(Pers) Mitchell, William (Billy) 0-63				890-59

THIS PAPER BELONGS TO: CORRESPONDENCE CONTROL, OFFICE OF THE SECRETARY OF THE AIR FORCE

SAFAA/Maj Jensen/adg/52718/17 Mar 59

17 MAR 1959

Dear Mr. Loomis:

In reply to your letter of 12 March 1959, the Mitchell 201 file can remain in the Pentagon for as long as is necessary.

Your question concerning the possible use of the Court Martial records in conjunction with material from the 201 file will take some study. However, at this time I feel there is a possibility that this material may be used.

Sincerely yours,

JOHN J. McLAUGHLIN
Administrative Assistant

Mr. Robert D. Loomis
Editor
Random House
457 Madison Avenue
New York 22, New York

cc: SAFS file cy
Ofc of sig

THE AIR FORCE
OFFICE SECRETARY OF
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Robert D. Loomis, EDITOR

March 12, 1959

Mr. John McLaughlin
Administrative Assistant to
the Secretary of the Air Force
OSAF
Washington 25, D.C.

Dear Mr. McLaughlin:

First, let me apologize for not being able to come back to see you after I had a chance to look through General Mitchell's 201 file. Unfortunately, I got started fairly late and I had to leave the Pentagon at a certain time to make my plane connections back to New York.

Needless to say I found the file fascinating. There is a great deal of interesting information in it. What I would like to do now is to check previous and already published material about Mitchell to evaluate just how important from a publishing point of view this file might be. My feeling now is that a book should be written based on it and other material which I know is in the Library of Congress. This book would be more or less the inside story of the Mitchell affair.

Will Mitchell's 201 file remain in the Pentagon for a while yet? In other words how much time will we have not only to make up our mind about doing the book but also finding the proper writer? You mentioned something about the court-martial record being still under wraps. Do you think if the book were to be done using some of the material in the 201 file that the court-martial record might be cleared too?

Again, let me thank you for the unusual opportunity of looking over such interesting material. I look forward to hearing from you at your convenience about some of my above questions.

Yours sincerely,

Robert D. Loomis

RDL:mg

890-59

OFFICE OF THE SECRETARY OF THE AIR FORCE
CORRESPONDENCE CONTROL DIVISION
ROUTING SLIP OCT 24 1958

TO	OFFICE	COPY SENT	TO	OFFICE	COPY SENT
	SAFS			DEPUTY, ASSISTANT SEC. MATERIEL	
	SAFUS			DEPUTY FOR MATERIEL PROGRAMS	
	SAFMA			DEPUTY FOR MILITARY ASSISTANCE PROGRAMS	
	SAFFM			DEPUTY FOR CIVIL AND MILITARY AIR TRANSPORTATION	
	SAFMP			DEPUTY FOR MANPOWER, PERSONNEL AND ORGANIZATION	
	SAFRD			DEPUTY FOR RESERVE AND ROTC AFFAIRS	
	SAFAA	✓		DEPUTY FOR SECURITY PROGRAMS	
	SAFLL			DEPUTY FOR REQUIREMENTS REVIEW	
	SAFIS			DEPUTY FOR ACCOUNTING AND FINANCIAL MANAGEMENT	
	SAFGC				
	SAFIN				
	SAFIE				
	AFCCS		✓	SAF FILE	

FOR ACTION SAFAA | INFO

SUSPENSE | B.I.S.

REMARKS:

CHARLES R. GRANDY
CHIEF, MAIL BRANCH

SAF FORM 14 (REV) 15 JUL 57) | SAF NUMBER: 995-58

SAF
EL

23 OCT 1958

:-Martial Records
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MR —
ACCESS NOT GRANTED —
INSUFFICIENT TIME AVAILABLE
FOR EXAMINATION

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON 25, D. C.

OSAF

23 OCT 1958

MEMORANDUM FOR ADMINISTRATIVE ASSISTANT, OSAF

SUBJECT: Request for Permission to Examine Court-Martial Records of Late Brigadier General William L. Mitchell, USA

1. In accordance with the telephone conversation which I had on 22 October with Mr. Curran, I am forwarding to you the communication from Midshipman Mitchell L. Lathrop, First Class, USN, forwarded through Naval channels to the Chief of Staff, USAF. The communication from Midshipman Lathrop requests authority to examine the record of trial and allied papers in the court-martial trial of the late Brigadier General William Lendrum Mitchell, USA. Naval authorities recommend that this permission be granted because Midshipman Lathrop wishes to inspect these records for the purpose of preparing a term paper.

2. It would appear that the record of trial and allied papers actually belong to the Department of the Army. They were loaned to the Air Force solely for consideration by the Board for Correction of Military Records. It would appear that the most desirable procedure here would be to return the records to the Department of the Army and then endorse the correspondence to the Department of the Army for appropriate action with proper notification to Midshipman Lathrop.

3. This correspondence is forwarded to you because your office and not the Office of The Judge Advocate General has temporary custody of these records and files at the present time.

ALBERT M. KUHFELD
Major General, USAF
The Assistant Judge Advocate General
United States Air Force

1 Incl
Ltr frm Midshipman M. L. Lathrop, First Class, USN, dtd 26 Sep 58 w/ Endorsements

MR — ACCESS NOT GRANTED — INSUFFICIENT TIME AVAILABLE FOR EXAMINATION

890.51

Op-212/jc
Ser 5422P21
OCT 14 1958

SECOND ENDORSEMENT on SuptNA ltr 7010 1-360-58 of 6 Oct 1958

From: Chief of Naval Operations
To: Chief of Staff, U. S. Air Force

Subj: Court-martial records and evidence; request for permission to examine

1. Forwarded, recommending approval.

E J Sands

E. J. Sands
By direction

Copy to:
SuptNA
BUPERS

DKT # 3450

995-58

-1-

Pers-B66-FAG
8 Oct 1958

FIRST ENDORSEMENT on SuptNA ltr 7010/1-360-58 dtd 6 Oct 1958

From: Chief of Naval Personnel
To: Chief of Staff, U. S. Air Force
Via: Chief of Naval Operations

Subj: Court-martial records and evidence; request for permission to examine

1. Forwarded.

C. R. BERQUIST
By direction

RECEIVED
NAVY DEPARTMENT
PENTAGON CENTRAL MAIL ROOM
10 OCT 1958
Reg. No. _____
Room No. _____

995-52

UNITED STATES NAVAL ACADEMY
Annapolis, Maryland

IN REPLY REFER TO:
7010

1-360-58

OCT 6 1958

From: Superintendent, U. S. Naval Academy
To: Chief of Staff, U. S. Air Force
Via: (1) Chief of Naval Personnel
(2) Chief of Naval Operations

Subj: Court-martial records and evidence; request for permission to examine

Encl: (1) Midshipman M. L. Lathrop, U. S. Navy, letter of 26 Sept 1958

1. Enclosure (1) requests permission for Midshipman Lathrop, a relative of General Mitchell, to examine the records and evidence of the latter's trial by General Court-Martial.

2. This permission is requested in furtherance of Midshipman Lathrop's research for his term paper, an original research paper required of all first class midshipmen in their course in English.

3. Midshipman Lathrop plans to do his research, if permission be given him, during his annual Christmas Leave period.

4. It is requested that, if not inconsistent with policy, Midshipman Lathrop be authorized to conduct the desired research.

C. L. Melson

C. L. MELSON

890.39

Room 5153

Eleventh Company

U. S. Naval Academy
Annapolis, Maryland
26 September 1958

From: Midshipman Mitchell L. Lathrop, First Class, USN
To: The Judge Advocate General, United States Air Force
Via: Official Channels

Subj.: Court-martial records and evidence, Request for permission to examine.

Ref.: (a) Article 1901, Sections 1 and 5; U. S. Naval Academy Regulations, 1958.
(b) Articles 1609 and 1250, U. S. Navy Regulations, 1948.

1. I respectfully request permission to have access to, and be permitted to examine, the records, transcript and evidence submitted in Court Martial No. 168771, convened January 20, 1926, under the jurisdiction of the Department of the Army, which records are now under the jurisdiction of the Department of the Air Force, Office of the Judge Advocate General. This was the court-martial which tried and convicted the late Brigadier General William Lendrum Mitchell, USA.

2. If permissions from the members of the immediate family of the officer concerned are required I am prepared to submit them. I am also related by blood to the officer concerned, my maternal grandfather being General Mitchell's uncle.

3. I request this in connection with a research project being done by me, and for which the records and evidence of this trial are indispensable.

Mitchell L. Lathrop

26 September 1958

FIRST ENDORSEMENT

From:: ELEVENTH Company Officer
To:: The Judge Advocate General, United States Air Force
Via:: Official Channels

Subj:: Court-Martial Records and Evidence; request for permission to examine

1. Forwarded recommending approval.

2. Midshipman LATHROP intends to use the subject records in connection with writing a term paper required during his final year at the Naval Academy. He would examine the records in Washington, D.C. during his Christmas Leave if they can be made available to him.

T R Cotten Jr

T. R. COTTEN JR.
LT, USN

SECOND
----------Endorsement

1. Forwarded, recommending Approval.

C. L. Reinhardt
Jr Div Officer

99
975-55

March 24, 1958

Dear Mr. Widnall:

I enjoyed our recent discussion and I can certainly appreciate your difficulties with the unemployment problems in your district and those of Mr. Osmers and Mr. Canfield. We shall certainly do all we can to be of assistance.

I am glad to enclose the copy of my decision on the Appeal for Correction of Military Records in the Billy Mitchell case. If you would like additional copies to furnish in response to any inquiries, my office will be glad to furnish them.

Very sincerely yours,

Signed:

James H. Douglas

Incl

Honorable William B. Widnall
House of Representatives

SAF file
MP -
Board -
OTR -
Cmbr -

995-58

AF HQ-50 (Rev 21 June 48)
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DEPARTMENT OF THE AIR FORCE

AIR STAFF SUMMARY SHEET

TO	ROUTE	DESIRED ACTION	INITIALS
~~SAFMP~~	~~1~~	~~Approval~~	~~[illegible]~~
SAFS	2	Signature	

OFFICE OF PREPARATION: SAFLL-1

GRADE - SURNAME: Major Lutrey/dja

TEL.: 74907

DATE: 13 MAR 1958

SUBJECT
Decision on Correction of Military Records - Brigadier General William (Billy) Mitchell

SUMMARY

1. In a letter addressed to the Secretary of the Air Force, dated 7 March 1958, Congressman William B. Widnall, New Jersey, (Member, Committee on Banking and Currency) expressed appreciation for the Secretary's discussion of the unemployment situation in his district and those of Congressmen Osmers and Canfield, both of New Jersey. Also, Mr. Widnall requested a copy of the Secretary's decision on the case of the late Brigadier General William (Billy) Mitchell.

2. A copy of the Secretary's decision is inclosed in reply which also acknowledges Mr. Widnall's appreciation.

RECOMMENDATION:

3. That the attached letter be signed.

JOE W. KELLY
Major General, USAF
Director, Legislative Liaison

Inclosure
Letter for signature

995-58

E 5211

J. WIDNALL
...STRICT, NEW JERSEY

HOME OFFICE ADDRESS:
15 MAIN STREET
HACKENSACK, NEW JERSEY

Congress of the United States
House of Representatives
Washington, D. C.

COMMITTEE:
BANKING AND CURRENCY

MARTHA M. SCHUBMEHL
WASHINGTON SECRETARY

March 7, 1958

Dear Secretary Douglas:

First, I want to thank you for the time that you extended to Representatives Osmers, Canfield and me yesterday in discussing the unemployment situation in our districts. We appreciated the detail with which you pictured to us the problems concerned with defense contracts, the utilization of facilities and the prospects for production in our areas.

I hope that every effort will be made, if possible, to provide additional employment for skilled labor and utilization of the excellent facilities in our districts.

I have just received a letter which I suppose will be the forerunner of a number, if the usual pattern follows. I would appreciate it very much if you would send me your decision with respect to the court martial of General Mitchell. I can more intelligently answer this letter if I have a full copy of your decision. A copy of the letter is enclosed.

Thanking you for your interest and with best wishes,

Sincerely yours,

William B. Widnall

Honorable James H. Douglas
Secretary of the Air Force
The Pentagon
Washington 25, D. C.

wbw:s:enc.

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IN
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127 Hudson Street
Hackensack, N. J.

Hon. William B. Widnall
House Office Bldg.
Washington, D. C.

Dear Sir:

I see by the papers that the verdict of gross stupidity against the armed services which was passed in 1925 has just been reaffirmed by the present Secretary of the Air Force. This, of course, is what the court martial against Billy Mitchell amounted to. the attacks on General Mitchell for recommending air power as an element of the United States military establishment cannot more characterized than unadulterated stupidity.

It is significant, though hardly news, that the same stupidity is in effect today, and I think that Secretary Douglas has done us a service in drawing our attention to it by reaffirming the court martial against General Mitchell at this time. The American people need constantly to remid themselves of the quality of their leadership. Of the 50 billion dollars we will spend on defense this year, certainly the largest single portion will go to pay just for stupidity.

Very truly yours,

/s/ Herbert Harvey

SAFGC/J.A.Johnson/rf/56996/26 Feb 58

MAR 3 11 11 '58
MAR 14 1958
OFFICE SECRETARY OF
THE AIR FORCE

MEMORANDUM FOR THE CHAIRMAN, AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SUBJECT: Application of Mr. William Mitchell, Jr.

I have considered the recommendation of the Air Force Board for Correction of Military records that the application of Mr. William Mitchell, Jr., be granted. Mr. Mitchell requested that the following corrections be made in the military records of his father, the late Colonel William Mitchell:

(a) That the proceedings, findings, and sentence of the General Court-Martial, relating to Colonel William Mitchell, which rendered its verdict on or about 18 December 1925, be declared null and void; and

(b) That all military records of the late Colonel William Mitchell be changed, corrected, or modified to reflect the effect of action taken pursuant to (a) above.

Mr. Mitchell's application for correction of records was submitted pursuant to section 1552 of Title 10, U. S. Code, which authorizes the Secretary of a military department to "correct any military record of that department when he considers it necessary to correct an error or injustice."

On October 28, 1925, a general court-martial was convened at Washington, D. C., for the purpose of trying Colonel William Mitchell for violation of the 96th Article of War which made punishable "all disorders and neglects to the prejudice of good order and military discipline" and ""all conduct of a nature to bring discredit upon the military service." The charge against Colonel Mitchell was based upon two lengthy statements which he delivered on September 5 and September 9, 1925, to representatives of the press for publication in the newspapers of the country. These statements had followed the destruction of the Naval Airship "Shenandoah" in a storm on September 3, 1925, and the unsuccessful effort by the Navy to make a flight by naval aircraft from the Pacific Coast to Hawaii. Colonel Mitchell's statements were severely critical of the administration of both the War and Navy Departments.

SAFS
OFFICE OF SIGNATURE
MR. JOHNSON
SAFGC SUBJECT

995-58

Colonel Mitchell's statement on September 5, 1925, included the following:

> "These accidents are the direct result of the incompetency, criminal negligence, and almost treasonable administration of the national defense by the Navy and War Departments. . . Officers and agents sent by the War and Navy Departments to Congress have almost always given incomplete, misleading, or false information about aeronautics, which either they knew to be false when given or was the result of such gross ignorance of the question that they should not be allowed to appear before a legislative body."

In his statement on September 9, 1925, Colonel Mitchell said in part:

> "If the department does not like the statement I made, let them take any disciplinary action they see fit, according to their judgment, court-martial or no court-martial. There will be no investigation, no pleas, no defense on my part covering a question of that kind. The investigation that is needed is of the War and Navy Departments and their conduct in the disgraceful administration of aviation."

The trial of Colonel Mitchell lasted for several weeks. On December 18, 1925, the court-martial found Colonel Mitchell guilty of the charge of violating the 96th Article of War and sentenced him to be suspended from rank, command, and duty, with forfeiture of all pay and allowances for five years. On January 25, 1926, President Coolidge approved the sentence but ordered suspension, during the pleasure of the President, of the execution of so much of the sentence as adjudged forfeiture of all of the allowances and one-half of the monthly pay of Colonel Mitchell. The President, in his order approving the sentence, described Colonel Mitchell's actions in these words:

> "He characterized the administration of those departments as incompetent, criminally negligent, and almost treasonable. He charged those administering those departments with ignorance, suppression of the truth and with giving misleading, if not false, information concerning the Air Service to Congress and the people. The Board of Review finds that those statements were made without basis in fact. In his statement of September 9, 1925, set out in the charges, he employed expressions which can not be

construed otherwise than as breathing defiance toward his military superiors.

"The theory of government implies that every official so long as he retains office shall deport himself with respect towards his superiors. This is especially true of those in the military service."

On January 26, 1926, the day following the President's action, Colonel Mitchell submitted his resignation. It was accepted by the President effective February 1, 1926, and he was honorably discharged on that date. Colonel Mitchell died on February 19, 1936.

The history of recent years has shown that Colonel Mitchell's vision concerning the future of air power was amazingly accurate. He saw clearly the shape of things to come in the field of military aviation, and he forecast with precision the role of air power as it developed in World War II, and as we see it today. Our nation is deeply in his debt, not only for his outstanding leadership of our combat air forces in World War I, but also for awakening us to the need for developing military aviation as a principal element of our armed forces. Colonel Mitchell's views have been vindicated. But while on active duty, and subject to the discipline of the military service, he characterized the administration of the War and Navy Departments as incompetent, criminally negligent, and almost treasonable.

Colonel Mitchell was free to resign his commission and to seek to arouse the public in support of his strong views and against the views and actions of others which he believed inimical to the country's interests. He chose instead to remain on active duty while making his charges against his service superiors. In taking this course, he was bound to accept the consequences imposed by his service responsibilities.

The sole question in this case is whether an error or injustice has been committed which requires that the proceedings, findings, and sentence of the general court-martial be declared null and void. In my opinion, Colonel Mitchell's statements of September 5th and 9th, 1925, provided sufficient evidence to substantiate the charge and the finding of the court-martial. Subsequent confirmation of the correctness of certain views be expressed cannot affect the propriety or impropriety under the 96th Article of expressions which he employed. Although the Board for the Correction of Military Records, acting in its advisory capacity, has recommended approval of the petition, I can find no ground for concluding at this time,

more than 30 years after the President personally approved Colonel Mitchell's conviction, that the trial should not have taken place or that the court-martial's finding that Colonel Mitchell was guilty of violating the 96th Article of War had no justification in fact.

It is tragic that an officer who contributed so much to his country's welfare should have terminated his military career under such circumstances. Today, however, I am confident that his services to his country and his unique foresight as to the place of air power in the defense of our country are fully recognized by his countrymen. No more convincing or appropriate recognition could be given than was bestowed on Colonel Billy Mitchell on August 8, 1946, when the President signed a law posthumously bestowing upon him a Medal of Honor "in recognition of his outstanding pioneer service and foresight in the field of American military aviation."

The application is denied.

| Signed

James H. Douglas

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON 25, D. C.

24 January 1958

MEMORANDUM FOR HON. JOHN A. JOHNSON
General Counsel of the Air Force

I return herewith your draft of the matter which had been considered by Secretary Douglas and was discussed with Secretary McElroy.

Our understanding is that this is to be kept for further consideration during the next three or four weeks and brought up at the end of that time in order to see if a decision can then be made.

Robert Dechert
ROBERT DECHERT

RD:eps
encl.

995-58

SAFS/Col Petit/ms/6 Feb 58

FEB 2 - 58

Dear Senator Potter:

I am very sorry that I cannot name a date for release of the decision on the Brigadier General William (Billy) Mitchell case. The matter is being thoroughly reviewed and the decision will be made public as soon as practicable.

Sincerely,

Signed

James H. Douglas

2 Enclosures

Honorable Charles E. Potter

United States Senate

COORD —
SAFS FILE
OFF SIGN
AFCAV —
SAFMP —
CMBK MAJ LUTREY —

995-58

~~420-58~~

21 June 48)

DEPARTMENT OF THE AIR FOR

AIR STAFF SUMMARY SHEET

TO	ROUTE	DESIRED ACTION	INITIALS
~~SAFMP~~	~~1~~	~~Approval~~	
SAFS	2	Signature	

OFFICE OF PREPARATION: SAFLL-1

GRADE - SURNAME: Major Lutrey/dja

TEL.: 74907

DATE: 4 FEB 1958

SUBJECT
The late Brigadier General William (Billy) Mitchell - Correction of Military Records

SUMMARY

1. In a referral to the Secretary of the Air Force, dated 23 January 1958, Senator Charles E. Potter, Michigan, (Member, Committee on Appropriations) requested the status of the case of Brigadier General William Mitchell.

2. Information from Mr. Hardin, SAFCB, indicates that the case is in the Secretary's Office. A check with the Assistant General Counsel (Personnel and Administration) shows that the case is still under consideration in the Office of the Secretary. Since Senator Potter directed his query to the Secretary, reply should be made from that Office.

RECOMMENDATION:

3. That the attached letter be signed.

JOE W. KELLY
Major General, USAF
Director, Legislative Liaison

Inclosure
Letter for signature

995-58
~~420-58~~

E 5211

United States Senate

January 23, 1958

Respectfully referred to
The Honorable
The Secretary of the Air Force
Washington 25, D. C.

with thanks for such favorable consideration as the communication herewith submitted warrants, and for a report thereon, in duplicate to accompany return of inclosure.

By direction of

CHARLES E. POTTER, U. S. S.

JAN 24 11 35 AM '58

SAFLL 36686

995-58

Dear Mrs. Potter

Enclosed is a clipping from D-day hoped. How long does it take these people to make a decision and right a wrong may till December as 6 months, will you find out how much longer.

Billy Mitchel was among the great of our time.

There have been only four men that I know of in our time that have been smart enough to get thrown out of the U.S. Military forces. Namely - Billy Mitchel - Smedley Butler - Charles A Lindey - Douglas Mc Arthur. To me this is the reason we are in the shape we are D-day. many of the good men are driven out.

Very truly yours

W. R. O'Brien

A Merry Christmas to you & Yours

RECEIVED
DEC 23 1957
SENATOR
CHARLES E.
POTTER

995-58

F ~~1120-58~~

Air Prophet Remembered

Unveil Statue Of Billy Mitchell

WASHINGTON, Dec. 17-(AP)—A statue of Billy Mitchell, stormy prophet of air warfare, is being unveiled today at what could hardly be a more appropriate time and place.

Thirty-two years ago an army court martial suspended Col. [illegible] from duty. He had argued—publicly and heatedly—that the United States was mired in old fashioned military methods while warfare was taking to the air.

Today—in a capital noisy with charges and countercharges that America is fumbling the transition to space weapons—a bigger-than-life-size bronze figure of Mitchell in World War I flying gear goes on display at the Aeronautics Hall of the Smithsonian Institution. The statue, by sculptor Bruce Moore, is the gift of George H. Stephenson of Philadelphia.

• • •

IT IS TO BE UNVEILED by Mitchell's son, William, who has been pressing for reversal of his father's 1925 court martial conviction on charges of making statements prejudicial to good order and discipline. At the time of the Mitchell court martial, the air corps was part of the army. It became independent in 1947.

An air force review board held a hearing on the Mitchell case last May and reportedly recommended reversal of the conviction. Its recommendations still are awaiting action by Secretary of the Air Force James H. Douglas.

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

11 July 1957

MEMORANDUM FOR THE UNDER SECRETARY OF THE AIR FORCE

SUBJECT: Application for Correction of Military Record of Colonel William Mitchell

The Air Force Board for the Correction of Military Records, in recommending that the subject application be granted, appears to have based its recommendation in part upon the conclusion that the court-martial conviction was not supported by the evidence since "the record is devoid of proof of what would seem to be an essential element of the crime, the intent to discredit and the intent to be contemptuous or disrespectful." (Par. 28 of the Board's findings. See also pars. 21, 29, 39, and 41.) In my opinion, there is no legal basis for such a conclusion.

