GAPINSKI, WALTER J - CPL

(name of accused)

GCM RECORD CHECK SHEET

1. RB Enter in GCM Data Book.

2. ____ Stamp "CM ETO" number on all pages of record, accompanying papers, and exhibits.

3. ____ "IN" Stamp is on record,

4. ____ Place "Checked & Passed" Stamp on record.

5. ____ Record involves 1 accused.

6. ____ Prior CM ETO Record No._____ ~~Attached~~ - None.

7. ____ White - ~~Colored~~ (strike out one).

8. ____ Withdraw copy of GCMO for TJAG.

9. ____ Withdraw copy of GCMO for Jurisdiction File.

10. ____ Prepare Receipt Card.

11. RB Prepare Index Card.

12. ____ Delays checked to date of trial 157 days.

13. ____ Delays checked and recorded to date of action 184 days.

14. ____ Record of Trial and "Field Action" entered on Form #19. NO RESTRAINT

15. ____ To: - MILITARY JUSTICE --- ~~BOARD OF REVIEW~~ (strike out one).

16. ____ Date Legally Sufficient CARD - LETTER sent 25 JUN 1945 (date)
    (a) If by letter, send copy to SJA of parent unit.

17. ____ BOARD OF REVIEW CASES ONLY:
    _____(a) Forward original holding & copy.
    _____(b) Send copy to B/R for file.
    _____(c) Send copy to M/J for file.
    _____(d) Copy of holding in suspense file.
    _____(e) Copy of holding (green) with signature of members of B/R to be attached to record.
    _____(f) File record temporarily in proper jacket awaiting published orders.
    _____(g) Complete GCMO entry on Index card.
    _____(h) Complete GCMO entry on GCM Data Book.

303906

18. ____ BOTJAG with ETO "Action" completed on form #19, etc. 26 JUN 1945

19. ____ Has Chief Examiner or Chairman B/R signed GCM Data Sheet & R/T Cover?

20. ____ Has "Legally sufficient" stamp been placed on four (4) copies of GCMO and one for each additional accused?

21. ____ Review of Staff Judge Advocate in triplicate (3), all signed?

22. ____ Arrange the record of trial and accompanying papers as indicated on the reverse side of this check sheet.

23. ____ Record examined by AJAG.

24. ____ Enter date of final action of this office in GCM Data Book.

25. ____ Examined by Clemency Section.

26. ____ File Record.

AJAG INITIALS

TO BE DIGESTED

Yes - No

(initials

(For B/R cases only)

26 JUN

1

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Executive Order 13526
DA Letter Dated 2 May 06

EXAMINER'S NOTES

Case No. CM ETO 13241 Name: Ekpinski

GCM Jurisdiction: 7th Armd Div.

SERIOUS ERRORS AND QUESTIONS:

Ct. imposed sen. of 1 yr. - asked for Clemency. The R.T.A. sentence is nothing more than a money forfeiture. Seems to me manslaughter calls for a more severe sentence and that clemency should be reflected in suspension thereof.

AW 93 involuntary manslaughter - carelessly killing pfc T. by shooting with an M-1 rifle

Clemency by all members who took part in trial — R/A's action gives effect to this recommendation.

COMMENTS:

SPECIAL COURT

SENT: (6 mos (HL) and forf $20 per mo for 6 mos) suspended

MINOR ERRORS AND IRREGULARITIES:
(Check those requiring correspondence)

accd and victim were "fooling around" - gun went off when it was in accd's hand (R-7) = accd had leaned his rifle against the book case & picked up another soldier's rifle instead of his own (R-7+8) = accd and victim were on friendly terms (R-11, 14) = MC Capt testified to victim's death from a rifle projectile (R-14) = accd made a sworn statement at trial re knowledge of events as described by other witnesses, gun went off as he was turning to go out the door (R-17) = accd picked up the wrong rifle (R-17).

Accidental shooting by accused of his friend.

L.S.

JOHN A. WRIGHT
1st Lt., JAGD

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Does record disclose any bad military situation that should be reported?

No

Notes re clemency (Miscellaneous) Age - 35 = No P.C. = Satisfactory Char. of P.S. = SSA's comment: "accused impressed me as being very sincere and as being still very much upset over the death of his "buddy".

	Examiner	Chief Examiner	Chief of Division
Is immediate clemency recommended?	No		
Does record indicate prisoner should be restored to duty in approximately 6 months?	No Ch't Sheet Prep'd		
If prisoner is evacuated to United States, is sentence as approved appropriate?			
If not, what remission should be requested?			

HEADQUARTERS 7TH ARMORED DIVISION
APO 257 US ARMY

5 June 1945

GENERAL COURT MARTIAL)
:
ORDER NO. .....47)

Before a general court martial which convened at APO 257, US Army, pursuant to Paragraph 2, Special Orders No. 118, Headquarters 7th Armored Division, dated 7 May 1945, was arraigned and tried:

Corporal Walter J. Gapinski, 35 111 603, 71st Troop Carrier Squadron, 434th Troop Carrier Group, on Detached Service with 7th Armored Division,(formerly Co B, 38th Armored Infantry Battalion).

CHARGE : Violation of the 93rd Article of War.

Specification : In that Corporal Walter J. Gapinski, Company B, 38th Armored Infantry Battalion, did, at APO 257, U.S. Army, on or about 27 November 1944, willfully, feloniously, and unlawfully kill Private First Class Richard A. Knott, Company B, 38th Armored Infantry Battalion, by shooting him, the said Private First Class Richard A. Knott, Company B, 38th Armored Infantry Battalion, with a rifle, U. S. Calibre, .30, M-1.

PLEAS

To the Specification of the Charge and the Charge: Not Guilty

FINDINGS

Of the Specification of the Charge: Guilty,except the word "wilfully", substituting therefor the word "carelessly", of the excepted word, Not Guilty, of the substituted word, Guilty.

Of the Charge: Guilty.

SENTENCE

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 one (1) year.
(Evidence of no previous convictions considered).

The sentence was adjudged 10 May 1945.

The sentence is approved, but all of the sentence which is in excess of confinement at hard labor for a period of six (6) months and forfeiture of Twenty ($20.00) Dollars per month for a like period, is remitted. As thus modified, the sentence will be duly executed, but the execution of that portion thereof relating to confinement at hard labor is suspended.

BY COMMAND OF MAJOR GENERAL HASBROUCK:

JOHN L. RYAN, JR.
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

DEAN G. OSTRUM
Captain,A.G.D .
Ass't Adjutant General

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CG, European T of Opns	3	Maj D. E. Cooley, TJA	1
CG, Twelfth Army Group, Att: JA	1	Capt Arthur R.Slade,Jr., DC	1
CG, Ninth US Army, Att: JA	1	Cpl Gapinski	1
CG, VII Corps, Att: JA	1	CO 38th Armd Inf Bn	5
Br Off, JAG, APO 887	6	CO 434th Trp Carrier Grp,Att	5
		Pers Sec, 38th Armd Inf Bn	1

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HEADQUARTERS 7TH ARMORED DIVISION
APO 257 US ARMY

5 June 1945

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BY COMMAND OF MAJOR GENERAL HASBROUCK:

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CG, Twelfth Army Group, Att: JA	1	Capt Arthur R.Slade,Jr., DC	1
CG, Ninth US Army, Att: JA	1	Cpl Gapinski	1
CG, VII Corps, Att: JA	1	CO 38th Armd Inf Bn	5
Br Off, JAG, APO 887	6	CO 434th Trp Carrier Grp,AP	1
		Pers Sec, 38th Armd Inf Bn	21

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REVIEW OF STAFF JUDGE ADVOCATE

Staff Judge Advocate, 7th Armored Division 3 June 1945

To: The Commanding General 7th Armored Division

1. The RECORD OF TRIAL BY GENERAL COURT-MARTIAL of the following named accused having been referred to me under the provisions of the 46th Article of War before action thereon by the reviewing authority, I submit herewith my review, with opinion and recommendation and reasons therefor, as required by paragraph 87b of the Manual for Courts-Martial.

2. SYNOPSIS OF THE RECORD, AND OF THE OPINION AND RECOMMENDATION

(Last Name)	(First name & middle initial)	(ASN)	(Rank)	(Organization)
GAPINSKI	WALTER J	35 111 608		71 Troop Carrier Sq, 434 Troop Carrier Gp, (Formerly Company "B", 28th Armd Inf Bn)

Tried at ~~APO 257, U S Army~~ on 9 May 1945 (Date of sentence) Days awaiting trial None (In arrest or confinement)

AGE (nearest birthday): 36 4/12 Years

Length of service : 3 1/12 Years

Character of service (Prior to offense) : Satisfactory

Previous convictions : None

Opinion of the Staff JA (Reversible errors, under AW 37: None
Findings of court legally sustained (See last column under CHARGES): Yes

	DISHONORABLE DISCHARGE (With total forfeitures)	CONFINEMENT at hard labor		FORFEITURE $ of pay per month.
	Yes or NO	How Long?	Where?	How long?
Maximum punishment (Based on legally sustained findings):	Yes	5 Years	As RA may direct	Total
Sentence adjudged by court:	Yes	1 Year	As RA may direct	Total
Recommendation of Staff JA:	No	6 Months		$20 per month ~~for 6 months~~

C H A R G E S

Violation of AW No.	Gist of offense	Pleas	Findings	Legally Sustained
95	Manslaughter	Not Guilty	Guilty	Yes

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3. EVIDENCE:

The issues in this case are simple and there is no substantial conflict in the evidence. The evidence shows that the accused and Private Knott were very good friends. They came into a certain room on the day in question. At that time Joe Carrubba's gun was lying against a bookcase. The gun was loaded. Accused did not notice Carrubba's rifle. Accused leaned his rifle against the bookcase. Knott came in later. They were joking with each other and the accused said, "Go on, I will shoot you." He picked up Carrubba's rifle, thinking that it was his own rifle, which was not loaded. In some way not explained, the rifle went off and Knott was struck and killed. The accused said, "Oh, my God, I didn't mean to do that," and similar words, and started to cry.

4. OPINION:

While the record does not show how the rifle which the accused had was discharged, it may be inferred from his statements that he pulled the trigger. There is no question but that the shooting was accidental and that the accused and the deceased were the best of friends. Under the circumstances, however, it is my opinion that the accused was guilty of gross and wanton negligence in connection with the shooting of Knott.

It is my opinion that the record is legally sufficient to support the findings and sentence, and that there are no errors which injuriously affect the substantial rights of the accused.

5. ESTIMATE OF ACCUSED:

Interview of the accused elicited the following information:

Accused is a white soldier, 25 years of age, who was born in South Bend, Ind. He lived in the latter state until entering military service. He has had an eighth grade education. Both of his parents are living. He has four brothers, two of whom are in service, and he has no sisters. He is married and has a child one year of age. In civil life he worked as a carpenter and earned from 50 to 80¢ an hour. His wife does not work and is not self-supporting. He has had no trouble in civil life.

Accused was inducted on 27 March 1942 and received basic training at Ft. Knox, Ky. He joined this Division in June 1942. He had not been court martialed before. He was slightly wounded, but did not report his injury and did not receive the Purple Heart. Accused impressed me as being very sincere and as being still very much upset over the death of his "buddy".

6. APPROPRIATENESS OF SENTENCE:

The sentence is legal and is entirely appropriate to the facts of this case. Four of the five members of the court which tried this case have signed a petition for clemency which is attached to the record of trial. The accused was in confinement for about four months pending trial. In view of these facts I recommend that clemency be granted as more fully set forth in the following paragraph.

7. RECOMMENDATIONS:

I recommend that the sentence be approved but that all of the sentence which is in excess of confinement at hard labor for six months and forfeitures of $20 per month for a like period be remitted; that the sentence be ordered executed, but that the execution of that portion thereof relating to confinement at hard labor be suspended.

Action to carry these recommendations into effect, should they be approved, is attached hereto.

John R. Parkinson

JOHN R. PARKINSON
Major, JAGD
Asst Judge Advocate

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RECORD OF TRIAL

(and accompanying papers)

of

GAPINSKI, WALTER J., 35 111 603 (W)

(Last name) (First name and middle initial) (Army serial No.)

Corporal, formerly Company B, 38th Armored Infantry Battalion, now 71st Troop Carrier Squadron, 434th Troop Carrier Group

(Grade) (Organization)

APO 133, U.S. Army

(Station)

By

GENERAL COURT MARTIAL

Appointed by the Commanding Officer

7TH ARMORED DIVISION

Tried at

APO 257, U. S. Army, 9 - 10 May, 19 45

CHECKED AND PASSED

Chief of Division .....

Examiners' Section .....

Clemency Section .....

Statistical Section .....

COVER SHEET

(Withdraw this cover sheet from set used to make carbon copy of record for accused and use as backing on original record.)

*W. D., A. G. O. Form No. 114
14 July 1943

*This form supersedes W. D., A. G. O. Form No. 114, 5 January 1943, which may be used until existing stocks are exhausted.

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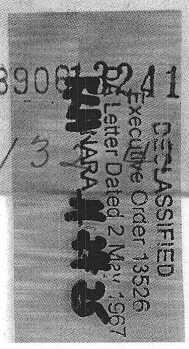

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A CHRONOLOGY OF THE CASE OF:

Gapinski, Walter J., Cpl., 35 111 603, 71st Trp Carrier Squadron 434th Trp Carrier Group, formerly Co B, 38th Armd Inf Bn

	Date	No. of days	Explanation
1. Offense committed:	27 Nov 44		
2. Accused confined:			
By civil authorities			
By military authority	(28 Feb 45)		
By military authority ordering trial	--		
Reconfined from escape			
3. Charges preferred: (Date of Jurat)	23 Dec 44		Original investigatio 10 Dec; Fwd by CO 10 Dec; Recd JA 12 Dec; Ret. to Org. 13 Dec; Recd back 18 Dec; Chgs-action SJA 20 Dec; Chgs fwd 30 Dec - accused evacuated; Chgs recd back and accused returned 4 March 1945; Chgs ret. Inv. Off. 6 Mar 45;
4. Charges further investigated: (Date of Report)	20 Apr 45	138	
5. Charges forwarded by CO:	24 Apr 45	4	
6. Charges received, J.A.:	24 Apr 45		
7. Charges returned:			
8. Charges received back:			
9. Charges—action Staff J.A.:	25 Apr 45	1	
10. Charges referred for trial:	25 Apr 45		
11. Trial had:	9 May 45	14	
Total days to trial			
Less time in hospital		157	
Less delay at request of defense			
Net total		157	
12. Record of trial received:	1 Jun 45	23	
13. Review by Staff J.A.:	3 Jun 45	2	
14. Action by reviewing authority:	5 Jun 45	2	
Total to Action by Reviewing Authority		184	
15. Mimeo. orders received:	9 Jun 45	4	
16. Record of trial mailed to J. A. G. O.:	11 Jun 45	2	
Total		190	

Trial: Dec 28, Jan 31, Feb 28, Mar 31, Apr 30, May 9 = 157

Action: Dec 28, Jan 31, Feb 28, Mar 31, Apr 30, May 31, Jun 5 = 184

Remarks:

JOHN R. PARKINSON
Lt Col, JAGD
Judge Advocate.

