

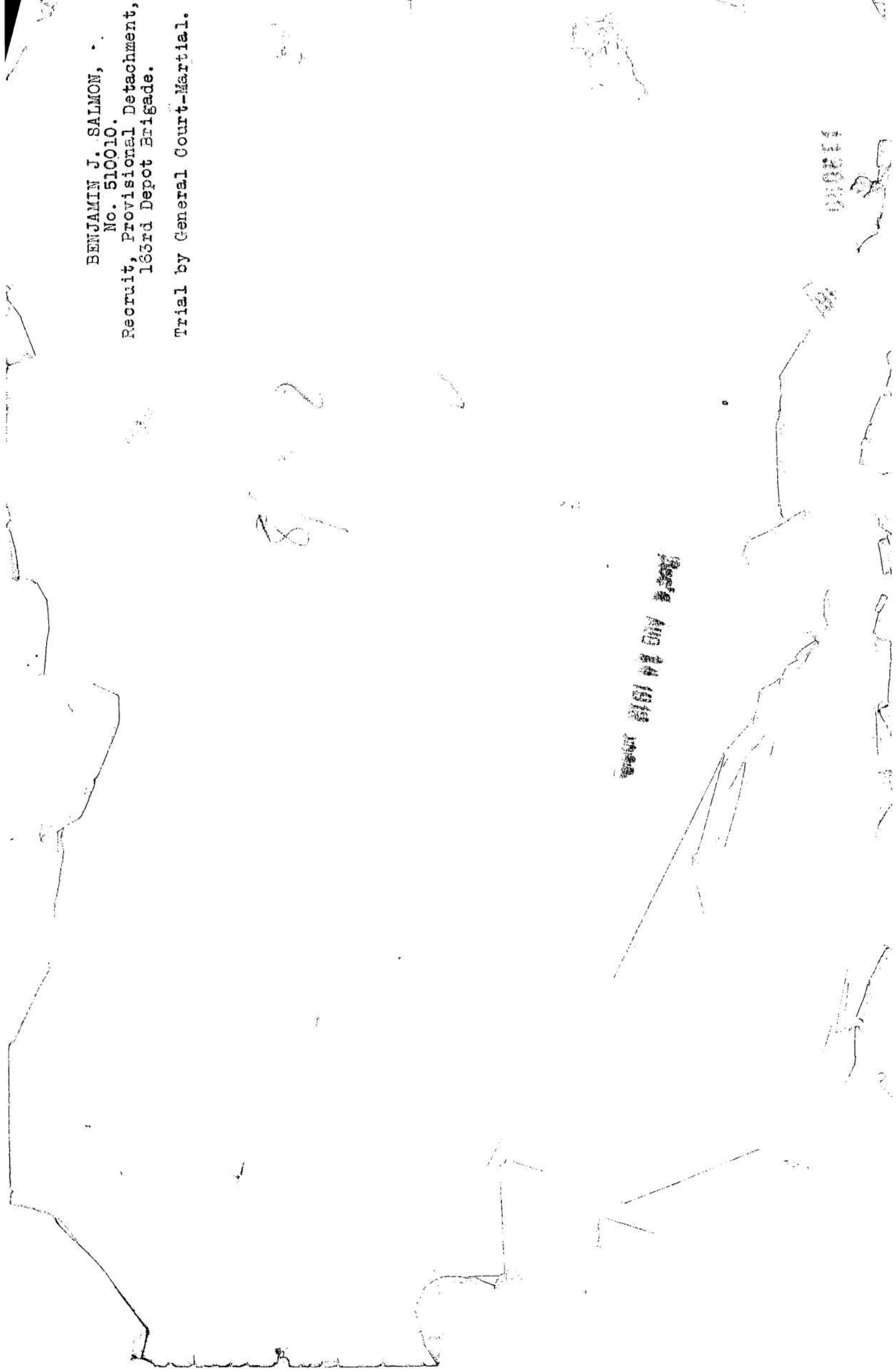
BENJAMIN J. SALMON,
No. 510010.
Recruit, Provisional Detachment,
163rd Depot Brigade.

Trial by General Court-Martial.

87-2

RECEIVED
MAY 24 1918

INDEX



UNITED STATES

vs.

Ben J. Salmon

CHECK LIST to be made out by trial judge advocate for each case tried by him and to be forwarded with the record.

Citations refer to paragraphs of Manual for Courts-Martial, Ed. of 1917.

At the time this check list is filled out, those parts of the record itself to which each question refers, will be examined and checked with lead pencil.

- ✓ 1. Is record properly numbered, paged, indexed, briefed and bound? (357) *yes*
- ✓ 2. Was a carbon copy of the record prepared, and if so, what disposition made thereof? (357) (b) (3) *yes - carried*
- ✓ 3. Is the place and date of each meeting of the court set out? (357) (b) (4) *yes*
- ✓ 4. Is the fact and hour of each meeting set out? (357) (b) (5) *yes*
- ✓ 5. Is the number, date, and source of the order appointing the court, and each amendatory order, stated at the proper place in the record of the trial? (357) (b) (6) *yes*
- ✓ 6. Is the fact of the presence and the name, rank, and organization of each member, judge advocate, and assistant judge advocate present at each assembling of the court or proceedings in revision set out? (357) (b) (7) *yes*
- ✓ 7. Is the fact of the presence and the name, rank, and organization of each new member, new judge advocate or assistant judge advocate who begins to participate therein, together with citation for his so doing set out? (357) (b) (8) *yes*
- ✓ 8. Is the fact of the absence and the name, rank, and organization of each member and the judge advocate or assistant judge advocate absent at any assembling of the court, or at any proceedings in revision, together with a statement of the reason for such absence, set out? (357) (b) (9) *yes*
- ✓ 9. Was the accused given an opportunity to introduce counsel, and is the action thereon indicated? (357) (b) (10) *yes*
- ✓ 10. Were the accused and his counsel present during all the open sessions of the court in his case, except during such proceedings in revision as did not so require? (357) (b) (11) *yes*
- ✓ 11. Is the name of each person, if any, who acted as reporter during any part of the trial set out, and does the record show that each such person was duly sworn? (357) (b) (12) *yes*
- ✓ 12. Is the name, rank, and organization of each member of the court present who, during the trial, announced himself as, or was alleged to be, ineligible to sit as a member, together with the alleged reason for such ineligibility, and the action thereon set out? (357) (b) (13) *yes*
- ✓ 13. Is the name of each person, if any, who acted as interpreter during any part of the trial together with a proper showing that such person was duly sworn, set out? (357) (b) (14) *yes*
- ✓ 14. Was the accused informed of his right to demand a copy of the record of the trial? *yes* Was the accused asked whether or not he desired a copy of the record? *yes* What was his answer thereto? (357) (b) (15) *yes*
- ✓ 15. Was the order appointing the court and each amendatory order read to the accused in court, and was he given an opportunity to challenge each member of the court who sat as such during the trial of his case? (357) (b) (16) *yes*
- ✓ 16. Was each member of the court, who sat as such during any part of the trial of the case, and each judge advocate and assistant judge advocate who appeared before the court in the case, sworn? (357) (b) (17) *yes*
- ✓ 17. Are the several charges and specifications upon which the accused was arraigned properly set out? (357) (b) (18) *yes*
- ✓ 18. Is the name, rank, and organization of the officer who subscribed the charges properly set out? (357) (b) (19) *yes*
- ✓ 19. Are the pleas of the accused to the several specifications and charges upon which he was arraigned properly and correctly set out? (357) (b) (20) *yes*
- ✓ 20. If the accused entered a plea of guilty, did the president explain the elements constituting the offense to which he pleaded guilty and the maximum punishment therefor; and was the accused asked if he fully understood that by pleading guilty he admitted the elements of the crime and might be punished as so explained to him? (357) (21) (a) *yes*
- ✓ 21. Were each of the several witnesses sworn? (357) (23) *yes*
- ✓ 22. If the accused was sworn as a witness in his own behalf, was he sworn at his own request? (357) (25) *yes*
- ✓ 23. Was the accused given an opportunity to cross-examine each witness? (357) (27) *yes*
- ✓ 24. Was the accused informed that he had the right to testify or make a statement in his own behalf? (357) (31) *yes*
- ✓ 25. Is the fact of each closing of the court set out? (357) (33) *yes*
- ✓ 26. Is the fact of each opening of the court, and that the accused and his counsel were present at such opening, set out? (357) (34) *yes*
- ✓ 27. Are the findings on each of the specifications and charges properly set out? (357) (37) *yes*
- ✓ 28. If evidence of previous convictions has been considered, are copies of each appended to the record properly marked? (357) (39) *yes*
- ✓ 29. If the accused was a soldier, was he asked if the evidence of previous convictions, if any, was correct, and was he asked if the statement of his service as shown on the charge sheet was correct? (357) (40) *yes*
- ✓ 30. Is the sentence, acquittal or other action finally taken properly set out? (357) (41) *yes*
- ✓ 31. Does the record show that the judge advocate subscribed each day's proceedings? (357) (45) *yes*
- ✓ 32. Does the record show that the president and judge advocate finally subscribed the record? (357) (46) *yes*
- ✓ 33. If the sentence awards confinement does it award hard labor? (394) *yes*
- ✓ 34. Are all erasures and interlineations authenticated by the initials of the president or the judge advocate? *yes*
- ✓ 35. In case of desertion does the record show that the accused understood that his plea of guilty was an acknowledgment of his intention to desert? (357) (b) (21) (b) *yes*
- ✓ 36. Does the record show that the judge advocate read the paragraphs of the Manual for Courts-Martial that set out the gist of the offense or offenses charged? (197) *yes*

N. B. If more space needed for answer use reverse side of sheet with number of question.

Place *Camp Hodge, Iowa*

Signature *Richard J. ...*

Date *Aug. 4, 1917*

Rank *Capt. ...*

N. B. Trial judge advocates in preparing this check list will refer to M. C. M., 1917.

CHARGE SHEET.

Number _____
(In summary court record.)

Camp Dodge, Iowa, July 9, 1918.
(Place) (Date)
Salmon, Benjamin J. (#510010) Recruit, Prov. Detach. 163rd Depot Brigade.
(Surname) (Christian name) (Rank and organization)
Date current enlistment, May 19, 1918; Rate of pay, \$30.; No. previous convictions, None.
Previous service, None.
(Give dates, with character given on each discharge.)
\$15.00 Class "A" allotment, \$5.00 Class "B" allotment. No War Risk Insurance.
Date of Arrest, June 6, 1918. Place where accused is now in arrest (or confinement),
Confinement, June 6, 1918. 163rd Depot Brigade Guard House.

Witnesses:

Proske, Theodore H.; Parker, C. A.; Clark, Albert J.;
Day, Capt. Jackson R.; Waldner, Rct. John M.; Schrock, Rct. Daniel

Charge I : Violation of the 58th Article of War.

Specification 1 : In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, having been duly drafted into the Military Service of the United States, did desert the service of the United States at Denver, Colorado, on the 19th day of May, 1918, and did remain absent in desertion until apprehended at Denver, Colorado, May 20, 1918.

CHARGE II: Violation of the 63rd Article of War.

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, at Camp Dodge, Iowa, on or about the 6th day of July, 1918, behave himself with disrespect toward Captain Jackson R. Day, 163rd Depot Brigade, his superior officer, by contemptuously leaving said Captain Jackson R. Day, after speaking to him and smiling and laughing in a cynical manner in the presence of other enlisted men who were standing near by.

CHARGE III: Violation of the 96th Article of War.

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, on or about the 5th day of July, 1918, without authority, distribute among certain conscientious objectors of the Provisional Detachment, 163rd Depot Brigade, certain printed literature, tending to influence said members to refuse to accept any kind of service in the army and tending to induce insubordination and disloyalty among said members to the prejudice of good order and military discipline.

LAWRENCE G WIGBELS
1st Lt. Inf. N.A.

I hereby certify that the foregoing is a full and true copy of the original charges preferred against Recruit Benjamin J. Salmon, and that the same are in the usual form of military charges and conform to the rules regulating military procedure.

Warren E Pugh
WARREN E PUGH
Major of Infantry,
Camp Adjutant.

Sworn to and subscribed before me this 6th day of November, 1918.

Lodwig C Davis
LODWIG C DAVIS
Major, Judge Advocate,
Acting Division Judge Advocate

CHARGE SHEET.

Number _____
(In summary court record.)

Camp Dodge, Iowa., July 9, 1918.
(Place.) (Date.)
Salmon, Benjamin J. (510010), Recruit, Prov. Detach. 163rd Depot Brigade.
(Surname.) (Christian name.) (Rank and organization.)
Date current enlistment, May 19, 1918; Rate of pay, \$ 30.; No. previous convictions, None.
Previous service, None.
(Give dates, with character given on each discharge.)
\$15.00 Class "A" allotment, \$5.00 Class "B" allotment. No War Risk Insurance.

Date of Arrest, June 6, 1918. Place where accused is now in arrest (or confinement),
Confinement, June 6, 1918. 163rd Depot Brigade Guard House.

Witnesses:

Proske Theodore H.; Parker C. A.; Clark Albert J.;
Day, Capt. Jackson R.; Waldnor Ret. John M.; Schrock Ret. Daniel

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Camp Adjutant.

Sworn to and subscribed before me this 6th day of November, 1918.

Ludwig C Davis
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Major, Judge Advocate,
Acting Division Judge Advocate.

RECORD OF TRIAL BY GENERAL COURT-MARTIAL OF
 Recruit Benjamin J. Salmon, No. 510010,
 Provisional Detachment, 163rd Depot Brigade.

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Exhibits.

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Carbon copy of the record furnished the accused.✓

Proceedings of a General Court-Martial which convened at
Camp Dodge, Iowa, pursuant to the following order: ✓

HEADQUARTERS, CAMP DODGE, IOWA. ✓

July 18, 1918. ✓

SPECIAL ORDERS }
No. 1 ✓

EXTRACT.

1/ A General Court-Martial is appointed to convene at
Camp Dodge, Iowa, on July 19, 1918, or as soon thereafter as
practicable, for the trial of such persons as may properly
be brought before it.

DETAIL FOR THE COURT. ✓

Lieut. Colonel Horace F. Sykes, 163rd Depot Brigade. ✓
Major William F. C. Jypson, 163rd Depot Brigade. ✓
Major Carl F. Dick, 163rd Depot Brigade. ✓
Captain Ingomar M. Oseth, 163rd Depot Brigade. ✓
Captain William E. PerLee, 163rd Depot Brigade. ✓
Captain Stephen A. Park, 163rd Depot Brigade. ✓
Captain William G. Harding, 163rd Depot Brigade. ✓
First Lieut. Richard W. Johnson, 163rd Depot Brigade. ✓
First Lieut. Lewis F. Wheelock, 163rd Depot Brigade. ✓
First Lieut. James A. Robson, 163rd Depot Brigade. ✓
First Lieut. Russell G. Engberg, 163rd Depot Brigade. ✓
Second Lieut. Fred L. Townley, 163rd Depot Brigade. ✓
Second Lieut. Grover C. Fillbach, 163rd Depot Brigade. ✓

First Lieut. Richard D. Manahan, 163rd Depot Brigade, ✓
Judge Advocate.
Second Lieut. Elmer E. Dixon, 163rd Depot Brigade, ✓
Assistant Judge Advocate.

The Judge Advocate is authorized to employ a reporter. ✓

By Command of Brigadier General Beach: ✓

RALPH S. DOUD, ✓
Captain of Infantry, R.C.,
Acting Camp Adjutant.

July 20, 1918.

SPECIAL ORDERS)
No. 2)

EXTRACT.

1. First Lieut. Charles R. Stafford, 351st Infantry, is detailed as an additional Assistant Judge Advocate of the General Court-Martial appointed by paragraph 1, Special Orders No. 1, Headquarters, Camp Dodge, Iowa, dated July 18, 1918.

2. First Lieut. Miller Davis, Infantry Reserve Corps, is detailed as an additional Assistant Judge Advocate of the General Court-Martial appointed by paragraph 1, Special Orders No. 1, Headquarters, Camp Dodge, Iowa, dated July 18, 1918.

3. Captain Raymond A. Scallen, 338th Machine Gun Battalion, is detailed as an additional Assistant Judge Advocate of the General Court-Martial appointed by paragraph 1, Special Orders No. 1, Headquarters, Camp Dodge, Iowa, dated July 18, 1918.

*

*

*

*

By command of Brigadier General Beach:

RALPH S. DOUD,
Captain of Infantry, R.C.,
Acting Camp Adjutant.

July 24, 1918.

The Court met, pursuant to the foregoing order,
at seven-fifteen o'clock P. M.

P R E S E N T.

Lieut. Colonel Horace F. Sykes, 163rd Depot Brigade.
Major William F. C. Jepson, 163rd Depot Brigade.
Major Carl F. Dick, 163rd Depot Brigade.
Captain Ingomar M. Oseth, 163rd Depot Brigade.
Captain William E. PerLee, 163rd Depot Brigade.
Captain Stephen A. Park, 163rd Depot Brigade.
Captain William G. Harding, 163rd Depot Brigade.
First Lieut. Richard W. Johnson, 163rd Depot Brigade.
First Lieut. James A. Robson, 163rd Depot Brigade.
First Lieut. Russell G. Engberg, 163rd Depot Brigade.
Second Lieut. Fred L. Townley, 163rd Depot Brigade.
Second Lieut. Grover C. Fillbach, 163rd Depot Brigade.

First Lieut. Richard D. Manahan, 163rd Depot Brigade,
Judge Advocate.
Second Lieut. Elmer E. Dixon, 163rd Depot Brigade,
Assistant Judge Advocate.
First Lieut. Charles R. Stafford, 351st Infantry,
Additional Assistant Judge Advocate.

A B S E N T.

First Lieut. Lewis F. Wheelock, 163rd Depot Brigade.
(Sick in base hospital.)

First Lieut. Miller Davis, Infantry Reserve Corps, Additional
Assistant Judge Advocate, appointed by Par. 2, S.O.No.2, Hq.
Camp Dodge, Iowa, July 20, 1918.
(Not detailed for prosecution in case on trial.)

Captain Raymond A. Scallen, 338th Machine Gun Battalion,
Additional Assistant Judge Advocate, appointed by Par. 3, S.O.
No. 2, Hq. Camp Dodge, Iowa, July 20, 1918.
(Not detailed for prosecution in case on trial.)

- - - - -

It was announced that First Lieut. Charles R. Stafford, 351st Infantry, Additional Assistant Judge Advocate appointed by Par. 1, S. O. 2, Headquarters, Camp Dodge, Iowa, July 20, 1918, would take charge of the Prosecution in the case on trial.✓

- - - - -

The Court proceeded to the trial of Recruit Benjamin J. Salmon (#510010), Provisional Detachment, 163rd Depot Brigade, who,✓ on appearing before the court, stated that he did not desire counsel.✓

JUDGE ADVOCATE: Let the record show that the accused was given opportunity to retain counsel, and he stated that he desired to be his own counsel.✓ I would like to ask the accused if he has changed his mind and now desires that counsel be appointed for him.✓

ACCUSED: I still desire to be my own counsel.✓

JUDGE ADVOCATE: You understand that you have a right to have counsel, if you want it, even now?✓

ACCUSED: Yes sir.✓

JUDGE ADVOCATE: Will the accused admit that he has been acquainted with the accusations against him?✓

ACCUSED: I received the charge sheet a few days ago.

JUDGE ADVOCATE: You have been informed by the Judge Advocate of your right to have counsel?✓

ACCUSED: Yes sir.✓

JUDGE ADVOCATE: And you have been informed by the Judge Advocate that you have a right to testify in your own behalf?✓

ACCUSED: Yes sir.✓

JUDGE ADVOCATE: And that you have a right to have a copy of the charges?✓

ACCUSED: Yes sir.✓

- - - - -

H. H. Whitaker was sworn as reporter.✓

- - - - -

The Judge Advocate then informed the accused that he was entitled, without cost, to a copy of the record of trial in this case, and asked him whether or not he desired such copy, to which the accused replied in the affirmative. The Judge Advocate then directed the reporter to prepare a carbon copy of the record for the accused.

- - - - -

JUDGE ADVOCATE: (Addressing Court) "If any member of the Court is an accuser, or a witness for the Prosecution, in this case, he will now make the fact known."

CAPTAIN INGOMAR M. OSETH, 163rd Depot Brigade, announced that he had investigated the charges against the accused, and had formed and expressed an opinion as to the guilt or innocence of the accused. He was thereupon excused, and withdrew.

- - - - -

The order appointing the Court and the order modifying the detail were read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied:

DEFENSE: I object to the entire Court.

JUDGE ADVOCATE: Do you object to any member of the Court in particular, who is now present?

DEFENSE: I would like, if I may, to ask the members of the Court certain questions to determine their competency.

JUDGE ADVOCATE: Their competency along what lines?

DEFENSE: Along the lines of prejudice and bias.

JUDGE ADVOCATE: Are you challenging the individual members of the Court?

DEFENSE: Challenging the individual members, and, to expedite matters, if I may, I will have to ask questions of the whole court.

JUDGE ADVOCATE: The Court has to vote on it. (Addressing reporter) This explanation of the procedure need not go in the record.

DEFENSE: I understand that should go in the record; everything

concerning this proceeding should go in the record, and I would like to object to anything being left out.

Judge Advocate! Put it all in. @m.
JUDGE ADVOCATE: The Court has to vote on every member challenged, do you understand? The court is closed while they vote, to decide whether that member is for any reason incompetent to sit as a member of the court, and if you challenge all the members collectively, they would naturally have to vote collectively, which would be impossible. If you challenge each individual member the court will be closed each time they vote.

DEFENSE: Yes, I understand the explanation of that. If that is true, I regret it will delay proceedings to that extent, because I do not want to keep you gentlemen here unnecessarily. I thought, perhaps, I might be able to address the questions to the entire court and then, in case anyone answered affirmatively, to challenge him individually.

JUDGE ADVOCATE: I will read to you: "In the following cases a member will be excused when challenged upon proof of the fact as alleged: (1) That he sat as a member of a court of inquiry which investigated the charges. (2) That he has personally investigated the charges and expressed an opinion thereon, or that he has formed a positive and definite opinion as to the guilt or innocence of the accused. (3) That he is the accuser. (4) That he will be a witness for the prosecution. (5) That, upon a rehearing of the case, he sat as a member on the former trial. (6) That, in the case of the trial of an officer, the member will be promoted by the dismissal of the accused. (7) That he is related by blood or marriage to the accused. (8) That he has a declared enmity against the accused." Those are the principal challenges. There are challenges for favor: "Where prejudice, hostility, bias, or intimate personal friendship are alleged, it is for the court, after hearing the grounds for challenging stated and the reply, if any, of the challenged member, as well as any other

evidence presented, to determine whether the grounds stated and proved or admitted are sufficient in fact to disqualify a challenged member." Do you understand that? ✓

ACCUSED: Yes sir. Now, gentlemen, I am honestly anxious to avoid all of this delay, because I do not want to keep you here any longer than necessary. I understand you have other duties to perform, and I believe that, under the circumstances, I will dispense with these challenges if I may have it entered in the record the nature of my questions; what those questions would have been. ✓

JUDGE ADVOCATE: We can't do that; challenge the members, if you want to challenge them. ✓

ACCUSED: Very well.

JUDGE ADVOCATE: I might add, for the benefit of the accused, that it is customary for the Judge Advocate to ask the members of the court "if there be any member of the court who for any reason cannot try the case fairly and impartially, without favor and without prejudice, or who entertains any opinions as to the guilt or innocence of the accused" to make such fact known.

ACCUSED: Well, if the Judge Advocate would do that. My position is ^{that} this: I don't want to be tried by any member of this court who is prejudiced against me because of the fact that I am a religious objector to war, and also, I don't want to have anyone sitting on the court who may be prejudiced because of the fact that I am a member of the Socialist Party.

