



Returning the 24th Infantry Soldiers to the Colors

Injustice anywhere is a threat to justice everywhere.¹

¹ Martin Luther King, Jr.

Returning the 24th Infantry Soldiers to the Colors

The soldier is the Army. No army is better than its soldiers. The Soldier is also a citizen.¹

EXECUTIVE SUMMARY

Part of the original “Buffalo Soldiers,” the 24th Infantry was formed in Texas in 1869 by the consolidation of two infantry regiments set aside for African-American soldiers following the Civil War. The unit served with distinction on the western frontier during the 1880s and 1890s in Texas, New Mexico, the Indian Territories, Utah and Wyoming. Six members of the unit were awarded the Medal of Honor during this period. In addition to the 9th and 10th Cavalry and 25th Infantry (the other African-American regiments of the U.S. Army), the 24th Infantry deployed to Cuba in 1898, fought on the battlefields of El Caney and San Juan Hill, and nursed other soldiers stricken in the yellow fever epidemics that followed. Between 1899 and 1915 the Regiment completed three tours of duty in the Philippines, assisting in the defeat of the Philippine Insurrection and the ensuing pacification of the islands. During this time, their stateside assignments included Utah, Wyoming, Washington, Montana, and Alaska. In 1916 the 24th Infantry deployed to the U.S.-Mexican border to join the Punitive Expedition led by Brigadier General John Pershing against the Mexican guerrilla forces of Pancho Villa after Villa’s attack on Columbus, New Mexico on 9 March 1916. Subsequently deployed in August 1917 on a seven-week mission to protect the construction of Camp Logan, the 3d Battalion of the 24th Regiment would face a far more potent enemy: Houston, the “nest of prejudice” that served as Jim Crow’s home town.

The racist attitudes that were prevalent in Houston were not a surprise to the Army. Black soldiers of the US Army were particularly resented by white Texans and between 1900 and 1917 at least five major incidents of racially motivated violence involving black soldiers occurred in the Texas cities of El Paso, Del Rio, San Antonio, Brownsville, and Waco. When ordered to Houston, Lieutenant Colonel William Newman, the commanding officer of the 3d Battalion, sought to have the orders into Texas changed. Having personal experience with the dangers his soldiers faced from the Jim Crow authorities of south Texas, he reported, “I had already had an unfortunate experience when I was in command of two companies of the 24th Infantry at Del Rio, Texas, April 1916, when a colored soldier was killed by a Texas Ranger for no other reason than that he was a colored man; that it angered Texans to see colored men in the uniform of a soldier.”

¹ George S. Patton Jr.

Although this hostile community was well known to Army authorities, it did nothing to insist that its soldiers—the 653 men of the 3d Battalion, 24th Infantry Regiment—be recognized as members of the US military that were to be accorded the respect due their uniform. Compounding the problem, the Army sent the most senior non-commissioned officers of the 3d Battalion to officer candidate school at Des Moines, leaving the battalion without its backbone of leadership. It did not take long for the conflict between the pervasive racism of the Jim Crow south and the pride of soldiers serving their nation to reach the point of implosion on the night of 23 August 1917 when approximately 100 of these soldiers seized weapons and ammunition, disobeyed an earlier order to remain in camp, and marched into the San Felipe district of the city. Following the orders of a senior non-commissioned officer, these soldiers marched out to engage what they believed was a mob advancing to attack their camp. That they reacted to this threat is unsurprising considering they had endured weeks of racist provocations, particularly at the hands of Houston's notoriously brutal police force. Facing threats that one of their unit would be lynched before leaving Houston, events had come to a head earlier that day when two policemen shot at, beat, and arrested one of the battalion's non-commissioned officers, Corporal Charles Baltimore, who was acting in his official capacity as a duly appointed and conspicuously identified provost. Even after Baltimore was returned alive but bloodied to camp, the increasing anger and fear resulting from this latest episode of racist violence fed into the tension that gripped the 3d Battalion camp that dark rainy August night.

At the 6 p.m. retreat, Major Kneeland S. Snow ordered that all members of the unit were to remain in camp that evening. After 8 p.m., when acting First Sergeant Vida Henry informed Snow of increasing unrest in the unit, Snow ordered that the unit assemble and turn their weapons in to the supply tents. Interrupting the completion of this process—Corporal Baltimore was in the process of handing in his rifle to the I company supply tent—a cry that a mob was coming was followed by gunfire. In the resulting panic the soldiers rushed the supply tents to retrieve their weapons, and the non-commissioned officers established hasty defensive positions within the camp, distributed ammunition to defend the camp from the perceived attack, and protected their officers as a twenty to thirty minute outbreak of gunfire ensued. During this outbreak, one soldier was mortally wounded by friendly fire. Captain Bartlett James, the commander of L Company established a skirmish line in the company street, and with his non-commissioned officers, retained control of his company. In contrast, Major Snow abandoned his battalion in a panic, fleeing toward town and leaving his company grade officers to attempt to regain control of the unit.

In the absence of officer leadership, as the firing subsided, Sergeant Vida Henry, the I Company First Sergeant, ordered his unit to fall in. All most all soldiers within earshot complied. Believing that the unit was under attack by a mob, Sergeant Henry ensured that his troops had water and ammunition and then, in columns of fours, marched his unit from the camp toward the San Felipe district, the old black freeman town district of Houston. One element of the group attempted to induce L Company to join the column moving to meet the threat to the camp, but because of Captain James' leadership, his company stayed within the bounds to their camp prepared to defend it.

Some fellow non-commissioned officers argued that the better tactical decision was to defend the camp in situ. However, Sergeant Henry, well aware of the deadly threat of racist mobs, instead chose to march out to meet the threat. The unit left camp under his leadership believing it was advancing to defend against a mob attack. The actual violence that night lasted approximately three hours, during which time the soldiers fired at several houses as they passed (apparently to shoot out porch lights to give themselves tactical concealment in the darkness), and shot at several vehicles that approached them in the dark streets. In one of these cases, they fired on a vehicle occupied by men in uniform whom they mistook for policemen. In that incident Captain James Mattes, a National Guard officer whose unit had been ordered into the district to restore order, was killed, and an Army enlisted man was mortally wounded. Shortly afterward, the soldiers abandoned their march and attempted to return to camp. The Army later determined that six of the sixteen casualties of that night were killed by random gunfire from the initial gunfire in camp prior to the column marching out toward Houston. The concept of an advancing armed white mob was far from a figment of the soldiers' imagination—martial law was declared in Houston on 24 August, in large measure to prevent armed mobs that formed the night of 23 August from attacking the 3d Battalion's camp. The next day, the entire battalion—consisting of 652 men, including those whom the Army knew had remained in camp—was disarmed, and loaded on trains to Columbus, New Mexico.

The Rush to Judgment and Procedural Failures

As soon as the soldiers arrived in Columbus, the Army's flawed quest for accountability commenced. A Board of Investigation began its inquiry, interrogating all the soldiers. The prosecution team headed by Colonel John A. Hull, a senior judge advocate appointed to try the case, joined them by mid-September at Fort Bliss where the soldiers were held in confinement. In violation of Army regulation and law, this board threatened the soldiers with execution if they did not cooperate. Less than two weeks before trial commenced, Major Harry S. Grier was

appointed to represent all 118 accused soldiers. He was not an attorney, nor have we identified any evidence of extensive trial experience.

The first trial, *United States v. Nesbit, et al.*, began on 1 November 1917 and concluded 30 days later. The review of the record of trial was accomplished in only three days, and on 10 December 1917 Major General Ruckman, the General Court-Martial Convening Authority, rejected the court-martial panel's clemency recommendation for one soldier, approved all findings and sentences adjudged by the court-martial, and ordered the immediate execution of the thirteen death sentences. As the sun rose the next morning at 0717, the thirteen soldiers—Sergeant William Nesbit, Corporal Larnon J. Brown, Corporal James Wheatley, Corporal Jesse Moore, Corporal Charles W. Baltimore, Private First Class William Breckenridge, Private First Class Thomas C. Hawkins, Private First Class Carlos Snodgrass, Private Ira B. Davis, Private James Divins, Private Frank Johnson, Private Riley W. Young, and Private Pat McWhorter—a group that included every non-commissioned officer among the original 63 defendants, were executed on a hastily constructed gallows by the bank of Salado Creek. On his signature alone, and without any external review, the thirteen soldiers were executed. The soldiers were given no opportunity to petition for clemency, or even to say goodbye to their families. Because Congress had declared war on Germany, Ruckman was not required to forward the record of proceedings to the President for confirmation of the death sentences. Although this process was authorized by the Articles of War, this rush to execution was not mandated; Article 51 of the MCM authorized Ruckman to suspend execution of the sentence “until the pleasure of the President shall be known.” The provisions for wartime hasty executions was never intended to operate outside a theater of war, and certainly not within the domestic boundaries of the United States.

Two additional trials followed. On 17 December 1917, the second trial, *United States v. Washington, et al.*, convened to try the case of 15 additional accused mutineers. That court was in session for five days and produced 10 sentences of imprisonment and 5 death sentences. The third, *United States v. Tillman, et al.*, followed on 18 February 1918, to try an additional forty soldiers. That trial resulted in dismissal of charges against 1 defendant (on grounds of insanity), 2 acquittals, 26 prison sentences, and 11 death sentences. Because of the national outcry in the aftermath of the execution of the original thirteen soldiers with no outside review, the Army had implemented General Order No. 7, requiring that all death sentences be reviewed by the President. Of the 16 additional death sentences adjudged, President Wilson approved only six after receiving hundreds of letters supporting clemency.

These proceedings largely complied, at least in the formalist sense, with the requirements of the 1917 Manual for Courts-Martial. However an in-depth review of the three trials discloses significant violations of military law in the investigation and prosecution of the cases. Although a true assessment of the effect of these faults on the fairness of the trial is difficult to fully resolve more than one hundred years later, their existence raises grave doubts that justice or fairness were achieved in the trials. These failures fall into three categories: (1) processes that, although technically meeting the requirement of military law in 1917, nonetheless produce a visceral conclusion that justice failed, most notably the inherent prejudice resulting from a single defense representative with minimal prior court-martial experience representing such a large number of defendants and the inherent conflict of interest that situation imposed; (2) defects that arise from violations of the laws governing courts-martial by the prosecution; and (3) fundamental flaws that followed the courts-martial—due process flaws arising from the denial of fair consideration of the soldiers’ clemency petitions to which they were entitled under law and regulation, and the Army’s failure to seek complete accountability for the events in Houston.

Of the visceral faults, the rush to try the 118 soldiers of the 3d Battalion in joint trials, the immediate execution of the first 13 soldiers sentenced to death without outside review or the opportunity to seek clemency, the joinder of so many defendants in a single trial, and the representation of all soldiers by a single officer, although permitted under the Manual, were deeply troubling and inconsistent with core principles of military law, even as understood in 1917. The taint to legitimacy produced by these aspects of this process continue to resonate, producing fundamental doubts that such trials led to a just result.

These doubts are reinforced when viewed in light of the racial violence that underlay the events of the night of August 23, 1917. Compounding the doubts raised by these fundamental defects are several instances of prosecutorial misconduct in the investigation and prosecution of the case which violated either the letter or spirit of the prevailing law. These included illegalities in the investigation of the case by the Army that were accepted, directed, or furthered by the prosecuting judge advocates, the failure to prove the specific intent required for mutiny under military law for the vast majority of the accused soldiers, a reversal of the burden of proof requiring the accused soldiers to prove that they were not part of the mutiny, and finally, the judge advocate’s obstruction of the presentation of matters in extenuation and mitigation, to include the hostile and racist environment into which the Army deployed this battalion. Finally, the record discloses that the Army did not meet its own standards when it failed to both review and act upon the soldiers’ clemency requests in good faith and to apply its justice system in an even-handed way to ensure accountability for all those responsible for the Houston violence.

Despite recommendations from two senior Inspectors General, the Army did not prefer charges against the Battalion Commander, Major Kneeland S. Snow, who had abandoned his unit on the night of August 23d. These defects are described in detail below.

These three courts-martial are *sui generis*, in both the nature of the allegations and the deprivation of justice. Military justice rightly demands that soldiers who violate their oaths and the laws which govern them should face the appropriate punishment for their crimes. But justice in any criminal context cannot be truly served if the law is violated or the process corrupted by a headlong rush to judgment in a manner that perverts fundamental fairness and fails to fully discern between the innocent and the truly guilty. This is precisely what occurred in the investigation and court-martial prosecutions that followed the night of August 23, 1917, and an objective review of this case clearly shows that true justice is still owed to the soldiers of the 3rd Battalion, 24th Infantry, one of the Army's proudest African-American regiments.

True justice in this case would involve the modern Army's recognition of the injustices that tainted these courts-martial and an acknowledgement that the Army itself did not uphold the standards of justice to which all soldiers are entitled by American military law. The Army has the ability to do justice and restore these soldiers to the colors that they served; they deserve no less. Upgrading all 110 soldiers' discharges to honorable characterization is an appropriate and long overdue first step. The Army should review this matter through the lens of its values, which have been enduring and founded upon honor, respect, integrity, and loyalty. This request is not meant to excuse the deaths and injuries that occurred in the violence of August 23rd; but the punishment for any crimes committed by these soldiers has long been served. This remedial action will acknowledge that the flaws in this process may have resulted in the imposition of punishment on some soldiers who were not genuinely guilty, or that the nature of the punishment was excessive in light of all the extenuating and mitigating factors associated with this tragedy. Because the Army did not ensure that these soldiers were accorded the full protections of military law and Army regulation, the ability of the military justice system to establish guilt beyond a reasonable doubt for those soldiers actually responsible for the deaths and serious injuries was irreparably lost. The City of Houston has recently passed a resolution supporting this petition for clemency, and, as it has for the past 103 years, the NAACP requests the Army to consider in good faith the petition to restore these soldiers to the colors they so honorably served.

Accordingly, the time is right for the Army to restore the honorable characterization of the 110 soldiers' records to allow a recognition of the service they rendered to the nation and continue a legacy of honor, patriotism, and valor that marked the history of the 24th Infantry

Regiment across its generations. This would truly honor these soldiers and the Army values under which they lived, served, and died.

Submitted on behalf of the soldiers of the 3d Battalion, 24th Infantry Regiment,
By Dru Brenner-Beck & John Haymond

SYNOPSIS* -- *RETURNING THE 24TH INFANTRY SOLDIERS TO THE COLORS*

In the list of uniquely military crimes, mutiny holds a singular position. Nothing strikes at the heart of military discipline quite as directly or egregiously as mutiny, and nothing is more antithetical to military professionalism. Mutiny is not just disobedience of orders; it is the actual subversion of, and revolt against, lawful military authority. It is natural and entirely appropriate, then, that when soldiers today first encounter the history of the Houston Mutiny of 1917, their most common immediate reaction is to condemn the men who were accused of that crime. Anyone who has served in our country's armed forces – every woman and man who bound themselves to each other and the nation in this voluntary, sacred trust – is justifiably affronted to read that a century ago other soldiers who took the same oath broke that trust and committed the one crime for which there is no possible justification in the community of soldiers. Mutiny is not just a betrayal of the nation's trust in its soldiers, it is a betrayal of one's comrades and leaders.

As we delve deeper into the history of this case, however, there is far more to this story than simply the crime for which these soldiers were court-martialed and punished. The Army itself—the officers who served as the convening authorities, prosecutors, and judicial reviewers in the process—did not uphold the standards of justice guaranteed to all soldiers under American military law. Military justice rightly demands that soldiers who violate their oaths and the laws which govern them should face the appropriate punishment for their crimes. It is also an immutable fact that justice cannot be truly served if the law is violated in a headlong rush to judgment in a manner that perverts due process and fails to fully discern between the innocent and the truly guilty. This is precisely what occurred in the judicial proceedings that followed the Houston Mutiny of 1917, and an objective review of this case clearly shows that true justice is still owed to the soldiers of the 3rd Battalion, 24th Infantry, one of the Army's most storied African-American regiments.

This evaluation is not an exercise in revisionist history or revisionist law. These courts-martial marked a salient turning point in the development of American military law, making the

* This evaluation of the events in Houston on 23 August 1917 and the ensuing general courts-martial was researched and prepared by John A. Haymond, MSc, FRSH, MSG (Ret.), U.S. Army & Dru Brenner-Beck, J.D., LL.M, LTC (Ret), U.S. Army. Assistance was provided by the Law Department at the US Military Academy, the students in the Actual Innocence Clinic, and research librarians in the South Texas College of Law. This effort is supported by the NAACP, which has worked for justice for these soldiers since 1917. We would also like to thank the numerous volunteer research librarians, archivists, and researchers across the country, many of them retired military, who assisted us in researching during the COVID-19 pandemic. Because this petition is an interdisciplinary project, the style and formatting of the citations are not uniform, but adhere to their respective disciplinary guides.

correction of the injustices in the Houston Mutiny trials even more imperative. It is never too late to right a fundamental wrong. These soldiers deserve no less from the Army and nation they served. A careful examination of the records has produced new evidence showing that the accepted history of what occurred in Houston on August 23, 1917 and in the courts-martial that followed does not accurately reflect the reality of the events of that night nor the failure of due process provided to the soldiers of the 3d Battalion, 24th Infantry. Only by freshly evaluating the events in Houston can the Army remedy the injustices that still lay unaddressed from 1917.

The 1917 Manual for Courts-Martial expressed the policy of the War Department to save men to the colors. For offenders, particularly those guilty of purely military offenses, the MCM explained, “[w]ith good conduct and proper progress toward reform evidencing efficiency in training and fitness to resume service relations the sentence of confinement terminates and the honorable status of duty with the colors is resumed.” Recognizing that recent changes to military penology, particularly governing purely military offenders, encouraged restoring offending soldiers to an honorable service status, the 1917 MCM authorized the suspension of dishonorable discharges and “additional means of saving men to the colors—men whose offenses are thoughtless acts due to youth or inexperience or committed under some special stress, and for these reasons have in them less of the element of culpability.” A comprehensive evaluation of the events in Houston, discussed in detail below, shows that the soldiers of the 3d Battalion, 24th Infantry truly deserved this opportunity, and the Army should endeavor to save them to the colors now, even after a century has passed.

The soldiers of the 3d Battalion, 24th Infantry served honorably in combat in Cuba, the Philippines, and in the Punitive Expedition in Mexico. They were deployed as a unit to Houston, and as a unit they faced the escalating threats of a racist, hostile local police and citizenry. In the aftermath of the events in Houston, they were tried and condemned as a unit. They never lost this sense of unit cohesion, because on April 14, 1919, the prisoners submitted a petition to the Acting Judge Advocate General, Lieutenant Colonel Samuel Ansell, respectfully requesting a “reconsideration of their case with a view to Executive Clemency and *restoration to duty*.” Each prisoner signed this petition, over the signature line: “Late Members of the Third Battalion of 24th Infantry, U.S.A.”²

True justice in this case would involve the modern Army’s recognition of the injustices that tainted these courts-martial and an acknowledgement that the Army itself did not uphold the

² Petition of the Soldiers of 3d Battalion, 24th Infantry to LTC Samuel Ansell, (Apr. 14, 1919), *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2086/rec/15>.

standards of justice to which all soldiers are entitled by American military law. The Army has the ability to do justice and restore these soldiers to the colors that they served, and these soldiers deserve no less. Upgrading all 110 soldiers' discharges to an honorable characterization and pursuing legislative authority or Army action to overturn the results of the three courts-martial--is necessary and not prohibited by the passage of time. The Army should review this matter through the lens of its values, which have been enduring and founded upon honor, respect, integrity and loyalty. This request is not meant to excuse the deaths and injuries that occurred in the violence of August 23rd. However, because the Army did not ensure that these soldiers were accorded the full protections of military law and Army regulation, the ability of the military justice system to establish guilt beyond a reasonable doubt for those soldiers actually responsible for the deaths and serious injuries was irreparably lost. The City of Houston has recently passed a resolution supporting this petition for clemency, and, as it has for the past 103 years, the NAACP requests the Army to consider in good faith the petition to restore these soldiers to the colors they so honorably served.

The 1917 Houston Mutiny and Subsequent Courts-Martial

Historical Context: Texas in 1917 was infamous for its rigid Jim Crow segregation enforced by violence against black people; it was also notorious for a pattern of racially-motivated mob violence and spectacle lynchings. Black soldiers of the US Army were particularly resented by white Texans and between 1900 and 1917 at least five major incidents of racially motivated violence involving black soldiers occurred in the Texas cities of El Paso, Del Rio, San Antonio, Brownsville, and Waco. (Annex A) Eleven years before the Houston Riot, an officer commanding black troops of the 25th Infantry wrote, "In my opinion the sentiment in Texas is so hostile against colored troops that there is always the danger of serious trouble between the citizens and soldiers whenever they are brought into contact." Nothing had changed in the interim. Nonetheless, the War Department posted battalions of the 24th Infantry to Texas in July 1917 without first ensuring that black military personnel would be fairly treated by the local communities.

Incident: On the night of August 23, 1917, at Camp Logan in Houston, TX, soldiers of the 3d Battalion, 24th Infantry Regiment seized weapons and ammunition, disobeyed an earlier order to remain in camp, and marched into the San Felipe district of the city. At least 100 men from several companies took part in the action; the exact number has never been fully determined. Following the orders of a senior non-commissioned officer, they believed they were marching out to engage an advancing mob coming to attack their camp after weeks of racist provocations,

particularly at the hands of Houston's notoriously brutal police force. The events had come to a head earlier that day when two policemen shot at, beat, and arrested one of the battalion's non-commissioned officers, Corporal Charles Baltimore, who was acting in his official capacity as a duly appointed and conspicuously identified provost. The actual violence that night lasted approximately three hours, during which time the soldiers fired at several houses as they passed (apparently to shoot out porch lights to give themselves tactical concealment in the darkness), and shot at several vehicles that approached them in the dark streets. In one of these cases, they fired on a vehicle occupied by men in uniform whom they mistook for policemen. In that incident Captain James Mattes, a National Guard officer whose unit had been ordered into the district to restore order, was killed, and an Army enlisted man was mortally wounded. Shortly afterward, the soldiers abandoned their march and attempted to return to camp.

Casualties: At least 16 people were killed during the violence. (Some sources put the numbers higher, but the Harris County coroner's reports and the Army's Inspectors General investigations are the most reliable accounts, and both fix the number at 16.) The dead included 13 civilians (two of whom were policemen, and two who were children) and three soldiers (two of the mutineers were killed, apparently by friendly fire from their own comrades or by their own hands; Captain Mattes and Corporal Everton were the other military casualties). Numerous persons were wounded, several of whom later died of their injuries. Of the dead, at least five persons were deliberately targeted and killed at close range; the others were apparently killed by random fire. Army investigation determined that six of the civilians casualties were killed by unaimed fire in the chaos before the column of soldiers marched into the city. Property damage was limited.

Aftermath: The Harris County District Attorney demanded the surrender of all alleged mutineers to his jurisdiction for prosecution in civilian courts, but the Army refused. The entire 3d Battalion was disarmed and sent by train to Columbus, New Mexico, where they were held under guard while the Army began its official investigation into the incident. In addition to the regimental investigatory board consisting of two captains and a lieutenant, the main investigators in this process were the Southern Department's Inspector General, Colonel George C. Cress, and the Army Inspector General, Brigadier General John L. Chamberlain. Their separate inquiries reached similar conclusions: Houston had displayed an entrenched racist hostility to the black soldiers ever since the unit arrived in the city that July; this hostility was demonstrated by frequent racist insults from citizens and physical violence at the hands of local police; despite repeated protests from Army officers, city policemen had persisted in calling black soldiers "niggers" with deliberate intent to insult or provoke them; the recently promoted commander of

3d Battalion, Major Kneeland Snow, failed to grasp the seriousness of the mounting unrest in his unit and demonstrated poor judgment, an appalling lack of leadership, and outright incompetence in his response to the outbreak of violence. Both IGs concluded that Houston and its citizens were responsible for provoking the outbreak of violence, but also stated that all soldiers who could be proven to have joined the column that left camp were guilty of mutiny in violation of the Articles of War. Trial by general court-martial (GCM) was therefore warranted.

Courts-Martial: Major General John W. Ruckman, Commanding General of the Southern Department, headquartered at Fort Sam Houston, TX, was the convening authority for judicial action relative to the incident. On 1 November 1917, the first of three GCMs convened at Fort Sam Houston, using the post's Gift Chapel as venue. Known as *United States v Nesbit, et al.* (each case was named for the lead defendant), it was and remains the largest court-martial in US history, with 63 defendants tried simultaneously on charges of willful disobedience of lawful orders (Article 64 of the Articles of War), mutiny (Article 66), assault with intent to commit murder (Article 93), and murder (Article 92). The trial ended on 30 November 1917, after 29 days in session. After two days of deliberation, the court delivered five acquittals and 58 convictions. Thirteen men received death sentences. Major General Ruckman ordered that the verdicts and sentences not be made public, and the only review he allowed was internal, conducted by his own Staff Judge Advocate. On 10 December, upon completion of this three-day SJA review, Ruckman approved the findings and sentence of the court-martial and ordered it immediately executed. That evening the 13 condemned men were removed from the post guardhouse where they had been confined with the other defendants, and sequestered in the cavalry barracks on Stanley Road. The next morning before dawn they were transported out to a location on the edge of the military reservation (the site is today the 15th tee on the post golf course) and there they were hanged at 0717 hours. It remains the largest mass execution of American soldiers ever carried out by the Army. Only after the hanging was concluded did Ruckman publicly announce the death sentences and executions.

The second GCM, *United States v Washington, et al.*, convened one week later on 17 December 1917 to try the case of 15 additional accused mutineers. That court was in session for five days and produced 10 sentences of imprisonment and 5 death sentences. The secrecy of the first executions, particularly the fact that the hangings were carried out without any external review or opportunity to seek clemency under the Articles of War, caused such public outrage that the Army's acting Judge Advocate General, Lieutenant Colonel Samuel T. Ansell, pushed for an immediate regulatory change to supplement the Articles of War to prevent any further such action by the convening officer of a capital case. This resulted in General Order No. 7 on January 17, 1918. Because of this change, the convicted defendants from the *Washington* trial

were able to seek review and clemency after their convictions and sentences were approved on 28 December 2017.

In the meantime, the final GCM, *United States v Tillman, et al.*, convened on 18 February 1918 to try the remaining 40 accused mutineers. It resulted in dismissal of charges against 1 defendant (on grounds of insanity), 2 acquittals, 26 prison sentences, and 11 death sentences. Per the changes to the Articles of War required by General Order 7, effective January 1918, all military death sentences now required executive review by the President of the United States. President Wilson approved 6 of the 16 pending death sentences from the second and third trials. Those sentences were executed on 11 September (5 hangings) and 24 September (1 hanging) at the same location as the first executions.

Controversies:

Close study of the three GCMs leads to some slightly contradictory conclusions. First, it is clear that the trial process complied with both the Articles of War and the Manual for Courts-Martial (MCM) of 1917. Yet it must be said that “legal” does not always mean “just” or “fair,” and that is true in this case. According to military law of that era, military death sentences *in time of war* could be carried out without external review or appeal; as the United States had declared war on Germany on 6 April 1917, a legal state of war existed at the time. However, the MCM also contained a provision stating that “Any officer who has authority to carry into execution the sentence of death... may suspend the same until the pleasure of the President be known...” Major General Ruckman was therefore not required by law to execute those first 13 death sentences without appeal, nor did military law require that the process follow the extremely rapid pace that characterized the prosecution and executions. Why Ruckman chose to do so remains a matter of some debate.

From a legal standpoint, the trials generate numerous legitimate criticisms. All 118 defendants were represented by a single officer, Major Harry S. Grier, who acted as sole counsel for defense. Though Major Grier had previously taught law at the US Military Academy, he was not an attorney. The prosecution, by contrast, was a team of experienced trial lawyers with full administrative support. MAJ Grier had less than half the time afforded the prosecution to prepare his defense. A key witness for the defense, Captain Bartlett James, was found dead under suspicious circumstances days before the first GCM convened; his death was ruled a suicide. As a result of James’ death, Captain Haig Shekerjian, the most qualified officer scheduled to assist in the defense, was forced to recuse himself shortly before trial because he was called as a primary prosecution witness. The identification of the accused mutineers was not established to the standards of reasonable doubt and was in some cases based on the testimony of immunized witnesses who were compromised by their own involvement in the crime. This is not to say that

proof of guilt was not established in *every* instance, but it is clear that nearly all the convictions were based on insufficient evidence.

While the trials and executions were demonstrably legal in terms of law, they were neither just nor fair, as shown by the factors specified above. It is frankly impossible that 118 defendants represented by single counsel could fully receive due process, and all death sentences should absolutely have been referred for external review as the law permitted.

Two truths stand in opposition here. The first is that in military law and military society there is almost no possible excuse or exculpation for an act of armed mutiny by a soldier. The other is that even with that legal reality acknowledged, the 1917-18 courts-martial still had the option of considering mitigating circumstances and comparative culpability when it imposed sentences. The record indicates the court-martial did not do so in all but one soldier's case.

Another example of injustice in these trials was that both of the Army's separate IG investigations excoriated the conduct of two of the battalion's officers, in particular the battalion commander, Major Kneeland Snow. Snow not only failed to control the situation while it was still possible to do so, when the chaos began he abandoned his post and his soldiers and he fled the camp in a civilian vehicle. By contrast, several of the battalion's company-grade officers kept control of their units and prevented their soldiers from leaving camp. The IGs concluded that Snow's actions "demonstrated his unfitness for command" and recommended that charges be brought against him for dereliction of duty, but Snow was never held accountable for his incompetence and lack of leadership.

Conclusions: Immediately following announcement of the first 13 executions, some commentators accused the army of carrying out "a military lynching." That view persists today in some circles. Although the sentiment is understandable, the characterization is inaccurate. The executions were the result of a formal judicial process and carried out under the authority of law. But that does not mean that the proceedings served the broader aims of justice, that the defendants received fair and impartial judgement, or that the standards of due process were fully met. Having said that, it is imperative that before we move to criticisms and condemnations of the numerous shortcomings in the 1917-18 courts-martial, we first examine military law as it existed *then*, not by the standards that exist today. The army itself recognized some of the flaws in the system at the time, as demonstrated by Lieutenant Colonel Ansell's immediate move to amend the Articles of War to prevent such an injustice as execution without appeal from ever happening again. The contemporaneous reaction these trials generated was also a factor in the subsequent creation of the first version of the military appellate system in the U.S. military. The actions by the Army when reviewing the Houston cases for clemency and parole purposes in the ensuing twenty years shows an increasing willingness to recognize the problematic nature of the

convictions obtained in the three courts-martial. Nonetheless, serious flaws exist in the clemency considerations of the Houston prisoners.

Virulent racism is an inextricable element of this entire case and was certainly the greatest predicated factor in the outbreak of the events in Houston, but it must be pointed out that the Articles of War themselves, the legal code under which these soldiers were prosecuted, was only focused on the legal identity of the accused as soldiers before the law, not their race. We must also acknowledge, though, that racism was endemic in a military structure that segregated soldiers by race and denigrated them with the casual use of racist stereotypes in official documents—that was the reality of the Army in 1917. Lieutenant Colonel Ansell's outrage at Major General Ruckman's handling of the first case was based on his view that no American soldier should ever be denied due process of law and denied the chance of appeal – the racial identity of the accused was not his primary concern. However, the record indicates that while military law did not specify the defendants' race as a factor, it is indisputable that the courts-martial which judged these soldiers were tainted by racial bias, and the Army's decision to send this battalion of black soldiers into the Jim Crow South without taking any measures to insist on their fair treatment as U.S. soldiers, directly contributed to the tragic events of the night of 23 August 1917.³ The law was largely followed in these courts-martial, but sometimes the law *itself* is the source of an injustice, and that was an undeniable factor in this case.

³ When Brigadier General John L. Chamberlain, the Army Inspector General, interviewed Houston's civil authorities a few days after the incident, he wrote in his official report that Houstonians "appeared to lose sight of the one fact upon which I endeavored to hold attention, namely 'that Corporal Baltimore at the time of this arrest was a United States soldier on duty as a guard under the orders of his officers and that he was on duty under specific arrangements between the city authorities and the military authorities; in other words, that this assault was one upon the United States uniform while on duty.'" If the Army would have insisted on that recognition of the black soldiers' status as members of the US military when it first posted the battalion to Houston, tragedy might have been averted. Records of the Inspector General, File 333.9, RG 159.

The Context of Racist Violence in America

Racial violence in the form of race riots and lynchings infected nearly every region of American society in the first decades of the 20th Century. This violence was concentrated in the Deep South, but cases of it happened in almost every state in the union. In the 14 years before the Houston incident, African-Americans communities were attacked in four major race riots, and in every instance, people of color were the victims of the violence, not the perpetrators. Only one of these outrages occurred in a Southern state:

Evansville, IN, 1903: 12 dead, 40+ injured, black neighborhood burned out, 2000 black refugees.

Atlanta, GA, 1906: 25 black citizens murdered, 90+ injured, massive property destruction of black-owned homes and businesses.