Colonel Mitchell was charged with violating the old 96th Article of War which read as follows:

> "Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

The 1921 Edition of the U.S. Army Court-Martial Manual contains the following statement concerning intent (par. 280):

> "In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as murder, larceny, burglary, desertion, and mutiny; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom,

995-58

as rape, perjury, sleeping on post, drunkenness on duty, neglect of duty. In cases of the former class the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act, for every man is presumed in law to have intended to do what he actually does, and the burden of proof is upon him to show the contrary."

It is clear that the offense under the 96th Article of War of conduct "to the prejudice of good order and military discipline" or "of a nature to bring discredit upon the military service" is an offense of the latter class described in the foregoing passage. Thus it was not necessary to specify intent in the charge against Colonel Mitchell nor was it necessary to adduce proof of intent at the trial in order to convict him of the offense charged.

The charge of violation of the 96th Article of War was supported by eight specifications, and the court found Colonel Mitchell guilty of each of them. Specifications 1 and 5 of the charge did not allege intent but alleged only that Colonel Mitchell did "conduct himself to the prejudice of good order and military discipline and in a way to bring discredit upon the military service by making, uttering, and publishing" certain statements. A finding of guilty of these two specifications alone, or even of one of them, would have supported the finding of guilty of the charge of violation of the 96th Article of War.

Specifications 3, 4, 7, and 8 alleged that Colonel Mitchell made the statements "with intent to discredit the administration" of the War and Navy Departments and that those statements were highly contemptuous and disrespectful of the administration of those Departments. The allegation of intent in those specifications was not essential, as a matter of law, to support the charge of violation of the 96th Article of War, but it was evidently included in aggravation of the offense charged. I have not reviewed the record of the court-martial proceedings to ascertain whether the prosecution made any effort to introduce proof of intent, but I think it is clear that the statements themselves provide ample evidence of the intent charged.

Specifications 2 and 6 alleged simply that Colonel Mitchell did make, utter, and publish statements "insubordinate to the administration" of the War and Navy Departments. Intent to be insubordinate was not alleged and was not an essential element of the offense under the old 96th Article of War. Here again I think

that a court-martial would be justified in concluding that the statements themselves were sufficient evidence of insubordination, regardless of the lack of other evidence that Colonel Mitchell intended to be insubordinate.

JOHN A. JOHNSON
General Counsel

June 26, 1957

MEMORANDUM FOR MR. MacINTYRE

Attached are the Findings of the Correction Board and recommendation of Assistant Secretary Smith concerning the disposition of the application of William Mitchell, Jr.

The Findings are submitted for your review and comments prior to forwarding to Secretary Douglas.

Signed:

JOHN J. McLAUGHLIN
Administrative Assistant

995-58

June 25, 1957

MEMORANDUM FOR MR. DOUGLAS

SUBJECT: Mitchell, William, 0-63 (Deceased) - Correction of Military Record

The Board for the Correction of Military Records by a vote of 4 to 1 has recommended that you grant the application of William Mitchell, Jr., to declare the court-martial of his father null and void. I have discussed this case in detail with my deputy, Mr. Goode, and my views are set forth in his memorandum, which is attached. I understand that inquiries are being received on this case from the press and the Air Force Association, and I believe that it would be desirable to announce your decision in the near future.

It is my recommendation that the application not be granted and that this decision be announced in a press release which emphasizes the importance of Billy Mitchell's contributions, while at the same time setting forth the reasons why the court-martial should not be declared null and void.

If you wish, I will be glad to work out a press release with General Luehman following the rationale of Jim Goode's memorandum.

DAVID S. SMITH
Assistant Secretary of the Air Force

Attachment

cc - OSAF FILE
Mr. Goode

995-58
~~135-57~~

MINORITY OPINION

1. The undersigned cannot agree with the Conclusions and Recommendations of the majority of the Correction Board in this case.

2. The issue in this Court Martial proceeding was whether William Mitchell was guilty of the specifications under which he was being tried. The answer to this question is in the affirmative. I do not believe that any reasonable person could disagree with this conclusion. However, I have to agree with the majority of the Board that from a review of the record it is obvious that Mitchell was being tried under specifications that were not officially presented. In truth, he was being tried for his "views and opinions". A review of the transcript of the Court Martial itself reveals interminable question and answer periods which have no relevancy to the specifications. Why the court allowed this to continue or why Mitchell or his counsel did not challenge is a matter for one's personal opinion after a review of the transcript. In my opinion, Mitchell had determined that he would use the court martial proceedings as a platform to present to the nation his concepts of airpower, how it should be utilized and its planned role in the future. Recognizing this, the prosecution sought at every turn to discredit Mitchell and to refute his claims. The result - the trial became a circus and a travesty insofar as what one would normally expect to find in the trial of a senior officer. It would be impossible to expunge from the record those matters which are truly irrelevant to the original issue. This is due to the fact that such irrelevancies are spread throughout the entire transcript. In truth, as a generalization, they occupy about 95% of the transcript.

3. Some have urged that the record of trial and conviction by court martial constitutes a blot upon the record of William Mitchell and those who now carry the shield. This is a mistaken belief. The trial and conviction did not invalidate his concepts nor dim the brilliance of his visions. On the contrary, it gave

impetus to the acceptance of those concepts. The fact that he had to publicly discredit his superiors to bring before the nation a picture of its muddled military policies was a unique situation which presumably could never happen again. America at the time was beginning to take notice of the infant known as "aviation". However, the worried parents had not as yet determined whether the child was normal or abnormal, manageable or necessary. Under these circumstances, one can condone Mitchell's approach to the issue that was at hand.

4. For the Air Force today to indicate it had blotted from the record the court martial of Mitchell would be a hollow victory indeed for those who are the proponents of this action. It could very well be regarded as biased and prejudiced action by the proponents of airpower - as biased and prejudiced as we imply the members of the original court martial were.

5. In summation, there is no error or injustice in that part of the proceedings which relate to the original specifications.

JOHN J. McLAUGHLIN

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

20 JUN 1957

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, PERSONNEL & RESERVE FORCES)

SUBJECT: Air Force Board for the Correction of Military Records

1. This is in response to your request for information concerning the statutory provisions which prescribe a time limit on filing applications to the Air Force Board for Correction of Military Records.

2. Section 207 of the Act of August 2, 1946, which was the first statute to authorize the establishment of correction boards, contained no time limitations on the filing of applications. This statutory provision was amended by the Act of October 25, 1951, to include a time limitation. The statutory provisions are now codified as 10 U.S.C. 1552. 10 U.S.C. 1552(a) authorizes the Secretary to correct records through boards, and 10 U.S.C. 1552(b) provides:

> "No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice."

JOHN A. JOHNSON
General Counsel

995-58

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

18 June 1957

MEMORANDUM FOR MR. MacINTYRE

Attached is a copy of AFR 31-3, which covers the operation of the Correction Board. The time limit for filing an application under the last revision of the original Act is prior to October 25, 1961, or within three years of discovery of alleged error or injustice, whichever be the later. This thereby allows the application of Billy Mitchell, Jr.

There is also attached a twelve-page memorandum of The General Counsel on the Mitchell case.

JOHN J. McLAUGHLIN
Administrative Assistant

Inclosures

995-55

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

MEMORANDUM FOR MR. GEORGE S. ROBINSON, CHAIRMAN,
AIR FORCE BOARD FOR THE CORRECTION OF
MILITARY RECORDS

SUBJECT: Application to Correct the Records of the Late Former Colonel William Mitchell

1. I refer to your request for an opinion concerning the authority of the Secretary, acting through the Air Force Board for the Correction of Military Records pursuant to 10 U.S.C. 1552, to correct the records of the late Colonel William Mitchell. The Executive Secretary of the Board (Mr. Frank Hardin) has informed us informally the records show that the late Colonel Mitchell, who was a member of the Air Service of the United States Army, was tried by court-martial, found guilty of violation of the 96th Article of War ("disorders and neglects to the prejudice of good order and military discipline" (formerly 10 U.S.C. 1568)) and sentenced on 25 January 1926 to suspension from all command and forfeiture of one-half of all pay and allowances for a period of five years. The sentence was delivered to Colonel Mitchell on 26 January 1926 at 6:15 p.m., and on the same day he submitted his resignation from the service effective 1 February 1926. Colonel Mitchell's resignation was accepted, and he is carried on the records as having resigned "under honorable conditions." Colonel Mitchell's son has submitted an application to the Air Force Board for the Correction of Military Records as follows:

"I request the following correction in the military records of the deceased Colonel Mitchell in order to remove an injustice:

> "(a) The proceedings, findings, and sentence of the general court-martial (verdict rendered December 18, 1925) be rendered null and void.
>
> "(b) All military records of the said deceased be changed, corrected or modified to reflect the effect of action taken pursuant to a."

See Bulky

✓

99-55

2. 10 U.S.C. 1552 provides in part:

> "The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice . . ."

This statutory provision was originally enacted as section 207 of the Legislative Reorganization Act of 1946 and was later amended by the Act of October 25, 1951.

3. There is a divergence of opinion among the military departments concerning the authority granted by this section to correct court-martial records. The Judge Advocate General of the Navy has said:

> "It has been held by this office that the Board for Correction of Naval Records has no jurisdiction to correct errors committed by a court-martial or otherwise to affect the conclusiveness of the proceedings, findings, or sentence of a court-martial (JAG:II:1:CTC of 20 May 1952 to BCNR). The Board is thus without jurisdiction to inquire into the legal aspects of a court-martial case or to make a determination that a legal error was committed therein. In determining whether error or injustice exists, the Board may not predicate its determination upon alleged irregularities of law or procedure appearing in a court-martial record (JAG:I:7:THH:js of 18 November 1949 to BCMR)." (Op JAGN 1954/214(JAG: II:1:MMS of 13 April 1954 to BCNR))

The Judge Advocate General of the Army has expressed the opinion that:

> "Specifically, it is legally objectionable for the board to find an error in such /court-martial/ cases, or to recommend that the proceedings, findings, or sentence be declared null and void." (JAGA 1956/ 2452, 2 March 1956)

The Judge Advocate General of the Air Force has expressed the opinion that:

> "There appears to be no doubt that the correction of entries in the Air Force records resulting from court-martial proceedings where such action is necessary to correct an error or to remove an injustice, comes within the province of the Air Force Board for Correction of Military Records (AFR 32-3A, 25 August 1950; 40 Ops Atty Gen 504, 24 February 1950). Technically, perhaps, the correction of a record to remove a reference to a conviction by court-martial does not disturb the finality and conclusiveness of the proceedings, findings and sentence (40 Ops Atty Gen 504, supra), but for all practical purposes the error or injustice would be effectively corrected insofar as that is possible." (Op JAGAF 1952/5, 14 January 1952)

In addition, the attachment to the memorandum which you forwarded to this office contains the statements:

> "It is the opinion of the Judge Advocate General /of the Air Force/ that an application for correction of military records on behalf of Colonel William Mitchell would come within the purview of AFR 31-3 which implements Sec. 207, Legislative Reorganization Act of 1946 as amended (65 Stat. 665). . . .
>
> "In the event an application were filed herein and a determination made to correct the records, the following comments are pertinent:
>
> "a. The court-martial proceedings would not be voided; the effect of a correction would be to delete the record of trial from the files of the Air Force and the officer concerned.
>
> * * *"

4. The Comptroller General has concluded that this statutory provision grants authority to correct a person's military record to remove a record of his conviction of an offense under the Uniform Code of Military Justice.

In a 1955 opinion the Comptroller General answered certain questions which were presented concerning the Act of September 1, 1954 (5 U.S.C. 740d), the Act which prohibits, among other things, the payment of an annuity or retired pay on the basis of service as an officer or an employee of the Government to a person who has been convicted of certain of those offenses which constitute a "felony under the laws of the United States." In his opinion the Comptroller General concluded that a conviction defined as a felony by the Uniform Code of Military Justice constituted "a felony under the laws of the United States" within the meaning of the Act of September 1, 1954. He also concluded:

> "The correction of a person's military record to remove a record of his conviction of an offense under the Uniform Code of Military Justice is within the authority of a board convened under section 207(a) of the Legislative Reorganization Act of 1946, as amended, 5 USC 191a, and if appropriate action is taken to that effect with the approval of the Secretary concerned, the person concerned could not be regarded as having been 'convicted' of an offense within the meaning of section 1 of the act of September 1, 1954. . ." (35 Comp. Gen. 302 at 306)

5. As you know, the Attorney General has written several opinions concerning the nature and extent of authority granted by 10 U.S.C. 1552. It appears from those opinions that one of the tests which he applies in determining the nature and extent of the authority granted is whether the Congress could provide the requested relief by private act, notwithstanding the purported "finality" of the prior proceedings.

6. In an opinion dated 24 February 1947 the Attorney General approved the application of section 207 of the Legislative Reorganization Act to cases involving the judgments of courts-martial notwithstanding the conclusiveness long attributed to such judgments. (40 Ops Att'y Gen 504; see summary of that opinion in 41 Ops Att'y Gen, Op No. 1, p.2) That opinion resulted from a request he had received from the Secretaries of Army and War for an opinion as to whether "'entries in naval and military records resulting from the actions of general courts-martial and of statutory bodies such as boards of review established in accordance with the Servicemen's Readjustment Act . . . and boards

7.

appointed for the selection and for the retirement of officers,' come within the purview of section 207 of the Legislative Reorganization Act of 1946." In that opinion, the Attorney General pointed out that another section, section 131, of the Legislative Reorganization Act provides:

> "Sec. 131. No private bill or resolution * * * authorizing or directing * * * the correction of a military or naval record, shall be received or considered in either the Senate or the House of Representatives."

In connection therewith, he said,

> "These two sections must be read together, They evidence an intention of the Congress to free itself from the burden of dealing with such matters by private bills and to provide a method for their disposition by administrative action. Of the private acts heretofore passed which might conceivably be said to relate to the correction of military or naval records a very large percentage have related to individuals who received discharges other than honorable. [citing examples of private acts]"
>
> * * *
>
> "It follows from the foregoing that if section 207 of the Legislative Reorganization Act is to be given substantial effect as a substitute for the correction of military and naval records by private acts it must be held applicable to cases in which former servicemen have received discharges or dismissals by reason of a sentence of a general court martial. . ."
>
> * * *
>
> "On the other hand, the language of section 207 cannot be construed as permitting the reopening of the proceedings, findings, and judgments of courts martial so as to disturb the conclusiveness of such judgments which has long been recognized by the courts."
>
> * * *
>
> "The correction of the record and the issuance of a new discharge may be regarded as acts of clemency, or in mitigation, precisely comparable in effect to a successful appeal to the Congress for relief by private act.

"Section 207 is a remedial provision and, therefore, to be liberally construed with a view to effecting the intended purpose. As a substitute for a disapproved system (relief by private acts) it should be so construed, if possible, as to make unnecessary further resort to the old method."

"I may add that I have no doubt that in considering the necessity and propriety of providing for relief under section 207 in any particular case or class of cases you are entitled to take into account the need for maintaining systems of courts martial which will provide effective disciplinary measures as well as insuring justice to the individual. It was clearly not the intention of the Congress to make mandatory, upon requests by interested parties, the indiscriminate and wholesale reexamination of discharges or dismissals by reason of sentences of general courts martial . . . Furthermore, section 207 is not to be regarded as superimposing a further means of review, freely available, upon the procedures previously set up. For example, a soldier sentenced to death by court martial, whose sentence has been examined and approved by the Secretary of War and by the President, is not given by section 207 an automatic stay of execution or any right to further review. The regulations established under that section may, and in my opinion should, reflect these considerations.

"For the foregoing reasons it is my opinion that entries in naval and military records <u>resulting from</u> the actions of general courts martial come within the purview of section 207 of the Legislative Reorganization Act, at least to the extent hereinbefore indicated." (Underscoring supplied)

7. The discussion in the opinion concerning the "records resulting from the action of general courts-martial" as distinguished from the records of the court-martial themselves, when coupled with other discussions in the opinion concerning the finality of proceedings, findings, and judgments of courts-martial, has created some question as to whether the Attorney General intended to conclude that the records of the courts-martial themselves are not subject to correction pursuant to section 207. However, when this opinion is considered in conjunction with his later opinions pertaining to section 207, it appears that the Attorney General did not discuss the question of the

authority granted by 207 to correct the records of the courts-martial themselves because he was not called upon to do so. It also appears that the latter part of the opinion, quoted above, was not intended to establish a limitation on the authority granted to the Secretary to correct court-martial records. Instead, that discussion constituted an admonition that the statutory provision was not to be construed as granting to every person convicted by courts-martial a statutory right to appeal to the board so as to suspend the execution of a court-martial sentence in every case.

8. In an opinion dated 14 February 1949, the Attorney General approved the application of section 207 of the Legislative Reorganization Act to cases involving decisions of the discharge review board, notwithstanding the statutory provision that findings of the discharge review board were "to be final subject only to review by the Secretary of War or the Secretary of the Navy, respectively" (41 Ops Att'y Gen, Op. No. 1). Discharge review boards were authorized by section 301 of the Servicemen's Readjustment Act of 1944 (38 U.S.C. 693h) and those boards were granted authority to change, correct, or modify any discharge or dismissal except a discharge or dismissal by reason of the sentence of a general court-martial. In his opinion, the Attorney General held that while an individual whose case had been considered by a discharge review board could not "as of right" invoke the procedures set up by section 207 of the Legislative Reorganization Act, "there does not appear to be any sound reason for an interpretation so narrowing the terms of the latter section as to deny to the respective secretaries the authority to invoke that section 'where in their judgment such action is necessary to correct an error or to remove an injustice.'" Accordingly, the Attorney General concluded that the Secretary of the Navy could, in his discretion, "properly refer to the board established pursuant to section 207 of the Legislative Reorganization Act cases in which a board acting under section 301 of the Servicemen's Readjustment Act had previously denied the relief sought despite the above quoted provision in section 301 for the finality of the findings made by boards under that section." In reaching this conclusion the Attorney General said:

> "It is to be remembered, too, that no action taken under section 301 /of the Servicemen's Readjustment Act/ could have such finality as to prevent the Congress from providing relief by private act --

a remedy heretofore applied in many cases affected by administrative action that had become otherwise final and conclusive, as pointed out in my opinion of February 24, 1947. Section 207 of the Legislative Reorganization Act was intended to supply a remedy in lieu of such relief by private acts, and section 131 of that act provided that no private bill or resolution for the correction of a military or naval record should thereafter be received or considered. As a substitute for the disapproved system of relief by private acts, section 207 should be so construed, if possible, as to make unnecessary further resort to the former method." (Underscoring added)

9. In an opinion dated 29 December 1949, the Attorney General approved the application of section 207 of the Legislative Reorganization Act to cases involving judgments of courts-martial notwithstanding the fact that in 1948, after the enactment of the Legislative Reorganization Act, Congress had passed a law which amended the Articles of War to provide for the finality of appellate review and to provide that "all proceedings, findings and sentences . . . and all dismissals and discharges carried into execution . . . shall be final and conclusive . . . and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies and officers of the United States." (41 Ops Att'y Gen, Op No. 8) Sections 226 and 230 of the Selective Service Act of 1948 (Act of June 24, 1948, P.L. 759, 80th Cong.) amended Articles of War 50 and 53. Article of War 50, as amended, prescribed certain appellate review of the records of court-martial trials, and Article of War 50h provided:

"Finality of Court-Martial Judgments. --The appellate review of records of trial provided by this article, the confirming action taken pursuant to articles 48 or 49, the proceedings, findings, and sentences of courts-martial as heretofore or hereafter approved, reviewed, or confirmed as required by the Articles of War and all dismissals and discharges heretofore or hereafter carried into execution pursuant to sentences by courts-martial following approval, review, or confirmation as required by the Articles of War, shall be final and conclusive and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon application for a new trial as provided in article 53."

Article of War 53, as amended, provided in part:

> "Under such regulations as the President may prescribe, the Judge Advocate General is authorized, upon application of an accused person, and upon good cause shown, in his discretion to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad conduct discharge previously executed a form of discharge authorized for administrative issuance, in any court-martial case in which application is made within one year after final disposition of the case upon initial appellate review: Provided, That with regard to cases involving offenses committed during World War II, the application for a new trial may be made within one year after termination of the war, or after its final disposition upon initial appellate review as herein provided, whichever is the later. . . <u>And provided further</u>, That all action by the Judge Advocate General pursuant to this article, and all proceedings, findings, and sentences on new trials under this article, as approved, reviewed, or confirmed under articles 47, 48, 49, and 50, and all dismissals and discharges carried into execution pursuant to sentences adjudged on new trials and approved, reviewed, or confirmed, shall be final and conclusive and orders publishing the action of the Judge Advocate General or the proceedings on new trial and all action taken pursuant to such proceedings, shall be binding upon all departments, courts, agencies, and officers of the United States."

After the enactment of this statute, the Secretary of the Army requested an opinion from the Attorney General as to whether the jurisdiction of the Army Board on Correction of Military Records to act in cases involving discharge or dismissal by reason of the sentence by court-martial had been superseded by the provisions of Articles of War 50h and 53 as amended by the Selective Service Act of 1948. The Attorney General concluded that:

> "It is my opinion that the enactment of sections 226 and 230 of the Selective Service Act of 1948 did not affect your authority, under procedures set up by you, and acting through boards provided

> for in section 207 of the Legislative Reorganization Act of 1946, 'to correct any military * * * record where in * * * [your] judgment such action is necessary to correct an error or to remove an injustice.'"

In reaching this conclusion the Attorney General quoted the portion of his opinion dated February 14, 1949, which is set out in paragraph 8 above, and stated that that quotation is "equally pertinent" to the question pertaining to court-martial proceedings. His opinion continues:

> "The only new feature in the question now presented is that the provisions of the Selective Service Act of 1948 for the review of sentences of courts martial were enacted after the Legislative Reorganization Act. The later act, however, did not expressly either repeal or amend the earlier. The question remains as to whether the Selective Service Act of 1948 effected an implied repeal of section 207 pro tanto . . . If, therefore, section 207 was in effect repealed by the Selective Service Act of 1948, section 131 must fall with it. This is a result, however, which I am unable to reach in the absence of any showing whatsoever of a congressional intention to resume the system of relief by private acts which section 131 had abolished. I find no evidence of such an intention. Nor do I find evidence of any congressional intention to replace at this time that system of relief, for which the Congress had, by section 207, substituted a system administered by civilian boards, with an appellate court-martial procedure administered by military officers . . . Nothing that has come to my attention indicates that the Congress by the passage of the Selective Service Act of 1948 had any intention thus to supersede sections 131 and 207 of the Legislative Reorganization Act."

10. On the basis of these Attorney General opinions, it seems quite clear that the fact that an official action is considered as being otherwise final and conclusive does not preclude the Secretary from correcting the records pertaining to that action pursuant to 10 U.S.C. 1552.

11. The only remaining question presented by the application submitted by Colonel Mitchell's son is whether the Congress could enact legislation which would grant the relief requested.

Fundamentally, the question is whether Congress has the authority to provide that records of court-martial actions which are otherwise "final" may be changed or corrected under certain specified circumstances. The statutes by which Congress has prescribed court-martial procedures, in themselves, contain convincing evidence that Congress has such authority. For example, Article of War 53, as amended, quoted in paragraph 9 above, authorized the Judge Advocate General to grant new trials, vacate sentences or take other action in certain cases which were otherwise final. Section 12 of the Act of May 5, 1950, (formerly 50 U.S.C. 740) granted similar authority to reconsider and grant relief on the application of the accused in any case involving an offense committed during World War II. Paragraph 110 of the Manual for Courts-Martial, 1951, which was issued pursuant to section 10 of that Act, provides in part:

> "WORLD WAR II OFFENSES.--a. General. With respect to all trials by general courts-martial which resulted in a conviction . . . committed at any time between 7 December 1941 and 30 May 1951, inclusive, an accused may, within one year after final disposition of the case upon initial appellate review or at any time before 31 May 1952, whichever is the later date, petition the Judge Advocate General of the armed force concerned to grant relief. Upon good cause shown, such Judge Advocate General may grant a new trial, or vacate the findings and sentence adjudged, and may order the restoration of rights, privileges, and property affected by the sentence, and in a proper case order the substitution for a dismissal, dishonorable discharge, or bad conduct discharge, previously executed, of a form of discharge authorized for administrative issuance (sec. 12, act 5 May 1950, 64 Stat. 147; 50 U.S.C. 740)." (Underscoring added)

12. From the foregoing it seems quite clear that Congress has granted to the Judge Advocate General extensive authority to change records of court-martial actions which had become "final." It follows that the Congress could grant to the Secretary similar authority to correct records of courts-martial. It also follows from the reasoning in the opinions of the Attorney General that 10 U.S.C. 1552 applies to records of court-martial actions.

