

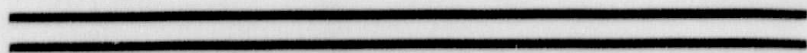
**REEL  
NO.**

**44**

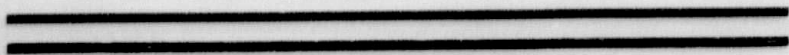
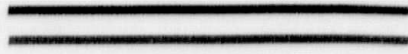
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**35**

**START**



**FIRST**



**SIDE**

4W-54.

Pte. Hyman. D.J.

**SCHEDULE.**

**PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: A-55712 Pte (L/Cpl) Donald James HYMAN, 9 CBR Bn

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable)	(See instrs p 2)	(See note below)	
1st	<i>Guilty</i>	<i>Guilty</i>	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 55, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

As-present under sentence for \_\_\_\_\_ beginning on (date) \_\_\_\_\_ (1)

(1. Insert sentence being served, or delete if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 66 days, of which 24 days were spent in hospital. (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

*To undergo one years detention.*

(Sgd) \_\_\_\_\_ Date awarded 10/24/45 (Sgd) \_\_\_\_\_ President (RP 45, 50)  
(See back of Convening Order as to assembly and disposal of record after trial.)

**PART II. MINUTE WHERE CONFIRMATION RESERVED.** (AA 54(5), RP 120(F), MML p 760.)

Date \_\_\_\_\_ (Sgd) \_\_\_\_\_ Commanding \_\_\_\_\_

**PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.**

(For duties and powers see AA 54, 57, RP 37(D) fn 4, 46(A), 51-56, 120, MML pp 759-761, KR Can 547-577. Acquittal requires no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

*Confirmed*

I direct that the accused be not committed to prison or detention barracks until further orders. (1)

(1. AA 57A. Delete if not used.)

Date 17 FEB 45

(Sgd) \_\_\_\_\_  
(G S N Gostling) Brig  
Commanding 2 CDR BASE HPT GP  
Confirming Officer.

**PART IV. PROMULGATED AND EXTRACTS TAKEN.** (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

A 55712 Pte (L/Cpl) Donald James HYMAN,  
9 CBR Bn.

FEB 20 1945

[Signature]  
CAPT. & ADJUT.  
9 BN. 2 CDR GP

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

RECORDED AT CMHQ IN AB 160. HW-54  
**FIELD GENERAL COURT-MARTIAL**

CPA88 (In lieu of AFAS) 40/P & B/1608 (144) 4/388

Order of Brig G S N Gostling Comd 2 CBRG dated 5 Feb 45

**ACCUSED.**

(b) apmt, A/R or A/Apmt, if any, see AA 182, 183, fn 3, KR Can 308, 326, 330.)  
Full Christian Names. Surname. Unit.  
A-55712 Pte (L/Cpl) Donald HYMAN, 9 CBR Bn  
James

A-55712 Pte (L/Cpl) Donald HYMAN, 9 CBR Bn  
PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL

Held in the Fd in (country) RELATIV on (date) 10 FEB 45

**RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.** 23/116

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Customs do NOT include all relevant fine ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 755. A brief record of such variation will be made and given a number having reference to appropriate or preceding page number instr. See back of Convening Order, CF 495. For notes on how to record addresses, evidence, etc. when instrs are forewarded called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 72, 74, 94, 102, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. (1) The Court is satisfied that it is properly convened and constituted, accused is (are) amenable to military law, and each charge discloses an offence. (2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.00 hours trial commences. A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(d). Delete, if not applicable.)

A5. President to accused: Do you object to \_\_\_\_\_ as interpreter? Ans \_\_\_\_\_  
The interpreter is sworn. (1) Do you object to \_\_\_\_\_ as shorthand writer? Ans \_\_\_\_\_  
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE, MBE, FCM, X-9 List att 3 Cdn NEDP
Member	Major	D MacKENZIE, Essex Scot, X-9 List att 3 Cdn NEDP
Member	LIEUT CAPT	H S JARROLD, CFC, 11 CBR Bn
Judge-Advocate		
Prosecutor	Lieut	A T MAUN, CIC, 11 CBR Bn
Defending Offr	LIEUT	A F McINTOSH, CAC, 9 CBR BN

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (1)

(1. RP 28, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DF p 3.)

A8. The accused A-55712 Pte (L/Cpl) HYMAN D J. before arraignment make(s) (no) (s) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 55(A), 113), or in case of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 6, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn 3 to Ref cited. Insert in Ad rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (do) not object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the plea in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 21, RP 21. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and: considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG AB HQ Val III P. 47

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Officer see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B); and of witnesses see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)(1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Yes  
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 32(B) fn 2 para 3, MML p 54 para 47. 4. See para E1 of Record Form E.

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on 7 charge(s). This accused is not informed, and he (she) is not advised to change his (their) plea(s) to Not Guilty on 7 charge(s). Part I of the Schedule is amended accordingly.  
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive of Record Form D on p 3. If any plea is appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin Into Lower Sheets of Booklet.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No  
(1. If "yes", see RP 39(A) for procedure. Statement of evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Officer submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 7 charge(s)(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the 7 charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s)(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 87 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No

Do you intend to call witnesses on your behalf? Ans. No  
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115/116. For procedure see Notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 7 charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed forthwith, on plea of Guilty surrounding and dealt with under Record Form B or C.

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Officer for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex A respectively.(2)

(1. MFB 255 or MFB 296. 2. MFM 4. 3. RP 44, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 54 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 563-564, Overseas RO 209, 232, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(8), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Officer see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

### INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 02) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (H); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

### RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)<sup>(1)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.<sup>(2)</sup>

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)<sup>(1)</sup>. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined<sup>(3)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(4)</sup>

President to accused: Do you wish to make a statement? Ans. Yes<sup>(4)</sup>  
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.  
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement<sup>(1)</sup>. The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on 2 charge(s). The accused is not so informed, and he (they) changes his (their) plea(s) on 0 charge(s). Part I of the Schedule is amended accordingly.  
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.<sup>(2)</sup>

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.<sup>(1)</sup>

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

### RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.<sup>(1)</sup>

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.<sup>(2)</sup>

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

### RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. Yes<sup>(1)</sup>  
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.<sup>(1)</sup>

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.<sup>(1)</sup>

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.<sup>(1)</sup> The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 0 charge(s).<sup>(2)</sup> The Court is closed, and considers the submission.<sup>(3)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the 0 charge(s), and allowed on the 0 charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).<sup>(4)</sup>

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 84 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.<sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.<sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination.<sup>(3)</sup> But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.<sup>(4)</sup> You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. Neither Do you intend to call witnesses on your behalf?

Ans. Yes Are they witnesses as to character only? Ans. Yes

(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.<sup>(1)</sup>

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 163(A).)

D7. The Court is closed to consider the finding(s).<sup>(1)</sup> The finding(s) of the Court is (are) recorded in Part I of the Schedule.<sup>(2)</sup> The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 0 charge(s), being subject to confirmation, will be promulgated later.<sup>(2)</sup>

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.<sup>(3)</sup>

(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

### RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?<sup>(1)</sup>

Ans. Yes  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service<sup>(1)</sup>, and certified true copy (copies) of Conduct Sheet(s)<sup>(2)</sup>, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex A respectively.<sup>(3)</sup>

(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?<sup>(1)</sup> Ans. Yes

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.<sup>(1)</sup>

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.<sup>(2)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.<sup>(3)</sup>

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564, Criminals RD 309, 322, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The court recommend that an investigation  
of Ste Hyman's domestic affairs be made.

10/26/45

~~Franklin D. Roosevelt~~  
S. C.

CHARGE SHEET

Donald James

The accused, A-55712 L/Cpl. HIGMAN, D.J. on the strength of 65 Coy., 9 Bn., 2 CBRG., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE  
AA 500 15C)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, did absent himself without leave from 1600 hours, 8 Nov 44 until surrendering himself at 2230 hours 6 Dec 44.

TOTAL TIME ABSENT: - 29 days, 6 hours and 30 minutes.

*H.W. Rick*  
(H.W. Rick) Lieut-Colonel,  
Commanding Officer,  
9 C.B.R. Bn

In the Field,  
26 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

*G.S.M. Costling*  
(G S M Costling) Brig  
Comd  
2 Cdn Base Rft Gp

In the Field  
3 Feb 45



# FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops in active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/R or A/Appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

## ACCUSED.

Number.	(a) Prmt B.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A-5 5712	Pte	(L/Cpl)	Donald James	HYMAN,	9 CBR Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (~~date~~) 3 Feb 45 ~~endorsed by me, for by an offr of my staff for me.~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~  
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court; (b) a ~~Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate ~~the Offr mentioned hereunder.~~  
(RP 104(E). Delete, if none appointed.)

### PRESIDENT.

Major G G MacKENZIE, MRE, FGH, X-9 List att 3 Cdn NETD (Unit)  
(Rank) (Must be named. RP 104.)

### MEMBERS.

Major D MacKENZIE, Essex Sect, X-9 List att 3 Cdn NETD  
(Rank) S. D. TOMLIN (Rank) 11 CBR Bn (Unit)  
F. I. S. FRASER (Named or detailed. RP 104.) CPL 11 (Unit)  
B. L. M. HARRIS

### WAITING MEMBER.

(Rank) (Named or detailed, if any. RP 104.) (Unit)

### JUDGE-ADVOCATE.

(Rank) (Must be named, if any. RP 104.) (Unit)

On Active Service in the FD

in BEIGIUM (Country) C. S. N. Gostling (Signed personally. RP 105 (a 2)) Brigadier (Rank)

Dat 3 FEB 45 (C S N Gostling) Commanding 2 Cdn Base Ept GP Convening Officer.

## CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

## CANADIAN MEDICAL SERVICE

DATE 7 Oct 45 No.No., Rank and Name A 55717  
4 Cpl Heyman D.S.

R The M/P has been referred for psychiatric interview but as yet has not had a consultation. 292 has been sent to M.O. of G.P. for arrangement of interview.

Signature of M.O. See. [unclear]

To be filled at Medical Inspection Room  
Military HospitalMFC 480  
3/69a 40-P&L-997 (4472)  
(Part of 100)

MEDICAL OFFICER CERTIFICATE

(RM(Can) Para 557)  
GMO CL 173

I certify that I have this day examined A35712  
(Number)

LCPL HYMAN D. J. and in my opinion he is  
(Rank) (Name)

~~fit~~ ~~unfit~~ to undergo trial by Court Martial

Station FIELD. M. M. Wasserman Capt (Sgd)  
Date 7-2-45 (Unit) 9C. B. R. Bn.  
Med. Off. Officer

MEDICAL OFFICER CERTIFICATE

(KR(Can)Para 557)  
C.M.Q. CL 173

I certify that I have this day examined A55712  
(Number)

LICPL HYMAN D. J. and in my opinion he is  
(Rank) (Name)

fit to undergo trial by Court Martial  
~~unfit~~

Station FIELD.

Sgt M. Wazir Capt.  
Medical Officer

Date 10 FEB. 45

(Unit) 9 C. B. R. BN.

26

Statement A 55712 of/ed Hyman D. J.  
9. CBR Bm

NOT on oath

"On 8 Nov. 44 I met a friend of mine  
and we went down ~~there~~ <sup>town</sup> in Ghent. I had  
quite a few drinks. The next I knew  
was 5 Dec 44. I was in Lyons. On  
London. I immediately started back to  
Ghent. The 6 Dec I could not get any  
further than Lyon. I was unable to  
get a room or a train. I turned myself  
into the American M.H.S."

R.P. 83(B) confirmed herein

Nonacel Wachinger  
Mayor  
Member of Court.

Character Witness

56

Statement of C 40532. Sgt. Cartwright, C.G.  
65. Coy. 9 Bn.

Whole Part

"The accused was with the Coy <sup>of</sup> which  
I am P.E. on two various occasions.  
During his stay with the Coy I, on several  
various occasions, had him for the N.C.O.  
to do & found that he was quite  
capable in his line of duty."

R. P. 83/B. Confirmed with

Honourable Mr. Justice  
Mayer  
Member of Council.

Official Witness

Lt. J. G. Patehall C.S.R.G.

Subj sworn

"The accused has been with me some time  
long in <sup>Sept-</sup> 1844 & has given excellent  
service. His character has been above  
reproach. In performance his duties he  
has always been very reliable & my duties  
assigned him he has always been well

For the reason

& that I know are correct then by looking  
the previous evening or because they have  
formed themselves reliable & were not take  
any unchallenged steps." I continue  
to employ the accused as a driver after he  
had been placed under the arrest & must  
regard responsible to the C.O. of 13th  
for his conduct. I had no hesitation  
in doing so.

R.P. 83 (B) Confirmed with

J. M. Mackenzie  
Major  
Member of Council.

Plea of mitigation

13

A 55712 L/cpl Hyman D.T. is an American who crossed from Detroit to Windsor 10 Oct 41 to join the 1st Base Ordnance Workshop. Came overseas with the advance party of this unit Jan 42 & remained with them in England approx 6 months. He was then posted to #1 CORU & posted from there to 93 LAD. Was with this unit till Aug 43 when he was posted to the CREME of 2 Corps. He came to France with this unit 8 Jul 44.

He was injured in a m/c accident in England. Damaging his back but was only hospitalized a couple of days. This injury was aggravated in Aug 44 & he was again evacuated to hospital. Here he was sent to 2CBRB, <sup>20 Aug 44 27h.</sup> awaiting reboard & reallocation. The board reserved its decision, sending him to #2 Convalescent depot for observation. His case was to be reviewed again in a month. However he was kept there for 2 months or then returned to 2CBRB. He was due to be sent for reboard again the day he went missing.

In March 43 he received news that his wife had been unfaithful and had a child by another. He applied for compassionate leave in order to arrange for <sup>a divorce and</sup> the custody of <sup>etc.</sup>



3 S/Corp Hyman

Finally was brought back to CBRB  
8 Jan 45 and has been held here  
since that date.

His case was first officially  
reviewed at Coy orderly room approx  
15 Jan 45. He was remanded for  
further evidence (the checking of his  
proper date of surrender) then brought  
up before Cpt Ricket and remanded  
for F.B.I. On none of these  
occasions was the man given an  
opportunity to give his full story.

Due to his apparent loss of  
memory I brought him before  
a medical officer (Capt Wasserman 13 CBRB).  
He and another M.O. questioned him  
for over an hour and recommended a  
psychiatric consultation and arrangements  
were started for this. These have  
not been completed but the decision  
of the consultant should be taken into  
consideration before sentence is finally  
recorded.

A. J. [Signature] Lt Colonel  
Defining Officer

Plea of Mitigation

To

A 55712 L/Plt Hyman D.T. is  
an American who crossed from Detroit to  
Windsor 10 Oct 41 to join the 1st  
Base Ordnance Workshop. Came overseas  
with the advance party of this unit  
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that his wife had been unfaithful  
and had a child by another. He  
applied for compassionate leave in  
order to arrange for <sup>the divorce and</sup> the custody of  
the child.

2/ his own two sons but this was not granted. He then tried to transfer to the American Army as he hoped to go into Bomb Ordnance as in this manner he could get home on a course. The necessary authority came through Feb 44 but was automatically cancelled when all transfers were frozen at this time on account of final preparations for the invasion. He was awaiting the outcome of his reboard before making another application for compassionate leave.

Feeling very depressed he went out on a drinking spree with a friend 8 Nov 44 and his next recollection was finding himself in the port of Toulon 5 Dec 44. He immediately started back intending to come direct to Ghent, or failing this to surrender himself to the Canadian Military Police. Reached Lyons 6 Dec and as he could not get any further that day or could not find accommodation he surrendered himself to the American M.P's. They held him a short time in Lyons and then transferred him to the Paris detent in barracks which apparently is jointly run by all branches of the allied M.P's. He

3 Lt/epb Hyman

Finally was brought back to CSRB  
8 Jan 45 and has been held here  
since that date.

His case was first officially  
reviewed at Coy orderly room approx  
15 Jan 45. He was remanded for  
further evidence (the checking of his  
proper date of surrender) then brought  
up before Col Ricket and remanded  
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occasions was the man given an  
opportunity to give his full story.

Due to his apparent loss of  
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a medical officer (Capt Wasserman 13CBAR) &  
He and another M.O. questioned him  
for over an hour and recommended a  
psychiatric consultation and arrangements  
were started for this. These have  
not been completed but the decision  
of the consultant should be taken into  
consideration before sentence is finally  
awarded.

A. J. [Signature] Lt 92286  
Defending Officer

SUMMARY OF EVIDENCE

in the case of

A-85712 L/Cpl. HYMAN, D.J. on the strength of 65 Coy., 9 Bn., 2 C.B.R.G., a soldier of the Canadian Army Overseas, who is charged with:

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,  
A.A. Sec. 15(1)

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS:

C-40632 Sgt. CARTWRIGHT, C.G., CIC, on the strength of 65 Coy, 9 Bn., C.B.R.G. (formerly 12 Bn), having been duly sworn states:

" I am C-40632 Sgt. Cartwright, C.G. of 65 Coy 9 Bn. I am Sgt Instructor on the P.E. At 1600 hours 8 Nov 44, I was handed a draft notice posting L/Cpl. Hyman, D.J., to No. 3 Re-Allocation Centre. I immediately checked Coy training parades, fatigue parties, barrack rooms, and Camp Area but was unable to locate L/Cpl. Hyman. The result was, the draft to No. 3 Re-Allocation Centre left without this man. This man was not previously warned for draft."

The accused declines to cross-examine this witness.

*C.G. Cartwright*  
C-40632 Sgt. Cartwright, C.G.

SECOND WITNESS:

Certificate under the Army Act, Section 165(1)(f) was shown to the accused, marked by me as Exhibit "A" and is attached hereto.

The accused declines to cross-examine this witness.

*V.D. Kenyon Lieut*  
(V.D. Kenyon) Lieut  
Officer detailed to  
take the summary of evidence.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

The accused does not call any witnesses in Defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (e) (f) and (g) have been complied with.

*V.D. Kenyon Lieut*  
(V.D. Kenyon) Lieut  
Officer detailed to take the  
Summary of Evidence

In the Field  
26 Jan 45

This is Exhibit "A" referred to in the <sup>43</sup>Summary of Evidence in the case of A. 59712 1/Col. <sup>13</sup> taken before me this 26th Jan 1945. <sup>13</sup> *W. Kenyon*

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1)

I (G. Beaulne), Lieut., D.A.P.M., Can. Mil. Staff Corps, certify that

Reg No 4-25712, Rank 1/Col., Name *HOWAN, A.C.*

REGIMENT *No. 2, C.B.A.C.*

UNIT *N/A*

STATION *N/A*

Surrendered himself to No 25641214 Rank Sgt., Name *Jones,*

of the *American Civil Service, Cleveland, Tenn.*

on the *16*th day of *Dec.* 1944, at *22.30* Hours

.....

at the time of his surrender he was wearing military uniform or

civilian dress

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

*G. Beaulne Lieut*

*D.A.P.M. Paris*

(G. Beaulne) Lieut.

D.A.P.M. Can. Mil. Staff Corps.

Field  
30-Dad-45.

## Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
A-58712	L/Cpl.	HETMAN, D.J.	85 Coy 9 C.B.R. Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For .....	times.
For Original M.F.W. & Not available .....	times.
For .....	times.
For .....	times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

Mark as if not applicable.

3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for 70 days in civil custody; and for 66 days in military custody, i.e., .....

nil days in open arrest, 66 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 32.

6. The date of his attestation calling up for military service is 10 Oct 1941.

7. The service which the accused is allowed to reckon is 3 yrs 3 months 30 days.

8. The accused is in possession of † NONE.

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date— 10<sup>th</sup> May 1944  
Date of Promotion.

In the substantive rank of Lt .....

In the war substantive rank of Lt .....

In the acting rank of L/Cpl .....

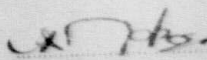
INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

## SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
<div style="font-size: 4em; opacity: 0.3; position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); pointer-events: none;">                     (The table body is currently empty)                 </div>				

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10<sup>th</sup> day of Feb 45

  
 CAPT. & ADJT.,  
 G. S. G. P.



A-55712 L/Cpl. HUMAN, D.J.

65 Coy., 9 C.B.R. Bn

(Temporary)

No. Name

Sq. Battery, or Company

Corps

Date of enlistment

GU Badges

Service or Proficiency Pay

3/17 MFM 6 (AFR 122) 40/P&R/136(154)2

Date of last entry in Company Conduct Sheet

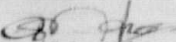
No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Case of decision-ness	TOC FROM 15 CBR Bn 22-1-45 OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discharging with trial	By whom awarded	Remarks
	27 Jan 45			Certified that original M.F.M. 6 is not available and that this is a true copy of all information available.   (C.L. Nelson) Capt & Adj 9 C.B.R. Bn					

LIST OF EXHIBITS

in the case of

A-55712 I/Cpl. HOGAN, D.J.

Exhibit "A"

- Certificate of Apprehension, under  
AA Sec 163(1) (3).

Date 17 Feb 45

2 CAR 2

1. I hereby acknowledge receipt of one copy of Charge sheet and one copy of the Summary of Evidence delivered to me

2.  (a) I request that \_\_\_\_\_  
if available, be appointed, as

(b) I request that an officer be appointed as my  
defending officer at my trial by Court Martial.

D. J. Hyman

I hereby certify that Lt A. J. McIntosh was appointed to defend  
Ass 712 Hepthyma, D.J. at his forthcoming trial  
by Court Martial and that the said Lt A. J. McIntosh  
was notified that he was defending officer on 17 Feb 45

D. J. Hyman Capt  
CAPT & AGIT,  
4 BN, 2 C.B.R. GP.

LIST OF WITNESSES IN THE CASE OF A-50712 L/Cpl. HOGAN, D.J.

WITNESSES FOR THE PROSECUTION

C-40532 Sst. CARTWRIGHT, C.G.

65 Coy., 9 C.B.R. Bn

*Q.* ~~Lieut. V.D. Kenyon~~

~~65 Coy., 9 C.B.R. Bn~~

WITNESSES FOR THE DEFENCE

- N I L -

4

**SCHEDULE.**

**PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: A-55712 Pte (L/Cpl) Donald James HYMAN, 9 CBR Bn

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See Instr p 2.)	(See note below.)	
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: In the case of joint charges, findings on alternative charges see MML p 483 fn 4 para 2, RP 44; (I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

AT present under sentence for \_\_\_\_\_ beginning on (date) \_\_\_\_\_ (1)  
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 65 days, of which Nil days were spent in hospital. (1)  
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo one years detention.

(Sgd) \_\_\_\_\_ 10 Feb 45 (Sgd) G.G. MacKenzie Major  
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)  
(See back of Convening Order as to assembly and disposal of record after trial.)

**PART II. MINUTE WHERE CONFIRMATION RESERVED.** (AA 54(5), RP 120(F), MML p 740.)

Date \_\_\_\_\_ (Sgd) \_\_\_\_\_ Commanding \_\_\_\_\_

**PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.**

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (1) GG  
(I. AA 57A. Delete if not used.)

Date 17 Feb 45 (Sgd) G.S.N. Gostling Brig  
Commanding 2 Cdn Base Rft Gp  
Confirming Officer.

**PART IV. PROMULGATED AND EXTRACTS TAKEN.** (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A55712 Pte (L/Cpl) Donald James HYMAN 9 CBR Bn	20 Feb 45	(Sgd) C.L. Nelson Capt Adjnt 9 Bn 2 CBR Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

4 W-57

**FIELD GENERAL COURT-MARTIAL**

CPASS (In lieu of AFAS) 40-P 8/14/45 4388

Convened by Order of Brig G.S.N. Gostling Comd 2 CBRG dated 3 Feb 45

**ACCUSED.**

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apmt, A/rank or A/ajpmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number. (a) Prmt R. (b) Apmt, A/R or A/Ajpmnt. Full Christian Names. Surname. Unit.  
A.55712 Pte (L/Cpl) Donald James HYMAN 9 CBR Bn

CERTIFIED TRUE COPY  
PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 10 Feb 45

**RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/115**

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fn notes. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate preceding page number herein. See back of Convening Order, CF 493, for rules and orders on how to record addresses, evidence, etc, which must be hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 84, 102, 118, 120.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet attached thereto. (1) The Court is satisfied that it is properly convened and constituted, accused is ~~is~~ amenable to military law, and each charge discloses an offence. (2)

(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-12, 23, 24.)

A3. The Court is opened. The accused is ~~is~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~is~~ fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the COT. (2)

(I. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to \_\_\_\_\_ as interpreter? Ans \_\_\_\_\_

The interpreter is sworn. (1) Do you object to \_\_\_\_\_ as shorthand writer? Ans \_\_\_\_\_  
The shorthand writer is sworn. (1)

(I. RP 72. Delete, if not employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (1)

(I. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, 90M, p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.G. MacKENZIE, MBE, POB, X-# List att 3 Cdn
		NETD
Member	Major	D. MacKENZIE, Essex Sect, K9 List att 3 Cdn
Member	Lieut	B. LAMARIE CPC 11 CBR Bn
		NETD
Judge-Advocate		
Prosecutor	Lieut	A.T. MANN CIC 11 CBR Bn
Defending Offr	Lieut	A.F. McINTOSH CAC 9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans \_\_\_\_\_ Is the Defending Offr a lawyer? Ans \_\_\_\_\_ (1)

(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for trial of Conv Offr.)

(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See D1 p 3.)

A8. The accused A55712 Pte (L/Cpl) HYMAN, D.J. before arraignment make(s) (no)  plea

(1)

(I. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in lieu of trial (RP 26), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn to Ref cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~is~~ arraigned (separately) on all charges in the charge sheet. (1) The accused does ~~not~~ object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the plea in Part I of the Schedule.

(I. RP 31, 112. See para 1 of Instr p 2. When more than one Charge Sheet see RP 41; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 11, RP 11. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

**PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.**

2 CBR G AB 160 Vol III p. 77

## INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; answering and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

## RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)<sup>(1)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.<sup>(2)</sup>  
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)<sup>(1)</sup>. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined<sup>(3)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(4)</sup>

President to accused: Do you wish to make a statement? Ans \_\_\_\_\_  
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.  
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.<sup>(1)</sup> The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on \_\_\_\_\_ charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on \_\_\_\_\_ charge(s). Part I of the Schedule is amended accordingly.  
(1. Court may sit closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.<sup>(1)</sup>  
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex \_\_\_\_\_, initialled and read aloud by the President.<sup>(1)</sup>  
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of para D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

## RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.<sup>(1)</sup>  
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.<sup>(1)</sup>  
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with para D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans \_\_\_\_\_  
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.<sup>(1)</sup>

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.<sup>(1)</sup>

(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.<sup>(1)</sup> The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the \_\_\_\_\_ charge(s).<sup>(2)</sup> The Court is closed, and considers the submission.<sup>(3)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the \_\_\_\_\_ charge(s), and allowed on the \_\_\_\_\_ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).<sup>(4)</sup>

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.<sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.<sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination.<sup>(3)</sup> But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.<sup>(4)</sup> You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, or to make a statement, or do neither? Ans \_\_\_\_\_ Do you intend to call witnesses on your behalf? Ans \_\_\_\_\_

Are they witnesses as to character only? Ans \_\_\_\_\_  
(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.<sup>(1)</sup>

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(s).)

D7. The Court is closed to consider the finding(s).<sup>(1)</sup> The finding(s) of the Court is (are) recorded in Part I of the Schedule.<sup>(2)</sup> The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the \_\_\_\_\_ charge(s), being subject to confirmation, will be promulgated later.<sup>(1)</sup>

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.<sup>(2)</sup>  
(1. AA 34(2) (i), RP 45, 120(A). 2. AA 34(5), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

## RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witness as to your character? (1)  
Ans \_\_\_\_\_  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service<sup>(1)</sup>, and certified true copy (copies) of Conduct Sheet(s)<sup>(2)</sup>, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(B) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex \_\_\_\_\_ and Ex \_\_\_\_\_ respectively.<sup>(3)</sup>

(1. MPB 353 or APB 276. 2. MPB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans \_\_\_\_\_  
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.<sup>(1)</sup>  
(1. AA 34(4), RP 120(A).)

E5. The Court considers the sentence.<sup>(1)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.<sup>(2)</sup>

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provision, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 136, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 363-366, Overseas AC 309, 2223, 2000-2001, 715-729. As to sentence assigned for civil offences by the law of England see AA 41(5), 100A, 132. When accused already under sentence of imprisonment or detention see AA 44(5), 68(1), KR Can 504. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The court recommend that an investigation  
of Pte Hyman's domestic affairs be made.

10 Feb 45

G.G. MacKenzie Major  
President

CHARGE SHEET

The accused, A.55712 L/Cpl. HYMAN, D.J. on the strength of 65 Coy, 9 Bn., 2 CBRG., a soldier of the Canadian Army Overseas, is charged with:

Donald James

First Charge  
AA Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, did absent himself without leave from 1600 hrs, 8 Nov 44 until surrendering himself at 2230 hrs 6 Dec 44.

TOTAL TIME ABSENT: - 28 days, 6 hours and 30 minutes.

(Sgd) H.W. Rick Lieut-Col.  
Commanding Officer  
9 C.B.R. Bn

In the Field,  
28 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(Sgd) GSN Gostling Brig  
Comd  
2 Cdn Base Rft Gp

In the Field  
3 Feb 45.



# FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried in his camp or not, a FGCM may an application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate camp of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

## ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A. 55712	Pte	(L/Cpl)	Donald James	HYMAN	9 CBR Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Feb 45 endorsed by me, ~~(signature)~~. "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and the case is not suitable for trial by an ordinary General Court-Martial.~~  
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.~~  
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~(Signature)~~  
(RP 106(E). Delete, if name appointed.)

### PRESIDENT.

Major G.G. MacKENZIE, MBE RGR, X-9 List att 3 Cdn NETD (Unit)  
(Rank) (Must be named. RP 106.)

### MEMBERS.

Major D. MacKENZIE, Essex Scot X-9 List att 3 Cdn NETD

Captain B. Lamarre CPC 11 CBR Bn (Unit)  
(Rank) (Named or detailed. RP 106.)

### WAITING MEMBER.

(Rank) (Named or detailed, if any. RP 106.) (Unit)

### JUDGE-ADVOCATE.

(Rank) (Must be named, if any. RP 106.) (Unit)

On Active Service in the Fd

in BELGIUM  
(Country)

G S N Gostling  
(Signed personally. RP 105 fn 2)

Brigadier  
(Rank)

Date 3 Feb 45

Commanding 2 Cdn Base Rft Gp  
Convening Officer.

**CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS**

4/38A (FAGS (in lieu of AFAS) 23/7/2 E/1967 14031)

(See overleaf for notes and notes for use on trial.)

CANADIAN MEDICAL SERVICE

DATE 7 Feb 45 No.

No, Rank and Name A. 55712 L/Cpl HYMAN, D.J.

R

The m/n has been referred for psychiatric interview but as yet has not had a consultation. 292 has been sent to MO of 8 Bn for arrangement of interview.

Signature of MO MM Wasserman Capt

MEDICAL OFFICER CERTIFICATE

(KR (Can) Para 557)  
CMHQ CL 173

I certify that I have this day examined A55712  
L/Cpl HYMAN, D.J. and in my opinion he is  
fit to undergo trial by Court Martial.

Station Field

(Sgd) M M Wasserman Capt

Date 7-2-45

9 CBR Bn.

MEDICAL OFFICER CERTIFICATE

(KR (Can) Para 557)  
CMHQ CL 173

I certify that I have this day examined A55712  
L/Cpl HYMAN, D.J. and in my opinion he is  
fit to undergo trial by Court Martial.

Station Field

(Sgd) M M Wasserman Capt

Date 10 Feb 45

9 CBR Bn

STATEMENT A.55712 L/Cpl HYMAN, D.J. 9 CBR Bn

NOT ON OATH

"On 8 Nov 44 I met a friend of mine and we went down town in Ghent and had quite a few drinks. The next I knew was 5 Dec 44. I was in Toulon. I immediately started back to Ghent. The 6 Dec I could not get any farther than Lyon. I was unable to get a room or a train. I turned myself into the American MP's.

R.P. 83 (B) complied with.

(Sgd) Donald Mackenzie Major  
Member of Court.

Character Witness

Statement of C.40532 Sgt Cartwright C.S. 65 Coy 9 Bn.

Under Oath.

"The accused was with the coy on whom I am PE on two previous occasions. During his stay with the coy I, on several various occasions, had jobs for this NCO to do and found that he was quite capable in his line of duty."

RP 83(B) conformed with.

Donald MacKenzie Major  
Member of Court.

Character witness.

Lt E.G. Patchell CBRG

Duly sworn

The accused has been with me since some time in Sept 44 and has given excellent service. His character has been above reproach. In performing his duties he has always been very reliable and any duties assigned him as have always been well passed out. For the reason that drivers are issued their log books the previous evening is because they have proved themselves reliable and were not take any unauthorized trips. I continued to employ the accused as a driver after he had been placed under open arrest and made myself responsible to the CO of 12 Bn for his conduct. I had no hesitation in doing so.

R.P. 83(B) conformed with.

Donald MacKenzie Major  
Member of Court.

PLEA OF MITIGATION

A55712 L/Cpl Hyman D.J. is an American who crossed from Detroit to Windsor 10 Oct 41 to join the 1st Base Ordnance Workshop. Came overseas with the advance party of this unit Jan 42 and remained with them in England approx 6 months. He was then posted to "1 CORP and posted from this to 93 LAD. Was with this unit till Aug 43 when he was posted to the CREME at 2 Corps. He came to France with this unit 8 Jul 44.

He was injured in a M/C accident in England, damaging his back but was only hospitalized a couple of days and his injury was aggravated in Aug 44 and he was again evacuated to hospital. Here he was sent to 2 CBRG 20 Aug 44 awaiting reboard and reallocation. The board reserved its decision sending him to #2 Convalescent depot for observation. His case was to be reviewed again in a month. However he was kept there for 2 months, and then returned to 2 CBRG. He was due to be sent for reboard again the day he went missing.

In March 43 he received news that his wife had been unfaithful and had a child by another. He applied for compassionate leave in order to arrange for a divorce and the custody of his own two sons but this was not granted. He then tried to transfer to the American Army as he hoped to go into Bomb Ordnance as in this manner he could get home on a course. The necessary authority came through Feb 44 but was automatically cancelled when all transfers were frozen at this time on account of final preparations for the invasion. He was awaiting the outcome of his reboard before making another application for compassionate leave.

Feeling very depressed he went out on a drinking spree with a friend 8 Nov 44 and his next recollection was finding himself in the port of Toulon 5 Dec 44. He immediately started back intending to come direct to Ghent, or failing this to surrender himself to the Canadian Military Police. Reached Lyon 8 Dec and as he could not get any further that and could not find accommodation he surrendered himself to the American MP's. They held him a short time in Lyons and then transferred him to the Paris detention barracks which apparently is jointly run by all branches of the allied MP's. He finally was brought back to CBRG 8 Jan 45 and has been held here since that date.

His case was first officially reviewed at Coy Orderly room approx 15 Jan 45. He was remanded for further evidence (the checking of his proper date of surrender) then brought up before Col Rick and remanded for PGM. On none of these occasions was the man given an opportunity to give his full story.

Due to his apparent loss of memory I brought him before a medical officer (Capt Passerman 13 CBR Bn). He and another MC questioned him for over an hour and recommended a psychiatric consultation and arrangements were started for this. These have not been completed but the decision of the consultant should be taken into consideration before sentence is finally awarded.

(Sgd) A.F. McIntosh Lt 9 CBR Bn  
Defending Officer

No. A55712 Name HYMAN, D.J.

Sqn, Battery,  
or Company

65 Coy, 9 CBR Bn

(Temporary)

Date of  
enlistment

Corps

GC  
Badges  
Signature GC  
Company, etc

Service or  
Proficiency Pay

3/17 MFM 6  
(AFB 122)  
40/P&R/130 (5412)

Character

Date of last entry in  
Company Conduct Sheet

No. and date  
of last drunk

Period not reckoning towards  
freedom from extra fine

Sheet No

Place	Date of offense	Rank	Case of drunken- ness	Period not reckoning towards freedom from extra fine	Name of Witnesses	Punishment awarded	Date of award or of order discus- sion with trial	By whom awarded	Remarks
				TOS from 12 CBR Bn 22-1-45 OFFENSE					
				Certified that original MFM 6 is not available and that this is a true copy of all information available.  (sgd) C.L. Nelson Capt & Adj 9 CBR Bn					
	27 Jan 45.								

SUMMARY OF EVIDENCE

in the case of

A.55712 L/Cpl, HYMAN, D.J. on the strength of 65 Coy., 9 Bn, 2 CBRG, a soldier of the Canadian Army Overseas, who is charged with:

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,  
A.A. Sec. 15(1)

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS

C.40532 Sgt CARTWRIGHT, C.G., CIC, on the strength of 65 Coy, 9 Bn., CBRG. (formerly 12 Bn), having been duly sworn states:

"I am C.40532 Sgt Cartwright, C.G. of 65 Coy 9 Bn. I am Sgt Instructor on the P.A. At 1 600 hours 8 Nov 44, I was handed a draft notice posting L/Cpl. Hyman, D.J., to No. 3 Re-Allocation Centre. I immediately checked Coy training parades, fatigue parties, barrack rooms, and Camp Area but was unable to locate L/Cpl. Hyman. The result was, the draft to No. 3 Re-Allocation Centre left without this man. This man was not previously warned for draft."

The accused declines to cross-examine this witness.

(Sgd) C.G. Cartwright.

SECOND WITNESS

Certificate under the Army Act, Sectn on 163(1)(1) was shown to the accused, marked by me as Exhibit "B" and is attached hereto.

The accused declines to cross-examine this witness.

(Sgd) V.D. Kenyon Lieut  
Officer detailed to  
take the summary of evidence.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

The accused does not call any witnesses in Defence.

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(Sgd) V.K. Kenyon Lieut  
Officer detailed to take the  
Summary of Evidence.

In the Field  
26 Jan 45.

This is Exhibit "A" referred to in the Summary of Evidence in the case of A.55712 L/Cpl Hyman, D.J. taken before me this 26th Jan 1945.

(Sgd) D Kenyon Lieut

CERTIFICATE UNDER THE ARMY ACT SECTION 163(1)(j)

I C. Beaulne Lieut D.A.P.M. Cdn Mil Staff Paris Ce rtify that

Regt No A55712 Rank L/Cpl Name Hyman, D.J.

Regiment No. 2 C.B.R.G.

Unit N/A

Stationed at N/A

Surrendered himself to No 35641214 Rank Sgt Name Jones

of the American Civil Affairs, Clermont Ferrand

on the 6th day of Dec 1944, at 2230 hours

as An absentee without leave

at the time of his surrender he was wearing (Military uniform)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

(Sgd) C. Beaulne Lieut  
DAPM Paris

Field  
30 Dec 44.

Date 1 Feb 45

2 CBRG

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

2. (a) I request that  
if available, be appointed, OR  
(b) I request that an officer be appointed as my  
Defending Officer at my trial by Court Martial.

(Sgd) D.J. Hyman.

I hereby certify that Lt A F McIntosh was appointed to defend  
A.55712 L/Cpl Hyman D.J. at his forthcoming trial  
by Court Martial and that the said Lt A.F. McIntosh  
was notified that he was defending officer on 1 Feb 45.

(Sgd) C.L. Nelson Capt Adj  
9 Bn 2 CBR Gp.



No 2 General Hospital R.C.A.M.C.

No. PSY - 6

MEDICAL UNIT DEPARTMENT OF Psychiatry

No. A55712 Rank L/Opl Name HYMAN, D.J. Unit 2 Cps Tps RCENE

Age 31 Cat A Service

Enl - Oct 44

O/S Jan 42

Date 16 Feb 45.

Fr 8 Jul 44

MARRIED - V2

Referred for psychiatry report request Admin Authority -  
Confirming Authority - pending promulgation of sentence PFCM.  
AWL 28 d. Was pending return to 3 CRC for review SMB. Got  
drinking with a friend 5 Nov and woke up in Toufon on Dec 5. Loss  
of memory for period unable to recall anything since - never  
happened before worried a bit about wife etc. "ack trouble-  
some - Can't lift or do much bending - Couldn't go back to unit  
or front - feel I would be better employed in a pay office  
at work I can do better".

Give long history of army maladjustment - WS citizen enlisted  
in HCOG in a mechanic W/S posted to 1 BOW/S - fed up didn't  
like work not a mechanic, no trades tag returned to HQ, asked  
for and obtained job as clerk regular hours time off - was  
posted 2 LAD poor attitude - little interest low efficiency  
no trades pay growled largely did GD and a little DR work. In  
Fr employed as DR claims he had a minor fall and was hurried  
into hosp. Too busy at 30 BCI and Aug 44 - 2 wks no improvement  
to 3 CRC and referred to 2 CCS for 1 mon - couldn't  
do exercise and retained for 2 mons on return to CBR. He went  
AWL - Claims domestic trouble started in Dec 42 letter from  
wife in 42 illegitimate child let things slide for a while  
corresponding finally applied for divorce to legal aid. DAB  
investigation showed condition of children was satisfactory  
refused compassionate leave, wished to transfer to US Forces  
but didn't follow up application etc. No acute anxiety evident  
to secure comfortable home - no psychopathy parents or sebs  
has 7 sebs, no neuropathic traits early life aggressive high  
strung type - over reactive impulsive rather locking in restraint  
mixed well active in sports educational - record adequate  
Gde XII (WS) Civil adjustment indicative of some justability,  
changed jobs frequently seasonal state skilled work in in-  
dustry in Detroit Mich Married in 39 No domestic disharmony  
Has attended slack directive purpose perseverence and some  
defendancy. He is avge intelligence but shows immaturity in  
adjustments rebellious judgement. Ego centive in outlook, avoid-  
ed responsibility and seeks easiest way out, readily tires of  
distrain and refuses to meet difficulties lacks self discip-  
line intolerant of frustration. He is short mediocre physique  
plausible voluble irrelable evasive statements tends to be  
superficial and irresponsible unreasonable in attitude -  
no objective signs of tension or significant affective state  
elected morale is poor motivations and volition poor In-  
efficiency- Psychopathic Personality inadequate MS2 level and  
Do not see any evidence of muedissolation state hysterical  
amnesia in this case alcohol no doubt was a factor Feel he is  
responsible for his act, in a measure his personality defects  
are a mitigation factor. He is fit to serve sentence and should  
be dealt with in disciplinary base.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-55712 Pte (L/Cpl) Donald James HYMAN, 9 CBR Bn

Charge. <small>(Insert "alternative" where applicable.)</small>	Plea. <small>(See Instrs p 2.)</small>	Finding. <small>(See note below)</small>	<small>(Space for use as required for further charges, accused charged jointly, special findings, etc.)</small>
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 (n 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in case of list see RP 44 (n 5).)

Accused present under sentence for none beginning on none (1).

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B335 or AF B296.)

Time in confinement awaiting present trial—a total of 66 days, of which 11 days were spent in hospital. (1)

(1. See RP 46(A) (n 2). Information should be found on MF B335 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo one years detention.

(Sgd) 10 Feb 45 (Sgd) G.S. MacKenzie Major  
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)  
(See back of Convening Order as to assembly and disposal of record after trial.)

~~PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 57(5), RP 120(F), MML p 760.)~~

~~Date (Sgd) Commanding~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 8.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised. AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 54. Minutes of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (n 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. (1) X Q  
(1. AA 57A. Delete if not used.)

Date 17 Feb 45 (Sgd) G.S.N. Gostling Brig  
 Commanding 2 Cdn Base Hrt Sp  
 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 57b, 577.)

Accused. Date. Signature of Offr.  
 A55712 Pte (L/Cpl) Donald James HYMAN 20 Feb 45 (Sgd) C.L. Nelson Capt Adj  
 9 CBR Bn 9 Bn 2 CBR Sp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

FIELD GENERAL COURT-MARTIAL

CPA 10 (10 1191 of AFAS) 40 P 50 R 1006 (4/80) 4/38B

Convened by Order of Brig G.S.N. Gostling Comd 2 CBRG dated 3 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname.  
 A.55712 Pte (L/Cpl) Donald James HYMAN 9 CBR Bn

CERTIFIED TRUE COPY/  
 PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 10 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/115

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Para ROL. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or previous para number herein. See back of Convening Order, CF 405, for notes and lists on how to record addresses, evidence, etc, which lists are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 24, 53-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if attached thereto.)<sup>(1)</sup> The Court is satisfied that it is properly convened and constituted<sup>(2)</sup>, accused is not amenable to military law, and each charge discloses an offence.<sup>(3)</sup>

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is not brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is not fit to undergo trial by court-martial.<sup>(1)</sup> The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.<sup>(2)</sup>

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to \_\_\_\_\_ as interpreter? Ans \_\_\_\_\_  
 The Interpreter is sworn.<sup>(1)</sup> Do you object to \_\_\_\_\_ as shorthand writer? Ans \_\_\_\_\_  
 The shorthand writer is sworn.<sup>(2)</sup>

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.<sup>(1)</sup> President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO <sup>(2)</sup>  
(1. RP 110. 2. If no objection, waiting member retires. RP 68(D). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.<sup>(1)</sup> The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G.S. MacKENZIE, MBE, PCN, X-0 List att 3 Cdn
Member	Major	D. MacKENZIE, Essex Scot, X2 List att 3 Cdn
Member	Lieut	B. JAMES, CPC 11 CBR Bn
Judge-Advocate		
Prosecutor	Lieut	A.F. MANN, CIC 11 CBR Bn
Defending Offr	Lieut	A.F. McINTOSH, CAC 9 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans \_\_\_\_\_ Is the Defending Offr a lawyer? Ans \_\_\_\_\_<sup>(1)</sup>

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Df p 2.)

A8. The accused A55712 Pte (L/Cpl) HYMAN, D.J. before arraignment make(s) no plea <sup>(2)</sup>

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in case of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 15, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn 1 to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is not arraigned separately on all charges in the charge sheet.<sup>(1)</sup> The accused does not object to any charge.<sup>(2)</sup> There is no amendment to be made to the Charge Sheet.<sup>(3)</sup> The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 406 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBR G AB 160 Vol III p. 77

## INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Index (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (15); duty and privileges of accused and Defending Offr see RP 60(C), 67(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 60, 67(C), 92(B); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

## RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)<sup>(1)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.<sup>(2)</sup>  
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).<sup>(1)</sup> If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined<sup>(3)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(4)</sup>

President to accused: Do you wish to make a statement? Ans. Yes <sup>(1)</sup>  
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.  
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.<sup>(1)</sup> The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on three charge(s). The accused is (are) so informed, and he (they) understands his (these) plea(s) in reference to the charge(s). Part I of the Schedule is amended accordingly.  
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.<sup>(1)</sup>  
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.<sup>(1)</sup>

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of para D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

## RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using para D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.<sup>(1)</sup>  
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using para B1 to B6 of Record Form B above.<sup>(1)</sup>

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with para D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the ~~pleas~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. Yes <sup>(1)</sup>  
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.<sup>(1)</sup>

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.<sup>(1)</sup>

(1. RP 39(C), 114, KR Con 355. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.<sup>(1)</sup> The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the three charge(s)<sup>(2)</sup>. The Court is closed, and considers the submission.<sup>(3)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the three charge(s), and allowed on the three charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).<sup>(4)</sup>

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.<sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts of your character or both, in which case you will be subject to cross-examination.<sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination.<sup>(3)</sup> But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.<sup>(4)</sup> You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes Do you intend to call witnesses on your behalf? Ans. Yes Are they witnesses as to character only? Ans. Yes  
(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.<sup>(1)</sup>

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 995. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).<sup>(1)</sup> The finding(s) of the Court is (are) recorded in Part I of the Schedule.<sup>(2)</sup> The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the three charge(s), being subject to confirmation, will be promulgated later.<sup>(1)</sup>

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.<sup>(2)</sup>  
(1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

## RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?<sup>(1)</sup>

Ans. Yes  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service<sup>(1)</sup>, and certified true copy (copies) of Conduct Sheet(s)<sup>(2)</sup>, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.<sup>(3)</sup>

(1. MFB 355 or AFB 276. 2. MFM 6. 3. RP 46, KR Con 158. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?<sup>(1)</sup> Ans. Yes  
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.<sup>(1)</sup>

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.<sup>(1)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.<sup>(2)</sup>

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-564, Overseas RD 209, 2122, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(1), 68(1), KR Con 504. 2. RP 30. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The court recommend that an investigation  
of Pte Hyman's domestic affairs be made.

10 Feb 45

G.G. MacKenzie Major  
President

CHANGE SHEET

The accused, A.55712 L/Cpl. HYMAN, D.J. on the strength of 65 Coy, 9 Bn., 2 CBRG., a soldier of the Canadian Army Overseas, is charged with:

First Charge  
AA Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, did absent himself without leave from 1600 hrs, 8 Nov 44 until surrendering himself at 2230 hrs 6 Dec 44.

TOTAL TIME ABSENT: - 28 days, 6 hours and 30 minutes.

(Sgd) H.W. Rick Lieut-Col.  
Commanding Officer  
9 C.B.R. Bn

In the Field,  
26 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(Sgd) SENGostling Brig  
Comd  
2 Cdn Base Rft Gp

In the field  
3 Feb 45.

# FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried in his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 159.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmnt, A/Rank or A/Appmt, if any, see AA 182, 183, fn, KA Can 306, 328, 330.)

## ACCUSED.

Number.	(a) Print R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A. 56712	Pte	(L/Cpl)	Donald James	HYMAN	9 CBR Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (has) committed the offence(s) set forth in the Charge sheet(s) attached and on (date) 3 Feb 45 endorsed by me, ~~to be tried by an ordinary General Court-Martial.~~ "To be tried by Field General Court-Martial."

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;~~  
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I hereby appoint (or the Offrs on the Court) (b) as President, for the reasons stated below.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I hereby appoint as Judge-Advocate (or the Offr on the Court) (b) as Judge-Advocate, for the reasons stated hereunder.~~  
(RP 106(E). Delete, if none appointed.)

### PRESIDENT.

Major G.G. MacKENZIE, WEE FGH, X-9 List att 3 Cdn MEFD (Unit)  
(Rank) (Must be named. RP 106.)

### MEMBERS.

Major D. MacKENZIE, Essex Scot X-9 List att 3 Cdn MEFD

Captain B. LAMARRE CPC 11 CBR Bn (Unit)  
(Rank) (Named or detailed. RP 106.)

### WAITING MEMBER.

(Rank) (Named or detailed, if any. RP 106.) (Unit)

### JUDGE-ADVOCATE.

(Rank) (Must be named, if any. RP 106.) (Unit)

On Active Service in the Fd

in BELGIUM G S N Gestling Brigadier  
(Country) (Signed personally. RP 105 fn 2.) (Rank)

Date 3 Feb 45 Commanding 2 Cdn Base Rft Gp  
Convening Officer.

**CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS**

4/38A (FAS) (in lieu of AFAS) 10/7 & 8/1947 (403)

(See overleaf for oaths and notes for use on trial.)

CANADIAN MEDICAL SERVICE

DATE 7 Feb 45 No.

No, Rank and Name A. 55712 L/Cpl HYMAN, D.J.

R

The m/n has been referred for psychiatric interview but as yet has not had a consultation. 292 has been sent to MO of 8 Bn for arrangement of interview.

Signature of MO MM Wasserman Capt

MEDICAL OFFICER CERTIFICATE

(KR(Can) Para 557)  
CMHQ CL 173

I certify that I have this day examined A55712  
L/Cpl HYMAN, D.J. and in my opinion he is  
fit to undergo trial by Court Martial.

Station Field

(Sgd) M M Wasserman Capt

Date 7-2-45

8 CBR Bn.

MEDICAL OFFICER CERTIFICATE

(KR (Can) Para 557)  
CMHQ CL 173

I certify that I have this day examined A55712  
L/Cpl HYMAN, D.J. and in my opinion he is  
fit to undergo trial by Court Martial.

Station Field

(Sgd) M M Wasserman Capt

Date 10 Feb 45

8 CBR Bn.

STATEMENT A.55712 L/Cpl HYMAN, D.J. 9 CBR Bn

NOT ON OATH

"On 8 Nov 44 I met a friend of mine and we went down town in Ghent and had quite a few drinks. The next I knew was 5 Dec 44. I was in Toulon. I immediately started back to Ghent. The 6 Dec I could not get any farther than Lyon. I was unable to get a room or a train. I turned myself into the American MP's.

