

60TH CONGRESS : : 1ST SESSION

DECEMBER 2, 1907-MAY 30, 1908

SENATE DOCUMENTS

IN 36 VOLUMES

VOL. 21

WASHINGTON : : GOVERNMENT PRINTING OFFICE : : 1908

CONTENTS

No.

402, pt. 3. Brownsville affray: Court-martial of Edgar A. Macklin.

402, pt. 4. Same: Hearings before Committee on Military Affairs, vol. 1.

60TH CONGRESS }
1st Session }

SENATE

{ Doc. No. 402
{ Part 3

AFFRAY AT BROWNSVILLE, TEX.

AUGUST 13 AND 14, 1906

PROCEEDINGS

OF A

GENERAL COURT-MARTIAL

CONVENED AT

Headquarters Department of Texas
San Antonio, Tex., April 15, 1907

IN THE CASE OF

Capt. EDGAR A. MACKLIN

Twenty-fifth United States Infantry

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

INDEX.

	Page.
Arguments:	
Defense	240-242
Prosecution.....	242-247
Arnold, Samuel B.:	
Member of court.....	3
Ash, Alexander:	
Testimony.....	63-65
Associate counsel:	
Murphy, Pierce A.....	4
Bailey, Wesley:	
Testimony.....	225-226
Baker, David J., jr.:	
Member of court.....	3
Baldwin, Murray:	
Member of court.....	3
Blocksom, A. P.:	
Testimony.....	133-151
Brown, Ira C.:	
Testimony.....	212-220, 224-225
Burbank, Edith:	
Reporter.....	4
Burdett, Ray:	
Telegrams concerning.....	170, 205
Cabell, De Rosey C.:	
Member of court.....	3
Charge and specification against accused.....	4-5, 245, 247
Counsel:	
Lyon, Samuel P.....	4
Ely, Hanson E.:	
Member of court.....	3
Challenged as member of court.....	152
Excused as member of court.....	152
Findings of the court.....	247, 248
Fitch, Roger S.:	
Judge-advocate.....	3
Fleming, Adrian S.:	
Member of court.....	3
Gatchell, George W.:	
Member of court.....	3
Gazley, Henry L.:	
Reporter.....	46
Goode, George W.:	
Member of court.....	3

II

INDEX

	Page.
Grier, H. S.:	
Testimony.....	20-28, 205-209
Hairston, Charles:	
Testimony.....	78-91, 130-133
Harley, Samuel W.:	
Testimony.....	75-78
Hatch, Everard E.:	
Member of court.....	3
Hay, Donald D.:	
Testimony.....	210-212
Houle, George E.:	
Member of court.....	3
Howard, Joseph Henry:	
Testimony.....	59-63
Hoyt, Ralph W.:	
Testimony.....	239-240
Johnson, Wait C.:	
Testimony.....	91-95, 129-130, 171
Judge-advocate:	
Fitch, Roger S.....	3
Kilbourne, Lincoln F.:	
Member of court.....	3
Lawrason, George C.:	
Testimony.....	28-31, 173-175, 197-205
Leckie, Harry G.:	
Testimony.....	95-110
Lyon, Samuel P.:	
Counsel.....	4
Testimony.....	31-34, 171-173, 220-223
Macklin, Edgar A.:	
Charge and specification against.....	4-5, 245, 247
Findings of court.....	247, 248
Testimony.....	176-197
Madison, Charles H.:	
Testimony.....	46-58, 119-120
Matlock, Oscar J.:	
Testimony.....	223-224
Members of court:	
Arnold, Samuel B.....	3
Baker, David J., jr.....	3
Baldwin, Murray.....	3
Cabell, De Rosey C.....	3
Ely, Hanson E.....	3, 152
Fleming, Adrian S.....	3
Gatchell, George W.....	3
Goode, George W.....	3
Hatch, Everard E.....	3
Houle, George E.....	3
Kilbourne, Lincoln F.....	3
Preston, John F.....	3
Roberts, Harris L.....	3
Murphy, Pierce A.:	
Associate counsel.....	4

INDEX.

III

	Page.
Penrose, Charles W.:	
Testimony.....	5-19, 226-239
Specification II, against.....	238
Findings of court in case of.....	238-239
Preston, John F.:	
Member of court.....	3
Reporters:	
Burlbank, Edith.....	4
Gazley, Henry L.....	46
Roberts, Harris L.:	
Member of court.....	3
Rogers, Joseph:	
Affidavit.....	248
Beyond jurisdiction of court.....	120-128
Testimony.....	152-170
Taliaferro, Spottswood W.:	
Testimony.....	31-45, 111-119
Testimony:	
Ash, Alexander.....	63-65
Bailey, Wesley.....	225-226
Blockson, A. P.....	133-151
Brown, Ira C.....	212-220, 221-225
Grier, H. S.....	20-28, 205-209
Hairston, Charles.....	78-91, 130-133
Harley, Samuel W.....	75-78
Hay, Donald D.....	210-212
Howard, Joseph Henry.....	59-63
Hoyt, Ralph W.....	239-240
Johnson, Wait C.....	91-95, 129-130, 171
Lawrason, George C.....	28-31, 173-175, 197-205
Leckie, Harry G.....	95-110
Lyon, Samuel P.....	31-34, 171-173, 220-223
Macklin, Edgar A.....	176-197
Madison, Charles H.....	46-58, 119-120
Matlock, Oscar J.....	223-224
Penrose, Charles W.....	5-19, 226-239
Rogers, Joseph.....	152-170
Taliaferro, Spottswood W.....	34-45, 111-119
Wheeler, Samuel.....	65-74
Wheeler, Samuel:	
Testimony.....	65-74

PROCEEDINGS OF A GENERAL COURT-MARTIAL WHICH CONVENED AT HEADQUARTERS DEPARTMENT OF TEXAS, SAN ANTONIO, TEX., PURSUANT TO THE FOLLOWING ORDERS:

**SPECIAL ORDERS, }
No. 13.**

**HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., January 16, 1907.**

A general court-martial is appointed to meet at these headquarters at 10 o'clock a. m., Friday, February 8, 1907, or as soon thereafter as practicable, for the trial of such persons as may properly be ordered before it.

DETAIL FOR THE COURT.

1. Maj. Everard E. Hatch, Twenty-sixth Infantry.
2. Maj. Harris L. Roberts. Twenty-sixth Infantry.
3. Capt. George W. Goode, First Cavalry.
4. Capt. David J. Baker, jr., Twenty-sixth Infantry.
5. Capt. De Rosey C. Cabell, First Cavalry.
6. Capt. George W. Gatchell, Artillery Corps.
7. Capt. Hanson E. Ely. Twenty-sixth Infantry.
8. Capt. George E. Houle. Twenty-sixth Infantry.
9. Capt. Lincoln F. Kilbourne. Twenty-sixth Infantry.
10. Capt. John F. Preston. Twenty-sixth Infantry.
11. Capt. Murray Baldwin. Twenty-sixth Infantry.
12. Capt. Samuel B. Arnold. First Cavalry.
13. Capt. Adrian S. Fleming. Artillery Corps.

First Lieut. Roger S. Fitch. First Cavalry. judge-advocate.

Upon final adjournment of the court, Lieutenant Fitch will return to his station at Fort Clark. Tex.

The travel directed is necessary in the military service.

By command of Brigadier-General McCaskey.

**C. J. CRANE,
Lieutenant-Colonel, Military Secretary.**

**HEADQUARTERS DEPARTMENT OF TEXAS,
MILITARY SECRETARY'S OFFICE,
San Antonio, Tex., February 6, 1907.**

**PRESIDENT GENERAL COURT-MARTIAL,
Fort Sam Houston, Tex.**

SIR: The department commander directs the date of assembly of the court convened per Special Orders. No. 13, current series, these headquarters, be postponed until after the trial now in progress before the general court-martial convened per paragraph 2, Special Orders, No. 264, series 1906, these headquarters, is completed.

Very respectfully,

**DOUGLAS McCASKEY,
First Lieut., Fourth Cavalry, Aid-de-Camp,
Assistant to the Military Secretary.**

HEADQUARTERS DEPARTMENT OF TEXAS,

*San Antonio, Tex., April 10, 1907.***Maj. EVERARD E. HATCH,***Twenty-sixth Infantry, President General Court-Martial,
Fort Sam Houston, Tex.*

SIR: The department commander directs that your court-martial, for the trial of Capt. E. A. Macklin, Twenty-fifth Infantry, meet and begin the trial next Monday, the 15th instant, at 10 o'clock a. m.

Very respectfully,

C. J. CRANE,

Lieutenant-Colonel, Adjutant-General.

HEADQUARTERS DEPARTMENT OF TEXAS,

San Antonio, Tex., April 15, 1907.

The court met, pursuant to the foregoing orders, at 10 o'clock a. m.

Present: Maj. Everard E. Hatch, Twenty-sixth Infantry; Maj. Harris L. Roberts, Twenty-sixth Infantry; Maj. George W. Gatchell, Artillery Corps; Capt. George W. Goode, First Cavalry; Capt. David J. Baker, jr., Twenty-sixth Infantry; Capt. De Rosey C. Cabell, First Cavalry; Capt. George E. Houle, Twenty-sixth Infantry; Capt. Lincoln F. Kilbourne, Twenty-sixth Infantry; Capt. John F. Preston, Twenty-sixth Infantry; Capt. Murray Baldwin, Twenty-sixth Infantry; Capt. Samuel B. Arnold, First Cavalry; Capt. Adrian S. Fleming, Artillery Corps; First Lieut. Roger S. Fitch, First Cavalry, judge-advocate.

Absent: Capt. Hanson E. Ely, Twenty-sixth Infantry. Per par. 5, S. O. 82, headquarters department of Texas, April 8, 1907.

The court then proceeded to the trial of Capt. Edgar A. Macklin, Twenty-fifth Infantry, who, having been brought before the court, introduced Capt. Samuel P. Lyon, Twenty-fifth Infantry, as counsel and Capt. Pierce A. Murphy, First Cavalry, as associate counsel.

Miss Edith Burbank was duly sworn as reporter.

The order convening the court and the subsequent orders pertaining to same were read to the accused. The accused was then informed that since the issuance of the order Capt. George W. Gatchell, Artillery Corps, had received his promotion to the grade of major, making him the third ranking member of the court instead of the sixth.

The accused was then asked if he objected to being tried by any member present named in the order, to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn.

The accused was then arraigned upon the following charge and specification:

"CHARGE.—Neglect of duty, to the prejudice of good order and military discipline, in violation of the sixty-second article of war.

"Specification.—In that Capt. E. A. Macklin, Twenty-fifth Infantry, having been regularly detailed as officer of the day and having duly entered upon that duty, on August 13, 1906, did neglect and fail to perform the duties enjoined upon an officer of the day in case of alarm, retiring to his quarters, from which it was found impossible to arouse him or bring him forth during the continuance of a considerable amount of small-arms fire at or in the vicinity of Fort Brown, Tex.,

and the alarms sounded in consequence thereof. This at Fort Brown, Tex., August 13-14, 1906."

To which the accused pleaded as follows:

To the specification, Not guilty.

To the charge, Not guilty.

Maj. CHARLES W. PENROSE, Twenty-fifth Infantry, witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. Charles W. Penrose, major, Twenty-fifth Infantry, Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. I do. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Q. Where were you and on what duty on August 13, 1906?—A. I was at Fort Brown, Tex., in command of that post.

Q. How large was the garrison and how long had it been there?—A. The garrison consisted of three companies, B, C, and D, of the Twenty-fifth Infantry. We arrived on the 28th day of July, about 3 o'clock in the afternoon.

Q. What officers were on duty at Fort Brown on the 13th of August, 1906, and what were the duties of each?—A. Captain Lyon was in command of his company, D, Twenty-fifth Infantry; Captain Macklin, in command of his company, C, Twenty-fifth Infantry; Lieutenant Lawrason in command of B Company, Twenty-fifth Infantry, and Lieutenant Grier, battalion quartermaster and commissary, First Battalion, Twenty-fifth Infantry, and myself.

Q. Lieutenant Grier was also acting adjutant, was he not?—A. Lieutenant Grier was acting adjutant.

Q. Will you kindly point out on the map, Major, the house occupied by each of the different officers in the post.—A. Building marked A, I occupied; 3, Captain Lyon; 5, Lieutenant Grier; 9—I believe; I am not sure whether Lieutenant Lawrason or Lieutenant Hay, or they both lived in the same house—I think he was in 9 and Hay in 10. Captain Macklin lived in No. 11.

Q. And the companies occupied the barracks as shown there?—A. As shown there, B, C, and D; this barracks was vacant. [Witness indicated on map.]

Q. You are familiar, of course, with the quarters and barracks there, Major, and I ask you if you will identify, by means of these photographs, the quarters occupied by Captain Macklin on August 13-14, 1906 [handing witness photograph No. 1].—A. This was the set of quarters occupied by Captain Macklin, the east side [indicating the right-hand one of the three larger buildings shown in the picture—that is, the right-hand one as one faces the pictures]. The right-hand of the picture, but he lived on the left side of the house.

Q. I will similarly ask you with respect to photograph No. 2.—A. Yes, sir; the house in the middle of the photograph, on the east side, or the left side as I look at it.

Q. Similarly with picture No. 3.—A. It is this house, the second one from the right of the picture, and on the farther side of it.

(These three pictures were submitted in evidence, and are hereto appended and marked, respectively, 1, 2, and 3.)

Q. And do you recognize that photograph [handing witness photograph]?—A. I could not recognize that.

Q. You could not state what particular side—A. No, sir; those houses are all the same.

Q. What officer reported to you after guard mount on August 13, as new officer of the day?—A. Captain Macklin.

Q. Did you give him any special orders at that time? If so, what?—A. No, sir: no special orders at that time.

Q. When did you next see him during the day? Do you recall?—

A. Well, I don't recall seeing him that day until about half past 5 in the afternoon. I might have seen him, however, several times.

Q. Did you at that time give him any special instructions?—A. I did.

Q. If so, please state what and why.—A. It would probably be best for me to put the "why" first. There was Mayor Combe and a Mr. Evans—

By ASSOCIATE COUNSEL. May it please the court. I would like to ask the judge-advocate what is the purpose of this question. Unless he can explain that it is relevant to this particular charge and specification, I will have to object, on the ground that it is immaterial. If he desires to ask witness whether he received any special instructions dealing with an alarm sounded at the post of Fort Brown and covered by this specification, the question would be relevant, but if it brings in any other matters it is not relevant.

The JUDGE-ADVOCATE. May it please the court. The object of this question is merely to connect in a logical manner the events of that day. It is stated in the specification that Captain Macklin was duly detailed as officer of the day, and mounted guard as such on August 13, and it seems to me that it is relevant to inquire as to any special instructions he got during that tour of duty, not with the idea of trying to show any feeling between the townspeople and the soldiers or anything of that kind—that has been cut out of the charges—but merely to show what the circumstances were that night and what orders he received as officer of the day. If the accused later on takes the stand in his own behalf, his movements on that night will doubtless be freely touched upon by him, and in order that the court may understand the sequence of events there it seems to me that this question is proper. It rests with the court, however, to determine its relevancy or materiality.

By ASSOCIATE COUNSEL. May it please the court. I must object to that question, as I am not satisfied with the explanation made by the judge-advocate to show its materiality. I don't think the question is a specific one and I object largely on that ground. If the judge-advocate will ask the witness whether or not he issued any instructions to him which required any special vigilance on his part in connection with an alarm which was to be sounded at the post that night, we have no objection. If the judge-advocate is going to introduce a line of questions to bring out facts which would necessitate a special vigilance on the part of Captain Macklin, I think it would be necessary for the defense to bring in a lot of testimony to show that this vigilance was not incumbent on the accused here on trial. And in that way the case is going to be prolonged by bringing in matter not relevant to the charges, and this matter has been cut out of these charges for that purpose and that purpose alone, simply to make this trial one of military neglect following upon an alarm sounded at the post of Fort Brown. If any other matters are

brought in by the prosecution, as I say, the defense will find it necessary to bring in evidence to rebut that. The question is not a specific one, and I object to it on that ground.

By the JUDGE-ADVOCATE. I have no objection to changing the form of the question. I still maintain, in my opinion, in order that the court may get a proper idea of the sequence of events and that the evidence be presented in a logical form, that the first witness upon the stand, Major Penrose, was in command at the time and is better fitted than anyone else to give the outline of what he knew at the time and what he saw and heard at the time. I will change that question to the following form:

Q. Major Penrose, did you, at or about half past 5 on the afternoon of August 13, give any special instructions to the officer of the day?—A. I did.

Q. Will you please state what they were?—A. I told Captain Macklin, officer of the day, to send not less than three patrols into town to inform all men, all enlisted men in town, that they must return to the post by 8 o'clock that night; that all passes would be suspended at 8 o'clock, and that if these patrols found any men who declined to come into the post to arrest them and bring them in. I think I stated there, didn't I, that all passes were canceled at 8 o'clock?

Q. Yes, sir. What was the cause of your issuing this order?

By ASSOCIATE COUNSEL. I object to that question.

Upon motion of a member of the court, the accused, his counsels, the witness, the reporter, and judge-advocate then withdrew and the court was closed: and, on being opened, the president announced, in their presence, as follows:

Proceed with the trial. Counsel will please state his objection.

By ASSOCIATE COUNSEL. May it please the court. My objection is substantially this: I desire the questions of the judge-advocate be limited to those allegations that are contained in this specification upon which Captain Macklin has been arraigned. If there are any other matters which bear either directly upon it or follow by analogy from the wording of this specification that could be properly brought before this court, we have no objection, but we do object to any line of questions which will attempt to establish the condition of affairs at Fort Brown which required or necessitated on the part of Captain Macklin any special vigilance as officer of the day. That charge was contained in the original charges, and was withdrawn for the reason that it was not found proper to enter into that matter again before a court-martial, and we believe this question that has just been asked by the judge-advocate is going to open up a line of investigation which will be very extended. We do not feel it is proper for us to allow that evidence to be introduced by the prosecution, and certainly if any evidence is introduced by the prosecution that tends to show conditions on the night of the 13th of August, further than contained in the specification, the defense will feel it necessary to introduce a large number of witnesses in rebuttal. We do not believe it relates to any allegation contained in this specification, and unless the judge-advocate can show it does I object to it on the ground that it is immaterial.

By the JUDGE-ADVOCATE. May it please the court. The prosecu-

tion has no intention of introducing evidence or attempting to bring out testimony that will of necessity lead to any prolonged discussion or introduction of other witnesses. I do not intend to ask any witness anything about conditions down there existing at that time, or prior to that time; but inasmuch as the officer of the day was given certain specific orders on the evening of August 13 by his commanding officer, as has already been testified to, I think it is entirely relevant for this commanding officer to state the causes that impelled him to issue special orders at that time. There was only one cause; there is no necessity for going into conditions at all. There is merely one incident, and no witnesses are going to be introduced to show the truth of the report upon which the commanding officer's action was taken. It is absolutely immaterial, and no attempt is going to be made to show that conditions were other than usual, except for the one instance related, upon which the commanding officer based his action, and it will not necessitate, I am certain, the going into this matter at all by other witnesses. It is, in my opinion, relevant as showing the basis of the commanding officer's action at that time, and I leave it to the court as to whether it is proper or not.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed; and, on being opened, the president announced, in their presence, as follows:

The objection of the counsel for the accused is not sustained and the witness will answer the question.

The question was repeated to the witness.

A. It had been reported to me by Mr. Evans that the night before, about 9 o'clock, his wife had been assaulted by what she was sure was a negro soldier, and fearing that harm would come to the men if they were found in town, either singly or in small groups, I issued this order to prevent them from having any trouble.