JUDGE ADVOCATE: Challenge each member, or one at a time. ✓

ACCUSED: Very well. ✓

JUDGE ADVOCATE: Challenge Lieut. Colonel Horace F. Sykes "on the following ground" and state your grounds.

ACCUSED: (Addressing Lieut. Colonel Horace F. Sykes) In the trial of this case would you be prejudiced against the defendant because he is a religious objector to war?

LIEUT. COLONEL HORACE F. SYKES: No.

ACCUSED: Would you be prejudiced against the defendant because he is a Catholic, and, contrary to the ordinary Catholic, holds that the teachings of the Catholic Church positively prohibit participation in war in any form?

LIEUT. COLONEL HORACE F. SYKES: I would not.

ACCUSED: Would you be prejudiced against the defendant because he is a member of the Socialist Party?

LIEUT. COLONEL HORACE F. SYKES: I would not.

ACCUSED: Have you been a party to any conversation pertaining to the case now before you for trial, and as to how it should be disposed of?

LIEUT. COLONEL HORACE F. SYKES: I have inquired as to what the case was; that was all. As President of the court I asked the Judge Advocate what the case coming up consisted of.

ACCUSED: Have you any knowledge, and would you be influenced by any pre-arranged understanding that the defendant should be sentenced to prison for thirty years?

LIEUT. COLONEL HORACE F. SYKES: No.

The Court was closed, and on being opened the president announced in the presence of the accused that the challenge was not sustained.

DEFENSE: I challenge Major William F. C. Jepson, on the grounds of prejudice or bias.

The accused having requested that the challenged member be sworn as to his competency to act as a member of the court, Major William F. C. Jepson was sworn by the judge advocate and testified as follows:

Q. Would you be prejudiced against the defendant because he is a religious objector to war?

A. I would not.

Q. Would you be prejudiced against the defendant because he is a Catholic, and, contrary to the ordinary Catholic, holds that

the teachings of the Catholic Church positively prohibit participation in war in any form?

A. I would not.

Q. Would you be prejudiced against the defendant because he is a member of the Socialist Party?

A. I would not.

Q. Have you been a party to any conversation pertaining to the case now before you for trial, and as to how it should be disposed of?

A. Only that I asked the President of the court what the case was; he said it was a case of draft evasion; that is all I know about it.

Q. Are you prejudiced against so-called "draft evaders"?

A. I am not.

Q. Have you any knowledge of any pre-arranged understanding that the defendant should be sentenced to prison for thirty years?

A. I have not.

The court was closed, and on being opened the president announced in the presence of the accused that the challenge was not sustained.

The accused was asked if he objected to any other member present, to which he replied in the negative.

JUDGE ADVOCATE: (Addressing Court) "The accused states that he does not desire to challenge any ^{other} member of the Court. It is the desire of the Judge Advocate, however, that if there be any member of the Court who for any reason cannot try this case fairly and impartially, without favor and without prejudice, or who entertains any opinions as to the guilt or innocence of the accused, such member will now make the fact known."

No response was made by any member of the court to the foregoing announcement.

THE MEMBERS OF THE COURT, THE JUDGE ADVOCATE, THE ASSISTANT JUDGE ADVOCATE, AND THE ADDITIONAL ASSISTANT JUDGE ADVOCATE, WERE THEN SWORN.

The accused was then arraigned upon the following charges and specifications:

CHARGE 1: Violation of the 58th Article of War.

SPECIFICATION: 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, having been duly drafted into the Military Service of the United States, did desert the service of the United States at Denver, Colorado, on the 19th day of May, 1918, and did remain absent in desertion until apprehended at Denver, Colorado, May 20, 1918.

CHARGE 2: Violation of the 63rd Article of War.

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, at Camp Dodge, Iowa, on or about the 6th day of July, 1918, behave himself with disrespect toward Captain Jackson R. Day, 163rd Depot Brigade, his superior officer, by contemptuously leaving said Captain Jackson R. Day, after speaking to him and smiling and laughing in a cynical manner in the presence of other enlisted men who were standing nearby.

CHARGE 3: Violation of the 96th Article of War.

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, on or about the 5th day of July, 1918, without authority, distribute among certain conscientious objectors of the Provisional Detachment, 163rd Depot Brigade, certain printed literature, tending to influence said members to refuse to accept any kind of service in the army and tending to induce insubordination and disloyalty among said members to the prejudice of good order and military discipline.

LAWRENCE G. WIGBELS,

1st. Lt. Inf. N. A.

Officer preferring charges.

To which the accused pleaded: ✓

ACCUSED: Gentlemen, I wish to enter a plea to the jurisdiction of the court, based upon the facts that I will call your attention to. I believe that, in union with the authorities at Washington, ^{Army} you gentlemen will take the position - ✓

JUDGE ADVOCATE: Will you enter your plea? Then you can make remarks on it afterwards. Enter your plea according to the Manual for Courts-Martial.

ACCUSED: I will make it in the form of a plea. I wish to plead to the jurisdiction of the Court, in accordance with Paragraph 146 of the Manual for Courts-Martial, which states:

"A plea to the jurisdiction denies the right of the court to try the case. The following are grounds for a plea to the jurisdiction of a court: (Sub-paragraph c) That the accused is not subject to its jurisdiction. (Sub-paragraph d) That it has not legal power to try the offense charged."

JUDGE ADVOCATE: The Judge Advocate would ask the accused if he bases his plea to the jurisdiction on those latter two grounds, the two that you have read?

ACCUSED: Those are two of them; those are the primary grounds.

JUDGE ADVOCATE: That is your plea to the jurisdiction? That is all?

ACCUSED: Not altogether, no sir; I have seventeen different citations of plea to the jurisdiction throughout the entire court-martial manual, but this is the primary ground, that I deny the right of the court to try the case, and I will state my reasons as I proceed, as briefly as I possibly can, and yet, I do not want to sacrifice facts for the sake of brevity. If I may be allowed to make the remark, I was just in the way of explaining when interrupted by the Judge Advocate, I am trusting in you gentlemen, that it is your desire, in union with the authorities at Washington, that the law should be strictly observed, regardless of whether it is in favor of or against one who claims he is not subject to military jurisdic-

tion, and my entire plea will be based upon the facts set forth in the Manual for Courts-Martial, which is the law for military courts. Now, gentlemen, the paragraph that I just cited to you refers to Chapter I, Persons Subject to Military Law. On Page 2, under the caption, Persons Subject to Military Law, we find the following classes enumerated under the heading: "The following persons are subject to the Articles of War: (sub-paragraph A) All officers and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty, or for training in the said service, from the dates they are required by the terms of the call, draft, or order to obey the same."

I will prove to you that I was unlawfully called, unlawfully drafted, unlawfully inducted into the service, and as a consequence of that unlawful induction I am not subject to military jurisdiction. Here is a stipulation of facts that the Judge Advocate has prepared for the purpose of expediting matters and I have consented to sign; a stipulation of facts. I am reading this at the request of the Judge Advocate. Before I read over any of the exhibits,- it is the exhibits that I want to call your attention to, to show to you, to prove to you that I am not subject to military jurisdiction.

"Stipulation of facts. The accused offers the following stipulation of facts, which he avers to be true -

JUDGE ADVOCATE: You will offer that in evidence; the reporter can take it as Exhibit "1".

ACCUSED: The accused offers the following stipulation of facts, which he avers to be true: (Reads stipulation)

The stipulation was read to the court and received in evidence, and is appended, marked Exhibit "1".✓

ACCUSED: Now, gentlemen, you will remember that it states in this stipulation of facts that I did not return the questionnaire,

and the reason I did not return the questionnaire is set forth in this communication,- it is very brief: (Accused reads to court Exhibit B-2, being attached to and made a part of Exhibit "1".) Pursuant to my failing to answer the questionnaire, as set forth in this stipulation of facts, I was reported to the United States District Attorney's office for prosecution. I was prosecuted in the Federal District Court for the State of Colorado for not answering the questionnaire. I had wished to procure a deposition as to the authenticity of that fact, but the Judge Advocate said he would be willing to admit it; therefore, it will not be necessary. This, I have in my hand, is a copy of the transcript from the court record, containing the letter that I just read to you. I was found guilty of not returning that questionnaire. I am guilty of not returning it, as far as that particular is concerned, but I deny the right of the government to require me to return that questionnaire and therefore I am legally not guilty until that matter is settled. But the federal district court found me guilty, and I took an appeal to the Circuit Court of Appeals, and the case is now before them for final adjudication.

Rule 13, of the Selective Service Regulations, on page 40, reads: "Any registrant, not classified in Class V under subparagraph (h) of Rule XII who is (a) In prison, serving sentence or awaiting trial; or, (b) In a reformatory or correctional institution; or, (c) At large on bail under criminal process; Shall first be classified and recorded as any other registrant; but, pending his discharge from confinement, or the final disposition of his case, he shall be treated as standing at the bottom of Class IV, and so recorded by entering in red ink next to and in the same column with his name on the Classification List (Form 1000) the figure IV."

According to the Selective Service Regulations the Local Board should have placed me at the bottom of Class IV. I was released on twenty-five hundred dollar bond, as I remarked before. I believe I

did not state the amount of the bond, but one of the exhibits touches upon that question. I was released on twenty-five hundred dollar bond, pending final disposition of this case in the Circuit Court of Appeals, but the Local Board, without authority and contrary to the regulations, placed me in Class I, and sent me a notice of induction into the service. That notice of induction is marked Exhibit "E" in this file of papers, and I would like to have this part that I am going to read entered by the reporter in the record: "To Benjamin Joseph Salmon, Order Number 656, Serial Number 352. Greeting: Having submitted yourself to a local board composed of your neighbors for the purpose of determining the place and time in which you can best serve the United States in the present emergency, you are hereby notified that you have now been selected for immediate military service. You will, therefore, report to the local board named below at 3607 W. 32nd Ave., at 7:30 P. M. on the 19th day of May, 1918, for military duty."

Now, gentlemen, it says: "Having submitted yourself to the local board." That I did not do, at any time. First, I refused to return the questionnaire, and subsequent to that, I refused to appear for physical examination, except for the purpose of avoiding any technicality in the case then pending in court, as my letter in the file here will show. I denied their right to examine me, but I appeared for examination merely for the purpose of avoiding obligations. I will read that letter to you; it is marked Exhibit "J". (Reads Exhibit "J", same being attached to and made a part of Exhibit "1") The evidence shows that I did not at any time submit myself to the Local Board. That part of the induction sheet shows a misstatement, and I called the attention of Mr. Mooney, Secretary of the Board, to that fact, after receiving this notice of induction, and if it would have been possible to have had Mr. Mooney here as a witness he would testify to the truth of the statement that I am now making. In fact, if the court should desire, they may secure a deposition from him concerning that point. I have tried to get him

here as a witness, but the Judge Advocate stated he did not believe the matter was of sufficient importance to put the government to that much expense -

JUDGE ADVOCATE: The Judge Advocate wishes the record to show that he stated to the accused that the witness's testimony, as stated by the accused, would not be material to the issues.

ACCUSED: I called Mr. Mooney on the telephone as soon as I received this notice of induction. I asked him if there was not some mistake. He said "no", there was no mistake. I said, "Mr. Mooney, why did you send me this notice of induction?" He said, "Because it was in the regular order." "Well, now", I said, "By what authority do you claim it is in the regular order?" He told me he called Mr. Tedrow, the United States District Attorney, on the telephone, - Mr. Tedrow is his legal adviser; that Mr. Tedrow told him to follow the Selective Service Regulations. I said, "Mr. Mooney, you are not following the regulations." "Well," he said, "I don't want to dispute with you on that matter at all; I merely want to tell you that we did this in the way that we thought was right, and that settles that." I said, "Mr. Mooney, assuming that I had been in the county jail, serving my sentence, in place of being out on a twenty-five hundred dollar bond, then what would you have done?" He said, "In that case we would have come over to the jail and taken you out of there and put you on the train." The Rule XIII, you will remember, gentlemen, also says that "any person serving sentence or awaiting trial * * shall be placed at the bottom of Class IV" and so forth. It makes an exception there; I meant to call your attention to that before; it makes an exception for those classified in Class V, under subparagraph (h). Well, this classification pertains to those who have committed murder and such crimes as that, as you will see by reference to the Selective Service Regulations.

Following my conversation with Mr. Mooney, I got in touch with Mr. Parker, whose signature appears on the bottom of the

notice for induction, and I put the same questions to him, and he gave me the same answers as Mr. Mooney. This letter, marked Exhibit "H", is the original letter that I sent to the Local Board, telling them why I could not appear in answer to that induction. (Accused reads Exhibit "H" to court; same being attached to and made a part of Exhibit "1".)

I forgot to contain in my previous remarks that Mr. Mooney admitted to me, as also did Mr. Parker, that that part of the induction notice stating that I had submitted myself to a local board was irregular; he said they had discussed that particular matter, but there was no other form to send me. So they sent that particular form, but he admitted that it did not state the fact.

Now, gentlemen, the United States Marshal recognized the law in this matter, and he would not take me into custody. First he consulted the District Attorney, Mr. Tedrow, and Mr. Tedrow told him that I was under the jurisdiction of the Federal Court, and I could not be arrested, and the United States Marshal positively refused to take me into custody, and the newspapers of the city of Denver heralded that fact the following day. There is no dispute, I believe, as to this matter. It is contained in this letter, and I did not think it was necessary, having this original letter in here, to procure any deposition to the fact that the Marshal refused to accept me, because I was under the jurisdiction of the United States district court.

And I might state, gentlemen, a fact that you can have confirmed at any time by the federal judge. I would liked to have had my attorney here as a witness in this matter, but he tried all of Saturday, the 18th of May, to get the Judge of the federal court to issue some other order that would simplify the matters, and, as I stated here, it was "impossible for me to comply with your order, at least until some further order shall be issued by the courts which now have jurisdiction of me." But the Federal

Judge would not issue any kind of an order. He left me in the same status. (Reads second paragraph on page 2, Exhibit "I", same being attached to and made a part of Exhibit "1".) Now that paragraph, as I called their attention to it, stated briefly there, refers to the Selective Service Regulations and the irregularity in summoning me, when I should have been at the bottom of Class IV. (Reads third, fourth and fifth paragraphs of Exhibit "I", same being attached to and made a part of Exhibit "1".) Now, gentlemen, that last paragraph has a bearing upon the case that was still pending in court, and until that was finally adjudicated the Local Board had no right, according to the Selective Service Regulations, to place me in any other class but at the bottom of Class IV. As I stated before, that is the main basis of my contention. They put me in Class I, in place of Class IV, and if I had Mr. Mooney here as a witness, which, as I said before, I tried to get him, I would have had him prove to you, in answer to my interrogatories, that if he had placed me at the bottom of Class IV, in place of Class I, as the regulations provide, I would not at that time have been reached for call, and he would not have sent me a notice of induction into the service.

PROSECUTION: The Judge Advocate wishes the record to show that his reason for refusing to have the witness appear here to testify was, as he stated to the accused, he did not believe the testimony was material.✓

ACCUSED: I am accused with being a deserter -

PROSECUTION: Now, if the court please, the Judge Advocate objects to any arguments as to the issues of the case. This is a straight plea to the jurisdiction, and while the Judge Advocate does not want to file objections, he does object to the accused at this time going into the issues.

ACCUSED: May I reply to that at this time? Paragraph 98 of the Manual for Courts-Martial, under the caption, Whole Truth to be Presented, states: "Throughout the trial the judge advocate

should do his utmost to present the whole truth of the matter in question. He should oppose every attempt to suppress facts or to distort them, to the end that the evidence may so exhibit the case that the court may render impartial justice."

Now, my object in presenting this testimony, is to show conclusively why I did not report to the Local Board; to show that I am not a deserter; and the evidence has a particular bearing upon the case.

PROSECUTION: May the Judge Advocate simply explain,- that will come in due time, but this is simply a plea to the jurisdiction, and anything you may offer as to why you are not a deserter will come in its place. You are now arguing your plea to the jurisdiction of the court.

ACCUSED: I am stating my reasons why they have not the right to try me. I am leading up ^{to this} point as briefly as I can, to show you that I am not a deserter as the Local Board reported me. Now if the Local Board's report that I was a wilful deserter is false, then you have no right to try me, and in that way I am making my plea to the jurisdiction of this court.

PROSECUTION: The Judge Advocate requests that the president of the court announce to the accused his right to take the stand under oath and give testimony, or that he can make an oral statement, if he does not care to be sworn. ✓

PRESIDENT: (Addressing accused) Does the accused understand that he may take the stand and testify in this matter before the court, under oath, the same as any other witness, subject to cross-examination, or that he may make an unsworn statement, just as you have been making? ✓

ACCUSED: Yes sir, I understand. Now I would do that, provided it will not interfere in any way with the validity of the plea to the jurisdiction, because I wish that to be a part of the plea to the jurisdiction of this court, or at least to give the reasons why I maintain that this court has no right to try me. I will be

glad to make a sworn statement, and contain these remarks that I am now pursuing.

PRESIDENT: You desire to be sworn; is that it?

ACCUSED: I am not sufficiently familiar with the particular point,- I desire to be sworn, provided it will not in any way interfere with the ^{validity} validity of my plea to the jurisdiction.✓

PROSECUTION: May it please the Court. "A plea to the jurisdiction, if well-grounded and sustained by the court, bars further prosecution before the court. If well grounded and not sustained by the court, the proceedings may be disapproved by the appointing authority, or, even though approved, may be reviewed on writ of habeas corpus by a United States court, which will cause the proceedings to be set aside as illegal and void. Waiver of objection will never avail to confer jurisdiction upon a court not legally possessing it, even though the accused fails to submit a plea to the jurisdiction at the proper time." The accused has a right to introduce any evidence that he has, showing that the court has no jurisdiction.✓

The Court was closed,✓ and on being opened the President announced,✓ in the presence of the accused,✓ the following ruling:

PRESIDENT: On behalf of the court I wish to announce, that the witness may continue, either sworn, if he so desires, or continue the statement as he would make it.✓

ACCUSED: I would rather be sworn.✓

THE ACCUSED,✓ at his own request,✓ was sworn✓ and testified as follows:✓

I was not attempting to desert the military service, even if I were in the service. Of course, I maintain I am not in the service. Exhibit "G" (attached to and made a part of Exhibit "1"), and I would like to have this letter,- it is very brief,- I would like to have it entered in the record. It is a letter to the

Local Board, dated Noon, May 20, 1918, - "Gentlemen: Under the order of the Federal District Court, I am in custody of my bondsmen, and during this forenoon I have been at the office of my bondsman, James T. Smith, 312 Colorado Bldg. I am now returning to my mother's home, where I shall remain in her custody as my other bondsman. I am giving you this information so that you may know my whereabouts. Yours very truly."

My purpose in sending that letter to them was, in case they wished to procure me they could know just where to find me.

I would like to interpose a remark at this time, that I believe I overlooked before, that although I was inducted into the service, according to the forms that were sent to me; nevertheless, my point is, that I was unlawfully inducted, which the facts themselves show, and that being the case, being unlawfully inducted, I am, according to Paragraph 4, Manual for Courts-Martial, subparagraph (a), not subject to the Articles of War, and consequently not subject to military law.

I was arrested on the evening of May 20th, as is stated in the stipulation of facts, and in appearing before the Local Board for trial, they asked me why I did not answer the summons. I inquired if they received the communication which I have read to you, and is marked Exhibits "H" and "I", and they said yes, they received that communication, and it is now in evidence before this court. "Well", I said, "Gentlemen, I can do nothing more than I stated in that communication, except to again call your attention to the Selective Service Regulations that you are not following. There isn't a rule in the entire regulations that will permit you to classify me in any other class than at the bottom of Class IV, and that is mandatory, - there is no escape for you." They ignored all the facts and found me guilty of wilful desertion, and so reported me to the police authorities. Their report is marked Exhibit "M", and I would like to read this report; it is brief, and

I would like to have it entered in the record.

PROSECUTION: It is in the record.

ACCUSED: I would like to have it entered, word for word, as it is: "Subject: Arrest of wilful deserter from National Army. Benjamin Joseph Salmon, Order Number 656, Serial Number 352, having been inducted into military service on May 19, 1918 by Local Board for Division No. 1, Denver, and having failed to report to said Local Board, has been apprehended by Albert T. Clark, Police Officer. Upon investigation this Local Board finds that the offense of said Benjamin Joseph Salmon was willful and committed with an intent to evade military service and hereby directs that the said Albert T. Clark deliver the said Benjamin Joseph Salmon to you for further action of the military authorities. Fred M. Plattner, Member of Local Board."

Gentlemen, as I stated in my trial by the Local Board, I was not a wilful deserter. I could not comply with their order for entrainment with the next draft contingent, without at the same time violating the jurisdiction of the federal court, and also jeopardizing the interests of my bondsmen. It was not committed with the intent to evade military service. I am ready, at any time, to suffer the penalty for refusal to conform myself to the requirements of any law that there is on the statute books that I will not obey; I am ready to accept the punishment; and in this case I was sentenced to nine months in the county jail, and if that sentence is upheld I am ready to take it. But what I object to is to having the Local Board, or any other organization for that matter, deal with me according to their own whims or their own fancies or their own prejudices, in place of dealing with me according to the law.

I am at a loss to tell just why the Local Board was so arbitrary in its action. They had no explanation to make of it, and if I could have had Mr. Mooney on the stand I could have questioned him and proved by his own testimony that he had no reason for taking such action.

Following the report of the Local Board that I was a wilful deserter and that I should be taken in arrest, I made this formal protest, which is marked Exhibit "L", and I would like to read this into the record:

"I hereby formally take exception to the verdict rendered by the Local Board for Division No. 1 in my case, heard at 7:15 P.M., May 20th, 1918, for the reason that the verdict is contrary to the facts submitted at the hearing. Benjamin J. Salmon."

On the bottom of that same exhibits is this formal protest of my bondsmen:

^{Per Mr.}
"I hereby formally protest against taking from my custody the body of Benjamin Joseph Salmon whose bond I, and Mr. James T. Smith,- who has legally delegated to me power of attorney for him,- have furnished and which we believe is jeopardized by our compulsory release of Benjamin Joseph Salmon. Catherine C. Salmon."

I was taken to Fort Logan, Colorado, on the 20th of May. On the morning of the 21st I was brought before the commander of the fort, who asked me if I was willing to become a soldier. I started to explain the circumstances of the case. He interrupted. He said, "All I want you to answer is - are you willing to become a soldier, and if you are we will dismiss all of this case against you that we have at the present time, and send you out among these other boys, and put you into the service." I started again to explain to him that under the circumstances I could not follow any such procedure, and he said, interrupting again,- would not allow me to explain,- he said, "All I want to know is, are you willing to soldier, or not?" And again I tried, because it is required that you make a protest within seven days after your being taken into custody in the matter, and I did my best to make this protest, but each time, for three successive times, I was interrupted, and he said, "Now I want you to answer." He would give me no opportunity to explain. "I simply want you to answer 'yes' or 'no'". So I said, "No". There was nothing else for me to say. He would not allow me to say, "Not under the

circumstances." Therefore, I had to, in order to comply with his request, give him the simple answer "no".