All delays must be fully explained.

In computing number of days between two dates, disregard the first day and count the last day. All months will *not* be assumed to consist of 30 days.

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GENERAL COURT-MARTIAL DATA SHEET

Gapinski, Walter J., 35 111 603 (W), formerly Co B, 38th Armd Inf Bn, now 71st Troop Carrier Squadron, 434th Troop Carrier Group.

(Last name) (First name) (Middle initial) (Army serial No.) (Grade) (Company, regiment, or arm of service)

J. A. G. O., C. M. No. 303906

	Trial J. A.		Staff J. A.		J. A. G. O.	
	Yes	No	Yes	No	Yes	No
1. Was court ordered by proper authority?	✓		✓		✓	
2. Are all orders showing membership of court properly entered in record?	✓		✓		✓	
3. Were there less than five members detailed or present at any meeting?		✓		✓		✓
4. Was the law member of the court designated by convening order?	✓		✓		✓	
5. If the presence of the law member was specifically required by the convening authority, was he present at each session?			—		—	
6. Did the court have jurisdiction of person and offense?	✓		✓		✓	
7. Does the record show place, date, and hour court convened?	✓		✓		✓	
8. Are all members of the court, trial judge advocate, assistant trial judge advocate, defense counsel, and assistant defense counsel accounted for as present or absent?	✓		✓		✓	
9. Was accused asked whom he desired as counsel?	✓		✓		✓	
10. Was reporter sworn?	✓		✓		✓	
11. Was interpreter sworn?			—		—	
12. Was accused extended right of challenge as to each member of the court, and was he instructed as to his right to exercise one peremptory challenge against any member except the law member?	✓		✓		✓	
13. Was action of court upon challenges regular and properly taken?			—		—	
14. Was the court sworn?	✓		✓		✓	
15. Was any officer sitting as a member of the court the accuser, a witness for the prosecution, or, upon a rehearing, one who sat as a member on the former trial?		✓		✓		✓
16. Was the personnel for the prosecution sworn?	✓		✓		✓	
17. Was the accused properly arraigned?			✓		✓	
18. If pleas of guilty were explained was accused's response, if any, recorded?			—		—	
19. Does each specification state an offense under the Articles of War?			✓		✓	
20. Are there copied into the record—						
(a) Charges and specifications?	✓		✓		✓	
(b) Name, grade, and organization of the person signing charges?	✓		✓		✓	
(c) Affidavit to the charges and specifications?	✓		✓		✓	
(d) Name of the person who administered the oath verifying the charges, and his official capacity?	✓		✓		✓	
(e) The order of reference for trial?	✓		✓		✓	
21. If the accused was advised of his right to plead the statute of limitations, was his response, if any, recorded?			—		—	
22. Are pleas of accused regularly entered?	✓		✓		✓	
23. Were the witnesses sworn?	✓		✓		✓	
24. Are the findings properly entered?	✓		✓		✓	
25. Was the vote upon each finding by secret written ballot?	✓		✓		✓	
26. Was sentence reached by secret written ballot?	✓		✓		✓	
27. Did at least two-thirds of members present at the time the vote on each finding was taken concur therein?	✓		✓		✓	

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	Trial J. A.		Staff J. A.		J. A. G. O.	
	Yes	No	Yes	No	Yes	No
28. In each case of finding of guilty where death sentence was mandatory, did all members present concur in each finding?			—		—	
29. Did members present concur in sentence, as follows: To death, all members; to life imprisonment or confinement for over ten years, at least three-fourths of members; to any other punishment, at least two-thirds?	✓		✓		✓	
30. Does the evidence sustain the findings of the court?			✓		✓	
31. Are the findings legal?	✓		✓		✓	
32. Is the sentence legal?	✓		✓		✓	
33. Does any ruling of the court on the admission of evidence or other matters injuriously affect the substantial rights of accused?				✓		✓
34. Did all members who participated in proceedings in revision vote on original findings and sentence?			—		—	
35. At proceedings in revision are the trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel, the accused, and the individual counsel, if any, accounted for as present or absent?			—		—	
36. Is the record properly authenticated?	✓		✓		✓	
37. Is action of reviewing authority properly entered in record and signed?			✓		✓	
38. In case of adjournment or continuance, are each day's proceedings properly signed by trial judge advocate?	✓		✓		✓	
39. After each adjournment during trial, is presence or absence of members of court, trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel, accused, his individual counsel, and the reporter properly accounted for?	✓		✓		✓	
40. Is the action of the reviewing authority legal and properly taken?					✓	
41. Is clemency recommended?			✓			✓

David E. Cooley — 31 May 45
Trial Judge Advocate. (Date)

John R. Parkinson — 11 June 1945
JOHN R. PARKINSON
Staff Judge Advocate. (Date)

John A. Wright — L.L. — Lt Col, JAGD — 25 June 45
JOHN A. WRIGHT
1st Lt., JAGD
Officer Reviewing Record. (Action) (Date)

Douglas N. Sharretts — A.S. — 25 June 45
A.S.S.
Chief Examiner. (Action) (Date)

NOTE.—Questions 13, 17, 18, 19, 21, 30, 33, 37, and 40 not to be answered by the trial judge advocate. Question 40 not to be answered by the staff judge advocate.

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Douglas N. Sharretts
Capt, JAGD

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HEADQUARTERS 7TH ARMORED DIVISION
APO 257 US ARMY

5 June 1945

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ORDER NO. .....47)

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BY COMMAND OF MAJOR GENERAL HASBROUCK:

JOHN L. RYAN, JR.
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

Dean G. Ostrum

DEAN G. OSTRUM
Captain,A.G.D .
Ass't Adjutant General

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TAG, RB, Wash DC	3	Col A.J.Adams,Pres	1
CG, European T of Opns	3	Maj D. E. Cooley, TJA	1
CG, Twelfth Army Group, Att: JA	1	Capt Arthur R.Slade,Jr., DC	1
CG, Ninth US Army, Att: JA	1	Cpl Gapinski	1
CG, VII Corps, Att: JA	1	CO 38th Armd Inf Bn	1
Sr Off, JAG, APO 887	6	CO 434th Trp Carrier Grp,APO	1
		Pers Sec, 38th Armd Inf Bn	1

303906

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REVIEW OF STAFF JUDGE ADVOCATE

Staff Judge Advocate, 7th Armored Division 3 June 1945

To: The Commanding General 7th Armored Division

1. The RECORD OF TRIAL BY GENERAL COURT-MARTIAL of the following named accused having been referred to me under the provisions of the 46th Article of War before action thereon by the reviewing authority, I submit herewith my review, with opinion and recommendation and reasons therefor, as required by paragraph 87b of the Manual for Courts-Martial.

2. SYNOPSIS OF THE RECORD, AND OF THE OPINION AND RECOMMENDATION

GAPINSKI	WALTER J	35 111 603	71 Troop Carrier Sq, 434 Troop Carrier Gp, (Formerly Company "B", 38th Armd Inf Bn)
(Last Name)	(First name & middle initial)	(ASN) (Rank)	(Organization)

Tried at APO 257, U S Army on 9 May 1945 (Date of sentence) Days awaiting trial None (In arrest or confinement)

AGE (nearest birthday): 35 4/12 Years

Length of service : 3 1/12 Years

Character of service (Prior to offense) : Satisfactory

Previous convictions : None

Opinion of the Staff JA (Reversible errors, under AW 37: None)Findings of court legally sustained ((See last column under CHARGES): Yes

	DISHONORABLE DISCHARGE (With total forfeitures)	CONFINEMENT at hard labor		FORFEITURE $ of pay per month.
	Yes or No	How Long?	Where?	How long?
Maximum punishment (Based on legally sustained findings):	Yes	3 Years	As RA may direct	Total
Sentence adjudged by court:	Yes	1 Year	As RA may direct	Total
Recommendation of Staff JA:	No	6 Months		$20 per month for 6 months

C H A R G E S

Violation of AW No.	Gist of offense	Pleas	Findings	Legally Sustained
93	Manslaughter	Not Guilty	Guilty	Yes

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5. EVIDENCE:

The issues in this case are simple and there is no substantial conflict in the evidence. The evidence shows that the accused and Private Knott were very good friends. They came into a certain room on the day in question. At that time Joe Carrubba's gun was lying against a bookcase. The gun was loaded. Accused did not notice Carrubba's rifle. Accused leaned his rifle against the bookcase. Knott came in later. They were joking with each other and the accused said, "Go on, I will shoot you." He picked up Carrubba's rifle, thinking that it was his own rifle, which was not loaded. In some way not explained, the rifle went off and Knott was struck and killed. The accused said, "Oh, my God, I didn't mean to do that," and similar words, and started to cry.

4. OPINION:

While the record does not show how the rifle which the accused had was discharged, it may be inferred from his statements that he pulled the trigger. There is no question but that the shooting was accidental and that the accused and the deceased were the best of friends. Under the circumstances, however, it is my opinion that the accused was guilty of gross and wanton negligence in connection with the shooting of Knott.

It is my opinion that the record is legally sufficient to support the findings and sentence, and that there are no errors which injuriously affect the substantial rights of the accused.

5. ESTIMATE OF ACCUSED:

Interview of the accused elicited the following information:

Accused is a white soldier, 35 years of age, who was born in South Bend, Ind. He lived in the latter state until entering military service. He has had an eighth grade education. Both of his parents are living. He has four brothers, two of whom are in service, and he has no sisters. He is married and has a child one year of age. In civil life he worked as a carpenter and earned from 50 to 80¢ an hour. His wife does not work and is not self-supporting. He has had no trouble in civil life.

Accused was inducted on 27 March 1942 and received basic training at Ft. Knox, Ky. He joined this Division in June 1942. He had not been court martialed before. He was slightly wounded, but did not report his injury and did not receive the Purple Heart. Accused impressed me as being very sincere and as being still very much upset over the death of his "buddy".

6. APPROPRIATENESS OF SENTENCE:

The sentence is legal and is entirely appropriate to the facts of this case. Four of the five members of the court which tried this case have signed a petition for clemency which is attached to the record of trial. The accused was in confinement for about four months pending trial. In view of these facts I recommend that clemency be granted as more fully set forth in the following paragraph.

7. RECOMMENDATIONS:

I recommend that the sentence be approved but that all of the sentence which is in excess of confinement at hard labor for six months and forfeitures of $20 per month for a like period be remitted; that the sentence be ordered executed, but that the execution of that portion thereof relating to confinement at hard labor be suspended.

Action to carry these recommendations into effect, should they be approved, is attached hereto.

John R. Parkinson

JOHN R. PARKINSON
Major, JAGD
Staff Judge Advocate

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REVIEW OF STAFF JUDGE ADVOCATE

Staff Judge Advocate, 7th Armored Division 3 June 19 45

To: The Commanding General 7th Armored Division

1. The RECORD OF TRIAL BY GENERAL COURT-MARTIAL of the following named accused having been referred to me under the provisions of the 46th Article of War before action thereon by the reviewing authority, I submit herewith my review, with opinion and recommendation and reasons therefor, as required by paragraph 87b of the Manual for Courts-Martial.

2. SYNOPSIS OF THE RECORD, AND OF THE OPINION AND RECOMMENDATION

(Last Name)	(First name & middle initial)	(ASN)	(Rank)	(Organization)
GARINERI	WALTER J	35 111 603		71 Troop Carrier Sq, 434 Troop Carrier Gp, (Formerly Company "B", 38th Armd Inf Bn)

Tried at APO 257, U S Army on 9 May 19 45 (Date of sentence) Days awaiting trial None (In arrest or confinement)

AGE (nearest birthday): 25 4/12 Years

Length of service: 3 1/12 Years

Character of service (Prior to offense): Satisfactory

Previous convictions: None

Opinion of the Staff JA (Reversible errors, under AW 37: None
)Findings of court legally sustained
((See last column under CHARGES): Yes

	DISHONORABLE DISCHARGE (With total forfeitures)	CONFINEMENT at hard labor		FORFEITURE $ of pay per month.
	Yes or NO	How Long?	Where?	How long?
Maximum punishment (Based on legally sustained findings):	Yes	5 Years	As RA may direct	Total
Sentence adjudged by court:	Yes	1 Year	As RA may direct	Total
Recommendation of Staff JA:	No	6 Months		$10 per month for 6 months

C H A R G E S

Violation of AW No.	Gist of offense	Pleas	Findings	Legally Sustained
93	Manslaughter	Not Guilty	Guilty	Yes

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3. EVIDENCE:

The issues in this case are simple and there is no substantial conflict in the evidence. The evidence shows that the accused and Private Knott were very good friends. They came into a certain room on the day in question. At that time Joe Carrubba's gun was lying against a bookcase. The gun was loaded. Accused did not notice Carrubba's rifle. Accused leaned his rifle against the bookcase. Knott came in later. They were joking with each other and the accused said, "Go on, I will shoot you." He picked up Carrubba's rifle, thinking that it was his own rifle, which was not loaded. In some way not explained, the rifle went off and Knott was struck and killed. The accused said, "Oh, my God, I didn't mean to do that," and similar words, and started to cry.

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Accused was inducted on 27 March 1942 and received basic training at Ft. Knox, Ky. He joined this Division in June 1942. He had not been court martialed before. He was slightly wounded, but did not report his injury and did not receive the Purple Heart. Accused impressed me as being very sincere and as being still very much upset over the death of his "buddy".

6. APPROPRIATENESS OF SENTENCE:

The sentence is legal and is entirely appropriate to the facts of this case. Four of the five members of the court which tried this case have signed a petition for clemency which is attached to the record of trial. The accused was in confinement for about four months pending trial. In view of these facts I recommend that clemency be granted as more fully set forth in the following paragraph.

7. RECOMMENDATIONS:

I recommend that the sentence be approved but that all of the sentence which is in excess of confinement at hard labor for six months and forfeitures of $20 per month for a like period be remitted; that the sentence be ordered executed, but that the execution of that portion thereof relating to confinement at hard labor be suspended.

Action to carry these recommendations into effect, should they be approved, is attached hereto.

John M. Parkinson

JOHN M. PARKINSON
Major, JAGD
Staff Judge Advocate

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(WRITE NOTHING ABOVE THIS LINE)

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CHARGE SHEET

APO 257, U.S. Army (Place), 27 November (Date), 1944

Name, etc., of accused Gapinski, Walter J. 35 111 603, Corporal, Company B, 38th Armored Infantry Battalion
(Give last name, first name, and middle initial in that order followed by serial number, grade, company, regiment, arm or service, or by other appropriate description of accused. Alias names, etc., to follow in same manner)

/ Due Soldier 20% for Foreign Service Pay.

Age 35 Pay, $66.00 per month. Allotments to dependents, $ 22.00 (Cl F,) per month.
(Base pay plus pay for length of service)

Government Insurance deduction, $ 7.40 (Cl N,) per month.

Data as to service: Prior Service: None. Inducted at South Bend, Indiana, 27 March 1942, to serve for duration of war plus six (6) months.
(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment)

Data as to witnesses, etc.: Against the accused:
(Give names, addresses, and note if for accused. List documentary evidence and note where each item thereof may be found)

Captain WILLIAM A. GREENE, Company B, 38th Armored Infantry Battalion.

