

VOLUME FOUR

MON December 11

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1333-1357	Cpl. Russell L. Ellis	D	650 PC
1358-1380	T/5 Henry Jupiter	D	650 PC
1380-1393	T/4 Booker W. Thornton	D	650 PC
1393-1398	T/5 Freddie L. Simmons	D	650 PC
1399-1420	Pvt. Elva Shelton	D	650 PC
1420-1431	T/5 Nelson L. Alston	D	650 PC
1431-1446	T/5 Arthur L. Stone	D	650 PC
1446-1456	T/5 Nathaniel T. Spencer	D	650 PC
1456-1462	Pfc. Milton D. Bratton	D	650 PC
1462-1474	Pvt. Booker W. Townsell	D	650 PC

TUE December 12

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1479-1485	Mr. Forrest Jack Freeman	ID	Intelligence & Security Div.
1485-1487	Maj. Robert H. Manchester	O	POE Intelligence & Security
1487-1490	Lt. Col. Curtis L. Williams	O	Inspector General Div., DC
1490-1496	Capt. Francis W. Beckman	O	28 ISU
1496-1500	S/Sgt Regis A. Callahan	MP	MP Section
1500-1560	Sgt. Arthur James Hurks	D	650 PC
1561-1562	Pfc. John Lee Hamilton	D	650 PC
1562-1563	Pvt. Robert Sanders	D	650 PC
1563-1565	Pvt. James C. Chandler, Jr.	D	650 PC
1566	Cpl. Johnnie Ceaser	D	650 PC
1567-1568	Pfc. Roy L. Montgomery	D	651 PC
1568-1569	Pvt. Walter Jackson	D	650 PC
1570	T/5 Riley L. Buckner	D	650 PC
1571-1572	T/4 John S. Brown, Sr.	D	578 PC
1572-1573	Pfc. Sylvester Campbell	D	651 PC
1573-1574	Cpl. Johnnie Ceaser	D	650 PC
1574-1575	T/5 James Coverson	D	650 PC
1575-1576	T/5 Willie S. "Slick" Curry	D	651 PC
1576-1577	T/5 Lee A. Dixon	D	650 PC
1577-1578	Pvt. Samuel Snow	D	650 PC
1578-1579	Sgt. Emanuel W. Ford	D	650 PC
1579-1580	S/Sgt. Ernest Graham	D	651 PC
1580-1581	Pvt. Frank Hughes	D	650 PC
1581-1582	Pvt. William G. Jones	D	650 PC
1582	T/5 Willie Prevost, Sr.	D	650 PC
1583-1584	Sgt. C. W. Spencer	D	650 PC
1584	T/5 Leslie T. Stewart	D	650 PC
1584-1585	Pvt. Richard Lee Sutliff	D	650 PC
1585-1586	Pfc. Freddie Umblance	D	650 PC
1586-1587	T/5 David Walton	D	650 PC
1587-1588	Pvt. Wallace A. Wooden	D	650 PC

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1592-1594	2nd Lt. Angelo J. Gagliardo	I	POE
1595-1600	Ms. Elsie Lahti	C	Legal Department
1600-1602	Capt. Ernesto Cellentani	IS	28 ISU Commander
1602-1603	<i>Defense rests</i>		
1603-1629	Capt. Charles O. Sturdevant	O	Neuropsychiatric Section
1629-1634	Lt. Vito Melpignano	IS	28 ISU
1634-1637	Cpl. Maj. Bruno Patteri	IS	28 ISU
1637-1642	2nd Lt. Giovanni Lobianco	IS	28 ISU



THU December 14		19
1644-1667	Pfc. John H. Pinkney	BS 650 PC
1667-1673	Pvt. Jesse Grego	MC Station Hospital
1673-1674	Pfc. John H. Pinkney	BS 650 PC
1674	<i>Prosecution rests</i>	
FRI December 15		20
1676-1688	Sgt. Grant Noel Farr	IG SCU 7909
1690-1691	1st Sgt. Robert B. Aubry	BS 650
1691	S/Sgt. Spencer Martin	BS 650 PC
1691	Sgt. Wilbur Jenkins	BS 650 PC
1691-1693	T/5 Earl William Lallis	BS 578 PC
1693-1694	T/5 Jacob Person	BS 651 PC
1693-1694	T/5 Freeman Pierce	BS 651 PC
1694-1695	T/5 William H. (A.?) Wilson	BS 650 PC
1695	T/5 John Terrell	BS 650 PC
1696	T/4 John S. Brown	D 578 PC
1696	T/5 William D. Montgomery	BS 650 PC
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ARMY SERVICE FORCES
SEATTLE PORT OF EMBARKATION
SEATTLE, 4, WASHINGTON

General Court Martial
Fort Lawton Staging Area
Fort Lawton, Washington

VOLUME FOUR

Pages 1332-1811

Concluding

276299

Fort Lawton Staging Area,
Fort Lawton, Washington,
11 December 1944.

The Court reconvened at 9:00 a.m., 11 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready to proceed?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show each of the accused is present; that all members of the Court are present and the personnel representing the accused as well as the personnel of the prosecution.

Assistant Defense: We will call Private First Class Russel L. Ellis.

Law Member: There was offered in evidence on Saturday morning Exhibit K for identification, an alleged letter on behalf of Sergeant Graham. Decision on that offer was reserved. At this time the prosecution's objection is sustained.

Defense: Does the Court wish to indicate the reason upon which the offer is refused?

Law Member: Hearsay and not properly authenticated. Corporal Ellis, as a defendant or an accused in a military court you have certain rights and it is my duty at this time to explain them to you.

You have the right to remain absolutely silent, not make any statement at all, and the fact that you do remain silent cannot be commented upon by the Trial Judge Advocate or considered by us in any way in determining whether or not you were guilty or innocent.

You may also be sworn as a witness in your own behalf just like any other witness, and then your evidence is considered along with the rest. If you are sworn as a witness, you are subject to cross-examination by the Trial Judge Advocate and by the members of the Court if they see fit to cross-examine you.

Finally, you may submit an unsworn statement, either orally or in writing, by yourself or through your counsel. If you do submit such an unsworn statement, which is not strictly evidence, you are not subject to cross-examination by anyone on the contents of that unsworn statement, but the Court would give such consideration to that unsworn statement as the members thereof deem it entitled to.

Now, do you understand those instructions I have given to you?

Corporal Ellis: Yes, sir.

Law Member: And have you talked it over with your counsel?

Corporal Ellis: Yes, sir.

Law Member: And after talking it over with your counsel you elect to be sworn as a witness, is that correct?

Corporal Ellis: Yes, sir.

Law Member: All right, Colonel.

Corporal Russel L. Ellis, Headquarters and Headquarters Detachment, Camp George Jordan, a witness for the defense, was sworn and testified as follows:

Assistant Trial Judge Advocate: State your name.

The Witness: Russel L. Ellis.

Assistant Trial Judge Advocate: And your grade.

The Witness: Corporal.

Assistant Trial Judge Advocate: And your organization.

The Witness: Headquarters and Headquarters Detachment, Camp George Jordan.

Assistant Trial Judge Advocate: You are one of the accused in this case.

The Witness: I am, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Corporal, how old are you?

A 33, sir.

Q Married?

A Yes, sir.

Q Have any children?

A One, sir.

Q Boy or girl?

A Girl.

Q What is the age of that youngster?

A Three, sir.

Q Where is your home, Corporal?

A Oklahoma, sir.

Law Member: Oklahoma City?

The Witness: Oklahoma City, Sir.

Q What has been the extent of your education?

A 4-year college course, sir.

Q What university?

A University of Langston.

Q What degree did you receive?

A Bachelor of Science.

Q What was your civilian occupation before you came into the armed service?

A I was working for the Government, sir.

Q Well, did you have any occupation before you worked for the Government?

A I was a shipping clerk for Sears and Roebuck.

Q Did you ever have any experience with a transportation company?

A Yes, sir. The Transportation company was connected with the Government for hauling soliders.

Q Oh, I see. Now, when were you first inducted into the armed services?

A About the 16th of December, 1942.

Q Did you ever receive a good conduct medal, Corporal?

A Yes, sir.

Q When did you receive that?

A It was about the latter part of April, 1943, sir.

Q Tell the Court whether or not you ever had any foreign service?

A I have, sir.

Q And when was that?

A I returned here on November 2nd, sir.

Q I don't want you to name the particular place you were at, but was that in the Southwest Pacific?

A Southwest Pacific, sir.

Q Approximately when did you leave the United States for foreign service?

A I think it was August 27.

Q This year?

A This year, 1944, sir.

Q Were you wearing glasses at that time, Corporal?

A No, sir.

Q What is the reason you are wearing glasses at this time?
A I was hurt overseas, in which I had a broken nose and two operations on my eyes.

Q Your condition since that time requires that you wear colored glasses?
A Yes, sir.

Q Now, about when were you assigned to the 650th Port Company?
A It was right around the first of June.

Q Of this year?
A Of this year, 1944, sir.

Q Well, tell the Court whether or not as a member of that company you lived on the post?
A No, sir, I didn't.

Q Where did you live?
A Downtown, sir.

Q You mean in downtown Seattle?
A Yes, sir.

Q What is the reason you didn't live on the post?
A My wife was here, sir.

Q I see. Now, Corporal, were you a corporal on August 14 of this year?
A No, sir.

Q What was your grade at that time?
A Pfc., sir.

Q And when were you promoted?
A After arriving overseas, sir.

Q Now, calling your attention to the night of August 14 of this year, Corporal Ellis, which is the night that there was difficulty between the Italians and the colored soldiers, I wish you would tell the Court in a general way what you were doing that night prior to the time you first learned that there was difficulty?
A When I first learned that there was difficulties I had just come out of the shower and walked upstairs.

Q I want you to tell the Court a little bit what you were doing before that time?
A The evening before that time, prior to that time, why, the early part of the evening after leaving chow I received a long distance telegram -- telephone call -- from my wife, but by the time they found me someone had hung up the receiver and the call didn't come through. I called the operator and tried to get back in touch with my family and, of course, the line was somewhat busy. She told me it would take her --

Q Don't go into the conversations you had. Just tell in a general way what you had done that evening during the time.

A After I did not get my call I sat around the day room that evening waiting for a call to come through. While I was waiting for my call to come through I had friends come out to visit and stayed until about 10:00. And the call didn't come through and I called the operator and told her to cancel it. Walked up to the bus line with my friends, which was around about 10:00. When I got back to the barracks it was about 10:45. I went upstairs and begin to write a letter to my wife.

Q I want to ask you about that. You told the Court a moment ago your wife lived here. When was it your wife left?

A She left just before -- when I found I was going overseas.

Q Well, about when was that, Corporal?

A That was about, I imagine, some time in June. Sometime in June, sir.

Q Sometime in June that she left?

A Yes, sir. I was still living downtown, sir.

Q Still living in town?

A Yes, sir.

Q How long did you continue living in town?

A I lived in town -- I came in the morning of August 14; that was the last morning that I was able to go out.

Q I see. Do you mean when you say you came in, you came back to the post?

A Came back to the post, yes, sir.

Q You were telling the Court you were upstairs in your barracks.

A I was upstairs in my barracks when I began the special letter telling her I would probably be leaving Fort Lawton; not to write anymore until she hear from me. It was close to somewhere around 11:00, and I knew it was about time for the light to go out, and so I went down and take my shave and begin to take a bath. When I come out of the shower and came upstairs I could hear different ones coming in and out of the barracks. In the conversation I heard that Montgomery had gotten killed.

Q Montgomery had gotten killed?

A That is the way I understood it, he had gotten killed. So I laid my toilet articles up on the bed and went downstairs and walked out --

Q Did you have any particular assignment in the company?

A Yes, sir, I was assigned by the Company Commander for medical aid for overseas.

Law Member: What was that?

The Witness: I was assigned by the Company Commander for medical air overseas.

Q When did you receive that assignment?

A It was about the 1st of July, sir.

Q It was about the 1st of July?

A Yes, sir.

Q Tell the Court whether or not you received any special training for it.

A I have, sir. I went to school at Fort Lawton.

Q Who sent you to school?

A Captain Ellingdon, Camp George Jordan.

Q Who was Captain Ellingdon?

A He was the Captain at Camp George Jordan, in connection with Lt. Colonel Shelton.

Q He is the one directed you to go to this medical school?

A Yes.

Q All right. You started to tell the Court you heard somebody saying Montgomery had been killed.

A I heard someone say Montgomery had been killed. So I went downstairs and just as I got to the door I sees the crowd around, and I walked out and the M.P.'s were just picking him up and put him in a jeep. I asked what was wrong and somebody said he had just got knocked out; and I asked if they needed any help and they said, no, we will take him up. And I turned and walked back into the barracks and continued --

Q As I understand you to say, when you got out there they were just putting Montgomery into the jeep.

A The M.P.'s just finished picking him up.

Q And you came back into the barracks?

A I went back into the barracks and stood in the door because I wasn't properly dressed. I stood in the door.

Q All right. Tell the Court what else happened; what you did.

A About three minutes after I had gone back in the barracks and was standing in the door, Sergeant Aubery --

Q Who is Sergeant Aubery?

A A sergeant of the 650th Port Company; 1st Sergeant.

Q He is a 1st Sergeant?

A Yes, sir. He came down and ordered the boys back in the barracks.

Q Corporal, I want you to tell the Court whether at any time

during the night of August 14 you went down to the Italian area?

A No, sir, I did not.

Q You understand what we mean when we say the Italian area?

A I understand what you mean, sir.

Q I want you to tell the Court whether or not at any time on the night of August 14 you ran upstairs in the barracks and said the Italians beat up one of our men?

A I did not.

Q Did you have such a conversation with anyone?

A I didn't have a conversation with anyone, sir.

Q Well, tell the Court whether or not at any time during the night of August 14 or later you ever made the statement that you gave the Italians a good whipping?

A I did not, sir, because I didn't know what it was all about, sir.

Defense: I think you may examine.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Corporal, are you trying to lead this Court to believe you were wounded while you were overseas?

A I didn't try to lead them that I was wounded. I was hurt, sir.

Q You were hurt when you went swimming?

A That is when I got hurt, sir.

Q And you went diving and you dove down in the water and you hit some coral, didn't you?

A That's right, sir.

Q Well, you weren't in combat or anything like that when you were hurt?

A No, sir.

Defense: He would have the Purple Heart if he was.

Q Now, you told the Court you wrote a letter to your wife that night.

A Yes, sir, I did, sir.

Q And that is before, of course, you went down to see about Montgomery?

A I hadn't finished, sir.

Q You hadn't finished?

A I hadn't finished writing the letter. Only started.

Q When did you start?
A Started to writing the letters before I went to take my bath, and started to take my bath before the lights went out.

Q You started writing a letter before you took a bath?
A That's right, sir.

Q You are sure of that?
A That's right, sir.

Q Then you went downstairs and you came back upstairs and you say Sergeant Aubrey showed up, didn't you?
A I didn't say I came back upstairs. I said I went back in the building and while I was standing inside the building.

Q You went back in the barracks and Sergeant Aubrey came in?
A He didn't come in the barracks; he came out in front.

Q Came out in front. You heard what he said?
A Yes, sir. I was standing inside.

Q All right. And then you went where after Sergeant Aubrey talked?
A After Sergeant Aubrey ordered them back in the barracks, which all the boys were coming back in the barracks, I went back upstairs and continued to finish my letter.

Q Continued to finish your letter?
A That's right, sir.

Q All right. Now at what time or do you know approximately what time it was when you first heard that someone said that Willie Montgomery was killed?
A Well, I couldn't give you the exact time, but I imagine it was somewhere around 11:00, because I think it was about 10:00 or 10:45 when I returned back to my barracks.

Q About 10:45?
A That is when I returned back to my barracks, yes, sir.

Q Now, did you hear any commotion or did you hear any noise or any indication that something was going on while you were taking a bath?
A No, sir, I couldn't hear because I was back in the room and I had the curtain pulled, and the water was running, and I couldn't hear anything back there.

Q Was anybody in there with you?
A Booker Thornton was taking a shave.

Q Booker Thornton was taking a shave?
A That's right.

Q That is the accused Booker Thornton?
A Yes, sir, Sergeant Booker Thornton.

Q Did the two of you talk any about what was going on out there?
A No, sir, we didn't.

Q Didn't say anything to each other?
A We didn't know what was going on.

Q You didn't know what was going on and you weren't wondering what was going on?
A I didn't have no idea. I had no reason for wondering.

Q Had no reason for wondering?
A No, sir.

Q Had you gotten upstairs before you heard somebody say that Montgomery was killed?
A I had, sir.

Q You were upstairs?
A I was upstairs.

Q Are you sure you had gotten upstairs before you heard that?
A I had, sir.

Q And where were you; next to your bunk?
A My bunk was the second bunk from the stairway, sir, as you come downstairs. I were, sir.

Q Were you sitting on your bunk?
A No, sir, I was standing by my bunk.

Q You were standing by your bunk when you heard that?
A Yes, sir.

Q All right. And what you heard was that Montgomery was killed?
A That is what I heard, sir.

Q You are sure it was killed?
A That's right, sir.

Q All right. And what did you do then?
A Well, I walked down the stairway and I walked out to the door to see what was going on.

Q Well, did anybody call your name?
A I am pretty sure they did. Nobody calls me by my name; everybody calls me "Heavy", and I understood somebody to say, "Heavy".

Q Have you any idea who was calling your name?
A No, sir, I don't; couldn't say.

Q Haven't any idea?
A No, sir.

Q Well, you answered to that call?
A I did not answer, sir. I walked down the steps, sir.

Q Well, wasn't that answering to it?
A Answering, if I had answered, I would have said something, but I didn't say anything. Just walked down the steps.

Q You responded to it by going downstairs?
A That's right, sir.

Q When you reached the door did you see anybody?
A Yes, sir.

Q Who?
A A crown out there. I don't know who they were. About three companies out there. Practically all of them out there.

Q Any M.P.'s there when you got downstairs?
A Yes, sir, there was.

Q Did you have any conversation with the M.P.'s?
A I only say to him, I say, "What is wrong?" He say, "Oh, he just got knocked out," and they were putting him in the jeep. That is all he say, and I turned and went back into the barracks because I wasn't properly dressed.

Q Well, didn't you tell them there wasn't anything you could do?
A I told him there wasn't anything they could do to a man that is knocked out.

Q You told them there wasn't anything they could do --
A No one could do.

Q -- (continuing) to a man knocked out?
A That's right, sir.

Q Well, were you sort of acting as the medical advisor there?
A I wouldn't say acting as a medical advisor, which I was, but I just went down to see what was going on, because I figured it was my duty to go by being appointed for medical aid.

Q You saw a mighty good doctor working over him at that time?
A Wasn't anyone working at that time.

Q Wasn't there somebody over Willie Montgomery working on him at that time?
A Not at that time, sir.

Q Nobody taking care of him?
A Not at that time, sir.

Defense: There is no testimony there was, Counsel, at that time.

Trial Judge Advocate: I think I have a right to examine this witness on any phase of this matter I want to.

Law Member: Continue, Colonel.

Defense: I am sorry.

Q There wasn't anybody working on Willie Montgomery at that time?

A There was no one working on Willie Montgomery at that time.

Q You went and took a look at him?

A I looked at him.

Q Did you examine him?

A No, sir, I didn't, sir. I just looked at him and told them what I thought about it, and that was all.

Q Is that the way you go about passing judgment on somebody's physical condition, just to take a look at them and then say there was nothing we can do for them?

A It is not the way they do, sir.

Q But that is the way you did it that night?

A That is the way I did it that night, sir.

Q All right. Well, did you help put Montgomery in a jeep?

A I started to help put him in a jeep, and they said they would take care of him; take him to a hospital.

Q So you didn't help put him in a jeep; so you didn't help put him in a jeep; you say you didn't?

A I was there at the time ~~he~~ was put in.

Q But you didn't help put him in?

A Yes, sir.

Q You just got through saying you didn't?

A I said I did, sir, in the beginning. I said the M.P.'s was picking him up and they put him in a jeep, and they told me -- and I asked them if they might need me to go with them, and he said no; they would take care of him.

Q So then you didn't actually put him in a jeep, or did you?

A I helped, sir.

Q All right. I want that testimony read to me.

(Testimony read by reporter.)

Q All right. Did you start to put him in the jeep or did you actually put him in a jeep; which is it?

A I tell you, sir, when I first arrived he wasn't laying flat on the ground, he was kind of sitting on one hand, and I kneeled down and looked at him. I looked at him and asked him how he was feeling, and he said he was feeling pretty good, and I reached down because we all helped pick him up, and after he stood the M.P.'s took him.

Q Then the M.P.'s took charge of him; they took him to the jeep?

A Yes, sir.

Q So there was no occasion for you to put him in a jeep because they took him to a jeep?

A No, sir.

Q Then what you meant, you started to help put him in a jeep by picking him off the ground but the M.P.'s took hold of him and took him to the jeep; that is what you mean?

A Well, he was laying there beside the jeep, sir.

Q About how far from the jeep was it?

A The jeep? He was laying with his feet just up off the curb.

Q Well, was he carried to that point?

A I wouldn't know where he was carried from.

Q That is where you first saw him?

A That is where I first saw him, sir.

Q Now, did any other M.P.'s arrived beside those two?

A Yes, sir, there was --

Q I mean before they left with Montgomery?

A Before they left with Montgomery, yes, sir, a command car, staff car, come past just in front of the barracks.

Q Did they say anything?

A I wouldn't know what they were saying, sir.

Q Well, they ordered you all inside, didn't they?

A My 1st Sergeant ordered me inside.

Q Didn't the M.P.'s order you all inside too?

A I wouldn't know, sir. I wasn't out there.

Q All right. Now, you gave a written statement in your handwriting about what you did that night while this riot was in progress, didn't you?

A I think I did, sir.

Q In fact, you know you did, don't you?

A Yes, sir.

Q And that was given on or about November 2, 1944, wasn't it?

A That's right, sir.

Q Right after you were returned from overseas?

A Right, sir.

Q All right.

Law Member: November 2?

Trial Judge Advocate: November 2.

Q Now, in that statement I will ask you if you didn't say that

when you and Booker Thornton were there that Booker was taking a shave and you were taking a bath; that that was during the time when this thing first started, and that both of you were wondering what was going on; didn't you say that?

A I wouldn't know, sir. I can't recall; it has been some time ago.

Q Well, you testified to the Court today that you and Booker were not wondering what was going on at that time. Now, which is right; were you or were you not?

A I guess the last statement I said was right, sir.

Q In other words, what you are telling the Court now is right; that you weren't wondering what was going on?

A That's right, sir.

Q Now, I asked you specifically whether you had gotten upstairs before somebody called that Montgomery was killed, and you said you had gotten upstairs and were standing by your bunk. Now, that is what you told the Court.

A That's right, sir.

Q Well, do you know that is right?

A I think it is, sir.

Q All right. Now, I will ask you if you didn't in this written statement say that you were going up the stairway when somebody yelled about Montgomery?

A I can't recall, sir. It has been some time ago.

Q You can't recall, it has been some time ago, but you were positive, and I asked you if you were sure where you were standing, and you said you had gotten upstairs and were standing by your bunk. That was your testimony this morning?

A That's right, sir.

Q All right. I also asked you whether you were certain that somebody called Montgomery was killed and you told the Court that you were certain about that, didn't you?

A I think I did, sir.

Q Now, I will ask you if you didn't say in this statement that someone yelled Montgomery was knocked out?

A I don't recall that, sir.

Q You don't recall that. All right. Now, you have told the Court this morning that you had started writing your wife a letter before you ever went downstairs. That is what you said, didn't you?

A When I went downstairs, yes, sir. I started that evening, sir.

Q All right. Now, I will ask you were you certain in this statement, in this written statement, that you began to write your wife a letter after you got back upstairs when this

affair was over with; that you began to write her a letter after you had returned to your barracks?

A I said in my statement, I think I said in my statement, after I had returned I finished writing my letter.

Q That is your recollection of what you said in the statement?

A That's right.

Q And you didn't say you began to write a letter after that?

A I don't think I did, sir.

Q Which is the truth?

A Well, the truth is I finished my letter after I had gone back upstairs.

Q And you didn't begin to write it?

A I had already begin it, sir.

Q Now, I asked you if the M.P.'s hadn't ordered everybody back inside when they arrived and you said they hadn't. That is what you told the Court, didn't you?

A That's what I told.

Q Now in this statement I will ask you if you didn't say it was the M.P.'s who ordered everybody inside.

A In my statement, sir?

Q I will ask you if you didn't say that in your statement?

A I don't remember. I think I remember saying the Sergeant ordered everybody inside. If the M.P.'s were out there, I am sure they were helping.

Q I will ask you if it isn't a fact that in your statement you didn't mention the Sergeant and didn't mention one word about Sergeant Aubery?

A I can't recall that, sir.

Q Well, you are a pretty smart man, with a college degree, aren't you?

A Everyone is capable of not thinking at all times, sir.

Q You don't make a habit of writing things that aren't true, do you?

A No, sir.

Q All right. Now, you just take a look at this and see if that isn't the thing that you wrote out on November 2 (handing paper to witness).

A That is in my handwriting, sir.

Q All in your own handwriting?

A That's right, sir.

Trial Judge Advocate: I offer it in evidence.

Defense: There is no objection.

Law Member: The exhibit is received in evidence as Prosecution Exhibit 43.

Defense: No objection to this either, if you tell me it is a copy.

Trial Judge Advocate: Yes, it is a copy.

Defense: If you tell me it is, it is satisfactory.

Trial Judge Advocate: Yes, that has been compared.

A paper was then marked Prosecution Exhibit 43 in evidence.

Trial Judge Advocate: Before I read this one I want to ask another question or two.

Q Now, Corporal, the day you wrote that our Major Manchester was talking with you and several others; it was right after you returned?

A Yes, sir.

Q And you and several others, several other accused here, were brought into a room and he told you of the charges that had been filed?

A That's right, sir.

Q And he read the charges to you and during the course of the conversation with you he told you if any of you wanted to write out your version of this matter you could do so, didn't he?

A That's right, sir.

Q And then you went out and wrote your version of this matter?

A That's right, sir.

Q And who was around you when you wrote it?

A Sergeant Young was out there, but he wasn't just over. He was just walking from table to table.

Q You happened to be sitting in that office where his desk was?

A No, sir, we were out in the large --

Q In a room about as large as this, weren't you?

A That's right, sir.

Q And there was some of the other accused sitting there too?

A That's right, sir.

Trial Judge Advocate then read Prosecution Exhibit 43 to the Court.

Q Now, Corporal, that is quite a different story than what you told the Court this morning?

A I don't think it varies so much, sir.

Q You don't think it varies so much?

A No, sir.

Q It just varies in about five or six respects.

Defense: That is an argumentative question. Counsel knows it is improper.

Law Member: The objection is sustained. The statement speaks for itself.

Q You know Willie Ellis quite well?

A I know him, sir.

Q Well, you know him quite well?

A No, sir, I don't know him quite well.

Q How long have you known Willie Ellis?

A Well, I used to know him by seeing him around the company. Bearing the same name I have, I could remember him, sir.

Q Well, you and Willie never had any difficulty, did you?

A No, sir.

Q Well, as a matter of fact, you had been pretty good friends, hadn't you, Corporal?

A Well, I try to be a friend to everybody.

Q I am sure of that, but Willie tried to be a friend of yours too?

A I don't know whether he tried to be a friend. He was a nice fella.

Q You heard Willie Ellis testify in this court room that he saw you with a club near door E on the inside of the orderly room, didn't you?

A I did, sir.

Q Is that true or not?

A No, sir.

Q Willie Ellis just wasn't telling the truth?

A Just didn't tell the truth, sir.

Q Now you also heard the testimony that after the fight, when there was talk in the barracks, you said you were down there. Was that true or was it not true?

Defense: I don't think that is the evidence.

Law Member: No such evidence.

Trial Judge Advocate: Well, Willie Ellis testified to the same thing.

Defense: No, he didn't. We challenge that statement.

Major Crocker: As I recall, he testified -- Willie Ellis -- that Ellis said we gave the Italians a good whipping.

Law Member: Yes.

Trial Judge Advocate: Well, that is what I am leading up to. It amounts to the same thing. I wasn't trying to quote it exactly.

Q There was then a statement made by you to the effect that you had been down there and had done something to the effect of giving the Italians a good beating.

A There was no such statement made because when those boys came back in I was in bed, and I hadn't seen them the entire evening, sir.

Q Well, now, just how long were those boys down there if you didn't see them?

A Down where, sir?

Q Down in the Italian area.

A I don't know, sir. I hadn't seen them all evening. Practically that whole day I haen't seen any of them, because the man who testified to that I don't think he even stayed in my barracks.

Q Well, now, let's see. You said you were there and saw a bunch of M.P.'s come, and that they ordered you all back in the barracks is what you said in your statement.

A That doesn't have any bearing on what I say --

Q (Interrupting) Is that correct or not; you did see a bunch of M.P.'s?

A Sure, a bunch of M.P.'s there, sir.

Q And the M.P.'s ordered you back in your barracks?

A They didn't order me. I guess they ordered the other fellows who testified before they were ordered back in the barracks, but the only conversation I had with the M.P.'s was the two that was handling Montgomery.

Q Then you say in this statement, that is in your own handwriting here, that there was plenty of M.P.'s there and they ordered everybody back inside. That part was untrue, then?

A It was true --

Defense: He has only gone into this matter with this same witness about three times now.

Trial Judge Advocate: It is not repetition.

Defense: Yes, it is.

Trial Judge Advocate: I am getting into another matter now.

I just want to see how long he was around before that time.

Law Member: Objection overruled.

Q I want to know whether that is true or not?

A It is true, sir -- I imagine so.

Q You imagine so?

A That's right.

Q All right. Then you were there outside and heard a bunch of M.P.'s order the men to go back inside?

A I was standing in the doorway, sir; inside the door, as I testified first.

Q How long after those M.P.'s ordered the men to go back inside was it before you heard men coming into the barracks?

A Before I heard men coming into the barracks?

Q Yes; how long?

A Men was coming into the barracks at all times, sir.

Q Who did you see coming into the barracks?

A I wouldn't know anyone, sir.

Q You didn't recognize a soul that went inside the barracks?

A Not a soul because it was dark. Wasn't a light on the outside and wasn't none in the hall. Perfectly dark outside the door.

Q And you didn't recognize the one that came into the barracks?

A The fact is I wasn't paying no attention, sir.

Q And then when you went upstairs you say you completed writing your wife a letter?

A I did, sir.

Q In the statement you say you begin to write her a letter.

A I had begin in the early part of the night, sir.

Q All right. Now, how long did it take you to either write that letter or complete writing it?

A Well, sir, I imagine it would take about five-ten minutes, sir.

Q Five-ten minutes?

A That's right, sir.

Q While you were writing that letter during those five-ten minutes, did anybody come into the barracks?

A I wasn't paying any attention, sir. Could have been, sir.

Q You don't know whether any came into the barracks or not?

A No, sir, I don't, sir.

Q You knew something was going on down in that Italian area,

didn't you?

A No, sir, I didn't, sir.

Q You didn't?

A I really didn't, sir, because I was having a little difficulty with my family and I was thinking of my family, sir, and I wasn't paying any attention to anything that was going on, sir.

Q You mean to tell this Court you went downstairs and you still didn't know during the period of time that you were down there that anything was going on in the Italian area?

A I didn't see anyone going towards the Italian area. Everybody was crowded on the outside when I went down. I didn't know what was going on.

Q You heard no noise?

A Very little noise I heard.

Q And you heard no cars passing on the street?

A Cars come down there after I got back in the barracks.

Q You heard no whistle blown that night?

A No, sir, I didn't.

Q And you were in what barracks?

A I am in 719.

Q 719 upstairs?

A That's right.

Q And you heard no whistle blown that night?

A I wasn't probably up there at that time. I was probably taking a shower at that time, sir.

Q Well, Willie Montgomery was already lying there in front when you came downstairs from the barracks?

A That's right, sir, he was.

Q And you heard no whistle blown at any time?

A I did not, sir.

Q You heard none of the commotion in the direction of the Italian area?

A No, sir, I didn't, because I wasn't out there that long, sir.

Q You didn't hear any fence being torn up?

A No, sir, I didn't hardly know a fence was over there because I was never in that area long at a time, sir.

Q Well, 700 mess hall isn't in that area, is it; that is, the 578th mess hall building, 700?

Defense: That is what he is talking about.

Trial Judge Advocate: That is what I am talking about.

Q That isn't the Italian area, is it?

A No, sir.

Defense: He didn't say anything about Italian area, if the Court please, in answer to the question.

Law Member: I know it; go ahead.

Trial Judge Advocate: You want to examine?

Defense: I want you to be fair to the witness.

Q Corporal, you know there was a fence in front of the 578th mess hall -- on the side of it?

A I have noticed a fence there during that day, because that was my first time of ever being down past 719 because I was practically in town all the time I was off duty, sir.

Q Did you hear that fence being torn up that night?

A No, sir, I did not.

Q You didn't hear that either?

A I did not.

Q Did you hear any rocks being thrown against barracks?

A No, sir.

Q Heard no window panes being shattered?

A I did not.

Q The whole time you were in 719 or out in front of 719?

A I did not, sir.

Q And when you sat up there writing this letter you have been telling the Court about you didn't hear any boys coming back upstairs talking about a fight having gone on?

A No, sir, because after I started writing my letter two officers, I believe, and an M.P. came in and someone called "Attention" and I jumped down off the bed where I was writing the letter and stood at attention until they walked around through the barracks, and checked the lights and said, "All you fellows put the lights out and go to bed."

Q That was about 1:00 in the morning when that happened?

A I don't know what time.

Q Wasn't it?

A I wouldn't know, sir.

Q Then as far as your testimony to this Court goes you didn't even know that night there was any difficulty in the Italian area, did you?

A I didn't know that there was anyone absolutely hurt but Montgomery until the next morning.

Q That wasn't what I asked you. I asked you did you or not know that night that there was difficulty in the Italian area?

A I knowed that there was some difficulty but I didn't know what was going on.

Q How did you find out there was some difficulty?

A Just by I knowed there was some difficulty.

Q I know, but tell the Court how you know?

A Because I went outside, sir.

Q You say when you were outside you hadn't heard anything that showed there was any difficulty down there?

A I didn't say that I didn't see anything about -- didn't know any difficulty.

Q All right. Tell us then how you did know there was difficulty down there.

A I know there was something going on by the M.P.'s coming down, sir. Anybody would know there was some type of difficulty. Everybody was out in the street, sir.

Q And that is the only way you know there was any difficulty in the Italian area, but the fact there was some M.P.'s out there?

A I didn't know exactly what was going on, sir. To be frank with you, I didn't know what was going on.

Q And you didn't ask any questions as to what was going on?

A No, sir. I hardly say anything to anyone unless they say anything to me, because it wasn't my business.

Q The M.P.'s were out in the street on Virginia Avenue, weren't they?

A I don't know what --

Q Well, they were in front of barracks 719?

A I believe to the left of 719.

Q Right close to 719?

A That's right, sir.

Q In the street?

A That's right, sir.

Q How did that lead you to believe there was any trouble in the Italian area by seeing the M.P.'s in the street there close to 719?

A The M.P.'s were talking about it themselves.

Q Oh, you heard the M.P.'s talking about it?

A I asked the question in the beginning, as I said in my first statement.

Q You asked what question?

A About Montgomery; when I was asking them about Montgomery.

Q Was that as much as you knew that night, that Montgomery had been hurt?

A Somebody had knocked Montgomery out.

Q And you didn't know anything beyond that?

A And I didn't know anything beyond that because I didn't ask them the reason. The further information I received was the next morning, sir.

Q Then you didn't know that there was any riot in the Italian area until the next morning?

A I did not know what had happened in that Italian area. I didn't know a single soldier was hurt until the next morning.

Q You didn't know there was a breaking of windows and throwing of rocks?

A I did not, sir.

Q Didn't know about that until the following morning?

A The following morning, sir.

Q Now, when you were sitting in your barracks there writing this letter that you have been talking about, you mean to say that there weren't some Negro soldiers came in there and talked about the riot that had gone on?

A Could have, sir, but they didn't talk to me.

Q You just didn't hear anything like that?

A I didn't hear anyone say anything about it. Three of us sitting there, and the guy sleeping next bed to me, he was writing a letter, and I was writing a letter, and I think another fellow there cutting hair.

Q Who was writing that letter?

A William A. Wilson.

Q And who was cutting the hair?

A I think his last name was Kane; a barber for 719 barracks.

Q All right. Now, as I understand your testimony to this Court here is what you want the Court to believe; that you went downstairs, were there just a few minutes until Willie Montgomery was placed in a jeep; that you then went back upstairs and that you were writing a letter that took you five-ten minutes to write, and then a Major and a Lieutenant came around and ordered everybody to bed?

A Somewhere around that time, sir, I don't know what time it was, but that absolutely happened, sir.

Q And the Major and Lieutenant came around within five-ten minutes after you went upstairs?

A I didn't say that, sir.

Q All right. You said it took you five-ten minutes to write the letter after you went up and then the Major and Lieutenant came around is what I understand you to say.

A But you didn't ask me what time I went up, sir.

Q Well, what did you do besides writing the letter when you went upstairs?

A I told you when I went back into the barracks I stood in the doorway, sir. I was standing in the doorway.

Q How long did you stand in the doorway?

A I don't have any recollection how long I stood there.

Q Well, about how long did you stand in the doorway?

A Well, I would say approximately fifteen-twenty minutes.

Q What were you doing standing in the doorway?

A Standing in the doorway.

Q I know, but what were you doing; just standing there for your own enjoyment?

A Yes, sir.

Q Well, what was the purpose?

A Looking.

Q Looking at what?

A Just looking, sir.

Q Just looking in blank space?

A No, sir.

Q Well, what were you looking at?

A Standing out there because all the fellows was gathering out there; about 400 men out there. The Sergeant was making them come back in the barracks, and after I went out there and saw what was going on I went back and stood in the doorway because I wasn't properly dressed. As I testified before, I wasn't properly dressed.

Q And you didn't see anybody go down the road?

A No, sir.

Q And you just stood in that doorway fifteen-twenty minutes?

A I don't think anyone went down anyplace after the 1st Sergeant came. If they did, I didn't see them.

Q There was about 400 men there?

A Approximately 400 men.

Q And you were standing in the doorway looking at them?

A Yes, sir.

Q Just looking at them for fifteen-twenty minutes?

A I wouldn't say I was just looking at them, no particular person; I was just standing in the doorway.

Q Anybody else standing there besides you?

A Not as I know, sir.

Q Anybody else standing there I mentioned in those 400 men?
A Not as I know, sir.

Q And then after you got through standing there fifteen-twenty minutes you went and wrote this letter?

A Went back upstairs, yes, sir.

Q And that letter took you five-ten minutes to write?

A That's right.

Q And then the Major and the Lieutenant came?

A Right around that time, sir.

Q Then your testimony that when you left Montgomery you went upstairs and started writing this letter was not correct, was it?

Defense: There isn't any such testimony, if the Court please.

Law Member: He distinctly said that at the beginning of his early cross-examination.

Trial Judge Advocate: What was that?

Law Member: That he went and stood in the doorway after the M.P.'s --

Trial Judge Advocate: He didn't say he stood any fifteen-twenty minutes.

Defense: You didn't ask him.

Trial Judge Advocate: And he further said he spent five-ten minutes writing this letter, and he said he went upstairs after he saw Willie Montgomery and started writing this letter.

Law Member: It is in the record on direct he did go and stand in the doorway for some period of time before he went upstairs.

Q All right. Now, in other words, from the time you were downstairs, according to your testimony now, from the time that you were downstairs and left Willie Montgomery until the Major and the Lieutenant came upstairs there must have been some twenty, twenty-five or thirty minutes that transpired and no more?

A I wouldn't know. I wouldn't know the time, sir.

Q Well, if you stood in a doorway fifteen-twenty minutes and you wrote this letter five-ten minutes, then it must have been somewhere between twenty-thirty minutes?

A Somewhere like that, sir.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: Any questions by the Court?

Major MacLennan: Yes, sir, I have.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q Corporal, as I recall your testimony here today, you testified that you watched them place Roy Montgomery in the jeep, the M.P.'s placed him in the jeep?

A Yes, sir, he was put in the jeep, sir.

Q And was it that time that Sergeant Aubrey came around and ordered the men back?

A He came along directly after we got him in the jeep.

Q Right after that?

A Yes, sir.

Q And then you went back and stood in the doorway, is that right?

A Yes, sir.

Defense: I think Major MacLennan used the word Roy Montgomery. I think he meant William.

Major MacLennan: I meant William.

Q You stood in the doorway some fifteen minutes or so?

A Yes, sir.

Q And I wanted to get this point straight. You didn't see anyone leave the vicinity of 719 and go down the Lawton Road?

A No, sir, I didn't.

Q During the time that you saw Willie Montgomery taken away and the time you went upstairs?

A No, sir, I didn't.

Q While you were standing in the doorway, Corporal, did you see Samuel Snow brought in?

A No, sir, I didn't, sir.

Q You did not?

A I did not, sir.

Q Did you see Samuel Snow that evening after Willie Montgomery was hurt?

A I didn't know him, sir.

Q You didn't recall?

A I didn't know Sammy Snow.

Major MacLennan: All right. Thank you.

Questions by Lt. Colonel Stetcher:

Q You say you lived in town through the 13th of August, is that right?

A Yes, sir.

Q Where did you eat all that time that you lived in town?

A I was staying on 1st Avenue --

Q No, I mean where did you eat; where were you fed?

A I was fed here, sir.

Q You were eating in the mess hall?

A Yes, sir.

Q While you lived in town you ate all three meals in the mess hall?

A No, sir, I wouldn't eat all three meals in the mess hall. I would just go to town after I got off work at night.

Q How many meals did you eat in the mess hall daily?

A Daily?

Q Yes.

A Supper --

Q While you lived in town.

A -- (continuing) supper and the noon meal, sir.

President: Any further questions?

Trial Judge Advocate: I have a question or two I want to ask him if the Court is through.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Major MacLennan asked you if you saw Sammy Snow brought up there while you were there and you said no. Did you see any other soldiers, any other injured soldier, besides Willie Montgomery brought up there while you were there?

A I didn't see them until the next morning.

Q In other words, Willie Montgomery was the only injured soldier you saw brought over there?

A That's right, sir.

President: Any further questions? If not, the witness may be excused.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Defense: Does the Court wish to take its morning recess before we call another witness, or would they prefer to start on one?

President: The Court will take a fifteen minute recess.

The Court thereupon recessed at 10:00 a.m., and reconvened at 10:30 a.m., 11 December 1944.

President: Is the prosecution ready?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

Trial Judge Advocate: Let the record show each of the accused is present, all members of the Court are present, and the personnel representing the accused and the personnel of the prosecution.

The reporter was also present.

Assistant Defense: We will call Henry Jupiter.

Law Member: Corporal, it is my duty to explain to you that you have certain rights as a witness in any Army Court-Martial. You may be sworn as a witness like any other witness in this case and give testimony under oath.

Corporal Jupiter: Yes, sir.

Law Member: Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness by both the Trial Judge Advocate and the members of the Court if they see fit.

Corporal Jupiter: Yes, sir.

Law Member: Or you may make an unsworn statement in denial, explanation or extenuation of the offense charge.

Corporal Jupiter: Yes, sir.

Law Member: This unsworn statement is not strictly evidence; it may be given by you personally or through your counsel and if you do elect to give such unsworn statement you cannot be cross-examined on any matters contained therein.

Corporal Jupiter: Yes, sir.

Law Member: It will be given such consideration by the Court as the members thereof see fit. Or, lastly, you may remain absolutely silent and not give any statement, sworn or unsworn, and if you do so elect to remain silent the fact you do cannot be used against you. You understand those instructions?

Corporal Jupiter: I do.

Law Member: Have you talked it over with your counsel?

Corporal Jupiter: I have.

Law Member: And you elect to be sworn as a witness, is that correct?

Corporal Jupiter: Yes, sir.

T-5 Henry Jupiter, Headquarters and Headquarters Detachment, Camp George Jordan, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: T-5 Henry Jupiter.

Trial Judge Advocate: And your organization.

The Witness: Headquarters and Headquarters Detachment, Camp George Jordan.

Trial Judge Advocate: Camp George Jordan, I believe you said?

The Witness: Yes, sir.

Trial Judge Advocate: That is your station. You are one of the accused in this case?

The Witness: I am sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you?

A 37, sir.

Q Where is your home?

A Florence, South Carolina.

Q How much education have you had?

A 5th grade, sir.

President; I didn't get the answer.

Law Member: 5th grade.

Q And what was your occupation before you came into the Army; what did you do?
A Farm.

Q Farming?
A Yes, sir.

Q Whereabouts?
A Decatur, Michigan.

Q Calling your attention to the night of August 14, Corporal, which was the night there was difficulty between the colored soldiers and the Italians, I will ask you where you were when you first knew that there was some trouble that night?
A I was upstairs in a crap game.

Q Upstairs in what barracks?
A Barracks 719.

Q Did you live in that barracks?
A I did, sir.

Q And who else was in the crap game?
A Richard Sutliff, Jesse C. B. Sims, Stanely Baldan --

Law Member: Balden?

The Witness: Balden,

A -- (continuing) Willie Scott, Addison George, Walter Jackson, and Sergeant Hurks was running the crap game.

Q Was Sims winning there that night or was he losing?
A Sims was losing, sir.

Q What calls to your attention the fact Sims was losing?
A Because I was the man winning the money.

Law Member: What is that?

The Witness: I was the man that was winning the money.

Q Did Sims make any remarks to you or to any of the crowd about losing?
A He did, sir.

Q Well, you say you were in the crap game when you first knew there was difficulty that evening?
A Yes, sir..

Q And then what did you do?
A Well, the first time we heard a whistle blow we didn't pay much attention, we continued on shooting dice, and the whistle blowed again. Then we heard someone downstairs hollering; say the Italians knocked out one of our boys.

Q And what did you do?
A We shoot dice then until I "seven" out.

Q What do you mean by that? You rolled a seven and took the money and that was the end of the game?
A No, sir, I rolled a seven and Sims picked up the money.

Q Then what did you do?
A Then we went downstairs.

Q Well, did you stay downstairs?
A No, sir, I went out in the street, sir.

Q Well, what did you see down there when you got down to the street?
A There was a crowd of men standing on the side of Virginia Avenue, where Fort Lawton road turns off Virginia Avenue, and all around the mess hall and in front of the barracks.

Q Did you see Willie Montgomery anywhere around in front of the barracks?
A No, sir, I didn't.

Q You didn't see him. Did you see Willie Montgomery any time that night?
A I did, sir.

Q When did you see him?
A After I stood in the road awhile and a jeep came down the hill off Virginia Avenue and turned up Lawton Road, then it stopped. In that group of men was John Pickney --

Q Let's get this clear. You say you stood around?
A Yes, sir.

Q A little while. Where di you stand around?
A Out in the road.

Q Well, what road?
A Virginia Avenue.

Q Well, whereabouts with reference to your barracks?
A Right in front of the barracks.

Q In front of your barracks?
A Yes, sir.

Q And then you say a jeep drove up?
A Yes, sir.

Q Where did that jeep come from?
A Down the hill, Virginia Avenue.

Q Well, did it come down Lawton Road?
A Turned up Lawton Road.

Q Then turned off Lawton Road into Virginia Avenue?
A Turned off Virginia Avenue into Lawtor Road where you go down to the Italian area.

Q Oh, I see. Who was in that jeep?
A I don't know, sir, but the man in the jeep, he spoke to Pinkney, because Pinkney had spoke out, "Boys, you all here, all standing by; if you hear me be sure and come".

Q Tell the Court who John Pinkney is?
A John Pinkney was a man was on M.P. duty.

Q How was he dressed; wearing anything particularly on his arm?
A I don't know sir; I didn't see. It was dark.

Q Where did you see John Pinkney with reference to this jeep?
A Standing over there with that group of men.

Q Standing over there with that group of men?
A Yes.

Q And what was it you heard John Pinkney say?
A He say, "Boys, you all here, you all standing by; if you hear me holler be sure and come".

Q Tell the Court whether or not you saw Sergeant Hurks around in the crowd at that time?
A No, sir, I didn't, because after Pinkney spoke those words and the jeep turned around and come out of Lawton Road and went back up Virginia Avenue, up the hill, I went back in the barracks.

Q You went up the hill towards your barracks?
A I went back in the barracks. I went back in the barracks.

Q You went back into the barracks?
A Yes, sir.

Q Well, when you got back in the barracks what did you do?
A I went into the latrine.

Q And then what did you do?
A After I come out of the latrine I went back to Montgomery's bunk, and he was lying up on the bunk with his eyes shut. I looked after him. I thought maybe he had a hole or something knocked in his head, the boys said he was knocked out, but he was just laying up there with his eyes shut just like he was asleep.

Q Was that after he had been brought back from the hospital, or do you know?
A I don't know, sir.

Q Did you ever go out of your barracks again that night, Corporal?

A I did not, sir.

Q I want you to tell this Court whether or not you were ever down in the Italian area on the night of August 14?

A No, sir, I was not.

Defense: You may examine.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Did you say you saw Willie Montgomery lying on the ground when you first went downstairs?

A No, sir, I did not.

Q Did you see Willie Montgomery at all when you went upstairs?

A No, sir.

Q The only time you saw Willie Montgomery is when he was lying in his bunk?

A That's right, sir.

Q And that was after you returned to your barracks?

A. Yes, sir, that was when I went back in the barracks.

Q And how long were you downstairs?

A I don't know, sir. It wasn't long.

Q Well, about how long?

A I don't know, sir. I am not good at it.

Q Well, were you downstairs as long as fifteen minutes?

A I don't know how long it was. It wasn't long.

Q Well, you can give the Court some idea about how long you were downstairs, can't you?

A No, I don't know how long it was, but it wasn't long, because I just stood out there until Pinkney spoke out and then I turned back and went into the barracks.

Q How long did that crap game continue after the whistle blew?

A Several minutes. I don't know how long, but it was several minutes.

Q Three or four minutes?

A Longer than that, sir.

Q Five minutes?

A Longer than that.

Q Ten minutes?

A I guess it was something like that, sir.

Q Something like ten minutes after the whistle blew this crap game continued?

A Yes, sir.

Q And you stayed in the crap game until it broke up?
A I did, sir.

Q Until everybody left?
A I did, sir.

Q And did you go downstairs with the rest of them?
A Yes, sir, I did, sir.

Q All of you went downstairs when the crap game broke up?
A Yes, sir.

Q Well, where did you stand or where did you go after you got downstairs?
A I walked out in the street and stood to the left of the door after you go out of the barracks.

Q Left of 719?
A Yes, sir.

Q Close to the curb?
A No, sir. I was standing out in the road.

Q You were standing out in the road?
A Yes, sir.

Q Did you get on the other side of the street?
A No, sir, I didn't.

Q You just stood out in the road?
A I just stood out in the road.

Q Sort of across from the 578th mess hall?
A No, sir, I was standing to the left after you come out of the barracks.

Q You were standing close to where Lawton Road comes in?
A Yes, sir.

Q And you stood there for a few minutes?
A Yes, sir.

Q Now, tell the Court about how long you stood there?
A I don't know, sir, how long it was.

Q Well, was it as long as fifteen minutes?
A I don't know how long it was, but it was long enough for that jeep to come down the hill.

Q But that doesn't mean much; you say it was long enough for that jeep to come down the hill. Would you say it was or was not as long as fifteen minutes?
A To tell you the truth, I don't know how long it was, sir.

Q Well, would you say it was longer than five minutes?
A I don't know, sir. I expect it was.

Q You don't know whether it was five minutes or fifteen minutes?
A No, sir, I don't.

Q And what were you doing there?
A Just standing up.

Q Just standing up?
A Yes, sir.

Q Were you talking with anyone?
A No, sir, I wasn't.

Q Was anybody else standing around you?
A There wasn't nobody standing close to me but a lot of boys was out there.

Q Well, how close were they to you?
A I don't know, sir.

Q Just standing there alone except for some boys that were a little piece away from you?
A I was just standing out there with the rest. The street was just full of them standing all our.

Q And you don't know why you were standing there?
A I was standing out there -- I wanted to see what happened. The boys hollered all about the Italians knocked out one of the boys. I took they were up there fighting.

Q You didn't see any fighting going on where you were standing?
A I did not.

Q But you continued to stand there for awhile?
A After that jeep came down and the jeep turned around, then I went back in the barracks.

Q You stood there for several minutes before the jeep arrived?
A Yes, sir.

Q You didn't see any fighting going on?
A No, sir.

Q Why were you standing there?
A Just standing out there.

Q For several minutes?
A Yes, sir.

Q With nothing going on?
A No, sir.

Q Did you hear any commotion down in the Italian area?
A No, sir, I did not.

Q Didn't hear any noise?
A No, sir. Some of the boys around there was talking.

Q And you didn't hear any shouting down there?
A No, sir.

Q And you didn't hear any rocks thrown against the barracks?
A I did not, sir.

Q No glass breaking?
A No, sir.

Q Didn't hear anything along that line?
A No, sir, I did not.

Q Hear any noise of any kind other than the blowing of the whistle that night?
A No, sir, I didn't. When I went upstairs just hear the boys right there was talking, that's all; talking amongst themselves. I wasn't standing out there.

Q Did you see Sammy Snow that night?
A No, sir, I did not.

Q You didn't see him brought in either?
A No, sir.

Q See Alvin Clarke that night?
A No, sir, I did not.

Q You didn't see him brought in anywhere?
A No, sir.

Q Anybody standing in front of 719 when you went down -- right in front of the barracks?
A No, sir, wasn't nobody standing there.

Q Nobody was standing there?
A No, sir.

Q You didn't see Addison George around there anywhere?
A I didn't see him no more after we all came downstairs.

Q You didn't see Jesse Sims anymore after that?
A No, sir.

Q Didn't see Sergeant Arthur Hurks after that?
A No, sir.

Q Now, when John Pinkney came up there where you say you were standing, you could understand what Pinkney said?
A Yes, sir.

Q You were close enough to hear him?
A Yes, sir.

Q Well, he was talking to the men that were gathered around

there?
A When he spoke those words he was talking to the man in the jeep.

Q Well, there were other men standing around there too at the time?
A Yes, sir.

Q How close were you to Pinkney?
A A distance from about here to that heater, I imagine.

Q Close to from where to where?
Defense: To the heater.

Q That heater (pointing)?
A Yes.

Q About twenty-five feet?
A I don't know, sir.

Trial Judge Advocate: That is about the distance, isn't it?
Defense: Oh, I think it is about twenty-five feet.

Q Well, was there a light there?
A No, sir, there wasn't.

Q How did you know it was John Pinkney?
A He always speaks loud in the company, I knew his voice.

Q Oh, you knew his voice?
A Yes.

Q That is the only way you knew it was Pinkney?
A Yes, sir.

Q You couldn't recognize him?
A No, sir.

Q You recognized the arm band that he was wearing?
A I didn't see no arm band.

Q You didn't?
A No, sir.

Q How did you know he was doing M.P. duty?
A I don't know whether he was doing M.P. duty then or not.

Q You don't know that?
A No, sir.

Q Just recognized John Pinkney's voice?
A Yes, sir.

Q Recognize anybody else's voice there?

A No, sir.

Q Did you hear any man shouting to the other men "Stand back, stand back; don't go down there"?

A No, sir, not at that present time I did not.

Q Well, after John Pinkney arrived there you didn't stay but just a minute or two, did you?

A I stayed out there until the jeep turned around and went back up the hill, Virginia Avenue. Then I went back in the barracks.

Q Where did John Pinkney go?

A I don't know.

Q And where did you last see John Pinkney?

A I didn't see him no more until the next morning.

Q And you went back to your barracks then and then you saw Willie Montgomery?

A Yes, sir.

Q And that was about how long after you had seen John Pinkney?

A Right after I went in the barracks. Went into the latrine, came out of the latrine, and went back to Montgomery in his bunk.

Q That was what; three-four minutes, five minutes?

A I don't know how long, sir, it was, but it wasn't long.

Q Wasn't over five minutes?

A I don't know, sir.

Q Just long enough for you to go to the latrine and walk from there up to your barracks?

A The latrine is right in the barracks. Went on into the latrine and on into the barracks.

Q Yes. So you would say you saw Montgomery within a very few minutes after you saw John Pinkney?

A After I come out of the latrine, yes, sir.

Q Well, now, that wasn't the question. See if you can answer it. What I asked you was that it was a very few minutes after you saw John Pinkney that you saw Willie Montgomery in his bunk?

A It wasn't long after I came out of the street where Pinkney spoke those words there and went into the latrine. I went into the latrine, into the barracks, and saw Montgomery.

Q How many minutes?

A I don't know.

Q As long as five minutes?

A I didn't have no watch. I don't know what time it was.

Q I know you didn't time yourself, but I assumed you want to

give the Court whatever estimate you can make and that is all I am asking you for. If you can say shorter than five minutes I will ask you to say so; if you can't, give us the best estimate you can.

A I imagine I stayed in the latrine longer than five minutes,
A sir.

Q Then you would say it was perhaps ten minutes before you saw Willie Montgomery after seeing John Pinkney?

A I expect it was.

Q Do you know when they brought Willie Montgomery back from the hospital?

A No, sir, I do not.

Q You don't know when they brought him back?

A No, sir, I do not.

Q You don't know how long it was after the M.P.'s arrived down there to break up that riot before Willie Montgomery come back from the hospital?

A I sure don't. I wasn't out there when the M.P.'s arrived.

Q All right. Now, you said you took a look at Montgomery?

A I did, sir.

Q What did you see?

A I didn't see nothing. Just laying up on his bunk with his eyes shut. Just laying there.

Q His eyes were shut?

A Yes, sir.

Q Well, you took a pretty good look at him, didn't you?

A I did.

Q Well, did you notice anything about his head?

A No, sir, I didn't.

Q Did you notice whether he had a hole in his head?

A I didn't see any.

Q Was his head bleeding?

A No, sir.

Q Well, after you took a look at Montgomery what did you do?

A I didn't do anything. Come on back up by my bunk where Richard Sutliff was sleeping, and I got him up and I an him and Stanley Balden went shooting dice again downstairs.

Law Member: Who?

The Witness: I and him and Stanley Balden.

Defense: Say them again.

The Witness: Me and Richard Sutliff and Stanley Balden.

went to shooting craps downstairs.

Defense: Stanley Balden and Richard Sutliff?

The Witness: Yes.

Q Well, you just took a look at Willie Montgomery and you noticed his eyes shut, that is all you noticed about him and then you decided to go to shooting dice again?

A Yes, sir.

Q All right. How long did you shoot dice?

A I don't know; not so long. We didn't shoot but just a few minutes.

Q Well, you shot for just a few minutes?

A Yes, sir.

Q Why didn't you shoot longer?

A I quit and went to bed.

Q You quit and went to bed?

A Yes, sir.

Q What made you quit?

A For one reason I quit, I just didn't like the way Stanley Balden was shooting the craps.

Q When you went to bed did you go right to sleep?

A No, sir, I didn't, not right then.

Q Well, did you hear any boys coming in from outside?

A The M.P.'s come in and asked for the boy that was hurt.

Q The M.P.'s came in and asked for the boy that was hurt?

A Yes, sir.

Q All right. Who showed him the boy that was hurt?

A Some of the boys was there in the bunks said, "Here he is back here," and they went back there. Took him out of the bunk and the last I seen him they were toting him out of the barracks.

Q All right. And then they took Willie Montgomery to the hospital?

A I don't know, sir, where they took him.

Q Do you have any idea what time of night that happened?

A No, sir, I don't.

Q And after Willie Montgomery was taken to the hospital --

Defense: You are talking about the second time?

Trial Judge Advocate: That he is talking about. I am not talking about any second time, no.

Q After Willie Montgomery was taken by the M.P.'s did any boys come in, return to the barracks?
A Yes, boys was coming in.

Q Yes. Any of them coming in?
A Yes, they was. Boys coming in.

Q Did you hear them talk any?
A No, sir, I didn't.

Q You didn't hear them say anything?
A Just talking to themselves just like they always talking.

Q They didn't talk about what went on down in the Italian area?
A I didn't hear anyone.

Q You didn't know what went on down in the Italian area, did you?
A No, sir, I did not.

Q You didn't ask any questions?
A I did not.

Q When you were standing out there and John Pinkney arrived did you hear anything going on in the Italian area?
A No, sir, I didn't.

Q As far as you knew there wasn't anything going on down in the Italian area?
A As far as I knew, there wasn't.

Q When was the first time you knew anything went on down in the Italian area?
A The first time I knew?

Q The first time you knew.
A The next morning.

Q The next morning?
A Yes, sir.

Q You just went back up to your barracks and you shot dice and then you went to bed?
A Yes, sir.

Q But you didn't fall asleep right away, did you?
A No, sir.

Q You heard the M.P.'s come up and get Willie Montgomery?
A Yes, sir.

Q And you still hadn't fallen asleep?
A I was going to sleep when Lt. Sistrunk and the Major came in and told those boys all to put out the lights, and Sergeant Aubrey was standing in the barracks then. That is when I

seen Sergeant Aubrey.

Q About how long was that after the M.P.'s came and had taken Willie Montgomery?

A I don't know, sir, how long.

Q Well, was it ten-fifteen minutes?

A I don't know, sir.

Q Was it as long as a half hour?

A I don't know, sir, how long.

Q Was it as long as an hour?

A I didn't have no watch; I don't know what time it was. I wasn't keeping no time. I didn't know what time it was.

Q You don't know whether that was fifteen minutes or an hour after the M.P.'s came and got Willie Montgomery?

A I don't know what time it was.

Q You don't have any idea?

A No, sir.

Q All right. Now, what was it you told the Court you heard John Pinkney say down there?

A He say, "Boys you all here, you all standby; if you hear me holler be sure and come"↓

Q Well, what did you think John Pinkney meant by that?

A I don't know, sir.

Q You didn't know what he meant by it?

A No, sir.

Q And you didn't ask what he meant by it?

A No, sir, I did not.

Q You just paid no attention to it?

A Because when the jeep turned around and went back up the hill I went back in the barracks.

Q About how many men did you see standing there in the intersection of Lawton Road and Virginia Avenue, somewhere near that vicinity?

A I don't know how many.

Q As many as fifteen-twenty?

A I couldn't say. It was dark; I couldn't see.

Q I am sure it was dark, but you saw a group of men there?

A Yes, there was some men standing around over there with Pinkney.

Q Well, could you tell whether there was as many as five?

A No, sir, I couldn't.

Q You couldn't tell whether as many as fifty or as many as five?
A I wasn't trying to count no boys. I was just seeing what was happening.

Q I am sure you didn't, but I was wondering whether it was a large or small group?

A It was dark; I couldn't see.

Q It was dark and you couldn't see?

A Yes.

Q So you can't tell the Court, can't give the Court any idea as to that group of men?

A No, sir.

Q What did you think those men were doing there?

A I don't know.

Q Didn't have any idea?

A No, sir.

Q And you didn't ask any questions?

A No, sir.

Q You went back up to the barracks to shoot some more dice. Did you look around for Addison George?

A No, sir, I did not.

Q Did you look around for Jesse Sims?

A No, sir, I did not.

Q Look around for Arthur Hurks?

A No, sir.

Q Who else did you say you were shooting craps with? Oh, yes. Did you look around for Willie Scott?

A No, sir.

Q Did you look around for Walter Jackson?

A No, sir.

Q Where did you think all those boys were?

A I don't know, sir.

Q And you didn't ask any questions?

A No, sir, I did not.

Q You got ahold of Richard Sutliff, though, somewhere at some time and you went back to shooting craps again.

Defense: I am objecting to that, if the Court please. That isn't his testimony at all. He said he shot dice with Richard Sutliff but he didn't say he went looking for him.

Trial Judge Advocate: I didn't say looking outside.

Q All right. You went to shooting dice with Richard Sutliff; that's right, isn't it?
A Sutliff was in his bed. He slept right by.

Q Oh, Richard was in his bed?
A Yes, sir.

Q And being in his bed it was easy for you to make contact with Richard?
A Yes, sir.

Q And so you asked him to get up and shoot some dice with you?
A Yes, sir.

Q Wasn't there anybody else in the barracks you could have shot dice with besides Richard?
A Stanley Balden was standing there in the barracks.

Q Who?
A Stanley Balden.

Q You saw Richard Sutliff was in bed?
A Yes, sir.

Q Where did you shoot dice; upstairs or downstairs?
A Downstairs.

Q Well, where was this crap game going on that broke up, the one that Addison George and Jesse Sims and Arthur Hurks were in?
A Upstairs.

Q Upstairs?
A Yes, sir.

Q Where do you sleep?
A Downstairs.

Q So this second crap game you are talking about went on downstairs?
A Yes, sir.

Q And you are sure that you and Richard Sutliff shot dice there for about how long?
A It wasn't long.

Q Well, about how long?
A I don't know, sir, how long it was, but I quite on account I didn't like the way Stanley Balden was shooting.

Q You told us about that, but I am wondering if you know about how long you shot dice. Did you shoot as long as thirty minutes?
A No, sir.

Q As long as fifteen minutes?
A No, sir, I don't know how long it was, but it wasn't long.

Q You wouldn't say whether it was as long as fifteen minutes or not?
A No, sir.

Q All right. But you are positive that it was that night that you and Richard Sutliff shot dice?
A Yes, sir.

Q All right. And the first time that you saw Willie Montgomery that night was when he was lying in his bunk?
A Yes, sir.

Q And there was no one around him?
A No, sir.

Q Why did you go and take a look at Willie Montgomery?
A Because the boys said that he was the one that knocked out and that is why I went and looked at him. I thought maybe he had a hole or something in his head.

Q Who told you that?
A I don't know who it was spoke to me.

Q When were you told Willie Montgomery had gotten knocked out?
A When we were upstairs.

Q When you were upstairs?
A Yes, sir.

Q Why didn't you go and take a look at Willie Montgomery then?
A I didn't know where he was.

Q You didn't know where he was?
A No, sir.

Q Well, where was Willie Montgomery's bunk; upstairs or downstairs?
A Downstairs.

Q Towards the rear?
A I think his bunk was in the third bunk from mine.

Q Third bunk from yours?
A Yes, sir.

Q Well, after the crap game was over with and you went downstairs, why didn't you go and take a look at Willie Montgomery's bunk then to see how he was getting along?
A I didn't know where he was.

Q Well, you didn't go to see whether he was in his bunk or not?
A No, sir, I didn't go before. When I came downstairs I didn't

go where my bunk is; I went out in the street.

Q Why did you go out in the street without going and taking a look at Willie then?

A I went out to see what was going on.

Q And you had heard Willie had gotten knocked in the head, gotten knocked out?

A I heard the boys went upstairs say the Italians knocked out one of the boys. I don't know who spoke. That is why I went out in the street. I thought they were fighting out there.

Q You say one of the boys got knocked out. How did you find out it was Willie Montgomery?

A I didn't know, sir, until I went into the barracks.

Q You mean you had been out in the street?

A Yes.

Q And you stood there for awhile?

A Yes, sir.

Q And you heard John Pinkney talk as you have told us?

A Yes, sir.

Q And you went back in the barracks?

A Yes, sir.

Q And you say that was the first time you then found out it was Willie Montgomery?

A The first time.

Q All right. Who told you it was Willie Montgomery?

A I don't know, sir, who spoke to me.

Q How did you go about finding out it was Willie Montgomery?

A How did I go finding out it was him?

Q Yes.

A Well, when I went in the barracks some of the boys in the barracks said -- I asked you got hurt -- and they said that boy Montgomery, and that is when I went and looked at him.

Q Who did you ask?

A I don't know who spoke to me.

Q Who was around there?

A Who was in the barracks?

Q Yes.

A I don't know who all was in the barracks.

Q Know any of them in the barracks?

A Did I know any of them?

Q Yes.
A At the time when I went in there?

Q Yes.
A Stanley Balden and Sutliff was in there, and more.

Q Well, who else?
A Warner O. Anderson.

Defense: Warner O. Anderson?

The Witness: Yes, sir.

Q And who else?
A T-5 Walter Kaufman, he was in there.

Q Walter who?
A Kaufman. Those the two boys I know was in there, because they were in there drunk.

Q Well, tell us about someone who wasn't drunk that you saw in there?
A Several boys, but I didn't go around in the men's bunks to see all who was in there.

Q Well, those two drunks weren't the two who told you it was Willie Montgomery that got knocked out?
A No, sir, I don't know who spoke to me.

Q But you didn't ask when you were out in the street and saw that group of men, you didn't ask them who it was got knocked out?
A I did not, sir.

Q You didn't even know what was going on?
A I sure didn't, sir.

Q Had no idea there was a riot going on in the Italian area?
A No, sir, I did not.

Q And you didn't know what John Pinkney had reference to when you heard him speak the words you have told the Court?
A No, sir, I did not.

Q And you went back to your barracks and there for the first time you found out Willie Montgomery got knocked out?
A Yes, sir.

Q How long have you known Alvin Clarke?
A Ever since we have been in the company.

Q Did you ever have any trouble?
A No, sir.

Q You heard Alvin Clarke say he saw you down there in the area with a stick in your hand?

A I did, sir.

Q And you say that is not true?

A It is really not, sir.

Q You didn't pick up a stick from this fence out here in front of or to the side of the mess hall?

A No, sir.

Q Building 700?

A No, sir, I did not.

Q You are sure you didn't pick up one of those clubs?

A I am positive, sir.

Q Alvin Clarke just wasn't telling the truth about it?

A He really wasn't.

Q You didn't even know there was a fight went on down there until the next morning?

A No, sir.

Q And then you heard some of the boys talk about it?

A Yes, sir.

Q But all the boys you had been shooting dice with suddenly disappeared, Addison George, Jesse Sims, Arthur Hurks, Walter Jackson; you didn't see them anymore?

A No, sir.

Q And you didn't ask of them that night where they had been?

A No, sir, I did not.

Q And you are positive that you and Richard Sutliff shot dice that night after you returned to the barracks?

A I am.

Q Richard Sutliff is one of the accused in this case?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: Any questions by the Court?

Major MacLennan: Yes, sir.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q Corporal Jupiter, you testified here today that in the game, in the crap game that you and Sims were in, that Sims was losing money?

A Yes, sir.

Q Do you know that for a fact because you were gaining?

A Yes, sir.

Q You were ahead. Then on the last roll when you "7'd out", you lost that, didn't you?

A Yes, sir.

Q Do you know if that made Sims ahead or not?

A Sir?

Q Would Sims be the winner then; was he ahead on the game?

A No, sir, Sims was losing.

Q He was still losing after you "7'd out"?

A Yes, sir.

Q When you saw Willie Montgomery on his bunk --

A Yes, sir.

Q -- (continuing) in 719 --

A Yes, sir.

Q -- (continuing) do you know if he had already been taken to the hospital and brought back?

A No, sir, I do not.

Q You don't know?

A No, sir.

Q Now, did you say that the M.P.'s came into 719 and took Willie Montgomery away?

A Yes, sir.

Major MacLennan: That is all. Thank you.

Questions by Lt. Colonel Stetcher:

Q Did I understand correctly the jeep came down Virginia Avenue to Lawton Road and stopped?

A Came down Virginia Avenue to Lawton road and then turned off up Lawton Road.

Q And stopped?

A Yes, sir.

Q Who talked first, Pinkney or the M.P. to Pinkney?

A I think Pinkney was the man went up to the jeep and stopped and was talking to the man in the jeep.

Q All right. Was the jeep still there when Pinkney called out, "You all stand by, and if you hear me holler, you come"?

A Yes, sir.

Q The jeep was still there?

A Yes, sir.

Q Who was he talking to?

A I don't know, sir, who he was talking to, but after he spoke those words the jeep turned around in that vicinity of the 578th mess hall and went back up the hill.

Q And went back up the hill?

A Yes, sir.

Q And back up Virginia Avenue?

A Yes, sir.

Q What did Pinkney do after that?

A I don't know, sir.

Q What did he mean, "You all stand by and if you hear me holler" did he continue standing there?

A I don't know whether he got in that jeep with that man or no.

Q You don't know whether he got in the jeep or not?

A No, sir. All I know he spoke those words and after the jeep turned around and went back up the hill, I went back in the barracks.

Q And you didn't see Pinkney after that?

A No, sir.

President: Any further questions? There appear to be none. The witness may be excused.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Assistant Defense: We will call Booker W. Thornton.

The Witness: I am sorry, I am unable to salute.

Law Member: Thornton, it is my duty to advise you of certain rights you have as a witness in a military court-martial.

The Witness: Yes, sir.

Law Member: You may be sworn as any other witness. If you are so sworn, you may be cross-examined by either the Trial Judge Advocate or by any member of the Court. If you don't want to do that you can give an unsworn statement. This can be given by you personally or by your counsel, and orally or in writing, and you are not subject to cross-examination of any matter contained in said unsworn statement. It is not strictly evidence but the members of the Court give it such consideration as they see fit. Or, lastly, you may remain absolutely silent and say nothing, make no statement, sworn or unsworn, and in such case if you do elect to remain silent, the fact that you do cannot be used against you. Now, do you understand those instructions?

The Witness: Yes, sir, I do, sir.

Law Member: And have you talked it over with Major Beeks?

The Witness: Yes, sir.

Law Member: And you elect to be sworn as a witness, is that correct?

The Witness: Yes, sir.

T-4 Booker W. Thornton, 650th Port Company, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: Booker W. Thornton.

Trial Judge Advocate: And your grade.

The Witness: Technician T-4.

Trial Judge Advocate: And your organization.

The Witness: 650th Port Company.

Trial Judge Advocate: Your station.

The Witness: Fort Lawton, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you, Sergeant?

A 37, sir.

Q How much schooling have you had?

A Grammar school; 5th grade.

Law Member: What grade?

The Witness: 5th grade; grammar school.

Q Married?

A Yes, sir.

Q Any children?

A One child.

Q What was your civilian occupation, Sergeant, before you went

into the military service?

A I was a brake mechanic for the Firestone Tire and Rubber Company, sir.

Q When were you first inducted into the military service?

A It was in November, sir, I think it was the 6th; 1943.

Q Since that time have you had any overseas service?

A Yes, sir, I have, sir.

Q Without naming the particular place, where were you; tell the Court where you served overseas; what area?

A Southwest Pacific.

Q You went over there since August 14?

A Yes, sir.

Q What was your grade on August 14 of this year, Sergeant?

A Technician; T-5.

Q You received a promotion since?

A Yes, sir, after I got overseas.

Q That is to your present grade?

A Yes, sir.

Q You mentioned to the Court this morning you were unable to salute the President. Why is that?

A Because I got hurt in 1936 playing baseball. Then I hurt my arm again the 9th or 10th of July over here at Fort Lawton.

Q Does your arm still bother you?

A Yes, it does, sir.

Q Any of your company officers give you a certificate to that effect to present to officers whom you might meet and are unable to salute?

A Yes, sir, I went to the orderly room and they give a slip and I went to the dispensary No. 5

Q Now, Sergeant, calling your attention to the night of August 14 of this year when there was trouble between colored soldiers and the Italians, where were you on that night when you first learned there was difficulty?

A I was in the latrine in building 719 shaving.

Q Now, is that your barracks, 719?

A Yes, it is, sir.

Q And what first called it to your attention?

A I heard a lot of noise.

Q Well, what kind of a noise did you hear, Sergeant?

A Well, sir, I thought it was the boys putting each other out

of each other's barracks.

Q What did you do?

A I just continued to shave, sir.

Q Well, for how long a period of time approximately did you shave?

A Take me about ten minutes because I had to use my left arm.

Q Well, then, what did you do?

A Then I went upstairs in my bunk, sir.

Q Your bunk was upstairs, was it?

A Yes, sir, in building 719.

Q All right. Go on and tell the Court what you did next.

A Then I laid my shaving kit up on my bunk. T-5 Wesley Williams, I told him, I say, "What is going on outside?" He say, "There is a fight out there," so I told him I was going down to see. He advised me to stay in, and I told him, I say, "I don't think there is any harm because the M.P.'s is down there".

Q What did you do?

A Then I went on downstairs. Stopped out in the road in front of building 719. Then I started toward the 700 mess hall, and I got at the corner of 700 mess hall and John Pinkney and the M.P.'s turned me around.

Q After they turned you around, what did you do?

A Came on back to my barracks; went upstairs.

Q You went upstairs in your barracks?

A Yes, sir.

Q Did you ever go out of your barracks again that night?

A No, sir.

Q You told the Court you got about as far as 578th mess hall. Let's go over here on the map here and see if you can show the Court about how far you got. Use your left hand to point. Are you familiar with this map? This is Prosecution Exhibit 2, Sergeant; this building is 719, your barracks (indicating)?

A Yes, sir.

Q This building here, 700, is the 578th mess hall; the area bounded here by Wyoming Avenue and Lawton Road is the Italian area (indicating).

A yes, sir.

Q Building 668 over here is one of those black barracks that is also occupied by the 650th Port Company. This is Lawton Road running down the hill (indicating).

A yes, sir.

- Q All right. Now you show the Court approximately how far you got that evening.
- A About the corner here, sir (indicating); about six-seven feet.
- Q About six-seven feet beyond the west end of the 700 mess hall?
- A Yes, sir. John Pinkney and the white M.P. were standing there, sir (indicating).
- Q I want you to tell the Court, Sergeant, whether or not you were ever down inside the Italian area at any time that night.
- A No, sir, until the day that the Court first went down there is the onliest time I was in the Italian area.
- Q Do you know Corporal King--
- A Yes, sir, I do, sir.
- Q I want you to tell this Court whether or not you ever had a conversation with Corporal King--
- A No, sir.
- Q Just a moment.--(continuing) in which you said, in words or substance, that you should hit him?
- A No, sir, I didn't, sir.
- Q Defense: I think you may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

- Q How long have you known Corporal King?
- A Ever since the 650th Port Company was organized.
- Q Ever have any trouble?
- A Yes, sir.
- Q A whole lot, I guess.
- A No, sir, wasn't a whole lot.
- Q Any personal encounter or personal difficulty?
- A Well, him and I had a little difficulty once, so I didn't have anymore to do with him.
- Q You didn't have anymore to do with him?
- A No, sir.
- Q Did you ever have any difficulty with Jesse Sims?
- A Jesse Sims?
- Q Yes, sir.
- A No, sir, I never associated with him.
- Q Never associated with him?
- A No, sir.
- Q Never any trouble between you and Jesse?

A No more than I used to see him in crap games and start arguments over little small bits.

Q Well, you weren't in those games?

A Sometimes I was.

Q Never had any serious argument of anything?

A With Sims?

Q Yes, sir.

A No, sir, because I always made it my business not to get in no fight or nothing. I wouldn't have no arguments with him.

Q So as far as your relations with Jesse Sims were concerned you had no difficulty with him?

A No, sor.

Q Well, you heard Jesse Sims say that he saw you on the way out from that Italian area and that you said you knocked the hell out of one twice.

A Yes, sir.

Q You heard him testify to that?

A I did.

Q And that is untrue, I guess?

A Yes, it is untrue.

Q Now your Counsel asked you about King, about your having made a statement to King as to the effect you ought to hit him. Now, you heard Corporal King say he saw you standing there at the front door A of the orderly room; you heard Corporal King testify to that?

A Yes, sir, I did, sir.

Q And that is untrue too?

A Yes, sir.

Q You had gotten clear beyond the 578th mess hall before you turned around and came back?

A 700 mess hall, 578th Company.

Q 578th Company mess hall?

A Yes.

Q Number 700 on the Prosecution Exhibit 2?

A That's right, sir.

Q Why did you go down there?

A Because I wanted to see what the trouble was.

Q Well, you knew that there was some trouble going on down there while you were shaving?

A No, sir, I did not know that there was no fight going on then.

Q You didn't know a fight was going on while you were shaving?

A No, sir.

Q What did you think was going on when you were shaving?

A Well, the boys have a habit of putting each other out of the barracks when they come over to different barracks; grabbing them. They had a habit of putting another one out of each others barracks.

Q Couldn't you hear the noise from the direction of the Italian area when you were shaving?

A No, sir, because the latrine door was closed.

Q You are sure of that; you weren't hearing that noise?

A Yes, sir.

Q Well, what did you hear after that that made you want to go down to the area?

A What did I hear after that?

Q Yes.

A I heard a lot of voices outside.

Q All right. What else did you hear?

A When I heard the voices outside; when I was upstairs then in my bunk?

Q Yes, what else did you hear?

A Then I went down to see for myself.

Q Well, what did you hear that made you want to go down and see for yourself?

A I didn't hear anything. The onliest thing I seen was the M.P.'s and the ambulance.

Q That is all that you saw?

A Yes. I didn't hear no noise whatsoever. Just a whole lot of soldiers.

Q Of course, the ambulances were out in the street?

A No, sir, going down in there.

Q Going down Lawton Road...

A Going both ways.

Q Going down Lawton Road?

A Yes; both ways

Q Towards the Italian Area?

A Yes, sir.

Q And you saw that?

A That's right, sir.

Q Well, you hadn't seen that at the time that you were upstairs talking to Wilson Williams?

A When I came out the ambulances were going in then.

Q Came out from where?

A Came out in front of building 719, out in the road.

Q Yes, but you talked to Wilson Williams upstairs?

A That's right; because he slept in the next bunk to me.

Q That's right. When you talked to Wilson Williams upstairs what was it that made you want to go down to the Italian area?

A I didn't want to go down to the Italian area. I went outside to see what was going on, and after I see the ambulances and jeeps going down that way I knew it must have been down that way.

Q What did you say to Williams?

A To William A. Wilson?

Q To Wilson A. Williams, isn't it; It is not William A. Wilson?

A Yes, sir, William A. Wilson.

Q What did you say to him?

A I told him I was going down to see what was going on. He gave me advice not to go.

Q Where do you mean; go where?

A Downstairs in front of 719. That is where all the noise was coming from; from the road up in the building.

Q Did you tell him why you wanted to go down?

A Sure; I wanted to see what the trouble was.

Q You wanted to see what the trouble was?

A Yes, sir.

Q And Wilson told you not go?

A That's right.

Q Did he say why he didn't think you should go?

A Beg pardon?

Q Did he say he believed you should not go?

A No, sir, he did not.

Q What was there wrong about your just going downstairs?

A What was there wrong?

Q Yes.

A With my going downstairs?

Q Yes.

A Wasn't anything wrong for me just going downstairs.

Q Well, didn't he say to you, "If I were you, Booker, I wouldn't go"?

A That's right, sir.

Q And didn't you say you believed there wasn't any harm in it?

A Yes, sir.

Q All right. Now, was there any doubt in your mind or in his mind about your just going downstairs?

A Well, sir, as I say, the boys play so much I take it for granted they were out there in the front putting someone out of the barracks.

Q Well, there wouldn't be any harm in your going down there to see the boys playing, would there?

A No, sir, no harm at all.

Q But there was conversation between you and Wilson and some question as to whether it was advisable for you to go down or not?

A William A. Wilson?

Q yes.

A There was not, sir.

Q Well, you told him you were going down?

A That's right.

Q And didn't you tell him you were going down to see who got hurt?

A No, sir, I didn't; I was going down to see what was going on outside.

Q And he told you if he were you he wouldn't go?

A That's right, sir.

Q And you said you believed there wasn't any harm to it?

A Yes, sir, I told him I don't think there is no harm because the M.P.'s are out there.

Q And Wilson didn't tell you why he thought there might be harm in your going down?

A No, sir, because he wasn't there by the building.

Q And the only noise you heard when you were shaving was what?

A A lot of noise. I thought the boys were putting each other out of the barracks.

Q That is all the noise you heard?

A Yes, sir.

Q Now, when you got downstairs, though, you found out that it wasn't just a bunch of boys playing?

A I knowed there was something else wrong because a lot of police was all over the area.

Q When you found out it wasn't a bunch of boys playing why didn't you go back upstairs?

A I wanted to see what was the trouble, sir.

Q Then you wanted to see what the trouble was?

A That's right.

Q And what did you do then?

A Started towards the Italian area, what they call the area back that way, and got to the mess hall.

Q And at that time you knew there was some trouble in the Italian area?

A After I seen the ambulances and M.P.'s.

Q And then you deecided to go down there?

A And then I deecided to go down there?

Q yes.

A Sure, to see what was wrong.

Q Well, what did you take along with you when you deecided to go?

A My hands.

Q You didn't t ake any standamd equipment with you?

A NO, sir.

Q just your hands?

A I just got one in shape at the time.

Q Well, your arms are in no better shape today than they were at that time?

A The same now.

Q And has been the same for months?

A About eight years.

Q And you are still in the Army?

A Yes, sir, they still got me in the Army.

Q Been no difference in the condition of your arm today than it was on August 14?

A No, sir.

Q And you say your arm has been that way for about eight months?

A Eight years.

Q I mean eight years.

A Yes, sir, but I rehurt it on the 9th or 10th of July.

Q But that has given you plenty of chance to develope your other

- hand, your left arm?
- A You can't do nothing with your left hand if you are right handed.
- Q But in eight years time you can pretty well learn to do something with your left hand.
- A Yes, the same thing as you can pick up, sure.
- Q But you can wield a stick with your left hand, can't you?
- A No, sir.
- Q All right. Now you started down to that area, you say, and the M.P.'s ran you back?
- A That's right; the M.P.'s. One white M.P. and John Pinkney.
- Q Anybody else around there at the time you got run back?
- A you mean in the area?
- Q Anyone close to you?
- A Oh, yes, a lot of guys going and coming.
- Q You saw some coming from Lawton Road going back up towards the barracks 719; you saw some of them going in this direction (indicating on map) ?
- A No, sir, they wasn't on Lawton Road.
- Q Where were they,
- A Between those other barracks, a lot of them.
- Q All scattered between 708 and 709?
- A Back of 700.
- Q Back of 700?
- A yes, sir.
- Q Back of it here (indicating on map)?
- A In between. Kind of like a lot out here (indicating). Like a lot of them in here and on the sidewalk (indicating).
- Q Between 701 and 700?
- A Yes, sir, and going down Virginia.
- Q Between Virginia and Wyoming Avenue. This is Wyoming here (indicating). And between 701 and 700,
- A These two buildings (indicating) and the building down by the PX.
- Q Well, did you see any soldiers standing over here close to 708?
- A No, sir, I didn't get that far.
- Q You didn't get that far?
- A No, sir.
- Q Well, you got, you say, just beyond the corner of 700: just behind 700?

A Six-seven feet there.

Q six- seven feet?

A Yes, sir.

Q You could see from here over to 708?

A It was dark.

Q You couldn't even see anything moving?

A See light from the jeeps and ambulances.

Q You couldn't see people moving around over there?

A M.P.'s.

Q You could see some M.P.'s?

A Sure, because when they pass in front of a jeep thier insignia would be on the arm. See an M.P. had a white rope.

Q When somebody passed in front of a jeep you could see them too?

A Sure, if they had a pass.

Q A pass?

A Yes.

Q You mean to tell us it takes a pass for you to recognize somebody who passes in front of a jeep?

A Pass in front of the light you can tell, but if they did not pass you can't tell.

Q Did you see any persons around there other than M.P.'s?

A No, sir, I didn't.

Q Just M.P.'s. All right.

A At the time I seen all of them; they were all in the road.

Q And you say they ran you back?

A That's right, sir.

Q And did you go right back to your barracks then?

A Yes, sir, I did, Sir.