That night I was taken to Camp Funston, Kansas, and placed in the guard house. I reached Camp Funston, Kansas, the night of May 22nd. The morning of May 23rd I wrote a letter to the commander of Camp Funston, Major General Wood, and set forth the facts in the case, telling him of my unlawful induction and subsequent unlawful transportation to Camp Funston, and asked him if he would arrange to give me an immediate hearing, or release me and remand me back to the federal jurisdiction of Colorado, from whose jurisdiction I was unlawfully taken. I tried for several days to get that letter to General Wood, but each Officer of the Day told me that it could not be transmitted to him. They said they would not allow it to go through. Whether it finally went through or not, I do not know, but I do know this: that you have the letter,- at least, the military authorities here have that letter on file. The captain who investigated my case showed me the letter. The question has been asked me, or rather, had been asked me at one time, why my attorneys did not obtain a writ of habeas corpus. The reason for it is, that the fight that my political enemies made me put up in the city of Denver, in defense of my individual rights, had completely relieved me of all of my finances. I had less than a hundred dollars when I was sent to Camp Funston, and it was a financial impossibility for me to procure that writ, and I have a letter here that I would like to introduce in testimony at this time. It has been censored by Captain Day, so the authenticity of it -

PROSECUTION: I object to the admission of the letter. It has not been identified by the writer, and is hearsay and opinion. I will object to its admission at this time, or object to its being read in evidence. ✓

ACCUSED: Well, now, I would like to save time for this court, if I can, and not introduce it, if we can get around it some other way. Would it be satisfactory to the Judge Advocate and would you

admit at this time that the reason why I did not procure a writ of habeas corpus is because it was a financial impossibility?✓

PROSECUTION: I certainly will not admit that, because I don't know it. You may state so.✓

ACCUSED: I will ask to have this letter introduced, because the letter shows,- it was a letter from my attorneys, censored by Captain Day -

PROSECUTION: It is objected to as incompetent, irrelevant and immaterial; hearsay; not being properly identified.✓

ACCUSED: I still wish to introduce the letter, if it please the Court, because I want to show why I did not procure that writ.✓

The Court was closed,✓ and on being opened the President announced,✓ in the presence of the accused,✓ that the objection was sustained and that the letter would not be introduced.✓

ACCUSED: The letter will not be admitted?

PRESIDENT: No.

ACCUSED: I wish to state, at this time, that the reason I did not procure a writ of habeas corpus is because it was a financial impossibility.

My confinement in the guard house at Camp Funston was continued and on the third day of June I received a charge sheet, notifying me that I would be tried by general court-martial for violating the 58th Article of War, and the specification was: "In that Benjamin Joseph Salmon, Recruit, 10th Company, 164th Depot Brigade, did, at Denver, Colorado, on or about the 19th day of May, desert the service of the United States -

PROSECUTION: Objected to as incompetent, irrelevant and immaterial; having no bearing on the question of the jurisdiction of this court. There is no plea in bar that he has ever been tried before. I do not care to file these objections, but it is absolutely immaterial stuff; there is no plea in bar of trial, and this matter is certainly immaterial and irrelevant, and I object.✓

ACCUSED: I would like to state my reasons for introducing this in evidence, which are to show that the Camp Funston authorities originally had me charged with desertion, subsequently dismissed the proceedings before I was tried. They recognized that they had no jurisdiction.✓

PROSECUTION: I move that the explanation be stricken. Any such statement would simply be an opinion of those officers, and I renew my objection to the testimony.✓

ACCUSED: I would merely wish to reiterate; I have nothing further to say as to the reason why I want to have this introduced, than the reason I already gave.✓

The Court was closed,✓ and on being opened the President announced,✓ in the presence of the accused,✓ that the objection was sustained.✓

ACCUSED: I would like to state that I was released from the guard house at Camp Funston on the 10th of June, and was at liberty around Camp Funston the 10th and 11th of June, not under guard,- no restrictions in any way placed upon me. The 12th of June I was taken to the detention camp, under protest, arrived at the detention camp the same day, and at that time I endeavored to lay my case before the commander of the camp, Captain F. J. Kintz. He would not listen to me. He told me he cared to hear nothing about that, and insisted that I be taken to a tent. The following day,- I want to interpose another statement in there: he pulled out a sheet from his pocket, a list of the court-martial that was then in session, and he crossed off his name. He said, "I will have to take this matter up and get off of this court, and appear against you as a witness at the trial." I tried to have Captain Kintz appear here as a witness to testify to those facts, but it was objected to by the Judge Advocate.

PROSECUTION: The Judge Advocate wishes the record to show

that on the representation and statements of the accused as to what such witness would testify, it was the view of the Judge Advocate that the testimony was immaterial.✓

ACCUSED: The following day I wrote a letter to Captain Kintz, calling his attention to the facts in the case. The letter was transmitted to Lieutenant McEvan, of the intelligence officer at Camp Funston. Lieutenant McEvan came out to see me the following Saturday. Now I cannot give you the exact date, but it was the following Saturday, and he procured for him a record of the case from the beginning up to that time. He told me that he had already wired the Local Board in Denver for information, and that afternoon he was going to wire to the Federal Court, and he would have a report prepared for General Wood the following Monday. The following Tuesday I was notified by Captain Kintz that I was not going to be tried by court-martial, and he told me, in the presence of four witnesses, which I will introduce later on in the trial, if I am put to trial,- he told me that it was his honest opinion, from his reading of the papers in the case -

PROSECUTION: I object to this testimony as immaterial; it being hearsay, and the opinion of a person expressed out of court.✓

ACCUSED: Gentlemen, I would like to refer again to Paragraph 98 of the Manual for Courts-Martial: "Throughout the trial the Judge Advocate should do his utmost to present the whole truth of the matter in question. He should oppose every attempt to suppress facts or to distort them, to the end that the evidence may so exhibit the case that the court may render impartial justice." Now I do not believe that the presentation of testimony is going to do any injury to the side of the prosecution, and it certainly may be admitted that it is merely testimony of one out of court, but, as I say, I would have had this man on the stand if permitted to have him, and I am making this statement under oath, that he made this particular statement, and it is relevant as showing the opinion of a member of that court-martial, and I would like, if permitted,

to tell of his conversation with the judge advocate; it has a particular bearing in the way of giving you gentlemen an opportunity to know that there are others who have investigated the validity of military jurisdiction over me - ✓

PROSECUTION: The question before this court is whether or not it has jurisdiction of this person. Any statements of any person who had investigated the case would simply be an opinion of that person, and as such, even if the person were here, would be absolutely immaterial. The statement of this accused, offering to state what a person stated to him as his opinion, is immaterial, and the Judge Advocate renews his objection to this line of testimony. ✓

ACCUSED: I would like to state, if I may, briefly, that the reason I ask to introduce it as material, is because this particular captain was a member of that court, and in conversation with the judge advocate they had discussed matters which I would like to relate to you, and they decided that they had no jurisdiction. ✓

PROSECUTION: You are misstating it; the court did not decide anything, - these men; you never were brought before a court. ✓

ACCUSED: I will accept that correction; it was these men who were called to appear on this court, of whom Captain Kintz was one.

The Court was closed, ✓ and on being opened the President announced, ✓ in the presence of the accused, ✓ that the objection was sustained. ✓

ACCUSED: I would ask that the record show that, on July 2nd, against my protest, I was sent to Camp Dodge, Iowa, to appear before the Federal Board appointed by President Wilson, to inquire into the cases of conscientious objectors. On July 4th I appeared before that Board and challenged their jurisdiction; denied their right to ask me any questions. And I stated the reasons for such challenge, and the President of that Board, Dean H. F. Stone of the Columbia University Law School, in union with the others, admitted that they

had no further jurisdiction -

PROSECUTION: I object to any testimony being given as to any statement by any board, as hearsay and as opinion, and not admissible before this court on the question of jurisdiction.✓

ACCUSED: I have the same reason for introducing this testimony; I had asked to have this Mr. Stone appear as a witness; he is the dean of the Columbia University Law School, and I believe his testimony as to the jurisdiction of any other tribunal but the Federal Court of Colorado as a marked relevancy upon the plea I am now making as to the jurisdiction of this court.✓

PROSECUTION: The Judge Advocate wishes the record to show that he refused to subpoena such witness for the reason that, according to the statement of the accused, the testimony of the witness, if given as stated by the accused, would be opinion and not admissible, and the Judge Advocate renews his objection to that testimony.✓

ACCUSED: While it would be an opinion, nevertheless, it was an official act of that board, that had been appointed for the purpose of trying conscientious objectors. They had no jurisdiction, and I believe such a recognition on the part of the board is certainly admissible, and that is all I have to say. And my only reason for trying to get it in evidence is to cite authorities, as it were, upon the fact, as I stated before, that no one has jurisdiction over me but the Federal Court of the District of Colorado, and that being the case I am not subject to the jurisdiction of this court.

The Court was closed,✓ and on being opened the President announced, ✓ in the presence of the accused, ✓ that the objection was sustained.✓

ACCUSED: On the 5th of July, I addressed a communication to Lieutenant Wigbels, who was commander of the company in which I was

stationed at this camp, and in that communication, as I will prove by the testimony of Lieutenant Wigbels, if it will be required lateron, I laid the facts in the case before him, and denied any jurisdiction of the military authorities over me at this camp, and told him that whatever orders I obeyed would be done absolutely for the purpose of making myself as agreeable as possible during the interim between that time and final adjudication of the case. On the 6th of July I was placed in the guard house by order of Captain Day, and on the 17th of July I received a charge sheet. I received that charge sheet at 8:30 P. M., July 17th, from Lieutenant Stafford, charging me with violation of the 58th Article of War. Specification 1: "In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, having been duly drafted into the Military Service of the United States, did desert the service of the United States at Denver, Colorado, on the 19th day of May, 1918, and did remain absent in desertion until apprehended at Denver, Colorado, May 20, 1918." Now, I deny the legality of the statement, that I was duly drafted; there is a point that I am making, gentlemen; that I was illegally drafted, and as a sequence of being unlawfully inducted, I am not subject to military authorities. The other two charges, under the 63rd and 96th Articles of War, that I was charged with on this charge sheet, will be both proven insufficient and untrue statements, if I am forced to go to trial, but in case you should decide that this court lacks jurisdiction, then I cannot be charged on either the 63rd or 96th Articles of War, because both of those Articles provide, as does the 58th, that they apply to persons subject to military law, and I am making the point that I am not subject to military law. However, I wish to refer at this time to those two charges, that I am not guilty as stated.

PROSECUTION: You will have your time to make your plea.

ACCUSED: I make that merely for the purpose of letting you gentlemen know it will be proven that I was not acting disrespectfully

towards Captain Day, or engaging in the circulation of propoganda as charged.

Paragraph 34 of the Manual for Courts-Martial states, Conditions Necessary to Show Jurisdiction. "The jurisdiction of every court-martial, and hence the validity of each of its judgments, is conditioned upon these indispensable requisites:

(a) That it was convened by an officer empowered by statute to appoint it.

(b) That the persons who sat upon the court were legally competent to do so.

(c) That the court thus constituted was invested by the acts of Congress with power to try the person and the offense charged.

(d) That its sentence was in accordance with law."

This court is not invested by the Acts of Congress with power to try any person except those subject to military law, and, therefore, its sentence could not be in accordance with law, and I am going to read the paragraph following, subparagraph (d), which says:

"Persons, then, belonging to the Army and the Navy are not subject to illegal or irresponsible courts-martial, when the law for convening them and directing their proceedings of organization and for trial have been disregarded. In such case, everything which may be done is void - not voidable, but void; and civil courts have never failed, upon a proper suit, to give a party redress, who has been injured by a void process or void judgment. * * * When we speak of proceedings in a cause, or for the organization of the court and for trials, we do not mean mere irregularity in practice on the trial, or any mistaken rulings in respect to evidence or law, but a disregard of the essentials required by the statute under which the court has been convened to try and to punish an offender for an imputed violation of the law." It then follows with the authorities upon that matter.

Now, gentlemen, if civil courts will grant redress to one belonging to the Army or the Navy for illegal proceedings, surely they will grant it to one who is not subject to their jurisdiction.

Paragraph 409, Manual for Courts-Martial, the Fifty-Eighth Article of War:

"Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct."

Now, gentlemen, it states: "Any person subject to military law", and then it gives Definitions and Principles, what desertion constitutes; and that is the main charge that is placed against me, and the charge that precipitated this whole proceeding.

PROSECUTION: Let me explain to the accused that the question of jurisdiction is now before the court,- not the question of whether you are guilty of desertion or not; this is the question of jurisdiction; you will have the time to argue whether you are a deserter or not.

ACCUSED: If I may explain to the court,- if we should go through with this trial the time I am now consuming will be saved subsequently, and the reason that I am speaking of desertion at this time, and must necessarily continue to do so, is for the purpose of showing that, if I am not a deserter, then I am not subject to military law, and if not subject to military law, this court has no jurisdiction over me. Under this paragraph 409 of the Court-martial Manual, it states: "Desertion is absence without leave accompanied by the intention not to return. Both elements are essential to the offense." Now, as I have shown before, I was not absent without leave. I was absence because I could not answer that summons without violating the jurisdiction

of the federal court. Moreover, the summons was illegally drawn, in that it followed the classification of Class I, when that classification should have been under Class IV.

"The offense becomes complete when the person absents himself without authority from his place of service with intent not to return thereto."

I had authority for absenting myself, and I had no intent, as I showed by my communication to the Local Board; I had no intent not to return, because I told them just where I could be apprehended in case they wished to arrest me.

On Page 202, Manual for Courts-Martial, contains the Proof of desertion -

PROSECUTION: Now, may it please the court, the question at this time is the question of jurisdiction, and there is no question before this court as to the proof or the essentials of proof of a case of desertion, and the Judge Advocate objects to the witness offering testimony as to desertion at this time, or argument as to question of whether or not he is a wilful deserter.

ACCUSED: If it please the court, the only way that I can present this case is to cite from the Manual for Courts-Martial the various points having a marked bearing upon the question as to whether or not I was a wilful deserter, as reported by the Local Board to the military authorities. Now, I am making these remarks in the form of a sworn statement, and it seems to me, gentlemen, that after I have waited for sixty-four days for a trial, after I have been denied my liberties illegally for sixty-four days, that I ought to be allowed to consume the necessary time in presenting every scintilla of evidence that might have a bearing upon the case. I regret that I am burden to the Judge Advocate, and that I am keeping you gentlemen here tonight; I regret it exceedingly, but the situation is one that has been thrust upon me, and I believe, in all fairness to a man whose liberties are at

stake and whose legal rights are involved, that I should be allowed to present, without interruption, all of the facts bearing upon the case. If they have no relevancy, the court, when going over the proceedings, can so decide, and then, later on, as I remarked before, I will not be consuming this time upon this defense; I will merely refer to it. If you overrule my plea to the jurisdiction, I will simply refer to the previous contention, when I am pleading not guilty to the 58th Article of War. On the other hand, if you sustain my plea, that settles the whole proceeding.

PROSECUTION: May it please the Court, the Judge Advocate wishes to explain again to the accused that he will have an opportunity when the issues are before the court, in case his plea to the jurisdiction should not be sustained, to go into all the matters at that time. The plea before the court is as to the jurisdiction, and, as provided in the Manual for Courts-Martial, a special plea should be stated briefly and clearly. It should also be supported by evidence or legal argument, and at this time, while the Judge Advocate, and he knows the court is of the same mind, does not want to keep the accused from offering any testimony when in its proper place,- at this time the question is of jurisdiction, and the Judge Advocate renews his objection to the testimony and remarks of the accused at this time.✓

ACCUSED: I would like to reply to that, as soon as I find this section. Would you kind telling me where you found that statement in regard to special pleas?

PROSECUTION: I took it from Action on Special Pleas, Paragraph 153.✓

ACCUSED: If I may quote from that Paragraph, 153. Action upon Special Pleas. "Each special plea should be stated briefly and clearly." I am trying to do that, gentlemen. I am sorry I am taking so much time. "It must also be supported by evidence or legal argument to show that it is well taken." That, also,

I am endeavoring to do. "The burden of supporting a special plea by a preponderance of proof, rests on the accused." That burden rests upon me, but I am being interrupted all the time -

PROSECUTION: The Judge Advocate wishes to explain that he is not trying to take advantage of the accused, but he wants the accused to see that this is a plea to the jurisdiction, and he does not, at this time, think it is relevant to go into the matter of the charges themselves; they are not before the court, at all. They have never been submitted to the court, and you are arguing simply the question of the jurisdiction of your person; the Judge Advocate does not interrupt with the idea of not giving you all the chance in the world to offer what you have, but **at** this time - ✓

ACCUSED: I am endeavoring to show that this court has no jurisdiction and I believe I will be able to prove it beyond all doubt, and in that event there will be no necessity of arguing these matters. ✓

PROSECUTION: Then, don't argue it now; that is what I am trying to get at. ✓

ACCUSED: But it is necessary for me to present these statements of facts. I am not trying to make an argument, - I am making a statement under oath as to the point involved, the evidence concerned in this matter, and if I am shut off from doing this, why, the trial will merely be a farce, as far as I am concerned, because I have considerable evidence I am leading to that has a marked bearing on this. ✓

PROSECUTION: The Judge Advocate renews his objection of incompetent, irrelevant and ^{RSW}immaterial, at this time. ✓

The Court was closed ✓ and on being opened ✓ the President announced, ✓ in the presence of the accused, that the objection was sustained. ✓

ACCUSED: This trial, then, will be a farce, as far as I am concerned, because I do not know of any way that I might call your attention to fact that you have no jurisdiction, except to produce the evidence. I have considerable evidence there, and if I am not allowed to present it, why I must remain absolutely silent from now on.✓

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PROSECUTION: (Addressing Court) May it please the Court; the question before the Court at this time is the consideration of whether or not this court has jurisdiction of the person of the accused. The plea has been entered that the accused is not subject to its jurisdiction. Under the stipulation of facts as admitted by the accused, and also admitted by the Judge Advocate, the Local Board, No. 1, of Denver, Colorado, on the 19th day of May, 1918, inducted into the military service the accused, Benjamin J. Salmon. That induction order is before this court. The Judge Advocate's position is, that this court is not a reviewing authority for an action of the local board; that this man, having been inducted into the service by the local board, is in the military service of the United States and, therefore, subject to the jurisdiction of a legally convened court-martial. To carry out to its logical conclusion the claim of the accused, any man who had been wrongfully classified, granting that he might have been wrongfully classified by the local board, and having been inducted into the service and having been placed, we will say, in Class I when he should have been placed in Class II, will come to any military camp and do any illegal act, and the court-martial will have no jurisdiction over him. The Selective Service Law provides for an appeal, but a court-martial has no authority, under the law and under the regulations and under repeated decisions, both of the Federal Court and the Judge Advocate General, to go into the question of the legality or regularity of

the induction of a man into the service, except to know that he was inducted by an order of the Local Board, and on that ground the Judge Advocate asks that this plea to the jurisdiction be overruled. The evidence is before the court as to the induction order.✓

ACCUSED: I would like to make a statement.✓ The Judge Advocate says that this court is not a reviewing authority for the local board. I am not taking the position that it should be. But this court must decide, according to the Manual for Courts-Martial, whether I am subject to military law, and having been unlawfully drafted by the local board there is no escape from the conclusion that I am not subject to military law.

He referred to my having been inducted by the Local Board. I was not inducted by the Local Board; I was illegally inducted by the Local Board. The Judge Advocate said that any man placed in Class I in place of his proper classification, could come to this camp and violate any of the military laws, and make the kind of a plea that I am making and attempt to exonerate himself. That is not a parallel case to mine, at all. Every man has an opportunity to make a demand upon the district board, or the local board, within seven days after he is taken into service. That opportunity was denied me, as I have previously explained. The camp commanders at Fort Logan and Camp Funston would not permit it. The reason the camp commander at Fort Logan would not permit it is because he would not listen to my plea in the matter, and the reason the camp commander at Camp Funston would not permit it is because he was not apprised of the facts. The Officers of the Day circumvented my attempts to acquaint him with the status of my case, and when he finally did, in some manner,- the manner in which he found out was that letter of mine to Captain Kintz, which was taken up through the intelligence office with General Wood,- when he finally did learn just what the situation was, the proceedings were dismissed against me.

PROSECUTION: Now you know the court has ruled out that testimony, and you are putting it now into your argument.✓

ACCUSED: Well, the court may take cognizance of it, if it wishes. He says you have no right to consider the question of the legality of the induction order. Gentlemen, that is a very important fact for you to consider, because your Manual for Courts-Martial, under paragraph 4, says that those subject to military law are those lawfully drafted. Now, if you are going to refuse to take cognizance of an unlawful drafting, why, then there surely is no object in having these courts. Now, in conclusion, I would like to merely refer to the paragraphs of the Manual for Courts-Martial that I would have referred to if I had been given an opportunity. May I do that? I will not make any plea; I will simply refer to the paragraphs.

PRESIDENT: Go ahead.✓

ACCUSED: Jurisdiction of General Court-Martial, page 21, paragraph 39, first paragraph and the subparagraph (a); paragraph 289, beginning with the 19th line, saying that these military courts must follow the contents of the several manuals, which includes this Manual for Courts-Martial. Paragraph 406, which shows that -

PROSECUTION: Now the Judge Advocate wants to call your attention to the fact that you are not doing what you stated, at all; let the court have the numbers of the paragraphs; they are able to read.✓

ACCUSED: Well, I will have to open up the book, then, and refer to the particular lines. Paragraph 32, the entire paragraph; paragraph 278, beginning with the tenth line; paragraph 279, the entire paragraph; paragraph 280, the entire paragraph; paragraph 281, beginning with the 15th line; paragraph 284, the entire paragraph; paragraph 288, the entire paragraph.

I would like to state that, if this court decides that it has jurisdiction it will merely be continuing a persecution that

began on the 20th of May, when I was illegally inducted into the service and placed in confinement. I would have shown, if I was given an opportunity, that I should have been released from confinement not later than eighteen days, either given a trial or released within not later than eighteen days after I was arrested. This is the sixty-fourth day since I was arrested, and the fact that this court has no jurisdiction is just as obvious as any fact could be. I believe that I have already proved that to the court, and had I been given the opportunity I would have given additional proof, such a preponderance of the evidence to that effect that it would be impossible for this court to decide any other way. Now, I had some matters here, pertaining to the jurisdiction, some other matters besides those I read - but, according to your ruling, I am not allowed to present them, and, as long as I am not permitted to present any more evidence concerning this matter, there is nothing more for me to say.

PROSECUTION: No further remark.✓

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The court was closed,✓ and on being opened,✓ the President announced,✓ in the presence of the accused,✓ the following ruling:

PRESIDENT: "The Court, having considered the plea of the accused to the jurisdiction of the court, overrules the same and holds that the accused is under military jurisdiction."✓

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The accused was then arraigned upon the following charges and specifications:✓

CHARGE 1: Violation of the 58th Article of War.✓

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, having been duly drafted into the Military Service of the United States, did desert the service of the United States at Denver, Colorado, on the 19th day of May, 1918, and did remain absent in desertion until apprehended at Denver, Colorado, May 20, 1918.✓

CHARGE 2: Violation of the 63rd Article of War.✓

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, at Camp Dodge, Iowa, on or about the 6th day of July, 1918, behave himself with disrespect toward Captain Jackson R. Day, 163rd Depot Brigade, his superior officer, by contemptuously leaving said Captain Jackson R. Day, after speaking to him and smiling and laughing in a cynical manner in the presence of other enlisted men who were standing near by.✓

CHARGE 3: Violation of the 96th Article of War.✓

SPECIFICATION 1: In that Recruit Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade, did, on or about the 5th day of July, 1918, without authority, distribute among certain conscientious objectors of the Provisional Detachment, 163rd Depot Brigade, certain printed literature, tending to influence said members to refuse to accept any kind of service in the army and tending to induce insubordination and disloyalty among said members to the prejudice of good order and military discipline.✓

LAWRENCE G. WIGBELS,✓
1st Lt. Inf. N. A. ✓
Officer preferring charges.✓

To which the accused pleaded:✓

TO SPECIFICATION 1 OF CHARGE 1:✓ "NOT GUILTY."✓

TO CHARGE 1:✓ "NOT GUILTY."

TO SPECIFICATION 1 OF CHARGE 2:✓ "NOT GUILTY."

TO CHARGE 2:✓ "NOT GUILTY."