Q. Did you see Captain Macklin again on the 13th of August? -

A. Yes, sir; I saw him about 9 or 9.30 in the evening, I think it was.

Q. Did anything unusual happen at that time? A. No, sir. He made a report to me, was all.

Q. State what, if anything, unusual happened at or near midnight on August 13. Where were you at the time and what did you do? -

A. There was something unusual happened shortly after midnight on the night of the 13th and 14th. I was awakened by firing. I immediately went over to the barracks and caused the companies to be formed. On the way over I ordered "call to arms" sounded. Do you want me to go into all details?

Q. No, sir; I will ask more specific questions. You state you ordered "call to arms" sounded; was that sounded at once by the musician of the guard? A. Almost at once. I repeated the order two or three times in running across the parade ground.

Q. Did he sound "call to arms" only once, or did he sound it several times? A. He must have sounded it several times, but it was taken up almost immediately by all the trumpeters of the three companies.

Q. They were apparently all on the parade ground or in front of their barracks at the time they sounded the call, or were they in rear? A. No, sir - well, I could not tell whether they were on the porches or in front of the barracks on the parade ground. Sounded from the direction of the barracks.

Q. What was the nature of this firing you heard? Was it small-arms fire, or what kind of fire was it? A. I first heard two pistol shots. I am satisfied they were pistol shots. After that there were six or seven, maybe seven or eight, shots that were fired very rapidly.

Q. Those were of what nature? A. I think they were from high-power guns, high-power rifles. Then there was a good deal of shooting after that. I would not pretend to say how many shots to be positive about it, but probably between 100 and 150. These shots were, in my opinion, from high-power rifles, intermingled with pistol shots.

Q. And where was this shooting with relation to the barracks of B Company, at the time the shooting began? A. The first two that I heard I took to be somewhere between the vacant set of barracks there and the guardhouse, which is marked "A" on that map, or farther over. [Indicating on map northerly direction from the northeast corner of the parade ground.] The other shots seemed to be there. I could not tell whether nearer C Company barracks or B Company barracks, but it sounded to me more in rear of B Company [indicating garrison road in rear of B and C Companies].

Q. When you reached the vicinity of the barracks did you see the acting first sergeant of C Company, namely, Sergt. Samuel W. Harley? A. I didn't see him when I first reached the barracks. I first went to C Company, then went over to B Company; I returned again to C Company and Sergeant Harley was then in front of the company.

Q. Did you about this time give any orders to anyone to send a messenger for Captain Macklin? A. I did.

Q. To whom, please? A. I told Sergeant Harley to send a man over to Captain Macklin's quarters and tell him to report to me at once.

Q. This was while the shooting was still going on? A. Yes, sir.

Q. Did you later on leave the vicinity of B and C Company barracks and go over toward the garrison gate, the main gate of the garrison? A. I did.

Q. When you were standing near the gate, did any noncommissioned staff officer of the battalion report to you? A. Yes, sir; Sergeant-Major Taliaferro reported to me. He had reported, however, before and stated he was not armed and asked permission to go and arm himself. I told him to do so and he reported to me while I was in front of the gate.

Q. Did you about that time give any orders to any one to go and find Captain Macklin? A. I did. I gave orders to Sergeant-Major Taliaferro.

Q. Did he start away in obedience to your order at that time? A. I think that he did; I don't recall of seeing him go, though.

Q. Was the firing still going on at this time or had it ceased? A. No; the firing had ceased at that time, excepting a few stray shots that apparently were way up in the town; I think I heard some after the companies were along the fence, and that was about the time the sergeant reported to me.

Q. When did the sergeant-major report back again to you, after you had given him this order to go and find Captain Macklin? A. Well, I suppose it was five or six minutes after, maybe. I don't know the exact time it was.

Q. What did he report to you with reference to—A. He reported to me that he could not find Captain Macklin in his quarters.

Q. Did he go into details at all?—A. No, sir.

Q. State anything further?—A. No, sir.

Q. Did the "call to arms" and the firing arouse the occupants of the barracks and bring the officers over to their companies?—A. I suppose that it did.

Q. What were your orders to the company commanders after they reached their barracks?—A. After the companies were fairly well formed I called to Captain Lyon and asked him if his company was formed, and he replied to me that it was; I told him to take position along the brick wall with his right resting on the garrison gate and extending to the left in line of skirmishers. I gave instructions to Lieutenant Lawrason, commanding B Company, to post his company in line of skirmishers along the brick wall, his left resting on the gate, and told him to take more than the ordinary interval. I directed Lieutenant Grier to take C Company and post it similarly along the wall with his left resting on B Company's right and throw back the right of his line a little toward the guardhouse.

Q. Will you kindly indicate on the map, Major, the positions occupied by those three companies?—A. This is the gate that enters into the garrison from Elizabeth street. Captain Lyon's company extended along the brick wall to the river. [Indicating point opposite garrison gate and running toward the river.] His company was extended along this portion of the wall, left resting on the river. B Company was posted from this side of the gate, I think his right must have been about in middle of the rear of C Company barracks. C Company's left rested on D Company's right and extended from here along this wall and was refused a little toward the guardhouse.

Q. How did Lieutenant Grier happen to be in command of C Company?—A. I placed him in command of C Company in the absence of Captain Macklin.

Q. By the way, Major, how long did this firing of high-power rifles continue, to the best of your judgment?—A. Well, I should say from five to seven minutes, it was pretty hard to tell, possibly it was eight minutes.

Q. Did any of the officers along the wall, Captain Lyon, Lieutenant Lawrason, or Lieutenant Grier, state to you that night that he had sent any one to find Captain Macklin? If so, what officer said so and what was his report to you?—A. Yes. Lieutenant Grier told me he had sent—in fact, I ordered Lieutenant Grier to send a man for Captain Macklin, and he told me the man had returned and was unable to find him.

Q. Do you know who this man was, who was sent by Lieutenant Grier?—A. Yes; I think he told me he had sent Corporal Madison.

Q. Did any noncommissioned officer of the guard report to you or did you see any noncommissioned officer of the guard during or immediately after the firing?—A. Yes; I saw Corpl. Ray Burdett, who was corporal of the guard, while the firing was going on.

Q. He reported to you where, Major?—A. It was between B and C Company barracks, on that brick walk that was indicated. I think it was about midway between those two barracks.

Q. Did he state why he had come over there?—A. Yes; he told me he had come over there in answer to the call of No. 2.

Q. Do you remember the name of the man on the No. 2 post?—
A. Yes, sir; it was Private Howard, of D Company.

Q. Did you give Corporal Burdett any special orders at that time?—A. Not when I first met him, excepting to stand where he was.

Q. Did you later? If so, what?—A. I did later. I sent him over to Captain Lyon's quarters to look after the safety of the ladies.

Q. Did he have any members of the guard with him?—A. He had two members of the guard, as I recall.

Q. Did he report to you at any time prior to your sending him to Captain Lyon's quarters that the sergeant of the guard had sent any member of the guard to find Captain Macklin?—A. He did not.

Q. When did you first see Captain Macklin after you and he had parted company about 9 o'clock—I think you said on the evening of August 13?—A. I think it was about 1 o'clock, or a little later, on the morning of the 14th. Possibly twenty minutes after 1—fifteen or twenty minutes after.

Q. Please state the circumstances of your meeting at this time, and what remarks were made by you both.—A. Captain Macklin came up to me and reported and he said: "Major, I have been asleep, and I haven't heard anything of what has been going on." I was very glad to see him and I told him to take command of his company at once.

Q. Had you made any other efforts to find Captain Macklin other than ordering Sergeant Harley to send a messenger and sending Sergeant Taliaferro yourself and directing Lieutenant Grier to send a man?—A. I had not.

Q. Had any patrols gone out into town with any orders to see if they could ascertain the whereabouts of Captain Macklin?—A. I directed D Company to go through that portion of the town that would be most frequented by the men to see if they could find any trace of Captain Macklin, or two men who were reported out on pass. I felt very much alarmed about Captain Macklin; I thought he might have jumped over the fence at the firing and harm had come to him.

Q. Captain Lyon was in command of this patrol?—A. Captain Lyon was in command of his own company—D Company—which was sent out.

Q. About how long after the firing was it sent out?—A. I think it was maybe twenty minutes or half an hour after the firing commenced that I sent Captain Lyon out.

Q. About what time did he return, with reference to Captain Macklin's report to you?—A. He returned soon after 1 o'clock; I judge it near 1 o'clock. I am not at all certain about the time, and I had been talking with Captain Lyon and Mayor Combe for a few moments when Captain Macklin reported to me.

Q. Has Captain Macklin at any time since he reported to you about or soon after 1 o'clock on the morning of August 14 made any other statements with reference to his whereabouts on that night?—
A. You mean since August 13?

Q. Since August 14.—A. Up to this period of time.

Q. Up to the present time.—A. Yes, sir; has spoken to me several times about it.

Q. What has he said in that connection?—A. He told me he had taken check roll call at 11 o'clock. He went then and inspected the guard. In returning he went down in rear of the company quarters to see if some orders that he had given relative to his company were

being carried out, and while he was there or in that vicinity he heard some screams down toward the gate. He immediately went over to the gate and found a party of children coming into the post and a large dog was barking at them. He drove the dog off and took the children halfway across the parade ground. He told me that must have been from half past 11 to twenty minutes of 12. He returned then to his quarters and threw himself down on the bed.

Q. Did he ever state anything further to you in regard to his actions after he returned to his house and before he went to bed?—A. I don't recall that he did.

Q. To your knowledge, was there anybody in the garrison who was asleep at the time the firing was going on and the bugles were sounding the "call to arms," who was not awakened by either the firing or the alarms, other than the officer of the day?—A. I don't know.

Q. Do you know, however, of anyone who did not waken during that time, other than the officer of the day?—A. I don't know whether they were all wakened at that time or not.

Q. You do not, however, know of anyone who slept through it all, other than the officer of the day?—A. No; I do not. I recall that Sergeant Osborn, the post quartermaster-sergeant, told me that he thought it might be a drill of some kind; was awakened, simply went to his window and then went back to bed again.

Q. How far were Sergeant Osborn's quarters from B Company barracks, however?—A. I suppose they must have been six or seven hundred yards.

Q. With reference to the guard, Major Penrose, how many posts were there kept up at Fort Brown at this time, and where was each located?—A. There were four posts.

Q. Would you kindly show on the map the positions of No. 1, No. 2, and 3?—A. No. 1, in front of the guardhouse; No. 2 extended at night around the barracks, keeping them on his left; No. 3 around the officers' quarters, marching completely around, keeping them on his left; No. 4 in a position off in here around the warehouses and the corral [indicating point some distance off the map above the upper right-hand corner].

Q. About how far was this No. 4 post from B Company barracks?—A. Well, that must have been—No. 4 was quite a long post—I expect that from the commissary to the quartermaster warehouse must have been all of 300 yards, and the warehouse—well, that must have been three or four hundred yards from B Company barracks, possibly longer. I don't know the distances, have never measured them, I am simply guessing.

(The court then took a recess until 11.35 o'clock a. m., at which hour the members of the court, the accused, his counsel, the reporter, the witness, and the judge-advocate resumed their seats.)

Q. Major Penrose, I have here a blueprint map of the military reservation of Fort Brown, and I will ask you if you will kindly scale off, in a direct line, the distance from the garrison road in rear of B Company barracks to the nearest point of No. 4's beat, and also to the farthest point of his beat?—A. (After measuring on the map.) About 1,500 feet.

Q. And how far is it to the farthest point, similarly of No. 4's beat, from the road?—A. (After measuring on the map.) About 2,575 feet.

Q. Major Penrose, which of these posts were kept up both day and night?—A. No. 1, No. 2, and No. 3.

Q. No. 4 was kept on, however, only from—A. From retreat to reveille.

Q. Were there any changes in the beats of the sentries on Nos. 2 and 3 during the night?—A. Yes; on No. 2, his beat extended in rear of the barracks during the daytime; on No. 3, it extended in rear of the officers' quarters during the daytime.

Q. But at night?—A. They were changed at retreat to march entirely around the barracks and the officers' quarters.

Cross-examination by the Accused:

Q. Major, what time did Captain Macklin report to you as officer of the day?—A. I think it was about 11 o'clock. The reason I fix it at that time, Companies B and D had a practice march that morning, and it was not customary to have guard mounting until twenty minutes after the companies returned from the practice marches.

Q. It was later than the usual time?—A. Yes, sir.

Q. I understood you to say that you gave to Captain Macklin, as officer of the day, no special orders at that time?—A. I did not, sir.

Q. And the next time he visited you officially, as officer of the day, was about 5.30 p. m. that evening?—A. I saw him; I went to find him myself about that hour.

Q. And your special orders that you gave him at that time were limited to patrols that were to be sent out that night into the town of Brownsville?—A. That, and I told him the passes were limited to 8 o'clock: all men were to be in by 8 o'clock, and none allowed out of the post after 8 o'clock that night.

Q. And from 5.30 that evening until 1 a. m. the next morning you did not see Captain Macklin?—A. Yes; I saw him. Well, from 9 to half past—I don't know exactly what time it was—he came to my quarters.

Q. At that time, at 9 o'clock, did you give Captain Macklin any special orders governing his performance of officer of the day duties?—A. I did not. He reported the result of patrol duty in town, told me all the men were in—he did not find any at all—and that he himself had been through the lower portion of the town. I did not give any additional instructions whatever.

Q. Did you again see him, until 1 o'clock next morning?—A. I don't recall seeing him again—I might have.

Q. So to summarize that, what orders, governing the performance of officer of the day duty by Captain Macklin, on August 13 and 14, 1906, were given him?—A. They were the usual orders prescribed for the officer of the day in the guard manual, and the special orders given to each one of the four posts, which are about the same as maintained in any garrison.

Q. You were commanding officer, were you not, Major?—A. Yes, sir.

Q. These special orders that you gave to Captain Macklin, about 5.30 o'clock on August 13, were those orders you thought necessary to give, in consequence of a certain report made to you a little while earlier?—A. I did.

Q. You took all the precautions you thought were necessary?—A. Yes, sir; I did.

Q. Did you give Captain Macklin to understand, in any way at all, that anything further was required of him, as officer of the day, except the carrying out of those special orders?—A. No, sir.

Q. What is about the distance from the barracks of Fort Brown to the officers' quarters?—A. Oh, I should say 150 yards.

Q. Where did you sleep in your quarters, Major?—A. I slept in the back room on the eastern side of the house, second story.

Q. Why did you sleep in the back room; any special reason?—A. Yes; a great reason there; the only breeze we had at Brownsville at all came, generally speaking, from the south. For that reason, I think, everybody occupied the back room, to get that breeze, and the front rooms were almost uninhabitable, it was so warm.

Q. About what distance was the officers' quarters from the guard-house at Fort Brown?—A. My own was probably 150 yards, about.

Q. And Captain Macklin's was farther or nearer?—A. Captain Macklin's was considerable farther. If I am right that my quarters were about 150 yards, his must have been 350, I should think.

Q. You testified as to the location of certain shooting that took place that night; did you see any shooting?—A. I did not.

Q. That is merely an opinion of yours as to its location?—A. That is all.

Q. Did it appear to be all outside of the post of Fort Brown?—A. I thought it was.

Q. You testified that a certain man was sent by Sergeant Harley, acting first sergeant of C Company, to waken Captain Macklin; did that man return and make any reports to you as to the result of his efforts?—A. No, sir; not to me.

Q. You later sent Sergeant Taliaferro?—A. Yes, sir.

Q. And Sergeant Taliaferro did report?—A. He did report that he could not find Captain Macklin in his house.

Q. Did Corporal Madison make any report to you?—A. Not that I recall. Lieutenant Grier told me—I think he said it was Corporal Madison he had sent over to Captain Macklin's quarters, and he could not find him.

Q. You testified at some length as to what took place between you and Corporal Burdett. Did Corporal Burdett make any report to you as to any efforts he, as a member of the guard, had made to waken Captain Macklin?—A. He did not.

Q. Did he make any statement to you of any efforts having been made by the sergeant of the guard, or any members of the guard, to waken Captain Macklin that night?—A. No; I don't recall that he did.

Q. Private Howard, you say, was sentinel on No. 2?—A. Yes, sir.

Q. Did he make any such report to you?—A. Relative to Captain Macklin?

Q. Relative to Captain Macklin.—A. No, sir.

Q. Do you know who the first officer was Captain Macklin saw after leaving his house on the morning of August 14, early in the morning?—A. I do not.

Q. Had he reported anywhere before reporting to you that morning?

By the JUDGE-ADVOCATE. I don't see that the witness can state that of his personal knowledge; it must be hearsay.

By ASSOCIATE COUNSEL. Please strike out the question.

Q. Did Captain Mucklin report to you of his own volition on the morning of the 14th of August?—A. I suppose he did.

Q. Had he reported to his company before that time?—A. I think not.

Q. Had he reported to any officer before that time?—A. Not that I know of.

By the JUDGE-ADVOCATE. I don't see how the witness can tell what happened so far as Captain Macklin's actions were concerned prior to that time he saw him, except by hearsay evidence.

Q. What conversation did you have with Captain Macklin at the time he reported to you at 1 o'clock?—A. Captain Macklin came up and saluted and said, "Major, I report. I have been sound asleep and haven't heard anything of what was going on."

Q. Did you believe that to be an honest statement?—A. I certainly did, sir.

Q. Was there anything in Captain Macklin's manner or condition to warrant that not having been made in good faith?—A. Not the slightest. I never questioned it for a moment.

Q. What did you say to Captain Macklin, Major?—A. Well, I think I said, "My God, Ed, I am glad to see you." I think that was my first expression, and I told him then to take command of his company at once; that he would find it on the right of the line, and to relieve Lieutenant Grier.

Q. Why were you so glad to see Captain Macklin?—A. Because I was afraid that Captain Macklin, being officer of the day, having heard the shooting—and knowing him as well as I do—that he might have scaled the wall to see what was the matter, and he might have come to harm.

Q. How long did Captain Macklin remain on duty as officer of the day?—A. I don't think that Captain Macklin was relieved before 11, or after, on the morning of the 14th. I don't recall the exact time; I know that it was late, though.

Q. What changes, if any, did you make in the guard that night?—A. At about 3, or a little after, in the morning I dismissed B and D Companies and told them that they could go to their quarters. I gave instructions to Captain Macklin to extend his entire company from about midway, a little farther toward the Rio Grande River, and the end of the brick wall and extending a little over toward the guardhouse. I established that company as a guard in addition to the regular guard.

Q. Was Captain Macklin present with his company all that later period?—A. I think that he was. I saw Captain Macklin possibly at half past 3, and I saw him again before it was really daylight.

Q. On your direct examination you were asked your opinion as to whether or not any of the inhabitants of Fort Brown slept through this firing of the 13th of August; do you remember any testimony that was developed in the trial of Major Penrose where a certain witness testified—a resident of Fort Brown—that he was asleep during this period?

By the JUDGE-ADVOCATE. I think that form of question is inadmissible. In the first place, I did not ask the witness his opinion as to whether anyone had slept; I asked him whether he knew of his own knowledge of anyone who slept through this firing and the sounding of the bugle other than the officer of the day. It was not a question

of opinion, it was a question of what came within the witness' knowledge.

By ASSOCIATE COUNSEL. May it please the court. I will modify the question according to the objection of the judge-advocate.

By the JUDGE-ADVOCATE. I wish to state, also, that the statements of witnesses in the other trial, even though made under oath, are not admissible. They are hearsay just as much as anything else.

By ASSOCIATE COUNSEL. May it please the court. May I be informed whether or not the objection is made to the form of this particular question or whether the objection is to the substance? If the objection is to form, I will modify that question to accord to the objection of the judge-advocate. If it is an objection to substance, I reserve the right—

(By direction of the court the question was read as recorded.)