Q Did you go right to sleep after you returned to the barracks?

A No, sir, I didn't go right to sleep.

Q What did you do?

A Because Lt. Sistrunka and a major came up.

Q Well, they didn't come up until quite some time after you returned to your barracks, did they?

A I don't know what time they came up, but I know I was upstairs when they came upstairs.

Q Yes. But now let's see; Let's see what you did after you got back to your barracks. How long was it before you went to bed after you returned to your barracks?

A About eight- nine minutes.

Q Eight-nine minutes. When you went to bed after that eight-nine minutes did you fall asleep?

A No, sir.

Q You were awake for a while?

A That's right, sir.

Q All right. Now during the eight-nine minutes you awaited before you went to bed and the several minutes that you were Awake after you went to bed, did any boys return to the barracks?

A Not upstairs.

Q Not upstairs?

A No, sir.

Q Nobody returned to the barracks upstairs; that is your testimony?

A Yes, sir.

Q And you were in 719?

A That's right, sir. Slept in the fourth bed on the left as you go upstairs.

Q And how long were you awake?

A Oh, I imagine maybe a half an hour, sir.

Q Were the lights on when you returned to your barracks?

A There was two lights on the side I slept on.

Q Did you see anybody in your barracks when you returned?

A You mean back upstairs?

Q Yes, sir.

A Plenty of boys up there.

Q Quite a few boys there?

A Yes, sir.

Q By that time the riot was over down in the Italian area?

A It was over before I even got to the corner of 700 mess hall.

Q How did you know that?

A Because the M.P.'s was down in there and I am quite sure it was over; the M.P.'s were down in there.

Q In other words, just because the M.P.'s were there is that why you said the riot was over?

A Beg pardon?

Q I say just because you saw the M.P.'s there is that reason you said the riot was over at that time?

A Well, any time that you see a bunch of M.P.'s in an area or

anyplace, that is done for protection; what they say, you got to do that.

Q The truth of the matter is, the reason you say the riot was over then was because you were right down there in that orderly room at the time and you knew the riot was over.

A The only time I been in that orderly room is when I went through with the Court.

Q And you weren't there on the night of August 14?

A No, sir.

Q And you didn't have a club in your hand?

A No, sir, I didn't.

Q And you didn't meet Corporal King and tell him you ought to jump on him or hit him because he went on and helped some of the bleeding Italian boys?

A No, sir.

Q That wasn't you?

A No, sir, it wasn't me.

Trial Judge Advocate: That is all.

EXAMINATION BY THE COURT

Questions by the President:

Q What is the matter with your arm?

A I got it hurt playing baseball. It is a fractured bone; it is splintered. They take several X-rays here and told me they wouldn't operate on it and wouldn't take me to the hospital hospital.

President: Any other questions? There appear to be none. That is all, Sergeant.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Assistant Defense: Freddie L. Simmons.

Law Member: Corporal Simmons, it is my duty to advise you of certain rights which you have in a military court-martial. You may be sworn as a witness in your own behalf the same as any other witness. If you are so sworn, you are subject to cross-examination by the Trial Judge Advocate and by the members of the Court if they see fit to question you; or, you may make an unsworn statement, either orally or in writing, and given either by yourself or by your counsel. If you give such an unsworn statement, you are not subject to cross-examination for any matters contained therein. Lastly, you may remain absolutely silent and make no statements, sworn or unsworn, and if you do elect to remain silent, the fact that you do cannot be used

against you. You understand those three alternatives you have?

Corporal Simmons: Yes, sir.

Law Member: You have talked it over with your counsel,

Corporal Simmons: Yes, sir.

Law Member: And you elect to be sworn as a witness?

Corporal Simmons: Yes, sir.

T-5 Freddie L. Simmons, 650th Port Company, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness; Freddie L. Simmons.

Trial Judge Advocate: And your grade?

The Witness: T-5

Trial judge Advocate: Your organization.

The Witness; 650th port Company.

Trial judge Advocate: Station.

The Witness: Fort Lawton.

Trial Judge Advocate: You are one of the accused.

The Witness: Yes, sir.

Trial Judge Advocate : You speak up so the Court can hear you now.

Law Member: Speak loudly.

DIRECT EXAMINATION

Questions by Defense:

Q

Q How old are you, Corporal ?

A 35

Q And where is your home?

A Bradley, Texas, is my home.

Q You got to speak up- The Court can't hear you yet.

A Bradley, Texas, is my home.

Q Married?

A Yes, sir.

Q What was your civilian occupation before you were inducted into the army?

A Truck driver.

Q Have you had any overseas service since you have been in the army?

A Yes, sir.

Q Without mentioning the particular place you were, what area were you in?

A Southwest Pacific.

Q Down in the Southwest Pacific?

A Yes, sir.

Q When did you first go over?

A On August-- sometime in August, sir.

Q In August of this year?

A Yes, sir.

Q When did you come back?

A November 2nd.

Q November 2nd. Can the Court hear him?

A November 2nd.

Q Speak up that way every time and we won't have any trouble. Now, calling your attention, Corporal, to the night of August 14 of this year when there was difficulty between the colored soldiers and the Italians, tell the Court where you were at the time you first learned that such difficulty took place?

A I was in my barracks. The next morning was when I first learned it, sir.

Law Member: It was what?

The Witness: In my barracks; the next morning when I first learned.

Q The next morning?

A Yes, sir.

Q What barracks did you have?

A 719.

Q You slept upstairs or slept downstairs?

A Downstairs.

Q Downstairs. About what time did you go to bed that night, Corporal?

A About 10:00, sir.

Q About 10:00?

A yes, sir.

Q After you went to bed do you have any idea about how long it took you to go to sleep?

A No, sir, I don't.

Q You eventually went to sleep, did you?

A yes, sir.

Q Did you wake up anymore that night?

A No, sir, I didn't.

Q I want you to tell the Court, Coporal, whether or not at any time during that night of August 14 you were down in the Italian area?

A No, sir, I wasn't.

Q Tell the Court whether you ever made the statement to anyone at anytime that an Italian liked to have got you?

A No, sir, I didn't.

Defense: You may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Corporal, you went to sleep somewhere around 10:00?

A Yes, sir, somewhere.

Q And you slept soundly all night long,

A Yes, sir.

Q The next morning after a good sound restful night of sleep you woke up and then for the first time heard that something had happened?

A Yes, sir.

Q Down in the Italian area?

A Yes, sir.

Q Now, Cop poral, you understand that you are under oath, of course?

A yes, sir, I do, sir.

Q And you are telling the Court the truth?

A Yes, sir.

Q You want the Court to believe that you didn't wake up any that night?

A yes, sir.

Q And if that isn't the truth, if the fact that you didn't wake up that night, if that isn't the truth nothing you are telling the Court is the truth?

Defense: I submit that is an improper question.

Law Member: Objection sustained.

Q You are sure of the fact you didn't wake up that night?

A Yes, sir.

Q As sure as you are of anything else you have told the Court?

A yes, sir.

Q Just as sure of that as that you weren't down in the Italian area that night.

A Yes, sir.

Q Just as sure of it. Well, when you came back from overseas you remember Major Manchester talked to a few of you men?

A Yes, sir.

Q Had you together and he told you you would have a chance to write your version of what you knew about this matter?

A Yes, sir.

Q And you did sit down and write a little?

A yes, sir.

Q Very little, though, what you wrote?

A All I knew about it, sir.

Q Yes, You knew very little about it so there was very little you could write.

A Yes, sir.

Q Now, didn't you in that little something that you wrote say that after you went to bed you woke up because there was noise going on outside?

A Yes, sir.

Q You didn't say that?

A No, sir.

Q Well, let's take a look at this little note you wrote (handing paper to witness). That is all in your own handwriting?

A Yes.

Q And it is dated November 2nd, 1944, isn't it?

A Yes, sir.

Law Member: What is the date?

Trial Judge Advocate: November, 2, 1944.

Q You wrote every bit of that, didn't you?

A Yes, sir, I believe so.

Trial Judge Advocate: I offer it in evidence.

Defense: No objection.

Law Member: The statement is received in evidence as Prosecution Exhibit 44.

A Statement is marked Prosecution Exhibit 44 and received in evidence.

The Trial Judge Advocate then read Prosecution Exhibit 44 to the Court.

Q Now, that is your statement?

A Yes.

Defense: There is no objection to the typewritten copy.

Trial Judge Advocate: Yes.

Law Member: We will mark the typewritten copy too the same number.

Trial Judge Advocate: No further questions.

Defense: I have no further questions.

President: Any questions by the Court? If not, the witness will be excused. That is all, Simmons.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Defense: If it please the Court, it is now six minutes to twelve o'clock. Would the Court care to recess?

President: We will recess until 1:30.

The Court thereupon recessed at 11:50 o'clock a.m., and reconvened at 1:30 o'clock p.m., 11 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready to proceed, yes, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show each of the accused is present, all members of the Court are present, the personnel representing the accused and the personnel of the prosecution.

The reporter was also present.

Assistant Defense: Private Elva Shelton.

Law Member: Private Elva Shelton, it is my duty at this time to advise you that you have certain rights as an accused in a military court-martial. You may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination by both the Trial Judge Advocate and by members of the Court. Or you may make an unsworn statement in denial, explanation or extenuation of the offense charge. This unsworn statement can be made orally or in writing either by yourself or to your counsel. If you make such an unsworn statement you cannot be cross-examined on any matters that are contained therein. It is not strictly evidence but may be given such consideration by the members of the Court as they see fit. Or finally, you may remain absolutely silent, and make no statement whatsoever either sworn or unsworn, and if you do remain silent, the fact that you did so cannot be used against you. Do you understand what I just said to you?

Private Shelton: yes sir.

Law Member: And concerning what your intentions are in this case, you have talked it over with your counsel?

Private Shelton: yes, sir.

Law Member: And you want to be sworn as a witness and testify in your own behalf?

Private Shelton: yes, sir.

Law Member: All right, Colonel Jaworski.

Private Elva Shelton, Headquarters and Headquarters Detachment No. 2, Camp George Jordan, a Witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

Witness: Private Elva Shelton.

Trial Judge Advocate: Your Organization.

The Witness: Formerly 650th Port Company.

Trial Judge Advocate: And your station.

The Witness: Fort Lawton.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT-EXAMINATION

Questions by Defense:

Q Shelton, do you think you can talk louder than you are talking right now?

A Yes, sir.

Q All right. How old are you, Shelton?

A I am 20

Q Where is your home?

A St. Louis, Missouri.

Q How much education have you had?

A Three years high school, sir.

Q Three years high school, In St. Louis?

A Yes, sir.

Q Now did you have a civilian occupation before you were inducted into the Army?

A Yes, sir.

Q What did you do?

A I was a machine operator for a furniture company.

Q A furniture company?

A Yes, sir.

Q When were you inducted into the Army?

A January 15th of this year, sir.

Q Do you have anybody dependent on you for support?

A Yes, sir.

Q Who?

A My mother and three sisters.

Trial Judge Advocate: Oh, I don't think that is material evidence, if the Court please. I have been very liberal and not made any objection to past history, but I don't think we ought to go into matters of that kind.

Law Member: It may stand. Don't pursue it further.

Defense: What is the Court's ruling?

Law Member: Continue; but don't pursue that subject further.

Defense: I was through, if the Court please.

Q Now, calling your attention, Shelton, to the evening of August 14 of this year, that is the evening that there was difficulty between the colored soldiers and the Italian soldiers at Fort Lawton, where were you when you first learned that there was trouble that evening?

A In my barracks, sir.

Q What barracks did you occupy?

A Barracks 668

Q 668?

A Yes, sir.

Q That is one of the black barracks?

A Yes, sir.

Q How long had you been in your barracks at that time?

A All evening after chow, sir.

Q All evening after chow. What time was chow?

A Chow is usually at 5:30, sir.

Q Well, what is the first information you had that there was trouble that night?

A Well, sir, the first time I knew just what really happened that night was the next morning at our formation.

Q What time did you go to bed that night, Shelton?

A Well, I went to bed after the O D turned off our lights.

Q Well, did you know that night there was anything unusual taking place or not?

A Well, sure, I had an idea that something unusual was taking place.

Q Well, tell the Court what gave you that idea?

A Well, from the noise I heard outside I had just an idea that something was unusual; that, you know, don't generally happen.

Q What were you doing at the time you heard that noise?

A Well, I was writing letters.

Q You were writing letters?

A Yes, sir.

Q Did you continue writing letters or did you do anything else?

A Well, after finishing writing letters, sir, I begin to pack my duffle bag.

Q Did you ever go out of your barracks that night?

A No, I never went out of my barracks.

Q I want you to tell the Court, Shelton, whether or not you were ever at any time that night down in the Italian area?

A No, Sir.

Q Would you tell the Court whether or not any time that night you struck anyone?

A No, sir, I didn't.

Q Now, Shelton, did you go through this show-up that they had down there at Camp Jordan?

A Yes, I did.

Q Were you ever identified down there by anyone?

A No, sir.

Q When is the first time that you were identified by anyone that you know of?

A Well, the first time I was ever identified by anybody was when they took me down there for questioning at the Port.

Q At the Port?

A At the Port.

Q Whereabouts did they take you for questioning?

A Well, I guess it is Major Manchester's office. I don't know exactly what that building is.

Q Were you indented by anyone at that time?

A Yes, sir.

Q Who identified you at that time?

A An Italian.

Q I want you to tell the Court whether at the time you were identified there were any other colored soldiers in the room?

A No, sir, there was not.

Q You were the only colored soldier in that room?

A I was.

Defense: I think you may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Now, your testimony is that you were in your barracks the night of this riot?

A Yes, sir.

Q What time did you say you entered the barracks that evening?

A Well, I went into my barracks for the last time right after our chow.

Q And you didn't leave your barracks again?

A No, sir.

Q Until the next morning?

A Yes, sir, I didn't leave no more that night at all.

Q Now, you heard some noise out there that night, didn't you?

A Sure. Yes, sir, I heard some noise.

Q What kind of noise did you hear?

A Well, it sounded mostly just like a lot of men get together and have a lot of fun; in fact, the noise didn't sound as though it was what really took place.

Q Well, had you gone to bed by the time you heard that noise?

A No, sir.

Q How long after you heard the noise did you go to bed?

A Well, I didn't go to bed, sir, until the OD turned off our lights.

Q Well, that was a long time after you heard that noise, wasn't it?

A Well, I don't know exactly how long it was, sir.

Q Well, was it as long as an hour?

A Well, I couldn't estimate the time in hours.

Q Was it just a few minutes?

A Sir, I really wouldn't know just how long it was.

Q You wouldn't know whether it was five minutes or an hour?

A No, sir.

Q Well, now, after you heard that noise did you see any fellows leaving your barracks?

A Well, I didn't pay that much attention to whoever came in or went out of our barracks.

Q Well, whether or not you know who went in or out, do you recall any Negro soldiers leaving the barracks about the time you heard that noise?

A Well, I tell you. The men was constantly walking around in the barracks but I do not take notice to see whetherrany were leaving or going out, or whether any coming in, but they were moving around in the barracks.

Q Now after that noise ceased that you heard out there did any men come in the barracks?

A Sir, that I couldn't tell you.

Q Well, you were up for quite some time after that, weren't you?

A I was up until the OD put out our lights.

Q That was about 1:00 in the morning, wasn't it?

A I really wouldn't know. I never had a watch.

Q You haven't any idea what time the OD put out the lights?

A Well, I figured that it was around 9:00, the time the lights were supposed to go out in the barracks, see. See, I did not know just what time he turned off the light. All I figured, it was about 9:00; time for lights to go out.

Q So when you heard that noise you figured it was around 9:00?

A I didn't try to estimate what time it was when I was hearing that noise.

Q But your best judgement was and what you thought at the time was that it must have been around 9:00?

A That is the time I thought it was when the OD turned out the lights.

Q You remember when you were questioned by Major Manchester--

A Sir--

Q -- (continuing) on the 31st of August of this year?

A -- (continuing) I never was questioned by Major Manchester.

Q You say you were never questioned by Major Manchester?

A No, sir.

Q Are you sure about that?

A Yes, sir.

Q You say you were never questioned by him?

A Yes, sir.

Q Well, were you ever questioned in his presence?

A No, sir. I don't know just who was down there when I was questioned. There was some Army officers there, but I don't know who they were.

Q Well, do you remember who questioned you?

A Yes, sir.

Q Who did question you?

A A civilian by the name of Mr. Freeman.

Q Well, didn't Major Manchester question you for a little while before Mr. Freeman questioned you?

A Mr. Freeman was the first person who interviewed me when I went into the office.

Q Did Sergeant Young question you at that time?

A Sergeant Young had said some words to me outside in the hall, and then if I remember correctly, he did ask me one or two questions after Mr. Freeman had finished.

Q Did Mr. Glasgow question you.

A Sir, I wouldn't know who Mr. Glasgow was.

Q Well, did more than one civilian question you at the time

you say you were interviewed?

A Well, sir, I tell you. Mr. Freeman, he did most of the interviewing,

Q Well, you don't mean to say he did all the interviewing, do you?

A No, sir, he didn't do it all, he did most of it, and then he asked the rest of the people in the room did they have some questions, and some technical rating soldiers were in there and they said one or two questions; some others said something too, but I don't remember who they were.

Q All right. Now, you are telling the Court that you went to bed just as soon as the lights were turned out that night?

A Yes, sir.

Q And the lights were turned out because the OD came in there and said they should be turned out?

A Yes, sir.

Q And your best estimate was that that was at 9:00?

A Well, that is what time I thought it was on that night.

Q Yes. Now, I want to ask you if at the time you were interviewed on August 31, 1944, you weren't asked this question: "What time did you go to bed?" and did not you give this answer: "I went to bed just as soon as they made us put out the lights, sir"?

Defense: Just a moment, if the Court please. That isn't the improper impeaching question.

Law Member: Why isn't it?

Defense: He hasn't fixed the time or place.

Law Member: He asked him on August 31.

Defense: But he hasn't named the man who is supposed to have questioned him.

Law Member: That is immaterial.

Defense: I disagree with the Court.

Law Member: Just a minute, Major.

Defense: I am sorry, sir.

Law Member: He has admitted being questioned by someone, and he has now been asked if he was asked a certain question and made a certain answer. If there was an objection made, it is overruled.

Q All right. Now, I will ask you weren't you asked this question

at that time: "What time did you go to bed?" and didn't you say: "I went to bed just as soon as they mand us put out the lights, sir." That is correct, isn't it?

A Yes, sir.

Q And then weren't you asked this question: "What time was that approximately?" and didn't you give this answer: "I guess it was about II:00, as that was the time the lights were supposed to go out"?

A No, sir, I never said that.

Q You didn't give that answer?

A No, sir.

Q Now, you are positive you didn't give that answer?

A Yes, sir.

Q Did you do any writing that night?

A Yes, sir.

Q Did you hear any unusual commotion that night?

A Yes, I heard some unusual commotion.

Q All right, describe to the Court what that unusual commotion was.

A Well, it sounded mestly like a bunch of soldiers having a lot of fun; laughing and jiving and going on at each other.

Q Did you or not conclude from what you heard that there was a fight going on in the Italian area?

A No, I did not.

Q You did not. You just thought there was somebody having some fun?

A I really didn't pass my curiosity on just what it was. I never could get it into my head just what it was, although I did realize that it was something unusual going on outside.

Q But it wasn't unusual enough for you to pay any attention to it?

A Well, it might have been if I hadn't been too busy.

Q You were busy writing letters and busy packing?

A Yes, sir.

Q And you didn't even stop to ask any questions as to what was going on?

A No, sir, I did not .

Q And you didn't concern yourself about it until the next morning?

A No, sir. I didn't concern myself about it the next morning. I was just standing up there listening to what our officers told us.

Q You never did concern yourself about it?

A I never did question nobody about what went on.

Q And anybody who came into the barracks after that time, after you heard this unusual commotion, you also didn't ask them any questions as to what was going on?

A No, sir.

Q It just didn't make any difference to you, is that right?

A That's right, sir.

Q Now, who was in your barracks at the time that you heard this unusual commotion?

A Well, the only persons I definitely know in my barracks was a sergeant. I remember a couple of them being in there because one of them spoke to us.

Q And they are the only ones you remember being in your barracks?

A Those are the only ones.

Q You didn't see anybody else in there except those sergeants?

A Sure, I saw some men there.

Q But you can't tell us who they are?

A No, sir.

Q Now after the noise stopped did a bunch of boys come back?

A They probably did, sir.

Q Well, don't you know that they did?

A No, I couldn't just say whether they did or not.

Q You have no recollection of a bunch of boys having come back after the noise stopped?

A Well, it seems as though some men did come in, but, you know, I was busy and I just looked around now and then and see that there was more men in the barracks than there was, you know, at such another time; but I didn't know just when they came in or not.

Q But you have no recollection at this time of a group of boys, a bunch of boys, having come into your barracks after the noise stopped?

A No, sir.

Q All right. I will ask you if you weren't questioned by Lt. Colonel Curtis Williams on the 30th of September, 1944; you remember Colonel Williams questioning you?

A Yes, sir.

Q All right. I will ask you if at that time you weren't asked the following questions and if you didn't give the following answers--

Law Member: This is for the purpose of testing the credibility of the witness, I assume?

Trial Judge Advocate: Well, I am not going to prove any

specific names.

Q (Reading) "After the fight was over and after the noise stopped a bunch of boys came back," that was the question, and didn't you answer: "Yes, sir"?

A No, sir, I did not.

Q You did not. And weren't you then asked who came in that you remember, and didn't you answer: "I don't remember who came in; all I know is some came in"?

A I remember being asked did I remember who came in; and I told him, no, sir, I don't remember who came in.

Q And didn't you also say some did come in?

A Well, I told him some probably came in.

Q You said some probably came in?

A I could have told him that, but I never did tell him definitely whether any came in or no.

Q And weren't you further asked: "After they came in what did they talk about"; weren't you asked that question?

A Yes, sir.

Q And what did you say?

A I told him I never did know what they was talking about. I know there was a steady drone of conversation in the barracks, but I never go over and try and pick up what they was saying.

Q But they did talk about something?

A Sure, they were talking.

Q And you just simply couldn't understand what they said?

A I didn't try to understand, sir.

Q All right. I will ask you if this wasn't your answer when you were asked that question. The question was, "After they came in what did they talk about?" and didn't you answer: "They didn't talk about anything"?

A No, sir, I never did, sir.

Q Wait a minute. (Reading) "They didn't talk about anything because the Sergeant made them stop talking." Wasn't that your answer?

A No, sir, I never said nothing like that.

Q All right. you are very positive you didn't give that testimony when you were questioned on the 30th of September, 1944, by Lt. Colonel Curtis Williams?

A Yes, sir.

Q Now, Colonel Williams asked you what barracks you stayed in that day, didn't he?

A Yes, sir.

Q And what was your answer?

A Barracks 668, sir.

Q That was correct, wasn't it?

A Yes, sir.

Q I want to ask you if you weren't asked these further questions on the same occasion by Colonel Williams; "You heard them talking about the fight?" Were you asked that question?

A I could have been, sir. I don't remember whether he asked me that question or not.

Q And didn't you then say: "Yes, sir, naturally?"

A No, sir, I never said nothing like that.

Q You didn't say that you heard them talk about the fight then?

A No, sir.

Q And weren't you asked after that: "What were they saying?" You remember that being asked you?

A He could have asked me that question too.

Q And didn't you say: "I cannot repeat the statements?"

A No, sir, I never told him that.

Q You didn't say that?

A No, sir.

Q Are you sure what I am asking you about didn't transpire? That you didn't make those statements; you are sure about that?

A Sure, I know that I didn't give the answer to those statements you just asked me.

Q All right. I just want you to be sure about it. Now, when you heard those boys doing some talking--you did hear them do some talking, didn't you?

A I could hear there was conversation going on in the barracks.

Q Well, were you or were you not interested in what they were saying?

A No, sir.

Q Why weren't you?

A Because I was too busy.

Q Too busy to listen a little?

A Yes, sir.

Q Well, a lot of commotion, unusual commotion as you call it, having gone on outside and you were too busy to listen to what these boys were talking about?

A I was too busy to listen to what they were talking about.

Q And, furthermore, you weren't interested in what they were talking about?

A No, sir, I wasn't.

Q And you weren't interested in what you term an unusual commotion either, were you?

A No, sir.

Q Now, are you and Roy Daymond good friends?

A Well, I don't have anything against Roy Daymond, He is my friend.

Q Were you and Roy Daymond good friends on the 30th of September, 1944?

A 30th of September?

Q Yes.

A I don't remember seeing Roy Daymond on the 30th of September.

Q Well, maybe you didn't. But up until the 30th of September, 1944, were you and Roy Daymond good friends?

A Sure; I didn't have nothing against him.

Q I know you say you didn't have anything against him, but can you answer that question specifically as to whether or not you were good friends?

A Yes, sir.

Q You were?

A Yes, sir.

Q All right. Now you heard Roy Daymond testify in the case, didn't you?

A Yes, sir, I heard him testify.

Q Did you hear what he said about your being in the Italian area that night?

A Yes, sir.

Q You heard him say you had a stick, didn't you?

A Yes, sir.

Q Now, that was your good friend testifying, wasn't it?

A

Defense: That is not proper.

A That was Roy daymond testifying.

Law Member: Overruled.

Q You say it was Roy Daymond testifying. And that is the man you say you were good friends with; that is right, isn't it?

A Yes, sir.

Q All right. And your testimony to the Court now is that first time you heard about this matter was the following morning at formation?

A Yes, sir.

Q And about when was that ?

A Well, sir, that was about 8:00.

Q Yes. And you had chow at that time, hadn't you?

A No, sir.

Q When did you have chow?

A Some of the boys in the company had chow. When I got up that morning I still had to finish the work I left undone that night, so while the rest was gone for chow I stayed in the barracks.

Q You stayed in the barracks and did some packing?

A Yes, sir.

Q What time did you get up the next morning.

A I don't know exactly what time I got up.

Q Well, you had been up a couple of hours before formation, hadn't you?

A Yes, sir.

Q And during those two hours you didn't hear what happened down in the Italian area the night before?

A No, sir, I didn't. To tell you the truth, I didn't hear just what happened down in the Italian area

Q You heard no one talk about it?

A No, sir.

Q And you didn't ask any questions about it ?

A I never asked any questions about it.

Q And the reason you didn't was because you just weren't interested in what happened?

A The reason was because I was too busy.

Q Oh, you were too busy?

A Yes, sir.

Q Well, you weren't interested either, were you?

A Not at the time I was doing my work.

Q Well, you worked before you went to bed that night and you got up early the next morning and you were working again?

A Yes, sir.

Q During all that time you just didn't find time to make any inquiries as to what went on that night.

A No, sir.

Q Now, there is an Italian soldier by the name of Grossi that picked you out from all these accused the other day and said that you were down there in the orderly room with a club in your hand; that is correct?

A That is what he said, sir.

Q Well, I said you heard him say it, didn't you?

A Yes, sir.

Q All right. How many times had he picked you out before?

A Well, he had picked me out twice before.

Q Twice?

A yes, sir.

Q Now, you told us about one time where he picked you out. Where was the other time he picked you out?

A Down there in some building that was right across from the service club there -- the PX.

Q At Fort Lawton.

A Yes, sir.

Q Who all was present?

A Nobody but the Italian soldier and some Army officer, and myself, and William G. Jones and a stenographer.

Q Do you know who the Army officer was that was present at that time.

A NO, sir.

Q When was the first time you left the barracks the next morning?

A The first time I left the barracks the next morning was to visit the latrine and wash up.

Q About what time was that?

A Well, I wouldn't know exactly what time it was .

Q 6:30, 700?

A Well, it had to be before 8:00.

Q All right, it was before 8:00. And you hadn't left your barracks since about 7:30 the night before; that is your testimony.

A Yes, sir.

Q And you are positive of that?

A Yes, sir.

Q How long had you known Roy Daymond?

A Well, I had known him ever since the company was evacuated.

Q Activated, you mean, don't you?

A Yes, sir.

Q Ever since the company was activated. And that was when?

A Oh, in the month of February.

Q February of what year?

A 1944

Q 1944. So that Roy Daymond knew you well and knew what you

looked like, didn't he?
A Sure. Yes, sir.

Q Oh, yes, there is one question I want to ask you further. How much time did you spend writing letters that night?
A Well, sir, I don't know exactly, but I spent quite a bit of time writing letters.

Q Well, let's see. You wrote letters from about 7:00 on, didn't you?
A I wrote letters until I finished and started packing my duffle bag.

Q I know, but that isn't giving us very much information, About how long did you write letters?
A Well, sir, I don't know just how long it took me to write those letters, but it did take quite a bit of time.

Q An hour?
A More than that.

Q Two hours?
A I wouldn't know exactly. See, it takes me some time to write letters.

Q All right; two hours?
A I wrote quite a bit of letters that night, so I wouldn't know just how long it took me to write those letters.

Q Three hours?
A I wouldn't know exactly.

Q Four hours?
A I don't know how long it took me to write them letters.

Q you just don't know?
A No, sir.

Q Well, could it have been as long as four hours?
A I wouldn't know. I wouldn't know, sir.

Q Could it or couldn't it have been as long as four hours?
A It could have been as long as four hours.

Q All right. It could have been as long as four hours. How much time did you spend that night packing your duffle bag?
A Well, then I spent the rest of the time I had since I finished writing letters up until the lights went out.

Q About how long was that?
A I don't know how long it was.

Q Could it have been an hour?
A Well, I don't know.

Q Could it have been two hours?

A I still don't know.

Q Could it have been three hours?

A I wouldn't know, sir.

Q Could it have been four hours?

A I don't know how long it was, sir.

Q Well, I am giving you an opportunity to say that it could have been anything between one and four hours?

A It could have been anywhere between that night -- anywhere between that time.

Q Anywhere between one and four hours?

A Yes, sir.

Q All right. Now, you got to your barracks about when?

A After our evening chow.

Q Well, when was that?

A Well, chow is usually 5:30. I don't know exactly what time it was.

Q Well, you got through by 6:00 anyway, didn't you?

A Well, I wouldn't notice it.

Q And you are telling this Court you figured you went to bed at 9:00?

A I told the Court I figured the OD turned out the lights at 9:00. I told them that is the time the lights usually went out.

Q You also told the Court that is the time you went to bed?

A I went to bed when they turned the lights out.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

Q I want you to tell the Court a little bit more about this second time you were identified. About when was it?

A Well, sir, it was a week after my first interview down at the Port.

Q And where was this place you were identified?

A Some small building right to the -- it is to the right of the PX.

Q What PX?

A The PX in the 700 area.

Q Down there in the colored area?

A Yes, sir.

Q A room in that building?

A Sir?

Q A room inside of that building?

A Yes, sir.

Q Who was in the room when you went in there?

A Well, sir, when I went in there was this Army officer, a stenographer, and Grossi, the Italian.

Q Did you go in alone or somebody with you?

A I went in with William G. Jones.

Q You were the only two colored soldiers there?

A Yes, sir.

Q And William G. Jones is a lot lighter than you in color?

A Yes, sir, and a lot larger man in size too.

Q And they didn't take another man in as dark as you?

A No, sir.

Defense: That is all.

RE-CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q That was the second time you were identified, wasn't it?

A Yes, sir.

Q And you had been identified previously?

A Yes, sir.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

Q Tell the Court once again where was the first time you were identified?

A At the Port, sir.

Q And you were all alone --

Trial Judge Advocate: Don't lead him so viciously, if you don't mind.

Defense: All right; I will withdraw it.

Q Who was in the room with you when you were identified at the Port?

A You mean was there another colored soldier?

Q Yes, tell the Court then who was there?

A I was the only colored soldier in there at the time.

Q You were the only colored soldier in the room?

A Yes, sir.

Defense: That is all.

RE-CROSS-EXAMINATION

Question by Trial Judge Advocate:

Q Just one other question. You were told that Roy Daymond had identified you when Colonel Williams questioned you and when Major Manchester questioned you?

A I don't ever remember Major Manchester questioning me, sir.

Q Well, all right. Up there at the time you were questioned by what you term were some civilians you were told then that Roy Daymond had identified you, weren't you?

A No, sir.

Q Well, did Colonel Williams tell you that Roy Daymond identified you?

A No, sir, Colonel Williams told me that Roy Daymond heard me say something.

Q Didn't Colonel Williams tell you this: "Do you know Roy Daymond? Answer: Yes, sir, Did you see Roy that night? answer: No, sir, he didn't leave with us." That is correct, isn't it?

A Yes, sir.

Q He asked you some questions and you gave those answers?

A Yes, sir.

Q And then didn't he ask you or tell you, "Roy Daymond has testified that on the night of August 14, 1944, you were in a fight in the Italian area and had a club --with a club-- and that he saw you down there"; didn't he tell you that?

A I remember him talking to me about Roy Daymond. Sir, I don't remember him saying he saw me down there in the Italian area, no.

Q Roy Daymond knows you well enough and you know him well enough to where Roy Daymond can identify you?

A Yes, sir.

Trial Judge Advocate: That is all.

Defense: No further questions.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Did I understand You to say that you were to a show-up of Negro soldiers?

A Yes, sir.

Q Where was that ?

A That was at the M.P. Cantonment.

Q M.P.Cantonment?

A Yes, sir.

Q Where is that; at Lawton?

A No, sir, at Camp George Jordan, sir.

Q And were you at that time picked out of that company of Negro soldiers by anyone?

A Yes, sir.

Q Somebody identified you out of those 500?

A Nobody identified me, sir. I was just taken out of the line by Mr. Freeman.

Q You were taken out of the line by Mr. Freeman?

A Yes, sir.

Q Was that when all the colored soldiers were together?

A Yes, sir,

Q But no one identified you at that time?

A No, sir, nobody identified me, sir.

Q No Italians identified you?

A No, sir.

Defense: Incidentally, Colonel Jaworski, I have asked you a couple times and you told me you didn't have it, and Colonel Williams told me several days ago he would look through his papers and produce it if he could find it, the list of those identifications that were made.

Trial Judge Advocate: I haven't seen them, and if you want any proof along that line I suggest Colonel Williams be placed on the stand and you ask him.

Defense: I would like to have Major Manchester and Colonel Williams. Major Manchester says he turned it over to Colonel Williams, and Colonel Williams says he hasn't got it.

Trial Judge Advocate: I haven't seen it at any time. You ask them.

President: Any other questions?

Trial Judge Advocate: There is a question based on what the

Law Member just asked.

RE-CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q At this show-up at Camp George Jordan you were pulled out of the line of a large number of Negro soldiers, were you not?

A Yes, sir.

Q You don't know why you were pulled out of that line, do you?

A Yes, sir, I think I do, sir.

Q You think you do?

A Yes.

Q Well, are you just guessing at it or do you know?

A Well, I have an idea they pulled me out of the line--

Q Just a minute. Your idea isn't what I am asking for. Did anybody tell you why you were being pulled out of that line?

A No, sir.

Q Then you don't know why you were pulled out?

A No, sir, I don't.

Q For all you know an Italian soldier may have identified you at that time?

A He didn't, sir.

Q What you mean is that one didn't come up to you and point his finger at you and say, "That is the man"?

A Didn't any of them ever say anything; didn't any of them do anything.

Q None of them were pointing their finger at anybody at that time, were they?

A I don't know. I know what they did about me.

Q All that you know is that you were taken out of the line-up?

A Yes, sir.

Q And you do know that there was some Italian soldiers present at that time?

A Yes, sir.

Trial Judge Advocate: All right. That is all.

EXAMINATION BY THE COURT

Questions by President:

Q Did Mr. Freeman say anything to you when he pulled you out of the line?

A Yes, sir.

Q What did he say?

A He said was that my name on my back and I told him yes, it was. So he told the soldier who was standing next to me, he said, "Take down his name," and he said, "You go into that little room"; because I had my name and serial number stenciled on the back of my fatigues.

Defense: I have one question.

REDIRECT EXAMINATION

Questions by Defense:

Q When you were passing through on that show-up tell the Court whether or not you remember seeing Grossi standing there?

A No, sir, I don't remember ever seeing him.

Q All right.

Defense: That is all.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q You wouldn't say he was there or wasn't there?

A I don't remember seeing him, sir.

Trial Judge Advocate: That is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q At this show-up, Shelton, did the Italian boys walk by the whole group of Negroes?

A No, sir. They were seated at tables and we had to walk past them.

President: Any further questions?

Questions by Major Carpenter:

Q Do you think you could identify Grossi if you saw him?

A Yes, sir.

Q You could?

A Yes, sir.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q You heard him testify in Court yesterday, didn't you?

A Yes, sir.

President: If there are no further questions the witness may be excused.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Assistant Defense: We will call Nelson Alston.

Law Member: Corporal Alston, it is my duty to advise you of certain rights you have in a military court-martial. You may be sworn as a witness and testify under oath the same as any other witness. If you elect to be sworn as a witness, you may be cross-examined by both the Trial Judge Advocate and by any members of the Court. Or, you may make an unsworn statement, orally or in writing, either by yourself or by your counsel. If you make such an unsworn statement, you cannot be cross-examined as to any matters therein. Such unsworn statement is not real evidence but will be given such consideration by the Court as the members see fit. Or, you may remain absolutely silent and make no statement whatever, sworn or unsworn, and the fact that you do remain silent cannot be considered against you. Now, do you understand those instructions?

Corporal Alston: Yes, sir.

Law Member: Have you talked it over with your counsel?

Corporal Alston: Yes, I have.

Law Member: And you have decided you want to be sworn as a witness?

Corporal Alston: Yes, sir.

T-5 Nelson L. Alston, Headquarters and Headquarters Detachment, Camp George Jordan, A witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: Nelson L. Alston.

Trial Judge Advocate: Your grade.

The Witness: Technician 5th grade.

Trial Judge Advocate: Your organization.

The Witness: Formerly 650 Port Company.

Trial Judge Advocate: And your station.

The Witness: Fort Lawton, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: yes, sir.

DIRECT EXAMINATION

Questions by Assistant Defense:

Q How old are you, Alston?

A 24, sir.

Q And where were you born?

A In Tennessee.

Q What did you do when you were in civilian life?

A I was a checker in the International Harvester Company.

Law Member: A checker?

The Witness: Yes, sir.

Q And when were you inducted into the Army?

A February 4, 1944.

Q Now, before or after August 14, 1944 were you or were you not overseas?

A I was, sir.

Q Without designating where you were specifically, will you tell the Court what theater of war you were in?

A The Southwest Pacific, sir.

Q And when did you return?

A I returned to the United States October 16 of this year.

Q You are a T-5?

A Yes, sir.

Q Do you recall the night of August 14 when some Negro soldiers had some trouble with the Italians?

A Yes, sir, I do.

Q Where were you when you first heard about this trouble?

A In barracks 719.

Q Did you live upstairs or downstairs?

A Downstairs.

Q What were you doing?

A I was in bed, sir.

Q Where had you been earlier in the evening?

A Earlier in the evening I had been to the PX and to the service club, sir.

Q And where did you go from the service club?

A From the service club I went to the barracks.

Q And when you got to the barracks what did you do?

A When I first went into the barracks I went upstairs on the second floor of the barracks; then I came back downstairs and went to bed.

Q Did you hear about the trouble after you got to bed?

A Did I hear about it after? When I woke up, the noise woke me up, but I heard about it later that night.

Q You heard about it later that night?

A Yes, sir.

Q Did you at any time go down to the Italian area?

A No, sir, I didn't.

Q Assistant Defense: I believe you may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q What noise woke you up ?

A The noise of the men outside of the barracks, sir.

Q Well, what sort of noise did you hear?

A I heard a lot of unusual talking.

Q Unusual talking?

A That's right, sir.

Q You didn't hear any screaming coming from the direction of the Italian area, did you?

A No, sir, I didn't.

Q You didn't hear any whistles blown?

A No, sir, I didn't.

Q Didn't hear any windows being shattered?

A No, sir.

Q Heard no rocks being thrown against the barracks?

A No, sir.

Q You didn't hear any boys running around out there hollering?

A No, sir, I didn't.

Q How long were you awake?

A How long was I awake?

Q Yes, sir.

A When I first woke up I went to the front of the barracks.

Q Did you look out?

A yes, sir, I did.

Q What did you see?

A I saw a crowd of boys standing out in the street and all around the barracks.

Q Around the barracks?

A Around in front of the barracks.

Q In front of barracks 719 ?

A That's right, sir.

Q See any of them cross the street and go in the direction of the Italian area?

A I didn't see any going anyplace. They were all standing out in the front.

Q How long did you watch them?

A I couldn't say definitely for how long I stood out there.

Q Well, about how long?

A I wouldn't be positive of the time.

Q Well, all right.

A I was out there about ten minutes.

Q About ten minutes?

A Yes, sir.

Q All right. And during those ten minutes all you saw was just a group of men standing in front of barracks 719?

A that's right, sir.

Q See anybody lying on the ground?

A No, sir, I didn't.

Q All standing up. See a jeep anywhere close?

A No, sir.

Q What were those men doing; just standing there talking?

A They were listening to the 1st sergeant. He was talking to them.

Q The 1st sergeant was talking to them?

A That's right, sir.

Q How soon did you go there to the window after you woke up?

A I didn't go to the window, sir.

Q Well, wherever you went.

A To the door.

Q All right; to the door.

A As soon as I could get on my pants, sir.

Q In other words you want there pretty promptly after you woke up?
A That's right.

Q Was there anybody in the barracks there when you woke up?
A There was some more fellows in bed.

Q Any of them up?
A Not that I know of. I couldn't say for sure.

Q Who was in bed?
A The fellow that slept over me was in bed.

Q Who was that?
A George Jackson.

Q George Jackson?
A That's right, sir.

Q Who else was in bed you saw around there?
A I saw the fellow that sleep next to me, Harvey Banks, sir.

Q Harvey Banks?
A That's right,

Q And you sleep next to him, you say?
A That's right.

Q He is a good friend of yours?
A No, sir, he is not a good friend. He is a friend of mine but I wouldn't class him as a good friend because I don't know much about him.

Q He is just a friend of yours?
A That's right, sir.

Q All right. Now, after you stood there ten minutes, looked out the door, what did you do?
A I went back in the barracks.

Q And then what did you do?
A Went back in the barracks and got on my bunk.

Q After you got on your bunk what did you do?
A Well, I was going back to sleep but the 1st Sergeant was sending everyone in, and a Major and an M.P. came in and wanted to know who it was that got hurt, and they were up there talking to the boy that got hurt, and I guess they took him to the hospital. Took him somewhere. After that I went to sleep.

Q Now this friend of yours--you don't call him a good friend, but you say he was a friend of yours-- Harvey Banks, you heard him testify here the other day, didn't you?
A Yes, sir.

Q And you heard him say that you came into the barracks that night after the fight and said that all who didn't go down there was yellow.

A I heard him say that.

Q Did you or not say that?

A No, sir, I didn't.

Q Do you know of any reason why Harvey Banks should so testify?

A Not that I know of.

Q And he is the only boy who slept next to you?

A That's right, sir.

Q How long have you known Alvin, Clarke?

A Since February of this year.

Q You and he have been friends too, haven't you?

A Acquaintances.

Q Well, acquaintances. All right.

A That's right, sir.

Q You heard him testify that you were down in the Italian area with a stick in your hand?

A I heard him, sir.

Q Do you know any reason why Alvin Clarke should so testify to that if it isn't true?

A No, sir. The only reason I could think of, he wanted to tell something to get out of it.

Q And you think that was the only reason?

A Yes, and he knew I wasn't here and he thought he could say something and I wouldn't be brought. That is the only reason I can see.

Q You heard him testify some were there who didn't go overseas?

A I heard him.

Q So do you still think that could have been the reason?

A That is the onliest reason I can think of.

Q The only one you can think of?

A That's right, sir.

Q Been no difficulty between you and Alvin Clarke?

A No, sir.

Q Now, when you stood there in the doorway for ten minutes what did you decide was going on down there?

A I didn't decide anything. I heard the 1st Sergeant was talking about a fight.

Q And you didn't even go down there among the boys while he was talking to them?

- A I was standing in the door. He was standing on the steps himself.
- Q And could you hear what he said?
- A Yes, sir, I could hear what he was saying.
- Q Was he there the entire ten minutes you were there?
- A Yes, sir.
- Q And all you heard him say was that there was a fight going on?
- A He was telling the boys not to go back and to go inside of the barracks.
- Q Did he say where this fight was going on?
- A No, sir, he didn't say where it was going on.
- Q And did he tell the boys where not to go?
- A No, sir, he didn't. He said back down there; that is all I understood him to say
- Q And from nothing he said did you gather there was a fight going on down in the Italian area?
- A I didn't know where the fight was going on.
- Q Well, you were standing in the doorway. Now, who else was standing in the doorway?
- A There was a whole bunch of boys standing there.
- Q A whole bunch of boys standing in the doorway?
- A Yes, sir.
- Q About how many?
- A I don't remember how many there, but the streets and all that in the area was full.
- Q Well, you saw Russel Ellis down there, didn't you?
- A No, sir, I didn't.
- Q Didn't see him standing around the doorway?
- A No, sir.
- Q Well, who did you see standing around the doorway?
- A Well, I remember the Sergeant was talking to Addison George.
- Q Addison George was there?
- A Yes, sir, I remember the Sergeant was talking to him.
- Q You heard Addison George tell the other day when he was a witness here in Court he was there?
- A I did, sir.
- Q Now, who was there that you haven't heard testify in Court-- was down there standing in the doorway?
- A Well, I saw Sergeant Gresham standing there. I haven't heard him say he was there.

- Q And Sergeant Gresham was there?
A Yes, sir.
- Q All right. Now who else did you see standing there?
A I couldn't be sure who else. So many people was there I couldn't say who was there, because I might have said I seen them there and it might have been some place else I seen them through the day. I wouldn't be for sure.
- Q Now, as a matter of fact, at the time the Sergeant was talking to those men and they were going up to the barracks, back into thier barracks, this whole fight was over with; the M.P.'s had already gone down into the area and had cleared out the area of Negro soldiers. Now, that is correct, isn't it?
A I really wouldn't know.
- Q You just don't know?
A No, sir.
- Q Did you see any Negro soldiers come from the direction of the Italian area while you were standing there ten minutes?
A No, sir, I didn't.
- Q And you didn't see any of them go in the direction of the Italian area?
A No, sir, I didn't.
- Q And you didn't hear any noises coming from the Italian area?
A No, sir.
- Q And the men went right back up in the barracks after the 1st Sergeant talked with them?
A Yes, sir.
- Q Did you see any ambulances while you were standing there?
A I saw some pass.
- Q When you first went down there?
A You mean while I was standing in the doorway? I don't know when I first got there or when I left, but I remember seeing some cars pass and I don't know whether ambulances or trucks or what.
- Q You don't even know whether they were ambulances; all you know is some cars passed by?
A That's right, sir.
- Q Then the entire ten minutes you were standing there nothing happened that gave you any idea that anything had occurred or was occurring in the Italian area?
A Not down there. I didn't know where it occurred, but I knew there had been a fight.
- Q But you didn't know where the fight had been?
A No, sir, I didn't.

Q And you didn't ask any questions about where it had been?

A No, sir.

Q And you went back upstairs and didn't ask anybody up there where it had been?

A No, sir.

Q And when these men started coming back up, back into the barracks, you didn't ask any of them what had gone on?

A I was on my bed then.

Q I know you were on your bed, but you didn't ask any of them what had gone on?

A No, sir.

Q And you didn't know anything about it until the next morning?

A I knew about it. The M.P.'s came into the barracks that night and told all about it.

Q That is how you found out about it?

A That's right.

Q And later on that night?

A Yes, sir.

Q And up until that time you hadn't asked any questions and you didn't know what went on?

A No, sir. I knew there had been a fight, but where I didn't know.

Q Didn't anybody make this statement that night that you fellows didn't go down there was yellow?

A No, sir, they didn't.

Q And you say you didn't make that statement?

A I am definitely -- I know I didn't.

Q And you didn't hear anybody else make it?

A No, sir, I didn't.

Trial Judge Advocate: That is all

REDIRECT EXAMINATION

Questions by Assistant Defense:

Q Alston, isn't it possible that Clarke could have been mistaken in his identity of you?

A It is possible, sir.

Q And isn't it possible that --

Trial Judge Advocate: If the Court please, that isn't a

A question for a witness to answer. That is asking a witness for a conclusion.

Defense: Well, that is what you want.

Trial Judge Advocate: Wait a minute. I didn't ask him anything of the kind.

Defense: I might add my two-bits worth here. Counsel has been for a long time asking these witnesses was so and so telling the truth. He asked for their opinion; he hasn't asked them whether that statement was true or not true. He has asked for the witness' opinion whether or not the other witness was telling the truth. Now having asked for that opinion he has opened that up and we have a right to ask the witness' opinion whether or not the witness could have been mistaken.

Trial Judge Advocate: There isn't any analogy between the two situations. Here is a man who says he wasn't down there; the witness says he was. The question was, was he or not telling the truth. That is a fact. That lies within the power of this witness to testify to; but when you ask him is it possible for somebody to have been mistaken, that is asking for the witness to testify to a conclusion. He can't ask him whether or not he was down there or not and ask fifteen times and I will not mind, but when he asks him is it possible somebody may have been mistaken, that is a function for the Court to pass on.

Defense: Counsel wasn't content with asking the witness whether that statement was true and wanted to go into it as to whether or not the other witness was telling the truth, and a lot of things might have gone on in the other witness' statement; he might have been mistaken. Counsel elected to ask this witness' opinion, and having opened it up we have a right to go into the same subject.

Trial Judge Advocate: It isn't a question of opinion. I asked whether a man was telling the truth. It is within his power to know because it was related to him and doesn't ask for a conclusion.

Defense: Couldn't the witness have been mistaken?

Trial Judge Advocate:

Trial Judge Advocate: I object on the grounds it is asking for a conclusion and is inadmissible.

Law Member: The objection is overruled.

Q Would you answer the question, Alston?

A Yes, sir, it is possible that he could have been mistaken.

Q And isn't it possible Banks could have made the statement to someone else in the barracks?

A He could have. He could have, sir.

Q Alston, isn't it possible that admission that Banks states, testified that he said that you made, isn't it possible it could have been someone else who made this statement?

A It could have been. If he heard such a statement, it must have been someone else.

Assistant Defense: That is all.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q You don't mean to tell this Court it is just possible Clarke made a mistake?

A He did make a mistake if he saw me down there.

Q Sure, that is what you mean to say; he definitely made a mistake?

A He definitely did.

Q There just isn't any possibility about, is there?

Defense: That is argumentative, if the Court please.

Trial Judge Advocate: Well, you went into the possibility phase of it.

Q All right. Now, what about Banks. He is very definitely mistaken about your having said that?

A I never said that to Banks.

Q All right. Then isn't it just a possibility but he is just mistaken, isn't it?

A That's right, sir.

Q Now, the last question Counsel asked you, you said it is possible somebody else might have said that. Was that your testimony?

A Yes, sir.

Q Didn't you say a while ago you didn't hear any such statement made by anyone?

A I say that and I still say that. I didn't hear any such statement, but that still doesn't make it possible someone else couldn't have said it.

Q Harvey Banks sleeps in a bunk next to you?

A That's right.

Q And you say he was there at the time?

A That's right, sir, he was; but when somebody is talking to him I don't have to hear everything they say.

Q Even though in the next bunk you don't have to hear them?

A That's right, sir.

Trial Judge Advocate: I see. That's all

Defense: No further questions.

President: Any questions by the Court? There appear to be none.

There being no further questions, the witness was excused and resumed his seat as one of the accused.

Defense: If the Court please, I don't want to cast any reflection on Colonel Jaworski about this, but I do want to trace down those records and I am getting the runaround about it from everybody I have asked. Not from Colonel Jaworski. I would like in the morning to have Major Manchester, Captain Tyson, Mr. Freeman and Colonel Williams.

Trial Judge Advocate: That is perfectly all right and that is the proper way to develop testimony. It is not proper for Counsel to make the type of statement about getting the run-around, and I am sure you can put them on the stand and ask them the questions if you think you have been getting the runaround; but I object to statements of that kind being put on record.

Law Member: The Court won't pay any attention to that.

Defense: You heard me ask for those records and he said he would let me know and hasn't.

Trial Judge Advocate: Did you ask him?

Defense: He was to let me know.

Trial Judge Advocate: If you were very interested, it looks like you would have.

President: Will you have the witnesses he asked for present in the Court?

Trial Judge Advocate: I would be very glad to. All you have to do is give me a list of them. You want them at 9:00 early in the morning?

Defense: Oh, I wouldn't quarrel if they were five minutes late.

Trial Judge Advocate: I want to be sure they are here just when you want them. Oh, by the way, one of them is out of the continental limits of the United States but he will be here in a day or two, I understand.

Law Member: Now that the dialogue has been completed, shall we proceed?

Assistant Defense: We will call Arthur L. Stone.

Law Member: Corporal Stone, it is my duty to explain to you that you have certain rights as an accused in a military Court-martial. First you may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such, and you will then be subject to a cross-examination by both the Trial Judge Advocate and the individual members of the Court if they so desire, or secondly, you may make an unsworn statement in denial, explanation or extenuation of the offense charges. This unsworn statement is not strictly evidence but it will be given such consideration by the Court as the members thereof see fit. You will not, however, be subject to cross-examination on any matters contained in said unsworn statement. Or, lastly, you may elect to remain silent, that is, make no statement whatever, either sworn or unsworn, and the fact that you so remain silent cannot be considered against you. Now, do you understand all that I have told you?

Corporal Stone: Yes, sir.

Law Member: No further explanation you desire?

Corporal Stone: No, sir.

Law Member: Have you talked it over with your counsel as to what you desire to do?

Corporal Stone: Yes, sir.

Law Member: And you elect to take the stand as a witness?

Corporal Stone: Yes, sir.

Law Member: And be sworn?

Corporal Stone: Yes, sir.

Law Member: All right, Colonel.

T-5 Arthur L. Stone, 650th Port Company, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: My name is Arthur Lee Stone, sir.

Law Member: Arthur A or Arthur L?

The Witness: Arthur L.

Trial Judge Advocate: Your grade.

The Witness: Technician 5th grade.

Trial Judge Advocate: Your organization.

The Witness: 650th Port Company, sir.

Trial Judge Advocate: And your station.

The Witness: Fort Lawton, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you?

A I am 24, sir.

Q Married?

A Yes, sir.

Q Any children?

A No, sir.

Q Where is your home?

A You mean where was I born?

Q No, where do you live?

A I live in Detroit, Michigan.

Q What was your occupation before?

A My occupation was skilled laborer; welding, metal testing--hot iron testing.

Law Member: What was that?

Defense: Metal testing.

Q When were you inducted into the Army?

A November 6th.

Q That is 1943?

A Yes, sir.

Q Now, since you have been in the military service have you seen any service overseas?

A Yes, sir.

Q Without designating the particular place, tell the Court what theater of operations you saw service in?

A South Pacific, sir.

Q Southwest Pacific?

A Yes, sir.

Q When did you go to the Southwest Pacific?

A About October 28th, I think.

Q You have got to speak up Stone.

A About October 28th.

Q Law Member: That is when you went?

The Witness: I think so. August or October; I don't know which.

Law Member: You mean you don't know whether October or August?

The Witness: Which one of those came first, sir?

Q Well, you think about it just a second and see if you can't recall.

Trial Judge Advocate: We will stipulate with you he went there in August:

Q August?

A August 28th, sir.

Q And you were brought back for the purpose of this trial?

A Yes, sir.

Q Now, Corporal, calling your attention to the night of August 14, that is the night there was trouble at Fort Lawton between the colored soldiers and the Italians.

A Yes, sir.

Q Where were you that evening when you first learned that there was trouble?

A When I first learned there was trouble I was in my barracks in my bunk.

Q You were in your barracks in bed?

A Yes, sir.

Q What barracks did you occupy?

A 719, sir.

Q 719?

A Yes, sir.

Q Well, tell the Court in a general way what you had been doing that night before you went to bed; don't go into any details, but tell the Court in a general way.

A I was down to the PX, sir. Just sat around down there. I messed around down there until the PX closed. I drank a couple glasses beer and I left. After the PX closed I left the PX and stood around out there in the road a while. I don't know how far I got up there to my barracks. While I was

standing out in the road then I decided to make a phone call.

Q You let your voice drop. Keep it so the Court can hear you.

A I decided to make a phone call to my fiance in Detroit, Michigan.

Law Member: Your who?

The Witness: My fiance. My common-law wife, rather, sir.

A And I asked the operator to give me Detroit, Michigan, and the number of the place, and she said I have to wait some time for her and I waited around there some time. Wasn't nobody there when I got to the day room. When I got there I had to shake on the door and ask the boy to let me in. The Headquarters boys were cleaning it up.

Law Member: You better talk a little louder.

A When I come down there to make a telephone call there wasn't nobody there. Everybody had done gone and two fellows, two soldiers, from the Headquarters were cleaning it up. I shook on the door and the one who opened the door asked me what did I want. I told him I wanted to make a telephone call, could I make a telephone call, and he said yes. And I make a telephone call, and I asked the operator could I make a telephone call to Detroit, Michigan, and she said wait a minute. Then she called me right back and tell me I had to wait a while because the line was busy.

Q Don't go into all that detail. Just tell in a general way what you did.

A Well, I waited a while and the telephone did ring and I talked to the girl and told her I was going to be shipped and I didn't know where to.

Law Member: Well, you talked to Detroit?

The Witness: Yes, sir.

Q Then after you talked to your lady in Detroit what did you do then?

A I hang the receiver up and left there and come on to my barracks and went right straight on the bed because I had been out that other night and I got half high and I was feeling kind of druggish, and I pulled off my shirt--I had on OD's-- I pulled off my shirt and slipped off my shoes and didn't pull off my pants because I had to get up early the next morning, because I know we were going to be shipped, and got up under one of the blankets and went to sleep.

Q Do you have any idea what time it was when you got over there and went to bed?

A No, sir, I don't, because the PX was closed. I spent some time

down there making up the telephone call. I don't exactly know what time it was.

Q All right. After you got into bed what is the first information that came to your knowledge or came to your attention that there was something wrong going on; something doing down there that evening; trouble?

A When I did hear I heard some noise down in one of the barracks, a whole lot of soldiers, so I jumped out of my bed and slipped on my shoes and went down there in my underwear and with some pants on. So I ran out there on the sidewalk then and the 1st Sergeant was standing there in front of the building. I asked him what was the matter and he said, "Go into your barracks and go to bed.," and I "insisted" on asking him what the matter was until he told me. He told me after I had asked him. He told me, "Now, you go on back upstairs and go to bed because the M.P.'s is down here now and they can go up there and get the gun and shoot you out here for raising a whole lot of devil and probably get killed or something", and I fled back in the barracks and went to bed.

Q Did you ever leave the barracks again that night?

A No, sir, I stayed in that barracks the entire rest of that night.

Q I want you to tell the Court whether or not you ever at any time went down there in that Italian area?

A I never been down there, sir, until the time the Court went down there.

Q Stone, I want you to tell the Court whether at any time you threw rocks at the orderly room or any building down there in the Italian area?

A No, sir.

Defense: You may examine.

CROSS-EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q Stone, what time did you finish your phone call, if you remember?

A I don't exactly know what time I finished my phone call, sir.

Q This phone call was made where?

A Detroit, Michigan.

Q Where were you when you were making the call?

A In a day room.

Q What building is that ?

A I don't recall the building number; I don't know the building number. That is the day room we have there. It was occupied

at that time--at that time.

Q Well, about what time was it, do you know; if you can remember?

A I don't recollect what time it was. I don't know, just to tell the truth.

Q Did you stay at the PX until it was closed?

A Yes, sir, I stayed at the PX until it was closed.

Q What time did the PX close?

A Suppose to close at 9:00. I don't know what time it closed that night.

Q How long after you were in the PX did you make the phone call?

A I don't know. I stood out there some time, a while. Some of the other boys I met in Detroit in that other company were over there.

Q Well, was it a half an hour?

A I don't know, sir. I couldn't tell you.

Q Was it an hour?

A I don't know, sir. I didn't have no watch.

Q Was it two hours?

A I don't know, sir.

Q You wouldn't know if it were five hours, would you?

A I couldn't tell you what time it was, sir.

Q Well, did you stand out there five hours?

A I couldn't tell you what time it was, sir, because I didn't have no watch and wouldn't estimate what time it was.

Q You remember pretty well the details of what happened that night, don't you?

A After everything was over and the 1st Sergeant done told me what was the matter. w

Q I mean before that you remember all the details about calling that lady in Detroit?

A Sure.

Q And shaking on the door and what the operator said to you?

A I wasn't shaking down the door. I just shook on the door.

Q I just said that.

A No, sir, I didn't shake it down. I shook it; drew attention inside.

Q You remember all those details; who you were talking to after you left the PX?

A I can't recollect the boys name.

Q How many were there there?

A Just talking about Detroit and some places around there.

Q More than one boy you were talking to?

A About two or three of them.

Q Who were they?

A I don't know, I don't know them; I don't even know them. I just say they are from Detroit and I asked them different places from Detroit there; had they been in Detroit. That is what I was trying to find out.

Q Then you came back to the barracks and slipped off your shirt, slipped off your shoes, is that right?

A When I got back to the barracks I went to bed.

Q And you took off your shirt first, didn't you; isn't that what you said?

A Yes, sir.

Q Took off your shoes?

A Yes, sir.

Q But didn't take off your pants?

A But didn't take off my pants.

Q You left your pants on?

A Yes, sir.

Q Got into bed with your pants on?

A That's right.

Q Did you go to sleep?

A Yes, sir, I went to sleep.

Q The next thing you knew there was some noise outside that awakened you, is that right.

A Yes, sir.

Q What kind of a noise was it?

A A whole lot of them out there hollering and whooping. That is what drew my attention. I just ran downstairs to see what was the matter, whether they were playing or whatever they were doing.

Q I just asked you what kind of a noise.

A I was just telling you, sir, about when I went down there.

Q The noise that awakened you when you first woke up. What did you hear?

A I heard the boys down there hollering, talking.

Q Hear what they were saying?

A I didn't hear what they were saying. I ran out there. The Sergeant --after I come out there, I ran out there, I asked this Sergeant what was the matter, because he was standing

out there in front of the barracks and I knew something unusual for him to be standing out there in front of the barracks if there wasn't something the matter. I thought maybe some of the boys out there fighting or something,

Q When you were awakened you put on your shoes before you went out?

A Yes, sir, I slipped on my shoes. I wouldn't go barefooted.

Q Did you live on the first or second floor?

A I live on the top floor.

Q You put on your shirt?

A No, sir.

Q Did you put on a helmet?

A No, sir, practically go bareheaded all the time anyway, unless I am up for inspection or something.

Q These things you are sure about; you are sure you didn't take off your pants when you went to bed?

A No, sir, I didn't take off my pants when I went to bed.

Q And you are sure you didn't put on a helmet when you got up?

A No, sir. I just told you no, sir, I ain't put on no helmet.

Q Did you put on another pair of pants when you got up?

A I had on the same pair of pants.

Q You didn't put on another pair over them, did you?

A No, sir, I didn't put on no other pair.

Q When you came back from overseas were you asked to write out a statement as to what happened that night,

A I was asked to write out a statement about what happened to me that night.

Q That is what I mean.

A yes, sir.

Q Whatever you did or whatever happened to you that night?

A That's right.

Q And you wrote it didn't you?

A I wrote it as far as I could.

Q And that was about November 2nd, wasn't it?

A I think so, yes, sir.

Q And you wrote the truth, didn't you?

A I caught myself writing the truth.

Q Everything you wrote that night was the truth, wasn't it, as far as you know?

A As far as anything to me.

Q As far as anything you did that was the truth, wasn't it?
A That was the truth.

Q Will you look at this statement and read it and see if that is your statement (hands paper to witness). Is that your handwriting?

A I don't know, sir, yet.

Q How many lines do you have to read before you find out whether it is your handwriting.

Defense: You asked him to read it. Let him read it.

Assistant Trial Judge Advocate: I asked him to look at it.

Defense: Well, he is looking at it.

Q Let me ask you Corporal, if you read enough to find out whether or not it is your handwriting?

A I will have to read it all before I find out whether it is my handwriting. Might not be my handwriting on the other side.

Q Corporal, was the side you just finished reading your handwriting?

A This here, sir (indicating)--

Q Answer my question. Was the side you finished your handwriting?

A Yes, sir.

Q Will you read the other side and see if it is your handwriting?

A The reason it took me so long, sir, I misspelled some words on here and I have to make them out. Yes, sir.

Q Have you finished reading the second side, Corporal?

A Yes, sir.

Q Is that your handwriting?

A Yes, sir.

Q All of it?

A All but I got up and put on my pants, because I already had on my pants.

Q Is that in your handwriting; are those words in your handwriting?

A All but this right here (indicating).

Q Those words aren't in your handwriting?

A Right here (indicating).

Q Those are not in your handwriting, is that what you mean to say?

A That is what I mean to say, sir. "Putting on my pants" that is not in my handwriting.

Q Doesn't that look like the rest of the handwriting; aren't those words the same?

A No, sir, they are not the same; that is not in my handwriting.

Q That is not in your handwriting?

A That's right.

Q Who do you suppose put it there?

A I don't know, sir.

Q Is this your signature?

A That is my signature.

Q And your serial number?

A That is my serial number

Q And you wrote all that is on the first side of it, front side?

A That's right, sir.

Q And all that is on the second side?

A That's right, sir.

Q Except the words what?

A "On my pants"

Q On my pants?

A Yes.

Q Those words are not in your handwriting?

A That's not in my handwriting.

Assistant Trial Judge Advocate: (To reporter) Will you mark this. I think it is Prosecution Exhibit 45 by the

A paper was then marked Prosecution Exhibit 45 by the reporter.

President: You want to continue your cross-examination now or take a recess.

Trial Judge Advocate: Whichever the Court prefers.

President: Well, it is up to you. You are cross-examining.

Assistant Trial Judge Advocate: I am just waiting until Defense Counsel looked at the statement.

Defense: I will agree with something that has been said. There are a few misspelled words.

Trial Judge Advocate: We don't offer it as a literary gem. We offer it as a statement.

Defense: I am not so sure it isn't a literary gem.

President: I think we will take a recess for fifteen minutes.

The Court thereupon recessed at 3:00 p.m., and reconvened at 3:20 o'clock p.m., 11 December 1944.

President: Is the prosecution ready?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready?

Defense: The defense is ready, sir.

President: The Court will come to order.

Assistant Trial Judge Advocate: Let the record show the members of the Court are present, the personnel of the defense and the prosecution, and all of the accused are present.

T-5 Arthur L. Stone, a witness for the defense, was recalled and testified further as follows:

CROSS-EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q Corporal Stone, you are reminded you are still under oath.

A Yes, sir.

Assistant Trial Judge Advocate: If the Court please, I will offer this exhibit. I understand there is no objection.

Defense: There is no objection.

Law Member: Stone's statement is received in evidence as Prosecution Exhibit No. 45.

The statement was then marked Prosecution Exhibit 45 and received in evidence.

Assistant Trial Judge Advocate: I will read it to the Court after a question or two.

Q Corporal, I believe you testified previously on direct examination that you went to bed and went to sleep with your pants on?

A Yes, sir.

Q And then you were awakened by the noise outside, is that correct?

A Yes, sir.

Q How long did it take you to go to sleep?

A I just fell right to sleep.

Q Right away?

A Yes, sir.

Q Within a minute?

A I wouldn't know, sir, about any minute. When I went to bed I fell asleep because I had been out the other night all night just about and had been drinking a little bit and I was feeling druggy, sir.

Q You were feeling druggy?

A Yes, sir.

Assistant Trial Judge Advocate: This is Prosecution Exhibit 45; I will read it.

The Assistant Trial Judge Advocate then read Prosecution Exhibit to the Court.

Defense: There is no objection.

Assistant Trial Judge Advocate: A typewritten copy of the statement just read, which is Prosecution Exhibit 45, is furnished by the Court.

Law Member: That will be marked 45 too.

Q Corporal Stone, do you know Jesse Sims?

A I don't know him very good, sir.

Q How long have you known him?

A I don't exactly know, sir, how long I knowed him.

Q Did you know him before August 14, 1944?

A I think I did, sir, but I didn't know him very good. I just knowed him by his face.

Defense: Speak up so the Court can hear.

A I think I did, sir, but I didn't know him very good. I just knowed him by his face.

Q How long had he been in the company with you before August 14, 1944?

A I don't know, sir.

Q Did you ever have any trouble with him?

A No, sir.

Q Did you know Willie Ellis?

A Yes, sir, I know him.

Q How long have you known Willie Ellis?

A I don't know whether he was there when the company organized or not, I imagine so; I don't know, sir.

Q You have known him long enough to have forgotten when you first met him?

A Sir?

Q You have known him long enough to have forgotten when you first saw him, first knew him; it has been quite a while ago you knew him first, wasn't it?

A Oh, yes, sir.

Q Quite a while before August 14, wasn't it?

A Yes, sir.

Q Did you ever have any trouble with him?

A No, sir.

Q Did you hear him testify that you were standing near the window of the orderly room in the Italian area?

A Yes, sir.

Q Did you hear Willis Ellis testify that he saw you go into room X and then in room Z in the orderly room of the Italian area?

A Yes, sir.

Q You knew Sergeant Gresham before August 14, 1944, didn't you?

A Yes, sir, we come in together.

Q You knew him quite well, didn't you?

A Not quite well. I knowed him

Q You heard him testify here?

A Yes, sir.

Q You heard him say that he saw you in the orderly room when he arrived?

A Yes, sir.

Q Do you know Corporal King: did you know him before August 14, 1944?

A Yes, sir.

Q Did you hear him testify that he saw you leave the orderly room in the Italian area?

A I just remember what he said, sir. I don't know exactly what he said-- testified against.

Q It was in connection with you in the orderly room, in the Italian area, wasn't it?

A Yes, sir, something like that.

Q Did you have any other civilian occupation than metal tester and whatever else it was?

A It was a welder.

Q Did you have any other civilian occupation?

A No, sir. If I couldn't get the job I was trained for or wanted, I would get any kind of work instead of being out in the street.

Q Did you ever do any prize fighting?

A Yes, sir.

Q How much prize fighting did you do?

A I done quite a little bit in the amateur.

Q Amateur standing?

A Yes, sir.

Q No professional fighting?

A No, sir, no, sir.

Q You were pretty handy with your fists, is that right?

A I wouldn't know, sir.

Q Have you ever won any championships?

A I wouldn't say I win any--won any, sir--because four or five of us boys fought up there at Fort Lawton and the company commander gave us a medal of some kind

Q You won a medal at Fort Lawton for prize fighting, is that right?

A Yes, sir.

Q I show you prosecution Exhibit 4I, which is a piece of metal and I will ask you if you can tell me if you know what it is. Just take it in your hands.

A Something out of a GI bed.

Q Part of a GI bed?

A Yes, sir.

Q Can you tell me without any instruments just how hard that is?

A It is pretty hard, sir.

Q Pretty heavy?

Law Member: What is the exhibit number?

Assistant Trial Judge Advocate: 4I

Q Did you see any of these on the night of August 14, 1944?

A No, sir.

Q It is the same kind of legs you had on your bunk?

A No, sir, we had wooden legs.

Assistant Trial Judge Advocate: That is all.

President: Any redirect?

Defense: Yes.

REDIRECT EXAMINATION

Questions by Defense:

Q Corporal Stone, the boxing you did here at Fort Lawton, that was of amateur variety, was it not?

A Yes, sir, it was amateur fighting.

Q Was that down here in the regular gymnasium where they used to hold boxing matches once a week?

Q No, sir, it was up here. Up here-- yes, sir, it was up here at the gymnasium.

Defense: That is all.

RECROSS-EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q Did you ever do any prize fighting before you got to Fort Lawton?

A Not much only when I was a kid. Used to fight a little; not much.

President: Any questions by the Court? There appear to be none. That will be all, Corporal Stone.

There being no further questions the witness was excused and resumed his seat as one of the accused.

Assistant Defense: We will call Nathaniel Spencer.

Law Member: You were on the stand before, weren't you, Spencer?

Corporal Spencer: Yes, sir.

Law Member: You remember the advise I gave you before when you took the stand?

Corporal Spencer: Yes, sir.

Law Member: And you fully understand your rights?

Corporal Spencer: Yes, sir.

Law Member: You have talked it over with your counsel?

Corporal Spencer: Yes, sir.

Law Member: And you wish to be sworn as a witness?

Corporal Spencer: Yes, sir.

Defense: He has already been sworn.

Trial Judge Advocate: You are just being advised you are still under oath.

Corporal Spencer: Yes, sir.

T-5 Nathaniel T. Spencer, a witness for the defense, was recalled and testified further, as follows:

REDIRECT EXAMINATION

Questions by Defense:

Q How old are you, Corporal?

A 33, sir.

Q And are you married?

A Yes, sir.

Law Member: How old is he, please?

Defense: 33.

Q What was your civilian occupation?

A I was a checker at the U. S. Rubber Company.

Q U. S. Rubber Company?

A Yes, sir.

Q Whereabouts?

A Detroit, Michigan.

Q When were you inducted into the military service?

A February 3, 1944

Q Have you seen any overseas service since you have been in the Army, Spencer?

A Yes, sir.

Q Without indicating the particular place where you were, what theatre of operations was that in?

A In the Southwest Pacific, sir.

Q And when did you go to the Southwest Pacific--about when?

A It was August 27, I think.

Q Then you came back just recently?

A Yes, sir.

Q Calling your attention to the night of August 14 of this year, which was the night that there was difficulty between colored soldiers and the Italians, I will ask you what barracks you occupied.

A 719, sir.

Q Upstairs or downstairs?

A Upstairs in the rear.

Q Whereabouts were you that evening, Corporal, when you first learned of difficulty between the colored soldiers and the Italians?

A Well, I was in the back of the barracks playing poker.

Q Playing poker?

A Yes, sir.

Q Well, now, just go ahead and tell the Court just what happened after you were playing poker there and it was called to your attention that something unusual was taking place?

A Well, we heard a lot of noise outside and some of the fellows in the barracks, they went downstairs then, and we kept on playing poker. Then we heard somebody come upstairs and say Montgomery had gotten knocked out. Some more of the fellows went downstairs and we would have went, I guess but we were busy in the poker game. Then I heard somebody come up and say, "Everybody out". I don't know who that was, but somebody say, "Everybody out," and we still set down there. We didn't pay no attention to it. We knowed there was a fight going on but we thought it was just between two or three soldiers-- two or three regular soldiers fighting in the street.

Q Did you see Sergeant Gresham up there that evening?

A Yes, sir, I saw him when he came in and he was talking to Richard Barber, and he was getting after Richard Barber about not falling out and I heard that. Then I guess about five minutes later a whistle was blown. I don't know who blew it.

Q Had you heard a whistle before that time?

A The first whistle I heard. I heard there was one blown, but I didn't hear it. The first one I heard. So when the whistle was blown it looked like everybody was up there in the barracks stood up then and fell out. When I fell out, when I got around to the bottom of the stairs, I saw men from all the rest of them running down towards the Italian area.

Law Member: Towards what?

The Witness: The Italian area.

Q Did you go down yourself?

A Yes sir, because I had been down there once before when the whistle was blown and stopped the Italians. I thought it was was the same thing over again. Well, it was awful dark. It was awful dark and I was afraid because I heard by that time, I heard somebody even got killed, and then I heard some of the men had been drugged down there and were getting beat up. I was afraid to go down there because it was awful dark, so --

Q Go ahead.

A --(continuing) so I started on down the road and some men was coming back from the area, some men were going towards the area, and some of them were running and some of them were walking, but I was half running and half walking because I didn't know exactly where I was going. I was headed to the north and the closer I got to the north it seemed like just like more hand to hand combat and fighting. I didn't hear no hollering. You hear more this other noise just like men were fighting, and I was looking trying to see what I could see, and the first man I seen was one of the accused here.

Law Member: What is that?

The witness: He is on trial now. The first man I seen down there was one of the accused here.

Q All right. Then what did you do?

A Well, him and another soldier, a white soldier, were together and I thought they was fighting, I thought they were tussling, fighting one another, because they were that close together; and I intended to help him. It was my intention to help him fight because I thought some of our boys were drugged down and getting whipped. Well, I went down to help them out. I had nothing in my hand, nothing at all, so I knew I needed something to fight with and I looked around and I saw a stick about a foot long.

Q How thick was it?

A Oh, it wasn't big enough to fight with. It wasn't the size. I would pick on, really. Just the first thing I seen.

Q Where did you find that?

A On the ground, on the pathway.

Q Well, come over here Spencer, and look at this map which is Prosecution Exhibit 2. Are you familiar with this now from the explanation you have heard?

A Yes, sir, I been in the Court; I am familiar with it.

Q You understand this is barracks 719 here (indicating)?

A Yes, sir.

Q And this is the mess hall of the 578th Port Company, Building No. 700; you understand that?

A Yes, sir.

Q And you understand this area bounded by Wyoming Avenue and Lawton Road is the Italian area?

A Yes, sir.

Q Now, back over here so you don't block the Court's view and show them about where it was that you picked up this stick to help out this other boy you saw?

A It must have been right at this barracks 709.

Q Well, were you in the road or inside the Italian area?
A I never got off the road.

Q you were in the road all the time?
A Yes, sir.

Q Well, who was this other boy you were seeking to help?
A Corporal Johnnie Ceaser.

Q Did you help him?
A No, sir. When I picked up the stick I was going to hit over his shoulder at this soldier I thought was Italian, and he stuck his arm out and stopped the lick and he said, "No this is an American soldier."

Q Who did that ?
A Johnnie Ceaser did that.

Q And then what did you do?
A By that time I heard something sounded like a shot. I thought they were shooting down there at me.

Q And what did you do?
A And by then I saw Johnnie Ceaser--I saw John Pinkney and another white M.P. say, "Break it up," and a jeep coming down the road; so Johnnie Ceaser and myself came on back up to the area, to the colored area.

Q Back up to your barracks?
A Yes, sir.

Q Did you go into your barracks?
A I stood out there a little while and I had an arguement out there before I went in, and then I went in.

Q You say you stood out there. Where did you stand?
A I stood in front of barracks 7I9.

Q Now, I want you to tell this Court whether or not you ever got any closer that night to the orderly room than you have indicated on Prosecution Exhibit 2.
A I did not, sir.

Q I want you to tell this Court, Corporal, whether or not you at any time ever said to Willie Ellis or anyone else, "We had ourselves a ball", or words to that effect?
A No, sir, I did not.

Q I want you to tell this Court, Corporal, whether or not you at any time that night struck an Italian?
A I did not hit a man, sir.

Q I want you to tell this Court whether or not you at any time that night damaged Government property down there?

A No, sir, I did not

Defense: You may examine.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q It wasn't your fault you didn't hit one?

A No, sir, it was not.

Q You did your best to hit one?

A It was my intention to hit someone.

Q You took a swing and you say Johnny Ceaser warded off the blow?

A Yes, sir.

Q If it hadn't been for Johnny Ceaser warding off the blow you would have struck him?

A Yes, sir.

Q So you don't claim any credit for not hitting one, do you?

A Well, yes, sir, I didn't hit one.

Q But Johnny Ceaser deserves the credit for that and not you.

A Yes, sir.

Q All right. Who were you playing poker with that night?

A Oh, a bunch of fellows in the barracks. We had been playing since early dark and off and on different fellows playing.

Q All right. Tell us now who you were playing poker with; that is the question.

A Well, a fellow by the name of William Wilson, a fellow by the name of Corporal Milton Fuqua.

Q Who else?

A And a couple of fellows from 578th Company. I don't know their names.

Q Who else?

A That is about all I can recall at the time.

Q When you heard this whistle blow did you then go downstairs?

A Yes, sir.

Q Did you hear somebody say, "Everybody out"?

A Yes, sir.

Q Were you the only one that went downstairs or did those playing poker with you also go downstairs?

A I don't know, sir. I thought everybody went.

Q As far as you know everybody you were playing poker with went downstairs?

A Yes, sir, as far as I know.

Q Now, James Coverson was one of those playing poker with you?

A Yes, sir.

Q You haven't mentioned him.

A You said who was playing poker with me at that time. That is what I thought I answered you.

Q When was he playing poker with you?

A Early part of the evening.

Q Who was playing poker with you at that time?

A I called the names.

Q And you can't think of anybody else?

A At the time?

Q At the time.

A That is all; I called the four names.

Law Member: At the time of the whistle that is , now?

The Witness: Yes, sir.

Q What four names did you call?

A Milton Fuqua, and William Wilson, and two soldiers from the 578th that I don't know the names.

Q Well, you didn't know their names, did you?

A Well, best I knowed.

Q You called the names of only two, Wilson and Fuqua?

A Yes, sir.

Q Who did you play poker with earlier in the evening?

A Well, everybody in the barracks has played, I guess, off and on.

Q Who do you remember you played with?

A Well, I remember playing with Coverson earlier, and playing with--I can't think of their names now. I remember playing with--I can't think of their names now.

Q Oh, all right. Do you remember what you said in your written statement as to why you went down into that Italian area?

A Well, no, sir, I don't; not exactly.

Q Well, whatever you said in that written statement was the truth, wasn't it?

A To the best of my knowledge, sir.

Q That is the first statement you made to anybody about this whole matter, wasn't it ?

A Yes, sir.

- Q Didn't you say in that statement that the reason you went down there was that you heard that your buddies were down there and needed help?
- A Yes, sir, I heard that. I said that.
- Q And that was the reason you went down there?
- A I went down there because the whistle blew and I heard my buddies were down there and needed help. That is the reason. That is what I thought I said in my statement.
- Q When you went downstairs you saw men running down to the Italian area from all directions?
- A yes, sir.
- Q Quite a few of them. Who was that kept saying, "Everybody out"?
- A I don't know, sir.
- Q Are you sure you don't know who kept saying, "Everybody out"?
- A I am positive.
- Q How many times did he say it?
- A I heard once.
- Q What did you mean in your written statement when you said somebody kept saying, "Everybody Out"?
- A Well, I guess different ones were saying it, but I heard one loud voice say, "Everybody out"?
- Q You didn't say in your statement someone said, "Everybody out"?
- A Well, the statement could be wrong then.
- Q Well, is it wrong or is it right?
- A What I am telling you is the truth.
- Q Didn't you say the truth when you made this statement in your own handwriting?
- A To the best of my knowledge, sir.
- Q And in that statement you said someone kept saying, "Everybody out"?
- A Well, I meant to say someone say, "Everybody out" ;oud. One man say that I know, and I kept hearing it over and over again, "Everybody out".
- Q Oh, you did hear it said over and over again, "Everybody out".
- A I don't know, sir. I couldn't give you a name.
- Q Now, you started running down there because you say that your

- buddies needed help?
- A Yes, sir.
- Q you heard the whistle blow and your buddies needed help?
- A Yes, sir.
- Q You say you didn't take anything along until after you got down there?
- A That's true.
- Q How did you expect to help your buddies when you didn't have anything with you?
- A I often wondered that myself.
- Q Yes, I am sure you did, And you didn't pick up anything until after you got down there?
- A Not until then.

Trial Judge Advocate: I believe that is all.

Defense: I have no further questions.

President: Any questions by the Court?

Law Member: May I see that statement?

Defense: Yes; surely.

Law Member: 33

Trial Judge Advocate: I have the one. Here it is, sir.
(handing the paper to the Law Member)

EXAMINATION BY THE COURT

Questions by Major Crocker:

- Q Did understand you to say Johnnie Ceaser was talking with the white soldier or was fighting?
- A I thought he was fighting, but he was helping him, sir.

Law Member: He was what?

The Witness: He was helping him; he was bringing him out of the area.

- Q You didn't see the white soldier raising his hand or doing anything of that kind?
- A No, sir, I never see where one raised a hand. They were together in a clinch. I thought they were fighting, wrestling.

Questions by Law Member:

- Q How soon after that occurred, Spencer, did you return with

Ceaser to your barracks?

A I came straight back to my barracks, sir.

Q And Ceaser went up with you?

A Yes, sir, he did.

Q What happened to the boy he was helping?

A I think it was the third party with Ceaser--I couldn't tell you--but I think he took over.

REDIRECT EXAMINATION

Questions by Defense:

Q I don't know that I clearly understood your response to the Court's question. Did you tell the Court Ceaser was helping this white American soldier?

A yes, sir, he was helping him.

Defense: That is all.

RECROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q Well, you thought he was fighting, didn't you?

A Yes, sir.

Q Who was this white soldier?

A I don't know, sir.

Q You have seen some noncommissioned officers come in here and testify who were hurt down in the Italian area that night; some American white noncommissioned officers?

A yes, sir.

Q Any of those men that came in here and testified, were they any of those?

A I don't know, sir.

Q Well, you walked up to the barracks with them, you said?

A I walked up with Johnny Ceaser.

Q Well, did Johnny Ceaser turn this man loose immediately after you took a swipe at him?

A Yes, sir. He was talking to me,; he told me, he said, "They are not fighting anymore."

Q Oh, they were through fighting. And that is the reason you went back to your barracks?

A I don't know.

Trial Judge Advocate: That is all.

Defense: No further questions.

Law Member: Did you say you had a question?

Defense: No, no further questions.

EXAMINATION BY THE COURT

Questions by Major Carpenter:

Q Was the white soldier with Johnny Geaser an M.P. ?

A No, sir, he was not an M.P.

Q: He was not?

A NO, sir.

Major Carpenter: That is all.

President: The witness may be excused. That is all.

There being no further questions the witness was excused and resumed his seat as one of the accused.

Pfc. Milton D. Bratton, Headquarters and Headquarters Detachment No. 2, Camp George Jordan, A witness for the defense; was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: Milton D. Bratton.

Trial Judge Advocate:

Trial Judge Advocate: And your grade.

The Witness: Private 1st class.

Defense: Speak up.

Law Member: Who is this now?

Trial Judge Advocate: Milton D. Bratton.

The Witness: Yes, sir.

Trial Judge Advocate: And your organization.

The Witness: Headquarters and Headquarters Detachment 2, Camp Jordan, formerly 650th Port Company, Fort Lawton.

Trial Judge Advocate: You are not one of the accused in this case?

The Witness: Not at present.

Trial Judge Advocate: You were at one time?

The Witness: Yes, sir.

Trial Judge Advocate: That is all.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you, Bratton?

A 32, sir.

Law Member: Speak up.

The Witness: 32.

Law Member: That is the way to talk .

Q Are you married?

A Yes, sir.

Q Have a family?

A Yes, sir.

Q What does your family consist of ?

Trial Judge Advocate: Those are strange questions to ask a witness. No need to go into all that.

Defense: I usually like to know whether a man is a family man or not a family man.

Trial Judge Advocate: I can't see where it makes any difference with a witness.

Law Member: The objection is overruled.

A Two boys and one girl, and a wife.

Q What was your civilian occupation, Private Bratton?

A For 14 months prior to entering the Army I worked in a small arms plant, and for six years before that I was captain of waiters at the Elms Hotel.

Q Where is that?

A Excelsior Springs, Missouri.

Q When you were captain of the waiters there how many did you have under your supervision?

A Around forty regularly. Sometimes about thirty more for conventions.

Q When were you inducted into the military service?

A In January, 1944.

Q And on August 14 of this year you were a member of the 650th?

A yes, sir.

Q What barracks, Bratton, did you occupy?

A 719.

Q Barracks 719?