Pfc Alfred L. Johnson, 34 583 355, Med Det., 38th Armored Infantry Battalion.

Pvt. Peter P. Lauriola, 32 229 376, Med Det., 38th Armored Infantry Battalion.

Pvt. Walter G. Johnston, 36 779 013, Co. B, 38th Armd Inf Bn.,

Pvt. Samuel J. Carrubba, 32 999 075, Co. B, 38th Armd Inf Bn.,

T/Sgt. Eli T. Martin, 36 117 961, Co B, 38th Armd Inf Bn.,

DOCUMENTARY EVIDENCE

W.D., A.G.O. Form No. 51- Report of Investigation

Data as to restraint of accused: Duty with Co B, 38th Armd Inf Bn., fr 27 Nov 44 to 28 Nov 44. Duty with 48th Armd Inf Bn., since 28 Nov 44.
(Give date, place, and initial date of any restraint of accused)

W. D., A. G. O. Form No. 115
8 July, 1943

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NND 963

CHARGE: Violation of the 93rd Article of War.

Specification : In that Corporal Walter J. Gapinski, ~~35 111 665~~, Company B, 38th Armored Infantry Battalion, did, at APO 257, U.S. Army, on or about 27 November 1944, willfully, feloniously, and unlawfully kill Private First Class Richard A. Knott, ~~14 120 656~~, Company B, 38th Armored Infantry Battalion, by shooting him, the said, Private First Class Richard A. Knott, ~~14 120 656~~, Company B, 38th Armored Infantry Battalion, with a rifle, U.S. Calibre .30, M-1.

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12½-inch paper will be used for additional sheets)

(2)

(WRITE NOTHING BELOW THIS LINE)

c16—27769-2

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser) William A. Greene
WILLIAM A. GREENE
Captain, Infantry, Co B, 38th Armd Inf Bn.
(Grade, organization, arm, or service)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 3rd day of December, 1944, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he* has personal knowledge of the matters set forth in specifications ~~s~~
(Indicate by specification and charge numbers) ~~; and has investigated the matters set forth in specifications~~ Of the Charge and the Charge
(Indicate by specification and charge numbers), and that the same are true in fact, to the best of his knowledge and belief.

(Signature) Walter E. Neumann
(Grade and organization)
WALTER E. NEUMANN,
1st Lt., 38th Armd Inf Bn., Adjutant.
(Official character, as summary court, notary public, etc.)

NOTES.—At (*) strike out words not applicable.
If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.
If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1st IND.

Headquarters 7th Armored Division, APO 257, U. S. Army, 25 April, 1945
(Place) (Date)

Referred for trial to Major David E. Cooley, GSC, TJA
(Grade, name, and organization of summary court, or trial judge advocate)

General court-martial appointed by paragraph 8, Special Orders
(Summary) (Trial judge advocate of special or general)
No 12, Hq 7th Armd Div, dated 12 Jan 45, as amnd by par 1, SO No 29, Hq 7th Armd Div,
No. ...., Headquarters dated 29 Jan 45, as amnd by par 1, SO 103, Hq 7th Armd, 19
Div, dated 19 April 45.
By COMMAND of MAJOR GENERAL HASBROUCK:
(Command or order) (Grade and name of commanding officer)

e16—27769-2

Francis E. Carr, *Adjutant.*
FRANCIS E. CARR
Lt Col, AGD
Adjutant General

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I have served a copy hereof on (~~each of~~) the above-named accused, this 28th day of April, 1945

(Signature) David E. Cooley, *Trial Judge Advocate.*

Maj, Hq. 7th Cmd. Div.
(Grade and organization)

(SPACE FOR USE WHERE TRIAL IS BY SUMMARY COURT)

CASE No. _____

SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR ACQUITTAL AND REMARKS

Place _____, Date _____, 19____

_____ Summary Court.
(Signature, grade, and organization)

Headquarters _____, 19____
(Place and date)

_____
(Action of reviewing authority)

_____, *Commanding.*
(Signature, grade, and organization)

Entered on service record in cases of conviction _____
(Initials of personnel adjutant)

(WRITE NOTHING BELOW THIS LINE) c16—27769-2 U. S. GOVERNMENT PRINTING OFFICE

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(Investigation of CASE of U. S. vs Cpl Walter J. Gapinski, Co E, [illegible])

2. Cpl Gapinski was not present during the investigation since he had been admitted to the hospital on 2 December 1944. Effort was made to contact Cpl Gapinski at the 41st Evac. Hosp. but it was found that he had been transferred to the 16th General Hospital the same date andthe following day, 3 Dec. 1944, was transferred to Hospital Train No. 1. Person contacted at the16th General Hospital could give no information as to the present whereabouts of Cpl Gapinski.

ALVA T. McDANIEL
Major, Infantry
Investigating Officer

Gapinski, Walter J. (Enl)
(Name of Accused)

1st Ind.

Hq. 7th Armd Div, APO 257, U. S. Army 6 February 1945
TO: Major Alva T. McDaniel, O 403 565, Hq 38th Armd Inf Bn

You are hereby designated to investigate, in accordance with the provisions of the 70th Article of War and paragraph 35a, M.C.M., the charges herewith dated 27 November 1944 against the accused named above.

By command of Major General HASBROUCK:

Dean G Ostrum
DEAN G. OSTRUM
(Adjutant)
1st Lt, Inf.
Acting Assistant Adjutant General

2nd Ind.

MAJOR ALVA T. McDANIEL
Investigating Officer, 38th Arm'd Inf. Bn., APO 257, U. S. Army 20 April 1945
TO: Commanding General, 7th Armored Division, APO 257, U. S. Army

Report of Investigation of Charges.

1. The charges herewith have been investigated, as directed. The accused was informed at the outset of the purpose of the investigation, was acquainted with the charges against him and the evidence upon which they were based. His rights and privileges during and incident to the investigation were fully explained. Witnesses requested by him, and other witnesses whose expected testimony was not fully and satisfactorily indicated in statements attached to the charges (see page 25, M.C.M.) were thereafter, if reasonably available, examined by me in his presence. He was allowed to examine and cross examine witnesses as he wished, with my assistance, and to make such statements and arguments as he wished in his own behalf, after due warning as to his rights and privileges.

2. The Summary of Evidence attached hereto includes all the substantial evidence I have been able to find, for and against the accused, or sufficient evidence to fully establish whether each specification and charge can be sustained.

3. In my opinion the following specifications and charges are not sustained by the evidence: None

4. Lesser Included Offenses (to be substituted for charges not sustained):
None

5. Additional Charges recommended: None

6. Further amendments or corrections of charges recommended: None

7. Except as indicated above, it is my opinion that all the specifications and charges, including additional charges, are correct in form and are sustained by the evidence.

8. I have no reasonable ground for belief that the accused is, or was at the time of any offense charged, mentally defective, deranged, or abnormal.

9. I have considered the following personal data concerning the accused:

Present age (verified by the accused): 35 1/2 W.J.G.

Length of Service: 3 1/12 years

(over)

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(2nd Ind., continued)

Character of service (prior to this offense): Satisfactory

Previous convictions : None

In my opinion he should not be eliminated from the service.

10. I recommend trial by General Court-Martial. This is recommended for the protection of subject enlisted man.

11. In arriving at my conclusions, I have considered not only the nature of the offenses and the evidence in this case, but I have likewise considered the age of the accused, his military service, the necessity for preserving the manpower of the Nation in the present emergency, of salvaging all possible military material, and the established policy of the War Department that trial by general court martial will be resorted to only when the charges can be disposed of in no other manner consistent with military discipline.

Alva T. McDaniel

ALVA T. McDANIEL
Major, 38th Arm'd Inf. Bn.
Investigating Officer

3rd Ind.

Hq._____ _____19__

TO:_____

1. The charges herewith against the above named accused person over whom I exercise court-martial jurisdiction have been thoroughly and impartially investigated as required by the 70th Article of War.

2. I have considered the Investigating Officer's report and recommendations, and I recommend _____.

_____
Commanding.

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HEADQUARTERS 38TH ARMORED INFANTRY BATTALION
APO 257 U. S. ARMY

20 April 1945.

Following is an unsworn statement of Cpl. Walter J. Gapinski, 35 111 603, made in connection with the court-martial charges against him dated 27 November 1944 for violation of the 93d Article of War.

"On 27 November 1944 I started into the squa d billet. We had instructions from our commanding officer to keep our weapons unloaded while indoors, so I removed the clip from my rifle and put the clip in my hip pocket. When I entered the house I leaned my rifle against the bookcase. Pfc. Richard A. Knott, 14 120 856, came over to me and we were teasing each other. He picked up a can of my rations, saying, 'I'll take this'. I said, 'No, you don't, Joe'.

When he started walking away I picked up my rifle from the bookcase and when I turned to face him I pointed it in his direction. The rifle went off and the bullet struck Pfc. Richard A. Knott. I do not remember attempting to fire the weapon. During the entire time I knew Pfc. Richard A. Knott we never had an argument. I am very anxious to face trial and clear my name."

Alva T. McDaniel

ALVA T. McDANIEL
Major, 38th Arm'd Inf. Bn.
Investigating Officer.

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201-Gapinski, Walter J. (Enl) 1st Ind.
(8 Apr 45)

Headquarters 38th Arm'd Inf. Bn., APO 257, U. S. Army, 20 April 1945.

TO: Commanding General, 7th Arm'd Div., APO 257, U. S. Army.

1. Report of Investigation of the charges against Cpl. Walter J. Gapinski, for violation of the 93d Article of War are forwarded herewith.

2. Attention is invited to the fact that of the witnesses listed on page 1 of the charge sheet, only the following are available at present:

Pfc Alfred L. Johnson, 34 583 355, Med. Det., 38th Armd Inf. Bn.

Pvt. Walter G. Johnston, 36 779 013, Co. "B", 38th Arm'd Inf. Bn.

T Sgt. Eli T. Martin, 36 117 961, Co. "B", 38th Arm'd Inf. Bn.

3. CAPT. WILLIAM A. GREENE, and Pvt. Peter P. Lauriola are Missing in Action and Pvt. Samuel J. Carruba has been hospitalized.

For the Commanding Officer:

RECEIVED
21 APR 1945
Headquarters, 7th Armored Division

ALVA T. McDANIEL
Major, 38th Arm'd Inf. Bn.
Investigating Officer

1 - Incl.
Charge Sheet and
allied papers.

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HEADQUARTERS 7TH ARMORED DIVISION
APO 257, U. S. Army

Q.A. 45 BA
1736

8 April 1945

201-Gapinski, Walter J. (Enl) (J)

SUBJECT: Report of Investigating Officer on Court Martial Charges.

TO : Commanding Officer, 38th Armored Infantry Battalion, APO 257, U. S. Army.

1. On 6 March 1945 the Charge Sheet and alliedpapers in the case of Private Walter J. Gapinski, formerly 38th Armored Infantry Battalion, were forwarded to your headquarters for further investigation.

2. The Report of the Investigating Officer has not been received at this headquarters and information is requested as to the present status of the investigation.

By command of Major General HASBROUCK:

Dean G Ostrum

DEAN G. OSTRUM
1st Lt., A.G.D.
Assistant Adjutant General

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HEADQUARTERS 7TH ARMORED DIVISION
Office of the Staff Judge Advocate
APO 257, U. S. Army

6 March 1945

MEMORANDUM TO: Major Alva T. McDaniel, Hq 38th Armd Inf Bn.

SUBJECT : Court-Martial Charges in case of Cpl Walter J. Gapinski.

1. Charge sheets and allied papers in subject case herewith.

2. The charges have been again referred to you for investigation under AW 70.

3. Suggest that you call at this office before beginning investigation.

FRANK P. ERESCH
Major, JAGD
Acting Staff Judge Advocate

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R E S T R I C T E D

HEADQUARTERS
IX TROOP CARRIER COMMAND

APO 133, U. S. Army,
28 February 1945.

SPECIAL ORDERS)
:
NUMBER 59)

1. Having been asgd to this Hq, per Ltr Orders, Hq, US Strategic Air Forces in Europe, dated 26 Feb 1945, the fol named O and EM, are further asgd, WP Hq, 52nd Trp Carr Wg, Sta 489. TDN by MT, mil acft or rail. 60-136 P 431-02 212/50425. PCS. EDCMR: 1 Mar 45.

F/O THOMAS F LYNCH	AC	T64 809
F/O PHILLIPPE R FLANNERY	AC	T65 426
F/O WILLIAM I WATTS	AC	T 136 001
Sgt John E Dieterle	15	082 573
Cpl Orville W McKitterick	15	065 873

2. 1ST LT JAMES E BODELL, AC, O 705 104, is reld fr asgmt and dy w/34th Trp Carr Sq, 315th Trp Carr Gp, Sta 493, is asgd, WP 70th Reinforcement Depot (AAF), Sta 594, for ret to the ZI by first available T, and to report to the Reception Center nearest his home for processing and reassignment under the provisions of PRI. The fol entry will be made on officer's WD AGO Form 66-1: "By order of the Secretary of War, this O will not be assigned to dy outside continental US". CO, 70th Reinforcement Depot will notify the War Department by priority cable not later than 12 Mar 1945 citing SPXPO-A ATTN: LT COL CULLETON, AGD, giving date of departure, mode of travel and port of embarkation, w/information copy to Hq, European T of Opr, USA. Auth: WAR 43642 and TWX E13466, Hq, European T of Opr, USA, dtd 26 Feb 1945.
TDN by MT, mil acft or rail. 60-136 P 431-02 212/50425. EDCMR: 5 Mar 45.

3. MAJ WILLIAM B CRUM, AC, 023 513, is reld fr asgmt and dy w/Hq, IX Trp Carr Comd, Sta 472(S), asgd, WP 70th Reinforcement Depot (AAF), Sta 594, to await T to the ZI for rehabilitation and reassignment therein. (Auth: Sec III, Par 4, WD Cir 372, 13 Sep 1944, and Ltr, Hq, US Strategic Air Forces in Europe, sub: "Combat Crew Rehabilitation Policy", 11 Sep 1944.) EDCMR: 3 Mar 45.
TDN by MT, mil acft or rail. 60-136 P 431-02 212/50425. PCS.

4. VOCG, 25 Jan 45, relieving 2D LT IRVING OPPENHEIM, FD, 02 001 148, fr dy and asgmt w/ 29th Air Depot Gp, assigning him to Hq, IX Trp Carr Comd, Sta 472(S), and detailing him to dy w/Fiscal Sec, are confirmed and made of record. EDCMR: 25 Jan 1945. Exigencies of the sv precluded the issuance of orders in advance.