TO SPECIFICATION 1 OF CHARGE 3:✓ "NOT GUILTY."✓

TO CHARGE 3:✓ "NOT GUILTY."

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The paragraphs of the Manual for Courts-Martial that set out the gist of each of the several offenses, namely:✓

Page 201, Section II, DESERTION - ABSENCE WITHOUT LEAVE. Fifty-Eighth Article of War, Par. 409, Definitions and Principles, Analysis and Proof;

Page 202, I. DESERTION. Proof. (a) (b) (c) (d) (e);

Page 207, Sixty-Third Article of War, Par. 414, Definitions and Principles;

Page 208, Analysis and Proof, I: DISRESPECT TOWARD A SUPERIOR OFFICER. Proof, (a) (b) (c);

Page 281, Ninety-Sixth Article of War, Par. 446;

Page 282, Analysis and Proof, I. DISORDERS AND NEGLECTS TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE;

Page 283, Proof, (a) (b);

were read to the Court by the Judge Advocate.✓

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PROSECUTION: The Judge Advocate, at this time, does not care to make any statement of the issues or what he expects to prove. The accused may state what his defense is at this time, but he is also informed that he will have a chance to make an argument to the court afterwards.✓

ACCUSED: I will merely make my argument to the court.✓

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PROSECUTION: The Prosecution at this time offers in evidence Prosecution's Exhibit "1", being the stipulation of facts as admitted by the accused, Benjamin J. Salmon, and admitted to be true by the Judge Advocate.

(No objection was made by defense.)

The papers were then received in evidence, and are appended, marked Exhibit "1".

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CAPTAIN JACKSON R. DAY, 163rd Depot Brigade, a witness for the Prosecution, was sworn and testified as follows:

Questions by Prosecution.

Q. State your name, rank and organization.

A. Captain Jackson R. Day, 163rd Depot Brigade.

Q. Do you know the accused; if so, state who he is.

A. Benjamin J. Salmon, Provisional Detachment, 163rd Depot Brigade.

Q. I will ask you to state whether or not you had a conversation with the accused on or about the 6th day of July, 1918.

A. I did.

Q. What was the nature of that conversation?

A. I called him into the orderly room of the detachment for conscientious objectors and asked him some questions in regard to his religion, age, and the ordinary questions asked conscientious objectors.

Q. You may state what your special assignment is in the 163rd Depot Brigade, and was at that time.

A. I am intelligence officer, and was at that time, and have supervision over the conscientious objectors, censoring their mail and a sort of a general supervision.

Q. I will ask you to state, at the time of that conversation and beginning of it, what the general demeanor of this accused was.

A. I considered it defiant and disrespectful.

Q. I will ask you to state just what he did.

A. May I refer to notes to refresh my memory, which I took at the time?

Q. Do you testify now from your memory, refreshed by those notes?

A. Refreshed from the notes.

Q. You have a distinct recollection?

A. I have a distinct recollection.

ACCUSED: I would like to object to his referring to any notes.

Q. Were those notes made at the time?

A. Those notes were made immediately at the time.

Q. And now, in referring to them, do you use them -

A. Only to refresh my memory.

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The Court was closed and on being opened the President announced in the presence of the accused that the objection was not sustained.

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The question was then repeated:

"Q. I will ask you to state just what he did."

A. He was leaning on the table, or laying on the table, while I was questioning him, and I asked him if he could not talk just as well if he stood at attention. He very defiantly folded his arms, refusing to stand at attention. After I had finished questioning him I told him that was all, and he stalked out of the room with a sneer on his face, and when he got into the room occupied by the other conscientious objectors he laughed. I called him back and asked him if I had said anything funny he saw fit to laugh about. He said, "I guess I can laugh any time I please." I then ordered him to leave the room, the building, without laughing or without any back talk. He started from the room with his head in the air, and started to laugh, and turned to me before these other objectors and asked me if that suited.

Q. You may state what the question was that you asked him when he first came in the room as you have described.

A. After asking his age and religion, and so forth, I asked him if he was a Socialist. His answer was, "That all depends." He evaded the answer. I asked him if he was an I. W. W. He answered, "No". I asked him if he had a red card. He said, "I have a red Socialist card. What difference does that make?"

Q. You stated that after he left you and went into the other room, among other soldiers there, that he laughed. I will ask you to state whether or not you saw that, or upon what is your knowledge based that he did laugh?

A. Lieutenant Wigbels called my attention to the fact that he was laughing. I looked out and I saw that he was smiling. Lieutenant Wigbels was in the room at the time, and I recalled him.

Q. You may state whether or not his demeanor during this conversation was respectfully or disrespectful.

A. I considered it disrespectful.

Questions by Defense. ✓

Q. You state that I defiantly folded my arms. Do you remember me telling you that I was willing to stand any way that you wished, and then put my arms to my side?

A. I don't just remember that; no. I remember that you folded your arms.

Q. But you remember that I unfolded them immediately after you spoke about the position in which I was standing?

A. I don't remember.

Q. What was the nature of my defiant attitude?

A. No apparent intention of directly answering my questions, and insisting on talking back when I had specifically ordered you to keep still.

Q. Every time you asked me a question and I started to answer it, you shouted, "Shut up!" Would you tell the court why

you persisted in that? You did that half a dozen times. Wouldn't give me a chance to answer the question.

A. That is not the facts. It can't hardly be answered.

Q. You are willing to swear, under oath, that that is not a fact?

A. I told you to shut up after telling you to keep quiet and after your refusing to keep quiet I told you to shut up. I used every means that I could to have you keep quiet. I simply wanted to ask a few questions. After I had asked those I was through. I did not care to hear any statement. I told you I was through and told you to leave, and you insisted on making statements that I did not care to hear.

Q. Is it not a fact that after you asked me if I was a member of the Socialist Party, and I told you that it depended upon what you meant by a Socialist, and then you afterwards asked me if I carried a red card and I told you yes, then you stated, "That is all", is it not a fact that I left your presence respectfully and started to walk to the barracks across the street?

A. It is not a fact.

Q. What was the nature of your statement, of your words, just previous to our parting?

A. I don't remember just what you mean by "parting".

Q. Well, do you remember what you did say to me after I told you that I carried a red card; that was followed by your statement that I may leave and you have sworn under oath here that I did not leave. Now I am asking you what I said after that.

A. I don't remember just what you said. You were trying to make some kind of a statement I did not care to hear. I ordered you to keep quiet; to leave.

Q. Did you order me to keep quiet and to leave at that time, or after you had called me back?

A. At that time, I believe.

Q. That is the best that you can remember the incident?

A. Yes.

Q. You said that I left the room and laughed. Did I laugh in an audible tone, or merely smile as I passed these comrades of mine on my way out?

A. I don't remember whether I heard you. I did see you, though.

Q. But you didn't see me until Lieutenant Wigbels called your attention to it?

A. Lieutenant Wigbels called my attention to it.

Q. You didn't know it until then?

A. As I remember, - I don't believe I noticed it until my attention was called.

Q. How far away from the office was I when you called me back?

A. As I remember, I sent someone on after you; you were just going out of the door. I called and you did not come back, and I sent someone after you.

Q. Have you any evidence that I heard your call?

A. I have not.

Q. Do you think that I heard it?

A. I don't know.

Q. You testify that when you called me back and questioned why I laughed, that I said, "I guess I can laugh any time I please"?

A. Words to that effect.

Q. Is it not true that I said I was not laughing at anything in particular?

A. It was, as I said, words to that effect, which I considered back talk.

Q. Well, you asked me a question and I had answered it. I had to give you some answer, and my answer was that I was not laughing at anything in particular. Do you remember that to be the fact?

A. Which I considered to insubordinate.

Q. You considered it insubordination for me to answer your question?

A. In the manner that you answered it.

Q. You considered it insubordinate for me to state the truth in the matter, that I was not laughing at anything in particular?

A. In the manner that you answered it.

Q. Didn't I also add that I always smiled as I passed my comrades,- I was passing by there and I merely smiled at them?

A. I don't remember such a remark.

Q. You don't remember that?

A. No.

Q. Did you talk in loud or angry tones when addressing me?

A. I did, after I found that you would not keep still,- probably said "shut up".

Q. Do you deny that you told me to shut up half a dozen times every time I started to answer your question?

A. After I had ordered you to leave the room you insisted on talking, and after asking you to keep quiet I did, probably once or twice, tell you to shut up.

Q. But do you deny that you told me to shut up when I started to answer the question that you put to me?

A. As I remember, the question was answered in an insubordinate manner, and I told you to keep still and to leave the room without laughing, and without saying a word, which you failed to do, insisting on making some kind of remarks which I considered uncalled for at that time.

Q. Did I make remarks, or ask you a question?

A. I don't remember.

Q. As I left the room did I laugh in audible tones, or merely smile?

A. I wouldn't say that you made any great noise. You were laughing.

Q. You would say that I made some noise?

A. I wouldn't say that you made any noise.

Q. Then it wasn't laughing, or do you insist that it was laughing, or merely smiling?

A. It might have been either. I considered it laughing.

Q. But there was no noise?

A. I don't remember whether there was or not.

Q. Do you remember positively that there was?

A. I don't remember.

Q. Do you remember positively that there was not?

PROSECUTION: He stated that he didn't remember.

ACCUSED: That is all.

Questions by Prosecution.✓

Q. Your orders to him to keep still that you have testified about, was that before or after you had ordered him to leave the room the first time?

A. As I remember, that was after I had called him back and he insisted on talking back to me in an insubordinate manner.

Questions by Defense.✓

Q. You stated in your former testimony that I answered these questions and then stood there and talked back to you and insisted on making a statement and would not leave the room, a statement that you did not want to hear, and in the redirect examination you stated, as you remember it, those remarks were made the second time you called me in. I would ask you to state to the court just when this happened; the first or the second time.

A. As I remember, it happened both times.

Q. Well, if it happened the first time, why was it that you did not place me under arrest at that time, in place of waiting until you called me back the second time?

A. I placed you under arrest after I was sure, or felt sure that you were trying to make a monkey of me before the other enlisted

men present.

Q. Will you state to the court what you mean by "trying to make a monkey" of you?

A. By stalking out of the room, laughing, after I had questioned you.

Q. Well, it required me doing that two times, did it, in order to give you sufficient reason to put me under arrest?

A. I saw fit to put you under arrest after it happened the second time; I felt more sure of myself.

Q. Do you remember my telling you that I did not consider you my superior officer?

A. I do not; I remember you made some remarks.

Q. Did you read that letter that I had written to Lieutenant Wigbels, that he took up to Colonel Newman's office, and as a sequence of which you apparently were prompted to call me in and question me, wherein I told him that I was not subject to military authority?

A. I had seen that letter, but I had not read it. Lieutenant Wigbels spoke to me about the letter and showed it to me, but I had not read it.

Q. Did he tell you of that part where I claimed I was not under military jurisdiction?

A. I don't remember.

(Witness excused.)

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FIRST LIEUTENANT LAWRENCE G. WIGBELS, Inf. N. A., 163rd Depot Brigade, a witness for the Prosecution, was sworn and testified as follows:

Questions by Prosecution.

Q. State your name, rank and organization.

A. Lawrence G. Wigbels, First Lieutenant, Infantry, National Army, 163rd Depot Brigade.

Q. Do you know the accused; if so, state who he is.

A. I know the accused as Benjamin J. Salmon.

Q. I will ask you to state whether or not you were present when Captain Jackson R. Day, 163rd Depot Brigade, had a conversation with the accused on July 6th, 1918.

A. I was.

Q. You may state to the court what the attitude and general demeanor of the witness was at that time toward Captain Day.

A. While in the office it was with the same standing and bearing that happened on one or two other occasions,- what I mean - "Here I am. What are you going to do about it?"

Q. I will ask you to state what happened that you saw, when Captain Day ordered the accused to leave the room.

A. He left the room and when reaching the door,- he went up to the door and pushed the door open, and there his face spread with a smile, and I called Captain Day's attention to it.

Q. What occurred then?

A. Captain Day immediately called him back; also called to one of the men to stop him and get him back. More words followed, and on the way to the door, when they were outside of the door, I didn't quite catch that argument, because I had other work to attend to, and so forth, but there was argument; first stopped on the step and I heard the remark, "You will pay for this; you will be sorry for this." Then I got up and looked out the window which faces towards the guard house, and I saw him on the ^{W^m}north side and the captain on the south side.

Q. You may state, if you know, who it was said, "You will be sorry for this."

A. Benjamin J. Salmon.

Questions by Defense. ✓

Q. Did I give any evidence of defiance, or was that merely your opinion, that I stood with my arms folded, as much as to say,

"Here I am; what are you going to do about it?"

A. That has been your character ever since you came here.

Q. That doesn't answer my question.

A. That was the attitude you gave in the office. You first leaned on the desk, or on the table. Captain Day asked you to stand up and stand at attention. You folded your arms. He asked you a question and every question he asked you, you tried to evade. One of the questions was, "What is your age?" You answered. "What religion?" You answered. "Are you a Socialist?" "That all depends." He asked you if you were an I. W. W. You said "no". Something about a red Socialistic card, was one of the other questions.

Q. I answered this?

A. You said yes, you had a red Socialistic card.

Q. And you considered my answer to his question if I was a Socialist, that it depended upon what he meant by a Socialist, - you considered that as trying to evade the question?

A. There were other questions. You wanted to explain your case, and it wasn't to be gone into.

Q. Are you acquainted with the fact that at Camp Funston it is the rule that prisoners shall fold their arms when they stand at attention?

A. You weren't a prisoner at the time.

Q. I was still a prisoner and had just been transferred to this camp.

A. You weren't a prisoner; you were not received by me under guard.

Q. I was brought here under guard; the train was guarded all the way, and I was turned over to you, and I was a prisoner.

A. You were delivered to me with 161 men that the sergeant received at the mustering office.

Q. I was a prisoner in the detention camp and sent to you as a prisoner.

PROSECUTION: You are not questioning the witness.✓

Q. Will you tell the court if you know whether or not it is the custom at Camp Funston and in fact is contained in the army regulations that a prisoner shall fold his arms when standing at attention?

A. I don't know anything about Camp Funston; it is provided that general prisoners will stand at attention with their arms folded.

Q. Do you know that I consider myself a general prisoner?

A. I do not.

Q. When he told me that wasn't the way to stand at attention, didn't I put my arms down to my side the way I was directed?

A. If I remember rightly, you dropped them; yes.

Q. After he asked me if I carried the Socialist red card and I told him "yes", was there any further conversation?

A. He made the remark that that was all.

Q. Did I leave the room?

A. You left the room.

Q. Then I answered all of his questions on that first visit and after he told me that was all, I left the room?

A. You left the room.

Q. There was no evidence of any defiance, aside from your opinion as to what my demeanor might be when I was in there the first time?

A. It was very marked.

Q. Will you state in which way it was marked?

A. Holding your head up and walking out, and peering sideways; the attitude was such that it prompted me to call his attention to it.

Q. Do you think you possibly could be mistaken about just what the nature of my attitude was?

A. Absolutely not. On the morning of the, - if the court pleases -

ACCUSED: I will object to any reference to any other matter.✓

WITNESS: All right.✓

Q. You were viewing my conduct,- you had in mind other incidents that had occurred which you considered evidence of defiance, did you not?

A. What other incidents?

Q. I am not speaking of what they are, but is it not a fact that you were dwelling upon such thoughts at the time?

A. I don't know to what you allude.

Q. You just started to tell about on a certain morning.

A. You ruled that morning out.

Q. And yet you had that in mind? Would you answer that "yes" or "no"?

A. What question do you want me to answer?

Q. That you had some particular morning in mind, some particular conduct in mind when you sized up my disposition on this particular morning that is now under discussion.

A. So far as I can see, it has been your bearing in everything.

PRESIDENT: I don't think that answers the question.

PROSECUTION: His question was, did you have in mind previous conduct of his at the time you were watching his conduct with Captain Day.

A. I will state that it was the first time he had come to that office, and if it was any other man that same remark would apply, that that is the way he left that office.

PRESIDENT: (Addressing accused) Do you consider that an answer?

ACCUSED: No sir, that is not an answer to the question.

WITNESS: He wants me to say that I was using the morning or two occasions -

PRESIDENT: He wants to know whether you based your opinion on any previous conduct.

Q. No, it is not; it had been his first appearance before me.

In considering anything about the man, as I said before, his manner in leaving the office was such that it caused me to call Captain Day's attention to it.

Q. Is it not a fact that you were somewhat prejudiced towards me as a result of this incident that you had in mind?

A. Prejudiced? No.

Q. Did you receive a letter from me that morning, stating to you that I was not under military jurisdiction and that whatever orders I obeyed, would be obeyed merely for the purpose of making myself as agreeable as possible?

A. I have a few pages of Y. M. C. A. paper to that effect; whether it was that morning I don't know; it was one of the mornings prior to that.

Questions by Court.

Q. Was this man present on the morning of the execution of the colored men?

A. He was.

Q. Is he the man that stood up in the back and raised a good deal of a rumpus?

MEMBER: I object.

The question was withdrawn by the member asking it.

(Witness excused.)

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RECRUIT DANIEL N. SCHROCK, Provisional Detachment, 163rd Depot Brigade, a witness for the Prosecution, was affirmed^{BY ME} and testified as follows:

Questions by Prosecution.

Q. You may state your name.

A. Daniel N. Schrock.

Q. You are a member of the provisional detachment, 163rd Depot Brigade,- conscientious objectors?

A. Yes sir.

Q. Do you know the accused, here, and if so, state who he is.

A. Sir?

Q. Do you know the accused here; if so, state who he is,-
this man (indicating accused); do you know this man,- look at him.

A. Yes sir.

Q. What is his name?

A. Salmon.

(Exhibit "2" marked for identification.)

Q. I hand you Prosecution's Exhibit "2" and ask you to look
at that. You may state whether or not you remember the accused,
Benjamin J. Salmon, handing you a copy similar to that.

A. Well, I think this is the one; it was about the size of
this; in fact I never did read the letter. After he did hand it
to me I just put it in my suitcase and then they came over the
next day or two days after and got my stuff and I never did get
to read it,- so I couldn't - I think it must be, though, the
same thing; it is the same size, and I remember of seeing his
name down on the bottom.

Q. State the circumstances under which he handed you that
printed paper with his name signed to it. Do you remember how
he happened to hand it to you,- where he was?

A. I happened to go by where he was on my way to go out of
the building, and I just happened to see that he had a paper there.

Q. What was he doing with the paper?

A. Well, he had it there,- anyway, I heard somebody said
about a letter to Wilson, so I looked around and he seen me and
he said, "yes, Shhrock, I want you to have one of these" or "I want
to give you one of these." I don't remember exactly the words.
I said, "Yes, I will take one of them." Just because it is a
letter written to Wilson I thought I would like to know just what
it was. I wasn't interested enough, that I never did read the
letter.

Q. You may state whether or not the accused stated to you it

was a letter written to President Wilson.

A. Sir?

Q. You may state whether or not the accused said to you at that time whether it was a letter to President Wilson.

A. Yes, I think he did; anyway, I know that him or someone said there it was a letter he had written to Wilson; him or someone said.

Q. Were you in a crowd, or did he call you over, which?

A. No sir; I just happened to come by there.

Q. Were you at that time a member of the provisional detachment of conscientious objectors?

A. Yes sir.

Q. You never read the letter?

A. No sir.

Questions by Defense. ✓

Q. About how long have we known each other down at the detention camp and up here, up to the time this happened?

A. Well, I knowed you right soon after you came there. I am this way, to know a person and not know his name or remember his name, and I knowed you, seen you right soon after you came there, and I talked with you a few times; in fact I wasn't in the same tent with you, that you was; I didn't know you.

Q. You never would take up any work at Camp Funston when Captain Kintz used to call on us to take up non-combatant work?

A. No sir.

Q. Did you make a trip over the hills one day to a certain spring in company with a few other conscientious objectors, and in our conversation let it be known to me that you were a religious objector to participating in any war work of any kind, and tell me that you had been sorry that you ever did any work and you gave it up afterwards?

A. I don't remember, now.

Q. Do you remember, on the morning of July 5th, that you were standing in line and the sergeant ordered "Right, dress!" and you refused to put up your left arm; you refused to turn your head, and you told them your reason for refusing was that you were determined not to do anything that savored of militarism; do you remember that incident?

A. Well, I don't know that I refused to turn my head.

Q. Do you remember refusing to put up your arm?

PROSECUTION: The witness need not answer any questions that tend to incriminate him.✓

ACCUSED: I am asking this question for the purpose of showing that this man is a bona fide objector to war and could not be moved by any literature I might give him.

PROSECUTION: He does not have to answer any questions that might incriminate him.✓

ACCUSED: It is not my intention to incriminate the witness.

Q. Would you answer the last question I put to you?

A. What was it, please?

Q. About your refusal to do anything of the nature of war work, even so much as put up your left arm when ordered by a military officer to do it.

PROSECUTION: The Judge Advocate warns the witness that he doesn't have to answer that question.

A. I didn't feel right in doing it; they never asked me to do it since.

Q. Then you are pretty thorough in your religious convictions not to take part in war?

A. Absolutely.

Q. And isn't it a fact that I was acquainted, from our conversation here and down at Camp Funston, with these facts?

A. I couldn't say much about that.

Q. What church do you belong to?

A. Mennonite.

Q. Do you remember me telling you that I was going to give you a copy of the letter that I wrote Wilson, that I wrote to President Wilson, in explanation of the fact why I registered but would not answer the questionnaire, and that I didn't want you to distribute this letter around or let others see it?

A. No, the first I remember,- that I can remember of this letter was one Sunday over here in that building; the first that I ever thought about it, that I can remember, now.

Q. Do you remember my telling you down at Camp Funston that I was going to give you a copy of that; I didn't show you the letter, but in a conversation we had down at Camp Funston as to why I refused to answer the questionnaire, but didn't refuse to register, I told you I would sometime give you a copy of the letter I wrote in explanation of that decision?

A. I remember you talking about it, but I couldn't say now you were going to give me a letter, but I believe you did say something to me at that time about that.

Q. Do you remember my making it clear to you at that time that when I would give you this letter it was not for the purpose of influencing you in your position, but merely for the purpose of throwing light upon the subject as to why I didn't answer the questionnaire, but did register?

A. I don't remember now, saying anything about the letter, that I can think of now.

Q. Would it be possible for me to give you any anti-war literature of any nature that would influence you to refuse to accept any kind of service in the army?

A. Absolutely not.

Q. Your position is so determined that it would be impossible to do that?

A. Yes sir.

Q. Would it be possible for me to give you any literature of any kind that would in any way increase your determination not to

be what is termed, among military men, as "loyal" to this country in the present crisis?

A. I don't know that I got that all.

Q. They have me charged with giving you literature that would tend to induce insubordination and disloyalty.

(Addressing Court) ACCUSED: Now, if it please the court, the point I am trying to make is, that there is not any literature that I could distribute and hand to people of this man's mental calibre that would have the slightest effect upon them one way or the other.

PROSECUTION: That wouldn't be your fault.

ACCUSED: But I knew who I was giving this to.

PROSECUTION: The witness stated that you couldn't influence him.

Q. Do you remember that I was careful who I gave that letter to?

A. No, I don't; I couldn't say about that; the first I ever remember of this letter was when I came along there; that is the first time I remember.

Q. Isn't it likely that if I were distributing them promiscuously that other members in our company would have said something to you about it?

PROSECUTION: That is calling for an opinion, Salmon,- you know better than that. I don't want to have to object,- will you withdraw that question?✓

ACCUSED: Yes; surely I will.✓

WITNESS: I absolutely don't remember anything now about this letter until I came by there and just happened to see you there; if I did see anything before I don't remember anything of it.✓

(Witness excused.)