Q. In your direct examination you were asked if you had any knowledge as to whether or not any of the inhabitants of Fort Brown had slept through this firing. I ask you, do you remember, in the testimony brought out in the trial of Major Penrose, a certain witness testified that he had slept through this firing? That witness was a resident of Fort Brown.—A. I don't recall anyone, excepting the accused.

Q. Other than the accused?—A. I don't recall it.

Q. Did you have occasion, on the morning of the 14th of August, to send out any patrol around the post?—A. I did.

Q. Who was in charge of that patrol, Major?—A. Corporal Madison.

Q. What were his instructions?—A. His instructions were to go to the lower post, the old cavalry and artillery post, in which are located the storehouse, and where the noncommissioned staff officers had quarters, to see if any harm had come to any of them and to see if any damage had been done down there at all.

Q. In the performance of this duty did Corporal Madison go to any of the noncommissioned officers' quarters?

By the JUDGE-ADVOCATE. As to what Corporal Madison reported to the witness, that is perfectly admissible, but to call upon the witness who is now upon the stand for a statement as to whether Corporal Madison actually did certain things beyond his sight and hearing is inadmissible. Corporal Madison will be called as a witness later and will testify as to what he actually did.

By ASSOCIATE COUNSEL. Please modify that question to read: Did Corporal Madison make any report to you that, in the performance of this duty, he had visited the quarters of the noncommissioned staff at Fort Brown?

A. He did so report, and I recall now that he stated to me—not at the time, but I think it was the next day—that he found some of the noncommissioned officers asleep. I do not recall, though, who they were.

Q. Major, did you ever, by word or action, give Captain Mucklin to understand that you were not thoroughly satisfied with his performance of officer of the day duty on August 13 and 14, 1906?—

A. I never have, sir.

Q. Are you thoroughly satisfied?—A. I am thoroughly satisfied.

Q. Major Penrose, where were you when you heard these shots

you have testified you have heard on the night of August 13 about midnight?—A. The first shots?

Q. Yes.—A. I was on my bed, lying on my bed.

Q. Were you asleep?—A. I was not, sir.

Q. Then the shooting did not awaken you?—A. It did not.

Redirect examination by the JUDGE-ADVOCATE:

Q. Could you hear those shots plainly or not from your bed?—A. Very distinctly.

Q. I omitted to ask you on the direct examination as to whether you met any member of the guard immediately after you left your house.—A. Not immediately after I left, but as I was going out of the front door—the sentinel on No. 3—

Q. Do you recall his name?—A. Yes; Hairston—Private Hairston. As I was putting my hand on the knob of the door to open it, he knocked, and as I opened the door I ran into him and he says, "Major, they are shooting us up." I told him to go over and tell the sergeant of the guard to sound call to arms.

Q. The first of the heavy rifle firing, as I understood you to say, took place apparently in rear of B Company barracks, and you indicated on the map the garrison road in rear of those barracks; was that about where it appeared to you to begin?—A. Seemed to be right in there.

Q. And thereafter did it remain in that same place, or did it go up in town?—A. It seemed to go up in town.

Q. Up what street or alley?—A. I could not tell. I thought it might have been that alley.

Q. The alley that runs between Elizabeth and Washington streets?—A. Yes.

Q. And could you form any estimate as to how far up it went?—A. No; I couldn't.

Q. And what is the farthest point it reached—whether one, two, or three squares?—A. No, sir; I couldn't tell you.

Q. Major, I will ask you to again kindly scale off the distance on this map, merely to refresh your memory, and ask you the distance from the garrison road in rear of B Company barracks to the non-commissioned officers' quarters, where, according to your recollection, Corporal Madison stated that some people—A. There are two sets here. I don't remember which one the quartermaster-sergeant lived in either, but to the first one [measuring on map] about 2,350 feet.

Q. To the nearest?—A. To the nearest set of noncommissioned officers' quarters, yes.

Q. And to the farthest set, in a straight line?—A. (After measuring on map.) Three thousand five hundred and fifty feet—just about.

Q. You do not, however, know in which of the noncommissioned officers' quarters these people lived whom Corporal Madison said were not awakened?—A. No; I do not.

Q. Whether in the near set of quarters or the farther one?—A. No; I don't recollect that—in fact, I don't recollect what quarters any of the noncommissioned staff occupied.

Q. The distance, however, from Captain Macklin's quarters to B Company barracks was about, I think you stated, 150 yards?—A. I

think a little longer than that, possibly. Well, about 150 yards; I think that's right.

Q. What is the distance from B Company barracks to the garrison road?—A. About 60 feet, I think.

Q. Did the bugles that were sounding, after the "call to arms" was first sounded by the trumpeter at the guardhouse, make a good deal of noise?—A. Yes, sir; they were all sounding. They were all sounding the call, and, of course, it made a good deal of noise.

Q. There were two buglers in each company, were there not?—A. Yes.

Q. So if all were sounding there would be the bugler at the guardhouse and the five other buglers at the companies?—A. Five others, yes.

Recross-examination by the Accused:

Q. Major, Private Hairston, sentinel on No. 3, in his conversation with you, did he make any statement relative to Captain Macklin?—A. No, sir; none whatever.

Examination by the Court:

Q. Did the old and new officer of the day report to you on August 14 as usual after the guard was relieved?—A. Yes, sir; it was later, I say, that morning.

Q. Captain Macklin was old officer of the day?—A. Yes, sir.

Q. Did he make any official report to you at that time?—A. Nothing but the usual one.

Q. He made no report in regard to the occurrences of the night before?—A. No; I don't think he said anything about it at that time; of course I had seen him on that morning and talked very freely with him before his company was relieved.

Q. Prior to August 13 was it usual to hear firearms discharged in the city of Brownsville?—A. I don't think I ever heard them—heard any. I remember hearing shots some night that I think were fired from Matamoros.

Q. I would like to ask the witness what the height of that brick wall was.—A. It varies according to the ground. At the gate, on either side of the gate, and, I think, on all along down to the Rio Grande, it was about, I think, 4 or 4½ feet high [indicating the section of the wall between Elizabeth and Washington streets]. The upper end, here, was considerably higher; I think the wall must have been 5 feet or 5½ feet high [indicating point near Adams street], the eastern end of the brick wall, and it gradually went down to about opposite this vacant barrack, and I think there it was about the same height, 4½ feet—about that; I never measured it.

Q. During how many minutes, Major, was the "call to arms" sounded?—A. Well, that's pretty hard to tell; I presume it was sounded a couple of minutes, though.

Q. What was the interval from the first shot you heard until Captain Macklin reported to you?—A. Well, it must have been a little over an hour, I think.

Q. Were the windows of your room open when you heard the first shots?—A. Yes, sir; they were all open; the whole house, sir.

Q. The officer of the day on that night, and under the circumstances

that maintained at the time, had certain definite duties in connection with his guard to perform, had he not?—A. Yes, sir.

Q. Do you consider, as his post commander, that he performed those duties?—A. He had performed his duties up to the time he went to sleep to my entire satisfaction. I never thought that I could hold him for a moment for not waking up at that time. I know he is a hard sleeper.

Q. I don't think you got the meaning of my question exactly. Under the circumstances, which were unusual of course, due to the facts that an alarm and "call to arms" had been sounded, the officer of the day, in connection with his guard, had certain duties to perform which are either prescribed by the manual or by special instructions from you. Did he on that night perform those duties?—A. I think that he did. He did not retire until after the prescribed period for him to retire, and that he slept through I don't think we can count against Captain Macklin.

Q. Captain Macklin reported to you, you say, about 1 o'clock or shortly after; did he ever state to you how he happened to awaken at that time?—A. I think he did afterwards; not at that time he reported to me.

Q. That time refers to the wakening about 1 o'clock. What caused him to awaken about that time?—A. My impression is he told me he heard some one knocking at the door. Yes, that was it; I am sure he told me he heard some one knock at the door—wait a minute, I think I remember that a little more clearly now. He told me he heard some one knock on the door and he got up and looked at his clock and he found that it was about 1 o'clock, and he thought that the man had made a mistake, intending to call him at reveille.

Recross-examination by the Accused:

Q. Major, you testified as to the number of musicians in the companies of your command; you do not mean to say that all these musicians were sounding the alarm that night, do you?—A. I don't know; it sounded to me as if all might be sounding it.

Q. What's the usual way in which an alarm is sounded?—A. Sounded first from the guardhouse and then each of the company musicians take up the call.

Q. Sounded at each company?—A. At each company.

Redirect examination by the JUDGE-ADVOCATE:

Q. It is ordinarily sounded by all of the trumpeters possessing trumpets, is it not?—A. By all of them.

Recross-examination by the Accused:

Q. But, Major, it is not ordinarily sounded together; there might be one trumpeter sounding it at one time. You would not have a volume of sounds from every trumpeter of the command?—A. That might have been. It sounded as if they were sounded all together. They did not all commence at once or keep in one key, or anything of that kind, but I thought they all sounded the "call to arms."

(The court then, at 12.15 o'clock p. m., adjourned to meet at 9 o'clock a. m., April 16, 1907.)

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 16, 1907.

The court met, pursuant to adjournment, at 9 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of April 15 was dispensed with.

Lieut. H. S. GRIER, Twenty-fifth Infantry, a witness for the prosecution, was duly sworn, and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and present station.—A. H. S. Grier, second lieutenant, Twenty-fifth Infantry, Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. I do; Capt. E. A. Macklin, Twenty-fifth Infantry.

Q. Where were you on August 12, 13, and 14, 1906?—A. I was in Fort Brown, Tex.

Q. Upon what duty were you during that time?—A. Post quartermaster and commissary, acting post adjutant.

Q. Was one of your regular daily duties to detail, by order of the commanding officer, the officer of the day for the succeeding day?—A. It was.

Q. Who, on August 12, 1906, was thus regularly detailed as the officer to march on as new officer of the day on August 13?—A. Captain Macklin.

Q. Who mounted the guard on August 13?—A. I did.

Q. What time of day was guard mount held?—A. I would say between half past 10 and 11 o'clock in the morning.

Q. And did Captain Macklin march on at that time as new officer of the day?—A. He did.

Q. When did you next see Captain Macklin that day?—A. I don't remember seeing him until evening, about 9 o'clock that evening.

Q. Did anything unusual happen on the night of August 13, at or near midnight? If so, please state briefly what it was and what you did in consequence thereof.—A. There was.

Q. Where were you at the time?—A. There was a shooting which took place at or near Fort Brown, Tex., which alarmed the entire garrison. In response to call to arms the entire garrison was assembled, on their proper company parade grounds.

Q. Where were you at the time you first heard this shooting?—A. I was asleep in my quarters.

Q. In quarters No.—A. Quarters No. 5.

Q. What did you do as soon as you heard the first shot?—A. I got up and got dressed as quickly as I could and got on the outside; later was assigned to command C Company by Major Penrose.

Q. When you left your house where did you go?—A. I went first to Captain Lyon's quarters, right next to mine.

Q. For what purpose?—A. To take my wife and child there—and from there I started across the parade ground towards C Company barracks.

Q. Did you meet anyone on the way to C Company?—A. Yes; I met Sergeant Harley, the acting first sergeant.

Q. Whereabouts did you meet him?—A. I met him about 10 or 15 yards from the southern end of the parade ground.

Q. That is about 10 or 15 yards from the road that runs along in front of the officers' quarters?—A. Yes.

Q. And in which direction was he going?—A. Running towards the officers' line.

Q. What did you say to him, if anything, and what was his response?—A. I halted him; I could not see who it was, and in response to my challenge he said it was Sergeant Harley. I asked him what the trouble was over there; he said, "The men say they are shooting up the barracks." I said, "If that's the case what are you doing over here?" He said, "I am going to get my captain."

Q. Who was his captain?—A. Captain Macklin.

Q. Did you have any further conversation with him?—A. I did not.

Q. In which direction did he apparently leave you?—A. He apparently kept on going towards Captain Macklin's house. I did not pay any further attention to him.

Q. You continued on towards C Company barracks then?—A. Yes.

Q. What happened then, when you arrived in the vicinity of the barracks?—A. As I crossed the parade ground I called several times for Major Penrose, and finally he answered my call and I found him at the east end of B barracks.

Q. What was your report to him and what did he order you to do?—A. I reported to him, as his adjutant, and he said for me to take command of C Company; that Captain Macklin couldn't be found and he was afraid he had been done away with.

Q. During the time you were crossing the parade was there any sound other than that of the shooting—any bugles?—A. Not while I was crossing the parade. Immediately before that the "call to arms" had been sounded by every trumpeter in the post.

Q. About how long do you think this sounding of the call to arms was kept up by the trumpeters?—A. Two or three minutes, I might say. It was first sounded by the musician of the guard; then, as fast as they could get outside, the company musicians took that call up—all three companies.

Q. There were six musicians there altogether in the post, were there not?—A. Yes.

Q. Each one had his trumpet, did he not?—A. Each one is furnished with one.

Q. After you took command of Company C what further orders did you receive from the commanding officer?—A. To check up the men and take the company out and put it behind the wall, with the left of C Company resting on the right of B Company.

Q. Did you receive any orders from him to send anyone to find Captain Macklin?—A. My recollection is that I did.

Q. Under what circumstances and whom did you send?—A. As I remember it, Major Penrose told me to send a man over to Captain Macklin's house to see if he could possibly be there, and in obedience to this I sent Corporal Madison—

Q. Of Company C?—A. Of Company C, on that errand, but did not see him—

Q. Just one moment, what time was this you sent him?—A. That was about 12.15 or 12.20.

Q. How long after the shooting had ceased?—A. About ten minutes.

Q. When did he report back to you?—A. Reported back to me about 1.15.

Q. Do you know, of your own knowledge, whether he in the meantime had been sent on any other mission by the commanding officer?—A. Yes, I do. He was sent by the commanding officer to the quartermaster storehouse and corral, with a patrol of two men, to see whether or not any damage had been done by firing, to the animals.

Q. When you saw him at about 1.15 did he make any report to you with reference to his finding or nonfinding of Captain Mucklin?—A. He did.

Q. State what he said; state in full all he said.—A. I asked him where he had been all the time. He said he understood me to say that he was to report to Major Penrose, and that he had gone over to Captain Mucklin's quarters, found his saber standing outside by the door, had gone in the house and called several times for Captain Mucklin and was unable to get any response. I then asked him if he had gone upstairs to the back bedroom; he said no, he had not. Then went on to say the reason he hadn't gotten back sooner was because the commanding officer had sent him on this other detail.

Q. Did he state that he had not gone upstairs, or that he had not gone upstairs to the back bedroom?—A. My recollection is that he stated he did not go upstairs at all.

Q. Was this shooting, by reason of which you were awakened, and which continued for some little time, considerable in amount or not? Please state your best approximation of the number of shots fired.—A. About 60 to 75 shots, fired from high-power rifles at the beginning. This was followed by the firing from mixed arms, in the town.

Q. This firing continued for how long, approximately?—A. Continued from five to eight minutes altogether, all kinds.

Q. Where did it apparently begin, with reference to B Company barracks?—A. Seemed to me to be directly in rear of B Company barracks.

Q. And at any time did this shooting from high-power rifles appear to be at a very great distance from the post?—A. Not particularly so. That is, it didn't seem to me to be at any time very far from Fort Brown.

Q. Within how many hundred yards would you say?—A. Within a couple of hundred yards.

Q. Did you see Captain Mucklin on the morning of August 14? If so, please state the earliest moment at which you saw him.—A. I don't remember seeing him on that morning at all.

Q. You did not see him about 1.15 in the morning?—A. Oh, yes; I did, too; I saw him about 1.15 in the morning, that early, but I thought you had reference to after breakfast.

Q. Please state the circumstances.—A. Captain Mucklin came about 1.15 or 1.20 and relieved me in command of his company.

Q. Was it before or after your relief by Captain Mucklin that Corporal Madison reported to you?—A. Just about the same time.

Q. Did Captain Mucklin state to you at that time any reasons for his absence?—A. He did not.

Q. Did he ever make any statement to you since that time with reference to his absence, or discuss the matter with you?—A. Yes.

Q. If so, please state, to the best of your recollection, all he ever said on the subject.—A. He stated that, after making his inspection

at check, he had come home, read the headlines of the newspaper, and then had gone to bed in the back bedroom upstairs. That he had given instructions to the musician of the guard to wake him up before first call for reveille; then he went to sleep, and wakened up suddenly as if some one was calling him; sat up on the edge of his bed, picked up his pipe which was on a chair next to the bed and lit it and sat there smoking for a few moments. The call he thought he heard was not repeated, so he thought he must be mistaken, and he went back to sleep again. When he finally was awakened it was by somebody pulling him by the foot.

Q. Did he state who this man was who pulled him by the foot?—

A. He said he didn't know who it was.

Q. Did he ever state anything to you regarding his feelings on that night—that he was very tired on account of having been out late the night before?—A. No; I am positive he never made any such remark to me as that.

Q. Was there anyone in the officers' quarters or in the barracks, so far as your personal knowledge goes, other than the officer of the day, who was not awakened, either by the sound of the shooting or the sound of the bugles that night?—A. Nobody that I know of.

Q. With reference to the houses down there—I will ask you if you recognize this photograph [handing witness Exhibit 1, already in evidence]? Please state to the court what that photograph represents.—A. That's a picture of the last three sets of officers' quarters.

Q. Numbers what?—A. Seven and 8, 9 and 10, 11 and 12.

Q. And also?—A. Also a cottage occupied by the quartermaster clerk, on the west end of the officers' line.

Q. Will you kindly mark by a cross the quarters occupied by Captain Macklin on August 13, if they appear in that picture? Also sign your name. [Witness marks on the face of the picture and signs his name.]

Q. Do you recognize that photograph [handing witness photograph, which was submitted in evidence, is hereto appended, and marked 4]?—A. I recognize that to be a photograph of a set of quarters.

Q. Do you know whose quarters they are?—A. I am not positive.

Q. Is there anything about the way this scalloped boarding in front of the porch is knocked off that enables you to identify it at all?—A. No; I don't remember that; that could be most any set down there. That's the general type of all such quarters.

Q. Is that a photograph of some one of the double sets of officers' quarters at Fort Brown?—A. Yes. They are all alike.

Q. You are unable to state exactly which one it is. With reference to the construction of the officers' quarters down there, are they strongly constructed or built of comparatively light material?—A. Well, they are not especially strongly built, and yet I don't think you could say the material is very light in them, either.

Q. The climate of Fort Brown and Brownsville is very mild the year around, is it not?—A. Yes.

Q. And oppressively hot in summer, is it not?—A. Yes.

Q. The houses down there are not ordinarily built with very thick walls, are they?—A. No.

Q. Are these officers' quarters down there, these double sets, fixed in any way, so if an officer occupies an entire double set of quarters,

ready access can be had from one side of the set to the other?—
A. Yes; it can be arranged that way—that is, on the first and second floors there are doors that open between houses, and unless those are kept locked or nailed up it is easy to pass from one side of the building to the other.

Q. About how far distant from the front wall of each set of officers' quarters is the door in the partition in the first floor?—A. About 5 or 6 feet from the front door.

Q. So that if that door is open, and the corresponding door upstairs, it practically makes one set of quarters out of the double set, does it not?—A. Yes.

Q. Is this division wall between the quarters a very thick one or not?—A. I don't believe it is; I never measured it.

Q. Did any one live in the quarters next to you?—A. They did not.

Q. Did you ever, while in any single set of quarters, hear anyone moving about in the other side of that set?—A. Yes.

Q. Could you hear ordinary conversation on the other side of this partition wall?—A. I don't know.

Q. If a door were open, however, on the first floor, ordinary conversation on one side could be heard on the other side, could it not?—
A. I think so.