5. Cpl Walter J Gapinski, 35 111 603, 434th Trp Carr Gp, is reld fr further DS w/ Hq Sq, IX Trp Carr Comd, Sta 472(S), and placed on indef DS w/7th Armored Div, APO 257, US Army, pending disposition of the Court Martial charges against him. Sub EM will proceed under guard fr Station Guardhouse, Sta 472(S) to Hq, First US Army, APO 230, US Army, for ret to 7th Armored Div, for trial. (Auth: 1st w/Ind, Hq, 7th Armored Div, 30 Dec 1944, to Ltr, Hq, 7th Armored Div, sub: "Rpt of Staff Judge Advocate to the CG, 7th Armored Div, on Court Martial Charges, 20 Dec 1944.")
TDN by MT, mil acft rail or water. 60-*** P 432-02 212/50425.

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SO No 59, Hq, IX Trp Carr Comd
28 Feb 1945

6. So much of Par 1, SO No 23, this Hq, cs, pertaining to the temp suspension of 2D LT THOMAS M ARMSTRONG, AC, O 996 292, fr dy involving regular and frequent participation in aerial flights, is revoked. (Auth: Par 10 c (2), AAF Reg 35-16, 20 Oct 1944.)

7. 1ST LT ROBERT H GEEDY, AC, O 829 373, who reported to this Hq in compliance w/ Par 1, SO No 48, Hq, Eighth Air Force, 17 Feb 1945, is asgd, WP 52nd Trp Carr Wg, Sta 489. EDCMR: 2 Mar 45.
TDN by MT, mil acft or rail. 60-136 P 431-02 212/50425. PCS.

8. Tec 4 Walter C Finke, 37 259 880 (187),388th Sig Co (Avn), will proceed o/a 2 Mar 1945 fr USAAF Sta 472(S) in the UK to Chateau de Prunay, Louveciennes, Paris Area (European Continent) on indef TDY, to carry out the instructions of the CG, IX Trp Carr Comd, and upon completion of such dy he will proceed to his proper orgn and sta. TDN by MT, mil acft, rail or water. 60-*** P 432-02 212/50425.

9. So much of Par 7, SO No 58, this Hq, cs, pertaining to the transfer of EM to Infantry OCS, as reads: "Infantry Officer Candidate Training (Class No. 4)", is amended to read: Infantry Officer Candidate Training(Class No. 5).

(Travel directed is pursuant to the auth contained in Ltr, Hq, European T of Opr, USA, file AG 300.4 MPM, 22 Nov 1944.)

By command of Major General WILLIAMS:

JAMES E DUKE, JR
Colonel, GSC
Chief of Staff

OFFICIAL:

J. E. BRILL
Lieutenant Colonel, AGD
Adjutant General

DISTRIBUTION:
2 cys-CG, First Allied Airborne Army; 5 cys-CG, USSTAF, (2 cys-93rd MRU, 1 cy-Postal O, and 1 cy-Director of Personnel); 2 cys-55th MRU; 1 cy-VIII AF Replacement Depot, attn: Postal O; 1 cy-VIII AF Composite Control, attn: Postal O; 2 cys-CO, 8th Historical Unit; 2 cys-Postal O, Hq, IX Trp Carr Comd;and 133rd APU; 3 cys-Fin O; 4 cys-CG, 52nd Trp Carr Wg; 4 cys-CO, 70th Reinforcement Depot (AAF); 4 cys-CO, 315th Trp Carr Gp; 4 cys-CO, Ea Sta: 472(S), 472(N), 493, 594; 4 cys-CO, 29th Air Depot Gp; 4 cys-CG, 7th Armored Div; 4 cys-CG, First US Army; 4 cys-CO, 434th Trp Carr Gp; 4 cys-CO, 61st Trp Carr Gp; 2 cys-CG, IX Trp Carr Comd (Fwd); 4 cys-CO, 388th Sig Co (Avn); 4 cys-CO, 435th, and 436th Trp Carr Gps; 2 cys-Ea Sec: A-2, A-3, A-4, AG, Med, Fiscal, and RTO; 3 cys-A-1 Sec; 1 cy -A-1 Sec, attn: Locater file; 3 cys-Ea O conc; 1 cy-Ea O 201 file conc; 3 cys-Ea EM conc; 1 cy -Orders Sec; 1 cy-File; 4 cys-Comdt, 9th Reinforcement Depot. 4 cys-CG, European T of Opr, USA.

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RESTRICTED

HEADQUARTERS
434TH TROOP CARRIER GROUP
APO 133, U S Army

28 February 1945.

SPECIAL ORDERS)
NUMBER 39)

EXTRACT

7. Cpl Walter J. Gapinski, 35 111 603, (566), 71st Trp Carr Sq, is placed on DS with Hq Sq, IX Trp Carr Comd, Sta 472, for an indefinite period of time and upon compl of such dy will ret to his proper orgn and sta. Where gov't qrs and rat are not available, EM atzd reimbursement of a daily alws of $1.25 per day for qrs and $2.25 per day per man for subs. The alws for subs will be reduced $0.75 for each meal provided by gov't facilities. EM traveling on dy, including detentions not exceeding thirty-one (31) days, when not furn rat or qrs in kind, will be granted a daily alws of $5.00 (alws for subs a/r $1.00 per meal and alws for qrs a/r $2.00 per day). Detentions shall be deemed to relate to stopovers during journeys and not to periods of DS. Reimbursements are in accordance with Sec I, Par 3a and 3b, Cir 63, Hq, European TO, USA dtd 5 June 44, as amended by Par 1, Sec IX, Cir 84, Hq, European TO, USA, dtd 31 July 44. TDN by MT, mil acft or rail. 60-136 P432-02 A212/50425. Auth: VOOG, IX Trp Carr Comd, 27 Feb 45.

8, Sgt Walter Patapow, 12 045 231 (747), 71st Trp Carr Sq, is placed on DS with Hq Sq, IX Trp Carr Comd, Sta 472, for a period of one (1) day for the purpose of accompanying Prisoner Cpl Walter J. Gapinski, 33 111 603 (566). Sgt Patapow will ret to his proper orgn and sta upon compl of DS. Where gov't rat and qrs are not available, EM atzd reimbursement of a daily alws of $1.25 per day for qrs and $2.25 per day for subs. The alws for subs will be reduced $.75 for each meal provided by gov't facilities. EM traveling on dy, including detentions not exceeding thirty-one (31) days, when not furn rat or qrs in kind will be granted a daily alws of $5.00 (alws for subs a/r $1.00 per meal and alws for qrs a/r $2.00 per day). Detentions shall be deemed to relate to stopovers during journeys and not to periods of DS. Reimbursements are in accordance with Par 3a and 3b, Sec I, Cir 63, Hq, European TO, USA, dtd 5 June 44 as amended by Par 1, Sec IX, Cir 84, Hq, European TO, USA, dtd 31 July 44. TDN by MT, mil acft or rail. 60-136 P432-02 A212/50425. Auth: VOOG, IX Trp Carr Comd, 27 Feb 45).

(Travel directed pursuant to auth contained in ltr, Hq, European TO, USA, AG 300.4, dtd 22 Nov 44).

By order of Lieutenant Colonel GARLAND:

JAMES H. TAYLOR,
Captain, Air Corps,
Adjutant.

OFFICIAL:

James H. Taylor

JAMES H. TAYLOR,
Captain, Air Corps,
Adjutant.

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C O N F I D E N T I A L

AG 250.4 x 220.48 11th W/Ind.
HEADQUARTERS IX TROOP CARRIER COMMAND, APO 133, US ARMY, 28 February 1945

TO: Commanding General, First US Army, APO 230.

1. Inclosed herewith are copies of orders placing Cpl Walter J. Gapinski, 35111603, on indefinite DS with the 7th Armored Division, APO 257, pending disposition of the Court Martial charges against him. Subject EM is presently assigned to the 434th Troop Carrier Group, APO 133, a unit of this command.

2. The above action was taken inasmuch as this Headquarters cannot proceed with the case without additional information or without the necessity of calling witnesses presently assigned to the 7th Armored Division.

3. As indicated in inclosed orders, Cpl Gapinski has been directed to proceed under guard to your Headquarters. It is requested that your Headquarters take necessary action to have him returned to the proper organization for trial.

4. It is also requested that this Headquarters be informed of the final action taken in this case and that two copies of any orders issued in his case be forwarded to this Headquarters.

For the Commanding General:

J. E. Brill

J. E. BRILL
Lieutenant Colonel, AGD
Adjutant General

T 2 Incls:
Added Incl 2 - Par 5, SO 59, Hq, Trp Carr Comd, 28 Feb 45.

252 (PW) 12th W/Ind.

HEADQUARTERS FIRST UNITED STATES ARMY, APO 230. 2 MAR 1945

A TO: Commanding General, 7th Armored Division, APO 257.

1. A matter pertaining to your command.

2. Prisoner now confined in the First U. S. Army Stockade.

By command of Lieutenant General HODGES:

3 Incls:
2-Incls: n/c
3-Personnel Records.

Joseph E Morrissey

JOSEPH E. MORRISSEY
Major, A.G.D.,
Asst. Adjutant General

C O N F I D E N T I A L
- 5 -

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250.4 - Gapinski, Walter J., Cpl.
35111603 9th W/Ind.

HQ., 70TH REINFORCEMENT DEPOT (AAF), AAF 594, APO 652, U.S. Army. 14 February 1945.

TO: Commanding Officer, 434th Troop Carrier Group, AAF 467, APO 133, U.S. Army.

1. Forwarded as a matter pertaining to your command.

2. EM concerned was transferred to your organization per Par. 6, Special Orders No. 32, this Headquarters, dated 1 February 1945.

For the Commanding Officer:

E. J. HART
Captain, AC
Actg Asst Adj. Gen.

1 Incl: n/c

201 - Gapinski, Walter J. (E) 10th W/Ind.

HEADQUARTERS, 434TH TR CARR GROUP, APO 133, U S Army, 21 February 1945.

TO : COMMANDING GENERAL, IX Tr Carr Command, APO 133, U S Army.

1. Request that subject enlisted man be reassigned to the 7th Armored Division, APO 257, U S Army for further investigation and Courts-Martial Proceedings.

2. An investigation conducted by this Group shows that information is not available for the inclosed Courts-Martial papers to be completed and man tried by this station.

For the Commanding Officer:

JAMES H. TAYLOR,
Captain, Air Corps,
Adjutant.

1 Incl: n/c.

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6th W/Ind

FKL/jjz/fws

HEADQUARTERS IV HOSPITAL GROUP (PROV) APO 63, US Army, 3 February 1945.

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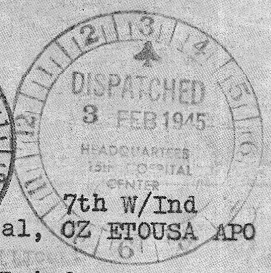
TO: Commanding Officer, 111th General Hospital, APO 63, US Army



F. K. L.

7th W/Ind LFG/wac

Hq, 111th (US) General Hospital, CZ ETOUSA APO 63 US Army, 4 Feb 1945.

TO: Commanding Officer, 10th Reinforcement Dep APO 874 US Army.

Soldier trfd to your command per Par 3, SO #10, this hqs, dated 10 January 1945.

For the Commanding Officer:

L. F. GRAPSKI
2d Lt, MAC
Asst Adjutant

201-Gapinski, Walter J. (Enl) 8th W/Ind. DGG/rjf

HQTENTH REINFORCEMENT DEPOT, APO 874, 11 Feb'45.

TO: Commanding Officer, Casual Pool, 70th Replacement Depot, AAF station 594, APO 652.

The above named enlisted man was transferred to your command per Par 11, SO 18, this Headquarters, dated 18 January 1945.

For the Commanding Officer:

238

D'ARCY G. GALLAGHER
Major, FA
Asst Adjutant

Incls:
n/c

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IN 13100

201-Gapinski, Walter J. (Enl.) 3rd W/Ind.

4342 USAHP (Hq. 16th GH), OFFICE OF DET.OF PATIENTS, APO 350: 15 January 1945

TO: Surgeon, Headquarters, Seine Base Section, APO 887, US Army.

1. Subject enlisted man was admitted to this hospital, 2 December 1944 and transferred to Hospital Train #1, 3 December 1944.

2. Request communication be forwarded to soldiers present station.

For the Commanding Officer:

Walter W. Moore, Jr
WALTER W. MOORE Sr.,
1st Lt., MAC.,
C.O., Det.of Pnts.

1 Incl:
n/c

201-Gapinski, Walter J. (Enl). 4th W/Ind. DMM/wll

HQ, SEINE SECTION, COM Z, EUROPEAN THEATER OF OPERATIONS, APO 887, U S ARMY, OFFICE OF THE SURGEON, 25 January 1945.

TO: The Surgeon, U.K. Base Section, European Theater of Operations, APO 413, U S Army.

1. Forwarded as a matter pertaining to your command.

2. Subject Soldier evacuated to unknown hospital U.K. (air), 4th December 1944.

For the Surgeon:

Donald M. McElroy
DONALD M. McELROY,
Captain, M.C.
Assistant.

Incl:
n/c

201. Gapinski, Walter J, 35111603. 5th W/Ind. HCM:chp

HQ. COM Z. OFFICE OF THE SURGEON. MED RECS DIV. APO 413. 31 January 1945

TO: Commanding Officer, 111 General Hospital, APO 63.
(Through: Commanding Officer, 4 Hospital Group, APO 63).

1. Forwarded for necessary action, subject enlisted man a patient in your hospital.

By order of the Surgeon:

H.C. Millard
H.C. MILLARD
Capt, MAC
Assistant

Incl: n/c.

REC'D 3 HEADQUARTERS 16th Hospital Center

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201-Gapinski, Walter J. (Enl) 1st W/Ind.

HEADQUARTERS 7TH ARMORED DIVISION, APO 257, U. S. Army, 30 December 1944

TO: Commanding Officer, 41st Evacuation Hospital

1. Forwarded for necessary action.

2. This soldier was evacuated to 41st Evacuation Hospital on or about 2 December 1944.

3. It is requested that this headquarters be advised of action taken.

For the Commanding General:

John I. McGiver
JOHN I. McGIVER
1st Lt., A.G.D.
Assistant Adjutant General

Incl: 1
1 - Charge Sheet and Accompanying Papers (Gapinski)

201-Gapinski, Walter J (Enl) 2nd W/Ind ALA/s

HEADQUARTERS, 41ST EVACUATION HOSPITAL, SM, APO 339, U. S. Army 8 Jan 1945

TO: Commanding Officer, 16th General Hospital, APO 350, U. S. Army

Subject enlisted man was evacuated to your hospital on 2 Dec 1944.

For the Commanding Officer:

RECEIVED 10 Jan 45 HEADQUARTERS 16 GENERAL HOSPITAL

Allen L. Allion
ALLEN L. ALLION
Captain M. A. C
Registrar

(Over)

10

HEADQUARTERS 7TH ARMORED DIVISION
Office of the Staff Judge Advocate
APO 257, U. S. Army

20 December 1944

UNITED STATES	:	REPORT OF STAFF JUDGE ADVOCATE
v.	:	TO THE COMMANDING GENERAL,
Corporal Walter J. Gapinski, 35111603, Company "B", 38th Armored Infantry Battalion.	:	7TH ARMORED DIVISION, ON COURT
	:	MARTIAL CHARGES.