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RECRUIT JOHN M. WALDNER, Provisional Detachment, 163rd Depot Brigade, a witness for the Prosecution, was affirmed and testified as follows:

Questions by Prosecution.

Q. You may state your name,- don't be frightened; just speak up so these people can hear you.

A. "State",- what you mean?

Q. Give your name.

A. My name?

Q. Yes.

A. John M. Waldner.

Q. You are a member of the Provisional Detachment of conscientious objectors down here in Camp Dodge? Are you now down in the conscientious objectors here in Camp Dodge?

A. Yes.

Q. Do you know the accused,- this man here?

A. No, I don't know him - I didn't know him.

Q. I hand you Prosecution's Exhibit "2" - look at this - and ask you to state whether or not the person sitting here gave you one of those.

A. You asked me if he gave me one?

Q. Yes.

A. Yes.

Q. You may state whether or not he read it to you.

A. Well, part of it, I think.

Q. Where were you at the time that he read it?

A. Well, I was in a house there.

Q. You may say whether or not there were others present at that time,- others there.

A. Well, I can't tell you, sir.

Q. Do you remember him reading it to you, do you?

A. Part of it, yes.

Questions by Defense.

Q. What church do you belong to?

A. Hutterite Brothers.

Q. How long were you at Camp Funston with our company before coming up here?

A. Not very long; about two days, I think, or three,- about two days.

Q. Were you in the tent, in the Hutterite Brothers tent the night that ^{from} some of them asked me for this letter and I told them I would give them a copy at some time?

A. No, I don't remember.

Q. You don't remember that?

A. No, I don't think I was there; no sir, I don't; maybe I wasn't there then when you told them that,- I don't know.

Q. Were you present the day Zachariah Hoeffler - you know him, do you not?

A. Yes.

Q. Did Zachariah Hoeffler say,- explain to me that the Hutterite Brothers will not take part in war in any form; would not even do any work around camp; wouldn't help in the kitchen?

A. I am sure I don't know; I wasn't there when he said that, or talked to you? You mean?

Q. Yes sir.

A. I don't remember.

Q. In the Hutterite tent?

A. I don't remember.

Q. The Hutterites have refused to take part in war in any form, right along, haven't they?

A. Yes.

Q. You won't work in a kitchen?

A. Can't do it.

Q. You ^{from} won't drill?

A. No sir.

Q. Is it not a fact that the Hutterites down at Camp Funston refused, - they were so determined in their position to have nothing to do with war that they even refused to go out and march under one of the officers on a hike?

A. Well, I don't know; I wasn't there at that time.

Q. You weren't there?

A. You mean out on a hike?

Q. Yes.

A. I think they refused it, but I wasn't there when they went on a hike. I wasn't there; I just came there lately.

Q. You heard them talking about it?

A. Yes, I think so.

Q. Could I make your position against taking part in war any firmer by distributing literature?

A. Well, I don't want to go in any more cases than I don't have to. The lieutenant - the Captain Day told me to come up and just say that I got this letter, and that is all I came up for.

Q. When did he tell you that?

A. The other day when he asked me if I got that letter, or that one.

Questions by Prosecution.

Q. Captain Day asked you if you had gotten one of those letters?

A. Yes sir.

Q. What did you tell him?

A. I told him I got one.

Q. That is when he told you to come up here and say you had it?

A. Yes sir.

PRESIDENT: There was a question asked by the accused that was not answered by the witness. The reporter will read it.

The question was then repeated by the reporter, as follows:

"Q. Could I make your position against taking part in war any firmer by distributing literature?"

PROSECUTION: (Addressing accused) Do you wish that question answered?

ACCUSED: I would like to have him answer.

PROSECUTION: (Addressing witness) Do you understand what he means? He wants to know if giving you a letter like this could make you any firmer in your stand.

A. Any firmer in my stand?

Q. Not to take service in the Army.

A. Well, this letter don't.

(Witness excused.)

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CAPTAIN ADAM RICHMOND, 163rd Depot Brigade, a witness for the Prosecution, was sworn and testified as follows:

Questions by Prosecution.

Q. State your name, rank and organization.

A. Adam Richmond, Captain, Infantry Reserve Corps, 163rd Depot Brigade.

Q. Do you know the accused; if so, state who he is.

A. Benjamin J. Salmon.

Q. I hand you Prosecution's Exhibit "2", and ask you to state what that is, if you know.

A. This is a printed copy of a letter purporting to have been written by Ben J. Salmon to the President of the United States, under date of June 5th, 1917.

Q. You may state whether or not you ever had any conversation with the accused in regard to this letter.

A. At the time Captain Oseth investigated the present charges, the accused, after having been warned of his privilege not to testify to anything, made the statement that he had handed this to several men in the Provisional Detachment.

Questions by Defense.✓

Q. Didn't I also tell you in the course of that investigation that the men to whom I handed them were so determined in their position not to take part in war in any form that I could not influence them?

A. I think you did; it was your own opinion, though.

Q. But it was an opinion based upon my knowledge of those men after associating with them for five weeks.

A. You have associated with men longer than that here, and haven't been able to change their views.

(Witness excused.)

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PROSECUTION: The Prosecution offers in evidence Exhibit "2", being copy of a letter by the accused.

(No objection was made by defense.)✓


The paper was then received in evidence and is appended, marked Exhibit "2".

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PROSECUTION: The Prosecution rests.✓

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The court then, at 12:08 o'clock A. M., July 25th, 1918, adjourned to meet at 7:15 o'clock P. M. on July 26th, 1918.



First Lieutenant, 163rd Depot Brigade,
Judge Advocate.

The Court met,✓ pursuant to adjournment,✓ at seven-fifteen o'clock P. M.✓

PRESENT:

All the members of the court,✓ the judge advocate,✓ the assistant judge advocate,✓ and the additional assistant judge advocate.✓

The accused,✓ and the reporter were also present.✓

The proceedings of the previous day were not required to be read.✓

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PROSECUTION: The Judge Advocate will explain to the accused that he may at this time make an opening statement of what he expects to prove in his defense.✓

ACCUSED: I want to inquire if I may, at this time, challenge the prejudice of one of the members of this court. I would like to ask the president of the court if he would inform me which one of the members it was who spoke of the hanging incident,- who inquired of Lieutenant Wigbels if I was the man who raised a rumpus down at the hanging.✓

PROSECUTION: Lieutenant Townley. Do you challenge him?✓

ACCUSED: I do challenge him, for prejudice. I would like to state my reasons for challenging him;-if it is in order I want to inquire of Lieutenant Townley if, because of that incident or anything you know in connection with it, you would be prejudiced against me in the course of this proceeding?

LIEUTENANT TOWNLEY: Not at all.✓

ACCUSED: The manner in which Lieutenant Townley addressed Lieutenant Wigbels the other night, caused me to believe that he was prejudiced, when he wanted to know if I was the man who raised all of the rumpus down there. There was no rumpus raised; I merely asked Lieutenant Wigbels a question, a question of personal privilege, which was denied. No rumpus of any kind.

PRESIDENT: (Addressing accused) Do you wish the member sworn to answer the question, or did you just merely wish to ask him that and get his answer?

ACCUSED: I merely wished to ask him that and to get his answer; if he believes, conscientiously, that it will not prejudice him in any way, I don't want to make any objection. I will allow the challenge to stand, because of his attitude. I challenge him for cause. ✓

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The Court was closed ✓ and on being opened ✓ the President announced, in the presence of the accused, ✓ that the challenge was not sustained. ✓

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ACCUSED: I want, at this time, to make a motion that the case against me be dismissed because of lack of evidence, and if it will be in order I would like to state the reasons for making such a motion.

PROSECUTION: There is no such procedure, sir, I am sure, in courts-martial. ✓

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ACCUSED: Could we introduce the witnesses at this time? I would rather, as far as I am concerned, follow the usual procedure, but if it won't make any difference in the correct order to excuse these witnesses, I would defer making my statement.

PRESIDENT: You may call the witnesses to testify, or go on the stand and make a statement; you may go ahead with the witnesses, unless you want to make a preliminary statement. ✓

ACCUSED: The statement I would make would be very brief, - merely to state that I expect to show, expect to prove that I did not desert the service of the United States as charged, and that I was not duly drafted. These papers are all mixed up, due to the fact that at somebody's orders my papers were taken away from me this evening when I was gone to supper; when I came back, all my

papers, books, and so forth, were gone; I had trouble getting them back -

PRESIDENT: You have all the papers you require, haven't you?

ACCUSED: I have, as far as I know. Captain Day was up to see me just a little while before supper, and then I went down to supper and left everything on my bed; I don't connect him with it, except he was there; I don't know whether he was there or not.

I will prove that I was not duly drafted into the military service of the United States, as is charged in Specification 1 of Charge 1; nor did I desert the service of the United States; nor did I remain absent in desertion, because I had never deserted. As to Specification 1 of Charge 2, I will prove by witnesses and by my own testimony, under oath, that I did not behave myself with disrespect toward Captain Jackson R. Day on the date mentioned in the charge sheet, and I will also prove that he was not my superior officer, and if he was such an officer I did not know of the fact, and I do not know it as yet. However, I did not behave myself with disrespect, notwithstanding the fact that I did not consider him as my superior officer, nor did I contemptuously leave him, after speaking and smiling and laughing in a cynical manner in the presence of other enlisted men who were standing near by, as is charged in this charge sheet. I will prove that by witnesses and by a deposition I have from one of the witnesses who has left here, and also by my own testimony, under oath. Regarding Specification 1 of Charge 3, I will prove that the printed matter that I am alleged to have distributed did not tend to influence the members to refuse to accept any kind of service; nor did it tend to induce insubordination and disloyalty among said members to the prejudice of good order and military discipline. And, concerning all of these charges, I will prove that I am not subject to be charged by any of them, because I am not subject to military law.

I have made several unsuccessful attempts to interview my witnesses before the trial. Every Officer of the Day that I tried

to get permission from would not grant it. I would like to have a few minutes time. Each time I was taken over there I hurried back; in fact, I didn't get the names of all the witnesses that I wanted.

PRESIDENT: How long do you think it would take; that is, just roughly?
^{RSM}

ACCUSED: Well, there are several witnesses, and I don't believe that it would require more than fifteen minutes,- perhaps not more than ten.

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The court then took a recess until eight o'clock P. M., at which hour the members of the court, the judge advocate, the assistant judge advocate, the additional assistant judge advocate, the accused, and the reporter, resumed their seats.

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CAPTAIN ADAM RICHMOND, Inf. R. C., 163rd Depot Brigade, a witness recalled on behalf of the Defense, was duly reminded by the Judge Advocate that he was still under oath, and testified as follows:

Questions by Prosecution.

Q. State your name, rank and organization.

A. Adam Richmond, Captain, Infantry Reserve Corps, 163rd Depot Brigade.

Q. Do you know the accused; if so, state who he is.

A. Benjamin J. Salmon.

Questions by Defense.

Q. Do you remember calling me to the office of Lieutenant Wigbels on July 5th?

A. Yes.

Q. Lieutenant Wigbels was present?

A. Yes.

Q. Would you please tell the court what you told me concerning

my case that had been heard the day previous by this special board?

A. In what way?

Q. Do you remember telling me that if I behaved myself that case would be settled favorably to me in about two weeks?

A. What case do you mean? Are you referring to desertion?

Q. Yes sir.

A. I had nothing to do with the desertion; I had no authority to remove any charges at that time. You appeared before the board for the purpose of determining whether you were a bona fide conscientious objector, and what disposition would be made of your case. I told you that your case, so far as - at least, that is what I meant, - so far as it concerned your religious scruples against combatant service or noncombatant service, would be decided by that board; that that board was the final board passing on the question; that those recommendations were submitted to Washington and that no doubt we would hear within two weeks or so what disposition would be made of your case. In regard to your desertion charge, the complete file was handed to me July 3rd by Captain Kintz; it was quite a voluminous file and I had considerable work in arranging the new conscientious objectors who had been brought from Camp Funston to appear before the board, and when I saw you July 5th I had no time to go over in detail the file that was submitted to me, so that I was not as familiar with your case at that time as I was later.

Q. Why did you tell me, in response to an interrogatory, that you were familiar with the status of my case?

A. So far as the jurisdiction was concerned, I was, up to the time that you were charged with desertion by the authority at Camp Funston. Why they didn't try you there I cannot tell.

Q. Then you were not thoroughly familiar with the case, as you had told me in response to my query?

A. I didn't say that I did tell you that.

Q. What did you tell me, in response to my query?

A. What was your query?

Q. I asked you if you were thoroughly familiar with the status of my case.

A. I didn't think you did.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.

(Witness excused.)

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PROSECUTION: (Addressing accused) The Judge Advocate will admit that he served the charge sheet on July 17th.

- - - - -

RECRUIT LOREN ADAMSON, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was affirmed and testified as follows:

Questions by Prosecution.

Q. State your name.

A. Loren Adamson.

Q. You are a member of the 163rd Depot Brigade, provisional detachment?

A. Yes sir.

Q. Do you know the accused?

A. Yes sir.

Q. If so, state who he is.

A. Ben Salmon.

Questions by Defense.

Q. Will you state to the court where you reside, as it were, at this time?

A. The guard house, 163rd Depot Brigade.

Q. When were you put in the guard house?

A. The 22nd day of May; on or about that date.

Q. Have you been there continuously since that time?

A. There was about a day that I was out from nine o'clock one day until about seven or eight the next day.

Q. Why did they put you in the guard house?

A. Because I refused to obey military orders, and to take the uniform.

Q. Did you ever receive a charge sheet?

A. Yes sir.

Q. That you would be tried by general court-martial?

A. Yes sir.

Q. On what date?

A. On June 3rd; on or about June 3rd.

Q. Do you know of any others in the guard house that received a notice about that time?

A. Yes sir, there were three others, I think that day, that received, and there were others later.

Q. With the same charge?

A. Yes sir.

Q. Were any of you ever tried?

A. There was one that received a charge sheet the same day that I did, that was tried, and the rest of them were not.

Q. What was his name?

A. Guy Little.

Q. He was charged with the same thing?

A. I don't know whether his,- I think his was just the same as mine, exactly; I am pretty sure it was.

Q. What date was he tried?

A. I can't say as to that.

Q. What became of the charge sheet,- your charge sheet?

A. They came and took it.

Q. When did they take it?

A. About June 3rd.

MEMBER: I object to that line of questioning; it has no bearing

on the case whatever; we are not trying this man, or any other man except the accused.

ACCUSED: The reason I have questioned the witness along these lines is, to show that the authorities here at Camp Dodge have recognized President Wilson's order concerning religious and conscientious objectors to war in several different instances, but they have not recognized it in mine, and the reason they have not recognized it in mine I will bring out later on.

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The Court was closed and on being opened the President announced in the presence of the accused that the objection was sustained.

- - - - -

Q. I want to ask you a question; it is your privilege not to answer if you do not wish to answer it. Do you know of any manifestations of prejudice or ill-feeling toward conscientious objectors on the part of Captain Day, Captain Jackson R. Day?

PROSECUTION: Objected to as calling for the opinion and conclusion of the witness.

ACCUSED: It has a bearing on the evidence that I am bringing out. I would like to state the reason I wish to present this testimony is because Captain Day has on numerous instances -

PROSECUTION: Now don't go to testifying.

- - - - -

ACCUSED: ^{From} I am trying, without giving evidence, to show why I called this witness to testify in the matter. Captain Day has exhibited such manifestations as I put in the question, and I am endeavoring to show that it is due to this that he has brought these charges against me. I will connect that later on if I am allowed to do it; that is the object in offering this testimony; it is only by bringing in other witnesses that I can prove the point that I am trying to prove.

The Court was closed and on being opened the President announced in the presence of the accused that the objection was not sustained.

The question was then repeated:

"Q. I want to ask you a question; it is your privilege not to answer if you do not wish to answer it. Do you know of any manifestations of prejudice or ill-feeling toward conscientious objectors on the part of Captain Day, Captain Jackson R. Day?"

A. Am I supposed to answer now?

PRESIDENT: Yes.

A. I do not care to answer the question at all.

PRESIDENT: On the ground that it might tend to incriminate you?

A. Yes sir, I don't care to have anything to say about that.

ACCUSED: That being the case I cannot ask him the questions that I wanted to in order to have the evidence brought out; that will close my questioning; if he has refused to answer this he would refuse to answer any questions concerning particular instances.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.

(Witness excused.)

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RECRUIT JAMES ALLISON HULL, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was affirmed and testified as follows:

Questions by Prosecution.

Q. State your name.

A. James Allison Hull.

Q. You are a member of the Provisional Detachment, 163rd Depot Brigade?

A. Yes.

Q. Do you know the accused; if so, state who he is.

A. His name is Salmon; I don't know his first name; I think it is Benjamin.

Questions by Defense.

Q. Do you remember a conversation that took place on or about the 17th of June at Camp Funston, Kansas, between five conscientious objectors and Captain Kintz, during the course of which he made a certain statement to me concerning my case that was then pending before the judge advocate's office on a charge of desertion?

A. Yes sir; he referred to the case when we were at the Captain's tent, I believe.

Q. Could you tell the court, in substance, what the captain said to me concerning that case?

PROSECUTION: I object to the testimony as irrelevant and immaterial, hearsay, opinion stated out of court, and having no bearing on the present charges against the accused.

ACCUSED: The purpose of this testimony is to show by different witnesses who were present at that particular incident, that Captain Kintz, the commander of the detention camp at Camp Funston, who was a member of the court-martial that was going to try me for desertion, told me on this particular occasion, gave certain evidence that I suppose I am not allowed at this time to mention, but I have tried to have Captain Kintz here as a witness, and it was denied by the judge advocate for grounds which he deemed sufficient, and as I could not have Captain Kintz himself, I thought I would be permitted to introduce this testimony by these witnesses. It has a particular bearing on my case in this respect: the Camp Funston authorities recognized they had no jurisdiction and dismissed the proceedings against me.

PROSECUTION: Now, if the court please, any statement made by any officer at the time the witness is asked to testify to would be simply a matter of opinion of that officer who made the statement. The witness misstates the facts when he says that the Camp Funston authorities dismissed the charges. They ordered the charges returned,

and it could be tried any time within a year. Nobody had any authority to dismiss those charges and they never were dismissed, and the testimony that the accused offers at this time by this witness is a statement made by an officer as to what his opinion was of the charges at that time, and is certainly opinion evidence and clearly inadmissible, both as to materiality and relevancy, and certainly as being the opinion of the man and nothing more than that. The Judge Advocate renews his objection. Even if the witness were himself here, his opinion would be nothing but his opinion as to whether those charges should be sustained, and would not be relevant as evidence before this court.✓

ACCUSED: I want to state, concerning that, his remarks that I could be tried any time within a year. I was continued in arrest; I should have been released. Those charges were dismissed, according to Captain Kintz. Now I don't know know anything more than his statement and he was a member of the court-martial, and if I was going to be tried any time within a year I could later be re-arrested, but I was continued in arrest, awaiting my transportation to this special board that was appointed by President Wilson.✓

The court was closed✓ and on being opened✓ the president announced in the presence of the accused✓ that the objection was sustained.✓

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Q. Do you know of any manifestations of prejudice or ill-feeling towards conscientious objectors, individually and as a group, in this camp, on the part of **Captain Jackson R. Day**?

A. No sir; as far as I am personally concerned I know of nothing that I would consider such.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.✓

(Witness excused.)

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RECRUIT LUTHER RUSSELL, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was affirmed and testified as follows:

Questions by Prosecution.

Q. State your name.

A. Luther Russell.

Q. You are a member of the 163rd Depot Brigade, provisional detachment?

A. Yes sir.

Q. Do you know the accused; if so, state who he is.

A. Mr. Salmon.

Questions by Defense.

Q. Do you know of any manifestations of prejudice or ill-feeling toward conscientious objectors individually or as a group, on the part of Captain Jackson R. Day?

A. I prefer not to answer that.

PRESIDENT: What is your reason; that it might tend to incriminate yourself?

WITNESS: Well, individually there has not been any evidence.

PRESIDENT: I am asking you your reason for not wanting to answer; you said you did not want to answer.

WITNESS: Well, because it is not strong that there has been - it hasn't been strong enough for me to testify, I suppose, individually.

PRESIDENT: Then you have really no objection to answering the question; by saying just what you have said, that in itself answers the question, doesn't it?

Q. I was asking concerning others in the camp, as well as yourself.

PROSECUTION: (Addressing witness) That would be from your own observation, however.

A. From my point of view, I couldn't answer that, except to the extent that he has been unfair to no greater extent than has any other army officer of a similar position whom I have been under.

Q. But he has been, as far as you know, unfair toward conscientious objectors?

A. You ask that in the form of a question?

Q. Yes sir; but you understand that I do not want to incriminate you; you do not have to answer these questions, if you feel it is getting too near a specific instance.

A. I can give a specific instance.

Q. As to what you know from observation and his general attitude?

A. No, - no.

(The last preceding question was read to witness by reporter.)

A. I can't give a specific example, I don't think.

Q. The knowledge you have, then, would be purely hearsay?

A. It would.

Q. Hearsay from among the conscientious objectors?

A. I think I could answer that definitely; yes sir.

Questions by Prosecution.

Q. Your feeling is that all the officers have been unfair, is it?

A. No, I couldn't say that, at all.

Questions by Court.

Q. You mean that all officers who have been in that same position; that he has acted the same as all other officers that have occupied the same position?

A. That he holds; yes sir.

(Witness excused.)

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RECRUIT ARTHUR A. ROGERS, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was sworn and testified as follows:

Questions by Prosecution.

Q. State your name.

A. Arthur A. Rogers.

Q. You are a member of the 163rd Depot Brigade, provisional detachment?

A. Yes.

Q. Do you know the accused; if so, state who he is.

A. Benjamin J. Salmon, I believe his name is.

Questions by Defense.

Q. Do you remember going with myself a few miles out of the detention camp on several occasions, not under guard?

A. Well, we went to the spring back over the hills every time.

Q. If I had had any desire to desert, would an opportunity there have been afforded me?

A. Yes sir.

Q. No guard of any kind anywhere near?

A. No sir.

Q. Could you state about how many times we went over there, just approximately?

A. Well, I believe eight times; seven or eight times; at least that many.

Q. Do you know of any specific instances of manifestations of prejudice or ill-feeling towards conscientious objectors on the part of Captain Jackson R. Day?

A. Any instances, you say?

Q. Yes sir.

A. In one instance about two weeks ago last Sunday, we were all called into one of the barracks there to sing two patriotic songs, and I don't see why we should have been called over there to sing those songs, because we hadn't showed any disloyalty or disloyal attitude towards this government in any way; in fact, none of the other officers seemed to have found out that we had, if we had. From the spirit or manifestations that other officers have shown towards us it seems as though that he does.

Q. Can you recollect any other exhibitions of hostility?

A. Well, I don't know that I could say that I can.

Q. Is your opinion made up from a general observation, or a number of instances that have come to your attention?

A. Well, from the number of instances that have come to my attention, I would say.

Q. Do you recollect any of those instances?

A. Well, I know once that he called the objectors all over in the barracks there and gave them a speech because they didn't watch the picture show; they all went out of the show while the show was going on; it wasn't a moving picture show, but it was a slide picture. Of course, for myself, I thought it was very instructive. Why they objected to it, I don't know. But he gave them quite a talk.

Q. Were you present at the talk?

A. Yes sir.

Q. Could you tell the court the nature of his conduct, - if he was severe or harsh?

A. Well, he asked nearly everyone why they objected to it, and then he promised to give them a lecture in the near future along the same lines along the picture, but of course he has not done that yet.

Q. Was there anything else that you know of?

A. No, that is the only instances that I could state.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS. ✓

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(Witness excused.)

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RECRUIT GEORGE S. KLASSEN, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was affirmed and testified as follows:

Questions by Prosecution.