13. Congress has enacted a variety of private acts which have granted relief involving courts-martial cases. For example, the Act of January 12, 1893 (27 Stat. 812) provided in part:

> "Be it enacted . . . That the Secretary of War be, and hereby is, authorized and directed to revoke and set aside the general order . . . approving the finding and sentence of the general court-martial in the case of George W. McKinney, finding him 'not guilty of desertion, but guilty of absence without leave,' and sentencing him to 'forfeit all pay and allowances due him from the United States . . .' and correct his record so as to show him absent on leave duly granted, . . . and absent, disabled from sickness and disease, rendering him unfit for any military duty, up to September twenty-fourth, eighteen hundred and sixty-three, when he rejoined his company."

We have found no private act which contains the statement that the proceedings of a court-martial are "null and void." However, the fact that Congress has not used such language does not mean that Colonel Mitchell's son cannot be granted relief. It seems to me that the practical effect of the Act of January 12, 1893, quoted above, was to render the findings and sentence of the court-martial "null and void."

14. Accordingly, 10 U.S.C. 1552 does grant authority, in my opinion, to correct the records so as to vacate the findings and sentence of a court-martial and to set aside the order approving the findings and sentence, if it is determined that such correction is necessary to correct an error or remove an injustice.

[Signed]

JOHN A. JOHNSON
General Counsel

Inclosure
Memo w/incl

See Bulkley

BEFORE THE
AIR FORCE BOARD FOR THE CORRECTION OF MILITARY RECORDS
OFFICE OF THE SECRETARY OF THE AIR FORCE

IN THE MATTER OF:

MITCHELL, William (Billy), 0-63, (deceased) DOCKET NO.56-290

Formerly Brigadier General, Air Service, Regular Army
(Permanent Colonel, Air Service, Regular Army)

Date of Application: March 15, 1956

Name of Applicant: Mr. William Mitchell, Jr. (son of Colonel William Mitchell)

COUNSEL: Air Force Association
Mills Building
Washington, D.C.

The following members of the Air Force Board for the Correction of Military Records, who are civilian officials of the Department of the Air Force, will convene in formal session on Wednesday, 15 May 1957, at 9:30 A.M. o'clock in Room 5C-883, The Pentagon, Washington 25, D.C., to hear the above entitled matter.

Mr. George S. Robinson,	Chairman
Mr. John J. McLaughlin,	Member
Mr. Joseph F. Cunningham,	Member
Mr. Ralph P. Dunn,	Member
Mr. Herbert R. Wildman,	Member
Mr. Frank D. Hardin,	Executive Secretary
Mr. Norman A. Compton,	Examiner

PART I — APPLICANT'S REQUEST

That the following corrections be made in the military records of his father, Colonel William Mitchell (deceased):

(TAB A)

(a) That the proceedings, findings, and sentence of the General Court-Martial, relating to Colonel William Mitchell, which rendered its verdict on or about 18 December 1925, be declared null and void; and

(b) That all military records of the late Colonel William Mitchell be changed, corrected, or modified to reflect the effect of action taken pursuant to (a) above.

PART II — APPLICANT'S STATEMENT

(TAB B) The applicant states that he sincerely believes that a gross injustice was done his father, and that history has vindicated him. He also believes that the United States Air Force cannot do less than correct the records to the extent requested in PART I, above. He waives any and all amounts /of monies/ which may be found due as a result of any corrective action which may be taken.

The applicant has designated the Air Force Association of the United States to act as his Counsel in these proceedings and has authorized that organization to handle all matters pertaining thereto.

COUNSEL"S STATEMENT OF FACTS & ARGUMENT

PART II (cont'd) Counsel for the applicant points out, among other things, that their Association assembled in convention in San Francisco, California, in August 1955 and resolved that proper application should be made to this Board to void the court-martial proceedings in question. In support of the application which has been submitted by the applicant, Counsel submits the following statement or argument:

(TAB C) "On December 18, 1925, William Mitchell, then Colonel, Air Service, U.S. Army, was convicted by General Court-Martial of violating the 96th Article of War. The 96th provision is a broad, all-encompassing Article of War.

"The immediate chain of events ultimately culminating in the Court-Martial charge, had its origin in a press release issued by General Mitchell on September 5, 1925. The statement was prompted by two almost simultaneous aircraft disasters that shocked the world. The more tragic was the breaking up of the U.S. Navy dirigible, the Shenandoah, on September 2 over Ava, Ohio, in which 14 crew members, including the Commander, were burned to death. The other was an ill-fated attempt at a trans-Pacific crossing by Navy airplanes. The real causes which started the chain of events toward Colonel Mitchell's Court-Martial, however, were much more deep seated, fundamental, controversial, and important, as will be discussed in more detail below.

"But before entering upon a discussion of the real causes underlying the Mitchell Court-Martial, cognizance should be taken of the fact that Congress vindicated Colonel Mitchell as long ago as July 26, 1946, when it adopted Senate Bill 881 authorizing a special Congressional medal honoring Mitchell for his contributions to military aviation. The bill became law with the signature of President Harry S. Truman on August 8, 1946. The act stated that the medal was being awarded 'in the name of the people of the United States, in recognition of his (Mitchell's) outstanding pioneer service and foresight in the field of American military aviation.'

"This action by the elected representatives of the American people came twenty-one years after Colonel Mitchell had issued the statement that led to his Court-Martial. That statement was the culmination of everything against which he had been warning military and Naval services and the country at large. In Mitchell's opinion the aircraft disasters of 1925 were shockingly unnecessary tragedies which called for shock treatment in order to preclude recurrences and to arouse the Nation to a sense of realization of the disregard by certain elements within the services toward the importance of airpower.

"It was perhaps merely coincidental that subsequent events may have indicated that the Shenandoah was an old airship, that its back had once buckled, that its helium content had been limited for reasons of economy and that weather reports over the new area which it was to be flown were incomplete. There existed strong circumstantkal, if not direct, evidence that the flight was for public relations purposes and was ordered in the face of two requests by its Commander to cancel, or at least postpone the flight in order to provide more adequate time for preparation. Similarly, the trans-Pacific flight to Hawaii had public relations overtones. This proposed operation demonstrated that the aircraft were unsuitable for the flight, that there was insufficient fuel to make the long haul, and that rescue setups were not provided

COUNSEL'S STATEMENT OF FACTS & ARGUMENT (continued)

PART II (cont'd) "The lengthy statement issued by Colonel Mitchell on September 5, 1925, running from 6000 to 8000 words, contained the following allegation:

> 'The accidents are the result of incompetence, the criminal negligence, and the almost treasonable administration of our national defense by the Navy and War Departments.'

"In the absence of the record of proceedings, reliance for the purposes of this brief has been on reports of Congressional hearings, quotations of newspaper and magazine articles, and biographies and documents of Colonel Mitchell published during the trial or several years subsequent.

"In any event, it appears that this one allegation was sufficient to set the Court-Martial in motion. In the absence of any proof of a more substantive, specific violation of the Articles of War, the 96th 'catch all' Article, was seized upon to charge that the above-quoted portion of Colonel Mitchell's statement was 'highly contemptuous and disrespectful of the administration of the War Department with the intent to discredit same' ... 'all to the prejudice of good order and discipline.'

"Although, as will be noted, intent to discredit was charged proof of such intent, presumably a most important element of the accusation, was apparently lacking and was somehow lost in the maze of proceedings and testimony, if all available information on the Court-Martial is to be relied upon.

"The intensity with which Colonel Mitchell held to his beliefs that his country's security depended on the development of airpower, and that a somnolent public as well as the governing group in the military and Naval service needed to be aroused to its importance before it was too late, should have provided ample testimony to the converse: that his intention was not to discredit the War and Navy Departments as charged, but rather to keep the controlling group in the services, to one of which he was proud to belong, from bringing discredit upon their Services by stubborn indifference to the significance and importance to the security of the United States of this new weapon of warfare. He did not hesitate to use strong words when strong words were required and his intent was to the contrary of that charged. He placed duty to country above any other duty.

"The injustice which exists in the record of Billy Mitchell, the removal of which is now requested by application of his son, does not spring solely or largely from the narrow aspect of the immediate circumstances of the Court-Martial. There are far broader and more overriding considerations warranting the corrective action requested. The contribution made by Colonel Mitchell to the development of airpower and the effect of these contributions in the subsequent successful defense of the national security in two wars amply demonstrates the need and justification for corrective action.

"Mitchell's statement in itself merely climaxes the efforts of many people to arouse an apathetic public and military group to the desperate need that more attention had to be given to airpower as the key to national survival. After three decades, it is possible to strip the situation of drama and to present it in a factual light.

COUNSEL"S STATEMENT OF FACTS & ARGUMENT (continued)

PART II (cont'd)

"If it were not possible to do so, it would be difficult to challenge the judgment of the Court-Martial.

"Mitchell emerges from an impartial analysis of his times as something far less than a crucified martyr, yet considerably more than an impractical visionary. His prophesies have turned out to be immensely practical.

"Mitchell was eminently qualified as a ground soldier. He enlisted in the infantry in 1898, one day after the declaration of war on Spain. It is not generally known that he served eighteen years with great distinction in Cuba, the Philippines, Alaska, and on the Army General Staff before he ever flew an airplane. It should be pointed out that in 1912 he was the youngest Major in the Army; his appointment to the General Staff being one of the most sought-after honors of his time. He was a recognized expert on wire communications, his reports having been converted into military and civilian textbooks.

"In 1916, with eighteen highly successful years of ground service, Mitchell took up flying at a private school, at his own expense. He began to visualize the possibilities of the airplane as a weapon of war. It should not be inferred that Mitchell was the originator of airpower. Other nations had been far ahead of the United States as is shown by the following table of expenditures during the years 1908 - 1913:

Country	Money Spent	Aircraft on Hand
United States	$435,000	28
Germany	$28,000,000	400
France	$22,000,000	400
Russia	$12,000,000	300
Italy	$ 8,000,000	200

"Even smaller countries - Bulgaria, Greece and Japan - had spent from $500,000 to $1,500,000, and each of those countries had an air fleet of 80 aircraft. The position of the United States is clearly shown by those figures, as is the task Mitchell set himself -- to assure that our country outstripped the rest of the world, and stayed out in front.

"At the time of America's entry into World War I, Mitchell was on his way to Europe. He arrived in France considerably in advance of the American Expeditionary Forces. He attached himself to French aviation, and was decorated for his actions over the front. When General Pershing arrived, he placed Mitchell in charge of aviation at the front. Mitchell's record in organizing and employing aircraft in combat is attested by decorations and commendations from Pershing and from foreign governments. It is important to know that his honors were awarded, not for dare-devil exploits, but for his contributions to military tactics and strategy. His attitude is best exemplified by a statement Mitchell made before a Committee of the Congress:

'The actual flying is only a small part of it; it is only from 30 to 50 per cent of the whole thing ... Unless the flyer has studied the military features of [illegible]

COUNSEL"S STATEMENT OF FACTS & ARGUMENT (continued)

PART II (cont'd)

"When Mitchell returned from France in 1919, he was designated Assistant Chief of Military Aviation. He was then 40 years old, far from the youthful, callow, hare-brained aviator that he was later to be called. He had 21 years of honorable service with the Army Signal Corps. His experience and stature were such as to be appointed to a job that carried with it the rank of Brigadier General.

"To bring matters into focus, and in order to understand certain facts which motivated Mitchell's actions, it is necessary to review briefly the events leading to Mitchell's trial and conviction. World War I had ended. Official interest in aviation waned rapidly. For example, on September 30, 1919, by order of the Secretary of War, the Air Service was reduced to 149 pilots from 10,000. Six thousand of those were discharged in nine days, with only the airmen protesting. Aircraft production was almost nil, despite the fact that World War I had taught bitter lessons, and that other nations were turning to the air as the future primary medium of combat.

"As early as 1920, the former ground soldier, Mitchell began to raise his voice for airpower. During World War I, he had secured approval from Pershing, over the almost unanimous opposition of the staff, to attempt the use of paratroops. The war ended before the operation could be carried out. That idea was dropped in the quiet of the peace. Mitchell pursued it, and other methods of employing aircraft in defense and offense.

"In his search for employment of airpower, Mitchell hit upon bombardment of surface vessels as an excellent use. He had his tattered and tiny air force engage in exercises that would demonstrate the effectiveness of bombardment. When he was certain that the job could be done, he announced that airplanes could sink battleships by bombardment. That remark was taken to be an open declaration of war upon our Navy. In point of fact, it was the cold, dispassionate viewpoint of a well-qualified military expert. The fact that the weapon might be used against our enemies or by our enemies against us, and therefore should be reckoned with, experimented with and tested, was ignored. A flood of vilification was launched that is hard to credit to men who ostensibly had the welfare of our country at heart. Mitchell was personally abused and reviled; he was mockingly dubbed 'Admiral' by then Secretary of the Navy. He was called names that could reflect on his judgment and personal integrity, despite the fact that he was a mature, seasoned General in the Army and held a distinguished military record.

"Mitchell persisted in his efforts. There is nothing in any record to show that he stepped beyond the bounds of military propriety. Eventually, in 1921, Congressional pressure resulted in an agreement to test Mitchell's ideas. Incredible as it may seem today, it took outside forces to compel testing a theory that revolutionized warfare.

"Only a few days prior to the start of the tests, Mitchell's commanding officer, General Menoher, U. S. Cavalry, issued a curt request to the Secretary of War for Mitchell's relief from his post as Assistant Chief of Military Aviation. The only clue to the reason for the request lies in references to the fact that Mitchell was stirring up trouble with the Navy. There is no

PART II
(cont'd)

"reference any place to insubordination or disrespect on Mitchell's part. The request was withdrawn when the Senate threatened an investigation.

"During the years following the tests, airpower received little attention in this country. Other nations steadily built up their forces. We concentrated on treating aviation as a sport. While Mitchell's reports to his superiors are not available, there is good reason to believe that he continuously pointed out the situation and that he did all he could within the restrictions of military roles to advance the cause of airpower.

"In 1924, Mitchell apparently determined to take his case to the people. He approached the President of the United States to do a series of articles. The President's formal reply is included in the attached chronology. From the President, Mitchell then went to his commanding officer, Major General Mason Patrick. Patrick's permission was likewise granted.

"It must be remembered that Mitchell was considered a 'controversial' figure, as a result of his practical demonstrations of airpower. Certainly his commanding officer and the President were aware of the fact. It would be illogical to think otherwise. It would be equally illogical to expect Mitchell to write on any subject other than aviation. Since his views were well-known throughout the War Department, it would be impossible under any rationalization to believe that he would expound views other than those which he had so often expressed in official reports. He was authorized to publish the articles.

"As might be expected, Mitchell expressed his views on airpower. He pressed his points for bombardment. He advanced an old idea of his, a separate Aviation University. Further, he promulgated another pet thought, a separate Department of Aeronautics. During 1924, the Army completed the pioneer round-the-world flight under Mitchell's direction.

"On March 7, 1925, Mitchell's appointment as Assistant Chief of Military Aviation expired. It was not renewed. Mitchell was reduced to the rank of Colonel, and transferred to Fort Sam Houston. At the time, some 26 Air Service officers told him that they would resign. Mitchell was extremely strict in his orders to them to do no such thing. He called it 'insurrection.' -- Hardly the act of a disloyal, disrespectful officer.

"There is nothing in the official records to indicate the exact reason for the transfer. The only clue is a statement made by Secretary of War Weeks to the Congress. Weeks told Congress that he grew 'tired of the complaints from the Navy Department' and hauled Mitchell on the carpet. Shortly afterwards, the Lampart Committee of Congress conducted an exhaustive inquiry into the air services. Mitchell was questioned on the subject of the muzzling of military officers. He stated, among other things, that officers were not permitted to give out their views without permission of the War Department. That, despite official orders to the contrary. The War Department thereupon proceeded to do the very thing that it said could not happen; Mitchell was not transferred or demoted technically; he simply was not reappointed. In the reasons given to the President, the Secretary of War condemned Mitchell in effect for speaking later-proved truths to the Congress, and in the process called his course 'lawless'. It is difficult to understand why lawlessness

PART II (cont'd)

some other strict disciplinary action.

"in the same month, a bill was introduced into Congress providing that 'no Army or Navy officer shall be transferred, demoted, or sent away' for testimony given before Congress. Another bill was also introduced to 'promote General William Mitchell by Special Acto of Congress to the rank of Major General'.

"In September of 1925 came the Shenandoah disaster and the ill-fated trans-Pacific flight. Mitchell's statements received wide publicity.

"Also in September,1925, a Presidential Board (the Morrow Board) was called to investigate the Air Services. The testimony fills some six volumes. A few extracts must be quoted that pertain to the Mitchell case:

"Acting Secretary of War Davis, speaking for Secretary of War Weeks, testified:

> 'There has not been, is not now, and will not be any 'muzzling' of Army officers in the expression of their individual views.'

"Major General Patrick, Chief of Military Aviation:

> 'It (the Air Service) has been regarded as a stepchild rather than as a real member of the family, and in some cases its motives have been questioned and its recommendations have been either ignored or denied.'

"Lt. Colonel Benjamin D. Foulois, Air Service:

> 'Let me state most frankly that up to the present date there has been an almost complete lack of teamwork between airmen and the Army, due in my opinion to the fact that Army officers as a class are utterly ignorant of 90% of the airman's problems.'

"Many other similar statements were made. Remarkably enough, the staunchest proponent of Mitchell's views was Rear Admiral Sims, veteran of some 40 years of Naval service, and up to that time, considered a naval elder statesman. Sims made such declarations as: existing naval concepts were out-dated; the battleship had had its day; aviation was the vital defense weapon; and that most of the Navy's high command were uneducated and unfit. Admirals Fullam and Winterhalter joined with him, Fullam going so far as to say:

> 'The responsiblity for our humiliation and defeat upon the sea in the next war will rest squarely upon the shoulders of those whose heads are buried in the sands of conservation.'

"Those admirals were not hot-headed young crusaders. All were more than sixty years of age; each had a distinguished career in the Navy during its transition from sail to steam. In 1925, they foresaw the carrier as the Navy vessel of the future; they were pressing for

PART II (cont'd)

wings for the Navy and the end of the battleship as the first and most important item.

"During the hearing, Mitchell took the directive of the Secretary of War literally. He testified frankly and openly. He established again the points he had made so many times before. Among other things he testified:

> "The air force 'consists of about 12, now old and outmoded, pursuit airplanes ... 22 bombers, designed seven years ago and worn out ... other aviation consists of the DH-4 airplanes with Liberty engines, designed during the war ... they are neither attack, bombardment, pursuit, or observation planes. They are worn out; they are dangerous ... Our pilots, the best in the world, really amount to not over 450... The reserves are a myth. They have no service material to fly in ... We have no corps of observers... no rated machine gunners..."

"In other testimony, he warned of disaster if war came. None of his statements was disapproved; no effort was made to demonstrate error. His facts were overlooked and ignored by other military witnesses.

"On October 3, 1925, Mitchell was ordered to be court-martialed. His trial lasted for weeks. No transcript of the trial was available for the preparation of this paper, so it is possible only to discuss it from various writings. It may be possible for the Board to acquire the official transcript. Source material indicates it was not a trial of Mitchell, but a trial of air-power. It could not have been otherwise, for the Secretary of War had consistently held to the line that no officer would be 'muzzled'. Mitchell had expressed his own personal views, strongly perhaps, but that becomes a matter of degree, and of usage. At the trial, Admiral Sims testified. Seven admirals, then at the top of the Navy, were named and Sims was asked if he considered them 'hidebound, unfitted and uneducated'. Sims replied, 'I certainly do!' In his summation, the Assistant Trial Judge Advocate set the tone of the proceedings by describing Mitchell as 'flamboyant, self-advertising, wildly imaginative, destructive ... and never overly careful as to his ethics.' He described elder naval statesman Sims as 'ego-maniacal' and 'narrow-minded'.

"Witnesses such as Spaatz, Arnold and Rickenbacker backed up every point made by Mitchell. The widow of the Shenandoah's commander even testified that the Naval Board of Inquiry had sent her the draft of a false story with instructions to tell it on the witness stand.

"On December 18, 1925, after one day's deliberation, the court announced its verdict. Mitchell was found guilty.

"It has been estimated that some 1,400,000 words of testimony were given. The one-day review of that testimony led to the sentence that Mitchell 'be suspended from rank, command and duty, with forfeiture of all pay and allowances for five years.'

"The court, the announcement added, 'is thus lenient because of the military record of the accused during the World War.'

PART II
(cont'd) "On January 20, 1926, President Coolidge reduced the sentence by allowing half pay.

"The strange nature of the sentence deserves comment. A military man 'suspended from rank, command and duty' has no status whatsoever. He still belongs to the Army; he cannot seek another occupation. Yet he receives no compensation of any kind. He is not even a private. Remission of such a sentence to half pay serves no purpose.

"Under these conditons, Mitchell had only one alternative. On February 10, 1926, with 27 honorable years of service behind him, he resigned.

"To sum up, Mitchell's is not a story of martyrdom. It is, instead, a model picture of a man who lived by the officers' code of 'Duty, Honor, Country'. To him above all the security of the country came first. Nothing that he ever said or did has proved to be detrimental or harmful to his country or to his service. Throughout his distinguished career, he clung to the rules of military behavior.

"The truth of Mitchell's words is shown by events starting in 1939. The use of the Stuka by the Germans, the destruction of various capital ships by the Japanese, the decisive role of airpower in all theaters during World War II, its effective, although limited, employment in Korea demonstrated the soundness of his arguments for military aviation. Probably the most effective monument, however, is national recognition of Mitchell's great contribution in the establishment by the National Security Act of 1947 of a separate Department of the Air Force.

"Briefly,the things that Mitchell sought were:

"a. Proper employment of airpower as an instrument of national policy;

"b. The development of military aviation to the point where the United States was the foremost Air Power in the world;

"c. A single Department of National Defense, with a separate department for air, co-equal with the Army and Navy;

"d. An air academy for the training of air officers.

"Every one of those objectives has been realized. Each constitutes a memorial to his vision. It is difficult to understand how Mitchell could have harbored the 'intent' specified in the court-martial charges when his concepts have been so universally adopted.

"Recognition afforded Mitchell over the years appears to add up to a vindication of the charges made against him. The Congress, as has been noted, voted him a special medal for his contribution to aviation development. One of his bitterest detractors,

COUNSEL'S STATEMENT OF FACTS & ARGUMENT (continued)

PART II (cont'd) Secretary of the Navy Josephus Daniels, recanted and called Mitchell, 'a Messiah come to save his country.' Several bills have been introduced in Congress to commission his ghost a Major General.

"To sum up, events demonstrated that Mitchell was motivated above all by the need to preserve the security of his country. The country has in effect condemned the unjust sentence of the court. As things stand, the sentence is the only remaining blot on an otherwise clear and outstanding record of the highest type of public service. It seems only logical to remove that blot. Since Mitchell was so much pilloried in life for telling the truth, purging the stain seems the least that can be done for him in death."

(TAB D) In addition to the above statement, Counsel presents a Statement entitled "Significant Developments Toward Trial of Colonel William Mitchell and Chronology of Later Events." This statement, with dates arranged in chronological order, commences by citing the introduction of a Bill in the Congress in January 1919 to provide for a single Department of National Defense; the statement concludes by citing that in the spring of 1954 the Congress enacted legislation which provided for establishment of the Air Force Academy.

