WITHDRAWAL FORM

ACCESSION: NN3-341-01-001

FROM BX 2

Date: 7/18/01

By: NWCS (Motion)

Item(s):

1 BETACAM SP DL-203DF-062 SELECTIONS POW
AMPEX 398 FUNERAL

1 DIGITAL BETACAM COL. KITTINGER CLIPS

2 BETACAM SP UFO STUFF – BALLOON TAPE 1+2

1 BETACAM SP ROSWELL INCIDENT

1 BETACAM PS130CG3C 40 MIN.
"MAN HIGH, EXCELSIOR, STARGAZER"

1 BETACAM SP LABEL SAYS "BLANK"

1 BETACAM SP NO TOPIC FOUND – NO LABEL

1 ~~2~~ BETACAM SP "PROJECT MO GUL" 10/2/95 11 MIN 45 SEC

2 BETA SP AND BETA 500 "PROJECT MOGUL 11/21/94 12 MIN
COPY 1 + COPY 2

FORM 111-A ASSOCIATE SERVICE, 255 ROBINSON ROAD, PASADENA 6, CALIF.

REGISTRATION

NAME Dr. & Mrs. George F. Adams

STREET Walker Air Force Base

CITY Roswell, N. M.

STATE N. M.

CAR LICENSE 4-3150 STATE N.M.

MAKE OF CAR Olds NUMBER OF PERSONS 2

ROOM NO. 12

DATE IN 4-6-19

RATE $ 7

DATE OUT APR 21 AM

DAYS OCCUPIED

SUN.					
MON.					
TUES.					
WED.					
THUR	19				
FRI.	20				
SAT.					

TOTAL DAYS_____ AMT. PAID $_____

ADVANCE PAYMENT REQUESTED

NOTICE TO GUESTS

THIS PROPERTY IS PRIVATELY OWNED AND THE MANAGEMENT RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE, AND WILL NOT BE RESPONSIBLE FOR ACCIDENTS OR INJURY TO GUESTS OR FOR LOSS OF MONEY, JEWELRY OR VALUABLES OF ANY KIND.

BPO

ASERVO SYSTEM

DATE	LAUNDRY	TELEGRAMS SENT	TELEGRAMS REC'D	PHONE CALLS LOCAL	PHONE CALLS LONG DIST	CAFE AND BAR	CASH	TOTAL

APR 19 PM

D-1 OTHER CHARGES

DATE	ITEM	AMOUNT	DATE	ITEM	AMOUNT

AMOUNT	$
OTHER CHARGES	$
ROOM	$
TOTAL	$
CREDIT	$
BALANCE	$

GUEST RECEIPT

ROOM

12. ADAMS

PROS. EX. 5

FORM 11-A ASSOCIATE SERVICE, 255 ROBINSON ROAD, PASADENA 6, CALIF.

REGISTRATION

NAME Dr. & Mrs. George T. Adams
Ft. Col.
STREET Walker AFB, Roswell, N. M.
CITY Roswell, N. M.
STATE N. M.
CAR LICENSE 4-13866 STATE N. M.
MAKE OF CAR Mercury 1956 NUMBER OF PERSONS 2

ADVANCE PAYMENT REQUESTED

NOTICE TO GUESTS

THIS PROPERTY IS PRIVATELY OWNED AND THE MANAGEMENT RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE, AND WILL NOT BE RESPONSIBLE FOR ACCIDENTS OR INJURY TO GUESTS OR FOR LOSS OF MONEY, JEWELRY OR VALUABLES OF ANY KIND.

ROOM NO. 44
DATE IN 4-27
RATE $ 7
DATE OUT

DAYS OCCUPIED

SUN.					
MON.					
TUES.					
WED.					
THUR.					
FRI.	27				
SAT.	28				

TOTAL DAYS _____ AMT. PAID $ _____

ASERVO SYSTEM

GUEST

DATE	LAUNDRY	TELEGRAMS SENT	TELEGRAMS REC'D	PHONE CALLS LOCAL	PHONE CALLS LONG DIST	CAFE AND BAR	CASH	TOTAL
						APR 29	AM	

D-1 OTHER CHARGES

DATE	ITEM	AMOUNT	DATE	ITEM	AMOUNT

AMOUNT	$
OTHER CHARGES	$
ROOM	$
TOTAL	$
CREDIT	$
BALANCE	$

ROOM

44 - ADAMS

PROS. EX. 6

Walker Air Force Base
New Mexico
AUG 13 1957

S_T_I_P_U_L_A_T_I_O_N

In the case of the United States v. Lieutenant Colonel George F. Adams, AO257543, 6th Tactical Hospital, 6th Bombardment Wing, Heavy, it is hereby stipulated and agreed among the trial counsel, the defense counsel, and the accused, that:

The accused, Lieutenant Colonel George F. Adams, AO257543, 6th Tactical Hospital, 6th Bombardment Wing, Heavy, executed in his own handwriting the information contained in Prosecution Exhibit 5 for Identification. It is further stipulated that the following words were written in the accused's handwriting at the time that he registered on the 19th of April 1956 at the La Fonda Motel in El Paso, Texas. The following words are in the accused's handwriting: the words "Dr. & Mrs. George F. Adams"; the words "Walker Air Force Base"; the word and letters "Roswell, N.M."; the letters "N.M."; the figures "4-3150"; the letters "N.M."; the word "Olds"; and the figure "2".

The accused, Lieutenant Colonel George F. Adams, AO257543, 6th Tactical Hospital, 6th Bombardment Wing, Heavy, executed in his own handwriting the information contained in Prosecution Exhibit 6 for Identification. It is further stipulated that the following words were written in the accused's handwriting at the time that he registered on the 27th of April 1956 at the La Fonda Motel in El Paso, Texas. The following words are in the accused's handwriting: the words "Dr. & Mrs. George F. Adams"; the words "Lt. Col."; the words and letters "Walker AFB, Roswell, N.M."; the word and letters "Roswell, N. M."; the letters "N. M."; the figures "4-13866"; the letters "N. M."; the word and figure "Mercury 1956"; and the figure "2".

Morris B. Fox

MORRIS B. FOX
Captain, USAF
Trial Counsel

David E. Ells

DAVID E. ELLS
Captain, USAF
Defense Counsel

I hereby acknowledge I understand the contents of and join in the above stipulation.

George F. Adams

GEORGE F. ADAMS
Lieutenant Colonel, USAF
Accused

PROSECUTION EXHIBIT 7 ~~FOR ID~~

Walker Air Force Base
New Mexico
AUG 13 1957

S_T_I_P_U_L_A_T_I_O_N

In the case of the United States v. Lieutenant Colonel George F. Adams, AO257543, 6th Tactical Hospital, 6th Bombardment Wing, Heavy, it is hereby stipulated and agreed among the trial counsel, the defense counsel, and the accused, that:

The accused, Lieutenant Colonel George F. Adams, AO257543, 6th Tactical Hospital, 6th Bombardment Wing, Heavy, was the owner of a 1954 Oldsmobile, license number 4-3150, which license was issued by the State of New Mexico. The accused was the owner of this vehicle during the entire year of 1956.

It is further stipulated that First Lieutenant Charleen Goodnough, AN2243350, 509th Tactical Hospital, 509th Bombardment Wing, Medium, was the owner of a 1956 Mercury, license number 4-13866, which license was issued by the State of New Mexico. First Lieutenant Charleen Goodnough was the owner of this vehicle during the entire year of 1956.

Morris B. Fox
MORRIS B. FOX
Captain, USAF
Trial Counsel

David E. Ellis
DAVID E. ELIS
Captain, USAF
Defense Counsel

I hereby acknowledge I understand the contents of and join in the above stipulation.

George F. Adams
GEORGE F. ADAMS
Lieutenant Colonel, USAF
Accused

PROSECUTION EXHIBIT 8 ~~FOR ID~~

Sunday
15 Jan. 1956.

Dearest Charleen,

Inclosed is a letter I wrote to your mother. I feel terribly depressed and unhappy because I have been so selfish in my love and have messed you up and confused you so much. I know you will probably hate me for writing to her but I felt that at least I owe you that much and I wanted them to know, so they will not blame you.

You are still invited to attend my installation next Friday evening at the Base Chapel if you wish to come and bring your friends. I shall not bother you. Before I go I'll leave my two plants at your door. I can't take care of them when I'm gone and they will die.

Please forgive me. all my love,

Prov Ltr 11 ~~for 25~~ George

(5)

Lt. Col. George 7. Adams
509 7th Tactical Hospital
Walker Air Force Base
Roswell, New Mexico

Mrs. Charles L. Goodnough
Box 133, 310 College St.
Simpsonville, S.C.

15 January 1956
Sunday

Dear Mrs. Goodnough,

I enjoyed talking to you and Mr. Goodnough, yesterday evening on the phone.

When I told you on the telephone that I love your daughter Charleen, you probably believed I was joking. I was in dead earnest, and it is because I sincerely love Charleen very deeply that I have a confession to make.

I have no legal or moral right to love Charleen and I have no right to expect her to love me because I am still married. Charleen hesitated to tell you this because it would make you unhappy. I also would hesitate to tell you except for three reasons: first, I love Charleen, second because I believe in truth and honesty and third because Charleen has told me how kind, loving and understanding both of you were during her past unfortunate

Exhibit 4

12-12-56
31
S-3

situation. Charleen and I have confided in each other and have told each other about our past lives. I know all about the baby who has turned out to be a sweet and lovely child. I'm sure that if Charleen says so, it must be so. Charleen is pure gold and I believe in her honesty and truthfulness. Most parents would condemn their daughters in the situations with a tragic result to everyone including the child. But fortunately, everything turned out alright, because you and your husband are kind and understanding and because you love Charleen and were willing to forgive her. Charleen loves you both very much. She speaks of you both all the time to me, and I know she misses you. I congratulate Charleen for her good luck in having such fine parents.

Charleen is aware that I am unhappily married and separated from my wife. We have not been compatible or agreeable for several years. My unhappy marriage is the reason for my return to duty with the Air Force from private practice a year and a

10 Oct 52
W.H.P.

12-12-52
W

S-3

half ago. I have not gone ahead with a divorce, mostly because of the children but also because I had not, until the present time, fallen in love with anyone. So as long as I was not in love with anyone there seemed to be no point in getting a divorce. However about two years ago I did see my attorney and start proceedings because the situation became so intolerable. There were other reasons which I discussed with Charlean confidentially. My attorney saw my wife to discuss a settlement agreeable to both of us. She wanted too much, which included half of my income, the home and other property and all insurance. She was only willing to leave me my car because I needed it in my profession. Since my overhead expenses in my private practice ran about 35% of my gross income, I would have been left with practically nothing.

I am sure all this has bored you, but I felt you should know.

10 Oct 56
W.H.P.

12-12-56
W

S-3

(4) We all know how Society as a whole condemns a relationship such as the present one between Charleen and me. Most people won't "live and let live." They prefer to gossip and pick other people to pieces. However, love is strong and when two people are in love, they often do not consider the consequences.

Charleen and I liked each other immediately when we met in Alabama. We became close friends very quickly and saw each other constantly. Our friendship grew into love very quickly, as often happens. I drove her back here with me.

Charleen has a feeling of guilt in loving me and tries very hard not to love me. She does not want to repeat her previous experience. I promise you that she has made every effort to avoid seeing me and to drive me away, even to the point of hurting my feelings and making me angry. But I haven't given her a chance to forget me. I have called her on the phone, gone to see her and forced my attentions on her.

10 Oct 56
W.H.D.

12-12-56
W

5-3

Because I love her so much, I have thought of myself too much and have been unfair to her. She has told me that she loves me and would marry me if I would get a divorce but naturally she is skeptical and does not trust me or believe me. She has tried to make me understand her feelings and wishes in the whole situation. I am willing to get a divorce and marry Charleen but this takes time and in the meantime poor Charleen is confused and unhappy. I have made an emotional and unhappy girl out of her and often she sleeps and eats poorly.

I sincerly feel very sorry for what I have done. I realize that my love for her has been a very selfish one on my part and I have not been fair to her. So I have decided not to talk to her or see her as she has requested, and to leave her alone. This will of course make me very unhappy and depressed because naturally if I love her I want to see her! But my desires and feelings

10 Oct 54
W.H.P.

12-12-57
W
5-3

are really not important. I must consider Charleen's feelings, health and well being. She is the only one to consider and I would rather cut off my right arm than to hurt her.

In about a week I shall go away overseas for about 3 months. I shall leave her alone before I leave and during the time I'm gone maybe Charleen will be able to forget me and readjust her life.

It is my hope that you both will forgive me and not think too harshly of me. I know that Charleen has spoken well of me to you, but probably because she didn't want to worry you. But I'm not really the nice guy that she said I was. Charleen is a wonderful girl and much too good for me. I can understand why you love her so much and I love her for the same reasons.

Please do not worry about her. I'm sure that she will forget me and come out of this O.K.

10 Oct 32
W.H.P.

12-12-32
U
5-3

(7)

I would like to have met you and your husband. I know that from the fine things Charleen says about you and from just talking to you both on the phone, I would like you both very much. It's too bad that things could not have been different But life and people are often very cruel.

With the hope that you will understand and be forgiving I remain,

Very humbly yours,

George F. Adams.

P.S. Please do not blame Charleen for any of this. I am entirely to blame for everything. I know she will hate me for writing this letter.

George

10 Oct 24
W.H.P.

12-12-06
W

S-3

PROS. EX. 11

25 Dec. 1955
Christmas Day.

Darling Charlene,

This letter will be a surprise to you, but it's Christmas Day, and I just had to write to you because I love you and I have missed you so much these past four days.

I was terribly unhappy after I left you Wednesday night. I was hurt and so I had hurt you. Why do people have to hurt each other, especially if they are in love? It doesn't make sense to me. Will you please forgive me for the terrible way I acted and be my friend again? We have been such good friends and have been so close to each other since we met. We became friends and we both liked each other immediately — don't you remember? We have had a lot of fun together even when we argued. But we really didn't argue, sweetheart, — we only discussed things. We always left each other as friends until this last time.

Pros Ex 9 ~~Add D~~ (next page)

Exhibit 8

10 Oct 56
W.H.P.

12-12-56
W
5-1

after I left you I was so miserable I couldn't sleep. So I finished packing and started off in my car. It was a silly thing to do since I was so tired and unhappy. I wrote you a note and stuck it in your door with the X-mas card after I signed out at 12:40. At about 1:00 a.m. I left the base and started for Albuquerque — 200 miles away. The first town on the way to Albuquerque is Vaughn, a distance of 92 miles. There isn't even a tree in between. I got terribly sleepy after about 60 miles. I had taken 2 dexedrine tablets when I left Roswell as I took another, but I guess I was so tired they didn't do much good. Just a few miles from Vaughn I fell asleep at the wheel and ran off the road into a field, going about 60 miles an hour. Fortunately for me, there was no ditch and the side of the road was level with the grass field. I didn't get hurt or damage my car but I was scared as Hell. It woke me up and I managed to get into Vaughn O.K. I went to the only Cafe open

(next page)

10 Oct 56
W.H.P.

12-12-06
W
5-1

in town and drank 3 cups of coffee; also took another dopedrine. I walked around outside for about 15 minutes, - then took off for Albuquerque, arriving about 5:00 a.m. My old friends and associates there got me a ride on an Air Force plane for Los Angeles at 8:00 a.m. I slept all the way. I left my car with Capt Snyder, for former adjutant when I was Base Surgon at Kirtland A.F.B.

Honey, I went to a Catholic Church for 1/2 hour yesterday and thinking of you I enjoyed it. Also I had a peanut butter and banana sandwich with the banana sliced thin on the peanut butter. It was <u>delicious</u>.

If you wish to do so and have time you can take a bus to Albuquerque and get my car to use for yourself until I return. Enclosed is a note to Capt Edward Snyder to identify you. His telephone number is 9-3046 at home or you can get him at the Kirtland AFB. Dispensary. Then I can come back all the way by plane.

As always my love,
George.

P.S. I hope you have a nice holiday season. D/

10 Oct 56
W.H.

12-12-56
W
S-1.

EXHIBIT 2

PROS. EX. 9

Adams S-2

			motion	Count
Chg I art 134				
Spec 1	Adultery @ Victoburg, Miss	16 Dec 55	NG	—
2	Adultery @ Dallas Tex	17 Dec 55	NG.	—
3	False Reg M+W @ El Paso Tex	19 April 56	—	G
4	False Reg. M+W @ El Paso	27 April 56.	—	G
Chg II art 125				NG
1.	Sodomy @ Walker AFB, NM.	March & Jan 56.		NG.
2.	Sodomy @ El Paso	19 Apr 56.	NG.	—
3.	Sodomy @ El Paso	27 Apr 56.	NG.	—
Chg III art 133.				
1	adultery Victoty.	16. Dec 55	NG	—
2	adultery Dallas	17 Dec 55	NG.	—
3	False Reg M+W El	19 Apr 56.	—	G
4	Reg. M+W. El Paso.	27 Apr 56.	—	G.

Pros Ex 10 for ID

(6)

9 Jan 1956

Lt. Goodenough.

You have been a terrible disappointment to me. A dog should not be treated the way you treat me and there is no reason for it. I have tried to do everything a can to help you and be kind and loving to you. And all I get is a bad time from you and get insulted.

You have told Katie terrible things about me to put me in a bad light and make her think I'm a damn fool.

You talked with Dr. Barnes at 3:00 o'clock the other morning and told him that I loved you and was bothering you and that all you want is for me to leave you alone. You told Katie the same thing to leave her to believe that that you had no part in this relationship at all, that it all comes from me. In that way you ~~be all the blame~~

Pros Ex 10 for ID

12-12-56
W
S-2

10 Oct 56
W.H.P.

(2)

put all the blame on me and make me out to be a silly stupid damn fool and let everybody know that you are O.K. and not to blame for anything. So that leaves you with a "clean slate" and the "jackass" who hasn't any sense.

You lied to everybody including Katie, Gloria, Dr. Barnes and God knows who else. So that leaves me as a God Damn fool.

You pretended to love me and on occasions acted as you love me. You even told me that you love me. I believed you honestly and sincerely. I trusted you, believed in you and loved you with all my heart. And you let me down. You have been dishonest and unfair with me behind my back. You have lied to me, and have been very unfair with me.

I have been honest and fair

10 Oct 56
W.H.P.

12-12-56
U
5-2

(3)

with you all the way every time and what do I get for it.

I certainly didn't know that you were that kind of girl.

If you were not in love with me you should have been honest and fair about it instead of lying to me and misleading me as you have done.

After the terrible episode the other night you let me down and told Dr. Barnes all about me This was unnecessary. You had asked me to keep our relationship quiet and keep it to ourselves. So what do you do. You are the one that tells everything to everybody not me. You told Barnes and you told Katie about La Cima and the fountain pen, etc. You told Gloria all about us.

I have just tried to be nice to you and love you I would have done anything in

10 Oct 56
W.H.P.

12-12-64
W
S-2

the world for you. I worshiped the ground you walked on. And all I ~~got~~ got is a bad time from you Except the two times you pretended to love me. I believed in you

You pretended to be so religious and pure. & that is religion & don't want any part of it. Im sure that God does not approve of one human being treating another as you have treated me. Im sure that the way you have treated me is not the way to gain entrance to Heaven. I so & prefer to go to Hell. Maybe people are more kind to each other in Hell.

You lied to me last night and you know it. I would not have done that to you. I have always been truthful and honest to you and I don't deserve such treatment from you in return

10 Oct 56
W.H.P.

12-12-56
W
S-2

(5)

People like you and the two officers at Kirtland AFB in Albuquerque destroy all my faith in human nature. I have kept trying to believe in people, even when they keep stepping on me and kicking me when I'm down. Finally I've reached the point where I no longer have any faith at all in people. From now on it will be "dog eat dog" with me I've finally learned my lesson at last. I'll be hard and tough with everyone. I'll get out of people what I can and to Hell with them and their feelings. I'll get what's coming to me even if they suffer. It's best that way and I won't get hurt. The Golden Rule is a lot of theory and nonsense It is only for stupid people. From now on my "Golden Rule" will be "do others before they do you"

Last night when I found out

10 Oct 56
W.H.P.

12-12-56
W
S-2

that you had deceived me & got
stinking drunk and passed out.
But before I got too drunk I left
Jess Hendrix a note to tell Katie
that I had influenza and was
sick. He apparently went over to
~~her~~ Katie's house and told her
because Dr. Barnes came over
to see me at noon and woke me
up. I told him I had "flu"
but I know he didn't believe me
because there was an empty
whiskey bottle, glasses and
cigarette butts all over the place
My room was a mess. But
he pretended not to notice. I
admitted that I loved you but
reminded him that I had not
said so over the phone the other
night when I told him you
were unable to work. I swear
on all that is Holy that I only
told him you were ill and
emotionally disturbed and that

10 Oct 56
W.H.P.

12-12-06
W
S-2

(7)

you would be unable to work. He knows that and agreed with me. He told me that he thought nothing of it until you called him and talked to him an hour telling him all that stuff. He said he really couldn't make out what it was all about.

So you "stuck my neck out" and led him to believe that it was all my fault and that I was the cause of all your troubles. You made me out as a damn fool. Now what do you suppose he thinks of me.

Well, Charlene I don't care what people think of me. You go right ahead and let people know that I'm a damn fool. I suppose it is "every man for himself" "Self preservation is the first law of nature" In this way people won't blame you. They will think I'm bothering you and pestering you

10 Oct 56
W.H.P.

12-12-84
W
5-2

(8)

so maybe it's better that way. So go ahead and have your fun.

I guess there is no more to say.

I won't meet you or Gloria with the car today or collect your pay. I've torn up the note. to get your pay.

I like the way you have treated me in the Godly and religious way of doing things then I don't want any part of religion.

George

10 Oct 56
WHP

12-72-03
U
S-2

EXHIBIT 3

PROS. EX. 10

Charleen,

Since I wrote to [redacted] you in the note given you in the hospital I called Dr Rube. He still insisted that there was a fracture. These young fellows just don't want to believe an older and more experienced doctor who has been in practice for quite a few years. I believe that I am a very good doctor and a good diagnostician. Im not saying this to brag. Im stating a fact. I know I'm a good doctor and I have confidence in myself all of my patients in private practice had complete confidence in me. I remind you of a letter that my American Legion Post wrote to Senator Kuchel on my behalf because of my administrative troubles with the General and Colonel at Kirtland AFB. But even those guys never did run me down professionally.