Springfield, IL, 1908: 16 dead (9 black, 7 white) undetermined number of injuries, black neighborhood burned out, 2000+ black refugees. According to the inquest, all white casualties of the riot were killed by other mob members or the militia.

East St. Louis, IL, 1917: Estimates of deaths vary—the Congressional report cites 39 black deaths, the city police chief estimated at least 100 black deaths.

Hundreds of people were injured. More than 300 buildings, mostly black-owned, were burned and 2000+ black citizens were refugees.

For the soldiers of the 24th Infantry, these incidents were not just remote news accounts of distant events, because some of them came from the states where these cases of mob violence occurred. Some soldiers had enlisted from those very cities. As the record of that era repeatedly showed, no African-American community could be confident of their safety, no matter how far north of the Mason-Dixon line they lived. Black soldiers serving in Texas were already acutely aware of the personal risks they faced from racism in the Jim Crow South, because five incidents of racial violence against black troops had occurred since 1900, but every report of a race riot or lynch mob anywhere in the country reinforced a terrible truth to them—their families, friends, and hometowns were never truly safe from the threat of racial violence.

The year after the 1917 tragedy in Houston, the national headquarters of the NAACP released its carefully researched study of lynching, titled *Thirty Years of Lynching 1889-1918*. In that 30-year period, the study tallied 3395 verifiable lynchings across the United States; 2650 of those victims were persons of color. Texas ranked third on that despicable list, with 335 lynchings (George was worst with 386; Mississippi next with 373). What set Texas apart on that

ledger of reprehensible savagery, though, was the appalling nature of lynchings in the Lone Star State. Between 1895 and 1917, that metastasized into what can accurately be described as racial terrorism. Spectacle lynchings became the hallmark of extra-judicial executions in Texas, with crowds of thousands of ordinary white citizens gathering to watch public torture, mutilation, and unrestrained sadism as black men were murdered.

In 1915 nearly 15,000 white Texans crowded into Waco to witness the maiming, torture, and public burning of a young black man named Jesse Washington. That lynching quickly became known across the nation as “the Waco Horror.” Another mob in Howard, Texas, held a public vote for how they should put a black man to death. They decided to burn him alive, and a huge crowd watched as their victim died in agony in the flames. These were not isolated incidents.

With this reality in mind, the soldiers of the 24th Infantry who were posted to Houston that summer would not have idly dismissed threats of racist violence, nor the persistent mutterings that a black soldier would be lynched before the battalion departed the city. When Sergeant William Nesbit overheard two white contractors on the pipefitting crew at Camp Logan say about one of his soldiers, “That nigger would look better with coils round his neck,” he did not pass it off as offensive but meaningless noise. He recognized it for what it was—a genuine threat in a hostile environment—and he immediately took steps to ensure his soldiers’ safety.

The racism that confronted the men of the 3rd Battalion when they arrived in Texas was not subtle, restrained, or concealed in any way. Nor was it mere intimidation. The pattern of history had made painfully clear to them what could happen to black soldiers in that region, and President Wilson’s repeated refusal to use Federal authority to condemn lynching, and the War Department’s refusal to use its economic power to insist that its soldiers be given the respect and decent treatment they deserved, made it all but certain that it was only a matter of time before another outburst of racial violence would claim more victims. A year and a half after the Houston incident, that was exactly what happened in the Red Summer of 1919 when black soldiers returning from service in the First World War were targeted, attacked, and lynched by racist mobs outraged by the sight of black men in the uniforms of the nation’s armed forces.

Casualties of the Houston Incident

Killed:

Ira D. Rainey – Police officer
Rufus Daniels – Police officer
E. J. Meineke – Police officer
Eli Smith – Civilian
S. Satton – Civilian
Earl Finley – Civilian
A. R. Carsten – Civilian
Manuel Garredo – Civilian
Charles W. Wright – Civilian
E. H. Jones – Civilian
CPT J. W. Mattes – A Batt, 2nd FA, Illinois NG
CPL M. D. Everton – E Batt, Texas NG
SGT Vida Henry – I Co, 3rd BN, 24th IN
PVT Bryant Watson – I Co, 3rd BN, 24th IN
PVT George Bivins – I Co, 3rd BN, 24th IN
PVT Wylie Strong – M Co, 3rd BN, 24th IN

Wounded

William J. Drucks – Civilian
W. H. Burkett – Civilian
Asa Bland – Civilian
Horace Moody – Police officer*
D. R. Patten – Police officer*
Zemmie Foreman – Civilian
James Lyon – Civilian
W. A. Thompson – Civilian
John Long – Civilian
T. A. Binford – Police officer
G. W. Butcher – Civilian
Sam Solensky – Civilian
Alma Reichert – Civilian

*Died of wounds; Moody on 24
August, Patten on 8 September

The Failure of Due Process.

Fundamental to the American concept of due process of law are three precepts: that the defendant shall be presumed innocent until proven guilty; that the burden of proving the guilt of the defendant falls upon the prosecution; and that every defendant is entitled to an individual determination of guilt and that the prosecution must prove guilt beyond a reasonable doubt. These requirements were also fundamental to the military justice system of 1917.⁴ The three courts-martial convened to try the 118 soldiers accused of offenses in the Houston Mutiny were required to weigh the evidence presented on the most serious crimes that can be charged under both military and civilian law—mutiny, willful disobedience of orders, murder, and assault with the intent to commit murder.⁵ In each of these courts-martial, the combination of the nature of the charges and the mode of proof chosen by the prosecution resulted in a reversal of the burden of proof and erasure of the presumption of innocence for the majority of convicted soldiers. Equally as concerning was that the Army itself, in the persons of the officers who served as the convening authorities, prosecutors, and judicial reviewers in the process, did not uphold the standards of justice to which all soldiers are entitled by American military law.

Although the proceedings largely complied with the requirements of the 1917 Manual for Courts-Martial (MCM or Manual), an in-depth review of the three trials discloses significant violations of military law in the investigation and prosecution of the cases. Although a true assessment of the effect of these faults on the fairness of the trial is difficult to fully resolve more than one hundred years later, their existence raises grave doubts that justice or fairness were achieved in the trials. These failures fall into three categories: (1) processes that, although legal under the law in 1917, nonetheless produce a visceral conclusion that justice failed; (2) defects that arise from violations of the laws governing courts-martial by the prosecution; and (3) fundamental flaws that followed the courts-martial—due process flaws arising from the denial of fair consideration of the soldiers' clemency petitions to which they were entitled under law and regulation, and the Army's failure to seek complete accountability for the events in Houston.

⁴ U.S. War Dep't, MANUAL FOR COURTS-MARTIAL. 1917, ¶ 288 (Reasonable doubt and burden of proof); ¶ 296 (Reasonable doubt) (hereinafter "1917 MCM," "MCM" or "Manual").

⁵ The charges of murder fell within the jurisdiction of the courts-martial only because the United States was "in time of war," having joined World War I on April 6, 1917. See MCM ¶ 442 ("Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.")

Of the visceral faults, the rush to try the 118 soldiers of the 3d Battalion in joint trials, the immediate execution of the first 13 soldiers sentenced to death without outside review or the opportunity to seek clemency,⁶ and the representation of all soldiers by a single officer, although legal, were problematic and continue to resonate, producing fundamental doubts that such trials led to a just result. This conclusion is reinforced when viewed in light of the racial violence that underlay the events of the night of August 23, 1917. Compounding the doubts raised by these fundamental defects are several instances of prosecutorial misconduct in the investigation and prosecution of the case which violated either the letter or spirit of the prevailing law. These included illegalities in the investigation of the case by the Army that were accepted, directed, or furthered by the prosecuting judge advocates, the failure to prove the specific intent required for mutiny under military law for the vast majority of the accused soldiers, a reversal of the burden of proof requiring the accused soldiers to prove that they were not part of the mutiny, and finally, the prosecutor's obstruction of the presentation of matters in extenuation and mitigation. Finally, the record discloses that the Army did not meet its own standards when it failed to both review and act upon the soldiers' clemency requests in good faith and to apply its justice system in an even-handed way to ensure accountability for all those responsible for the Houston violence.

I

First, all 118 soldiers were represented by a single officer, Major Harry S. Grier, who although trained in the law, was not an attorney.⁷ Under the 1917 MCM, it was accepted practice for defendants, even in a general courts-martial, to be represented by an officer appointed to present their case, and although defendants had the right to be represented by civilian lawyers at their own expense, civilian counsel was rare in courts-martial. Nonetheless, because it was common for a defendant to not have legal counsel, the Manual required the judge advocate (the prosecutor) presenting the case to protect the rights of the soldier-defendants, particularly as to their rights against self-incrimination.⁸ Because the 118 soldiers in the Houston courts-martial were represented by Major Grier, the responsibilities of the prosecutor to protect the rights of the defendant were diminished, but not eliminated.⁹ Military law nonetheless required the prosecutor

⁶ Modern military law recognizes that "the post-trial review and the action of the convening authority together represent an integral first step in an accused's climb up the appellate ladder. This step is oftentimes the most critical of all for an accused because of the convening authority's broad powers which are not enjoyed by boards of review . . . It is while the case is at the convening authority level that the accused stands the greatest chance of being relieved from the consequences of a harsh finding or a severe sentence." *See United States v Wilson*, 26 C.M.R. 3, 6 (C.M.A. 1958).

⁷ *See* Annex B for a biography of Major Harry S. Grier.

⁸ For example in trials where the soldier was not represented, the Manual required the Judge Advocate to inform the soldier of the accusations against him; of his right to have counsel, of his right to testify on his own behalf, and to have a copy of the charges. 1917 MCM, ¶ 96.

⁹ William Winthrop *MILITARY LAW AND PRECEDENTS* 199 (1920) ("where the accused is provided with capable counsel, . . . the relation of the judge advocate toward him is so far modified that the former may be required, in the interests of justice, to assume a controversial if not an aggressive attitude. It will then indeed be his duty to resist the

to act as a minister of justice, to include “facilitat[ing] the accused in making such defence or offering such matter of extenuation as may exist in the case.”¹⁰ The judge advocate was required to focus on the attainment of justice, not mere conviction.¹¹

Because of the rush toward trial in the aftermath of the events in Houston, Grier was required to investigate and try three courts-martial with no investigative support and minimal time to prepare, with the first two trials of 78 soldiers concluding after less than 34 days of proceedings.¹² Representing all 63 soldiers in the first trial, *United States v. Nesbit, et al.*, Grier was given only two weeks to prepare and consult with the accused soldiers and earn their trust—a formidable task. Facing him was a prosecution team of two experienced criminal lawyers, judge advocates Colonel John A. Hull and Major Dudley V. Sutphin, who had been detailed to this case at the request of Major General Ruckman, the Southern Department Commander and Convening Authority.¹³ In its preparation of the case from 24 September onwards the prosecution worked closely with the ongoing regimental Board of Investigation at Fort Bliss. Extensive trial testimony raised significant questions as to whether the officers who conducted this investigation complied with military law under the 1917 Articles of War (A.W.), particularly as to their methods in questioning the accused soldiers held in detention at Fort Bliss.

One week prior to trial, Captain Bartlett James, the L Company commander, who was a key fact witness on the events in camp on the night of August 23, 1917, was found dead in his quarters, depriving the defendants of his testimony on their behalf. Although the Army determined that James’ death was by suicide, that conclusion is subject to considerable dispute.

introduction by the accused of objectionable testimony, to contest any inadmissible pleas or unreasonable motion made by him, and generally, while courteous in his treatment of him and strictly fair and considerate of his rights, to maintain with the zeal and energy of a champion the cause of the United States.”) (hereinafter “1920 Winthrop”); William Winthrop, *MILITARY LAW AND PRECEDENTS*, 294 (1896) (same) (hereinafter “1896 Winthrop”).

¹⁰ 1920 Winthrop, *supra* note 8 at 193; 1896 Winthrop, *supra* note 8, at 285 (same).

¹¹ Canon 5 of the 1908 American Bar Association Canon of Professional Ethics echoed this requirement: “The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.” See 1908 AMERICAN BAR ASSOCIATION CANON OF PROFESSIONAL ETHICS (hereinafter “1908 ABA Canon of Professional Ethics”), available at

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf

¹² Although a letter from the Secretary of War to the House Military Affairs Committee claims that Grier was provided “clerical” support, the historical record is absent of the provision of any other support to Major Grier’s defense. And to the contrary, Major Grier’s investigative efforts appeared limited to sending written requests to the units of possible witnesses in order to seek evidence for use in the trials.

¹³ Tellingly, in the Army of 1917, the Judge Advocate General’s Corps changed drastically from April 1917 to December 1918, growing from seventeen officers on April 6, 1917 to 426 officers in December 1918. See William F. Fratcher, *Notes on the History of the Judge Advocate General’s Department, 1775-1941*, 1 THE JUDGE ADVOCATE GENERAL’S JOURNAL 11, (15 June 1944) At the time of the Houston courts-martial, the Manual specifically stated that any judge advocate was unavailable to serve as counsel for a defendant. See MCM, ¶ 108.

As a result of James' death, Captain Haig Shekerjian, who had been detailed as assistant defense counsel for the accused soldiers, recused himself after being designated as a prosecution witness, leaving Grier as the sole counsel representing all 63 defendants. Grier had no independent investigative support to prepare for trial or investigate the events of August 23d and was required to immediately take up the representation of an additional 15 accused soldiers in *United States v. Washington, et al.*, seventeen days after the completion of the first trial, only one week after the first thirteen soldiers had been executed at dawn on 11 December 1917. And the third court-martial, *United States v. Tilman, et al.*, was delayed only until 18 February 1918 to allow for the prosecution to draft charges against an additional 40 soldiers with this trial commencing approximately seven weeks after completion of the second trial.

It is yet unknown why Grier did not seek a delay of the trials to better prepare his defense,—the inadequacy of two weeks to prepare for a capital murder trial of 63 defendants is self-explanatory—and the omission is even more puzzling given the recognition that continuances should be granted liberally when necessary to protect the substantial rights of an accused soldier.¹⁴ Perhaps he assessed that because the high ranking officers who comprised the specially requested panel were available only because they were in transit between pressing war time assignments, such a request for delay would probably not have been favorably considered. Even so, he was ethically obligated to pursue every possible benefit for his clients and any reasonable assessment of the circumstances would have required such a request. The inadequacy of the defense to both simultaneously try and investigate three on-going courts-martial involving 118 defendants, with the first two trials of 88 men being completed within 58 calendar days—to include the Christmas holidays—needs no explanation. Although joinder was permitted under military law for joint offenses, such as mutiny,¹⁵ one counsel could not adequately defend the individual interests of 63 defendants. The impossibility of such a task was further compounded

¹⁴ See *Hearings on S. 3191, Revision of the Articles of War*, S. Rpt. No. 130, Hearing before the S. Subcomm. on Milit. Aff., 64th Cong. 1st Sess. 47 (1916) (In February 1916, MG Enoch Crowder testified before the Senate that continuances are granted liberally in military trials, “for we are a little bit chary of denying applications of an accused. There have been many instances where the reviewing authorities set aside proceedings, instances where it is thought the substantial rights of an accused have not been preserved.”), *available on* https://www.loc.gov/rr/frd/Military_Law/pdf/RAW-vol1.pdf; Articles of War (A.W.) 20, reprinted in 1917 MCM (“Continuances- A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.”); 1896 Winthrop, *supra* note 9, at 358 n.2 (“A refusal by a court to grant a continuance therefor is exhibited, while it will not affect the legal validity of the proceedings, will, if the accused appears to have been thus prejudiced in his defence, or to have otherwise suffered injustice, ‘properly constitute good ground for disapproving the sentence, or for mitigating or partially remitting the punishment.’”) (*quoting* THE DIGEST OF THE OPINIONS OF THE JUDGE ADVOCATE GENERAL, 109 (1880-1895)).

¹⁵ 1896 Winthrop, *supra* note 9 at 208-09; 1920 Winthrop, *supra* note 9, at 145-46 (“Whether in-a case in which there may properly be a joinder, the accused shall be charged and tried jointly or separately, is a question of discretion, to be determined upon considerations of convenience and expediency, and in view of the exigencies of the service, by the commander authorized to order the court.”).

by the deleterious impact of the prosecution's theory of the case and the resulting imposition on each defendant to individually show that he was not a participant in the mutiny, which will be discussed further. It is also certain that representing 63 individuals with far different roles in the events of August 23d would create significant conflicts of interest for a single counsel representing all their interests; in this case Grier represented 118 soldiers.

Also of great concern, the Army in its official correspondence on the Houston courts-martial falsely informed Congress that Major Grier was an attorney. He was not, a fact well known to the Judge Advocates who prepared the Secretary of War's December 6, 1921 response to the House Military Affairs Committee.¹⁶ The Army further asserted that the accused soldiers declined representation by civilian attorneys, but exhaustive research has discovered no evidence that any such offers were ever made or that any offers were conveyed to the defendants.¹⁷

Equally concerning, the historical record discloses a significant conflict of interest on the part of Major Grier that raises substantial questions about his commitment to his clients. On January 11, 1918, in the break between the completion of the second and the beginning of the third trial, Colonel Hull, the prosecutor in the first two trials, wrote to the Southern Department Judge Advocate, Colonel Dunn:

*I intend to make a recommendation that a strong letter be given to Major Grier. He is one of the ablest, most conscientious and high classed officers of his rank in the Service. He never loses sight of his obligations to the Government, and wherever he may be placed, he will bring to the discharge of his duties, experience, a right discretion and a pleasing personality. You of course appreciate fully the opportunities he had as counsel to raise race questions and so forth, which, while they might not have helped his clients, certainly would not have helped the interests of the service.*¹⁸

Major Grier kept an extract of this letter, initialed by Hull, in the scrapbook that he created on the Houston courts-martial. This is not to suggest that Grier was complicit with the prosecution. It

¹⁶ See War Dep't Letter from Secretary of War John W. Weeks to Representative Julius Kahn (Dec. 6, 1921) found in National Archives, Records of HR67A-F28.1, House Military Affairs Committee, 67th Congress; see also H.R. Rpt. No. 503, HOUSTON RIOT CASES, ADVERSE REPORT, H. Comm. on Milit. Aff., 67th Cong. 2d Sess. (Dec. 9, 1921). (available from the authors on request)

¹⁷ *Id.*

¹⁸ Scrapbook of Harry S. Grier, The Harry S. Grier and James L. Grier papers, 1906-1944, US Army Heritage and Education Center, Carlisle Penn. (copy available from authors) (hereinafter "Grier Scrapbook").

does however raise concerns about Grier's independence. As already stated, though Grier was trained in law he was not an attorney. So although he may not have been technically subject to the ethical requirements of zealous advocacy or loyalty to his clients,¹⁹ the Manual imposed an identical requirement:

*An officer acting as counsel before a general or special court-martial should perform such duties as usually devolve upon the counsel for a defendant before civil courts in criminal cases. He should guard the interests of the accused by all honorable and legitimate means known to the law, but should not obstruct the proceedings with frivolous and manifestly useless objections or discussions.*²⁰

His dedication to the Army as an institution, as recognized by Colonel Hull, created fundamental conflicts for Grier as a non-attorney representing these 118 soldiers in high profile courts-martial garnering national attention. His failure to make an issue of the racial hostility experienced by these soldiers in Houston deprived them of the mitigating evidence recognized by the MCM if any crimes were “committed under some special stress.”²¹ Given the Army's knowledge of the virulent racism its soldiers faced in Texas,

¹⁹ In 1908, the American Bar Association adopted its first Canon of Professional Ethics, which articulated the duties of lawyers recognized that a lawyer, having undertaken the defense of a criminal case, “is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty without due process of law. See Canon 5, 1908 ABA CANON OF PROFESSIONAL ETHICS, *supra* note 11. Canon 6 stated that “it is unprofessional to represent conflicting interests, . . . The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences.” Canon 15 states that “the lawyer owes ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,’ tor be withheld from him, save by the rules of la, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. *Id.*

²⁰ MCM ¶ 109. This is a long standing requirement in military law. See Howland, DIGEST OF OPINIONS OF THE JUDGE ADVOCATE GENERAL, 505 (1912) (“VG4 By use of the term counsel in General Order No. 29, Adjutant General's Office, 1890, without qualification, it was undoubtedly intended that officers detailed as such should perform for an accused all those duties which usually devolve upon counsel for defendants before civil courts of criminal jurisdiction, in so far as such duties are apposite to the procedure of military courts. It would be proper for an officer so detailed to invoke every defense which the law and facts justify, without regard to his own opinion as to the guilt or innocence of the accused. Military law does not any more than the civil assume to punish all wrongdoing, but only such as can be ascertained by the methods of justice which the law and customs of the service prescribe.”).

²¹ MCM, ¶ 340; see also *Echoes from Houston*, THE NEW YORK AGE, New York, 4 (22 Dec. 1917), available at <https://www.newspapers.com/clip/3348330/1917-captain-bartlett-james/>. The Houston Police Department of the time was relatively new and inexperienced at that time – so reliance on “community” [mob] for enforcement was not uncommon, and soldiers' fear of mob violence was rooted in contemporary fact.

this defense was particularly relevant and compelling, and one to which the soldiers were entitled under military law.²²

Further demonstrating disloyalty to his clients, on the second day of the first trial Grier made a public statement to reporters “that the testimony of Major Snow, unless rebutted, established the fact that a mutiny occurred, although the participants were not identified.” Such a public statement of the ultimate issue to be determined by the court-martial to the detriment of his clients violated the duties imposed upon him by the Manual. Because it was made in the public press it was likely to affect the adjudication of the court-martial panel. This type of impermissible public statement was exacerbated by other public statements from Army commanders that impermissibly affected the presumption of innocence to which the soldiers were entitled by law. Major General George Bell Jr., the commander of the 33d Division, the command under which the 3d Battalion fell when deployed to Houston, referring to the investigations of the violence in Houston in his first statement after officially taking command on August 25, 1917, told the *Denver Post*: “There is but one punishment for mutiny; it is death.”²³ These comments were improper, adversely affected the presumption of innocence to which the soldiers were entitled, and were prejudicial to the ability of the ensuing courts-martial to impartially try the case.

The racial conflicts that contributed to the outbreak of violence at Houston were clearly relevant to material issues before the courts-martial, and were far from frivolous or manifestly useless. They were specifically relevant to the charge of mutiny and to matters in extenuation and mitigation, as will be discussed below. The long history of abuse experienced by black soldiers in Texas were well known to the soldiers of the 3d

²² Five separate incidents of racial violence involving black soldiers occurred in Texas in the 17 years before Houston: El Paso, 7 February 1900; Brownsville, 12-13 August 1906; San Antonio, April 1910; Del Rio, 8 April 1916; and Waco, 23-24 July 1917. Each of these incidents were cited in the Annual Reports submitted to the War Department every year. Lieutenant Colonel William Newman, who commanded the 3d Battalion when it was first posted to Houston, told the Army Inspector General, “When I took my battalion to Houston, I knew that the Texan idea of how a colored man should be treated was just the opposite of what these 24th Infantrymen had been used to.” See statement of William Newman, September 20, 1917. Records of the Inspector General, File 333.9, RG 159, FRC.

²³ Grier Scrapbook, *supra* note 18 (THE DENVER POST, August 25, 1917: “The state of Texas does not intend to allow the negro rioters to escape punishment. In the information filed by Mr. Crooker [Harris Co. DA] the thirty-four negroes are accused of being responsible for the murder of seventeen persons, four of them policemen. Texas officers will ask the release of other negroes that they may be tried for murder in the civil courts here... With the arrival of Maj. Gen. George Bell Jr. investigation of the shooting was scheduled to begin. ‘There is but one punishment for mutiny; it is death,’ Major General George Bell Jr. said today. It was his first statement after officially taking command of the Thirty-third army division, in which the fatal race riots and mutiny of negro troops occurred.”).

Battalion, and to the Army. This violence-filled history was reinforced by escalating conflicts with local citizens and police, threats that a 3d Battalion soldier would be lynched, including direct threats made by local workers against the soldiers on guard duty to which the non-commissioned officers were required to implement security measures to guard against, and rumors conveyed by the local Houston black population to the soldiers that violence was likely against the soldiers of the 3d Battalion. One of the defendants later described the foreboding atmosphere leading up to 23 August as follows: “[t]he feeling was running high against us and one could almost feel it in the air.”²⁴ Over the next two decades the convicted soldiers consistently presented their explanations of the events leading up to the night of August 23, 1917 in petitions for clemency presented to the Army as authorized under the Manual and regulations. Yet, Major Grier only presented an anodized, curtailed version in agreement with Colonel Hull, the prosecuting Judge Advocate:

The cases at bar are all based on offenses alleged to have been committed by sixty-four (64) soldiers of the 3rd Battalion, 24th Infantry, at Houston, Texas, on the night of August 23rd, 1917.

However, prior to the alleged trouble, on the date mentioned, there were certain underlying, contributing causes which, although neither directly pertinent nor strictly material to the issue about to be tried, nevertheless serve, in connection with the evidence, to place the court in possession of more accurate information relating to the trouble at Huston, Texas on August 23rd, 1917.

With the foregoing object in view, the judge advocate and counsel have agreed on certain matters, as being of importance by way of information and also in explanation of the evidence about to be adduced. Therefore, with the permission of the Court, we beg leave to submit the following, viz:

1st: On July 28th, 1917, the 3rd Battalion, 24th Infantry, Lieut. Colonel William Newman, Commanding, seven officers and six hundred and forty five enlisted men arrived at Houston, Texas, for the purpose of guarding construction work in progress at Camp Logan.

The troops were placed in camp on a site selected by the Constructing Quartermaster, between Camp Logan and the city of Houston...

[A list of assigned officers here follows.]

2nd: Almost from the very first there was trouble over the enforcement of the so-called “Jim Crow” law. At Camp Logan, there was trouble between the

²⁴ James Robert Hawkins, THE CHICAGO DEFENDER (NATIONAL EDITION), *How Houston Citizens Started Bloody Riot: True Story Told for First Time by 24th Infantryman*, Mar. 17, 1934 at A9 (copy at Annex C); see also Claude Barnett, THE CHICAGO DEFENDER (NATIONAL EDITION), *Houston Riot Prisoners Tell Their Own Story*, Jan. 26, 1918, at A1, A11

colored workmen and the white workmen. Separate receptacles for drinking water were furnished, marked "White" and "Colored," and, subsequently, the colored soldiers were furnished with tanks marked "Guard," "Colored," and subsequently, the colored soldiers were furnished with tanks marked "Guard."

3rd: Up to August 23rd, 1917, there had been a number of clashes between soldiers and the city police and between soldiers and white workmen at the Camp. Most of these incidents consisted merely in applying epithets of approbrium to each other, but in several cases, resulted in soldiers being arrested and being beaten up by the police. Without going into the merits of individual cases or attempting to pass judgment on the same, the fact remains that in several instances, colored soldiers of the 24th Infantry actually did receive injuries at the hands of the city police.

The soldiers of the 24th Infantry took particular offense to being referred to as "Niggers" even when this term was used without intention of casting any slur on them. The word "Nigger" appears to have been employed in connection with almost every case of disorder and was invariably met invariably met by angry responses, outbursts of profanity and threats of vengeance.

4th: From the feeling of mutual distrust and fear existing between the citizens of Houston and the soldiers of the 3rd Battalion, 24th Infantry, these incidents (really minor in themselves) created an unfortunate condition which was aggravated by the influence exerted on the soldiers by that portion of the colored population of Houston residing in the San Felipe district in and around the former restricted district. The need of Military Police, particularly in this district, was made apparent shortly after the arrival of the battalion at Houston and this system was instituted on or about August 1st, 1917. The Military Police were instructed to cooperate with the civil authorities, but similar instructions to cooperate with Military Police had not been properly promulgated to the Civil Police of Houston.

5th: About 10:30 A. M. August 23rd 1917 city police officers Lee Sparks and R. H. Daniels raided a "crap" game which was being conducted by some negro boys at the corner of San Felipe and Wilson Streets. Upon the approach of these officers, the boys ran, one of them going into a nearby house occupied by a colored woman. Officer Sparks, in an endeavor to locate this boy, spoke to the woman and an altercation ensued which ended by the arrest of the woman. It is claimed that while placing the woman under arrest, Officer Sparks slapped her in the face. In any case, Private Alonzo Edwards, Company "L", 24th Infantry, who was partially drunk at the time,²⁵ attempted to interfere with Officer Sparks and as a result, was promptly beaten up and placed under arrest by Sparks.

²⁵ The accusation that Edwards was drunk is disputed. In a contemporaneous investigation conducted by the NAACP reporter Martha Gruening, Edwards merely attempted to stop Sparks from beating the woman. See Martha Gruening, 14 THE CRISIS, *Houston: a NAACP Investigation* 14-15 (Nov. 1917).

About 2:00 P.M. August 23rd, 1917, Corporal Charles Baltimore [sic], Company "I", 24th Infantry, a member of the Military Police, approached Officers Sparks and Daniels on San Felipe Street and engaged Sparks in conversation, relative to the arrest of Edwards. Account vary as to the details of this conversation, but it was ended by Sparks striking Baltimore over the head with his pistol. Baltimore then ran. Sparks fired three shots from his pistol and pursued Baltimore into a house where he had taken refuge. Baltimore states that he was forced by Sparks to come out from under a bed, and upon so doing was again struck twice over the head with a pistol in the hands of Sparks, placed under arrest and taken to the city jail. The news of this incident quickly reached the Camp of the 24th Infantry where it rapidly grew into a false report that Corporal Baltimore had been killed, which report served to intensify further the feelings of the soldiers of the 24th Infantry against the city policemen.

There may have been many other contributing causes, such as the recent race riot at East St. Louis, which it would not be proper or profitable to call specifically to the attention of the court.

However, it should be mentioned that the policy of the Army is to instruct all soldiers to respect their uniform, themselves and the authority of the Government.

Army Regulations provide as follows:

2. -Military authority will be exercised with firmness, kindness and justice. Punishments must conform to law and follow offenses as promptly as circumstances will permit.

3. Superiors are forbidden to injure those under their authority by tyrannical or capricious conduct or by abusive language. While maintaining discipline and the thorough and prompt performance of military duty, all officers, in dealing with enlisted men, will bear in mind the absolute necessity of so treating them as to preserve their self-respect.

The colored soldiers could not reconcile the actions of the police authorities of Houston with the above principles.

*(Signed) J. A. Hull
Colonel, Judge Advocate General's
Dept. Judge Advocate.
(Signed) H. S. Grier
Major, Division Inspector, Counsel.²⁶*

²⁶ Record of Trial, *United States v. Nesbit, et al.*, (hereinafter "Nesbit ROT") on the South Texas College of Law special collections website, available at <https://digitalcollections.stcl.edu/digital/collection/p15568coll1>.

The uncontested evidence shows that at approximately 8 p.m. on the rainy night of August 23, after Sergeant Vida Henry, I Company First Sergeant, informed Major Snow that some men were stealing ammunition, Snow ordered the unit to fall in. A detail was ordered to collect the arms in each company while the soldiers remained in formation in their company streets. The details worked to the north end of the company street when a shot rang out, causing the soldiers to drop to the ground or seek cover. Someone shouted that a mob was coming and soldiers rushed the supply tents in panic to seize their weapons, and unrestrained firing erupted and continued for nearly 20-30 minutes. Although the soldiers' belief in an approaching mob was ridiculed by the prosecution during trial, the pattern of race violence prevalent in Texas, the gruesome race massacre in East St. Louis that had occurred only seven weeks before, and the recent killings of colored soldiers in Texas were all relevant evidence of the reasonableness of the 3d Battalion's belief that they were under attack.²⁷ The evidence also conclusively establishes that in the midst of the confusion and unrestrained firing, the 3d Battalion's non-commissioned officers established hasty defensive lines within the camp,²⁸ and finally that Sergeant Henry, in the absence of most of the officers of the Battalion and I Company (Major Snow had abandoned his post and fled from the camp as the initial firing commenced), ordered I Company to fall in to march out to meet what they believed was an advancing mob. In this context, a defense counsel who placed the interests of the Army over that of the accused soldiers failed to live up to the requirements of military law under the 1917 MCM, a failure made even more chilling in the defense of capital charges.

Second, the convening authority, Major General John W. Ruckman, and the Army rushed the investigation, trials, and executions in the Houston cases. Capital charges were preferred in the *Nesbit* case on 30 October and trial commenced the following day. The trial ended on 30 November 1917, after 29 days of proceedings. Although the Southern Department's Judge Advocate, Colonel George Dunn, claimed he reviewed the 2169-page transcript as the trial proceeded, he actually detailed a subordinate lawyer "from civil life" in his office to conduct the

²⁷ Both the Army Military Intelligence Bureau and the precursor to the Federal Bureau of Investigation were well aware of the contemporaneous reports on this massacre. Copies of Ida B. Wells' article on the East St. Louis massacre were included within the files of these two organizations as they monitored ongoing race violence and its effect on the war effort. See Black Studies Research Sources, Microfilms from Major Archival and Manuscript Collections, August Meier and Elliott Rudwick (General Eds), *Federal Surveillance of Afro-Americans, (1917-1925)* Reel 19, National Archives and Records Administration, RG165 War Department: General and Special Staffs- Military Intelligence Division; File 0423Casefile 10218-60: Race Riots, East St. Louis, Illinois, Ida B. Wells-Barnett, "The East St. Louis Massacre." 1917-1918. 24pp. (hereinafter "Federal Surveillance Collection").

