 9 June 1945 he and his wife attended "a barbecue" and, as did the other officers, replaced his Army shirt with a "T-shirt". Drinks were served before the meal, which took place at about 10:00 or 11:00 o'clock, and he and his wife left the party about three hours later. After reaching home they quarrelled and, in a fit of rage, he left the house, purchased and consumed a quantity of whiskey, picked up "some" negroes to drive his car, and then went to sleep (R. 43). His recollection of the accident was vague and uncertain, but he recalled the police car and the fact that he was taken to the county jail. The right side of his head was sore the following day (R. 44). He explained that a person with whom he had served overseas was jokingly called "hook-nose", and this circumstance probably accounted for the epithet which he applied to Mrs. Beaver (R. 49). His drinking habits developed after his entry into the Army and, to find relief from tension, he drank quite heavily while overseas (R. 47). Liquor had never affected him as it did on the occasion in question (R. 48). He was married in June, 1942, and has two children (R. 46, 49).

Captain Aaron W. Bortin, Medical Corps, testified that the conduct of the accused could be explained either by the alcohol which he consumed or by a slight head injury which he might have sustained in the accident. Either factor could have caused the release of inhibitions and the transfer of the resentment which the accused harbored toward his wife to the people whom he abused at the scene of the accident (R. 55, 56). He is not psychoneurotic (R. 57).

According to Major Charles A. Allard, Captain John F. Krueger, and Captain Franklin H. Reinach, all of whom had been associated with the accused, his performance of duty was of a highly creditable or superior manner and his conduct was consistent with the standards required of an officer. His "wonderful knowledge of aircraft" and his success as an instructor increased the efficiency of the pre-flight school to which he was assigned (R. 58-63). Captain Reinach considered the accused capable of further useful service and his retention in the service desirable (R. 63). The accused's "66-2" record reveals four performance ratings of "excellent" since 2 December 1944 (R. 65).

5. The Specification of Charge I alleges that the accused "was, at or near Memphis, Tennessee, on or about 10 June 1945, in a public place, to wit, the intersection of Overton Crossing Road and Raleigh Frazier Road, drunk and disorderly". This offense is laid under Article of War 95. The Specification of Charge II alleges that the accused did, at the same time and place, "wrongfully appear in a public place * * * without his shirt, and insignia of rank". This is alleged as a violation of Article of War 96.

The accused, in reviewing the events which led up to the conduct in issue, related how he and his wife attended a party on Saturday evening, 9 June 1945, how they quarrelled upon their return home, and how he stalked out of his house in the early morning hours of Sunday for the avowed purpose of getting drunk. That he succeeded is all too evident. He consumed a large quantity of whiskey, picked up two negroes to drive his car, and then lapsed into such a drunken stupor that he had only a hazy recollection of the automobile accident which occurred several hours later. The details surrounding the incident were supplied by the prosecution and portray an ugly and offensive pattern of conduct. His disheveled appearance, without proper uniform and insignia, was in itself sufficient to bring discredit to the military service. His drunken condition and opprobrious language brought the reprehensible character of his actions into even stronger focus. Such conduct, occurring on a busy thoroughfare in the presence of several civilians, was conspicuous and disgraceful and ill befitted an officer of the Army. The court was justified in finding that both Articles of War 95 and 96 were offended. Pars. 151, 152, MCM, 1928.

6. The accused is about 27 years of age and is married. After completing high school, he enrolled, in September, 1937, at Georgia School of Technology and remained a student there until February, 1939. He entered the Army as an Aviation Cadet on 11 July 1940, was commissioned a Second Lieutenant on 26 July 1942, and was promoted to the rank of First Lieutenant on 11 March 1943. For engaging in combat missions in the North African Theatre, he was awarded the Air Medal with six Oak Leaf Clusters.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 96 and is mandatory upon conviction of a violation of Article of War 95.

Abner E. Lipscomb, Judge Advocate.

Robert J. Clamm, Judge Advocate.

Samuel Morgan, Judge Advocate.

SPJGN-CM 285412 1st Ind SEP 17 1945
Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Ira L. Ivey (0-727996), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of being drunk and disorderly in a public place, in violation of Article of War 95, and, at the same time and place, of wrongfully appearing without his shirt and insignia of rank, in violation of Article of War 96. He was sentenced to be dismissed the service. The reviewing authority approved the sentence, forwarded the record of trial for action under Article of War 48, and recommended suspension of the sentence in the event of confirmation.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof.

The record shows that at about 11 o'clock on the Sunday morning of 10 June 1945, the automobile in which the accused was riding collided with the car of Mr. and Mrs. Leslie P. Beaver at a highway intersection a few miles north of Memphis, Tennessee. It became immediately apparent that the accused was drunk. He had on neither shirt nor hat nor insignia of rank. He abused practically everyone in sight, vilified Mrs. Beaver as a "god-damn son-of-a-bitch and hooked-nose Jew", and threatened to "stomp [her] god-damn hook-nose in [her] face". The law enforcement officers who arrived at the scene took the accused into custody after experiencing some difficulty in calming him.

The accused's record shows that he has been awarded the Air Medal with six Oak Leaf Clusters for meritorious achievement while engaged in operational missions in the North African Theatre of Operations. His superior officers attested his good character, his creditable performance of duty, and the desirability of his retention in the service. His conduct on the occasion in question, which was clearly the result of excessive drunking, was highly reprehensible and ill befitted an officer in the Army. In view, however, of his previous outstanding record and the recommendation by the reviewing authority that the

sentence of dismissal be suspended, it appears that clemency is warranted. I recommend, therefore, that the sentence be confirmed but that it be commuted to a reprimand and a forfeiture of $50.00 per month for four months. As thus commuted the sentence will be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
Incl 1 - Record of trial
Incl 2 - Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but commuted to a reprimand and forfeiture of $50. pay per month for four months.) GCMO 459, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 285445

UNITED STATES	)	FOURTH AIR FORCE
	)	
v.	)	Trial by G.C.M., convened at McChord Field, Washington, 15, 29 June and 6 July 1945. Dismissal, total forfeitures and confinement for five (5) years.
Second Lieutenant William R. Canavan (0-587081), Air Corps.	)	

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OPINION of the BOARD OF REVIEW
ANDREWS, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant William R. Canavan, Squadron "V", 464th AAF Base Unit, did, at Tacoma, Washington, on or about 26 February 1945, with intent to defraud, wrongfully and unlawfully make and utter to the Olympus Hotel, Tacoma, Washington, a certain check, in words and figures substantially as follows, to wit:

TO Bank of America No. 295
Name of Bank

Whitley-Hollywood Branch

Hollywood, California 26 Feb 1945
City State

PAY TO THE ORDER OF OLYMPUS HOTEL $ 25.00

Twenty-Five and no/100- - - - - - - - - - - - - - - - - - DOLLARS

ARMY SERIAL NUMBER 0587081

/s/ William R. Canavan
Signature Here Lt. A.C. Sq V 464th McChord

and by means thereof did fraudulently obtain from the Olympus Hotel, Tacoma, Washington, Twenty-Five Dollars ($25.00), lawful money of the United States, he, the said Second Lieutenant William R. Canavan, then well knowing that he did not have and not intending that he should have sufficient funds in the Bank of America, Whitley-Hollywood Branch, Hollywood, California, for the payment of said check.

Specifications 2, 3, 4, 5, 6, 7, 8, 9 and 10 are identical with Specification 1 except as to dates, amounts, check numbers and payees, which exceptions are, respectively, as follows:

Spec.	Date	Amount	Check Number	Payee
2	27 February 1945	$20.00	296	Olympus Hotel
3	3 March 1945	25.00	298	Cash
4	6 March 1945	25.00	300	Olympus Hotel
5	6 March 1945	25.00	301	Cash
6	7 March 1945	25.00	302	Olympus Hotel
7	7 March 1945	25.00	303	Cash
8	8 March 1945	25.00	305	Cash
9	8 March 1945	25.00	305	Cash
10	9 March 1945	25.00	306	Cash

Specification 11: In that Second Lieutenant William R. Canavan, Squadron "V", 464th AAF Base Unit, did, at Tacoma, Washington, on or about 7 March 1945, with intent to defraud, wrongfully and unlawfully make and utter to the Turf Smoke Shop, Tacoma, Washington, a certain check, in words and figures substantially as follows, to wit:

16-316 Whitley-Hollywood Branch 16-316 NO. 305

BANK OF AMERICA
National Trust and Savings Association

Hollywood, Calif., 7 Mar 19 45

PAY TO THE ORDER OF Cash $ 25.00

Twenty Five and no/100 -DOLLARS

/s/ William R. Canavan
Lt. AC

and by means thereof did fraudulently obtain from the Turf Smoke Shop, Tacoma, Washington, Twenty-Five Dollars ($25.00), lawful money of the United States, he, the said Second Lieutenant William R. Canavan, then well knowing that he did not have and not intending that he should have sufficient funds in the Bank of America, Whitley-Hollywood Branch, Hollywood, California, for the payment of said check.

Specifications 12, 13 and 14 are identical with Specification 11 except as to dates, amounts and check numbers, which exceptions are, respectively, as follows:

Spec.	Date	Amount	Check Number
12	7 March 1945	$25.00	303
13	8 March 1945	25.00	306
14	10 March 1945	75.00	307

He pleaded not guilty to and was found guilty of the Specifications and the Charge. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct, for five (5) years. The reviewing authority approved the sentence, designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement, and forwarded the record of trial for action under Article of War 48.

3. It was stipulated by and between the trial judge advocate, defense counsel and the accused that the accused signed five checks drawn on the Bank of America, Whitley-Hollywood Branch, Hollywood, California (R. 15, 16, 17). Four of the checks each in the amount of $25 were drawn respectively to the order of Olympus Hotel on 26 February 1945 (R. 15; Pros. Ex. 1), to the order of cash on 6 March 1945 (R. 15; Pros. Ex. 2), to the order of Olympus Hotel on 7 March 1945 (R. 16; Pros. Ex. 3), to the order of cash on 7 March 1945 (R. 16; Pros. Ex. 4) and were presented by the accused on the dates when the checks were drawn to Sally Heassler, desk clerk at the Olympus Hotel, Tacoma, Washington, who gave the accused cash for each check (R. 15, 16). On 27 February 1945 the accused drew a check to the order of Olympus Hotel in the amount of $20 and on the same date presented it to John Henning, desk clerk at the Olympus Hotel, who gave the accused cash for the check (R. 17; Pros. Ex. 5). The five checks were thereafter handled in due course of business by the Olympus Hotel (R. 15, 16, 17).

George O. Dirks, a clerk at the Olympus Hotel cashed three checks drawn on the Bank of America, Whitley-Hollywood Branch, Hollywood, California, signed by the accused, payable to the order of cash in the amount of $25 each, two being dated 8 March 1945 and the third being dated 9 March 1945 (R. 17, 18, 19, 20, 21; Pros. Ex. 6, 7, 8). In each instance Mr. Dirks took the check, gave the accused cash of the Olympus Hotel, put the check in his "bank" and "ran it through as cash" (R. 19, 20, 21).

Gerald F. Lachman, the manager of the Olympus Hotel, cashed a check drawn on the Bank of America, Whitley-Hollywood Branch, Hollywood, California, signed by the accused to the order of cash in the amount of $25 and dated 3 March 1945 (R. 22, 23; Pros. Ex. 9). He identified a similar check, dated 5 March 1945, drawn to the order of the Olympus Hotel, by the hotel's indorsement stamp but he was not sure who had cashed the check (R. 24, 25, 27; Pros. Ex. 10). The Hotel gave something in exchange for the check or it would have been "long" in its accounts (R. 26). The check might have been taken in exchange for cash, payment for a room, or part cash and part payment for a room (R. 26). This check was deposited in the bank and when it was returned unpaid it was charged to the hotel's account by the bank (R. 26, 27). The ten checks given to the Olympus Hotel (Pros. Ex. 1 to 10) were deposited in the hotel's account with the Puget Sound National Bank, were all returned unpaid after 9 March 1945, and the accused was notified of their non-payment (R. 27, 28, 29). Two or three days after the first check was returned the accused reimbursed the hotel in the amount of $25 (R. 29), or $50 (R. 33). When more checks came back the accused gave the hotel $70 to cover additional checks that might come back (R. 29, 30, 31, 32, 33). On 17 April 1945 the accused gave the hotel $125 to cover the remaining checks (R. 31, 32, 33). When the first check was returned the accused did not say where he would get the money but he made several telephone calls in an attempt to get the money (R. 34). All of the checks have now been paid by the accused (R. 28, 30). It takes a check 14 to 16 days to clear in California and be returned (R. 30).

On 7 March and 8 March 1945 Laura Ferguson, the cashier at the Turf Smoke Shop in Tacoma, cashed two checks drawn by the accused on the Bank of America, Whitley-Hollywood Branch, Hollywood, California to the order of cash and in the amount of $25 each (R. 34, 35, 36, 37; Pros. Ex. 11, 12). In each instance she gave the accused money of the Turf Smoke Shop in exchange for the checks and placed the checks in the till (R. 35, 36, 37). Ethel Schultz, a cigar counter clerk and cashier, at the Turf Smoke Shop, cashed a check for the accused on 10 March 1945. It was drawn on the same bank to the order of cash and was in the amount of $75 (R. 38, 39; Pros. Ex. 13). She gave the accused cash in exchange for the check and put the check in the cash register (R. 39, 40).

On 7 March 1945 Frank A. Johnson, the owner of the Turf Smoke Shop, cashed a check for the accused drawn and signed by the accused on the Bank of America, Whitley-Hollywood Branch, to the order of cash in the amount of $25 and gave the accused $25 in United States currency (R. 40, 41; Pros. Ex. 14). He deposited the three $25 checks cashed by the accused at the Turf Smoke Shop (Pros. Ex. 11, 12, 14) in his account with the National Bank of Washington but he did not deposit the $75 (Pros. Ex. 13) because he learned on 11 March 1945 that the checks would not clear (R. 42, 43). The three checks which he deposited (Pros. Ex. 11, 12, 14) were returned unpaid (R. 42). Shortly thereafter he had a conversation with the accused who "was surprised because he said there should be money at the bank and there was no reason why they should not have gone through" (R. 44). The checks were all paid by the accused on 17 April 1945 (R. 43, 44). In trying to contact the accused, Mr. Johnson spoke to Major Fonville, the trial judge advocate, and told him about the checks before he spoke to the accused (R. 45, 46).

It was stipulated by and between the accused, defense counsel and the trial judge advocate that the deposition of Caesar DeSchane, chief clerk of the Bank of America, Whitley-Hollywood Branch, Hollywood, California, "was orderly and properly taken and admissible into evidence as such" (R. 46; Pros. Ex. 15). The original record of the accused's account, now closed, showed a deposit of $150 on 1 March 1945 (Pros. Ex. 15(b)). The bank did not keep a record of the identity of withdrawals but only listed the amounts and returned the checks to the accused at 1221 North Mission Road, Los Angeles, California (Pros. Ex. 15, (b,c,d)). The account showed four withdrawals on 1 March 1945 in the amount of $25 each, one on 6 March 1945 in the amount of $25, and one on 7 March 1945 in the amount of $20 (Pros. Ex. 15(b)). It was stipulated that on 3 March 1945 the accused's account had a balance of $52.62 but was subject to a legitimate charge of $50 which was known to the accused and reduced the available balance to $2.62 (R. 47). Later the charge against the account was released (R. 47). Thirteen checks (Pros. Ex. 1-12, 14) were presented for payment and returned unpaid because the balance in the accused's account was not sufficient to pay them (Pros. Ex. 15 (d to l)). Two checks were presented for payment on 3 March 1945 when the available balance was $2.62, two on 9 March 1945 when the balance was $5.12, six on 13 March 1945 when the balance was $3.62, one on 14 March 1945 when the balance was $2.62, and two on 15 March 1945 when the balance was $.62 (Pros. Ex. 15(d-l)).

4. The accused after having his rights explained to him elected to be sworn and to testify in his own behalf (R. 51). He is 24 years old (R. 52). He enlisted in the Regular Army as a private in the Air Corps on 25 January 1940 and attained the grade of technical sergeant (R. 52). He was commissioned on 27 May 1944 after going to Air Corps Administration Officer Candidate School (R. 52). He has had a high school education and a nine months' night course in a business college (R. 52). Before entering the Army he worked in his father's hotel for eight or nine months doing bookkeeping and general business

work (R. 52, 77). His mother's name is Mrs. Inez A. McCarrick, his father is dead, and he has a half-sister nine years old (R. 52, 53). In the Army he had foreign service in South America from 27 February 1940 to 25 January 1943 (R. 53). While he was in Panama he sent his mother money in varying amounts of $25, $35 and $50 but he does not know the total amount (R. 53). The money was sent to his mother to use if she wanted to or needed it but he assumed that she would just hold it for him (R. 53). On 13 February 1945 he sent a letter to his mother by air mail requesting her to send $400 to his bank but he did not get a reply (R. 53, 54; Def. Ex. A). At this time he had an account in the Bank of America, Whitley-Hollywood Branch, Hollywood, California, which he had started in December 1943 (R. 54). He made 14 checks (Pros. Ex. 1 to 14) and received cash for them on the dates shown on the checks (R. 54). At the times when he issued the checks he thought that he had sufficient funds in the Bank of America to pay the checks (R. 54, 55). He knew that his account was active because he had $5 or $6 in it when he wrote to his mother to send him money (R. 55). On a prior occasion in September or October 1944 upon his request she had sent him $300 which he had received the same day by a telegraphic money order (R. 55). During the last week in March, while he was under restriction, he received statements from the bank for January, February and March addressed in care of the Provost Marshal, McChord Field (R. 55, 56). The accused never lived at 1221 North Mission Road, Los Angeles, California, knew no one who lived there, and did not authorize the bank to send his statements to that address (R. 56). The bank had no record of where they received this address (R. 56; Def. Ex. B).

On 10 March 1945 he was contacted by Mr. Johnson at the Turf Smoke Shop and told that checks to the amount of $75 had been refused payment and that, upon being called, the Bank of America said there were insufficient funds in the account (R. 56). The accused told Mr. Johnson that he could not understand it because he was sure the money was there and that the bank must have made a mistake and that he would straighten out the matter in a few days (R. 56, 57). On the same night he was called to the Olympus Hotel and was informed by Mr. Lachman that his checks were coming back (R. 57). The accused then made several telephone calls to obtain money and left $70 to cover two checks for $25 each and one for $20 (R. 57). On 13 or 14 March he wrote to his mother to find out whether she had a receipt for the money that she had sent or, if she had not sent the money, the reason that she had not sent it (R. 57). His mother sent him a letter and an affidavit and he took the affidavit to Major Fonville, the commanding officer of his squadron (R. 57, 58). A few days later he left $50 at the Olympus Hotel (R. 58). If all the checks "were coming back", he would have owed $125 more at the hotel at this time (R. 58). No reimbursement had been made to the Turf Smoke Shop, so that the total amount due was $275 (R. 59). The accused wrote another letter to his mother

in which he told her that he was "in quite a jam and had to pick up checks" and asked her to send him $300 (R. 59). He received a reply from his mother stating that the money was not readily available but he tore up the letter (R. 59). On 12 April he received a Western Union money order for $300 (R. 59). He deposited $280 in the bank and on 17 April repaid the Olympus Hotel and the Turf Smoke Shop and secured receipts from each (R. 59, 60; Def. Ex. D, E). The accused did not intend to defraud, did not know that he had insufficient funds, and believed that he had sufficient funds in the bank when he wrote the checks (R. 60).

On cross-examination the accused admitted that he wrote, presented, cashed and received money for the 14 checks (Pros. Ex. 1-14) and that there was not enough money in the bank to pay the checks (R. 60 to 67). The only reason that he thought his account was open was because there was $5 in it (R. 67). The checks were made on the basis that his mother had sent the $400 and this amount would be available to pay the checks (R. 67, 68). He wrote to his mother on 13 February and drew the first check on 27 February without checking at the bank to see if the money had been deposited (R. 68, 70). He received no word from his mother as to whether she had sent the money to the bank (R. 68). A deposit of $150 was made in the account on 1 March 1945 but the accused, after objecting to answering, admitted that he had made the deposit by Western Union from Tacoma but he denied that he had made the deposit to cover outstanding checks (R. 68, 69). When the accused wrote his mother after the checks started to come back he did not know whether or not she had sent the money (R. 71). At this time the accused knew that a court-martial investigation was under way and wanted a statement from his mother to present to the trial judge advocate (R. 71). The last address that he gave to the bank was 462d Base Unit, Camp Pinedale, California, from where he had gone to the hospital at Hammer Field and then to McChord Field, where he arrived on 24 February 1945 (R. 71, 72). He did not notify the bank of his new address (R. 72, 78). The accused sent money to his mother from 1940 to 1944 but he had no idea how much he sent in 1940 (R. 72). Finally he estimated that he sent between $150 and $200 in 1940, about $75 in 1941, around $50 in 1942 and none in 1943 and 1944 (R. 72, 73). He had previously received $300 from her which was $75 more than he had sent (R. 74). The accused's mother has a poultry farm and he knows generally about her financial condition (R. 75). The business runs in three month cycles and sometimes she has money while at other times she is hard pressed (R. 75). When he wrote for the $400 he was not aware that his mother might not be able to comply because her letters indicated that she was doing very well (R. 75, 76). The accused kept a cumulative record on a check stub of the checks that he drew, but tore up the record after he knew he was going to be tried (R. 76, 77). He did not enter anything on the record as the amount he had in the bank because

"A bookkeeper doesn't enter funds not on deposit at the time unless you have an actual . . ." (R. 77).

On redirect examination the accused stated that he also wrote other checks and that the $150 deposit on 1 March 1945 was simply a bank transaction on payday (R. 77).

Mrs. Inez A. McCarrick, the mother of the accused was a witness for the defense. She has been conducting a hatchery for five years (R. 78). About 16 or 17 February she received a letter from her son requesting her to send $400 to him (R. 79; Def. Ex. A). Several months before, she had sent her son $300 within a week or a few days after he requested the money but it may have been sooner (R. 79, 80). This time she did not send the money immediately nor reply, because she did not have the money (R. 79). Two or three weeks later she received another letter from her son referring to his first letter and asking her to hurry and send the money and to make an affidavit for him to show to his commanding officer (R. 80). She does not have this letter (R. 80). She made the affidavit on 19 March and later received a letter from the accused asking her to send $300, which she did on 12 April (R. 81, 82). When the accused was in Panama he sometimes sent money with no special understanding (R. 82). "It was his to use or mine . . . just a natural understanding, I suppose" (R. 82). She did not answer the accused's first letter immediately because she wanted to be sure that she could raise the money (R. 82). There had been illness in the family, resulting in large expenses but she had not told the accused of all the illness until after she had received his second letter (R. 82). She admitted that she gave a deposition under oath but claimed that she made a mistake when she said that she wrote to the accused a week after receiving his letter of 13 February 1945 (Def. Ex. A) which was attached to the deposition (R. 83, 84). The answers to the deposition were read to her and all the other answers were correct (R. 85, 86). This one answer was wrong because she did not write to the accused until four weeks later which was after she had received his second letter (R. 87). Within the next few days, she realized that she had made a mistake (R. 87, 94). She denied that she spoke to anyone except her husband about the deposition (R. 88). The defense counsel called her on the telephone at her home and at her hotel but he did not talk to her about it (R. 88, 89). She denied that she had received a letter from her son setting forth the answers which she was supposed to give to the deposition, and denied that she had written to anyone that she had received such a letter (R. 89). She was shown a letter written by her to the accused's wife and secured from the accused's wife by the prosecution, in which she wrote, "There evidently were papers for me to swear to, head army officer from Syracuse, Summinary Court, was here and he said, to save me from coming way out there, I ans the Questions

to the best of my ability was the same as being on the witness stand, having rec. some ans of His too late, I discovered I was supposed to swear I had used money he had sent me" (R. 91; Pros. Ex. 16). She finally admitted that she had written the letter (Pros. Ex. 16) but denied that she had received answers (R. 92, 93, 94). She admitted that the accused wrote a note "bawling me out because I made one mistake" (R. 94). The mistake was that she said her money when she really meant accused's money at the time she spoke of sending the $300 (R. 94). The first letter (Def. Ex. A) was returned to the accused when he asked for it (R. 95). Mrs. McCarrick does not keep all of the accused's letters and sometimes destroys them (R. 95). It took her two months to borrow $2400 and she could not send the money when the accused asked for it (R. 96).

5. The evidence is clear and undisputed that the accused made and uttered 14 checks aggregating $395 between 26 February 1945 and 10 March 1945, in each instance receiving cash for the checks. The checks were all returned unpaid because there were insufficient funds in the accused's account. These facts were admitted by the accused. The sole controverted issue of fact in the case is whether the accused issued these checks with an intent to defraud. As evidence of his lack of intent to defraud, the accused showed that he had written to his mother by air mail on 13 February 1945 requesting her to send $400 to his bank. Although he did not receive a reply from his mother or contact his bank to ascertain whether the deposit had been made, he began to draw checks on the account 13 days later. Some months before, he had made a similar request to his mother for $300 and she had sent it immediately. When the accused was first notified on 10 March 1945 that his checks were not being paid, he made partial reimbursement for the checks in the amount of $25 or $50 and later $70, and by 17 April 1945 made reimbursement for all the checks. Final reimbursement was made when he received $300 from his mother. In considering the intent of the accused it is important to note that the sum of $400 which he requested from his mother on 13 February 1945 was $5 greater than the aggregate amount of the 14 checks and if it had been sent by his mother to his bank, all of the checks would have been paid.

The prosecution attempted to prove a fraudulent intent on the part of the accused by inferring it from the fact that the accused did not receive a reply from his mother and did not contact his bank before drawing the checks. It also brought out on cross-examination of the accused that he had destroyed some private records pertaining to the transaction. Although the accused claimed that his mother had money of his which he had sent her from Panama in the years 1940 to 1942, he was unable to remember the exact amounts which he had sent. An attempt was made to impeach the testimony of the accused's mother. In a deposition which she had made, she had stated that she had written to the

accused a week after receiving his letter of 13 February 1945 that it would take her some time to raise the money. She testified that this was a mistake and that she had written about a week after receiving a second letter which the accused wrote after the checks began to come back. In a letter to the accused's wife dated 25 June 1945 she stated that she had received answers from the accused too late for the deposition in which she was supposed to have said that the $300 which she sent was the accused's money and not hers. At first she denied writing the letter but later admitted that she had written it. She denied that the accused had sent her answers but admitted that he had written that she had made a mistake in the deposition.

The evidence fails to show beyond a reasonable doubt that accused knew that he did not have and did not intend to have sufficient funds in the drawee bank for payment of the checks. As a consequence, there is likewise a failure of proof on the issue of intent to defraud. However, the evidence is sufficient to prove that the accused was guilty of the lesser included offense of wrongful failure to maintain a sufficient bank balance to meet the checks specified, in violation of Article of War 96, being conduct of a nature to bring discredit upon the military service (CM 280789, Hughes; CM 280898, Dannelly, and cases therein cited).

The defense objected to the admission of the letter of 25 June 1945 written by Mrs. McCarrick, the accused's mother, to the accused's wife, on the ground that since the letter was obtained from the accused's wife it was an indirect method of securing the wife's testimony against her husband (R. 89, 90, 91, 92, 93; Pros. Ex. 16).

The Manual for Courts-Martial, 1928, provides in paragraph 120d, "Wife and husband may testify in favor of each other without limitation; but unless both consent, neither wife nor husband is a competent witness against the other, except as follows: A wife may testify against her husband without his consent whenever she is the individual or one of the individuals injured by an offense charged against her husband." In paragraph 123b, "Communications between husband and wife are privileged; therefore neither may testify to confidential communications of the other unless the other consent." Since the letter objected to was not a communication between the accused and his wife it is not a privileged communication on that ground.

The admissibility of the letter depends upon whether its use is the equivalent of the accused's wife testifying against him. It does not appear under what circumstances the letter was secured by the trial judge advocate from the accused's wife. The letter was written by the accused's mother on 25 June 1945, which was during the first continuance of the trial, and 11 days later was in the possession of the trial judge advocate. "Letters written by one spouse to the other or to a third person have been held admissible as against the contention that this was equivalent to permitting one spouse to testify against the other" (70 CJ 141).

In State v. Wilkins, 142 P. 589 (Or.), "The authorities all agree that, if oral communications between husband and wife are overheard by third parties, they may be given in evidence from the mouth of the witness to whom they are thus imparted. It is not perceived that any difference in principle can exist because the communication is in writing and has fallen into the possession of strangers by whom it is disclosed."

In Wigmore on Evidence (3d Ed.), paragraph 2233, it is stated, "The privilege applies to testimony in any form. Hence the production of documents from the wife or husband against the other is within the privilege". There is a distinction between admitting privileged communications between a husband and wife which are overheard by third persons or, if in writing, are found by third persons, and in permitting one spouse to testify against or to supply documents to be used against the other spouse. This distinction is apparent from the reasons which are usually advanced for the rule prohibiting one spouse from testifying against the other. These reasons are that it would cause dissension in a family if one spouse testified against the other and it is repugnant to fair-minded people to have one spouse condemn the other. The trial judge advocate admitted that the letter was obtained from the accused's wife (R. 90), and not from some third person. The admission of the letter in this case was a circumvention of the spirit and purpose of the rule of the Manual for Courts-Martial, paragraph 120d, supra, and it would better have been excluded. In view, however, of the fact that the letter was used solely for the purpose of impeaching the testimony of the accused's mother on the question of his fraudulent intent, no substantial harm has been done to the accused, since we have concluded that the accused was proven guilty only of the lesser included offense of failure to maintain a bank balance sufficient to cover the checks issued by him, and not of fraudulent intent.

6. War Department records show that the accused is 24 years of age and married. He is a native of New York and a resident of Elmira, New York. He attended high school for three years but did not graduate. In civilian life he was employed by his father from June 1939 to January 1940 as a bookkeeper and clerk in a hotel in Elmira, New York. He served in enlisted status in the Regular Army from 25 January 1940 to 26 May 1944, attaining the grade of staff sergeant. On 27 May 1944 he was appointed a second lieutenant upon graduation from Officer Candidate School, Army Air Forces Training Center No. 1, Miami Beach, Florida, and assigned to duty in the Air Corps. He served overseas as an enlisted man from 1940 to 1943 in Panama, Peru, Trinidad, Netherlands West Indies, Guatemala and Colombia, and seven months in the Aleutian Islands. He is authorized to wear the Good Conduct Medal, American Defense Service Ribbon with one Bronze Service Star, American Theater Ribbon and Air Crew Wings. He was placed on a limited service status for service within the continental limits of the United States on 4 October 1944 as a result of the findings of a Board of Medical

Officers, and a continuation of this status was recommended by a similar Board on 2 February 1945. The accused was punished under Article of War 104 on 22 August 1944 for forging a check for $25 and received a fine of $75 and a reprimand. On 28 January 1945 the accused submitted his resignation for the good of the service under other than honorable conditions in lieu of trial by court-martial. It appears from the first indorsement to his resignation that he was to be reclassified for undesirable traits of character as evidenced by the habitual issuing and cashing of checks for which he had insufficient funds on deposit, fraternization for a period of three months with an enlisted man who was alleged to be of questionable reputation, two occasions of absence without leave, unauthorized wearing of decorations and the aforementioned punishment under Article of War 104. His resignation was accepted "without specification as to character" on 4 April 1945 by the Secretary of War's Separations Board and the action rescinded on 31 May 1945. On 5 May 1945 the Finance Office, Army Air Base, Hammer Field, California, forwarded a copy of a memorandum exception issued by the General Accounting Office, Army Audit Branch, Los Angeles, California, relating to a partial payment voucher in the sum of $225 paid to the accused on 29 July 1944 and not shown on his pay voucher for the month of July 1944 and which had not been refunded or repaid by the accused.

7. The court was legally constituted. Except as noted, no errors injuriously affecting the substantial rights of the accused were committed during the trial. The Board of Review is of the opinion that the record of trial is legally sufficient to support only so much of the findings of guilty of Specifications 1 to 14 of the Charge as involves findings that the accused wrongfully failed to maintain a sufficient bank balance to meet the checks therein specified, legally sufficient to support the finding of guilty of the Charge, and legally sufficient to support the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of an officer of a violation of Article of War 96.

Fletcher R. Andrews, Judge Advocate

[illegible], Judge Advocate

Donald D. Hickman, Judge Advocate

SPJGQ - CM 285445 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant William R. Canavan (0-587081), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of 14 Specifications of wrongfully and unlawfully making and uttering 14 checks aggregating $395 with the intent to defraud, not having and not intending that he should have sufficient funds in the bank for the payment of the said checks, in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for five years. The reviewing authority approved the sentence, designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support only so much of the findings of guilty of the Specifications of the Charge as involves findings that the accused wrongfully failed to maintain a sufficient bank balance to meet the checks therein specified, legally sufficient to support the finding of guilty of the Charge, and legally sufficient to support the sentence and to warrant confirmation thereof. I concur in that opinion.

The accused officer made and uttered 14 checks aggregating $395 between 26 February 1945 and 10 March 1945, in each instance receiving cash for the checks. The checks were all issued in Tacoma, Washington, and were all returned unpaid because there were insufficient funds in the accused's account in the Bank of America, Whitley-Hollywood Branch, Hollywood, California. These facts were admitted by the accused. On 13 February 1945 the accused wrote his mother by airmail requesting her to send $400 to his bank. Although he did not receive a reply from his mother or contact his bank to ascertain whether the deposit had been made, he began to draw checks on the account 13 days later. Some months before, he had made a similar request to his mother for $300 and she had sent the money to him immediately. When the accused was first notified on 10 March 1945 that his checks were not being paid, he made partial reimbursement for the checks and by 17 April 1945 he had made reimbursement for all the checks. Final reimbursement was made when he received $300 from his mother.

Information contained in War Department records shows that the accused was punished under Article of War 104 on 22 August 1944 for forging a check for $25. On 28 January 1945 he submitted his resignation for the good of the service under other than honorable conditions in lieu of trial by court-martial. It appears from the first indorsement to his resignation that he was to be reclassified for undesirable traits of character as evidenced by the habitual issuing and cashing of checks for which he had insufficient funds on deposit, fraternization for a period of three months with an enlisted man who was alleged to be of questionable reputation, two occasions of absence without leave, unauthorized wearing of decorations, and the aforementioned punishment under Article of War 104. His resignation was accepted "without specification as to character" on 4 April 1945 by the Secretary of War's Separations Board and the action rescinded on 31 May 1945, apparently by reason of the commission of the offenses for which he was here tried. On 5 May 1945 there was forwarded a copy of a memorandum exception issued by the General Accounting Office, Army Audit Branch, Los Angeles, California, relating to a partial payment voucher in the sum of $225 paid to the accused on 29 July 1944 and not shown on his pay voucher for the month of July 1944, which amount had not been refunded or repaid by the accused.

In view of the finding of the Board of Review that the accused did not issue the checks with a fraudulent intent, confinement is not deemed appropriate. I recommend that the sentence be confirmed but that the confinement and forfeitures be remitted, and that the sentence as thus modified be ordered executed.

4. Consideration has been given to letters from Thomas R. Gano to the President, dated 24 July 1945 and 9 August 1945, to the Honorable Francis J. Myers, United States Senate, dated 25 July 1945, to The Judge Advocate General, dated 9 August 1945, to Colonel R. E. Kunkel, Chief of Military Justice Division, Office of The Judge Advocate General, dated 9 August 1945, and to The Judge Advocate General's Department, letter undated. Consideration has also been given to a letter from the Honorable Joseph F. Guffey, United States Senate, dated 1 August 1945, and to copies of undated letters from Mrs. Inez McCarrick, the mother of the accused, to the Honorable James Mead, United States Senate, and the Honorable W. Sterling Cole, House of Representatives of the United States. The above letters contain requests for clemency on behalf of the accused.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

MYRON C. CRAMER
Major General
The Judge Advocate General

11 Incls
1 - Record of trial
2 - Form of action
3 - Ltr fr Thomas R Gano to the President, 24 July 45
4 - Ltr fr Thomas R Gano to the President, 9 Aug 45
5 - Ltr fr Thomas R Gano to Hon. Francis J Myers, 25 July 45
6 - Ltr fr Thomas R Gano to The Judge Advocate General, 9 August 45
7 - Ltr fr Thomas R Gano to Col. R E Kunkel, 9 August 45
8 - Ltr fr Thomas R Gano to The Judge Advocate General's Department, undated
9 - Ltr fr Hon. Joseph F Guffey, 1 August 45
10 - Cy of ltr fr Mrs. Inez McCarrick to Hon. James Mead, undated
11 - Cy of ltr fr Mrs. Inez McCarrick to Hon. W Sterling Cole, undated

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(Findings approved in part. Sentence confirmed, but forfeitures and confinement remitted. GCMO 453, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 285460

17 SEP 1945

UNITED STATES v. Second Lieutenant JAMES B. MOONEY (0-887040), Air Corps.	ARMY AIR FORCES PERSONNEL DISTRIBUTION COMMAND Trial by G.C.M., convened at Army Air Forces Convalescent Hospital, St. Petersburg, Florida, 1 August 1945. Dismissal, total forfeitures and confinement for five (5) years.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 61st Article of War

Specification: In that 2nd Lieutenant James B. Mooney, Detachment of Patients, AAF Convalescent Hospital, St. Petersburg, Florida, did, without proper leave, absent himself from his station at AAF Convalescent Hospital, St. Petersburg, Florida, from about 28 May 1945 to about 15 June 1945.

CHARGE II: Violation of the 94th Article of War

Specification 1: In that 2nd Lieutenant James B. Mooney, * * *, did, at Hunter Field, Georgia, on or about 15 May 1945, make a claim against the United States by presenting to Major Rudolph Kay, Finance Officer, United States Army, at Hunter Field, Georgia, an officer of the United States, duly authorized to pay such claims, a voucher in the amount of $126.00 for pay, which claim was false in that 2nd Lieutenant James B. Mooney had already received his pay, and was then known by said 2nd Lieutenant James B. Mooney, to be false.

Specification 2: Same allegations as Specification 1 except false claim in the amount of $168 and made on 21 May 1945, at Dayton, Ohio, to Colonel H. B. Brown, Finance Officer.

Specification 3: Same allegations as Specification 1 except false claim in the amount of $150 and made on 23 May 1945, at Pittsburgh, Pennsylvania, to Lieutenant Colonel H. O. Robinson, Finance Officer.

CHARGE III: Violation of the 95th Article of War (Finding of guilty disapproved by reviewing authority).

Specification: (Finding of guilty disapproved by reviewing authority).

CHARGE IV: Violation of the 96th Article of War

Specification 1: Finding of not guilty).

Specification 2: In that 2nd Lieutenant James B. Mooney, * * *, did, at AAF Convalescent Hospital, St. Petersburg, Florida, Union Trust Company Branch, on or about 2 May 1945, with intent to defraud, wrongfully and unlawfully make and utter to Union Trust Company, a certain check, in words and figures as follows, to wit:

May 2 1945

First Trust Co.
Fill in Name of Bank
Albany, N.Y.
City and State Where Payable

Pay To The Order Of Cash $ 50.00
Fifty - no/100 DOLLARS

/s/ James B. Mooney
Lt. AC 0887040

Endorsed: May 3, 1945 Union Trust Company, St. Petersburg, Florida, R. M. Petrick, Cashier

and by means thereof, did fraudulently obtain from Union Trust Company, the sum of $50.00, he the said 2nd Lieutenant James B. Mooney, then well knowing that he did not have and not intending that he should have sufficient funds in the First Trust Co., Albany, N. Y., for the payment of said check.

Specification 3: Same allegations as Specification 2 hereof except check in the amount of $100 and made and uttered on 3 May 1945.

Accused pleaded guilty to Charge I and its Specification and not guilty to all other Charges and Specifications. He was found not guilty of Specification 1 of Charge IV and guilty of all other Specifications and of all Charges. No evidence of any previous conviction was introduced. He was sentenced to dismissal, total forfeitures and confinement for fifteen years. The reviewing authority disapproved the findings of guilty of Charge III and its Specification, approved the sentence but reduced the period of confinement to five years and forwarded the record of trial for action under Article of War 48.

3. The evidence introduced by the prosecution is hereinafter summarized under appropriate headings indicating the Charges and Specifications to which particular evidence is pertinent.

a. Charge I and Specification:

Competent documentary evidence established that accused absented himself without leave on 28 May 1945, following completion of an authorized 12-day leave of absence, and was returned to military control on 15 June 1945 (R. 7, 8; Pros. Exs. 1, 2). In a voluntary statement made by accused after he had been fully advised of his rights, he stated that he spent his unauthorized absence attempting to persuade his wife to consent to the performance of an eye operation upon his daughter and that during his absence he sent two telegrams to his commanding officer (R. 19; Pros. Ex. 14).

b. Charge II, Specifications 1, 2, 3:

On 10 May 1945, accused informed Warrant Officer (j.g.) Samuel R. McSwain, the Finance Officer at accused's station, that he was going on leave and accused filed with him a Pay and Allowance Account, commonly called a pay voucher, on which he requested a partial payment of $25. A partial payment in the requested amount was made to accused on 10 May 1945 which left a balance of but $8.98 due him on his pay as of 10 May 1945 and he was so informed (R. 11, 12). Each day after 10 May 1945 the balance of $8.98 would be increased by the daily proportionate part of the monthly pay and allowances thereafter earned by accused. The total pay and allowances accused could have earned for the month of May 1945 would have amounted to $253.40 (R. 14). It was stipulated by the prosecution, defense and accused that Prosecution's Exhibits 5, 6, 7 were true copies of original pay vouchers presented by accused to particular Finance Officers of the United States Army (R. 10; Pros. Ex. 4). These pay vouchers show that accused requested and received the following partial paymentsfrom the following Finance Officers, viz (R. 10, 11; Pros. Exs. 5-7, incl):

Spec.	Date of Voucher	Amount of Partial Payment	Finance Officer
1	15 May 45	$126	Major Rudolph Kay, Hunter Field, Ga.

2	21 May 45	$168	Col H. B. Brown, Dayton, Ohio
3	23 May 45	$150	Lt Col H. O. Robinson, Pittsburgh, Pa.

Sometime after 10 May 1945 and after accused had received payment on these three pay vouchers they were received by the Finance Officer at accused's station, Army Air Forces Convalescent Hospital, St. Petersburg, Florida (R. 12, 13). Sometime around 25 May 1945, Warrant Officer McSwain suggested that accused's Class E allotment in an unspecified amount be cancelled and it was terminated "as of the first of the month" (R. 12-14).

In his voluntary statement accused admitted that he received "an overage in pay in Dayton Ohio, Pittsburgh Pennsylvania and Hunter Field Georgia" but stated that he did not intend to defraud the Government inasmuch as he knew the vouchers would be sent to the Finance Officer at his home station and he intended thereafter to make appropriate deductions on his June pay voucher to adjust for the overpayments made to him (Pros. Ex. 14).

c. Charge IV, Specifications 2, 3:

On or about the dates thereof accused made and cashed two checks which are more particularly described as follows, viz (R. 15, 16; Pros. Exs. 9, 10):

Spec.	Date of Check	Amount of Check	Cashed By	Drawee Bank
2	2 May 45	$50	Union Trust Co. St Petersburg, Fla.	First Trust Co. Albany, N. Y.
3	3 May 45	$100	" " "	" "

About two weeks after issuance thereof, these two checks were returned unpaid by the drawee bank (R. 15, 16). Two or three days before these checks were returned accused inquired at the cashing bank as to whether or not they had been sent back. The day after they were returned accused was advised thereof and, although he stated he would call in a few minutes to redeem them, he failed to do so. These checks were still unpaid at the time of trial (R. 17).

Accused had an account with the First Trust Company, Albany, New York, from at least 14 February 1945 to 12 March 1945. On the date last mentioned his account was closed and the balance of $134.80 then on deposit was sent to accused. From 12 March 1945 to at least 30 July 1945 accused had no checking account with The First Trust Company, Albany, New York (R. 17, 18; Pros. Exs. 11, 12, 13).

In his voluntary statement accused recited that after making these two checks he talked with an official of the cashing bank about his account being closed and told him that he would take care of the checks after they were returned. They were eventually returned the day accused went on leave and he "had forgotten to make them good." While in Pittsburgh, Pennsylvania, he sent the cashing bank a telegram stating that the checks would be redeemed immediately but failed to do so because, as he expressed it, "I was short of funds and needed what I had to get to my home." He denied that he wrote the checks in bad faith or that he intended to defraud the cashing bank (Pros. Ex. 14).

4. The defense introduced psychiatric evidence which showed that, although accused had become disorganized in his judgment and suffered from a chronic anxiety state or reaction attributable in great part to his overseas combat experience, nevertheless he knew the difference between right and wrong both at the time he committed the instant offenses and at the time of trial (R. 25-27).

After his rights had been explained to him accused elected to testify under oath in his own behalf. He testified that he went on leave on 15 May 1945 and, although he was due back on 28 May 1945, he failed to return to his station. On 14 June 1945 he was apprehended by civil authorities at Canton, Ohio (R. 28).

With respect to the three partial payments, accused admitted that he had received them and realized afterwards that he had, as he expressed it, "overdrawn on my account" inasmuch as his total pay and allowances, even had he no allotment, would have been but approximately $252 (R. 27, 28). He denied intending to defraud the Government since he knew the three vouchers would be forwarded to the Finance Officer at his station and he expected that any "overdrawals" would be deducted from his June pay (R. 30). He intended to return to his station with $150 to repay the partial payments made to him but when apprehended "was not given an opportunity to contact my relatives to try to get it" (R. 32). Over objection of defense and for the purpose of testing accused's credibility, the prosecution was permitted to elicit from accused on cross-examination the admission that during May 1945 he had received a partial payment of over $200 at Schenectady, New York, and another of over $200 at Cleveland, Ohio (R. 31).

With respect to the two checks totaling $150, accused testified that, knowing his own bank account had been closed, he telephoned his mother and told her to place $150 to his account in the First Trust Company, Albany, New York, that he thereafter cashed the two checks and then about a week later again telephoned his mother and learned that she had not made the requested deposit. He had never had his mother make a deposit to his account at any prior time. He also admitted that the checks had not been redeemed at the time of trial (R. 29, 30, 32).

Accused further testified that he entered military service on 6 August 1942, was transferred overseas in April 1944 and saw five months service as "bombardier navigator" on a B-17 type bomber plane, performing twenty-eight missions for which he received the Distinguished Flying Cross, the Air Medal with three Oak Leaf Clusters and three battle stars. Thereafter he was returned to a Redistribution Station, Miami, Florida, and from there he proceeded in October 1944 to his present station, Army Air Forces Convalescent Hospital, St. Petersburg, Florida (R. 29, 30).

5. The evidence and accused's plea of guilty amply establish accused's guilt of the offense of absence without leave as alleged in the Specification of Charge I.

The evidence also reveals that at three different military installations on 15, 21 and 23 May 1945 accused requested and received three partial payments in the amounts of $126, $168 and $150, respectively. Army Regulations provide that officers may be paid as partial payments the pay and allowances due and earned to and including the date of payment (par. 7, AR 35-1360, 11 April 1944). As of 10 May 1945 accused had but a balance of $8.98 due him for the month of May 1945 and each day thereafter that balance would be increased by the earned daily proportionate part of accused's monthly pay and allowances. For the month of May 1945 accused's total earned pay and allowances would have amounted to $253.40. The earned daily proportionate part thereof would be 1/31 of that amount or $8.17. From 11 May 1945 through 14 May 1945, the balance of $8.98 was increased to $41.66 by virtue of the addition of four days pay in the amount of $32.68. Therefore on 15 May 1945 when accused requested and received a partial payment of $126, he had earned and was entitled to but $41.66. Thus, on that partial payment he obtained a total of $84.34 to which he was not entitled. Simple arithmetic demonstrates that, considering this overpayment of $84.34 on 15 May 1945, accused had no earned pay and allowances as of 21 and 23 May 1945, when he requested and received the additional sums of $168 and $150, respectively, as partial payments.

Accused had been informed on 10 May 1945 that the balance of pay and allowances due him as of that date was but $8.98. Furthermore, from his voluntary statement and his testimony given at the trial it is apparent that he realized he was requesting and receiving unearned pay and allowances when he presented each one of these pay and allowances. Such facts amply warranted the court in concluding that accused had knowledge of the falsity of his claims for partial payments. Accused sought to defend his conduct by contending that he expected to repay this "overage" by appropriate deductions from his June pay and allowances. Even were that the fact, it would constitute no defense. It amounts to no more than an intent eventually to repay funds improperly obtained; it does not relieve the fact that the claims were false when made.

Inasmuch as guilty knowledge or criminal intent may be established by proof of other acts of accused even though such other acts may

tend to establish commission of other offenses (MCM, 1928, par. 112b) it was appropriate for the prosecution to elicit on cross-examination of accused that he had presented other requests for partial payments totaling $400 during May 1945. Such evidence directly tended to refute accused's contention that he expected to repay his "overage" by appropriate deductions from his June pay and allowances, the amount of which was substantially less than the total "overage." When admitting this evicence the court limited it solely to impeach the credibility of accused. Such limitation benefited the accused and accordingly the admission of this evidence did not prejudice any of his substantial rights.

Upon all the evidence it is our opinion that the record of trial is legally sufficient, with respect to Charge II, to support only so much of the finding of guilty of Specification 1 thereof as involves the making of a false claim in the amount of $84.34 and legally sufficient to support the findings of guilty of Specifications 2 and 3 thereof.

Under Specifications 2 and 3 of Charge IV accused is charged with fraudulently issuing two checks aggregating $150 in amount. At the time he issued these checks he had no account in the drawee bank and had not had one for over a month and a half. Under such circumstances the court was fully warranted in concluding that accused intended to defraud when he issued these checks. Even if, as he contended, he had sought to have his mother make a deposit to cover these checks his reckless conduct in issuing these checks without ascertaining whether or not the deposit had in fact been made demonstrates his gross indifference as to the sufficiency of his bank balance to pay these checks and brands his conduct as fraudulent (CM 270061, Sheridan). The record of trial is legally sufficient to support the findings of guilty of Specifications 2 and 3 of Charge IV.

The psychiatric evidence presented by the defense, although indicating that accused may have been suffering from a nervous disorder, demonstrates that he was legally responsible for his actions. Accordingly, any nervous condition he may have had as a result of his combat experiences may be accorded consideration only in so far as clemency is concerned.

The record reveals that, after defense counsel asked accused but a single question to which accused replied by asking for amplification of the question, defense counsel informed the court he could not continue with any direct examination of accused because he could not obtain intelligent answers from him. Thereafter the trial judge advocate cross-examined accused following which defense counsel examined him. The record reveals that during those examinations accused understood the questions asked of him and made rational replies thereto. The record does not sustain the original contention of defense counsel that accused was unable to offer intelligent replies to his counsel's questions.

6. Attention has been given to the communication from Colonel A. W. Rigsby, Staff Judge Advocate, and to the statement of accused forwarded therewith. A careful examination of accused's statement and a comparison of it with the record of trial does not reveal any matter therein which affects our conclusions with respect to the record in any material respect.

7. Accused is 23 years of age. War Department records indicate that in civilian life he was employed as a machinist. He entered military service as an air cadet in September 1942 and on 4 December 1943 was appointed a flight officer. On 14 July 1944 he was commissioned a second lieutenant. He served overseas in the European Theater of Operations for six months participating as bombardier in twenty-eight bomber combat missions over enemy occupied continental Europe. For exceptionally meritorious achievement while on such missions he was awarded the Air Medal and three Oak Leaf Clusters thereto. Upon his return from that theater he was admitted to the Army Air Forces Convalescent Hospital, St. Petersburg, Florida, on 31 October 1944, where he was found to be suffering from severe combat fatigue. On 15 December 1944 a Board of Officers reported his condition as improved and recommended his return to full military duty.

8. The court was legally constituted and had jurisdiction of the accused and the offenses. Except as noted above, no errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support only so much of the finding of guilty of Specification 1 of Charge II as involves the making of a false claim in the amount of $84.34 and legally sufficient to support all other findings of guilty and the sentence, as approved by the reviewing authority, and to warrant confirmation of the sentence. The sentence imposed is authorized upon conviction of a violation of either Article of War 61 or of Article of War 94 or of Article of War 96.

Thomas N. Jaffy, Judge Advocate

William H. Gambrell, Judge Advocate

Robert E. Trueblood, Judge Advocate

SPJGH-CM 285460 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant James B. Mooney (0-887040), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of (a) absenting himself without leave in violation of Article of War 61 (Chg I, Spec); (b) presenting three false claims against the Government in the amounts of $126, $168 and $150, respectively, in violation of Article of War 94 (Chg II, Specs 1, 2, 3); (c) making and uttering two fraudulent checks in the amounts of $50 and $100, respectively, in violation of Article of War 96 (Chg IV, Specs 2, 3); and (d) dishonorably failing to pay a debt in the amount of $200 in violation of Article of War 95 (Chg III, Spec). He was sentenced to dismissal, total forfeitures and confinement for fifteen years. The reviewing authority disapproved the findings of guilty of Charge III and its Specification (dishonorable failure to pay debt), approved the sentence but reduced the period of confinement to five years and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support only so much of the finding of guilty of Specification 1 of Charge II (false claim against the Government) as involves the making of a false claim in the amount of $84.34 and legally sufficient to support all other findings of guilty and the sentence, as approved by the reviewing authority, and to warrant confirmation of the sentence. I concur in that opinion. Following completion of a twelve-day leave of absence accused absented himself without leave from 28 May 1945 until he was returned to military control on 15 June 1945. On 15, 21 and 23 May 1945 he presented three pay vouchers to three different Finance Officers of the United States Army and obtained as partial payments the sums of $126, $168 and $150, respectively. The first claim was false to the extent of $84.34 and the remaining two claims were false <u>in toto</u> inasmuch as he did not have these sums due and owing to him as pay and allowances. On 2 and 3 May 1945 he fraudulently made and uttered two checks in the amounts of $50 and $100 respectively without having an account in the bank on which these checks were drawn.

Accused served overseas for six months in the European Theater of Operations and, as bombardier aboard a bomber type aircraft, participated in twenty-eight combat missions over enemy occupied continental

Europe. For meritorious achievement while on these missions he was awarded the Air Medal and three Oak Leaf Clusters thereto as well as the Distinguished Flying Cross. From October to December 1944 he was hospitalized because of severe combat fatigue. Psychiatric examination revealed that at the time of commission of these offenses he was still suffering somewhat from a nervous disorder resulting in great part from his combat experience.

In view of accused's excellent combat record and considering the psychiatric evidence with respect to his nervous condition, I recommend that the sentence as approved by the reviewing authority be confirmed but commuted to a reprimand and a forfeiture of $50 per month for six months and that the sentence as thus commuted be carried into execution.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

Myron C. Cramer

2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, but commuted to a reprimand and forfeiture of $ 50. pay per month for six months. GCMO 463, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 285586

12 SEP 1945

UNITED STATES	)	THIRD SERVICE COMMAND ARMY SERVICE FORCES
v.	)	
First Lieutenant WARREN G. HUXLEY (O-1304221), Infantry.	)	Trial by G.C.M., convened at Deshon General Hospital, Butler, Pennsylvania, 9 August 1945. Dismissal, total forfeitures and confinement for three (3) years.

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that 1st Lieutenant Warren G. Huxley, Infantry unassigned, Detachment of Patients, 1386th Service Command Unit, Deshon General Hospital, Butler, Pennsylvania, being lawfully married to Suzanne Wieneke Huxley, who was then living, did at Pittsburgh, Pennsylvania, on or about 9 April 1945, wrongfully become joined in marriage with Private First Class Nona L. Allman, and thereafter lived with her as her husband.

Specification 2: (Finding of not guilty).

Specification 3: In that 1st Lieutenant Warren G. Huxley, * * *, did at Pittsburgh, Pennsylvania, on or about 12 April 1945, wrongfully appear at the Office of the War Finance Committee, Oliver Building, Pittsburgh, Pennsylvania, wearing The Distinguished Service Cross; The Silver Star with one Oak Leaf Cluster; The Combat Infantryman Badge; The Purple Heart with three Oak Leaf Clusters; and The Bronze Star Medal, none of which he was authorized to wear.

Specification 4: In that 1st Lieutenant Warren G. Huxley, * * *, did at Deshon General Hospital, Butler, Pennsylvania, on or about 5 April 1945, wrongfully appear at Deshon General Hospital, Butler, Pennsylvania, wearing The Distinguished Service Cross; The Silver Star with one Oak Leaf Cluster; The Combat Infantryman Badge; The Purple Heart with three Oak Leaf Clusters; and

The Bronze Star Medal, none of which he was authorized to wear.

Specification 5: In that 1st Lieutenant Warren G. Huxley, * * *, did at Rock Haven Inn, Butler, Pennsylvania, R.D. 5, wrongfully appear at Rock Haven Inn, Butler, Pennsylvania, R.D. 5, on or about 3 July 1945, wearing the Distinguished Service Cross; The Silver Star with one Oak Leaf Cluster; The Combat Infantryman Badge; The Purple Heart with three Oak Leaf Clusters; and The Bronze Star Medal, none of which he was authorized to wear.

Specification 6: In that 1st Lieutenant Warren G. Huxley, * * *, having taken an oath in a statement for use in an investigation of charges against 1st Lieutenant Warren G. Huxley, before 2d Lieutenant Luther C. Braham, Judge Advocate General's Department, a competent Officer, that he would testify truly, did at Deshon General Hospital, Butler, Pennsylvania, on or about 15 June 1945, willfully, corruptly, and contrary to such oath, testify in substance that he was never formally married to Suzanne Wieneke, and that he was never a party to any religious or civil marriage ceremony with Suzanne Wieneke, which testimony was a material matter, and which he did not then believe to be true.

He pleaded not guilty to and was found guilty of the Charge and all Specifications except Specification 2 of which he was found not guilty. No evidence was introduced of any previous conviction. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due and to be confined at hard labor for six (6) years. The reviewing authority approved only so much of the sentence as provided for dismissal, total forfeitures and confinement at hard labor for three years, and forwarded the record of trial for action under Article of War 48.

3. For the Prosecution.

Specifications 1 and 6 (Bigamy, False Swearing).

A certified transcript of a marriage ceremony introduced into evidence without objection showed that on 1 May 1941 Warren G. Huxley and Suzan(e)e O. Wieneke were "joined in the Holy State of Matrimony" at Forrest County, Mississippi (R. 7, Pros. Ex. 7). A certified copy of a marriage record introduced into evidence without objection showed that on 9 April 1945 Warren G. Huxley and Nona L. Allman were "united in marriage" at Pittsburgh, Pennsylvania (R. 13, Pros. Ex. 9). On 9 April 1945 Suzanne W. Huxley was living and resided at 193 Royal Road or Rural Route No. 5, Box 209, Indianapolis, Indiana (R. 6-a, Pros. Ex. 1,2).

At the direction of Major Brown, head of the Intelligence Office in Pittsburgh, Pennsylvania, Mr. Paul E. Stevens, Special Agent of the Security and Intelligence Corps, interrogated the accused on 15 June 1945 with

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reference to accused's marital status and "anything else that might appear regarding a violation of an Article of War "(R. 8,11,12). Prior to the questioning accused was placed under oath by Lieutenant Braham, JAGD, who explained to him his rights under the 24th Article of War (R. 9). At the termination of the interrogation a statement was prepared from the "record" which was signed by the accused after again having his rights under the 24th Article of War explained (R. 9). In the signed statement which was admitted in evidence without objection he stated he was "never formally married to Suzanne Wennicke" and was "never a party to any religious or civil marriage ceremony with Suzanne Wennicke" (R. 15, Pros. Ex. 10).

On 9 July 1945 accused, after an explanation of his rights under Article of War 24, voluntarily signed a statement under oath administered by the Adjutant of Deshon General Hospital which in pertinent part is as follows:

> "I made application for a marriage license with Miss Suzanne O. Wieneke at Forest County, Hattiesburg, Mississippi, on 1 May 1941. I married Miss Wieneke, now Mrs. Warren G. Huxley, at Hattiesburg, Mississippi on 1 May 1941. We lived together at Hattiesburg, following the marriage, for a period of about three or four months. When I went home to Indianapolis on furlough, I lived with her at the home of her parents. There was one child born of this marriage.
>
> "I at no time secured a divorce from Mrs. Suzanne Wieneke Huxley, nor did she ever divorce me, nor was she ever legally separated from me.
>
> "On 9 April 1945 I made application for and secured, with Nona L. Allman, a marriage license from the Prothonotary's Office, Allegheny County, Pittsburgh, Pennsylvania. I married Miss Nona L. Allman at Pittsburgh, Pennsylvania on 9 April 1945." (R. 12,13, 27, Pros. Ex. 8.)

On 17 July 1945, after an explanation of his rights under Article of War 24, accused signed an affidavit, which was admitted in evidence, certifying he was married to Suzanne Wieneke on 1 May 1941 at Hattiesburg, Mississippi, and that on 9 April 1945 he was married to Nona L. Allman. He further stated "that both women are living and that I am legally guilty of bigamy" (R. 18, Pros. Ex. 11).

Specifications 3, 4, and 5 (Wearing Decorations without Authority).

It was stipulated that if Walter Ecker and Dorothy Dahm were present in court they would each testify they saw accused on 12 April 1945 in the office of the War Finance Committee, Oliver Building, Pittsburgh, Pennsylvania, at which time he was wearing the Distinguished Service Cross, the Silver Star with one Oak Leaf Cluster, the Combat Infantryman Badge, the Purple Heart with three Oak Leaf Clusters and the Bronze Star Medal (R. 6-a, Pros. Ex. 3,4).

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The accused was interviewed on a radio program at Deshon General Hospital, Butler, Pennsylvania, on 5 April 1945 and was seen at Rock Haven Inn on 3 July 1945, on both of which occasions he was wearing the above described decorations and medals (R. 24,25,27).

The prosecution introduced into evidence a statement by accused which, in addition to other matters, contained accused's explanation for his believing he was authorized to wear the decorations in question. The pertinent part of this statement is as follows:

"While en route to North Africa, during an attack by the enemy, I took over the operation of a machine gun. A Captain then aboard, whose name I do not remember, stated that he had recommended me for a Silver Star and further claimed later that it was granted to me in Algiers.

"Later, as a result of action while on patrol duty near Cassino, Italy, I was told by the Battery Commander, whose name I do not now remember; that I would receive the Distinguished Service Cross. On the same day, on returning from the patrol duty as above-mentioned, I removed certain enemy mines and, as a result, was told by the same Battery Commander that I would also receive an Oak Leaf Cluster for the Silver Star. I was with A.T. Pl. 1st BN, 143rd Inf. 36th Division, at this time.

"While a member of the 591st Engineers Regiment, and while working at the Port of Naples, I was recommended for the Bronze Star medal for meritorious service. I was so recommended by the Port Commander, whose name I do not know.

"While under enemy fire at Cassino, I suffered minor wounds three times which I treated myself. Later, while in the hospital overseas, being treated for trouble with my feet, the Purple Heart was placed on my bed by a person whose identity was not known to me.

"On another occasion, while in a military hospital near Concerti (phonesic), Italy, each officer in my battalion received the Combat Infantryman Badge. Since I was not able to stand formation, the Combat Infantryman Badge awarded me was sent to me to the hospital by a mail clerk who I did not know.

"In regard to all of the above-mentioned awards, that is, Distinguished Service Cross, Silver Star Medal with one OLC, Bronze Star Medal, Purple Heart Medal with three OLC, and Combat Infantryman Badge, I have never seen official orders for any of them or naming me as a recipient of any of them, nor do I know whether or not such have been issued. Since I was not sure I was entitled to wear the above-mentioned awards, I requested the proper authorities at Deshon General Hospital to determine whether or not official orders had been issued for any of them. One of the military personnel in the Records Section at Deshon General Hospital told me that if I said I had been awarded these medals, that was sufficient, and entered them on my War Department Form 66-1. In April of 1945,

when I was about to go on duty with the War Finance Committee, Pittsburgh, for the purposes of the Seventh War Loan Drive, I put all the above-mentioned decorations on my uniform and wore them while on such duty." (R. 15, Pros. Ex. 10.)

First Lieutenant Pearl M. Scott, WAC, testified, without objection, she was the official custodian of patient officer records at Deshon General Hospital and that accused's "201" does not contain any official orders authorizing him to wear the decorations and medals described in the Specifications and that as "far as personal records go there is no evidence" accused is entitled to the ribbons (R. 19,20).

Mr. Paul Stevens testified that during his interrogation of accused the "only written paper Lt. Huxley ever mentioned in regard to these awards was the fact that while overseas he went to a Lt. Col. McCarthy and told him that he thought he was entitled to wear these awards. Col. McCarthy then told him that if he was so entitled that he would sign a paper and signed a typewritten paper to the effect that Lt. Huxley was entitled to wear the awards listed on that paper" (R. 10).

4. For the Defense.

Accused, after being apprised of his rights as a witness, elected to take the stand and testify under oath (R. 29). His testimony may be summarized as follows: He knows and has lived with Suzanne O. Wieneke but does not remember where he married her (R. 35). The reason he could forget such an "important event as a marriage" was owing to a brain concussion he suffered in 1940 while playing football (R. 35). He does not remember "much of anything that went on" between 1940 and 1943 (R. 35). He had a recurrence of a brain concussion in 1943 while wrestling with one of the men from the company (R. 36,49). On 9 April he married Nona L. Allman (R. 35).

While overseas, and previous to his entry into the 37th General Hospital, he requested Lieutenant Colonel McCarthy to find out about "these" decorations (R. 31). One afternoon while a patient in the 37th General Hospital he returned from a show at the theater and found on his bed a Purple Heart and a certificate. A true copy of the certificate was admitted in evidence and states as follows:

"This Officer (Warren G. Huxley, 2nd Lt Inf) is authorized to wear the following medal's: Purple Heart, Three Clusters, Distinguished Service Cross, Silver Star, One Cluster, Bronze Star, Pre Pearl Harbor, Campaign, Two Stars, Four Over Seas Stripes, and Combat Infantry Badge.

"His orders were lost in combat. They have been entered on his 66-1".

The certificate was signed by Lieutenant Colonel Edward R. McCarthy, Executive Officer, 591st Engineer Boat Regiment. When he received the certificate he believed he was entitled to wear the awards in question (R. 34). He had been overseas for about 18 or 19 months and had been in combat for approximately four or 4-1/2 months (R. 32). During this time he was engaged in a number of exploits (his explanation of the exploits and his participation is substantially the same as given in his statement on 15 June 1945) which he thought entitled him to wear these awards (R. 32,33).

On cross-examination he admitted that he stated under oath on 15 June 1945 that he had never been married to Suzanne Wieneke and that on 9 July 1945 he stated that he had (R. 36).

Captain Peter H. Knapp testified that he was Chief of the Neuropsychiatric Section at Deshon General Hospital (R. 41). He examined accused and made the following diagnosis: Constitutional psychopathic state, type unclassified, manifested by pathological lying, in an immature, irresponsible male (R. 41,43). He is able to distinguish between truth and falsehood and adhere to the truth. The compulsion is part of his diseased personality and is extremely strong and difficult to overcome, usually impossible to overcome in "my experience without careful handling, if possible, psychiatric treatment" (R. 43). The accused does know right from wrong and is legally competent and is not suffering from any serious mental or neurological disease (R. 43). At the time of examination he could detect no marked loss of memory.

5. Specification 1 of the Charge alleges that accused did on 9 April 1945, while being lawfully married to Suzanne Wieneke Huxley and while she was still living, marry Nona L. Allman. The evidence of record, as adduced from the marriage certificates introduced into evidence and from accused's pre-trial statements admitted into evidence, clearly shows that accused was legally married to Suzanne Wieneke Huxley and that while that marriage status still existed, on or about 9 April 1945 contracted a bigamous marriage with Nona L. Allman. Despite the failure of the prosecution to introduce sufficient evidence aliunde the confession to prove all the elements of the offense of bigamy, there was sufficient proof to establish the corpus delicti and support the introduction of a voluntary confession. The evidence of record clearly establishes beyond a reasonable doubt the commission of the offense alleged.

Specifications 3, 4 and 5 allege that on specified dates and places accused wrongfully appeared wearing the Distinguished Service Cross, the Silver Star with one Oak Leaf Cluster, The Combat Infantryman Badge, the Purple Heart with three Oak Leaf Clusters and the Bronze Star Medal, none of which he was authorized to wear. The record clearly shows the accused was wearing the decorations and medals at the alleged times and places. His explanation for his authority was his participation in

a number of hazardous exploits during his 4 or 4-1/2 months in combat for which participation he maintained that he was told he would be recommended to the awards in question. He admitted that he never received any official orders naming him as recipient of the awards and did not know whether or not such orders were ever issued. His only written authority was a certificate signed by Lieutenant Colonel McCarthy, which certificate was based upon facts furnished by the accused and virtually amounts to no more than an attempt to lift himself by his own boot straps. His personnel records contain no official orders authorizing him to wear these awards. The court was clearly justified in finding accused wore the decorations and medals at the time and places alleged and did so without authority.

Specification 6 alleges in effect that accused made false statements under oath to a material matter which statements he did not then believe to be true. The evidence shows that on 15 June 1945, after being placed under oath by a competent officer, accused signed a statement that he had never been formally married to Suzanne Wieneke and that he was never a party to any religious or civil marriage ceremony with Suzanne Wieneke. On 9 July 1945 he made and signed a statement under oath that he married Suzanne Wieneke on 1 May 1941. A certificate of marriage was introduced into evidence further corroborating the marriage. The accused as a witness on his behalf testified during trial he had no remembrance of the marriage owing to a loss of memory as a result of a brain concussion. A medical examination showed no indication of a loss of memory. The Board of Review is of the opinion the court was justified by the evidence in finding that the accused made a false statement under oath and that at the time it was made the accused knew it to be false. That the statement was material is beyond question as the investigation was made primarily to determine accused's marital status.

6. War Department records disclose that this officer is 23 years of age, married, and has one child. He attended high school for four years but did not graduate. In civil life he was employed from 1939 to 1941 as an assistant plumber and professional boxer. He served in the Indiana National Guard from 1937 until induction into Federal service on 17 January 1941. On 16 December 1942, upon graduation at the Infantry Officer Candidate School at Fort Benning, Georgia, he was appointed a temporary second lieutenant in the Army of the United States, and on 3 March 1945 was promoted to first lieutenant.

7. The court was legally constituted and had jurisdiction of the accused and the offenses. No errors injuriously affecting the substantial rights of the accused were committed by the court during the trial. In the opinion of the Board of Review the record of trial is legally sufficient

to support the findings and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 96.

Charles G. Luckie, Judge Advocate

(On Leave), Judge Advocate

Thomas S. Dykes, Judge Advocate

SPJGK - CM 285586 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Warren G. Huxley (0-1304221), Infantry.

2. Upon trial by general court-martial this officer was found guilty of bigamy, (Specification 1), wrongfully wearing decorations on three separate occasions (Specifications 3, 4, and 5), and of making false statements under oath to a material matter (Specification 6), all in violation of Article of War 96. There was no evidence of any previous convictions. He was sentenced to be dismissed the service, to forfeit all pay and allowances due to to become due and to be confined at hard labor for six (6) years. The reviewing authority approved only so much of the sentence as provided for dismissal, total forfeitures and confinement at hard labor for three years, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation of the sentence.

On 1 May 1941 accused was married to Suzanne O. Wieneke, and on 9 April 1945 while the marital status was still existing he married Nona L. Allman. On 5 April, 12 April and 3 July 1945 accused was seen wearing the Distinguished Service Cross, the Silver Star with one Oak Leaf Cluster, the Combat Infantryman Badge, the Purple Heart with three Oak Leaf Clusters and the Bronze Star Medal. He explained he had authority to wear the awards in question because of his participation in a number of hazardous exploits, for which participation he maintained he was told he would be recommended to these awards. He admitted he never received any official orders authorizing him to wear the medals and did not know whether or not such orders were ever issued. No such official orders are shown by his personnel records. On 15 June 1945, after being placed under oath during an investigation of his marital status, accused stated he had never formally married Suzanne Wieneke and was never a party to any religious or civil marriage ceremony. On 9 July 1945 he stated under oath that he made application for a marriage license and was married to Suzanne Wieneke on 1 May 1941. A psychiatric examination of accused resulted in the following diagnosis: Constitutional psychopathic state, type unclassified, manifested by pathological lying, in an immature, irresponsible male.

This office was informally advised on 19 September 1945 by the Decorations and Awards Branch of The Adjutant General's Office that accused has no record of decorations.

It is apparent that this officer is unworthy of his commission and deserves substantial punishment in addition to dismissal. I recommend that the sentence as modified by the reviewing authority be confirmed but that the forfeitures be remitted, that the period of confinement be reduced to one year, and that the sentence as thus modified be carried into execution. I further recommend that the United States Disciplinary Barracks, Fort Leavenworth, Kansas, be designated as the place of confinement.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
1 Rec of trial
2 Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed, but forfeitures remitted and confinement reduced to one year. GCMO 456, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGN-CM 285699

UNITED STATES	)	FOURTH SERVICE COMMAND ARMY SERVICE FORCES
v.	)	Trial by G.C.M., convened at Miami Beach, Florida, 13 August 1945. Dismissal, total forfeitures and confinement for five (5) years.
Captain CARL F. SCHAURER (0-399866), Cavalry.	)	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 95th Article of War.

Specification 1: In that Captain Carl F. Schaurer, 1486th Service Command Unit, Fourth Service Command, Army Ground and Service Forces Redistribution Station, Miami Beach, Florida, did, at Miami Beach, Florida, on or about 31 May 1945, wrongfully, knowingly, and feloniously embezzle by fraudulently converting to his own use about $714.25, lawful money of the United States, the property of Brigadier General James H. Walker, as trustee, entrusted to him, the said Captain Carl F. Schaurer, by the said Brigadier General James H. Walker, for the purpose of buying Christmas presents, and Christmas tree ornaments, for the entertainment of children of personnel stationed at the 1486th Service Command Unit, Fourth Service Command, Army Ground and Service Forces Redistribution Station, Miami Beach, Florida.

Specification 2: (Disapproved by reviewing authority).

Specification 3: In that Captain Carl F. Schaurer, * * *, did, at Miami Beach, Florida, on or about 31 May 1945, wrongfully and with intent to deceive Brigadier General James H. Walker, Commanding General, Army Ground and Service Forces Redistribution Station, Miami Beach, Florida, officially report and state to the said Brigadier General James H. Walker, that he, the said Captain Carl F. Schaurer, "had taken care of all of his obligations, both personal and public, and that everything had been left in proper shape," or words to that effect, which report and statement was known by the said Captain Carl F. Schaurer, to be untrue in that he had not taken care of all his obligations, both personal and public, and had not left everything in proper shape.

CHARGE II: Violation of the 96th Article of War.

Specification 1: In that Captain Carl F. Schaurer, * * *, did, at Miami Beach, Florida, from about 1 March 1945 to about 22 May 1945, wrongfully and unlawfully cohabit and live in open adultery with Mrs. Clifford L. Jackson, alias Mrs. Patricia Lee Jackson, a woman not his wife, the said Captain Carl F. Schaurer being then married and undivorced.

Specification 2: In that Captain Carl F. Schaurer, * * *, did, at West Palm Beach, Florida, from about 23 May 1945, to about 28 May 1945, wrongfully and unlawfully cohabit and live in open adultery with Mrs. Clifford L. Jackson, alias Mrs. Patricia Lee Jackson, a woman not his wife, the said Captain Carl F. Schaurer being then married and undivorced.

Specification 3: In that Captain Carl F. Schaurer, * * *, did, at Miami Beach, Florida, from on or about 5 April 1945, to about 31 May 1945, wrongfully make, sign and utter the following checks, all drawn on the Bank of America, South Palo Alto Branch, Palo Alto, California, without maintaining sufficient funds to cover the same when presented within a reasonable time for payment, to wit:

Check dated 5 April 1945 and payable to the order of Benco Trading Company, in the amount of $461.50.

Check dated 19 May 1945 and payable to the order of Miami Beach Service Base, Exchange, in the amount of $17.00.

Check dated 19 May 1945 and payable to the order of Milgrims, in the amount of $152.75.

Check dated 21 May 1945 and payable to the order of Miami Beach Service Base Exchange, in the amount of $14.50.

Check dated 22 May 1945 and payable to the order of Pinto Tailleur & Furrier, in the amount of $1500.00.

Check dated 22 May 1945 and payable to the order of Cash, in the amount of $25.00.

Check dated 30 May 1945, and payable to the order of Mr. Robert Bloch, in the amount of $816.00.

Check dated 31 May 1945 and payable to the order of Post Communications Services Account, in the amount of $190.57.