Q. State your name.

A. George S. Klassen.

Q. You are a member of the conscientious objectors, provisional detachment, 163rd Depot Brigade?

A. Yes sir, I belong to that.

Q. Do you know the accused; if so, state who he is.

A. Yes sir.

Q. Who is he?

A. Salmon is his name.

Questions by Defense.

Q. Did you hear the ~~con~~^{con}versation between Captain Jackson R. Day and Benjamin J. Salmon on or about July 6th, 1918, which resulted in the arrest of the said Benjamin J. Salmon?

A. Sir, I heard part of it.

Q. Were Captain Day's words and actions, and the tone of his voice, such as would ordinarily anger one to whom he was speaking?

PROSECUTION: Without making objections, I would suggest to the witness that he do not ask leading questions.

ACCUSED: I will withdraw that question, then.

PROSECUTION: Ask it in another form.

Q. Will you please state to the court just what you heard, as nearly as you can recollect.

A. Well, sir, I was sitting on my bed in the lower squad room, and I was reading or writing, one of the two, and all at once I heard some loud talking in the orderly room, and I looked up and saw Salmon standing in the door, and I don't know what they were talking about, but just then I heard Captain Day say several times that he should shut up, and I couldn't understand very

well what Salmon said.

Q. Will you tell the court the tone of his voice, whether it was ordinary, or loud, or harsh, or whatever it was?

A. Well, I think it was rather loud,- harsh, I think, as much as I can tell.

Q. Did you see the defendant as he left the office to go out of the barracks?

A. Yes sir.

Q. What was the nature of his conduct?

A. Well, as he walked out, I saw him go straight ahead; he went to start several times; once he turned toward the crowd, and as he naturally does, I believe he always has a smile on his face; he always has among us boys; but I couldn't say whether he made a laugh, or more than that,- of course, I didn't pay much attention, but that is just what I -

Q. Did you see the defendant the second time he left Captain Day's office after he had been called back there?

A. Yes sir.

Q. The time he left with Captain Day?

A. Yes sir.

Q. Did you hear him say anything? Did you hear the defendant say anything?

A. I believe ^{RWM} he walked straight ahead of him. He said, "How ^{RWM} is this?",- as far as I could tell; it wasn't very loud, as if he was just speaking to the captain.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.✓

(Witness excused.)
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RECRUIT JOSEPH J. HOFER, Provisional Detachment, 163rd Depot Brigade, a witness for the Defense, was affirmed and testified as follows:

Questions by Prosecution.

Q. State your name.

A. My name is Joseph J. Hofer.

Q. You are a member of the Provisional Detachment of conscientious objectors, ^{RM} 163rd Depot Brigade, are you?

A. Yes sir.

Q. Do you know the accused; if so, state who he is.

A. I don't know him very well, sir.

Q. You have seen him down there?

A. Yes sir, I saw him down there.

Questions by Defense.

Q. Did you hear a conversation between Captain Jackson R. Day and Benjamin J. Salmon on or about July 6th, 1918, which resulted in the arrest of the said Benjamin J. Salmon?

A. Yes sir, I did, sir.

Q. Would you please tell the court about what you heard, as near as you can remember?

A. Well, I heard the captain call you back, and he told you that you shouldn't talk, you know,- you shouldn't talk; and just whatever he asked you, why, just say so, and then he said, "Will you shut up?" You said, "Yes." He said, "Shut up." And you didn't say anything. He said, "Will you shut up?" You said, "Yes". And he said that about five or six times, and the captain was pretty loud about it when he said it.

Q. Did you see the defendant after he left the office the first time;- do you remember how many times he went back to the office and left the office?

A. Well, he went out once and called you in.

Q. And did you see me the second time I left then with Captain Day?

A. Yes sir,- yes sir, I saw; he took you over to the door and then he asked you back again in the office, and he told you to make a straight face and walk out of his office, and he told you to shut up, and you said, "Yes sir, I will shut up," and I heard a talk in there,- I don't know what it was,- I couldn't understand.

Q. Could you hear him?

A. Yes, I could hear it all right, but I couldn't understand it all.

Q. Could you tell, from your hearing of the conversation, whether his tones were angry or ordinary tones?

A. Well, they were angry; I could tell that.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.✓

(Witness excused.)

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ACCUSED: I offer and read in evidence the deposition of Frank E. Harris, Recruit, Provisional Detachment of Conscientious Objectors✓

PROSECUTION: I will state to the court that the deposition is made out in due form and is sworn to before Charles R. Stafford, Trial Judge Advocate.✓

The deposition was then received in evidence, and is appended, marked Exhibit "3".✓

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FIRST LIEUTENANT JOSEPH J. MOORE✓, 163rd Depot Brigade, a witness for the Defense,✓ was sworn✓ and testified as follows:

Questions by Prosecution.

Q. State your name, rank and organization.

A. Joseph J. Moore, First Lieutenant, 163rd Depot Brigade.

Q. Do you know the accused; if so, state who he is.

A. I do; Benjamin J. Salmon.

Questions by Defense.

Q. Do you remember my being in your office about eight-thirty P. M. the night of July 11th?

A. Eight-thirty P. M.?

Q. At about that time.

A. I don't remember the time, no.

Q. It was eight-thirty. If you remember, I was in your office that evening, in the guard house office, and you asked me what I was put in the guard house for?

A. Was this in the evening?

Q. Yes sir.

A. No, I don't remember.

Q. Do you remember telling me why I was put in the guard house?

A. No, I don't remember.

Q. Is there any way you could refresh your memory on that particular incident?

A. The only time I remember you at that time in the evening, was, I gave you your ten cents back for the cake of soap, I remember you bringing me at that time of night; I gave you your dime back.

Q. You don't remember your conversation at that time?

A. No, I don't; I had several conversations with several prisoners; I don't remember distinctly anything about a conversation I had with you.

Q. Do you remember telling me that I was put in the guard house because of the disputation that I had with the captain over at the mess hall a few days previously?

A. No, I don't remember that I said you were put in the guard house for that reason, no.

Q. Do you remember saying anything about that?

A. Yes, I remember saying something about it.

Q. Do you remember asking me why I was put in the guard house?

A. No, I don't remember asking you why you were put in the guard house; I might have asked you what the charges were against you.

Q. But you don't remember telling me that I was put in the guard house for that reason?

A. No, I don't.

Q. Do you know, - if I may ask this question; if I cannot ask it I will withdraw it, - do you know of any conversation with your fellow officers concerning that particular incident?

A. The incident you had with Captain Griswold?

Q. Yes, - I don't know his name, but he is the captain of the -

A. Captain of Company 4.

Q. Yes sir.

A. Yes, I believe I do, concerning that incident; I was a member of the company at that time; I had that conversation after you left the barracks.

Q. Was anything said about putting me in the guard house for it?

A. Why, as I remember, Captain Griswold stated that if you didn't watch out he would put you in the guard house; I remember your answer was that you said he couldn't put you in the guard house, because you would take it up with Washington.

Q. Did I say he couldn't put me in the guard house because I would take it up at Washington, or did I say that if I were given any unfair treatment I would take it up at Washington?

A. I don't remember just what you said then about unfair treatment; you were arguing about the food in there and Captain Griswold, he said he would put you in the guard house if you didn't watch your step.

Q. Do you remember or know anything about the incident that led up to our conversation?

A. Between you and Captain Griswold?

Q. Yes sir.

A. Why, you had some complaint to make about food, and

marched in the orderly room and complained to him and it led to quite a hot discussion.

Q. Do you remember me telling him that I had been directed to him, directed to knock on his door?

A. I think I did hear you say that, yes.

Q. And did you see the cook, or whoever he was, on the outside, dressed in a white uniform, who was standing there and gave me that direction?

A. No, I didn't; there was the first sergeant and myself and Captain, and Lieutenant Graves, were the only ones that I saw there; I didn't see the cook.

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THE PROSECUTION DECLINED TO CROSS-EXAMINE THE WITNESS.✓

(Witness excused.)

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ACCUSED: Now, at this time, may I state that I wanted to have here as a witness, Captain F. J. Kintz? I want to avoid burdening the record, - didn't ^{I ask} mention that before?✓

PROSECUTION: Yes, - several times.

ACCUSED: I would like to have entered in the record that I requested to have Sergeant Roots of Camp Funston as a witness; I wanted him concerning my vaccination.

PROSECUTION: The Judge Advocate states that the witness stated to the Judge Advocate that he wished to call the sergeant to testify that he refused to be vaccinated at Camp Funston, and the Judge Advocate told the accused he didn't believe the testimony would be material, and refused to call the witness.✓

ACCUSED:✓ I would like, also, to have the record show that I tried to procure a copy of the Catholic weekly, that is named "America", - the issue of April 20th, published by the Jesuit Fathers in New York City; a copy of the publication was taken from me by Captain Day, and I tried to have it returned and he said he couldn't find it. I believe that he lost it accidentally. I

think he would have returned it to me if he had it, because he returned everything else but that. But there is a citation in that particular document that I am going to ask the court to allow me to read into the record. It is impossible for me to get the paper. I tried several times to go up to the Knights of Columbus building to procure a copy of it, and if I couldn't have gotten it there I could have telegraphed for a copy, but the Officer of the Day wouldn't allow me to go from the guard house. The citation is, that, "When conscience declares that the ordinances of God and the State conflict, God, rather than man, must be obeyed." The article is quite a long one, under the caption of "The Supremacy of Conscience", and written by one of the leading theologians in the Catholic Church, Father Fisher, a member of the Jesuit order, and it clearly substantiates my position, so far as honestly following the dictates of my conscience is concerned.

PROSECUTION: I would like to ask the accused if he is testifying at this time, or presenting his argument.

ACCUSED: I am not presenting my argument; I was merely stating what this article contained, as long as the article itself is not here.

PROSECUTION: You stated what the article contained, or the substance of it. Why you wanted to introduce it will come in your ^{RSM.} argument.

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PRESIDENT: (Addressing accused) Are there any other witnesses?

ACCUSED: No sir.

PRESIDENT: You, the accused, are informed that you have the right to testify in your own behalf, and, subject to cross-examination, offer any evidence in denial, in explanation, or in contradiction of the charges against you. If you do testify, your

testimony will be given the weight of evidence, the same as any other witness, and you may not be cross-examined beyond the field of your direct examination, except to test your credibility as a witness. You may also make an unsworn verbal or written statement to the court, which may consist of a brief summary or version of the evidence, with such explanation or allegation of motive, or matter of extenuation, and so forth, as you may desire to offer, or it may embrace with the facts a presentation, also, of the law of the case, and an argument both upon the fact and the law. Such statement is not testimony, and, therefore, is not subject to cross-examination, but as a personal defense or argument, however, it may be and properly should be taken into consideration by the court. You do not have to do either, and your failure to do either will not create any presumption against you. Do you fully understand all I have said to you?

ACCUSED: Yes sir.

PRESIDENT: Knowing these rights, do you now wish to testify and make a statement in your own behalf, or to do either?

ACCUSED: I wish to do both; first to testify, and afterwards to make a statement.

PRESIDENT: You wish to be sworn?

ACCUSED: Yes sir.

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THE ACCUSED, at his own request, was sworn and testified as follows:

Questions by Prosecution.

Q. You are Benjamin J. Salmon, the accused in this case?

A. Yes sir.

ACCUSED: Now, if I do not pursue this properly, if you will just inform me.

I wish to testify that, concerning Charge 1, Specification 1, desertion, I was illegally drafted into the service, illegally inducted. I did not answer the summons because it was unlawfully

drawn, did not state the facts, and if I had answered it I would thereby violate the jurisdiction of the Federal court of Colorado, and at the same time jeopardize the interests of my bondsmen. I had, a few months previously, been sentenced to nine months in the county jail at Denver for refusing to answer the questionnaire, released on twenty-five hundred dollar bond on an appeal taken to the upper court, the Circuit Court of Appeals. Rule XIII of the Selective Service Regulations, which I will read later on to save burdening the record, provides that in case, among others, of anyone out on bond, they shall be placed at the bottom of Class IV until the final disposition of their case, and the intent of that provision is obvious, because if anyone could be taken at random and placed into the army they would thereby be removed from the jurisdiction of the particular court that had them in custody, and also in the case of anybody so handled, they would jeopardize the interests of their bondsmen, whether the bond would be twenty-five hundred dollars, or a thousand dollars, or ten thousand dollars. As I did not belong to the army, I could not desert it, and I gave notification of where I could be found in case the authorities wished to apprehend me. When I was taken into custody, removed to Fort Logan, I endeavored to place the facts in the case before the commanding officer, but he would not permit it. I had only seven days in which to take an appeal to the district board. I was subsequently transferred to Camp Funston, Kansas, on the 22nd day of May, and again I attempted to acquaint the authorities of the facts in the case, that they might know the exact status. I was denied this opportunity, kept in the guard house for a considerably greater length of time than that in which I was allowed to make the appeal.

According to the Manual for Courts-Martial, only those legally drafted into the service are subject to the Articles of War, and subject to the jurisdiction of the military authorities, and for

that reason I did not consider myself at any time, nor do I now consider myself as subject to your jurisdiction. I did not consider any of the army officers as my superior officers, but I have always endeavored to the best of my ability to be respectful and courteous towards them, although there have been instances that would try the patience of any man, in or out of the army. Concerning this particular specification of Charge 2, Violation of the 63rd Article of War, I did not behave myself with disrespect toward Captain Jackson R. Day. Moreover, I did not consider him my superior officer, nor did I, as charged, contemptuously leave him after speaking to him and smiling and laughing in a cynical manner in the presence of other enlisted men who were standing nearby. On this particular morning I was called into the office of Lieutenant Wigbels. Captain Day asked me my name, my religion, why I would not go to war. He asked me if I was a Socialist, and I said, "It depends upon what you mean by a Socialist." The reason I gave him that answer is, because a thousand people will have a thousand different conceptions of Socialism, and that is particularly true in the Catholic Church, of which I am a member. Ordinarily, Catholics have a horror of the very word "Socialism", but my conception of Socialism, and the reason I made that answer to Captain Day, saying, "It depends upon what you mean by a Socialist", - my conception of Socialism is merely the Brotherhood of Man, as Christ taught.

Then when he asked me if I carried a red card in the Socialist party, I told him "yes". He said, "That is all", but he gave a demonstration of being angered by the fact that I was a member of the Socialist Party. Whether he was mad or not, I do not know, but he so exhibited himself. When he said, "That is all" I left his office, - left that office, rather, - it was Lieutenant Wigbels' office, and as I passed along, going towards the door, quite a number of my comrades were seated around there, and I did, as I have been in the habit of doing, - I guess as everybody is in the habit of

doing when they meet friends of theirs,- I merely looked in their direction and smiled and nodded and walked out. I was half way across the street when I heard someone shouting to me to come back. I turned around, some one of the conscientious objectors motioned to me to come back, and I got back to the steps and they said, "Captain Day wants you." I went back to the office. He asked me what I was laughing at. I told him that I was not laughing at anything in particular. I did not mean for that to be, and I did not say it in such language or the tenor of voice that would savor of disrespect in the slightest; I simply told him I wasn't laughing at anything in particular, which I was not; I merely did, as I always do, smile as I greeted those friends of mine, but I did not laugh. "Well", he said, "Now I want you to answer my questions, and" he said, "I want you to shut up;" he said, "will you shut up?" and I said, "Yes." I am getting a little bit ahead of my story. Prior to this he told me to stand at attention. The fact is, I did stand at attention as soon as I entered the office. I folded my arms and stood at attention. He said, "Didn't I tell you to stand at attention?" I said, "I am standing at attention." He said, "You are not; put your arms down to your side." So I did put my arms down to my side, as Lieutenant Wigbels has testified. Now, I didn't know that a general prisoner should stand with his arms down to his ^{side} ~~side~~; in fact, down at Camp Funston my first acquaintance with the fact that I was not standing at attention down there was when I had my arms down at my side; when he yelled to me to stand at attention, he said, "Fold your arms." When I got up here, it was just the reverse. But I do know it is in the army regulations, as I understand it, that a general prisoner shall stand with his arms folded when he is standing in the presence of a superior officer. Had I known,- I tell this court that I make this statement the same as I would make it before the Judgment Seat,- if I had known that I was not standing at attention when I went in there,

I certainly would not have stood that way, because it was not in my mind to offer any evidence of disrespect. First of all, I had no reason to do it, and in the second place, I believe that I had better judgment, whether it was an army officer or anybody else, I think that I would stand in a respectful manner when I was in their presence. So I did not know, gentlemen, that I was not standing at attention. When he told me,- shouted at me, "to stand at attention, I said, "I am doing so, Captain Day," and then, as I remarked before, he told me to put my hands down at my side, which I did; and I afterwards learned,- that was only my second day in this camp,- and I afterwards learned that that was not the proper way to stand at attention,- at least not considered so around here.

Captain Day then asked me some question; I don't remember the nature of it, and he didn't recite it in his testimony on the stand, but whatever the question was I started to answer it, and he yelled "Shut up!" And then he asked me again some other question. I started to answer it, and he yelled "Shut up!" again. He did that five or six successive times, and as near as I could determine his whole attitude and his every motive was to get me angered, to give him some reason for having a charge of some kind against me, but I did not, as the deposition shows here,- I did not exhibit any anger, although I certainly admit that it was a trying situation and if I was not angered I had good reason to be angered. He then asked me, or rather, commanded me,- he said, "Now I want you to walk out of this room, and don't you smile or talk as you go out." I said, "All right, sir". And he kept me there for a brief period longer, and then we started out of the room, and as I had a chance to reflect upon his efforts, and his extreme efforts, to my mind, to make me mad and his failure to do so, and as near as I could define, his wish that he could get me angry, so as to make a charge against me, and then failing, I did, as I passed out there, a very

small smile crept across my lips. I was not laughing. But I started to ask him, "How is this, Captain Day?" to put the question to him, if that was satisfactory, within the keeping of his command. I had no wish to break it, no reason for breaking it, no desire of any kind, and just as I said, "How is this?" he turned on me violently and swung his arms and ordered me back into the office of Lieutenant Wigbels, and shouted to somebody outside to bring in a ^{from} guard, he was going to put me in the guard house, which he did. If there is anyone that the charge ought to be placed against in this connection, it is Captain Day, in place of me, because his conduct was unbecoming an officer and unbecoming a gentleman in the most extreme sense; but as near as I could, I bore up with his conduct, and, gentlemen, when you consider the fact that in the first place I did not consider him a superior officer, and in the next place my patience was almost exhausted,- I had been held in confinement, held in arrest, for over fifty days at that particular period, or nearly fifty days,- it was between forty-five and fifty-five days, without any disposition being made of my case, when, according to your own manual, the Manual for Courts-Martial, I should not have been held more than eighteen days without either being tried or released. And I had endeavored day after day to get some action. No action was taken. I was jostled around from one place to another; released from the guard house first and allowed to run loose around Camp Funston for two days, and then sent out, against my protest, to the company of conscientious objectors, and I was held in camp there until July 2nd and sent here, against my protest, and all of this time trying to get some definite action, but, as the judge advocate told me on the morning of the 5th, rather, on the morning of the 8th of July, up at headquarters, the authorities, as he expressed it, the authorities down at Funston just "passed the buck" to these people. They were jostling me around from one place to another, and I certainly was getting to the point where most any kind of harsh

treatment might anger me, but treatment of this kind wore on me considerably, but I did not act the way I am charged with acting here, nor in any way resembling such conduct.

Charge 3, Violation of the 96th Article of War, Specification 1,- I would like to ask at this time, if I may later on read the particular document into the record.

PROSECUTION: It is in the record now.

ACCUSED: It is made an exhibit.

PROSECUTION: That makes it in the record.

ACCUSED: I would like to read that letter to the court at this time, if I may.

PROSECUTION: He can read it if he wants to.

ACCUSED: I merely wish the court to know just what was distributed, the nature of the document and my reason for distributing it, and those to whom I distributed it. First of all, before I had ever given this letter to anybody, I had been questioned why I registered but did not answer the questionnaire. Well, I simply told my comrades that when I registered I took my stand against war, that is, I took it officially, as it were; I had taken my stand against war some ten years ago, and had written numerous articles against it long before the European war broke out, which were introduced in evidence in my trial in Denver. But this particular letter was not calculated to stir up any insubordination or disloyalty, as the charges here are phrased, and I might add, that several thousand copies of these were distributed in Denver with the knowledge of the United States District Attorney, and he did not prosecute me for it. He called me up to his office concerning it; he said he would rather I would not distribute them. I told him I would distribute them only among those I wished to be acquainted with my reasons for registering, but when the time came, to let them understand why I would not go further, and I will read the letter to the court.

(The accused then read to the court Exhibit "2", said exhibit having been hereinbefore received in evidence, and appended hereto.)

Now, gentlemen, there is nothing in that document that would in any way influence those to whom I distributed it, and more particularly the witnesses who went on the stand, would influence them to refuse to accept any kind of service in the army, or tend to induce insubordination and disloyalty. The fact is, that these particular parties had previously given notification to the board appointed by President Wilson that they would accept farm furloughs; in fact, every one of the Hutterite Brethren,- there is in the neighborhood of between forty and forty-five in this camp,- everyone had agreed to take up farm furloughs, and they are now awaiting disposition of their case. All of us had had that hearing on the fourth of July,- not all of us,- part of us on the 5th of July and a great many on the fourth; and it was on the 5th I had given these communications and they all had already signed up, and aside from that, I knew from my association with those people that there is nothing that could move them to be more determined in their position than they are now. It is a matter of religion with them; they belong to religious organizations that positively prohibit their participation in war in any form, and down at Camp Funston they had repeatedly refused to take up noncombatant service; had refused it for nine months, from nine months down to within a week or two up to the time they came here. Each one that came into the camp came in here for that purpose, had refused to take up any kind of service, and there hasn't been a single instance of where,- Captain Kintz, who is considered a successful man in getting ^{them} people to take up noncombatant service,- there hasn't been a single instance of where he ever could get one of the Hutterite boys to take up work, nor did he ever get a man of one of those who testified against me. This man Schrock was so determined in his position against war that he would not even as

much as put up his left arm for right dress out in the ranks the second morning we were here. And there is no possible manner that that document could tend to influence these members, anyone of the members of the conscientious objectors group, to refuse to accept any kind of service, and with God as my witness I tell you that if it could have influenced them I would not have distributed those articles among them. The fact is, if we could have a witness here to testify, this man Harris whose deposition I got, in place of trying to influence him not to take up anything, my conversation was more of the nature of persuading him to take up this farm furlough if he could possibly do it. His final decision was to take it up, ^{RTM} although he originally refused to do so. He refused before the board to take it up, and several days afterwards gave them notice that he would take it up, and he is now down at Leavenworth to appear before them a second time. There isn't a word in that whole pamphlet that would tend to induce insubordination and disloyalty. I am not disloyal to my country. There is nothing in that pamphlet that said anything about disloyalty or disobedience. Whatever laws I refuse to conform to I am ready to take the punishment for such refusal.

I would also state that yesterday morning, July 25th, I requested the Officer of the Day at the guard house, Lieutenant Guernsey, to obtain permission for me from Captain Day to talk to my attorneys in Denver over the long distance telephone. I told him that I would pay the charges and that he could stand there and listen to our conversation, that it was very important in connection with this case, and the fact is, it might have saved the military authorities some little difficulty later on, and as far as my particular position is concerned, it was very essential that I should converse with them concerning some recent happenings with regard to this case, but he refused to permit me to talk to them. He said I could send them a telegram and that he would have to censor the telegram. I want to offer that to show that there is

considerable prejudice in the heart of Captain Day towards me, when he will not grant one who is on trial for his liberties the ordinary courtesy of communicating with his own attorneys, and I had asked to have Lieutenant Guernsey as a witness here tonight, to testify to this fact, but the Judge Advocate said it would not be necessary.

