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CLOSING ADDRESS BY COUNSEL FOR ACCUSED

Gentlemen, now that the accused has been acquitted of the second charge it is only proper I should refer to the first charge, and I propose to do so. This charge is under Section 40 and as all you gentlemen -- experienced officers -- know, Section 40 is more or less a catch-all section -- decidedly so -- but nevertheless -- I wish to stress this as strongly as I can -- although it is a catch-all section, it is required that the prosecution prove the accused guilty of the offence as charged -- not merely prove him guilty of conduct to the prejudice of good order and military discipline -- but prove him guilty of the exact charge as set forth on the charge sheet, namely, that on November 11, 1949, at the time and place mentioned, he, the accused, appeared in such a dishevelled and unshaved condition as to bring discredit to the officers of the Canadian Army Active Force.

Now, I think there can be no doubt that under Section 40 not only must it be proven that his conduct was prejudicial to good order, but to military discipline as well. The prosecution must prove the accused guilty of conduct to the prejudice of good order and military discipline. The onus is on the prosecution to prove both, and remains there. I submit the prosecution has not fulfilled that onus -- has not discharged it. I will deal later with the second phase of that, and that is that the accused, under our system of justice -- British justice -- is always entitled to the benefit of the doubt. No matter how small the doubt, he is always entitled to the benefit of it. The law is clear that the prosecution must prove not only beyond a shadow of doubt that the accused's conduct at the time and place was prejudicial to good order but also -- I wish to emphasize -- military discipline as well -- both -- prejudicial to good order and military discipline. It is my submission, and I make it as forcibly as I can, there is absolutely no evidence whatsoever before this Court to show -- or indicate -- any offence prejudicial either to good order or military discipline, let alone both.

The gist of the charge is that he appeared in such a dishevelled and unshaved condition as to bring discredit to the officers of the Canadian Army Active Force. You are officers of the Canadian Army and you are entitled -- and I think it is your duty -- to call on your experience when considering the facts and apply your own experience to the situation -- and having that in mind and considering the evidence before you, what has this officer done that has not been done numerous times in numerous messes? If ever a mountain was made out of a mole hill, this is it. I consider Captain Chambers acted in a fairly gentlemanly manner. He goes to this place. He knew he had no invitation. The evidence is that he thought he would go up in case he knew somebody there -- and he did. The evidence is that he no sooner got there when one of the soldiers said "Hello Bob" -- and so on -- but he doesn't go into the mess. He doesn't attract anyone's attention to himself. He doesn't create a disturbance -- and behaves like a gentleman. Bearing in mind there was an "open house" that evening where there was a certain amount of celebration and mixed drinking going on, I think we will all agree -- certainly it would be much preferred for an officer to be neatly and properly dressed -- but we all know there are occasions when certain officers, unfortunately, are not as neat and well-dressed as we would like them to be -- and while that

*A. H. N.*