Pros Ex 12 ~~two~~ 1

Exhibits

10 Oct 56
W.H.P.

12-12-56
W
5-4

We only had command or administrative difficulties. My battle with them was because they tried to run my hospital and tell me what to do and how to treat the patients in my hospital. As a doctor I resented this and I put being a doctor above being an officer. Please read the letter from the Legion Post especially the underlined sections. You will see what my professional colleagues and friends think of me. So I couldn't be so lousy as you probably believe I am. Ruke and these young doctors like Turk think they know it all when they are only just out of school. You know how Turk and Ruke are. You said so yourself. They think just because I am in a staff and command position and at the moment don't do much professional work that I'm out of touch and not so good. But the "old man" knows more than they think. After all I have

10 Oct 56
W.H.P.

12-12-57
U

S-4

been away from active practice in San Francisco for only 1½ years I certainly didnt forget all I know about medicine and surgery ~~that~~ during this short time. I have been doing surgery and Gynecology here in the Hospital. I have seen many women in the Gyn. clinic here and when they come back they want to see only me. If you don't believe me, just ask Mrs. Taylor, the receptionist in O.P.C.

I'm not trying to excuse my childish display of temper at your apartment. There was no excuse for that. But I really was not seriously worried about your knee. Surely you injured it, but it was not as bad as you made it out to be. At the time there wasn't even much swelling. By tomorrow you should be O.K. and be able to go home. Perhaps I should have been kinder and more sympathetic in my

10 Oct 56
WHP

12-12-57
W

S-4

attitude towards you. But it seems that always something happens to keep us apart. The God damnest things happen. I guess Fate has decreed that we are not for each other. I repeat that I was just mad and "blew my top" because I was so disappointed at the turn of events. I really was not angry at you. I didn't even look at you or say anything to you. I was just angry and frustrated at my bad luck. It wasn't really you at all that I was angry at. You should realize this if you think about it. I was like a child having a tantrum.

But since you can't see all this you are not willing to be fair and forgive me after all the many times I have forgiven you which indicates that you don't think enough of me or have any confidence in me as a friend or a doctor. So Charley again I say goodbye and good luck

George

P.S. I shall have your transferred to the 6th AAF Hosp. on Monday if it is at all possible. The way I feel about it now I have never had all this worry and trouble

10 Oct 56
W.H.P.

12-12-56
W

5-4

EXHIBIT

PROS. EX. 12

Charlean

I'm terribly unhappy. I not only failed you as a friend but also professionally as a doctor. I was selfish and thinking only of myself and what I wanted. I wanted to be with you because I loved you. I'm sorry that I had to fall in love with you but I couldn't help it. It just happened. Things happen like that. I know that you won't ever forgive me. I know that this is it! When you say you are finished you mean it, - just like with Don. And I know you meant it. I went home and cried like a baby, before I came over to see your x-ray films. I just couldn't believe you had a fracture. Of course I was right. There is no fracture. Dr. Rube is a young doctor just out of school and I have had many years of practice

Pros Ex 13-

(next page

10 Oct 54
W.H.P.

12-12-04
W
S. S

I've read lots of X-ray films. I can recognize an artifact when I see one I've read hundred more films than Dr. Rube.

Your treatment should be hot compresses and something for pain prn. but no cast as they wanted to do. When the pain and swelling is down and you have been off your feet you should use an Ace bandage for support if you wish. Hospitalization is not necessary. You can compress it at home yourself. But after all as I said you have lost all confidence in me as a friend and a doctor and I don't blame you. You are under the care of Dr. Rube at present and probably Turk tomorrow. Since I'm not your doctor I have nothing further to say and of course no right at all to say it.

(next page)

10 Oct 56
W. H. P.

12-12-56.
W
S-5

I'm very sorry for all the grief and unhappiness I've caused you. So after all I was right when I told your mother I was no good. So now you can write her and tell her I'm an "S. of a B." and you will be right.

I'm going to your place now and gets my boots and suitcase So Charleen, goodbye and best of luck. I'll be leaving Tuesday or Wednesday and you won't be bothered with me again.

Thanks for everything

Goodbye.

George

10. Oct 56
W. H. P.

12-12-56
U
5-5

EXHIBIT 6

PROS. EX. 13

Thursday
26 Jan.
2:00 P.M.

Charleen,

Inclosed is a carbon copy of a letter I mailed this afternoon to your mother. I hope this letter will make everything O.K. for you with your parents. I hope their minds will now be relieved. Since they seem to be such nice folks, I hate to have them so confused. I'm sure that they will approve of our final arrangement.

Regards,

George F. Adams

Pws Ex 14 ~~Pws~~

(1)

Lt. Col. George T. Adams
509th Tactical Hospital
Walker Air Force Base
Roswell, New Mexico

Thursday
26 Jan. 1956

Dear Mrs. Goodnough

I received your very nice letter yesterday and was very happy to hear from you. It was obvious from your line of reasoning that you are a very sensible and practical woman. I am very sorry that I upet and confused you. I didn't mean to confuse you, I only thought that you should know the truth! I don't know what Charleen told you but it must have been different than what I told you. I had not seen Charleen for several days until today. I showed her your letter to me and discussed your ideas.

What really must have confused you is that Charleen had not told you that I am married and also that she was [redacted] in love with me. To be truthful with you I made the mistake of believing that Charleen was in love with me. I presumed she was but I have found

(2) out since ~~that~~ she was never in love with me at any time. So it's all my fault. As I said before you can blame me for everything. I pursued and "heckled" her I guess I must have made a big pest of mypelf hanging around her and trying to see her. All along she was really trying to avoid me and keep me away from her, but she didn't want to be rude or impolite and hurt my feelings. I am smart enough to see all this now. But you know how it is when people are in love. Sometimes they make fools out of themselves and I really made a <u>damn</u> fool out of mypelf.

You advised me not to get a divorce unless I was sure that Charleen and I were in love with eachother. A one-sided love is no good as you know and since Charleen definitely does not love me, <u>that's that</u>!

After discussing your very sensible letter, I promised Charleen not to bother her ever again. I said that we could be "friends" in a sense in that we

(3) will be nice and polite to each other if ever we accidentlly run into each other or cross each other's paths. It is impossible for me to avoid seeing her at work since I have to make ward rounds in the hospital all the time and naturally I'll see her when she is on duty and maybe pass her in the halls, on the street see her in the officer's Club, etc. She may even be visiting friends when I go to see the same friends since we have some mutual friends. All these incidents cannot be avoided since they are by chance. However I will not seek her out, look for her or call her on the phone. I'll do my very best to avoid Charleen all I can. But from now on she will be Lt. Goodnough to me and I will be Dr. Adams or Colonel Adams to her.

Unfortunately I am Charleen's Commander and we must be on the same base at present. But this will not last very long I am going away in a couple of weeks for 3 months. Soon after I return

(4) it is expected that our hospital unit, the 509th Tactical Hospital, will move to Portsmouth air Force Base on the coast at Portsmouth New Hampshire. This is an opportunity for Charleen to "get me off her neck" so to speak. I can transfer her to the other hospital unit, (6th Tactical Hospital) very easily, before we leave for New Hampshire. I believe this will accomplish the separation of Charleen from me. This will give her an opportunity to find someone to interest her. also maybe, as you said, she will find someone to love while I'm away for three months. By getting her out of my hospital unit, she will get rid of me for good and this will make her feel a lot better. Don't you agree that this is the best for both of us? Loving her as I do it will be difficult for me to get over my feelings toward her if she is still around where I am. So this solves everything.

As I said before I'm sorry that

(5) I started this unhappy situation and got Charleen, you and your husband so confused. Maybe you all will feel much better after reading this letter.

Well, Mr. Goodnough, please forgive me for all I have done. Just realize that I am not really the "nice guy" you think I am.

I shall be here until about 7th if you care to answer this letter. I would like very much to hear from you again if you care to write and are not too disgusted with me.

Cordially yours,

George F. Adams

PROS. EX. 14

Wed. 21 Dec.
11:30 P.M.

Dear Charlene,

I'm very unhappy. I'm sorry for any blame that can be attached or attributed to me for this night's unhappy event. Maybe God planned it this way. I guess maybe our love was never meant to be. If it is God's will then it has to be that way. He guides our destiny. I'm terribly disappointed and very unhappy, but my unhappiness and my feelings in all this are not important. Only one person and what I think, desire, want and believe is not really important.

Prov 3:5-6 (next page)

It is your welfare and security that are most important. I really had no right to interfere at all in your life. My love for you is wrong in accordance with your beliefs and in the opinions of society. I realize now as I write this that our friendship and love is not fair to you. I've been completely wrong all the way. I should have avoided falling in love with you and have been strong enough and fair enough to you not to bring all this upon you. I blame myself completely for interfering in your life. My feelings are not important at all.

(next page)

I made a tragic mistake and must be punished by God for my sin. I am really sorry and remorseful for all the wrongs I have done you and I shall never forgive myself. What is done is done. I know you shall never forgive me and maybe God will not forgive me. But please pray for me the next time you go to church.

I'm terribly sorry that I messed up your life so much, but I know there is nothing I can do to atone for the way I have treated you.

My X-mas card is attached. I just want you to see it and know I meant what I said

(next page)

Maybe I'm foolish but I'm
leaving this note and
departing from the base
immediately. I know that
in my present condition I
should not drive after drinking
so much and in my present
emotional state, but I just
have to go. I can't sleep
so I may as well just
start out and drive. If I
don't make it and fall asleep
it really doesn't matter much.
That's a chance I have to take.
Goodbye Charlene, and the
very best of luck to you. George

PROS. EX. 15

Walker Air Force Base, New Mexico

(Place)

27 November 1956

(Date)

Walker AFB, N.M.

I, Lt Col GEORGE FURMAN ADAMS, USAF M.D., AO-257543, 4036th USAF Hospital, hereby state that before I was interrogated by or requested to furnish a statement to WILLIAM H. PITTSON, who identified himself to me as a Special Agent of the Office of Special Investigations, United States Air Force, this Special Agent read Article 31 of the Uniform Code of Military Justice to me and informed me that the nature of the offense he is investigating is as follows:

1. FALSIFICATION OF REGISTRATION 2. ADULTERY 3. SODOMY

and advised me that I did not have to make any statement regarding this offense, and that any statements made by me may be used as evidence against me in a trial by court-martial.

I hereby further state that, after the aforementioned explanation, I do hereby voluntarily and of my own free will make the following statement without having been subject to any coercion, unlawful influence or unlawful inducement and without any promise of reward, benefit, or any immunity having been made to me:

[redacted]

Q Col ADAMS, what is your marital status?

A I am married, have two (2) children, however, at the present time I am separated from my wife and I would like to further state that I have twenty-eight (28) years of service, approximately ten (10) of which is active duty.

Q Col ADAMS, when did you first become acquainted with Lt GOODNOUGH?

A I believe my first acquaintenance with Lt GOODNOUGH was early December 1955, specific date unknown, while we were both attending courses at Gunther AFB, at the School of Medicine, Montgomery, Alabama. I contacted the administration

Exh. G, T-14

Pros Ex 27.A

to discover if any personnel attending the basic orientation course had been assigned to Walker AFB. After meeting Lt GOODNOUGH I attended social functions at the Officers Club at Gunther and elsewhere in Montgomery, night clubs, etc.

Q Col ADAMS, did Lt GOODNOUGH accompany you back to Walker AFB by car after you both completed your courses at Gunther AFB?

A Yes, I brought Lt GOODNOUGH in my car to Walker AFB after completion of our respective courses.

Q Col ADAMS, approximately 16 December 1955, did you and Lt GOODNOUGH register at a Motel in Shreveport, Louisiana?

A Lt GOODNOUGH and I registered separately under our own names in a Motel at Vicksburg, Mississippi, on the Friday evening of the same day we departed Gunther AFB. We had our separate rooms and registered under our own names.

Q Col ADAMS, prior to departing Vicksburg, Mississippi, did you have sexual intercourse with Lt GOODNOUGH in her room and were you drinking?

A I did not. The only liquor available at that time was two (2) miniature bottles of Scotch whiskey that I obtained as souvenirs from a Montgomery, Alabama, bar. Each of these bottles contained enough whiskey for one (1) drink. I offered Lt GOODNOUGH a drink; she stated that she did not like Scotch whiskey but she tasted part of one (1) drink and I drank the rest. This was accomplished within a few minutes.

Q Col ADAMS, after departing Mississippi, did you stop over at a Motel in Dallas, Texas, and register as man and wife, and if so, did you participate in sexual intercourse with Lt GOODNOUGH at this time?

A Yes, I did stop in a Motel in Dallas. I don't recall how we registered but I felt that at the time it was better if I was with her because she was very ill. She had most probably eaten something enroute before arriving at Dallas and was quite ill with nausea, vomiting, and acute abdominal cramps. I realized it probably wasn't the best thing to stay in the same room with her but I felt that as a doctor my services were needed to attend her. I did not have intercourse with her on this occasion at any time while we were in Dallas and both of us were up all night. I obtained no sleep trying to help her with her illness. She certainly wasn't in any condition to have intercourse at that time.

G.T.A.

Q Col ADAMS, after arriving at your permament duty station, Walker AFB, did you continue seeing Lt GOODNOUGH on occasions?

A I did. I might mention too, on arrival I took her to my quarters and immediately called Major ALLEN who lives two (2) doors from me, at approximately 2300 hours. Major ALLEN asked me if I would arrange quarters for her at the billeting office and said she would see her in the morning. I acquiesced to Major ALLEN'S request and immediately disposed of Lt GOODNOUGH for the night at the billeting office.

Q Col ADAMS, has Lt GOODNOUGH ever been in your quarters at Gunther Circle, Walker AFB?

A Yes she has, on a few occasions.

Q Col ADAMS, have you ever participated in an act of sodomy with Lt GOODNOUGH at your quarters, 3 Gunther Circle, Walker AFB?

A I have not, nor have I had intercourse with her.

[redacted]

Q Col ADAMS, did you ever register at the same Motel as mentioned above in the company of Lt GOODNOUGH on 27, 28 April 1956, and sign the register as Dr. & Mrs. GEORGE F. ADAMS, Walker AFB, New Mexico?

[redacted] I broke off all relations other than professional with Lt GOODNOUGH when I departed for England in February 1956. Admittedly I have been to her house two (2) or three (3) times since

G.7.a.

my return from England, not socially, but on each occasion professionally to render aid and assistance to her, staying only a few minutes on each occasion. Lt GOODNOUGH had stated when I left for England she felt we should discontinue our social relationship and I had indicated to her Mother by letter that I felt it best that under the circumstances I not continue to associate with Lt GOODNOUGH socially. Her Mother had appointed me as sort of a guardian to look after her daughter while here at Walker AFB, to which I agreed, both in correspondence and telephonic communications with her Mother. Lt GOODNOUGH has used my telephone in my quarters on several occasions to call her parents in South Carolina. The last two (2) occasions incurred a charge of approximately eight (8) to nine (9) dollars each. Lt GOODNOUGH has not refunded this money to me, also, she has not paid back twenty dollars ($20.00) that she borrowed from me on a previous occasion when she needed money. I have asked her several times for the money she owes me and she has "put me off" stating that she cannot afford to pay me. The total amount of money owed to me is about thirty dollars ($30.00).

D.F.C.

Q Col ADAMS, in reference to letters written Lt GOODNOUGH by yourself, the following phrases and sentences were extracted from these letters which I would like for you to explain. I would like you to explain specifically what you meantin a sentence extracted from one of your letters by the phrase "childish display of temper" at Lt GOODNOUGH'S apartment.

A I am sure I don't know what she had reference to, I made no statement to her concerning a "childish display of temper." I might say that I became annoyed with her on several occasions and told her so.

Q A sentence extracted from one of the letters indicated that you were going to transfer her to the 6th Tactical Hospital from under your command.

A I remember telling her prior to my departure for England that I felt that it was best that she be transferred from the 509th Tactical Hospital to the 6th Tactical Hospital in conjunction with my decision to cease social relationships with her. I felt it was for the best. At that time I was Commander of the 509th Tactical Hospital, I had no authority to transfer her from one hospital to another; I could only recommend that this be done.

Q What did you mean in the sentence extracted from one of your letters when you stated that you were terribly unhappy and had failed Lt GOODNOUGH as a friend and also professionally as a doctor?

A I don't recall making such a statement to Lt GOODNOUGH. At no time did I feel that I had been professionally neglectful. I have more confidence in my professional ability than to make a statement of that type. All records pertaining to my treatment of Lt GOODNOUGH will substantiate my professional judgment and capabilities relative to her case.

Q What did you mean in the sentence extracted from one of your letters in which you state that you were going to her residence to pick up your boots and suitcase.

G.7.a.

A I did not leave my suitcase at Lt GOODNOUGH'S apartment. I had left my boots at her place on one (1) occasion when I wore them while visiting her during a heavy snow of early February 1956. I told Lt GOODNOUGH that I would like to go to her place with her permission to pick up my boots because I needed them for the snow.

Q Will you elaborate on the sentence extracted from your letter whereas you were apologizing for the way that you had treated her?

A I believe that on one (1) occasion I did apologize to her for being abrupt and harsh with her when she had annoyed me and had seemed unappreciative of the things I was doing for her. I felt sorry that I had spoken harshly to her and simply apologized for my presumably rude manner.

Q What did you mean in a sentence extracted from one of your letters in which you advised Lt GOODNOUGH that she had discussed yours and Lt GOODNOUGH'S association with Major ALLEN, Chief Nurse, Walker AFB, New Mexico?

A In answer to this question I only remember asking Lt GOODNOUGH why she discussed our association and friendship between Lt GOODNOUGH and myself with Major ALLEN. I personally felt at the time and still feel that my social relationship with Lt GOODNOUGH were of no concern to Major ALLEN.

Q What did you mean in a sentence extracted from one of your letters wherein you asked Lt GOODNOUGH why she discussed your relationship with GLORIA MARTIN and Dr. BARNES?

A I don't remember accusing Lt GOODNOUGH of discussing my relationship with her with Dr. BARNES except on one (1) occasion which I will discuss presently. I don't remember GLORIA MARTIN being in the picture at all relative to this question. Lt MARTIN lived in quarters adjacent to Lt GOODNOUGH and was well aware that I was dating Lt GOODNOUGH. I made no accusations, statements, or complaints to Lt GOODNOUGH relative to discussing with Lt MARTIN my relations with Lt GOODNOUGH.

Q Will you explain the phrase extracted from one of your letters whereas you told Lt GOODNOUGH that "you lied to me last night"?

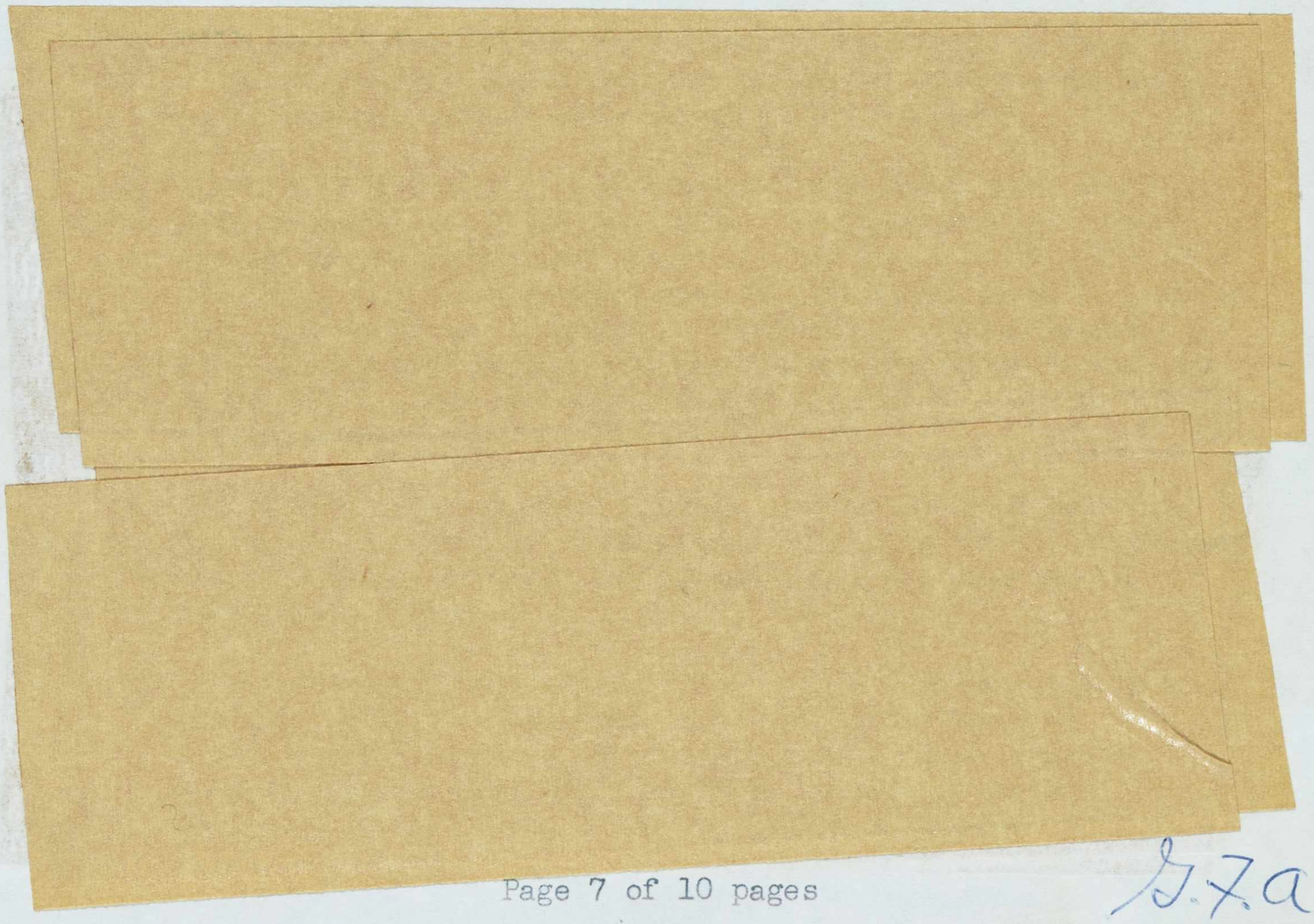
A I don't remember using the term that "you lied to me last night." I believe this statement refers to an occasion in which Lt GOODNOUGH had a date with me and went out with another officer and I simply told her that she had not told me the truth.

Q Will you explain the sentence extracted from one of your letters whereas you advised Dr. BARNES that Lt GOODNOUGH

D.7.a.

would be unable to work?

A One evening Lt GOODNOUGH was very drunk and extremely emotionally upset. She went to Lt MARTIN'S quarters in this state. Lt MARTIN called me by phone and asked me to please come to her quarters immediately and take care of Lt GOODNOUGH. I did so at Lt MARTIN'S request and found Lt GOODNOUGH in the above state. Against Lt GOODNOUGH'S vehement objections I called Dr. BARNES, who was medical officer of the day at the time, and stated to Dr. BARNES that Lt GOODNOUGH was not in a condition to perform duty. Dr. BARNES accepted this statement from me and made arrangements with the ward so that it would not be necessary for her to report for duty; he had this authority as medical officer of the day. At this time I did not tell Dr. BARNES anything concerning my personal relations with Lt GOODNOUGH. I advised Lt GOODNOUGH to return to her quarters and go to bed and asked Lt MARTIN to accompany her to her quarters and see that she went to bed. After I had left, apparently Lt GOODNOUGH phoned Dr. BARNES and in her irresponsible state of inebriation told Dr. BARNES that she was perfectly able to work and that I was excusing her from duty for personal reasons. The next day, Dr. BARNES discussed this with me and stated to me that he was unable to understand what Lt GOODNOUGH was talking about and overlooked anything she said because of her emotional state of mind at the time. I might state at this time Lt GOODNOUGH was drinking heavily and excessively on numerous occasions during this period of time. She tried several times to have me get her off duty and to cover up for her, which I refused to do.