The accused pleaded not guilty to Specification 2 of Charge I and guilty to all other Specifications and the Charges. He was found guilty of all Specifications and Charges and was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for five years. The reviewing authority disapproved the findings of guilty of Specification 2 of Charge I, approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that in early December, 1944, a "Major Reid" donated $1000 to be used in the celebration of the Christmas season at the Army Ground and Service Forces Redistribution Station, Miami Beach, Florida. It was contemplated that the money would be expended for the purchase of decorations and favors for Christmas parties and of gifts for children of station personnel (R. 16; Pros. Ex. 4). Ten one hundred dollar bills were left by the donor with Brigadier General James H. Walker, Commanding General of the Station, who delivered them to his adjutant, the accused, with instructions that they be spent for the purposes indicated and that an accounting of the disbursements be made to the local Inspector General (R. 9, 16, 17). The accused, on 11 December 1944, following initial directions to place the money in a "headquarters fund", deposited $1000 in the Mercantile National Bank, Miami Beach, and from this account made the following withdrawals:

(1) $187.88, by check dated 11 December 1944, to "Burdine's" for payment of miscellaneous toys.

(2) $18.42, by check dated 14 December 1944, to Sergeant Robert M. Brainard for further payment to "Burdine's".

(3) $43.99, by check dated 19 December 1944, to 2nd Lt. James I. Morton to cover the cost of shipments by railway express.

(4) $5.46, by check dated 30 December 1944, to Captain Morton S. Busick for additional express charges (R. 9, 12; Pros. Exs. 1, 1A, 2, 2A-2R, 3, 4).

The accused was subsequently directed to transfer the money to a "separate fund", and, on 9 January 1945, executed to himself, as payee, a check for the balance of $744.25 (R. 9, 12, 14, 24; Pros. Ex. 3).

A large amount of merchandise, consisting of decorations and favors for Christmas parties, had been purchased from Benco Trading Company of New York City. The seller made repeated requests for payment of the purchase price and, eventually, received the personal check of accused, dated 5 April 1945, in the amount of $461.50, and drawn on the Bank of America, South Palo Alto Branch, Palo Alto, California. This check, when presented for payment, was dishonored by the drawee bank (Pros. Exs. 5-S, 6-A).

Following the receipt of War Department Special Orders directing his assignment to "Fort Riley, Kansas", the accused, on 31 May 1945, called at General Walker's office and, in response to the General's question, stated that "nothing had been left undone. That all property funds that he was accountable for had been properly closed and legally cared for and turned over to his successor, and all funds both personal and public had been left in good shape" (R. 17,18). He, that day, had made his last disbursement from the "Christmas Fund" to "Lee's Tackle Store" in payment of an indebtedness of $30.00, leaving a balance of $714.25, as of 31 May 1945, for which he was responsible (Pros. Ex. 4). He did not, however, deliver this amount to his successor but the "unexpended portion" of the fund, amounting to $278.00, was placed in the custody of Warrant Officer Lester O. Kenner, Assistant Adjutant (R. 14, 21). The accused ultimately made restitution of whatever shortage existed and, on 26 June 1945, the indebtedness to Benco Trading Company was paid by Mr. Kenner from the "Central Post Fund" (R. 14, 19; Pros. Ex. 5-S).

The accused and his wife, "Margie", lived at the National Hotel "penthouse" at Miami Beach from August, 1944, until marital difficulties developed between them early in 1945 (R. 57). They entered into a formal separation agreement on 26 March 1945 but the marriage had not been dissolved at the time of the trial (R. 54). About the time of this separation the accused was seen frequently with Mrs. Patricia Jackson, a married woman, and it soon became apparent that they were enamored of each other. As early as March, 1945, they expressed their mutual love, their intention to marry as soon as divorces from their respective spouses became final, and their determination, in the meantime, to live together (R. 58, 59; Pros. Exs. 8, 9). During the spring months of 1945 the accused resided in room 109 and Mrs. Jackson in adjoining room 111 in the Sunset Hotel, Miami Beach (R. 55). With them lived her son, aged 7,

and his daughter, aged 4 or 5 (R. 55). According to Captain Joseph C. Pope, Jr., a frequent visitor, the space occupied by the accused and Mrs. Jackson and their children constituted a single apartment, consisting of a bedroom, two baths, a combination living room and dinette, and a small kitchen. Twin beds were "pushed together making one large double bed" in the bedroom, and two studio beds were placed in the living room (Pros. Ex. 9). The accused's attitude toward Mrs. Jackson was one of "deep affection", and they displayed such "familiarity" that the visitor was often embarrassed by their actions and conversation (Pros. Ex. 9). Captain Russell Callan, Jr., another frequent caller, believed the accused and Mrs. Jackson were "sharing" the apartment and presumed their relationship to be an "intimate" one (Pros. Ex. 8). The accused paid the rental charges for the apartment space (R. 55). His wife, throughout this period, was living in San Antonio, Texas (R. 59; Pros. Ex. 8).

Mrs. Jackson, on 19 May 1945, purchased at "Milgrims" in Miami Beach various items of merchandise, including, among other things, shoes and handbags. She had in her possession a check which was executed in the name of the accused on the Bank of America, South Palo Alto Branch, Palo Alto, California, but blank as to payee and amount. After a telephone conversation, apparently with the accused, she completed the check by designating "Milgrim's" as the payee and stating the amount as $152.75, and presented it as payment for the merchandise. The check, when presented to the drawee bank, was dishonored (Pros. Exs. 6-G, 7).

Two purchases, consisting of an officer's shirt and trousers and a lady's handbag, were made at the instance of accused from the Miami Beach Service Base Exchange and, as payment, two checks, one for $17.00, dated 19 May 1945, and the other for $14.50, dated two days later, were given. Both were drawn on the above stated bank, were signed in the name of the accused, were dishonored upon presentment, and remained unredeemed at the time of trial (R. 27, 28; Pros. Exs. 6D, 6E).

On 22 May 1945 the accused and Mrs. Jackson, accompanied by the children, went into the shop of Mr. Joseph M. Pinto, furrier, of Miami Beach. Two fur coats, a silver fox and a Russian lynx, were purchased for Mrs. Jackson and a check of that date for $1500.00, drawn on the same California bank and signed in the accused's name, was given as payment. The check, which was returned unpaid by the drawee bank, was not redeemed but the coats were returned to the seller prior to trial (R. 32, 33; Pros. Ex. 6C). On the same day Mr. Moe Brenner, co-proprietor of the Albion Blue Room, Miami Beach, cashed a check in the amount of $25.00 for the accused. This instrument, too, was drawn on the South Palo Alto branch of the Bank of America and was dishonored upon presentment. Restitution has not been made (R. 39; Pros. Ex. 6F).

The accused, on 23 May 1945, registered for himself and

"family" at the Hotel Pennsylvania, West Palm Beach, Florida. According to Mr. Max Wilson, "Superintendent of service" at the hotel, the accused, Mrs. Jackson, and two children occupied a suite of two bedrooms separated by a parlor. On one of his visits to the suite Mr. Wilson observed Mrs. Jackson attired in a nightgown, the accused without shirt, and the children, who apparently shared a bedroom, in pajamas. The group left the hotel on 28 May 1945 (R. 49-53; Pros. Exs. 10, 10A, 10B).

On the following day the accused was advised that, unless he redeemed certain dishonored checks by noon, his financial delinquencies would be reported to the Commanding General. He thereupon attempted, without success, to procure a loan from Captain Pope and from Captain Thomas E. Anthony, Director of the Security and Intelligence Division at the station. At the latter's suggestion the accused, accompanied by Captain Pope, approached Mr. Robert Bloch, who operated "a check cashing service" at Miami Beach. Bloch, when asked to cash the accused's check for $800, at first demurred in the absence of assurance from the drawee bank that the check would be honored. But, when the accused stated that he was to depart from the station within thirty minutes on a special mission and had no time for a message from his bank, and when Captain Pope asserted that he and Captain Anthony had confidence in the accused's reliability, Bloch acceded to their wishes. Not having the required amount in currency, he gave his check for $800 to the accused and, in return, accepted the latter's check for $816.00. The discrepancy of $16.00 represented the usual two per centum charged by Bloch for his services. The draft given by accused named the same drawee bank as his other checks and was dishonored upon presentment. Bloch has never been repaid (R. 34-37; Pros. Exs. 6B, 6Q, 6P, 9).

The accused, who, like certain other officers, was allowed to make personal telephone calls on government facilities, gave his check for $190.57 to the order of the "Post Communications Service Account" as payment for several long distance calls. This check, dated 31 May 1945, was returned unpaid by the drawee bank, and the telephone account remained unpaid at the time of trial (R. 29, 30; Pros. Ex. 6H).

According to Mr. Bernard Elman Towle, manager of the South Palo Alto Branch of the Bank of America, the accused and his wife maintained a joint checking account from 7 January 1943 to 13 June 1945. The checks described in the Specifications were presented for payment, and all were dishonored because of the depleted condition of the account. Mr. Towle, by letter of 1 May 1945 to the accused, deplored the practice of passing checks against an inadequate account, and by another letter of 1 June 1945 stated that, in view of the continuation of the prohibited practice, the management of the bank nolonger wished to handle the account (Pros. Ex. 6, 6A, 6N).

4. The defense demonstrated that Mr. Bloch, in cashing the accused's check, relied chiefly on Captain Pope's assurances as to the dependability of the accused and the solvency of his bank account (R. 62).

After his rights relative to testifying or remaining silent had been explained, the accused elected to make an unsworn statement. He and his wife considered their marriage a mistake, which they had been trying to correct "since September 1944". They decided to live separate and apart and filed a separation agreement in "Dade County" on 26 March 1945. Mrs. Jackson had attempted "for some years" to gain freedom from her husband and both she and the accused had divorce proceedings pending. After such actions became final, they planned to be married. The accused regretted that financial matters got "beyond /his/ control", and his attempt to make full restitution to his creditors would continue "no matter what happens in court" (R. 63).

His "66-1" record showed three ratings of "Satisfactory", two of "Excellent", and six of "Superior". On 17 May 1945 he addressed to the Adjutant General, Washington, D. C., a request for assignment with the Ground Forces. General Walker, by first indorsement, approved the request and stated that the accused, who had served under his command as a "Troop Commander and S-4" for six months and as "Assistant Adjutant and Adjutant" for fifteen months, had performed his duties in a superior manner (Def. Ex. 1).

5. Specification 1 of Charge I alleges that the accused did, "on or about 31 May 1945, wrongfully, knowingly, and feloniously, embezzle by fraudulently converting to his own use about $714.25, lawful money of the United States, the property of Brigadier General James H. Walker, as trustee, entrusted to /the accused/ by the said /General/, for the purpose of buying Christmas presents, and Christmas tree ornaments, for the entertainment of children of personnel stationed at the * * * Army Ground and Service Forces Redistribution Station, Miami Beach, Florida". Specification 3 of Charge I alleges that the accused, on the same date, did, "wrongfully and with intent to deceive Brigadier General James H. Walker, * * * officially report and state to the said * * * General * * * that he /the accused/ 'had taken care of all of his obligations, both personal and public, and that everything had been left in proper shape', or words to that effect, which report and statement was known by /accused/ to be untrue in that he had not taken care of all his obligations, both personal and public, and had not left everything in proper shape". These offenses are laid under Article of War 95. Specification 1 of Charge II alleges that the accused "did, at Miami Beach, Florida, from about 1 March 1945 to about 22 May 1945, wrongfully and unlawfully cohabit and live in open adultery with Mrs. Clifford L. Jackson, alias Mrs. Patricia Lee, a woman not his wife, the /accused/ being then married and undivorced". Specifi- 2 of Charge II alleges an identical offense between the same parties, "at West Palm Beach, Florida, from about 23 May 1945, to about 28 May 1945".

Specification 3 of Charge II alleges that the accused did "wrongfully make, sign, and utter, * * * without maintaining sufficient funds to cover the same" a series of checks, all drawn on the Bank of America, South Palo Alto Branch, Palo Alto, California, which as to date, payee, and amount were allegedly as follows:

Date	Payee	Amount
5 April 1945	Benco Trading Company	$461.50
19 May 1945	Miami Beach Service Base Exchange	17.00
19 May 1945	Milgrims	152.75
21 May 1945	Miami Beach Service Base Exchange	14.50
22 May 1945	Pinto Tailleur & Furrier	1500.00
22 May 1945	Cash	25.00
30 May 1945	Mr. Robert Bloch	816.00
31 May 1945	Post Communications Service Account	190.57

These offenses are set forth as violations of Article of War 96.

The accused, by his pleas, admitted his guilt of the foregoing offenses, and the evidence adduced reveals nothing inconsistent with, but, on the contrary, supports, his culpability. The record pictures him as a weak and unstable character who covered the extravagant cost of his adulterous relationship by procuring money through misrepresentation, falsehood, and fraud. His moral collapse, as far as the record shows, began when he and his wife became estranged, and he formed his intimate association with Mrs. Jackson. They not only made no effort to conceal this extra-marital affair, but they brazenly expressed their mutual affection and their intention to live together. They openly shared an apartment, and to those who called upon them they appeared to be enjoying a life of happy and connubial domesticity. Even the children, her son and his daughter, regarded each other as brother and sister.

Apparently feeling that nothing was too good for his paramour, the accused lavished upon her gifts purchased at the fashionable and expensive shops of Miami Beach. Together they went to Pinto Tailleur & Furrier, where he bought for her two fur coats and left behind his worthless check for $1500.00. His bank account at that time showed a balance of $2.76. On another occasion she purchased several items at Milgrim's and paid for them with his check in the sum of $152.75, which reached the drawee bank when his account stood at less than $5.00. He bought her a handbag from the Post Exchange and on that occasion, too, passed a worthless check. In late May he took Mrs. Jackson and the children to the Pennsylvania Hotel in West Palm Beach and paid $167.53 for a six day visit there.

This extravagant way of life naturally placed a crushing financial burden on the accused. The demands were great and his resources

apparently limited. To meet them he solicited loans from his friends and even depleted the trust fund which he clearly had no authority to use for personal needs. Authorized disbursements from this fund, which originally stood at $1000, accounted for $255.75, and on 9 January 1945, the accused made a check to himself for the balance of $744.25. A further expenditure of $30.00 brought the sum for which he was responsible to $714.25. There is no evidence that he followed instructions to place this amount in a "separate fund", but the record rather indicates that he used the money to meet pressing personal requirements. Thus, when the voucher from Benco Trading Company was presented to him for payment, he dispatched a check, not drawn on the trust fund, which, we may assume, had been dissipated, but drawn against his personal account. The check was dishonored, and it was not until late June, 1945, that the seller was paid for merchandise supplied for the previous Christmas season. The fact that the accused delivered the sum of $278.00 to Mr. Kenner, who succeeded to the custody of the fund, does not necessarily negative the accused's guilt of embezzling the entire alleged sum of $714.25, for the amount left with Mr. Kenner may properly be regarded, in view of all the evidence and the plea of guilty, as a portion of the restitution which, concededly, was made by the accused.

That the drafts mentioned and those made to the Post Communications Service Account and to Mr. Moe Brenner, were only a few of the worthless checks which the accused distributed is indicated by the fact that, on 30 May 1945, he needed $800 to redeem other checks held by the "Officers' Mess". When he was told that his failure would result in a full report of his sorry financial plight to the Commanding General, the accused realized that the inevitable crisis had arrived. He turned first to Captain Pope for a loan of $1000.00. The latter demurred but pointed to Captain Anthony as a person who might possibly help. Captain Anthony refused, but suggested Mr. Robert Bloch's "check cashing service". Bloch was approached and requested the usual certification of solvency but, to avoid an inquiry into the status of his bank account, which at that time showed a balance of $.76, the accused asserted an apparent falsehood that an important mission would require his departure from the station within thirty minutes. Whatever reluctance Bloch displayed was overcome by Captain Pope's expression of his and Captain Anthony's confidence in the accused. The latter then exchanged checks with Bloch and thereby realized sufficient cash to postpone the threatened crisis. The effect of this transaction, however, was merely to compound his delinquencies, for his check to Bloch was dishonored and had not been redeemed at the time of trial.

On the day following his dealings with Bloch the accused conferred with General Walker and declared, in effect, that he "had taken care of" his obligations and had accounted for all property and money which had been entrusted to him. The false and deceitful character of this assertion, which was official in nature, is attested by the foregoing recital of worthless checks, misrepresentations, and embezzlement.

This entire pattern of conduct revealed a shocking absence of moral responsibility, financial integrity, and the tenets of honor, which form an indispensable part of the Army officers' code. The accused, by flaunting his immorality, by obtaining large sums of money by falsehood and misrepresentation, and by deceiving his Commanding General, has compromised his character as an officer and brought disrepute and discredit to his military service. The court was amply justified in finding that the provisions of Articles of War 95 and 96 were offended.

Consideration has been given to the fact that Specification 3 of Charge II, in alleging the wrongful making and uttering by the accused of eight worthless checks, contravenes the provision of the Manual for Courts-Martial that "One specification should not allege more than one offense either conjunctively or in the alternative" (Par. 29b). When, however, it appears that the accused has not been misled by the duplicitous character of the Specification and that the allegations fully apprize him of the facts upon which he must prepare his defense, the Board of Review has held:

> "The fact that a specification is multifarious is not of itself a sufficient reason for setting aside a finding of not guilty" (CM 202601, Sperti, 6 BR 171, 207). See also CM 218876, Wyrick et al., and CM 224765, Butler.

Since, in the present case, each check was described as to date, payee, and amount, and the accused interposed no objection, it is believed that, while contrary to good pleading, the form of the Specification did not prejudice his substantial rights.

6. The accused is about 31 years of age and is married. He graduated from High School, attended Ohio State University in 1932, and the University of Cincinnati in 1933. He served as a Sergeant in the National Guard of the United States from 23 November 1936 to 20 November 1940 and, on 5 March 1941, entered on active duty as a Second Lieutenant. By War Department Special Orders dated 8 April 1942 he was promoted to First Lieutenant to rank from 1 February 1942, and, on 27 November 1943, was promoted to Captain.

7. The court was legally constituted. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and sentence as approved by the reviewing authority, and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 96 and is mandatory upon conviction of a violation of Article of War 95.

Abner E. Lipscomb, Judge Advocate.

Robert J. Connor, Judge Advocate.

On Leave, Judge Advocate.

SPJGN-CM 285699 1st Ind 1945
Hq ASF, JAGO, Washington, D. C.
TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Captain Carl F. Schaurer (0-399866), Cavalry.

2. Upon trial by general court-martial this officer was found guilty of embezzling the sum of $714.25 (Spec. 1, Chg. I); of making false official statements to Lieutenant Colonel Henry L. Love (Spec. 2, Chg. I), and Brigadier General James H. Walker (Spec. 3, Chg. I), all in violation of Article of War 95; of living in open adultery with a woman not his wife from 1 March 1945 to 22 May 1945, at Miami Beach, Florida (Spec. 1, Chg. II); of the same offense with the same woman from 23 May 1945 to 28 May 1945, in West Palm Beach, Florida (Spec. 2, Chg. II); and of wrongfully making and uttering a series of worthless checks, totaling $3177.32 (Spec. 3, Chg. II), all in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct, for a period of five years. The reviewing authority disapproved the findings of guilty of Specification 2, Charge I, approved the sentence, and forwarded the record of trial for action under Article of War 48.

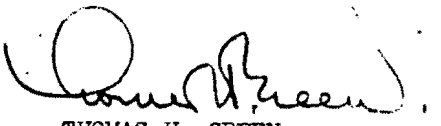
3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings of guilty as approved by the reviewing authority and the sentence and to warrant confirmation thereof.

Brigadier General James H. Walker, Commanding General of the Army Ground and Service Forces Redistribution Station, Miami Beach, Florida, placed $1,000 in the custody of his adjutant, the accused, and instructed him to use the money to purchase decorations, favors, and gifts, for the celebration of the Christmas, 1944, season, at that station. The accused expended $285.75 for this purpose but converted the balance of $714.25 to his own use and apparently used it to meet pressing financial demands. Having separated from his wife in March 1944, the accused was seen frequently in the company of a Mrs. Patricia Jackson. Although undivorced from his wife, he and Mrs. Jackson, during the spring months of 1945, shared an apartment at the Sunset Hotel, Miami Beach, and to all who knew and visited them, the couple appeared to be living as husband and wife. They occupied the same room at the Pennsylvania Hotel in West Palm Beach, Florida, from 23 May 1945 to 28 May 1945. This adulterous relationship and extravagant method of living placed a crushing financial burden on the accused, and, over a period from

5 April 1945 to 31 May 1945, he gave worthless checks aggregating $3177.32. One check, for example, in the amount of $1500, was given in payment of two fur coats. To raise sufficient funds to meet certain worthless drafts, he obtained $800 from Mr. Robert Bloch's "check cashing service". His check for $816 to Mr. Bloch was also returned unpaid because of insufficient funds. On 31 May 1945, the accused, prior to leaving Miami Beach for a permanent change of station, called upon Brigadier General Walker and made the false statement that "all property funds that he was accountable for had been properly closed and legally cared for and turned over to his successor, and all funds both personal and private had been left in good shape".

The record portrays the accused as a weak and unstable character, who, to sustain the high cost of an adulterous relationship, obtained money by fraud, misrepresentation, and falsehood. At a time when his financial condition was desperate he insisted in an interview with his Commanding General that his debts had been taken care of and his affairs were in order. The high degree of moral turpitude involved in the offenses, the utter lack of moral responsibility and financial integrity demonstrated by the accused, his disregard for principle and truth, and the substantial total of his financial delinquencies, compel the conclusion that the sentence of dismissal and confinement for five years should be confirmed. I recommend, therefore, that the sentence be confirmed but that the forfeitures be remitted, that the sentence as thus modified be ordered executed, and that an appropriate United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.



2 Incls
Incl 1 - Record of trial
Incl 2 - Form of action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence confirmed but forfeitures remitted. GCMO 485, 15 Nov. 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 285844

U N I T E D S T A T E S	)	ARMY AIR FORCES TRAINING COMMAND
	)	
v.	)	Trial by G.C.M., convened at
	)	Laredo Army Air Field, Laredo,
Second Lieutenant ARTHUR J.	)	Texas, 21 August 1945. Dis-
MIX, JR. (0-761822), Air Corps.	)	missal and total forfeitures.

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant Arthur J. Mix, Jr., Squadron B-1, 2126th Army Air Forces Base Unit, did, at Laredo Army Air Field, Laredo, Texas, on or about 6 August 1945, wrongfully apply to his own use and benefit without proper authority a 1939 Ford Convertible Coupe automobile, value about six hundred dollars ($600.00), the property of William A. Koeppen.

Specification 2: In that Second Lieutenant Arthur J. Mix, Jr., Squadron B-1, 2126th Army Air Forces Base Unit, having been restricted to the limits of his post, did, at Laredo Army Air Field, Laredo, Texas, on or about 6 August 1945, break said restriction by going to the City of Dilley, Texas.

He pleaded not guilty to, and was found guilty of, the Charge and the

Specifications thereunder. Evidence was introduced of one previous conviction by a general court-martial for wrongfully abetting an enlisted man in the wearing of the insignia of an officer, for wrongfully violating a post regulation governing visits to the Republic of Mexico, and for being drunk and disorderly there, all in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that on 6 August 1945 the accused was under sentence of a general court-martial restricting him to the limits of the Laredo Army Air Field and had not been given permission to leave his post on that date (R. 15, 16; Pros. Ex. 1). Near midnight on 5 August the accused, who was described as being "drunk" at that time, left his barrack at the Laredo Army Air Field (R. 9). Shortly thereafter Second Lieutenant Donald B. Koeppen observed that the two-toned 1939 Ford Convertible Coupe which he had parked near the barrack was gone (R. 7). This car belonged to Lieutenant Koeppen's father, William A. Koeppen, but was in Lieutenant Koeppen's possession and under his "full control" (R. 7). Lieutenant Koeppen had not given the accused permission to use it. Early on the following morning the accused was seen at a filling station in Dilley, Texas, having a tire changed on the car in question (R. 13-14). A little later the car was returned to the Laredo Army Air Field and parked there. The dash compartment had been forced open and two tires were "flat" (R. 8). The value of the car was stipulated to be $600 (R. 15).

4. After the accused's rights relative to testifying or remaining silent had been explained to him, he elected to remain silent and no evidence was presented for the defense (R. 16-17).

5. Specification 1 alleges that the accused did, at the Laredo Army Air Field, on or about 6 August 1945, wrongfully apply to his own use and benefit without proper authority a 1939 Ford Convertible Coupe automobile, value about $600, the property of William A. Koeppen. The evidence shows that on 6 August 1945 Second Lieutenant Donald B. Koeppen was in the exclusive possession and control of the car described in the above Specification and owned by his father, William A. Koeppen. The evidence shows further that the accused was seen with the car in Dilley, Texas, a short time after the car had been removed from its parking place at the Laredo Army Air Field. This evidence, and the evidence that Lieutenant Koeppen had not given the accused permission to use the car, warrants the conclusion that the accused wrongfully applied it to his own use, in violation of the rights of both William A. Koeppen and his son Second Lieutenant Donald B. Koeppen. Every element of the offense charged is established by evidence beyond a reasonable doubt.

6. Specification 2 alleges that the accused, "having been restricted to the limits of his post, did, at Laredo Army Air Field, Laredo, Texas, on or about 6 August 1945, break said restriction by going to the City of Dilley, Texas". The evidence clearly shows that the accused, on the date stated above, was restricted to the limits of his post by the order of a general court-martial and that he did not at that time have permission to leave. Despite this restriction he left his post and wrongfully visited the city of Dilley, Texas. The evidence establishes beyond a reasonable doubt the offense charged.

7. The records of the War Department show that the accused is 21 years and 9 months of age. Prior to entering the service he graduated from high school and attended the University of Minnesota for one year. He received "ROTC" basic training from 1936 to 1940 and entered the Enlisted Reserve Corps on 26 June 1942. Thereafter he entered active duty in the Army Air Corps on 29 December 1942 and was commissioned a second lieutenant in that organization on 5 December 1943. On 11 July 1945 he was convicted of wrongfully abetting an enlisted man in the wearing of the insignia of an officer, for wrongfully violating post regulations governing visits to the Republic of Mexico, and for being drunk and disorderly there, all in violation of Article of War 96.

8. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. The Board of Review is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is authorized upon a conviction of a violation of Article of War 96.

Abner E. Lipscomb, Judge Advocate.

Robert J. Clemmer, Judge Advocate.

Samuel Morgan, Judge Advocate.

SPGCM-CM 285844 1st Ind
Hq ASF, JAGO, Washington 25, D. C.
To: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Arthur J. Mix, Jr., (0-761822), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of wrongfully applying an automobile of the value of $600 to his own use and benefit, and of leaving his post in violation of a restriction which had been placed upon him, both in violation of Article of War 96. After evidence of a previous conviction by general court-martial had been considered by the court, he was sentenced to be dismissed the service, and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof.

Prior to the present case the accused was convicted, on 11 July 1945, by a general court-martial for wrongfully abetting an enlisted man in the wearing of the insignia of an officer, for wrongfully violating post regulations governing visits to the Republic of Mexico, and for being drunk and disorderly there, in violation of Article of War 96, and was sentenced to be restricted to the limits of his post for three months and to forfeit $100 of his pay for six months. He was under the restriction of this sentence on the evening of 5 August 1945 when he became inebriated and broke the restriction by driving the car of a fellow officer from the Laredo Army Air Field to Dilley, Texas. The car was wrongfully taken by the accused without permission. The car was used by the accused from about midnight to about seven o'clock the following morning. When returned to the Laredo Army Field, it had two flat tires and the dash compartment had been forced open. Since the accused is only 21 years of age and since his offense is a relatively minor one, he appears to be worthy of clemency. It is recommended, therefore, that the sentence be confirmed but that the forfeitures be remitted and that the sentence as thus modified be suspended during good behavior.

4. Brigadier General John J. O'Brien presented a letter to the Board of Review from Mr. O. G. Holmer concerning the accused's good record in civilian life and requesting the extension of clemency in his behalf.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

MYRON C. CRAMER
Major General
The Judge Advocate General

3 Incls
Incl 1 - Record of trial
Incl 2 - Form of action
Incl 3 - Ltr. fr. Mr. O.G. Holmer

(Sentence confirmed but forfeitures remitted. GCMO 459, 11 Oct 1945). Sentence suspended during good behavior.)

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGQ - 285878

UNITED STATES	FIRST AIR FORCE MITCHEL FIELD, NEW YORK
v.	
Second Lieutenant LE ROY F. GILLEAD (0-713060), Air Corps.	Trial by G.C.M., convened at Walterboro Army Air Field, South Carolina, 14 August 1945. Dismissal and total forfeitures.

OPINION of the BOARD OF REVIEW
ANDREWS, BIERER and HICKMAN, Judge Advocates.

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 61st Article of War.

Specification: In that Second Lieutenant LeRoy F. Gillead, Air Corps, "W" Squadron, 126th Army Air Forces Base Unit (Combat Crew Training Station - Medium and Fighter), did, without proper leave absent himself from his station at Walterboro Army Air Field, Walterboro, South Carolina, with intent to go to Dayton, Ohio, at about 1500, 17 July 1945, and did remain absent without leave until he was apprehended by the military authorities at Hunter Field, Georgia, at about 1930, 17 July 1945, and directed to return promptly to his proper organization.

CHARGE II: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant LeRoy F. Gillead, Air Corps, "W" Squadron, 126th Army Air Forces Base Unit (Combat Crew Training Station - Medium and Fighter), did, at Walterboro Army Air Field, Walterboro, South Carolina, on or about 17 July 1945, fail to sign out on the Officers' Register before leaving his station to visit a place more than twenty-five (25) miles therefrom, to wit: Savannah, Georgia, in violation of paragraph 2, Base Regulation Number 35-2, Headquarters, Army Air Base, Walterboro Army Air Field, Walterboro, South Carolina, dated 31 December 1944.

Specification 2: In that Second Lieutenant LeRoy F. Gillead, Air Corps, "W" Squadron, 126th Army Air Forces Base Unit (Combat Crew Training Station - Medium and Fighter), did, at Hunter Field, Georgia, on or about 17 July 1945, with intent to deceive Captain Otis A. deMott, Air Corps, officially state to the said Captain Otis A. deMott, Air Corps, that he was trying to obtain aircraft passage to Walterboro Army Air Field, Walterboro, South Carolina, which statement was known by the said Second Lieutenant LeRoy F. Gillead, Air Corps, to be untrue in that he was in fact trying to obtain aircraft passage to Dayton, Ohio, or Chicago, Illinois.

He pleaded guilty to the Specification of Charge I and Charge I, guilty to Specification 1, Charge II, and Charge II, and not guilty to Specification 2, Charge II. He was found guilty of all Charges and Specifications. No evidence of previous convictions was introduced at the trial. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48 with the recommendation that the sentence be approved but that that portion thereof providing for dismissal be suspended and that portion thereof providing for forfeiture in excess of $75.00 per month for six months be remitted.

3. The evidence for the prosecution, briefly summarized, is as follows:

Upon stipulation and agreement of the prosecution and the defense, the following documents were introduced in evidence: a true extract copy of Base Regulation 35-2, dated 31 December 1944, Headquarters, Walterboro Army Air Field, the duty station of the accused (R. 17, 18), requiring that officers visiting places more than 25 miles from such base after duty hours sign out in "the Register" (R. 18; Pros. Ex. 2); an unnumbered memorandum of the same Headquarters, dated 12 June 1945, providing that student officers would not leave the base during duty hours without permission of their squadron commanding officer (R. 18, 19; Pros. Ex. 3); and a certificate, dated 3 July 1945, purporting to bear the signature of the accused and reciting that he had read and understood Base Regulations (R. 19; Pros. Ex. 4).

The commanding officer of accused's squadron testified that he did not recall seeing the accused on 17 July 1945 and that he did not give the accused permission to leave the base on that date (R. 17, 18). The base adjutant testified that he was the official custodian of the "Officers' Register," that he had examined all entries therein for 17 July 1945 and that the name of accused did not appear therein (R. 20, 21). The Register for that date, which did not bear the accused's name, was introduced in evidence (R. 21; Pros. Ex. 5).

The chief aircraft dispatcher, Hunter Field, (Georgia) testified that while he was on duty, 17 July 1945, the accused came in and inquired

as to a ride, saying that he wanted to go to Chicago (R. 15, 16). The dispatcher told the accused a plane was going out the next morning at "approximately 9:00" and gave him a form which accused filled out in his own handwriting as to name, home station and destination (R. 16, 17). This form, "a log," was introduced in evidence showing: "Gillead, L. F., 2nd Lt., Walterboro, S. C., WAAF (home station), Dayton (destination), 606 BOQ (local phone), 1645 (time)" (R. 16; Pros. Ex. 1). At the time accused signed in and made application for passage to Dayton, Ohio, the first available plane for that point was "one taking off at approximately 9:00 the following morning" (R. 17).

Captain deMott, Provost Marshal, Hunter Field, Savannah, Georgia, and Sergeant Heard saw accused there about 5:00 or 6:00 o'clock in the late afternoon, 17 July 1945, and the Captain told the accused that he had written orders from the "authorities" (Walterboro Field) directing accused to return there immediately (R. 6, 7, 11). The accused asked to be taken to "Operations" to pick up his bags (R. 7). Captain deMott asked accused why his bag was there and accused told him that he was "trying to get a hop to Walterboro" (R. 8, 9, 12). Examination of the register at "Operations" indicated that accused was going to Dayton rather than Walterboro (R. 8). Orders had been issued that no officer in training could go to Savannah without leave papers or written orders (R. 8). Accused was beyond fifty miles of the City of Walterboro at the time (R. 9). There was no complaint about the conduct of accused, he wasn't drinking or insulting in his language, and he acted as an officer should act (R. 10).

A statement of the accused subscribed and sworn to on 23 July 1945 was introduced in evidence (R. 21, 22; Pros. Ex. 6). In this statement, the accused expressly denied that he was guilty of Specification 2, Charge II, reciting that he signed for a plane leaving Hunter Field for Dayton, Ohio, but that before the Provost Marshal saw the accused, he (the accused) was on his way to sign out of the BOQ and "board the 2140 bus from Savannah to Charleston for Walterboro, S. C." Later when the Provost Marshal asked him about his bag being at Operations, accused said "I was trying to get a flight now I'm going to Walterboro." The statement contained a recitation by a Summary Court officer that accused declared that he understood his rights under the 24th Article of War, acknowledged his signature, and appeared before such officer to swear to the contents of the statement (Pros. Ex. 6).

4. The accused took the stand and made a sworn statement (R. 23). Insofar as is material to the charges, he testified that he was a lifelong friend of one William Batten, who was also in the military service, and who was going to get a divorce in Cleveland, Ohio, and needed two witnesses to appear there in his behalf and who asked accused to go to Cleveland for that purpose (R. 24, 25). Accused undertook to obtain leave in order to go there but being unable to secure any, he decided to try to catch a plane to Dayton and make the trip anyway (R. 25, 26). His friend's outfit was scheduled to go overseas and accused felt there was no use of Batten going overseas married and sending money to his wife

when they were not getting along so the accused "reasoned with things" and came to the conclusion he might be able to do something (R. 25). Accused signed for Dayton (R. 26). Then his conscience began bothering him, "telling me I had no business going" and if he "did go AWOL" he would not be upholding the standards of an officer. He then decided not to go. Thereafter the Provost Marshal saw him and when that officer asked accused what his bag was doing at "Operations," accused said: "I was trying to get a flight. Now I am going to Walterboro." Accused left on the "1:40 bus for Walterboro and reported on the Base sometime around 4:00 that morning" (R. 26). Accused was required by letter, dated 18 July 1945, over the signature of his commanding officer to reply by indorsement as to why he was absent from bed check on the evening of 17 July 1945 and as to his whereabouts that evening (R. 26; Def. Ex. E). Accused replied that he "did not return from town before 2315," that he was present for duty the morning of 18 July 1945, and that he "was in Savannah, Ga., and could not obtain transportation to return to base before bed check" (Def. Ex. E). The accused believed the Provost Marshal misconstrued his statement about going back to Walterboro (R. 27).

Accused further testified that it was about 1645 hours when he was at Hunter Field seeking a ride to Dayton, that thereafter he went to a show, and it was about 1930 hours when he was apprehended (R. 30). Immediately before his apprehension he had definitely decided to return to Walterboro (R. 31).

Without objection by the prosecution, the following papers and documents were introduced in evidence by the defense: statements of Capt. deMott and Sergeant Heard executed prior to the date of trial which in all material respects agreed with their testimony given at the trial except that the approximate time at which they saw the accused at Hunter Field was fixed in the respective statements at 1930 hours (R. 22; Def. Exs. A, B) rather than from 1700 to 1800 hours (R. 7, 11); two letters from a legal firm in Cleveland, Ohio, to William T. Batten stating, in substance, that his case might be tried there at any time he was able to appear with two witnesses (R. 23; Def. Exs. C, D); five money order receipts which accused testified represented money which he had sent to his family (R. 34; Def. Ex. F); W.D., AGO Form 29 showing authorizations for allotments of the pay of the accused in the sum of $200.00 monthly to his wife and $50.00 monthly to his mother (R. 34; Def. Exs. G, H).

The commanding officer of the accused, recalled as a witness by the court, testified that he had no recollection of accused asking him for any type of leave on 17 July 1945 although he could not positively state that accused did not ask him (R. 31, 32).

5. The pleas of guilty and the evidence clearly establish that the accused was absent without leave from his station at Walterboro Army Air Field, South Carolina, from about 1500 hours, 17 July 1945, to about 1930 hours, the same day, when he was apprehended at Hunter Field, Georgia,

and that, in violation of base regulations, he failed to sign out on the Officers' Register before leaving his station to visit a place more than twenty-five miles therefrom, namely, Savannah, Georgia.

The only controverted issue in the trial was with respect to Specification 2, Charge II, alleging that accused made a false official statement to the effect that he was trying to obtain aircraft passage to Walterboro Field when in fact he was trying to obtain aircraft passage to Dayton, Ohio, or Chicago, Illinois. The accused admits that he did undertake to secure passage by air from Hunter Field, Georgia, to Dayton, Ohio, but claims that a few hours later he decided not to go there but to return to his duty station. He further asserts that he told the Provost Marshal, to whom it was alleged he made the false statement, that he "was trying to get a flight. Now I am going to Walterboro." He contends that he planned to return to his station by bus and did not state that he was trying to get a flight to that place.

Both the Provost Marshal and Sergeant Heard testified positively that accused stated he was trying to get a hop or ride to Walterboro. The evidence was undisputed that some two or three hours earlier, accused had made application for air passage to Dayton by registering in a log book, although at the same time he had orally asked for a plane to Chicago and was informed that the next plane out would be about 9:00 o'clock the following morning. Accused admits that he went to a show, after making inquiry about the plane, but claims that immediately prior to his apprehension he had abandoned his intention of going to Dayton and planned to return to his base.

The weight of the evidence is clearly against the accused. The court was fully warranted in disbelieving his claim that he possessed a subjective intent to return to his base when all other evidence indicated that he was trying and intending to go to Dayton. Up until the time he was actually apprehended, his every act disclosed his intention of going to Dayton or Chicago. His repudiation of such intention under the circumstances was not persuasive.

Prosecution's Exhibit 6 consisted of a written statement made by the accused on 23 July 1945. The statement was partially disserving and partially self-serving insofar as the accused's guilt was concerned. He admitted therein that he signed for a plane leaving for Dayton but denied that he told the Provost Marshal that he said he was trying to get a flight to Walterboro. No circumstances surrounding the execution of the document were shown. Inasmuch as the statement contained admissions against the interest of the accused, it was properly admitted without any showing that it was voluntarily made, there being no proof whatever that the statement was procured by means that may have caused the accused to make a false statement (MCM, 1928, par. 114b, p. 117). Furthermore, where an admission of an accused is partially self-serving, the entire statement should be received, it being the function of the court to pass upon its weight and to reject either part believed to be untrue (See Vol. 1, Wharton's Criminal Evidence, 11th ed., p. 792).

6. Attached to the record of trial is a letter to the "Boards of Review," dated 14 August 1945, from First Lieutenant Hayden C. Johnson, Special Defense Counsel, urging clemency and stating that the "defense of the accused was injured by the recorder's inefficiency." The letter recites that the court, after two and one-half hours of deliberation, called in the "recorder" (reporter) in order to have the testimony of the Provost Marshal resubmitted, that the "recorder" requested permission to transcribe her shorthand notes, that the request was denied, that she then attempted with great difficulty and no definite sequence to read from her notes. The trial judge advocate and the president of the court authenticated the record of trial as correct and the defense counsel, author of this letter, signed the record of trial under the certificate, "I examined the record before it was authenticated." Apparently he was satisfied as to the correctness of the record of trial or he would not have signed it. There is nothing to indicate incorrect transcription of the testimony. The unsubstantiated suggestion that the record fails accurately or truly to reflect the proceedings, without detailing any specific errors, is not persuasive in view of the authentication of the record and the defense counsel's approval thereof.

7. War Department records show that the accused is 25 years of age. He is a high school graduate. In civil life he was a registration clerk employed by the Police Athletic League, New York City, a recreation organization. He served in enlisted status in the Regular Army from 2 April 1941 to 25 February 1944, at which latter date he was discharged to accept a commission in the Army of the United States. He was immediately ordered to active duty as a Second Lieutenant, Air Corps.

8. The court was legally constituted and had jurisdiction of the accused and the offenses charged. No errors affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. Dismissal is authorized under Articles of War 61 and 96.

Fletcher R. Andrews, Judge Advocate.

[illegible], Judge Advocate.

Donald D. Hickman, Judge Advocate.

SPJGQ - CM 285878 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant LeRoy F. Gillead (0-713060), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of absence without leave (4½ hours), in violation of Article of War 61 (Specification, Charge I), failing to sign out in the Officers' Register before leaving his station to visit a place more than twenty-five miles therefrom (Specification 1, Charge II), and making a false official statement (Specification 2, Charge II), both in violation of Article of War 96. He pleaded guilty to Charge I and the Specification thereof and to Specification 1, Charge II. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48 with the recommendation that the sentence be approved but that that portion thereof providing for dismissal be suspended and that portion thereof providing for forfeiture in excess of $75.00 per month for six months be remitted.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. I concur in that opinion.

About 1500 hours, 17 July 1945, the accused without authority left his duty station at Walterboro Army Air Field, Walterboro, South Carolina, and went to Hunter Field, Savannah, Georgia, a distance of over fifty miles from his station. He failed to sign out in the Officers' Register before going to Hunter Field, as required by base regulations when visiting a place more than twenty-five miles from such station after duty hours. On arrival at Hunter Field, he told the aircraft dispatcher that he wanted to go to Chicago. He was told there were no planes that day but one would be going out the next morning about 9:00 o'clock. Accused then filled in a form giving his name, and home station and his destination as being "Dayton." This was about 1645 hours, 17 July 1945. Accused then went to a movie. About 1930 hours that evening he was apprehended by the Provost Marshal of Hunter Field and directed to return to his proper station. When asked by the Provost Marshal why his bag was at "Operations," accused told him that he (the accused) was trying to get a ride or hop to Walterboro, his home base.

Considering all the circumstances, including the prior record of the accused, it is my opinion that the conduct of the accused does not justify his separation from the service. Accordingly, I recommend that the sentence be confirmed but commuted to a reprimand and forfeiture of $50.00 of his pay per month for six months and that as thus commuted, the sentence be carried into execution.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

2 Incls
1. Rec of Trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but commuted to a reprimand and forfeitures of $50. per month for six months. Sentence as commuted ordered executed. GCMO 493, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 285893

20 SEP 1945

UNITED STATES v. Second Lieutenant HAROLD W. MILLER (0-2055124), Infantry.	FOURTH SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Moore General Hospital, Swannanoa, North Carolina, 25 August 1945. Dismissal and total forfeitures.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 61st Article of War.

Specification: In that 2d Lt. Harold W. Miller, Detachment of Patients, Moore General Hospital, Swannanoa, North Carolina, did, without proper leave, absent himself from his organization and station at Moore General Hospital, Swannanoa, North Carolina from about 26 February 1945 to about 15 August 1945.

He pleaded not guilty to and was found guilty of the Charge and the Specification. Evidence was introduced of a previous conviction of accused by a general court-martial on 18 February 1945 for AWOL from 11 January 1945 to 1 February 1945, for which he was sentenced to be reprimanded and to forfeit one hundred dollars of his pay per month for a period of three (3) months. In the present case he was sentenced "to be dishonorably discharged the service and to forfeit all pay and allowances, due or to become due." The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. Evidence for the prosecution:

Accused's initial absence without leave on 26 February 1945 from his organization, Detachment of Patients, Moore General Hospital, Swannanoa, North Carolina, was established by the introduction of a certified extract copy of his organization's morning report (R. 13; Ex. 1). His return to military control on 15 August 1945 was established by the testimony of Captain Frederic L. Rogers, Provost Marshal stationed at Moore General Hospital. Captain Rogers testified that he took accused into custody at the City jail in Hendersonville, North Carolina, on 15 August 1945, and that accused was at that time dressed in civilian clothes (R. 11, 12). A State patrolman testified that he and an F.B.I. agent apprehended accused while the latter was working as a soda fountain clerk in the bus terminal at Chimney Rock, North Carolina, on 15 August 1945, and that they took him to the city jail in Hendersonville. When apprehended accused was dressed in civilian clothes and was wearing "an honorable discharge button from the Armed Service on the left wing of his collar" (R. 8, 9). It does not appear of record, but it is a fact of which the court was entitled to take judicial notice that the hospital is distant from Chimney Rock approximately 45 miles.

4. Evidence for the defense:

The accused, after being advised by the court as to his rights as a witness, elected to testify under oath. He has had 22 years of service in the Army, of which 20½ years were served in an enlisted status. As a member of the 70th Tank Battalion he served in the African, Sicilian and French campaigns and was commissioned on the battlefield in Sicily on 30 August 1943. He has been awarded the Silver Star and the Purple Heart. While he was AWOL he paid a visit to the hospital with a baseball team which played the hospital team, but so far as he knows he was not recognized by anyone at the hospital. During the time he was working in the bus terminal at Chimney Rock he saw "quite a few" people from the hospital and realized that sooner or later he would be recognized. The reason he was wearing civilian clothes when apprehended was that he had no summer uniform. In response to a question as to why he "went AWOL", he replied "I can't answer that, sir, because I don't know." He testified, however, that he intended to return voluntarily to his station. On cross-examination he testified with respect to the honorable discharge button "I found it, sir. Why I wore it, I don't know" (R. 17-19).

First Lieutenant William J. Garvin, Medical Corps, of the Neuropsychiatric Service, Moore General Hospital, testified as a witness for the defense, in substance as follows: He has examined the accused and found him to be "sane, responsible for his acts; that he is prone to periodic emotional instability and is addicted to alcoholic excesses." The accused also has "psychopathic tendencies" (R. 14-15).

5. Before arraignment of accused, defense challenged two members of the court, Lieutenant Colonel Thomas B. Wilson and Captain Vernon C. Wilson,

"for cause on the basis that these two officers sat on the trial of a closely related case." Defense declined to define more precisely the ground of the challenges and both challenges were denied by the court in closed session (R. 3). It was subsequently shown that the basis of the challenges was that these two officers had sat on a general court-martial which tried and convicted accused of an AWOL offense on 18 February 1945 (R. 14, 20; Exs. 3, 4). Denial of the challenges did not prejudice any substantial rights of the accused. CM 243215, Owen, 27 B.R. 305, 308. In that case the Board of Review said (p. 308):

> "The court having previously tried the accused, it must be presumed to have had knowledge of the prior convictions during the trial of the instant case. The question here, however, is not one of evidence, as no evidence of that nature was offered by the prosecution at this trial, but one of procedure. The procedure followed by the convening authority of referring this case to the same trial court, under these circumstances, has the same objectionable feature, namely, admitting evidence of prior convictions. It has always been peculiar to military justice that a court-martial may, at the same time, try an accused for numerous offenses notwithstanding their dissimilarity in kind or difference in time of commission. If the offenses in the subject case had been committed prior to the trial of 28 August, there could have been no valid objection to including under an additional charge these very offenses and the court could have properly tried all of the charges at the same time and in that manner have had before it the evidence of all of the offenses."

In the Owen case, as in the present case, the offense involved in the second trial was identical with the offense involved in the first trial, namely, AWOL. Likewise, in each case the accused frankly admitted that he was absent without leave. The knowledge by one or more members of the court, therefore, that accused had previously been convicted of a similar offense could have been of no moment in arriving at a verdict of guilty. Such knowledge may have been taken into account in fixing the penalty; but this could not be complained of, because evidence of the previous conviction was admissible upon the sentence.

6. The prosecution's uncontradicted evidence of accused's absence without leave, taken with accused's own admissions, required a finding of guilty of the offense alleged.

While the sentence that accused be "dishonorably discharged the service, etc." was in the form appropriate for an enlisted man rather than a commissioned officer, the sentence was nevertheless legal. It has uniformly been held that "dismissal" and "dishonorable discharge" are legal equivalents. CM 249921, Maurer, 32 B.R. 229, 235.

7. The records of the War Department show that accused is 40 years of age and single. He enlisted in the Regular Army in 1923, when he was 18 years of age, and has been continuously in the service since that time. After completing 20½ years of enlisted service in the Tank Corps, he was given a battlefield appointment as second lieutenant, AUS, on 30 August 1943 by command of the Commanding General of the Seventh Army. On 28 January 1944 he was awarded the Silver Star for gallantry in action; and on 7 July 1944 he was awarded the Purple Heart for "slight" wounds received in action in France on 13 June 1944.

Accused was tried and convicted by a general court-martial on 18 February 1945 for AWOL from 11 January 1945 to 1 February 1945, for which he was sentenced to be reprimanded and to forfeit one hundred dollars of his pay per month for a period of three (3) months.

8. The court was legally constituted and had jurisdiction of the accused and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. The sentence imposed is authorized upon conviction of a violation of Article of War 61.

Thomas H. Dapper, Judge Advocate

William H. Bancroft, Judge Advocate

Robert E. Trevethan, Judge Advocate

SPJGH-CM 285893 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War.

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Harold W. Miller (0-2055124), Infantry.

2. Upon trial by general court-martial this officer was found guilty of absenting himself from his organization, without proper leave, for a period of 5 2/3 months, in violation of the 61st Article of War. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. I concur in that opinion. The uncontradicted evidence shows that accused, while stationed at Moore General Hospital, Swannanoa, North Carolina, as a member of the Detachment of Patients, absented himself without leave on 26 February 1945 and remained absent until he was apprehended on 15 August 1945 at Chimney Rock, North Carolina, a distance of some 45 miles from his station. When apprehended he was dressed in civilian clothes, was wearing an honorable discharge button on the wing of his collar and was working as a clerk behind a soda fountain.

This officer was previously tried by a general court-martial on 18 February 1945 for absence without leave from 11 January 1945 to 1 February 1945. In that case he was convicted and sentenced to be reprimanded and to forfeit $100 of his pay per month for three months. The order carrying the sentence into execution was promulgated on 23 February 1945, which was three days before the commencement of his absence without leave in the present case.

In view of the long duration of accused's absence, the fact that he was apprehended wearing civilian clothes and an honorable discharge emblem and the fact that he had been convicted of a similar offense only a few days prior to the commission of the present offense, I recommend that the sentence be confirmed but that the forfeitures be remitted and that the sentence, as thus modified, be carried into execution.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

Myron C. Cramer

2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed , forfeitures remitted. GCMO 481, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 285927

10 SEP 1945

UNITED STATES	)	ANTILLES DEPARTMENT
v.	)	Trial by G.C.M., convened at APO 851, c/o Postmaster, Miami, Florida, 7 August 1945. Dismissal.
Second Lieutenant STANLEY B. GIENIEC (O-1119304), Corps of Engineers.	)	

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE: Violation of the 85th Article of War.

Specification: In that 2nd Lt. Stanley B. Gieniec, attached unassigned to Company "C" (Infantry Battalion Number Two), Replacement Battalion, APO 850, c/o Postmaster, Miami, Florida, was, at APO 850, c/o Postmaster, Miami, Florida, on or about 8 July 1945, found drunk while on duty as Post Officer of the Day.

ADDITIONAL CHARGE: Violation of the 96th Article of War. (Finding of not guilty.)

Specification: (Finding of not guilty).

He pleaded not guilty to all Charges and Specifications. He was found guilty of the original Charge and its Specification, not guilty of the Additional Charge and its Specification, and was sentenced to be dismissed the service. No evidence of any previous conviction was introduced. The reviewing authority approved the sentence and forwarded the record of trial for action under the provisions of Article of War 48.

3. The evidence for the prosecution, in so far as pertinent to the Charge and Specification of which accused was found guilty, shows that the accused by appropriate orders of his organization had been designated as Post Officer of the Day for 7 July 1945. His tour of duty was from 1630 hours on that date until 1700 hours on the following day. He relieved his predecessor about 1645 hours on 7 July 1945 and undertook performance of

such assigned duties at APO 850 where his organization was located. At this time he was sober (R. 7,8,11, Pros. Ex. 1).

About 0230 hours on 8 July 1945, accused approached the guard at Post No. 1 in the stockade, "urinated on the plants," and asked for the Corporal of the Guard. When the corporal appeared, he was ordered by accused to "line up the prisoners in formation." Some difficulty was encountered in forming the prisoners. Accused approached and asked one of them if he did not like the formation. Upon receiving a negative answer, he informed the prisoner that he could put him in solitary confinement. When another prisoner stated, "Lieutenant, you are doing that because you are drunk," accused took the pistol from his holster, pulled the "slide back and forth" and said, "Step out you black bastard and repeat that in front of me." The Corporal of the Guard "grabbed" accused by the arm and unsuccessfully tried to take him "out." He then called the Staff Duty Officer who "showed up and took him [accused] along with him" (R. 20,26,29,33,50).

According to one of the prison guards, accused was "drunk," his overseas cap was "crosswise," he was "zigzaging," he talked "incoherently," and he had an "alcoholic smell." Two other guards expressed the opinion that accused was "apparently drunk" and testified that his "tongue was heavy," that he did not walk "normally" or "zigzaged," and that he "smelled of liquor," although one of them also stated that accused was "orderly." A corporal on guard testified that accused was "zigzaging a little," smelled of alcohol, had a "heavy tongue" and had been "drinking" but treated them "decently and with courtesy." Five prisoners also testified to the effect that accused was drunk, that his shirt was "out of place" and his cap on "cross-wise," and that he "zigzaged" (R. 20,22,25-27,31,34,37,42,45,47,48, 51).

The Staff Duty Officer, First Lieutenant Henry O. Rhodes, who asked accused to accompany him from the stockade to Post Headquarters, noticed "a strong odor of alcohol" on accused's breath and that he was "unsteady on his feet at times." He then suggested that accused report to the "Medical OD" for an examination. Accused agreed "readily" and left Lieutenant Rhodes who later drove to the hospital and awakened the sleeping Charge of Quarters but could not find accused. He found accused in bed in his hutment and was told that he had been unable to find anyone in the hospital. They returned to the hospital where accused submitted to a blood alcohol test about 0400 hours which showed "Blood Alcohol 2.0 mgs per 1 cc blood." In the opinion of Lieutenant Rhodes, accused was "intoxicated" to an extent which impaired the rational and full exercise of his mental and physical faculties. Accused was, however, "orderly" at all times and he did not take his pistol from him. Captain Francisco Velez, MC, who examined accused at the hospital testified that he noticed accused had an "alcoholic breath" and that his eyes were a "little blood shot." His opinion was that accused was not "drunk" but was under the "influence" sufficiently sensibly

to impair the rational and full exercise of his mental and physical faculties. He also testified that the report as to alcoholic content of accused's blood meant that accused "had been drinking." A condition normally called "dead drunk" is manifested by a blood content of from "3 to 4" mgs per 1 cc of blood.

4. For the defense, the accused, whose rights as a witness had been explained, elected to testify. He had been in military service for forty months and was commissioned on 7 February 1945. In civil life, he was a coal miner. He arrived in Puerto Rico on 28 June and had never before 7 July been on duty as Officer of the Day. About 1300 and 1400 hours on 7 July, he had a "rum and coke" but took no other drinks before reporting for duty as Officer of the Day. After his tour of duty began, he performed the usual duties and then went to a show. About 1930 hours, he went to the Officers' Club where he stayed thirty minutes. He again visited the Club about 40 minutes later for a short time and returned there about midnight where he remained until 0245 hours. He drank nothing intoxicating except for "a mouthful" of whiskey in a glass which he mistakenly picked up for his own from a table where a large number of glasses rested during the progress of a dance. Accused further testified that he then went to the post stockade to check the prisoners because he was responsible for them. When the prisoners began to "mill around" he "raised" his pistol but did not call one of them a "black bastard" or tell him to repeat any remark. When the Staff Duty Officer arrived, accused told him he had one drink at the Officers' Club. He voluntarily submitted to the blood test suggested by the Staff Duty Officer and he denied that he was drunk or in such a condition that his mental and physical faculties were sensibly impaired by intoxicants.

Captain Robert C. Kassner, CAC, testified that he saw accused at the Officers' Club at 2020, 2200 and 0200 hours on the night involved and that accused "walked alright." He did not notice whether accused was "drunk" and "didn't smell alcohol." On cross-examination, witness stated that he had taken "an occasional drink" between 2200 and 0200 hours.

Captain Joseph Osmanski, CAC, testified that he also attended the dance at the Officers' Club on the night of 7 July. About 2200, 2300 and 0100 hours, he saw accused briefly. On each occasion, accused appeared to be normal.

Two other officers testified as to accused's apparent sobriety on the occasions they noticed him at the Officers' Club. One of them who relieved accused as Officer of the Day about 0400 hours noticed "nothing unusual" as to the condition of accused at the time.

5. The Specification alleges that the accused at APO 850 on or about 8 July 1945 was found drunk while on duty as Post Officer of the Day. The elements of the offense alleged are being found drunk while in the performance of military duty and "any intoxication which is sufficient sensibly to

impair the rational and full exercise of the mental and physical faculties is drunkenness within the meaning of the Article of War /85/" (MCM, 1928, par. 145).

The uncontroverted evidence shows that the accused during the late afternoon of 7 July 1945 had properly assumed and entered upon the performance of duties as Post Officer of the Day at APO 850 for a period of 24 hours. The evidence for the prosecution shows that about 0230 hours while acting as Officer of the Day the accused appeared at the Post Stockade where he required the prisoners to turn out for a formation. According to the testimony of four of the prison guards, the accused at this time was either "drunk," "apparently drunk" or had been "drinking," his tongue was "heavy," he smelled of "liquor," he was "zigzaging," and his overseas cap was on crosswise. However, accused treated them with "courtesy." Five of the prisoners who had been summoned to the formation from the "arms of Morpheus" noticed that accused "zigzaged," and that his cap was askew and shirt "out of place." In their opinion, accused was drunk. The Staff Duty Officer who had been called to the Stockade by the Corporal of the Guard smelled "a strong odor of alcohol" on accused's breath and noticed that he was "unsteady on his feet at times" as they returned to Post Headquarters from the Stockade, and he concluded that accused was "intoxicated." Accused's condition was not sufficiently reprehensible to warrant his being relieved of his side-arms because he was "orderly." A blood alcohol test about 0400 hours revealed the presence of "2.0 mgs per 1 cc blood" which meant that accused had been "drinking." In the opinion of the medical officer who examined him, the accused was not "drunk" but was under the "influence" of alcohol sufficient sensibly to impair the rational and full exercise of his mental and physical faculties. On the other hand, the evidence for the defense, elicited from witnesses who had only a limited opportunity to observe the accused is inconclusive in that it is merely to the effect that he appeared to be normal when they saw him. Such evidence would, however, tend to substantiate the testimony of accused that he was sober and that the one "mouthful" of whiskey he had taken while on duty was caused by his drinking from the "wrong" glass, had the court elected to believe the accused. The court was entitled, particularly in view of the direct testimony of the prosecution's numerous witnesses, corroborated by the blood alcohol test, to disbelieve the testimony of the accused. There is disclosed no apparent reason to disturb the findings of the court which were appropriately within its province. The record contains clear, direct and abundant evidence establishing beyond a reasonable doubt that accused was under the influence of alcoholic liquor "sufficient sensibly to impair the rational and full exercise" of his "mental and physical faculties" while on duty in the performance of the alleged military duty, and therefore amply supports the court's findings of guilty of the Charge and its Specification.

6. War Department records show that accused is 26 years of age. He entered on active duty as an enlisted man on 4 May 1942 and served in the Corps of Engineers. He was commissioned second lieutenant on 7 February

1945, after successfully completing Officers' Candidate School at Fort Belvoir, Virginia.

7. The court was legally constituted and had jurisdiction over the accused and the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is mandatory upon conviction of an officer of a violation of Article of War 85.

Charles G. Lockie, Judge Advocate

(On Leave), Judge Advocate

Charles S. Sykes Judge Advocate

SPJGK - CM 285927 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Stanley B. Gieniec (O-1119304), Corps of Engineers.

2. Upon trial by general court-martial this officer was found guilty of being drunk while on duty as Post Officer of the Day at APO 850 on 8 July 1945 in violation of Article of War 85. He was found not guilty of assaulting certain prisoners at the same time and place by menacing them with a pistol in violation of Article of War 96. He was sentenced to dismissal. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and the sentence.

About 0230 hours on 8 July 1945, while he was Post Officer of the Day, the accused appeared at the Post Stockade where he required the prisoners to turn out for a formation. Although he treated the prison guards with "courtesy," he was "zigzaging," his tongue was "heavy," his cap was on cross-wise, and he smelled of "liquor." The guards testified that he was "drunk," "apparently drunk" or had been "drinking." Accused who left the Post Stockade with the Staff Duty Officer who had been summoned there was unsteady on his feet "at times" and had "a strong odor of alcohol" on his breath, as they went to Post Headquarters. The Staff Duty Officer concluded that accused was "intoxicated." About 0400 hours, a blood alcohol test on accused revealed the presence of "2.0 mgs per 1 cc blood" which meant that he had been "drinking." In the opinion of the medical officer who examined him, accused was not "drunk" but was under the "influence" of alcohol sufficient sensibly to impair the rational and full exercise of his mental and physical faculties. The accused denied that he was drunk and claimed that he had taken only one drink while on duty which resulted from his taking the "wrong" glass from a table at the Officers' Club.

Drunkenness on duty in violation of Article of War 85, particularly in time of war, is a serious offense. In view, however, of his more than 28 months of enlisted service without any previous conviction, his having been

a commissioned officer for only five months, and his amenability to higher authority on the night in question and "courtesy" to the guards, indicating that he was not grossly drunk, I recommend that the sentence be confirmed but commuted to a reprimand and forfeiture of $50 of his pay per month for a period of six months and that, as thus modified, be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but commuted to a reprimand and forfeitures of $50. pay per month for six months. GCMO 447, 21 Sept 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGN-CM 286100

UNITED STATES	THIRD AIR FORCE
v.	Trial by G.C.M., convened at Alexandria Army Air Field, Alexandria, Louisiana, 21 August 1945. Dismissal, total forfeitures and confinement for five (5) years.
Second Lieutenant WAYNE W. PERKINS (O-778247), Air Corps.	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 96th Article of War.

Specification 1: (Finding of not guilty).

Specification 2: In that Second Lieutenant Wayne W. Perkins, 329th Army Air Forces Base Unit, Squadron S, Alexandria Army Air Field, Alexandria, Louisiana, did, at Alexandria, Louisiana, on or about 20 June 1945, with intent to defraud, willfully, unlawfully and feloniously utter as true and genuine a certain customer's draft, in words and figures as follows, to-wit:

84-24 GUARANTY BANK & TRUST CO. 84-24
of Alexandria, La.

CUSTOMER'S DRAFT

Alexandria, La., June 20 1945

Pay to the order of Cash $75 00

Seventy Five & no/100 --------- Dollars
with exchange

value received and charge the same to account of

To Valley National Bank)
Uma Arizona)

2nd Lt
/s/ John L Rankin
0-7458247 AAAF.

a writing of a private nature which might operate to the prejudice of another, which said customer's draft was, as he, the said Second Lieutenant Wayne W. Perkins, then well knew, falsely made and forged.

CHARGE II: Violation of the 93rd Article of War.

Specification: In that Second Lieutenant Wayne W. Perkins, * * *, did, at Alexandria Louisiana, on or about 20 June 1945, with intent to defraud, falsely make in its entirety a certain customer's draft in the following words and figures, to-wit:

84-24 GUARANTY BANK & TRUST CO. 84-24
of Alexandria, La.

Alexandria, La., June 20 1945

Pay to the order of Cash $75 00

Seventy Five & no/100 -------- Dollars
with exchange

CUSTOMER'S DRAFT

value received and charge the same to account of

To Valley National Bank)
Uma Arizona)

2nd Lt
/s/ John L Rankin
0-7458247 AAF.

which said customer's draft was a writing of a private nature which might operate to prejudice of another.

CHARGE III: Violation of the 69th Article of War.

Specification: In that Second Lieutenant Wayne W. Perkins, * * *, having been duly placed in arrest at Alexandria Army Air Field, Alexandria, Louisiana, on or about 20 June 1945, did, at Alexandria Army Air Field, Alexandria, Louisiana, on or about 20 June 1945, break his said arrest before he was set at liberty by proper authority.

CHARGE IV: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Wayne W. Perkins, * * *, did, without proper leave, absent himself from his organization and station at Alexandria Army Air Field, Alexandria, Louisiana, from about 20 June 1945, to about 24 June 1945.

The accused pleaded not guilty to Charges I and II and the Specifications thereunder, but guilty to Charges III and IV and to their respective Specifications. He was acquitted of the offense alleged in Specification 1, Charge I, but found guilty of that Charge as well as all other Charges and Specifications, and was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for five years. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows, largely by stipulation as to the facts to which bank employees and others would testify under oath if present, that the accused, on 20 June 1945, requested the assistant cashier of the Guaranty Bank & Trust Company, Alexandria, Louisiana, to accept a customer's draft from him in the amount of seventy-five ($75.00) dollars. Because the accused on a prior occasion had received payment from the bank on a draft which had not been honored, his request was refused. Thereupon the accused prepared a draft on a fictitious bank; affixed a fictitious name as drawer; indorsed the initials of the cashier, indicating approval, in the upper left corner; and presented the completed instrument to a teller in the bank for payment as an approved customer's draft (R. 8, 9, 10, 12-13; Exs. 2, 3, 5, 7, 8). Payment to the accused was made by the teller and the error was subsequently discovered (R. 9; Ex. 3). The accused was apprehended, identified by the bank employees involved, and placed in arrest in quarters at 1700 on the day of the offense (R. 7, 8, 11; Ex. 1). He broke arrest within an hour and thirty minutes and absented himself without leave. He returned to military control and arrest in quarters on 24 June 1945 (Ex. 1).

4. No witnesses, other than the accused, appeared for the defense. Several depositions were, however, introduced indicating that the character of the accused prior to the offenses was good or excellent, and that his honesty and integrity had never been questioned (R. 12-16; Exs. 6, 9, 10, 11, 13).

5. After the accused's rights with respect to testifying, making an unsworn statement, or remaining silent were fully explained to him by the court, he elected to testify under oath. In substance he stated

that his financial condition was bad because of the purchase of an automobile, his monthly allotment to his "folks", the cost of keeping a wife in Alexandria, and damage to his automobile by fellow officers. He explained that he would not request financial aid of his parents because he fancied they favored his brother and sister over him, that disappointment over the nature of his assignment in the Army had caused him to "turn to drink", and that he had thrown aside "the difference between right and wrong" and cashed the draft in a "minute of frustration." Realizing that he would be caught and becoming frightened, he "ran to Houston, Texas." Although he then apparently wanted to get away from the Army, he came back because "the Army was still in [his] eyes" (R. 17, 18). Upon questioning by the prosecution, he stated that the facts set forth in the stipulations as to the testimony of the bank employees were true and correct. He identified the instrument upon which he was paid seventy-five ($75.00) dollars, admitted that he had prepared it, and acknowledged that the fictitious name written as drawer of the draft "came out of [his] mind" (R. 18, 19).

6. The Specification of Charge II alleges that the accused did, on or about 20 June 1945, "with intent to defraud, falsely make in its entirety a certain customer's draft" which "was a writing of a private nature which might operate to prejudice of another." This act was set forth as a violation of Article of War 93. Specification 2 of Charge I alleges that he did, on the same date, "with intent to defraud, willfully, unlawfully and feloniously utter as true and genuine" the same customer's draft, which he "then well knew" was "falsely made and forged." This latter offense was laid under Article of War 96.

> "Forgery is the false and fraudulent making or altering of an instrument which would, if genuine, apparently impose a legal liability on another or change his legal liability to his prejudice" (MCM, 1928, par. 149i).

To constitute the additional separate and distinct offense of uttering a forged instrument "there must be a knowledge that the instrument is a forgery, and there must be an intent to defraud. The intent to defraud may be implied where knowledge of the falsity of the document is shown" (MCM, 1928, par. 152c).

The evidence clearly shows that the writing here in issue was false, and that the accused made it, presented it for payment, and was paid thereon. The accused himself admitted that he had "prepared" and "cashed" the worthless draft. Moreover, he was positively identified by the bank employees as the person who cashed and apparently prepared it. There is, therefore, no reasonable doubt as to the guilt of the accused as alleged in these Specifications.

7. The Specification of Charge III alleges that the accused, on or about 20 June 1945, after being duly placed in arrest, broke his

arrest before being set at liberty by proper authorities. The Specification of Charge IV alleges that he absented himself from his organization and station from about 20 June 1945 to about 24 June 1945. The evidence, as established by competent witnesses and the duly authorized extract copies of the morning report of the organization to which accused was assigned, as well as by his own testimony, shows that accused was duly placed in arrest in quarters and that he broke his arrest and absented himself from his quarters for a period of about four days.

8. The records of the War Department show that the accused is approximately 23 years of age. He served as an air cadet pilot from 21 July 1943 to 23 May 1944, when he accepted an appointment as a second lieutenant. His entire service has been in this country. He is married, but he states that his wife left him because of his misconduct, apparently resulting from the use of intoxicating liquors.

9. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 61, Article of War 93, or Article of War 96.

Abner E. Lipscomb, Judge Advocate

On Leave, Judge Advocate

Samuel Morgan, Judge Advocate

SPJGN-CM 286100 1st Ind
Hq ASF, JAGO, Washington 25, D. C.
TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Wayne W. Perkins (O-778247), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of forging a draft in violation of Article of War 93, unlawfully and feloniously uttering as true and genuine the same draft in violation of Article of War 96, breaking arrest in violation of Article of War 69, and absence without leave in violation of Article of War 61. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for five years. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof.

The accused admittedly forged and cashed a customer's draft at the Guaranty Bank & Trust Company, Alexandria, Louisiana. On the same day after being apprehended and placed in arrest in quarters, he broke arrest and went to Houston, Texas, where he remained absent without leave for four days. At the end of this period he voluntarily returned to Alexandria, Louisiana, and surrendered himself to military control. He is a young man, approximately 23 years of age, with a good reputation and record both in civilian life and in the Army up until the date of his offenses. His testimony at the trial incidated that he is an inexperienced youth with an immature mind. He is repentant and now recognizes the seriousness and implications of his deed, and that he was driven to such action by influences which ordinarily do not affect a mature man. In view of all the circumstances, it is my opinion that he is deserving of some clemency. I accordingly recommend that the sentence be confirmed, but that the forfeitures be remitted, that the period of confinement be reduced to one year, that an appropriate United States Disciplinary Barracks be designated as the place of confinement, and that the sentence as thus modified be ordered executed.

4. Consideration has been given to a letter from the Honorable Thomas E. Martin, Member of Congress, addressed to the Secretary of War.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

3 Incls
Incl 1 - Record of trial
Incl 2 - Form of action
Incl 3 - Ltr. fr. Hon. Martin

(Sentence confirmed forfeitures remitted and confinement reduced to one year. GCMO 483, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGH-CM 286254

29 OCT 1945

UNITED STATES v. Second Lieutenant WILLIAM JOHN KAUPP, JR. (0-788209), Air Corps.	THIRD AIR FORCE Trial by G.C.M., convened at Venice Army Air Field, Venice, Florida, 24 August 1945. Dismissal and total forfeitures.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 61st Article of War.

Specification 1: In that Second Lieutenant William John Kaupp, Jr., Air Corps, Squadron S, 337th AAF Base Unit (CCTS F), Venice Army Air Field, Venice, Florida, did, absent himself without leave from his organization and station at Venice Army Air Field, Venice, Florida, on or about 17 July 1945 and did remain so absent until he was apprehended at Reno, Nevada, on or about 23 July 1945.

Specification 2: In that Second Lieutenant William John Kaupp, Jr., Air Corps, * * *, did without proper leave, absent himself from his organization and duties at Venice Army Air Field, Venice, Florida, from about 4 August 1945 to about 7 August 1945.

CHARGE II: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant William John Kaupp, Jr., Air Corps, * * *, did, at the Bonanza Club, Reno, Nevada, on or about 23 July 1945, without authority, appear in civilian clothing.

Specification 2: In that Second Lieutenant William John Kaupp, Jr., Air Corps, * * *, having received a lawful order from Captain James P. Johnson, Acting Provost Marshal, Reno Army Air Base,

Reno, Nevada, to report to the Commanding Officer at Headquarters Venice Army Air Field, Venice, Florida, without delay, the said Captain James F. Johnson being in the execution of his office, did, at Venice Army Air Field, Venice, Florida, on or about 4 August 1945, fail to obey the same.

He pleaded guilty to Charge I and its two Specifications, guilty to Specification 1 of Charge II, not guilty to Specification 2 of Charge II and guilty to Charge II. He was found guilty of all Charges and Specifications. No evidence of any previous conviction was introduced. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. Evidence presented by the prosecution will, for the sake of clarity, be summarized in the order in which the offenses charged were committed.

Specification 1, Charge I:

On 2 July 1945 the accused was ordered to proceed from his home station, Venice Army Air Field, Venice, Florida, to Hendricks Field, Sebring, Florida, thence to Ogden, Utah, as escort of the remains of Second Lieutenant Howard L, Nicholaisen, and upon completion of such mission to return to his proper station (R. 6, 8; Pros. Ex. 1). On the same date accused was placed on temporary duty at Hendricks Field, Sebring, Florida, and ordered to return to the last mentioned station after he had delivered the remains of the deceased officer to a funeral home in Ogden, Utah (R. 6, 9; Pros. Ex. 2). The last mentioned order was amended on 27 July 1945 ordering accused to return to Hendricks Field, Sebring, Florida, thence to his home station, Venice Army Air Field, Venice, Florida (R. 6; Pros. Ex. 3). Accused accompanied the remains of the deceased officer to Ogden, Utah, as ordered and after attending the funeral, which was held on 9 July 1945, he remained with the deceased officer's family a few days (R. 6, 14). He departed from Roy, Utah (about eight miles distant from Ogden) on 13 July 1945. The normal travel time between Roy, Utah, and Venice Army Air Field, Venice, Florida, is four days. Accused was apprehended at the Bonanza Club, in Reno, Nevada, on 23 July 1945 by members of the military police detachment of the Reno Army Air Base (R. 6-7). He was not authorized to be in Reno, and had no authority to be absent from his station at Venice, Florida, from 17 July 1945 to 23 July 1945.

Specification 1, Charge II:

Upon leaving Roy, Utah, accused proceeded to Reno, Nevada, to visit his mother and small sister. On the evening of 23 July 1945, accused went with a friend to the Bonanza Club at Reno and partook of a few drinks. While there, his friend suggested that they go to the Reno Hot Springs pool for a swim. He thereupon retired to an automobile, removed his Army

shirt, necktie and service cap and donned a civilian sport jacket. When he returned to the Bonanza Club, a colonel, who was present, called the military police who took him into custody upon arrival and held him until 26 July 1945 (R. 7; Pros. Ex. 5).

Specification 2, Charge II:

On 26 July 1945 accused was released by the military police and Captain James P. Johnson, the provost marshal at Reno, gave him a written order directing him to report without delay to his commanding officer at Venice Army Air Field, Venice, Florida. He acknowledged receipt of this order and his understanding of its contents by signing his name on the bottom thereof (R. 7, 12; Pros. Exs. 4, 5,). Accused left Reno, Nevada, 26 July 1945, arrived at Hendricks Field, Sebring, Florida, 3 August 1945, and at Venice Army Air Field, Venice, Florida, 4 August 1945, but did not report to his superiors, nor sign in as directed and required (R. 9-12; Pros. Ex. 5).