²⁸ *Nesbit* ROT, *supra* note 26, at 1301-35.

daily review.²⁹ Dunn's final legal review was completed and forwarded to the convening authority for action on 3 December 1917. On 10 December 1917, Major General Ruckman rejected the panel's clemency recommendation for one soldier, approved all findings and sentences adjudged by the court-martial, and ordered the approved death sentences for the thirteen soldiers executed. As the sun rose the next morning at 0717, the thirteen soldiers—Sergeant William Nesbit, Corporal Larnon J. Brown, Corporal James Wheatley, Corporal Jesse Moore, Corporal Charles W. Baltimore, Private First Class William Breckenridge, Private First Class Thomas C. Hawkins, Private First Class Carlos Snodgrass, Private Ira B. Davis, Private James Divins, Private Frank Johnson, Private Riley W. Young, and Private Pat McWhorter—a group that included every non-commissioned officer among the original 63 defendants, were executed on a hastily constructed gallows by the bank of Salado Creek. Because the country was in a legal state of war, Ruckman was not required to forward the record of proceedings to the President for confirmation of the death sentences. On his signature alone, and without any external review, the thirteen soldiers were executed. The soldiers were given no opportunity to petition for clemency, or even to say goodbye to their families. Although authorized by the Articles of War, this rush to execution was not mandated; Article 51 of the MCM authorized Ruckman to suspend execution of the sentence “until the pleasure of the President shall be known.”³⁰ The provisions for hasty executions was never intended to operate outside a theater of war, and certainly not within the domestic boundaries of the United States.

Its use in this manner led Lieutenant Colonel Samuel Ansell to write a 17 December 1917 letter to The Judge Advocate General, castigating General Ruckman and Colonel Dunn:

Subject: Evidence of inefficiency of Maj . Gen. John W. Ruckman, commanding the Southern Department, headquarters at San Antonio, Tex., and of Col. George M. Dunn. Judge Advocate General's Department, the judge advocate upon the staff of Gen . Ruckman

²⁹ See Hearings, Subcomm. of the S. Comm. on Mil. Aff., 66th Cong. 1st Sess, on S. 64: “A Bill to Establish Military Justice” (1919), Appendix, (hereinafter “Hearings Appendix on S. 64”) 1124-1126 (Testimony of Colonel John A. Hull) (Colonel Hull testifies that a copy of the daily evidence was “given to the judge advocate of the Southern Department, and a copy was sent to the Judge Advocate General [in Washington] . . . Col. Dunn, the judge advocate of the Southern Department, detailed an assistant of his, a lawyer from civilian life, to review this case, and this officer had no other function except to carry on a current review of the case as the case was tried. . . I gave to Col. Dunn, informally a copy of the findings and sentence at the same time I was entering them in the record, so his review could be brought up to date.”), available at https://www.loc.gov/rr/frd/Military_Law/pdf/appendix.pdf. Thus, rather than a senior judge advocate with experience in military law conducting this “on-going” review as had been conveyed to Congress and the American public, a more junior lawyer from “civilian life” did the actual review. It is further disturbing that Major General Ruckman in his public January 1919 dispute with the President of the American Bar Association falsely asserted that *he* conducted this daily review. See *The Ruckman Defends Texas Hangings*, THE BOSTON GLOBE, 2 (05 Jan 1919), available at Annex F.

³⁰ A.W. 51 (1917) reprinted in 1917 MCM; MCM ¶ 391.

1. I feel it my duty to call to your attention what I conceive to be evidence of the incompetency of the two officers of the Army who are the subject of this memorandum with the intention and purpose that these views be brought by you to the attention of the Chief of Staff and the Secretary of War

3. Yesterday we were apprised, through the public press and for the first time, that Gen. Ruckman had proceeded summarily to execute the sentences of death in the case of 13 negro soldiers recently tried in his department. I shall not allude to this case further than to say that, under the circumstances surrounding this case which were such as to reveal themselves in all their bearings to a man of ordinary prudence and care, a man possessing the poise and sanity of judgment that should be necessary concomitants of the rank which this officer holds, could, not have summarily carried into execution those sentences. Under the circumstances of this case the action taken by this commander was such a gross abuse of power as justly to merit the forfeiture of his commission .

4. I must assume that this general officer has sought and acted upon the advice of his judge advocate, Col. Dunn, and that this officer therefor has, in the same degree with Gen. Ruckman, manifested his incompetence at a critical time.³¹

II

Compounding these fundamental defects are several flagrant instances of prosecutorial misconduct in the investigation and prosecution of the case which violated either the letter or spirit of the prevailing law. The records of the three courts-martial are clear that the rights of the soldiers being held in confinement pending trial were not respected by the Board of Investigation appointed to determine the facts of the events of August 23, 1917, or by the two Judge Advocate officers appointed to prosecute the cases as they acted to coordinate the efforts of the investigatory Board. Military law clearly prohibited involuntary confessions from being received in evidence at a court-martial, and confessions, if voluntary, were admissible against only an accused or accomplice. Because of the nature of the mutiny charge (discussed below), incriminating statements by an accomplice could be received against the remaining defendants. Despite significant evidence that soldiers of the 3d Battalion were threatened by the Board in order to obtain evidence for trial, the two judge advocates prosecuting the courts-martial relied heavily on witnesses pressured to turn state's evidence as a result of the Board's threats.

Coerced and devious interrogations violate military law. Immediately following the mutiny, the Army commenced two regimental Boards of Investigation on August 24th as the entire 3d Battalion, 24th Infantry Regiment was disarmed and loaded on trains out of Houston under guard, despite the Army's knowledge that less than a quarter of the 653 men had

³¹ Hearings Before the S. Subcomm. on Milit. Aff, *Establishment of Military Justice, Proposed Amendments of the Articles of War*, Aug. 26, 1919, 130-131, available at https://www.loc.gov/law/mlr/pdf/08_26.pdf .

potentially been involved in the events of 23 August. On arrival in Columbus, New Mexico on 27 August, the two boards were replaced by a single regimental Board of Investigation consisting of Captain Homer N. Preston, Captain William Fox, and Lieutenant Alexander Levie,³² and the 156 soldiers suspected of participation in the alleged mutiny were moved and detained at the stockade at Fort Bliss where the Board began its interrogation. In an early September 1917 telegram to Colonel Cress, the Southern Department's Inspector General who was conducting a separate investigation into the events in Houston, Captain Preston described the Board's conduct as resorting "to various and devious methods, all proper however."³³ The transcripts of the Board have yet to be found in the Archives, but numerous defendants testified that the officers on the Board had screamed and cursed at them, and threatened them with the noose if they did not cooperate.³⁴

In addition to prohibiting the introduction of involuntary statements, military law at the time prohibited this type of investigatory conduct, particularly if designed to elicit involuntary confessions, and specifically when employed against enlisted soldiers. Contemporaneous military treatises, including *Winthrop*, as well as legal opinions summarized in the *Digest of the Opinions of the Judge Advocate General*, make clear that not only was the admission of involuntary statements prohibited, but also the behavior of the superior military authorities extracting them. Several contemporaneous reviews of courts-martial confessions obtained in this manner condemned this behavior as "a defiance of the spirit of our laws."³⁵

³² Nesbit ROT, *supra* note 26, at 1098.

³³ Cress, George O., Investigation of the Trouble at Houston, Texas, between the 3d Battalion, 24th Infantry and the Citizens of Houston, Aug. 23 1917. Records of the United States Army Continental Commands, Southern Department, Headquarters File 370.61, Box 364 (RG 393 NA).

³⁴ Representative of this testimony is that of Private Harry Richardson stated in response to a cross examination question asking if he had not told the Board of Investigation a different story:

Q You don't remember telling the Board of Officers up at El Paso that you stopped there and talked with a boy by the name of Will, of "L" Company, from your home town? '

A No, sir.

Q Yon don't remember telling them that you said you were on guard that night?

A No, sir, because I couldn't remember half I did tell them, they hollered at you, and cussed at you, and told you were going to get hung, and all that, and you didn't know what half you did tell them up there. ... When I told them what I did, they told me they knowed I was lying and said I was going to get hung, and all like that, and they told me I never put my foot out of that door, that would be the last time I put my foot in that door

Q Did they make any threats toward you?

A No mora than say I would get hung, that's all, I was scared, they said I was going to get hang, and said I knowed I was lying. I never said any more.

Nesbit ROT, *supra* note 26, at 1458, 1469-1470; Testimony of Private Harry Richardson, *id.* at 1469-1470; *see also* testimony of Private Douglas T. Bolden, *id.* at 1829 (same); testimony of Private Grover Burns, *id.* at 1868 (same).

³⁵ *See* DIGEST OF THE OPINIONS OF THE JUDGE ADVOCATE GENERAL, 1912-1930, §1292 which describes conduct that violates this requirement in roughly contemporaneous cases ("After the accused had been placed in the

Furthermore, military law placed the onus on the Judge Advocate trying the case to show the voluntariness of confessions—"The "most familiar requisite to the admissibility of a confession is that it must have been voluntary, and the onus to show that it was such is upon the prosecution in offering it."³⁶ In the Houston courts-martial, to meet this burden, Colonel Hull merely asked the President of the Board of Investigation, Major Preston, to testify denying the reports of threats of the noose, cursing, and berating, and sought additional testimony from the cooperating witnesses that they had "volunteered" to assist the prosecution. The Manual, however, required that "in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced and held in confinement and close arrest, should be regarded as incompetent unless very clearly shown not to have been unduly influenced."³⁷

Evidence from the trial shows that not only did the Board participate in the extraction of confessions from the cooperating witnesses while conducting its investigation, but it then became an integral part of the prosecution team, to include engaging with the accused soldiers up to the Sunday before trial commenced.³⁸ The improper techniques employed by what was supposed to have been an investigatory board, and their participation as part of the prosecution team up to and during the trial further compounds the fundamental inequality of arms between the prosecution and the defense where a single major was required to defend all 118 accused soldiers in three back-to-back courts-martial with no assistance.³⁹ Additionally, the records

guardhouse he was questioned by his commanding officer. He was not warned that he might refuse to answer questions, or that what he said might be used against him. He was told that he had lied, that one of the two men charged with the crime was to be hung and the other to get 20 years in the penitentiary, and otherwise threatened. It is too plain for discussion that this examination was a gross violation of the accused's rights and to a high degree discreditable to the officers concerned in it. The confession so obtained was inadmissible. He may or may not be guilty. If he is in fact guilty, the failure of justice in this case is attributable to the illegal methods employed by the judge advocate in his efforts to convict him. . . . C.M. 124907 (1919) . . . An officer to whom a confession was made testified that he warned the accused that anything he said might be used against him, and that he used no threats or promises to secure the confession. It was shown, however, that the accused had been in solitary confinement for 10 days prior to the date of the confession, during which time a confession was sought and not obtained, and that he was still in solitary confinement by order of the officer to whom the confession was made; that accused had been denied the right to communicate with friends or counsel; that during the interrogation the officer required an answer 'Yes' or 'No,' to a question not satisfactorily answered; that the officer told the accused he was very shrewd.; that he felt the accused was not telling the truth and that he was reluctant. The warning in words and then following this with treatment such as shown constitutes a defiance of the spirit of our laws. Confessions thus obtained are not voluntary, and are incompetent. There being no other evidence connecting the accused with the offense, conviction should be disapproved. C.M. 131194 (1919).")

³⁶ 1896 Winthrop, *supra* note 9, at 496

³⁷ MCM ¶ 225, *accord* 1920 Winthrop, *supra* note 9, at 329; 1896 Winthrop, *supra* note 9, at 497.

³⁸ Nesbit ROT, *supra* note 26, at 1198-1200, 1200-1202 (Testimony of prosecution witness Private Elmer Bandy).

³⁹ Our review of the historical record discloses no investigatory or trial support provided to Major Grier in any of the three trials.

reflect that Colonel Hull, the prosecuting Judge Advocate, compounded this violation after the first trial when he “interviewed all the soldiers who had been tried, and secured considerable information”⁴⁰ to use against the defendants of the next two courts-martial. No records show Major Grier’s response to this post-trial interrogation which was used by Hull to gather evidence for use in the third trial, but given that he was representing the remaining 55 soldiers he should have protested vociferously against it.

The evidence did not establish the voluntariness of the cooperating witnesses’ confessions. Although confessions were admissible in evidence only against an accused or an accomplice, to be admissible the confession must, nevertheless, be “voluntary.”⁴¹ Under military law, “voluntary” in the legal sense meant “when it was not induced or materially influenced by hope of release or other benefit or fear of punishment or injury inspired by one in authority, or, more specifically, where it is not induced or influenced by words or acts, such as promise, assurances, threats, harsh treatment, or the like, on the part of an official other person competent to effectuate what is promised, threatened, etc., or at believed to be thus by the party confessing.”⁴² Citing *Winthrop*, the 1917 Manual states that “the reason of the rule is that where the confession is not thus voluntary, there is always ground to believe that it may not be true.” MCM ¶ 255. This concern applied equally to the testimony of immunized witnesses cooperating to avoid the noose around their own necks. As explained in the 1917 Manual,

In military cases, in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced and held in confinement or close arrest, should be regarded as incompetent unless very clearly shown not to have been unduly influenced. Statements, by way of confession, made by an inferior under charge to a commanding officer, judge advocate, or other superior whom the accused could reasonably believe capable of making good his words upon even a slight assurance of relief or benefit by such superior should not in general be admitted. Thus, in a case where a confession was made to his captain by a soldier upon being told by the former that “matters would be easier for him,” or “as easy as possible,” if he confessed, such confession was held not to have been voluntary and therefore improperly admitted. . . . Considering, however, the relation that exists between officers and

⁴⁰ Letter from Col. J.A. Hull to Col. Wm. O. Gilbert, Office of the Judge Advocate, 8th Corps Area, Fort Sam Houston, Texas (Dec. 16, 1921), *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2025/rec/2>.

⁴¹ 1917 MCM, ¶225(b).

⁴² *Id.*

enlisted men and between an investigating officer and a person whose conduct is being investigated, and the obligation devolving upon an investigating officer to warn the person investigated that he need not answer any question that might tend to incriminate him, confessions made by soldiers to officers or by persons under investigation to investigating officers should not be received unless it is shown that the accused was warned that his confession might be used against him or it is shown clearly in some other manner that the confession is entirely voluntary.

MCM ¶ 225b (emphasis added). Military law also explicitly recognized that even if a soldier was warned that a confession could be used against him, subsequent coercive acts by the investigatory official could nonetheless result in an involuntary confession.⁴³

Specific Intent Required for Mutiny. To understand the due process violations that occurred in the prosecution of these three trials, it is critically important to understand the offense of mutiny and its specific requirements under military law. First, because mutiny is considered a crime of conspiracy, once it was established that a soldier joined the mutiny he was criminally liable for all acts committed by the participants in the mutiny,⁴⁴ to include any alleged acts of murder and attempted murder committed during the mutiny.⁴⁵ This liability resulted regardless of a particular soldier's violent acts or even if he lacked any knowledge of acts undertaken during the mutiny—it is a conspiratorial liability. In the Houston courts-martial the prosecution bootstrapped the remainder of its case—specifically the charges of murder and aggravated assault with the intent to commit murder—on the joint liability resulting from a finding of mutiny. Because no victim or non-cooperating witness was able to identify any soldier as committing an act of murder or assault beyond reasonable doubt, this joint liability was critical to the prosecution of the case. Only by relying on the concept of group complicity was

⁴³ See DIGEST OF OPINIONS OF THE JUDGE ADVOCATE GENERAL, 1912-1930, §1292 (describing 1919 review).

⁴⁴ 1920 Winthrop, *supra* note 9, at 583 (“Joining in a mutiny is the offence of one who takes part in a mutiny at any stage of its progress, whether he engages in actively executing its purposes, or, being present, stimulates and encourages those who do. The joining in a mutiny constitutes a conspiracy and the doctrines of the common law thus become applicable to the status—*viz.* that all the participators are principals and each is alike guilty of the offence; that the act or declaration of any one in pursuance of the common design is the act or declaration of every other, and that, the common design being established, all things done to promote it are admissible in evidence against each individual concerned.”) (footnote omitted), *available at* https://www.loc.gov/rr/frd/Military_Law/pdf/ML_precedents.pdf ; *see also* Closing argument Maj Sutphin, Nesbit ROT *supra* note 26, at 2056-2050 (same)

⁴⁵ Additionally murder under A.W. 93 was broadly defined to encompass the concepts of felony and recklessness murder. *See* MCM, ¶442.

the prosecution able to prevail when unable to provide evidence beyond a reasonable doubt that any particular soldier committed a criminal act.

Making the circumstances of the racial animosity in Houston even more relevant in these courts-martial, military law recognizes differing degrees of culpability in a mutiny, particularly as to mitigation of the sentence.⁴⁶ Thus, the role of a particular soldier or his rank has been held to justify mitigation or enhancement of the adjudged sentence. Additionally, although not legally a defense, military law has recognized that abusive acts by a commanding officer, while not justifying mutiny, might lead to mitigation of the sentence.⁴⁷

The prosecution in the Houston courts-martial endeavored to show that a mutiny had occurred, because under that legal construct, they were then excused from proving that any particular soldier engaged in the violence that resulted in the 16 dead and 8 wounded during the night of 23 August 1917. Under this theory of group liability, the prosecution was also excused from proving that a particular soldier had the necessary *mens rea* to be held criminally liable for murder or assault. The prosecution premised its case on the theory that a wide-ranging overt conspiracy took root among the soldiers of the 3d Battalion in the early afternoon of 23 August when false reports of Corporal Baltimore's death at the hands of local police made their way back to camp and which continued until the group marched out of the camp after the pandemonium that resulted when the cry that a mob was coming was raised.⁴⁸

The evidence, however, shows just the opposite—the men of the 3d Battalion responded as a trained and experienced combat unit to what they believed was an attack on their camp by a hostile mob, and, responding to the orders of their First Sergeant, some of them subsequently

⁴⁶ “In the military practice all accused persons are treated as independent offenders. Even though they may be jointly charged and tried, as for participation in a mutiny for example, and each may be guilty of a distinct measure of criminality calling for a distinct punishment, yet all are principals in law.” 1896 Winthrop, *supra* note 9, at 148-149;

⁴⁷ See 1920 Winthrop, *supra* note 9 at 397; George B. Davis, A TREATISE ON THE MILITARY LAW OF THE UNITED STATES, TOGETHER WITH THE PRACTICE AND PROCEDURE OF COURTS-MARTIAL AND OTHER MILITARY TRIBUNALS, 390 (1898) (hereinafter “Davis Treatise”) (“In a case where a brief mutiny among certain soldiers of a colored regiment was clearly provoked by inexcusable violence on the part of their officer, the outbreak not having been premeditated, and the men having been prior thereto subordinate and well conducted, advised that a sentence of death imposed by a court-martial upon one of the alleged mutineers should be mitigated and the officer himself brought to trial. Similarly advised in the cases of sentences of long terms of imprisonment imposed upon sundry colored soldiers who, without previous purpose of revolt, had been provoked into momentary mutinous conduct by the recklessness of their officer in firing upon them and wounding several in order to suppress certain insubordination which might apparently have.”).

⁴⁸ Two independent JAG reviews conducted from 1919-1922 regard the testimony of Clela Love as “unreliable” Love was the only witness to testify as to an overt agreement to leave camp that evening at 2100. See Memorandum, 4th Endorsement to Secretary of War, War Dep’t, J.A.G.O. (Jul 16, 1919), from LTC E.A. Kreger to Secretary of War and handwritten note by COL King (12 Sep. 1919) (hereinafter “Kreger 16 Jul 1919 memo”).

marched from the camp in military formation to meet the perceived threat.⁴⁹ Non-commissioned officers were established as rear guards under the prevailing (and current) military doctrine to prevent stragglers in the column.⁵⁰ The evidence shows that after its departure from camp, the column realized that there was no mob to repel. This likely occurred after the initial halt of the unit near Shepards Dam bridge. Prior to this point, both criminal intent and the specific intent to join a mutiny is absent for the majority of men in the column who were present under the direct orders of their First Sergeant in a fluid tactical situation. After this halt, significant numbers of men in the column began to fall out and return to camp. By the time the column reached the corner of Arthur and San Felipe Street, a witness counted only 49 soldiers in the column.⁵¹ Although actions later in the night did involve egregious criminal acts, particularly as the column encountered police, the advancing column did not fire indiscriminately even when passing through white neighborhoods. They allowed several civilians and two military officers to depart the street where they stopped them, and otherwise exercised weapons discipline, with the majority of the early volleys of fire aimed at lights. There was no evidence that the column departed the camp with the intent either to override military authority or to march on the city of Houston to harm its inhabitants. In fact, rather than following the most direct route into the city, the column instead marched to the historic black district, also at risk from a mob attack. While criminal intent may have developed later among some soldiers who remained in the diminished column, the departure from camp, particularly in the absence of any officer authority to the contrary, did not demonstrate the specific intent to join in a mutiny for all but possibly two of the participating soldiers.

At the time I Company formed up under Sergeant Henry's leadership and prepared to march out, Corporal Wheatly attempted to persuade Sergeant Henry to stay and defend the camp, Henry responded, "there will be no camp to return to,"⁵² a statement which indicates an experienced NCO's argument that the situation called for active offensive tactics rather than a static defense. Sergeant Fox also tried to convince Henry to remain and defend the camp rather than marching to meet the attackers. Given the extreme depredations that occurred in St. Louis just weeks earlier, it is unclear if even Sergeant Henry entertained a mutinous intent at that moment—the evidence clearly establishes that the men of the 3d Battalion, even those who

⁴⁹ Nesbit ROT, *supra* note 26, at 131 (Captain Shekerjian testified that as the firing in camp quieted one soldier entreated him "Captain, for God's sake, help me hold the ammunition, that is the only way we can hold them now.")

⁵⁰ *Infantry Drill Regulations: United States Army, 1911, with text corrections to May 18, 1916; changes no. 14.* New York: Army and Navy Journal, War Department, Document No. 453, Office of the Chief of Staff.

⁵¹ Nesbit ROT, *supra* note 26, at 587-588.

⁵² Nesbit ROT, *id.* at 198; *United States v. Nesbit, et al., Review of record of trial by a general court-martial convened at Headquarters, Southern Department, Fort Sam Houston, Texas, on 1 November 1917* (January 29, 1918).

remained in camp, believed that they were being attacked by a mob. And it was this belief that sparked the pandemonium in camp and the resulting actions by the soldiers—Captain Haig Shekerjian testified, “it just broke out from a clear sky all at once. . . . [At 8 o’clock] I would have said that it was impossible.”⁵³ Although Shekerjian attempted to convince an individual soldier (Corporal Larnon Brown) not to join the column, he did not use his military authority to attempt to halt the column as it marched out of camp. While Shekerjian’s individual entreaties may demonstrate willful disobedience of orders for the soldier he attempted to influence directly, even this evidence failed to establish the intent to override the existing military authority.

Furthermore, the soldiers’ belief that they were under attack was not unreasonable. The Houston City inquiry did produce some troubling evidence that white men with guns were present near the camp that evening, and subsequent to the events, troops from other Army units were deployed to keep armed white mobs away from the camp.⁵⁴

This criticism is not meant to excuse the deaths and injuries that did occur as a result of the violence of August 23rd, but because the prosecution chose to present its case in this way the ability of the military justice system to establish guilt beyond a reasonable doubt for those soldiers actually responsible for the deaths and serious injuries was irreparably lost.

The prosecution’s theory and presentation of the case led to a reversal of the burden of proof and a violation of the presumption of innocence. In light of this governing law, a review of the trial proceedings discloses three intertwined flaws that infect the prosecution of these cases: (1) the evidence relied upon by the prosecution to prove identity and participation in the mutiny was unreliable and underinclusive, and resulted in a reversal of the burden of proof; (2) the prosecution failed to establish the specific intent necessary to prove mutiny for the majority of soldiers; and to the contrary, (3) the evidence unrefutably shows that the column that left the camp that night was ordered to fall in on the command of Sergeant Vida Henry, I Company’s acting First Sergeant, and marched in military formation from the camp—such evidence does not present mutiny. In the face of the abdication of all officer authority in the I Company area, the soldiers responded to their noncommissioned officers, who were the only military authority operating in the aftermath of the chaos that resulted after shouts that a mob was coming and sounds of gunfire resulted in the entire unit assuming a hasty defense of their camp.

⁵³ Nesbit ROT, *supra* note 26, at 159-160.

⁵⁴ Nesbit ROT, *supra* note 26, at 1145.

The prosecution obstructed the presentation of evidence in extenuation and mitigation relating to the earlier attacks on 3d Battalion soldiers at the hands of Houston police, and any explanation of the reasonableness of the fear of the men of the 3d Battalion given the increasing race violence exemplified by the East St. Louis race riot that had occurred only seven weeks prior to the events in Houston. The limitation of this evidence to the “agreed upon” antiseptic and dismissive statement at the beginning of the trial was utterly insufficient. As such, it is questionable that the prosecution ever established the specific intent required to prove that the accused soldiers had “joined in a mutiny,”⁵⁵ with the required specific intent to override or usurp military authority required under military law.

Because no victim or non-military witness could identify a single soldier as participating in the column that marched into Houston, the prosecution was forced to rely on its immunized witness testimony, routinely leading his witnesses in the identification of soldiers allegedly involved, and on its records of checks made in the camp immediately prior to the outbreak of shooting and in the company streets on the skirmish line at various points over the night. As summarized by the prosecution in its closing argument in the first *Nesbit* trial,

The methods of identification may be divided as follows:

1st. Those absent from the second check in the company streets, and from the check of the skirmish line.

2nd. Those who in the late afternoon and evening, up to 8:00 o’clock, manifested either by word or act, an intention to leave camp that night.

3rd. Those who were seen leaving camp that night in column.

4th. Those arrested in town that night and the following days.

5th. Those who drifted back to Camp Logan the next morning. There are four of the accused in that class.

6th. Those seen coming into camp late that night or early the next morning.

7th. Those found wounded the next morning, which subsequent examination proved to have been from buck shot.

8th Those seen in column that night at various points, either on the way down town or on the way back to camp late that night and early the next morning.”⁵⁶

A review of the trial records shows how all of these methods of identification are inadequate to sustain the mutiny, and hence the murder and assault, convictions. First, the evidence presented at trial clearly demonstrated the inadequacy of the checks in the company

⁵⁵ See Kreger 16 Jul 1919 memo, *supra* note 48.

⁵⁶ Nesbit ROT, *supra* note 26, at 2075.

streets and skirmish line—they were conducted against the background of a dark rainy camp, with inexperienced and frightened soldiers running and seeking cover after pandemonium that resulted after the first outburst of firing triggered by the call that a mob was coming. Individual defendants testified to hiding in ditches, to moving between and among the various company streets and the skirmish line, to reporting to non-commissioned officers and officers of different companies. The records disclose that one soldier actually hid in the cesspit of the camp latrine. Government witnesses testified that their checks of the company streets occurred in just fifteen to twenty minutes, which could not have exhaustively established the presence of the soldiers within camp. The inadequacy of the procedures employed by the leadership in 3d Battalion were in marked contrast to those involving the 1st Battalion earlier that summer in Waco under similar circumstances.⁵⁷

Secondly, the prosecution sought to rely on evidence of statements made during the afternoon after the unit received the false news of Corporal Baltimore's death at the hands of the Houston police to prove a grand conspiracy among the soldiers to march on Houston that night. Such mutterings and vows of vengeance would not be surprising to any leader of soldiers, but they fail to establish a plot to override military authority as no orders were given prohibiting leaving camp until after 6:30 p.m. that evening. As to the testimony of the immunized 3d Battalion witnesses, the record is replete with their failure to correctly identify defendants in the courtroom, misidentifying soldiers,⁵⁸ and simply agreeing with the prosecution's persistent

⁵⁷ The 1st Battalion of the 24th Infantry was posted to Waco, Texas on 23 July 1917. Racial confrontations between soldiers and town police occurred almost immediately. At about 11:15 that night, the battalion commander, Captain Charles Andrews, was woken by an NCO who reported that a small group of soldiers had taken weapons and headed into town. Andrews immediately mustered the entire battalion for a 100% accountability check, locked down the camp, ordered the arrest of any soldier caught attempting to leave or enter camp, and sent Lieutenant James Higgins with a detachment of soldiers into Waco in pursuit of the absent men. Higgins coordinated his effort with civilian police but insisted on his men being allowed to apprehend the miscreant soldiers. Shots were fired, no one was hit, but in the darkness the suspects escaped. Captain Andrews' proactive measures paid off, however, when the troublemakers attempted to slip back into camp and were challenged and arrested by the perimeter guards. Andrews then met with Waco authorities and defended his unit's good reputation—the errant soldiers, he explained, were new recruits, that they would face appropriate military justice for their actions, and the rest of the battalion should not be blamed for their behavior. His efforts were very successful in allaying the initial hysteria in the local press, and effectively countered the racist hyperbole from extreme elements in the community. Six soldiers were court-martialed for their part in the incident and received sentences ranging from five to ten years imprisonment.

⁵⁸ During Captain Shekerjian's testimony in *United States v Nesbit*, he testified that he had seen a soldier returning to camp the morning of 24 August and, when challenged, the soldier gave his name as "J.R. Hawkins." When the prosecutor asked Shekerjian to point out Hawkins in the courtroom, Shekerjian "could not identify him at the trial, but stated that the man pointed out to him [by Hull] had the same general appearance." Memo for the Judge Advocate General, March 27, 1919, citing ROT pg. 148. South Texas College of Law Digital Archives, Houston Riot, James R. Hawkins File. When Corporal Arthur Riley testified, he said "he saw two men leaving the line and go out in the bushes and come back. One of them he thought was accused [Private Douglas Lumpkins], but would not be sure." Colonel B.A. Read, Memorandum for the Judge Advocate General, C.M. No. 109045, April 23, 1919. South Texas College of Law Digital Archives, Houston Riot, Douglas Lumpkins File. Lieutenant Colonel Edward

leading questions of whether particular soldiers “were in the column?” When senior judge advocates reviewed the courts-martial in 1919, they identified defects in the proof against specific soldiers. They found the testimony of primary prosecution witness Clede Love to be “so unreliable” it was not considered sufficient to sustain the proof of guilt.⁵⁹ And Clede Love was the only witness to testify to an agreement to break out of camp at 9 p.m. that evening.

The evidence irrefutably established the fundamental events of what occurred on the night of 23 August. First, that sometime after 8:00-8:30 p.m. during the checks of the units in the company streets, a small number of soldiers balked at turning their weapons in when ordered to do so by Lieutenant Jack.⁶⁰ However, the evidence further shows that these soldiers were actually in the process of complying with that order when the cry of “mob” resulted in a stampeding of the unit, a storming of the supply tents to obtain defensive weapons and ammunition, the establishment of hasty defensive lines by the soldiers, NCOs and officers, and then upon the sound of gunfire, 20-30 minutes of uncontrolled firing toward the city of Houston.⁶¹ It is important to note that the East St. Louis race riot had occurred just seven weeks prior to the events in Houston, and the 3d Battalion was well aware of the large scale slaughter of black men, women and children that had occurred in that massacre, a carnage perpetrated not only by mobs of civilians but also by police officers and members of the 8th Illinois National Guard,⁶² a unit that had since been posted to Houston and quartered near the 3rd Battalion camp. In fact, Sergeant Henry, along with the chaplain’s assistant Corporal Singleton had led the unit fundraising drive in the Battalion to assist the survivors of St. Louis.⁶³ Mob violence was far

A. Kreger, Acting Judge Advocate General, referring to the case against Private Abner Davis, stated: “The record of this trial [*United States v Nesbit*] was reviewed in this Office under date of January 29, 1918, and held to be legally sufficient to sustain the findings and sentence. In that review the evidence against Davis is not set forth in detail, but reference is made to... the evidence connecting him with the body of soldiers who committed the crimes of which he was found guilty. On page 852 of the record, Private Breeseman testified that he arrested two soldiers... whose names he had learned were ‘Private Davis and Private Ceci,’ and turned them over to Captain Sorensen. Captain Sorensen testified that Ira Davis and Ben Ceci were turned over to him... It thus appears that the reviewer, when he approved the findings, was under the erroneous impression that Abner Davis had been arrested in the city of Houston on the day after the riot.” See Kreger, Edward A., C.M. No. 109045, July 16, 1919, to the Secretary of War.
⁵⁹ See Kreger 16 Jul 1919 memo, *supra* note 48.

⁶⁰ Although this evidence might establish the offense of willful disobedience of orders because of the delay in complying with the order, this evidence does not establish the requisite intent to override military authority.