R.P. 83 (B) complied with.

(Sgd) Donald Mackenzie Major  
Member of Court.

Character Witness

Statement of C.40532 Sgt Cartwright C.G. 65 Coy 9 Bn.

Under Oath.

"The accused was with the coy on where I was PE on two previous occasions. During his stay with the coy I, on several various occasions, had jobs for this NCO to do and found that he was quite capable in his line of duty."

RP 83(B) conformed with.

Donald MacKenzie Major  
Member of Court.

Character witness.

Lt E.G. Patchell CBRG

Duly sworn

The accused has been with me since some time in Sept 44 and has given excellent service. His character has been above reproach. In performing his duties he has always been very reliable and any duties assigned him as have always been well passed out. For the reason that drivers are issued their log books the previous evening is because they have proved themselves reliable and were not take any unauthorized trips. I continued to employ the accused as a driver after he had been placed under open arrest and made myself responsible to the CO of 12 Bn for his conduct. I had no hesitation in doing so.

R.P. 83(B) conformed with.

Donald MacKenzie Major  
Member of Court.



PLEA OF MITIGATION

A55712 L/Cpl Hyman D.J. is an American who crossed from Detroit to Windsor 10 Oct 41 to join the 1st Base Ordnance Workshop. Came overseas with the advance party of this unit Jan 42 and remained with them in England approx 6 months. He was then posted to "1 CORN and posted from this to 93 LAD. Was with this unit till Aug 43 when he was posted to the CBRG at 2 Corps. He came to France with this unit 8 Jul 44.

He was injured in a M/C accident in England, damaging his back but was only hospitalized a couple of days and his injury was aggravated in Aug 44 and he was again evacuated to hospital. Here he was sent to 2 CBRG 20 Aug 44 awaiting reboard and reallocation. The board reserved its decision sending him to #2 Convalescent depot for observation. His case was to be reviewed again in a month. However he was kept there for 2 months, and then returned to 2 CBRG. He was due to be sent for reboard again the day he went missing.

In March 43 he received news that his wife had been unfaithful and had a child by another. He applied for compassionate leave in order to arrange for a divorce and the custody of his own two sons but this was not granted. He then tried to transfer to the American Army as he hoped to go into Base Ordnance as in this manner he could get home on a course. The necessary authority came through Feb 44 but was automatically cancelled when all transfers were frozen at this time on account of final preparations for the invasion. He was awaiting the outcome of his reboard before making another application for compassionate leave.

Feeling very depressed he went out on a drinking spree with a friend 8 Nov 44 and his next recollection was finding himself in the port of Toulon 5 Dec 44. He immediately started back intending to come direct to Ghent, or failing this to surrender himself to the Canadian Military Police. Reached Lyon 8 Dec and as he could not get any further that and could not find accommodation he surrendered himself to the American MP's. They held him a short time in Lyons and then transferred him to the Paris detention barracks which apparently is jointly run by all branches of the allied MP's. He finally was brought back to CBRG 8 Jan 45 and has been held here since that date.

His case was first officially reviewed at Coy Orderly room approx 15 Jan 45. He was reminded for further evidence (the checking of his proper date of surrender) then brought up before Col Wick and remanded for FGCM. On none of these occasions was there given an opportunity to give his full story.

Due to his apparent loss of memory I brought him before a medical officer (Capt Wasserman 13 CBR Bn). He and another MO questioned him for over an hour and recommended a psychiatric consultation and arrangements were started for this. These have not been completed but the decision of the consultant should be taken into consideration before sentence is finally awarded.

(Sgd) A.F. McIntosh Lt 9 CBR Bn  
Defending Officer

No. **A55712** Name **HYMAN, D.J.** Sqn, Battery, or Company **65 Coy, 9 CBR Bn** (Temporary) Date of enlistment **3/17 MFM 6**  
 Corps **OC** Badges **Service or Proficiency Pay** **(AFB 122)**  
**40/F45/150 (15413)**  
 Date of last entry in Company Conduct Sheet **No. and date of last drunk** Period not reckoning towards freedom from extra fine **Sheet No** Signature OC Company, etc **Character**

Place	Date of offence	Rank	Case of drunkenness	TGS from 12 CBR Bn 22-1-45 OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	27 Jan 45.			Certified that original MFM 6 is not available and that this is a true copy of all information available.  (Sgd) C.L. Nelson Capt & Adjt 9 CBR Bn					

SUMMARY OF EVIDENCE

in the case of

A.55712 L/Cpl, HYMAN, D.J. on the strength of 65 Coy., 9 Bn, 2 CBRG, a soldier of the Canadian Army Overseas, who is charged with:

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,  
A.A. Sec. 15(1)

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS C.40532 Sgt CARTWRIGHT, C.G., CIC, on the strength of 65 Coy, 9 Bn., CBRG. (formerly 12 Bn), having been duly sworn states:

"I am C.40532 Sgt Cartwright, C.G. of 65 Coy 9 Bn. I am Sgt Instructor on the P.L. At 1 000 hours 8 Nov 44, I was handed a draft notice posting L/Cpl. Hyman, D.J., to No. 3 Re-Allocation Centre. I immediately checked Coy training parades, fatigue parties, barrack rooms, and Camp Area but was unable to locate L/Cpl. Hyman. The result was, the draft to No. 3 Re-Allocation Centre left without this man. This man was not previously warned for draft."

The accused declines to cross-examine this witness.

(Sgd) C.G. Cartwright.

SECOND WITNESS Certificate under the Army Act, Section 163(1)(j) was shown to the accused, marked by me as Exhibit "B" and is attached hereto.

The accused declines to cross-examine this witness.

(Sgd) V.D. Kenyon that  
Officer detailed to  
take the summary of evidence.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

The accused does not call any witnesses in Defence.

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(Sgd) V.K. Kenyon Lieut  
Officer detailed to take the  
Summary of Evidence.

In the Field  
26 Jan 45.

This is Exhibit "A" referred to in the Summary of Evidence in the case of A.55712 L/Cpl Hyman, D.J. taken before me this 26th Jan 1945.

(Sgd) D Kenyon Lieut

CERTIFICATE UNDER THE ARMY ACT SECTION 163(1)(j)

I C. Gaulne Lieut D.A.P.M. Cdn Mil Staff Paris Ce rtify that

Regt No A55712 Rank L/Cpl Name Hyman, D.J.

Regiment No. 2 C.B.R.G.

Unit N/A

Stationed at N/A

Surrendered himself to No 35641214 Rank Sgt Name Jones

Of the American Civil Affairs, Clermont Ferrand

on the 6th day of Dec 1944, at 2230 hours

as An absentee without leave

at the time of his surrender he was wearing (military uniform).

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

(Sgd) C. Gaulne Lieut  
DAPM Paris

Field  
30 Dec 44.

Date 1 Feb 45

2 CERG

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

2. (a) I request that

if available, be appointed, OR

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Sgd) D.S. Hyman.

I hereby certify that Lt A F McIntosh was appointed to defend A.55712 I/Cpl Hyman D.J. at his forthcoming trial by Court Martial and that the said Lt A.F. McIntosh was notified that he was defending officer on 1 Feb 45.

(Sgd) C.L. Nelson Capt Adjt  
9 Bn 2 USR Gp.

## MEDICAL UNIT DEPARTMENT OF Psychiatry

No. A55712 Rank L/Cpl Name HYMAN, D., Unit 2 Cps Tps RCME

Age 31 Cat A Service

Enl - Oct 44

O/S Jan 42

Date 18 Feb 45.

Pr 8 Jul 44

MARRIED - V2

Referred for psychiatry report request Admin Authority -  
 Confirming Authority - pending promulgation of sentence PFCM.  
 AWL 28 d. Was pending return to 3 CRC for review SMC. Got  
 drinking with a friend 5 Nov and woke up in Toufon on Dec 5. Loss  
 of memory for period unable to recall anything since - never  
 happened before worried a bit about wife etc. "lack trouble-  
 some - Can't lift or do much bending - Couldn't go back to unit  
 or front - feel I would be better employed in a pay office  
 at work I can do better".

Give long history of army maladjustment - US citizen enlisted  
 in ROCC in a mechanic W/S posted to 1 30W/S - fed up didn't  
 like work not a mechanic, no trades tag returned to HQ, asked  
 for and obtained job as clerk regular hours time off - was  
 posted 2 LAD poor attitude - little interest low efficiency  
 no trades pay growled largely did GD and a little DR work. In  
 ER employed as DR claims he had a minor fall and was hurried  
 into hosp. Too busy at 30 BCI and Aug 44 - 2 wks no improvement  
 to 3 CRC and referred to 2 CCS f or 1 mon - couldn't  
 do exercise and retained for 2 mons on return to CBR Bn went  
 AWL - Claims domestic trouble started in Dec 42 letter from  
 wife in 42 illegitimate child let things slide for a while  
 corresponding finally applied for divorce to legal aid. DAB  
 investigation showed condition of children was satisfactory  
 refused compassionate leave, wished to transfer to US Forces  
 but didn't follow up application etc. No acute anxiety evident  
 to secure comfortable home - no psychopathy parents or sons  
 has 7 sibs, no neuropathic traits early life aggressive high  
 strung type - over reactive impulsive rather lacking in restraint  
 mixed well active in sports educational - record adequate  
 Gde XII (US) Civil adjustment indicative of some instability,  
 changed jobs frequently seasonal state skilled work in in-  
 dustry in Detroit Mich Married in 39 No domestic disharmony  
 Has attended slack directive purpose perseverance and some  
 delinquency. He is avge intelligence but shows immaturity in  
 adjustments rebellious judgement. Ego centric in outlook, avoid-  
 ed responsibility and seeks easiest way out, readily tired of  
 restraint and refuses to meet difficulties lacks self disci-  
 pline intolerant of frustration. He is short mediocre physique  
 plausible voluble unreliable evasive statements tends to be  
 superficial and irresponsible unreasonable in attitude -  
 no objective signs of tension or significant affective state  
 eiegeled morale is poor motivations and volition poor in-  
 efficiency- Psychopathic Personality inadequate MSE level and  
 Do not see any evidence of medication state hysterical  
 amnesia in this case alcohol no doubt was a factor feel he is  
 responsible for his act, in a measure his personality defects  
 are a mitigation factor. He is fit to serve sentence and should  
 be dealt with in disciplinary base.

30 F- Ple Hyman, H. U.

O. H. M. S.

M. F. B. 879  
MODEL 15-20 1945-50-70  
REG. 1973-20-47

Correspondence to be PINNED here.

Army Form A.3.

**Form for Assembly and Proceedings of Field  
General Court Martial on Active Service.**

**PROCEEDINGS.**

On Active Service, this 6th day **A.**  
of December, 1941. Order convening the Court

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDW ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court

Martial; \* ~~XXXXXX~~

\* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

\* Omit if not applicable.

\* ~~XXXXXX~~

- \*1. ~~XXXXXX~~
- \*2. ~~XXXXXX~~
- \*3. ~~XXXXXX~~  
(service.)

~~XXXXXX~~

PROCEEDINGS REVIEWED

*Receiving & filing Oct 21 1941*

*President.*

Rank.	Name.	Regiment.
Major	M. F. H. Browne <i>M.M.</i>	No. 1 Cdn Div Inf Reinf Unit

*Members.*

Rank.	Name.	Regiment.
Captain	<b>D. F. STEWART</b> <del>A. G. Green</del>	No. 1 Cdn Armd Corps H.Q.
Lieutenant	D. F. Newson	No. 1 Cdn Div Inf Reinf Unit
Lieutenant	W. M. Oxley	No. 1 Cdn Sigs Hldg Unit

\* Must be signed personally by the Officer actually in command at the time, and all signatures in the composition of the Court to be initialed by him

\*Signed *[Signature]* Brigadier

Commanding Cdn Reinforcement Units.  
Convening Officer.





CHARGE SHEET

*M. B. MacDonald*  
6  
President

The accused A-9000 Pte. Harry Victor HYMAN, of No.4 Holding Company, 1 Cdn. ASC Reinf. Unit, Blenheim Barracks, Farnborough, Hampshire, a soldier of the Canadian Army (Overseas) is charged with, when on active service:-

1st CHARGE

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

SFC

in that he

16(4)

A.A.

at the Salvation Army Hostel, Aldershot, Hampshire on the 19th or 20th November 1941 stole Five Pounds sterling from No.930334 Pte. Bernard BORN, 437 Field Battery, 53 Field Regiment, Royal Artillery, a person subject to military law.

2nd CHARGE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

SFC

14(1)

A.A.

at Blenheim Barracks, Farnborough, Hampshire, absented himself without leave from 2300 hours on 28th October 1941 until apprehended by the civil authorities at Aldershot, Hampshire, at 2325 hours on 28th November 1941.

3rd CHARGE

LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES

SFC

in that he

24(2)

A.A.

at Blenheim Barracks, Farnborough, Hampshire on or about 29th November 1941 was deficient of:-

Boots, ankle prs	1	Razor	1
Brushes, blacking	1	Socks, prs	1
Brushes, polishing	1	Spoon	1
Brushes, hair	1	Towels, hand	1
Brushes, shaving	1	Gym shorts, prs	1
Brushes, tooth	1	Gym shirts	1
Fork	1	Bags, ration	1
Gloves, woollen	1	Haversacks	1
Holdall	1	Tins, mess	1
Housewife	1	Mugs, enamel	1
Table knife	1		

to the total value of £2-11-9½

*N.B. MacDonald*  
(N.B. MacDonald) Lt Col  
Commanding  
1 Cdn. ASC Reinf. Unit

Blenheim Barracks  
Farnborough, Hampshire

29th November 1941.

To be tried by Field General Court Martial

*F.R. Phelan*  
(F.R. Phelan) Brigadier  
Commanding Cdn Reinforcement Units

Farnborough, Hants  
This 3th day of Dec 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD  
AT Blenheim Bks. ON THE 10th DAY OF DEC 41

TRIAL OF:- No. A-9000 Pte Hyman, H.U

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lieut. W.D.S. Careless (Unit) RCASC R.U.)

Defending Officer:- (Name) 2/Lieut. C. Hersom (Unit) RCASC R.U.

At 1500 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to M15888 Pte. Gottselig, P.F. acting as shorthand writer? A2- No.

The shorthand writer is duly sworn.

The accused pleading guilty to the charges in the above mentioned charge sheet, R.P. 35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No.

-----  
BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT  
AND EVIDENCE AS TO CHARACTER.  
-----

No statement.

M. S. B. B. B. B. B.  
President.

H  
T.M.B.

SUMMARY OF EVIDENCE IN THE CASE of A-9000 HARRY VICTOR HYMAN,  
1 Cdn. ABC Reinforcement Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer, Lt Col W.E. MacDonald, 1 Cdn. ABC Reinforcement Unit, Cdn. Army (Overseas), Blenheim Barracks, Farnborough, Hampshire, directs that evidence be taken on oath.

1st Witness

Lieut. R.E. Bates, having been duly sworn states:-

I am Lieut. R.E. Bates, Acting Records' Officer, 1 Cdn. ABC Reinforcement Unit, C.A. (C), Blenheim Barracks, Farnborough, Hampshire.

I have knowledge of certain documents pertaining to this case and relative to the accused. I produce herewith the following:-

- (a) Letter-Ref. A.Hy/41/11/908-3/27 Nov. 41 signed S. Bennett, Superintendent Police, Aldershot, enclosing Statement of Evidence (mentioned in "B") and relative to the accused being brought before the Civil Authorities 27 Nov. 41.
- (b) Statement of Evidence of 930334 Pte. Bernard BONEY-437 Field Battery-58 Field Regiment, R.A. and Albert James Francis MAY Police Constable, Hampshire Constabulary, Aldershot.
- (c) A.P.B. 115 Record of Declaration-Court of Inquiry 2/20 Nov 41 declaring accused absent from 2300 hours 28 Oct 41. (List of Kit deficiencies since reduced).

The accused declined to cross-examine this witness.

*R.E. Bates*  
\_\_\_\_\_  
(R.E. Bates) Lieut.

2nd Witness

930334 Pte. Bernard BONEY-437 Field Battery-58 Field Regiment, R.A.

3rd Witness

Albert James Francis MAY-Police Constable, Hampshire Constabulary, Aldershot.

I certify in my opinion that the attendance of the following, Pte. Bernard BONEY and P.C. Albert James Francis MAY, owing to the expense and loss of time involved are not procurable and a written statement signed by them has been read to the accused and is attached hereto.

*C. Herson*  
\_\_\_\_\_  
(C. Herson) Lieut.  
1 Cdn. ABC Reinf. Unit  
Investigating Officer.

I do not require the attendance of these witnesses for the purpose of cross-examination.

*H.V. Hyman*  
\_\_\_\_\_  
A-9000 Pte. Hyman, H.V.

SUMMARY OF EVIDENCE -- (A-9000 Pte. Harry Victor HYMAN) cont'd.

4th Witness

D-91308 Sgt. KINSELLA, J.A. having been duly sworn states:-

I am D-91308 Sgt. Kinsella, J.A. of No. 4 Holding Company 1 Cdn. ASC Reinforcement Unit, C.A.(C) Blenheim Barracks, Farnborough, Hampshire.

I am performing the duties of C.Q.M.S. and have checked the equipment, clothing and regimental necessaries against the MPC 800 of A-9000 Pte. HYMAN, Harry Victor, and produce herewith a certified list of deficiencies totaling £2-11-9½.

The accused declined to cross-examine this witness.

*J.A. Kinsella*  
D-91308 Sgt. Kinsella, J.A.

5th Witness

B-33965 A/L/Cpl. WILES, R., having been duly sworn states:-

I am B-33965 A/L/Cpl. Wiles, R., a L/Cpl of the Regimental Police, 1 Cdn. ASC Reinforcement Unit C.A.(C) Blenheim Barracks, Farnborough, Hampshire.

I was on duty in the Guard Detention Room on 27th November 1941 when I received instructions from Command Post to detail an escort to proceed to Aldershot Police Station to pick up Pte. Hyman. Upon return of the escort with the accused, I placed him in confinement at 1130 hours 27th November 1941.

The accused declined to cross-examine this witness.

*R. Wiles*  
B-33965 A/L/Cpl. Wiles, R.

The accused soldier was thereupon warned in accordance with R.F. 4 (e)

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused soldier declined to make a statement.

*H.V. Hyman*  
A-9000 Pte. Hyman, H.V.

- 3 -

SUMMARY OF EVIDENCE ---(A-9000 Pte. Harry Victor HYMAN) Continued.

I certify that the foregoing summary of evidence was taken down by me in writing this 30th day of November 1941 at Blenheim Barracks, Farnborough, Hampshire, in the presence and hearing of the accused and that R.F. (c) (d) (e) (f) and (g) have been complied with.

C. Herson  
(C. Herson) 2/Lieut.  
1 Cdn ASC Reinf. Unit  
Investigating Officer.

1, A-9000 Pte. Harry Victor HYMAN desires the assignment of an Officer to represent me at my Court-Martial.

H.V. Hyman  
A-9000 Pte. Hyman, H.V.

List of Witnesses.

Lieut. R.E. BATES  
930334 Pte. Bernard BOHNY  
Albert James Francis MAY  
D-91308 Sgt. KIMSELLA, J.A.  
B-88966 A/L/Cpl. WILES, R.

1 Cdn ASC Reinforcement Unit  
437 Field Battery-52 Fld. Regt.R.A.  
Hampshire Constabulary Aldershot  
1 Cdn ASC Reinforcement Unit  
1 Cdn ASC Reinforcement Unit.

List of exhibits

Letter - Ref. A.Hy/41/11/908 d-27 Nov 41 Signed by S.Bennett  
Supt. Police, Aldershot.  
Statement of Evidence 930334 Pte. BOHNY & P.C. MAY  
A.P.S. 115 Record of Declaration-Court of Inquiry d/30 Nov 41.

1 Cdn. ASC REINF. UNIT - Blenheim Barracks, Farnborough, Hampshire

I certify that on 29th November 1941 I checked the equipment, clothing and regimental necessaries against the M.P.C. 800 of A-9000 Pts. HYMAN, Harry Victor and found the following articles to be deficient:-

ARTICLE	NUMBER	VALUE		
		£	s	d
Boots ankle, prs.	1	1	2	6
Brushes blacking	1			6
Brushes polishing	1	2	1	
Brushes hair	1	2	6	
Brushes shaving	1	1	2	
Brushes tooth	1			5
Fork	1			4
Gloves woollen, prs.	1	1	11	
Heldall	1			9
Housewife	1			7
Table knife	1			10
Razor	1			5
Socks, prs.	1	1	11	
Spoon	1			4
Towels hand	1			6
Gym shorts, prs.	1	2	1	
Gym shirts	1	1	11	
Bag ration	1			2
Handkerchiefs	1	7		
Tin mess	1	2	3	
Mugs enamel	1			5

TOTAL      £ 2 11 9

*J.A. Kinsella*  
 B-CLASS Sgt. Kinsella, V.A.  
 Acting as C.S.M.S.  
 No. 6 Holding Company  
 1 Cdn. ASC Reinf. Unit.

(a)

HANTS CONSTABULARY.



NEW

SUPERINTENDENT'S OFFICE.  
POLICE STATION.  
ALDERSHOT.

Ref: A.Ry/41/11/905.

27th November, 1941.

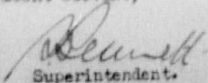
Sir,

Harry Victor HYMAN, Private no. A9000.

I enclose statements of evidence relating to the above named of your unit, who appeared at Aldershot Police Court this day, charged with 'feloniously stealing from the dwelling house of Bernard Borny, the sum of £5, the monies of the said Bernard Borny, at Aldershot on the 19th or 20th November, 1941' and 'being an absentee from the Royal Canadian Army Service Corps at Aldershot on the 22nd November, 1941', and was handed over to the Military Authorities to be dealt with.

I would be glad if you would in due course inform me of the date of proceedings, by whom dealt with, the actual charge of which found guilty, and the sentence awarded Hyman.

I am, Sir,  
Your obedient Servant,

  
Superintendent.

The Officer Commanding,  
Royal Canadian Army Service Corps,  
Elenheim Barracks,  
FAENBOROUGH.



## HANTS CONSTABULARY

Aldershot Division,  
23rd November, 1941.

Sir,

HARRY VICTOR HYMAN @ RIDDELL - in custody - Larceny from house.

I beg to submit statements of evidence relative to the above.

BERNARD BERNY states:-

"I am Private No. 930334, of the 437 Field Battery, 52 Field Regiment, Royal Artillery, stationed at South Walsham, near Norwich, and am at present residing at the Salvation Army Soldiers' Home, Victoria Road, Aldershot.

On Wednesday the 19th November, 1941, I was granted seven days' leave, and came to Aldershot. I booked rooms at the Salvation Army Hostel for the night of the 19th/20th November, 1941, and was given a bed in a room where there were a number of other beds. I went to bed at 9.30 p.m. but did not go to sleep.

At some time between 10 p.m. and 11 p.m. that evening, a Canadian soldier came into my room, and took the bed next to mine. We sat conversing for a while and during the course of the conversation I told him that I had £5. to last me during my leave. He then suggested to me that I should put the money under my pillow whilst I slept for safety.

I did as he suggested, and later went to sleep. When I placed the money under my pillow, it was in a brown leather wallet. At about 8.30 a.m. on the 20th November, 1941, I awoke and felt under my pillow and found that the wallet was still where I had left it, but on examining it I found that the £5. had gone. On looking around the room I saw that the Canadian soldier was missing.

I did not give anyone permission to take the money, and if I saw the Canadian soldier again, I would recognise him.

Signed - B. BERNY.

ALBERT JAMES FRANCIS MAY states:-

"I am a Police Constable in the Hampshire Constabulary, stationed at Aldershot.

At about 2 p.m. on Saturday the 22nd November, 1941, I received a report of this case from the aggrieved person. In consequence I made enquiries, and ascertained that the Canadian soldier who had shared the room at the Salvation Army Hostel, with BERNY on the night of the 19th/20th instant, had given the name of 'H.V. RIDDELL', and further, that he had left the premises early in the morning of the 20th instant.

In consequence of this report I made enquiries with D.C. Long and found that a person giving the name of 'RIDDELL' had booked a room at Miss Daniels Soldiers' Home, Aldershot, for the night of the 22nd/23rd November, 1941.

At about 11.25 p.m. on the 22nd instant, I accompanied D.C. LONG to the Soldiers' Home, where we saw the accused, HYMAN, as he was about to get into bed. I told him that I was a Police Officer, and that I was making enquiries about £5. which was stolen from a soldier's bed, at the Salvation Army Hostel, on the night of the 19th/20th November, 1941.

HYMAN admitted that he was the soldier who had given his name as 'RIDDELL' and who had slept in the same room as BERNY on the night in question, but he denied all knowledge of the £5, stating that he had left the premises early for reasons which were his business. I told him that I was not satisfied with his statement, and asked him how much money he had on him. He stated that he was an absentee from his regiment, and that he only had 3s.6d.

I escorted him to Aldershot Police Station, where he was searched, and in his respirator haversack I found a One Pound Bank of England Note. When asked for possession of this he stated that he had been saving it up. He then said: "I might as well tell the truth, I took it, it's the first time

/ P.T.O.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks  
Farnborough, Hants.  
on the 20th day of November 19 41, for the purpose of investigating  
and recording the absence, without leave, from his duty, and deficiency, if any, in the  
Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of  
No. A-9000 Pte. Hyman, H.

## DECLARATION.

The Court declare, that No. A-9000 Pte. Hyman, H. No. 4 Holding  
Company, 1 R.C.A.S.C. Holding Unit G.A. (O) illegally absented  
himself without leave from Blenheim Barracks, Farnborough, Hants.  
at 2200 hrs. on the 28th day of October 1941 that he is still ab-  
sent, and that on the 30th day of November 1941 he was deficient  
and that he is till deficient of the following articles:-

		£	s.	d.
Anklets, web	1 pr.	4	4	
B.D. blouse	1	2	6	
B.D. trousers	1 pr.	0	6	
Boots, ankle	1 pr.	2	6	
Braces	1 pr.	1	6	
Brushes, shaving	1	1	2	
" tooth	1		5	
Combs, hair	1		2	
Drawers, woollen	1 pr.	7	6	
Dressings, F.F.	1	1	1	
Gloves, woollen	1 pr	1	11	
Razor	1		5 $\frac{1}{2}$	
Shirt, Flannel	1			10
Socks	2 pr			3 10
Towels, hand	1			1 6
Resp. container	1			7 6
" facepiece	1			4 3
" haversack	1			4 7
" Outfit A1d1	1			2 $\frac{1}{2}$
" Eyeshields	6			2 3
" Cint. A/G	1			6 $\frac{1}{2}$
TOTAL				25 - 18 - 8 $\frac{1}{2}$

## Names of President and Members

Lieut. J.P. Burton President

1 R.C.A.S.C. Holding Unit

Lieut. A.N. Innes

Lieut. H.A. Bell

1 R.C.A.S.C. Holding Unit

Members

Signature of Commanding Officer

Lt. Col.

CERTIFIED TRUE COPY  
1 R.C.A.S.C. Holding Unit

Signature of Officer having custody of the

Original Record R.C.A.S.C. H.U.

## HANTS CONSTABULARY

Aldershot Division,  
23rd November, 1941.

Sir,

HARRY VICTOR HYMAN @ RIDDELL - in custody - Larceny from house.

I beg to submit statements of evidence relative to the above.

BERNARD BORMY states:-

"I am Private No. 930354, of the 437 Field Battery, 52 Field Regiment, Royal Artillery, stationed at South Walsham, near Horwich, and am at present residing at the Salvation Army Soldiers' Home, Victoria Road, Aldershot.

On Wednesday the 19th November, 1941, I was granted seven days' leave, and came to Aldershot. I booked rooms at the Salvation Army Hostel for the night of the 19th/20th November, 1941, and was given a bed in a room where there were a number of other beds. I went to bed at 9.30 p.m. but did not go to sleep.

At some time between 10 p.m. and 11 p.m. that evening, a Canadian soldier came into my room, and took the bed next to mine. We sat conversing for a while and during the course of the conversation I told him that I had £5. to last me during my leave. He then suggested to me that I should put the money under my pillow whilst I slept for safety.

I did as he suggested, and later went to sleep. When I placed the money under my pillow, it was in a brown leather wallet. At about 8.30 a.m. on the 20th November, 1941, I awoke and felt under my pillow and found that the wallet was still where I had left it, but on examining it I found that the £5. had gone. On looking around the room I saw that the Canadian soldier was missing.

I did not give anyone permission to take the money, and if I saw the Canadian soldier again, I would recognise him.

Signed - B. BORMY.

ALBERT JAMES FRANCIS MAY states:-

"I am a Police Constable in the Hampshire Constabulary, stationed at Aldershot.

At about 2 p.m. on Saturday the 22nd November, 1941, I received a report of this case from the aggrieved person. In consequence I made enquiries, and ascertained that the Canadian soldier who had shared the room at the Salvation Army Hostel, with BORMY on the night of the 19th/20th instant, had given the name of 'H.V. RIDDELL', and further, that he had left the premises early in the morning of the 20th instant.

In consequence of this report I made enquiries with D.C. Long and found that a person giving the name of 'RIDDELL' had booked a room at Miss Daniels Soldiers' Home, Aldershot, for the night of the 22nd/23rd November, 1941.

At about 11.25 p.m. on the 22nd instant, I accompanied D.C. LONG to the Soldiers' Home, where we saw the accused, HYMAN, as he was about to get into bed. I told him that I was a Police Officer, and that I was making enquiries about £5. which was stolen from a soldier's bed, at the Salvation Army Hostel, on the night of the 19th/20th November, 1941.

HYMAN admitted that he was the soldier who had given his name as 'RIDDELL' and who had slept in the same room as BORMY on the night in question, but he denied all knowledge of the £5, stating that he had left the premises early for reasons which were his business. I told him that I was not satisfied with his statement, and asked him how much money he had on him. He stated that he was an absentee from his regiment, and that he only had 3s.6d.

I escorted him to Aldershot Police Station, where he was searched, and in his respirator haversack I found a One Pound Bank of England Note. When asked to account for possession of this he stated that he had been saving it up. He then said: "I might as well tell the truth, I took it, it's the first time

/ P.E.G.

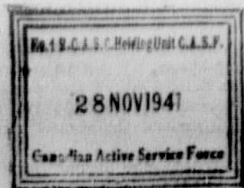
that I have ever stolen anything, but I did take that £5."

I then cautioned and charged him with the offence, and in reply he said: "That's right, I did it."

He was detained.

(Signed) A.J.F. MAY, P.C. 519.

To/ Superintendent S. Bennett,  
Aldershot.



Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks  
 Farnborough, Hants.  
 on the 20th day of November 19 41, for the purpose of investigating  
 and recording the absence, without leave, from his duty, and deficiency, if any, in the  
 Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of  
 No. A-9000 Pte. Hyman, H.

DECLARATION.

The Court declare that No. A-9000 Pte. Hyman, H. No.4 Holding  
 Company, 1 R.C.A.S.C. Holding Unit C.A. (O) illegally absented  
 himself without leave from Blenheim Barracks, Farnborough, Hants.  
 at 2300 hrs. on the 28th day of October 1941 that he is still ab-  
 sent, and that on the 20th day of November 1941 he was deficient  
 and that he is till deficient of the following articles:-

	1	2	3	4	5	6	7	8	9	10
Anklets, web	1 pr.				1					10
B.D. blouse	1		2	4						
B.D. trousers	1 pr.	1	0		5				3 pr	3 10
Boots, ankle	1 pr.	1	3		6				1	6
Braces	1 pr.		1		6					7 6
Brushes, shaving	1		1		2					4 3
" tooth	1				5					4 7
Combs, hair	1				2					2 1
Drawers, woollen	1 pr.		7		6					2 3
Dressing, P.F.	1		1		1					6 1
Gloves, woollen	1 pr		1		11					
Razor	1				5 1					
TOTAL										£5 -18-3d

Names of President and Members

Lieut. J.F. Burton President  
 1 R.C.A.S.C. Holding Unit  
 Lieut. A.N. Innes Members  
 Lieut. R.A. Bell  
 1 R.C.A.S.C. Holding Unit  
 Signature of Commanding Officer *J. Innes* Lt. Col.  
 CERTIFIED TRUE *R.C.A.S.C. Holding Unit*  
*R.G. Pearce* Lieut  
 Signature of Officer having custody of the  
 Original Record *R.C.A.S.C. H.U.*

Date 10 Dec 41

This is to certify that Regt. No. A-9000 Pte. Name H.YMAN, H.V.  
is fit to undergo Court Martial.

Signed B.H. Capt.

**Statement as to Character and Particulars of Service of Accused.**

A-9000 Pte. Hyman, H.W. of the 1. Cdn. ABC Reinf. Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—The Regimental and Squadron, Battery or Company Conduct sheets are to be retained in Court with the charge sheet but are not to be attached to the proceedings.

The Form G.C.R. 1941.

\*The entries herein stated should correspond with the number of entries in the Conduct sheets, provision being given in the most serious offence in each entry, and to any prolonged special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

\*Within last 12 months.      \*Since Enlistment.

For	AWL 15 (1) A.A.	times 1	times
For		times	times
For		times	times
For		times	times

~~Number of instances of gallantry or distinguished conduct~~ **REA**

or,

~~There are no entries in the Conduct sheets of the accused.~~ **REA**

2. ~~The accused has not been previously convicted.~~ **REA**

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Description of Court by which trial, or disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
<b>REA</b>				

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this **10** day of **December**, 1941.

**REA**  
OFFICER I.C. RECORDS  
I.R.C.A.S.C. HOLDING UNIT. **REA**

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for REB  
beginning on the REB day of REB

4. The accused has been in confinement, awaiting trial on the present charges  
for \_\_\_\_\_ days in Civil Custody,  
and \_\_\_\_\_ days in Military Custody.

Total \_\_\_\_\_ days.  
Of which \_\_\_\_\_ days were spent in hospital.

5. The present age of the accused according to his REB  
attestation paper is 21

6. The date of his REB  
attestation specified in his REB  
attestation paper is 5 Sept. 39

7. The service which the accused is allowed to reckon towards discharge or  
transfer to the reserve is \_\_\_\_\_

8. The accused is entitled to deferred pay or gratuity in respect of \_\_\_\_\_  
years' service.

9. The accused is entitled to reckon \_\_\_\_\_ years' service for the purpose  
of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or  
military reward [or is in possession of or entitled to \_\_\_\_\_]

11. (If the accused is a warrant officer.) The accused before he was made a  
warrant officer last held the regimental rank of \_\_\_\_\_

12. (In the case of an officer.) The accused holds in the army the rank of \_\_\_\_\_  
dated \_\_\_\_\_, and in his regiment (or corps  
or department) the rank of \_\_\_\_\_ dated \_\_\_\_\_

13. The accused has served as a non-commissioned officer continuously,  
without reduction, to the present date, \_\_\_\_\_

Date of Promotion.

In the rank of \_\_\_\_\_ years, \_\_\_\_\_  
In the rank of \_\_\_\_\_ years, \_\_\_\_\_  
In the rank of \_\_\_\_\_ years, \_\_\_\_\_

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books  
the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial  
has been dispensed with) is read, marked \_\_\_\_\_, signed by the  
president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in  
which Trial has been dispensed with.

Army Number, Rank and Name REB of the 1. REB, 2. REB, 3. REB, 4. REB, 5. REB, 6. REB, 7. REB, 8. REB, 9. REB, 10. REB, 11. REB, 12. REB, 13. REB, 14. REB, 15. REB, 16. REB, 17. REB, 18. REB, 19. REB, 20. REB, 21. REB, 22. REB, 23. REB, 24. REB, 25. REB, 26. REB, 27. REB, 28. REB, 29. REB, 30. REB, 31. REB, 32. REB, 33. REB, 34. REB, 35. REB, 36. REB, 37. REB, 38. REB, 39. REB, 40. REB, 41. REB, 42. REB, 43. REB, 44. REB, 45. REB, 46. REB, 47. REB, 48. REB, 49. REB, 50. REB, 51. REB, 52. REB, 53. REB, 54. REB, 55. REB, 56. REB, 57. REB, 58. REB, 59. REB, 60. REB, 61. REB, 62. REB, 63. REB, 64. REB, 65. REB, 66. REB, 67. REB, 68. REB, 69. REB, 70. REB, 71. REB, 72. REB, 73. REB, 74. REB, 75. REB, 76. REB, 77. REB, 78. REB, 79. REB, 80. REB, 81. REB, 82. REB, 83. REB, 84. REB, 85. REB, 86. REB, 87. REB, 88. REB, 89. REB, 90. REB, 91. REB, 92. REB, 93. REB, 94. REB, 95. REB, 96. REB, 97. REB, 98. REB, 99. REB, 100. REB

Description of Court by which tried, or status of officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted.
<u>REB</u>	29 Jul 41	1. AWL Sec. 15 (1) AA 2. Losing by Reg. Inst. Sec. 94 (2) AA	90 days det.	

(Continued overleaf)



No. and date of last entry in Company Conduct Sheet

No. and date of last drunk

Ferred not reckoning towards freedom from extra fine

Signature O C

Sheet No 1

Company, etc

No. A-9000 Name **HYMAN, H.V.**

Sqn. Battery

1st DAV Supply Col  
Cpys R. O. A. B. G.

Date of enlistment: 8.9.41

O C

Service or

Proficiency Pay

Character

(New Sheet 3-5-41)

LA & BATES

M F 26 6

Title

Date of entry

Rate

Class of soldier

OFFENCE

Name of witnesses

Punishment awarded

Date of award or of order signed

By whom awarded

Remarks

Camp Gordon

3-6-41 to 3-6-41 to

1. Absent without leave

Geo. 15(1) v.v.

Home

Opt. v.v.

Williamson

7 days C.D. 10-6-40

Major G.D. Forties

Home - 5 days pay

S.O.S. to General Holding Unit,

effective 14-7-40, Part II Order #182 d/14-7-40

S.O.S. on being despatched a deserter w.o.f. 21 Apr. 41.

Plata	Date of offense	Rank	Class of delinquency	OFFENSE	Name of Witness	Punishment awarded	Date of award or of order dispensing with this	By whom awarded	Remarks
Field	21-4-41	Pte.		Sec. 15 (1) A.W.L. from 0600 hours 21 Apr 41 to 1500 hours 22 Jun 41. (82 days 7 1/2 hrs) Sec 24 (2) A.A. losing by neglect his clothing and regt necessaries amounting to £2-2-4	Documentary	90 days det. Assessed pay stoppages 2-2-4. F.M.I. Can 158(2)	29 Jul 41	F.G.O.M.	Forfeits 90 days pay F.M.I. 148(1)(b) 65 days pay F.M.I. 148(1)(a) 35 days pay F.M.I. 148(1)(c)
				Released from Detention Barrack ALBERTSHOT on 26 Sep 41 Sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" 50 days.					
				Commandant's initials ---					
				CERTIFIED TRUE COPY.					
				RECORDS					

52-126

Plc. Hyman, H.V.

**SCHEDULE.**

**PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: A-9000 P.O. Hyman, H.V. 56 Lda to Reg RCASG at 1 Lda this Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUINTY	GUINTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

**A1. present or future sentence for** 90 beginning on 10th <sup>(1)</sup>  
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)  
Time in confinement awaiting present trial—a total of 48 days, of which 0 days were spent in hospital. <sup>(4)</sup>  
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)  
**Sentence Awarded by the Court:**  
To undergo detention for six months.

(Sgd) R June 45 (Date awarded) (Sgd) Hornby (President, RP 45, 50)  
Judge-Advocate, if any. (See back of Convening Order as to assembly and disposal of record after trial)

**PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)**

Date: \_\_\_\_\_ (Sgd) \_\_\_\_\_ Commanding

**PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.**

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Washing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Continued.

I intend that the accused be not committed to prison or detention barracks until further orders. <sup>(1)</sup>  
(1. AA 57A. Delete if not used.)

Date 5 Jun 45 (Sgd) P.D. Lind <sup>(1)</sup>  
Commanding 3 CBR GP.  
Confirming Officer.

**PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)**

Accused: A9000 P.O. HYMAN HV Date: 7 JUN 45 Signature of Offr. W. Daschamp Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

**FIELD GENERAL COURT-MARTIAL**

RECORDED AT CMHQ IN AB 160 56-726

CPARM (10 JUL OF AFAP) 107/8/8788 (1971) 4/388

Convened: Brig J.H. Lind Comd: 3 CBR GP. dated: May 45

**ACCUSED.**

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or full rank, and (b) apptnt, A/rank or A/joppnt, if any, see AA 182, 183, fn1, KR Can 308, 328, 330.)

Number: (a) Prmtt R. (b) Apptnt, A/R or A/Apptnt. Full Christian Names. Henry Victor

A-9000 P.O.  
PROCEEDINGS REVIEWED  
PROCEEDINGS OF TRIAL  
REVIEWING OFFICER, 29 June 45  
BRANCH C.M.H.Q.  
PROCEEDINGS REVIEWED  
REVIEWED BY  
UNIT  
UNITY GP.

**PROCEEDINGS OF TRIAL.**

Held in (a) (Country) Belg cam. on (date) 2 June 45

**RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/54.**

A1. The President, Members, waiting Member, JA, if any, and Offr under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant form Nos. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495 for notes and instructions as to how to record admissions, evidence, etc., which forms are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 62-70, 72, 74, 94, 102, 119, 121.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, attached thereto. <sup>(1)</sup>  
The Court is satisfied that it is properly convened and constituted, <sup>(2)</sup> accused is not amenable to military law, and each charge discloses an offence. <sup>(3)</sup>

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is not brought before the Court. At 11.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is not fit to undergo trial by court-martial. <sup>(1)</sup>  
The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. <sup>(2)</sup>

(1. KR Can 557. 2. AA 46(B), RP 80 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to JA as interpreter? Ans \_\_\_\_\_  
The Interpreter is sworn. <sup>(1)</sup> Do you object to \_\_\_\_\_ as shorthand writer? Ans \_\_\_\_\_  
The shorthand writer is sworn. <sup>(2)</sup>

(1. AP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused <sup>(1)</sup>  
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No <sup>(2)</sup>  
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 57, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offr under instr, if any, are sworn. <sup>(1)</sup> The following are the ranks, names and units of the offrs comprising the Court, etc:

President	<u>Major</u>	<u>S. H. Jernigan</u>	<u>1 Lda C.M. Bde</u>
Member	<u>Major</u>	<u>A. G. Dufour (dapt/1st Lt)</u>	<u>1 Lda C.M. Bde</u>
Member	<u>Capt</u>	<u>A. S. L. Mallo</u>	<u>1 Lda C.M. Bde</u>
Judge-Advocate			
Prosecutor	<u>Sgt</u>	<u>V. Pope</u>	<u>1 Lda C.M. Bde</u>
Defending Offr	<u>Capt</u>	<u>F. Math</u>	<u>1 Lda C.M. Bde</u>

Questions by President: Is the Prosecutor a lawyer? Ans: NA. Is the Defending Offr a lawyer? Ans: NO. <sup>(1)</sup>

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused: A-9000 P.O. Hyman HV before arraignment make(s) no plea <sup>(1)</sup>  
(1. If a special plea is made for separate trial on one or more charges (RP 42(B), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by use of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn to Rsp cited. Insert in NR rank and name of the accused making the plea.)

A9. The accused is not arraigned (deleted) on all charges in the charge sheet. <sup>(1)</sup> The accused does not object to any charge. <sup>(2)</sup> There is no amendment to be made to the Charge Sheet. <sup>(3)</sup> The President records the plea in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 21, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court does not consider the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B+E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MG3 CBR VOL 1 P 77

## INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

- The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).
- The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:
  - If pleas to all charges are GUILTY, use Record Form B below.
  - If pleas to all charges are NOT GUILTY, use Record Form D on p 3.
  - If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,
    - Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)
    - Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instructions as may be appropriate to result of its decision. See MML p 744 Instrs (2).
- As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Officer see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

## RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

- The President ~~JA~~ <sup>JA</sup> ~~complies~~ <sup>complies</sup> with RP 35(B) by explaining to the accused the nature and meaning of the charges ~~(s)~~ <sup>(s)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment. <sup>(2)</sup>  
(1. RP 35 fn 3. 2. MML p 54 para 47.)
- President to accused: The Court will now receive any statement you desire to make in reference to the charges ~~(s)~~ <sup>(s)</sup>. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty <sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined <sup>(2)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire. <sup>(4)</sup>  
President to accused: Do you wish to make a statement? Ans. ~~yes~~ <sup>no</sup>. <sup>(2)</sup>  
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)
- The Court considers the accused's statement. <sup>(1)</sup> The Court decides (not) to advise accused to change his (their) plea of Guilty to Not Guilty on ~~the~~ <sup>these</sup> charge ~~s~~ <sup>s</sup>. The accused is ~~not~~ <sup>so</sup> informed, and he ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~change(s) his (their) plea(s) on~~ <sup>change(s) his (their) plea(s) on</sup> ~~the~~ <sup>the</sup> Part I of the Schedule is amended accordingly. <sup>(1)</sup>  
(1. Court may be closed to consider the statement. Delete whole or part not used.)
- On the charge ~~s~~ <sup>s</sup> to which the plea ~~s~~ <sup>s</sup> of Guilty is ~~not~~ <sup>not</sup> changed the President records finding ~~s~~ <sup>s</sup> of Guilty in Part I of the Schedule. <sup>(2)</sup>  
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)
- The Summary of Evidence is marked Ex. ~~A~~ <sup>B</sup>, initialled and read aloud by the President. <sup>(1)</sup>  
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)
- The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

## RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

- As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2. <sup>(1)</sup>  
(1. RP 37(A) (E).)
- The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above. <sup>(1)</sup>  
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereafter proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)
- The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

- President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ~~no~~ <sup>yes</sup>. <sup>(1)</sup>  
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)
- The Prosecutor makes (an) (no) opening address. <sup>(1)</sup>  
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)
- The evidence for the Prosecution is taken. <sup>(1)</sup>  
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)
- The Prosecution is closed. <sup>(1)</sup> The Defending Officer submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~charge(s)~~ <sup>charge(s)</sup>. <sup>(2)</sup> The Court is closed, and considers the submission. <sup>(2)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the ~~charge(s)~~ <sup>charge(s)</sup>, and allowed on the ~~charge(s)~~ <sup>charge(s)</sup>, and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s). <sup>(4)</sup>  
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)  
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)
- President to accused: You will now proceed with your defence. <sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. <sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination. <sup>(2)</sup> But a statement which would have been made on oath will carry with the Court the same weight as sworn testimony. <sup>(4)</sup> You may call witnesses to prove ~~your defence~~ <sup>your defence</sup>, whether you give evidence or make a statement or do neither.  
President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ~~no~~ <sup>no</sup>. Do you intend to call witnesses on your behalf? Ans. ~~no~~ <sup>no</sup>. Are they witnesses as to character only? Ans. ~~no~~ <sup>no</sup>.  
(1. RP 115. 2. RP 40(A), see 86(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)
- Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. <sup>(1)</sup>  
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)
- The Court is closed to consider the finding(s). <sup>(1)</sup> The finding(s) of the Court is (are) recorded in Part I of the Schedule. <sup>(2)</sup> The Court is re-opened.  
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)
- The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ~~charge(s)~~ <sup>charge(s)</sup>, being subject to confirmation, will be promulgated later. <sup>(1)</sup>  
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed. <sup>(2)</sup>  
(1. AA 34(3) (e), RP 45, 120(A). 2. AA 34(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)
- The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

## RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

- President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? ~~no~~ <sup>no</sup>. <sup>(1)</sup>  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)
- The Prosecutor produces Statements ~~as to~~ <sup>as to</sup> Character and Particulars of Service <sup>(1)</sup>, and certified true copy ~~(copy) of~~ <sup>(copy) of</sup> Conduct Sheet ~~(s)~~ <sup>(s)</sup>, purporting to refer to the accused, which he submits to the Defending Officer for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. ~~B~~ <sup>B</sup> and Ex. ~~C~~ <sup>C</sup> respectively. <sup>(2)</sup>  
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)
- President to accused: Do you wish to address the Court on the Statements ~~and~~ <sup>and</sup> Conduct Sheet ~~s~~ <sup>s</sup>, and in mitigation of punishment? <sup>(1)</sup> Ans. ~~yes~~ <sup>yes</sup> ~~by my defending officer~~ <sup>by my defending officer</sup>. <sup>(2)</sup>  
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)
- The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated. <sup>(1)</sup>  
(1. AA 54(6), RP 120(A).)
- The Court considers the sentence. <sup>(1)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. <sup>(2)</sup>  
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provision, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas RD 309, 2223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 62(1), KR Can 504. 2. RP 50. As to release from arrest by Confirming Officer see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

45.

The accused, A-9000 Pte Harry Victor HEMAN, B6 Cdn Bridge Coy, RCASC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE  
Sec 15 (1)  
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1200 hrs 14 Mar 45 until apprehended in EREDA, Holland at 1145 hrs 14 Apr 45.

(Total absence: 30 days 23 hrs 45 minutes)

Remanded for Summary of Evidence

In the Field  
7 May 45

*J. W. Sedhurst*  
\_\_\_\_\_  
(J. W. Sedhurst) Lt col  
Commanding  
1 Cdn Disciplinary Centre

Remanded for Field General Court-Martial

In the Field  
7 May 45

*J. W. Sedhurst*  
\_\_\_\_\_  
(J. W. Sedhurst) Lt col  
Commanding  
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field,  
15 May 45

*J. S. H. Lind*  
\_\_\_\_\_  
(J. S. H. Lind) Brig  
Comd  
3 Cdn Base Rft Gp

# FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may an application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MM1, Chap V paras 20 and 23, RP 67(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fn. RR Can 308, 328, 330.)

## ACCUSED.

Number.	(a) Prinnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A.9000	Fte		Harry Victor	HYMAN	(86 Cdn Bridge Coy RCASC) att 1 Cdn Disciplinary Centre

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 MAY 45 endorsed by me, ~~(as by an offr of my staff for case)~~ "To be tried by Field General Court-Martial."

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~  
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint to three Offrs to form the Court, (b) a 1st Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate the offr(s) mentioned hereunder.~~  
(RP 104(E). Delete, if none appointed.)

### PRESIDENT.

Major (Rank)	G.E. JERMYN	(MCA)	1 Cdn Court-Martial Centre (Unit)
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### MEMBERS.

Major	A.E. LEFROY	(Seaforth Highrs) 1 Cdn Court-Martial Centre
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Capt (Rank)	R.G.L. MILES	(X-10) 1 Cdn Court-Martial Centre (Unit)
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### WAITING MEMBER.

(Rank)	(Named or detailed, if any. RP 106.)	(Unit)
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### JUDGE-ADVOCATE.

(Rank)	(Must be named, if any. RP 106.)	(Unit)
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On Active Service in the Fd

in BELGIUM  
(Country.)

(Signed personally. RP 105 fn 2.)

Brig

(Rank.)

Date 15 May 45

Commanding 3 Cdn Base Rft Gp

Convening Officer.

**CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS**

MEDICAL OFFICERS CERTIFICATE(KR(Gen) Para 55)  
(CMR2 JL 173)I certify that I have this day examined 49000-  
(No.)PIE HEMPK. HV and in my opinion he is  
(Rank) (Name)  
fit to undergo trial by Court-Martial.  
~~unfit~~Station FIELDAllen Capt. (Sig)  
(Medical Officer)Date 2-6-45Unit 1000 21st. Gen. Hq.



B-2

Statement by Accused in Response to Charge

7-9000 P.O. Hyman, H.V. 86 10th St. Coy at 1 Cavalier Co. states.

I was A.W.L. one Lopez and I got transferred to a new platoon. They told me they didn't want me. I was just an extra man in the platoon. Then when they went to Bunsails they sent me to Cook to help build up a cookhouse for advance bridging. It kept up like that all the time so I went A.W.L. I came back the same day we finished building the cookhouse and the unit was in Bunsails. So I went A.W.L. I figured they would be back in a couple of days. One thing led to another and finally I was picked up in Bunsails. I have volunteered for the Burma campaign to sort of redeem myself. I can do it if I get into another unit.

E-3

Defending Officer in Mitigation

Accused enlisted in Sept 27 last summer in Aug 40 which gives him nearly four years of overseas service. He joined 86th Coy in Dec 43 and was with them until this officer. He arrived in France 2 Aug 44 and ever since he has been with the 86th Coy he has been a spare man with no job to do.

at first night his M.F.M. to look for food. but his last one was in Oct 44 and he has been living on it since that except for minor charges. Considering these facts the court should be lenient in its view of this offense.