1. The attached charges in the above-entitled case, dated 27 November 1944, together with the report of investigation thereof and papers therewith connected, have been referred to this office for action in accordance with the provisions of the 70th Article of War and paragraph 35b, MCM, 1928. After due and careful consideration thereof the following report and advice are submitted:

a. The charge is correct and complete in form.

b. The charge is appropriate to the indicated competent evidence in the case.

c. The specification states an offense cognizable by courts-martial. The Specification has been corrected by the undersigned so as to eliminate Serial Numbers (App 4, MCM, 1928).

d. There is nothing in these papers to indicate any reason for a belief that accused may be mentally defective or deranged, either temporarily or permanently.

2. The investigation of the charges does not substantially comply with the provisions of the 70th Article of War, as opportunity was not given accused to present evidence in his own behalf or cross-examine the witnesses against him.

"At such investigation full opportunity shall be given the accused to present anything he may desire in his own behalf either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused" (par 35a, MCM, 1928, AW 70).

"The provisions of AW 70 with reference to investigating charges are mandatory and there must be a substantial compliance therewith before charges can legally be referred for trial. A court-martial is without jurisdiction to try an accused upon charges referred to it for trial without having been first investigated in substantial compliance with the provisions of AW 70 and, in such a case, the court-martial proceedings are void ab initio" (Dig Ops JAG, 1912-1940, Sec 428 (1)).

3. Investigation by the undersigned reveals that accused on 28 November 1944 was transferred from Co "B", 38th Armd Inf Bn, to Co "C", 48th Armd Inf Bn, and that on 2 December 1944 accused was evacuated as a non-battle casualty to 41st Evacuation Hospital; that the 48th Armd Inf Bn still has the service records of accused, and he may be returned to this organization.

4. In view of the foregoing it is recommended that if accused is returned to this command the charges be returned to the investigating officer for completion of investigation; that if accused is not returned to this command the charges and accompanying papers be forwarded for appropriate disposition.

John P. Oliver
JOHN P. OLIVER
Lt Col, JAGD
Staff Judge Advocate

Incl 1 (Complete File)

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201-Gapinski, Walter J. (Enl) 5th Ind.

Headquarters 38th Armored Infantry Battalion, APO 257, U. S. Army, 14 December 1944.

To: Commanding General, 7th Armored Division, APO 257, U. S. Army.

1. It was the intention of the Investigating Officer to cross out the inapplicable sentences of paragraph 1, of Report of Investigation, but through oversight this was not done.

2. The Investigating Officer was directed by the Deputy Chief Of Staff, Colonel Molony, to complete the investigation of the charges in the absence of the accused, since the accused had been evacuated and could not be contacted.

RECEIVED
DEC 18 1944
J. A. OFFICE
HQ., 7th ARMD. DIV.

For The Commanding Officer:

Walter E. Neumann
WALTER E. NEUMANN
1st Lt., Infantry,
Adjutant.

Gapinski, Walter J.
(Name of Accused)

1st Ind.

Hq. 38th Armored Infantry Battalion, APO 257, U. S. Army 3 December 19 44
TO: MAJOR ALVA T. McDANIEL, O 403 565, Hq 38th Armd Inf Bn.

You are hereby designated to investigate, in accordance with the provisions of the 70th Article of War and paragraph 35a, M.C.M., the charges herewith dated 27 November 19 44 against the accused named above.

By order of Lt. Col. FULLER:

WALTER E. NEUMANN
1st Lt., Infantry
Adjutant

2nd Ind.

Investigating Officer, MAJOR ALVA T. McDANIEL, O 403 565 10 December 19 44
TO: Commanding Officer, 38th Armored Infantry Battalion, APO 257, U. S. Army.

Report of Investigation of Charges.

1. The charges herewith have been investigated, as directed. The accused was informed at the outset of the purpose of the investigation, was acquainted with the charges against him and the evidence upon which they were based, his rights and privileges during and incident to the investigation were fully explained, witnesses requested by him, and other witnesses whose expected testimony was not fully and satisfactorily indicated in statements attached to the charges (see page 25, M.C.M.) were thereafter, if reasonably available, examined by me in his presence. He was allowed to examine and cross-examine witnesses as indicated, with my assistance, and to make such statements and present such matters in his own behalf, after due warning as to his rights and privileges. WEN

2. The Summary of Evidence attached hereto includes all the substantial evidence I have been able to find, for and against the accused, or sufficient evidence to fully establish whether each specification and charge can be sustained.

3. In my opinion the following specifications and charges are not sustained by the evidence: None.

4. Lesser Included Offenses (to be substituted for charges not sustained):
None.

5. Additional Charges recommended:
None.

6. Further amendments or corrections of charges recommended:
None.

7. Except as indicated above, it is my opinion that all the specifications and charges, including additional charges, are correct in form and are sustained by the evidence.

8. I have no reasonable ground for belief that the accused is, or was at the time of any offense charged, mentally defective, deranged, or abnormal.

9. I have considered the following personal data concerning the accused:

Present age (verified by the accused): 35

Length of Service: 2 years 8 months

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(2nd Ind., continued)

Character of service (prior to this offense): Satisfactory.

Previous convictions : None.

In my opinion he should be eliminated from the service.

10. I recommend trial by General Court.

11. In arriving at my conclusions, I have considered not only the nature of the offenses and the evidence in this case, but I have likewise considered the age of the accused, his military service, the necessity for preserving the manpower of the Nation in the present emergency, of salvaging all possible military material, and the established policy of the War Department that trial by general court martial will be resorted to only when the charges can be disposed of in no other manner consistent with military discipline.

Alva T. McDaniel

ALVA T. McDANIEL, Major, (Inf)
Investigating Officer

3rd Ind.

Hq. 38th Armored Infantry Battalion, AOPO 257, U. S. Army. 10 Dec. 19 44

TO: Commanding General, 7th Armored Division, APO 257, U. S. Army.

1. The charges herewith against the above named accused person over whom I exercise court-martial jurisdiction have been thoroughly and impartially investigated as required by the 70th Article of War.

2. I have considered the Investigating Officer's report and recommendations, and I recommend trial by General Court Martial.

W. H. G. Fuller

W. H. G. FULLER, Lt. Col. Commanding.
(Inf)

12 DEC 1944

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201-Gapinski, Walter J. (Enl) 4th Ind.

HEADQUARTERS 7TH ARMORED DIVISION, APO 257, U. S. Army, 13 December 1944.

TO: Commanding Officer, 38th Armored Infantry Battalion, APO 257, U. S. Army

1. Charge Sheet and report of investigating officer in case of Cpl, Walter J. Gapinski, Company B, 38th Armored Infantry Battalion, returned herewith.

2. Paragraph 1 of 2nd Indorsement states as follows:

"The accused was informed at the outset the purpose of the investigation, was acquainted with the charges against him and the evidence upon which they were based. His rights and privileges during and incident to the investigation were fully explained. Witnesses requested by him, and other witnesses whose expected testimony was not fully and satisfactorily indicated in the statements attached to the charges were thereafter, if reasonably available, examined by me in his presence. He was allowed to examine and cross examine witnesses as he wished, with my assistance, and to make such statements and arguments as he wished in his own behalf, after due warning as to his rights and privileges."

3. Paragraph 2 of letter Headquarters 38th Armored Infantry Battalion dated 10 December 1944, Subject: "Investigation" being a portion of the accompanying papers in the report of investigating officer states in part as follows:

"Cpl. Gabinski was not present during the investigation since he had been admitted to the hospital on 2 December 1944".

4. The communications referred to in paragraphs 2 and 3 above appear inconsistent. Clarification is requested.

By command of Brigadier General HASBROUCK:

John I. McGiver
JOHN I. McGIVER
1st Lt., A.G.D.
Assistant Adjutant General

Incls: n/c

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HEADQUARTERS 38TH ARMORED INFANTRY BATTALION
APO 257, U. S. Army.

10 December 1944.

SUBJECT: Investigation.

TO : Commanding Officer, 38th Armd Inf Bn., APO 257, U. S. Army.

1. Investigation of Charges in Case of U. S. vs Cpl Walter J. Gapinski, 35 111 603, reveal the following:

a. Pfc Alfred L. Johnson, 34 583 355 Med. Det. 38th A. I. Bn.
"He knows both Gapinski and Knott and had no knowledge of any trouble between the two men. He was in his own billet, two doors from the scene of the shooting, and arrived at the scene approximately 5 minutes after the shooting. Knott was lying on his back in the doorway and was dead at that time. Gapinski was lying face down on his bed sobbing. Knott was very quiet man and everyones friend.

b. Pvt Peter P. Lauriola, 32 229 376, Med. Det. 38th A. I. Bn.
Knew the two men only casually. He was in his own billet, two doors from the scene of the shooting, and arrived at the scene approxemately 5 minutes after the shooting. Knott was lying on his back in the doorway and was dead at that time. Gapinski was lying face down on his bed sobbing. Knott was very quiet man and everyones friend.

c. Pvt Walter G. Johnston, 36 779 013, Co. B, 38th A. I. Bn.
Had been with company since 13 November 1944, and knew both Gapinski and Knott. He was sitting at the table with back to the door and was eating when Gapinski and Knott entered. He heard them kidding and he looked around when Knott approached. He heard Gapinski say, "Go on, I'll shoot you" then the shot was fired. Two rifles were leaning against the book rack when Gapinski picked up one. To his knowledge there was no hard feelings between the two men. After the shot was fired Gapinski cried "Oh My God, No", and went into the other room crying "No,No".

d. Pvt Samuel J. Carrubba, 32 999 075, Co. B, 38th A. I. Bn.
Been with the company since 13 Nov. 1944 and had known the two men during that time. He had come in and placed his rifle against the book rack and was eating with his back to the door. He heard Gapinski and Knott come in teasing each other but didn't pay any attention. He heard the shot and saw Knott fall to the floor. He picked up the rifle where it lay by the body, found it to be loaded and it was hisown. He looked at the other, Gapinski's, whene it stood at the book rack and found it to be empty with the safety off. He knew of no trouble between the men and believes it to be an accident.

f. T/Sgt Eli T. Martin, 36 117 961, Co. B, 38th A. I. Bn.
Was in the mess Mine 150 yards from the house when notified of the shooting. He called the Medics and went to the scene. He knew both men well and knew of no trouble. The men teased a lot on friendly terms.

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HEADQUARTERS, 38TH ARMORED INFANTRY BATTALION
APO #257, % P.M. New York, N.Y.

3 December 1944

C-E-R-T-I-F-I-C-A-T-E

I certify that there is no record of previous convictions by Courts-Martial in the case of Cpl Walter J. Gapinski, 35 111 603 , Company "B", 38th Armored Infantry Battalion.

Walter E. Neumann
WALTER E. NEUMANN
1st Lt.,38th Armd Inf Bn.,
Adjutant.

(LEAVE THE SPACE ABOVE THIS LINE FOR BINDING)

A

TW

ADVICE OF STAFF JUDGE ADVOCATE

Staff Judge Advocate, 7th Armored Division, 24 April, 1945

To: The Commanding General, 7th Armored Division

1. The attached charges have been referred to me for consideration and advice under the provisions of the 70th Article of War and par. 35 b of the Manual for Courts-Martial. I have carefully examined and considered the charges and accompanying papers, including the report of the investigation made in compliance with the 70th Article of War, and submit herewith my report and recommendations.

2. a. PERSONAL DATA concerning the accused, as shown by the records:

Gapinski (Last name)	Walter J. (First name and middle initial)	35111603 (Army Serial No.)	Cpl (Rank)	7th Trp Carr Sq, formerly of Co "B", 38th Armd Inf Bn (Organization)

Age (nearest birthday)	:	35 Years
Length of service	:	3 Years
Character of service (prior to this offense)	:	Satisfactory
Previous convictions	:	None
Restoration probable? (if convicted and sentenced to be dishonorably discharged)	:	Yes

b. SUMMARY OF THE CHARGES. Each specification alleges, in correct form, an offense under the Article of War alleged to have been violated.

Violation of A.W. No.	Gist of Offenses
93rd	Did at, APO 257, U. S. Army, on or about 27 November 1944, willfully, feloniously, and unlawfully kill Private First Class Richard A. Knott, by shooting him with a rifle, U. S. Calibre .30, M-1.

3. On or about 27 November 1944 accused and the deceased soldier entered a building where the other men of the company were eating. As the accused and deceased soldier entered the room, they were kidding and teasing each other. Accused was heard to say, "Go on, I'll shoot you." Then a shot was fired, and accused cried, "Oh My God, No," and went into another room. After the shooting the deceased fell on the floor and died within a few minutes.

4. The evidence indicates that before entering the room, accused removed the clip from his rifle, and after entering leaned his rifle against a book case. After getting into the room the deceased picked up a can of accused's rations, saying, "I'll take this." Accused said, "No, you don't Joe." When the deceased started to walk away, accused picked up his rifle and pointed it in the direction of the deceased, at which time the weapon was discharged.

5. The evidence submitted is sufficient to establish a prima facie case. In view of the evidence submitted and the nature of the charges, I recommend that the case be referred to a general court-martial for trial.

Trial by GCM

Trial by Special CM ____

JOHN R. PARKINSON
Major, JAGD
Staff Judge Advocate

7—Advice of Staff Judge Advocate

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WAR DEPARTMENT
Form 333 (Improvised Form)
Approved by Comptroller of Treasury
July 25, 1919

WAR DEPARTMENT

VOUCHER No.

PUBLIC VOUCHER
Personal Services

APPROPRIATION:

$ 7.62

THE UNITED STATES,

TO Sergeant Richard D. Myer, Dr.

ADDRESS A A Section, APO 257, U. S. Army

DATE From	DATE To	CHARACTER OF SERVICES	RATE	AMOUNT
1945 9 May	10 May	Shorthand reporting services before a General Court Martial in the case of U.S. v. Corporal Walter C. Capinski, Special Duty with Company B, 88th Armored Infantry Battalion	$0.10 per 100 words	
		Transcribing 7,620 words pursuant to Par 2, SO 116 Hq 7th Armd Div dated 7 May 1945		$7.62

I certify that the above bill is true and correct, and that payment thereof has not been received.

(Do not sign in duplicate)

Examined by

Received _____ 19___, of _____

in CASH the sum of _____ dollars and _____ cents in full payment of the above account.

$_____

(Do not sign in duplicate)_____

CERTIFICATE

I certify that Sergeant Richard D. Myer was employed by me as reporter for taking shorthand dictation and transcribing the proceedings of a General Court Martial, under the attached authority, and that the amount for his services as stated is correct.

I further certify that the foregoing account is correct; that the person named thereon was legally appointed or employed; that he has performed the service required by law and the regulations of the War Department; and that he is entitled to the amount of pay stated above.

TRIAL JUDGE ADVOCATE
GENERAL COURT MARTIAL

APPROVED FOR $ 7.62

Date June 1945

RECORD OF TRIAL

(Proper)

of

GAPINSKI, (Last name) WALTER J., (First name and middle initial) 35 111 603 (Army serial No.)