⁶¹ See also report of Snow morning after (soldiers firing toward Houston in initial panic), see e.g. Nesbit ROT, *supra* note 26 at 61, 90, 110 (same).

⁶² Starting on 17 August 1917, elements of the Illinois National Guard began arriving in Houston. These included Companies E and H of the 2nd Illinois Infantry from Chicago, and Company E of the 4th Illinois Infantry from Carbondale. All three units were deployed to East St. Louis and were implicated in joining in the violence against African-American citizens, rather than quelling the unrest and restoring order. See United States Congress, House of Representatives, Special Committee Authorized by Congress to Investigate the East St. Louis Riots, Report, House of Representatives, 65th Congress, Second Session, House Doc. 1231, Vol. 114, 7444 (Washington, D. C., 1918).

⁶³ Correspondence from the Twenty-Fourth Infantry, *THE CRISIS*, 307-08 (Oct. 1917); Nesbit ROT, *supra* note 26, at 1245-1246.

from a hypothetical threat to these men, particularly in Texas which ranked second in the nation for the number of lynchings, burnings and murders, a state in which the “colored soldiers” of the U.S. Army had experienced significant race violence on five separate occasions in the preceding 17 years. On receiving orders to deploy the 3d Battalion to guard the construction of Camp Logan, Lieutenant Colonel Newman stated, “I had already had an unfortunate experience when I was in command of two companies of the 24th Infantry at Del Rio, Texas, April 1916, when a colored soldier was killed by a Texas Ranger for no other reason than that he was a colored man; that it angered Texans to see colored men in the uniform of a soldier.”

In mocking the soldiers of the 3d Battalion, Colonel Hull condemned them for failing to provide proof of a mob to fear, yet precluded their ability to do so by limiting the evidence of the increasing level of threats and violence experienced by the 3d Battalion soldiers in Houston, and by discounting significant evidence presented by his own witnesses that the soldiers were firing toward the City of Houston where the perceived threat was located.⁶⁴ That he did so by buttressing his argument against this evidence as an [incorrect] explanation of military law— “[f]ear to a soldier is a crime of itself”—is particularly concerning given his responsibilities as the judge advocate to ensure that justice was obtained in the trial. Professional soldiers have always understood what Hull did not—military law lists cowardice before the enemy as a crime, but fear is a natural reaction to danger that many soldiers experience as part of the martial life.

The unrefuted evidence at trial supports that the men of the 3d Battalion reasonably feared a mob attack, and when the warning of a mob was joined with a gunshot, they responded by assuming defensive positions and firing toward the perceived threat. The soldiers consistently reported this understanding of what occurred in the camp on the night of 23 August—in their trial testimony, in their repeated requests for clemency, in their reports to members of the black press, and in their own accounts written after release from Leavenworth. The prosecution’s ridicule of this well supported explanation does not rebut it. The prosecution also obstructed the presentation of evidence concerning the escalating violence experienced by the 3d Battalion

⁶⁴ Argument by Col. Hull, prosecuting JA, Nesbit ROT, *supra* note 26, at 2122 (“They did not fire out to the north because they knew that it was their own soldiers out there. And it was not fear of the mob that cause that firing, otherwise it would have been directed to where that mob was supposed to be. It might seem from the remarks that fear was incidentally being presented to this court as a defense for military offenses. The exigencies of the service, so far as I know, have not produced fear as a proper defense for military offenses. Fear to a soldier is a crime of itself. If fear was the actual basis of action, the facts on which that fear was based should be adduced in evidence and the court should be entitled to judge as to whether that fear, which in my opinion cannot be used as a basis for a military defense, was just, or well founded, or not. In this case we have no evidence the fear that would stampede a soldier and fear that would warrant a successful defense should be of a greater character than might stampede a crowd of nine-year old school girls.”)

soldiers at the hands of the Houston police and in some cases citizens, permitting only the agreed-upon anodyne “statement” at the beginning of the trials. Because military law clearly recognized the relevance of a trigger to mutiny, at the very least for the purposes of mitigation in sentencing, such an obstruction was improper.

Second, the evidence conclusively establishes that the non-commissioned officers of the battalion were engaged in the establishment of hasty defensive lines, the provision of ammunition to repel attack, regaining control of their soldiers as the firing diminished, and in some cases protecting their officers from the unrestrained firing.⁶⁵ This unit had just the year before participated in the Punitive Expedition in Mexico and its NCOs were well trained in their combat duties. Further, Captain Bartlett James, who died shortly before the beginning of the first trial, maintained control of his company within L Company’s streets as firing broke out across the camp and he established a hasty skirmish line there during the initial firing. In I Company, after the initial firing subsided Sergeant Vida Henry ordered his company to fall in, and in the absence of any officer authority to the contrary, the majority of I company within earshot obeyed that order. After ensuring that they were supplied, he then marched the soldiers in column of fours from the camp toward the city of Houston. At trial numerous soldiers testified to the absence of any officer presence in I Company as the column left the camp.⁶⁶ Although the prosecution introduced self-contradictory evidence as to the leadership of Sergeant Henry, it was clear from the testimony at trial that he led the unit from the camp. I Company departed the camp as a military unit under the orders of the only apparent military authority present within the unit. This proof is inconsistent with the establishment of any intent to override military authority required for a mutiny. Major Snow had run away from camp after the pandemonium erupted after the call that a mob was coming. Witnesses described his loss of composure and the military aide to Major General Hulen, who established martial law in Houston the next morning, is scathing in this description of Snow:

⁶⁵ For example, testimony established that Sergeant Nesbit was handing out ammunition to the panicking soldiers on the hastily-formed skirmish line, and warned Captain Shekerjian to get down beyond a stump on the defensive line so he would not be hit.

⁶⁶ Nesbit ROT, *supra* note 26 at 1258 (testimony of Private Henry Peacock that he did not see or hear any officers as the column left the camp); *see also id.* at 1145 (testimony of prosecution witness Private Elmer Bandy, that he did not see or hear any officer when he left the company streets).

May 7, 1929: The above is a transcription of my notes taken about 5 o'clock on the morning after the firing and rioting. I remember distinctly Major Snow's inability to direct his thought with clearness. General Hulen was sitting there with us---the Major and me. The General was doing all he could to quiet Snow's nerves and I guess Snow needed something too, as he had passed through a pretty close shave. At any rate, he was weak and a rotten disciplinarian as you will see from his report as to the manner in which he wavered when he needed firmness.

⁶⁷ Both senior Inspectors General who investigated the events in Houston severely castigated Snow, and recommended that charges be brought against him and Lieutenant Silvester. These recommendations are included later in this discussion.

Contemporaneous legal reviews conducted by two separate reviewing Judge Advocates also identified many of the flaws laid out above. Although specifically applicable to the sufficiency of the evidence in the review as to only one defendant, these criticism are generally applicable to the prosecution's presentation of the case against all defendants and raise substantial doubts that these courts-martial resulted in justice under the military law of the day. As Lieutenant Colonel Edward A. Kreger, whom Major General Crowder described as "unquestionably the best lawyer in the Department"⁶⁸ summarized in his specific review of the conviction of Private Abner Davis:

From the fact that Davis participated in the rush on the supply tent, it does not necessarily follow that he did so with intention to march upon the city of Houston. When the cry was raised that a mob was coming, practically all the members of his company rushed and got their rifles and ammunition. It is not contended that they all had the intention of going to Houston at this time, and in fact less than one-fourth of the members of the company left the camp according to the check which was made. The mere fact that he got his rifle then is not enough to show that he did so with the intention of committing any unlawful acts. It is just as reasonable to say that his intention was to protect the camp and himself from a mob, as did three-fourths of the men in the other company. There must be some evidence of an intention. The finding therefore that the act was with the intention to march upon the city of Houston to the injury of persons or property located therein, is not sustained by the evidence.

Any soldier who participated in the mutiny with the intention of marching upon the city and committing unlawful acts was responsible for all the acts committed

⁶⁷ Report of Major K.S. Snow to General John S. Hulen, Report of the Circumstances attending the routing, 24 August 1917 (attached as Annex D).

⁶⁸ Robert W. Runyans, *General Pershing and his JAG: The Friendship that Helped Win WWI*, THE ARMY LAW. (Nov. 2018), <https://tjaglcspublic.army.mil/general-pershing-and-his-jag>

by those who actually did visit the city, even though he himself did not leave the camp. If he did not have such intention, then he is not responsible for the acts of the others. Having failed to produce any evidence to show such intention on the part of Davis, it was then [incumbent] on the prosecution to show that he did actually participate in the murders and assault. This it failed to do, and there is therefore no evidence to support the finding.

Nor can the fact that the story of the accused was proved to the satisfaction of the court to be false, supply the deficiencies in the evidence produced by the prosecution. The prosecution must show beyond a reasonable doubt that the accused was present in the column, and while the court might consider the fact that his statement was shown to be false, it could not use his statement that he was at one place as affirmative evidence that he was at another particular place. No matter how improbable his story as to where he was might appear, the court may not say he was not there, therefore, he was in the column, where he was charged with being. This would be using the charge as evidence, and throwing the burden on the accused to show affirmatively that he was not where he was charged with being.⁶⁹

As recognized above, and significant to analysis of these courts-martial, military law in 1917 established that the offense of mutiny requires specific intent, “defined as consisting in an unlawful opposition or resistance to, or defiance of superior military authority, with a deliberate purpose to usurp, subvert, or override the same, or to eject with authority from office.” Military law has long differentiated even violent acts, insubordination, or willful disobedience from the heightened intent necessary to constitute mutiny. A soldier could not be guilty of mutiny absent proof beyond a reasonable doubt of this specific intent. As argued by the prosecution in the Houston courts-martial, mutiny “is not mere insubordination itself, but consists of an act or collective acts of insubordination committed with the intention of overriding military authority, in other words, it is the intent which distinguishes it from other offenses which combine to constitute it; this intent may be openly declared by words or it may be implied from acts committed; intent alone, however is not sufficient and therefore the offense of mutiny is not complete until the opposition or resistance to military authority has manifested by overt acts and specific conduct.” Interpretations of this provision explained, “To charge as a capital offense under this article a mere act of insubordination or disorderly conduct on the part of an individual soldier or officer, unaccompanied by the intent above indicated, is irregular and improper. Such an act should in general be charged under articles 20, 21, or 62.”⁷⁰

⁶⁹ Kreger 16 Jul 1919 memo, *supra* note 48.

⁷⁰ Howland, 1912 DIGEST OF THE OPINIONS OF THE JUDGE ADVOCATE GENERAL, at XXIIA, 123; *see also* Hearings Appendix on S. 64, *supra* note 29, at 776-777, Exhibit 5 War Dep’t, Memorandum from Office of the Judge Advocate to The Adjutant General (Oct. 30, 1917) (in depth discussion of the specific intent required for

Undisputed evidence establishes that Major Snow conveyed orders through the First Sergeants around 6:30 p.m. that all soldiers were to remain in camp that night. Neither the Manual nor the military law treatises discuss the effect of a substantial change in tactical circumstances coupled with abandonment of the unit by its commanding officer, on the charge of willful disobedience of orders under the military law of 1917. Regardless, as shown by the significantly lesser sentences adjudged against those soldiers found guilty of only willful disobedience, violation of this order did not, and could not, establish mutiny as a matter of law. Thus, even if strict liability applies to the disobedience charges in the face of the drastically changed tactical circumstances when the unit believed itself under attack, far lesser sentences would have been merited.

Although a fresh review of the evidence supporting the mutiny charge discloses significant problems with its legal sufficiency given the heightened specific intent required, in light of the belief of all the soldiers that the camp was being attacked, the identifying information provided by the immunized witnesses is also highly suspect. Two reviewing Judge Advocates conducting post-trial clemency reviews (Lieutenant Colonel Edward A. Kreger and Colonel King) characterized Private Clede Love's testimony as "so unreliable" as to call into question the legal sufficiency of the evidence against Private Abner Davis. The unreliability of his testimony applies to all the defendants.

III

In the aftermath of the national outrage that erupted after the execution of the first thirteen soldiers without outside review, the Army conducted full reviews of the records of trial in the three courts-martial. These reviews stated that "the record is singularly free from evidence that is irrelevant or of doubtful competency,"⁷¹ that the record shows no grounds for the apprehension that there has been or will be in the proceedings some discrimination against the negro race,"⁷² and that "the rulings of the court are without trace of race prejudice or other bias."⁷³ But a close reading of even these early reviews shows that the Army disregarded evidence that would have either raised substantial doubts as to the legal sufficiency of the charges or the group liability of the soldiers under the charge of mutiny, or which otherwise

mutiny, distinguished from mutinous conduct), *available at* https://www.loc.gov/rr/frd/Military_Law/pdf/appendix.pdf.

⁷¹ Review of Record of Trial, *United States v. Nesbit, et al.*, 29 Jan. 1918, *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/44/rec/2>.

⁷² Review of Record of Trial, *United States v. Washington*, 29 Jan 1918, at 18, *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2123/rec/3>.

⁷³ Review of Record of Trial, *United States v. Tillman, et al.*, at 52, *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2117/rec/4>

should have merited relief. For example, in the review of the *Tillman* trial, Colonel James J Mayes, acting Judge Advocate General, concluded, “There is little or no doubt but that [civilians] Carstens, Butcher, Thompson, Gerado, and the Misses Reichert and Miller were struck by stray bullets fired during the fusillade in the company streets in the direction of, and immediately prior to the march upon the city. All the other acts of violence were committed by the soldiers after their departure from camp.”⁷⁴ Even assuming the existence of mutiny when the soldiers marched from the camp in the column (the point at which the reviews concluded mutiny existed), deaths that occurred during the initial pandemonium in camp would not have been properly attributed under the law to the alleged mutineers. Recognition that six of the thirteen civilian deaths resulted prior to the “march on Houston” should have prompted some degree of inquiry as to the appropriateness of the findings of murder under accomplice liability. This is not to excuse the tragedy of the deaths of these six people, but the criminal liability associated with their deaths is far different than that arising from participation in a felonious act, and at a minimum, under their own understanding of the case, the Army should have conducted a far more discriminating inquiry into the appropriateness of the findings or to any sentence mitigation due the soldiers. It did not do so.

The Army similarly failed to complete clemency reviews in good faith in compliance with its own procedures. The case of Private Abner Davis is a concrete example of this failure. As discussed above, Lieutenant Colonel Kreger identified significant deficiencies in the case against Private Davis, and concluded, “In view of the fact that the evidence does not sustain the findings of guilty of murder and assault to commit murder, it is recommended that all of the unexecuted portion of the sentence in this case, in excess of confinement for 7 years, be remitted. In a note to this recommendation, Colonel King, a fellow reviewing judge advocate stated, “Note: It is believed that this man should be punished about equally with the others convicted of mutiny only, as Love’s testimony is so unreliable and there is no evidence that he went to town. Recommendation should be made for reduction when he has served sufficient time. And in a follow-on memo from Colonel King to Colonel Ely, King concludes:

Because of the meagre evidence it is believed that [Davis] might be punished about the same as the men convicted of mutiny only, but if recommendation for reduction is made now it will precipitate an avalanche of applications from the others. It is believed that when he has been sufficiently punished the sentence may then be remitted, or at least, at some later date.”

⁷⁴ *Id.* at 19.

Colonel Read of the JAG concurred, yet Abner Davis remained incarcerated. In 1924, the Army approved a limited reduction in his sentence from life to 23 years, 7 months, and more than twelve years later, the reviewing judge advocate responding to a 1931 Army Adjutant General request for a “remark and recommendation . . . relative to clemency in behalf of Abner Davis” referred to Lieutenant Colonel Kreger’s 1919 review and responded, “As Davis was convicted of participating in the murder of fourteen people and assault with intent to kill eight other persons, this office does not feel warranted in recommending any further extension of clemency that has heretofore been granted.”⁷⁵ Even referring to the clemency review which determined that the charges as to murder and attempted murder as not supported by the evidence against Davis, the Army persisted in mischaracterizing the record and denying clemency based on the “seriousness of the crimes” for which it had determined there was insufficient evidence to sustain. Given that the deficiencies in evidence identified by Lieutenant Colonel Kreger apply to more defendants than just Davis, it is likely that the Army’s clemency reviews, a specific statutory right of soldiers, failed to meet its own standards under the law.

Even in the clemency petitions submitted to President Wilson for those soldiers condemned to death in the second and third trials, the Army stated that “commutation of the death sentences may not properly be recommended in any case in which the finding of guilty is supported by competent evidence showing actual participation in any such wounding or killing.”⁷⁶ Yet, referring to the *Nesbit* case, the Army only stated “thirteen of the accused have been hanged.”⁷⁷ Given that the Army’s own review of the *Nesbit* trial failed to identify any actual participation in any wounding or shooting by the original thirteen executed soldiers, with the possible exception of McWhorter, this statement intimating that such evidence of participation in the actual wounding or killing existed as to those thirteen executed soldiers was at the best misleading, and at the worst, false. It is also significant proof that Major General Ruckman’s decision to immediately execute the sentence of the *Nesbit* court-martial upon his approval, without outside review, substantially impacted the ability of these thirteen soldiers to present evidence of their lack of such participation for consideration as to whether the sentence of death should be approved, as was their right under long-standing military law. Although the 1916 Articles of War authorized immediate execution in time of war, it neither mandated it, nor was that provision intended for implementation within the limits of the continental United States.

⁷⁵ Clemency file for Abner Davis, (at Annex E), *available on* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/679/rec/1>

⁷⁶ Memorandum from Office of the Judge Advocate General to Secretary of War, *Subject: Commutation of death sentences in Houston Riot Cases*, (Aug. 3, 1918), *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/1969/rec/3>.

⁷⁷ *Id.*

The Army conducted the original reviews of the record of trial, albeit after the executions in the *Nesbit* case had taken place, in 1918, when it prepared the records of trial for presentation to President Wilson for confirmation. The War Department, in its response to a November 1921 letter forwarding a proposed congressional resolution that requested the Army to “transmit information to the House of Representatives relative to soldiers of the United States alleged to have been implicated at the riot at Houston, Tex, on the 23d day of August, 1917,” provided a report which summarized the subsequent clemency reviews conducted between 1918 and 1920 and the limited clemency that had then been granted by the Army.⁷⁸ It concluded, “The only reason clemency has not been extended and is not now recommended is that on account of the offenses of which these men were clearly guilty they are not entitled to any clemency.”⁷⁹ This response resulted in Representative Kahn submitting an adverse report from the Committee on Military Affairs recommending that the resolution not pass.⁸⁰

This War Department report illustrates three fundamental concerns. First, it disregarded the significant flaws identified by Lieutenant Colonel Kreger in his 1919 review, flaws that should have raised some concern on the evidence supporting the convictions for a significant number of the accused soldiers. Second, it falsely informed Congress that “In each of these three trials the defendants were represented by Major H.S. Grier, of Pennsylvania, Inspector General of the 36th Division, a lawyer of experience, specially assigned by the Government as counsel for the defendants.” Thus, the response perpetuated this false assertion, which also appeared in all three 1918 reviews of the records of trial for the courts-martial. The defendants did not employ civilian counsel and did not request the appointment of any other officer to assist in their defense—in fact, the officer detailed to assist in their defense recused himself one week before trial after the death of Captain James resulted in his being called as a prosecution witness. Third, it incorporated the comment from the January 29, 1918 written review of the *Nesbit* trial, “The

⁷⁸ Letter of Secretary John Weeks, Secretary, War Dep’t to Representative Julius Kahn, Dec. 6, 1921, 5 (“Of the one hundred and ten accused who were convicted and sentenced as a result of the trials above mentioned, nineteen were executed; one was pardoned, apparently because following his conviction at the first trial he gave valuable testimony at a subsequent trial; six died in confinement, fifteen were restored to duty at the U.S. Disciplinary Barracks; the sentences to confinement of three were remitted by my predecessor on the recommendation of the Judge Advocate General; the sentence to confinement of one was reduced from seven years to three years, and as reduced subsequently expired; and two others were also released upon expiration of their terms of confinement of two years each, thus leaving in confinement at the present, sixty-three general prisoners, of whom fifty-eight are serving sentences to confinement for life and five for fifteen years each. These general prisoners, with the exception of one who has been transferred to St. Elizabeth’s Hospital, Washington, D.C., on account of his mental condition are confined at the U.S. Penitentiary, Leavenworth, Kansas..”), found HR67A-F28.1, the file code assigned to the committee records of the House Military Affairs Committee from the 67th Congress.

⁷⁹ *Id.*

⁸⁰ Report No 53, Houston Riot Cases, Dec. 9, 1921, 67th Cong. 2d Sess. Committee on Military Affairs.

evidence of guilt (of those sentenced to death) was overwhelming and stands without explanation or contradiction,” a statement in the original which immediately followed the comment, “None of these men took the stand on his own behalf, neither did any of them make an unsworn statement as might have been done without being subject to cross examination.”⁸¹ The incorporation of this comment, in the original reviews of the record of trial and in this report to Congress, implicates both the constitutional and military law privilege against self-incrimination.

This was not the only instance of falsehoods being told to defend the trials of the 3d Battalion’s men. In January 1919, General Ruckman in a statement responding to criticisms of the military justice system in general, and to the executions of the thirteen soldiers specifically, again falsely asserted that each of the thirteen men had been represented by counsel, and Colonel George M. Dunn, his Staff Judge Advocate, falsely claimed that “each of the 13 men executed had confessed his guilt on the morning of the hanging.”⁸² This was an outright lie. All the executed men steadfastly asserted their innocence, to include on the morning of the hanging. Yet this false assertion entered the narrative to deny these soldiers their rights even after death. Contemporaneous eye witness accounts describe a completely different ending for the thirteen, one in which they maintained their dignity and unit cohesion to the end. And every letter sent to their families denied their guilt. Such a deliberate distortion of the record by the two men responsible for the hasty execution speaks volumes about the intent of those involved.⁸³

The disregard of earlier identified flaws in the evidence supporting a significant number of convictions, and the false assertions that the soldiers were represented by “a lawyer of experience” do not show a dedicated good faith assessment of clemency in these cases by the Army. The sole rationale given for the denial of clemency is the seriousness of the crimes, and the evidence for that had already been thoroughly undermined.

In the face of continued requests for clemency from both the soldiers themselves, and a large number of citizen groups across the country, in December 1921 the Undersecretary of War directed Colonel John A. Hull (the prosecutor of these cases) “to study the individual cases and records and to submit such recommendations in each case as my knowledge and judgment dictated.”⁸⁴ The employment of the prosecutor of these cases to conduct this review raises the

⁸¹ Review Nesbit ROT, *supra* note 26, at 27.

⁸² *Ruckman Defends Texas Hangings*, THE BOSTON GLOBE, 2 (05 Jan 1919), available at Annex F.

⁸³ Baltimore and Hawkins letters, available at Annex G.

⁸⁴ John A. Hull, War Dept. Office of the Judge Advocate General, Memorandum to the Secretary of War, *Subject: Houston Riot*, August 8, 1922, (“Hull memo”), available at <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2032/rec/10>.

specter of a lack of impartiality and a concomitant lack of good faith on the part of the Army in the conduct of this review. In fact, Hull's participation contradicted the position of the Judge Advocate General in which he stated that the reviewing judge advocates fulfilling an appellate function would be separate from the trial judge advocate.⁸⁵ The timing of these events also supports the inference that Hull was involved in drafting the demonstrably misleading and inaccurate 6 December 1921 response to Congress.

In Hull's assessment, he concluded, "Of the 57 men who were in confinement at the commencement of this year, under sentences of life imprisonment, it must be remembered that while each and every one was guilty of actively participating in the mutiny and ensuing murders, that all those against whom there was affirmative proof of taking a personal part in an actual killing have been executed."⁸⁶ And even after Lieutenant Colonel Kreger's 1919 assessment of the evidentiary flaws discussed above, Hull concluded, "Different minds must arrive at different estimations of the degree of personal responsibility of the men now in confinement, though they are all equally responsible in the eyes of the law." Even Hull, however, acknowledged, "We find here men, who, by the nature of their offenses, have merited the most severe punishment but

⁸⁵ See MILITARY JUSTICE DURING THE WAR: A LETTER FROM THE JUDGE ADVOCATE GENERAL OF THE ARMY TO THE SECRETARY OF WAR IN REPLY TO A REQUEST FOR INFORMATION, United States. Army. Office of the Judge Advocate General, 27-28 (Jan 1919) ("the distinction between the staff judge advocate regularly attached as legal advisor to the staff of the reviewing authority, and the trial judge advocate specially detailed for the prosecution of general court-martial trials in the various units within the division, it will be perceived that these two functions are in practice exercised by different persons . The trial judge advocate does indeed perform the duty of prosecuting attorney; he is supposed to conduct the prosecution, not indeed with the ruthless partisanship frequently to be observed in civil prosecuting attorneys, yet with the thoroughness suitable to a proper performance of his duties. But the staff judge advocate, in whose hands the record of the trial subsequently arrives and who reviews the record and advises the reviewing authority as to its legality, is a different personage and is in no way hampered by having formerly acted as prosecuting attorney in the same case. . . . But so far as concerns the actual administration of military criminal justice, it ought to be plainly understood that military law does not tolerate the anomaly of expecting the same man to be both appellate judge and prosecutor, and that in the practice of the present war (as above pointed out) the trial judge advocate acting as prosecuting attorney in general courts-martial is a different person from the staff judge advocate regularly attached to the staff of the reviewing authority as a judicial officer and quasi appellate judge."), *available at* <https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t2h70b734&view=1up&seq=1>. And even in this official publication addressing Military Justice During the War, Major General Crowder, the Judge Advocate General, incorrectly stated that in the Houston case; "It may be confidently asserted that (except in a few special cases) no staff judge advocate attached as judicial advisor to the commanding general has acted during the present war as trial judge advocate (or prosecuting attorney) in a court-martial trial . The few exceptions to this statement occurred in special cases (such as the Houston riots and murders in 1917) where a staff judge advocate was specially detailed to conduct the prosecution, and where also the accused were aided by counsel consisting of specially detailed officers of high rank and legal experience or by civil counsel of their own choice, but in such case the judge advocate was brought in from a different department or division." *Id.* at 28 (emphasis added).

⁸⁶ Recall that this is in the fact of reviews of the record of trial that stated that 6 of the 13 civilian dead were killed by fire from the camp during the initial period of pandemonium, and in face of evidence in the first trial review that fails to provide any proof of actual participation by the thirteen executed soldiers (with the possible exception of McWhorter).

have as a group had less clemency extended to them than any other group of prisoners that the United States now has in custody.” His recommendations for clemency for five prisoners is telling, however:

*Tillman and Mitchell, and probably Corporal Geter, if they actually left the camp that night with the Henry Column promptly had a change of heart and returned to camp long before the column reached town. Turner, while repeatedly identified as being with the column, was always mentioned as first aid man to the injured and, from his general character, I have reason to believe that he was more exercised in trying to help his wounded comrades than inflicting injury upon the civil population of Houston.*⁸⁷

This recommendation is so self-contradictory that it defies explanation. The prosecutor of the case, recommending reduction of sentences of life in prison, acknowledges that the evidence may have shown they did not participate in or abandoned participation in the alleged mutiny prior to any of the acts of killing or wounding. His involvement in assessing clemency for these soldiers raises grave doubts that the Army properly evaluated the myriad of clemency petitions submitted by, and on behalf, of the soldiers of the 3d Battalion, 24th Infantry.

Failure of accountability for officers of 3d Battalion, 24th Infantry. Both senior Inspectors General who investigated the events in Houston severely castigated the actions of Major Kneeland Snow, and recommended that charges be brought against him and Lieutenant Silvester once the courts-martial of the soldiers concluded. These assessments were unanimous. In addition to the observations of General Hullen’s aide, described above, contemporary witnesses describe Snow’s actions in fleeing camp disparagingly.⁸⁸

Colonel George O. Cress, the Inspector General for the Southern Department, who had experience investigating racial incidents between Texas authorities and United States African-American soldiers, stated in his conclusions:

Recommendations:

That Major K.S. Snow, 24th Infantry, be brought to trial under the 96th Articles of War for gross neglect and inefficiency in not taking more effective steps to prevent the mutiny of August 23rd and its consequences, and for his

⁸⁷ Hull memo, *supra* note 84, at 4.

⁸⁸ Testimony of William M. Nathan, L.E. Gentry, R.R. McDaniel, Frank Dwyer, Captain Roth Rock, and BG John A. Hulen, in Houston Civilian Board of Inquiry, *available at* <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2057/rec/1>.

failure to make proper efforts to effect the arrest and identification of the participants therein.

That Captain Lindsey McD. Silvester, 24th Infantry, be brought to trial under the 96th Article of War for neglect of duty in absenting himself from camp and from his company from about 7:15 to 11:30 p.m. August 23rd when his services with his company were imperatively needed and when he knew before his departure, that conditions in camp were such as might lead to trouble of more or less serious nature.”

General Chamberlain echoed these recommendations.⁸⁹

However, disregarding these recommendations from two senior and experienced officers, the Army took no disciplinary action against either Major Snow or Lieutenant Silvester, and promoted Snow to Lieutenant Colonel on 30 July 1918. Snow’s behavior in photographing his accused soldiers for souvenirs during the trials is similarly discrediting to the solemnity of the capital courts-martial. Similar rewards were provided to Major Grier, Colonel Hull, and Major Sutphin, whose career trajectories improved after their participation in the trials.

Race: Substantial evidence shows that race prejudice affected these trials despite the Army’s repeated assertions to the contrary. The Manual for Courts-Martial was race neutral with one small exception,⁹⁰ but the civil and military societies in which these trials occurred was far from unprejudiced. The Army officially segregated its units, and the casual and pervasive race prejudice that permeated civil society also operated within the military, directly affecting the fairness of the trials and subsequent reviews provided to these United States soldiers. Both the Bureau of Investigation (which later became the Federal Bureau of Investigation) and the

⁸⁹ Memorandum for the Secretary of War, from The Inspector General of the Army, *Subject: Report of investigation of mutiny in 3d Battalion, 24th United States Infantry at Houston, Texas, on the night of August 23, 1917*, (Sep. 13, 1917) (“That Major Kneeland S. Snow, the battalion commander, with a knowledge of general conditions, with full knowledge of the occurrences of the 23d, and with warnings of pending trouble, should have appreciated that a serious situation existed and should have taken prompt and radical steps to prevent trouble. In failing to do so he exhibited inefficiency and criminal negligence of a character which, in my judgment, demonstrates his unfitness to command. . . . Captain Silvester had feared race troubles since the arrival of the battalion in Houston, he was cognizant of general conditions, he was cognizant of the occurrences of the 23d, he received specific warnings from the keeper of the dance hall that the men were notifying their friends to keep away from the camp and he felt called upon to caution his supply sergeant to look out for ammunition, yet he left early in the evening and knew nothing of the trouble until about 11 o’clock. This evinces inefficiency and criminal negligence. When the cases of mutinous soldiers have been disposed of, Major Snow and Captain Silvester should be brought to trial. In these views the Commanding General, Southern Department, fully concurs and action will, at the proper time, I believe, be taken by him.”), available at <https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/1212/rec/1>.

⁹⁰ See 1917 MCM at ¶ 204 (“Illustration of the difference between good and bad circumstantial evidence. The accused is charged with stealing clothes from the locker of a comrade. The following circumstances are not admissible as circumstantial evidence . . . (5) he belongs to a race or enlisted in a locality that does not entertain very strict notions of right and wrong as to the manner of acquiring possession of property.”).

Military Intelligence Bureau (MIB) surveilled black military units, suspicious of their loyalty even while they trained for deployment to France in World War I. In one contemporaneous document, the Army even contemplated removing colored units from White House duty because of a perceived fear of disloyalty.⁹¹ When one of the original thirteen soldiers' bodies was returned to his family for burial in Washington, D.C., a military MIB official visited his mother to counsel a quiet funeral in which the events of Houston were not discussed. He then invited himself to the funeral to ensure compliance with the Army's requests.⁹² The government also failed to address the increasing race violence across the country that can be seen in the numerous race massacres in East St. Louis, in Tulsa in 1921, in Washington, D.C. and elsewhere, and the Ku Klux Klan's overt campaign to lynch and burn returning African-American World I veterans.⁹³ The records of trial for the three courts-martial also evidence the fear and intimidation of local black witnesses who may have been able to meet the exacting standard established by the prosecutor Colonel Hull in order for the accused soldiers to prove that they were not participants in a mutiny.⁹⁴

Significant to the treatment of the 3d Battalion soldiers was the far different treatment accorded to the other (white) Texas mutineers brought to trial in 1917 at Fort Bliss, Texas. Their case was reviewed by the War Department's Judge Advocates. After this review Brigadier General Ansell, the acting Judge Advocate General, "set aside the judgment of conviction and the sentence in the ease of each of these several defendants, and recommended that the necessary orders be issued restoring each of them to duty. This set off the Ansell-Crowder controversy. Significant to his inquiry was the in-depth analysis of the specific intent required for the military offense of mutiny, and its distinction from mere mutinous conduct."⁹⁵ In stark contrast, discussing the Houston mutiny court-martial, the Department of War Inspector General Report, without any examination of the law of mutiny, states merely that:

There was no opportunity for appeal in these cases. This action was denied the accused by their summary execution. The entire action was regular and lawful . No error was later found in the records of trial. The possibilities of injustice, incapable of future correction, were, however, so exemplified in these cases that

⁹¹ 0557, Washington, D.C. 1917, 1919. 10pp. Negroes. 1917-1924. 24pp. Reel 16, National Archives and Records Administration, RG 60 Department of Justice cont. Federal Surveillance, *supra* note 27.