Specification 2, Charge I:

Following his return to his proper station at Venice, Florida, accused again absented himself without leave on 4 August 1945 by going to Sarasota, Florida, and remained absent without leave until 7 August 1945 on which latter date he reported to Colonel V. B. Dixon, the commanding officer of Venice Army Air Field. Accused had no authority to be absent during this period (R. 10; Pros. Ex. 5).

4. Following an explanation of his rights as a witness, the accused elected to give sworn testimony in his own behalf. He stated that he accompanied the body of Lieutenant Nicholaisen to Ogden, Utah, and after attending the funeral which was held at Roy, Utah, on 9 July 1945, he remained at the home of the deceased's family until 13 July 1945. On the latter date he proceeded to Reno, Nevada, for the purpose of visiting his mother. He intended staying there only a few days, but his young sister became ill and at the request of his mother he remained until 23 July 1945 on which date he was apprehended by military police at the Bonanza Club in Reno. He admitted removing his Army shirt, necktie and service cap and putting on a civilian sport jacket while he was a patron in the Bonanza Club on 23 July, but said he had done so with the sole view of accompanying a civilian friend to Reno Hot Springs swimming pool for a swim and had no intention of remaining in town dressed in this fashion. He admitted receiving a written order on 26 July 1945 from Captain Johnson, the provost marshal in Reno directing him to return immediately to his station in Venice, Florida, and understood the contents of it. In compliance with that order, he left Reno on 26 July and arrived in Ogden, Utah, the following day. He was unable to obtain a Pullman reservation until 31 July 1945, on which date he left Ogden, Utah, for Sebring, Florida. He arrived in Sebring 3 August and received orders to proceed to Venice. He arrived in Sebring the following day, but did not sign in and did not report to his commanding officer as previously ordered. Instead he left Venice Army Air Field on 4 August 1945 the day of his arrival, and proceeded to

Sarasota, Florida. He returned to his station at Venice, Florida, 7 August 1945 and then reported to the commanding officer of the field. Accused had no authority to be absent from 4 August to 7 August 1945.

Second Lieutenant Paul J. Christian, a member of accused's squadron, testified that he had known accused for seven months, during which time they had been very close friends. He testified further that accused to his knowledge had never had any difficulty with either civil or military authorities, and that he considered his character as "very excellent."

5. Accused's pleas of guilty to each of the offenses charged, except that of failing to report to the commanding officer of Venice Army Air Field, as alleged in Specification 2 of Charge II, together with the evidence of the prosecution leaves no doubt that the court's findings of guilty of all Charges and Specifications were fully warranted. Accordingly, the record of trial is legally sufficient to support the findings and the sentence.

6. Records of the War Department show accused to be 23 years of age and married. He completed the 10th grade in high school. He was inducted into the service 21 April 1943 and was honorably discharged 20 November 1944 to accept a commission as second lieutenant, Air Corps, following which he received training as a fighter pilot. His efficiency ratings have been excellent and he was scheduled to graduate as a fighter pilot 7 August 1945. In civil life he was employed as an airport clearance officer earning $75 per week.

7. The court was legally constituted and had jurisdiction of the accused and the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 61 or Article of War 96.

Thomas N. Tolly, Judge Advocate.

William H. Hambrecht, Judge Advocate.

Robert E. Trevethan, Judge Advocate.

SPJGH-CM 286254 1st Ind NOV 13 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant William John Kaupp, Jr., (0-788209), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of absence without leave from 17 July to 23 July 1945 (Charge I, Specification 1); absence without leave from 4 August to 7 August 1945 (Charge I, Specification 2), in violation of Article of War 61; appearing in civilian clothing in a public place (Charge II, Specification 1), and failing to obey a lawful order of a superior officer (Charge II, Specification 2), in violation of Article of War 96. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. I concur in that opinion. On 2 July 1945 accused was ordered to proceed from his home station at Venice, Florida, to Sebring, Florida, thence to Ogden, Utah, to accompany the remains of Lieutenant Howard L. Nicholaisen and upon completion of such mission to return to Hendricks Field, Sebring, Florida. In compliance with this order, accused accompanied the remains of the deceased officer to Ogden, Utah, and after attending the funeral which was held at Roy, Utah, on 9 July 1945, he remained with the deceased officer's family until 13 July 1945. On the latter date he proceeded to Reno, Nevada, where, on the evening of 23 July 1945, he was apprehended by military police, at the Bonanza Club in Reno. He had accompanied a civilian friend to the Bonanza Club to have a few drinks. While there he removed his Army shirt, necktie and service cap, and donned a civilian sport jacket belonging to this friend. On 26 July 1945, Captain James P. Johnson, the provost marshal at Reno, gave accused a written order directing him to return without delay to his home station at Venice, Florida. Accused left Reno, Nevada, on the latter date, arrived at Hendricks Field, Sebring, Florida, 3 August 1945 and at Venice Army Air Base, Venice, Florida, 4 August 1945, but did not report to his superiors, nor sign in as directed and required. On the same day of his arrival at Venice Army Air Base, Venice, Florida, viz: 4 August 1945, accused again absented himself without leave and remained absent from his station until 7 August 1945.

Information contained in a letter from accused's station dated 29 October 1945, discloses that since accused's trial he again absented himself without leave from his organization and station from 3 October 1945 until 10 October 1945.

I recommend that the sentence be confirmed but that the forfeitures be remitted and that the sentence as thus modified be carried into execution.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

2 Incls
1. Rec of trial
2. Form of action

(Sentence confirmed but forfeitures remitted. GCMO 507, 5 Dec 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 286270

UNITED STATES v. First Lieutenant WILLIAM T. LOVE (0855866), Air Corps.	ARMY AIR FORCES WESTERN TECHNICAL TRAINING COMMAND Trial by G.C.M., convened at Buckley Field, Colorado, 25 and 27 August 1945. Dismissal and total forfeitures.

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OPINION of the BOARD OF REVIEW
ANDREWS, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 94th Article of War.

Specification 1: (Finding of not guilty.)

Specification 2: (Finding of not guilty.)

Specification 3: (Finding of not guilty.)

Specification 4: In that First Lieutenant William T. Love, Air Corps, unassigned, attached Squadron B, 3702d Army Air Forces Base Unit, Buckley Field, Colorado, did, at Buckley Field, Colorado, on or about 31 October 1943 present for approval and payment a claim on War Department Form 336 (Pay and Allowances Account), against the United States to Major T. M. Sorenson, Finance Officer, at Buckley Field, Denver, Colorado, an officer of the United States duly authorized to approve and pay such claims, in the amount of two hundred and eighty-five dollars and 07/100 ($285.07) Dollars for pay and allowances alleged by the said First Lieutenant William T. Love to be due him for services alleged to have been rendered to the United States as an officer of the Army of the United States for the month of October 1943, which claim was false, in that said First Lieutenant William T. Love had received a partial payment of seventy-five dollars ($75.00) from Lieutenant Colonel L. B. Markey, Disbursing Officer,

United States Army, on or about 13 October 1943, which partial payment said First Lieutenant William T. Love failed to deduct and failed to cause same to be deducted in said claim from the amount of pay and allowances otherwise lawfully due said First Lieutenant William T. Love for said month of October 1943, and which claim was then known by the said First Lieutenant William T. Love to be false.

Specification 5: (Finding of not guilty.)

Specification 6: (Finding of not guilty.)

Specification 7: In that First Lieutenant William T. Love, Air Corps, unassigned, attached Squadron B, 3702d Army Air Forces Base Unit, Buckley Field, Colorado, did, at Buckley Field, Colorado on or about 31 August 1944 present for approval and payment a claim on War Department Form 336 (Pay and Allowance Account) against the United States to Lieutenant Colonel J. F. Cogdell, Finance Officer, at Buckley Field, Colorado, an officer of the United States duly authorized to approve and pay such claims, in the amount of two hundred and eighty-five dollars and 07/100 ($285.07) for pay and allowances alleged by the said First Lieutenant William T. Love to be due him for services alleged to have been rendered to the United States as an officer of the Army of the United States for the month of August 1944, which claim was false, in that said First Lieutenant William T. Love had received a partial payment of one hundred and fifty dollars ($150.00) from Lieutenant Colonel W. Gritz, Disbursing Officer, United States Army, on or about 28 August 1944, which partial payment said First Lieutenant William T. Love failed to deduct and failed to cause same to be deducted in said claim from the amount of pay and allowance otherwise lawfully due and said First Lieutenant William T. Love for said month of August 1944, and which claim was then known by the said First Lieutenant William T. Love to be false.

CHARGE II: Violation of 95th Article of War.

Specification: In that First Lieutenant William T. Love, Air Corps, Unassigned, Attached Squadron B, 3702d Army Air Forces Base Unit, Buckley Field, Colorado, being legally charged with the duty of contributing the sum of fifty dollars ($50.00) each month toward the support of his divorced wife, Faye Shelton Love, and his son, William Edwin Love, did, from about April 1944 to about August 1944 and from about October 1944 to about June 1945, unlawfully and dishonorably fail to discharge said duty.

He pleaded not guilty to the Specifications and Charges, and was found guilty of Specifications 4 and 7 of Charge I and of Charge I and of the Specification of Charge II and not guilty of Specifications 1, 2, 3, 5 and 6 of Charge I and not guilty of Charge II but guilty of a violation of Article of War 96. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for three years. The reviewing authority approved the sentence, remitted so much thereof as was in excess of dismissal the service and forfeiture of all pay and allowances due or to become due and forwarded the record pursuant to Article of War 48.

3. The evidence for the prosecution, with particular regard to the Specifications of which the accused was found guilty, is briefly summarized as follows:

Specifications 4 and 7, Charge I

It was stipulated in writing by and between the prosecution, the defense and accused that if E. H. Stephenson were present he would testify substantially to the following facts (R. 7; Pros. Ex. 1). He is Chief of the Reconciliation and Clearance Subdivision, General Accounting Office, on the Army Audit Branch, Chicago, Illinois. He is the custodian of the original pay and allowance vouchers pertaining to the accused and the originals are on file in his office. Upon the request of the trial judge advocate he submitted true photostatic copies of certain original vouchers pertaining to the accused (Pros. Ex. 1). The following pay and allowance vouchers drawn by the accused were admitted into evidence: for the period 1 October 1943 to 31 October 1943 drawn on Major T. M. Sorensen, Finance Department Buckley Field, Colorado, in the amount of $285.07 (R. 9; Pros. Ex. 8); for partial payment dated 13 October 1943 drawn on Lieutenant Colonel L. B. Markey, Finance Department, Edmonton, Alberta, in the amount of $75 (R. 9; Pros. Ex. 9); for the period 1 August 1944 to 31 August 1944 drawn on Lieutenant Colonel J. F. Cogdell, Finance Department, Lowry Field, Colorado, in the amount of $285.07 (R. 10; Pros. Ex. 14); for partial payment dated 28 August 1944 drawn on Lieutenant Colonel W. Gritz, Finance Department, St. Louis, Missouri, in the amount of $150 (R. 10; Pros. Ex. 15).

Captain Brimhall has been connected with the Finance Office at Buckley Field since 4 December 1942 and has been Base Finance Officer since 1 December 1944 (R. 11). He stated that the accused's pay vouchers for the period 1 October 1943 to 31 October 1943 (Pros. Ex. 8) and for the partial payment of $75 on 13 October 1943 (Pros. Ex. 9) were for the same month (R. 13) and that the pay vouchers for the period 1 August 1944 to 31 August 1944 (Pros. Ex. 14) and for the partial payment of $150 on 28 August 1944 (Pros. Ex. 15) were drawn for the same month (R. 14). In accordance with the policy of the Finance Office

when accused was placed on temporary duty in Alaska he signed blank pay vouchers and was requested to wire on the last of the month "that he was alive and well and on duty" (R. 14, 15, 32). "That saves time and the trouble of submitting pay vouchers and expedites payment" (R. 15). He did not know how long the accused was on temporary duty in Alaska (R. 15). During this entire time he filed the accused's regular pay vouchers and the pay was sent to the First National Bank, Denver, Colorado, during the latter part of 1943 and to the Denver National Bank during the first part of 1944 (R. 15). Every month Captain Brimhall received a wire from the accused stating that he was alive and on duty but he never received a report from the accused stating that he had drawn partial payments (R. 15). In the first part of 1944, after the accused had returned from his temporary duty in Alaska, Captain Brimhall received information from the General Accounting Office of discrepancies in the account of the accused (R. 14). "Exceptions" means that the Finance Office "has erroneously paid more money to an individual than he actually has due" (R. 14). When "Exceptions" were first received Major Sorensen, the disbursing officer, called the accused and he paid the government (R. 16). Captain Brimhall identified a letter dated 23 August 1944 (Pros. Ex. 19) and one dated 8 June 1945 (Pros. Ex. 22) as true copies of letters "Subject: Memorandum Exception" received from the General Accounting Office in Chicago (R. 18, 19) pertaining to the accused's accounts for October 1943 and August 1944 respectively. The accused's pay card at Buckley Field for 1943 (R. 23; Pros. Ex. 23) indicated that he was paid $285.07 for the period ending 31 October 1943 (R. 20) but did not indicate a partial payment of $75 for 13 October 1943 nor its collection (R. 21). A partial payment would be shown on the card if the Finance Office had been notified before receiving an "exception" but none was shown on the pay card of the accused (R. 22). The accused's pay card for 1944 did not show a payment to him from Buckley Field for August 1944 (R. 23, 24; Pros. Ex. 24). All indebtedness of the accused to the government has been collected (R. 24). Captain Brimhall thought that Army Regulations 35-1360 require partial payments to be deducted on the pay voucher for the month in which payment is made (R. 25), but he knew of no Regulation that specifically states when such deduction will be made (R. 34). Army Regulations 35-1360 make an officer responsible for completing his voucher as far as amounts, credits and allowances are concerned (R. 26, 27), including debts due to the United States (R. 36) but as a matter of policy Finance Officers make out the pay vouchers to eliminate errors (R. 27). Army Regulations first made officers responsible for making out their pay vouchers in the latter part of 1944 or early 1945 but circulars and letters made them responsible before that time (R. 28). The same Regulations required the officer making a partial payment to notify the disbursing officer of the home station (R. 29). Prior to the new Regulations, Army Regulations were not clear as to who was to notify the disbursing officer at the home station of a partial payment (R. 29, 30). The Finance Officer at

Buckley Field was notified by the Finance Officer at Buffalo, New York, of a partial payment of $100 to the accused in November 1943 (R. 31; Pros. Ex. 10). A few Finance Officers notified other Finance Officers of partial payments (R. 31), although they were not required to do so by Army Regulations prior to Changes 3, AR 35-1360, dated 3 January 1945 (R. 31, 39). Captain Brimhall had a conversation with the accused in June 1945 concerning an exception to his pay voucher for August 1944 (Pros. Ex. 22) and the accused reimbursed the Finance Officer (R. 33). The accused's pay voucher for August 1944 (Pros. Ex. 14) was paid at Lowry Field, Colorado, and not at Buckley Field (R. 34). An officer cannot (properly) submit a pay voucher for an amount which he has not earned (R. 34). If he draws partial pay and does not deduct it he owes the government and is drawing money not earned (R. 35). If a partial payment is not reported or deducted by the officer the discrepancy would be discovered by the General Accounting Office (R. 37). The General Accounting Office reported the discrepancy for October 1943 on 14 June 1944 (R. 37) and for August 1944 on 8 June 1945 (R. 38). When the accused returned from overseas duty he did not tell the Finance Officer that there were outstanding amounts in his account (R. 39). There were no figures of any kind on the vouchers which the accused certified while he was on detached service (R. 40).

Specification, Charge II

It was stipulated in writing between the prosecution, the defense and the accused that if Faye Shelton Love were present she would testify to the following facts (R. 44; Pros. Ex. 25). She married the accused on 27 October 1942 and a male child, William Edwin Love, was born on 18 August 1943. She was granted a decree of divorce from the accused by the Circuit Court of Webster County, Missouri, on 16 March 1944, which awarded her custody of the child and alimony of $50 per month for herself and the child (R. 44; Pros. Ex. 25, 26). She received a check for $50 for alimony from the accused during the month of September 1944. She has been informed that the accused has made out a Class "E" allotment of $50, commencing 1 July 1945 in which she is named as the allottee (Pros. Ex. 25).

4. The accused testified (R. 54, 55). He was assigned to Buckley Field on 18 December 1942 and remained there until 12 January 1943 when he was placed on detached service on temporary duty with a Mobile Training Unit (R. 55, 56). Until 1 July 1943 he was on temporary duty at various posts in the United States and after that date in Alaska and Canada until 29 October 1943 (R. 56, 57). He then went to the Headquarters, 4th District, Denver, Colorado, for two days, secured a 10 day leave and went to the Bell Aircraft Plant, Buffalo, New York, where he remained until 2 December 1943 (R. 57). From there he went to various posts in California and finally returned to Buckley Field

on 6 February 1944 where he remained until 27 June 1944 when he went to Lowry Field (R. 57, 58). From 12 January 1943 until 6 February 1944 he was away from Buckley Field on temporary duty (R. 58). Before he left Buckley Field, he signed blank pay and allowance vouchers because a clerk in the Finance Office told him to do it that way as it was the practice to sign vouchers in advance if he was going away for any length of time (R. 59). He signed "approximately six" vouchers in blank and later while passing through the field "signed for an additional amount, as I had no knowledge as to when I would get back". He also signed vouchers in blank while he was away from Buckley Field, all "under the advice of the Finance Department at Buckley Field" (R. 59). The accused personally received payment of the voucher for October 1943 in the amount of $145.07 (R. 60; Pros. Ex. 8). On 31 October 1943 he returned to Denver and went to the bank to cash a check to go on leave and found there was only $35 in the joint account to which his pay had been sent (R. 60). He went to the Finance Office at Buckley Field where someone changed the payee on the voucher so that he could receive cash (R. 60, 61; Pros. Ex. 8). He did not personally receive payment of his vouchers for July, August, September, November and December, 1943, and January and August 1944, but it was placed to his credit in his designated depository banks (R. 59-61). (Pros. Exs. 2, 4, 6, 10, 12, 14). He received from Lieutenant Spilker in the Finance Office in Edmonton, Alberta, Canada, a partial payment of $75 on 12 July 1943 (R. 61; Pros. Ex. 3); another of $75 on 8 August 1943 (R. 62; Pros. Ex. 5); another of $100 on 12 September 1943 (R. 62; Pros. Ex. 7 (erroneously referred to in the testimony as Exhibit 6 - R. 52)); another of $75 on 13 October 1943 (R. 62; Pros. Ex. 9). On each occasion he told Lieutenant Spilker that he had signed a pay voucher for that month, and each time was advised that his Finance Office would be informed of the partial payment (R. 62). On 17 December 1943 he drew a partial payment of $80 from the Finance Officer at Hamilton Field. He informed the Finance Officer that a pay voucher for the month had been signed, and, as nothing was said about advising the Finance Officer at Buckley Field, accused "assumed that it would be done, as it had been done before" (R. 62; Pros. Ex. 11). On 19 January 1944, he drew $80 at Camp Beale, California, under the same conditions (R. 63; Pros. Ex. 13). In August (Pros. Ex. 15 shows 12 September) 1944, the accused received a partial payment of $150 from the Finance Officer at Jefferson Barracks (St. Louis), Missouri (R. 63; Pros. Ex. 15). He informed the Finance Officer that he had signed a voucher at Buckley Field and assumed that the Finance Officer there would be notified (R. 63). Prior to the time that the accused reimbursed the Finance Department for the partial payments he did not know whether or not these Finance Officers had notified Buckley Field that he had received partial payments but understood that they would do so (R. 63). He did not definitely know how much money was received by the bank, "other than knowing approximately the amount which should be placed to my credit", and did not receive or ever see a monthly statement while the bank

account was carried in the name of himself and his wife (R. 63). While he was in Alaska and Canada he personally drew four checks against the joint bank account and when he returned to the United States he found there was a balance of $35, in the account (R. 63, 64). He had Class "E" allotments of $40 to his children by a former marriage and $100 to Mrs. William T. Love effective on June 1943 (R. 64). Mrs. William T. Love (Faye Shelton Love) was the person with whom he had the joint account (R. 64, 65). On 1 January 1944 he reduced her allotment to $50 and discontinued it effective 1 July 1944 (R. 64). He had a conversation with Lieutenant Colonel Sorensen, the Finance Officer at Buckley Field, and made payment to restore the partial payments which he had received while he was in Alaska and Edmonton, Canada (R. 65, 66). He made no attempt to hide from Lieutenant Colonel Sorensen any partial payments that he had received (R. 66). In June 1945 he arranged with Captain Brimhall to cover the partial payments in their entirety (R. 66). He made no attempt at any time to defraud the United States of monies paid to him in error (R. 66). He felt that there were sufficient funds in the bank to cover three checks returned by the bank in 1944 for insufficient funds (R. 66). He thinks that the account had been milked, presumably by his former wife (R. 66, 67).

On cross-examination the accused testified that he signed pay vouchers in blank before leaving Buckley Field and stopped there at a later time to sign more (R. 67, 68). He arranged for the checks to go to his joint account at the First National Bank of Denver knowing and intending that his wife could draw money on it (R. 68). In addition his wife received a $100 Class E allotment effective 1 June 1943 after which she started a separate account (R. 68, 69). The first partial payment that he ever drew was for $75 in Nome, Alaska, and was suggested by the Finance Officer because he could not pay the accused his per diem (R. 69). At the time the Finance Officer said he would notify Buckley Field (R. 69). Every month the accused wired Buckley Field that he was living at a certain A.P.O. number so that the vouchers could be paid (R. 69, 70). It did not occur to him to notify the Finance Officer at Buckley Field of the partial payments because the accused had been informed that the Finance Officer would be notified (R. 70). In July 1943 the accused received a wire from his wife, Faye Shelton Love, that his June 1943 voucher had not been deposited because he had not sent a wire to the Finance Officer at Buckley Field (R. 71). His wife was living on the money (R. 72). The accused will be 36 years old in October 1945, enlisted in the Army on 18 May 1942 and has been an officer since 24 October 1942 (R. 72). He has signed many pay vouchers but to his knowledge has never read Army Regulations 35-1360 (R. 72). Now he knows that he is personally responsible for his pay and allowance vouchers but he did not know it at the time he signed the blank vouchers (R. 72). He has read pay vouchers but had not read the certificate when he signed the vouchers in July 1943 (R. 72, 73). He knew that the Finance Officer at Buckley Field was going to put certain amounts in the vouchers (R. 73). The accused never received statements from the First National Bank of Denver and does not know whether his wife received statements (R. 74). He did not sign the voucher for

August 1944 in the amount of $285.07 in blank (R. 75; Pros. Ex. 14). When he signed it on 15 August 1944 he knew that he had two partial payments outstanding, from Camp Beale and St. Louis (R. 75). Later he drew a partial payment on 28 August 1944 in the amount of $150 (R. 75). He did not indicate a partial payment of $80 received at Camp Beale because he thought it would come in and be deducted (R. 75). He had received notice of exceptions some months before and knows that an officer cannot draw money that he has not earned (R. 76).

When the accused was told to wire to the Finance Officer at Buckley Field each month nothing was said about payments (R. 76). When he drew the partial pay at St. Louis, Missouri, on 28 August 1944 he told the Finance Officer that he had already made out a voucher for the month but he was not told to cancel it and make out a new voucher (R. 76). In June of 1944 he knew for the first time that he had been drawing partial payments that had not been charged against his monthly pay vouchers (R. 77). He then paid up all the exceptions that came in and thought that he had them all paid before Major Sorenson called him in. In spite of that experience, in August 1944 he was short of money and again drew a partial payment without notifying anyone. He "thought that possibly in a month or two it would come in and be deducted" (R. 78). He repaid the partial payment received on 28 August 1944 "when the exception came in" (R. 78). He signed the August 1944 voucher on 15 August as it was made up but did nothing about it for 11 months after he received the partial payment on 28 August 1944 (R. 80). He saw the voucher for October 1943 filled out when he drew that pay in cash and signed the receipt for it (R. 79). He noticed that the partial payment had not been deducted and did not mention it, but assumed that it had not yet come in and would be deducted on the next month's voucher (R. 79, 80). Captain Brimhall, recalled as a witness for the accused, testified that the pay cards of the accused for 1943 and 1944 show Class "E" allotments of $140 from June to December 1943 and $90 from January through May 1944 (R. 45, 46; Pros. Ex. 23, 24). According to his records these amounts were deducted from the pay of the accused but the witness did not know and had no records to show to whom the allotments were paid nor whether they were sent out by the proper authorities to the various allottees (R. 46).

Elmer W. Lumberg, head bookkeeper for the First National Bank of Denver (R. 47), was acquainted with and had charge of the records of the depositors in that bank (R. 47). The account of the accused was opened on 5 January 1943 and was made a joint account, "Lieutenant or Mrs. William T. Love", in June 1943 (R. 47). It was closed on 10 December 1943, reopened as a joint account on 7 January 1944, and closed on 22 June 1942 (R. 47, 48, 51, 52). The account was closed out automatically on 10 December 1943 when it showed an overdraft of $1.98 and automatically reopened by the bank on 7 January 1944 when a deposit was made (R. 48). Either one of the joint owners of the account could make deposits or withdrawals (R. 48). The account was not on the mailing list for statements. They were picked up at the bank (R. 48).

No record was kept of what statements were mailed and what were picked up (R. 49). The address on the account was changed, finally to 1459 Fillimore Street, Denver, Colorado (R. 49). Mr. Lumberg spot checked the microfilm photographs of the checks drawn on the account in 1943 and found four checks drawn on 19 July 1943 and two on 6 August 1943 by Mrs. William T. Love, and a check for $100 drawn by her in October 1943 (R. 49, 50, 53, 54).

The witness did not check the photographs for 1944 except checks which were returned short for insufficient funds (R. 51). These were drawn by the accused on 29 February 1944 in the amount of $10, on 3 April 1944 for $10, and on 24 March 1944 for $25 (R. 51). Mrs. Love had an account in her own name "but it was just opened and closed at practically the same time" (R. 51). The records of the bank do not indicate whether the deposits to the accused's account were allotments but only that the first deposit was by a government check in the amount of $249.02 (R. 52). Mr. Lumberg did not know whether government checks were the only source of deposits or whether Mrs. Love made deposits (R. 52, 53). From June to October 1943 fifty checks were drawn on the account and it was more or less dormant during November and December 1943 (R. 53). Since 3 April 1943 there had been no activity in the account except bank charges and it was closed on 22 June 1944 (R. 54).

Letters from George D. Romero, Chief Clerk in the Office of the State Treasurer of Colorado (R. 81; Def. Ex. A), Lieutenant Colonel William W. Chase, Medical Corps, Army Air Forces Regional Hospital, Office Chief of Surgical Service, Buckley Field, Colorado (R. 81; Def. Ex. B), and Leon Harvell, Regional Enforcement Attorney, Region VII, Office of Price Administration (R. 81; Def. Ex. C), attesting to the accused's honesty and integrity, were admitted into evidence (R. 81).

5. The accused was tried upon seven and found guilty of two Specifications of presenting to Finance Officers for approval and payment vouchers for pay and allowances which were false in that he failed to deduct the amount of partial payments received by him during the months for which the vouchers were presented, in violation of Article of War 94, (Charge I). He was also tried for and found guilty of unlawfully and dishonorably failing to discharge a legal duty of contributing $50 each month toward the support of his divorced wife and his son, in violation of Article of War 96 (Charge II).

Before leaving his station at Buckley Field, Colorado, in January 1943, on indefinite temporary duty, with a Mobile Training Unit, the accused, upon the advice of a clerk in the Finance Office, signed a series of pay and allowance vouchers in blank, to provide for his pay and allowances for ensuing months to be deposited to his credit in a designated bank, where he had an account jointly with his then wife. In the course of his temporary duty, he travelled to various posts in the United States, Alaska and Canada until 6 February

1944, when he returned to Buckley Field. He was at Buckley Field briefly in October 1943. In the course of his travels he drew certain partial payments against his pay, which, for want of notice to the Finance Office at Buckley Field, were not deducted from payments made on his monthly vouchers. Later he drew a partial payment at St. Louis, Missouri, against his pay for August 1944, for which monthly pay, in full, voucher was filed and paid at his then station, Lowry Field, Colorado. Upon his testimony that he acted innocently and relied upon statements by Finance Officers that they would attend to the necessary notifications to his permanent station, he was acquitted as to all the Specifications of false claims except those for October 1943 (Specification 4, Charge I) and August 1944 (Specification 7, Charge I).

As to the October 1943 claim, (Specification 4, Charge I), the circumstances differed from the others in that the accused, while passing through his home station at Buckley Field, Colorado, at the end of the month, personally called at the Finance Office and collected his pay and allowances instead of having them deposited at his bank. Thus he saw his voucher completed by the clerk, and signed and receipted for the full amount, without disclosing that he had drawn a partial payment of $75 on 13 October at another station. His testimony that he supposed that this partial payment simply had not got into the month's accounting and would be deducted the next month failed to convince the court. It is clear from the evidence that the accused knew when he receipted for his pay on 31 October 1943 that the voucher was false in that the partial payment which he had received on 13 October 1943 was not deducted. Since he knew that the claim was false it was not necessary to prove an intent to defraud. In CM 253323, McClure, 34 BR 347,355 the Board of Review said:

> "It has repeatedly been stated and held that intent to defraud is not an essential element of proof in a charge of violation of Article of War 94, but only that the accused knew that the claims were false (CM 241208, Russell; CM 243683, Bowling; Winthrop, Military Law and Precedents, 2d ed. rev., p. 701)."

The facts in connection with the voucher for August 1944 (Specification 7, Charge I) are materially different. This voucher was fully filled out when it was signed by the accused, but, according to his testimony, he signed it on 15 August 1944 and at that time it was correct in not showing a deduction for a partial payment which he did not claim nor receive until 28 August 1944. When the accused presented the voucher to the Finance Officer on 15 August it was neither false nor known by him to be false. The testimony of the accused that he signed and presented the voucher on 15 August 1944, rather than on 31 August, was inherently credible and was not controverted by the prosecution. Both the prosecution and the accused agreed that he received the partial payment of $150 on 28 August 1944 at St. Louis, Missouri. Since the uncontradicted testimony shows that the

accused was not at Lowry Field, Colorado (his then station, where his monthly voucher was filed and paid, erroneously specified as Buckley Field) on 31 August 1944 and signed and presented the voucher on 15 August 1944 when it was not false, the prosecution has failed to prove the essential allegations of Specification 7 of Charge I. The accused may have been guilty of unlawfully receiving pay to which he was not entitled, but he was charged only with presenting a false claim under Article of War 94, and not with receiving payment.

Concerning Charge II and the Specification, the evidence shows that from 16 March 1944, when the accused's wife, Faye Shelton Love, was granted a decree of divorce providing for alimony of $50 per month to be paid by the accused for the support of herself and their child, the accused paid only $50, which he paid in September 1944, until he made out a Class "E" allotment to his divorced wife effective 1 July 1945. The decree of divorce created a legal obligation on the part of the accused to pay the alimony. In a somewhat similar case the Board of Review in CM 247766, Burk, 31 BR 33, 36, said:

> "It is a violation of the Articles of War (96) for an officer to evade his legal obligation toward his dependents and to fail to make provision for their support (Dig. Op. JAG, 1912-40, sec. 454(48), p. 356, 357). Continuous failure to make alimony and support payments on time and to remain delinquent therein for such periods of time as is evidenced by this record is tantamount to a failure to provide support and, in the opinion of the Board of Review, is conduct of a nature to bring discredit upon the military service and constitutes an offense in violation of Article of War 96."

6. By letter to the reviewing authority, attached to the record of trial, six members of the court which tried the case and the defense counsel and assistant defense counsel have recommended clemency, suggesting reduction of the sentence to a severe reprimand and substantial forfeitures, citing the facts of restitution and provision made by allotment for the support of the divorced wife and child of the accused and the belief of the signers that the accused has been taught a lesson in the proper handling of his personal finances and responsibilities.

7. War Department records show that the accused is 35 years of age and married for the third time. The record of trial shows that he has two children by his first divorced wife and one by his second divorced wife. He is a native of Missouri and a resident of Shawnee, Kansas. He attended Missouri University for two years, specializing in architecture, but did not graduate. In civilian life he was employed by E. I. DuPont de Nemours Company from 21 January 1942 to 14 May 1942 as a foreman in acid concentration work in a power plant, by Burns and McDonnell Engineering Company from 6 September 1941 to 13 January 1942 as an estimating clerk in the construction of buildings, by K.N.W.L. Construction Company from 7 December 1940 to 3 May 1941 as a labor foreman supervising construction, by Union Electric Light

and Power Company as office manager and he was the owner and operator of service stations. He had two years basic training in the Reserve Officers Training Corps at Missouri University. He was inducted on 18 May 1942 and served in the Air Corps as an aviation cadet. On 24 October 1942 he was appointed a second lieutenant, Army Air Forces Reserve, upon graduation from the Armament Course, Army Air Forces Technical School, Lowry Field, Colorado, and was ordered to active duty with the Air Corps. He was promoted to first lieutenant on 29 June 1943. From 30 October 1942 to 8 June 1943 he served as a student officer at the Officers Training School, Miami Beach, Florida, as Armament Officer and as Liaison Officer with a Mobile Training Unit and received three ratings of excellent. On 10 March 1943 and 19 April 1943 Hortense Love, a divorced wife of the accused, wrote to The Adjutant General requesting that the accused make an allotment of $25 per month to her for the support of two minor children in accordance with the provisions of a court order. On 12 May 1943 the accused authorized an allotment to Hortense Love in the amount of $40 per month effective 1 June 1943. On 27 January 1945 he submitted his resignation in lieu of reclassification. The first indorsement gives the following reasons for reclassification: he is unreliable and gives more thought to personal desires than to duty, as evidenced by his going from Lowry Field, Denver, Colorado, to St. Louis, Missouri, on informal leave by vocal orders on or about 26 July 1944 and not returning until 28 July 1944, the trip being in excess of the allowed mileage on informal leave; he has failed to display necessary leadership and attention to duty by permitting guns assigned to his department to remain in an unsatisfactory condition from 7 July 1944 to 19 July 1944; he has displayed a trait of irresponsibility in personal financial matters by accepting an overpayment of $75 on his voucher submitted in October 1943 (considered in this case), failing to pay a debt of $50 in July 1944 and by making only one payment of $50 since 16 March 1944 on account of a decree of court granting his wife a divorce and $50 per month for the support of her child and herself (also considered herein). The resignation was not favorably considered by the Secretary of War.

8. The court was legally constituted and had jurisdiction of the accused and the offenses charged. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally insufficient to support the findings of guilty of Specification 7 of Charge I, legally sufficient to support all other findings of guilty and legally sufficient to support the sentence and to warrant confirmation thereof. Dismissal is authorized for violation of Articles of War 94 and 96.

(not participating), Judge Advocate

R. E. Gimer, Judge Advocate

Donald D. Hickman, Judge Advocate

NOV 13 1945

SPJGQ - CM 286270 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant William T. Love (O-855866), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of presenting for approval and payment two monthly pay and allowance claims, each of which was false in that he had previously received partial payments of $75 and $150 respectively, for October 1943 and August 1944, which were not deducted from his claims, in violation of Article of War 94 (Specifications 4 and 7, Charge I), and of failing, unlawfully and dishonorably, to discharge a legal duty to contribute $50 each month from April 1944, to August 1944, and from October 1944 to June 1945, toward the support of his divorced wife and his son, in violation of Article of War 95 (Specification, Charge II). He was sentenced to dismissal, total forfeitures, and confinement at hard labor, at such place as the reviewing authority might direct, for three years. The reviewing authority approved the sentence, remitted the confinement, and forwarded the record of trial pursuant to Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally insufficient to support the findings of guilty of Specification 7 of Charge I (presenting false claim against the United States), legally sufficient to support the findings of guilty otherwise, and legally sufficient to support the sentence as approved by the reviewing authority and to warrant confirmation thereof. I concur in that opinion.

The accused officer was stationed permanently at Buckley Field, Colorado, but was for many months on detached service as temporary duty with a Mobile Training Unit at various stations in the United States, Alaska and Canada. During this period, from January 1943 to February 1944, his pay and allowances were deposited for him in his bank by his direction contained in a series of monthly vouchers which he had signed in blank and left with the Finance Office at his station. He drew various partial payments on his travels, which failed to be deducted for want of notice to the Finance Office at his permanent station, but in this matter his testimony that he relied upon the Finance Officers who made the partial payments to report them was accepted by the court. However, while passing through his home station, Buckley Field, Colorado, on 31 October 1943, he went to the Finance Office and collected his pay and allowances for October 1943, in person, having the voucher changed

accordingly and completed in his presence to draw his full pay and allowances without disclosing that he had, on 13 October 1943, at Edmonton, Alberta, Canada, drawn a partial payment of $75 for the same month. As to this item, his testimony, that he supposed the deduction would be certified later and get on his next month's account, failed to convince the court. Later he drew partial payments for August 1944, and also his full pay and allowances for that month, but the partial withdrawals were made after the filing of his regular pay voucher, upon which he was tried; therefore, since this voucher was not false at the time of its making and presentation the evidence of record fails to sustain a conviction as to that Specification.

The accused was obligated by decree of court to pay to his divorced wife $50 each month from April 1944 to June 1945, for her support and that of their minor son. He paid only one month's payment, $50 in September, 1944, during that period.

The accused has had the benefit of every reasonable doubt and every favorable inference in this case, as well as in connection with other reported and discovered misconduct over a long period which inspired the submission of his resignation, unfavorably considered by reason of the present charges. Although ultimately he made restitution and made some provision for his two divorced wives and their three children, and six members of the court and the defense counsel have recommended clemency, his record indicates that he does not merit the honorable status of a commissioned officer. I recommend that the sentence as approved by the reviewing authority be confirmed but that the forfeitures be remitted, and that the sentence as thus modified be executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S. Army
Acting The Judge Advocate General

2 Incls
1 - Record of trial
2 - Form of action

(Sentence as approved by reviewing authority confirmed, but forfeitures remitted. GCMO 509, 5 Dec 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 286277

14 SEP 1945

UNITED STATES	ARMY AIR FORCES WESTERN TECHNICAL TRAINING COMMAND
v.	Trial by G.C.M., convened at Lowry Field, Denver, Colorado, 18 and 24 August 1945. Dismissal.
Second Lieutenant LOUIS B. WINGO (0-785943), Air Corps.	

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 96th Article of War.

Specification: In that Second Lieutenant Louis B. Wingo, Air Corps Unassigned attached Squadron T, 3705th Army Air Forces Base Unit (Technical School and Pilot School, Very Heavy Bombardment), was at Denver, Colorado, on or about 26 July 1945, drunk and disorderly in uniform in a public place, to wit: 1712 Broadway.

He pleaded guilty to and was found guilty of the Charge and Specification. Evidence was introduced of a previous conviction of absences without leave from 6 to 8 February 1945 and from 23 February to 19 March 1945, in violation of Article of War 61, for which the approved sentence was forfeiture of $75 per month for twelve months. He was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution, in addition to the accused's plea of guilty, was adduced by the testimony of two non-commissioned officers of the Military Police who had been summoned about 0030 hours on 26 July 1945 to the Embassy Club, 1712 Broadway, Denver, Colorado. When they reached the Embassy Club they were directed to the "rear of the building" where they found accused was being held by one of the Club's officers. Two officers from Lowry Field offered to take accused back to camp. One of the non-commissioned officers agreed to let them do so and "started to turn the lieutenant [accused] loose." Accused then "started to hit" the club official, and then "to grab" the military police when they restrained him. The military police decided to take accused into custody and so informed the Lowry Field officers. Accused continued "struggling considerably,"

while calling the military police and the club official certain opprobrious and vile names. As they were forcing accused to their car, he continued struggling and "tripped" the military police. However, they succeeded in placing accused in the car and taking him to jail. Accused persisted in his cursing and resistance. At the jail, he was forcibly subjected to a sobriety test throughout which time he "verbally abused" the military police. In the opinion of the witnesses, the accused was drunk. As one of them testified:

> "His eyes were bloodshot, he was staggering, he could hardly stand on his feet, and his attitude was very belligerent, his breath smelled of liquor and that about sums it up." (R. 7-11)

4. For the defense, Major Donald A. Young, Air Corps, testified that accused worked as his assistant, was "most reliable" and "willing to learn," and "with training" would make a "very able officer" (R. 12-13).

Accused, after being apprised of his rights as a witness, elected to testify. According to his testimony, he had been in the Army for 31 months and was 21 years of age. Although rated a pilot and desiring to be a B-29 pilot, he was sent to a flight engineer school. His disappointment resulted in his having absented himself without leave from school for "quite a number of days." On his return, he was tried by court-martial and sentenced to forfeit $75 per month for twelve months but a portion of the forfeiture was later suspended, but the suspension was revoked since "this particular incident at the Embassy." Accused claimed he is not "an habitual drinker" but admitted attending the Embassy Club previously in July "maybe three times a week" and averaging about four or five drinks on each visit. On the night in question, he had "fourteen or fifteen double shots" and thereafter remembered only that the manager of the Club held accused's arms behind his back and that someone hit him in the car of the military police (R. 13-17).

5. The undisputed evidence for the prosecution, substantiated by the plea of guilty and corroborated in many respects, except as to the disorderly acts, by the testimony of accused, discloses clearly that the accused was drunk and disorderly while in uniform in a public place as alleged, an offense repeatedly held violative of Article of War 96. The accused's plea of guilty, in so far as his disorderly conduct is concerned, may be inconsistent with his testimony to the effect that he had no memory of his disorderly conduct because of his gross drunken condition. However, such inconsistency is immaterial in view of the positive and uncontradicted testimony relating to his disorderly and unwarranted actions, while drunk, in the presence of at least a civilian, two officers and two warrant officers. All elements of the alleged offense were established by the prosecution beyond a reasonable doubt.

6. War Department records disclose that this officer is 21-1/2 years of age, single, and is a high school graduate. He attended Cisco Junior College for three months. In civil life he was employed for one year as a freight clerk by the Texas and Pacific Railway Company. He entered the service on 5 March 1943, was appointed an aviation cadet on 20 November 1943, and commissioned a temporary second lieutenant in the Army of the United States on 8 September 1944. On 31 March 1945 he was convicted by a general court-martial for absences without leave from 6 February to 18 February 1945 and from 23 February to 19 March 1945 in violation of Article of War 61, the sentence as approved providing for a forfeiture of $75 per month for twelve months.

7. The court was legally constituted and had jurisdiction of the person and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 96.

Charles G. Lockie, Judge Advocate

On Leave, Judge Advocate.

Charles J. Lykes, Judge Advocate

SPJGK - CM 286277 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Louis B. Wingo (0-785943), Air Corps.

2. Upon trial by general court-martial this officer pleaded guilty to and was found guilty of being drunk and disorderly in uniform in a public place, in violation of the 96th Article of War. Evidence was introduced of one previous conviction by general court-martial for two prior absences without leave for periods of 12 days and 24 days, respectively, during Feburary and March 1945, for which the sentence, as approved, provided for a forfeiture of $75 per month for 12 months. In the instant case he was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation of the sentence.

At about 0030 hours on 26 July 1945, two non-commissioned officers of the Military Police were summoned to the "rear of the building" of the Embassy Club, 1712 Broadway, Denver, Colorado, where they found accused who was being held by a club officer. Upon being turned loose accused "started to hit" the club official and "to grab" the military policemen. He called the club official and military policemen opprobrious and vile names and, after being arrested by the military police, he persisted over a considerable period of time in cursing and resisting them. Accused had had "fourteen or fifteen double shots" of straight whiskey during the night in question and he was obviously drunk and disorderly.

Despite his unjustifiable acts, in view of accused's youth, age 21-1/2; the recommendations of his immediate Commanding Officer, the Investigating Officer, and the Commanding Officer of his post, that adequate punishment could be imposed under Article of War 104; the statement of the Commandant of Students that accused has carried out his duties in an excellent manner; the testimony of Major Donald A. Young, under whom accused is presently assigned, to the effect that he "has definite salvage value as an officer in the Armed Forced of the United States, and that with proper guidance his rehabilitation to that standard expected of

officers in the Army of the United States will present no difficulties;" the report of the Flying Evaluation Board of Lowry Field, which convened on 2 August 1945 to consider the professional qualifications of accused with reference to flying duty, that accused "does not possess habits and traits of character which would preclude his usefulness in a flying capacity" and recommending that he be restored to flying duty; and the action taken on 2 August 1945 which revoked the previously suspended unexecuted portion of the forfeiture imposed in his previous court-martial trial thus requiring him to now forfeit $75 per month for 10 months. I recommend that the sentence be confirmed but that the execution of the sentence be suspended during good behavior.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

Myron C. Cramer

2 Incls
1-Rec of trial
2-Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but execution suspended during good behavior. GCMO 464, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGN-CM 286337

UNITED STATES v. Second Lieutenant WARREN P. COLEMAN (0-716365), Air Corps.	WEST COAST WING, PACIFIC DIVISION AIR TRANSPORT COMMAND Trial by G.C.M., convened at Fairfield-Suisun Army Air Base, California, 6 August 1945. Dismissal, total forfeitures and confinement for ten (10) years. Disciplinary Barracks.

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant Warren P. Coleman, Air Corps, Combat Replacement and Training Center, APO #19194-BW9, Attached on temporary duty to Squadron G, 1504th Army Air Forces Base Unit, West Coast Wing, Pacific Division, Air Transport Command, having received a lawful order from Major Cecil C. Clark, Air Corps, 1504th Army Air Forces Base Unit, West Coast Wing, Pacific Division, Air Transport Command, to attend all alert meetings without fail, the said Major Cecil C. Clark being in the execution of his office, did, at Fairfield-Suisun Army Air Base, California, on or about 26 May 1945, fail to obey the same.

Specification 2: In that Second Lieutenant Warren P. Coleman, * * *, having been restricted to the limits of the Fairfield-Suisun Army Air Base, California, did, at Fairfield-Suisun Army Air Base, California, on or about

25 May 1945, break said restriction, by going to Sacramento, California.

CHARGE II: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Warren P. Coleman, * * *, did, without proper leave, absent himself from his station, at Fairfield-Suisun Army Air Base, California, from about 31 May 1945 to about 28 June 1945.

CHARGE III: Violation of the 95th Article of War.

Specification 1: In that Second Lieutenant Warren P. Coleman, * * *, did, at Sacramento, California, Cedar Crest Resort, Homewood, California, and other places, from about 23 April 1945 to about 28 June 1945, wilfully and wrongfully cohabit with one Rosemary Shaughnessy, a woman not his wife, and one whom he knew to be the wife of another.

Specification 2: (Motion for finding of not guilty sustained).

Specification 3: (Motion for finding of not guilty sustained).

He pleaded guilty to Charges I and II and to the Specifications thereunder but not guilty to Charge III and its Specifications. After a motion for findings of not guilty as to Specifications 2 and 3 of Charge III was sustained, he was found guilty of all Charges and all other Specifications and was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for thirty years. The reviewing authority approved only so much of a finding of guilty of Specification 1, Charge III as involved a finding of the commission of the offense at Sacramento, California, and Cedar Crest Resort, Homewood, California; approved the sentence but reduced the period of confinement to ten years; designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement; and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that, after failing to attend two alert meetings at Fairfield-Suisun Army Air Base, California, the accused, on 25 May 1945, was brought before Major Cecil C. Clark, the Embarkation and Debarkation Officer, and was ordered by him to attend the next meeting scheduled for 10:00 a.m. on 26 May 1945 and "not to leave the base under any circumstances". Disregarding these explicit instructions the accused at 6:30 p.m. on 25 May 1945 went into Vacaville and boarded a bus bound for Sacramento, California. The following morning he was not present at the alert meeting (R. 10-14, 37-39; Pros. Ex. 7).

Upon returning later in the day, he was informed by a "Colonel Breckenridge" that he was restricted to the base pending an investigation and the preferment of charges against him (Pros. Ex. 7). For five days the accused complied with these directions, but on 31 May 1945 he absented himself without permission from his station and went to Sacramento, California (R. 12; Pros. Exs. 1, 7). He did not return to effective military control until apprehended at the Lenhart Hotel in Sacramento on 28 June 1945 (R. 12-13, 29; Pros. Exs. 2, 7). During the period of his absence he returned to the base on 5 or 6 June 1945 to call for some clothes at the "cleaners and the laundry". Upon visiting his quarters he found a note from a "Captain at the Legal Office" requesting him to report. "After thinking about it, /the accused/ became scared, and decided to and did, go back to Sacramento. /He/ intended to come back sometime, probably about the first, to see about /his/ pay" (Pros. Ex. 7).

The magnet which drew him away from his duties was a Mrs. Rosemary Shaughnessy, the wife of a lieutenant in the Air Corps who was serving overseas. He had first made her acquaintance while stationed at Langley Field, Virginia, and had lived with her in nearby Newport News. When he was transferred to the West Coast, she had followed him across the continent. They sincerely intended to marry one another, but her attempts to obtain a dissolution of her existing marital bonds had been unsuccessful (R. 40, 54-57; Pros. Ex. 7).

On 23 April 1945, about three weeks after her arrival in California, they registered at the Lenhart Hotel in Sacramento as "Lt. and Mrs. W. P. Coleman". Room 304, to which they were assigned, was occupied by them as husband and wife until about 20 June 1945. On that date they commenced a short vacation at the Cedar Crest Resort, Lake Tahoe, California. Here they rented a "two room housekeeping cabin" and again registered as "Lt. & Mrs. W. P. Coleman". They terminated their stay at the lake and returned to the Lenhart Hotel early on the morning of 28 June 1945 (R. 22-29, 34-37, 40, 51-53; Pros. Exs. 6, 7). Shortly after 1:00 a.m. Sergeant Harvey Braswell of the Military Police knocked on the door of their room. After the lapse of a "good ten minutes", he was admitted. The accused was then wearing trousers and a "Shirt half buttoned". Mrs. Shaughnessy was attired in a white slip and a pair of bedroom slippers. Although he at first described Mrs. Shaughnessy as his wife, the accused, upon being taken to the Provost Marshal's office for investigation, conceded that she was not (R. 29-34, 53; Pros. Ex. 7).

As a result of her relations with the accused she had been pregnant for three months at the time of the trial. She had asked the accused "to stay" with her. She "needed him because /she/ was sick" (R. 57-58; Pros. Ex. 7).

4. After being apprized of his rights as a witness, the accused

elected to make an unsworn statement. He admitted that he had lived with her as husband and wife with full knowledge of the fact that she was married to another man. His only excuse was that:

> "I love her very much and have ever since I've known her. We've tried for a long time to get this annulment pushed through, finished, so we could marry. Due to circumstances beyond our control there was nothing we could do."

Mrs. Shaughnessy had been ill before coming to California, and, after joining him there, she had suffered a relapse. "She couldn't get her breath right. The doctor said it was due to some glandular trouble and * * * she should not work" (R. 62).

The reason for the accused's absence without leave was his anxiety over her condition. He was "so upset and worried about her [he] didn't want to leave her alone" (R. 62-63). He appealed to the mercy of the court by declaring that

> "* * * whatever happens to me I've got her to take care of and if anything happens to me I don't know what she can do. She has no one to take care of her. I'm the father of her child and we do want to get married as soon as we can, and now that Lt Shaughnessy is here and agreed to sign the papers, that will make it easier for us if nothing happens to me" (R. 63).

5. Specification 1 of Charge I alleges that the accused, on 26 May 1945, failed to obey an order to "attend all alert meetings". Specification 2 of Charge I alleges that the accused on or about 25 May 1945 broke a restriction which had been imposed upon him. These were set forth as violations of Article of War 96. The Specification of Charge III alleges that the accused absented himself without proper leave from 31 May to 28 June 1945. This was represented to bein contravention of Article of War 61.

The evidence adduced clearly establishes, and the accused's plea of guilty conclusively confirms, all three of these offenses. Ignoring the restriction to which he had been subjected and the orders which he had received, he went to Sacramento on the night of 25 May 1945 and failed to attend the alert meeting the following morning. After having been placed under a new restriction upon his return, he again displayed his contempt for military discipline by absenting himself without leave for a period of twenty-nine days. These flagrant acts reveal an incorrigible character wholly at variance with the basic requirements of the military system.

6. Specification 1 of Charge III alleges that the accused, from about 23 April to 28 June 1945, did "wilfully and wrongfully cohabit with one Rosemary Shaughnessy, a woman not his wife, and one whom he knew to be the wife of another". This offense was laid under Article of War 95.

Although he pleaded not guilty, the accused both in his sworn pre-trial statement and in his unsworn statement at the trial frankly admitted that he had cohabited with Mrs. Shaughnessy whom he knew to be wed to a brother officer serving overseas. Her testimony was equally candid. Their protestations of "love" and their somewhat belated concern over the welfare of their unborn child do not extinguish or diminish their culpability. His conduct was intrinsically of such moral turpitude as to be unbecoming an officer and a gentleman.

Although the record contains several pages of argument concerning the power of the court to compel Mrs. Shaughnessy to answer incriminating questions, the problem need not be considered on review. The privilege granted by the Fifth Amendment is purely personal, and its denial to a witness cannot accordingly be complained of by the accused. Even if this were not the rule, he has not been prejudiced in any way because his own pre-trial statement and his unsworn statement at the trial, embellished by other unobjectionable testimony, were sufficient in themselves to sustain the findings of guilty beyond a reasonable doubt.

6. The records of the War Department show that the accused, who is single, is approximately 23 years and nine months of age. After attending the University of Pennsylvania for one year, he was employed from September of 1941 to March of 1943 by The Pennsylvania Company as a general ledger clerk. He had enlisted service from 21 March 1943 to 18 March 1944 when he was commissioned a second lieutenant. On 5 September 1944 he was reprimanded and directed to pay a forfeiture of $75 per month for one month under Article of War 104 for absenting himself without leave from 15 August to 18 August 1944. On 10 January 1945 he was found guilty by a general court-martial of absenting himself without leave from 23 November 1944 to 9 December 1944, and sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. Thereafter the findings of guilty and the sentence were disapproved and the case dismissed. Since 18 March 1945 he has been on active duty as an officer.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 61 or Article of War 96 and is mandatory upon conviction of a violation of Article of War 95.

Abner E. Lipscomb, Judge Advocate.

Robert J. Glenn, Judge Advocate.

_____, Judge Advocate.

SPJGN-CM 286337 1st Ind
Hq ASF, JAGO, Washington, D. C.
TO: The Secretary of War.

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Warren P. Coleman (O-716365), Air Corps.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, failing to obey an order to attend an alert meeting, and of breaking a restriction, in violation of Article of War 96; and of absenting himself without leave from his station from 31 May 1945 to 29 June 1945, in violation of Article of War 61. He was also found guilty of wrongfully and unlawfully cohabiting with a woman not his wife at Sacramento, California, Cedar Crest Resort, Homewood, California, and other places, in violation of Article of War 95. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for thirty years. The reviewing authority approved only so much of the finding of guilty of the offense of wrongfully cohabiting with a woman not his wife as involves a finding of the commission of that offense at Sacramento, California, and Cedar Crest Resort, Homewood, California; approved the sentence but reduced the period of confinement to ten years; designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement; and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence as approved by the reviewing authority and to warrant confirmation thereof.

The record shows that the accused, after failing to attend two alert meetings, was ordered by the embarkation officer at Fairfield-Suisun Army Air Base, California, to attend the next scheduled meeting and not to leave the base under any circumstances. The accused, however, disregarded these explicit instructions and went to Sacramento, California, on 25 May 1945. Upon his return to his base he was placed in restriction. Thereafter on 31 May he absented himself without leave and again went to Sacramento, California, and did not return to military control until apprehended there on 28 June 1945. The accused appears to have been drawn away from his military duties by his infatuation for a Mrs. Rosemary Shaughnessy, the wife of a lieutenant in the Air Corps who was serving overseas. He had first lived with her at Newport News, Virginia. When he was transferred to the West Coast she followed him across the continent.

He registered at the Lenhart Hotel in Sacramento as "Lt. & Mrs. W.P. Coleman" and they occupied a room there from 23 April 1945 to 20 June 1945. They then moved to Cedar Crest Resort, Homewood, California, where they occupied a "housekeeping cabin" and again registered as husband and wife. As a result of the accused's adulterous relationship with Mrs. Shaughnessy she appears to be pregnant.

The accused pleaded guilty to the first three offenses alleged and readily admitted that he had lived as husband and wife with Mrs. Shaughnessy. He appealed for mercy to the court upon the grounds that he was the father of Mrs. Shaughnessy's unborn child and that she needed his care and support. He avowed his purpose of marrying her as soon as she was divorced from her present husband.

Although the accused's derelictions and neglect of duty are deserving of stern punishment, the sentence approved by the reviewing authority is clearly excessive. I recommend, therefore, that the sentence as approved by the reviewing authority be confirmed, but that the forfeitures be remitted and the period of confinement be reduced to one year, that an appropriate United States Disciplinary Barracks be designated as the place of confinement; and that the sentence as thus modified be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

2 Incls
Record of trial
Form of action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, but forfeitures remitted and confinement reduced to one year. GCMO 475, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGQ - CM 286339

UNITED STATES v. Second Lieutenant LOUIE F. DOCKERY (O-1177372), attached unassigned to FACRP, FARTC, Fort Sill, Oklahoma	FIELD ARTILLERY REPLACEMENT TRAINING CENTER Fort Sill, Oklahoma Trial by G.C.M., convened at Fort Sill, Oklahoma, 14 August 1945. Dismissal, total forfeitures and confinement for five (5) years.

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OPINION of the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 95th Article of War.

Specification 1: In that Second Lieutenant Louie F. Dockery, attached unassigned to Field Artillery Officers' Replacement Pool, FARTC, Fort Sill, Oklahoma, did, at Oklahoma City, Oklahoma, on or about 4 January 1945, with intent to defraud, falsely make in its entirety a certain check in the following words and figures, to-wit:

Alexandria, La. January 4 1945 No. 67

Rapides Bank & Trust Co. 84-23

Pay to the order of Lt. J. L. Moore $365.00

Three Hundred Sixty Five no/100 Dollars

Col. AAF

Hugh C. McCullin
0-386824

which said check was a writing of a public nature which might operate to the prejudice of another.

Specification 2: In that Second Lieutenant Louie F. Dockery, attached unassigned to Field Artillery Officers' Replacement Pool, FARTC, Fort Sill, Oklahoma, did, at Shawnee, Oklahoma, on or about 8 January 1945, unlawfully and wrongfully make and utter to the American National Bank, Shawnee, Oklahoma, a certain check in words and figures as follows:

No. _____
Jan 8 _____ 1945

Pay to the
Order of _____ Louie F. Dockery _____ $86.00

Eighty Six and no/100 ---------- Dollars

City National Bank and Trust Company
39-7 Oklahoma City, Oklahoma

Louie F. Dockery

and by means thereof did fraudulenty obtain from the American National Bank the sum of $86.00, he, the said Second Lieutenant Louie F. Dockery, then well knowing that he did not have, and not intending that he should have, sufficient funds in the City National Bank and Trust Company, Oklahoma City, Oklahoma, for the payment of said check.

Specification 3: Identical with Specification 2 except that the date is 26 January 1945, the place is Duncan, Oklahoma, the payee is Jess Sharp, Duncan, Oklahoma, and the amount is $10.

Specification 4: Identical with Specification 2 except that the date is 11 June 1945, the place is Fort Sill, Oklahoma, the bank is The City National Bank, United States Depositary, the payee is the Officers Club, 8th Training Regiment, FARTC, Fort Sill, Oklahoma, and the amount is $15.00.

CHARGE II: Violation of the 93rd Article of War.

Specification: Same as Specification 1, Charge I.

CHARGE III: Violation of the 96th Article of War.

Specification 1: Same as Specification 2, Charge I

Specification 2: Same as Specification 3, Charge I

Specification 3: Same as Specification 4, Charge I

ADDITIONAL CHARGES

CHARGE IV: Violation of the 69th Article of War.

Specification 1: (Finding of not guilty.)

Specification 2: In that Second Lieutenant Louie F. Dockery, attached unassigned to Field Artillery Officers' Replacement Pool, FARTC, Fort Sill, Oklahoma, having been duly placed in arrest in his quarters at Fort Sill, Oklahoma, on or about 4 June 1945, did, at Fort Sill, Oklahoma, on or about 3 July 1945, break his said arrest before he was set at liberty by proper authority.

CHARGE V: Violation of the 96th Article of War.

Specification: In that Second Lieutenant Louie F. Dockery, attached unassigned to Field Artillery Officers' Replacement Pool, FARTC, Fort Sill, Oklahoma, did, at Fort Sill, Oklahoma, on or about 3 July 1945, unlawfully and wrongfully make and utter to the Officers' Club, 8th FA Training Regiment, FARTC, Fort Sill, Oklahoma, a certain check in words and figures as follows:

Lawton, Okla. _____ 19___ No._____

BANK OF AMERICA

PAY TO Officers Club $ 5.00

Five and no/hundreths DOLLARS

/s/ Louie F. Dockery
0-1177372

and by means thereof did fraudulently obtain from the said Officers' Club the sum of $5.00, he, the said Second Lieutenant Louie F. Dockery, then well knowing that said bank was non-existant.

He pleaded guilty to all Specifications and Charges, but with leave of court at the close of the evidence and before submission of the case, changed his pleas to not guilty as to the Specifications of Charge IV and Charge IV, Specification 4 of Charge I, Specification 3 of Charge III, the Specification of Charge V and Charge V. He was found not guilty of Specification 1 of Charge IV; guilty of all other Specifications and all the Charges. He was sentenced to be dismissed the service

of the United States, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for five years. The reviewing authority approved the sentence and forwarded the record of trial under the provisions of Article of War 48.

3. The evidence for the prosecution established the following state of facts.

Specification 1, Charge I; Specification, Charge II

On 8 January 1945, the accused called upon Mr. Denning, vice-president of the City National Bank and Trust Company, of Oklahoma City, Oklahoma, and opened a checking account with that bank (R. 11) by depositing a check (R. 12; Pros. Ex. 1) for $365, dated 4 January 1945, drawn on Rapides Bank and Trust Co., of Alexandria, Louisiana, purporting to be drawn by "Hugh C. McCullin, Col. AAF, O-386824", payable to the order of "Lt. J. L. Moore", bearing the purported endorsement of "J. L. Moore, O-1616432, 2nd Lt. AAF", and endorsed by the accused, reciting his station as Tinker Field (Oklahoma City). In return for the check, the depository bank furnished the accused a book of checks with his name imprinted upon them at a service charge of $2.00 and set up an account for him with a credit of $363, subject to collection of the $365 check. The check was cleared through banking channels and returned by the drawee bank for "No account" (R. 12-13). In the opinion of Sydney T. Holland, Special Agent, Federal Bureau of Investigation, Document Identification Specialist in the Laboratory of that Bureau at Washington, D. C., all the material writing on the check, including the signatures of the purported maker and payee-endorser, were written by the same person who wrote the endorsement of the accused and other samples of the accused's handwriting (Deposition, R. 25; Pros. Ex. 7). When questioned by Special Agent Haggart of the Federal Bureau of Investigation, Lawton, Oklahoma, on 14 May 1945, the accused, after warning of his rights, at first denied that he had written the check and claimed that he had won it in a poker game, but, when informed of the laboratory report on the handwriting in question, admitted that he had written the check, including the "names" of the maker and of the payee thereupon, and deposited it for bank credit knowing that it was worthless and fraudulent (R. 31). The City National Bank incurred expenses of $9.50 in connection with the transaction (R. 13), which the accused repaid just before trial (R. 14).

Specification 2, Charge I; Specification 1, Charge III

On or about 8 January 1945, the accused presented to Mr. Riddle, vice-president of the American National Bank, Shawnee, Oklahoma, his personal check for $86, drawn by the accused on the City National Bank and Trust Company of Oklahoma City, on one of the check forms printed

with the accused's name (R. 16). He showed Mr. Riddle his credentials, said that he had just been transferred to the Shawnee naval air base and needed the money for moving expenses, and satisfied Mr. Riddle that "he was OK". The bank cashed the check for him (R. 16, 17; Pros. Ex. 2). It was returned in due course as drawn against uncollected funds and, again presented to the drawee bank, was returned with the statement that the check with which the accused had opened his account had been returned unpaid (R. 17). Attempting to locate the accused, Mr. Riddle found that he was not and never had been stationed at the Shawnee naval air base (R. 18). The $86 which the accused received remained due and owing to the American National Bank, plus protest fees, less $10.50 credit for that amount which that bank was to receive from a money order which the accused had turned over to Mr. Denning, of the City National Bank and Trust Company of Oklahoma City on the day of trial (R. 18). The accused admitted to Special Agent Haggart that he had drawn and cashed the $86 check at the American National Bank in Shawnee (R. 32). His handwriting was identified by Special Agent Holland (R. 25; Pros. Ex. 7).

Specification 3, Charge I; Specification 2, Charge III

On or about 26 January 1945, the accused presented his personal check for $10, drawn on the City National Bank and Trust Company of Oklahoma City (R. 22; R. 20; Pros. Ex. 3) payable to Jess Sharp, at the Pastime Club in Duncan, Oklahoma, operated by Jess Sharp (R. 24), on whose behalf the check was cashed for the accused, who received $10 in money (R. 21, 19, 22, 23). The check was returned unpaid through the bank (R. 20), and later efforts to locate the accused and collect the amount due were unsuccessful (R. 20, 25). The accused admitted to Special Agent Haggart that he had drawn and cashed this check (R. 31). His handwriting was identified by Special Agent Holland (R. 25; Pros. Ex. 7).

Specification 4, Charge I; Specification 3, Charge III

On or about 11 June 1945, the accused wrote and presented his personal check for $15, drawn on the City National Bank of Lawton, Oklahoma (R. 37; Pros. Ex. 4), to the regimental Officers' Club, on whose behalf it was cashed for him by the enlisted bartender (R. 36-37). He had no account at that bank (R. 39).

Specification 2, Charge IV

Letter orders placing the accused in arrest in quarters were issued on 4 June 1945 by command of the Commanding General exercising jurisdiction over the accused (R. 47; Pros. Ex. 5; R. 41) and placed in channels for delivery to him (R. 44). On 11 June 1945, by orders, an Assistant Staff Judge Advocate of the command personally communicated

to the accused the contents of the orders placing him in arrest and explained their effect (R. 45-47). The limits of the accused's arrest were fixed at his barracks, latrine and mess hall, plus certain limited privilege of going to the Post Exchange for the purchase of necessary articles with specific permission of his regimental commander (Ex. 5). On the night of 3 July 1945, he cashed a check and played in a poker game at the regimental officers' club (R. 50).

Specification, Charge V

At the regimental officers' club, on 3 July 1945, the accused presented to the enlisted bartender a check (R. 51; Pros. Ex. 6) for $5, drawn by himself, payable to the Officers' Club, and received $5 cash for the check from the club funds (R. 50, 51). The check was drawn on a printed check form of the City National Bank of Lawton, Oklahoma, upon which the name "City National Bank" was lined out and the name "Bank of America" written in. The words "Lawton, Okla." remained unchanged (Ex. 6). There is no Bank of America branch in Lawton, Oklahoma (R. 39). The circumstances under which the check was uttered were that the accused, earlier that night, cashed a check for $20 at the club bar to enter a poker game, then later returned to the bar and took up his $20 check with $15 cash and the $5 check here involved (Ex. 6), which he wrote in the presence of the bartender (R. 50).

4. The defense introduced no evidence. Duly advised of his rights (R. 53), the accused made an unsworn statement by his counsel, to the effect he had instructed defense counsel to pay off "certain of those checks"; that all checks held by the Officers' Club and introduced in evidence had been "paid off in cash"; that "payment has been made" to the Oklahoma (City) bank and the Shawnee bank and that "it is his intention as his checks become due to turn the entire amount over to his counsel to liquidate any and all indebtedness which might result from checks outstanding" (R. 54).

5. The evidence establishes that, as specified, the accused forged a check for $365 on a fictitious bank account of one "Colonel Hugh C. McCullin", who, for all that appears, was a fictitious person, drawn on a bank at Alexandria, Louisiana. With full knowledge of the worthless and fraudulent character of this, his own handiwork, he "deposited" the spurious check to open a spurious and illusory account to his apparent credit in an Oklahoma City bank. He then promptly drew and uttered his check on that account whereby he defrauded a bank in Shawnee, Oklahoma, of $86 in cash. In each instance, he gave erroneous information about himself and his military station, calculated to mislead the persons with whom he was dealing and to inspire an unfounded confidence in himself. Later, he drew and passed another check for $10 cash in Duncan, Oklahoma, on the same wholly spurious account. Still later, he drew and uttered to a regimental officers' club at Fort Sill,

Oklahoma, two worthless checks, for $15 and $5 respectively, in cash, one on the City National Bank of Lawton, Oklahoma, where he had no account, and the other, by changing partially a check blank of that bank, on the "Bank of America, Lawton, Oklahoma", which did not exist. He broke arrest in quarters, lawfully imposed awaiting trial, to engage in a poker game at the Officers' Club, funds for which he procured in part by the use of the $5 check.

The sufficiency of the record is fortified, though superfluously, by his pleas of guilty remaining unchanged to the more serious offenses: the forgery of the $365 check, as violations both of Article of War 95 (Specification 1, Charge I) and of Article of War 93 (Specification, Charge II), and the fraudulent making and utterance of the $86 check to the Shawnee bank (Specification 2, Charge I, and Specification 1, Charge III) and the $10 check in Duncan, Oklahoma (Specification 3, Charge I, and Specification 2, Charge III) in violation of both the 95th (Charge I) and 96th (Charge III) Articles of War.

His guilt of the offenses concerning which he changed his plea to not guilty is left in no reasonable doubt. His making and utterance of the $15 worthless check to the officers' club was clearly proved (Specification 4, Charge I, and Specification 3, Charge III). As to the $5 check (Specification, Charge V) drawn on the "Bank of America, Lawton, Oklahoma", he might enjoy the benefit of a charitable assumption of his careless but innocent failure to complete the proper change of location to accompany the change of name of the drawee bank, if the evidence concerning that particular transaction stood alone. However, it does not stand alone, and in the reflected light of his course of thoroughly dishonest and fraudulent conduct in this case, unextenuated and unexplained, the only reasonable inference concerning any of his checks is that of intentional fraud, perpetrated according to the circumstances of the particular case.

The proof of his breach of arrest (Specification 2, Charge IV) should have included affirmative proof that he had not been set at liberty by proper authority, where the breach occurred on 3 July after arrest on 4 June, but as it is apparent from the record that his arrest was for the purpose of detaining him for trial and the investigation included a laboratory study and report upon his questioned handwriting by the Federal Bureau of Investigation, the duration of his arrest at that time was not so excessively long as to avoid entirely the force of the familiar presumption of continuance of a state of facts once shown to exist, in the absence of any affirmative showing, or even any contention, that he had been released. Whether or not he may have been entitled to earlier disposition of charges and release, he was not entitled to release himself (CM 229280, Warwick, 17 BR 109, 115).

An assistant Staff Judge Advocate testified that he informed the accused of the orders for his arrest, showed him the letter orders and explained them to him in regimental headquarters office "in the presence of Colonel Liebst" (R. 45). Lieutenant Colonel Charles A. Liebst was president of the court which tried the case. In qualifying the court, there was no response to the prosecution's request that any member state facts known to him which he believed to be ground for challenge. The accused, duly advised of his rights, declined to exercise a challenge, either for cause or peremptorily, and accepted the court (R. 3). Although there was necessarily an issue of law in the case whether the accused had been duly placed in arrest in quarters, the evidence was complete and compelling that he had been so placed. It was not shown that any member had any extra-judicial knowledge of the breach. The offense of breach of arrest was a relatively minor one among those involved in this case. Though the presence of a member having such previous knowledge is bad practice and not to be encouraged, this circumstance did not, in our opinion, adversely affect the substantial rights of the accused in this case (Cf. CM 30-435, Nov. 19, 1914, Dig. Op. JAG 1912-40, Sec. 365 (8), page 174).

Charges IV and V were additional charges instituted after the original charges were referred for investigation. They should have been designated Additional Charges I and II. This irregularity was not prejudicial.

The same forgery, specified in identical language, is made the basis of conviction both under Article of War 95 and Article of War 93, and the same worthless checks under Articles of War 95 and 96. In each case, both articles have been violated by the same conduct, and, though the resulting multicipital character of the record seems to us wholly unfruitful in this case and unjustified on any practical grounds, it is permitted by settled military law (CM 218924, Foster, 12 BR 173, 182; CM 253638, Kent, 35 BR 9, 14).

6. The accused officer is 25 years of age, single, a citizen and resident of Earlsboro, Oklahoma. He completed high school at Harjo, Oklahoma, and one year at Oklahoma Agricultural and Mechanical College. As a civilian, he was a plumber, welder and pipeline maintenance man, with some experience in horticulture and land terracing. He entered the Army in September 1941, was appointed a second lieutenant, Army of the United States, assigned to Field Artillery, through Officer Candidate School of that branch at Fort Sill, Oklahoma, 11 February 1943. On 18 August 1943 he broke a leg in a baseball game in Hawaii, and was hospitalized at North Sector General Hospital in that Area, Hammond General Hospital, Modesto, California, and Borden General Hospital, Chickasha, Oklahoma, being in and out of hospital until he was assigned to Field Artillery Officers' Replacement Pool, Field Artillery Replacement Training Center, Fort Sill, Oklahoma, for limited service by orders 2 March 1945. He suffered some residual impairment of his leg resulting from the mentioned fracture, as a result of which

his retirement was twice recommended by an Army Retirement Board, but disapproved by the Surgeon General. The Secretary of War on 5 February 1945, directed his retention for limited service and re-examination after six months. The misconduct involved in this case intervened.

7. The court was legally constituted and had jurisdiction of the accused and the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is mandatory upon conviction of a violation of Article of War 95 and is authorized upon conviction of a violation of Articles of War 93, 96 and 69.

Wm. Powell, Jr., Judge Advocate

[illegible], Judge Advocate

Donald D. Hickman, Judge Advocate

SPJGQ - CM 286339 1st Ind.

NOV 6 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Louie F. Dockery (0-1177372), attached unassigned to FAORP, FARTC, Fort Sill, Oklahoma.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, forgery of a bank check for $365 at Oklahoma City, Oklahoma, about 4 January 1945, in violation of Articles of War 95 and 93 (Specification 1, Charge I; Specification, Charge II), and of wrongfully, unlawfully, fraudulently and knowingly making and uttering for value a worthless check for $86 at Shawnee, Oklahoma, on 8 January 1945, and another for $10 at Duncan, Oklahoma, on 26 January 1945, in violation of Articles of War 95 and 96 (Specifications 2 and 3, Charge I; Specifications 1 and 2, Charge III). He was also found guilty, upon pleas changed to not guilty, of wrongfully, unlawfully, fraudulently and knowingly making and uttering for value a worthless check for $15 at Fort Sill, Oklahoma, on 11 June 1945, in violation of Articles of War 95 and 96 (Specification 4, Charge I; Specification 3, Charge III) and another for $5, on a nonexistent bank, on 3 July 1945, in violation of Article of War 96 (Specification, Charge V), and of breach of arrest in quarters at Fort Sill, Oklahoma, on 3 July 1945, in violation of Article of War 69 (Specification 2, Charge IV). He was sentenced to dismissal, total forfeitures and confinement at hard labor, at such place as the reviewing authority might direct, for five years. The reviewing authority approved the sentence and forwarded the record of trial under the provisions of Article of War 48.

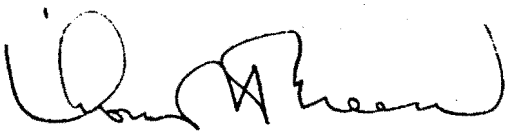
3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation of the sentence. I concur in that opinion.

The accused officer, while stationed as a patient at Borden General Hospital, Chickasha, Oklahoma, pending action upon findings of an Army Retiring Board, went to Oklahoma City, Oklahoma, on 8 January 1945 and there forged and uttered a bank check for $365 upon

a fictitious account in a bank in Louisiana of a fictitious Colonel. Upon false representations to a banker there, concerning his status and station as well as the check, he opened a spurious account to his credit. He then went at once to Shawnee, Oklahoma, and there, by other but equally false representations as to his status and station, succeeded in cashing a check for $86 upon his illusory account in the Oklahoma City bank, which check was dishonored first as drawn upon uncollected funds and later for "No Account". The accused made and cashed another worthless check for $15 on 11 June 1945 on a Lawton, Oklahoma, bank where he never had an account and another for $5 on 3 July 1945 on a nonexistent bank. At the time of the 3 July incident he was in a status of breach of lawfully imposed arrest in quarters, engaged in a poker game at the regimental officers' club. He made some partial restitution at the time of trial. All of his check transactions are marked by deliberate fraud and complete dishonesty, the suggestion of any honest impulse being nowhere discernible. This office is now advised that the accused escaped confinement on the night of 23-24 September, in company with another convicted officer, and is presently at large.