H. J. Forman  
2/24  
P.M.

Summary of Evidence in the case of A-9000 Pte HERMAN H V,  
86 Canadian Bridge Coy RCASC, attached to 1 Cdn Disciplinary  
Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused,  
marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from  
Pt II Order No 14 dated 24 Mar 45

Exhibit "B" - Certificate of apprehension dated  
14 Apr 45.

- Q. Do you wish to make any statement or to give evidence  
on oath? You are not obliged to say anything or give  
evidence unless you wish to do so but whatever you say  
or any evidence you give will be taken down in writing  
and may be given in evidence.
- A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence  
consisting of one page was taken down by me in the  
presence of the accused and that RP 4(c) (5) (B)  
(F) and (G) have been complied with.

*M. Rousseau*

(Maurice Rousseau) Capt  
Officer detailed to take Summary of Evidence

Dated in the Field

7 May 45

22

**PART II ORDER EXTRACT FORM**

Exhibit "A"

TO: A-8  
2 Ech

00/20/86Rr Coy/1..(A5e)

*M. H. ...*

14 APR 1945

EXTRACTS FROM: Unit 86 CANADIAN BRIDGE COY RCASC  
Part II Order No. 14 dated 24 MAR 45

ABSENT WITHOUT LEAVE

- (a) AWL from 1200 hrs 14 MAR 45  
A9000 Pte HYMAN H V

Certified to be a true extract from the  
regimental books and documents in my  
custody.

*M. Laune*  
Officer IC Records  
Cdn. Sec. 2 Ech. HQ 21 A Gp.

The following documents are:

For info

Originating Clerk's Initials CAM

for  
Officer in Charge  
Canadian Section, GHQ, 2nd Echelon

CERTIFICATE OF ARREST IN ATTENDANCE WITH ARMY ACT, SECTION 163 (2) (A)

EXHIBIT  
In Rousseau book

I certify that No. 49000.....Rank.....Pte.....Name.....H.V. HYMAN.....  
of 86th Bridging Coy, B.C.A.S.C.....(unit) was arrested at.....~~THEBURN~~.....~~O.R.F.O.T.~~  
.....(place) at.....II45.....hrs on.....14 Apr, 45.....(date)  
he was dressed in uniform /XXXXXXXXXXXXX.

Date.....14 Apr 45..... Signature of Provost Marshal, A.S.I., or other Officer into  
whose custody the a/s person was taken on arrest.  
signature & rank).....*V.H. Hannell, Lieut.*.....  
unit or appointment).....*Staff Lt. G. D.A.M. H.R.S. of C.*

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances is it to be signed by one officer "for" another, or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as "in the field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the best reference should be given.

LIST OF WITNESSES

NIL

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 14  
dated 24 Mar 45

120

Certificate of apprehension dated 14 Apr 45

120

I, the undersigned hereby acknowledge receipt of one copy  
of Charge Sheet and one copy of Summary of Evidence free  
of charge on 7 May 45

*W. C. Lyman*  
W-1000 P-6 HEMAN V V

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number Rank Name Regiment (or as the case may be)

A 9000 Pte HEYMAN H V 86 Cdn Bridge Coy RCASC  
1 Cdn Disc Centre

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For Sec 15 (1) 1 2 times

For \_\_\_\_\_ times

For \_\_\_\_\_ times

For \_\_\_\_\_ times

Date of first entry in Field Conduct Sheet 29 Jul 41

Date of last entry in Field Conduct Sheet 21 Dec 44

2. Previous convictions of the Accused by a Court-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A.

4. N/A accused has been awaiting trial on the present charges for \_\_\_\_\_ days in civil custody and for 48 days in military custody, i.e. 120 days in Open Arrest 48 days in Close Arrest, of which 70 days were spent in hospital.

5. The present age of the accused is 24 years 2 months 25.

6. The date of his Attestation is 5 Sep 39.

7. The service which the accused is allowed to reckon \_\_\_\_\_.

8. The accused is in possession of CWSM & CLASP.

9. (If the accused is a Warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

In the substantive rank of \_\_\_\_\_ Date of Promotion \_\_\_\_\_

In the War substantive rank of \_\_\_\_\_

In the acting rank of \_\_\_\_\_

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
FGCM	29 Jul 41 Field	AA Sec 15 (1)	90 days det	
FGCM	10 Dec 41 Field	AA S <sup>E</sup> c 19(4) AA Sec 15(1) AA Sec 40 Lasing by neglect	1 year imprisonment with hard labour	
FGCM	19. Oct. 42 FIELD.	AA Sec 15(1) AA Sec 24 (2)	18 mos det Stop of pay in the amt of £2-15-10	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd day of June ~~1945~~ 1945

M. A. Lovell

No. 49000 Name HUNTER, R V Sgn. Battery, Corp. Date of enlistment 3 SEP 39  
 Date of last entry in Company Contact Sheet No. and date of last drink  
 Period not reckoning towards freedom from extra fine  
 Signature (IC) Judge DC  
 Receiver or Proficiency Pay (AFM 121) 3/17 MFM 6  
 Character (AFM 121) 1074A/1074B(121)

Place	Date of offense	Rank	Case of drug-mess	OFFENSE	Number of Discharges	Punishment awarded	Type of Award or flag with trial	If shown awarded	Remarks
KIAID	21 Apr 41	1st Lt		VA 15 (1) Absent 62 days	90 days det	29 Jul 41 PGM			MOR 62 days MAY PGM 149 (1)(a)
KIAID	28 Oct 41	1st Lt		1st CHARGE: VA 18(4) Stealing property of a person subject to Military Law 2nd CHARGE: VA 15(1) AWL from 2200 hrs 28 Oct 41 to 2225 hrs 25 mins 3rd CHARGE: VA 40 Losing or neglect his equipment, clothing and personal necessities	1 year Imprisonment with HD 10 Dec 41 PGM			MOR 26 days MAY PGM 149 (1)(a) Close arrest	

EXHIBIT c



Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award of order discharging with trial	By whom awarded	Remarks
Field	19 Oct	42	Pte	1ST CHARGE AA 15(1) AWL from 0800 hrs 19 Oct 42 to 0145 hrs 22 Nov 42 (absent 33 days 17 hrs 45 mins) 2nd CHARGE AA 24(2)		18 mos det Stop of pay in the amt of £2-15-10			Forfs 34 days pay FR&I 149(1)(a) Forfs 5 days pay FR&I 149(1)(c)(1) (close arrest) Forfs 6 days pay FR&I 149(1)(a)
Field	17 Feb	44	Pte	AA 15(1) AWL from 1530 hrs 17 Feb 44 to 2345 hrs 22 Feb 44 (absent 5 days 8 hrs 15 mins)		28 days FP 28 days pay	23 Feb 44		Forfs 19 days pay FR&I 149(1)(a)
Field	4 Nov	44	Pte	AA 15(1) AWL from 2300 hrs 4 Nov 44 to 2300 hrs 23 Nov 44 (absent 19 days)		28 days FP 28 days pay	21 Dec 44		Forfs 19 days pay FR&I 149(1)(a)
<p>DUPLICATE CREATED FROM ICFM 4 14 April 44 RECORD OF CONDUCT IN CANADA          PRIOR TO FOR CDH ARMY OVERSEAS 2 AUG 40 NOT AVAILABLE          "J E LAWRENCE" Lt</p> <p style="text-align: right;">Certified true copy of ICFM 4 in my possession  <i>R. A. Galt</i>          1 Cdr, Royal Army Cadets</p>									

79T (3rd Case)

Pte. Hyman, H. V.

See 367B for 1st case

" 30 F " 2nd "

Correspondence to be PINNED here.



**Form for Assembly and Proceedings of Field General Court Martial on Active Service.**  
**PROCEEDINGS.**

On Active Service, this **twenty-fifth** day  
**November**, 19**42**.  
Whereas it appears to me, the undersigned, an officer in  
Command of **1 Cdn Inf Bde**,

persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.  
And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

\* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

\* Omit if not applicable.

Proceedings reviewed by  
E.H. [Signature]  
Reviewing Officer, 1st Cdn Div.  
to [Signature]

- ~~XXXXXXXXXXXXXXXXXXXX~~
- ~~XXXXXXXXXXXXXXXXXXXX~~
- ~~XXXXXXXXXXXXXXXXXXXX~~
- ~~XXXXXXXXXXXXXXXXXXXX~~



- |              |                    |                             |
|--------------|--------------------|-----------------------------|
| Rank. _____  | President.         | Regiment.                   |
| <b>Major</b> | <b>E.F. Hersey</b> | <b>1 Cdn Div Sigc</b>       |
| Rank. _____  | Members.           | Regiment.                   |
| <b>Capt.</b> | <b>A.H. Ewan</b>   | <b>Sask LI (MG)</b>         |
| <b>Capt.</b> | <b>F.G. Ingram</b> | <b>1 Cdn Div Ord Wkshop</b> |
| Rank. _____  | <b>F.J. Argue</b>  | <b>4 Cdn Fd Amb</b>         |
| <b>Capt.</b> |                    |                             |

\* Must be signed by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

\*Signed (G.G. Simonds) Brigadier  
Commanding 1 Cdn Inf Bde  
Convening Officer.

Correspondence to be PINNED here.

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787

Army Form A.3



Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twenty-fifth day of November, 1942.

Order convening the Court

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [REDACTED]

\* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

\* Omit if not applicable

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Handwritten note: 1st Army Div. Convening Officer

Processing reviewed [Signature] 10 Nov 42

66

President.

Rank.	Name.	Regiment.
Major	E.F. Hersey	1 Cdn Div Sigc

Members.

Rank.	Name.	Regiment.
Capt.	A.H. Ewan	Sask LI (MG)
Capt.	P.G. Ingram	1 Cdn Div Ord Wkshop
Capt.	F.J. Argue	4 Cdn Fd Amb

\* Must be signing officer... actually in command at the time, and all alterations in the composition of the Court to be initialled by him

Signed (G.G. Simonds) Brigadier Commanding 1 Cdn Inf Bde Convening Officer.

**SCHEDULE.**

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A. 9000 Pte. HYMAN, H.V. 1 Cdn Div Sup Coy	1st charge A.A. 15(1)  2nd charge A.A. 24(2)	<i>Guilty</i>	<i>18 months Retention</i> <i>Refused</i> <i>£2-15-10s</i> <i>27 Nov. 42</i>	<i>57 Henry Major President</i> <i>28 hours confinement to find up and down time</i> <i>28 hours confinement to find up</i>

\* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—  
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"  
Answer to be recorded on separate sheet if necessary:— *NO*

(Signed) *P. J. Simonds*  
**(P. J. Simonds) Brigadier**  
Commanding 1 Cdn Inf Bde

(Signed) *S. F. Henry Major*  
**(S. F. Henry Major)**  
President

- (a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.  
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.  
(c) Recommendation to mercy, if any, to be inserted in this column.  
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.  
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the *27<sup>th</sup>* day of *November 1942*, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings

I also certify that :—

- The members of the Court
- The witnesses
- ~~The interpreter~~
- ~~The officers under instruction~~

\* Omit if not applicable

were duly sworn.

Signed this *27<sup>th</sup>* day of *November 1942*

*S. F. Henry Major*  
President of the Court Martial.

\* See footnote (b) on page 702 M.M.L. 1940.

I certify that the terms of \*A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation

\* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ *PS*

Signed this *28<sup>th</sup>* day of *November 1942*

*P. J. Simonds*  
Confirming Officer

Promulgated and extracts taken in the case of *A. 9000 Pte. Hyman H.V.*

(a) (Dated) *30 Nov 42* (Signed) *W. H. J. [Signature]*  
O.C. 1 Cdn. Div. Sup. Coy. (3 Coy.) R.C.A.S.C.

Promulgated and extracts taken in the case of \_\_\_\_\_

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

Promulgated and extracts taken in the case of \_\_\_\_\_

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

*St. Patrick's Day  
Penitence*

The accused, A9000 Pte. Hyman, H.V., 1 Cdn Div Sup Coy(3 Coy) RCASC, a soldier of the Canadian Army (O's) is charged with, while on active service:

1ST CHARGE  
SEC 15(1) AA

ABSENCE WITHOUT LEAVE

in that he, at Cross-IM-Hand, Sussex did absent himself without leave from 0800 hrs 19 Oct 42 until apprehended by the Brighton and Hove Military Police in Preston Park at 0145 hrs, 22 Nov 42. (33 days 17 hours and 45 minutes)

2ND CHARGE  
SEC 24(2) AA

LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING and  
REGIMENTAL NECESSARIES

in that he, in the Field, on 23 Nov 42 was deficient the articles listed below with values set opposite each in the amount of £2 - 15 - 10½ computed at 75% of the Vocabulary Price in accordance with Cdn Army Routine Order(Overseas) 1398.

Article	Vocabulary Price			75% Vocabulary Price		
	£	s	d	£	s	d
Anklets web	1	3	6½	2	7	0
Boots ankle	1	1	6	15	0	0
Braces	1	1	3½	11	3	0
Brushes tooth	1		4½	3	3	0
Gloves woollen	1	2	7½	1	11	0
Holdall	1		9		6	0
Respirator anti gas (complete)		16	6½	12	5	0
Eyeshields	6	2	3	1	8	0
Anti dim	1		2½		2	0
Haversacks RAG	1	4	7½	3	5	0
Knives clasp	1	5	3½	3	11	0
Covers Mess tin	1		3		2	0
Shorts Gym pres	1	1	11	1	5	0
Belts Waist small	1		3		2	0
Sheets ground	1		10		7	0
			<hr/>			<hr/>
			£ 3-14 -6½			£ 2-15-10½

*J. J. G. O'Brien*  
(J. J. G. O'Brien) Capt  
A/Officer Commanding  
1 Cdn Div Sup Coy(3 Coy) R.C.A.S.C.

To be tried by Field General Court Martial.

25 Nov 42

*G. J. Simonds*  
(G. J. Simonds) Brig  
The Adjutant General

Squadron  
Battery  
Company  
Detachment

1 Bdn Div Sup. Coy. R.P.S. Co.

Unit or Battalion

*S. J. Kelly*  
*Tranamb.*

MORNING SICK REPORT

27 Nov

1942

Reg't No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty, a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
H-9000	Pfc. Hyman, H. V.	21	Bapt.		S.	Examined & found free of beriberi and infectious diseases	Fit for trial by court & martial

*G. C. McHarvey Major*

Medical Officer

Orderly N.C.O.

M. F. D. 285  
1,600M-4-45 (4622-4)  
H.Q. 1972-28-245

(OVER)

Proceedings of a Field General Court Martial held at H.Q. 1 Can Para Coy on the 27th day of November 1942 by order of Brigadier G. G. Simons Commanding 1 Can Div dated 25 day of November 1942

President

Major E. F. Henry 1st Can Para Coy

Members

Capt A. H. Evans 1st Can Para Coy

Capt P. G. Duggan 1st Can Para Coy

Trial of

A 9000 Pte Hyman H. V. 1st Can Para Coy (3 Coy) R.C.A.F.C. a soldier of the Canadian Army Overseas.

Court assembled and at 22 and 23 read. Court convened in accordance with the rules.

Court opened 10.55 hrs 27 Nov. 42 accused, court, witness, prosecutor and defending officer enter room.

Opening order read and accused answered to his name.

Accused asked if he has any objection to be tried by myself or President or any member of the court. Answer "No sir" in each case.

President names members, - member names president.

Witnesses marked out

Medical certificate presented to court and examined.

2nd plea in bar of trial

Accused description read and found correct

First charge read, - accused pleads guilty

Second charge read, - accused pleads guilty.

R.P. 35 (B) complied with

Court asked to stand if accept plea of guilty both charges

Summary of evidence read by member of court

54 Henry Henry's President.



Court re assembled and accused informed his plea of guilty accepted on both charges.

Ask accused if desired make a statement on charge  
Answer "No sir"

Accused asked if he wanted to give or call character evidence  
Answer "No sir"

Prosec. asked to produce M.P.M. 6 and A.P.B. 296

Prosec. sworn and produced for court M.P.M. 6 and short statement (attached)

Defending Officer makes statement in mitigation of punishment (attached)

Court closed - ~~prosec.~~ accused informed that he is to be remanded in state court to await promulgation of sentence and his attendance not further required.

St. Henry <sup>Magistrate</sup>  
Pronounced

SUMMARY OF EVIDENCE ON THE CASE OF A-9000 Pte, HYMAN, H.V.  
1ST CANADIAN DIVISIONAL SUPPLY COMPANY (3 COY) R.C.A.S.C. a SOLDIER  
-----OF THE CANADIAN ARMY (OVERSEAS)-----

57  
John  
H. Hyman

By Direction of the Officer Commanding, the summary of evidence is taken on oath.

1st Witness - A9043 Sgt. Aldridge, W., 1 Cdn Div Sup Coy(3 Coy) RCASC having been duly sworn, states:

I am A9043 Sgt. Aldridge, W. of the 1 Cdn Div Sup Coy(3 Coy) RCASC. As administrative Sgt. of Headquarters Platoon it is my duty to call the roll daily at 0800 hrs. On 19 Oct 42 at 0800 hrs roll call, A9000 Pte. Hyman, H.V., failed to answer to his name and was subsequently marked absent. This matter was reported to the C.S.M. and to the Company Orderly Room. I called the roll each day from the 19 Oct 42 to the 12 Nov 42 and at no time was Pte. Hyman present or did answer to his name. He was S.O.S. the platoon on 12 Nov 42(Ref Part One Orders-No. 210, d/12 Nov 42)

*W Aldridge*  
A9043 Sgt. Aldridge, W.

The Accused declines to cross-examine this witness.

2nd Witness - A9195 Cpl. Ricketts, H.E., 1 Cdn Div Sup Coy(3 Coy) RCASC having been duly sworn, states:

I am A9195 Cpl. Ricketts, H.E. of Headquarter's Platoon, 1 Cdn Div Sup Coy(3 Coy) RCASC. On the 19 Oct 42 I was Platoon Orderly Corporal and as such it was my duty to call the roll at Tattoo (2300 hrs). When calling the roll I found that A9000 Pte. Hyman, H.V., was absent. I reported the same to the Orderly Officer on my Tattoo Report.

*H E Ricketts*  
A9195 Cpl. Ricketts, H.E.

The Accused declines to cross-examine this witness.

3rd Witness - A9483 Cpl. Lord, G.W., 1 Cdn Div Sup Coy(3 Coy) RCASC having been duly sworn, states:

On the night of 11 Nov 42, I, as Section Orderly Corporal, called the roll at Tattoo. A9000 Pte. Hyman, H.V. did not answer to his name. This was reported on the subsequent Tattoo report to the Orderly Officer.

*G W Lord*  
A9483 Cpl. Lord, G.W.

The Accused declines to cross-examine this witness.

4th Witness - B88448 Sgt. (A/CQMS) Mathews, T.F.G., 1 Cdn Div Sup Coy (3 Coy) RCASC, having been duly sworn, states:

I am B88448 Sgt. (A/CQMS) Mathews, T.F.G., 1 Cdn Div Sup Coy (3 Coy) RCASC. This is a list (Exhibit B) of regimental kit and necessaries deficient in the case of A9000 Pte. Hyman, H.V., 1 Cdn Div Sup Coy (3 Coy) RCASC., on 23 Nov 42.

Article	Vocabulary Price			75% of Vocabulary Price.		
	2	8	1	2	8	1
Anklets web pra	1					
Boots ankle "	1	3	5½	2	7	
Braces "	1	1	6	16	11½	
Brushes tooth	1	1	3½		11½	
Gloves woollen	1		4½		3½	
Holdall	1	2	7½	1	11½	
Respirator anti gas (complete)	16	9	6½		2½	
Eyeshields	6	2	3½	12	XB	
Anti dim	1		2½	1	8	
Haversack RAO.	1	4	7	1	2	
Knives clasp	1	5	3½	3	5	
Covers mess tin	1	1	3½	3	11½	
Shorts Gym pra	1	1	11		2½	
Belts waist small	1	3	6	1	5	
Sheets ground	1	10	-	7	6	
<b>Total</b>	<b>3</b>	<b>-14-</b>	<b>6½</b>	<b>22</b>	<b>-15-</b>	<b>10½</b>

J. F. Mathews  
B88448 Sgt. Mathews, T.F.G.

The accused declines to cross-examine this witness.

5th Witness - L/Cpl Stevens, A., Brighton and Hove Military Police .

Sir: At Brighton on the 22 Nov 42 at about 0145 hrs I was ordered to proceed to Preston Park to pick up the a/m soldier, who was being detained by the Civil Police as an absentee. He informed me that he had been absent a week from his unit. I obtained his particulars from him verbally as he was not in possession of his MB 1 or 2.

L/Cpl. Stevens, A.

The Accused does not demand the presence of this witness for cross-examination.

Due to the exigencies of the service and the high cost of transport the presence of this witness is in my estimation unnecessary.

F. B. Perrott  
(F.B. Perrott) Capt-1 Cdn Div Sup Coy (3 Coy) RCASC

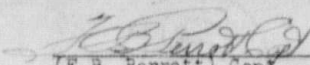
6th Witness - L/Cpl. Hall, Brighton and Hove Military Police.

Sir: I have read over and corroborate the statement of L/Cpl. Stevens, A. Brighton and Hove Military Police.

L/Cpl. Hall

The Accused does not demand the presence of this witness for cross-examination.

Due to the exigencies of the service and the high cost of transport the presence of this witness is in my estimation unnecessary.


  
(F.B. Perrott) Capt  
1 Cdn Div Sup Coy(3 Coy) RCASC

The accused having been duly cautioned in accordance with R.P. 4 a

The accused reserves his defence

Certified that the R.P. 4(c), (d), (e), (f) and (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 23rd day of November 1942 at 1 Cdn Div Sup Coy(3 Coy) RCASC, Field, England.

  
(F.B. Perrott) Capt  
1 Cdn Div Sup Coy(3 Coy) RCASC

CHARGE

Army Form B 432  
(By King's Regulations)

R.O.A.S.G.  
HQ 1 Div Supply Co.

Regiment  
Battery  
Squadron  
Troop or  
Company

CHARGE against No. A 8000 Rank Pte

Name HYMAN H.V.

Place Brighton Date of Offence 31 Nov 42

OFFENCE W.O.A.S. absent from .. until  
apprehended by the Military Police  
in Preston Park at about 0.15 hrs.  
0/40



Names of Witnesses:—

Lt/Col Stevens  
" Hall

Signature of O.C. Battery,  
Squadron, Troop or Company  
Brighton & Hove Military Police

Punishment  
Awarded

By whom  
Awarded

Adjutant.

P.T.O.

Statement of EVIDENCE in the case of  
A 9000 Pts Ryman H.V.  
HQ 1 Div Supply Co.  
RGASC

Sir,

At Brighton on the 22 Novr 42  
at about 0145 hrs I was ordered to  
proceed to Preston Park to pick up  
the s/n soldier who was being detained  
by the Civil Police as an absentee.

He informed me that he had been  
absent a week from his unit. I  
conducted him to the Civil Police  
Station under close arrest to await  
an escort from his unit.

I obtained his particulars from him  
verbally as he was not in possession  
of his MB 1 or 2.

Brighton

.....*Stevens*.....L/Cpl

Sir,

I have read over and corroborated  
the above statement.

Brighton  
22 Nov 42

.....*Cipaly*.....L/Cpl

REMARKS

16 Nov 42  
54 Henry May  
President

Statement of mitigation re case of etc. Hyman.

While it is acknowledged that the accused did absent himself without permission for the period already mentioned, surely this Military Court would not want to punish Private Hyman merely in revenge, that is to say, merely in retaliation for having committed an offence.

Because of previous indiscretions, Hyman has been labelled by almost everyone as "a bad actor". He was returned here after having served out a certain sentence, from the Reinforcement Unit, in spite of his entreaties to be transferred to the Ammunition Company, where he could have started "on the right foot", and where his friend and Uncle was stationed. Failing in that plea, which, after all was only common sense, he asked to be trained on the motorcycle in order that he might be able to secure a job as Dispatch Rider. This request was also turned down, and he came back once more to the First Canadian Divisional Supply Company. Not where he was interviewed by the Padre and properly advised by someone who knew something about the problems of human behaviour, but instead, where, was immediately ostracized by his fellow soldiers, and apparently ignored by the officer and S.C.O.'s of his platoon, ignored possibly because they felt that Hyman was not worth bothering about, but ignored in any case, for Private Hyman has had practically no military training here. He cannot handle a Bren Gun, cannot fire the anti-tank rifle, and certainly cannot drive a truck, for the simple reason that ~~he~~ <sup>he</sup> has never bothered to teach him.

Here, Gentlemen, you have, not a worn-out crook, too old or too stupid to do anything more towards the War Effort, than wash floors, but a strong, healthy young body employed in just that very task and nothing else. Is it any wonder, then, that because of this improper handling, Hyman soon lost interest in the job of work he expected to do when he volunteered for Active Service, becoming so bewildered by this unorthodox, if not inhuman treatment, that absenting himself without leave, did not appear to his mind, the serious offence it actually is.

I ask you, gentlemen, before his spirit is broken completely, not to punish Hyman by sending him to detention or jail, where he will most likely spend his time weaving wicker baskets, but release him so that he can have the training and guidance that would fit him to do his part in whatever assignment the future may hold for the Canadian Army. I say, Gentlemen, in all sincerity, that if Hyman is not given a break on this occasion, I fear he will probably become ~~one~~ <sup>one</sup> of that group of shiftless, disillusioned derelicts, the country was burdened after the last war.

J.B. Patten Lt  
First Can Div Supply Coy.  
H.Q. C.S.C.

No. A9000 Name

HYMAN, H.V.

Sqn, Battery  
or CompanyRCASC Corps  
1 Cdn Div Sup Coy (3 Coy)Date of  
enlistment

2 Sep 39

G.C.  
BadgesService or  
Proficiency Pay

*Heater M. C.*  
 11231 A.P.R. 20-30  
 H.P.M. 20-30

Date of last entry in  
Company Conduct SheetNo. and date  
of last drunkPeriod not reckoning towards  
freedom from extra fine

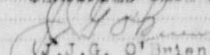
Sheet No.

Signature O.C.  
Company, etc.

Character

Place	Date of offence	Rank	Case or description	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order discharging with trial	By whom awarded	Remarks	
Borden	3.6.40	Pte		Absent without leave - Sec 15(1)	L/Cpl Rowe Cpl Wilkinson	7 days C.B. (extra)	10.6.40	Major G.D Ross-Smith	Frfts 5 dys pay	
Field	21-4.41	Pte		Sec.15(1) A.W.L. from 0800 hrs 21 Apr 41 to 1530 hrs 22 Jun 41 (62 dys, 7½ hrs) Sec 24(2) A.A. Losing by neglect his clothing & regtl necessaries amounting to £22-2-4½	Documentary	90 dys Detn. Pay stoppage £22-2-4½ FR&I Can 158(2)	29.7.41	F.G.C.M.	Frfts 90 dys pay FR&I Ca 149 1 s Frfts 65 dys pay FR&I Ca 149 1 s Frfts 35 dys pay FR&I Ca 149 1 c.	
				Released from Detention Barracks Aldershot on 26 Sep 41. Sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisoners 30 days.						



Place	Date of offence	Rank	Grade of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks	
Field	10.12.41	Pte		Sec 16(1) A.A. Stealing property belonging to a person subject to Military Law to the value of £5	Documentary	One year imprisonment with hard labour and stoppages to the amount of £2.11.9½	23.12.41	F.O.C.M.	Frfts 26 dys pay FR&I Can 149 (1) (a)	
				Sec 15(1) A.A. A.W.L. from 2200 hrs 28 Oct 41 to apprehended by civil authorities at Aldershot on 22 Nov 41					Frfts 165 dys pay FR&I Can 149 (1) (b)	
				Sec 24(2) A.A. Lusing by neglect equipment, clothing and regtl necessaries to the value £2.11.9½					Frfts 16 dys pay FR&I Can 149 (1) (c)	
						Total forfeiture			407 days pay	
				CERTIFIED TRUE COPY						
				 (J.G. O'Brien) Capt R/O.C. 1 Can Div Sup Coy (3 Coy) RCASC						

SHORT STATEMENT AS TO PARTICULARS

*St Henry's  
Thames*

Complied as at 24 Nov 42

- |  |          |
|--|----------|
| (a) The accused has been in confinement for                                  | TWO DAYS |
| (b) The date of his attestation is   | 2 SEP 39 |
| (c) The present age of the accused according<br>to his attestation papers is | 21 YRS   |
| (d) The accused is not entitled to any military decorations<br>or awards.    |          |

I hereby certify that the foregoing particulars  
are true extracts from the register book in my  
custody.

*J.J.O. O'Brien*

(J.J.O. O'Brien) Capt  
a/o.c. 1 Cdn Div Sup Coy (3 Coy) RCASC

567 B.

St. N. H. Hymen

Correspondence to be PINNED here.

Army Form A.3.

### Form for Assembly and Proceedings of Field General Court Martial on Active Service.

## PROCEEDINGS.

On Active Service, this 25<sup>th</sup> day A. of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; \* [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

\* Omit where Convening Officer is a Commanding Officer or is of Field Rank

\* Omit if not applicable

~~\* I am unable to appoint:—~~

~~\*(1—Three Officers to form the Court.)~~

~~\*(2—A Field Officer as President.)~~

~~\*(3—Three Officers having more than one year's service.)~~

for the following reasons, namely:—]

#### President.

Rank.	Name.	Regiment.
Major	J.W. Johanson	1 Cdn Div Sigs

#### Members.

Rank.	Name.	Regiment.
Capt.	G.L. Coward	13 Cdn Tp C Coy
Lieut.	N.H. Bellingall	1 Cdn Div Sup Coln
Waiting Lieut.	J.W.R. Le Blond	Sask L.I. (MG)

\* Must be signed personally by the Officer actually in command at the time, and all alterations on the composition of the Court to be initialled by him.

\*Signed G.R. Fearkes  
(G.R. Fearkes) Major-General  
Commanding 1st Canadian Division  
Convening Officer.

## SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.9000 Pte. HYMAN, H.V. 1 Cdn Div Sup Col	<u>1st charge</u> A.A. 15(1)	Guilty	Guilty 90 days detention	1 confin in country
	<u>2nd charge</u> A.A. 24(2)	Guilty	Guilty 100 days detention	sentenced to the Court  Sgt. Peakes M.B. 1 Cdn Div.

\* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—  
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"  
Answer (to be recorded on separate sheet if necessary) :—

(Signed)

Sgt. Peakes  
(G.R. Pearkes) Major-General  
Commanding 1st Canadian Division  
Confirming Officer (e)

(Signed)

J. Johnson  
Major  
President.

- (a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.  
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.  
(c) Recommendation to mercy, if any, to be inserted in this column.  
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.  
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary)  
to be PINNED here.

I certify that the above Court assembled on the 29<sup>th</sup> day of July 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

B.  
Certificate of  
President as to  
proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses

\* (3) The interpreter

\* (4) The officers under instruction

were duly sworn.

Signed this 29<sup>th</sup> day of July 1941.

J. Johnson Major  
President of the Court Martial

\* See footnote  
(b) on page 254  
N.M.L. 1929.

I certify that the terms of \*A.C.I. 570 of 1918 have been complied with.

C.  
Certificate in  
case of death  
sentences.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

D.  
Confirmation

\* I direct that the soldier named in the margin be not committed to prison until further orders.

Signed this 31<sup>st</sup> day of July 1941.

Sgt. Peakes  
Confirming Officer, M.B.  
1 Cdn Div.

Promulgated and extracts taken in the case of A 9000 Pte Hyman H.V.

(a) (Dated) 2 Aug 41 (Signed) W. Hastie

Promulgated and extracts taken in the case of

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

Promulgated and extracts taken in the case of

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGESHEET

The accused, A.9000 Pte. Hyman, H.V.,  
1 Cdn. Div. Sup. Col., R.C.A.S.C., a  
soldier of the Canadian Army (Overseas)  
is charged with, while on active service

1. Army Act                    ABSENT WITHOUT LEAVE  
Sec 15 (1)

in that, he, in the field, absented him-  
self without leave from 0800 hrs 21 Apr 41  
until apprehended by Brighton Police at  
1530 hrs 22 Jun 41. *skl*

2. Army Act                    LOSING BY NEGLECT HIS CLOTHING AND  
Sec 24 (2)                    REGIMENTAL NECESSARIES

in that he, in the field on 22 Jun 41 was  
deficient the following articles:

Brushes, tooth	. 5 $\frac{1}{2}$
Combs, hair	. 2
Housewives	. 6
Knives, clasp	2.10
Gloves, knitted	1. 8
Socks, worsted	1.11
Towels, hand	1. 4
Vests, wollenn	13.
Eyeshields A/G (6)	2.
Gloves A/G	2. 9
Helmets, steel	7.
Tins, mess	2. 3
Covers, tin mess	. 3

---

£ 2. 2. 4 $\frac{1}{2}$

*Attest*  
(*H. J. Hastie*) Major  
C.C. 1 Cdn. Div. Sup. Col., RCASC

*J. J. Shaw*  
Major

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined  
No A. 9000... P.T.E. HYMAN... H.Y.  
of 1 Cdn. Div. Supply Col. R. C.R.S.C. and in my opinion he  
is <sup>fit</sup> ~~unfit~~ to undergo Trial by Court Martial.

Station Field.....

Date 29 Jul. 41.....

G. C. Mc Harry Capt.  
Medical Officer  
M.O. R.C.A.S.C.

J. Johnson  
Major

FORM "A"  
PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL  
HELD IN THE FIELD ON THE... 24... DAY  
OF. *Jul.* 1941.

TRIAL of No. *A 9000 Pte. Heyman U.V.*

PROSECUTOR *Lieut. B. L. Fryer* | *Lt. Col. W. S. Lohr*

DEFENDING OFFICER *Lieut. Gardner* | *Lt. Col. W. S. Lohr*

OFFICERS under INSTRUCTION:

1. The order convening the court is read in the presence of the accused.  
The accused is asked the following question:  
"Do you object to be tried by the President or any Members of the court whose names you have heard read over?"  
ANSWER; *no*
3. The President, Members, ~~Judge Advocate, Officers under Instruction,~~  
Shorthand Writer and Interpreter are duly sworn. *34*
4. (a) The accused answers to his name and number, and is duly arraigned on the charges.  
(b) The accused having pleaded guilty to *both*  
the Charges, R.P-36(B) is compiled with.
5. The accused is asked the question at the foot of page 2  
of A.F. A. *3*, and his answer is recorded beneath the *35*  
question.
6. The Prosecutor makes ~~(me)~~ (the Following) opening address;  
*see attached page 3*

*J. Johnson*  
*magis*



3

Address by Prosecution

I submit the following exhibits

Exhibit A	Declaration of Court of Inquiry
Exhibit B	Army Form O.1618
Exhibit C	Deficiencies of kit.

The Defence Council states that the accused states that he had not heard the Sections 4-44 which is a statement of facts and ~~advised~~ this sentence should be out.

*J. Johnson*  
*Major*

41

STATEMENT BY DEFENCE

A 9000 Fte. Hyman, H.V. has an absolutely clean crime sheet since he had been in England. The total lack of ignorance regarding the Army Act. At no time since he has been in England can be remember the Sections 4 to 44 being read to him. The main point in his defence is that his crime sheet is clean and due to lack of ignorance it is not as clean as it should be.

*J. J. Lammie  
magin*

AFTER FINDING

*Capt. J. H. Dunne* Is sworn and states;

I produce a certified true copy of A.F. B.122 relating to the accused. (THE said copy is marked signed by the President, and attached to the proceedings.)

QUESTION TO THE ACCUSED;

Do you wish to address the Court, or to call evidence as to character?.

ANSWER. *No.*

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence.

*See attached page 4.*

*J. H. Dunne  
Mayer*

Summary of Evidence

Page 1.

in the case of  
A9000 Pte. Hymans H.V.

6.

1<sup>st</sup> WITNESS

A9155 Sgt. Shuttleworth F.E.

Section Sergeant "B" Section

Sgt. Shuttleworth F.E. having been duly sworn states:

I was section sergeant of "B" Section, 1 Cav. Div. Sup. Col.

R.C.A.S.C., A9000 Pte. Hymans H.V. was one of my men.

He was issued a week-end pass from 1200 hrs 19 April 41  
to 0800 hrs 21 April 41. At 0800 hrs 21 April 41 Pte.

Hymans failed to answer his name at roll call.

I have not seen him since until I heard he had  
been apprehended at Brighton on 22<sup>nd</sup> June 41.

F.E. Shuttleworth *ff*

The accused declined to cross-examine the witness

*ff*

*J. J. Johnson*  
Major *cdl*

WITNESS

Page 2.

Lieut. A. S. Hudson  
A/Administration Officer

Lieut. A. S. Hudson having been duly sworn states  
I am the A/Administration Officer, 1 Cdn Div. Sup. Col.  
R.C.A.S.C.

I produce the following documentary evidence in the  
case of A9000 Pte. Hyman H. V.

1. Declaration of Court of Inquiry and list of deficiencies of clothing and equipment. Exhibit 'A'
2. Certificate of apprehension by Brighton Constabulary dated 23 June '41. Exhibit 'B'

I wish also to state the following. Pte. Hyman was returned to this unit on 23 June '41. On 24 June '41 he was evacuated to 5<sup>th</sup> Field Amb. to be treated for scabies. He was later at 8<sup>th</sup> Field Amb. and was released on 20 July '41 and brought back to 1 Cdn Div. Sup. Col. on that date. During this period he was under close arrest.

A. S. Hudson Lieut

The accused declined to cross-examine the witness.

D. Johnson  
Major

WITNESS

P28118 C. G. W. S. Davis J.  
Quartermaster

C. G. W. S. Davis J. Having been duly sworn states:

I saw the Quartermaster, 1 Cdn Div. Sup. Col. R. C. A. S. C. I have checked the list of 19000 Pte. Nymann H. V. on 21 July 41 and declare the list of deficiencies of clothing and equipment shown on the attached to be a true list. Exhibit 'C'.

*[Handwritten signature]*  
C. G. W. S. Davis

The accused declined to cross-examine the witness.

The accused was asked if he wished to make any statement after having been duly warned in accordance to Rules of Procedure Para. 4 B. He declined.

I certify the above Summary of Evidence has been taken down in accordance to the regulations set forth in Rules of Procedure in the A. C.

C. A. Somerville Capt.  
1 Cdn Div. Sup. Col.

21 July 41

*[Handwritten signature]*  
Major

LIST OF EXHIBITS

- Exhibit A Declaration of Court of Inquiry
- Exhibit B Army Form D.1618
- Exhibit C Deficiencies of Kit

*Ed Lawson*  
*Major*

DECLARATION

THE COURT DECLARE THAT No. A. 9000 Pte. WYMAN, W.V.

1 CDR. DIV. SUP. COL., R.C.A.S.C.

ILLEGALLY ABSENTED HIMSELF WITHOUT LEAVE From his unit and duty

AT 0800 hrs ON THE 21st DAY

OF APRIL 41 THAT HE IS STILL SO ABSENT, AND THAT ON THE

13th MAY 41 HE WAS DEFICIENT, AND THAT HE IS STILL

DEFICIENT OF THE FOLLOWING ARTICLES, - as in EXHIBIT "A" attached.

Articles	Value	Articles	Value

*[Signature]*  
PRESIDENT

*[Signature]*  
MEMBERS  
*[Signature]*  
MEMBERS

SIGNED AT FIELD, England

THIS 13th DAY OF MAY 1941

*[Signature]*  
MAJOR  
O.C. 1 CDR. DIV. SUP. COL., R.C.A.S.C.

*[Signature]*



DESCRIPTIVE RETURN OF: Pte No. A.9000 Harry Victor HYMAN who was apprehended at 5.30pm (hour) on the 22nd day of June 1941 and was committed to confinement at Brighton on the 23rd day of June 1941 as a Deserter (or Absentee without leave) from the Bn. of the 1st. Divisional Supply Coy., Regiment of R. G. A. C. C. Blindley Heath.

Age 19 yrs. Height 5 feet 6 inches  
 Complexion pale. Hair dk. brn. Eyes dk. brn.  
 Marks Scar upper lip. In uniform or plain clothes. Uniform.

Probable date and place of attestation

Probable date of desertion or beginning of absence and from what place From Blindley Heath since 21.6.1941.

Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.  
 W.R. Constable Albert Frederick KENSERTT.

Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

\* At 5.30pm, on 22.6.41, I saw Hyman in the Pavilion Grounds and I said to him, "Can I see your pass?". He said "I have lost it." I said, "You have been here since Tuesday and you must come to Police Station." He said, "All right. I am on the loose." Retained and charged. Replied, "Must I be a deserter?"

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he is *W.R. Constable Albert Frederick Kensertt* of *Town Hall, Brighton.* Residence of Magistrate.  
 Date of Signature *23.6.41.*

*W.R. Constable Albert Frederick Kensertt* Signature of Prisoner  
*121* Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Care should be taken to insert Army No. and Rank.  
 Insert "was apprehended" or "surrendered," as the case may be.  
 It is important for the public service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.  
 Insert "is" or "is not a Deserter" or "Absentee without leave," or "belongs," or "does not belong to," as the case may be.

PART II.

Army Form 'O. 1618.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of  
 Regiment at on by  
 who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I RECOMMEND\*

Address  
 for a reward of  
 (Signature of Committing Magistrate)  
 Date.

The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules:-

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.
2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.
3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed £0/-.

I CERTIFY that the following expenses were incurred by the \_\_\_\_\_  
Police in connection with the apprehension of \_\_\_\_\_  
\_\_\_\_\_ and are  
payable to \_\_\_\_\_

--	--	--	--	--	--

(Superintendent or Officer  
i/c Police Station at \_\_\_\_\_)

Date \_\_\_\_\_

**AUTHORITY for the PAYMENT of a REWARD.**

(For Army use only.)

The Command Paymaster \_\_\_\_\_ is hereby authorised to  
pay to \_\_\_\_\_ being the person recommended by the  
Committing Magistrate, a reward of \_\_\_\_\_ for the apprehension  
of \_\_\_\_\_

Date \_\_\_\_\_ (O.C. Unit)  
Officer Commanding

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below:—

**IMMEDIATE.**

**PART I.**

**DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.**

**INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.**

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier surrendered or was arrested.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

C 19961

H HYMAN A 9000

D.

○ Anklets Web prs	1 - 1	Straps web supporting	2 - 2
○ Bootlaces prs	1 - 2	<del>Thin mess</del>	1 - 1
/ Boots Ankle prs	2 - 2	Bottles Oil	1 - 1
○ Braces prs	1 - 1	Fullthroughs	1 - 1
/ Battle Dress Blouses	1 - 1	Rifles	1 - 1
" " Trousers prsl	1 - 1	Revolvers	1 - 1
" " <del>Blouse</del>	1 - 0	Groundsheets	1 - 1
" " <del>Trousers</del>	1 - 0	Blankets	4 - 3 + 1
/ <del>Brush</del> shaving	1 - 0	Pelisses	1 - 1
" <del>tooth</del>	1 - 0	Goggles and case	1 for drivers
○ Caps Comforter	1 - 1	Gloves M.T. prs	1 and M.C.'s 0
" Field Service	1 - 1	Trousers A/G	1 " " "
<del>Combs</del> Hat	1 - 0	Jackets A/G	1 " " "
○ Discs Identity Red & Green	1 - 2	Jackets M.C.	1 M.C.'s only
/ Dressings First Field	1 - 1	Leggings M.C.	1 " " "
<del>Food</del> Table	1 - 1	Spectacles tinted " prs	1 for MG crew
/ Greatcoats E.S.	1 - 1	Compasses prismatic	1
<del>Head</del> Table	1 - 0	Pockets compass	1
/ Housewife	1 - 1	Smocks butchers	2
○ <del>Knives</del> Glass with lanyard	1 - 0		
" <del>table</del>	1 - 1		
/ Jackets sweater or Pullover	1 - 1		
○ Gloves Winter prs	1 - 1		
/ Razors	1 - 1		
/ Shirts Angola	2 - 1		
2 Socks prs	3 - 3		
/ <del>Spoons</del> Table	1 - 1		
/ Towels hand	2 - 2		
○ Underwear Shirts	2 - 2		
" Drawers	2 - 2		
○ Respirator A/G Complete	1 - 1		
○ Eyeshields A/G (6) pkgs	1 - 1		
○ Ointment A/G tins	2 - 1		
/ Capes A/G	1 - 1		
○ Gloves A/G prs	2 - 1		
<del>Bottles tin oil</del>	1 - 0		
<del>Attachment</del>	1 - 0		
/ Attachment Brace	2 for pistols		
/ Bags <del>attachment</del>	1 - 0		
/ Belts waist	1 - 1		
/ Bottles water	1 - 1		
2 Braces web	2 - 1		
2 Carriers cartridge rixx	2 - 2		
/ Carriers waterbottle	1 - 1		
- Cases pistol	1 for pistols		
/ Covers <del>respirator</del>	1 - 0		
○ Covers Rifle	1 for drivers - 0		
/ Haversacks	1 - 1		
○ Helmets steel	1 - 1		
" Motor Cycle	1 for M.C. riders		
" Crash	1 " " "		
Lanyards pistol	1 for Pistols		
/ Packs	1 - 1		
/ Pouches ammo pistol	1 for pistols		
/ Slings rifle	1 - 1		
/ Straps haversack at & Lft	1 each - 1		

KIT BAR 01  
White Hyman & Charles Hyman

Certified that the above clothing and equipment was in my possession on this date

Date Oct 13 1940

(Sgd) H. Hyman

Witness J. Davis

C.S.M.S.

(Strike out any item not in possession of Soldier.)  
(Add any item of Government equipment or clothing not enumerated.)  
(Fill in serial number of any articles so marked.)

J. Hanson  
Mgt

21-7-41

Deficiencies in Clothing and Equipment

Pte. Hyman, H.V. A 9000.

Brushes tooth	-/5 $\frac{1}{2}$
Combs hair	-/2
Housewives	-/6
Knives clasp	2/10
Gloves knitted drab	1/ 8
Socks worsted	1/11
Towels hand	1/ 4
Vests woollen	12/
Drawers woollen	6/ 3
Eyeshields A/G (pkt of 6)	2/
Gloves A/G	7/ 9
Helmets steel MkI	2/ 3
Tins mess	/ 3
Covers tin mess	

2 2-2-4 $\frac{1}{2}$

*J. H. Davis*  
C. Q. M. S. . .  
1st Cdn Div Sup Col ACASC.

*J. H. Davis*  
*Major*

11

I, the accused, Pte. Hyman, H.V. wish to  
have an officer defend me at my trial by  
Field General Court Martial.

*H. Hyman*  
(H.V. Hyman) Pte.  
1 Can. Div. Sup. Col., R4130

*H. Hyman*  
*Hyman*

No. 1-9000 Name

HYLAN, H. V.

Sqn. Battery,  
or Company

Corps

Date of  
enlistment

2 Sep 39

G.C.

Badges

Service or  
Proficiency PayM.F.M.'s  
(A.F.B. 122)  
3884 - 4-39 (733)  
H.Q. 1772-45-18Date of last entry in  
Company Conduct SheetNo. and date  
of last drunkPeriod not reckoning towards  
freedom from extra fine

Sheet No. 1

Signature O.C.  
Company, etc.

Character

Place	Date of offense	Rank	Cases of drunken- ness	OFFENSE	Names of Witnesses	Punishment awarded	Date of award or of order depend- ing with trial	By whom awarded	Remarks
TOS	NOV 30	TC		CAMP BORDEN 26-2-40	Ft. II Cr. 88		4, 27 Feb 40		
Camp Borden	Feb			Sec 15(1) A.S. AWL	1/Cpl Rowe	7 days C.B.	10-6-40	Major Ross	11th S days D.V.

CONFIRMED  
*Hastie* Major  
 O.C. I Cdg. Div. Sup. Col., R.C.A.S.C.

*Johnson* Major

(PTO)

YYV-94

Pte Nynda N.R.

**SCHEDULE.**  
**PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: K-5088 Pte NORMAN ROBERT HYNDA, R. No. 8, 10 CBR Bn

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See instrs p 2.)	(See note below.)	
1st <u>AA sec 120</u>	<u>NOT Guilty</u>	<u>Guilty</u>	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 in 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 in 6.)

*Dmc* **Assignment under sentence for:**  
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)  
Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital. (2)  
(1. See RP 46(A) in 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)  
**Sentence Awarded by the Court:**  
2 years detention

*Dmc* **Date awarded:** 16 Sep 44 (Sgd) D. M. Cooper Maj President. (RP 45, 50)  
(See both of Convening Order or to assembly and disposal of record after trial.)

**PART II. MINUTE WHERE CONFIRMATION RESERVED.** (AA 54(5), RP 120(F), MML p 760.)

Date \_\_\_\_\_ (Sgd) \_\_\_\_\_ Commanding

**PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.**

(For duties and powers see AA 54, 57, RP 37(D) in 6.46(A), 51-56, 120, MML ps 759-761, KR Can 567-577. Acquittals require confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 in 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed  
I direct that the accused be not committed to prison or detention barracks until further orders. (1)  
(1. AA 57A. Delete if not used.)  
Date 18<sup>th</sup> Sept. 44 (Sgd) D. M. Cooper Commanding 2 CBR Bn Confirming Offr.

**PART IV. PROMULGATED AND EXTRACTS TAKEN.** (RP 53, KR Can 576, 577.)

Accused: K 5088 Pte Norman Robert Hynda 20 Sep 44  
R. No. 12.  
Signature of Offr: Imparadic Capt.  
Adj 11 CBR Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4/38B  
**FIELD GENERAL COURT-MARTIAL**



Order of Brig G. H. H. H. Comd 2 CBR Bn, dated 13 SEP 44  
**ACCUSED.**  
(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, ins, KR Can 308, 328, 330.)  
Number (a) Prmt R. (b) Apptmt, A/R or A/ Apptmt. Full Christian Names. Surname confirmed  
K-5088 Pte NORMAN ROBERT HYNDA  
Date 20 Sep 44 (Sgd) D. J. A. Odm. Sec. O. 1170  
11/11/44  
21 July 44

**PROCEEDINGS REVIEWED**  
John R. L...  
12 Oct 44  
**PROCEEDINGS OF TRIAL.**  
REVIEWING OFFICER, JAG BRANCH C.M.H.Q. on (date) 13/9/44  
Held in the Pd in (country) FRANCE

**RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 18/144**

A1. The President, Members, waiting Member, Dmc and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES DE JA. The Schedule referred to throughout is on p 4. Customs do NOT include all relevant form ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding party number herein. See back of Convening Order, CP 493, for notes and instrs on how to record addresses, evidence, etc., which notes are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, attached thereto. (1) The Court is satisfied that it is properly convened and constituted. (2) accused is Dmc amenable to military law, and each charge discloses an offence. (3)  
(1. As to use of Summary of Evidence see RP 17 in 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is Dmc brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is Dmc fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (2)  
(1. KR Can 557. 2. AA 46(8), RP 60 in 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Dmc as interpreter? Ans  
The interpreter is sworn. (1) Do you object to Dmc as shorthand writer? Ans  
(1. RP 72. Delete, if not employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?  
Ans NO, SIR (2) If no objection, waiting member retires. (RP 62(B)). If objection, see procedure AA 57, RP 25, 71, 108, MML p 742.)  
(1. RP 110. 2. If no objection, waiting member retires. (RP 62(B)). If objection, see procedure AA 57, RP 25, 71, 108, MML p 742.)

A7. The President, Members, Dmc and Offrs, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	<u>D. E. MCFEE</u>	RCA	<u>10 CBR Bn</u>
Member	Capt.	<u>F. E. WALSH</u>	RCA	<u>11 CBR Bn</u>
Member	Lieut.		CIC	<u>11 CBR Bn</u>
Prosecutor	Lieut.	<u>L. HERRING</u>	CIC	<u>11 CBR Bn.</u>
Defending Offr	Lieut.	<u>J. D. TOBIN</u>	CIC	<u>11 CBR Bn</u>

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO. (1)  
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comd Offr.)  
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60 (B) and fn 2 were not followed. See (D) p 33 before arraignment makes 27 (no) 7 plea

A8. The accused K-5088 Pte HYNDA R. No.  
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 6, 7), such plea, the addresses made in support or against the evidence, if any, and finding are recorded per Notes. For forms of record see references in ins to Ref cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is Dmc arraigned Dmc on all charges in the charge sheet. (1) The accused does not object to any charge. (2) There is no amendment to be made to the Charge Sheet. (1) The President records the pleas in Part I of the Schedule.  
(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(c), and use separate copies of CP 496 to record proceedings. 2. AP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court, and each member, considers the instrs of Procedure after arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.  
2 CBR Bn Vol 3 p 11



INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 80(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; answering and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 80, 118; use of Summary of Evidence at Trial see RP 17(E) fn 8; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 (A). 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)(1). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Yes, a statement (2)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.