⁹² 0498, Casefile 10218-102: Negro Subversion, Race Riot Aftermath, Houston, Texas. 1918. 1 p. Reel 19 National Archives and Records Administration, RG165 War Department: General and Special Staffs-Military Intelligence Division, in *id.*.

⁹³ See Equal Justice Initiative, *Lynching in America: Targeting Black Veterans* (2016), *available at* <https://lynchinginamerica.eji.org/report/>; Dissertation, Vincent Mikkelsen, *Coming From Battle to Face a War: The Lynching of Black Soldiers in the World War I Era*, Fla. State Univ. 2007, *available at* <https://fsu.digital.flvc.org/islandora/object/fsu:180643/datastream/PDF/view>.

⁹⁴ See Gruening, *supra* note 25; see also Nesbit ROT, *supra* note 26, at 1323-24.

⁹⁵ Hearings Appendix on S. 64, *supra* note 29, at 728.

*G . O. No, 169, War Department, 1917, were issued on December 29, 1917, providing that, after the commanding general of a territorial department or division confirms a sentence of death, the execution of such sentence shall be deferred 'until the record of trial has been received and reviewed in the office of the Judge Advocate General and the reviewing authority informed by the Judge Advocate General that such review has been made and that there is no legal objection to carrying the sentence into execution . Thus the principle of automatic appeal was established, and henceforth all death sentences were stayed until careful review could be had of the records of trial in the office of the Judge Advocate General.*⁹⁶

Thus in a general courts-martial of white NCOs, the Army carefully examined the record to determine not only if mutiny under the law had occurred, but also examined the triggering conduct on the part of the officer in charge of the NCOs.⁹⁷ No such searching query occurred in the case of the 3d Battalion, 24th Infantry.

Colonel Cress's disparaging comments in his IG investigation of the violence in Houston simultaneously reflect both the prejudice confronting these soldiers and the inability of the Army to rise above this prejudice and meet the asserted standards of the United States Army:

*That the tendency of the negro soldier, with fire arms in his possession, unless he is properly handled by officers who know his racial characteristics, is to become arrogant, overbearing, and abusive, and a menace to the community to which he happens to be stationed. . . That for the proper administration of negro regiments, it is vitally necessary that there should be on duty with them a full complement of experienced field officers and captains. . . That the negro soldiers of the 24th Infantry showed a spirit of insubordination and lack of proper discipline in that they failed to observe in proper spirit the segregation laws of the State of Texas.*⁹⁸

However, the United States Army, and particularly its system of military justice, since the Civil War consistently acknowledged that African-American troops are soldiers first and foremost:

All the legislation since the date of these acts, in regard to the enlistment, pay, bounties, &c., of colored troops, aims at placing them upon the same footing, both as to their duties and their privileges, with white soldiers. 3d. The employment of colored troops, as the hirelings of private individuals or corporations, and in a lower and more servile class of labor than that which white troops are called upon to perform, would be injurious to their discipline, and degrading to their morale, and is therefore incompatible with their status as United States soldiers. 4th. The sentiment of all loyal citizens is in favor of the elevation of the colored race, and their reception into the military service is one of the very measures, which, in the public expression of this sentiment, have been resorted to as a

⁹⁶ *Id.* at 733.

⁹⁷ *Id.* at 776-77.

⁹⁸ Report of Colonel G.O Cress, Recommendations, Records of Inspector General, File 333.9, RG 159.

*means of promoting the desired end; and any measure which tends to degrade the colored soldier, or to distinguish him disparagingly from his white comrade in arms, does violence to this sentiment and defeats, so far, the worthy purposes of loyal men.*⁹⁹

The soldiers of the 3d Battalion, 24th Infantry were “loyal men,” and as such were due the same considerations, protections, and respect of all other American soldiers.

Perhaps the most telling evidence of the failure of the Army to accord these soldiers their rights is the method of their execution and burial. The 1917 Manual instructed that “[f]or the sake of example, and to deter others from committing like offenses the death sentence may, when deemed advisable, be executed in the presence of the command.” It further explained that “[d]eath by hanging is considered more ignominious than death by shooting and is the usual method of execution designated in the case of spies, of persons guilty of murder in connection with mutiny, or sometimes for desertion in face of the enemy; but in case of purely military offense, as sleeping on post, such sentence when imposed is usually ‘to be shot to death with musketry.’”¹⁰⁰ Earlier military treatises describe the ritual solemnity and disciplinary purpose of the execution of a military death sentence:

When capital punishment is to be inflicted, great ceremony is made of special observance. When a criminal is to be put to death by shooting, the troops to witness the execution are formed on three sides of a square. The prisoner, escorted by a detachment, is brought on the ground. The provost marshal leads the procession, followed by the band or field music of the regiment to which the convict belongs, drums muffled, playing the dead march. The party detailed to fire, consisting usually of eight to twelve men, comes next; then four bearers with the coffin, and immediately after the prisoner attended by a chaplain; the escort closes the rear. The procession passes in front and along the three sides of the square facing inwards. On arriving at the flank of each regiment the band of that regiment plays the dead march, and continues until its front is cleared. When the procession has reached the open space, the music ceases; the prisoner is placed on the fatal spot where the coffin has been put down, and the charge, sentence, and order for the execution read aloud. The chaplain having engaged in prayer with the condemned, retires. The execution party forms at about six paces from the prisoner, and the word is given by the provost marshal. When the firing party forms, the escort moves by the right flank and takes position in rear of that party, at ordered arms. Should the fire not prove instantaneously fatal, it is the duty of the provost marshal, or a file which has been reserved for such duty, to complete the sentence. The execution being over, the troops break into column by the right and move past the corpse in slow time.

⁹⁹ DIGEST OF THE OPINIONS OF THE JUDGE ADVOCATE GENERAL, 1866, at 53-54.

¹⁰⁰ 1917 MCM ¶ 346.

*Hanging. When death by hanging is to be inflicted, the troops are formed in square on the gallows as a centre. The prisoner, with the escort, having arrived at their respective places, the charge, sentence, and warrant are read aloud, and the executioner, under the direction of the provost marshal, performs his office. The troops march off the ground at common time; the provost marshal with the escort, remaining until the body is taken down.*¹⁰¹

Despite the fact that Fort Sam Houston offered three secure, appropriate sites for such a solemn ceremony, Major General Ruckman instead chose to hang the original thirteen condemned men at dawn, with only a few solitary witnesses, and no ceremony. Their bodies were buried in hastily dug graves by the banks of Salado Creek, and rather than burying the bodies with their dogtags as was required by Army regulation, the bodies were buried with the names of the soldiers written on scraps of paper which were placed within glass bottles.¹⁰² Such ignominy was not in accordance with military law, Army regulation, or the customs of the service.

In his annual report to Congress in 1918, The Judge Advocate General recognized that

[t]he rights and obligations of every man in the Army, from private to general, are well defined and established by laws exacted by Congress or by the common law. Every offender against the military code is subject to trial by court-martial according to a definite procedure prescribed by law. All this procedure is safeguarded by law and no soldier can be punished except according to the law.¹⁰³

In extolling the work of the Judge Advocate General Department, the TJAG recognized that in conducting its reviews of courts-martial, it “passes upon ‘the most sacred questions of human rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law.’”¹⁰⁴

Our review of these cases is an illustration of Faulkner’s quote that “[t]he past is never dead. It’s not even past.”¹⁰⁵ Because our review of the three courts-martial that followed the events in Houston leave substantial and grave doubts that such a “sacred” duty was fulfilled by the Army, we urge the Army to upgrade the characterization of these soldiers’ discharges to reflect honorable service. This remedy achieves justice for all the convicted soldiers of the 3d Battalion, 24th Infantry Regiment.

¹⁰¹ William C. De Hart, OBSERVATIONS ON MILITARY LAW: AND THE CONSTITUTION AND PRACTICE OF COURTS MARTIAL, WITH A SUMMARY OF THE LAW OF EVIDENCE, AS APPLICABLE TO MILITARY TRIALS; ADAPTED TO THE LAWS, REGULATIONS AND CUSTOMS OF THE ARMY AND NAVY OF THE UNITED STATES, 247-48 (1859).

¹⁰² Testimony of C. E. Butzer, THE HOUSTON POST 1, Dec. 13, 1917

¹⁰³ Report of the Judge Advocate General, War Dep’t 227, 231 (Sep. 26, 1918)

¹⁰⁴ *Id.*

¹⁰⁵ William Faulkner, *Requiem for a Nun*.

A Brief Operational History of the 24th Infantry Regiment ¹⁰⁶

The 24th Infantry Regiment was among the first six Black regiments that the U.S. Army established in 1866, at the end of the Civil War. The creation of these postwar units was seen as a victory for black Americans, who considered military service an opportunity to validate their claims of citizenship and receive government recognition of their equal rights. The storied history of the Regiment – a legacy of both combat valor and controversy – is inextricably entwined with the nation’s long reckoning with racism: the tensions of systemic institutional and societal racism on one hand, and the government’s effort across two centuries to integrate black Americans into its Armed Forces while nevertheless segregating units by race.

The six black regiments were primarily stationed at remote frontier posts in the American Southwest, and during the years of Reconstruction they were one of the most relied upon units in an understrength military. In the Army’s official history of the line regiments, written in 1894, the 24th Infantry’s chronicler wrote, “The regiment was in Texas from 1869 to 1880... The duties falling to it were many, consisting of expeditions against Indians over the staked plains and other sections, guarding strategic points, building roads, hunting horse thieves, and in other ways performing arduous service which brought no fame, but required of its officers and men constant vigilance, discretion and care in the performance of the service...” It was unrelentingly hard duty, but the records indicate that the soldiers of the 24th Infantry did it well. In addition to the tactical role assigned to the soldiers of the 24th Infantry, they also protected settlers from outlaws and hostile Native Americans, built roads, and constructed telegraph lines, until 1898.

Pre-Spanish-American War (1866-1898)

•1870s

- Soldiers of the 24th Infantry garrisoned Forts Davis, Duncan, McKavett, Quitman, McIntosh and Stockman along the Mexican Border, and served alongside men of the 9th Cavalry, the 25th Infantry, and the 8th Cavalry.

- 1872: The first expedition over the Staked Plains. This was a vast region of uncharted land that the Native Americans and Mexican bandits used to exchange money, guns or liquor for stolen stock.

¹⁰⁶ U.S. Military Academy, Department of Law, independent research project, LW 498 (under supervision of LTC Dan Maurer, Assistant Professor of Law) (7 Oct 2020)

- 1876: A series of brutal raids by Native American tribes triggered organization of a force to counter the raids. The 24th operated throughout mountains and deserts along border and sometimes conducted tactical pursuits into Mexico.

- 1878: With conflict with Native American raiders persisting, extensive campaign by the 9th and 10th Cavalry and the 24th Infantry, posting detachments throughout west Texas, covering every watering hole in order to guarantee they would encounter the Apaches. Ultimately, this campaign forced the Native Americans back into Mexico where they were trapped and killed by Mexican forces.

•1880s

- The regiment continued to perform many of the same duties but stayed closer to their posts than in the 70s. Their primary focus was maintaining control over the Native Americans in the reservations or keeping trespassing settlers out.

- 1888: The regiment garrisoned Forts Apache and Grant, and the San Carlos Indian Agency in Arizona. With the threat of Native American raids lessening, soldiers mostly conducted practice marches and marksmanship training to maintain their fighting skills.

•1890s

- After spending the longest amount of time in the harshest locations of the southwest, the 24th had made the best of their posts by building gyms, bowling alleys and canteens at most of their posts, organizing theater and music productions.

- 1896: The Army rewarded their decades of service on the frontier by posting the 24th to Fort Douglas, Utah, on the northern edge of Salt Lake City, which excited the majority of the soldiers. Initially they were not welcomed by the citizens of Salt Lake City, but gradually built a good reputation until the locals generally viewed the regiment with pride and fondness.

- 1897: As tensions grew with Spain, the 24th was sent to Tampa, Florida, to prepare to deploy

Spanish-American War (1898-1899)

- Congress declared war on Spain in April 1898. Though many Americans criticized the US for its hypocrisy of engaging in a war against the same sort of racial injustices suffered by blacks in America, soldiers of the 24th Infantry professed their commitment to the effort in the Caribbean Theater, with the hopes that their participation and contributions would earn the full recognition of their citizenship in America.

- The 24th Infantry Division deployed as the 3rd Brigade of 1st Division, V Corps. In July 1898, the 24th Infantry fought its first combat engagements as a full regiment.

- At the battle of San Juan, the 24th Infantry charged the open hill amidst enemy fire and successfully captured the Spanish blockhouse defending the city of Santiago. Seventeen soldiers were killed and 82 were wounded in their gallant assault against the Spanish Army. Sixteen soldiers were recognized by the regimental commander for their demonstration of valor and courageousness.

- Operations in the Caribbean theater involved exposure to tropical diseases that posed grave risk to the health of American soldiers. The War Department organized a volunteer force of men who were believed to possess immunity from tropical climate diseases.

- o Specialized units consisted primarily of men who were unable to enlist in regular units. The War Department ignorantly assumed African Americans to be naturally immune to native diseases in the Caribbean, and the Adjutant General's office formed four "Immune Regiments" consisting primarily of colored soldiers.

- o The 7th, 8th, 9th, and 10th US Volunteer Infantry were composed of black enlisted men and lieutenants, with company commanders and above consisting of white men.

- The issue of commissioning black officers was highly sensitive and controversial, and the War Department faced backlash from media commentators who were implacably opposed to racial progressivism.

- o The War Department allocated one hundred spots for black officer housing for the lieutenants and chaplains in the black "Immunity Regiments."

- o Among the lieutenants, were six college graduates (including the Assistant Surgeon), seven had prior enlisted with military experience, and first lieutenant Benjamin O. Davis (later the United States' first African American general officer).

- o Much of the Immunity Regiment's senior leadership were displeased with the decision to integrate black men into the ranks of officers, and this sentiment was shared by local white communities that neighbored recruitment bases.

- o Soldiers assigned to the units located in the deep south dreaded the oppressive discrimination and often found trouble with local authorities under restrictions of Jim Crow segregation laws.

o Hostile newspapers painted black Regiments as undisciplined, unfit soldiers unworthy of citizenship and social acceptance. Nevertheless, the War Department formed two black volunteer regiments to participate in the Philippine War with promises of higher positions in company command for black lieutenants.

In 1899, the 24th Infantry deployed to the Philippines for service in the Philippine-American War, a counter-insurgency operation lasting until 1902.

Philippine-American War (1899-1902)

- Black soldiers identified with Filipinos as fellow people of color and developed a good relationship with the local civilians, allowing them to take control of additional duties there that were not traditional military missions, such as organizing police forces and helping run towns.

- Duties were similar to those during the Indian Wars: they garrisoned small posts, built roads, strung telegraph wire, secured supplies and lines of communication and occasionally took part in combat operations.

- In their first important combat operation, CPT Batchelor led march of four hundred soldiers (including two companies from the 24th) three hundred miles through jungle and mountains in pursuit of insurgents. Three weeks later, he accepted the surrender of the regional commander of the more than 1,000 insurgents and the American flag was raised over the Provincial Capital, Tuguegarao.

After redeploying to the U.S., the regiment began a decade of rotations between the U.S. and the Philippines, returning again to the islands in 1906 and 1911 to serve on garrison duty.

Post Philippine-American War (1906-1916)

- Between 1908 and 1911, the 24th was stationed at Madison Barracks, New York. In 1916, it was sent to the Mexican border to serve as a security force as the Mexican Revolution destabilized the region. The regiment's headquarters was at Camp Furlong, Columbus, New Mexico with the primary mission of providing security on both sides of the border. In 1916 the 24th Infantry deployed as part of the Punitive Expedition into Mexico lead by General John Pershing. The following summer the regiment's 3rd Battalion was posted to Houston, and was caught up in the tragedy of 23 August 1917.

The Regiment, consisting of 654 black soldiers and 8 white officers, was assigned to assume guard duties at Camp Logan, a new training post that was then under construction in Houston. The soldiers, many of whom were veterans of campaigns in Cuba, the Philippines, and

Mexico, were insulted by the Jim Crow segregation laws Houston imposed on black people. As a result, the atmosphere in the city and Camp was tense and increasingly hostile from the very beginning of the Regiment's assignment. While the Houston population was thirty percent black, many white citizens resented the presence of armed black soldiers in their city, regardless of their mission. It was in this charged climate that tensions erupted into the so-called Houston Riot of 1917, and the capital courts-martial that followed.

Representative Soldier Profiles

As part of this request, we have included profiles of a representative number of accused soldiers from the 3d Battalion, 24th Infantry. The project hopes to produce a separate profile for each soldier that shows their service to the nation and their involvement in the events of 23 August 1917 in Houston.



Private Isaac A. Deyo, Prisoner No. 13243
United States v Tillman
Sentence: Confinement for Life

Private Isaac A. Deyo was born in 1879 in the US Virgin Islands. He and his family relocated to New York when he was 10 years old. He completed the 3rd grade in school. In civilian life he worked as a hotel waiter and a grocery store clerk. He had one minor infraction as a civilian (an arrest for petty theft when he was a teenager) which was “not considered detrimental to his character” in military service. He enlisted in the Army during the Spanish-American War and served an enlistment from 1898-1902, during which he also saw combat service in the Philippine Insurrection. He remained in the Philippines after his discharge and worked for the U.S. Army Quartermaster Corps from 1902 to 1909. He reenlisted in 1909 and was assigned to I Company, 3rd Battalion of the 24th Infantry. At the time of the Houston incident in 1917 Deyo was 38 years old and had 19 years’ combined service with the Army, either on active duty or as a civilian contract employee. Private Deyo’s campaign credits included Cuba,

the Philippines, and the Punitive Expedition into Mexico in 1916. He was one of the most experienced enlisted men in the battalion; his service record was unblemished.

According to his testimony, on the night of August 23, 1917 Private Deyo was standing in line to turn in his rifle when the shooting started in camp. “Realizing the danger and there being no officers present,” he took his weapon and started out for Camp Logan, accompanied by Privates Lindsay and Burnette. He reported to Sergeant Bransome, NCOIC of the Camp Logan guard mount, at about 2250 hours that night. At trial Bransome testified that Deyo did indeed report to him, and that Deyo had told him he was afraid to stay at the 3rd Battalion’s encampment after the wild shooting erupted. Deyo steadfastly maintained that he had no part in the actions of the column that left camp that night under Sergeant Henry’s authority.

On August 24, 1920, while incarcerated at Leavenworth, Deyo sent a letter to Senator W.S. Kenyon asking for help with his clemency appeal. “I am innocent of the charges and specifications,” he wrote. “Therefore, I appeal to you to have this wrong right[ed]. I do not want to be punished for the misdeeds of another—or perchance for a crime that never had commission... I feel proud of my Army record... I am merely seeking a fair trial. The Constitution of the United States requires that every man shall be tried before all courts thereof fairly and impartially. So far, I have had neither a fair trial nor an impartial one. I am asking for that now.” Senator Kenyon passed Deyo’s letter on to the TJAG, E.H. Crowder, who denied the clemency request on September 20, 1920.

The month after the denial, Deyo wrote to the editor of the *Kansas City Post*. “It isn’t very much that I am asking the country in return for some twenty years faithful service,” he wrote; “just that they remit the unexecuted portion of my sentence: that they return the life that belongs to me, which they have taken away. Now a little thing like that doesn’t amount to a whole lot to the country. I know it is a small thing; but to me, it is different. It is all I have.”

On November 13, 1922, Deyo saved the life of a guard in the prison when another prisoner attacked the officer. The warden reported that Deyo “rendered especially valuable and commendable service in aiding Guard John Keinery” during the assault. Based on his conduct, the Acting JAG, BG John A. Hull, recommended that “so much of the sentence to confinement in the case of Isaac A. Deyo, as exceeds eighteen years, be remitted.”

Deyo was granted parole on January 30, 1924, having served six years and nine months of the original sentence handed down by the *United States v Tillman* court-martial.



Private James R. Hawkins, Prisoner No. 12258
United States v Nesbit
Sentence: Confinement for Life

James R. Hawkins was born in 1895 in Virginia. He quit school at age thirteen after reaching the eighth grade. He first enlisted into the Army in April 1912. From his letters it appears that he was close to his parents and younger sister. His civilian employers described him as “well behaved and honest, faithful and very industrious... he was never any trouble of any kind.” At the time of the Houston incident, he was serving his second enlistment and had more than five years’ service. His service record was outstanding and included his commander’s evaluation that he was “a very good soldier and considered an asset to the Company.”

In the post-trial summary of the evidence presented against him at trial, Private Peacock “testified that he ‘thinks’ he saw the accused about where they fired on the first automobile, but does not remember seeing him any more.” Captain Shekerjian testified that he saw Hawkins returning to camp at about 0530, that the soldier identified himself as J.R. Hawkins, but the record also states that Shekerjian “did not know the accused at that time and could not identify him at the trial, but stated that the man pointed out to him had the same general appearance.” Despite the obvious inadequacies of the eye witness identifications, Private Hawkins was convicted, and sentenced to confinement for life.

On May 14, 1919, while incarcerated at Leavenworth, Hawkins sent a letter to Lieutenant Colonel Samuel T. Ansell. “I am appealing, not for myself alone, but for me and my imprisoned comrades now confined...” Hawkins wrote. “We come not as a body making a demand, but we

make an appeal. We ask you to consider the fact that we were in the south, in the State of Texas, where the negro is unanimously hated whether in uniform or not. We do not think this could have occurred in any other state in the union. Every time negro soldiers have been put in this state (Texas) they have had trouble... We were in a city and state where each time we went on the street we were greeted with the vulgar word 'nigger...' We ask you to consider that this trouble was started by the police of Houston, and not by the 24th Infantry... To be kept out of the war has punished us. We would rather of had a headboard mark our resting place in a soldier's grave, marked 'killed in action,' than have a court determine our living grave. We ask you to consider our case to the best of your ability, give us a chance to be in the future what we have been in the past; honorable soldiers."

In May 1923, after learning of his mother's death, Hawkins wrote directly to Colonel John A. Hull, the former prosecutor of the court-martial that convicted him:

"Sir,

It behooves me to write the Colonel a few lines in regards to my case, this is the first letter that I have sought to trouble the colonel with realizing the seriousness of same. I was informed by you that if I would write you after I had served a few years that you would if possible aid me.

To me my case is become serious because of the condition of my father who is getting old and a baby sister who has lost her mother since my confinement. I do not ask that you have unusual pity on me for these reasons only place yourself in plight and you can appreciate my [concerns].

I am sure the Colonel realizes the fact that a thing like the Houston riot could not happen under normal conditions, that it was something unusual. That, however, does not excuse to any extent this affair.

No one has realized the seriousness of this affair more than I have but I can say I have been deprived of my freedom for more than five years for marching out of camp, led by the acting first Sgt, seeing I was wrong after going less than three blocks [illegible] and remaining in the woods all night. This I will admit warranted my conviction under circumstances however I ask the Colonel to help me in getting my sentence reduced so that I will be given a chance to make parole.

When the clemency board reviewed Hawkins' case in April 1924, they noted that he maintained his story "that the guards around Camp Logan had trouble in making the civilians obey orders; that he heard Sergeant Henry say 'get your guns, the mob is on us,' that he then fell in with others at Henry's orders, fired one shot and fell out." The board recommended his life sentence be reduced to 30 years.

On January 1, 1925, Hawkins sent another letter to Hull, who was now the TJAG. He reminded Hull that the colonel had "told me to come up here, behave and keep a good record, I would soon get out." He pointed out that even though he had consistently maintained an excellent record in prison, and was in fact now an outside trusty at the warden's quarters, but he had still received fewer considerations for clemency than other men with worse records. He made an appeal for personal reasons, saying that he had learned the tailoring trade while in prison and had an offer of employment if he was released. "I don't ask you to do the impossible but, I may never get another such opportunity and I am sure you realize what that means so I trust that you will give me all the consideration possible," Hawkins wrote. "My mother has died since my confinement here and I can't tell where my father is but, I have a small sister that I would like to help, no one needs this worse than she does in the way of a brother. I am sure you can appreciate my feeling for a sister. I have my opportunity now to do a little for her if I can get some consideration. I have explained my case to you as best I can because you told me more than seven years ago to write you." Hawkins enclosed two petitions that had been gathered on his behalf, one from white citizens of his hometown supporting his release.

Hull apparently found these personal appeals to be an irritant, because on January 13 that year he replied to Hawkins, "I wrote some time ago that I would help you all I could, and I have done so; so please don't write to me any further. I return the letters you have sent me."

Hawkins eventually received parole in 1927 after serving nearly 10 years of his original sentence. True to his stated intent, he set himself up in trade as a tailor and began trying to put his life back together. In 1934 the Adjutant General informed the TJAG that a "thorough investigation" had recommended "the unexecuted portion of Hawkins' sentence to confinement be remitted." In light of the fact that for "the last seven years this prisoner on parole has fully complied with regulations and the law, and has so conducted himself as to earn the respect of the people in the community where he has resided, we may safely conclude that his reformation is complete and his rehabilitation an accomplished fact," the report concluded. "Therefore there can

be no further good purpose in keeping him in restraint for the remaining two or three years and under the disability resulting therefrom.”

That same year Hawkins wrote an article that was published in *The Chicago Defender*, a prominent African-American newspaper of the era. He described the 3rd Battalion’s arrival in Texas, the immediate collisions with Jim Crow racism, and the events that led up to the tragedy on August 23, 1917. He related that early that morning he was on duty as a guard at Camp Logan. When he returned from walking his post, the Sergeant of the Guard that day, Sergeant William Nesbit, told him he had overheard two of the white workmen say, “That nigger would look better with a rope around his neck than he does with that rifle.” Concerned for the safety of his soldiers, Nesbit required the soldiers to walk their posts in pairs for mutual protection for the rest of the guard shift.

Hawkins reaffirmed what he had always said in the 17 years since that terrible night in Houston: In in the chaos of the dark night he and his comrades truly believed they were under attack; that Sergeant Henry had confirmed that impression when he formed his company and told them a mob was coming at them; that I Company moved out as a military formation under the leadership of its NCOs; and that the column’s purpose only seemed to shift after the departure from camp.

“We were not a mob of wild Negro soldiers on a rampage of indiscriminate shooting as we have been pictured in the white press,” Hawkins said. “No one regretted this riot more than we did, and none did more to avoid it.”



Private Abner Davis, Prisoner No. 12254
United States v Tillman
Sentence: Confinement for Life

Private Abner Davis was born in Kentucky in 1893. He quit school at 15 years old, in the sixth grade, and worked as a janitor with his father. He enlisted in the Army in September 1914 at the age of 21. He served with the 24th Infantry in the 1916 Punitive Expedition into Mexico. Davis had no law violations in civilian life, but he had two infractions on his service record—one for disrespecting a noncommissioned officer and being drunk in uniform, and another for fighting with another soldier while on a practice march. He testified in his own behalf at court-martial and insisted that he had not joined the column that left camp under Sergeant Henry's command.

In a 1919 memo to the Secretary of War, the Acting JAG, Lieutenant Colonel Edward Kreger, said that a case of mistaken identity was used against Davis when he was confused with Private Ira Davis. "It thus appears that the reviewer," Kreger wrote, "when he approved the findings, was under the erroneous impression that Abner Davis had been arrested in the city of Houston the day after the riot." He then proceeded to detail some of the glaring inadequacies of the prosecution's case against Davis:

The evidence for the prosecution is sufficient to show that Davis disobeyed the order to remain in camp, and his own statement that he took part in the rush on the supply tent and got a rifle and ammunition, is sufficient to convict him of mutiny. The doubt which arises is whether the evidence is sufficient to sustain the finding of guilty of murder and assault with intent to commit murder.

There is no evidence that Davis was in the column which marched on the city of Houston, or that he participated in any of the discussions about going to town, or in fact that he had any knowledge of the intention of any of the other men to go to town. The only evidence is his admission that he took part in the rush on the supply tent, and that he was seen returning to camp [from towards Camp Logan] next morning with his rifle. The mere fact that he returned to camp with his rifle is not of itself sufficient to convict him of mutiny or participating in the riot in the City of Houston. The only theory upon which he can be connected upon the charges of murder and assault with intent to commit murder is that he, having joined in the conspiracy to commit an unlawful act, became a co-conspirator and liable for the acts of the others.

From the fact that Davis participated in the rush on the supply tent, it does not necessarily follow that he did so with intention to march upon the city of Houston. When the cry was raised that a mob was coming, practically all the members of his company rushed and got their rifles and ammunition. It is not contended that they all had the intention of going to Houston at this time, and in fact less than one-fourth of the members of the company left the camp according to the check which was made. The mere fact that he got his rifle then is not enough to show that he did so with the intention of committing any unlawful acts. It is just as reasonable to say that his intention was to protect the camp and himself from a mob, as did three-fourths of the men in the other company. There must be some evidence of an intention. The finding therefore that the act was with the intention to march upon the city of Houston to the injury of persons or property located therein, is not sustained by the evidence.

Any soldier who participated in the mutiny with the intention of marching upon the city and committing unlawful acts was responsible for all the acts committed by those who actually did visit the city, even though he himself did not leave the camp. If he did not have such intention, then he is not responsible for the acts of the others. Having failed to produce any evidence to show such intention on the part of Davis, it was then [incumbent] on the prosecution to show that he did actually participate in the murders and assault. This it failed to do, and there is therefore no evidence to support the finding.

Nor can the fact that the story of the accused was proved to the satisfaction of the court to be false, supply the deficiencies in the evidence produced by the prosecution. The prosecution must show beyond a reasonable doubt that the accused was present in the column, and while the court might consider the fact that his statement was shown to be false, it could not use his statement that he was at one place as affirmative evidence that he was at another particular place. No matter how improbable his story as to where he was might appear, the court may not say he was not there, therefore, he was in the column, where he was charged

with being. This would be using the charge as evidence, and throwing the burden on the accused to show affirmatively that he was not where he was charged with being.

In view of the fact that the evidence does not sustain the findings of guilty of murder and assault to commit murder, it is recommended that all of the unexecuted portion of the sentence in this case, in excess of confinement for 7 years, be remitted.

In September that year, Colonel King of the JAG wrote to Colonel Ely at the Leavenworth prison to discuss Davis' situation. "Because of the meagre evidence it is believed that he [Davis] might be punished about the same as the men convicted of mutiny only," King wrote, "but if recommendation for reduction is made now it will precipitate an avalanche of applications from the others. It is believed that when he has been sufficiently punished the sentence may then be remitted, or at least, at some later date."

Even with the JAG's acknowledgements of the shortcomings of the case against him, and despite recommendations for clemency, Davis was still incarcerated 12 years later. The documents related to his case come to an end in 1931, and it is unclear what became of him in later years.



Sergeant William Nesbit
United States v Nesbit
Sentence: Death
Executed 11 December 1917

Sergeant William C. Nesbit was born in Massachusetts to a family with a long history of social activism as well as a proud legacy of military service. Thirteen members of his extended family served the Union cause in the Civil War. His grandfather, William W. Nesbit, was a corporal in the famous 54th Massachusetts Infantry and later president of the Pennsylvania State Equal Rights League. Nesbit enlisted into the Army on 16 August 1911 and was assigned to I Company, 24th Infantry. He reenlisted in 1914 and served with the regiment during the Punitive Expedition into Mexico in 1916.

Nesbit figured prominently in the events in Houston on 23 August 1917, both earlier that day and during the violence of the night itself, and he was the lead defendant in the first court-martial, *United States v Nesbit*. An objective reading of the records, though, leads to a completely different perspective on his actions than the heavily slanted way in which Colonel Hull described them in the trial.

Sergeant Nesbit was on duty as Sergeant of the Guard for the guard mount at Camp Logan one morning, and when he heard white workman talking about lynching one of his soldiers, he did not pass the remarks off as mere racist invective. Private Hawkins remembered that Nesbit ordered his men to walk their posts together so that no soldier would be alone.

When the chaos broke out in the 3rd Battalion's camp that night, numerous witnesses described Sergeant Nesbit as doing exactly what one would expect an experienced non-commissioned officer to do. He was near Captain Haig Shekerjian during the outburst of wild, uncontrolled firing; Shekerjian later testified that Nesbit told him, "Lay down, Captain, they are shooting all over." Nesbit himself, according to Shekerjian and other witnesses, was passing out ammunition, apparently to defend the perimeter against what he and many others believed was an external threat, but he did not engage in the firing himself. Private Lloyd Shorter testified that Sergeant Nesbit gave the order to cease firing and tried to regain control of the men at his position.