I recommend that the sentence be confirmed but that the forfeitures be remitted and the confinement reduced to three years, and that the sentence as thus modified be executed and a Federal reformatory designated as the place of confinement.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.



2 Incls
1. Record of trial
2. Form of action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence confirmed, forfeitures remitted and confinement reduced to three years. GCMO 477, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 286344

20 SEP 1945

UNITED STATES	SECOND AIR FORCE
v.	Trial by G.C.M., convened at Sioux Falls Army Air Field, Sioux Falls, South Dakota, 17 August 1945. Dismissal.
Second Lieutenant JOHN M. WOLFE (0-785621), Air Corps.	

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 93d Article of War.

Specification 1: In that Second Lieutenant John M. Wolfe, Air Corps, 613th Bombardment Squadron, 401st Bombardment Group, attached Squadron 0-3, 211th Army Air Forces Base Unit, did, at Sioux Falls, South Dakota, on or about 30 July 1945, unlawfully enter the store building of the B & E Economy Grocery, with intent to commit a criminal offense, to wit, larceny therein.

Specification 2: In that Second Lieutenant John M. Wolfe, * * *, did, at Sioux Falls, South Dakota, on or about 30 July 1945, feloniously take, steal and carry away about $4.25 lawful money of the United States, the property of the B & E Economy Grocery.

Accused pleaded not guilty to and was found guilty of the Charge and Specifications. No evidence of any previous conviction was introduced. Accused was sentenced to dismissal, total forfeitures and confinement for two (2) years. The reviewing authority approved only so much of

the sentence as provides for dismissal and forwarded the record of trial for action under Article of War 48.

3. The prosecution introduced evidence to show that about 10 a.m., Sunday, 29 July 1945, Mr. Taylor Thompson, manager of the Economy Center Markets, paid a brief visit to his store which was located on South Phillips Avenue, Sioux Falls, South Dakota. When he departed he closed and locked only the front screen door as was his custom during the summertime. He left the cash registers open and in two of them there reposed a total of about $4.30, made up of two one dollar bills, silver and pennies (R. 6, 7, 8).

Around midnight that Sunday two city policemen, Russell A. Bernau and John C. Green, accompanied by two military policemen, Technical Sergeant Ellis H. Edwards and Sergeant Ephriam Myers, went to this store in response to a call that had been received. Arriving there they observed that the wire mesh of the padlocked front screen door had been torn or kicked in. Patrolman Bernau entered the store through the hole in the screen door and examining the cash registers found all of them empty (R. 9-13, 16, 19, 20). Patrolman Green hurried to the rear entrance of the store and found accused standing about a foot away from the opened rear door. Green took accused into custody and turned him over to the two military policemen to whom accused said "Let's forget about it." After accused had been escorted to the front of the store he requested Sergeant Edwards to turn his back so that he could "make a break" (R. 14, 17, 19). Accused staggered some as he walked but the consensus of opinion expressed by the four policemen was that although he had been drinking he was not drunk (R. 10, 14, 15, 17).

Thereafter accused was taken to the local police station. When asked by Detective Clarence Sholtes what had happened accused replied "I guess they caught me in the store." Accused was then told to empty his pockets and as he removed about $4.30 from his pockets, which included two one dollar bills and some change, he remarked "That doesn't belong to me" (R. 17, 19, 20, 22).

When Mr. Thompson arrived at his store the following Monday morning he observed the torn screen door and found his cash registers empty. He had given no one permission to enter the store (R. 7, 8).

4. The defense introduced Second Lieutenants Albert S. Deporne and Wilson Griffith, Jr. as witnesses and they testified that while accused served as bombardier in their Bombardment Group in England he performed his duties in an excellent manner and enjoyed a good reputation. During their return flight to the United States on 30 May 1945, they were involved in an airplane accident in Iceland (R. 31, 32).

Accused elected to make an unsworn statement through his counsel, the gist of which is as follows (R. 33). He had recently returned from the European Theater of Operations where he served as a

member of the Eighth Air Force and was awarded one battle star. His last combat mission was over Bradenburg, Germany, on 20 April 1945. On his return to this country the airplane in which he was traveling was involved in an accident on a runway in Iceland. Since his return he had been nervous and easily startled by any unexpected noise. So much of accused's unsworn statement as pertained to the offenses charged was worded as follows (R. 33):

> "* * * On the night of the alleged break-in and larceny, I was very intoxicated and remember nothing specific about the alleged break-in and larceny. In this condition, I could not have and did not have an intent to break in and commit larceny in the store as alleged."

5. Accused is charged with housebreaking and with larceny. The evidence amply establishes the essential elements of both offenses. The condition of the front screen door of the store, accused's possession of the contents of the cash registers, his apprehension in the early morning hours just outside the opened rear door of the store, and his admissions to the police authorities fully warranted the court's findings of guilty of the offenses charged. Although it was a reasonable conclusion that accused effected an entry into the store by tearing the wire mesh of the front screen door, nevertheless since a breaking is not an essential element of the offense of housebreaking it was immaterial how accused effected his entry so long as it was unlawful (MCM, 1928, par. 149e). That his entry was unlawful is established by the testimony of the store manager. His theft of $4.30 from the store not only establishes commission of the larceny alleged but also justified the court in concluding that when accused entered this building he did so with the intent to commit that offense.

It was proper for the authorities to allege, as a completed act in the larceny specification, the criminal offense which was alleged as intended under the housebreaking specification (MCM, 1928, par. 149d). To allege these two offenses of larceny and housebreaking constituted no unreasonable multiplication of offenses.

Although accused had been drinking his intoxication would constitute no defense unless it was so extreme as to render him mentally incapable of formulating the specific intent involved in the offenses alleged (MCM, 1928, par. 126a). The evidence does not establish that accused was intoxicated to that extent. Indeed, his conduct immediately after perpetration of the acts alleged amply demonstrates that he was well aware of what he had done. In the opinion of the Board of Review the record of trial sustains the court's findings of guilty.

6. Accused is 23 years of age, is married and has one child. War Department records reveal that in civilian life accused was employed

as a ship fitter with a shipbuilding concern. On 5 January 1943 accused entered military service and after successfully completing his training as an aviation cadet he was commissioned a second lieutenant on 2 September 1944.

7. The court was legally constituted and had jurisdiction of the accused and the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 93.

Thomas N. Jaffy, Judge Advocate

William H. Gambrell, Judge Advocate

Robert E. Trevethan, Judge Advocate

SPJGH-CM 286344 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant John M. Wolfe (0-785621), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of housebreaking and of larceny of the sum of $4.25, both in violation of Article of War 93. He was sentenced to dismissal, total forfeitures and confinement for two (2) years. The reviewing authority approved only so much of the sentence as provides for dismissal and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. I concur in that opinion. Around midnight of 29 July 1945, accused, after having been drinking, unlawfully entered a store in Sioux Falls, South Dakota, and rifled the cash registers of the sum of $4.30. He was apprehended just outside the rear door of the store and shortly thereafter turned over to the police authorities the several dollars he had taken. According to the review of the Staff Judge Advocate and the testimony of accused, he served as a bombardier with the Eighth Air Force in the European Theater of Operations from 24 March 1945 to 31 May 1945. His last combat mission was completed on 20 April 1945. He was entitled to wear the theater ribbon with one star. All members of the court hearing this case recommended that clemency be exercised as to the confinement imposed upon accused and that recommendation was followed by the reviewing authority.

In my opinion accused's five weeks of combat service in the European Theater of Operations was accorded full consideration by the reviewing authority when he approved only so much of the sentence as involves dismissal. Both offenses committed by accused not only involve moral turpitude but also such disgraceful conduct as fully to demonstrate his unfitness longer to remain an officer. I recommend that the sentence as approved by the reviewing authority be confirmed and carried into execution.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

2 Incls
1 Rec of Trial
2 Form of Action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence as approved by reviewing authority confirmed and ordered executed. GCMO 489, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGK - CM 286435

17 SEP 1945

UNITED STATES v. Private JOSEPH W. WNEK (36739001), 9222nd Technical Service Unit, Transportation Corps, Ship's Complement Detachment, Charleston Port of Embarkation, Charleston, South Carolina.	CHARLESTON PORT OF EMBARKATION Trial by G.C.M., convened at Charleston, South Carolina, 29 August 1945. Dishonorable discharge and confinement for five (5) years. Disciplinary Barracks.

HOLDING by the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the soldier named above has been examined by the Board of Review.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 93rd Article of War.

Specification: In that Private Joseph W. Wnek, 9222 Technical Service Unit, Transportation Corp, Ship's Complement Detachment, Charleston Port of Embarkation, Charleston, South Carolina, did, at 32 4th Street, Navy Yard, South Carolina, on or about 19 July 1945, unlawfully enter the trailer dwelling of Jewell Richardson, with intent to commit a criminal offense, to wit, assault therein.

CHARGE II: (Finding of not guilty).

Specification: (Finding of not guilty).

He pleaded not guilty to all Charges and Specifications. He was found guilty of Charge I and its Specification, not guilty of Charge II and its Specification and was sentenced to dishonorable discharge, total forfeitures, and confinement at hard labor for five years. Evidence of three previous convictions by summary court-martial for being drunk and disorderly on two occasions, to-wit, 5 October 1944 and 14 July 1945 in violation of Article of War 96, and for being AWOL for one day in December 1944 in violation of Article of War 61, was introduced. The reviewing authority approved the sentence, designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement and forwarded the record of trial pursuant to Article of War 50½.

3. For reasons which are later apparent, it is unnecessary to discuss the evidence relating to the commission of the offense of which the accused was found guilty.

In the case under consideration, First Lieutenant William W. Fuller, MC, who appeared as a witness for the defense, testified that he was in charge of the Psychiatric Ward, Station Hospital, Charleston Port of Embarkation, and had the duty of examining and observing men for mental disorders. From his observance and mental examination of accused "in the prescribed usual manner over a period of approximately two weeks to ten days," his "convictions" as to accused were expressed as follows:

> "*** He is definitely abnormal in his mental reactions and he is unable, in my opinion, to tell right from wrong and like so many psychiatrics he is difficult to classify until we have had more time to observe him. Therefore, we have diagnosed him as Psychosis Unclassified - probably dementia praecox."

Lieutenant Fuller also testified that accused "does not have the ability to distinguish between right and wrong" and, if he did, would not have the ability to adhere to the right, and in his opinion, the accused is "insane." Although the dates during which he had the accused under observation are not shown by the record, the witness in reply to a question as to whether he had "recently" had the opportunity of examining and observing the accused, answered "frequently." The accused elected to remain silent (R. 28-31).

No evidence in rebuttal was adduced by the prosecution. Neither did the court "inquire into the existing mental condition of the accused" as it should properly have done "in the interest of justice" (see MCM, 1928, par. 63).

The issue controlling this case concerns the mental responsibility of the accused for the offense. The Manual for Courts-Martial provides in part as follows:

> "Where a reasonable doubt exists as to the mental responsibility of an accused for an offense charged, the accused can not legally be convicted of that offense." (MCM, 1928, par. 78a)

It has been held that this provision places the "burden of ultimate persuasion on the issue of mental responsibility upon the prosecution and recognizes the fundamental principle that all men are deemed innocent until proven guilty beyond a reasonable doubt" (CM 223448, Riesenman, 13 B.R. 399). To similar effect is Davis v. United States, 160 U.S. 469, in which the court said:

> "*** Strictly speaking, the burden of proof, as those words are understood in criminal law, is never upon the accused to

establish his innocence or to disapprove the facts necessary to establish the crime for which he is indicted. It is on the prosecution from the beginning to the end of the trial and applies to every element necessary to constitute the crime. * * *.

"If insanity is relied on and evidence given tending to establish that unfortunate condition of mind, and a reasonable well-founded doubt is thereby raised of the sanity of the accused, every principle of justice and humanity demands that the accused shall have the benefit of the doubt".

The test to be applied in determining the mental responsibility of an accused is set forth in the Manual in the following language:

"*** A person is not mentally responsible for an offense unless he was at the time so far free from mental defect, disease, or derangement as to be able concerning the particular acts charged both to distinguish right from wrong and to adhere to the right." (MCM, 1928, par. 78a.)

In view of the positive, unqualified opinion of a competent medical expert that accused is "insane" and unable to distinguish right from wrong, which clearly raises a reasonable doubt as to whether the accused at the time of trial and, inferentially, at the time of the alleged offense was "so far free from mental defect, disease, or derangement as to be able concerning the particular acts charged both to distinguish right from wrong and to adhere to the right," and since there is no other evidence in the record to overcome that reasonable doubt, the prosecution failed to discharge the burden of proof under the circumstances (CM 223448, Riesenman, 13 B.R. 403; CM A-348, 3 Bull. JAG, p. 469; 1st Ind to CM 260194, Collett, 23 Mar. 1945) and the court-martial could not properly reject the expressed opinion of the qualified medical expert (CM 128252, Heppberger; CM 223448, Riesenman; 1st Ind to CM 260194, Collett). Accordingly, the findings of guilty and the sentence must be rejected.

In so holding, this Board of Review has not overlooked the case reported in 3 Bulletin JAG, page 228 (CM NATO 2047), but, in so far as that case may be inconsistent herewith, prefers to follow the long established and consistent holdings of the Office of The Judge Advocate General (some of which are heretofore cited) which conform with the holding in the case under consideration.

4. Accused is 31-9/12 years of age. He was inducted 8 March 1943 at Chicago, Illinois.

5. For the reasons heretofore stated, the Board of Review holds the record of trial legally insufficient to support the findings of guilty of the Charge and its Specification and the sentence.

Charles G. Lynskie, Judge Advocate

(On Leave), Judge Advocate

Charles S. Sykes, Judge Advocate

SPJGK - CM 286435 1st Ind.

Hq ASF, JAGO, Washington 25, D. C.

TO: Commanding Officer, Charleston Port of Embarkation, Charleston, S.C.

1. In the case of Private Joseph W. Wnek (36739001), 9222nd Technical Service Unit, Transportation Corps, Ship's Complement Detachment, Charleston Port of Embarkation, Charleston, South Carolina, attention is invited to the foregoing holding by the Board of Review that the record of trial is legally insufficient to support the finding of guilty and the sentence, which holding is hereby approved. For the reasons stated in the holding by the Board of Review I recommend that the findings of guilty and the sentence be vacated.

2. Under the provisions of Article of War 50½, the record of trial is transmitted for vacation of the sentence in accordance with the foregoing holding and for a rehearing or such other action as you may deem proper.

3. In view of the testimony in the record of trial as to the insanity of accused, it is recommended that the accused be examined by a board of medical officers appointed for that purpose. At least one member of the board should be an experienced psychiatrist. It is important that the board make separate and distinct findings and conclusions as to each of the three questions as follows:

a. Was the accused at the time of the alleged offense "so far free from mental defect, disease and derangement as to be able concerning the particular acts charged" to distinguish right from wrong? (fifth subparagraph, paragraph 78a, M.C.M., 1928.)

b. Was the accused at the time of the alleged offenses "so far free from mental defect, disease and derangement as to be able concerning the particular acts charged *** to adhere to the right?" (fifth sub-paragraph of paragraph 78a, M.C.M., 1928.)

c. Was the accused at the time of his trial sufficiently sane "intelligently to conduct or cooperate in his defense"? (first subparagraph of paragraph 63, M.C.M., 1928.)

Your attention is particularly invited to the provisions of the Manual for Courts-Martial cited above.

When the report of the board of medical officers has been made, it should be submitted to you for your consideration. If the report of the board establishes to your satisfaction that the accused is sane and

mentally responsible, the case may be ordered by you to be reheard before another court, and if the question of insanity or lack of mental responsibility is raised by the defense, the prosecution in rebuttal should introduce the medical experts who examined accused and have them testify as to his sanity.

4. When copies of the published order in this case are forwarded to this office they should be accompanied by the foregoing holding and this indorsement. For convenience of reference, please place the file number of the record in brackets at the end of the published order, as follows:

(CM 286435).

1 Incl
Record of trial

MYRON C. CRAMER
Major General
The Judge Advocate General

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGK - CM 286519

4 OCT 1945

UNITED STATES v. Second Lieutenant JOSEPH A. McADAMS (O-1581924), Adjutant General's Department.	NEW YORK PORT OF EMBARKATION ARMY SERVICE FORCES Trial by G.C.M., convened at Headquarters, Port Terminals, New York Port of Embarkation, 21 and 22 June 1945. Dismissal.

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 95th Article of War.

Specification 1: In that Second Lieutenant Joseph A. McAdams, Adjutant General's Department, Adjutant General's Pool, New York Port of Embarkation, Brooklyn, New York, was at the Embarkation Army Post Office, 464 Lexington Avenue, New York, New York, on or about 31 May 1945, drunk and disorderly in command.

Specification 2: In that Second Lieutenant Joseph A. McAdams, * * *, was at New York, New York, on or about 31 May 1945, in a public place, to wit, Lexington Avenue, between 46th and 47th Streets, drunk and disorderly while in uniform.

CHARGE II: Violation of the 96th Article of War. (Finding of not guilty.)

Specification 1: (Finding of not guilty).

Specification 2: (Finding of not guilty).

Specification 3: (Finding of not guilty).

ADDITIONAL
CHARGE: Violation of the 95th Article of War.

Specification: In that Second Lieutenant Joseph A. McAdams, * * *, was, at New York, New York, on or about 31 May 1945,

in a public place, to wit, the Village Vanguard Nightclub, 178 Seventh Avenue, New York, New York, drunk and disorderly while in uniform.

He pleaded not guilty to all Charges and Specifications. He was found guilty of Specification 1, Charge I, except the words "and disorderly," guilty of Specification 2, Charge I, except the words "and disorderly while in uniform," and guilty of Charge I. He was found not guilty of Charge II and all its Specifications. He was found guilty of the Additional Charge and its Specification. Evidence was introduced of one previous conviction by general court-martial for being drunk and disorderly in camp in violation of the 96th Article of War, for which the sentence as adjudged on 7 March 1944 and subsequently approved, provided for a reprimand, restriction for three months and forfeiture of $80 per month for three months. In the instant case he was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. For the Prosecution.

In the late afternoon of 31 May 1945 the accused together with Lieutenant Joseph Schuler, Lieutenant William M. Hodges and a young lady were in the room of Lieutenant Hodges in the Winslow Hotel, New York City (R. 11, 14). During the period from 1800 to 2000 hours the four of them consumed a fifth of a gallon of whiskey which had been "split" four ways, the accused taking either 3 or 4 drinks (R. 12). The four of them then proceeded in accused's automobile to the Village Vanguard, a night club where they obtained seats in the balcony (R. 12,58). Prior to eating, according to witness Hodges, accused had two drinks of either beer or whiskey but he did not recall whether or not accused had anything to drink during the meal, as he (witness) was talking to the young lady and accused was talking to a "Calypso" singer (R. 14).

Mr. Jerome Milich, operator of the Village Vanguard, testified accused and his party arrived about 2000 or 2015 hours (R. 58). Accused did not remain continuously at the table but was sometimes at the bar where he observed him have three drinks (R. 59,60). While at the bar accused questioned the OPA ceiling price of a drink and in a "belligerent" voice threatened "to close the place down if it wasn't in conformance" (R. 61). Mr. Milich offered to buy accused a drink to "placate" him, which drink accused accepted (R. 61). During the time accused was at the table his "speech was loud; his manner boisterous," and while at the bar his "voice was quite loud" (R. 59,60).

A party of civilians, composed of two men and two women, were sitting at a table next to the bar (R. 60). Accused spoke to one of the ladies and subsequently had "words" with one of the men (R. 60). Mr.

Milich heard only a part of what was said to the man, but did hear accused call him a "4-F" in a "tough" and "loud" voice and offered to fight him. (R. 60,61,62). Despite efforts to restrain him, accused insisted he wanted to fight the civilian and kept trying to take the bars off his uniform (R. 61). At this time his voice was clear but his "gait" was unsteady and he was "definitely drunk" (R. 62).

Mr. Milich witnessed a fight between accused and Lieutenant Schuler, but he did not see who struck the first blow (R. 65). Possibly 8 or 10 blows were struck and accused finally ended up on the "ground" (R. 66,67). Witness and some customers then carried accused into the back "away from the public gaze" (R. 67). When Lieutenant Schuler approached him with a towel and some ice accused thrashed out with his legs and screamed hysterically (R. 67). Later at approximately 2400 hours accused departed unescorted (R. 58, 68). At the time accused was leaving witness could not tell whether accused was drunk or hurt or a little of both (R. 68). Accused's nose was bloody and he believed his mouth was puffed after the fight (R. 68).

At approximately 2332 hours, an Auxiliary Military Policeman attached to the Army Post Office and on duty at his post located on 46th Street between Lexington Avenue and Depew Place observed a car come "rolling" into Depew Place and stop (R. 15,16). He approached the car and upon examination observed accused slumped over to the right on the front seat of the car with his face down on the seat and his body behind the steering wheel (R. 16, 19,30,37,76). Assistance was requested from other members of the Auxiliary Police Organization and the accused was removed from the car (R. 16,17,20, 37,77). He "couldn't" talk and when placed upon his feet collapsed (R. 21, 77). He was "picked" up and carried into the duty office of the Army Post Office (R. 21,30,37,41,77). There was a slight alcoholic odor on his breath (R. 30). Upon being placed in a chair in the duty office he "slumped" and "slid" out of the chair (R. 31,32,77). He then became violent and it required two or three men to hold him on the floor (R. 31). He kept saying, "Schuler, don't hit me with a bottle" (R. 31,78). In his struggles he kicked two enlisted men who were assisting in restraining him (R. 24,25, 38,42,79). The struggle continued until Lieutenant Carver entered the room and soothed him (R. 22,71). Lieutenant Carver assisted him to his feet and accused appeared "docile" for a short time (R. 71). Suddenly he gave Lieutenant Carver a shove and attempted to get out of the door which was being held closed from the outside by two of the Auxiliary Military Policemen (R. 26,39,71,79). The individuals holding the door released it when accused kicked the door and broke a glass panel (R. 27,39,71). Accused, wearing neither shirt nor tie, then pushed the door open and ran into the street (R. 71,72). He was finally apprehended on Lexington Avenue between 46th and 47th Streets by Lieutenant Carver and others who had given chase (R. 55,73,80). While running on the streets accused struck an enlisted man with his open hand and aimed blows at an unidentified civilian and two Naval officers (R. 54,72,80). Accused was then taken to the dispensary

at Breslin Hotel in New York where he was given a medical examination (R. 34, 44,73). At the beginning of the examination accused cried and mumbled something about upsetting the good work he had accomplished, but later became belligerent, swaggered, and was boastful. The examining medical officer testified that accused's pupils were dilated, he appeared ataxic, there was delay in his reaction, his judgment was somewhat impaired, and his speech was a little slurred. An alcoholic blood test indicated 2.5 milligrams of alcohol. In his opinion accused was drunk (R. 44,45,46). Witnesses who observed accused on Lexington Avenue testified that in their opinions he was drunk at that time (R. 28,35,73).

4. For the Defense.

Accused, after being apprised of his rights as a witness, elected to take the stand and testify under oath (R. 86). His testimony may be summarized as follows: At 1400 hours on 31 May 1945 he went to be examined by Major Edward P. Freedman, MC, a qualified neuropsychiatrist, who had been treating him at the request of accused's wife (R. 87,88,110). The examination was very fatiguing and nerve wracking and when he left the psychiatrist's office at about 1500 hours he was tense, moody, nervous and had a terrific headache. He spent the remainder of the afternoon with a captain. Upon leaving the captain he went to the apartment he was intending to share with Lieutenant Hodges, straightened it out, and then called the lieutenant at his hotel room (R. 88,89). Lieutenant Hodges was not in but a young lady was there. He invited her down to have a beer but at her counter-invitation went up to the room where they talked until Lieutenant Hodges and Lieutenant Schuler arrived at about 1900 hours (R. 89). There had been some ill-feeling between himself and Lieutenant Schuler as a result of a previous "double date"; so he attempted to leave the room when Lieutenant Schuler came in (R. 89). Lieutenant Hodges persuaded him to stay "around", and that "everything would be all right." He and Lieutenant Schuler "got together" and "patted" each other on the back and the two of them went out and purchased a fifth of a gallon of liquor (R. 89,90). They returned to the room and consumed the liquor in about three rounds of drinks (R. 90). At his suggestion they went to the Village Vanguard, arriving about 2015 hours, where they each had a glass of beer before dinner (R. 90, 91). After eating he invited one of the entertainers, a "Calypso singer," to the bar and ordered four "ponies" of liquor for the two of them (R. 91). He questioned the price of drinks, arguing the matter with the manager who satisfied him with an explanation of the charge, and then he sat at a table with the singer (R. 92). Upon noticing some excitement at the table of his friends who "seemed to be having trouble" he started towards them. In the meantime, Lieutenant Hodges and the young lady had apparently "out across" the dance floor and he saw no more of them after that. He suggested to Lieutenant Schuler that they go. As they started out a girl who was seated near the bar with a civilian escort said, "If you want to fight why don't you fight the Japs" (R. 93). This made him see "red" and he replied that

his friends were in uniform and that two of them had been overseas and "That's more than your buddy can say." The girl's escort made a retort and an argument ensued which ended when Lieutenant Schuler hit him several times rendering him unconscious (R. 94,101). He remembered regaining consciousness momentarily at the Village Vanguard and later momentarily at the Whitesell Dispensary, but could recall nothing more of his evening's activities (R. 94,95). He finally regained consciousness at the Fort Jay Hospital the following day (R. 94).

When he was fifteen or sixteen years of age he had seen "red" and "boiled" over on two occasions. During these "spells" he became involved in situations of which he had no later remembrance (R. 95,96). He has had these "spells" when not under the influence of alcohol as well as when he was (R. 102). He has been under observation of a psychiatrist in his youth and again in Atlanta, Georgia, in January 1945 (R. 96,97). He had one drink of liquor and a bottle and a half of beer at the night club, but none was bought him by the operator of the club (R. 96,106). He may have sung "Calypso" songs while there, but does not recall having done so (R. 104). He has been in the army for two years and three months and was married to his present wife after having divorced his first wife because of her infidelity (R. 87,97). He has made three attempts at self-destruction (R. 96).

Major Edward P. Freedman, a qualified neuropsychiatrist, testified he had examined accused on three occasions prior to the commission of the offenses here alleged, but kept no records since he was acting in an unofficial capacity (R. 110,129). Although he "hadn't quite made up" his mind as to the exact diagnosis of accused's condition, nevertheless he was of the opinion that after accused was struck and rendered unconscious he was not responsible for his conduct and doubted whether he could recognize right from wrong (R. 111,112). The blow which accused received would be sufficient to cause an "emotional upset" in accused and thereafter his conduct would not be that of a normal and mentally sound person (R. 111). On 16 June 1945, after observing and examining accused in preparation for trial, he did make a written report that in his opinion accused was responsible for his actions up to the time he received the knockout blow (R. 131,132). He was of the opinion that alcohol did not have "any effect in bringing these effects on" (R. 115). When he examined accused on the afternoon of 31 May 1945 he gave no evidence of being in the "midst" of an emotional upset at that time (R. 129,130).

Captain Hugh McHugh, MC, a witness called by the prosecution in rebuttal, testified that he had accused under observation for ten days following the episode that occurred at the Village Vanguard (R. 137). Based on examination and history he was of the opinion that there was a great deal of maladjustment in accused's life and that accused had an acute hysterical personality which would prevent him from distinguishing between right and wrong when he got into a hysterical state, because he "blacks"

out and has no memory of anything until he comes out of it (R. 139). The "story /he/ got on what happened" at the Village Vanguard was in his opinion sufficient to precipitate such a hysterical state (R. 142,143). He was of the further opinion that although alcohol could be considered one of the precipitating factors that could bring on an emotional upset, it was only one of such factors (R. 142).

5. The Specification of the Additional Charge alleges that on 31 May 1945 accused was drunk and disorderly in uniform in a public place. The evidence is clear and convincing that in the late afternoon of 31 May 1945 accused imbibed a number of drinks of whiskey and then with a party of three persons, proceeded to the Village Vanguard, a night club, where he took additional drinks. During his presence in the night club his voice was loud and his manner boisterous. In a belligerent manner he questioned the manager of the club with reference to the ceiling price of drinks. Without introduction, he spoke to a lady, one of a party of civilians, and subsequently had words with her escort, calling him a "4-F" and offering to fight him. He engaged in a fight with one of the officers in his own party, receiving blows in the encounter which knocked him to the floor and necessitated his having to be carried from the room. He was "definitely drunk" during this period. Such drunkenness and disorderly conduct in a public place is clearly conduct unbecoming an officer and a gentleman within the contemplation of Article of War 95, and the court was justified in finding accused guilty of the offense alleged in the Specification of the Additional Charge and the Additional Charge.

6. Specification 1, Charge I, alleges that on 31 May 1945 accused was drunk and disorderly in command in New York. Specification 2, Charge I, alleges that on the same date accused was drunk and disorderly in uniform on nearby Lexington Avenue.

The evidence offered in support of the commission of these offenses shows that shortly after accused departed from the Village Vanguard night club he appeared at Depew Place, a street adjacent to an Army post office. He was found in his automobile in a slumped position and was apparently unable to talk or to stand alone. He was bodily carried from the street into the Army post office where he then began to struggle and act in a disorderly manner. In his struggles he struck two enlisted men who were attempting to restrain him. He finally escaped from those who were holding him, broke the glass in a door, and ran into the streets and along Lexington Avenue, wearing neither a hat nor a shirt. In his running he struck

or attempted to strike several persons as he passed them. It was clearly established he was drunk at this time.

The court in its findings excepted those portions of each Specification pertaining to being disorderly and disorderly in uniform, but did find accused guilty of being drunk at the alleged times and places. The only reasonable explanation that can be advanced as to why the court found the accused not guilty of being disorderly at these alleged places was that it accepted the theory offered by the defense that after being struck on the head during the fight in the Village Vanguard, accused was no longer mentally responsible for his actions. The accuracy of this explanation becomes clear when considered in the light of the evidence showing beyond question that accused was in fact disorderly. It also accounts for the court's action in finding accused not guilty of the three assaults alleged in Specifications 1, 2, and 3 of Charge II for it was established beyond any possible doubt that accused did in fact commit the assaults.

The Board of Review is of the opinion the court was clearly justified in finding that accused was not mentally responsible for these acts. The testimony of the medical witnesses was in substantial agreement that from the time accused received the blows on his head and throughout the period alleged in these Specifications he was unable to know right from wrong and was unable to adhere to the right. The evidence also indicates that it was the blows received by accused and not his drunkenness which resulted in such a mental condition.

In view of the evidence which establishes that accused was not mentally responsible for his actions subsequent to his physical injuries in the night club, it is the opinion of the Board that he can not be held responsible for being drunk at the specific places alleged. Where a reasonable doubt exists as to the mental responsibility of an accused for an offense charged, the accused can not legally be convicted of that offense (par. 78a, MCM, 1928). At the time accused was charged with being drunk in the Army post office and being drunk on Lexington Avenue, he was, as a result of a physical injury, incapable of distinguishing right from wrong and should not be held responsible for any offense he committed while in this condition. He is not charged by these Specifications with having gotten drunk earlier in the day in question, but with being drunk in an Army post office and on Lexington Avenue. When these offenses were committed he was devoid of mental responsibility not occasioned by voluntary intoxication but by physical injury. To hold an

accused responsible for acts committed under these circumstances would result in a grave injustice and would be contrary to reason and law (see CM 245153, Holm).

In view of the foregoing the Board of Review is of the opinion the evidence is legally sufficient to support the findings of guilty of the Specification of the Additional Charge and the Additional Charge, but insufficient to support a finding of guilty of Specifications 1 and 2, Charge I, and Charge I.

7. War Department records disclose that this officer is 31 years of age, is married, and has one child. He attended high school for three years but did not graduate. In civil life he was employed for approximately two years as a sheet metal worker, approximately two years as a surveyor, and approximately two years as a postal carrier. He entered the service on 2 January 1942, having previously served in the Georgia National Guard from 12 August 1929 to 7 November 1933 and in the Regular Army from 9 August 1934 to 10 December 1936. He was appointed and commissioned a temporary second lieutenant, Army of the United States, on 23 December 1942. On 7 March 1944 he was convicted by general court-martial for being drunk and disorderly in camp in violation of Article of War 96, the sentence as approved providing for a reprimand, restriction for three months, and forfeiture of $80 per month for three months.

8. The court was legally constituted and had jurisdiction of the person and the offenses. Except as noted, no errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is not legally sufficient to support the findings of guilty of Charge I and the two specifications thereunder, but is legally sufficient to support the findings of guilty of the Additional Charge and its Specification and is legally sufficient to support the sentence and to warrant confirmation thereof. Dismissal is mandatory upon conviction of a violation of Article of War 95.

Charles G. Luckie, Judge Advocate

Norman Moore, Judge Advocate

Charles S. Sykes, Judge Advocate

SPJGK - CM 286519 1st Ind OCT 31 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War.

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Joseph A. McAdams (O-1581924), Adjutant General's Department.

2. Upon trial by general court-martial this officer was found guilty of being drunk in command and on Lexington Avenue, New York, in violation of Article of War 95 (Specifications 1 and 2, Charge I); not guilty of striking three enlisted men, charged as violations of Article of War 96 (Specifications 1, 2 and 3, Charge II); and guilty of being drunk and disorderly in uniform in a public place, namely, the Village Vanguard, a night club, in violation of Article of War 95 (Specification, Additional Charge). All the offenses were alleged to have been committed in New York City on 31 May 1945. He was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is not legally sufficient to support the findings of guilty of Charge I and the two specifications thereunder, but is legally sufficient to support the findings of guilty of the Additional Charge and its Specification and is legally sufficient to support the sentence and to warrant confirmation thereof.

On 31 May 1945 accused was drunk and disorderly in a night club in New York City. While in the club he participated in a fight which resulted in his being knocked to the floor. A short while later he was found in an automobile on Depew Place, a street adjacent to an Army Post Office. He was bodily carried into the Army Post Office where he became extremely disorderly, and, upon successfully escaping from those who sought to restrain him, ran out into the streets and along Lexington Avenue. He was definitely drunk. The medical evidence shows that he was not mentally responsible for any acts committed subsequent to his physical injuries in the night club; and that such lack of mental responsibility was solely a result of his physical injuries and his psychiatric condition and was not a result of his intoxication.

Accused by his misconduct has demonstrated that he is not worthy of his commission. On 7 March 1944 he was convicted by general court-martial of being drunk and disorderly in camp, the sentence as approved

consisting of a reprimand, three months' restriction, and forfeiture of $80 of his pay per month for three months. War Department records contain a Report of Investigation which discloses that on 3 July 1945 accused sustained injuries as the result of an abortive suicidal attempt and that such injuries were incurred due to his own misconduct and not in line of duty. I recommend that the findings of guilty of Specifications 1 and 2 of Charge I and Charge I be disapproved and that the sentence be confirmed and carried into execution.

4. Consideration has been given to a letter from accused's wife addressed to The Judge Advocate General and to a letter written by accused to the Honorable Richard B. Russell, United States Senator from Georgia, and referred by the latter to this office.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

4 Incls
1. Record of trial
2. Form of action
3. Ltr fr accused to Sen Richard B. Russell
4. Ltr fr wife of accused to JAG

(Findings disapproved in part. Sentence confirmed and ordered executed. GCMO 480, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 286520

UNITED STATES	)	4TH INFANTRY DIVISION
	)	
v.	)	Trial by G.C.M., convened at Camp Butner, North Carolina, 5 September 1945. Dismissal.
	)	
First Lieutenant JOSEPH L. BROOKS (0-1320421[illegible]), [illegible] Infantry.	)	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 95th Article of War.

Specification: In that First Lieutenant Joseph L. Brooks, 8th Infantry, did on the United States Naval Transport Hermitage, on or about 8 July 1945, with intent to defraud fellow officers, wrongfully and dishonestly cheat in a game of cards.

He pleaded guilty to, and was found guilty of, the Charge and Specification and was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that, on 8 July 1945, certain personnel of the 4th Infantry Division were aboard the Naval Transport "Hermitage", en route from Le Havre, France, to the United States (R. 7, 9, 10). Card playing proved a popular form of diversion among the officers and, on several successive days, a poker game was in

progress for eight or nine hours (R. 13). Apparently the same group participated on each of these occasions (R. 13).

Suspicion having been aroused as to the regularity of the accused's play, Lieutenant Colonel White E. Gibson, Jr. and Captain Max B. Barrick, on 8 July 1945, observed the game to determine whether any fraud was actually being practiced (R. 7-9). At that time seven officers, including the accused, were playing (R. 7). Wagers were made with white chips worth fifty cents each, red chips valued at one dollar each, and blue chips worth five dollars each (R. 11, 12). Unlimited betting was allowed, and one "pot" amounted to as much as $175. Lieutenant Colonel White stood behind the accused and observed that he handled the cards in an "unorthodox manner". The deal rotated clockwise from player to player, and, as the group was playing the hand which Captain Middleton, who sat to the accused's right, had dealt, the accused gathered, and began to arrange, the "discards". The accused was seen to select three "eights", to place six cards between each of them, and, when the play of the preceding hand was completed, to put beneath these twenty-one cards the rest of the deck. He shuffled in a superficial manner so as not to disturb the prearranged cards and offered them to Captain Middleton who, instead of "cutting" them, merely "tapped them lightly". Having thus "stacked" the cards, the accused dealt and won the hand with three "eights". He likewise won the next two hands which he dealt, but, on the one occasion when Captain Middleton cut the deck, the accused failed to win and "dropped out early in the middle of the play" (R. 7-10, 13). At the suggestion of Lieutenant Colonel Augustus T. Terry, Jr., who also observed the manipulation of the cards, the accused repaid certain of the monies which he had won (R. 11).

4. The defense adduced evidence that the accused, on or about 8 July 1945, returned approximately $130.00 to certain "heavy losers" who took part in the game on the preceding evening. Major Baker S. Smith, a defense witness, testified that the accused's services in combat, as a member of a mortar platoon, were very satisfactory.

After an assertion by his counsel that his rights with reference to testifying or remaining silent had been explained, the accused made an unsworn statement. He was 21 years of age, married, and the father of one child. Before entering the Army in 1942, he was employed as Senior Clerk by the "Civil Service". He served as an enlisted man for several months, graduated from Officer Candidate School, and joined the 4th Division at Fort Dix, New Jersey. Thereafter he served as Regimental Special Service Officer and as "mortar platoon leader". He intended to return to the Civil Service position after leaving the Army.

5. The Specification of the Charge alleges that the accused "did, on the United States Naval Transport Hermitage, on or about 8 July 1945, with intent to defraud fellow officers, wrongfully and dishonestly cheat in a game of cards". This offense is set forth as a violation of Article of War 95.

An officer in the Army is required to observe the highest standard of honor and honesty and to give allegiance to those rules of fair play demanded of every gentleman. The accused's comrades, apparently assuming that he lived up to this high code, received him at the card table without question and played with him for high stakes. Their complete confidence and trust was exemplified by Captain Middleton's declination to cut the cards before the accused dealt. The faith imposed in the accused by his fellow officers was betrayed. He resorted to trickery and by a ruse, which went undetected for a time, won a lion's share of the money wagered in the game. When the finger of suspicion was pointed at him and his chicanery was exposed, he attempted to rectify his wrong by restoring a portion of his winnings to the "heavy losers". But the damage which he had inflicted upon his character was irreparable. His honor was impugned and his conduct, which could have been considered hardly less than disgraceful by his companions, branded him as "morally unfit to be an officer * * * or to be considered a gentleman". Par. 151, MCM, 1928. See 32 BR, CM 249115, Van Horn. His guilt of a violation of Article of War 95 was established beyond any reasonable doubt by his plea and by evidence of the most compelling character.

6. The accused is about 25 years of age and is married. After graduating from high school he served with the Civilian Conservation Corps from 1938 to 1941. He entered the Army in 1942 and, having attended Officer Candidate School was commissioned a Second Lieutenant on 2 June 1943. For exemplary conduct against the enemy he was awarded the Combat Infantry Badge on 6 June 1944, and for meritorious service performed on 28 July 1944 in connection with military operations against the enemy he received the Bronze Star Medal. He was promoted to the rank of First Lieutenant on 13 July 1944.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof. Dismissal is mandatory upon conviction of a violation of Article of War 95.

Abner E. Lifecomb, Judge Advocate.

On Leave, Judge Advocate.

Samuel Morgan, Judge Advocate.

OCT 18 1945

SPJGN-CM 286520 1st Ind
Hq ASF, JAGO, Washington, D. C.
TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Joseph L. Brooks (0-1320421), Infantry.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, cheating in a game of cards, in violation of Article of War 95. He was sentenced to be dismissed the service. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof.

The accused, while returning from Europe to the United States on a Navy transport, indulged in extensive poker playing with his fellow officers. Suspicion was aroused because of his constant winnings and certain officers observed his actions to determine whether or not he was cheating. It was noticed that, before dealing, the accused "stacked" the deck by selecting certain cards of the same denomination and arranging them so that they would be received by him. The officer sitting to the right of the accused generally failed to cut the cards so that the ruse of the accused usually worked and he won several large "pots" by this chicanery. When his fraud was disclosed he attempted to make restitution to certain of the game's "heavy losers".

The accused has a good service record and has been awarded the Combat Infantry Badge and the Bronze Star Medal for meritorious performance of duty against the enemy. While his reprehensible conduct, as revealed by this record, cannot be tolerated among officers in the Army, and while he should receive some punishment, his excellent record warrants clemency. I recommend, therefore, that the sentence be confirmed but commuted to a reprimand and a forfeiture of $100 of his pay, and that the sentence as thus commuted be ordered executed.

4. Consideration has been given to a request for clemency by Honorable John W. McCormack, Member of Congress.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

7 Incls
Record of trial
Form of action
4 Ltrs fr Mrs.M.B.Millett
Ltr fr Hon. John W. McCormack

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence confirmed , but commuted to a reprimand and forfeiture of $100. of his pay. As commuted ordered executed. GCMO 491, 15 Nov 1945)

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 286536

UNITED STATES	)	ARMY AIR FORCES CENTRAL FLYING TRAINING COMMAND
v.	)	
First Lieutenant EDWARD F. DiGIACOMO (0-699545), Air Corps.	)	Trial by G.C.M., convened at Selman Field, Monroe, Louisiana, on 31 August 1945. Dismissal and total forfeitures.

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OPINION of the BOARD OF REVIEW
ANDREWS, BIERER and HICKMAN, Judge Advocates

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. Upon a rehearing the accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 96th Article of War.

Specification: In that First Lieutenant Edward F. DiGiacomo, Air Corps, did, at Selman Field, Monroe, Louisiana, on or about 31 May 1945, wrongfully, knowingly and unlawfully receive and accept the sum of $166.67 as aviation pay for the months of April and May, 1945, without being legally entitled thereto, in that he had not performed sufficient aerial flights in the months of April and May, 1945, to comply with the requirements of Executive Order Number 9195, 7 July 1942, Army Regulations 35-1480.

He pleaded not guilty and was found guilty of the Specification and the Charge. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence, recommended that the execution thereof be suspended, and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution is as follows:

The stipulated testimony of First Lieutenant Rusiewski, deputy disbursing officer, Selman Field, Monroe, Louisiana, disclosed that on 31 May 1945, he paid to the accused the sum of $173.44 in cash upon the execution and presentation by accused of a pay and allowance voucher

bearing that date (R. 6; Ex. 2). A photostatic copy of this voucher was introduced in evidence (R. 6; Ex. 1). Credits were shown upon this voucher for base and longevity pay, $166.67, for additional pay for flying from 1 April to 31 May 1945, $166.67, and for rations, $21.70, total credits being $355.04. Debits for Class "E" allotment, $175.00, and Class "N" insurance, $6.60, totaling $181.60, were also shown, leaving a net balance of $173.44 which was paid in cash to the accused (Exs. 1, 2), such sum representing the accused's base pay, flying pay, and subsistence allowance less deductions of Class "E" allotment and Class "N" insurance (Ex. 2). Accused affixed his signature to items 16 and 18 on this voucher, the former attesting that the statement and account were true and correct, the latter acknowledging receipt by him of the sum of $173.44 in cash (Exs. 1, 2). A certificate upon the reverse side of the voucher was incorporated by reference into the document and read:

> "I certify that I hold an aeronautical rating as a bombardier, that during the period for which aviation pay is claimed on this voucher I was, by orders of competent authority, required to participate regularly and frequently in aerial flights; and, in consequence of such orders, I did participate in regular and frequent flights, while in a duty status, sufficient to meet the requirements of Executive Order No. 9195, 7 July 1942 (AR 35-1480)."

It was further stipulated that the Class "E" allotment on such voucher provided for payments to two allottees, the amount of $75.00 to one allottee having been paid but the sum of $100.00 to the other allottee not having been paid as of 27 August 1945, although a Treasury check in that amount was dispatched to the allottee prior to 6 July 1945 by the Office of Dependency Benefits (R. 6; Ex. 1). Accused was stationed at Selman Field during the entire period of April and May 1945 and was not on temporary duty from such station during any of said period of time (R. 6; Ex. 1).

Captain Jarmon, officer in charge of the "Time Records Section at Base Operations", Selman Field, testified that it was his duty to maintain a record of each rated officer's flying time, the number of flights each month, type of plane, and number of landings (R. 7). As custodian of these records, the witness testified that he had examined the records and that they disclosed that accused had accomplished no flying time during April 1945, and only twenty-five minutes flying time during May 1945 (R. 7, 8). Flying time is reported on "AAF Form 1". The information contained therein is consolidated on "WD AAF Form 5", "Individual Flight Record" (R. 8). Form 5 pertaining to accused for the months of April and May 1945, "certified correct" by "Jack N. Newman, Capt., Air Corps, Base Operations Officer", and showing twenty-five

minutes flying time accomplished by accused in May and no flying time in April were introduced in evidence (R. 8; Exs. 3, 4). It is possible that Form 5 is incorrect, if the officer flew at this station and Form 1 was never received or if he flew at another station and his flying time was not forwarded to this station. It is the individual officer's responsibility to see that these records are correct and they were available to the accused during April and May 1945 for inspection (R. 9, 10). There have been several instances in which the flying time has been erroneously shown on Form 5 (R. 10).

4. The evidence for the defense is as follows:

The stipulated testimony of the Classification Officer, Selman Field, disclosed that accused is authorized to wear the European Theater of Operations ribbon with one star, the Air Medal, two oak leaf clusters, and the Distinguished Flying Cross. Also it referred to a communication concerning the accused dated 22 June 1945 from Headquarters, Army Air Forces Central Flying Training Command, Randolph Field, Texas, to the Commanding Officer, Selman Field, stating: "The recommendation for return to flying duty is not consistent with the psychiatric evaluation. It is recommended that subject officer be transferred to nearest Army Air Forces Convalescent Hospital for observation and treatment" (R. 11; Ex. A).

The stipulated testimony of a neuropsychiatrist at the Station Hospital, Selman Field, described his diagnosis of the accused based upon a ten day period of observation in April 1945, during which time the accused was a patient in such hospital. The diagnosis of accused was "psychopathic personality, emotional instability moderately . . . severe, manifested by inadequate personality and lack of inherent drives". The meaning of psychopathic personality is that the individual has certain conflicts which he acts out instead of attempting to suppress, he is not cognizant of the consequences of an act at the time he performs it and fails to learn by experience. It was determined that the accused knew the difference between right and wrong and could adhere to the right. He was discharged from the hospital after the diagnosis was established because "of lack of cooperation because we did not know the whereabouts of Lt. DiGiacomo after the lights were turned off" (R. 11; Ex. B).

Captain Jarmon, custodian of the flight records, having previously testified as a witness for the prosecution, was called as a defense witness and testified that his records indicated that accused flew a total of twelve hours in June 1945 and that, under present regulations, if a rated officer flies twelve hours in June he makes up the hours missed during April and May 1945 (R. 12; Ex. C). The witness certified to the Finance Officer the names of 70 rated officers who had

not accomplished a minimum number of hours for April and a total of 77 for the month of May, the name of the accused being on each list (R. 12).

The accused did not testify.

5. The record of trial in this case discloses that on 31 May 1945, the accused executed and presented a pay and allowance voucher to the Deputy Disbursing Officer, Selman Field, Monroe, Louisiana, and received in cash the sum of $173.44 thereon. In the voucher, the accused claimed "additional pay for flying from Apr 1, 1945 to May 31, 1945" in the sum of $166.67, as well as his base pay and authorized allowances. It was established that accused had accomplished no flying time during the month of April and only twenty-five minutes flying time during the month of May.

The Specification under which the accused was arraigned and tried alleges in part that the accused was not legally entitled to receive aviation pay for the months of April and May 1945, because he had not performed sufficient aerial flights during those months "to comply with the requirements of Executive Order Number 9195, 7 July 1942, Army Regulations 35-1480." The record of trial is devoid of any reference to the provisions of such Executive Order or of the Army Regulations mentioned. However, courts-martial are authorized to take judicial notice of the contents of Army Regulations (MCM 1928, par. 125, p. 135; CM CBI 114 Ranzinger), although it is customary for the side desiring the court to take judicial notice of a given fact to ask the court to do so, at the same time presenting any available authentic information on the subject (MCM 1928, par. 125, p. 135). Despite the failure of the prosecution to invite attention to the applicable provisions of Executive Order 9195, 7 July 1942, the court is deemed to have taken judicial notice that such Order, set forth in AR 35-1480, 10 October 1942, provides in pertinent part and in substance that entitlement of officers to receive an increase of 50 per cent of their pay when by orders of competent authority they are required to participate regularly and frequently in aerial flights depends upon their performance of certain prescribed flying requirements. In this instance, the requirement was that one, such as the accused, be in the air a total of at least four hours in each calendar month. The Executive Order further provides that no flight pay shall accrue to any person during any period in which such requirements have not been met, although in the event such flight requirements are not complied with in one or two consecutive calendar months, the entire period of twelve hours flight time for the three months may be met in the last one of the three consecutive months (par. 2, subparagraphs 10(a) (b) (c), and 14, AR 35-1480, 10 Oct 42).

Proof of failure of the accused to perform the required flying time rests upon Exhibits 3 and 4, War Department AAF Form 5, Individual

Flight Record, pertaining to the accused, for the months of April and May 1945, respectively, and showing accomplishment by accused of only twenty-five minutes flight time in May. These instruments purported to be copies of permanent records maintained in the Base Operations office, Selman Field, and "certified correct" over the signature of someone purporting to be the Base Operations Officer. Such authentication did not follow the precise form prescribed in the Manual for Courts-Martial (MCM 1928, par. 116a, p. 119, 120). However, the custodian of these records, the officer in charge of the Time Records Section of Base Operations, appeared and testified at length upon direct and cross-examination with respect to these records, stating that the exhibits truly and correctly reflected the record of the time flown by the accused as recorded at the Time Records Section of Selman Field. Moreover, a similar form, authenticated in the same manner by the same person, and showing accomplishment of twelve hours flight time by the accused during the month of June 1945 was offered by the defense and received in evidence. The testimony of the custodian fully established the authenticity of these records and the defense was afforded ample opportunity to cross-examine him. Under such circumstances, the accused has no ground to complain about the introduction in evidence of these exhibits (CM 187345, Clarke, 1 BR 39, 47).

A motion for a finding of not guilty was made by the defense at the conclusion of the prosecution's evidence and was overruled by the court (R. 11). The motion was based upon the grounds that the guilt of the accused had not been proved beyond a reasonable doubt because it was shown that flying time could have been obtained at this station by the accused and no entry thereof entered in the records and the fact that the allottee of $100.00 of the accused's pay had not been paid such sum. Neither of such grounds is tenable and the motion was properly denied. The records showing accomplishment of only twenty-five minutes flying time within the two months in question were at least prima facie evidence that this was all the flight credit for such period to which the accused was entitled. If such records were wrong, it was the individual officer's responsibility to see that they were correct, the records being available to him for that purpose. Moreover, considering the entire record, the proof introduced by the defense showing accomplishment of twelve hours flying time during the month of June, the third of three consecutive months, and the required flying time for the entire period of three months, tends to corroborate the correctness of the records for April and May. The defense relied upon the same records to prove such flight time as the prosecution used to show the failure to perform the required time for the first two months. If the accused had accomplished additional time in the air, his counsel undoubtedly would have introduced evidence of that also. The evidence as to payment of the allotment shows that a United States Treasury check in the amount of $100.00 was dispatched to the allottee prior to 6 July 1945 by the Office of

Dependency Benefits. The fact that it had not been received by 27 August 1945 does not affect the wrongful receipt by the accused of flying pay to which he was not entitled. If the check were lost in transit, it might be replaced (par. 7, AR 35-600, 20 September 1944). To all intents and purposes, insofar as the accused was concerned, the transaction was complete upon his execution and presentation of the pay voucher and his receipt of $173.44 in cash.

The accused accomplished sufficient flying time within the month of June 1945 to entitle him to receive aviation pay for the entire three months, as he was privileged to do under paragraph 2, subparagraph 10, AR 35-1480, 10 October 1942. The vice of his conduct was that on 31 May 1945, he officially represented that he had accomplished the required flying time for the period 1 April to 31 May 1945, and received and accepted payment therefor to which he was not entitled at that time. The evidence supports the findings of guilty.

6. War Department records show that the accused is 25 years old. He is a high school graduate. From April 1942 to September 1943, he was employed as a lead mixer by the Electric Storage Battery Company in Philadelphia, Pennsylvania. He entered upon active duty in the Army on 10 January 1943, as an aviation cadet. On 4 December 1943, he was commissioned a second lieutenant, Army of the United States, with an aeronautical rating as aircraft observer, bombardier. He was promoted to first lieutenant on 3 August 1944. For participation in numerous combat missions in the European Theater of Operations he has been awarded the Distinguished Flying Cross and the Air Medal with three oak leaf clusters. On 19 December 1944, the accused was given a reprimand and restricted to the limits of his post for a period of one week as disciplinary punishment under Article of War 104 for wrongfully appearing in a public place upon three occasions without his service coat. The Staff Judge Advocate states that the accused was given further disciplinary punishment under Article of War 104 on 15 February 1945 because of his absence from class without permission. The nature of such punishment is not revealed.

7. The court was legally constituted and had jurisdiction of the accused and the offense charged. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. Dismissal is authorized under Article of War 96.

Fletcher R. Andrews, Judge Advocate

[illegible], Judge Advocate

Donald D. Hickman, Judge Advocate

SPJGQ - CM 286536 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Edward F. DiGiacomo (0-699545), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of wrongfully and knowingly receiving and accepting the sum of $166.67 as aviation pay for a period of two months without being legally entitled thereto because of his failure to perform the required aerial flight within such period in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence, recommended that the execution thereof be suspended, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. I concur in that opinion.

On 31 May 1945, the accused executed and presented his pay and allowance voucher to the Finance Office at his duty station, Selman Field, Monroe, Louisiana, and received in cash the sum of $173.44 thereon. In the voucher, the accused claimed additional pay for flying from 1 April 1945 to 31 May 1945, as well as his base pay and authorized allowances, the total credits amounting to $355.04. The difference between the total credits and the sum received by the accused in cash was due to debits occasioned by Class "E" and Class "N" allotments. It was established that accused had accomplished no flying time during the month of April and only twenty-five minutes time during the month of May, whereas it was required that he complete eight hours flight time within the two months to entitle him to aviation pay for the period. On behalf of the defense, it was shown that during the month of June 1945, the accused accomplished twelve hours flying time, the required total for the three consecutive months.

The accused participated in numerous combat missions as a bombardier in the European Theater of Operations. He has been awarded the Distinguished Flying Cross and the Air Medal with three oak leaf clusters. On 19 December 1944 he was given a reprimand and restricted to the limits of his post for a period of one week as disciplinary punishment under Article of War 104 for wrongfully appearing in a public place upon

three occasions without his service coat. The Staff Judge Advocate states that the accused was given further disciplinary punishment under Article of War 104 on 15 February 1945 because of his absence from class without permission.

Considering all of the circumstances and in view of the recommendation of the reviewing authority and of the splendid combat record of the accused, it is my opinion that his conduct does not justify his separation from the service. Accordingly, I recommend that the sentence be confirmed, but that the forfeitures be remitted and the execution of the dismissal be suspended during good behavior.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

2 Incls
1. Rec of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed, forfeitures remitted and sentence suspended during good behavior. GCMO 454, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH-CM 286548

9 OCT 1945

UNITED STATES v. Second Lieutenant CARROLL B. WELCH (0-676695), Air Corps.	ARMY AIR FORCES CENTRAL FLYING TRAINING COMMAND Trial by G.C.M., convened at Fort Worth Army Air Field, Fort Worth, Texas, 23 August 1945. Dismissal and total forfeitures.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Sheppard Field, Wichita Falls, Texas, on or about 17 March 1945, with intent to deceive Major John F. Conway, Air Corps, officially state to the said Major John F. Conway, that on or about 28 February 1945 he had mailed his pay check in the amount of approximately $91.80 to the National Bank of Fort Sam Houston, San Antonio, Texas, or words to that effect, which statement was known by the said Second Lieutenant Carroll B. Welch to be untrue in that the pay check for $91.84 which had been issued to him on 28 February 1945 had not been mailed to the National Bank of Fort Sam Houston, San Antonio, Texas, but had been indorsed by him in blank and negotiated to Henry Lewis in exchange for $91.84 cash.

Specification 2: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Sheppard Field, Wichita Falls, Texas,

on or about 2 April 1945, with intent to deceive Major John F. Conway, Air Corps, officially state to the said Major John F. Conway, that on or about 28 February 1945 he had mailed his pay check in the amount of approximately $91.00 and some cents to the National Bank of Fort Sam Houston, San Antonio, Texas, or words to that effect, which statement was known by the said Second Lieutenant Carroll B. Welch to be untrue in that the pay check for $91.84 which had been issued to him on 28 February 1945 had not been mailed to the National Bank of Fort Sam Houston, San Antonio, Texas, but had been indorsed by him in blank and delivered to Henry Lewis in exchange for $91.84 cash.

Specification 3: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Fort Worth Army Air Field, Fort Worth, Texas, on or about 22 May 1945, in an affidavit, make under oath a false statement, in substance, that he had mailed Government Check Number 1739660 to the National Bank of Fort Sam Houston, that he was certain that he had not cashed this check, and that he had never received payment for this check, which statement he did not then believe to be true.

Specification 4: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Fort Worth Army Air Field, Fort Worth, Texas, on or about 24 May 1945, in an affidavit, make under oath a false statement, in substance, that he had not cashed Government Check Number 1739660 which he had received as pay for the month of February 1945, that he had not received the amount of money for which it was drawn or any part thereof, and that he did not receive any payment for the check from a soldier named Henry Lewis, which statement he did not then believe to be true.

Specification 5: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Fort Worth Army Air Field, Fort Worth, Texas, on or about 2 March 1945, wrongfully gamble with Corporal Henry Lewis and Private First Class Mose J. Lowe.

Specification 6: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Fort Worth Army Air Field, Fort Worth, Texas, on or about 2 March 1945, wrongfully and unlawfully make and utter to the Officer's Mess Fund, Fort Worth Army Air Field, Fort Worth, Texas, a certain check, in words and figures as follows, to wit:

No. _____ San Antonio, Texas,
March 2, 1945

30-65
NATIONAL BANK OF FORT SAM HOUSTON
At San Antonio

PAY TO THE
ORDER OF Officer's Mess Fund $ 32.00

Thirty Two and no/100 - - - - - - - - - - - - - - DOLLARS

/s/ Carroll B. Welch, 2nd Lt., 0-676695

in payment of a $22.00 bill which he owed to the Officer's Mess Fund, Fort Worth Army Air Field, Fort Worth, Texas, and by means thereof, did obtain from the Officer's Mess Fund, Fort Worth Army Air Field, Fort Worth, Texas, $10.00 lawful money of the United States, he, the said Second Lieutenant Carroll B. Welch, then well knowing that he did not have and not intending that he should have sufficient funds in the National Bank of Fort Sam Houston, San Antonio, Texas, for the payment of said check.

Specification 7: Same allegations as Specification 6 except check issued on 3 March 1945 in amount of $18 to Hospital Subsistance Account in payment of bill owed by accused.

Specification 8: In that Second Lieutenant Carroll B. Welch, Air Corps, did, at Fort Worth Army Air Field, Fort Worth, Texas, on or about 14 May 1945, wrongfully and unlawfully fail to maintain a sufficient bank balance in the National Bank of Fort Sam Houston, San Antonio, Texas, to pay a certain check issued by him, in words and figures as follows, to wit:

No. _____ San Antonio, Texas, 5-14, 1945

30-65
NATIONAL BANK OF FORT SAM HOUSTON
At San Antonio

PAY TO THE
ORDER OF Cash - $ 10.00

Ten and no/100- DOLLARS

/s/ Carroll B. Welch

Specification 9: Same allegations as Specification 8.

Accused pleaded guilty to so much of Specification 7 as involved the offense of failing to maintain a sufficient bank balance to pay the check alleged and pleaded guilty to all other Specifications and to the Charge. He was found guilty of the Charge and of all Specifications. No evidence of any previous convictions was introduced. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence introduced by the prosecution which relates to similar offenses is hereinafter collectively summarized under appropriate headings indicating the Charge and Specifications to which particular evidence is pertinent.

a. Charge, Specifications 1 to 5 inclusive:

On 17 March 1945 and 2 April 1945 accused was interviewed by Major John F. Conway who, in his capacity as Base Legal Officer, was conducting an official investigation with respect to certain checks issued by accused among which were included the two checks involved in Specifications 6 and 7 of the Charge. After having been duly advised of his rights, accused informed Major Conway, on 17 March 1945, that there should have been sufficient funds in his bank account to pay the checks for $32 and $18 (Specifications 6 and 7) since about two days before he issued these two checks on 2 and 3 March 1945, respectively, he had sent his pay check in the amount of $92 and some cents to the drawee bank, National Bank of Fort Sam Houston, for deposit (R. 22; Pros. Ex. 8). On 2 April 1945, when again questioned by Major Conway about the pay check for approximately $91, accused stated that he mailed the check to his bank on the day he received it which was about the last day of February but that the bank failed to credit it to his account (Pros. Ex. 8).

During the course of a subsequent official investigation conducted by First Lieutenant Malcolm M. Heber, Assistant Base Legal Officer, accused voluntarily made two sworn statements, one on 22 May 1945 and the other on 24 May 1945. In the first statement accused swore that either on 28 February or 1 March 1945, he received his pay for the month of February by check No. 1739660 in the amount of $91.84 which he did not cash but indorsed and mailed for deposit to the National Bank of Fort Sam Houston. He further stated that he wrote and uttered the two checks for $32 and $18 relying upon this deposit of $91.84 to cover them. On 24 May 1945, after examining a photostat copy of this pay check No. 1739660, accused stated under oath to Lieutenant Heber that he had not cashed that check or negotiated it to a Corporal Henry Lewis or ever received the face amount thereof (R. 22; Pros. Ex. 9).

As a matter of fact sometime around 2 or 3 March 1945, accused participated in a dice game in the Station Hospital at Fort Worth Army Air Field along with Corporal Henry Lewis and a colored soldier named Mose Lowe. During the game Corporal Lewis cashed accused's February pay check in the amount of $91.84 and accused used the proceeds to continue in the gambling game (R. 20, 21, 23-26; Pros. Ex. 7). Private Frank Ford who had been observing the dice game was asked by Corporal Lewis to take the check to the local bank and cash it. Ford did so, after indorsing the check below the name of accused which appeared on the reverse side thereof, and he then returned the proceeds to Corporal Lewis (R. 20, 21, 24, 27; Pros. Ex. 10).

On 21 June 1945, after having been fully advised of his rights, accused made a final statement in which he admitted that around 2 or 3 March 1945 he participated in a dice game with several enlisted men and certain patients at the Station Hospital, Fort Worth Army Air Field. During the game he cashed his Government check in the amount of $91.84. Accused admitted that the four statements he had previously made about this check to Major Conway and to Lieutenant Heber were false (R. 28; Pros. Ex. 11).

b. Charge, Specifications 6-9 inclusive:

On the following dates accused made and uttered the following checks receiving the following consideration in exchange therefor, viz (R. 7, 9, 10, 11-13, 16; Pros. Exs. 2-5):

Spec.	Date of Check	Am't	Payee or Cashee	Consideration	Drawee Bank
6	2 Mar 45	$32	Officers Mess Fund	$22-mess bill $10-cash	National Bank of Fort Sam Houston
7	3 Mar 45	$18	Hospital Subsistence Acc't	Hospital Mess Bill	National Bank of Fort Sam Houston
8	14 May 45	$10	Officers Mess Fund	Cash	National Bank of Fort Sam Houston
9	14 May 45	$10	Officers Mess Fund	Cash	National Bank of Fort Sam Houston

These checks were put through for collection but were all returned unpaid by the drawee bank. Subsequently, accused redeemed each of these checks (R. 8, 9, 10, 13). Accused had an account with the National Bank of Fort Sam Houston on which he alone was entitled to draw and on

the dates accused made and uttered these four checks his bank balance was as follows, viz (R. 17):

Spec.	Date Check Uttered	Am't of Check	Balance then on Deposit
6	2 March 45	$32	$9.75
7	3 March 45	$18	$4.75
8 & 9	14 May 45	$10 & $10	$110.75

On the dates these checks were presented to the drawee bank for payment accused's bank balance was as follows, viz (R. 16):

Spec.	Date Check Presented	Am't of Check	Balance then on Deposit
6	7 March 45	$32	$4.75
7	8 March 45	$18	$2.75
8 & 9	19 May 45	$10 & $10	$ .55

Accused had opened this account on 28 April 1944. On 10 February, 10 March, 6 April and 7 May 1945, his monthly allotments to this bank in the amount of $100 each were received for deposit (R. 18-20).

On 22 May 1945 accused stated in his affidavit made to Lieutenant Heber during the official investigation concerning his check transactions that he made and uttered the two checks for $32 and $18 (Specifications 6 and 7) expecting that his falsely asserted deposit of the February pay check would cover them (Pros. Ex. 9). However, in his final statement made 21 June 1945, accused asserted that he issued these two checks for $32 and $18 believing his bank balance then to be sufficient to pay them and not, as he previously contended, because he thought deposit of his February pay check for $91.84 would cover them (R. 29; Pros. Ex. 11).

4. Accused made the following unsworn statement in his own defense, viz (R. 32):

> "I realize I made some pretty bad mistakes. I had a pretty good record until I got to this field. You can check my 66-2 on that. I was Squadron Commander at the post previous to this one. I realize that I have made a lot of mistakes. That is about all there is to say."

5. It is too well settled to require any extensive citation of authority that the making of a false official statement or a false

affidavit by an officer with the intent to deceive constitutes a violation of the Articles of War and may be charged as a violation of Article of War 96 (MCM, 1928, par. 151, CM 248065, McCraney, 31 B.R. 99; CM 250309, Hollis, 32 B.R. 331). It is equally a violation if the false statement or affidavit is made to a commanding officer or to an investigating officer who is conducting an official investigation (CM 254202, Roby, 35 B.R. 185; CM 245066, Baird, 29 B.R. 115 and cases previously cited). The evidence conclusively establishes the complete falsity of the four statements made by accused on 17 March 1945, 2 April 1945, 22 May 1945 and 24 May 1945, respectively. These statements were all made with respect to a highly material phase of the matter under investigation. It is patent that they were made with the intent to deceive. There was no improper multiplication of offenses even though each false statement was made with respect to the same specific matter. Each offense occurred during a separate and distinct transaction. Had all of the false statements subsequent to the first one been elicited from accused for the purpose of increasing the punishment to which accused had exposed himself by his first statement, then it might well have been improper to have tried accused for these later statements (See CM 281923, Hosford). However, such was not the case. It is quite clear from the record that each statement was made by accused to an officer who, in the course of his official duties, was solely engaged and interested in ascertaining particular material facts. The evidence coupled with accused's pleas of guilty amply sustains the court's findings of guilty of Specifications 1 to 4 inclusive of the Charge.

It is well established that for an officer to gamble with enlisted men constitutes a violation of Article of War 96 (CM 241176, Petty, 26 B.R. 213). That accused committed such an offense is fully established by the evidence, thus demonstrating that his plea of guilty thereto was not improvidently entered. The record sustains the finding of guilty of Specification 5 of the Charge.

Under Specifications 6 and 7 accused is charged with wrongfully and unlawfully uttering two checks, one on 2 March 1945 for $32 and the other on 3 March 1945 for $18, without having or intending to have sufficient funds on deposit to pay them. There is no specific allegation that these checks were issued with "the intent to defraud" and that accused thereby "fraudulently" obtained money or other consideration. Such allegations should appear in a specification which is intended to connote fraudulent conduct (See MCM, 1928, App. 4, Form 114). In the absence of such allegations it has recently been held that in a specification worded as are these Specifications 6 and 7 fraud is not an element; that the offense alleged "is something less than that of obtaining money or property by fraud and something more than mere careless failure to maintain a sufficient bank account" (CM 280789, Hughes). Accused pleaded guilty to Specification 6 and guilty to so much of Specification 7 as alleged the offense of failing

to maintain a sufficient bank balance. The proof shows that accused alone was entitled to draw on this account and that on the dates these checks were issued and later when presented to the drawee bank for payment the balance in his account was insufficient to pay them. From this evidence the court concluded that not only did accused not have sufficient funds on deposit to pay these checks when he issued them but also that he then intended not to have sufficient funds on deposit to pay them when they reached the drawee bank for collection. We cannot say that this conclusion was unwarranted. Since accused alone was entitled to draw on this account he was chargeable as a matter of law with knowledge of its condition (CM 282335, McCarthy; CM 253783, Fleming, 35 B.R. 97; CM 202601, Sperti, 6 B.R. 171; Hughes case, supra). Furthermore, the burden was upon accused to offer a satisfactory explanation for his conduct in issuing these checks under the circumstances here present and, in the absence of an adequate explanation, the inference is justified that he issued them without intending to have a sufficient bank balance to pay them (Hughes case, supra, and authorities there cited). Accordingly, the record is legally sufficient to sustain the findings of guilty of these Specifications 6 and 7.

Under Specifications 8 and 9 accused is charged with the nonfraudulent offense of issuing two checks each for $10 without maintaining a sufficient bank balance to pay them. Such an offense is established by proof that (a) the check was issued when accused knew or ought to have known that his bank balance was or was likely to be insufficient to pay it and (b) when the check was presented for payment the balance in his account was in fact insufficient to pay it (McCarthy case, supra; CM 252273, Clark, 34 B.R. 25; CM 249232, Norren, 32 B.R. 95). As stated above, where there is no evidence to show that the condition of accused's bank account was occasioned by acts of persons other than himself, accused is charged with knowledge of the status of his account as a matter of law (McCarthy, Fleming and Sperti cases, supra). Proof that the check was issued as a result of an honest mistake made by accused with respect to the sufficiency of his bank balance may constitute a defense but proof that the check was carelessly and negligently issued affords accused no legal excuse for his conduct inasmuch as negligence is the essence of this nonfraudulent offense (McCarthy case, supra; CM 284260, Hayes.). Although the balance in accused's account was $110.75 when he issued the two checks for $10 each, his balance was but $.55 when they were presented for payment. Since accused alone was entitled to draw on this account, the court was well justified in concluding that he was responsible for the intermediate withdrawals which depleted his account. Accused had no credible explanation to indicate that any honest mistake caused this condition. Under such circumstances the court was warranted in concluding that he carelessly issued these two checks for $10 without maintaining a sufficient bank balance to pay them (McCarthy case, supra; CM 258171, Lucas, 37 B.R. 327). Thus the record of trial sustains the findings of guilty of these Specifications 8 and 9 and demonstrates that accused's pleas of guilty to the offense of failing to maintain a sufficient bank balance to pay these checks were not improvidently entered.

6. Accused is 24 years of age. War Department records show that in civilian life he attended Brigham Young University for a half year and Western State College for a similar period. From July 1941 to August 1942 he worked in a lime quarry at a monthly wage of $135. He entered military service as an air cadet in August 1942 and on 22 April 1943 he was commissioned a second lieutenant with the rating of pilot after completing the requisite course of training. During March and April 1945 he was hospitalized because of a suspected hearing defect and on 24 April 1945 he was returned to full military duty.

7. The court was legally constituted and had jurisdiction of the accused and the offenses. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. The sentence imposed is authorized upon conviction of a violation of Article of War 96.

Thomas H. Coffey, Judge Advocate

William H. Gambrell, Judge Advocate

Robert C. Trevethan, Judge Advocate

SPJGH-CM 286548 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Carroll B. Welch (0-676695), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of (a) making two false official statements and two false statements under oath (Chg., Specs. 1-4 incl); (b) gambling with enlisted men (Chg., Spec. 5); (c) wrongfully making and uttering two checks in the total amount of $50 knowing that he did not have and not intending to have sufficient funds on deposit to pay them (Chg., Specs. 6, 7); and, (d) making and uttering two checks in the total amount of $20 without maintaining a sufficient bank balance to pay them (Chg., Specs. 8, 9), all in violation of Article of War 96. He pleaded guilty to so much of Specification 7 as involved the offense of failing to maintain a sufficient bank balance to pay the check alleged and guilty to all other Specifications and the Charge. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. I concur in that opinion. On 17 March and 2 April 1945, accused was officially interviewed by Major John F. Conway and on 22 May and 24 May 1945 was officially interviewed by First Lieutenant Malcolm M. Heber, both interviews being concerned with the dishonor of certain checks issued by accused. On the two dates first mentioned accused informed the investigating officer that he had forwarded his February pay check of approximately $91 to his bank for deposit and, accordingly, believed he had sufficient funds on deposit to pay the questioned checks. On 22 May 1945, before another investigating officer, accused voluntarily made a statement under oath that he had not cashed his February pay check but had forwarded it to his bank for deposit and on 24 May 1945 he made an affidavit that he had not cashed his February pay check or received the face amount thereof in cash from one Corporal Henry Lewis. All of these four statements were false, as accused subsequently admitted, inasmuch as around 2 or 3 March 1945, while participating in a gambling game with enlisted men, accused had indorsed his February pay check to Corporal Henry Lewis, a participant in the game, and had received in exchange the face amount thereof, $91.84, with which he continued in the gambling game. On 2 and 3 March 1945 accused issued two checks for $32 and $18, respectively, without having sufficient funds on deposit in his bank

account to pay these checks either on the dates they were issued or on the dates they were presented for payment, and on 14 May 1945, he issued two checks each for $10 and carelessly failed to maintain a sufficient bank balance with the drawee bank to pay these two checks.

Accused's conduct was dishonorable in making four false official statements, two of them under oath, patently with the intent to deceive superior military authority concerning certain of his financial transactions and such conduct clearly demonstrates his moral unfitness to remain an officer. I recommend that the sentence be confirmed but that the forfeitures be remitted and that the sentence as thus modified be carried into execution.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

2 Incls
1 Rec of trial
2 Form of action

THOMAS H. GREEN
Brigadier General
Acting The Judge Advocate General

(Sentence confirmed but forfeitures remitted. GCMO 488, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 286572

UNITED STATES v. Private JIMMIE MURPHY (34004696), Attached Unassigned Company G, First Training Battalion, Army Service Forces Training Center, Indiantown Gap Military Reservation, Pennsylvania.	THIRD SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Indiantown Gap Military Reservation, Pennsylvania, 21-22 August 1945. Dishonorable discharge and confinement for life. Disciplinary Barracks.

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REVIEW by the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

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1. The record of trial in the case of the soldier named above has been examined by the Board of Review and the Board submits this, its review, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 92nd Article of War.

Specification: In that Private Jimmie Murphy, Attached Unassigned Company G, First Training Battalion, Army Service Forces Training Center, Indiantown Gap Military Reservation, Pennsylvania, did, at Youngstown, Ohio, on or about 31 May 1945, with malice aforethought, willfully, deliberately, feloniously, unlawfully, and with premeditation kill one Estella Murphy, a human being by shooting her with a pistol.

He pleaded not guilty to and was found guilty of the Specification and Charge. No evidence of previous conviction was introduced. He was sentenced to be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for the term of his natural life. The reviewing authority approved the sentence, designated the Eastern Branch, United States Disciplinary Barracks, Green Haven, New York, as the place of confinement, and forwarded the record of trial for action under Article of War 50½.