(TAB E) On 27 April 1956, the applicant's Counsel submitted as additional evidence copies of an exchange of correspondence alleged to have transpired between Senator Alexander Wiley and General Douglas MacArthur. The copy of the letter allegedly written by Senator Alexander Wiley is addressed to General MacArthur and bears a date of 6 November 1945. This letter reads in pertinent part

(TAB F) as follows: "In the last three Sessions, I have introduced and had passed through the Senate a Resolution which would posthumously confer upon 'Billy' Mitchell the rank of Major General. The Resolution has always been stopped in the House Military Affairs Committee. Today I was informed that the reason it was stopped there may have been that some folks felt that the enactment of this Resolution might cast some adverse reflection upon yourself. I never heard that argument before because it was my understanding that yours was the one vote against the court-martial's verdict which cashiered 'Billy'Mitchell. I so stated in remarks that I made in the Senate. Now, the purpose of this letter is to ask you to express, if you would like to, your opinion in relation to this measure...."

(TAB G) The copy of the alleged reply from General MacArthur reads as follows following the complimentary opening remarks: "I was one of Billy Mitchell's most intimate and devoted friends from the beginning to the end... Your recollection of my part in his trial is entirely correct. It was fully known to him and he never ceased to express his gratitude for my attitude. It would have been ridiculous for anyone to say that any posthumous honors that might be granted him would be embarrassing to me. He was a rare genius in his profession and contributed much to aviation history ..."

PART III EXTRACT OF MILITARY RECORDS

MITCHELL, William (Billy) O-63 (deceased)
PART III (contd)
EXTRACT OF MILITARY RECORDS (continued)

Record of Appointments & Promotions

Pvt, 1st Wisconsin Volunteer Inf, 14 May 1898; honorably discharged 7 Jun 1898
Aptd 2d Lt (Signal Officer) 1st Inf, Wisc Volunteers, 8 Jun 1898
Prom 1st Lt (Signal Officer) " " " " 21 Jan 1899
(Honorably discharged 17 Apr 1899)
Reapt 2nd Lt (Signal Officer) 1st Inf, Wisc Volunteers, 17 Apr 1899
Prom 1st Lt, (Signal Officer) 1st Inf, Wisc Volunteers, 8 Jun 1900
(Apmt vacated to accept apmt in the United States Army)
Aptd 1st Lt, Signal Corps, USA, 26 Apr 1901, with rank from 2 Feb 1901
Prom Capt, Signal Corps, RA, 2 Mar 1903
Prom Major, Signal Corps, RA, 1 Jul 1916, with rank from 1 Jul 1916
Prom Lt Col, Signal Corps, RA, 15 May 1917, with rank from 15 May 1917
Aptd tem Col., Signal Corps, 29 Sep 1917, with rank from 5 Aug 1917
Aptd temp Brig Gen, 12 Oct 1918
Prom perm Col, Signal Corps, RA, 20 Jul 1920 with rank from 1 Jul 1920
(Trafd from Aviation Section, SC, to Air Service, RA, 30 Jul 1920)
Aptd Asst Ch of Aur Sv (Recess Apmt) 16 Jul 1920, with rank of Brig Gen
(Recess apmt expired 4 Mar 1921 since apmt not confirmed, dropped as Brig Gen 5 Mar 1921 and reverted to rank of perm Colonel)
Reaptd Asst Chief of Air Sv 27 Apr 1921 for 4 years, with rank of Brig Gen from 2 Jul 1920 (Apmt as Asst Chief of Air Service and rank of Brig Gen expired 26 Apr 1925, when he reverted to his permanent rank of Colonel due to failure of the President to renominate him.)

Submitted resignation as commissioned officer of Regular Army on 26 Jan 1926.
Resignation accepted by President effective 1 Feb 1926.

Oversea Service

8 Dec 1898	to 24 Aug 1899	Cuba
5 Oct 1899	to 9 Jan 1901	Philippine Islands
26 Aug 1901	to 1 Aug 1903	Alaska
4 Oct 1906	to 28 Jul 1907	Cuba
5 Aug 1909	to 14 Dec 1911	Philippine Islands
19 Mar 1917	to 28 Feb 1919	Europe, WW I
23 Oct 1923	to 5 Jul 1924	Hawaii & Philippine Islands (Pacific Area Inspection Trip)

Aeronautical Ratings

Junior Military Aviator	19 Jul 1917
Military Aviator	23 Apr 1919
Airplane Pilot	16 Oct 1919

General Mitchell, while serving in the grade of Major, commenced private flying lessons with the Atlantic Coast Aero-Nautical Station Inc., on 2 Sep 1916.

Schools Attended - Civilian and Military

Civilian: Graduate of Columbian University Preparatory School
Two years Columbian University
Bachelor of Arts (B.A.) Geo Washington Univ, 1899

Military: Graduate, Engineer School, 1907
Distinguished Graduate, Army School of the Line, Fort Leavenworth, Kansas, 30 Jun 1908
Graduate, Army Staff College 30 Jun 1909
Graduate, Field Engineer School, 1915

Decorations and Service Awards

Domestic Decorations

Distinguished Service Cross, 4 Dec 1918: "For repeated acts of extraordinary heroism in action at Noyon, France, March 26, 1918: near the Marne River, France, during July, 1918; and in the St. Mihiel salient, France, September 12 to 16, 1918. For displaying bravery far beyond that required by his position as Chief of Air Service, 1st Army, American Expeditionary Forces, setting a personal example to the United States aviation by piloting his airplane over the battle lines since the entry of the United States into the war, some instances being a flight in a monoplane over the battle of Noyon on March 26, 1918. and the back areas, seeing and reporting upon the action of both air and ground troops, which led to a change in our aviation's tactical methods; a flight in a monoplane over the bridges which the Germans had laid across the Marne during July, 1918, which led to the first definite reports of the location of these bridges and the subsequent attack upon the German troops by our air forces; daily reconnaissances over the lines during the battle of St. Mihiel salient, September 12 to 16, securing valuable information of the enemy troops in the air and on the ground, which led to the excellent combined action by the allied air services and ground troops particularly in this battle."

Distinguished Service Medal, 5 July 1919: "For exceptionally meritorious and distinguished services, as Air Service commander, first of the Zone of the Advance and later of the 1st Corps, by his tireless energy and keen perception he perfromed duties of great importance with marked ability. Subsequentlv as commander, Air Service, of the 1st Army, and, in addition, after formation of the 2d Army as commander of Air Service of both armies, by his able direction of these vitally important services he proved to be a potent factor in the successes achieved during the operations of the American armies."

WW I Victory Medal with 8 Clasps: For participation in the Cambrai, Somme Defensive. Meuse-Argonne, Champagne-Marne, Aisne-Marne, Oise-Aisne, St. Mihiel, amd Defensive Sector campaigns.

Spanish National Guard Medal with Ribbon: For service from 14 May 1898 to 1 Jan 1899 as an enlisted man and officer of the 1st Wisconsin Volunteer Infantry.

A Medal of Honor: Bestowed posthumously by the President 8 Aug 1946, following enactment by the Congress of Private Law 884, on 26 Jul 1946 (60 Stat 1319).

Foreign Decorations

British Companion of Order St. Maurice and St George Cross
French Croix de Guerre with Palm
French Commandeur, Legion of Honor
French Enlarged Citation Certificate
La Decoration d'Officier de l'ordre National de la Legion d'Honneur
Italian Order of St Maurice and St Lazarus (Commander)
Italian Order of the Crown of Italy (Grand Officer)

Pertinent Duty Assignments

14 May 1898 to 7 Jun 1898	- Pvt, Company M, 1st Inf, Wisc Volunteers.
8 Jun 1898 to24 Aug 1899	- Signal Officer, U.S. Volunteers, Cuba.
5 Oct 1899 to 9 Jan 1901	- Company F, Signal Corps, Philippine Islands, Signal Corps duties. (Philippine Insurrection)
26 Aug 1901 to 1 Aug 1903	- Signal Officer, Eagle City, Alaska, and other places in Alaska, constructing military telegraph lines.
4 Oct 1906 to 28 Jul 1907	- Chief Signal Officer, First Expeditionary Brigade and Army of Cuban Pacification, Marianao, Cuba.
5 Aug 1909 to 14 Dec 1911	- Commanded various Signal Corps companies at Fort McKinley, Rizal, P.I.; participated as member of the American Polo Team in the International Pol-

Pertinent duty Assignments (continued)

15 Dec 1911 to 11 Feb 1913 - Stationed at various stations in the U.S., including Fort Russell, Wyoming, Fort Bliss, Texas, and the Mexican Border.
13 Feb 1913 to 9 Jun 1916 - Stationed at the Army War College
10 Jun 1916 to 31 Dec 1916 - Office, Chief Signal Officer
19 Mar 1917 to 14 Jun 1917 - Duty in France as Aeronautical Observer, representing the Aviation Section, Signal Corps.
15 Jun 1917 to 28 Aug 1917 - Designated Aviation Officer of the American Expeditionary Forces, upon arrival of the Commander-in-Chief of the AEF.
10 Oct 1917 to 15 Jan 1918 - Air Commander, Zone of Advance, France
16 Jan 1918 to 27 Jun 1918 - Chief of the Air Service, First Army Corps, France
28 Jun 1918 to 24 Jul 1918 - Commander, 1st Brigade, Air Service, France
10 Aug 1918 to 14 Oct 1918 - Chief of Air Service, First Army, France
15 Oct 1918 to 14 Nov 1918 - Chief of Air Service, Army Group (comprised of First and Second Armies), France
14 Nov 1918 to 16 Jan 1919 - Chief of Air Service, Third Army, France.
17 Jan 1919 to 28 Feb 1919 - Enroute to the United States via England.
10 Mar 1919 to 15 Jul 1920 - Detailed as Director, Military Aeronautics, under the Director, Air Service.
16 Jul 1920 to 4 Mar 1921 - Assistant Chief of Air Service (Served under a recess appointment).
27 Apr 1921 to 26 Apr 1925 - Assistant Chief of Air Service.
27 Apr 1925 to 19 Sep 1925 - Air Officer, 8th Corps Area, San Antonio, Texas.
20 Sep 1925 Detached Service to Washington, D.C., awaiting trial by General Court-Martial.
28 Oct 1925 to 17 Dec 1925 Trial by General Court-Martial
1 Feb 1926 - Resignation accepted by the President, on which date he was honorably discharged.

Summary of Efficiency Reports, Admonitions, and Other Matters of Record

/Examiner's Note: In order that a relatively complete brief of the military service of General Mitchell will be before the Board, excerpts from Efficiency Reports, Admonitions, and other pertinent matters of record will be included, which will cover his entire military career./

1898: William Mitchell entered Federal service at the age of 18 years during the Spanish American War as a Private, Company M, 1st Infantry, Wisconsin Volunteers. He was appointed 2nd Lt, 1st Infantry, Wisconsin Volunteers, on 8 June 1898, and served on duty with the Signal Corps at Quemados, Cuba, from 8 December 1898 to 24 August 1899.

1899: In a report of the duties performed by Company F, Signal Corps, submitted by Captain D.J. Carr, Signal Corps, U.S. Volunteers, Bautista, P.I. during the Philippine Insurrection, Capt Carr included the following comments for the dates indicated relative to Lieutenant Mitchell.

Nov 16: "Three miles of insulated wire was laid north of Tarlac in anticipation of advance. Had considerable trouble crossing washout, but due to the excellent work of Lieutenant Mitchell and squad in preparation for the advance ... our supplies of wire, etc., and even our heavy handcars /were carried/ across the river promptly ... /Lt. Mitchell and his squad had/ built a bamboo raft which was of great service in getting /the supplies across the river./

Nov 17: "Party goes back to Gerona, cutting the wire through. Lieutenant Mitchell and party started from Tarlac with upright reel, took up insulated wire between Gerona and Paniqui, as repaired Spanish wire was found to be satisfactory.

Summary of Efficiency Reports, Admonitions, and Other Matters of Record (cont'd)

Nov 28: "Lt Mitchell and party begin work on line to Tayug.
Dec 19: "Lt. Mitchell and detechment cut in loop on Tayug line to Rasales; distance, three-quarters of a mile."

An Efficiency Report reflects that Lt. Mitchell "served most efficiently in ... the Philippines, /by/ distinguishing himself greatly by connecting telegraphically MacArthur's command with Lawton's at a critical period of the campaign."

1900: Lt. Col James Allen, Chief Signal Officer, Department of the Philippines, Manila, P.I., indicated Lt. Mitchell's performance of duty as "Excellent" and commented. "Excellent work in various parts of the Philippines, and especially on important line of communication from Manila to Apurri, overcoming great obstacles and dangers .... Bright, well educated, zealous officer. Make excellent officer in the permanent establishment."

1901: /Duty: Asst Instructor of EM at Co A, Signal Corps, /Signal Corps Post, Fort Myer, Va., in Telegraphy and Signaling./ Major J. E. Maxfield, Commanding, Signal Corps Post, indicated, "Duties satisfactorily performed." He also indicated "Good" capacity for command, "but lacks experience."

1902: /Duty: Constructing military telegraph lines in Alaska, with Headquarters at Eagle City./ Brig. Gen. G.M. Randall, Commanding, Department of the Columbia, stated, "Duty performed in a perfectly satisfactory manner and under great difficulties." He rated Lt. Mitchell's general conduct, professional zeal, and ability as "Excellent" and his capacity to command, "Good."

1st Lt. Mitchell was commended by the Department Commander on the excellent work done on completion of the All American telegraph line in Alaska.

1903: /Duty: Constructing military telegraph lines in Alaska/ Brig. Gen. F.Funston remarked "Duties satisfactorily performed."

1905, 1906: /Duty: Asst Instructor, Signal School, Ft. Leavenworth, Kansas/ Brig Gen J. Franklin Bell, Commandant of Service Schools, commented, "Captain Mitchell is an earnest, zealous, efficient young officer, intensely interested in his professional work and in the efficiency and appearance of his company. Cheerful, sanguine, courteous, subordinate, and of agreeable personality. Will cheerfully undertake to perform any duty; ambitious and willing; soldierly and neat in personal appearance."

In a letter dated 22 June 1906, addressed to The Chief Signal Officer of the Army, Lt Col Lea Febiger, Chief, Bureau of Consolidated Relief Stations, San Francisco, California, invited attention to the fact of Captain Mitchell's "thoroughly satisfactory work performed by him as Chief of the First Relief Section of this City..."

1907: /Duty: Chief Signal Officer, First Expeditionary Brigade and Army of Cuban Pacification./ Brig Gen. Thomas H. Barry, Commanding, Army of Cuban Pacification, Marianao, Cuba, rated duty performance as "Excellent" and commented, "Captain Mitchell is an enthusiastic, energetic young officer. Especially well qualified for signal duties with troops in the field."

1908, 1909: /Duty: Student, The School of the Line, and the Army Staff College/ Brig Gen Frederick Funston, Commandant, Service Schools, Fort Leavenworth, Kansas, remarked, "A bright, energetic man. Exceptionally well qualified for work in his own corps /Signal Corps/."

MITCHELL, William (Billy) O-63 (deceased)

PART III (cont'd)

Summary of Efficiency Reports, Admonitions, and Other Matters of Record (cont'd)

1910: /Duty: Commanded various Signal Corps Detachments at Ft. McKinley, P.I./ Brig Gen R.D. Potts, Commanding, Ft. William M. McKinley, Rizal, P.I., rated Attention to Duty, Professional zeal, and Intelligence and Judgment as "Excellent."

Lt. Colonel George P. Scriven, Chief Signal Officer, Hq Philippine Division, Manila, P.I., stated, relative to the Signal Troops which were on an expedition to China, "All Signal Troops will, of course, be placed under control of Captain Mitchell, who in addition to being in command of the field company, should be designated as chief signal officer of the expedition.."

1911: Lt. Col George P. Scriven, Chief Signal Officer, Hq Phil Div, reported to the Chief Signal Officer, U.S. Army, Washington, "I desire to say that I regard /Captain Mitchell, Commanding, Company L,/ as one of the best officers I have ever known. A thorough field soldier, a credit to his own service and to the Army; he combines energy, ability and soldierly qualifies in the highest degree. His work in organizing the field company (L) has been admirable."

Col. W.C. Rivers, Philippine Constabulary, Manila, In Charge of Relief Work, stated, "The excellent work performed by the several detachments of the Army Signal Corps, under the command of Captain William Mitchell, Signal Corps, Fort William McKinley, assisted greatly in the relief work at Lake Taal, following the recent eruption of the volcano."

1912: Colonel A.B. Dyer, Commanding Patrol District of El Paso, Ft. Bliss, Texas, rated Captain Mitchell's Attention to Duty as "Excellent" and indicated that in view of Captain Mitchell's energy, ability and enthusiasm he "would fit nicely on General Staff duty."

Brig Gen E.Z. Steever, Commanding, Patrol District of El Paso, indicated Captain Mitchell as "an energetic and efficient officer." He rated Captain Mitchell's Attention to Duty and Professional Zeal as "Excellent," and his General bearing and military appearance,and Intelligence and Judgment as "Very Good."

Col Arthur Williams, Commanding, Fort D.A. Russell, Wyo, stated that he had known Captain Mitchell since the year 1899, rated performance of duty as "Excellent," and indicated he would be "glad to have him" serve under him in either peace or war. /During this period Captain Mitchell travelled in Manchuria, Korea, and Japan, inspecting the battlefields and troops, and studying the military systems of Japan, Russia, and China. He submitted a report of his observations to The Adjutant General./

Captain Mitchell was recommended for detail on the General Staff by a Board of General Officers which convened 1 March 1912 to select officers for detail on the General Staff.

1913: Brig Gen William Crozier, Chief of Ordnance and Chief of War College Division, commented, "Captain Mitchell is a careful and industrious officer, but I do not consider him specially qualified for laborious and pains-taking staff duties."

1914: Col John Biddle, General Staff, stated, "An active, energetic officer, but not especiallyqualified for General Staff work. Would do well as a line officer in time of war."

MITCHELL, William (Billy) O-63 (deceased)

PART III(contd) Post Service Matters of Record

Colonel Mitchell passed away 19 February 1936, at the age of 56. He was buried in the family cemetery at Milwaukee, Wisconsin.

During the period Feb 1936 through July 1946, a number of Bills and Resolutions were introduced in the Congress relating to Colonel Mitchell. These bills or resolutions would have authorized the President to accomplish certain posthumous acts with reference to the late Colonel Mitchell. The substance of these bills was as follows:

(2 of 15)

1. Authorize the President to restore the rank of Brigadier General as of date of resignation, with no accrual of pay, allowances, or financial benefits;

(8 of 15)

2. Authorize the issuance of a posthumous commission as a Major General, USA, as of the time of his death. (The Department of the Army interposed no objection to its enactment.)

3. Authorize the payment of all pay and allowances to the widow of Colonel Mitchell had he remained in the Service until the date of his death. (War Department opposed enactment.)

4. "That the Congress hereby regards Colonel William Mitchell as having been exonerated of all the charges on account of which a judgment of court-martial was on January 26, 1926, entered against him and the causes which he espoused and by reason of which such court-martial was instituted to have been vindicated by the passage of time ..." (The War Department opposed enactment.)

5. Pay to the widow the sum of any monies, which, pursuant to the approved sentence, were deducted from his pay and allowances from the date of his conviction until the effective date of his resignation; and pay the amounts which he would have received as pay and allowances if, for the period from the date of his resignation until the date of his death, he had received the full pay and allowances of a Colonel, the rank he held prior to his conviction. (The War Department opposed enactment.)

(5 of 15)

6. Authorize the President to place his name on the unlimited list of retired officers with entitlement to the retired pay of a Colonel. (The War Department opposed enactment.)

None of the above Bills or Resolutions were enacted into law.

Immediately following his death in February 1936, and at periodic intervals thereafter, a number of bills were introduced in the Congress to authorize the President to posthumously award Colonel Mitchell a Medal of Honor in the name of Congress. On 8 August 1946, the President signed into law Private Law 884, (60 Stat 1319) which bestowed a Medal of Honor upon the late Colonel Mitchell. (The War Department, from the beginning, did not oppose the enactment of this legislation.)

Norman A. Compton

NORMAN A. COMPTON
Examiner

war and navy departments to Congress have almost always given incomplete, misleading or false information about aeronautics, which either they knew to be false when given or was the result of such gross ignorance of the question that they should not be allowed to appear before a legislative body.

"The airmen themselves are bluffed and bulldozed so that they dare not tell the truth in the majority of cases, knowing full well that if they do, they will be deprived of their future career, sent to the most out-of-the-way places to prevent their telling the truth and deprived of any chance for advancement unless they subscribe to the dictates of their non-flying bureaucratic superiors. These either distort facts or openly tell falsehoods about aviation to the people and to the Congress.

"Both the war and navy departments maintain public propaganda agencies which are supposed to publish truthful facts about our national defense to the American people. These departments, remember, are supported by the taxes of the people and were created for the purpose of protecting us from invasion from abroad and from domestic disturbances from within. What has actually happened in these departments is that they have formed a sort of a union to perpetuate their own existence, largely irrespective of the public welfare - and acting, as we might say about a commercial organization that had entire control of a public necessity, 'an illegal combination in restraint of trade.'

"The conduct of affairs by these two departments, as far as aviation is concerned, has been so disgusting in the last few years as to make any self-respecting person ashamed of the cloth he wears. Were it not for the great patriotism of our air officers and their absolute confidence in the institutions of the United States, knowing that sooner or later existing conditions would be changed, I doubt if one of them would remain with the Colors - certainly not, if he were a real man.

"The story is a long one, beginning practically with the inception of aviation in this country, so I shall mention only a few things in connection with the disgraceful performances which have occurred this summer.

"Seeing no progress in our efforts, which had been continued for years, to convince or even seriously interest the governing bodies of the war and navy departments to better our aeronautical condition, we were stirred to further action by the killing of Lieut. Pierson and Capt. Skeel in the dilapidated racing airplanes, during last October's air meet. This was caused by an arrangement between the navy and army that the navy should take the racers one year and the army should take them the next year, thereby equalizing propaganda, not service. Instead of building new airplanes, our men were given the old crates to fly at those terrific speeds. Of course, they came to pieces as they were designed only for one race two years before. This was done in spite of the fact that we had sufficient money to build new ships according to entirely advanced patterns and new safety factors. We, in the air fraternity, then and there decided to put the issue squarely up to Congress and the people. We received an immediate response from the people and the Congress, because they saw the right of our proposition, which was to make a single department of national defense with sub-secretaries for the land, the air and the water, each to have an equal voice in our national defense system. The general scheme, by the way, has been adopted by practically every

of the House of Representatives last winter, it probably would have passed by a large majority.

"Congress also provided that not less than $50,000 out of monies already appropriated, could be spent for the aerial bombardment of battleships and shipping board vessels while under their own steam and moving, so as to set at rest any doubt of aircraft's ability to destroy and sink any seacraft which floats on the water.

"It was evident then that the American people were awakening to the necessity for a change and that if this change were to be prevented by the war and navy departments, that they must act at once. What was the result? Steam was gotten up by the navy on the one hand to disprove and deprecate the value of air-power and show the value of the surface vessels and battleships, and on the part of the army to fool the public as to the value of anti-aircraft, cannon and machine guns. Any operations by the air service to sink the ships, as provided for by the law of the land, were stopped. Now, what have the army and navy done to show that the existing obsolete systems should be maintained?

"First, the great Pacific naval maneuvers - the main features of these were the assembling of a fleet of some 148 surface vessels in the Pacific, the parade up out Pacific coast and entrance into San Francisco Harbor and then the trip to Honolulu. Press representatives and congressional committees galore were handled, fed and entertained according to the good old navy's propaganda system. It was heralded that the navy had taken the Hawaiian Islands. Now, let us see what actually would have happened had there been war. Suppose that we had been at war with a Pacific power and this fleet of surface vessels had been in San Francisco Harbor. Instantly the Pacific power's submarines would have planted all entrances to the harbor with mines, would have covered all the approaches with these death-dealing engines. If the surface vessels ever got through these, the whole Pacific Ocean would be districted off into squares and to each of these districts submarines would be assigned for the purpose of tracking the surface ships and attacking them. These ships would be under constant attack by gun fire from the submarines, that can carry any size cannon and use projectiles containing gas, high explosives or armor piercing, they use under-water torpedoes which not only will hit the side of the ships but will hit their bottoms, and can produce gas clouds which will completely envelop any fleet.