5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ABC, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No, Sir (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes the (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge of the. The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the 1st charge and allowed on the 2nd charge, and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter.

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes, a statement Do you intend to call witnesses on your behalf? Ans No, Sir

Are they witnesses as to character only? Ans None

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes address, statement, evidence and any summing up by the JA under RP 41, 103(e).)

D7. The Court is closed to consider the finding(s) of the Court is (are) recorded in Part I of the Schedule.(1) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(2) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)

(1. As 34(B) (a), RP 45, 120(A). 2. AA 54(B), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? (2)

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(f) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex AB and Ex BC respectively.(3)

(1. MPB 355 or APB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans Yes, Sir

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(B), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprising of the punishment or punishments laid down in AA 41, 44 and 52 proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 562-566, Overseas AO 309, 2222, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 504. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

*DM*

The accused, **K 5088 Pte HYMDA, M.R., R Wpg Rif** on the reinforcement strength of **10 Cdn Base Rft Bn**, a soldier of the **Cdn Army Overseas**.

is charged with

FIRST CHARGE  
A.S. Sec 12(1)

WHEN ON ACTIVE SERVICE DESERVING HIS MAJESTY'S FORCES

in that he

In the Field, on 3 Sep 44, having been warned for draft to proceed to the Field, with intent to avoid so proceeding, absented himself without leave from 1530 hrs 3 Sep 44 until surrendering himself at 2100 hrs 4 Sep 44. (absent 1 day 5 hours 30 minutes).

In the Field  
3 Sep 44

*A. Shaw*  
(A.T. Law) Lt-Col  
CO 10 C B R Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field  
11 SEP 44

*G. Franck*  
(G. Franck) Brig  
Comd  
2 Cdn Base Rft Gp

# FIELD GENERAL COURT-MARTIAL

*JMC*

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any officer of the Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authority. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Officer in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appointment, A/Rank or A/Appmt, if any, see AA 182, 183, (Inst. KA Com 308, 328, 330.)

## ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-5088	Pte		NORMAN ROBERT	HYNDA	R Wgt Bn, 13 CBR Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 SEP 66 endorsed by me, (as by an officer of my rank or one), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior (qualified) officer.)  
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Officers appointed or detailed hereunder.

4. I am unable to appoint (a) three Officers to form the Court, (one of whom I appoint as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I am unable to appoint as Judge-Advocate (a) the Officer mentioned hereunder.  
(RP 106(E). Delete, if none appointed.)

### PRESIDENT.

Major D W R COOPER 13 CBR Bn  
(Rank.) (Must be named. RP 106.) (Unit.)

### MEMBERS.

Capt To be detailed by O1 11 CBR Bn 11 CBR Bn

Lieut To be detailed by O2 11 CBR Bn 11 CBR Bn  
(Rank.) (Named or detailed. RP 106.) (Unit.)

### WAITING MEMBER.

Capt To be detailed by O3 12 CBR Bn 12 CBR Bn  
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

### ~~JUDGE ADVOCATE~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in FRANCE *G. Francoeur* Brigadier  
(Country.) (Signed personally. RP 105 (a 2)) (Rank.)

Date 11 SEP 66 (G. Francoeur) Commanding 2 CBR Base HQT GF  
Convening Officer.

**CONVENING OFFICER WILL INITIAL ALL DELETIONS AND ALTERATIONS**

W. C. BRAN

16 SEPT 44

THIS IS TO CERTIFY THAT I HAVE THIS DAY EXAMINED  
K50881 PG. HNYDA. N.R. AND FOUND HIM fit  
TO UNDERGO TRIAL BY COURT-MARTIAL

*W. C. Bran*  
W. C. BRAN

WME

11 CBR Bn

DATE 14 SEPT. 44

I HAVE THIS DATE EXAMINED K 50871 PTE HAYDA, N.B.-R.W.B.  
(No) (Rank) (Name) (Unit)

AND FIND HIM fit TO UNDERGO TRIAL BY COURT MARTIAL

Signed .....

*Seyal Capt CSM*  
*M.D. 11 CBR Bn*  
*BMC*

11 CHR BU

DATE .. 13 Sept 41 ..

I HAVE THIS DATE EXAMINED ... K. 52881 Pvt ... Harde ... 1158887  
(No) (Rank) (Name) (Unit)

AND FIND HIM ... fit ... TO UNDERGO TRIAL BY COURT MARTIAL.

Signed ... Sheppard 1st Lt  
in O 1158887  
DME

11 CBR Bn

DATE ... 13 Sep 44

I HAVE THIS DATE EXAMINED ... 450881 Pfc ... Hayda ... 11 CBR Bn  
(No) (Rank) (Name) (Unit)

and FIND HIM ... fit ... TO UNDERGO TRIAL BY COURT MARTIAL

Signed ... Walter R. Cane

WRC

Dml

Evidence in the case of K5022  
 Pte. Herman Robert Hynda, R. W. P. R. 10 COB Co  
 tried by Field General Court Martial, on the  
 field 4 Sept 44

The Court having assembled and no objections being raised as to its constitution was duly sworn. Charge was read to the accused and a plea of not guilty entered

1st Witness Capt W. Brooks C1C 11804 Co  
 having been duly sworn states:

On 3 Sept 44 I was detailed to witness the reading of a draft warning order and the calling of the nominal roll of men proceeding en draft. The accused whom I recognize answered his name on that parade at approx 1230 hrs. Later in the afternoon C.S.M. Cook reported to me that Pte. Hynda, the accused was absent when the draft moved off.

Cross Exam: Who called the Roll?

a) C.S.M. Cook.

Q. Could you say, from memory, if C.S.M. Cook read draft warning order to troops in accordance with R.R. 1099 (warning order to troops) and if he followed amendments as detailed in a routine order dated 2 June 44 from Gen. H.H.G. 1 Etc.?

A. Yes.

Q. Would you recall if C.S.M. Cook stated a definite time and place, where and when the draft was to move off.

A. C.S.M. Cook stated the time of



a parade in the Bay lines and accused  
the men that they were C.B.

Exam by Court: Could you give approx  
wording of warning order that was read  
to the accused.

A. yes approx. "you are warned for  
special duty and anyone who is  
absent from a parade that will be  
called later will be charged with  
desertion"

Q. Was anything said what the draft was  
to do between time of draft warning and  
time of moving off

A. They were to have Med. inspection

Q. Was accused present for Med. Inspr.

A. I don't know I was not there

Q. Was anything said to the men if  
they C.B.

A. Yes. CSM Cook in warning order  
stated they, the draft, were C.B.

Court adjourned <sup>ill 1300hr 14 Sep 44</sup> to give the prosecution  
time to obtain the attendance of CSM  
Cook, chief witness for the prosecution.

14 Sep 44 Court adjourned sine die

On 16 Sep 44

The Court proceeded without  
CSM Cook, whose attendance could not  
be obtained in the near future, after  
having referred the matter to the  
Convening Officer

1st Witness Capt. W. Brooks was recalled  
(by) Q. In answer to question could you  
say from memory if C.S.M. Cook read  
draft in accordance with R.R. 1077  
(Warning order to troops) your answer  
was?

A. Yes.

Q. Could you remember if C.S.M. Cook  
said "attend the following" at some time  
prior to departure of this draft a parade  
will be called at which parade the  
exact date and time of departure  
will be told to you.

A. To the best of my knowledge and  
belief I do remember C.S.M. giving  
those instructions.

(Cont) Q. To your belief, the warning given  
on this parade, the warning read out  
on this parade was a definite warning  
as to draft.

A. It was a definite warning, a  
typewritten form, and read out before  
before the reading of which, C.S.M. Cook  
asked all ranks if they could hear  
his voice. There were no dissenting  
answers.

(by) Q. After the warning was read out  
to the parade were they queried as  
to whether they understood the  
draft warning

A. I remember C.S.M. Cook asking if  
they were clear regarding the meaning  
of what he had read.

Q. and were there any queries

A. No there were none.

(Cont) Q. I ~~now~~ believe I am correct in saying that you heard C.S.M. Cook read off a printed form the following (as before, the key question) or words to that effect and also in answer to a previous question of the defence you stated that the time of a parade in the Coy lines was given out by C.S.M. Cook and the men warned they were C.B. on the 1330 hrs parade.  
 A. Yes, Sir. The time "a parade" may have referred to a G.M. or M.O. parade.

2<sup>ND</sup> Witness duly sworn

B. 74684 Sgt. Donald J. Laine Co. 11 Bn.

(Cross) Q. On 3 Sep 44 you were at what Bn.  
 A. I was on the strength of 10 Bn of 1 Coy.  
 Q. What was your duty.  
 A. I was Orderly Sgt.  
 Q. Would you tell the Court your duties on the afternoon of the 3 Sep 44.  
 A. On Sunday 3 Sep 44, as Orderly Sgt. a draft was called out. I was one of the witnessing N.C.O.s. At 1230 hrs C.S.M. Cook had the Coy formed up. He called out the names of a draft and they fell in on the right of the Coy. The accused whom I recognize fell out with this draft on the right of the Coy. When the draft was formed up C.S.M. Cook then read the warning order to them. There was no definite time set as to when the draft would move off. They were told they would parade to the G.M. the M.O. and the B.C. at 1530 hrs

all men on the draft were called out and C.S.M. Cook called the roll at which time Pto Nynda the accused was missing. C.S.M. Cook ordered me as orderly Sgt. to check tents and lines to see if he could be located. After I looked around for a certain length of time I reported back that he could not be found. The draft left the parade ground at approx. 1630 hrs and the accused did not go with it.

(Cont) Q After the draft warning order was read out was the draft asked if they understood the warning order.

A. Yes they were asked if they understood and no one dissented.

(Def) Q I want you to try and remember as well as you can if C.S.M. Cook told the draft at the time of reading the draft warning order (1230 hrs 3 Sept 68) the exact time and place of departure of the draft.

A. Not that I recall, at the time, did he give any special time or place for the draft to move off.

Q. Did C.S.M. Cook say the following to the draft, after reading the draft warning order at 1230 hrs 3 Sept 68. The time of the last parade for this draft, I do not know at the present time.

A. Yes these are the words C.S.M. Cook said to the men.

(Pres.) Q. Did the C.S.M. warn the draft that they were confined to their lines after they had attended the M.O. parade until the draft was to move off.

A. I don't know I did not stay until the end of the 1230 hrs parade.

(Court) Q. Was the draft told while you were on the 1230 parade that they were C.B.

A. I don't recall them being told that  
Q. Were you on the M.O., G.M., or D.O. parades

A. No Sir I was not

Q. Do you know where the M.O. parade was held

A. I don't know Sir.

(DE. W.) ~~Confidential/affidavit~~ produced by Pres. 9/11/48  
There were no further questions.

The following motion is respectfully submitted by the defence at this point. In as much as the evidence produced by the prosecution is in places at variance and also since it has been shown from evidence of the last witness called by the prosecution and substantiated in part at least by statement of the first witness for the prosecution that the draft warning order in question, read to the accused on parade at 1230 hrs 3 Sep 48 did not contain paragraph relative to Cidergram Para Section B. HQ. 1 sub. relative to draft warning orders in that the

exact time and place of the final movement of the draft was not given. The Defence submits therefore that a reasonable doubt could have existed in the mind of the accused regarding the movement of the draft. Moreover the Defence is prepared to introduce for the Courts inspection a sympathetic report stating that the accused is of nervous temperament from experience in action. The above being so the Defence respectfully asks the Court to consider this motion that under Army Act 57 the accused be tried under the lesser offence of A.W.O. and not desertion.

The Court adjourned to consider motion.

The submission on 125 charge is disallowed and case will proceed.

Page DS was read.

(Cont) Q. Do you wish to make a statement

A. The accused will make a statement not on oath.

Q. Do you intend to call witnesses on your behalf

A. No. This man is not known around here as to character his unit being full.

Statement by accused

I came to 10 C.C.F. Co 17446. I was there one day. The next day

DML

Q Do you wish to call witnesses on your behalf

A. This man is not known as to character here his unit being dead.

Statement by accused

I came to 10 CBEB 1st Lt I was there one day the next day we were called on draft I went three quarters Q.M. M.C. Det D.C. I came back to the lines as per I was under nervous strain as I had just come from hospital I don't know what I was doing and I wandered off the lines and went into Delverande. I stayed around the Maple Leaf Club trying to see if I knew anybody around there and I couldn't see anybody that I knew. Night came on and I found a barn to sleep in. I slept there until I woke up the next morning and I realized what I had done. I became frightened and reported to the Military Police they brought me back. That is all Sir.

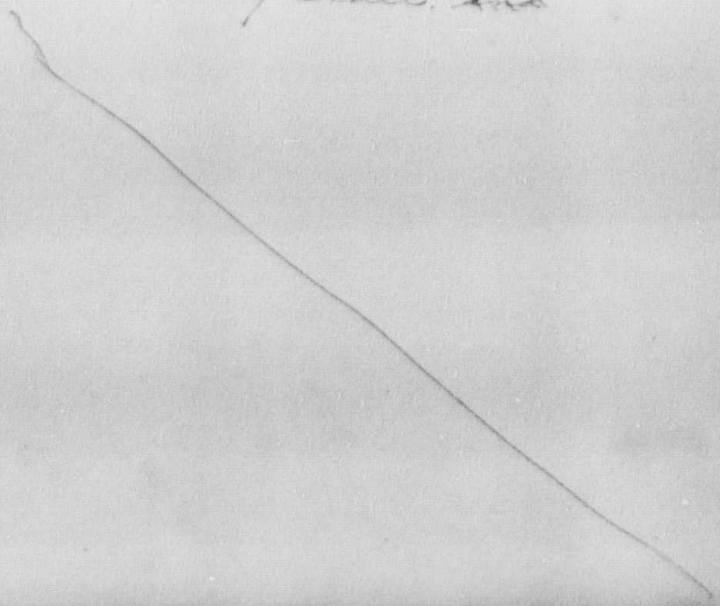
*[Signature]*

18

V. Cos Summary

DME

Prosecution has shown that the man attended the draft warning parade and that he understood the purpose & seriousness of that parade. Witnesses have proved that altho' no time was set for the draft to move fwd. The draft was warned that it was confined to their lines after attending the necessary Admin Parade so that they would be available for final movement. The accused evidently understood the warning and as he did not question the warning order, and

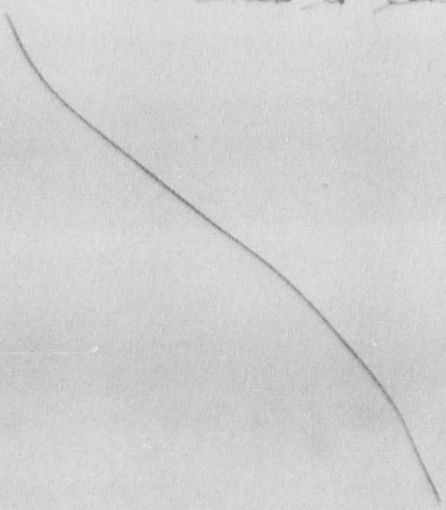




## Summary for defence.

The defence has pointed out that the testimony of the 3 witnesses called by the prosecution is at variance. The defence has pointed out by cross examination that a possibility of doubt could have existed in the accused regarding the exact time of draft. The defence points out in closing the unusual nature of this case due to the absence of the main witness for the prosecution and the lack of definite proof of intent on the part of the accused.

The Court closed to consider finding



XX

Plea of Mitigation

Dme

Concluding the def makes the following plea in mitigation. I wish to point out that the accused is a man who has served with his reg. in the front lines for approx a period of 7 weeks. He was sent to hospital suffering from Shoch and after 4 days was discharged. One day later he was again on draft for the field. The def submits <sup>that</sup> this man may have been motivated by feelings stronger than himself and in view of his service asks the Courts clemency. It is unfortunate that he is unable to produce witnesses as to his character as his reg is food. His record up to this offence as far as is known has been clear. Here points the def asks the Court to consider when passing sentence on the accused. ~~Thank you~~

Court now closed.

E/A  
Dmc

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (J)

I, *Reverend Sgt. Lunn* ..... Certify that  
 Reg No. *A. 5. 2881* Rank *1st Lt.* Name *Boyds M. R.*  
 REGIMENT *10th Buffs*  
 UNIT *10th Bn. C.B.R. G.*  
 STATIONED AT *Daukrhes*  
 Surrendered himself to No. *53888* Rank *Sgt.* Name *Andrew H. ...*  
 of the *M. G. Coy. I of C. B. Coy. Sec.*  
 on the *4<sup>th</sup>* Day of *Sept.* 194, at *2.00* Hours  
 ..... AS AN ABSENTEE WITHOUT LEAVE.

at the time of his surrender he was wearing (military uniform) or  
[civilian clothes]

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer  
or the Commanding Officer of the portion of His Majesty's Forces or the  
officer, warrant officer or non-commissioned officer in charge of the  
detachment of the Canadian Provost Corps, Canadian Army, into whose  
custody the above named person was taken on surrender.

*Sgt. Lunn (A. 5. 2881)*  
*M. G. Coy. I of C. B. Coy. Sec.*

## Statement as to Character and Particulars of Service of Accused.

<i>Number.</i>	<i>Rank.</i>	<i>Name.</i>	<i>Regiment (or as the case may be).</i>
K 5088	Pte	HYNDA BR	10 Cdn Base Rft Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced by court with this statement and not inserted in the proceedings.

† See para. 417, R.E.M. 1960.

\* The conduct sheets stated should correspond with the number of entries in the conduct sheet, provisions being made in the most serious offences in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For ORIGINAL WFM 6 NOT AVAILABLE	_____ times	_____ times
For _____	_____ times	_____ times
For _____	_____ times	_____ times
For _____	_____ times	_____ times
For _____	_____ times	_____ times
Number of instances of gallantry or distinguished conduct,		
or		
There are no entries in the conduct sheets of the accused.		

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence of~~ \_\_\_\_\_ beginning \_\_\_\_\_ days.

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 12 days in military custody, making a total of 12 days, of which nil days were spent in hospital.

5. The present age of the accused according to his 20 years ~~attestation paper~~ is \_\_\_\_\_

6. The date of his 31 Mar 43 ~~commission~~ specified in his attestation paper is \_\_\_\_\_

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 8 mos 9 days service.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 8 mos 9 days service.

9. The accused is entitled to reckon 1 yr 8 mos 9 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)).

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of \_\_\_\_\_

12. (In the case of an officer.) The accused holds in the army the rank of \_\_\_\_\_ dated \_\_\_\_\_ and in his regiment (or corps or department) the rank of \_\_\_\_\_ dated \_\_\_\_\_

**Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.**

No. \_\_\_\_\_ Rank \_\_\_\_\_ Name \_\_\_\_\_ of \_\_\_\_\_ Regiment (or as the case may be.)

*(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)*

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations will read as a true extract from the regimental books in my custody.

Signed this 16<sup>th</sup> day of August 1944

*W. G. Arthur*  
 (W. G. Arthur) Capt  
 Adj't 10 C B R Bn

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion: \_\_\_\_\_

In the rank of \_\_\_\_\_ years

In the rank of \_\_\_\_\_ years

In the rank of \_\_\_\_\_ years

*(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be indicated from such sources as are available and the paragraph entered amended accordingly.)*

No. **K 5088**

Name

**HYUDA****NR**Sgt., Battery,  
or CompanyCorps **CIC****TEMPORARY**Date of  
enlistment

Sheet No

GC

Badges

Signature GC  
Company, etcService or  
Proficiency Pay**Exhibit 8****3/17 MFM 6 23-6**  
GAFB 1215  
401350738-104152

Character

Date of last entry in  
Company Conduct SheetNo. and date  
of last drunkPeriod not reckoning towards  
freedom from extra fine

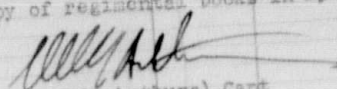
Names of Witnesses

Punishment awarded

Date of award or  
of order dispen-  
sing with trial

By whom awarded

Remarks

Place	Date of offense	Rank	Grade of drinker- less	OFFENSE	Names of Witnesses	Punishment awarded	Date of award or of order dispen- sing with trial	By whom awarded	Remarks
				Original MFM 6 not available					
Certified to be a true copy of regimental books in my possession.									
 ( C M G Arthurs ) Capt Adjt 10 C B R Bn									

SUMMARY OF EVIDENCE

In the case of K 5088 Pte RYNDAL W. R., 8 Wpg Rif on strength 10 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

P 21313 CSM COOK, JL, 10 CBR Bn, having been duly sworn, states:

I am P21313 CSM COOK, JL, CSM of 41 Coy 10 CBR Bn. At approximately 1230 hrs 3 Sep 44 I was given a list of names and instructed to parade these men and warn them for draft. I paraded the draft and called the roll. The accused answered his name and number on that parade. I saw him at that time. I read out the draft warning order as follows:

'You have been selected to proceed on a draft for the performance of a special duty, and you are now warned that you must be present and ready to go when the draft is sent off. Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on Active Service.

Similarly any unauthorized absence on your part while the draft is in transit or at any intermediate point before its final destination will result in your being charged with desertion on Active Service.

If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life.

The time of the last parade for this draft I do not know at present but you are now warned that as soon as you have finished your M.O.'s inspection you will return to your lines and remain there. By your lines I mean your tent in the area between that fence and this one (pointing to both). No one will leave the lines without my permission.'

At 1530 hrs I paraded the draft prior to signing off. The accused was not present. I then sent the Orderly Sergeant through the lines but he could not find him. I then reported him as a deserter. The draft left that afternoon and the accused was not on it.

The accused declines to cross examine the witness.

*J.L. Cook*  
(J.L. Cook) CSM

SECOND WITNESS

Capt W. BROOKS, 8 Wpg Rif att 10 CBR Bn, having been duly sworn, states:

I am Capt W BROOKS, 8 Wpg Rif on the rft strength of 10 Cdn Base Rft Bn. On the afternoon of 3 Sep 44 I was delegated to witness the reading of the draft warning order used by this Bn. This warning order paras (a) to (d) inclusive were read by CSM COOK. He further warned the draft that after the M.O.'s inspection they must not leave the lines without his permission. The accused answered his name when it was called from a nominal roll on the draft warning parade. I remember seeing the accused on that parade.

The accused declines to cross examine the witness.

*W. Brooks, Capt*  
(W Brooks) Capt

THIRD WITNESS

A 42007 Cpl PATTERSON JD, 10 CBR Bn, having been duly sworn, states:

I am A 42007 Cpl PATTERSON, JD, Orderly Room Cpl of 41 Coy 10 Cdn Base Rft Bn. At 1230 hrs 3 Sep 44 I was present when the draft

warning parade was called. When the roll was called Rfn HWYDA's name was ~~called~~ on that roll and I heard a soldier whom I presumed was Rfn HWYDA answer. The draft warning order ~~was~~ used by this Bn was read out loudly and clearly by CSM COOK on this parade.

The accused declines to cross examine the witness.

*J D Fattinson*  
(J D Fattinson) Cpl

FOURTH WITNESS B 74684 Sgt DONALD, J. Lorne Scots, 10 CBR Bn, having been duly sworn, states:

I am B 74684 Sgt DONALD, J., Lorne Scots, on the rft strength of 10 Cdn Base Rft Bn. at approximately 1230 hrs 3 Sep 44 a parade was called to warn personnel for draft. I heard the accused's name called out and I heard him answer. I also saw him present on that parade. The draft warning order used by this Bn was read out to the draft by CSM COOK in a loud voice. When he had finished he asked if there was anyone who did not understand, and no one replied.

At approximately 1530 hrs when the draft formed up to move off I was present and heard the roll called by CSM COOK. The accused ~~did not~~ was not present. I searched the Coy lines but could not find him. The draft left the unit at approximately 1630 hrs. I did not see him again until the morning of 5 Sep 44 in the Quardroom. From 3 Sep 44 to 5 Sep 44 I called the roll every morning and night and the accused did not answer his name during that interval nor did I see him in the Coy lines.

The accused declines to cross examine the witness.

*J Donald Sgt*  
(J. Donald) Sgt

The accused, having been duly warned in accordance with RF 4(E), declines to make a statement and reserves his defence.

Certified that the foregoing summary of evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused. Certified that Rules of Procedure 4 (C) (D) (E) & (F) have been complied with.

*W. S. Arthur*  
(W S Arthur) Capt  
10 Cdn Base Rft Bn  
Officer Detailed to Take  
The Summary of Evidence.

8 Sep 44



272C

LIST OF WITNESSES

F 21313	CSM	COCK	JL	10 Cdn Base Rft Bn
	Capt	W. BROOKS		R WpG R 11 Cdn Base Rft Bn
A 42007	Cpl	PATINSON	JD	10 Cdn Base Rft Bn
B 74684	Sgt	DONALD	J	Lorne Scots 11 Cdn Base Rft Bn

LIST OF EXHIBITS

Certificate under Army Act Section 163(1)(j).

STATEMENT OF THE ACCUSED

I certify that I have received free of charge a copy of the charge sheet, summary of evidence, list of witnesses and list of exhibits.  
 I do desire the services of an officer to represent me at my trial by Court Martial.

*M. Anglin*

(N E HYDA) Pte E 50881

No. 503

DEPARTMENT OF

Neuropsychiatry - ~~Psychiatry~~  
H.C.B.A. Unit

1550881

Rank *Major* Name *Hayden R.* Unit *R.W.R. 5th*

DATE 12 Sept 49

REPORT:-

Born Poland 1926. Went to Canada in 1934  
~~Parents~~ to join father. Mother died when  
he was an infant, I think he thinks. Started  
to school in Poland. Completed grade 7 in  
Harrowby aged 16. Mother thin, feminine  
countenance, poor understanding with father.  
Left home age 16+ went to Vancouver but  
returned home on freight after a month. Shortly  
afterwards returned to Vancouver but left several  
jobs - couldn't settle down.

Joined army 31 March 43.  
Placed in C.I.F. though he didn't want  
to be a combatant. Only 2 minor wounds,  
3 hospitalizations - scabies, rose throat. Inducement  
in training apparently given -  
England 1 April 44 - France June 11 -  
R.W.R. about 28 June 44 - Evacuated about  
end of August, presumably for exhaustion. He  
doesn't remember. He says he was pretty affected  
he thinks up till time of evacuation - it was not clear  
whether he was knocked out by blast or went into  
a hysterical state. He about 3 Sept. Having been  
warned for draft he went A.M.L. - Returned the next  
day + gave himself up. This was not a hysterical  
episode - he was frightened + worried and resentful  
because he had been fit on draft in spite of  
his complaints about headaches.

P.T.O.

Specialist, RCAMC

Without knowing whether or not  
he had any concussion it is impossible  
to be sure whether or not there is any  
traumatic element in his headache.  
Eye grounds + retinal normal  
no neurological signs.  
Headache most of clear cut post traumatic  
type.

He is very immature - stated age  
probably correct 18-11 - rather  
mature in fact - never had  
much confidence as fighting man  
though he insists that was effective  
up till time he was evacuated.  
now demoralized + sure he  
couldn't stand the front again.  
Psychoneurotic headache + dyspnea  
doesn't sleep well -

Diagnosis Psychopathic Personality  
(inadequate)

Rating - 53

He is fit to stand trial and  
to undergo punishment as far  
as mental condition is concerned.

W. G. ...

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: **K-5088 Pte Norman Robert HYNDA, R Wpg R, 10 CBR Bn**

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.) 1st <b>AA SEC 12(1)</b>	(See instr p 2.) <b>NOT GUILTY</b>	(See note below.) <b>GUILTY</b>	
2nd			
3rd			
4th			
5th			
6th			

(Date - As to findings for lesser offences see AA 56, RP 44. Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in case of kit see RP 44 fn 2.)

"DCM"

(1) Insert sentence being served, or date, if not applicable. See RP 46(A). Information should be found on MF 8355 or AF 8296.

Time in confinement awaiting present trial—a total of **12** days, of which **0** days were spent in hospital.(4)

Sentence Awarded by the Court

**2 years detention**

"DCM"

(Sgd) **J. D. WALKER** Date awarded **16 Sep 44** (Sgd) **"D.M. Cooper" Major** President (RP 45, 50)  
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date \_\_\_\_\_ (Sgd) \_\_\_\_\_ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 8, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

**Confirmed**

(1. AA 57A. Delete if not used.)  
Date **18th Sep 44** (Sgd) **"G. Francouer" Brig**  
Commanding **2 CBRG**  
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 31, KR Can 576, 577.)

Accused **K5088 Pte Norman Robert Hynda, R.W.R.** Date **20 Sep 44** Signature of Offr **"F.M. Pardoe" Capt Adj, 11 CBR Bn**

ALL DELETIONS AND ALTERATIONS WILL BE INITIALED.

FIELD GENERAL COURT-MARTIAL

CPA 10 (in lieu of AF 21)  
40 P W S 1 (108)  
4/38B

Convened by Order of **Brig G FRANCOUER** Comd **2 CBRG** dated **11 Sep 44**

ACCUSED.

(As to trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appt, A/rank or A/appt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number. (a) Prmt R. (b) Appt, A/R or A/Appmt. Full Christian Names. Surnames **REVIEWED**  
**K-5088** Pte **Norman Robert HYNDA** **R Wpg R 10 CBR Bn**

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) **FRANCE** 21 Army Gp. on (date(s)) **13, 14, 16 Sep 44**

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. "DCM"

A1. The President, Members, waiting Member **REVIEWED**, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is in p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 485, for notes and instrs on how to record addresses, swidgers, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (7) The Court is satisfied that it is properly convened and constituted (7), accused **REVIEWED** amenable to military law, and each charge discloses an offence (7) "DCM"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is **REVIEWED** brought before the Court. At **1010** hours trial commences. "DCM"

A4. The Prosecutor produces a Medical Certificate that accused **REVIEWED** fit to undergo trial by court-martial (1) "DCM"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

"DCM"

A5. **REVIEWED** (1. RP 71. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused (7) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans **No, sir** (7) (1. RP 110. 2. If no objection, waiting member retires. RP 48(B). If objection, see procedure AA 51, RP 23, 71, 16, MML p 742.)

"DCM" A7. The President **REVIEWED** are sworn (7) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	<b>Major</b>	<b>D W M COOPER</b>	<b>RCA</b>	<b>12 CBR Bn</b>
Member	<b>Capt.</b>	<b>D E McPHEE</b>	<b>RCA</b>	<b>11 CBR Bn</b>
"DCM" Member	<b>Lieut.</b>	<b>F E WALSH</b>	<b>CIC</b>	<b>11 CBR Bn</b>
Prosecutor	<b>Lieut.</b>	<b>L HERRING</b>	<b>CIC</b>	<b>11 CBR Bn</b>
Defending Offr	<b>Lieut.</b>	<b>J D TOBIN</b>	<b>CIC</b>	<b>11 CBR Bn</b>

Questions by President: Is the Prosecutor a lawyer? Ans **No**. Is the Defending Offr a lawyer? Ans **No** (7)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused **K-5088 Pte Hynnda, N R** before arraignment make(s) (no) **1** plea "DCM"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 180, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused (7) the plea.) "DCM"

A9. The accused is **REVIEWED** arraigned **REVIEWED** on all charges in the charge sheet (7) The accused does **REVIEWED** not object to any charge (7) There is no amendment to be made to the Charge Sheet (7) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 485 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. **REVIEWED**

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-86; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 114; use of Summary of Evidence at Trial see RP 17(B) fn 9; and responsibility of JA or Pres to record proceedings see RP 94, 96.

## RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)<sup>(1)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses in to character and make an address in mitigation of punishment.<sup>(2)</sup>  
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).<sup>(1)</sup> If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined<sup>(3)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(4)</sup>

President to accused: Do you wish to make a statement? Ans: Yes, a statement.  
(1. RP 37(B). 2. RP 37(D) fn 5. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.  
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.<sup>(1)</sup> The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.  
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.<sup>(1)</sup>  
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.<sup>(1)</sup>  
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

## RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.<sup>(1)</sup>  
(1. RP 37(A) (E)).

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.<sup>(1)</sup>

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereafter proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans: No, sir.  
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.<sup>(1)</sup>  
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.<sup>(1)</sup>  
(1. RP 39(C), 114, KR Can 553. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.<sup>(1)</sup> The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... 1st ..... charge(s). The Court is closed, and considers the submission.<sup>(2)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the ..... 1st ..... charge(s) and that, accordingly, the trial will proceed ..... and that, accordingly, the trial will proceed .....  
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p B1 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.<sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.<sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination.<sup>(3)</sup> But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.<sup>(4)</sup> You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans: Yes, a statement. Do you intend to call witnesses on your behalf? Ans: No, sir.

(1. RP 115. 2. RP 40(A), see 80(C). 3. RP 40 fn 1 (G). 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.<sup>(1)</sup>  
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).<sup>(1)</sup> The finding(s) of the Court is (are) recorded in Part I of the Schedule.<sup>(2)</sup> The Court is re-opened.  
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President records the finding(s) of Guilty in Part I of the Schedule.  
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

## RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. The President records the finding(s) of Guilty in Part I of the Schedule.  
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service<sup>(1)</sup>, and certified true copy of the Conduct Sheet(s)<sup>(2)</sup>, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.<sup>(3)</sup>  
(1. MFB 355 or AFS 296. 2. MFM 6. 3. RP 46, KR Can 138. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? Ans: Yes, sir.  
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.<sup>(1)</sup>  
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.<sup>(1)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.<sup>(2)</sup>  
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisions, is to be awarded to cover all charges in all charge sheets on which accused found guilty, RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 58, 118, 119(A), KR Can 206, 220, 543-546, Overseas RD 209, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 48(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K 5088 Pte HYNDA, N.R., R Wps Rif  
on the reinforcement strength of 10 Cdn Base Rft  
Bn, a soldier of the Cdn Army Overseas

is charged with

FIRST CHARGE  
A.A. Sec 12(1)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S  
FORCES

in that he

In the Field, on 3 Sep 44, having been warned for draft  
to proceed to the Field, with intent to avoid so  
proceeding, absented himself without leave from  
1530 hrs 3 Sep 44 until surrendering himself at 2100  
hrs 4 Sep 44.  
(Absent 1 day 5 hrs 30 minutes).

In the Field  
8 Sep 44

"A.T.Law"  
(A T Law) Lt-Col  
CO 10 C B R Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field  
11 SEP 44

"G. Francouer"  
(G. Francouer) Brig  
Cowl  
2 Cdn Base Rft Gp

# FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any officer of the Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authority, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Officer in dealing with the application see MM, Chap V paras 20 and 23, RP 87(B). There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appointment, rank or appointment, if any, see AA 182, 183, fns. RR Can 308, 328, 330.)

Number.	(a) Prmt R.	(b) Appmt, A/R or A/Appmt.	<b>ACCUSED.</b>		Surname.	Unit.
			Full Christian Names.			
K-5088		Pte	Norman Robert		HYNDA	R Wpg Rif 10 CER Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Sep 44 endorsed by me, ~~and to be tried by me.~~ To be tried by Field General Court-Martial.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial.

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Officers appointed or detailed hereunder.

4. I hereby appoint ~~the following Officers to constitute the Court-Martial:~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

- PRESIDENT. 12 CER Bn (Unit)
- Major D W M COOPER (Must be named. RP 106.)
- MEMBERS.
- Capt To be detailed by OC 11 CER Bn 11 CER Bn (Unit)
- Lieut To be detailed by OC 11 CER Bn 11 CER Bn (Unit)
- WAITING MEMBER.
- Capt To be detailed by OC 12 CER Bn 12 CER Bn (Unit)

(Must be named, if any. RP 106.)

On Active Service in the Fd "G. Francouer" Brigadier (Rank)

in FRANCE (Country.) (G Francouer) 2 Cdn Base Rpt GP Convening Officer.

Date 11 SEP44

CONVENING OFFER WILL INITIAL ALL DELETIONS AND ALTERATIONS  
(See overleaf for words and notes for use on trial.)

# FIELD GENERAL COURT-MARTIAL

CFAS (In lieu of AFAS)  
M/FAS/1007 (2005)

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any officer of the Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authority. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Officer in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, RR Can 308, 328, 330.)

## ACCUSED.

Number.	(a) Prmt R.	(b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-5088	Pte		Norman Robert	HYNDA	R Wpg Rif 10 CER Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Sep 44 endorsed by me, (undersigned) ~~in the presence of the court members~~. To be tried by Field General Court-Martial.

~~And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;~~

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Officers appointed or detailed hereunder.

4. ~~As a member of the court appointed to try the said person(s) I hereby appoint the following as members of the court:~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~As a member of the court appointed to try the said person(s) I hereby appoint the following as members of the court:~~

(RP 106(A). Delete, if none appointed.)

### PRESIDENT.

Major D W M COOPER 12 CER Bn  
(Rank) (Must be named. RP 106.) (Unit)

### MEMBERS.

Capt To be detailed by OC 11 CER Bn 11 CER Bn

Lieut To be detailed by OC 11 CER Bn 11 CER Bn  
(Rank) (Named or detailed. RP 106.) (Unit)

### WAITING MEMBER.

Capt To be detailed by OC 12 CER Bn 12 CER Bn  
(Rank) (Named or detailed, if any. RP 106.) (Unit)

~~As a member of the court appointed to try the said person(s) I hereby appoint the following as members of the court:~~

(Rank) (Must be named, if any. RP 106.) (Unit)

On Active Service in the Fd

in FRANCE G. Francouer Brigadier  
(Country.) (Signed personally. RP 105 (n 2)) (Rank.)

Date: 11 SEP44 G Francouer 2 CON BSB RPT GP  
Commanding Convening Officer.

**CONVENING OFFER WILL INITIAL ALL DELETIONS AND ALTERATIONS**

(See overleaf for oaths and notes for use on trial.)



11 CER Bn

16 Sep 44

This is to certify that I have this day examined K 5088 Pte Hynda, N. R., and found him fit to undergo trial by Court-Martial.

"S.Segall" Capt  
M.O. 11 C B R Bn

"DMC"

11 CER Bn

14 Sept 44

I HAVE THIS DATE EXAMINED K 5088 Pte Hynda, N.R., R.W.R.,  
AND FIND HIM fit TO UNDERGO TRIAL BY COURT MARTIAL

Signed "S.Segall" Capt, RCAMC  
M.O. 11 C B R Bn

"DMC"

11 CER Bn

13 Sept 44

I HAVE THIS DATE EXAMINED K 5088 Pte Hynda, N.R., 11 CER Bn,  
AND FIND HIM fit TO UNDERGO TRIAL BY COURT MARTIAL.

Signed "S.Segall" Capt RCAMC  
M.O. 11 CER Bn

"DMC"

"DMC"

Evidence in the case of K 5088 Ptw Norman Robert Hynda, R WPG R, 10 CBR Bn, tried by Field General Court Martial in the Field 14 Sep 44.

The Court having assembled and no objections being raised as to its constitution was duly sworn. Charge was read to the accused and a plea of not guilty entered.

1st Witness Capt W Brooks, CIC, 11 CBR Bn, being duly sworn, states:

On 2 Sep 44 I was detailed to witness the reading of a draft warning order and the calling of the nominal roll of the ~~XXXX~~ men proceeding on draft. The accused whom I recognize answered his name on that parade at approx 1230 hrs. Later in the afternoon CSM Cook reported to me that Pte Hynda, the accused, was absent when the draft moved off.

Cross-Exam:

Q. Who called the roll?

A. CSM Cook.

Q. Could you say from memory if CSM Cook read draft warning order to troops in accordance with KR 1099 (warning order to troops) and if he followed amendments as detailed in a routine order dated 8 Jun 44 from COM GHQ 1 Ech?

A. Yes.

Q. Would you recall if CSM Cook stated a definite time and place where and when the draft was to move off?

A. CSM Cook stated the time of a parade in the coy lines and warned the men that they were C.E.

Exam by Court:

Q. Could you give approx wording of warning order that was read to the accused?

A. Yes, approx. "You are warned for special duty and anyone who is absent from a parade that will be called later will be charged with desertion".

Q. Was anything said what the draft was to do between time of draft warning and time of moving off.

A. They were to have Med inspection.

Q. Was the accused present for Med. inspection?

A. I don't know. I was not there.

Q. Was anything said to the men if they C.E.?

A. Yes, CSM Cook, in warning order, stated they, the draft, were C.E.

Court adjourned till 1300 hrs 14 Sep 44 to give the prosecution time to obtain the attendance of CSM Cook, chief witness for the prosecution.

14 Sep 44 Court adjourned Sine die.

On 16 Sep 44

The Court proceeded without CSM Cook, whose attendance could not be obtained in the near future, after having referred the matter to the Convening Officer.

1st Witness, Capt W Brook, was recalled.

(Def) Q. In answer to question could you say from memory if CSM Cook ~~read~~ read draft in accordance with K.R. 1099 (warning order to troops) your answer was?

A. Yes.

Q. Could you remember if CSM Cook said approx the following, "At some time prior to departure of this draft a parade will be called at which parade the exact date and time of departure will be told to you"?

A. To the best of my knowledge and belief I do remember CSM giving those instructions.

(Court) Q. To your belief, the warning given on this parade, the warning read out on this parade was a definite warning as to draft?

A. It was a definite warning, a typewritten form, and read out, before the reading of which, CSM Cook asked all ranks if they could hear his voice. There were no dissenting answers.

(Def) Q. After the warning was read out to the parade were they queried as to whether they understood the draft warning?

A. I remember CSM Cook asking if they were clear regarding the meaning of what he had read.

Q. Ans were there any queries?

A. No there were none.

(Court) Q. I believe I am correct in saying you heard CSM Cook read off a printed form the following (as before the Def question) or words to that effect and also in answer to a previous question of the defence you stated that the time of a parade in the coy lines was given out by CSM Cook and the men warned they were C.B. on the 1230 hrs parade?

A. Yes, sir. The term "a parade" may have referred to a QM or MO's parade.

2nd Witness E.74684 Sgt Donald, J, Lorne Scots, 11 CBR Bn, duly sworn:

(Pros) Q. On 3 Sep 44 you were of what Bn?

A. I was on the strength of 10 Bn, 41 Coy.

Q. Would you tell the court your duties on the afternoon of 3 Sep 44? What was your duty?

A. On Sunday, 3 Sep 44, I was Orderly Sgt. As Orderly Sgt, a draft was called out. I was one of the witnessing NCOs. At 1230 hrs CSM Cook had the Coy formed up. He called out the name of a draft and they fell in on the right of the Coy. The accused whom I recognize fell out with this draft on the right of the Coy. When the draft was formed up CSM Cook then read the warning order to them. There was no definite time set but as to when the draft would move off. They were told they would parade to the QM, the MO and the DC. At 1530 hrs all men on the draft were called out and CSM Cook called the roll at which time Pte Hynia the accused was missing. CSM Cook ordered me as Orderly Sgt to check tents and lines to see if he could be located. After I looked round for a certain length of time I reported back that he could not be found. The draft left the parade ground at approx 1630 hrs and the accused did not go with it.

(Court) Q. After the draft warning order was read out was the draft asked if they understood the warning order?

A. Yes they were asked if they understood and no one dissented.

(Def) Q. I want you to try and remember as well as you can if CSM Cook told the draft at the time of reading the draft warning order (1230 hrs 3 Sep 44) the exact time and place of departure of the draft?

A. Not that I recall. At that time, did he give any special time or place for the draft to move off.

Q. Did CSM Cook say the following to the draft, after reading the warning order at 1230 hrs 3 Sep 44, the time of the last parade for this draft, I do not know at the present time?

A. Yes those are the words CSM Cook said to the men.

(Pros) Q. Did the CSM warn the draft that they were confined to their lines after they had attended the MO's parade until the draft was to move off?

A. I don't know. I did not stay until the end of the 1230 parade. Was the draft told while you were on the 1230 hrs parade that they were CB?

(Court) A. I don't recall them being told that.

Q. Were you on the QM, MO's or DC's parades?

A. No sir, I was not.

"DMC"

Q. Do you know where the MO's parade was held?  
A. I don't know, sir.

Certificate of apprehension produced by Prosecution and marked Exhibit "A".

There were no further questions.

D4 "DMC"

The following motion is respectfully submitted by the defence at this point. Inasmuch as the evidence produced by the prosecution is in places at variance and also since it has been shown from evidence of the last witness called by the prosecution and substantiated in part at least by statement of the first witness for the prosecution that the draft warning order in question read to the accused on parade at 1230 hrs 3 Sep 44 did not contain paragraph relative to Orders from Cdn Sec GHQ 1 Ech relative to draft warning orders in that the exact time and place of the final movement of the draft was not given, the Defence submits therefore that a reasonable doubt could have existed in the mind of the accused regarding the movement of the draft. Moreover the Defence is prepared to introduce for the Court's inspection a psychopathic report stating that the accused is of nervous temperament from experience in action. The above being so the Defence respectfully asks the Court to consider this motion that under Army Act 57 the accused be tried under the lesser offence of AWL and not desertion.

The Court adjourned to consider the motion.

The submission on 1st charge is disallowed and case will proceed.

Para D5 was read.

D5 "DMC"

(Court) Do you wish to make a statement?

A. The accused will make a statement not on oath.  
Q. Do you intend to call witnesses on your behalf?  
A. No this man is not known around here as to character, his unit being fwd.

Statement by accused

I came to 10 CRE 1 Sep 44. I was there only one day. The next day we were called on draft. I went to three parades, QM, MO, not DG. I came back to the lines as sir I was under nervous strain as I had just come from hospital. I don't know what I was doing and I wandered off the lines and went into Deliverance. I stayed around the Maple Leaf Club trying to see if I knew anybody around there and I couldn't see anybody that I knew. Night came on and I found a barn to sleep in. I slept there until I woke up the next morning and I realized what I had done. I became frightened and reported to the Military Police and they brought me back. That is all, sir.

D6 "DMC"

Pros sums up

Prosecution has shown that the man attended the draft warning parade and that he understood the purpose and seriousness of that parade. Witnesses have proved that altho' no time was set for the draft to move fwd the draft was warned that it was confined to their lines after attending the necessary Admin Parades, so that they would be available for final movement. The accused evidently understood the warning as he did not question the warning order.

Summary for defence

The defence has pointed out that the testimony of two witnesses called by the prosecution is at variance. The defence has pointed out by cross-examination that a possibility of doubt could have existed in the accused regarding the exact time of draft. The defence points out in closing the unusual nature

of this case due to the absence of the main witness for the prosecution and the lack of definite proof of intent on the part of the accused.

The Court closed to consider finding.

B3 ~~XXXXXXXX~~ "DMC"

Conduct Sheet

Plea of Mitigation.

Concluding the def makes the following plea in mitigation. I wish to point out that the accused is a man who served with his reg. in the front line for a period of approximately seven weeks. He was sent to hospital suffering from shock and after 4 days ~~was~~ discharged. One day later he was again on draft for the field. The defence submits that this man may have been motivated by feelings stronger than himself and in view of his service asks the court's clemency. It is unfortunate that he is unable to produce witnesses as to his character as his reg. is fwd. His record up to this offence as far as is known has been clear. These points the defence asks the court to consider when passing sentence on the accused.

Court now closed.

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1)(J)  
I, E 22883 Sgt Sues, W.G., No 9 Cdn L of C Pro Sec,  
certify that K 5088 Pte Hynda, N R, R Wpg Rifles, 10  
Bn, C.B.R.G., stationed at Douvres, surrendered himself  
to No L-38350 L/Cpl Andrews, H.W., No 9 Cdn L of C Pro Sec,  
on the 4th day of September, 1944 at ~~2200~~ 2200 hrs  
as an absentee without leave. At the time of his surrender  
he was wearing military uniform.

Signed "Sgt Sues" ~~22883~~ E22883  
No 9 Cdn L of C Pro Sec

STATEMENT AS TO CHARACTER AND PARTICULARS  
 OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K 5088	Pte	HYNDA NR	10 Cdn Base Rft Bn

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery~~  
 or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court,  
 of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed  
 with.

	Within last 12 months	Since enlistment or appointment
For	ORIGINAL MFMC NOT AVAILABLE	times
For		times
For		times
For		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under  
 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule  
 annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~THE ACCUSED IS CURRENTLY UNDER SENTENCE AT THE PRESENT TIME.~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in  
 civil custody, and 12 days in military custody, making a total of 12 days in custody,  
 of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ is 20 years.

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ is 31 Mar 43

7. The service which the accused is allowed to reckon towards discharge is 1 yr 8 mos 9 days

8. The accused is entitled to reckon 1 yr 8 mos 9 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in  
 possession of or entitled to). State any air force decoration or reward.  
 military military  
 military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held  
 Air Force  
 the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of  
 Permanent Force  
 unit

dated ..... , and in his regiment (or corps), the rank of  
 dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the  
 present date:-- ..... Date of promotion: .....

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.--If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army  
 Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....  
 Name ..... of ..... Unit  
 Regiment

NOTE.--A verbatim extract from the regimental books stating these convictions and dispensations with  
 trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract  
 from the regimental books in my custody.

Signed this 16th day of September, 1944 "C M G Arthurs"  
 (C M G Arthurs) Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed  
 with) is read, marked  
 proceedings. signed by the president, and annexed to the  
 APJT 10 C E R Bn



No. **K5088** Name **HYNDA NR** Sqn., Battery, or Company } Corps **CIC** **TEMPORARY** Date of enlistment } G.C. Badges } **EXHIBIT "C"** **"DCM"** Service or Proficiency Pay } **M.F.M. 6**  
 (S.F.H. 122)  
 40/P & B/100 (2637)  
 Date of last entry in Company Conduct Sheet } No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. } Signature O.C. Company, etc. } Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original MFM6 not available					
				Certified to be a true copy of regimental books in my possession					
				"C.M.G.Arthurs" (C M G Arthurs) Capt Adj't 10 C B R Bn					

## SUMMARY OF EVIDENCE

"DMC"

In the case of K 5088 Pte HYNDA, N R, R Wpg Rif, on strength 10 Cdn Base Rft En, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

F 21313 CSM COOK, JL, 10 CBR En, having been duly sworn, states:

I am F21313 CSM COOK, JL, CSM of 41 Coy 10 CBR En. At approximately 12 30 hrs 3 Sep 44 I was given a list of names and instructed to parade these men and warn them for draft. I paraded the draft and called the roll. The accused answered his name and number on that parade. I saw him at that time. I read out the draft warning order as follows:

'You have been selected to proceed on a draft for the performance of a special duty, and you are now warned that you must be present and ready to go when the draft is sent off.

Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service.

Similarly any unauthorized absence on your part while the draft is in transit or at any intermediate point before its final destination will result in your being charged with desertion on active service.

If you are convicted of desertion the Court has the power to sentence you to a maximum of penal servitude for life.

The time of the last parade for this draft I do not know at present but you are now warned that as soon as you have finished your MO's inspection you will return to your lines and remain there. By your lines I mean your tents in the area between that fence and this one (pointing to both). No one will leave the lines without my permission.'

At 1530 hrs I paraded the draft prior to moving off. The accused was not present. I then sent the Orderly Sgt through the lines but he could not find him. I then reported him as a deserter. The draft left that afternoon and the accused was not in it.

The accused declines to cross examine the witness.

"J.L.Cook"  
(J L Cook) CSM

SECOND WITNESS

Capt W Brooks, R Wpg Rif att 10 CBR En, having been duly sworn, states:

I am Capt W.BROOKS, R Wpg Rif on the rft strength of 10 Cdn Base Rft En. On the afternoon of 3 Sep 44 I was delegate to witness the reading of the draft warning order used by this En. This warning order paras (a) to (d) inclusive were read by CSM COOK. He further warned the draft that after the MO's inspection they must not leave the lines without his permission. The accused answered his name when it was called from a nominal roll on the draft warning parade. I remember seeing the accused on that parade.

The accused declines to cross examine the witness.