Q. You were post quartermaster, I believe, at that time?—A. Yes.

Q. To which quarters was Captain Macklin assigned?—A. No. 11.

Q. Did he use any other quarters in addition to No. 11?—A. He did, in this way. As I remember it, he had some property of his not yet unpacked stored in No. 12, which was not occupied.

Q. Do you know that none of this was unpacked prior to August 13?—A. I don't know absolutely; my impression is it was not.

Q. Do you know whether, in view of the fact that Captain Macklin lived in one side of this house and had his property stored in the other—A. Hold on; I didn't say that. I said part of his property stored in 12; he had some of his property in 11, too.

Q. Whether or not, the division doors in the partition between 11 and 12 were nailed up or locked?—A. I don't know.

Cross-examination by the Accused:

Q. Lieutenant Grier, you said that when you first heard the shooting you were asleep in quarters, as I understood you; you don't mean that, do you?—A. Yes; I was asleep in my own quarters when I first heard the shooting—that is, when I first woke up.

Q. Whom did Captain Macklin relieve as officer of the day on the 13th of August?—A. Myself.

Q. Did you report with him to the commanding officer, as old and new officer of the day?—A. I did.

Q. Were any instructions issued to him at that time by the commanding officer, as new officer of the day? Special instructions?—
A. No, sir; as I remember it the commanding officer said to Captain Macklin, "Captain, the usual instructions."

Q. What noncommissioned officer was in charge of the formation of Company C when you joined it, after leaving the commanding officer?—A. Sergeant Harley.

Q. What length of time did you spend with the commanding officer before joining this company?—A. About half a minute; just long enough for me to report to him and for him to tell me what to do.

Q. You found Sergeant Harley present there with the company, you say?—A. Yes, sir.

Q. Would that interval of time have been sufficient for Sergeant Harley to have visited the quarters of his commanding officer, returned to the company, and taken part in the formation?—A. Well, hardly, unless he had run all the way.

Q. How do you know that the musician of the guard first sounded the alarm that night?—A. I heard the commanding officer give the order to the musician of the guard to sound it.

Q. You know nothing further than that?—A. That's all. I heard Major Penrose say, "Sound 'call to arms' from the guardhouse."

Q. Do you know of your own knowledge how many trumpeters sounded the alarm that night?—A. I do not. It would have been impossible to tell how many were sounding it.

Q. Who was the senior noncommissioned officer of Company C. Twenty-fifth Infantry, present for duty?—A. I think Sergeant Harley was.

Q. When Corporal Madison reported back to you, after having made patrol under the orders of the commanding officer, and reported to you having visited Captain Macklin's quarters, you stated you asked him if he had visited the back bedroom; what was the purpose of that question?—A. Because I knew that was the place where people always slept in that particular post.

Q. You knew that Captain Macklin slept in his back bedroom ordinarily?—A. Not so much that, as I knew everybody in the post was accustomed to using that room for that purpose; it is the only one in which it is cool enough.

Q. Just describe the windows in that bedroom.—A. Well, in the first place, the room faces directly on a body of water in rear of the officers' line known as the lagoon, from which at night there is usually a good breeze. There is a window facing directly on the lagoon 2 or 3 inches off the floor—this window is about 3 feet wide by 18 inches deep—and that is left open. In addition to that, on the east side of the quarters in the same room, there is a double window, about 3 feet off the floor, the window extending to the ceiling.

Q. What was the approximate size of these windows, normal or less?—A. About normal.

Q. About how large were they, Mr. Grier?—A. About 3 feet and a half wide by 5 feet deep, double window.

Q. You testified to a certain conversation you had with Captain Macklin relative to his awakening on the 13th of August—the morning of the 14th of August. Will you just describe again what you said about his first awakening and not getting up out of his quarters?—A. As I recall it, he said he thought he heard some one calling him and thought perhaps it might be the man waking him for reveille, and that he got up and sat on the edge of his bed and lit his pipe.

Q. Did he say where this man was calling him?—A. He did not. He listened and he didn't hear it again and he thought he must be mistaken.

Q. You said in your previous testimony that the call was not repeated; you mean the summons of this man?—A. Yes; what he thought he heard, was not repeated.

Q. You stated that as far as you knew directly there was nobody

in the officers' quarters or in the barracks who was not wakened by that firing and the alarms of the 13th of August. What do you mean by that statement?—A. I mean I have never heard or never been told of anybody sleeping through it. That I don't know of anything to the contrary.

Q. Your testimony is purely negative on that point?—A. Purely negative.

Q. Who occupied the quarters No. 9 at Fort Brown?—A. Lieutenant Hay.

Q. Where was he on the 13th of August?—A. He was at Fort Sill, Okla., at the rifle competition.

Q. How long had he been absent from the post?—A. Since the 3d or 4th of the month.

Q. Were his quarters furnished?—A. They were.

Q. Downstairs?—A. Downstairs and upstairs both.

Q. Who occupied quarters No. 10 at Fort Brown?—A. Lieutenant Lawrason.

Q. Were his quarters furnished?—A. They were.

Q. Downstairs?—A. Yes; and upstairs also.

Q. Quarters No. 12 were occupied by whom?—A. Nobody.

Q. Were they furnished?—A. Not that I know of.

Q. What did they contain downstairs?—A. Contained for one thing a lot of Captain Macklin's property, still packed up.

Q. And the quarters No. 11, were they furnished downstairs?—A. They were.

Q. To what extent?—A. Well, Captain Macklin, as I remember, had a couch in the front room by the front windows, desk, table, and three or four chairs.

Q. Was Captain Macklin living alone?—A. Yes.

Q. Was this couch uncrated or still crated?—A. It was uncrated; but my recollection is it was still wrapped in burlap; I may be mistaken about that.

Q. Was there any rug or carpet on the floor?—A. Yes; I believe there was.

Q. Any curtain on the windows?—A. No; I think not.

Q. Lamp inside?—A. One lamp.

Q. What kind of a lamp?—A. Ordinary nickel lamp; with a white shade, if I remember correctly.

Q. Is Captain Macklin a married man?—A. Yes, sir.

Q. Was his wife present at Fort Brown on the 13th of August?—A. She was not.

Redirect examination by the JUDGE-ADVOCATE:

Q. By the back bedroom, Mr. Grier, you mean what room, with relation to the front of the house? How far from the back was it?—

A. Well, I could show on the map over there a good deal better. Here is the main part of the house here, back this far; that back room, the one facing on the lagoon, is right here, this half. [Indicating the southern half of the front portion of the house.] The window I spoke of as being just above the floor faced this way, directly toward the lagoon.

Q. How many rooms altogether—how many bedrooms altogether—in that main portion of the house you have just indicated, upstairs?—

A. Just two.

Q. So this back bedroom of which you spoke was the second room back from the front of the house?—A. Yes.

Q. How large was the front bedroom—how deep was it from front to rear?—A. About 12 feet I should say.

Q. So that the front partition of this back bedroom was only about 12 feet from the front wall of the house?—A. Yes.

Q. The door to this back bedroom opened towards the head of the stairs and toward the front of the house?—A. Well, practically the same way in both; that is, the door off the back bedroom into the stairway going downstairs, and there's one off the front room opening into the same place.

Q. So that the main door into this back bedroom opened towards the head of the front stairway?—A. No.

Q. It is immaterial which way the door swung, but I mean it opened on the head of the stairway?—A. Opened on: yes.

Q. And about how far distant from the head of the stairs?—A. Right at it.

Q. Are the doors and windows at Fort Brown in the summer time ordinarily kept open during the hot weather of summer?—A. No.

Q. Of occupied quarters and barracks, I said.—A. Yes; they are.

Q. The heat was very intense there at that time, was it not, in August, 1906?—A. Yes.

Q. How long had Captain Macklin been in quarters No. 11?—

A. Ever since the battalion took station at Fort Brown, about the 29th of July.

Recross examination by the Accused:

Q. Lieutenant Grier, is there a bathroom and toilet room between these two bedrooms upstairs?—A. Yes, sir; over to one side; in most houses it was originally a part of the front room partitioned off for that purpose, with a door opening into the back bedroom on the other side.

Q. I wish you would try to recall again how that room downstairs was furnished, if you can, in No. 11, Captain Macklin's quarters—front room downstairs.—A. Well, it had that couch in it, I remember, and a desk, and a lamp and chairs.

Q. What kind of chairs were they?—A. They were white chairs—Government chairs, or chairs that looked like Government chairs—painted white.

Q. How about the floor?—A. My impression is there was a rug; I am not sure. I am sure there were no curtains up.

Q. You wouldn't say there was a rug there?—A. I wouldn't be absolutely positive. My impression is, there was.

By the JUDGE-ADVOCATE. I am through with the witness for the present, sir; I may have to recall him later. I wish to make that reservation.

Examination by the Court:

Q. Was there any wind on the night of August 13, 1906, about 11.30 o'clock? If so, about how strong was it, and from what direction was it blowing?—A. I don't know: I was asleep then.

Q. Did you or did you not testify that Sergeant Harley reported to you with Company C too soon for him to have gone to the quarters of Captain Macklin?—A. I believe I stated that he would have had to run all the way to have gotten back there by the time he did.

Q. Was there any wind on the night of August 13, 1906, at the time you were awakened by the shooting? If so, about how strong was it and from what direction was it blowing?—A. I don't remember any wind, but the prevailing wind in that locality was from the south every night during the summer months. The prevailing wind was from the south—this was towards the post. That always gave a cool breeze in the back rooms of the houses at night.

Redirect examination by the JUDGE-ADVOCATE:

Q. There was no wind, however, on the night in question?—

A. None especially that I noticed.

Upon motion of a member, the accused, his counsels, the reporter, and the judge-advocate then withdrew and the court was closed, and on being opened the president announced, in their presence, as follows:

Mr. Judge-Advocate, proceed with the next witness.

Lieut. G. C. LAWRASON, Twenty-fifth Infantry, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station, Mr. Lawrason.—

A. George C. Lawrason, second lieutenant, Twenty-fifth Infantry. My station is Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Q. Where were you on the days of August 13 and 14, 1906?—

A. I was at Fort Brown, Tex.

Q. Were you stationed there?—A. Yes, sir; that was my station.

Q. What was the number of the quarters occupied by you?—A. No. 10.

Q. Are the houses down there strongly constructed, or are they constructed as houses ordinarily are in such a hot country?—A. They are frame buildings, with plastered walls between rooms, as I recall it, sir.

Q. With reference to the partition wall between the double sets of quarters, did that differ in any respect, according to your recollection, from the ordinary division wall between rooms in the same side of the house?—A. No; I believe not; this was a plastered wall.

Q. It was not a sound-proof wall of any kind, such as is used in modern flat buildings and tenement buildings?—A. No, sir.

Q. Even though the doors were shut, could you still hear people moving around on the other side of the partition—the other half of the house?—A. There were no doors on the first floor in my house connecting the rooms in the front of the house. It is my recollection that you had to go as far back as the alley—the extension shown in rear of the quarters—before being able to go from No. 9 into No. 10.

Q. You do not know, however, the conditions in the other houses?—A. No, sir; I am not sure of the condition in the other houses.

Q. About midnight on August 13, where were you?—A. I was in bed.

Q. Asleep?—A. Asleep in my quarters.

Q. Were you wakened at all about that time by any unusual sounds?—A. I was wakened by the sound of shots being fired.

Q. Apparently in what direction?—A. Apparently in the direction of the town of Brownsville.

Q. That is, the place from which the shots were fired was apparently in that direction?—A. It seemed to me so, sir.

Q. Please state how much shooting you heard before you got up, and what you did afterwards.—A. I jumped out of bed as soon as I waked up and realized that shooting was going on. I then dressed as rapidly as possible and went downstairs and over to my company parade ground.

Q. While you were crossing the parade did you hear any sounds other than the sounds made by the shooting—the reports of the fire-arms?—A. I heard “call to arms” being sounded, and repeated by the company trumpeters.

Q. About how long was the “call to arms” sounded and kept up by the various trumpeters? For about how long a space of time?—A. I can only guess. I imagine in the neighborhood of five minutes.

Q. That these bugles were sounding?—A. Yes, sir.

Q. About how long did this shooting keep up which wakened you?—A. I recollect hearing no shots after joining my company. I believe the shooting to have kept up five or six minutes after I was awakened.

Q. You are not positive, however, that it had not been going on prior to the time you were awakened—that there had not been some shots fired prior to that time?—A. No, sir; I think some shots waked me up.

Q. When you reached the vicinity of your company barracks what did you do?—A. I took my place in front of the company and proceeded to assist in forming the company.

Q. Did you then receive any orders from the commanding officer?—A. Yes; he ordered me to march my company out as soon as formed and post it along the wall, as a guard, in rear of the barracks.

Q. What position was your company to occupy?—A. It was extended from the gate leading into Brownsville up eastward, the right being in rear of the west end of C Company barracks, as I recall it.

Q. Which company held the left of the line, from the garrison gate towards the river?—A. D Company.

Q. And which company was posted on your right, extending eastward?—A. C Company was posted on my right.

Q. What was your impression at the time you were forming this company?—A. My impression was that some persons in Brownsville were firing into the soldiers' barracks.

Q. That was the general impression held by all the officers there, was it not?—A. Yes, sir.

Q. So that this was an attitude of defense taken up along this wall?—A. Yes, sir.

Q. Were you present at any time in the early morning of August 14, when Captain Macklin reported to the commanding officer?—A. I don't think I was present when he reported; I think I saw him shortly after he reported. I recall seeing him near the gate some time before my company was relieved.

Q. You do not know, however, the exact time at which he reported to the commanding officer?—A. No, sir; I do not.

Q. Was it the custom down there for the officers to sleep with the doors and windows wide open in their quarters, at this time of year,

in order to get the benefit of any air that might be stirring?—A. I believe that it was. I slept with the window in my room partly open. There was generally a pretty stiff breeze blowing from the southeast in the evening.

Q. Is it not a fact that this breeze usually sprang up about sundown and continued for a few hours and then died away until daylight?—A. I am not positive exactly when it used to spring up, but it blew steadily about sundown for a couple of hours, sometimes longer than that.

Q. On the night of August 13, however, was there any appreciable wind, according to your best recollection?—A. I believe we had the usual breeze in the evening. I do not recall that it was particularly strong when I was awakened.

Q. But at or near midnight, when you were awakened by the shots, and during the next hour or so, have you any recollection of the wind blowing at that time?—A. No; I do not recollect it.

Cross-examination by the Accused:

Q. Is it likely that you would have any recollection of the wind blowing when you got up that night, Mr. Lawrason?—A. No, sir; I don't believe so; I was so much engaged in thinking about other things.

Q. Mr. Lawrason, you testified, I think, that according to your best recollection the bugles continued to blow "call to arms" for about five minutes. When you first waked up were they sounding call to arms?—A. I did not hear "call to arms" while in my quarters.

Q. When you formed your company was "call to arms" still being sounded?—A. I think it was being sounded when I first reached my company; I took several minutes to form the company, and I do not recollect exactly when "call to arms" ceased blowing.

Q. When you had completed the formation of your company was "call to arms" being sounded then?—A. No, sir; I do not believe it was; in fact, I know it wasn't.

Q. Did you dress hurriedly when you got up?—A. Yes, sir.

Q. And when you left your quarters did you hurry to your company barracks?—A. Yes, sir.

Q. About how long do you think it took you, from the time you got up until you got to your company barracks?—A. I think it was less than five minutes.

Redirect examination by the Judge-Advocate:

Q. Mr. Lawrason, where did you sleep in your quarters?—A. In the back room upstairs.

Q. The back room upstairs was the room generally occupied by the officers there stationed for sleeping quarters, was it not?—A. Yes, sir; it was.

Q. Could you, while in this room, clearly hear the sounds of the shots that were fired prior to the time you left the room?—A. Yes; I could hear them without difficulty.

Q. This firing was of what kind?—A. Sounded to me like scattered volleys.

Q. Of what kind of arms?—A. High-power rifles, I think.

Q. Where did it apparently start—the high-power rifle shooting—with reference to B Company barracks?—A. I could only locate it as in the direction of the town.

Q. Did it at any time appear to you to go a very great distance from the post—that is, more than a few hundred yards, or how far?—A. I could not say about that, sir; it did not seem so to me.

Q. What is your best judgment as to the farthest point from the post that was reached by the parties doing this high-power rifle shooting—that is, prior to the time of its cessation?—A. I have no idea.

Q. Can you give us an approximation as to whether it was 200 yards, or half a mile, or what? Merely an approximation; that's all we can expect.—A. Well, it was within half a mile, I should guess, although I have no way of telling.

Q. At its beginning, however, can you state now whether, at the time you joined your company, it was approximately only a few hundred yards away, or was it half a mile away or more?—A. I recall hearing no shots after I joined my company.

Q. While you were crossing the parade ground, then?—A. While I was crossing the parade ground it seemed to me to be anywhere within 500 yards of me.

(The court then took a recess until 10.35 o'clock a. m., at which hour the members of the court, the accused, his counsel, the reporter, and the judge-advocate resumed their seats.)

Capt. SAMUEL P. LYON, Twenty-fifth Infantry (counsel for the accused), a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the Judge-Advocate:

Q. Please state your name, rank, and station.—A. Samuel P. Lyon; captain, Twenty-fifth Infantry; Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. I do. Capt. Edgar A. Mucklin, Twenty-fifth Infantry.

Q. Where were you stationed on the 13th of August, 1906?—A. At Fort Brown, Tex.

Q. Did you see the accused on that day?—A. I did.

Q. Did you see him after guard mount? If so, at what time?—A. I saw him a number of times on that day.

Q. What was the last time you saw him on that day?—A. Between half past 9 and 10 o'clock p. m.

Q. Under what circumstances?—A. I saw him at his quarters.

Q. What did you do after that?—A. I went to my own quarters.

Q. And did you retire soon afterwards or not?—A. No; I went to bed about twenty minutes of 12, I should say.

Q. Did anything unusual happen at or about midnight on that date? If so, please state whether you were asleep or awake at the time and what you did immediately afterwards.—A. At or about midnight, or perhaps a few minutes after, I was awakened by the sound of firing. I got up and dressed hurriedly and went at once to my company barracks.

Q. What was the nature of this firing that awakened you?—A. The first shots that I heard were pistol shots. That was followed by rifle fire.

Q. How long did this rifle fire keep up, approximately?—A. Three or four minutes, I should say.

Q. Was that followed by shots from revolvers and other small arms?—A. Yes.

Q. And that kept up approximately how long—this mixed fire?—
A. Well, I should say that all the firing perhaps covered a period of four or five minutes—the rifle fire, the mixed firing, the whole business.

Q. Where, according to your best judgment formed at the time, did this rifle firing begin?—A. The rifle firing that I heard came apparently from the direction of Brownsville, about opposite the line of barracks, the center of the line of barracks.

Q. That would be opposite B and O Companies?—A. Yes; about in there somewhere.

Q. And distant from the garrison or close to the reservation line?—A. I should say it was close to the reservation line.

Q. Did the people doing the shooting apparently remain there, or did they gradually move away from or towards the post?—A. I didn't notice any particular change in the location of the shooting, except that towards the end there was more shooting out farther in town.

Q. But the shooting from the rifles was apparently confined to a distance of not over how much from the post? How great a distance was the farthest rifle shot fired, apparently?—A. Well, I wouldn't want to be at all definite in that. I should say the farthest shots were not more than 300 or 400 yards; it might not have been so far; that's simply an approximation.

Q. There was a good deal of rifle firing nearer the post than that, in your best judgment, was there not?—A. It sounded to me so.

Q. When you left your house and started for the company barracks, did you hear any loud sounds other than the reports of the rifles?—A. I heard Major Penrose calling to the guard to have "call to arms" sounded, and I heard the trumpeters sounding "call to arms."