A yes, sir.

Q And in what part of the barracks did you live?

A I lived near to the front on the right-hand side facing the street.

Law Member: Upstairs or downstairs?

The Witness: Upstairs.

Q Calling your attention to the night of August 14 which is the night there was some trouble between the colored soldiers and the Italians, what time did you go to bed?

A I don't know approximately, but the nearest I can estimate was somewhere between 9:30 and 10:00.

Q Now, after you went to bed and were asleep, were you awakened by anyone?

A Yes, sir.

Q Who was that?

A The first time I was awakened by Charles Chandler.

Q And what was the occasion of his awakening you?

A His mother, whom he had been wanting me to meet, was in front of the barracks.

Q Did you meet his mother?

A No, sir, I had a headache at the time and I excused myself because I didn't want to dress.

Q Did he borrow anything from you?

A He borrowed my field jacket, yes, sir. to wear to the bus stop with his mother.

Q Well, after Chandler left you what did you do?

A I went back to sleep.

Q Were you awakened by anyone?

A Yes, sir, I was awakened by William A. Wilson who sleeps over me.

Q Now during the time that Chandler borrowed your field jacket and the time you were awakened by William A. Wilson were you asleep during that period of time or were you awake any of it?

A I was asleep, sir.

Q Did anything come to your attention when William A. Wilson awakened you?

A He awakened me in this manner. He told me to get up and put my clothes on, and I asked him why should I get up and put my clothes on, and he said there was trouble and the Italians may come up there. I asked him why should the Italians come up there, and he said they had knocked out two of our boys and they had gone to fight them.

Q Well, did you get up and put your clothes on?

A I didn't put my clothes on. I got up and looked out the window.

Q Well, did you have occasion about this time to have conversation with anyone else?

A After I looked out the window I couldn't see anything but the lights of the mess hall so I got back in bed. At that time Fred Brown, who sleeps next to me, had come into the barracks and was talking about going into the area. Wilson was remonstrating with him and asked me to say a word.

Q Did you say a word?

A Yes, sir. And about this time the boys who sleep across the aisle from us also were having a conversation, speaking about how they would like to be at home and how they would be on the train the next day, and like that.

Q Do you know Booker Townsell, one of the accused in this case?

A Yes, sir. He was the most dominant voice in the conversation across the aisle.

Q Across the aisle?

A Yes, sir.

Q Well, I want you to tell the Court where Booker Townsell was that evening.

A He was in bed as I remember it. Just seen his head, which he had just freshly shaven, sticking out from under one of the blankets.

Q Was he a participant in this conversation you have just told the Court about?

A He was having a conversation with the boys who were sleeping around him.

Q Well, where was Booker Townsell at the time William A. Wilson suggested that you had better get up and dress?

A He was in bed at the time.

Q And when did this conversation that you heard Booker Townsell engage in take place with respect to the time you

Q got up and went over to the window to look out?
A That was while I was at the window, coming back and getting in bed.

Q Now, after you got back and got into bed again, what did you do then, Bratton; did you go right to sleep or did you talk for a while?

A After I finished talking to Brown and he decided not to go, I went back to sleep.

Q You went back to sleep?

A Yes, sir.

Q Now up to the time that you went back to sleep there, where was Booker Townsell?

A He was in bed.

Q Defense: You may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q You don't know whether or not Booker Townsell got up from bed when you were asleep or not, of course?

A No, sir, being asleep

Q And you were just awake, as I believe you have testified, about ten minutes.

A Yes, sir, roughly.

Q And at the time you were awake those ten minutes what did you hear or see?

A You mean conversation?

Q No, I mean noise or anything like that outside?

A Oh, there wasn't much noise outside.

Q There wasn't much noise. You don't know when this riot occurred down in the area; I mean as to hours?

A No, sir.

Q You don't know whether the fight was on at the time you saw Booker Townsell or not?

A I don't know whether the fight was on, no, sir.

Q And all you know is that night Booker Townsell was in bed during that time when you were awake?

A Yes, sir.

Q And that was about ten minutes?

A Yes, sir.

Q Now, about what time of the night was it when you saw James Chandler?

A I haven't any idea. See, I had gone to sleep, and awakened, and gone to sleep again.

Q You went to sleep pretty early the first time, didn't you?

A Well, I left the mess hall around 9:00 and it was some time after that,

Q Pretty shortly after that?

A No, sir. I had gotten my gear into shape so all I had to do -- together for the next day's trip.

Q Was it thirty minutes after you went sleep?

A I estimate it was, sir.

Q So it would be around 9:30 would be your guess?

A I haven't any idea. It was somewhere in that neighborhood.

Q In that neighborhood. And you don't know how long you had been asleep?

A No, sir.

Q When you saw James Chandler?

A No, sir.

Q Could have been a few minutes, could have been an hour?

A I haven't any idea.

Q Did you see James Chandler anymore that night?

A No, sir.

Q Do you know when he returned your field jacket to you?

A It was there when I got up the next morning. See, it hangs at the foot of my bed.

Q Did you notice anything peculiar about that field jacket?

A No, sir.

Q Did you examine it to see whether it had any stains?

A No, sir, I had no reason.

Q Now, lets see. I believe those were the two you mentioned, wasn't it, Booker Townsell And Chandler?

A Yes, sir.

Trial Judge Advocate: I believe that is all.

Defense: I have no further questions.

President: Any questions by the Court?

EXAMINATION BY THE COURT

Questions by President:

Q Bratton, You said that somebody came into the barracks and

wanted to go out, and they argued with him about not going out. Who was that man that came into the barracks?

A Fred Brown.

Q Fred Brown?

A Yes, sir.

Q That is not the Brown that is accused here?

A No, sir.

President: The witness may be excused.

Defense:

Defense: Can he be permanently excused?

Trial Judge Advocate: I see no reason why not. If so, we can call him again.

Defense: Yes.

There being no further questions, the witness was excused and withdrew.

Assistant Defense: We will call Booker Townsell.

Law Member: Has he been on before?

Defense: No.

Law Member: Private Townsell, it is my duty to explain to you have certain rights which you have here as an accused in a military court-martial. First you may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness by both the prosecution and the members of the Court. Or you may make an unsworn statement in denial, explanation or extenuation of the offense charged. That unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word but will be given such consideration as the Court may see fit, and you cannot be cross-examined on anything contained therein or, lastly, you may remain silent and not make any statement, sworn or unsworn, and the fact that you do remain silent cannot be considered against you. Do you understand that, Townsell?

Private Townsell: Yes, sir.

Law Member: Is there any further explanation you want?

Private Townsell: No, sir.

Law Member: Have you talked it over with your counsel, Major Beeks?

Private Townsell: Yes, sir.

Law Member: And have you decided what you want to do?

Private Townsell: Yes, sir.

Law Member: And that is to be sworn as a witness?

Private Townsell: Yes, sir.

Law Member: All Right.

Private Booker Townsell, 650th Port Company, a witness for The defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The Witness: Private Booker Townsell.

Trial Judge Advocate: And your organization.

The Witness: 650th Port Company.

Trial Judge Advocate: And your station?

The Witness: Fort Lawton, Washington.

Trial Judge Advocate: You are one of the accused in this case?

The Witness: Yes, sir.

DIRECT EXAMINATION

Questions by Defense:

Q Speak up louder than that, Townsell.

A Yes, sir.

Q All right. The Court wants to hear you. Speak up loudly so they can all hear you. How old are you?

A 29. Be 30 the 15th of February.

Q Are you married?

A Yes, sir.

Q Any children?

A Two.

Q And where is your home?

A My native home where I was born?

Q Your home at the time you were inducted into the service?

A Milwaukee, Wisconsin.

Q And what type of civilian occupation did you have before

you came into the Army?
A I was a sandblaster in a defense plant.

Q Sandblaster in a defense plant?
A Yes, sir.

Q When were you inducted into the Army?
A In 1943

Q 1943?
A Yes, sir.

Q Now what barracks did you occupy, Townsell, as a member of the 650th Port Company on August 14 of this year?
A 719.

Q 719. You slept upstairs?
A Yes, sir.

Q Where did you sleep with reference to Milton Bratton?
A Well, I slept in the first bed as you come upstairs, on the right-hand side as you come upstairs, and Bratton slept about the third bed, third or fourth bed on the right-hand side also going down. I slept on one side and he slept on the other. It was right across.

Q What time did you go to bed that night?
A I went to bed between 8:30 and 9:00.

Q You went to bed between 8:30 and 9:00?
A Yes, sir.

Q Well, do you have any idea about what time it was you went to sleep there after?
A No, sir, I don't exactly. I couldn't say exactly what time I went to sleep.

Q Well, tell the Court whether or not after you went to bed you ever got up that evening?
A No, sir, I did not.

Q Never got up anytime?
A No, sir,

Q Well, after you went to bed and sleep that evening did you ever at anytime awaken thereafter?
A Yes, sir, I was awakened that night. I don't know exactly what time it was, butt I awakened.

Q Who awakened you?
A When I first awakened it was the OD and a Lieutenant and our 1st Sergeant was in the barracks. That is when I first awakened up.

Q Well, did you have any conversation that evening with anyone

- after Milton Bratton had come to bed?
- A Yes, sir, I think Milton was in--I don't know exactly whether he was in bed, but J. D. Horton and me we did lay awake and talk awhile before we went sleep.
- Q Did you have any conversation with a man by the name of Terrell?
- A John Terrell? Yes, sir, he and I carried on all the time. he slept up over me and I slept underneath him.
- Q Well, I want you to tell the Court now, Townsell, whether or not at any time on the night of August 14 you were down in the Italian area?
- A NO, sir, I was not.
- Q I want you also to tell the Court whether or not you at any time ever made the statement to anyone that you got the first Italian that was hit.
- A No, sir, never did.
- Q Now, did you go through the show-up at Camp Jordan shortly after August 14?
- A Yes, sir, I did.
- Q Do you know Sergeant Todde?
- A Yes, sir.
- Q You saw him in this room?
- A Yes, sir.
- Q Was he present down there at the first show-up?
- A I am not positive, but I don't remember seeing him at all.
- Q Were you identified by anyone down there?
- A Yes, sir, that civilian guy. I don't know his name. He was in here the other day; he is the one pulled me out of the line.
- Q He pulled you out of the line?
- A Yes, sir.
- Q When was the first time you were identified by anyone to your knowledge?
- A The first time I was identified by anyone to my knowledge was the second time I was questioned down in Major Manchester's.
- Q Major Manchester's office?
- A Yes, sir.
- Q Who identified you at that time.
- A This same Italian identified me here.
- Q Any other colored soldier in the room?
- A I was the onliest one.

Q you were the only one?

A Yes, sir.

Q Well, did that Sergeant Todde have occasion to see you anytime again at a later date?

A Well, I have been before him three times since then. Excuse me; other than the time I saw him here.

Q Did he identify you at any of those other times?

A No, sir.

Q Well, tell the Court whether or not on those other show-ups he was asked whether or not you were the man?

A He wasn't asked exactly whether I was the man, but the Lt. Colonel Williams told all of them--he wasn't speaking directly to him, he told all of them--there were seven or eight of us in the room together--and he told about twelve of them, and he say, "If anybody you all see in that line you think would be doing any harm was down there -- you don't have to know exactly--but think would be doing any harm, he was there, pick him out." Well, I was there in the line. This Sergeant Todde, he was there too. They couldn't identify me at all then. And the next time we had the show-up Colonel Williams had them up in the mess hall at the back of the stockade and had all of us to come by and stop and let them look us all over, turn around and back and he still couldn't identify. So he never identified me anymore until he identified me here.

Q In Court?

A Yes, sir.

Defense: You may examine, Counsel.

CROSS-EXAMINATION

Questions by Trial Judge Advocate:

Q This first time that you were pulled out of the show-up you don't know whether you were identified or not, do you?

A That civilian pulled me out. Of course I was watching for anybody to see if anybody could identify me, because I know I hadn't been down there and I didn't think what I would be pulled out of the line. So I was looking, watching, to see who would identify me. That civilian is the onliest man say anything to me at all.

Q And you didn't hear the conversation that went on between the Italians and civilians that were seated there, did you?

A The Italians?

Q Yes.

A I couldn't understand anything they said if I had heard them.

Q No, you couldn't have. So you don't know whether one identified you or not?

A I don't think they did.

Q Well, you just think but you don't know?

A I don't believe they did.

Q Well, that is just your guess?

A That is my belief.

Q What was it you said to Major Manchester when he told you that you had been identified by an Italian?

A I told him I had never been identified by one.

Q And you said you wished you had gone out and killed all of them?

A After Major Manchester tried to make him say that he saw me and after he said he saw me down there, I told him I might just as well have been down there because I wouldn't have anymore did to me than I was getting up there.

Q And killed all of them; wasn't that what you said?

A I didn't say anything about killing of them.

Q No?

A No, sir. It wasn't in my statement that I would kill--

Q The fact remains that you were with several hundred colored soldiers in this show-up and that you were pulled out of that show-up?

A Yes, sir, I was pulled out.

Q All right. Now, when you appeared there another time you said some seven or eight other negro soldiers were present?

A There were seven or eight of us. I disremember.

Q You don't know what instructions had been given to the identifying witnesses at that time, do you?

A Instructions had been given before we got there.

Q Yes; as to what they were to say in your presence?

A They identified three boys there.

Q Yes.

A I don't know what they had told them before we got there, but they did identify three boys.

Q How well does Alvin Clarke know you?

A He knows me. Just know me by being in the company.

Q You don't think he would have any trouble identifying you, do you?

A No, sir, I don't think he would.

Q How well does Willie Ellis know you?

A Knows me just like Alvin Clarke does.

Q You don't think he would have any trouble identifying you?

A No, sir, I don't guess he would.

Q How well does Sergeant Gresham know you?

A He knows me very well.

Q He wouldn't have any trouble identifying you?

A No, sir, I guess he wouldn't.

Q Now, what time did you get to your barracks that night?

A Well, I don't know exact, but around 7:00; maybe a little after 7:00, because it was right at 7:00 before I came off a detail.

Q And what barracks did you sleep in?

A 7I9.

Q Upstairs or downstairs?

A Upstairs.

Q All right. At about what time did you go to bed?

A Between 8:30 and 9:00.

Q Between 8:30 and 9:00?

A Yes, sir.

Q And did you fall asleep pretty promptly?

A No, sir, I didn't go right to sleep. I laid there and talked a few moments.

Q Who did you talk with?

A I talked with J. D. Horton; also John Terrell.

Q And about how long did you talk with them?

A Well, I couldn't estimate on that.

Q Well, thirty minutes or an hour?

A I wouldn't know, sir

Q Well, ten-fifteen minutes?

A I wouldn't know.

Q Could it have been as long as an hour?

A I wouldn't say.

Q Well, could it have been as long as an hour?

A I wouldn't say because I don't know exactly how long I talked.

Q Well, was it a very short period of time or was it a long period of time?

A I talked with them a few minutes I know.

Q Just a few minutes.

A I say I talked with them a few minutes that I know.

Q A few minutes. That wouldn't have been as long as an hour

A I don't know sir, exactly how long it was. I didn't have no watch.

Q And you are afraid to estimate, are you?

A Not afraid to estimate but before I tell a lie I wouldn't testify anything--

Q I am sure of that, but you certainly are willing to tell this Court whether it could have been as long as an hour or not, aren't you?

A Well, I would be afraid to say

Q You would be afraid to say?

A Yes, sir.

Q Well, you were questioned about it once before and you weren't afraid to say.

A I never talked about how long we talked.

Q I will ask you if you weren't questioned by Colonel Williams on the 30th of September 1944; weren't you?

A Yes, sir.

Q Yes, all right, And at that time didn't Colonel Williams ask you this question: "Previous to that time what did you do?" and didn't you answer: "Well, I got off detail loading stuff on a train and when I got through I ate supper and take a shower and pack my barracks bag between 8:20 and 9:00, and went to bed". That was your answer.

A Between what?

Q Between 8:20 and 9:00?

A I say about 8:30 or 9:00 I went to bed.

Q All right, between 8:30 and 9:00 you went to bed. He asked you that question and you gave that answer.

A I did,

Q And he say about 9:00 and you say between 8:30 and 9:00, didn't you?

A I say between 8:30 and 9:00 I went to bed

Q That's very correct, isn't it?

A Yes, sir.

Q And then didn't he ask you: "Didn't you go to sleep?" and didn't you answer: "Not right off. I laid up and talked to a fellow". That is right?

A Yes.

Q And he asked you, "who was that?" didn't he?

- A Yes, sir.
- Q And what did you answer?
- A J. D. Horton.
- Q Then didn't he ask you: "Did you and J.D. Horton talk about any particular thing?" He asked you that, didn't he?
- A Yes, he did.
- Q And what did you answer?
- A I told him we were talking about we wished we were at home, and the way we figured, going away from home, we didn't know where we were going to.
- Q And didn't he ask you: "You talked to J. D. Horton until you went to sleep?" Didn't he ask you that?
- A Yes, sir.
- Q And didn't you say: "We talked about five-ten minutes, and I said I was going to sleep because we had a long journey and I dozed off to sleep"?
- A He asked me that question and I told him J. D. Horton said, "Well, we better go to sleep; we got a long journey to take," and I said, "Sure we sure have," and he said, "Well, I am going to sleep," and I said, "I am too." That is the question he asked me and that is why I answered.
- Q I want you to tell me now, did you or did you not in answer to his question, "You talked to J. D. Horton until you went to sleep?" say and answer, "We talked about five-ten minutes, and I said I was going to sleep because we had a long journey and I dozed off to sleep." Did you or not give that answer?
- A You have got it down there wrong.
- Q Everything else I read to you before, that was right?
- A Because that wasn't the way, the conversation. He asked me how long did J. D. and I talk, and I told him I didn't exactly know how long we talked but it wasn't very long, because J. D. Horton took a turn and said, "I am going to sleep," and he turned over. He said he was going to sleep, and I said, "I am going to sleep too," and he turned over and so did I. That is the way that was.
- Q All these other questions and answers I read to you were correct?
- A Yes, sir.
- Q And we got down to this point about the five-ten minutes, and that you say is incorrect?
- A I didn't give him no definite answer on what time, because I didn't know how long we did talk.
- Q All right. Now, who did you tell the Court a while ago you talked with that night?
- A That I talked with? I told them I talked with J. D. Horton and John Terrell.

Q mention anybody else?

A I didn't mention anyone else.

Q You didn't say anything about talking to John Terrell at the time Colonel Williams interviewed you?

A We didn't ask me who I talked to.

Q He asked you did you go to sleep, and you answered , not right off; I laid up and talked to a fellow.

A Yes, I did.

Q And then he asked you who was that, and you said J.D.Horton.

A Yes, sir; that is correct!

Q Well, you didn't say anything about Terrell?

A He didn't ask me about anyone else.

Q Now, you knew you talked to Terrell.

A He didn't ask me who all I talked to.

Q That is the reason you didn't tell him about Terrell?

A Well, if he had asked me did I talk to anyone else but J.D. Horton I would have told him.

Q I see. All right. Now, you went to sleep then right after you talked to J.D.Horton?

A I don't know exactly how long I laid there awake, but I know I didn't drop right off to sleep the time I got through talking; I know that, But I wasn't awake very long I am quite sure.

Q A crap game going on in the building at that time?

A No, sir; not at that time there was not.

Q How long ago?

A I couldn't say.

Q You couldn't say?

A Because I went to sleep.

Q you don't know whether one went on that night or not?

A I don't.

Q When did you first wake up after you fell asleep after talking to Horton?

A First wake up?

Q yes.

A When the OD and the Ist Sergeant and another Lieutenant came in the barracks. They was running the men in the barracks, and when they first--when I first wakened up, there they were up there. I remember hearing the OD--- not the OD, another officer, I don't know what he was, but anyway he told the boys, "You put these lights out and go to bed

because you have a hard day before you tomorrow.

Q And you had been asleep all that time before they came in?

A Yes, sir, I had.

Q And you hadn't heard anyone come running in the barracks and saying, "Everybody out"?

A No, sir, I haven't heard anybody.

Q Didn't you hear anything like that?

A No, sir, I didn't,

Q You are a very sound sleeper aren't you?

A Well, I don't know exactly how sound I sleep, but I didn't hear anything.

Q You didn't have any trouble sleeping that night, did you?

A I don't ever have any trouble sleeping.

Q You heard no noise of any kind in the barracks?

A No, sir.

Q Now, you heard Alvin Clarke testify that you said you were the first man to get an Italian?

A Yes, sir, I heard him say that.

Q Of course that is untrue?

A I didn't say it.

Defense: I don't think that is the testimony in this record.

Law Member: What is the question?

Trial Judge Advocate: As to whether Clarke didn't say he heard him say he was the first soldier to get an Italian. I very definitely have a record. If I am in error, I would like to be corrected.

Law Member: Clarke?

Trial judge Advocate: Yes, sir.

Major Crocker: We said he got the first Italian that was hit.

Defense: I have it here as Ellis.

Assistant Trial Judge Advocate: I have here Booker Townsell said he got the first Italian that was hit.

President: Clarke was the one that testified that he got the first Italian that was hit.

Q All right. you heard Clarke's testimony on that, didn't you ?
A Yes, sir,

Q You heard him say that you said you got the first Italian that was hit?

A
Trial Judge Advocate: I may proceed?

Law Member: I have no recollection of it; the other members have.

Q You heard that didn't you?
A I heard him say it.

Q you say that is untrue?
A Sure.

Q Now, you heard Willie Ellis testify that he saw you with a club in your hand?
A Yes, sir I heard that.

Q In the vicinity of the orderly room?
A Yes, I heard that.

Q And that is untrue?
A I was in my barracks in bed.

Q In bed?
A Yes, sir.

Q So it is untrue, of course?
A I was in my barracks in bed. I don't see how he could have saw me then.

Q you heard Sergeant Gresham testify too, didn't you?
A Yes, sir, I did.

Q What did you hear him testify?
A I don't know exactly what he said now.

Q Well, he said he heard you make a statement, didn't he?
A He said something like that.

Q About hitting an Italian soldier?
A Yes, I heard him.

Q And that is untrue too?
A Yes, sir, because I was in my bed.

Q And, of course, Sergeant Todd's identification, this Italian soldiers identification, is all wrong too?
A That's right.

Q He is just mistaken?
A If he said he saw me down there.

Q Well, that is what he said.

A He is just mistaken, because I wasn't there.

Q Trial Judge Advocate: That is all.

Defense: I have no further questions.

President: any questions by members of the Court? There appear to be none. The witness may be excused.

There being no further questions the witness was excused and resumed his seat as one of the accused.

President: The Court will visit the Italian area at 6:30 this evening. It will convene here at 6:30 prior to going up there, and after viewing the scene in the dark will return here to complete the record. At that time the Law Member will give proper warning to the members of the Court. The Court will recess now until 6:30.

The Court thereupon recessed at 4:30 p.m., 11 December 1944, and reconvened at 6:30 p.m., 11 December 1944

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready to proceed?

Defense: yes, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show each of the accused is present, that all members of the Court are present, as well as the personnel representing the accused and the prosecution.

The reporter was also present.

President: The Law Member will instruct the members of the Court.

Law Member: We are going to visit tonight the area generally shown on the Prosecution Exhibit 2, which will include what has been described as the Italian area, the area of the mess hall, 700, and barracks 719. We may also go over and see some of the barracks which have appeared in the testimony as occupied by the 651st.

As I have previously stated before our other two inspections there will be no further questions asked or answered, nor will any comment be made while this inspection is in progress.

It is not to be presumed that the lighting conditions tonight --I am not talking about artificial lighting now--- the climatic conditions maybe a little different tonight than they were on the night of August 14, but that will be taken into consideration by the members of the Court.

After we have completed this inspection we will return to this room and a review of the inspection will be started for the record.

Trial Judge Advocate: May I make one suggestion, if it please the Law Member? I think that the same thing should be presumed as to the artificial lighting. I am sure each member of the Court will fit that into the testimony as he recalls it, because we can give no assurance the artificial lighting conditions will be the same tonight as they have been before.

Law Member: All of that will have to be taken into consideration by the members of the Court because I believe it to be physical impossibility to get a night with the conditions all exactly the same as they were on the night in question, and due consideration and allowances will be made for all of that.

Defense: Well, I think, if the Court please, however, as far as the artificial lighting is concerned there are certain factors in the testimony in the record that are undisputed as to what they are, and I think--

Law Member: Well, that is so, but there is evidence in the record some of the windows were broken out and we are not going to break out any windows tonight.

Defense: I understand that, but I meant the other barracks. The testimony was they were all dark with the exception of lights on the end.

Trial Judge Advocate: Even to the lights on the barracks, I don't know, and I am sure you don't, that they are lighted up tonight--I mean the end lights, the outside lights--as they were on that night.

Defense: I don't know.

Trial Judge Advocate: We just don't know, but I think it is perfectly proper to visit and let the members of the Court take that into account.

Law Member: That will have to be considered in connection with the evidence in the record with reference to the lights; As I understand, it was distinctly stated the lights were on in 700 on the rear end.

Defense: I had particular reference to 708, 709, and 710, I believe it was.

Law Member: I think we all agreed the lights on 713 were on; is that not so?

Defense: No, it is not so. The testimony is undisputed no lights were on in room Y, and had been turned off in room Z.

Trial Judge Advocate: No, I beg your pardon. The testimony is not they were turned off in room X. There is testimony one was turned off, but there were two lights in room Z.

President: I think the testimony is at variance. I can't reconcile it any other way.

Defense: At some stage of the proceeding they were all probably on.

President: As I recollect, that there was considerable examination as to whether they were both on.

Defense: Sergeant Todde testified that he saw--no, Sergeant Todde testified he turned the light out and Corporal Haskell testified he saw Sergeant Todde turn the overhead light off.

Law Member: Well, all testimony pertaining to the lights-- I am talking now of artificial lights---I am sure appears in the notes that have been taken by the various members of the Court, and the inspection of the premises will be made tonight and when the time comes to deliberate the memory of our inspection tonight will be completed with what our notes show as to the artificial lights.

Defense: Well, with the testimony in dispute I think the Court when down there should see it with the lights on and with the lights off.

Law Member: You want us to do that in room what?

Defense: That is room Z.

Trial Judge Advocate: That is by door E there.

President: I believe the testimony was clear as to the lights over the latrine. The light over the latrine was burning and there were lights in the latrine.

Defense: I don't think there is any dispute in the testimony about the light over the latrine.

Trial Judge Advocate: The same with the light over door A.

Defense: I think that's right. No dispute about that.

President: But the light over 708 was testified as having

been knocked out.

Defense: That's right.

Trial Judge Advocate: That's right.

President: And the lights in the barracks 710 and 709 were definitely turned out.

Trial judge Advocate: At some time?

President: At some time.

Defense: At 11:00 they were out. I would say this for the Court. I think it is a little too early to go down there.

President: I think you will find it as dark as it is going to get.

Defense: As we came in, I drove over the west road and it was not dark yet.

President: If it isn't, we will stay there until you are satisfied.

The members of the Court, the personnel of the defense and the prosecution, and all of the accused, left the Court room at 6:45 p. m., 11 December 1944, and returned at 7:30 p.m., 11 December 1944.

President: Is the prosecution ready to proceed?

Trial judge Advocate: Yes, sir.

President: Is the defense ready?

Defense: Yes, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: Let the record show all of the accused are present, and all the members of the Court, the personnel representing the accused and the personnel representing the prosecution are present.

The reporter was also present.

President: The Law Member will state for the record the action the Court took in visiting the scene of the area known as the Italian area.

Law Member: For the purpose of the record, all the members of the Court, the Trial Judge Advocate, the defense counsel and all of the accused visited generally the area appearing on Prosecution Exhibit No. 2, which has been referred to throughout the record as the Italian area. The accused remained in their trucks along Lawton Road in the neighborhood of building 713, the orderly room. The members of the Court, accompanied by the Trial Judge Advocate and the defense counsel, went through the orderly room, making observations as to visibility through room D toward door A, through door A out to the outer side, through door D to the outside, and through the window of room Y. The members of the Court, with the Trial Judge Advocate the defense counsel also visited the neighborhood of the two tents, tent 1 and tent 2, building 708, 709, 710 and 712. We then proceeded to the intersection of Wyoming Avenue and Lawton Road, observing lighting conditions to the southwest along Lawton Road and also in the direction of the barracks 668 and 672. In returning, we proceeded north along Lawton Road and then south on Virginia Avenue, observing the lighting conditions in the immediate neighborhood of 719. There were no questions asked within the hearing of the Court, no answers made, nor were there any comments. As far as practical the Court and the counsel were in the general sight of the accused, who were kept in the trucks along Lawton Road as I have stated before. Are there any suggestions by either the Trial Judge Advocate or the defense counsel to add to the statement which has just been made for the record?

Trial Judge Advocate: It is quite satisfactory as stated. I might make one suggestion. Your references to door A and door E and the various rooms were taken from Prosecution Exhibit 3.

Law Member: That's right.

President: The defense have anything?

Defense: No, I have no amendments to the statement of the Court.

Law Member: I might add there were no outside lights with the exception of the light over door A, as shown on Prosecution Exhibit 3, and the light over the latrine.

Trial Judge Advocate: That's right.

President: The Court will recess until 9:00 tomorrow morning. That is all.

The Court thereupon recessed until 7:35 p.m., 11 December 1944, to reconvene at 9:00 a.m., 12 December 1944.

LEON JAWORSKI
Lt. Colonel, J. A. C. D.
Trial Judge Advocate

Ft. Lawton Staging Area
Ft. Lawton, Washington
December 12, 1944

The Court met, pursuant to adjournment, at 9:00 a.m., all of the personnel of the Court, Prosecution, and Defense, who were present at the close of the previous session in this case, being present.

The accused and reporter were also present.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll was then called by the Assistant Trial Judge Advocate, and all of the accused were present.

Trial Judge Advocate: Let the record show that each of the accused are present, that all members of the Court are present, as well as the personnel representing the accused and the personnel of the Prosecution.

Defense: I will call Mr. Freeman. Will you go and get him?

(Mr. Forrest J. Freeman was recalled by the Defense, and having previously been sworn, testified as follows:)

DIRECT EXAMINATION

Trial Judge Advocate: Mr. Freeman, you are reminded that you are still under oath?

Mr. Freeman: Yes, sir.

Questions by Defense:

Q What is your first name?

A Forrest J.

Q Mr. Freeman, will you tell the Court whether or not you were present at Camp Jordan during the first show-up they had of colored soldiers down there, for the purpose of identification?

A I was present, yes, sir.

Q Now, was any type of list kept of the individuals who were identified and the persons naming the identifications?

A Yes, sir, there was.

Q Who kept that listing?

A I did.

Q Will you tell the Court just briefly the manner in which you kept that list?

A It was on this regular tablet form of paper, the white tablet, and it was in indelible pencil. The man's name that made the identification was put down first and who he identified right alongside of it. Or, it could be vice versa.

Q Yes, I understand that. Now, were any subsequent, -- strike that. Were you present, Mr. Freeman, during any subsequent show-ups, or identifications, that were made?

A Nothing, excepting when statements were taken.

Q Well, that was down at the Goodrich Building at the Port of Embarkation?

A That's right.

Q Now, was any type of a list kept of the identifications that were made at that time?

A As I remember there were notations made on that original list.

Q On the original list?

A Yes.

Q Now, about subsequent show-ups, Mr. Freeman, there has been some testimony there were subsequent show-ups out here at Ft. Lawton.

A I was not present at those show-ups.

Q Do you know whether or not those took place after your office had been relieved and the investigation turned over to the Inspector General, of Washington?

A I am not positive. I was taken sick on the 14th of September.

Q What did you do with the list that you had, Mr. Freeman?

A I turned it over to Maj. Manchester.

Defense: You may examine.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Mr. Freeman, you testified about one show-up and then the second time when counsel asked you, you said you were present when some statements were taken?

A Yes, sir.

Q Was that second occasion a show-up, or just an interview of some witnesses?

A Just an interview of some witnesses.

Q In connection with those interviews, would men be called in for identification at times?

A They were kept in a room of glass windows around this

room and the witnesses were asked to pick out the ones that they could identify and then they were brought in.

Q All right. Now, how was the first show-up held? Just explain to the Court where it was held and about how many Negro soldiers were present, and what system was pursued in having identifications made, will you please explain that in detail?

A It was made in the mess hall, at Camp Jordon. I think they call it Camp No. 2, now. And the Negroes, there was about 400 or 450 of them, would march through the mess hall one at a time and on the Negro's left as they came in were the Italians, and the American soldiers that were in this riot, and on the right was St. Farr, sitting on a cot, and I was sitting just ahead of Sgt. Farr, at the end of a mess table. And they came down right between us. Like this was where the Italians were and I was sitting here, they would come down right between and as they were identified, whoever identified them would hold up his hand and either myself or one of the men would get their names and then the man who pulled the man out of the line would get the names of men who were identified.

Q Whenever the hand would be raised, that was an indication that he was identifying someone?

A Yes.

Q And as he got to the end of the line, what happened?

A The man would be held there until he got his name and then the man would bring it over to me and I would put down the man that did identify him and the man he identified.

Q Were you present in any subsequent show-ups?

A No, sir.

Q Now, at this show-up that you have told the Court about, did St. Farr identify any Negro soldiers as having seen them on the night of the incident?

A He identified a few positively and some were tentatively identified.

Q A few were identified tentatively and some positively?

A Yes, sir.

Q Now, state whether or not the men were asked at that time

Defense: (interposing) I don't think this is proper cross examination, if the Court please.

Law Member: Objection overruled.

Defense: If he wants to make him his own witness, --

Law Member (interposing) Well, I think he might, but the Court is interested in this also, whatever identifi-

cations were made, how they were made, etc.

Defense: Well the Defense is too, and that is the reason we are calling for these lists.

Trial Judge Advocate: I am now speaking of the identifications that they were making of some of them.

Q (continuing) Were they or not told at that time that you were there for the purpose of making an identification, to make only positive identifications, or were they told to make positive and also tentative identifications if they could do so; just what instructions were given?

A The only instructions I heard were, they were told to identify the members as they came in and I went down to the table there to take care of the identifications as they came in and what else was said, I don't know.

Q State whether or not any of them made identifications that were tentative and some made identifications that were positive?

A Yes, sir.

Q And do you remember as to whom it was that made identification of witnesses, the names of those who identified witnesses and made both positive and tentative identifications?

A Sgt. Farr, and I believe there was one Italian.

Q Do you remember his name?

A I know it, but I can't pronounce it.

Q Would you object if I were to call, --

A (interposing) Pisciatano.

Q And did he make positive identification or were some of them tentative?

Defense: I don't think you should lead him like that.

Q Well, were they positive or tentative identifications? There certainly cannot be anything leading about that.

A Both.

Q Well, do you remember whether Sgt. Todde made any identifications?

A Yes, sir, he did.

Q Do you remember about how many identifications he made at that first show-up?

A twelve or fourteen, I don't remember just which it was.

Q Are you positive that there were as many as twelve?

A Yes, I would say there was at least as many as twelve.

Trial Judge Advocate: I believe that is all.

Defense: I have no further questions.

EXAMINATION BY THE COURT

Questions by Law Member:

Q These men that were identified were not then actually picked out of a crowd, but as they walked across the room alone, is that right?

A Would you state that question again?

Q I say these men that were identified, Mr. Freeman, were not picked out of a crowd by the identifying man, but walked across the floor alone?

A Yes, sir. Well, I say "alone", there were probably three or four foot apart as they come through.

Q Well, did they just walk by or did they stop?

A They walked up to Sgt. Farr first and faced him, and then they walked in front of the Americans and faced them, and then on down farther and faced the Italians.

Q Were there any names appearing on the Negro boys?

A Not that I saw.

Q They did not have their names on their backs, or anything?

A No, sir.

President: Is that all?

Law Member: Yes.

QUESTIONS BY THE PRESIDENT

Q How did they pick the people out that walked through the show-up?

A How did they pick them out?

Q Yes, how would they determine who would walk through the lines?

A It was the two Port Companies, the 650th and 651st. They walked through the lines.

Q Were any identifications made which were later proven to be impossible because of the fact the men, -- no, I cannot ask that. The question is withdrawn. Were all of Todde's identifications positive?

A I cannot say that all of them were but it seems like they were. I don't remember of him missing on a man.

Q Do you know of your own knowledge whether any positive identifications were made which were later withdrawn?

A You mean at the first show-up?

Q Yes.

A I couldn't say.

REDIRECT EXAMINATION

Questions by Defense:

Q Well, let me ask you this, Mr. Freeman. Wasn't there considerable discrepancy in the, -- with respect to what the identifying witness said the men were doing and where he saw them?

A No, I wouldn't say there was.

Q There wasn't in that respect.

A If I get your question right, I am not positive that I have your question right.

Q Well, after a witness had identified a Negro soldier as being present, he was also asked, maybe not then, but at some later time, at what point he saw that soldier and what that soldier was doing?

A Well, if I remember rightly, there was no questioning of the man in regards to where he saw him until we had the interviews later up in the office.

Q But wasn't there some subsequent discrepancies that later developed as to what that witness said with respect to where he saw the man and what he was doing?

Trial Judge Advocate: Well, I don't understand that question. You have got to tell the two times in which there was a discrepancy.

Q All right. At a later time, when you were taking statements of the man, or having an interview with the man, as to identification of this man, there was later questioning with respect to where the man was and what he was doing?

A Yes.

Q Isn't it true that subsequently at a time thereafter they did not give the same answers when they were questioned as to their identifications of some of these men?

A Well, I couldn't say, I was not at further questioning.

REXCROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Were any men identified by the Americans and the Italians at the first show-up and afterward it developed that the man could not have been there?

A I don't know of a case.

Q Who could not have been at the scene of the riot?

A I don't know.

REDIRECT EXAMINATION

Questions by Defense:

Q How about Sgt. Veeder, wasn't he identified first?
A I couldn't remember the details of that. We had fifty or more up there.

Q How about John R. Brown, one of the originally accused in this case. Wasn't he identified as being there and you later developed through investigation he was not there?

A I don't remember the case.

Trial Judge Advocate: It might have been John S. Brown, but not John R.

Defense: I don't know whether he was identified, but I know he was charged earlier in the case and dismissed as not having been there.

Trial Judge Advocate: Well, there were more things to consider there?

Defense: All right.

Witness: I could not say as to that particular subject.

President: What did you say you did with the list; you gave it to Maj. Manchester?

Witness: Yes, I gave it to Maj. Manchester.

President: Any further questions? That is all.

(There being no further questions, the witness was excused and withdrew.)

Defense: Will you ask Maj. Manchester if he will come in?

(Major. Robert H. Manchester, a witness for the Defense, was recalled, and having previously been sworn, testified as follows:)

DIRECT EXAMINATION

Trial Judge Advocate: You are reminded you are still under oath, Major.

Witness: Yes, sir.

Questions by Defense:

Q Maj. Manchester, did you receive a list from Mr. Froeman of the colored soldiers who were identified at the show-up at Camp Jordon, and also the persons making the iden-

tifications?

A I received such a list, yes, sir. It was given to me at my request. I don't know whether it was the list that was made at Camp Jordon or not. However, I asked for such a list and such a list was given to me.

Q That list was given to you?

A Yes. It carried the names of the colored soldiers and Italians, and American soldiers identifying them.

Q What did you do with it?

A I gave the list to Capt. Tyson, for Colonel Williams, or to Col. Williams directly, I forget now.

Defense: That is all.

Trial Judge Advocate: No further questions by the Prosecution.

EXAMINATION BY THE COURT

Questions by the President:

Q Were you present at the identifications at Camp Jordon?

A Yes, sir, I was.

Questions by Law Member:

Q Were these colored soldiers, after the show-up, told at the time they had been identified, Major?

A They were not told, no, sir. I may explain that procedure, sir.

Q Well, it was explained by Mr. Freeman.

President: I believe that is all. Any further questions?

REDIRECT EXAMINATION

Questions by Defense:

Q I have another question or two. Let me ask you this, Major. Would a colored boy, going through the line, be able to tell when he had been identified through the procedure that was followed?

A I should say yes, sir, because he was immediately segregated.

Trial Judge Advocate: And by "segregated" do you mean he was taken from the line?

Witness: Yes, sir. And placed in the back room or kitchen of the mess hall where the show-up was being conducted.

Defense: That is all.

President: Is that all?

Trial Judge Advocate: That is all.

President: You are excused.

There being no further questions, the witness was excused and withdrew.

Defense: Will you ask Col. Williams to come in?

(Lt. Colonel Curtis Williams was recalled by the Defense, and having been sworn, testified as follows:)

DIRECT EXAMINATION

Trial Judge Advocate: You are reminded, Colonel, you are still under oath?

Witness: Yes, sir.

Questions by Defense:

Q Colonel, did you receive from Maj. Manchester a list of those colored soldiers who were identified at the show-up at Camp George Jordan, together with the names of the persons who made the identifications?

A I either received it from Maj. Manchester or from Capt. Tyson, I am not sure who it was.

Q You received into your possession such a list?

A Yes, sir.

Q Where is that list at the present time?

A I don't know.

Q Well, what did you do with it after you received it?

A I received it and used it one time to look through it and to see the persons who were identified and to use it subsequently in a further confirmation of identification, which I held of my own accord in the mess hall of the stockade.

Q Yes. Well, now did you subsequently destroy that list, or did you take it with you when you returned to Washington?

A I can't state, definitely, what I did, whether I destroyed it or took it with me, I don't know.

Q You may have it in your possession?

A Yes, sir.

Q Would you call Washington to determine that?

A Yes.

Q You conducted of your own accord several subsequent show-ups?

A No, not several.

Q How many?

A One, that is all.

Q Did you keep at that time a record of the persons that were identified and also the persons making the identifications?

A No, sir, I didn't keep such a list. You see, I had this particular list you are talking of now given to me by Maj. Manchester and at the time, the people that passed by in the mess hall, my stenographer would check the names of the persons who were identified to confirm them again.

Q By making a red check on the list?

A Yes, sir.

Defense: That is all the questions I have.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q What was the reason of your having any further identification after you took over the investigations, or rather after you conducted your investigation?

A For a confirmation, for my own records, of the persons who had identified the witnesses I had questioned.

Q Was your investigation to be independent, an independent one completely from any previous investigations that had been made?

A Yes, sir, that is true.

Trial Judge Advocate: That is all.

EXAMINATION BY THE COURT

Questions by Major Crocker:

Q Was there just one show-up of the entire two companies or was there more than one?

A No, all the men who were then held present in the stockade were in the mess hall at the time I was there.

Q They had already been identified previously?

A They had gone through a show-up. I can't say definitely but a list of the men were given to me.

REDIRECT EXAMINATION

Questions by Defense:

Q Weren't the men who had not been identified originally allowed to go overseas?

A Yes, those men were not present.

Q Some of them at least. Those men were not present at your show-up?

A That is right.

Law Member: Is it fair to determine from that they had not been identified at the first show-up?

Witness: I don't know, I was not present.

Trial Judge Advocate: Does or not your investigation disclose they left either two or three days after the show-up or does or not your investigation disclose that?

Witness: Yes, my investigation shows they left here on the 22nd or 23rd, if I understood it correctly. They had to be in San Francisco on the 24th of August.

Q How many men did you investigate in the stockade here at Ft. Lawton?

A I don't know. My report would show.

Q Approximately a hundred?

A I don't know.

Q Would you say as many as seventy-five?

A As best I recall, it seems to me like it was something like sixty-six men, I recall, that were being held in the guard house.

Law Member: And had all of these sixty-six men gone through the original show-up?

Witness: That one held by Maj. Manchester? I don't know, sir.

Law Member: Were all sixty-six names on the list that your stenographer was checking off?

Witness: No, all sixty-six were not on the list that we had. The roll that was called was of the whole sixty-six but those who had been identified, was a separate list, which was given to me and of which I checked off at the time.

Law Member: Had you been given to understand at the time of your show-up, Colonel, that all of the men in your show-up had been identified in Maj. Manchester's show-up?

Witness: No, I had not been told that, no, sir.

Q Why were the sixty-six men being held in the stockade, Colonel?

A I don't know that, I don't think there was any conversation as to why they were.

RE-CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Just a question or two, Colonel. No charges had been filed at that time, had they, there?

A No, no.

Q Was or not the investigation fully in progress at that time?

A It was.

Q Was or not some of those men held in the stockade because they had material, or it was considered they had material information about the case?

A Yes, I think that is true.

Q Did the holding of those men in the stockade, the 66 or whatever it was, have any direct connection with any previous identifications that might have been made as to all men, as to all 66.

A I don't understand your question.

Q Well, let me rephrase that, that is a little involved. What I am trying to get at is this. The fact that these men were held in the stockade, did that necessarily mean that they had been previously identified by anyone?

A Not all of them, no.

Trial Judge Advocate: I believe that is all.

Defense: No further questions.

President: Any further questions by the Court?

Defense: I understand you will call Washington and let me know?

Witness: I shall, yes, sir.

Defense: Thank you.

There being no further questions, the witness was excused and withdrew.

Trial Judge Advocate: Now, you asked for another witness or two, I believe, but Capt. Tyson has been sent for by the General a few days ago. He will be back in a day or two.

Defense: Well, I won't need him, or Sgt. Young. I didn't know who I would need, but in view of the testimony, I won't need him.

Trial Judge Advocate: All right.

(Captain Francis W. Beckman, a witness for the defense, was sworn and testified as follows:)

Trial Judge Advocate: State your name?

Witness: Francis W. Beckman.

Trial Judge Advocate: And your grade and rank?

Witness: Captain in the Infantry.

Trial Judge Advocate: Your station?

Witness: Ft. Lawton, Washington.

DIRECT EXAMINATION

Questions by Defense:

Q Capt. Beckman, in what capacity were you serving on August 14th of this year?

A Company Commander of the 28th Italian Quartermasters Service Company.

Q And how long had you served in that battalion?

A Approximately three months.

Q So, on July 17, 1944 you were the Commanding Officer of the 28th?

A Yes, sir.

Law Member: July 17th?

Witness: Yes, sir.

Defense: Yes.

Q Handing you an instrument which I will have marked as Exhibit L for identification, I will ask you if that is your signature?

A Yes, sir.

Q I wish you would tell the Court the circumstances under which you signed Defense Exhibit L for identification?

A At the time these two men were requested by the Italian Captain Cellentani to be sent up to the psychopathic ward, --

Trial Judge Advocate: (interposing) Just a minute, now. Any conversation with any other part is hearsay. This witness can testify to anything he did and if it were something done at somebody else's request, he can testify to that, but as to any conversation beyond that, I object to it as hearsay, and I ask whatever answer is given to that question be stricken.

Law Member: The objection is sustained and the motion will be granted.

Q (continuing) You said two men, what men do you refer to?

A Private Fadini and Private Guglielmo Olivotto.

Q And at whose request was it that you signed this letter, which is Defense Exhibit L for identification?

A The Italian Captain, Capt. Collentani.

Defense: I am offering this evidence, if the Court please.

Trial Judge Advocate: I have no objections.

Law Member: Defense Exhibit L for identification is received in evidence as Defense Exhibit L.

(The letter marked for identification Defense Exhibit L was then received in evidence.)

Defense: I shall read this to the Court, now.

Whereupon, Defense Exhibit L was read to the Court by Defense Counsel.

Defense: I have no further questions.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Captain, was Pvt. Guglielmo Olivotto sent to the hospital?

A Yes, sir.

Q How soon after he was sent to the hospital did he return?

A Approximately three days.

Q Well, are you sure of that or did he come back the same day?

A I believe he was, -- I wouldn't say as to that because I don't have any access to the records at the present, but I believe, --

Q (interposing) But who, --

Defense: (interposing) Let him finish his answer. He started to say something. He said, "I believe", and you interrupted him.

Q Had you finished your answer?

A Yes.

Q All right. Do you know what particular doctor over at the hospital saw Pvt. Guglielmo Olivotto?

Defense: Are you asking him of his own knowledge, now?

Trial Judge Advocate: Yes.

Defense: All right.

A I believe it was Capt. Sturdevant.

Q All right. Did you at any time receive any report from the hospital, or from anyone there at the hospital, after that examination, that there was anything the matter with Pvt. Guglielmo Olivotto?

A I received the report only through Pvt. DeJacommo.

Q You did not receive it direct?

A No, sir.

Q All right. After Pvt. Olivotto returned from the hospital, he went immediately back to work?

A Yes, sir.

Q Was he or not a very good worker?

A Very good.

Q Was he or not well disciplined?

A I believe he was from all the experiences I had with him.

Q You saw him quite some little bit, didn't you?

A Yes, sir.

Q Did you ever notice anything about Olivotto that was in any way abnormal?

A The only thing I noticed was that once in a while he became melancholy.

Q Did he or not indicate, at any time, anything abnormal in his statements or conduct, or actions, or was he going about his work the best he could?

A To the best of my observation and experience, he was normal.

Q Do you mean when you say "melancholy", do you mean by that he had a tendency to be by himself?

A He had a tendency to be by himself and wouldn't talk to the other members of the company.

Q He was not a free mixer, was he?

A No, sir.

Q The date of this was somewhere around July 17th. Now, Olivotto worked every day after that time until his death, didn't he?

A I believe he did, sir.

Q When was the last time that you saw Olivotto?

A That I couldn't say, sir. That is alive.

Q You saw him when he was dead, didn't you?

A Yes, sir.

Q When did you see him when he was dead?

A I made an identification of the body at the Bleitz Funeral Home in Seattle, on the 15th.

Q That was when Capt. Walker was there making his autopsy?

A No, sir. He had already made his autopsy and I went over there with Prinzi.

Q He is the Italian Warrant Officer?

A Yes, sir, the Italian Warrant Officer.

Q About how old a man was Olivotto?

A I don't know, sir.

Q Do you remember what his rank was in the Italian Army?

A I believe it was a private.

Q And you had known him from what time?

A I took over that company at Florence, Arizona, on the 9th day of May, 1944. I believe he was assigned on the 7th.

Q Throughout that period of time, was he in the hospital at any time other than the one examination that was made?

A He might have been in the hospital for some cold or something of that nature. I haven't kept track of that, but not for any length of time.

Q Not for any length of time?

A No, sir.

Q As far as you know, he was in good health?

A Yes, sir.

Q Captain, in order that there be no question about your phase of your testimony, you are not certain as to how long he was in the hospital, are you?

A No, sir.

Q Did you base your statement that you believed it might have been a matter of three days on the fact that you did not see him for a couple of days, or so, after he went to the hospital?

A Well, I based that on the fact that I sent this interpreter down to pick him up at the hospital and I believe it was two or three days afterwards. I wouldn't say.

Q Do you know the exact day that he went there?

A It was on the same day that the letter was written, sir.

Q It is possible that he might have been there only a very short period of time?

A Yes, sir.

Q And it is possible that he might not have been kept overnight?

A That is possible, but, -- it is possible by being sent in the morning, he might have been back the same day,

for all I remember. I don't know.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

Q Captain, hadn't Olivotto been sent to the hospital on one previous occasion in connection with his tonsils?

Trial Judge Advocate: Now, just a minute. I believe this is your witness.

Q Well, state whether or not, then, Olivotto had been sent to the hospital on one previous occasion in connection with his tonsils?

A He might have been, sir, I don't know. Not having access to the sick book, I don't know.

Q You don't recall that?

A I don't recall that, no.

Q Well, state whether or not, Captain, you recall that a tonsilectomy was recommended and that Olivotto refused to submit to it?

A Well, I wouldn't say, --

Trial Judge Advocate: (interposing) Well, I don't know, now. In the first place, that question is highly leading. I don't know what it has to do with the examination of this witness and the issues of this case. I object on the grounds it is leading and suggestive.

Law Member: Will you reframe your question, if it is material, Major?

Defense: Well, I think he answered that he didn't know.

Q Captain, will you tell the Court whether or not you thought on July 17th, from what you learned, there was or was not justification for sending Olivotto for an examination by a psychiatrist?

Trial Judge Advocate: Now, I think that is a conclusion on his part, and there is absolutely no showing yet that there was an examination by a psychiatrist.

Defense: Counsel went into his condition.

Law Member: I believe it calls for a conclusion by the witness, who is not competent to answer that question.

Defense: All right, that is all.

Trial Judge Advocate: We have no further questions.

President: Any further questions? That will be all.

There being no further questions, the witness was excused and withdrew.

Defense: I think as far as I am concerned, he may be excused.

Trial Judge Advocate: He may be excused and if he is needed later on, we will call for him, if that is all right with the President of the Court?

President: That is all right.

(Sgt. Regis Callahan, a witness for the Defense, was recalled, and having previously been sworn, testified as follows:)

DIRECT EXAMINATION

Trial Judge Advocate: You are reminded that you are still under oath, Sergeant?

Witness: Yes, sir.

Questions by Defense:

Q Sergeant, I believe you have originally testified as a witness for the Prosecution, that on the night of August 14th, you went down to the orderly room in the Italian area?

A Correct.

Q I wish you would tell the Court, Sergeant, whether or not at any time after you got to the orderly room in the Italian Area you, at any time, went across Lawton Road over to the vicinity of the Italian Service Club?

A Yes, sir. Approximately a half-an-hour or thirty-five minutes, something of that extent, I crossed Lawton Road to the edge of the precipice. At that time, we were endeavoring to locate some of the Italians who were apparently hiding in the area at the base of the cliff, and along the side.

Q Was that the first time you went over there, thirty to thirty-five minutes afterwards?

A To the best of my recollection, it is.

Q Now, did you have men assisting you or not?

A Yes. At the time, we had several men down over the bank, trying to locate these Italians to get them to come back up out of their hiding places.

Q Well, tell the Court here, were you and any of your men using artificial lights of any kind?

A Yes. We even went so far as to focus a spotlight, from one of the military vehicles, as well as the headlights from other vehicles available.

Q When you went over there, what light did you use when you first went over?

A Nothing but a flashlight.

Q After you used that, how long was it afterward you used the other type of light?

A Approximately half-an-hour. The other vehicles had been used to take the injured to the hospital.

Q Tell the Court where some of your men went in an attempt to find some of these men?

Trial Judge Advocate: Well, I don't think that is proper.

Q Well, tell them, then, where you saw they went?

A They went over the edge of the cliff, between the Sound and Lawton Road.

Q Whereabouts with reference to the recreation hall, building 731?

A It would be west of that, possibly a little north.

Q Tell the Court whether or not your men were using any other means in an attempt to persuade the Italians to return?

A Well, outside of shouting and trying to talk to them, we had one member of the M. P.'s who spoke Italian, who we thought might be a little more persuasive, to get the Italians to come up.

Q Now, tell the Court when it was with reference to the first time you tried to get the Italians to come up, when you got someone there who spoke Italian?

A Approximately a half-an-hour.

Q Tell the Court whether or not, Sergeant, the original attempts to persuade them to come up were in English or in what language?

A Well, they were in English.

Defense: You may examine, Counsel.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Sergeant, now, when you first went into that area, you spent considerable time around either barracks 708 or 709 before you ever went to the orderly room?

A That is correct.

Q How much time did you spend around barracks 708 or 709 before you went to the orderly room?

A Approximately a half-an-hour.

Q You were clearing those Negro soldiers out?

A Sgt. Jones was working in the orderly room, the Italian

orderly room, clearing them out and assisting in that area.

Q And you were working in the barracks, and I believe you told the Court in one of the barracks you pulled your gun out and it took you about thirty minutes to accomplish that?

A Yes, sir.

Q Or it could have been a little longer?

A Yes, sir.

Q And after that you went to the orderly room?

A Yes, sir.

Q How long did you spend in the orderly room?

A Only a few minutes, possibly five minutes.

Q You, among other things, looked around for things that were in the orderly room and checked to see if anybody else was there hurt?

A That's right.

Q And I believe a dog tag was picked up at that time?

A Yes.

Q So you estimate that it was a few minutes that you spent there?

A Yes, sir.

Q And, then, after you left the orderly room where did you go?

A Then I crossed Lawton Road to detail some men to assist recovering these Italians.

Q Yes. So that from the time that you arrived at the Italian area and first started working trying to clear these barracks of Negro soldiers, from that time on until you entered, or, -- until your coming across Lawton Road to try to find some of the Italians, there could have been as long as forty-five minutes elapsed?

A It is possible. I should judge between thirty and forty minutes.

Q Between thirty and forty minutes. All right. Now, your men would come over and would go to the edge of the embankment, just beyond Lawton Road, to the west, wouldn't they?

A Yes.

Q And that is where the looking around for the Italians was done?

A That is correct.

Q Now that is some little distance north of the recreation hall, isn't it?

A That is right.

- Q You know where the recreation hall is, you can come up here and look at this if you wish.
- A I would say they were north and west of that area.
- Q And the embankment runs all along here, doesn't it, west of Lawton Road?
- A I believe Lawton Road is shaped to fit the embankment.
- Q Yes, that's right. Now, then, you and your men would come to the bank and they would look around to see if they could find any of them hiding along the bank there, and then they would also, as you say, shout to see if anyone would hear, that they could come up with safety now?
- A That is right. We also had some men over the bank, down in the brush.
- Q You don't know how far they went down in the brush, do you?
- A No.
- Q Those men who were over the bank, they were some distance from the area of the recreation hall?
- A Well, they were over here (indicating).
- Q Most of the activity of your men went on up here (indicating), which is some hundred yards away from the recreation hall?
- A That's right.
- Q And as far as you knew, none of your men went down along the obstacle course along the pathway?
- A I have never been able to determine whether they did or not.
- Q As far as you know, none of them ever went down there, then?
- A No.

Trial Judge Advocate: That is all.

REDIRECT EXAMINATION

Questions by Defense:

- Q You don't want this Court to understand that none of your men were sent around the Italian Service Club?
- A No, I wanted to give the impression that they covered the area as well as they could. I can't say definitely that they did do it.

Defense: That is all.

RE CROSS EXAMINATION

Questions by Trial Judge Advocate:

- Q Where were you when you pulled this gun?

A At the rear of barracks 709.

Q That is away from Lawton Road?

A A single barracks, as you come into the barracks from the south.

Q How long had you been in the area before you pulled your gun?

A Just long enough to walk from Wyoming Avenue to barracks 709.

Q Did you fire a shot in the air?

A No, sir.

Q Did anybody fire a shot in the air that you heard?

A I didn't hear any if there were.

President: Any further questions?

Major MacLennan: Yes, I have a question.

EXAMINATION BY THE COURT

Questions by Maj. MacLennan:

Q Was your search, or the search of your men, successful in rounding up any Italians in that ravine?

A Yes, sir. We brought quite a few out in the area in which we were searching.

Q Did you estimate how many you caught?

A Well, seven or eight, anyway.

President: Is that all?

Defense: If the Court Please, the next witness might be somewhat lengthy, and it being a few minutes to ten, I would suggest we take the morning recess at this time before starting, if that is agreeable with the Court.

President: We will take our usual fifteen-minute recess.

The court then took a recess from 9:58 a.m., until 10:13 a.m., at which hour the personnel of the Court, Prosecution and Defense, and the accused and the reporter resumed their seats.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Is the Defense ready?

Defense: Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: Let the record show that all of the accused are present, that all members of the Court are present, as well as the personnel representing the accused and the personnel representing the Prosecution.

Sgt. Arthur J. Hurks steps up before the Court.

Law Member: Sgt. Hurks, it is my duty to advise you that you have certain rights as an accused in a military Court Martial.

First, you may either be sworn like any other witness in this case and give your testimony under oath, and if you do that, your evidence is considered like anybody else's evidence, and you are subject to cross examination by the Trial Judge Advocate and by any members of the Court.

Or, you may make an unsworn statement, either through yourself or through your counsel, and if you do make an unsworn statement, you may not be cross examined on any matter contained therein. Such unsworn statement is not strictly evidence, but the Court gives such consideration to it as it deems fit.

Or, third, you may remain absolutely silent and make no statement, either sworn or unsworn, and if you do elect to remain silent, the fact that you do cannot be considered against you. Do you understand those instructions?

Accused: Yes, sir.

Law Member: There are no further instructions that you wish along that line?

Accused: No, sir.

Law Member: You have talked this matter over with your counsel, Maj. Beeks.

Accused: Yes, sir. I have, sir.

Law Member: And you have decided that you want to be sworn and testify as a witness in your own behalf?

Accused: I have, sir.

Law Member: All right, will you swear him, Col. Jaworski?

(Sgt. Arthur J. Hurks, a witness on his own behalf, was sworn and testified as follows:)

Trial Judge Advocate: State your name?

Witness: Arthur J. Hurks.

Trial Judge Advocate: And your grade?

Witness: Sergeant.

Trial Judge Advocate: And Your organization?

Witness: Formerly of the 150th Port Company, now
stationed at the Post stockade

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Trial Judge Advocate: You are one of the accused in this case?

The Witness: I am, sir.

DIRECT EXAMINATION

Questions by Defense:

Q How old are you?

A I am twenty-three years old, sir.

Q Where is your home?

A Houston, Texas, sir. I was drafted there. I was born in Louisiana.

Q How much education have you had?

A To the highest level grade, passing.

Q Did you finish high school?

A No, sir. I didn't; there was fourteen days I had to finish it. That was due to three deaths in the family within thirty-eight days.

Law Member: We can't hear you, Sergeant; keep your voice up.

Q When were you inducted into the Military Service?

A December 28, 1943.

Q What did you do, Sergeant, before you were inducted into the Army?

A I was a rigger, first-class, at the Houston Shipbuilding Corporation.

Q Now, were you ever convicted of any crime in civilian life?

A No, sir; I have never been convicted.

Q Have you ever been convicted by a courts martial since you have been in the Army?

A No, sir; I haven't.

Trial Judge Advocate: I am going to ask that that be stricken. That hasn't any place at this time.

Defense: Well, if I want to put in his record, I think I can do so.

Law Member: He has a right, if he wishes.

Trial Judge Advocate: Not on court martial convictions. However, it is already in so I will let it go.

Q Have you ever been recommended for the good conduct medal?

A Yes, sir.

Q When were you recommended for the good conduct medal?

A I was recommended when I was overseas.

Q You have been overseas, have you?

A Yes, sir; I have.

Q Without indicating the particular place you were at overseas, tell the Court where you were in your operations?

A I was in the southwest of the Pacific, sir.

Q When did you go to the Southwest Pacific?

A Sailed on the 28th of August, sir.

Q When did you return?

A I returned, I think, the 19th of October.

Q Now, tell the Court how you came back. Did you come back under guard, did you come back alone, or how did you come back?

A No, sir; I have never been under guard. I came all the way back to California; from there I was given my transportation to Seattle, and upon my arrival in Seattle, I caught the bus and came out to Fort Lawton.

Q Now, calling your attention, Sergeant, to the night of August 14th, of this year, which is the night that there was difficulty between the colored soldiers and the Italians, I will ask you where you were at the time you first had knowledge that there was something unusual taking place that evening?

A I was upstairs in Building 719, running the crap game, sir.

Q You were banking the game?

A Yes, sir; I was banking the game.

Q Who was in that game, Sergeant?

A Well, some of the men were Jessie Sims, Willie Ellis. There was Cunningham. And a number of others. Halsey. That was just about,---that was just some of them.

Q You have a distinct recollection of Sims being in the game that night?

A Yes, sir; I do, very clear.

Q And what brings that you your mind?

A I remember Sims very well because of the argument that he kept up in the game. The reason why he kept up so much argument, I imagine, to begin with, he wasn't his normal self. That is, he seemed to have been drinking. Then, again, he was angry because he seemed to be losing his money every time he bet.

Q And you say you were in the crap game at the time you first learned of something unusual taking place. What took place that brought that to your mind, called it to your attention?

A While we were in the game there was a whistle blown

and we didn't pay any attention. We just continued to shoot on for a few minutes longer. And someone shouted out their's, I mean during the time when the whistle was blown,---fellows began to want to know what was wrong. Someone shouted out, "The Italians had killed one of our boys," and we didn't pay any attention to that because the man had his money down and we was shooting and we continued to snoot until this fellow missed his point.

Q Well, then what did you do, Sergeant?

A The fellows began leaving the game, one by one, and I was the last to leave this game because I had my money scattered all over the blanket and I had to pick it up and put it in my pocket before going down.

Q Well, you say, "going down." Now, tell the Court just what you did.

A I walked downstairs, sir, to the door of 719.

Q Did you live in that particular barracks?

A Yes, sir, I did.

Q Did you go outside the door?

A I stood in the door for awhile around the steps, not needing the occasion for at least, well, I stood there until a few minutes, until a soldier came down and asked me what was going on.

Q At this time, what lights were there burning in front of Barracks 719 that evening, if you know.

A There was no lights burning in front of Barracks 719. I thought there was a little light coming through the hall from the light of the latrine.

Q Are there light fixtures on the front of Barracks 719?

A Yes, sir, there are light fixtures there, but no bulbs in the fixtures.

Q Tell the Court whether or not there had ever been bulbs in those light fixtures from the time you have lived in Barracks 719?

A No, sir; there have never been no lights there from the time I lived in Barracks 719.

Q By the way, do you know the First Sergeant of the 578th Company?

A Yes, sir. I know him by seeing him, not by name.

Q During the time you were standing in front of 719 did you see the First Sergeant of the 578th?

A Yes, sir, I did.

Q Where did you see him?

A I saw him standing in front of his men in the next barracks, 720.

Q What was he doing?

A He had a baseball bat in his hand, daring any of his men to come out, daring any of them to mix with any of the boys from our barracks who were out in the streets.

Q What did he say?

A As I recall it, in words of substance, he was telling them that there was none of his boys was going down to fight the Italians. He kept swinging his bat around, if anyone walked up close to him.

Q He did what?

A He would swing his bat around if anyone walked up close to him.

Q All right. You told the Court that you stood out in front of Barracks 719. I want you to tell the Court what you did from that point on.

A I stood in front of Barracks 719, right in the doorway, until one of the accused, now I don't know whether I can name him or not,---asked me what was going on. I told him that they were fighting down in the Italian area, because as I stood there I could see some fellows just running on across the little, I would say, vacant lot, by mess hall 700, back there. They was running on down toward the area. As I stood there for a few minutes I could hear a rumbling noise, and there seemed to be a breaking of glass and throwing of rocks against a house or barracks. Then I walked out to the side where I could see a group of men who were huddled around a boy whom I later found out to be Montgomery. Well, while I was standing there someone either shined a light in his face or was striking matches, for I could see between the fellows' legs that was standing around him that this fellow was of light color, and his eyes seemed to be just a bit open. Later on this man was put in a jeep and carried away. I also saw over to my right, I think the right of Building 719, out in front, a boy, it must have been Alvin Clarke, who had his hands on top of his head, kind of holding it, and then he later squatted down on the curb. Seemed he was sitting down there.

Q And then,---

A (interposing) I first saw,-----

Q (interposing) Pardon me. This Alvin Clarke, you say, had his hand on top of his head sitting down there?

A Yes. He seemed to be as if he was in pain.

Q I see. Could you tell whether or not he had been injured?

A I couldn't tell whether he had been injured, because I could not see any blood, as I recall.

Q All right. You started to say something about something else. Was it your First Sergeant, or first what? Will

- you go on and tell the Court?
- A Yes. My First Sergeant ran up and asked me what was going on and said for the fellows to get back in the barracks and told me to put them back in, and, so all I could do was help him, because he explained to me that if the M/P.'s came down with machine guns that they could kill any of those fellows they wanted to and nothing could be done about it. He also explained that they didn't have anything to do with protecting themselves and to get back in the barracks. The fellows seemed to be slow and I also talked to them helping to get them back in.
- Q Did you have a conversation with any other Sergeant about getting the men back in?
- A Yes, sir; I did.
- Q Who was that?
- A I had a conversation with Staff Sergeant Spencer Martin.
- Q What was the conversation you had with him?
- A He asked me, "What is going on, Hurks?" I mean, he ran up to me, he was in a hurry and he wasn't nowhere in the area when the thing ever started up, so he asked me what was going on. I told him that they were fighting and he said we have got to get those men out of that area. He said that if we didn't do that we could be, ---I think he said we could be put in the guardhouse or words of substance of that kind, as a non-com. He said we have got to get them out of that area.
- Q All right. Go on and tell this Court what you did after that.
- A After that the fellows all drew around and the First Sergeant disappeared; also the Staff Sergeant. I didn't see them any more. So I walked back to the steps and it seems as if I remember seeing a few fellows standing up there with underwear on and their hands in their pockets.
- Q Let me ask you this, Arthur? Did you have any contact or conversation with a white soldier who had been injured that evening about the time you have mentioned?
- A Yes, sir. There was a soldier. The ambulance came up and, it seemed after the Chief had gone, and I could see by the light of the ambulance, and I think in one of my statements I said "M.P. car lights," but I could see by the ambulance, instead of the M.P. car lights, that the men they had named, one of the accused was bringing up a white fellow.
- Q Who was that?
- A Bringing up the white man?

say you carried him, you don 't mean physically, now, do you?

A No, sir; he walked along and didn't seem to be injured.

Q Show the Court where that was now on Prosecution Exhibit 2

A Well, we walked all the way there to about right over here (indicating). This road (indicating); and we walked on this road (indicatingg).

Q You are indicatingg up Lawton Road in the vicinity of Barracks 665?

A Yes, a little beyond Barracks 665.

Q Where did he go then?

A Here (indicating).

Q Through the park in an easterly direction?

A Yes. There was something about,---when I had talked with,---

Q (interposing) Now, speak up, so the Court can hear you.

A Yes. When I had talked with this Staff Sergeant,---

Q (interposing) You mean Sergeant Farr?

A Yes, sir. I talked with Sergeant Farr. I met a buck scargeant. He told me as we was going up the hill that there were a number of American soldiers down there, white soldiers. And I told him to go on from there, that he would be all right, and he said, Thanks.

Q Then what did you do?

A I returned back to the front of 719.

Q All right. Tell the Court what you did, what happened, then?

A After this, I stood there for a few minutes, and later a group of M.P.'s came around in a command car. These M.P.'s were white, all white; so the most of them seemed to be sitting in the back, there seemed to be three in the back; so, all the fellows began crowding around him and wanting to know what it was all about, what was going on. One of our fellows, see, John Pinkney, a member of the 650th Port Company, talked with the M.P.'s.

Q How was Pinkney dressed up, particularly, was he wearing any kind of an armband?

A Yes, sir. He wore the armband that said "M.P." on it.

Q Did he have anything in his hand?

A Yes, he had a club in hand.

Q An M.P. stick?

A He had an M.P. stick, in his hand!

Q Where did this conversation take place where you saw the Chief, and John Pinkney?

A It was right here in front of 719 (indicating). That is where the car stopped, parked directed in front.

Q Was it on the westerly side or the easterly side?

A They began talking in the center of the street, then they walked over.

Q Which way did the people come from if you know?

A The command car?

Q Yes the jeep or the command car, those people in the car.

A It came down here(indicating).

Q Came down Lawton Road?

A Yes, sir.

Q And drove over in front of Barracks 719?

A Yes, sir.

Q Which side of the street did it stop on, the Barracks 719 side of the street, or the mess hall side of the street?

A It stopped on the barracks 719 side of the street.

Q Then I understand you to say some of the men got out and walked down?

A Then the fellows got out, all of them, along with a fellow who had pistol, a pistol, he was armed with a pistol, and they walked across there (indicating).

Q Virginia Avenue?

A Yes, sir, to this little vacant park between the 700 mess hall and Lawton Road.

Q You mean this area between Lawton Road and Mess hall 700?

A Yes, sir.

Q All right. Now, Arthur, what happened then, just tell the Court.

A All the fellows was crowded around. There was quite a large crowd around the M.P.'s, and they wanted to go to the area, too. But this white soldier told them to go back to their barracks and stay there, because he didn't them to go down to that area, and he wanted all the fellows to go back to the barracks.

Q Well, were you asked to do anything in particular there at that time?

A Yes, sir; I was asked,---

Q (interposing) Just a moment. Who asked you?
A John Pinkney.

Q Well, what did he say or what did he ask you to do?
A He asked me to stay back with the,---stay there, I mean stay there and hold the men back so that they wouldn't come down and be in their way, because they had to clear their men out.

Q Did he ask anybody else besides you?
A There were a few other fellows. I mean, particularly, I think he was speaking to me and Gresham.

Q Was Gresham there at the same time?
A Gresham was there, sir, but he seemed to be talking directly to me, because he called my name.

Q After Pinkney made this request of you, what did you do?
A I bluffed the fellows by cussing them and talking loud and telling them the M.P.'s were going to have to do a whole lot of shooting, and like that, and to stay back. These fellows hesitated a few minutes and I continued to talk with them and while I was continuing to talk with them, the white M.P.'s and John Pinkney continued to go down to the Italian area, and they seemed to be half running.

Q Where did Gresham go?
A Gresham also followed, after he found out I was going to stay there and hold this crowd back.

Q Did you see Corporal King there at that time or not?
A I don't remember seeing Corporal King, sir.

Q All right. You have told the Court now that you, in response to Pinkney's request, assisted in keeping the crowd back. Now, I want you to go right on and just tell the Court what you did from that point on.

A After I got this crowd to stay back, they began walking back down the street. They seemed to be just milling around, standing there. So, I walked back to Building 719 and stood up there, looked around for awhile. Didn't seem to be any more men going down that way. So I went on to the steps. Then Sergeant Aubry came back again. That is the First Sergeant. He came back and talked with me, then, and those that were out there, he wanted them to go in the barracks, and those that were coming back, he wanted them to get back in, because well, he was still talking about the M.P.'s might hurt some of us. Well, he left again, I think, to call the Company Commander or try to get in touch with him.

I stood there for a few seconds, and I ran on to our orderly room. John Pinkney came in with the white M.P. and told the Sergeant for the good work he had done there he said he should get some stripes for it. I left our orderly room and came back to our barracks and there was one M.P., at least one or two M.P.'s, two M.P.'s stood in the door, and I found out one of them was from Houston, Texas, and I talked with him just a second or two, and walked on upstairs and went on. I went on and laid down in my bunk after pulling off my shoes and listened to the radio and put my lights out.

Q All right. Let me ask you this. I want you to tell the Court whether or not on this evening you ever led a group of men down to the Italian area from Barracks 719, or its vicinity?

A I have never led a group of men down to the Italian area. I have stood in front of a group of men and told them, and asked them, to stay back. That is the only time.

Q I want you to also tell this Court whether or not at any time on the night of August 14th, you were yourself down in that Italian area?

A No, sir; I have never been down in that Italian area.

Q Or whether you were down there armed with a club or anything?

A No, sir; I was never down in that Italian area with a club in my hand or anything. The only time I ever went down there was with the Court.

Q Do you understand what we mean by Italian area?

A Yes, sir; I do.

Q By the way, Sergeant, did any officer connected with the Seattle Port of Embarkation ever tell you that he was going to see that you received some kind of a letter?

A I have been,---

Trial Judge Advocate: Now, just a moment.

Q Just answer that yes or no.

Trial Judge Advocate: Now, that is a thing that is wholly improper, because what some officer might have thought long prior to the time of the investigation of this matter was completed, or even after it was completed, or what some officer might have thought or might have wanted to do, or have done, or recommended, is not material to any issue in this case, and it is improper.

Law Member: I think it is material. However, it is hearsay.

Trial Judge Advocate: And there would be no authority for that.

Q I will ask him, who the officer was.

A The officer was Major Manchester.

Trial Judge Advocate: I want the Court to know this, too. If Counsel should go into this matter then I am going to ask the Court to let me develop the full facts under this particular thing or situation and I think I am entitled to and I am going to if the Court will permit me.

Law Member: I want to go back to the original question of the subject.

(Original question read back to the Court.)

Law Member: That is obviously calling for hearsay and the question is objectionable on that ground.

Defense: I can't see how it is hearsay, if the Court please. Here is a representative of the Seattle Port of Embarkation that makes that statement. We are not asking what this officer said or what somebody else said to him. That is direct testimony.

Law Member: The officer that has been referred to has been around this court room for four weeks now and can be put on the stand.

Defense: Is the Court ruling that is hearsay?

Law Member: That definitely is hearsay and it is excluded.

Defense: You may examine.

The Witness: There is one thing I would like to say, sir?

Defense: Well, you tell me.

(Whispered discussion.)

Q All right. You tell the Court. That is just clearing up something there may be some confusion on.

Trial Judge Advocate: Well, you ask the question.

Q Well, there is nothing prejudicial about it. You mentioned you would like to clear up one part of your testimony so there would be no confusion about it, didn't you Sergeant?

A Yes, sir.

Q And that pertains to when you saw John Hamilton?

A Yes, sir.

Q Go ahead.

A I saw John Hamilton and this First Sergeant, I mean this American white sergeant, before I talked with the First Sergeant of my Company and the Staff Sergeant.

Q Well, now, who is the First Sergeant of your Company?

A Sergeant Robert Aubry.

Q And who do you mean by the other Staff Sergeant?

A Staff Sergeant Spencer Martin.

Q You want the Court to understand you saw Sergeant Hamilton take this Sergeant Farr up there before you had this conversation with this other Sergeant?

A Yes, sir.

Defense: All right, you may inquire.

Law Member: Did I understand you had the discussion with Hamilton before you talked to Aubry and Martin?

The Witness: Yes, sir.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Do you know how long that riot was in progress down there before Sergeant Farr was brought up?

A I don't know how long it was in progress, but I can estimate just about the time that the soldier left me until he came back.

Q All right. Just estimate that time.

A It seemed to have been about ten or eleven minutes.

Q Ten or eleven minutes?

A Yes, sir, ten or eleven; about ten, something like that.

Q You have had quite a bit of education, haven't you, Sergeant?

A To the 11th grade, sir.

Q Well, you have had quite a few experiences in your lifetime, haven't you?

A Experiences?

Q Yes.

Defense: Oh, I object to that.

Q Yes, you have worked and been around quite some bit, haven't you?

A I have worked on jobs, sir.

Q And you consider yourself rather clever, don't you?

Defense: Object to that question, if the Court, please.

Trial Judge Advocate: Well, I want to show what sort of ability this man has.

Law Member: Well, what he thinks is not proper. Objection sustained.

Trial Judge Advocate: I asked him, if the Court please, if he did not consider himself to be clever.

Defense: Well, that is the same thing.

Trial Judge Advocate: Well, it is his conclusion. A man has a right to speak of what he believes of himself.

Defense: I still object to the form of the question.

Law Member: Objection overruled.

Q Will you answer that question?

A What was the question again?

Trial Judge Advocate: Read the question to him, Mr Stoddard.

(Last question read back)

A No, sir; I don't consider myself a clever type of person.

Q You don't?

A No, sir. Now, maybe I have your meaning of clever wrong. Will you explain to me when you are talking about clever, in what ways you mean?

Q Well, you have considerable confidence in yourself, don't you?

Defense: I want the record to show my objections running to all these types of questions.

Law Member: Objection overruled.

A He said that I consider myself,---

Q (interposing) You have considerable confidence in yourself, don't you?

A Oh, confidence?

Q Yes.

A Well, I have,---well, any man I think should have confidence in himself.

Q Well, I am not talking about the other fellows; I am talking about you just now.

A In what way do you mean about confidence? There could be confidence in ways of working or things of that kind, you know. Just what particular thing are you talking about.

Q The same confidence that you spoke of when you said that every man should have confidence in himself?

A Well, sir; I don't believe there is a man that don't have a little confidence in himself.

Q Well, you have considerable confidence in yourself, don't you?

A Pertaining to what matter?

Q All matters?

A Well, there are a lot of things that I don't know anything about, therefore, I couldn't have confidence in something like that.

Q You have sat in this court room and you have listened to considerable testimony, have you not?

A Yes, sir; I have.

Q And you have followed that testimony pretty carefully, haven't you?

A I only sit here and listen to things that was going on. Sometimes I forget things before I even got back to the barracks.

Q You Didn't forget that the man you should say that you participated in helping that night was Sergeant Farr?

A That was Sergeant Farr.

Q And yet, when I talked with you about anyone that you saw that night, you couldn't give me even a description of that man, could you?

A I have given a description once.

Q How did you describe him?

A I says he was tall, and I mean, he was about my height and sandy, I think I said had sandy hair.

Q Now, the truth of the matter was, the only thing you said was that he was tall. Now, that was all that you said, wasn't it?

A I did mention about his hair.

Q Do you consider Sergeant Farr tall?

A Yes, sir, I do.

Q You consider him to be tall?

A Yes, sir; I do.

Q How tall do you think he is?

A I would say about five feet nine and a half or ten inches, it is about that.

Q You watched Sergeant Farr very carefully in the court room, didn't you?

A I saw him as he testified.

Q Now, when you say it was John Hamilton who turned Farr over to you, a person that you say was Sergeant Farr, that is correct, isn't it, isn't that what you testified to?

A John Hamilton turned a man over to me when I ran out to meet him, sir.

Q You ran out to meet him?

A Out in front of my barracks.

Q Where did you run from to meet him?

A From my doorway, sir, of 719.

Q You were standing in the doorway of 719?

A When I saw him.

Q And you ran out to meet him?

A Yes, sir.

Q Well, now, why did you run out to meet him?

A I think it was something very unusual that they would have a white soldier out there.

Q Well, now, how far away from you was he when you ran out to meet him?

A It was just a little to the right of my barracks, 719.

Q He was across the street?

A No, sir; it wasn't across the street.

Q It wasn't across the street?

A He was in the street, sir.

Q He was in the street?

A Yes walking straight up through the street.

Q Well, you were in the doorway of 719?

A Yes, sir.

Q And you ran out to meet him?

A Yes, sir.

Q Now, don't forget, Sergeant, it was awfully dark that night.

A Yes, sir.

Q And you had no light in front of that barracks?

A It was,---

Defense: (interposing) I object, that is argumentative,

he is testifying himself.

Law Member: Objection overruled. He already said it was wark.

Defense: Show my same objection to all this type of questions. He is not asking questions, he is making assertions and statements, and in fact, testifying himself.

Law Member: It is not direct, it is in the direct testimony he testified he went from the door out to the road. This is cross-examination, now.

Defense: But it is arguing with the witness and he is not asking questions, he is not asking a proper type of question. That is my objection.

Q It was dark, wasn't it?

A It was very dark, sir. But the only light there was from the ambulance parked in front of our barracks shining down in the street.

Q There was an ambulance already there at that time?

A An ambulance came up after the jeep.

Q You are placing an ambulance there at the time Hamilton was coming up the street, then?

A Yes, sir.

Q At the time the ambulance got there, the matter was already all over in the Italian area?

A No, sir. When John Hamilton was coming up, that ambulance was already there in front of our barracks. I think this same ambulance carried away some of the boys, I am not sure, but I think they did, but I am pretty sure they did carry someone away.

Q So there was an ambulance light that helped you out to see that John Hamilton and this man you say was Sergeant Farr, it helped you to see them when they were coming across the street?

A Coming up the street.

Q All right. Was he placed in that ambulance right away?

A Was who placed in the ambulance?

Q Sergeant Farr.

A No, sir. I carried Sergeant Farr to the top of the hill, to where the road intersects. He seemed to have come to at the park, because I told him he would be all right, and he could go on.

Q You took charge of him sort of in front of 719?

A Yes, sir.

Q And you took him up the hill?

A Yes, sir, all the way, sir.

Q Why was that done?

A There were reasons, the reason I did, Hamilton told him "Don't let no one hurt this American soldier."

Q Do you mean to tell this Court that there were negro soldiers out in the street in front of 719?---

A (interposing) There was.

Q Just a moment, let me ask you this question first. That there were negro soldiers out in front of 719 and in that vicinity who were there to hurt Italian soldiers; is that your testimony?

A I am only inferring, sir, from the words John Hamilton told me. Those men,---I guess, I don't know whether those fellows would hurt him or anything, so I carried him all the way, walked right by his left side, and he wasn't saying anything until we passed on the other side of a little street, and was going on up the hill, then he told me about American soldiers being down there in that area.

Q Now, at the time you were standing there in the doorway of 719, and John Hamilton brought this soldier up there was there a crowd of negro soldiers anywhere close by?

A There were fellows milling around, all up and down the street.

Q All right. You told this Court on direct examination that John Hamilton told you at that time, "Take that man through the crowd, and don't let him get hurt."

A Yes, sir.

Q That he is an American soldier?

A Yes, sir.

Q And didn't you also say that you wanted to take him to safety and that is the reason you took him?

A I didn't say that I wanted to take him to safety. He told me to take him on all the way up, to take him to safety through these fellows.

Q You didn't mind doing an unnecessary thing, did you?

A What do you mean?

Q I mean by that, you had in mind taking him to safety, too, didn't you?

A When I walked out there and John Hamilton told me this was an American soldier, take him on through the crowd to safety, then I carried him on,---all I was interested in was in carrying this man through

so he wouldn't be hurt.

Q You were very much interested to see that he was not hurt?

A Yes, sir, since he was an American soldier.

Q Yes.

A But if that had been an Italian soldier I wouldn't have tried to help him, because maybe somebody would have jumped on him.

Q That tells your whole story, is that right?

Defense: That is improper, if it please the Court.

Law Member: Yes, it is.

Q I will ask you this; is it not a fact that you went on down to the orderly room that night, that you were in there with a group participating in that affair with the crowd in the orderly room?

Defense: Now, that is two questions in one.

Trial Judge Advocate: Well, if he didn't do that, all he has to say is "no".

Law Member: Objection overruled.

Q Isn't that true?

A Sir, I have never been in that Italian orderly room.

Q Weren't you down there with a club participating in that affair? in that orderly room?

A No, sir, I was never in there with a club. The only time I have been in the Italian orderly room was with the Court.

Q In other words, you were not in that orderly room that night?

A No, sir.

Q With or without a club?

A I have never been in there except with the Court.

Q After you got down there you saw that American white soldier had been hurt?

A Sir, what are you speaking of now? I have never been in the orderly room; I have never been down there to find out if anybody were hurt. The only time I did anything, was bring a man up that hill and I didn't know that man was hurt or who he was when he was turned over to me in front of barracks 719, and he told me to take him up through the crowd.

Q Well, after you saw that American soldier was hurt

pretty badly down here in that orderly room, you left the men that you led down there and went back up to a place where you thought it would be safer, isn't that true?

A Sir, I have never led no men, and I have never went down and as you say found out that American were wounded and brought them back. That is not right. I have never done that.

Q Have you ever talked with James Chandler, one of the accused in this case about your activities and where you were that night?

A No, sir, I have never talked with James Chandler about where I was or any of my activities.

Q Have you ever talked with Willie G Jones, about where you were that night and what your activities were?

A Since coming back,----

Law Member (interposing): Now, don't state the conversation. The Answer to that question is Yes, or No.

The Witness: Can I name the place?

Law Member: The answer to that question is yes, or no, Sergeant. He has asked you if you have talked with Sergeant Willie Jones.

Q About your activities on the night in question?

A In the compound out here, since the case has started.

Law Member: Now, the answer is yes, then?

The Witness: Yes, sir.

Q In the course of that conversation did William G Hones tell you anything about where he saw you?

Law Member: And the answer likewise to that question is yes or no, Sergeant.

A No, sir. In the compound we never talked about,--- he never said anything about where he was.

Q Did he say anything about where you were?

A No, sir.

Q Well, you have talked with the accused, James Chandler?

A No, sir; I have never talked with James Chandler.

Q You were considerably concerned when you realized that some white American soldiers had been hurt that night, were you not?