Corporal, (Grade) formerly Company B, 38th Armored Infantry Battalion, now 71st Troop Carrier Squadron, 434th Troop Carrier Group (Organization)

APO 153, U. S. Army (Station)

By

GENERAL COURT MARTIAL

Appointed by the Commanding Officer

7TH ARMORED DIVISION

Tried at

APO 257, U. S. Army, 9 - 10 May, 19 45

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TESTIMONY

Name of Witness	Direct	Cross	Redirect	Recross	Court	Recalled
	Page	*Page*	*Page*	*Page*	*Page*	*Page*
Pfc Walter G. Johnston, Jr.	6	8		9	9	15
T/Sgt Eli T. Martin	9	10				
Captain Joseph R. Jehl	10					
Pfc Albert L. Johnson	12	13				
Captain George R. Freyberger	14	14				
Cpl Walter J. Gapinski	16	17	17		17	

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EXHIBITS, ETC., APPENDED

Description	Number	Page where introduced
Extract copy of indorsements from service record	"A"	15

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a carbon copy of the above described record of trial, delivered to me at 267 A.P.O.

this 13 day of June, 1945

Walter J. Gapinski
(Signature of accused)

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PROCEEDINGS OF A GENERAL COURT MARTIAL

which convened at APO 257, U. S. Army pursuant to the following order.....:

R E S T R I C T E D

HEADQUARTERS 7TH ARMORED DIVISION
APO 257, U. S. ARMY

/mwc

7 May 1945

SPECIAL ORDERS)
:
NUMBER.....118)

E X T R A C T

* * *

2. A General Court-Martial is aptd to meet as soon as practicable at Hq 7th Armd Div APO 257 or such other place as may be designated from time to time by the president thereof, for the trial of such persons as may be properly brought before it. (Auth: AW 8 MCM 1928)

DETAIL FOR THE COURT

COL ANDREW J. ADAMS 018 579 Inf
LT COL JESSE P. BELLAMY 0 177 755 FD
MAJ JERROLD D. O'BRYANT 0 405 845 Cav - LAW MEMBER
MAJ CLYDE W. BRADSHAW 0 339 992 CAC
MAJ WILLIAM RATOWSKY 0 444 908 DC
MAJ GUY C. STRICKLER 0 499 419 Ord
CAPT ERNEST L. HORTON, JR 0 465 878 CE

MAJ DAVID E. COOLEY 01 012 156 GSC - TJA
CAPT JAMES F. CARPENTER 01 010 175 Inf - Asst TJA

CAPT ARTHUR R. SLADE, JR 0 456 136 Cav - DC
1ST LT LEO FELDMAN 01 541 738 MAC - Asst DC

All unarraigned cases in the hands of the Trial Judge Advocate of the General Court-Martial aptd by Par 8 SO 12 this hq dated 12 Jan 45 as amended are withdrawn from that court and are referred for trial to the Trial Judge Advocate of the General Court-Martial herein aptd.

The employment of an enlisted reported is authorized, if available; if not, employment of a civilian reporter is authorized.

* * *

BY COMMAND OF MAJOR GENERAL HASBROUCK:

JOHN L. RYAN, JR.
Colonel, G. S. C.
Chief of Staff

OFFICIAL:

FRANCIS E. CARR
Lt. Col., A.G.D.
Adjutant General

DISTRIBUTION:
50 - JA
11 - 1 to each O concerned
1 - Misc Sec
1 - Off Sec
5 - File

R E S T R I C T E D

Record of trial GCM.
See appendix 6, MCM.

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APO 257, U. S. Army
(Place)

9 May, 19 45
(Date)

ORGANIZATION OF THE COURT

The court met pursuant to the foregoing order..... at 0920 ..... o'clock ..... M

PRESENT

1. COL ANDREW J. ADAMS, 018 579 Inf
4. MAJ CLYDE W. BRADSHAW, O 339 992 CAC
5. MAJ WILLIAM RATOWSKY, O 444 908 DC
6. MAJ GUY C. STRICKLER, O 499 419 Ord
7. CAPT ERNEST L. HORTON, JR, O 465 878 CE

A. MAJ DAVID E. COOLEY, 01 012 156 GSC - Trial Judge Advocate
B. CAPT JAMES F. CARPENTER, 01 010 175 Inf - Assistant Trial Judge Advocate

C. CAPT ARTHUR R. SLADE, JR, O 456 136 Cav - Defense Counsel
D. LST LT LEO FELDMAN, 01 541 738 MAC - Assistant Defense Counsel

ABSENT

2. LT COL JESSE P. BELLAMY, O 177 755 FD - absence due to performance of official duties.

3. MAJ JERROLD D. O'BRYANT, O 405 845 Cav - LAW MEMBER - absence due to performance of official duties.

PROSECUTION: The presence of the Law Member appointed by the order appointing the court is not deemed essential by the appointing authority in the trial of this case.

The court proceeded to the trial of Corporal (Grade) Walter J. Gapinski (Name)
35 111 603, (Army serial number) formerly Company B, 38th Armored Infantry Battalion, now 71st Troop Carrier Squadron, 434th Troop Carrier Group (Organization)
who, on appearing before the court, was asked by the trial judge advocate whom he desired to introduce as counsel.

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The accused stated he desired to be defended by the regularly appointed defense counsel and assistant defense counsel.

Sergeant Richard D. Myer was sworn as reporter.

PROSECUTION TO ACCUSED: Do you want a copy of the record of trial?

ACCUSED: I do, Sir.

The trial judge advocate then announced the names of the members of the court present and absent.

The trial judge advocate then announced the names of the accuser, the investigating officer, officers who forwarded the charges and any members of the court who would be called as witnesses for the prosecution as follows: Officer who forwarded the charges - Lt. Colonel W. H. G. Fuller, Investigating Officer - Major Alva T. McDaniel, Accuser - Captain William A. Greene, and no officer of the court will be called as a witness for the prosecution.

PROSECUTION: If any member of the court is aware of any facts which he believes to be a ground of challenge by either side against any member, it is requested he state such facts.

PRESIDENT: Apparently none.

PROSECUTION: The prosecution has no challenges.

PROSECUTION TO ACCUSED: You now have the right to challenge any member or members of the court for cause, and any one member, other than the law member, peremptorily.

DEFENSE: The accused has no challenges.

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

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The members of the court and the personnel of the prosecution were then sworn.

ARRAIGNMENT

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

CHARGE : Violation of the 93rd Article of War.

SPECIFICATION : In that, Corporal Walter J. Gapinski, Company B, 38th Armored Infantry Battalion, did, at APO 257, U. S. Army, on or about 27 November 1944, willfully, feloniously, and unlawfully kill Private First Class Richard A. Knott, Company B, 38th Armored Infantry Battalion, by shooting him, the said, Private First Class Richard A, Knott, Company B, 38th Armored Infantry Battalion, with a rifle, U. S. Calibre .30 M-1.

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William A. Greene
(Signature of accuser (TYPED))
WILLIAM A. GREENE
(Name (TYPED))
Captain, Infantry, Co B, 38th Armd Inf Bn
(Grade, organization, or arm or service)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser, this 3rd day of December, 19 45, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he *has personal knowledge of the matters set forth in specifications / (Indicate by specification and charge numbers); and *~~has investigated the matters set forth in specifications~~ Of the Charge and the Charge (Indicate by specification and charge numbers), and that the same are true in fact, to the best of his knowledge and belief.

Walter E. Neumann
(Signature (TYPED))
WALTER E. NEUMANN
(Name (TYPED))
1st Lt., 38th Armd Inf Bn
(Grade and organization)
Adjutant
(Official character, as summary court, notary public, etc.)

1st IND.

Headquarters 7th Armored Division, APO 257, U. S. Army, 25 April, 19 45
(Place) (Date)

Referred for trial to Major David E. Cooley, GSC,
(Grade, name, and organization of trial judge advocate)

Trial Judge Advocate of general court-martial appointed by paragraph 8, Special Orders No 12 Hq 7th Armd Div 12 Jan 45 as amnd by par 1, SO No 29 Hq 7th Armd Div 29 Jan 45 as amnd by par 1, SO 103 Hq 7th Armd Div 19 April 45

Orders No. ....., Headquarters ....., ..., 19.....

By command of MAJOR GENERAL HASBROUCK:
(Grade and name of commanding officer)

Francis E. Carr
FRANCIS E. CARR, *Adjutant.*
Lt Col., AGD, Adjutant General

~~The accused then pleaded as follows:~~

~~No~~ ~~Specification~~, ~~Charge~~:

~~No~~ ~~Charge~~: Charges served on accused 28 April 1945.

PROSECUTION: Have you had sufficient time to prepare this case?
DEFENSE: We have.

PROSECUTION: Are there any special pleas or motions?
DEFENSE: There are no special pleas or motions.

The accused then pleaded as follows:

To the Specification of the Charge: Not Guilty

To the Charge: Not Guilty

*Strike out phrase not applicable.

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By direction of the court the following matters were read to the court by the trial judge advocate, to wit:

Paragraph 149 a and b, Page 165, Manual for Courts Martial 1928

The statement to the court.

TESTIMONY FOR THE PROSECUTION

Private First Class Walter G. Johnston, Jr., a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by prosecution:

Q. State your full name, grade, organization, and station.

A. Walter G. Johnston, Jr., Private First Class, Company B, 38th Armored Infantry Battalion, APO 257.

Q. Do you know the accused? If so, state his name.

A. I do; Gapinski.

Q. Is he in the military service of the United States?

A. He is.

Q. What is his grade and organization?

A. He is a corporal. At the present time I don't know what organization.

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Q. Of what organization was he a member on 27 November 1944?
A. Company B, 38th Armored Infantry Battalion.

Q. Did you know him at that time?
A. Yes, Sir, he was my squad leader.

Q. Do you recall anything unusual that occurred on 27 November 1944?
A. No.

Q. You recall nothing unusual?
A. How do you mean that.

Q. Did you see the accused on that date?
A. Yes, Sir.

Q. What time of day did you see him on that date?
A. Approximately seven-thirty in the morning, chow time.

Q. Where was he at that time?
A. In the same room where I was eating.

Q. What room was that?
A. That was the room where we slept, across from the kitchen in the house we were billeted in.

Q. What was the name of that town where that house was?
A. Ronsdahl, Holland.

Q. Was anyone else in the room at that time?
A. Yes, Private Joe Carrubba.

Q. Private Joe Carrubba, yourself and the accused, is that correct?
A. Yes, Sir, and the fellow that got shot, Private Knott.

Q. Did anything unusual occur at that time?
A. They were just joking around and I heard the shot fired.

Q. From the time they were joking, tell exactly what you saw and heard.
A. I came in the room and sat down to eat my breakfast and Joe Carrubba came in and sat his rifle next to the book case where Gapinski's rifle was, and later Knott and Gapinski came in. They were foding around, and I didn't pay much attention to them. The shot was fired and Knott was on the floor and I went and got the medics.

Q. Did you see who fired that shot?
A. My back was to them. Gapinski had the gun in his hand.

Q. What kind of gun did he have in his hand?
A. M-1 Rifle, .30 calibre.

Q. Did you look at Knott where he was on the floor?
A. Yes, Sir.

Q. Did you examine him?
A. No. I looked down and then went to get the medics.

Q. What was your observation of him?
A. I saw he was breathing and moving his lips.

Q. Had he been injured?
A. He had.

Q. Could you tell where he had been injured?
A. No, Sir, I couldn't.

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Q. Did you hear anything said immediately prior to the shooting or immediately after the shooting?
A. After the shooting, Gapinski said "Oh My God, I didn't mean to do that" and started to cry.

Q. Did you hear either Gapinski or Knott say anything immediately prior to the shooting?
A. Gapinski said, "Go on, I will shoot you".

Q. To whom did he say that?
A. To Knott.

Q. You stated that Carrubba came in there and placed his rifle by Gapinski's, is that correct?
A. Yes, Sir.

Q. Was Gapinski's rifle in the room before Gapinski came in?
A. Yes, Sir.

Q. Did you see Gapinski when he entered the room?
A. Yes, Sir.

Q. Was he armed at the time he entered the room?
A. Yes, Sir, he came in and sat his rifle down at the book case.

Q. Carrubba set his rifle next to Gapinski's rifle. Was Gapinski in the room when Carrubba came in the room?
A. Yes, Sir.

Q. At the time Carrubba entered the room Gapinski was already in the room?
A. Yes, Sir.

Q. Was Knott in the room when Carrubba came in?
A. I don't remember, I can't say definitely.

Q. Could that shot have been fired by anyone else in the room other than Gapinski?
A. No, Sir.

Q. Do you know the full name of private Knott.

A. His first name is Richard.

CROSS EXAMINATION

Questions by the Defense.

Q. Did you know both Men?
A. Yes, Sir.

Q. Were you in the same squad?
A. Knott was our peep driver and Gapinski was our squad leader.

Q. What was the relationship between those men? Was it friendly or unfriendly?
A. It was friendly.

Q. This joking you were talking about, was it friendly joking?
A. I didn't pay too much attention to it. They were laughing and joking around usually. Everyone fooled around.

Q. Was this any different?
A. No, Sir.

Q. Did you observe the condition of Corporal Gapinski immediately after the shooting?
A. Yes, Sir. We had some straw and blankets on the floor. He went over there and said "I didn't mean to do that" and started to cry.

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Q. Did he appear upset and nervous?
A. Quite so.

Q. In your opinion, did Gapinski have any reason for wanting to shoot Knott?
A. I don't believe so.

QUESTIONS BY THE COURT

Questions by the President.

Q. You stated that Gapinski's rifle was standing against the book case at the time?
A. Yes, Sir.

Q. Then whose rifle did you see was placed besides Gapinski's?
A. Private Joe Carrubba.

Q. Corporal Gapinski's rifle was besides the book case, at that time. When was it removed from besides the book case?
A. Both rifles were there until the shooting.

Q. Was Corporal Gapinski's rifle ever removed from the book case prior to the shooting?
A. No, Sir.

Q. I believe you stated that Corporal Gapinski had a rifle in his hand when you turned around after hearing the shot, is that correct?
A. I don't remember if it was set down. The other fellow said it was his rifle and Corporal Gapinski never carried his rifle loaded.

Q. Whose rifle did Corporal Gapinski have?
A. Joe Carrubba's.

Q. When did Gapinski obtain Carrubba's rifle that was leaning against the book case?
A. When he picked it up.

Q. Who picked it up?
A. Corporal Gapinski.

Q. When did he pick it up?
A. Just prior to the shooting.

Q. Did you see him pick it up?
A. No, Sir, he had it in his hand when I turned around.

RE CROSS EXAMINATION

Questions by the Defense.

Q. Isn't it possible that he had that rifle in his hand sometime prior to theshooting?
A. Yes, Sir.

Q. Both the same type of rifle?
A. Yes, Sir.

There being no further questions, the witness was excused and withdrew.

Technical Sergeant Eli T. Martin, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution.

Q. State your name, rank, organization and station.
A. Eli T. Martin, Technical Sergeant, Company B, 38th Armored Infantry Battalion, APO 257.

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Q. Do you know the accused in this case?
A. Yes, Sir.