"W. Brooks" Capt  
(W Brooks) Capt

THIRD WITNESS

A 40027 Cpl PATTINSON JD, 10 CBR Bn, having been duly sworn, states:

I am ~~XXXXXXXXXXXX~~ A 42007 Cpl PATTINSON, JD, Orderly Room Cpl of 41 Coy 10 Cdn Base Rft Bn. At 1230 hrs 3 Sep 44 I was present when the draft warning parade was called. When the roll was called Rfn HYNDA's name was on that roll and I heard a soldier whom I presumed was Rfn HYNDA answer. The draft warning order used by this Bn was read out loudly and clearly by CSM COOK on this parade.

The accused declines to cross examine the witness.

"J.D.Pattinson"  
(J D Pattinson) Cpl

FOURTH WITNESS

B 74684 Sgt DONALD, J., Lorne Scots, 10 CBR Bn, having been duly sworn, states:

I am B 74684 Sgt Donald, J., Lorne Scots, on the rft strength of 10 Cdn Base Rft Bn. At approximately 1230 hrs 3 Sep 44 a parade was called to warn personnel for draft. I heard the accused's name called out and I heard him answer. I also saw him present on that parade. The draft warning order used by this Bn was read out to the draft by CSM COOK in a loud voice. When he had finished he asked if there was anyone who did not understand, and no one replied.

At approximately 1530 hrs when the draft formed up to move off I was present and heard the roll called by CSM COOK. The accused was not present. I searched the coy lines but could not find him. The draft left the unit at approximately 1630 hrs. I did not see him again until the morning of 5 Sep 44 in the guardroom. From 3 Sep 44 to 5 Sep 44 I called the roll every morning and every night and the accused did not answer his name during that interval nor did I see him in the coy lines.

The accused declines to cross examine the witness.

"J.Donald"  
(J Donald) Sgt

The accused, having been duly warned in accordance with RP 4(E), declines to make a statement and reserves his defence.

Certified that the foregoing summary of evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused. Certified that Rules of Procedure 4 (C) (D) (E) & (F) have been complied with.

"C.M.G.Arthurs" Capt  
(C M G ARTHURS) Capt  
10 Cdn Base Rft Bn  
Officer Detailed to Take  
The Summary of Evidence.

8 Sep 44

LIST OF WITNESSES

P 21313 CSM COOK JL 10 Cdn Base Rft Bn  
Capt W BROOKS R Wpg Rif 11 Cdn Base Rft Bn  
A 42007 Cpl PATTINSON JD 10 Cdn Base Rft Bn  
E 74684 Sgt DONALD J Lorne Scots 11 Cdn Base Rft Bn

LIST OF EXHIBITS

Certificate under Army Act Section 163(1)(j)

STATEMENT OF THE ACCUSED

I certify that I have received free of charge a copy of the charge sheet, summary of evidence, list of witnesses and list of exhibits.  
I do desire the services of an officer to represent me at my trial by Court Martial.

"N.R.Hynda"

( N R HYNDA ) Pte E 5086

Department of Neuropsychiatry - 11 CER Bn

K 5088 Rfn Hynda N R R W R

MEMORANDUM "DMC"

REPORT:-

DATED 12 Sep 44

Born Poland 1926. Went to Canada in 1934 to join father. Mother died when he was an infant. Started to school in Poland. Completed Grade 7 in Winnipeg aged 16. Rather timid, juvenile court once. Poor understanding with father. Left home age 16 and went to Vancouver but returned home on freight after a month. Shortly afterwards returned to Vancouver, but left several jobs - couldn't settle down.

Joined Army 31 March 43.

Placed in CIC though he did not want to be a combatant. Only 2 minor crimes. 3 hospitalizations - scabies, sore throat.

Endurance in training apparently fair. England 1 April 44 -

France June 11 - R W R about 28 June 44 - evacuated, about

end of August, presumably for exhaustion. He doesn't remember.

He says he was pretty effective he thinks up till time of

evacuation. It is not clear whether he was knocked out by

blast or went into a hysterical state. On about 3 Sep having

been warned for draft went AWL. Returned next day and gave him-

self up. This was not a hysterical episode - he was frightened

and worried and resentful because he had been put on draft in

spite of his complaints about headache. Without knowing whether

or no he had any concussion it is impossible to be sure whether

or not there is any traumatic element in his headache. Eye

grounds and retinae normal no neurological signs. Headache not

of clean cut post traumatic type.

He is very immature - stated age probably correct - 18, 11 -

rather unstable in past - never had much confidence as fighting

man though he ~~anna~~ insists that he was effective up till time

he was evacuated. Now demoralized and sure he couldn't stand

the front again. Psychoneurotic headache and dyspepsia, doesn't

sleep well.

Diagnosis Psychopathic personality (inadequate).

RATING - 83

He is fit to stand trial and to undergo punishment as far as mental condition is concerned.

4222222222 Major

# FIELD GENERAL COURT-MARTIAL

CPA# (In Use of AFAS) 40-1 & 2, 1094 4/388

Convened by Order of Brig G FRANCOUR Comd 2 CBRG dated 11 Sep 44

## ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or continued rank, and (b) appmt, A/R or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

Number. (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname.  
 K-5088 Pte Norman Robert HYNDA

## PROCEEDINGS OF TRIAL.

D. J. A.,  
 Cdr. Sqn. G.H.Q. 2 Ech. 21 Army Gp.

Held in the Fd in (country) FRANCE on (date(s)) 13, 14, 15 Sep 44

### RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

DMC"

A1. The President, Members, waiting Member, ~~adjutant, and other members of the court~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for orders and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 23, RP 36, 63-75, 73, 74, 74, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.<sup>(1)</sup> The Court is satisfied that it is properly convened and constituted<sup>(2)</sup>, accused is ~~found~~ amenable to military law, and each charge discloses an offence.<sup>(3)</sup>

DMC"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~now~~ brought before the Court. At 1010 hours trial commences.

DMC"

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.<sup>(1)</sup>

DMC"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

DMC"

A5. ~~The Convening Order and Charge Sheet(s) are read to the accused.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.<sup>(1)</sup> President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans. No, sir.<sup>(2)</sup>

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

DMC"

A7. The President, ~~Members of the Court and the waiting member~~ are sworn.<sup>(1)</sup> The following are the ranks, names and units of the ofrs comprising the Court, etc:

President	Major	D W M COOPER	RCA	12 CBR Bn
Member	Capt.	D E McPHEE	RCA	11 CBR Bn
Member	Lieut.	F E WALSH	CIC	11 CBR Bn
DMC"				
Prosecutor	Lieut.	L HERRING	CIC	11 CBR Bn
Defending Ofr	Lieut.	J D TOBIN	CIC	11 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans. No. Is the Defending Ofr a lawyer? Ans. No.<sup>(2)</sup>

(1. RP 26, 27, 109, 111. List of ofrs under instr will be returned separately with proceedings for information of Conv Offr.)  
 (2. If Pres a lawyer and Def Ofr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Cf p 2.)

A8. The accused K-5088 Pte Hynda, N R before arraignment make(s) (no) (a) plea<sup>(1)</sup>

DMC"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~now~~ arraigned ~~on all charges in the charge sheet.~~<sup>(1)</sup> The accused does ~~not~~ object to any charge.<sup>(2)</sup> There is no amendment to be made to the Charge Sheet.<sup>(3)</sup> The President records the pleas in Part I of the Schedule.

DMC"

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The President reads the Charge Sheet(s) to the accused.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PROCEEDINGS REVIEWED  
 Date: 15 Sep 44  
 By: D.J.A.  
 CBR Bn  
 21 Army Gp

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

- I. If pleas to all charges are GUILTY, use Record Form B below.
  - II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.
  - III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,
    - (a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)
    - (b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as below. (RP 37(A).)
3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Officer see RP 60(C), 87(C), 91, 92; assisting and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc. see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

**RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.**

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)<sup>(1)</sup>, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.<sup>(2)</sup>  
 (1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)<sup>(3)</sup>. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(4)</sup>, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined<sup>(5)</sup>, we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(6)</sup>

President to accused: Do you wish to make a statement? Ans. \_\_\_\_\_ (P)  
 (1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E2 of Record Form E.  
 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.<sup>(1)</sup> The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on \_\_\_\_\_ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on \_\_\_\_\_ charge(s). Part 1 of the Schedule is amended accordingly.  
 (1. Court may be closed to consider the statement. Deletes whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.<sup>(1)</sup>  
 (1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex \_\_\_\_\_, initialled and read aloud by the President and the accused.  
 (1. If there is no Summary, or if it is inadequate, comply with RP 27(B). If there is any evidence inconsistent with the plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by using paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

**RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.**

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.<sup>(1)</sup>  
 (1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.<sup>(1)</sup>  
 (1. Under B5 such parts only of the Summary of Evidence are read to relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. "Dac"

**RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.**

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No, sir (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~his~~ (no) opening address. (1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken. (1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed. (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge(s). (2) The Court is closed, and considers the submission. (2) The Court is re-opened, and the President announces that the submission is disallowed on the 1st charge(s), and allowed on the 1st charge(s), and that, accordingly, the trial will proceed on the 1st charge(s). (3) ~~on the 1st charge(s) and then the accused is found Not Guilty on the 1st charge(s).~~

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delets part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination. (2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. (2) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. Yes, a statement. Do you intend to call witnesses on your behalf?

Ans. No, sir.

(1. RP 113. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. (1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).)

D7. The Court is closed to consider the finding(s) (1) The finding(s) of the Court is ~~now~~ recorded in Part I of the Schedule. (2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces to the accused that the finding(s) of the Court is recorded in Part I of the Schedule, and that the Court is re-opened.~~

(1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

**RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.**

E1. President to accused: ~~In your witness box, make a statement on oath as to your character or to any other matter which you wish to bring to the attention of the Court.~~

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively. (2)

(1. MFB 255 or AFB 296. 2. MFM s. 1. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans. Yes, sir (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated. (1)

(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence. (2) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. (2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 89, 118, 119(A), KR Can 566, 530, 563-564, Overseas NO 309, 2323, MML p 80, 757-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

**PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.**





CHARGE SHEET

The accused, K 5088 Pte HYUDA, N.R., R Wpg Rif  
on the reinforcement strength of 10 Cdn Base Hft  
Bn, a soldier of the Cdn Army Overseas

is charged with

FIRST CHARGE  
K.A. Sec 12(1)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S  
FORCES

in that he

In the Field, on 3 Sep 44, having been warned for draft  
to proceed to the Field, with intent to avoid so  
proceeding, absented himself without leave from  
1530 hrs 3 Sep 44 until surrendering himself at 2100  
hrs 4 Sep 44.  
(Absent 1 day 5 hrs 30 minutes).

In the Field  
8 Sep 44

"A.T.Law"  
(A T Law) Lt-Col  
CO 10 C B R Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field  
11 SEP 44

"G. Francoeur"  
(G.Francoeur) Brig  
Comd  
2 Cdn Base Rft Gp

# FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAS)  
40/P&S/1607 (2004)

(Whether the accused to be tried is under his command or not, a FGCM may an application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MM1, Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

## ACCUSED.

Number.	(a) Prmtnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-5088	Pte		Norman Robert	HYNDA	R Wpg Rif 10 CER Bn

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Sep 44 endorsed by me, (and/or an offence in my status for a m), "To be tried by Field General Court-Martial".

"GF" 2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;~~ ~~(Delete part in brackets where not required for compliance with RP 105(C).)~~ "GF"

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~My only available officer in the rank of Major is D W M COOPER, who is the only officer of the rank of Major available in the 12 CER Bn.~~ "GF"  
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed an alternate to the President of the Court, to be detailed hereunder.~~  
(RP 106(E). Delete, if none appointed.)

### PRESIDENT.

Major	D W M COOPER	12 CER Bn
(Rank.)	(Must be named. RP 106.)	(Unit.)

### MEMBERS.

Capt	To be detailed by OC 11 CER Bn	11 CER Bn
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Lieut	To be detailed by OC 11 CER Bn	11 CER Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

### WAITING MEMBER.

Capt	To be detailed by OC 12 CER Bn	12 CER Bn
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JOSEPH VIRADISSE "GF"~~

	(Must be named, if any. RP 106.)	(Unit.)
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On Active Service in the Fd

in FRANCE	"G. Francouer"	Brigadier
(Country.)	(Signed personally. RP 105 fo 2)	(Rank.)

Date: 11 SEP 44	Comprising 2 CDN BASE RPT GP	Convening Officer.
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CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

11 CER Bn

16 Sep 44

This is to certify that I have this day examined K 5088 Pte Hynda, N. R., and found him fit to undergo trial by Court-Martial.

"S. Segall" Capt  
M.O. 11 C B R Bn

"DMC"

11 CER Bn

14 Sept 44

I HAVE THIS DATE EXAMINED K 5088 Pte Hynda, N.R., R.W.R.,  
AND FIND HIM fit TO UNDERGO TRIAL BY COURT MARTIAL

Signed "S. Segall" Capt, RCAMC  
M.O. 11 C B R Bn

"DMC"

11 CER Bn

13 Sept 44

I HAVE THIS DATE EXAMINED K 5088 Pte Hynda, N.R., 11 CER Bn,  
AND FIND HIM fit TO UNDERGO TRIAL BY COURT MARTIAL.

Signed "S. Segall" Capt RCAMC  
M.O. 11 CER Bn

"DMC"

"DMC"

Evidence in the case of K 5088 Ptw Norman Robert Hynda, R WPE R, 10 CER Bn, tried by Field General Court Martial in the Field 14 Sep 44.

The Court having assembled and no objections being raised as to its constitution was duly sworn. Charge was read to the accused and a plea of not guilty entered.

1st Witness Capt W Ebrooks, CIC, 11 CER Bn, being duly sworn, states:

On 3 Sep 44 I was detailed to witness the reading of a draft warning order and the calling of the nominal roll of the ~~xxxx~~ men proceeding on draft. The accused ~~whom~~ I recognize answered his name on that parade at approx 1230 hrs. Later in the afternoon CSM Cook reported to me that Pte Hynda, the accused, was absent when the draft moved off.

Cross-Exam:

Q. Who called the roll?

A. CSM Cook.

Q. Could you say from memory if CSM Cook read draft warning order to troops in accordance with KR 1099 (warning order to troops) and if he followed amendments as detailed in a routine order dated 8 Jun 44 from CDW GHQ 1 Ech?

A. Yes.

Q. Would you recall if CSM Cook stated a definite time and place where and when the draft was to move off?

A. CSM Cook stated the time of a parade in the coy lines and warned the men that they were C.B.

Exam by Court:

Q. Could you give approx wording of warning order that was read to the accused?

A. Yes, approx. "You are warned for special duty and anyone who is absent from a parade that will be called later will be charged with desertion".

Q. Was anything said what the draft was to do between time of draft warning and time of moving off.

A. They were to have Med inspection.

Q. Was the accused present for Med. inspection?

A. I don't know. I was not there.

Q. Was anything said to the men if they C.B.?

A. Yes, CSM Cook, in warning order, stated they, the draft, were C.B.

Court adjourned till 1300 hrs 14 Sep 44 to give the prosecution time to obtain the attendance of CSM Cook, chief witness for the prosecution.

14 Sep 44 Court adjourned Sine die.

On 16 Sep 44

The Court proceeded without CSM Cook, whose attendance could not be obtained in the near future, after having referred the matter to the Convening Officer.

1st Witness, Capt W Brock, was recalled.

(Def) Q. In answer to question could you say from memory if CSM Cook ~~read~~ read draft in accordance with K.R. 1099 (warning order to troops) your answer was?

A. Yes.

Q. Could you remember if CSM Cook said approx the following, "At some time prior to departure of this draft a parade will be called at which parade the exact date and time of departure will be told to you"?

A. To the best of my knowledge and belief I do remember CSM giving those instructions.

(Court) Q. To your belief, the warning given on this parade, the warning read out on this parade was a definite warning as to draft?

A. It was a definite warning, a typewritten form, and read out, before the reading of which, CSM Cook asked all ranks if they could hear his voice. There were no dissenting answers.

(Def) Q. After the warning was read out to the parade were they queried as to whether they understood the draft warning?

A. I remember CSM Cook asking if they were clear regarding the meaning of what he had read.

Q. Ans were there any queries?

A. No there were none.

(Court) Q. I believe I am correct in saying you heard CSM Cook read off a printed form the following (as before the Def question) or words to that effect and also in answer to a previous question of the defence you stated that the time of a parade in the coy lines was given out by CSM Cook and the men warned they were C.B. on the 1230 hrs parade?

A. Yes, sir. The term "a parade" may have referred to a QM or MO's parade.

2nd Witness B.74684 Sgt Donald, J, Lorne Scots, 11 CPM Bn, duly sworn:

(Pros) Q. On 3 Sep 44 you were of what Bn?

A. I was on the strength of 10 Bn, 41 Coy.

Q. Would you tell the court your duties on the afternoon of 3 Sep 44? What was your duty?

A. On Sunday, 3 Sep 44, I was Orderly Sgt. As Orderly Sgt, a draft was called out. I was one of the witnessing NCOs. At 1230 hrs CSM Cook had the Coy formed up. He called out the names of a draft and they fell in on the right of the Coy. The accused whom I recognize fell out with this draft on the right of the Coy. When the draft was formed up CSM Cook then read the warning order to them. There was no definite time set out as to when the draft would move off. They were told they would parade to the BN, the MO and the DG. At 1530 hrs all men on the draft were called out and CSM Cook called the roll at which time Pte Hynda the accused was missing. CSM Cook ordered me as Orderly Sgt to check tents and lines to see if he could be located. After I looked round for a certain length of time I reported back that he could not be found. The draft left the parade ground at approx 1630 hrs and the accused did not go with it.

(Court) Q. After the draft warning order was read out was the draft asked if they understood the warning order?

A. Yes they were asked if they understood and no one dissented.

(Def) Q. I want you to try and remember as well as you can if CSM Cook told the draft at the time of reading the draft warning order (1230 hrs 3 Sep 44) the exact time and place of departure of the draft?

A. Not that I recall, at that time, did he give any special time or place for the draft to move off.

Q. Did CSM Cook say the following to the draft, after reading the warning order at 1230 hrs 3 Sep 44, the time of the last parade for this draft. I do not know at the present time?

A. Yes those are the words CSM Cook said to the men.

(Pros) Q. Did the CSM warn the draft that they were confined to their lines after they had attended the MO's parade until the draft was to move off?

A. I don't know. I did not stay until the end of the 1230 parade.

(Court) Q. Was the draft told while you were on the 1230 hrs parade that they were CB?

A. I don't recall them being told that.

Q. Were you on the QM, MO's or DG's parades?

A. No sir, I was not.

"DMC"

Q. Do you know where the MO's parade was held?  
A. I don't know, sir.

Certificate of apprehension produced by Prosecution and marked Exhibit "A".

There were no further questions.

D4 "DMC"

The following motion is respectfully submitted by the Defence at this point. Inasmuch as the evidence produced by the prosecution is in places at variance and also since it has been shown from evidence of the last witness called by the prosecution and substantiated in part at least by statement of the first witness for the prosecution that the draft warning order in question read to the accused on parade at 1230 hrs 3 Sep 44 did not contain paragraph relative to Orders from Cdn Sec GHQ 1 Ech relative to draft warning orders in that the exact time and place of the final movement of the draft was not given, the Defence submits therefore that a reasonable doubt could have existed in the mind of the accused regarding the movement of the draft. Moreover the Defence is prepared to introduce for the Court's inspection a psychopathic report stating that the accused is of nervous temperament from experience in action. The above being so the Defence respectfully asks the Court to consider this motion that under Army Act 57 the accused be tried under the lesser offence of AWL and not desertion.

The Court adjourned to consider the motion.

The submission on 1st charge is disallowed and case will proceed.

Para D5 was read.

D5 "DMC"

(Court)

Do you wish to make a statement?

A. The accused will make a statement not on oath.

Q. Do you intend to call witnesses on your behalf?

A. No this man is not known around here as to character, his unit being fwd.

Statement by accused

I came to 10 CBRE 1 Sep 44. I was there only one day. The next day we were called on draft. I went to three parades, QM, MC, not DG. I came back to the lines as sir I was under nervous strain as I had just come from hospital. I don't know what I was doing and I wandered off the lines and went into Deliverance. I stayed around the Maple Leaf Club trying to see if I knew anybody around there and I couldn't see anybody that I knew. Night came on and I found a barn to sleep in. I slept there until I woke up the next morning and I realized what I had done. I became frightened and reported to the Military Police and they brought me back. That is all, sir.

D6 "DMC"

PROS SUMS UP

Prosecution has shown that the man attended the draft warning parade and that he understood the purpose and seriousness of that parade. Witnesses have proved that altho' no time was set for the draft to move fwd the draft was warned that it was confined to their lines after attending the necessary Admin Parades, so that they would be available for final movement. The accused evidently understood the warning as he did not question the warning order.

Summary for defence

The defence has pointed out that the testimony of two witnesses called by the prosecution is at variance. The defence has pointed out by cross-examination that a possibility of doubt could have existed in the accused regarding the exact time of draft. The defence points out in closing the unusual nature

of this case due to the absence of the main witness for the prosecution and the lack of definite proof of intent on the part of the accused.

The Court closed to consider finding.

E3 ~~XXXXXXXX~~ "DHC"

Conduct Sheet

Plea of Mitigation.

Concluding the def makes the following plea in mitigation. I wish to point out that the accused is a man who served with his reg. in the front line for a period of approximately seven weeks. He was sent to hospital suffering from shock and after 4 days ~~XXXXXXXXXXXX~~ was discharged. One day later he was again on draft for the field. The defence submits that this man may have been motivated by feelings stronger than himself and in view of his service asks the court's clemency. It is unfortunate that he is unable to produce witnesses as to his character as his reg. is fwd. His record up to this offence as far as is known has been clear. These points the defence asks the court to consider when passing sentence on the accused.

Court now closed.



EXHIBIT "A" "DMC"

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1)(J)  
I, E 22883 Sgt Sues, W.G., No 9 Cdn L of C Pro Sec,  
certify that K 5088 Pte Hynda, N R, R Wpg Rifles, 10  
Bn, C.B.R.G., stationed at Douvres, surrendered himself  
to No L-38350 L/Cpl Andrews, H.W., No 9 Cdn L of C Pro Sec,  
on the 4th day of September, 1944 at ~~minimum~~ 2200 hrs  
as an absentee without leave. At the time of his surrender  
he was wearing military uniform.

Signed "Sgt Sues" ~~W.G.~~ E22883  
No 9 Cdn L of C Pro Sec

STATEMENT AS TO CHARACTER AND PARTICULARS  
OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K 5088	Pte	HYNDA NR	10 Cdn Base Rft Bn

1. The following is a fair and true summary of the entries in the ~~original and General~~ ~~Regimental and Squadron, Battery~~ ~~Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ ~~and of cases in which trial has been dispensed with.~~

	Within last 12 months	Since enlistment or appointment
For ORIGINAL MPMS NOT AVAILABLE	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Army Act~~ ~~and dispensations with trial under A.A. 73~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused is in confinement awaiting trial on the present charges, for ~~nil~~ ~~days~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~nil~~ ~~days~~ in civil custody, and ~~12~~ ~~days~~ in military custody, making a total of ~~12~~ ~~days~~ in custody, of which ~~0~~ ~~days~~ were spent in hospital.

5. The present age of the accused according to his ~~original service~~ ~~attestation paper~~ is 20 years.

6. The date of his ~~discharge~~ ~~specified in his original service~~ ~~attestation paper~~ is 31 Mar 43

7. The service which the accused is allowed to reckon towards discharge is 1 yr 8 mos 9 days

8. The accused is entitled to reckon ~~1 yr 8 mos 9 days~~ ~~service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. ~~military~~ ~~military~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ~~air force~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of \_\_\_\_\_  
 Permanent Force unit \_\_\_\_\_  
 dated \_\_\_\_\_, and in his regiment (or corps), the rank of \_\_\_\_\_  
 dated \_\_\_\_\_

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— \_\_\_\_\_ Date of promotion: \_\_\_\_\_

In the rank of \_\_\_\_\_ years.  
 In the rank of \_\_\_\_\_ years.  
 In the rank of \_\_\_\_\_ years.

NOTE—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, or summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number \_\_\_\_\_ Rank \_\_\_\_\_ Unit \_\_\_\_\_  
 Name \_\_\_\_\_ of \_\_\_\_\_ Regiment \_\_\_\_\_

NOTE—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Instance of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of September, 1944 "C M G Arthurs"  
 (C M G Arthurs) Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked \_\_\_\_\_  
 proceedings. \_\_\_\_\_  
 signed by the president, and annexed to the

ADJUTANT 10 C B R Bn

No. K5088 Name HYNDA NR

Sqn., Battery,  
or Company

Corps CIC

TEMPORARY  
Date of  
enlistment

G.C.  
Badges

EXHIBIT "C"  
Service or  
Proficiency Pay

"DCM" M.F.M. 6  
[A.F.H. 122]  
40/P & B/136 (2637)

Date of last entry in  
Company Conduct Sheet

No. and date  
of last drunk

Period not reckoning towards  
freedom from extra fine

Sheet No.

Signature O.C.  
Company, etc.

Character

Place	Date of offense	Rank	Cases of drunken- ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispen- sing with trial	By whom awarded	Remarks
				Original MFM6 not available					
				Certified to be a true copy of regimental books in my possession					
				"C.M.G.Arthurs" (C M G Arthurs) Capt Aijt 10 C B R Bn					

(P.T.O.)

## SUMMARY OF EVIDENCE

"DMC"

In the case of K 5088 Pte HYNDA, R R, R Wpg Rif, on strength 10 Cdn Base Rft En, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

F 21313 CSM COOK, JL, 10 CBR En, having been duly sworn, states:

I am F21313 CSM COOK, JL, CSM of 41 Coy 10 CBR En. At approximately 12 30 hrs 3 Sep 44 I was given a list of names and instructed to parade these men and warn them for draft. I paraded the draft and called the roll. The accused answered his name and number on that parade. I saw him at that time. I read out the draft warning order as follows:

'You have been selected to proceed on a draft for the performance of a special duty, and you are now warned that you must be present and ready to go when the draft is sent off.

Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service.

Similarly any unauthorized absence on your part while the draft is in transit or at any intermediate point before its final destination will result in your being charged with desertion on active service.

If you are convicted of desertion the Court has the power to sentence you to a maximum of penal servitude for life.

The time of the last parade for this draft I do not know at present but you are now warned that as soon as you have finished your MO's inspection you will return to your lines and remain there. By your lines I mean your tents in the area between that fence and this one

(pointing to both). No one will leave the lines without my permission.'

At 1530 hrs I paraded the draft prior to moving off. The accused was not present. I then sent the Orderly Sgt through the lines but he could not find him. I then reported him as a deserter. The draft left that afternoon and the accused was not in it.

The accused declines to cross examine the witness.

"J.L.Cook"  
(J L Cook) CSM

SECOND WITNESS

Capt W Brooks, R Wpg Rif att 10 CBR En, having been duly sworn, states:

I am Capt W.BROOKS, R Wpg Rif on the rft strength of 10 Cdn Base Rft En. On the afternoon of 3 Sep 44 I was delegated to witness the reading of the draft warning order used by this En. This warning order paras (a) to (d) inclusive were read by CSM COOK. He further warned the draft that after the MO's inspection they must not leave the lines without his permission. The accused answered his name when it was called from a nominal roll on the draft warning parade. I remember seeing the accused on that parade.

The accused declines to cross examine the witness.

"W. Brooks" Capt  
(W Brooks) Capt

THIRD WITNESS

A 40027 Cpl PATTINSON JD, 10 CBR En, having been duly sworn, states:

I am ~~namtWmKbKbKb~~ A 42007 Cpl PATTINSON, JD, Ordinary Room Cpl of 41 Coy 10 Cdn Base Rft Bn. At 1230 hrs 3 Sep 44 I was present when the draft warning parade was called. When the roll was called Rfn HYNDA's name was on that roll and I heard a soldier whom I presumed was Rfn HYNDA answer. The draft warning order used by this Bn was read out loudly and clearly by CSM COOK on this parade.

The accused declines to cross examine the witness.

"J.D.Pattinson"  
(J D Pattinson) Cpl

FOURTH WITNESS

B 74684 Sgt DONALD, J., Lorne Scots, 10 CBR En, having been duly sworn, states:

I am B 74684 Sgt Donald, J., Lorne Scots, on the rft strength of 10 Cdn Base Rft Bn. At approximately 1230 hrs 3 Sep 44 a parade was called to warn personnel for draft. I heard the accused's name called out and I heard him answer. I also saw him present on that parade. The draft warning order used by this Bn was read out to the draft by CSM COOK in a loud voice. When he had finished he asked if there was anyone who did not understand, and no one replied.

At approximately 1530 hrs when the draft formed up to move off I was present and heard the roll called by CSM COOK. The accused was not present. I searched the coy lines but could not find him. The draft left the unit at approximately 1630 hrs. I did not see him again until the morning of 5 Sep 44 in the guardroom. From 3 Sep 44 to 5 Sep 44 I called the roll every morning and every night and the accused did not answer his name during that interval nor did I see him in the coy lines.

The accused declines to cross examine the witness.

"J.Donald"  
(J Donald) Sgt

The accused, having been duly warned in accordance with RP 4(E), declines to make a statement and reserves his defence.

Certified that the foregoing summary of evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused. Certified that Rules of Procedure 4 (C) (D) (E) & (F) have been complied with.

"C.M.G.Arthurs" Capt  
(C M G ARTHURS) Capt  
10 Cdn Base Rft Bn  
Officer Detailed to Take  
The Summary of Evidence.

8 Sep 44

LIST OF WITNESSES

P 21313 CSM COOK JL 10 Cdn Base Rft En  
Capt W BROOKS R Wpg Rif 11 Cdn Base Rft En  
A 42007 Cpl PATTINSON JD 10 Cdn Base Rft En  
B 74684 Sgt DONALD J Lorne Scots 11 Cdn Base Rft En

LIST OF EXHIBITS

Certificate under ARMY Act Section 163(1)(j)

STATEMENT OF THE ACCUSED

I certify that I have received free of charge a copy of the charge sheet, summary of evidence, list of witnesses and list of exhibits.  
I do desire the services of an officer to represent me at my trial by Court Martial.

"N.R.Hynda"

( N R HYNDA ) Pte K 5088

Department of Neuropsychiatry - 11 CER Bn

K 5088 Rfn Hynda N R R W R

MRCAMMM "DMC"

REPORT:-

DATED 12 Sep 44

Born Poland 1926. Went to Canada in 1934 to join father. Mother died when he was an infant. Started to school in Poland. Completed Grade 7 in Winnipeg aged 16. Rather timid, juvenile court once. Poor understanding with father. Left home age 16 and went to Vancouver but returned home on freight after a month. Shortly afterwards returned to Vancouver, but left several jobs - couldn't settle down.

Joined Army 31 March 43.

Placed in CIC though he did not want to be a combatant. Only 2 minor crises. 3 hospitalizations - scabies, sore throat. Endurance in training apparently fair. England 1 April 44 - France June 11 - R W R about 28 June 44 - evacuated, about end of August, presumably for exhaustion. He doesn't remember. He says he was pretty effective he thinks up till time of evacuation. It is not clear whether he was knocked out by blast or went into a hysterical state. On about 3 Sep having been warned for draft went AWL. Returned next day and gave himself up. This was not a hysterical episode - he was frightened and worried and resentful because he had been put on draft in spite of his complaints about headache. Without knowing whether or no he had any concussion it is impossible to be sure whether or not there is any traumatic element in his headache. Eye grounds and retinae normal no neurological signs. Headache not of clean cut post traumatic type. He is very immature - stated age probably correct - 18, 11 - rather unstable in past - never had much confidence as fighting man though he insists that he was effective up till time he was evacuated. Now demoralized and sure he couldn't stand the front again. Psychoneurotic headache and dyspepsia, doesn't sleep well.

Diagnosis Psychopathic personality (inadequate).

RATING - 63

He is fit to stand trial and to undergo punishment as far as mental condition is concerned.

"222222" Major



296 B. H. Hudson. E.W.

*orig*

Correspondence to be PINNED here.

Army Form A.3.

**Form for Assembly and Proceedings of Field  
General Court Martial on Active Service.**

**PROCEEDINGS.**

On Active Service, this 19<sup>th</sup> day **A.**  
of June, 1941. Order convening the Court

Whereas it appears to me, the undersigned, an officer in  
Command of **CANADIAN BASE UNITS, CDN ARMY**  
on active service, that the  
persons named in the annexed Schedule, being subject to Military  
Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that  
such offences should be tried by an ordinary General Court  
Martial. ~~XX~~ *P*

\* Omit where  
Convening Officer  
is a Commanding  
Officer or is of  
Field Rank

~~XX~~

I hereby convene a Field General Court Martial to try the  
said persons, and to consist of the Officers hereunder named.

\* Omit if not  
applicable

~~XX~~

\* (1. ~~XX~~)

\* (2. ~~XX~~)

\* (3. ~~XX~~) *P*

~~XX~~

~~XX~~

Judge-Advocate Capt. A.H. Friedgut C.M.H.Q.

*President.*

Rank	Name	Regiment
Major	K.J. Southern	No.1 Cdn Eng Hldg Unit

*Members.*

Rank	Name	Regiment
Captain	G. Gibb	No.1 RCASC Hldg Unit
Lieutenant	C.C. Chapman	No.2 Det R.C.O.C.
Lieutenant	G. Hepburn	No.1 Cdn Sigs Hldg Unit

\* Must be  
signed personally  
by the Officer  
actually in  
command at the  
time, and all  
alterations in  
the composition  
of the Court to  
be initialed  
by him

*Signed* *A.H. Friedgut* Brigadier

Commanding Cdn Base Units, Cdn Army  
Convening Officer.

**SCHEDULE.**

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-93621  PTE. HYNDMAN, G.W.  No. 15 Cdn Gen Hosp.	<u>First Charge</u> A.A. sec 13(4) as per charge sheet	<i>Not Guilty.</i>	<i>Not Guilty.</i>	
	<u>Second Charge</u> A.A. sec 40 as per charge sheet	<i>Not Guilty</i>	<i>Change with the exception of all the words following the word "he is" and "he is"</i>	<i>Confirmed</i>
	<u>Third Charge</u> A.A. sec 40 as per charge sheet	<i>Not Guilty.</i>	<i>Not Guilty</i>	

*Sentenced to undergo detention for 60 days.  
27th 41*

\* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :-  
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"  
Answer (to be recorded on separate sheet if necessary) :- 20

(Signed) *L. J. Ryan* Brigadier (Signed) *L. J. Ryan* Major  
Commanding Cdn Base Units, Cdn Army. No. 5 Eng. H.Q.  
Confirming Officer (e)

- (a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.  
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.  
(c) Recommendation to mercy, if any, to be inserted in this column.  
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.  
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheet (if necessary) to be FINISHED here.

I certify that the above Court assembled on the day of June 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. 27<sup>th</sup> B.

I also certify that :-

- The members of the Court
- The witnesses
- ~~The interpreter~~ *The stenographer*
- The officers under instruction

were duly sworn.

Signed this 27<sup>th</sup> day of June 1941.

*L. J. Ryan* Major  
President of the Court Martial  
*A. J. P. Smith* Capt  
Mag. Advocate

I certify that the terms of \*A.O.L. 570 of 1918 have been complied with.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

*L. J. Ryan*  
President of the Court Martial

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Signed this 10<sup>th</sup> day of July 1941.

*L. J. Ryan*  
Confirming Officer, Major General

Promulgated and extracts taken in the case of B-93621 Pte Hyndman G.W.

(a) (Dated) 12 July 1941 (Signed) *L. J. Ryan* Colonel  
O.C. 15 Cdn Gen Hosp.

Promulgated and extracts taken in the case of \_\_\_\_\_ (Signed) \_\_\_\_\_

Promulgated and extracts taken in the case of \_\_\_\_\_ (Signed) \_\_\_\_\_

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. B-97621 Pte. George William Hyndman, No. 15 Canadian General Hospital, R.C.A.M.C., a soldier of the Canadian Army Overseas is charged with, when on active service:

First Charge

Stealing Public Property

AA Sec 17(4)

In that he, between 4th April and 4th May 1941, at No. 15 Canadian General Hospital, Bramshott, stole a quantity of cigarettes, sent to Canadian Soldiers Overseas, duty free and not for re-sale.

Second charge

An act to the prejudice of good order and military discipline

AA Sec 40

In that he, at Witley Camp on 2 May 41, sold cigarettes, being cigarettes sent to Canadian Soldiers overseas, duty free and not for re-sale, contrary to Canadian Army Routine Order (Overseas) No. 635 dated 25th March 1941 and republished in Unit Part 1 Order No. 86/41, dated 1st April 41.

Third charge

An act to the prejudice of good order and military discipline

AA Sec 40

In that at approximately 1830 hrs 4 May 41, near the Essex Scottish barrack block "C", Witley Camp, Surrey, he was concerned in the improper use of a truck, the property of the Crown, in the right of the Dominion of Canada, namely truck No. C.A.25038.

Bramshott Chase  
Hindhead, Surrey.

14 June 41.

*G.M. Farmer*  
.....  
(G.R.D. Farmer) Colonel, R.C.A.M.C.  
Officer Commanding  
No. 15 General Hospital, R.C.A.M.C.

To be tried by Field General Court Martial

*A. J. ...*  
..... Brigadier  
Commanding Cdn Base Units.

Bordon, Hants  
This 19<sup>th</sup> day of June 41.

*H. J. ...*  
Major  
23/6/41

*as is*

## MEDICAL OFFICER'S REPORT

I certify that No. B.93621, Pte. Hyndman, G.W.  
of this unit is in a ~~unfit~~ fit state of health,  
and ~~unable~~ able to undergo Trial by Court martial.

*C. Sleshaert, Capt.*  
Medical Officer

Station No. 15 General Hospital, R.C.A.M.C.

Date 27 Jun 41

M. F. B. 246

3M-6-39 (1724)  
H. Q. 1772-39 680

No. B93621, Pte. G. W. HYNDMAN, No. 15 General Hospital, R.C.A.M.C.,  
tried by a Field General Court Martial at BORDON, Hants. on the  
27th day of June, 1941.

-----  
The order convening the Court, the charge sheet, summary of evidence  
and medical certificate are laid before the Court.

Prosecutor:- Lieut. H.M. Howell, No. 1 C.I.H.U. (Lawyer)  
Defending Officer:- Lieut. Richard B. McDougall, No. 3 C.I.H.U.

At 1000 hrs the trial commences.

The names of the President and members of the Court are read over in  
the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President, or by any of the  
officers whose names you have heard read over?

A1 No, sir.

The President and members are duly sworn.

Q2 Do you object to B66944, Sgt. T. Pyburn, R.Regt.C., Cdn Base Units,  
acting as shorthand writer?

A2 No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the  
proceedings.

The accused is arraigned upon each charge in the above mentioned  
charge sheet.

Q3 Are you guilty or not guilty of the first charge against you,  
which you have heard read?

A3 Not guilty, sir.

DEFENDING OFFICER: Before pleading, sir, I would like under rule  
62 (E) to apply for the accused to be tried separately on each  
charge in the order in which they appear on the charge sheet, that  
will be satisfactory.

PROSECUTOR: I have no objection to that, sir.  
Q4 Dealing with the first charge, are you guilty or not guilty of  
the first charge against you, which you have heard read?

A4 Not guilty, sir.

Q5 Do you wish to apply for an adjournment on the ground that any  
of the rules relating to procedure before trial have not been  
complied with, and that you have been prejudiced thereby, or on  
the ground that you have not had sufficient opportunity for  
preparing your defence?

A5 No, sir.

The prosecutor makes no opening address.

1st witness) MATRON AGNES C. NEILL, being duly sworn, is  
for ) examined by the prosecutor:-  
prosecution)

Q6 Miss Neill, what are your duties at the 15th General Hospital  
insofar as cigarettes are concerned?

A6 I am sent cigarettes from time to time by different organizations;  
some of them are specifically designated to be given to patients  
and some are for the Nursing Sisters, which I give out according  
to whom they are intended for.

Q7 Where are those cigarettes which are sent to the 15th General

- Hospital, kept?
- A7 They are sent to me directly - that is, if they are sent directly to me they are kept in my office, or if they are sent to the C.O. they are kept in his office.
- Q8 During the period covered from 4 Apr 41 to 4 May 41, did you have any cigarettes in your custody in your office?
- A8 Yes, I did.
- Q9 Were any of those cigarettes found missing at any time?
- A9 Yes.
- Q10 Now, will you just tell the Court as near as you remember just when it was and what happened?
- A10 I am not absolutely definite as to the date, but it would be about the end of April or the beginning of May, I had two thousand cigarettes which had been sent to me by the Toronto Hotels' Soldiers Fund. They were sent to me for distribution to the Nursing Sisters and I put them in my cupboard in my office, and then one morning I went to get them and they were not there.
- Q11 Was that cupboard kept locked?
- A11 No, it wasn't.
- Q12 Who has access to your office besides yourself?
- A12 Well, during the day the Assistant Matron and myself are there most of the day except when we are making our rounds, but our office door is never locked, and then the Night Sister is there in charge of it during the night, but of course any person can go in and out of that office if we are not there at the time, for instance being at a meal.
- Q13 Who else would you say has access to that office of yours?
- A13 Well, practically any person can come into our office.
- Q14 Does anybody go into that office regularly in the course of cleaning the hospital?
- A14 Oh, yes, the cleaners are in there at night. You see, the cleaning of the administration block is done at night, and they start about six o'clock and they are of course in and out a good deal while they are doing the cleaning.
- Q15 Do you know of any soldiers in particular who were on duty the night before you missed the cigarettes?
- A15 No, I would not like to say that.
- Q16 Are these cigarettes from the Toronto Hotels' Soldiers Fund ever sent to any private individuals?
- A16 Not to my knowledge.
- Q17 And you say it was about the end of April that these cigarettes were found to be missing?
- A17 Yes.
- Q18 Did you ever see them again?
- A18 No.
- Q19 Or were they ever returned to you?
- A19 No.
- Q20 Have you any idea who took those cigarettes?
- DEFENDING OFFICER: I object to that question; that is purely a matter of opinion.

CROSS EXAMINATION BY THE DEFENDING OFFICER

- Q21 Miss Neill, at the time you lost these cigarettes, you say it was the end of April or the beginning of May. Taking from say the 29th or 30th April until the 1st or 2nd of May, or anything like that, could you swear just when they were missing?
- A21 I am afraid I couldn't.
- Q22 But you are reasonably certain it was some time about the end of April or the beginning of May?
- A22 Yes.
- Q23 Now about these cigarettes, does a covering letter come with them?
- A23 Yes, it does; it comes usually addressed to the Superior Officer or Nursing Sister.

- Q24 And you are the Matron of the hospital?  
A24 Yes.  
Q25 The parcels, I take it, are all addressed in the same way?  
A25 Yes.  
A2 5 Was a covering letter received with these particular  
Q26 cigarettes?  
A26 Yes.  
Q27 Do you happen to have in your possession the covering letter?  
A27 I am sorry, but I haven't.  
Q28 Do you remember in a general way what was in that letter? To whom was it addressed, for instance? I have a letter here which my friend has seen but I do not want it to go in as evidence, but it might be an aid to you, Miss Neill, to assist your memory. This letter was received on 6 May 41 and therefore I take it it covers a subsequent shipment of cigarettes?  
A28 Yes, this is the type of letter I get.  
Q29 This letter is addressed to the Superior Officer, and it says the cigarettes are for distribution to the members of your staff?  
A29 Yes.  
Q30 The staff of your nurses, of course, is a known quantity; you know just how many are on the staff at any particular time?  
A30 Well, of course it varies from time to time, but I know naturally how many are on the staff at any one time.  
Q31 And when you receive these cigarettes you give them out according to the number on your staff at the time?  
A31 Yes.  
Q32 In other words, it is a known body of people?  
A32 Quite.  
Q33 Are Nursing Sisters subject to military law?  
BY JUDGE ADVOCATE: That surely is a matter of law.  
DEFENDING OFFICER: Yes, but it affects this case; possibly the Court will take notice of it.  
BY JUDGE ADVOCATE: Well, they ought to know.  
Q34 BY DEFENDING OFFICER: This parcel, Miss Neill, was it ever opened?  
A34 No, it wasn't.  
Q35 There was a brown paper wrapping on it?  
A35 Yes.  
Q36 Do you happen to know what kind of cigarettes were in this parcel?  
A36 Well, it had "Sweet Caporal" on the outside of it.  
Q37 Do you know the size of the package?  
A37 I don't know in that particular box, no, because you see it was not opened.  
Q38 How many cigarettes did this parcel contain?  
A38 Two thousand.  
Q39 Now then, this question of access to your room, you say the room is not locked at any time during the day or night, and the cupboard in which these cigarettes were kept was not locked; is that right?  
A39 They were not locked up, no.  
Q40 In the building in which your office is in, - take for instance on the night, or during any night, how many people are in that building? As I understand it - correct me if I am wrong - the building your offices are in are in a separate wing, but it is all connected up by corridors?  
A40 Yes.  
Q41 About how many patients would be in that building that is connected by a corridor? They are not shut off or locked off from your offices at night, are they? Let us say for instance that someone wanted to see you from the patients' part of the building, there would be no doors or anything to stop them from walking in, would there?  
A41 There would be someone on duty in the Admitting Office, though.  
Q42 You come in the main entrance of the building and the Admitting Desk is on the right hand side as you come in?  
A42 You come in the front door and through double doors into the Admitting Desk.



- Q43 And is there always somebody there all through the night?  
A43 Yes.  
Q44 And there would of course be a certain number of nurses on duty at night?  
A44 Yes.  
Q45 They would have access to your quarters?  
A45 Yes.  
Q46 And if a nurse wanted to see the Night Supervisor could she go and look for her in your room?  
A46 Yes.  
Q47 Then there were men on duty - the accused was one - cleaning up the building?  
A47 Yes.  
Q48 Is there more than one man doing that, do you know?  
A48 Yes.  
Q49 There is also a switchboard operator on duty there?  
A49 Yes.  
Q50 That is during the night. Now, during the daytime there is a constant stream of people passing in and out?  
A50 Yes.  
Q51 And occasionally during the day, as you have said, your office is empty?  
A51 Yes, when I am out for meals.

RE-EXAMINATION BY THE PROSECUTOR

- Q52 In regard to these "Sweet Caporal" cigarettes you have mentioned, what is the usual size of package that come in? Is it a small package or large?  
A52 Packages of 10 cigarettes.  
Q53 Have you ever received them in any other size from this Fund?  
A53 No, I have not.  
Q54 And have they always been "Sweet Caporal"?  
A54 Yes.

JUDGE ADVOCATE: I should point out that those questions asked just now on re-examination were not questions, as I recall it, that arose out of cross-examination.

THE PROSECUTOR: I think they were. My friend brought out the make and size of the package in his cross-examination.

JUDGE ADVOCATE: Then the questions are quite in order, but in view of the fact there are some Officers for instruction I wish to point out for general consideration that questions in re-examination must arise out of the cross-examination, otherwise they cannot be asked without permission of the Court.

2nd witness) No. B93533, G.M.S. J.J. EVERETT, No. 15 General  
for ) Hospital, R.C.A.M.C., being duly sworn, is examined  
prosecution) by the prosecutor:-

- Q55 Have you anything to do with the duty roster for other ranks at the 15th General Hospital?  
A55 Yes, sir.  
Q56 What generally are your duties?  
A56 I warn the Orderly Sergeant that I want men for different duties, and my job is really the allocation of the men to those various duties.  
Q57 Does that also include the men who are detailed for fatigue, to sweep the floors, for instance, and clean up the building generally?  
A57 Yes, sir.  
Q58 Do you recognize the accused, Pte. Hyndman, in the Court?  
A58 I do.  
Q59 Indicate him?  
A59 That is Pte. Hyndman, sir (indicating).

- Q60 Has Pte. Hyndman been detailed for fatigue to clean up the  
administration block of the hospital?  
A60 He was, yes, sir.  
Q61 We are concerned now with the time between the 4 Apr 41 and  
the 4 May 41; was Pte. Hyndman on duty during that period?  
A61 From 8 Apr 41 until 29 Apr 41 he worked nights, sir.  
Q62 Where was he employed, in what part of the building?  
A62 In the Administration Block, which included the Colonel's room,  
the Matron's room and the Clerk's room and some other offices  
in the front as well.  
Q63 What time did he go on duty?  
A63 Well, they usually start at six o'clock at night and work for  
five or six hours.  
Q64 Do you know whether Pte. Hyndman during that period would have  
access to these offices you have mentioned?  
A64 He would.  
Q65 And how is that access gained?  
A65 They get the keys from the switchboard operator.  
Q66 Have you the duty roster with you?  
A66 Yes, sir, it is just outside; shall I get it? I can send some-  
one over for it if you wish.  
DEFENDING OFFICER: I am quite prepared to admit that Pte.  
Hyndman was on duty between those dates.  
THE PROSECUTOR: Would the Court like to see the duty roster?  
THE COURT: I do not think it is necessary in that case.
- CROSS-EXAMINATION BY DEFENDING OFFICER
- Q67 How many men were detailed at nights for the work of cleaning up?  
A67 Two men were detailed, sir.  
Q68 Were there ever any more?  
A68 Well, at times we have had three.  
Q69 Were they detailed to do work in particular rooms?  
A69 No sir, they were not.  
Q70 Then it follows that you could not say on any specific night who  
cleaned out the Matron's room?  
A70 No, sir.  
Q71 You said they could gain access to the rooms by getting the keys  
from the switchboard operator. Were the rooms kept locked?  
A71 All in the Administration Wing with the exception of the  
Matron's office.  
Q72 You said the last night duty the accused did was on the 25th?  
A72 I think that would be right, sir.  
Q73 And at night there are two separate switchboard operators on;  
one does until midnight?  
A73 One from 12 noon until midnight, and the other from midnight  
until 6.00 in the morning.  
Q74 And they also would have access to these rooms in the Administra-  
tion Wing if they wanted to slip away from their post?  
A74 They would, sir, yes.  
Q75 The accused or any other person doing the cleaning up there of  
the building would be employed at that work, you say, for five  
or six hours?  
A75 Yes, sir.  
Q76 So they went on at six o'clock and would be off about eleven or  
twelve at night?  
A76 Yes, sir.  
Q77 And in that time moving in and out of the offices and cleaning  
up the hallways and offices and so on, after twelve o'clock there  
would not be any of these men in the hallways or the offices?  
A77 They wouldn't be, no sir.
- 227

3rd witness) No. B93675, Cpl. C.S. GROUNDWATER, No. 15 General  
for ) Hospital, R.C.A.M.C., being duly sworn, is examined by  
prosecution) the prosecutor:-

- Q78 Cpl. Groundwater, what are your duties?  
A78 I am the postal orderly.  
Q79 As such, have you a record of the parcels received by the  
personnel of the hospital?  
A79 I keep a record of all cigarettes received, sir.  
Q80 Can you tell me from your records what cigarettes Pte. Hyndman  
has received, if any, during the last few months?  
A80 Yes sir - two parcels, on the 10 Feb 41 and 12 May 41.  
Q81 On 10 Feb 41 he received what size parcel?  
A81 Three hundred cigarettes.  
Q82 And on 12 May 41?  
A82 Three hundred also.  
Q83 As Postal Orderly, do the packages of cigarettes when they  
arrive from the Toronto Hotels' Soldiers Fund come through you?  
A83 Yes, sir.  
Q84 And to whom are they generally addressed?  
A84 To the C.O. or one of the senior officers like the Matron.  
Q85 Can you tell us anything about what size they usually are?  
A85 Usually a large size, about 2500, sir.  
Q86 Do you know what units they are in inside those parcels?  
A86 No sir.  
Q87 Have you ever seen one of those packages addressed to a  
private individual?  
A87 Not that I know of, sir.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

- Q88 Now the second lot of cigarettes which Pte. Hyndman received,  
you said that was 300?  
A88 One was 300, but there was no definite quantity stated, so I  
assume they were both 300.  
Q89 Then actually you do not know?  
A89 I assume they were 300.  
Q90 Presumably a great number of cigarettes come into that  
hospital?  
A90 Yes, sir.  
Q91 About how many? Could you give us an average?  
A91 I could not just say, but in the thousands anyway.  
Q92 This package in question with which we are dealing here, the  
parcel Miss Neil lost, that was what - 2,000 or 2,500, and  
that would only be one of many?  
A92 Well, sir, there are not very many parcels of 2,500 cigarettes.  
Q93 Are there many cigarettes received there in a parcel of 1,000?  
A93 Yes, quite a few.  
Q94 The amount of cigarettes coming into that hospital would be  
what - would you say 25,000 or 30,000 per month, providing  
the shipments are fairly regular?  
A94 Yes, sir.

