

(The Court and the Judge Advocate are of the opinion that it is unnecessary to comply with RP 83 (B)).
(See D 5, Page 3 of CF A96).

ADDRESS TO THE COURT BY THE PROSECUTION

Sir, the Prosecution has adduced evidence through two Witnesses that proves that the accused was guilty of Disgraceful Conduct of an Indecent Kind and the fact that the accused was manipulating the penis of Pte DOUCET proves beyond a doubt that the act was not accidental. The defence has pointed out certain irregularities in the Summary of Evidence, such as hearsay evidence, etc, which would show that the officer taking the Summary of Evidence was quite inexperienced. Also it is quite evident that the Officer taking the Summary of Evidence did not fully instruct the witnesses as to their duty and as to what was required of them, consequently certain facts regarding the case were not brought out in the Summary of Evidence. In view of the Evidence adduced in this court, only a conviction can follow.

ADDRESS TO THE COURT BY THE DEFENCE

Sir, as I thought, the case is now thrown on the question of the manipulation of the penis. That appears to be a good point of the case so let us go back. The prosecution attributes the failure to mention the illuminating issue of manipulation of the penis of one DOUCET, the Absence of any mention of that in the Summary of Evidence, to the ignorance of the Officer taking the Summary not a very sporting decision to make. However, from the standpoint of the defence the accused is entitled to rely upon the record which is against him. Normally the Summary of Evidence insofar as the prosecution is concerned, unless the accused enters a plea of guilty, and in this case the accused does not plead guilty, and the only way in which the Summary of Evidence comes before this court is by virtue of the matter in which concerned portions only of the Summary of Evidence were read to the witnesses may enter the record and be considered by the Court to form part of the Evidence before this Court. It is true in making my first objection about hearsay evidence, I explained to the Court that I had found the Summary of Evidence to contain many statements which should not have been admitted according to laws of Evidence but having had previous experience of exactly the same sort of thing and it having been ruled that any admissible evidence should not be struck from the Summary of Evidence by higher authority, I can only in this case object to hearsay evidence as it appeared to be about to be brought out. There is some evidence of indecency on the part of Sgt JOHNSON on the night in question when witnesses for the prosecution stated that he appeared to be pretty drunk. I am quite content that the court should attach its own interpretation to that discussion. It is particularly obvious that a person, whether drunk or sober sleeping with another soldier might have his hand in the proximity of the other soldiers privates without suggestion arising in anyones mind of anything indecent or incipid. As one read the Summary of Evidence one gathered that both witnesses swore to the fact that Sgt JOHNSONS hand was in a passive position on or near the penis of Pte DOUCET such being consistent with the lack of any guilty intent to perform an indecent act and also consistent with Sgt JOHNSON having reached such a point of intoxication that he was incapable of forming an intent to commit a crime. How important any evidence which would say a series of mental factors, together with physical action, such as physical manipulation of the penis of the Pte soldier, can readily be seen. Words spoken in the early part of the evening or prior to Sgt JOHNSON retiring, even if true, and however obnoxious to the ears of the court, as it has to listen to them, does not constitute anything more or less than a filthy conversation and I hope that in the administration of law that the phase of the matter will be taken into consideration. Once an act was committed, not the mere passive pos-