Q. State his name and point him out to the court.
A. Corporal Gapinski. (Witness indicates accused).

Q. Is he amember of the military service?
A. Yes, Sir.

Q. Do you know what organization he is a member at the present time?
A. No, Sir.

Q. Was he a member of your organization on or about 27 November 1944?
A. Yes, Sir.

Q. What were your duties in the company at that time?
A. Platoon Sergeant, Anti-Tank Platoon.

Q. And what were the duties of the accused at that time?
A. He was gunner corporal, Anti-Tank Platoon.

Q. Did you see the accused at any time on 27 November 1944?
A. Yes, Sir.

Q. When did you see him on that day?
A. After breakfast, Sir.

Q. Where was he at that time?
A. He was in the room we were living in.

Q. Will you state to the court the circumstances under which you saw him on that day?
A. He was sitting on the floor crying when I walked into the room. All the members of his squad were there, and Private Knott's body was laying in the doorway.

Q. Did you look at the body of Private Knott?
A. Yes, Sir.

Q. And what did you observe?
A. He was dead.

Q. How could you tell he was dead?
A. I couldn't exactly tell, his eyes were open and his face was green.

Q. Were there any marks of violence on his body?
A. No, Sir.

Q. Did you observe anything else about him?
A. No, Sir.

Q. Do you know whether or not medical personnel were called to attend Private Knott?
A. Yes, Sir, I called them.

Q. Did any come to the scene?
A. Yes, Sir, I don't know their names, our company medics.

CROSS EXAMINATION

Questions by the Defense.

Q. Did you know both Corporal Gapinski and Private Knott?
A. Yes, Sir.

Q. Both were in your platoon?
A. Yes, Sir.

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Q. Would you say they were on Friendly or unfriendly terms?
A. Friendly terms, Sir.

Q. Have you ever observed the way Corporal Gapinski handled his weapons?
A. He was careful with his weapons, Sir.

The court did not desire to question the witness. There being no further questions, the witness was excused and withdrew.

Captain Joseph R. Jehl, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution.

Q. State your name, rank, organization and station.
A. Joseph R. Jehl, Captain, Medical Corps, 38th Armored Infantry Battalion, APO 257.

Q. Do you know the accused in this case?
A. No, Sir.

Q. I believe you stated that you are an officer in the Medical Corps?
A. Yes, Sir.

PROSECUTION: Will the defense accept this witness as a medical expert?
DEFENSE: The defense will.

Q. Calling your attention to the date of on or about 27 November 1944, do you recall a shooting that occurred in Company "B" on that day?
A. The shooting occurred at a position in the area of the 31st Tank Battalion. The company that this man was in was separated from the rest of the battalion and was under a different area and I was not present at the case.

Q. Did you have occasion to examine the body of a man that was brought to you on that day?
A. No, Sir. I never saw the man.

Q. Did you ever have occasion to examine the body of Private First Class Richard Knott
A. No, Sir.

Neither the court nor the defense desired to question the witness, who was excused and withdrew.

PROSECUTION: The prosecution feels that it must call the proper medical officer to establish the fact of the death.
PRESIDENT: The court will be adjourned until such time as the witness can be brought before it.

The court then at 1007 9 May 1945 adjourned to meet at the call of the President.

David E. Cooley
DAVID E. COOLEY
Major, GSC
Trial Judge Advocate

APO 257, U. S. Army

9 May 1945.

The court met, pursuant to adjournment, at 1345, all the personnel of the court, prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused and reporter were also present.

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PROSECUTION: If it please the court, the prosecution has obtained the witness, but it is necessary for that witness to examine his records. Due to the great distance at which his organization is, the prosecution requests an adjournment until tomorrow morning.

PRESIDENT: The court will adjourn to meet at 0900 10 May 1945.

The court then at 1350 9 May 1945 adjourned to meet at the call of the President.

David E. Cooley
DAVID E. COOLEY
Major, GSC
Trial Judge Advocate

APO 257, U. S. Army

10 May 1945

The court met, pursuant to adjournment at 0920, all the personnel of the court prosecution and defense, who were present at the close of the previous session in this case, being present.

The accused and reporter were also present.

Private Albert L. Johnson, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution.

Q. State your name, rank, organization and station.
A. Albert L. Johnson, Private First Class, Medical Detachment, 38th Armored Infantry Battalion, APO 257.

Q. Do you know the accused in this case?
A. I do.

Q. State his name and point him out to the court.
A. I know his name, I can't think of it right now. There he is.

Q. How long have you known that man you have just indicated?
A. I knew him from about the 12th of August until the time it happened back in Holland.

Q. Until the time what happened?
A. That Knott was shot.

Q. Did you know Private Knott?
A. Yes, Sir.

Q. Did you know his full name?
A. Richard Knott.

Q. Did you see Private Knott on 27 November 1944?
A. I don't remember the date.

Q. Did you see him on or about that date?
A. I saw him about three minutes after he was killed.

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Q. State to the court everything that you observed that day in connection with the incident.
A. They came after us.

Q. Who came after you?
A. One of the boys came and said one was shot. Four of us medics returned down there and I examined Knott. We examined his heart beat, pulse and his face was green.

Q. Did you do that yourself?
A. All of us did.

Q. Where was the body when you arrived?
A. Half in the kitchen and half in the adjoining room. His legs in one room, and his head in the other.

Q. Was that the body of Richard Knott?
A. Yes, Sir.

Q. Did you observe any marks on the body?
A. There was a hole around here. (Indicates the shoulder).

Q. What was done with the body of Richard Knott?
A. Civilians were in the other room, so we moved it in the room and closed the door and told one of the boys to stand guard till the officers came.

Q. Did anyone come for the body?
A. It was an hour later that the 31st Medics came.

Q. Do you know why they came?
A. "B" Company of the 38th was attached to the 31st Tank Battalion, and we were about ten to fourteen miles from the 38th.

Q. Did you see the 31st Tank Battalion Medics when they came?
A. Yes, Sir, I helped load the body on the peep.

Q. Did you go with that peep?
A. No, Sir.

Q. Describe just what you saw.
A. The body was laying in the door and we examined him and found that he was already dead. There was several GI's there and he (witness indicates accused) was back in this room. This man was in the other room.

CROSS EXAMINATION

Questions by the Defense.

Q. The door, that Knott's body was laying in, was between the Kitchen and the dining room?
A. I don't know what room it was.

Q. Did you notice Corporal Gapinski's condition at that time?
A. Yes, Sir, he was pretty well shook up and he was saying "Lord have Mercy".

Q. From the position where he was at that time could you see through the door into the room?
A. No, Sir.

Q. The two rooms were in the shape of an "L"?
A. Yes, Sir, the door was up in this corner.

Q. Did you know the two men in this case?
A. Yes, Sir.

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Q. Did you know whether the relationship between them was friendly or unfriendly?
A. I believe it was friendly.

Q. Do you know anything about Private Gapinski's reputation for handling of firearms?
A. No, Sir.

The court did not desire to question the witness. There being no further questions, the witness was excused and withdrew.

Captain George A. Freyberger, a witness for the Prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution.

Q. State your name, rank, organization and station.
A. George A. Freyberger, Captain, Medical Corps, 31st Tank Battalion, APO 257.

Q. Do you know the accused in this case?
A. No, Sir.

PROSECUTION: Does the defense accept the witness as a medical expert?
DEFENSE: It does.

Q. Did you or did you not on or about 27 November 1944, examine the body of a man who was brought to you from Company B, 38th Armored Infantry Battalion?
A. I did.

Q. Who brought that body to you?
A. Two aid men from my medical detachment.

Q. What time of day was it brought to you?
A. Approximately 0930 in the morning.

Q. Did you examine that body?
A. Yes, Sir.

Q. Was the body identified in your presence?
A. The body was identified by the dog tags on the man and later by an officer from his organization.

Q. What was the identification given that man's body?
A. The identification was that of Richard Knott. Serial number I have with me.

Q. What was the condition of Richard Knott when he was brought to you?
A. Richard Knott was dead at the time I saw him. Death hadn't taken place very long before I seen him, rigor mortis had not set in. There was a wound of entry and a wound of exit. The wound of entry was below the lower left shoulder blade and the point of exit was the right shoulder. It put the bullet through vital structures of the body. I believe death was within an hour of the time I saw him.

CROSS EXAMINATION

Questions by the Defense.

Q. How would you say the bullet travelled?
A. Upward; upward and forward.

The court did not desire to question the witness. There being no further questions, the witness was excused and withdrew.

Private Walter G. Johnston, Jr., was recalled as a witness by the Prosecution, was reminded that he was still under oath and testified as follows:

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DIRECT EXAMINATION

Questions by the Prosecution.

Q. You have already testified in this case?
A. Yes, Sir.

Q. The shot that you have testified as hearing, was that fired within the room or outside the room.
A. Within the room, from that rifle; from Joe Carrubba's rifle.

Q. It was fired from within the room?
A. Yes, Sir.

Q. How do you know it was fired from within the room?
A. When the shot went off it wasn't more than six inches from my head, and I heard it go off.

CROSS EXAMINATION

Questions by the Defense.

Q. Did you ever actually see that gun in Gapinski's hands or had it already fallen from his hands when you turned around?
A. He had it in his hand.

Q. Did you see him set it down afterwards?
A. That part I just don't remember.

Q. Do you know Private Gapinski's reputation for handling firearms?
A. He is careful.

There being no further questions, the witness was excused and withdrew. (The court did not desire to question the witness).

PROSECUTION: The prosecution offers in evidence the Service Record of Corporal Gapinski, Walter J., to show by three indorsements attached thereto the assignment and present status of the accused.
DEFENSE: No objection.
PRESIDENT: It will be received in evidence as Exhibit "A".

PROSECUTION: The Prosecution submits in evidence this service record particularly the three indorsements to be withdrawn and substituted by a true copy for the purpose of the record at the end of trial. (Prosecution read the indorsements).

PROSECUTION: The accused is at present a member of the Air Corps, on indefinite detached service with the 7th Armored Division.

PROSECUTION: The Prosecution rests.

DEFENSE: It is stipulated by and between the Defense, the accused, and the Prosecution that if Private Samuel J. Carrubba, formerly a member of Company B, 38th Armored Infantry Battalion were present, he would testify substantially as follows, to wit: That he was a member of Company B, 38th Armored Infantry Battalion from 13 November 1944 to 28 December 1944, and knew both Corporal Walter J. Gapinski and Pfc Richard A. Knott; that on or about 27 November 1944, upon entering his billet, he had placed his rifle against the book rack; that while eating, with his back to thd door, he heard Gapinski and Knott come in, and that they were teasing each other; that he heard a shot and saw Knott fall to the floor; that he picked up a rifle lying by Knott's body, and found that it was his own rifle and that it was loaded; that he then looked at Gapinski's rifle, where it stood by the book rack, and found it to be empty, with the safety off.

PROSECUTION: The Prosecution so stipulates.

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DEFENSE: I ask the accused, do you so stipulate?
ACCUSED: I do.
DEFENSE: The Defense so stipulates.

DEFENSE: The accused has had his rights as a witness explained to him and he elects to take the stand under oath and testify in his own behalf.

The President explained to the accused his rights as a witness and the accused still desired to take the stand under oath.

The accused was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the Prosecution.

Q. State your name, rank, organization.
A. Walter J. Gapinski, Corporal, 71st Troop Carrier Squadron, 434th Troop Carrier Group, APO 133.

Q. Are you the accused in this case?
A. Yes, Sir.

Questions by the Defense.

Q. Did you know Private Richard Knott?
A. I did. He was one of my best friends.

Q. On the morning of 27 November 1944, did you take your rifle to breakfast?
A. I did.

Q. And when you returned was it loaded or unloaded?
A. It was unloaded.

Q. When did you unload it?
A. Before I entered the house and I put the ammunition in my hip pocket.

Q. What did you do with the rifle?
A. I leaned it against a book rack. It was a piece of furniture. They called it a book case, but it was a shelf.

Q. Was anyone in the room when you came in?
A. No, Sir.

Q. Did anyone came into the room after you did?
A. They came into the room and I didn't pay any attention to them, one, two or three fellows came in.

Q. What were you doing at that time?
A. I was just wiping my mess kit?

Q. Did Private Knott come into the room after you did?
A. Yes, Sir.

Q. Tell the court what happened when he came into the room.
A. He came into the room. I was facing the door of the room as he entered. He passed by me and he reached for one of my rations. He said he was going to eat the ration. I said "Save it for Supper, Joe". We called each other "Joe", and I said "No,Joe" and he said "I will take it, Joe". We used some cuss words, it was a habit among us.

Q. At this time did you have the rifle in your hands or not?
A. I picked up the rifle after he was behind me.

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Q. What were you doing with that rifle?
A. I was at that time ready to go out to battalion headquarters. Well, Sir, just before I go out we kept on teasing, Knott and I. He crossed on my right and I made the left turn towards the door and the gun went off in my hand. I couldn't tell exactly what happened. I see Knott drop after that. I don't know nothing for an hour.

CROSS EXAMINATION

Questions by the Prosecution.

Q. Do you remember picking the rifle up?
A. Yes, Sir, it was a habit we had of all the time putting your rifle and mess kit by your bed and I went to pick up that rifle with my left hand, which my habit was, and switching to my right.

Q. Where was that rifle when you picked it up?
A. By the book case.

Q. At the time you picked that rifle up, did you notice another rifle against the book case?
A. No, Sir.

Q. Can you recall seeing that rifle by your bed?
A. At that time I just picked it up without looking at it, thinking it was my own rifle.

Q. Do you remember saying just before the shot was fired some words to the effect "I'LL shoot you"?
A. It could be that we used words like that. That was between us. We always talked like that.

QUESTIONS BY THE COURT

Questions by the President.

Q. Were you still joking when you started out?
A. Yes, Sir.

Q. Do you remember what you were joking about?
A. About the rations.

Q. Do you remember making the statement "Go on, I'll shoot you"?
A. I don't recall all the words. We used all kinds of words, "Chop your head off", "Knock your brains out", always something like that. As a matter of fact back in civilian life I was a professional boxer and I wouldn't need a rifle to kill anyone.

RE DIRECT EXAMINATION

Questions by the Defense.

Q. Do you remember using those words?
A. Sir, I couldn't exactly say if I used those words.

Q. Was all this kidding in fun?
A. Yes, Sir.

Q. Had you had the rifle in your hands before you started out?
A. Yes, Sir. I wiped my mess kit and I picked up the wrong rifle.

Q. Was that the place for your rifle?
A. Yes, Sir, it was by my own bed.

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FURTHER QUESTIONS BY THE COURT

Questions by the President.

Q. Did you pull the trigger intentionally on that rifle?
A. No, Sir, I don't recall how it happened. The gun was loose in my hands and when it was fired it fell out of my hands. I didn't know what to do, it fell out of my hands.

Questions by Major Ratowsky.

Q. Did Knott push against you and cause the gun to go off accidentally?
A. No, Sir, he couldn't. I don't think he was that close. He was on my right and I went to face the door. At that time the shot was fired, his left side was facing me.

There being no further questions, the accused was excused and resumed his seat.

DEFENSE: The Defense rests.

The Prosecution announced that it had nothing further to offer.

The defense had no further testimony to offer.