A The only matter that I knew of, as an American, was this fellow that we brought out and I didn't think

that he was hurt, and he never said that he was hurt. But when he said there were a number of American soldiers down there I was interested in seeing that that stopped. Because, I came from a place where colored and whites, if they do fight, you know, the results would be for the detriment of the negroes. The negroes would always get the worst. That is down in Texas.

Q Well, that is the thing that ran through your mind, when you saw what went on down there in that orderly room, and you saw some American soldiers had been hurt?

A I have never been in the orderly room,---in the Italian orderly room. I never saw any men being hurt, or any men that were hurt. All I know is that I did take this Sergeant from the front of my barracks all the way to the top of the hill.

Q You heard Sergeant Farr testify that he had to be taken through a line in order to get to what was termed a safe place; were you forming or were you with any line that Sergeant Farr had to gain passage through before he could return to safety?

Defense: I don't know how he can answer that question, if the Court, please. He asked first if he heard Sergeant Farr's testimony, and then he goes on to another thing.

Q All right. Did you hear Sergeant Farr's testimony to that effect?

A Sir, I have heard Sergeant Farr testify that it was difficult,---that fellows were bringing him out from the area, something like that.

Q Well, you heard him further say that he had to gain passage through lines before he could get to safety?

A I don't remember that.

Q You don't remember that?

A No, sir.

Q You can't remember him saying anything about lines of colored soldiers that had formed and that he had to pass through?

A Sir, it could have been stated if you say so, they did, but I just didn't pay any attention to that, when it was being testified to in court.

Q Yet, you felt he was talking about you and John Hamilton the whole time, but you didn't pay any attention to him?

A No, sir.

Defense: Are you making an assertion or are you asking a question, Counsel?

Trial Judge Advocate: No, sir; I have a right to lead him.

Defense: I am objecting to it as not being in the form of questioning. There is a way of asking a proper question.

Law Member: What was that, Major?

Defense: And for one thing, the record does not show any tone of voice counsel is using with this witness.

Law Member: Is there any rule about tone of voice, Major?

Trial Judge Advocate: If you can control the tone of my voice, you are pretty good.

Defense: Well, if you can't, I am sure I cannot.

Law Member: What is the question.

(Last question read back.)

Law Member: That question is objectionable in form, because it certainly does call for two questions.

Q Well, let's see if I can possibly chop it up in two or three questions, if I can I will be glad to do it, but I thought it was just one question. Now, lets see. Did you feel that Sergeant Farr was talking about you and John Hamilton when he testified about having been taken by soldiers to safety?

A Sir, you spoke of lines at one time and---

Q (interposing) Well, I am asking you this question now first. Will you please answer it? Or do you have any objection to answering it?

A Will you read the question, please?

Trial Judge Advocate: All right. Will you read it to him, Mr Stoddard?

(Last question read back.)

A When he said soldiers,---I don't think so, but, he said soldier, which would be strictly pertaining to me, then I would say, yes, sir. If he said that. Because, I was the only one who carried him to the top of the hill.

Q Of course, you didn't pack him up there, you didn't just pick him up down at the orderly room, did you, and carry him bodily to the top of the hill?

A I saw this men only when he was coming up to the front of the barracks.

Q Well, you were, of course, standing in the doorway of Barracks 719?

A Yes, sir.

Q Now, will you come up here with me and show me the furthestest point you ever got from the doorway of 719? Let us go over to Prosecution Exhibit 2. Here is your barracks, 719, and here is Virginia Avenue, and your doorway would be right in front here (indicating). Now, you show the Court the furthestest point you ever got away from that doorway.

A The farthest point I had ever got away from this Building 719?

Q From the doorway, I said.

A From the doorway of 719, was to my orderly room.

Q Where was that?

A I don't know the number.

Q What was the furthestest point you got away from the doorway of 719 on the night of the riot?

A While it was in progress?

Q While the riot was in progress, yes.

A While it was in progress?

Q Yes; while it was in progress.

A I think it must have been about eight or ten feet, on this little vacant lot, where Pinkney and the M.P.'s held the crowd back.

Q Will you just mark the spot by your initials down there?

A I don't know exactly, right along here(indicating).

Q Well, now, you see, you can judge the distance here; here runs Lawton Road, and here is Building 719, and here is Building 700, the mess hall. Now, just put your initials there, there is no harm in putting your initials on there.

A (marking on map.)

Q All right. Now, you marked that AH, with a dot right underneath it, didn't you?

A Yes.

Q All right, will you come back and have a seat, please. When did you first go down to that point that night?

A At the time I went to that point was when the,--- when Pinkney was trying to explain to the M.P.'s about going down there, and he kept asking Pinkney, was he going, was he going, and he said, yes, he was going

to get our boys out of that area, so when he asked me,---

Q (interposing) All right, I asked you just what you heard to that point.

Defense: He is telling you, Counsel.

Trial Judge Advocate: Yes, he told me when Pinkney was there. That is all I am interested in.

Q Was Pinkney, at that point, before you were there,--- or was he there after you were there, did you go there first, or was Pinkney there when you arrived at this point?

A Pinkney was already there, over there, and the white M.P.'s were on the other side of the other fellows and me, so that would make Pinkney there first.

Q He was there first. All right.

A Yes, because they started right in front of the street, and as the fellows walked around trying to say they were going down there to see what it was all about, a lot of them said they wanted to see what it was about and a lot of them were going, I guess. I can't give an opinion why they were going.

Q Well, just tell us why you were going to that particular point.

A That is where I heard the group, and Pinkney and the M.P.'s.

Q But you had to get there first from the door to the M.P.'s?

A When the M.P.'s came out, I walked down to the car and everybody tried to talk and telling the M.P.'s what was going on, and he said, "Let him do the talking," and he talked with them, and they said they was going down and break up what was going on and also get our boys out of that area.

Q Did you walk from the doorway of 719 with Pinkney to that spot?

A I walked from the doorway in front of 719 to the car when it parked. It was a Command car. It was a car without doors.

Q Well, from there, did you walk with Pinkney to the spot that you have marked on the map?

A From there I walked right along with a white sergeant and Pinkney.

Q Then you got to the spot the same time as Pinkney did?

Q No, sir. They did. I mean Pinkney and the M.P. got there first.

Q Well, you said you walked alongside of them?
A Well, if I said alongside, that was because they was at the door,---sort of in front.

Q In other words your testimony is that you got to that spot about the same time?

A I won't say on that about the same time. A few seconds would mean a lot, sir.

Q All right. Why won't you say you got there about the same time?

A You want the truth in this testimony, sir, and I am giving you the truth, the best I can.

Q Well, you have told me once that you went alongside of them, and now I want you to tell me why you won't say you got there at the same time?

A That would make them getting there a little ahead of me. I won't say. Pinkney was going on down and I imagine if I had had enough protection I would have gone down but as long as I saw all of those men coming up and one with a gun, naturally I would rather stay back.

Q Did you take this man with Sergeant Farr up the road before the M.P.'s got there, or afterward, after Pinkney and the M.P.'s got there?

A I carried him up there before the M.P.'s got there. You said Lawton Road. Is that considered Lawton Road, all the way on that,---

Q Do you want to step up to the map?

A I thought all along here (indicating) was Lawton Road. I am speaking of here (indicating).

Q Well, that is a part of Lawton Road.

A I didn't know, I am sorry, sir.

Q So you had taken Farr, according to your testimony and walked a little distance up Lawton Road and then turned back and came to your barracks again?

A Yes, sir.

Q Before the M.P.'s arrived?

A Yes, sir; before the M.P.'s arrived.

Q And you went back to your post, or to your position in the doorway of Barracks 719?

A I went back to the front. Then up came the--- the Sergeant there, I was telling you about. That is where I made that explanation to the Court about having seen Hamilton before the Sergeant.

Q Did you or not go back to the doorway of 719 after

A Yes, sir.

Q How many whistles did you hear blow?

A I can say I heard a whistle blown twice. Whether this was the same whistle or two different whistles I don't know. But I did hear what seemed to have been two whistles and it might have been just the same whistle blown twice.

Q Yes, all right. And did you hear anyone come running up the barracks where this crap game was going on shout anything?

A I didn't see anyone come running up, but I heard someone yell that the Italians had killed one of our boys.

Q Did that break up the crap game?

A Not there, sir, because the man was still shooting, shooting for his point.

Q All right. Now, by the way, you were naming some of those who were in that crap game. Who did you say was in that crap game?

A I said some of those fellows. Cunningham; Willie Ellis; Sims; Halsey. Those are just some of them.

Q Well, about how many were shooting dice that night.

A Well, we were down on the floor with a blanket, the regulation blankets we use, and there were a number of fellows all crowded around. I could name more, but since I didn't name those in the statement I gave you, I didn't name them in the court. However, if you want me to give others who were in that game, I can do that.

Q You were asked under oath to give those names at the dice game.

A When I did give the names I said they were some.

Q You mean you were holding out on the others that were in that crap game.

A I can give you some more names but I don't know who all of them are.

Q Well, give those, like your lawyer asked you to do.

A Well, there was Addison George.

Q Why didn't you mention Addison George awhile ago?

A I just didn't name him, sir.

Q You just didn't name him. All right, go ahead.

A Because I said there was some. It could be the part I named or the part I left out, that some.

Q All right, go ahead and name some of the others.

A Oh, there was Jupiter.

Q Henry Jupiter?

A Yes, sir.

Q Why didn't you mention him awhile ago?

A As I said, sir; those were some that I named. I named, I told you, some of them, and if I named some, quite naturally I didn't get all of those. Those were some that were not named.

Q You heard Henry Jupiter testify yesterday he was in that crap game?

A Yes, sir.

Q But you didn't name him today?

A I have named him a long time ago.

Q Did you name Henry Jupiter to me?

A No, sir, I didn't

Q All right, go ahead and tell us who else was in that crap game.

A That's about all I remember.

Q In other words, you mentioned everybody except you left out Addison George and Henry Jupiter. Is that it? The others that you mentioned when your counsel asked you were in the game too?

A These fellows were in the game.

Q Have you named all of them now?

A Well, as I stated, I don't remember all of these men. But I told you I named some.

Q Well, was Willie Scott there?

A Oh, yes, sir. Willie Scott was in the game.

Q Yes, Willie Scott was in that game, too, wasn't he?

A Yes, sir.

Q All right. Now, have they all been named?

A I don't know all,---I wouldn't say that all of them have been named, sir. I don't know.

Q Well, you have testified to the Court in very great detail of your every single movement on that night, that this riot was in progress, haven't you?

A I think so, sir.

Q You have told the court everything that you can think of that you did that evening?

A There are some things that evening that weren't asked me and I didn't name them, sir.

Q All right. When you wrote out a statement about this matter, didn't you say you were upstairs running a dice game with some soldiers, namely, Jessie Sims, Willie Ellis, Cunningham, and Scott?

A Yes, sir; those were some.

Q You did not say some at that time, you said, "namely"?
A Yes, sir.

Q And you did not mention Henry Jupiter at that time, did you?
A No, sir; I didn't name Jupiter.

Q Now, you say that someone came running up there and shouted "The Italians have killed one of our boys"?
A Yes, sir.

Q And who was that that shouted that?
A I don't know, sir, who that person was.

Q Well, you are telling the Court that did not break up the crap game then?
A No, sir; that didn't break up the game right then. The boys continued to shoot.

Q For how long?
A Oh, I wouldn't be exact in saying but it could have been four, five, six, or even up to eight minutes.

Q About eight minutes?
A I say it could have been up to.

Defense: Well, why do you want to take the biggest number he gave you, Counsel?

Trial Judge Advocate: I have got a right to, Counsel.

Defense: Well, I am objecting to that, if the Court please. He said, four, five, six or up to eight minutes, and Counsel picked out the largest number.

Trial Judge Advocate: Well, I am sorry, Counsel. I did not hear the four. But if I had I would have had the right to ask him whether it was eight or not, I would have had the right to use the larger.

Law Member: Well, the Court knows he could have been playing either four or eight minutes.

Defense: But Counsel comes right back with the eight minutes.

Trial Judge Advocate: Frankly, I did not hear the four, but if I had hear it, I still would have had the right to ask whether it was eight minutes.

Q Now, how long did you say?
A It could have been anywhere from, between four, to five, six, seven, or eight minutes, anywheres between there.

Q Yes. In other words, it could have been four minutes,

or eight minutes under your testimony?

A Yes, sir; somewhere between that time.

Q You are telling the court somebody came running up there and said they have killed one of our boys and that that crap game still went on four to eight minutes after that?

A Yes, sir, it did.

Q All right. What caused the crap game to break up? Oh, after the fellows continued,--I mean after the fellows shot the dice, they said, "Let's see what's going on out here, let's see what it's all about." So they began to leave the game.

Q Now, wait a minute. I am asking you now what it was that caused that crap game to break up?
Defense: I will submit he is attempting to answer it; he is attempting to answer it.

Law Member: Let him go, Major.

Q Will you answer that question?

A Well, as I stated, he asked me what caused the crap game to break up.

Q That's right.

A Then we heard a whistle. That is one thing.

Q All right, go ahead. You heard a whistle.

A Then after we shot dice and the fellow missed his point, then we naturally came down.

Q Oh, you just kept right on shooting dice after you heard the whistle and after somebody came running up there and said the Italians had killed one of our boys; you just kept on shooting dice until somebody missed his point?

A Yes, sir. The man had his money down and was shooting and it just didn't break up, and the next thing, we just didn't believe it, I mean, I couldn't just believe it.

Q Well, if you didn't believe it, then why didn't you keep on shooting dice?

A Well, sir, I wouldn't stay there and shoot by my ownself, I wouldn't be getting anything.

Q Oh, you were the only one stayed there?

A I don't know, I couldn't speak for the others.

Q What did the others say to you when they left?

A They just said, "Let's see what's going on," and walked downstairs.

Q Was that the only thing that caused the men to leave

that crap game and go downstairs?
A Those things I have told you, I think, yes, sir.
Maybe curiosity.

Q There wasn't anything else transpired that caused that crap game to break up?
A Well, I have told you after the whistle had been blown and the fellows were told about the Italians killing one of our boys and the whistle being blown, and stuff like that, well, after the man missed his point, we walked downstairs.

Q When I asked you about this matter and you wrote your version of it, is it not a fact what you stated at that time was the men in the game continued to shoot dice until they heard men running out of the barracks cursing?
A Yes, sir; fellows were running out of the barracks.

Q And you continued to shoot dice until the fellows started running out of the barracks cursing?
A Well, the only thing, after this man missed his point, all of us left then and I was the last to leave, sir.

Q All right, now. You had heard whistles blown. You had heard that the Italians had killed one of the negro soldiers and you had heard men running out of the barracks cursing. You had heard all of that before you went downstairs, didn't you?
A Yes, sir, I did.

Q All right. What did you do when you got downstairs?
A I got downstairs and I stopped.

Q Where did you stop, in the doorway?
A Yes, sir, I did.

Q All right. What did you see as you stood there in the doorway?
A As I stood there in the doorway I could see groups of men, fellows crowding all around over to my left. I could see fellows being over.

Q What else did you see from the position of the doorway?
A One of my,---one of my own soldiers ran down and asked me what was going on.

Q Who was that?
A That was Private First Class John Hamilton, sir.

Q Then what did you say?
A Then what did I say?

Q Yes.
A Well, I could see men milling around and running around and some run straight on across that 700 area,

I mean that area by mess hall 700.

Q Well, can't you tell whether anybody was lying on the ground?

A Yes, sir. There was a fellow over to my left. A group of men were crowding around him.

Q Could you tell who that was?

A At that time the fellows giving the man's name said it was Montgomery.

Q That is not what I asked you. Could you tell who the fellow was, that is the question.

Defense: You mean by looking at him.

Q Yes, of course. Could you tell who he was?

A You could tell if you looked at him, of course, you could tell.

Q Did you look at him?

A As I stated, sir, a lot of men were standing up close, close up on him, some were either using flashlights or lights of matches, or something like that, and it would strike a reflection and I could see part of his face.

Q You were standing in the doorway?

A Yes, sir.

Q How far was he from you?

A Over to my left.

Q You have told us three times it was over to your left, but I am asking you how far he was from you.

A Oh, that wasn't very far from the side walk.

Q What distance?

A What distance?

Q Yes, just estimate it.

A I can show you up here, sir.

Q No, you can't show us on the map. Just tell us about how far it was and we will measure it if you can't estimate it.

Defense: If he can show it on the map I think he has a right to do that.

Law Member: If he can show us on the court room floor, it is a lot better than any map.

A It seemed to have been, I imagine, about from here to the corner of that (indicating).

Q Now, will you stand there again?

A From about there.

Q From about there?

A To the corner (indicating).

Q To this corner (indicating)?

A Yes, sir. It seemed to have been about there.

Q All right. This corner here. We will measure that later on and there were men crowding all around him, weren't there?

A There were men crowded around him, it seemed, bent over; fellows would walk by.

Q About how many men were around him?

A That would be rather hard to say.

Q Well, tell us whether it was a small group or a large group?

A Oh, that was a small group around him.

Q Just a small group?

A Yes, sir.

Q About how many men were there, as many as ten or fifteen?

A Well, sir, that I am unable to state.

Q You are not able to state that?

A About how many men, I imagine, to be exact, I could not give you the exact number.

Q I didn't ask you for the exact number. About how many were there, were there as many as ten or fifteen?

A Well, it seemed to have been around,--and I am only guessing now,---it could be more or it could be less than that, I would say around eight or ten.

Q Around eight or ten?

A Yes, sir. I think that is just about right.

Q All right. Now, give us the names of any of those men who were crowded around Montgomery at that time.

A I don't remember, sir, the men,---

Q Well, now, let's see.

A (continuing) I don't think I remember seeing fellows that crowded around him.

Q You have told us that matches were struck?

A Yes, sir.

Q And yet you cannot tell us the names of anyone who was standing around him at that time?

A No, sir; I don't recall anyone who was standing around Montgomery.

Q All right. Now, you, however, remembered that you saw Montgomery lying on the ground?

A Montgomery was on the ground, sir.

Q Was anybody over him?
A I don't remember of seeing nothing but just a part of his face, just a little part of his face and that was the part facing, I mean his head was toward the barracks.

Q And you can't tell the Court whether anybody was over him, working on him or not?
A That part, sir, I could not say.

Q You couldn't say as to that?
A No, sir.

Q Well, there were just eight or ten men around him, and you could see his face.
A I say I could see his face whenever those fellows either shined a light in his face or matches were lit, they were striking matches pretty close to his face. That is about all.

Q So you cannot give the Court the name of a single man who was present around Montgomery when you saw him lying on the ground?
A No, sir, I can't.

Q Now, were there any men around you as you were standing in that doorway?
A There were men around me, because a number of them stood from the hall all the way to the edge of the steps.

Q Were you standing in the doorway or were you standing on the steps?
A I stood on both, sir; both in the doorway and on the steps at times. Fellows would come by, just push over to the side and step down on the steps and step back in the doorway, and some of them were partly dressed and didn't want to get too far but, I guess.

Q All right. So that there were some men around you both in the doorway and on the steps when you were standing there?
A Yes, sir.

Q Now, give us the names of some of those.
A The names of some of those men?

Q Yes.
A I can't be exact. But I believe, I am not sure, and I wouldn't swear to it, but I do believe that I saw Australia Boettner.

Q You believe you saw him?
A Yes, sir; I believe I saw him. I am not sure.

Q Tell the Court about someone you could be positive that you know.

A There might be a question on the next man, too.

Q Well, tell me first whether you saw anyone you can be positive you saw while you were in the doorway or standing on the steps, of anyone of this crowd of men that you say was around you?

A There is one man I believe I saw in his underwear standing up, but you say be positive. Well, I would be afraid to say positive. It is just my believe that I saw that man standing there.

Q In other words, you cannot tell the Court under oath of a single person among the group who were around you in the doorway or on the steps while you stood there that night. A. This man I am speaking of is Joe Dimitri. That is the one I think I saw, but I can't swear.

Q Well, will you please answer the question. I asked you first,---I know you are long on explanation, but if you will just answer the questions then you can explain all you want to.

Defense: I object to that; that is a very prejudicial remark by counsel.

Law Member: That remark "long on explanation," shall go out.

The Witness: What is the question?

Trial Judge Advocate: Read the question I asked him before he got off on that answer.

(Question read back by reporter.)

A Well, in answer to that question, sir, while I wasn't looking for any particular person I was not trying to find out who was there, and I just don't remember.

Q Now, read the question to him for the second or third time, Mr Reporter, whatever it is going to be and I would like to have an answer.

(Last Question reread by the reporter.)

A I could tell you of a man whom I know, but he didn't stay there, because he just asked me "What is going on" and ran on out into the street.

Q You have told us about that man. That is John Hamilton; that is the one you are talking about, isn't it?

A I think that is the only one I could be positive about, I think..

Q He didn't stand there long. The group of men you had reference to when you said you were in the door--

way, and on the steps,---he was not standing around there, was he, John Hamilton?

A No, sir; he wasn't standing there.

Q He ran down towards the Italian area, didn't he?

A He ran up and talked with me first because his conversation was, "What is going on"? and, naturally, I told him, sir.

Q What do you mean, what did you tell him?

A I told him they were fighting down there, meaning the Italian area.

Q Then your answer to the question that I have asked you two or three times is that you cannot tell the Court positively of a single man who stood there on the steps or in the doorway with you,---your answer is, no, that you cannot, that is your answer, isn't it?

A I think the only one would be John Hamilton, sir.

Q And none other than John Hamilton?

A That I could swear to, I don't think so. Sir, that was actually standing right there, I mean.

Q All right. You were not able to tell us of anyone that was around Willie Montgomery either?

A No, sir; I wasn't.

Q All right. Now, you have sworn to this court that you took this man, Sergeant Farr, and brought him to safety before John Pinkney and the other M.P.'s got there, didn't you?

A Yes, sir.

Q And you are very positive of that, aren't you?

A I know so, sir.

Q Yes, you know it is true?

A Yes, sir.

Q Now, I want to ask you if you did not in a written statement that you made, when you came back from overseas, and was placed in the stockade in connection with this affair, if you did not say that Pinkney and the M.P.'s came there first; that you had been yelling at those men for them to stop and not go into the area, and that then John Hamilton was coming up the street with a white American soldier?

A Well, at that time, sir,---may I answer that this way?

Q Well, did you or not say that in your statement?

A That I don't remember, sir, but there is one thing I would like to tell you.

Q Well, just a moment.

Law Member: Just answer the question first.

Defense: He says that he does not remember.

Q Answer that question, first, did you or did you not say that in your written statement?

A Those things I don't remember, I was trying to give you everything that I remembered, whether it came in its order or not. I give you everything I could to help. I was under a very great strain coming back from the overseas and I was giving this the best I could and I was given to believe I was going to get a recommendation from Major Manchester,---

Trial Judge Advocate (interposing): Now, just a minute. I object to that and I ask that it be stricken and the witness instructed to answer the question.

Law Member: It may go out.

Q Now, you were not under any greater strain at that time than you are at this time, were you?

A Well, sir, that is a matter of opinion.

Q The truth of the matter is, you were talked with only briefly, and were given an opportunity to write your statement, weren't you?

A I was talked with and brought back to the guard house. Carried up back again, I think the second time, when I wrote the statement out.

Q It could have been the first time you wrote it, couldn't it?

A I don't remember. But I was trying to give you everything that actually happened.

Q Yes.

A Whether it came in its right order or not.

Q All right, we will see about that. Now, when did you write this statement, what was the date?

A I don't recall, sir.

Q Well, give us the approximate date. Well, to refresh your memory wasn't it on October 26th?

A Well, I am not sure, sir.

Q Well, it was about that time, wasn't it?

A I would say, roughly, yes, sir.

Q And your explanation now of your statement is that you were just putting anything and everything in there that came to your mind, but that you did not particularly pay any attention to the order you put it in?

A As I stated to you, sir, I was trying to give you everything that happened.

Q Yes, but you paid no particular attention to the order

in which you mentioned those things in that statement?

A I don't recall, I don't think I put it down just like you would, running from one, two, three, on, or something like that.

Q Yes.

A But I had it all down there. I know I had it all down.

Q All right. You say you were able to distinguish John Hamilton bringing this soldier up because of the ambulance light; that is correct, you gave us that testimony?

A Yes, sir; because of the ambulance light.

Q All right. Now, was that the ambulance that came after Montgomery?

A That was the ambulance that came after the jeep had gone, because there was a jeep parked, when it came, first, and I think that was what carried Montgomery away.

Q Was that the only ambulance that had come up to that time?

A I think that was the only one. A number of them came later, I know.

Q Oh, yes, but I am talking about up to that time, it was the only ambulance?

A No, sir; it wasn't the only ambulance that came.

Q I mean the only ambulance that came up to this time that you saw John Hamilton and the soldier?

A When I saw, ---I think so. That was the only one that I saw during that time, because it was parked directly in front of our door.

Q And is that the ambulance that took away Willie Montgomery?

A No, sir, I didn't see no ambulance take away Willie Montgomery.

Q No.

A The jeep was the thing that carried him away as I recall it.

Q Who did the ambulance carry off?

A It seemed to have been Snow, or either this Clarke.

Q Yes. You believe it was Clarke, don't you?

A I think so, I think it was Clarke.

Q As a matter of fact, you did not see Sammy Snow at all that night, did you?

A It seems as though I saw Snow, but when I saw him I might have been mistaken, or mistaken him for the

same man that was called Alvin Clarke, because Alvin was one of them almost in front of the car lights, and he had his hands over the top of his head, and squatted down on the curb. I could have seen this other man in the dark and thought it was Snow.

Q As a matter of fact, you only saw one of them, you did not see two?

A I know about Clarke, and as I said I could have mixed him up with Clarke again, and called him Sammy Snow.

Q Clarke and Snow don't look a bit alike, do they?

A No, sir.

Q One is light, that is Clarke, and the other one is dark, Snow is dark?

A Yes, sir.

Q And yet you say you saw one in the ambulance light?

A Yes, sir.

Q And when you say you may have mixed them up and thought the man was Snow,---

A (interposing) I said in the dark he could have been mistaken for him.

Q In your statement you did not say anything about that, about Sammy Snow?

A No, sir.

Q But you did mention Alvin Clarke?

A Yes, sir.

Trial Judge Advocate: If the Court is going to recess directly, then I don't want to get into this further.

Law Member: Will you be with him for some time yet?

Trial Judge Advocate: Yes, sir.

President: The court will recess and reconvene at 1:30 p.m.

The court then at 11:59 was recessed to reconvene at 1:30 p.m., same day.

AFTERNOON SESSION

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Trial Judge Advocate: Let the record show that each of the accused is present, and all members of the Court as well as the personnel representing the accused and the personnel representing the Prosecution are present.

Sergeant Arthur Hurks resumes the witness stand and testifies further as follows:

CROSS EXAMINATION

(continuing)

Questions by Trial Judge Advocate:

Q Sergeant, you are reminded that you are still under oath.

A I am, sir.

Q Now, while Willie Montgomery was lying on the street, or in front of Barracks 719, did you hear any negro soldiers down the street?

A Yes, sir, I did.

Q What were they doing?

A Well, milling around as best I could remember, milling around and running. Breaking sticks.

Q Breaking sticks. Is that what you said, breaking sticks?

A Yes, sir. All down the road.

Defense: Speak up, will you, Sergeant?

A All down the road as well as I remember it, sir.

Q Well, your memory is pretty clear as to what happened that night?

A Pretty well, sir.

Q And you know where that fence was, the fence on the side of Building 700, the 578th mess hall?

A Yes, sir. I know where that fence is.

Q Did you hear them tear up that fence?
A I don't recall hearing them tearing up that fence, sir.

Q Did you hear them say anything or shout anything?
A Well, fellows were shouting, yes, sir.

Q What were they shouting?
A Well, I don't recall everything, sir, but I do know that they was shouting, some of them was standing up in one place, making a lot of noise.

Q Well, when you could hear the people down the street, when you heard the breaking of sticks, could you hear anything that any of them shouted?
A There is one thing, yes, sir. I could hear one thing.

Q All right, what did you hear?
A A lot of men were all out in the street milling around and the thing that I heard was, "Let's go," words in substance to that, something like that.

Q "Let's go."
A That was a long distance from me.

Q And all that you can recall hearing them say was "Let's go"?
A That is all, sir, that I can recall right now.

Q Did you hear any of them say, or anyone shout, "Let's mob them"?
A No, sir; I didn't hear that statement that I recall, I don't remember hearing that, sir.

Q Did you hear any of them say "Let's get them"?
A I don't recall hearing that either, sir.

Q You don't recall that?
A No, sir; I don't.

Q I will ask you if you did not say in this written statement that we have been talking about that you could hear people all down the street, breaking sticks and saying "Let's get them"? Did you or not say that?
A That is in my statement, sir. Yes, sir; I said it.

Q All right. Did you or not hear that that night?
A I did hear that, in words of substance to that effect.

Q Then you heard something besides "Let's go"?
A Well, in words of substance, sir, that is what I heard. That is what I was speaking of when I said, "Let's go."

Q That is what you were speaking of when you said "Let's go"?
A When I heard them say "Let's go."

Q Did you also hear them say "Let's get them"?

A I don't recall hearing them say those words.

Q You don't recall that. All right, now, when you returned to your barracks after this riot had come to an end, did any officers come up to the barracks?

A Yes, sir.

Q Do you remember the rank of these officers?

A Yes, sir.

Q All right, tell us what their rank was?

A I remember one, sir, being a lieutenant, a second lieutenant. The other, sir, I remember as being a Major.

Q All right, now. Were you up when they came, or had you already gone to bed?

A I had gotten in bed, sir.

Q You had gotten in bed and then they came in, is that your testimony?

A They came in, sir,---what was that?

Q I say your testimony was that you had gone to bed and then the Major and the Lieutenant came in?

A That is what I am answering you right now, yes, sir. I was in bed when they came in.

Q Had you already fallen asleep?

A No, sir; I wasn't asleep.

Q Well, are you sure that you were in bed when they came in?

A Yes, sir; I remember that.

Q You remember distinctly that you were in bed when they came in?

A Yes, sir.

Q All right. Did they come upstairs?

A Yes, sir, they did.

Q And did you listen to what they said?

A Yes, sir, I listened to some parts.

Q You listened to some parts. Well, did you stay in bed or get up?

A I got up, sir.

Q To listen to what they had to say?

A Yes, sir; to see who they were.

Q Well, did you recognize either of them?

A Yes, sir.

Q Who were they?

A I recognized one man, sir.

Q Who was that?

A Lt. Sistrong.

Q Have you seen the other man in the court room during this trial? the Major that you referred to?

A What is that, sir?

Q I say, the Major that you referred to that came along with the Second Lieutenant, have you seen him appear in this court room as a witness?

A Yes, sir.

Q Then you know who the Major was, too?

A Only, ---you say then I know who he is?

Q Yes.

A I know him, sir, when I see him.

Q And you saw him in this court room, didn't you?

A Yes, sir.

Q And you heard his name called, didn't you?

A I may have, I imagine I did, sir.

Q Well, what did you hear his name when it was called in this court room, what did you hear him called?

A I don't recall the names.

Q You don't recall?

A No, sir.

Q All right. Did the two officers ask any questions as to how the fight started?

A Yes, sir.

Q Did anyone reply as to how it started?

A Just partly, sir.

Q Did anyone state that he knew how it started?

A Yes, sir; that was the spark.

Q How was it stated he knew how it started?

A This man, ---oh, the man's name, ---it was Larkin, sir.

Q Luther Larkin?

A Yes, sir.

Q Well, did you try to find out what happened?

A I only tried to find out what was all going on there?

Q Well, you had been standing there in that area in front of 719 while that whole fight was going on down in the Italian area, hadn't you?

A If you remembered, sir, I imagine, ---I may have, while

part of it was going on, before that, when I came downstairs.

Q All right.

A And that part which went on in front of our building, I mean, before I came down, is what I wanted to know about.

Q But you knew that there had been a fight going on with the Italian boys, didn't you?

A By the time I had gotten upstairs, sir, or where?

Q Oh, yes, by the time you had gone back upstairs up to bed?

A Yes, sir.

Q As a matter of fact, you knew that shortly after you went downstairs, after the crap game?

A Yes, sir.

Q In fact, you testified that you told somebody who inquired as to what was going on that there was a fight in the Italian area between your boys, between the Italian boys and with the negro soldiers, that is correct, isn't it?

A Yes, sir, I told a man.

Q But when these officers came up there you then tried to find out what happened, didn't you?

A Well, that is just,---just read that sentence over again, sir.

Q I say, afterward, when the officers came up there, this Major and Second Lieutenant, didn't you ask someone what happened?

A After I tried to find out which happened?

Q Yes.

A Well, what are you referring to, what happened in the Italian area, or what happened on the outside of our barracks?

Q Either place?

A In front of our barracks.

Q Did you ask any questions, did you ask anyone at that time any questions as to what had happened?

A Yes, sir.

Q All right. What did you ask?

A I just asked what happened.

Q Well, what did you have in mind when you asked what happened?

A About the first beginning of this fight, sir.

Q And the first time you asked that question was after you had already gone to bed?

A After I had gone back, sir.

Q You did not ask what happened when you saw Willie Montgomery lying down there in front of barracks 719?

A Sir, I didn't have to ask.

Q You knew?

A Everyone was making a lot of statements and you could hear at that time from what they was saying what happened.

Q Well, why did you ask what happened then after you went back up to bed, if you knew?

A I wanted to know what happened before I came down there.

Q Didn't you say you knew when you got down there from statements that were made while you were looking at Willie Montgomery, that you knew what happened?

A Yes, sir.

Q Well, I asked you again, and I will ask you again what you mean, then, by saying, you asked what happened after you got back to bed, what did you do that for?

A Sir, I wanted to know in detail the things which happened.

Q All right, then, you did not find out what happened when you were standing in the doorway or at that time while Willie Montgomery was out in front of 719?

A Yes, sir.

Q You did not?

A You asked me a question about, did I find out. Well, I knew that there was a man laying there, and fellows was talking. Naturally, sir, I heard that he had got hurt or hit.

Q And that is all that you asked at that time?

A What time, sir?

Q At the time you were standing in the doorway, when Willie Montgomery was down on the ground?

A I did not have to ask anyone, sir. They was just saying about what had happened. I mean, these people pertaining to that fellow on the ground.

Q Well, what did you learn at that time had happened to the fellow on the ground?

A I learned that he had been knocked down.

Q By whom?

A By Italians, that is what was said.

Q All right. Did you learn anything else at that time?

A Not as I recall, sir.

Q Well, you learned that that is the reason the men were going down into the Italian area, didn't you?

A They were going, yes, sir.

Q And you knew that they were going because that man had gotten knocked out, didn't you?

A They were going down there, sir, I presume that is right, what you said.

Q Well, I am trying to find out from you what was in your mind at that time. You said that you saw Willie Montgomery lying there on the ground and that you learned at that time that he had been knocked out by an Italian, and you also told us at that time you saw men going toward the Italian area. Did you at that time conclude that the men were going into the Italian area because an Italian had knocked out Willie Montgomery?

A I don't think I understand your question quite clearly, sir.

Trial Judge Advocate: Please read the question to him, Mr. Stoddard.

(Last question read back.)

Law Member: Now, I think, Sergeant, that is a very clear question. Now, we will have him read it again and you pay close attention to it.

The Witness: Yes, sir.

(Last question reread by the reporter)

A Well, sir, I would say that was my conclusion, sir; with very little thinking.

Q All right. Then what do you mean when you were up in your barracks after you had gone to bed and these officers came in and you asked the question, "What happened?"

A You say, what did I mean, sir?

Q Yes.

A I was mean that I wanted to find out definitely what happened before I got down there. Now, how was he hit? Who all were there, that is what I was trying to find out.

Q That is what you were trying to find out?

A Yes, sir.

Q And at the time you asked the question, "What happened" you already knew that Willie Montgomery had been hit by an Italian boy; had been knocked out; and you

had already concluded that the negro soldiers went down to the Italian area for that purpose?
A I guess they were going there for that purpose, sir.

Law Member: Keep your voice up, Sergeant.

The Witness: I say I guess they were going there for that purpose.

Q It was not a guess, was it, Sergeant?
A You asked me and I guess I concluded they were going there because Montgomery had been hit? Isn't that right?

Q Well, now, the question was this: at the time you then asked the question as to what happened, after these two officers came in there, you at that time already knew that Willie Montgomery had been struck by an Italian soldier, had been knocked out, and you at that time had already concluded that the negro soldiers had gone to the Italian area for the purpose of attacking the Italian soldiers?

Defense: Well, that question is duplicitous, if it please the Court. There are really two questions in one. I could not answer that question myself.

Law Member: Objection overruled.

Q Well, maybe the witness can do better. Now, will you answer that question?
A Well, wanting to know, sir, and curious about the thing, that could be my only reason for asking this question, sir.

Q And that is your answer?
A Yes, sir.

Q All right. Who replied to that question of what happened, who gave the answer to it?
A When I asked that question Larkin gave me an answer.

Q Luther Larkin gave you an answer?
A Yes, sir; that is as near as I can remember.

Q What did he say?
A And the way that he answered this question he must have undoubtedly been thinking about it.

Q I am asking you that you just tell us what his answer was.
A He just said, "Where was I?"

Q What did he say?
A "Man, where were you?"

Q He said, "Man, where were you"?
A Well, in that, or words or substance, I guess. "Where

was I?"

Q What did you say?

A I don't recall saying anything else.

Q You don't remember answering to that?

A No, sir; I don't remember.

Q Well, didn't you tell him that you were busy helping the M.P.'s?

A I might have stated that, sir. I guess I did, but I don't recall it right now, saying that I was helping the M.P.'s.

Q Or did you tell him, "I was right here," meaning in your barracks?

A I don't recall that, either, sir. Could be, I don't recall.

Q I will ask you to take a look at this statement that I am going to pass to you, I will have it marked Prosecution Exhibit 46 for identification.

The document above referred to was marked Prosecution Exhibit 46 for identification.

Q (continuing) Before I pass this statement to you, Sergeant, there is one question I want to ask you. Is there anything in the testimony you gave this morning before the court recessed for lunch that you want to change?

A That I want to change?

Q Yes.

A I don't remember of that, sir.

Q There is nothing that you care to change in the testimony that you gave this morning?

Defense: That is what he said, Counsel.

A I don't remember, sir.

Q Well, I believe, so there will be no mistake about it, your testimony was this morning, that you saw John Hamilton with this American soldier whom you say was Sergeant Farr?

A Yes, sir.

Q That was before John Pinkney and the M.P.'s arrived?

A Yes, sir. I did see that.

Q And you are positive of that?

A Yes, sir. But in writing my statement and giving it to you, I tried to give you everything that happened. I said, that I probably did not have it directly in order, as it came or happened, but I

thought I had it all; that I wrote it all down as I remembered it. I told you in the condition I was,---

Q (interposing) As a matter of fact, you were very careful in your statement to get it written in the very order it happened, weren't you?

A I was trying to, but under those conditions it seemed very funny. It just seemed very funny.

Q It seemed very funny to you?

A Yes, sir.

Q The matter of your writing out what you remembered about this incident seemed very funny to you?

A I was speaking about the conditions, sir. Coming back all the way from overseas without escort or guard of any kind and then being put in the guard house and charged with something which I tried to stop, prevent. Being promised things. Well, it all was changed when I got back, sir.

Q As a matter of fact, before you wrote out this statement you were told that you were implicated in this matter, weren't you?

A Yes.

Q You were not laboring under any belief that people considered you innocent at that time?

A I was very disturbed, sir, and I was upset about implicated in something which I know that I tried to help stop.

Q All right. And you were trying very hard at the time that you wrote this statement to convince those who were investigating the matter that were innocent.

A It was not a matter,---well, no, sir.

Q Well, weren't you trying to help yourself all you could with the testimony that you gave at that time?

A I was trying to give you the things as I remembered them.

Q Yes, and you gave them truthfully, didn't you?

A Yes, sir, to the best of my knowledge I did, sir.

Q Yes, to the best of your knowledge.

A Whether they came in order or just the things that actually happened.

Q When you write out a story about a matter or when you tell a version of an incident, don't you give it in the order in which the events happened?

A Sir, this is my first time ever writing stories or matters that you are talking about. That is something new.

Q Yes, Is it the natural thing for you to tell something no matter what it is, in the order of events, or not?

Defense: Now, just a minute, if the Court please. He has testified that this is the first time he ever did this, so there could not be any natural custom for him.

Trial Judge Advocate: I was asking when he did do it.

Defense: He answered the last question, he said he had never written or told anything similar to this.

Trial Judge Advocate: That question was framed deliberately from the standpoint of telling things and not from the standpoint of writing, because he had said he had not written before. Would you mind reading the question, Mr. Reporter? I think you could get it more clearly in your mind.

(Last question read back)

Law Member: I have not heard any objection.

A It is, sir.

Q All right. Now, you have been lacking just a few weeks of going through high school?

A Yes, sir.

Q Well, you did a lot of composition work when you were in high school?

A Yes, sir, I did.

Q And did you do that composition work by setting things out in the order of events or would you skip about and change the order?

A I probably did, sir. Maybe that accounts for some reason why I didn't make very good marks at times in English.

Q I see, you wouldn't get such very good marks in English.

A Yes, sir, at times.

Q And that was due to the fact that you lacked the facility of writing things in the order of events?

Defense: If the Court please, he did not say that.

Trial Judge Advocate: Well, he is implying it.

Defense: Well, if you know, go ahead and tell him.

A I don't know.

Q You just don't know that?

A No, sir.

Q All right. Well, tell me, was there any particular reason why you would write this statement without telling it in the correct order in which the events occurred?

A You want to know were there reasons?

Q Yes, sir; was there any reason, particularly?

A Yes, sir; there was.

Q All right, tell us the reason?

A Well, I don't know, if the Court would like to hear it. But it is a little long, I think. I will, though.

Law Member: Well, make sure he understands the question.

Q All right. Now, let us see if you understand what I am talking about. What I mean is, did you have some particular purpose in mind when you wrote this statement without setting it up in the correct order of events; did you have any particular purpose in mind at the time you did that?

A No, sir; I don't think I had any particular thing in mind.

Q Well, if you did not write it up in the order of events, then it was just accidentally done that way?

A As I stated to you, that I was very much upset,---

Q (interposing) Oh, yes, you have told us that three or four times, now. We understand that thoroughly.

A And if I didn't get it down, sir, the way it actually happened, that was the reason.

Q Then that was the reason?

A Yes, sir.

Q All right. You take a look at this now and read it and see if that is not the statement you wrote?

A (Perusing document).

Q (continuing) That statement is or not your own handwriting?

A Yes, sir.

Q And that is a statement you wrote at that time?

A Yes, sir.

Trial Judge Advocate: I will now offer it in evidence.

Defense: I would like to read it first.

Law Member: Are there any other names in there?

Trial Judge Advocate: Yes, sir, there are, but I think

they have all come out in the evidence. Yes, sir; they have. There is nothing in there that has not come out.

The Witness: Colonel, in this statement,---

Trial Judge Advocate (interposing): Wait a minute. Let us permit your counsel to finish reading it first.

The Witness: There is nothing wrong, sir. I just wanted to show you,---

Defense: No objection.

Law Member: The Hurks' statement will be received in evidence as Prosecution Exhibit No 46. Now, I understand there are names in there, but they have already come out in the testimony?

Trial Judge Advocate: That is right.

Defense: I don't think there are any names in there that are objectionable.

Law Member: At any rate the statement is received as binding only upon Hurks, not upon any other of the accused.

The document previously marked Prosecution Exhibit 46 is received in evidence.

(Prosecution Exhibit 46 is read to the Court by the Trial Judge Advocate.)

Q Now, Sergeant, you said something this morning about remembering Jessie Sims very well?

A Yes, sir.

Q I will ask you if it is not a fact that you remember Jessie Sims so well because he appeared here in Court as a witness and said that you led a group of men to the Italian area?

A That is not the reason, sir.

Q That isn't the reason?

A No, sir.

Q That helped you remember him, though, didn't it?

A I have a definite reason for remembering Jessie Sims.

Q You heard Jessie Sims testify that you led a group of men to the Italian area and that he was in that group?

A Yes, sir, I heard him testify to that.

Q That is untrue?

A Yes, sir; that is if it pertains to me.

Q How long have you known Willie Ellis?

A I have known Willie Ellis since in Houston, Texas.

Q Did you know him before you went into the Service?

A Yes, sir; I did.

Q How long did you know him before you went into the Service?

A Oh, I couldn't estimate the time, but I know I knew him before we went in the service.

Q Where did Willie Ellis live in Houston?

A I don't know, sir, where he lived.

Q Do you know what part of town he lives in?

A I know where he used to be, or where I used to see him, but I don't know what part of town he lives in.

Q Did you go to school with Willie Ellis?

A He started in my school and quit there, and then went to another school in another ward.

Q What ward did you attend school in there?

A In the third ward, sir.

Q And you knew Willie for awhile then, when he was in school, about the same time you were?

A Yes, sir, I did.

Q And how long did you and Willie serve in the same company?

A We served in the same Company since activation, sir.

Q Now, you heard Willie Ellis say that he saw you walking through the orderly room with a club in your hand?

A Yes, sir, I did hear him.

Q And, that, of course, is untrue?

A Yes, sir; that is untrue.

Trial Judge Advocate: Prosecution has no further questions.

REDIRECT EXAMINATION

Questions by Defense:

Q Sergeant, tell the Court a little bit about what Col. Jaworski asked you about knowing Willie Ellis beforehand, just tell the Court what the situation was, how you knew him?

A I went to Yates School which was in the third ward, and Willie Ellis went to the Wheatley High, in the fifth ward. And those two schools are always rivals, especially when it comes to any sports, and especially football. I played on the football team for Yates High School, and, naturally, I took up every-

thing that had to do with Yates' High School, if anything was said about Yates High School, or if anybody had any statements about Yates, and naturally he took up for the Wheatley High School if there was anything about that said.

Q How would those football games always wind up?

A Yes, sir, regardless of who would win, there was always going to be a fight, regardless of what happened. If Wheatley won, they was going to have a fight with Yates, and if Yates won they were going to have to settle with the Wheatley students.

Q In response to one of Col. Jaworski's questions, you said you had a reason for remembering Jessie Sims. Will you tell the Court what your reason was for remembering Jessie Sims?

Trial Judge Advocate: I went into that this morning.

Law Member: You may answer the question.

A I remember Jessie Sims definitely, because he always kept up a fuss, and arguing about losing his money. He said we was robbing him without a pistol sometimes and if he had a man faded and a man would roll the dice out on him, and sometimes if he had a number and would roll seven, he would lose his money and he would start a big argument about that.

Trial Judge Advocate: Were you robbing him without a pistol?

The Witness: No, sir; it was just his luck.

Trial Judge Advocate: It was just his luck to be shooting dice with you?

The witness: Just his luck, sir.

Defense: I think that's all.

RECROSS EXAMINATION

Questions by Trial Judge Advocate:

Q You were talking about playing football with Willie Ellis is that right, an another school. Are you telling this court that is the reason for Willie Ellis trying to place you in the orderly room?

A I am not giving you any reason for him telling that, but I am giving you the reason for our high school arguments.

Q That is right. You are just giving the reason. You don't know of any reason that you can assign to this Court why Willie Ellis placed you in that orderly room

- with a club in your hand?
A Only belief, sir.
Q But you have no reason that you know of, no fact you could mention to this court?
A I know of no fact, sir, but only to these things I told you.

Trial Judge Advocate: That is all.

Defense: No other questions.

EXAMINATION BY THE COURT

Questions by Law Member:

- Q Sergeant, you say that you saw Hamilton with Sergeant Farr, and that you recognized him because of lights from an ambulance?
A Yes, sir.
Q That ambulance was parked, was it not, in the neighborhood of Barracks 719?
A In front of 719, sir.
Q Now, there has been some evidence here that Farr sustained some rather severe injuries that night. Did you notice that he was bleeding?
A No, sir; he never showed any signs of bleeding. He had on, it was either a fatigue jacket or a field jacket, whatever it was and it was open.
Q You didn't see any blood though?
A No, sir: no blood.
Q Did Hamilton have him by the arm?
A Hamilton had him by his right arm when he was coming up.
Q And was it around Farr or had just taken hold of Farr by the arm?
A It seems to have been around by the elbow.
Q Now, Hamilton told you to get him out of the area, wasn't that it?
A To take him on to the top of the hill so he would be out away from there.
Q Why didn't you put him in the ambulance?
A I didn't see no reason, sir. I didn't see anything, I was only under the impression he was down there visiting.
Q You assumed, didn't you, that the ambulance was going out of the area?
A Sir? Oh, yes, I assumed it was going to be leaving, but I didn't know when, sir.

Q Did you see Montgomery taken away in a jeep?
A Yes, sir; Montgomery was carried away in a jeep, sir.

Q Now, this morning you testified that you had the talk with Staff Sergeant Martin?
A Yes, sir.

Q Before you had your talk with Hamilton?
A That was where I went back to explain.

Q Yes, I know that now. But when you first testified you said that you had talked to Sergeant Aubry, and Staff Sergeant Martin?
A Yes, sir.

Q Before you had the talk with Hamilton?
A Yes, sir.

Q Now, that was the same as this statement that was offered in evidence, wasn't it?
A I think so, yes, sir.

Q And at the time you wrote out your statement you said you were much concerned about being accused?
A Yes, sir.

Q Then after you had finished your direct testimony, then, you were asked to correct it, or you asked to correct it, so that you claim now, you had the talk with Hamilton before you talked to Sergeant Aubry and Staff Sergeant Martin.
A Yes, sir; that is correct.

Q In other words, you claim now you talked with the two Sergeants after you came back from delivering Farr up the hill?
A Yes, sir.

Q Well, you didn't notice in any way that Sergeant Farr had been injured?
A No, I really didn't, sir.

Q Didn't see that there was any blood?
A I didn't see any blood, sir.

Q Did you see Willie Montgomery later that night on his bunk?
A Well, yes, sir; I just glanced down the hall from the door that leads in from the hall.

Law Member: That is all.

President: Any further questions by any members of the Court?

Lt. Col. Stecher: Yes, I have a question.

Questions by Lt Col Stecher:

Q Sergeant Hurks, how long have you been a Sergeant?

A I have been a Sergeant, sir, since June, some time in June.

Q Whate grade, do you know what grade did Hamilton hold on the 14 of August?

A Hamilton?

Q Do you know what grade he held at that time?

A Hamilton at that time was a PFC.

Q Sergeant, is it a usual thing, or is it an unusual thing, for a PFC to tell a Sergeant to do a certain thing, and for the Sergeant to do it?

A Well, in that way, sir, it is unusual, but I didn't think so. I was looking at the man.

President: Any further questions?

Questions by Maj MacLennan:

Q As I recall your testimony, you said that the ambulance was there and the light shining on Hamilton and this Sergeant?

A Yes, sir.

Q That came up there?

A Yes, sir.

Q And it was right in front of 719 that Hamilton asked you to take the Sergeant up the hill where it was safe?

A Yes, sir.

Q What was unsafe about in front of 719 at that time?

A I imagine it was all due to the fellows who was all up and down the street, in front of 719.

Q There was no fighting down there?

A No, sir; no fighting going on.

Q Did that occur to you at that time as being necessary to take him out of that area?

A Yes, sir; I did.

Q What was the reason you thought it was necessary to take him out of there?

A I felt since there had been fighting or a man hurt, it might have been still in the atmosphere of those still around there to be angry so I carried him all the way.

Q Who was driving this ambulance; do you know?

A No, sir; I don't know.

Q Was it a colored soldier?

A I didn't see the driver.

Q Now, that was after Montgomery had been taken away?
A Yes.

Q In a jeep or in some other vehicle?
A Yes, sir.

Q Did you consider at the time whether it was a necessary or an unnecessary thing to take this Sergeant up on the hill?
A No, sir; I thought it was necessary; that is the way I looked at it.

Q How long did you stop there and talk to Hamilton and this Sergeant before you started off with Sergeant Farr.
A Well, the two men never started walked. When I walked up to him he told me that, and then I got on the Sergeant's left side, and got him by the elbow, and we walked all the way.

Q Hamilton dropped off, then?
A Yes, sir.

Q Did he say he was going anywhere?
A No, sir; he didn't say he was going anywhere when he did drop off, sir.

Major MacLennan: I believe that is all, thank you.

Questions by Maj Crocker:

Q Just one question. Sergeant, when you were playing dice, Cunningham and George were in the game with you?
A Yes, sir; those fellows were.

Q Were they in the game when the whistle first blew?
A Yes, sir.

Q When you heard somebody say that an Italian had knocked out one of your men, did that voice come from downstairs or was that on the second floor of the barracks?
A That was not on the second floor. It came from downstairs, I would say, because I had my back turned to the door, I mean, to the steps as you go down.

Q Did you see anybody come upstairs and say anything about any trouble?
A No, sir; I didn't see anybody come up. Everything you could hear, sir, was from downstairs.

RE-CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Just another question or two, if it please the Court. Where is John Hamilton from?

A John Hamilton is from Houston, Texas.

Q How long have you known him?

A Since being in the Army.

Q Are you sure you did not know John Hamilton before you went in the Army?

A No, sir; I didn't.

Q Now, did John Hamilton go with you when this American soldier whom you said was Sergeant Farr, was taken to safety, or did you go alone?

A Well, we both talked, and he dropped off, and I continued to carry this man on up the hill.

Q You walked together just a short distance?

A Yes, sir.

Q And then you took the man you say was Sergeant Farr up the Hill?

A Yes, sir.

Q Where did John Hamilton go?

A I don't know, sir.

Q John Hamilton did not return to the barracks with you, did he?

A After,---

Q After you took Sergeant Farr on?

A No, sir; I didn't see John Hamilton.

Trial Judge Advocate: I think that is all.

EXAMINATION BY THE COURT

Questions by Law Member:

Q You say you carried Farr up the hill. You mean, you helped him walk up the hill?

A No, sir; I didn't carry him. I sort of held him by the elbow.

Q Did you have to help him?

A No, sir, I didn't have to help him. He seemed to be all right, as far as I could tell.

Law Member: That is all.

Defense: It is just an expression, Colonel.

President: Any further questions? Witness is excused.

Witness excused.

Defense: If the Court please, at this time we are going to put in some unsworn statements.

Law Member: At this time?

Defense: Yes.

Private First Class John L Hamilton steps before the Court.

Law Member: Hamilton, it is my duty to advise you of certain rights which you have in a military court martial. You have the right to take the oath and take the witness stand and testify and tell your story the same as any other witness. But, if you are so sworn as a witness you may be cross-examined by both the Trial Judge Advocate and members of the Court.

Or, you may make an unsworn statement, and if you do make an unsworn statement, while it is not strictly evidence, it will be given such consideration as the members of the Court see fit. And you cannot be cross-examined on any matters contained therein.

Or, you may elect to remain absolutely silent and in such an event, if you do remain silent, that cannot be taken into consideration by either the Trial Judge Advocate in his final summing up to the Court, or by the members of the Court in determining your guilt or innocence. Now, do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with Major Beeks?

The Accused: Yes, sir.

Law Member: And what do you desire to do?

The Accused: I desire to make an unsworn statement, sir.

Defense: That unsworn statement has been reduced to writing and it will be read.

Law Member: That has been read to you, Hamilton?

The Accused: Yes, sir.

Law Member: And you desire it to be read?

The Accused: Yes, sir.

Defense: You have no objection to his returning and sitting down?

Law Member: No.

Trial Judge Advocate: I imagine before these are read, we ought to examine of these first, before they are read. There might be something in there, and they might be all right.

Law Member: Of course, any statement made in an unsworn statement about any other accused are not binding on those accused.

Defense: Would the court like these put in as exhibits, marked?

Trial Judge Advocate: They are not evidence.

Defense: I know, it is just a question of marking them to keep the record straight. I don't care how they are put in.

Law Member: I think they should be read.

Trial Judge Advocate: Read, yes.

Law Member: And there ought to be some way of identifying them.

Trial Judge Advocate: How about using identification marks of unsworn statements, 1, 2, 3, and so forth?

Law Member: Well, that will get us all balled up, then, when the reviewers go to read this.

Trial Judge Advocate: Well, I don't care how it is done. Go ahead.

Law Member: Well, we will give them exhibit numbers. The statement of Hamilton will be Defense Exhibit M. They will be received.

The document above referred to was marked and received in evidence as Defense Exhibit M.

(Defense exhibit M was read to the Court by Assistant Defense Counsel.)

Private Robert Sanders steps forward before the Court.

Law Member: Sanders, it is my duty to explain to you that you have certain rights as an accused in a military court martial. First, you may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the Court, or you have the alternative of making an unsworn statement, which may be a denial or in extenuation of the offense charged. This unsworn statement can be in writing or made orally either by your-

self or your counsel. Such unsworn statement is not evidence strictly and you cannot be cross-examined on it by the members of the court by the Trial Judge Advocate, but it will be given such weight and consideration by the Court as they see fit. Finally, you may make no statement, either sworn or unsworn and in such event the Trial Judge Advocate cannot comment at all in his summation of the case, and the members of the Court cannot take it into consideration in their consideration of the case, as to your guilt or innocence. Do you understand what I have told you?

The accused: Yes, sir.

Law Member: Have you prepared an unsworn statement in writing?

The Accused: I have, yes, sir.

Law Member: And do you wish your counsel to submit that?

The Accused: Yes, sir.

Trial Judge Advocate; May I look at it?

Law Member: You may return and sit down.

The Accused: Thank you.

Defense: Hero, Counsel.

Trial Judge Advocate: All right, go ahead.

Law Member: The unsworn statement of Robert Sanders is received in evidence as Defense Exhibit N.

The document above referred to was marked and received in evidence as Defense Exhibit N.

(Defense Exhibit N read to the Court by the Assistant Defense Counsel.)

Private James C Chandler steps forward before the Court.

Law Member: Chandler, as an accused in a Military Court Martial you have certain rights and it is my duty to explain those rights to you. You may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered as such by the Court. You will then be subject to cross examination, just like any other witness, by both the Prosecution and by the members of the Court if they see fit.

Or, you may make an unsworn statement in denial, explanation or extenuation of the offense charged. This unsworn statement can be made orally or in writing, and

either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined thereon, but the members of the court will give such consideration to it as they see fit.

Lastly, you may elect to remain absolutely silent and making no statement, either sworn or unsworn. If you so elect, the Trial Judge Advocate can make no comment thereon in his final summation to the Court, nor can the members of the Court take it in to consideration when they go to finally deliberate on your innocence or guilt. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with Major Beeks?

The Accused: Yes, Sir.

Law Member: Have you decided what you want to do?

The Accused: Submit an unsworn statement.

Law Member: Submit and unsworn statement?

The Accused: Yes, sir.

Law Member: And has that been prepared in writing?

The Accused: Yes, sir.

Law Member: And signed by you?

The Accused: Yes, sir.

Law Member: That is all. You may sit down. The unsworn statement of the Accused James Chandler, will be marked and received in evidence as Defense Exhibit O.

The document above referred to was marked and received in evidence as Defense Exhibit O.

Trial Judge Advocate: I am going to object to part of this statement which contains argument which is expressly forbidden by provisions of the Manual.

Law Member: I know it is forbidden by the Manual. May I see that part?

Trial Judge Advocate: Yes.

(Law Member perusing document.) It is argument, part of the sentence is all right.

Defense: Well, I want the record to show what he is offering is an unsworn statement. If the Court wants

to keep any portion of that out, I want the record to show what we have offered. That part of the sentence,--

Law Member: The last sentence in the next to the last sentence goes out. "I couldn't have had both." That goes out.

Defense: I will agree that that is argument.

Law Member: That is the Chandler Unsworn Statement, Defense Exhibit O, now.

Defense: Is that being taken out by interlineation; is it satisfactory to you that it just be stricken out?

Trial Judge Advocate: Yes.

Assistant Defense Counsel: I am not going to read it.

Trial Judge Advocate: That is all right, just strike it out.

(Defense Exhibit O is read to the Court by the Assistant Defense Counsel.)

Law Member: It seems to me that that statement putting Ceaser in the area should be taken out of that statement because it certainly is not binding on Ceaser.

Defense: Well, there will be another one here from Ceaser. I don't think there is anything prejudicial in that. Why don't you reserve your ruling on that until you hear Ceasar's statement?

Law Member: The court understands that any names mentioned in these unsworn statements are not binding upon anybody except the person making the statement.

Defense: Does the court want to take a 15-minute recess?

President: Court will take its 15-minute recess at this time.

At this point a 15-minute recess was taken after which proceedings were resumed as follows:

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Will the court excuse me for just one moment? Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: The record may show that each of the accused are present; that all members of the court are present, that the personnel representing the accused as well as the personnel representing the Prosecution are also present.

Law Member: Major Beeks, did you have something to say relative to the Chandler statement? I called your attention to the fact that it named a co-accused?

Defense: Yes. The Court mentioned before the recess something about the accused Ceaser. I think I mentioned that the ruling at that time that the ruling be reserved. I was under the impression at that time that Ceaser will make an unsworn statement, but I am not correct in that. Ceaser will remain silent.

Law Member: If you are going to put in any more statements, I believe the names of co-accused should be deleted. I think that the names should be deleted because they are not binding upon anyone except the one making the unsworn statement. In the statement which has been received, that is the Chandler Statement, Defense Exhibit O, the court has instructed that any mention therein cannot be held binding upon Ceaser or evidence of his having been in the Italian area.

Defense: I think the Law Member can properly instruct the other members of the court that it cannot be binding, but it certainly seems to me that should be a right the accused has to give credence to his testimony or the statements he makes.

Trial Judge Advocate: Suppose you consult with the accused Ceaser and see if he has any objection to it?

Defense: All right, I will be glad to do that.

(Whispered discussion)

Defense: The accused Ceaser says he has no objection to it being in.

Law Member: Ceaser, I am addressing you now. The statement of Chandler, which has been admitted, states that he saw you in the Italian area. Have you any objection to that remaining in the unsworn statement of Chandler?

Accused Ceaser: No, sir; I don't.

Law Member: It still is not evidence against Ceaser that he was there.

Defense: I think that is understood.

Law Member: And it will not be so considered by the Court.

Private First Class Roy L Montgomery steps forward before the Court.

Law Member: Montgomery, it becomes my duty to advise you of certain rights which you have as an accused in a Military Court Martial.

You may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You may then be subject to cross-examination by both the Trial Judge Advocate and by any members of the Court.

Or, secondly, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing, and either by yourself or by your counsel. Such unsworn statement is not strictly evidence and you cannot be cross examined thereon. But the members of the Court may give such consideration to that unsworn statement as they see fit.

And, finally, you may remain absolutely silent, and make no statement, sworn or unsworn. If you do elect to remain silent the Trial Judge Advocate may not comment on that fact in his final summation to the Court nor can the members of the court take that into consideration in determining your guilt or innocence. Do you understand that, Montgomery?

Accused Montgomery: Yes, sir.

Law Member: Anything about it that you want me to explain further to you?

Accused Montgomery: No, sir; I understand it clearly.

Law Member; Have you talked this over with your counsel?

Accused Montgomery: Yes, sir.

Law Member: And have you decided on what you want to do?

Accused Montgomery: Yes, sir.

Law Member: And what do you elect to do?

Accused Montgomery: To make an unsworn statement.

Law Member: And has that unsworn statement been pre-

pared in writing?

The Accused: Yes, sir.

Law Member: Counsel may submit it.

Assistant Defense Counsel: Any objection?

Trial Judge Advocate: No, I think it may go in.

Law Member: The unsworn statement of Roy L Montgomery may be received in evidence as Defense Exhibit P.

The document above referred to was marked and received in evidence as Defense Exhibit P.

(Defense Exhibit P is read to the Court by the Assistant Defense counsel.)

Defense: Will the Court bear with us for just a minute, please? Before the copies are submitted to the Court we have a little change that has to be made.

Private Walter Jackson, stops forward before the Court.

Law Member: What is your name?

The Accused: Walter Jackson.

Law Member: Jackson, it is my duty to explain to you certain rights that you have as an accused in a Military Court Martial. You may be sworn as a witness like any other witness and give testimony under oath. Your testimony is then a part of the evidence and will be considered as such by the Court. You will then be subject to cross examination by either the Trial Judge Advocate or by the individual members of the Court, if they see fit.

Or, you may submit an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be oral or in writing and given either by yourself or by your counsel. This unsworn statement is not evidence in the strict sense of the word, and you cannot be cross-examined thereon, but the members of the Court will give such consideration to what you say in that unsworn statement as they see fit.

Or, finally, you may remain absolutely silent and make no statement, sworn or unsworn. In such an event the Trial Judge Advocate may not comment upon that fact that you remained silence in his final summation to the Court nor can the members of the court take that into consideration in determining your guilt or innocence.

Do you understand that?

The Accused: Yes, sir.

Law Member: Is there anything else that you want me to say about it?

The Accused: No, sir.

Law Member: Have you talked this over with your counsel, Major Beeks?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What is that?

The Accused: Make an unsworn statement.

Law Member: And has that unsworn statement of your been prepared in writing?

The Accused: Yes, sir.

Law Member: All right.

Assistant Defense Counsel: Is it O.K., Colonel?

Trial Judge Advocate: Yes.

Law Member: This is Defense Exhibit Q, and will be received in evidence.

The document above referred to was marked and received in evidence as Defense Exhibit Q.

(Defense Exhibit Q is read to the Court by the Assistant Defense Counsel.)

Defense: Now, if the Court please, that completes the unsworn statements which the Defense will offer. The balance of the accused, which have not testified, either testified or given an unsworn statement, will remain silent. Would the court like to call them up and explain their rights to them, individually, or collectively?

Law Member: I believe, though it is going to take some time and effort, I think each of the accused should be warned individually of his rights and have the individual come up and state what he wishes to do and that he understands his rights.

Defense: That is probably the better practice.

Law Member: So, if they will line up, I will do it

the best I can.

Defense: I have the names here.

Law Member: All right. Now, boys, as your names are called, will you step up here, between the reporter and myself?

Defense: Riley Buckner.

(T/5 Riley L Buckner steps forward before the Court.)

Law Member: Buckner, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked this over with your counsel?

The Accused: Yes, sir.

Law Member: And have you decided what you wish to do?

The Accused: Yes, sir.

Law Member: And what is that?

The Accused: Remain silent.

Law Member: You may be seated.

Defense: John S Brown.

Private John S Brown steps forward before the Court.

Trial Judge Advocate: If the Court please, I wonder if, in order to save effort for the court reporter as well as a lot of space in the record, I wonder if it wouldn't be well for the record to just show a similar explanation by the Law Member in each of the instances without involving the necessity for taking this all down repeatedly.

Defense: I will certainly agree to that.

Trial Judge Advocate: I know that is done. As long as it is agreeable to Counsel that the explanation given is sufficient and is sufficient for each one, if it is agreeable to the Trial Judge Advocate and Defense Counsel, if they are satisfied with the explanation as it has been given; I believe it can be commented upon while it is being given if there is any necessity. And if there is no comment then it can be assumed to be satisfactory.

Defense: That is perfectly agreeable.

Law Member: Well, I can state that exactly the same instructions which were given to Buckner will be given to each of the accused which come up here, so that the record can state that the same instructions which were given to each and every one of the accused will be the same as those given to Buckner. However, the questions and answers to Buckner, and to each and every one of the accused thereafter should be taken down, I believe, immediately after I have completed giving the explanation.

Trial Judge Advocate: That is agreeable, yes.

Defense: Yes, sir; that is agreeable.

Law Member: This will eliminate putting my statement in the record but he will pick it up with the questions and answers at the end of my explanation and the explanation as given to Buckner will go to all of the rest?

Trial Judge Advocate: Yes, sir.

Defense: Yes.

Law Member: Now, Mr Stoddard, you may just make a note at the beginning of the explanation to each of these accused that the same instructions as those given to Buckner are given to each and at the end of my explana-

tion, beginning with the question "Do you understand those instructions?" you will take down the questions and answers as to each accused.

Defense: We have John S Brown.

Law Member: Brown, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in the final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Do you want any further instructions upon that subject?

The Accused: No, sir.

Law Member: Have you talked this matter over with your counsel?

The Accused: Yes, sir; I have, sir.

Law Member: And you have decided what you wish to do?

The Accused: Yes, sir.

Law Member: And what is that?

The Accused: Remain silent.

Law Member: All right.

Defense: Private First Class Sylvester Campbell.

Private First Class Sylvester Campbell steps forward before the Court.

Law Member: Campbell, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir; I do.

Law Member: Campbell, have you talked the matter over with your counsel?

The Accused: Yes, sir.

Law Member: And have you decided what you wish to do?

The Accused: Yes, sir.

Law Member: And what is that?

That Accused: I wish to remain silent.

Law Member: All right.

Defense: Corporal Johnnie Ceaser.

Corporal Johnnie Ceaser steps forward before the Court.

Law Member: Ceaser, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness

in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir, I do.

Law Member: Are there any further instructions that you wish on it?

The Accused: No, sir.

Law Member: Have you talked it over with Major Becks?

The Accused: Yes, sir, I have.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What do you want to do?

The Accused: Remain silent, sir.

Defense: James Coverson.

T/5 James Coverson steps forwards before the Court.

Law Member: Coverson, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness, in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: I do, sir.

Law Member: Have you talked this over with your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: Remain silent, sir.

Law Member: That is all.

Defense: Willie S Curry.

T/5 Willie S Curry, steps forward before the Court.

Law Member: Curry, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir; I have.

Law Member: And what do you want to do?

The Accused: Remain silent.

Law Member: All right, that is all.

Defense: Lee Dixon.

T/5 Lee A Dixon steps forward before the Court.

Law Member: Dixon, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir; I do, sir.

Law Member: Have you talked it over with your counsel?

The Accused: Yes, sir; I have, sir.

Law Member: And have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: Yes, sir.

Law Member: I say, what do you want to do?

The Accused: Remain silent, sir.

Law Member: That is all.

Defense: To give the Court a break, I will call one witness that has already been sworn, I will call Sammy Snow. The Court has explained his rights to him once before.

Private Samuel Snow was recalled by the Defense and testified further as follows:

Law Member: Snow, do you remember some days ago I explained at length to you your rights as a witness?

The Witness: Yes, sir.

Law Member: And you remember that at that time you elected to be sworn as a witness and testify on the matter of your statement.

The Witness: Yes sir.

Law Member: And you remember at that time I told you you might also make an unsworn statement?

The Witness: Yes sir.

Law Member: And that you could not be cross-examined if you would make an unsworn statement?

The Witness: Yes, sir.

Law Member: And do you remember also I told you that you had the right to remain absolutely silent throughout?

The Witness: Yes, sir.

Law Member: And not give any statements, either sworn

or unsworn?

The Witness: Yes, sir.

Law Member: And the fact that you remained silent could not be commented on by the Trial Judge Advocate in his final summation to the Court?

The Witness: Yes, sir.

Law Member: And that it would not be taken into consideration by the members of the Court in its final consideration?

The Witness: Yes sir.

Law Member: Do you remember all of that?

The Witness: Yes sir.

Law Member: Have you talked this over with your counsel further?

The Witness: Yes, sir.

Law Member: And have you decided what you want to do, further?

The Witness: Yes, sir.

Law Member: And what do you want to do?

The Witness: Remain silent, sir.

Law Member: All right, you may be seated.

Defense: Emanuel Ford.

Sergeant Emanuel W Ford steps forward before the Court.

Law Member: Ford, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial. Which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will

give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked this over with your counsel, Major Beeks?

The Accused: Yes, sir.

Law Member: And have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: Remain silent.

Law Member: That is all.

Defense: Sergeant Graham.

Staff Sergeant Ernes Graham steps forward before the Court.

Law Member: Graham, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case

to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: I do, sir.

Law Member: Have you talked it over with Major Beeks, your counsel?

The Accused: Yes, sir.

Law Member: And have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: Remain silent, sir.

Law Member: That is all.

Defense: Frank Hughes.

Private Frank Hughes steps forward before the Court.

Law Member: Hughes, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with your counsel, Major Beeks?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: Remain silent.

Law Member: All right.

Defense: Willie Jones.

Private Willian G Jones steps forward before the Court.

Law Member: Jones, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with your counsel, Major Beeks?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What do you want to do?

The Accused: I choose to remain silent, sir.

Law Member: All right.

Defense: Willie Prevost. He has been sworn before, if the Court please.

T/5 Willie Prevost, Sr., steps forward before the Court.

Law Member: Do you remember my warning to you and explanation before Prevost at the time your statement was in issue when you were sworn?

The Witness: Yes, sir.

Law Member: You remember you elected to be sworn as a witness on the question of this statement?

The Witness: Yes, sir.

Law Member: Do you remember also that I told you you had a right to make an unsworn statement?

The Witness: Yes, sir.

Law Member: And that you could not be cross-examined upon that unsworn statement?

The Witness: Yes, sir.

Law Member: And do you remember also I told you that you had the right to remain absolutely silent and make no statement, sworn or unsworn, and that that fact could not be commented upon by the Trial Judge Advocate in his final summation, nor by the members of the Court, it could not be considered by them in determining your guilt or innocence. Do you remember that pretty well?

The Witness: Yes, sir.

Law Member: Have you talked this matter over with your counsel as to what you wish to do?

The Witness: Yes, sir.

Law Member: Have you decided what you wish to do?

The Witness: Yes, sir.

Law Member: And what do you wish to do?

The Witness: Remain silent.

Law Member: All right.

President: We will take a 5-minute recess sitting here in the court room.

At this point a short recess was taken, everyone remaining seated in the court room, after which proceedings were resumed as follows:

President: Are all of the accused in here?

Sergeant of Military Police: Yes, sir.

President: Court will come to order.

Trial Judge Advocate: The record will show that all of the accused are present, that all members of the court are present as well as the Prosecution and Defense.

Defense: C W Spencer.

Sergeant C W Spencer steps forward before the Court.

Law Member: Spencer, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statement, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: I do, sir.

Law Member: And have you talked this over with Major Beeks, your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What do you wish to do?

The Accused: Remain silent.

Law Member: All right.

Defense: Corporal Stewart.

T/5 Leslie T Stewart steps forward before the Court.

Law Member: Stewart, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked it over with Major Beeks, your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What do you want to do?

The Accused: Remain silent.

Law Member: All right.

Defense: Richard Sutliff.

Private Richard L Sutliff steps forward before the Court.

Law Member: Sutliff, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case; and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked this over with your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: And what do you want to do?

The Accused: I wish to remain silent, sir.

Law Member: All right.

Defense: Freddie Umblance.

Private First Class Freddie Umblance steps forward before the Court.

Law Member: Umblance, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir.

Law Member: Have you talked this over with your counsel, Major Beeks?

The Accused: Yes, sir.

Law Member: Have you decided what you want to do?

The Accused: Yes, sir.

Law Member: What is your decision?

The Accused: Remain silent, sir.

Law Member: All right.

Defense: David Walton.

T/5 David Walton steps forward before the Court.

Law Member: Walton, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial,

explanation, or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: Yes, sir; I do.

Law Member: Have you talked it over with Major Beeks, your counsel?

The Accused: Yes, sir.

Law Member: Have you decided what you wish to do?

The Accused: Yes, sir.

Law Member: And what do you wish to do?

The Accused: Remain silent.

Law Member: All right.

Defense: Wallace A Wooden.

Private Wallace A Wooden steps forward before the Court.

Law Member: Wooden, it is my duty to explain to you that you have certain rights as an accused in a Military Court Martial, which are as follows:

You may be sworn as a witness, like any other witness in this case, and give testimony under oath. Your testimony is then a part of the evidence and will be considered by the Court as such. You will then be subject to cross-examination like any other witness, by both the Prosecution and the individual members of the Court.

Or, too, you may make an unsworn statement in denial, explanation or extenuation of the offense charged. This unsworn statement can be made orally or in writing and either by yourself or by your counsel. Such an unsworn statement is not evidence in the strict sense of the word and you cannot be cross-examined on it, but the Court will give such weight and consideration to it as it sees fit.

And, finally, you may remain absolutely silent, making no statements, either sworn or unsworn, and the fact that you do remain silent, the Trial Judge Advocate may not comment upon that fact in his final summation of the case to the Court, nor may the members of the Court consider that in determining your guilt or innocence. Do you understand those instructions?

The Accused: I do, sir.

Law Member: Do you want any further explanation about any part of it?

The Accused: No, sir.

Law Member: Have you talked this over with Major Beeks, your counsel?

The Accused: I have, sir.

Law Member: And have you decided what you want to do?

The Accused: Yes, sir; I have, sir.

Law Member: And what do you wish to do?

The Accused: I wish to remain silent.

Law Member: All right.

Defense: Now, if the Court please, that completes all of the accused. The defense has nothing more to offer at this time. The Court understands the situation with respect to other witnesses which the Defense may call, who are not yet here and with respect to the Italian witnesses presently in the hospital. Colonel Jaworski and I shall attempt to agree if we can upon what the Italian Captain would testify to if he was called. I don't know if we can do so, or if we can agree, but there will be that much time saved if we can. If we cannot agree, then some other means will have to be devised to obtain this testimony.

Law Member: Does the Trial Judge Advocate feel inclined to proceed without his rebuttal of order?

Trial Judge Advocate: Yes, I think so. I think that the rights of the accused can be fully preserved through that procedure. If I proceeded in that manner I would, of course, agree that Counsel could put on any of those witnesses that he wants to if they return. If he does rest his case, it would be the same as if he were to proceed.

Law Member: I thought you had agreed on this?

Trial Judge Advocate: I will make a very firm effort to attempt to agree on the testimony of the Italian

Captain. Now, I probably should take some time tomorrow morning to go over this. Of course, this testimony, I have been in court constantly listening to this testimony and I have had no way of determining what testimony I would need until I knew what the Defense was proving. I don't know how long it will take me to do it, but a few hours. I will have to get the witnesses here, and I will have to proceed to put that testimony on.

All I can say is that we can proceed in the morning and see what happens.

President: Suppose we look at it this way. Suppose we agree to adjourn now until 1:30 tomorrow afternoon, and then on reconvening we will hear the Italian Captain's testimony as agreed on, or if it is secured we will hear it or him, and if it is not secured or agreed upon, then you can obtain the Captains testimony on a later date. If a stipulation cannot be agreed to, is there any objection to getting that testimony in the form of a deposition?

Defense: I have not given that matter any thought, if the Court please. I would rather not commit myself on it until we convene tomorrow. I don't think there is going to be anything prejudicial by my so doing. I understand it is possible for the witness to be here under certain conditions, but I will have to determine what that is.

Law Member: Is it possible for him to be here?

Defense: Yes, but you might read that to the Court if you would, Colonel Jaworski, the document you have stating those conditions.

Trial Judge Advocate: At my request Captain Farrington, who is the Commanding Officer of the 28th Italian Quartermasters Service Company, addressed this communication to the Depot Surgeon, Mount Rainier Ordnance Depot, Tacoma, Washington.

"12 December 1944

"Subject: Physical Condition of Patient.

To: Depot Surgeon, Mount Rainier Ordnance Depot, Tacoma, Washington.

"1. It is requested that information be furnished as to whether or not the physical condition of Captain Ernesto Cellentani, IO 903849, Italian officer this organization, will allow him to appear as a witness at a courts-martial at Fort Lawton, Washington.

"2. Captain Cellentani is at present a patient hospitalized at Fort Lewis, Washington.

/s/ WAYNE A FARRINGTON, Captain, CMP,
Commanding."

And this is the 2nd endorsement.
"Office of the Commanding Officer, ASF, NSC, Madigan General
Hospital, SCU 1915, Fort Lewis, Washington 12 December 1944

TO: Commanding Officer, 28th Italian Quartermaster Ser-
vice Company, MROD Tacoma, Washington

1. Subject illness is a contagious nature; he is now
in semi-isolation. It is anticipated that he will be in this
hospital about ten more days.
2. If necessary, patient may be taken out, only if his
organization assumes the responsibility of reasonable care as
to sanitation and isolation. Commanding Officer must also
be responsible for providing own transportation to pick O up
and return him to hospital each night.

For the Commanding Officer:

/s/ V S Mills
2d Lt, WAC
Asst Registrar."

Now, that is the full communication, now, and how
we isolate him as a witness in this case is something I
don't understand how we are going to do. I wouldn't
know how to go about it. Incidentally, I can give you
a copy of this for your files.

Defense: Thank you.

Trial Judge Advocate: I know definitely that a
deposition cannot be used by the Prosecution.

Law Member: But it can be used by the Defense.

Trial Judge Advocate: Yes, that is what I thought.

Defense: I don't think there is any question but
what it can be. Of course, the Court well knows that
testimony by a deposition is never as effective as a
deposition taken orally or the witness's testimony. How-
ever, I am not going to unduly prolong this case. If
that is the only way it can be done, all right.

President: We still have other testimony to
take. If we postpone this testimony tomorrow you can
agree and see about it then, perhaps.

Defense: Yes.

Law Member: Colonel, if we recess until 1:30
tomorrow, would that give you sufficient time?

Trial Judge Advocate: If think so. That would give
me sufficient time to proceed with at least a good part
of the testimony.

Law Member: You know I am wanted some place else?

Trial Judge Advocate: Yes, sir; I know, and I am very eager to get some place else also.

Law Member: If you gentlemen agree upon your stipulation, if you can get that done by tomorrow afternoon at 1:30, plus the rebuttal evidence, with all rights reserved to further rebut, if Major Beeks puts in further testimony, will that be all right?

Trial Judge Advocate: Yes, sir.

President: Court will be adjourned until 1:30 tomorrow afternoon.

The court recessed at 4:42 p.m., to reconvene at 1:30 p.m., December 13, 1944.

1591

LEON JAWORSKI
Lt. Col., JAGD
Trial Judge Advocate

Fort Lawton Staging Area,
Fort Lawton, Washington,
13 December 1944

The Court reconvened at 1:35 p.m., 13 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: The prosecution is ready, sir.

President: Is the defense ready to proceed?

Defense: The defense is ready, sir.

President: The Court will come to order.

A roll call of the accused was then conducted by the Assistant Trial Judge Advocate.

Trial Judge Advocate: The record may show that each accused is present; that all members of the Court, and the personnel representing the accused and the personnel of the prosecution are present.

Defense: If the Court please, there are two little matters I overlooked last evening: I would like to call witnesses at this time. Lt. Gagliardo, will you be sworn, please.

2nd Lt. A. J. Gagliardo, Transportation Corps, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: State your name.

The witness: A. J. Gagliardo.

Trial Judge Advocate: And your rank?

The Witness: 2nd Lieutenant.

Trial Judge Advocate: Your assignment?

The Witness: T. C., Military Personnel Branch, Seattle Port of Embarkation.

Trial Judge Advocate: That is all.

DIRECT EXAMINATION

Questions by defense:

Q Lt. Gagliardo, do you speak the Italian language?

A I do.

Q And with what degree of fluency do you speak it?

A I would say good, sir.

Q As a matter of fact, you have acted as an advisor for the

defense during the trial of this case in connection with Italian witnesses?

A I have, sir.

Q I want you to tell the Court whether or not you were with me at Mount Rainier several weeks ago at which time Sergeant Major Todde was examined by me?

A I was.

Q And in what capacity did you act on that day, Lt. Gagliardo?

A I acted as an interpreter.

Q I want you to tell the Court whether or not you were the interpreter at the time that I examined Sergeant Major Todde?

A I was.

Q I wish you would tell the Court just in what manner we proceeded to examine Sergeant Major Todde.

A The questions were asked by Major Becks; I in turn translated them in Italian to Sergeant Todde. He answered in Italian, and I in turn translated it into English to Major Becks.

Q I want you to tell the Court whether or not you made true interpretations of the questions that I asked Sergeant Todde?

A I did.

Q Tell the Court whether or not you made true interpretations of the answers that were given.

A I did.

Defense: That is all.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Of course, what you mean, Lieutenant, is that you did it to the best of your ability?

A That is correct, sir.

Q It is true, is it not, at times there is some difficulty in Italian witnesses understanding questions that are asked?

A That is true, except that I made it a particular point where there seemed to be some doubt in the minds of the witnesses -- he didn't seem to understand exactly the question -- to reframe it so that he did understand.

Q You tried to the best of your ability to have him understand it correctly, of course?

A That is correct.

Q But even from the experience here in Court with some of the witnesses who have testified, you have found that sometimes they would misunderstand and they would have to have questions repeated?

A That is true.

Trial Judge Advocate: That is all.

Defense: One more question.

REDIRECT EXAMINATION

Questions by defense:

Q Do you recall that part of Sergeant Major Todde's examination when I asked him if he had ever seen certain men whose pictures I presented him before?

A Not in relation to any specific person.

Q But, I mean, generally?

A Yes, sir.

Q Well, tell the Court whether or not there was any difficulty in translating those questions and Sergeant Major Todde's answers thereto?

A There was not.

Defense: That is all.

Trial Judge Advocate: No further questions.

President: Any questions by the Court?

Law Member: Just a minute. I want to ask one question.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Lieutenant, you say that at some time there was difficulty in making the witness understand. Do you feel that he fully understood before he answered?

A Yes, sir, I do.

Q And you did have some difficulty here in Court with Lt. Schepis on certain questions and answers?

A That is true.

Q But do you feel that the questions that were asked of these witnesses here in Court and answered by them were correctly interpreted by you?

A Yes, sir.

Law Member: That is all.

President: That is all. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Elsie Lahti, a witness for the defense, was sworn and testified as follows:

Trial Judge Advocate: Will you state your name, please, Ma'am?

The Witness: My name is Elsie Lahti.

Trial Judge Advocate: You will have to speak a little louder, because there isn't a chance they can hear you.

Law Member: Did you hear how that Lieutenant just spoke to us?

The Witness: My name is Elsie Lahti.

Trial Judge Advocate: How do you spell that?

The Witness: E-l-s-i-e L-a-h-t-i.

Trial Judge Advocate: What is your occupation, please?

The Witness: I am a stenographer in the Legal Division at Post Headquarters, Fort Lawton.

DIRECT EXAMINATION

Questions by defense:

Q What are your regular duties here at Fort Lawton, Miss Lahti?

A I am a reporter on special court-martials, section A, and I take dictation, or affidavits, certificates, anything that may come up in the Legal Division; investigations, I take them.

Q You report generally court-martials and boards?

A Yes, sir.

Q You have been assigned to me during the time that I have been engaged in the defense of this case, have you not?

A Yes, sir.

Q Miss Lahti, tell the Court whether or not several weeks ago you were with me down at the Mount Rainier Ordnance Depot during which time I examined Sergeant Major Todde?

A Yes, I was with you.

Q And what did you do at the time you were with me and during the period of time that Sergeant Major Todde was being examined?

A I was what you call the reporter, but I was taking down in shorthand, verbatim, everything that was said -- the questions and answers.

Q You were taking down in shorthand verbatim everything said, the questions and answers?

A Yes, sir.

Q Now tell the Court whose statements you took down during the time that we were examining Sergeant Todde.

A When you asked the questions, is that what you mean?

Q That's right.

A You asked, Major Beeks asked the questions, and a Lt. Gagliardo in turn interpreted the questions in Italian to the Italian, to the individuals who were being questioned, and in turn Lt. Gagliardo gave the reply in English.

Q Lt. Gagliardo's reply that you transcribed?

A Yes, sir, your questions and Lt. Gagliardo's translations.

Q Do you have your original notes with you at this time?

A Yes, I have.

Q Will you turn to that part of your notes where I asked Sergeant Major Todde about a picture of Leslie Stewart?