D.7a.

ted

G.7.a.

[redacted]

Q Col ADAMS, I show you five (5) letters seized from Lt GOODNOUGH'S residence in which the above questions were extracted and would like to know if these letters were written by you to Lt GOODNOUGH.

A After examining the letters I state that they are letters written by me to Lt GOODNOUGH.

[redacted]

I further state that I have read this entire statement, initialed all pages and corrections, and signed this statement, and that it is correct and true as written.

George F. Adams
Lt Col USAF (MC)

Witness:

Edward A. Brown
S/A OSI Det

Subscribed and sworn to before me this 28 day of Nov. 1956 at Walker AFB, New Mexico, a person authorized by law to administer oaths.

Wm H. Pittson
WILLIAM H. PITTSON, Special Agent OSI

S.F.A.

PROS. EX. 17

Defense Exhibit No. 25.

The California Legionnaire

OFFICIAL PUBLICATION OF THE AMERICAN LEGION

DEPARTMENT OF CALIFORNIA

SUCCESSOR OF THE LEGION NEWS

ecember 31, 1940, at the Post-
er the Act of March 3, 1879.

5

JANUARY 15, 1947

Published semi-monthly by The American Legion Department of California at 2048 C St., Berkeley, Calif., on the 1st and 15th of each month. Subscription by mail per year.

DOCTOR'S POST INITIATED—"Bill" Sorensen, 8th District Commander, swears in officers of new San Francisco all-doctors Post. Name and number of the new Post is Dr. George K. Rhodes, 766. The Commander, Dr. George F. Adams, is a holder of the Silver Star. The Post's first officers are (left to right): Lawrence Custer, M. D., Sergeant-at-Arms; Walter Cuthbertson, D.D.S., Finance Officer; Clarence Nelson, M.D., Adjutant; Angelo May, M. D., Second Vice Commander; George F. Adams, M. D., Commander (Silver Star); Raymond Curtner, D.D.S., First Vice Commander; Herbert C. Sanderson, M.D., Chaplain; and Lloyd Wilson, M.D., Historian.

OFFICIAL PHOTOGRAPH
U. S. AIR FORCE
WALKER A.F.B.
ROSWELL, N. MEX.

OAKLAND TRIBUNE, SUNDAY, JULY 15, 1942

Magazine Pictures Army Post Surgeon

Maj. George F. Adams, medical inspector and assistant post surgeon at the Army Ground and Service Forces Redistribution Station here, is "doctor of the month" in a current issue of Family Physician.

Pictures of Maj. Adams and the Mar Monte Hotel, where he is stationed, appear on the cover of the publication. The officer, formerly of San Francisco, received his M.D. degree at the University of California in 1937, and entered the Army three years later. He is a veteran of 36 months of overseas duty, and was the first American flight surgeon to reach Java and the last to depart. He cared for hundreds of American airmen during a strenuous two months on the island while serving with the Navy's famed Dr. Wassell, according to the article.

He has been awarded the Silver Star, and a Presidential Citation with an Oak Leaf Cluster.

Barbara News-Press, Tuesday Eve., May 29, 1945 A-3

Major Adams Given Farewell Party by Officers

Maj. George F. Adams, medical inspector at Army Redistribution Station, was honored by officers of the post station complement at a farewell party held Friday evening at the home of Capt. Charles Buchman.

Maj. Adams, who has served at the returnee center since Nov. 3, 1944, left Monday for a new assignment. A veteran of 35 month's duty overseas, Maj. Adams wears the Silver Star medal and the Presidential Unit Citation in addition to his ribbons for South Pacific and Philippine service. A graduate of the University of California and the University of Arkansas, he practiced in San Francisco prior to entering the service in 1940.

The major, Mrs. Adams and their two sons have been making their home at 1139 El Camino Real during the officer's tour of duty in Santa Barbara.

Santa Barbara News-Press, Tuesday Morn., July 10, 1945

OFFICIAL PHOTOGRAPH
U. S. AIR FORCE
WALKER A.F.B.
ROSWELL, N. MEX.

OFFICIAL PHOTOGRAPH
U. S. AIR FORCE
WALKER A.F.B.
ROSWELL, N. MEX.

DEFENSE EXHIBIT A

Defense Exhibit B f[redacted]

HQ WESTERN AIR DEFENSE FORCE · HQ FOURTH AIR FORCE · 78th FIGHTER-INTERCEPTOR WING

Plane Patter

VOLUME VI — No. 31 · HAMILTON AIR FORCE BASE, HAMILTON, CALIFORNIA · August 11, 1950

S. F. Doctor First Reserve Medical Officer Volunteer

The first medical officer to volunteer for active duty on the west coast since volunteers were requested reported to Hamilton Air Force Base on August 3. He is Lt Colonel George F. Adams, former commanding officer of the Air Reserve, 83rd Medical Group (Cor)

He will take charge of medical processing at Hamilton AFB of those air reservists being recalled to active duty. His civilian medical practice in San Francisco will be taken over by a colleague, Dr. Leslie Krotcher. Lt Colonel Adams' wife and children, George Jr age 16 and John age 11, will continue to reside at 75 Borica Street in San Francisco.

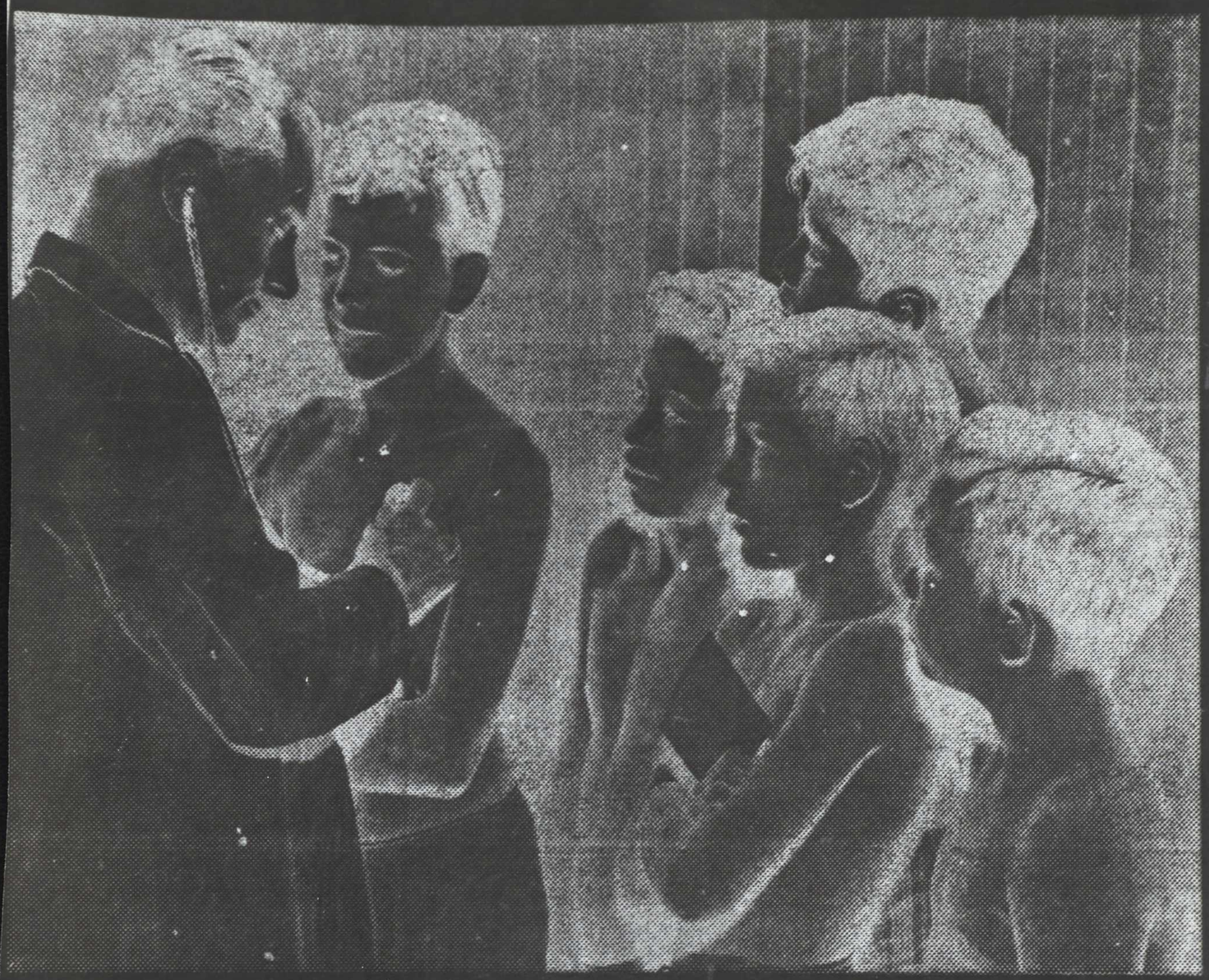
With a military background which includes service in the Philippines, Java, and Australia during the beginning of World War II, Lt Colonel Adams is eminently qualified to take charge of the medical processing center at Hamilton. He was flight surgeon for the 19th Bomb Group from November 1841 to May 1942. He also served as commanding officer of the 20th Portable Surgical Hospital in Australia and New Guinea from October 1943 to October 1944.

He holds the Silver Star for gallantry in action as well as the Presidential Unit Citation with one oak leaf cluster. He was graduated from the University of Arkansas in 1937 with an MD degree and received his AB degree from the University of California in 1931.

OFFICIAL PHOTOGRAPH
U. S. AIR FORCE
WALKER A.F.B.
ROSWELL, N. MEX.

Mon. 16 June 52

THE SAN FRANCISCO NEWS



FIT AS FIVE FIDDLES—Members of the San Francisco Boys Club lined up today for physical examinations by Dr. George F. Adams, left, preparatory to being assigned to summer camps. The boys are, left to right, Richard Greer, 12, of 351 Paris-st; Tommy Vigil, 12, 3117 San Bruno-av; Mario Costello, 12, 1707A Oak-st; Anthony Harlan, 11, of 154 Ocean-av, and Anthony Chotnacki, 11, of 1318 Seventh-st.

Lieutenant Colonel George F. Adams, San Francisco physician active in the Air Force Reserve at Hamilton Air Force Base, receives congratulations on his recent designation as Flight Surgeon from Colonel H. P. Little, commander of the 249th Fighter Bomber Wing (Reserve), and Lieutenant Colonel John F. Daye, Jr., commander of the 2346th Air Force Reserve Combat Training Center. Colonel Adams, who commands the 349th Medical Group during weekend training meetings at the Hamilton Reserve Center, is the first Air Reservist to merit the advancement from Aviation Medical Examiner to Flight Surgeon while not on extended active duty with the Air Force.

Lt Col George F. Adams, Air Reservist assigned to the 349th Fighter-Bomber Wing, Hamilton AFB, Calif, recently became one of the few aviation medical examiners to be designated a flight surgeon while not on extended active duty with the Air Force. A San Francisco physician, Colonel Adams commands the 349th Medical Gp. The new designation, which permits the wearing of flight surgeon wings, indicates outstanding skills in aviation medicine. It also means Colonel Adams will participate as a crew member in Reserve training flights.

AIR RESERVIST MAY '54

HAMILTON SCRAMBLE | THURSDAY 25 MARCH 1954

OFFICIAL PHOTOGRAPH
U. S. AIR FORCE
WALKER A.F.B.
ROSWELL, N. MEX.

DEFENSE EXHIBIT B

File No. 6/1.

Headquarters,
" N " Force
2 N Z E F,
NORFOLK ISLAND.

19th February, 1943.

The Officer Commanding,
United States Army Hospital,
NORFOLK ISLAND.

Dear Sir,

On the eve of your departure, I desire to place on record my appreciation and the appreciation of the New Zealand Medical Services of your co-operation and assistance to the New Zealand Forces.

I shall personally always remember with gratitude your very kindly welcome and assistance to myself and other officers of the advanced party.

Since then as Capt. O'Brien our S.M.O. points out, there have been many occasions when you have helped us in the matter of admission of patients, provision of medicine, loan of beds, etc.

I should be glad if you would inform those under your command of our appreciation of the many courtesies extended to us by them and beg to wish you all good fortune in your future movements.

With Kind Regards,
Yours sincerely,

/s/ J. W. Barax
Lieutenant Colonel.

Commanding,
" N " Force,
2 N Z E F.

A CERTIFIED TRUE COPY

Langford Keith, Jr

LANGFORD KEITH, JR
1st Lt., USAF
Ass't Staff Judge Advocate

DEFENSE EXHIBIT C

HEADQUARTERS
CONTINENTAL AIR DEFENSE COMMAND
Ent Air Force Base
Colorado Springs, Colorado
Office of the Surgeon

18 March 1955

Lt Colonel George F. Adams, USAF (MC)
Surgeon
Kirtland Air Force Base
Albuquerque, New Mexico

Dear Colonel Adams:

Information gathered during my staff visits, or in some cases, word from the commander or defense force surgeon, indicates that our 93rd Fighter-Interceptor Squadron, tenant on your base, is receiving excellent aviation medical support. I want you to know that both General Chidlaw and I really appreciate this support as well as the commander and personnel of the squadron. Your efforts have materially furthered the mission of the Continental Air Defense Command.

Almost inevitably, from time to time, problem cases present themselves for which no pat solution is apparent. The thought has occurred to me that in these instances it might help if, by means of informal notes or telephone calls to Colonel Clarence A. Tinsman, the Central Air Defense Force Surgeon, we could work together even more closely. I believe by this means that some of these troublesome cases, such as everyone has, can be resolved more rapidly and more easily from your point of view.

Again thanks for your most excellent support, and please don't hesitate to let me know if there is any way in which we can assist in helping to resolve any problems which may arise.

Sincerely yours,

/s/ A. H. Schwichtenberg
A. H. SCHWICHTENBERG
Brigadier General, USAF (MC)
Command Surgeon

'THIS IS A CERTIFIED TRUE COPY'

/s/ John F. Killen
JOHN F. KILLEN
CWO, USAF

A CERTIFIED TRUE COPY

Langford Keith, Jr.

LANGFORD KEITH, JR
1st ~~2nd~~ Lt., USAF
Ass't Staff Judge Advocate

HEADQUARTERS
CONTINENTAL AIR DEFENSE COMMAND
ENT AIR FORCE BASE
COLORADO SPRINGS, COLORADO

29 March 1955

Lt Col George F Adams, USAF (MC)
Commander
4920th USAF Infirmary
Kirtland Air Force Base
New Mexico

Dear Colonel Adams:

I have received the articles on noise, visual communication training program, and ear protective devices which you sent me.

The problems presented in this field to the Air Force Medical officer are of paramount importance, and every effort possible must be made by him to resolve these problems. The effort which you are making along this line at your base are to be commended.

May I take this opportunity to thank you for the papers which you sent me.

Sincerely,

/s/ A. H. Schwichtenberg
A. H. SCHWICHTENBERG
Brigadier General, USAF (MC)
Command Surgeon

'THIS IS A CERTIFIED TRUE COPY'

/s/ John F. Killen
JOHN F. KILLEN
CWO, USAF

A CERTIFIED TRUE COPY

Langford Keith, Jr

LANGFORD KEITH, JR
1st ~~2nd~~ Lt., USAF
Ass't Staff Judge Advocate

DEFENSE EXHIBIT D

USAF HOSPITAL
ALTUS AIR FORCE BASE
OKLAHOMA

9 July 1956

Lt. Colonel George F. Adams
4036th USAF Hospital
Walker Air Force Base
Roswell, New Mexico

Dear Colonel Adams:

I would like to take this means of expressing my appreciation to you for relieving me during the month of June 1956 and to thank you for the way in which the hospital administration was carried out.

On my return officer and airmen personnel of this organization and others spoke highly of you as a hospital administrator and I would like to convey this message from them also.

Any time you are back in this part of Oklahoma, do not hesitate to come by to see us.

Sincerely,

/s/ Jesse K. Grace
/t/ JESSE K. GRACE
Colonel, USAF (MC)
Commander

A CERTIFIED TRUE COPY

Langford Keith, Jr

LANGFORD KEITH, JR
~~1st~~ Lt., USAF
Ass't Staff Judge Advocate

DEFENSE EXHIBIT E

UNITED STATES)
)
V)
)
LTCOL GEORGE F ADAMS)

BRIEF

ON

MOTION TO DISMISS

CHARGE I

AND ITS

SPECIFICATIONS

SPECIFICATIONS

Appellate Exhibit 9/1

STATEMENT OF ISSUES

I IS ARTICLE 134, UNIFORM CODE OF MILITARY JUSTICE, A CRIMINAL STATUTE?

II IS ARTICLE 134, UNIFORM CODE OF MILITARY JUSTICE, AS A CRIMINAL STATUTE, VOID FOR UNCERTAINTY?

I IS ARTICLE 134, UNIFORM CODE OF MILITARY JUSTICE, A CRIMINAL STATUTE?

A crime is any act or omission which is forbidden by law, to which a punishment is annexed, and which the state prosecutes in its own name.[1]

Article 134, Uniform Code of Military Justice, purports to forbid "all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses, not capital....". It imposes punishment "at the discretion of such court", and violations are prosecuted in the name of the United States. It is thus evident that the Article fits every requirement for a criminal statute.

In addition, a court-martial is strictly a criminal court[2] and would, thus, be unable to take cognizance of any but a criminal offense.

II IS ARTICLE 134, UNIFORM CODE OF MILITARY JUSTICE, AS A CRIMINAL STATUTE, VOID FOR UNCERTAINTY?

A criminal statute must inform the citizen with reasonable precision what conduct is prohibited so that he may know what acts it is his duty to avoid.[3] While "ignorance" of the law may be no excuse, certainly that law should be

1. Shick v. United States, 195 U.S. 65
2. Winthrop's Military Law and Precedents, 2d Ed, 1920 Reprint, pp 55.
3. Champlin Refining Co. v. Corporation Commission, 286 U.S. 210; Connally v. General Construction Company, 269 U.S. 385

so stated as to remove doubt from the minds of reasonable men as to what conduct is proscribed.

A criminal statute which fails to define the conduct resulting in a criminal act violates the first essential of due process of law.[4]

In United States v. Lee,[5] the Board of Review dismissed the argument that Article 133 was unconstitutional because of its vagueness and cited Dynes v. Hoover[6] where a general article in the Rules for the Government of the Navy was upheld against a similar argument. In Dynes v. Hoover, supra, the accused was charged with desertion but was found guilty of attempted desertion in violation of a statute not unlike the one under attack here. The court, in that case, stated "Notwithstanding the apparent indeterminateness of such a provision, it is not liable to abuse; for what those crimes are... is well known by practical men in the Navy... and by those who have studied the law of courts-martial and the offenses of which the different courts-martial have cognizance."

If "those crimes" be so well known, then is it to be assumed that their definition puts such an undue burden on the Congress that that body should not be required to specifically define them, as they have some fifty-five other Articles of the Uniform Code of Military Justice,[7] for those who may not have " studied the law of courts-martial and the offenses of which the different courts-martial have cognizance"?(Dynes v. Hoover, supra)

4. See footnote 3, supra
5. CM 348951, 4 CMR 185, pet for rev den, 4 CMR 173
6. 20 How 65 (1858)
7. Art 77 through Art 132, except Art 79

It will not be denied that Congress has the power to establish rules for the government of the armed forces,[8] but it is submitted that that authority is limited by other provisions of the Constitution.[9]

An examination of Article 134 indicates that three general classes of conduct are prohibited. The first of these is "all disorders and neglects to the prejudice of good order and discipline in the armed forces." Does such phraseology indicate specific offenses. It is so broad, instead, that it encompasses scores, if not hundreds, of offenses.

The second class of conduct prohibited is "all conduct of a nature to bring discredit upon the armed forces." Again the language is too general to lend itself to certainty as to what is meant.

The third class of conduct proscribed is "crimes and offenses, not capital.....", and again there is no certainty.

The fact is that the definition of the terms of the Article which would, in turn, define the offenses encompassed by the Article, is left up to the court. Congress did not define, with any degree of certainty, the specific conduct which they intended to proscribe.

A statute is inherently void when it leaves to the Court and jury, in a legislative capacity, the ascertainment and fixing of the proscribed conduct, before the guilt of the accused is established.[10]

It is therefore submitted that, because Article 134, Uniform Code of Military Justice, does not fix an ascertainable standard of what conduct is proscribed, it is void for uncertainty.

9. United States v. Brown (No 7998), 22 CMR 41
10. See footnote 3, supra; also United States v. L. Cohen Grocery Co., 255 U.S. 87, Norris v. Lawton, 47 Okla 213, 148 Pac 123

7 CMR, p. 576-577, United States v. Hanna (ACM 5819)

Ord was tried for violation of Article of War 96. The Manual for Courts-Martial, 1949, was then in effect. Paragraph 29a of that Manual set forth (referring to draft of specifications)

". . . If the alleged acts of the accused are not in themselves criminal or contrary to the custom of the service but are made an offense by statute (including Articles 95 and 96) or regulations, words importing criminality such as 'wrongfully', 'unlawfully', 'without authority', 'dishonorably' or 'feloniously', depending upon the nature of the particular offense involved, should be used to describe the accused's acts. . . ."

Almost the identical language is used in the Manual for Courts-Martial for 1951 (par 28a(3)), but in that Manual a supplementary statement follows--to wit:

". . .However, if the alleged act of the accused would not under any circumstances be an offense, the mere addition to the specification of words importing criminality will not in itself convert the act into an offense."

The pamphlet "Legal and Legislative Basis, Manual for Courts-Martial, 1951", which was prepared in the Office of the Judge Advocate General, United States Army and discusses the drafting of that Manual, states with regard to the subject matter of the sentence above quoted.

". . .If it is concluded that the mere addition of words importing criminality to a specification alleging an act or omission that is not per se an offense will not make an offense of that act or omission, rules evolve that demand all the technical niceties of common law pleading.