Q. Did it sound to you as if all the trumpeters were sounding the "call to arms" about the same time, or not?—A. No; they started—I think perhaps the trumpeters nearer the guardhouse—seemed to me it started from C Company and went on up. There might have been two or three or four sounding the call simultaneously, but it was taken up, as I recall it, somewhat in succession.

Q. And these bugle calls kept up all together, from the time the first call was sounded in the guardhouse until the last note of the last trumpet had ceased, approximately how long?—A. About three minutes, I should say. I should think that would cover it.

Q. You were occupying what quarters at this time?—A. No. 3.

Q. When you reached the vicinity of your company barracks, what did you do?—A. I went in my company barracks to hurry the men out, and then I formed the company on the company parade ground.

Q. Then did you make a report to anyone? If so, what?—
A. Major Penrose asked me if my company was formed and everybody out, and I reported to him that the company was formed.

Q. What instructions did he then give you?—A. He directed me to place my company along the garrison wall, with the right at the gate and the left extending down towards the Rio Grande.

Q. How long did your company remain in this position?—A. I should say twenty or thirty minutes.

Q. At the conclusion of this period of time did you receive any orders from the commanding officer?—A. I did.

Q. What were they?—A. He directed me to form my company and patrol a certain part of the town of Brownsville.

Q. Did he, in giving you these instructions, make any mention of the officer of the day, or ask you to try to ascertain his whereabouts?—

A. Yes; he told me especially to see if I could find Captain Macklin, who was the officer of the day.

Q. You then took your company and started on this patrol, did you?—A. I did.

Q. How long were you absent on this patrol?—A. Perhaps half an hour.

Q. Did you ascertain anything of the whereabouts of Captain Macklin on this patrol?—A. I did not.

Q. Upon your return with your company what did you do?—

A. After I reported my return to Major Penrose, whom I met near the main gate of the garrison, he directed me to have my men fall out, but to remain right there, and for me to stay there also.

Q. At or about 1.15 a. m., did any officer report to the commanding officer—any officer who had not made an appearance before on that evening?—A. I didn't see him report.

Q. To whom have you reference?—A. This officer.

Q. When did you first see Captain Macklin on the morning of the 14th of August, and under what circumstances?—A. After my men were permitted to fall out they sat about on the grass between B and D Company barracks, along that walk that's indicated on the map leading in from the main gate, and I saw Captain Macklin some time between 1 o'clock and a quarter past 1—that is, that's the best of my recollection; I am sure it was not after quarter past 1—as he was coming across the parade ground; I met him then just in front of the line of barracks.

Q. What did he say to you or you say to him? Please state the conversation.—A. I can't recall the exact conversation, of course, but the gist of it was, I asked him where he had been, and he said he had been asleep, he hadn't waked up, and I told him he had better go and report at once to Major Penrose, the commanding officer, and he left.

Q. He then left you and started in the direction of Major Penrose?—A. Yes.

Q. Was this the first time you saw Captain Macklin between the time you parted company with him, between 9.30 and 10 o'clock on August 13?—A. Yes.

Q. I want to ask you a question or two, Captain Lyon, with reference to your quarters there. Did you sleep upstairs in your quarters?—A. Yes.

Q. In the front or back room—the first or second bedroom?—A. In the back bedroom.

Q. That was the room used ordinarily there as sleeping quarters—that is, corresponding rooms in other quarters?—A. I understand so.

Q. Were the windows in this room open?—A. In my room?

Q. In your bedroom?—A. Yes.

Q. Could you hear the shooting plainly from there?—A. I could.

Q. Is the distance from your quarters, No. 3, to B Company barracks approximately the same as the distance from quarters No. 11 to B Company barracks?—A. I should say just about the same.

Q. Do you recollect that there was any strong wind that night?—A. I don't recollect any strong wind.

Q. Do you recall any wind at all at or about midnight, the time you were going to your barracks?—**A.** No; there was nothing unusual; nothing that impressed me at all.

(The accused declined to cross-examine the witness.)

Examination by the Court:

Q. I would like to ask Captain Lyon to go to the map and point out the quarters and where he slept.—**A.** These are my quarters, No. 3, and the second story—this business in the rear is one-story affair [indicating southern portion of the house]. The second story has two bedrooms, with a bathroom in between, and my room was this rear bedroom.

Cross-examination by the Accused:

Q. Is that a full set of quarters, Captain, upstairs—a full story?—**A.** No; the ceilings are very low and sloping roof to the front, and the back windows are dormer windows.

Q. Similar set of quarters to No. 11?—**A.** The same plan; yes.

Sergt. Maj. S. W. TALIAFERRO, First Battalion, Twenty-fifth Infantry, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. What is your name, rank, and station?—**A.** Spottswood W. Taliaferro, battalion sergeant-major, Twenty-fifth Infantry; station, Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—**A.** Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Q. Were you in the United States Army in August, 1906?—**A.** Yes, sir.

Q. In what capacity were you serving at that time?—**A.** Battalion sergeant-major, Twenty-fifth Infantry.

Q. Of which battalion?—**A.** First Battalion, sir.

Q. And at what station were you stationed?—**A.** Fort Brown, Tex.

Q. What quarters did you occupy there at Fort Brown?—**A.** I had a room in the administration building, sir.

Q. Kindly indicate on the map the position of your room.—**A.** (Indicates on map.) There is a hallway running right through the building, directly through the center of the building; my room was to this side of the hall next the barracks. The office was the side next the officers' line.

Q. Your room was therefore in what section of the building? In the northeast section?—**A.** Yes, sir; I think it was. On this side of the hall.

Q. How long had you been at Fort Brown?—**A.** Since July 28, 1906.

Q. Were you acquainted with the quarters occupied by the various officers there during the period from July 28 to August 13?—**A.** Not very well.

Q. Do you know or did you know, on the night of August 13, the quarters that were occupied by Captain Macklin?—**A.** I was quite sure of the house, but I was not certain of the apartment, whether it was to the right or the left.

Q. That is, you are certain of the building, but you are not sure whether the east or west half of the building was occupied by him?—

A. Yes, sir. I was under the impression I was right, but I found out next morning that I made a mistake.

Q. Point out on the map the building in which you believed, on the night of August 13, Captain Macklin lived, and the side of the building also.—A. (Indicating on map). This building right here, the first building; and I was under the impression he was quartered in the side No. 12 of this building. I learned the next morning he lived in No. 11 of this building.

Q. You learned next morning, you say, that although you were right as to the double set of quarters, still you were wrong as to the half side which was occupied by Captain Macklin?—A. Yes, sir.

Q. How did you know that Captain Macklin lived in that double set of quarters?—A. Well, I had seen him there on the porch frequently reading the paper, and I would be sitting on the porch in front of the administration building in the evening, and he would generally be sitting on the porch in front of this building, and I generally assumed that was his quarters.

Q. Which side did he generally sit on, the east or west side of this set of quarters?—A. I could not say definitely any particular side; he would be sitting most any place on the porch; the porch was not so very long.

Q. Were the front doors of Nos. 11 and 12 usually kept open?—A. I can't say; I didn't notice that matter.

Q. Were you present at guard mounting on the morning of the 13th of August?—A. Yes, sir.

Q. Who marched on as new officer of the day?—A. I think Captain Macklin marched on as officer of the day, sir.

Q. On the evening of August 13 what time did you go to bed?—A. Something between call to quarters and taps.

Q. In your own room?—A. Yes, sir.

Q. In the administration building?—A. Yes, sir.

Q. Were you awakened at or about midnight by any unusual occurrence?—A. Yes, sir.

Q. What was it?—A. Shooting; seemed to be in the vicinity of the post.

Q. Where were the first shots you heard apparently fired, with reference to the barracks of B Company or the garrison gate?—A. They seemed to be probably lower down, or as low down as C Company barracks; might have been lower.

Q. The next shots you heard; where were they with reference to the garrison gate?—A. Seemed to be a little nearer to me, up nearer B Company barracks.

Q. These shots were pistol shots or rifle shots?—A. I couldn't tell, sir.

Q. Did you hear a considerable amount of firing that night?—A. I did, sir.

Q. About how many shots do you suppose were fired altogether?—A. One hundred and fifty probably, or more.

Q. Were all these shots fired in the vicinity of the post?—A. No, sir.

Q. There were some fired from farther away?—A. Yes, sir.

Q. But the majority of this shooting, did that occur within a few

hundred yards of the post, according to your best judgment, or not?—
A. The heaviest firing I heard was down in the town, some distance off from me, it seemed.

Q. The first firing you heard?—A. The first firing was in the vicinity of the post.

Q. And it gradually worked away from the post, is that the idea?—
A. Yes, sir.

Q. Did you jump out of bed as soon as you heard the first shots?—
A. No, sir.

Q. When did you get up?—A. I got up when I heard quite a number of shots.

Q. Did you hear anything else at that time?—A. Not just at that time.

Q. Did you hear any bugles sound soon afterwards?—A. I heard the bugles sound after I got up, while I was dressing.

Q. Did they make considerable noise or not?—A. Yes, sir; sufficient noise to alarm the garrison; "call to arms."

Q. What did you then do after you had dressed?—A. I went in the office and put on my belt and ran down to Major Penrose's quarters.

Q. What was your impression at the time?—A. My impression at the time was that the post was being fired into by a mob.

Q. Indicate on the map the route you took from the administration building to Major Penrose's quarters.—A. I went down in rear of the officers' quarters, around down to this point here [indicating to the front of quarters marked "A"].

Q. Did you make any effort to find whether Major Penrose was there?—A. Yes, sir.

Q. With what result?—A. He wasn't there.

Q. Then where did you go?—A. I went over, following this moat around.

Q. Why did you follow this moat around?—A. Because I wanted to keep something between me and the line of fire.

Q. You followed the moat around where?—A. Around this direction, right along down this way [indicating eastern direction from Major Penrose's quarters].

Q. Then where did you go?—A. To the guardhouse [indicating northerly direction].

Q. Was there any shelter there? A. Shelter? No; only the guardhouse.

Q. When you reached the guardhouse did you make any inquiries as to Major Penrose's whereabouts?—A. I did, sir.

Q. With what results?—A. The sergeant of the guard says he didn't know where he was.

Q. Who was the sergeant of the guard?—A. Sergeant Reid.

Q. Did you also see the corporal whose relief was on post at that time?—A. I saw Corporal Wheeler; I don't know whether his relief was on post at that time or not.

Q. What was the disposition of the guard at that time?—A. The few men that I saw at the guardhouse seemed to be in line of skirmishers, lying prone in front of the guardhouse.

Q. Did they appear to be excited?—A. I couldn't see very well their faces, it was dark; I only saw, really couldn't say that I saw

but two privates, and I could just see the shape of the men in line of skirmishers lying prone in front of the guardhouse.

Q. With reference, Sergeant Taliaferro, to the moat of which you spoke a little while ago; will you describe a little more in detail this moat, and where it ran?—A. It is a ditch, scooped about 2½ or 3 feet deep and about 8 feet wide, and it has marsh and water in the bed of it, some places more or less water, mud, marsh. I call it a moat—probably that might not be the proper term for it—but I simply designated it as moat because the old moats were made on that plan.

Q. This ran from the vicinity of Major Penrose's quarters in a general easterly direction, did it?—A. It runs down in prolongation of the line—

Q. Line of officers' quarters?—A. There is several branches to it; it branches off and goes down to the lagoon, and there is another one right by the guardhouse.

Q. So you had fairly good cover on the way to the guardhouse?—A. Yes, sir. In fact, I was not going directly to the guardhouse. I was looking for Major Penrose, I thought maybe he had the battalion out and deployed. After I could not find him in his quarters I didn't know what to think, and after I got down that far I just wandered over to the guardhouse.

Q. When the sergeant of the guard, or Corporal Wheeler, told you Major Penrose was not there, where did you then go?—A. I went up to the barracks, up the parade ground to the barracks.

Q. Straight from the guardhouse to the barracks?—A. Yes, sir.

Q. What happened at this time, if anything?—A. When I got opposite C Company barracks I met Lieutenant Grier and asked him for Major Penrose. He told me I would find him to the right; I went to the right a few yards and found him.

Q. Then what happened?—A. I reported to the major and told him I was without arms and wanted to get some arms; he told me to go into the barracks and arm myself.

Q. You then went where?—A. I went into C Company barracks and got a rifle and some ammunition and came out and reported to the major again, near the gate.

Q. At the time you first met Major Penrose were the companies forming in front of their respective barracks, or had they left to take up position along the wall?—A. They were forming in front of their respective barracks.

Q. During the time you were making this trip from the administration building around in rear of the officers' quarters and to the guardhouse and then back to the barracks, was the shooting going on all the time, or not?—A. The shooting was still going on when I reported to the major.

Q. Was it all rifle shooting, or had the nature of it changed in that time?—A. I couldn't tell exactly whether it was rifle shooting or not, but the shooting had moved down into the town when I got to the major and of course the sound was different—I couldn't tell whether the same kinds I had heard or whether the distance made the difference in the sound. They didn't sound the same, of course, naturally would not sound the same, being a distance from me.

Q. After you had secured your arms and again reported to Major Penrose, he was, I understood you to say, at that time near the gate?—Yes, sir.

Q. Did he give you any instructions or send you on any special mission?—A. Yes, sir.

Q. What?—A. He told me to go over and tell Captain Macklin to report to him.

Q. What did you then do?—A. I went to the building I have just indicated on the map.

Q. What number is it on the map?—A. I went to No. 12, and I called Captain Macklin and knocked on the door; no one answered. I opened the door, went in the room downstairs, the front room downstairs, looked around, saw no one—I went out of that room—

Q. Did you call in there?—A. Yes, sir; and I went and called in the hall way also. Then I went upstairs and called upstairs; no one answered. Then I came downstairs, and I thought Captain Macklin might be in No. 11, so I knocked on No. 11 and no one answered.

Q. Did you call while outside there?—A. After knocking and no one answered, I opened the door and called in the hall way.

Q. Did you call in an ordinary conversational tone or did you raise your voice?—A. I called in a loud tone of voice.

Q. As loud as you could or not?—A. Yes, sir.

Q. Did you go upstairs in this side of the house, No. 11?—A. I did not go upstairs in No. 11. I did not enter any of the rooms in No. 11 at all, because I was under the impression Captain Macklin was quartered in No. 12 and I did not know who was in No. 11 and did not think it proper for me to go through the house.

Q. You did, however, go upstairs?—A. In No. 12?

Q. In No. 12.—A. Yes, sir.

Q. And while you were upstairs did you call out in a loud tone or not?—A. Yes, sir; I called upstairs and downstairs.

Q. Did you have a revolver or rifle at this time?—A. I had a rifle.

Q. Did you use that in any way, in order to help arouse Captain Macklin?—A. I don't remember using the rifle in any way at all. I simply called.

Q. Had you ever been in any of the officers' quarters before?—A. No, sir.

Q. When you went upstairs in quarters No. 12 did you stop at the head of the steps or did you go on in that side of the house?—A. I went in the room.

Q. In which room?—A. The room right at the head of the steps, the upstairs room in No. 12.

Q. Was it what you would call the front bedroom or the back room?—A. Front room.

Q. And while you were there you called out in a loud tone, did you?—A. Yes, sir.

Q. How many times?—A. I couldn't say, sir; I called repeatedly. I didn't keep any note of the number of times.

Q. You were making an honest effort to arouse Captain Macklin, were you?—A. Yes, sir; I was. I wasn't making an honest effort to arouse him, because I had no idea he was there asleep. I was simply trying to notify him the commanding officer wanted him.

Q. You, however, called out?—A. Yes, sir.

Q. Did you call out his name, or did you call out in addition that the commanding officer desired to see him?—A. I simply called, "Captain Macklin," and I got no response, so I added nothing to it.

Q. About how many times do you suppose you called his name in a loud tone, on one side or the other of this partition wall between quarters Nos. 11 and 12? Two or three times or how many?—

A. More than two or three times.

Q. About how many?—A. After knocking, I called him before entering, then I entered the downstairs sitting room and called him there; called in the hall way; went upstairs and called in the hall way. Not finding him in No. 12 I went to No. 11 and knocked and called, and then opened the door and called in the hall way again.

Cross-examination by the ACCUSED:

Q. Sergeant, what kind of a night was the 13th of August?—

A. Seemed to be a dark night.

Q. The post well lighted or not?—A. Fairly well lighted, sir.

Q. Your first movement, after leaving your own quarters, was to go in rear of the officers' quarters?—A. Yes, sir.

Q. Why did you do that, Sergeant?—A. To throw protection between me and the firing.

Q. You located that firing; do you make that a definite location, what you described in your direct testimony?—A. About being in rear of B and C Company barracks?

Q. Yes.—A. It seemed to me to be right over there, sir.

Q. Inside or outside the post?—A. I couldn't tell, sir; of course, the distance between the inside and outside of the post would be a distance of about 18 inches; I could not possibly locate by the sound the difference in a distance of 18 inches.

Q. Near the edge of the reservation then?—A. Yes, sir.

Q. How were the houses down there at Fort Brown numbered, Sergeant?—A. Numbered, it seems, from the guardhouse up towards the administration building.

Q. I mean in what particular way was each house numbered; where was the number of each house, on what part of the building?—A. I don't know, sir.

Q. How do you know, for instance, that that house on the map marked No. 3 is really quarters No. 3?—A. I don't know that that is quarters No. 3.

Q. So when you describe a particular house as No. 9 or 10 or No. 11 or 12, you describe it with reference to this particular map?—A. I describe it with reference to the buildings and the location and what I know of Fort Brown. I don't know anything about those numbers on the map, only so far as they are placed there for the convenience of the court.

Q. How do you know the numbers of the houses?—A. With reference to the houses and reference to each other and what I know of Fort Brown.

Q. Assuming that the numbers——A. Assuming that the numbers are correct.

Q. And beginning this side of A.—A. Yes, sir.

Q. Do you know whether there was any light in quarters No. 9 or 10 and 11 or 12?—A. There was a light upstairs in 12.

Q. In the building?—A. Yes; and there was a dim light in 11.

Q. I want to know about the light outside the building. Was there a light outside?—A. Outside of 12?

Q. Street light.—A. I don't remember now, sir; I couldn't say.

Q. Any outside of 9 or 10?—A. I don't know, sir; I don't remember that much about the grounds.

Q. This quarters you describe as No. 12 you say was lighted inside?—A. Yes, sir.

Q. Downstairs and upstairs?—A. Yes, sir.

Q. Was that No. 12 house furnished?—A. Yes, sir; seemed to be furnished.

Q. You went through it downstairs?—A. I went in one room downstairs and one room upstairs.

Q. The first room downstairs?—A. Yes, sir.

Q. Fronting on the walk?—A. Yes.

Q. And what room upstairs?—A. The first one I got to—head of the stairs.

Q. That's called the front bedroom?—A. Yes, sir.

Q. You say after going in this house, No. 12, you went over and knocked at No. 11; you opened the door in that house?—A. Yes, sir.

Q. You remember seeing anything of the hall or room in that house—No. 11?—A. No, sir; it was dark. I could just see a little dim light in the sitting room.

Q. Sergeant, did you notice anything outside on the porch?—A. No, sir.

Q. Did you see a saber or sword?—A. No, sir. It might have been there; I couldn't say.

Q. Was the door open or shut?—A. It was shut; I opened it with my hand.

Q. Not locked?—A. No, sir.

Q. Who occupied house No. 9 down there at Fort Brown?—A. I don't know.

Q. No. 10?—A. No, sir.

Q. Do you know who occupied No. 3?—A. No, sir.

Q. Do you know who occupied No. 1?—A. I don't know the houses by numbers at all—the quarters by numbers at all.

Q. You said that when you went in the quarters you went to arouse Captain Macklin, you had no idea he was in there asleep. Just what do you mean by that?—A. The lieutenant asked me if I made an honest effort to arouse him; I told him I couldn't say I made an honest effort to arouse him, because I had no idea he was there asleep.