After I Company's acting First Sergeant, Vida Henry, ordered the company to fall in and prepared them to march out to meet what he described as an approaching mob, Sergeant Nesbit and Corporals Baltimore, Wheatley, Brown, and Moore joined their unit in response to the only military authority present. After Sergeant Henry halted the column near Shepard's Dam and soldiers realized there was no mob to fight, Sergeant Nesbit argued they should return to camp. Henry overruled him and ordered the column to march on.

Two separate witnesses, Privates Bandy and Peacock, testified that Sergeant Nesbit several times tried to convince Henry to give up and return, and that at the pivotal moment at the railroad tracks when Henry refused for the last time, Nesbit took command of 30-40 men and led them back to camp.

During the court-martial, Captain Fox testified that Sergeant Nesbit had a reputation as an excellent soldier, "especially as to his loyalty to his officers." He never took the stand or made a statement on his own behalf.

Every depiction of Nesbit in the record indicates that he was a professional NCO of the highest caliber. His concern for the welfare of his soldiers was part of his persona, and he was consistent in that to the end. When he and the other twelve condemned men were led to the gallows in the predawn darkness of 11 December 1917, Nesbit gave them his final order. "Not a word out of any you men, now," a witness recorded him saying, and he led them to their deaths as soldiers, with their dignity intact.

Sergeant Nesbit is buried in the National Cemetery at Fort Sam Houston, Texas, beside 16 other men of the 3rd Battalion.



Corporal Charles Baltimore
United States v Nesbit
Sentence: Death
Executed 11 December 1917

Corporal Charles Baltimore was originally from Pennsylvania; not much information has yet been learned about his life prior to enlistment in the Army. What is known is that he was one of the younger NCOs in the 3rd Battalion, and was he highly regarded by his superiors and popular with his fellow soldiers.

On 23 August 1917, Corporal Baltimore was on duty as one of the battalion's provosts, or military policemen. He learned that two Houston police officers, Lee Sparks and Rufus Daniels, had arrested Private Alonzo Edwards earlier that day. When Corporal Baltimore located the two policemen at about 2:00 that afternoon, he asked them what they had done with Private Edwards. Sparks took affront at the idea that a black soldier would question him, even one wearing the identifying brassard of a military provost. He later claimed that Baltimore was "insolent" and used offensive language, but his partner Daniels said he never heard Corporal Baltimore say any such thing. Sparks struck Baltimore over the head with his pistol and the corporal ran. Sparks fired three shots at him, chased him into a house, and then struck him again when he placed him under arrest.

The initial word that reached the battalion camp was that Corporal Baltimore was killed. When the correct version of events was learned, Captain Shekerjian went to the police station to retrieve him. On their return, the battalion commander displayed the bloodied corporal to the first sergeants and instructed them to tell their soldiers that Corporal Baltimore was alive and that the policeman who injured him would be dealt with by the civil authorities.

When the chaos erupted in the camp later that evening, Baltimore fell in with his company when Sergeant Henry formed them up to march out of camp to meet a mob they believed was approaching. Numerous witnesses testified that Baltimore and two other corporals, Wheatley and Moore, were positioned at the rear of the column as rear guards, which was standard infantry tactical doctrine for a unit moving to contact. No evidence was ever produced that Baltimore fired his weapon in any of the incidents of violence that night; what is certain is that he did not obey Sergeant Henry's orders to shoot any man who fell out of the column, because dozens of men left the formation unhindered as it became apparent that there was no mob.

A few days after the Houston incident Corporal Baltimore made a sworn statement to Brigadier General Samuel Chamberlain, the Army Inspector General, in which he described his altercation with the two Houston policemen. He freely admitted to leaving camp with the column under Sergeant Henry's orders, but insisted he did not engage in the violence that occurred at different points along the march. He did not take the stand during the court-martial that November.

Along with Sergeant Nesbit and every other NCO among the original group of 63 defendants, Corporal Baltimore was sentenced to death. The condemned men were informed of their impending execution the day before they were to be hanged. After they were sequestered in the cavalry barracks on Fort Sam Houston for their last night, several of them wrote final letters to their families. Baltimore wrote to his brother Frederick back in Pennsylvania:

Dear Brother:

I write you for the last time in this world. I am to be executed tomorrow morning. I know this is shocking news, but don't worry too much, as it is God's will. Meet me in heaven. I was convicted in the general court-martial held here last month; was tried for mutiny and murder. It is true I went downtown with the men that marched out of camp. But I am innocent of shedding any blood. "For God so loved the world that he gave his only begotten son, that whosoever believeth on him shall not perish, but have everlasting life. I am going to meet father and mother and all the rest of the family gone before. Good-by; meet me in heaven. Your brother, Charles Baltimore.

He is buried in the Fort Sam Houston National Cemetery beside his 16 fellow soldiers of the 3rd Battalion, 24th Infantry.

Annexes

- Annex A Military-Civilian Incidents in Texas Involving Black Regiments, 1900-1917**
- Annex B Harry S. Grier Biography (with assistance of West Point)**
- Annex C The Chicago Defender, James R. Hawkins Article, Mar. 17, 1934**
- Annex D Record of Statement of Major K.S. Snow, Houston, August 24, 1917**
- Annex E Abner Davis Clemency Packet, includes Lieutenant Colonel E.A. Kreger
Review**
- Annex F Ruckman-Page Public Exchange**
- Annex G Resolutions of NAACP and City of Houston**

Annex A Military-Civilian Incidents in Texas Involving Black Regiments, 1900-1917¹⁰⁷

El Paso (Fort Bliss), 7 February 1900

Unit: A Co, 25th Infantry

Incident: A group of soldiers attacked the town jail, ostensibly to free from custody one of their comrades who had earlier been arrested for public intoxication. A policeman, Officer Newton Stewart, and a soldier, Corporal James Hull, were killed.

Outcome: SGT John Kipper, CPL William Powell, PVT Benjamin Carroll, and PVT Leroy Roberts were accused of taking part in the violence and tried in civilian court following a jurisdictional dispute between the army and local district attorney. CPL George McElroy was implicated in the case but deserted before he could be arrested. The army retained custody of four other soldiers accused of participating in the raid on the jail. At trial, Powell testified for the prosecution; Kipper and Carroll were found guilty and sentenced to life imprisonment in state prison. Kipper served ten years before receiving a conditional pardon. The army's investigation supported the conclusion that the indicted soldiers were guilty of unlawful violence that night, but also pointed out that a vicious climate of abusive racist behavior existed in El Paso on the part of local law enforcement and customs officers manning border crossing points, in addition to prevalent local racial biases in the community. The army concluded that these factors had all contributed to growing resentment in the ranks.

Lt. Col. Cyrus Roberts (Acting Adjutant General, Southwestern Division), writing to the Adjutant General, Dept. of Texas, in San Antonio, said: "The defense insists that an impartial jury is impossible in El Paso, owing to prejudice, and I am inclined to agree... While it is impossible to protect colored soldiers from insults from the hoodlum class, or unjust discrimination at border towns where the right of drunken cowboys and other white men to 'shoot up the town' upon occasions is tacitly recognized, it is submitted that the government is entitled to expect that the utterances of federal officials should tend to allay, rather than to intensify, local excitement and prejudice." Roberts believed that local law enforcement and border agents had provoked the soldiers to violence.

Brownsville (Fort Brown), 12-13 August 1906

Unit: 1st Battalion (minus A Co), 25th Infantry

Incident: The unit transferred from Fort Niobrara, Nebraska, on 28 July. At around midnight on 12 August unidentified persons fired several hundred rounds in the town, targeting businesses and lighted areas. A white bartender, Frank Natus, was killed and a Latino policeman, Joe Dominguez, was injured. Citizens of Brownsville insisted that the shooters were soldiers. The military garrison denied this; Major Charles Penrose, battalion commander of 1-25 Inf, had mustered the battalion as soon as the shooting began and found that all his personnel and weapons were accounted for. Arms inspection indicated all weapons were clean and unfired. Initial evidence of military involvement in the shooting was in the form of spent .30 shell casings

¹⁰⁷ Provided by John A. Haymond

allegedly found in the town's streets, but the battalion's own ordnance stocks appeared intact. (It bears noting that .30 Springfield ammunition, while a military cartridge, was also widely available for civilian purchase and use.)

Outcome: The War Department's primary investigator was the Asst. Inspector-General of the Southwestern Division, Major Augustus Blockson. From the outset, Blockson seemed to accept civilian accusations against the soldiers at face value; he discounted the soldiers' testimony in their own defense. Twelve soldiers were initially arrested by civilian authorities; after their acquittal and release to the army, they were held in close confinement at Fort Sam Houston. President Theodore Roosevelt ordered the War Department's Inspector General, General Ernest Garlington, to "endeavor to secure information that will lead to the apprehension and punishment of the men of the Twenty-fifth Infantry." Roosevelt instructed Garlington to make it clear that if the persons responsible for the Brownsville Incident could not be identified, then "orders will be immediately issued from the War Department discharging every man in Companies B, C, and D, without honor." The soldiers of the battalion continued to insist on their innocence, but immediately after the congressional elections that November, Roosevelt issued an executive order dismissing every man of B, C, and D Companies from the service with dishonorable discharges. (He seems to have deliberately waited until after the election so as not to alienate black voters, who were sure to be outraged by the dismissal order.) A subsequent congressional investigation led by Senator Joseph Foraker argued that no conclusive evidence was ever presented to support allegations of the soldiers' guilt; that local citizens had more motivation to create the incident; and that the refusal of the entire command to admit guilt was because none of them were guilty of the charge. Not until historian John Weaver's investigation in the 1970s did any official redress occur – honorable discharges were retroactively granted to the 153 men dismissed by Roosevelt's order. Only one man of that group was still alive at that point. Final clarification on the question of who was responsible for the Brownsville Incident remains elusive – it is *possible* that some members of the garrison were involved, but absolutely certain that not the garrison entire. It is equally likely that the attack on the town was precipitated by civilian perpetrators who are still unidentified. The prevailing argument today holds that the entire event was a scheme intended to discredit the 25th Infantry and force the army to transfer them away from Fort Brown, where a racially hostile civilian population resented the presence of black soldiers. If there was indeed such a scheme, then it succeeded.

San Antonio (Fort Sam Houston), April 1910

Unit: 9th Cavalry (minus)

Incident: On at least two occasions, troopers of the 9th Cavalry refused to comply with San Antonio's Jim Crow laws when riding the city's street cars. Such incidents as occurred were isolated and limited; the division commander insisted that there was "no difficulty between men of Ninth Regiment U.S. Cavalry and civil authorities at San Antonio." The regimental commander, Colonel John Guilfoyle, declared that the entire problem was the result of "Southern prejudice." Officers of the regiment who investigated individual complaints against their soldiers found them to be usually baseless and insisted that the black troopers were "victims of mistreatment."

Outcome: Texas Representative John Nance Garner used unsubstantiated and exaggerated reports of this military-civil unrest to support his efforts to have the 9th Cavalry transferred out of Texas, if not disbanded entirely. Bexar County Sheriff John Tobin went on record to say that his department had received no official reports of violence perpetrated by soldiers of the 9th Cavalry, but Garner succeeded in pressuring the War Department to transfer the regiment out of San Antonio to duty at border stations farther south.

Del Rio (Camp Del Rio), 8 April 1916

Unit: 1st Battalion (minus), 24th Infantry

Incident: Black soldiers were refused admittance to the Greentop, a local brothel; they were accused of later returning and shooting at the building. In the ensuing confrontation with law enforcement, Private John Wade of C Company was shot and killed by a Texas Ranger “while resisting arrest.” Civilian investigation accused the black soldiers of initiating the violence and firing all the shots that night. The army’s investigation, on the other hand, indicated that Private Wade was shot multiple times in the back, contradicting the local police report. It is far from certain that soldiers were responsible for the initial outbreak of violence, but the army did determine that at least two men from 1-24th Infantry, Privates Gay and Wilson, were with Wade when he was shot by police. After Wade was gunned down, Gay and Wilson went back to the military post, armed themselves from the company rifle racks, and returned to town to get revenge. A count of expended ammunition indicated they fired at least 24 rounds; they later corroborated this by their own admission. The army officer on the scene, LT Alexander Chilton, was very effective in keeping control of the soldiers under his command, in accounting for personnel and weapons immediately after the incident, and for conducting a quick and efficient investigation of the scene. Another crucial factor that kept the incident from escalating was that the black NCOs in the battalion had firm control over their men and their leadership kept military discipline intact.

Outcome: The 1st Battalion was transferred away from Camp Del Rio in acquiescence to the demands of the local populace and the renewed interference from Rep. John Nance Garner. Privates Gay and Wilson were court-martialed for their part in the incident, though LT Chilton stated that “neither had any idea of the enormity of his offense.” The army failed to press for federal prosecution of the civilian law enforcement officers who were involved in the highly questionable circumstances of Private Wade’s death, which sparked the shooting that night.

Waco (Camp MacArthur), 23-24 July 1917

Unit: 1st Battalion, 24th Infantry

Incident: The battalion arrived in Waco on the morning of 23 July to serve as the security unit for Camp MacArthur. The battalion commander, Captain Charles Andrews, assigned six soldiers with experience as battalion provosts to liaison with the local police force, imposed a 2300 hour curfew for all soldiers under his command, and established camp sentinels. At 2315 hours that night, an NCO woke Andrews and reported that he had seen a platoon-sized group of soldiers, all armed, heading into town. Andrews immediately telephoned Waco’s police

chief and informed him of the situation, then mustered the entire command for a 100 percent accountability and weapons check. He also posted guards on the camp perimeter with orders to arrest any soldier who attempted to leave or enter the camp. He then sent another officer, Captain James Higgins, with a detail of six enlisted men in a commandeered civilian automobile, to intercept the rogue group. Higgins, with a combined force of local policemen and soldiers from 1-24th Infantry, headed into the city's black neighborhood. Their destination was a nightclub called the Waco Club where a disturbance was reported. Higgins asked that the civilian police allow him and his military detail to apprehend the suspects – they were fired on by two salvos of rifle fire before the wanted men escaped into the darkness. Back in camp, CPT Andrews' precautions paid off as the missing men were apprehended when they attempted to slip back into their company area before dawn. The next morning Andrews attended a local civic meeting and squashed the growing rumors of revolt and riot by announcing that only about half a dozen soldiers were involved in the shooting incident, that all alleged perpetrators were accounted for and would face military justice, and that the incident was not a premeditated, organized revolt. It was a mistake by a few men, not a concerted intent by his unit as a whole. Andrews succeeded in allaying much of the initial hysteria in the local press, and stoutly defended 1-24th Infantry's good reputation. Waco's mayor announced in a newspaper editorial that "It is not right to hold the entire regiment responsible for what twelve men do... I would ask that no slurring remarks be made about negro soldiers so long as they conduct themselves in an orderly and peaceful way."

Outcome: COL George Cress, inspector-general of the Southern Department, was ordered to conduct the army's investigation into the incident (Cress would lead the official investigation into the Houston Riot a few weeks later). Cress determined that the cause of the riot was a series of confrontations between soldiers and local police, along with civilians, that had occurred in the black district of town earlier that day. Black soldiers had been pushed off the sidewalks, called insulting names, and one soldier was clubbed over the head by a policeman after an altercation, but as several observers noted at the time, neither the police nor the soldiers involved in any of this had notified CPT Andrews of any of these incidents when they happened. Cress felt that the battalion's soldiers who were detailed as provosts could have done more to control the situation in town if they had been armed and issued with insignia that identified them as military policemen. The army seemed eager to smooth over any hint of racial discord and missed the opportunity to force Southern localities to guarantee fair treatment of black troops if they wanted the benefit of military garrisons in their towns. For its part, the city government of Waco took a surprisingly proactive stance against any citizen who provoked black soldiers by the use of racial slurs or threats. In the days following the incident, Waco police actually arrested several white citizens for insulting soldiers. In the meantime, the army court-martialed six soldiers for the 23 July incident – all were privates and new recruits. (Veteran soldiers in the battalion reportedly were furious that their professional reputations had been tarnished by the actions of a few hotheads, even though they understood the resentment over unfair treatment.) Five soldiers pled guilty to charges of violating the 93rd Article of War (attempted murder); one pled not guilty. All were convicted and sentenced to dishonorable discharges and confinement at hard labor (five years for the guilty pleas, ten years for the soldier who pled not guilty). Two days after the verdicts were announced, the Houston Riot erupted on the night of 23 August, 1917, involving a sister battalion of the 24th Infantry.

Annex B Harry S. Grier Biography
(provided by West Point Dep't of Law)

Harry Grier was born in 1880 in Pittsburg, Pennsylvania. He reported to the United States Military Academy in 1899 and graduated in 1903. Upon his graduation, he was appointed a second lieutenant, and commissioned as an infantry officer. He was first assigned to the 25th Infantry at Ft. Niobrara, Nebraska. Subsequent assignments included service in the 22d, 8th, and the 24th Infantry Regiments. While serving in the 24th Infantry, he served as the Regimental Adjutant. He deployed twice to the Philippines, first as Adjutant and Executive Officer, and later (1931) in command of Pettit Barracks, Zamboanga.



Prior to the First World War, Grier graduated from the French General Staff College, Grier served as an instructor in law at the United States Military Academy from 1907-1910, with an additional year as an Assistant Professor. He subsequently served in Mexico under General Pershing in 1916. In 1917, assigned as defense counsel, he represented 118 African-American soldiers of the 24th Infantry Regiment in three general courts-martial. At the time of the trials, he was a major and assigned as the Inspector General of the 36th Division, a National Guard unit. Grier was not a lawyer. His opposing counsel was a judge advocate in the rank of Colonel.

Grier later served in the Southern Camps in France during the first World War, and as the Chief of Intelligence for Xth Corp, American Expeditionary Forces. He was awarded the Army Distinguished Service Medal for his work as “Chief of the Legal Department, Office of the Officer in Charge of Civil Affairs, Army of Occupation in Germany.”

After the First World War, he graduated from the School of the Line in 1921 and the General Staff School in 1922. He stayed as an instructor at the Staff School from 1922-1926. He then attended Army War College in 1927 and upon graduation, stayed on as faculty. He served as an Assistant Chief of Staff and Acting Chief of Staff in 1933 and 1934 at the Headquarters of the Second Division in Fort Sam Houston, Texas. In 1934, he was assigned to the War Department for duty in the Office of the Chief of Infantry as its Executive Officer, where he served until his death in October, 1935.

Sources:

- Fred L. Borch II., “*The Largest Murder Trial in the History of the United States*”: *The Houston Riots Court-Martial of 1917*, 2011 ARMY LAW. 1 (February 2011).
- 67th Annual Report of the Association of Graduates of the United States Military Academy at West Point (June 11, 1936), *available at* https://usma.primo.exlibrisgroup.com/view/delivery/01USMA_INST/12198909640005711
- “Harry Sturgisson Grier,” <https://valor.militarytimes.com/hero/17608>.

Annex C

James Robert Hawkins, The Chicago Defender, March 17, 1934

See attached pdf.

HOW HOUSTON CITIZENS STARTED BLOODY RIOT

True Story Told for First Time by 24th Infantryman

Whites of City Would Not Permit Soldiers to Remain in Peace

Facts Reveal One of Blackest Periods in U. S. History

By JAMES ROBERT HAWKINS

The 24th infantry in the summer of 1917 had high hopes of going to France. In fact many of us were sure that we would be among the first to be sent to the battle front. Why not? Our regiment had served on the plains against the Indians, had served with distinction both in Cuba and the Philippines. Only a few months before the declaration of war against Germany the regiment had been in Mexico with General Pershing. It had been one of the first regiments sent to the border after Villa's raid on Columbus, N. M., coming from Fort Russell, Wyoming.

There were some in the outfit who said that we would not be sent to France, some who were not interested in going. The latter group were not cowards, but as they put it, "Negroes had nothing to fight for." This group, I confess, was small.

Several things happened in the spring of 1917 to give this feeling an impetus. First there was the East St. Louis riot, in which evidence showed that Colored women and children had been fired on by white soldiers. Then a Negro was burned in Memphis, Tenn. The thing that struck the outfit the hardest was the retirement of Colonel Young. He had been in Mexico with the regiment, and the men had seen much of him, although he was with a cavalry regiment. I never heard anyone in the regiment speak anything but good of the colonel.

The first indication we had that we would not be sent to the front was when the best and newest of our equipment was turned over to a white air corps outfit.

HOPE STILL RAN HIGH AMONG SOLDIERS

We did not believe, however, when the rumor hit the camp to the effect that we were to be sent to Houston, Tex., for any purpose. It did not take a scholar to know what the attitude of the whites would be to our coming. We could not recall a time in which Colored troops had been stationed in any one place for any length of time without trouble. Some of the older men had told us of the Brownsville affair; then there were several minor incidents that we knew of.

Some of us, myself among them, who had read of how serious were kept in war time, thought the Houston rumor was just a blind; that we were going to France after all. But this was not the case. The first battalion was ordered to Waco, Tex. (They also had a riot and four men were sent to prison.) The second battalion went to Deming, N. M., and the third battalion to Houston.

At most of the small towns (after we left El Paso) white persons along the way stared at us goggle-eyed. At the station the white folks crowded around our train as though it was a circus train. About the only friendly greetings we got on the way were from white soldiers who were guarding railroad bridges.

At one town—if I remember correctly it was Del Rio—the train stopped for about an hour. Our company commander (Co. 1) took us for a short hike. He halted us in front of a drug store and soda fountain and started in. About half way to the door he stopped and turned to us: "If any of you want anything to drink, come on in." We hesitated, looked at each other blankly, then some one whispered:

"Don't the captain know this is Texas?"

Exactly the captain understood our hesitation. He smiled: "Well?" About 20 of us followed him into the store. Most of the men did not have money, it being about two weeks after pay day. We saw no Colored people as we entered, but there were several tables of whites. The most of these half arose from their seats and stared incredulously at us and then dropped back in their seats, but some remained standing as we trooped past to the fountain.

There was one soldier in the bunch who had lived there before joining the army. He told us that Negroes were not allowed in that place with their hats on and that at times they were not allowed in at all. We lined up at the counter; those who could find seats sat down, the captain at one end. The astonished clerk looked from the captain to the other end. All the blood in his body seemed to have shot up into his face. The captain kept his seat until we had all finished our drinks, then arose. We paid for our drinks and started out; when we reached the door there was a sound of breaking glass—the clerk was smashing the glasses we had drank out of against the floor. Once before, when we were in the Philippines, the little daughter of one of our captains brought some water down in the yard where we were working. On her way back to the house her mother met her, snatched the glasses and pitcher from her and broke them right in our presence, and then made us clean up the pieces! And this woman's husband commanded Colored troops.)

TWO LITTLE BOYS PASS OPINIONS

We finally arrived in Houston, and the first word of greeting we had was from a tall white man on the outside, who said: "Go, them's big niggers, ain't they?" The proverbial two licks were passed—some one hit him and he hit the ground, hard.

A white woman living near the site chosen for our camp evidently thought that her dignity had been

drill on our good behavior under such circumstances.

Some of the whites themselves admitted that our conduct had been excellent; this was especially true of the press. As a result of this the chamber of commerce was giving us a watermelon feast in Emancipation park the very night the riot occurred. These Colored soldiers, be it said to their honor, had protested almost to a man against any such public disgrace as a watermelon feast. In fact, it had become necessary to order some of them to go. The incidents that happened during the day, which led up to the trouble that night, are all that prevented our going in a body.

REGIMENT'S GOOD NAME AT STAKE

There are several reasons for our passing up things that would have otherwise been wanted. There was the good name of the regiment that we had no desire to stigmatize. Then, too, the Colored people of Houston were treating us royally, and we had no desire to see them suffer (as they surely did), for possibly doing that we might do. We knew that whatever the circumstances we would have been given the biggest share of the blame. Another reason, and this was by no means a small one, was that many of the boys had their eyes on some of this Houston girls, and were ready to call it a day as far as their army service was concerned as soon as the war was over. It is my opinion, and several others had the same opinion, that a certain element of the whites mistook our conduct for meekness. It was rumored that some had boasted that there would be a soldier lynched before we left. This rumor need not be considered absurd, for the white people had every desire to indicate the indignity of the whites of Houston with the idea that they were no more afraid of Negro soldiers than any other Negroes; in fact, Colored people told us that such a boast had been made. Viewed in that light, one can see how our conduct was misunderstood.

The 2d of August seems to have been the day set aside by fate for something serious to happen. Early that morning I was walking post on the south side of the cantonment; near the post some white plumbers were working, had paid very little attention to them all morning, and thought they paid less to me. When I got back to the starting point after one of my rounds, I found the sergeant in charge of the detail, Sergeant Nesbit (afterwards executed), with another sentry. He told me that in making his inspection he had heard one of the white plumbers say, referring to me: "That nigger would look better with a rope around his neck than he does with that rifle."

The protest was carried to our commanding officer, Colonel Newman. [Such a thing, they said, would assume serious proportions if the Negroes and whites drank from the same barrel. A molehill had been made into a mountain. It would not do to have two separate barrels, one for white and the other for Colored; the soldiers would kick. We were given that much consideration. A compromise was reached and another barrel was placed in the camp and marked "Guards." Of course we would let the Colored workmen drink from the barrel and that would settle everything.

The next serious encounter was not far behind the first. It came on a Saturday—my day. The whites wanted to get paid first, so proceeded to push the Colored laborers out of line until they got paid. They seemed to have gotten away with this for a while, but finally the Negroes began to kick. There were several scuffles, the sergeant of the guard calling for help by telephone.

At the main camp a platoon of us were loaded into a truck and rushed to the scene with fixed bayonets. On reaching the scene of the trouble we dispersed the line entirely and formed it over with one white man and one Colored man behind each other, and then stood guard while they were paid. The Colored men smiled, the whites fumed and cursed under their breath. I believe it safe to say that the 24th infantry while in Houston took more insults from roughneck whites than had ever been the case before. It was certainly true of them since I had been with them, and I was on my fourth year. There was hardly a time that any of us went on the street that we were not insulted in some way; yet there had not been a fight; that could be considered serious until Aug. 23.

A drunken soldier was a rare thing, one of the Colored editors of Houston to the contrary notwithstanding. Much whiskey was brought into camp in most every conceivable way, only to be carried out again by the would-be bootlegger. Sergeant Henry complimented the men of Company I each day before he dismissed us from

this man being punished, but we were very willing to await the results.

We returned to our tents and orders were issued for no one to leave camp. It began to drizzle rain and some of us began to prepare for bed. There was every indication that the feeling had subsided to a great extent.

About 6:30 p. m. Sergeant Henry reported to Major Snow that he thought some of the men were stealing ammunition from the supply tent. The major decided to take up our arms, bugles were sounded, whistles blown and the entire battalion was ordered to fall in again. Some of us were only partly dressed and fell out of our tents and in line just as we were, and it was raining at the time.

A detail was picked to collect the arms in each company. The detail in I company was under Corporal Wheatley, and Sergeant Henry was also with this detail. We were to remain in line until they had completed the collection.

This detail had worked to the north end of the company street in the last few tents. A shot rang out from that direction and those in line instinctively dropped to the ground or took cover otherwise.

This detail came running back down the company street, and Frank Johnson yelled: "Get your guns, boys; here comes a mob!" Pandemonium broke loose. Our arms, that is, most of them, were in the supply tent. More shots were heard in other directions, and some of the men changed the supply tent while others went back to their tents. This supply tent was small, and men were pushing, pulling, yelling. Some were trampled. I have a scar on my left hand now made by a hobnailed shoe.

FEELING SUBSIDES AS NIGHT FALLS

When we reached our camp after being relieved from guard duty there was a great state of excitement. Men were standing around in little groups talking. A rumor had come to the camp to the effect that Corporal Baltimore of the military police had been killed. Just as I joined one of these groups I saw what I would find out a civilian rushed, panting, up to the same group. He told us that he knew Baltimore had been killed because he had seen the hole in his head. Also that the white people were threatening to kill any Negro soldier they found out of camp. Just how much of this was fact or fancy it was hard to tell. The feeling was running high against us and one could almost feel it in the air. While I was standing near this group a Ford truck drove into camp. When the driver stopped and uncovered the truck, two of the other military police got out; they had been smuggled out of town.

It was obvious that the situation was serious. Officers and men alike were anxious to do everything to avoid trouble. Capt. Halvickson was sent to town to investigate the affair. About 5:30 he returned with Corporal Baltimore, who had been washed up and his bloody shirt changed for a new one.

At retreat Baltimore was paraded before us that we might see that the report of his death was as Mark Twain said, "Greatly exaggerated." It was explained that the policeman who had assaulted Baltimore had been suspended and would be tried. (He was reinstated less than six hours later, and a few weeks later shot and killed a Negro in a dice game and was freed by a jury in five minutes.) We had little faith in

it up and went on his way.) There were several companies of the Texas national guard; also some of the Illinois national guard (white). Sergeant Henry was in no mood to be reasoned with. He gave the command and we marched out of the camp.

Some distance from the camp he halted; he had other plans. Each man was to keep one round of ammunition for himself; no one was to be taken alive. He then told us what was to be done.

Although many of us went to prison as a result of this riot, and some spent the best years of their lives there, the people of Houston would shudder even today if they knew what would have really happened if it had not been for us. We flatly refused to follow Sergeant Henry into certain death. This can be substantiated by the fact that when Henry reached the ball park that night he could count less than two dozen men, and that he never got to the police station, where he originally started.

We were not a mob of wild Negro soldiers on a rampage of indiscriminate shooting as we have been pictured in the white press. I have yet to see a news item in the white newspapers concerning this affair that was correct. No one regretted this riot more than we did, and none did more to avoid it.

"If you don't want to go I'll finish you now," he replied, reaching for his gun. Wheatley fell back into line. This is not melodrama; it happened.

Sergeant Henry had discussed the watermelon feast with me, so I thought I would try my hand at dissuading him from his plan. I reasoned that there was the entire Houston police department. (A white fellow who came to Leavenworth several years later said that he and a woman were in the Houston police station the night of the riot.) Being fined \$10 and costs for something, the money was laying on the desk. About that time the call came in that the soldiers had broken out of Camp Logan. He said that everyone in the station ran out and left him alone—the money on the desk. He picked

Annex D Major K.S. Snow Statement of 24 August 1917

From Major K S Snow, Infantry
To Brigadier General John S Hulen
Subject Report of Circumstances attending the routing

1. In the Third Battalion, 24th Infantry, Houston, Texas, on the night of August 23-24; At about 3 o'clock on the afternoon of August 23, reports began coming into the 24th Infantry Camp that Corp Baltimore, Co. I, 24th Inf., had been shot and killed on San Felipe Street by the Police. I sent Capt. Haig Shekerjian of the 24th Inf. to Police Headquarters to investigate and at about 4:30 I went down to investigate myself to the Police Headquarters. I learned through investigation that Corp. Baltimore had not been shot as had been reported but had been struck on the head several times with the butt of a pistol by a Police Officer; that the Police Department had investigated the circumstances surrounding this affair and reported to me that Corporal Baltimore was innocent of any wrongdoing, and that the Police Officer was entirely in the wrong. I was informed by the Superintendent of Police that this police officer had been suspended from the force. I went back to the 24th Infantry Camp, assembled the First Sergeants of the four companies and in Corporal Baltimore's presence informed them that the injury Corp. Baltimore sustained was not due to gunshot wound but rather to an assault with the butt of a pistol, and that the police officer who committed this outrage has been suspended from the Police Force and that he would be punished. I told the First Sergeants to publish this information to their companies at retreat and to let all the men know that justice would be done; that the police officials were doing all they could to work in co-operation with the Army and that I knew that this police officer would be punished. I then directed that no man leave camp that night and posted sentinels around the camp to carry this order into effect. The men of the battalion had been acting in an uneasy manner since first reports begun to arrive in camp about Corp. Baltimore's having been hurt. I could see that the men were uneasy and very much incensed on account of the occurrence.