"To avoid such technicalities, words importing criminality, such as 'wrongfully,' 'unlawfully,' etc., have been given a definite meaning. For example, with respect to offenses laid under Article 133 or Article 134, the general rules laid down in paragraph 28a(3) should lead to this result: If, in the light of the general situation existing at the time and place alleged, the act described can reasonably be considered as being unbecoming an officer and a gentleman, as prejudicial to good order and discipline, or as bringing discredit upon the armed forces, then the addition of an appropriate word importing criminality or wrongfulness is sufficient to apprise the accused that the act charged is alleged to have been committed under unbecoming, discrediting, or disorderly circumstances. Such circumstances may be inferred if applicable law, regulation, or custom or practice having the effect of law, makes such act unlawful. ." (pp 42, 43)

Appellate Exhibit 2

CMR 12, p 704, United States v. Francis (ACM 6822)

". . ./A/ specification not only must set forth the offense in such a manner as to advise an accused, by a fair and reasonable construction, of the essential elements of the offense charged in order to enable him to prepare his defense and to plead the judgment which may be rendered against him in bar to a subsequent prosecution for the same offense, but also must be so worded that if all the facts expressly or impliedly pleaded therein be admitted as true or duly proven, the accused cannot be innocent (ACM 1461, Mickle et al (BR), 2 CMR(AF) 672, 680; ACM 1508, Huppelsberg (BR) 2 CMR (AF) 362, 364; ACM 1058, Starks (BR), 2 CMR(AF) 183; ACM 3837, Ricci (BR) 4 CMR(AF) 687; par 29a, MCM 149)." (ACM S-1432, Lewis, 1 CMR 601, 602; see also MCM, 1951, pars 28a(3) and 87a(2); ACM 5167, Wheat, 5 CMR 494, 497; and ACM 5107, McCourt, supra; ACM S-2860, Priester, 4 CMR 830, 831).

7 CMR, p. 578, United States v. Hanna (ACM 5819)

Headnote 2.

All that is required in a specification is a plain, concise and definite written statement of the facts constituting the offense, sufficient to apprise the accused of the specific offense with which he is charged, and definite enough to permit a plea of double jeopardy in the event the accused is charged again with the same offense (MCM 1951, par 28; see also Rule 7(c) Federal Rules of Criminal Procedure for the same simple requirements for Federal criminal indictments).

Headnote 2:

Pertinent to consideration of whether or not Specification 1 of Additional Charge I and Specification 1 of Additional Charge II are sufficient pleadings of offenses in violation of Articles 133 and 134, are the following provisions of the Manual for Courts-Martial, United States, 1951:

"The specification should include the following:

* * *

"A statement in simple and concise language of the facts constituting the offense. The facts so stated will include all the elements of the offense sought to be charged. A specification must include every reasonable hypothesis of innocence . . . If the alleged act of the accused is not in itself an offense, but is made an offense by applicable statute (including Articles 133 and 134), regulations, or custom having the effect of law (213a), words importing criminality such as "wrongfully," "unlawfully," "without authority," or "dishonorably," depending upon the nature of the particular offense involved should be used to describe the accused's acts. In this connection, see 28c. However, if the alleged act of the accused would not under any circumstances be an offense, the mere addition to the specification of words importing criminality will not in itself convert the act into an offense. To a reasonable extent matters of aggravation may be recited. If applicable, the wording of the appropriate punitive article or other statute should be used in preference to a supposedly equivalent expression. For example, in charging a person with being found drunk on duty, the specification should not allege that he was found intoxicated on duty." (par 28a(3), p 31).

In the Legal and Legislative Basis, Manual for Courts-Martial, United States 1951, the provisions of paragraph 28a(3) of the Manual are discussed as follows:

"Paragraph 28a(3) lays down some broad, general rules as to the manner of alleging offenses. As noted above the specification forms in appendix 6 do not need to be tested by these rules. Rule 7c of the Federal Rules of Criminal Procedure and the decisions of the Federal courts thereon are the sources of much of this material. If it is concluded that the mere addition of words importing criminality to a specification alleging an act or omission that is not per se an offense will not make an offense of that act or omission, rules evolve that demand all the technical niceties of common law pleading.

"To avoid such technicalities, words importing criminality, such as "wrongfully" "unlawfully," etc., have been given a definite meaning. For example, with respect to offenses laid under Article 133 or Article 134, the general rules laid down in paragraph 28a(3) should lead to this result: If, in the light of the general situation existing at the time and place alleged, the act described can reasonably be considered as being unbecoming an officer and gentleman, as prejudicial to good order and discipline, or as bringing discredit upon the armed forces, then the addition of an appropriate word importing criminality or wrongfulness is sufficient to apprise the accused that the act charged is alleged to have been committed under unbecoming, discrediting, or disorderly circumstances. Such circumstances must be inferred if applicable law, regulation, or custom or practice having the effect of law, makes such act unlawful. See CM 307097, Mellinger, 60 BR 199, 213." (pp 42-43).

In CM 307097, Mellinger, supra, an accused officer was charged, inter alia, with offenses of "wrongfully and unlawfully" engaging in business in certain alleged particulars in violation of Article of War 96. The Board of Review, in affirming convictions of these offenses, stated:

> "The defense further moved to strike all Specifications of Charge I (Violation of Article of War 96) on the ground that the specifications allege no offenses (R 48-55, 57). In support of the motion, defense counsel argued that engaging in business and having possession of British currency are not per se wrongful acts; but instead, are acts which can only be made wrongful by legislation; and that the specifications do not allege what statute or order has been violated. The trial judge advocate thereupon announced that the prosecution relied upon letter, Headquarters, European Theater of Operations, dated 23 September 1944, Subject: Prohibition Against Circulating, Importing, or Exporting United States and British Currencies in Liberated and Occupied Areas and Certain Transactions Involving French Currency Except through Official Channels," and upon letter, Headquarters, European Theater of Operations, dated 4 April 1945, Subject: "Prohibition Against Engaging in Business" (R 54).
>
> "Whereas it would have been better practice to allege the orders which made the conduct of the accused wrongful, failure to include a reference to such orders did not prejudice the substantial rights of the accused, since the specification fairly apprised the accused of the offense charged. The presence of the word "wrongful" in each specification was sufficient to put him on notice that his acts were alleged to have been effected under such improper circumstances as to be prejudicial to good order and military discipline or to constitute conduct of a nature to bring discredit upon the military service (Cf: CM 226512, Lubon; CM 303049, Penick, CM ETO 8458; CM 305617, Blacker, CM ETO 10418). The word "wrongfully" may reasonably be construed to mean under improper circumstances in the light of the general situation with regard to the existing military situation, European economic and currency conditions, accused's position as an officer, and the place where the transactions were made. The specifications thus state offenses in violation of Article of War 96. It was not essential to allege that accused violated any official directives (CM 291176, Besdine, CM ETO 7553; Williams vs. U. S. (1897); 168 U. S. 382, 389; CM 305617, Blacker.)" (p 214).

Also, it has been held that a specification alleging an offense under Article 134 need not employ the words that the acts alleged were a disorder or neglect to the prejudice of good order and discipline in the armed forces or conduct of a nature to bring discredit upon the armed forces for as stated in United States v. Marker (No. 281), 1 USCMA 393, 3 CMR 127:

> ". . . Finally, we find no reason for the inclusion in the specifications of the words "conduct of a nature to bring discredit upon the service." In truth, we believe the suggested language to be nothing more than traditionally permissible surplusage in specifications laid under Article of War 96, supra. Its use therein can add noting of legal effect to an allegation of conduct not of such a discrediting nature - and its omission detracts not at all from conduct which clearly is . . . " (p 134).

Though we find at hand no comparable express holding respecting the significance of an allegation, or its omission, of the words, "conduct unbecoming an officer and gentleman" in a specification under Article 133, we note numerous cases where such an allegation has also been treated as surplusage (see inter alia, CM 347792, Downard 1 CMR 405, reversed and remanded on other grounds in United States v. Downard (No. 266), 1 USCMA 346, 3 CMR 80; ACM 5819, Hanna, 7 CMR 571; CM 351646, Halliwill, 4 CMR 283).

In our opinion, it is the clear expression of the Manual (par 28c), in harmony with prevailing legal principles, that specifications sufficiently allege all the elements of the offenses sought to be charged in violation of Articles 133 or 134, if the specifications comply with the following:

> "If, in the light of the general situation existing at the time and place alleged, the act described can reasonably be considered as being unbecoming an officer and a gentleman, as prejudicial to good order and discipline or as bringing discredit upon the armed forces, then the addition of an appropriate word importing criminality or wrongfulness is sufficient to apprise the accused that the act charged is alleged to have been committed under unbecoming circumstances . . ." (See Legal and Legislative Basis, Manual for Courts-Martial, United States, 1951, pp 42-43; CM 307097, Mellinger, supra; ACM 5819, Hanna, supra; U.S. V. Snyder, supra; U. S. v. Herndon (No. 570), 1 USCMA 461, 4 CMR 53; CM 348951, Lee, 4 CMR 185; ACM 8289, Peterson, 16 CMR 565, pet den U.S. v. Peterson, 16, (No. 4231) 16 CMR 292).

Headnote 3:

Testing Specification 1 of Additional Charge I and Specification 1 of Additional Charge II by the rule of the preceding paragraph, we conclude that an allegation that a married officer occupied a bed with a woman not his wife on an air base, can reasonably be considered as conduct unbecoming an officer and a gentleman, discrediting to the service, or prejudicial to good order and discipline, and that, when accompanied by the additional allegation of the word "wrongfully," importing criminality, the specification alleges the acts to have been unbecoming, disorderly, or prejudicial circumstances, depending upon whether it is charged under Article 133 or Article 134. For the foregoing reasons, we conclude that Specification 1 of Additional Charge I and Specification II contain allegations of the essential elements of the offense sought to be charged under Articles 134 and 133 respectively.

Headnote 4:

Specification 2 of Additional Charge I, alleging an offense of drunk and disorderly in station, in violation of Article 134, is drawn in model from (see Specification Form No. 132, App 6c, p 490, MCM, 1951), and it is well settled that such form of pleading adequately alleges the offense sought to be charged (see MCM, 1951, pag 28d; ACM 5167, Wheat, 5 CMR 494; U. S. v. Lowe (No. 4620), 4 USCMA 654, 16 CMR 228; ACM 2840, Gunning, 3 CMR (AF) 756; CM 351492, Powers, 5 CMR 206; ACM S-6102, Wallace, 10 CMR 937). As to Specification 2 of Additional Charge II, alleging in identical language a violation of Article 133, such allegations, or substantially similar ones, have heretofore been held to be or treated as sufficient to allege a violation of Article 133 or its antecedent Articles of War 95 (see CM 232968, McCormick, 19 BR 263; CM 312773, Johnston, 62 BR 289; CM 350729, Akins, 4 CMR 364; CM 355119, Anderson, 8 CMR 212; CM 355287, Loney, 8 CMR 533).

Headnote 5:

The gravamen of an offense in violation of Article 133 (and its antecedent Articles of War 95) is conduct unbecoming an officer and a gentleman and such conduct may occur on as well as off a military installation (see Winthrop's Military Law and Precedents, 2d ed,p 717; MCM, 1951, par 212; CM 347810, Jewson, 7 CMR 213, affd U. S. v Jewson (no. 532), 1 USCMA 652, 5 CMR 80; CM 312773, Johnston, supra).

In military law the broad test for legal sufficiency of a specification has been expressed by the United States Court of Military Appeals in United States v. Sell (No. 1939), 3 USCMA 202, 11 CMR 202 as follows:

> ". . . The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently

apprises the defendant of what he must be prepared to meet; and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a formal acquittal or conviction. . ." (See also U. S. v. Marker, supra).

We have examined the specifications of the instant case, the issues litigated at trial and the evidence of record, and find that the specifications in addition to containing all the elements of the offense sought to be charged, were sufficiently definite and certain to apprise the accused of what he had to meet and considered in conjunction with the record, amply protect him from double jeopardy.

Next, we shall review the substance of the evidence to determine if it is legally sufficient to support the findings of guilty. On the date alleged the accused was the officer in charge of a laundry on the base, and had supervision over some fifty-eight civilian employees. He was married and the woman involved in his conduct was not his wife. Ordinarily female employees arrive about 0800. About 0740 hours on the morning of the date alleged he was found asleep in a bed in a "back room" of the building occupied by the laundry. This room was frequently used by female employees of the laundry to change clothes and was used as aladies rest room. An airman clerk at the laundry testified that he observed the accused and the woman under a sheet in the same bed and the accused was in a partial state of undress. The accused denied that he occupied the same bed with the woman. However the court resdved this issue against the accused as it properly could (MCM, 1951, pars 74a(2) and 153; U. S. v. Armstrong (no. 2926), 4 USCMA 248, 15 CMR 248). The accused was difficult to arouse and he did not arise and leave the room for about an hour. His woman companion did not leave the room until after civilian employees had arrived. A female employee, the sister of the accused's woman companion, observed the accused in bed and his woman companion in the room under circumstances suggestive that she had slept in the room that night. The accused admitted that he and his woman companion had consumed approximately fifteen ounces of whiskey. A pretrial admission of the accused that he was in a "very drunken condition" and "had passed out during the night" was in evidence. The accused's appearance at the time as described by witnesses who observed him, was indicative that he had been drinking. Though the accused, testifying in his own behalf, denied making the extra-judicial admission that he was drunk and denied that he was drunk, the court resolved this issue against him as it properly could (ibid).

Headnote 6:

By Specifications 1 and 2 of Additional Charge II, the accused was charged with conduct unbecoming an officer and a gentleman, in violation of Article 133. By Specification 1 of Additional Charge II, this conduct was alleged to be the accused's act of wrongfully occupying a bed on the air base with a woman not his wife. The evidence showed that the act was committed in a semi-public place on the base; that the act was observed by an airman; and that though the civilian employees did not actually see the two in bed together, they saw the accused and his woman companion in circumstances from which it was clearly inferable that the act had occurred. Thus, the act of the accused was conspicious to both civilian and military personnel. Under the circumstances shown, the accused's act of occupying a bed with a woman who was not his wife, clearly constituted behavior in an unofficial or private capacity that was dishonoring and disgraceful to him as an individual and seriously compromised his standing as an officer. Accordingly, the Board of Review determines that the findings of guilty of Specification 1 of Additional Charge II are supported by the evidence.

7 CMR, p. 581, United States v. Hanna (ACM 5819)

The instructions would have been improved if the court-martial had also been informed in detail that conduct unbecoming an officer:

". . . is action or behavior in an official capacity which, in dishonoring or disgracing the individual as an officer, seriously compromises his character as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the individual personally, seriously compromises his standing as an officer." (MCM, 1951, par 212)

Likewise, it would have been better if the court had been informed that conduct of a nature to bring discredit upon the armed forces means "to injure the reputation of" the service (MCM, 1951, par 213b). Nevertheless, the Board is of the opinion that the instructions as to Specification 2, taken all together, were adequate to provide the court-martial with the required pattern against which it could apply the facts in evidence and fairly judge the issues.

UNITED STATES)
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V)
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LTCOL GEORGE F ADAMS)

BRIEF

ON

MOTION TO DISMISS

CHARGE III

AND ITS

SPECIFICATIONS

Appellate Exhibit 3 (3)

STATEMENT OF ISSUES

I IS ARTICLE 133, UNIFORM CODE OF MILITARY JUSTICE, A CRIMINAL STATUTE?

II IS ARTICLE 133, UNIFORM CODE OF MILITARY JUSTICE, AS A CRIMINAL STATUTE, VOID FOR UNCERTAINTY?

ARGUMENT OF LAW

I IS ARTICLE 133, UNIFORM CODE OF MILITARY JUSTICE, A CRIMINAL STATUTE?

A crime is any act or omission which is forbidden by law, to which a punishment is annexed, and which the state prosecutes in its own name.[1]

Article 133, Uniform Code of Military Justice, purports to forbid "conduct unbecoming an officer and a gentleman". It imposes such punishment "as a court-martial may direct", and violations of the Article are prosecuted in the name of the United States. It is evident, then, that the Article fits every requirement for a criminal statute.

In addition, a court-martial is strictly a criminal court[2] and would, thus, be unable to take cognizance of any but a criminal statute.

II IS ARTICLE 133, UNIFORM CODE OF MILITARY JUSTICE, AS A CRIMINAL STATUTE, VOID FOR UNCERTAINTY?

A criminal statute must inform the citizen with reasonable certainty what conduct is prohibited so that he may know what acts it is his duty to avoid.[3] While "ignorance" of the law may be no excuse, certainly that law should be so stated as to remove doubt from the minds of reasonable men as to what conduct is proscribed.

1. Schick v. United States, 195 U.S. 65
2. Winthrop's Military Law and Precedents, 2d Ed, 1920 Reprint, pp 55
3. Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, Connally v. General Construction Company, 269 U.S. 385

A criminal statute which fails to define the conduct resulting in a criminal act violates the first essential of due process of law.[4]

In United States v. Lee[5], the Board of Review dismissed the argument that Article 133 was unconstitutional because of its vagueness and cited Dynes v. Hoover[6] where a general article in the Rules for the Government of the Navy was upheld against a similar argument. In Dynes v. Hoover, supra, the accused was charged with desertion but was found guilty of attempted desertion in violation of a statute not dissimilar to Article 134, Uniform Code of Military Justice. The court, in that case, stated "Notwithstanding the apparent indeterminateness of such a provision, it is not liable to abuse; for what those crimes are... is will known by practical men in the Navy.... and by those who have studied the law of courts-martial, and the offenses of which the different courts-martial have cognizance."

If "those crimes" be so well known, then is it to be assumed that their definition puts such an undue burden on The Congress that that body should not be required to specifically define them as they have some fifty-five other Articles of the Uniform Code of Military Justice?[7]

It will not be denied that Congress has the power to establish rules for the government of the armed forces[8], but it is submitted that that authority is limited by other provisions of the Constitution.[9]

4. See footnote 3, supra
5. CM 348951, 4 CMR 185, pet for rev den, 4 CMR 173
6. 20 How 65 (1858)
7. Art 77 through Art 132, except Art 79
8. U.S. Const., Art. I, sec. 8, cl. 14
9. United States v. Brown (No 7998), 22 CMR 41

The language of Article 133, "conduct unbecoming an officer and a gentleman", no doubt encompasses, in the minds of all reasonable men, certain areas of conduct which is prohibited. Likewise, the language "unjust or unreasonable rate or charge" in the statute under attack in United States v. L. Cohen Grocery Co.[10], no doubt encompasses certain rates or charges which all men could agree were "unjust or unreasonable". However, the Court, in holding the statute was void for uncertainty, said "It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can forsee, and the result of which no one can foreshadow or adequately guard against."

Article 133, Uniform Code of Military Justice, leaves the ascertainment and fixing of the proscribed conduct to the court in a legislative capacity and, because it does, is inherently void.[11]

10. 255 U.S. 87
11. See footnote 3, supra; Norris v. Lawton, 47 Okla 213 148 Pac 123

UNITED STATES)
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V)
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LTCOL GEORGE F ADAMS)

BRIEF

ON

MOTION TO DISMISS

SPECIFICATIONS 3 AND 4

OF

CHARGE III

Appellate Exhibit 4 (4)

STATEMENT OF ISSUE

IS WRONGFUL, DISHONORABLE AND FALSE REGISTRATION AT A MOTEL WITH A WOMAN NOT HIS WIFE, CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN?

ARGUMENT OF LAW

IS WRONGFUL, DISHONORABLE AND FALSE REGISTRATION AT A MOTEL WITH A WOMAN NOT HIS WIFE, CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN?

The accused is charged with false registration at a motel with a woman not his wife, in Specifications 3 and 4 of Charge III. Assuming, but not granting, these allegations to be true, do they spell out an offense of conduct unbecoming an officer and a gentleman?

Winthrop has defined conduct unbecoming an officer and a gentleman as "action or behaviour in an unofficial or private capacity, which, in dishonoring or disgracing the individual personally as a gentleman, seriously compromises his position as an officer and exhibits him as morally unworthy to remain a member of the honorable profession of arms."[1]

There is a plethora of reported cases involving misconduct which has been held to be conduct unbecoming an officer and a gentleman. These cases involve such offenses as false swearing[2], visiting a house of prostitution in the company of enlisted men[3], abusing his wife in public[4], and adultery[5]. On the other hand, ordinary drunkenness[6], association with a prostitute when such prostitute was not notorious[7], and drunk on duty[8] have been held not to be such conduct.

No one can deny that the acts alleged in Specifications 3 and 4 of Charge III are a breach of decorous conduct but, on the other hand, can it be said they are so serious as to render the accused morally unworthy of remaining in the Air

1. Winthrop's Military Law and Precedents, 2d Ed, 1920 Reprint, pp 713
2. United States v. Gomes (No 2165), 11 CMR 232
3. CM 369088, Rice, 14 CMR 316
4. CM 347792, Downard, 1 CMR 405
5. ACM 140, Moon, 1 CMR (AF) 124
6. CM 374664, Mallory, 17 CMR 409
7. See footnote 6, supra
8. CM 349653, Clarke, 3 CMR 227

Force. Winthrop has said that the most reliable test to determine amenability to trial for conduct unbecoming an officer and a gentleman is the accused's "worthiness, morally, to remain in (the service) after, and in view of, such behaviour." [9]

An examination of the allegations contained in Specifications 3 and 4 of Charge III reveal no act that can be remotely compared to the type of behaviour that would render the accused so morally unworthy that he should not be allowed to remain in the service.

It is submitted that Specifications 3 and 4 of Charge III fail to allege acts which, if proved, would constitute an offense under Article 133, Uniform Code of Military Justice and that, therefore, these Specifications should be dismissed.

9. Winthrop's Military Law and Precedents, 2d Ed, 1920 Reprint, pp 711

Time: 0821 hours, 13 August 1957.

LO: Let the record reflect an out-of-court conference was held at the request of the defense counsel. The trial counsel and his assistant, the defense counsel and his assistant, and the accused, and the reporter, and the law officer were present.

DC: The first motion I have to present, which is in the form of a brief, is a motion to dismiss Charge I and the Specifications thereunder. Essentially, the motion is based upon a rule of law which provides that a criminal statute must be certain, and a criminal statute which is vague and which does not inform a public-at-large of what is an offense is considered unconstitutional. SVR ZK.

TC: This is Charge I, right?

DC: That's correct.

TC: Okay.

LO: Charge I, does this go to all four specifications of Charge I? The motion?

DC: (Nods head) All Specifications and the Charge. Now, one of the first points in a discussion of this type, I think, is whether or not Article 134 is a criminal statute. There is some basis for saying that it is not. On the other hand, if you apply the general rule of law as to what is a crime, I think you will find that Article 134 fits as a criminal statute. That if a crime is an act which is prohibited by law to which a punishment is annexed and which the state prosecutes in its own name, I don't think anyone will deny that Article 31 prohibits certain acts, unspecified in the article itself, but nevertheless, certain acts--

LO: You mean Article 134.

DC: 134, yes, sir--there is no doubt but what a punishment is attached to that statute for violation of it, and there is no doubt that the United States prosecutes violators in own name, that is, in the name of the United States. SVR ZK In my opinion, it fits every criteria for a criminal statute. Now, we come to a discussion of whether or not Article 134 is certain enough to be constitutional. I'll put it another way, put it whether it is so uncertain in its terms that it is unconstitutional.

LO: This is the real basis of your objection, now.

DC: That is the basis of my objection. . .

LO: You are admitting that it fits the criteria for a criminal statute, but your basis for objection is that it is uncertain.