A Yes, sir.

Q And read to the Court the question I asked Sergeant Major Todde and his answer thereto?

A Question by Major Beeks: Here is the picture of Leslie Stewart. Has he ever seen him? Lt. Gagliardo's reply was: No, sir.

Defense: The Court hear that? You may examine.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Leslie Stewart wasn't there in person that day, was he?

A No, not that I know of.

Q May I have the transcript of testimony? You transcribed that testimony?

A Yes, sir.

Trial Judge Advocate: (To Major Beeks) May I have it, please?

(Defense Counsel hands papers to Trial Judge Advocate)

Q I will ask you to look at this transcript -- just take a look at it; you probably recognize your own work -- and tell me if that is the transcript of that testimony, please.

A You mean every single page?

Q Yes.

A Yes. That is my initial (indicating); this is my work, yes.

Q That is your work?

A Yes, sir.

Defense: I want the Court to understand I am loaning the transcript as a matter of convenience to counsel. The original notes are here, which is the best evidence; he has a right to

go into that.

Trial Judge Advocate: Unfortunately I can't read the notes and the Court can't read the notes, and that is the reason I want the transcript.

Defense: I am loaning them to you as a matter of convenience. I expect to get them back.

Trial Judge Advocate: Oh, surely.

Q Now, did you transcribe at that time all of the testimony that was taken of that witness?

A Yes, sir, I did.

Q Everything that was said to him and everything that he said?

A Yes, sir.

Defense: We didn't leave anything out, Colonel.

Q Did you at that time also observe what particular pictures were presented to this witness?

A Well, you mean did I look at the pictures as they were presented to the witness?

Q Yes.

A No, sir. I took down the numbers, and when they were indicated by name I took down the name. I take down what I heard.

Q Yes; you take down what you heard.

A I take down what I heard.

Q Do you remember about how many pictures were presented to him?

A Yes, I think there were 19 in number, and then -- I didn't count them, count the pictures. Probably 40 or 50; I wouldn't be positive.

Q Probably 40 or 50?

A I wouldn't be positive because I didn't count them. I would just estimate offhand.

Q Those were small photographs, were they not?

A Yes, sir.

Q I hand you Defense Exhibit F and I will ask you if this is the type of picture that was presented to the witness for identification?

A Yes, sir, it was that size.

Q It was that size?

A Yes, sir.

Law Member: That is No. 6?

Trial Judge Advocate: That is Defense Exhibit F.

Q And your recollection is that there was quite a number of photographs presented to the witness at that time?

A Yes, sir.

Q I believe a number of those photographs at first were presented by number?

A Yes, sir.

Q And then some of them by name?

A Yes, later on they were by name.

Q And I believe that there were a number of identifications made from photographs by the witness Todde, were there not?

A Yes, I believe there were some.

Q You don't remember how many?

A No, I don't recall.

Trial Judge Advocate: That is all. No further questions.

President: Any questions by the Court? Appear to be none. The witness may be excused.

There being no further questions, the witness was excused and withdrew.

Defense: Counsel for the prosecution has just indicated that he would stipulate that the photograph that I handed to the witness Todde at the time mentioned by Miss Lahti was the photograph of Leslie Stewart. That is what I had intended to prove by Captain Noyd. Counsel very kindly consented to stipulate to that, so Captain Noyd's testimony won't be necessary. Counsel has further indicated that he would stipulate that Defense Exhibit F is the photograph that I handed to Sergeant Major Todde at that time.

Major Crocker: May I see the picture, Major?

Defense: Yes.

Law Member: F is Stewart, is that right?

Defense: Yes, sir. Miss Lahti, will you come back again. I have one further question in connection with one matter I would like to ask you.

Elsie Lahti, a witness for the defense, was recalled and testified further, as follows:

Trial Judge Advocate: You are reminded you are still under oath.

The Witness: Yes, sir.

REDIRECT EXAMINATION

Questions by defense:

Q Miss Lahti, tell the Court whether or not you were present at Camp Jordan on or about the 9th day of November of this year when I examined Corporal Richard King?

A Yes, I was present.

Q In what capacity were you acting on that day?

A I was acting as stenographer and was taking down the questions and answers verbatim.

Q You mean the questions that I asked Corporal King and his answers thereto?

A Yes sir.

Q You have refreshed your recollection from your notes at my request, have you not?

A Yes, sir.

Q Now, do you recall my asking Corporal King a question with reference to whether or not he saw Henry Jupiter?

A Yes, sir.

Q On the night of August 14, 1944?

A Yes, sir; I have it here.

Q All right. Will you read to the Court the question that I asked him and his answer thereto?

A Question by Major Beeks: Did you see Henry Jupiter? Answer by Corporal King: No, sir. Question: Do you know Henry Jupiter? Answer: Yes, sir. They could have been there but I just didn't see them.

Defense: That is all.

REGRO'S EXAMINATION

Questions by Trial Judge Advocate:

Q When was that; did you say?

A That was on November 9th.

Q You wrote out the name Henry Jupiter in your notes, I assume?

A Yes, sir. Generally on those odd names I write them out.

Q And you considered that an odd name, so you wrote it out?

A Well, yes.

Q And have you checked your transcript with your notes in the last day or two?

A No.

Q It was two or three days ago?

A No, it was, I imagine, about a week ago.

Q Oh, about a week ago. And the transcript you made at that time you compared with your notes again.

A Yes, sir.

Q Why did you do that?

A Well, there is no particular reason for it, except I wanted to refresh my memory. I have it down here as Henry Jupiter.

Q Refresh your memory as to what?

A As to the whole transcript.

Q So you took the transcript and you again checked your notes with the transcript, was that it?

A Yes, sir.

Q You did that, I assume, only for the purpose of making sure of the transcript, wasn't it?

A Well, yes.

Q Well, there wasn't any doubt in your mind but what you had transcribed the notes correctly, was there?

A No; I can go back on my notes and transcribe them at any time.

Q I realize that, but I wanted to know why you checked them again a week ago and compared them with the transcript.

A Well, for the simple reason that I thought I might be called in Court.

Q Well, you wanted to check them again to make sure that they had been accurately transcribed, then?

A Yes, sir.

Q Well, that is what I thought.

Trial Judge Advocate: That is all.

Defense: No further questions.

President: Any questions by the Court? If not, the witness may be excused.

There being no further questions, the witness was excused and withdrew.

Defense: At this time, if the Court please, there is a stipulation which has been entered into between Counsel for the prosecution and Counsel for the defense that I would like to read to the Court.

Law Member: Just a minute. Is this a stipulation pertaining to Charge II?

Defense: That's right, sir.

Law Member: Pertains to the Captain in the hospital?

Defense: That's right.

Law Member: What is his name?

Defense: Ernesto Cellentani.

Law Member: Is the stipulation in the form if he was present he would testify such and such a way?

Defense: It is that type of stipulation.

Law Member: Larkin, Jones and Hurks, will you please stand up.

The accused, as requested, then arose and faced the Court.

Law Member: There appears to be a stipulation before the Court pertaining to Charge II in which you three gentlemen are the accused. The stipulation is to the effect that if Captain Cellentani, who is confined in the hospital, were present he would testify in the manner that probably is set forth in that stipulation. Now, the Trial Judge Advocate and your counsel have agreed that this stipulation may go into the record. Do you also so stipulate, Larkin?

Corporal Larkin: Yes, sir.

Law Member: And you, Hurks?

Sergeant Hurks: Yes, sir.

Law Member: And you, Jones?

Private Jones: Yes, sir.

Law Member: Okeh. Subject to objection by any member of the Court, the stipulation will be received and now heard.

Defense: I hear no objections?

President: No objections. The stipulation may be received.

Defense: It is stipulated by the Counsel for the prosecution and the Counsel for the defense that if Captain Ernesto Cellentani were called as a witness for the defense in this case, he would testify as follows:

That he is assigned to the 28th Italian Quartermaster Service Company, and that he was a member of said organization during all of the period it was stationed at Fort Lawton, Washington, being its highest ranking Italian officer.

That his education has been as follows: Five years elementary school, eight years secondary school, two years university, and four years military academy training.

That he has had thirteen years service as a regular officer of the Italian army, and that at the time of his capture in Tunisia he held the rank of captain.

That he knew Guglielmo Olivotto, who was an Italian soldier and a member of the 28th Italian Quartermaster Service Company.

That Olivotto had an abnormal fear of Negroes, which was due to mistreatment of him by French Moroccan colored troops while he and other Italian prisoners were being transported through French Morocco by French Moroccan colored troops as their guards.

That he had talked to Olivotto who revealed this fear to him on several occasions, and that Olivotto believed he was in danger of being injured by the Negro soldiers stationed at Fort Lawton, Washington.

That Olivotto was quiet, untalkative, stayed to himself and did not make friends with others in the company, and that he had been observed to have this behavior since May 1944.

Trial Judge Advocate: That is since the time he knew him, isn't that it? Didn't he say since the time he knew him?

Defense: Well, I think that is probably true. So far as I know, that probably constitutes all the period that he knew him. I don't know whether that is a fact or not. It isn't in the stipulation. I think it is probably true, Counsel.

Counsel for the defense then continues reading the stipulation.

Defense: That on or about 17 July 1944 he requested Captain Beckman to send Olivotto to the hospital for a complete mental and physical examination.

It is further stipulated by the Counsel for the prosecution and Counsel for the defense that the foregoing may be read in evidence as if Captain Ernesto Collentani had personally testified as a witness for the defense. Signed by Leon Jaworski, Lt. Colonel, JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel.

Law Member: I think that stipulation ought to have an exhibit number.

Trial Judge Advocate: I don't think so because we have not agreed to our exhibits that way; that they go into evidence. We have merely agreed it may be read into evidence and that is all that stipulation was agreed upon. It may be read into evidence. The Court understands I am not stipulating those are the facts. I have merely stipulated if the witness did come in he would testify to those facts.

Defense: Is the Court ruling on its own suggestion?

Law Member: Well, if it is just stipulated it would be read, that answers it.

Trial Judge Advocate: That is all the stipulation goes to.

Defense: Now, if the Court please, the defense has no more evidence available at this time and is willing to rest and let the prosecution commence its rebuttal, provided, however, it is distinctly understood that when further witnesses which the defense has requested are available that the defense will be permitted to put those witnesses on out of order.

Law Member: Wouldn't be any question about that, Major.

Trial Judge Advocate: You have rested subject to the right of putting on these other witnesses?

Defense: That's right.

Law Member: I suppose that is a question for the Court, so I am going to add subject to objection by any member of the Court the defense rests, with the right to reopen if further evidence becomes available.

Trial Judge Advocate: Well, I think that is, of course, limited to such evidence as may come from these other parties. Certainly I don't want to give him carte blanche authority to put on anyone.

The Trial Judge Advocate and Counsel for the defense then conferred with the Court, and the following further proceedings occurred:

Law Member: It has been agreed between Counsel and the Court that defense rests at this time with his rights reserved to place upon the witness stand any witnesses that may be available to him if and when they are returned from overseas, and the additional right is reserved for the accused John S. Brown to take the stand if deemed desirable at that time.

Trial Judge Advocate: Is the Court ready to proceed with the hearing of rebuttal testimony of the prosecution?

President: Yes.

Captain Charles O. Sturdevant, Medical Corps, a witness for the prosecution in rebuttal, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name.

A Charles O. Sturdevant.

Q What is your given name?

A Charles O. Sturdevant.

Q And your rank?

A Captain.

Q And your assignment?

A At present I am assigned to the Station Hospital, Camp McCoy, Wisconsin.

Q Station Hospital, Camp, McCoy, Wisconsin. Captain, what was your work or your profession in civil life?

A I was a physician and surgeon, specializing in neuropsychiatry.

Q Specialized in neuropsychiatry. Now, what medical school or college did you attend?

A I graduated from the University of Nebraska.

Q You graduated from the University of Nebraska. Now, when was that?

A In 1932.

- Q In 1932. With what degree?
A Degree of M.D. -- Doctor of Medicine.
- Q All right. Did you pursue your studies further after that?
A Yes, sir, I did.
- Q Where?
A Well, I had a fellowship in neurology.
- Q You had a fellowship in neurology.
A Yes, sir.
- Q Yes. I want to tell you one members of the Court are straining their ears trying to hear you, and I want you to forget you are talking to me and speak out loudly so they can hear you.
A I had a fellowship in neurology at the University of Nebraska, and I worked there two years in the Department of Neurology and Psychiatry. After a rotating internship at Emanuel Hospital at Portland, Oregon, I held a fellowship in Columbia University at New York City in psychiatry. Subsequent to that time I returned to Portland, Oregon, where I was associated on the staff of the medical school until I. --
- Q At what University? You say you returned to Portland, Oregon, where you were associated on the staff of the medical school. What school?
A The University of Oregon School of Medicine.
- Q For how long?
A From 1935 until I came into the Army in 1942.
- Q Now, prior to the time you entered the Army did you have occasion to advise or consult on matters relating to neuropsychiatric matters; did you have occasion to advise or consult with federal officials and, if so, what experience have you had along that line?
A Well, I worked as a consultant for the U. S. Attorney's office for approximately five years, and in the Federal Courts in Oregon and for the District courts in the city of Portland.
- Q And when did you enter the service, Captain?
A I entered the service on September 23, 1942.
- Q Were you ever stationed at Fort Lawton?
A Yes, sir.
- Q What period of time, please?
A From October, 1942, until about October of 1944.
- Q And what particular assignment did you fill during that time?
A I was chief of the neuropsychiatric section at the station hospital, Fort Lawton.

Q Chief of the neuropsychiatric section at the station hospital, Fort Lawton. Now, Captain, did you or not have occasion in your work as chief of the neuropsychiatric section of the station hospital, Fort Lawton, to examine an Italian soldier by the name of Guglielmo Olivotto?

A Yes, sir, I did.

Q Do you recall whom that was?

A May I refer to my notes?

Q Yes, you may.

A I saw him on July 18, 1944.

Q July 18, 1944. Did you or not at that time interview him?

A Yes, sir, I did.

Q And approximately how long did you interview him?

A Oh, I should judge from thirty minutes to an hour.

Q After you completed your interview was he kept in the hospital or was he permitted to return to his organization?

A He was permitted to return to his organization.

Q All right, sir. Now, in the course of that interview I will ask you to tell the Court whether or not Olivotto expressed to you any sort of an anxiety or any sort of a particular fear, and, if so, just what it was -- just what he told you.

Defense: Did Olivotto talk directly to him?

Trial Judge Advocate: Well, let me develop that.

Q Was there an interpreter present at that time?

A Yes, sir.

Q And who was that interpreter, do you remember?

A I don't recall his name. He was the regular interpreter who ordinarily accompanied the patients when they came for interviews.

Q That was the usual and normal manner of handling of interviews with the Italian prisoners of war?

A Yes, sir.

Q Do you or not yourself speak the Italian language?

A No I don't speak it.

Q Well, how would you go about the matter; did you ask questions through the interpreter?

A Ordinarily the interpreter would come in telling me the nature of the patient's complaints, and then through the interpreter I would inquire further as to the complaints and try to develop the story of his illness as much as possible.

- Q And on this particular occasion did you or not ask questions through the interpreter so the patient could give you answers?
A Yes, sir, I did.
- Q And did you or not in that manner attempt to determine what the complaints were?
A Yes, sir.
- Q Did you or not in that manner attempt to advise the patient?
A Yes, I did try to advise him.
- Q And state to the Court whether or not that was the manner in which you reached your conclusions as to the patient?
A Yes. There was nothing unusual. It was purely a routine method of examination with an interpreter present.
- Q All right. Now, Captain, I will ask you at this time to tell the Court whether in the course of that interview that you had through the interpreter with Olivotto he expressed to you any particular concern or any particular fear that he had, and, if so, what was it?
A Yes, he did express concern and fear
- Q As to what?
A Concerning his contact with Negro soldiers about the post. Through the interpreter I learned that he identified them with some fears he had had with native troops he had encountered in Africa, and they frightened him. He identified them with, I think the interpreter told me, Moroccans he had seen.
- Q French Moroccans?
A French Moroccans he had seen in Africa.
- Q Now after that was disclosed to you, did you or not undertake to make any statements to the patient or to assure him in any manner?
A Yes, I discussed the thing with him, as much as you can under those circumstances, and tried to talk back to him through the interpreter, assuring him these men were our own troops; that they were here in training and he had nothing to fear from them, and they were not in any way identified or attached to anything of which he feared, and I felt that he was reassured as a result of this interview.
- Q All right. Now, in your neuropsychiatric work when a person has some fear or shows some concern about a matter, what is the term you apply to that; is that anxiety state or anxiety fear?
A Insofar as this specific instance is concerned, I interpreted his reaction as one of an anxiety state.
- Q Yes. Now just tell the Court whether or not such a matter as an anxiety state is a usual or an unusual thing in connection with soldiers who have been in battle or who have had experiences of combat?
A It is rather usual.

Q Rather usual, did you say?

A Yes, sir.

Q All right. Now did you or not at the time of that interview, and as a result of your investigation, did you notice anything that indicated that the patient had any thought whatever or any tendency or possibility of self-destruction?

A No, sir. I didn't notice anything that led me to think that at all.

Q All right. Now I believe you told the Court that that was on July 18th?

A Yes, sir.

Q Was that patient ever returned to you again?

A No, he wasn't. When he left, as I say, I felt he was assured, and I told the interpreter to take him back; that I felt he would be better off in his company there; that he should try to reassure him if he expressed these fears again or bring him back to me at some later date if he wished; and he was never brought back.

Q He was never brought back. Now, Captain, I want to propose to you this hypothetical question. Let's assume that a person having an anxiety state, such as you discovered in Guglielmo Olivotto when you talked with him, finds himself in a situation late at night when he is aroused from his bed in which the area in which he lives is attacked by Negro soldiers and he decides to jump from his barracks, and as he prepares to do so he calls to one of those who slept in his barracks with him, asking him to go along, and after he jumps he calls words to the effect, "Oh, Mother of Mine" and is then grabbed by some Negro soldiers who proceed to take him a distance. Assume that the person whom you have talked to, Guglielmo Olivotto, has an experience of that nature, I wish you would tell the Court what possible reactions can set in with a person of that type under those circumstances with respect to defending himself or acting helpless and powerless.

Defense: Objected to; if the Court please; as not containing all of the facts in evidence; containing facts not in evidence; of having no value to this court because of the time interval between the time this doctor examined him and up to the time of August 14th, nearly a month later; and there being no evidence of his condition at that time.

Law Member: Objection overruled.

Q Will you answer that question please, Captain?

A I can answer it in general sort of terms.

Defense: Well, if the Court please, if the doctor can only answer in general terms, I think it is clearly objectionable -- if he can't give testimony as to a specific individual.

A I can give a specific answer so far as this individual is concerned and so far as this individual suffering from an anxiety tension state at the time I saw him.

Q Speak a little louder.

A I say this individual was suffering from what I interpreted as an anxiety tension state at the time I saw him. That anxiety had its origin in experiences which were connected with his previous military experience. His fears were specific and directed towards individuals of color. I am sure that encountering them under a set of circumstances as have been set up that his reaction would be one of fear. Well, now, what he would do in response to fear, and it probably would be an intense sort of fear because this was specifically the sort of thing he would fear, was harm at the hands of someone of color, I am sure that encountering that sort of thing he would probably be thrown into some sort of panic. Well, some people run when they have a panic. Whether he did I don't think one can say. Some people will fight back; some people will freeze or have the so-called startled reaction.

Q Will you explain what you mean by freezing and what you mean by having a startled reaction?

A Well, an individual so overwhelmed by a frightening experience that they become disassociated in the sense that they cannot initiate movement. They would stand even in the presence of the thing they fear and not be able to do anything about it. It is the sort of thing we encounter in battle experiences occasionally.

Q If such a freezing or startled reaction as you have mentioned should set in, would or not the person then do anything?

A No, he is just immobilized.

Q Just immobilized?

A Under those circumstances.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by Defense:

Q Doctor, do you have your full hospital file with you on Olivotto?

A There was no hospital file. Hewas never hospitalized--

Q Well, your full clinical record there?

A I have my clinical records.

Q You have that?

Z And notes.

Q There is nothing at the hospital now pertaining to Olivotto or at the dispensary that you don't have with you?

A There is a dispensary card always, file, on all patients.

Q That contain any information you don't presently have with you?

A No, I don't believe so.

Q Doctor, I want you to assume here for a moment that Colonel Jaworski takes me down to you for examination, for physical and mental examination and I want you to tell me, Captain, just exactly how you would proceed; what you do and exactly what questions you would ask me, supposing that Colonel Jaworski tells you that I have some unusual fear of something or other; I want you to tell this Court, now, just exactly how you would sit me down and what questions you would ask me.

A Well, I would probably ask you about your fears specifically and the circumstances under which it developed, and try to determine exactly what your attitude toward this fear might be.

Q Ask me anything else?

A Well, certainly. I would probably ask you a great deal more over a period of time. I may not ask you more that day in private practice because the first attempt would be to establish some sort of a personal relationship with you where I would give you time to know me and gain some confidence in my questioning, and during the first interview I may not see you long enough to get acquainted with you.

Q Wouldn't you want to know, the first thing, about my family history, doctor?

A Perhaps not the first time I saw you

Q Well, would you want to know it the second time?

A Yes, probably over a period of time I would develop things as your inclination to talk about these things came into the foreground; as you would gain confidence and be willing to tell me.

Q Did Olivotto have a great reluctance to talk to you that day?

A No; I had to talk through an interpreter.

Q Was he reluctant and fearful?

A Somewhat reticent and backward in his responses, yes.

Q Well, was he sullen about it?

A No, not at all.

Q Isn't it a fact, Doctor, the first thing you do when any new patient comes into your office is to get as complete a family history as if possible to get?

A No, that isn't the first thing I do when a patient comes into my office.

Q You don't follow the regular practice?

A Yes, I do.

Q You are never interested in a patient's background?

A Yes, I am very definitely.

- Q But you would rather have him come to you three or four times before you attempt to find out what that background is?
- A It is far more important to get on a friendly basis with your patient before you begin inquiring into points in family history, about which the patient --
- Q (Interrupting) That is only when the mental condition of the patient is such when you must get on a friendly basis?
- A No, that is true of all patients.
- Q You mean the patients who come to you usually aren't friendly?
- A Yes, sir, I mean patients who come to me don't wish to come originally; may be brought by relatives--
- Q (Interrupting) Was that true with Olivotto?
- A No, he was brought by an interpreter.
- Q And he was friendly?
- A And he was friendly.
- Q And you didn't need to get on a friendly basis with him, did you?
- A No; I wouldn't even attempt to. I try to get the facts for the reason he was brought there; and that is true generally when you examine a patient in private practice or in the Army, you try to get the facts and try to get on a friendly basis with them
- Q As a matter of fact, you weren't trying to get on a friendly basis with him because he was friendly when he came in?
- A He was a stranger as everyone is strange who comes to a doctor, but he was friendly.
- Q Was he friendly or not friendly?
- A He was friendly, yes.
- Q So you didn't have to get on a friendly basis with him?
- A Have to give him an opportunity to get acquainted. Let's put it that way.
- Q Before you attempted to make any sort of a diagnosis it was important for you to know all his family history, wasn't it?
- A Not entirely.
- Q You don't care what his past associations have been, what his past illnesses have been, what the hereditary conditions might have been in his family -- they are unimportant?
- A Oh, very important to me.
- Q Those are important conditions?
- A Yes, sir.
- Q Yes. You never did obtain those conditions?
- A No, sir, I didn't.

Q By the way, what was this patient's age; do you have that in your record?

A I don't know. (Refers to personal notes) 33.

Q 33?

A Yes, sir. I might --

Q (Interrupting) Did you attempt to make any check that day of his reflexes?

A No

Q Well, that is important in giving a physical examination?

A I didn't do a physical examination.

Q Well, that is what the request came in to you for, isn't it: asked for a mental and physical examination?

A That's right, but I didn't do the physical examination.

Q You didn't do a physical.

A Ordinarily I do not, or did not do the physical examinations of these patients who came in.

Q Well, is that the practice you followed in civilian life, Doctor?

A No, sir.

Q As a psychiatrist is it not the usual practice to make a physical examination when you handle the patient?

Law Member: Major, there is nothing in that exhibit that said the psychiatrist was to make a physical examination; that letter was addressed to the hospital surgeon.

Defense: All right, I am asking him the further question if he did and if it was the practice in civil life to make physical examinations when examining patients for psychiatric reasons.

A Yes, sir, I did, depending at times whether or not they were referred to me by a man who had just gone through all of that. Sometimes they were referred by a very good internist who would check them carefully, and in those instances it was not necessary.

Q Yes; but if a case has not been referred to you by someone who makes such a type of examination, it is always done, isn't it?

A It is always done.

Q It is always done, yes, because there are certain basic factors which you must know in determining your diagnosis, your prognosis, as well as your treatment, that can only be revealed by a physical examination, isn't that right?

A Certain things, that is true.

Q Well, when a man comes into you complaining about everything, might have some psychosis or an anxiety complex, you are

interested in knowing too whether he has a toxic condition, are you not?

A Yes, I would be.

Q And by toxic we mean a generalized infection of some kind?

A Yes.

Q Yes. Didn't you think that was an important condition to know insofar as Olivotto was concerned?

A He had no appearance which led me to believe he was toxic or in anyway physically disabled.

Q Well, if, in fact, he were toxic, you would have wanted to inquire a little further?

A He would have had complaints which would lead me into that sort of an inquiry.

Q Yes; but I say if it is a fact he had a toxic condition you would have wanted to inquire a lot further before coming to any definite conclusion?

A Oh, yes, certainly.

Q Now, isn't it a fact he had a diseased tonsil condition, Doctor, and he had been advised at this hospital to have a tonsillec-tomy and refused to do so?

A Not to my knowledge.

Q Not to your knowledge. But a generalized toxic condition could result from infected tonsils, couldn't it?

A Have to be very severely infected.

Q Isn't there something in that record there which shows that he had an infected tonsil condition?

A I have never seen it if there is. These are my own notes, a copy made by my secretary from my own handwriting, and I have nothing here to indicate it.

Defense: Oh, I am quite positive there is. I wonder if we might have a five minute recess and the doctor call the hospital and they could send it down here.

Trial Judge Advocate: Do you have a copy of it?

Defense: No, I don't have.

The Witness: I have seen a card that was with this when I picked it up from the surgeon, which is the dispensary card. Now, there may be a sentence or portions of a sentence written on that card, but they weren't pertinent to this and it is the hospital card. I don't recall whether it mentioned the tonsils on that card or not.

Defense: Well, I think the one I saw did.

Law Member: Let's get it. I don't see where it is material.

Defense: I think I can develop where it is material.

President: The Court will take a fifteen minute recess at this time and reconvene at five minutes to three.

The Court thereupon recessed at 2:40 p.m., and reconvened at 3:15 p.m., 13 December 1944.

President: Is the prosecution ready to proceed?

Trial Judge Advocate: Ready, sir.

President: Is the defense ready?

Defense: Defense is ready, sir.

President: The Court will come to order.

Trial Judge Advocate: The record may show each of the accused is present, as are all members of the Court, the personnel representing the accused and the personnel of the prosecution.

The reporter and interpreter were also present.

Captain Charles O. Sturdevant, a witness for the prosecution in rebuttal, was recalled and testified further, as follows:

CROSS EXAMINATION

Questions by defense:

Q Captain, you now have the hospital or clinical record that was sent for?

A Yes, sir.

Q And what does that record indicate with reference to the tonsils of the deceased?

Trial Judge Advocate: Now, of course, just so the record may be kept straight, this witness apparently has no personal knowledge of the matter at all; at least as far as the testimony now shows he doesn't. However, we will raise no objection to the use of that as the hospital record and just consider it as though it is authenticated.

Law Member: By him.

Trial Judge Advocate: I can't say by him, but I will not raise any question as to that being the hospital record.

Law Member: I say, as if made by him. In other words, Colonel, you are not objecting to the authenticity of the record?

Trial Judge Advocate: That is correct, yes.

Law Member: This man evidently did not make the physical examination nor the entries contained in this hospital record.

Q That is an official record, however, of the station hospital at Fort Lawton, isn't it, Captain?

A Yes, sir, it is a copy. It appears as a copy.

Q As a copy of the official record?

A Yes.

Defense: You are not raising any objection, as I understand, because it is a copy?

Trial Judge Advocate: No, I will not raise any.

Q What does that record indicate with reference to the tonsils of the deceased?

A Reading directly from it, it states: "Infected tonsils"--

Law Member: Louder, now.

A -- (continuing) it states: "Infected tonsils; deviated septum, right, severe." Under that the date: "6-23-44; refuses surgery" and the medical officer's signature, or not his signature but his name signed with the initials of his secretary or someone who apparently signed for him.

Q Well, the tonsils, Doctor, were considered in a sufficiently diseased condition to necessitate surgery, were they not?

Law Member: This doctor can't answer that question.

Defense: He has got the record.

Law Member: Well, he can say what the record shows.

Defense: Well, all right, I will ask for the doctor that made the record and treated the man:

Trial Judge Advocate: You have a right to call him anytime you want to. I have agreed to cut it short by agreeing; but as the Law Member said, how can he state?

Defense: Well interpretation doctors can put on records from the notations that appear thereon.

Trial Judge Advocate: Let's see if he can answer the question. I don't see how he can.

Defense: Just trying to save you time. If you want me to bring that doctor, I will bring him.

Trial Judge Advocate: You will have a chance to put on testimony.

A Well, from the record here it would appear that the tonsils were infected and the septum is deviated to the right, with a severe deviation, and I can't tell from the record --

Law Member: No, but you can say whether surgery is recommended.

A I can say apparently surgery was recommended because he refused it. Now, I can't say whether the surgery was recommended for the deviated septum or for the tonsils because it doesn't indicate

Q It does indicate the tonsils were infected?

A That's right.

Q And infected tonsils will produce a toxic condition?

A Sometimes, yes, sir. I don't think you could say from the record, though, for which part the surgery was even recommended.

Q All right. Now, Doctor, refer to his other record a moment again, will you, and give us just exactly in detail the history you got from this patient.

A Well, through an interpreter it was learned that--

Q (Interrupting) By the way, is that history appearing there in your own handwriting?

A Yes, sir, this is my own handwriting. That--

Trial Judge Advocate: (Interrupting) That of course, that question is limited to what the patient told you through the interpreter; that is correct?

Defense: Well, I don't think it is. Well, I will ask him at this time --

Law Member: (Interrupting) How else could this witness possibly get a history if he didn't get it through an interpreter?

Defense: From the patient he couldn't, but he may have gotten some history elsewhere which he used in forming his opinion.

Trial Judge Advocate: Well, that wouldn't be permissible.

Defense: It is permissible to ask this witness every circumstance he took into consideration in reaching his conclusion and opinion in this case regardless of where he got it from.

Law Member: That is correct.

Trial Judge Advocate: Anything he might have been told, though, from a different source other than the patient himself--

Law Member: (Interrupting) Well, he was asked about this particular record at the time.

Trial Judge Advocate: That's right; that he obtained from the patient.

Defense: That is a point that is coming up and we might

as well thresh it out now.

Law Member: I will tell you how I am going to rule. I am going to allow any history, allow this man to testify to any history he took and based his conclusion on.

Defense: What was the questions that remained unanswered?

(Question read by reporter)

Law Member: That questions is clear; that you got from the patient.

Trial Judge Advocate: That's right.

Defense: That's right.

A May I explain a bit further before I go on with that?

Law Member: Yes, Doctor, if you can talk louder -- you can talk louder than that.

A This record, these notes, some of them were taken from the patient, some were from information given me directly from the interpreter from talking to the patient.

Q I will reframe my question, then, and ask you to give us the history you got regardless of the source at the time you examined Olivotto.

Law Member: Which appears in his statement.

Defense: I want to know all the history he got whether it appears thereor not.

A He said he saw Negro soldiers around; that he through they were French Moroccans -- that is the statement as I recall the interpreter gave -- and he thought they were De Gaullists.

Law Member: I am beginning to think you have tonsil trouble unless you speak up more. We can't hear you.

A He thought they were French Moroccans, he thought they were DeGaullists, and stated that he had seen some of these fellows who had cut legs and arms off Italian prisoners and treated them cruelly. That is information I got from the interpreter, and through questioning the man. Further the interpreter told me he doesn't associate with the other men as much as others; that he tends to remain by himself and seems to talk to himself.

Trial Judge Advocate: Now that part was something the interpreter told you?

The Witness: Yes.

Trial Judge Advocate: And you didn't get it from the patient.

Q He doesn't associate with others, Doctor, and what else?

A Remains alone quite a lot; seemed to talk to himself at times.

Trial Judge Advocate: If the Court please, there is absolutely no predicate as to where the interpreter may have gotten the information.

Law Member: Yes; but, Colonel, the doctor took all this history into consideration.

Trial Judge Advocate: That is true.

Law Member: In reaching his conclusion.

Trial Judge Advocate: That is true, but then it ought to be limited only as something that was told him in connection with the examination he made and the conclusions he reached and not be considered as evidence of those facts. In other words, it cannot be considered as evidence.

Law Member: Oh, it would be definitely be heresay.

Trial Judge Advocate: All right, let's let it be limited to that.

Defense: Oh, it is quite clear. I am not asking to give it as proof of the fact that actually occurred, but it is a history that this doctor took into consideration in making his diagnosis.

A Further, we learned in questioning him he was a truck driver in Africa and that he moved out before he was attacked. The interpreter said his Captain didn't think --

Trial Judge Advocate: Just a moment. Now as to that, let me have your notes just a minute.

The Witness: You won't be able to read my handwriting.

Trial Judge Advocate: Yes, I think I can read it. (To Defense Counsel) Now come up here. I think the Law Member should see this latter part. This is obviously someone else's conclusion; it is not the history now. (Hands witness' notes to Law Member).

Q Did you take that latter part of the history into consideration, Doctor, at that time?

A Yes, certainly, I took it into consideration in making a decision as to his disposal.

Defense: I think it is quite clear it should come out if the doctor took it into consideration. Not as truth of what actually happened, or what took place, but it is a factor this doctor took into consideration. Doctors, if the Court please, in prescribing for patients often base their opinions upon numerous things that they learn by hearsay. They can't be bound by strict rules of evidence in determining the history and the factors which they think are important for prescribing for patients, and we have a right to have everything before this Court that this doctor took into consideration in making a diagnosis or disposition of this case.

Trial Judge Advocate: But, you see, what you have there is not a fact. You don't have anything that is presented to someone as a fact; you merely have someone else's opinion or conclusion. That is all that relates to, the whole thing, that information. I can't conceive of it being admissible for any such purpose. If it were some fact or some circumstance, it would be an entirely different thing; but it is just somebody's conclusion that he jotted down.

Law Member: It is what somebody else thinks.

Trial Judge Advocate: Yes, that's right.

Defense: But that still forms a factor in what this doctor took into consideration.

Law Member: I am going to overrule the objection and take it as part of the history.

Trial Judge Advocate: And just limited to that.

Law Member: Oh, definitely.

The Witness: Well, shall I go on?

Law Member: Go on and read.

A As is customary, I try to find out what the man is doing in his company, and this latter sentence is an inquiry along that line. He said the Captain doesn't think he is completely off his beam but thinks he should be observed in his company for a time, and that is the end of my notes here. Now the rest of the examination consisted of asking questions specifically of Olivotto, trying to inquire and find out if actually he did have a fear of psychotic proportions or if he actually was fearing or did identify or did think these people were Moroccans. After questioning him this period of time and trying to assure him on these points, I felt he was not psychotic; these were not delusions. I didn't feel he felt they were really Moroccans but he just feared the face, the color, and I felt justified in sending him back to his company; and his Captain had already indicated he was getting along all right there, so he was sent back after this examination.

Q Well, of course, Captain, you couldn't deal direct with Olivotto, could you?

A No, I had to deal through an interpreter.

Q And you got the interpreter's answer to your questions?

A Yes, sir.

Q And if Olivotto really thought that these Negro soldiers were French Moroccans, that would be a delusion, wouldn't it?

A Yes.

Q And being a delusion it would be indicative of a psychosis rather than a neurotic condition, wouldn't it?

A Yes, sir.

Q By psychosis we mean mental deterioration?

A No.

Q Insanity of one form or another?

A Insanity is the legal term.

Q Insanity, yes. And there are several forms of psychoses?

A Yes, sir.

Q Now, what consideration did you give the fact, the history that you got, that he didn't associate with the others, remained alone quite a lot and he talked to himself; that is an important circumstance too, isn't it?

A Yes, sir.

Q As a matter of fact, that is one of the first indications of the schizophrenic type of insanity?

A Withdrawn, yes, sir.

Law Member: With what?

The Witness: Withdrawn.

Q You mean withdrawal?

A Reticence.

Q Withdrawal from associations?

A Withdrawal from associations, and people, and that sort of thing.

Q As a matter of fact, the isolation of the schizophrenic is usually based directly on that failure of socialization, isn't it?

A I don't believe I understand your question. The isolation is a failure of association, yes.

Q That is usually the basic cause isn't it?

A Oh, no. I don't exactly follow what you mean, I am sure.

Q Well, I mean the isolation of the patient or the withdrawing from the association of others is usually the first basic sign that we have of the schizophrenic?

A It is among one of the first signs of schizophrenia, yes.

Q By the way, this schizophrenia is also known as dementia praecox?

A Yes, sir.

Q Now was this patient, Olivotto, in the age group that usually develop schizophrenia?

A No, sir, he was older.

Q He was older. Isn't it a fact that in most of them the onset usually occurs between 18 - 35 years of age?

A Yes, sir, but usually younger than 33.

Q Well, you are familiar with this "Theory and Practice of Psychiatry" by Sadler?

A Yes, sir.

Law Member: you recognize him as an authority, Doctor?

The Witness: I would rather not answer that question, if you don't mind. He is an authority, yes, sir.

Q It is one of the basic textbooks on psychiatry?

A It isn't used in the medical schools.

Q You mean it wasn't used in the medical school you went to.

A Or in any I have been associated with.

Q You mean Dr. Sadler doesn't know his business? So we won't be under any misunderstanding of who Dr. Sadler was, he was the chief psychiatrist and director, the Psycho Institute of Research and Diagnosis, wasn't he?

A That's right.

Q And he was the consulting psychiatrist at Columbus Hospital; fellow of the American Psychiatric Association; a member of the American Psychopathological Association; the author of the "Mind at Mischief," "Piloting Modern Youth," "Worry and Nervousness," "Physiology of Faith and Fear," and "The Quest for Happiness," isn't that correct?

A I suppose. I have read the same group of titles. I suppose that is correct.

Q Well, if Dr. Sadler said in his work, speaking of schizophrenia, that the onset of this disorder with few exceptions occurs between the 18th and 35th years, would you think he is incorrect?

A No, that is correct, but I think if you break down those figures further you will find more of them occur before 25 than after. It is essentially an illness of youth; that is why it gets its name dementia praecox.

Q With the schizophrenic, Doctor, the onset is oftentimes very precipitous, isn't it; the first symptoms can show up almost immediately?

A Those that are detectable to the lay person, yes, but if you look into that picture you will find there is a smooth running development that is detectable for over a long period of years.

Q Yes, but you have to look into those things, Doctor, don't you to be able to know?

A The lay person, I say, might not recognize it. For example--

Q But I saw --

Trial Judge Advocate: Let him answer the question. I think he knows more about it.

A -- (continuing) For example, a youngster will be in its home and his parents think he is perfectly normal until they suddenly realize this individual is hallucinating. They may have noticed a reticence on his part to go outside and associate with others and the fact he has difficulty making friends or keeping them, and recognize it didn't seem quite right for him to spend his time in his room and so on. But when they suddenly realize he is hallucinating they will bring him to us and say, "Here there is something wrong with this boy," and they have accepted his withdrawal as perfectly normal behavior in the past, whereas actually it hasn't been and the boy has been sick a much greater period of time but it hasn't been recognized in its own setting because people have become accustomed to it.

Q In order to diagnose carefully you must have a detailed history over a period of time, must you not?

A You should have a history of the individual's whole life.

Q Whole life; that's right.

A That's right.

Q But when recognizable, discernible symptoms do appear, that sometimes occurs with shocking suddenness, doesn't it, in schizophrenia?

A I don't think you can say that.

Q Well, let's see what Dr. Sadler again has to say about it.

A I think you can always find a background for it.

Trial Judge Advocate: What was that last?

The Witness: I think you can always dig out the background of an illness of this kind. It just doesn't appear out of a clear blue sky.

Q You didn't have any background in this particular case, did you?

A No, sir, none except what I obtained at one interview.

Q Well, if Dr. Sadler in his work that I have just mentioned states that the shocking suddenness with which schizophrenia will develop is overwhelming, you don't agree with that statement?

A Not necessarily.

Q You think it is incorrect?

A Yes, I do.

- Q Well, if in fact, Doctor, Olivotto really believed that these Negro soldiers were French Moroccans -- I think you have already testified that -- that would be a delusion on his part?
- A If he actually believed it and it was a belief which he could not be persuaded from. That, by the way, is a definition of a delusion.
- Q Yes. Well, that in itself is an indication of a paranoid trend?
- A Yes.
- Q Of a schizophrenic, isn't it?
- A A paranoid trend, yes.
- Q And paranoids also are reserved, usually quite shy, aren't they, in their early stages?
- A No.
- Q They are not?
- A A paranoid is just quite the opposite.
- Q I am talking about the early stages of paranoia.
- A Paranoid or paranoid-schizophrenic?
- Q I am not talking about true paranoid; I am talking about a paranoid-schizophrenic.
- A Paranoid-schizophrenics, they are likely to be more aggressive than any one of the other varieties.
- Q Doesn't that usually come on following a shock of some kind when they do become active?
- A No, not necessarily.
- Q Well, they have periods of remission also, don't they?
- A They have periods of remission, yes, where they are not as active.
- Q And where they act perfectly normal?
- A On the surface.
- Q Yes. Well that is all we see, on the surface, when we watch them?
- A If you inquire, their delusions are there in a latent sort of way.
- Q You can only tell when you take and sit down and question them at length, isn't that correct?
- A When you question you can find those things out, yes.
- Q Now, there is also a form of schizophrenia known as the catatonic type?
- A Yes, sir.
- Q And that type often comes about suddenly following some generalized body infection or some sudden emotional shock, isn't that true?

- A There, too, it is the background of poor adjustment, which is the condition upon which the catatonic reaction makes its appearance.
- Q You must know the background to understand the reasons for it?
- A Yes.
- Q But I say the catatonic manifestations will appear suddenly following some type of infection or some rather abrupt emotional shock?
- A Or they may not; come on without either.
- Q Yes, I say they may, but I say they do follow those things -- a good many of the cases on record?
- A Yes, sometimes; sometimes not. It isn't altogether typical.
- Q Well, when you do have a catatonic type you do have marked tendencies toward impulsive acts?
- A Yes.
- Q And often these are very definitely homicidal and suicidal?
- A Yes, they may be.
- Q That is true. And a very common type of escape in the schizophrenic is suicide?
- A Not common.
- Q Not common?
- A No.
- Q But it occurs?
- A It may occur.
- Q But in the catatonic type it is rather common, isn't it?
- A That hasn't been my experience.
- Q That hasn't been your experience?
- A No, sir.
- Q But it has occurred?
- A I imagine it has occurred. I can't give you figures on that. In my own experience I have never had it happen, and I don't --
- Q (Interrupting) Well, Doctor, without a complete -- in all fairness -- without a complete history of this man's activities for a long period of time prior to the time you saw him it wouldn't be possible to give an absolute accurate diagnosis of what his condition was, would it?
- A I saw him sufficiently to satisfy myself as to what his condition was.
- Q You were completely satisfied?
- A Not as completely as if I were going to go on treating him. I mean as a matter of expedience and so on. My whole attitude towards the situation was here is a man who needs reassurance, he is not delusional, he has a lot of fears, he is anxious, he is tense because of these fears, and he needs to be re-

assured; and if he needs more reassurance at anytime, he should be brought back to me, and that was my whole attitude toward it. I satisfied myself his preoccupations were not of delusional character and questioned him sufficiently along that line to satisfy myself.

Q Well, his self-removal from the association of others, however, is not usually associated with an anxiety neuroses, is it?

A It may be.

Q But it isn't a usual condition?

A It is not unusual either.

Q Did you give that factor a consideration?

A Yes, sir.

Q You didn't think it was important?

A Yes, I think it was important in evaluating the whole picture; particularly in the type of anxiety reactions that occur in combat situations. Aloofness, reticence and withdrawal are frequently encountered.

Q And you gave no consideration at all to the delusionary character of the history he gave you?

A I certainly did. I inquired enough to satisfy myself that his fears were not of a delusional nature.

Q By the way, Doctor, did you have a Wassermann or a Kahn blood test made?

A No, sir.

Q Isn't that usual and customary procedure to do that when dealing with a psychotic?

A Not necessarily so.

Q Isn't it a fact that the medical profession regards syphilis usually as the "great deceiver"?

A That's right, and--

Q (Interrupting) In other words--

Trial Judge Advocate: Let him answer the question. "And," he said and started to explain it.

Q All right.

A I think it is sufficiently important always when a patient is admitted to my section here, and everywhere I have been, I have always taken a routine blood Kahn or Wassermann; but, of course I never admitted to that section unless I felt they were ill and sufficiently ill that they needed further study.

Q That is one thing that is well settled in the medical profession, that you must before making any diagnosis definitely rule out syphilis?

A Yes, sir.

- Q And the reason for that is that syphilis will produce the symptoms of almost any disease known to the medical profession?
- A Yes. Sir William Osler has made that comment in almost that same statement, and it is still true.
- Q Without the opportunity of having seen this man again later, you don't know what his condition might have changed to or developed into?
- A Well, I think I could predict reasonably that he would get along fairly satisfactorily or I wouldn't have sent him back.
- Q Now, you think that, as I understood you, that he was completely immobilized through fear?
- A I don't know that he was. I mentioned that as a possibility.
- Q Well, now, what do you mean when you say completely immobilized; do you mean his body muscles and everything were completely spastic to the extent he couldn't use them?
- A No, I was relating some of the possibilities of a fright reaction. Some individuals are, when I mentioned that, subject to startled reactions in which they become disassociated; their mind may wish them to flee and they can't. There is disassociation between the intent and what they actually can do, and they stand rigid.
- Q If this man was either schizophrenic or predisposed to a schizophrenic type of reaction, that sudden fright may have caused him to take other action, couldn't it, doctor?
- A It would be still a reaction of fear if he was schizophrenic.
- Q Yes. That fear is one of the things that will bring on schizophrenia, catatonic type of schizophrenia?
- A Is that a question?
- Q Yes, isn't that right?
- A Yes, sir. Fear of life itself and inability to adjust to the ordinary threats that exist. The compensations that lead them away from socialization eventually unfit them for a satisfactory social life, so that they fear more things perhaps than a well adjusted person.
- Q And the history you actually got from this man is entirely compatible with that of a paranoid delusion, isn't it?
- A That was not my interpretation.
- Q I say as far as the history is concerned it is compatible with that?
- A No, sir.
- Q It isn't?
- A Not as I inquired further into this thing, and as I say--
- Q (Interrupting) You say inquired further. What do you mean, you inquired further?
- A Well, I have this information here about his fears of

individuals. My interpretation of this information was that these were actually fears and not delusions.

Q Well, is that something that you got from talking with the interpreter?

A Talking through the interpreter with the patient.

Q Well, it is a fact, isn't it, that a paranoid delusion usually starts with some actual occurrence?

A Oh, yes, the delusion is about something.

Q That actually took place?

A Not necessarily. All sorts of delusions about things that are purely fanciful.

Q That is the general rule, isn't it?

A No, I don't believe so. They start out with misinterpretations of something and then after into a realm of fancy.

Q That is true, that is the way it develops, but it will usually start with some actual occurrence?

A With they misinterpret, yes.

Q Well, they misinterpret or they may not?

A I don't think I follow you. You mean that the individual has had some injustice done him?

Q Well, let me read you this passage here and maybe you can tell me what he means. (Reading) "As a rule" --

Law Member: What is the question?

Defense: Maybe you can tell me what it means.

Q "As a rule the paranoid trend has an actual occurrence as a starting point, and then with individuals suffering from a paranoid predisposition the imagination gradually builds up paranoid delusions."

A That is correct.

Q That is true, isn't it?

A But the incident:

Q (Interrupting) In other words, with Olivotto the incident that took place in North Africa could be the starting point?

A Yes, his misinterpreting of things may have been the starting point--misinterpreted or actual.

Q You don't know whether misinterpreted or they actually occurred?

A I don't know whether he even saw them.

Q When you examined Olivotto, Doctor, did you find a scar on his head?

A No.

Q You didn't; you say you didn't find one or you didn't examine?

A I didn't examine his head. I didn't do a physical examination as I recall, at all.

Q Well, a previous head injury might have been of considerable importance in diagnosing his condition, mightn't it?
A The knowledge of it would cause you perhaps to inquire whether he had headaches or other signs of residuals of head injury. He had no complaint in that direction at the time.

Q No, but I mean it might have produced conditions at the time that that injury took place or following it which would be important in making a definite diagnosis of his condition at a later date, isn't that true?
A That is a possibility.

Defense: I think that is all.

Trial Judge Advocate: The prosecution has no further questions, if the Court please.

EXAMINATION BY THE COURT

Questions by Law Member:

Q I take it there is no entry of syphilis on the card you produced in Court here?
A No entry of syphilis?

Q Yes.
A No, there was no entry.

Defense: The card is silent, isn't it, Doctor; doesn't say one way or the other?

Trial Judge Advocate: That is what the Law Member has asked.

Law Member: That is what I have asked him.

A Nothing. States just what I gave you.

Defense: The Law Member like that Card in evidence?

Law Member: Well, I don't care.

Q Doctor, in answer to the hypothetical question you said that the reaction in this man when faced with an attack as occurred on August 14th, he might freeze, or he might run, or he might have the natural reaction of fighting, is that correct?
A Yes, sir.

Q From the examination that you made on the 18th of July could you state with reasonable certainty what his natural reaction would be?
A No, sir, I think that would be impossible.

Q It is all speculation and conjecture, isn't it?
A Yes, sir.

Q Had this anxiety state which you have described reached such a stage as to be called an obsession?

A Yes, almost to that extent, I think, as it was described to me.

Q Do you believe that the obsession had such a control over his mind as to indicate a desired self-destruction?

A No, sir. As a matter of fact, I felt when he left the office that day that he understood and was reassured concerning these individuals whom he feared, and I told the interpreter to bring him back if there was any further trouble or he needed reassurance and instructed him to try and reassure him.

Q Well, after getting his history from himself, Olivotto himself, and from the interpreter and after your psychotic examination, you returned him to duty with his company?

A Yes, he left the same day, or as soon as our interview was over.

Law Member: That is all.

President: Any further questions?

Questions by Major MacLennan:

Q Captain, you have described his condition when you examined him, as you found him?

A Yes, sir

Q And it was not quite a month later that an incident took place. Is it your opinion that his condition could have become progressively worse during that time to the point where he might have had some of these self-destruction tendencies?

A From what I know of him I didn't think that. If I had thought that at the time I wouldn't have sent him back.

Q At that time you didn't anticipate this emotional strain that he was put under in this hypothetical question. In such a case where there was great fear produced, in your opinion would that have made his case progress more rapidly?

A You mean do I feel that suddenly confronted with this situation as described in the hypothetical question, do I feel that he would rush off and destroy himself?

Q Yes.

A I think that is highly unlikely.

President: That is all. Thank you very much, Captain.

Defense: It may be, if the Court please, I may want to ask the doctor further questions as further testimony develops. He has called the doctor as the first witness and then intends to put lay witnesses on afterwards.

Trial Judge Advocate: I did that for the personal con-

venience of the Captain, among other reasons, but I feel that the Captain will be available. We know where we can reach him and I am not asking that he be released until after this case has been concluded.

Law Member: You won't let him go back to Wisconsin?

Trial Judge Advocate: No, sir, I surely won't.

Defense: Oh, I am not asking he sit around the courtroom at all, just so he understood he isn't fully released.

Trial Judge Advocate: Let me know when you want him; he will be available.

Defense: Thank you, Colonel.

There being no further questions, the witness was excused and withdrew.

1st Lt. Vito Melpignano, 28th Italian Quartermaster Service Company, a witness for the prosecution in rebuttal was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please state your name.

A Lieutenant Vito Melpignano.

Q Vito is his given name?

A Yes, Vito.

Q M-e-l-p-i-g-n-a-n-o. And you said you are a lieutenant. Are you a 1st or 2nd lieutenant?

A 1st Lieutenant.

Q And what is your present station?

A Mount Rainier Ordnance Depot.

Q Your assignment is what; of what organization are you?

A 28th Italian Quartermaster Service Company.

Q Did you know Guglielmo Olivotto during his lifetime?

A Yes, sir.

Q In what barracks did he stay at Fort Lawton?

A 709.

Q Was he in that particular barracks 709 under your immediate supervision as a superior officer?

A Yes, I was commanding officer of barracks 709.

Q Did you or not have occasion to observe Guglielmo Olivotto during the time that you acted in that capacity?

A Yes, sir.

Q Did you have occasion to observe him during the month of August 1944 prior to the time of his death?

A Yes, sir.

Q Did you have occasion to observe during the month of July 1944?

A Yes, from the moment I arrived in the company from the 13th of July, 1944.

Q From the 13th of July, 1944. Now, Lieutenant, during that period of time when you acted in the capacity that you have testified, I will ask you whether or not you had occasion to observe Guglielmo Olivotto at work?

A Not at work, because all I was interested in was as his platoon leader or barracks leader and I was not interested in his work during the day.

Q All right. As platoon leader and as barracks leader were you or not acquainted with Olivotto's attendance at the work detail; by that I mean as to whether or not he went to work?

A He was always punctual at the time for detail, which was at 8:15 or 8:20, just as he was always punctual for reveille formations and also throughout the day.

Q Do you or not know of a single instances during that period of time where Olivotto absented himself from work, from the work detail?

A I never saw him absent. For me, I have always seen him go to work.

Q Did you or not have occasion to observe his discipline?

A His discipline was very good and he always saluted officers when he met them; also when he left them.

Q Do you or not whether he attended any lessons, any school?

A What type of school?

Q English.

A Yes, sir.

Q Well, tell the Court about it.

A Every night at 6:00 o'clock in the evening there was a school in English as directed by the American command. On occasions in which I was duty officer for the night it was always one of my duties to attend or to appear at the English classes that they were holding. Olivotto was always present at these classes and he seemed very eager to learn the English language. There were occasions, however, when he would find difficulty in learning. When he confronted these difficulties in learning how to speak English, he would always come to me because he knew that I understood a little English and he always seemed to be satisfied with the explanations and answers I gave him.

Q All right. Now did you at anytime observe any religious interest or tendencies on the part of Guglielmo Olivotto?

A To me he seemed to be very religious, because every Sunday he would attend church.

Q Did you or not observe at anytime whether he was interested in others attending church?

A When I was on duty that Sunday, I would send him into the barracks in order to tell the others inside the barracks to attend church, and I did this because I knew that he was a very religious type and that he did not mind doing it.

Q All right. From your observation of Guglielmo Olivotto during that period of time did you find him to be a normal or an abnormal person?

Defense: Now, if the Court please, that is not a proper question.

Law Member: It is objectionable in form. Would you ask him if he considered his actions those of a normal man.

Trial Judge Advocate: I would be glad to add it.

Defense: I still think it is objectionable and suggest, if the Court please, he can tell what he did and the Court can determine whether those were of a normal man.

Law Member: No, he can answer the question in the form which I have suggested. If it is answered in that form your objection will be overruled.

Trial Judge Advocate: (To reporter) All right, will you read the exact words of the Law Member, please.

(Statement of Law Member read by reporter)

Law Member: Wait a minute.

Trial Judge Advocate: Well, we will put the predicate on there.

Q I will ask you from your observations of Guglielmo Olivotto would you or not consider his actions to be those of a normal person?

A Acts of a normal person.

Q Now you remember the incident on the night of August 14, 1944, when the Negro soldiers entered the Italian area at Fort Lawton?

A Yes, sir.

Q In what barracks did you stay, Lieutenant?

A In the Italian officers' quarters.

Q And do you remember what number that building carried?

A If I am not mistaken, 715.

Q Will you step up here to Prosecution Exhibit 2, please. This is the Prosecution Exhibit 2; it is a map that indicates the Italian area. You see here is barracks 708, 709; here is the orderly room. Is it this building up here, 715?

A Yes, it is the building No. 715, the one between the street and barracks 714.

Q The street. You mean Lawton Road?

A It is the road that is between the area and the woods.

Q All right. Were you in those barracks during the time of the riot -- 715?

A Yes, I was in my barracks.

Q After the M.P.'s arrived and cleared the area of Negro soldiers, state to the court what, if anything, you did with respect to going around the area and checking on Italian soldiers.

A I walked over to the orderly room to where Lt. Lobianco was assisting the soldiers, administering aid to their wounds.

Q All right. After that was completed where did you go, Lieutenant?

A We remained in the area, because we had orders from the military police and the American officers that were present for each of us officers to check each barracks to see what men were missing from those barracks.

Q Did you or not have occasion to go through barracks 709 and check it to see who might be present or absent?

A Yes, I was ordered to go to my barracks, barracks 709, to check.

Q Did you or not see Guglielmo Olivotto in barracks 709 when you made that check?

Defense: This is all improper rebuttal, if the Court please.

Trial Judge Advocate: Who raised the issue of a possible something besides hanging?

Defense: I know, but--

Law Member: I know; that is correct on that.

Defense: (Continuing) his case in chief showed this man left, left, left the room, the building, at a certain time. I haven't produced one particle of evidence to indicate otherwise.

Trial Judge Advocate: But now an issue of possible self-destruction has been made, and I want to show the man didn't return to that area. I have the right to show that and that is the whole purpose of this proof; that he wasn't seen in that area.

Law Member: The objection is overruled.

A No, he was not present. I called all the names out and he did not answer to his name.

Q Did you or not see Guglielmo Olivotto anywhere in that area as you were around there that night?

A No, I positively could not see him because he wasn't there.

Q About how much time did you spend in the Italian area looking

around and gathering facts after the military police left?
A Until 5:30 or 6:00 o'clock in the morning. I did not go to bed any more that night.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by defense:

Q In what respects was Olivotto more religious than the other men in your platoon, Lieutenant?

A He was very religiously inclined, to the effect that he followed all the rules of Catholicism.

Q Did he spend a good deal of time reading the Bible?

A That I don't know, because I have never noticed that, but I know when he came to church he always had his little prayer book with him all the time.

Q Well you said he was more religious than any other man in your platoon there. Now I want to know just exactly in what way he was more religious than those other men.

A He was more religious in this respect; that he attended mass all the time, whereas some of the other members of the platoon did not, and it is because of this fact that I saw he was more religious than the others.

Q He didn't talk about religion all the time, did he?

A No, he couldn't speak about religion all day long. On Sundays he came to church to follow his religion.

Q What is the first information you had, Lieutenant, there was a riot on that evening?

A We were in the barracks and we heard noise, but we didn't pay any attention to it because we thought it might have been just noise that the soldiers were making. However, we heard an Italian soldier who was running towards the woods say that Negroes were attacking.

Q What did you do then?

A Captain Cellentani told me to remain in the barracks while he went to the telephone in the orderly room and that he would be back. In the meantime I went out towards the orderly room to give what possible aid I could.

Q You didn't follow your Captain's orders then?

A I remained in the barracks, but I only remained there for a few minutes. When I saw that he did not come back, then I went out to look for him.

Defense: That is all.

Trial Judge Advocate: Nothing further, if the Court please.

President: Any questions by the Court? That will be all, Lieutenant; thank you very much.

There being no further questions, the witness was excused and withdrew.

Defense: Do you have any further witnesses who are going to testify along the same line he did?

Trial Judge Advocate: They may testify along a little bit of a different line.

Corporal Major Bruno Patteri, 28th Italian Quartermaster Service Company, a witness for the prosecution in rebuttal, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please state your name.

A Patteri, Bruno.

Q That is Bruno Patteri. And what is your grade?

A Corporal Major.

Q And you are stationed with the 28th Italian Quartermaster Service Company at Mount Rainier Ordnance Plant?

A Yes, sir.

Q Where were you stationed on August 14th, 1944?

A Fort Lawton.

Q Did you know Guglielmo Olivotto during his lifetime?

A Yes, I know him for two years.

Q Where did you first meet him?

A The first time we met was in Libya, in Africa.

Q Were you captured at the same time?

A We were both captured at the same time.

Q All right. Now, where after you reached this country were you kept as prisoners of war?

A A camp in Florence, Arizona.

Q Was that just prior to the time you came to Fort Lawton?

A Yes, sir.

Q Do you remember when you came to Fort Lawton?

A The exact date I don't remember, but it was the end of May.

Q Did you have occasion or not during the time that you knew Guglielmo Olivotto to observe him and become closely acquainted with him?

A Yes, we were intimate friends, him and I.

Q Do you know whether or not Olivotto had any other friends besides yourself?

A We three of us were intimate friends, Olivotto, I and Nolgi.

Q That is Eno Nolgi?

A Eno Nolgi.

Q Did you ever have occasion to work in a work detail along with Guglielmo Olivotto?

A Yes.

Q What sort of a worker was he?

A He was a very good worker.

Q Did he or not attend any lessons in the evenings?

A When we were here at the Fort he used to attend the English classes at night.

Q From your observation and your friendship with Guglielmo Olivotto I will ask you whether or not you considered him to be a person of normal mind?

A Yes, he was very normal.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by defense:

Q Was Olivotto wounded during combat at anytime?

A In combat he was never wounded.

Q Did he have any scars on his head that you know of?

A He had a cut here on the lip and he had a scar there (indicating)

Q Was that kind of like a harelip?

A It was a cut just like this (indicating).

Q To your knowledge that is the only scar he had?

A That was the only wound that I ever saw; that I know of on Olivotto, on his face.

Q How old was Olivotto?

A I believe that he was of the class of '12. That is 1912.

Law Member: What does that mean?

Trial Judge Advocate: Make him about 32 years old.

Q Ask him again.

A He was two years younger than I. I am 34; he was 32

Q Did you and Olivotto come from the same town in Italy?

A No. I'm a Parmaginian and he is from Venice. We were both together in France.

Q When were you in France together?

A No, I wasn't in France with him. He was just telling me he was in France 17 years.

- Q Whereabouts in France was he?
A I don't know exactly where he was in France.
- Q Did he ever have any fear of returning to France?
A I never spoke of anything like that.
- Q Did he ever say anything to you that would indicate he feared certain French people might be after him?
A No, never.
- Q You are positive of that?
A Very sure.
- Q Was Olivotto married?
A No.
- Q Did he have any brothers and sisters?
A He never told me whether he had any brothers or sisters.
- Q Did he ever tell you whether his mother and father were living or not?
A He told me that his family was in Italy.
- Q Did Olivotto write to anyone?
A He wrote to his family with letters that we used, those of prisoners.
- Q How often did he write?
A I don't know that.
- Q You go to church pretty regularly, Patteri?
A Sometimes I go to church. However, not always.
- Q How about Nolgi; did he go to church pretty often?
A Nolgi also went just a little.
- Q Well, did you and Olivotto take in social functions together?
A We worked together four months picking cotton.
- Q Well, what did you do since you were at Fort Lawton; what did you do together?
A At nighttime we would go over to the beach and study a little English together.
- Q Go to the shows together?
A To the shows, no; but we went several times, just a few times, to the recreation hall, because he didn't drink and neither did I.
- Q Did Olivotto go to church oftener than you did?
A Yes; Olivotto, yes.
- Q Of the three close friends, he was the only religious man?
A He was more Catholic than us two.

Defense: That is all.

Trial Judge Advocate: No further questions.

President: Any questions by the Court? That is all.

There being no further questions, the witness was excused and withdrew.

2nd Lt. Giovanni Lobianco, 28th Italian Quartermaster Service Company, a witness for the prosecution in rebuttal, was sworn and testified through the interpreter, as follows:

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q Please state your name, your rank, your organization and your station.

A 2nd Lieutenant Giovanni Lobianco.

Q Lieutenant, did you know Guglielmo Olivotto during his lifetime?

Interpreter: Do you want the rest of it?

Defense: I will stipulate on the rest of it. Takes 20 minutes to get it.

Trial Judge advocate: No, I think I can get it pretty fast.

A 28th quartermaster Italian Service Company, situated at Mount Rainier, Tacoma.

Q Did you know Guglielmo Olivotto during his lifetime, Lieutenant?

A Yes.

Q Were you ever his immediate superior officer?

A I was his immediate superior officer in the company during the time that Captain Cellentani and myself were the only officers in that camp.

Q Now, about when did you first know Olivotto?

A In May of this year.

Q Where was that?

A In Florence, Arizona.

Q Florence, Arizona. And then about when did you come to Fort Lawton?

A 21, 22, or 23 of May. I don't remember the exact date.

Q Did you or not have any connection with Olivotto's work squad?

A Yes, I was the one that supervised the squad where Olivotto worked.

Q Did you have occasion to talk with Olivotto in connection with the supervision that you exercised over him?

A Yes, the occasion often arose that I spoke to him just as it arose for me to speak to other soldiers in the company.

Q Now from your observation of Guglielmo Olivotto did you or not consider him to be a normal person?

Defense: I don't hink--well, go ahead; but I don't think it is proper.

A Yes, he was normal.

Q Will you tell the Court --

Law Member: Now "he was normal," is objectionable. If his acts that he observed appeared to him to be normal, that is receivable.

Trial Judge Advocate: I think it amounts to the same thing.

Law Member: No, there is a difference.

Trial Judge Advocate: Well, all right, sir. Let me ask him this then.

Q Just strike that last answer and explain to him that we are asking the question in a different form, and we will ask him whether or not from his observation he considered his acts to be those of a normal person?

A Yes, he never did any abnormal acts. He was always normal in all his instructions and classes and things of that nature.

Q What type of worker was he?

A He was an orderly in the officers' Italian barracks -- in the American officers' quarters, not the Italian's.

Q With respect to his diligence or lack of diligence in his work what are the facts?

A He was a very good worker. He never gave me no trouble. He helped out in the company besides his regular work. He was very diligent.

Q At the morning and evening instructions how did he conduct himself?

A He was always present, always diligent, and always followed orders.

Q Lieutenant, in what barracks were you on the night of the attack on the Italians by the Negro soldiers at Fort Lawton?

A When the attack commenced I was in my barracks. As a matter of fact, in bed asleep.

Q And what barracks were those?

A In the officers' Italian barrack.

Q Does he remember the number?

A No, I don't remember the number.

Q Will you come with me, please. This is Prosecution Exhibit 2, the Italian area. Here is the orderly room, 713 (indicating) was it 715?

A Yes, sir.

Q Now after the M.P.'s arrived, what in a general way, did you do?

A When the military police arrived I was already outside. I was in the orderly room administering first aid to the wounded; sending them to the hospital. Right after that I was in the hospital to see the ones who were wounded and each officer took a roll call in his barracks to see who was in the barracks and who was not.

Q About how long did you remain in the area on the outside that night after the M.P.'s had cleared the area of colored soldiers?

A I was in the area a little while; then I went to the hospital. Actually I did not get back into my barracks until about 5:00 o'clock in the morning.

Q Did you or not see Guglielmo Olivotto anytime that night after the M.P.'s arrived?

A No.

Trial Judge Advocate: You may have the witness.

CROSS EXAMINATION

Questions by defense:

Q Where were you captured, Lieutenant?

A In Corva, Tunisia.

Law Member: I didn't get that.

The Witness Corva, Tunisia.

Q When did you first know Olivotto?

A In Florence, Arizona; in the month of May.

Q Now, what was it that caused Capt. Cellentani to send Olivotto up for an examination?

Trial Judge Advocate: If it please the Court, this witness can't answer that.

Law Member: Not unless he shows he can answer that.

Trial Judge Advocate: It would be hearsay.

Q Do you know Lieutenant, why Capt. Cellentani sent Olivotto up for an examination?

Trial Judge Advocate: Of his own knowledge.

A Yes.

Q Why was that?

Trial Judge Advocate: Now, just a minute. I want to take this on Voir Dire and see if he knows of his own knowledge. May I ask a question or two?

Law Member: Yes.

Examination on Voir Dire by Trial Judge Advocate:

Q Do you know this of your own knowledge or do you base it on what Capt. Cellentani told you?

A During the natural course of the company you can't tell whether somebody told you or you know of your own knowledge when a thing like that is so or not.

Law Member: Well, that is about him going to the hospital.

A When he was sent to the hospital, I knew the reason why he was being sent to the hospital.

Q All right. Who told you of the reason; how did you learn it?

A I knew that from the Captain himself because the Captain requested that he go to the hospital.

Law Member: Well, if he got his knowledge from the Captain and not from his own observation, then the testimony is objectionable.

Q Do you know the reason other than what the Captain told you, Lieutenant?

Interpreter: You want me to translate yours first or what?

Trial Judge Advocate: Translate to him what the Law Member said.

Defense: I don't think there is anything to translate from what the Law Member said because the Law Member was ruling on an objection. Nothing for the witness to know.

Law Member: You ask him, Major.

Defense: I have already asked him a question. Read it, please.

(Question read by reporter)

A I know that he was sent to the hospital, and I know his reason, but I can't exactly say whether it was the Captain who told me the reason or not.

Defense: Is the Court ruling that I can't ask him?

Law Member: I believe it is hearsay. You see, the form of the question is do you know why Capt. Cellentani sent him to the hospital, and I don't know how anybody could know that but the Captain.

Defense: Well, if it was something discussed in Olivotto's presence I think perhaps it is admissable.

Trial Judge Advocate:

Q Olivotto had been laboring under a great fear for some time, hadn't he, Lieutenant?

A He at one time confessed to me that he had a fear of the French Moroccans, because he was in France and then he reentered Italy at the time of the war and he was afraid that the French Moroccans were after him to take revenge for the fact that he had reentered Italy.

Q And he had considerable fear of that, didn't he?

A No. One day he told me about that at Florence, and I explained to him that he had nothing to fear; that he was a soldier and he had reentered his correct place.

Q That was down in Arizona where you told him that?

A Yes.

Q But he continued to fear that condition afterwards, didn't he?

A No. because in Arizona itself, about two or three days after, I asked him how he was getting along with respect to this and he said it was all right; he had been convinced there was nothing to fear.

Q I see. Well, Captain Cellentani was never down there in Arizona, was he?

A Yes, he was there when I was there.

Q With the 28th Italian Service Company?

A Yes, when the company was formed in Arizona.

Defense: That is what I tried to tell you yesterday.

Trial Judge Advocate: No, it isn't. It says May; wasn't formed until early in May.

Q What month was that?

A May.

Q Now, there wasn't any repetition of this fear clear down through July?

A No. At another time I approached him and I asked him how he was getting along, and he said to me that sometimes he felt the fear but I explained to him again that there was nothing actually to fear; especially in the condition that he was in now.

Q Then you did discuss this fear with him after you left Arizona, didn't you?

A Yes, in the first few days that we arrived here at Fort Lawton.

Q Well, when was it that you first arrived here?

A We arrived about the 21st, 22nd, 23rd of May.

Q 23rd of May. Well, was it in May that he again expressed this fear to you?
A Yes, it was the first few days that we arrived here. At the end of May or the beginning of June.

Q And he never had any fear at anytime again after that?
A Yes, after this time, why once in a while I would ask him how he was getting along with respect to this and he would say he was getting along pretty well now.

Q But he never did have any more fear after May of Negroes?
A No. He never told me that he had any fear of Negroes; he only told me he had fear of those French Moroccans.

Q Aren't French Moroccans Negroes?
A When we speak here of Negroes, we are speaking about Negro-Americans, aren't we?

Q My question to him was aren't French Moroccans Negroes?
A They are not Negroes in the sense Negroes are here in America. They are dard, but not Negroes such as we have here in America.

Q In any event, you want this Court to think that Captain Cellentani on July 17th sent Olivotto up for an examination of something that took place in May, is that right?

Trial Judge Advocate: If the Court please--

Law Member: That question is assuming facts not in the record. Your objection is sustained.

Defense: I don't follow the Court's statement of facts not in the record.

Law Member: How does this man know what prompted Capt. Cellentani to send this man to the hospital.

Defense: He knows.

Law Member: Well, He hasn't said that he did. If he says that he knows, then I will permit the answer.

Defense: I have no further questions.

Trial Judge Advocate: None by the prosecution.

President: Any questions by the Court? If not, the witness will be excused. Thank you very much Lieutenant.

There being no further questions, the witness was excused and withdrew.

President: The Court will recess until 9:00 o'clock tomorrow morning.

The Court thereupon recessed at 5:05 o'clock, p.m., 13 December 1944, to reconvene at 9:00 a.m., 14 December 1944.

LEON JAWORSKI
Lt. Colonel, J.A.G.D.
Trial Judge Advocate

1643

Ft. Lawton Staging Area
Ft. Lawton, Washington
December 14, 1944

The Court reconvened at 9:00 o'clock a.m., the 14 December 1944.

The reporter and interpreter were also present.

President; Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of the accused was called by the Assistant Trial Judge Advocate and all were present.

Trial Judge Advocate: The record may show that each of the accused are present, that all members of the Court are present and the personnel representing the accused as well as the personnel representing the prosecution are also present.

(Pfc John H. Pinkney, Headquarters, Headquarters Detachment 2, called as a witness by the Prosecution in rebuttal, was sworn and testified as follows:)

DIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q State your name?

A Pfc John H. Pinkney.

Q And your organization?

A Headquarters, Headquarters Detachment 2, Camp George Jordan.

Q That is your station. Where were you stationed in August 1944?

A Ft. Lawton.

Q Do you remember the incident when on the night of August 14th, 1944--

A (Interposing) I do, sir.

Q (Continuing) - some negro soldiers entered the Italian area at Ft. Lawton?

A Yes, sir.

Q Where were you when you first heard of that incident

that night?

A In my barracks, building 665.

Q Will you step up here just a minute. This is Prosecution Exhibit 2, which shows the Italian area over here and the barracks of the 650th and 651st and the 578th, and is this your barracks you have reference to, 665? (Indicating)

A Yes sir.

Q And here is Lawton Road and here is the 578th mess hall and here is building 719 and here is the Italian area, and buildings 708 and 709 and here is the orderly room, 713 and here are the tents over here and the latrine; you recognize that do you?

A Yes sir.

Q Now without saying what was said, how did you first learn that something of an unusual nature was transpiring in the Italian area?

A Orders came from the orderly room, from the CQ.

Q Charge of quarters?

A Charge of quarters, yes sir.

Q And did he come in to talk with anyone about that?

A Yes sir. First Sergeant, Sergeant Aubry.

Law Member: Just a minute. He came in -- who?

Q The charge of quarters came in, isn't that what you said?

A Yes sir.

Law Member: And spoke to Aubry?

Q That's right, isn't it?

A Yes sir.

Q Now don't mention anything that was said, but what if anything did Sergeant Aubry do?

A He jumped up and put on his clothes and ran outside.

Q All right. Now after Sergeant Aubry did that, did you do anything?

A Yes sir.

Q What did you do?

A I did likewise.

Q Now just where did you go after you went outside?

A I ran back on the inside and finished putting on my clothes in barracks 665, then ran - came back out and ran over to the orderly room to obtain an M.P. club and brassard.

Q Now you say you ran to the orderly room and obtained an M.P. club and brassard; what room do you have reference to now?

A 650th orderly room.

- Q Will you come over here and let's see if we can find this orderly room?
A Could be 670.
- Q Pointing to barracks 670?
A Yes.
- Q After you obtained the brassard and M.P. club, let me ask you, did you put the brassard on your arm?
A Yes sir.
- Q And what sort of a club was it you took?
A An M.P. club.
- Q Was it or not a regulation M.P. stick?
A Yes sir; what we had been using all the time for M.P. duty.
- Q All right. After you obtained your brassard and club, where did you go to then?
A Down into the 700 area.
- Q What did you see there, if anything?
A A group of men assembled in the street.
- Q Do you know about how many were assembled; can you make some guess?
A Approximately 115 or 125.
- Q Approximately 115 or 125. Well after you did that, state whether or not were there any M.P.'s present besides yourself?
A About a minute and a half or two minutes after I arrived into the area a command car of white M.P.'s arrived.
- Q How many white M.P.'s were in that command car?
A Approximately 4 or 5.
- Q Do you remember who any of them were?
A Sergeant Jones was one.
- Q Sergeant Jones was one. Was he or not in charge of them, do you know?
A No, I didn't.
- Q You didn't know. Now where did this command car park or where did it come to a stop; I will ask you that first?
A In the vicinity of building 719.
- Q Was it right in front of 719 or a little distance from 719 or tell the Court about where it stopped?
A It wasn't right in front of the barracks, but approximately around, right close to around the corner.
- Q Now about how long did the M.P.'s stop there?
A Long enough for a question to be asked.

Law Member: What is that?

Trial Judge Advocate: "Long enough for a question to be asked."

Q And after that question was asked, what if anything did the MP's do?

A The MP's and myself, after the question was asked, the M.P.'s got out of the command car and we proceeded into the area of the Italians.

Q All right. Now did you or not notice an ambulance there at any time while you were in the vicinity of building 719?

A No sir.

Q All right. Now you say you and the M.P.'s started over to the Italian area?

A Yes sir.

Q Did you notice whether or not this group of men that you have described was standing still after that or did they follow you, or what?

A I beg your pardon?

Q You said there were a group of men that you described there?

A Yes sir.

Q To be about 115 or 125, or something like that in round numbers?

A Yes sir.

Q What if anything did they do after you and the M.P.'s walked over to the Italian area?

A They started to follow us.

Q All right now. Up to what point after you started towards the Italian area did this group follow you, and I will ask you to come up here and look at this map so you can point out to the Court where that was. Let me ask you this -- calling your attention to this being the 578th mess hall and it is marked building 700 and this is Lawton Road; now point out about at about what point this group was?

A It was along about the middle of building 700, of the 578th Port Company. It was along about the middle of the barracks, in the middle there, Lawton Road. (Indicating)

Q Well was it in the middle of Lawton Road, you say?

A Well this is the road that leads down into the Italian area; along this road. (Indicating)

Q Now just stop there a minute. In order to get it straight were you and the M.P.'s walking along Lawton Road or some other place at that time?

A We had already crossed from building 719, entering into Lawton Road, and when we arrived along about the middle of building 700, one of the M.P.'s gave me an order.

Q All right. Now will you mark that point there, putting your initials there please; just mark it on Lawton Road?

A (Marking as indicated)

Defense: Don't you think he ought to mark it in pen, Colonel?

Q Do you have a pen?

A Yes.

Q All right, use yours.

A (Marking as indicated.)

Q Now you marked that with an X and then you put JHP with it, didn't you?

A Yes sir.

Q All right, fine; will you have a seat. Now you say that at that time an MP gave you an order?

A Yes sir.

Q What order did he give you?

A To tell the rest of the men to stay back until after we had proceeded into the area to see if we could stop whatever had occurred down in the Italians' area.

Q All right. Now I will ask you if before the time the M.P. gave you that order - now get this question - before the time the M.P. gave you this order, had you or not seen Sergeant Arthur Hurks that evening?

A I don't recall.

Q You don't recall. Do you mean by that that you have no recollection of having seen him prior to the time the M.P. gave you that order?

A No sir.

Q After the M.P. gave you that order what did you do?

A I immediately turned around and when I did I turned right around in Sergeant Hurks' face.

Q Now you have testified you had no recollection of having -- no recollection of having seen him prior to that time. Is the Court to understand from that or not that you have no recollection of having talked with him that evening prior to that time?

A Yes sir.

Q Is that right?

A Yes sir, that's right.

Q All right. Now when you turned around and looked right in Sergeant Hurks' face as you have testified, did you or not say anything to him?

A Yes sir.

Q What did you say to him?

A I told him to keep the rest of the men back until after we had went down into the area to see what was going on wrong.

Q All right. Now that was something you said to Sergeant Hurks?

A Yes sir.

Q Well what did you and the M.P.'s do then after you said that?

AA We proceeded on into the Italian area.

Q Now where did you go?

A We went to the Italians' orderly room.

Q Did you go directly to the orderly room?

A Yes sir.

Q Now right there; you have told the Court that you spoke to Sergeant Hurks and what you said to Sergeant Hurks, I will ask you whether or not you saw Sergeant Hurks any more after that?

A No sir.

Q Then was that or not the only time and the last time -- I say, the first and the last time that you saw Sergeant Hurks?

A Yes sir.

Q You say you went to the orderly room. Now as you got to the orderly room, did you or not see any negro soldiers on the outside of the orderly room?

A Yes sir.

Q And did you enter the orderly room?

A Yes sir.

Q Now after you entered the orderly room, did you see any negro soldiers inside the orderly room?

A Yes sir.

Q Well will you give the Court some idea of about how many soldiers - negro soldiers - you saw, first, we will say inside the orderly room?

A There were a few. Approximately 9 or 10 soldiers.

Q Now did you or not notice whether there were any negro soldiers in any of the doorways of the orderly room?

A Yes, there was one. I forget just what door, you named that door, but --

Q Well come with me and let's get this so the Court will understand. Let's look at Prosecution Exhibit 3, which is a plat of the orderly room. This is the front and this is the side entrance. (Indicating) Those are located as it is

here. Here is one doorway and here is another doorway; which di you enter?

A Through door E.

Q Now tell the Court just where you saw negro soldiers standing and then tell the Court the approximate number that you saw?

A In Room X there were 9 or 10 soldiers, in room X.

Q Now where else did you see any negro soldiers?

A There was one in room R.

Q Did you notice whether or not there were any around any of the doorways?

A Just a second; you mean before we entered or after we entered?

Q Either time; just tell us whether it was before or after?

A Well before we entered, as we entered the building, there were soldiers on the outside of room E - or door E - on the, well, I imagine you would call it the right hand side or left hand side.

Q Close to this window, window Y?

A Yes sir. And then there were a group of soldiers assembled back in this direction here, under room R.

Q Can you tell us about how many negro soldiers were close to the window of room Y?

A I never noticed up close to the window of room Y.

Q Well I mean, within the vicinity there?

A Well there were two.

Q Now how many did you notice here in the vicinity of room R?

A I said there were a group.

Q I know you said there were a group. But about how many would you say?

A I would give a slight estimation of around 35 or 40 men.

Q Around 35 or 40 men?

A There may have been more and may have been less.

Q All right. Now do you know Richard Barber?

A Yes sir. I have known him since I have been in the Company.

Q Did you or not see him when you went to the orderly room?

A Yes sir.

Q Where did you see him?

A In room R.

Q In room R. Did he or not have anything in his hand?

A He had something in his hand.

Q Can you tell the Court what it was?

A No sir, I couldn't distinguish what it was.

Q I wonder if you would come with me just a minute and let's see if you can pick out Richard Barber from the group of this men; just look over the group and see if you can see him anywhere?

A Yes sir.

Q Wellcome with me and show me which one is Richard Barber?

A There. (Indicating)

Q Third man, that one? (Indicating)

A Yes sir.

Q All right; have a seat. Now I will ask you if you know Wallace Wooden?

A Yes sir.

Defense: Now if it please the Court, this is not proper rebuttal as to Wallace Wooden. He did not take the witness stand.

Trial Judge Advocate: He didn't take the stand, but Loary Moore identified - or attempted to testify as to what could be construed as an alibi for Wallace Wooden.

Defense: Oh no.

Trial Judge Advocate: Oh yes. He testified Wooden came in and told him to put his clothes on, that the barracks might be burned down, which attempts to place him somewhere other than down in that area.

Defense: I don't think there is any time element fixed at all as to when that took place and it might have taken place when all this was over with. I submit to the Court it is improper rebuttal testimony.

Trial Judge Advocate: Oh no.

Law Member: Excuse the delay; just a moment.

Trial Judge Advocate: I am almost certain it was the testimony of Loary Moore.

Defense: I think that it the testimony of Moore; but there is no time fixed.

Law Member: Objection is over-ruled.

Trial Judge Advocate: Will you read the question?

(Question read back by the Reporter.)

A Yes sir.

Q Did you or not see Wallace Wooden in the orderly room or around the orderly room on the occasion in question when you went down there?

A Yes sir, he was around the orderly room.

Q All right; let's get back up here please, to Prosecution Exhibit 3, and show the Court approximately where you saw the accused Wallace Wooden?

A It was on this end of room R -- or room X -- no, room Y, rather, (Indicating)

Q End of room Y?

A Yes sir.

Q That is the corner of room Y?

A Yes sir.

Law Member: May I ask a question?

Trial Judge Advocate: Surely.

Law Member: Is that when you arrived at the orderly room?

Witness: Yes sir.

Defense: For the record, that is nearest - the point he has indicated - is near the corner of the building, or of room Y nearest door E.

Q All right. Now after you completed -- well tell the Court first what you went on to do in the orderly room, you and the other M.P.'s?

A After we entered the room X and observed a lot of wounded soldiers, or wounded Italians, lounging around on the floor and on tables and benches and chairs and what not there was in the room, we seen so many of them badly wounded, so we cleaned out the orderly room and then we proceeded to get ambulances and carriers to carry the men to the hospital.

Q And then after you took care of the wounded, then what did you do?

A Then after the men had been moved from the - from room X, then we proceeded, or continued to police up the barracks in the area to see if there were any more wounded.

Q And you spent about how long doing that?

A Approximately 35 or 40 minutes.

Q And then what did you do after you completed that?

A One of the guards that were appointed to stand guard in the area that night had come off without a jacket and we went up to the Italian -- I mean, up to the M.P. barracks to obtain some kind of clothing for the guard to put on that night.

Q Now were you or not on regular M.P. duty that night?

A No sir, I wasn't.

Q I understand you testified when you heard there was trouble down there you took it upon yourself to serve as an M.P. and help out all you could?

A Yes sir.

Q I believe I failed to ask you to point out the accused Wallace Wooden. Would you do that please; will you look over these men and if you see Wallace Wooden will you point him out?

A Yes sir; he is sitting on the end there. (Indicating)

Q Sitting on the end in what row?

A First.

Q First man in the front row?

A Yes sir.

Law Member: He hasn't identified Hurks.

Trial Judge Advocate: Beg your pardon?

Law Member: He hasn't identified Hurks, has he?

Q Now you know Sergeant Arthur Hurks, don't you?

A Yes sir.

Q Well I wish you would point him out to us if you see him among the accused?

A He is the sixth man in the first, front row.

Q Sixth? (Indicating)

A No, the fifth man, over, in the front row.

Q Here? (Indicating)

A Yes sir.

Trial Judge Advocate: Prosecution has no further questions.

CROSS EXAMINATION

Questions by Defense:

Q Pinkney, will you look over this group of men pretty carefully here and then tell the Court whether you saw any men down in the orderly room or standing around the orderly room that night whom you recognized who are not among the accused?

A Will you state that again?

Q I want you to look over this bunch of accused carefully?

A Yes sir.