Q. What was your idea?—A. My idea was if he was there he was awake, and if he didn't answer when I called him he wasn't there; that was my impression.

Redirect examination by the JUDGE-ADVOCATE:

Q. Is there a walk of any kind that runs in front of the administration building from near the front of D Company barracks towards the officers' line?—A. Yes, sir.

Q. There is also a driveway that runs in front of the administration building in the general direction just mentioned?—A. Yes, sir.

Q. I ask you, Sergeant Taliaferro, if you recognize this picture [handing witness photograph already submitted in evidence, hereto appended as Exhibit 2]?—A. That seems to be a section of the officers' line at Fort Brown, Tex.

Q. Which end of the line, if it is at an end?—A. That's the end towards the administration building.

Q. The east or west end of the line?—A. This would be the west end.

Q. What is that small building shown on the right of the photograph?—A. That's a small building occupied by the civilian clerk in the quartermaster department.

Q. Remember his name?—A. Matlock.

Q. The next building shown, the one shown in the center of the photograph, is what?—A. That is the building I supposed Captain Macklin lived in.

Q. And in which half of the building did you suppose Captain Macklin lived?—A. I was under the impression he lived in this half.

Q. Towards your right or left as you face the picture?—A. Towards my right as I face the picture; the building towards Mr. Matlock's.

Q. So that your impression on the night in question was that Captain Macklin lived in the building shown in the center of that picture and in the half of that building towards the right—towards the small house shown there?—A. Yes, sir.

Q. Was it to that particular building and to that right-hand half of that building that you went that night, or was it toward the right-hand half of the next building shown in the picture on the left?—A. It was to the right-hand half of this building, the one in the center, the first one on the line.

Q. Are you sure that is the building you went to that night?—A. Yes, sir.

Q. Was it so dark that you could have made a mistake as to which building you went to?—A. No, sir.

Q. Is there any possibility that you did not go to that building shown in the center of that photograph, but instead went to some other building?—A. No, sir; I don't think it is possible I went to any other building.

Q. Will you put a cross mark over the building that you recollect as Captain Macklin's quarters and sign your name on the face of the card there? [Witness marks a cross on photograph and signs his name.]

Q. Is that building below the cross mark beyond a doubt the building you went to that night?—A. It is, sir.

Q. Indicate by a small circle the portion of the house in which you believed Captain Macklin lived. [Witness does so.] So that the cross, as shown in this picture, No. 2, represents the building, and the small circle represents the half of the house in which you believed Captain Macklin lived and which you first entered?—A. Yes, sir.

Recross-examination by the ACCUSED:

Q. Sergeant, where were you and Major Penrose standing when he sent you over to arouse Captain Macklin?—A. Near the gate that leads out into Elizabeth street, sir.

Q. Just point it out on the map, will you?—A. Standing near this gate [indicating point within the garrison wall and near the garrison gate].

Q. You went from that particular point to where you thought were the quarters No. 12, directly?—A. Yes, sir.

Q. Sergeant, did you see Captain Macklin on the morning of the 14th of August, early in the morning?—A. I did, sir.

Q. About what time?—A. I don't know exactly what time. I saw him when he reported to Major Penrose the first time.

Q. Did you have any conversation with him?—A. I did not.

Q. Did you get any ammunition from him?—A. No, sir.

Q. How were you armed just before this time?—A. Before this shooting took place at Fort Brown?

Q. I mean just before Captain Macklin reported to Major Penrose.—A. I had a rifle and 100 rounds of ammunition.

Q. Did you keep that throughout the night?—A. I kept it until dismissed by the Major.

Q. Did you later get a pistol and some ammunition?—A. Yes, sir.

Q. From whom?—A. Quartermaster-sergeant of C Company.

Q. Under whose direction did you get that?—A. I didn't have any special direction at all; it was an understood thing. I had arrangements with Captain Macklin before leaving Niobrara that I could use equipments and arms from his company.

Q. You do not remember Captain Macklin giving you any ammunition that night?—A. No, sir.

Q. Or any pistol?—A. I do not, sir.

Examination by the Court:

Q. I would like to ask the Sergeant what he saw in that first room he went in. You say it was furnished?—A. I couldn't recall any particular furniture I saw, only that the room was furnished. If it had not been furnished, it would have attracted my attention and that it did not attract my attention unusually—everything seemed to be in ordinary condition there; it did not seem to be a vacant room.

Q. Do you remember what kind of light there was?—A. There seemed to be a lamp, sir.

Q. Was the furniture in that room packed or unpacked?—A. It wasn't packed up; everything was natural about the room, nothing unnatural about it at all.

Q. What kind of a light was there in the room upstairs?—A. A lamp.

Q. Furniture in that room?—A. Yes, sir; both rooms seemed to be furnished.

Q. Packed or unpacked?—A. Everything seemed to be as if some one was living in it.

Q. See any beds in either room?—A. I don't recall, sir, any beds that I saw.

Q. Sergeant, you say that you went into the quarters you thought Captain Macklin lived in, and that you called downstairs and then went upstairs and called, and then came down and left that building, and then you went into the hall of the other side of the quarters in the same building; why did you do that? What was your idea?—A. I thought probably he might be visiting.

Q. But you had no idea he lived in that quarters?—A. No, sir; I did not; if I had an idea I would have gone through that building like I did the first one. I knew Captain Macklin's family was not at home and that's why I took the liberty to go all through the house. I didn't know who was living in the other side, and that's the reason I didn't go all through the house.

Recross-examination by the Accused:

Q. Sergeant, I understood you to say you did not go into the back bedroom of No. 12.—**A.** I didn't go into but one room, sir.

Q. Front bedroom upstairs?—**A.** Front bedroom upstairs.

Reexamination by the Court:

Q. I would like to have the Sergeant explain. My recollection is that he said he went in the front bedroom upstairs, is that so Sergeant?—**A.** I went into the front room at the top of the steps.

Q. I understand from the testimony of another witness that the nearest door to the head of the stairs is the back bedroom; these steps run from the front to the back, do they not?—**A.** No, sir; they run from the back to the front.

Recross-examination by the Accused:

Q. Just describe that answer of yours to question last asked you by a member of the court.—**A.** This building here, 12, the steps run from the back towards the front; you go back here and go up the steps, the steps run up that way. You don't enter the steps from the front, you go up this way—you enter from the back, and go up this way.

Q. And you are sure you went into that front room?—**A.** Yes, sir.

Reexamination by the Court:

Q. Will you describe the number of doors at the top of this flight of steps, after you get to the top, and the situation with respect to one another?—**A.** I could not be definite about that, but it strikes me there were two doors.

Q. Close together?—**A.** Yes, sir.

Q. Does not the door leading into the front room upstairs immediately face the stairway, and the door leading to the back room to the right of the stairway?—**A.** Captain, I really could not give any definite information as to the arrangement of doors, etc., in the house.

Q. In other words, if you were going up the stairway and wanted to go into the front room, wouldn't you go straight ahead—the stairway leading from the rear of the quarters towards the front? If you wanted to go into the back room, wouldn't you turn to the right at the head of the stairway?

By the JUDGE-ADVOCATE. I don't know, may it please the court, that this witness ever went into these quarters aside from that night in question, when he was more or less excited, at least he states he had never been in them before that night, and I don't know he ever went into them afterwards, at least upstairs; and on the night in question, according to his testimony, he did not even go into the back room, but went into what he believes and states is the front room, and as to where that other door led I don't see—

By ASSOCIATE COUNSEL. May it please the court. That, to our mind, is just the value of his testimony—

By the JUDGE-ADVOCATE. May it please the court. This is no place, it seems to me, for an argument to be made by either side with respect to the value of a witness' testimony, as to its evidential value as to what has been brought out. My purpose in rising was to object to trying to show the arrangement of rooms in this house by this witness, who, by his own statement, is not familiar with them. As to his

own actions on that night and to where he went, that is an entirely different question, but I do not think it is fair to the witness to ask him to describe the construction of a house with the arrangement of which he is not familiar. I object to that question by a member, sir, on the grounds that the witness does not know about it.

By ASSOCIATE COUNSEL. May it please the court. I think I can state my position without objection by the judge-advocate. In using that word, the value of his testimony, I should say the competency of his testimony. This witness is testifying to certain facts that came within his knowledge on that particular night, and that knowledge is not in any way added to by his previous or later information as to that set of quarters, and it is what we want, with respect to this witness' recollection, with respect to his doings on that night, and any question that pertains to his doings with respect to that house, No. 12, is important as showing what he remembers about that house, and that remembrance is not in any way affected by any knowledge he has of that building or its construction.

By the JUDGE-ADVOCATE. May it please the court. The witness only entered one room upstairs, according to his testimony, the front room. As to where that other door went, it seems to me, inasmuch as he didn't open that door and never went into the house before and, as far as I know, never went in again, that his testimony is absolutely incompetent on that point.

By MEMBER OF THE COURT. I can explain why I asked that question, if it is desired.

By the PRESIDENT. Very well; the member will explain.

By MEMBER. I have been in several of the houses at Fort Brown myself and I know there are two doors, one leading into the front room and one into the back room, at the head of the stairs, and the one leading into the front room is directly opposite the stairs. In other words, if you wanted to go into the front room you would go up the stairway and go straight ahead; and I thought I could fix that in the sergeant's mind by asking that question.

By the JUDGE-ADVOCATE. It, however, appears from the witness' statement that he didn't enter but one room, and as to what was behind the closed door he didn't open I think his testimony is absolutely incompetent.

The accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew and the court was closed, and on being opened, the president announced in their presence as follows:

The objection of the judge-advocate is sustained and the witness will not answer the question as put. The member will ask the question in a different form.

Q. Sergeant-Major, please describe the direction you took after leaving the head of the stairway to enter the room which you went into.—A. It's my impression that I simply went to my left. I may not be right in that.

By PRESIDENT OF THE COURT. The court will want a fuller description than that, Sergeant. Can't you describe more fully how you went?—A. I am not familiar with the interior of the houses at all. I never was in it before, never been in it since; it was a time of great excitement, and I simply rushed up the steps, calling Captain Mack-

lin, and rushed out. Didn't notice anything on the inside of the building at all; never thought for a moment that I would be called in question as to the interior of the house, and it is a matter of impossibility for me to give any description.

Q. You stated then you went into the front room of quarters No. 12, upstairs?—A. Yes, sir.

Q. I was trying to fix definitely how you knew it was the front room.—A. It was just my impression; it was the first room I struck at the head of the steps.

Q. Sergeant, I would like you to point out on that map just the way you went when Major Penrose gave you the order to find Captain Macklin. Show us where you started and where you went.—A. I was right over here, near the gate, sir. He gave me the order here, and I went straight across here [indicating a straight line between the vicinity of the garrison gate and quarters 11 and 12].

Q. You did not follow the walk as shown on the map? A. No, sir; made a straight line.

Redirect examination by the JUDGE-ADVOCATE:

Q. Sergeant Taliaferro, did you actually see those lights in the house; that is, did you see the lamps themselves that gave the light in quarters No. 12?—A. I couldn't describe the lamps at all, but my impression—it was the impression in my mind that they were lamps, because of the nature of the light they gave. Had they been lanterns the light would not have been as clear.

Q. You don't recall, however, seeing the lights themselves?—A. I couldn't describe the lamps at all.

Q. Was the house brilliantly lighted?—A. Well lighted; yes, sir.

Q. Could you see any evidences of occupancy in quarters No. 12 other than receiving the impression that the quarters were occupied by some one?—A. They were furnished, there was furniture in the quarters, and the reason that rests so firmly in my mind is because the absence of furniture would have rested on my mind, and the fact that there was nothing unusual about the quarters of course naturally makes it fixed on my mind that the quarters were in ordinary condition; everything was normal, there was nothing abnormal or strange about it at all.

Reexamination by the COURT:

Q. Sergeant, do you state positively that there were lamps burning in the room on the first floor and on the second floor of quarters No. 12 when you went in? Were there lamps burning in those rooms?—A. Those rooms were well lighted, and it was my impression it was lamps, because lanterns would not have given such a brilliant light; neither would candles. I could not describe the lamps because my attention was not attracted to them.

Q. But positively there were lights?—A. Yes, sir; oh, yes, sir; there were lights, and brilliant lights.

(The court then, at 12 o'clock m., adjourned to meet at 9 o'clock a. m. Wednesday morning, April 17, 1907.)

ROGER S. FITCH,

First Lieutenant, First Cavalry, Judge-Advocate.

**HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 17, 1907.**

The court met pursuant to adjournment at 9 o'clock a. m.

Present, all the members of the court and the Judge-Advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of April 16 was dispensed with.

• • • • • • • •

Henry L. Gazley was duly sworn as reporter.

• • • • • • • •

CHARLES H. MADISON, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. What is your name, residence, and present occupation?—

A. Charles H. Madison. Residence, 3525 Madison avenue, Pittsburg, Pa.; train porter Baltimore and Ohio Railroad Company.

Q. Do you know the accused? If so, state who he is.—A. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Q. Were you a soldier in the United States Army?—A. I was, sir.

Q. Did you ever serve in the Twenty-fifth Infantry? If so, in what company?—A. My last service was in Company C, Twenty-fifth Infantry, sir.

Q. Were you in Company C, Twenty-fifth Infantry, when the First Battalion—Companies B, C, and D—went to Brownsville from Niobrara?—A. I was, sir.

Q. And you were with that company during the entire period C Company was at Fort Brown?—A. Yes, sir.

Q. On August 13 and 14, 1906, you were at Fort Brown, Tex.?—A. Yes, sir.

Q. Did anything unusual happen on the night of August 13; about midnight?—A. I was awakened by the explosion of firearms.

Q. And you were at that time sleeping in C Company barracks?—A. Yes, sir.

Q. What did you do?—A. I got up, put on my trousers, shoes, and after the "call to arms" being sounded I put on my belt and proceeded to the armracks.

Q. Did you get a rifle then or soon afterwards?—A. After I went to the racks I was ordered to go down and find the noncommissioned officer in charge of quarters, who was Sergeant Quarles—not Sergeant Quarles, but Sergeant Brawner. I met him at the foot of the steps and he came upstairs and started to unlock the racks, and I got a rifle out of the first rack unlocked.

Q. Then, did you go down and fall in in front of company barracks with the company?—A. I did sir.

Q. Did you about this time receive orders from any officer to go and find somebody?—A. I received orders from Lieutenant Grier to go over to Captain Macklin's quarters and tell him to report to the commanding officer, by direction of the commanding officer, who was present at the time.

Q. At this time was shooting still going on?—A. A few shots were being fired; yes, sir.

Q. Most of the shooting was over at that time?—A. Yes, sir.

Q. About how many shots do you suppose were fired all together?—

A. Well, I don't really know; something over 100; maybe 125 or 150; I couldn't really say.

Q. Was most of this shooting apparently within a few hundred yards of the barracks or not?—A. It seems it was, sir.

Q. And it started where, with reference to B Company barracks—apparently?—A. I don't know the names of the streets. It seemed to be between B Company and C Company, the fire coming from towards town—the reports—seemingly.

Q. The majority of those shots, however, were fired within a distance of how much from B Company barracks, do you suppose?—A. I don't know, sir; I couldn't really say when the first shots were fired; I was awakened by the first shooting.

Q. But the majority of the shots fired in the earlier part of the shooting—I do not mean the very first shots, but the majority of the shots fired in the earlier part of the shooting—were apparently fired near the post or at a great distance away from the post?—A. Well, it seemed they might be about 150 yards from the post, seemingly. I don't know, sir; I couldn't say positively.

Q. Was the "call to arms" sounded by more than one trumpeter?—A. Yes, sir; it was sounded by the trumpeter on the parade ground and was also taken up by the trumpeters in the next barracks, and also by one of our trumpeters in our barracks.

Q. And by D Company also?—A. I don't know, sir; B barracks was next to me.

Q. How long did the bugles continue sounding, approximately?—A. About three minutes, perhaps.

Q. After receiving this order from Lieutenant Grier to go and find Captain Macklin, what did you do?—A. Lieutenant Grier ordered me to go load my rifle and report to the commanding officer. I loaded my rifle, went over to Captain Macklin's quarters—the first line of officers' quarters, next to the administration building; I went into the door closest to the hospital toward the hospital.

Q. Will you point out on the map the route followed by you from C Company barracks to Captain Macklin's quarters?—A. (Stepping to map and indicating thereon.) Here is the administration building; C Company's quarters are here. I came diagonally across the parade ground to this building here [indicating building marked No. 11 on the map.]

Q. Madison, I hand you a photograph marked No. 5 and I ask you if you recognize it?—A. I do.

Q. What is it?—A. Fort Brown, Tex.

Q. What part of Fort Brown?—A. The line of officers' quarters and one noncommissioned staff building.

Q. Does it show the entire line of the officers' quarters, or just one end?—A. Just one end, the end next to the administration building.

Q. That would be the east or west end—you can look at the map there—is it the west or the east end?—A. It is the east end.

Q. No—there is north [indicating]. East is up here; west is down towards the administration buildings.—A. Oh, it is the west end.

Q. Do you know who occupied that small building shown on the right of the picture?—A. A civilian clerk for the quartermaster's department. I don't know his name.

Q. Who occupied the next building?—A. I don't know, sir; I think it was empty.

Q. Who occupied this building here [indicating on picture]?—

A. Captain Macklin—the left-hand side.

Q. I will ask you, Corporal Madison, when I said who occupied the next building, and you replied, “I don’t know, sir; I think it was empty,” did you refer to the entire double building or to what?—

A. One side—or No. 12.

Q. No. 12, you think, was empty?—A. Yes, sir.

Q. And the other half of that building—that is, No. 11—

A. Yes, sir.

Q. Was occupied by whom?—A. Captain Macklin.

Q. Where is that building, Nos. 11 and 12, with reference to the small house on the right of the picture?—A. As I hold this picture in my hand, it is on the left of that small building.

Q. Is it the next building to it?—A. The next building; yes, sir.

Q. I will ask you to make a cross right over what you believe to be Captain Macklin’s quarters—that is, mark it over the side of the house that you believe he lived in—mark a heavy cross there, and sign your name—just write your name above it. [Witness marks exhibit as indicated.]

Q. How do you know that this half, or this set of quarters, referred to as No. 11, was the one actually occupied by Captain Macklin?—A. I was detailed sometimes in charge of quarters, and I carried the sick report over there to have the company commander sign it before taking it to the hospital.

Q. Captain Macklin was your company commander, was he?—

A. He was, sir.

Q. About how many times, to the best of your recollection, had you been in charge of quarters and thus carried the sick report to Captain Macklin for his signature?—A. About three times, as near as I can remember.

Q. That is, while you were at Fort Brown?—A. During my stay there.

Q. And each time did you find him in this set of quarters—this No. 11?—A. I did, sir.

Q. Where did you find him—downstairs or upstairs?—A. He occupied the second room downstairs, on the left.

Q. The first room downstairs was furnished how, according to the best of your recollection?—A. The captain didn’t have all his furniture loose; I think he had a sofa in there, if I am not mistaken, but it had not been uncovered. I don’t know what else.

Q. And you say on each of these two or three occasions that you carried the sick report over there to him that you found him in the second room downstairs. Is that right?—A. I did.

Q. Was his bed there at that time?—A. He was sleeping down there at that time.

Q. And you knew of no change in his sleeping quarters?—A. I did not, sir.

Q. Did you ever go in the other side of the house—that is, in the No. 12 side?—A. No, sir.

Q. Now, on the night of the 13th, when you reached quarters No. 11, what did you see and do?—A. When I reached No. 11 I seen Captain Macklin’s saber sitting outside the door on the porch, and a very dim light burning in there. I went into the hall way, and I called in a loud tone of voice, “Captain Macklin,” about five distinct

times; after which I taken the butt of my rifle and rapped on the floor five or six times, and after I could not make anybody hear, I finally thought he was not there. I returned back to the company and reported to Lieutenant Grier. The company at that time was still standing in front of the barracks.