I kept a sharp watch and made frequent inspections through the camp. At about 7:20 I started down "I" Company street and noticed an unusual number of men going to "K" Company street. I followed them and found the Store Tent of Co. K crowded with men who were stealing ammunition. I went up to them, asked them what they were doing, saw they were getting ammunition, ordered them to drop it and clear the tent. I captured three men who were in this crowd of men getting ammunition and confined them in the Guard Tent. I then had officers call sounded and informed the officers of what had occurred and told them I feared we were going to have trouble. I directed that assembly be blown, and that the companies form in their company streets for the purpose of a checked roll call. I directed that while this was being taken, each man, as his name was called, would pass in front of his First Sgt. calling the roll for identification. At the same time the roll was being called I directed that all rifles in the company be collected and put in the store tent with the ammunition which was under guard. I also directed that a search be made of the Battalion for ammunition. After this inspection had been going on for possibly five minutes, I asked the first Sgt. of Co. I if any ammunition had been found and he replied that it had not. I thereupon walked down to the end of the company

From Major K S Snow, Infantry
To Brigadier General John S Hulen
Subject Report of Circumstances attending the routing

1. In the Third Battalion, 24th Infantry, Houston, Texas, on the night of August 23-24; At about 3 o'clock on the afternoon of August 23, reports began coming into the 24th Infantry Camp that Corp Baltimore, Co. I, 24th Inf., had been shot and killed on San Felipe Street by the Police. I sent Capt. Haig Shekerjian of the 24th Inf. to Police Headquarters to investigate and at about 4:30 I went down to investigate myself to the Police Headquarters. I learned through investigation that Corp. Baltimore had not been shot as had been reported but had been struck on the head several times with the butt of a pistol by a Police Officer; that the Police Department had investigated the circumstances surrounding this affair and reported to me that Corporal Baltimore was innocent of any wrongdoing, and that the Police Officer was entirely in the wrong. I was informed by the Superintendent of Police that this police officer had been suspended from the force. I went back to the 24th Infantry Camp, assembled the First Sergeants of the four companies and in Corporal Baltimore's presence informed them that the injury Corp. Baltimore sustained was not due to gunshot wound but rather to an assault with the butt of a pistol, and that the police officer who committed this outrage has been suspended from the Police Force and that he would be punished. I told the First Sergeants to publish this information to their companies at retreat and to let all the men know that justice would be done; that the police officials were doing all they could to work in co-operation with the Army and that I knew that this police officer would be punished. I then directed that no man leave camp that night and posted sentinels around the camp to carry this order into effect. The men of the battalion had been acting in an uneasy manner since first reports began to arrive in camp about Corp. Baltimore's having been hurt. I could see that the men were uneasy and very much incensed on account of the occurrence.

I kept a sharp watch and made frequent inspections through the camp. At about 7:20 I started down "I" Company street and noticed an unusual number of men going to "K" Company street. I followed them and found the Store Tent of Co. K crowded with men who were stealing ammunition. I went up to them, asked them what they were doing, saw they were getting ammunition, ordered them to drop it and clear the tent. I captured three men who were in this crowd of men getting ammunition and confined them in the Guard Tent. I then had officers call sounded and informed the officers of what had occurred and told them I feared we were going to have trouble. I directed that assembly be blown, and that the companies form in their company streets for the purpose of a checked roll call. I directed that while this was being taken, each man, as his name was called, would pass in front of his First Sgt. calling the roll for identification. At the same time the roll was being called I directed that all rifles in the company be collected and put in the store tent with the ammunition which was under guard. I also directed that a search be made of the Battalion for ammunition. After this inspection had been going on for possibly five minutes, I asked the first Sgt. of Co. I if any ammunition had been found and he replied that it had not. I thereupon walked down to the end of the company

street, and saw a crowd of men ~~xxxx~~ about 30 in number with their rifles in their hands. As soon as I came up they started loading their pieces. I order them to put their guns down. I tried to reason with them but without success. I overheard several remarks about "shoot him" and "not shoot him", undoubtedly referring to me. They had their pieces some at the "ready" and some of them were aimed and all of them were pointed in my direction. I had a flashlight in my hand and they ordered that I put it ~~down~~ out. There was a man behind (me) who was making the ammunition check and who had a lantern and they directed that he put it out also. The men seemed very much incited. By the time I reached the other end of the company street, there was a great deal of confusion in camp. I noticed numbers of men trying to crawl under the walls of the store rent where the ammunition and rifles were being guarded. I took hold of two men asked them what they were doing. They stood up and did not answer me. I saw that they had rifles in their hands. About that time the noise and confusion increased, and one of the men called "Let's go" and laid down on the ground, loaded his piece and aimed it in the direction of town.

Many other men followed his example. I got down into the line with the men and shoved their rifles to the ground and told them not to do it. But they paid no attention to me whatsoever. In a moment firing started in the company street which soon spread to a considerable volume. A considerable amount of the firing seemed directed at me. The officers of the camp all immediately took charge of the situation and the camp itself was soon cleared of any disturbance, but approximately 100 men had moved out from camp in the direction of town firing. I went down to Washington Street to a telephoned and telephoned Police Headquarters. I endeavored to get Camp Logan but was unable to do so. At about 8:15 all firing in the vicinity of the 24th Infantry Camp had stopped, and reports came to me that considerable number of armed 24th Infantry men were marching in the direction of San Felipe Street.

In the meantime, Capt. Tuttle of the Illinois National Guard, having heard the firing, assembled about 800 men of his command, and brought them down to the vicinity of the 24th Infantry Camp on Washington Street in auto trucks. A crowd of civilians had assembled with shotguns and pistols in the neighborhood of Fire Station No. 11 on Washington Street. I caused a chain of sentinels to be placed across Washington Street with orders to allow no one to pass in the direction of the 24th Infantry Camp. Capt. Tuttle then sent about 700 of the Illinois troops down to San Felipe Street to quell the disturbance reported there. Several casualties in both the vicinity of the 24th Infantry Camp and San Felipe Street were reported. No firing has been reported since about 1 o'clock.

Tonight's trouble is the culmination of the general dissatisfaction that has existed in the Battalion on account of the way some of the police officers have treated them. I received many reports from men of the Battalion of mistreatment on the part of the officers of the Police Department of Houston. Supt. of Police Brock and his assistants have worked in hearty cooperation with the 24th Infantry and I know that he has been more than anxious to avoid any clash between the negro soldiers of the 24th Infantry and civilians of Houston; that this police officer who assaulted Corporal Baltimore was not upheld in any way by the

Supt. of Police. A good deal of the trouble was caused by the use on the part of the police officer of the word "nigger" which the men of the battalion considered an insult to their race and do not have a kindly feeling toward that possibly most of the Southern negroes do have.

I believe that the situation is well in hand and that no further serious clash will occur. The men will all be confined to the camp and no one will be allowed to leave its limits. A check was made of all men in camp after the firing had quieted down in camp so that all men who were absent can be checked by name.

(Some wounded by shot gun and not rifle----negroes of Houston taking part)/

* * *

May 7, 1929: The above is a transcription of my notes taken about 5 o'clock on the morning after the firing and rioting. I remember distinctly Major Snow's inability to direct his thought with clearness. General Hulen was sitting there with us---the Major and me. The General was doing all he could to quiet Snow's nerves and I guess Snow needed something too, as he had passed through a pretty close shave. At any rate, he was weak and a rotten disciplinarian as you will see from his report as to the manner in which he wavered when he needed firmness.

As well as I now recall, and this is about 12 years after the happening, there was an additional telegram during the day from either Major Snow or General Hulen to the Secretary of War and to the Commanding General, Southern Department, giving further details, setting out the casualties amongst the civilian population, stating ~~of~~ that Sgt. Vida Henry, the ringleader, had shot himself through his head in order to miss the punishment that he knew would be his, and stating about martial law that was then in progress.

The Texas National Guard stepped into the breach at this point, covering Houston, while the Illinois Guard did honors at the Camp. Captain Mattes of the 1st Illinois Field Artillery was killed when his organization attempted to intercept the passing of the 24th Infantry on its return to camp, after they had shot up the San Felipe Area.

7. 17 K.S. e 2-

5 am

2. 9. Jahres-Bücher

1 - of 1. meeting

①. → 3d Bn with 8/23-24
1st 30'clock → 8/23
with Inf. → Corp Baltimore
Co. 1st Inf. → 8/23

Sau Felipe St V V by x v e Capt.
Naig ~~Sheddy~~ Sherkjian with Inf. V. Hg.
T. 1 w 430 v c 1, 2 > 10 Hgs.

٥٠١ ٤٥٦ ٤٥٧ ٤٥٨ ٤٥٩ ٤٦٠ ٤٦١ ٤٦٢ ٤٦٣ ٤٦٤ ٤٦٥ ٤٦٦ ٤٦٧ ٤٦٨ ٤٦٩ ٤٧٠ ٤٧١ ٤٧٢ ٤٧٣ ٤٧٤ ٤٧٥ ٤٧٦ ٤٧٧ ٤٧٨ ٤٧٩ ٤٨٠ ٤٨١ ٤٨٢ ٤٨٣ ٤٨٤ ٤٨٥ ٤٨٦ ٤٨٧ ٤٨٨ ٤٨٩ ٤٩٠ ٤٩١ ٤٩٢ ٤٩٣ ٤٩٤ ٤٩٥ ٤٩٦ ٤٩٧ ٤٩٨ ٤٩٩ ٥٠٠ ٥٠١ ٥٠٢ ٥٠٣ ٥٠٤ ٥٠٥ ٥٠٦ ٥٠٧ ٥٠٨ ٥٠٩ ٥١٠ ٥١١ ٥١٢ ٥١٣ ٥١٤ ٥١٥ ٥١٦ ٥١٧ ٥١٨ ٥١٩ ٥٢٠ ٥٢١ ٥٢٢ ٥٢٣ ٥٢٤ ٥٢٥ ٥٢٦ ٥٢٧ ٥٢٨ ٥٢٩ ٥٣٠ ٥٣١ ٥٣٢ ٥٣٣ ٥٣٤ ٥٣٥ ٥٣٦ ٥٣٧ ٥٣٨ ٥٣٩ ٥٤٠ ٥٤١ ٥٤٢ ٥٤٣ ٥٤٤ ٥٤٥ ٥٤٦ ٥٤٧ ٥٤٨ ٥٤٩ ٥٥٠ ٥٥١ ٥٥٢ ٥٥٣ ٥٥٤ ٥٥٥ ٥٥٦ ٥٥٧ ٥٥٨ ٥٥٩ ٥٦٠ ٥٦١ ٥٦٢ ٥٦٣ ٥٦٤ ٥٦٥ ٥٦٦ ٥٦٧ ٥٦٨ ٥٦٩ ٥٧٠ ٥٧١ ٥٧٢ ٥٧٣ ٥٧٤ ٥٧٥ ٥٧٦ ٥٧٧ ٥٧٨ ٥٧٩ ٥٨٠ ٥٨١ ٥٨٢ ٥٨٣ ٥٨٤ ٥٨٥ ٥٨٦ ٥٨٧ ٥٨٨ ٥٨٩ ٥٩٠ ٥٩١ ٥٩٢ ٥٩٣ ٥٩٤ ٥٩٥ ٥٩٦ ٥٩٧ ٥٩٨ ٥٩٩ ٦٠٠ ٦٠١ ٦٠٢ ٦٠٣ ٦٠٤ ٦٠٥ ٦٠٦ ٦٠٧ ٦٠٨ ٦٠٩ ٦١٠ ٦١١ ٦١٢ ٦١٣ ٦١٤ ٦١٥ ٦١٦ ٦١٧ ٦١٨ ٦١٩ ٦٢٠ ٦٢١ ٦٢٢ ٦٢٣ ٦٢٤ ٦٢٥ ٦٢٦ ٦٢٧ ٦٢٨ ٦٢٩ ٦٣٠ ٦٣١ ٦٣٢ ٦٣٣ ٦٣٤ ٦٣٥ ٦٣٦ ٦٣٧ ٦٣٨ ٦٣٩ ٦٤٠ ٦٤١ ٦٤٢ ٦٤٣ ٦٤٤ ٦٤٥ ٦٤٦ ٦٤٧ ٦٤٨ ٦٤٩ ٦٥٠ ٦٥١ ٦٥٢ ٦٥٣ ٦٥٤ ٦٥٥ ٦٥٦ ٦٥٧ ٦٥٨ ٦٥٩ ٦٦٠ ٦٦١ ٦٦٢ ٦٦٣ ٦٦٤ ٦٦٥ ٦٦٦ ٦٦٧ ٦٦٨ ٦٦٩ ٦٧٠ ٦٧١ ٦٧٢ ٦٧٣ ٦٧٤ ٦٧٥ ٦٧٦ ٦٧٧ ٦٧٨ ٦٧٩ ٦٨٠ ٦٨١ ٦٨٢ ٦٨٣ ٦٨٤ ٦٨٥ ٦٨٦ ٦٨٧ ٦٨٨ ٦٨٩ ٦٩٠ ٦٩١ ٦٩٢ ٦٩٣ ٦٩٤ ٦٩٥ ٦٩٦ ٦٩٧ ٦٩٨ ٦٩٩ ٧٠٠ ٧٠١ ٧٠٢ ٧٠٣ ٧٠٤ ٧٠٥ ٧٠٦ ٧٠٧ ٧٠٨ ٧٠٩ ٧١٠ ٧١١ ٧١٢ ٧١٣ ٧١٤ ٧١٥ ٧١٦ ٧١٧ ٧١٨ ٧١٩ ٧٢٠ ٧٢١ ٧٢٢ ٧٢٣ ٧٢٤ ٧٢٥ ٧٢٦ ٧٢٧ ٧٢٨ ٧٢٩ ٧٣٠ ٧٣١ ٧٣٢ ٧٣٣ ٧٣٤ ٧٣٥ ٧٣٦ ٧٣٧ ٧٣٨ ٧٣٩ ٧٤٠ ٧٤١ ٧٤٢ ٧٤٣ ٧٤٤ ٧٤٥ ٧٤٦ ٧٤٧ ٧٤٨ ٧٤٩ ٧٥٠ ٧٥١ ٧٥٢ ٧٥٣ ٧٥٤ ٧٥٥ ٧٥٦ ٧٥٧ ٧٥٨ ٧٥٩ ٧٦٠ ٧٦١ ٧٦٢ ٧٦٣ ٧٦٤ ٧٦٥ ٧٦٦ ٧٦٧ ٧٦٨ ٧٦٩ ٧٧٠ ٧٧١ ٧٧٢ ٧٧٣ ٧٧٤ ٧٧٥ ٧٧٦ ٧٧٧ ٧٧٨ ٧٧٩ ٧٨٠ ٧٨١ ٧٨٢ ٧٨٣ ٧٨٤ ٧٨٥ ٧٨٦ ٧٨٧ ٧٨٨ ٧٨٩ ٧٩٠ ٧٩١ ٧٩٢ ٧٩٣ ٧٩٤ ٧٩٥ ٧٩٦ ٧٩٧ ٧٩٨ ٧٩٩ ٨٠٠ ٨٠١ ٨٠٢ ٨٠٣ ٨٠٤ ٨٠٥ ٨٠٦ ٨٠٧ ٨٠٨ ٨٠٩ ٨١٠ ٨١١ ٨١٢ ٨١٣ ٨١٤ ٨١٥ ٨١٦ ٨١٧ ٨١٨ ٨١٩ ٨٢٠ ٨٢١ ٨٢٢ ٨٢٣ ٨٢٤ ٨٢٥ ٨٢٦ ٨٢٧ ٨٢٨ ٨٢٩ ٨٣٠ ٨٣١ ٨٣٢ ٨٣٣ ٨٣٤ ٨٣٥ ٨٣٦ ٨٣٧ ٨٣٨ ٨٣٩ ٨٤٠ ٨٤١ ٨٤٢ ٨٤٣ ٨٤٤ ٨٤٥ ٨٤٦ ٨٤٧ ٨٤٨ ٨٤٩ ٨٥٠ ٨٥١ ٨٥٢ ٨٥٣ ٨٥٤ ٨٥٥ ٨٥٦ ٨٥٧ ٨٥٨ ٨٥٩ ٨٦٠ ٨٦١ ٨٦٢ ٨٦٣ ٨٦٤ ٨٦٥ ٨٦٦ ٨٦٧ ٨٦٨ ٨٦٩ ٨٧٠ ٨٧١ ٨٧٢ ٨٧٣ ٨٧٤ ٨٧٥ ٨٧٦ ٨٧٧ ٨٧٨ ٨٧٩ ٨٨٠ ٨٨١ ٨٨٢ ٨٨٣ ٨٨٤ ٨٨٥ ٨٨٦ ٨٨٧ ٨٨٨ ٨٨٩ ٨٩٠ ٨٩١ ٨٩٢ ٨٩٣ ٨٩٤ ٨٩٥ ٨٩٦ ٨٩٧ ٨٩٨ ٨٩٩ ٩٠٠ ٩٠١ ٩٠٢ ٩٠٣ ٩٠٤ ٩٠٥ ٩٠٦ ٩٠٧ ٩٠٨ ٩٠٩ ٩١٠ ٩١١ ٩١٢ ٩١٣ ٩١٤ ٩١٥ ٩١٦ ٩١٧ ٩١٨ ٩١٩ ٩٢٠ ٩٢١ ٩٢٢ ٩٢٣ ٩٢٤ ٩٢٥ ٩٢٦ ٩٢٧ ٩٢٨ ٩٢٩ ٩٣٠ ٩٣١ ٩٣٢ ٩٣٣ ٩٣٤ ٩٣٥ ٩٣٦ ٩٣٧ ٩٣٨ ٩٣٩ ٩٤٠ ٩٤١ ٩٤٢ ٩٤٣ ٩٤٤ ٩٤٥ ٩٤٦ ٩٤٧ ٩٤٨ ٩٤٩ ٩٥٠ ٩٥١ ٩٥٢ ٩٥٣ ٩٥٤ ٩٥٥ ٩٥٦ ٩٥٧ ٩٥٨ ٩٥٩ ٩٦٠ ٩٦١ ٩٦٢ ٩٦٣ ٩٦٤ ٩٦٥ ٩٦٦ ٩٦٧ ٩٦٨ ٩٦٩ ٩٧٠ ٩٧١ ٩٧٢ ٩٧٣ ٩٧٤ ٩٧٥ ٩٧٦ ٩٧٧ ٩٧٨ ٩٧٩ ٩٨٠ ٩٨١ ٩٨٢ ٩٨٣ ٩٨٤ ٩٨٥ ٩٨٦ ٩٨٧ ٩٨٨ ٩٨٩ ٩٩٠ ٩٩١ ٩٩٢ ٩٩٣ ٩٩٤ ٩٩٥ ٩٩٦ ٩٩٧ ٩٩٨ ٩٩٩ ١٠٠٠ ١٠٠١ ١٠٠٢ ١٠٠٣ ١٠٠٤ ١٠٠٥ ١٠٠٦ ١٠٠٧ ١٠٠٨ ١٠٠٩ ١٠١٠ ١٠١١ ١٠١٢ ١٠١٣ ١٠١٤ ١٠١٥ ١٠١٦ ١٠١٧ ١٠١٨ ١٠١٩ ١٠٢٠ ١٠٢١ ١٠٢٢ ١٠٢٣ ١٠٢٤ ١٠٢٥ ١٠٢٦ ١٠٢٧ ١٠٢٨ ١٠٢٩ ١٠٣٠

→ 2 7 1 heat c 15 9 butt
 > 4 12 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44 46 48 50 52 54 56 58 60 62 64 66 68 70 72 74 76 78 80 82 84 86 88 90 92 94 96 98 100
 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200

[Handwritten scribbles]

6 Vol 6 f 20
ref- 11

7 y v c L > 24th
1st Sept > HCR?

... to ...
... gunshots
... assault & death ...
... 6 ...
... told ...
... retreat ...
... caused ...
... then ...
... effect ...
... acting ...
... Corp. B's ...
... see ...

Co. st. } 7 10 10

> ~~stone~~ tent

hands x n

laid down loaded

shoveled

camp all

Camp Logan

with

Annex E Clemency Record Private Abner Davis

DAVIS, Abner

63 accused
24th Inf.

7169 pages
67 Ex

For Sam Houston
Feb Nov 1, 1917

8 Vols. & Index of

64 A N

Milful disobedience
2 spec.

66th A N

Join in a mutiny - 1 spec

92d A N

Murder 1 spec

93d A N

Assault with intent to murder
1 spec

DD total forfeitures - life

Approved Dec 10, 1917

US Pen. Leavenworth.

GAD:CMF.
C.M.No. 109045.

4th Indorsement.

War Department, J.A.G.O., May 29, 1918. - To The Adjutant General:

1. This is a request from the President, Board of Pardon, dated January 4, 1918, that he be furnished any information in the possession of the War Department concerning the offenses committed by Abner Davis, formerly Private, Company L, 24th Infantry, now in confinement at the United States Penitentiary, Leavenworth, Kansas, that would be material for consideration by the Board at the time the prisoner's application for parole is heard.

2. Davis was tried jointly by general court-martial with sixty-two members of the 24th Infantry, at Fort Sam Houston, Texas, on November 1, 1917, upon charges alleging disobedience of orders, two specifications, in violation of the 64th Article of War, mutiny, murder and felonious assault. He pleaded not guilty throughout, was found guilty of willful disobedience of an order of his superior officer to remain in camp and guilty of the offenses of mutiny, murder and felonious assault; and was sentenced to dishonorable discharge, total forfeitures and to be confined at hard labor for the term of his natural life. (O.C.M.O. 1299, Southern Department, December 10, 1917.)

3. Inclosed herewith is a copy of a review of the record of trial in the case of Abner Davis, at St. L., dated January 29, 1918, which contains all the information disclosed by the records of this office concerning this man.

4. In the copy of the review above referred to is contained all the information disclosed by the records of this office concerning the sixty-three members of the 24th Infantry named in O.C.M.O. No. 1299, Southern Department, December 10, 1917. As pointed out in the review, the record in these cases is lengthy, comprising 2172 pages of typewritten matter, besides 67 exhibits and 63 charge sheets, and in the cases of other men whose trial is included within this record in which parole reports may be requested, this office shall invite attention to the copy of review inclosed in this case, which, as stated above, contains a full history of the offenses committed by the men whose trials are published in O.C.M.O. No. 1299, Southern Department, December 10, 1917.

JAMES J. MAYES,
Acting Judge Advocate General.

1 Incl.

MAY 29 1918

JCK
C. M. 109,045

4th Ind.

War Department, J. A. G. O., July 5, 1918. - To The Secretary of War.

1. The record of trial in the case of Abner Davis, formerly private, Company B, 24th Infantry, discloses that he was one of sixty-two members of the 24th Infantry charged and tried jointly at Fort Sam Houston, Texas, November 1, 1917, upon charges alleging disobedience of orders, murder, mutiny and felonious assault. He was found guilty of willful disobedience of an order to remain in camp, and of the crimes of mutiny, murder and felonious assault.

2. The record of trial has been carefully reviewed in this office, and the conclusion reached that the accused had a fair and impartial trial, and that the conviction and sentence imposed are authorized by law and sustained by the evidence.

3. Clemency is not recommended.

JAMES J. MAYES,
Acting Judge Advocate General.

JUL 9 1918

March 25, 1919.

Military Justice
King-1ep
C.M. No. 109045.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL:

1. Abner Davis, formerly private, Company L, 24th Infantry, was convicted of participation in the riots of Houston, Texas, August 23, 1917. The specifications of which he was found guilty charged disobedience of an order to remain in camp, mutiny, murder, and assault with intent to commit murder. He was sentenced to be dishonorably discharged, with total forfeitures, and confined at hard labor in a penitentiary for life.

2. The evidence relating particularly to this prisoner is as follows:

He was on duty with the Company, August 23, 1917 (R.p. 29; Ex. 4). He was absent from the check of the skirmish line at 11:30 p.m. (R.p. 235; Ex. 11, 11A, 12, 13-A, 13-B, 13-C).

Private Gleda Love, Company I, testified that he knew the accused; that he did not see him the night of the riot, but about six o'clock the next morning saw him coming in-accused and a dark fellow together. Witness was on a porch talking to a girl, and accused and the other man came from towards Camp Logan, with their rifles and belts (R.p. 1304). He identified accused in court (R.p. 1304).

Accused testified that he participated in the rush on the supply tent, when the cry was made that a mob was coming, got a rifle and ammunition, (R.p. 1705), and ran back to his tent, to keep under cover; that he laid down behind a box, and stayed there until the shooting in the company street ceased, then came out in the street and went with his company to the skirmish line in the rear of Company M; that he went out with the first bunch and stayed in the line near a certain tree, by the side of Private McIntyre, all night; that he saw Private Geede check the line about half an hour after he went out on the line, or about half past nine o'clock (R.p. 1707); that he did not remember whether Geede had a light or not (R.p. 1708); but that he passed by his (accused's) face as he was lying down (R.p. 1724). Geede did not speak to him, and he did not remember hearing him speak to anyone in the line (R.p. 1725). He did not remember testifying before the Board of Investigation that Captain James and Sergeant Parilla were with Geede when the line was checked. He went in from the line about reveille the next morning (R.p. 1722). Private Love's statement that he came in from towards Camp Logan with another man was not true (R.p. 1709). He did not remember seeing anybody in the line besides

Military Justice

3/25/19

King:lop

C.M. No. 109048

Mem. to the Judge Advocate General (cont'd) ---2

McIntyre (R.p. 'V18). McIntyre was not called as a witness.

Private Goode testified that he made the check of the skirmish line about 11:30 p.m.; that he checked that portion of the line in which Davis claims to be, and that he also searched the camp through the tents, kitchens, latrines, etc., (R.p. 241); that when he checked the line he had a lantern and sent Private I. G. Thomas along in front of him to wake the men and ask their names, and as each man answered he wrote the name down; that he was walking at the feet of the men as they lay on the ground, and could see their faces. (R.p. 248). Private McIntyre's name appears on the list of men in the line, but Davis' does not, nor among those found elsewhere in camp.

The prisoner was, at the time of the trial, 24 years of age, and had been in the Service about two years and two months. Records of two previous convictions were introduced, for disrespect to a non-commissioned officer, being drunk in uniform, and engaging in a fight in ranks while on a practice march.

B. A. READ,
Colonel, Judge Advocate,
Assistant to the Judge Advocate General.

Military Justice
King;dep
C.M. No. 109045

4th Ind.

War Department, J.A.G.O., July 16, 1919 - To the Secretary of War.

1. Abner Davis, formerly private, Company L, 24th Infantry, was convicted of disobedience of an order to remain in camp, mutiny, murder, and assault with intent to commit murder, in connection with the riots of the 24th Infantry at Houston, Texas, August 23, 1917. He was sentenced to be dishonorably discharged, to forfeit all pay and allowances due or to become due, and to be confined in the Penitentiary for life.

2. The evidence relating particularly to Davis is in substance as follows:

He was on duty with the company August 23, 1917 (p. 29; Ex. 4). He was absent from the check at 11:30 p.m. (p. 235; Ex. 11-11A-13-13A-13B-13C).

Private Clede Love, Company I, testified that he knew Davis; that he went to town with the column on the night of the 23d, but did not see Davis in town, but about 6:00 o'clock next morning saw him come in, ~~the~~ accused and a dark fellow, together; ^{that while} Witness was standing on a porch talking to a girl, ~~and~~ ^{the} accused and the other man came from towards Camp Logan with their rifles and belts (p. 1304). He identified ^{the} accused in court.

Davis testified in his own behalf in substance that he was on the skirmish line all night (p. 1705).

3. The record of this trial was reviewed in this Office under date of January 29, 1918, and held to be legally sufficient to sustain the findings and sentence. In that review the evidence against Davis is not

set forth in detail, but reference is made to pages 852 and 1304 of the record as containing the evidence connecting him with the body of soldiers who committed the crimes of which he was found guilty (review page 30).

On page 852 of the record, Private Breeseman testified that he arrested two soldiers in Houston on the 24th of August, whose names he had learned were "Private Davis and Private Cecil", and turned them over to Captain Sorensen.

Captain Sorensen testified that Ira Davis and Ben Cecil, both of Company I, were turned over to him by Privates Breeseman and Sheehan, and that he delivered the prisoners to the sheriff or deputy sheriff and took a receipt for them (p. 864; Ex. 23).

It thus appears that the reviewer, when he approved the findings, was under the erroneous impression that Abner Davis had been arrested in the city of Houston on the day after the riot.

In the case of Robert Tillman et al (C.M. 114575), which was a trial of other participants in the same riots, the review of this office contains the following paragraph:

"It cannot be reasonably doubted, that some of the men of the 3d Battalion were impelled by fear to flee the camp-site when the firing first broke out and to seek refuge in various places beyond its confines. Nor is it improbable that some were apprehensive and filled with fear lest their comrades, who had gone forth with the column, would return and carry out their threats to "shoot up the camp" and all those who refused to join the mutineers in their descent upon the city. Therefore, mere absence from the checks which were taken, or from the camp-site, or from any given proper station fails to establish the elements of wilful disobedience of orders, of mutiny, of murder, or of assault to commit murder."

In that case it was held that the evidence against Privates Bennett, Hedrick, Thomas, and Wofford was not sufficient to sustain a conviction for mutiny. The

evidence as to these men was that they were absent from check, and that Bennett made an admission to Private Love that he had made the rounds with the men, and dropped out at the dance hall; that with their rifles, Hedrick and Thomas joined the skirmish line just before reveille, and Wofford had signed a statement admitting that he was not on the skirmish line.

4. The evidence for the prosecution is sufficient to show that Davis disobeyed the order to remain in camp, and his own statement that he took part in the rush on the supply tent and got a rifle and ammunition, is sufficient to convict him of mutiny. The doubt which arises is whether the evidence is sufficient to sustain the finding of guilty of murder and assault with intent to commit murder.

5. There was no evidence that Davis was in the column which marched upon the city of Houston, or that he participated in any of the discussions about going to town, ^{direct} or in fact that he had any knowledge of the intention of any of the other men to go to town. The only evidence is his admission that he took part in the rush on the supply tent, and that he was seen returning ^{from towards Camp Lagan} to camp next morning with his rifle. The mere fact that he returned to camp with his rifle is not of itself sufficient to convict him of mutiny or participating in the riot in the City of Houston (C.M. No. 114575, Hedrick and Thomas, supra). The only theory upon which he can be connected upon the charges of murder and assault with intent to commit murder is that he, having joined in the conspiracy to commit an unlawful act, became a co-conspirator and liable for the acts of the others ~~conspirators~~.

From the fact that Davis participated in the rush on the supply tent, it does not necessarily follow that he did so with intention to march upon the city of Houston. When the cry was raised that a mob was coming, practically all the

^{the ammunition tent}
members of his company rushed and got their rifles and ammunition. It is not contended that they all had the intention of going to Houston at this time, and in fact, less than one-fourth of the members of the company left the camp according to the check which was made. The mere fact that he got his rifle then is not enough to show that he did so with the intention of committing any unlawful acts. It is just as reasonable to say that his intention was to protect the camp and himself from a mob, as did three-fourths of the men in the other company. There must be some evidence of an intention. ^{(See Davis Case)*} The finding therefore that the act was ^uwith the intention to march upon the city of Houston to the injury of persons or property located therein, ^uis not sustained by the evidence.

Any soldier who participated in the mutiny with the intention of marching upon the city and committing unlawful acts was responsible for all the acts committed by those who actually did visit the city, even though he himself did not leave the camp. If he did not have such intention, then he is not responsible for the acts of the others. Having failed to produce any evidence to show such intention on the part of Davis, it was then ^{ent}encumbered on the prosecution to show that he did actually participate in the murders and assault. This it failed to do, and there is therefore no evidence to support those findings.

Nor can the fact that the story of the accused was proved to the satisfaction of the court to be false, supply the deficiencies in the ^{affirmative}evidence produced by the prosecution. The prosecution must show beyond a reasonable doubt that the accused was present in the column, and while the court might consider the fact that his statement was shown to be false, it could not use his statement that he was at one place as ^{affirmative}furnishing any positive evidence that he was at another particular place. ^{appear}The other words, no matter how improbable his story as to where he ^{appear}actually was might ^{be}the court may not say that ^{not there}because he was charged with

he was in the column, where he was charged
being at a certain other place he was there, if it should choose to disbelieve
with being and throwing the burden
his story as to where he was. This would be using the charge as evidence, which
on the account to show affirmatively that he was not where he
can never be done. was charged with being,

for 7 years, be remitted.