Q And then I want you to tell the Court whether you saw any men down around the orderly room that night you went down

- there --
- A Yes sir.
- Q -- or inside the orderly room, whom you recognized and who are not among these men over here. In other words, men who have not been charged in this case?
- A Yes?
- Q But, who was down there; do you understand my question now?
- A No sir, I don't.
- Q First of all, I want you to look over all the men over here, the accused who have been charged in this case?
- A Yes sir.
- Q Then I want you to tell the Court whether there are any men whom you saw down there that night, when you went down to the Italian area, either immediately outside the orderly room or in the orderly room whom you recognized, and who are not sitting in that group of men; do you understand it now?
- A This is the way I understand it.
- Q All right?
- A Say for instance you were down there, but --
- Q You don't think I was?
- A I'm trying to --
- Q All right, go ahead.
- A Say for instance you were down there and you were in the area and you were accused, but yet and still -- oh well --
- Q Well let's follow your own example now. Suppose I was down there that night and you saw me down there and I am not sitting over there amongst this group of men. Yet now, instead of mentioning my name, I want you to use the same idea and mention the names of any other men you saw down there that night, whom you saw, and yet who are not in this group of men; did you see any that are not in this group?
- A No sir, I don't see any.
- Law Member: I don't think he understands the question yet Major.
- Defense: No, I don't think he does either.
- Witness: No sir, I don't.
- Q Well you get up and take a look at these men; do you know pretty well who they are?
- A Those were in 650th Port Company the same identical time I was there. There's a few in there that I don't know that wasn't in 650th.
- Q Let me do this, let me hand you a list of names here of the

accused in this case. You look this over - or let me show you the roll call. Here, better still Pinkney, will you look at this list?

A Yes.

Q Which is a list of all the men who have been accused in this case. Now tell the Court whether you saw any -- or you look it over first. I think you will agree with me Counsel he is looking at a list of all the accused in this case?

Trial Judge Advocate: Oh yes, surely.

A This is the way I understand it. If these men were, or if they weren't down in that area; do you want me to testify whether I saw them there?

Q No, you haven't got it right yet. I just want you to look at that list first and acquaint yourself with the names?

A Okay. (Peruses list)

Q Have you read over all of them?

Trial Judge Advocate: There is some there on the back.

Q Yes. Look at those on the back too.

A Okay. (Perusing list)

Q Now, did you see any men down there, that is in the orderly room or the immediate vicinity outside of it, whose names are not on this list you just looked at?

A No sir, I don't see any of them.

Q Didn't you tell me about somebody the other day, the names of some men that are not there?

A They are not in there.

Q That's right; that is the ones I want you to tell us of?

A Well after the M.P.'s and myself had left the M.P. barracks and was going back into the area, we stopped two men from 650, and two men that was on the alert from down in the staging area.

Law Member: That was when did you say, after you and the M.P.'s left the barracks?

The Witness: After we left the barracks from getting the clothing.

Q That was some time later?

A Well that was after the riot.

Q I mean, when you went right down there to the orderly room, when you first went down there to the orderly room and went inside, didn't you tell me something, about giving me the names of two other men that you saw who are not sitting over here in this bunch of boys?

A I don't recall, sir.

Q You don't recall. All right. Now Pinkney, as far as Richard Barber is concerned; you don't know whether he had anything in his hands or not that night, do you?

A I couldn't testify definitely whether he had anything in his hands or not, no sir.

Q Well you told me before, down in Camp Jordan, you didn't think Richard Barber had anything in his hands, didn't you?

A I told you I didn't know whether he had anything and I couldn't say whether he had anything.

Q That's right. And Wallace Wooden didn't have anything in his hands either, did he?

A I couldn't say whether he did or not.

Q You didn't see either one of those men strike anybody?

A No sir.

Q You didn't see them damage any Government property?

A No sir.

Q As a matter of fact, it was very dark outside the orderly room and it was difficult to recognize anyone?

A Yes sir.

Q You were on duty all night that night weren't you?

A Yes sir.

Q As a matter of fact, wasn't it you that discovered the body the next morning?

A Yes sir.

Q That is, the body that was hanging down in the obstacle course?

A Yes sir.

Q How did you happen to be down there in the obstacle course that morning?

A We were scouting after a Government jeep that had been taken away from the Italian area.

Q Did you ever find it?

A No sir.

Q You didn't?

A No sir.

Defense: I don't think I have any further questions.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q That obstacle course, Pinkney; tell the Court whether or not

that is the same obstacle course that you negro soldiers used in your training?

A Well all Ft. Lawton have used that obstacle course, white and colored.

Q Did you go through that obstacle course in your training?

A I did.

Q What Port Company were you a member of?

A 650th.

Q Do you know whether or not the members of the 650th Port Company used that obstacle course?

A We did.

Q Now Major Beeks asked you to look over a number of the accused and tell him whether there was anyone else that you saw aside from them. Now I want you to take a look at them and tell me whether there was anyone else you saw in and around the orderly room who are of the accused here?

Defense: I object to that; that is not proper.

Q You mentioned two, Wallace Wooden and Barber as being on the outside of the orderly room. Now will you look over the rest of them and see if there is anyone else sitting among the accused there that you saw in or around the orderly room?

A Frank Hughes, and Wallace Wooden.

Defense: I entered an objection, if the Court please.

Law Member: Didn't you open this up?

Defense: I did not, I didn't ask anything about the accused Frank Hughes.

Trial Judge Advocate: I can go into this and open it up now because you went into that question of identification, if he could identify any that were there and not among the accused.

Defense: All right, if you want that in the record it's all right with me. But it is extremely prejudicial. I want the record to show that this is extremely prejudicial to the accused Frank Hughes.

Law Member: There is no doubt about that Major. But under the Manual for Courts Martial the Court may make this witness it's own to develop further facts and in that event, as soon as examination by counsel is completed, if the Court does, it would undoubtedly come out.

Trial Judge Advocate: As a matter of fact, even aside from counsel opening it up himself, the Court has the right at any time to ask questions with respect to this.

Law Member: Objection over-ruled.

Q You say you saw Frank Hughes here, he was also down there?
A Yes. And Wallace Wooden was standing near room Y.

Law Member: Frank Hughes, and --

Trial Judge Advocate: Wallace Wooden.

Q In other words, it is your testimony he was standing close to Wallace Wooden?

A Yes sir.

Q Will you look over the group of men here and point out Frank Hughes?

A Yes sir. Sixth man in the second -- seventh man in the second row. No, sixth men in the second row.

Q All right. Let us make sure. Come with me and point him out. Now which one is Frank Hughes?

A This man. (Indicating)

Q Sixth man? (Indicating)

A Yes sir.

Q All right; have a seat.

Trial Judge Advocate: That is all I have; if it please the Court.

RECROSS EXAMINATION

Questions by Defense:

Q Frank Hughes did not have anything in his hands, did he?

A I didn't see anything.

Q You didn't see him hit anyone?

A No sir.

Q Didn't see him damage any Government property?

A No sir.

Defense: That's all. Let me ask you this one further question - no, I will withdraw that. That is all.

President: Court will take a ten-minute recess at the present time.

Witness: Is that all?

Trial Judge Advocate: Well the Court may want to ask you some questions, do you better wait around. You can sit here or go outside.

(A ten-minute recess was taken and proceedings resumed as follows:)

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: The record may show that each of the accused are present, that all members of the Court are present, and that the personnel representing the accused as well as the personnel representing the prosecution are present.

(Pfc John Pinkney recalled by the Court and testified further as follows:)

Trial Judge Advocate: You are reminded that you are still under oath Pinkney?

Witness: Yes sir.

President: Were you through?

Defense: Yes, I am through.

EXAMINATION BY THE COURT

Questions by Law Member:

Q Pinkney, did you or the command car arrive in front of barracks 719 first?

A I,- I think that we arrived just about the same time. I wouldn't say whether I arrived first or whether the command car arrived first.

Q And at that time you say there was quite a large group of negro soldiers in and about the front of barracks 719?

A Yes sir.

Q Did you take any particular notice of any of the negro soldiers there at that time?

A I don't quite understand that, sir.

Q Did you identify any of the negro soldiers that were in front of barracks 719 at that time?

A I couldn't identify anyone, no sir.

Q And then you and the white M.P.'s proceeded in the general direction of the Italian area, is that right?

A. Yes sir.

Q And this group which has been described in front of 719 followed you down?

A Yes sir.

Q To the point which you have marked X and JP on Prosecution Exhibit 2?

A Yes sir.

Trial Judge Advocate: I believe it is JHP, sir.

Witness: Yes sir.

Q Then you received some order from Sergeant Jones?

A Yes sir.

Q To have the men stop following you?

A Yes sir.

Q You say you then turned around in the direction of the group, is that correct?

A Yes sir.

Q And the first man you saw was Sergeant Hurks?

A Yes sir.

Q At any time, to your knowledge, was Sergeant Hurks between you and the Italian area?

A I couldn't say definitely whether he was or not.

Q You didn't see him?

A No sir.

Q Did you see Sergeant Hurks start telling the men to stop where they were?

A I heard him say, yes sir.

Q What did he say?

A He said, "Okay men, you heard what they said; we'll wait here," or "we'll stay here."

Q And that is the last you saw Hurks?

A Yes sir.

Q You never saw Hurks in the orderly room?

A No sir.

Q You never saw Hurks around outside the orderly room?

A No sir.

Q But you say you did see Wooden and Hughes at the southwest corner of the orderly room, outside of room Y?

A Yes sir.

Q Now you also said that you saw a considerable group of men outside of room R.

A Yes sir.

Q And that was when you arrived?

A Yes sir.

Q And you went through door E?

A Yes sir.

Q Did you identify any of the negro soldiers that you saw outside of room R?

A No sir.

Q Now you say that you saw Barber in Room R, between doors A and B, is that correct?

A Yes sir.

Q Who else was there?

A I didn't see anyone else, sir.

Q You didn't see anyone else in room R?

A No sir.

Q Now it is your estimate that there were eight or ten negro soldiers in room X?

A Yes.

Q Were they from your Company, the 650th?

A I couldn't say definitely whether they were or not, sir.

Q How many Italian soldiers were in there at that time?

A Approximately 14 or 15. I forget just how many there were, sir.

Q 14 or 15 Italians, and 8 or 10 negro soldiers, is that right?

A Yes sir.

Q Now what negroes did you identify in room X?

A I couldn't identify any, sir.

Q You couldn't identify any of them, is that correct?

A No sir, I couldn't. They were fleeing out the doors and windows and their backs were to me. I didn't see any of them I did notice to know so I could identify any of them.

Q What was Barber doing alone in Room R?

A I imagine he was standing looking.

Q He wasn't fleeing too?

A I don't recall whether he was looking, - I mean whether he was moving or standing still.

Q You are sure it was Barber though?

A Yes sir.

Q When you turned around and saw Hurks down there opposite the mess hall 700, did you have any difficulty in identifying him as Hurks?

A No sir.

Q But you can't give me the names of any of the men you saw in room X?

A No sir.

Q You are sure of that?

A Yes sir.

Q Did you go into room Y?

A No sir. I just looked in through the door C into room Y.

Q Did you notice when these negroes were fleeing room X, did you notice whether or not they had anything in their hands?

A No sir, I can't -- I couldn't say.

Q What windows did you see them go out of?

A The windows, in room X.

Q That is, in the --

A (Interposing) The big hall.

Q In the back of the building?

A Yes, the big room.

President: Anybody else have any questions?

Major Crocker: I would like to ask one.

Questions by Major Crocker:

Q Pinkney, when you first heard about this incident you were in your barracks, 665?

A Yes sir.

Q Were you in bed?

A Beg your pardon?

Q Were you in bed?

A No, I was getting ready to go to bed.

Q And how did you first come to know about it?

A I said word had come from the orderly room that there had been a riot, or fight, going on down in the Italian area and they wanted the first Sergeant to come see what he could do about it.

Q And then you went to the orderly room?

A No sir, I ran out of barracks 665 into the street and seen that there were a bunch of men assembled in that vicinity and then I ran back and put on my field jacket and cap and then ran back out and ran over to the orderly room to obtain the M.P. club and brassard.

Q And was it at that time that the charge of quarters came in; you said the charge of quarters came in your orderly room?

A No sir, the charge of quarters came from the orderly room into barracks 665 when the first Sergeant was there.

Q He came from the orderly room to your barracks?

A Yes sir.

Q And he spoke to Sergeant Aubry?

A Yes sir.

Q And you went out into the street; did you stand in the street any length of time?

A No sir; just for a glance and then I ran back on into the barracks, 665.

Q After you put the rest of your clothes on you went to your orderly room?

A Yes sir.

Q And then you put on a brassard and got your club and then who did you go out with?

A I didn't go out with anyone. I went out by myself.

Q And you went from that point directly to the area?

A In front of barracks 719.

Q Had you heard any noise at all before you received word, or word was sent to you in your barracks?

A No sir.

Q You testified when Colonel Jaworski questioned you this morning that when you saw Barber he had something in his hand but you didn't know what it was?

A Yes sir.

Q And then when Major Beeks questioned you, you said you couldn't say that he had anything in his hand; now which is correct?

A I couldn't,- I said that I didn't know what he had in his hand and I couldn't tell that he had anything in his hand or not, if he had anything at all. If he had anything I don't know what it was, whether it was a rock, knife or club, I couldn't say.

Q I am asking you now whether you could say positively whether you saw anything in his hand?

A Yes sir, I saw something.

Q Do you know,- do you have any recollection of the size of the thing that he had in his hand?

A No sir, I don't.

Major Crocker: No further questions.

Questions by Law Member:

Q How long was it, Pinkney, from the time that you heard from the CQ that there was a riot or fight until you arrived in front of barracks 719?

A I imagine it was about 4 or 5 minutes, sir.

Q That is from the first word that you heard of it up until the time that you got in front of 719, 4 or 5 minutes?

A I wont' say definitely whether it was from the time, from the first time that I heard the word that there was this trouble going on, whether it was from the time that I left the orderly room until I got in front of barracks 719.

Q We know that you can't be exact, Pinkney; but would you give us your best judgment?

A I would say 5 to 10 minutes.

Q From the time you first heard of the riot until you got in front of 719?

A Yes sir.

Questions by the President:

Q Pinkney, how many clothes did you have on when you heard about the riot, do you remember?

A I think I just had on my shoes and my underwear.

Q How long would it take you to get dressed normally?

A You mean the way that I was dressed that night?

Q Yes.

A I imagine it was about a minute and a half; two minutes.

Q When you left your barracks to go to the orderly room, did you walk or run?

A I was,- I was on the double-time, sir.

Q You ran, on the double. How long do you think it took you to get the M.P. club and brassard?

A I couldn't say definitely.

Q Well I mean, I will ask you this; where was this M.P. club and brassard kept?

A I think that it was under the counter or either in a box or something that they had it in.

Q Did you have to hunt for it?

A No sir.

Q Did you have to unlock anything to get it?

A No sir; the CQ gave me the club and brassard.

Q I see. How did you go from the orderly room to 719; did you walk or run?

A I couldn't say, I don't recall.

Q You don't recall whether you walked or ran?

A I don't recall.

Q You were in a hurry though?

A Possibly. Yes.

Q You weren't just walking along taking it slow; you were in a hurry to get up there?

A Yes sir.

Questions by Law Member:

Q What route did you take from the orderly room up to 719?
A The shortest route, sir.

Q Well what was that?
A Well the orderly room was 670. I cut from in the back of building 665 to the room.

Q And then down Lawton Road?
A I didn't have to go to Lawton Road. I mean, I didn't have to go across Lawton Road.

Q I mean, down Virginia Avenue?
A Well, yes sir.

President: Any further questions?

RECROSS EXAMINATION

Questions by Defense:

Q Yes, I want to ask one further question. Pinkney, there has been testified here in this Court by one of the accused Henry Jupiter I believe, that you made some exclamation to the crowd either just before or just after you talked to Sergeant Hurks; that you gave some order to the crowd?
A I did.

Q Do you recall what that was?
A Yes sir.

Q What was it?
A With the Court's permission, I said "men -"no, I said, "After I go down in here and if I don't come out, you all be sure-in-hell to come on down and see what it's all about." If I didn't get back in a little while.

Q Who did you address that remark to, to the bunch of men standing behind you?
A Yes sir.

Q Did you say it loud so they could all understand you?
A Yes sir.

Defense: That's all.

REDIRECT EXAMINATION

Questions by Trial Judge Advocate:

Q But they didn't have to come down after you?
A No sir.

Q You came out all right under your own power?
A Yes sir. That is, the next morning.

EXAMINATION BY THE COURT

Questions by Major MacLennan:

Q There is one thing I am not clear about. That is, when the word came to your barracks there was trouble, you went to the orderly room after you got dressed to get an M.P. club and a brassard?

A Yes sir!

Q Why did you go over to get the M.P. club and brassard at that point?

A Well sir, we had always been instructed when we were going on duty, or was finishing or fixing to take up duty of any kind, to be properly dressed and armed as an officer, or rather, in Army life, as an M.P.

Q Well who told you that you would be on duty right then?

A No one.

Q When word came to your barracks, that was brought in by the charge of quarters?

A Yes sir.

Q What did he say to lead you to believe that you were going to be on duty, or that you should go and get this club and brassard?

A The word came from him that there was a fight or riot going on and they wanted the first Sergeant to come and try to break it up or either see what he could do about it.

Q That was Sergeant Aubry?

A Yes sir.

Q Did Sergeant Aubry tell you anything that you should do?

A No sir.

Major MacLennan: That is all I believe.

Questions by Law Member:

Q Were you ever in an M.P. Detachment?

A No sir, not other than in the C.C.C.'s; like there we had to pull MP duty.

Q You were in the C.C.C.'s before you came into the Army?

A Three years and seven months, sir.

Questions by the President:

Q Have you ever done any M.P. duty either at Ft. Lawton or any place else, as far as the 650th Port Company is concerned?

A Yes sir.

Q What job was your job?

A Well at different times we were called on to be M.P.'s at different PX's.

Q I mean, what was your regular duty?
A I was,- well when I was working at the Fort I was a bull driver.

President: Any further questions?

Defense: That is all.

Trial Judge Advocate: That is all.

President: You are excused; thank you very much Pinkney.

(Witness excused.)

(Pvt. Jesse Grego, Hospital Detachment, Ft. Lawton, called as a witness by the Prosecution in rebuttal, was sworn and testified as follows:)

DIRECT EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q State your name, grade and organization and before you do that will you spell your name and speak loud now?

A Private Jesse Grego, Hospital Detachment, Ft. Lawton Staging Area.

Q Were you on duty on the night of August 14th, 1944?

A Yes sir.

Q What was your duty that night and where were you?

A I was in the receiving office in the hospital and my duties are, I answer the phone and call the O.D. on patients that are coming into the hospital and also make a record of the patients coming in after the O.D. gives me instructions to admit them to the hospital.

Q Now on that night did you have occasion to admit one Willie G. Montgomery?

A Yes sir.

Q A negro soldier?

A Yes sir.

Q What time did you receive him at the hospital?

A At 11:15.

Q How do you fix that time?

A I just come back from chow.

Q Was he, or did he come in alone or was he brought in by somebody?

A He was brought in by somebody.

Q Who brought him in?

A Two M.P.'s.

Q Did you talk with Montgomery when he was brought in?
A Yes sir. I asked him what was wrong with him; yes sir.

Q Did he reply?
A Well he replied but I couldn't understand him, what he was saying. He was talking out of his head.

Q What if anything did you do with Montgomery?
A I put him in, into the examining office, which is right across from the receiving office and went to call the O.D.

Q Was he in there alone?
A No sir, the M.P. stayed with him.

Q Was he inside the room or outside the room?
A Outside the room.

Q What did you do then?
A I called the O.D. and then went back to my office.

Q After Montgomery was brought in did you receive any calls for ambulances that night?
A Yes sir.

Q How long after Montgomery was brought in did you receive the first call?
A About six or seven minutes.

Q Did you answer the phone?
A Yes sir.

Q Did the person calling identify himself?

Defense: I think that is going into hearsay matters, if the Court please.

Law Member: It is hearsay.

Defense: Whether he identified him, no matter how he did it, he had to identify him through some statement.

Law Member: Objection sustained.

Q As a result of that call, did you dispatch an ambulance?
A Yes sir.

Q Did that ambulance return to the hospital?
A Yes sir.

Q How long a time expired approximately from the time you dispatched it until it returned?
A Oh, he come back at 11:30, sir; about 15 minutes.

Q At that time, do you know whether or not the ambulance brought anybody back with it?
A Yes sir, he brought back one man.

Q Do you know the name of the man he brought back?

A Yes sir.

Q State the name of the man?

A Samuel Snow.

Q Was that the only one call for an ambulance you received that night?

A No sir.

Q When did you receive another call?

A About five minutes after Samuel Snow came in.

Q State what was said to you at that time the call came in?

Defense: If the Court please, I object to going into these conversations and hearsay statements.

Law Member: Just where it came from is all that is material.

Defense: If you want to tell me what you are trying to develop here I may agree to it.

Assistant Trial Judge Advocate: All we want to show is the number of ambulances asked for.

Defense: Well if you want to tell me in confidence maybe we can --

Law Member: (Interposing) The what?

Assistant Trial Judge Advocate: The number of ambulances asked for.

Defense: Go ahead.

Q Do you know where that call came from?

A Yes sir.

Q Where?

A From this 650th Port Company orderly room.

Q What was said to you at that time?

Defense: Now --

Assistant Trial Judge Advocate: I just want to show - well --

Q (Continuing) Did they ask for an ambulance or ambulances?

A Ambulances.

Law Member: Plural.

Q How many ambulances did they ask for?

A They said seven or eight or all we had.

Q How many ambulances did you have at that time?

A Four, sir.

Q Were those dispatched?

A Yes sir.

Law Member: How many?

Witness: Four.

Q So far as you know, did those ambulances make more than one trip?

A Yes sir; they kept going back and forth.

Q Now after you placed Montgomery in the receiving room -- is that what you call the receiving room?

A Examining office.

Q Examining office; when did you next see him?

A About one o'clock that next morning.

Defense: Who is that?

Assistant Trial Judge Advocate: William Montgomery.

Q Where did you see him at that time?

A He was brought into the receiving office by an MP.

Trial Judge Advocate: Brought in by whom?

Witness: By an M.P.

Q Do you know of your own knowledge the circumstances of his leaving the hospital after the first time that you saw him?

A All I know, sir --

Defense: That is answered yes or no.

Q Just answer yes or no; do you know of your own knowledge the circumstances surrounding his leaving the hospital the first time, what happened after the first time that you saw him?

A No sir.

Q Who was the medical officer of the day on that evening?

A Captain Swerdloff.

Q Do you know his initials?

A No, I don't.

Q Do you know whether that is Carroll F.?

A Yes sir.

Law Member: How can Montgomery's actions in the hospital have a place in ascertaining the truth, or could it in any way be prejudicial to the rights of the accused?

Defense: I don't know. I offered to stipulate as to what this witness knows before they brought him in.

Assistant Trial Judge Advocate: I would be glad to have the witness tell him in confidence.

EXAMINATION BY THE COURT

Questions by Law Member:

Q After Willie Montgomery was first brought into the hospital and put in the receiving room, did you have occasion to go into this receiving room thereafter?

A No sir.

Q Until what time?

A I didn't go in there at all, sir. It's just a small room where the O.D. examines the patients.

Q And he was brought by the M.P.'s at that time?

A Yes sir.

Q And then approximately one and three-quarters hours he was brought in by an ambulance?

A No sir, all I seen was, when he walked into the receiving office, he was with an M.P. I don't know how he was brought in.

Q Do you know of your own knowledge he was out of the hospital during that time?

A Yes sir.

Q You do know between the first time he was brought in and the second time, about one o'clock, he was out of the hospital do you?

A Yes sir.

Q All right.

A Yes sir.

Defense: There is no dispute about that.

Law Member: Is there anything more you wanted? He was brought back the second time at about one o'clock.

Trial Judge Advocate: I think that covers it.

CROSS EXAMINATION

Questions by Defense:

Q You didn't keep a log of these things you are talking about in the regular course of your duties?

A No sir.

Q I mean, a call would come in; or when you would dispatch

an ambulance you didn't keep it in a book?
A No sir.

Q The times you are giving us are more or less approximated?
A Yes.

Defense: That's all.

Trial Judge Advocate: That is all we have.

EXAMINATION BY THE COURT

Questions by the President:

Q Was Alvin Clarke admitted to the hospital that evening?
A Sir?

Q Was Alvin Clarke admitted to the hospital that evening?
A Yes sir, he was admitted to the hospital.

Q What time was he admitted?
A It was,- he was down in the receiving office before twelve o'clock.

Q Was he admitted before Private,- before Samuel Snow or after Samuel Snow?
A After Samuel Snow.

Q How did he come to the hospital?
A I just saw him in the receiving office, sir, with the rest of the patients there, sitting there waiting to be admitted. I don't know how he came in.

President: I have no further questions. Any further questions?

REDIRECT EXAMINATION

Questions by Assistant Trial Judge Advocate:

Q I might just ask one or two more questions. Was there a regular dispatcher on duty at the hospital that night?
A No sir.

Q Did you or not assume those duties to a certain degree?
A Yes sir.

Q Did you or not keep trip sheets of the drivers that evening?
A No sir, I didn't.

Q Did the drivers keep their own trip sheets or make their own records?
A Yes sir, the drivers kept their own. Made their own.

President: Any further questions?

RE CROSS EXAMINATION

Questions by Defense:

Q Did any calls come in for the O.D. that evening?

A Not that I know of.

Law Member: You mean the medical O.D., Major?

Defense: Yes. I will withdraw the question, if the Court please.

Law Member: As a matter of fact, the O.D. we have been talking about is the medical O.D.?

Witness: Yes sir.

President: Any further questions? Thank you very much, that is all.

(Witness excused.)

President: I would like to have John Pinkney returned as a witness for just one question,

Trial Judge Advocate: All right; see if he is out there. May I be excused for just a moment; they are trying to get me on the telephone.

President: Court will take a fifteen-minute recess.

(Court was in recess for fifteen minutes and proceedings resumed as follows:)

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: The record may show that each of the accused are present, all members of the Court are present, and the personnel representing the accused as well as the personnel representing the prosecution are present.

(Pfc John H. Pinkney, was recalled by the Court, and testified further as follows:)

Trial Judge Advocate: You are reminded that you are still under oath, Pinkney?

Witness: Yes sir.

EXAMINATION BY THE COURT

Questions by President:

Q Pinkney, when you left your barracks, 668, state --
A (Interposing) 665, sir.

Q Or 665, did the First Sergeant Aubry leave ahead of you
or after you?
A He left ahead of me.

Q Ahead of you. Did he go to the orderly room?
A No sir.

Q Did you see him at 719 when you got there?
A I don't recall whether he was in front of 719 when I
arrived there or not.

Q Did you see him at 719 while you were there?
A I didn't pay any attention, sir.

Q You didn't?
A No sir,

President: No further questions. Anybody else like to
ask him some questions? That's all, thank you very much Private
Pinkney.

Trial Judge Advocate: Now, if the Court please, there has
been mentioned in the testimony Captain Swerdloff of the medical
corp and counsel has agreed to stipulate that the Captain is
overseas. That is as far as the stipulation goes. The stipula-
tion is based on advices that have been received as to his
departure. Is that satisfactory?

Defense: Yes, that is satisfactory. You never asked that
he be returned, did you?

Trial Judge Advocate: No. This information was received,
or the inquiry was made on the 8th of November and the informa-
tion was received on the 9th of November.

Defense: With the information he has and from what coun-
sel tells me, I am glad to stipulate that the witness he named
is presently overseas.

Law Member: Well that stipulation, subject to any object-
ion by any member of the Court, is received.

President: Any objection by any member of the Court?
Appear to be none; the stipulation is received.

Trial Judge Advocate: Now if the Court please, the Prose-
cution rests, with the understanding of course that if other
witnesses arrive from other parts that we have the right reserved
also to make use of those witnesses.

Law Member: Under the circumstances of the case there
would seem to be no doubt of that.

Trial Judge Advocate: Yes.

Law Member: So subject to objection by any member of the Court, the rights of the Prosecution on rebuttal to preserve their right, to preserve rebuttal, or put on further rebuttal evidence in the event witnesses arrive, as has been preserved by the defense, that request will be granted.

President: Is there --

Defense: (Interposing) Pardon me. I want to have the record show now, the Prosecution having rested, the Defense renews each and every motion that it previously made at the close of the Prosecution's case in chief. I just wanted that in there.

President: Are there any objections by any members of the Court to the ruling made by the Law Member? There appear to be none; the Prosecution reserves the right to rebutt any further defense witnesses that are produced.

Law Member: Subject to objection by any member of the Court, the motions of the Defense renewed at this time have been entertained and denied.

President: Any objection by any member of the Court? There appear to be none; the motions are denied.

Defense: May it be stipulated, counsel, that in the event there is further testimony introduced that the renewed motions I have just made may be considered as having been made at the close of all the evidence?

Trial Judge Advocate: Yes.

Law Member: You can make them again, Major; it doesn't have to be stipulated.

Trial Judge Advocate: Do you have anything further at this time?

Defense: I have nothing further at this time.

Trial Judge Advocate: The Court understands the situation as to the possible absence of some witnesses. I suggest to the Court that we have an adjournment until possibly tomorrow morning, during which time counsel for the Defense and I have some matters we are going to undertake to determine and we will then present them to the Court tomorrow morning.

President: I will endeavor to take it up with each member of the Court individually here. (Consultation) Court will recess and reconvene at 9 o'clock tomorrow morning.

(At 11:15 a.m., Dec. 14, 1944 Court recessed until 9:00 a.m. December 15, 1944, and proceedings resumed as follows:)

Ft. Lawton Staging Area
Ft. Lawton, Washington
December 15, 1944

The Court reconvened at 9:00 o'clock a.m., the 15 December 1944.

The reporter and interpreter were also present.

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

(The roll of the accused was called by the Assistant Trial Judge Advocate, all being present.)

Trial Judge Advocate: Let the record show that each of the accused are present and all members of the Court are present as well as the personnel representing the accused and the personnel representing the prosecution being present.

Now if it please the Court, the Court requested me to bring Sergeant Farr in for further examination and I wish to announce that Sergeant Farr is here. I sent for him and he is present at this time. Shall I bring him in?

President: Yes.

(Sgt. Farr resumes the witness stand, being called by the Court, and testified further as follows:)

Trial Judge Advocate: You are reminded you are under oath.
EXAMINATION BY THE COURT

Questions by the President:

Q Have a seat Sergeant. Sergeant Farr, you have been brought back as a witness for the Court. There are a few things we wanted to clear up if possible. You testified I believe in your direct examination that you were led out of the area by a colored soldier, is that correct?

A Yes sir, that is correct.

Q Will you state to the Court again, as near as you can, the

circumstances under which you were led out of the area?

A Yes sir. I was in building 713, where I was recognized by this colored soldier as being an American soldier and he told me to come with him. That they didn't want me. He then accompanied me out of building 713 through door A -- yes, through door A -- outside to the area immediately in front of door A, where there was a large group of colored soldiers. He cleared me with them and there also was joined by one or two other colored soldiers who accompanied me to the area in front of door E. From there they led me through the area up the stairs over the embankment adjacent to Wyoming Avenue and through the colored area to a position approximately opposite the PX, on Virginia Avenue, where we turned right and proceeded down Virginia Avenue to a point on Lawton Road approximately at the junction of Lawton Road and Virginia Avenue, where I was left and told that I would be all right from there on.

Q You say they led you. How many colored soldiers brought you out of that area?

A I am not positive of the exact number, sir. I am sure there were more than one, however. There was two or three.

Q Will you point out on the map, prosecution Exhibit 2, the route that you took from the area to where you were turned loose?

Law Member: Has anybody got a red pencil?

Defense: I've got one.

Q Will you trace that route with a red pencil on that Exhibit?

A Yes. (Marking as indicated.)

President: Can the Court all follow that all right?

Law Member: Is that red line all visible down Virginia Avenue?

(Witness continues marking)

Q Are you certain as to where you were finally released by the colored soldiers that told you you were all right?

A Yes sir.

Q Where is that spot; put an X there in red pencil and put your initials beside it?

A There is a small lane here that runs through this area here (Indicating), and merges into Lawton Road at about this spot here (Indicating). The lane is not shown on this map.

Q That is the route?

A Yes.

Law Member: But the lane comes into Lawton Road at approx-

imately the X you have put there.

Q Could you describe any of the colored soldiers that led you out of the area?

A No sir, I could not.

Q Could you describe them even partially, as to color, that is, whether they were dark or light colored or any such special features that you remember?

A No sir, I could not.

Q Do you have a very clear recollection of what happened during that walk?

A Yes sir, I do.

Q You were not in any way dazed or --

A No sir.

Q But you can't identify any of those that carried you out?

A No sir.

Q At any time during your trip from 713, where you were released, were you turned over from one group of conductors to another?

A No sir.

Q At any time when travelling from 713 to where you were released, did any of your conductors fall out; that is, leave you?

A On that point I am not positive, sir. It is my recollection that one man did drop out.

Defense: What was that last answer?

President: Repeat the last answer, Mr. Reporter?

(Last answer read back)

Law Member: Tell me, Sergeant, is the man that took you out of 713 the same man that brought you down Virginia Avenue?

Witness: Yes sir.

Q Did he accompany you as far as the spot that you have marked X on Exhibit 2?

A Yes sir.

Law Member: The original man?

Witness: Yes sir.

Law Member: Did you state before when you were in Court that the man was light in color that took you out of the orderly room?

Witness: No sir.

Questions by Lt. Col. Stecher:

Q At point X, how many colored soldiers were with you when they turned you loose?

A I am not positive of the exact number, sir. I was only aware there was more than one.

Q There was more than one?

A Yes sir.

Questions by the President:

Q When did you first become aware of the fact that you were injured?

A I was aware of it, sir, as soon as I began walking through the area; I was having some difficulty walking.

Q Were the colored soldiers that were conducting you aware of that; did they know; did you tell them that you were hurt?

A I don't recall telling them, sir.

Q When you passed down Virginia Avenue, along the route that you have marked on the map, did you see any vehicles parked along Virginia Avenue?

A No sir.

Q Could you see clearly the surroundings while you were walking down Virginia Avenue?

A Well sir, the area was quite a dark one. I was familiar with the area, but there was no obstructions visually.

Q What I wanted to bring out; could you see the surroundings, or could you see the people standing around?

A Yes sir, I could see the people.

Q Could you distinguish features at that time?

A No sir.

Q You could not?

A No sir.

President: Are there any further questions by any member of the Court?

Questions by Lt. Col. Stecher:

Q While you were on Virginia Avenue, approaching 719, were you at any time placed where the lights of a vehicle were shining upon you, you and your escorts?

A No sir, I recall no vehicles.

Q You were at no time in the focus of the lights of a vehicle?

A No sir.

Questions by Law Member:

Q Was Corporal Haskrell with you at the time it was said "We

are American soldiers"?

A Yes sir, he was in building 713.

Q Did Corporal Haskell see you taken out of 713?

A I don't know, sir.

Q Sergeant Parata was there at that time, too, was he not?

A Yes sir, he was.

Questions by Lt. Col. Stecher:

Q I understand then that you left the orderly room with this one escort initially, is that correct?

A That's right.

Q All right; where did you pick up the additional escort?

A He was joined outside door A, building 713, when we came out.

Q There several men joined with him, is that right?

A Yes sir.

Q And all the whole group then moved down the path that you have described, along the path or route that you have described, is that correct?

A Yes.

Q When you approached 719 did you notice any congregation there of men; that is, at the junction of Virginia Avenue and Lawton Road, or its vicinity?

A Well there were men there, sir; I recall that there were men.

Q There were men there. All right. Now if you were going down Virginia Avenue and to Lawton Road, and to a point where you were released, then additional escort and several additional men accompanied you to that point, is that right?

A Yes sir.

Q You are definite, you are certain that at no time - no, I can't put it that way. Let me, for confirmation in my own mind, ask you this. Was there a transfer from one individual to another; in other words, did anybody turn you over to somebody else at any point along that route?

A No sir.

Q They did not?

A No sir.

Q The original escort carried you from the orderly room to point marked X?

A Yes sir.

Questions by Law Member:

Q Was Corporal Haskell with you at the time you were taken

A out at the orderly room?
He was in the immediate vicinity.

Q Did this colored soldier who took you out of 713 say "come on" or "We don't want you"?

A Yes sir, he did.

Q Now Corporal Haskell says that was the accused Montgomery. Can you identify Montgomery over here amongst the accused?

A Yes sir.

President: Any further questions?

Questions by Major MacLennan:

Q Sergeant, you recall passing, definitely, down Virginia Avenue, do you, with your escort?

A Yes sir.

Q Do you recall particularly when you passed before 719?

A No sir, not particularly.

Q Do you recall whether there was a crowd or not around 719?

A I don't recall, sir, a crowd.

Q Was there anyone in front of 719 when you went by with the escort?

A As I recall, there were some men standing in that area.

Q You are quite certain, are you, that your escort did not change over to another escort at building 719?

A Yes sir.

Q Are you definitely sure there were no vehicles in front of 719, as far as you recall?

A No sir.

Q There were no bright lights out there from a car as far as you can recall?

A No sir.

Q Was there any pause there by your escort for conversation with other people?

A No sir.

Q When you got to 719, Sergeant, with your escort, can you tell us just how you were feeling?

A Well, I was beginning to have difficulty walking. I could remember events, however, and I had no difficulty remembering what occurred. And I had no difficulty remembering what I said to the men on the route.

Q You are not confused in your own mind as to your walk up the street?

A No sir, I am not.

Q Your perceptions were keen at the time?

A Yes sir, they were.

Q I believe that is all.

Questions by Law Member:

Q Sergeant, where did you go ultimately?

A Well I then proceeded on up Lawton Road to, well, that map doesn't indicate it there. I don't know the name of the street, sir.

Q Beyond barracks 665?

A Oh, yes sir. I followed Lawton Road to, I believe it is Utah Street. I am not positive, but I think it is Utah Street, and went on up Utah Street, almost to the signal light, which is --

Q (Interposing) Well when did you fully realize that you had been seriously injured?

A I knew that I had been injured. I didn't know how seriously. There was no blood in evidence, because my clothing was soaking it up. But when I got back, when I turned around and came back, and walked back to building 713, it was there that I first realized there was a knife wound in my arm.

Q In other words, you just went up the road a ways and waited a bit and then came back to building 713?

A I went on up the road until I saw a vehicle headed in the direction of the Italian area and it appeared there were M.P.'s in the vehicle, so I turned and came back.

Q That is what I wanted to know. You came back?

Questions by the President:

Q You walked back to 713?

A Yes sir.

Questions by Law Member:

Q Did you walk back or go back with these M.P.'s?

A No sir, I walked back.

Q You followed that car?

A Yes sir.

Questions by Lt. Col. Stecher:

Q All the way back to the orderly room?

A Yes sir.

President: Anything further?

Questions by Major Carpenter:

Q Sergeant, when you left 713, following the route indicated

on the map and indicated by the red line, your recollections are perfectly clear, you were not dazed in any manner; you remember perfectly well?

A Yes sir.

Q And you don't remember particularly stopping in front of 719?

A No sir.

Q You didn't stop your march whatsoever at any point?

A No sir.

Q Continued on with the same escort?

A Yes sir.

Questions by Major MacLennan:

Q Sergeant, in that walk from the orderly room, 713, up to the point marked X where you were released, could you estimate about how much time it took you to make the walk?

A I would estimate 3 or 4 minutes.

Q Now the escort who took you out of the area recognized you first in room X of building 713?

A Yes sir.

Q The lights were on in room X?

A Yes sir.

Q But you are not able to recall any description of the person at this time?

A No sir.

Q Now during your walk up to the point marked X, was there any conversation between you and your escort that you recall?

A Yes sir. I,- I inquired as to why the incident had started and I also informed them that they had seriously injured a man, an American Staff Sergeant, who was in room X.

Q Is that all you recall of the conversation?

A Yes.

Q When you left your escort at the point marked X did you say anything further?

A No, I didn't.

Major MacLennan: That is all.

Questions by Lt. Col Stecher:

Q Did your escort say anything to you at that point?

A No sir. Oh, at point X the escort merely said "you would be all right from then on."

Questions by Major Crocker:

- Q Were you taken to the hospital that night?
A Yes sir, I was.
Q Did you remain in the hospital any length of time?
A Yes sir, I did. From, it was early September when I was discharged from the hospital.
- Q You were in the hospital over a period of two weeks then?
A Yes sir.

Major Crocker: That is all.

Questions by Captain Atkinson:

- Q Sergeant, how long after did you arrive at 719 from the time the fight started?
A Well, sir, I would estimate that from the time I phoned the M.P.'s until the time I was taken out of room X it was 20 minutes. And it took approximately 3 or 4 minutes to walk through the area.

Questions by the President:

- Q Any further questions?

Questions by Law Member;

- Q Are you sure, Sergeant, that the man who said "We don't want you" is the man who took you out of the orderly room?
A Yes sir.

Questions by Major MacLennan:

- Q Is there any possibility, Sergeant, that the man who took you out of the orderly room is not the man who released you at Lawton Road?
A In my mind, sir, I am sure that it was the same man who took me from the orderly room, who accompanied me through the entire area and released me at point X.
- Q What makes you think that Sergeant; you can't describe him and you say that others joined the escort and one may have dropped out; what makes you so positive he was the same man throughout that trip?
A Well sir, his voice perhaps. I just, in my mind there is no recollection whatsoever of any change in the escort.
- Q Did you have his arm; was he assisting you physically in your walk?
A Yes sir; through the Italian area he did. He took hold of my arm.
- Q And did he still hold your arm as you walked down Virginia Avenue past 719, do you recall?
A No sir, I don't recall that he was holding my arm.
- Q You didn't mention to him that you had been wounded or injured in any way?

A No sir.

Q Were you injuries apparent at that time; in other words, in your estimation did he know that you had been injured in room X?

A No sir, I don't believe he did.

Major MacLennan: That is all.

Questions by Major Carpenter:

Q Sergeant, you stated that at some point of your march there were more than on escort?

A Yes sir.

Q Where did you pick up more than one; where di some others join you; do you have any idea?

A Well sir, the man who took me out of room X was joined by others in front, or in the area in front of door A of building 713.

Q In front of building 713?

A Yes sir.

Q And how far did they continue?

A Well sir, I was aware of more than one throughout the entire trip.

Q There was more than one at point X where you were released?

A Yes sir.

Q On Lawton Road?

A Yes sir.

Q You are sure there were more than one?

A Yes sir.

Q You don't know how many?

A No sir, I don't.

Major Carpenter: That is all.

Questions by Major Crocker:

Q When you inquired what started the trouble and stated that you were an American soldier, was your conversation with one man in particular at that time?

A Yes sir. It was the man that took me out of the orderly room.

Q I see. And after you had -- immediately following that conversation he took you out, is that correct?

A Oh, no sir. He -- the way it happened was this. In room X he said "You are an American soldier; we don't want you; you come with me." So he took me out of building 713 and in the course of the trip, I don't recall at what point, but I asked him what had started the entire incident.

Q Well at the time a rock was thrown at you, were you having a conversation with somebody?

A No sir.

Q When the group of negroes first broke into the room, room X, did you direct your remarks to anyone of them in particular?

A No sir, I didn't.

Q Do I understand that there were two entries into the orderly room; they came in first and went out and then the door was locked and then they came in again?

A Yes sir, that is correct.

Q And you were injured on the second occasion, is that right?

A I don't recall when I was injured, sir. I presume it was on the second entry. Because I wasn't near enough to any of the colored soldiers on the first entry to have suffered wounds.

Q Sergeant Perata was injured on the first attack?

A Yes sir.

Q Is that right?

A Yes sir.

Major Crocker: That is all, no further questions.

President: Any further questions? Prosecution have any others?

Trial Judge Advocate: Prosecution has no further questions.

President: Defense have any?

Defense: Yes.

CROSS EXAMINATION

Questions by Defense:

Q Sergeant, calling your attention back again to the conversation that you had with the American soldiers or soldier, who said "come out with me", are you quite certain that was about 20 minutes after you had called the M.P.(s?

A Yes sir.

Q It might have been longer than that?

A Well sir, I didn't look at my watch. As a matter of fact I lost my watch that night.

Q Well you feel quite certain it was as long as 20 minutes?

A Yes.

Q Well when I talked with you down down at Mt. Rainier about this matter didn't you tell me it was 15 minutes?

A I don't recall, sir.

Q You could have said that?

A Well sir, to me it was 20 minutes between the time I called and the time I left the orderly room.

Q Well you are not absolutely sure though?

A No sir; I am not absolutely sure; it is just an approximation.

Q I want you to think very carefully about this Sergeant and also your conversation with me down there at Mt. Rainier. As you came down Virginia Avenue approaching barracks 719 or in front of barracks 719, or in that vicinity somewhere weren't you joined by one or two colored soldiers who accompanied you the rest of the way up to where you have marked X?

A I don't recall. I don't recall being joined in that area by anyone else. I knew that the escort has been increased. I was aware of not being - or of it being increased.

Q Do you recall making the statement to me at Mt. Rainier that you were joined in that area by one or two colored soldiers, but that you could not identify them?

A No sir, I don't recall that.

Q It is possible that evening that you were joined by one or two there?

A Well, it is possible. I suppose. But in my mind I do not recall any such incident.

Q Well there were a lot of things that happened that evening and there may be some that you don't recall at this time?

A Yes, sir.

Defense: That is all.

Trial Judge Advocate: Aren't you positive of one very important matter, and that is the escort who took you out of 713 remained with you until you were left at point X?

Defense: That is objected to as leading.

Law Member: That is leading.

Witness: Yes.

Law Member: Well, he has answered. He said yes, before.

Trial Judge Advocate: I asked if he was not positive of one thing and then he stated yes.

Defense: These accused should not be convicted on the unsworn testimony of the Trial Judge Advocate.

Trial Judge Advocate: The Law Member already got through telling you he had testified to it, so it is not repetitious.

Law Member: It is repetitious. It's already been answered.

Trial Judge Advocate: Do I understand from that that the Prosecution is not to ask any questions on any matter that has been brought out?

Law Member: Oh no, you can expand on any matter that has been brought out.

Trial Judge Advocate: No, but you said that was repetitious. In other words, we are not to expand on anything that has been brought out?

Law Member: I think that question was asked verbatim by the Law Member.

Trial Judge Advocate: I think that is all. I think Colonel Stecher also asked it.

Law Member: I think so.

Trial Judge Advocate: The point I am getting at is I am not to ask any questions that are repetitious to what the Court has asked?

Law Member: You may expand on anything we have brought out. We don't mean to restrict you.

Trial Judge Advocate: All right, I will ask it in a different way then.

CROSS EXAMINATION

Questions by Trial Judge Advocate:

Q Is there or not any doubt in your mind as to whether or not there was a change in the original escort that took you out of the orderly room?

A There was no change.

Q Is there any doubt in your mind with respect to that matter?

A No, sir.

Trial Judge Advocate: That is all.

Law Member: Is that perfectly satisfactory to you now?

Trial Judge Advocate: It is just as satisfactory and as complete to me; it just had to come in through the window instead of going in through the door.

President: Any further questions? Thank you very much.

(Witness excused.)

President: Does any member of the Court desire any further witnesses; any further questions they would like to ask; or have any witnesses recalled at this time? If you have, please come up

to the law Member and tell him. Appear to be none.

Trial Judge Advocate: Well if there are no other witnesses that the Court desires to have called there is nothing further at this time that the Prosecution has to offer. The matter that I mentioned to the Court yesterday before adjournment was made the subject of conference between the Trial Judge Advocate and Defense counsel throughout yesterday afternoon and through last evening.

I would like to have an opportunity to pursue the conferences with counsel. There has been some progress made, but again, I am not sure at this time what the situation will be. If the Court please, if you can permit us some time I fully believe we can make an announcement to the Court a little later on during the day.

President: What time would you like?

Trial Judge Advocate: What suggestion would you make, Major?

Defense: Oh, about 1:30.

Trial Judge Advocate: Yes, we should certainly know by then. Suppose we make it 1:30 and I feel sure by that time we can let the Court know one way or another.

President: Court will recess and reconvene at 1:30.

(Court recessed at 9:45 a.m. and reconvened at 1:30 p.m. on the same day, as follows:)

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

(The roll of the accused was called by the Assistant Trial Judge Advocate, all being present.)

Trial Judge Advocate: Let the record show that each of the accused are present, that all members of the Court are present, and that all personnel representing the accused and the prosecution are also present.

Defense: If the Court please. In view of the fact that the witnesses whom the Defense requested to be returned from overseas have not arrived and we have not been able to ascertain their present whereabouts, or the approximate time of their arrival in Seattle, the Prosecution and the Defense have

stipulated to the expected testimony of First Sergeant Robert Aubry, Staff Sergeant Spencer Martin, and Sergeant Wilbur Jenkins.

Does the Court wish to make inquiry of Sergeant Hurks before the stipulations are read?

Law Member: Sergeant Hurks, will you stand up please. Your counsel has stated that in conference with the Trial Judge Advocate, Colonel Jaworski, they have agreed upon a stipulation as to what certain men would testify to if they were present in Court. Are you willing to so stipulate that the stipulation be read here as the testimony of these men?

Accused Hurks: Yes sir.

Law Member: You are. All right, then subject to objection by any member of the Court the stipulation announced by the Defense Counsel will be received.

Defense: Does the Law Member wish to ask the accused if he has seen the stipulation and knows the contents of it?

Law Member: Have you seen the stipulation which has been mentioned?

Accused Hurks: Yes sir.

Law Member: And are you satisfied with that?

Accused Hurks: Yes sir.

President: Any objection by any member of the Court? Appear to be none; it will be received. Is it going to be received as an exhibit or read into the record?

Defense: It will be read.

Trial Judge Advocate: Have you any objection to a copy being furnished to the members of the Court. It is to be returned later though and not be held as evidence; it is being read as evidence.

Defense: We haven't many copies, but we can furnish one for you.

President: Save us a copy of you will.

Defense: Yes. "It is stipulated by and between the Defense and the Prosecution that if 1st Sgt. Robert Aubry were called as a witness for the defense, he would testify as follows: That on August 14, 1944, he was 1st Sergeant of the 650th Port Company. That on the evening of said date, about the time of, or shortly prior to, the arrival of four M.P.'s and John Pinkney to stop the fight in the Italian area, he had a conversation with the accused, Arthur Hurks, in the vicinity of barracks 719. The foregoing stipulation is to be read to the court as if the

witness, 1st Sgt. Robert Aubry, had testified as a witness for the Defense in person. Signed: Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

"It is stipulated by and between the Defense and the Prosecution that if S/Sgt. Spencer Martin were called as a witness for the defense, he would testify as follows:

"That on the evening of August 14, 1944, about the time of, or shortly prior to, the arrival of the military police and John Pinkney to stop the fight in the Italian area, the witness had a conversation with the accused, Arthur Hurks, in the vicinity of barracks 719.

"The foregoing stipulation is to be read to the Court as if the witness, S/Sgt. Spencer Martin, had testified as a witness for the defense in person.

"Signed, Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and Wm. T. Beeks, Major, JAGD, Defense Counsel."

Major Crocker: May I ask if that is the same working as the previous stipulation as to time?

Defense: Yes. "It is stipulated by and between the Defense and the prosecution that if Sgt. Wilbur Jenkins were called as a witness for the Defense, he would testify as follows:

"That he heard the MP's tell the accused, Arthur Hurks, to hold the crowd back, and that thereafter Arthur Hurks complied with this request.

"The foregoing stipulation is to be read to the Court as if the witness, Sgt. Wilbur Jenkins, had testified as a witness for the Defense in person. Signed Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

Now the Prosecution and the Defense have also reached a stipulation of the expected testimony of T/4 Earl William Lallis if he were called as witness for the Defense, on behalf of the accused T/4 John S. Brown.

Law Member: Brown, will you stand up? It is announced here in Court that the Trial Judge Advocate and your counsel, Major Beeks, have agreed upon a stipulation as to what T/4 Earl William Lallis would testify to if he were called here and testified as a witness. Now have you read that stipulation?

Accused: Yes sir.

Law Member: Are you satisfied with it?

Accused: Yes sir.

Law Member: And are you willing to join in the stipulation made by your counsel?

Accused: Yes sir.

Law Member: That that be read and placed in the evidence in place of the witness' testimony?

Accused: yes sir.

Trial Judge Advocate: You might also, in questioning the accused Brown ask him about a stipulation that has been entered into between the Prosecution and the Defense about an excerpt of the testimony given by the accused Brown before Colonel Curtis Williams. It is simply an excerpt of testimony taken from that testimony and the stipulation is that is an excerpt from his testimony.

Law Member: Did you hear what Colonel Jaworski said, as to a further stipulation, that previous testimony given by you before Colonel Williams on September 30th may also be brought to the attention of the Court?

Accused; Yes.

Law Member: Have you seen that stipulation that Colonel Jaworski mentioned?

Accused: Yes sir, I saw it.

Law Member: All right; subject to any objection by any member of the Court, the stipulation relating to the testimony of Earl William Lallis will be read to the Court, coupled with the stipulation Colonel Jaworski has mentioned, to wit: the reading verbatim of testimony that was given by the accused before Colonel Williams on September 30th.

President: Was that testimony given by the accused Brown?

Trial Judge Advocate: Yes sir.

President: Any objection? Appear to be none; the stipulations will be accepted.

Defense: "It is stipulated by and between the Defense and the Prosecution that if T/4 Earl William Lallis were called as a witness for the Defense, he would testify as follows:

"That the witness was a cook in the 578th Port Company. That T/4 John S. Brown was also a cook in the 578th Port Company. That both the witness and John S. Brown slept in the same barracks. That John S. Brown occupied the bunk at the foot of the witness' bunk. That witness recalls the disturbance in the Italian area on the night of August 14, 1944. That he was awakened by the noise. That John S. Brown did not wake up during the disturbance. That the witness tried to wake him up

but that the said John S. Brown did not move or wake up.

"The foregoing stipulation is to be read to the Court as if the witness, T/4 Earl William Lallis, had testified as a witness for the defense in person."

The signatures are the same as the others.

Law Member: Better read them.

Defense: "Signed, Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

Now may it please the Court, the Prosecution and the Defense have also stipulated to the expected testimony of T/5 Jacob Person and T/5 Freeman Pierce, if they were called as witnesses by the Defense on behalf of the accused Herman Johnson they would so testify.

Law Member: Johnson, will you stand up? It has been suggested by Defense counsel that a stipulation has been agreed upon by Colonel Jaworski, Trial Judge Advocate and your attorney, Major Beeks, that if certain witnesses were here, which he has named, they would testify in a certain manner in your behalf. That is, of course, instead of producing the witnesses themselves. Now do you join with your Counsel, Major Beeks in that agreed stipulation between counsel?

Accused: Yes sir.

Law Member: You consent to that stipulation?

Accused: Yes sir.

Law Member: Have you read the contents thereof?

Accused: Yes.

Law Member: And you are satisfied with them?

Accused: Yes sir.

Law Member: Subject to objection by any member of the Court the stipulations pertaining to the testimony of -- what are these fellows' names?

Trial Judge Advocate: Jacob Person and Freeman Pierce.

Law Member: The stipulation pertaining to Jacob Person and Freeman Pierce will be received.

President: Any objection? Appear to be none; stipulations will be received.

Defense: "It is stipulated by and between the Defense and the Prosecution that if T/5 Freeman Pierce were called as a

witness for the Defense, he would testify as follows:

"That on the night of August 14, 1944, he was barbering in the barracks in which the accused, Herman Johnson, stayed and used the same table which Herman Johnson was using while pressing clothes. That during that evening and night, the witness had occasion to have conversations with the accused, Herman Johnson. That Herman Johnson was not in the witness's presence the entire time the attack in the Italian area occurred, but that the witness remembers seeing Herman Johnson in his barracks during a part of that time.

"The foregoing stipulation is to be read to the Court as if the witness, T/5 Freeman Pierce, had testified as a witness for the Defense in person. Signed, Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate and William T. Beeks, Major, JAGD, Defense Counsel."

"It is stipulated by and between the Defense and the Prosecution that if T/5 Jacob Person were called as a witness for the defense, he would testify as follows:

"That on the night of August 14, 1944, he saw the accused, Herman Johnson in his barracks. That both the witness and Herman Johnson stayed in the same barracks. That the witness took a shower and before doing so, left his wallet with said Herman Johnson for safekeeping. That Herman Johnson was pressing clothes in his barracks that night. That during that evening and night, the witness and Herman Johnson had several conversations. That Herman Johnson was not in the witness's presence the entire time the attack in the Italian area occurred, but that the witness remembers having conversation with Herman Johnson in his barracks during a part of that time.

"The foregoing stipulation is to be read to the Court as if the witness, T/5 Jacob Person, had testified as a witness for the Defense in person. Signed: Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

Now if the Court please, the Prosecution and the Defense have also arrived at stipulations as to the expected testimony of T/5 William H. Wilson and T/5 John Terrell, if they were called as a witness for the Defense on behalf of the accused Booker Townsell.

Law Member: Townsell, will you stand up? It has been brought to the attention of the Court that a stipulation has been agreed upon between the Trial Judge Advocate and the Defense to the effect, that if T/5 Wilson and T/5 Terrell were here they would testify in such a manner. Do you join with your Counsel in that stipulation?

Accused: Yes, sir.

Law Member: Have you read it?

Accused: Yes, sir.

Law Member: And are you satisfied with it?

Accused: Yes sir.

Law Member: And you are willing now that this stipulation be read to the Court?

Accused: Yes, sir.

Law Member: Rather than the presence of the witnesses themselves?

Accused: Yes sir.

Law Member: Subject to objection by any member of the Court the expected testimony - or rather, the stipulation pertaining to the expected testimony of T/5 Wilson and T/5 Terrell will be received.

President: Any objections? Appear to be none; the stipulations will be received.

Defense: "It is stipulated by and between the Defense and the Prosecution that if T/5 William H. Wilson were called as a witness for the Defense, he would testify as follows:

"That the witness lived in the same barracks with the accused, Booker Townsell. That the witness had occasion to see Booker Townsell on the evening of August 14, 1944, and that Booker Townsell was in his presence before 11:00 p.m., August 14, 1944. That the witness saw Booker Townsell go to bed before 11:00 p.m. that evening. That the witness also went to bed prior to 11:00 o'clock on said evening. That the witness was later awakened when the officer of the day came into the barracks and told all the soldiers to go to bed, which was after the riot was over, and that Booker Townsell was in his bed at that time.

"The foregoing stipulation is to be read to the Court as if the witness, T/5 William H. Wilson, had testified as a witness for the Defense in person. Signed: Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

"It is stipulated by and between the Defense and the Prosecution that if T/5 John Terrell were called as a witness for the Defense, he would testify as follows:

"That the witness lived in the same barracks with the accused, Booker Townsell, and slept in the bunk over him. That the witness had occasion to see Booker Townsell on the evening of August 14, 1944, and that Booker Townsell was in his presence before 11:00 p.m., August 14, 1944. That the witness saw Booker Townsell go to bed before 11:00 P.M. that evening. That the

witness also went to bed prior to 11:00 o'clock on said evening. That the witness was later awakened when the officer of the day came into the barracks and told all the soldiers to go to bed, which was after the riot was over, and that Booker Townsell was in his bed at that time.

"The foregoing stipulation is to be read to the Court as if the witness, T/5 John Terrell, had testified as a witness for the defense in person. Signed: Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William T. Beeks, Major, JAGD, Defense Counsel."

"It is stipulated by and between the prosecution and the defense that the following excerpt of testimony of the accused, T/4 John S. Brown, may be read in evidence, such excerpt having been taken from the report of the Inspector General as testimony given on September 30, 1944, before Lt. Col. Curtis L. Williams:

"Q Wasn't there anyone in your part of the barracks that went to the window to look out?

A Earl Lallis was telling about it, I don't know whether he went to the window.

Q Was he talking to you?

A He called, "Brown, wake up, there is a fight going on out here," and I asked him who it was and he said, "The two companies fixing to leave and the Italian prisoners." He said, "Aren't you going to get up," and I said no, because I was too tired."

"Signed: Leon Jaworski, Lt. Col., JAGD, Trial Judge Advocate, and William Beeks, Major, JAGD, Defense Counsel."

If the Court please, I did overlook one thing; I would like to speak to Colonel Jaworski.

(Whispered discussion)

Defense: There is one further oral stipulation that we wish to make. It is stipulated between counsel for the Prosecution and counsel for the Defense that Willie Montgomery of the 650th Port Company is presently stationed at Camp Jordan, in Seattle, and is at liberty.

Law Member: Subject to objection by any member of the Court that stipulation just referred to will be received.

President: Any objection by any members of the Court? Appear to be none; the stipulation is received.

Defense: The Defense has nothing further and rests.

Trial Judge Advocate: The Prosecution rests, sir.

Law Member: All right, then the evidence is concluded.

Defense: At this time I want the record to show that the Defense renews each and every motion that it previously made at the close of the Prosecution's case in chief.

Law Member; Subject to objection by any members of the Court, the motions are entertained and are denied.

President: Are there any objections? Appear to be none; the motions are denied.

Law Member: Now, I know we have a matter which is to be taken up. It has come to the attention of the Court that the accused Montgomery must be removed to the hospital. What are the wishes of Counsel?

Trial Judge Advocate: If the Court please, I suggest, with permission of the Court, that the argument in this case proceed tomorrow morning. If it is found that the accused Roy Montgomery cannot be in attendance, I feel that counsel for the Defense, under a proper agreement that will fully protect the rights of the accused Montgomery, probably would consent for the argument to proceed. Of course, I haven't had an opportunity to talk with counsel about it. I wouldn't want it to be under any circumstances, except where counsel could feel that under any circumstances his rights would be protected and he would not be prejudiced in any way or jeopardized. And I am willing to go the full limit so that will not be done.

Law Member: Major Beeks, you have heard about Montgomery, haven't you?

Defense: Yes. Well I mean, the statement just made comes as a surprise to me. I think it probably took place while I was in a conference a few moments ago.

Law Member: It seems to me that the chance of Montgomery being here tomorrow morning is most remote, and to save time tomorrow morning, it seems to me that we ought to dispose of that matter at this time.

Trial Judge Advocate: All right, sir.

Defense: I will say this for the Court, that I am perfectly willing to stipulate to anything along the lines counsel has suggested.

Law Member: Will somebody wheel Montgomery over here closer, Montgomery, the doctor has informed the Court that you are a sick boy.

Accused. Yes sir.

Law Member: And that the chances are that you will not be able to be here tomorrow. Now, I am telling you what the procedure will be tomorrow. The evidence is closed; no further evidence against you in any way, shape or form will be introduced.

Accused: Yes sir.

Law Member: It is essential that the accused be present during the course of the trial. In the instant case however, all of the evidence is in and no further evidence, as I said, will be introduced against you. The only thing that will take place tomorrow is the final summation by the Trial Judge Advocate to the Court on all of the evidence.

Accused: Yes.

Law Member: And the final summation on behalf of you and all the defendants by the Defense Counsel.

Accused: Yes sir.

There might also come before the Court in your absence a record pertaining to your past military record, as to whether or not you have had any convictions. If, in your absence the Court should go on in its ordinary procedure, the Court will direct the Trial Judge Advocate in his summation to the Court not to mention your name in any way, shape or form; or take up in any way, shape or form any evidence pertaining to you.

Accused: Yes sir.

Law Member: And furthermore, if the Court should ask for your previous record the Court will reveal none of that in your absence.

Accused: Yes sir.

Law Member: Do you understand that fully?

Accused: Yes sir, I understand that.

Law Member: Then you may be wheeled over into that corner and talk it over with Major Beeks, your counsel, having in mind what I have told you, that Colonel Jaworski will not sum up this case -- will not mention your name in any way, shape or form, in summing up the case, and then they can wheel you back here and you tell me what you would like to do, will you?

Accused: Yes.

Law Member: All right; go on over Major.

(Whispered discussion between Accused and Defense).

Law Member: Now have you talked it over with Major Beeks?

Accused: Yes sir.

Law Member: And what are your wishes?

Accused: I wish just to let the Court go on and I'll just

go on to the hospital.

Law Member: All right. The case will continue and you will go on to the hospital?

Accused: Yes sir.

Law Member: And the Court will go on, with my promise to you that Colonel Jaworski will not mention your name in the summation on any evidence that has been introduced against you.

Accused: Yes sir.

Law Member: And if your record is brought to the Court, none of that will be heard.

Accused: Yes sir.

Law Member: All right. Subject to objection by any member of the Court, that procedure will be followed.

President: Any objection by any member of the Court? There appears to be none; the procedure outlined by the Law Member will be followed.

Defense: Of course, I think I should state that I am not precluded in any way from mentioning his name.

Trial Judge Advocate: Oh no, of course, the instructions from Colonel O'Connor to restrict mentioning his name in the summing up does not restrict Major Beeks and he can sum up in your behalf and use your name if he desires; do you understand that?

Accused: I understand that, yes sir.

Trial Judge Advocate: Is that all?

Law Member: Yes.

Trial Judge Advocate: Prosecution has nothing further at this time, except I presume the Court wishes to have the arguments presented tomorrow morning?

Defense: Does the Court wish to fix the time or the extent of the arguments? That may very well affect the time we convene.

Law Member: I don't believe the Court wishes to restrict counsel in any way. I had heard some place that you had both agreed on two hours apiece. Is that right?

Trial Judge Advocate: There is no definite length of time agreed upon sir. I believe that was a suggestion made by you a couple of days ago.

Defense: Well I made the suggestion we might divide the forenoon between us.

Law Member: That would be an hour and a half each.

Defense: Yes. Or, considering the rebuttal and all, if the Court is agreeable and if we should run over, we could go on through to say a quarter to one or one, in order to complete it.

Law Member: Here is something that has to be taken into consideration. As long as the arguments are going to be taken down in the record by the reporter, and they will be quite lengthy, Mr. Stoddard has requested that a recess be granted of five minutes every 40 or 45 minutes, and that will be done in order to give Mr. Stoddard a chance to get a little relief.

President: It appears to be the consensus of opinion of the Court that there should be no limit of time placed on counsels' arguments.

Trial Judge Advocate: I trust the Court realizes what it is doing to itself when it says there is to be no limit on the length of argument we make.

President: Yes; well, that is all right.

Defense: May I ask, if instead of adjourning at noon tomorrow we run right straight through? I mean, rather than breaking off near the conclusion we might run into the noon hour and take an hour and then return.

Law Member: Do you mean you want to keep going and then we can eat some time later?

Defense: Yes.

Law Member: Is that satisfactory?

President: We might not get to eat for a long while. I suggest we wait and see how it goes.

Law Member: Here is another thing. These men happen to eat at a specified time, and I believe they would have to eat at the regular time. I believe you can get your argument arranged all right. You have always succeeded in getting your recesses at the time you wished. If you can arrange a good place in your argument to break we can take a recess I am sure.

Defense: Yes; all right.

President: Court will be in recess until 9 o'clock tomorrow morning.

(Court was recessed at 2:40 p.m., December 15, 1944, and reconvened at 9:00 a.m., December 16, 1944, at which time proceedings resumed as follows:)

Ft. Lawton Staging Area
Ft. Lawton, Washington
December 16, 1944

The Court reconvened at 9:00 a.m., o'clock, on 16th
December 1944.

The reporter and interpreter were also present.
President. Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

(The roll of the accused was called by the assistant
Trial Judge Advocate, all being present.)

Trial Judge Advocate: Let the record show that each of
the accused are present, other than the accused Roy Montgomery,
and that all members of the Court are present; that counsel
representing the accused are present as well as the personnel
representing the prosecution.

President: I would like to announce for the record it
has come to the attention of the Court that the accused Roy
Montgomery is ill with a slight attack of pneumonia, which will
prevent him from attending Court for a considerable period of
time.

Law Member: Colonel Jaworski, the case is with you. Will
you please bear in mind that no mention will be made of the
accused Roy L. Montgomery in your summation pertaining to any
evidence against him.

Trial Judge Advocate: Yes sir.

May it please the Court, only a few hours remain of the
duties that have been those of Defense counsel and the Govern-
ment attorneys and then the case will pass entirely into the
hands of this Court.

The purpose of the summation of an argument of course, is
not so much an attempt to sell the Court a bill of goods, or
convince any member of the Court of something that he may not
already be convinced of,

but its purpose is for the purpose of trying to be of assistance to the Court in reviewing the evidence and in pointing out a few matters of evidence that may have particular significance.

As the Government's attorney I would feel remiss in my duty had I not mentioned to this Court my very great personal gratification at the manner in which this trial has been conducted at the hands of this Court. The fairness that has been exhibited. The great diligence that has been exercised to make certain that the rights of each of these accused will be fully protected, and of course, that is nothing more than the performance of what is a duty on the part of this Court.

But, on the other hand, it is grand to see a Court function in that manner.

I want to beg the indulgence of the Court, too, while I pause to pay tribute to the work of Defense counsel in this case. It has been my privilege and pleasure to serve as Government's attorney in a few cases of some importance more or less, but I don't recall any where there has been such a strong devotion to duty, such extreme diligence, such determination, and I might say, ability - as shown by counsel and as has been exhibited by the Defense counsel in this case.

Whether the accused be convicted, or whether they be acquitted, it is certain that they must each say to himself, "I have been served well, and I have been served faithfully."

Now let us briefly take a panorama view of what occurred on the night of August the 14th, 1944, in the area immediately adjacent to the Italian area and in the Italian area itself.

We find that on that unfortunate and I might say, fatal night, there were gathered four negro soldiers. There were also in the vicinity of those four negro soldiers three Italian boys who were peacefully walking along to their area - not disturbing a soul. Then one of the four negro soldiers decides to say something, to curse them, and thereupon he starts towards them. And then, we find that one of these Italian boys, in self-defense, strikes the negro soldier.

Now we know that story. We know it. Not from the lips of an Italian soldier - we know it from the lips of one of the negro soldiers who was present at that time. We know it from the testimony not only of the Italian soldier Belle but we know it from the testimony of Roy Daymond.

Now the men who were present at that time were Luther Larkin, Willie G. Jones, Roy Daymond and Willie Montgomery. Those were the four negro boys.

Roy Daymond says that after that happened rocks were thrown at the Italian boys that were running towards their area. We know from the testimony of Daymond, as well as from the admissions of Luther Larkin, that Montgomery was then taken, or

carried across the street, laid in front of barracks 719, and then somebody got busy in a hurry to start this conflagration.

Now who was it? Can there be any doubt in this Court's mind but what that was Luther Larkin and Willie G Jones? In the first place they were there - right on the spot. The evidence in this case is overwhelming to show Larkin's activities from that time on. How he strove to do everything he possibly could in order to get his men assembled and launch an attack on that area.

Willie Jones - the testimony shows - ran upstairs, telling the boys to come on out. And then he himself, together with four or five others went down into that area - perhaps the first ones that got there.

The testimony shows the light was knocked out by him and the testimony also shows his leadership - the leadership by him that took place in that orderly room.

And we find men assembling. We find this small group of boys with Jones going down there first and then we find the group with Luther Larkin going next and then Arthur Hurks' group started down there.

Oh no - it didn't take any time for those men to get down there; they were in a hurry. And when they went down there they took with them practically anything they could get their hands on for a weapon. They took some knives and they took some clubs and some ripped up a fence and took these posts, these heavy sticks or clubs that the Court has seen and some tore up and took pieces of bunks, bunk legs, these pipes and bricks and stones and some took these clubs like what some have referred to as uniform equipment.

And with those things in their hands they started down towards that Italian area. As they passed this fence entering this area down there they paused just long enough to tear that down so that they could be sure everyone in the group had a club - and those were obtained to take along and use on those boys down there.

Then they enter that area and they find that some of the barracks - when they try to get into them - have been closed, have been barricaded, and they couldn't enter them. So rocks were thrown through the windows; windows are smashed. And a full scale attack on the boys living in that area was launched.

And then, frustrated somewhat in their efforts to gain entrance into the barracks they wind their way over to the orderly room, the place where some of these unfortunate boys had sought as their haven of refuge. And there - there in that orderly room - what a picture of brutality. What a picture of savagery. So intent - so intent on carrying out the mischievous the malicious, the vicious purpose that they had in mind that they didn't even stop in the presence of American non-commissioned

officers - who were telling them they were white American soldiers - they didn't even stop until finally someone took one of them out. They "didn't want him."

The thought is inescapable to me - and it has occurred not once - but many, many times, of what a wonder and what a miracle - and it was a miracle - that on the night when this attack occurred that there was found to be only one victim. Only one deceased instead of eight or ten. It is one of the things that is most difficult for me to understand.

But there wasn't enough blood yielded through the swinging of those clubs and through the wielding of those knives. Oh no! Some had to take that poor, unfortunate boy, who, terrified as he was - jumping out from his barracks window and who sought to find an escape somehow - only to find himself in the clutches of several of these negro boys.

Well - the Court heard a description of what sort of a boy this was. And can there be any doubt in anyone's mind but what that boy's terror, terror-struck as he was, what he must have felt when he found he was in the hands of these negro boys? He was just putty in their hands.

And we find that they take him away. We find that they take him away.

Now, when you stop to think about this, and without going into all of the lurid details of the matter -- when you stop to think of just what that general picture was. Yes, when you stop to think of its extreme viciousness; if you stop to think of its extreme brutality; if you stop to think of about how those men entered down there with malice in their hearts and with clubs and knives in their hands -- can there be doubt in anyone's mind but what they went down there for the purpose not only of attacking and assaulting but for the purpose of committing severe injury. Yes - death. Murder.

You can't escape it. And I still say that it wasn't the fault of any of these knife wielders and none of the fault of any of those club swingers, that there wasn't several others who were dead.

Well, this Court heard the details of what went on in that area. The intensity of it. The Court heard what went on in that orderly room. It was streaked with blood when they had accomplished their purpose!

Well, I need not review in every detail what happened, but we know that what went on there in that area that night was shockingly shameful. We know that it was a disgraceful thing. We know that it was something that placed a blight on one of the pages of the annals of our Army during this present War. Tragic and unfortunate.

We know that it was a rebuff to the discipline that our

Army has so strongly sought to instill into those soldiers.

All right, so much for the general picture.

Let me say at the outset, and I don't have to say it to this Court, that we don't have every man that participated in this matter. We don't have every guilty party standing before this Court. And I will say in the same breath - how I wish that we did have. And I will say further, if the Court will pardon me, that so far as I am concerned it is not my fault that we don't have every single one of them standing before this Court.

I will say this also. That I don't know that it is anybody's fault. I feel that anyone who has had any connection with this matter, if they could possibly have obtained proof for this Court everyone of these guilty persons would be standing today before this Bar of Justice, just as these men are seated over here.

But, they are not here. And it is circumstances we cannot control that control these things.

Yes, we know there was difficulty of identification. We have no quarrel with counsel over that. But we also know that there were places and times when identifications could be made. And so far as the Prosecution is concerned - and I am duly mindful of the fact that absolute fairness is required of me in my views of this case - but insofar as the Prosecution is concerned it is thoroughly and completely satisfied with the identifications that have been made. And where the Prosecution was not satisfied the Prosecution dismissed.

Please don't misunderstand me. Don't give me credit for that. That is my duty and what I should have done if I was not satisfied and if I was not satisfied at this instant I would again seek permission to dismiss.

Now if it please the Court, you might as well expect it - I might as well expect it - there is going to come quite a plea that where there is just identification by one person, just one identification, one identifying witness - that a man should not be convicted on the statement of that one person.

I say that that would be a very erroneous, a highly irregular yardstick to apply. If you do that you are apt to turn loose one of the greatest culprits. Because all you need to be is satisfied with the identification, whether it comes from the lips of one or ten witnesses.

Bear in mind that one man may have committed great damage in that orderly room, or at any other place, but have done it in an unostentatious manner. Maybe through his cleverness. Maybe through lack of any design.

The stubborn fact remains that he was able to escape detection except through the eyes perhaps of one person. Is that man going to go scott free? When his co-accused who was

also in that orderly room may have done much less damage - much less - and yet have done it openly where he was seen by five or six.

I know this Court will not seek to increase arbitrarily the quantum of proof required in cases of this nature. You have one witness. One Witness. And that meets the legal test. That meets the legal test.

Of course, this Court knows that insofar as the identifications in that orderly room were concerned - and some in the immediate vicinity of the orderly room, especially with that door open - as I noticed one member of the Court noticed and then several members of the Court in the general inspection noted - there was light coming through there and there was an area immediately adjacent to it where unquestionably those in the vicinity could well be detected.

How do we know that? I know this Court believes John Pinkney; that he had no axe to grind; and it wasn't an easy job for John Pinkney to talk about the three men who are accused in this case who were seen down there. It wasn't an easy thing for him to do. And I can well think what there must have been running through his mind since he sat down in this witness chair.

And where did he put Frank Hughes and Wallace Wooden? How could Pinkney see Frank Hughes and Wallace Wooden where he put them down there if there wasn't visibility outside that orderly room? Just bear that in mind.

And there isn't any question but what next to the windows and next to the doors there were lights shining; there was reflection from those lights; and those who were in that immediate vicinity could be seen.

I do want to take up with the Court briefly each of the accused in this case. It so happens that in order for this opening summation to be properly begun - to be properly opened up - it becomes my duty to make reference to those matters. And I wish to dwell briefly as to the evidence pertaining to each of these accused.

The Court has taken its own notes and I know that the Court is not dependent upon what I might say with respect to the proof in this matter and I want to say to the Court, that while I will strive to be not only as complete as possible in what I present to the Court as the evidence against each of the accused, I also will strive to be as accurate as it is humanly possible a person can be. If some inaccuracy should develop I trust the Court will stand ready to correct it and understand it is due to the human frailty in error in not having the matter correctly in mind; although I think that by now I should have it correctly and clearly in my mind.

In any event, the Court has its notes and it has the

stenographic record available to it in case any question should arise as to the testimony of each of the accused.

Taking the accused in order, Nolson Alston first; and taking them in the manner that they appear in this little pamphlet which the Court has. We find that Alvin Clarke has placed Nelson Alston in that area with a stick in his hand and we find that T/4 Alvin Banks said that Alston, after returning to his barracks, remarked "You fellows that didn't go down there was yellow."

Now in the first place, Alvin Clarke, who took this witness stand, testified to having seen several men down there. There is no question but what Alvin was down there himself, because he got clouted somewhere close to this orderly room and the accused Riley Buckner had to take him out of that area. So we know he was there. We know he was there where he could observe the others. Is there any reason why Alvin Clarke shouldn't tell the facts? Why should he say he saw one individual when he saw others and we know he was in the thick of it. He was where he had plenty of opportunity to see them and then Alston's statement on the stand was that the only reason he could figure that Clarke put the finger on him was because he was sent overseas. And that can carry no weight, because Alvin Clarke implicated men who remained behind as well as men who went overseas. There is an apparent fallacy in that.

Now Banks. Why should he give testimony of that nature to this Court. He was not granted immunity. He was just brought in as a witness in this case and took his own chances, and yet he tells us that Alston, when he came back, made that statement and that is a natural statement for someone to make who was down there in the thick of it and who expected to see others down there in the thick of it, and was perhaps disappointed that he didn't see others that he expected to see. But chances are he saw most of them. But, there may have been some that he missed.

We will pass from him now on to Richard Barber, against whom the evidence is so overwhelming that much comment is not needed. But you know, it is an interesting, and I know it is interesting to this Court - and I know this Court is bound to realize how extremely cautious statements of the accused must be taken when you view them in the light of what transpired in the light of the developing of the testimony against Richard Barber. But we find that Barber finally placed himself close to that area. And how he strived and how he struggled to stay out of that orderly room.

Well, some of our witnesses placed him in this orderly room. He himself admitted he equipped himself with a lethal weapon, and we know that he started down into that area, and we know that he was in that orderly room - and how do we know it?

We don't have to depend on the witnesses that placed him

there that had been granted immunity. No. I will mention them, although we don't need to defend all of them. Roy Daymond saw him next to the orderly room. Willie Ellis first saw him in a jeep with Sanders and then saw him going in door A of the orderly room. Jessie Sims saw Barber in the vicinity of the orderly room. The witness Todde saw him wearing a helmet in the orderly room. And Gresham said Barber came in door E and looked in.

Well, I am sure that counsel would seek to find some fault with the testimony of each of those, but then, we find that John Pinkney comes in and says "Yes", that Richard Barber was in that orderly room.

Well, I mentioned the witness Gresham in connection with Barber's testimony and I want to digress for just a moment from the further discussion of Barber's testimony to say something about the witness Gresham and something about his testimony.

In the first place, the Court I know has reached its own conclusions and has the capacity to judge witnesses. To me, Gresham portrayed the part of a very fine, frank, open witness. I was greatly impressed with his testimony. But what happens?

Of course when Gresham, during the investigation, was called before him - which was admitted by the accused Barber himself - when he was brought before them to put the finger on these men and to give incriminating testimony against them - then suddenly somehow, some way, someone conceived the bright idea that it would be smart to try to implicate Gresham.

But this Court knows - this Court knows that they have nothing that implicated Gresham, for the simple reason that they would have told the investigating officers something about it, and especially after Gresham was brought in to confront them and to tell them just what had happened, and what he had told the investigating officers - as was admitted by the witness Barber in this case.

Don't you know that that would have been the normal reaction and would have been the thing that those men would have done? They would have immediately spoken about Gresham, and not one word was said. And when Gresham was up in Court here and testified, then we find they try to put the finger on him as having been connected with the original whistle blowing or something like that.

All right. If Gresham had anything to do with that escapade - if he had anything to do with it other than to go down there at the request of the MP's and stand at the door of that orderly room and to keep any colored soldiers from coming in - if he had anything to do with it beyond that - then why - oh, why - didn't they produce one single witness to say so other than the accused themselves.

Wouldn't it have been simple to say that Gresham had some connection with this matter, other than the belated testimony of the accused, when they were given opportunity after opportunity to tell and inform the investigating officers of any material thing?

Now I will say this, in the same breath. Oh, if they could but furnish some reliable testimony - some reliable testimony that Gresham had anything to do with the matter - I would be the first to welcome that and to see that he was tried by Court Martial. But there was no immunity granted to Gresham.

He came into Court on his own entirely. He was called and summoned as any witness and there has been no immunity granted to him. So far as I can see, I have received not one bit of testimony or evidence that I consider reliable that connects Gresham up with it in any way.

Now passing from Richard Barber we come to Willie Basden; and I don't think there is the remotest doubt, the remotest chance, that Corporal Haskell could have been mistaken in who he saw coming through that orderly room swinging his club.

Well, here is the tip-off on what Willie Basden himself had to say about it. Now mind you, Willie was a pretty good witness. Of course he knows he is not supposed to talk. He will say "No sir" and "Yes sir" and he stays with it. And I think anyone can say that is a pretty fair rule to follow when you are on the witness stand. And I surely hope if I am ever called on the witness stand, if I ever happen to be an accused, I hope I will have as much sense as Willie Basden did when he testified.

But even with all that - his foot slipped. And I say it was the tip-off that showed that Corporal Haskell was correct in his identification. Willie wouldn't say whether he went to bed at 7 o'clock, 8 o'clock, 9 o'clock or 10 o'clock. But, when you hit 11 o'clock - yes, then Willie said "Yes," he was in bed.

Well, "Why do you say you were in bed at 11 o'clock, Willie?" and Willie said "My statement says so" and that's why. He must have been in bed by 11 o'clock he said because "It is in my statement."

All right. That, to me, means only one thing. Willie made up his mind that he was going to stick to his story and he stuck to it, whether it made sense or not. He was going to stick to it and he wasn't going to say that he had been in bed any time before 11 o'clock - because he didn't know whether, but what someone might have been able to produce proof that he wasn't in bed at 7, 8, 9 or 10 o'clock.

But he had to be in bed by 11 o'clock, or else his story would be without an alibi and he might be out-alibied by someone who could prove differently.

Law Member: Colonel, you have already gone a little over 40 minutes.

Trial Judge Advocate: All right; thank you.

Law Member: We can take a five-minute recess at this time and at the end of the next 40 minutes we will take our 15-minute recess.

President: Court will take a five-minute recess, and we will remain seated.

Court was in recess for five minutes and proceedings thereupon resumed as follows.

President: Court will be in order.

Trial Judge Advocate: If the Court please, continuing on with the next accused, we come to John S. Brown; who was definitely identified, positively identified by two Italians.

Corea was one, who said that Brown struck him upon the arm and the other one by Perata, who said that as he was lying on the floor Brown threw a piece of glass at him.

Now let it be remembered that each of those witnesses identified a man with whom they had a personal experience and that is because it wasn't that they just saw someone passing through the area, or saw someone standing at a certain place, but they had a personal experience with him.

I think this Court will agree that the accused John S. Brown is not a difficult man to identify and is not a man whose facial features are difficult to remember; it is not difficult for one to remember his facial features.

Now two different ones identified him, and both of them were the objects of an assault emanating from him, so they had good reason to fix in their minds the appearance of that man.

Let's be fair about it. There is a stipulated testimony in this case given by Earl Lallis, a Sergeant, who was a cook with Brown, in the same outfit, they worked together, and who slept close to him, who says he was awake and heard the disturbance and that Brown was asleep. That he tried to awaken him and that he couldn't wake Brown. Brown remained asleep.

But, if it please the Court, that won't quite do. That won't quite do. Because there was read to this Court by stipulation, an excerpt of the testimony that the accused John S. Brown gave as to his alibi witness Earl Lallis, and there we find that John S. Brown in that testimony had said that Earl Lallis awakened him, told him about the disturbance, and that they had a conversation about it and that then he said "No," he was too tired, he was "going back to bed."

Well, here is the point about it. If Earl Lallis could

be so certain that Brown was there the entire time, then it seems to me that he could also have known the very important question of whether he had any conversation or whether that man actually was asleep the entire time - as he was telling.

Now that is important. Important because those are the things that the Court has to look to to determine whether a man is coming into Court and telling the truth or whether he is coming into Court for another purpose.

Well, Riley Buckner. No question but what he was in that area, because the man that he brought out said that it was Riley Buckner that brought him out and I am referring to the testimony of Alvin Clarke.

But we don't have to rest it upon Clarke's testimony alone because Willie Ellis said he saw Clarke and Buckner somewhere just outside of door A. We have got Riley Buckner then somewhere right in the shadows of the orderly room.

Let me say something about the testimony of Willie Ellis. I want to say to this Court that if - and I say this in all candor and sincerity - if the Court doesn't believe every bit of testimony Willie Ellis gave, then I am not going to ask you to believe any testimony. I have never seen a witness that spoke with more frankness or candor than Willie Ellis. There is not one iota of inference or chance of casting a suspicion against the credibility of Willie Ellis as a witness. There is no reason why he should have told the Court the things he did except to reveal the true facts as he swore he would when he took the witness stand.

Now passing on to Sylvester Campbell. Here is an instance of an accused against whom one witness was produced and I know that counsel will appeal to this Court against accepting the testimony of Battle. I have just completed talking about the kind of witness Willie Ellis was. And I don't think - and this is my honest view - I don't think that Battle was any less eager to tell the truth about this matter than Ellis, but I, at the same time, must admit that Battle was not the witness that Willie Ellis was.

On the other hand, for this Court, there is not an iota of reason or justification for you to discredit the testimony of Battle just because he didn't make an excellent witness. Are we justified in saying, without going into the matter further, "Oh, he got mixed up in a couple of little things and therefore we can disregard what else he says." Is that the approach? I don't think so. Let's take a look behind it all and see.

In the first place, we know that Thomas Battle was down there. There's no question about that. Why should he put himself right in the big middle of the matter if he wasn't down there? And isn't it reasonable to assume that he saw a number of other colored soldiers down there just as others have told us they saw a number of them down there?