3. The evidence for the prosecution is as follows:

On 2 March 1945, and for about nine months prior thereto, the accused and his wife, Estella, lived at 906 Shehy Street, Youngstown, Ohio (R. 25, 36, 42). The accused was away from there during most of the time in the Army but he communicated with his wife by telephone "practically ever day" (R. 37) and came home on week-end passes (R. 34, 43). They got along fine until March (R. 37, 42). Between four and five o'clock on the morning of 2 March 1945, while the accused and his wife were in their room, Estella screamed for help to get a doctor, and yelled that the accused had hit her (R. 25, 26). The accused was discovered holding a pistol which was bloody. His wife had blood over her clothes and head (R. 27), and there was a big hole on the left side of her head (R. 38). A doctor bandaged the wound (R. 30). Accused said he was going to shoot her "three times" and pointed the pistol at his wife (R. 27, 39). Other persons talked with him, begging him not to shoot her and he finally gave up the gun (R. 27). The police came and talked with the accused (R. 28). About seven o'clock the same morning Estella ran downstairs and locked herself in the bathroom. The accused came down with a "long fish knife" and again stated he was going to kill her (R. 28, 29; Ex. 3). Later the same day, the accused appeared with a razor and repeated several times that he was going to kill her (R. 30). About five o'clock that evening after Estella had departed, the accused appeared again with the same pistol, asked for his wife, and stated that "wherever he found her, that was where he was going to leave her" (R. 30, 31, 39), and that he was going to kill her (R. 40).

The accused was seen searching for his wife at various times during the next several days (R. 31). On 8 March 1945, the accused and his wife were seen together (R. 32). About the middle of March 1945, Estella was in a hospital suffering from cuts on the face and back (R. 32, 44), although no witness testified as to how this occurred (R. 34, 44). Accused visited his wife (in Youngstown) almost every week-end in April (R. 34). Estella was absent from their home some week-ends (R. 34), including the week-end of 26 May (R. 35). On 29 May the accused came home and asked where his wife was (R. 43). On the following day, 30 May, Estella returned home and was wearing her work clothes when she left (R. 35).

About 3:15 or 3:20 o'clock on the afternoon of 31 May 1945, Estella and her friend, Virginia Evans, left the plant of Republic Steel Corporation in Youngstown, Ohio, where they were employed (R. 6, 7, 22), and saw the accused who rushed into the waiting room where they were and said he wanted to talk to Estella (R. 7). Virginia went to Peter Cannon, a patrolman for Republic Steel who was nearby (R. 7, 21), and said "don't let him take her out" (R. 7). The accused said he was taking his wife home (R. 22), that "you can't tell this man what not to say to my wife", and that he was going to talk to her (R. 7). Another police officer who was present said "we don't want any scenes

created here" and waved their dismissal (R. 22). The accused, Estella and Virginia then started walking through the tunnel that led from the plant to the parking lot (R. 7, 11, 22). The two women were walking together "locked in arms" and the accused was trying to get between them. Estella jerked loose from the accused, leaving him holding her coat and saying to her "what is the matter woman, I don't want your coat". He put the coat around her shoulders and they continued through the tunnel (R. 15, 16).

It was approximately 175 feet from the waiting room to the parking lot (R. 11), and just as they turned into the parking lot, the accused stepped back a foot, drew a revolver from his coat pocket, and fired at Estella (R. 7, 11, 19). Estella was about three feet from the accused when he drew the weapon (R. 10). She started to fall at the first shot (R. 7, 16, 19) and as she was falling, the accused continued to shoot at her (R. 16, 19), firing in the region of her head (R. 16). Three or four shots were fired (R. 8, 16, 19). Accused then walked toward the carline (R. 19) and was arrested by Patrolman Cannon, who took the revolver from the pocket of the accused (R. 16, 23). The accused was "cool and collected" (R. 23) and "undisturbed" (R. 16). In response to Cannon's statement that "you sure got yourself in a hell of a mess now", the accused said he was satisfied (R. 23, 120). The gun, a .38 caliber Smith and Wesson revolver, was introduced in evidence (R. 9, 10, 23; Ex. 1). It was the same gun that accused had used at his home on 2 March 1945 (R. 30).

Estella was bleeding from the mouth and nose and said nothing after being shot (R. 8, 9, 17). She appeared to be dying (R. 17). She was removed by ambulance (R. 9) to a hospital where the county coroner saw her a few minutes after her admittance. The stipulated testimony of the coroner shows that she was dead, and a post mortem examination revealed that death was due from shock and hemorrhage as a result of gun shot wounds, four bullets being found in the body (R. 24; Ex. 2).

The stipulated testimony of the investigating officer disclosed that he fully explained to the accused his rights as a witness on 27 July 1945, and that thereafter the accused executed a written sworn statement which was attached as a part of the stipulation (R. 45; Ex. 4). In this document the accused stated substantially as follows: That on 29 May 1945 he came to Youngstown on pass until 1 June 1945. He searched for his wife the next day but was unable to find her. On the morning of 31 May, he called the plant where his wife was working and told her to come on home, and that he had to catch the nine o'clock train back to camp. He took two or three more drinks, having had a few the previous evening, and then stopped by the mill where his wife worked. When she came out, he went up, patted her cheek and said "hello babe" and "let's go home", and they started on. After proceeding about a quarter of a block, Virginia came up and said to come on, "you (Estella) don't have to go with him." Virginia snatched Estella

away and the accused went back to his wife and said "let's go home" and Estella then reached for her purse, "she always carried a knife or razor". Then the shooting occurred but the accused could not remember pulling the gun or shooting her. He did not go down there to hurt her but he knew she would cut him as she had done twice before. He had the gun "a couple of hours" prior to the shooting, but was taking it home and did not have it to do anything to her. After the shooting, the accused walked out and gave the gun to a watchman and was taken to the City Hall by the police (Ex. 4).

4. The evidence for the defense is as follows:

The accused, after having been advised of his rights in this regard in open court, testified that he entered the Army 21 January 1941, at Fort McClellan, Alabama, and has been in continuous service since that time. He has been stationed at various posts within the United States, and has requested overseas service four times (R. 86, 87). He married Estella on 30 October 1935, in Birmingham, Alabama, and lived with her there until he entered the Army (R. 87). The accused was six feet two inches in height and weighed 184 pounds. Estella was "five feet something" and weighed from 130 to 145 pounds (R. 118). He and his wife got along "pretty good" but had "several squabbles" (R. 87). In 1939, his wife cut his right leg with a razor, and the wound required 41 stitches to close (R. 87, 118). On another occasion, she shot him in the left ankle with a pistol (R. 87) and in 1942, while they were at Camp Croft, South Carolina, she stabbed him in the back (R. 87, 88). The scars left by these wounds were exhibited to the court by the accused (R. 106). In spite of these incidents, they continued to live together (R. 89). She took employment at or near the various posts where he was stationed so as to be with him (R. 89, 108, 109). Since October 1944, the accused has been stationed at Indiantown Gap (R. 89). His wife took the place at 906 Shehy Street, Youngstown, Ohio (R. 89, 107) and started to work for Republic Steel Corporation the latter part of August or the first of September 1944 (R. 107). The accused kept in close contact with his wife during the following months by frequent telephone calls and by going to see her at Youngstown "practically every week end" (R. 90).

During this time, the accused held the grade of First Sergeant and provided well for his wife, giving her from one to three hundred dollars a month in addition to the usual "Government allotment", and buying dresses and expensive coats for her (R. 91). On several occasions the accused came to Youngstown to see his wife and she was not at home (R. 91, 92). He usually found her at a gambling joint or beer garden in Youngstown (R. 91, 92). On four occasions between December 1944 and May 1945, he was unable to find his wife in Youngstown and she told him afterwards she had been to Pittsburgh and Cleveland at those times, although he never learned where she went during May 1945, one of the instances of her absence from home (R. 92). Once in February 1945 the accused returned home and found his wife in bed with a man named Tom Nelson from Detroit (R. 92). On many occasions

when he came home, the accused found his wife with another man, one Robert Russel (R. 93). The accused found about six letters from Nelson and other men to his wife. The ones from Nelson were very affectionate in tone (R. 93, 94). The accused showed the letters to several persons (R. 94). The accused considered getting a divorce and discussed it with one Sergeant Felder but when he told his wife that he wanted a divorce because she was receiving love letters and would not visit him, she promised to be a "better girl" and told him not to do it. As he loved his wife and did not want to separate from her, he decided to "let it go and make up with her and live like man and wife" (R. 94, 95).

Once when the accused was home on furlough, his wife ran at him with a fish knife (Ex. 3), which she carried in her purse. As the accused pushed her off with a small knife in his hand, she threw up her hand and swung under his arm, one of the knives striking her on the jaw. Her face and hand bled and she went to the hospital (R. 95, 96, 116). Around the last of February or 2 March, while they were at home, the accused and his wife had a "tussle", during the course of which "she bumped her head against the ceiling of the door", injuring her head (R. 96, 116). He did not strike her with the gun (Ex. 1) which belonged to his wife and which she twice attempted to use on the accused (R. 96, 97, 110). On the 15th of May he took the gun to "Lulu's on Penn Avenue" to keep his wife from using it on him (R. 97, 110).

On Tuesday, 29 May 1945, the accused came to Youngstown and went to his home, but his wife was absent and he was unable to find her (R. 97, 98). He bought a "fifth" of brandy, a quart of whiskey, and a half-pint of "rasin jack", and began drinking (R. 98, 110). During the following day and a half the accused continued drinking and tried to eat but could not do so (R. 99, 100, 101). He called the Republic Steel Mill to locate his wife on Wednesday evening but was told that she had checked out the previous week-end and had not been back (R. 100). Next morning, Thursday, 31 May 1945, he continued drinking liquor, thinking of his wife and wondering where she was (R. 101). About noon that day he stopped by "Lulu's" to get a drink, and while he was there he picked up his wife's pistol to take it back home where he intended to put it in one of the coats she did not wear so that she would not find it (R. 101, 102, 110). A friend of his picked him up and they went riding for about an hour and forty-five minutes, during which time the accused took two or three drinks (R. 102, 112, 113). About five minutes until three o'clock that afternoon, the accused stopped at the Republic Steel Mill (R. 102, 112). He had the gun in his pocket at that time although he did not know whether there were any rounds in it (R. 102, 113, 114) and he had no intention of shooting or harming his wife (R. 102, 104). His only purpose at

the time was to pick her up as was his custom (R. 104). He loved his wife and he wanted to see her (R. 104).

When his wife came out of the mill, she came up and "I pinched her on the jaw and we started walking . . . . laughing and talking" (R. 103, 114). A woman, whom the accused had been told was Virginia Evans, came up behind them and told his wife that she didn't have to go with the accused and she (Virginia) grabbed "Stella" by the arm and "swung her around from me" (R. 103, 114). The three then returned to the shack where the guards were and the accused "began to get hot". He was sweating and the guard came up and said "is this your husband", and "go home with him". "So we started up the street, and this girl told her to come on and go back with her, and that is all. I got sweaty and don't know what else took place" (R. 103, 115). The last thing the accused remembers is that his wife "told the girls with her to move back that she was going to fix me, she opened her purse" (R. 106). He has no recollection of the shooting (R. 103). He does not remember shooting his wife (R. 115), although he knows she died on 31 May 1945 (R. 107). The next thing he remembers is sitting in the company guard shack where the police picked him up (R. 103, 114).

The accused denied making any statement to the effect that he would leave his wife where he found her (R. 104). The accused was in the habit of drinking whiskey, and had been drinking more in the last eight months than ever before, sometimes drinking a pint in a day (R. 118, 119). The accused returned (to Indiantown Gap) on his "own, and on pass" from the "MP Detachment at Cleveland" in July (R. 120; Def. Ex. 1).

An Army neuropsychiatrist examined the accused on 17 August 1945 and made a diagnosis of "psychopathic personality, emotional instability, inadequate personality" (R. 123). In answer to hypothetical questions posed by defense counsel and embracing much of the evidence developed in this case, including in part the history of the marital relations of the accused and his wife, his use of alcohol during the three days preceding the tragedy, and the medical diagnosis made of the accused, the neuropsychiatrist testified that under conditions of great emotional stress, with alcoholic intake, a man can act as he would not normally act in the absence of such factors, but that he did not believe the man would be deprived of his reason. However, while such person might know the difference between right and wrong, on the spur of the moment he might not have sufficient power to resist the doing of wrong (R. 125). In response to similar hypothetical questions by the prosecution, emphasizing that the person was able to remember what he did during a three day period of drinking and claimed to completely lose his awareness or consciousness for a short period of time, this expert testified that he did not believe such momentary unconsciousness would occur (R. 125, 126).

Several witnesses testified to the effect that the accused bore a reputation in the community as a good and law abiding citizen (R. 51, 53, 56, 57), and Major Williams, Chaplain, testified that the accused had a "very good" reputation in the service (R. 83, 84). The company clerk of accused's organization testified that the service record of the accused disclosed that he entered service 21 January 1941, became a Private First Class 1 June 1941, a Corporal, 21 March 1942, Sergeant, 1 September 1942, First Sergeant, 17 June 1944, and Private, 6 June 1945. Character and efficiency ratings from 27 February 1945 to 8 June 1945 were "excellent-excellent". The accused returned to his station without guard on 21 July 1945 (R. 46, 47).

It was established that on numerous occasions the accused's wife, Estella, was seen in both public and private places with men other than the accused (R. 51, 53, 54, 59, 67, 79), that she danced with them (R. 52), that she was seen hugging one man (R. 53), that she frequented a place run by Virginia Evans (R. 58) where gambling games were conducted and liquor sold (R. 52, 57, 58), and that she drank liquor (R. 58), got drunk, and had to be carried out of places (R. 56, 59).

During the middle of March 1945 the accused visited the "Court Section" at his station headquarters and discussed with a Sergeant Felder the matter of getting a divorce (R. 48). The accused had some letters addressed to his wife and apparently written by one Tom Nelson. These were "affectionate in tone" and "implied some sort of affection the writer had for the addressee". One letter "seemed to state that the writer was wanting to marry the addressee" (R. 49). Other witnesses saw these letters and described them as being in similar vein (R. 66, 77, 78).

A sister of the accused testified that the accused "was very nice to his family" (R. 63), that he and his wife got along "swell" until March or April 1945, when Estella was absent from home when he came (R. 64), that on one such occasion Estella went to Detroit, another time to Cleveland, and once to New York (R. 64, 65), that Estella treated the accused badly, would not cook or wash for him, would not stay at home (R. 66), that she went out with other men (R. 67), accepted money from one of them (R. 68), and was a "nice looking, nicely built" "little dark-skinned woman (weighing)... about 120 pounds". On 29 and 30 May 1945 the accused was at his sister's house part of the time (R. 68, 74). He was drinking rum and whiskey, would not eat, sat around with his head down, "talking to himself like a crazy man" (R. 68, 69, 70, 74). Another sister of the accused who saw him on 29 May testified that he was "different", sat with his head down and was "popping" his fingers (R. 79, 80).

The following stipulations were entered into by the prosecution and the defense: that the 4518th Quartermaster Service Company (accused's

unit) was in readiness for overseas movement 25 May 1945, but did not in fact move out until on or about 8 June 1945 (R. 47); that following the 31st of May 1945, the accused was taken into custody by the civil authorities, that charges were instituted, preliminary hearing waived, and the accused bound over to await the action of the Grand Jury in Mahoning County, Ohio, and that thereafter the accused was ultimately transferred to military authority and returned to the Third Service Command on a pass issued to the accused, who returned without guard (R. 83); that on approximately the 12th day of May 1945, the President of the United States announced the unconditional surrender of Germany, ending the war in Europe, and that on 14 August 1945, the unconditional surrender of the Japanese Government was announced (R. 120). The court was asked to take judicial notice that industrial cut-backs have been made, that war demobilization of plants is in progress, and that reconversion plans are being effected and are presently in force (R. 120).

In rebuttal for the prosecution, Virginia Evans was recalled as a witness and testified that she did not hear Estella ask her (Virginia) to step back, and state that she (Estella) was going to fix the accused. She also testified that after the shooting, Estella's purse was opened by a "cop" in her presence and it contained a pack of cigarettes, a book of matches, a handkerchief, and a little change purse (R. 122).

5. The evidence discloses that the accused shot and killed his wife after intermittent quarrels with her from time to time over a period of several years, some of which resulted in physical injuries to the accused and others in injuries to his wife. The accused on 31 May 1945, went to the Republic Steel Corporation plant in Youngstown, Ohio, where his wife was employed, waited several minutes until she came from the plant, walked to a nearby parking lot with her, drew a pistol and fired four shots at her, killing her instantly. The accused testified that it was his wife's custom to carry weapons in her purse and immediately before the shooting his wife said she was going to "fix me" and opened her purse. The accused "got sweaty and don't know what else took place". An eye witness to the tragedy denied that Estella made any threatening statement or movement to or against the accused, and further testified that no weapon was found in her purse following the shooting. In the opinion of the Board of Review, the evidence fully supports the finding that the accused committed murder.

After both the prosecution and the defense had completed the introduction of evidence and rested, the defense counsel moved to dismiss the cause for want of jurisdiction upon the following grounds: that the civil authorities of Mahoning County, Ohio, having once taken jurisdiction in the case retained it until final disposition, the cause having been improperly transferred to military jurisdiction; that since the alleged commission of this offense, the country has passed from a condition of war to one of peace; and that the accused was

proceeded against under a different status or grade than he held at the time of the alleged offense, a reduction in grade having been accomplished without a board hearing as required by paragraph 15, Army Regulations 615-5 (R. 127). The motion was without merit and was properly denied.

The paramount right of the military authorities to proceed against this accused is clear. In time of war, military authorities have a prior right to proceed against soldiers for offenses committed by them and, upon interposition of the military, the jurisdiction of military courts will be given preference over state courts (Ex parte King, 246 Fed. 868; Funk v. State, 84 Tex. Crim. Rep. 402, 208 SW 509). At the time this offense was committed, 31 May 1945, and at the time the accused returned to military control, on or about 21 July 1945, actual hostilities and a state of war existed. That portion of Article of War 92, providing that "no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace", has been held to contemplate a complete peace, officially proclaimed (MCM 1928, par. 148a, p. 162; Kahn v. Anderson, 255 U.S. 1). Clearly, this objection to the jurisdiction of the court-martial is untenable.

The fact that by administrative procedure the accused had been reduced from the grade of first sergeant to private between the date of the offense and the time of trial has no bearing whatsoever upon the jurisdiction of the court. The accused remained a soldier, irrespective of any irregularity connected with the proceedings by which he was reduced in grade, and as such he was fully amenable to trial by court-martial.

The defense objected to the testimony of three witnesses for the prosecution upon the ground of surprise in that the names of such witnesses were not indorsed on the charge sheet, and later moved to strike their testimony from the record (R. 45). The objections and the motion were overruled. The competency of such witnesses to testify was not affected by failure of the prosecution to advise the defense it intended to present such testimony (CM 228146 Menefee, 16 BR 75, 80; CM 243567 Montalvo, 28 BR 17, 20, 21). Defense counsel was accorded ample opportunity to cross-examine each of these witnesses at length. Moreover, when counsel for the accused moved for a continuance because of this testimony, the prosecution did not object but joined in the motion. The defense thereupon withdrew its motion for a continuance and relied wholly upon the motion to strike (R. 45). The accused was not prejudiced by the action of the court in permitting these witnesses to testify and in overruling the motion to strike their testimony from the record.

The defense objected to testimony offered by the prosecution concerning some difficulty between the accused and his wife which occurred on or about 2 March 1945, nearly three months prior to the death of the wife, on the grounds that it was irrelevant, immaterial and too remote in time to be of probative value (R. 25). The evidence in question was received over this objection and showed that on that date the accused and his wife were discovered in their living quarters, the accused with a bloody pistol in his hand and his wife suffering from a fresh wound on the left side of her head, and claiming that the accused had struck her. Further, that the accused stated that he was going to kill his wife and at intervals on the same day, while armed with the gun, a fish knife, or a razor, the accused repeated his threat to kill her several times and said that where he found his wife was where he was going to leave her. Such evidence was entirely competent and highly material and relevant in showing malice and intent upon the part of the accused to take his wife's life. In 20 American Jurisprudence 322, 323, it is said:

> "Malice and intention are often shown by threats of physical harm; and in criminal proceedings in particular, antecedent menaces, quarrels, and hostility are admissible in proof of the malice or the intention with which an act was done. Thus, in prosecutions for homicide evidence of former difficulties between the accused and the deceased and the threats made in connection therewith is admissible on the part of the prosecution, although the particulars of the difficulty may not be admissible..... The admissibility of proof of threats made by the accused is not affected by the remoteness of the statements, since remoteness goes to the weight of the evidence, and not to its competency" (See also Volume 1, Wharton's Criminal Evidence, 11th edition, pp. 357 et sequi).

The accused himself and other witnesses in his behalf testified that the accused consumed a vast amount of liquor within the two days immediately preceding the commission of this offense, and that he ate very little food during that period. The witnesses stated that he acted "crazy", talking to himself and "popping" his fingers. Voluntary drunkenness is not an excuse for crime committed in that condition, but it may be considered as affecting mental capacity to entertain a specific intent (MCM 1928, par. 126a, p. 136). It is significant in this case that while the accused testified fully concerning all aspects of this offense, he did not testify that he was in fact drunk, nor did any other witness so testify. The import of all his testimony respecting his drinking activities, however, was that he was temporarily bereft of reason because of such drinking. But the accused was in sufficient possession of his mental faculties to recall clearly and in detail every move he made during this period up to the very moment of the shooting. His memory failed only at the very moment the shooting occurred. The evidence fails to show that the accused was under the influence of liquor to the extent that he was incapable of entertaining

the specific intent to commit murder.

On the contrary, the events preceding the tragedy, coupled with the marital history of the accused and his wife, is convincing that the accused returned home on furlough prior to contemplated overseas service, found his wife again absent from their home, brooded over her misconduct, fortified himself with liquor in the ensuing two days, made up his mind to take her life, procured a gun, went to the plant where she was employed, waited for her to come out and, when she did, he deliberately and intentionally shot and killed her. Strong drink may have stimulated his nerves to the point of committing the act. It did not provide in law an excuse for the crime committed.

6. The charge sheet discloses that the accused is 30 years of age and was inducted at Fort McClellan, Alabama, on 21 January 1941. He has no prior service and no dependents. The review of the staff judge advocate states that the accused has received consistent ratings of excellent throughout his military service, that he advanced from private to first sergeant, which grade he held at the time of this offense, that he has no provious convictions by courts-martial and no police record in civil life.

7. The court was legally constituted and had jurisdiction of the person and the subject matter. No errors injuriously affecting the substantial rights of accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and sentence. A sentence of either death or life imprisonment is mandatory upon conviction of a violation of Article of War 92.

W. D. Pontius Jr., Judge Advocate

A. E. Green Jr. Judge Advocate

Donald D. Hickman, Judge Advocate

16 OCT '45 PM
DISPATCHED
WAR DEPARTMENT
J.A.G.O.

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGH - CM 286577

UNITED STATES v. Second Lieutenant RUSSELL H. FORD (0-2090009), Air Corps.	)	ARMY AIR FORCES CENTRAL FLYING TRAINING COMMAND Trial by G.C.M., convened at Childress Army Air Field, Childress, Texas, 30 August 1945. Dismissal, total forfeitures and confinement for six (6) months.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Second Lieutenant Russell H. Ford, Air Corps, did, on or about 5 August 1945, wrongfully violate paragraph 43.400 of Civil Air Regulations Amendment 43-0, effective 1 July 1945, issued by the Civil Aeronautics Board, Washington, D. C., by wrongfully piloting a non-military aircraft from Chickasha, Oklahoma, to Childress, Texas, without having first obtained a valid pilot's certificate.

Specification 2: In that Second Lieutenant Russell H. Ford, Air Corps, did, at or near Roosevelt, Oklahoma, on or about 5 August 1945, wrongfully operate an aircraft in such a reckless and careless manner that it collided with an automobile on the ground and injured the occupants thereof.

He pleaded not guilty to Specification 2, but guilty of Specification 1 and guilty of the Charge. He was found guilty of the Charge and both Specifications thereof. No evidence of any previous conviction was introduced. He was sentenced to dismissal, total forfeitures and confinement for six (6) months. The reviewing authority approved the sentence

The collision was witnessed by several adult witnesses who were standing alongside of the dirt road on which the car was traveling, at a distance of approximately 100 to 150 yards from the scene of the accident. Just prior to the collision they saw the plane flying at an altitude estimated at from 20 to 50 feet, with its nose pointed down in the direction of the car, which was traveling at about 15 miles per hour (R. 37, 38,48,49,51).

In a voluntary, pre-trial written statement made by the accused on 9 August 1945, and introduced without objection as Prosecution's Exhibit 10, he stated on 4 August 1945 he borrowed an airplane from Lieutenant Roberts for the purpose of flying with his wife from Childress, Texas, to Chickasha, Oklahoma. He admitted that he did not have a private pilot's license. While returning from Chickasha to Childress he let down to about 200 feet near Roosevelt, Oklahoma. Because he thought the oil pressure was excessively low, he piloted the plane still nearer to the ground, looking for an open field. He leveled off at an altitude of five feet, flying 110 miles per hour. It was an open field and there were no nearby trees. The engine in the plane was performing smoothly. He was looking on either side of the plane and suddenly he noticed a car directly in front of him. He made an attempt to miss it, but he was too close, and as a result his left landing gear collided with the top of the car. His statement then continues:

> "* * * I then circled at approximately one hundred (100) to two hundred (200) feet of altitude to determine how much damage had been done or if anyone had been hurt. I could see that the roof of the car was torn off and there was broken glass in the road. I could not determine whether or not anyone was hurt. All the passengers in the car were standing around in the road. I then climbed to three thousand (3000) feet and returned to Childress."

4. <u>Evidence for the defense.</u>

After his rights as a witness were explained to him, accused elected to testify under oath. Subsequently to departing from Chickasha and before reaching Roosevelt, Oklahoma, he observed that the needle of the oil pressure gauge began oscillating between "30 and 50" (R. 57). If the motor were functioning normally, it should not have gone below 50 pounds (R. 70). "I surmised I had less oil than I should have had. I remembered not filling it at Chickasha. I gathered my oil was low. The engine might overheat and so I decided to land and check my oil" (R. 57). He "let down" and dragged the field near the place of the accident to ascertain whether it was suitable for a forced landing (R. 58, 72-73). The moment he saw the car in front of him he pulled back on the stick but nevertheless was not successful in clearing it (R. 68). He did not drag the field "just for a lark" or "to buzz an automobile" (R. 58).

On cross-examination he stated that he chose this particular field as a possible one for landing because it appeared to be large and open and did not appear to have anything growing on it. He could have seen any logs or rocks that may have been on the ground (R. 63). He could have seen the car if he had been looking for it (R. 65). Although he was afraid of motor trouble he did not check his map to ascertain the location of an airfield in the vicinity of Roosevelt (R. 67). There is a municipal airport at Roosevelt and there are several other airfields within ten to twenty miles of Roosevelt (R. 65,66; Pros. Ex. 11). It is 50 air miles from Roosevelt to Childress Field (R. 66). He flew from the scene of the collision directly back to Childress Field and on this flight he conceded that his motor "worked good" (R. 67). The oil pressure continued to fluctuate in substantially the same manner as it did prior to the collision (R. 67). Being aware that he had lost one wheel from his landing gear, he was afraid that if he tried to land on a strange field he might "nose over" and injure himself or his wife (R. 68-69).

5. Specification 1 of the Charge alleges that accused did, on or about 5 August 1945, wrongfully violate paragraph 43.400 of Civil Air Regulations Amendment 43-0, effective 1 July 1945, by piloting a non-military aircraft from Chickasha, Oklahoma, to Childress, Texas, without first having obtained a valid pilot's certificate. The paragraph referred to provides as follows:

> "43.400. Pilot Certificate. Any person piloting an aircraft in the United States shall hold a valid pilot certificate issued by the Administrator or a foreign pilot certificate validated by the Administrator."

The prosecution's evidence conclusively establishes, and the accused in his testimony admitted, both the fact that accused made the flight in question and the fact he did not then have a private pilot's certificate. Thus it appears that his plea of guilty to this Specification was not improvidently made. The conduct of which accused has been found guilty is clearly prejudicial to good order and military discipline and of a nature to bring discredit upon the military service. As such, it represents a violation of Article of War 96, as alleged.

6. Specification 2 of the Charge alleges that accused did, at or near Roosevelt, Oklahoma, on or about 5 August 1945, wrongfully operate an aircraft in such a reckless and careless manner that it collided with an automobile on the ground and injured the occupants thereof. The Specification is charged under Article of War 96. It is undisputed that, at the place and time alleged in the Specification, one George W. Moore was driving a 1930 Model Ford car along a country road, in a lawful manner; that accused piloted the aircraft which he was flying in such a manner as to cause it to collide with Mr. Moore's car; and that as a

result of the collision the top of the car was torn off, one wheel of the landing gear of the aircraft was broken off and several occupants of the car were painfully cut and bruised, one of them receiving such a serious injury to his right eye that he will probably lose the sight of it entirely. The only question raised by the record pertains to accused's culpability or lack of culpability.

By its finding of guilty, the court found that the accused was at the time of, or immediately prior to, the collision operating the plane in a "reckless and careless manner," as alleged. This finding was amply supported by the evidence.

Accused's attempted explanation that he was dragging the field near the scene of the collision with the intention of making a forced landing is unworthy of belief and was properly rejected by the court. In the first place the accused did not even take the trouble to examine his map to ascertain whether there was a regular landing field in the vicinity. Had he done so, he would have observed that there is a municipal airport at Roosevelt, Oklahoma, the town over which he had flown just a few minutes before. In the second place, after the collision, although his oil temperature and oil pressure gauges continued to act in the same manner as they had prior thereto, the accused was not sufficiently concerned about them even to make any endeavor to locate any airfield near the course he was flying between Roosevelt and Childress. Instead, after circling the scene of the accident and surveying the wreckage, he headed directly for Childress Field, where he ultimately landed.

All of the facts and circumstances surrounding this case indicate that the accused did not have any intention of landing in the cotton field near Roosevelt. Instead, the only reasonable inference is that the accused was either deliberately engaging in some unlawful low flying for the gratification of his wife and himself or that he intentionally "buzzed" the automobile with which his plane ultimately collided. In either event his conduct was wholly inexcusable and was such as to subject him to criminal liability for the injuries inflicted upon the occupants of the car. His conviction was not only warranted, but required, by the evidence.

7. The records of the War Department show that accused is 20 years of age and married. He attended 12 years of graded school, but did not graduate. He entered upon active service in the Army on 22 September 1943, became an aviation cadet on 29 June 1944, and was commissioned a second lieutenant, Air Corps, AUS, on 23 May 1945, at Pampa Army Air Field, Pampa, Texas, after completing Officer Candidate School.

8. The court was legally constituted and had jurisdiction of the accused and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In

the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. The sentence imposed is authorized upon conviction of a violation of Article of War 96.

Thomas N. Jaffy, Judge Advocate

William H. Bamberger, Judge Advocate

Robert E. Trevellian, Judge Advocate

SPJGH-CM 286577 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Russell H. Ford (O-2090009), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of wrongfully piloting a non-military aircraft without having first obtained a valid private pilot's certificate (Spec. 1 of the Ch.) and guilty of wrongfully operating an aircraft in such a reckless and careless manner that it collided with an automobile on the ground and injured the occupants thereof (Spec. 2 of the Ch.), both in violation of Article of War 96. He was sentenced to dismissal, total forfeitures and confinement for six (6) months. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. I concur in that opinion. The uncontradicted evidence shows that accused, in company with his wife, while flying a borrowed, non-military aircraft from Chickasha, Oklahoma, to Childress Army Air Field, Childress, Texas, on 5 August 1945, piloted the plane so close to the ground in an open cotton field that it collided with an automobile, which was at the time proceeding along a dirt road through the field, with such violence that it tore the top of the automobile and ripped one wheel off of the landing gear of the plane. Several occupants of the automobile were painfully cut and bruised, one of them receiving a laceration of his right eye which will probably result in the total loss of sight of the eye. Accused's view of the automobile was unobstructed, and he conceded that he could have seen it if he had been looking for it. Following the collision, accused circled the scene of the accident one time to survey the wreckage and then flew on to Childress before landing. His attempted explanation of his conduct was that his oil pressure gauge showed an abnormally low reading and that, surmising that his "oil was low," he dragged the field near the scene of the accident for the purpose of determining whether it was suitable for a forced landing. He declared that he did not drag the field "just for a lark" or "to buzz an automobile." He conceded, however, that, following the collision, he did not attempt any emergency landing, but continued straight to Childress - a distance of some 50 miles - and that on the trip his motor "worked good." He further conceded that neither before

nor after the accident did he check his map to determine whether there were any regular landing fields in the vicinity of the cotton field in which the accident occurred and that if he had done so he would have discovered that there were several regular landing fields in that vicinity. He admitted that he does not have a private pilot's certificate.

Transmitted with the record of trial is a Memorandum for The Judge Advocate General, dated 5 October 1945, from the Commanding General, Army Air Forces. It is recommended therein that the sentence be confirmed and ordered executed. The following sentiments concerning accused's conduct are also expressed in the memorandum:

> "* * * It can reasonably be inferred from the facts of this case that he deliberately engaged in flying low over the cotton field, or that he intentionally buzzed the automobile. However, even if he is given the benefit of all doubt, and full credence is placed in the claim concerning the readings of his oil gauges, his own admission that the vegetation was not tall enough to obstruct his view of the automobile, and that he probably could have seen it if he had been looking for it, labels his operation of the aircraft at the time of the accident as careless. Such wanton disregard for the safety of others cannot be tolerated. His conduct clearly constituted a serious, wilful violation of flying regulations, and in light of the serious consequences resulting therefrom, fully warrants the imposition of the sentence assessed by the court-martial."

I concur with the views expressed by the Commanding General, Army Air Forces, and I recommend that the sentence be confirmed but that the forfeitures be remitted, that the sentence as thus modified be carried into execution and that a United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should such recommendation meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

3 Incls
1. Rec of trial
2. Memo for TJAG, 5 Oct 45
3. Form of action

(Sentence confirmed but forfeitures remitted, GCMO 503, 5 Dec 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGK - CM 286579

21 SEP 1945

UNITED STATES	)	ARMY AIR FORCES CENTRAL FLYING TRAINING COMMAND
v.	)	Trial by G.C.M., convened at Ellington Field, Texas, 27 August 1945. Dismissal, total forfeitures and confinement for five (5) years.
First Lieutenant FRANK J. PFEIFFER (O-451464), Signal Corps.	)	

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 58th Article of War.

Specification: In that First Lieutenant Frank J. Pfeiffer, Signal Corps, did at Camp Crowder, Missouri, on or about 9 December 1944, desert the service of the United States and did remain absent in desertion until he was apprehended at Beaumont, Texas on or about 5 July 1945.

He pleaded not guilty to the Charge and Specification but guilty of absence without leave from Camp Crowder, Missouri, from 9 December 1944 to 5 July 1945 in violation of Article of War 61. He was found guilty of the Charge and Specification and was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due and to be confined at hard labor for five years. No evidence of any previous conviction was introduced. The reviewing authority approved the sentence and forwarded the record of trial for action under the provisions of Article of War 48.

3. Evidence for the Prosecution.

According to the extract copy of the morning report of Company B, 81st Signal Heavy Construction Battalion, the accused absented himself without leave from his station at Camp Crowder, Missouri, on 9 December 1944 (R. 6, Pros. Ex. II). His unauthorized absence was terminated on 5 July 1945 when he was apprehended in Beaumont, Texas, by a Special Agent of the Federal Bureau of Investigation. At the time of apprehension which occurred in an

apartment, accused admitted his identity and "willingly" accompanied the arresting officer after he had put on a white shirt and grey whipcord trousers similar to "pinks." Accused and a girl who was in the apartment with him were then taken to the Beaumont Police Station where they were turned over to the Provost Marshal. To the Provost Marshal, accused admitted leaving his station about 15 November 1944 (R. 7-15).

During the latter part of his unauthorized absence, the accused was employed as an assistant in the "parts department" of the Jefferson Motor Car Company, Beaumont, Texas, his work there having started in the "early part of April." He always wore civilian clothes to work (although occasionally he wore trousers and shoes which may have been of "Army" standard) and had told his employers he was a "discharged soldier." On occasions, accused's "wife" worked on inventories for the company (R. 16-22).

A transcription of a sworn statement made by accused during the investigation of this case after having been warned of his rights against self-incrimination was introduced in evidence without objection (R. 23,24; Pros. Ex. III). In his statement, the accused said he had enlisted on 24 September 1940 and successfully completed Officers' Candidate School at Fort Monmouth, New Jersey, on 30 September 1941. He then recounted becoming involved with a young woman who had divorce proceedings then pending, marrying her on 30 December 1941, living with her in Joplin, Missouri, near Camp Crowder where he was stationed, and having a son by her in July 1943. His "wife" and he had numerous "disagreements," some of them "rather violent," which prompted his suggesting a divorce on "numerous occasions." In July 1944, he received an "APO leave of absence" which he spent in Colorado with his "wife" and child. While there, he met "Rita," a nineteen year old girl, and they fell in love. He informed his "wife" of "this situation", and she "for days" alternated between assenting to and refusing accused's proposal of a "divorce." She then moved "back East." "Rita" came to Joplin and lived with a friend. Accused saw her "perhaps too much." His "wife" heard news to such effect and refused him a divorce. Accused was told by an Army superior to discontinue seeing "Rita." Accused "bluntly told" him that it was none of his business. Resenting the fact that his battalion commander and Captain Stockett permitted "personal prejudice [to] interfere with military decisions in very numerous instances," accused requested to be relieved as company commander. About this time, he received letters from his "wife" which aggravated his state of mind. Thereafter, he and "Rita" left for Arkansas, and were married on 11 December 1944 "on the chance" that his "wife" had not secured a divorce from her first husband,which later turned out to be true. Advice of counsel had previously been obtained. They drove to Texas, then to Nyack, New York, where they lived "as civilians" until March 1945. They returned to Texas. "Rita" supported them by working. When she began to "lose weight," he obtained a job in Beaumont at the Jefferson Motor Company and accepted a low salary "to avoid apprehension." He had never reached any

conclusion for "returning to the service" (Pros. Ex. III).

4. Evidence for the Defense.

The accused, after being advised of his rights as a witness, elected to testify in his own behalf. He reaffirmed and amplified the statements made during the investigation, heretofore summarized, as to his entry into the military service, his difficulties with and marrying two young women, and his subsequent absence without leave and apprehension. He further testified that on 8 December 1944, the day before his unauthorized absence began, he submitted a written request to the Commanding General, Camp Crowder, Missouri, for relief from his assignment for certain reasons specifically described therein under the general headings of (1) "Consistent lack of cooperation from superior headquarters," (2) "Shifting of responsibility in an improper and high-handed manner" and (3)"Interference with personal problems of the undersigned by Captain Richard C. Stockett" (Def. Ex. 1), but he denied that when he submitted the request he intended to go AWOL. The "pressure," however, of his "personal problems" was so great that he left the next morning with "Rita." He carried two woolen uniforms with him, leaving several uniforms behind, but never wore a complete uniform while absent. There was no question "in his mind" that he "eventually" would return to the Army. He prolonged returning until "Rita" would have a "safe haven to go to." He carried his uniform with him because he intended to return to military control. The daily discussions between him and "Rita" as to his returning always ended in a "stalemate" with regard to the "time." Accused also testified that he absented himself without leave and was apprehended at the times and places alleged. A copy of his "efficiency report" was introduced in evidence. The report shows consistent ratings of "superior" from 13 January 1942 to 31 August 1944, excepting certain periods for which he has no ratings, and from 10 to 31 December, 1944, as "unsatisfactory" (R. 24-43; Def. Ex.II).

Major Clyde D. Rogers, MC, testified that he examined accused at the request of the Trial Judge Advocate, and that in his opinion the accused, both on the date of the offense and on the date of the examination, was competent to know the difference between right and wrong and to adhere to the right. He would not say that the "combination of circumstances" related by accused would tend to make him "emotionally unsound" at the time he went AWOL, but that the "tension" he was then under "probably" would make him act differently than under "normal circumstances" (R. 44-45).

Mrs. Marguerite Berryman Pfeiffer testified that she was the wife of accused and accompanied him during his unauthorized absence. She and accused discussed "quite often" his returning to the Army, as he intended to do "as soon as he got Eileen [accused's first "wife"] out of his father's house and sent me [Rita] back there," or "as soon as he could find some place to send me," but he "never got to the place where

he had any place to send me." She and accused knew from letters received from accused's father that Eileen and her mother were living with accused's father (R. 46-53).

Accused, on being recalled to the stand, testified that his first "wife," Eileen, initially went to live with his father in September 1944 and to the best of his knowledge and belief she, her child and mother, were with his father while he was in New York and in Texas (R. 54).

First Lieutenant Floyd Lewis Clark, AC, testified that he was Police and Prison Officer, Ellington Field, Texas, and that during the six weeks preceding trial, accused had been conducting himself "excellently" and had "efficiently" performed duties assigned him while under restriction (R. 55).

5. In rebuttal, Captain Richard C. Stockett, CAC, testified that he was executive officer of accused's battalion. At a meeting held for the battalion officers on 7 December 1944 regarding a proposed bivouac, accused asked the battalion commander if he was trying "to run us all over the hill." On the next morning, accused's request for relief from assignment (Def. Ex. I) was found on the battalion commander's desk. He had discussed accused's "family affairs" with him and had ordered him to stay on the post where officers who were not living with their families stayed. He respected accused's ability as an officer and had previously rated him "superior." Accused had not told him that his "personal performances" were none of witness' business (R. 57-64).

6. The Specification alleges that accused deserted the service of the United States at Camp Crowder, Missouri, on 9 December 1944, and remained absent in desertion until apprehended at Beaumont, Texas, on 5 July 1945. It is properly laid under Article of War 58.

The uncontradicted evidence for the prosecution, corroborated by accused's plea of guilty of absence without leave and by his testimony to similar effect, establishes that the accused absented himself without leave at the time and place alleged and that such unauthorized absence was terminated by apprehension at the time and place alleged. Although the accused disavowed having any intention not to return to the service, he admitted that he had no intention of returning until such time when he could find a place to send his "wife," Rita, which time was uncertain and indefinite and which might never occur. His entire conduct and actions during his unauthorized absence were inconsistent with any conclusion except that he had no intention of returning. His extended traveling from Missouri to Texas, then to New York, and back to Texas, his admitted failure throughout his absence to wear a uniform, his obtaining work only after his funds were exhausted and the health of his "wife" prevented her from supplying funds to defray expenses, and his prolonged absence of approximately seven

months and the manner and place of its termination, especially when considered in the light of his expressed dissatisfaction with his organization, logically and irresistibly compel the conclusion that the accused is guilty of the alleged charge of desertion.

7. War Department records show that accused is 25 years of age. He graduated from Emerson High School, Union City, New Jersey, in 1937. He enlisted on 24 September 1940, and attained the grade of corporal. On satisfactory completion of Officers' Candidate School, Fort Monmouth, he was commissioned second lieutenant in the Army of the United States on 30 September 1941, and was assigned one month later to Signal Corps Replacement Center, Fort Monmouth, New Jersey. On 25 July 1942, he was promoted to first lieutenant.

8. The court was legally constituted and had jurisdiction over the accused and the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 58.

Charles A. Luckie, Judge Advocate

Norman Mayer, Judge Advocate

Charles S. Lyon, Judge Advocate

SPJGK - CM 286579 1st Ind.

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Frank J. Pfeiffer (O-451464), Signal Corps.

2. Upon trial by general court-martial this officer was found guilty of deserting the service at Camp Crowder, Missouri, on 9 December 1944, terminated by apprehension at Beaumont, Texas, on 5 July 1945, in violation of Article of War 58. He was sentenced to dismissal, total forfeitures and confinement for five years. The reviewing authority, although deeming the sentence inadequate, approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation thereof.

Accused absented himself without leave from Camp Crowder, Missouri, on 9 December 1944, after having submitted on the preceding day a written request for reassignment to another organization. His dissatisfaction with his organization was based on the interference, the accused claimed, by superior officers in his personal affairs. Accused recounted having married a young woman in December 1941 who was not divorced from her husband, although proceedings for divorce had been filed, thereafter living with and having a child by her, and then sending her "back East" in September 1944 because he had fallen in love with another young woman who came to live in the town near his station. The latter young woman accompanied him during his unauthorized absence. He married her in December 1944. While absent they drove to Texas, then to New York, where they lived "as civilians" until March 1945, when they returned to Texas. The young woman supported them by working until her health began to fail, when accused obtained a job in Texas and accepted a low salary "to avoid apprehension." While he often discussed with the young woman returning to the service he intended to do so only after he had made satisfactory arrangements for her welfare. During his absence he wore civilian clothes, although he carried his uniform with him. He was apprehended by a special agent of the Federal Bureau of Investigation of Beaumont, Texas, where he was working, on 5 July 1945.

Accused is 25 years of age. He enlisted on 24 September 1940 and was commissioned second lieutenant on 30 September 1941 upon satisfactory completion of Officers' Candidate School. On 25 July 1942 he was promoted

to first lieutenant. His efficiency as an officer was consistently rated as "superior" from 13 January 1942 to 31 August 1944, excepting certain periods for which he had no ratings.

Desertion in violation of Article of War 58, particularly in time of war, is a serious offense. Despite the accused's previous fine record, the length of his unauthorized absence (approximately 7 months), the manner of its termination, and his dissatisfaction with his organization, apparently resulting from his own reprehensible conduct regarding the two young women, clearly show his unfitness as an officer and merit his being subjected to the punishment imposed by the court. Accordingly I recommend that the sentence be confirmed but that the forfeitures be remitted, that a United States disciplinary barracks be designated as the place of confinement, and that the sentence as thus modified be carried into execution.

4. Consideration has been given to copy of a letter from the wife of accused to Senator Thomas Connelly dated September 6, 1945, which accompanies the record of trial.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

3 Incls
1. Record of trial
2. Form of action
3. Ltr fr wife of acc'd to Sen Connelly

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed but forfeitures remitted. GCMO 461, 11 Oct 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGN-CM 286633

UNITED STATES	)	WARNER ROBINS AIR TECHNICAL SERVICE COMMAND
v.	)	Trial by G.C.M., convened at Robins Field, Georgia, 2-4 August 1945. Dismissal, total forfeitures, and confinement for three (3) years. Southeastern Branch, Disciplinary Barracks, Camp Gordon, Georgia.
Major TULLIE F. ALLEN (0-471801), Air Corps.	)	

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on divers, many and sundry occasions between the dates of 1 August 1943 and 13 March 1945, more specific dates of which are to the accuser unknown, knowingly, wilfully and wrongfully take, carry away and convert to his own use certain foodstuffs of the value of about ONE HUNDRED DOLLARS ($100.00), the same being the property of the Army Air Forces Regional Station Hospital Mess (variously designated as Army Air Forces Station Hospital Mess and Army Air Forces Regional Hospital Mess), Robins Field, Georgia, all to the prejudice of good order and military discipline.

Specification 2: In that Major Tullie F. Allen, 4117th Army

Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on divers, many and sundry occasions between the dates of 1 August 1943 and 13 March 1945, more specific dates of which are to the accuser unknown, wrongfully and corruptly induce Technical Sergeant Irving Lieb to aid and assist in the unlawful taking and carrying away and conversion by military personnel of certain foodstuffs of the value of about TWO HUNDRED DOLLARS ($200.00), the same being property of the Army Air Forces Regional Station Hospital Mess (variously designated as Army Air Forces Station Hospital Mess and Army Air Forces Regional Hospital Mess), Robins Field, Georgia, all to the prejudice of good order and military discipline.

Specification 3: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Warner Robins, Georgia, on divers, many and sundry occasions between the dates of 1 August 1943 and 13 March 1945, more specific dates of which are to the accuser unknown, knowingly, wilfully, and wrongfully misappropriate the labor of certain enlisted men of the Army of the United States, to wit, Sergeant George E. Brooks, Private First Class James J. Leavy, Private First Class Vern McMillen, Private First Class Russell E. Woodling, Private First Class Raleigh Pruitt, Private Joseph J. Scott, and Private Oscar E. Crowe, by causing said enlisted men to perform, during their regular duty hours, various services and manual labor, of the value of about ONE HUNDRED DOLLARS ($100.00) in, upon, and in connection with the private dwelling house of the said Major Tullie F. Allen and the grounds appurtenant thereto, all for the personal gain and benefit of the said Major Tullie F. Allen and to the prejudice of good order and military discipline.

Specification 4: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on or about 29 November 1944 wrongfully take, carry away, and convert to his own use one (1) turkey, value about SIX DOLLARS AND FIFTY CENTS ($6.50), property of the Army Air Forces Regional Hospital Mess, Robins Field, Georgia.

Specification 5: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on or about 24 December 1944 wrongfully take, carry away, and convert to his own use one (1) turkey, value about SIX DOLLARS AND FIFTY CENTS ($6.50), property of the Army Air Forces Regional Hospital Mess, Robins Field, Georgia.

Specification 6: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on or about 12 January 1945 wrongfully take, carry away, and convert to his own use one (1) dozen eggs, total value about 50 cents, and two (2) quart-size cartons of milk, value about 14 cents each, total value about 28 cents, all property of the Army Air Forces Regional Hospital Mess, Robins Field, Georgia.

Specification 7: In that Major Tullie F. Allen, 4117th Army Air Forces Base Unit, Robins Field, Georgia, did, at Robins Field, Georgia, on or about 19 January 1945 wrongfully take, carry away, and convert to his own use one pound of meat, value about 30 cents, property of the Army Air Forces Regional Hospital Mess, Robins Field, Georgia.

The accused pleaded not guilty to all Specifications and the Charge and was found guilty of Specification 3, except the words "Private First Class Vern McMillen, Private First Class Russell E. Woodling, Private First Class Raleigh Pruitt"; guilty of Specification 6 except the words and figures "total value about 50 cents", substituting therefor the words and figures "of the value of 39 cents"; guilty of Specification 7 except the words and figures "value about 30 cents", substituting therefor the words and figures "value about 26 cents"; and guilty of all other Specifications and the Charge. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for three years. The reviewing authority approved only so much of the findings of guilty of Specification 2 "as involves a finding that the accused did, at the time and place alleged, wrongfully and corruptly induce Technical Sergeant Irving Lieb to aid and assist in the unlawful taking, carrying away, and conversion by military personnel of certain foodstuffs of some value"; approved the sentence; and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that for a considerable period of time, extending from 1943 until the early months of 1945, the accused was stationed at Robins Field, Georgia, where, among other duties, he served as Executive Officer, Chief of Administration, and Mess Officer at the Station Hospital, which, on 1 July 1944, became a "Regional" Hospital (R. 39, 61, 64, 87, 90, 131; Pros. Ex. 6). Under his supervision came the three units of the Hospital Mess, namely, the Patients' Mess, the Detachment Mess, and the Nurses' Mess (R. 87; Pros. Exs. 1, 2, 3).

During the latter part of 1943, the accused, who had been living on the post, purchased a house in the nearby town of Warner Robins and prepared to move his family there (R. 101, 109). The house being in need of cleaning and repairs, he solicited the help of Lieutenant John Shaughnessy, Utilities Officer at the Hospital, for the purpose of

obtaining the services of several enlisted men to perform the required work (R. 39, 40). George Pleasant, a civilian carpenter at the Utilities Shop, was instructed to take a group of men to the accused's home, and, for three six-day weeks in August and September, 1943, Sergeant Brooks and Privates Leavy, Scott, and Crowe worked with a civilian by the name of Dunagan in renovating the house and grounds (R. 40, 44, 47-53). The accused, according to Private James A. Leavy, was on leave for ten days during this period and spent much of his time working with the men and supervising their efforts (R. 48, 49, 52). While the work was in progress the accused moved his family into the house. Since the "utilities service was not hooked up", he requested Mess Sergeant Irving Lieb to send prepared meals for the members of his family and the enlisted men there engaged. This service was provided by the Sergeant twice a day for two days (R. 101, 102, 109, 110). During this period there was much work to be done at the Station Utilities Shop and, following a conversation between Lieutenant Shaughnessy and "Colonel Cameron", the enlisted men were recalled from the accused's house and returned to their assigned duties (R. 41, 42, 57). In December, 1944, Private Leavy received $35.00 as a "Christmas present" from the accused, and the other men were also compensated for their work (R. 56).

The accused made frequent visits to the three mess halls and appeared almost daily between five and six o'clock at the Patients' Mess, where, with Sergeant Lieb, he generally conducted an inspection of the premises. On three or four afternoons a week he would drive his car to the rear of the mess hall, enter through the "back door", and instruct one of the mess sergeants, either Lieb, Frank Fiumefredo, or Flore Saccoccia, to "fix his package", which, having been prepared, would be placed in his automobile. The package, filled with foodstuffs from the hospital mess, varied as to content but generally included milk, eggs, and bread and, on some occasions, was swelled by other supplies, such as jelly, coffee, sugar, baby food, canned goods, cheese, fish, ham hocks, butter, watermelons, and fruit (R. 62-65, 91-93, 96, 97, 122, 123, 129, 130, 135, 136, 150, 156, 155, 172, 175, 176, 178, 187, 188, 193, 197). Meats, consisting of roast beef, pork chops, and chicken, were often included (R. 111, 115, 130, 136, 163, 164, 173). On one occasion, when he was expecting guests, the accused instructed Sergeant Lieb to prepare fourteen steaks for use at home. After following these instructions, the sergeant drove to the accused's house in a government vehicle, and delivered the steaks, with potatoes, onions, and ketchup (R. 97, 102, 107). The accused's children were fond of "toddy", and four cases of this chocolate drink, valued at $1.68 each, were taken by him from the hospital mess supplies (R. 65, 66, 99, 100; Pros. Ex. 4). On the day before Thanksgiving, 1944, he removed a turkey from the ice box in the Patients' Mess, placed it in a container with certain other foods "that would go with a turkey dinner", and directed one of the kitchen personnel to place the items in his automobile (R. 184, 185). Prepared food from the mess hall was also delivered to the accused

on Thanksgiving Day (R. 123; Pros. Ex. 4B).

According to Private Cecil M. Kelly, diet cook at the Patients' Mess, the accused took another turkey from the refrigerator on Christmas Eve, 1944, and other enlisted personnel related how, on the following day, six complete Christmas dinners, consisting of turkey, dressing, peas, potatoes, fruit cake, nuts, and "other things" that were on the menu, were prepared and placed in the accused's car. Officers who ate Christmas dinner at the hospital mess were charged seventy-five cents for the meal (R. 98, 113, 115, 137, 145, 183, 186). Private William F. Fisher recalled that the accused, both on 12 and 19 January 1945, took from the Patients' Mess and carried away with him a dozen eggs, two quarts of milk, and a pound of meat (R. 178, 179). Food was also removed in this manner from the Detachment Mess (R. 130, 132, 133). The values of foodstuffs "about which testimony [had] been presented" were stipulated as follows:

> "beef, 21¢ per pound; cold cuts, 26¢ per pound; chicken, 38¢ per pound; milk, fresh, 14¢ per quart; milk, canned, $1.92 per case; bread, 7¢ per loaf; turkey, $6.50 each; sugar, 05¢ per pound; cheese, American processed, $1.65 per 5 pound brick; cheese American cheddar, 30¢ per pound; watermellon, 30¢ each; peaches, $3.50 per hamper; ham hocks, 10¢ per pound; fish, 12¢ per pound; canned corn, 10¢ per can; canned peas, 10¢ per can; butter, 43¢ per pound; eggs, 39¢ per dozen; pork loin, 25¢ per pound; catsup, 13¢ per bottle; potatoes, 3¢ per pound; jelly, 25¢ per two pound jar; apples, 2¢ each; oranges, 2½¢ each; candy, 15¢ per pound; nuts, 35¢ per pound; baby food, $3.84 per case; Thanksgiving Dinner, 75¢ per meal and Christmas Dinner, 75¢ per meal" (R. 197).

Captain Lee B. Townley, custodian of the "Patients' Fund" or "hospital fund", explained that his duties included an accounting for all authorized receipts and disbursements in the operation of the hospital mess. Funds were realized from "monetary allowances for enlisted men"; from other patients, such as dependents of service personnel and civilians, who paid directly for meals; and from "men authorized to ration separately, occasional meals for officers, civilian employees and military nurses and * * * donations". Monthly disbursements were made for foodstuffs which were obtained either from the Quartermaster or from civilian merchants (R. 60, 61; Pros. Ex. 4). Although Captain Townley was not authorized to accept money for food removed from the Mess Hall and although the practice was not sanctioned by the "regulations", he realized that a "custom" existed "of officers taking foodstuffs and they could, without any knowledge [or] approval of the Mess Officer * * * have checked it on the regular roster". The witness referred to a roster posted in the Nurses' Mess, where certain officers, including the accused, gathered almost daily to play poker while having lunch. Any officer participating in this pastime would place a "check"

mark beside his name for each meal consumed and would make monthly remittances, at the rate of 35¢ per meal, for the total of such charges (R. 72-75, 78, 82).

The accused, on one occasion, in the course of a conversation regarding the difficulty of obtaining certain items for personal use, asked Captain Townley "Why don't you get it from the mess hall and check it off?" Sergeant Lieb, who testified that the accused was not the only officer taking provisions from the mess hall, was instructed by him to deliver items of food to certain other officers. Thus, "Colonel Cameron" received six or eight steaks and several prepared meals; "Colonel Stribling", several steaks, cheese, and butter; "Captain Tilley", two cases of fruit juices; and Captain Townley, several cans of Carnation milk (R. 94, 95, 112, 138, 146, 147). The accused made no effort to conceal this practice and never suggested paying for the items taken, except on "very, very rare occasions he would tell [Sergeant Lieb] in a joking way to check" his name on the roster, which was done "a couple of times" in 1943 (R. 78, 104). The accused did personally check his name on the roster at various times and paid into the hospital mess fund the following amounts:

August 1943	$ 8.40
September 1943	10.15
October 1943	10.85
November 1943	10.50
December 1943	2.45
January 1944	7.70
August 1944	9.10
September 1944	1.05
March 1945	3.15

(R. 68, 76-79, 80; Def. Exs. 1-3)

This money, totalling $63.35, was the only amount received from the accused and was regarded by Captain Townley as payment for meals at the Nurses' Mess and not for food consumed elsewhere (R. 81, 289). Although contrary to Army Regulations, the accused, as Mess Officer, was allowed to eat meals free of charge at the Hospital Mess (R. 68; Pros. Ex. 7).

4. Sergeant Pete P. Ragusa and Private First Class Arthur J. Letter, both butchers at the Patients' Mess, testified for the defense that all of the turkeys supplied for the 1944 Thanksgiving and Christmas dinners were prepared for cooking and, as far as the witnesses recalled, none was wrapped or designated for the accused (R. 208, 209, 214-216). They admitted, however, that the transaction might have occurred and escaped their attention (R. 210, 217). Sergeant Ragusa had never been requested by the accused to cut or prepare meat for the latter's personal use (R. 209).

Private Leavy, upon being called as a witness for the defense, stated that the accused had not moved his family into the house at the time the witness worked there and he had no recollection of meals sent from the mess hall to the workmen (R. 213). The defense, apparently in an effort to impeach the testimony of Sergeant Lieb that enlisted men, on one occasion, were sent by government vehicle to the accused's house, introduced Privates First Class Russell E. Woodling and Raleigh Pruitt, both of whom testified that they were transported to the accused's house not by Government conveyance but in the accused's car (R. 218, 219).

In the fall of 1943 Mr. James W. Dunagan was employed as "senior carpenter" at the Post Utilities Shop, with duty hours from 4:40 o'clock in the afternoon to 1:30 the following morning (R. 219). He contracted to perform certain work during his off-duty hours for the accused and spent approximately six weeks during September and October, 1943, in adding a screen porch, bathroom, and bedroom, and in effecting certain repairs to the accused's home (R. 219, 220). Two soldiers by the names of Brooks and Scott assisted Dunagan in this work for a total of twenty-five hours over a period of three or four days. Dunagan, who stated that neither Crowe or Leavy worked with him, although the latter was seen on the premises "a couple of times", had no knowledge of four soldiers working for a continuous period of three weeks (R. 221, 222). From 15 March to 4 May the following spring, Dunagan worked a total of 115 hours for the accused and for six days was helped by a Sergeant Combs, who lived in a nearby apartment (R. 223, 224). Dunagan pointed out that the accused, about every two months, would bring back from his home in South Georgia as many as thirty dozen eggs, some of which were distributed to "other fellows" (R. 227, 228).

The accused, after his rights relative to testifying or remaining silent had been explained, elected to take the stand as a witness in his own behalf (R. 232). He is forty-four years of age, is married, and has four children. His Army service, which has covered a period of more than twenty-one years, was as an enlisted man until he was commissioned a first lieutenant on 14 May 1942. His "permanent" Army rank is that of Technical Sergeant (R. 232, 233, 234, 256, 261, 285).

In early August, 1943, he purchased a home in Warner Robins, Georgia, and arranged with two civilians at the Hospital Utilities Shop to effect certain renovations, George Pleasant to paint the interior, and Mr. Dunagan to make certain repairs and additions. Sergeant Brooks, too, wished to do certain of the work and the accused sought out Lieutenant Shaughnessy, officer in charge of the Utilities Shop, to determine whether Brooks was competent to perform the task. Shaughnessy indicated that enlisted men under his supervision were qualified and available for the work, but it "never occurred" to the accused that his request would have the effect of "taking the men off duty" (R. 233-235, 281). Before the work began he obtained ten days leave and took his family to Florida (Def. Ex. 11). Upon his return he discovered that much work had been

accomplished in his absence and for this, as well as for certain other jobs performed by the men during off-duty hours, he paid $100, which was divided between Brooks, Scott, Crowe, and Leavy (R. 235-238). In March, 1944, the accused wished additional work done on his house and delegated the job to Mr. Lunagan and Sergeant Combs, the latter being on furlough at the time (Def. Ex. 12). Other enlisted men assisted in their off-duty hours (R. 239, 240). As far as the accused knew, his desire that no soldier work for him while on an Army duty status had been respected (R. 241). When, for example, Privates Pruitt and Woodling set out certain shrubs at his house, he assumed that they had the afternoon off from their assigned duties. He paid them for the work, as he did in every case when enlisted men gave their assistance (R. 241-243).

While there was no authority, to the accused's knowledge, for the practice, a "custom" developed, whereby "practically all people connected with the mess" removed food therefrom for outside use (R. 244, 262, 268). The practice was initiated by Colonel Cameron, Commanding Officer of the Hospital, and was justified as a time-saving device in those early days of the war when, because of the long hours of work, personnel found it difficult to purchase supplies elsewhere. In the beginning, payment was made in cash to the Mess Steward, but in 1943 officers began to pay by having the value of the food charged to their "daily mess account" (R. 244, 245, 268-270). The accused actually saw only one officer, Major Bristow, procure foodstuffs from the mess halls, but he knew that many others, including Colonel Cameron, indulged in the practice (R. 245, 262, 270). Occasional reports showed that raw milk from the local dairy was contaminated and, at such times, the accused would take a few bottles of milk from the hospital supply. He also, from time to time, took bread and ice cream and assumed that his "specific" instructions to the Mess Sergeant to charge his mess bill with the value of the items taken were followed (R. 245, 266, 267, 271, 272, 274). The dozen eggs which he took from the mess on 12 January 1945 were replaced the following day (R. 250). The only meats he removed were "ham hocks" and "giblets" for his dog (R. 251, 252). Emphatically denying the taking of an uncooked turkey at Thanksgiving or at any other time, he explained that he had indicated, by signing for himself and guests, his plan to have Christmas dinner with his family at the Hospital Mess, but, when this became impossible because of the illness of his baby, "Colonel Mosley" suggested that the prepared meals be taken home to his family. He assumed that "Sergeant Burson", who looked after many of his affairs, had paid for these dinners and was surprised to learn that such was not the case (R. 249, 250, 277). As a result of "acute stomach trouble" and "a blood sugar condition", the accused was placed on a diet in June or July, 1943, and thereafter ate only those foods which were specifically prepared by his wife. The money which he thenceforth paid into the mess fund was not for meals, since he no longer ate at the hospital, but for

foodstuffs which he carried home (R. 243, 247). He realized that he did not pay for all of such items, but, in view of the "policy" established by the Commanding Officer, allowing the Mess Officer free meals at the hospital, the accused considered that he should be allowed merchandise equal in value to the meals which he did not consume but to which he was entitled (R. 247, 272, 275, 276). He categorically denied the charge of wrongfully inducing Sergeant Lieb to assist in the removal of foodstuffs from the Hospital Mess (R. 258).

Captain Townley, recalled as a defense witness, failed to substantiate accused's testimony that he had signed for himself and guests to have Christmas dinner at the Hospital Mess. The list did not contain accused's name (R. 228-230; Def. Ex. 4).

The defense introduced into evidence four letters of commendation which praised the accused's efficiency, ability, and loyalty, both as an enlisted man and as an officer (Def. Exs. 5, 7, 8, 9). His "exceptional" ability and initiative were referred to in a letter of 11 June 1945, recommending his promotion to the rank of Lieutenant Colonel (Def. Ex. 10). From his "66-3" record it appears that his twelve efficiency ratings as an officer have been "Superior" (Def. Ex. 6).

5. Captain Townley testified for the prosecution, by way of rebuttal, that the accused, after his stomach condition developed, was frequently observed in the Nurses' Mess eating sandwiches, which were charged as meals (R. 288).

6. Specification 1 of the Charge alleges that the accused "did, at Robins Field, Georgia, on divers, many and sundry occasions between 1 August 1943 and 13 March 1945, more specific dates of which are to the accuser unknown, knowingly, wilfully and wrongfully take, carry away and convert to his own use certain foodstuffs of the value of about One Hundred Dollars ($100.00), the same being the property of the Army Air Forces Regional Station Hospital Mess * * *, Robins Field, Georgia, all to the prejudice of good order and military discipline". Specifications 4, 5, 6, and 7 allege similar offenses but are explicit as to date and property; Specifications 4 and 5 alleging the wrongful conversion of a turkey, valued at about $6.50, on 29 November 1944, and 24 December 1944, respectively; Specification 6, as modified by the court, alleging the wrongful conversion, on 12 January 1945, of one dozen eggs and two quarts of milk, of a total value of 67 cents; and Specification 7, as modified by the court, alleging the wrongful conversion, on 19 January 1945, of one pound of meat, valued at 26 cents. Specification 2, as modified by the reviewing authority, alleges that the accused did, from 1 August 1943 to 13 March 1945, "wrongfully and corruptly induce Technical Sergeant Irving Lieb to aid and assist in the unlawful taking and carrying away and conversion by military personnel of certain foodstuffs" of "some value",

property of the mentioned mess. Specification 3 alleges a wrongful misappropriation by accused, during the same general period of time, of the labor of certain enlisted men, valued at about $100.00, by causing them, during their regular duty hours, to perform certain tasks in and around his private home. All offenses were laid under Article of War 96.

The accused, a Technical Sergeant in the Regular Army with over twenty-one years of service, turned his temporary commissioned status to substantial personal gain. By virtue of his positions as Hospital Executive Officer and Mess Officer he was able to canalize for his individual purposes the energies and labors of many enlisted personnel assigned to the hospital. The sum of one hundred dollars paid to the four men who were compelled to forsake pressing duties at the Utilities Shop for three weeks' work in and around his house was obviously far below civilian wage standards.

The accused took the position that he had no knowledge of the duty status of the men and therefore should not be held criminally responsible for the conversion of their labors. If his assertion of innocent knowledge were supported by the evidence, he might well be held guiltless in light of the Wyatt case (CM 227239), reported in 15 BR 217, 248, 249. But his protestation of innocence appears to have no basis in fact in this case. The accused insisted that he was absent on leave when much of the work was accomplished and, although upon his return he observed the soldiers at his house, he assumed they were not on a duty status at the time. It seems highly improbable, however, that, after making a substantial outlay of money for a home, he would immediately depart on a trip and delegate important details of repair and renovation to men with whose work he admittedly was not familiar. Credence, rather, should be attributed to the testimony of Private Leavy that the accused spent his period of leave working around the house and supervising the efforts of the men there engaged. This situation did not escape the attention of the Commanding Officer who, apparently, ordered the return of the men to their assigned duties. It seems clear that the accused, as the person chiefly interested, was fully aware of the circumstances surrounding the work on his recently purchased house, including the obvious fact that the enlisted men could hardly remain off duty for such an extensive period of time. The conversion was both willful and wrongful, as alleged. While no direct evidence establishing the value of the misappropriated labor was introduced, the court was justified in finding that the Government had been deprived of services in at least the alleged amount of one hundred dollars. His appropriation of Government labor was clearly conduct to the prejudice of good order and military discipline and of a nature to bring discredit upon the military service, in violation of Article of War 96. 4 BR 51, 70; CM 199440, Campbell.

The accused, having moved the members of his family into their new home, embarked upon a practice which must have effectuated a considerable saving in both money and ration points. With the assistance of enlisted personnel at the hospital, particularly Mess Sergeant Lieb, he, with almost daily frequency, supplied his private larder with foodstuffs from the Mess, including bread, milk, eggs, and more occasionally, fruits, canned goods, meats, and other items. With the exception of the instances occurring on Thanksgiving and Christmas, 1944, and on 12 and 19 January 1945, which formed the basis of Specifications 4, 5, 6, and 7, no effort was made to accomplish the obviously difficult feat of isolating as to date and amount the specific deeds of conversion. This omission resulted in a failure to prove with exactness the value of the provisions taken throughout the period of nineteen months designated in Specification 1. Since, however, the cumulative effect of this general practice of peculation was necessarily substantial, the monetary amount alleged represented a minimum estimate.

The accused, while acknowledging occasional acts of conversion, attempted to justify his conduct by proving it to be consistent with that of other personnel at the Hospital, including the Commanding Officer, and contended that the existence of such a "custom", although contrary to Army Regulations, created at least implied authority for the practice. Certain acts of misappropriation by other officers were shown but it is not clear whether compensation was paid by them for the property obtained. Apparently a loose and inexact method of payment had been devised, whereby officers "checked" on a roster the number of meals, at the rate of 35¢ each, which approximated the value of the provisions so taken. Should it be conceded that a faithful adherence by accused to this unauthorized and irregular procedure would have demonstrated good faith on his part, such was not in fact the case. Only on "very, very rare occasions" did he direct Sergeant Lieb to check his name on the roster and even then it was no more than a "joking" gesture. Confronted with an impressive number of witnesses attesting the frequency of his peculations and with the comparatively minute amounts which he had paid into the mess fund, the accused offered the ingenious explanation that, since he did not eat at the hospital the meals to which he claimed to be entitled free of charge, he felt justified in claiming their value in uncooked foodstuffs. Such a contention, having all the earmarks of a mere afterthought, appears too illogical to merit serious consideration. He obviously could not erect a credit or equity in his favor by failing to exercise the unauthorized privilege of consuming free meals, and it is hardly probable that he fell into such an error of judgment. The evidence, rather, compels the belief that he indulged in the practice of supplying his dining table with food intended for the hospital without any genuine claim of right. Perhaps the most reprehensible feature of this conduct was the bad example set for, and evil influence exerted upon, the enlisted men whose cooperation was solicited and utilized. While a part and parcel of the entire pattern of conduct, the wrongful and corrupt inducing of Sergeant Lieb to participate

in the unlawful conversions was properly made the subject of the separate and distinct offense alleged in Specification 2.

With reference to the question raised by the defense as to the nature of the offenses alleged in Specifications 1, 4, 5, 6, and 7, it is sufficient to refer to a former opinion of the Board of Review in 34 BR 95, 101, CM 252620, Watterson. There it was pointed out that the type of conduct here under consideration was properly alleged as a wrongful conversion and fell within the scope of the following definition:

> "A wrongful conversion, as defined in law and as distinguished from the equitable doctrine of that name, consists of the 'Unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition, or the exclusion of the owner's right.' (Black's Law Dictionary, 1933 Ed., p. 430 and numerous cases cited thereunder)."

Evidence was adduced showing that the mess was maintained by funds obtained through receipt from the local disbursing officer of commutation of rations allowed by the Government to each enlisted patient and from payment by other personnel authorized to take meals at the Hospital. Since this fund is not the property of the United States but that of the organization or unit receiving it (Sec. 452, pars. (2) and (8), Dig. Op. JAG 1912-1940; CM 252620, Watterson, supra), the ownership of the food purchased with money from that fund was properly alleged as in the Hospital Mess. The defense's contention, that the description of the foodstuffs involved as Government property by a witness for the prosecution created a variance between allegation and proof, is without merit in view of the competent evidence as to the true nature and ownership of the property. The compelling evidence appearing in the record abundantly sustains the findings of guilty as approved by the reviewing authority.

6. The accused is forty-four years of age and is married. War Department records reveal that after eighteen years of enlisted service, he was, on 14 May 1942, commissioned a first lieutenant in the Army of the United States and entered on active duty on 20 May 1942. He was promoted to the rank of captain on 2 January 1943 and to the rank of major on 10 March 1944.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial

is legally sufficient to support the findings, as approved by the reviewing authority, and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 96.

Abner E. Lipscomb, Judge Advocate.

Robert J. Glamor, Judge Advocate.

Samuel Morgan, Judge Advocate.

SPJGN-CM 286633 1st Ind
Hq ASF, JAGO, Washington 25, D. C. NOV 7 1945
TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Major Tullie F. Allen (0-471801), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of willfully taking and converting to his own use certain foodstuffs, of an alleged value of about $114, property of the Station Hospital Mess at Robins Field, Georgia (Specs. 1, 4, 5, 6, 7); of wrongfully and corruptly inducing Technical Sergeant Irving Lieb, who was assigned to the Mess, to aid and assist in the unlawful conversions of food, allegedly worth about $200, by military personnel (Spec. 2); and of wrongfully misappropriating the labor, allegedly valued at about $100, of certain enlisted men by causing them, during their regular duty hours, to perform various tasks of manual labor in and around his private dwelling house (Spec. 3); all in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for three years. The reviewing authority approved only so much of the findings of guilty of Specification 2 "as involves a finding that the accused did, at the time and place alleged, wrongfully and corruptly induce Technical Sergeant Irving Lieb to aid and assist in the unlawful taking, carrying away, and conversion by military personnel of certain foodstuffs of some value"; approved the sentence; and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings, as approved by the reviewing authority, and the sentence, and to warrant confirmation thereof.

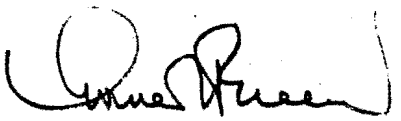
The accused, while Mess Officer at the Station Hospital, Robins Field, Georgia, from 1943 until the early months of 1945, developed the practice of removing foodstuffs from the hospital mess and taking these items to his home for personal use. The provisions so taken generally consisted of milk, eggs, and bread, and, less frequently, baby food, canned goods, cheese, fish, fruit, and such meats as roast beef, pork chops, and chicken. The value of the converted food was alleged to be about $114, but since the practice, which occurred with

almost daily frequency, extended over a period of some nineteen months, this amount represented a very conservative estimate. The evidence establishes that no compensation was paid for the provisions taken by the accused. He solicited the aid of several enlisted men, particularly that of Sergeant Irving Lieb, and often relied upon them to prepare the food and deliver it to him or other officers indulging in this practice. When, in late 1943, the accused bought a home near Robins Field, he utilized the labors of four enlisted men who were assigned to the hospital Utilities Shop and, for three successive weeks, these men worked in and around the accused's new home in effecting certain repairs and renovations. They were precluded from performing their assigned duties throughout this period of time.

The accused, after eighteen years of service as an enlisted man in the Army, was on 14 May 1942, commissioned a first lieutenant in the Army of the United and, at the time of trial, had attained the rank of major. His conduct, in converting Government labor and hospital mess provisions to his own use and profit, reveals not only his failure to appreciate the responsibilities of an officer but also a shocking absence of honesty and integrity. He has thus shown himself unworthy to wear the uniform, but, in view of his Army career of many years, the substantial benefits of which will be lost as a result of dismissal, and the character of his commissioned service, as attested by twelve performance ratings of "Superior", I believe that a remission of the confinement is appropriate. I recommend, therefore, that the sentence be confirmed but that the forfeitures and confinement be remitted, and that the sentence as thus modified be ordered executed.

4. Consideration has been given to a letter from the Honorable Stephen Pace, member of Congress.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.