"If any vessels of the fleet survived the submarine attacks, crossed the sea and came within hundreds of miles of the hostile coast, they would be sent to the bottom forthwith, by aircraft. If the Pacific maneuvers showed anything conclusively, it was that aircraft acting from land bases can destroy any surface fleet, coming within its radius of operations. This already had been amply proved by our bombardment tests in 1921. As far as Honolulu is concerned, it is not a position of decisive influence in the control of the Pacific. Its value consists in being an excellent submarine base to act against hostile surface seacraft and submarines. The control position of the Pacific is our own territory of Alaska and the peninsula of Kamchatka opposite. It is reported that from fifty million to eighty million dollars has been spent just for this Pacific parade of our navy - more properly, the vessels belonging to the United States, because in fact it is not a navy in the modern conception of the term. What would this amount, applied to the

RECORD OF TRIAL BY GENERAL COURT-MARTIAL (contd)

"Next to get publicity and make a noise about what it was doing with aircraft, this so-called Hawaiian flight was arranged for. Even if it had been made successfully to Honolulu it would have meant little, either commercially or strategically, compared to what a flight to Europe or Asia would. Three airplanes were built to participate in it. These showed nothing novel in design and were untried for this kind of work. One never got away from the Pacific Coast, another flew a few miles out and was forced to land in the water, and one was lost on account of being out of gas, somewhere on the high seas. Patrol vessels were stationed every 200 miles, a distance entirely too far apart for an experimental flight of this kind, with such primitive flying machines as the PN-9s are. Double or triple this number of vessels should have been there. In fact, the whole Pacific fleet should have been employed there, instead of joy-riding around the Antipodes. As it was, when these slow-moving airplanes, going about 75 miles an hour, were first sighted from the destroyers, the destroyer should have steamed out full speed in the direction the airplane was going. This would not only indicate the proper course to the plane, but would place the destroyer closer to it in case of accident. As the airplanes were only moving at about 75 miles an hour, a destroyer could have been speeded up to within 30 miles of that speed. Why, if they expected to run short of fuel, as indeed they might, did they not make arrangements for refueling the airplane while it was in the air, by another airplane, as we have repeatedly done? Why did they carry a crew of five, when the weight of two men in fuel might have carried the ship through?

"What happended to this really good-for-nothing big, lumbering flying boat, when its brave navigators began to run short of gas, over a heavy sea? The probability is that they held her up as long as they could. As they neared the water, caught by a sudden gust, she might have been thrown into a stall and spun down amd gone straight under the waves. We hope that some passing fisherman may have picked them up as our Lieut. Wade was picked up in the North Sea. Our navy did not find him either; all they did was to smash his plane when it was turned over to them by the fisherman. After all, the Hawaiian Islands are not a vital area with our present methods of national defense.

"Then, the disaster to the Shenandoah - killing Capt. Lansdowne, the last of our really experienced airship captains, a splendid man, with his companions, following in the wake of Capt. Mabry and Capt. Mayfield, our airship commanders who have gone before.

"I do not know exactly what happened to the poor Shenandoah. She was an experimental ship, built in this country. I believe she was about 50 per cent overweight in her structure. She had broken away from her mooring mast - an inefficient way of handling airships, anyway - last spring, and her whole structure was badly strained. I believe that the number of valves in the gas bags containing the helium had been diminished so as to save helium gas, which is expensive in money, but which made the ship more dangerous to the crew. The Shenandoah was going West on a propaganda mission for the navy department to offset the adverse publicity caused by the failures in the Pacific and Artic. Note: Propaganda and not service is the keynote in these undertakings.

"What business has the navy over the mountains, anyway? Their mission is out in the water not only out in the water but under the water, out of sight, away from the land - that is why we have the navy.

PART III (contd)

Record of Trial by General Court-Martial (contd)

"No accurate meteorological arrangements are available for aircraft in this country. The weather bureau is under the department of agriculture and primarily organized to turn out weather reports affecting onions, cabbage and other crops. While this is very necessary, it is a complete failure as far as we are concerned. I say this after having flown across mountains and bucked their storms hundreds of times.

"The Shenandoah, 50 per cent overweight in her structure, her members strained last spring, possibly some of them disintegrated from the action of the non-freezing compound in the radiators of her engines, wherever this liquid dropped on them, and with valves in her helium gas bags reduced, strikes a storm. She is caught in an up-current of air. Due to her excessive weight, her reserve buoyancy is low. She is carried high up by this current and her gas bags begin to expand, due to the altitude. The crew valves her in an attempt to allow the gas to escape, but the automatic valves reduced in number do not allow the gas to escape fast enough; the pressure of the expanding gas on the structure tears the ship to pieces. Some of her crew go to eternity. Those that do not, escape by miraculously good fortune. No notice of the storm was received in time to avoid it. Her survivors are muzzled by the navy department, pending a whitewash board. Are these things so, or are they not? I am down here in Texas and have not all the data at hand, but I am sure the facts are practically as stated.

"What results?

"The Navy department announces that this shows that America can not be reached by hostile aircraft. What has that to do with it? The way that America will be reached from Asia is by way of Alaska. The water that has to be crossed is scarcely wider than the English Channel. The route from Europe is by the same course that the round-the-world flyers took to Iceland, Greenland and North America, whenever a country gets powerful enough to undertake the operation. What has the loss of a seaplane near Homolulu and an airship over the mountains to do with it?

"The impression is given to the public at large that the Shenandoah was a modern ship, properly constructed, properly operated and completely equipped. This was not the case. It shakes the faith of the people in airship transportation because they are not given the exact facts on the subject. This is not an argument necessarily for the maintenance of many airships by the Government but it is a demand for the facts in the cas so that we will not be hindered in the commercial development of this splendid aircraft on account of the accident to an airship due to incompetence in the navy department, and the criminal negligence in the ordering of this trip. If we took the safety valve of a locomotive off to save water in the desert and it blew up, killing the engineer and passengers, would we say that the railways were no good in deserts and go back to camels?

"An interesting sidelight might be thrown on the development of airships in this country. When I came back from the war in 1919, I attempted to get airships for the purpose of making them into airplane carriers. That is, having airplanes take off from them and land on them, so that they could get out in the middle of the ocean if necessary and attack hostile vessels, in case of war. I obtained permission immediately from the then chief of staff, Gen. March, and then Secretary of War, Sec. Baker. I sent Maj. Hensley to Europe with money to get the ship. We had even gone so far as to order the gasoline to Germany for the voyage of the ship to this country.

Record of Trial by General Court-Martial (contd)

"Mysteriously the order was rescinded - all work was stopped - it was said at the time that it was against the provisions of the treaty, which I do not believe was the case. Work had already been begun on the frames by the Geramns. This was the ZR-2, rechristened the Los Angeles, which the navy obtained recently, six years after I ordered it. What has it been used for? Nothing but parading around the country. It is evident that whenever an airship is developed as an airplane carrier the necessity for any naval surface airplane carrier may be done away with. Is this the reason the navy has the Los Angeles?

"The Germans are the only people who have had real experience with airships. They had many a disaster before they learned how to handle them. I have seen German Zeppelins years ago in terrific storms. A storm has little effect on an airship properly constructed and ably handled.

"What other things has the navy done this summer?

"After borrowing some airplanes from the army, that were entirely inadequate to the work in hand, they went on the MacMillan trip to the Arctic. More propaganda! As far as can be learned, from a distance, they had a cat and dog fight all the way up and back, between MacMillan, the pilots and the navy department, and, of course, got nowhere and did nothing. Is there an airman who does not know that with the little jitneys they took up there the pole could not be reached? Another example, says the navy department, of the incapacity of aircraft.

"At last the great anti-aircraft tests took place. A battleship goes out into the sea. She takes the airship Shenandoah and has her tow a target at 33 miles an hour, at a known altitude, in broad daylight and on a certain course. Some officers have told me that the dirigible was heading into the wind of an intensity of many miles an hour and that therefore the target really was almost standing still in the air. The navy shoots at it all day long in this position and hits it a few times and publishes to the people of the United States the wonderful results obtained, to impress them with the fact that battleships can be protected by anti-aircraft guns, which is absolutely and entirely false.

"What is our navy for? Presumably it is to control lines of sea communication on the high seas. What is is actually? It is entirely and completely outpointed by Great Britain in the Atlantic. What can it do across the Pacific as at present organized? Nothing - against an insular Asiatic power, whom you all know.

"The navy has about one billion, five hundred million dollars invested in navy yards. The upkeep and depreciation of these amounts to about one hundred and fifty million dollars a year. How many of these are useless and how many of them are of any benefit? Probably not many. Suppose we took fifty million of this and applied it to the development of aircraft and submarines under competent airmen and submarine men? What could we do with it?

"Every time a battleship is built, the ship itself, when it is completed, may cost from fifty million to seventy million dollars. It has to be protected by submarines, destroyers, cruisers, and aircraft, the total cost of which is around or over one hundred million dollars, so that every time a battleship is built,

the expenditure of one hundred million dollars is necessary. I believe a battleship today is a useless element in the national defense armament of the United States. Suppose we had even one-half of the cost of a battleship to use in the development of our aircraft and submarines.

"These are only a few of the things which must be brought up before the people and the coming Congress.

"The navy, to maintain its position, keeps asking for more aircraft, which is cannot use legally, because the legal defense of the land is entrusted to armies. In spite of the legal restrictions, however, but to keep control of aviation and not let it get away, the navy department continually gets more money from congress by its Washington lobby so as to keep the political support of the aircraft manufacturers and, possibly, some others interested in them. This year, the navy's estimate for the aircraft amounts to $37,360,248. They only have one aircraft carrier, the Langley, which can go about half as fast as a battleship, and which is an obsolete collier. It can hold 36 small airplanes. They are building two aircraft carriers which can hold 60 to 70 planes. These are practically obsolete before they are completed.

"Where is the thirty-seven million for aircraft going? It is going into land aircraft which have nothing to do with the navy's operation on the seas and which will be used as a political lever for the maintenance of their existing system.

"The War Department, that now is entrusted by law with the aerial defense over the land areas of the United States and its possessions, including the protection of navy yards, asks for $24,582,000. Consider how foolish it is. The navy, an organization charged with going to sea and which must operate from surface vessels, which as a matter of fact are practically obsolete now, and which will afford no real protection to the country in case of an air attack, asking for two-thirds more than the army does, which acts from land bases and is specifically charged with the defense of the land areas. The amount allotted to the navy for new aircraft is three times as much as the army.

"Now, let us turn to the war department. The war department has done nothing this summer to develop air power and has undertaken to prove by tests that anti-aircraft guns can protect cities, which is known everywhere to be false. They have fixed up a scheme to give constructive hits when the guns firing do not hit the targets at all. The firing has been at targets towed at a constant altitude, over courses which have now been flown hundreds of times, at greatly reduced speeds and never in excess of 75 miles an hour. Even this was only because the wind was helping the plane along and under weather conditions that have been ideal. In spite of all this preparation, the results have been laughable. As an example of one of these performances, the war department has taken the lid off for publicity in the 2d corps area - that means around New York - with the result that the coast artillery tells the papers the story in greatly exaggerated terms, whereas the chief of air service has been completely muzzled. An interesting example of some of the anti-aircraft target practice was the testing of the listening device for aircraft at Camp Dix, July 27. The umpire had told Capt. Hall, commanding the airplane bombers at Mitchel Field, that in the next anti-aircraft test he was at liberty to fly under

conditions which would be used in war. Capt. Hall informed the umpire ahead of time that he would glide into the target. Before this, the coast artillery had had all their practice with planes that had flown over at a fairly constant altitude and with their motors open. The night of the test the planes got their proper altitude, played around a little just out of range of the searchlights and just within range of the listening devices on the ground. The coast artillery thought that this was easy because they picked up the planes far off and plotted their course absolutely; but all of a sudden sounds from the airplanes stopped. Five or ten minutes later, the bombers dropped their bombs directly on the target. All around not a sound had been heard before this. The fury of the ground officers, artillery officers and others was tremendous. The air service had not acted fair and had fooled them - all of which a kind enemy of course in war would never do! Discussion even went so far that it had to be pointed out that it was provided in our bombardment manual to attack a place in this fashion. This is just one little instance of this ridiculous performance. So far, practically the only bombardment airplanes we have in this country have been used up towing these targets for ground shooting which other airplanes could just as well have done. The actual cost out of air service funds appropriated will be approximately $200,000 by the time they are completed this fall.

"Why are things done this way? The coast artillery sees that it is bound to be greatly reduced on account of the fact that aircraft are a positive coast protection. The coast artillery now has about 92 stations. For the ten years prior to 1920, about two billion dollars was spent on coast defense - not two million, but two billion. What good are these coast defenses? None - except those in the immediate vicinity of large cities where a submarine might emerge at close range and plant a few shells in the city. What could the saving do, on these useless expenditures, if used by the troops of the mobile army stationed in Texas and other frontier points, living in shacks, unequipped with modern conveniences, cut down on every activity and rendered almost incapable, in case the Constitution is menaced, of putting down insurrection, or executing the laws when all other means fail, and patrolling our frontiers and holding our insular possessions? What would only a small part of this tremendous expenditure mean in the development of aircraft?

"Not one heavy bomb has been dropped by the air service line units in target practice for two years. Only about four or five modern sights are on hand with the bombing groups; and today, I, who know war personnel better than any living man, can only put my hand on two perfectly capable bombardment crews to handle our aircraft in case we are attacked.

"The other thing that the war department has done this summer is to study how the flyers' pay could be reduced or taken away from them. Think of it, the whole effort of the war department during the summer has been to fool the people into thinking that anti-aircraft cannon are a protection and to keep the rightful flying pay away from the pilots.

"To make a long story short, we are utterly disgusted with the conduct of our military affairs applying to aviation. Our pilots know they are going to be killed if they stay in the service, on account of the methods employed, in the old flaming coffins that we are still flying. Those that still remain have held on so long that if they get out they would starve. They don't dare open their mouths and tell the truth, because they and their families might be booted out to some obscure place. No finer body ever existed in the makeup of our country than these men.

Record of Trial by General Court-Martial (contd)

There are many able men in the army - these should be developing the grand army in accordance with the needs of the nation. There are many able men in the navy - but the bureaucracies that both of these national services maintain in Washington have passed all bounds of national decency. They are deluding the public, sacrificing our national defense and not only wasting the money of our citizens but the lives of its ablest men, our flying officers.

"This condition must be remedied. It is not in the field of partisan politics. It concerns us all. The American people must know the facts and, with their unfailing common sense and ability, they will surely remedy it.

"As far as I am personally concerned, I am looking for no advancement in any service. I have had the finest career that any man could have in the armed service of our United States. I have had the great pleasure of serving in all our campaigns from the Spanish war to the present and of commanding the greatest air forces ever brought together on the planet. I owe the Government everything - the Government owes me nothing. As a patriotic American citizen, I can stand by no longer and see these disgusting performances by the navy and war departments, at the expense of the lives of our people, and the delusion of the American public.

"The bodies of my former companions in the air moulder under the soil in America, and Asia, Europe and Africa, many, yes a great many, sent there directly by official stupidity. We all may make mistakes but the criminal mistakes made by armies and navies, whenever they have been allowed to handle aeronautics, show their incompetence. We would not be keeping our trust with our departed comrades were we longer to conceal these facts.

"This, then, is what I have to say on this subject and I hope that every American will hear it."

Specification 2 alleged, in substance, that the above statement was insubordinate to the administration of the War Department.

Specification 3 alleged, in substance, that the statement was highly contemptuous and disrespectful of the War Department and was uttered and published with intent to discredit the administration of the War Department.

Specification 4 alleged, in substance, that the statement was highly contemptuous and disrespectful of the Navy Department and was uttered and published with intent to discredit the administration of the Navy Department.

Specifications 5, 6, 7, and 8 alleged substantially the same as Specifications 1 through 4, respectively, except that the Specifications referred to a Statement which was uttered and published on 9 Sep 1925, under similar circumstances as those set forth in the preceding Specifications of 1 through 4. The Statement of 9 Sep 1925, reads as follows:

(TAB J) "Again I have been asked to express my opinion on the so-called disciplinary measures that are being taken in my case by the War Department. So far, all I have to go on are the newspaper reports. It is entirely right and proper that an investigation should be made by the War Department on any question involving military jurisdiciton.

PART III (contd)

RECORDS OF TRIAL BY GENERAL COURT-MARTIAL (contd)

"Discipline is a difficult thing to define. Some people call it the unhesitating obedience of a junior to a superior officer. If, however, conditions that obtain are not properly estimated by superior officers and if superior officers are not that in fact but only in name, then the discipline ceases, because the people that are forced under them, recognizing that they are incompetent for their positions, fail to have the trust and loyalty in them which should be the case in any undertaking.

"In time of war, conditions have to be met squarely, willy-nilly, but in time of peace, questions of great moment to the country must and will be investigated by all the people of the country on their merits, otherwise we would not have representative government. To obscure the issue in this case, which is the fact that our aeronautics is in a disgraceful condition and our whole national defense is little better, is merely to delude the public. It is the old sea lawyer's game of 'indulging in special pleading to obscure the main issue' or as our friends, the diplomats, would say, of 'enlarging the field of discussion so as to hide the questions brought up.' What I have said about the conditions of our national defense hurts the bureaucrats in Washington - it ought to hurt them because it is true. When our men crash in airplanes and are killed, it does not hurt them - it is all over with.

"I also note with amusement the question of whether my statements are authentic or not. Whenever I make a statement, it is authentic. I am always willing to back every part of it. I am perfectly willing to indulge in any constructive discussion for the betterment of our aeronautics and our national defense with any agent of any department of government, or any citizen of the United States but to discuss any question of insubordination or subordination at this time involving the larger questions and not involving service with the troops that I am now here with at San Antonio, which is an honor and pleasure, is entirely beside the point. If the department does not like the statement I made, let them take any disciplinary action they see fit, according to their judgment, court-martial or no court-martial. There will be no investigation, no pleas, no defense on my part covering a question of that kind. The investigation that is needed is of the War and Navy Departments and their conduct in the disgraceful administration of aviation. This, however, is unnecessary, as the sworn evidence spread on the pages of the hearings before Congress in the last session is sufficient to show this.

"Let every American know absolutely and entirely that we are going to better our National Defense, that we are on the warpath and that we are going to stay there until these conditions are remedied. The barking of the little dogs that follow the main pack should not delude any clear thinking person as to the object of our chase, so while our bureaucrats and non-flyers indulge in mental gymnastics in Washington in an attempt to evade the truth by whitewashing boards, alibis and suggestions for fixing the blame for disasters on the dead commanders, when they know that they themselves were responsible, are not worth the time taken away from teaching our people what our national defense should be and telling them the truth about it.

"I want to say a word about Secretary Weeks, whose name has been brought into this [illegible] and who has been a very sick man. I have the kindliest personal feelings toward him. While we have differed on questions of policy,

Record of Trial by General Court-Martial (contd)

I will never forget the part he played in the airplane-battleship tests in 1921, when we showed the world that aircraft dominate and that they could sink or destroy any battleship that had been made or could be made. In that year, failing to get any response from the War and Navy Departments to develop this feature of air defense, Dan Anthony of Kansas, in the House of Representatives, and Harry New of Indiana, in the Senate, pushed through an act of Congress requiring the President to turn over the battleships to us for demonstration. Seeing that the issue could be no longer avoided, every attempt was made by certain bureaucrats to evade it, some of the worst methods being employed that I have ever heard of being carried out in any service, foreign or domestic. Secretary Weeks stood up fairly and squarely and made his decisions without bias or favor. The result of these tests practically have revolutionized methods of national defense all over the world.

"The question of cartoons of Secretary Weeks in the book I have written, is mentioned in the newspaper dispatches. These cartoons are incorporated in the inside cover of the book and were put there by the publishers. They appeared in the public press and were published all over the country a number of months ago, and I imagine made Secretary Weeks laugh as much as anybody else. I think they make everybody laugh. Secretary Weeks is a graduate of the Naval Academy and was a naval officer and has many friends in the navy, sees them frequently, and this is bound to influence him as it would any other human being; but I want it distinctly understood that as far as I am personally concerned, I have the kindliest feelings for him individually, no matter what our views on public questions may be.

"Now then, if an investigation is desired, I am eager to have it. But it must be entirely public and all the evidence must be published for the people to know about. The board making it should be composed of representative Americans instead of members of the army and navy bureaucracies. Let its members be from the East and the West of our country, from the North and the South, and men from the fields and factories, as well as from the counting houses and the industries. Then and only then will we begin to get at the actual facts involved in this proposition and remove it from petty politics and entire bureaucratic repression. Let everybody qualified to speak appear before this body and the American people will soon see what the result of their deliberations is.

"We had a body of this kind appointed once before to investigate the subject of aviation. They investigated it in this country and they investigated it all over Europe. They recommended unanimously and unqualifiedly a united air service in this country as being the only means of keeping us abreast of modern national developments. It was promptly turned down and quashed by the War Department.

"As far as I am personally concerned, it does not make any difference to me whether I am in the army or out. If the bureaucracies wish to throw me out, they probably have the machinery for doing it and it will be only one more evidence of the condition into which our national defense has drifted. In or out of the service, we have laid out hands to the plow and the field of our whole national defense will be thoroughly cultivated and vitalized before we lay it aside. I can tell you now that when we get through we are going to modernize and simplify a good many other departments of the government."

Record of Trial by General Court-Martial (contd)

Colonel Mitchell pleaded Not Guilty to the Charge and its specifications.

/Examiner's Note: Since all Board members, the Executive Secretary and the Examiner have personally and individually previously reviewed the entire Record of Trial in this case, only the names of the witnesses who testified during the trial will be listed in this Brief for reference purposes. Since the "Opinion of the Board of Review"contains the summarized substantive testimony of each witness, their testimony will not be set forth in this Brief. The "Page Number" appearing to the left of each witnesses' name indicates the page of the "Opinion of the Board of Review" on which the summarized testimony of that particular witness appears. The exact page numbers in the "Record of Trial"of the testimony of each witness will be found in the "Record of Trial."