DC: Right, that is correct. I don't know whether the law officer would like oral argument on this. I have detailed it all pretty well in my briefs and I have cited the authorities for my. . .

LO: I see no need for oral argument. I'd like to take time to read the brief. If you wish, just sit down; I'll read the brief.

(The LO read, to himself, the brief.)

APPELLATE EXHIBIT 5

LO: Has the prosecution had an opportunity to read the brief?

TC: I have not read it, but I'm ready to answer it. Our argument is simply this: that Article 134 of the Code is specific, certain enough, because it is a general article, and secondly it is custom and practice in the service, of the course of conduct expected of individuals in the service in itself, and a general article covers these modes of conduct throughout the years. Now, as far as the statute being uncertain, I don't think it is uncertain as to the offenses concerned here because adultery is a specific offense and wrongfully and dishonorably and falsely registering at a motel is a specific offense, too; but this isnot whether a specification could be made more definite or certain. The test is, whether by express or general implication, if we state that everything averred in the specifications is proved or is actually true, would it state an offense? It is our contention that it would state an offense under these two different specifications under Article 134; besides, there is a close offense of a woman occupying a bed, which is an offense closely allied to the offense of adultery. The second offense, wrongfully registering, is a disorder under Article 134. Disorder to the prejudice of good order and discipline or to injure the reputation of the armed forces. The specification under Article 134 has been held constitutional; there are cases in Volumes I through XXII where numerous accused have been tried for the offense of adultery. My research has not disclosed where an individual has been tried for Specification 2 of Charge I; however, this is a disorder under Article 134 of the Code. Unless, the defense can show that he cannot properly prepare for his defense under this specification under Article 134 or that his client, the accused, will be placed in double jeopardy, then I don't think he has no argument under Article 134. Because the test is not how more definite, or simple, or certain you can make a specification, but whether the accused will be protected for a second trial on this offense and the accused will be adequately prepared to prepare his defense based upon what is presented in the Charge and Specifications. I have a written brief just on the part, The Charge and Specification, not on the constitutionality or anything.

DC: If it please the court, I think the argument by trial counsel avoids the point. This argument is not directed to whether or not the specifications state an offense, it is directed to the fact that the specifications are laid under a charge which, in our opinion, are unconstitutional--under a statute which is unconstitutional--and I don't care how specific you state the specification, if you have an unconstitutional statute any specification doesn't state an offense. It can't state an offense because the statute is unconstitutional. I have no further argument on the point, sir.

TC: I just have one little brief point. Under. . .to determine the constitutionality of a statute, we are not talking about a statute here; we're talking about an Article of the Uniform Code of Military Justice. And remember, this is a general article and not a specific crime, but an article that covers disorders, neglect, or prejudice to good order and discipline and it has been held that this is sufficient to make this a constitutional basis and enough certainity for an accused to know what he is charged with. That's all I have.

LO: I'll read the brief of the prosecution.

(The LO read, to himself, the brief of the TC.)

LO: I note that the prosecution has cited almost at verbatim, an account of the United States versus McGlone. I have read the McGlone case; I'll not take the time to read the entire brief, but will just scan it. Has the defense had an opportunity to read the material presented by the prosecution?

DC: It has not.

LO: Would you like to do so?

DC: We would like to scan it through.

(LO gave copy of brief to DC.)

TC: Take your jacket off; feel that air.

DC: Again, sir, I submit that this brief does not go to the point that we are arguing here as to the constitutionality of the statute.

LO: Your basis is that the statute in itself is unconstitutional because it is void. . .and should be void for uncertainity.

DC: That is correct, sir; and that because of that, any specification laid under that article is also void.

LO: The brief of the defense counsel on Motion 1 will be attached to the record as Appellate Exhibit 1, and the material presented by the prosecution, which is not in the form of a brief, but which is excerpts from various cases, will be attached to the record as Appellate Exhibit 2.

LO: Gentlemen, the motion of the defense counsel as to the entitled motion 1, for the purposes of accounting, is denied.

DC: At this time, the defense counsel moves to dismiss Charge III and its specifications on the same basis. That is, that Article 133, the Article entitled "conduct unbecoming an officer and a gentleman" is void for uncertainity and for that purpose, submits briefs--a brief--to the law officer and a copy of same to the defense counsel. I propose to make no additional oral argument on this, sir. The argument is essentially that contained in the first motion. There is some difference, of course, because of the different wording of the statute itself.

TC: My only argument is that it's constitutional; it is certain enough to meet the standards required of an accused to defend himself.

LO: Any further arguments by counsel?

TC: I have none.

DC: I have none.

LO: The brief of the defense counsel on Motion 2, to dismiss Charge III and its specifications, will be appended to the record as Appellate Exhibit 3.

LO: The motion is denied.

DC: The defense next moves to dismiss Specifications 3 and 4 of Charge III on the basis that those specifications fail to allege an offense of conduct

unbecoming an officer and a gentleman. I am not arguing that the specification is not specific enough. It is specific enough; it alleges a date, a place; it alleges a specific type of conduct; but it is submitted that even assuming that the allegations contained in the specifications are true, which we are not granting, that the specification, even then, fails to allege an offense. Winthrop, who is the leading authority on military law, although his book is rather old, said that the most reliable test for determining whether a certain act constitutes an offense under Article 133 was whether the accused should remain in the service in view of those facts. That is, were we assuming that he committed the offense, is he worthy, morally to remain in the service. Now, it is submitted that mere false registration in a motel, which is not violating any criminal statute, to my knowledge--at least in Texas, where the offense is alleged to have occurred--is not that type of conduct. If it were, I dare say that 50% of the officers in the Air Force would not be morally worthy of remaining in the Air Force and I don't think you can make that assumption. I have no further argument, sir. The argument of the defense is prepared in brief form, so that the law officer will be. . .more readily assimilated and as I say, sir, I have no further argument on this.

TC: I have no argument, sir. All I can state is that it does allege an offense under Article 133 of the Code.

LO: Predicated upon your previous presentation?

TC: Yes, plus the fact. . .based on my prior argument that the argument of the defense is that because one man is doing it another man shouldn't be punished. That isn't the test. The test is that two rights don't make a wrong. . . . Isn't rather, whether two wrongs make a right? The test is whether the accused would be able to defend himself against this and whether he can plead double jeopardy in the future trial and further, whether all. . . everything stated in the specification is sufficient to inform him of the offense that's been committed. Now, under Article 133, if an individual compromises himself, as an individual, he therefore compromises himself as an officer. So, therefore, the specification states enough to advise him as to what to expect in this offense and I feel that my prior argument pretty well covers the matter.

LO: If that concludes the argument. . .

TC: I have no further argument.

DC: I have no further argument.

LO: The brief presented by the defense counsel on his motion #3 will be appended to the record as Appellate Exhibit 4.

LO: The motion is denied.

DC: At this time the defense moves to dismiss Specifications 3 and 4 of Charge I for failure to state an offense under Article 134. The specifications allege the same acts as are alleged in Charge III, Specifications 3 and 4; namely, wrongful, false, and dishonorable registration in a motel with a woman not his wife. That specification, in my opinion, does not state an offense under Article 134, either as. . .a service-discrediting offense or an offense prejudicial to good order and military discipline. There is no allegation in the specification that such an act was a public one and it is

not alleged that the general public had knowledge of it. In my opinion, such knowledge would be essential in order to show that the act was service discrediting. Obviously, it is not prejudicial to good order and military discipline inasmuch as those types of offenses are generally committed while on duty and this offense most certainly was not. I have no further argument, sir; I have not prepared a brief on this motion.

LO: The brief would contain approximately the same material which you have previously presented, I assume.

DC: No, sir. The arguments, of course, are slightly different because of the wording of the Article; essentially the same.

TC: I have no argument. . .just to state that it does allege an offense under Article 134.

LO: The motion is denied.

DC: The defense has no further motions to present.

TC: Let's have a good motion before we call them in.

LO: That concludes the out-of-court conference. The entire transcript of this record will be attached to the record as Appellate Exhibit 5.

Time: 0847 hours, 13 August 1957.

Time: 1605 hours, 13 August 1957.

LO: The court was adjourned and the members of the court were excused; the spectators have departed and the law officer, reporter, counsel for both sides and the accused are present.

LO: Proceed.

DC: First of all, I'd like to state that defense counsel was totally unaware of any of the circumstances described by the witness concerning her departure for Sheppard. Because of the way that she has testified and because there is some truth in her statement, although it is probably half truths, the defense now requests a continuance until such time as that witness can be given a psychiatric examination under conditions which will not invalidate the examination.

TC: In other words, you're requesting another psychiatric?

DC: I'm requesting another psychiatric examination on an in-patient basis so that she has complete rest before the examination and there won't be any taint on the examination. I don't think that the agent of the Government in this case should attack the validity of an examination which was directed by the Government and under their entire supervision. As long as he has, and I don't blame him particularly - he's the trial counsel in this case - he's doing his best; but since he has, I feel that a continuance for the purpose of a proper psychiatric examination, with proper time and no rush, I think should be granted.

LO: Before the trial counsel makes his speech, I'd like to clarify one thing. Are you trying to imply from your statements that the trial counsel is bound by the Government's. . .ah. . .examination. . .

DC: No.

LO: . . .of this witness?

DC: No, I think he's bound to the extent that she should have been given a proper examination. I don't think he is bound by what the examination reveals, no, sir. I'm not attacking his attack on the examination or the results of the examination, but merely on the manner in which it was conducted and I think he is bound by that.

TC: The request. . .

DC: My original request in this matter was about 24 July - I don't have the exact date - but it was about that, was that she be examined by a board of psychiatrists. I was told by a representative of the convening authority that that would be done and I asked him if I could. . .if I was supposed to do anything and he says no, we'll take care of it and that is the last I knew until I got the psychiatric report back, or until I came down here on the 4th day of August.

TC: My answer to that is. . .

(TC and DC confer briefly out of hearing of the other parties present.)

TC: Well, let me get this straight, you are. . .your's is, - just on the request for another psychiatric?

APPELLATE EXHIBIT 6

DC: Right, and not because of the. . .

TC: That's your primary motion?

DC: Right.

TC: Well, let me say this about the thing - it's this, that the defense has tried to impress the court of the witness's incompetency and the psychiatrist has testified that he had sufficient time; he considered the examination very thorough and adequate; it is true that we have tried to tear the examination down and I think you have to stand by the witness that you call. You're more or less in a position of impeaching your own witness where you request a further psychiatric examination at this time because he did state that he thought his examination was very fair and very thorough. Now as far as not knowing the circumstances - I think there's a waiver on that - you could have inquired as to the circumstances of how they picked her up and took her there - it's almost a week. I don't think that should be a important part of the motion; the important part is the future or another psychiatric examination, right? That's what you're asking for?

DC: I'm asking for it solely on the basis of the manner in which she was rushed away from here, after apparently being under heavy sedation.

TC: The doctor feels that that had no affect on her or anything and he feels that even if he looked at her for a little while he would have that opinion concerning her.

DC: He didn't have the bulk of these facts. . .

TC: And he gave her these tests and so forth and so on.

Asst DC: The doctor didn't have these facts before him, the facts which you have elicited - the government's representative.

TC: The reason we brought it out was we had brought it out on her competency and we wanted to prove. . .

Asst TC: We made an offer of proof.

TC: We can't make an offer of proof as the prosecution - only the defense. . .

Asst TC: But I mean it's substantially the same thing is what I'm referring to.

LO: I wish to remind the defense counsel that there was an opportunity for this material to be brought out, at least in substance, by the prosecution and the defense objected at which time I instructed the prosecution that he could not present this material unless he brought in the background material, which he said he had; if you recall, we had. . .trial counsel withdrew his presentation at that time. I, therefore, did not have to rule upon your objection. I feel if there was any objection, at that time - such as you're making now - it would have been better if the defense counsel had presented. . . permitted the trial counsel to present this material that he had and then we could have brought in these other witnesses and clarified the area in regard to this matter at the time.

DC: I never objected to that procedure, sir; the trial counsel himself stated that the only evidence he had of it was the girl who was not yet competent as a witness.

TC: No, we stated later that we had other evidence.

DC: I never objected to the procedure of calling in evidence to back up this statement.

TC: Well, let's go slow so she can get it.

LO: I believe that the material the prosecution is bringing in at the present time is germane because it goes to the credibility of the witness, and I feel that if there had been an objection, even to this material which was brought in, I would have had to overrule the defense counsel because it is going to the credibility of this witness.

DC: Going to the credibility of the psychiatric examination is what I'm talking about.

LO: Well, it goes to the credibility of the witness, too.

DC: And. . .ah. . .yes; I never objected to her testimony in that regard because I realized that it was material evidence, but I still feel that if those are the circumstances surrounding the. . .immediately surrounding the psychiatric evaluation in this case that her testimony has, in the minds of the court, destroyed much of the value of that psychiatric examination. I'm so requesting.

LO: gvk JK Fine; I think I have the motion down that there be a new psychiatric examination of greater duration and greater evaluation and I can rule on it and I'm going to withhold the ruling on it until tomorrow morning and we'll meet at approximately five minutes or ten minutes before the court meets.

DC: If it please the law officer, I hate to make these motions this way, but I think this would be the best way to do it; it would save more time. Failing - in the motion - to grant our request for a continuance for a further psychiatric examination, the defense will then request a continuance be granted; how long I don't know; shouldn't be too long; for the purpose of obtaining a witness who apparently now is going to be of some value to the defense, that wasn't realized before this girl testified on this matter of the way she was taken to the hospital, who is now on leave in California.

LO: Who is this?

DC: Major Smith.

TC: Well, what will she testify to; maybe we can stipulate to it?

Asst DC: Well, I think - bear in mind that we didn't talk with Major Smith along this line - but I think that her testimony would be to the effect that she made every opportunity to provide Lieutenant Goodnough with all of the necessary clothing and other accouterments and that Lieutenant Goodnough told her a series of falsehoods about where this clothing was located and finally, losing patience and having delayed some considerable length of time waiting on an aircraft, that she then determined that the only thing to do was to go

ahead, that Lieutenant Goodnough didn't in fact, have this clothing where it would be available in a day or two days' time.

TC: Well, if you know all this information why didn't you bring it. . .you had the opportunity to get a deposition or get ahold of her.

Asst DC: As I say, I didn't realize that this information would be pertinent at the time. The issue of the method in which Lieutenant Goodnough was taken to Sheppard was never raised until you raised it yourself at this time and it was never pertinent. . . .

DC: The defense was totally unaware of it, sir, I'll say that; we had no knowledge. . .

TC: Lieutenant Keith went on the plane with. . . .

Asst DC: Lieutenant Keith is prepared to testify to the manner in which she was actually put on the airplane, but I did not observe Lieutenant Goodnough until the time that she actually stepped upon the aircraft and for the three or four hours, maybe five, prior to that time Major Smith would be in a position to testify, because she was in her constant company for that whole time.

LO: Who is Major Smith?

Asst DC: She's the Chief Nurse at the hospital.

DC: She is presently on leave in California, as I understand.

TC: I'm sure the counsel knew we were going to attack the examination and the manner in which she was brought to the hospital.

DC: That is untrue; we did not.

TC: If you say it's untrue, that's good enough for me.

DC: I did not, Maurie; I didn't, really.

TC: Okay, that's good enough for me.

LO: I believe that gives us sufficient background on what your motion is - why you want the motion presented to the court and I believe that I can rule adequately on the matter before our morning session

LO: That concludes the. . .

TC: I have no doubt that they didn't know about it and their word's good enough for me.

LO: I believe that is Appellate Exhibit 6.

The out-of-court session recessed at 1616 hours, 13 August 1957 to be continued prior to the opening of court the following day.

The out-of-court session continued at 0800 hours, 14 August 1957, as follows:

LO: Let the record reflect that this is a continuation of the out-of-court hearing requested by the defense counsel afterthe adjournment of the court last evening. The law officer, reporter, the accused, his counsel, and the counsel for the prosecution are all present.

LO: I have a motion on which I indicated I would defer a ruling until this morning. I am now ready to rule.

DC: The defense at this time, withdraws its request for a continuance for further psychiatric examination in view of the. . .a stipulation of testimony which will be entered into between the trial counsel, defense counsel, and the accused. However, the motion for a continuance to obtain the testimony of Major Smith is still in force.

LO: Let's take these one at a time. In view of the fact that we had the main motion last evening which was for a continuance and that has been now withdrawn, the problem is settled. In regard to the request for a continuance to secure the testimony of one Major Smith, I'll now hear arguments on the need for her presence. I don't believe we went into that thoroughly last evening.

DC: If the law officer please, I'd like the assistant defense counsel to elaborate on the need.

Asst DC: The witness, Lieutenant Goodnough, was interrogated towards the end of the direct examination as to the facts and circumstances surrounding her departure to Sheppard Air Force Base, apparently with the intent of attacking her psychological evaluation, on the basis that she was not in a physical nor presentable state for such an examination. In the course of that examination of Lieutenant Goodnough by the trial counsel it appeared to the defense that she had made several mis-statements and told several half-truths which can be proven or disproven by. . .to some extent at least, we think, by the testimony of Major Smith who accompanied her from the time she left the Medical Center in town until she boarded the aircraft - Major Smith being the only person to so accompany her - Major Smith being called only for impeachment purposes. The reason the defense had made no effort to secure her testimony by deposition prior to trial, knowing that she was going on leave, was because we did not feel that her. . .that this particular point would be raised. We did not know that the prosecution felt that Lieutenant Goodnough had been mishandled; we did not know that anybody felt that she had been mishandled, and as far as the defense is concerned, that was the only pertinent testimony that Major Smith might have.

TC: My reply to that is that the defense. . .the defense brought out the fact that Lieutenant Goodnough, through the psychiatrist, brought out the fact that she was in a rumpled-up uniform, no insignia, and disheveled and we are primarily trying to show that she was. . .why this condition took place. Regardless of what Major Smith would testify to, she arrived in that condition at the psychiatric ward. Now, at the most, it's just on a collateral matter that goes to the psychiatric examination. Now the defense and the trial counsel are willing to stipulate that the defense - psychiatric examination was adequate; is that correct?

DC: Correct.

TC: So, therefore, there's no argument as to going into that and that's our prime purpose on that testimony is just to show the psychiatric examination,

how she was brought about. Now that it's stipulated that it's adequate, I don't see what our problem is.

Asst DC: It's no longer a collateral matter. The defense now wishes to call Major Smith for the purposes of impeaching Lieutenant Goodnough's testimony on direct examination.

TC: For what purpose? What will she testify to?

Asst DC: For impeachment purposes.

TC: Are you willing to make an offer of proof as to what she will testify to?

Asst DC: I can make an offer of proof to what I hope and what I think she'll testify to, but I haven't talked to Major Smith personally on this matter but I have. . .I do have some hearsay evidence as to what she will testify to.

LO: I don't think that. . . we can rely upon that. Your offer of proof would have to be based upon known facts that either you or the defense counsel may be aware of as the result of interrogation of Major Smith or of testimony that was taken from her during the course of the investigation.

Asst DC: I do know this much. I can prove that Lieutenant Goodnough. . .

LO: Are you making ~~lawful~~ proof now?

Asst DC: Yes, I can prove that Lieutenant Goodnough was taken to her home where she remained for some time. . .some little time, at least from the hospital, that was, and that she was granted or she had a good two hours in which to prepare herself for the journey and. . .

LO: She admitted that.

TC: She admitted she had time, I don't think that. . .

LO: Gentlemen, why don't we, in view of the fact that we have the witness available immediately after this session - I didn't mean to interrupt your offer of proof, but in view of the fact that you had stopped as to what you had intended to say - why doesn't the trial counsel go back over the story with the witness. It seems to me that much of it is purely a matter of how fine we wish to go. . .

TC: That's right.

LO: . . .in arriving at a decision as to how much this girl was taken bodily from her home without a uniform, without money, and so forth and taken to Sheppard Air Force Base.

TC: I think the defense is making a lot out of a minor collateral point and they brought it out themselves through the psychiatrist and all we're trying to get in was the way she was dressed and so forth. He made a lot out of it - the psychiatrist. And now that we are stipulating that the psychiatric examination was adequate and the doctor was informed of these facts that. . . defense counsel - is that correct - was informed of these facts in such and such a situation would your examination have changed any and he stated "no".

LO: I think in view of the fact of the uncertainity of the defense counsel as to what will. . .would be contained in this offer of proof, that I'm going to have to insist that if an offer of proof is desired, that it be in writing as to what her expected testimony would be. We've had only generalizations so far; we've had no specific proof.

TC: I have nothing further.

Asst DC: We hadn't talked to the witness.

LO: I understand that. Do you wish to make a written offer of proof?

DC: It's rather difficult, sir, to make an offer of proof when, as I have said before, the defense counsel or the assistant defense counsel, neither one of us, has talked to the witness. The assistnat defense counsel is aware of certain hearsay evidence which has been imparted to him as having been stated by Major Smith; we were not aware that this problem was going to arise and, therefore, we did not talk to Major Smith.

LO: It seems to me that there are some witnesses in addition to Major Smith who can verify the time that this flight was ordered; the length of time it took to prepare for it; the length of time it took to prepare the witness for the flight and every incident leading up to the time that they actually departed for Sheppard. I can see no inconsistency in the testimony so far regarding the flight to Sheppard. I think that's fairly routine. There's no doubt that she wore a parachute. She arrived there and shortly thereafter went in to visit the psychiatrist.

TC: She admits that.

LO: She admitted that on the stand; the only thing that you're trying to prove is preliminary material leading up to the time that she departed, right?

Asst DC: Right.

TC: Yeah, but all we were getting at. . .

DC: We're not trying to prove. . .

TC: . . .and he says the examination is adequate. . .all we're trying to get at is to attack the examination which was his main motion, and he just brought this other thing in, was to show that she wasn't in proper shape. But he says conceding all these facts that so, and so, and so, and so, happened, the examination would still be the same.

DC: Sir, if I may make clear the exact reason why we wish to get Major Smith is not to rebut anything about the psychiatric examination. It is merely to impeach the testimony of Lieutenant Goodnough under oath.

Asst DC: If the witness, under oath, on direct examination says that it is night and in fact the defense can show that it is daytime, whether it is material or not, they have the right to. . .

TC: Yeah, but you can't go into every collateral matter that comes up during the trial.

LO: So far, you haven't been able to show me what you can expect to get from the testimony of Major Smith.

DC: Except for hearsay material, we can't, sir.

Asst DC: We are confident as to what she'll testify to, but we can't make an offer of proof based on our hearsay evidence of what she'll testify to. In other words, what she told a third person.

LO: Well, you can make an offer of proof based upon any knowledge that you want. You can make an offer of proof based upon anything that you think will be brought out by the testimony of this absent witness. I'm not trying to limit your offer of proof, but I want you to state what your offer of proof is so that we can evaluate whether or not a continuance will be necessary to obtain this material which is now absent.

Asst DC: All right.

DC: If the law officer please, we will hold the matter in abeyance until after the cross examination. . .

Reporter: I can't hear you, I'm sorry.