RE-EXAMINATION BY THE PROSECUTOR

- Q95 You mentioned the second shipment of cigarettes to Pte.  
Hyndman was 300; what made you think it was 300?  
A95 Well, one package definitely stated 300 and the other just  
simply bore a number, with no quantity shown.  
Q96 Do you happen to remember which one stated it was 300?  
A96 If I remember correctly, sir, the one which did not have any  
serial number on it.  
Q97 And which one would that be?  
A97 I couldn't say exactly without reference to my records.

4th witness) No. B33789, Dvr. C. BARNHAM, No. 15 General  
for ) Hospital, R.C.A.M.C., being duly sworn, is examined  
prosecution) by the prosecutor:-

Q98 What are your duties at the hospital?  
A98 I am an ambulance driver.  
Q99 Do you recognised the accused present in this Court?  
A99 Yes, sir.  
Q100 Just indicate him?  
A100 Yes sir, Pte. Hyndman, sitting over there (indicating).  
Q101 The accused man is charged, as you have heard, with the theft of some cigarettes between 4 Apr 41 and 4 May 41. Will you just tell the Court in your own words what you know, if anything, about Pte. Hyndman and the cigarettes?  
A101 Well sir, we were at breakfast one morning and he asked me where I was going that day and I said I was going to Witley. We go to different places with patients from the hospital and on that day I was booked for Witley. He asked me if I knew where he could sell some cigarettes and I told him to take them to Witley, and we went up there and that is where the cigarettes were sold.  
Q102 Do you remember what day that was?  
A102 Yes sir, On Sunday 4 May 41 I think it was.  
Q103 I show you here a transport work ticket; can you identify that work ticket?  
A103 Yes sir, it is my work ticket for 4 May 41.  
Q104 Is your signature on that work ticket?  
A104 Yes, sir.  
Q105 Just read to the Court the entry for 4 May 41?  
A105 It covers patients from Bramshot to Witley Camp and return, showing time taken being from 1330 hrs to 1500 hrs.

EXHIBIT A - Transport Work Ticket.

Q106 Now then, what happened as regards the cigarettes on this occasion?  
A106 Well sir, we proceeded to Witley Camp and I discharged these patients, and on the way I picked up two soldiers at the Devil's Punchbowl and took them to the roudabout there.  
Q107 Were there any cigarettes in the vehicle?  
A107 Yes, sir.  
Q108 Were they yours?  
A108 No, sir.  
Q109 Well, whose were they?  
A109 The accused's.  
Q110 Roughly, how many were there; do you know approximately?  
A110 Roughly about 500, sir.  
Q111 And what kind of container were they in, if any?  
A111 In a big container about the size of the 1,000 packages you receive here - the regular size.  
Q112 What kind of cigarettes were they?  
A112 "Sweet Caporal," sir.  
Q113 What size packages?  
A113 Size 10's.  
Q114 Did you have occasion to open any of them?  
A114 Yes, sir.  
Q115 And what did you find inside them?  
A115 I never found anything; I just put them in my cigarette case, just ten cigarettes.  
Q116 Was anything else inside the package?  
A116 Not to my knowledge, sir.  
Q117 And what did you do with the cigarettes?  
A117 They were sold at Witley, sir.  
Q118 Did you ask Hyndman at any time as to where he got these cigarettes?  
A118 No sir, I did not.

Q119 Or did he tell you where he got them?  
A119 No, sir, he didn't.

CROSS EXAMINATION BY DEFENDING OFFICER

Q120 The container in which these cigarettes was contained was, you say, about the size of a package of 1,000?

A120 Yes sir, it looked to be about that; I never received them in the thousands myself, and perhaps it was not quite that big.

Q121 Did you sell all those cigarettes?

A121 All but what were kept for our own personal use.

Q122 Now, this was on a Sunday, was it?

A122 Yes, sir.

Q123 Have you ever had other men go out for rides with you on a Sunday when they were off duty?

A123 Yes, quite often.

Q124 Under the authority to permit them or refuse them if you did not want them to go?

A124 Yes, sir.

Q125 Have you any idea where Pte. Hyddman got these cigarettes?

A125 I have not.

Q126 Or whether he had any more?

A126 No sir, I could not state whether he had any more or not.

Q127 BY THE COURT: In your evidence you said, "We went to Witley Camp." By "we" do you mean the accused and yourself?

A127 Yes, sir.

Q128 Did he help you to complete the transaction, or did you help him; did you more or less assist each other?

A128 Yes, sir.

5th witness) No. A-22449, Pte. R. MacKINNON, No. 2 Canadian  
for ) Infantry Holding Unit, being duly sworn, is examined by  
prosecution) the prosecutor:-

Q129 Pte. MacKinnon, do you recognise the accused in this Court? Just look around and see if you see him, Pte. Hyddman?

A129 No sir, I could not recognise him here.

Q130 Just look around again and make sure?

A130 No, sir.

Q131 All right. Some time around the beginning of May did anything unusual happen in the way of a vehicle coming in from another unit that you saw?

A131 Yes sir, one Sunday afternoon - I don't just know the date - but at the beginning of May, it was in the afternoon, I was coming from our barrack down here and I heard someone say, "There is someone there selling cigarettes," and I went over and there was a vehicle that looked like an ambulance and there were two fellows there, and I went over and asked them if they had any cigarettes and they said they had, and I wanted to buy some so I bought fifty of one of these men.

Q132 What did you pay for them?

A132 I gave him a 10-shilling note and he gave me 7-shillings change back.

Q133 What does that come to? How much did you pay for the cigarettes?

A133 3-shillings for 50 cigarettes.

Q134 Could you recognise the type of package they were in if you saw it?

A134 Yes, sir.

Q135 What brand of cigarettes were they?

A135 "Sweet Caporals."

Q136 Does that represent anything to you (producing empty package of cigarettes)?

A136 Yes sir, that is the kind of package they were in, sir.

EXHIBIT "B" - Empty package of "Sweet Caporal" cigarettes (10's)

Q137 Have you ever seen that package before?

A137 Do you mean that very package there, sir?  
 Q138 Yes, just look at it and see if in any way you can identify it?  
 A138 Well, I don't know, sir; they all look alike to me.  
 Q139 But it is the same type of package, is it?  
 A139 Yes, sir.

DEFENDING OFFICER: I suggest that it be marked "for identification" - we don't know where it came from or what it is. In the meantime it should be just marked "for identification."  
 JUDGE ADVOCATE: Yes, it will be marked, "Exhibit B - for identification."

Q140 BY THE PROSECUTOR: What else was in the package, if anything, besides cigarettes?  
 A140 A small card, sir.

Q141 What did it say on the card, do you remember?  
 A141 I don't just know exactly, but something about The Toronto Hotels - I don't just recall exactly what it was, though.

Q142 Would you recognise the card if you saw it?  
 A142 Yes, sir.

Q143 What about this card (produced)?  
 A143 Yes sir, that is the card I produced myself.  
 Q144 Just look on the back of it and say whether or not that is your name on the back of it?

A144 Yes, sir.  
 Q145 And is that card signed by yourself?  
 A145 Yes, sir.

Q146 And you say that is the very card which you found in the package?  
 A146 Yes sir, in the last package I had.

EXHIBIT "C" - Card of Toronto Hotels' Soldiers' Fund, signed on reverse by A22449, Pte. R. MacKinnan.

Q147 Have you any idea how many cigarettes this man you have referred to, had?  
 A147 I bought 100 off him myself; you see, I bought 50 off him at first and then went back half a minute after and bought another 50 cigarettes.

Q148 And is that all you know about the circumstances of this case?  
 A148 Yes, sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q149 In connection with this exhibit "C", you say you found that card in the last package. Did you find a similar card in every package?  
 A149 Yes, sir.

Q150 You first produced that card about 5 Jun 41, and you received the cigarettes on the 4 May 41; is that right?  
 A150 I don't know just what date it was, sir.

Q151 Well, in any event, it was a Sunday in May?  
 A151 Yes, sir.

Q152 And you apparently kept that card for a month?  
 A152 I did.

Q153 Why did you do that?  
 A153 Well sir, I think it was about three days after I had bought the cigarettes, the Orderly Corporal asked me if I had any packages left and I said I thought I did have one, and he said, "They must have been stolen." He said, "The Major would like to see the package," and I told him, "I will keep the card inside it," and that is how I came to keep that card. I gave one of the other packages away as I bought it.

Q154 But you carried that card in your pocket for a month, did you?  
 A154 Yes, sir.

Q155 And never showed it to anyone else?  
 A155 No, sir.

- Q156 BY THE COURT: Did you see the container that these packages of  
cigarettes were in?  
A156 No, sir.  
Q157 All you saw, I take it, were the actual packets of cigarettes?  
A157 Yes, sir.  
Q158 From whom did you buy the cigarettes?  
A158 I could not say whether I bought them from the driver or from  
the other fellow, but there were two fellows there selling these  
cigarettes, sir. I went right back into my hut; I didn't wait  
until the ambulance went away. It all happened in less than  
two minutes, sir.  
Q159 What unit were these two soldiers from?  
A159 I couldn't say, sir.  
Q160 Would you recognise the man from whom you bought the cigarettes  
if you saw him?  
A160 I don't think so, because you see I was not looking at him long  
enough to identify him at all.  
Q161 Why was this card signed?  
A161 Well sir, about three weeks ago I was taken sick and I went to  
Bramshott Hospital and the officer went up there to get evidence  
from me one day, and I gave him this card and I signed it then  
when I gave it to him.
- 6th witness) No. A-22366, PTE. J. JUNG, No. 2 Cdn Infantry  
for Holding Unit, being duly sworn, is examined by the  
prosecution) prosecutor:-
- Q162 I believe you have a statement to make about a certain occurrence  
in connection with cigarettes?  
A162 Sir, I don't remember the date, but anyway on a Sunday in the  
afternoon I went from the hut to the washroom and ---  
Q163 Do you remember what month it was?  
A163 I wouldn't be sure, but I think it was the 4 May 41, and I saw  
a crowd of the boys around an ambulance tuck. I came closer to  
it and I wanted to find out what it was all about, and I found  
they were selling cigarettes.  
Q164 Where was this ambulance?  
A164 Right in the Essex Scottish area, on the road.  
Q165 Which Essex Scottish area?  
A165 Well, in this camp anyway, sir.  
JUDGE ADVOCATE: Just a moment. I don't know what connection  
this evidence and the evidence of the previous witness has with  
the first charge. On the face of it, it must be connected with  
the second charge.  
THE PROSECUTOR: I am attempting to prove, sir, that the cigar-  
ettes taken from Matron Neill's office are either the same or  
similar to the cigarettes in the possession of the accused, and  
of course that is being done by offering the cards shown which  
were contained in the packets of cigarettes.  
Q166 All right. What happened?  
A166 I had been out of cigarettes myself but I had 11d. in my pocket  
and I asked one of the men if I could get some cigarettes for  
11d. and he gave me two small packages, two small packages of  
"Sweet Caporals." Two or three minutes after they start to  
leave the place. I opened the cigarettes and I found a little  
sheet or card in the package, "Toronto Hotels' Soldiers' Fund,"  
and this is my writing on the back of this card with the number  
of the ambulance, "CA-25036, Sunday, May 4th, 41 - J.J." Those  
are my initials.  
Q167 When did you put that writing on there?  
A167 When I opened the package and found this little card in it and  
I found out that a soldier could not get cigarettes like this  
from Canada for himself and that these cigarettes must be stolen  
or something, then I took the Number of the truck and thought I  
would find out what had happened.

Q166 A166 No, sir.

Q167 A166 Would you recognize either of them if you saw them?

Q170 A169 Now, yes sir.

Q171 A170 Can you recognize one of them here?

Q172 A169 Yes sir, right here (indicating accused).

Q173 A169 Do you remember what this particular soldier was doing on that occasion, what part of the transaction he was handling?

Q174 A171 Yes sir, I remember now, Hyndman was in the truck giving out the cigarettes and the other soldier was standing on the street by the truck and selling the cigarettes and handing the money to the man in the ambulance.

EXHIBIT "D" - Card of Toronto Hotels' Soldiers' Fund, signed on reverse by witness.

Q175 A175 I am showing you a "Sweet Gaporal" packet, a container for ten cigarettes; do you recognize that?

Q176 A175 Yes, sir.

Q177 A175 Where have you seen one before similar to that, or that one?

Q178 A175 Can you tell us anything about a package like that, or that particular package you have in your hand?

Q179 A175 It was a package like this which I bought - I bought two of them like that, exactly the same as that package, and there were ten cigarettes in each.

Q179 A174 Can you identify that particular package?

Q179 A174 No sir, I could not say it was that very package, but I know it was the same kind of package.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q175 A175 The man you have identified now as the accused was the man inside the truck, was he?

Q176 A175 Yes, sir.

Q176 A175 You said you could identify the accused now?

Q177 A175 Yes, sir.

Q177 A175 Why do you say "now"?

Q178 A175 Because now I see both of them here; I remember them now. In other words, due to the fact they were brought to your attention by being brought in here, you can recognize them, is that it?

Q178 A175 Yes, sir.

RE EXAMINATION BY THE PROSECUTOR

Q179 A179 Could you have recognized the accused before today?

Q180 A179 If I saw both of them, yes.

Q180 A179 Apart from the occasion on which the cigarettes were handed out, was there any other time you saw them?

Q181 A181 Yes, sir, this soldier I saw him because I have been in the Mr. Orderly Room, I don't speak very good English, sir.

Q181 A181 When did you see him approximately after 4 May 41?

Q182 A182 In the Mr. Orderly Room.

Q182 A182 About what date?

Q183 A182 I don't remember.

Q183 A182 Were you asked any questions that day?

Q184 A182 Yes, sir.

DEFENDING OFFICER: This is re-examination anyway.

Q184 A182 Because the man came in here that this witness recognized the accused.

Q184 A182 When that man came into the Mr. Orderly Room, did you recognize him then?

Q185 A182 Yes, sir.

BY THE COURT: Could you swear positively that Hyndman was the man you saw on that occasion in the Orderly Room, and that it was the same man you saw selling cigarettes?

Q185 A182 Yes, sir.



(The foregoing witness claims the right under R.P. E3(B) of having his evidence read to him. The shorthand writer reads the evidence, which is accepted in toto by the witness).

THE PROSECUTION IS CLOSED

DEFENDING OFFICER: In view of the fact this last witness testified that the accused, Pte. Hyndman, was in the truck, and selling the cigarettes, I would like permission to ask Pte. Barnham about that, to clear up just who was in the truck.

THE PROSECUTOR: I think that is entirely in the discretion of the Court; I personally have no objection.

DEFENCE

4th witness } No. E33789, Dvr. C. BARNHAM, No. 15 General Hospital,  
for } R.C.A.M.C., being previously sworn, is recalled and  
prosecution } examined by the defending officer:-  
(recalled on }  
behalf of }  
the defence))

Q186 When you were selling the cigarettes in the camp area one of you was in the truck and one outside?

A186 Yes, sir.

Q187 Who was in the truck?

A187 I was in the truck, sir.

THE DEFENDING OFFICER: At the close of the case for the prosecution I am applying that the accused be dismissed, and quote as my authority for making this motion note 1 to R.P. 40, p. 644 M.M.L. There are two main grounds on which I feel I have not been put on my defence. The accused is charged under AA 1E(4) with stealing public property. That same section provides for a charge to be laid against an accused person for stealing property belonging to persons subject to military law. Miss Neil testified in her evidence that these cigarettes are addressed to her as supervisor, that she is the supervisor at the 15th General Hospital. She also states, according to the letter she received, the cigarettes are for distribution to members of her staff, and she has admitted that that staff is at all times a stated body. When the time for distribution comes different individuals get the cigarettes; they are not distributed to patients or any person other than members of the staff. It is a gift from Canada to a definite, recognizable body of people, care of the person in charge of that body. In other words, under no consideration can I see where that can be called "public property." That is something belonging to the public generally, usually in the right of the Crown and the right of the Government, and these cigarettes could not be deemed to be public property; they were gifts to certain definite people, and if the charge had been worded properly it might have been worded that the cigarette this man is charged with stealing were the property of persons subject to military law. As yet we have no evidence of public property being stolen - the cigarettes were certainly not public property. The second ground upon which I feel I have not been put on my defence is on the ground of stealing. To prove the stealing there has to be a certain general ---

JUDGE ADVOCATE: Just a moment. You were quoting 1E(4). Have you the amendment?

DEFENDING OFFICER: Yes, sir. He must be expressly charged with stealing public property; in this case, if anything, I submit he should be charged with stealing property belonging to a person subject to military law. As you can appreciate, the gravity of the offence may vary, according to whether public property or personal property. If a man steals a rifle, which is public property, it is considered a more serious charge than if he steals some article of personal property.

*LA J.*

My second objection is to the evidence of actual theft. The MML looks upon stealing from comrades in arms as a very serious charge, but consequently the evidence must be very strong. The evidence we have first is of access, since no-one was caught in the act, and the evidence of the prosecution to prove access has certainly proved access on the part of the accused, but it has not limited it to him at all. There was access on the part of the switchboard operators, nurses during the day and at meal times particularly, and the opportunity for access on the part of anyone who cared to walk down the corridor. Furthermore, this cupboard was unlocked, so I do not see that the evidence of access is sufficiently strong in itself to raise any presumption that the accused stole the cigarettes. If it does not do that, then it follows that you must show he was in possession or was seen to be in possession of the cigarettes to connect him up with the alleged crime. In this case the accused sold in this camp packages of ten cigarettes sent by the Toronto Hotels' Soldiers' Fund. They have not been able to prove that they were packages of ten received by Matron Neil, because the package she did receive was never opened. She says they were contained in a package of 2,000; the Postal Corporal stated he thought it was a package of 2,500, but the only evidence we have at this end was given by Barnham who said the cigarettes which were sold were contained in a package of 1,000 or less. It seems to me that the connecting link between the cigarettes sold here and the cigarettes missing from Miss Neil's office is practically non-existent, because there is no proof except possibly that they were both "Sweet Corporal" cigarettes. I think it is a matter worthy of note that the Postal Corporal said thousands of cigarettes came into that hospital every month as well as the ones sent to Matron Neil, and I do not think the accused has been put on his defence because he does not come under those charges and the evidence of theft is inadequate.

THE PROSECUTOR: In regard to this motion, sir, the defending officer has brought up the question of the laying of the property in the right of someone, and states in this case it is not public property. That is a question of law which I am prepared to argue, but I hardly think it is relevant. It quite possibly could be public property, in that it was sent to a representative of H.M. Forces for distribution. However, I don't think it really matters in view of the section in the A.A. to the effect that if the evidence is different then the Court can find the accused guilty of what is proven in evidence. As regards the evidence for the prosecution, the prosecution has proved, firstly, the loss of the cigarettes, cigarettes which were sent by the Toronto Hotels' Soldiers' Fund, and this loss took place at a date covered by the charge. Now then, Matron Neil stated these cigarettes have always been "Sweet Corporals," she has never known of them being anything but packages of 10. The prosecution has also proved that the accused was in possession of Sweet Corporal cigarettes in packages of 10 with this Toronto Hotels' Soldiers' Fund card in them. It has been proved also that these cigarettes are not sent to private individuals, and also that the accused could only have had legitimately cigarettes that were sent to him in February, I believe, in the amount of 300.

DEFENDING OFFICER: I object to that, because there is no evidence it was 300.

THE PROSECUTOR: As I remember the evidence of Groundwater, I think he said it was a packet of the 300-size. However, regardless of the size, they were still not cigarettes sent by the Toronto Hotels' Soldiers' Fund.

DEFENDING OFFICER: There is certainly no evidence to that effect, that they were not received from the Soldiers' Fund.

THE PROSECUTOR: There is evidence to this effect, that the Toronto Hotels' Soldiers' Fund only send cigarettes to institutions.

We have cigarettes stolen, we find the accused in possession of the same brand of cigarettes, and even if the accused could not be found guilty of theft, I suggest to the Court he could possibly be found guilty under A.A. 56 (5) of the lesser crime of receiving stolen goods. When I say that is applicable, the Court will note the subsection refers to "...an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence ...." I submit the receiving of stolen goods is the same offence, because in A.A. 18 (4) the offence is, "Steals, embezzles or fraudulently misapplies or receives," - the receiving of course not being as serious an offence as that of actual theft.

DEFENDING OFFICER: If I might say a word in connection with that receiving question. You will notice that sec 18 (4) says, "...receives, knowing them to be stolen ...." and the question of knowing the articles in question to have been stolen has not been proved here today at all. It is quite a different offence, and as to the suggestion of the prosecuting officer in connection with public property in the lesser charge, once again I say it is another offence entirely and he is trying virtually to amend his charge, which he cannot do unless certain formalities are proceeded with in this case.

THE PROSECUTOR: A receiving case is seldom proved except by implication.

THE COURT IS CLOSED TO CONSIDER THEIR DECISION

THE COURT: Pte. Hyndman, the Court find a case has not been established against you in that you stole cigarettes under A.A.18(4), and dismiss this charge against you.

The accused is arraigned upon the second charge in the above mentioned charge sheet.

Q188 Are you guilty or not guilty of the second charge against you, which you have heard read?

A188 Not Guilty, sir.

Q189 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A189 No, sir.

DEFENDING OFFICER: In order to expedite the proceedings, may I point out in connection with the plea of not guilty to this charge, I am quite prepared to admit the actual sale of the cigarettes, I am quite prepared to admit that on 4 May 41 the accused, Pte. Hyndman, did in fact sell cigarettes at this camp, being packages of 10 Sweet Caporals, marked, "Gifts of the ~~British Army~~ British Army Service Only, and Not for Re-Sale."

THE PROSECUTOR: I think my friend is wishing to adopt the procedure under rule 32, that the charge does not disclose an offence under the Army Act.

DEFENDING OFFICER: The charge certainly does disclose an offence under the Army Act, but I am arguing that there is no evidence here at all and it is a matter only of law.

JUDGE ADVOCATE: To expedite matters, are you consenting that the evidence given on the previous charge, so far as applicable, shall apply to this second charge?

DEFENDING OFFICER: Yes, sir.

THE PROSECUTOR: That is agreeable to me, sir.

JUDGE ADVOCATE: Have you any further evidence to give in support of this charge, other than as already given on the previous charge?

THE PROSECUTOR: I think before I could answer that, perhaps my friend should enlarge on what he said and submit what he can to the Court to show this is not an offence.

DEFENDING OFFICER: The only other thing I would like to see in as evidence is R.O. 635; that is what my argument is based on solely, but it does not affect the evidence at all. In other words, I am basing my argument on a weakness in R.O. 635.

THE PROSECUTOR: I think my friend means R.O. 635 does not prohibit the sale of cigarettes, which I am prepared to admit.

JUDGE ADVOCATE: I think the safe way to proceed would be for Lieut. Howell to put in his case as he thinks it needs to be put in, and then there will be no danger of revealing your defence too soon.

THE PROSECUTOR: In that case the prosecution will adduce no further evidence, but I would like to argue a question of law on what we have been discussing. Perhaps my friend would go ahead first on that.

JUDGE ADVOCATE: Are you submitting the order as evidence?

THE PROSECUTOR: Not as part of the case. Well, perhaps it would be just as well if I did put it in that way. I will have to call someone to prove it, though.

DEFENDING OFFICER: I will consent to that being put in as evidence without further proof. That is a certified copy; it is a unit order but it republishes the R.O.

EXHIBIT "E" - No. 15 General Hospital Part I Orders dated 1 Apr 41.

THE COURT: Have you anything further you wish to add?

THE PROSECUTOR: That is all, sir, but I think the defending officer wishes to argue a point of law.

THE DEFENDING OFFICER: This man has a certain charge against him, "An act to the prejudice of good order and military discipline, in that he at Witley Camp on 4 May 41 sold cigarettes, being cigarettes sent to Canadian soldiers overseas, duty free and for re-sale, contrary to C.A.R.O. (O) No. 635 dated 25 Mar 41 and republished in Unit Part I Order No. 86/41 dated 1 Apr 41." You cannot divorce the charge, the offence and the particulars. If you will look at R.P. 13, (B), p. 624 M.M.L. you will find that the charge as a unit in itself is divided up into two component parts, each of which is equally important - one, the offence; and secondly, the particulars. The particulars, if you read the footnote, are an enlargement or giving specific examples of what the offence is, because it is required by R.P. so that the accused knows exactly what he has to meet. In other words, the particulars must specify in detail just exactly what the offence is. The offence here is an act to the prejudice of good order and military discipline. From the particulars we have to find out just how or why we are charged with an act to the prejudice. We have to limit our defence to the manner in which we have been brought under this specific offence under the A.A. When you read the particulars you find that the act alleged to the prejudice of good order and military discipline is that the accused sold cigarettes, contrary to C.A.R.O. (O) 635. That is the way the particulars are worded. Then if you turn to C.A.R.O. (O) 635 you will find that that order is not mandatory at all. It reads as follows: (Reads CARO(O) 635). As a matter of fact I do not think it constitutes an order at all, it is so vague. All the accused has to contend with is he has been told that if he sells cigarettes he is liable to lose the privilege of getting them in duty free. It is merely a warning that if he sells these cigarettes he is going to lose the privilege of getting them in duty free. Well, he has taken upon himself to run that risk. There is no specific injunction in this R.O. prohibiting him from selling cigarettes. Certain R.Os. contain a specific injunction. For instance, dealing with security, they start out, "The following matters are forbidden to be mentioned in correspondence."

All I have to meet is the fact that he is charged with selling cigarettes - an act to the prejudice in that he sold cigarettes contrary to a R.O. There must be a definite prohibition laid down and in this R.O. there is nothing like that at all. He is not prohibited by the Canadian Army (C) R.O. 635 from selling cigarettes at all. That is the point of law I am arguing.

THE PROSECUTOR: I quite agree with everything my friend the defending officer has said. However, the accused is charged with an act to the prejudice of good order and military discipline; it is therefore incumbent upon the prosecution to say or to show that he has committed an act which is contrary of the prejudice of good order and also to military discipline. Whether R.O. 635 prohibits the sale of cigarettes or not I do not think is in issue here. The point is, he admits selling cigarettes. Is that an act to the prejudice? I submit that it is. By so selling cigarettes he is imperilling the privilege that the Canadian Army enjoys of receiving cigarettes duty free from Canada, and by the mere fact he does imperil that privilege especially by being caught, good order is prejudiced. I think we can all well imagine if this privilege were stopped it would be quite the reverse of good order; in fact there would be a terrific hulabaloo about it, and I submit also it is to the prejudice of military discipline for this reason, that by selling these cigarettes he is tending to bring about a state of conduct or serious of actions in other men that are very prejudicial to military discipline and encouraging people to entirely ignore their Standing Orders and Routine Orders, in that they prohibit the sale, but they certainly caution people that the sale of cigarettes is not desirable, and that to my mind is the substance of the charge.

THE DEFENDING OFFICER: One point. I may say I agree with my friend's contention that it is against good order, but I do not agree that it is against military discipline, because there is no order out that he shall not sell cigarettes, but whatever it comes under, I do not think I have to face that. If the charge had been in that he sold cigarettes being sent to the Canadian Army Overseas and not for re-sale, I would agree with him, but the particulars say, "contrary to a Canadian Army R.O." and when I look at that R.O. I find it falls to pieces because there is no prohibition in the Army R.O. referred to.

THE PROSECUTOR: I submit there does not have to be a direct order.

THE COURT IS CLOSED TO CONSIDER THEIR DECISION.

THE COURT: The Court will not uphold the plea of the defense for dismissal of this charge and ask the defence to go on with their case. Does the accused wish to give evidence himself? (R.P. 40 complied with by the Court).

DEFENDING OFFICER: No sir, I am not calling any evidence at all. As a matter of fact we have already admitted the fact of the sale, so there will be no evidence or defence on the part of the accused at all.

JUDGE ADVOCATE: The accused does not wish to give evidence himself or to make a statement. Are you calling any other witnesses at all?

DEFENDING OFFICER: No, sir.

THE COURT: Have you anything to say about the evidence brought out which we are accepting as evidence on this charge of selling cigarettes?

THE PROSECUTOR: In view of the fact the defending officer has admitted the sale of the cigarettes, and in view of the fact the Court has decided it is an act to the prejudice of good order and military discipline ---

JUDGE ADVOCATE: That has not been decided. The accused has been put on his defence.

THE PROSECUTOR: In that case I won't address the Court.

DEFENDING OFFICER: I have nothing further to add, but when it comes to the question of mitigation of sentence I would like to speak to it then.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE FINDING

THE COURT: Have you any evidence to produce as to character and particulars of service of the accused?

THE PROSECUTOR: Yes, sir.

The Prosecutor, LIEUT. H. M. HOWELL, No.1 Canadian Infantry Holding Unit, being duly sworn, states:-

Sir, I produce firstly certified true copy of MFM-6, regimental conduct sheet of the accused. Secondly, I produce MFB-355, Statement as to character and particulars of service of accused.

Q190 BY THE COURT: Is the accused the person named in the statement which you have heard read?

A190 Yes, sir.

Q191 Have you compared the contents of the above statement with the regimental books?

A191 Yes, sir.

Q192 Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A192 Yes, sir.

The defending officer declines to cross-examine this witness.

THE COURT: Now, before we give you an opportunity of addressing the Court we will try the last charge.

JUDGE ADVOCATE: Is that satisfactory?

DEFENDING OFFICER: That is satisfactory, sir. I may say, sir, I am taking objection before the accused pleads to the third charge. My objection is submitted under sec 23 of R.P., (A) (ii). I have to refer once more to the particulars to find out what I have to meet and quite honestly, the way this charge is worded neither the accused nor myself know what we have to meet. He is charged with improper use of a truck, but in what way he was improperly using it I have not the faintest idea. I can only prepare my defence to meet the charge as I understand it; if they said, "In that he did something with this truck," then I would know what I have to meet, but as it is I haven't the faintest notion of what I have to meet insofar as improper use is concerned.

THE PROSECUTOR: The defending officer is referring to R.P.23. I presume the Court have already satisfied themselves that that R.P. has been complied with before the trial actually opened. However, I think again the rule applicable is R.P. 32 and it is therefore incumbent again upon the prosecution to show this improper use, whatever it may be, and I confess I am very much in the dark as to what it is myself. An act to the prejudice of military discipline, apparently it was the selling of cigarettes which constituted the improper use and I can only say the remarks I have already addressed to the Court as regards the same action on the second charge apply to this one, and would merely add that the using of the truck for the purpose of selling these cigarettes is definitely improper use of a W.D. vehicle or a vehicle the property of the Crown in the right of the Dominion of Canada, if it is the property of the Crown.

*and*

DEFENDING OFFICER: If I may answer that - these charges are being tried separately. Each must stand by itself and any evidence which appeared in the other two charges is not yet relevant to this charge. I might have been handed that third charge on a separate sheet of paper. If my friend will just refer to sec 32 it says, "The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act ....". I don't know what the charge is under this sec, standing alone on the third charge. I don't know what it alleges or what I have to meet. The remarks of my friend about selling cigarettes on the ambulance are not relevant because that has not appeared in this charge.

JUDGE ADVOCATE: The question raised by the defence is that there are not sufficient particulars.

DEFENDING OFFICER: I am quite prepared to meet the charge that at 1430 hrs near the Essex Scottish barrack block "C" he was concerned in the improper use of a truck.

JUDGE ADVOCATE: And if the charge is confined to that, then you withdraw the objection formerly made?

DEFENDING OFFICER: Yes, sir.

THE PROSECUTOR: The prosecution does not know what improper use is charged, but it is presumed with the selling of cigarettes, therefore we will confine ourselves to that. I am prepared to go ahead on that presumption. For the purposes of the case we will say it is.

DEFENDING OFFICER: I am quite prepared to admit that at approximately 1430 hrs the accused did sell cigarettes on the same admission I made on the previous charge.

JUDGE ADVOCATE: I would suggest we be very chary about accepting admissions.

DEFENDING OFFICER: I want to expedite matters in this Court because I asked for the charges to be tried separately, but the evidence is pretty concrete that the cigarettes were sold at that time near the Essex Scottish area. I am not admitting it constitutes improper use of a truck but I do admit there were cigarettes sold there at that time.

JUDGE ADVOCATE: Is that agreeable to you?

THE PROSECUTOR: Yes sir.

(By consent of both defending officer and the prosecutor the evidence as given on the first charge so far as it is applicable and relevant to the sale of cigarettes shall be made to apply to the third charge).

THE PROSECUTOR: In that case the prosecution will not produce any further evidence but will confine itself to a question of law as to whether that does constitute prejudice to good order and military discipline.

THE DEFENDING OFFICER: The prosecution alleges an act to the prejudice of good order and military discipline in that the truck was improperly used. The prosecution have produced in evidence that it was improperly used. The evidence we have from the first trial is that the witnesses saw an ambulance outside this particular barrack block; in the rear of it was one man whom he admits himself was the driver Barnam, handing cigarettes out to the accused, who was standing outside the ambulance selling cigarettes. To meet a charge of that kind there has to be some proof of the use of the vehicle. If the vehicle had not been there would he have been able to sell the cigarettes? If he had walked down there would that in any way have affected the sale of the goods? It was not a large parcel and he did not have need of a truck to carry it. Could he have sold them just as well if he had not had the vehicle? In other words, was this a factor in the sale of those cigarettes, because apparently by selling cigarettes from it in the vicinity of a W.D. vehicle he is improperly using it. That is the case I have to meet. I think personally it is bad, but on that basis alone, at 1430 hrs on a Sunday afternoon, he did sell cigarettes in the vicinity of this vehicle, but he was not in the vehicle. Just how was that improper use, making an act to the prejudice? I grant you riding in

the vehicle was an act to the prejudice, but we are not faced with that charge. You might do a lot of nefarious acts in the presence of a W.D. vehicle and if you were charged every time with improperly using a vehicle you would have it tacked on to the end of every Court Martial.

**THE PROSECUTOR:** The defending officer brought out the question of whether or not the vehicle was necessary or was a necessary factor in the sale of these cigarettes. He could quite conceivably have sold cigarettes without the vehicle but it has been shown the vehicle was used to transport these cigarettes and also used more or less as a travelling shop for the sale of the cigarettes. One man was outside and the other man was inside it, handing them out. In other words, the vehicle was used as a form of cover to disguise the fact the sale of cigarettes was going on. I submit that it does constitute improper use of a W.D. vehicle. This vehicle was requisitioned for the sole purpose of taking patients to Witley Camp, but the evidence shows it was, in addition to that, improperly used as a shop to sell cigarettes.

**DEFENDING OFFICER:** The word "shop" implies it did play a part in the sale, which it did not do, but whether or not he carried cigarettes on the truck is not in question because the charge is laid at a different time and place.

THE COURT IS CLOSED TO CONSIDER THEIR DECISION.

**THE COURT:** The Court finds they have to uphold the submission of the defending officer in that the evidence given for the prosecution does not establish a case against Pte. Hyndman, and we dismiss the third charge.

**DEFENDING OFFICER:** I would just point out, speaking to the second charge, which is the only one left, there is considerable doubt as to just what military discipline would be affected if he did sell those cigarettes. He undoubtedly had the R.O. published in his area but it is not definite by any manner of means, and I submit that a private reading that R.O. would not get a definite prohibition out of it, and therefore there is some mitigation in his selling those cigarettes. Furthermore, that company conduct sheet and statement as to character and particulars of service of the accused does not show any great charges against him - they are all merely AWL's. He has no actual crimes such as he is charged with today; his crimes on that sheet are all A.W.L. for a short period of time. I think the longest is a period of 96 hours, and the rest for eight or nine hours, and there is nothing vicious about the accused on these conduct sheets. He has been in custody now for a considerable length of time and I ask that that time be taken into consideration, 29 days, and I know it will be taken into consideration in assessing sentence. I would further point out that the accused elected trial by Court Martial.

The Judge Advocate and the Court think a summing up unnecessary.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.



Summary of Evidence

Taken June 1, 1911

in case of B. 9362, J. H. Hayburn  
G. W. 15 Gen Hosp.

T B. 93500 E. Miller B. S. M.

15 Gen Hosp. same he states  
as follows

Q. Mr. Miller what is your  
evidence in this case.

~~A. At approximately May 8/11,  
I was given a letter by  
Major Montgomery from  
Major Hayburn of the 1st  
Regiment in regard to  
the sale of supplies  
& I was told to take  
any steps necessary to  
find out what we could  
do about it.~~

Q. What did you do.

~~A. After reading the letter  
I instructed Mrs. Madigan  
to get in touch with  
the Field Sec. Section.~~

Q. Mr. Miller you were  
called upon to be a witness  
on the afternoon of the 9th of May 11.  
The evidence given by you Dr.  
Barnes. is that correct?

~~yes~~

Q. Mr. Miller were you present  
at the taking of a statement

From R.A. Hyndman.

A. yes.

Q. In Miller at the time the offence was committed when was Hyndman working.

A. 3-4 days previous to May 4 he was relieved from night duty when he had been working on the corridors on fatigues in Administrative Bldg.

Q. He would be working on days at the time the offence was committed.

A. yes.

Q. ~~He would be working on days at the time the offence was committed.~~

A. ~~He would be working on days at the time the offence was committed.~~

Q. ~~He would be working on days at the time the offence was committed.~~

A. ~~He would be working on days at the time the offence was committed.~~ Did my mind  
glut get in the cigarette case  
yes it is his recognized  
the cigarette case.

The accused declared  
to cross examine to witness

G. Miller RSM

Endorse of <sup>3</sup> sgt young  
Branchin  
sgt young #A B93672  
15 yr Hosp Army Lee  
Daily sum states as follo

Q sgt young Did you a may  
194, organize a trip for  
ambulance no CR 75038 from  
~~Bedon~~ Bramshot/Hospital  
in hill camp.

A Yes

Q in what exact purpose  
of that trip

A To camp site from ~~the~~ Bramshot  
Hosp to nearby camp

Q How long does that trip  
usually take.

A It's generally less than 330  
hrs & arrive back he also  
1500 hrs

Q Did you know for Ayuda  
was going with that  
ambulance

A no. I did not he had no  
authority for me.

The ~~ambulance~~ were trained  
the ~~ambulance~~ as follo

Q sgt young who was in charge  
of that ambulance.

A Dr Barnum. ~~in his~~

Q sgt young has Dr Barnum the  
right to refuse me permission

10 Under what ambulatory

A yes

Q say young Did you know  
of me Florida in what  
ambulatory before

A no.

Let E. G. Jones?

Summary of Evidence.

4th witness.

Pte. Simon G. #A 22537

Having been duly sworn in states as follows.

Q: What do you know about this case?

A: On the stated day two men came up in an ambulance and asked if I wanted to buy cigarettes.

Q: Did you want to buy cigarettes?

A: I answered no.

Q: Then what happened?

A: They said one of the men said "do you know anyone else wanting to buy cigarettes?"

I answered, "there were a lot of boys around the camp who might want to buy some."

Q: Where did this take place?

A: In front of the Essex Scottish <sup>33rd</sup> ~~Forward~~ Block and I said drive over there and stood on the side of the running board to show them where to go.

Q: After they drove over to Barrack Block what happened?

A: One of the men <sup>I also stated</sup> shouted "anyone want to buy any cigarettes?"

Q: Did you see the men in the ambulance sell any cigarettes?

A: Yes.  
Q: Was it accused one of the persons in the ambulance?

A: I do think so.

Q: Can you positively identify him as one of the men selling cigarettes?

A: No.

Q: Have you any idea the amount of cigarettes they had?

A: No.

- Q. Do you know the size of pkg. for sale  
A. I should know as they gave me a pkg.  
The pkg. was 10 cigarettes.  
Q. At what price were they selling those cigarettes  
A. ~~1/4~~ 6 pence a pkg.  
Q. Is the pkg. in Exhibit 2 the type they were  
selling  
A. Yes, sir.  
Q. Did they appear to sell a large number of  
these pkgs.  
A. Yes - 2 ~~to~~ to 3 ~~to~~ hundred.  
Q. Did you see the accused sell any cigarettes  
A. One was selling cigarettes, she was taking  
out of containers. I do not remember which  
sold the cigarettes.

~~Cross Examination by Accused.~~  
The accused declines to cross examine  
the witness.

Charles Nimmo  
A 227 37  
Crest Scotland

The Jung, J. A. 22366  
Edwin Scullish

Having been duly sworn in etc as follows:

Q. The Jung will you tell me what you know of these events?

A. On Sunday afternoon between 4:00 & 5:00<sup>4:00</sup> I came out of the barrack hut and I saw an ambulance standing in front, when I came close I found out the boys had been buying cigarettes from the boys in the ambulance.

Q. Did you go over to buy some cigarettes?

A. Yes they were asking them two for a penny or 6 pence a pkg. I only had 11 pence but they gave me two pkgs for 11 pence.

Q. What happened after that?

A. I opened that pkg and found a little card and read it and found that the cigarettes were from the Hotel Soldiers <sup>and in front</sup>

Q. Is this card exhibit 1? ~~the card~~ <sup>you bought?</sup>

A. Yes ~~Exhibit 6~~ <sup>Exhibit 6</sup> the ~~pkg~~ <sup>pkg</sup> you bought?

Q. Yes sir.

Q. Did you note the number of the ambulance and write it on the card?

A. Yes sir.

Q. Is that your writing on back of card?

A. Yes sir.

Q. Did you know the man in the ambulance?

A. No sir.

Q. Is the accused one of the men in the ambulance?

A. Yes sir. He was helping to sell cigarettes.

Q. Did you see the accused sell any cigarettes

A. Both had cigarettes in their hand. ~~and~~  
~~selling them~~

Q. you were interviewed by the office before  
around 8th of May <sup>and made a statement as follows</sup> which is (par 8)

Q. Yes.

Q. Have you any idea how many cigarettes they  
had for sale.

A. No Sir.

Q. Have you any idea how many were sold.

A. Between 20 + thirty pgs.

Q. Do you positively identify the accused as  
one of the men in the ambulance.

A. Yes.

Q. Did you see Were both men selling cigarettes

A. One man was inside handing the cigarettes  
to the other man <sup>who</sup> was on the street taking the  
money and handing the pgs over.

Q. Which one was in the ambulance

~~Cross Exam~~

A. I am not certain but I think the  
accused was in the ambulance.

~~Cross Exam. by accused.~~

Q. Did you see me accept money for these  
cigarettes?

A. One of them took money but I am not  
certain which one.

Q. I point out to you that in your previous evidence  
that the soldier who was with the driver  
collected the money. Is that correct

A. Yes Sir, but I do not know who was the  
driver of the ambulance.

J. J. Jones  
A22366



6th witness.

Pte. Prusak, K. A22396 - Essex British.  
Having been duly sworn in states as follows:

Q. On about 4 May did you see an ambulance drawn up in front of your barrack block.

A. Yes.

Q. Did you see two men who were with that ambulance selling cigarettes.

A. Yes.

Q. Did you buy any cigarettes.

A. No Sir.

Q. Was the accused one of the men?

A. I am not sure. I heard one of the men say 'come on Blackie ~~buy some more~~ <sup>hand out some</sup> cigarettes out.'

Q. About many cigarettes were sold.

A. 200 or 300.

Q. Did you hear the men impress on the purchasers not to mention where they bought the cigarettes.

A. Yes Sir.

Q. Could you identify the driver of the ambulance.

A. No.

Q. Did you see the accused sell any cigarettes.

A. I am not certain, the man looked something like the defendant but I am not certain that he did sell any cigarettes.

Pte. K. F. Prusak,  
A22396

87th Witness

W. E. Barnum C. B. 83787. "1, Grandport Co. - Mass  
Having been duly sworn in states as follows -

Q. On the 9th of May you were interviewed by "2 Alldice  
Secton and made the following statement (Pgs 12-14)  
Is that statement correct?

A. Yes.

Q. Do you know where the Hyndman received these  
cigarettes?

A. No, sir.

Q. You admit that the Hyndman was with you  
on the afternoon in question.

A. Yes, sir.

Q. You helped the Hyndman sell those cigarette

A. Yes, sir.

Q. How many did you sell.

A. About 500

Q. Did you sell all the cigarettes

A. Yes, all but a few for our own use.

Q. Did you or the Hyndman sell the cigarette

A. We were both selling the cigarettes, I was  
handing them out the door.

Q. What sort of <sup>containers</sup> were the cigarettes in

A. They were in a large container that was  
not full, and could have contained many  
more than the amount I have stated.

Q. About what time were the cigarette sold?

A. Around 1430 or 1500 hrs.

Q. Did you know that the Hyndman was planning  
to go to Whitley Camp with you for the purpose  
of selling cigarettes.

A. Yes, and for the ride.

Q. Have you any idea where the Hyndman got the  
cigarettes

A. No, sir, I have not.

Q. On the day of May you took a pkg into Hotel. Grandlot

A. Yes.

Q. Do you know what was in that pkg.

A. Yes sir, mending for hospital, pyjamas etc.

Q. What was the size of that pkg.

A. It was not very large, it was wrapped in brown or purple paper.

Q. Had you received permission from Sgt Young to have the Hyndman in the cab with you.

A. No sir.

Q. Did Hyndman intimate to you that he had any more cigarettes to sell other than <sup>500</sup> that he had with him.

A. No sir.

Q. How long did it take to dispose of these cigarettes.

A. About twenty minutes to half an hour.

Q. Cross Exam by Recused.

Q. Has there been any other person <sup>they</sup> ride in your ambulance on days off besides me.

A. Yes, at least half a dozen.

Q. Has Sgt. Young known of this.

A. I don't it.

Q. Did you know that it was making improper use of a W.D. vehicle to transport to Whitley Camp for the purpose of selling cigarettes.

A. I did not.

Q. When we sold these cigarettes was inside or outside of the ambulance.

A. Outside the ambulance.

Sheet #2 witness 7.

- Q. Do you remember <sup>accused</sup> saying, Come on "Blasie"  
hand out some more cigarettes?
- A. Yes, sir.
- Q. Did you pick up two sailors <sup>between</sup> ~~at~~ ~~between~~ ~~at~~  
and Hindhead?
- A. Yes, sir, I picked them up very near the Devil's  
Cannon Boat.
- Q. The people you took into the Huts at Hindhead  
were the patients in the ambulance and not  
the sailors.
- A. Yes, sir.
- Q. Do you recognize your signature on A F  
G 3818 Serial # 952837.
- A. Yes, sir.

Clifford Panum  
B. 93759

"H. J. Louther" sign

S/O. A Safoya A 21. 262. 4/2/62  
I collect. I have been duly  
sworn states that as follows

Q. What do you know about  
this case.

A. Very little, all I know is  
what 2 soldiers did come up  
to the camp & were selling  
cigarettes in Camp 101.  
at 12.30 & collect for 100.

Q. Do you know what day it was

A. It was a Sunday.

Q. Do you know the date

no I don't sir

Q. Did you buy any cigarettes.

A. no sir

Q. Do you remember the  
circumstances at the time  
of the cigarette selling

A. no sir all I remember is that  
they were selling 50 cigarettes  
for 1/2 a crown & were saying to  
I keep it quiet

Q. Is it the accused one of the  
men selling cigarettes

A. yes sir

Q. Do you remember where  
abouts in the ambulance  
they were selling cigarettes

A. they were both at the  
back

Q About how many cigarettes  
were sold

A I saw 4-10 packages sold.

Q Did you see the accused  
hand over packages.

A yes sir

Q Did he take the money  
for them.

A no the other man did

A Declines to cross examine

A J. J. F. A 2862

Pb. Cal. SA A 2263, Essex.  
S. Collier Block no 130E  
having been Derby seven  
states as follows

Q. Can you remember on or  
about 7th of May. I mean in  
an ambulance selling cigarettes  
near the Essex, Collier Block  
Block at 20.02.10.

A. Yes sir.

Q. Will you tell me what  
occurred.

A. The ambulance came up  
about 7 PM. I was told  
that the men in the  
ambulance were selling  
cigarettes. I then  
went out & bought some  
cigarettes from the 2 men.  
I was told by the men  
not to use a cell where  
I bought the cigarettes.

Q. What did you pay for the  
cigarettes.

A. 6d. for 10, small papers.

Q. ~~Is~~ exhibit A the type of paper

A. Yes

Q. If you find anything  
else in the paper.

A. I see some cards but I  
do not remember what it says  
did not read it

Q. is this card similar to the  
one in your file  
A. I am not certain

Q. you stated in your  
previous testimony that  
you could identify the  
Armed Airborne Soldier  
with him as the accused

A. one of these 2 men  
I do not remember sir.

Q. Do you remember what  
either man looked like.

A. no I don't

Q. you do not remember  
buying cigarettes for  
the accused

A. no sir I don't

Q. <sup>AC</sup> Call which of the 2 men  
told you not to say anything  
about where you got the  
cigarettes

A. I do not know.

Q. Have you ever bought  
Cdu Cigs before

A. yes:

Wt of A Cole A72 631  
Essex Scottish Coy.



Re McPherson no 17 72447.1  
Essex, Scotland. Having  
been duly sworn states  
as follows

Q McPherson do you remember on  
or about the 4th of May of men in  
an ambulance selling  
cigarettes near the Essex  
Scottish Barracks at No 101 W

A Yes Sir

Q Could you tell me  
what occurred

A I heard that some men  
out side the Barracks were  
selling cigarettes I went  
out. One of the men asked  
me if I wanted to buy  
any I said yes I bought  
and asked him if he had  
sell me 50. He sold me  
fifty. I then asked for another  
fifty he told me further  
fifty.

Q What kind of cigarette were  
they

A Sweet caporal 10 to 2 1/2 cigs

Q What did you pay

A 3 shillings for 50

Q Is Exhibit A the type of  
package

A Yes

Q Was there anything in  
the package besides cigarettes

A Yes a small card

2 stamps yellow

Q Do you remember what was on that card.

A Something about Toronto Hotels I kept the card. I have one here. Exhibit D

Q ~~You promised to state that you could recognize the men~~

A So the accused one of the men who were selling cigarettes.

Q I could not say. I remember I was in Ambulance that day but you not sure that the accused is one of the men.

Q Does the accused resemble the man in the ambulance

A I could not say. They were both about the same height.

Q Did either of the men tell you not to say where you got the cigarette

A No I respect one of the men if they were full the answers gone you can see they have never been opened

Q Have you ever bought other cigarettes before

A Yes many times

A22449 PFE-R. Mackinnon  
Lancehill

Walter A. C. Neil 15 yrs  
1400 Sp. St. Am. & Branch St.  
St. Paul, Minn. has only sworn  
states in evidence as  
follows

Q. Miss Neil on or  
about the end of April  
did you lose a quantity  
of cigarettes from your office

A. Yes, I did

Q. I would you give me  
an approximate date

A. I can not give you  
a definite date but it was  
about the end of April or  
beginning of May

Q. What kind of cigarettes  
were they

A. Sweet capsoral, 100  
from what did you obtain  
where were these

Q. Cigarettes ~~from~~  
~~from~~

A. Toronto Hotel's Soldier  
Fund.

Q. Have you received  
cigarettes from this  
source before

A. Yes we have

Q were the previous  
cigarettes 10 packs of 10 cig.

A yes.

Q From previous gifts  
@ ltho the present ~~that~~  
parcel was not opened  
you would believe that  
these also would be  
10 packs of 10.

A yes I would because  
that is the way they  
have always come to us

Q miss nil approx  
How many cigarettes  
did you lose.

A I am not sure but  
a similar Box of presents  
has 2000 marked on the  
out side

Q Previous cigarettes  
that you had reserved  
were similar to Exhibits

A 4 B

A yes. All that have  
come from Toronto  
soldiers and have been  
safe exhibit 17 contain  
exhibit 13.