Oral arguments were then made by the defense and prosecution.

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FINDINGS

Neither the prosecution nor the defense having anything further to offer, the court was closed and voted in the manner prescribed in Articles of War 31 and 43. Upon secret written ballot, all of the members present at the time the vote was taken concurring in each finding of guilty, the court finds the accused:

Of the Specification of the Charge: Guilty, except the word "Willfully" substituting therefor the word "Carelessly", of the excepted word, Not Guilty, of the substituted word, Guilty.

Of the Charge: Guilty.

PREVIOUS CONVICTIONS, ETC.

The court was opened and the trial judge advocate stated, in the presence of the accused and his counsel, that he had no (No or some) evidence of previous convictions, ~~which was read to the court and is attached as Exhibit /~~ (Cross out if inappropriate)

The trial judge advocate read the data as to age, pay, service, and data as to restraint of accused as shown on the charge sheet as follows:

Age 55 Pay, $66.00 plus 20% for foreign service (Base pay plus pay for length of service) per month. Allotments to dependents, $22.00 (Cl F) per month.

Government insurance deduction, $7.40 (Cl N) per month.

Data as to service: Prior Service: None. Inducted at South Bend, Indiana, 27 March 1942, to serve for duration of war plus six (6) months.

Data as to restraint of accused: Duty with Co B, 38th Armd Inf Bn fr 27 Nov to 28 Nov 4 Duty with 48th Armd Inf Bn since 28 Nov 44 to

Prosecution to accused: Is that data correct?

Accused: Yes, Sir, all except the restraint.

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SENTENCE

The court was closed, and upon secret written ballot two-thirds of the members present at the time the vote was taken concurring, sentences the accused 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 one (1) year.

The court was opened and the president announced the findings and sentence.

The court then, at 1045 o'clock, M., 10 May, 19 45 proceeded to other business.

AUTHENTICATION OF RECORD

G. J. Adams

A. W. ADAMS
Colonel, Infantry

President.

David E. Cooley

DAVID E. COOLEY
Major, GSC

Trial Judge Advocate.

I examined the record before it was authenticated.

Arthur R. Slade, Jr.

ARTHUR R. SLADE, JR.
Captain, Cavalry

Defense Counsel.

HQ:SOS.17-1-44/50M/20156(44/2 43104)

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HEADQUARTERS 7TH ARMORED DIVISION
APO 257, U. S. Army

5 June 1945

In the foregoing case of Corporal Walter J. Gapinski, 35 111 603, 71st Troop Carrier Squadron, 434th Troop Carrier Group, on Detached Service with 7th Armored Division (formerly of Company "B", 38th Armored Infantry Battalion), the sentence is approved, but all of the sentence which is in excess of confinement at hard labor for a period of six (6) months and forfeiture of Twenty ($20.00) Dollars per month for a like period, is remitted. As thus modified the sentence will be duly executed, but the execution of that portion thereof relating to confinement at hard labor is suspended.

R. W. Hasbrouck

R. W. HASBROUCK
Major General, U.S. Army
Commanding

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PRIOR SERVICE—Continued

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

RECORD OF IMMUNIZATION

†Type of vaccination or diphtheria susceptibility test.

Type of Vaccine	Date	Type of Vaccine	Date
		Blood Type	

†If carrier examination, show parasite examined for, and kind of specimen.

_____ Ind.

Hq 434th Troop Carrier Group, APO 133
U S Army 4 Feb, 1945

To CO, 71st Tr C Sq, APO 133, U. S. Army

This soldier asgd yr comd, per asgmt memo 14 Hq 434 TCOp dtd 4 Feb 45 4 Feb 45
per _____ and left this organization _____, 19__

He was last paid to include 31 October, 1944

by (Name and grade of finance officer or agent officer, if any) unknown

Due United States, if nothing, so state _____
See remarks financial

Due soldier at date of asgmt - Acc - Pay & Alws

This soldier {*has / *has not} a Class F deduction, Type (A*) (B*), which has been deducted from his pay to include family alws 31 Oct 44

This soldier {*has / *has not} a Class B allotment running which has been deducted from his pay to include _____

This soldier {*has / *has not} a Class E allotment running which has been deducted from his pay to include _____

This soldier has authorized a Class {*(D) / *(N)} deduction for Government insurance, which has been deducted from his pay to include _____

His character is _____ Efficiency rating as soldier _____

I have personally verified all entries in this indorsement.

Name Gerald L. Belding

Grade and organization F/O, AC, Asst Pers O

REMARKS: Here will be shown such other entries not set forth elsewhere as may be required to make the extract complete, as in the case of a soldier finally separated from the service.

_____

_____

_____

_____

Service record with inclosures transmitted to _____

By _____, 19__

_____ Incls. {*Individual clothing record. / *Individual equipment record. / *W. D., A. G. O. Form No. 20.} ☆ GPO 16—37346-1

*Strike out words not applicable.

EXHIBIT "A"

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NARA Date 12-31-98

PRIOR SERVICE—Continued

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

RECORD OF IMMUNIZATION

†Type of vaccination or diphtheria susceptibility test.

Type of Vaccine	Date	Type of Vaccine	Date
		Blood Type	

†If carrier examination, show parasite examined for, and kind of specimen.

_____ Ind.

71st Troop Carrier Squadron, APO 133
U.S.Army

To CO Hq Sq IX Troop Carrier Command, 24 Feb, 1945

This soldier was placed on ind DS yr comd per SO 39 Hq 434th TC Gp and left this organization 28 Feb, 1945

He was last paid to include 31 Jan, 1945

by (Name and grade of finance officer or agent officer, if any) G.A.Bringman, Maj. FD

Due United States, if nothing, so state Nothing

Due soldier at date of DS: Acc Pay and Alws

This soldier {*has / *has not} a Class F deduction, Type (A*) (B*), which has been deducted from his pay to include 31 Jan 45

This soldier {*has / *has not} a Class B allotment running which has been deducted from his pay to include _____

This soldier {*has / *has not} a Class E allotment running which has been deducted from his pay to include _____

This soldier has authorized a Class {*(D) / *(N)} deduction for Government insurance, which has been deducted from his pay to include 31 Jan 45

His character is excellent Efficiency rating as soldier excellent

I have personally verified all entries in this indorsement.

Name Lemson L. Myers
Grade and organization Capt, AC, Adjutant

REMARKS: Here will be shown such other entries not set forth elsewhere as may be required to make the extract complete, as in the case of a soldier finally separated from the service.

Service record with inclosures transmitted to _____

By _____, 19____

_____ Incls. {*Individual clothing record. / *Individual equipment record. / *W. D., A. G. O. Form No. 20.}

*Strike out words not applicable.

☆ GPO 16—37346-1

EXHIBIT "A"

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PRIOR SERVICE—Continued

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

Co., regt., arm or service _____ from _____ to _____

Discharged as _____ Character _____ Days lost under AW107 _____

By reason of _____

RECORD OF IMMUNIZATION

†Type of vaccination or diphtheria susceptibility test.

Type of Vaccine	Date	Type of Vaccine	Date
		Blood Type	

‡If carrier examination, show parasite examined for, and kind of specimen.

_____ Ind.

Hq Sq IX Troop Carrier Command, APO 133
U S Army 28 Feb 45

To 7th Armored Division, APO 257

This soldier is placed on indef DS to yr comd per 5, SO 58 Hq IX TCC 28 Feb 45 and left this organization 1 Mar, 1945

He was last paid to include 31 Jan 45

by (Name and grade of finance officer or agent officer, if any) G.A.Bringman, Maj, FD

Due United States, if nothing, so state Nothing

Due soldier at date of DS: Acc Pay and Alws

This soldier {*has / *has not} a Class F deduction, Type (A*) (B*), which has been deducted from his pay to include 31 Jan 45

This soldier {*has / *has not} a Class B allotment running which has been deducted from his pay to include _____

This soldier {*has / *has not} a Class E allotment running which has been deducted from his pay to include _____

This soldier has authorized a Class {*(D) / *(N)} deduction for Government insurance, which has been deducted from his pay to include 31 Jan 45

His character is unknown Efficiency rating as soldier unknown

I have personally verified all entries in this indorsement.

Name James T. Harrison
Grade and organization Major, A.C.

REMARKS: Here will be shown such other entries not set forth elsewhere as may be required to make the extract complete, as in the case of a soldier finally separated from the service.

Service record with inclosures transmitted to _____

By _____, 19__

_____ Incls. {*Individual clothing record. / *Individual equipment record. / *W. D., A. G. O. Form No. 20.} ☆ GPO 16—87346-1

*Strike out words not applicable.

C

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HEADQUARTERS
7TH ARMORED DIVISION
APO 257, U. S. ARMY

28 May 1945.

SUBJECT: Recommendation to Clemency.

TO : COMMANDING GENERAL, 7th Armd. Div, APO 257, U. S. Army.

1. In accordance with Par. 81, MCM 1928, the following Recommendation to Clemency is submitted.

2. We the undersigned members of the Court in the case of Corporal Walter J. Gapinski, formerly of Company "B", 48th Armored Infantry Battalion, recommend that all of the sentence in excess of a forfeiture of thirty-five dollars of his pay per month for a period of six months and confinement at hard labor at such place as the reviewing authority may direct for a like period, be remitted.

3. It is felt that the degree of negligence in this case is sufficient to warrant punishment, but that a dishonorable discharge would be excessive.

ANDREW J. ADAMS
Colonel, Infantry
President.

CLYDE W. BRADSHAW
Major, Coast Artillery Corps

WILLIAM RATOWSKY
Major, Dental Corps

GUY C. STRICKLER
Major, Ordnance

ERNEST L. HORTON
Captain, Corps of Engineers.

DAVID E. COOLEY
Major, General Staff Corps
Trial Judge Advocate

JAMES F. CARPENTER
Captain, Infantry,
Asst Trial Judge Advocate

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HEADQUARTERS
7TH ARMORED DIVISION
APO 257 U. S. ARMY

28 May 1945.

SUBJECT: Plea for Clemency.
TO : COMMANDING GENERAL, 7th Armd Div, APO 257, U. S. Army.

1. As provided in Par. 81, MCM 1928, the following Plea for Clemency in the case of Corporal Walter J. Gapinski, formerly of Company B, 48th Armored Infantry Battalion, is submitted.

2. It appears from the evidence that:
   a. The accused was not habitually careless in the use of firearms, but on the contrary was known to be unusually careful about handling and unloading his piece.
   b. At the time of the accident, Corporal Gapinski had unloaded his rifle and placed the ammunition in his hip pocket.
   c. Private Carrubba's loaded rifle was placed by Corporal Gapinski's bed contrary to their usual custom, which was for each man to keep his weapon by his own bed, and Corporal Gapinski picked it up without realizing that it was not his own.
   d. The weapon was not discharged by any deliberate or careless act, such as intentionally pulling the trigger under the impression that the gun was unloaded, but went off without any conscious act on the part of the accused.

3. An interview of the accused will show that he does not possess a high degree of neuro-muscular coordination, and could easily fumble and touch the trigger without actual culpable negligence.

4. In view of the above facts it appears that the shooting was a bona fide accident.

5. The law recognizes and punishes two general kinds of involuntary manslaughter: (1) where the death occurs as the result of a wrongful act by the accused (in which case the act must be inherently wrongful, and not merely the violation of a statute, or order), and (2) where the death results from culpable negligence on the part of the accused in the performance of a lawful act. A bona fide "accident" is not punishable by law.

6. In this case it appears that the victim was one of the best friends of the accused, and that the accused has already suffered greatly as a result of the accident.

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7. An interview will also show that Corporal Gapinski possesses a high degree of family pride, and that the sentence of a dishonorable discharge and one year at hard labor would constitute a cruel punishment for what clearly appears to be a tragic accident.

8. Counsel for the defense therefore pray that the entire sentence be remitted.

Arthur R. Slade

ARTHUR R. SLADE
Captain, Cavalry
Defense Counsel.

Leo Feldman

LEO FELDMAN
1st Lt., MAC
Ass't Defense Counsel.

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HEADQUARTERS
7TH ARMORED DIVISION
APO 257, U. S. ARMY

2 June 1945

SUBJECT: Recommendation for Clemency.

TO : COMMANDING GENERAL, 7th Armd. Div., APO 257, U. S. Army.

1. In accordance with Par. 81, MCM 1928, the following Recommendation for Clemency is submitted.

2. It is recommended that so much of the sentence calling for dishonorable discharge be remitted.

3. The service of Corporal Walter J. Gapinski, formerly of Company "B", 48th Armored Infantry Battalion, was exemplary prior to the offense in question. Further, that the service of Corporal Walter J. Gapinski since the commission of this act, to the best knowledge of the undersigned members, has been excellent.

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JUN 2 1945
J. A. OFFICE

ANDREW J. ADAMS
Colonel, Infantry
President.

WILLIAM RATOWSKY
Major, Dental Corps.

GUY G. STRICKLER
Major, Ordnance

DAVID E. COOLEY
Major, General Staff Corps.
Trial Judge Advocate

JAMES F. CARPENTER
Captain, Infantry
Asst Trial Judge Advocate

13241

A CHRONOLOGY OF THE CASE OF:

....

	Date	No. of days	Explanation
1. Offense committed:	....		
2. Accused confined:			
By civil authorities	....	....	
By military authority	....	....	
By military authority ordering trial	....	....	
Reconfined from escape	....	....	
3. Charges preferred: (Date of Jurat)	....	....	
4. Charges investigated: (Date of Report)	....	....	
5. Charges forwarded by C.O.:	....	....	
6. Charges received, J.A.:	....	....	
7. Charges returned:	....	....	
8. Charges received back:	....	....	
9. Charges—action Staff J.A.:	....	....	
10. Charges referred for trial:	....	....	
11. Trial had:			
Total days to trial	....	....	
Less time in hospital	....	....	
Less delay at request of defense	....	....	
Net total	....	....	
12. Record of trial received:	....	....	
13. Review by Staff J.A.:	....	....	
14. Action by reviewing authority:	....	....	
Total to Action by Reviewing Authority	....	....	
15. Mimeo. orders received:	....	....	
16. Record of trial mailed to J. A. G. O.:	....	....	
Total	....	....	

Remarks:

....

....

Judge Advocate.

All delays must be fully explained.

In computing number of days between two dates, disregard the first day and count the last day. All months will *not* be assumed to consist of 30 days.

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Executive Order 13526
DA Letter Dated 2 May 1967
NARA

RECORD OF TRIAL

(and accompanying papers)

of

303906

.....

(Last name) (First name and middle initial) (Army serial No.)

.....

(Grade) (Organization)

.....

(Station)

By

GENERAL COURT MARTIAL

Appointed by the Commanding Officer

.....

Tried at

....., 19....

303906

WAR DEPARTMENT
RECEIVED
FEB 11 46 AM

COVER SHEET

(Withdraw this cover sheet from set used to make carbon copy of record for accused and use as backing on original record.)

303906

* W. D., A. G. O. Form No. 114
14 July 1943

*This form supersedes W. D., A. G. O. Form No. 114, 5 January 1943, which may be used until existing stocks are exhausted.

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