PROSECUTION: Now, who said that?✓

ACCUSED: Didn't you say ←

PROSECUTION: You never mentioned Lieutenant Guernsey to me until this minute. I never heard Lieutenant Guernsey's name until this minute.✓

ACCUSED: This morning I asked you at the guard house office if I could have this Lieutenant Guernsey as a witness to testify to this effect.✓

PROSECUTION: I never had heard Lieutenant Guernsey's name before until tonight.✓

ACCUSED: Well, you surely have forgotten it, because I gave it to you with those other names, and you said it would not be necessary to have him here. I will ask to introduce this as an exhibit, -this is Guernsey's handwriting.✓

PROSECUTION: I do not deny anything you said, except that you ever asked to have Lieutenant Guernsey. I never heard of Lieutenant Guernsey until I heard it tonight.✓

ACCUSED: Perhaps I can refresh your memory; do you remember my asking you for this lieutenant, and I wouldn't tell you why? Do you remember me asking you to have Lieutenant Guernsey, and I said I didn't mind telling you ^{RAM} why I wanted Lieutenant Guernsey and showed you this slip?✓

PROSECUTION: You never mentioned Lieutenant Guernsey; I never knew anything about this incident until you told me tonight.✓

ACCUSED: I told you of it this morning and you said it would not be necessary.✓

PROSECUTION: Absolutely untrue, sir.✓

PRESIDENT: Does the accused feel that it is necessary to have Lieutenant Guernsey?

ACCUSED: Under the circumstances, I would ask that we have him.

(It was then agreed by the Judge Advocate that the accused should read the letter of Lieutenant Guernsey in evidence.)

ACCUSED: It is his ^{own} own handwriting, and reads as follows: "Guardhouse, 163rd D. B., Camp Dodge, Ia., July 25, 1918. Memo. to Intel. Officer of 163rd D. B. Prisoner Ben Salmon wishes to talk over the long distance phone to firm of attorneys Whitehead & Vogl at Denver in connection with his case before the court martial. Request authority for him to do so. Hugh G. Guernsey, 2nd Lt. Inf. R. C. Officer of the Day."

Then, on the bottom here he has a notation:

"Must send a wire and have the wire censored by Capt. Day, Brigade Intelligence Officer."

I picked this slip up and wrote his name down on the back of it and asked if I could subpoena him as a witness to testify to this effect.

PRESIDENT: Will the Prosecution be satisfied to have the accused introduce this as an exhibit?

PROSECUTION: I have no objection.

The paper was then received in evidence and is appended, marked Exhibit "A".

Questions by Prosecution.

Q. You say you wished to telephone to Whitehead & Vogel at Denver?

A. Yes sir.

Q. Were they your attorneys in this case?

A. It depends upon what you mean by this case; do you mean before the court-martial?

Q. Yes.

A. Not before the court-martial.

Q. Haven't you stated you didn't want any counsel and wouldn't accept any counsel before this court?

A. Yes.

Q. And you have never asked to have any member of Whitehead & Vogel to be out here and testify in the case, have you?

A. I asked for a deposition from Whitehead & Vogel.

Q. As to what effect?

A. Concerning why I didn't procure a writ of habeas corpus.

Q. They weren't your attorneys in this case, then?

A. They are not in this case, but they are my attorneys in the case in the federal court.

Q. You didn't answer the summons to entrain on May 19th, 1918?

A. I sent them a communication in answer to it.

Q. When did you send them a communication?

A. It was delivered to Mr. Parker at the union depot between eight-thirty and nine A. M., the morning of the 20th of May.

Q. You were ordered to entrain when?

A. May 20th.

Q. Did you write a letter to them any time before they sent the induction notice in regard to May 20th, stating where you would be?

A. I wrote the letter I just referred to, telling them why I couldn't answer the summons. It was dated the 19th of May. That was the day on which I wrote it.

Q. What reason did you give in that letter?

A. The letter has been read into the record. The reasons I gave, you have it there in that exhibit; the reasons I gave were because -

Q. This letter that is in the record, then, dated May 19th, is the first notice you gave them that you would not appear?

A. Yes sir.

Q. You registered in June, 1917?

A. Yes sir.

Q. You refused to fill out your questionnaire?

A. Yes sir.

Q. You know that under the Selective Service Act that that would place you in Class I?

A. Yes sir.

Q. Did you ever, at any time, claim exemption because you were married?

A. No sir.

Q. Did you ever, after you failed to answer your questionnaire and knew that you were placed in Class I, request the board to reclassify you?

A. I didn't request them to reclassify me, because that portion of the Selective Service Regulations is mandatory in its demand that they reclassify me.

Q. Will you answer that question? Did you ever ask for a reclassification?

A. I did not. I would like to correct that. I asked for reclassification when talking over the phone to Mr. Mooney, and later to Mr. Parker, on the morning of May 19th, when I found out they had failed to follow the regulations.

Q. Then any request that you made probably was made after the induction into the service?

A. The notice read that I would be inducted into the service beginning 7:45 P. M., May 19th, and it was on the morning of May 19th that I requested reclassification.

Q. Up to that time you knew you were in Class I by your wilful failure to answer the questionnaire?

A. I knew that I had been unlawfully put in Class I, but I expected, in pursuance to the Selective Service Regulations, that I had been reclassified in Class IV.

Q. Are you married?

A. Yes sir.

Q. Did you claim exemption?

A. No sir.

Q. Or ask for deferred classification?

A. No sir.

Q. I hand you this Exhibit "2", the letter that you have read, and ask you to state,- you stated that you distributed it among conscientious objectors that you knew would not be influenced by it; is that true?

A. Yes sir.

Q. You read it to some of them?

A. To those I knew would not be influenced by it.

Q. You read it to several of them?

A. To those I afterwards gave a copy of it.

Q. How many of these did you have printed?

A. It was in the neighborhood of two thousand copies in Denver.

Q. You were distributing those two thousand around?

A. Around Denver, yes sir.

Q. And brought some of them here with you?

A. A few of them.

Q. And you had read it to men who were in the military service?

A. To those who had declined to take up any service of any kind. They were in the military service,- so far as their attitude was concerned, they claimed not to be in the military service.

Q. Would you have been willing to have reported and entered into the military service in case you had been placed in Class IV and your term had been reached?

A. That would be a question to determine at that time. I cannot tell what I might do tomorrow.

Q. In this letter, when you say you refuse to submit to conscription,- you might change your mind on that, might you, tomorrow?

A. I cannot tell what I will do; I do not believe you can tell, either, what you will do tomorrow.

Q. Did it ever occur to you that other conscientious objectors might change their mind the next day?

A. These conscientious objectors to whom I have given that, at that particular time had already signed up for farm furlough work.

Q. They have a mind, haven't they? They might have been able to change it.

A. It is very true; there is nothing in that letter that would cause them to change their mind.

Q. Why did you not claim an exemption, sign the questionnaire and claim exemption from the draft?

A. I would have claimed an exemption if I could have claimed it without signing the questionnaire, but signing the questionnaire would virtually be signing myself up for military service.

Q. When you refused to obey the draft order of the local board, ordering you to report at seven-thirty P. M. on the 19th day of May, 1918, you did that with the full knowledge that you had been ordered by the local board into the service?

A. With the full knowledge that I had been unlawfully ordered into the service, and on receipt of the illegal summons, and Mr. Mooney admitted to me, both over the phone and at the meeting at which I was tried, that that part of the summons that read, "Having submitted yourself to the local board", that that part of the summons was not a statement of the truth.

Q. Did it ever occur to you that had there been a conflict between the Department of Justice and the Department of War as to your custody, that that would be a question for those two departments to determine among them, rather than for you to determine?

A. I had to stay within the jurisdiction of the court in which I was then in.

Q. You say that you had been taught at Camp Funston to fold your arms as a general prisoner?

A. Yes sir.

Q. Were you brought to Camp Dodge as a general prisoner?

A. Yes sir.

Q. Why do you refer to having been put in arrest by Captain Day?

A. From being put in the guard house by Captain Day. I have been in arrest since the 20th day of May.

Q. You knew you were not a prisoner at the time you came here, but you came here to have your case taken up before the board to examine conscientious objectors.

A. No sir, that is not true; I came here still a prisoner.

Q. You weren't under guard, were you?

A. I was under goard on the way; I was not in the guard house, I was in charge.

Q. Were you in the guard house here?

A. I was not in the guard house at Camp Funston, but I was still in arrest, and I was in arrest on the way here.

Q. Were you in the guard house here; that is the question.

A. I wasn't in the guard house, but I was under arrest.

Q. Who placed you under arrest?

A. I was remaining in a continuous state of arrest, from the 20th of May. As Captain Kintz told me down at Camp Funston, he said, "You don't ^{ever} ~~da~~ leave here." I didn't. I didn't ^{ever} ~~da~~ leave this camp. I was under arrest. The fact that there are officers confined to their quarters on different occasions, - they are not in the guard house, but they are under arrest, and I was confined in my quarters. I wasn't even allowed to go to the Y. M. C. A. or even allowed to go to mass, without permission.

Q. Had you been placed in arrest by any officer?

A. I was still in a state of arrest.

Q. Had you been placed in arrest by any officer?

A. I was placed in arrest on the 20th day of May.

Q. By whom?

A. By a civilian policeman in Denver.

Q. And turned over to the military authorities?

A. Yes sir.

Q. Have you ever been placed in arrest by any officer?

A. Yes sir.

Q. What officer?

A. The commanding officer at Fort Logan, and I was put in the guard house.

Q. Who placed you in arrest at Funston?

A. I was transferred to Funston, handcuffed, - brought there in handcuffs and placed in the guard house as soon as I got to Funston.

Q. Were you brought here under arrest?

A. Yes sir, the train that we came on was fully guarded, and we asked to go up town in Kansas City to mail some letters, but we were not allowed to go. Captain Kintz had one of the guards take our letters.

Q. When you left Captain Day the second time, after he told you to go out of the room without laughing, what did you say you said to him? "Does that suit you?"

A. No sir, as we were passing out, and I smiled very slightly, I started to ask him, "How is this? Is this satisfactory?" I wasn't laughing, and I didn't want him to consider it as laughter; he had considered a smile before as laughing.

Q. Let me ask you: If you were simply answering Captain Day's questions, without starting out on any long explanations, why did he tell you to keep still?

A. I didn't start out any long explanations.

Q. It is a fact that you can't answer questions without starting out with explanations, isn't it?

A. That is not a fact; I have answered several questions of yours tonight without any explanations.

Q. Was Captain Day angry with you when he first brought you over there; did he act angry?

A. He acted sullen and prejudiced and bitter.

Q. What do you mean by that? Did he say anything that indicated prejudice and bitterness?

A. The tone of his voice, and the expression on his countenance, the manner in which he addressed himself to me.

Q. Then you are of the opinion that the countenance and the expression may indicate distrust and contempt; is that true?

A. Why, it is true with everybody, I believe, that your countenance may indicate your feelings.

Q. You didn't regard Captain Day on that day as your superior?

A. I didn't then, as my superior officer, and I do not now regard him as such, but, regardless of that, I was then and am now willing to respect him as I would respect anybody.

Q. You do not regard that he has any right to question you, do you?

A. Well, regardless of his right, I am willing to ^{answer} any questions that he or anybody else might wish to put to me, and I would have answered his questions that day if he had not interposed with shouting "Shut up!"

Q. If you object to entering the service, why didn't you claim exemption as a married man?

A. I have previously stated that I could not claim that exemption without signing the questionnaire, and if I signed the questionnaire that would be tantamount to joining the military service.

Q. Couldn't you have claimed exemption between June 5th, when

you registered, and the time before the questionnaires were issued?

A. There was no provision made for claiming such exemption; in fact, those who were summoned during that interval, married men, had no recourse except to go, go into the service.

Q. If you had not been arrested on the 20th day of May, you would not have reported, would you?

A. I could not report without violating -

Q. Answer the question. You would not have reported, would you?

A. I have already stated I could not have reported.

Q. And you would not have reported?

A. No sir.

Q. And if you hadn't been arrested you wouldn't have reported?

A. No sir.

Q. Your intention was not to report?

A. My intention was to remain within the jurisdiction of the federal court of Colorado.

Q. You may answer the question: Would you have reported at any time to the Local Board for entrainment as ordered?

A. It would depend; you say "at any time"; I would not have reported at any time. If their order had been legal and proper, according to law, then there is a question whether I would have reported. That would be some time in the future, and I cannot tell what I will do in the future.

Q. But you had no intention, on the 19th or on the 20th to report in response to that induction order?

A. My intention was just to the contrary, because I could not report, for the reasons I have stated.

(Witness excused.)

- - - - -

ACCUSED: As far as my testimony is concerned, I rest.✓

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PROSECUTION: The Judge Advocate does not care to make any opening argument; he will close.✓ He waives any opening argument.✓

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THE ACCUSED,✓ having no further testimony to offer,✓ made the following verbal statement to the Court:✓

ACCUSED: Concerning the testimony of Captain Day, with regard to the 63rd Article of War, he said that I had folded my arms and left the room with a sneer on my face. Lieutenant Wigbels testified that I put my arms down when I was told to. Captain Day later testified that he didn't see the smile, or the sneer, as he was referring to it, until Lieutenant Wigbels called his attention to it. Captain Day testified that I said, "Yes, I can laugh any time I please." That is not the truth. What I did say was, that I was not laughing at anything in particular, but the fact is that I was not laughing at all; I was merely smiling, as I testified in the evidence that I gave here previously, and if you will remember, Captain Day said under cross-examination that he did not notice any audible sound, which there surely would have been if I were laughing in place of smiling. Captain Day testified that I did not answer his question concerning "Are you a Socialist?" but that I tried to evade the answer. Lieutenant Wigbels testified that I didn't evade the answer but that I answered his question directly,- told him it depended upon what he meant by a Socialist, and afterwards told him I was a member of the Socialist Party. The Court will remember that Captain Day was mixed on his testimony, although he was testifying from a record of notes that he had written down, and yet, with those notes before him that you gave him permission to read from, he nevertheless got mixed up on his

testimony, and testified on one occasion that this disrespectful conduct, as he termed it, took place at the time I was first in there in his office, and on another occasion he testified that it took place the second time I was in there, and again, still further, he said it took place both times, but Lieutenant Wigbels testified that it took place only the second time. The Court will remember that Lieutenant Wigbels started to refer to some other incidents that he had in mind, which I am satisfied caused him to be considerably prejudiced against me, and one of those incidents was that which a member of the court referred to as a "rumpus" or disturbance down there the morning of the hanging of the three negroes. On that particular morning, as we were in line awaiting the hanging, I called to Lieutenant Wigbels and asked if I could get permission to leave there. He said, "No, you can't; you are here and you are going to stay." "Well" I said, "Lieutenant, if I knew where you were bringing me to you never would have gotten me here." That was all that was said. He went over and talked to some officers a little ways over; I don't know what he had to say, to them, but I did not raise any rumpus. There was something more I said; I said, "I want to tell you that I am staying here under protest; I would like not to be here."

Concerning the witness Schrock, you will remember that he said he never read the letter. The other witness, Waldner, said he had read only a part of it; said that it could not influence him in any way; and both Schrock and Waldner had already agreed to take up farm work, in their hearing before this presidential board. So that, my letter, as I will touch upon a little later in citations from the Manual for Courts-Martial, could hardly in any way be construed as I am charged with in Specification 1 of Charge 3. And you will remember that John Waldner testified that Captain Day told him to not say anything else but that he had received the letter. Why Captain Day should try to persuade a witness to keep quiet concerning the asking of questions I will leave for the court

to judge.

Captain Richmond testified that he did not think I asked him if he was familiar with the status of my case. I most certainly did ask him that question. If I knew there was any danger of his not remembering it, I would have subpoenaed Lieutenant Wigbels as a witness, who was present when I asked the question, and he told me at that time that this case would be settled favorably to me within a couple of weeks. Not intimating that I would be in any noncombatant service, because that I positively had refused to accept. My position concerning noncombatant service is that it is a cowardly act for a man to accept purely noncombatant service. It is taking part in war just as much as if the person were pulling a trigger, and I believe if a person is going to join the army, at least as far as I am concerned, if I were going to join the army I would not ask to be given some class of noncombatant work, but I would turn myself over and say, "Put me in any branch of the service in which you think I can best serve the United States." So I can only refer to the fact, just as positively on my side of the question as Captain Richmond has on his side of it. He told me positively that he thoroughly understood my case, had read those papers that were turned over to him by Captain Kintz, and I refer to this for the purpose of showing that there has been some kind of prejudicial work going on in this camp by some army officer or army officers to bring me to trial when I should not have been brought to trial, and I am satisfied that Captain Day has been largely instrumental.

The witness Adamson testified that he received the charge sheet about the 3rd of July and it was taken away from him the 7th of July; that there were several others received such charge sheets. The fact is, there are nine people,- there are nine religious objectors to war now confined in the guard house, contrary to President Wilson's order, which is another exhibition of Captain Day's

animus towards we religious objectors. He has now these people in the guard house when they should rightfully be transferred to the company of conscientious objectors. And he has denied them their privilege; he interferes with our mail, going out and coming in. One boy had a friend of his come one hundred and fifty miles to see him, just last Sunday, and he would not permit that friend of this young man, his wife to be, - would not permit her to talk to him. I tried to get a number of these witnesses from the guard house, but they feared it would implicate them in some manner, and I believe, in the very near future, the authorities at Camp Dodge will hear from Washington concerning Captain Day's conduct.

PROSECUTION: You should confine yourself^{Boy} to the evidence that has been submitted to the court; you are really bringing in new things that have not been brought before the court at all.

ACCUSED: I will endeavor to confine myself; my object was to bring before the court light bearing upon Captain Day's prejudice; otherwise the charge based on the 63rd Article of War would not have been placed against me.

You will remember the witness Klassen testified, concerning the question I wanted to put to Captain Day as we left the office on the date in question, and also the witness Hofer testified, that he had told me to shut up in loud, angry tones, five or six times. There were about fifteen or twenty witnesses that I could have gotten to testify to this same fact, but I did not want to burden the record. I believe I have enough, with the deposition of the witness Harris.

Concerning the incident at the mess hall that Lieutenant Moore referred to; that was precipitated on the morning in question by my having a little food left over, - some egg, it was, scrambled egg, about two tablespoonfulls that I could not eat, and they were going to force me to eat it. If they had asked me to leave it there until noon I would have been glad to have had it at noon, but they were

trying to force me at the time and I absolutely could not do it.

I will touch upon the case with regards to the Manual for Courts-Martial as we go along a little further. I am going to skip a few of those jurisdictional points that I had brought in in my plea to the jurisdiction, but I am going to ask the court if they will take them into consideration as they read the record in this case. To save time now I will not refer to them at all. I will start in where I left off before.

On page 201, the 58th Article of War is defined; "Any person subject to military law who deserts or attempts to desert." It says, "Desertion is absence without leave, accompanied by the intention not to return. Both elements are essential to the offense. The offense becomes complete when the person absents himself without authority from his place of service with intent not to return thereto." The evidence shows that I was not absent without leave. I was absent because I could not respond to that summons without violating the jurisdiction of the Colorado federal court. I was absent because the Selective Service Regulations, Rule XIII, on page 40, which I believe I have already read into the record, specifically provide that in a case such as mine the registrant shall be placed at the bottom of Class IV until his case is finally disposed of. Therefore, I was not absent without authority. Nor was my absence accompanied with intent not to return. It states here that both elements are essential to the offense. On page 202, where it gives the proof of desertion, - "That the accused absented himself, or remained absent without authority, from his place of service, as alleged," and "that he intended, at ^{the} ~~the~~ time of absenting himself or at some time during his absence, to remain away permanently from such place." The court cannot prove either one of those facts. The evidence shows just the contrary was the case in both instances.

Paragraph 34 of the Manual for Courts-Martial: "The jurisdiction of every court-martial, and hence the validity of each

of its judgments, is conditioned upon these indispensable requisites: (Subparagraph c) That the court thus constituted was invested by the acts of Congress with power to try the person and the offense charged." The Acts of Congress have especially forbidden military courts to try anyone except those subject to military law, and, as I have previously shown, according to Paragraph 4 of the Manual for Courts-Martial, I am not subject to military law, because I have been unlawfully inducted into the service. Subparagraph (d): "That its sentence was in accordance with law." Which your sentence, if you should sentence me, certainly would not be. Again, I will refer you to the Manual for Courts-Martial, Page 21, Paragraph 39, giving the Jurisdiction of General Courts-Martial. "General courts-martial have power to try any person ^{RSM} subject to military law." But they have no power to try persons not subject to military law.

Paragraph 406. "Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct." It says in Subparagraph (b) under the ^{RSM} caption of Proof: "That such person was within the classes whose enlistment or muster in were prohibited at the time of such enlistment or muster in." Now, I was within that class; I was properly within Class IV, and my enlistment was prohibited at that time and I should not have been brought here before your court.

Paragraph 77 of the Manual for Courts-Martial:

"Prompt action required.- No person put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled. When any person is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see

that a copy of the charges on which he is to be tried is served upon him within eight days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested person be not brought to trial, as herein required, the arrest shall cease."

I was not served with a charge sheet in the first instance until eleven or twelve days after I was placed in the guard house at Camp Funston, and after I was placed in the guard house there it was two days after I had been placed under arrest. I was placed in the guard house here on the 6th of July. I did not receive my charge sheet until the 17th of July. But altogether I have been under arrest since the 20th of May, in the neighborhood of sixty-five days before I was brought to trial, and according to your own Manual I should have been released, and, if you wish to do so, place a new charge against me, but at least I should have been released. The fact is, I have been under a continuous state of arrest. Releasing me from the guard house did not release me from the military authorities, as I was told down at Camp Funston I had to stay in camp, and I did stay there, awaiting regular disposition of my case, which never took place.

Paragraph 103 also provides that there shall be no delay in the matter of bringing people to trial. I will not take your time to read that.

Jurisdiction in General. Paragraph 32. "The jurisdiction of a court-martial is its power to try and determine cases legally referred to it * * * . Being courts of special and limited jurisdiction their organization, powers, and mode of procedure must conform to all the statutory provisions relating to their jurisdiction. (For the source and kinds of military jurisdiction and persons subject to military law see Chap. I, Secs. I and III.)"

And the reference that it cites there, is, among others, section 4, which, as I have previously remarked, provides that those lawfully inducted into the service are subject to courts-martial, subject to military law. Due to the mix-up in my papers I have not got each particular charge under the one heading. I had them all lined up very nicely before supper this evening, but these papers are so mixed now that I will just take them in the order I have got them, and cite the particular passages I have referred to.

The 63rd Article of War, Paragraph 414. "Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct." Now I still insist that I am not subject to military law, and therefore not amenable to this particular Article of War, and not having been in the service I did not behave myself in any manner toward a superior officer, because I did not recognize him as such. The last paragraph states: "Where the person who did the acts or spoke the words did not know that the person against whom they were directed was his superior officer, such ignorance is a defense." I did not, at that time, know that he was a superior officer, nor do I know it now.

On the following page, under the caption of PROOF, Subparagraph (c) "That the officer toward whom the acts, omissions, or words were directed was the accused's superior officer." That, I again deny.

Paragraph 278, under Presumptions of Fact, beginning with the tenth line, it says:

"Facts in evidence showing a motive or absence of motive on the part of the accused, preparations or the absence of preparations for the commission of crime, a failure to account for suspicious circumstances, acts ^{RUM} showing a criminal consciousness, * * the suppression of evidence, (etc.) are a proper basis ~~of~~ for presumptions of fact."

Now, gentlemen, you have no basis in my case for any presumption of fact. The evidence in this case is entirely in my favor, all the way through, on all three charges.