Q. Wasn't it where also  
you keep your cigarette

A. I kept them in the bottom  
shelves of middle cupboard  
of an office

Q. Was this cupboard  
locked when you left

A. No.

Q. Is there any time during  
the 24 hrs that your  
office is locked

A. No.

Q. At that place wasn't it  
possible to assume that  
at any time day or night  
the cigarettes might  
have been removed

A. The office is only alone  
about 7 1/2 hrs during the  
day. At night is  
vacant. Several hrs  
~~at night~~ as the night  
supervisor is making  
his rounds

Alfred C. Keill  
Wagon

P. to Grimsby 9 H 1393706  
15 g 11. 20th

Have you been daily since  
started as fallen

Q. P. to Grimsby down road  
when was making  
rights administered

A. yes.

Q. Can you tell me the name  
of the firm to which the job  
was given

A. I would say about 2300 lbs.

Q. Where the keys always  
kept in your  
hand

A. yes - what was the usual  
procedure.

Q. Where did the keys kept  
on the  
sunboard key board

Q. Do you have a man working  
all night in there.

A. yes. He always all the  
time in there does he  
take a nap.

A. Don't know.

Q. Do you remember  
the time when my friend  
Henry's key was missing

# Yes it was missing  
for about 2 days

Q. Can you give me any detail  
on what date it was missing  
how long before it was  
found. noted

A. It was missing about  
24 Apr.

It was missing 2  
days.

I found a ~~small~~ spare hook  
on the keyboard not  
in its proper place.

J. J. Smiley  
1393706

B m s. Enevold 7.13.

15 Jan Hoop Room

Blank for duty even  
states as follows.

Q. Q m s Enevold <sup>was</sup> ~~did~~ P. H. Hyndman  
~~work on duty at any time~~  
~~was in the block~~  
~~would enable him to~~  
in the administrative  
office

A Yes He worked nights

Q <sup>Between</sup> what dates was he  
on duty there

A Between apr 8. - 29 apr 41

Q. <sup>while working</sup>  
Responsible in the  
Administrative Block  
what were his duties  
~~assigned~~

A cleaning all administrative  
offices including the cabs  
- may mention the orderly  
Room C.B. Miss. rules office.

Q would he have access to all  
the rooms in the administrative  
Block

A yes the man got the  
keys for the block



Q. Would he be working  
by himself at  
any time.

A. There are times when he  
would.

Q. Having to keep he would  
have access to any of  
the offices at any time  
during the night

A. Yes.

Q. A.

Q.

Q. How many walk at night  
on this block

A. 2 men

Q. Was there any nights when  
there were more than 2.

A. Yes. Some times 3.

Q. Do you know what time  
we finish this job

A. No I do not

Q. When we are finished  
what do we do - do we go

A. Return then to Summit Road  
are not but occ. we  
have to locate these things.  
in the Au

Q. Did you ever have to go after  
me for the things

A. No.

Q: Mrs. was she any <sup>time</sup> period  
what she (key to map  
most general office was  
running any length of time

A: I also remember a time  
when it was missing  
for a ~~short period~~ couple of  
days.

Q: Do you know where she  
key was found -

A: I think it was  
found hanging on the board  
in a different place.

J. L. Wood  
Mrs.

Cyprus ground water, Postal  
Order no 1393675

15 June 1944  
Hanging Loose Derby  
State, Texas

Q What shipments of cigs  
has Hyndman received  
since first of year.

A He has received 2 lots

Q On what dates did the first  
shipment arrive?

Q Dates? A The first arrived  
the 10 of Feb. Dispatched on 22  
Jan.  
The second arrived here  
on the 12 of May

Q What size Pkgs.  
The first one was 300 size  
The second <sup>Pkg</sup> was also 300  
like I did not state on the  
Pkg 300 sig. ~~It was~~  
~~size of a 100 sig Pkg.?~~  
I assumed it was a  
300 sig Pkg.

<sup>C.A.</sup>  
Q Opt graduates are  
you absolutely sure that  
all the copy I have received  
A To the best of my  
knowledge yes.

Charles J. Vandewater.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence." The accused wishes to give evidence on oath, was duly sworn.

Statement of Pte. HYNDMAN, G.W. Reg No. B93621

"I asked Pte. BARNUM on Sunday, 4 May 41, if he knew where I could get rid of some cigarettes. He said, 'I think you can get rid of them at Witley'. I then asked him if he would drive me down. Pte BARNUM was sitting in the truck before I got into the truck. I had a box half full of cigarettes. I had found them behind the incinerator on the 3 May 41 at about 2130 hrs. We drove to Witley Camp 101 and there sold the cigarettes to soldiers of the unit there, the R.H.L.I. I gave Pte. Barnum ten shillings, it was a ten shilling note. I did not give Barnum any cigarettes. I did not warn the men I sold the cigarettes to to keep it under their hats as to where they bought the cigarettes. I sold all the cigarettes and did not have any left. I did not open a single package. I did not give Barnum any packages of cigarettes. We picked up two sailors on the way to Witley, but did not take them in to the Huts Hotel at Hindhead for a beer. On the way back to the Hospital we stopped (Barnum and myself) and had a beer apiece. I paid for the beer here. I was broke when I went to Witley to sell the cigarettes."

*G. W. Hyndman* B93621  
.....  
G.W. Hyndman, Private, B93621 Pte.  
#15 General Hospital, R.C.A.M.C.

"I certify that the foregoing summary of evidence, consisting of sixteen pages was taken down by me in writing in the presence of the accused and rules of procedure 4(c), (d), (e) and (f) have been complied with."

Bramshott Chase  
Hindhead Surrey.

8 June 41.

*H.C. Hair* capt.  
.....  
(H.C. Hair) Captain, R.C.A.M.C.

"R.T.A."



SUMMARY OF EVIDENCE - CONTINUED

Witness 2. B.93672, Sgt. Young, E.  
N.C.O. i/c Transport  
No.15 General Hospital, R.G.A.M.C.

Having been duly sworn in states as follows:

- Q. "Sgt. Young, did you on 4 May 41, authorize a trip for Ambulance No. C.A. 25038, from Bramshott Hospital to Whitley Camp?" (See exhibit C. Transport work ticket O-952839)
- A. "I did."
- Q. "What was the purpose of that trip?"
- A. "To carry patients from Bramshott Hospital to Whitley Camp."
- Q. "How long does that trip usually take?"
- A. "They generally leave at 1330 hrs. and arrive back here about 1500 hrs."
- Q. "Did you know Pte. Hyndman was going with that ambulance?"
- A. "No, I did not. He had no authority from me."

The accused cross-examined the witness as follows:

- Q. "Sgt. Young, who was in charge of the ambulance?"
- A. "Driver Barnum."
- Q. "Sgt. Young, has Dvr. Barnum the right to refuse me permission to ride in that ambulance?"
- A. "Yes."
- Q. "Sgt. Young, did you ever know of me to ride in that ambulance before?"
- A. "No."

.....  
E.G. Young, Sergeant, B93672  
No.15 General Hospital, RGAAMC

Witness 3. A.22537 Pte. Simon, C.  
No. 1 Cdn. Infantry Holding Unit (Essex Scottish)

having been duly sworn in states as follows:

- Q. "What do you know about this case?"
- A. "On the stated day two men came up in an ambulance and asked if I wanted to buy cigarettes?"
- Q. "Did you want to buy cigarettes?"
- A. "I answered 'no'."
- Q. "Then what happened?"
- A. "One of the men said, 'Do you know anyone else wanting to buy cigarettes?'. I answered, there were a lot of boys around the camp who might want to buy some and said, 'Drive over there,' and stood on the running board to show them where to go."

SUMMARY OF EVIDENCE - Continued

Witness 3  
(Cont'd)

- Q. "Where did this take place?"
- A. "In front of the Essex Scottish Barrack Block, Witley Camp"
- Q. "After they drove over to the Barrack Block what happened?"
- A. "One of the men shouted and I also shouted, 'Anyone want to buy any cigarettes?'"
- Q. "Did you see the men in the ambulance sell any cigarettes?"
- A. "Yes."
- Q. "Was the accused one of the persons in the ambulance?"
- A. "I do think so."
- Q. "Have you any idea the amount of cigarettes they had?"
- A. "No."
- Q. "Do you know the size of package for sale?"
- A. "I should know, as they gave me a package. The package was ten cigarettes."
- Q. "At what price were they selling these cigarettes?"
- A. "Six pence a package."
- Q. "Did they appear to sell a large number of these packages?"
- A. "Yes - two to three hundred."
- Q. "Is the package in Exhibit A the type they were selling?"
- A. "Yes sir."
- Q. "Did you see the accused sell any cigarettes?"
- A. "One was selling cigarettes, the other was taking out of container. I do not remember which sold the cigarettes?"
- The accused declined to cross-examine the witness.

.....  
Charles Simon, A.22537, Private  
Essex Scottish, No. 1 Can. Inf. Hold. Unit



SUMMARY OF EVIDENCE - CONTINUED

Witness 4

A.22366, Pte. Jung, J.  
No. 1 Cdn. Infantry Holding Unit (Essex Scottish)

having been duly sworn in states as follows:

Q. "Pte. Jung, will you tell me what you know of these events?"

A. "On Sunday afternoon between 1400 and 1500 hrs., I came out of the barrack huts, Witley Camp, and I saw an ambulance standing in front. When I came close I found out the boys had been buying cigarettes from the boys in the ambulance."

Q. "Did you go over to buy some cigarettes?"

A. "Yes, they were selling them two for a shilling or six pence a package. I only had eleven pence but they gave me two packages for eleven pence."

Q. "What happened after that?"

A. "I opened that package and found a little card and read it over and found that the cigarettes were from the Hotels Soldiers Fund in Toronto."

Q. "Is this card, Exhibit B, the card you found in the package?"

A. "Yes."

Q. "Is this package, Exhibit A, the package you bought?"

A. "Yes, sir."

Q. "Did you note the number of the ambulance and write it on the card?"

A. "Yes, sir."

Q. "Is that your writing on the back of the card?"

A. "Yes, sir."

Q. "Did you know the men in the ambulance?"

A. "No, sir."

Q. "Is the accused one of the men in the ambulance?"

A. "Yes, sir. He was helping to sell cigarettes."

Q. "Did you see the accused sell any cigarettes?"

A. "Both had cigarettes in their hands."

Q. "Have you any idea how many cigarettes they had for sale?"

A. "No, sir."

Q. "Have you any idea how many were sold?"

A. "Between twenty and thirty packages."

Witness 4  
(Cont'd)

- Q. "Do you positively identify the accused as one of the men in the ambulance?"
- A. "Yes."
- Q. "Were both men selling cigarettes?"
- A. "One man was inside handing the cigarettes to the other man, who was on the street taking the money and handing the packages over."
- Q. "Which one was in the ambulance?"
- A. "I am not certain, but I think the accused was in the ambulance."

Cross-examined by the accused.

- Q. "Did you see me accept money for these cigarettes?"
  - A. "One of them took money but I am not certain which one."
- Question by officer taking evidence:

- Q. "I point out to you that in your previous evidence, the soldier who was with the driver collected the money. Is that correct?"
- A. "Yes, sir, but I do not know who was the driver of the ambulance."

.....  
J. Jung, Private, A.22366  
No. Cdn. Inf. Hold. Unit (Essex Scottish)

Witness 5

A.22396, Pte, Frusak, K.  
No. 1 Cdn. Infantry Holding Unit (Essex Scottish)

having been duly sworn in states as follows:

- Q. "On about 4 May 41, did you see an ambulance drawn up in front of your barrack block at Witley Camp?"
- A. "Yes."
- Q. "Did you see two men who were with than ambulance selling cigarettes?"
- A. "Yes."
- Q. "Did you buy any cigarettes?"
- A. "No, sir."
- Q. "Was the accused one of the men?"
- A. "I am not sure. I heard one of the men say, 'Come on Blackie, hand out some more cigarettes.'"
- Q. "About how many cigarettes were sold?"
- A. "Two or three hundred."
- Q. "Did you hear the men impress on the purchasers not to mention where they bought the cigarettes?"

SUMMARY OF EVIDENCE - Continued

Witness 5  
(Cont'd)

- A. "Yes, Sir."
- Q. "Could you identify the driver of the ambulance?"
- A. "No."
- Q. "Did you see the accused sell any cigarettes?"
- A. "I am not certain, the man looked something like Pte. Hyndman, but I am not certain that he did sell any cigarettes."

The accused declined to cross-examine the witness.

.....  
R.J. Prusak, Private, A.22396  
No.1 Cdn. Inf. Hold. Unit (Essex Scottish)

Witness 6

B.83789, Dvr. Barnum, C.  
No. 1 Transport Company, R.C.A.S.C.

having been duly sworn in states as follows:

- Q. On the 9th of May, you were interviewed by No. 2 Field Security Section and made the following statement, (Para. 12-14 attached evidence). Is that statement correct?"
- A. "Yes."
- Q. "Do you know where Pte. Hyndman received these cigarettes?"
- A. "No, sir."
- Q. "You admit that Pte. Hyndman was with you on the afternoon in question?"
- A. "Yes, sir."
- Q. "You helped Pte. Hyndman sell these cigarettes?"
- A. "Yes, sir."
- Q. "How many did you sell?"
- A. "About five hundred."
- Q. "Did you sell all the cigarettes?"
- A. "Yes, all but a few for our own use."
- Q. "Did you or Pte. Hyndman sell the cigarettes?"
- A. "We were both selling the cigarettes, I was handing them out the door."
- Q. "What sort of container were the cigarettes in?"
- A. "They were in a large container that was not full and could have contained many more than the amount I have stated."
- Q. "About what time were the cigarettes sold?"
- A. "Around 1430 or 1500 hrs."

SUMMARY OF EVIDENCE - CONTINUED

Witness 6  
(Cont'd)

- Q. "Did you know that Pte. Hyndman was planning to go to Whitley Camp with you for the purpose of selling cigarettes?"
- A. "Yes, and for the ride."
- Q. "Have you any idea where Pte. Hyndman got the cigarettes?"
- A. "No, sir, I haven't."
- Q. "On the day of 4 May 41, you took a package into Gorsline Hotel, Bramshott?"
- A. "Yes."
- Q. "Do you know what was in that package?"
- A. "Yes sir, mending for hospital, pyjamas, etc."
- Q. "What was the size of that package?"
- A. "It was not very large, it was wrapped in brown or purple paper."
- Q. "Had you received permission from Sgt. Young to have Pte. Hyndman in the cab with you?"
- A. "No, sir."
- Q. "Did Hyndman intimate to you that he had any more cigarettes to sell other than the five hundred he had with him?"
- A. "No, sir."
- Q. "How long did it take to dispose of these cigarettes?"
- A. "About twenty minutes to half an hour."

Cross examined by the accused.

- Q. "Has there been any other person ride in your ambulance on their day off, besides me?"
- A. "Yes, at least half a dozen."
- Q. "Has Sgt. Young known of this?"
- A. "I doubt it."
- Q. "Did you know that it was making improper use of a W.D. vehicle to transport me to Whitley Camp for the purpose of selling cigarettes?"
- A. "I did not."
- Q. "When we sold these cigarettes was I inside or outside of the ambulance?"
- A. "Outside the ambulance."

Officer - Q. "Do you remember accused saying 'Come on, Blackie, hand out some more cigarettes?'"

A. "Yes, sir."

Q. "Did you pick up two sailors between Bramshott and Hindhead?"

SUMMARY OF EVIDENCE - CONTINUED

Witness 6  
(Cont'd)

- A. "No, sir, I picked them up very near the Devil's Punch Bowl."
- Q. "The people you took into the Huts at Hindhead, were the patients in the ambulance and not the sailors?"
- A. "Yes, sir."
- Q. "Do you recognize your signature on A.F.G.3518, Serial #0952839?" (Exhibit C)
- A. "Yes, sir."

.....  
Clifford Barnum, Driver, B.83789  
#1 Transport Coy., R.C.A.S.C.

Summary of Evidence Continued

Witness 7

A21862, L/Cpl. Laforge, A.  
Essex Scottish Regiment

having been duly sworn in states as follows:

Q. "What do you know about this case?"

A. "Very little, All I know is that two soldiers drove up to the camp and were selling cigarettes in Camp 101 at Essex Scottish Barrack Block, Witley."

Q. "Do you know what day it was?"

A. "It was a Sunday."

Q. "Do you know the date?"

A. "No, I don't, sir."

Q. "Did you buy any cigarettes?"

A. "No, sir."

Q. "Do you remember the circumstances at the time of the cigarette selling?"

A. "No, sir. All I remember is that they were selling fifty cigarettes for half-a-crown, and were trying to keep it quiet."

Q. "Is the accused one of the men selling cigarettes?"

A. "Yes sir."

Q. "Do you remember whereabouts in the ambulance they were selling cigarettes?"

A. "They were both at the back."

Q. "About how many cigarettes were sold?"

A. "I saw nine or ten packages sold."

Q. "Did you see the accused hand over packages?"

A. "Yes sir."

Q. "Did he take the money for them?"

A. "No, the other man did."

The accused declined to cross-examine the witness.

.....  
A. Laforge, Lance Corporal, A21862  
Essex Scottish Regiment.

Witness 8

A22631, Pte. Cole, J.A.

Essex Scottish Regt., attached 2nd Btn. R.C.E.  
having been duly sworn in states as follows:

- Q. "Cole, do you remember on or about the 4th of May men in an ambulance selling cigarettes near the Essex Scottish Barrack Block at No. 1 Cdn. Infantry Holding Unit, Witley?"
- A. "Yes sir."
- Q. "Will you tell me what occurred?"
- A. "The ambulance came up about 2 p.m. and I was told that the men in the ambulance were selling cigarettes. I then went out and bought some cigarettes from the two men. I was told by the men not to resell or tell where I bought the cigarettes."
- Q. "What did you pay for the cigarettes?"
- A. "Six pence for ten. Small package."
- Q. "Is exhibit A the type of package?"
- A. "Yes."
- Q. "Did you find anything else in the package?"
- A. "There was a card but I do not remember what it said. I did not read."
- Q. "Is this card similar to the one in your package?"
- A. "I am not certain."
- Q. "You stated in your previous testimony that you could identify the driver and another soldier with him. Is the accused one of these two men?"
- A. "I do not remember sir."
- Q. "Do you remember what either of the men looked like?"
- A. "No. I don't"
- Q. "You do not remember buying cigarettes from the accused?"
- A. "No sir, I don't."
- Cross examination by accused:
- Q. "Cole, which of the two men told you not to say anything about where you got the cigarettes?"
- A. "I do not know."
- Q. "Have you ever bought Canadian cigarettes before?"
- A. "Yes."

.....  
J.A. Cole, Private, A22631  
Essex Scottish att. 2 Btn R.C.E.

SUMMARY OF EVIDENCE - CONTINUED

Witness 9

B93675 Cpl. Groundwater, C.S.  
Postal Orderly,  
#15 General Hospital, R.C.A.M.C.

having been duly sworn in states as follows:

- Q. "What shipments of cigarettes has Pte. Hyndman received since the first of the year?"
- A. "He has received two lots."
- Q. "Dates?"
- A. "The first arrived the 10th of February, dispatched on 22nd January. The second arrived here on the 12th of May."
- Q. "What size packages?"
- A. "The first one was 300 cigarette size. The second package was also 300. Although it did not state on the package '300 cigarettes' I assumed it was a 300 cigarette package."

Cross examination by accused:

- Q. "Corporal Groundwater, are you absolutely sure that is all the cigarettes I have received."
- A. "To the best of my knowledge, yes."

.....  
C.S. Groundwater, Corporal, B93675  
No. 15 General Hospital, R.C.A.M.C.

Witness 10

B93533 Q.M.S. (WO2) Evered, J.J.  
#15 General Hospital, R.C.A.M.C.

having been duly sworn in states as follows:

- Q. "Q.M.S. Evered, was Private Hyndman ever on duty at any time in the Administration Offices?"
- A. "Yes, he worked nights."
- Q. "Between what dates was he on duty there?"
- A. "Between April 8th and 29th April 1941."
- Q. "While working in the Administration block, what were his duties?"
- A. "Cleaning all Administration offices, including the Colonel's, Major Montgomery's, the Orderly Room, Central Registry, and Miss Neill's office."
- Q. "Would he have access to all the rooms in the Administration block?"
- A. "Yes. This man got the keys from switchboard."
- Q. "Would he be working in the Administration block by himself at any time?"
- A. "There are times when he would."
- Q. "Having the keys, he would have access to any of the offices at any time during the night?"
- A. "Yes."



Witness 10  
(Cont'd)

Cross examination of Q.M.S. Evered by accused:

- Q. "Q.M.S. Evered, how many work at night on this block?"  
A. "Two men."  
Q. "Was there any nights when there were more than two?"  
A. "Yes, sometimes three."  
Q. "Do you know what time we finish this job?"  
A. "No, I do not."  
Q. "When we are finished, what do we do with the keys?"  
A. "Return them to switchboard as a rule, but occasionally we have to locate these keys in the morning."  
Q. "Did you ever have to go after me for the keys?"  
A. "No."  
Q. "Q.M.S. Evered, was there any period that the key to Major Montgomery's office was missing any length of time?"  
A. "I do remember a time when it was missing for a couple of days."  
Q. "Do you know where the key was found?"  
A. "I think it was found hung on the board in a different place."

.....  
J.J. Evered, Q.M.S. (WO2) B92533  
No. 15 General Hospital, RCANCO.

STATEMENT OF EVIDENCE CONTINUED  
Evidence for the Defense

Witness 11

B93706, Pte. Grimsley, S.H.  
#15 General Hospital, RCAMC.

having been duly sworn in was examined by accused as follows:

- Q. "Pte. Grimsley, do you recall when I was working nights on Administration?"
- A. "Yes."
- Q. "Can you tell me the usual time to finish the job?"
- A. "I would say about 2300 hours."
- Q. "Were the keys always handed in to you?"
- A. "Yes. That was the usual procedure."
- Q. "Where are these keys kept?"
- A. "On the switchboard keyboard."
- Q. "Do you have a man working all night in there?"
- A. "Yes."
- Q. "Is he awake all the time in there or does he take a nap?"
- A. "I don't know."
- Q. "Do you remember the time when Major Montgomery's key was missing?"
- A. "Yes. It was missing for about two days."
- Q. "Can you give me any details on when it was missing, how long, and where it was found?"
- A. "It was noted missing about 24th April. It was missing two days and found on a spare hook on the keyboard - not in its proper place."

Capt. Hair declined to cross-examine the witness.

.....  
B93706 Pte Grimsley, S.H.  
#15 General Hospital, RCAMC

STATEMENT OF EVIDENCE - CONTINUED

EVIDENCE FOR THE DEFENSE

Witness H17145 Pte. Nixon, D.  
#3 Inf. Holding Unit  
att. #15 Gen Hos. RCAMC

having been duly sworn in was examined by accused as follows:

Q. "What are your duties in hospital?"

A. "I work on the switchboard."

Q. "What hours do you work?"

A. "Twelve o'clock midnight to eight a.m."

Q. "I believe the keys to the Administration offices are kept in the switchboard. Is that right?"

A. "Yes."

Q. "Are you awake all the night?"

A. "I doze off, but do not sleep. I stretch out on two chairs."

Cross examination by Capt. Hair.

Q. "If anyone went into the switchboard to remove a key would you know it?"

A. "I would know the minute they opened the door into the R.S.M.'s office."

.....  
D.W. Nixon, Private, H17145  
No. 15 General Hospital RCAMC

SUMMARY OF EVIDENCE - CONTINUED

Witness 13

Miss Agnes C. Neill, Matron,  
No.15 General Hospital RCAMC

Q. "Miss Neill, on or about the end of April did you lose a quantity of cigarettes from your office?"

A. "Yes, I did."

Q. "Would you give me an approximate date?"

A. "I can not give you a definite date, but it was about the end of April or beginning of May."

Q. "What kind of cigarettes were they?"

A. "Sweet Caporals."

Q. "From whom did you obtain these cigarettes?"

A. "Toronto Hotels Soldiers Fund."

Q. "Have you received cigarettes from this source before?"

A. "Yes, we have."

Q. "Were the previous gifts packages of ten cigarettes?"

A. "Yes."

Q. "From previous gifts, although the present parcel was not opened, you would believe that these also would be packages of tens?"

A. "Yes, I would, because that is the way they have always come to us."

Q. "Miss Neill. Approximately how many cigarettes did you lose?"

A. "I am not sure, but a similar box at present has 2000 marked on the outside."

Q. "Previous cigarettes that you have received were similar to exhibits A & B?"

A. "Yes. All that have come from Toronto Soldiers Fund have been like Exhibit A and contain Exhibit B."

Cross examination by accused:

Q. "Miss Neill, where did you keep these cigarettes?"

A. "I kept them in the bottom shelf of the middle cupboard of our office."

Q. "Was this cupboard locked, Miss Neill?"

A. "No."

Q. "Is there anytime during the twenty-four hours that your office is locked?"

A. "No."

Q. "At that rate, Miss Neill, I might assume that at any time day or night, the cigarettes might have been removed?"

A. "The office is only alone about two and a half hours during the day, and at night is vacant several hours as the night supervisor is making her rounds."

.....  
Agnes C. Neill, Matron  
No.15 General Hospital, RCAMC

SUMMARY OF EVIDENCE - CONTINUED

Witness 14      A22447 Pte. McKinnon, R.  
                  Essex Scottish Regiment.

having been duly sworn in states as follows:

- Q. "McKinnon, do you remember on or about the 4th of May, two men in an ambulance selling cigarettes near the Essex Scottish Barrack Block at No. 1 Cdn. Infantry Holding Unit, Witley Camp?"
- A. "Yes sir."
- Q. "Will you tell me what occurred?"
- A. "I heard that some men outside the barracks were selling cigarettes, and I went out. One of the men asked me if I wanted to buy any. I said yes, and asked him if he would sell me fifty. He sold me fifty and I asked for another fifty. He sold me a further fifty."
- Q. "What kinds of cigarettes were they?"
- A. "Sweet Caporal - ten to a package."
- Q. "What did you pay?"
- A. "Three shillings for fifty."
- Q. "Is exhibit A the type of package?"
- A. "Yes."
- Q. "Was there anything in the package besides cigarettes?"
- A. "Yes, a small card, I think it was yellow."
- Q. "Do you remember what was on that card?"
- A. "Something about Toronto Hotels. I kept the card. I have one here." (Exhibit D.)
- Q. "Is the accused one of the men who were selling cigarettes?"
- A. "I could not say. I remember it was an ambulance that drove up, but I am not sure that the accused is one of the men."
- Q. "Does the accused resemble the men in the ambulance?"
- A. "I could not say. They were both about the same height."
- Cross examination by accused:
- Q. "Did either of the men tell you not to say where you got the cigarettes?"
- A. "No. I asked one of the men if they were full. He answered, 'Sure, you can see they have never been opened.'"
- Q. "Have you ever bought Canadian cigarettes before?"
- A. "Yes, many times."

.....A22447  
R. MacKinnon, Private, A22447  
Essex Scottish Regiment.

8 June 41.

Bransford Chase  
Hindhead Quarry.

[H.C. Blair) Captain, R.C.M.P.C.]

I certify that the foregoing summary of evidence, containing evidence taken down by me in writing in the presence of the accused and filed of procedure 4(a), (b), (c) and (f) have been compiled with.

*J.F. Hindhead Quarry, Hindhead, Surrey, S.W. 20, N.C. 19521*

I asked Pte. BARNUM on Sunday, 4 May 41, if he knew where I could get rid of some cigarettes. He said, "I think you can get rid of them at Witley". I then asked him if he would give me down. Pte BARNUM was sitting in the truck before I got into the truck. I had a box half full of cigarettes. I had found them behind the instrument on the 3 May 41 at about 2100 hrs. The driver of the truck there, the R.M.I.I. the cigarettes for soldiers of the unit there, it was a ten shilling note. I gave Pte. BARNUM ten shillings. I did not want the man I did not give BARNUM any cigarettes. I sold all the cigarettes where they bought the cigarettes. I did not open a single package and did not have any left. I did not open a single package. I did not give BARNUM any packages of cigarettes, he picked up two sailors on the way to Witley, but did not take them in to the Harts Hotel at Hindhead for a beer. On the way back to the hospital we stopped (BARNUM and myself) and had a beer apiece. I paid for the beer here. I was broke when I went to Witley to sell the cigarettes."

to give evidence on oath, was duly sworn.  
writing and may be given in evidence." The accused wishes say or any evidence you give will be taken down in evidence unless you wish to do so, but whatever you on oath; you are not obliged to say anything or give evidence if you wish to make any statement or to give evidence

The accused was cautioned as follows:

6

WITNESSES FOR DEFENSE

1. B.93706 Pte. Grimsley, S.H. #15 General Hospital, RCAMC, Bramshott  
Chase, Surrey.
2. H.17145 Pte. Nixon, D. #15 General Hospital, RCAMC, Bramshott  
Chase, Surrey.

TRANSPORT WORK TICKET

Serial "A" 242  
 No. 216  
 952839  
 MAY 4 1941

Make of Vehicle Ford V8

Class

W.D. No.

Hour of Parade

Unit

Section

Driver's Name

Barnum

For what journey is performed (1)	FULL Details of kind and service (2)	ROUTE			Signature of person authorizing journey (3)	TIME TAKEN		Miles run (5)
		From (3)	To (4)	Via (5)		From (7)	To (8)	
15th Reg	Patrol	Baronet	Wetherby	Thornhill	[Signature]	1730		10
		Baronet	Wetherby	Thornhill	[Signature]		1500	10
		Baronet	Wetherby	Thornhill	[Signature]	1730		6
		Baronet	Wetherby	Thornhill	[Signature]		1750	6
		Baronet	Wetherby	Thornhill	[Signature]	1700		6
		Baronet	Wetherby	Thornhill	[Signature]		1930	6
		Baronet	Wetherby	Thornhill	[Signature]	92215	2250	12
		Baronet	Wetherby	Thornhill	[Signature]	92310	2345	12

TOTAL .. 68

**SPEEDOMETER READINGS**

	Miles
(10) In ..	19149
(11) Out ..	19080
Mileage	69

**PETROL**

	Galls.
(12) Held at Start ..	
(13) Add—Amount drawn ..	13
(14) Deduct—Remains on completion ..	
(15) Quantity Consumed ..	

(16) TOTAL hours out on duty

(17) Signature of Driver  
 [Signature]

(18) Countersigned  
 [Signature]

Rank



## INSTRUCTIONS TO DRIVER FOR COMPLETING TRANSPORT WORK TICKET.

Items (7) and (8) will be completed by the driver.

In the case of a number of details not requiring return to H.Q. until completion of the last detail, items (7) and (8) will be completed for each detail.

Item (9) will be completed by the driver after completion of each detail.

Items (10), (13), (14), (15), (16) and (17) will be completed by the driver after the last journey of the day.

Item (20) will be completed as necessary.

(19) Special instructions to driver.

(20) Driver's breakdowns, accidents, reasons for delay, alterations to route, running adjustments made and anything which has appeared to him unusual in the running of the vehicle.

(21) Reference to documentary authority (e.g., Army Form F 756, &c.) where such exists (see instructions for items 6 and 18).

A

B

C

D

E

F

G

H

K

It is strictly forbidden to employ any M.T. vehicle, other than a tank or dragon, without a Work Ticket, which is the only authority for journeys and must be shown if demanded.

PART I ORDERS

Colonel C.A. Mac Officer Commanding

Issued 1 Apr 41  
For 2 APR 41

#85

Braceholt Camp

1. DETAILS: Orderly Officer for week ending 8 Apr 41. Capt. E.A. Gordon  
 Next for duty " " " 13 Apr 41. Capt. E.L. Bergin  
 Surgical Officer " day of 2 Apr 41. Service #2  
 Duty Officer Medical week ending 6 Apr 41. Capt. H.C. Hair  
 Next for duty " " " 13 Apr 41. Capt. W.R. Feasby  
 Orderly Sergeant " day of 2 Apr 41. Sgt. Langfield, T.P.  
 Next for duty " " " 2 Apr 41. Sgt. Burroughs, A.  
 Orderly Corporal " " " 2 Apr 41. WOpl. Letourneau, O.

2. PARADES: 0630 hrs. Reveille  
 0610 hrs. Blackout off  
 0700 hrs. Breakfast (Day Staff)  
 0715 hrs. Sick Parade  
 0745 hrs. Duty Parade  
 0800 hrs. Breakfast (Night Staff)  
 0815 hrs. Duty Parade  
 0900 hrs. Company Officer  
 0930 hrs. Orderly Book  
 1200 hrs. to  
 1300 hrs. Dinner  
 1630 hrs. Sick Parade  
 1830 hrs. Supper  
 1730 hrs. Retreat  
 1745 hrs. Duty Parade  
 2005 hrs. Blackout on  
 2120 hrs. Last Post  
 2215 hrs. Lights Out

3. WEAR: Steel helmets and respirators will be carried to place of duty.

*[Signature]*  
 W. J. Montgomery Major  
 Registrar, No. 15 Gen. Hosp. R.C.A.F.C.

WARNING 1. ILLSIN CASE OF GIFTS FROM CANADA:

The British Government agreed to allow gifts for the Canadian Army to enter the United Kingdom, free of duty, on the distinct understanding that these gifts were for personal use and not for re-sale.  
 The number of cases of re-sale of gifts, particularly cigarettes and tobacco, are increasing to such an extent that the British Treasury have made representations that unless the practice is discontinued, they may have to reconsider their decision regarding duty free entry.  
 The effect of a decision of this nature is obvious and Officers Commanding will take immediate steps to call to the attention of all ranks the fact that they are liable to lose this privilege, which is now enjoyed through courtesy of the Government of the United Kingdom, and to see that appropriate disciplinary action is taken immediately any cases are reported or come to their notice.  
 (ROUTINE ORDER #635, dated 26 Mar 41)

2. SPEED LIMITS, WITLEY CAMP AREA as a safety precaution, and to stop undue wear on the newly laid road surfaces, the speed limit of vehicles within the WITLEY CAMP AREA will be 15 M.P.H. effective 2 April 1941 (Routine Order C.S.U. #79 d/31 Mar 41)

Exhibit "E"  
 688  
 27/4/41  
 158  
 Colophon Ten copy 7  
 Original order  
 unmounting  
 signed

WITH THESE CIGARETTES WE SEND YOU  
OUR BEST WISHES FOR GOOD LUCK

THE TORONTO HOTELS' SOLDIERS' FUND

SUITE 612  
141 WELLINGTON STREET WEST  
TORONTO  
CANADA  
*26*  
*27/4/41*  
*exhibit D*

WITH THESE CIGARETTES WE SEND YOU  
OUR BEST WISHES FOR GOOD LUCK

THE TORONTO HOTELS' SOLDIERS' FUND

SUITE 612  
141 WELLINGTON STREET WEST  
TORONTO  
CANADA  
*exhibit B*

*exhibit A*  
CIGARETTES  
SWEET  
CAPORAL  
*for exhibit B*  
*27/0/41*  
  
*Henry B...*

A22449

R. Mackinnon  
Cross Scottish

C.D. 25038

Sunday

Exhibit "D" May 9 1941.

~~21/6/41~~  
21/6/41

## PART I ORDER 536

PARADE (Cont'd)

3. There will be a parade for all Corporals and Lance-Corporals at the laboratory at 1430 hours. Privates whose initials are included from A to W will parade according to the following schedule:

1500 hours - A and B  
1525 hours - C  
1540 hours - D, E and F.  
1600 hours - G and H  
1625 hours - I, J and L  
1640 hours - K and W

NOTICE - FORMS. IIC - Field Service in mess hall.  
YIC. These articles may be had from  
IX. INQUIRY the Orderly Corporal.



~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated \_\_\_\_\_, and in his regiment (or corps), the rank of \_\_\_\_\_ dated \_\_\_\_\_.~~

~~19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date: \_\_\_\_\_ Date of promotion: \_\_\_\_\_~~  
 In the rank of \_\_\_\_\_ years.  
 In the rank of \_\_\_\_\_ years.  
 In the rank of \_\_\_\_\_ years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number 575821 Rank Pte.

Name Hyndman, G. W. of No. 15 Gen. Hosp. RCAMC. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N I L		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of June, 1941. *Henry J. [Signature]*  
 FOR OFFICER COMMANDING  
 15th Canadian General Hospital

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked \_\_\_\_\_ signed by the president, and annexed to the proceedings.

COPY

M.F.M. 6  
(A.F.B.122)

No. B93621 Name: HYNDMAN, George, William Sgdn, Battery) 15 General Date of )  
or Company ) Hospital Corps: RCAMG enlistment) 10/9/39

Date of last entry in) No. and date ) Period not reckoning) Signature O.C. )(Signed)  
Company Conduct Sheet) Nil of last drunk) N.A. towards freedom from) N.A. Company etc ) C.A.Rae Character: Fair  
extra time )

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded
Toronto	6.11.39	Pte		A.W.O.L. WOAS	Sgt Lane	Forfeiture one days pay & allow. Awarded 7 days CB	6.11.39	Maj. van Nostrand
Bramshot	15 Aug 40	Pte		A.W.O.L. 9 hrs	L/Cpl McDonald	10 days C.B. Loss 1 days pay	17.8.40	Col. C.A. Rae
Bramshot	29 Dec 40	Pte		WOAS AWOL WOAS 34 hrs	L/Cpl LeFourneau	Loss 2 days pay		Col. C.A. Rae
Bramshot	17 Feb 41	Pte		WOAS AWOL 11 hrs 46 min.	L/Cpl LeFourneau	Loss 1 days pay	19.2.41	Col. C.A. Rae
Bramshot	24 Mar 41	Pte		WOAS AWOL 86 hrs 20 min.	Sgt. Langfield	10 days detention	24 Mar 41	Col. C.A. Rae
Bramshot	12 May 41	Pte		WOAS AWOL 34 hrs 5 min.	Sgt. Surrage Sgt. Baker.	Forfeits 8 days pay	12 May 41	Col. GRD Farmer

*John J.*  
*HR*  
*208*

Certified true copy.

8 June 41

*G.R.D. Farmer*  
.....  
(G.R.D. Farmer) Colonel, R.C.A.M.C.  
Officer Commanding,  
No. 15 General Hospital, R.C.A.M.C.



HY 77

Lyd. Ontyolop, J.

**SCHEDULE.**  
**PART I. PLEA(S), FINDING(S) AND SENTENCE.**

Accused: H. 26715 Dgt. John Hyslop

Charge.	Plea.	Finding.	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
(Insert "alternative" where applicable.)	(See Instrs p 2.)	(See note below.)	
1st	<u>Not Guilty</u>	<u>Not Guilty</u>	
2nd	<u>Not Guilty</u>	<u>Guilty</u>	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 in 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 in 6.)

At present under restraint for: \_\_\_\_\_ beginning on (date) \_\_\_\_\_ (4)  
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF 6296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital. (1)  
(1. See RP 46(A) in 2. Information should be found on MF B355 or AF 6296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be severely reprimanded and to be put under stoppage of pay until he has made good the sum of thirty dollars (\$30.00) in respect of damage to vehicle No. C.A. 724 2538

(Sgd.) J. P. Phelan 27 Jan 45. (Sgd.) \_\_\_\_\_  
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)  
(See book of Convening Order as to assembly and disposal of record after trial.)

**PART II. MINUTE WHERE CONFIRMATION RESERVED.** (AA 54(5), RP 120(F), MML p 760.)

Date \_\_\_\_\_ (Sgd.) \_\_\_\_\_  
Commanding

**PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.**

(For duties and powers see AA 54, 57, RP 37(D) in 6, 46(A), 51-54, 120, MML pp 759-761, KR Can 567-577. Acquittal requires no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 51, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, STA, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 in 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I do not think that the accused be not committed to detention through until further orders.

Date 31 Jan 45 (Sgd.) W. Robinson  
Commanding 2 Cdn Armd Bde. Confirming Offr.

**PART IV. PROMULGATED AND EXTRACTED TAKEN.** (AA 51, 52, 53, 57.)

Accused: 266451 Sgt Hyslop, J Date 2 Feb 45 Signature of Offr: \_\_\_\_\_

Having been tried by FIELD GENERAL COURT MARTIAL on 27 Jan 45, for two offences under A.A. Sec 40. Was found NOT GUILTY on the first offence and GUILTY on the second offence. Was awarded Severe Reprimand and placed under stoppage of pay of \$35.00 to make good part cost of damage to M.D. Yeh #CM4243588. Confirmed by Brig. G.W. Robins. ALL DELETIONS AND ALTERATIONS WILL BE INITIALED on 31 Jan 45.

**FIELD GENERAL COURT-MARTIAL**

RECEIVED  
1 MAR 1945  
JAG BRANCH  
G.M.M.O.

**ACCUSED.**

Order: Brig. G.W. Robins Comd: 2 Cdn Armd Bde. Date: 27 Jan 45  
Number: (a) Prmt R. (b) Apmt, A/R or A/Apmt. Full Christian Names: H. 26715 Dgt. John Hyslop, 10 Cdn Armd Bde.  
Summons: \_\_\_\_\_ Unit: \_\_\_\_\_

PROCEEDINGS REVIEWED  
23 Jan 45

PROCEEDINGS OF TRIAL.  
Held in the Fd in (country) Holland on (date) 27 Jan 45

**RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.** 21/18-

A1. The President, Members, waiting Member, JA, if any, and Offrs. under instr, if any, assemble, and the Court is opened.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALED BY PRES OR JA. The Schedule referred to throughout is on p 4. "Dates do NOT include all relevant final RUs. For guidance on procedure when a variation in this form arises, see form for GCMS in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See book of Convening Order, CF 495, for notes and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto. (1) The Court is satisfied that it is properly convened and constituted, accused is (are) amenable to military law, and each charge discloses an offence. (2)

(1. As to use of Summary of Evidence see RP 17 in 6. 2. AA 49, 50, RP 105-107. 3. RP 11-12, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At \_\_\_\_\_ hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. (1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO. (2)

(1. KR Can 557. 2. AA 46(B), RP 60 in 1. For effect see KR Can 563(C). Delete, if not applicable.)

A5. President to accused: Do you object \_\_\_\_\_ as interpreter? Ans: No  
The interpreter is sworn. (1) Do you object to \_\_\_\_\_ as shorthand writer? Ans: \_\_\_\_\_  
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. (1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No (2)  
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs. under instr, if any, are sworn. (1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President: Major J.C. St. John, W.B. Coy 2 C.A.B.  
Member: Capt. N.W. Lawrence, 10 Cdn Armd Bde.  
Member: Went. F.G. Russell, 2 C.A.B. Coy 2 C.A.B.  
Judge-Advocate: Capt. J.P. Phelan, W.B. Coy 2 C.A.B.  
Prosecutor: Went. J.F. Jeffries, 10 C.A.B. (723)  
Defending Offr: Went. F.P. Davidson, 10 C.A.B. (723)

Questions by President: Is the Prosecutor a lawyer? Ans: No Is the Defending Offr a lawyer? Ans: No (2)  
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Care Offr.)  
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and in 2 were not followed. See Ed p 3.)

A8. The accused \_\_\_\_\_ before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, (the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in (a) to RP cited. Insert in all such and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet. (1) The accused does (not) object to any charge. (2) There is no amendment to be made to the Charge Sheet. (3) The President records the in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 in record proceedings. 2. RP 22, RP 21. If objection, delete and make appropriate record per Notes.)

The Court (is/are) considered; the Instrs on Procedure after Arraignment at top of p 2. The pro- are continued on Record Form \_\_\_\_\_

**PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.**

## INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing insets as may be appropriate to result of its decision. See MML p 744 Insets (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Officer see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 85, 116; use of Summary of Evidence at Trial see RP 17(B) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

## RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) (1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment. (2)

(1. RP 35 fn 2. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). (1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty (2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined (3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire. (4)

President to accused: Do you wish to make a statement? Ans Yes (1)

(1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on \_\_\_\_\_ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on \_\_\_\_\_ charge(s). Part I of the Schedule is amended accordingly. (1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule. (1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex \_\_\_\_\_, initialed and read aloud by the President. (1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

## RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2. (1)

(1. RP 37(A) (E)).

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above. (1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial should proceed by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

## RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address. (1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken. (1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed. (1) The Defending Officer submits that the evidence for the Prosecution does not establish a prima facie case against the accused on this \_\_\_\_\_ charge(s). (2) The Court is closed, and considers the submission. (3) The Court is re-opened, and the President announces that the submission is disallowed on the \_\_\_\_\_ charge(s), and allowed on the \_\_\_\_\_ charge(s) and that, accordingly, the trial will proceed \_\_\_\_\_, but the accused is (are) found Not Guilty on the latter charge(s).

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used, if accused acquitted on all charges, use second alternative in para D6.)

(NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. (1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination. (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination. (3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. (4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Free witness in both Do you intend to call witnesses on your behalf? Ans Yes Are they witnesses as to character only? Ans No

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. (1)

(1. RP 114, 115, 116. For procedure see Notes on book of Convening Order, CF 95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the findings. (1) The finding(s) of the Court is (are) recorded in Part I of the Schedule. (2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the \_\_\_\_\_ charge(s), being subject to confirmation, will be promulgated later. (1) The accused is informed that the finding(s) of the Court on the \_\_\_\_\_ charge(s) are accordingly terminated. Part I of the Schedule is deleted and signed. (2) This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

## RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? (1)

Ans No (1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service (1), and certified true copy (copies) of Conduct Sheet(s) (2), purporting to refer to the accused, which he submits to the Defending Officer for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex \_\_\_\_\_ and Ex \_\_\_\_\_ respectively. (3)

(1. MFD 355 or MFD 296. 2. MFD 4. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans By my Officer (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated. (1)

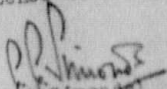
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence. (1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. (2)

(1. When several accused tried separately see RP 7(2). One sentence only, comprising of the punishment or punishment, RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 320, 342-346, Overseas RP 309, 302, MML p 80, 157-159. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from prison by Convening Officer see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The Deputy Judge Advocate General, Cdn Section 1 Echelon Headquarters 21 Army Group, having advised that the sentence in these proceedings is invalid, I hereby direct that the sentence be and the same is hereby removed and the accused relieved from all consequences of such sentence, and I do hereby sentence the accused H-28415 Sgt Hyslop, J. to be severely reprimanded, such sentence to be effective as if passed by the Court Martial on 27 Jan 45.

  
(G. G. Simonds), Lieut-Gen,  
GOC 21 Cdn Corps.

In the Field,  
..... 27 Feb 45.

CHARGE SHEET

In the Field on or about 4 Dec 44 did so negligently drive W. D. Vehicle No. CM-4243588 from Turnhout to Antwerp without authority.

SECOND CHARGE  
A.A. 380, 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on or about 4 Dec 44 did so negligently drive W. D. Vehicle No. CM-4243588 as to become involved in an accident with a tramcar thereby causing damage to the said W. D. Vehicle in the sum of approximately \$35.00.

In the Field  
Jan 45

*F. T. Jeffer*  
(F. T. Jeffer) Major  
A/Comd 10 Cdn Armd Regt (FOR)

To be tried by PGM.

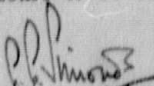
In the Field  
24 Jan 45

*G. W. Robinson*  
(G. W. ROBINSON) A/Brig.  
Comd 2 Cdn Armd Bde.

*J. C. St. John*

The Deputy Judge Advocate General, Cdn Section 1 Echelon Headquarters 21 Army Group, having advised that the sentence in these proceedings is invalid, I hereby direct that the sentence be and the same is hereby removed and the accused relieved from all consequences of such sentence, and I do hereby sentence the accused H-26415 Sgt Hyslop, J. to be severely reprimanded, such sentence to be effective as if passed by the Court Martial on 27 Jan 45.

In the Field,  
..... 24 Feb 45.

  
(G.G. Simons), Lieut-Gen,  
GOC 2 Cdn Corps.

CHARGE SHEET

*FA. 61-1128951*  
The accused, ~~H. 26415~~ Sergeant John HYSLOP, 10 Canadian Armoured Regiment (FGR) a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD  
A.A.Sec. 40 ORDER AND MILITARY DISCIPLINE

in that he

In the Field on or about 4 Dec 44 did proceed on a recreational trip driving W. D. Vehicle No. CM-4243588 from Turnhout to Antwerp without authority.

SECOND CHARGE WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD  
A.A.Sec. 40 ORDER AND MILITARY DISCIPLINE

in that he

In the Field on or about 4 Dec 44 did so negligently drive W. D. Vehicle No. CM-4243588 as to become involved in an accident with a tramcar thereby causing damage to the said W. D. Vehicle in the sum of approximately \$35.00.

In the Field  
Jan 45

*J. T. Jenner*  
(P. T. Jenner) Major  
A/Comd 10 Cdn Arm'd Regt (FGR)

To be tried by FCM.

In the Field  
24 Jan 45

*G. W. Robinson*  
(G. W. ROBINSON) A/Brig,  
Comd 2 Cdn Arm'd Bde.

*J. C. 11 / de met.*

# FIELD GENERAL COURT-MARTIAL.

(FORM 10, Reg. of AFAM)  
1 JAN 1957 (2088)

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authority. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appoint, A/rank or A/appmt, if any, see AA 182, 183, (ns, KR Can 308, 328, 330).

## ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-26415	Sgt	John	HYSLOP	- 10 Cdn Armd Regt (POH)

## CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/have committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Jan 45 endorsed by me, ~~to be tried by Field General Court-Martial.~~ To be tried by Field General Court-Martial.

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to try the accused in a General Court-Martial.~~ (Delete part in brackets which is not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint the following Offrs to form the Court-Martial to try the said person(s) on the charges above attached thereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereof the Offr mentioned hereunder. (RP 106(F). Delete, if none appointed.)

### PRESIDENT.

Major	JC	ST JOHN	HQ Sqn 2 Cdn Armd Bde
(Rank)		(Must be named. RP 106.)	(Unit)

### MEMBERS.

Capt	NM	LEVINE	17 Cdn Lt Fd Amb RCIMC
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Lt	FG	RUSSELL	2 Cdn Armd Bde Coy RCASW
(Rank)		(Named or detailed. RP 106.)	(Unit)

### WAITING MEMBER.

Lt	DF	HORAN	X-4 List att "C" Sqn 25 Cdn Armd Del Regt
(Rank)		(Named or detailed, if any. RP 106.)	(Unit)

### JUDGE-ADVOCATE.

Capt	P.F. MILLIGAN	BY	HQ 2 Cdn Corps
(Rank)		(Must be named, if any. RP 106.)	(Unit)

On Active Service in the Fd

in	Holland	<i>[Signature]</i>	A/Brig.
(Country)		(Signed personally. RP 105 (p 2).)	(Rank)

Date	24 Jan 45	Commanding 2 Cdn Armd Bde Convening Officer.
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**CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS**

(Use overleaf for notes and notes for use on trial.)

*J. C. St. John Maj*



## MEDICAL OFFICER'S REPORT

I certify that No. H26451 Sgt HYSLOP, John  
10 CDN ARMED REPT  
of (PORT GARRY HORSE) is in a Normal state of health,  
and fit to undergo Trial by Court martial.

J. Cunningham Capt  
Medical Officer R.C.M.C.

Station Field

Date 27 Jan 45

M. F. B. 246

FORM-6-41 (792)  
H.Q. 1172-09 480

1001

The Band being allowed that the No. 4<sup>th</sup> Co. be  
detached to No. 116951 that part of the 116951  
amount to 24000 was accordingly.

Page 1

23 -

Expd R. B. Stewart 10 APR  
also in notes:

7 Dec 79, 120000 00 15 Dec  
10 APR. The account of 89

Byrd's was under my  
jurisdiction. Vicinity around.

In 7 Dec 79, the general  
practice was not to count

with double as high as,  
occurred beyond the

expense with habits. Some  
of 89. 8<sup>th</sup> M. application

with ticks stored and 8<sup>th</sup> M.  
In case of other vehicles it

occurred the rounded through  
transport 897. On the 79

account did not apply  
for a work habit.

~~897~~ - The practice for  
creation of ticks and 8<sup>th</sup>

was with ticks of 897  
was beyond 897 area. It that

time resident was around  
area of 897 area. The account

of 897. In 79. 8<sup>th</sup> M.  
No 897. 897.

~~897~~ - There were no  
exceptions to the practice of

my knowledge.  
By 897. The account of 897

ticks could all be 897  
vegetational up 897 and 897.

As the 897 that 897 can be

PM.

written orders governing recreational  
trips up to 7 Dec. 44. Written  
orders have been published since  
that date.

A.P. 83 B1 Complied with.