So up to that point there is nothing strange about Bat-

tle's testimony. If that is true, then why should we say that Thomas Battle had identified some with deliberate erroneousness? Why? Why?

Whoever he saw he is in a position to tell this Court and why should he select one man over another one? What gain would it be to him?

But this is the thing that convinces me as much as anything else. If Thomas Battle had come into this Court and tried to pick out eight or nine, none of whom had been identified by others, then I would say in view of all the circumstances there could be a little question about his testimony. But that is not what happened here. There were several men that Thomas Battle told you he saw in the vicinity of that orderly room that were placed there by a number of other witnesses. And I think that is a very important factor to be placed on the passing on the testimony of Battle.

Oh, I know - I know they tried hard to assail his testimony but just because he might have gotten a little confused under the pressure cross-examination of counsel on where he saw some of these men, and finally flatly said that he wasn't going to place them anywhere but where he saw them - that is no reason for doubting his testimony in the least.

I will admit and I think anyone would do the same, that under the hammering of the cross-examination and under the searching and cork-screwing examining of counsel, he wasn't willing perhaps to commit himself like some other witness might have done. If he had wanted to lie he might have done that. He could have said "I saw this man here" and stayed with it, but instead of that he said "I can't be sure; I can't be sure", but that is frankly different from the average witness who has seen something like he did. He wouldn't say whether he saw them eight feet from the orderly room or fifteen feet.

But, if he saw them anywhere down there in that area, they were down there for a purpose. They were down there to lend their aid and support, whether actively participating or by their presence. So it is wholly immaterial to me where Battle saw them in the area, and I don't believe anybody would come into this Court and say he saw certain men down there when he didn't see them there.

Well, let us pass to the accused Johnny Ceaser. Alvin Clarke said that he heard Ceaser speak about his activities down there. Battle saw Ceaser standing in that vicinity of where he was. Corporal King told us Johnny Ceaser was by the tent that was next to the orderly room.

Now bear in mind, Thomas Battle was standing somewhere within the vicinity of this orderly room and Corporal King comes along and says he saw Johnny Ceaser standing in the vicinity of the tent, next to the orderly room.

Well, there hasn't been anything brought in here to

assail the testimony of Corporal King. There was a boy who stuck his neck out plenty, he stuck it out a mile when he went into this orderly room from a humanitarian standpoint to try to help some of these Italian boys, and then he was told by one of the accused to get on out, he had no business there, or words to that effect.

Well, one threatened him with something; or later on someone said to him "I ought to have hit you." Now he went down there to help and I think he deserves just as much credit as John Pinkney. Just as much. And there hasn't been anything brought in to question him; not in the least. King was down there.

Of course, Sergeant Jones, who was in charge of the MP's that were there said that King was one of those whose services he enlisted; that King came down there with him and he went in the orderly room to help take care of the wounded.

Now King, I say, is a witness who, in his testimony, the utmost verity can be placed. Todde saw Ceaser in the orderly room. Chapman heard Ceaser say he was down there. So we have a number of witnesses against the accused Johnny Ceaser.

Passing from him to James Chandler, we find that Jessie Sims - and there is another boy, there is another man who unquestionably brought before this Court the testimony as he saw things. And Jessie Sims was certain of what he saw too.

Counsel, you will recall, cross-examined Jessie Sims, but he found that he knew what he was talking about and I am sure that this Court concluded that Jessie Sims told the Court everything about what he saw in there on the evening in question.

James Chandler was in the orderly room, so Sims says. Now Battle saw him there too. Now why did Battle say he saw James Chandler there if Chandler wasn't there? Why did Battle say he saw him there if he wasn't there? And other witnesses have corroborated that. Other witnesses have corroborated Battle and Gresham, who comes there at a time when Pinkney and the MP's go down there; Gresham says that Chandler was just outside of the orderly room.

And now we come to James Coverson. Well, I have discussed this testimony once before because the Court recalls counsel made particular mention of him with respect to a motion, in support of a motion.

There is no doubt of the sufficiency of the testimony and the evidence in this case against James Coverson. Let this Court bear just one thing in mind. If I were to say, for example, if I saw a man assaulted down the street, if I were to go to someone and say "I just beat up Major Crocker unmercifully"; if I were to go to one of the other members of the Court and say, "I just beat up Major Crocker unmercifully," and it was found that Major Crocker was lying down the street suffering

from this unmerciful beating, and after all the testimony was brought into this Court, would the Court convict me or would it acquit me? Well, that is what you have got here. You have got some Italians who were beaten unmercifully; you have got this riot; you have got the facts; and you have got a man coming out and saying "I beat one or two of those Italians unmercifully."

No reason for making an exception in this case. Absolutely none. If that testimony is to be believed - and we know it meets the legal test - then what reason is there that a conviction should not be based upon it then? There is none I submit. And further, it was a natural thing for him to say.

That's another thing that lends credence to that particular testimony. It was a very natural thing for those boys, after they were down there, to come back and tell about it in a boasting way. They were discussing their escapades and I submit to the Court, they were telling what they did and that is what he did, what he said, "I beat one or two of those Italians unmercifully."

All right. Now getting on to the accused Willie Curry. We find that again Battle identified Curry as getting out of a jeep with a club in his hand and that Curry had also spoken of having spanked an Italian or two. King saw Curry close to the orderly room. Chapman said he was driving a jeep.

Now was Battle telling the truth, or T/5 Sanders, when he said he saw Curry down there and Alvin Murray said he saw Curry in that area.

Now if you stop to piece Battle's testimony together and then take it apart, well you see how thoroughly it is corroborated in a number of instances, well then I think there is no justification for seeking to discredit him.

So the testimony against Willie Curry, coming from these five witnesses is clearly sufficient.

Passing on to Lee Dixon. Now in connection with his situation I want to discuss the testimony of the witness Todde. If the Court remembers, the Sergeant Major Todde identified a number of these accused. Bear in mind that there is an identification by one in a lone instance, and this may have been the lone instance, but in almost every instance the identifications of Todde were supported by the identifying testimony of other witnesses.

But here is a man who, this Court knows from having observed him, that was standing in that orderly room taking careful note of things. In the first place, you can tell by his actions there and, in other words, you can tell that this is a calm and collected person, one who was a careful observer and he was observing particularly close that evening.

Why? Because he knew his life was in particular danger

and he knew he could hardly escape serious injury, and isn't that the way it turned out? When he fell into the hands of Green and Prevost he very barely escaped serious injury and had he been alone, if he had been alone - one wonders, because one of them had a knife and the other one had a club. And it was in there where he had a light and could observe them very well.

He said definitely it was Green and Prevost. But I am principally pointing out the opportunities that this man had for observation while he was in that orderly room and for observing all that went on. And he had observed all that went on up to the time - and without injury mind you - up till the time he got over to the door, when Green and Prevost got after him. But up until that time that man had been standing in that orderly room, doing only one thing: observing those men and their movements closely so as to avoid becoming a victim too, He didn't want to become a victim of their assaults either, naturally.

All right. Now he said that he definitely saw Dixon. And he told this Court where he saw Dixon in that orderly room and it wasn't that he merely was on the outside of that orderly room. He saw Dixon inside this orderly room. And he definitely placed him there.

Well now, Todde testified that he picked him out of the show-up, right from the beginning. That there was never any question about it. He was positive in his identification. And there is no proof to the contrary that Todde didn't pick him out the first time and that he was not thoroughly consistent in his identification of Dixon.

Now did Todde know what he was talking about? Well, Todde identified several others, others in that orderly room, just exactly as he did Lee Dixon. He identified Wallace Wooden and he identified Johnny Ceaser, and he identified John Hamilton and he identified Richard Barber as having been in that orderly room. Everyone of them. Well, there isn't any doubt in this Court's mind but what every single one of these men have been overwhelmingly shown to have been in that orderly room.

So does Todde know what he is talking about? Can his identifications be depended upon? Just because Dixon might not have stayed as long as the others and others didn't see him and were not able to identify him is no reason why it should not be sufficient and thoroughly satisfy this Court that it was Dixon. We have no testimony in this record that Dixon was any place else or doing anything else. This is uncontradicted testimony. This is uncontradicted testimony. It is undisputed testimony.

All right. Passing on to Russ Ellis. Well, Willie Ellis has known Russell Ellis for a long, long time. Willie Ellis said he saw Russell Ellis with a club on the inside of that

orderly room and that he also heard Russell Ellis talk about it later on. He said he saw him there. Now.

There never was any doubt in my mind and I don't think there was in this Court's mind, about the testimony of Willie Ellis, in any phase or in any particular. But let's just assume for the minute there might have been a little doubt. About Russell Ellis.

Whatever doubt there was in my mind, I know it was removed from my mind when he took quite some time to explain, because he tried to make this Court believe he just went through certain movements and that he just came down to the doorway and said he was there for just a minute or two and later on, perhaps three minutes he said. Then later on, when we bored into that testimony, we suddenly found Russell Ellis not being able to tell this Court what he was doing, and then finally, he said he was there fifteen minutes. And those are the telling points on how to decide on whether a witness is telling the truth.

There is no reason on earth why he should have wound up saying he stood there for just fifteen minutes; just standing there; standing there.

Incidentally, that was the favorite spot to select in all this testimony. In the doorway. My goodness sakes alive; my goodness, how that doorway must have been crowded; how crowded that doorway must have been that evening.

Well, we will pass on to the testimony as to Emanuel Ford. Now Jessie Sims says that Emanuel Ford was down there. He put him there definitely. There wasn't any question in Jessie Sims' mind about his testimony. Sims knew him and Sims put him there. Well, there is nobody that has said that he was not down there. Nobody has said that they saw him elsewhere.

Jessie Sims says positively he was there. And if he wasn't there, where was he? Jessie Sims had no occasion for saying that Emanuel Ford was down there if Jessie Sims didn't see him down there.

Well then we come to the testimony as to Ernest Graham. It rests on Battle's testimony. Now efforts have been made to bring in an alibi as to Graham, but when that is carefully deciphered we find that Graham had ample time to be in that area and still be where the witnesses said they saw him. The point that I am making is this:

We know that Graham was at a certain place up to a certain point, but we also know that there isn't a single witness that has placed him at a point away from the Italian area throughout the time of that disturbance.

Now we haven't said anything more about him than the fact that he was down there in that area and was somewhere between barracks 709 and that orderly room. He was somewhere in that

vicinity.

Now how long he was there I don't know; our proof don't show. All we know is that he was down there. And I say to this Court that the testimony of the Prosecution that he was down there is entirely consistent with the testimony the Defense has produced, seeking to establish an alibi, because no one has come into this Court and said that they saw him or were with him the entire time that this disturbance took place.

Passing from that on to Jefferson D. Green. We find that Todde, whose testimony I discussed a while ago, had the experience with Green and Prevost together. And the greatest of reliance can be placed on that testimony because there was Todde's experience with those two men and he had to watch them and he had to be careful. One with a club and the other with a knife.

Well, there isn't any question but what Todde is telling the facts about it in my estimation and it is corroborated in too many different ways for him not to be telling the facts about it. We know Willie Prevost was down there from the testimony of other witnesses. We can take Willie Prevost's own word for it as set forth in his confession. So how are we going to say Todde didn't know what he was talking about?

You have them right there next to door E and one of them had a knife and one of them had a club in his hand. Now just think what an impression that particular experience must have had on Todde; what an impression it must have made on him. And there isn't any doubt but what it must have rather indelibly impressed itself on his mind. "Yes," Todde says, that's right, "Green was down there."

And Battle said he saw Green there. And Battle put him at a window on this side of the orderly room (Indicating to Map). There is where he had his experience with him.

Now they both put him right in the same vicinity. So I say, when you take the testimony of the witnesses against whom some question is sought to be cast and if you stop to see how it is analyzed and corroborated by other witnesses, you then begin to see how strong it becomes and how effective.

We will pass on to John Hamilton. Well, our proof is rather abundant against John Hamilton. Sims heard Hamilton say he was down there. Ellis saw Hamilton with a club in his hand in the orderly room. Todde saw him in the orderly room. Gresham saw him as he came up to the orderly room. Chapman, that Hamilton had spoken to of having lost his dog tag down there or someplace. Well, he did. He lost it in that orderly room was where he lost it.

Well, we produced the proof that the dog tags were found in that orderly room and they are John Hamilton's dog tags.

Now if it please the Court, you don't just by accident drop dog tags in an orderly room. That would be a strange coincidence indeed, that there - at that very unfortunate spot - Hamilton's dog tags should suddenly have unloosened themselves and dropped to the floor. You don't lose dog tags under those circumstances just that way. You are much more apt to lose them by having some strong, physical, bodily contact. This Court is entitled to draw its deductions. This Court is entitled to draw its reasonable inferences.

Passing on to the testimony relating to Frank Hughes. Well, all right. Here is Roy Daymond, he said that he saw Frank Hughes in that orderly room and that he had a large knife in his hand. Oh well, they don't want to believe Daymond; oh no. They don't want to believe that Roy Daymond saw Frank Hughes down there. No.

Well then, all right. Jessie Sims says he saw Frank Hughes down there in that area. Well - they don't want to believe Jessie Sims either. All right. But then Addison George comes along and Addison George says he saw Frank Hughes, David Walton and Robert Sanders returning from the area and they talked about beating up the Italians.

So, of course, there is some question about Addison George's testimony too.

Ah, but now, now the light strikes. Pinkney says he saw Frank Hughes with Wallace Wooden in the corner of room Y. And what about the testimony of Sims and the testimony of Daymond; are they telling the truth? Or are they not?

I am going to skip the testimony relating to Sergeant Hurks for the time being, because I want to discuss that in connection with the second charge. We will pass on to the testimony relating to the accused Walter Jackson.

Again, Willie Ellis, who testified with frankness and candor, said he saw Walter Jackson with a club in his hand near door E on the inside. He said he saw him with a club. It wasn't merely Willie Ellis says he saw him down there somewhere; No he said where he saw him. And Willie Ellis knew what Jackson was doing. He knew where he was. And he said he saw him there. So there can be no question insofar as the proof of this case is concerned but what a man was there himself and, one who watched the proceedings, a man who saw Jackson.

Well, I want to discuss next with the Court the testimony relating to Herman Johnson. Well, at first, the first witness that gave any testimony against Herman Johnson was Battle, who said that he saw the MP's take a flashlight from him - or, I beg your pardon; that Johnson had said the MP's had taken a flashlight from him and that he had lost something down there.

All right. That is the sworn testimony of Thomas Battle. But they said, "Battle, you are lying; you are not telling the truth to this Court; you are not a credible witness."

Well, I want to tell you that almost everything Battle has told this Court has been corroborated, with the possible exception of a couple of those men. And let's see how it is corroborated.

Hamilton, or rather Johnson, came in and said he lost his trench shovel down there. Just exactly what Battle said; the substance was the same. And then we put on Murray and what does he say? He said "Well I saw Johnson down there, he and Willie Curry and somebody else was being rounded up by the MP's, and I saw them down there." And he said further more after the thing was over with, "Johnson comes in and asks us fellows if we had a trench shovel he could have."

Well, he wasn't losing any time getting another trench shovel to replace the one he had lost in that area. There isn't any question that that is his shovel here. But then he comes up with the story somebody had taken his shovel and it was lost down in that area; so somebody must have taken it.

My goodness, he even bungles on that testimony. He won't admit that he lost it but he admits it was gone for the first time that night and that it was standing up by the bunk or laying on the bunk, when he missed it. And here is the tip-off.

When Johnson took the witness stand and on cross-examination admitted that he went a hunting for a trench shovel that night, he couldn't tell this Court who took it from him or who he got one from or who he talked to. Well, this Court can know as well as I that Murray told the truth when he said he came up and told them he hadn't been issued one; that they had run out, and he was trying to get one of theirs.

I was convinced Murray told the truth about that. There is some stipulated testimony the Court wants to bear in mind on that, and I know the Court will consider that carefully; there are witnesses who claim they saw him on the evening of the disturbance, but that he was not in their presence during the time of the disturbance.

Please understand we are not contending for a moment that Johnson was down there for the whole time. No, we don't know how long he was down there and when he was down there, but we are convinced of one thing and that is that he was down there and that his trench shovel he claimed to have laid down in barracks 709 was with him when he was down there - he was there all right, or that shovel would not have been found there. Just as Murray said.

All right. We will pass on to the next one on this list. Willie G Jones. But he will be discussed in connection with the second charge also, at a later time.

Next is Henry Jupiter. Well, Clarke says Jupiter was in the area with a stick in his hand and Corporal King said that Jupiter was close to the orderly room. Now there is a peculiar thing about the testimony of the accused Jupiter on his own defense. And that testimony coming from Alvin Clarke and Corporal King is strong and is convincing with respect to this.

And the peculiar thing about this testimony of Jupiter himself is that he says he went downstairs after the crap game was broken up. He leaves the crap game and goes downstairs and stands around for a while and comes back and wants to start a new crap game. He wasn't even interested enough to inquire about what was going on.

Well, that just doesn't sound reasonable.

Now passing over Luther Larkin, because he will be discussed in connection with charge two later also, and going on to the accused Loary Moore.

President: We will take a fifteen-minute recess.

Court was in recess for fifteen minutes and proceedings resumed as follows:

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

Trial Judge Advocate: Let the record show that each of the accused are present, other than the accused Roy Montgomery; that all members of the Court are present as well as the personnel of the accused and the personnel of the prosecution.

President: Proceed.

Trial Judge Advocate: Now if the Court please, I am passing next to the testimony of Roy Moore - pardon me; Loary Moore.

Jessie Sims saw Moore with a club and Gresham said that Moore was inside the orderly room when Gresham came and took his place at door E. Well, that is strong and convincing testimony. Loary Moore took the witness stand and in substance his testimony was this;

That he was in his barracks; that he was in bed; that he was asleep; and that Wallace Wooden comes running in and tells him to get his pants on, that the Italians might burn down the barracks.

Well, that story, coupled with Moore's further testimony that he slipped on his pants, went to all that trouble and then crawled back in bed and stayed there with his pants on so that in case the barracks would be set on fire he would have the advantage of having his pants on - well, that testimony is very, very unimpressive to me.

And if that is all; if that is the sort of testimony that

the accused must stand on in order to seek to overcome these identifications, then I am afraid that they are too weak to be of much help.

Those two men could not have been mistaken in their identifications, in the identity of Moore, because both of them had known him. It isn't that they just saw him at some area where they may have been - because of darkness or otherwise, could have made a mistake - they saw him in that orderly room.

Now passing from that to the testimony relating to the accused Willie prevost. Well, we don't have to spend much time on that, except that it is important for this Court to bear in mind that he is one of the two men with whom Todde had that experience. One of them had a club and the other one had a knife. It is important to remember that.

We know that Willie Prevost was down there. He says he was down there with a mob, and he was down there with a club, and if he didn't have the club, then Green had the club and he had the knife. And there is nothing to have kept either of them from having both a club and a knife. But, one of those two men had a club and the other one had a knife.

Now we know Prevost was down there, because in his own handwriting he has told us he was down there and he told us in his own handwriting he was down there with a stick. We don't have to depend on that alone. Gresham also saw him just outside of the orderly room and Sanders, who came into Court and testified he heard Prevost say he was down there.

Passing on from him we come to the testimony involving the accused Robert Sanders. Jessie Sims said he saw Sanders down there. Willie Ellis said how he saw Sanders down there with Barber, first in a jeep and then they were going into that orderly room. T/5 Cunningham testified that Sanders brought Snow out of the area. Addison George you will recall testified that Sanders was among the three who, after returning to his barracks, talked about how he and some of the others beat up the Italians.

So the testimony, I submit, is clear, is convincing, as to the activities of the accused Robert Sanders.

Next, Freddie Simmons. Jessie Sims testified that Simmons was down there. Willie Ellis said that he saw Simmons with a club and after the fight Simmons remarked that an "Italian liked to have hit him."

So you have the testimony of two men who were down there, who had occasion to observe those who were in that orderly room and their testimony was clear on that point of having seen Freddie Simmons in that orderly room.

Passing from him we come to the testimony relating to the accused Elva Shelton. Well, there was an Italian by the name of Grosse who had testified that he saw three negroes in door A.

One of them he was able to identify and that was Elva Shelton. Now this Italian witness was definite in his testimony with respect to Shelton, but we don't have to rest the conviction of Shelton on that testimony alone. Roy Daymond. Roy Daymond saw Shelton in the Italian area and he had a stick in his hand and the Court will check me on this, but I am almost certain that Daymond testified that he saw him hit an Italian.

I know he had him in the area and I know he had him with a stick in his hand and I think he went a step further and testified he saw him strike an Italian.

So we are not entirely dependent on this Italian witness' testimony, alone, in order to sustain the proof against Elva Shelton.

Passing from him we come to Samuel Snow. And of course, there is just no question about Samuel Snow having been down in that area and the fact that Samuel Snow's experiences down there were suddenly interrupted and came to a rather unexpected end was no fault of Samuel Snow.

- He went down there for the purpose of swinging and probably swinging long and hard, but Samuel didn't get to swing very long, or quite as long as he wanted to, because someone took a swing at him and when Samuel caught that one, that was the end of Samuel's brief swinging experience that night. Now there is no question about that proof. Absolutely none. Because we have got Samuel Snow's testimony about it himself. He thought he was going to catch himself an Italian coming out of the barracks, and he was running around the barracks and getting all ready to tee-off against one of these Italians as soon as he showed his head, but someone connected with Samuel first and knocked him to the ground. It just so happened I guess that one of the other comrades of Sammy's was probably just as anxious to get himself an Italian as Sammy was and he took off and connected with the wrong person.

So Sammy Snow was down there and left there with a little memento. There isn't any question about that and we have the testimony of Alvin Clarke, who saw him in the area after he was knocked out. He didn't actually see the act of his being knocked out, but he saw him in that area when he was in a knocked out condition.

We come now to C. W. Spencer, and we find that Sims saw Spencer definitely in the area, and he was doing some chunking on his own. And we know there was a lot of that going on, and it is entirely reasonable for some man to have seen some man doing some chunking.

If the Court please, I trust you won't mind my use of that expression "chunking." That is an old favorite expression down where I come from in Texas, and I know it means the same to these witnesses as it means to me, if we say someone is doing

some chunking that means he is throwing rocks or bricks. If I am using a colloquialism I hope I will be forgiven. But that means throwing rocks, and when we take a look at some of these rocks and bricks they were heaving - well, these are junior boulders that they were tossing around over there and Jossie Sims found them in the orderly room, and this Court well knows that they were thrown through the windows and at some of the men in the orderly room, who had to do some fancy ducking escaping those young boulders.

And he says he saw Spencer doing some of that chunking. I haven't heard any witness or testimony that Spencer was at any other place and that he was not down in that Italian area.

All right. We will pass from him on to Nathaniel Spencer. Jessie Sims said Nathaniel Spencer was down there and Ellis said he saw him with a stick and that Nathaniel Spencer, after the fight, said he had himself a brawl. I don't know about him having himself a brawl, whether he told the truth or not, but he had one good chance and the fact that it wasn't carried to full execution was because he too saw someone come out of the area there and he winds up to take a swing at him and has it stopped by some other fellow, some other ally.

I think the significance of that testimony about Nathaniel Spencer is simply this. Jessie Sims says he was down there and Ellis says he was down there, and then Spencer comes in and by his own confession says, "Yes, I was down there." How can you say then that Sims and Ellis don't know what they are talking about. Both of them put him down there and both of them say they saw him, and both of them come into this Court and testify they saw him down there and then furthermore, Spencer in his own confession early in the game had said he went down there with a stick.

Now, the testimony against Leslie Stewart. Sergeant Farr identified Stewart as having a knife in that orderly room. And let's not overlook that, if the Court please. Sergeant Farr identified Stewart as having a knife in that orderly room.

Now Todde identified him as being in the orderly room. It is true that counsel referred to his previous examination, the time that he talked to the witness Todde, at a time when he passed him a little photograph, rather small - and I don't know whether Leslie Stewart looks the same on that photograph as he does in person, I am not qualified to pass on that - but I do say that there is no testimony that he had not picked out Stewart, all along, when he saw him in person, as being one that he saw in the orderly room.

Just because he might not have recognized him from the photograph does not detract from identifications made by a man in person. And he didn't have any trouble picking him out in this courtroom here. He was consistent about that.

But, suppose there should be, should remotely be some possibility of a mistake about him. What about Sergeant Farr's

testimony and what about the testimony of T/5 Sanders, who said he heard Stewart say that he was down there.

So it seems to me, it seems to me that the evidence is rather conclusive as against the accused Leslie Stewart, and there is no reason why Sergeant Farr should not have been able to recognize him in that orderly room, especially when he saw him armed with a knife.

Passing from him to the next, to the testimony relating to the accused Arthur Stone. Well, again we find that Jessie Sims has him near the orderly room. Ellis has him in the orderly room. Gresham says that he was in the orderly room when Gresham arrived with the MP's. Corporal King, who arrived there with the MP's said he saw Stone as he was leaving the orderly room. But again, Stone took the witness stand and he said he wasn't down there.

But again, one of those little things, and those little things are the matters that help the Court make up its mind as to whether one is telling the truth or not.

Stone comes along and wants to refute part of his statement which is in his own writing, because it didn't jibe with the witness' testimony. The importance of that lies in one fact. If a man has actually been away from a scene of a crime or an incident, it should be easy for him to learn where he was or what he did, especially because he is going to be thinking about that rather promptly.

Particularly, when it involved a matter of this kind. When it was known that there were many, many negro soldiers involved. And when a man can't remember the same story that he told on one day, if he can't remember the same story six weeks or two months after that, a story he had so thoroughly impressed on his mind - that is when any listener is allowed to doubt the verity of that story. That is where the importance lies.

We will pass on from him to the accused Richard Sutliff, and there again Sergeant Farr said, "that is the man who threw the rock that I ducked." As bright as those lights were in that orderly room; as closely as a few of those men were being observed; and then if somebody picked up a rock and threw it at me and I ducked that rock, realizing if it had struck me it would have severely wounded me - am I to believe I would have any difficulty in recognizing that man?

That is the testimony of Sergeant Farr as to Richard Sutliff.

Passing on from him to Booker Thornton. Well, Jessie Sims says he saw Thornton on the way out. Well, I believe he said Thornton said he "knocked the hell out of one Italian." Corporal King said that Thornton told him that he had ought to have hit him, and previously he saw Thornton standing at the front of the door to the orderly room and Thornton - and this is a

reasonable inference from the testimony - seeing King in there helping those Italians, helping to take care of them, Thornton says to him he ought to hit them.

Well, Thornton's alibi was a stiff arm. But upon looking into that a little bit we find that he had that condition, according to his own testimony, for eight years. Well, he got along pretty well with that arm in the Army and I'll say that anybody who has had a condition of any kind for eight years should be rather versatile with his left hand, and I assume that the accused, under his own testimony, would have no difficulty in making use of his left arm whenever he wanted to and with the condition having existed for eight years, I submit it is a rather weak thing to bring before this Court.

Passing on from him to the accused Booker Townsell. Clarke heard Townsell say that he was the first, that he got the first Italian that was hit. Ellis saw Townsell standing with a club in his hand in the corner of the orderly room. Todde said that Townsell was in the orderly room. Gresham heard Townsell say that he was one of the first to hit an Italian soldier, or words to that effect.

So you have got the testimony of those four men. Three corroborated. And the testimony produced by this accused under the stipulation made yesterday. The Court, I know, has those stipulations in mind, but I might allude to the fact that the testimony of those witnesses is simply that they had gone to bed at 11 o'clock, at which time Townsell was in bed.

Well, when they were awakened, the OD had come in, and the testimony in this case shows that that was a considerable time after the riot had come to a close. Fixed variously at different hours, but around one o'clock.

Well I am just sure that the accused Booker Townsell was in bed by the time the OD came around, long after this riot had come to a close. And I have no reason to suspect that he might not have been in bed before 11 o'clock, but I have plenty of reason to suspect that he was not in bed the entire time, between 11 o'clock and 1 o'clock.

Passing from him on to the testimony relating to Freddie Umblance. We find that Battle said that Umblance was walking with a club in his hand.

Now if it please the Court, I don't care where Umblance was walking with a club. It is immaterial to me if he was walking in that Italian area with a club in his hand or not; I don't care whether he was walking in and around barracks 708 or 709, or close to the orderly room. That is all I am interested in, that is where he was seen, and that is what the testimony shows here and if it cannot be developed as to the exact spot where he was with this club in his hand, it is immaterial to me.

The stubborn fact remains a witness says he saw him

walking with a club in his hand in that area. And the defense has not produced a witness that said he was elsewhere. Not a single witness.

All right, we will pass from him on to the testimony relating to the accused David Walton. Well, Roy Daymond said that Walton had a stick and that he saw him in the orderly room. Jessie Sims said that Walton was in the orderly room and that he made the remark that one of the Italian boys would have gotten a negro soldier if it hadn't been for him.

And Corporal King said he heard Walton say he had been in the fight and Addison George said he heard Walton talking with them about how the Italians were beaten up, and this was after they had returned from down there.

Well, of course, nobody was carrying a stick around that evening for any purpose other than to make use of it as the occasion presented itself. The testimony of Daymond and Sims definitely places Walton in the orderly room and the statements of these other witnesses, King and George as to what they heard him say, confirms the testimony of Daymond and Sims.

Coming now to the testimony relating to Arthur Williams, we find that the witness Todde said that Williams entered the orderly room, I believe he said just as door D was opened, or immediately after it was opened.

Now bear in mind this point, if it please the Court; that is Todde's testimony. He was standing there, watching those men. Was it true or was it untrue? Doesn't Gresham come along right away and tell us that as he got to the orderly room along with the MP's that there he finds Williams, right next to the orderly room; right next to the door where he was standing.

Well, then Williams took the stand. And Williams might have put up a pretty good story of where he was if it hadn't been for one thing. He said during the course of his testimony one thing, and that was, that Willie Basden claimed he had been in the barracks with him the entire evening and if I had had a little doubt about whether Williams was down there or not, then that little doubt was completely dispelled and removed when he said that Willie Basden was in the barracks that entire evening because Willie was down there in the orderly room swinging a club - so the testimony shows.

Passing from him to Wallace Wooden, and we find Ellis saw Wallace Wooden with a club in his hand. Said the MP's had shined a flashlight in his face and that is how they detected Wooden. That was the time that Sergeant Callahan was having some of the boys rounded up around 708. All right. Todde saw Wooden in the orderly room. Let's see what some of the other witnesses say. An Italian saw him with a club. Gresham comes along and sees him there and King said he was the one that called to him and said that he ought to come out, he had no

right being there. He didn't like what King was doing, doing a humanitarian thing in helping some of these Italian boys in getting them to the hospital. He didn't like it and told him he had no business doing that.

Now did Ellis and Todde and Gresham know what they were talking about? Well, and then Pinkney comes along and finds Wooden standing near the entrance of the orderly room. Just where Gresham put him. Gresham was standing in door E to keep the boys from coming in. And he said he saw Wooden somewhere near the corner of the orderly room and that is the point where Gresham would have seen Wallace Wooden too, because that is where he was standing.

That completes the review of those who are charged with rioting now. I want to hurriedly review some of the testimony relating to those men who are charged with the additional charge, 2. I will take up first the testimony relating to Luther Larkin.

Because we do not like to see questions of doubt, any question or any doubt or room for speculation as to the activities of a man who is charged with an offense of this kind I am grateful that there was ample and convincing testimony available that the Prosecution could produce and could bring before this Court as to those who are accused with this offense.

You take the testimony as to the accused Luther Larkin. Could there rest any doubt in the mind of any man who has heard all of that testimony, that Larkin was the one who blew the whistle to get those boys to go out? To get them out of the barracks and have them assembled to go to the Italian area for the purpose of launching this attack.

This does not rest on the testimony of one of the witnesses. Let us see just what that whistle testimony is and that is a tremendously serious thing. If Luther Larkin had not been so intent on going down there and causing an attack against those Italians, and had not taken the extreme measures and the extreme steps that he did to blow those boys out of the barracks, I doubt that this matter could ever have reached the intensity that it did.

I doubt that there would ever have been an attack of this nature and of this kind. But he was intent upon it. Yes. Now let's see.

Roy Daymond said that Larkin ran upstairs and he heard him ask for a whistle. He later heard a whistle blown. Jessie Sims said he heard a whistle - or first, that he heard Larkin ask for a whistle. He said that later on he saw him with that whistle; he heard him say "Let's go." Larkin led that first group, this first sizeable group, after Jones had gone down there with four or five men, according to Sims. Clarke says that Larkin led a group of men down there. All right.

Gresham and King both put Larkin in that orderly room. Both of them. Gresham and King both put Luther Larkin in that orderly room. All right. Corporal Cunningham said that Larkin ran into the barracks and asked for a whistle and that he later heard a whistle blown.

Addison George says that Larkin came upstairs and asked for a whistle. That he recognized him by his voice, which is a high-pitched voice, and he was positive, as the Court will remember him saying, that it was the voice of Luther Larkin.

Bear this in mind - bear this in mind. Luther Larkin was there at the time that the Willie Montgomery episode occurred. Luther Larkin was one of those who wanted to do something about that episode. He was the one that forged that determination and malicious feeling in the others, the same as he developed it in his own heart. He was the one who wanted to form this group and get these men together and go down there for the purpose of getting even with them for having struck Willie Montgomery - for having struck him in self-defense.

Let's see what was in Luther Larkin's mind. No, Luther Larkin didn't admit that he blew the whistle and led those men down there. We didn't expect him to admit it because after all, he is charged with murder. But what did he admit?

Now he said he heard somebody say, "Somebody ought to blow the boys out," and he said himself on the witness stand that he had said, "You ain't a lying." "That's the thing to do." Now let's see. Here is a man who admits the workings of his mind at the moment, that he wanted to do the very thing we say he did. He admits he was thinking about it, and we have proved it, and that he did it. "That's the thing to do," he said, and admits it in his written statement, and yet he said he didn't do it. What caused him to be deterred? He said "You ain't lying," and "That's the thing to do." So, what kept him from doing it. There wasn't anything that kept him from doing it. He did it!

Now he wants this Court to believe he set up a first aid station over there and as they brought them in he took care of them. The idea of a man setting up a first aid station after he had just gotten through saying "Yes, that's the thing to do." "Let's blow the boys out of the barracks." Yes, I submit that is all he could have done, all he could have been doing. He admits that in his written statement.

Well then, I don't know. His co-accused under this charge comes in and testifies to something that doesn't look very good to me. I don't know. Is one trying to unload on the other, or what is it? I don't know. All I know is what they say.

But Arthur Hurks, you remember, under my questioning? Well Larkin came up and they asked him how it started, and did he say "I know how it started,"? Oh no. Larkin said he didn't know how it started or came on. So he asked some questions of Larkin

about it. Of course he admitted he was down there far enough to know where the crowd was at and that he had carried a man away, which was for his own protection, but in any event he inquired of Larkin.

He asked Larkin and Larkin said "Man, where were you." Now take it or leave it; believe it or disbelieve it. I don't know. I don't know. But I do know that you have got one accused saying to the other one, by his own testimony, by your own testimony - "Man, where were you?"

Well now, whether that was brought in for the purpose of trying to help himself or whether it is testimony that shows what the other accused was doing down there, or whatever he was doing, that is something that this Court may determine.

In any event, we know that the testimony as to Larkin's activities, as to his leadership, is well established. He is one who shoulders heavily the responsibility for what occurred. The responsibility for all of the things that came to pass that evening, including the hanging of Guglielmo Olivotto. His legal responsibility is fixed. It is inescapably fixed, and the testimony, I am very glad, is clear.

Now let us pass on to Willie G Jones. Well, his leadership; his leadership on the evening in question is well defined. We find that at the very beginning he is one of those who is with Luther Larkin and we find that he is one who, after it is decided that action shall be taken in the form of an invasion on that Italian area, we find that he runs upstairs. Jessie Sims says that. And he said, "All right, you boys, come on; let's go, you boys from Texas; come on, let's go."

Well, there are a few boys from Texas that respond I am sorry to say, but they did. And Willie Jones was rounding them up, as we would say down there; he was egging them on, "Come on now, you boys; come on." And they did. They followed him and he didn't lose any time in starting the first movement into the area. With four or five of these "eggs" he went down there. And you remember the testimony as to what occurred after he got down there, including the knocking out of that light in the front of the barracks.

But it doesn't stop with that. That testimony alone doesn't show his leadership. Remember, there is a very vital piece of testimony coming from two witnesses which shows who were the leaders and who was responsible for what happened down there.

His leadership is further demonstrated by the fact that he was in that orderly room just before that door was busted down. He was seen there and then what happens? What happens when that door is chopped down? Who was the first one that enters? Well that is the man that leads them in; that is the man that leads them in there. He is the one that enters and that was the

man who entered, according to the testimony of the Italian witness Pisciatano, who was standing there watching them come into that orderly room.

Oh, the fact that he was down there is of course proven by a number of witnesses. Daymond, Sims, Ellis, Gresham and the Italian Witness, of course.

Now we brought in a witness, Chapman, who was in the stockade with the accused Jones and what did he say to him? Chapman said that Jones admitted having had an axe down there. Now that testimony fits in like a glove. It shows the leadership. It shows you that he was one of those that originated this entire riot. And bear in mind, from the word "Go", Jones was with Luther Larkin; they were together when this thing first started.

All right, we will pass now to the discussion of the testimony relating to the accused Arthur Hurks.

Law Member: Before you start, Colonel, it is within a minute of 40 minutes now.

Trial Judge Advocate: All right, I am sorry. I am running a little longer than I had anticipated.

Law Member: No, that is all right. I am not attempting to limit you at all.

President: We will take a five-minute recess, remaining seated.

Court was recessed for five minutes and proceedings resumed as follows:

President: Court will come to order. You may proceed.

Trial Judge Advocate: Now if it please the Court, passing now to the testimony relating to the accused Arthur Hurks, I want to preface my remarks by stating to the Court that I am fully conscious of the seriousness of the charge lodged against Arthur Hurks, as I am fully aware of the seriousness of the charges lodged against the other two accused, and that there comes a time in the presentation of the Government's case when the Government's attorney also shoulders a heavy responsibility.

It is not only one that is the Court's. And there comes a time when the Government's attorney must also reach a decision as to the evidence to be produced and as to the status of the accused. I am saying that because I wouldn't argue to this Court along the lines that I intend to in the next few minutes, unless, based on the evidence in this case, I had reached certain conclusions that I have had impressed on me.

Now you have the testimony of Jessie Sims, who said that he went down there, and he went down there with a group. That the leader of that group said, "Come on men, let's go." And who was

it? It was the group in which Jossie Sims went and he said that the leader was Arthur Hurks.

Now if Jessie Sims had stood off somewhere some distance away, watching this as a bystander and he had given that testimony, I couldn't give it the credence I can give it now, when Sims said he was a member of that group and went with this group that was led down there.

One of two things are true. Either Sims went down with that group led by Arthur Hurks, as he said, or Jessie Sims is just a colossal liar. Because Sims said he was in that group and he went down there and there is no possible question of who the leader was. He said there was a group of about 20 or 25 as I remember.

And Ellis, who has known Hurks long and can't be mistaken as to identification of Hurks, said he saw Arthur Hurks as he went through the orderly room with a club in his hand and he traced his movements for the benefit of this Court through that orderly room. Take your choice. Is Willie Ellis lying about that? There is no chance for mistaken identity. He has known him too long.

Under the testimony of Hurks himself, they used to play football against each other. They knew each other in Houston prior to the time they went into the Army. All right. Now let's see. There isn't a member of this Court that isn't going to readily concede that Arthur Hurks is nobody's fool. His demeanor on the witness stand, the manner in which he cared for himself, and the manner in which he would testify and I might say in all fairness to him, the manner in which he would circumvent some of the questions asked by me through indirect responses was clearly evidence of a rather clever mind.

Well, let's see. Let's fit that situation into what happened that night, and let me say, as conscientiously as I possibly can, that there was never a time - never a time - that the Prosecution felt that Arthur Hurks was down there the entire time, and I don't have to ask the Court to accept my statement, or my word for that.

If this Court will just remember, if this Court will just check its notes, you will find that through the testimony of Sergeant Gresham we brought out the fact that Arthur Hurks was standing there and was asked by the MP's to hold back the crowd when they went down into the Italian area. It wasn't anything singular to hear that testimony when Hurks took the stand, nor was there anything strange when I proved the same thing by Pinkney. It is wholly consistent with the Prosecution's theory of the activities of Hurks.

I want to say to this Court, when you look at the testimony of Sims and Ellis and look at the testimony of Hurks, and then the testimony of Sergeant Farr, you cannot reach but one conclusion. Arthur Hurks was down there - but he left in a hurry. And why did he leave in a hurry? He left because Arthur Hurks knew - clever and smart as he is - he knew that the devil was going to break loose in that orderly room.

Yes, when he saw what was going on in there and when he saw that American non-commissioned officers were being cut, yes, - oh yes, I don't doubt but what there ran through his mind what he told you about in another connection, that he knew what trouble meant between negroes and whites, because he came from the South.

That was the time Arthur Hurks deserted his men he had led down there. He left them staying there and he went to other parts - fast. And why? He wanted to be at a point of safety. He didn't want to be down there in that orderly room when the MP's arrived, no, he didn't want to be found in there with these men that were bleeding and cut as they were. No, not with two white American non-commissioned officers having been made the object of an attack. No! It was time to leave!

Why, I don't doubt the testimony for a minute that he went toward the vicinity of building 719 before the MP's arrived. Why of course, that is the place to go. That is away from this business of the Italian area - and after all that was his business. That was the place to go.

Now what credit - what credit is he to be given for complying with the request of the MP's that he hold those boys back? The stubborn fact remains that he was walking with this group of men behind the MP's, clear over to here, where Pinkney marked it, over here about half way down the mess hall on Lawton Road.

This man that wasn't very much interested, as he said, and was standing in the doorway and was letting somebody else carry on down in the Italian area. But it was strange that he started down there, according to his testimony, and was right by the side of the MP's, and that he turned around and - it was then, Pinkney turned around and requested the Sergeant to hold the crowd back. What credit does he deserve; what else could he do but hold the crowd back. And if he was down there in the Italian area, as the testimony shows, then he would have been very eager to put himself in the spotlight by holding the men back; don't overlook that.

He is capable of that type of thinking. I want to be very fair to him, but I can't escape the conclusion that here is a soldier who has got a very good head on him. A very good head.

And under this testimony, if you fit it together and if you put it together and fit into it the testimony that Farr gave yesterday, I have no doubt but what Hurks was down there in that Italian area, as Sims and Clarke and Ellis said he was.

Now taking the bull by the horns; was he the man that led Farr out of there? One thing we don't know - or we do know, and that is, there wasn't any switch in escorts. And we do know that if he knew as much about that man having been taken away from there as he claimed he did from the witness stand, he was

either one of two things; either he was the man that walked along or was the original escort of Farr. One of the two, and either one is bad enough.

I personally - well, I'm not going to say that. The Court can reach its own conclusions as to whether he was that man or he wasn't that man.

But I say at the conclusion, it is inescapable that he was down there and that he was leaving about that time. He may not have even walked along there - we don't know that; but that he was leaving that area about that time, because it was time to leave - I don't doubt for one moment.

I don't doubt it for a moment.

Now you take that testimony, all of that testimony, and I mean taking his testimony and fitting it into the picture. Just fit it into the picture. And I cannot for the life of me see how you can fail to get a pattern that shows that he was down there, that shows his leadership initially, but a quick determination to get away from there before things got too hot.

Bear in mind - bear in mind that under the testimony of Sims and under the testimony of Ellis he had ample opportunity to be there for ten minutes. I will say for the very briefest, for ten minutes - to be around that orderly room. Another reason why I feel he did leave in a pretty big hurry after he saw what happened, was because there was only two identifying witnesses. But how positive they were about him being right there.

Had he remained and been down there as long as some of those other men, there would no doubt have been other identifying witnesses. All right, I submit that the proof on that is convincing and particularly do I ask the Court to give close consideration to his own story and his own claims and also then the testimony of Sergeant Farr, coming on the heels of that.

Sergeant Farr had given much of that same testimony, if it please the Court, prior to the time he was recalled. He gave a good part of that testimony when he testified initially in this case.

Well there remains but one thing for me to discuss with the Court. Was Olivetto hanged, or did he in some sinister and mysterious manner obtain a rope and run out there and string himself up? Commit suicide?

Well, the Defense made an abortive attempt to show that there might have been some suicide tendency, but I don't think there is any doubt in anyone's mind; I don't see how anyone can doubt but what that attempt to show suicide fizzled.

The evidence, the circumstances, the physical facts, if it please the Court, are too plain to leave any room for doubt

and I say to this Court, that when even a psychiatrist - with the propensity that psychiatrists are known to have for finding something wrong with a man's mind - that even with a psychiatrist examining him - and I am not being critical, they are doing a very fine work in this War; but I still insist, that when even a psychiatrist couldn't find anything wrong with Olivotto, than that psychiatrist did or could, then he must have had an unusually strong mentality.

I just hope he couldn't find anything more wrong with me than he did with Olivotto after examining me.

Now say what you will about that matter, Olivotto was resting in his bed on this fateful night; a peaceful human; contented,- when this reign of terror begins. Why, I don't doubt for a moment that he had fear of negroes or French Moroccans or whatever you want to call them. Who is going to say today that his fears were not justified?

I don't doubt it for a moment. He wouldn't have jumped from those barracks if he hadn't had that fear; if he hadn't been terror-stricken he would never have jumped. And I don't doubt but what after he jumped and found himself in the clutches of these negro soldiers - I don't doubt for a moment but what he was virtually helpless.

There wasn't anything he could do and under the possibilities that the psychiatrist described, the reactions of a man that night to a situation as confronted him - I do not doubt for a moment but what he was just helpless in their hands. Putty for them, to do with him whatever they wanted to do.

The physical facts as to what the situation was when they found this body is very, very strong. Very strong. It negatives the suicide theory any way you look at it. Not a single footprint; not a single footprint; and the man was barefooted and his legs were covered with dirt as though his legs had dragged. There were abrasions on his legs.

And what do we find there? A shoe print; two shoe prints. As though a man were holding up someone that was being raised on that cable. We do find two shoe prints and they were fairly distinct, and the reason they were was because there was pressure on those shoe prints.

You might remember, Major Orem's testimony on that; he said there wasn't a single bare footprint anywhere. Not a single one. And another thing, the vertebrae are easily broken, usually when a man is dropped or jumps when he is hung, as the Court knows from common experience; that so frequently happens when a man jumps. But there was nothing there on which he could have stood, or have kicked off a box from under him; no box or nothing like that apparently. That didn't happen to Olivotto; no.

Why I say to this Court, even if the proof of circumstances were not so strong, showing he was in the hands of those negro soldiers, I would say even if it was not so strong, I would say still that every physical fact negated completely the suicide

theory. There are other facts that could be pointed out too. I am not trying to cover all of them, but let me call your attention to just one thing.

There is no doubt but what they had a hold of Olivotto; that much we know from several witnesses. Was it their technique; was that their approach that night, to get hold of someone and then turn him loose without doing something to him? Were they just playing tag or playing catch that night? Were they just grabbing hold of someone, taking them off a little piece and then turning them loose? Was that what they were doing? Oh no; no.

Bear in mind now Olivotto had not been knifed and he had not been clubbed. What other Italian did they get close to that night that they didn't do something to, either club him or knife him or throw him over the embankment? But nothing of that nature appeared on Olivotto. Nothing.

Now that just simply means this: You know they had a hold of him and you know they did something with him and if they didn't knife him and if they didn't club him, what did they do with him?

Well I'll say I don't believe there is a member of this Court that would believe that they had hold of him and then voluntarily turned him loose. Well, there just isn't much need for spending a lot of time on it because actually, I don't see how there could possibly be any question under all of the facts and circumstances that Olivotto was ruthlessly murdered on the night in question.

I want to say to the Court that I appreciate very much the indulgence that has been shown to me. I did not intend to argue this case in my opening statement as I have in such detail and length, but I have done so and have gone into detail as I went along principally for the purpose of developing all of the facts fully in order to give Defense counsel an opportunity to answer fully if he desires. I did not want to hold back any of the facts and use them in my closing argument, when he would not have an opportunity to answer them, and for that reason I have developed them rather fully and given more time to doing that than I had intended originally.

I do appreciate the attention the Court has given. Thank you.

President. The Court will recess until 1:15.

Court recessed at 11:50 a.m., and reconvened at 1:15 p.m., December 16, 1944, and proceedings resumed as follows:

The Court met, pursuant to adjournment for noon recess, at 1:15 p.m.

President: Is the Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of the accused was called by the Assistant Trial Judge Advocate and all were present, with the exception of the accused Roy L. Montgomery.

Trial Judge Advocate. The record may show that each of the accused is present, other than the accused Roy Montgomery, that all members of the Court are present and that the personnel for the accused and personnel of the prosecution are also present.

Law Member: It may appear in the record that in the event the summations are not printed in full that Colonel Jaworski complied with the instructions of the Court and did not in any way, shape or form mention the name of the accused, Roy L. Montgomery.

Defense: Yes, that is correct up to this point.

President: The case rests with you, Major.

Defense: May it please the Court and counsel, this has been a long and tedious case. I know the Court is tired and I am also. And I am not going to unduly prolong it if I can help. Like counsel, however, I do want to thank the Court for its courtesies; for its interest; and for its patience; for its conscientious endeavor throughout to give these men the kind of a fair and impartial trial to which they are entitled.

I say in all sincerity and all candor that had I been permitted to pick this Court myself, I could not have done a better job. I also want to thank counsel for his courtesy and for his fairness, for his cooperation and the very fine compliment he paid to me this morning. Coming from such a brilliant and capable lawyer as he is I consider it a high tribute.

Now as counsel says, the happening on this evening was a tragic affair. It is a serious affair. And for that reason - if for no other reason alone - this Court should be most careful. It should examine the evidence with the greatest of caution - that they don't punish or brand an innocent man as a participator in this fracas.

I think personally that the lowest form of individual who exists is an individual who will try to save himself at the

expense of others. If I were formulating, or devising a scale of human degradation, I think without any question that I would place the type of individual who attempts to save himself at the expense of others, at the bottom - at the very bottom of that scale. There is no type of an individual who, in my opinion, is more vile or degraded, and I refer of course to Roy Daymond, Alvin Clarke, Willie Ellis, Jessie Sims, and Thomas Battle.

That fact alone, and without anything more, should cause this Court to view their testimony with the greatest suspicion. I can't analyze a mind of that kind and I am not going to try it. I don't know what they were attempting to do. They didn't tell a constant story. There were changes in it. There were men that were implicated and brought back to be charged and then their stories changed. That is quite some time ago now.

I expect that the first time they tried to save their skins they implicated whomsoever first came to mind. They were not learned individuals. They just gave the names of some of the first ones they could think of and then after the investigators kept pressing and pressing and pressing them - well, I think there is enough evidence in this courtroom to indicate that the investigators did do a little urging.

Then the fact began to dawn on these men that the best men to implicate were those men who had gone overseas, and there is a good reason for that. They didn't think at that time, if the Court please, that they would ever have to face those men. They didn't think those men that had been sent overseas would ever be returned back here. You just go over your notes and you will find, with few exceptions, a very few exceptions, that the majority of the men implicated were men implicated by these five men I have named here, and were all men that had been sent overseas.

Now let us review their testimony in a little more detail. Let us take Roy Daymond first. Roy Daymond was one of those individuals who came in here and swore and testified under oath he had never talked to anyone about the testimony he was to give. Never talked to anyone.

Why, the Court knows and I know that he talked with counsel; that he talked with other investigating officers, and counsel would be most derelict in his duty if he didn't talk with a witness before he put him on the witness stand. Is that the type of candor; is that the type of testimony that rings true and rings clear?

Well, let's look a little further here and see what Roy Daymond said. The closest he said that he ever got to that orderly room was fifteen paces away - fifteen paces - forty-five feet. That's a lot longer than this room here and the Court saw the conditions that existed down there that night. It was dark. And I defy anyone to identify anyone accurately, outside there that night at that distance.

And another factor. If the Court is going to believe his evidence you have got to take it all and not just a part of it. He said when he came down there the MP's were already there and he saw Sergeant Gresham in the orderly room. We know, of course that Gresham - of course - didn't go down there until the MP's went down.

Even if you do give any credence to his testimony, the only man he may have seen he saw at a time when the fight was over and the MP's were there.

But best of all, and I think this clearly illustrates the type of an individual Roy Daymond is, is the testimony that he gave to me when I examined him before trial in Major Manchester's office, and after some quibbling he finally admitted that he had said -- well I want to read that to this Court and I want the Court to follow it closely. The first question I asked him that I reviewed with him on the witness stand, referring back to the incident involving Willie Montgomery, I asked him:

"Q Then what Happened?

A So we came and picked up Montgomery and laid him on the street. Luther Larkin got to feeling his pulse to see if anything was wrong, so he finally said there's nothing, just got hit and knocked out cold. He had been drinking, you could smell on his breath. There was a party at the mess hall but I didn't know anything about it. Finally some of the boys gathered around him. You know how a crowd is. Whoever was in charge of the quarters called an ambulance.

Q Who was on CQ?

A I don't know. The ambulance came and picked up Montgomery and took him to the hospital and finally it was all over and I came on into the barracks."

Mind you, he came on into the barracks.

"A (Continuing) Larkin went on upstairs and Montgomery went to the Hospital. I just got into the bed without undressing. When the First Sergeant came and said the Major would be by.

Q Was that Sergeant Gresham?

A Yes sir. He said the Major was coming by.

Q How soon after Sergeant Gresham said that did the Major come?

A I couldn't tell you.

Q Was it right away or five or ten minutes?

A I don't know for sure.

Q You lay on your bed all the time until the Major came?

A Yes sir.

Q Was it the Provost Marshal?

A I don't know. The Major went to look at Montgomery, who had been brought back and asked "Are you hurt bad" and then the Major left.

Q You never went out of your barracks?

A No sir.

Q Let me ask you this. You went into your barracks and got on your bed?

A I did.

Q And Larkin went on upstairs?

A Yes sir.

Q Did he go to bed or do you know?

A I don't know.

Q You don't know what he did?

A No sir."

All right. There wasn't any question about it. Roy Daymond was trying to convince me at that time that after the Montgomery incident he went into the barracks and didn't come out. Why did he want to lie to me? I don't know. I can't answer that question. I wish I could.

It is just easier for Roy Daymond and people like Roy Daymond to tell a falsehood than it is to tell the truth.

Then, there is Willie Ellis. Counsel says that he is absolutely honest and truthful as a witness. But he hadn't talked to anybody about this case either and I wouldn't say that is important, but why should a man lie; why should he lie about it? If he is lying about one thing why assume that is the only thing he lied about and that he told the truth about everything else? He is not entitled to that kind of a presumption.

Now there are two isolated instances in the testimony that I want the court to read and the Court's notes will probably show it. Willie Ellis admitted to me that he had been drinking. He had been drinking with Sergeant Veeder that evening and I suspect if the truth were known that Willie Ellis was pretty drunk. The Court will recall in the testimony, I think it is Corporal King, I am not sure, that I brought it out of the man that Willie Ellis was drinking, that he was drunk. And King used Sergeant Veeder's field jacket to go down there to the area itself. He got some blood on it and never told Sergeant Veeder about it and got him implicated in this case.

Now another thing I think is important as far as Willie Ellis is concerned, he said that he just went down there in the Italian area to look around. He didn't intend to go there to do damage or to hurt anyone. Is that a true statement? Counsel vouches for his veracity. But yet, at the same time, counsel don't believe what he says and I know he don't believe it, because he introduced in this Court a letter granting Willie

Ellis an immunity, if Willie Ellis went down there for no other purpose than to observe what was going on, as a spectator, if you please. There wasn't the slightest need in the world to introduce or even ask for the General to afford him a letter of immunity.

There is one thing that occurs to me, about Willie Ellis, that shows you just exactly how accurate his recollection is. We have got to test the accuracy of a witness' recollection or we don't know how much credence to give his testimony, or we can't be able to believe him - and which I don't think is justified in his case.

If a man is lying about one thing I think his testimony should be very seriously discounted, unless it is strongly corroborated by a number of other witnesses whom the Court has no reason for doubting their veracity.

But here is one thing I asked Willie Ellis about, the stick that he said that Nathaniel Spencer had. And he identified one of these green two by six planks over here, scantlings I think they have been referred to, as the type of a stick Nathaniel Green had. If the Court please, I am wrong about that. Counsel brought that out on cross-examination, that that was the kind of stick Nathaniel Spencer had. Well, on cross-examination he forgot all about this. Don't recall.

Then we had it measured and identified. He told me that the type of stick Nathaniel Spencer had was one of those cigarette can holder parts and we measured it over here, one of these one and a half by one and a half inch affairs, and he told counsel that this green stick was about three feet long and the Court can tell that the one he identified with me was five feet long anyhow. The white one. Well, that is a small thing. That is a small thing, but nevertheless if that man was there and knows what was going on, if his recollection of incidents as they occurred are worthwhile, or worthy of any credence by this Court, why should he testify on direct examination the type of stick he saw one man have was a two by six and its color was green and then on cross-examination it was a one and a half by one and a half white stick.

Well then, Alvin Clarke, he hadn't talked to a single individual about this case either. Now that is a circumstance in itself that don't amount to very much. But if a man lies about a little thing of that kind will he tell the truth about the big things? About the important points? There is no secret about talking with someone before you go on the witness stand about the testimony. There is no reason to disguise it. But for some reason, unknown to me, I can't understand their mental processes - and I am not going to try to - but he preferred, as the others did, to lie about that thing.

And another thing that is remarkable about Alvin Clarke. Please allow me to go into this in a little more in detail a little later on when I discuss the testimony with reference to some of the accused. But it was a singular thing about the

men whom he id entified. On cross-examination he could not place a single one. Look at the Court's notes. On cross-examination he could not tell where a single man was he attempted to identify.

Then there is Jessie Sims. Yes, Jessie was another one. He hadn't talked with a single soul about his testimony in this case and I think that night that Jessie Sims was just a disgruntled gambler.

Now those little things to us, losing a few dollars at cards or dice, don't mean very much to us; but who knows. That may have been a big thing with him. I don't know whether he thought he had been trimmed out of it or what had happened. But I am satisfied that he did lose that evening. And another thing, Jessie Sims is the man who refused before trial to talk with me about this case. He refused to say a word about it. Is that the attitude of a man who has nothing to hide? Of a man who is willing to tell the truth and of a man who is telling the truth and particularly, when people of his own race and color were involved.

I say, it is not. And I think the Court can't help but agree with me.

Well what did Jessie Sims say he went down there for? No, he didn't go down there to hurt anybody. He took a club along when he went down to defend himself. Is that credible? Is that worthy of belief? That Jessie Sims went down there with a club to defend himself?

And another thing about Jessie Sims you want to take into consideration. He couldn't specify how a single man he identified that night was dressed. He identified some as having clubs but he couldn't describe the size, shape or color of a single club.

Now I can understand, if the Court please, how a witness could not remember how everyone was dressed on a particular evening or what attire or things a person might have been wearing. But a man who has got the mental capacity and remembers the number of individuals that Jessie Sims claims that he saw in this case, if he is telling the truth, certainly has the mental capacity to remember how a few wore dressed. But no, Jessie wasn't attempting to tell all of the truth. And he was just cagey enough that he wasn't going to say.

And then there is the remaining member, Thomas Battle. I am not even going to take this Court's time to say anything about Thomas Battle. If ever a man so clearly demonstrated that he was nothing but a provaricator and perjurer, I think that man did, and I am not going to take another single moment of this Court's time discussing Thomas Battle.

But I do want the Court to review the testimony of all of those men as you have it in your notes, with the greatest of care. You have all sworn to well and truly try this case

according to the law and the evidence, and I want the Court to remember at all times that these men are presumed innocent and they are innocent until they are proven guilty beyond a reasonable doubt. They are not required to prove their innocence, if the Court please.

And there isn't any question but that a conviction based on the uncorroborated testimony of any of the men that I have named who are - if I may use the term, if the Court please, - nothing but stool pigeons; and any conviction based upon the uncorroborated testimony of those men would be a terrific miscarriage of justice.

Now I want also, if the Court please, at this time to discuss some witnesses for the Prosecution whose veracity I don't question in the least; not in the slightest degree. Men whom I feel beyond all question were attempting to tell the truth and tell the truth as they saw it.

Well, I refer to Sergeant Farr, Corporal Haskell and the Italian Sergeant Major Todde. I don't want the Court to understand, however, that I accept their testimony at face value. Because that is not the case. The frailties of human nature are such that I believe, and I think I can demonstrate to you and I am going to try to do so - that those men are mistaken.

I am going to ask the Court to recall Sergeant Farr testified that he saw Roy Montgomery in doorway C. If the Court wants to look at your notes on that, I see some of you are looking at your notes. I will wait a minute until you find it.

Now remember, if the Court please, that happened in a brightly illuminated room. Two lights of 200 watts each, 400 watts of light in a small room.

I asked Sergeant Farr who that man was, he said it was Montgomery. I asked him if he had a conversation with Montgomery - you remember that, and I will read you the testimony here in a moment, - and he said "No sir." He didn't have a conversation with Montgomery. He remembered that he had no conversation with Montgomery.

Now Corporal Haskell also testified that he saw a mulatto or a light colored soldier standing at the same place. I asked Corporal Haskell who that man was and he said it was Montgomery. I asked Corporal Haskell, did Sergeant Farr have any conversation with Montgomery, and he said, "Yes sir, he did have a conversation, with Montgomery."

And then I said, "Did you have any conversation with Montgomery," and he said "Yes sir." He had a conversation. All right. That is in that same brightly illuminated room. At that time there was no action, at least in the vicinity of that door, and here was Montgomery standing absolutely still. All of his physical movements and his physical contour, physical characteristics were visible to these men. It is the best test I know of of how reliable their recollection is.

Sergeant Todde said that he saw Sergeant Farr and Corporal Haskell having a conversation with a mulatto soldier and I asked Todde if that man was Montgomery and he said "No sir."

Now all of these men can't be right; some of them have got to be wrong. I don't think there is any question but what that man was Montgomery. Montgomery in his unsworn statement admits that it was.

Now if Sergeant Todde and Corporal Haskell are right, Todde has got to be wrong. If Todde is right, Sergeant Farr and Corporal Haskell must be wrong. There is no other alternative; as to the conversation they can't all be right. Either Sergeant Farr is right and Corporal Haskell is wrong and Todde is wrong or Todde and Haskell are right and Sergeant Farr is wrong. And don't take my memory for it. I will read you here the notes of what the testimony was. Now this is on direct examination of Sergeant Farr. I don't have the complete examination; just an extract.

"Q Sergeant Farr, the first one again?

A This one here (Pointing to one of the accused)

Law Member: Stand up and give us your name.

(The individual indicated by the witness then arose and announced his name: Private 1st Class Roy L. Montgomery.)

Q Will you tell us what you saw this man do?

A This man was standing at Door E, I believe, in the side entrance there to room Z.

Q Door E, did you say, Sergeant?

A Yes sir.

Q This side door was it?

A No sir, door B.

Q Door B?

A Yes sir."

Now on cross-examination I asked Sergeant Farr:

"Q Now do you recall having some conversation with him?

A- No sir, I don't recall no conversation.

Q Did Corporal Haskell have a conversation with him?

A I don't know, sir."

Now here is the testimony of Corporal Haskell on direct examination, pertaining to Montgomery.

"Q Did you have any conversation with him?

A Yes sir, he was the man I told that we were American soldiers.

Q Did he give you any reply?

A Yes sir, he said "I don't want you."

Q Did he tell you who he did want?

A No sir."

Now on cross-examination:

Q Now, Corporal, the man that you identified as Montgomery you saw standing in doorway B?

A That is correct, sir.

Q And you had some conversation with him at that time?

A Yes sir.

Q Did you have any conversation with any other of the colored soldiers that were there that evening?

A No sir.

Q Montgomery was the only man that you had any conversation with?

A Yes sir.

Q Was Sergeant Farr present at the time you had that conversation?

A Yes sir.

Q Did he participate in the conversation?

A Yes sir.

Q To your knowledge did Sergeant Farr have any conversations with any of the other colored soldiers that evening?

A Not to my knowledge.

Q And you feel quite positive the man you talked to at that time in doorway B was Montgomery?

A Absolutely."

Now here is the testimony of Sergeant Todde on cross-examination.

"Q Handing you Prosecution's Exhibit 17, Sergeant Todde, I will ask you to indicate on the map where it was that you originally saw the man indicated in the photograph? (Indicating)

A I saw this boy here (Indicating), for the first time."

The Court will have to look at the Exhibit list to tell what that photograph is. It is the photograph of Montgomery being referred to.

"Q All right. Let's mark that T-1. Did you ever see the man indicated in Prosecution's Exhibit 17 again at a later time?

A Yes sir.

Q Where?

A First he went this way (Indicating), and then he came back.

Q Wait a minute. First he went from the point T-1 towards the door E."

And the Court will remember Sergeant Toddo said he saw Montgomery out here and he knew Montgomery and had him walking between T-1 and T-2, and he saw him out of this window to room Z.

"Q And then he came back towards the point T-1 again?

A And then he walked back and forth in front of the window a couple times.

Q In front of the window to room Z?

A And then he proceeded to a point near door E.

Q We will mark that T-2 on Prosecution's Exhibit 3.

A I saw the man you mention from here (Indicating); he remained still here (Indicating).

Q You saw the man who left from T-1 remain still at the point marked T-2. Now where were you at the time you saw the man at the point marked T-2?

A I was always inside this window, window of room Z.

Q All right; let's mark that T-3. Now after you saw the man shown in Prosecution's Exhibit 17 at the points marked T-1 and T-2, did you ever see him again or at any other time that night?

A I saw that he returned from here (Indicating).

Q Don't say "here". Returned from T-2.

A To here (Indicating).

Q To the point T-1.

A Then he went this way (Indicating), and I never saw him again.

Q He went from T-1 back past door E and he never saw him again.

Law Member: That is Montgomery."

And then a little bit more:

"Q Now during the course of the evening of August 14th did you have occasion to see Corporal Haskell or Sergeant Farr or both of them talking with anybody in doorway B, as shown on Prosecution's Exhibit 3?

A Yes sir.

Q And describe the man that you saw either Corporal Haskell, Sergeant Farr, or both of them, talking to in doorway B?

A He was a mulatto color; about my stature, thin as I am. He had a khaki shirt; I remember particularly, and it

remained impressed with me, since he had a piece of cotton in his ear.

Q That man was a colored American soldier, was he?

A Yes sir.

Q Now indicate the place in doorway B or in the vicinity of doorway B that you saw this mulatto?

A I saw this mulatto in the center of door B, a little towards the inside of room X.

Q Let's mark that T-4. Who was talking with this mulatto?

A Sergeant Farr was speaking with the mulatto.

Q Was Corporal Haskell also speaking to him?

A Corporal Haskell also said some words to this mulatto.

Q All right. Now mark where Sergeant Farr was standing at the time he was talking with the mulatto?

A Sergeant Farr was at this point here, marked B.

Q Let's mark that T-5."

And T-5, if the Court please, appears right here on Prosecution's Exhibit 3; right in doorway B.

"Q Now where was Corporal Haskell standing?

A The other side of the door; where it swings out.

Q Let's mark that T-6."

And there is the T-6, if the Court please (Indicating).

"Q Where were you standing?

A The first time I was here (Indicating), and then I passed over to this side.

Q Well let's mark the first time T-7."

If the Court please, all right around in a nice little close group, where there is no trouble observing; a bright light and a brightly illuminated room.

"Q Well Haskell came towards the letter B, as shown on Prosecution's Exhibit 3.

A And the mulatto walked over here (Indicating).

Q And the mulatto walked over towards door C, or in the direction of door C.

A Yes, but he always remained nearby; close by.

Q Well was that man Montgomery as shown in Prosecution's Exhibit 17?

A No sir."

Now I believe that describes the situation there and shows what occurred.

Now I notice I have been going for 45 minutes if the Court please. I think this is a good place for a break.

President: Court will take a five-minute recess. We will remain seated.

Court was recessed for five minutes and proceedings resumed as follows.

President: Court will come to order.

Defense: Now the point of all of this, of course, is, if Sergeant Farr was mistaken about this one occurrence which took place in that brilliantly lighted room, isn't it reasonable to assume that he could be honestly mistaken as to other details.

And another thing which makes me feel quite certain that Farr is mistaken as to a number of things that occurred, is his description of the negro soldiers who were in the orderly room that night. You recall he described them with their nostrils dilated? Dilated means enlarged; it can't mean anything else.

I ask this Court to try and dilate their own nostrils and enlarge them. It can't be done. I know Sergeant Farr is honest about what he says. But the truth is, gentlemen, he was badly frightened that night and had a good right to be frightened and in fright things not only appear distorted but the memory is impaired and it is not reliable.

I think the truth is, and I don't think there is any question about it, that Sergeant Farr that night was in a state of shock. Another fact which causes me to have some doubt on the reliability of both the memory of Sergeant Farr and Corporal Haskell is their estimate of the length of the encounter. Now you recall both of them placed the time as from from 30 to 35 minutes before the MP's arrived from the time that they were called. Both say that the call for the MP's was made at 11:25 and that 30 to 35 minutes later the MP's arrived.

They were, of course, excited, and that period of time, whatever it was, probably seemed like ages - an eternity. But what is the real fact on the length of that encounter?

Sergeant Callahan, the MP Sergeant, said that call came in at 11:25. They agree on that. And he dispatched Sergeant Jones. Sergeant Jones said he was down there in about eight minutes, but not to exceed ten minutes.

Now we don't have to rely on Sergeant Callahan and Sergeant Jones as to the length of that encounter. I am satisfied that the truth for that is substantiated by the testimony of the man from the hospital receiving office when he said it was 11:15 when Willie Montgomery was admitted to the hospital. That is about right. That is about the time it happened; six or seven minutes later they received a call for an ambulance and that is about right. That is when they called for Snow. And at 11:30

Snow was admitted and then five minutes later, after Snow was admitted, they received a call for six or seven ambulances and dispatched all they had; I think he said they sent four.

And Snow was admitted about ten or fifteen minutes later, I think about 11:35. That checks very closely with the MP's and the testimony of the hospital.

And of course the Court will remember the ambulances were not called for until the time the MP's arrived, so from the time they called the MP's that encounter only actually lasted a period of about ten minutes.

Now I want to say a few more words about Todde. The Court noticed that Sergeant Farr, Sergeant Perata and Corporal Haskell who testified here, they were bright, intelligent and educated young men. They are way above the average in intelligence. I don't think there is any question about that. Yet between the three of them they only attempt to identify four men. Sergeant Perata didn't identify any of those and besides Todde, the Prosecution called 17 Italian witnesses who collectively only attempted to identify four men. And other than Todde, not a single Italian attempted to identify more than one man and the Court will remember that several of these Italians had had a number of years' experience in Africa dealing with colored soldiers or colored individuals.

I want the Court also to remember that there wasn't a single MP, who are trained and whose duty it is to look for that sort of situation - they couldn't identify a single individual. Nevertheless, the Italian Todde claims to have recognized 12 to 14 men - I have forgotten just the exact number. But I wonder just how accurate his testimony is and just how much reliance can be placed upon it. Let's go back to that orderly room again for the moment.

Here is Montgomery there, standing there for some time by door B, and I don't think there is the slightest doubt but what that was Montgomery. And he is not exactly a typical negro because he is light in color and he is easy to recognize. And we have got an unusual situation with respect to Montgomery in there that evening with all the running around and all that took place in there, whereas Montgomery was standing comparatively still. He remained there fixed in the vision of Sergeant Todde in a brilliantly lighted room. And there is something else that is unusual there, because he was having a conversation with both Sergeant Farr and Corporal Haskell.

Farr said it was Montgomery and Haskell said it was Montgomery. Montgomery said it was he. And what does Todde say? "No," it wasn't Montgomery. That was the best test that I can think of to test the reliability of his testimony. I think there is only one conclusion that can be drawn from it. That if he made mistakes as to that situation he undoubtedly made many more mistakes as to other situations.

And I can tell you about one more. He selected Leslie Stewart here in Court as the man he identified that night, but he did admit on cross-examination that he had never identified him before. That was the first time that he had ever identified Leslie Stewart. But I showed him a picture of Leslie, and that picture is in evidence, when I examined him down at Mt. Rainier and he said, "No," he had never seen that man before.

Now there are two things, gentlemen; two things that occurred on that evening, which we know Todde was wrong about. And I don't believe the man was intentionally falsifying; I am satisfied he was not. But the human recollection is a funny thing. The frailties of it I can't attempt to explain. I think he really, honestly believes what he said. But if he was mistaken twice, he could just as easily be mistaken many more times.

Now about Ferrante. He was the witness whose vision the Court will recall was obstructed by blood and who didn't have his glasses on at the time. There is something singular about his testimony. He is the man who was lying on the floor on his back in room Z.

Now when I first questioned Ferrante and I want the Court to remember this -- here is his initials (Indicating to Map); and I had him put an arrow in the direction his head was. He was laying on his back with his head in the direction of the arrow, this way, towards the door.

Now of course it would be very difficult for him to identify anyone in the door laying on his back in this direction. Counsel realized that and came to his rescue and on redirect examination he reversed himself and put his head around the other way. Maybe he was. I don't know. But when a witness gives two different versions of the same thing, how much credibility can we put in what he says? Do you want to send a man to the penitentiary on the testimony of a witness who testifies to one thing one moment and then just the opposite the next? Maybe there is a reason for it. I don't know. But it is in the record as to what he testified. If there is any doubt in the Court's mind about it I wish the Court would have the reporter read the testimony.

Then, there is Grosse and Pisciantano. Well, they only identified one man each. The man Grosse identified was 23 feet away - we paced it off in the courtroom. The man Pisciantano identified was 25 feet away and we also paced that off. Then Belliani, he claimed to have seen the man that he identified at room Y outside the orderly room altogether.

The Court saw that evening it went down there and visited the premises how difficult it is to identify particularly negroes outside of that orderly room. Particularly, when you are on the inside looking out. A black face. It was difficult enough down there that evening to recognize us; light in color.

How much credence can we give to that type of testimony,

particularly when it is uncorroborated.

Another point I want to emphasize is the great difficulty most of the Italians had in identifying what, if anything, the colored soldiers had in their hands. None of the witnesses, with a few minor exceptions could remember what kind of a club a man had, the size of it or its shape or color. And under ordinary circumstances, that is understandable.

But it seems to me that if I were down there that evening and if I were in fear of being struck by one of those sticks or clubs or whatever it was, that I wouldn't have my eyes focussed on the individual's face. I would be watching that club or stick. That would be the center of my focus. I would be far more interested in what was going to happen to that stick next, where it was going to land, than I would in any particular facial or physical characteristics of one of those negro soldiers.

That is the thing that they would be watching first of all if the Court please, is whatever weapon was in the hand. Why, it is only human nature that that should be the situation. Self preservation - it is human nature - if a blow is aimed at you to attempt to avoid it. And it would be far easier for me and I think for any member of the Court or for anyone else for that matter, to tell what the man had in his hand than it would to attempt to identify his physical characteristics.

Now of course I don't know whether Grosse, or Pisciantano or Bellini identified the right men or not. None of us will ever know. But I do know that the circumstances are such that their testimony should be considered with the greatest of caution.

Just as a further substantiating factor of the frailty of human recollection; it isn't of any great significance in this case; but I do want to call the attention of the Court to the Italian witness Urbano. Now he even had long sun tan pants on Olivetto when he jumped out of that window that night. I assume it was about this same time that he saw Olivetto as these other witnesses testified they saw him when he went out that window. It may have been two men; I don't know.

But I do know most of the witnesses had him in his underwear and his shorts; but Urbano had him fully dressed with pants on him. Now I am fully satisfied Urbano didn't attempt to falsify, but it is just one of the frailties of human recollection and one of the reasons why the Court must be careful.

Now counsel made the statement this morning that I would probably tell this Court that they should not convict a single one of these men on the uncorroborated testimony of a single witness. He is right. I do so tell the Court.

And why did counsel make that statement? Why did it occur to him? Because he knows that if he were in my place that would

be the thing; he put himself in my place in attempting to determine what I would tell this Court. And capable lawyer that he is, he knows that if he were defending this case that that would be the first thing he would insist on, that this Court not try to convict any man against whom there had been only one witness.

And I say, that because of the physical conditions which existed down there around that Italian area; the poor lighting; as well as the shortcomings of the human memory. It is just a precaution this Court should take against sending any man to jail or to a period of confinement.

Well, when I say that there should be corroborating evidence, I mean that there shall be substantial evidence. The testimony of at least several credible and trustworthy witnesses. Counsel made one statement this morning - I had to pinch myself for a moment to tell where we were. I couldn't tell, from what he said, whether we were over in Nazi Germany or here in the United States. He wants you to convict men upon the testimony of a single witness because he tells you that they may have been more involved in this affair than other men. Well if that is true and there is any such men, why doesn't counsel prove it?

Does he want this Court to reach up into the realm of fantasy and supply evidence through imagination? That isn't the American way. These men aren't required to prove their innocence. And it isn't fair for counsel to take the position that the Court should assume that these men whom he has failed to implicate in this case might be the most guilty man and therefore you should convict him.

That is his job. It is his job to supply the evidence and if he has not done it they should be acquitted.

Now there is one thing in this case that I dislike to mention. But in view of my duty to the accused I feel that I must bring it to light. Where is that record of identifications? Why hasn't it been retained or produced here? I demanded it and there hasn't been any satisfactory explanation given as to its whereabouts or what was done to it or with it.

As the Law Member will advise all the Members of the Court, in circumstances such as these, where a record as this has existed and is not accounted for or produced, these accused are entitled to the legal presumption that that record of identifications was unfavorable to the Prosecution and that is the only reasonable inference that you can draw from the circumstances and I suspect that that is the reason it was destroyed.

That is the very foundation of the investigation on the Government's case against these men - those original identifications that were made - the record of them. Why, you would think that that is the one thing they would hang on to and never let get out of their sight.

But when I asked for it I don't get it. No satisfactory

explanation has ever been given to me, and the only thing I can gather is that it must have been destroyed. And a valuable record of that kind - why, they knew there would be a prosecution of this case; they knew that the identifications of these men might be questioned. Why was it destroyed? Well, it must have been of some help to the Defense.

I want to speak now of some of the accused in this case. First, I want to speak about a group that on my advise did not take the witness stand.

Those are: Riley Buckner, Lee Dixon, Emanuel Ford, Sylvester Campbell, James Coverson, Ernest Graham, Freddie Umblance. And C. W. Spencer.

In view of the fact they did not take the witness stand the Court hasn't had the opportunity of looking at them, or of observing them with any degree of care, and with the Court's permission I would like to ask the Court's permission for those particular men to come forward here so that the Court can see them. May I have the Court's permission?

Law Member: Subject to objection by any member of the Court, Defense counsel's suggestion will be denied.

Major MacLennan: Objection.

President: Court will be closed. Clear the room, please.

Court enters closed session and upon the conclusion thereof proceedings resume as follows:

President: Court will come to order. The Court, during the closed session, took a brief recess and it is now open.

Trial Judge Advocate: The record may show that each of the accused are present, other than the accused Roy Montgomery, that all members of the Court are present, and that the personnel of the Defense, as well as the personnel of the Prosecution are also present.

President: The Court, by a majority vote, sustains the ruling of the Law Member. At the time each of the accused was warned of his rights as an accused and as a witness in the case, each of the accused stepped forward to the bench and was fully observed at that time by all members of the Court. The request that only a few of the accused again present themselves to the Court is wholly unnecessary and improper and might be unfair to the others. The ruling of the Law Member therefore is the ruling and the decision of the Court.

Defense: Now what is the testimony here if the Court please, with reference to Riley Buckner? Riley Buckner is an accused who served overseas and was brought back for this trial. The only testimony is that at some point outside the orderly room and near the tent, I believe between the tent and this other tent marked 2 (Indicating); between tent 1 and

tent 2, or nearer tent 1, I can't recall the exact testimony; but Riley Buckner picked up Alvin Clarke and carried him back up to the colored area.

Clarke testified also that Riley Buckner carried him up back to barracks 719, or in that vicinity. Clarke, in his own testimony, ran down there and never got inside the orderly room; he never got a chance to participate at all in the riot. He was knocked out.

Riley Buckner, of course, couldn't have been in that orderly room or he wouldn't have seen Clarke at the time he was laying on the ground. There isn't one single iota of evidence in this case that Riley Buckner participated in this riot to any extent whatsoever. All that appears in the Prosecution's case is, he is nothing more than a bystander that happened to be present.

He saw Clarke and picked him up and carried him out.

Now as to Lee Dixon. The only testimony in this case as to Lee Dixon was that of Sergeant Todde. And I submit, if the Court please, the evidence does not disclose beyond a reasonable doubt that Lee Dixon was an active participant in the affair. Even on Todde's testimony the man was not armed. He didn't do anything. And if Todde was wrong as to two other men, are you prepared to say that Todde was right or Lee Dixon.

Emanuel Ford. The only testimony against Emanuel Ford is this: - and here is a man sitting over here wearing four battle stars and a South Pacific ribbon, a man who was over there for three years, through every major engagement in the South Pacific, Port Darwin, the Solomon Islands and New Guinea -- and the only testimony is that he was seen in the area.

Sims did say he didn't see him doing anything. The time that he saw him is not fixed. And I think in all fairness - where he said he saw him outside the orderly room, and the time is not fixed and he did not see him doing anything, he was just out there in that area where there is difficulty in identifying anyone -- is the Court prepared to say from the testimony of only that one witness that Emanuel Ford was a participant in the riot that night?

There is not a single iota of evidence that Emanuel Ford participated in anything that went on, during the time he was there, and the best - at very best - he could only have been a bystander, who happened to be witnessing what took place.

Then, there is Sylvester Campbell, another man brought back from overseas. Absolutely, the only testimony against Sylvester Campbell was that of Thomas Battle. He don't place where he saw him. He just says in the area; he had nothing in his hands and wasn't doing anything. Do you remember that Sergeant Cabral testified as to Campbell's good reputation? Now on top of that the witness Redley, a man who was working up in the mess

that night with Sergeant Graham testified that when he came back from the mess hall after 11 o'clock and went to the barracks, Sylvester Campbell was in there and he and Sylvester Campbell looked out of the window at what was going on and Sylvester Campbell never left his barracks that evening.

I submit, if the Court please, there isn't any substantial evidence with respect to Sylvester Campbell, let alone any evidence sufficient to convince the Court beyond a reasonable doubt that Sylvester Campbell was a rioter that evening.

James Coverson, another man that was brought back from overseas. And absolutely the only thing against James Coverson that has been brought before this Court was the testimony of Roy Daymond. That at some later time after this riot took place he heard Coverson say "I beat up an Italian unmercifully."

Was counsel fair this morning in the example he put to the Court? The Major Crocker incident he talked about? If Major Crocker had been beaten and then somebody, the next day said "I beat up Major Crocker."

Well, of course, the incident he put is only one individual that is involved and only one time involved, because Major Crocker had only been beaten once and in a statement of that kind probably it would be tied in with Major Crocker, but the incident with Coverson does not tie in with the particular occasion.

There isn't any evidence in this record he was in that area or anywhere near it. Like I told the Court at the close of the Prosecution case, James Coverson may have stayed away from there, and he may have intentionally stayed away and been boasting about it the next day to the men, wanting the men to think he did go down there, or for all we know, he may have been talking about some previous occasion. I don't know.

But certainly that is not sufficient to convince beyond any question of a reasonable doubt that he was involved in that fracas.

Now Ernest Graham, the only man that attempts to implicate Ernest Graham in this case is the same Thomas Battle. On top of that, Sergeant Cabral said that Ernest Graham had a big job to do that night, getting the mess hall ready for inspection the next morning. It was after 11 o'clock when Graham left that mess hall, well after.

Then, he went down to the latrine before going to his barracks. Sergeant Cabral saw him outside the latrine. And the riot was well underway at that time. The Court will remember that Sergeant Cabral was on his way up to the orderly room to call the MP's, and he went in there and put in the call and then he went outside and stood on the corner a couple of minutes and came on to the barracks.

Then, we have the testimony of Herman Redley again, and I

submit he was a good witness; he was not perjuring himself and counsel did not impeach him on any cross-examination. Herman's testimony was, he said he left that mess hall before Graham. He told him to lock up and he went down to his barracks and he was there he said about five or ten minutes, when in comes Sergeant Graham.

And as a further indication that the riot was almost over by the time that Sergeant Graham even left the mess hall - well, first of all, Sergeant Cabral going up there and calling the MP's, arriving shortly thereafter and going down the hill. Then we have got a few minutes in or about that time they hear the traffic going down the hill and they watch it out of the window.

But I learned something new about the law this morning. Counsel says he did not have a single witness to come in and account for his movements that night. Well, wouldn't it be a fine state of affairs if, to keep ourselves from being implicated in some crime, we had to carry somebody around with us all the time to account for our movements! Why of course not.

Counsel seeks to cast the burden back upon the Defendants requiring them to prove themselves innocent. And why does he want to do that? Because he knows that in these instances he has totally and wholly failed to produce the required degree of proof to sustain a conviction.

Then we have got Freddie Umblance, another boy brought back from overseas and the only witness that implicates Freddie Umblance is Thomas Battle. A man who isn't worthy of belief. There isn't anything else. Just Thomas Battle.

Then I want to also mention the accused C. W. Spencer. There is only one witness that implicates him in this case and that is Sims. Sims didn't identify him in the orderly room he identified him in the area outside. Out there where it is dark. Out there it would be difficult to recognize anyone specifically.

You will recall on cross-examination of Sims with respect to this, that he couldn't recall where the man was standing or even come close to where he saw him; and he couldn't recall when he saw him; with respect to when the affair was going on whether it was early or late, or whether it was any particular time. And he couldn't recall how he was dressed.

I think this man also should be acquitted. On such testimony the Court cannot say the proof is sufficient to overcome the presumption of innocence and convict him, on the basis the proof is established beyond a reasonable doubt.

Gentlemen, where there is only one witness, under physical conditions like this, there is just too much room for error. Too much room for the frailties of human recollection and I feel satisfied that if this Court convicts any of these men on the testimony of a single uncorroborated witness' testimony

under the physical circumstances such as existed here, there would be a terrible miscarriage of justice.

Now with respect to these men that were down there, identified down in the area, but not doing anything; I have mentioned before the Bamber Bridge case. And when you go into deliberate I want you to take that case in with you and read carefully what it says and with particular respect to the men I have just mentioned.

I want you to read what the accused Wise was doing in that case and what the Court had to say about it. Of course, counsel in referring to it at the close of the Prosecution's case referred to it as a man who just happened to be on a public street.

But I want you to see just how this man Wise happened - just happened - to be in an English pub when the trouble started. How he just happened to be ordered out by an MP and how he just happened to become involved when the trouble first happened and then I want you to read when the trouble started, when he went out in front where the big riot was, where the big crowd was, and how he just happened to be standing with this big crowd when the MP's found it necessary to shoot two men and they feel, notwithstanding that, the Board of Review in that case, felt this accused Wise was not a participator. He was nothing more than a bystander. He gave no encouragement, but anyway they reversed his conviction.