THOMAS H. GREEN
Brigadier General, USA
Acting The Judge Advocate General

3 Incls
Incl 1 - Record of trial.
Incl 2 - Form of action
Incl 3 - Ltr. fr. Hon. Pace

(Sentence confirmed but forfeitures and confinement remitted. GCMO 470, 15 Nov 45)

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGQ - CM 286742	)	
U N I T E D S T A T E S	)	SECOND AIR FORCE
v.	)	Trial by G.C.M., convened at Peterson Field, Colorado Springs, Colorado, 31 August 1945 and 1 September 1945. Dismissal, total forfeitures and confinement for one (1) year.
Second Lieutenant WILLIAM J. CHYLIK (0-928307), Air Corps.	)	

OPINION of the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer above named and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 93d Article of War.

Specification: In that Second Lieutenant William J. Chylik, Air Corps, Squadron A, 224th Army Air Forces Base Unit, did, at Sioux City Army Air Base, Sioux City, Iowa, on or about 30 May 1945, unlawfully enter Parachute Building Number 909, with intent to commit a criminal offense, to wit, larceny therein.

CHARGE II: Violation of the 94th Article of War.

Specification: In that Second Lieutenant William J. Chylik, * * *, did, at Sioux City Army Air Base, Sioux City, Iowa, on or about 30 May 1945, feloniously take, steal and carry away fifty-three parachute First-Aid kits, of the value of about $31.80, property of the United States, furnished and intended for the military service thereof.

CHARGE III: Violation of the 61st Article of War.

Specification: In that Second Lieutenant William J. Chylik, * * *, did, without proper leave, absent himself from his organization at Sioux City Army Air Base, Sioux City, Iowa, from about 3 August 1945 to about 4 August 1945.

He pleaded guilty to the Specification of Charge I, Charge I, the Specification of Charge II and Charge II and not guilty to the Specification of Charge III and Charge III. He was found guilty of all the Specifications and Charges. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for two (2) years. The reviewing authority approved only so much of the sentence as provided for dismissal, forfeiture of all pay and allowances due or to become due and confinement at hard labor for one (1) year, designated the United States Disciplinary Barracks, Fort Leavenworth, Kansas, as the place of confinement and forwarded the record of trial for action under Article of War 48.

3. Specification, Charge I; Specification, Charge II

Private First Class Mosier, who was in charge of Section 3 Parachute Department, Building 909, Sioux City Army Air Base, left the building and locked the door at approximately 1700 on 30 May 1945 to go to "chow" (R. 11). When he returned at about 2030 he tried to unlock the door with his key but the latch "wouldn't throw over." (R. 11). He forced the door and in doing so broke the bolt which was locked from the inside (R. 11). When he entered the building he found the accused standing about ten feet from him between the counter and the stove (R. 11, 15). The accused said that he was looking for him to get some flying clothes (R. 11, 16). The accused belonged to Section 1 and not Section 3 (R. 11). The accused said that when he entered the building a corporal or a sergeant had a bag in his hand and when asked what he had in the bag the sergeant dropped the bag and rushed for the door (R. 11, 14, 16); that the sergeant went out the door before the accused could stop him (R. 11). A laundry bag was four or five feet from the accused around the end of the counter (R. 13, 16). It was dusk and no lights were on in the building but Private First Class Mosier could clearly see the accused (R. 12, 15). He found the laundry bag, containing first-aid kits, and a few loose first-aid kits on the floor inside the counter (R. 13, 16). He did not count the first-aid kits and put the ones which were on the floor in the laundry bag (R. 13, 16). The first-aid kits had originally been attached to parachute harnesses and were Government property (R. 13). Upon checking the harnesses he found that the light cloth by which the first-aid kits had been attached had been cut (R. 17). He talked to the accused for about half an hour, during which time the accused appeared to be nervous, perspired freely and smoked quite a few cigarettes (R. 11, 19). The accused said that he did not want to be implicated and wanted to know if the witness would report the incident (R. 11, 15, 16). The accused gave his name and the place where he could be located on the base (R. 19). Private First Class Mosier asked him to return the next morning (R. 11), but the accused did not return (R. 17). He did not know how the accused entered the building (R. 17). There are two entrances but the other door was padlocked on both sides (R. 18). The accused did not explain why the door was bolted (R. 18).

Private First Class Mosier got in touch with the night adjutant and met First Lieutenant Park, who was the Officer of the Day, sometime between 2330 on 30 May and 0130 on 31 May 1945 (R. 11, 14, 20). They went back to the building and Private First Class Mosier unlocked the door of the building and the storage locker where he had locked up the bag with the first-aid kits (R. 11, 21). He showed First Lieutenant Park how the first-aid kits had been taken from the harnesses (R. 21), and told him the accused's name and BOQ number (R. 23). Without counting the first-aid kits, First Lieutenant Park took the laundry bag to the garrison prison and locked it in the gun room (R. 11, 12, 14, 21). He then made a formal report of the incident and was called to the Provost Marshal's office at about 1100 on 31 May 1945 (R. 21, 22). Staff Sergeant Followell, who was Sergeant of the Guard on 31 May 1945, received a telephone call to bring the bag of kits to the Provost Marshal's office (R. 22, 24). He unlocked the gun room, took the bag to the Provost Marshal's office and gave it to First Lieutenant Park and Lieutenant Offshany, the Provost Marshal (R. 24, 25). The bag was tied and he did not open it (R. 25). Special Agents Thompson and Mulhall of the Federal Bureau of Investigation were in the Provost Marshal's office (R. 22, 26). Mr. Thompson opened the bag and counted 53 sealed first-aid kits (R. 27, 28). It was stipulated in writing by and between the prosecution, the defense and the accused that the value of the 53 parachute first-aid kits was $31.80 (R. 31; Pros. Ex. 4).

The accused, after being advised of his rights by Lieutenant Offshany and Special Agent Thompson, made an unsworn statement in writing on 31 May 1945 (R. 26, 27, 29). The accused was examined for about 45 minutes before giving the statement (R. 29). He appeared very tired and continually yawned (R. 28). He was not particularly nervous but he used his fingers and bit his fingernails (R. 28, 29). The statement was admitted in evidence (R. 27; Pros. Ex. 3).

The accused stated that he was 24 years old, a second lieutenant and a pilot at the Sioux City Army Air Base. On 18 December 1944 he had been operated for hernia and when he was released from the hospital about 18 January 1945 he immediately received a 30 day leave. He went to his home in Maple Heights, Ohio, and while there he got the desire to use morphine. In the first part of March 1945, about a week or two after he returned to the air base, he cut a first-aid kit off the harness of a parachute in Section I Building. He left the base in his car, removed the syrette containing morphine from the kit and injected the morphine into his left arm. He continued to take kits from Section I Building until 24 or 25 May when he cut off 12 with a razor blade. At about 2000 on 30 May he went to the Operations Building for Section III and secured the key to the parachute equipment building. The building was unlocked. He bolted the door and started cutting off the first-aid kits and putting them in a brown Army sack. While he was doing this, a soldier broke into the building by pushing in the door. He did not know how many kits he took from Section I. The morphine habit grew. At first he was satisfied with one syrette every two days and then it grew

to two every day. Some days he took as many as six syrette injections. The first time that he took syrettes from Section III was on 30 May 1945. (Pros. Ex. 3).

After being advised of his rights the accused made a sworn statement on 6 August 1945 to Major Ryder, the Investigating Officer (R. 9, 10; Pros. Exs. 1, 2). The statements that he made to Special Agents Mulhall and Thompson were substantially correct except that 20 March 1945 was the correct date when he started taking morphine. He admitted Charges I and II "with the exception of the intent which has been previously stated in former testimony by me." After he was discovered taking morphine he was hospitalized for 28 days and recovered satisfactorily from its effects. Statements made by him on or about 31 May 1945 were made while he was in a highly nervous condition (Pros. Ex. 2).

Specification, Charge III

Morning Reports, (R. 31; Pros. Ex. 6), supported by the stipulated testimony of the Squadron Commander (R. 31; Pros. Ex. 5), showed the accused: "3 Aug 45 Dy to AWOL 0001," "5 Aug 45 AWOL TO dy 1800 4 Aug 45."

In his sworn statement of 6 August 1945 to Major Ryder, the Investigating Officer, the accused stated that the charge of violating Article of War 61 was substantially true. He had been doing nothing around the base for 30 days. He asked for a 3 day pass to see his brother who was home on a 30 day leave from Europe but he "was unable to get it because of the circumstances." On 2 August 1945 he could not locate Lieutenant Hannin to find if there was any change in his status. He left at approximately 0001 on 3 August 1945 to see his brother whom he had not seen for three and a half years and who was going to the South Pacific. Before leaving he left his sister-in-law's telephone number. When he was contacted by Lieutenant Hannin by telephone he returned immediately and arrived at approximately 1800 on 4 August 1945 (Pros. Ex. 2).

4. The accused testified (R. 33). On 7 January 1941 he had an acute appendectomy operation (R. 33). While he was in the hospital during and after the operation morphine was administered to him (R. 33). In August of 1942 his enlistment in the cadets was rejected because of a deviation in the right side of his nose (R. 34). In September 1942 an operation was performed on his nose and he was given morphine before the operation and afterward to ease severe head pains and headaches (R. 34). After being released he had a hemorrhage and later a local operation for a swelling in his nose for both of which morphine was administered (R. 34). His active service in the cadets began on 1 February 1943 (R. 34). He again received morphine when he was operated for a left inguinal hernia on 3 or 4 June 1943 (R. 34). On 1 October 1944 he came to Sioux City Army Air Base as a flight officer and was placed in the replacement pool to await his commission as a second lieutenant

so that he could become an airplane commander of four engine equipment (R. 34, 35). He had an operation for a right inguinal hernia on 18 or 19 December 1944 (R. 35). Before the operation he was given amytol and morphine (R. 35). The spinal anesthetic did not take effect and he felt pain and went into shock (R. 35). After he left the hospital he was nervous and could not sit still (R. 35). He had a 30 day leave and when he got back he reported that he had pain in the abdominal region, right testicle and right leg (R. 36). In March of 1945 he was given a crew but the first time he flew he got sick and the second time he had trouble flying and worried because he thought he was losing the knack of flying (R. 36). That night he was taken to the base hospital in an ambulance and stayed almost a week for treatments for nasal laryngitis, though he told the medical officers that his trouble was "just plain fatigue" (R. 37). He was also "worried sick" over family matters. His wife could not have a child, they were of different religions and his sister-in-law was a "two-bit whore" (R. 37). When he was put up for a check ride with the Standardization Board on 20 March 1945 he injected the morphine from the syrette from his first-aid kit and passed the check ride (R. 37). In the latter part of March or April he started taking morphine from the first-aid kits in the parachute room and took it home (R. 37). After a while the morphine did not seem to be having any effect but only made him sweat (R. 38). On 30 May when he was apprehended he had taken about three grains of morphine (R. 38). The next day he was to ship to Ardmore, Oklahoma. He secured the key to the Section 3 operations parachute room but when he arrived there the door was open and the light was lit (R. 38). He went in, locked the door and filled the laundry bag with first-aid kits (R. 38). On his way out he started to get a stricken conscience and began to unload the bag behind the counter when he heard someone at the door (R. 38). By the time he got through the counter gate, the door had been kicked open (R. 38). He gave Private First Class Mosier an alibi and his name and address and was there about 15 minutes while the enlisted man checked the parachutes (R. 39). The Military Police called for him at his home about 0130 or 0200 on 31 May and he went to the base and told the same story to First Lieutenant Park (R. 39). That day he talked to Lieutenant Offshany and the Special Agents of the Federal Bureau of Investigation and was advised of his rights (R. 39). The same day he was put in the hospital and remained for 28 days (R. 39). When he was released his base pass was returned and he was told to report to Lieutenant Offshany for orders and to keep in touch with him by calling every day because there would be papers to sign (R. 39, 40). The accused contacted him every day and signed papers for about 10 days but after that was told to contact him once a week (R. 40). The accused's brother arrived from Europe on 4 July and came home on a 30 day leave (R. 41). He had not seen his brother for approximately three and a half years and his father wrote a letter asking him to get a leave (R. 41). On 2 August after 1600 he went out to the base to see Lieutenant Hannin, the Courts and Boards Officer, but he had left for the afternoon (R. 41). When he went to see his brother, he left his telephone number (R. 41, 47). As soon as

he arrived home his father told him that a call had come from the base (R. 41). He immediately called Lieutenant Hannin and was told to report the next morning, Saturday, at 0800 (R. 42). He tried to get back and called Lieutenant Hannin when he was 100 miles from Sioux City and was told to report at 0800 on Monday, 6 August (R. 42). During this time he was unassigned and was not performing any duties (R. 42).

Under cross-examination the accused testified that he had asked Lieutenant Hannin about the second week in July whether he could get a 3 day pass and was told not to try (R. 42, 43). He never secured permission from any officer to go to Ohio which was around 700 miles (R. 43). On the night of 30 May he cut the first-aid kits from harnesses with a razor blade that he had in his car (R. 43). He was in a replacement training unit and all crews were shipped to Ardmore on 31 May when Sioux City Army Air Base was being changed over to B-29's (R. 43, 44). After his operation in March 1945 he began to have a fear of the B-17 and had no faith in the ship (R. 44). He did not know if he would have the fear in any other ship because he had not been in any other ship (R. 44). Prior to that time he had not been giving himself injections of morphine (R. 44). Temporarily the morphine seemed to overcome his fear (R. 44). He was almost ready to go overseas and tried his best to go (R. 44). He inquired about getting relieved from flying but did not mention his fear of the B-17 (R. 44). He did not seek assistance concerning his family affairs because if his sister-in-law's conduct became known it would embarrass his father-in-law, who was a minister (R. 44, 45). He never sought the advice of a psychiatrist concerning his fear of the B-17 and never advised the medical officers that he was taking morphine (R. 47, 48).

On redirect examination the accused stated that he had not had any previous fear of flying (R. 45). He wanted to go overseas with his crew and took the morphine so that he could fly (R. 45). He was married on 3 December 1944 and all his worries came after that (R. 45). About 1 March 1945 he was first assigned to a crew (R. 45). He had never been told that he was required to stay within any fixed distance of Sioux City and the base policy regarding the distance had never been explained to him (R. 47). On the night of 30 May he thought that he was under the influence of morphine when he went to the parachute building because he had taken three grains of morphine during the day (R. 48).

On examination by the court the accused admitted that when he went into the Parachute Building on 30 May he was taking first-aid kits but he was only interested in the morphine that was in the kits (R. 46). He did not know how many first-aid kits he took but he was present when Mr. Thompson counted 53 (R. 46). He was absent without leave from Sioux City Army Air Base from 3 August to 4 August 1945 and no one had told him that he could leave (R. 46, 47). He has never read the base regulation that states the limit that an officer may go from the base without orders (R. 47).

It was stipulated by and between the prosecution, the defense and the accused that if the following persons were present they would testify substantially as follows concerning the accused's character (R. 32). Frank H. Vacha, Chief of Police, Maple Heights, Ohio, has known the accused for the past 20 years and found him to be honest, ambitious and cooperative. He comes from a fine family who are highly respected in the community (R. 32). The Reverend Joseph W. Koudelka, Pastor of St. Wenceslaus Church, Maple Heights, Ohio, would testify that the accused was a former student in the parish school, is honest and ambitious and can be trusted anywhere (R. 32). Mr. A. E. Hadfield, Superintendent of Schools, Maple Heights, Ohio, would testify that the accused graduated from Maple Heights High School in June 1939 in the upper fourth of his class. On the OSU Psychological Test his centile rank was 78. He comes of a good family, is respected by pupils and teachers alike and is of excellent character (R. 32, 33). It was further stipulated that if Captain Gerald R. Bausch, Medical Corps, were present, he would testify in accordance with a sworn statement made by him to Major Ryder, the Investigating Officer (R. 48, 49). He had examined and observed the accused from 31 May to 23 June 1945 in the Station Hospital (R. 48). The accused admitted his fear of flying and that he had taken morphine to quiet his nerves (R. 48). He expressed a sigh of relief when he was advised that he would not have to fly again (R. 48). It is his opinion that if the accused were to return to flying he would again start taking morphine to combat his fear of flying (R. 48, 49). It was further stipulated that if the Reverend C. E. Fredricksen, Pastor of the St. Paul Luthern Church, Carroll, Nebraska, were present he would testify in accordance with a letter dated 29 June 1945 (R. 49). He had made pastoral calls on the accused during his operation in December 1944 and the accused spent part of his convalescent leave in his home. Early in March 1945 he perceived that the accused was becoming more and more restless and nervous, losing hold on himself and going down to nothing in weight and health (R. 49, 50).

5. The accused officer, having become more or less addicted to the use of morphine as a result of a series of surgical operations wherein that drug was employed, entered a Parachute Building of a Section other than his own, at a time when the building was unguarded and bolted the door behind him. There he cut loose from parachute harnesses fifty-three first-aid kits containing syrettes of morphine which he had placed in a laundry bag to take away when he was interrupted by the return of the soldier in charge of the building who broke in the door and discovered him. The clear and admitted purpose of the accused was to steal the morphine. The record is somewhat unsatisfactory in its failure to show the extent of his addiction and lack of medical testimony as to the effect of that condition upon the mental responsibility of the accused. However, he was not driven by a craving for the use of the drug at that time, as he had had three grains that day. His purpose was not immediate relief, but future supply, as by his own testimony he sought to equip himself with a plenty of morphine in view of an impending change of

station. Medical testimony was readily available to either side, but the accused introduced only the stipulated testimony of a medical officer to show that his use of morphine was impelled by his fear of flying and that he would probably return to the use of the drug if he were required to fly. The accused pleaded guilty to the charges of housebreaking and larceny.

The first-aid kits taken by the accused were military property, of the specified value of $31.80. Although their asportation by the accused was interrupted by the timely return of the custodian, the larceny was complete. (CM 144215, Watson, Dig. Op. JAG 1912-40, sec. 452 (1), Dig. Op. JAG 1922, p. 62).

The evidence was sufficient to support the findings of guilty of the offenses above discussed as well as of the additional offense of absence without leave for one day on a later occasion, as specified, when the accused went without permission beyond the authorized distance from his station, to visit his home and see his brother, returned from service overseas.

Colonel Schauffler, the President of the Court, withdrew from the court while the prosecution's second witness was being examined and took no further part in the consideration of the case (R. 12). While the witness was testifying, this officer realized that he had previously studied the same evidence either in connection with reclassification proceedings or as a member of a Flying Evaluation Board (R. 12). The action of the President was in conformity with the provisions of the Manual for Courts-Martial, 1928, paragraph 57, and no substantial right of the accused was affected.

6. War Department records show that the accused is 24 years of age and the record of trial shows that he is married. He is a native of Ohio and a resident of Maple Heights, Ohio. He is a graduate of high school and attended Ohio State University for two years and Case School of Applied Science for a half year majoring in electrical engineering but did not graduate from either. In civilian life he was employed from July 1942 to February 1943 in Lynn, Massachusetts by General Electric Company as a test engineer on new designs of aircraft turbosuperchargers. He enlisted in the Army 1 February 1943 and became an aviation cadet. He was appointed a flight officer on 23 May 1944 upon graduation from the Pilot School, Advance Twin Engine, Fort Sumner, New Mexico, and was ordered to active duty in the Air Corps. On 8 November 1944 he was appointed a second lieutenant, Army of the United States, and ordered to active duty in the Air Corps.

7. The court was legally constituted and had jurisdiction of the person and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally

sufficient to support the findings of guilty, to support the sentence as approved by the reviewing authority, and to warrant confirmation thereof. Dismissal is authorized for the violation by an officer of Articles of War 93, 94 and 61.

W. L. Partlow, Jr., Judge Advocate.

A. R. Fiero, Judge Advocate.

Donald D. Hickman, Judge Advocate.

SPJGQ - CM 286742 1st Ind NOV 2 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant William J. Chylik (0-928307), Air Corps.

2. Upon trial by general court-martial this officer pleaded guilty to and was found guilty of housebreaking by the unlawful entry of a parachute building at Sioux City Army Air Base, Sioux City, Iowa, on 30 May 1945 in violation of Article of War 93 (Specification, Charge I) and larceny of military property, fifty-three parachute first-aid kits of the value of $31.80, at the same time and place, in violation of Article of War 94 (Specification, Charge II). Upon pleas of not guilty, he was also found guilty of absence without leave for one day from his organization at the same Base from 3 August to 4 August 1945, in violation of Article of War 61 (Specification, Charge III). He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for two (2) years. The reviewing authority approved only so much of the sentence as provided for dismissal, forfeiture of all pay and allowances due or to become due and confinement at hard labor for one (1) year, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence, as approved by the reviewing authority, and to warrant confirmation of the sentence. I concur in that opinion.

At Sioux City Army Air Base, Sioux City, Iowa, on the evening of 30 May 1945, the accused officer unlawfully entered a parachute building of a section other than his own, while the custodian was out and the building unoccupied. After bolting the door behind him, he cut fifty-three first-aid kits loose from parachute harnesses and had placed them in a laundry bag to take away when he was discovered and interrupted by the return of the building custodian. The kits were military property of the value of $31.80. The purpose of the accused was to steal the first-aid kits for the morphine contained in them. He had become addicted to morphine as a result of the medical use of that drug in a series of surgical operations which he had undergone before and during his military service, and to quiet his nerves and

allay a fear of flying which he had developed. His other offense, absence without leave from 3 to 4 August 1945, occurred when he went without permission from his station at Sioux City, Iowa, to his home in Ohio to see his brother, returned from service overseas. The extent of the accused's drug addiction is somewhat unsatisfactorily defined by the sparse medical testimony in the record, but his actions were not impelled by craving for morphine for immediate relief, as, by his own testimony, he had had three grains that day, and his purpose was to supply himself with the drug in view of an impending change of station. It is clear, however, that the offense had its origin and motivation in the drug addiction of the accused rather than in any basic criminality of character.

I recommend that the sentence as approved by the reviewing authority be confirmed, but that the forfeitures be remitted, that the sentence as thus modified be carried into execution, and that a United States Disciplinary Barracks be designated as the place of confinement.

4. Inclosed is a form of action designed to carry into effect the foregoing recommendation, should it meet with your approval.

2 Incls
1 - Record of trial
2 - Form of action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence as confirmed by reviewing authority confirmed but forfeitures remitted. Sentence as modified ordered executed. GCMO 474, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGK - CM 286874

25 SEP 1945

UNITED STATES v. Second Lieutenant GORDON H. EDWARDS (0-1997067), Medical Administrative Corps.	FOURTH SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Camp Shelby, Mississippi, 4 September 1945. Dismissal.

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 93rd Article of War.

Specification: In that Second Lieutenant Gordon H. Edwards, Medical Administrative Corps, 1473 Service Command Unit, Camp Shelby, Mississippi, did, at Jackson, Mississippi, on or about 25 July 1945, with intent to commit a felony, viz, rape, commit an assault upon Juliette McDonald by willfully and feloniously seizing the said Juliette McDonald, laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts, and attempting to throw her on the floor.

He pleaded not guilty to the Charge and Specification. He was found guilty except the words, "with intent to commit a felony, viz, rape; commit an assault upon Juliette McDonald by willfully and feloniously seizing the said Juliette McDonald, laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts, and attempting to throw her on the floor," substituting therefor the words, "wrongfully assault Juliette McDonald by laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts without her consent," of the excepted words, not guilty, and of the substituted words, guilty, in violation of Article of War 95, and was sentenced to be dismissed the service. No evidence of any previous conviction was introduced. The reviewing authority approved only so much of the findings of guilty as involved wrongfully assaulting, at the time and place alleged, Juliette McDonald by laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts without her consent in violation of Article of War 96, approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution shows that about 0200 hours on 25 July 1945, the accused (later identified by Juliette McDonald as her assailant), who had been drinking but was not drunk, entered an elevator in the Edwards Hotel, Jackson, Mississippi, and asked to be taken to the 12th floor where he had engaged a room the day before. The elevator was operated by Juliette McDonald, a 20-year old negro woman, then seven months pregnant. Upon reaching the designated floor, the operator then opened the door of the elevator for accused to leave. Accused told her that he was not going to get off, and after the operator informed him she would return him to the first floor, said that he was not going back there. When she attempted to go to the first floor, accused grabbed the operating handle and stopped the elevator. He pushed the operator, started scuffling with her and said, "Aw, come on, I will pay you." She refused his offer. Without permission, he "grabbed" her in "her privates" under her skirt, tearing loose the "undies" which had been fastened with a pin. With his other hand, he held her shoulder and attempted to throw her to the floor of the elevator. Accused, also, "unzipped" his trousers. His victim was afraid of him and made no outcry. About ten or fifteen minutes after the elevator had left the first floor, a bell boy, observing that it stayed at the 12th floor, went to that floor in another elevator to ascertain the cause of the delay in returning. He observed through the glass panels on the door a "soldier" struggling with and apparently "choking" Juliette McDonald. Accused then "got off the elevator and went to the room" and the operator was taken down to the first floor in the other elevator (R. 7-12,15,17,19-24,26,27,29-31, 33-35,38-40,43,44).

A short time later, the hotel detective and the military police were summoned. They brought Juliette to the door of accused's room to identify him. Accused was attired only in his undergarments and the light was not bright. At first, she stated that she did not recognize him but immediately thereafter said, "I can't tell because he is not dressed." About thirty minutes later, when accused was brought, under arrest, to the lobby of the hotel, she definitely recognized him as her assailant (R. 13,14, 32,43,45-50,52-55,59-64).

Juliette McDonald was examined by a doctor "that morning." The examination disclosed "a cut in the left side of the vulva just external to the vaginal orifice *** about 3/4 of an inch in length and about 1/16th of an inch in depth." She testified that the cut was caused by accused's attack. Several spots which were red or brown in color appeared on the floor of the elevator, on the victim's "undies" and also on accused's trousers (R. 13,16,25,28,37,64,65,66; Pros. Ex. H).

Photographs of the hotel lobby and the exterior and interior of the elevator in which the assault occurred were introduced in evidence (R. 56-58; Pros. Exs. A-G).

4. For the defense, it was stipulated that if Robert Wehr were present in court he would testify that he is a professor at Florida State College, Lakeland, Florida, that he has known accused for five years, that accused worked his way through college, that accused's father died when accused was 14 years of age, that accused was physical education instructor during his last college year, that accused was president of his fraternity and a member of the interfraternity council, that he has never known anything to reflect on accused's good moral character, and that accused graduated from Medical Administrative Corps Officers' Candidate School on 28 March 1945 (R. 66, Def. Ex. 1).

A letter from Major Herold L. Crook was introduced in evidence without objection (R. 66). In this letter, it is stated that Major Crook saw accused "several times daily" from 12 May 1945 to 15 June 1945 at Kennedy General Hospital, Memphis, Tennessee, that accused was prompt and courteous in performing his duties as "M.A.C." for Wards 4, 5 and 6, and that he would "rate" accused as follows: Character - excellent; leadership-excellent; aggressiveness - superior; initiative - superior, and attention to duty - excellent (R. 66; Def. Ex. 2).

It was stipulated that at the time of trial the accused was 20 years of age.

Accused, after an explanation of his rights as a witness, elected to remain silent (R. 67).

5. It is unnecessary to recapitulate the evidence which clearly and abundantly establishes that the accused at the time and place alleged, without justification or excuse, assaulted in an obscene and strenuous manner a young colored woman who was operating a hotel elevator in which the attack occurred. The evidence beyond a reasonable doubt establishes every element of the offense of which the accused was found guilty in violation of Article of War 96.

6. War Department records disclose that this officer is 20-1/2 years of age, single and is a high school graduate. He attended Florida Southern College as a pre-medical student for three years but did not graduate. He entered the service on 1 May 1944 and upon subsequent attendance at the Medical Administrative Corps Officer Candidate School, Carlisle Barracks, Carlisle, Pennsylvania, he was, on 28 March 1945, temporarily appointed and commissioned a second lieutenant in the Medical Administrative Corps, Army of the United States.

7. The court was legally constituted and had jurisdiction of the person and subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty as approved by the reviewing authority and the sentence and to

warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 96.

Charles G. Luckie, Judge Advocate

On Leave, Judge Advocate

Charles S. Lyles, Judge Advocate

SPJGK - CM 286874 1st Ind SEP 28 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Gordon H. Edwards (0-1997067), Medical Administrative Corps.

2. Upon trial by general court-martial this officer pleaded not guilty to a violation of the 93rd Article of War and its Specification thereunder alleging assault with intent to commit rape. He was found guilty except the words, "with intent to commit a felony, viz, rape; commit an assault upon Juliette McDonald by willfully and feloniously seizing the said Juliette McDonald, laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts, and attempting to throw her on the floor," substituting therefor the words, "wrongfully assault Juliette McDonald by laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts without her consent," of the excepted words, not guilty, and of the substituted words, guilty, in violation of Article of War 95. He was sentenced to be dismissed the service. No evidence was introduced of any previous conviction. The reviewing authority approved only so much of the findings of guilty as involved wrongfully assaulting, at the time and place alleged, Juliette McDonald by laying his hands upon her, holding her, placing his hands under her clothing and upon her private parts without her consent in violation of Article of War 96, approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and sentence and to warrant confirmation of the sentence.

At about 0200 on 25 July 1945 accused entered an elevator of the hotel at which he was staying and asked the 20-year old negro woman operator to take him to the twelfth floor. Upon arrival at the designated floor he refused to leave the elevator. When the operator attempted to return accused to the first floor he grabbed the operating handle of the elevator and stopped it. He then began scuffling with her and said, "Aw, come on, I will pay you." Upon refusal of his offer and without her consent, he "grabbed" her in "her privates" under her skirt, tearing loose her "undies" and attempted to throw her to the floor. He "unzipped" his trousers. Upon being observed by a bell boy he got off the elevator and went to his room.

A medical examination of the female operator disclosed "a cut in the left side of the vulva just external to the vaginal orifice *** about 3/4 of an inch in length and about 1/16th of an inch in depth" which she testified resulted from accused's attack.

Accused's conduct was inexcusable. I recommend that the findings of guilty as approved by the reviewing authority and the sentence be confirmed and carried into execution.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

Myron C. Cramer

2 Incls
1. Record of trial
2. Form of action

MYRON C. CRAMER
Major General
The Judge Advocate General

(Sentence confirmed and ordered executed. GCMO 478, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGH - CM 288015

UNITED STATES v. First Lieutenant ANDREW W. GILES (0-1171550), Air Corps.	ARMY AIR FORCES EASTERN FLYING TRAINING COMMAND Trial by G.C.M., convened at Maxwell Field, Alabama, 21 and 22 August 1945. Dismissal, total forfeitures and confinement for five (5) years.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 92nd Article of War.

Specification: In that First Lieutenant Andrew W. Giles, Squadron H, 2132nd AAF Base Unit, Maxwell Field, Alabama, did, at Montgomery, Alabama, on or about 14 June 1945, forcibly and feloniously, against her will, have carnal knowledge of one Annie C. Brown.

CHARGE II: Violation of the 93rd Article of War.

Specification: In that First Lieutenant Andrew W. Giles, *** did, at Montgomery, Alabama, on or about 14 June 1945, commit the crime of sodomy, by feloniously and against the order of nature, having carnal connection, per os, with one Annie C. Brown.

Accused pleaded not guilty to all Charges and Specifications. He was found guilty of only so much of the Specification of Charge I as involves an attempt to rape, not guilty of Charge I but guilty of a violation of the 96th Article of War, and guilty of Charge II and its Specification. No evidence of any previous conviction was introduced. He was sentenced to dismissal, total forfeitures and confinement for five years. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The prosecution introduced evidence to show that about 9 p.m. on the evening of 14 June 1945, the prosecutrix, Polly Brown, accompanied by four other girls, Helen Keevan, Georgia Ellen Tucker, Lottie Rudder and Jo Ellen Rudder, the last two named girls being cousins of the prosecutrix, visited an establishment known as the Blue Room in Montgomery, Alabama. Polly Brown was eighteen years of age and unmarried (R. 7-9, 72, 73, 88, 100). The accused who was also at the Blue Room came to the table occupied by the girls, asked Polly for a dance and thereafter danced with her several times. At Polly's invitation he joined the girls at their table. Eventually a private and a sergeant also joined the group. During the hour the girls were at the Blue Room they each consumed one mixed drink of rum and Coca Cola. About 10 p.m. the group left the Blue Room to visit another establishment known as The High Hat. Accused conveyed the party in his bluish-green convertible Ford Automobile, stopping on the way at a fruit stand to see if he could cash a check inasmuch as he was practically out of funds. At the High Hat Polly again danced several times with accused and consumed nothing stronger than a drink of Coca Cola. Sometime between 11 and 11:30 p.m. the girls prepared to leave since Polly's mother had told them to be home by 11:30 p.m. (R. 9-12, 31, 72-75, 80, 88-90, 100-103, 133). Up to this point accused's conduct had been polite and courteous (R. 94).

Polly and accused walked from the High Hat while the rest of the party lingered for a few minutes until one of the girls finished dancing. After Polly entered his automobile, accused ran it in reverse gear for a short ways, turned it about and then instead of stopping at the entrance to the High Hat drove off with Polly at a rapid rate of speed. Polly's girl friends emerged from the High Hat about the time accused sped away and eventually two of them went with a taxi driver to search for her but without success. During the ride Polly screamed and begged accused to let her out of the automobile but accused continued on his course informing her that he had something which would make her stop screaming and also threatening to wreck the auto if she refused to be quiet. Eventually accused turned down a narrow wooded country road known as Narrow Lane Road and brought the car to a stop near a bridge (R. 12-14, 19, 20, 32, 33, 64, 75, 76, 82, 92, 104, 105).

Accused then demanded that Polly remove her underpants. She refused to do so and jumping from the automobile she fled down the road but accused overtook her and pulled her back to the auto. He then drove off slowly commencing to remove his shirt and trousers and holding Polly by the arm as she sought to leave the car. After removing his shirt he brought the slowly moving vehicle to a stop near a second bridge and completed the removal of his trousers (R. 14, 39, 41, 42, 63, 64). He again insisted that Polly remove her pants and when she refused to do so, he removed them while she screamed and tried to get away. She was menstruating at the time and was wearing a sanitary pad inside two pairs of pants. After accused removed both pairs of pants he forced Polly down upon the seat with her feet pointed toward the steering wheel and her

head hanging out of the opposite door. Despite her entreaties that he desist, he forced her legs apart with his hands and putting one of his legs on the seat and the other under the steering wheel he lay upon her and inserted his penis about an inch into her vagina, holding one of her arms behind her and placing one of his hands over her mouth. She tried to rise but was unable to because, as she expressed it, accused "was a man weighing 200 and I only weigh 90 pounds" (R. 14, 15, 42-47, 64, 65). Although she pushed accused and managed to close her legs once, accused pried them open. He could not effect a deep penetration with his sexual organ but penetrated to such extent that for three days thereafter she walked "straddled legs" (R. 14, 15, 42-47, 64-69).

Accused remained on top of Polly for about five minutes but did not complete the act of intercourse. He then informed Polly that if he could not accomplish his purpose in that manner she could do it by mouth. As he permitted her to rise she jumped from the auto and fled down the road. Crossing a wooden bridge she caught her heel in the planking and fell bruising her lips and skinning her knees. Overtaking her accused dragged her back to the auto and then drove on aways until he neared another bridge where he came to a stop (R. 15-17, 48-50, 85). Then, grasping her head he forced it down toward his penis and as she screamed "he rammed it" into her mouth. Moving her head up and down he told her "a little less of the teeth and a little more of the tongue" and then instructed her to rub his stomach and play with his testicles. She complied with his last instructions because, as she expressed it, "I couldn't help myself" and "I thought if I didn't do everything he would kill me" (R. 19, 20, 52, 53, 69). Polly struggled for several minutes to remove her head until finally accused released her as an automobile approached from the rear, warning her not to "try any funny business." Accused started his automobile and as he began to drive off, Polly jumped from the car landing in a ditch alongside the road and tearing her dress on a barbed wire fence. She crawled from the ditch as accused's auto moved off and hailed a truck operated by one John Hannon which was just passing. The truck failed to stop and Polly then ran to the other side of the road and concealed herself in the bushes bordering it (R. 20, 21, 55-57).

It was about midnight as John Hannon approached to within 200 to 225 feet of accused's parked automobile and saw a woman get out of the car. The lights of accused's car then flashed on and as it was driven off across the bridge nearby its lights were extinguished. As Hannon drew opposite the place where accused's car had been parked, he saw Polly run into the road shouting and waving her hands but he refused to stop. Proceeding to a neighbor's house farther down the road, Hannon awakened William Granthum and the two returned to the scene in Hannon's truck. Accused's auto passed them as they drove slowly along looking for the girl (R. 110-114, 125, 126). Polly who had remained concealed in the roadside bushes for some thirty minutes during which accused's auto passed by three times shouted as Hannon's truck approached her hiding

place. As she clambered aboard the truck she was upset and crying, her hands and arms were scratched, her hair disarranged and her clothing soiled. She complained that a soldier threatened her life, treated her roughly, attempted to rape her and that when she once escaped from him he pushed her to the gravel road. She also made some statement about having thought that accused possessed a gun and a hypodermic needle. Harmon conveyed her to the High Hat and finding her friends had departed he then brought her to her home (R. 23, 24, 54, 114-116, 119-121, 123, 126-130).

Arriving home about 1 a.m. Polly put on a pair of pants and her sister aroused her mother to whom Polly complained that she had been mistreated by accused and pointed to her mouth. Polly could hardly walk, her lips were bruised, her arms and legs cut and scratched, her neck red, her dress torn and soiled and her hair mussed. Her lips had been damaged by her fall on the bridge and her dress torn by the barbed wire and soiled from the ditch (R. 22, 24, 57, 77, 93, 133-135). Shortly thereafter Polly and her folks drove off to search for the other girls who had been with Polly and met them at a nearby corner coming home in a taxicab (R. 58, 76, 77, 82, 83, 92, 93).

Three days later on Sunday, 17 June 1945, Polly and some girl friends were walking about at a place called Oak Park where they met a Lieutenant Williams who was a friend of a neighbor of Polly's. After some conversation, Polly related at least a portion of her experience with accused. She told him no "act" had been committed but probably would have been if an auto had not come past. The lieutenant told her to report it to the provost marshal but Polly never did so. Lieutenant Williams also asked her what damage had been done and Polly stated that her girl friends had incurred $14 taxicab fare searching for her and that she had suffered $5 damage to her shoes and $15 damage to her dress (R. 26-29). The dress she had worn that night belonged to her friend Helen Keevan (R. 30). Thereafter Lieutenant Williams called at her house on the following Monday evening and telephoned her on Tuesday (R. 59). Also, some several days after this affair, an officer telephoned Polly, identifying himself as the provost marshal and informed her that she had not been raped, that she could do nothing about the matter and asked her what monetary damages she had suffered. This telephone call came a few days after "Mrs. Giles" had telephoned Polly and then called at her home. She had told Polly that accused had been doped and that she was working at the Post Exchange to save money for an expected baby. This woman again visited Polly on 22 June 1945, after Polly had been examined the day before by Dr. Buchanan who charged $5 for his services, and left $39 saying she would feel "better about it" although Polly's mother did not wish to accept it (R. 30, 60-62, 125, 126, 136-140). Polly and her mother later saw accused's wife and she was not the same woman as the one who had previously so identified herself (R. 63, 137). The dress Polly had worn on the night in question belonged to Helen Keevan but she had not received $15 for it from Polly (R. 98).

On cross-examination Polly was confronted with three statements she had made prior to trial. The following discrepancies as to the course of events existed between her testimony at the trial and the matter contained in the statements. In the statements she related that accused stopped his auto but once, and that accused removed her pants before he removed his clothing (R. 35-40). One substantial discrepancy existed which was that in at least one of the statements she asserted that accused attempted to penetrate her "but didn't get his penis in." Her explanation given on the stand was "I didn't know how to say it. I meant he didn't perform his act. He got it in me just a little ways - not all the way" (R. 71).

4. The defense introduced the testimony of four individuals, three of whom were or had been officers in the Army of the United States. They variously asserted that accused's reputation for truth and veracity was good (R. 142-146, 162, 163).

The defense also introduced evidence to show that about 1 a.m., 15 June 1945, about an hour after the alleged criminal assault, accused entered his organization's mess hall and had a small repast with Lieutenant Robert E. Holland. The latter noted nothing abnormal in accused's appearance at the time (R. 158). Later on the morning of 15 June 1945, Sergeant James R. Nelson had occasion to look over accused's automobile to see if it was worth what accused had paid for it and during the course of his examination he observed no blood nor woman's apparel on or in it nor anything to indicate that it had recently been washed (Def. Ex. 5). On the following day, 16 June 1945, accused was operated on at his station hospital (R. 160).

There was introduced in evidence a chronological record of accused's military experience which showed that from October 1942 until July 1945 accused served variously as radio officer, munition officer, flying trainee, flying instructor and pilot, receiving three performance ratings of "excellent" and four of "very satisfactory" (R. 161 and Ex.).

After his rights had been fully explained to him, accused elected to give sworn testimony in his own behalf and he testified as follows. He was twenty-four years of age and married. On 12 June 1945 he was admitted to the hospital to undergo an operation for a pilonidal cyst and on the evening of 14 June 1945, receiving an overnight pass, he visited the Blue Room where he met and danced with Polly Brown and eventually joined her group composed of four other girls and two soldiers. Accused had several drinks and several dances with Polly. Thereafter she suggested that they all visit the High Hat but accused sought to excuse himself by claiming he was out of funds although he had over $20 (R. 164-167). After consuming about four or five drinks at the Blue Room accused felt dizzy and nauseated. The next thing he knew he was driving his automobile down a highway with Polly Brown beside him. He had no recollection of attempting to cash a check or of visiting the

High Hat with Polly and her friends (R. 168, 183). Feeling nauseated and having a slight headache as he drove down a road toward Narrow Lane Inn he stopped the auto near a bridge and informed Polly he was going to lower its collapsible top. Switching on the parking lights he stepped from the auto, "vomited a couple of times," re-entered the auto, motioned to Polly to unfasten the snaps on the auto's top and discovered she had disappeared (R. 168-170). He denied making love to Polly, attempting to rape her or committing sodomy. The only reason he could ascribe for her departure was that she had to urinate (R. 179, 188-190). Without leaving the auto he shined a flashlight about but could not locate her. He decided to shine his auto lights into the ditch bordering the road but seeing another auto approaching, he drove off slowly intending to turn around and return. After the other auto had turned onto another road, he returned and beamed his headlights around the ditch near the bridge. Thereafter he passed a panel truck which was proceeding along the road, concluded that Polly had secured a ride aboard it and then proceeded to his station where he visited the mess hall to have some eggs and milk (R. 170-173). He did not report Polly's disappearance because, as he expressed it, "I didn't think of it" (R. 213).

Accused was operated upon on the morning of 16 June 1945. The following day a Lieutenant Williams visited accused and told him that Polly claimed accused had caused her to tear her dress and break the heel of her shoes for all of which she wished to be compensated. The lieutenant returned the following day telling accused that Polly "told a story that she could work up real good." As accused started to write her name in his address book he noticed it was already written there. It was not in his handwriting and he did not know who had inserted it in the book (R. 175, 211, 212, 216, 221; Def. Exs. 8, 9). Later when Mrs. Phillips, a civilian employee of the Post Exchange, whom accused knew, was dispensing magazines and candy about the hospital, accused requested her to see Polly Brown and find out what all the trouble was about. He did not tell her to represent herself as Mrs. Giles. Mrs. Phillips visited the Browns on three occasions and paid them a total of $39 which included the doctor's bill of $5. Accused stated that he paid this sum of money "because Lieutenant Williams advised it and he said it would be the best thing to do until I could see the girl and I knew if she made a complaint it would be brought up in an investigation" (R. 176-178; Def. Ex. 6).

5. In rebuttal the prosecution called Lieutenant Herbert M. Williams and he testified as follows. On Sunday, 17 June 1945, about three days after the alleged assault, he met Polly Brown at a place called Oak Park where she was strolling with some girls whom he knew. Noticing that her arms were bruised and scratched he commenced to josh her whereupon she told him "the story" and wanted to know what to do about it. Polly stated that no "act" had been committed but that if an auto had not passed by there would have been. She stated that her pants had been removed but did not say that penetration had been effected or an act of

sodomy committed. The lieutenant told Polly she could contact accused if she wished reimbursement or if she wished "to straighten it the other way" she could complain to the provost marshal. Polly then asked him to see accused about the matter (R. 224, 227, 231, 236). Visiting accused the following day, Lieutenant Williams told him that he was supposed to have taken a girl in his automobile and to have tried "to go a little bit too far." Accused neither admitted nor denied it but merely said that he had probably had a few drinks and didn't know what he was doing and requested Lieutenant Williams to find out if the girl had been at the Blue Room (R. 225). The next day the lieutenant told accused he had learned more of the story. He also informed accused that Polly came from a poor family, that she had worn a borrowed dress on the night in question, that her family had incurred expenses for taxicab hire and that the matter could probably be settled by reimbursing Polly's family. Accused thereupon asked for Polly's telephone number. About a week later Lieutenant Williams saw accused again and the latter stated that his wife had straightened out the situation (R. 226, 231).

Polly Brown was recalled as a witness by the court and she testified that she wrote her name in accused's address book while they were at the High Hat, after accused suggested they have another date and presented the book to her. She also testified that she had not instituted the prosecution of accused, that some Mr. Light advised the provost marshal of the situation and thereafter the provost marshal contacted her concerning it (R. 238). She further stated that her mother had the $39 which accused had paid (R. 239).

6. Accused was charged, under Charge I and its Specification, with the offense of rape but was found guilty of the lesser included offense of attempt to rape. An attempt to commit rape is established by proof of an overt act done with the intent to rape and forming part of a series of acts which will apparently, if not interrupted by circumstances independent of the doer's will, result in commission of the crime of rape (MCM, 1928, par. 152c). Attempt to rape is closely related to the offense of assault with intent to rape (CM 229166, Bradford, 17 BR 61). The intent to rape is an essential element of each of these offenses. In either case to establish intent to rape the proof must show that accused intended to overcome any resistance by force, actual or constructive, and penetrate the woman's person (MCM, 1928, par. 149b). Something less than the requisite intent is established if accused's actions, although lacking finesse, demonstrate only a determination to gain the prosecutrix's express or implied acquiescence before satisfying his lecherous desires (CM 243927, Strong, 28 BR 129).

Furthermore, where a prosecutrix's testimony in a case involving a sexual offense is not clear and convincing and free from serious contradiction, a conviction of that offense may not be sustained if corroboration of her testimony is lacking (See CM 243927, Strong, 28 BR 129; Wharton's Criminal Evidence, 11 ed., Vol. 2, sec. 916). Although the

prosecutrix testified at the trial that actual penetration of her person had been forcibly effected by accused despite all resistance she was able to offer, in her complaint made promptly to her rescuers after conclusion of the events in question and in statements to the investigating officer and in a recitation of her experience made to another individual, she complained only of an attempted rape, asserted that the accused "didn't get his penis in" and that no "act" had been committed but that if an auto had not opportunely passed by there would have been. Such conflicting statements undoubtedly influenced the court in arriving at its findings of guilty of attempted rape rather than of rape. In addition to the foregoing, although prosecutrix testified at the trial that accused stopped his automobile at three different secluded spots during the progression of events and removed his clothing before he removed her underpants, in prior statements she asserted that accused had stopped his auto but once and removed her underpants before he removed his own clothing. Furthermore, she testified that while slowly driving the auto along the country road accused held her within the auto with one hand and also removed his shirt and commenced removal of his trousers, a concurrence of operations not easily performed. Thus, it is apparent that there are discrepancies in the various stories told by the prosecutrix with respect to the rape or attempted rape. In view of the foregoing, we must determine whether or not there was sufficient corroboration of the prosecutrix's testimony concerning the rape to justify the court in according credence to so much thereof as established attempt to rape.

Corroborating evidence must have some real supporting force and must tend to connect accused with the crime; it need not support her testimony as to all the essential elements of the offense but it must be of such character as to strengthen and support her story and connect accused with the crime (Wharton, supra, Vol. 2, sec. 919, and cases cited in notes).

Corroboration of prosecutrix's story as to alleged rape is found in the evidence showing that late at night accused drove her down a country road after separating her from her friends; that thereafter a passing motorist observed her leaving accused's automobile at a secluded spot whereupon accused drove off extinguishing his auto lights and she ran into the road and unsuccessfully sought to flag the motorist as he passed by; that she subsequently came from the undergrowth alongside the road with her clothing torn and arms scratched from briars and barbed wire, hailed a passing truck, climbed aboard it sobbing and distraught and promptly complained that accused attempted to rape her. Evidence as to her prompt complaint was admissible as a part of the res gestae (CM 232790, Brandon, 19 BR 193). These facts all compel the reasonable inference that prosecutrix was not willingly in accused's company on this lonely road, that she eventually escaped from him and that failing to obtain help from the driver of a passing truck, as accused fled from the scene, she sought refuge in the underbrush bordering the road. In the opinion of the Board of Review they constitute sufficient corroboration to warrant the court's findings of guilty of the offense of attempt to rape.

Sodomy consists of sexual connection, by rectum or by mouth, by a man with a human being (MCM, 1928, par. 149k). The prosecutrix's testimony concerning that offense clearly establishes its commission. Furthermore, to support her statement that accused forced her head down upon his penis by grasping her about the neck, there is the testimony of prosecutrix's mother and of several of her girl friends that after arriving home early the next morning they observed the reddened condition of her neck. She promptly complained to her mother that accused had mistreated her and pointed toward her mouth as she registered the complaint. This prompt complaint made to her mother as soon as she reached home was properly admitted in evidence as a part of the res gestae (CM 232790, Brandon, 19 BR 193). In the opinion of the Board of Review such evidence is sufficient to warrant the court's findings of guilty of the offense of sodomy.

Before concluding our comments, some mention should be made of accused's version of the night's events. Not only did he deny that any sexual relations, normal or abnormal, occurred between him and prosecutrix, but he denied making any overtures soliciting any such relations. He claimed he was so drunk that his mind was a blank for over an hour on the night in question, although the testimony of third parties reveals that he danced with prosecutrix and conducted himself normally during that time. He asserted that in his opinion the only reason prosecutrix left his automobile on the lonely road was to urinate. During her absence another motor vehicle approached the scene whereupon accused drove off extinguishing his lights. We can not understand why an individual should find it necessary furtively to steal away at the approach of another automobile while his female companion was indulging in the not unnatural act of relieving herself. Such conduct is so extraordinary that we are compelled to conclude that the trial court was correct in according no credence to accused's version of the progress of events. In addition, he testified that he eventually returned to his post because he believed his companion had obtained a ride in a passing truck. He also claimed that he did not report her disappearance from his auto because he did not think of it. Such lack of interest in the safety and well being of his youthful companion is to be expected from one who had behaved as prosecutrix asserted but is at the very least unusual behavior if accused's conduct had been as harmless as he contended. The court was fully justified in rejecting accused's story as improbable and contrary to human experience.

In addition to the foregoing, although accused testified that he did not authorize his female mediator to represent herself to prosecutrix and her family as accused's wife, the testimony of a third person established that soon after she had made a most moderate monetary payment to prosecutrix's mother, accused stated that his wife had straightened out his difficulties with prosecutrix. This discrepancy not only casts serious doubt upon accused's version of the settlement but lends credence to the testimony given by prosecutrix and her mother as to the marital

representations made by this woman obviously to elicit their sympathy and induce them to refrain from complaining against accused.

7. On 17 October 1945, Senator James O. Eastland of Mississippi, and Representative Henry D. Larcade, Jr. of Louisiana, appeared before the Board of Review on behalf of the accused and were accorded a full hearing.

8. Accused is 24 years of age and is married. After graduation from high school he worked for six months in the survey section of a drainage district and from 1938 to 1940 was employed as an assistant laboratory technician by Barrow-Agee Laboratories, Inc. He was a member of the National Guard of Mississippi from 5 February 1940 to 25 November 1940, and on the latter date entered active military service. On 15 October 1942 accused was commissioned a second lieutenant after successfully completing the course of instruction at the Field Artillery School, Fort Sill, Oklahoma. On 13 February 1945 he was promoted to first lieutenant.

9. The court was legally constituted and had jurisdiction of the accused and the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. The sentence imposed is authorized upon a conviction of a violation of either Article of War 92 or Article of War 93.

Thomas H. Dolle, Judge Advocate

William H. Rawles, Judge Advocate

Robert E. Thornton, Judge Advocate

SPJGH-CM 288015 1st Ind NOV 8 1945

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Andrew W. Giles (0-1171550), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of an attempt to rape in violation of Article of War 96 and of sodomy in violation of Article of War 93, both offenses committed upon an eighteen-year old girl. He was sentenced to dismissal, total forfeitures and confinement for five years. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. I concur in that opinion. On the evening of 14 June 1945, accused met the prosecutrix, Polly Brown, and four of her female friends at a roadhouse or night club in Montgomery, Alabama. After each of the five girls consumed one drink of rum and Coca Cola they and two enlisted men accompanied accused in his automobile to another roadhouse. Leaving that establishment about 11 p.m., accused and prosecutrix entered accused's automobile before the rest of the group had emerged from the roadhouse and despite prosecutrix's objections accused drove her off alone. He eventually parked his automobile along a country road and when he insisted that prosecutrix remove her underpants she fled from the automobile. Accused overtook her, pulled her back to the automobile and drove off slowly as he commenced to remove his shirt and trousers, meanwhile restraining her from leaving the automobile. He parked again and despite her resistance he removed the two pairs of underpants and the sanitary pad which she was wearing, forced her down upon the seat and attempted to penetrate her privates with his sexual organ. Failing to complete an act of intercourse he informed prosecutrix that her alternative was to do it by mouth. As he permitted her to rise she fled from the auto but tripped and fell crossing a wooden bridge and was returned to the auto by the pursuing accused. He then grasped her neck, forced her head down upon his penis and inserted it in her mouth. She complied with his instructions to rub his testicles and stomach because she was fearful of her life. As a truck approached accused's auto from the rear accused ceased his abnormal connection with prosecutrix and commenced to drive off. As he did so, prosecutrix leaped from his auto and hailed the passing truck but the driver refused to stop. Prosecutrix then sought refuge in the bushes bordering the road. About a

half hour later the truck driver, who had awakened a friend to accompany him back to the scene, drove slowly by the prosecutrix's hiding place and when she ran into the road, stopped and took her aboard. Prosecutrix was crying, upset and complained of an attempted rape upon her. She was returned to her home where she informed her mother that she had been mistreated, pointing to her mouth as she complained.

Consideration has been given to a letter dated November 8, 1945, from Congressman Henry D. Larcade, and to an investigation report of the prosecutrix inclosed therewith.

I recommend that the sentence be confirmed but that the forfeitures be remitted and that the sentence as thus modified be carried into execution and that a Federal reformatory be designated as the place of confinement.

4. Inclosed is a form of action designed to carry the above recommendation into effect, should such recommendation meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

3 Incls
1. Rec of trial
2. Form of action
3. Ltr. fr Cong. Larcade w/incl

(Sentence confirmed but forfeitures remitted. GCMO 504, 5 Dec 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 288020

UNITED STATES	)	FIRST AIR FORCE
	)	
v.	)	Trial by G.C.M., convened at Mitchel Field, New York, 28 August, 4 and 5 September 1945. Dismissal and total forfeitures.
	)	
First Lieutenant CARTER K. SORENSEN (O-672692), Air Corps.	)	

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OPINION of the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE: Violation of the 96th Article of War.

Specification 1: In that First Lieutenant Carter K. Sorensen, Junior, Air Corps, Squadron E, 100th AAF Base Unit (Headquarters, First Air Force), Mitchel Field, New York, did, without due cause, at Suffolk County Army Air Field, Westhampton Beach, New York, and Mitchel Field, New York, from about 1 April 1945 to 1 June 1945, dishonorably fail and neglect to provide for the support of his wife, Harriet Fay Sorensen, and of his minor children Linda Fay Sorensen and Carter K. Sorensen, III.

Specification 2: (Finding of not guilty.)

ADDITIONAL CHARGE I: Violation of the 96th Article of War.

Specification: In that First Lieutenant Carter K. Sorensen, Junior, Air Corps, Squadron E, 100th AAF Base Unit (Headquarters, First Air Force), did, at Mitchel Field, New York, on or about 31 August 1944, with intent to deceive Elbert L. Thompson, Major, Finance Department, Finance Officer, Mitchel Field, New York, officially certify to the said Elbert L. Thompson, Major, Finance Department, that he had previously signed a pay voucher for the month of August 1944 which was subsequently personally withdrawn by him and destroyed, which certificate was known by the said First Lieutenant Carter K. Sorensen, Junior, to be untrue.

ADDITIONAL CHARGE II: Violation of the 94th Article of War.

Specification 1: In that First Lieutenant Carter K. Sorensen, Junior, Air Corps, Squadron E, 100th Army Air Forces Base Unit (Headquarters, First Air Force), did, at Mitchel Field, New York, on or about 31 August 1944, present for payment a claim against the United States by presenting to Major Elbert L. Thompson, Finance Department, finance officer at Mitchel Field, New York, an officer of the United States duly authorized to pay such claims, a pay and allowance voucher in the amount of $178.47, for services rendered to the United States by First Lieutenant Carter K. Sorensen, Junior, Air Corps, during the period 1 August 1944 to 31 August 1944, which claim was fraudulent in that he had previously submitted a claim against the United States for full pay and allowances due him for this period of time, and was then known by the said First Lieutenant Carter K. Sorensen, Junior, Air Corps, to be fraudulent.

Specification 2: In that First Lieutenant Carter K. Sorensen, Junior, Air Corps, Squadron E, 100th Army Air Forces Base Unit (Headquarters, First Air Force), did, at Mitchel Field, New York, on or about 30 November 1944, present for payment a claim against the United States, by presenting to Lieutenant Colonel John B. Marian, Finance Department, an officer of the United States duly authorized to pay such claims, in the amount of $208.67, for a balance of payment for pay and allowances claimed by First Lieutenant Carter K. Sorensen, Junior, Air Corps, to be due him for the period 1 November 1944 to 30 November 1944, which claim was false in that First Lieutenant Carter K. Sorensen, Junior, Air Corps, was then, on 30 November 1944, due only $98.67 by the United States as the balance of payment for his pay and allowances for the period 1 November 1944 to 30 November 1944, and the claim so presented on 30 November 1944 was then known by the said First Lieutenant Carter K. Sorensen, Junior, Air Corps, to be false.

He pleaded not guilty to all the Specifications and Charges. He was found not guilty of Specification 2 of the Charge and guilty of all other Specifications and of all the Charges. No evidence of previous convictions was introduced. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for one (1) year. The reviewing authority approved the sentence but remitted the confinement and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution is as follows:

Specification 1, Charge I.

It was stipulated in writing by and between the prosecution, the defense and the accused that Harriet Fay Sorensen was the lawful wife of the accused (R. 18; Pros. Ex. 1). She resided in Cleveland, Ohio, with their two minor children, Linda Fay Sorensen, 4 years old, and Carter K. Sorensen, III, 3 years old, at all times between 1 April 1945 and 1 June 1945 (Pros. Ex. 1, p. 1). The accused received subsistence allowances from the United States of $42 for April 1945 and $43.40 for May 1945 and a rental allowance of $75 per month for April and May 1945 (Pros. Ex. 1, p. 1).

The testimony of Harriet Fay Sorensen was orally stipulated by and between the prosecution, defense and the accused (R. 18). She resides at 16626 Miles Avenue, Cleveland, Ohio, is 23 years of age, has been married to the accused since 10 December 1940 and they have two minor children (R. 18). The accused enlisted in the Army Air Corps as a cadet on 15 June 1942 and was commissioned a second lieutenant in March 1943 (R. 18). Since the accused has been in the service she has never received an allotment check for the support of the children and herself (R. 18, 19). The accused sent her $50 per month from April 1944 through November 1944 and $100 per month from December 1944 through March 1945 but she has received no money since March 1945 (R. 19). She has been working for about two and a half years, since her son was five weeks old, in order to support her two children and herself (R. 19). Since March 1943 she has been employed by Jack & Heintz Company, Cleveland, Ohio, as an inspector of airplane parts and her earnings averaged $50 per week for working 12 hours per day and seven days per week (R. 19). Due to a cut in production she may be laid off and then she could not support herself and her children as she is now doing (R. 19). On 9 June 1945 she requested the accused to make some arrangements to support her and the children (R. 19).

After being advised of his rights the accused made a voluntary sworn statement to Major Wassung, the Investigating Officer (R. 61-81; Pros. Ex. 8). The accused admitted that on or about 18 September 1944 he was notified in writing that he was not making adequate provisions for the support of his wife and minor children. On or about 3 November 1944 he promised the Commanding General, First Air Force, in writing that he would send $100 per month to his wife for the support of herself and their two children. From about 1 April 1945 to 9 June 1945 he failed to keep this promise. He further admitted "that without due cause I failed and neglected to provide for the support of my wife and our two minor children" (Pros. Ex. 8), and that on 9 June 1945 his wife appeared at his station, reported the nonpayments to his commanding officer, and said that she and the baby were in desperate straits, whereupon he was ordered to make the payments, which he then did (R. 182, 183, 184).

Specification 1, Additional Charge I; Specifications 1 and 2, Additional Charge II.

It was stipulated in writing by and between the prosecution, the defense and the accused that the accused was assigned to the following stations for the periods indicated (R. 18; Pros. Ex. 1):

Station	Period of Assignment
Hillsgrove Army Air Base, Providence, Rhode Island.	From: 25 May 1944 To: 29 August 1944
Army Air Forces Regional Station Hospital & Convalescent Center, Mitchel Field, New York, Pawling Branch, on temporary duty.	From: 30 August 1944 To: 1 December 1944
Hillsgrove Army Air Base, Providence, Rhode Island.	From: 2 December 1944 To: 31 March 1945
Suffolk County Army Air Field, Westhampton Beach, New York.	From: 1 April 1945 To: 2 April 1945
Mitchel Field, New York.	From: 3 April 1945 To: Date of trial

Major Elbert L. Thompson, Finance Department, was the Finance Officer at Mitchell Field from 9 September 1944 to 31 October 1944, and Lieutenant Colonel John B. Marian, Finance Department, has been the Finance Officer since 1 November 1944 (Pros. Ex. 1, p. 2). During the periods when each was assigned as Finance Officer at Mitchel Field he was duly authorized to make payment of officers' pay vouchers. The accused submitted a Pay and Allowance Voucher to the Finance Officer at Bradley Field, Windsor Locks, Connecticut, for the period 1 August to 31 August 1944 and it had not been withdrawn or destroyed by the accused "at the time he received his pay under subject voucher". The copy of Pay and Allowance Voucher for August 1944, Voucher No. 574, is a true copy of the claim presented to Major Thompson at Mitchel Field by the accused for services rendered from 1 August to 31 August 1944 and the original voucher contained the true signature of the accused (R. 40; Pros. Ex. 1, p. 2; Pros. Ex. 4). During the month of September 1944 the accused received by mail at Pawling, New York, a check for $178.47 from the Finance Officer at Mitchel Field and a check for the same amount from the Finance Officer at Bradley Field, Connecticut. Both checks were in payment of services rendered by the accused during the month of August 1944 (Pros. Ex. 1, p. 2). On 27 November 1944 he received a partial payment of $110 from the Finance Officer at Bradley Field, Connecticut, on Pay and Allowance Voucher No. 2876. The original of this voucher contained two true signatures of the accused (R. 40, 41; Pros. Ex. 1, p. 3; Pros. Ex. 5). On 30 November 1944 the accused presented Pay and Allowances Voucher No.

14673-97 for the period 1 November to 30 November 1944 to the Finance Officer at Mitchel Field and this voucher contained his true signature. He received the sum of $87.87 from Lieutenant Colonel Marian, the Finance Officer at Mitchel Field, for pay and allowances for the month of November 1944 (R. 41; Pros. Ex. 1, p. 3; Pros. Ex. 6).

The testimony of Alex Sabin was stipulated in writing by and between the trial judge advocate, the defense counsel and the accused (R. 42; Pros. Ex. 7). He was discharged from the Army on 12 July 1945 (Pros. Ex. 7, p. 1). From August 1944 to February 1945 he was a technical sergeant assigned to the Finance Section, Mitchel Field, on detached service at the Army Air Forces Convalescent Center Hospital, Pawling, New York (Pros. Ex. 7, p. 2). He was known as the finance sergeant and prepared the payrolls. During August 1944 there was no commissioned officer supervising the Finance Section at Pawling (Pros. Ex. 7, p. 2). He remembered seeing the accused and talking to him in the Finance Section but he could not remember the date or the subject (Pros. Ex. 7, p. 3, 4). Since his discharge from the Army he has been ill with a streptococcic infection of the throat and a nervous disorder but his memory has not been affected (Pros. Ex. 7, p. 3, 4). He prepared the initial pay vouchers for officers at Pawling but subsequent vouchers were prepared at Mitchel Field (Pros. Ex. 7, p. 5). It was customary that a certificate of nonpayment be prepared with the initial pay voucher and signed by the officer (Pros. Ex. 7, p. 5, 6). He identified a certificate of nonpayment as being attached to the Pay and Allowance Voucher No. 574 of the accused for 1 August to 31 August 1944 (Pros. Ex. 7, p. 6; Pros. Ex. 10). He took the information for this voucher but he did not remember whether he prepared the voucher (Pros. Ex. 7, p. 6). Ordinarily he forwarded the vouchers to Mitchel Field as soon as they were signed (Pros. Ex. 7, p. 7). The accused's voucher for August 1944 (Pros. Ex. 10) is an initial pay and allowances account at Pawling (Pros. Ex. 7, p. 7). Mr. Sabin wrote in "none" and "have" on the certificate of nonpayment attached to the voucher (Pros. Ex. 7, p. 8, 9; Pros. Ex. 10). He never processed an initial pay and allowances voucher without a certificate of nonpayment (Pros. Ex. 7, p. 8). The Pay and Allowances Voucher of the accused for November 1944 (Pros. Ex. 6) was not submitted at Pawling (Pros. Ex. 7, p. 8, 9). He could not remember an officer at Pawling requesting his advice about an overpayment (Pros. Ex. 7, p. 9, 10). Whenever an officer had been overpaid he would turn him over to a Finance Officer, an Assistant Finance Officer, or a Class "B" officer (Pros. Ex. 7, p. 11). He did not remember processing a pay voucher for an officer at Pawling when the officer stated that he also had a pay voucher at another station (Pros. Ex. 7, p. 10).

Lieutenant Colonel Marian has been on duty as Finance Officer at Mitchell Field since 1 November 1944 (R. 43, 53). He is the custodian of the Finance Section records and has the file pertaining to the accused which contains the initial pay voucher submitted by the

accused at Mitchel Field for August 1944, and attached to it is the certificate of nonpayment which is required every time that an officer is paid for the first time at that station (R. 43, 44). No date appears on the certificate of nonpayment because it is a part of and bears the same date as the voucher (R. 53, 54). The certificate of nonpayment is a regular form which is required by Army Regulations 35-1360, 11 April 1944, and Changes thereto (R. 55, 61). The accused could not have been paid at his new station for August 1944 unless the certificate of nonpayment was attached to the voucher, but Lieutenant Colonel Marian did not know whether it was attached to the voucher when the accused signed the voucher (R. 57-60). The certificate is attached at the Finance Office (R. 54, 55). It is the duty of the Finance Officer to see that the consolidated pay record of each officer is maintained (R. 45, 46). The master pay card in the file shows that the accused was first paid on 15 September 1944 for the month of August 1944 (R. 45, 46). Lieutenant Colonel Marian was not on duty at Mitchel Field when the first payment was made to the accused but the date on the back of the certificate of nonpayment shows that the Finance Office received it on 15 September 1945 (R. 53, 54). The first payment to an officer is identified by posting the voucher number on his card (R. 56). The card is first made out and then the voucher. The card is attached to the voucher and detached after the voucher number has been posted (R. 57). The true copy of the accused's Pay and Allowances Voucher for August 1944 (Pros. Ex. 4) is the same voucher as the photostat (R. 48, 49; Pros. Ex. 10). The accused presented to Lieutenant Colonel Marian a Pay and Allowances Voucher for November 1944 in the amount of $233.67 less deductions of $100 for a Class "E" allotment, $20.80 for insurance and $75 for a partial payment (R. 49). On this voucher he paid the accused the sum of $87.87 by check (R. 49). On 21 May 1945 a notice was received from the General Accounting Office that the accused had been overpaid for August 1944 and on 21 June 1945 that a duplicate payment had been made to the accused for the month of November 1944 (R. 49, 50).

Bert Bedell was a sergeant in the Detective Bureau, Nassau Police, Mineola, New York (R. 104). For 12 years he has been investigating crimes in the county including cases of forgery, questioned documents and the comparison of handwriting (R. 104, 105). Handwriting analysis is part of his regular duties and he is the only handwriting expert in the department (R. 108). He has studied books and treatises on handwriting (R. 108). He has appeared in court ten times as an expert witness (R. 105, 110, 111). He compared the signature of the accused on a check (Pros. Ex. 2) and on the certificate of nonpayment (Pros. Ex. 10) and they are the same (R. 105). The signature on the certificate of nonpayment (Pros. Ex. 10) is the same as the admitted signature of the accused (R. 106, 107, Pros. Ex. 5, 6, 8 and 9).

After being advised of his rights the accused made a voluntary sworn statement on 23 July 1945 to Major Wassung, the Investigating Officer (R. 81-86; Pros. Ex. 9). The accused signed a Pay and Allowances Voucher for August 1944 for $178.47 at Hillsgrove Army Air Base, Rhode Island and received a check for $178.47 in the mail at Pawling, New York. Knowing that he had not personally withdrawn and destroyed this voucher, he, nevertheless, signed a certificate that he had done so. On the strength of this certificate the Finance Officer at Mitchel Field sent him another check for $178.47 for the month of August 1944. During the latter part of May 1945 Major Schwartz, the Base Finance Officer at Mitchel Field, informed him that he had made a false official statement regarding his August 1944 pay voucher, and that if he repaid the sum of $178.47 before the last day of May, the incident would be closed. The overpayment was repaid on 29 May 1945. On 13 November 1945 the accused drew a partial payment of $75 at Pawling, New York. On 27 November 1944 he was short of funds while on pass at Hartford and went to Bradley Field where he received a partial payment of $110. He accepted this payment because he did not believe that this was more than he should receive. He returned to Pawling on or about 30 November 1944 and received a check for $87.87 from the Mitchel Field Finance Office. When he informed the finance sergeant that he had been overpaid, he was told to cash the check and pay the main Finance Office later. He paid the Finance Office on 3 July 1945 after he had been informed by Captain Murray, his Commanding Officer, that he had been overpaid (Pros. Ex. 9).

4. No witness, other than the accused, appeared for the defense. However, it was stipulated between the prosecution, the accused, and the defense counsel that if Mr. Hugh McNamee, Counsel for Jack & Heintz, were present, he would testify that the earnings of the wife of the accused while she was employed by that company amounted to a total of $9,931.67 for approximately 29-1/3 months (R. 121). Moreover, that company offers to each of its employees a hospital plan for the employee and immediate dependents to the extent of $1,450.00 (R. 122; Def. Ex. A). It was further shown that the accused has repaid all sums due the Government from the overpayments in question (R. 148; Def. Exs. C and D).

5. After the accused's rights with respect to testifying, making an unsworn statement, and remaining silent were fully explained to him by the court, he elected to testify under oath. He stated that he entered the Army on 29 March 1942, had served as a fighter pilot overseas, taking part in twenty-two combat missions and being credited with one enemy plane destroyed and one probably destroyed, and that during his period of service he had been hospitalized for injuries resulting from a crash and for malaria (R. 116-118). He further stated that he was returned to the United States because of an eye injury from a crash and was now suffering from recurring attacks of malaria (R. 118-119). He is married and has two children, two and three years of age, and his wife is employed earning approximately $310.00 per month. He stated that he has paid his wife $100.00 per month for the months of April and May 1945, through his mother (R. 123, 124), and offered

canceled checks to prove these payments, but the court declined to accept this evidence of payment (R. 135). He explained that these payments were delayed because he was anticipating an honorable discharge momentarily, in view of his wife's management of the funds he sent her, he preferred to be present at their distribution in order to assure appropriate care for the two children (R. 124, 125).

The accused denied that he had admitted to the investigating officer that he had "without due cause * * * neglected to provide for the support of * * * (his) wife and * * * two minor children", although he had signed such a statement prepared by the investigating officer (R. 140), and he explained that his complete signed statement to the investigating officer was prepared and signed on the advice of that officer, omitted certain statements he had made, and contained others devised by the investigating officer (R. 141, 142).

As to the signing of a false certificate to accompany his initial pay voucher at Army Air Forces Convalescent Center, Pawling, New York, the accused stated that he signed it without reading it carefully because he was in a hurry and presumed that it was only a certificate that he had not been paid (R. 149). He admitted receiving two checks, each for the full amount due him for services rendered during the month of August 1944, but explained that the enlisted man on duty at the Finance Section at Pawling told him he should cash the checks and repay the duplicate payment when he "got a chance" at Mitchel Field (R. 151, 152). That same individual advised him to do likewise after he received an overpayment resulting from the submission of vouchers for partial payments during the month of November 1944 (R. 154). Accused answered in the affirmative when asked whether he was suffering from operational fatigue and malaria during the year in which the transactions as to pay vouchers took place. He added that he was a fighter pilot and knew nothing about finance (R. 154).

On cross-examination, the accused admitted that at the time he certified that he had destroyed the first voucher he filed for August 1944 pay, he knew that this was not the case (R. 165), and that at the time he signed his pay voucher for November 1944 he knew that he had submitted a partial payment voucher for $110.00 for that month (R. 170, 171). That partial payment is not shown on his November voucher (Pros. Ex. 6). This latter admission is apparently in conflict with the statement of accused on direct examination to the effect that his November voucher "went in earlier" than the date upon which he presented his voucher for $110.00 partial payment for that month (R. 153, 154). However, it is in harmony with a signed stipulation agreed upon by the prosecution, defense and accused (par. 13, Pros. Ex. 1).

6. The evidence clearly shows that the accused on or about 31 August 1944 presented a pay and allowances voucher supported by a false certificate representing that at the time of its presentation there was no outstanding pay voucher covering a like period of time, although in fact such was not the case. Moreover, the accused admitted that he signed the voucher in question, as well as the certificate, knowing that such certificate did not represent the true facts, and had received payment on the voucher (R. 149, 151, 165). Payment on such vouchers may not be made unless supported by the prescribed certificate (par. 2c, AR 35-1360, 11 April 1944). The accused further admitted that at the time he signed his pay and allowance voucher for November 1944, he knew that he had previously submitted a partial payment voucher for $110.00 (R. 170, 171), which does not appear on the November voucher (Pros. Ex. 6). It appears that by these false representations on the part of the accused he obtained approximately $288.00, i.e. $178.00 in September and $110.00 in November, to which he was not entitled, and which he converted to his own use and refunded only when called upon to do so when the errors were discovered several months after each transaction. Although the presentation of a false claim and the obtaining of money thereon are separate and distinct offenses, the obtaining of these amounts by the accused in this case, together with the retention thereof by him for so long a period and his knowledge that he was not entitled thereto, is persuasive evidence as to his knowledge of the falsity of the claims at the time they were presented.

> "Any person * * * who presents or causes to be presented to any person in the civil or military service * * * for approval or payment, any claim against the United States * * *, knowing such claim to be false or fraudulent * * * shall be punished * * *" (A.W. 94).

> "The claim must be presented, directly or indirectly, to some person having authority to approve or pay it. False and fraudulent claims include not only those containing some material false statement, but also claims that the person presenting knows to have been paid or for some other reason knows he is not authorized to present or to receive money on" (MCM 1928, par. 150b).

The accused was also properly found guilty of Specification 1 of the Charge, alleging a violation of Article of War 96 in that the accused "did, without due cause * * * dishonorably fail and neglect to provide for the support of his wife * * *, and of his minor children * * *".

The evidence in regard to his wife's separate income is in conflict, but it is apparent that she provided a home for herself and her two children, and that the usual monthly payments of the accused

to her for the months of April and May 1945, were not made until about 1 July 1945. Although the propriety of an officer's conduct in this regard is not to be judged entirely by a general and inchoate legal obligation of support unrelated to the actual need of his legal dependents and his own earnings and requirements, nevertheless, the measure of his obligation to support his wife is not diminished by the fact that she is employed if her income from such employment is used to support persons who are dependent upon her (SPJGA 1944/1475, 9 February 1944, 3 Bull. JAG 64).

7. The records of the War Department show that the accused is 24 years of age. He is married and has two minor children. He was graduated from Cleveland College, Cleveland, Ohio, as an accountant. He entered military service as an enlisted man 3 March 1942 and served as a private, Air Corps, until appointed an aviation cadet 16 June 1942, in which latter grade he served until his appointment as second lieutenant on 16 February 1943. He was promoted to First Lieutenant on 1 February 1944, and has served as a fighter pilot in the Asiatic-Pacific Theater where he was awarded the Air Medal. On 19 April 1945 a reclassification board meeting at Mitchel Field recommended his separation from the service, not as a result of physical disability, under the provisions of paragraph 12d (6) (b) 1, AR 605-230, C3, 7 August 1944.

8. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 94 or Article of War 96.

W. E. Pardee Jr., Judge Advocate.

[illegible], Judge Advocate.

Donald D. Hickman, Judge Advocate.

SPJGQ - CM 288020 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War.

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant Carter K. Sorensen (0-672692), Air Corps.

2. Upon trial by general court-martial, this officer was found guilty of dishonorably failing and neglecting to provide for the support of his wife and minor children (Specification 1 of the Charge) and making a false official certificate (Specification of Additional Charge I), both in violation of Article of War 96. He was also found guilty of presenting a fraudulent claim against the United States on or about 31 August 1944, and presenting a false claim against the United States on or about 30 November 1944 (Specifications 1 and 2, Additional Charge II), in violation of Article of War 94. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for one (1) year. The reviewing authority approved the sentence but remitted the confinement adjudged, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. I concur in that opinion.

On or about 15 September 1944, the accused, not having been paid for the preceding month of August, although he had submitted a pay and allowances voucher therefor at Hillsgrove Army Air Base, Rhode Island, submitted another pay and allowances voucher for the month of August at his new station, Mitchel Field, New York. Pursuant to Army Regulations relating to procedure in such cases, the voucher presented by the accused at Mitchel Field was supported by his certificate that he had previously signed a pay voucher covering the stated period but that it had been withdrawn personally by him and destroyed. The accused admitted that such was not the case and that he knew this at the time the second voucher was presented. In due course, he received two separate checks, each for full pay and allowances due him for the month of August 1944, less allotments, which he cashed and converted to his own use.

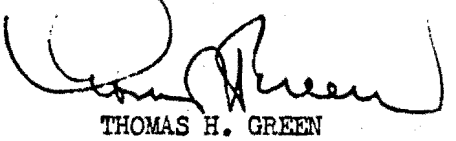
On or about 30 November 1944 the accused presented at Mitchel Field, New York, a pay and allowances voucher for that month, omitting therefrom the statement of a partial payment of $110 he had received on 27 November upon presentation of a voucher for that amount at another station. As a result he received $110 more than the total pay and allowances to which he was entitled for that month. He failed to take appropriate action to refund these overpayments until the errors were discovered several months after the respective transactions, at which time he made complete restitution.

During the months of April and May 1945, the accused without due cause failed and neglected to provide for the support of his wife and their two children. His wife was employed at a substantial salary during this period, but she was accustomed to the receipt of money from the accused, which she supplemented with her income, and maintained a home for herself and the children.

The accused served as a fighter pilot in the Asiatic-Pacific Theater, where he was awarded the Air Medal. He successfully completed 22 combat missions between 6 June 1943 and 22 December 1943, and is credited with shooting down one enemy plane and the possible destruction of another.

I recommend that the sentence as approved by the reviewing authority be confirmed but that the forfeitures be remitted, and that the sentence as thus modified be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.



2 Incls
1 - Record of trial
2 - Form of action

THOMAS H. GREEN
Brigadier General, U. S. Army
Acting The Judge Advocate General

(Sentence as approved by reviewing authority confirmed, forfeitures remitted, as modified ordered executed. GCMO 511, 5 Dec 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ - CM 288050

UNITED STATES v. Second Lieutenant ROBERT C. KLOFANDA (0-780978), Air Corps.	ARMY AIR FORCES WESTERN FLYING TRAINING COMMAND Trial by G.C.M., convened at Victorville Army Air Field, Victorville, California, 4 September 1945. Dismissal and total forfeitures.

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OPINION of the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Robert C. Klofanda, Air Corps, Squadron B, 3035th Army Air Forces Base Unit, did, without proper leave, absent himself from his command at Victorville Army Air Field, Victorville, California, from about 13 August 1945 until he was apprehended at or near Crestline, California, on or about 21 August 1945.

He pleaded not guilty to and was found guilty of the Specification and Charge. Evidence of one previous conviction was introduced for absence without leave in violation of Article of War 61 for six days from 8 to 14 July 1945. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for one (1) year. The reviewing authority approved the sentence, remitted the confinement and forwarded the record of trial for action under Article of War 48.

3. Extract copies of the Morning Reports of Squadron "B", 3035th Army Air Forces Base Unit, Victorville Army Air Forces Base Unit, Victorville Army Air Field, California, were stipulated to be authentic

and accurate and were received in evidence (R. 7; Pros. Ex. 1). The entries pertaining to the accused for 14 August 1945 showed him, "Dy to AWOL 2015 13th", and on 21 August 1945, "AWOL to Arrest Qrs 1700" (Pros. Ex. 1). Major Messer, the accused's Commanding Officer identified the accused as a member of his organization (R. 7). He saw and apprehended the accused at 1700 on 21 August 1945 at a lake"a couple of miles"from the town of Crestline, California (R. 7, 8), about 50 to 55 miles from Victorville Army Air Field (R. 8). At this time the accused was in a bathing suit and showed no government identification (R. 8). The accused was cooperative, changed into uniform and was brought back to Victorville in a car (R. 8, 9). Major Messer picked the accused up on the Morning Report "as returned" as of the time he first saw him (R. 9).

Captain Pollock, Operations Officer of Advanced Radar Flying Group 2, after testifying for the defense, became a witness for the prosecution (R. 14). The accused was scheduled to fly on the night of Monday, 13 August 1945, but he was absent and did not fly (R. 14, 19). During the period from 14 August to 21 August 1945, when there was no flying at the field, the flyers were required to report for roll call every day at 0800 and 1300 except on 15 and 16 August 1945 (R. 15, 16). Captain Pollock was present when these roll calls were taken by Captain Hester, the Squadron Commander. The accused was not present for any of them, to the witness' knowledge (R. 15). The order concerning the roll calls was posted on the bulletin board at 1900 on 14 August 1945 and officers calling in were notified of it (R. 16, 17). The taking of roll call twice a day was not the practice before the surrender of Japan (R. 16). It was the duty of all officers to check the bulletin board to see if they were scheduled to fly (R. 17). The flying schedules showed that the accused was scheduled for a "stand-by" on the night of Tuesday, 14 August 1945, but no roll call was taken because flying was called off (R. 18, 19). The schedule for Tuesday, 14 August 1945, was made up two days in advance and was posted on the bulletin board on Saturday (R. 19, 20). Captain Pollock was present when roll call was taken at 0800 on Friday, 17 August 1945 (R. 20, 21). He spoke to the accused in the mountains on Thursday, 16 August 1945, but he did not mention the roll call (R. 21). He told the accused that he had been marked absent on Monday night and that he should come to his office the next morning to straighten out the matter (R. 21). He did not see the accused again until the trial (R. 21). Captain Pollock made a consolidated list of the men absent from roll calls and handed it in to Squadron Headquarters (R. 22).

Lieutenant White, the Investigating Officer appointed under Article of War 70, explained to the accused his rights under Article of War 24 and the accused voluntarily made a statement which was read, signed and sworn to by the accused (R. 10, 11). At first the accused seemed to be surprised that he was in trouble (R. 12). The sworn statement of the accused was received in evidence (R. 12; Pros. Ex. 2).

The accused stated that he was assigned to Squadron B, 3035th Army Air Force Base Unit for administrative purposes and to Advanced Radar Flying Group II. On Saturday 11 August 1945 he flew a regularly scheduled mission and then checked the Flying Schedule for Monday 13 August 1945 on the Bulletin Board but his name was not on it. The schedule for Tuesday, 14 August 1945, was not made up but a pencil copy showed that he was not scheduled to fly. He was, however, assigned on a "stand-by" basis which required him to be present at roll call at 2015. He spent Monday, 13 August, and Tuesday, 14 August, at Crestline, California and stayed at the Rim of the World Hotel. At 1600 on Tuesday, 14 August, while still at Crestline, he heard an announcement over the radio that the war was over. Some officers came in from Victorville and told him that flying had been called off for that night but he did not call the field because the telephones were busy. On Wednesday, 15 August, a sergeant and two officers told him that a two-day holiday had been declared at the field from Tuesday night until Friday morning. He then went swimming at Lake Gregory and stayed at the Crestline Hotel that night. He started toward Victorville at 1500 on Thursday, 16 August, but got out of the car and returned to Crestline when the captain with whom he was traveling told him that flying had been suspended at the field and that no one was doing any night flying. He was unable to complete a call to the field to find when he was next scheduled to fly. At 1800 Captain Pollock, Deputy Commanding Officer of Radar Flying Group II, told him that he had missed a regularly scheduled flight on Monday, 13 August, and had been marked absent at roll call. The accused told Captain Pollock that he would report to Group II the next day. On Friday, 17 August, and Saturday, 18 August, it was rainy and foggy and few cars were going down the hill. He did not report or telephone but stayed with some civilian friends at Crestline. On Sunday, 19 August, he spent most of the day swimming at Lake Gregory and he spent all day Monday, 20 August at the home of his civilian friends. He intended to go swimming at Lake Gregory until 1800 on Tuesday, 21 August, and then return to the field. At 1600, while he was at the lake, a first lieutenant asked his identity and told him to get his clothes and return to the base. Major Messer walked up and the accused got his clothes. The two officers brought him back to the field and he was placed in arrest in quarters. During this period he did no excessive drinking except at a Victory celebration at the Rim of the World Hotel on Tuesday evening, 14 August (Pros. Ex. 2).

4. The accused after being advised of his rights elected to remain silent (R. 23). Captain Pollock testified for the defense that he was Operations Officer of Advanced Radar Flying Group 2 from 9 August to 21 August 1945 (R. 13, 14), and was acquainted with the flying schedules of the group (R. 13). After President Truman announced the surrender of Japan on 14 August 1945, flying in the Group was called off until Tuesday, 22 August 1945 (R. 14). There was flying on 13 August 1945 (R. 14).

5. The evidence sustains the findings of guilty. The accused was convicted of being absent without leave from his command at Victorville Army Air Field for a period of eight days from 13 August 1945 until he was apprehended on 21 August 1945. The absence of the accused was proven by the entry on the Morning Report of the accused's organization. His apprehension and return to military control at a mountain resort fifty odd miles from his field was proven by the testimony of his Squadron Commander, who apprehended him, and by the entry on the Morning Report of his Squadron. The accused made a sworn statement to the Investigating Officer appointed in accordance with Article of War 70 in which he admitted his absence without leave and his apprehension. In his attempt in this sworn statement to explain his absence the accused clearly showed his disregard for the responsibilities and duties of an officer which he had displayed not only by absenting himself without leave in the first instance but also by remaining absent after he had been told that he had missed a scheduled flight and roll call.

6. War Department records show that the accused is 21 years of age and unmarried. He is a native of Wisconsin and a resident of Fennimore, Wisconsin. He is a graduate of high school and attended the Wisconsin Institute of Technology for a half year, majoring in chemistry. He served in enlisted status from 22 February 1943 to 26 June 1944 and attained the grade of aviation cadet. On 27 June 1944 he was appointed a second lieutenant, Army of the United States, and was ordered to active duty in the Air Corps. On 1 August 1945 he was tried by a general court-martial and found guilty of absence without leave for six days in violation of Article of War 61. He was sentenced to forfeit $100 of his pay per month for a period of six months. The sentence was approved and ordered executed by the reviewing authority on 9 August 1945. The Review of the Staff Judge Advocate, which is attached to the record of trial, shows that the accused has been punished twice under Article of War 104. On 8 May 1945 he was given a reprimand for being drunk and disorderly in a public place in violation of Article of War 96. On 21 June 1945 he was reprimanded and a forfeiture of $75 of his pay imposed for a violation of Article of War 61. Prior to his trial he was placed in arrest in quarters and was never released from such arrest. On 9 September 1945, subsequent to his trial, the accused breached his arrest and again absented himself without leave from his station until he was apprehended at San Bernardino, California, on 12 September 1945, for which offense the disposition of charges is withheld pending final action in the present case.

7. The court was legally constituted and had jurisdiction of the accused and the offense charged. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In

the opinion of the Board of Review the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation of the sentence. Dismissal is authorized for a violation by an officer of Article of War 61.

W. P. Carlton, Jr., Judge Advocate

A. L. Fisher, Judge Advocate

Donald D. Hickman, Judge Advocate

SPJGQ - CM 288050 1st Ind

NOV 2 1945

Hq ASF, JAGO, Washington, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Robert C. Klofanda (0-780978), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of being absent without leave from his command for eight days from 13 August to 21 August 1945 in violation of Article of War 61. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority might direct, for one year. The reviewing authority approved the sentence, remitted the confinement and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. I concur in that opinion.

The accused left his command and station at Victorville Army Air Field, Victorville, California, on 13 August 1945 without authority and was returned only after apprehension at Crestline, California, on 21 August 1945, at a lake resort.

On 1 August 1945 the accused was convicted by a general court-martial of absence without leave for six days in violation of Article of War 61. He was then sentenced to forfeit $100 of his pay per month for a period of six months. The sentence was approved and ordered executed by the reviewing authority on 9 August 1945. Twice previously, punishment under Article of War 104 has been imposed upon him. On 8 May 1945 he was reprimanded for being drunk and disorderly in a public place in violation of Article of War 96. On 21 June 1945 he was reprimanded and a forfeiture of $75 of his pay imposed for a violation of Article of War 61. Prior to his present trial he was placed in arrest in quarters and was never released from such arrest. On 9 September 1945, subsequent to his trial, he breached his arrest and again absented himself without leave from his station until he was apprehended at San Bernardino, California, on 12 September 1945, for which offense the disposition of charges is being withheld pending final action in the present case. Thus absenting himself without leave three times in less than three months, in defiance of discipline, the accused has shown

his disregard for the responsibilities and duties of an officer and should be eliminated from the service. I recommend that the sentence be confirmed but that the forfeitures be remitted and that the sentence as thus modified be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S. Army
Acting The Judge Advocate General

2 Incls
1 - Record of trial
2 - Form of action

(Sentence confirmed but forfeitures remitted. GCMO 479, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 288073

4 OCT 1945

UNITED STATES	ARMY AIR FORCES EASTERN TECHNICAL TRAINING COMMAND
v.	Trial by G.C.M., convened at Boca Raton Army Air Field, Boca Raton, Florida, 25 August 1945. Dismissal and total forfeitures.
Captain WILLIAM A. DeMINT (O-198381), Air Corps.	

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to the Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 96th Article of War.

Specification: In that Captain William A. DeMint, Squadron A, 3501st Army Air Forces Base Unit (TS), having a lawful wife then living, did, at Fort Lauderdale, Florida, from about November, 1944, to about April, 1945, wrongfully and unlawfully live and cohabit with one Pauline Parker Gascoigne, a female person not his wife.

He pleaded not guilty to and was found guilty of the Charge and its Specification. No evidence of any previous conviction was introduced. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. For the prosecution.

It was stipulated that during the month of November 1944 accused was and at all times since has been in the military service of the United States, stationed at Boca Raton Air Field, Boca Raton, Florida (Pros. Ex. 1). Prior to his transfer to Boca Raton in November 1944, accused was on duty in Sioux Falls, South Dakota (R. 29). In March 1943, while serving as "Defense Counsel on a Special Court" he met a Mrs. Pauline Gascoigne, who was acting as a reporter for the court. However, his association with her socially did not start until July 1944. Thereafter he usually spent an evening with her at least once a week, playing bridge or dining with her in her apartment, or taking her to dinner, until a few weeks immediately

preceding his departure from Sioux Falls, when his visits "were more frequent - several times a week" (R. 29). Accused was a married man. It was stipulated that if his wife were present she would testify that they were married on 16 June 1926, that she and their two daughters, aged 9 and 15 years respectively, were living in Evanston, Illinois, that she had not lived with accused at any time between 31 October 1944 and April 1945; that she was not in Florida at any time between those dates; that she and accused were never divorced; and that she had never been served with a complaint in any divorce action instituted by accused (Pros. Ex. 2).

Accused arrived in Boca Raton in November 1944 (R. 29). In the early part of that month, accused, in search of an apartment, called at the office of Mr. B. A. Cromartie, a real estate broker in Fort Lauderdale, Florida, accompanied by a woman, whom, according to Mr. Cromartie's best recollection, accused introduced as his wife, and whom Mr. Cromartie in turn introduced to his wife as Mrs. DeMint in the presence of accused. Neither accused nor the woman so introduced as Mrs. DeMint corrected Mr. Cromartie, "but rather responded to it." Mr. Cromartie showed accused and the woman who he thought was accused's wife the downstairs apartment at 110 North East Sixteenth Terrace, Fort Lauderdale, Florida, and leased it to accused for a period of one year from 15 November 1944. According to Mr. Cromartie's belief, accused and this woman occupied the apartment thereafter until some time in April 1945. The apartment had two bedrooms, a bathroom, a kitchen and a combined living and dining room. Both Mr. and Mrs. Cromartie believed that they would recognize the woman whom they considered to be Mrs. DeMint. According to Mrs. Cromartie she walked with a decided limp (Pros. Exs. 3 and 4). A Mrs. Arthur S. Abney resided in a garage apartment back of that occupied by accused and the woman whom she knew as Mrs. DeMint. Mrs. Abney was never introduced to this woman, but assumed that she was accused's wife "since they occupied the same residence" (R. 7 and 8). When accused moved into the apartment he was accompanied by the woman Mrs. Abney considered to be Mrs. DeMint, who remained there with accused until the first or second week of April, with the exception of a period just before Christmas when she left for a short while, returning before Christmas with her daughter. Mrs. Abney described "Mrs. DeMint" as being "rather tall, dark hair and had a slight limp" (R. 7,8, and 9).

In February 1945, Captain William A. Hanley, a chaplain, who had known both accused and Mrs. Pauline Gascoigne in Sioux Falls and who considered accused a "good friend," was also transferred to Boca Raton (R. 10, 11). While en route by automobile he wired accused, who met him in West Palm Beach and took him to accused's apartment at 110 North East 16th Terrace, Fort Lauderdale, where he remained for three weeks, and where he occupied the front bedroom with accused. The other occupants of the apartment were Mrs. Gascoigne and her daughter, Joan, who jointly occupied the rear bedroom (R. 11,12,14). Chaplain Hanley knew nothing about the financial arrangements between accused and Mrs. Gascoigne for

the operation of the apartment and considered their conduct "above reproach." (R. 14) After obtaining permanent quarters he continued to visit accused and Mrs. Gascoigne. In explaining to the court his reason for not commenting on the joint occupancy of the apartment by accused and Mrs. Gascoigne, Chaplain Hanley stated:

> "If Captain DeMint were living there with Mrs. Gascoigne alone I would have questioned it, but when Mrs. Gascoigne was there with her daughter I didn't think it worthy of comment" (R. 15).

Upon accused's arrival in Boca Raton in November he was assigned as Personal Affairs Officer. Lieutenant Donald K. Skinner served as his assistant. On a Thursday afternoon in the latter part of November or the early part of December, Lieutenant Skinner, who was in the Personal Affairs Office at the time, stated to accused that he had several letters to get out and that there were no stenographers present to whom he could dictate. Thereupon accused stated, "My wife is out in the car and she will do them for you." Accused then brought in a woman and stated, "Lieutenant Skinner, this is my wife, Mrs. DeMint." The woman so introduced was the same person whom witness met several weeks later as Mrs. Pauline Gascoigne. This woman walked with a limp (Pros. Ex. 5). Master Sergeant Wendell W. Croyle, who was assigned to Personal Affairs Office, was present in the office some time in the latter part of November or early part of December working with Lieutenant Skinner on a report when accused came in and, after being told that they desired to get out the report, looked over it and said, "I will go out and get my wife; she knows all about this and can get the report out all right." Accused then brought in the woman to whom he had referred as his wife (R. 22,23). Almost a week later this woman came in alone and was introduced generally to those present by accused as "Mrs. DeMint" (R. 23). About four or five weeks later when she again appeared at the office, Sergeant Croyle greeted her with, "Good morning or afternoon, Mrs. DeMint." Shortly thereafter accused came out of his office with her and introduced her generally as "Mrs. Gascoigne" (R. 24). There was a considerable amount of comment and discussion about accused and Mrs. Gascoigne in the office, and for a while Sergeant Croyle was confused as to whether she was actually the same person that he had heard accused refer to as his wife, but his doubts were quickly and fully dissipated (R. 25,26).

Sergeant Alfred E. Dean, who was also assigned to the Personal Affairs Office, first saw Mrs. Pauline Gascoigne in November or December 1944, late in the afternoon, in the inner office with accused, where she was typing. Accused remarked, "This is my wife, just helping out with some work" (R. 17,19). About three or four weeks later this woman became a civilian employee in the Personal Affairs Office (R. 17). In talking to accused about her, the sergeant referred to her as "Mrs. DeMint" and was not corrected by accused. She was the same person that accused had introduced to the witness as his wife. Sometime after beginning her work

she called four or five of the workers in the office together and stated that she wanted them to know that she was Mrs. Gascoigne and not Mrs. DeMint, adding, "I don't think it is so funny even if Captain DeMint does" (R. 20).

Accused was interviewed several times during the month of March 1945 by Major Horace J. McKenzie, Base Judge Advocate, Boca Raton Army Air Field, who advised accused that he was investigating a complaint of illegal cohabitation against him and explained to him his rights under the 24th Article of War. Thereafter accused made certain statements and answered certain questions relative to the situation out of which the complaint arose. He did not deny acquaintanceship with Mrs. Pauline Gascoigne, and while admitting that he was living in the same apartment with a woman at 110 North East 16th Terrace, he declined to divulge her name or identity (R. 27,28). Accused stated to Major McKenzie that he had arrived in Boca Raton in November 1944, that about 10 November he had rented an apartment at 110 North East 16th Terrace, Fort Lauderdale; and that prior to Christmas 1944 he was joined there by a woman and her 15-year old daughter, who since that time had been occupying the apartment with him. He stated that he had known this woman in Sioux Falls, South Dakota. No mention was made by him of her having occupied the apartment with him prior to the time she joined him with her daughter. He gave details of his acquaintance with this unnamed woman in Sioux Falls, and "stated that *** he and this lady in some circles were known as Captain and Mrs. DeMint; that he recalled having been introduced (sic) or permitted her to be introduced as Mrs. DeMint without interposing any objection or correction; that he didn't recall himself ever having introduced her as Mrs. DeMint." Accused admitted to Major McKenzie "having the greatest admiration for this lady. He admired her ability both professionally in the business world and domestically. He stated he respected her and admitted being devoted to her." Accused declared to Major McKenzie that "he was in love with her," qualifying this statement by adding in substance that "he and this lady didn't enjoy the erotic side of life as is usually enjoyed by husband and wife; that it was understood that that would have to be deferred until he could offer her the protection of his name." Accused stated that this lady served in a secretarial capacity to him in the Personal Affairs Office and that "during her entire stay here they rode back and forth in the same car." Major McKenzie stated that accused first declined to give a statement but finally, after "conferences and discussions" which lasted a week, accused prepared a written statement in rough, which did not contain certain statements made verbally to Major McKenzie. Later accused prepared a written statement which contained all the information that he had previously given to Major McKenzie. This statement was offered in evidence by the defense as its Exhibit 1. In it, in addition to the facts previously testified to by Major McKenzie, accused went into details concerning his financial status, the estrangement between himself and his wife, who he stated had declined to join him in either Sioux Falls or Boca Raton, and his personal history. He expressed the view that the "differences" between him and

his wife "will never be settled or reconciled" (R. 29-34).

It was generally conceded by witnesses for both the prosecution and the defense that it was difficult to procure living quarters in and around Boca Raton.

4. For the defense.

Staff Sergeant Herbert J. Olson, Squadron A, Boca Raton Army Air Field, testified that he had known Mrs. Gascoigne for approximately eight years. He and his wife had visited the accused and Mrs. Gascoigne in their apartment at Fort Lauderdale, Florida. They had visited "at least a dozen times - back and forth." He had never known of any occasion when Mrs. Gascoigne was referred to or introduced as Mrs. DeMint, nor had the accused ever referred to her as Mrs. DeMint in his presence (R. 36). No explanation was ever made to him as to the circumstances of the accused's and Mrs. Gascoigne's residing together as he "wasn't curious *** I didn't think about it" (R. 39).

Captain Jordan P. Campbell, a chaplain, testified that he visited the apartment occupied by the accused and Mrs. Gascoigne, to whom he was introduced by Chaplain Hanley, "approximately three times." Mrs. Gascoigne had not been introduced as the wife of the accused on these occasions. He knew that Mrs. Gascoigne's daughter also resided in the apartment (R. 40).

Joan Gascoigne testified that she arrived with her mother in Fort Lauderdale, Florida, in December 1944, just before Christmas, and resided there in the apartment leased by the accused until April 1945. During this period she and her mother occupied the "back bedroom" and the accused "the front room." On one occasion she had been questioned by a lieutenant as to the accused's relationship to her, and she had "said something like stepfather." She had registered under her own name at school and entered the correct name of her father on the registration form which she signed. Her mother, and not Captain DeMint, supported her. She had been present when financial matters were discussed by her mother and the accused, and her mother "usually gave Captain DeMint money" for purposes of which she had no knowledge (R. 42,43,44,45). On cross-examination witness testified that for the four to six weeks preceding their journey to Fort Lauderdale her mother had been in Minneapolis with witness' grandmother, who was ill. The following was developed on redirect examination by the defense:

"Q. Joan, when did your mother visit your grandmother?
"A. Last October.

"Q. Then, where was your mother in November of last year?
"A. Still with my grandmother.

"Q. State whether or not you knew your mother was in Fort Lauderdale, Florida, during a part of November and early December 1944?
"A. No, I don't know that.

"Q. Joan, when your mother came back to Sioux Falls just before you came down to Florida, where did your mother come from?
"A. I don't know - Minneapolis."

Mrs. Gascoigne testified that she was married to a Claude Gascoigne, who resided in Rapid City, South Dakota. She had been separated from him for two and one-half years (R. 63). She was employed at Sioux Falls Army Air Field for a time and was acquainted with the accused. She went to Florida in November 1944 "generally to see Florida and to see if I would like to move to Florida and make it my home." She had sent a telegram to the accused advising him of her arrival and, for the first two nights, she resided with some "casual acquaintances" (R. 48). She accompanied the accused on a search for an apartment and, on this occasion, the real estate agent had addressed her as "Mrs. DeMint." She stated, "Much to my sorrow - no - I did not" make any correction or objection (R. 49). She resided with the accused in the apartment leased from the 15th of November until the first week in December 1944. She occupied the rear bedroom and he had occupied the front bedroom. The "understanding" between the two had been -

> "The room was there - it was vacant and I was without an apartment - prices for apartments or hotel rooms at that time were prohibitive and Captain DeMint was kind enough to offer me the use of that room temporarily until such time as his family ever came down or until such time as he could find another couple to share the apartment with him" (R. 49).

She recalled the occasion of her visiting the Personal Affairs Office late in November, but stated that the accused had not introduced her as Mrs. DeMint, but that she had been referred to by persons in the office as "Mrs. DeMint" (R. 50).

Mrs. Gascoigne stated that she had paid her own expenses for her trip from Sioux Falls and on the occasion when she went back to Sioux Falls and returned to Florida with her daughter (R. 52). She had written the accused a letter and received a letter from him during her trip to Sioux Falls. The letter written by the accused was received in evidence as Defense Exhibit D (R. 52). When she had arrived at Fort Lauderdale, she had disposed of her personal possessions as follows: "The bulky things - those we didn't need for immediate use - were left in the packing cases in the corner of the porch. Suitcases and items used daily were unpacked and put in the dresser drawers." This arrangement had been made because she was looking for an apartment for herself and daughter (R. 53). She had been acquainted with her neighbor, Mrs. Abney, and knew that Mrs. Abney referred to her as

Mrs. DeMint and believed that she was the accused's wife. She had made no objection or correction because "An explanation would have been possibly a little embarrassing, and because of the possibility of arousing unfavorable comment on the part of neighbors." Financial arrangements had been agreed upon as follows:

> "The first period I was there - in November - I paid him a flat Twelve Dollars a week for my room. The last period when my daughter was there we sat down at the end of the month or every two weeks and figured approximately what amount had been spent, and I usually handed Captain DeMint some money for my daughter's and my share of the expenses - including our share of the rent" (R. 54).

Mrs. Gascoigne had looked for an apartment for herself, stating, "I was constantly on the alert - for 2 or three months - after that it was just sort of understood - seemed like a good arrangement and everybody seemed happy and got along O.K." She became secretary to the Personal Affairs Officer on the 5th or 6th of January. After she commenced work she was informed of gossip concerning her being Mrs. DeMint, so -

> "I called the entire office force together and told them that I understood that there was some speculation going on as to whether or not I was Mrs DeMint and that I wanted to set them straight - that my name was Mrs Pauline Gascoigne and they would find my name on the roster of civilian personnel as that"(R. 56).

Captain DeMint left Boca Raton early in April 1945. Mrs. Gascoigne continued to occupy the apartment for approximately a month. In an effort to terminate the lease she wrote a letter to the real estate agent and referred to Mrs. DeMint's occupancy of the apartment.

> "*** I knew when I was writing the note I was in hot water.
>
> * * *
>
> "Because I realized that the Cromarties were under the impression I was Mrs DeMint. I was aware of the fact that I hadn't corrected Mr Cromartie when he addressed me as Mrs DeMint" (R. 56).

Mrs. DeMint described her relationship with the accused as "an unusually wholesome friendship." It was decidedly not "an intimate relationship." She stated that the accused had never professed his love for her or made love to her, nor had there ever been any intimate relationship or sexual intercourse between the two (R. 57). She had learned that the accused had made a statement to Major McKenzie expressing a great admiration or a love for her, but "it was a great surprise" to her (R. 58). While residing at the apartment in Fort Lauderdale with the accused, Mrs. Gascoigne had conducted her business transactions such as shopping, "bought groceries - took my dry cleaning" and received mail under her name "Mrs. Pauline

Gascoigne" (R. 59). Upon cross-examination Mrs. Gascoigne admitted that she had written Mr. Cromartie, reciting, "Since neither Captain nor Mrs. DeMint were able to contact you before their departure, Capt. DeMint has executed Power of Attorney authorizing the undersigned to act as his agent in a settlement of his lease" and had signed the latter "Mrs. Pauline Gascoigne" (R. 61). She had not made corrections or objections to her being known as Mrs. DeMint "because temporarily I felt it unnecessary - I figured it would take lengthy explanation - I was living under the same roof with Captain DeMint temporarily, and thought no explanation necessary at the time *** I thought it would require a lengthy explanation and might possibly be misunderstood - the arrangement was only temporary at the outset" (R. 62).

The accused testified under oath as to his acquaintanceship with Mrs. Gascoigne in Sioux Falls. He recalled the incident of the inspection of the apartment with Mr. Cromartie but denied having introduced Mrs. Gascoigne as Mrs. DeMint. He later found out that Mr. Cromartie had assumed that Mrs. Gascoigne was Mrs. DeMint (R. 66). He denied that he had introduced Mrs. Gascoigne to Lieutenant Skinner or to others in the office as Mrs. DeMint, but knew that Lieutenant Skinner had said, "How do you do, Mrs. DeMint" (R. 68). During the time that he and Mrs. Gascoigne had resided in the apartment at Fort Lauderdale she and her daughter had occupied one bedroom and he had occupied the other. When Mrs. Gascoigne returned to Sioux Falls he had "listed the room as available with the Billeting Office" and during this time a lieutenant, his wife and daughter had occupied the room for a few nights (R. 69). Some of Mrs. Gascoigne's belongings had never been unpacked "because she expected to move to a place of her own" (R. 69). He had paid for the rent of the apartment by personal check. An understanding so far as finances were concerned had been arranged.

> "Mrs. Gascoigne had been doing the marketing and inviting me to dinner which she prepared. After about two or three weeks I made mention of the fact that I should reimburse her for her expenditures for groceries and foodstuff, etc. She decided that this would be practical so at the end of every two week period she would let me know what the grocery bill would be and then we would make a settlement. * * * she would usually pay me some small amount - whatever was due, after everything was calculated" (R. 71).

The accused stated that no "intimate relationship" had ever existed between him and Mrs. Gascoigne, that he never "made love" to her nor indulged in "sexual intercourse with her." He first knew of a complaint concerning his residing with Mrs. Gascoigne in March of 1945 (R. 72). In connection with the statement made by the accused to Major McKenzie he stated,

> "Well, I went into Major McKenzie's office - I don't recall exactly who was there - I believe Colonel Mansfield, * * *. Colonel Mansfield stated 'you are about to be charged with cohabitation with

a woman in Fort Lauderdale - a woman other than your wife'. He then said 'do you want to make a statement'? At that time I believe I asked that the reporter be excused and said I would like to confer with Colonel Mansfield at his leisure. This request was immediately granted. I said at first I did not care to make a statement - meaning at that time - Colonel Mansfield drew the inference that I was not going to make a statement so he very gentlemanly told me that it would be to my advantage to make a statement in order to eliminate the possibility of any discredit - especially concerning the woman in question, and to eliminate the necessity of a thorough investigation and possibly eventual court-martial. I did not care to make a statement at that time but told him I would think it over. I eventually prepared as many as five or six statements. I would bring them to the Judge Advocate's office and turn them over to Major McKenzie." (R. 73)

Only one statemant had been signed (R. 73). He had been fully advised that his statement must be voluntary and, although made in connection with a resignation without specification as to character under AR 605-275 submitted by the accused, he understood it could be used against him in the event of court-martial (R. 75).

The accused denied that he had introduced Mrs. Gascoigne to Lieutenant Skinner as Mrs. DeMint, although he knew that Lieutenant Skinner referred to her as Mrs. DeMint, but felt it was "not necessary" to make the correction (R. 77). He further denied that he had introduced Mrs. Gascoigne to Sergeant Dean or Sergeant Croyle or Mr. Cromartie. He had heard, however, that Mr. Cromartie had introduced Mrs. Gascoigne to the tenants in the apartment above them as "Mrs. DeMint" (R. 78).

5. Comment.

It is clear that shortly after accused, a married man whose wife and children were living in Evanston, Illinois, was transferred from Sioux Falls, South Dakota, to Boca Raton, Florida, in November 1944, he was joined in Fort Lauderdale by Mrs. Pauline Gascoigne, a married woman, who had been estranged from her husband for more than two years, and whom accused had known intimately in Sioux Falls, first professionally and then socially. Starting in July 1944, accused had visited Mrs. Gascoigne about once a week until the latter part of October, when his visits had become much more frequent.

About 10 November 1944 accused, accompanied by Mrs. Gascoigne, secured a two-bedroom apartment in Fort Lauderdale. This they occupied until accused's transfer from Boca Raton in the end of March, 1945, with the exception of a short period prior to Christmas, when Mrs. Gascoigne left for Sioux Falls, returning the day before Christmas with her fifteen-year old daughter, Joan. According to the testimony given by Joan, Mrs.

Gascoigne was supposed to have spent the month of November and that part of the month of December preceding her return to Sioux Falls with her mother, witness's grandmother, in Minneapolis, Minnesota. The record is conclusive that during this period, Mrs. Gascoigne was actually occupying an apartment with accused in Fort Lauderdale. From the time that Joan arrived in Fort Lauderdale until accused's departure at the end of March, the apartment was occupied by accused, Mrs. Gascoigne and Joan.

While the accused stoutly denies that he had ever introduced Mrs. Gascoigne as his wife, the testimony overwhelmingly establishes that he did so introduce her at the time that he procured the apartment from the real estate broker; that he was present and did not contradict the broker when the latter introduced Mrs. Gascoigne to his wife as Mrs. DeMint; that he introduced her as his wife to the personnel at the Personal Affairs Office at the Boca Raton Air Field and raised no objection when she was called "Mrs. DeMint" by others in his presence; and that among his neighbors it was assumed that he and Mrs. Gascoigne were husband and wife, since they occupied the same apartment. While some friends of the accused and Mrs. Gascoigne testified that their conduct was above reproach, and that Mrs. Gascoigne was never held out to them as accused's wife, she herself, in writing to the real estate agent in an effort to terminate the lease at the time of accused's departure, attempted to conceal from the agent that she was not actually accused's wife.

Further, accused in his statements to the investigating officer, without disclosing Mrs. Gascoigne's name or identity, failed to disclose the fact that he and Mrs. Gascoigne had occupied the apartment alone between the middle of November and her departure for Sioux Falls shortly before Christmas, stating solely that he, an unnamed woman, and her daughter had lived in the apartment since about Christmas. Accused likewise admitted his affection for this woman, while denying that there had been any improper relations between them.

6. The Board is of the opinion that the record fully justifies the finding of guilty. For at least five or six weeks prior to Mrs. Gascoigne's departure for Sioux Falls she and accused openly and publicly occupied an apartment alone in Fort Lauderdale, which had been procured by accused following his introduction of Mrs. Gascoigne to the real estate broker as Mrs. DeMint. By his words and actions, accused held Mrs. Gascoigne out to the world as his wife. Even after they were joined by Mrs. Gascoigne's daughter, from whom Mrs. Gascoigne had concealed the fact that she had been in Fort Lauderdale, they gave every appearance of living as man and wife - there is no proof that they occupied the same bedroom, but their method of living bore every earmark of constituting cohabitation as a married couple. Probably had there not been the period of five or six weeks in which they lived alone, it might with some force be argued that there was nothing per se wrongful in a married man living in the same apartment with

a married woman, estranged from her husband, and her adolescent daughter. But it would be to ignore the normal experiences of life to contend that the relations between accused, who professed his love for Mrs. Gascoigne, and the latter, who had followed him from Sioux Falls, South Dakota, to Fort Lauderdale, Florida, were innocent and proper. As summed up by accused's good friend, Chaplain Hanley, who was apparently unaware of the period which accused and Mrs. Gascoigne had spent alone in the apartment,

> "If Captain DeMint were living there with Mrs. Gascoigne alone, I would have questioned it, but when Mrs. Gascoigne was there with her daughter, I didn't think it worthy of comment."

It is rare that sin committed in the secrecy of the bedroom may be proved by direct evidence, but it has consistently been held that immoral conduct may properly be inferred from circumstances (CM 261897, Ochs, 40 B.R. 339, CM 254722, Grimstad, 35 B.R. 341; CM 227791, Fahres, 15 B.R. 357). Furthermore, sexual intercourse is not an essential element of the offense of unlawful cohabitation. For an officer openly and publicly to live with a woman not his wife "in a manner such that the discovery later that he had done so was calculated to bring the military into discredit and disrepute" is a violation of the 96th Article of War (CM 254722, Grimstad, 35 B.R. 341). Without in any way holding that it is improper per se for a married officer to occupy a room as a lodger in a rooming house or residence owned or operated by a married woman, not his wife, the Board is of the opinion that the circumstances in the present case lead to the unescapable conclusion that accused and a woman not his wife openly and publicly lived together as man and wife, and that accused's conduct, in violation of good morals and the well-recognized standards of propriety, brought discredit upon the military service.

7. War Department records show that accused is 42 years and 10 months of age, is married, and has two children. He graduated in 1922 from Western Military Academy where he was a member of the R.O.T.C. for four years. He held a commission as second lieutenant in the Infantry, Officers' Reserve Corps, from 1924 to 1934, and as captain in the Illinois National Guard from 1923 to 1932. His civilian occupations included nine years as Tactical Officer at Western Military Academy, nine years as Special Representative of Yellow Truck and Coach Manufacturing Company, and ten months as manager of the DeMint Farms, from which position he resigned to enter the military service in June 1942, with the rank of captain in the Army of the United States.

8. The court was legally constituted and had jurisdiction over the accused and of the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion

of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 96.

Charles G. Lickie, Judge Advocate

Thomas Mayo, Judge Advocate

Charles S. Sykes, Judge Advocate

SPJGK - CM 288073 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Captain William A. DeMint (O-198381), Air Corps.

2. Upon trial by general court-martial this officer was found guilty of wrongful and unlawful cohabitation with a woman not his wife from November 1944 to April 1945, in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings and the sentence and to warrant confirmation thereof.

While stationed at Sioux Falls, South Dakota, accused, a married man, 42 years of age, whose wife and two minor daughters lived in Evanston, Illinois, became very intimate socially with Mrs. Pauline Gascoigne, a married woman, who had been estranged from her husband for more than two years. A short while after accused had been transferred to Boca Raton, Florida, in November 1944, Mrs. Gascoigne appeared at his new post and accompanied accused in search of an apartment. A two-bedroom apartment in Fort Lauderdale was leased through a real estate dealer to whom accused introduced Mrs. Gascoigne as his wife. Accused and Mrs. Gascoigne occupied this apartment together from about 15 November until shortly before Christmas 1944, when he went back to Sioux Falls. Upon her return the day before Christmas she was accompanied by her fifteen year old daughter, from whom she had concealed the fact that she had spent several weeks with accused in Fort Lauderdale. Thereafter, until accused was transferred from Boca Raton in the latter part of March 1945, the three occupied the apartment. Accused, who was Personal Affairs Officer at Boca Raton Air Field, introduced Mrs. Gascoigne as his wife or as Mrs. DeMint to personnel in his office and permitted third persons to refer to her as Mrs. DeMint. When she became a civilian employee in his office in January 1945 she let it be known that she was not accused's wife and gave her real name. Other occupants of the apartment house believed that accused and Mrs. Gascoigne were husband and wife. Accused admitted his affection for Mrs. Gascoigne but denied any improper relationship between them, and further denied that he had ever

introduced her as his wife, while admitting that he had allowed others to refer to her as Mrs. DeMint in his presence. Mrs. Gascoigne also maintained that her relations with accused were purely platonic and that her occupancy of the apartment with him was due originally to the acute shortage in housing facilities. Three of their friends testified that their conduct was above reproach and that they were well aware of the fact that they were not married to each other.

The record fully sustains the finding of unlawful and wrongful cohabitation. However, with the exception of the period preceding Christmas, 1944, accused and Mrs. Gascoigne at least sought to give the appearance of respectability by having the latter's daughter occupy one of the bedrooms with her. While accused's conduct can not be condoned, it was not so flagrant as to justify the conclusion that he is unworthy of continuing as an officer in the Army of the United States. His past record as an officer shows eight efficiency ratings as excellent, four as very satisfactory, and two as satisfactory. He held a commission as a Reserve officer from 1924 to 1934 and as a National Guard officer from 1923 to 1932. With the exception of the present offense the only evidence of misconduct is a reprimand under Article of War 104 for disorderly conduct in public on 6 March 1945. On 30 March 1945 he tendered his resignation under Army Regulations 605-275 in lieu of reclassification, but this resignation was not favorably considered by the Secretary of War on the recommendation of the Commanding General, Army Air Forces, that accused's alleged unlawful cohabitation "was more properly a matter for appropriate disciplinary action than a basis for the initiation of reclassification proceedings." On 1 August 1945 the same court which sentenced accused to dismissal sentenced Major Milton Harrison (CM 285050) to be reprimanded, to be restricted for three months, and to forfeit $75 of his pay per month for twelve months, upon a similar charge of wrongful and unlawful cohabitation, covering a period of eight months, to which the accused in that case pleaded guilty. In view of the rapid demobilization which is now in progress, a forfeiture of pay over an extended period in the present case would probably be inefficacious as a form of punishment. I, therefore, recommend that the sentence be confirmed, but that it be commuted to a reprimand and forfeiture by accused of $100 of his pay per month for two months, and that the sentence as thus modified be carried into execution.

4. Consideration has been given to a letter from Mrs. Pauline Gascoigne, reaffirming the propriety of her relations with accused, and pointing out the severity of his sentence as compared with that imposed on Major Harrison.

5. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

3 Incls
1. Record of trial
2. Form of action
3. Ltr fr Mrs. Pauline Gascoigne

(Sentence approved but commuted to a reprimand and forfeitures of $100. a month for two months. As modified ordered executed. GCMO 492, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGK - CM 288193

2 OCT 1945

UNITED STATES	)	ARMY AIR FORCES EASTERN FLYING TRAINING COMMAND
v.	)	
Second Lieutenant DAVID M. BURD (O-577017), Air Corps.	)	Trial by G.C.M., convened at Gunter Field, Alabama, 5 September 1945. Dismissal, total forfeitures and confinement for two (2) years.

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and SYKES, Judge Advocates.

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1. The record of trial in the case of the officer named above has been examined by the Board of Review and the Board submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 93rd Article of War.

Specification: In that Second Lieutenant David M. Burd, Squadron C, 2131st AAF Base Unit, Army Air Forces Pilot School (Basic), Gunter Field, Alabama, did, at Craig Field, Alabama, on or about 13 July 1945, feloniously take, steal and carry away One (1) Leica Camera, value about Four Hundred ($400.00) Dollars, the property of Aspirant Jean V. Forestier.

He pleaded not guilty. He was found guilty of the Charge and Specification and was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for two years. No evidence of any previous conviction was introduced. The reviewing authority approved the sentence and forwarded the record of trial for action under the provisions of Article of War 48.

3. Evidence for the Prosecution.

Jean Forestier, an Aspirant in the French Air Forces, was stationed at Craig Field, Selma, Alabama, during the months of June and July 1945. On 23 June 1945 he purchased a Leica Camera with a pigskin leather carrying case from the jewelry firm of Busch & Sons in Montgomery, Alabama, for the sum of $400.00 (R. 7,31,33). An expert witness testified that at the time of trial the camera had a market value of "not less than $400.00" (R. 33). All better grade cameras and lens have serial numbers and the jeweler who sold the camera to Forestier testified that he had never seen the same serial

numbers on two different cameras or lens (R. 30). After purchasing the camera, Forestier made a note of the serial numbers on the camera and the lens (R. 7, Ex. A) and the jewelry firm kept the tag from the camera, which tag contained information as to the serial numbers of the camera and lens and also the date of sale and to whom the camera was sold (R. 31,32, Ex. G). Forestier took the camera and case to his station at Craig Field and last saw the camera in his room, which remained unlocked, at about noon on 13 July 1945. He returned to his room about 1700 hours on 13 July 1945 and noted that the camera and case were missing. He had given no one authority to take the camera and case (R. 10,11,13). At the time of the loss, the case also contained a notebook and card belonging to Forestier (R. 10). Forestier immediately reported the loss, orally and in writing, to the Provost Marshal at Craig Field, describing the camera and giving the serial numbers of the camera and lens (R. 11, Ex. B).

Accused was also stationed at Craig Field during the month of June and part of the month of July 1945, being transferred in July to Gunter Field in Montgomery, Alabama. He signed out from Craig Field at 2100 hours on 13 July 1945, the date of Forestier's loss, and proceeded to Gunter Field (R. 28, Ex. F).

On 10 August 1945 the Provost Marshal of Craig Field and the Provost Marshal of Gunter Field obtained a search warrant for the purpose of searching accused's quarters in Montgomery and had the warrant served by two civilian detectives (R. 17,18). A search was made through "dressers, chifforobe and so forth" in accused's quarters and also in a closet which contained two or three suitcases, cartons, boxes and clothes. In a rear corner of the closet was a pasteboard carton containing books, papers, clothing, bedclothing, miscellaneous items, and also the missing camera and pigskin carrying case. The serial numbers on the camera and lens were found to be the same as those given by Forestier and as contained in Forestier's written report and the Provost Marshal's official report of the loss. Forestier's notebook and card were also found in the carrying case (R. 17,18,19,22). That same day, 10 August 1945, accused was interviewed in the office of the Gunter Field Provost Marshal and, after being fully advised of his rights under the 24th Article of War, stated that the camera had been given to him by his brother-in-law in Louisville, Kentucky, while the accused had been on leave about two and a half months before (R. 24,26).

4. <u>Evidence for the Defense.</u>

While stationed at Craig Field, accused lived in Selma, Alabama, at the home of Mrs. Caine, located four or five miles from Craig Field (R. 36,43,69). Mrs. Caine recalls the date accused was transferred to Gunter Field and also recalls that accused arrived at her home at about 1300 hours, parking his car in front of the house, and staying at the house packing and loading the car preparatory to leaving until he finally departed

for his new station at about 1900 hours. During the entire afternoon she either heard accused moving around the house or heard him talking, and each time she looked out front the accused's car was present (R. 37,38,42, 43,44). Mrs. Caine's sister, Mrs. Lide, also lived in the Caine home and spent most of the afternoon on the front porch of the house. Mrs. Lide recalls that accused moved on the 13th of July and further recalls that he arrived at about 1300 hours to pack and load his car, which was parked in front of the house, and remembers that he did not leave the house until about 1900 hours. During the entire afternoon Mrs. Lide did not leave the front porch for periods of longer than ten minutes and accused's car remained parked in front of the house during the entire afternoon (R. 50,51, 54,55). Both Mrs. Caine and Mrs. Lide recalled that a neighbor, Mr. Cox, who lived across the street, was on his front porch all afternoon on 13 July 1945 (R. 39,57). Mr. Cox testified that due to asthma and hay fever he was unable to work and spent his time "out in the open in the cool, fresh air" sitting on his front porch (R. 62). Mr. Cox does not recall the date accused moved but does recall that he was on his front porch while accused was loading his car preparatory to moving. He saw accused arrive at the Caine home at about 1300 hours and saw him finally depart at about 1900 or 1930 hours. Accused's car remained parked in front of the Caine house at all times between about 1300 and 1900 hours (R. 63,64).

Mrs. Ellen Ross was in Selma working as a waitress in Carter's Drug Store on 13 July 1945 (R. 70) and saw accused in the drug store at about 1230 or 1300 hours that date. Accused told her that he was going to Montgomery that evening and she asked, and received, permission to ride to Montgomery with accused and his wife. Accused left the drug store at about 1330 hours and later picked up Mrs. Ross for the trip to Montgomery at about 1930 hours. Accused then proceeded to Craig Field where he went into a BOQ while Mrs. Ross and accused's wife remained in the car. When accused returned they remained parked in front of the BOQ while they drank a "coke." While drinking the "coke" a Frenchman approached accused, talked a few moments, then the Frenchman left for a few minutes and returned with a camera which he gave accused. Accused handed the camera to Mrs. Ross who placed it in the glove compartment of the car (R. 73,74, 75,77). Accused handed the Frenchman a "piece of paper" (R. 82), then accused went to headquarters and signed out and proceeded to Montgomery, arriving at about 2230 hours (R. 74).

Accused, having been informed of his rights relative to becoming a witness, elected to make an unsworn statement. He stated that he served seven and a half years in the Army as an enlisted man, then went to OCS at Miami Beach, Florida, where he graduated on 15 April 1943 and received his commission the next day. He had been stationed at Craig Field since sometime during the latter part of 1944 and on 10 July 1945 received word that he was being transferred to Gunter Field. On the morning of 13 July 1945 he completed his clearance of the Field, except for signing out, and

went home to assist his wife in packing. En route home he stopped at Carter's Drug Store where he met Mrs. Ross and agreed to take her to Montgomery. He was engaged in packing and loading his car all afternoon and did not leave the vicinity of the house at any time between his arrival there at about 1300 or 1330 hours until about 1900 hours. He then picked up Mrs. Ross and proceeded to Craig Field where he first stopped at a BOQ because he had missed a uniform and thought it might be at the Field. While at the BOQ they had a Coca Cola and as he was standing beside the car a Frenchman approached accused and asked if accused would take a camera to Montgomery to have repaired. Accused agreed and asked where he should take the camera and the Frenchman replied that it did not matter, to take it any place accused could find. Accused informed the Frenchman that he probably would not have time to look for a place but would have the camera repaired if conveniently possible. Accused then gave the Frenchman his name and new address, taken from his transfer orders. Accused handed the camera to Mrs. Ross, telling her to put it in the glove compartment of the car. Accused did not know the Frenchman and did not ask for his name. Accused then left the BOQ and went to headquarters where he signed out and went to Montgomery. On 10 August 1945 accused was visited by the Provost Marshal of Craig Field and Gunter Field who asked permission to search his quarters. Accused's wife was pregnant and for that reason accused was not very much in favor of having a search made; however, he did consent to the search. After arriving at his quarters he recalled that, as he was living in the residence of another, he had no authority to permit a search and felt it was necessary to have a search warrant issued before permitting the search. After the officers obtained the search warrant they made the search of the quarters, during which time accused's wife was very hysterical and accused's only thought was to get them out of his house. For that reason he told the officers the first thing that crossed his mind about the camera, viz, that it was given him by his brother-in-law. When questioned later at the office of the Provost Marshal he knew it would not help matters to deny what he had already said, so he again told them that the camera was given him by his brother-in-law. Subsequent to 10 August 1945 he made a trip to Craig Field in an effort to find the Frenchman who gave him the camera, but was unable to locate him (R. 84-90).

5. <u>Prosecution evidence in rebuttal.</u>

The Provost Marshal of Craig Field was recalled to the stand and testified that accused made no statement at his quarters concerning the manner in which he came into possession of the camera, and that if such statement had been made the witness would have heard it (R. 91). On cross-examination the witness testified that, "He could have made it to someone else but he didn't make any remark to me of that nature." The witness also testified that another camera, of a German make, was found in accused's quarters (R. 92,93).

6. The evidence for the prosecution clearly establishes that on 23 June 1945 Aspirant Forestier purchased a Leica Camera for the sum of $400.00 and that on 13 July 1945, between the hours of 1200 and 1700, the camera was taken from his quarters without his permission or authority. On the day the camera was taken, the accused was transferred from Craig Field to Gunter Field in Montgomery. Less than one month later the camera, fully identified, was found in exclusive possession of accused at his new station. The defense sought to establish an alibi for accused by adducing evidence to show that he was at his home, some four miles from the scene of the crime, at all times between the hours of 1300 and 1900 on 13 July 1945. The defense then sought to prove that an undescribed camera was given accused by an unknown Frenchman to be taken to some unnamed repair shop in Montgomery to have undescribed repairs made. The court, acting within its rights, declined to believe that accused's alibi evidence was sufficient to preclude the possibility that he took the camera from Forestier, and further declined to believe the rather far-fetched story of the unknown Frenchman in so far as it related to Forestier's camera. The evidence as to accused's guilt is entirely circumstantial but, in such cases, it is proper for the court to believe prosecution's evidence in order to determine whether the proof is sufficient to exclude every reasonable hypothesis of innocence. The prosecution's evidence showing accused's possession of recently stolen property, taken in connection with accused's obviously unsatisfactory explanation of having received the camera from his brother-in-law in Louisville at a time prior to its actual purchase in Montgomery, is sufficient to support the conviction of larceny.

7. War Department records show that accused is 28 years of age and is married. He is a high school graduate. He enlisted in the Army in 1935 and served as an enlisted man for seven years, rising to the grade of staff sergeant prior to being selected for Officer Candidate School. He graduated from Officer Candidate School on 15 April 1943 and received his commission as second lieutenant, AUS, on 16 April 1943.

8. The court was legally constituted and had jurisdiction of the accused and the offense. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence. Dismissal is authorized upon conviction of a violation of Article of War 93.

Charles A. Luckie, Judge Advocate

Herman Mayer, Judge Advocate

Edwin S. Sykes, Judge Advocate

NOV 1 1945

SPJGK - CM 288193 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant David M. Burd (O-577017), Air Corps.

2. Upon trial by general court-martial this officer pleaded not guilty to, and was found guilty of, larceny in violation of Article of War 93. No evidence was introduced of any previous conviction. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for two years. The reviewing authority approved the sentence and forwarded the record of trial for action under the provisions of Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support the findings of guilty and the sentence.

On 23 June 1945 Jean Forestier, an Aspirant in the French Air Forces, purchased a Leica Camera at Montgomery, Alabama, paying therefor the sum of $400.00. Forestier took the camera to his station at Craig Field, Selma, Alabama, where he last saw it in his quarters at about noon on 13 July 1945. When Forestier returned to his quarters at about 1700 hours the camera was missing. The accused had been stationed at Craig Field but signed out for Gunter Field, Montgomery, Alabama, his new station at 2100 hours on 13 July 1945. About one month later a search warrant was obtained and accused's quarters at his new station were searched, resulting in the finding of Forestier's camera and also a second camera in a closet in his room. The defense sought to establish an alibi for accused by adducing evidence to show that he was at his home, some four miles from the scene of the crime, at all times between the hours of 1300 and 1900 on 13 July 1945. Defense also sought to prove that, immediately prior to his departure from Craig Field, an unknown Frenchman gave accused an undescribed camera for the purpose of taking it to accused's new station (Montgomery, Alabama) and having unnamed repairs made thereon. Accused testified he had made a subsequent effort to locate the unknown Frenchman without success.

4. The record of trial establishes beyond contradiction that accused was found in the possession of a recently stolen camera. His contention that an undescribed camera was given him by some unknown Frenchman

does not alter the fact that the particular camera, belonging to Aspirant Forestier, was stolen and later found in accused's quarters at his new station. This contention is further weakened by the discovery of a second camera in accused's possession. The value of the camera was established to be "not less than $400.00." I recommend that the sentence be confirmed, but that the forfeitures be remitted and that the period of confinement be reduced to one year. I further recommend that a disciplinary barracks be designated as the place of confinement.

5. Accused has been a commissioned officer since 16 April 1943. His 201 file in the War Department does not reveal his efficiency ratings, but the review of the staff judge advocate indicates that such ratings have been "very satisfactory" and "satisfactory." He previously served seven years as an enlisted man, attaining the grade of staff sergeant.

6. Consideration has been given to a letter from Senator Joseph F. Guffey dated October 16, 1945, inclosing a letter to him from Mr. C. L. Counts. These letters accompany the record of trial.

7. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

4 Incls
1. Record of trial
2. Form of action
3. Ltr fr Sen Jos F Guffey w/incl
4. Ltr fr Mr C. L. Counts dated Oct 31, 1945.

(S entence confirmed, forfeitures remitted and confinement reduced to one year. As modified ordered executed. GCMO 471, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 288446

UNITED STATES v. Private First Class ALEJANDRO N. ARVIZU (39854709), Army Air Forces Overseas Replacement Depot, Kearns, Utah.	ARMY AIR FORCES WESTERN FLYING TRAINING COMMAND Trial by G.C.M., convened at Williams Field, Chandler, Arizona, 30 August 1945. Dishonorable discharge and confinement for life. Penitentiary.

REVIEW by the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the soldier named above.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 92nd Article of War.

Specification: In that Private First Class Alejandro N. Arvizu, Army Air Forces, Overseas Replacement Depot, Kearns, Utah, did, at Chandler, Arizona, on or about 5 August 1945, with malice aforethought, willfully, deliberately, feloniously, unlawfully, and with premeditation kill one Teresa Arvizu, a human being, by stabbing her with a knife.

After counsel for accused had entered a plea of "not guilty by reason of emotional insanity at the time the act was committed", the court directed that a plea of not guilty to the Charge and Specification be entered on behalf of accused. The accused was found guilty of the Charge and Specification and sentenced to be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at

hard labor, at such place as the reviewing authority might direct, for the term of his natural life. The reviewing authority approved the sentence; designated the United States Penitentiary, Leavenworth, Kansas, as the place of confinement; and forwarded the record of trial for action under Article of War 50½.

3. Evidence for the prosecution: During a change of station accused, who had been in the Army for about two and a half years, visited his home at Chandler, Arizona, from which he had been absent for seven months (R. 9, 62; Pros. Ex. B). After his arrival on 31 July 1945, he, his wife Teresa, and their 4-year-old child, occupied a house adjoining the residences of her mother, Mrs. Juana Zazueta, and her brother, Frank Zazueta (R. 9-10, 14, 36).

The accused was in a tavern on Friday afternoon, 3 August 1945, and was "pretty full". He displayed a knife and made the statement, "I am going to kill her, she is no good" (R. 53-55). The following night, 4 August 1945, accused was in the tavern drinking beer until closing time (R. 10). Frank Zazueta was there and talked to accused, who asserted that he intended to divorce Teresa but that he wished to remain friendly with Frank (R. 17). After the tavern closed, the patrons gathered outside to sing and it was around 3:00 a.m. when accused, accompanied by his stepfather, Rosindo Vassquze, and Frank Zazueta went home. According to the latter accused was sober (R. 11-12). Frank entered his house but apparently accused could not gain admittance, for he was heard pounding and shouting for Teresa to open the door (R. 13).

The disturbance awakened Mrs. Zazueta and caused her to come outside. She was soon joined by her son Frank and other members of her family (R. 14, 36-37, 44). Teresa did not appear until accused talked about taking the child away from her. She then stepped into the yard saying, "Before you take my daughter you take my life" (R. 37). A verbal squabble over the divorce followed (R. 14). Teresa stated she would agree to it, but they would have to prove what they had been saying about her (R. 37). Mrs. Zazueta finally said they would "fix" the divorce Monday and requested accused to leave (R. 15, 38, 46). He asserted, "I am going to sleep here. She is my wife; I have a right to sleep with her until I get a divorce" (R. 15). When Frank urged, "You had better go away", accused rejoined, "Teresa is staying with me dead or alive". He was very angry and, as he spoke, he stabbed her in the stomach with a pocketknife (R. 15, 38, 43, 46, 77; Pros. Ex. A). He then ran away while Teresa, who was bleeding badly, took a few steps and collapsed (R. 16, 47). In the opinion of Mrs. Zazueta and her daughter, Dora, accused was not drunk at the time of the stabbing (R. 42, 47).

Teresa was taken to a physician about 3:30 a.m., and found to have suffered a laceration, three-fourths of an inch long, on the right side of her abdomen. The cut appeared to have been inflicted with a knife. After giving her first aid treatment, the physician sent her home (R. 17, 33-34)

Later in the morning, about 9:30 a.m., she was taken to the Station Hospital at nearby Williams Field (R. 17, 63). Her injury was described as "a penetrating wound of the lower abdomen, right mid-quadrant, just above the level of the navel", and the symptoms indicated penetration of the inter-abdominal cavity. She was given plasma and blood transfusions and an operation was performed but she eventually succumbed on Wednesday, 8 August. An autopsy disclosed that death was caused by a knife wound, "penetrating the abdomen, involving a wound, penetrating, of the transverse colon and of the right kidney, with subsequent hemorrhage, shock, peritonitis, and bronchial pneumonia". The pneumonia was due to shock and a "general cellulatory collapse" resulting from the wound (R. 63-65).

Accused was asleep at his home when military police arrived about 5:30 a.m. on 5 August 1945. When awakened, he appeared to be sober, but he claimed that he did not remember anything that had previously happened (R. 49-53). The following day, 6 August 1945, he was questioned by the county attorney and, after being warned of his rights, made a statement concerning the killing (R. 60-62; Pros. Ex. B).

He asserted that when he arrived home in Chandler he heard that his wife was "running around" late at night and had been seen with other men. This news so enraged accused that he asked her for a divorce. She denied any infidelity and said she would not agree to a divorce until he came back from the Army. They continued to live together, but the matter preyed on his mind. Saturday night, 4 August 1945, he went from one tavern to another drinking large quantities of beer. After the taverns closed, he stood in the street singing and drinking with his brother-in-law, Frank Zazueta, and his step-father, Rosindo Vassquze. The succeeding events were described by accused as follows:

> "* * * I was so drunk you know when I went home, then I want to go to sleep. My wife was there in bed already when I got in the house, I was going to bed. My mother-in-law, her mother, came to the house and told me to get out of there, she was trying to chase me out of there and trying to take my wife to her house, she wanted to take her. I told them the day before that I want to fix a divorce to see if I can get it, I just told them and they got mad. Let's see, then when she came up into the house she make me mad because she wanted to take my wife to her house. I wasn't going to do nothing, I was going to sleep. She came up there and tried to chase me out of there, so I got mad and I was drunk and I don't know what happened if I cut her. The next morning the M.P's took me to the mother's house. They said, 'Do you know what you did last night?' I said I didn't know. That is all I remember" (Pros. Ex. B).

Although he persisted in his assertion that he had no recollection of stabbing his wife, when asked, "Arvizu, why did you stab your wife?", he replied, "I got mad I think" (Pros. Ex. B).

4. Evidence for the defense: Accused, after being advised of his rights as a witness, elected to remain silent (R. 93). However, testimony concerning the homicide and the preceding events was given by accused's mother, his step-father, and other witnesses. It was shown that when accused came back to Chandler he received information from several sources that his wife had been seen with other men. His former employer told him that he had seen her on the street with some soldier (R. 67-69). A bartender at the "Avalon", described as a cabaret of poor reputation, informed accused that he had seen her there (R. 86-88). The accused's mother told him of a conversation in which Teresa had said that accused never wrote, but she did not care because she was going to marry another man (R. 79). A Manuel Gaulna admitted to accused that he had been out with Teresa and that she was "chasing" him (R. 73-75).

These reports angered accused (R. 69). On Thursday, 2 August 1945, he was in a tavern "kind of drunk" and showed a knife which he said "sooner or later he was liable to use * * * on his wife" (R. 76-77). Saturday night, about 8:30 o'clock, he came out of a saloon drunk. He was taken home and given coffee, which he soon vomited. His mother tried to induce him to go to bed, but he insisted on returning to his friends (R. 69-73, 79-80). He remained in the vicinity of the tavern drinking beer and whiskey until early in the morning (R. 82-84). When he finally went home and became involved in the quarrel with his wife and the Zazuetas, he was so drunk that his words were unintelligible. "He was awful mad and drunk" according to the testimony given by his step-father (R. 84-85). It was about 4:30 that morning when, with a knife in his hand, he arrived at his mother's house. She testified that he was "awful drunk", and that it was difficult to understand his speech. He mumbled something about having a quarrel with his wife and went to sleep immediately after lying down (R. 80-81).

Two witnesses testified that accused's reputation for peace and quiet in his community was good (R. 67, 84-90). A report of a psychiatric examination of accused was received in evidence which contained the following diagnosis: "No psychosis, psychopathic personality, emotional instability" (R. 92; Def. Ex. 1).

5. It is alleged that accused "did, at Chandler, Arizona, on or about 5 August 1945, with malice aforethought, wilfully, deliberately, feloniously, unlawfully, and with premeditation kill one Teresa Arivzu, a human being, by stabbing her with a knife", in violation of Article of War 92.

Murder is "the unlawful killing of a human being with malice aforethought". By "unlawful" is meant "without legal justification or

excuse". MCM, 1928, par. 148a. "Malice aforethought" has been defined in the following language:

> "* * * Malice * * * is used in a technical sense, including not only anger, hatred, and revenge, but every other unlawful and unjustifiable motive. It is not confined to ill will toward one or more individual persons, but is intended to denote an action flowing from any wicked and corrupt motive, a thing done malo animo, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent on mischief. And therefore malice is implied from any deliberate or cruel act against another, however sudden.
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> * * *
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> "* * * It is none the less malice aforethought, within the meaning of the law, because the act is done suddenly after the intention to commit the homicide is formed: it is sufficient that the malicious intention precedes and accompanies the act of homicide. It is manifest, therefore, that the words 'malice aforethought' in the description of murder, do not imply deliberation, or the lapse of considerable time between the malicious intent to take life and the actual execution of that intent, but rather denote purpose and design in contradistinction to accident and mischance". Commonwealth v. Webster, 5 Cush. 296, 52 Am. Dec. 711.

The words "deliberately" and "with premeditation" have been held to mean "* * * an intent to kill, simply, executed in furtherance of a formed design to gratify a feeling for revenge, or for the accomplishment of some unlawful act". Wharton's Criminal Law, Vol. I, Sec. 420. "Deliberation and premeditation may be instantaneous. Their existence is to be determined from the facts and circumstances in each case". Aldridge v. United States, 60 App. D.C. 45, 47 F. 2d 407, 408.

The record shows that the fatal stabbing of Teresa Arvizu by her husband Alejandro Arvizu was the result of a jealous hatred induced by repeated stories of her infidelity and aggravated by her refusal to cooperate in his securing a divorce. It is clearly apparent that accused brooded over his misfortune and that his mind developed a murderous bent. Only two days prior to the killing the accused revealed his uxoricidal design by displaying a knife in a saloon and drunkenly proclaiming his intent to do away with her. Since the heart "fatally bent on mischief" existed, there was needed only the occasion for him to carry out his purpose. The family tilt that developed on the morning of 5 August 1945 afforded him the opportunity to vent his hatred for his wife and to deliver the lethal thrust that slashed the abdomen and penetrated the organs of his wife resulting in her death three days later.

No extended discussion is necessary to show that accused's action was murder. It cannot be said that accused acted in the heat of sudden passion caused by adequate provocation. The Manual for Courts-Martial (par. 149a) states:

> "The law recognizes the fact that a man may be provoked to such an extent that in the heat of sudden passion, caused by the provocation, and not from malice, he may strike a blow before he has had time to control himself, and therefore does not in such case punish him as severely as if he were guilty of a deliberate homicide.
>
> "In voluntary manslaughter the provocation must be such as the law deems adequate to execute uncontrollable passion in the mind of a reasonable man; the act must be committed under and because of the passion, and the provocation must not be sought or induced as an excuse for killing or doing bodily harm".

It is clear that accused's malo animo antedated the quarrel with his wife and her family on the morning of 5 August. The nature of the quarrel, a mere exchange of verbal thrusts, could not constitute adequate provocation. While accused's anger may have been intensified by the encounter, it cannot be deemed a "sudden passion". The record fails to show any circumstances which would reduce the killing to manslaughter.

The evidence is conflicting as to accused's sobriety at the time of the slaying. The defense testimony tended to show that accused was highly intoxicated. The Manual for Courts-Martial (par. 126) provides:

> "It is a general rule that voluntary drunkenness, whether caused by liquors or drugs, is not an excuse for a crime committed while in that condition; but it may be considered as affecting mental capacity to entertain a specific intent, where such intent is a necessary element of the offense."

A more detailed exposition is contained in 26 American Jurisprudence, sec. 118, as follows:

> "One intoxicated to the extent of being deprived of mental capacity to deliberate or premeditate cannot be guilty of a crime of which premeditation is an essential element, if he formed no purpose to commit the crime prior to the time he became intoxicated. * * * It is to be noted, however, that intoxication of one accused of murder will not reduce the grade of the offense where the killing was done with deliberation and premeditation. If one who, while sober, deliberately resolves to

kill another, makes himself drunk for the purpose of nerving himself for the accomplishment of his design, and is temporarily insane and unconscious of what he is doing, he is still guilty of murder in the first degree. Intoxication resorted to for the purpose of blunting moral responsibility, only increases the culpability of the defendant.

"Before intoxication can be relied upon as reducing the degree of the crime, the intoxication must have been of such a degree as in fact to render the slayer incapable of attaining the purpose, intent, or malice, that the law deems an ingredient of the offense. * * *".

The defense witnesses on this issue are directly contradicted by those of the prosecution. Three members of the Zazueta family testified in effect that, while accused showed signs of his drinking, he was not intoxicated. These opinions are corroborated by the fact that, when questioned the next day concerning the homicide, accused was able to reconstruct in detail his activities leading up to the killing. It was, peculiarly enough, only the actual stabbing that he could not recall. There was thus presented to the court for determination the question of fact whether accused's mind was in such a condition as to be incapable of forming an intent to kill. The affirmative conclusion reached, implicit in the court's findings of guilty, is supported by the evidence, and no valid reason appears why they should be disturbed. Furthermore, there is sufficient evidence in the record to show that intent on the part of accused to kill his wife existed prior to the slaying and, under the law quoted, his condition as to sobriety at the time he consummated his intent becomes immaterial.

6. The accused sought to enter a plea of "not guilty by reason of emotional temporary insanity". By direction of the court a plea of not guilty was entered. At the conclusion of the testimony the law member ruled that the issue of insanity had been raised. He subsequently ruled that "at the time of the commission of the offense charged and at the present time the accused is not suffering from mental disease or difficulty and can distinguish between right and wrong and adhere to the right". The only evidence introduced which directly concerned his mental condition was a psychiatric report disclosing, "No psychosis, psychopathic personality, emotional instability". The defense counsel stated that they had no further evidence on the issue of insanity, but that they also relied upon the facts of the case itself as negativing mental accountability. A careful consideration of the relevant evidence compels the conclusion that it does not vitiate the usual presumption of sanity or raise a reasonable doubt as to accused's mental responsibility. WD Tech. Bull. "Psychiatric Testimony Before Courts Martial" (TB Med, 201, 1 Oct 45). On the contrary, it affirmatively appears that accused "was at the time so far free from mental defect,

disease, or derangement as to be able concerning the particular acts charged both to distinguish right from wrong and to adhere to the right" (MCM, 1928, par. 78a).

7. The charge sheet shows that accused is 27 years of age, and that he was inducted at Phoenix, Arizona, 12 January 1942, with no prior service.

8. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. A sentence either of death or life imprisonment is mandatory upon conviction of murder, in violation of Article of War 92. Confinement in a penitentiary is authorized by the 42nd Article of War for the offense of murder, recognized as an offense of a civil nature and so punishable by penitentiary confinement for more than one year by Section 22-2401 of the District of Columbia Code.

Abner E. Lefkowitz, Judge Advocate.

Robert J. Cannon, Judge Advocate.

Samuel Morgan, Judge Advocate.

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGN-CM 288453

U N I T E D S T A T E S v. Second Lieutenant ALLAN MORAN (O-1593109), Quartermaster Corps.	)))))))	THIRD SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Camp Lee, Virginia, 18 September 1945. Dismissal.

OPINION of the BOARD OF REVIEW
LIPSCOMB, O'CONNOR and MORGAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charge and Specification:

CHARGE: Violation of the 61st Article of War.

Specification: In that 2d Lieutenant Allan Moran, Quartermaster Corps, 9109 Technical Service Unit, Quartermaster Corps, Detachment No. 1, Quartermaster Replacement Pool, Army Service Forces Training Center, did, without proper leave, while enroute from First Service Command Headquarters, Boston, Massachusetts, to Camp Lee, Virginia, absent himself from his organization at Camp Lee, Virginia, from about 5 August 1945 to about 23 August 1945.

The accused pleaded guilty to, and was found guilty of, the Charge and the Specification. Evidence was received of a previous conviction by general court-martial on 15 January 1945 of being drunk and disorderly in camp, in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved only so much of the sentence as

provided for dismissal and forwarded the record of trial for action under Article of War 48.

3. Evidence for the prosecution: By special orders of the First Service Command, dated 2 August 1945, accused was relieved from duty at Boston, Massachusetts, and assigned to the Quartermaster Replacement Pool, Army Service Forces, Camp Lee, Virginia (R. 7; Pros. Ex. 1). Pursuant to these orders he departed from Boston on 3 August 1945, but, having failed to join his organization at Camp Lee by 5 August 1945, he was recorded as absent without leave on the latter date (R. 7-8; Pros. Exs. 2, 3). He eventually presented himself for duty at Camp Lee on 23 August 1945 (R. 8; Pros. Ex. 3).

Accused was interviewed by an investigating officer on 10 September 1945 and, following an explanation of his rights as a witness under Article of War 24, made a statement concerning his absence and also his previous record (R. 9; Pros. Ex. 4). He asserted that he was inducted in December 1942 and, after graduation from the Officers' Candidate School at Camp Lee, was commissioned on 18 June 1943. He went overseas in September 1943 and was stationed in Bombay, India, as an assistant quartermaster supply officer. Arriving back in this country in May, 1945, he spent a 30-day leave with his wife at their home in Albany. In July he had another 10 days at home when he was transferred to the First Service Command.

In complying with the orders assigning him to duty at Camp Lee, he reached Washington on 4 August 1945 and, finding that his luggage had not arrived, he decided to remain over night. He met some officer friends at his hotel, and a prolonged drinking bout ensued which did not end until 21 August when he proceeded on to Camp Lee. He reported at Post Headquarters, but, because he was suffering from the effects of his alcoholic episode, he went to a nearby hotel instead of joining his organization. On the morning of 23 August he reported to his organization for duty (Pros. Ex. 4).

4. No evidence was introduced by the defense. Accused, after explanation of his rights as a witness, elected to remain silent (R. 11-12).

5. The Specification of the Charge alleges that, while en route from the First Service Command, Boston, Massachusetts, to Camp Lee, Virginia, accused absented himself without leave from his organization at Camp Lee, Virginia, from 5 August 1945 to 23 August 1945. The Specification is laid under Article of War 61.

The unauthorized absence of accused is established by the evidence for the prosecution and admitted by his pleas of guilty. Although accused signed in at Camp Lee on 21 August, he failed to report to his organization until 23 August and, consequently, was absent without leave from his organization for the entire period alleged. The record is devoid of any semblance of an excuse for his extended absence. His explana-

tion that he spent 17 consecutive days in Washington drinking furnishes no justification for his dereliction. The offense charged is established without question.