DC: Oh, I'm sorry. The defense will hold this matter in abeyance until after the cross examination of Lieutenant Goodnough, at which time we will confer again with the law officer and trial counsel concerning the motion. Is that agreeable with you?

LO: In other words, gentlemen, at the present time you still have the opportunity for the prosecution to open and re-examine Lieutenant Goodnough and clarify this particular point which was. . . .

DC: I would prefer, sir, to do it on cross examination.

LO: You'd prefer to do it on cross examination? Well, then in view of the fact. . .

DC: Redirect.

TC: Redirect. . .okay.

LO: And then after that, if the matter is still not cleared up, then we'll entertain the offer of proof again.

DC: That's correct.

LO: And this stipulation, gentlemen, that you have, do you intend to put that into the open court or the closed session?

DC: Open court, sir.

TC: Yeah, but I want the stipulation to say that he thinks the examination is adequate. . .those words in there.

LO: Will you please get together and arrive at a decision as to what your stipulation would be? Let the record reflect that this concludes the out-of-court session and the entire transcript will be attached to the record as an Appellate Exhibit; make that Appellate Exhibit 6.

Time: 0815 hours, 14 August 1957.

Time is 1110, 14 August 1957.

IO: Let the record reflect an out-of-court conference was held at which all the parties as previously enumerated, respectively, the accused and his counsel, and the trial counsel, and the assistant, law officer, and the reporter were present.

IO: I have read the documents offered by the prosecution, Prosecution Exhibits 9 through 15 and 17, respectively, during the interim period - between the closing of the court and the opening of this out-of-court session. I am now ready to hear arguments from the counsel.

DC: If it please the law officer, the arguments on the objection to the admission of the letters will be made by the assistant defense counsel.

Asst DC: We are objecting to the admission of the letters on the grounds that they are incompetent, irrelevant and immaterial insofar as the offenses alleged are concerned. They, obviously I think, have no relevancy as tending to show that the offense of sodomy was or was not committed nor do they have any relevancy towards showing whether or not Colonel Adams registered falsely at a motel. I just fail to see any relevancy in either one. . .along either one of those two lines toward either one of those two offenses.

I further think that they are not relevant to the offense of adultery because, although it may be argued that they go to show a close relation between the two parties, I think that it is obvious from the testimony which has gone before that these letters were all written subsequent to the time that the adultery is alleged to have occurred and, therefore, they cannot be relevant to the adultery, since the relationship between the parties at the time of the offense is all that's relevant - not what relationship developed afterwards or existed afterwards - substantially afterwards - and on that basis, they're not relative to the offense of adultery.

TC: Our argument is that where you have adultery or other sexual offenses, motive plays a part because motive involves emotion and it involves passion. We feel that the letters are competent and material and relevant for the reason that they show a mutual disposition, an emotional predisposition, and a continuing passion of the accused for this girl. It has been the argument of the defense that she's not believed. . .to be believed and, therefore, we are submitting these letters to show that this relationship actually existed between the accused and between the witness, Lieutenant Goodnough. The letters are further material as they indicate a frame of mind of the accused at a period close to the period of the offenses. It is true that the letters are right afterwards, but it shows his disposition and continuing passion from the time that he met her and we submit that it is. . .only submit on the basis of showing that he could. . .with this passion and love for her, go to a hotel and register and go and possibly commit the offense of adultery. True, it has no connection with the sodomy. But it always has connection, and we have a brief to submit to show that, in this type of case that letters have been admitted in two CMR cases.

IO: May I see the brief?

Asst DC: I. . .(shakes head)

IO: Let me read the brief and then I'll hear further argument.

APPELLATE EXHIBIT 7

DC: May the defense counsel also have the privilege of seeing those briefs?

LO: Is this all of these?

TC: Yeah, they're all.

LO: I have read the documents previous to the trial inasmuch as the trial counsel had submitted to the law officer briefs on certain aspects of the trial which he expected to arise.

(LO hands briefs to DC)

LO: It is my understanding that there is no objection by the defense counsel as to the source, authenticity, or the seizure of these letters?

DC: No, just on their relevancy and materiality as a whole.

LO: Just on their general relevancy.

LO: Are their any arguments by the defense after reading the material?

Asst DC: We still contend that a subsequent relationship between the accused and Lieutenant Goodnough is no evidence of the. . .of adultery being committed much prior to that. . .particularly.

In an instance such as this where the evidence clearly shows that the act is alleged to have occurred very shortly after the first meeting of the accused with the witness and now the prosecution attempts to show that because. . . after this meeting and after the alleged acts, a month or so, a relationship sprung up, has no bearing on whether or not the act was committed or the time it was alleged to have been committed. All of these letters are written, substantially sebsequent to when the offense of adultery is alleged to have happened and, under the circumstances, there can be no showing that such a relationship existed at the time or before the time due to the fact that the evidence clearly shows that they had just met.

LO: Gentlemen, I'll concede that the letters have, at the present time, no bearing upon the offenses of adultery which are alleged to have been committed on 16 and 17 December 1955, respectively. It is obvious from looking at the letters that they were written subsequent to that time; however, and we will also admit that there is nothing in the letters, after the reading of them, that shows any relationship to the three offenses under Charge II. However, we still have four offenses alleged, to which they are applicable because they show the continuing passion and affection and the relationship that existed between these two people and that the letters were prior to those dates which were 19 and 27 April 1956, respectively. . .

Asst DC: Are you speaking of the offenses of falsification of registration?

LO: Right; because we have here that he "did wrongfully, dishonorably and falsely register at a motel with a woman not his wife." These letters, I believe, are. . .go to show that there was a relationship between these two people which, should I say, accelerated or permitted this false registration as man and wife at the motel in El Paso, Texas.

Asst DC: Well, I beg to disagree on the grounds that mere showing of. . .that they were well acquainted has no bearing on a false registration.

LO: However, you must not overlook. . .you've overlooked the point that I made. These two people registered as man and wife and these letters are certainly indicative of a mutual affection, passion, and so forth between the two people, almost to the point where they were desirious of becoming married - a married man and woman.

Asst DC: The offense of false registration though, it would seem to me, the elements of the offense would seem to be merely that they registered falsely; not being in crime of passion or sexual offense or anything, other thing, similar to false official statement or anything else and in that vein whether or not any of the persons with whom he was alleged to have committed the offense, would not be material.

LO: Well, what I'm trying to make clear. . .you leave out the gravamen of the offense. It's not false registration alone, but false registration as man and wife. There can be many false registrations - you can put down the wrong license number on your. . .or the wrong place which you are from; you could put down your wrong name and that would be a false registration; but it would not be a false registration as man and wife. That's the offense before the court is two offenses of false registration as man and wife on two respective dates. I feel that these two letters go to show that there was this mutual affection between these two people; therefore, when they went to this motel it was not unusual as a result of their affection, for them to register as man and wife. We still have these two offenses before the court, and there has not been a plea of guilty. If there was a plea of guilty as to these two offenses, I believe, that I would withhold the introduction of these two documents. . .of these documents. . .these letters, because then we would not need to show this material; but we still have a plea of not guilty to a false registration as man and wife and these go to show the motive, continuing passion, and so forth that Captain Fox has outlined. I will give an instruction to the court, if you wish, if these letters are introduced, to the effect that they will not be used as evidence as to the commission of the offenses of adultery or to the commission of the offenses of sodomy; if you want to limit them.

Asst DC: May I make one more statement? It would seem to me that the offense of registering falsely at a motel as Mr. and Mrs. Adams. . .the elements of the offense are that he did write Mr. and Mrs. George F. Adams. Now, it is not material who the other person was; merely, that it was not Mrs. George F. Adams. It's not, as I say it is not a sexual crime - it's not a sex offense - just. . .all that is required would be a showing, to prove the offense, would be a showing that he registered as Dr. and Mrs. Adams and, in fact the statement Dr. and Mrs. Adams, is incorrect. Who he actually did register with. . .that may be one way of proving it, but a relationship between he and this other woman is not material in the sense that it goes to show that she was in fact, not Mrs. George F. Adams. And that is all that's material to the offense.

DC: If I may say a few words here, it seems to me curious reasoning to say that if there were a plea of Guilty to those offenses, the documents would not be admissible and where there is a plea of Not Guilty, to say they are admissible. I can't imagine such a situation.

LO: In other words, if we had a plea of Guilty before the court, there would be sufficient evidence, from what has been presented so far, to support, as a prima facie matter, a plea of Guilty - which is all that is necessary for the prosecution to show. However, as long as the prosecution has the plea of Not Guilty, he is required to prove the offense, and anything in connection with

that offense or those offenses is relevant to the case. We have had much discussion by Lieutenant Goodnough of this continuing passion, the fact that Dr. Adams had attempted on many occasions to see her, wanted to have a relationship of some sort with her, wanted to date her - all that; I feel that these letters are germane to the problem.

DC: I take it. . .I take it the law officer then is overruling our objection.

LO: I am prepared to overrule your objection and they introduce the letters. I feel that the letters are indicative of a strong mutual attraction and that there did exist a platonic relationship between these two people. When you have a person registering in a motel with a woman not his wife, I feel that that is. . .you could register at a motel with your sister or your mother or someone else, but in this particular case the offense is that he registered with a woman not his wife - that's what we're getting at. Do you have anything further, Captain Fox?

TC: No, sir.

DC: I have nothing further.

Asst DC: That, of course, is exactly my point that. . .

LO: Well, I think that's the reason we've spread all this into the record. That you feel that it calls for reversal; that's an obvious reason for going into this in the great detail that we have and supporting the material with all our out-of-court statements and the briefs of the defense. . .of the prosecution.

Asst DC: We will request a limiting instruction that they be considered for that purpose only.

Asst TC: At this point, before we agree on limiting instructions, would you explain exactly, once again, as to the point of the instructions?

LO: Well, I'll be glad to give an instruction to the effect that these letters are applicable only to Specifications 3 and 4, and 3. . .of Charge I, and 3 and 4 of Charge II. . .of Charge III, I'm sorry. . .

Asst TC: 3 and 4 of III and 3 and 4 of I?

LO: I think you'll have to admit that these letters were written after the alleged acts of adultery occurred and also there is nothing in these letters to indicate an act of sodomy.

Asst TC: However, in one of the letters there is a statement which says and this is only a very poor paraphrase that, "you only pretended to love me on two occasions" or "you loved me" or "you don't love me except on the two occasions when you pretended to love me," referring to acts which had already occurred.

LO: Can you find that statement?

Asst TC: I can't recall which one. . .

TC: Our contention is that this is a continuous. . .

DC: I will admit that that statement is in one of the letters.

TC: You'll admit that statement?

DC: I'll admit the fact that the statement is in one of the letters, but what materiality has it?

TC: We say this is a continuing passion he had for her and that's what we're trying to show. The defense has tried to bring out her credibility and why did she go out with this fellow, and so forth and so on, and we're trying to show that this passion and love existed over a period of time, and it goes to her over-all credibility, all these letters, not alone to just the offense on registration.

LO: I think that's a point that's well taken. Certainly the letters were brought out by the witness on the stand and in view of the fact that there has been a determined effort on the part of the defense to attack her credibility, these letters certainly go to credibility as well.

Asst DC: We have not attacked her credibility in the sense that we've denied the existence of. . .

LO: Of the letters?

Asst DC: . . .of the letters.

TC: Yeah, but you've attacked her credibility on other matters and we feel that this goes to her credibility.

LO: I'll be glad to enlarge upon that instruction to the effect that these letters are also. . .may be used by the court to. . .as a matter to assist them in determining the credibility of the witness and the weight to be attached to her testimony.

TC: Quite right.

LO: I'll make that. . .enlarge this instruction to the court. With that type of instruction I feel that the court will be sufficiently aware of the fact that they are not to consider these statements for an act of adultery or for an act of sodomy, but only for the purpose of showing the continuing passion for the offenses that are still in. . .existing after eliminating those other offenses. For the record, this statement is in Prosecution Exhibit 10 for Identification, says, "I worshipped the ground you walked on and all I got is a bad time from you except the two times you pretended to love me. I believed you," on the fourth page of Prosecution Exhibit 10 for Identification.

TC: It is our contention that it goes to her over-all credibility. It shows that. . .conceivably, too, that he was forcing his attentions upon her and he even admits in these letters here that she was trying to push him away. And the defense has brought out, why did she continue going with him.

Asst DC: Well, we have never denied that she tried to push him away. We've never denied the existence of these letters; we've never denied that she received these letters; we've never denied that they were written. I fail to see how it can go to her credibility; we've never denied any statement contained in any of those letters.

TC: But you examined her. . .

Asst DC: But the mere fact that we cross examined her. . .

TC: It goes to her overall credibility.

Asst DC: . . .doesn't make those admissible for credibility purposes.

LO: I will give an instruction to the court that these letters will be limited to these two offenses under I and the two offenses under III and the credibility which may be credited. . .weight of the testimony of the witness.

DC: I want it understood for the record that our objection has not been withdrawn; that it stands.

TC: It's on the record.

DC: But our objection has not been withdrawn.

TC: It's on the record.

DC: I just wanted to make sure.

LO: Now, gentlemen, that brings up a second point as to the contents of Prosecution Exhibit 17 for Identification.

DC: If the law officer will so permit, I think Captain Fox and myself can agree on what should be stricken from that document before it is shown to the court.

TC: I think the consent of the accused should be added in there.

DC: We're going to mask those portions which we mutually feel. . .

LO: You don't want me to make any determination in this?

DC: If we cannot mutually agree on something that I think should be. . .if we don't agree, why then I will object to that portion and you can make a decision, sir, but I think we can agree on it.

LO: You want the decision in open court?

TC: No, we'll do it now.

LO: You're going to do it now?

TC: We're going to try to get the masking tape right now. (Accused starts to leave table where trial counsel and defense counsel are working on the statement.) I want him to be present, whatever we mask. (Speaking of the accused.)

LO: Go ahead and do it now, otherwise we're going to run into one o'clock and we have to be through.

LO: That's all for now.

Time: 1140 hours, 14 August 1957.

7 CMR, p. 580, United States v. Hanna (ACM 5819)

Headnote 6.

The evidence with respect to Specification 2 proves beyond reasonable doubt that the accused and Mrs. Druian lived together at the place alleged during the period alleged and that during such time they were not married to each other but each was married to another. Accused's wife had obtained an interlocutory decree of divorce from him in the State of California on 28 May 1952, but they were still man and wife until a final decree of divorce was granted. Under the California law, the final decree could not be entered until 27 May 1953. The contents of the letters[8] written by the accused to Mrs. Druian are indicative of a strong mutual attraction and negate the existence of a platonic relationship between them. Cohabitation under the foregoing circumstances is unlawful and is an offense under military law (CM 244648, Tuttle, 28 BR 369; CM 344452, Dunlop, 10 BR-CS 187; ACM 1259, Ketchel (BR), 2 CMR (AF) 126; ACM 2360, Campbell (BR), 3 CMR (AF) 329) and constitutes a violation of Article 133 or Article 134, as it has constituted a violation of Article of War 95 or Article of War 96 (Ketchel, supra; Campbell, supra; CM 250939, McCaffree, 33 BR 95; CM 281188, Greene, 54 BR 77).

8--These letters were relied upon, in great part, by the prosecution to prove the offense alleged in Specification 1. They are competent evidence in support of Specification 2 and would have been admissible for that purpose alone. All the prosecution evidence submitted to prove Specification 1 was admissible to show circumstances leading to the commission of the other offense alleged in Specification 2.

CMR 12, p. 706-709, United States v. Francis (ACM 6822)

The Board is not faced in this instance with a situation wherein two witnesses who both observed the same event give conflicting testimony as to what occurred, but with a situation wherein one witness testifies as to certain facts and another witness is called who testifies that the first witness made to him a statement which, when compared with the first witness' testimony at the trial, tends to contradict such testimony on a material point. The Manual provision controlling the latter situation is as follows:

"....A witness may be impeached by showing any competent evidence that he made a statement (or engaged in other conduct) inconsistent with his testimony, but a foundation must first be laid before introducing evidence of an inconsistent statement. The foundation for the introduction of evidence of the making of an inconsistent oral statement is laid by asking the witness if he made the inconsistent statement, at the same time directing his attention to the time and place of the statement and the person or persons to whom it was made. This procedure may also be used in the case of an inconsistent written statement, and, if it is used, the writing need not be shown to the witness. If the witness admits making the inconsistent statement, no other proof that he made it is admissible. If he denies making the statement, or testifies that he does not remember whether he made it or not, or refuses to testify as to whether he made it, evidence that he did make the statement may be introduced....." (MCM, 1951, par 153b(2)(c); emphasis supplied.)

The Manual provision makes it clear that evidence of an inconsistent oral statement by the witness is not admissible until a foundation is laid by asking the witness if he made the inconsistent statement, at the same time directing his attention to the time and place of the statement and the person or persons to whom it was made, and then only if the witness does not admit making the statement. In an early case, the United States Circuit Court of Appeals said:

"This rule is well settled in England, that the contradictory statements of a witness cannot be proved, unless the witness shall be examined as to such statements. 1 Phil. Ev. 293; 2 Brod. & B. 286, 315, 2 Peake 232....And we think this is the correct rule. It is reasonable and just. Until a witness shall have an opportunity to explain prior and contradictory statements, by having his attention called to them, they should not be the subject matter of proof....." (McKinney v. Neil, 16 F Cas 219, 222; see also Mattox v. U. S., 156 US 237, 39 L ed 409, 15 S Ct 337; Woods v. U. S. , 279 F 706; The Charles Morgan, 115 US 69, 29 L ed 316, 5 S Ct 1172; Chapin v. Siger, 5 F Cass 468).

In the instant case Miss.....was called to the stand on three different occasions, and the defense had ample opportunity to question her on any proper matter that it desired to, but at no time was she ever questioned concerning the apparently inconsistent statement sought to be proved by the defense by the testimony of Colonel Guerin.[3] Consequently, Colonel Guerin's testimony concerning the statements she made to him were inadmissible for the purpose of impeaching her testimony. The ruling of the law officer was

3--It would have been proper, had the defense desired to do so, to recall Miss...for the purpose of questioning her concerning the inconsistent statements (See MCM, 1951, par 54b and 149a).

therefore correct.[4]

The next matter raised by the assignments of error relates to evidence of offenses not charged. As previously stated, the alleged acts involved in the carnal knowledge and adultery offenses occurred during the period from January 1950 until September 1952. During the court's interrogation of Miss . . . the information was elicited that she went to live with her mother and the accused on or about the 26th of December 1947, when she was approximately eleven years of age, and that the first sexual acts with the accused occurred within three months thereafter (R 219). Although a previous reference to such acts prior to January 1950 had been stricken from the record by the law officer (R 218), no such ruling was made with respect to the one above referred to. Appellate defense counsel assigns the reference to accused's commission of the offense of carnal knowledge prior to the period of time involved in the allegations as prejudicial error.

Concerning the admissiblity of evidence of other offenses not charged the Manual states:

The general rule is that evidence that the accused has committed other offenses or acts of misconduct is not admissible as tending to prove his guilt, for ordinarily such evidence would be useful only for the purpose of raising an inference that the accused has a disposition to do acts of the kind committed or criminal acts in general and, if the disposition thus inferred was to be made the basis for an inference that he did the act charged, the rule forbidding the drawing of an inference of guilt from evidence of the bad moral character of the accused would apply....." (MCM, 1951, par 138g).

The same paragraph of the Manual, however, goes on to state that the reason for excluding evidence of other offenses or acts of misconduct is not applicable:

". . .if evidence of other offenses or acts of misconduct of the accused has substantial value as tending to prove something other than a fact to be inferred from the disposition of the accused. . ." (MCM, 1951, par 138g).

Thus evidence of other offenses or acts of misconduct is, according to the Manual, admissible as an exception to the general rule in the following specific situations:

(1) When evidence tends to identify the accused as the perpetrator of the offense charged.

(2) When it tends to prove a plan or design of the accused.

(3) When the evidence tends to prove guilty knowledge or intent, if guilty knowledge or intent is an element of the offense charged.

(4) When such evidence tends to prove motive.

4--The Board does not decide the admissibility of the evidence of Miss . . .'s statements for any other purpose. It is noted, however, that the Manual provides that "On direct or cross-examination he an/expert witness/ may be required to specify the data on which his opinion is based, but if in the course of relating the data he refers to matters which, if themselves regarded as evidence in the case, would be inadmissible and might improperly influence the court. . ., the law officer (or the president of a special court-martial) should instruct the court in open session that such matters are to be considered only with respect to the weight to be given to the expert

opinion." (MCM, 1951, par 138e).

(5) When the evidence tends to refute a claim, express or implicit, made by the accused that his participation in the offense charged was the result of accident or mistake (See MCM, 1951, par 138g[5]).

Under the circumstances of this case, the Board finds no basis for the admission of evidence of prior sexual acts of the accused under the first, second, third, and fifth exceptions set forth above. However, a different situation is presented with respect to the fourth exception, i.e., when the evidence tends to prove motive. The term "motive" is defined as "The inducement, cause or reason why a thing is done." (Black's Law Dictionary, 3d Ed. p. 1209). One aspect of "motive" is the emotion or passion which brings about the particular acts with which the accused is charged (See Wigmore on Evidence, 3d Ed, Vol I, § 117). On the question of the admissibility, in a trial for sex offenses, of evidence of sexual passion of the accused at other times for the victim of the offenses, Wigmore says:

"The prior or subsequent existence of a sexual passion in A for B is relevant. . .to show its existence at the time in issue. The circumstance that the prior or subsequent conduct exhibiting the passion is criminal does not alter the case nor affect the admissibility of the evidence. . ." (Wigmore, supra, Vol II, § 398 and Vol I, 216; see also numerous cases annotated in Wigmore, supra, Vol II, § 398, Footnote 1).

In Weaver v. United States, 299 F 893, the accused was charged with carnal knowledge. The language of the Court of Appeals of the District of Columbia is particularly pertinent to the problem before the Board:

". . . /W/e now will consider certain of the assignments of error. It is insisted that it was error to permit the prosecuting witness to testify concerning similar acts between the parties, prior to the offense charged in the indictment. It now is the generally accepted doctrine that, in prosecutions for statutory rape upon one under the age of consent, such testimony is admissible. . . ./Citing numerous cases/. When this testimony was introduced, the defendant, through his plea of not guilty, in effect had denied sustaining any improper relations with the witness, and according to her testimony the acts of intimacy were continuous and culminated in the particular act charged. Under the rule announced, her testimony therfore was admissible." Weaver v. U.S., supra, 897; emphasis supplied; see also Wigmore, supra, § 399(b)).