Prosecution Witnesses:

Page No.	Name of Witness	Position
21	A. H. Yeager	Newspaper Reporter
21	Luis Felipe Recimos	" "
22	Lt. Col George L. Hicks	Adj Gen, 8th Corps Area
22	Harry Lee McCleary	-
22	Kenneth McCalla	Newspaper Reporter
23	Lloyd Gregory	Employee, Associated Press
23	Henry S. Parsons	Employee, Library of Congress
57	Brig Gen LeRoy Eltings	CO, Ft McPherson, Ga.
58	Maj James J. Bain	Mbr, WD General Staff
59	Capt H. E. Yarnell	USN
62	Lt Comdr Major E. Byrd, Jr.	USN
63	Mr Grover Loening	Airplane constructor
63	Lt Col T.C. Turner	USMC (Naval Aviator)
64	Comdr Kenneth Whiting	US Bureau of Aeronautics
66	Comdr R.D. Weyerbacher	USN
67	Lt Comdr C.E.Rosendahl	USN
69	Lt Ronald G. Meyer	USN
70	Col. C.G.Hall	Air Service
71	Capt G.S. Lincoln	USN
71	Comdr J. H. Klein, Jr.	USN
72	John F. Victory	Asst Secy, Naval Advisory Comm for Aeronautics
72	Lt Comdr Noel Davis	USN Res Forces
72	Lt Comdr Percy T. Wright	USN
73	Rear Adm W. V. Pratt	USN
73	Comdr G.T.G. Stapler	Info Sec, Navy Dept, USN
74	Adm Edward W. Eberle	USN
77	Lt Comdr R.C. Leighton	USN
78	Lt Comdr H. H. Frost	USN
79	Charles Payne Burgess	Asst Prof, Mass Inst of Tech
79	Lt Comdr Frederick A. Mitscher	USN
80	W.H. Stanley	USN
81	Maj Gen Hanson E. Ely	CO, Army War College
82	Maj Gen Robt H. Allen	Chief of Infantry
83	Maj Gen M. W. Ireland	Army Surgeon General
84	Lt. Col Edmund Bullis,	Mil Intelligence Reserve
85	Lt. Col Edward N. Caldwell	Army Reserve & Mbr WD Gen Staff
85	Lt Col John E. Baer	General Staff Corps
87	Maj Gen Mason M. Patrick	Chief of Air Service
88	Capt Howard D. Rath	Mbr of crew of first bomber flight over enemy lines on 12 Jun 1918.
93	Brig Gen Martin A. Reckord	Adj Gen of State of Maryland
93	Maj Gen Chas T. Menoher	Former Director of Air Service
94	Maj George V. Strong	General Staff Corps
96	Maj Gen C. [illegible] Williams	Chief [illegible], US Army

Record of Trial by General Court-Martial (contd)

Prosecution Witnesses: (contd)

Page No.	Name of Witness	Position
97	Maj Gen. Chas P.Summerall	Former Comder, Hawaiian Dept.
97	Maj Gen Robt C. Davis	The Adjutant General
97	Maj Gen Frank W. Coe	
97	Brig Gen Hugh A. Drum	Asst Chief of Staff, WD Gen Staff
99	Maj Gen Dennis E. Nolan	General Staff Corps

Defense Witnesses:

Page No.	Name of Witness	Position
26	Maj Gen Amos A. Fries	- - -
27	Capt Robt Oldys (Army)	Planning Div, Off, Ch of A/S
28½	Maj H. H. Arnold	Info Div. Off Ch of A/S
30	Lt Col W.E. Schauffler	Air Sv Reserve Corps
30	Maj Henry J. F. Miller	On dy in Militia Bureau
31	Lt Col. W. E. Gilmore	Supply Div, Off, Ch of A/S
32	Maj G.C. Brandt	On dy in General Staff
33	Col. O.C. Pierce	Pers Div, Off, Ch of A/S
34	Capt B.V. Baucomb (Army)	Tact Sec, Off Ch of A/S
35	Maj H. R. Harmon	Info Div, Off Ch of A/S
35	Henry Rawlon	Bureau of Standards
35	Mrs. Margaret R. Lansdowne	Widow of Lt. Col Zachary Lansdowne, USN, Comdr of the Shenandoah
36	Maj Raycroft Welsh	Air Service
36	1st Lt Harold L. George	Air Service
37	J. Edward Cassiday	Reserve Corps & Consulting Engr, Chem Warfare Sv
37	Maj Herbert A. Dargue	Air Service
38	1st Lt Donald D. Duke	Air Service
39	Reed G. Landis	Advertising Agent
40	Victor E. Bertrandis	1st Lt, Air Service
40	Capt. W. H. Hale	Air Service
41	Maj H. M. Hickam	Air Service
41	Capt Anton Heinen	An airship line promoter
41	Maj Frank M. Kennedy	Engr Div, Off, Ch of A/S
42	Capt Charles P. Clark	Air Service
42	Lt. Col John A. Paegelow	CO, Scott Fld
42	1st Lt Orville A. Anderson	Air Service
43	Ernest Sheehan	Newspaper Correspondent
43	Maj William R. Blair	Signal Corps
43	Rear Adm Wm.S.Sims	USN Retired
44	Maj William R. Blair	Signal Corps
44	Reed M. Chambers	Connected w/Commercial aircft
45	1st Lt Leigh Wade	Engr Div, Air Service
45	Edward V. Rickenbacker	Former mbr of the first American Pursuit Sq to arrive at the Front
45	1st Lt H.W. Sheridan	Air Service
46	Maj Wm N. Hensley	Air Sv, Student at Army War Coll.
48	Col William Mitchell	(A witness on his own behalf) (TAB K)
53	Mr Randolph Perkins	Mbr of House of Representatives
53	James H. Collier	Ch Avn Rigger, of Shenandoah at time of fatal flight.
55	Fiorello La Guardia	Lawyer & Mbr of House of Representatives
55	James T. Williams, Jr.	Representative

MITCHELL, William (Billy) 0-83 (deceased)

PART III (contd)

Record of Trial by General Court-Martial (contd)

After hearing the testimony of the witnesses and reviewing the evidence before it, the Court found Colonel Mitchell Guilty of the Charge and its Specifications, and sentenced him "To be suspended from rank, command, and duty with forfeiture of all pay and allowances for five years." The sentence was adjudged on 17 December 1925, on which date the Court adjourned.

Incident to the expression of an opinion as to the legal limitations of administrative action which the War Department could prospectively take with respect to Colonel Mitchell, The Judge Advocate General commented, that "The sentence in this case is as broad and all-embracing as it is possible to conceive without complete separation from the army." (4 of 15)

(TAB L) It was the opinion of the Board of Review that "the defense failed to establish the truth of practically all of those statements [referring to the statements which were allegedly uttered and published by Colonel Mitchell as set forth in the specifications] which were thus put in controversy, which are quite numerous, and particularly the following [statements]." (underscoring supplied)

"These accidents are the direct result of the incompetency, criminal negligence and almost treasonable administration of the national defense of the Navy and War Departments."

"Officers and agents sent by the War and Navy Departments to Congress have almost always given incomplete, misleading and false information about aeronautics, which either they know to be false when given or was the result of such gross ignorance of the question that they should not be allowed to appear before a legislative body.

"The air men themselves are bluffed and bulldozed so that they dare not tell the truth in the majority of cases, knowing full well that if they do, they will be deprived of their future career, sent to the most out-of-the-way places, to prevent their telling the truth and deprived of any chance of advancement unless they subscribe to the dictates of their non-flying bureaucratic superiors. These either distort facts or openly tell falsehoods about aviation to the people and to Congress."

"Her (Shenandoah's) survivors are muzzled by the Navy Department pending a whitewash board."

"The conduct of affairs by these two departments, as far as aviation is concerned, has been so disgusting in the last few years as to make any self-respecting person ashamed of the cloth he wears."

"There are able men in the Navy but the bureaucratics that both of these national services maintain in Washington have passed all bounds of national decency. They are deluding the public, sacrificing our national defense and not only wasting the money of our citizens, but the lives of its ablest men, our flying officers."

"The investigation that is needed is of the War and Navy Departments and their conduct in the disgraceufl administration of aviation. This, however, is unnecessary, as the sworn evidence spread on the pages of the hearings before Congress in the last session is sufficient to show this."

"Let every American know absolutely and entirely that we are going to better our national defense, that we are on the war path and that we are going to stay there until these conditons are remedied. The barking of the little dogs that follow the main pack should not delude any clear thinking person as to the object

(Tab L) of our chase, so while our bureaucrats and non-flyers indulge in mental gymnastics in Washington in an attempt to evade the truth by whitewashing boards, alibis and suggestions for fixing the blame for disasters on the dead commanders, when they know that they themselves were responsible, are not worth the time taken away from teaching our people what our national defense should be and telling them the truth about it."

(Tab M) The Board of Review was of the opinion "That the accused committed all of the acts alleged in the specifications was established beyond question. That these acts are in themselves direct violations of the 96th Article of War is also beyond question." The Board of Review was of the opinion that the record of trial was legally sufficient to support the findings of guilty and the sentence. The opinion continued in part, "Under the sentence, if approved, the accused remains an officer of the Army, and in contemplation of the sentence, he will return to rank, command, and duty upon its expiration ... the Board of Review recommends that the sentence be approved, but that the execution of so much of the sentence as adjudges forfeiture of all the allowances and one-third of the monthly pay of the accused, in a non-flying status, be suspended during the pleasure of the President."

(Tab N) The Judge Advocate General concurred in the recommendation of the Board of Review. In forwarding the Record of Trial and the Opinion of the Board of Review to the President, the Secretary of War stated, among other things, "Colonel Mitchell's present pay and allowances in a non-flying status are $600.00 a month, the maximum for a colonel. If given one-third of his pay, which is $483.33 per month, the third would amount to $161.11. His allowances are $120.00 a month rental and $36.00 a month subsistence, making a total of one-third of his pay plus allowances $317.11." The Secretary of War concurred and recommended the sentence be modified accordingly.

On 25 Jan 1926, President Calvin Coolidge approved the sentence and ordered the sentence duly executed, except that so much of the sentence as adjudged forfeiture of all of the allowances and one-half of the monthly pay, was during the pleasure of the President suspended. (Under the sentence as approved, Colonel Mitchell would receive total monthly pay of $397.67. His total regular monthly pay was $639.33.)

(5 of 15) The sentence became effective both as to suspension from rank, command, and duty and to forfeiture of pay effective 26 Jan 1926. At 6:15 PM a copy of General Court-Martial Orders No. 3, War Department, dated 26 Jan 1926, was delivered to Colonel Mitchell.

(5 of 15) Under date of 26 Jan 1926, Colonel Mitchell submitted his resignation, stating "I hereby tender my resignation as an officer of the United States Army, to take effect February first, 1926." On 29 Jan 1926, the President accepted the resignation, effective 1 February 1926, which was announced in Par 4, Special Orders No.24, dtd 29 Jan 1926, War Department. Colonel Mitchell received notification of the acceptance of his resignation on 1 February 1926. With respect to the question whether he desired an appointment in the Officers Reserve Corps, Colonel Mitchell indicated, "No answer at present."

Summary of Efficiency Reports, Admonitions, and Other Matters of Record (cont'd)

BrigGen M.M. Macomb, Chief of War College Division, indicated Captain Mitchell as "well-fitted" for promotion to the next higher grade, and stated, "An active energetic officer with good powers of observation. A very capable officer... I consider him better suited to active service with troops than on general staff duty. Would be an efficient aide de camp to a General in the field."

1915: /Duty:General Staff/ Brig Gen Macomb commented substantially the same as above.

1916: /Duty Assignment: Office of the Chief Signal Officer, Washington./ Brig Gen Geo. O. Squier, Chief Signal Officer, stated, "Specially fitted for field service with mounted troops. Has resourcefulness and initiative in emergency."

1917: Departed the United States for France on 19 March 1917.

Upon assuming command as Air Commander, Zone of Advance, A.E.F., Lt. Colonel Mitchell issued a directive to all Air Service personnel, entitled "General Principles Underlying the Use of the Air Service in the Zone of the Advance." In these instructions Colonel Mitchell pointed out, among other things, "...An army is composed of various arms and services whose complete interdependence and working together is necessary for efficiency. No one arm alone can bring about complete victory ... The Air Service of an army is one of its offensive arms. Alone it cannot bring about a decision. It therefore helps the other arms in their appointed mission..."

1918: /Duty: Chief of Air Service, Zone of Advance/ Maj Gen W.L.Kenly stated that Colonel Mitchell had performed his duties "with great enthusiasm and energy and very well." In his opinion, General Kenly stated, Colonel Mitchell was "A well trained General Staff Officer, an enthusiastic sportsman, a very good military aviator and an all around fine officer. Perhaps more than any other officer he should be credited with the success of our Air Service in France for which he labored incessantly."

/Duty: Chief of Air Service, 1st Army Corps/ Brig Gen F.D. Foulois, Chief of Air Service, 1st Army, commented, "This officer can do excellent work but his instability of character is such that it is absolutely impossible to depend upon his judgment."

Maj Gen H. Liggett, Commanding 1st Army, commented, "A very intelligent and zealous officer. Eager for results and though tenacious of his own opinions is loyal and very capable..."

On 19 Sep 1918 General John J. Pershing recommended Colonel Mitchell for promotion to Brigadier General in the staff. It was indicated that "All the officers recommended have been thoroughly tried out in their respective grades in the A.E.F. and have fully demonstrated their fitness for promotion to the higher grade..."

Lt. Gen. H. Liggett rated, among other things, Initiative as "Superior"; Judgment and common sense, attention to duty, organizing ability and capacity for command as "Above Average." He commented, "A very highly accomplished officer."

PART III (cont'd)

Summary of Efficiency Reports, Admonitions, and Other Matters of Record (cont'd)

1919: In a report dated 17 Jan 1919, which was forwarded to the Commander-in-Chief, A.E.F., Maj Gen Mason M. Patrick, Chief of Air Service, American Expeditionary Forces, stated,among other things, "... I may add that I believe General Mitchell to be a very efficient officer. His personality is pleasing, he is likeable, he possesses exceptional qualifications for leadership, and throughout his service in France he has shown himself to be courageous and resourceful. He thinks rapidly and acts quickly, sometimes a little too hastily. He is opinionated but I have usually found him properly subordinate and ready to obey orders ..."

/Duty: Chief, Air Service, Army Group, A.E.F./ General John J. Pershing, Commanding, A.E.F., commented, "Generally speaking, he handled his job in an able manner, especially when in charge of Aviation in First Army. Prior to that time while he displayed great energy, he did not always succeed in getting the best work out of his subordinates. The task he had was beyond the capacity of most officers."

/Duty: Director of Military Aeronautics and Chief of Training and Operations Group, Air Service/ Maj Gen Menoher, Director of Air Service, commented, "An officer of great energy, an excellent pilot, with a thorough knowledge of the fighting game." General Menoher indicated he would especially desire to have General Mitchell in time of war, and that he would be satisfied to have him in time of peace.

In Dec 1919 Maj Gen Menoher described General Mitchell's Manner of Performance of duty as "Excellent." He rated Intelligence, Professional Knowledge, Force, and Initiative as "Superior," and Judgment and Common Sense, Attention to Duty, and others, as "Excellent." He commented, "An excellent officer of great energy and enthusiasm."

1920: In April 1920, General Mitchell was designated as the representative of the Air Service to serve on the Department of Agriculture Committee on Photographers Surveying, Board of Surveys and Maps.

General Mitchell's name was carried on the initial General Staff eligible list which was published by the War Department in 1920.

1921: General Mitchell was designated as the War Department representative from the Air Service to participate in the bombing experiments against ex-German submarines, destroyers, cruisers, and the Ostfriesland during May 1921.

In a letter dated 8 Jun 1921, General Menoher, Chief of Air Service, requested that General Mitchell be relieved as Assistant Chief of Air Service for substantially the following reasons: that General Mitchell had given serious offense to the Navy Department by his public utterances and publicity in connection with the bombing maneuvers; his attempting to influence legislation pertaining exclusively to the Navy; unfortunate and undesirable publicity given to his individual exploits at the time immediately following the fatal accident to the Curtiss Eagle ambulance plane in which seven persons lost their lives; by persistently agitating the question of the organization of the Air Service and by advocating policies that were contrary to the aviation policy announced by the War Department, the Navy Department, and the President in his message to Congress; and that the effect of the above has been so demoralizing to Air Service personnel in his office that General Menoher felt very strongly that General Mitchell's continuance in his present position was a positive detriment to the efficiency of the Service and to the interests of the Government. /No affirmative action

was taken on General Menoher's request to relieve General Mitchell as Assistant Chief of Air Service./

On 22 Sep 1921, General Mitchell was admonished by the Secretary of War for his lack of attention to the administrative and supply phases of the bombing experiments against naval vessels which were held during the period 6 to 23 May 1921 at Langley Field, Virginia. The admonition pointed out that General Mitchell had concerned himself only with the tactical phase of the maneuver.

1922: Letter dated 7 Mar 1922, from Honorable Charles E. Hughes, Secretary of State, which was addressed to the Secretary of War, expresses his "high appreciation of the assistance by your Department during the Conference on the Limitation of Armament not only in the preparation of material for the information of the American Delegation prior to the opening of the Conference but also for the personal services rendered by the ... officers assigned to duty on the Technical Staff of the Delegation." The name of Brig Gen William Mitchell was included among those cited.

/Duty: Assistant Chief of Air Service/ Maj Gen Mason M. Patrick, Chief of Air Service, rated General Mitchell's Manner of Performance as "Very Well," and commented, "A more than usually able, forceful and energetic officer. A thorough believer in the possibilities of the Air Service as a combat arm. He knows more of air force strategy and tactics than any one else in this country. The results of the bombing experiments conducted by him in the Fall of 1921 are important and far reaching. He deserves credit for this work. He is impulsive and at times his opinions are colored by his prejudices. His judgment is not always sound. He is somewhat overbearing and dictatorial toward his subordinates. He himself is impatient of control and not always willing to subordinate his own views to accord with those of his superiors ..."

1923: Maj Gen Patrick rated General Mitchell's Performance of Duty and Knowledge of Profession as, "Above Average," and commented, "He is specifically recommended for command of Air Service troops in the event of war ... General Mitchell does not always render willing and generous support to the plans of his superiors regardless of his personal views in the matter ... In justice to him I should add that so far as his ability to command Air Service troops is concerned, none of these /forty/ general officers /known to General Patrick/ would be his superior. It is difficult for him to subordinate his own views and opinions to those of others. He is somewhat erratic and changeable. I cannot always rely upon either his opinions or his judgment. His enthusiasm sometimes carries him away."

General of the Armies John J. Pershing, Chief of Staff, War Department, rated performance of duty as "Very Satisfactory," and Knowledge of his profession as "Superior." Out of 43 general line officers known to him, General Pershing indicated he would rate General Mitchell relatively at about number 20. General Pershing commented, "This officer is an exceptionally able one, enthusiastic, energetic, and full of initiative. Served as Chief of the Air Service of the First Army during active operations with very great ability. An expert flyer himself. Is fond of publicity, more or less indiscreet as to speech, and rather difficult to control as a subordinate."

By letter dated 3 Nov 1923, the Acting Chief of Staff, on behalf of the Secretary of War, forwarded General Mitchell, who was on an official War Department inspection trip of the Pacific Area, a newspaper clipping which [illegible]

Summary of Efficiency Reports, Admonitions, and Other Matters of Record (cont'd)

dressed in the conventional Army uniform, except that he was wearing a white shirt with colar clasp beneath a civilian type four-in-hand flowered necktie./ The Secretary of War directed "that you discard this uniform in future and you are hereby forbidden to appear in any other uniform than that prescribed by regulations ..." An explanation was requested. General Mitchell penned a 1st Indorsement to the bottom of the letter under date of 13 December 1923, at Honolulu, T.H., wherein he stated, "The costume mentioned above is used for flying and not as a uniform. The prescribed uniform cannot be used for flying as it is dangerous and unsuitable as has been frequently reported by the Senior Flight Surgeons and the Chief of Air Service. It is regretted that a photograph of this kind gained such circulation and caused this communication."

1924: During the period 29 Oct 1923 to 18 Jul 1924, General Mitchell made an official War Department inspection of the United States possessions in the Pacific Area. The report, which was dated 24 October 1924, included, among other things, comments on the air defenses of the Hawaiian and Philippine Islands, particularly from the viewpoint of an Air Service officer. As part of this report General Mitchell set forth his version asto how an enemy air attack could be successfully launched against the city of Honolulu andits surrounding harbors on the island of Oahu, P.I., from airplanes carried on the decks of submaries in water tight containers or launched from aircraft carriers.

For the period 1 Jul 1923 to 30 Jun 1924, Maj.Gen Patrick rated General Mitchell's Manner of Performance as "Above Average," and commented, "A very energetic officer, one who has an especially good knowledge of air tactics and who has demonstrated his ability to handle effectively an Air Force in time of war. He is impulsive and in dealing with subordinates frequently shows evidence of temper and a tendency to use measures unnecessarily harsh. His recommendations frequently fail to take into consideration conditions actually existing and which must be, in a measure, controlling. He is erratic and his opinions on many matters are frequently biased. In consequence I find at times that I cannot place confidence in them."

1925: In a letter addressed to the President. which was received at the White House on 5 March 1925, the Secretary of War set forth his reasons for not recommending the reappointment of General Mitchell as Assistant Chief of the Air Service. The reasons were bottomed primarily on General Mitchell's testimony before Congressional Committees which were investigating the Air Service. After reciting various incidents in support of the reasons for not recommending reappointment, the Secretary of War concluded his letter as follows: "In addition to these matters, General Mitchell's whole course has been so lawless, so contrary to the building up of an efficient organization, so lacking in reasonable team work, so indicative of a personal desire for publicity at the expense of everyone with whom he is associated that his actions render him unfit for a high administrative position such as he now occupies. I write this with great regret because he is a gallant officer with an excellent war record, but his record since the war has been such that he has forfeited the good opinion of those who are familiar with the facts and who desire to promote the best interests of national defense."

General Mitchell's appointment as Assistant Chief of Air Service expired 26 April 1925, and he thereupon reverted to his permanent rank of Colonel.

On an Efficiency Report rendered for the period ending 26 Apr 1925, Maj General Patrick commented, "This officer has an excellent knowledge of the handling of an Air Force and of air tactics. As a commander

his value is greatly lessened by reason of the fact that he is too opinionated, his ego is too greatly developed, and by his constant desire and effort to focus public attention upon himself."

/Duty: Air Officer, 8th Corps Area, Fort Sam Houston, Texas, during period 27 Apr 1925 to 19 Sep 1925./ Maj Gen Ernest Hinds, Commanding, 8th Corps Area, commented, "Very erratic--has no comprehension of discipline, nor in my opinion, of loyalty to his superiors. Insubordinate. Wholly unsuited for military service... In his direct personal relations with both superiors and subordinates I would rate him 'Above Average' as to Tact."

Commencing 20 Sep 1925, Colonel Mitchell was on Detached Service to Washington to await trial by General Court-Martial.

Record of Trial by General Court-Martial

(3 of 15) Court-Martial Charges and Specifications against Colonel Mitchell, which had been prepared by the Chief, Military Affairs Section, Office of The Judge Advocate General, were forwarded to The Adjutant General on 26 Sep 1925 for consideration by superior authorities. On 30 Sep 1925 the Charges were forwarded to The Inspector General for investigation in accordance with the Manual for Courts-Martial, since it was "Impractical for the President to investigate these charges.."

The Investigating Officer, Col Geo. A. Nugent, I.G.D., submitted a report of his investigation of the charges to The Adjutant General on 19 Oct 1925. The Investigating Officer recommended trial by General Court-Martial.

Colonel Mitchell was tried by General Court-Martial which convened on 28 October 1925 at the Emory Building, 1st and B Streets, N.W., Washington, D.C., for violation of the 96th Article of War under 8 specifications.

(TAB H) Specification 1 of the Charge alleged in substance that on 5 Sep 1925, Colonel Mitchell conducted himself to the prejudice of good order and military discipline and in a way to bring discredit upon the military service by making, uttering, and publishing to certain named individuals and to news gathering agencies a Statement, which reads as follows:

(TAB I)

"I have been asked from all parts of the country to give my opinion about the reasons for the frightful aeronautical accidents and loss of life, equipment and treasure that has occurred during the last few days. This statement therefore is given out publicly by me after mature deliberation and after a sufficient time has elapsed since the terrible accidents to our naval aircraft, to find out something about what happened.

"My opinion is as follows:

"These accidents are the direct result of the incompetency, criminal negligence and almost treasonable administration of the national defense by the navy and war departments. In their attempt to keep down the development of aviation into an independent department, separate from the army and navy and handled by aeronautical experts, and to maintain the existing systems, they have gone to the utmost lengths to carry their point. All aviation policies, schemes and systems are dictated by the non-flying officers of the army or navy who know practically nothing about it. The lives of the airmen are being used merely as pawns in their hands.

"The great Congress of the United States, that makes laws for the organization and use of our air, land and water forces, is treated by these two departments as if [illegible]

MINORITY OPINION

1. The undersigned cannot agree with the Conclusions and Recommendations of the majority of the Correction Board in this case.

2. The issue in this Court Martial proceeding was whether William Mitchell was guilty of the specifications under which he was being tried. The answer to this question is in the affirmative. I do not believe that any reasonable person could disagree with this conclusion. However, I have to agree with the majority of the Board that from a review of the record it is obvious that Mitchell was being tried under specifications that were not officially presented. In truth, he was being tried for his "views and opinions". A review of the transcript of the Court Martial itself reveals interminable question and answer periods which have no relevancy to the specifications. Why the court allowed this to continue or why Mitchell or his counsel did not challenge is a matter for one's personal opinion after a review of the transcript. In my opinion, Mitchell had determined that he would use the court martial proceedings as a platform to present to the nation his concepts of airpower, how it should be utilized and its planned role in the future. Recognizing this, the prosecution sought at every turn to discredit Mitchell and to refute his claims. The result - the trial became a circus and a travesty insofar as what one would normally expect to find in the trial of a senior officer. It would be impossible to expunge from the record those matters which are truly irrelevant to the original issue. This is due to the fact that such irrelevancies are spread throughout the entire transcript. In truth, as a generalization, they occupy about 95% of the transcript.