H26319 Sgt. Skinton, J.O.N., 10. P.A.R.  
sworn status:

The defence does not object to  
this witness giving evidence.  
I was a passenger in the jeep  
driven by Sgt. Skinton on 4 Dec  
44. He accused to tell me he  
was going to turn out on  
business. He did not tell me  
what the business was. We  
went to M/S. Mess 10 P.A.R.  
Gen Hoop. in Turn out. The  
accused came back and said  
he had more business to do and  
he had to go to Antwerp. I went  
along with him on that trip.  
While going down the road  
towards Antwerp, shortly before  
we got to Antwerp, I noticed  
a bright light coming towards  
me. I felt the jeep start to  
slow down. It swerved and  
I remember nothing after that.  
I woke up in hospital. The  
accused said he had  
business concerning our Sgt  
Sgt to me in Antwerp. He did  
not tell me what the business was

PM

I had been drinking in  
N/S mess. He accused  
had one drink in N/S mess  
before supper and one after  
supper.

Cross Exam None.

Ry. Capt. - He accused  
dropped me at N/S mess  
and told me he was going  
down to see a Sgt. Major but my way  
to see Sgt. at Bde. Battle School.

We came back to N/S mess and  
heer. later. It was then he told  
me he had to go to Antwerp.

We had supper at N/S mess

first & then went to started  
for Antwerp. He accused had  
not been drinking prior to our

arrival in Antwerp. We arrived  
at 10 Ode. San Hosp. approx. 1600 hrs.

We left for Antwerp approx 1800 hrs.  
R.P. 53031 Complied with.

H. 26666 Tpr. Ferneau, J. 10 Ode.  
Snoorn estate:

On 7 Dec 47 I was ordered by  
accused to go with him to  
Turnout. I was to go along  
to wait the jeep. I don't know  
if he had a work ticket. He  
accused and myself left 10 Ode  
San Hosp & went to Battle School.  
Before we got there he accused  
bought two bottles of Cognac.

When we got to Ball's School the 3 bottles of Cognac were left in jeep. I stepped outside to watch the jeep which he caused went in. We did not have any drinks either going or from Ball's School.

No cross-exam.

By Court-

I saw not the driver of the jeep. The accused bought Cognac in Turmont. The accused did all the driving. Before going to Ball's School the accused had a drink of Scotch Whiskey in M/S mess. After supper in M/S mess he had one more drink. The accused was in Ball's School approx 5 min. That is only time he was out of my sight.

A.P. 83 W.A. Complied with.

A 6088 R. Sgt. Jeffries, W.D. 8 Can. Prov. Coy. Subaltern.

At 2145 hrs + Loc. 44 I arrived at scene of an accident on Cutwep - Turmont Highway near West Mill M.A. 838035 ~~at~~ the Cutwep Sheet. A jeep was stationary on road at an angle of approx. 45° to rd. A tractor also stopped beside the jeep. One of passengers in jeep had been injured. I stopped

an ambulance and had injured person taken to hosp. I produce a sketch made by me of the scene of accident, I admitted in evidence and marked Ex. F.]

showing the position of jeep and train car when I got there. The accused whom I identify was standing beside the jeep when I arrived. He was standing where I put an x on sketch. Inside the jeep was an injured passenger sitting on flight front seat. A man whom I now know to be Sgt. Garneau was in back seat of jeep. Cpt. Whinnery W. J. 11 Prov. Coy arrived at scene and immediately left to get a recovery vehicle. He accused & smelled of liquor. I searched jeep with Cpt. Whinnery on his return & found a full bottle of Cognac & a full bottle of Gin which I removed and later labelled. I produce the two bottles admitted in evidence & marked Ex. G. & Ex. H. There was also pieces of a broken bottle in the back of the jeep. The label had Cognac on it. The jeep was then removed from scene & Sgt. Garneau and accused were taken to our Det. H. Q. We searched jeep but could not find work ticket. We did find log

book in glove compartment. I questioned accused at See & S. and he said he was the driver of the jeep.

Cross Exam. - When I arrived at scene of accident, the accused gave no indication that he was drunk. It is a cobbles stone road. There is a cobbles stone curb where I have road verge marked about 5 ins high. Between curb & train line is dirt approx same level as cobbles stone road. By Court: The accused did not have a drink after I got to scene of accident.

R.P. 83(B) Complied with.

730666 Sgt. Kenneth W. J. 11 Can  
Prov. Coy. account states:

On 7 Dec 77 at 2200 hrs I arrived at scene of accident on dirt verge. Found Lt. Highway. The accused whom I recognize was standing beside a jeep. I smelled liquor off his breath. He showed no ~~clear~~ clear indications of ~~being~~ having been drinking.

No Cross Exam.

By Court: R/Cpt. Hughes and myself arrived at scene of accident in same jeep. R/Cpt. Jeffries was there when I arrived.  
R.P. 83(B) Complied with.

Constant Zagors, 73 Gierke Steuweg  
 Bern, Switzerland, sworn states:

I remember an accident  
 but not the exact date. It  
 was early in Dec. The lights  
 on my train were dim. The  
 jeep was 20 metres away when  
 I first saw it. Its speed  
 was 30 or 40 Kilometres. Just  
 before he hit my train he slowed  
 down but not touch. The jeep hit  
 the train with the ~~left~~ <sup>right</sup> hand side  
 and he hit the train on the  
 right hand side. When I saw  
 the jeep first he was coming  
 straight ahead then he turned  
 sharp right and hit the train.  
 Cross Exam: - It was dark.

Re Exam: - The top part of  
 bus of light on train was dimmed  
 & sep. There were two bulbs in  
 light. At time of accident only  
 the dim one was on. The witness  
 when ~~asked~~ asked to estimate height  
 of room said 10 metres. The room  
 being approx. 10 metres long.  
 The speed of my train was about  
 40-45 Kilometres.

P.P. 83 (18) Complied with.

N 26593 Capt. M. Pherson, D.F.  
 10 C.P.H. sworn states:

I identify accused. 7 Dec. 77  
 in the morning occurred asked me to



test brakes on his jeep to see  
which ones were doing the gripping.

Mr. <sup>mechanic</sup> Wright's front wheel was only one  
that was gripping. I am a  
Mr. Mechanic's wheel. He accused  
said he would take it to the fitter.  
No Cross Exam -

By Court - This was only an  
unofficial check up. I jeep  
has hydraulic brakes. We tried  
it on the road. When driving at  
6 to 7 miles per hour and applying  
brakes to jeep would swerve to  
the right. The road we were  
testing on was wet & muddy.

Ex. 53 (B) Complied with.

K. 45879 Mr. Morrison H.A., 10 C.A.A.  
sworn states:

I identify accused. I am motor  
mechanic wheel. On morning 7 Dec  
77 accused came to me & asked  
me to make adjustment on the  
brakes of his jeep. I checked  
brake on right front wheel, but it  
did not work satisfactorily. So I  
adjusted all four brakes and  
he seemed satisfied. I noticed  
when he tested them that they worked  
satisfactorily. It was a hard  
surfaced road, but wet &  
muddy. I was satisfied that  
the brakes were catching on all  
four wheels at same time.

This possible for the brakes to come out of adjustment in 60-70 miles when running on good road. By running one brake could tighten up. To adjust brakes we tighten all feet up and then relaxen off. After the accident I looked at the brakes I saw a leak in brake ~~line~~ fluid line leading to two front wheels. This would not alter adjustment as it was two front wheels.

Cross Exam. This possible because of leak that one front brake would grab before the other front brake.

Replant. This leak may have been caused by collision with tank car or any other severe jolt. A ~~man~~ ~~man~~ is qualified to adjust brakes.  
R.P. 831B1 Complied with.

H 63508 Sgt. Hogan. C.K. P.C.A.A.  
sworn state: I recognize accused.  
I am transport Sgt. B. Sym. A.  
Feb. 10. C.A.A. All work ~~done~~  
Come to me eventually through  
the drivers. On 7 Dec 44 I was  
in 3-C.C.S. I arrived back at  
unit 5 Dec 44. Since 5 Dec. I  
have not received any work ~~that~~  
accident was accused to journey  
I had except on 4 Dec 44. Work

to take you turned in I was with  
Lewis for possibly the night. I  
have no privations with Spm.  
I might admit. The worst part  
was not turned in the. The Spm.

PM. Spm. Lewis has been in fact.  
He received ~~stated~~ <sup>stated</sup> have had  
his own work lately he had me.

PM. Lewis from <sup>the</sup> stage of day  
will ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> not have  
of any work lately being in  
hand I don't even know

PM. have in mind. Lewis, I ~~thought~~  
this was nothing about work  
that being necessary.

PM. Lewis. As far as I know  
a Spm Spm. Lewis would  
exchange his own trip. I do  
not know if he could arrange  
has been substituted trip. She  
was Spm. Lewis has the field  
has for maintenance and I  
detail your ticket. No work tickets  
were turned in to me during period  
1 Dec 77 to 7 Dec 77.

PM 83 181 completed work

sent. H. E. Lewis, n. c. 1978.

more notes. I am the officer  
who took the Sp of E in the  
case of Smithfield the account  
was sent in Sp of E. and the  
account that is wanted I made  
a statement on 8th Feb the

was sworn and gave evidence  
as in S. of E.

[Evidence of accused in S of E  
admitted his evidence]  
in Cron. Exam.

H.P. 83(B) Complied with.

The prosecution is dead.

26

The accused sworn states:

Capt Grant is my C.O. of H Ech.

Major Joyce my C.O. of B. Sqn.

I was never informed that it

was necessary to have a work

ticket to go beyond Turment.

I have made trips beyond Turment

before without getting work tickets.

Other Sr. N.C.O.'s had done this. There

was never any criticism of this

practice by Comdr. of H Ech. Sqn

Comdr. - My superiors had never

informed me of any H.O.

requiring work tickets to go

beyond Camp Area. When I left

for Turment I did not intend

going to Antwerp. I decided

to go to Antwerp because part

of business could not be transacted

in Turment. Five ~~members~~ of Sqn.

Sgt ~~was~~ had asked me to purchase

liquor for them. They told me it

was for troops at Christmas time.

The Regt had on ~~leave~~ a few

days previous to 4 Dec 44 come

M  
M.

out of line for a rest. I have never before in the army been involved in an accident. I have been in army over 5 yrs. I was a truck driver in civil life.

Cross Exam.

I went to Turnhout to ascertain if I could get back "B" Sgn. Captain Sgn S. M. Miller had at Belle School. Also to obtain liquor for Sgts of "B" Sgn. I could not get enough liquor in Turnhout as the price was too high, so went on to Antwerp. There are two or three places in Antwerp ~~where~~ <sup>in the</sup> PM that I know of where I could get liquor. Individual Sgts gave me the money to buy liquor for themselves individually. Major Joyce has told me that I should go where I like in the interest of the Sgn. No officer authorized me to go on this trip. I did not have a work ticket. To my knowledge I did not need one.

The lights of the train blinded me. When I saw the light ~~approaching~~ <sup>approaching</sup> very quickly on right hand side of road, I slowed down. As the train came closer to me I applied the brakes to stop until it passed by. As the brakes were applied the jeep reversed to the left very sharply. He notes on

jeep stalled and I could not  
turn out again. There was a  
collision as the tram collided  
with my right front wheel knocking  
it off. I then got out of jeep  
and went around to right side  
to see what happened. As I walked  
around I noticed the wheel of  
the jeep laying on the road. I  
asked Sgt. Stinson if he was  
hurt and he did not answer as  
he was unconscious. Capt. Jeffries  
arrived and obtained an ambulance  
to evacuate Sgt. Stinson. The post  
then called me and Tpr. Faridan  
to come to their billets where they  
would give us a bed for the  
night. I did not take a drink  
after I left. Lieutenant  
By Court I was going 25-30 miles  
per hour. I had seen along this  
road twice before. The light was  
100 yds away when I first  
noticed it. It blinded me then.  
I started to slow down. I took  
my foot off accelerator. The road  
was dry. When I first applied the  
brakes I would be going about  
10 miles per hour. I hit the second  
coach of the tram. I am a  
qualified driver. The purpose of my  
trip was not known to Major Joyce  
A Capt. Grant. Major Joyce had told me  
I could go where I wanted on Sgt. Stinson.

Cu + H.C. 77 we did not have  
a Sgn. Sgt's mens. I was  
travelling 1 ft to 1 1/2 ft. from verge.  
I had noticed the train tracks.  
When I saw the light I slowed  
down because I did not know  
what it was. I did not hear them until it was  
P.M. ~~at the time I was~~  
about 20 yds from me. I then  
applied the brakes. There were  
three of us in front of perp  
N/S. Canton, Sgt. Shewell & myself.  
H.P. 83 (B) Complied with

Capt. H. W. Grant recalled.

Cu + H.C. 77 I was not  
aware of a R.H.F. R.O. requiring  
work tickets for trips beyond their  
Cops area. I never told the  
accused it was necessary to  
have a work ticket for any trips.  
Prior of 7 H.C. 77 the only trips  
to my knowledge beyond their limit  
were leave trips to Greensboro and  
their work tickets were issued by  
H.O.R.  
H.P. 83 (B) Complied with.

H.A. 755 Sgt. Jones A.B. 10. C.H.R.  
sworn states: I am ~~Sgt. Jones~~  
Mech. Sgt. 15 Sgn. H. 15th.  
I have been in Sgn. <sup>since 1939 and</sup>  
since coming to Continent I have  
never heard that it was necessary

for a work ticket to go beyond  
Coys boundaries with a vehicle  
I was one of Sgt's who asked  
Q11: ~~Sgt's~~ ~~ordered~~ to purchase  
liquor for me. There was not  
any organized Sgt's men on 7 Dec 44  
to Cron. Exam.

By Court - I considered that that  
was sufficient to adjust books.  
A. P. 53 (12) Complied with.

Summing up by Del off (See all d)  
Summing up by Pros (See all d).

Summing up by Judge Advocate

On the first charge the Court should  
ask themselves three questions:

- (1) Was it a Recreational trip?
- (2) Was authority necessary?
- (3) If so, did he have authority?

The answer to the first question  
is supplied by the accused himself.  
When he stated his purpose in going to  
Antwerp was to buy liquor for  
some 100 to 150 men.

On questions (2) & (3) you have  
evidence that ~~trips beyond~~ ~~law~~ ~~but~~  
needed authority. You have evidence  
that in some cases a Sgt. S.M.  
could authorize his own trips and  
you have evidence that orders were  
never published as to authority  
necessary for which trips. It is



for the court to decide on the evidence the answer to the questions and consequently the guilt or innocence of the accused.

I am not allowed to do so, consequently I express no opinion on the evidence.

On the Second Charge you simply have to ask yourselves "Was there negligence on part of accused within the definition as set out in M.M.P. 459 the extended part of P.P. Sec. 70 which I read to you. As to the evidence. You have

1. Evidence of Tram driven. (2) Chart on F showing position of vehicles after collision. (3) Sketch of front seat (4) Drinking (5) Reflexive Brakes (6) Speed.

As to (3) & (4) remember he is not charged with having 3 in front or driving while drunk. Only consider these facts in as far as they may bear on negligence. Now how did collision ~~take~~ happen? Was it caused by the negligent driving of accused? Do you accept his explanation that it was caused by circumstances over which he had no control? If you have any doubts resolve that doubt in favour of the accused but it must be a reasonable doubt not a fanciful one or one conjured up in your own minds.

J.P. Mungro  
J.P.

1. "Rec" Trip: Capt. Grant said  
mess. packages were business.

"Authority": wk. ticket NOT an  
issue. SSM automatically was NOT  
kept on loading strips  
Dif was admin - somebody else.

2. Negligent driving:

a) vehicle was checked before journey -  
+ brakes were adjusted

b) Sgt. was the proper driver of the veh.

c) He was a competent driver

d) He had not had too much to drink

e) He drove at a reasonable speed.

f) It was a dark night

g) The tractor lights were blinking

h) Brakes failed to respond as they had  
been doing.

i) The accident was an accident -  
and if there was error in <sup>time of</sup> applying  
brakes, it was not negligence. study

The record books  
were not written yet  
the numbers for the  
groups. He had no words  
written on the paper  
notes.

Also - There were no  
to get the paper for students  
to be done for record -  
B. H. from the school by  
not for a group  
B. H. from the school for individual  
B. H. from the school for individual  
B. H. from the school for individual  
B. H. from the school for individual

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Description of Exhibits.

Ex. F. - 1 bottle of Gin (26 oz full)

" W 1 bottle of Cognac. (26 oz full)

Considered true description of above  
Exhibits as above & will forward K. 24756 of the same

J. C. S. John. May, 1890.

Scene of Accident as found by Messrs. J. J. Jeffries W.A.  
 No. 11 Sdn Prov Coy. at app 12 48 hrs 4 Dec/44 involving a  
 Civilian Tram and a Mil Veh Ford 5-wht Mil No. CM4243560 of  
 10 C.A.R.  
 Place: Antwerp-Turnhout H'Way app MH 030030 Sheet No 3.  
 Road Condition: Dry Cobblestone.  
 Visibility: 0300. CLEAR.

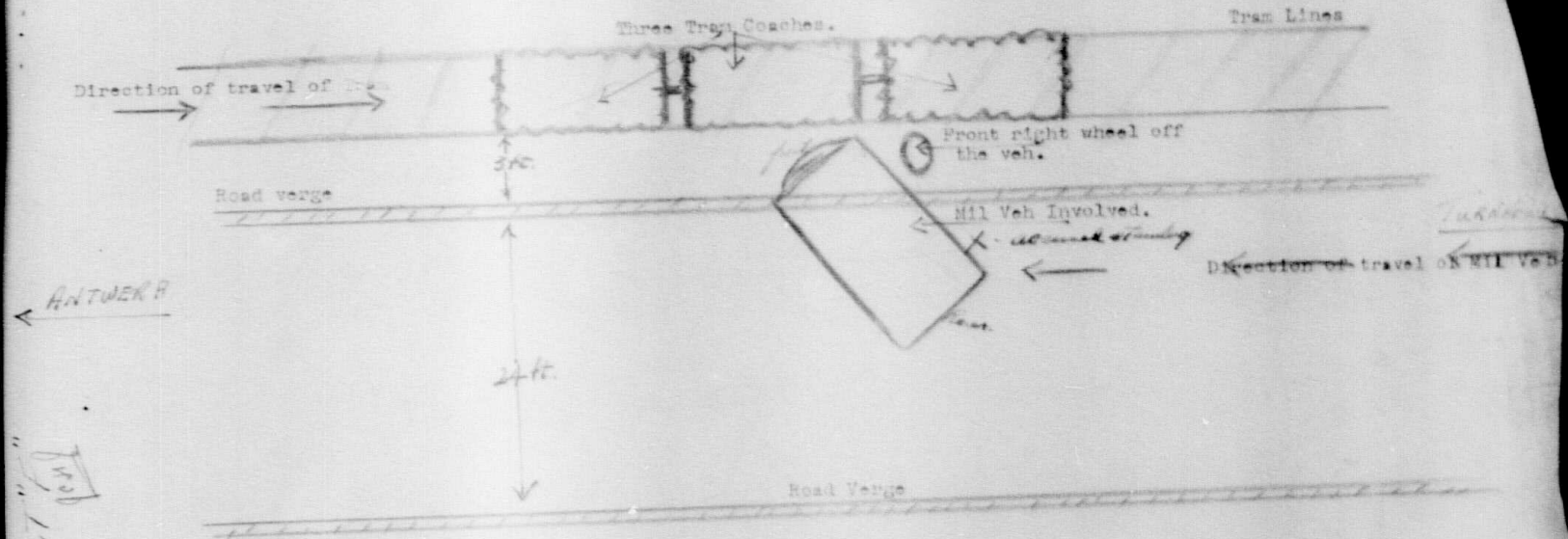
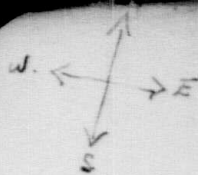


Exhibit "C"

*J. J. Jeffries*  
 11 Dec 44

No H26451 Name HYSLOP, John

Sqn, Battery,  
or Company

Corps C.A.C.

Date of  
enlistment 19-9-39GC  
BadgesService or  
Proficiency PayMFM 6  
(AFB 122)  
40/PAN/136 (3458)Date of last entry in  
Company Conduct Sheet

N/A

No and date  
of last drunk

N/A

Period not reckoning towards  
freedom from extra fine

N/A

Sheet No One

Signature GC  
Company, etc

Character

Place	Date of offence	Rank	Class of drunken- ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispens- ing with trial	By whom awarded	Remarks
Field	8 Nov 42	Sgt		WOAS Neglecting to obey Regt'l Order #196 d/24 Aug 42	Documentary	Severe Reprimand	29 Nov 42	E.B. Evans Major	
				CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY. <i>H.W. MacEwing</i> ..... (H.W. MacEwing) Capt & Adjutant 10 CDN ARMED REGT (FORT GARRY HORSE)					

(17)

## STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

*Robert D.  
1941*

Number	Rank	Name	Regiment (or unit)
H-26451	Sergeant	HYSLOP, John.	10 CDR ARMED REGT. (PCH)

1. The following is a fair and true summary of the entries in the Service and General  
Regimental and Squadron, Battery

Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months	Since enlistment
For Neglecting to obey Regt'l Order times	One (1) times
For _____ times	_____ times
For _____ times	_____ times
For _____ times	_____ times

~~Number of instances of absence or drunkenness~~

~~The nature of entries in the conduct sheets of the accused.~~

NOTE:--If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Number of convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 72 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for \_\_\_\_\_ beginning on the \_\_\_\_\_ day of \_\_\_\_\_~~

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and N/A days in military custody, making a total of N/A days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 28 years.

6. The date of his commission specified in his record of service attestation paper is 19 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 5 years, 4 months.

8. The accused is entitled to reckon 5 yrs 4 mths vice for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to an Air Force decoration, or an Air Force award (or is entitled to) decoration or reward C.V.S.M. & Clasp

10. ~~(If the accused is entitled to a pension, the amount thereof and the date when it became payable should be stated.)~~





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CHARACTER STATEMENT: PLEA FOR MITIGATION OF SENTENCE

B-20441, Sgt. Myslop, J., volunteered for the Canadian Active Army on September the nineteenth, 1939. For nearly four years, he has served as an R.C.O. He was a Crew Commander of one of the assault squadrons on D-day. At VERSCHE, his tank was knocked out. The next day he was back in action with his squadron. At TILLY LA CAMPAGNE, Sgt. Myslop's troop leader was killed, and the sergeant took over command of the troop. The next morning, Sgt. Myslop's tank was the only one to get inside the town of STAM. The tank was knocked out. One week later, Sgt. Myslop had returned from T.D.R. with a new tank. In the drive to PALAISE, his troop leader was knocked out and the sergeant took over the troop for two days of bitter fighting.

At BOULOGNE, after his crew had accounted for at least two enemy ordnance pieces, Sgt. Myslop was wounded, and evacuated to 6th British General Hospital in ROUEN. Six weeks afterwards, back with the regiment he had served for over five years, Sgt. Myslop was appointed to the post of acting Sergeant-Major, since the regular S.M. was away at THESBOURNE with the 2nd C.A.P. Battle Group.

Plea: Sergeant Myslop's record speaks for itself. If he was guilty of anything, it was of an error of omission, not, one might say, of commission. There was no criminal intent. There was no unreluctant conduct. If there is blame in this case, it should rest very largely, at least, on the proven fact that the 21st Army Group regulation in question was not known to the sergeant's superior officer. The defect is administrative, and one wonders if the remedy might not, also, be administrative. The Canadian Army requires Sgt. Myslop's continued services, not that he be dishonored by the judgment of a Court Martial. We close our case, confident that this Court will consider the character, record, and value to his Regiment of Sergeant John Myslop, before imposing sentence.

*Sgt. Myslop is married, and has one child.*

SUMMARY OF EVIDENCE

in the case of H-26415 Sgt HYSLOP, J, 10 Cdn Armd Regt (PGE)  
charged with:-

1. Proceeding on a recreational trip driving WD Vehicle No.  
CM 4243588 from TURNHOUT to ANTWERP without authority (AA Sec 40).
2. Did negligently drive WD Vehicle No, CM 4243588 as to become in-  
volved in an accident with a tram car thereby causing damage to  
the said WD Vehicle in the sum of \$35.00. (AA Sec 40) (1)

By decision of the Commanding Officer, the evidence is taken on  
oath. (2)

First Witness (3) Certified true copy of sworn statement given by  
Capt Grant (RP) (2)

Sworn statement by Capt R.D. Grant, OC A Ech.  
by Maj W.H. Joyce

7 Capt R.D. Grant was OC A Ech. on 4 Dec 1949  
and H 26451 Sgt Hyslop J was acting SSM  
for "B" Sqn as such he came under command  
A Ech. for all purposes.

Up to this date it was not considered  
necessary for SSMs to get permission  
to make duty trips to Turin but however  
other unscheduled trips to Turin  
or any other destination beyond the Brigade  
area required work tickets. A work ticket  
was requested on the above date by Sgt  
Hyslop.

R.D. Grant

by Accused

Cross question by Sgt Hyslop.

Q Were you advised on that date that soldiers  
of the 4th Sqn # 546 required that vehicles going  
beyond their loop area should have a work  
ticket?

A. No but it was a Regt Policy to issue  
work tickets for recreational trips.

R.D. Grant

Sworn statement by H 26666 Tpr Carnear J.

H 26666 Tpr Carnear J. of B Coy. 10 Cdr. Amd Regt am employed as Driver I/C 3rd class. On Dec 4 I was ordered by Sgt Hyslop J. to accompany him to Tumbout as a spare driver on his jeep. To my knowledge we did not have a work ticket for this journey. We went first to 3005 to see Sgt Hogan and then to 10 Cdr Gen Corp. Sgt Shinton, Sgt Hyslop and myself went into the kitchen Mess. Sgt Hyslop and myself had a drink of Scotch then ~~Sgt Hyslop and I~~ we both went to the Burgess Battle School to see 5509 Miller and returned to Hospital for dinner buying three bottles of Cognac en route. After dinner Sgt Hyslop and I had a drink of Cognac. We were starting out for Antwerp with Lieut W's Cantor, Sgt Shinton, I.O.P. Sgt Hyslop was driving with Lieut Cantor in the front seat ~~and~~ with Sgt Shinton and I myself in the rear seat. It was a very dark night, the traffic was normal, our speed was about 40 m.p.h. when about ten miles from Tumbout I saw a very bright light approaching on the right hand side of the road. Sgt Hyslop slowed the jeep and applied the brakes and I heard a loud bang on our right side and I remembered nothing until the morning when I found myself in the Provost Section billets. The next morning the Provost returned us to the unit. We were not placed under arrest by the Provost.

Carnear

3rd Witness (5)

(4)

Statement of Lieut M.R. Carter 1115 100.0.4.

Lieut M.R. Carter of "H. Co. 5th Inf. 1100p" at the time of the accident was riding in the front seat of the Jeep and talking to the soldiers in the back. The first I knew of the accident was when I felt a bump and my hat flew off.

Lt. Shreton was bleeding from the mouth and did not respond to us. The others were all right. Lt. Shreton was definitely unconscious, pulse very fairly good condition with a large hematoma above right eye.

We had previously to supper at 1730hrs drank one bottle of Scotch between five people and one bottle of Cognac after supper between six people.

We left Turn Boat at about 2040hrs on 4 Dec.

Mauro D. Hamilton, Lieut (M/S)

FOURTH WITNESS

(6)

A6088 I/Cpl Jefferies W.A. 11 Cdn Pro Coy

Document purporting to be a signed statement of the evidence of A6088 I/Cpl Jefferies W.A. 11 Cdn Pro Coy, was read over to the accused, marked Exhibit A and attached hereto.

The statements (1), (2), (3), and (4) referred to in the document purporting to be a signed statement of the evidence of A6088 I/Cpl Jefferies W.A. 11 Cdn Pro Coy, were read over to the accused, marked Exhibits B, C, D and E respectively and attached hereto.

*A.G. Coulter*  
A.G. Coulter

Lieut

*abs*

Statement of F30666 Cpl Hennessy was rec'd today  
 At approx 2200 hrs 4 Dec 64 I was informed of  
 an accident on the Artoump-Turnboat at approx  
 M.R. 835038. I immediately proceeded to the scene  
 and found A6088 2/Cpl Jeffries w/o. of accident  
 Rec. Coy in charge.

I was informed that there had been four  
 passengers on the jeep one whom I now know  
 to be H26319 Sgt Thurston I.C.H. having been  
 taken to the 24th American Field Hospital. He  
 had been accompanied by another passenger  
 whom I now know to be Pvt H.P. Carter I.C.H.  
 165th Gen. Hosp.

The driver whom I now know to be  
 H26451 Sgt Hyslop I had been drinking  
 as well as the fourth passenger H26666  
 Sgt Gagneau I. who had a slight accident on  
 his chest.

I then proceeded for a recovery which  
 from Rec. Sect. 1003. On my return I assisted  
 Cpl. Jeffries in searching the vehicle and  
 found one bottle of Gin and one bottle of  
 Cognac both full and one broken bottle of Cognac.  
 It was not ascertainable as to whether this  
 broken bottle had been opened. The veh. was taken to Rec.  
 Section H.O. at approx 046060.

Sgt Hyslop and Sgt Gagneau were placed  
 under guard and escorted to the rec. billets  
 where they were detained overnight.

It was not ascertained as to whether Sgt  
 Hyslop was in possession of a work ticket.

F30666 Cpl W. J. Hennessy  
 910 11 Provost Coy.  
 1st Army

Sworn statement of C. Jagers. No. 10128 (8) Witness

Ik heb opgemaakt den brief van den trambestuurder: ⑦  
Mr. Jagers Constant Gierbestemming 72 te Eindhoven

De auto kwam langs de baan en had zijn lichten op.

• Bij nadering van den tram, draaide hij vlak tegenop  
den bumper. Op het oogenblik van het ongeval reed  
ik bij tussen de 40 en 50 km per uur. We stopten  
in 20 meters.

De auto had enkel zijn klein parkeerlichten op.  
zijn lichten waren al dien tijd aan.

Getekend

Opgemaakt op 4 December 1944 te 20,30 uur.

Jagers C

Jan Constant Jagers Gierbestemming 72 te Eindhoven  
The jeep came down to road and had his  
lights on. On nearing the tram, he turned  
in at front and had hit the bumper. At  
this time of the accident I was going between  
forty and fifty km per hour. We stopped  
in twenty (20) meters

He had only small parking lights. My  
lights were done all the time.

Signed

Jagers C



Sworn statement by H 26593 1/Cpl MacPherson D.I.  
I, H 26593 1/Cpl MacPherson D.I. am employed  
as a Gun. Mech. (W) — B Coy A Coy. On the  
morning of 4 Dec 44 Sgt Khylof asked me  
to observe which brakes on his jeep were  
operating while he applied the brake  
foot pedal. After several trials of applying  
the brakes I could conclude that the  
right foot was which was the only one on  
which the brakes were operating properly.  
This made the jeep run more smoothly on  
the right and Sgt Khylof stated that he would  
take it to the B Coy fitter.

L/Cpl W. J. MacPherson

The Witness (9)

(9)

Sworn statement by ~~448~~ H 63508 Sgt Hogan C.K.

I H 63508 Sgt Hogan C.K. am employed and was employed as <sup>since June 44</sup> transport Sgt. in B Sqn Arch. all the from 1 Dec to 5 Dec 44 was in 3 con. CCS.

At the F. up to 4 Dec 44 I had no knowledge of a work ticket being issued since before 1 June 44 for any journey whatsoever by my unit vehicles.

C.K. Hogan Sgt

4th Witness (10)

The accused states that he desires to call K45879 Tpe Morrison KA as a witness on his behalf.

K45879 Tpe Morrison KA. being duly sworn to I was on 4 Dec 44 and am now employed as a Motor Mechanic (W) in Bagn 1001212. On the morning of 4 Dec Sgt Hyslop came to me and asked if I could adjust the brakes on his jeep WD# CM 4243588. I noticed that the right foot brake was grabbing ahead of the other three and tried to correct this by loosening the brake of this. This was not satisfactory so I adjusted all four brakes and Sgt Hyslop tested the brakes and states that he was satisfied that they were all operating properly.

A. C. Morrison

Sworn statement (9)

(9)

Sworn statement by ~~11218~~ H63508 Sgt Hogan CK.

I H63508 Sgt Hogan CK am employed and was employed as <sup>since 1954</sup> transport Sgt. in B Sqn Mech. <sup>alt</sup> from 1 Dec to 5 Dec I was in 3 Coon. CCB.

At the F. 5th to 4 Dec 44 I had no knowledge of a work ticket being issued since before June 44 for any journey whatsoever by my unit  
which

CW Hogan 1st Lt

Made out in Duplicate

A.C. Morrison

was all operations properly  
and state that is was later find that they  
four trucks and got supply both the trucks  
This was not satisfactory in respect to the  
load to collect this by burning the trucks off  
trucks was grabbing ahead of the other three and  
W.D. # CM 4243588. I noted that the night prior  
arrived of 200000 dollars in trucks on his job  
measuring of 4000 sq ft trucks can't be and  
as a truck mechanic (W) on 13 Jan 1958. In the  
I was on 4 Dec 44 and am now employed  
K45879 for Morrison RA. Very truly yours etc.

in fact  
K45879 for Morrison RA in a number  
The amount state that is shown to call  
Morrison (10)

STATEMENT BY THE ACCUSED

The accused was cautioned as follows:-

- Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
- A. I want to make a statement.
- Q. On oath or not on oath?
- A. On oath.

Sworn Statement by H26451 Sgt. Nyslop J.

I, H26451 Sgt. Nyslop J. 10th Cdn. Arm. Regt. am employed as Sgt. Major of "B" Coy.

On the 4th Dec 1944 at 1300 hrs. having no pressing duties in our immediate area I decided to go to Lumbout and take care of some incidental business which I had previously been unable to attend to. On the way down I stopped off at No. 3 C.C.S. to visit Sgt.

Hogan C.K. a former member of our Coy. I brought him some cigarettes and some of his belongings. From there I proceeded to Fort Lumbout to see if there was a chance of getting back the "B" Coy. trailer which S.E.M. Miller had taken with him to 2 C.A.B. Battle Study Group. I had agreed while in the Lumbout area to purchase some liquor

for various members of the Coy. <sup>arranged that some</sup> <sup>and not to go out</sup> <sup>of arrangements for buying</sup>  
~~Christmas presents through Post Channels~~  
On arriving at Lumbout I saw

Simons ~~the 10th Cdn. General Hospital~~ <sup>who had come along with me</sup> from Balgoin, to the 10th Cdn. General Hospital where Nursing Sister Cantin, an acquaintance of his, invited us in to the Officers Mess for a drink.

My second driver Sgt. Guzman and I accepted one drink each and then and then left to attend to our business. We bought three bottles of Cognac, but the price was too high so I decided to go in to Antwerp where prices were more reasonable. I visited

S.E.M. Miller at the Battle School. He suggested that I come back later to look things over so I delayed not "making stop." We went to the hospital where Cantin invited us to stay



for supper, which we did. After supper our  
group of six persons dealt with a bottle of  
Cognac, but I myself, again, only had one  
drink, as I knew I would have to do the  
driving. The Cognac was of poor quality  
anyway. When I told the gathering that I  
was going to drive in to Antwerp, Nurse Cantin  
asked if she might come along because  
she had never been there. I consented.

On the way to Antwerp I was travelling at an  
average speed of 30 m.p.h. My lights were very  
dim. I saw a very brilliant light approaching on  
the right hand side of the road. I slowed down  
as it was almost impossible to see. As the light  
approached to a distance of some 10 yds. I was  
completely blinded. I applied the brakes to stop  
until it passed. As I applied them the jeep  
swerved to wards the tram and collided with  
same.

Sgt. Skinton was unconscious. No one  
else was thought hurt, but later it was found  
Sgt. Gaineau had been hit on the head, and  
he appeared somewhat dazed. I asked him if he  
was alright, to which he answered "yes".

The Provost arrived and obtained statements  
an ambulance to take Sgt. Skinton to the  
hospital. They then took statements from all  
concerned. Nurse Cantin accompanied Sgt.  
Skinton to the hospital. They took Sgt. Gaineau  
and myself to billets for the night. They informed  
me the jeep had been taken to 1005 Cdn. Recdng Unit.  
They also informed me there was no cause to  
worry about Sgt. Skinton. Next day the  
Provost brought Sgt. Gaineau and myself back  
to our unit.

Yours truly,  
G. W. R. Skinton

I certify that the foregoing Summary of Evidence, consisting of nine pages, was taken down by me in the presence of the accused and that RP 4 (C), (D) and (E) (13) have been complied with.

*A.G. Coulter Lt.*

(A.G. COULTER) Lt  
10 Cdn Armd Regt (FGH)

*Exhibit A*

Officer Commanding,  
No. 11. Cdn Provost Coy,  
First Cdn Army.

Field,  
5 Dec/44.

STATEMENT OF "A6088 L/Cpl. W.A. Jefferies, No. 11 Cdn Provost Coy.  
( re Accident involving Mil Veh of 1st C.A.R. and a Tram)

At about 2145 hrs 4 Dec/44 I was returning to billets on the Antwerp-Turnhout H'way at MR 838038 where I saw that an accident had occurred. After despatching one of the passengers of W. D. Veh. No. CM-4243588 belonging to the 10th Cdn. Arm'd. Regt. to the 29th Fld. Hosp. American Army, I proceeded to question the motorman of the tram and obtain statements from all parties.

The motorman, Mr. C. ZACERS, 72 Starle Steenweg, Turnhout, gave the attached statement (No. 1). He was in charge of tram No. 9688 on Route No. 41. He was then allowed to proceed.

I ascertained that the driver of the jeep was H26481 Sgt. HYSLOP, J., 10 Cdn. Arm'd. Regt., On questioning he gave a statement (No. 2). At the time of the accident Sgt. Hyslop had been drinking.

Cpl. Hennessey, W. J., No. 11 Coy., Cdn. Provost Corps arrived at the scene of the accident and immediately left to obtain the assistance of a wrecker. Before leaving, he saw that Sgt. Hyslop and one of the other passengers, H26666, Tpr. GARNEAU, J. had been drinking.

On Cpl. Hennessey's return with the wrecker I searched the jeep in his company and found one bottle of gin, one bottle of Cognac, and a broken bottle of Cognac.

Sgt. Hyslop and Tpr. Garneau were then taken to the sect. billets and Cpl. Hennessey and I proceeded to the 29th American Fld Hosp. where I questioned the M. O. who had examined the injured passenger whom I now know to be H26318, Sgt. SHINETON, J. C. H., 10th Cdn. Arm'd. Regt. Capt. LOGANCRAGG, Jr., No. 6478473, American Army, stated that Sgt. Shineton had been unconscious for two (2) hours but was responding. He was suffering from contusion to the right side of the face and temple and brain concussion.

A Nursing Sister, also a passenger in the jeep, whom I now know to be Lieut. CARTIN, M. H., 10th Cdn. Gen. Hosp. had gone with Sgt. Shineton to the hospital. I obtained a statement from her, (No. 4)

Cpl. Hennessey and I then escorted Lieut. Cartin to her billets and returned to Sect. H. Q. at about. 01.30 hrs., 5th Dec. 44.

All the occupants of the jeep had been drinking. It is my opinion that Sgt. Hyslop, mistaking the tram headlight for that of a vehicle on the highway, swerved to the right in an effort to avoid a collision.

Damage to the jeep was the front right wheel knocked off, the bolts being torn out of the wheel, bumper bent back, right fender completely flattened and body of the vehicle buckled with the windshield smashed.

At the time of the accident, and later, I was unable to obtain a statement from Tpr. Garneau as he had been drinking.

Field  
5 Dec. 44.

*W. A. Jefferies*  
A6088 Jefferies, W. A.,  
No. 11 Prov. Coy.,  
Cdn. Provost Corps.

L/Cpl

Exhibit "B"

STATEMENT NO. 1.

Field,  
5 Dec/44.

STATEMENT OF "Mr. Constan ZACERS, (Motorman)  
72 Circle Steenway, Turnhout.

The jeep come down the road and had his lights on. On hearing the tram, he turned inot the front end and hit the bumper. At the time of the accident I was going between forty and fifty (40-50) kilometers per hour. We stopped in twenty (20) meters.

He had only small parking lights. My light was dim all the time.

Signed "C. Zacers"

Field  
5 Dec/44.

The above statement of Mr. C. Zacers was given to me at approx. 22.00 hr., 4 Dec/44. The above is a Certified True Copy of the original.

*W. C. Jeffries* L/Cpl.  
AC088 *W. C. Jeffries*, W. A.  
No. 11 Can. Provost Coy.,  
First Cdn. Army.

Exhibit "A"

Officer Commanding,  
No. 11 Cdn Provost Coy.  
First Cdn Army.

Field,  
5 Dec/44.

STATEMENT OF "AGOBBS L/Cpl. W.A. Jefferies, No. 11 Cdn Provost Coy.  
(re Accident involving Mil Veh of 1st C.A.R. and a Tram)

At about 2145 hrs 4 Dec/44 I was returning to billets on the Antwerp-Turnhout H'way at MR 839038 where I saw that an accident had occurred. After despatching one of the passengers of W. D. Veh. No. CM-4243588 belonging to the 10th Cdn. Arm'd. Regt. to the 29th Fld. Hosp. American Army, I proceeded to question the motorman of the tram and obtain statements from all parties.

The motorman, Mr. C. ZACHERS, 79 Clerie Steenway, Turnhout, gave the attached statement (No. 1). He was in charge of tram No. 9688 on Route No. 41. He was then allowed to proceed.

I ascertained that the driver of the jeep was H26451 Sgt. HYSLOP, J., 10 Cdn. Arm'd. Regt., On questioning he gave a statement, (No. 2). At the time of the accident Sgt. Hyslop had been drinking.

Cpl. Hennessey, W. J., No. 11 Coy., Cdn. Provost Corps arrived at the scene of the accident and immediately left to obtain the assistance of a wrecker. Before leaving, he saw that Sgt. Hyslop and one of the other passengers, H26668, Tpr. GARNEAU, J. had been drinking.

On Cpl. Hennessey's return with the wrecker I searched the jeep in his company and found one bottle of gin, one bottle of Cognac, and a broken bottle of Cognac.

Sgt. Hyslop and Tpr. Garneau were then taken to the sect. billets and Cpl. Hennessey and I proceeded to the 29th American Fld. Hosp. where I questioned the M. O. who had examined the injured passenger whom I now know to be H26318, Sgt. SKINOTON, J. O. H., 10th Cdn. Arm'd. Regt. Capt. LOBANGRAGG, Jr., No. 6478473, American Army, stated that Sgt. Skinton had been unconscious for two (2) hours but was responding. He was suffering from contusion to the right side of the face and temple and brain concussion.

A Nursing Sister, also a passenger in the jeep, whom I now know to be Lieut. CANTIN, M. R., 10th Cdn. Gen. Hosp. had gone with Sgt. Skinton to the hospital. I obtained a statement from her, (No. 4)

Cpl. Hennessey and I then escorted Lieut. Cantin to her billets and returned to Sect. H. Q. at about. 01.30 hrs., 5th Dec. 44.

All the occupants of the jeep had been drinking. It is my opinion that Sgt. Hyslop, mistaking the tram headlight for that of a vehicle on the highway, swerved to the right in an effort to avoid a collision.

Damage to the jeep was the front right wheel knocked off, the bolts being torn out of the wheel, bumper bent back, right fender completely flattened and body of the vehicle buckled with the windshield smashed.

At the time of the accident, and later, I was unable to obtain a statement from Tpr. Garneau as he had been drinking.

Field  
5 Dec. 44.

*W. A. Jefferies*  
AGOBBS Jefferies, W. A.,  
No. 11 Prov. Coy.,  
Cdn. Provost Corps.

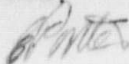
L/Cpl

5 DEC 44

C.C.  
10 Cdn Arm'd Regt.

1. Fwd, please, for your further action, together with  
copies of statement and ~~exhibits~~ and live bodies of Sgt. Hyslop  
and Tpr. Garneau. *Exhibits held at No 11 Cdn Prov Co*

*Copy for production at trial.*



Captain

(E. Porter)  
Officer Commanding  
No. 11 Cdn Provost Company.

Exhibit "B"

STATEMENT NO. 1.

Field,  
5 Dec/44.

STATEMENT OF "Mr. Constan ZACHERS, (Motorman)  
72 Gierle Steenway, Turnhout.

The jeep come down the road and had his lights on. On hearing the tram, he turned inot the front end and his the bumper. At the time of the accident I was going between forty and fifty (40-50) kilometers per hour. We stopped in twenty (20) meters.

He had only small parking lights. My light was dim all the time.

Signed "C. Zachers"

Field  
5 Dec/44.

The above statement of Mr. C. Zachers was given to me at approx. 22.00 hr., 4 Dec/44. The above is a Certified True Copy of the original.

*W. C. Jeffries* L/Cpl.  
A5068 Jeffries, W. A.  
No. 11 Cdn. Provost Coy.,  
First Cdn. Army.

Exhibit "C"

STATEMENT No. 2.

STATEMENT OF H26451 Sgt. HYSLOP, J.  
10 Cdn. Arm'd. Regt.

I was driving the jeep in the direction of Antwerp. My lights were very dim. When I noticed the tram I jammed on the brakes. There was a collision.

One of the passengers, Sgt. Shingleton, J.O.E. was found to be unconscious and was taken to the hospital. Other passengers were Lieut. Nurse Shingleton, Epr. Garnesau, J. CANTIN.

I was doing about thirty (30) m.p.h.

Signed " J. Hyslop"

Field  
8 Dec/44.

The above statement of H26451 Sgt. Hyslop, J. was given to me at approx. 22.00 hrs., 4 Dec/44. The above is a Certified True Copy of the original.

*W.G. Jeffries* L/Cpl.  
A6088 Jeffries, W. A.  
No. 11 Cdn. Frost Coy.,  
First Cdn. Army.



Exhibit D

First Cdn. Army  
No. 11 Cdn. Troop Coy.

Field  
5 Dec/44

STATEMENT OF "R3066 Cpl. Hennnessy, W. J., No. 11 Cdn. Troop Coy.  
(re Accident Involving Mil. Veh. of 10 Cdn. and Team)

At approx. 23.00 hrs, 4 Dec/44 I was informed of an  
accident on the Antwerp-Turnhout Highway at approx. MR 438038. I  
immediately proceeded to the scene and found A6088 I/Cpl. Jellefles,  
W. A., of No. 11 Cdn. Troop Coy. in charge.

I was informed that there had been four passengers in  
the jeep, one whom I now know to be H86218 Sgt. Shingleton, J. O. H.  
having been taken to the 88th American Fld. Hosp. he had been  
accompanied by another passenger whom I now know to be Lieut. N.S.  
Gentlin, M.H., 10th Cdn. Gen. Hosp.

The driver, whom I now know to be H86218 Sgt. Hyslop,  
I. had been drinking, as well as the fourth passenger, H8688 Sgt.  
Garnett, J.

I then proceeded for a recovery veh. from Lieut. Sect.  
No. 1003. On my return I assisted L/Cpl. Carter in searching the  
vehicle and found one bottle of Gin and one bottle of Cognac, Full,  
and a broken bottle of Cognac. The veh. was taken to Lieut. Sect. H.Q.  
at approx. MR. 046060.

Sgt. Hyslop and Sgt. Garnett were placed under arrest  
and escorted to the sect. billets, where they were detained over-  
night.

W. J. Hennnessy  
Cpl.  
R3066 Hennnessy, W. J.  
No. 11 Cdn. Troop Coy.,  
First Cdn. Army.

Field  
5 Dec/44

*Exhibit K*

Field,  
5 Dec/44.

<sup>CANTIN</sup>  
STATEMENT OF "Lieut M.R. ~~xxxx~~" (Nursing Sister)  
10th Cdn Gen Hospital.

At the time of the accident I was riding in the front seat of the jeep and talking to the soldiers in the back.

The first I knew of the accident was when I felt the bump and my hat flew off.

Sgt. Shinton was bleeding from the mouth and did not respond to us. The others were all right. Sgt. Shinton was definitely unconscious, pulse in fairly good condition with large hecnota above right eye.

We had previous to supper at 1730 hrs drank one half bottle of Scotch between five people and one bottle of Cognac after ~~xxxx~~ supper between six people.

We left Turnhout at about 2040 hrs.

<sup>CANTIN</sup>  
Signed "M.R. ~~xxxx~~ Lieut. (N/S)"

Field  
5 Dec/44.

The above Statement of Lieut M.R. <sup>CANTIN</sup> ~~Sister~~ was given to me at app 2355 hrs 4 Dec/44. The above is a Certified True Copy of the original.

*W. G. Jeffries* L/Cpl.  
AGOSE *H.* / L/Cpl. Jeffries, W.A.  
No. 11 Cdn Provost Coy.  
First Cdn Army.

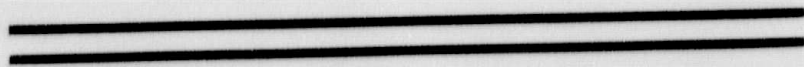
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HOUR 18<sup>20</sup>

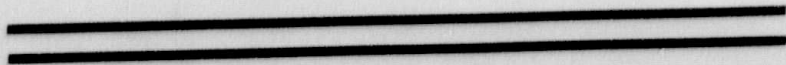
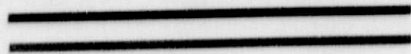
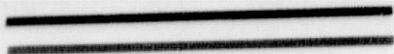
OPERATOR'S INITIALS O.G.

RELIEVING OPERATOR \_\_\_\_\_

**END**



**FIRST**



**SIDE**

**REEL  
NO.**

**44**

**.**

**35**

# ***CORRECTION***

This document has been rephotographed to assure legibility

COUNTER NUMBER 1841997

HOURLY 18<sup>20</sup>

OPERATOR'S INITIALS O.G.

RELIEVING OPERATOR \_\_\_\_\_

# Affidavit

PROVINCE OF ONTARIO } I, Robert August  
 COUNTY OF CARLETON } of the City of Ottawa, in the County of  
 TO WIT: Carleton, an employee of the Department of  
 National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.
2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.
3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the  
 City of Ottawa, in the  
 County of Carleton, this  
 day of \_\_\_\_\_  
 A.D. 19 \_\_\_\_\_

\_\_\_\_\_  
 CAMERA OPERATOR

\_\_\_\_\_  
 A NOTARY PUBLIC

Dated \_\_\_\_\_

NOV. 28 19 52

## APPENDIX "A" TO THE AFFIDAVIT

### CAMERA OPERATOR'S REPORT

		JOB NO. <u>44</u>	REEL NO. <u>35</u>
		BOOK NO. <u>9-5</u>	
PRODUCTION DATA		<u>44-35A</u>	INDEXING DATA <u>44-35B</u>
	DATE	HOUR	BEGINS WITH <u>HYMAN D. J.</u>
STARTED			1. _____
FINISHED			2. _____
TOTAL NO. OF HOURS		<u>1/4</u>	3. _____
TOTAL NO. OF IMAGES		<u>330</u>	ENDS WITH <u>HYDICK J.</u>



# Affidavit

PROVINCE OF ONTARIO } I, Paul Argood  
 COUNTY OF CARLETON } of the City of Ottawa, in the County of  
 TO WIT: } Carleton, an employee of the Department of  
 National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the  
 City of Ottawa, in the  
 County of Carleton, this  
 day of \_\_\_\_\_  
 A.D. 19 \_\_\_\_\_

\_\_\_\_\_  
 CAMERA OPERATOR

Dated \_\_\_\_\_

\_\_\_\_\_  
 A NOTARY PUBLIC

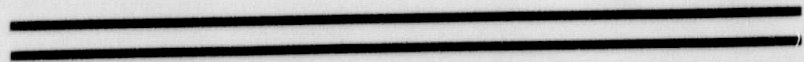
NOV. 28 19 52

## APPENDIX "A" TO THE AFFIDAVIT

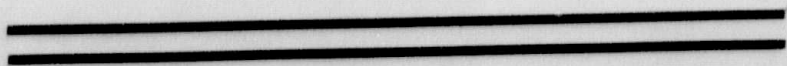
### CAMERA OPERATOR'S REPORT

PRODUCTION DATA			JOB NO. <u>44</u>	REEL NO. <u>35</u>
			BOOK NO. <u>9-5</u>	INDEXING DATA <u>44-35B</u>
			<u>44-35A</u>	<u>44-35B</u>
	DATE	HOUR	BEGINS WITH <u>HYMAN D. J.</u>	
STARTED			1. _____	
FINISHED			2. _____	
TOTAL NO. OF HOURS		<u>1/4</u>	3. _____	
TOTAL NO. OF IMAGES		<u>330</u>	ENDS WITH <u>HYGLOP J.</u>	

**END**



==== **FIRST** =====



**SIDE**

REEL  
NO.

44

35