In Hodge v. United States, 126 F2D 849, the same court said:

"The general rule, applicable in criminal prosecutions, is that evidence of other offenses than that for which the accused is

5--On the general problem of admissibility of evidence of other offenses or acts of misconduct see also U.S. v. Jones (No. 288), 2 USCMA 80, 85, 6 CMR 80, 85; U.S. v. Hunter (No. 359), 2 USCMA 37, 43, 6 CMR 37, 43; U.S. v. Marshal et al (No. 548), 2 USCMA 54, 57, 6 CMR 54, 57; U.S. v. Yerger, (No. 122), 1 USCMA 288, 289, 3 CMR 22, 23; U.S. v. Valencia (No. 308), 1 USCMA 415, 4 CMR 7, 11; U.S. V. Powell (No. 1450), 3 USCMA 64, 11 CMR 64; ACM 6280, Wright et al, 8 CMR 850).

on trial is inadmissible. In prosecutions for sexual offenses, however, there is a well established exception, the theory of which is that as the mental disposition of the defendant at the time of the act charged is relevant, evidence that at some prior time he was similarly disposed is also relevant. Evidence of prior acts between the same parties is admissible, therefore, as showing a disposition to commit the act charged, the probabilities being that the emotional predisposition or passion will continue. Such evidence is admissible not only on authority, but on reason /citing cases/" (Hodge v. U.S. supra, 849; emphasis supplied; see also Thayer v. Thayer, 101 Mass 111; and CM 349332, Schwartz, 4 CMR 272, 276).

Accordingly, it is the opinion of the Board that the evidence that the accused in the instant case engaged in sexual acts with Miss. . . at a time prior to the period covered by the allegations was relevant and admissible to show a continuing passion in the accused for the particular person involved in the sex offenses. This is so, irrespective of the fact that the prior acts of the accused, if prosecuted criminally, may have been barred by the statute of limitations (AW 39; MCM, 1949, par 67; UCMJ, Art. 43; MCM, 1951, pars 33b and 68c; ACM 5780, Johnson, 6 CMR 810; See Wharton's Criminal Law, supra, Vol II, § 2096).

The Board notes that in this case Miss . . . gave positive testimony as to the commission of the sexual acts during the period alleged. Her further testimony that he had committed identical acts over a period of time prior to that covered by the allegations, although it established a continuing passion in the accused and was admissible as bearing on motive, amounted to no more than circumstatial evidence tending to corroborate her own testimony as to the commission of the acts during the period alleged. That this is so does not, however, affect the admissibility ofthe testimony inquestion (See MCM, 1951, par 138b).

11 CMR, page 73, United States v. Rhodes (3 USCMA 73, 11 CMR 73)

Evidence § 79--letters--carbon copies of.

3. Carbon copies of longhand letters, including signatures thereon, sent by the accused to a co-conspirator, did not constitute secondary evidence, but, on the other hand, were duplicate originals and equally admissible in evidence as originals. (Citing MCM, 1951, par 143a(1); United States v. Jewson (No. 532), 1 USCMA 652, 5 CMR 80.)

Evidence § 79--letters--carbon copies of.

4. Assuming the letters in question were "secondary" evidence, such evidence would have been admissible, inasmuch as the orginals of the letters had been destroyed by the co-conspirator. (Citing MCM, 1951, par 143a (2); Riggs v. Tayloe, 22 US 483, 6 L ed 140.)

7 CMR, p. 574, United States v. Hanna (ACM 5819)

Accused's third letter and his succeeding letters to Mrs. Druian were love letters and from the references therein to Mrs. Druian's communications it appeared obvious that she reciprocated his ardent affection. In one letter he questioned whether she was receiving his correspondence and mentioned that he had cabled Captain Druian's commanding officer. That cablegram dated 15 August 1951, reads:

497. Statements made in preparation for crime. Statements concocted in advance as part of a projected scheme of crime are clearly not within the exception. Such statements are inadmissible as self-serving and cannot, therefore, be introduced by the defendants on their own behalf. They may be put in evidence, however, by the prosecution when the object is to prove premeditation and preparation on the part of the defendants. [13]

13. See supra #126; Wharton, Ev. #268.

AMERICAN JURISPRUDENCE, 20, § 912, pages 768, 769

B. PRIVATE WRITINGS. 1. IN GENERAL.

Generally.--The tests for the admissiblity of private writings and records are not dissimilar from those that apply to the admissiblility of oral testimony offered at the trial. Any such writing is admissible only where it is relevant and material to the issues and competent, under the general rules of the law of evidence, to prove such issues. It has been said that the condition required by law in order to make documents legal evidence is that they shall have been made or found and preserved in such manner as to make it appear that they state directly, accurately, and truly a fact relevant and material to the issue in question.

Documents containing evidence relevant to a fact in issue may be inadmissible because of the existence of a privilieged relation. Where, however, such a document or writing comes into the hands of a third person not a member of the protected relation or an agent or a representative of a member thereof, it is, according to most courts, no longer privileged, but admissible in evidence to the same extent as any other writing.

Generally speaking, any relevant writing is admissible where, from its contents and other circumstances in evidence, it is reasonably inferable that the author, or another lawfully acting for him, is the person sought to be charged. Documents which form the subject matter of an action and those executed contemporaneously with a transaction in dispute become landmarks by which to correct, adjust, and supply the imperfections and uncertainties of memory; they supply convincing evidence of controverted facts and will be construed most strongly against their author. A document forming part of the res gestae and conducing to illustrate the case is admissible. Several writings executed between the same parties, substantially at the same time, relating to the same subject matter, may be read in evidence together as forming parts of one transaction, although they do not in terms refer to each other, if in point of fact they are parts of a single transaction. Upon; the broadest principles, a written memorial made at the time of a transaction, and in the presence of parties, upon anything--wood, stone, or paper--is evidence and admissible, especially in a case where human recollection differs, in order to strengthen the one side or the other, as the memorial may corroborate the one or the other. It is immaterial who made it, as long as it was made at the time and in the presence of the parties at variance.

Private writings which emanate from a source other than the party against whom they are sought to be introduced should be shown to have been authorized by, or otherwise to be binding upon, him. Generally speaking, the rights of an individual cannot be affected by written statements of persons who act in an unofficial capacity in respect of matters to which he is a stranger. As to him such writings are inadmissible. They are hearsay and res inter alios. In such cases the principle that unsworn written statements of living persons who may be produced in court as witnesses are not admissible is applicable.

If a person is by statute denied the right to testify, the law will not permit him to make a memorandum of a fact and introduce it as evidence of that fact.

Where an exhibit, though mentioned in an agreement as

AMERICAN JURISPRUDENCE, 20, § 912, pages 768, 769

B. PRIVATE WRITINGS. 1. IN GENERAL.

as annexed to it, is , in truth, not annexed, the agreement is admissible in evidence without the exhibit.

The use of a private writing to refresh the memory of a witness is discussed elsewhere.

WHARTON'S CRIMINAL EVIDENCE

583. - Letters. A letter written by the defendant, when self-diserving, is prima facie evidence against him; though in such case the confession, to be operative must be distinctly to a point material to the issue. It is not necessary to the admissibility of such a letter that it should be signed; if traceable to the writer, and if involving a self-disserving admissionof any kind, this is enough. Nor is it an objection that a letter stands by itself, since a letter containing a particular confession may come in alone; nor is it necessary, when a letter is thus independent in its character, that the whole pertinent correspondence should be put in. Nor is it fatal to the admissibility of such letter that it was in answer to a letter meant as a trap. It is for the jury to determine whether the contents of the letter containing a purported confession are in fact such a character, but a letter otherwise inadmissible is not to be received into evidence because it is contended that is contains a confession of the writer. (Page 963)

802. - Letter; telegrams. It is universally conceded that letters, telegrams, and other correspondence are admissible in evidence if the proper foundation has been laid and if such correspondence pertains to some material fact at issue in the case in which it is sought to be introduced. To illustrate, a letter or telegram has been held to be admissible to prove motive, threats, and consciousness of guilt; to corroborate other testimony; to be compared with a confession; to impeach a witness; to show agency; as an independent circumstance; to show relationship between the addressee and the writer; and as a part of the transaction itself. But letters written by a third party to one who is charged with a crime are not to be taken as an admission against him, but are to be rejected hearsay. An unanswered letter which is not a part of a mutual correspondence amounts to a self-serving statement and is inadmissible in favor of the writer as evidence of the statements therein contained. It is also held that unintelligible and meaningless writings, and garbled extracts" from letters are not admissible. (Page 1383)

Footnote: 9. United States v. Dunbar (D.C.) 60F.75 (telegram from prosecuting witness to defendant admitted to corroborate verbal admissions of defendant to such witness); Gebardi v. United States (C. C. A. 7th) 57 F. (2d) 617, reversed on other grounds in 287 U.S. 112, 77 L. ed. 206, 53 S. Ct. 35, 84 A.L.R. 370 (railway post card with love note in prosecution for conspiracy to transport women from one state to another for immoral purposes); Patterson v. State, 202 Ala. 65, 79 So. 459; Lockhart v. State, 145 Md. 602, 125 A. 829; State v. Adams, 108 Mo. 208, 18 S. W. 1000 (letters written by prosecution witness to defendant); State v. Twardus, 6 N. J. Mis. R. 193, 140 A. 317, affirmed in 105 N. J. L. 254, 143, A. 920 (in a prosecution for conspiracy to burn a building, telegraphed a money order from defendant to co-conspirators).

WHARTON'S CRIMINAL EVIDENCE

808. Authentication: letters telegrams. Ordinarily a letter or telegram does not prove itself, and it is not admissible as evidence in the absence of proof of its genuineness. The usual method of making such proof is by establishing the identity of the handwriting contained in the instrument, but it may also be shown by competent evidence that such letter or telegram was signed, written, in the possession of, authorized by, or within the knowledge of, the person by whom such instrument purports to have been written or executed. In other words, it must be satisfactorily shown that the letters or telegram and the purported signer or person responsible for its existence are in some way connected, and such a showing may also be made by proof of the attending circumstances. But the mere fact that a letter or telegram purports to have been written and signed by the person in question is insufficient to establish its authenticity and genuineness. This is particularly true where the gneuineness of the letter is denied by the purported signer, or where it does not appear that it was received by, or was ever in the possession of, the alleged recipient. Neither is it sufficient to show merely that the letter or telegram was found in the possession of the person in question, without further showing that he wrote, received, or knew of such writing. The universally accepted rule is to the effect that a prima facie case of authenticity is made by showing that the offered letter purports to be from the addressee of a prior letter and to be in reply thereto, and that it was received through the mail in due course, there being indulged, in such a case, a presumption of fact of the genuineness of the signature to the reply letter sufficient in itself to render it admissible in evidence without futher authentication. (Page 1393)

CASES ON EVIDENCE

STATE v. FRESHWATER

Page 260

Supreme Court of Utah, 1906. 30 Utah 442,). 447, 116 Am.St.Rep. 853

McCarty, J. The defendant was convicted of the crime of adultery alleged to have been committed on June 18, 1904, at Provo, Utah, with one Delia Nance, an unmarried woman and was sentenced therefor to a term in the penitentiary....

Delia Nance, the woman with whom it is alleged defend- and committed the crime of which he stands convicted, was called as a witness and testified that defendant was crim- inally intimate with her on June 18, 1904, at Provo, Utah, and that, as a result of their criminal conduct, she became pregnant; that defendant, after he was arrested from the crime prevailed upon her to go to her home in Colorado in order to avoid testify against him; that on the night of September 5, 1904, the defendant took her to Springville in a buggy, at which point he gave her money, and she took the train for Colorado; that it was understood before they parted that the defendant would ship her trunk to her later on. (Thecourt admitted the further testimony of the witness as to the contents of letters written by her to the defendant, about the shipment of her trunk, and concerning the date of the trial of the criminal proceedings against defendant. Some of the letters received by her in reply were typewitten and these she produced in evidence, but one of the letters was written, and as to this she testified that she recognized it as being in the handwriting of the defendant.)

It is now urged that the court erred in permitting Delia Nance, who claimed to have seen the defendant write but once, to testify that the letter written by hand which she claimed was received by her, and the address on the envelope in which came, was in the defendant's handwriting. The rule is well settled that writing may be proved by evidence of a witness who has seen the person write....In 2 Jones on Ev. § 559, the author says; "But whatever degree of weight his testimony may deserve, which is a question exclusively for the jury, it is an established rule that if one has seen the person write, he will be competent to speak as to his handwriting; and this is true, although the impression on the witness may be faint and inaccurate. Thus, the testimony has been admitted although the witness has not seen the person write for many years before the trial and although he has only seen the person write on a single occasion, and even though he only saw the person write his name, or even his surname." And again: "It is not necessary that the wit- ness should be an expert. These are matter affecting not the admissiblility but the weight of such testimony."....
Hammond v. Varian, 54 N.Y.398; McNair v. Commonwealth, 26 Pa. 388; Rideout v. Newton, 17 N.H.71; Pepper v. Barness, 22 Grat., Ba., 405; Keith v. Lothrop, 10 Cush, Mass., 453; Hopkins v. Megquire, 35 Me. 78; 17 Cyc. 157. . . .

We find no reversible error in the record. The judgement is therefore affirmed.5

BARTCH, C.J., and STRAUP, J., concur.

WAUSAU SULPHATE FIBRE CO. v. COMMISSIONER OF INTERNAL REVENUE

Circuit Court of Appeals of the United States, Seventh Circuit, 1932.

61 F. 2d 879.

Page 621

[5]This sort of familiarity with handwriting, adequate to enable the witness to furnish an initial showing of genuineness sufficient to secure the mere admission in evidence of the document, may also be gathered from having seen writings of the person in question, known to be genuine, or from exchange of correspondence. Wigmore, Evidence, §§ 694-708, See the interesting article, Inbau, Lay Witness Identification of Handwriting (An Experiment), 34 Ill.L.Rev. 433; Hilton, The Detection of Forgery, 30 J.Crim.L. & Criminology 568, 1939.

Time: 1455 hours, 14 August 1957

LO: Okay, gentlemen, we're ready to go.

LO: First I've given you copies of the instructions that I prepared prior to the opening of this case. Obviously, those instructions are no longer completely appropriate in view of the findings of the law officer as to the motions for a finding of not guilty as to the various charges, rather specifications of the charges. I won't enumerate those because you know which ones they are. What I want to go over with you is...I want to ask the defense counsel if he requests any instructions at this time?

DC: I believe the law officer has my one requested instruction.

LO: I have one requested instruction; do you have others?

DC: Not immediately, sir; I would like time to finish reading these before...

LO: I'll defer on this until after we've gotten through. I intend to give these instructions as I have set them out here, leaving out the references, of course, to the specifications as to which there was a finding of not guilty on motion. Perhaps you'd like to take the time to read them and then come up with a decision as to whether you have additional instructions.

TC: I have one; I request that you give and that is on inconsistent statements - that's what inconsistent statements represent - even though you have given it before. In other words, that they affect credibility only and do not go to the truth of the issue.

LO: (Nods head) The instruction on inconsistent statements which has already been given has been requested to be given again by the trial counsel.

TC: I'll withdraw that - I changed my mind; I've got another.

LO: At this stage of the proceedings I wonder what value it would have because I instructed them quite thoroughly on it at the time of the...

DC: Not only that, I don't know what applicability it has at this particular time.

LO: I seriously doubt, Captain Fox, it would have any value at this time to the court because although they remember that I pointed it out to them, they certainly would not be completely aware of the pertinency of it.

DC: Do you intend to give the instruction on a lesser included offense on that one offense of sodomy that remains?

LO: In my opinion, as a result of the evidence given by Lieutenant Goodnough, there is no necessity for a lesser included offense.

DC: (Nods head in the affirmative.)

LO: It was not reasonably raised by the evidence presented by Lieutenant Goodnough. That is purely an opinion at this particular point and my recollection of her testimony at this time.

TC: What if the court feels that there wasn't an actual penetration but there was a licking around the vagina and licking on other parts of the body?

APPELLATE EXHIBIT 8

DC: The testimony of Lieutenant Goodnough, I believe, was that his tongue was in her vagina. That has not been refuted...

Accused: That's anatomically impossible...

LO: (Gestures to accused to be quiet) Doctor, you just...

Accused: I have nothing to say, huh? (chuckles)

DC: (To accused) You just hear.....(continues with argument)...that has not been refuted except on the point of her credibility. It has not been refuted by any evidence except the evidence of the witness's inconsistent... impeachment; and her testimony is that if anything happened, the tongue was in the vagina.

LO: I don't believe there was any controverting evidence presented regarding that offense. The only thing that possibly could be raised...that due to her impeached status you could possibly infer from that, that a lesser offense occurred.

TC: We don't consider her as being impeached.

LO: Well, in that particular case then I feel that the evidence does not reasonably raise a lesser included offense. Do I have any objection to this?

Asst TC: You say "does" or "does not?"

LO: It does not; do I have any objection from the trial counsel as to the exclusion of the lesser included offense?

TC: I'm agreeable.

DC: As to what?

LO: As to the inclusion of a lesser included offense or the exclusion of a lesser included offense - one way or the other - I give you your choice.

Asst DC: No, we don't want it.

LO: I didn't ask the defense counsel; this is purely for your arguments sake.

TC: Our argument is going to be that the act was consumated, so I think we're bound by our argument.

DC: Let the record reflect that the defense counsel has no request for any instruction on the lesser included offense.

LO: That is the lesser included offense of sodomy; there is no lesser included offense of the other.

LO: During the arguments one of the counsel, I don't remember which one, raised the point of circumstantial evidence. I saw little, if any, circumstantial evidence raised in this case and I don't think an instruction of proof of anything by circumstantial evidence is required. There is no intent in these cases. I see no reason for giving a circumstantial evidence instruction. You had direct evidence or you had no evidence at all.

DC: I'm inclined to agree; I will agree with that statement.

TC: What do you think, Dom?

Asst TC: You're talking about the standard instruction given?

LO: The standard instruction - which doesn't fit our situation - would have to be adapted.

TC: There is no specific intent, so you can't...

LO: There is no proof of knowledge required and those are the standard instructions for circumstantial evidence; therefore, I do not feel that circumstantial evidence should have any instruction in this case.

TC: Now our position is that the alleged act took place in the quarters of the accused and the only testimony that we do have is the direct testimony of the witness.

LO: And the stipulated testimony as to where the quarters of the accused were located. It is agreed then by the trial counsel and the defense counsel that neither counsel requests an instruction on circumstantial evidence?

DC: It is so agreed.

TC: Agreed.

LO: I intend to give a stipulation instruction, standard stipulation instruction, to remind them of...

TC: Agreed.

DC: Agreed; as a matter of digression here, it might be wise to add that there are, in addition, stipulations of fact.

LO: I will...I will adapt that. I will adapt the stipulations to fit the facts...the instructions. My instructions will be tailored to fit the new requirement for the court not having Manuals in closed session. I feel that... I will give them a personal instruction on the requirements of 74a of the Manual. I have paraphrased it to fit our situation. Is that suitable?

DC: That's suitable.

TC: Paragraph 74?

LO: Paragraph 74a which you can no longer have or make reference to, so therefore I will instruct upon it fully.

TC: Agreed.

DC: Agreed.

LO: Now we come to the problem of the accomplice testimony. I have offered, as defense requested instruction number one, an instruction which will...I will give an instruction from page 289 of the Manual for Courts-Martial on the value of accomplice testimony in sexual cases.

DC: It is the contention of the defense, sir, that this is not the type of sexual case mentioned in the Manual where it refers to victims. It is a sexual case in which the chief prosecution witness, the only prosecution witness, to any of these acts is an accomplice.

The defense further feels that that accomplice's testimony taken as a whole - and I don't think it can be related only to a specific offense about which she testified, but taken as a whole - is improbable and because it is improbable, it required a further instruction on corroboration and that further corroboration should be defined.

TC: I can't understand the position of defense counsel. The witness testified on the adulteries that she don't remember if sexual intercourse took place. Now, is that improbable? She never said intercourse took place; therefore, he is basing his argument on the fact that it was improbable that she never testified that sexual intercourse took place. That is one of the tests; the second test is that where a witness's testimony is not uncertain, improbable, or incredible, throughout the trial, then there's no necessity of instructing on corroboration. The only necessity is that if he could have impeached her here in court on her testimony here in the courtroom not as to inconsistent statements made outside the courtroom - the test is that he impeach her in the courtroom here not by inconsistent statements out of the courtroom.

DC: Sir, I only say this - that impeachment is impeachment, and impeachment is defined in the Manual as tending to diminish the credibility of a witness. I don't think anyone can say that in this case the credibility of the witness has not been diminished; it most certainly has. It has from the testimony of the psychiatrist who says that she doesn't know the difference between fantasy and reality. It has been diminished by her numerous admissions on the stand that she has previously made statements inconsistent with those given under oath here. Those statements likewise being under oath. If that is not impeachment. . . .

TC: It is our contention and we have law to cite for our position and we will not argue the point any further on it. I submit our brief on law on that.

DC: The defense further contends that the testimony of this witness throughout this case can be considered very improbable. It does not seem probable that a person who has undergone such a tremendous experience as this witness indicated she had on the stand, would then - three months later - go out with a man who subjected her to such an act - voluntarily as apparently she did.

TC: Isn't it very credible that the fact that a man is in a position such as the accused was and from all the letters that we have in evidence and so forth to show that this was a relationship that existed over a period of time?

Asst TC: It's the contention of the prosecution, every time the defense attempted to impeach the witness with some sort of inconsistency, she had adequate explanation and that's all that's required under law that she be given the opportunity for adequate explanation on the stand, which she did have an explanation for every inconsistency.

DC: The adequate explanation or no; she was still impeached.

TC: She was not impeached.

DC: She admitted making inconsistent statements.

Asst DC: She didn't have an adequate explanation; she just admitted the inconsistency. You're saying that she has to deny them and have them be proved by outside evidence - just admitting them is not an adequate explanation.

LO: Gentlemen, I will not give instructions as requested. . .as defense requested number one; I will give a paraphrase of the instruction which is set out or the manual portion which is set out on page 289, Section 153a. The paraphrase will read thus: "A conviction cannot be based upon the uncorroborated testimony of an accomplice in a trial for a sexual offense if such testimony is self-contradictory, uncertain, or improbable. The uncorroborated testimony of an accomplice, even though apparently credible, is of doubtful integrity and is to be considered with great caution." I will also instruct the court that according to the evidence presented before this court, Lieutenant Goodnough is an accomplice.

TC: Is what?

LO: Was an accomplice.

TC: That's all right.

Asst TC: One final point for the consideration of the law officer. . .

TC: I still object to this. . .you're not saying that she was. . .you're just saying <u>if</u> it was. . .

LO: I'm just stating that she was an accomplice. . . .

TC: Yeah, but the prior statement. . . .

LO: A conviction cannot be based upon the uncorroborated testimony of an accomplice in a trial for a sexual offense if such testimony is self-contradictory, uncertain, or improbable. I believe the weight of opinions I have read as submitted in the brief of the trial counsel and my other reading on this matter indicates that that is a sufficient instruction.

DC: I am assuming that the law officer has denied the requested instruction of the defense in this case.

LO: Request Instruction Number One is denied.

DC: However, in view of what the law officer intends to instruct the court on, the defense requests that, since he is telling the court that if they find the testimony uncertain, unprobable or incredible, they must find corroborating evidence, I am asking the law officer to define "corroboration" for the benefit of the court since it is a legal term and it needs definition. The court has no guide lines to go by when you say corroboration; it's a legal term; it's a term of ours.