Counsel takes the position that any of these men that were within the Italian area that night should be convicted; that they hadn't any right to be there. And there isn't any question that if such a theory was upheld it would pave the way for injustice after injustice.

Let us just suppose on this night, on this particular night of August the 14th, that some of the men had burned down some of those buildings; would counsel want to convict every man that went down to witness the fire?

They wouldn't have any reason to be there, but they would just be curious as anybody would. It is the most natural thing in the world, when there is a fire or a fight or something unusual taking place, to stop, to go down and see what is going on. If I had been around that night and heard a big fight going on I would have probably have been over there and he would want to convict me because I had been over there watching it.

I haven't any doubt if any member of this Court happened to know about something unusual going on that night, or heard about it, he would probably want to go around and take a look. Why how many times have we gone out to follow the fire engine, you yourself have done it; I know I have done it and I think every member of the Court has gone to see what was going on.

Well, I haven't any doubt, at least, that every member of

the Court at some time or another in his life has walked along the street and seen a fight or something unusual take place on the opposite side of the street and walked over and stopped to watch it:

It is the only natural reaction. It is only a human impulse to satisfy your curiosity. And out of the one hundred and fifty negro soldiers that were undoubtedly around that Italian area that night - or more - there was undoubtedly a large percentage that went down to see just what was going on. And they had no thoughts of being involved in it. You can't penalize them for that, for following their human instincts, and that is just the danger of attempting to convict any one of these men just because he happened to be seen down there at some unfixed time.

This Court has got to live with itself a long time after this case is over with and there is too much chance for error under this type of a situation. There is too much chance that you might convict an innocent man.

Now I want to say a few words about some of the other accused here. Let's take them as they come here, let us take the accused Alston first. Another soldier that was brought back from overseas and a man that held a substantial position in civilian life, a chemist assistant and a checker for the International Harvester Company.

He took the witness stand and told a straight-forward story of his movements. He wasn't impeached by counsel. Now what is against him here?

Clarke. He claims he saw him in the Italian area. Now on direct examination he didn't say where he saw him. On cross-examination he couldn't remember where he saw him. On redirect examination he said it was around the mess hall. And on re-cross examination he didn't know whether Alston was in the Italian area or not.

I mean, that isn't credible testimony, if the Court please. Not for a witness to testify that way. First to blow hot and then blow cold and then blow hot and then blow cold. It isn't the type of testimony upon which you should convict men in this case.

Taking the testimony as a whole and the manner in which Clarke was discredited, I just don't think it is sufficient to convince beyond a reasonable doubt. And I want to say a brief word too about the accused Barber.

Here is a boy that has served overseas; he is married; and in civilian life he held a substantial position. Barbering. He was a waiter for the Pennsylvania Railway Company, and you have all travelled on that railroad I am sure and you know that their waiters are usually a pretty high class group of men. This man was frank and honest when he got up here.

He didn't make any bones about it; he told the truth; he told you just exactly what he did down there and I ask the Court, in all fairness - don't penalize him because of his honesty.

And there is Willie Basden. Now here is a man that's been identified by only one witness. And that is Corporal Haskell. And Haskell, if you remember placed Basden in a group - I think it was at door B - but not in the immediate vicinity of the front of the group. He was behind.

And he has not been identified by a single other witness. All of his testimony was that he was in his barracks.

Now I will concede that Corporal Haskell was attempting to tell the truth. But we do know one or two things that he was mistaken on that evening. I think I have shown the Court that; so does the Court want to convict Willie Basden in view of that possibility for error and mistake, on the sole and uncorroborated testimony of only one man? There is just too much room for mistake, if the Court please.

Now as to Johnny Ceaser. The only particularly real damaging testimony against Ceaser is that of Battle. Who I think was quite clearly beyond belief. He was down there. That is, if you accept the testimony of the other witnesses. But there is no testimony that he was doing anything. That he hurt anybody. Or that he damaged Government property.

On the contrary, if you will recall Nathaniel Spencer's testimony, Johnny Ceaser was helping an American soldier. Now I submit, if the Court please, Ceaser deserves considerable consideration there and he deserves the Court's leniency.

Now we have Russel Ellis. I think counsel made the statement this morning that Willie Ellis identified him in the orderly room. I don't think counsel intended to make that statement and I think the record bears me out. He saw him outside the orderly room.

Here is a married man, with a family; a man that has received the Good Conduct Medal. A man that was sent overseas since this incident occurred and a man that's been promoted since this incident occurred. And after all, this case against Russel Ellis boils down to Willie Ellis versus Russel Ellis.

A man with a good record, a man that holds a college degree; a man that has gone overseas; a man that has received the Good Conduct Medal and a man that has been recommended for his work overseas; and has been promoted for that work. His word, his testimony, against that of a man whose uppermost thought was to save his own skin, whose testimony under the circumstances such as that - whose word are you going to accept?

Well, then Jefferson Green. Only two witnesses testified against this man. Battle, the prevaricator, and Todde. Now we disregard Battle's testimony, which I don't think is worthy of

belief and we have got only Todde's testimony.

Now you will remember Jefferson Green was the first accused to take the witness stand. He told a straight-forward story about his movements that evening. The Court will look at it's notes and will recall he was not impeached or discredited by counsel and counsel tried hard - very hard.

Now we do know that Todde was wrong a couple of times that evening. Is the Court then prepared to say he might not have been wrong in this particular case? Is the Court prepared to say this man is guilty beyond all question of reasonable doubt?

Johnny Hamilton. Well, Hamilton was in the Italian area that night. He don't deny it. But there isn't a scintilla of evidence that he injured anyone. And the Court will recall that he rendered valuable assistance to Sergeant Farr. That circumstance in and of itself is sufficient to warrant the Court's utmost consideration and leniency.

Now I want to talk about Henry Jupiter. Counsel said a lot about this witness Corporal King. How fair he is, how honest he was. King did testify before this Court that after he went down to the Italian area he saw Henry Jupiter, but does the Court remember that I asked him about Henry Jupiter when I talked to him out at Camp Jordan. I brought the stenographer in who testified about his testimony. I asked him - Corporal King - at that time, if he had seen Henry Jupiter down there that night and he had said no.

Now how honest is Corporal King? And counsel went on to make a lot of hullabaloo about this crap game. Trying to convince the Court that Henry Jupiter claims he was shooting crap through all this incident when the riot took place and I will ask the Court to go back and read its notes on Henry Jupiter's testimony; he didn't say anything of the night of the riot as to the time but that it was after the riot was pretty well over and he went back up to his barracks that he started shooting craps again for a few minutes.

All the testimony there is here against Henry Jupiter is Alvin Clarke and Corporal King. Now let's look at Clarke's testimony again.

I will ask the Court to look back through their notes and make a note of it here, and you will have it when you get in to your deliberation. Clarke on direct examination said he saw Henry Jupiter. He didn't fix the time; he didn't fix the place. On cross-examination he couldn't remember where he saw Henry Jupiter. On redirect examination he saw him around the mess hall. Then on recross examination he didn't know whether he was in the Italian area or not. Maybe he was. Maybe he wasn't. I don't know.

But I am not prepared to give very much credence to anything that Alvin Clarke testifies to unless it is strongly

corroborated by credible witnesses and King lied to me once, or was mistaken or something, and under those circumstances I don't consider Corporal King a credible witness.

And now as far as the accused Loary Moore is concerned, with all the testimony that is against him Loary Moore took the witness stand and he told his story. He wasn't down there in the Italian area that night. He was in his barracks. Will the Court be prepared to say beyond all question of reasonable doubt that Moore is guilty in this case?

And then the accused Sanders. Now at the very best, Sanders could not have been involved down there that evening for more than just a few minutes. Even if the Court is completely satisfied that he was down there. And I'll tell you why.

He was the man that brought Sammy Snow up to the barracks. And there isn't testimony he was around there thereafter. Now Sammy Snow was hurt early in the proceeding. And at the very worst against Sanders, he couldn't have been involved or he couldn't have been down there for more than just a few minutes.

And as to Freddie Simmons, the Court has heard the testimony against him. Freddie took the witness stand. He is a married man with a family and a boy that has seen overseas service. I thought he made a good witness.

He said he went to the show; came back from the show and went to his barracks and went to bed. He was awakened by the noise but he didn't get up; went back to sleep. He couldn't have been both places, if the Court please. The Court has got to accept one story or another. I submit that he made a splendid witness here from the witness stand.

And I want to say a word about Sammy Snow. There isn't any question but what under the confession and evidence Sammy Snow had all the intent in the world to go down there that evening. But the man has never been convicted yet and the conviction, if such, has never been sustained under our system of law for what he intended to do or what he thought, unless he executed and carried out that intention.

I may have all the intention in the world of taking a crack at somebody or killing somebody, but until such time as I put into execution the thoughts I have in my mind I cannot be convicted, I have committed no crime.

Sammy Snow never got the opportunity to put into effect what he had in mind, to put it into execution. Somebody let him have it. And I submit, no matter how much the Court finds that Sammy Snow intended to do something that night, he never got the opportunity to carry out that intention.

Now you have heard the testimony against Alvin Shelton - or Elva Shelton, rather. Roy Daymond and the Italian witness Grosse.

Daymond, I don't think, is worthy of belief, and I have told the Court why. The Italian paced off the distance in this courtroom that he was away from the man he thought was Elva Shelton. 25 feet away.

I think there is serious doubt whether, under those circumstances, he could accurately identify anyone. And as opposed to that, Elva Shelton took the witness stand here and told his story and was not impeached or discredited by counsel.

Under that positive testimony, is the Court prepared to say beyond all question of a reasonable doubt that Elva Shelton was down there participating in that fight that night?

Then we have Nathaniel Spencer. And I think Spencer should receive some special consideration from this Court. He took this witness stand and was very frank, very candid, very honest, about what his actions were that night. He wasn't lying. He told everything that happened. He told it very frankly and he told it very honestly.

Counsel did not impeach him in the slightest degree. He said that he made a swipe at a man down there that he thought was an Italian and his swipe caught Johnny Ceaser. I think he is to be believed. And he was not at the place that Willie Ellis said he saw him. That is an important circumstance.

In view of Nathaniel Spencer's candor, I think the Court should show him the utmost of leniency.

Then there is Leslie Stewart. The testimony against Leslie Stewart, of course, was that of Farr and Todde. Todde you will remember never identified Leslie Stewart till the day he came into this Court. Three months after the occurrence took place. And it was Todde, if the Court please you will remember that told me when I examined him over at Mt. Rainier that he had never seen Stewart before.

That leaves us then with Sergeant Farr. I will concede that Sergeant Farr was certainly probably honest in his belief that he saw Stewart, but we know his recollection was not correct as to some things that occurred that night. Are you prepared to say he was wrong on the others and right on this one? I ask this Court to consider that matter very seriously.

Then there is Arthur Stone. Arthur Stone, a boy that was brought back from overseas' service. And you will remember he is the chap who was quite a comedian here in Court during the time he was testifying and the boy who had done some amateur boxing around the Post here. He is probably better known than any other man in the Company and because he is in the lime light more he is undoubtedly better known. He represented the Company. Had done some amateur boxing around the Post. The Company was undoubtedly down there and saw him every time he fought. I am sure if somebody saw him - and I mentioned that for this reason. His name, if somebody was asked who was there

that night - and that person was trying to save themselves, and had that thought uppermost in mind, trying to give some names, any names - Stone's would be one of the first they would think of. You heard him here in Court. He testified to what he did that evening.

The Court must weight his testimony against that of the other witnesses, but don't convict him just because he forgot whether he had his pants on or not, as Counsel wants you to do. I was impressed with Stone. I think he is a good fellow. I think he is a funny boy. I don't think there is anything vicious about him at all.

Well, Booker Thornton. Booker Thornton is a married man with a family who served overseas and was promoted overseas. And after this incident took place. And he is the boy, you will remember, that held a responsible job in civilian life with the Firestone Tire and Rubber Company.

He admitted on the witness stand that he went as far down as building number 700. But he never went further. The only other testimony against him is that of Corporal King. And we know Corporal King didn't tell the truth, at least on one instance here, and why should we assume Corporal King is telling the truth this time.

It simply narrows down to this. The witness Sims said he saw him in the area of the mess hall and Thornton admitted he was down in the vicinity of the mess hall building 700. So it narrows down to the point of whether you are going to accept Thornton's word or that of King. And I submit since Corporal King has been discredited, the evidence is not supported beyond a reasonable doubt that Thornton was a participant in the rioting that evening.

Now we have Booker Townsell. Townsell took the witness stand and I thought he told a straight-forward story about his movements that evening. He was in bed and you remember we brought Bratton back here and you never heard a more honest, find appearing witness on the witness stand in your life than Bratton. And he testified that Townsell was in bed that evening; that he saw him in bed; and we have got some stipulated testimony of John Terrell that he was in bed from 11 o'clock on, all through this time that the fight was going on, till the OD came around. Maybe some part of that time Terrell was sleeping, but the period is fully accounted for, if the Court please, with the testimony of Wilson, Terrell and Townsell.

If you will consider all their testimony you will find that that period from before 11 o'clock clear all the way through, up until the time that the OD came around, is fully accounted for. When you consider that, I don't think there is sufficient to convict beyond a reasonable doubt, that he was guilty.

Well, there is Arthur Williams. Arthur Williams is the boy who was the barber for the 651st Port Company. Arthur Williams is the boy who went down to the PX that night. He

bought about ten dollars worth of merchandise to sell on the train, if you will remember. And he came back to his barracks and he made ten of fifteen dollars cutting hair. Had to be a pretty busy boy that night to cut that much hair at thirty-five cents a head; it takes a lot of head of hair to make fifteen dollars at that price.

I was impressed with Williams' testimony. He was a good witness. A nice boy. Todde said he saw him out there in the corridor. I think Todde must have been mistaken. He had been mistaken about other incidents. And Greshem said he saw Williams down there in that vicinity that night after the MP's arrived. He didn't say what time. And he wasn't even a member of the same Company. He didn't know Williams well. They both said that.

And the place where he said he saw him was dark, where identifications at best were difficult. Well, I think there is sufficient there to create a reasonable doubt as to whether Arthur Williams was implicated in that riot.

President: We will take a five-minute break at this point; remaining seated.

Court was recessed for five minutes and proceedings resumed as follows:

President: Court will come to order. You may proceed, Major.

Defense: Well the next man I want to mention, if the Court please, is Herman Johnson. The Court saw this likeable negro soldier when he testified here from the witness stand. A man that in civilian life was a foreman for the Packard Motor Car Company. A good, substantial citizen; he was a good soldier. He was a man who was picked out of that Company and sent to a special school for training as a crane operator.

The only real evidence they have got against him is the trench tool, which he very frankly explained he drew, put it down on his bed, and the next time he looked for it it was missing.

Now he testified he was only out of his barracks twice and at very short periods of time. He was the pressor for the Company; he was in there pressing clothes that evening. He took a look out of the door once and Sergeant Cabral was out in front and told the men to stay in and he went back and continued pressing clothes and at a later time he took a pail and went up to the latrine, just a short distance from the barracks, and got a pail of water for his pressing iron and then came back down to his barracks and went on with his work.

Now his testimony is corroborated by Jacob Person. The testimony we stipulated to here and too by Freeman Pierce, the barber who was working at the same table. Of course, we

couldn't account for Johnson's every movement, because he did go out, under his own testimony, but he was only out for a very short period of time. Counsel makes a considerable to do and mentions with great pride the witness Murray. Murray, he is the man, if the Court please, you will remember that I examined down here at Camp Jordan, and I read from the examination that I conducted at that time, and he quibbled a lot but finally admitted he said that, and what did he say to me?

The Court will remember that man that was working up there at the mess hall under Sergeant Graham and said he left the mess hall before Sergeant Graham and came back to the barracks and stayed in the barracks all that evening and never went out; that's the testimony about Johnson.

Now why does he lie to me if he is telling the truth now? I don't know. I haven't the slightest idea. But it shows the man hasn't any hesitancy to tell a falsehood and we know when he told an untruth once why should we give him any particular credence as to his testimony at any other time?

I submit, if the Court please, that there is not sufficient evidence to convince this Court beyond a reasonable doubt that Herman Johnson was implicated in the affair that evening.

Now with respect to Roy Montgomery. He is not here, but I want to say a couple of words. I appreciate counsel cannot answer me regarding Montgomery so I am not going to say a great deal.

Roy Montgomery has been very frank and honest about everything he did that evening. Now I just ask the Court this. In view of the fact that he was frank and honest about his movements and what he did, don't penalize him for telling the truth, for being honest.

We come now to John S. Brown. The only member of the 578th Port Company that's been brought into Court here. Counsel tells you he thinks Brown is an easy man to identify. He is? Well, I don't think he is; I think he is a very ordinary and typical looking negro. I have already described the Italian witness' testimony who identified Brown; the Court has its notes on that. He was the Italian who was first lying on his back with his head towards the door and on his other examination was with his feet to the door. But irrespective of how he was lying he claims when he identified Brown he had been injured and the blood had been flowing freely down his face and he said he couldn't see at all out of right eye and more than that, the man ordinarily wears glasses and he did not have his glasses on that evening.

Now we have Lallis, one of the men whose testimony we stipulated to. Lallis testified that Brown was in bed during the riot and he couldn't awaken him. You will recall the testimony you have heard here about the First Sergeant of the 578th Port Company, who stood out in front of the barracks with a baseball

bat in his hands and was swinging it and daring the men to come out. Well, Brown was one of those men. He was a member of the 578th Port Company, and I very seriously doubt that Brown ever came out of his barracks that evening.

In view of Lallis' testimony I certainly think there is sufficient to create a very serious doubt in the Court's mind as to whether Brown participated that evening.

Now I want to say a few words about Luther Larkin. The Court heard his testimony. The Court heard the testimony about him; introduced against him. It was dark down there in front of barracks 719 that evening. I think it would be difficult for anyone to say with any degree of accuracy that any particular individual did any particular thing.

Here was Larkin and Gresham standing along side of each other. Larkin says Gresham blew that whistle. Isn't it reasonable to suppose when he was standing there that somebody could have been mistaken? It might really have been Gresham that blew that whistle as Larkin told you he did. There is nothing criminal about Luther Larkin; he is a good soldier. He has been given the Good Conduct Medal. He has served overseas.

Well, I think this Court, in view of his previous record, should exercise and extend to him the utmost consideration and the utmost leniency.

One thing more I just want to point out there as far as Larkin is concerned. There isn't a scintilla of evidence in this whole record that Luther Larkin was ever armed that night. Or that he ever hurt anyone or that he ever damaged any Government property.

And the same thing is true with respect to William G. Jones. A lot of people have testified against him; that is true. But there isn't any testimony that Jones injured anyone that evening. There isn't any testimony that he did damage to any Government property and the Court cannot assume those things.

This Court cannot assume that any particular individual did damage personally or injured anyone. The Prosecution must produce evidence of those acts and they have not done so.

Now with respect to Arthur Hurks. As I listened to this boy here on the witness stand - and I want to say I was very much impressed - with his personality and with his sterling qualities. Counsel, with all his skill grilled him for three long hours, better than three hours, and he couldn't shake his story. Not in a single detail.

And I submit, that if a man is lying, if the Court please; he could not possibly have stood up under the type of grilling, the type of skillful cross-examination that Colonel Jaworski used, in examining Arthur Hurks, without contradicting himself in a great many particulars.

Arthur Hurks assisted that night in keeping the crowd back. While there is some discrepancy in his story and that of Farr's remember please, remember when you deliberate that Farr was mistaken about Montgomery. Farr was mistaken about the length of time this or the time this accident happened. Farr was mistaken about the dilation of nostrils.

And I want to say again. Farr was without doubt a very badly frightened and upset boy; in a state of shock, that evening. He might not have realized it, but under the circumstances he couldn't have been otherwise.

I want the Court to think a long time before they discredit the story that Arthur Hurks told here. Further, I want you to remember this; he told exactly the same story with respect to Hamilton and himself to Colonel Jaworski the day after he returned from the Southwest Pacific and please remember that. He was not with Hamilton after he got back either. He had not seen Hamilton for several months, or whatever the period was they were gone. They left in the latter part of August I believe. And they did not have the opportunity to concoct a story that would hold water. There must be some truth in it.

I want to read you what Arthur Hurks said, what he told Colonel Jaworski the day he got back from the Southwest Pacific on the 26th of October. And I did not have access to this statement; remember that, I didn't have access to it at all. Counsel has had it all to himself. Here is what he said:

"I looked down the street and saw Hamilton coming up the street with a white American soldier. When Hamilton got up to my barracks I ran out in front of my barracks to see what was up and Hamilton told me to take the man on up the hill."

Now he told the same story the day after he turned from the Southwest Pacific as he told here in Court.

And now Hamilton tells the same story too:

"I took the fellow out of the door of the orderly room and I finally got up to the 578th mess hall where I saw Hurks. The white soldier didn't seem to be hurt bad and I walked part of the way with Hurks, who took the white soldier the rest of the way up the street towards the park. I left after I saw Hurks taking care of the soldier and went up to the barracks."

Now there is the story; there is the corroboration of his testimony.

Now I haven't any doubt at all but what Farr is absolutely honest and trying to be absolutely honest in everything he said. But we do know of several things that is not right on that evening. And just under the circumstances as they occurred it is just only reasonable that his recollection would not be too good.

I want to mention one last man here and that is Walter Jackson. He has only been identified by one man. That is all. And he was not identified inside the orderly room, where it was brightly illuminated. He was identified as being outside in the dark.

I think Walter Jackson, if the Court please, should be acquitted. I do not believe that we can say under those physical conditions that existed outside the orderly room that Walter Jackson was a participator in that riot that evening. I don't think that we can say that beyond any question of a reasonable doubt.

Now in all of the years that I have practiced law, I want to say that I have never known of a case that was prosecuted on more flimsy evidence, on more inadequate evidence, that charge 2 in this case. I am not going to review that evidence in detail; I think the Court remembers what it is. Except to say this.

Olivotto was seen and traced from barracks 709 to the corner of this tent (Indicating). Tent number one. He was never seen again by anyone thereafter until he was found dead the next morning. And the place where he was found is a long ways away from tent one.

Now counsel brought in one of these Italians that was hiding over there in the brush who heard voices and saw men down there with flashlights, but what does that testimony amount to now, after Sergeant Callahan testified that the MP's were down through there with flashlights, speaking in English, trying to get the men to come out. There is a complete and absolute hiatus.

And what happened to Olivotto, where he went, what he did from the time he was seen by tent one until he was found the next morning? There isn't the slightest bit of evidence that Olivotto was hanged by anyone. There isn't anything more than a suspicion.

Counsel says there isn't any evidence of the crime, if any was committed, it was independent and collateral. I don't see how he could make that statement. I think the evidence is overwhelming that this was an independent and collateral crime.

In the first place, it did not occur in the Italian area, but some distance away through rugged terrain. Why was he taken away clear down that long distance? If these colored soldiers wanted to kill the man why didn't they just use a club or a knife. From Counsel's own testimony there was plenty of them

there. And isn't it singular that all of these men went down to the Italian area armed with clubs, armed with knives, and armed with rocks, armed with shovels, armed with sticks and armed with axes?

That is the very best counsel can hope to get out of his testimony. I have named all of the weapons. Yet, they went down there to do violence - but yet - there isn't a single mark on Olivotto's body - not one!

If he had been beaten or stabbed to death with a knife, we might say that there was evidence connecting the death with the riot. But he was hanged by the neck; by a rope, and there isn't a scintilla of evidence that the accused or anyone else had a rope or went down there with a rope or even obtained a rope. There isn't a scintilla of evidence that there were any ropes around in that vicinity.

And another thing. The testimony indicates that the rope was still around Olivotto's neck while he was in the morgue. Why hasn't that rope been produced? Prosecution contented itself with producing a rope "similar" to the one that was used.

Was there something about the actual rope itself that was used that caused the Prosecution to be fearful of producing it here? They can't say they couldn't identify that rope, because they had it right down there in the morgue, still around Olivotto's neck.

Now I don't contend that Olivotto committed suicide. I don't know how he came to his death. I do say, however, that there is sufficient evidence here to create more than a reasonable doubt as to whether he was hanged and by whom. The Prosecution wants you to take the life of three of these men; three good soldiers. Or, to send them to the penitentiary for the rest of their natural lives, or for a substantial term of years.

I want to say to this Court in all sincerity, if you find any of these boys guilty of murder you will regret it and your conscience will bother you the rest of your life. I don't really and honestly see how the Prosecution has the effrontery to seek this or ask it. And especially, when the man most responsible for this regrettable incident - the man who without provocation of any kind - made a dastardly and criminal assault, and with a dangerous weapon if you please - with intent to do serious bodily injury - with intent to do murder - is free to go where he pleases, scott free down here at Camp Jordan perhaps!

Yes, if the Court please, that is exactly what has happened. This man is able to enjoy complete freedom and is facing no charges whatsoever, none of any kind - no charges have ever been filed against him!

I say to this Court, with all seriousness, if the Prosecution wants to make an example out of any man for projecting and starting this matter - let it be that man Willie Montgomery.

Willie Montgomery - but for whose cowardly and criminal act none of these men would have been in here today.

I don't even think Willie Montgomery was unconscious that evening. I think that Willie Montgomery - shamed before his friends - feigned unconsciousness and death even, hoping that by so doing his comrades would avenge his shame and do what Willie Montgomery had failed to accomplish.

Now what was done that evening, if the Court please, is not justifiable; but it is nevertheless understandable. Just put yourselves in the shoes of these colored soldiers. And imagine that you believed that one of your buddies had been killed or maimed by a group who - but a short time ago - were their enemies. By a group of men who but a few short months ago were killing our own boys with gun fire, bombs and with cunningly placed booby traps, if you please.

Under the same circumstances what would you have done? It wouldn't have been legally justifiable, but I think that under circumstances like that any red-blooded American would have done the same thing that these men did.

Negroes, if the Court please, are by nature an easy-going and peace-loving people. At the same time they are easily swayed by passion and by prejudice. They were inducted into our Army and they were trained as fighting men. We were at war with Italy. She was our enemy.

And she was an enemy which, because of the very nature of the manner in which she entered the war, we were taught and we pledged ourselves to hate and to exterminate them. You can't teach men to hate and to kill others and then make them buddies over night! That cannot be done. There are still too many graves of American soldiers in North Africa, in Sicily and in Italy.

The memories of these American soldiers who fought in the Italian campaign, who are walking around without arms, and without legs, badly maimed - is still too fresh in our memories. You just can't teach men to hate and to kill and then without anything further throw them together and expect them to be buddies with these same men they were but a short time ago taught to hate and kill.

A perfect example of that is the man who buys a dog, and he trains him to chase and to bite strangers. One day a friend of the man comes to the house, but still a stranger to the dog and the dog bites him. Is that dog to blame? No, of course not, the dog is only doing what he has been taught to do. The fault is that of the man who trained the dog that way and did not untrain him.

The seed of hate which had been sown in the minds of these men by propanganda and what they got in the training of these men as soldiers, laid dormant for a long time. It needed only a

spark to touch it off. To cause the inevitable explosion.

Gentlemen, that spark came. These men thought that the men they had learned to hate, the men that they had been taught to exterminate, had killed one of their own men. They saw him laying prostrate on the ground for a long period of time.

Gentlemen, I defy anyone to say that their reaction that evening was anything but natural!

This situation is vastly different than one of mutiny against superior authority, for these men are soldiers.. They are taught to obey; they are taught to respect authority; they know that.. Here are their teachings - and their only teaching, is to hate and to kill the enemy.

You know the type of talk that all soldiers get in their basic training. You have seen the literature and having been so taught they were never untaught, they were never instructed at any time on the rights of prisoners of war or on the status of an Italian Service Company.

It was a terrible and tragic mistake, if this Court please, to send these prisoners of war out here to Ft. Lawton where they were to be mixed with our own soldiers and to set them down side by side where they must of necessity intermingle without proper prior training.

I say again, that it was a mistake and my assertion that it was a mistake is proven by the fact that after this occurrence the Italians were transferred to another locality, where they would not be required to intermingle with American soldiers.

Another fault I want to mention, which is a contributing factor to this occurrence, and that is, there wasn't a single Company officer of any of these three Companies present that evening.

Now negro soldiers have an honorable ancestry in the Army of the United States. A negro was one of the first persons to fall in the Boston Massacre in 1707. There were negroes that served as Minute Men in the Revolutionary War and they were present in the Service in the Battles of Lexington and Concord. And there were negro soldiers that served in the Civil War also and there were four negro soldierregiments that served in our Army during the Spanish American War and one of these negro regiments was the 10th Cavalry, the one which came to the assistance of Teddy Roosevelt when he so badly needed that assistance in the Battle of San Juan Hill, where he so direly needed help at that time.

And in World War 1 we had four hundred thousand negro soldiers and over two hundred thousand of those saw service overseas.

Now these men are good soldiers. Many of them have

served overseas and many of them have excellent, excellent records. Let's not put all of them in a position of responsibility for this matter; let's not put all of the blame on them if the Court please.

Let's put it squarely where it belongs and render justice tempered with mercy and consideration.

There is more on trial here today than these accused. The whole Army system of justice is on trial. It has been charged time and time again that a negro cannot receive a fair and just trial before a military court. This case, as all of you know, has received nation-wide publicity. The eyes of the Nation are upon this Court here, as a result.

I know this Court is not going to let the people down. And I know that this Court is going to show that in this command the Army system of justice is sound. That a Court Martial, appointed in this jurisdiction, will not tolerate racial differences or inequality and the negro will be given a square deal.

Now before closing, I want to mention one thing. The rules or procedure don't give me an opportunity to reply to Colonel Jaworski. He has the privilege of replying to me; so when I sit down I am through. Colonel Jaworski is not only a very splendid gentleman, but he is a very clever and able lawyer. And he has demonstrated that fact well in this case and that fact is attested to by the fact that he was selected from thousands of lawyers in the Army to prosecute this case.

Now I ask the Court to govern itself solely from the evidence you have heard from the witness stand and not to be overly persuaded by Colonel Jaworski in his most convincing arguments.

And before I sit down, I want to ask this of the Court. Before you convict any of these accused here today, ask yourself this question: Would you be satisfied to have your son or your father or someone near and dear to you convicted and go to the penitentiary on the same testimony you have heard against the particular accused you are considering.

Thank you very much for your patience and consideration.

President: How long do you expect to require for your rebuttal, Colonel?

Trial Judge Advocate: Oh, I don't think I will take so very long. However, I have some comments that I do want to make to the Court.

President: The Court will take a five-minute recess at this time. We better let the accused go out, and then you can bring them back as soon as you can.

Court recessed for five minutes and proceedings resumed

as follows:

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order. Now I think in view of the fact the accused have been out of the room you better make the announcement for the record.

Trial Judge Advocate: The record may show that each of the accused are present other than the accused Roy L. Montgomery, all members of the Court are present, and the personnel representing the accused as well as the personnel representing the prosecution are also present.

Now may it please the Court, I shall not reply, nor comment upon the last ten or fifteen minutes of counsel's presentation. I consider it not only untimely and out of place, I likewise consider it most embarrassing to this Court. I think it is an unjustifiable criticism of higher authority. I don't think that it properly lies in counsel's mouth to bring matters of that kind out here, which is so wholly out of line with the proceedings of this Court. With that I am going to let that matter suffice and rest.

I think the Court knows what I am talking about, and I feel and have confidence that no member of this Court has paid one whit of attention to those remarks. I will say this though. That if that be the attitude towards any human being, as has been mentioned and alluded to by counsel, we might just as well declare open season on prisoners of war - on any prisoners of war for that matter - we might just as well turn loose the wrath of any who have a heart of vengeance to wreck their vengeance on them at their will and just let them do what they want to do.

We might just as well scrap the Geneva Convention! We might just as well tear up all of our agreements and understandings with Italy! We might just as well forget about our Service Units, those Italian Service Units and the pledges these boys have made and the fact that they have been placed on trial in these various service units and we might just as well forget the noble work they have done and are doing in helping our Government maintain and obtain the equipment so badly needed that helps us in our war effort!

Yes - if that is the attitude - let's just forget about the whole thing; let's just forget it all.

Now if it please the Court, I care not whether a human being be a negro, a negro soldier, or whether he be a white soldier or whether he be an Italian soldier. If his life is taken under the circumstances that Olivotto's life was taken,

it is murder! Just plain murder! And it is murder under the laws of this land.

We cannot forget, we must not overlook that after all it is a human being, a body, in which God All Mighty breathed a soul - and no one - no one has the right to take that life. And when that life is taken - it is murder!

Now that much is inescapable. And you can talk all you want to and bring in all the prejudice and poison you want to - but you will never circumvent that conclusion.

If it please the Court, if one were to follow and accept the argument of counsel, one would almost be driven to the conclusion that everyone of these accused sitting over here were down in that Italian area merely as spectators - as spectators if you please. Innocent bystanders.

Who? - I ask you - Who was wielding the clubs? Who was it that was doing the slashing with those knives? Who put these many men in the hospital? Who caused all that bloodshed?

Was it that these accused just went down there for the purpose of witnessing an affray that might have taken place between the Italian soldiers themselves? Oh yes! If you are going to follow his argument you are almost driven to that conclusion.

Nothing but spectators down there. Nothing but innocent bystanders.

Well who? Who? Who did the cuttings! Who did all this damage! Who hanged poor old Olivotto!

You know, counsel's approach to the hanging of poor old Olivotto is so inconsistent to where it is almost amusing. In one breath he says that he isn't saying that it was a suicide - and yet he was trying desparately to seek to have this Court think during a part of this proceeding that it was a suicide.

Well why take up this Court's time with some evidence that was introduced, with some of the questions and answers that were asked and given - if counsel was not seeking to imply there was a suicide.

But his efforts were frustrated. And he was smoked out on that approach. And he couldn't sustain the position he was trying to lead this Court into following. Now he says that while he doesn't contend it was a suicide you can't tell who hanged him.

Now we know he was taken away in the height of the riot and we know he was hanged in the height of the riot. We don't know who took him. But we do know that poor old Olivotto's death march was made right at the height of that riot and in the Italian area!

Now if counsel didn't believe that these negro soldiers - if he didn't believe that they were responsible for the hanging of poor old Olivotto as a result of that riot - then I want to know what counsel meant when he asked Jessie Sims if he didn't return to the barracks with his clothing muddy and mud caked on his shoes.

That was just another way of saying to this Court - it was just another way of saying "Oh yes, we realize there was a hanging and that it was an outgrowth of this riot, and we just wanted to imply to this Court that Jessie Sims might have been one implicated in it."

You can't say it didn't happen in the height of the riot. And you can't say that the hanging wasn't an immediate outgrowth from it. Unfortunately, it is true I do not know the exact man who did the hanging and that we are not in a position to put the finger directly on those men and convict them of that particular thing - but we do know in a legal sense that the law contemplates if a man who participated - that each man who did participate could be charged with it.

However, it was considered wiser to charge the leaders here and that leadership has been proven. They are the ones who are responsible beyond any shadow of a doubt and it is this Court's duty of fixing any responsibility on them.

Oh, I am so disappointed in one thing. I thought surely that among all the witnesses I brought here to this Court that counsel could at least find one that would tell this Court the truth!

Isn't it singularly strange that out of the five negro soldiers' testimony that General Denson granted immunity to -- isn't it singularly strange that we didn't find a single truthful one. Isn't it strange that all of them are liars.

They talk of granting immunity. Well this Court knows and the Law Member knows and is in a position to advise this Court if necessary that in hundreds of decisions of the Judge Advocate General that that is a practice that has been followed and approved not once, but hundreds and perhaps thousands of times - not that it is always followed, I don't mean - but it is followed many times - and that is a part of military law and an approved practice.

Oh I know - the chips fall in a different place from where counsel would like to have them fall when immunity is granted to men. But this record shows indisputably that not a single one of these men knew they were going to be granted immunity. Not a single one knew.

They had not been made a single promise; they had just been brought in to this Court to testify and tell their story, and then the granting of immunity was introduced at that time. Of course it was done. They were entitled to have it done.

It would have been very unfair to them to ask them to come in to this Court and after the story they gave the investigating officers and say "All right, you've got your foot in it now and you're going to be tried." That isn't the Convening Authority's belief of how a matter should be done and how it should be handled fairly. And I know it is not this Court's idea of fairness.

There doesn't sit among those accused a single man who wouldn't have been glad to have taken this witness stand and got himself granted an immunity too.

How can you arrive at a conclusion that just because these men were granted immunity that that means they have lied about their testimony?

Now if the Court please, counsel says some four of them lied because, he says, they said they hadn't talked to anyone about the case. It was so inescapable noticeable that when counsel argued he used the word "talked." When he was examining the boys though, he used the word "discuss." The word "discuss" mind you, and that word implies that you might tell certain things to you, and those boys said no, they hadn't "discussed" it.

Counsel used that word "discussed" when he questioned them but despite that, the fact that he used the word "discussed" before, with an entirely different implication to these boys, when he argues this matter to the Court, he uses the word "talked." Of course they had discussed in a sense - they had "talked" to me, they had told me what they knew; but they hadn't gone around "discussing" the case and what they knew.

Then along comes Battle and he asks, "What do you mean by that "discussed?" and then when it was determined what it meant when the word "Discussed" was used, whether he had "talked" to anyone, well he said "Yes, I talked to him and he talked to me."

So that makes Battle a very truthful man and it makes all of the others all alike.

Well, of course, he has been standing before this Court and saying he won't even talk about Battle because he is just a plain liar. I thought - perhaps - among that group - that he would be willing to concede he found just one that was at least half way truthful.

Now counsel stands before this Court and tells this Court in effect that there was a deliberate destruction of a paper that had some names on it. When you make a statement of that kind, you might just as well be frank enough to come right out in the open and say just what you mean.

That can't be construed to mean but one thing, and that is that the Inspector General and his assistants who made this investigation, at the request and at the hands of the Chief of

Transportation, have dishonorably destroyed papers in connection with this case and have sought to change the facts in so doing and that they have come into this Court seeking to railroad some accused.

What an indictment! What a charge to make! And if this Court for a moment - or any member of this Court - believes that higher authority is seeking to conduct this case in that way - then I say - make the most of it. The very idea.

Counsel knows he found something he could use as a red herring. When those initial notes are taken on matters - when they are taken and as anyone knows - and when a report is presented in its final form, it is very seldom those original notes are preserved. It is an unusual thing to do. And why should there be any hesitancy about bringing that record in. The record shows I never had it and never saw it. It was taken by Colonel Williams long before I was called in on this case. He called Washington and made every effort possible to have it available.

Now, to say that the authorities that handled this investigation - that the authorities who are responsible for conducting the Army's affairs in an upright and an honorable state have suddenly swung to the depths of dishonor and are trying to railroad someone - is very serious, a very serious charge indeed.

I feel though that there isn't a member of this Court that does not agree with me readily that it is an unfounded charge.

Well, counsel went through quite a struggle to try to show that maybe Sergeant Farr didn't know just what he was talking about. And Counsel for the first time makes himself out something other than a lawyer. He suddenly goes through a metamorphosis of becoming a doctor and he speculates, if it please the Court, that Farr was suffering from shock. That's his diagnosis.

And he says you want reasons why you shouldn't believe what Farr spoke of - it was because he spoke of dilated nostrils! Yes; and he spoke of the approach, the savage appearance as they came into that orderly room to knife and club and to do grievous bodily harm and there wasn't any doubt there was intent to do murder with the slashings and the cutting of two American officers, if you please, cut in the groin. Yes, that's the truth all right.

And who did it? Those spectators.

Now he talks about dilated nostrils to the Court; asks the Court to try and dilate its nostrils. Why, I don't believe there is a member in this Court who begin to reflect on his face and in his system the viciousness and the malevolence and the brutality and savagery that those men worked up in

their hearts and in their minds on that occasion in question.

No, you wouldn't be able to dilate your nostrils without the other to accompany it; without that determination to hurt, to maim and to kill and I dare say that there isn't any member of this Court that could with the deftness have done the carving that was done on these human beings in that Italian orderly room either.

Why, the idea of talking to this Court about the fact that the Court would be carrying something on its conscience the rest of its lives. Why, that is just an indirect threat to this Court. Why this Court has sworn to perform a duty and no one has a right to doubt that this Court is going to perform it in a fair and honorable and impartial manner and no one has the right to doubt for a moment that this Court is not going to do the right thing and whatever they do - we know they will do it in a fair and courageous manner.

That's why this Court was picked and if you will pardon me for saying it - hand-picked. And that was because there was a determination to have men of fairness, honor and of courage sitting on this court.

And now we find that suddenly, in this desperate effort to try to find something to try and get this Court to leave the evidence and to tie itself to something else - we find counsel makes a great big speech of Willie Montgomery.

Why the Court knows that under the evidence Willie Montgomery couldn't have been a party to this riot. Willie Montgomery was knocked out, under the evidence. I don't know whether he was or wasn't. But counsel wants us to believe Luther Larkin. Counsel stands up here and says "I don't believe Montgomery was knocked out." But his own client, his own accused, Luther Larkin, says he was in bad shape for a while and had to be worked on; that he had to work on him and give him artificial respiration and a lot of other things.

Well now, Doctor Larkin, who has had a lot of first aid experience probably is in a better position to pass on the condition of Willie Montgomery, and determine what shape he was in, than counsel at this late time.

But let's just remember that there isn't any charge that could have been filed against Willie Montgomery in connection with this riot and remember also, if any charges can be filed against Willie Montgomery, let's remember that counsel and any of the accused have got the right to file any charges any time they want to.

It ill behooves counsel to criticize the Convening Authority who exercises jurisdiction over Willie Montgomery for saying that Willie Montgomery is not a party of this proceeding. I don't know what charges are contemplated against him.

But the inescapable fact remains that the riot charges and the murder charge could not have been brought against him, and the Court knows he was not a party to this; he was not one of those that went down into that area. He was in the hospital.

He wasn't one of those that started the idea of going down there and starting a riotous attack. He had himself a personal altercation with the man. There's no way on earth he could have been linked with this proceeding.

Well, there is one thing that we can all remember. These men are here to have a fair trial. I am convinced they have gotten it. I am convinced that no man could ever truthfully say that they have not gotten it.

I care not what the results of this proceeding may be, but counsel cannot stand up to this Court and ask for his men any different sort of a trial than any other American soldier is entitled to and if you would convict any other American soldier under the evidence in this case there is no reason at all that exists why you should not convict the American soldiers seated over there. None whatever.

Talk all you want to about its importance and the attention it has received and all of that. That isn't the test. Would you convict another American soldier on that evidence? If you would, then all the flamboyancy of everything else and talk about its attention and importance it has received goes out the window. That alone is the test.

If you would convict another one. They can ask for no more.

Counsel talked about these five witnesses that the Convening Authority granted immunity to and has sought to leave the inference with this Court that they just came along and sought to implicate and incriminate some of those soldiers that were overseas. That just happens not to be a fact. I am sure counsel didn't intend to mislead the Court, but if you will check the evidence you will find that every single one of those men incriminated and implicated from three to six or seven men - each one of them did, mind you - who were in the stockade and who had remained behind, just as did these five witnesses.

And the mere fact that these men, long prior to the time that any investigation could have been made or completed, in this matter, were sent overseas, is certainly no barrier to their trial. And all this talk about their service overseas was service that they had subsequent to the time that this riot occurred and prior to the time this investigation was completed; when they could be brought over to face trial and before the trial was brought as a result of the completed investigation.

You take Battle, who he has talked about more than anyone

else. If you will check Battle's testimony you will find six and not eight or ten - you will find six of those talked to me that were left behind here.

Well, I am not going to make an effort here - I don't want to burden this Court with any attempt to answer each of the arguments that were presented by counsel. After all, I know that the Court has followed this evidence carefully and I have no doubt but what the Court is going to check its own records and its own notes as against some of the arguments that have been made here.

But some of them are somewhat interesting and while I am not going to attempt to answer each one of them I do want to tell the Court one or two things that were of particular interest to me.

In the extreme effort to try to help some of these accused with the evidence as plain as it is against them, counsel did speak for instance of such things as how he could vividly see them with the blood streaming down their face. The Court knows and the evidence is very plain as to Perata, because he pointed out the eye from which the blood was coming from and how he could see. The evidence is plain there was no obstruction to the eye and I can say to this Court, with one eye only partially closed, he just couldn't forget the looks of a man so low, so viscious, as to throw glass at him when he was lying on the floor hurt and bleeding. I know I couldn't.

Now that is the sort of identification counsel says is no good. Well, counsel undertook to take the witness and he got to talking about the mistake about Emanuel Ford.

Well, I guess counsel thought it would be a better thing for him to get up and testify a while and so he took the stand on their behalf. But I know and this Court knows that is not evidence and I know this Court knows how you get evidence into the case and that is through putting the witness on the stand.

Counsel spoke of the Bamber Bridge case and wants the Court to read it. I am glad he mentioned something about that case and when the Court reads it, I hope they will read all of it and not just a part of it. And when the Court reads it I want the Court to think of the difference in the situation of Wise and the situation of these men that went down into the Italian area.

You cannot say on behalf of a single one of these men that he was just down there by accident. Just remember this; just remember this. Several of the accused have taken the stand and several of them have made unsworn statements. Not a single one of them who made the unsworn statements or who took the witness stand - not a single one of them said they went down there as a matter of curiosity or that he went down there just to see what was going on. Not a one. They were not down there that way.

They went down there because they wanted to participate in the melee. They went to the place where they had no right to be. It wasn't like being on a public street and counsel well knows the difference.

Most of the comments, of course, were efforts to try to gain some sympathy on behalf of some of these accused. To try to gain a little mercy of some kind or some extension of elemency or sympathy. I can't see it. I can't see any place for it.

Who extended any sympathy to Sergeant Perata, cut up as he was. Or Sergeant Farr. Or to those Italian boys. There was the time to extend some sympathy; some consideration.

And who extended any to poor old Olivotto, dragged as he was to his death - within the shadows of the little chapel - where he no doubt had many, many times raised his eyes heavenward and spoke his prayers. No. I can't see it.

No one extended anyone in that Italian area that night - be he Italian or white American soldier - any sympathy. And I can't see a proper place for it at this time in this proceeding.

Let me say to this Court, without prolonging this matter any further, that it is not one of my duties to suggest to the Court the sentences in this case. I do have the right to tell the Court what I believe the facts in this case show and the offenses of which the accused have been proven guilty, and I stand before this Court mindful of my oath and I am telling this Court that I have the very definite conviction that the evidence is sufficient to convict each of the accused of the respective offenses with which they stand charged.

And I truthfully and sincerely say to the Court that the Prosecution expects findings to that effect. On the other hand this Court is in better position to assess the sentences in this case than am I and I am not going to suggest to this Court what the sentences should be.

I am going to say to this court that before those sentences are written, as I know this Court will do, I want the Court to think in retrospect. I want the Court to think back over what happened in that area that fateful night. I want the Court to think about the malisciousness, the malevolence, the visciousness and about the brutality that was exhibited.

That is what this Court has got the right to do. That is what this Court will think about in affixing and determining what the proper punishment should be. This Court's duty is not only of finding the accused innocent or guilty; that is one of its functions. And a function it has equally as great as that is that of writing appropriate sentences.

I leave this thought with this Court, with the feeling that

that the Court will do - as I have the firm conviction it has the intention of doing - the fair and righteous thing.

I again thank this Court, not only for its attention today but its very close attention, not only to the Prosecution but to the Defense and all of us throughout the conduct of this trial, and I do thank the Court for that.

Law Member: Have you anything further to offer?

Trial Judge Advocate: It has been stipulated between the Prosecution and the Defense that all exhibits not documentary are being withdrawn and pictures substituted therefor.

Defense: Yes, I agree to that stipulation; however, I want the record to show that I am not in any way waiving any objections that I have heretofore made to the admission of those exhibits. However, I am perfectly agreeable that the pictures be substituted therefor.

Law Member: Subject to objection by any member of the Court the stipulation will be received.

President: Any objection? Appear to be none; ruling of the Law Member is the ruling of the Court and the stipulation will be received.

Law Member: All exhibits not documentary will be withdrawn and pictures substituted therefor. Anything further?

Trial Judge Advocate: Prosecution has nothing further to offer.

Defense: Defense has nothing further, sir.

Law Member: It is desired that all articles over along the wall, which have not been marked in evidence, be removed from the courtroom. Colonel, I don't mean right at this particular moment, but before we come back from dinner; we don't want anything in here that is not an exhibit.

Trial Judge Advocate: Yes sir.

Law Member: Now I wish that the Trial Judge Advocate and the Defense counsel would get together and check the exhibits which have been marked so that we will have all those when we start out deliberations tonight at 7 o'clock, or whenever we start our deliberations.

President: The Court will now be closed and immediately take a recess to get refreshment. For the record, the accused and counsel will be required to be present in the building, or readily accessible to the building during the deliberations of the Court in order that in the event it becomes necessary to read back testimony from the record that they will be available to be brought into court quickly and not lose too much time. For

that reason the Court desires that the accused be back here at 7:30 and counsel are expected to be available to the Court within five minutes at any time during the Court's closed session.

All right. Court is closed.

FINDINGS

Court met in closed session and by secret written ballot, two-thirds of the members present at the time each vote was taken concurring in each finding of guilty, finds each of the accused as follows:

Alston, Nelson L. T/5	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Barber, Richard Pvt.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Basden, Willie C. Pvt.	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Brown, John S. T/4	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Buckner, Riley L. T/5	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Campbell, Sylvester Pfc	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Ceaser, Johnnie, Cpl.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Chandler, James C, Jr. Pvt.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Coverson, James T/5	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Curry, Willie S. T/5	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Dixon, Lee A T/5	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Ellis, Russel L Cpl.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Ford, Emanuel M. Sgt.	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Graham, Ernest S/Sgt.	Of the Specification, Charge 1 Of Charge 1	Not Guilty Not Guilty
Green, Jefferson D. Pvt.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty

Hamilton, John L. Pfc.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Hughes, Frank Pvt.	Of the Specification, Charge 1 Of Charge 1	Guilty Guilty
Hurks, Arthur J. Sgt.	Of the Specification, Charge 1 Of Charge 1 Of Specification, Charge II Of Charge II	Guilty Guilty Not Guilty Not Guilty
Jackson, Walter Pvt.	Of the Specification, Charge I Of Charge 1	Not Guilty Not Guilty
Johnson, Herman T/5	Of the Specification, Charge I Of Charge 1	Not Guilty Not Guilty
Jones, William G. Pvt.	Of the Specification, Charge I Of Charge 1 Of the Specification, Charge II except the words "with malice afore- thought," "deliberately," and "and with premeditation," substituting therefor the word "and" after the word "feloniously", of the excepted words "Not Guilty" of the substituted "Guilty". Of Charge II, Not Guilty, but Guilty of violation of the 93rd Article of War.	Guilty Guilty Guilty,
Jupiter, Henry T/5	Of the Specification, Charge I Of Charge I	Not Guilty Not Guilty
Larkin, Luther Cpl.	Of the Specification, Charge I Of Charge 1 Of the Specification, Charge II except the words "with malice afore- thought," "deliberately," and "and with premeditation," substituting therefore the word "and" after the word "feloniously", of the excepted words "Not Guilty" of the substituted "Guilty". Of Charge II, Not Guilty, but Guilty of violation of the 93rd Article of War.	Guilty Guilty Guilty,
Montgomery, Roy L. Pfc.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Moore, Loary M. Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Prevost, Willie Sr. T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty

Sanders, Robert Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Shelton, Elva Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Simmons, Freddie L. T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty
Snow, Samuel Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Spencer, Nathaniel T T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty
Spencer, C. W. Sgt.	Of the Specification, Charge I Of Charge I	Not Guilty
Stewart, Leslie T T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty
Stone, Arthur L T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty
Sutliff, Richard L. Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty
Thornton, Booker W. T/4	Of the Specification, Charge I Of Charge I	Guilty Guilty
Townsell, Booker Pvt.	Of the Specification, Charge Of Charge I	Guilty Guilty
Umblance, Freddie Pvt.	Of the Specification, Charge I Of Charge I	Not Guilty Not Guilty
Walton, David T/5	Of the Specification, Charge I Of Charge I	Guilty Guilty
Williams, Arthur Pfc.	Of the Specification, Charge I Of Charge I	Not Guilty Not Guilty
Wooden, Wallace A. Pvt.	Of the Specification, Charge I Of Charge I	Guilty Guilty

ROBERT BRANAND, Captain, J.A.G.D.
 Ass't. Trial Judge Advocate
 because of the absence of the
 Trial Judge Advocate.

Fort Lawton Staging Area
Fort Lawton, Washington
17 December 1944

The Court was opened at 5:45 o'clock p.m., all of the personnel of the Court, Prosecution, and Defense, who were present at the close of the previous session in this case, being present.

President: For the record I will state that the Court closed from Open Session at 5:15 on December 16th, and reconvened at 6:25 p.m., to go into Closed Session; that all members of the Court were present when the Court reconvened and recessed again at 11:15 p.m., December 16th.

It reconvened in Closed Session at 9:00 o'clock, a.m., December 17, 1944, and all of the members of the court were present when it reconvened.

It recessed again at 12:00 noon, and reconvened at 1:15 p.m., December 17, 1944. All of the members of the court were present at the time the Court reconvened. Then court was open at 5:45 p.m.

Trial Judge Advocate: Does the court wish to have a roll call?

President: I believe the roll call is in order; that's right.

The roll of accused were called by the Assistant Trial Judge Advocate and all accused were present before the court.

Trial Judge Advocate: Let the record show that each of the accused are present, other than the accused and with the only exception of the accused Roy Montgomery, that all members of the court are present, and that the personnel representing the accused as well as the personnel representing the Prosecution are present.

The President announced that the following accused were acquitted upon all specifications and charges:

T/5 Nelson L Alston
Pvt. Willie C Basden
Pfc Sylvester Campbell
T/5 James Coverson
T/5 Lee A Dixon
Sgt Emanuel M Ford
S/Sgt Ernest Graham
Pvt Walter Jackson
T/5 Herman Johnson
T/5 Henry Jupiter
Sgt C W Spencer
Pvt Freddie Umblance
Pfc. Arthur Williams

President: The court will hear any further evidence that the Prosecution has to offer on reconvening tomorrow morning.

Trial Judge Advocate: I assume the Court has reference to evidence of previous convictions and data as to service.

President: Yes, evidence of previous convictions and records of military service.

Defense: What time do we reconvene tomorrow morning?

President: At 9:00 o'clock. Court will recess until 9:00 o'clock tomorrow morning.

The court then at 6:00 o'clock p.m., on December 17, 1944, adjourned to meet again at 9:00 o'clock, a.m., the following day.

ROBERT BRANAND, Captain, J.A.G.D.
Ass't. Trial Judge Advocate
because of the absence of the
Trial Judge Advocate.

Fort Lawton Staging Area
Fort Lawton, Washington
18 December 1944

The court met, pursuant to adjournment, at 9:00 o'clock, a.m., all of the personnel of the court, Prosecution, and Defense, who were present at the close of the previous session in this case, being present.

President: Prosecution ready to proceed?

Trial Judge Advocate: Prosecution is ready, sir.

President: Defense ready to proceed?

Defense: Defense is ready, sir.

President: Court will come to order.

The roll of accused was called by the Assistant Trial Judge Advocate and all accused were present before the Court.

Assistant Trial Judge Advocate: Let the record show that all members of the Court are present, that the personnel of the Defense and the Prosecution are present, and that all of the accused, except the accused Roy L Montgomery who is in the hospital and all of the accused heretofore acquitted, are present.

President: Private Barber.

Accused Private Barber steps forward before the Court.

President: Has the Prosecution any evidence of any previous convictions to offer, and will the Prosecution read the personal data from the Charge Sheets as concerning Private Barber.

Assistant Trial Judge Advocate: The Prosecution has no further evidence to offer concerning Private Barber or any evidence on any previous convictions. The Prosecution will read the personal data as concerning Richard H. Barber, Serial No. 36945532, Private, Headquarters, Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington; formerly a member of the 650th Port Company, Transportation Corps. Age 22 2/12. Pay, \$50 per month. Allotment to dependents, \$27.00. Class F deduction, Government insurance deduction \$6.60 per month. As to service, prior service, none. Current enlistment: inducted 3 January 1944, to serve the duration of the war, plus six months.

President: Is that all you have?

Assistant Trial Judge Advocate: Is this statement correct?

Accused Barber: May I see it? (Perusing document.)

Assistant Defense Counsel: The statement is correct.

President: All right, Barber, that is all. T/4
Brown, John S.

Accused T/4 John S Brown steps forward before the
Court.

President: Has the Prosecution any evidence of
previous convictions to offer, and will the Prosecution
read the personal data from the Charge Sheet as concerns
Private T/4, John S Brown?

Assistant Trial Judge Advocate: The Prosecution has
no evidence of previous convictions to offer. And will
now read the personal data as concerning the accused John
S Brown. Name, Brown, John S. Number 34518593; technician
4th class. Headquarters, Headquarters Detachment No 2,
Camp George Jordan, Seattle, Washington. Formerly a member
of the 578th Port Company, Transportation Corps. Age,
22 and 7/12. Pay \$78.00 per month. Allotment to de-
pendents, \$22.00, Class F deduction, Government insurance
deduction, \$6.50 per month. Data as to Service, prior
service, none; current enlistment, inducted 16 December
1942, to serve duration of the war plus six months. Is
this statement correct?

Assistant Defense Counsel: It is.

President: Was his grade a T/4 on the 14th of August?

The Accused: Yes, sir.

President: You are a T/4?

The Accused: Yes, sir.

President: Are these Charge Sheets going to be avail-
able to the Court at the Closed Session?

Assistant Trial Judge Advocate: They are available.

President: There is nothing to prevent our taking
them?

Trial Judge Advocate: No.

President: It will save us quite a lot of writing.
All right, that is all.

Assistant Trial Judge Advocate: There is one thing
that should be read into the record in the case of Richard
Barber. He was confined to the guard house, 19 October 1944,
Fort Lawton.

President: Is that correct, Barber?

The Accused: Yes, sir.

Assistant Trial Judge Advocate: And in the case of John S Brown, he was confined 9 September 1944. Is that statement correct?

The Accused: Yes, sir.

President: T/5 Riley L Buckner.

Accused T/5 Riley L Buckner steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer in the case of Riley Buckner and will now read the personal data as to that accused. Name of accused: Buckner, Riley L., No. 3854/177; technician, 5th grade, Headquarters, Headquarters Detachment No 2; Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age: 25-5/12. Pay: \$66.00 per month. Allotted to dependents, \$22.00. Class F. Government Insurance deduction, \$6.70 per month. Data as to Service, prior service, none, inducted 15 December 1943 at Houston, Texas, to serve the duration of the war, plus six months. No information as to the confinement here on this Charge Sheet. I will have to get that and bring it to the Court or we can stipulate. A number of these men were brought back later and it does not appear on the sheet.

Assistant Defense Counsel: November the 2nd.

Trial Judge Advocate: November 2nd.

President: If that is agreeable with the Prosecution then the date will be entered in the Charge Sheet. Is that statement correct?

The Accused: Yes, sir.

President: Corporal Johnnie Ceaser.

Accused Johnnie Ceaser steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer, and will now read the personal data in the case of Private Johnnie Ceaser.

President: Is that Private Johnnie Ceaser?

Assistant Trial Judge Advocate: Yes, sir; Private Johnnie Ceaser.

President; He is shown in the Charge Sheet here as a corporal.

Assistant Defense Counsel: Corporal; his present rate is Corporal.

Assistant Trial Judge Advocate: Corporal Johnnie Ceaser. Corporal is right, sir. And it is so named in the Specification. We will have to change it on this page. And that would be what pay?

Assistant Defense Counsel: \$66.00.

Assistant Trial Judge Advocate: Name of Accused, Ceaser, Johnnie, Number 36792773, Corporal Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington, formerly a member of the 650th Port Company, Transportation Corps. Age, 22 and 8/12 months. Pay, \$66.00 per month. Allotment to dependents, \$22.00; Class F deduction. Government insurance deduction, \$6.50 per month. Data as to service, prior service, none, current enlistment, inducted 30 August 1943, to serve the duration of the war plus six months. Confined to the Post Guard House, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The accused: Yes, sir.

President: What was your grade on the 14th of August?

The Accused: Corporal, sir.

President: Private James C Chandler, Jr.

Accused Private James C Chandler, Jr., steps forward before the Court.

President: Has the Prosecution any evidence of any previous convictions to offer and will you read the personal data as relates to the accused, Private James Chandler?

Assistant Trial Judge Advocate: The Prosecution has no evidence of any previous convictions to offer and will now read the personal data as to the accused, James Chandler.

Name of Accused, Chandler, James C. Jr. Number 37731142. Private. Headquarters, Headquarters Detachment No. 2, Camp Jordan, Seattle, Washington, formerly a member of the 650th Port Company, Transportation Corps. Age 20 and 11/12 months. Pay \$50.00 per month. Allotment to dependents, \$27.00 per month, Class F deduction, government insurance deduction, \$6.50 per month. Data as to service, prior service, none, current enlistment, inducted 15 January 1944 to serve duration of war plus six months. Confined to Post Guard House, Fort Lawton Staging Area, Fort Lawton, Washington Seattle, Washington, 23 August 1944.

Is that statement correct?

The Accused: The statement is correct, sir.

President: That is all, Chandler. T/5 Willie S Curry.

Accused T/5 Willie S Curry steps forward before the court.

President: Will the Prosecution read the evidence of any previous convictions, if any, and the personal data relating to the accused, T/5 Willie S Curry?

Assistant Trial Judge Advocate: The Prosecution has no evidence of any previous convictions and will now read the personal data as to the Accused, Willie S Curry.

Name of Accused, Curry, Willie S. Number 18209465, technician, 5th grade; Headquarters, Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington, formerly a member of the 651st Port Company, Transportation Corps. Age, 20 and 2/12 months, pay, \$66.00 per month. Allotment to dependents, \$27.00 per month. Class F deduction. Government insurance, \$6.45 per month. Data as to Service, prior service, none; current enlistment enlisted 9 November 1942, to serve the duration of the war plus six months. Confined to the Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, on the 23rd of August 1944. Is that statement correct?

The Accused: Yes, sir.

Assistant Defense Counsel: The statement is correct.

Major MacLennan: What was the age, Captain?

Assistant Trial Judge Advocate: 20 and 2/12 months.

President: Private First Class, or, Corporal Russel L Ellis.

Accused Russel L Ellis steps forward before the Court.

Assistant Trial Judge Advocate: This is one that has been changed since he was overseas. The Prosecution has no evidence of previous convictions to offer in the case of Russel L Ellis and will now read the personal data as relating to that accused. Name of accused, Ellis, Russel L, No 38395034. Private, First Class, Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Was formerly a member of the 650th Port Company, Transportation Corps. Age: 32 and 8/12 months. Pay \$66.00 per month. Allotment to dependents \$27.00 per month, Class F deductions. Government Insurance deduction \$7.10 per month. Data as to service, prior service, none, inducted 31 December 1942 at Oklahoma City, Oklahoma to serve duration of the war plus six months. I do not have the data as to the restraint of the accused.

Assistant Defense Counsel: Date of restraining was November 2nd; otherwise, the statement is correct.

President: Your present grade is Corporal?

The Accused: Yes, sir.

President: And that is your rating at the present time?

The Accused: Yes, sir.

President: What is your rate of pay?

The Accused: \$66.00.

President: When were you made a corporal?

The Accused: I was made a corporal about two weeks before I came back to the States.

President: Will you put that on the data sheet. His grade, and rate of pay at the present time.

Law Member. \$66.00?

Assistant Trial Judge Advocate: \$66.00; that is correct. I see now that it was crossed over and Corporal put in here. It does not give the date.

President: Otherwise that is correct?

The Accused: Yes, sir.

President: Private Jefferson D Green.

Accused Jefferson D Green steps forward before the Court. Assistant Trial Judge Advocate: The Prosecution has evidence of other previous convictions to offer.

Whereupon the record of previous conviction was read to the Court by the Assistant Trial Judge Advocate.

President: Private Green, is that statement correct?

The Accused: Yes, it is.

Assistant Trial Judge Advocate: The Prosecution now offers in evidence this evidence of one previous conviction that was read.

Law Member: The record of previous conviction will be received in Evidence as Prosecution Exhibit No 47.

The record of previous conviction above referred to

was marked Prosecution Exhibit No 47 and received in evidence.

Assistant Trial Judge Advocate: The Prosecution will now read into the record the personal data relating to the accused Jefferson Green. Name of accused, Green, Jefferson D., No 38252238, Private. Headquarters, and Headquarters Detachment No 2, Camp Jordan, Fort Lawton, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age: 27-10/12. Pay, \$50.00 per month. Allotment to dependents, \$22.00 per month, Class F Deduction. Government insurance deduction \$6.80 per month. Data as to service, prior service, none, current enlistment, inducted 1 October 1942 to serve the duration of the war plus six months. Confinement at the Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

Assistant Defense Counsel: The statement is correct.

President: Private First Class John L Hamilton.

Accused Private First Class John L Hamilton steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous convictions to offer and will now read the personal data in the case of the Accused John L Hamilton.

Name of accused, Hamilton, John L., No 38547943. Private First Class, Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 19-1/12. Pay, \$54.00 per month. Allotment to dependents, \$22.00 per month; Class F deduction. Government Insurance deduction \$6.40 per month. Data as to service, prior service none, current enlistment, inducted 14 January 1944 to serve the duration of the war plus six months. Confined to Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: Yes, sir.

Assistant Defense Counsel: The statement is correct.

President: Private Frank Hughes.

Accused Frank Hughes steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of any previous convictions and at this time will now read the personal data concerning the accused Frank Hughes. Name of accused, Hughes, Frank,

Private, No. 38558565. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington, Formerly a member of the 650th Port Company, Transportation Corps. Age 30-11/12. Pay \$50.00 per month, allotment to dependents \$22.00 per month, Class F deduction. Government insurance, deduction \$7.10 per month. Data as to service, prior service, none, current enlistment, inducted 9 November 1943 to serve the duration of the war, plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 19 October 1944. Is that statement correct?

The Accused: Yes, sir.

Law Member: What is his age again?

Assistant Trial Judge Advocate: Thirty, and 11/12.

President: Sergeant Arthur J Hurks.

Accused Sergeant Arthur J Hurks steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer in the case of Arthur J Hurks and will now read the personal data concerning the accused Hurks. Name of accused, Hurks, Arthur J., No 38547446, Sergeant. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 22-10/12. Pay \$78.00 per month. Allotment to dependents, \$22.00 per month. Class F Deductions. Government Insurance Deduction \$6.60 per month. Data as to service, prior service, none; current enlistment, inducted 28 December 1943 to serve the duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, on 22 October 1944. Is that statement correct?

Assistant Defense Counsel: The statement is correct.

President: Private William G Jones.

Accused Private William G Jones steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer in the case of Private William Jones, and will now read the personal data as to the accused. Name of accused, Jones, William G, Number 36945784, Private. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company. Age 21, and 0/12. Pay, \$50.00 per month. Allotment to dependents none. Government Insurance deduction \$6.50 per month. Data as to service, prior service, none. Cur-

rent enlistment, inducted 10 January 1944, to serve duration of the war, plus six months. Confined Post Guard House, Fort Lawton Staging area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: No, sir. The age is twenty.

President: What does the charge sheet show?

Assistant Trial Judge Advocate: twenty-one.

Assistant Defense Counsel: 28th of October, he was twenty years old. October 28, 1924 is the date of birth.

Assistant Trial Judge Advocate: The Prosecution has no objection to amending the charge sheet.

President: All right. It will be so amended. In all other particulars the statement is correct?

Assistant Defense Counsel: Yes, sir.

President: Corporal Luther Larkin.

Accused Luther Larkin steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer in the case of Luther Larkin and will now read the personal data relating to the accused. Name of accused, Larkin, Luther L. No 38295182, Corporal. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 23-4/12 months. Pay: \$66.00 a month. Allotment to dependents \$22.00 per month, Class F deductions.

Government Insurance \$6.55 per month. Data as to service, prior service none. Current enlistment, inducted 26 October 1942 to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 19 October 1944. Is that statement correct?

The Accused: Yes, sir.

President: Now, we have private First Class Roy L Montgomery, next.

Law Member: Major Beeks?

Defense: Yes, sir.

Law Member: Do you wish Montgomery brought into court?

Defense: May it please the Court, I think it would be most inadvisable to bring Montgomery before this Court at this time because as I understand he is very seriously ill

with pneumonia and I think it would be inhumanitarian, to bring him over here.

Law Member: You say he is suffering with pneumonia?

Defense: I am advised he is seriously ill with pneumonia.

Law Member: Well, it seems to me then also for humanitarian reasons, the court should not go to the hospital while the record of previous convictions or the previous data is read. Have you checked Montgomery's data?

Defense: I understand, if the Court please, there are no previous convictions, and I have seen his personal data and I am reasonably satisfied as to its accuracy.

Law Member: Do you consent that that shall be read to the Court at this time?

Defense: Yes, I so consent.

Law Member: Subject to objection by any member of the Court, Montgomery will not be brought into Court for the purpose of being present while this is read, nor, will the court visit the hospital, but with the consent of the accused's counsel, the record of the accused as to personal data will be read to the court.

President: Any objections. Appear to be none; the decision of the Law Member will be the ruling of the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of any previous convictions to offer and will now read the personal data relating to the accused. Name of accused, Montgomery, Roy L. No 36897259, Private First Class. Headquarters and Headquarters Detachment No. 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 651st Port Company, Transportation Corps. Age 23-5/12 months. Pay: \$54.00 per month. Allotment to dependents, none. Government insurance deduction \$6.60 per month. Data as to service, prior service, none. Current enlistment, inducted 10 January 1944 to serve duration of the war plus six months. Confined to Post Guard House, Fort Lawton Staging Area, Fort Lawton, Washington, Seattle, Washington 23 August 1944. Is that statement correct, Major Beeks?

Defense: I am reasonably satisfied as to its accuracy, if the Court please.

President: Private Loary M Moore.

Accused Private Loary M Moore steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution

has evidence of one previous conviction in the case of Loary M Moore.

Whereupon the record of previous conviction was read to the Court by the Assistant Trial Judge Advocate.

Law Member: Will you give me again the date of the first offense?

Assistant Trial Judge Advocate: Date of the first offense 26 November 1943. Date of second offense was 20 December 1943.

President: Do you want to put that into evidence?

Assistant Trial Judge Advocate: Yes. The Prosecution offers the record of one previous conviction in the case Loary M Moore in evidence as Exhibit No 48.

Law Member: It will be received as Prosecution Exhibit No 48.

The record of previous conviction above referred to was marked and received in evidence as Prosecution Exhibit No. 48.

Assistant Trial Judge Advocate: The Prosecution will now read the personal data as to the accused, Loary Moore. Name of accused, Moore, Loary M, No 38557512, Private. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. He was formerly a member of the 650th Port Company, Transportation Corps. Age: 23 years and 10/12. Pay: \$50.00 per month. Allotment to dependents, \$22.00 per month, Class F. Government Insurance Deduction \$6.60 per month. Data as to service, prior service, none. Current enlistment, inducted 15 October 1943, at Fort Sam Houston, Texas to serve duration of the war plus six months. Prosecution does not have the data as restraining this accused.

Assistant Defense Counsel: Data as to restraint, November 2. All other particulars in the statement are correct.

Assistant Trial Judge Advocate: Confined 2 November 1944, Fort Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington. Is that statement correct?

The Accused: Yes, sir.

President: That is all. T/5 Willie Prevost, Sr.

Accused T/5 Willie Prevost, Sr., steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous convictions to offer in the case of

Willie Prevost, and will now read the personal data as to the accused, Willie Prevost. Name accused, Prevost, Willie, Sr., No 38547289, technician 5th grade. Headquarters, Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps, age: 27 2/12. Pay \$66.00 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government Insurance deduction \$6.80 per month. Data as to service, prior service, none. Current enlistment, inducted 20 December 1943, to serve the duration of the war plus six months. Confined Post Guard House Fort Lawton staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: Yes, sir.

President: Private Robert Sanders.

The Accused Private Robert Sanders steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous conviction to offer in the case of Robert Sanders and will now read the personal data as to the accused. Name of accused, Sanders, Robert, Private. No 36789334. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 21-9/12. Pay \$50.00 per month, allotment to dependents \$22.00 per month. Government insurance deduction \$6.50 per month. Data as to service, prior service, none. Current enlistment, induction 27 November 1943, to serve duration of the war plus six months. Confined to Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington 19 October 1944. Is that statement correct?

The Accused: Yes, sir.

President: That is all. T/5 Freddie L Simmons.

Accused Freddie L Simmons steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous conviction to offer in the case of Freddie Simmons and will now read the personal data as to the accused. Name of accused, Simmons, Freddie L, No 38557737, technician, 5th grade. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age: 35 and 2/12 months. Pay, \$66.00 per month. Allotment to Dependents, Class F deduction, \$22.00 per month; Class E allotment, \$25.00 per month. Government Insurance deduction \$7.50 per month. Data as to service, prior service, none. Inducted

19 October 1943 at Fort Sam Houston, Texas to serve duration of the war plus six months. Prosecution does not have the data as to the restraint of the accused. Was it 2 November 1944? Otherwise, that statement is correct?

Assistant Defense Counsel: Yes. The statement is correct.

President: That is all. Private Elva Shelton.

Accused Private Elva Shelton steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous conviction to offer and will now read the personal data as to the accused, Private Elva Shelton. Name of accused, Shelton, Elva. No 37615747. Private. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 20-4/12 months. Pay \$50.00 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government insurance deduction \$6.50 per month. Data as to service, prior service, none. Current enlistment, inducted 5 February 1944 to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

Assistant Defense Counsel: What was the day as to induction?

Assistant Trial Judge Advocate: Inducted 5 February 1944.

Assistant Defense Counsel; There seems to be a discrepancy as to the date there.

Assistant Trial Judge Advocate: There appears to be some objection by the accused to the personal data as read. Captain Noyd, the Assistant Counsel said he will check his record and advise the Court.

President: We will proceed to hear other data and call Private Shelton back again. All right. Private Shelton, that is all for now.

Private Samuel Snow.

Accused Private Samuel Snow steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous convictions in the case of Samuel Snow and will now read the personal data relating to the accused. Name of accused, Snow, Samuel, No 34245919, Private. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member

of the 650th Port Company, Transportation Corps. Age, 19 and 0/12 months. Pay, \$50.00 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government insurance deduction, \$6.50 per month. Data as to service, prior service, none. Current enlistment, inducted 2 May 1944, to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 7 September 1944.

The Accused: Yes, sir.

Assistant Defense Counsel: Yes, sir; that is correct, sir.

President: That is all. T/5 Nathaniel T Spencer.

The Accused, Nathaniel T Spencer, steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions to offer and will now read the personal data as to the accused. Name of accused, Spencer, Nathaniel T, No 38210534, technician 5th grade. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age: 33 and 9/12. Pay, \$66.00 per month. Allotment to dependents, Class F deduction, \$27.00 a month; Class E deduction, \$30.00 per month; government insurance deduction \$7.40 per month. Data as to service, prior service, none. Inducted 13 January 1944 at Detroit, Michigan to serve duration of the War plus six months. Prosecution does not have the data as to the restraint of the accused and therefore asks the accused if it was 2 November 1944?

The Accused: Yes, sir.

President: That is all. T/5 Leslie T Stewart.

Accused T/5 Leslie T Stewart steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of any previous conviction or offer, and will now read the personal data relating to this accused. Name of accused, Stewart, Leslie T. No 38561223. Technician, 5th grade. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age, 18 and 11/12 months. Pay, \$66.00 per month. Allotment to dependents \$22.00 per month; Class F deduction. Government insurance \$6.40 per month. Data as to service, prior service, none. Current enlistment, inducted 3 January 1944, to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: No, sir.

Defense: He says he is nineteen years of age.

Assistant Trial Judge Advocate: The Prosecution has no objection to amending it.

Defense: He was 19 on the 27th of November.

President: Change it to 19. We have no objection.

Defense: It would 19 and 0/12. Is that right?

The Accused: Yes, sir.

President: That is all. T/5 Arthur L Stone.

Accused T/5 Arthur L Stone steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has evidence of one previous conviction to offer.

Whereupon the record of previous conviction was read to the Court by the Assistant Trial Judge Advocate.

President: Is that right?

The Accused: That is correct.

Assistant Trial Judge Advocate: The Prosecution offers that record as Prosecution Exhibit 49.

Law Member: It will be received in evidence as Prosecution Exhibit 49.

The record of previous conviction above referred to was marked and received in evidence as Prosecution Exhibit 49.

Assistant Trial Judge Advocate: The Prosecution will now read the personal data as to the accused. Name of accused, Stone, Arthur L., Number 36888714, technician, 5th grade. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company Transportation Corps. Age 24-4/12 months. Pay, \$66.00 per month. Allotment to dependents, \$22.00 per months, Class F deductions. Government insurance deduction \$6.60 per month. Data as to service, prior service, none. Inducted at Detroit, Michigan, 6 November 1943, to serve duration of the war, plus six months. Prosecution does not have the data as to restraint of the accused and asks the accused if it was 2 November 1944?

Defense: That is right.

President: That is all.

Assistant Trial Judge Advocate: Is that statement other wise correct?

President: Is that statement correct?

The Accused: I don't know, sir. I did not hear it all.

Defense: What part didn't you hear?

(Whispered discussion)

Well, he says he didn't hear it all after the record was read. Well, what is the part you didn't hear? You might read it back.

Assistant Trial Judge Advocate: Name of accused, Stone, Arthur L., Number 36888714, technician, 5th grade.

President: Is that part correct?

The Accused: Yes, sir.

Assistant Trial Judge Advocate: Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington, formerly a member of the 650th Port Company, Transportation Corps.

President: Is that correct?

Law Member: You can talk louder than that, though, Captain, will you speak up, please.

Assistant Trial Judge Advocate: Age: 24 and 4/12.

President: Is that correct?

The Accused: Yes, sir.

Assistant Trial Judge Advocate : Pay, \$66.00 per month.

President: Is that correct?

The Accused: Yes, sir.

Assistant Trial Judge Advocate: Allotment to dependents, \$22.00 per month, Class F deduction.

President: Is that right?

The Accused: Yes, sir.

Assistant Trial Judge Advocate: Government insurance deduction, \$6.60 per month.

President: Is that right?

The Accused: Yes, sir.

Assistant Trial Judge Advocate: Data as to service, prior service, none. Inducted at Detroit, Michigan, 6 November 1943, to serve duration of the war plus six months.

President: Is that right?

The Accused: That is right, sir.

Defense: Well, it is all correct, then?

The Accused: I guess so; yes, sir.

President: All right. Private Richard L Sutliff.

Accused Richard L Sutliff steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous conviction to offer in the case of Richard L Sutliff and will now read the personal data relating to the accused. Name of accused, Sutliff, Richard L. No 38545834, Private. Headquarters, and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 24-1/12 months. Pay \$50.00 a month. Allotment to dependents, \$27.00, Class F Deduction. Government insurance deduction \$6.60 per month. Data as to service, prior service, none. Current enlistment, inducted 16 November 1943 to serve duration of the war, plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: Correct.

President: That is all. T/4 Booker W Thornton.

Accused T/4 Booker W Thornton steps forward before the Court.

Assistant Trial Judge Advocate: Prosecution has no evidence of previous convictions to offer, and at this time will read the data relating to the accused. Name of accused, Thornton, Booker W, No 36789533, technician, 4th grade. Headquarters and Headquarters Detachment, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 36 and 7/12 months. Pay, \$78 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government insurance deduction, \$7.70 per month. Data as to service, prior service, none. Inducted 4 December 1943, Chicago, Illinois, to serve duration of the war plus six months. Prosecution does not have the data as to the restraint of

the accused and asks that the accused state if it was 2 November 1944?

The Accused: Yes, sir; that's right.

Assistant Trial Judge Advocate: Is the statement otherwise correct?

The Accused: Yes, sir.

President: That is all. Private Booker Townsell.

Accused Booker Townsell steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous conviction to offer in the case of Booker Townsell and will now read the personal data relating to the accused. Name of accused, Townsell, Booker, No 36836812. Private. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 29 and 8/12 months. Pay, \$50 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government insurance deduction, \$7.00 per month. Data as to service, prior service, none. Current enlistment, inducted 30 October 1943, to serve duration of the war, plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: Yes, sir.

President: That is all. T/5 David Walton.

Accused T/5 David Walton steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous conviction to offer and will now read the personal data relating to accused. Name of accused, Walton, David, No 36789244, technician 5th grade. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington; formerly a member of the 650th Port Company, Transportation Corps. Age 34 and 7/12 months. Pay, \$66.00 per month. Allotment to dependents \$27.00 per month, class F deduction. Government insurance, \$7.50 a month. Data as to service, prior service, none. Current enlistment, inducted 26 November 1943 to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington 19 October 1944. Is that statement correct?

The Accused: Yes, sir.

President: That is all. Private Wallace Wooden.

Accused Wallace Wooden steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution has no evidence of previous convictions and will now read the personal data relating to the accused.

Name of accused, Wallace A Wooden, No 36789652, Private. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age 36 and 1/12 months. Pay \$50.00 per month. Allotment to dependents, \$22.00 per month, Class F deduction. Government insurance deduction \$7.60 per month. Data as to service, prior service none. Current enlistment, inducted 9 December 1943, to serve duration of the war plus six months. Confined Post Guard House, Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: Yes, sir.

President: That is all. We will have a short recess.

At this point a short recess was taken after which proceedings were resumed, as follows:

President: Court will come to order. Private Elva Shelton.

Accused Elva Shelton steps forward before the Court.

Assistant Trial Judge Advocate: The Prosecution will read the personal data as to the accused Elva Shelton. Name of accused, Shelton, Elva; number 37615747, Private. Headquarters and Headquarters Detachment No 2, Camp George Jordan, Seattle, Washington. Formerly a member of the 650th Port Company, Transportation Corps. Age: 20 and 4/12 months. Pay, \$50 per month. Allotment to dependents, \$22.00 per month. Class F deduction. Government Insurance Deduction, \$6.50 per month. Data as to service, prior service, none. Current enlistment, inducted 15 January 1944 to serve duration of the war plus six months. Confined Post Guard House Fort Lawton Staging Area, Fort Lawton, Seattle, Washington, 23 August 1944. Is that statement correct?

The Accused: No, sir.

Law Member: What about it is not correct?

Defense: Wherein is it wrong?

The Accused: It is wrong where it says "no previous service." I was inducted last year on the 19th of May 1943.

Defense: Where were you inducted on the 19th of May, 1943?

The Accused: Jefferson Barracks, Reception Center, St Louis, Missouri.

Defense: And how long did you serve?

The Accused: Until July 2, 1943.

Defense: Were you discharged at that time?

The Accused: Yes, sir.

Defense: Whereabouts?

The Accused: I was discharged at the same place.

Defense: Then you were reinducted into the Army?

The Accused: Yes, sir; January 15th.

Defense: Where?

The Accused: It says Class F deduction and it was Class B.

Assistant Defense Counsel: Well, that was formerly the Class B, and it is now called the Class F. Class B was discontinued in August, and so it is probably a Class F allotment.

The Accused: Yes, sir; so it is \$22.00 a month, anyway.

Defense: It is \$22.00 a month that is taken out of your pay?

The Accused: Yes, sir.

President: That is all. Does the Prosecution have anything further to offer?

Assistant Trial Judge Advocate: The Prosecution has nothing further to offer.

President: Defense have anything further to offer?

Defense: Defense has nothing further, if it please the Court.

President: All right. Court will be closed.

S E N T E N C E S

The Court was closed, and upon secret written ballot three-fourths of the members present at the time the vote was taken concurring, sentences the following accused:

Hurks, Arthur J Sgt. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of twelve years.

Jones, William G. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of fifteen years.

Larkin, Luther Cpl. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of twenty-five years.

And upon secret written ballot two-thirds of the members present at the time the vote was taken concurring sentences the following accused:

Barber, Richard, Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Brown, John S. T/4. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Buckner, Riley L. T/5 To be reduced to the grade of private, to be confined at hard labor at such place as the Reviewing Authority may direct for a period of six months, and to forfeit \$18.00 per month for a like period.

Ceaser, Johnnie, Cpl. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of five years.

Chandler, James C. Jr. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of four years.

Curry, Willie S T/5 To be reduced to the grade of private, to be dishonorably discharged the Service, to for-

feit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Ellis, Russel L Cpl. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of four years.

Green, Jefferson D. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Hamilton, John L. Pfc. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Hughes, Frank, Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Montgomery, Roy L Pfc. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of two years.

Moore, Loary M. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of five years.

Prevost, Willie Sr. T/5. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Sanders, Robert Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Shelton, Elva Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of four years.

Simmons, Freddie L. T/5. To be reduced to the grade of Private, to be dishonorably discharged the Service, to for-

feit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of four years.

Snow, Samuel Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of one year.

Spencer, Nathaniel T. T/5. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of three years.

Stewart, Leslie T. T/5. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Stone, Arthur L. T/5. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Sutliff, Richard L. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

Thornton, Booker W. T/4. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of five years.

Townsell, Booker, Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Walton, David, T/5. To be reduced to the grade of private, to be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of eight years.

Wooden, Wallace A. Pvt. To be dishonorably discharged the Service, to forfeit all pay and allowances due and to become due, and to be confined at hard labor at such place as the Reviewing Authority may direct for a period of ten years.

The Court was opened at 7:00 o'clock p.m.

President: Court will come to order. It is announced for the record at this time that the court during its closed session recessed at 12:15 p.m., and reconvened at 1:30 p.m. and all members of the court were present at the time of reconvening. Court recessed again at 5:45 p.m., and reconvened at 7:00 o'clock, p.m., at which time court was open.

All of the members of the court, the personnel of the Prosecution and Defense are present, and each of the accused with the exception of the accused Roy Montgomery, are present.

The President announced the findings and sentences as to each accused except as to the accused Pfc, Roy L Montgomery.

As to the accused Pfc Roy L Montgomery, the President stated that the court had directed that the findings and sentence be not announced.

Documents submitted by the Defense for consideration in connection with clemency are attached hereto marked "clemency letters."

President: Is there any further business to come before the court?

Trial Judge Advocate: There is no further business, it it please the Court.

Defense: The Defense has nothing further.

The court then, at 7:44 p.m., 18 December 1944, adjourned to meet at the call of the President.

AUTHENTICATION OF RECORD

/s/ Wilmar W. Dewitt

WILMAR W. DEWITT
Colonel, G.S.C.

President

/s/ Robert Branand

ROBERT BRANAND, Captain, J.A.G.D.
Ass't Trial Judge Advocate
because of absence of
Trial Judge Advocate

I examined the record before it was authenticated.

/s/ William T. Boeks

Major, J.A.G.D.

Defense Counsel

I certify that I personally recorded the findings and sentence of the court as to the accused, Pfc Roy L. Montgomery.

/s/ Robert Branand

ROBERT BRANAND; Captain,
J.A.G.D. Ass't. Trial
Judge Advocate because
of absence of Trial
Judge Advocate

I certify that in the original record each day's proceedings are properly signed by the Assistant Trial Judge Advocate because of absence of Trial Judge Advocate.



ROBERT BRANAND,
Captain, J.A.G.D.
Ass't. Trial Judge
Advocate because of
absence of Trial Judge
Advocate