Paragraph 279, Prima Facie Evidence. "Prima facie evidence is that which suffices for the proof of a particular fact until contradicted and overcome by other evidence. In other words, prima facie evidence justifies the court in finding the facts presumed, but in view of the doctrine of reasonable doubt that always inures to the benefit of the accused from a consideration of all of the evidence presented the court is not required to find the facts presumed. The court may decide, for instance, that the prima facie evidence presented does not outweigh the presumption of innocence."

Now, gentlemen, I submit that that paragraph, this particular provision of the Manual for Courts-Martial, should cause you to decide this whole matter in my favor, because the prima facie evidence not only does not outweigh ^{the} the presumption of innocence, but it has not even the slightest scintilla of convicting me of being guilty of any of those charges, and, more particularly, the charge of desertion.

Now, even, if I were subject to military law: Paragraph 281, Intent in military cases. - It says: "Such is the case with respect to the offense of desertion, the intent being not to return. But whether the intent that is presumed from the commission of an unlawful act or the specific one that must be proved raises a point in issue the accused in his defense may prove there was actually no intent. If the accused can substantiate such a defense, he must be acquitted." I submit, gentlemen, that I certainly have substantiated such a defense; that there was no intent to desert the service. First, because I could not respond to the summons, and second, because I was not in the service, even after claiming that I was not in the service the date I was arrested; I have not been in the service at any time since then.

Evidence of Desertion. Paragraph 284. "Absence without leave is usually proved by the evidence of an officer or noncommissioned officer of the company of the accused to the effect that he was absent from his organization without authority for a certain period, but if such witnesses are not available it may be proved by the entries on the muster rolls. In making the latter kind of proof, that portion of the muster roll relating to the accused, or a copy of it certified by the officer having official custody thereof, showing the accused was absent without leave, beginning a certain date, and (if such is the case) was dropped as a deserter, should be attached to the proceedings as an exhibit. But the muster roll, even though it refers to the accused as a "deserter," is not complete evidence of ^{proof} desertion; it is evidence only of absence without leave, and it is still necessary for the judge advocate to prove an intent to remain permanently absent; that is, to desert."

No ^{proof} such evidence can be proved in my case. I could not desert something that I did not belong to. And I again wish to call the attention of the court to the fact that, unless the charge of desertion is sustained against me, the other two cannot be tried, because in that event I would not be subject to military law, but even though I were subject to trial, the evidence on the other two charges is surely conclusive enough to acquit me.

Paragraph 288. Reasonable doubt and burden of proof. "In order to convict, the court must be satisfied, beyond a reasonable doubt, that the accused is guilty as charged. By 'reasonable doubt' is intended not fanciful or ingenious doubt or conjecture but substantial, honest, conscientious doubt suggested by the material evidence in the case."

The material evidence in this case before you shows that I am innocent. This goes on to read:

"It is an honest, substantial misgiving, generated by insufficiency of proof. It is not a captious doubt, nor a doubt suggested by the ingenuity of counsel or jury and unwarranted by

the testimony; nor is it a doubt born of a merciful inclination to permit the defendant to escape conviction, nor prompted by sympathy for him or those connected with him. The meaning of the rule is that the proof must be such as to exclude not every hypothesis or possibility of innocence but any fair and rational hypothesis except that of guilt; what is required being not an absolute or mathematical but a moral certainty. A court-martial which acquits because, upon the evidence, the accused may possibly be innocent falls as far short of appreciating the proper amount of proof required in a criminal trial as does a court which convicts because the accused is probably guilty.

"In trials before courts-martial the prosecution has upon it the burden of proving the guilt of the accused beyond a reasonable doubt, and, whatever the defense of the accused may be, this burden never changes. After the evidence is all in the court must be convinced beyond a reasonable doubt of every element necessary to constitute the offense in order to justify it in convicting the accused of the offense charged."

It says, gentlemen, that you must be convinced beyond a reasonable doubt of every element. The two essential elements that are required in a case of desertion are, absence without leave, accompanied by the intention not to return. Neither element, and more particularly the primary element, have been or can be proven in my case.

In regard to the 63rd Article of War, aside from the evidence controverting Captain Day's testimony, the Manual provides that where the person did not know that the person to whom he was speaking was his superior officer, that such ignorance is a defense.

I would like to refer at this time to the contention that the Judge Advocate made previously, that this court is not a reviewing authority for the local board. He said, having been inducted into the military service, I was in the service and subject to their law.

Well, while I grant that you are not a reviewing authority for the local board, yet that does not justify any military court in ignoring the facts or law as laid down in the Manual for Courts-Martial, which is mandatory and is very specific in calling attention to those legally inducted. Now, I was illegally inducted. The judge advocate said that you have no right to consider the question of the legality of the induction. That is the very question that you must consider, because it is upon the legality of the induction that the whole case hinges.

With reference to the 96th Article of War, which which I am charged as violating: Analysis and Proof. "This article applies to any person subject to military law." I still insist that I am not subject to military law. This specification reads, that I was, "distributing among certain conscientious objectors certain printed literature tending to influence said members to refuse to accept any kind of service in the army and tending to induce insubordination and disloyalty among said members, to the prejudice and good order of military discipline." The PROOF in this particular case says: "By the term 'to the prejudice,' etc., is to be understood directly prejudicial, not indirectly or remotely merely. An irregular or improper act on the part of an officer or soldier can scarcely be conceived which may not be regarded as in some indirect or remote sense prejudicing military discipline; but it is hardly to be supposed that the article contemplated such distant effects, and the same is, therefore, deemed properly to be confined to cases in which the prejudice is reasonably direct and palpable."

Now I have submitted evidence showing that if there was the slightest influence it was exceedingly remote, and, according to the Proof under this Article, you could not convict me of violation of the 96th Article of War.

I would like to remark, in my statement, that the evident reason for the local board being so prejudiced against me and

anxious to get me out of the city of Denver, is because I was more or less actively engaged in bringing about the conscription of wealth to prosecute the war, advocating that we tax profits, everything above five thousand dollars a year, leaving a man five thousand dollars a year to live on during the war, and conscripting everything above that for the purpose of expediting the undertaking and bringing it to an earlier conclusion. And the big interests of the city of Denver and other cities didn't like such an undertaking and they don't like it now, and they would be very glad to have you gentlemen, or any other tribunal that they could get to favor them, to house myself and every other person who advocates such an idea,- to put them in prison until this war is over with, so there will be no danger of the rich people paying their share of this war.

I wish once more to make the claim that I am entitled, if I were in the military service, that I am entitled to be dealt with according to President Wilson's order of May 31st; if I were at all in the military service, entitled to be dealt with as the other religious objectors. They are not charged with desertion, and the charge against me of the 63rd and 96th Articles of War is absolutely unfounded, and was done for the purpose as shown in the record.

I am going to call your attention, gentlemen, in closing, to the oath that you took, that "you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the Armies of the United States." If you will follow the oath, and the Manual for Courts-Martial, there is nothing for you to do but to acquit me of all three charges. I have considerable other matter there that I have really wished to introduce in my statement. The principal matter

was that concerning my religious convictions against war, to make it plain to this court that they are well founded and not taken for the purpose of escaping military service, but, as I cannot at this time see that it would have any material bearing upon your decision of the issues involved, I am going to spare everybody the burden of having me go over this matter at this time.

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PROSECUTION: If the Court please, the Judge Advocate wishes to be very brief. The first charge is that of desertion. The Judge Advocate asks conviction under the evidence in this charge, under that part of the law in the Selective Service Act, which provides,- I will read from Section 49 of the Selective Service Act, the last paragraph of that section:

"Persons who, after induction into military service, with intent to evade such service, willfully fail to report to Local Boards for military duty, or fail to entrain for a mobilization camp, or who absent themselves from entrainment or from their parties of selected men en route to a mobilization camp, are deserters and are subject to military law. It is hereby made the duty of all such police officials to apprehend and arrest such deserters and proceed in respect of them as provided in sections 51, 130, and 140."

Now there are facts before this court that you cannot get away from, and those facts are, that this man was inducted by the Local Board No. 1, Denver, Colorado, and was notified by that Local Board to report at 7:30 P. M. on May 19th, and that his failure to report on that day, under the terms of the Act, automatically inducted him into the service. Then you have only the question to determine: was that failure to report wilfully done on the part of the accused. How can you reach the intent of any act, except by the act itself and the declarations of the man? Why didn't this accused report on May 19th? And you could

only take his own words, which are in the evidence,- back on June 5th, 1917, when he registered, he said, "Complying with your edict, I registered today. Your mandate was autocratic, and contrary to the Constitution, nevertheless * * * * * I submitted. But, I must now tell you that I refuse to submit to conscription." If, when he registered, he declared then and there that he would not submit to induction into the military service, what better evidence do you want of the wilfulness of the act, when he failed to report on May 20th and was placed in arrest? Then, when his questionnaire was sent to him, the same declaration,- "You may inform the proper officials that I refuse to answer the questionnaire. I am legitimately entitled to exemption; a wife and mother to support. However, I will not use my dependents to shield me from an institution against which my soul rebels. War is incompatible with my conception of Christianity. I positively refuse to aid organized murder." Again, when the only evidence of intent,- the only evidence of the wilfulness of the man can be deduced from the act itself, and from the declarations of the party committing the act. The overt act is admitted by the accused; that he failed to report, and that he had no intention to report until he was possibly arrested and brought to the train. Then the evidence that he, himself, submits here in proof of his claim for jurisdiction, declares positively that that act was wilful. Under the evidence, the Judge Advocate believes that the first charge of the charges and the specification thereunder is absolutely uncontroverted by any testimony of the accused.

Now we come to the second charge and that specification, that he did behave himself with disrespect toward Captain Jackson R. Day, his superior officer, by contemptuously leaving said Captain Day, after speaking to him and smiling and laughing in a cynical manner. Captain Day and Lieutenant Wigbels testified that his

manner was defiant and disrespectful. I need not tell any officer as he sits here, that disrespect can be shown in numerous ways very hard to describe, and while it is no effort for a man to know that he is being treated disrespectfully, still, at the same time, it would be a very difficult matter to explain, in words, wherein the disrespect lay. The testimony of the accused and several of the witnesses is, that Captain Day repeatedly told him to keep still, possibly to shut up. Is it reasonable to suppose that this man was not repeatedly trying to talk about something that was not germane to the subject, at all? Lieutenant Wigbels testifies that his whole attitude was disrespectful; that as he left the room he left it with a sneer and a smile. And he so himself explains it, that he meant only to ask if Captain Day was satisfied, but when he was called back and told to go from the room quietly and without laughing, he turned and asked if that suited the captain, or words to that effect. On the evidence, the Judge Advocate feels that the specification of Charge 2 is sustained.

Now the accused, as to Charge 3, seems to be laboring under the impression that the charge is that he influenced some one to be disloyal or insubordinate. That isn't the charge, at all. The charge is that he distributed among certain people literature which would tend to induce disloyalty and insubordination. And the accused not only admits that he distributed this letter, but boasts, in his testimony, that he printed two thousand copies of it, and did distribute some,- we have witnesses here,- among the conscientious objectors, and then he says that there is nothing disloyal in it, and nothing to tend toward insubordination.

I read from the first paragraph:

"Complying with your edict, I registered today. Your mandate,-" this to the President of the United States - "was autocratic and contrary to the Constitution, nevertheless, acquiescence caused injustice against no one but myself, consequently, I submitted.

But, I must now tell you that I refuse to submit to conscription.

* * * * "Aside from right or wrong, why concern ourselves about German injustice while unmindful of the disorder of our own house? In America, millions of impoverished citizens vainly send forth their mute appeal for justice. Their supplications are answered with greater tyranny, renewed iniquities, and a further disregard of their rights and their liberties."

If that is not disloyalty, then, what, in God's name, is disloyalty? If a man believes that, and then speaks it, and then prints it,- if that is not disloyalty there isn't such a thing as disloyalty in America, and any man who distributes that and then says that he has not distributed that which tends to disloyalty, certainly has a mind that has succumbed to disease.

He goes on and says, "Conscience,-" this distributed among men who have refused to take service as conscientious objectors,- "Conscience, my infallible guide, impels me to tell you that prison, or death, or both, are infinitely preferable to joining any branch of the army, and contributing, either directly or indirectly, to the death of my fellow workingmen."

I do not care whether the men who received that were influenced or not. He could have handed it to me, or to you, and he could not have influenced us; but the man who distributed that was distributing literature that tended to disloyalty and to insubordination to military service.

There is no question of the evidence in this case. There is no question of the overt act of desertion; no question of the wilfulness of the act; no question in the second specification; and no question that this man distributed this literature, the character of which there can be no better judges than yourselves, whether it would tend to disloyalty and insubordination.

The Judge Advocate just closes with this thought: Under your oath, when, as I know you will, you decide that this man is guilty of these charges and specifications, then you must fix the punishment. And when you come to fix the punishment I ask you to consider the grounds upon which society takes the right to punish anyone, to take away their liberty or life: First, and least of all, to punish them,- and I do not believe that this court would want to punish this man; the second ground, as a warning to others, and on that ground this man, at this time when the Nation is in the throes of war and needs its man-power, this man, then, deserves the most severe punishment that you can inflict. And the third and greatest ground by which society recognizes its right to take away a man's life or liberty, is, to protect society itself. And on that ground, under the evidence before you, if for no other, the Judge Advocate asks that you find the extreme penalty, and sentence this man to death.

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The Court was closed, ✓ and finds the accused: ✓

OF SPECIFICATION 1 OF CHARGE 1: GUILTY

OF CHARGE 1: GUILTY

OF SPECIFICATION 1 OF CHARGE 2: NOT GUILTY

OF CHARGE 2: NOT GUILTY

OF SPECIFICATION 1 OF CHARGE 3: GUILTY

OF CHARGE 3: GUILTY

The Court was opened, and the Judge Advocate read to the accused the statement of service as contained in the charge sheet, as follows, to-wit:

"Benjamin J. Salmon, (#510010), Recruit, Provisional Detachment, 163rd Depot Brigade; date current enlistment, May 19, 1918; Rate of pay, \$30.00; number of previous convictions, none; previous service, none; \$15.00 Class "A" allotment, \$5.00 Class "B" allotment; no War Risk Insurance."

The Judge Advocate then asked the accused:

JUDGE ADVOCATE: I ask you if that statement of previous service is correct.

ACCUSED: No previous service, yes sir.

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The Judge Advocate then stated, in the presence of the accused, that he had no evidence of previous convictions to submit.

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The Court was closed and sentences the accused, Recruit Benjamin J. Salmon, (#510010), Provisional Detachment, 163rd Depot Brigade,

To be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for Twenty-five years.

The Court, at 12:18 o'clock A. M., July 27, 1918, adjourned to meet at 7:15 o'clock P. M. the twenty-ninth instant.

Richard D. Mansfield
1st Lieutenant, 163rd Depot Brigade,
-125- Judge Advocate.


Horace T. Dukes
Lieut. Colonel, 163rd Depot Brigade,
President.

HEADQUARTERS

Camp Dodge, Iowa.
August 10, 1918. ✓

ACTION

In the foregoing case of Recruit Benjamin J. Salmon, (510010), Provisional Detachment, 163rd Depot Brigade, the sentence is approved. The United States Disciplinary Barracks, Fort Leavenworth, Kansas, is designated as the place of confinement. The execution of the sentence will be directed in orders as of this date after the record of trial has been reviewed in the office of the Judge Advocate General, or a branch thereof, and its legality there determined. Jurisdiction is retained to take any additional or corrective action that may be found necessary prior to or at the time of the publication of the general court martial order in this case.


S M FOOTE
Brigadier General, N.A.
Commanding.

AR/gjh.
AR.

Exhibit "2"

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.—*John Stuart Mill*.

This letter sent to our Congressman for transmittal to President Wilson. Letter returned. Retailed to the President's secretary with request that it be given to our Chief Executive.

DENVER, COLO., June 5, 1917.

HIS EXCELLENCY, WOODROW WILSON,
President of the United States,
Washington, D. C.

My Dear Mr. Wilson:

Complying with your edict, I registered today. Your mandate was autocratic, and contrary to the Constitution, nevertheless, acquiescence caused injustice against no one but myself, consequently, I submitted. But, I must now tell you that I refuse to submit to conscription.

Regardless of nationality, all men are my brothers. God is "our Father who art in heaven." The commandment "Thou shalt not kill" is unconditional and inexorable.

If the parent orders the child to do wrong, the child should disobey. If the State commands the subject to violate God's law, the subject should ignore the State. Man is anterior to the State, and God is supreme.

Both by precept and example, the lowly Nazarene taught us the doctrine of non-resistance, and so convinced was He of the soundness of that doctrine that he sealed His belief with death on the cross. The great mass of the people still adhere to Christ's teachings against war, regardless of the fact that cardinals, priests and ministers have repudiated the Christian ideal and bowed to the god of expediency.

There are many ways to avoid war. Now that you are in it, there are many ways to get out of it without sacrificing, or threatening to sacrifice, a single life. Solution of the problem, without breaking the commandments of God, is merely a question of desire and determination.

Aside from right or wrong, why concern ourselves about German injustice while unmindful of the disorder of our own house? In America, millions of impoverished citizens vainly send forth their mute appeal for justice. Their supplications are answered with greater tyranny, renewed iniquities, and a further disregard of their rights and their liberties. Show me any German cruelty that can outdo in horror the massacre of the women and children in the tent colony at Ludlow! And, the underlying cause of the Ludlow tragedy manifests itself daily throughout the length and breadth of this land of liberty, although it is only when given spontaneous expression that we even notice the misery and sorrow and seething despair that is slowly eating out the heart of our boasted civilization in America. Why not correct the wrongs at home? ".....Hypocrite, cast first the beam out of thy own eye; and then shalt thou see clearly to take out the mote from thy brother's eye."—*St. Luke, vi-42*.

I am not an alien sympathizer. I was born in Denver, of Canadian-American parents, and I love America. This letter is not written in a contumelious spirit. But, when human law conflicts with Divine law, my duty is clear.

Conscience, my infallible guide, impels me to tell you that prison, or death, or both, are infinitely preferable to joining any branch of the army, and contributing, either directly or indirectly, to the death of my fellow workingmen.

I voted for you and worked for your election in 1916, and I still have faith in you. Hopeful that you may yet see the right and have the courage to follow it, I am, sincerely yours,

(Signed) BEN J. SALMON.



(Leave space for binding.)

¹ Strike out words not used.

UNITED STATES

vs.¹

In the Matter of¹

Benjamin J. Salmon

INTERROGATORIES
AND
DEPOSITION.

² General (or special or summary) court-martial, or military commission, or court of inquiry, or military board.

To be read in evidence before a ² General Court Martial

United States Army, appointed to meet at Camp Dodge, Iowa

by paragraph 25, Special Orders, No. 135, Headquarters 30th Division

May 18, 1918, in the matter of

Benjamin J. Salmon, Recruit Provisional Detachment, 1st Divat Brigade.

³ Name, rank, and organization of the accused, or other proper words identifying the particular matter in which the deposition is desired to be used.

Fort _____, 19_____ To _____

Please cause to be taken on the interrogatories herein contained the deposition of

_____, to be found at _____

⁴ To be subscribed by the trial judge advocate or other proper person with his name, rank, organization, and official title, as "judge advocate," "summary court," "recorder," etc.

HEADQUARTERS, _____, 19_____

⁵ Strike out word or words not used.

To _____, who will take or cause to be taken ⁵

the deposition of the person named above on the interrogatories herein contained.⁶

⁶ If it is desired to give special instructions, or if a travel order is necessary, the remaining space will be used for the purpose.

By _____ of _____

_____, Adjutant.

First interrogatory: Are you in the military service of the United States? If so, what is your full name, rank, organization, and station? If not, what is your full name, occupation, and residence?

*Answer:*⁷ Yes, Frank E. Harris, Recruit, Provision Detachment, of Conscientious Objectors.

Second interrogatory: Do you know the accused? If so, how long have you known him?

Answer: Yes, about five weeks or better.

Third interrogatory: Did you hear the conversation between, Capt. Jackson R. Day and Benjamin J. Salmon on July 6, 1918, which resulted in the arrest of said Benjamin J. Salmon and did you see the parties named while they were conversing with each other?

Answer: Yes.

Fourth Interrogatory: Were Capt. Day's words and actions and the tone of his voice such that he would ordinarily anger the one to whom he was speaking?

Answer: Yes.

Exhibit "3"

Fifth interrogatory: Do you remember anything he said, if so, what did he say?

Answer: He said to Salmon "to get out." and asked if there was a guard around to take Salmon to the guardhouse.

Sixth interrogatory: Did Capt. Day speak in a harse or angry tones?

Answer: Yes.

Seventh interrogatory: Did Capt. Day so speak and act as to ordinarily incite a person to anger?

Answer: That would depend on what kind of a man he was talking to. If he was talking to a man of his own kind, yes.

Eighth interrogatory: Was the tone of Capt. Day's voice loud or harse, or both?

Answer: Yes.

Ninth interrogatory: Was there anything about defendant Salmon's actions that savored of disrespect or surliness toward one who considered himself a superior officer?

Answer: Nothing I could see.

Tenth interrogatory: How long has the defendant Salmon been in the company of Conscientious objectors?

Answer: About five weeks as far as I know.

Eleventh interrogatory: So far as you know has defendant Salmon's conduct been respectful towards those who considered themselves his superior officers.

Answer: As far as I have seen.

Twelfth interrogatory: So far as you know, has the defendant Salmon been in the habit of smiling at and greeting his comrades as he passed them in different places in camp.

Answer: Yes.

Thirteenth interrogatory: Did he smile in his customary manner as, after leaving Capt. Day he passed before you on July 6th, the day he was arrested?

Answer: I could not say.

Fourteenth interrogatory. Did dependant Salmon behave himself with disrespect towards Capt. Day by contemptously leaving said ~~XXXXXX~~ Capt. Day after speaking to him and smiling and laughing in a cynical manner in the presence of others who were standing nearby?

Answer: No.

~~XXXXXX~~

Insert "court,"
"commission," or
"board," as the case
may be.

CROSS

First/interrogatory by the Judge Advocate. 8
How long have you been here at Camp Dodge?

Answer: I came on July 2, 1918.

Second cross interrogatory: Where is your home?

Answer: Denver, Colorado.

Third cross interrogatory: Did you know the accused before you came here?

Answer: No sir.

Fourth cross interrogatory: How far away were you from Capt. day and the accused during their conversation?

Answer: Fifteen or twenty feet.

(Witness sign here.)

Frank E. Harris.

Act 163 Regt Regd Prov Atch

I CERTIFY that the above deposition was duly taken by me, and that the above-named witness, having been first duly sworn by me, gave the foregoing answers to the several interrogatories, and that he subscribed the foregoing deposition in my presence at _____

Camp Dodge, Iowa, this 19 day of July, 1918.

(Name.)

Charles R. Stafford

1st. Lieut. Inf. N.A., 351st Inf.

(Rank and organization.)

Trial Judge Advocate.

(Official character, as summary court, notary public, etc.)



ARMY AND NAVY
 YOUNG MEN'S CHRISTIAN ASSOCIATION
 "WITH THE COLORS"



Exhibit "A"
 7/26/18

Guardhouse, 163rd D. B.
 Camp Dodge, Ia., July 25, 1918.

Memor. to Intel. Officer of 163rd D. B.

Prisoner Ben Salmon wishes to talk over the long distance phone to firm of attorneys Whitehead & Vogl at Denver in connection with his case before the Court Martial. Request authority for him to do so.

Hugh G. Guernsey
 2nd Lt, Inf. R. C.
 Officer of the Day.

Must send a wire and have the wire censored by Capt. Day, Brigade Intelligence Officer.

TO THE WRITER: SAVE BY WRITING ON BOTH SIDES OF THE PAPER
 TO THE FOLKS AT HOME: SAVE FOOD, BUY LIBERTY BONDS AND WAR SAVINGS STAMPS.

[Faint signature]