3. Some have urged that the record of trial and conviction by court martial constitutes a blot upon the record of William Mitchell and those who now carry the shield. This is a mistaken belief. The trial and conviction did not invalidate his concepts nor dim the brilliance of his visions. On the contrary, it gave

impetus to the acceptance of those concepts. The fact that he had to publicly discredit his superiors to bring before the nation a picture of its muddled military policies was a unique situation which presumably could never happen again. America at the time was beginning to take notice of the infant known as "aviation". However, the worried parents had not as yet determined whether the child was normal or abnormal, manageable or necessary. Under these circumstances, one can condone Mitchell's approach to the issue that was at hand.

4. For the Air Force today to indicate it had blotted from the record the court martial of Mitchell would be a hollow victory indeed for those who are the proponents of this action. It could very well be regarded as biased and prejudiced action by the proponents of airpower - as biased and prejudiced as we imply the members of the original court martial were.

5. In summation, there is no error or injustice in that part of the proceedings which relate to the original specifications.

JOHN J. McLAUGHLIN

PROCEEDINGS OF THE
AIR FORCE BOARD FOR THE CORRECTION OF MILITARY RECORDS
ROOM 5C-860, THE NATIONAL DEFENSE BUILDING
WASHINGTON, D. C.

I certify that the hereinafter recorded proceedings of the Air Force Board for the Correction of Military Records are a true and complete record of the proceedings of this Board in the case of Brigadier General William Mitchell, O-63 (Deceased), Docket Number 56-290.

The applicant, William Mitchell, Jr., requests that the proceedings, findings, and sentence of the general court-martial of his father, Brigadier General William Mitchell, be declared null and void, the said William Mitchell having been found guilty on December 18, 1925 of violating the 96th Article of War and having been sentenced thereon on the 25th day of January 1926.

The Air Force Board for the Correction of Military Records met in Room Number 5C-883, The National Defense Building at 9:45 A.M., on Tuesday 14 May 1957, pursuant to the call of the Chairman.

Those present were:

Mr. George S. Robinson, Chairman
Mr. Joseph F. Cunningham, Member
Mr. Ralph P. Dunn, Member
Mr. John J. McLaughlin, Member
Mr. Herbert R. Wildman, Member
Mr. Frank D. Hardin, Executive Secretary
Mr. Norman A. Compton, Examiner

The applicant, William Mitchell, Jr., appeared before the Board. Appearing on behalf of the applicant were Mr. Stephen F. Leo, Mr. William R. Sweeney, and Mr. Edmund F. Hogan, all of the Air Force Association, said organization having been designated by the applicant to act as counsel in his case.

MITCHELL, William, 0-63, Docket Number 56-290

The following listed documentary evidence was reviewed and considered:

EXHIBIT A. Applicant's request for corrective action with supporting brief.
EXHIBIT B. Brief of Examiner, Mr. Norman A. Compton.
EXHIBIT C. Transcript of Testimony.
EXHIBIT D. Personnel Records of William Mitchell, 0-63.
EXHIBIT E. General Court-Martial Record (CM 168 771).
EXHIBIT F. Hearings and reports of Select Committee, Select Committee of Inquiry into the Operation of the U.S. Air Service (six volumes).
EXHIBIT G. Hearings before the President's Aircraft Board (Morrow Board).
EXHIBIT H. Report of Lassiter Board.
EXHIBIT I. Report of General Mitchell on his visit to the Pacific Area 1923.
EXHIBIT J. Congressional Resolutions relating to William Mitchell and reports thereon.
EXHIBIT K. Biographies of William Mitchell by Isaac Don Levine; Ruth Mitchell; Lester Cohn and Emile Gauvereaux; and Roger Burlingame.

(At the time the application and supporting papers were filed the applicant and his counsel had not had made available to them the court-martial record of General Mitchell. The record was made available for their review and they were informed that a supplemental brief could be filed and, if desired, they would be given an opportunity to present argument before the Board. The applicant and counsel indicated that a hearing was desired and on 14 May 1957, they appeared before the Board and made a brief supplemental statement in support of the application.)

THE BOARD FINDS THAT:

1. The applicant has exhausted all effective remedies provided by law or regulation.

2. General Mitchell's military record is summarized beginning on page 10 of the Examiner's Brief in this case. The record of trial by general court-martial is adequately summarized beginning on page 20 of the same Brief. The circumstances precipitating the court-martial are stated in the Examiner's and the petitioner's Briefs. It is unnecessary to restate them in detail here. The issuance of news releases by Mitchell containing his opinion regarding two air tragedies was considered under the court-martial specifications to be in substance an act of insubordination to the War Department, contemptuous and disrespectful of the War Department and the Navy Department, and done with intent to discredit the administration of the War Department and the Navy Department. The Article of War alleged to have been violated was Article 96, and all-encompassing and catch-all article, as follows:

> "Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

3. The nub of the Mitchell statement in the news release alleged to constitute insubordination and to be contemptuous and disrespectful to the two Departments was contained in the following sentence: "The accidents are the result of incompetence, the criminal negligence and the almost treasonable administration of our national defense by the Navy and War Departments."

4. It is noted that the charges of alleged insubordination were not made by the officer who was Michell's superior at the time the releases were made to the press but were made by the Secretary of War at the direction of the President - a point which could not have been entirely lost on the court members. Mitchell's commander did not file charges but referred the problem of his subordinate, Mitchell, back to the War Department.

5. It is also of some importance that members of the court who were to judge the issues were high-ranking officers who were matured in the glories and traditions of the several arms and services, the very existence of which would be endangered by the acceptance of the accused's views which were admitted into evidence and became a major issue in the court-martial. That these views were a major issue in the trial there is no doubt - even the prosecution frankly admitted this.

6. The application in this case is predicated on the broad authority of the Secretary to correct a military record in order to remove an injustice. In order to determine whether the proceedings, findings and sentence of the court-martial in the record of General Mitchell constitutes an injustice the removal of which should be recommended to the Secretary by the Board, the Board out of an abundance of caution and in view of the unusualness of the case felt constrained to make an extensive examination and review of the numerous voluminous personnel records of General Mitchell, the court-martial proceedings, Congressional Committee hearings

and reports, hearings and findings of Executive Department Boards as well as miscellaneous material, such as biographies, all having some material bearing on the application though perhaps in varying degrees. This review was believed necessary for a more complete and clearer comprehension and understanding of the circumstances leading up to and surrounding the filing of the court-martial charges as well as the real issues involved in the proceedings. And without such review, the Board does not believe a fair and just recommendation on the corrective action requested in the application could be made. Further, the Board has taken into consideration not only the history of events in military aviation prior to but also during the years subsequent to the court-martial trial, particularly as they relate to the growth and development of the airplane as a new, revolutionary and potentially decisive weapon and the contribution made by General Mitchell to that development. This entire period, one might say, constituted the threshold of the air age. The Board believed this review to be necessary and appropriate in view of the fact that at the court-martial trial extensive testimony bearing on the views and concepts of the accused and those of the General Staff of the War Department regarding the present and future value of the airplane in national defense planning was permitted to be introduced into evidence.

7. It would serve no useful purpose to incorporate herein all the numerous facts and circumstances the Board considers pertinent to this case. It

must be emphasized, however, that without them a fair and just consideration of this application from the broad concept of "removing an injustice" from the record would be difficult. Many of these are touched upon in the applicant's brief, others are to be found in the voluminous personnel records of General Mitchell, records of Congressional and Executive Committee hearings, and, of course, the court-martial proceedings. Suffice it to say that General Mitchell, beginning with World War I and during the period thereafter, with a small group of associates in the Air Service developed firm, definite and constructive ideas and beliefs regarding the potentiality of the airplane as a decisive weapon in warfare, and the proper organizational setup and concepts needed to exploit it to the fullest in planning for national security. These convictions were predicated on experinece and actual tests as well as not unreasonable conclusions to be drawn therefrom. Future developments would of course be commensurate with the amount of departmental support and encourangement given to the solution as they might occur of technological and personnel problems peculiar to aeronautics.

8. General Mitchell was outspoken, blunt and frank, admittedly, in expressing his opinion in this regard before both Congressional Committees and other official boards. But nowhere in the records has the Board found any indication that his views were held otherwise than with genuineness, sincerity and honesty. That he expressed them with one purpose in mind, namely the security of the United States, is clear. In advancing or defending his views he did not descend to the level of argumentum ad hominem. His

views were in sharp contrast, in fact, diametrically opposed to the obsolete, conventional ideas on military and naval strategy and tactics as well as organization, held by those in the War and Navy Departments who, during this era, controlled and formulated the policies of those Departments on national defense but who, unfortunately but understandably, were products of the traditions and concepts of the past. It appeared that they professed little interest in and could find little value in anything that was suggested by General Mitchell. Any observation made by him, however sincere and constructive, only served as an excuse for derisive comment or adverse reflection on his motives. There is evidence in the record that many of the ranking officers of the Army and the Navy were disposed to remain wilfully ignorant of the potentialities which lay in this new weapon. This does not mean that their honor or their military record is impugned. What Mitchell complained of and criticized was the system which placed them in a position in the General Staff organization to formulate and administer policies and plans for the nation's defense. This they were doing based on conventional weapons of the past. The steadfast and seemingly wilful refusal of those charged with the administration of the two service departments to grasp the significance of the importance of control of the air in future battle was placing the United States in extreme danger. If the airplane had any function at all, in their views it could never be anything except a support vehicle for surface operations. They could visualize nothing beyond this. The

full import of this thinking Mitchell and his associates realized, as well as the dangers inherent in a perpetuation of the outmoded organizational concepts of the General Staff in the War Department in this respect.

9. Mitchell had repeatedly stated that his firm and unalterable convictions were that our inefficient national military aeronautics, our undeveloped civil and commercial aeronautics, and our curtailed and interrupted experimentation in aeronautics were the direct result of the lack of:

a. A department of aeronautics to handle the whole air question, co-equal with the Army and Navy.

b. A definite aeronautical policy.

c. An organization, both military and civil, to fit the aeronautical policy.

d. A method of providing suitable personnel for all air undertakings.

e. A single system of procurement and supply for all air undertakings.

f. A system of instruction and inspection of all air elements.

"Until these fundamental principles for the creation of air power are put in effect," he said, "the air power of the United States will continue to flounder in the slough of aeronautical despond."

10. Mitchell repeated these convictions forcefully before many forums to the great and growing annoyance and irritation of those within the services holding to more conventional and stereotyped views on the preparation and conduct of war and national defense.

11. Mitchell's views, however, coincided substantially with those of both the Lassiter Board and House Committee which had investigated thoroughly the operation of the Air Service under the General Staff. Each sensed the failure on the part of responsible and ranking military and naval as well as civilian department heads to appreciate and fully understand the need for developing to its greatest potentiality the weapons and personnel of the air arm, the deficiencies in the administration of the military and naval services in this regard from an organizational viewpoint and each expressed grave concern over these failures and deficiencies.

12. The court-martial of Mitchell can be fully understood only in the light of findings and recommendations of these two bodies. They voiced the very complaints and cirticism which, coming more bluntly and stingingly from Mitchell, prompted the court-martial charge of insubordination based on the news releases. It was the culmination of the bitterness and animosity which had developed over the persistency with which Mitchell was expounding his views.

13. The Select Committee of Inquiry into Operations of the United States Air Service began its public hearings on 4 October 1924 and ended 2 March 1925. Numerous witnesses, approximately 150, were called to testify. The work of the Committee extended over 11 months. Among other things

the Committee found major failures and deficiencies, all of which Mitchell and his associates in the Air arm were more than aware. These are contained in numerous cited excerpts taken from the findings and recommendations of the Committee attached hereto and made a part hereof. (These excerpts, it should be noted, contain references to the findings and recommendations of the Lassiter Board in 1923, which received scant consideration by the War Department and were in effect pigeonholed.) The findings of the Committee could not have been more critical of the administration of the War and Navy Departments not only with respect to the treatment of and failure to appreciate the potential decisiveness of the weapons of the air arm but also as regards the organizational setup of the military establishment. Nor could it have been a more alarming indictment of the status of preparedness of the United States for aerial warfare.

14. Following the report of the Select Committee and just prior to the conviction of General Mitchell the President's Aircraft Board, commonly called the Morrow Board, made its report of 30 November 1925 on its study of best means of developing and applying aircraft in National Defense. It made certain concessions to the proponents of air power, but for the most part found difficulty in breaking away from the old fundamental concepts, expressed as follows:

> "The arrival of new weapons operating in an element hitherto unavailable to mankind will not necessarily change the ultimate character of war. The next war may well start in the air but in all probability will wind up, as the last war did, in the mud; ... protected, as the United States is, by broad oceans,

> "... wars against high spirited peoples never will be ended by sudden attacks upon important nerve centers such as manufacturing plants, depots, lighting and power plants, and railway centers, etc."

The findings and conclusions of the Board allowed room for some slight progress but major developments in military aviation which were to occur would be by reason of the inevitable and inexorable push of technological developments - and the move of the Nazi Air Force into Poland in 1939. Then it was realized that during all the years since World War I we had time and no money. Suddenly we had money but so little time. In its favor, it can be said, the Morrow Board did give some recognition to the recommendations of Mitchell and his associates of the Air Service. The study of the Board did result in steps being taken, however, short, in the right direction. In view of the recommendations of the Lassiter Board and the Select Committee, and the reaction to the Mitchell court-martial something constructive had to be accomplished.

15. At least as insubordinate, if you will, or in any event equally as critical as Mitchell's news release, was the testimony of Lt. Colonel Foulois before the Morrow Board, in effect indicting the War Department and those charged with national defense planning.

He charged:"If, during the period between 1908 and 1916, the Air Service of the Army had had the fullest sympathy and assistance from the General Staff of the Army, and had occasionally been given special preference, strictly from the viewpoint of its

military value, there is not the slightest doubt that the United States Army would have had an Air Service at the outbreak of war, April 6, 1917, at least as efficient as the Air Service of either England or France at the time they entered the war.

"Full military efficiency depends upon one most vital factor which has been conspicuous by its absence in regard to Air Service work with the Army during the past 17 years, and that factor is called teamwork. Let me state most frankly that up to the present date there has been an almost complete lack of teamwork between the airmen and the Army, due in my opinion, to the fact that Army officers as a class are utterly ignorant of 90 per cent of the airman's problems. This ignorance, especially on the part of the higher ranking Army officers, frequently found expression during our service in France in the issuing of orders which in a number of cases absolutely failed to take into consideration the limitations in the use of the airplane. In other words, the airman was often not consulted as to whether he was capable of carrying out his orders, but was often ordered to carry out his mission regardless of the possible mechanical or other technical obstacles in the way. The airman knows what he can do and what he cannot do, and in many instances, especially during the recent hostilities in France, the airman

endeavored to inform his superiors (not in the Air Service) as to the limitations of his equipment, with a result that the inexperienced superior usually dammed the airplane and the Air Service man, and in so doing not only failed to make full military use of the Air Service but also utterly defeated any attempt on the part of the Air Service to secure intelligent and helpful teamwork.

"The United States Army will get results from the Air Force if theAir Service is given an opportunity to develop under the guidance of practical experience instead of theory. A fair, just, willing, and sympathetic opportunity for the Air Service to produce results has never been evidenced, from my experience of the past 17 years, and I doubt whether results can be obtained in the next 20 years if the Air Service is required to continue its struggle for existence under General Staff control. (underscoring supplied)

"The recommendations made by the Lassiter Board are nearly 2½ years old, and the Air Service is still waiting for the General Staff of the Army to place the recommendations of that board before Congress with a view to either its approval or disapproval.

"Is it any wonder that after 17 years of trials and tribulations the majority of the older and most experienced

officers in the Air Service are now united behind their chief in an earnest and sincere demand for full recognition and effective legislation which will transfer the present Army Air Service into an Air Corps, with its chief directly responsible to the Secretary of War, and not to the various divisions and subdividions of the War Department General Staff?"

16. More than anything else does the testimony of General Mason Patrick before the Morrow Board give an insight into the underlying reason for and an explanation of the fear and resentment undoubtedly held by the General Staff and their contemporaries sitting in judgment on Mitchell towards his views or any likelihood of their implementation. Both the General Staff and the majority of the Court members were products of the combat arms of the Army. Within this testimony lies at least a partial answer to the question as to why the Court, constituted as it was of the hierarchy of the combat arms, could perhaps reach no other verdict than it did regardless of whether General Mitchell, his views, or both were on trial. An acquittal would have meant an acceleration of the demise or displacement of the cavalry, coast artillery, field artillery, and infantry.

17. General Patrick, obviously with great patience, understanding and restraint, explained to the Board:

"As it has been explained to the committee, at the present time the Army Air Service is merely one of the several combat arms which constitute the Army of the United States.

It was brought into being some five years ago. It is dealt with by the War Department and the officials thereof as they deal with all other branches, with this exception: It has been regarded I think rather as a stepchild than as a real member of the family, and in some cases its motives have been questioned and its recommendations have either been ignored or denied.

"I am careful, as the Secretary said this morning, to impugn the motives of no one. I believe very thoroughly that the War Department has done the best that it knew how. It is a fact, however, that the coming into being of this new arm has somewhat lessened the importance of every other combat arm of the Army. Reaching out over the sea, as it can, far beyond the range of coast defense guns, it has somewhat minimized the necessity for fixed coast defenses. The Cavalry, formely the eyes of the Army, its main mission reconnaissance, has had that function largely taken away from it, the Air Service rising to greater heights, looking over much larger areas of the terrain below, using aerial photography, has minimized the importance of the Cavalry as a reconnaissance agency. With the machine guns and bombs, attacking objectives on the ground beyond the range of field artillery, it has lessened the importance of that arm. The Infantry, heretofore and still, if you will, the backbone of all armies according to the opinions of some of the best

military geniuses of the world, may not have to come in contact with enemy infantry. (underscoring added)

"It is human nature that under such circumstances the coming into being of this arm has not been so greatly welcomed by those whom it in a measure at least displaces, and the result is that every recommendation that I have had to put forward must be passed upon by men with that trend of thought, men trained in the old schools, and they have not realized, I think, the full importance of the air arm. I think they are being educated, and that the importance of the arm is being impressed upon them more and more every day, but it was a long time before I could get anyone to recognize the fact that there is what we now call an air force. The term is used now by the Army Staff, is used by the schools, but I had to fight for it for about three years before I could get it adopted and get it realized that there is such a thing. There has been too much of a tendency to consider the Air Service as a purely auxiliary arm. It is not. It goes beyond that. The Air Service has functions of its own to fulfill. I have recommended many things to the War Department. Some have been approved, some have been disapproved. The position of my officers on the promotion list is one of the sore points of the Air Service.

"It so happened that during the World War Air Service officers were not commissioned until they had completed their flying training.

In some cases that took as much as 18 months, due to the small amount of personnel and the small amount of equipment available to give the training. On the other hand, men who had volunteered at the same time went through three months in training camps and received their commissions. When the time came to arrange all of this officer materiel on this single list they based it on the length of commissioned service largely. Therefore, the majority of my Air Service men who had to wait these long periods for their commissions are at the bottom of the list.

"A board constituted by the War Department not alone acknowledged that fact but reported it and stated, in a study of this promotion list, that the only service that had been unjustly dealt with was the Air Service. They proposed no remedy. I proposed at least three. Not one of them has been adopted, nor do I know of any move that has been made on the part of the War Department to correct that injustice.

"Harking back again to the Lassiter Board, that report was submitted, I think, something over two years ago. I have urged, and urged repeatedly, that something be done to put the recommendations of that board into effect. I do not know of any legislation that has been drafted or proposed by the War Department looking toward enacting it into law.

"These are just illustrations of things that have come up, and I have tried to place before the department my views as to what should be done. As I say, in this particular instance there has been as yet no action.

"As a matter of fact, I think we have got to revise most of our ideas of national defense. Our national defense doctrine must be rebuilt on three fundaments as determined by practical requirements rather than as at present upon two fundaments as determined by the administrative organizations involved, the Army and the Navy. There are three phases that must occur successively in any attack upon the continental United States or its outlying territories which we may designate as the'sea action phase', the 'air action phase', and the 'land action phase' for the reason that sea power, air power, and land power have the dominant role therein, respectively. The primary responsibility for the action in each of these phases must be definitely fixed on the arm playing the dominant role and the action of the other arms made subordinate to the policies of the dominant arm."

18. Could it be expected that a court composed of the Infantry men, the Cavalry men, the Coast Artillery men, and Field Artillery men, could remain so unbiased and so unprejudiced as to deal objectively and impartially with an accused who was on trial for views which, if true, would outmode and render obsolescent or obsolete those arms?

19. The calm, patient logic and criticism of General Patrick had gotten nowhere with the General Staff. It would take more forceful, sharper criticism to check the trend toward national disaster and Mitchell provided it at the needless sacrifice of his career and loss of his ability to the military service. There was too much at stake.

20. Having reviewed the background of this case and the transcript of testimony the conclusion is inescapable in the Board's opinion that Mitchell was tried for views rather than a violation of Article 96. As alluded to above the prosecution admitted his views were a major issue in the case.

21. The record of the court-martial proceedings is replete with evidence that on trial were Mitchell's views on air power as opposed to those of the policy makers of the War and Navy Departments. The matter of proof of the necessary elements to constitute the offense under Article 96 was submerged or was lost as the prosecution concentrated on pressing for proof of the existence of actual facts to justify Mitchell's opinions on the capabilities of air power.

22. Many incidents could be cited in the proceedings to show the contempt with which Mitchell's views were held by representatives of the General Staff and the effort made by the prosecution to hold up

Mitchell's views to public ridicule. Because an airplane had not flown 1000 miles per hour it would, by the prosecution's contention, never be able to do so. If this type of logic permeated the thinking of the General Staff, then the situation was truly alarming, just as Mitchell contended.

23. A typical reaction to Mitchell's observations is the comment made by members of the General Staff on Mitchell's report of Pacific Inspection of 1923. Mitchell's Chief, General Mason Patrick, had commented favorably on certain aspects of the report and recommended it be studied by the General Staff. Comment of the General Staff was:

> "The report is so voluminous and contains so many statements which indicate a misconception of the true role and proper employment of the combined arms in warfare and such an exaggerated idea of the powers of aviation with little if any appreciation of their practical limitation that detailed comment on the report is believed unnecessary."

24. With respect to Mitchell's conclusion that Japanese air power ranked second, the General Staff commented that it ranked fifth and then observed irreverently and irrelevantly that since Mitchell so notoriously overestimated what could be done with air power by the U.S. it is not improbable that he grossly overestimated what Japan could and would be able to accomplish with air power; that many of

Mitchell's views were exaggerated ideas of the power and importance of the airplane and were therefore unsound; that Mitchell was trying to make his report an agency of propaganda for a unified air service and his other pet hobbies. And Pearl Harbor looming in the not too distant future.

25. The lack of foresight of the General Staff is clearly represented with respect to the potentiality of military aviation by the testimony before the Select Committee on inquiry into operation of the United States Air Service of the high-ranking staff officer in charge of operation, organization, mobilization and training of the Army. This testimony was introduced at the trial. When asked by the Committee whether or not the U.S. had just as big a field ahead of it in aviation as it has behind it, the representative (the War Department G-3) replied in the affirmative so far as commercial aviation was concerned, but he added not as big so far as military aviation was concerned. - Aviation had passed its peak of military potential in 1924?

26. The vehemence of the feeling against Mitchell personally is probably summed up in the last report on efficiency rendered by his superior officer, General Hind, who described his subordinate officer, Mitchell as follows:

"Temperamentally unsuited for military service. Has no conception of the fundamentals of military discipline. Very erratic - has no comprehension of discipline nor in my opinion of loyalty to his superiors. Insubordinate. Wholly unsuited for military service."