Q. The shooting was all over by this time, I suppose?—A. It was; yes, sir.

Q. How far inside of the front door did you go when you called and pounded?—A. I went back to the second door, on the left-hand side downstairs.

Q. Were you near the foot of the stairs at any time when you called and pounded?—A. I was at the second door; I don't know how far the stairway back was, sir, that leads upstairs.

Q. Then, after you rejoined the company, was the company moved elsewhere and placed in position?—A. After I rejoined the company I had orders from Lieutenant Grier to step out of the line, unload my rifle. I did so. The company then was going along squads left; we moved around in the rear of C Company, in rear of the vacant barracks, and formed line of skirmishers.

Q. Along by the wall?—A. The brick wall. There wasn't no brick wall by the vacant quarters.

Q. Did you about this time receive orders from the commanding officer?—A. I had orders then to report to the commanding officer, and the commanding officer directed me to take two men and make a patrol around the hospital and the quarters of the noncommissioned staff, and to report back to him.

Q. When you made this patrol, did you find any persons who had not been awakened, or who stated that they had not heard the firing or the bugle calls?—A. I went to the hospital at first and met a first-class sergeant of the Hospital Corps, and some convalescents standing on the porch. He claimed that he had heard some shots passing over the building. I went from there to the noncommissioned staff—to the corral—those men were already up. I went from there to the quarters of the noncommissioned staff, which seemingly is a double set of quarters, right at the side of the ice plant—to the right of the ice plant—and I knocked on their doors, and they had not been awakened, sir. I awakened them and notified them of what had happened.

Q. About how far in distance were these noncommissioned staff quarters from the ice plant?—A. About 25 or 30 yards.

Q. Was it customary down there for this ice plant to be operated during the night, making ice?—A. Yes, sir; they had been doing it. I don't know whether the plant was running that night or not; I couldn't say.

Q. But that was the custom down there, for the ice plant to run at night, making ice for the garrison; isn't that correct?—A. There was an engineer there when I passed there. I don't know whether he was running there that night or not; I am not sure whether he ran it any night; but there was a man there at night. I think they did, but I couldn't say, I am not sure.

Q. When you saw this engineer was he apparently in his working clothes?—A. He was in his working clothes; yer, sir.

Q. Was the ice plant lighted?—A. It was, sir.

Q. You don't remember, however, whether the machinery was actually in motion or not?—A. No, sir.

Q. But the ice plant was well lighted, and this man was in his working clothes?—A. Yes, sir.

Q. And he did not look as if he had just been aroused from his slumbers, but he looked as if he was there for business, did he not?—A. Yes, sir.

Q. Does that ice plant make a good deal of noise when it is going?—A. I don't remember ever being there and hearing it when in operation. I couldn't say; I don't know, sir.

Q. With reference to the light that you saw in Captain Macklin's quarters, was this a brilliant light or a dim light?—A. A dim light, sir.

Q. Did you see the lamp or lantern itself, or just the light given out by it?—A. Just the light. I didn't pay any attention to what it was—candle or lamp.

Q. Are you absolutely certain that you went on this errand to the quarters where you had always found Captain Macklin before?—A. I am positive I did, sir.

Q. And on which side of the door was his saber standing, do you remember, on the right or the left, as you went in?—A. It was standing outside of the door. I don't remember whether it was to the right or to the left.

Q. Is there any possibility that you went to any other quarters than No. 11?—A. I did not go to any other quarters, sir.

Cross-examination by the Accused:

Q. How long have you been in the service, Corporal?—A. Eleven years, nine months, and eight days, sir.

Q. Where did you serve; what regiment?—A. In the Twenty-fourth Infantry and the Twenty-fifth, sir.

Q. How long had you been in Captain Macklin's company?—A. From about December, 1904, to November 22, 1906.

Q. How often did you visit his quarters before August 13? Do you remember?—A. I don't know, sir; I don't remember.

Q. Frequently or not?—A. Only when I was detailed on some duty to go over there and do something, sir.

Q. When you were in charge of quarters?—A. Yes, sir.

Q. Do you happen to remember the last time before August 13 that you visited his quarters?—A. I do not, sir.

Q. How often did you go on in charge of quarters, Corporal?—A. I couldn't really say; I didn't run the roster, and you would have to refer to the company records to find that out, sir; I don't know.

Q. How many noncommissioned officers were there in that company at that time?—A. We had a full staff, with the exception of two men short—one on furlough and the other on rifle competition; he was the first sergeant, and that made us two noncommissioned officers short on that duty.

Q. Would you say once every ten days—how much or how little?—A. I couldn't say, sir; you would have to refer to the roster; it might have been ten days; may have been fifteen.

Q. Can't you give any approximate idea at all?—A. I could not, sir.

Q. Did you go on service once every three days?—A. I don't know, sir.

Q. Once every six days?—A. I don't know.

Q. Once every five days?—A. I told you I could not give you an approximate answer in that respect without referring to the register. If you had your roster, I could show you exactly how it ran.

Q. But approximately you went on once in every ten or twelve days, did you?—A. I guess so.

Q. What kind of night was this 13th of August?—A. It seemed to be a very dark night, sir.

Q. Was the post well lighted?—A. Well, the kind of lamps you had in one of those old posts—lit up with that. You know what kind of light that furnishes.

Q. Were there many lights in the post?—A. I don't know how many were in the post, sir; there were a few in the officers' line.

Q. About what time of night was it that you went over to Captain Macklin's quarters?—A. They say that the shooting occurred about 12 o'clock, and I went over there about five or seven minutes after the shooting occurred, or during the time it was going on—just before it ceased.

Q. Do you mean that you went over there five or seven minutes after the shooting had ceased or five or seven minutes after it had occurred?—A. After it had commenced.

Q. Was it still going on when you went over there?—A. A few shots were still being fired when I had orders to go over there.

Q. How did this shooting affect you?—A. Frame your question—in what respect, sir?

Q. I mean what were your sensations during this shooting?—A. Well, of course, a man would naturally have a little fear when he was first awakened; he would think some one was firing upon his quarters—most like any other man would be. That is the way I felt.

Q. You felt somewhat frightened?—A. At first I did, when I first awakened; yes, sir.

Q. Have you a very loud voice?—A. Yes, sir.

Q. Did you have any trouble in making yourself heard as a witness in the last court you testified before?—A. I did not, sir.

Q. What report did you make to Lieutenant Grier when you returned to the company?—A. I told Lieutenant Grier I couldn't find the captain over there. Lieutenant Grier asked me if I went upstairs; I told him I did not.

Q. Do you know why there was any inquiry as to whether or not you had gone upstairs?—A. I do not, sir.

Q. Did you notice any light in the set of quarters adjoining Captain Macklin's, in the same building?—A. I did not, sir.

Q. Was there any light there, could you testify to that positively, or not?—A. I didn't notice, sir.

Q. This last shooting that you heard, where was it located with respect to the post, Corporal?—A. What do you have reference to?

Q. Can you give any idea as to the approximate location of the shooting that you described as being in town that night, the latter part of that shooting?—A. Well, it seemed a good distance away—just a few shots.

Q. And with reference to the post, it was nearest to what part of the post—the administration building or toward the guardhouse, or how?—A. No, sir; it was in the rear of C and B Company.

Q. How did you happen to know that those people living in the noncommissioned set of quarters were asleep when you went around there?—A. I was sent around there to make a careful investigation on patrol, and I went to their doors and knocked on their doors to see if they were there, and to make proper reports to the commanding officer.

Q. Where was this light that you saw in Captain Macklin's quarters?—A. I never paid any attention to the light in there—I don't know whether it was up—seemingly it might have been in the hall, may have been in the hall or upstairs; I couldn't say. It might have been up high or low. I don't know whether it was a lamp or a candle.

Q. Was it a brilliant light at all?—A. A dim light, sir.

Q. If it was a lamp, would it have been a lamp turned down, do you think?—A. Yes, sir.

Q. If you went into Captain Macklin's quarters that night do you think you would have awakened him?—A. By the noise I was making, and after so much shooting and sounding to arms going on, it seemed like I should have wakened him; yes, sir.

Q. Had you ever had any difficulty in awakening Captain Macklin before; had you ever had occasion to attempt to awaken him?—A. I had occasion at Niobrara to attempt to awaken him.

Q. Did you ever have any trouble in doing it?—A. Well, in the absence of his wife he was kind of hard to awaken once or twice when I had occasion to carry a sick report to his quarters.

Q. Where was the entry to that stairway within the hall, in quarters No. 11?—A. Leading upstairs!

Q. Yes.—A. Facing the quarters, as I sit now, it was on the right-hand side, I should think, sir; being in double quarters.

Q. Was the entry in the front or rear?—A. I don't know, sir. It may be in the rear; I never paid that much attention to it.

Q. Now, just think, if you can, and try to give us your belief about that?—A. I couldn't give a definite statement concerning it, because I did not go over there really to inspect the quarters. I don't know, sir.

Q. Now, I just want you to think a moment. Corporal, before you answer that, and see if you can not remember whether that entry to that stairway was to the front or rear?—A. I can suggest, but I can not give a definite statement.

Q. Where do you think it was?—A. I think it was in the rear.

To this question the judge-advocate objected, as follows:

I object to that. I do not know myself which way this stairway ran—whether it was in the rear, or ran from the rear toward the front, or one side or the other; but this witness has stated before that he doesn't know, all he can do is to guess; it is a mere matter of opinion, and not a statement of fact, and this is what he has stated several times. But inasmuch as counsel insists upon it, I think it either ought not to be regarded in evidence, or that this line of questioning be discontinued, because, according to the witness's own statement, the only times he was ever down there Captain Macklin was downstairs, and he had never had occasion to go upstairs or pay any particular attention to it.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, I am very glad to know what is in the mind of the judge-advocate with reference to this particular set of quarters. If we desire to call him as a witness to establish any point in regard to that particular set of quarters we will do so. For the present we are trying to get

at what is in the mind of the witness with respect to the location of those quarters, and we think it proper to bring out any little detail that he remembers with respect to that set of quarters, which will serve to fix the situation in the minds of the court. This witness is not being examined upon any knowledge that he had of the set of quarters that Captain Macklin occupied at Fort Brown. He is being cross-examined on particular points that he has given—that he went to that particular set of quarters—and it is with the purpose of suggesting to this court and suggesting to us whether or not he is posted as to the particular set of quarters that he went into. It is not to determine what his knowledge of this set of quarters is.

The PRESIDENT. The witness should answer as to what he knows. If he does not know, he should say so. On such questions he should make a definite statement, and not a guess. Will the judge-advocate have that last question read?

(The reporter read the last question and answer.)

The JUDGE-ADVOCATE. I object, sir, to its being considered as evidence—the statement that he thought it was in the rear—as tending to show that the quarters to which he went were not those occupied by Captain Macklin if the stairway in Captain Macklin's quarters happened to run in some other direction, as the witness merely answered this question after a number of questions to which he replied that he did not know which way it went and could not really give an approximate idea—but finally, after being urged again and again, he stated that he thought it was one way, but he didn't know. And I request that the court not consider that last question and answer as evidence.

A MEMBER. I move the court that the objection be not sustained, without clearing the court. The court is competent to decide what question is proper.

The accused, his counsels, the reporter, and the judge-advocate withdrew and the court was closed; and on being opened the president announced in their presence as follows:

The objection of the judge-advocate is not sustained. The question will stand—I think it has already been answered—the question and the answer will stand.

Q. Corporal, will you state a little more definitely what was the actual order that was given to you by Lieutenant Grier with respect to visiting Captain Macklin's quarters?—**A.** The commanding officer told Lieutenant Grier to have a man go over there to Captain Macklin's quarters and see if he was there, and perhaps if he was not there he might be down about his guard—but to send a man over there. Lieutenant Grier called me and told me to load my rifle, go over to Captain Macklin's quarters to see if he was there, and if he was there, to tell him by order of the commanding officer to report to the commanding officer; and I did so.

Q. Now, when you came back and reported to Lieutenant Grier, what was your report, as definitely as you can tell it?—**A.** I reported to Lieutenant Grier I could not find the captain. He asked me did I go upstairs; I told him I didn't.

Q. But you understood that the intention that was expressed in his order was to the effect that you were actually to awaken Captain Macklin if he was in his quarters?—**A.** Make that statement again please. I don't understand it.

Q. Did you understand that the order of Lieutenant Grier, as given to you, was in effect an order that you were to go over to Captain Macklin's quarters, and if Captain Macklin was there, that you were to actually find him, and if he was asleep, that you were actually to awaken him; did you understand that, Corporal?—A. I understood the order was to go to Captain Macklin's quarters and see if he was there, in his bed—where he had been sleeping; of course I was not supposed to prowl all through the quarters. I taken it that way. Of course, if I had known he had slept upstairs I would have went upstairs; but I went there and I made enough noise, if he was upstairs or downstairs, I should think, to awaken him.

Q. But you actually did not go into the room he was sleeping in, did you?—A. I never went upstairs.

Q. What room did you go in, Corporal?—A. I didn't go in any room. I went to the door of the room I generally went to, and knocked—the door was open—and I called in a loud tone of voice, "Captain Macklin!" I did this in the way of thinking he had heard the firing and might perhaps think some one else was coming to his quarters, and I called, thinking he might know my voice—and then, after calling four or five distinct times, I rapped on the floor with the butt of my rifle, and I thought if anybody had been there surely they would have answered.

Q. Now, I asked you if actually you did go into the room in which Captain Macklin was asleep, and you said you did not go into the room upstairs?—A. I did not, sir.

Q. Did you actually go into that room downstairs?—A. I went to the door—the rooms are very small—I went to the door, and the door was open.

Q. Now, what did you see in that room, if you saw anything at all?—A. I didn't pay any particular attention. I didn't distinguish any furniture or anything, if that is what you have reference to.

Q. I want to know just what you saw in that set of quarters?—A. I never went there to figure out what kind of furniture was in the house; I went there just the same as if I had been sent there in time of warfare—on an urgent occasion—and I went there, as near as I knew how, and made the necessary reports.

Q. I believe that you, as corporal of that company, received an order from the commanding officer, and that you made your best effort to carry out that order.—A. I did, sir.

Q. And in carrying out that order you went over to the set of quarters you believed Captain Macklin lived in?—A. I went in the set of quarters I knew he lived in.

Q. Now, what I am trying to find out from you is whether you did actually carry out the order, no matter what your intentions were?—A. I did carry out the order.

Q. And I want to know what you saw in that particular house to show you, or to show us, whether or not you were mistaken in the house, and to show what you did when you actually went there. I will just make this explanation so you can understand what these questions relate to.—A. Well, I have told you what I did when I went in there; but as to going to look and see if he was asleep in an iron bed or a Government bunk, I did not do that; I went there and made enough noise to awaken anybody, except they were in a trance, seemingly.

Q. Do you know where Captain Macklin slept in his quarters?—

A. I know where he slept the last time I went there carrying the sick report.

Q. But you don't remember what date that was?—A. No, sir; I don't.

Q. Do you remember how long it was before this 13th of August?—

A. No, sir.

Q. You do not have any approximate idea of what that time was, do you, Corporal?—A. What do you have reference to, sir?

Q. I say, you do not have any approximate idea of what that time was that you last carried the sick report, or how long before the 13th of August that was?—A. No, sir; I don't. They were going on practice marches by companies, and our doing guard duty there—we didn't get but very little time for guard duty and different duties—and sometimes it might be five, seven, or eight, or ten days, for all I know, and I couldn't give a definite answer without reference to the companies' records.

Q. I just want your recollection of it?—A. I don't know.

Q. You do not know, then, where Captain Macklin—A. I know where he was supposed to be sleeping all the time before.

Q. You do not know where Captain Macklin slept on the night of the 13th of August?—A. I don't know, sir.

Q. You do not know what was in this room downstairs that you opened the door of?—A. There was a desk in there, if I am not mistaken—I am quite sure there was.

Q. Was there anything else?—A. I couldn't go to work and narae to you the different furniture there. Without any disrespect, I didn't stay there—over there—myself, but I went there to awaken the captain up, where he had been sleeping.

Q. Was there a bed there?—A. There had been a bed there.

Q. No, no; I mean was there a bed there on this night you went to the house?—A. There was a very dim light, and the door was open; I called and I rapped on the door, but I didn't go to look into the bed, or to prowl around, or anything like that; and after the commanding officer made the remark that the captain might not be in his quarters, might be down with his guard, I didn't go to prowl around at all.

Q. Was there a bed in this particular room?—A. I don't know, sir.

Redirect examination by the JUDGE-ADVOCATE:

Q. Corporal Madison, you stated the guard duty down there at Fort Brown was rather severe, particularly upon the noncommissioned officers?—A. Yes, sir.

Q. And were the noncommissioned officers kept particularly busy—generally either on guard, on old guard, or on special duty?—A. They wasn't on any special duty, to my knowledge, sir.

Q. In your company?—A. In my company, you say, on special duty?

Q. Yes.—A. Well, I don't remember of any particular noncommissioned officers being on special duty at that time, sir, to my recollection at the present time; but guard duty—by going out once a week on these marches—sometimes two companies went out and one company had to furnish the guard, that is the reason I say it made guard duty pretty strict, and if I am not mistaken we had 40,

and by the extra and special duty mentioned, of course, it didn't leave but very few men for duty, and then the noncommissioned officers would have to be on for a time, and then take their turn out on the march, and then come back and go on guard again.

Q. Now, Corporal Madison, what is your idea as to how often you yourself went on as a noncommissioned officer in charge of quarters? Do you think it was once every five or six days; or once every ten or twelve days; which is the nearer do you think?—A. Well, I don't really know, sir.

Questions by the Court:

Q. Corporal, you stated that you went over to Captain Macklin's quarters under instructions from Lieutenant Grier, coming from the commanding officer?—A. Yes, sir.

Q. To find if Captain Macklin was there, and in case he was there to tell him that the commanding officer wanted him?—A. I did, sir.

Q. You went to the room in his quarters where you knew, or thought you knew, he slept?—A. I did, sir.

Q. You came away without finding the captain, and you state positively to the court that Captain Macklin was not in that room?—A. Downstairs, I did; yes, sir.

Q. You can state that?—A. You say did I state that?

Q. I want to know what you can state. You are absolutely certain that Captain Macklin was not in that room when you went there and knocked on the door?—A. The door was open.

Q. Well, when you knocked on the door?—A. I never pulled back the cover or anything. I can't say whether there was a bed in there or not; but I made enough noise, if he was there, excepting he being in a trance, why, he would have been awakened—if he was downstairs. I can state that positively to the court.

Q. I want you to state for the information of the court, if you can, whether you know or do not know if he was or was not in that room. You went there to find him; you had definite orders—that is, by knocking there?—A. Yes, sir.

Q. And you went to the room where you thought he was. Now, did you go away without knowing whether he was there or not, or do you know he was not in there?—A. I never went into the room, or anything like that; but I can positively state to the court that the captain was not sleeping downstairs at that time when I went there. If he was, he was in a trance.

Q. Yes; you have stated that before; but I want you to state positively just exactly the fact: Was he or was he not there?—A. I wouldn't begin to state to the court that I went there and prowled around the room, because I didn't.

Q. Did you, at this time, see Captain Macklin, or did you not?—A. I did not, sir.

Q. Was there, in the vicinity of Captain Macklin's quarters, either any path or lamp-post, or any feature of the landscape that would enable you to mark that house so that you could not mistake it?—

A. There is a lamp-post between the first and second sets of quarters, if I am not mistaken, not very far from his quarters. I am sure I went to his quarters.