* The more probable that a soldier is to be released
by the court, the more likely it is that he will
commit a crime. I was not so much surprised
at making him a prisoner as the act of those who went
to Hamilton. I. C. 114575, 114576, 114577, 114578, 114579, 114580, 114581, 114582, 114583, 114584, 114585, 114586, 114587, 114588, 114589, 114590, 114591, 114592, 114593, 114594, 114595, 114596, 114597, 114598, 114599, 114600, 114601, 114602, 114603, 114604, 114605, 114606, 114607, 114608, 114609, 114610, 114611, 114612, 114613, 114614, 114615, 114616, 114617, 114618, 114619, 114620, 114621, 114622, 114623, 114624, 114625, 114626, 114627, 114628, 114629, 114630, 114631, 114632, 114633, 114634, 114635, 114636, 114637, 114638, 114639, 114640, 114641, 114642, 114643, 114644, 114645, 114646, 114647, 114648, 114649, 114650, 114651, 114652, 114653, 114654, 114655, 114656, 114657, 114658, 114659, 114660, 114661, 114662, 114663, 114664, 114665, 114666, 114667, 114668, 114669, 114670, 114671, 114672, 114673, 114674, 114675, 114676, 114677, 114678, 114679, 114680, 114681, 114682, 114683, 114684, 114685, 114686, 114687, 114688, 114689, 114690, 114691, 114692, 114693, 114694, 114695, 114696, 114697, 114698, 114699, 114700, 114701, 114702, 114703, 114704, 114705, 114706, 114707, 114708, 114709, 114710, 114711, 114712, 114713, 114714, 114715, 114716, 114717, 114718, 114719, 114720, 114721, 114722, 114723, 114724, 114725, 114726, 114727, 114728, 114729, 114730, 114731, 114732, 114733, 114734, 114735, 114736, 114737, 114738, 114739, 114740, 114741, 114742, 114743, 114744, 114745, 114746, 114747, 114748, 114749, 114750, 114751, 114752, 114753, 114754, 114755, 114756, 114757, 114758, 114759, 114760, 114761, 114762, 114763, 114764, 114765, 114766, 114767, 114768, 114769, 114770, 114771, 114772, 114773, 114774, 114775, 114776, 114777, 114778, 114779, 114780, 114781, 114782, 114783, 114784, 114785, 114786, 114787, 114788, 114789, 114790, 114791, 114792, 114793, 114794, 114795, 114796, 114797, 114798, 114799, 114800, 114801, 114802, 114803, 114804, 114805, 114806, 114807, 114808, 114809, 114810, 114811, 114812, 114813, 114814, 114815, 114816, 114817, 114818, 114819, 114820, 114821, 114822, 114823, 114824, 114825, 114826, 114827, 114828, 114829, 114830, 114831, 114832, 114833, 114834, 114835, 114836, 114837, 114838, 114839, 114840, 114841, 114842, 114843, 114844, 114845, 114846, 114847, 114848, 114849, 114850, 114851, 114852, 114853, 114854, 114855, 114856, 114857, 114858, 114859, 114860, 114861, 114862, 114863, 114864, 114865, 114866, 114867, 114868, 114869, 114870, 114871, 114872, 114873, 114874, 114875, 114876, 114877, 114878, 114879, 114880, 114881, 114882, 114883, 114884, 114885, 114886, 114887, 114888, 114889, 114890, 114891, 114892, 114893, 114894, 114895, 114896, 114897, 114898, 114899, 114900, 114901, 114902, 114903, 114904, 114905, 114906, 114907, 114908, 114909, 114910, 114911, 114912, 114913, 114914, 114915, 114916, 114917, 114918, 114919, 114920, 114921, 114922, 114923, 114924, 114925, 114926, 114927, 114928, 114929, 114930, 114931, 114932, 114933, 114934, 114935, 114936, 114937, 114938, 114939, 114940, 114941, 114942, 114943, 114944, 114945, 114946, 114947, 114948, 114949, 114950, 114951, 114952, 114953, 114954, 114955, 114956, 114957, 114958, 114959, 114960, 114961, 114962, 114963, 114964, 114965, 114966, 114967, 114968, 114969, 114970, 114971, 114972, 114973, 114974, 114975, 114976, 114977, 114978, 114979, 114980, 114981, 114982, 114983, 114984, 114985, 114986, 114987, 114988, 114989, 114990, 114991, 114992, 114993, 114994, 114995, 114996, 114997, 114998, 114999, 115000, 115001, 115002, 115003, 115004, 115005, 115006, 115007, 115008, 115009, 115010, 115011, 115012, 115013, 115014, 115015, 115016, 115017, 115018, 115019, 115020, 115021, 115022, 115023, 115024, 115025, 115026, 115027, 115028, 115029, 115030, 115031, 115032, 115033, 115034, 115035, 115036, 115037, 115038, 115039, 115040, 115041, 115042, 115043, 115044, 115045, 115046, 115047, 115048, 115049, 115050, 115051, 115052, 115053, 115054, 115055, 115056, 115057, 115058, 115059, 115060, 115061, 115062, 115063, 115064, 115065, 115066, 115067, 115068, 115069, 115070, 115071, 115072, 115073, 115074, 115075, 115076, 115077, 115078, 11

Note: It is believed that this man should be punished about equally with the others convicted of mutiny only, as Louie's testimony is so unreliable and there is no evidence that he went to Town Recommendation should be made for reduction when he has served sufficient time. King 9-12-19

WAR DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL

9-12-14

Memorandum:

9-8000

Col. Ely:

Because of the meagre evidence it is believed that he might be punished about the same as the men convicted of mutiny only, but if recommendation for reduction is made now it will precipitate an avalanche of applications from the others. It is believed that when he has been sufficiently punished the sentence may then be remitted, or at least, at some later

date

Col Read

King

Concurs with

WAR DEPARTMENT.

OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE ARMY.

C. S.

CLEMENCY MEMORANDUM FOR THE SECRETARY OF WAR.

1. C. M. No. 109043		2. Name. Davis Abner, Pvt.		3. Organization. Co. L. 24 Inf.	
4. Offenses. Dis. orders		Sentence.			
5. Date. 12/10/17		Approved for:			
Mutiny Murder Assault to murder		Dishonorable Discharge.		8. Forfeitures.	
		6. Yes.		7. No.	
		Not suspended		Total	
				Life	
Place of Confinement.					
U. S. Disciplinary Barracks.			U. S. Penitentiary.		
11. Ft. Leavenworth	12. Alcatraz	13. Fort Jay.	14. Leavenworth	15. Atlanta	16. McNeil Island.
17. Offenses for which Previously Convicted. 2 Summary		18. Present Age in Years. 25		Education.	
				19. Good.	20. Fair.
				Not known	
		Previous Service.		Civil Life Record.	
		22. Years.	23. Months.	24. Good.	25. Bad.
		2	11	26. No Record.	
27. Circumstances Attending Offense. Inclosed is copy of memorandum of this office containing a summary of all the evidence relating particularly to this man. There is no direct evidence that he participated actively in the march upon the city, but from his admitted participation in the mutiny by rushing the supply tent and securing his rifle and ammunition after having been ordered to turn them in, the fact that he disobeyed orders by leaving camp, and the other circumstances of the case, the court might legally determine that he was guilty of those acts.					
28. Apprehended.	29. Surrendered.	Time in Confinement.		Conduct in Confinement.	
		30. Years.	31. Months.	32. Excellent.	33. Fair.
		1	4	good	34. Bad.
ASSIGNED OR TO BE ASSIGNED TO DISCIPLINARY BATTALION.		37. Physical Ailments.	38. Mental Ailments.	39. Family Dependents.	
35. Yes.	36. No.				
40. Commandant's Recommendation: Date: _____					
41. Recommendation of Board. Clemency is not recommended at this time.					

Date: **Sept. 12, 1919.**
Incl.

Assistant to the **Brigadier-General, Judge Advocate**
Judge Advocate General.

SEP - 5 1919

W. L. R.

UNITED STATES PENITENTIARY,
LEAVENWORTH, KANSAS

109045

Ex. 134

Report on General Prisoner No. **12254**.....as to fitness for further military service.

G. P. **Davin, Abner**

Surname

Christian

Middle

IS PHYSICALLY { **FIT**
UNFIT

If unfit, state why:.....

MENTALLY { **FIT**
UNFIT

If unfit, state why—give clear diagnosis:.....

MORALLY { **FIT**
UNFIT

If unfit, state why:..... **Solely by reason of the crime**

for which he is now serving sentence.

Recommendation:

Not recommended for transfer to the J. S. D. S.

Remarks:

A. B. Coleburn,
Capt. U. S. A.,
President.

J. A. Pierce,
1st Lt. Inf.,
Member.

James M. Casey
1st Lieut., M. C., U. S. Army

Recorder of Board to Examine Prisoners.

GENERAL PRISONER NO. 12254

Summary of History:

Born in Kentucky 1893 of colored parentage. Quit school at the age of fifteen (15) years in the sixth (6th) grade. Worked as a janitor with his father until he joined the army. He began to drink at the age of twenty one (21) years. We have no record of civil offenses. Enlisted September 1914. Received two (2) S. C. M. While serving in Company L, 24th Infantry, he was convicted of disobedience of orders in time of war, mutiny, murder, and assault to murder, receiving a life sentence. Approved December 10th, 1917. This man has a slightly bad record in the U. S. Penitentiary.

E. B. M. Casey
E. B. M. Casey,
1st Lt. M. Co.,
Recorder.

DEPARTMENT OF PSYCHIATRY AND SOCIOLOGY
UNITED STATES DISCIPLINARY BARRACKS
FORT LEAVENWORTH, KANSAS

May 3, 1920

(Board to Examine Military Prisoners at the United States
Penitentiary, Leavenworth, Kansas)

Report on General Prisoner No. **12254** as to fitness for further military service.

G. P. **Davis, Abner**

Surname

Christian

Middle

IS PHYSICALLY { **FIT** If unfit, state why:
UNFIT

MENTALLY { **FIT** If unfit, state why—give clear diagnosis
UNFIT

MORALAY { **FIT** If unfit, state why: **(See Remarks).**
UNFIT

Recommendation:

NOT Recommended for transfer to the United States Disciplinary Barracks.

Remarks:

This Board has interviewed this man in connection with the other men formerly of the 24th Infantry now in confinement at the United States Penitentiary, and has elicited nothing additional to the evidence produced in the court martial, tending to disprove the charges against him. It is the opinion of the Board that, unless new evidence is produced, no action in the nature of clemency should be taken in this case at this time.

Board of Officers to Examine Prisoners;

abc-s;

A. B. Colburn
A. B. COLBURN,
Captain, M. C.

Recorder

GENERAL PRISONER NO 12254

Summary of History:

Born in Kentucky in 1893 of colored parents. Quit school at the age of fifteen years in the sixth grade. Worked as a janitor with his father until he joined the Army. He began to drink at the age of twenty-two years. We have no record of civil offences. Enlisted September 1914. Received two summary courts martial. While serving in Company L, 24th Infantry, he was convicted of disobedience of orders in time of war, mutiny, murder and assault to murder, receiving a life sentence. Approved December 10, 1917.

This man states that the night of the Houston Riot about 8 P. M. he was in the line of L Company, that during the shooting in Camp he stayed in his tent. When the rush was made he left his tent and followed crowd to supply tent. Men were trying to get arms. He got a rifle and went back to his tent. Came out when skirmish line was formed. He fell in with the bunch to from skirmish line, staying there all night. Has also stated to some officers of this Board, that he remained in his tent all night.

Conduct in confinement is reported as Fair.

also-2:

A. B. Colburn
A. B. COLBURN,
Captain, M. C.,
RECORDER OF BOARD.

109045 -

December 27, 1920.

Military Justice
Herrick-eng-Md.Rev.No.1.
J.A.G. Cor.

DEC 28 1920 J.A.G.
13 LIT

Honorable King Swope,
House of Representatives.

My dear Mr. Swope:

I have the honor to acknowledge receipt of your letter of December 20, 1920, in which you state you have received a communication in behalf of Abner Davis, who was tried by court-martial on November 1, 1917, at Fort Sam Houston, Texas, and convicted of disobedience of orders, resulting in his being sentenced to imprisonment for life at Fort Leavenworth, Kansas. You express a desire to be furnished a copy of the "proceedings" of the court before which he was tried, with a view to making application for a pardon in his behalf.

In reply, I beg to advise you that the record of trial on file in this office discloses that Private Abner Davis was tried jointly with 62 other soldiers of the 24th Infantry by general court-martial convened at Fort Sam Houston, Texas, on November 1, 1917. He was convicted of wilful disobedience of an order of his superior officer, in violation of the 64th Article of War, of joining in a mutiny, in violation of the 66th Article of War, of murder, in violation of the 92d Article of War, and of assault with intent to commit murder, in violation of the 93d Article of War, and was sentenced by the court to dishonorable discharge, forfeiture of all pay and allowances, and imprisonment at hard labor for the term of his natural life, which sentence was approved on December 10, 1917, by the reviewing authority, who designated the United States Penitentiary, Leavenworth, Kansas, as the place of confinement.

The record of trial in this case comprises 2169 typewritten pages, 67 exhibits, and an index, the whole comprising 6 large volumes.

Under the 111th Article of War the furnishing of one copy of the record of trial by general court-martial to each accused is authorized. The record of trial in question discloses that a copy thereof was furnished each of the accused in this case, and the War Department is therefore not authorized to furnish an additional copy at public expense. Such copy may be furnished at the expense of the accused if so desired.

The record of trial in this case on file in this office may be inspected and examined by the accused or any one duly authorized to act in their behalf or any of them.

I trust from the foregoing statement of the facts in this case you will readily understand why I am not able to comply with your request for a copy of the record of trial in the case in question. Should you desire to examine such record, the facilities of my office, so far as compatible with the public interests, will be at your disposal.

Very truly yours,

E. H. CROWDER

E. H. CROWDER,
Judge Advocate General.

E. H. C.

KING SWOPE
6TH DIST. KENTUCKY

109045-
House of Representatives U. S.
Washington, D. C.

*Misc
matter*

Dec. 20, 1920.

Judge Advocate General,
U.S.A.
City.
Sir:

I am in receipt of a letter in behalf of
Abner Davis who was tried by court martial on Nov-
ember 1, 1917 at Fort Sam Houston, Texas, and con-
victed on a charge of disobedience of orders and
confined for life in prison and is now at Fort.
Leavenworth, Kansas.

I desire a copy of the proceedings of
the court martial with a view of making application
for pardon.

Sincerely yours,

King Swope

M. C.

K: E
REC'D DEC 21 1920 J.A.G.C
8:55

REPORT OF CLEMENCY BOARD, 1924.

No. 174.
Davis, Abner.
C. M. No. 109045.

APR 9 1924

1. Davis is now serving a life sentence at Leavenworth Penitentiary for offenses growing out of the Houston riots, effective December 10, 1917.

2. Davis claims he is now 30 years of age; was born in Kentucky; reached the sixth grade in school; was laboring with his father prior to enlistment; and denies having any prior trouble. He now works as orderly for the chaplain.
Conduct in confinement fair; clear since April, 1922.

3. In view of all the circumstances, it is recommended that so much of the sentence to confinement in this case as exceeds twenty-three years and three months be remitted.

JAMES H. STARSFIELD,
Major, J. A.

FRANK K. ROSS,
Major, A. G.

Approved: April . 1924.

The Assistant Secretary of War.

AS 201 Davis, Abner
Pris. (7-22-22)

GJP/145.

1st Ind.

War Dept., A.G.O. July 28, 1931

- To The Judge Advocate General.

For remark and recommendation.

By order of the Secretary of War:

Horace F. Sykes

Adjutant General.

1 Incl.

Bacon-elh

Military Justice
C.M. 109045.

2nd Ind.

War Department, J.A.G.O., AUG 3 - 1931 - To The Adjutant General.

1. By 1st Ind. (AM 201-Davis, Abner (7-21-31) Pris.), July 28, 1931, you refer to this office for remark and recommendation Clemency Memorandum for the Secretary of War from the Commandant, Atlantic Branch, United States Disciplinary Barracks, dated July 21, 1931, relative to clemency in behalf of Abner Davis.

2. The records of this office disclose that Abner Davis, formerly Private, Company L, 24th Infantry, was one of the soldiers who participated in what are known as the "Houston Riots" and was convicted of (a) wilful disobedience of orders, (b) joining in a mutiny, (c) murder, and (d) assault with intent to kill, and sentenced to dishonorable discharge, total forfeitures and confinement for the term of his natural life. The confinement was later reduced to twenty-three years and three months.

3. A summary of the evidence of record relating to this prisoner is set forth in a memorandum of this office, dated March 25, 1919, a copy of which was inclosed with the clemency memorandum, dated September 12, 1919, to which attention is invited.

4. As Davis was convicted of participating in the murder of fourteen people and assault with intent to kill eight other persons, this office does not feel warranted in recommending any further extension of clemency than

has heretofore been granted.

For The Judge Advocate General:

G. L. Finley
G. L. Finley,
Major, J.A.G.D.,
Chief of Section.

1 Incl.

MB QM

201 Davis, Abner (7-21-31) Pris.
GJ/145.

MEMORANDUM

for The Judge Advocate General.

The views set forth by The Judge Advocate
General under date of August 3, 1931,
relative to clemency denial

REC'D

AUG 24 1931

(J. A. G. O. File No. 103046). Over ap-
direction of
proved by the Assistant Secretary of War
on August 18, 1931.

By order of the Secretary of War:


Adjutant General.

The Adjutant General's Office,

August 21, 1931.

FORM NO. 0411. A.G.O.

AUG. 5, 1926.

Annex F Ruckman-Page Controversy



<https://chroniclingamerica.loc.gov/lccn/sn83030214/1919-01-04/ed-1/seq-16/>

Remarks of ABA President George T. Page: ABA President George T. Page gave an address at a meeting in New York City on January 3, 1919 in which he condemned harsh and unjust judgments of military courts-martial, and stated that: "our military laws and our systems of administering military justice are unworthy of the name of law or justice." The January 4, 1919 New York Tribune carried an article on the event with extensive quotes from the speech by President Page. Below is a link to a historic newspaper print of the Tribune article. Interesting note, the news headline mis-printed ABA President George T. Page as President Gage. New York Tribune, January 4, 1919:

Transcription:

Administration of military justice in the United States army will be one of the subjects considered at the annual meeting of the American Bar Association. The executive committee of the association, at a meeting here yesterday, decided it was a subject which required consideration "and probably some reformation."

In making the announcement President George T. Page, of Peoria Ill., gave out a statement in which he declared that the war has demonstrated "that our military laws and our system of administering military justice are unworthy of the name of law or justice."

The United States, he said, still was following rules copied from England in 1774, but which were abandoned long ago by Great Britain and which were better suited "to the armies of feudal times than to the citizen armies of a modern republic."

Outrageous Punishments

"My interest in this matter was aroused some time ago," he said, "by stories of the outrageous punishments meted out by our courts martial for comparatively slight breaches of military discipline. Punishments are not only grossly harsh, as compared with the penalties imposed for like offences by our criminal courts, but they also differ so widely that we find the same offence punished in one court martial by twenty-five years in the penitentiary and in another by six months punishment in disciplinary barracks.

"A boy overstaying his leave, or yielding to a natural impulse to go home for Christmas is charged not with absence without leave but with desertion.

Disobedience Called Mutiny.

"The accused soldier has no real legal protection. He may, it is true, obtain a pardon, but this leaves his record blotted by a serious crime, of which he ought never to have been accused.

"The negro soldiers convicted for shooting up a Texas town were executed within a few hours after they were convicted and before there was an opportunity for a review of the record of trial.

In Accord with Regulations.

"A group of non-commissioned officers, after being ordered under arrest by a young officer, were accused of mutiny because they refused in a body to do drill duty while under arrest. Their position was in accordance with army regulations. Nevertheless they were court martialled for mutiny and sentences ranging from fifteen to twenty-five years were imposed.

"These cases are extreme instances, but they are typical of thousands in which the will of the commanding officer has been substituted for law and justice in the punishment of military offenders.

"The maintenance of military discipline does not require this harsh and arbitrary procedure. The French army is a model of discipline, but an accused soldier has the protection of the law thrown around him at every stage of the trial.

Speaks of "Prussian Method"

"That a soldier in our army should have less legal protection challenges the attention of the lawyers of the country. The American people never will stand for Prussian methods, even in disciplining the army."

A supplementary statement was made by Frederick E. Wadhams, of Albany, treasurer of the association.

"There is no reason why the soldier accused of crime should not have the protection of law as well as the man in civil life," he said. "It is not necessary to delay or interfere with military justice, but it is essential, if we are to have a democratic army that justice be done to the accused soldier within the law and according to the orderly processes of the law.

"The executive committee of the Bar Association could do no more in advance of the annual meeting of the association than to declare its interest in the matter and express the hope that action will be taken by Congress to remedy existing evils."

Members of the executive committee include Mr. Page, Mr. Wadhams, Walter George Smith, Philadelphia; Ashley Cockrell, Little Rock, Ark.; T.A. Hammond, Atlanta, GA.; Charles T. Terry, New York; E.F. Tabue, Louisville; Thomas H. Reynolds, Kansas City, Mo; and Paul Howland, Cleveland.

<https://chroniclingamerica.loc.gov/lccn/sn83030214/1919-01-04/ed-1/seq-16/> (zoom to top right of newspaper page for full article).

For more on the January 3, 1919 speech by Page here is another short article with extensive quotes from the address/Tribune article which may be easier to read than the historic newspaper print.

HARSH MILITARY PUNISHMENTS CONDEMNED BY AMERICAN BAR ASSOCIATION

In the New York Tribune of January 4, 1919, the President of the American Bar Association, at a meeting in New York City on January 3rd, condemned harsh and unjust judgments of military courts-martial, and stated that "our military laws and our systems of administering military justice are unworthy of the name of law or justice." He also said that our army was still following rules copied from England in 1774, but which were abandoned long ago as better suited "to the armies of feudal times than to the citizen armies of a modern republic." He also condemned "the outrageous punishments meted out by our courts-martial for comparatively slight breaches of military discipline." And he further stated that "Punishments are not only grossly harsh, as compared with the penalties imposed for like offences by our criminal courts, but they also differ so widely that we find the same offence punished in one court-martial by twenty-five years in the penitentiary and in another by six months in disciplinary barracks." . . . "The accused soldier has no real legal protection." . . . "The maintenance of military discipline does not require this harsh and arbitrary procedure. The French army is a model of discipline, but an accused soldier has the protection of the law thrown around him at every stage of his trial. That a soldier in our army should have less legal protection challenges the attention of the lawyers of the country. The American people never will stand for Prussian methods even in disciplining the Army.

Ruckman responded to criticisms from George Page, President of the American Bar Association in Boston Sunday Globe on January 5, 1919. The article is summarized as "General Ruckman defend hangings at San Antonio, taking issue with President Page."

<https://bostonglobe.newspapers.com/image/431215538/?terms=ruckman>

The Boston Globe (Boston, Massachusetts) 05 Jan 1919, Sun Page 2

RUCKMAN DEFENDS TEXAS HANGINGS

Brig Gen John W. Ruckman, commanding the North Atlantic Coast Artillery District and acting Commanding General of the Northeastern Department, intends to write at once to Pres George T. Page of the American Bar Association relative to an address at the meeting of the Bar Association in New York, in which he is quoted as declaring:

"Our military laws and our systems of administering military justice are unworthy of the name of law and justice." Calling the laws inadequate and antiquated and based on the British laws of 1774, Mr Page, it is said, cited the case of the hanging of 13 negro members of the 24th United States Infantry at San Antonio last year as an example of the injustice of the law.

Gen Ruckman commanded the Southern Department when the men of the 24th Regiment ran amuck and shot up a couple of towns, killing several persons, and Col George M. Dunn, Judge Advocate General of Gen Edwards' staff, was the Judge Advocate General of the Southern Department, who directed the prosecution of the offenders.

Gen Ruckman says that a court with four Generals as members, at a public trial at which every accused man had

Transcription:

Ruckman Defends Texas Hangings

Brig. Gen. John W. Ruckman commanding the North Atlantic Coast Artillery District and acting Commanding General of the Northeastern Department, intends to write at once to Pres. George T. Page of the American Bar Association relative to an address at the meeting of the Bar Association in New York, in which he is quoted as declaring:

"Our military laws and our systems of administering military justice are unworthy of the name of law and justice." Calling the laws inadequate and antiquated and based on the British laws of 1774, Mr. Page, it is said, cited the case of the hanging of 13 negro members of the 24th United States Infantry at San Antonio last year as an example of the injustice of the law.

Gen. Ruckman commanded the Southern Department when the men of the 24th Regiment ran amuck and shot up a couple of towns, killing several persons, and Col George M. Dunn, Judge Advocate General of Gen Edwards' staff was the Judge Advocate General of the Southern Department, who directed the prosecution of the offenders.

Gen Ruckman says that a court with four Generals as members, at a public trial, at which every accused man had counsel, found the 13 men guilty and sentenced them to be hanged. He approved, as department commanders can in time of war.

It was no quick or rash decision, he explained. The testimony was reviewed by him every day, and it was nearly two weeks after the finding before he finally approved the death sentence and had them carried out at once. Five Judge Advocate Generals have since approved very action of the court and himself.

Gen Ruckman adds that he also brought the regiment, which had been widely distributed, together and within four months had it so changed in discipline that it was marked as one of the best in the service, and no citizens or city or town had to be afraid to have units of it in or near their districts or homes.

Col Dunn felt that Mr. Page was not aware that each of the 13 men executed had confessed his guilt on the morning of the hanging.

Maj Gist Blair, assistant judge advocate here, who is the son of Montgomery Blair of President Lincoln's Cabinet and grandson of Gen Blair of President Jackson's staff, said that the present military laws were adopted by Congress no later than 1916, and were prepared by Gen Crowder, one of the ablest lawyers of the country, instead of being 100 or more years old they were up to date and carefully guard every interest of the officers and enlisted men in the Army.

Annex G Resolutions of NAACP and City of Houston

COMMEMORATIVE/MEMORIAL

1. *Camp Logan Mutiny* Houston, Texas Branch #6183

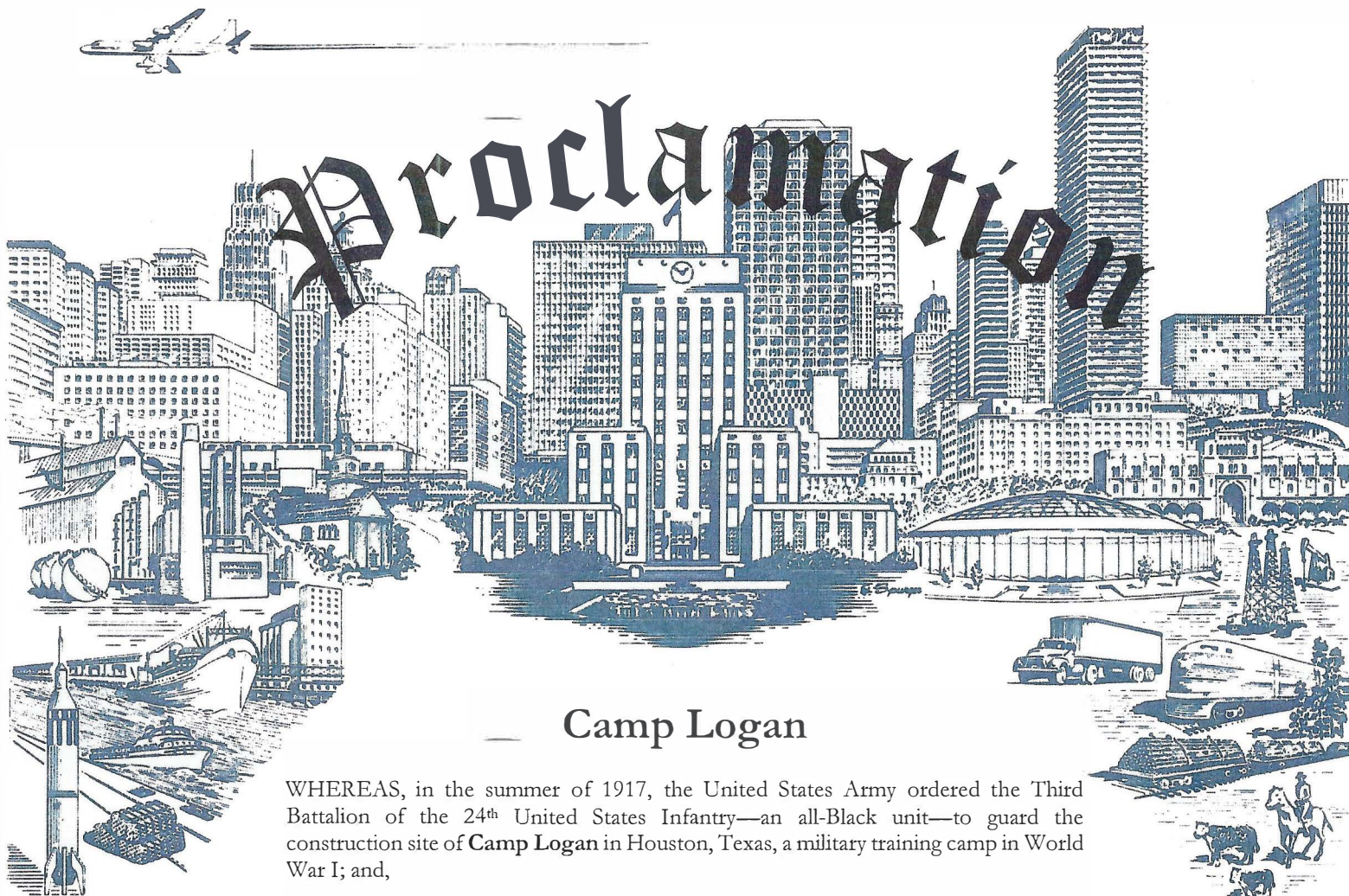
WHEREAS, August 23, 2017, marked the 100th anniversary of the Camp Logan Mutiny, the NAACP Houston Branch request a pardon for 13 soldiers; and

WHEREAS, in the summer of 1917, shortly after the United States entered World War I, the United States Army sent a unit of the famed Buffalo Soldiers, the Third Battalion of the African American 24th Infantry Regiment, to guard construction of Camp Logan in Houston, Texas, where the soldiers regularly encountered cruel and inhumane treatment and police harassment in the segregated city; and

WHEREAS, tensions reached the boiling point on August 23, 1917 when a military policeman from the 24th; Corporal Charles W. Baltimore, inquired about the pistol-whipping and arrest of an African-American soldier by a Houston police officer; the police officer beat Corporal Baltimore, fired shots at him as he tried to flee, then beat him again and hauled him to the police station; word of the assault spread throughout the camp, and more than 100 soldiers started to march to the jail; a violent confrontation ensued which ultimately claimed the lives of 4 black soldiers, 5 police officers and 11 white residents; and

WHEREAS, on November 1, 1917, the largest court-martial in United States military history convened for the trial of 63 African American soldiers from the Third Battalion 24th Infantry Regiment on charges of disobeying orders, mutiny, murder, and aggravated assault; a single military officer was appointed as attorney to represent all of the soldiers, with only two weeks to prepare for trial; and,

WHEREAS, the following 13 men (Sergeant William C. Nesbitt, Corporal Larsen J. Brown, Corporal James Wheatley, Corporal Jesse Moore, Corporal Charles W. Baltimore, Private William Brackenridge, Private Thomas C. Hawkins, Private Carlos Snodgrass, Private Ira B. Davis, Private James Divine, Private Frank Johnson, Private Rosley W. Young, and Private Pat MacWharter) were convicted on December 1, 1917, and hanged on December 11, 1917; The sentence was approved by the Commanding General and carried out without further review by Army Headquarters or appeal being given the 13 soldiers. Although 16 additional soldiers were condemned to hang in a subsequent court-martial, President Woodrow Wilson eventually



Camp Logan

WHEREAS, in the summer of 1917, the United States Army ordered the Third Battalion of the 24th United States Infantry—an all-Black unit—to guard the construction site of **Camp Logan** in Houston, Texas, a military training camp in World War I; and,

WHEREAS, from the onset, racial tensions flared between local law enforcement and the soldiers quartered at **Camp Logan**. On August 23, 1917, the soldiers led an armed revolt in response to the disenfranchisement and mistreatment they witnessed, as well as endured, from both civilians and local law enforcement; and,

WHEREAS, on August 23, 2020, which marks the 103rd anniversary of the Camp Logan Riot of 1917, the NAACP Houston Branch will adopt a resolution seeking a posthumous presidential pardon for the 13 soldiers who were denied effective assistance of counsel, sentenced without further review by Army headquarters and hanged following the rebellion; and,

WHEREAS, the City of Houston commends the NAACP Houston Branch for highlighting these soldiers on this somber observance of **Camp Logan's** 103rd anniversary and extends best wishes to all who seek to learn from this violent chapter in Houston history in an effort to forge a better Houston future, where people of all backgrounds stand boldly against injustice.

THEREFORE, I, Sylvester Turner, Mayor of the City of Houston, hereby proclaim August 23, 2020, as

Camp Logan Day

in Houston, Texas.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the City of Houston to be affixed this 13th day of August, 2020.

Sylvester Turner



commuted 10 of those death sentences and more than 60 soldiers received life imprisonment; and

WHEREAS, no white civilians or abusive police officers that were involved were brought to trial, and the two white Army officers who faced court-martial charges were simply released from active duty with honorable discharges; and

WHEREAS, the Sixth Amendment of the U.S. Constitution mandates effective assistance of legal counsel in all criminal prosecutions and the Fourteenth Amendment of the U.S. Constitution mandates no person shall be deprived of life liberty, or property without due process of the law and equal protection of the law; and

WHEREAS, Sgt. Nesbitt, Cpl. Brown, Cpl. James Wheatley, Cpl. Moore, Cpl. Baltimore, Pvt. Hawkins, Pvt. Snodgrass, Pvt. Davis, Pvt. Divine, Pvt. Johnson, Pvt. Young, and Pvt. MacWharter were denied effective assistance of counsel, due process of law and equal protection of the law.

THEREFORE, BE IT RESOLVED, that the NAACP seek a posthumous Presidential pardon to set aside the convictions of Sgt. Nesbitt, Cpl. Brown, Cpl. Wheatley, Cpl. Moore, Cpl. Baltimore, Pvt. Hawkins, Pvt. Snodgrass, Pvt. Davis, Pvt. Divine, Pvt. Johnson, Pvt. Young, and Pvt. MacWharter, 13 Buffalo Soldiers of the all black Third Battalion, 24th Infantry Regiment, in the 1917 Camp Logan Mutiny, Houston, Texas.