LO: Let me read the definition of corroboration: "corroborating evidence is evidence which, taken by itself, leads to the inference that a crime has been committed and that the accused is implicated in it."

TC: Read that again, please.

Asst TC: Is this the suggested Instruction Number One?

LO: This is from the suggested Instruction Number One from the defense counsel. That "corroborating evidence is evidence which, taken by itself, leads to the inference that a crime has been committed and that the accused is implicated in it."

TC: That don't say nothing as far as I'm concerned.

LO: All it is, is the definition taken from the United States versus Murphy which was found in 253 Federal 404. It is also found in substantially that term in Black's Dictionary; U. S. v. Murphy is cited in Black's Dictionary as one of the cases wherein corroborating evidence was defined.

DC: That definition of corroboration, sir, is agreeable with the defense and I think it should be given.

LO: While I realize that it would be agreeable to you; it's from the defense.

TC: Let me see that once again.

TC: You can give that definition, but I'm going to request that the law officer instruct the court that as a matter of law he's not found Lieutenant Goodnough's testimony to be uncertain, improbable or inconsistent.

LO: I think that would be a comment upon the evidence taken as an entirety and not upon the portion of the evidence.

TC: All right, can we have a statement to the effect that this does not mean that you have found her testimony to be uncertain. . .

DC: I'll object to that statement.

TC: Wait until I'm done - you haven't heard what I've said. C$_a$n't we have a statement to the effect that this does not mean that there has been any finding of uncertainty, improbability or inconsistency.

LO: I believe that this is the ultimate decision of this court to make based upon these guide lines. . .

Asst TC: Why don't we say. . .

LO: . . .to the effect that they must make the decision as to whether her testimony is self-contradictory, uncertain or improbable. I am telling them that a conviction cannot be based upon the uncorroborated testimony of an accomplice if those three things exist.

DC: Or one of them.

LO: Or one of them. It's in the disjunctive, not in the conjunctive.

TC: Don't be too sure of an acquittal.

Asst DC: What brought that on?

Accused: He's getting mad now.

LO: I am prepared, gentlemen, to give this instruction: a conviction cannot be based upon the uncorroborated testimony of an accomplice in a trial for a sexual offense if such testimony is self-contradictory, uncertain or improbable. The uncorroborated testimony of an accomplice, even though apparently credible, is of doubtful integrity and is to be considered with great caution. According to law Lieutenant Goodnough was an accomplice in this case.

TC: No, no, I don't go on that.

Asst TC: No, I'd say, sir, by the very giving of that. . .

DC: You don't deny that, surely?

LO: As a matter of law, Lieutenant Goodnough would be considered an accomplice in this case.

Asst TC: I can't help but feel by giving that instruction, whether consciously or not, you will leave the inference with the court that her testimony requires corroboration. Besides. . . .

LO: I don't see that.

Asst TC: In substance, that's my feeling on this. The very <u>giving</u> of the instruction would. . . .

LO: I feel that this instruction says that unless you find, or <u>if</u> you find that her testimony is self-contradictory, uncertain or improbable, it must be corroborated.

Asst TC: Well, will it. . .does that say so, sir? <u>If</u> you find?

LO: A conviction cannot be based upon the uncorroborated testimony of an accomplice in trial for a sexual offense, if such testimony is self-contradictory, uncertain or improbable. That's exactly from the Manual for Courts-Martial and I will not. . .I do not intend to go any further than that; it's a paraphrase.

Asst TC: Well, let me say this, sir. In deciding to give this instruction, you in your own mind, have resolved or come to the conclusion that Lieutenant Goodnough's testimony is improbable or needs. . . .

LO: I do not read that in this; I do not read that at all in my instructions.

DC: If I may say something for a minute here, I think that by giving that instruction, he has said to the court that there is some evidence upon which you could say that it is uncertain, improbable or self-contradictory. . .

TC: I don't buy that.

DC: . . .he's not saying. . .

TC: That's standard instructions. . .that's what we're trying to bring out - to get clear to the court that you're not saying that it <u>is</u> inconsistent, uncertain and improbable - that he's. . .

Asst TC: Well, wait a minute. . .

TC: . . .not saying it is or it isn't.

Asst TC: I'm enough of a layman yet to be able to put myself in the court members' place and upon the reading of that instruction draw the inference that, "Ah ha! The law officer has determined that this girl's statement or testimony must have been improbable in some sense, otherwise he wouldn't have instructed." As a lawyer, you would say that's not the case; and, I would agree with you, as a lawyer; but as a layman, I cannot agree with you, sir.

Asst DC: Well, it's plain English, if the testimony of the. . . .

Asst TC: He doesn't say if.

Asst DC: It does say if.

LO: I'll give you. . .using the same language, a conviction cannot be made based upon the uncorroborated testimony of an accomplice if it is self-contradictory uncertain or improbable. If you wish, I'll include "I express no opinion as to the uncertainty, the improbableness, or the self-contradictory nature of the testimony given in this case. That is a matter for the court to determine.

TC: I buy that.

Asst TC: I think that's better.

DC: I think it's redundant.

LO: I think that's their determination to make. I feel that that is an unnecessary addition to this, I think.

DC: I do, too.

LO: Do you have any further. . . .

DC: Sir, am I to understand from what has gone before that you will give a definition of corroboration?

LO: No, I will not.

DC: You will not?

LO: I do not feel that corroboration is a word which is so steeped in legal technicality and legal language that the court members cannot understand it.

TC: You mean the definition that was point out in the. . . .

LO: I do not feel it's necessary.

TC: I concur.

DC: I will reiterate again for the record that I do deem it necessary.

LO: I will ask the members of the court if they want a definition of the word corroboration, but I don't feel that a definition of corroboration is required under these instructions.

Asst DC: Assuming that the members of the court would request a definition of corroboration, what definition would. . .

LO: I would give the definition from Black's Law Dictionary.

DC: The one that you read. . .ours?

LO: Well, it's similar to the one that you have.

Reporter: What was that?

LO: I would give the definition from Black's Law Dictionary which is similar to the definition presented by the defense counsel. You remember it is not the word corroboration, it is corroborating evidence is what you are asking for a definition of. That is what the definition is that you submitted to me - corroborating evidence. Corroborating evidence and corroboration are both defined in Black's; they are two separate definitions. Do I have any further requests for instructions?

TC: I have none.

DC: I have none at this time, sir. I wish to reserve, perhaps, an objection to any definition of corroborating evidence that you might give because I don't know exactly what you intend to give, if you give it at all.

LO: I'll ask the court if they understand what the word corroboration means. If they do not, then I will have Black's Dictionary here and will give the definition from Black's Dictionary.

Asst TC: I have, I think, the latest - the Ninth Edition of Black's - not with me, but at home and I can bring it, if that's the one you want.

LO: Good. I do not feel that there are any other terms of a legal type that the court will not be able to understand. I'm defining certain terms that are already included in the instructions. I don't feel there are any other words that are words of ours.

LO: The entire transcript of this will be attached to the record as an appellate exhibit and the reporter will attach to it the briefs of the prosecution regarding corroboration and the requested instruction number one will also be attached to the appellate exhibit as a sub-section. You can put one "a" and the other "b".

DC: Sir, at this time before the closing of the out-of-court session, with reference to the defense motion for a continuance to obtain Major Smith; that motion is withdrawn.

LO: Let the record so reflect that the motion was withdrawn by the defense counsel. I do not believe there are any other motions before the court either in closed session or otherwise which have not been resolved.

DC: I believe that's correct, sir.

TC: Right.

Time: 1543 hours, 14 August 1957.

UNITED STATES

V.

Master Sergeant HOWARD N. JONES, AF 33117741
Detachment 1, Eighth Air Postal Squadron
Wheelus Field, Tripoli, Libya
ACM 7792

Sodomy 20 - Instructions as to corroboration of victim

4. Each of the victims testified in detail concerning the offenses and in spite of vigorous cross-examination persisted in their original testimony. However, the defense introduced statements made by these victims to the OSI and the investigating officer prior to trial which contained inconsistencies as to the dates, places and circumstances pertaining to the offenses charged. The defense requested the following instruction: A conviction cannot be based upon the uncorroborated testimony of an alleged victim in a trial for a sexual offense, if such testimony is self-contradictory, uncertain or improbable." This instruction was refused. HELD: The law officer properly refused to give the above instruction because it was inapplicable inasmuch as the testimony of the alleged victims was not inconsistent. The nature of a witness' testimony at the trial determines whether it is to be characterized as self-contradictory, uncertain or improbable. In other words, consistent, certain and probable testimony elicited at trial is not capable of being changed in character by the showing that the witness made inconsistent statements prior to trial. Such inconsistent statements are to be considered only in assesing the over-all credibility of the witness.

Trial 57 - instructions to reject testimony of impeached witnesses.

5. The defense requested the following two instructions: "If the court, or any member of the court, considers that the testimony of a witness has been successfully impeached, he should disregard the testimony of that witness in determining his vote on the findings . . . . The court is further advised that if a witness makes a statement on direct examination and on cross-examination he denies knowledge of the same facts, his denial operates as a withdrawal of his direct testimony, and it should not be considered by the court." HELD: The law officer properly de-

Appellate Exhibit 8A

clined to give the above requested instructions since they were patently erroneous. Each of the quoted instructions falls into the same error, i.e. an invasion of the province of the triers of fact. It is for the court members to determine to what extend and in regard to what facts they would believe the witnesses, and the law officer has no authority to advise the court to disregard completely testimony which can be weighed, believed in whole or part, or totally rejected. (Citing U.S. v Michemer, 152 F2d 880, 885; Lyles v. U.S., 20 App DC 559, 567; MCM, 1951, par 153b (3).)

(See 53 Am Jur, Trial 599, 778.)

Trial 57 - request for instructions as to credibility of witnesses - sufficiency of instructions given to cover requested instructions.

6. The defense also requested an instruction that a witness may be impeached by showing that he made a statement or statements inconsistent with his testimony and an instruction that it was the function of the court to determine the credibility of witnesses and that all testimony found to be lacking in credibility could be rejected. The law officer did not give the requested instructions but in his general instructions he told the court that the defense had introduced into evidence certain statements made by the alleged victims prior to the trial for the purpose of impeaching their credibility and that the only reason these statements were admitted was for purposes of impeachment and that the court was only to consider them for such purpose. He further instructed the court that it was the exclusive judge of all questions of fact and that the final determination as to the weight of evidence and credibility of witnesses rested solely upon the members of the court. HELD: The instructions on credibility given by the law officer adequately conveyed to the court that it could consider the inconsistent statements made by the witnesses for impeachment purposes and that it was the final judge of the credibility of those witnesses. Where requested instructions are otherwise adequately covered in the general charge to the court or in other specific instructions, the law officer need not give the specific instructions requested by the defense dealing with the same matter. (Citing U.

(OVER)

(Citing U. S. v. Beasley (No. 2173), 3 USCMA 111, 11 CMR 111; Ruvel v. U.S. 12 F2d 264, 265.)

Headnote 4:

The problem of the credibility to be accorded an accomplice's testimony is one of fact (State v. Taborsky, - Conn -, 95 A2d 59, 62 (1953). A conviction may not be based on the self-contradictory, uncertain, or improbable testimony of an accomplice where there is no corroboration thereof (MCM, 1951, subpar, 153a, p. 289), but if his testimony is clear, certain and credible, it may support a conviction (Delvalley v. United States, 88 F2d 579 (7th Cir 1937). However bitterly the testimony of an accomplice may be assailed before the court, the fact remains that it alone may support a verdict (Caminette v. United States, 242 US 470, 496, 61 L ed 442, 37 S Ct 192 (1917); United States v. Heitler, 274 Fed 401 (ND Ill 1921); State v. Guild, 10 NJL 163, 18 AM Dec 4041 (1828). Where such testimony is corroborated by other evidence, supporting its probability and impressing the court with a belief in its truth (and we so conclude from the record, see infra), the conviction is even more strongly established.

c. As to the Merits

Sodomy is unnatural carnal copulation with another person of the same or opposite sex. Any panetration, however slight, is sufficient to complete the offense and emission is not necessary. It is unnatural carnal copulation for a person to take into his mouth the sexual organ of another person or to place his sexual organ in the mouth of another person. The only element of proof of the offenses charged is that the accused engaged in unnatural carnal copulation with a certain other person, as alleged (MCM, 1951, par 204, p 367)

15 CMR, page 664-665, United States v. M/Sgt Howard N. Jones, ACM 7792

Sodomy § 9 -- specification alleging course of conduct rather than single acts--affirmance by board of review for violation of Art 134.

1. The accused was convicted of sodomy under a specification which included allegations that the acts occurred "at divers places at or near Wheelus Field, Tripoli, and Sabratha, Libya, on divers times during the months of June and July 1952." HELD: A specification alleging a series of acts which, considered together constitute a course of conduct of a particular type is not subject to an objection on the ground of duplicity irrespective of whether each individual act might constitute a separate offense. Where such a course of conduct is alleged as a violation of a specific article, the error may be cured by an amendment of the charge from the specific article to the general article. Accordingly in the instant case, although the law officer did not direct amendment of the charge, there is no reason why the board of review cannot now make such a change without prejudice to the substantial rights of the accused thereby curing the error. (Citing MCM, 1951, par 28b; ACM 6822, Francis, 12 CMR 695 and cases cited therein.)

Sodomy § 9 -- sufficiency of allegation of time of offense.

2. The allegation as to time was not objectionable as too indefinite since time is not a material element of the offenses and the accused was sufficiently apprised of the time of the offenses charged and the statute of limitations was not involved. (Citing ACM 2421, Dickey (BR), 3 CMR(AF) 251, 263; ACM 2103, McAbee (BR), 2 CMR(AF) 487, 490; ACM 4202, Barnes, 2 CMR 797, 799; CM 353087, Neville, 7 CMR 180, 190; CM 352896, Neill, 4 CMR 220, 225.)

Trial § 57 -- requested instructions--duty of law officer with respect to.

3. Not every requested instruction need be given in a case simply because it is requested. (Citing U.S. v. Offley (No. 1841), 3 USCMA 276, 12 CMR 32; see also U.S. v. Dodge (No. 1834), 3 USCMA 158, 11 CMR 158; U.S. v. Beasley (No. 2173), 3 USCMA 111, 11 CMR 111.)

Sodomy § 20 -- instructions as to corroboration of victim.

4. Each of the victims testified in detail concerning the offenses and in spite of vigorous cross-examination persisted in their original testimony. However, the defense introduced statements made by these victims to the OSI and the investigating officer prior to trial which contained inconsistencies as to the dates, places and circumstances pertaining to the offenses charged. The defense requested the following instruction: "A conviction cannot be based upon the uncorroborated testimony of an alleged victim in a trial for a sexual offense, if such testimony is self-contradictory, uncertain or improbable." This instruction was refused. HELD: The law officer properly refused to give the above instruction because it was inapplicable inasmuch as the testimony of the alleged victims was not inconsistent. The nature of a witness' testimony at the trial determines whether it is to be characterized as self-contradictory, uncertain or improbable. In other words, consistent, certain and probable testimony elicited at trial is not capable of being changed in character by the showing that the witness made inconsistent statements prior to trial. Such inconsistent statements are to be considered only in assessing the over-all credibility of the witness.

Headnote 6

Appellate defense counsel, however, urges that one accused of a sex crime cannot be convicted on the uncorroborated testimony of an accomplice. This is not the law. The rule laid down in the Manual and expressly approved by the United States Court of Military Appeals is that corroboration is necessary only where the testimony of the accomplice is "self-contradictory, uncertain or improbable" (MCM 1951, subpar. 153a, p. 289; United States v. Washington (No. 815) 2 USCMA 177, 7 CMR 53). Examining the testimony of Corporal Staples and Private Laster with this rule in mind, we find nothing "self contradictory, uncertain or improbable" in their testimony. On the other hand the accused's answers to questions put to him by the court concerning his letter to Corporal Edwards border on the ridiculous and certainly weaken the credibility of his denials of these offenses.

For these reasons we determine that the findings of the court as to the offenses of sodomy are correct in both law and fact.

Sodomy § 15 - testimony of victim - sufficiency of evidence.

A board of review, recognizing that the trial court saw the witnesses and their demeanor in testifying, affirmed a conviction of sodomy based on testimony of the victim which, although impeached in part, was not inherently improbable, inconsistent or contradictory. (Citing MCM, 1951, par 153a; CM 371333, Massey, 16 CMR 316, mod on other grounds 5 USCMA 514, 18 CMR 138; U. S. v Taylor (No. 5210), 5 USCMA 775, 19 CMR 71; ACM 10655, Rosenthal and Narens, 20 CMR 655.)

UNITED STATES)
)
V)
)
LTCOL GEORGE F ADAMS)

DEFENSE REQUESTED INSTRUCTION NO. 1

You are advised that you are the exclusive judges of the effect and value of the evidence submitted to you and of the credibility of the witnesses who have testified in this case. The character of the witnesses as shown by the evidence should be taken into consideration for the purpose of determining their credibility, that is, whether or not they have spoken the truth. The court may scrutinize the manner of the witness while on the stand and may consider her relation to the case and her degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be rebutted by the manner in which she testifies; her interest in the case, if any; her bias or prejudice, if any, against the accused; or by the character of her testimony. You should consider the testimony of each of the witnesses and attach such relative weight to the testimony of each as in your fair judgment it reasonably deserves in the light of all the circumstances, including your own common knowledge and observations. In this connection, you are advised that a conviction may not be based u pon the uncorroborated testimony of an accomplice if such testimony is self-contradictory, uncertain or improbable. In this case if you find that the testimony of Lieutenant Goodnough is self-contradictory, uncertain or improbable, unless you find that her testimony is corroborated by other evidence , your finding must be one of not guilty. In this connection, you are advised that corroborating evidence is evidence which,

Appellate Exhibit 8B

taken by itself, leads to the inference that a crime has been committed, and that the accused was implicated in it.

Accomplice -

1. "... One who engages in the crime of adultery with another is, ... to be considered an accomplice of such other person.

Wharton's Criminal Evidence, 11th Ed., Vol 2, Sec 742

2. "One who is capable of consenting, and who does consent, and willingly participates in the perpetration of the crime against nature ... is an accomplice.

Wharton's Criminal Evidence, 11th Ed, Vol 2, Sec 742

Corroboration

"Statements of an accomplice made to different persons will not suffice to corroborate similar statements made by the accomplice while testifying."

Wharton's Criminal Evidence, 11th Ed, Vol 2, Sec 747

"Corroboration must be such that legitimately tends to connect the defendant with the crime "(and must be)" of a material nature."

Wharton's Criminal Evid, 11th Ed, vol 2, Sec 747

Back-up Material for Requested Instruction No. 1.

"Corroborating evidence is evidence which is independent of the evidence of an accomplice, and which, taken by itself, leads to the inference not only that a crime has been committed, but that the person on trial was implicated in it...." United States v. Murphy 253 F. 404.

" the law officer must, when requested, instruct on accomplice testimony."
United States v. Bey (No 4254), 16 CMR 239

App. Ex 8-B

Appellate Exhibit 8-B

fwidaip

PRES: _____ it is my duty as president of this court to advise you that the court in closed session and upon secret written ballot has found you not guilty of (the) (all) Specification(s) and Charge(s). The court will adjourn to meet at my call.

PRES _____, it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, (two-thirds) (all) of the members present at the time the vote was taken concurring in each finding of guilty, finds you: /Of (all) the Specification(s) and Charge(s): Guilty/ /Of Specification _____, Charge _____: (Guilty) (Not guilty). Of Charge _____: (Guilty) (Not guilty).

Of Specification _____, Charge _____: Guilty, except the words "_____" and "_____" (, substituting therefor, respectively, the words "_____" and "_____," of the excepted words, not guilty, of the substituted words, guilty). Of Charge _____: (Guilty) (Not guilty, but guilty of a violation of Article _____)/.

CMP Ex 9

Appellate Exhibit 9

Col Reandor — Appellate Exhibit 10

To Col George D. Adams as President of this court

It is my duty to inform you that the court in closed session and upon secret written ballot two thirds of the members present at the time the ruling was taken concurring in each finding of guilty finds you of Specification 3 and 4, Charge I - Guilty

Of Charge I - Guilty

of Specification 1
Charge II - Not
Guilty, and of
Charge II - Not Guilty,
of Specification
3 & 4, Charge III
Guilty, and
of Charge III
Guilty

Appellate Exhibit 10

Sentence

PRES: "_____", it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, (two-thirds) ~~(three-fourths)~~ (all) of the members present at the time the vote was taken concurring, sentences you: _____

Appellate Exhibit 11

Appellate Exhibit 11

Appellate Exh 12

LtCol George v Adams

PRES: _____, it is my duty as president of this court to inform you that the court in closed session and upon secret written ballot, (two-thirds) ~~(three-fourths)~~ (all) of the members present at the time the vote was taken concurring, sentences you: ~~to forfeiture~~ of $445 per month for a period of six months

Appellate Exhibit 12

INSTRUCTIONS FOR PREPARING AND ARRANGING VERBATIM RECORD OF TRIAL

USE OF FORM.—Appendix 9*a*, MCM, 1951, and this form will be used by the trial counsel and the reporter as a guide to the preparation of the completed record of trial in all general court-martial cases and in all special court-martial cases in which a verbatim record is prepared.

COPIES OF RECORD.—See appendix 9*f*, MCM, 1951.

ARRANGEMENT OF RECORD.—When forwarded to the appropriate Judge Advocate General, a record of trial by general or special court-martial will be arranged in the sequence shown below. The reporter, under the supervision of the trial counsel, will arrange a verbatim record in the sequence shown except for the items in *italics*. Items 6 and 7 need not appear with a special court-martial record. Item 9 (*h*) will not appear with a special court-martial record.

1. Front cover and chronology sheet.
2. Court-martial data sheet.
3. *Court-martial orders; 10 copies promulgating the result of trial as to each accused.*
4. *Signed review of staff judge advocate or legal officer, in duplicate.*
5. Charge sheet.
6. Report of investigating officer, required by article 32, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.
7. Advice of staff judge advocate or legal officer, required by article 34.
8. Records of former trials.
9. Record of trial proper in the following order:
   - (*a*) Index sheet
   - (*b*) Receipt of accused, or certificate of trial counsel, showing delivery of copy of record to accused.
   - (*c*) Record of proceedings in court.
   - (*d*) *Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.*
   - (*e*) Exhibits admitted in evidence.
   - (*f*) Clemency papers.
   - (*g*) Offered exhibits not received in evidence, but which are attached at request of counsel. Pages of record where offered and rejected will be noted on the front of each exhibit.
   - (*h*) Appellate exhibits, such as proposed instructions, preliminary evidence, and, when directed by the LO, written or oral arguments or briefs of counsel heard outside the presence of the members of the court.
10. *Briefs of counsel.*
11. *Request of accused for appellate counsel.*
12. This back cover sheet.

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