6. War Department records show that the accused is about 32 years and 8 months of age, having been born 19 March 1913. He is a high school graduate and attended Harvard University for one year. His employment record shows that he has been engaged in the insurance brokerage business, that he was a stage and radio actor, and that immediately prior to entering the service he was an "expeditor" of materials and contracts for the General Electric Company. He was inducted 15 December 1942 and, upon graduation from The Quartermaster School at Camp Lee, was commissioned a temporary second lieutenant in the Army of the United States on 18 June 1943, reporting for active duty on that date.

7. The court was legally constituted. No errors injuriously affecting the substantial rights of the accused were committed during the trial. The Board of Review is of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation thereof. Dismissal is authorized upon conviction of a violation of Article of War 61.

Abner E. Lifsey, Judge Advocate.

Robert J. Conner, Judge Advocate.

Samuel Morgan, Judge Advocate.

SPJGN-CM 288453 1st Ind 1945
HQ ASF, JAGO, Washington 25, D. C.
TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Allan Moran (0-1593109), Quartermaster Corps.

2. Upon trial by general court-martial this officer pleaded guilty to, and was found guilty of, absence without leave from 5 August 1945 to 23 August 1945, in violation of Article of War 61. Evidence was received of a previous conviction by general court-martial on 15 January 1945 of being drunk and disorderly in camp, in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved only so much of the sentence as provides for dismissal and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board of Review that the record of trial is legally sufficient to support the findings and sentence as approved by the reviewing authority and to warrant confirmation thereof.

Accused left the First Service Command, Boston, Massachusetts, on 3 August 1945, under orders for duty at the Quartermaster Replacement Pool, Camp Lee, Virginia, but did not report at the latter place until 23 August 1945. His only explanation for his unauthorized absence of eighteen days was that he met friends in Washington en route and engaged in a prolonged drinking bout with them. The present offense follows by only a few months his conviction by general court-martial of being drunk and disorderly in camp for which he received a sentence to restriction and forfeitures. The circumstances indicate that accused is deficient in those qualities requisite in an officer. I recommend that the sentence as approved by the reviewing authority be confirmed and ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

2 Incls
Incl 1 - Record of trial
Incl 2 - Form of action

(Sentenec as approved by reviewing authority confirmed and ordered executed. GCMO 482, 15 Nov 1945.)

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

SPJGQ
CM 283574

UNITED STATES	)	FIRST AIR FORCE
	)	
v.	)	Trial by G.C.M., convened at Walterboro Army Air Field, Walterboro, South Carolina, 19 September 1945. Dismissal.
	)	
Second Lieutenant RALPH D. WILKINS (0839093), Air Corps.	)	

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OPINION of the BOARD OF REVIEW
PARTLOW, BIERER and HICKMAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE: Violation of the 61st Article of War.

Specification: In that Second Lieutenant Ralph D. Wilkins, Air Corps, did, without proper leave, absent himself from his command and station at Walterboro Army Air Field, Walterboro, South Carolina, from about 18 July 1945 to about 24 July 1945.

ADDITIONAL CHARGE: Violation of the 95th Article of War.

Specification: In that Second Lieutenant Ralph D. Wilkins, Air Corps, did, at Walterboro, South Carolina, on or about 26 July 1945, with intent to deceive Captain Robert B. Wilson, Air Corps, an officer detailed to conduct an investigation, officially state to the said Captain Robert B. Wilson, under oath, that he, the said Second Lieutenant Ralph D. Wilkins, had been informed by Dr. T. E. Jones, his family physician, in a telephone conversation, on or about 18 July 1945, that his mother was critically ill in Washington, D. C.; that the said Dr. Jones had called at his mother's home several times between 18 July 1945 and 23 July 1945, and had discussed his mother's condition with him; and that he had made

arrangements with a Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945, which statement was known by the said Second Lieutenant Ralph D. Wilkins to be untrue, in that he had not received a telephone call from Dr. T. E. Jones on or about 18 July 1945, in that said Dr. T. E. Jones had not attended his mother at her home in Washington, D. C., between 18 July 1945 and 23 July 1945, and in that he had not made arrangements with Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945.

He pleaded guilty to the Specification of the Charge and the Charge and not guilty to the Specification of the Additional Charge and the Additional Charge. He was found guilty of all the Specifications and Charges. No evidence of previous convictions was introduced. He was sentenced "to be dismissed from the service of the United States Army." The reviewing authority approved the findings of guilty except so much of the Specification of the Additional Charge as involves the words "and that he had made arrangements with a Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945" and "and in that he had not made arrangements with Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945", approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The evidence for the prosecution showed that the accused was a member of E Squadron, 126th Army Air Force Base Unit, Walterboro Army Air Field, Walterboro, South Carolina (R. 7, 8). The Morning Reports of E Squadron contained the following entries pertaining to the accused: on 20 July 1945 "Dy to AWOL 0800 18 July 45" (R. 8, Pros. Ex. 1), and on 24 July 1945 "AWOL to dy 1200" (R. 9, Pros. Ex. 2). On 19 July 1945 Captain Beary, the Commanding Officer of E Squadron, checked the accused's room and found a notice of a long distance telephone call under the accused's pillow (R. 9). He learned from the Charge of Quarters that the accused had received a long distance telephone call during the night of 17 July 1945 (R. 9).

After being advised of his rights by Captain Wilson, the Investigating Officer appointed pursuant to Article of War 70, the accused made a statement which was typed and then sworn to and signed by the accused (R. 10, 11; Pros. Ex. 3). Between 0230 and 0300 on 18 July 1945 the accused was awakened by the Squadron Charge of Quarters and told that there was a long distance telephone call for him on the telephone in the orderly room. The call was from Dr. Jones, his family physician, advising him to come home as soon as possible because his mother was critically ill. The accused told Dr. Jones that he "would be home as soon as possible." He then told the Charge of Quarters about the telephone call and inquired whether Captain Beary came on

duty before the Charge of Quarters went off and was told that he did not. The accused was upset and disturbed about his mother being ill. He did not give the Charge of Quarters a message to give to Captain Beary because he knew that it "would be all mixed up before it reached him." He knew from past experience that it would be impossible to awaken Flight Officer Merriweather, his roommate. After failing to get a taxicab by telephone the accused walked to the main gate where he met two white Military Policemen who took him in their jeep to the bus station in Walterboro. At approximately 0400 he got a bus to Yemasee, South Carolina, and left there by train at 0930 and arrived in Washington at approximately 2200. His mother was alone when he arrived home. Except for necessary trips to the store for supplies he remained at home until 0600 on 23 July 1945 when he left to return to his base. While accused was at home Dr. Jones called several times and one time advised him that his mother was improving and that he could leave as soon as he could get a practical nurse or some dependable person to stay with her. The accused arranged to have Miss Jelks, with whom he had worked at the Navy Department, stay with his mother and she "started this job on the 21st or 22nd of July". Dr. Jones never told the accused and he never asked exactly what was wrong with his mother but he assumed that it was some female ailment. Because of his state of mind he failed to consider what would be an appropriate way of handling the situation. He now realizes that he should have communicated with Captain Beary after he got to Washington. His absence without leave was not deliberate or for pleasure but resulted solely from the telephone call notifying him that his "mother was so sick" (Pros. Ex. 3).

Dr. Jones testified by deposition (R. 12; Pros. Ex. 4). He has known the accused for three or more years. He knows Mrs. Wilkins, the mother of the accused, and has rendered medical care to her. During the period 18 July to 23 July 1945 he did not render medical services to her and did not see the accused. He did not call the accused by long distance telephone on 18 July 1945 and he did not receive a telephone call to visit Mrs. Wilkins on 21 or 22 July 1945 (Pros. Ex. 4).

Miss Katherine Jelks testified by deposition (R. 12; Pros. Ex. 5). She has known the accused for about three years and has lived in his mother's home since July 1943. She was in his mother's home when the accused arrived and she saw him there every day from 18 July to 23 July 1945. Upon his arrival the accused said that he had come home to see about his mother but he did not say that he had received a telephone call to come home. The witness is employed and worked continuously from 18 July to 23 July 1945. She has never seen Dr. Jones but Mrs. Wilkins told her that she had been treated by him. To her knowledge Dr. Jones did not visit Mrs. Wilkins. Mrs. Wilkins was employed by A. G. Thurman and to the best of the witness' knowledge worked every day from 18 July to 23 July 1945 except Sunday, 22 July

1945. During this period Mrs. Wilkins was not bedridden. Miss Jelks did not call the accused to come home. On 20 or 21 July 1945 the accused asked her to look after his mother, although he knew that she had always looked after her. The accused did not ask her to call Dr. Jones on or about 21 or 22 July 1945 to come to visit his mother and he did not ask her if Dr. Jones called to see his mother. It is possible for her to go to work and return without knowing whether or not Mrs. Wilkins has been to work. She did not know who could have made a telephone call to the accused on 18 July 1945 (Pros. Ex. 5).

4. The accused after being advised of his rights elected to remain silent (R. 14). It was orally stipulated that if Allen G. Thurman were present he would testify in accordance with his letter dated 24 August 1945 to Colonel Kirksey (R. 13; Def. Ex. A). Mrs. Wilkins, the mother of the accused was employed by Mr. Thurman as a cook. From 18 July to 23 July 1945 she was unable to report for work because of illness (Def. Ex. A). Miss Jelks sent a postcard to accused which was written on 27 July 1945 and postmarked 28 July 1945 (R. 13; Def. Ex. B). She wrote that the accused's mother was better and had been to see the doctor on 27 July 1945 (Def. Ex. B). A letter from Dr. Jones dated 20 August 1945 was received in evidence (R. 14; Def. Ex. C). Dr. Jones has attended Mrs. Wilkins at various times in his office. "She has been suffering from mental and physical stress, induced and aggravated by, in my opinion, worry." The accused has visited him several times since his induction into military service to seek Dr. Jones' opinion of his mother's condition. He believes that the accused believed that his mother was seriously ill and that his presence was imperative. This belief was prompted by impressions that the accused has made on him over a period of years "because of his veracity, his upstanding manhood, polite bearing and devotion to a trust" (Def. Ex. C).

5. The accused officer, after receiving a long distance telephone call during the night of 17 July 1945, absented himself from his squadron at Walterboro Army Air Field, Walterboro, South Carolina, from early on 18 July 1945 until he returned voluntarily at 1200 on 24 July 1945. During the period of his absence he was at his mother's home in Washington. The evidence and the accused's pleas of guilty amply support the findings of guilty of absence without leave in violation of Article of War 61.

The accused pleaded not guilty to but was found guilty of making a false official statement in violation of Article of War 95 to the officer detailed as Investigating Officer pursuant to Article of War 70, during the course of his investigation of the accused's absence. The evidence amply supports the finding of guilty as approved by the reviewing authority. The accused made a sworn statement in the course of an official investigation that Dr. T. E. Jones, his family physician, had informed him in a telephone conversation on or about 18 July 1945 that his mother was critically ill in Washington, D. C., and that Dr. Jones had called at his mother's home several times between 18 July and 23 July 1945, while the accused was absent without leave,

and had discussed her condition with him. Dr. Jones denied that he had spoken to the accused by telephone and that he had rendered any medical services to the accused's mother or had spoken to the accused between 18 July and 23 July 1945. The testimony of Dr. Jones amply supports the conclusion that the statement made by the accused to the investigating officer was false and known by him to be false. "The evidence compels the conclusion that it was made with an intent to deceive the officer who was conducting the official investigation" (CM 254429, Ehrlinger, 35 BR 264). "The making of a false official statement, knowing it to be false, and with intent to deceive, is conduct unbecoming an officer and gentleman, and violates Article of War 95" (CM 256407, Jaycox, 36 BR 278).

6. War Department records show that the accused is 24 years of age and single. He is a native of North Carolina and a resident of Washington, District of Columbia. He is a graduate of high school and attended Shaw University and Howard University for a total of two years, majoring in chemistry, but he did not graduate from either. In civilian life he was employed by the United States Navy from August 1942 to July 1943 as head messenger in the Navy Department, Washington, D. C. He was a member of the Enlisted Reserve Corps, was called to active duty on 15 July 1943 and served in an enlisted status until 19 November 1944, attaining the grade of aviation cadet. On 20 November 1944 he was appointed a second lieutenant, Army of the United States, upon completion of the prescribed Training Command Course of instructions at Tuskegee Army Air Field, Tuskegee, Alabama, and ordered to active duty with the Air Corps.

7. The court was legally constituted and had jurisdiction of the person and the subject matter. No errors injuriously affecting the substantial rights of the accused were committed during the trial. In the opinion of the Board of Review the record of trial is legally sufficient to support the findings of guilty as approved by the reviewing authority and to support the sentence and warrant confirmation thereof. Dismissal is authorized for a violation of Article of War 61 and mandatory for a violation of Article of War 95.

W D Partlow Jr, Judge Advocate

[illegible], Judge Advocate

Donald D. Hickman, Judge Advocate

SPJGQ - CM 288574 1st Ind

Hq ASF, JAGO, Washington 25, D. C. NOV 2 1945

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant Ralph D. Wilkins (0-839093), Air Corps.

2. Upon trial by general court-martial this officer pleaded guilty to and was found guilty of absenting himself without leave for a period of seven days from his command and station, in violation of Article of War 61 (Specification of the Charge); pleaded not guilty to and was found guilty of making a false official statement under oath with intent to deceive the Investigating Officer appointed pursuant to Article of War 70 to investigate his absence without leave, in violation of Article of War 95 (Specification of the Additional Charge). He was sentenced "to be dismissed from the service of the United States Army". The reviewing authority approved the findings of guilty except so much of the Specification of the Additional Charge as involves the words "and that he had made arrangements with a Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945" and "and in that he had not made arrangements with Miss Katherine Jelks to stay with and attend his mother from about 21 or 22 July 1945", approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. The Board is of the opinion that the record of trial is legally sufficient to support the findings and the sentence as approved by the reviewing authority and to warrant confirmation of the sentence. I concur in that opinion.

The accused officer, after receiving a long distance telephone call during the night of 17 July 1945, absented himself from his squadron at Walterboro Army Air Field, Walterboro, South Carolina, from early on 18 July 1945 until he returned voluntarily at 1200 on 24 July 1945. During the period of his absence he was at his mother's home in Washington, D. C. He made a sworn statement in the course of an official investigation of his absence that Dr. T. E. Jones, his family physician, had informed him in a telephone conversation on or about 18 July 1945 that his mother was critically ill in Washington, D. C., and that Dr. Jones had called at his mother's home several times between 13 July and 23 July 1945, while the accused was absent without leave, and had discussed her condition with him. Dr. Jones denied that he had spoken to the accused by telephone and that he had rendered any

medical services to the accused's mother or had spoken to the accused between 18 July and 23 July 1945. However, Dr. Jones stated he had attended the accused's mother, who was in poor health, at various other periods.

In view of the accused's previous good record I recommend that the sentence be confirmed but commuted to a reprimand and a forfeiture of $100, and that the sentence as thus commuted be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Brigadier General, U. S. Army
Acting The Judge Advocate General

2 Incls
1 - Record of trial
2 - Form of action

(Sentence confirmed but commuted to a reprimand and forfeiture of $100. As commuted ordered executed. GCMO 495, 15 Nov 1945).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington 25, D. C.

SPJGH-CM 288584

1 NOV 1945

UNITED STATES v. Second Lieutenant WILLIAM E. ROACH (0-796736), Air Corps.	THIRD AIR FORCE TAMPA, FLORIDA Trial by G.C.M., convened at MacDill Field, Florida, 6 and 7 September 1945. Dismissal.

OPINION of the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 92d Article of War.
(Finding of not guilty)

Specification: (Finding of not guilty).

CHARGE II: Violation of the 96th Article of War.

Specification: In that Second Lieutenant William E. Roach, Squadron A, 327th AAF Base Unit, Drew Field, Florida, did, at Tampa, Florida, on or about 30 June 1945, have carnal knowledge of Dorothy Lyons, an unmarried female of previous chaste character under the age of 18 years, such conduct being of a nature to bring discredit upon the military service.

Accused pleaded not guilty to all Charges and Specifications, was found not guilty of Charge I and its Specification and guilty of Charge II and its Specification. No evidence of previous convictions was introduced. He was sentenced to dismissal and total forfeitures. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. The prosecution introduced evidence to show that the prosecutrix, Dorothy Lyons, reached the age of 18 years on 30 July 1945. She had been having dates since she was 15 years of age and while living in the vicinity of the Sanford Naval Aviation Cadet Base had dated both enlisted men and officers from that installation (R. 4, 11, 12, 28, 29, 34, 40). Her mother had conducted dances for officers and Dorothy had accompanied her to these functions (R. 100). She testified that she had never engaged in sexual intercourse until the instant affair with accused occurred (R. 11).

On the Thursday preceding Saturday, 30 June 1945, a month before Dorothy reached her 18th birthday, she met accused on a train bound from Jacksonville, Florida, to Tampa, Florida. During their conversation he told her he was on his way home having recently been liberated from a German prisoner of war camp. Sometime during their conversation accused remarked that he came from a well-to-do family which owned a home in Florida, a lake home and a home in the mountains. Before separating at Tampa, he made a date with her for Friday, 29 June 1945. On that evening they attended a show, had refreshments thereafter and then took a short drive. Accused did not kiss Dorothy any time during that evening (R. 5, 12, 13, 26). On the afternoon of the next day, Saturday, 30 June 1945, accused visited Dorothy at her home in Tampa for about two and a half hours during which he kissed her twice on the lips and several times on the forehead (R. 13, 14). That evening he returned to her house about 7:40 p.m. to keep a date previously arranged. After chatting awhile with her mother and sister, Dorothy and accused left. They proceeded to accused's house where he obtained his mother's automobile since his own auto was not functioning properly. They then drove to another house where Dorothy was introduced to accused's mother and thereafter Dorothy and accused proceeded down town where they engaged in an unsuccessful shopping tour for film. Thereafter, about 10:30 p.m., they drove to Davis Island where accused parked in a vacant lot. While accused kissed her, he placed his tongue in her mouth. This method of osculation angered Dorothy and she insisted upon being taken home. Approaching her home accused accelerated the automobile, sped past the house and eventually turned down a dead end road bringing the car to a stop about a block away from a house (R. 5, 6, 15).

After accused kissed her, she stepped from the auto to see what time it was. She suggested they go for a walk but accused refused to do so. He then pulled her into the back seat of the auto and stretching her across his lap he kissed her and commenced unbuttoning her dress. Dorothy told accused to stop and began to fight, kick and scream until he covered her mouth and nose with his hand, cutting off her breath and forcing her to lie limply (R. 6, 7, 16, 17). He started to remove her pants and when they were half off, she told him she would help him if he would free one of her hands. When he did so she removed one of her shoes and struck him on the head with it causing a knot near his temple (R. 7, 9, 18). Telling her that was her last chance, he placed one of her hands

between his legs, held the other hand and tried to complete removal of her pants while she fought, kicked and crossed her legs to prevent him from doing do (R. 7, 25).

Finally, acting as if he were "wild," he put his legs around her waist in a scissors grip, squeezed her until she couldn't breathe and held his hand over her mouth. Telling her if she didn't behave he would make her have a baby, he opened the door of the auto and lay on top of her as she stretched on the seat with her head hanging outside the auto. By then her pants were off. She did not remember how their complete removal had been accomplished but thought they must have fallen off. She refused to put her legs around accused or to insert his penis in her private parts as accused asked her to do. He then inserted his penis in her privates, hurting her as he pushed it in and stating that "it had to go all the way in." She could feel his privates inside her "a little bit" as she cried and begged to be released. Her privates hurt "awfully" until finally he let her rise (R. 7-9, 17, 18). She did not know whether or not accused used a contraceptive because she didn't know what they were (R. 24). Dorothy screamed all during the assault and thrice when she screamed the loudest accused smothered her mouth with his hand (R. 18).

Accused then asked her to go fishing with him the next day and she agreed to do so if he would take her home. Accused told her to button her dress and comb her hair but she was so nervous she could only fasten the top button of her dress. There was a button off her dress and her slip was torn. Thereafter she stepped behind the auto and by the illumination of the tail light determined from her watch that it was about 11:45 p.m. (R. 9, 18, 19, 27, 104).

Driving Dorothy home accused inquired, "It wasn't so bad, was it?" to which she did not reply. When he asked her if it was the first time she had done it she replied, "Of course it was" (R. 9, 26). Arriving home Dorothy walked some 40 feet from accused's auto to her home where she promptly told her mother what had happened. She was crying, nervous and had difficulty breathing. She complained that her legs were bruised and that her private parts and her ribs and neck were sore. Her mother observed that the front of her dress was unbuttoned, one button was missing, her skirt wrinkled, the lace on the hem of her slip was torn, there were two spots of blood in the crotch of her pants, her hair was messed and two or three fingernails were broken, one of which was bleeding (R. 9, 10, 29-31, 34, 35). Dorothy believed she must have scratched accused considering the condition of her fingernails (R. 20).

Dorothy's father had retired but he was awakened and told what had happened. Within a few minutes thereafter the Lyons' family found accused standing in their living room. When Dorothy's father asked him why he had done this to his daughter, accused replied that he did not know. When the father threatened to shoot him, accused replied, "Go on and shoot me, I deserve it." Dorothy's mother then stated accused would

have to marry her which accused agreed to do but her father objected stating that he wanted "no such son of a bitch like this in our family" (R. 11, 30, 31, 36, 37). Dorothy's father did not hear accused make any statement to the effect that Dorothy had consented. He did testify that accused stated, "There's no use reporting it because my word is as good as hers" (R. 38, 40). Eventually Mr. Lyons told accused to return the next morning and he would tell him what he proposed to do (R. 40).

The next morning accused visited the Lyons' house and told Mrs. Lyons that Dorothy had helped him have sexual intercourse. He was then asked to sign a certificate which had been drafted by Dorothy's father and typed by her sister. This document was worded as follows, viz:

> "This is to certify that I am, of my own free will and without coercion, stating that I did force Dorothy Lyons of 400 6 Palmira Street, Tampa, Florida, to have Sexual Intercourse with me in my car on the night of June 30, 1945, between 11:00 and 11:59 p.m."

Dorothy had asked her father to obtain such a statement from accused to prove when she eventually married that she had been a good, clean girl and had done nothing wrong. Accused refused to sign the statement (R. 21, 33, 38, 40; Def. Ex. A). The accused consented that Dorothy receive a medical examination and he followed her and her folks to a Doctor Cook's office that morning. In the afternoon about 4:30 p.m., she was taken to Drew Field where she was physically examined (R. 20, 21, 32, 33, 39).

4. The defense introduced Lieutenant Colonel Raymond B. Myers who testified that he had known accused since February 1943 and that his reputation for truth and veracity was excellent. Accused had been a member of his squadron for nine months until he was shot down over Germany. He had remained a prisoner of war of the Germans for about eighteen months (R. 65).

Technical Sergeants John T. Palazzo and Michael J. Lynch and Sergeant Ralph P. Rowe, official investigators, visited the scene of the alleged rape and determined that the house nearest thereto was occupied by Mrs. Paul Meyers and her daughter, Pauline, and was about 277 feet from where accused's auto had been parked. They made tests which revealed that with the windows of an auto closed, male cries uttered at the place where accused had parked his auto could be heard in the Meyers' yard even though chickens were cackling and dogs were barking. With the windows of an auto opened a voice pitched but a little above normal could be clearly heard in the Meyers' yard. Accused accompanied them on their visit to the scene on 1 July 1945 and he pointed out a contraceptive device on the ground claiming it was the one he threw there on the night in question. They did not know whether it contained any seminal fluid. (R. 44-46, 68-71). Sergeant Lynch noticed no scratches or bruises on

between his legs, held the other hand and tried to complete removal of her pants while she fought, kicked and crossed her legs to prevent him from doing do (R. 7, 25).

Finally, acting as if he were "wild," he put his legs around her waist in a scissors grip, squeezed her until she couldn't breathe and held his hand over her mouth. Telling her if she didn't behave he would make her have a baby, he opened the door of the auto and lay on top of her as she stretched on the seat with her head hanging outside the auto. By then her pants were off. She did not remember how their complete removal had been accomplished but thought they must have fallen off. She refused to put her legs around accused or to insert his penis in her private parts as accused asked her to do. He then inserted his penis in her privates, hurting her as he pushed it in and stating that "it had to go all the way in." She could feel his privates inside her "a little bit" as she cried and begged to be released. Her privates hurt "awfully" until finally he let her rise (R. 7-9, 17, 18). She did not know whether or not accused used a contraceptive because she didn't know what they were (R. 24). Dorothy screamed all during the assault and thrice when she screamed the loudest accused smothered her mouth with his hand (R. 18).

Accused then asked her to go fishing with him the next day and she agreed to do so if he would take her home. Accused told her to button her dress and comb her hair but she was so nervous she could only fasten the top button of her dress. There was a button off her dress and her slip was torn. Thereafter she stepped behind the auto and by the illumination of the tail light determined from her watch that it was about 11:45 p.m. (R. 9, 18, 19, 27, 104).

Driving Dorothy home accused inquired, "It wasn't so bad, was it?" to which she did not reply. When he asked her if it was the first time she had done it she replied, "Of course it was" (R. 9, 26). Arriving home Dorothy walked some 40 feet from accused's auto to her home where she promptly told her mother what had happened. She was crying, nervous and had difficulty breathing. She complained that her legs were bruised and that her private parts and her ribs and neck were sore. Her mother observed that the front of her dress was unbuttoned, one button was missing, her skirt wrinkled, the lace on the hem of her slip was torn, there were two spots of blood in the crotch of her pants, her hair was messed and two or three fingernails were broken, one of which was bleeding (R. 9, 10, 29-31, 34, 35). Dorothy believed she must have scratched accused considering the condition of her fingernails (R. 20).

Dorothy's father had retired but he was awakened and told what had happened. Within a few minutes thereafter the Lyons' family found accused standing in their living room. When Dorothy's father asked him why he had done this to his daughter, accused replied that he did not know. When the father threatened to shoot him, accused replied, "Go on and shoot me, I deserve it." Dorothy's mother then stated accused would

have to marry her which accused agreed to do but her father objected stating that he wanted "no such son of a bitch like this in our family" (R. 11, 30, 31, 36, 37). Dorothy's father did not hear accused make any statement to the effect that Dorothy had consented. He did testify that accused stated, "There's no use reporting it because my word is as good as hers" (R. 38, 40). Eventually Mr. Lyons told accused to return the next morning and he would tell him what he proposed to do (R. 40).

The next morning accused visited the Lyons' house and told Mrs. Lyons that Dorothy had helped him have sexual intercourse. He was then asked to sign a certificate which had been drafted by Dorothy's father and typed by her sister. This document was worded as follows, viz:

> "This is to certify that I am, of my own free will and without coercion, stating that I did force Dorothy Lyons of 400 6 Palmira Street, Tampa, Florida, to have Sexual Intercourse with me in my car on the night of June 30, 1945, between 11:00 and 11:59 p.m."

Dorothy had asked her father to obtain such a statement from accused to prove when she eventually married that she had been a good, clean girl and had done nothing wrong. Accused refused to sign the statement (R. 21, 33, 38, 40; Def. Ex. A). The accused consented that Dorothy receive a medical examination and he followed her and her folks to a Doctor Cook's office that morning. In the afternoon about 4:30 p.m., she was taken to Drew Field where she was physically examined (R. 20, 21, 32, 33, 39).

4. The defense introduced Lieutenant Colonel Raymond B. Myers who testified that he had known accused since February 1943 and that his reputation for truth and veracity was excellent. Accused had been a member of his squadron for nine months until he was shot down over Germany. He had remained a prisoner of war of the Germans for about eighteen months (R. 65).

Technical Sergeants John T. Palazzo and Michael J. Lynch and Sergeant Ralph P. Rowe, official investigators, visited the scene of the alleged rape and determined that the house nearest thereto was occupied by Mrs. Paul Meyers and her daughter, Pauline, and was about 277 feet from where accused's auto had been parked. They made tests which revealed that with the windows of an auto closed, male cries uttered at the place where accused had parked his auto could be heard in the Meyers' yard even though chickens were cackling and dogs were barking. With the windows of an auto opened a voice pitched but a little above normal could be clearly heard in the Meyers' yard. Accused accompanied them on their visit to the scene on 1 July 1945 and he pointed out a contraceptive device on the ground claiming it was the one he threw there on the night in question. They did not know whether it contained any seminal fluid. (R. 44-46, 68-71). Sergeant Lynch noticed no scratches or bruises on

accused's face on 1 July 1945 (R. 70). First Lieutenant Emerson Day, the investigating officer, made a similar vocal test, having his wife scream from his auto which he parked with windows opened, as far down the dead end lane as possible. He heard his wife's scream plainly and called to her not "to overdo it" (R. 67).

Mrs. Paul Meyers and her daughter, Pauline, retired sometime between 11 and 12 p.m. on the night of 30 June 1945. Pauline slept on a screened sleeping porch and did not immediately go to sleep. Both are very light sleepers. They also had two dogs which were accustomed to bark at any noise. That night they heard no noise nor did they hear the dogs bark. Mrs. Meyers considered it a "particularly quiet night" (R. 48, 49, 54, 55, 58).

Sergeant Palazzo examined the pants worn by Dorothy on the night of 30 June 1945. He made tests for blood stains but obtained a negative reaction. The fact that the pants had been washed immediately after the alleged assault might have caused the negative reaction. The pants were well worn having three worn holes in the crotch and a worn elastic about the waist. The buttonhole on the side was stretched but the button was intact (R. 44, 46, 48).

In his deposition which was admitted in evidence, Major Robert S. Hunt, Medical Corps, testified that he made a physical examination of Dorothy Lyons about 6 p.m., 1 July 1945. He found a small bruise about the size of a dime on the left thigh and a small bruise on the right knee. The hymen of the vagina was notintact and there was no evidence of irritation about the vagina. There were no marks on her body to indicate she had been abused or beaten. The hymen might well have been previously ruptured through exercise rather than sexual intercourse. However, if the rupture had occurred during intercourse, there would be definite evidence thereof apparent upon physical examination made within twenty-four hours (R. 59; Def. Ex. 1). Major John Preece, Medical Corps, was of the opinion that if an eighteen-year old girl with no hymen intact but supposedly a virgin were forcibly raped definite evidence of ravishment would be present in the vaginal tract within twenty-four hours thereafter. If such a girl had been subdued through exhaustion it was his opinion that there would be a tenderness and an abrasion of tissue apparent twenty hours later (R. 59, 63).

After his rights had been explained, accused elected to give sworn testimony in his own behalf. He testified that he had served three years and eight months in the Army. He went overseas in July 1943 and after four months service was shot down over Germany. He remained a prisoner of war for eighteen months until released in May 1945 (R. 71). He met Dorothy Lyons on a train on the Thursday before the Saturday in question and during their conversation he told her of the three houses owned by his parents. He had a date with her on Friday night during which they attended a show, had refreshments and took a drive (R. 72).

On Saturday afternoon, 30 July 1945, he visited Dorothy at her home and the two of them were there alone from 2:30 until about 5:00 p.m. They indulged, and mutally cooperated, in passionate kissing and embracing during which accused had an erection and he and Dorothy rubbed against each other. Eventually she lay on the sofa and accused lay on top of her putting his hand on her leg. At her suggestion they changed their position and she lay across his lap so that she might watch for her mother's return. Her mother returned about 5 p.m. and accused visited with her for about an hour. It was arranged that Dorothy would accompany accused to a fish fry to be held the following day at which his mother, father and sister were to be present (R. 73).

Accused returned to Dorothy's house about 7:40 p.m. that Saturday night to keep a date with her. After obtaining his mother's auto and introducing Dorothy to his mother, accused and Dorothy drove down town to shop for films. He kissed her several times during their trip and eventually drove to Davis Island where accused parked his auto. There they engaged in "necking" and accused fondled her breasts. Both of them became "pretty hot" so accused suggested he'd better take her home. As he drove to her house, Dorothy remarked that she did not then wish to terminate their evening as she had another hour and a half before she was due home. Thereafter accused drove to the dead end lane near Mrs. Meyer's house where he parked the auto, commenced kissing his companion, unbuttoned the front of her dress, and fondled and kissed her breasts. Soon Dorothy stepped out of the auto to see what time it was. Re-entering the auto she and accused occupied the rear seat where she lay with her head in his lap. As they kissed each other she rubbed the back of his neck (R. 74). Accused then ran his hand along her leg and eventually slipped it inside her pants and inserted his fingers in her vagina as she passionately squirmed about. She then asked accused to let her up while she fixed her shoe. Removing one of her shoes she struck him with the toe of it across his forehead. Thereafter she kissed his forehead and they resumed their embraces. Accused asked her to remove her pants but she told him to remove them and then rose up as he slipped them off. Telling accused to wear a rubber because she could not take care of herself, she stretched out on the seat. Putting on a rubber, accused got astride her and told her to insert his penis. She inserted his penis in her privates, wrapped her legs about him and accused thereafter completed an act of intercourse (R. 75).

After completion of the act, accused gave her a comb to arrange her hair, stepped from the auto and threw the contraceptive in the grass nearby. During the act she stated that they would have to marry but accused replied that they could not do so until they knew each other better (R. 75). Accused then drove Dorothy home and en route he asked her if she liked it to which she replied that it wasn't so bad. Arriving at her home accused escorted her to the door and kissed her goodnight. As he re-entered his auto he saw the light flash on in her father's bedroom, saw the bottom of Dorothy's dress, heard her father say, "My God",

and saw him arise from his bed. Accused returned to the house and entered it after her father bid him do so. Her father and mother commenced to insist that accused would have to marry Dorothy. Thereafter her father said he was going to shoot accused and the latter, asserting that Dorothy had not objected to his overtures, replied that if he thought accused guilty he could shoot him. The father never did exhibit a gun. Subsequently he told accused to return the next morning at which time he would learn what Mr. Lyons proposed to do (R. 76). Leaving the house, accused went around to the side and speaking through the window to Dorothy asked her if she wasn't going to admit that she had inserted his penis in her vagina and she replied, "Yes, but I was scared you would hurt me" (R. 77).

Early the next morning he went to MacDill Field to obtain a doctor to examine Dorothy and was told by a major to summon a civilian doctor. Accused eventually contacted Dr. Cook who told accused to bring the girl to his office. Going to Dorothy's home he informed her father he had a doctor who would examine her. Her father then presented to him the typed statement which recited that accused had forced Dorothy to engage in sexual intercourse with him and accused refused to sign it. Accused, his mother, Dorothy and her father and mother, then visited Dr. Cook's office (R. 77). Awaiting the doctor's arrival, Mr. Lyons continued to urge accused to sign the statement and accused reiterated his refusal. Dr. Cook finally refused to examine the girl because of certain legal proscriptions. Accused knew nothing about Dorothy's subsequent examination by a doctor at Drew Field (R. 78).

Later that Sunday, military authorities called for accused at his home and he conducted them to the scene of the alleged assault where he pointed out the contraceptive lying on the ground (R. 78).

On cross-examination accused testified that he did not believe Dorothy was a virgin when he had relations with her because her vagina was not closed up and admitted easy entrance of two of his fingers (R. 92).

5. In rebuttal the prosecutrix testified, among other things, that she had never had sexual intercourse prior to her experience with accused. She had no bleeding after accused completed the act but experienced pain when she urinated. She also stated that she was about 17 years old when she commenced dating naval personnel (R. 105-108).

6. Accused was tried for common law rape in violation of Article of War 92 and for statutory rape in violation of Article of War 96. He was found not guilty of common law rape but guilty of the statutory rape. Accordingly, we are only concerned with the legal sufficiency of the evidence as to the latter offense.

It is violative of the laws of Florida for a person to have "unlawful carnal intercourse with any unmarried person, of previous chaste character, who at the time of such intercourse is under the age of eighteen

years . . ." (Fla. Stat. Ann., sec. 794.05; Comp Gen'l Laws 1927, sec. 7552). Under the Specification of Charge II, accused was charged with having "carnal knowledge of Dorothy Lyons, an unmarried female of previous chaste character under the age of 18 years . . ." It is thus apparent that accused was tried for statutory rape under the laws of Florida. Statutory rape under the laws of the state where committed is an offense under Article of War 96 (MCM, 1928, 148b). Furthermore, accused's guilt or innocence of the offense here charged is determined by the law of Florida where the offense was committed (CM 233689, Tidwell, 20 BR 65; CM 234110, Ritchie, 20 BR 237; CM 245817, Phillips, 29 BR 295).

Under the law of Florida, previous chaste character is an essential element of the offense of statutory rape and it must be both alleged and proved (Thomas v. State, 105 Fla. 332, 141 So. 145; Bynum v. State, 76 Fla. 618, 80 So. 572; Dallas v. State, 76 Fla. 358, 79 So. 690; Williams v. State, 92 Fla. 125, 109 So. 305). The burden is upon the state to establish previous chaste character to the exclusion of every reasonable doubt (Ward v. State, 149 Fla. 107, 5 So. 2d 59). "Chaste" as applied to unmarried persons signifies purity from all sexual intercourse (Williams v. State, supra). Accordingly, the conviction of accused under Charge II and its Specification cannot be sustained if the proof fails to establish to the exclusion of every reasonable doubt that Dorothy Lyons had not engaged in sexual intercourse prior to her experience with accused.

Turning to the record of trial we find that the sole evidence to establish the prior chaste character of the prosecutrix is her own testimony that she had never before engaged in sexual intercourse. To establish the contrary, it was shown that when the prosecutrix was physically examined about twenty hours after the alleged assault, the hymen of her vagina was not intact and there was no evidence of irritation about her vagina. Further, there is unrefuted medical testimony in the record to the effect that if the hymen had been ruptured during sexual intercourse, definite evidence of such rupture would be apparent upon physical examination made within twenty-four hours thereafter. There is also unrefuted medical testimony that if a virgin, about eighteen years of age, without hymen intact, were forcibly raped, definite evidence of ravishment would be found in the virginal tract within twenty-four hours thereafter; if such a virgin succumbed to intercourse through exhaustion, a tenderness and abrasion of vaginal tissue would be apparent twenty-four hours later. Prosecutrix herself testified that she experienced no bleeding after completion of the act.

There is also unbiased evidence in the record tending to controvert testimony given by the prosecutrix on very material matters. Although she alleged that she screamed and fought all during the progress of events, no noise was heard by two women occupying a nearby house, who, so far as the record reveals, would certainly have heard any such disturbance as prosecutrix contends she created. Such evidence plus the location of the contraceptive at the scene tends strongly to support

accused's story that prosecutrix consented to the intercourse, and in turn raises the serious question whether a young lady of prior chaste character would have consented to intercourse on such brief acquaintance as existed between prosecutrix and accused.

Accused's testimony that prosecutrix's vagina was sufficiently large to admit the entrance of two of his fingers is supported by the evidence establishing that after the act was committed she experienced no bleeding and no visible evidence of irritation or abrasion of the vagina was found upon medical examination made less than twenty-four hours after the alleged assault. Such facts certainly cast some doubt on prosecutrix's contention that she was of prior chaste character.

From the foregoing, it is our opinion that the prosecution failed to sustain the burden of extablishing prosecutrix's prior chaste character to the exclusion of every reasonable doubt. Such was also the decision of the Florida Supreme Court in a case involving even more evidence as to chastity and less in contradiction thereof than is present in this record. In Howell v. State, 121 Fla. 327, 163 So. 691, the Supreme Court reversed a conviction of statutory rape because the evidence as to prosecutrix's prior chaste character was of "such unsatisfactory character that a majority of the court are of the opinion that the ends of justice will be best subserved by the award of a new trial." The dissenting opinion reveals that the prosecutrix was a young girl about 11 or 12 years of age. The prosecutrix and her mother and father testified as to her prior chastity. The only testimony to contradict it was that of the accused and his young daughter which amounted to but little more "than an insinuation of previous bad conduct" plus the fact that prosecutrix evidenced some familiarity with matters involving sexual relations. That opinion is decisive of the question here before us.

7. In view of the foregoing it is our opinion that the prosecution failed to sustain its burden of establishing beyond a reasonable doubt that the prosecutrix was of prior chaste character and, accordingly, the record of trial is legally insufficient to sustain the findings of guilty and the sentence.

Thomas H. Taffy, Judge Advocate

William H. Lawrence, Judge Advocate

Robert E. Trevethan, Judge Advocate

SPJGH - CM 288584 1st Ind

Hq ASF, JAGO, Washington 25, D. C. JAN 22 1946

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated 26 May 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of Second Lieutenant William E. Roach (O-796736), Air Corps.

2. Upon trial by general court-martial the accused was found guilty of having carnal knowledge of an unmarried female of previous chaste character under the age of 18 years, such conduct being of a nature to bring discredit upon the military service, in violation of Article of War 96. He was sentenced to be dismissed the service and to forfeit all pay and allowances due or to become due. The reviewing authority approved the sentence and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review, which concluded that although accused admittedly had carnal knowledge of "an unmarried female under the age of 18 years," the record of trial was legally insufficient to establish the commission of statutory rape under the laws of Florida on the grounds that there was a reasonable doubt that the young girl involved was "of previous chaste character," an element required to be alleged and proved under the Florida statute defining statutory rape, as interpreted by the courts of that state. I cannot agree with this conclusion.

The regrettable episode, out of which grew the charges in the present case, came as the culmination of a three-day acquaintance between accused and the prosecuting witness, Miss Dorothy Lyons, both residents of Tampa, Florida, who met by chance on Thursday, June 28, 1945, while they were traveling by train from Jacksonville, Florida, to Tampa, Florida. Accused was a young officer, 24 years of age, who had recently returned from Europe, where he had been a prisoner of war for some months. His parents were described as being "well-to-do people." Miss Lyons was 17 years and 11 months of age, resided with her parents and an older sister, and was preparing to enter college. Her father was a railroad engineer. She had gone out socially with men, principally naval cadets, since she was 17. Her reputation in the community was not assailed directly or indirectly. On the day following their first meeting accused dated Miss Lyons, but nothing improper occurred. However, on the succeeding day, Saturday, June 30th, accused conducted a whirlwind campaign for a physical demonstration of her affections which persisted until he succeeded in having sexual intercourse with her at a relatively secluded spot at Tampa, commonly known as "Lovers' Lane." That he had talked to her about marriage during the course of the day was admitted by accused, who, however, contended that his remarks were not serious. However, he had taken her to his home, told her about his family, and introduced her to his mother. The two spent

the greater part of the day together. During the evening accused borrowed his mother's car and after going around to the house of a friend where the introduction to his mother took place, drove out with Miss Lyons to "Lovers' Lane." There, after initiating and pursuing a course of licentious fondling designed to excite the passions of both of them, accused overcame whatever resistance Miss Lyons put up and completed an act of sexual intercourse with her. Miss Lyons contended that she never consented to this act, that she fought and screamed, and that she was finally forced to submit. Accused, on the other hand, testified that after some temporary resistance Miss Lyons consented and cooperated, that he had used a contraceptive and that she had not screamed. In substantiation of the latter assertion two persons living less than 300 feet from the scene of the act testified that they had heard no outcry. Sufficient force was used in overcoming the young woman's resistance or opposition to suggest seriously that rape had been committed. Accused was acquitted of this charge, the doubt resulting from the conflict in the testimony being resolved in favor of the accused by the court, which may have been actuated in part by the alternative it had of finding him guilty of "statutory rape" as a military offense in violation of Article of War 96.

Miss Lyons reported the incident to her parents that night immediately upon her arrival at home before the accused, who had left her at the door, had departed. Hearing from outside the house her father's exclamation, "My God!" accused entered the house and engaged in a humiliating and debasing debate with Miss Lyons and her parents as to whether or not she was at fault in the matter. During the course of the argument Mr. Lyons, though not armed, threatened to shoot accused, and accused, according to his own admission, made on cross-examination after an initial attempt at evasion or denial, agreed "at first" to marry Miss Lyons. Mr. Lyons vehemently rejected this suggestion, declaring that he would not have "such a son of a bitch in the family," and told accused to return the following day. When accused complied with this request, he was asked and refused to sign a declaration that he had forced Miss Lyons to have intercourse with him. This request was based on Miss Lyons' desire to establish her good character when she eventually married.

An Army medical officer made a physical examination of Miss Lyons about eighteen hours after the alleged assault. He discovered a small bruise upon her left thigh and another small bruise on her right knee. The hymen was not intact and there was no evidence of irritation about the vagina. The examining doctor could not reach any conclusion as to whether she was a virgin, stating that the hymen might have been ruptured through exercise or other exertion rather than by sexual intercourse. She complained of soreness through her chest and back and soreness and tenderness in the vaginal area, which made examination difficult and which the doctor had no reason to believe were feigned. Medical opinion was offered by the defense to the effect that if a virgin, about eighteen years of age, without hymen intact, were forcibly raped, definite evidence of the ravishment would be present in the

vaginal tract within twenty hours thereafter, and if such a girl had been subdued through exhaustion, there would be some tenderness and abrasion of tissue apparent.

Miss Lyons testified that she had never had sexual intercourse prior to this experience with the accused and that while she had no bleeding after the act she experienced pain when she urinated. Accused expressed the opinion that she was not a virgin because her vagina was not closed up and it admitted entry of two of his fingers.

There is no contradiction of the statements made by Miss Lyons as to her chastity, and nothing in her actions to indicate that her unqualified declaration that prior to June 30th she had never had sexual intercourse was untrue. Her opposition to accused's advances, even assuming that his passionate persistency finally procured reluctant acquiescence on her part, and her immediate report of the incident to her parents, coupled with accused's action in remaining near her home, apparently to ascertain what might develop, add weight to her testimony. There is no evidence of previous sexual intercourse unless such is to be found in the circumstances noted in the Board's opinion that, according to the medical testimony, her hymen was found to have been ruptured, a condition which did not appear to have been created so recently as the intercourse with accused, and physical evidence in the form of tenderness and abrasion of tissue should appear upon examination of a girl who had recently been robbed of her vaginity by forcible rape or who had succumbed through exhaustion; and that her outcries had not been heard by persons living within three hundred feet of the place at which the act of sexual intercourse had taken place. The examining physician was not able from his examination to form a conclusion as to her virginity, and testified that she had complained of soreness and tenderness of her vagina, which rendered the examination difficult, and that he had no reason to believe that these complaints were feigned. These facts, taken in connection with the unqualified medical testimony that the rupture of the hymen may have been caused by exertion or exercise certainly are not sufficient to justify a conclusion that Miss Lyons' testimony was untrue. The failure of any one to hear her alleged outcries is not pertinent to the present charge nor does the accused's contention that he used a contraceptive have any bearing on the case. Certainly the court was justified in disregarding accused's assumption of lack of virginity, based on his ability to place two fingers in her vagina, particularly in view of the medical testimony that she merely had a normally developed genital. The mere fact that she occasionally had dates with naval cadets cannot create a presumption of lack of chastity, especially as there is not the slightest indication of any improper conduct in connection with these dates. In my opinion the evidence raises no reasonable doubt as to Miss Lyons' previous chastity, and the trial court was fully justified in its conclusions.

Further, there was a presumption of Miss Lyons' chastity that persisted "in the absence of sufficient evidence to the contrary" (Manual

for Courts-Martial, 1928, p. 110). This presumption was created by the express, specific and clear provisions of the Manual in much stronger language than is used in the decisions of the civil courts and in text books and legal treatises in laying down the principle that a woman's chastity is presumed. Paragraph 112a of the Manual divides presumption into two classes, the first, those which arise without the introduction of any evidence, and the second, those which cannot arise until after some evidence has been introduced. There is then laid down the following positive, mandatory provisions for the government of courts-martial:

> "In the first class are those presumptions which relate to facts, the existence of which courts are bound to presume in the absence of evidence to the contrary. Thus, an accused person is presumed to be innocent until his guilt is proved beyond a reasonable doubt; an accused is presumed to have been sane at the time of the offense charged until a reasonable doubt of his sanity at the time appears from the evidence; and, in the absence of sufficient evidence to the contrary, a woman's chastity is presumed." (Underscoring supplied.)

In short, without the introduction of any testimony the court-martial which tried the accused in the present case was "bound to presume" Miss Lyons' chastity, despite the fact that this status, it will be assumed, was an essential element of the offense that had to be established, and despite the fact that the court was also "bound to presume" accused's innocence until his guilt was established beyond a "reasonable doubt." It is true that under the decisions of the Florida Supreme Court, cited in the opinion of the Board of Review, where one is charged with statutory rape under the pertinent Florida statute the chastity of the prosecutrix must be established, but in the administration of military justice courts-martial are not governed by the laws of the states as to the quantum or method of proof, particularly where the Articles of War or the Manual for Courts-Martial lays down a conflicting or contradictory rule. Article of War 38 provides in pertinent part as follows:

> "The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: * * *"

Pursuant to this authority the President has prescribed in the Manual for Courts-Martial (par. 112a, supra) that, as a matter of law, without the introduction of evidence, courts-martial are "bound to presume" a woman's chastity and that such presumption persists in the absence of proof to the contrary. This presumption, in my opinion, exists in the

present case, and has not in any way been weakened or destroyed by any testimony adduced. While I consider that Miss Lyons' chastity was established by the testimony I am also of the opinion that, in view of the lack of evidence to the contrary, the court would have been justified in relying upon the presumption of chastity.

That accused's conduct was such as to bring discredit upon the military service requires little discussion. A state statute making it a criminal offense to have carnal knowledge of an unmarried female, less than eighteen years of age, of previous chaste character, is clearly intended to protect the public morals and to prevent innocent young women from being taken advantage of by persuasive members of the opposite sex, purposes which members of the military establishment are under moral obligation to foster. The Manual for Courts-Martial, 1928 (par. 152b, p. 188) in defining "discredit" as used in Article of War 96, states:

> "*** Instances of such conduct on the part of persons subject to military law may include acts in violation of local law committed under such circumstances as to bring discredit upon the military service."

While, therefore, violation of a state statute does not per se subject a member of the military establishment to punishment under the Articles of War, it has properly been held that the act of an officer in having carnal knowledge of an unmarried female in violation of a state statute does bring discredit upon the military service, and, therefore, is punishable under Article of War 96 (CM 233689, Tidwell, 20 B.R. 65, CM 245817, Phillips, 29 B.R. 295).

For the reasons stated, I am of the opinion that the record of trial is legally sufficient to support the findings of guilty and the sentence and to warrant confirmation of the sentence.

4. The accused is 24 years of age. He has been in the military service since 21 January 1942 and has no previous convictions. He went overseas in July 1943 and after four months was captured by the German forces in whose captivity he remained for eighteen months and until released in May 1945.

In view of his military record and the entire circumstances under which this offense was committed, I recommend that the sentence be confirmed but that the forfeitures be remitted, and that the execution of that portion of the sentence adjudging dismissal be suspended during good behavior.

5. Consideration has been given to a brief, dated 21 September 1945, submitted by defense counsel in behalf of the accused and to letters recommending clemency from the accuser, dated 22 September 1945, and from a former commanding officer of the accused, dated 12 September 1945, addressed

to the reviewing authority, all of which papers are attached to the record of trial. Consideration has also been given to a letter from the Honorable Charles O. Andrews, United States Senator from Florida, dated 12 October 1945, inclosing a letter from Mr. Raymond Sheldon of Tampa, Florida, dated 10 October 1945, and to a letter from First Lieutenant Rudyard K. Bell, the Assistant Trial Judge Advocate, dated 22 October 1945, and forwarded to my office by W. R. Fokes, Secretary to the Honorable Claude Pepper, United States Senator from Florida.

6. Inclosed is a form of action designed to carry into execution the foregoing recommendation, should it meet with your approval.

THOMAS H. GREEN
Major General
The Judge Advocate General

4 Incls
1. Record of trial
2. Form of action
3. Ltr fr Sen. Andrews
4. Ltr fr Lt. Bell

(Sentence confirmrd, forfeitures remitted and dismissal suspended on good behavior. GCMO 29, W.D. , 31 Jan 1946).

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D. C.

SPJGH - CM 288588

26 OCT 1945

UNITED STATES v. Private ISAAC H. HAWKINS, JR. (16143742), Provisional Service Detachment No. 1 and Private First Class ADAMS KELLEY (38056813), Section II, Detachment Medical Department, Regional Hospital, both of 1473 Service Command Unit, Camp Shelby, Mississippi.	FOURTH SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Camp Shelby, Mississippi, 17 September 1945. Hawkins: Dishonorable discharge and confinement for seven (7) years. Federal Reformatory. Kelley: Dishonorable discharge (suspended) and confinement for one (1) year. Rehabilitation Center.

HOLDING by the BOARD OF REVIEW
TAPPY, GAMBRELL and TREVETHAN, Judge Advocates.

1. The record of trial in the case of the above-named soldiers has been examined by the Board of Review.

2. The accused were tried upon the following Charge and Specifications:

CHARGE: Violation of the 94th Article of War.

Specification 1: In that Private First Class Adams Kelley, Section II, Detachment Medical Department, Regional Hospital, 1473 Service Command Unit, Camp Shelby, Mississippi, and Private Isaac H. Hawkins, Junior, Provisional Service Detachment Number 1, 1473 Service Command Unit, Camp Shelby, Mississippi, acting jointly, and in pursuance of a common intent, did, at or near Camp Shelby, Mississippi, on or about 29 July 1945, feloniously take, steal, and carry away two pistols, serial numbers 1061796 and 1226462, respectively, value about $70.00, property of the United States, furnished and intended for the military service thereof.

Specification 2: In that Private First Class Adams Kelley *** and Private Isaac H. Hawkins ***, acting

jointly, and in pursuance of a common intent, did, at or near Hattiesburg, Mississippi, on or about 29 July 1945, wrongfully sell one pistol, serial number 1226462, value about $35.00, property of the United States, furnished and intended for the military service thereof.

Specification 3: In that Private First Class Adams Kelley *** and Private Isaac H. Hawkins ***, acting jointly, and in pursuance of a common intent, did, at or near Hattiesburg, Mississippi, on or about 30 July 1945, wrongfully sell one pistol, serial number 1061796, value of about $35.00, property of the United States, furnished and intended for the military service thereof.

Both accused pleaded not guilty to all Specifications and the Charge. Accused Hawkins was found guilty of all Specifications and the Charge; accused Kelley was found not guilty of Specification 1 and guilty of all other Specifications and the Charge. No evidence of previous convictions was introduced as to accused Kelley but as to accused Hawkins evidence of previous convictions for breach of restriction and disrespect toward a commissioned officer was introduced. Accused Hawkins was sentenced to dishonorable discharge, total forfeitures and confinement at hard labor for seven years. Accused Kelley was sentenced to dishonorable discharge, total forfeitures and confinement at hard labor for one year. As to accused Hawkins, the reviewing authority approved the sentence, designated the Federal Reformatory, Chillicothe, Ohio, as the place of confinement and forwarded the record of trial for action under Article of War 50½, and as to accused Kelley, the reviewing authority disapproved the finding of guilty of Specification 2 of the Charge, approved the sentence, suspended execution of the dishonorable discharge and designated the Fourth Service Command Rehabilitation Center, Fort Jackson, South Carolina, as the place of confinement.

3. The record of trial is legally sufficient to support the approved findings of guilty and the only question requiring consideration here is whether or not the evidence is legally sufficient to support the sentence to seven years' confinement in a Federal Reformatory imposed upon accused Hawkins. The evidence material to our consideration of this question is hereinafter summarized.

4. The prosecution introduced evidence to show that the two pistols described in Specification 1 were Government property issued to Headquarters, 95th Infantry Division, and were packed along with 42 other pistols and shipped from Le Havre, France, sometime in the latter part of June 1945 (R. 7, 8, 10; Pros. Ex. A). During the month of July 1945 accused Hawkins worked with his organization at Camp Shelby, unloading the supplies and equipment of the 95th Division and storing them in the area allocated to that division (R. 17, 18). When the packing case containing these pistols arrived at Camp Shelby it was stored in the recreation dayroom in the Headquarters Company Area (R. 11). Sometime during July 1945, Captain Edward J. Miller visited the dayroom and examined the packing case in which these revolvers had been shipped. He found that 16 of the 44 pistols, including the two pistols described in Specification 1, were missing (R. 9, 10). Neither of the accused had been given permission to take any of these pistols (R. 10, 15).

On 29 July 1945 accused Hawkins had two pistols in his possession and he sold one of them to David Archer in Hattiesburg, Mississippi, for $25. The pistol sold was the second of the two pistols described in Specification 1 (R. 35, 36, 38, 40). On 30 July 1945 both accused sold a pistol to O. J. Williams, proprietor of a restaurant in Hattiesburg, for $35, of which he paid $25 in cash and promised to pay the balance by the end of the week (R. 19-23, 25, 26). This pistol was the first of the two pistols described in Specification 1 (R. 28, 31, 32).

5. For the defense accused Kelley elected to testify under oath. He testified that on 29 July 1945 accused Hawkins had two .45 calibre pistols in his possession, each of which bore the letters "U.S." (R. 49, 52). He also saw accused Hawkins sell one of the pistols to O. J. Williams for $35, of which $25 was paid in cash and the balance of $10 promised by the end of the week (R. 51, 52).

6. Accused Hawkins having been found guilty of all Specifications and the Charge was sentenced, among other things, to confinement for seven years. Since the total maximum confinement he could receive under Specifications 2 and 3 was two years (MCM, 1928, par. 104c), it is apparent that five years of his confinement was imposed because of his conviction of Specification 1. That Specification alleges the theft, on or about 29 July 1945, of two Government pistols of a total value of $70. Each pistol had a value of $35. If the theft of the two pistols was substantially one transaction

it would constitute a single larceny and, the articles having a value in excess of $50, the maximum penalty for the offense would have been five years' confinement (MCM, 1928, par. 149g, 104c). On the other hand, if the theft of the two pistols was not a single transaction but two separate and distinct transactions, then each theft would have been a separate and distinct offense. In such event, the values of the two pistols could not be aggregated to warrant the imposition of five years' confinement (MCM, 1928, par. 104c). Each of the thefts would warrant the imposition of not more than one year of confinement and the total maximum confinement that could be imposed upon accused for all of the offenses of which he was convicted would be four years.

There is no evidence as to the exact time these two pistols were stolen. All that the evidence shows is that sometime during the period from the latter part of June 1945 to the latter part of July 1945 these two pistols plus fourteen others were stolen. It is equally as possible that they were filched at separate times as that they were stolen at the same time. The prosecution has not established beyond a reasonable doubt that the theft of the two pistols was a single transaction. Accordingly, each theft must be considered a separate offense although both have been alleged in the same Specification. The maximum penalty for each theft is one year. Thus, the total confinement that can be imposed upon accused for all offenses of which he was convicted is confinement for four years. Also, since no one of the offenses of which accused was convicted involves a greater maximum punishment than one year, he may not be confined in a Federal penitentiary or reformatory (AW 42; CM 226579, Evans, 15 BR 125; par 5 AR 600-375, May 17, 1943).

Before concluding, it should be observed that the charging of two separate offenses in a single Specification (Specification 1) did not constitute fatal error since the essential elements of each offense were alleged and the accused was fully advised of the offenses with which he was charged (CM 247496, Egalnick, 30 BR 361).

For the foregoing reasons it is the opinion of the Board of Review that the record of trial is legally sufficient to support the findings of guilty as approved by the reviewing authority, legally sufficient to support the sentence imposed upon accused Kelley as approved by the reviewing authority and legally sufficient to support only so much of the sentence imposed upon accused Hawkins as involves dishonorable discharge, total forfeitures and confinement at hard

labor for four years in a place other than a Federal reformatory or penitentiary.

Thomas M. Foley, Judge Advocate.
William H. Lumbrell, Judge Advocate.
Robert C. Trevethan, Judge Advocate.

SPJGH - CM 288588 1st Ind NOV 20 1943

Hq ASF, JAGO, Washington 25, D. C.

TO: Commanding General, Fourth Service Command, Army Service Forces, Atlanta 3, Georgia.

1. In the case of Private Isaac H. Hawkins, Jr. (16143742), Provisional Service Detachment No. 1 and Private First Class Adams Kelly (38056813), Section II, Detachment Medical Department, Regional Hospital, both of 1473 Service Command Unit, Camp Shelby, Mississippi, attention is invited to the foregoing holding by the Board of Review that the record of trial is legally sufficient to support only so much of the sentence as to accused Hawkins as involves dishonorable discharge, total forfeitures and confinement for four years in a place other than a Federal reformatory or penitentiary, which holding is hereby approved. Upon disapproval of so much of the sentence as to accused Hawkins as is in excess of dishonorable discharge, total forfeitures and confinement at hard labor for four years and designation of a place of confinement other than a penitentiary or Federal reformatory, you will have authority to order the execution of the sentence.

2. In view of the youth and good civilian record of accused Hawkins, I recommend that his sentence be reduced to two years' confinement, that execution of the dishonorable discharge be suspended until his release and that a rehabilitation center be designated as the place of confinement.

3. When copies of the published order in this case are forwarded to this office they should be accompanied by the foregoing holding and this indorsement. For convenience of reference and to facilitate attaching copies of the published order to the record in this case, please place the file number of the record in brackets at the end of the published order, as follows:

(CM 288588).

1 Incl
Record of trial

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

WAR DEPARTMENT
Army Service Forces
In the Office of The Judge Advocate General
Washington, D.C.

(403)

SPJGK - CM 288599

18 OCT 1945

UNITED STATES v. First Lieutenant JOHN E. DARTEZ (0-1795867), Corps of Military Police.	))))))))	EIGHTH SERVICE COMMAND ARMY SERVICE FORCES Trial by G.C.M., convened at Camp Claiborne, Louisiana, 30 May and 4 September 1945. Dismissal, total forfeitures and confinement for two years.

OPINION of the BOARD OF REVIEW
LUCKIE, MOYSE and WINGO, Judge Advocates.

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1. The Board of Review has examined the record of trial in the case of the officer named above and submits this, its opinion, to The Judge Advocate General.

2. The accused was tried upon the following Charges and Specifications:

CHARGE I: Violation of the 61st Article of War.

Specification: In that First Lieutenant John E. Dartez, Receiving and Processing Group, 3860th SCU, ASFTC, Camp Claiborne, Louisiana, did, without proper leave, absent himself from his station at Camp Claiborne, Louisiana, from about 3 May 1945 to about 7 May 1945.

CHARGE II: Violation of the 96th Article of War.

Specification 1: In that First Lieutenant John E. Dartez, Receiving and Processing Group, ***, did, at Camp Claiborne, Louisiana, on or about 30 April 1945, with intent to deceive Colonel Ralph H. Durkee, officially state to the said Colonel Ralph H. Durkee that he had reported for duty at 0900 CWT, 30 April 1945, which statement was known by the said First Lieutenant John E. Dartez to be untrue.

Specification 2: In that First Lieutenant John E. Dartez, ***, did, at Oakdale, Louisiana, on or about 22 February 1945, with intent to defraud, wrongfully and unlawfully make and utter to Mr. J. C. Callahan of Oakdale, Louisiana, a certain check, in words and figures as follows, to wit:

RAPIDES BANK & TRUST CO.

84-23

in Alexandria
Alexandria, La. 22 Feb 1945

PAY TO THE
ORDER OF Cash $75.00
Seventy-Five Dollars and 00/100 DOLLARS
To Rapides Bank & Trust Co
Camp Claiborne Facilities

/s/ John E. Dartez
1st Lt., CMP, 01795867

and by means thereof, did fraudulently obtain from Mr. J. C. Callahan the sum of $75.00, lawful money of the United States, then well knowing that he did not have and not intending that he should have sufficient funds in the Rapides Bank & Trust Company for the payment of said check.

Specification 3: Specification 3 is identical in form with Specification 2 except that the amount of the check is $10.00 and "value" is alleged to have been obtained.

Specification 4: (Finding of guilty disapproved by reviewing authority).

Specification 5: (Finding of guilty disapproved by reviewing authority).

Note: Specifications 6 through 10 inclusive are identical in form with Specification 2 except as to date, amount, and person defrauded. The Bentley Hotel was the organization defrauded in each instance. Other variations are as follows:

Specification	Date	Amount
6	3 May 1945	$ 5.00
7	4 May 1945	20.00
8	4 May 1945	20.00
9	5 May 1945	20.00
10	6 May 1945	15.00

He pleaded guilty to Charge I and the specification thereof and not guilty to Charge II and its specifications. The court found him guilty of all Charges and Specifications. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for two years. No evidence was introduced of any previous conviction. All but one member of the court recommended suspension of the confinement. The reviewing authority disapproved the finding of guilty of

the words "with intent to defraud" in Specification 3, Charge II, disapproved the findings of guilty of Specifications 4 and 5 of Charge II; approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. At all times mentioned herein accused was in the military service of the United States (R. 101, Pros. Ex. 17). In support of Charge I and its specification the prosecution introduced evidence showing that on 3 May 1945 accused absented himself without leave from his organization and remained in that status until his return to military control on 7 May 1945 (R. 17,18; Pros. Exs. 1 and 2).

With respect to Specification 1 of Charge II the prosecution's evidence discloses that accused was not present for duty during the morning of 30 April 1945 and did not report during the day until about 1630 (R. 28, 32,34). When asked by his commanding officer as to the time he reported back to camp, he replied, "nine o'clock, *** that Monday morning" (R. 29). Testimony by deposition of a fellow officer shows that accused had been with him on the morning and afternoon of the day in question, that at the hour of 0930 they were en route back to Camp Claiborne from Eunice, Louisiana, and did not arrive back at the Post until 1630 (R. 37; Pros. Ex. 3).

The evidence introduced by the prosecution in support of the bad check offenses, which are the subject of Specifications 2,3,6,7,8,9 and 10 of Charge II may be summarized as follows:

All of the checks were drawn by accused on the Rapides Bank and Trust Company of Alexandria, Louisiana (hereafter referred to as the Rapides Bank). On 22 February 1945 accused presented two checks, dated as of that date, to Mr. J. C. Callahan, who was the operator of a saloon in Oakdale, Louisiana, and to whom accused was well known. Both checks were made payable to cash, one in the amount of $10.00 (Pros. Ex. 4), the other being for $75.00 (Pros. Ex. 5). The transaction occurred at Callahan's place of business and he instructed his manager to cash said checks for accused. This was accomplished with Callahan's funds and accused received $75.00 in cash for the $75.00 check. Part of the proceeds of the $10.00 check was used as payment for some drinks (the amount is not indicated) and the balance was paid to accused in cash (R. 40,43,44,56,59) (Pros. Exs. 4,5). These checks were deposited for collection in the ordinary course of business but were returned unpaid (R. 45,46,64). Restitution had not been made up to the time of trial, but there had been some negotiation toward redemption on or about 1 September 1945, the Saturday preceding trial (R. 45,46, 48).

With respect to the $10.00 check the bank representative testified, "It appears to me that we were wrong in not paying this particular check for $10.00 just on the face of it. *** In fact the check was paid and later taken off" (R. 94).

The other checks, five in number, which are the subject of Specifications 6 through 10 inclusive of Charge II, were likewise drawn on the Rapides Bank by accused, all being payable to the order of Bentley Hotel of Alexandria, Louisiana. These checks are more particularly identified and described as follows:

Specification	Date of Check	Amount of Check	Pros. Ex. No.
6	3 May 1945	$ 5.00	10
7	4 May 1945	20.00	12
8	4 May 1945	20.00	13
9	5 May 1945	20.00	14
10	6 May 1945	15.00	11

On the respective dates above set forth accused presented said checks to authorities of the Bentley Hotel who approved them for cashing, and thereupon accused received in cash, from the hotel cashier on duty, the amounts indicated on the several checks. All were deposited for collection in the ordinary course of business and all were returned unpaid by the drawee bank (R. 76,77,83,102-106,109,110; Pros. Exs. 10-14 incl.). Accused's bank balance was insufficient to pay any of them when they were presented for payment between 5 May 1945 and 17 May 1945 (R. 91,92). Subsequently the hotel was reimbursed for all of the checks (R. 84).

4. For the defense, testimony was adduced to the effect that accused sent a telegram to his wife in Abbeyville, Louisiana, on 3 May 1945 requesting that she send him $100.00 immediately (R. 99; Def. Ex. A). No telegraphic reply was received by the sending office (R. 99-100).

Accused, after being apprised of his rights as a witness, elected to remain silent (R. 114).

Thereafter the defense moved for findings of not guilty of Specifications 3, 5 (finding of guilty of Specification 5 was disapproved by the reviewing authority) and 6 of Charge II on the ground that the evidence established accused had sufficient funds in his account to permit payment on the dates the checks which are the subject of the respective specifications were passed (R. 115). The motion was denied and thereupon the defense rested (R. 117).

5. By his plea, the accused admitted his guilt of the offense alleged in Charge I and the specification thereof. Aside from the plea, however, there is ample evidence in the record of trial, both documentary and testimonial, to establish the unauthorized absence of accused as alleged. The finding of guilty of this specification and of the charge should therefore be sustained.

With regard to the offense of making a false official statement to his commanding officer as to the time of his arrival at Camp Claiborne on 30 April 1945 the undisputed evidence conclusively shows that accused

was away from his station on the morning in question and that he did not return until late in the afternoon. It is further established that when asked officially by his commanding officer as to the time of his arrival, he placed the hour of his return at 0930. The facts and circumstances are such as to leave no doubt that this statement was made with intent to deceive.

The Board next considers the fraudulent checks offenses. An examination of accused's bank statement (Pros. Ex. 15) reveals that on 22 February 1945, the date on which the checks which are the subject of Specifications 2 and 3, Charge II, were passed his balance was $12.50. At the close of business 28 February 1945 it was $7.00, though between 22 February and 27 February it remained at $12.50. There was a deposit of $15.00 on 28 February, but two $10 withdrawals together with a fifty cent charge on that date reduced the balance to the $7.00 figure above indicated. From 28 February 1945 until 31 March 1945 the highest balance in accused's bank account was $68.25 on 29 March. On 2 April 1945 there was a deposit of $153.50 and his balance was $153.75. This balance was reduced to $63.75 by five checks which were paid 3 April 1945, and further reduced on 9 April 1945 to $3.75 by four checks totaling $60.00. From then until accused deposited $50.00 on 1 May 1945 the highest balance in his account was $3.75. On 1 May 1945, the day after accused drew a $20.00 check, the subject of Specification 5, Charge II, guilty findings of which were disapproved by the reviewing authority, his bank balance was $29.75. On 2 May 1945 two checks totaling $20.00 were paid and the account balance was reduced to $9.50 during the 3rd of May. On 4 May 1945 the account was reduced to $4.50, which was the highest balance until it was closed 24 May 1945. With respect to all the check offenses save that indicated in Specification 3 of Charge II the overwhelming weight of the evidence leads to the inescapable conclusion that on the dates mentioned the accused made and uttered to the persons named therein the several checks, then and there well knowing that he did not have sufficient funds in his bank account for the payment of said checks, and not intending that he should have sufficient funds when the checks were presented. The design was apparent and the court was justified in finding accused's acts were accompanied by a specific intention to defraud the person and organization to whom he uttered and passed the checks. The evidence is legally sufficient to sustain the findings of guilty of Specifications 2,6,7,8,9 and 10.

With respect to Specification 3 of Charge II, the evidence shows that on February 22, 1945, the date on which this check was cashed and until 27 February 1945 accused had sufficient funds in his bank account to permit payment. However, on February 28th, the day on which it was presented, two other checks were presented for payment and the balance was reduced to $7.00, resulting in this check being dishonored. Although the bank cashier was confused in his testimony, an examination of the bank statement shows conclusively that the balance was inadequate to permit payment on the day said check was presented. The reviewing authority in approving the finding of the applicable specification, excepted from his approval the words "with intent to defraud," but he took no positive action with respect to the phrase "did fraudulently

SPJGK - CM 288599 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

TO: The Secretary of War

1. Pursuant to Executive Order No. 9556, dated May 26, 1945, there are transmitted herewith for your action the record of trial and the opinion of the Board of Review in the case of First Lieutenant John E. Dartez (O-1795867), Corps of Military Police.

2. Upon trial by general court-martial this officer pleaded guilty to and was found guilty of absenting himself without leave from his station for a period of four days in violation of Article of War 61 (Charge I and its Specification); and pleaded not guilty to and was found guilty of making a false official statement to his commanding officer as to the time of his arrival at the station of his command (Charge II, Specification 1), and of issuing nine worthless checks totaling $485.00 in exchange for cash or value with intent to defraud (Charge II, Specifications 2 through 10, incl.), in violation of Article of War 96. He was sentenced to be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for two years. Eight of the nine members of the court subsequently recommended that "the confinement be suspended." The reviewing authority disapproved the findings of guilty involving two of the checks totaling $320.00 (Charge II, Specifications 4 and 5); excepted the words "with intent to defraud" from his approval of the finding of guilty involving a check for $10.00 (Charge II, Specification 3); approved the sentence, and forwarded the record of trial for action under Article of War 48.

3. A summary of the evidence may be found in the accompanying opinion of the Board of Review. I concur in the opinion of the Board that the record of trial is legally sufficient to support only so much of the findings of guilty of Specification 3 of Charge II as involves a wrongful failure of accused to maintain sufficient funds in his bank account to pay the check, and legally sufficient to support the findings of guilty of the Charges and all other Specifications as approved by the reviewing authority and the sentence and to warrant confirmation of the sentence.

During the month of February 1945 the accused passed two worthless checks, one for $10.00, and the other for $75.00. These were returned unpaid and accused permitted them to remain dishonored. In addition, during the month of May 1945 he passed five other worthless checks of an aggregate amount of $80.00 to a certain hotel, which were likewise returned unpaid. He also absented himself without authority for a period of four days, during which time he passed the above mentioned checks to the hotel. Accused also made a false official statement to his commanding officer concerning the time of arrival at his station. Restitution was made on the checks issued

and to warrant confirmation of the sentence. A sentence of dismissal is authorized upon conviction of a violation of Articles of War 61 or 96.

Charles G. Luckie, Judge Advocate

Herman Mayo, Judge Advocate

Earl W. Wingo, Judge Advocate

SPJGK - CM 288599 1st Ind

Hq ASF, JAGO, Washington 25, D. C.

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During the month of February 1945 the accused passed two worthless checks, one for $10.00, and the other for $75.00. These were returned unpaid and accused permitted them to remain dishonored. In addition, during the month of May 1945 he passed five other worthless checks of an aggregate amount of $80.00 to a certain hotel, which were likewise returned unpaid. He also absented himself without authority for a period of four days, during which time he passed the above mentioned checks to the hotel. Accused also made a false official statement to his commanding officer concerning the time of arrival at his station. Restitution was made on the checks issued

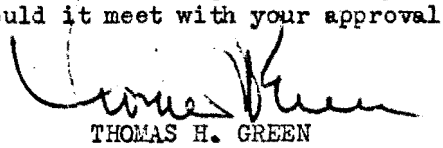
to the hotel sometime before the trial. The related papers indicate that, after trial, restitution was made on all other checks.

The accused's bank balance was sufficient to pay the $10.00 check from 22 February 1945, the date on which it was issued, until 27 February 1945, but lacked sufficient funds on the day it was presented for payment, 28 February 1945. The $75.00 check, issued on the same day as the $10.00 one, was likewise presented for payment on 28 February 1945 and was dishonored. There were never sufficient funds on hand in the account to pay the $75.00 check from the time it was issued until the day on which the account was closed on 31 May 1945, save for one day, 2 April 1945, when a deposit of $153.50 raised the balance to $153.75. On the following day the account was down to $63.75. With respect to the hotel checks in denominations of $5.00, $20.00, $20.00 and $15.00 issued respectively on 3 May, 4 May, 5 May and 6 May 1945, the bank balance on 3 May 1945 was $9.50, but on the following day it was down to $4.50 and not sufficient to pay even the $5.00 check passed the preceding day. Four dollars and fifty cents was the highest balance from 4 May 1945 until the closing of the account on 31 May 1945.

The accused did not testify at the trial, the sole evidence adduced in his behalf being to the effect that on the day the first hotel check was cashed accused sent a telegram to his wife requesting that she send him $100.00 immediately.

This officer's actions clearly demonstrate that he is unworthy of his commission, and justify the imposition of punishment in addition to dismissal. However, his satisfactory record for a period of four and a half years preceding the commission of the offenses of which he was found guilty, his youth and domestic responsibilities, and his restitution in full of the amounts received by him on his worthless checks deserve consideration. I recommend that only so much of the findings of guilty of Specification 3 of Charge II as involves a wrongful failure by accused to maintain sufficient funds in his bank account to pay the check described therein be approved; that the sentence be confirmed but that the forfeitures and confinement be remitted and that the sentence as thus modified be ordered executed.

4. Inclosed is a form of action designed to carry into execution the foregoing recommendation should it meet with your approval.



2 Incls
1. Record of trial
2. Form of action

THOMAS H. GREEN
Brigadier General, U.S.A.
Acting The Judge Advocate General

(Sentence confirmed but forfeitures and confinement remitted. GCMO 516, W.D. 18 DEC 1945).

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TITLE

DATE	BORROWER'S NAME	EXT.