27. Contrast this with the comment of General Patrick, Chief of the Air Service, a short time prior to General Hind's remarks, to the effect that General Mitchell knew more about air force strategy and tactics than anyone in the country, a thorough believer in the possibilities of the Air Service as a combat arm; and also with the opinion held by many that the air offensive which Mitchell laid on in the Meuse-Argonne in World War I was the greatest thing seen of its kind in the war. It was the first mass air operation in history, involving 1500 allied aircraft. Air Marshall Trenchard called it "the most terrific exhibition I have ever see -----(it) cleaned out the air."

28. The fact that Mitchell was alleged to be insubordinate to, disrespectful to, and intended to discredit an inanimate object, seemed to present no new or novel concept to the Court under Article 96. Be that as it may, the record is devoid of proof of what would seem to be an essential element of the crime, the intent to discredit and the

intent to be contemptuous or disrespectful. The decision of the court can be rationalized only as one author so ably has stated regarding Article 96:

> "It says nothing about the motive for bringing discredit. It says nothing about loyalty to the Service coming in conflict with loyalty to country. It does not allow for the 'conduct' which brings discredit on the service being a statement of the truth. True or false, once it brings discredit, the goose of accused is cooked. Under military law, the court-martial which tried Billy Mitchell had no alternative but to find him guilty. His conduct was 'of a nature' to bring discredit that was all there was to it."

In other words the rational of the Court's verdict can only be that the issuance of the releases spoke for itself and motive and intent were immaterial.

29. Of course if this were true, it was totally unnecessary to encumber the proceeding with what was in essence a trial of Mitchell's views on air power as contrasted with the views of the General Staff. Clearly this introduced into the proceedings a matter which would tend to create a prejudicial and biased attitude on the part of theCourt toward the accused. In such an atmosphere an accused could hardly hope for or

expect a fair trial. Further, the Court failed utterly and completely to consider or appreciate the fact that the intent and motives of the accused may have resulted from a sense of patriotism and loyalty to one's country. Steeped as the Court members undoubtedly were in the tradition that discipline was the beginning and end of military service, motivation from a higher sense or feeling of duty was presumably beyond their perception or comprehension. In any event all but one member must have disregarded this or else considered it inconsequential. Apparently it did not occur to the court in reaching its verdict that the entire military record of the accused in and of itself would negate any such intent or motive as charged. Also little if any credence or weight was given to the statement made by Mitchell when the charges were handed to him. Certainly, it had a ring of simple honesty and sincerity. He said:

"I want to make this statement, that all references of mine have been given with a view to constructive work in the future. I am perfectly willing to enter into any discussion as to the betterment of conditions that exist, but as far as any court-martial proceedings are concerned, on the advice of counsel, I will not go into any discussion at all.

"I want it distinctly understood that this thing is not aimed at any person or anything of that kind; it is aimed at the

whole system of handling our national defense. It is a constructive proposition entirely, and as far as I personally am concerned, that is a secondary matter. Any round table conference they want, I will help them in any way I can. That is my feeling about it entirely."

30. Confined as it was by its limited concept of military discipline the Court was incapable of recognizing that the accused could be expressing views critical of a system and in so doing be motivated by a sincere desire to benefit good order and military discipline by bringing about a correction of the evils in and maladministration of the system and thereby restore confidence in the planning for national defense and reestablish credit to replace the discredit being brought upon the services by retention of outmoded concepts of national defense. Presumably it was incomprehensible to the Court that one could experience a genuine and sincere sense of a paramount duty -- the security of his country, and be motivated by it; and that this paramount duty might transcend (as his oath of office so required, 'to protect this country against all enemies, foreign and domestic') any loyalty to individual institutions, political parties, even loyalty to the military service itself.

31. The Board finds and believes the entire military record of General Mitchell bears testimony to the fact that it was this

sense of duty of loyalty that motivated him on this particular occasion to speak sharply, plainly, and bluntly regarding the system which was placing in jeopardy the nation's security.

32. The Board feels constrained to comment on the manner or seeming lack of dignity with which the court-martial proceedings were conducted. From a review of the proceedings the impression cannot be denied that the opening of the proceedings to a trial of the views of the accused surcharged the atmosphere with bitterness and acrimony which boded ill for a fair, impartial, dignified trial. True there are certain leniencies permitted between counsel and in summation, but these at times overstepped the bounds of all propriety. Even aside observations of court members were tolerated. It is recognized courts are often liberal in permitting counsel in argument or summation to range somewhat freely, but this does not imply that bounds do not exist which should not be exceeded. The prosecution in the opinion of this Board far overran those bounds without restraint or admonition by the Court, but in doing so brought into focus either consciously or unconsciously the irrefutable fact that Mitchell's views and not his statements of 5 September to the press were on trial.

33. The transcript is replete with testimony of high-ranking officers regarding Mitchell's air power views, controverting those views and at the same time demonstrating an unappreciation and lack of under-

standing of the future potentialities of the airplane as a weapon of national defense.

34. Even the civilian head of the War Department, Secretary Weeks, in reporting to Congress on proposed legislation to provide for a Department of Aeronautics disclosed a lack of comprehension as to the significance of air power. This report was introduced at the trial. He stated, "While the operations of the Army and Navy overlap along a single line, and the areas immediately adjacent thereto, the field of operation of the Air Force, will overlap everywhere the sphere of action of one or the other - such a condition of affairs could end only in disaster in time of war, and should not be tolerated in time of peace." That it did not end in disaster in time of war and has been tolerated in time of peace, history has proven.

35. The following from the summation of the prosecution should resolve any doubt on the question as to whether Mitchell's views, as distinguished from his act of 5 September 1925, were the real issues in the trial:

> "Is such a man a safe guide? Is he a constructive person or is he a loose-talking, imaginative megalomaniac cheered by the adulation of his juniors who see promotion under his banner, and intoxicated by the ephemeral applause of the people

whose fancy he has for the moment caught?

"Is this man a Moses, fitted to lead the people out of a wilderness which is his own creation, only? Is he of the George Washington type as counsel would have you believe? Is he not rather of the all too familiar charlatan and demagogue type -- like Alcibiades, Catiline, and except for a decided difference in poise and mental powers in Burr's favor, like Aaron Burr? He is a good flyer, a fair rider, a good shot, flamboyant, self-advertising, wildly imaginative, destructive, never constructive except in wild non-feasible schemes, and never overly careful as to the ethics of his methods.

"This Court has had opportunity to study those methods, not only as revealed in his statements of September 5 and 9, but also in his former statements which his counsel has read into the record. All of these statements made over a period of years follow what we may term the Mitchell formula.

"First: Exaggeration of National Defense matter closely approaching falsehood.

"Second: Untrue and misleading statements for the deliberate purpose of discrediting Army and Navy officers, thus

"Third: Creating distrust in minds of people as to War and Navy Departments.

"Fourth: Egotistic self-description as to experience and qualifications, coupled with

"Fifth: Protestations of absence of self-interest and expressions of willingness to be, and expectation of being a martyr, all leading to

"Sixth: A United Air Service, with

"Seventh: William Mitchell as the only logical head of it.

"That is the formula he has followed. Every demagogue has followed a similar one, protesting unselfishness and secretly seeking self-aggrandizement, as he appealed directly to the people over the heads of constituted authority."

36. Further in the summation the prosecution made reference to the young men of the air arm some of whom testified for the improvements Mitchell advocated, as men "influenced from some source outside themselves - drawn from the direct and straight path by some insidious force, . . . that has drawn these young men from that straight path of rectitude in their profession, . . . under the influence of a superior officer, a dominant force."

37. For such young men as the Arnolds and Spaatzs this country can indeed be thankful and grateful.

38. What relevancy or materiality this type of character assassination had to the specific charge is difficult to comprehend. Nevertheless it went on unchecked and unrestrained by the court. But it did prove what really was in issue.

39. At least one member of the Court sensed what was on trial and voted to acquit. (See exchange of correspondence between Senator Wiley and General Douglas MacArthur, an exhibit to petitioner's brief.) Little doubt exists that he could have so voted unless he believed that most of the things that Mitchell said about the future of aviation were right (and perhaps needed saying), or in any event the intent alleged was lacking.

40. With the so-called wild imaginings or pipe dreams of Mitchell spread on the record in contrast with pat, conventional and outmoded views of witnesses from the General Staff it is small wonder that contemporaries of the latter on the court should find Mitchell guilty of harboring delusions about the capabilities of air power. Not until sentence was pronounced did the real purpose of the court-martial become exposed. It did not sentence him to dismissal from the service as it could have done. It kept him in the service but without rank, command, or pay for five years. More important, this would keep him from talking, from upsetting the status quo - at least so it was thought or hoped. Only by modification by the

President of the sentence to allow half pay was Mitchell to be permitted to subsist. The alternative for Mitchell was of course obvious -- resignation and severance of all ties to the service he loved.

41. There are some who despite their approval of Mitchell's views still harbor some lingering conviction that his actions of 5 September constitute insubordination. This fails to take into consideration the absence of intent but also the fact that there can be times when alleged insubordination is not only essential to but an integral and inseparable part of patriotism or loyalty to one's country. Conviction by court-martial therefore would result in the anomalous situation of the accused being convicted for loyalty and patriotism. Surely Article 96 never contemplated such a circumstance. Unfortunate it is, perhaps, in this case that no Article of War made it an offense to refuse wilfully to explore a possibly decisive force upon which the life of one's country may depend.

42. The plain, unvarnished, inescapable fact of the Mitchell case is that he spoke the truth on the 5th of September 1925, as well as many other times, and with one purpose - the security of the United States. He was convicted for this and for the views he held on air power as a decisive element in national defense planning, which ultimately and

belatedly were accepted. Had the War and Navy Departments been less laggard in accepting them, at least some of the tragedies of the first half of the 20th century might have been avoided, prevented or minimized.

43. The Board rejects the view tenaciously held by some that mum is the right word - that discretion is the better part of justice as regards any reexamination of the Mitchell case is concerned. It has been stated repeatedly over the years that this nation is still in debt of Billy Mitchell. It is an almost universally accepted fact that history has vindicated Mitchell. If this be true that in its judgment history has removed the taint of a court-martial conviction from the name of Mitchell by holding him guiltless of the issue for which he was tried - his views on air power - then surely the Air Force is justified in discharging its debt by removing the one blemish from a truly outstanding military record, and at the same time a burden from the American conscience.

44. The Board recommends the application be granted.

George S. Robinson

GEORGE S. ROBINSON
Chairman
Air Force Board for the Correction of Military Records

AIR FORCE REGULATION
NO. 31–3

DEPARTMENT OF THE AIR FORCE
WASHINGTON, *3 NOVEMBER 1952*

MILITARY RECORDS

Air Force Board for Correction of Military Records

(Effective 29 September 1952)

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*** This Regulation supersedes AFR 31–3, 15 February 1949, including Change 31–3A, 25 August 1950.**

CHANGE

AFR 31–3A
10–11

AIR FORCE REGULATION }
NO. 31–3A }

DEPARTMENT OF THE AIR FORCE
WASHINGTON, *28 JUNE 1955*

MILITARY RECORDS

Air Force Board for Correction of Military Records

AFR 31–3, 3 November 1952, is changed as follows:

* * * * *

10. Review of Application. Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him. In connection with any application which it considers, the Board may recommend to the Secretary that the records be corrected, as requested by the applicant, without a hearing. The Board may deny an application if it determines that insufficient evidence has been presented to indicate probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him, or that effective relief cannot be granted. The Board will not deny an application on the sole ground that the record or records involved were made by or by direction of the President or the Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. If the application is denied, the applicant will be advised of the denial and that he is privileged to submit new and material evidence for consideration.

11. General. In each case in which a hearing is authorized, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

* * * * *

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

N. F. TWINING
Chief of Staff, United States Air Force

OFFICIAL:

E. E. TORO
Colonel, USAF
Air Adjutant General

DISTRIBUTION:
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SECTION I—GENERAL

1. Purpose and Scope. This Regulation establishes procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for the Correction of Military Records (hereinafter referred to as the "Board"). This Regulation is applicable to all Air Force activities.

2. Authority. Section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 831) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, (65 Stat. 655), provides:

> "SEC. 207 (a) The Secretaries of the Army, Navy, and Air Force and the Secretary of the Treasury (with respect to the Coast Guard), respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective Departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or remove an injustice, and correction so made shall be final and conclusive on all officers of the Government except when procured by means of fraud: *Provided,* That procedures set up by the Secretaries of the Army, Navy, and Air Force in accordance with this subsection shall be approved by the Secretary of Defense: *Provided further,* That no corrective action shall be taken under this subsection unless the request therefor be filed by claimant, his heirs at law, or legal representatives within three years after his or their discovery of the alleged error or injustice, or within ten years after the date of enactment of this Act, whichever be the later: *Provided further,* That the failure to file the request by claimant, his heirs at law, or legal representative, within three years after his or their discovery of the alleged error or injustice may be excused by such board of civilian officers or employees of the respective Departments upon finding by it that it is in the interest of justice to excuse such failure to file within the prescribed time in which event action shall be taken in the same manner as if the request had been filed within the three years as prescribed herein.
>
> "(b) The Department concerned is authorized to pay, out of applicable current appropriations, claims of any persons, their heirs at law or legal representatives as hereinafter provided, of amounts paid as fines, forfeitures, or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits, as the case may be, which are found to be due on account of military or naval service as a result of the action heretofore taken pursuant to section 207 of the Legislative Reorganization Act of 1946, or hereafter taken pursuant to subsection (a) of this section: *Provided,* That in the case of deceased persons where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due hereunder shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence or succession as may be prescribed by the applicable provision of law relating to the kind of payment involved and when not otherwise so provided, in the order of precedence as set forth in the Act of February 25, 1946 (60 Stat. 30), or as may be prescribed by the applicable provisions of law relating to the kind of payment involved.
>
> "(1) This subsection shall not be deemed to authorize the payment of any claim heretofore compensated by Congress through enactment of a private law.
>
> "(c) The acceptance by the claimant of any settlement made pursuant to subsection (b) of this section shall constitute a complete release by the claimant of any claim against the United States on account of such correction of record.
>
> "(d) Applicable current appropriations shall be available for payment of such sums as may be due for continuing the pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits to persons who shall have received payment pursuant to the provisions of subsection (b) of this section and who may be entitled to such continuing payments as a result of the correction of their military or naval records: *Provided,* that continuing payments are authorized to be made to such personnel for not more than one year following the date of the correction or one year following the date of enactment of this Act, whichever be the later, without the necessity of reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached, and such reenlistments,

appointments, and reappointments are hereby authorized by the Secretary concerned without regard to other qualification.

"(e) The Secretary of Defense and the Secretary of the Treasury, for their respective Departments, shall make semi-annual reports to the Congress of all claims paid under this subsection during the period covered by each such report. Each such report shall include, with respect to each such claim, a statement of the amount paid, to whom, and a brief description of the claim.

"(f) Nothing in this Act shall be construed to authorize the payment of any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs."

"SEC. 2. This Act shall be effective from and after August 2, 1946.

"Approved October 25, 1951."

SECTION II—ESTABLISHMENT, FUNCTION, AND JURISDICTION OF THE BOARD

3. Establishment and Composition:

a. *Establishment.* Pursuant to the provisions of section 207 of the Legislative Reorganization Act of 1946, as amended, the Board is established in the Office of the Secretary of the Air Force.

b. *Composition.* The Board will consist of civilian officers or employees of the Department of the Air Force in such number, not less than three, as may be appointed by the Secretary of the Air Force. Three members present shall constitute a quorum of the Board. The Secretary of the Air Force will designate one member as the chairman. In the event of absence or incapacity of the chairman, an acting chairman chosen by the Board shall act as chairman for all purposes.

4. Function. The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice and to make appropriate recommendations to the Secretary of the Air Force.

5. Jurisdiction. The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

SECTION III—APPLICATION FOR CORRECTION

6. General Requirements:

a. *Submission.* The application for correction should be submitted on DD Form 149, "Application for Correction of Military or Naval Record," or exact facsimile thereof, and should be addressed to the Air Adjutant General, Headquarters USAF, ATTENTION: Personnel Records Service Division, Washington 25, D. C. Forms and explanatory matter may be obtained from the Air Adjutant General, Headquarters USAF, ATTENTION: Personnel Records Service Division, Washington 25, D. C.

b. *By Whom Signed.* Except as provided in c below, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287, 1001).

c. *When Person is Unable to Submit Application Himself.* When the record in question is that of a person who is incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the matter before the Board, the application may be made (except where compliance with the provisions of the law with respect to time limitations for filing an application may require otherwise) by such person as the Board shall determine to be competent and suitable and to have a proper interest therein, including but not limited to, a spouse, a parent, or relative. Such proof of suitability and proper interest shall be submitted as may be required by the Board.

7. Time Limit for Filing Application. The claimant, his heirs at law, or legal representatives must file a request for correction of a record with the Secretary of the Air Force prior to 25 October 1961, or within three years of discovery of the alleged error or injustice, whichever be the later. The failure to file such request within the time prescribed may be excused by the Board on its finding that it is in the interest of justice to do so.

8. Exhaustion of Other Remedies. No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

9. Other Proceedings Not Stayed. The application to the Board for correction of a record shall not operate as a stay of any proceedings being taken with respect to the person involved.

10. Denial of Application. It shall be adequate ground for denial of any application that a sufficient basis for review has not been established or that effective relief cannot be granted.

SECTION IV—ENTITLEMENT TO HEARING, NOTICE, COUNSEL, WITNESSES, AND ACCESS TO RECORDS

11. Entitlement to Hearing. When an application has been found to be within the jurisdiction of the Board and sufficient evidence has been presented indicating probable error or injustice, the applicant will be entitled to a hearing before the Board either in person or by counsel of his own selection or in person with counsel.

12. Notice:

a. *To Applicant and Counsel.* In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

b. *Notifying Board.* Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with paragraph 17b.

13. Definition of Counsel. As used in this Regulation, the term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the Act 29 June 1936 (38 U. S. C. 101), and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

14. Witnesses. The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

15. Access to Records:

a. *Official Records.* The applicant shall have access to such official records as are deemed necessary to an adequate presentation of his case. It will be the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Air Force as he desires to present in support of his case.

b. *Classified or Privileged Matter.* Classified or privileged matter shall not be disclosed or made available without express finding of the chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure shall not be contrary to existing law and departmental regulations concerning the security of classified material. When appropriate, the applicant may be supplied only with a summary or extract of classified matter.

SECTION V—HEARING

16. Convening the Board. The Board will be convened at the call of the chairman and will recess or adjourn at his order.

17. Conduct of Hearing:

a. *By Chairman.* The hearing shall be conducted by the chairman, and shall be subject to his rulings so as to insure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

b. *When Applicant is Not Present or Represented at Hearing.* If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

c. *When Applicant Fails to Appear at Time and Place Set for Hearing.* If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with the provisions of b above, or will make such other disposition of the case as is indicated under the circumstances.

d. *Testimony.* All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

18. Continuance. The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

SECTION VI—ACTION BY THE BOARD

19. Deliberations, Findings, Decisions, and Recommendations:

a. *Deliberations.* Only members of the Board and its staff shall be present during the deliberations of the Board.

b. *Further Information.* Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

c. *Findings, Decisions, and Recommendations.* Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

d. *Separate Communication.* Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Air Force as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication.

20. Minority Report. In case of a disagreement between members of the Board, a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

21. Record of Proceedings. When the Board has completed its proceedings, a record thereof shall be prepared. Such record shall indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record shall include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, decision and recommendations of the Board and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the chairman or his designee as being true and complete.

22. Withdrawal. The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Air Force.

SECTION VII—ACTION BY THE SECRETARY OF THE AIR FORCE

23. Action by the Secretary of the Air Force. The record of proceedings of the Board will be forwarded to the Secretary of the Air Force who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary.

SECTION VIII—STAFF ACTION

24. Action by the Air Staff:

a. *Returning Case to Board.* Upon final action by the Secretary of the Air Force, the complete record in each case will be returned to the Board. The Board will transmit the decision of the Secretary of the Air Force to the Chief of Staff, USAF, for appropriate action.

b. *Communicating Decision to Applicant and Counsel.* Upon receipt of the record of proceedings after final action by the Secretary of the Air Force, the Board will communicate the decision to the applicant and counsel, if any.

c. *Informing Applicant When Administrative Action Has Been Completed.* When all necessary administrative action has been completed by the Air Staff, the applicant will be informed of such action by the Air Staff office designated by the Chief of Staff, USAF.

d. *Written Notice to Chairman of Board.* Written notice specifying the action taken and the date thereof will be transmitted to the chairman of the Board.

e. *Filing Record of Decision of the Secretary of the Air Force.* The record of the decision of the Secretary of the Air Force will not be filed in the military records of the subject of the application where the effect of such action would be to nullify the relief granted or in those cases wherein the application is denied.

f. *Applicant Not Entitled to Copies of Record of Proceedings.* The applicant shall not be entitled to copies of the record of proceedings, but such record shall be made available for his inspection except where, in the discretion of the chairman, it is detrimental to the public interest.

SECTION IX—RECONSIDERATION

25. Further Hearing Before the Board. After final adjudication, further hearing before the Board will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Air Force.

SECTION X—SETTLEMENT OF CLAIMS

26. Authority:

a. *Claims Authorized to be Settled and Paid.* The Department of the Air Force is authorized to settle and pay claims for amounts paid as fines or forfeitures or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits as the case may be which are found to be due, under applicable provisions of law, on account of military service, and as the result of action heretofore or hereafter taken under section 207 of the Legislative Reorganization Act of 1946, as amended, except as provided in b below.

b. *Claims Not Authorized to be Paid.* The Department of the Air Force is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

27. Application for Settlement:

a. *Filing Claims.* Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

b. *To Whom Payments Will Be Made If Person is Deceased.* In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence or succession as may be prescribed by the applicable provisions of law relating to the kind of payment involved and when not otherwise so provided, in the order of precedence as set forth in the Act 25 February, 1946 (60 Stat. 30), or as may be prescribed by the applicable provisions of law relating to the kind of payment involved.

c. *Determining Status as Proper Parties to Claim.* Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

28. Settlement:

a. *Basis for Settlement.* Settlement of claims shall be upon the basis of the decision and recommendations of the Board, as approved by the Secretary of the Air Force. Computation of the amounts due shall be made by the Deputy Chief of Staff, Comptroller. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government, arising from military service.

b. *Advising as to Nature and Amount of Various Benefits.* Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the Deputy Chief of Staff, Comptroller, as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

29. Report of Settlement:

a. *To Chairman of Board.* In every case where payment is made, the amount of such payment and the names of the payee or payees, shall be reported to the chairman of the Board.

b. *To the Secretary of the Air Force.* The chairman of the Board shall make a semiannual report to the Secretary of the Air Force of all claims paid during the period covered by the report, including a statement of the amount paid, the names of the payee or payees and a brief description of the claim in each case.

SECTION XI—MISCELLANEOUS

30. Staff Assistance:

a. *Assembling and Transmitting Available Military Records.* At the request of the Board, the appropriate staff office will assemble the original or certified copies of all available military records pertinent to the corrective action requested. Such records together with the application and all supporting papers will be transmitted to the Board with a certification from the

staff office designated by the Chief of Staff, that the corrective action requested cannot be granted through administrative action by any staff office.

b. *Facilities of Staff Offices.* The facilities of all staff offices will be made available as required to assist the Board in the accomplishment of its function. Upon request of the Board, personnel of the Air Staff will be made available for presentation before the Board of matters within their functional areas and which relate to the issues under consideration.

31. Expenses. No expense of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf, will be paid by the Government.

32. Changes in Procedures. The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Air Force and of the Secretary of Defense.

33. Publication in the Federal Register. This Regulation and any amendments thereto will be published in the Federal Register.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

HOYT S. VANDENBERG
Chief of Staff, United States Air Force

OFFICIAL:

K. E. THIEBAUD
Colonel, USAF
Air Adjutant General

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