Q. What makes you sure you went to his quarters; how did you locate the house that night?—A. Why, I located it by going direct

to his quarters, and I had been there so often I know I went to his quarters—I am positive I did.

Q. After you had been to Captain Macklin's quarters, Corporal, and had left there, you left there thinking you had carried out your orders—in other words, you left there thinking that Captain Macklin was not there; is that correct?—A. I did, sir.

Q. Was there a light in the next building to Captain Macklin's quarters—in No. 10—at that time?—A. No. 10?

Q. Yes; the next quarters east of Captain Macklin's?—A. That is where Lieutenant Lawrason lived. I don't know, sir, whether there was a light there that night or not.

Q. In going to Captain Macklin's quarters from C Company, did you pass near these quarters No. 10 or not?—A. I went in a triangular direction across the parade ground direct from C Company over to the last set of quarters, which was the first set of quarters from the administration building, to Captain Macklin's quarters. The next set of quarters was No. 9 and No. 10. I know very distinctly the difference.

Q. Was there a light in No. 10?—A. I never paid that much attention. That was another officer's quarters, and I was not sent to his quarters.

Q. You do not remember, in passing near there, whether you glanced at the quarters or not?—A. No, sir; I don't remember it.

Q. Corporal, you knew that Captain Macklin was officer of the day, did you not?—A. I did, sir; before I left the quarters.

Q. You just stated you saw outside on the porch his saber?—A. I did, sir.

Q. Did you report that fact when you got back to the commanding officer, that you had not found Captain Macklin, but had seen his saber on the porch?—A. I didn't make that report to the commanding officer at all. I reported to Lieutenant Grier.

Q. Well, to whomever you reported, I want to know if you mentioned the fact that although you could not find him you saw his saber?—A. I don't remember I told him that, because the officers have two sabers, and I did not know but that some other officer might have been with him. I did not make that statement. I told him I couldn't find him. On a night like that I dare say there wouldn't any of the men in here think of making that statement probably, because I thought just like the commanding officer, that if he was not in his quarters he was down with his guard.

Q. The fact of his saber being there did not suggest to you that he might be in the building somewhere?—A. No, sir. After the call to arms was sounded it appeared to me that his saber might be there, and after the firing commenced he would put on his six-shooter, just like he was going into the field, just like any other officer would do, sir—that is the reason I didn't do that.

Redirect examination by the JUDGE-ADVOCATE:

Q. You stated that Lieutenant Lawrason lived in quarters No. 10?—A. If I am not mistaken. I am not positive, but I think he did, sir.

Q. Who lived in quarters No. 9; do you know?—A. I am not sure; I don't know whether Lieutenant Higgins lived there or not. I am not sure; I don't know.

Q. Did anyone live in quarters No. 12?—A. I don't know, sir; I don't think so. All the officers were away from the post except about four at that time, sir.

Q. Was this desk you saw in the bedroom downstairs, did that desk look like a desk you had ever seen there before, or not?—A. Yes, sir; it was the company commander's desk.

Questions by the COURT:

Q. You spoke about pulling the cover back—that you did not pull the cover back. What did you mean by that "cover"?—A. I mean by this, the company commander had been sleeping down there, and they wanted me to make a statement that I did go to the bed, if there was a bed in there—or something like that. That is what I meant by that.

Q. You were referring to the cover of the bed, were you?—A. Of the bed; yes, sir.

Q. Corporal, you said this desk looked like an ordinary company commander's desk. Do you mean that it had a high top to it, or was it flat like a table?—A. Why, flat like a table. I think that is the kind he had—I am not sure; I wouldn't be positive about that, either.

Q. Was this desk you saw in this room, was it the same desk the company commander signed sick reports on?—A. It was the same thing he signed the sick reports on; yes, sir.

Recross-examination by the ACCUSED:

Q. Just point out the light that you described in your previous testimony as being located near Nos. 11 and 12.

A MEMBER. You mean the street lamps?

Q. The street lamps.—A. As to how arranged?

Q. That particular one that was nearest that set of quarters?—A. Well, I don't know for sure, but it should have been setting between 10 and 11, something along there, the way the lamps ran up and down the front of the street.

Q. You think it was between 10 and 11?—A. I am not sure. There was one post, though, over to this line—it may have been near No. 10, something like that.

Q. You wouldn't say it was near where this check mark is [indicating on map]?—A. No, sir; I don't know.

Q. How do you know that officers have two sabers?—A. Well, I don't know. I have seen officers that had two sabers.

Q. Did Captain Macklin have two sabers?—A. I don't know, sir. Captain Macklin used to leave his saber in the orderly room sometimes. I don't know whether he had two or not.

Q. You never saw two, did you?—A. No, sir.

Q. Corporal, what idea did you have in mind when you spoke about the cover of the bed there in that back room?—A. In the back room?

Q. Yes.—A. The idea I had in mind, it seemed to appear to some of the members of the court that I should have went into the room, and seen if the bed was in there, and seemed to think I didn't do my duty by not doing so.

Q. So, you have not in your mind any idea of having seen a bed or cover in there?—A. Not on that night; no, sir.

(Excused.)

JOSEPH HENRY HOWARD, a witness for the prosecution, was duly sworn, and testified as follows:

Direct examination by the **JUDGE-ADVOCATE**:

Q. What is your name, present residence, and occupation?—A. Joseph Henry Howard, 812 Twelfth street, Louisville, Ky.; laborer.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Captain Macklin.

Q. Were you in the service of the United States Army on August 13, 1906? If so, state in what company and regiment and where you were stationed.—A. Yes, sir; I was in Company D, Twenty-fifth Infantry, at Fort Brown, Tex.

Q. What rank did you have in the company?—A. Private.

Q. Did you go on guard about 11 o'clock on the morning of August 13?—A. Yes, sir.

Q. To what relief were you assigned?—A. The first relief.

Q. And what post?—A. Post No. 2.

Q. That post extended where in the daytime?—A. In the rear of the soldiers' barracks.

Q. In the rear of C, B, and D barracks, or did it also extend in the rear of the vacant barracks?—A. In the rear of the vacant barracks also.

Q. And at night, or between retreat and reveille, where did your post extend?—A. Around the barracks.

Q. Entirely around the four sides of the barracks?—A. Yes, sir.

Q. Keeping them on your left?—A. Yes, sir.

Q. What time were you posted the last time you were on the post prior to check roll call on the night of August the 13th? Do you remember?—A. The last time?

Q. Was it about 10.30?—A. I went on about 10.30; yes, sir.

Q. And you would have been relieved at what time ordinarily? You went on at 10.30?—A. I should have been relieved at 12.30.

Q. Did you hear "call to quarters" and "taps" sounded that night?—A. Yes, sir.

Q. Could you hear the noncommissioned officers in charge of quarters report to the officer of the day?—A. Yes, sir.

Q. Did you see the officer of the day after that?—A. Yes, sir.

Q. Under what circumstances?—A. I saw him on post; he came around and received my orders.

Q. Then, after he asked you your orders, did he leave the vicinity of your post?—A. Yes, sir; he went on away from me; I suppose he did.

Q. And did you see him again within a short time?—A. Yes, sir.

Q. Where was he going then?—A. He was coming away from the gate when I saw him.

Q. Was anyone with him?—A. There was some children along with him.

Q. Did you see him again?—A. No, sir.

Q. Before the next morning—before daylight the next morning?—

A. No, sir.

Q. Did anything unusual happen about midnight of August the 13th?—A. Yes, sir.

Q. What?—A. The shooting in the town.

Q. It apparently started where?—A. It first started over in the road.

Q. The garrison road—the road that runs along by the brick wall?—A. Yes, sir.

Q. And about opposite which company barracks, could you tell?—A. No, sir; it was away from the company barracks.

Q. This shooting was away?—A. The first shooting was; and then it opened up again in the rear of the barracks—in the alley.

Q. In the alley that runs between Washington and Elizabeth streets and parallel to those streets—the so-called Cowen alley?—A. Yes, sir.

Q. Was there a good deal of shooting?—A. Yes, sir.

Q. What kind?—A. Loud reports; every kind of different guns, seemed to be.

Q. Rifles and revolvers, and so on?—A. Yes, sir.

Q. Where were you at the time this shooting began in the alley?—A. I was in the rear of the barracks; at the interval between B and C companies' quarters.

Q. And after this shooting had been going on for a few moments, did you do anything yourself?—A. Yes, sir; I gave the alarm.

Q. How did you do it? Where did you go?—A. I gave the alarm in the rear of the barracks; in the interval between B and C Company barracks.

Q. By calling?—A. By calling, "The guard, post No. 2."

Q. Then what did you do?—A. I went between B and C Company barracks and gave the alarm on the front side.

Q. How did you give the alarm this time?—A. By discharging my piece and calling the guard.

Q. How many times did you discharge your piece?—A. Three times.

Q. In what general direction?—A. It was elevated toward the officers' line.

Q. Did the "call to arms" begin about this time?—A. Yes, sir. When I fired the last shot the "call to arms" began at the guard-house.

Q. Was this "call to arms" taken up by anyone else?—A. It was taken up by the musicians over at the barracks—taken up by B Company musicians, and some other companies also taken it up.

Q. And those bugles sounded for how long, approximately—one minute or two minutes or five minutes, or how long?—A. About two or three minutes, I suppose.

Cross-examination by the Accused:

Q. Henry, how long have you been in the service?—A. I have been in the service three years and eight days.

Q. In what company and regiment did you serve?—A. D Company, Twenty-fifth Infantry.

Q. Your complete service?—A. Yes, sir.

Q. Do you remember what was the date of your second enlistment?—A. I was on my first enlistment.

Q. You said you had served three years and eight days.—A. I was held eight days overtime on my first enlistment.

Q. What time was taps sounded that night at Fort Brown?—A. At 11 o'clock.

Q. What were your hours on post No. 2?—A. From half past

10 until half past 12 tour of duty, and I stayed on the post overtime—it was something after 1 o'clock before I was relieved.

Q. From half past 10 until 1 o'clock?—A. It was something after 1 o'clock.

Q. You say that the officer of the day, Captain Macklin, visited you on post after taps?—A. Yes, sir; immediately after taps.

Q. From what direction had he come when he reached your post, do you know?—A. He came from the parade ground.

Q. This was the first post he visited, was it?—A. Yes, sir.

Q. How long did it take you to turn over your orders, have you any idea?—A. No, sir. It only taken me a few seconds.

Q. What direction did Captain Macklin go from your post?—A. I was in the rear of the quarters when he received my orders and he went up toward the gate.

Q. Toward the Elizabeth street gate?—A. Yes, sir.

Q. He went toward the gate?—A. Yes, sir.

Q. How long was it after he had left your post that you saw him with these children there on that walk leading in from the gate?—

A. About twenty-five minutes.

Q. About twenty-five minutes?—A. Yes, sir.

Q. Did you hear any disturbance there at this particular time when he was with those children?—A. I heard the children. There seemed to be someone laughing and talking out in the street before I saw them; there was someone out in the street laughing and talking, and shortly after I saw Captain Macklin and the children passing me, going down the road.

Q. But I mean you did not hear any particular disturbance among these children, other than this laughing and talking?—A. I heard a dog barking.

Q. Did that have any reference to these children?—A. I don't know, sir.

Q. Where was this dog?—A. He seemed to be out in the street.

Q. Near them?—A. Down in that direction.

Q. Barking at them?—A. I don't know, sir—but this dog was barking at the same time these people were laughing and talking out in the street.

Q. Now, your estimate, then, of the time this occurred was about twenty-five minutes past 11? You say it was about twenty or twenty-five minutes after Captain Macklin had visited your post?—

A. Yes, sir.

Q. Did you see where Captain Macklin went from that locality?—A. He went straight across the parade ground.

Q. Toward the officers' quarters?—A. Yes, sir. And the children went that way also.

Q. Whose were those children: do you know?—A. No, sir.

Q. Do you know whether they were post children or town children?—A. I taken them to be children who were living in the post. I don't know.

Q. Why did you take them to be children who were living in the post?—A. They were coming in at that time of night, and I thought maybe they were coming home: I thought they lived in the post somewhere.

Q. How long was it after this shooting first began that you

sounded the alarm—that you gave the alarm there by firing your rifle?—A. About two seconds.

Q. Do you think it was that near the first shot?—A. I didn't give the alarm until the fusillade opened up in the alley.

Q. What I mean, Howard, is how long after the shooting first began was it that you fired your rifle out in front of B and C Company barracks?—A. It was a minute from the time that I heard the first shot until I fired the rifle in front of B Company's quarters.

Q. And you fired your rifle three times?—A. Yes, sir.

Q. And with reference to the last shot you fired, when did the "call to arms" come?—A. About the time that I fired the last shot the "call to arms" was sounded, from the guardhouse.

Q. You testified what particular musician sounded that first "call to arms"—I mean, not his name, but whether he was a musician of the guard or company musician?—A. It was sounded from the guardhouse. I suppose it was the musician of the guard.

Q. Now, where was it next sounded from?—A. At B Company's barracks.

Q. How many musicians?—A. I don't know, sir. B Company's musicians sounded it.

Q. Both of them?—A. It sounded like it was two or three.

Q. Well, how many musicians did B Company have—do you know?—A. Two.

Q. It could not have been sounded by more than two, then? Where was it next sounded from?—A. All the way down the line among the companies.

Q. C Company's next?—A. Yes, sir.

Q. And then D Company's?—A. I am not sure; it sounded like more than one musician; I don't know how many it was.

Q. Do I understand that your idea of this was that "call to arms" was sounded first by the musician of the guard, and then taken up by B Company or by C, or both the other companies?—A. Yes, sir.

Q. Did you see Captain Macklin again on the night of the 13th or morning of the 14th, after half past 11?—A. No, sir; I don't remember seeing him any more.

Q. Did you see any of the officers in command of the companies after they had taken position along the wall, in the rear of the company barracks?—A. Yes, sir.

Q. Did you see the officer in command of C Company?—A. No, sir; I don't remember seeing him.

Q. Did you hear him?—A. Lieutenant Grier—I heard him.

Q. You heard his voice, did you?—A. Yes, sir.

Q. You were familiar with that?—A. Yes, sir.

Q. Were you on post when Captain Macklin came and relieved him, or do you know anything about that?—A. I don't know when Captain Macklin came.

Questions by the Court:

Q. You stated that Captain Macklin went back toward his quarters with those children; they went in the same direction. How far were you from Captain Macklin at that time?—A. I was about 50 yards, I guess.

Q. Well, how do you know it was Captain Macklin?—A. I taken it to be him—he had on his saber, and I saw them from the light at the

gate; there is a light right at the gate, and they were coming—they were crossing the road, coming toward the barracks when I saw them.

Q. You could see them under the light of the gate? Is that the way you recognized him?—A. Yes, sir.

(Excused.)

ALEXANDER ASH, a witness for the prosecution, was duly sworn, and testified as follows:

Direct-examination by the JUDGE-ADVOCATE:

Q. State your name, residence, and present occupation.—A. Alexander Ash, Kansas City, Mo., laborer.

Q. Did you ever serve in the Twenty-fifth Infantry as a soldier?—A. Yes, sir.

Q. In what company?—A. Company D, Twenty-fifth Infantry.

Q. Was all your service in the Twenty-fifth in this company?—A. No, sir. A month or so I was in the Ninth Cavalry.

Q. Were you in Company D, Twenty-fifth Infantry, on August 13, 1906?—A. I was, sir.

Q. Where were you stationed then?—A. I was stationed at Fort Brown, Tex.

Q. Did you mount guard that day?—A. Yes, sir.

Q. What relief were you assigned to?—A. First relief.

Q. And what post?—A. No. 4.

Q. Was No. 4 kept up during the daytime?—A. No, sir.

Q. It was posted at what time and relieved at what time?—A. I don't know, sir, just what time it was posted.

Q. It was posted about retreat, wasn't it, and taken off at reveille?—A. Yes, sir; it was posted about that time, as near as I can recollect.

Q. You were posted on the night of August 13 at about 10.30, were you?—A. Yes, sir.

Q. Did you hear anything unusual about midnight?—A. Yes, sir.

Q. What?—A. I heard some shooting about midnight.

Q. From what direction did the main part of this shooting apparently come?—A. It came from the vicinity of the barracks somewhere.

Q. Could you hear this shooting plainly?—A. Yes, sir; I could hear it plainly.

Q. And did you hear any bugle calls?—A. Yes, sir; I heard bugle calls.

Q. When were you relieved from this post?—A. I was relieved about 2.30.

Q. Were you inspected by the officer of the day at any time you were on the post?—A. Was I inspected by the officer of the day? No, sir; I was not.

Q. You were inspected at the guardhouse by him, were you?—A. Yes, sir.

Q. You do not know the distance, do you, from B Company barracks to your post No. 4?—A. No, sir; I don't.

Q. But your post ran where? Describe the route you took.—A. My post ran from the commissary, around the quartermaster's department, and back to the commissary, all around, taking in all of the quartermaster's building, the storehouses, and commissary.

Q. You kept them on which hand?—A. Kept them on my left all the time.

Q. How long did the shooting keep up that you heard?—A. I don't know, sir; I couldn't say.

Q. Did it keep up five minutes, ten minutes, or how long?—A. It might have kept up that long; I couldn't say whether it kept up five, ten, or fifteen minutes.

Cross-examination by the Accused:

Q. Ash, do you understand this map here?—A. No, sir; I don't.

Q. Just come up here and I will see if I can explain it [indicating on map]. All this portion in there is the post at Fort Brown.—

A. Yes, sir.

Q. And this portion on the other side of what is marked "road" is Brownsville?—A. Yes, sir.

Q. And these are the company barracks running from the river—B Company, C Company, D Company, and a vacant set of barracks?—A. Yes, sir.

Q. And these are officers' quarters?—A. Yes, sir.

Q. And here is the guardhouse?—A. Yes, sir.

Q. The hospital and post exchange are over here [indicating]—not shown here on the map, but off to the right, as my pointer goes?—

A. Yes, sir.

Q. Now, can you tell from this explanation what was the general locality of your post that night—say, with reference to the hospital and post exchange? Was it off in that direction [indicating] or here toward—A. It was off in that direction [indicating].

Q. The hospital was to the right of the guardhouse as we look at the map?—A. Yes, sir; and the commissary was to the right of that.

Q. The commissary and the quartermaster's building was to the right of that hospital?—A. Yes, sir.

Q. How long were you on post?—A. From half past 10 to half past 2. I was on four hours.

Q. About how long did it take you to go around your post?—A. Well, walking the post slowly, it taken me ten minutes or fifteen minutes—something like that—or twenty minutes.

Q. About ten, fifteen, or twenty minutes?—A. Yes, sir.

Q. Now, with respect to the buildings there, where was that firing that you first heard that night?—A. The first I heard?

Q. Yes.—A. Well, two shots to the right of me, the first I heard—off to the hospital.*

Q. Point it out.—A. Well, the hospital would be to the right of the guardhouse; those shots—the first two I heard—seemed to be over in that direction from me [indicating a point just off the eastern corner of the map]—off back there.

Q. Now, with respect to that point you located, was there any road that divided the reservation from the town?—A. Yes, sir.

Q. And you thought that that first shot came from the vicinity of the road dividing the reservation from the town?—A. Yes, sir; the first two shots I heard.

Q. What was that district over in that general locality—what was it called?—A. I don't know what it is called.

Q. What did the soldiers call it?—A. "The firing line."

Q. "The firing line?" What did that mean?—A. I don't know, sir.

Q. Did it mean "tenderloin?"—A. I don't know, sir, what it meant. I just heard it called "the firing line."

Q. What people lived down in that district?—A. Well, Mexicans, and some few colored people, that is about all.

Q. Did you see the officer of the day in the vicinity of your post after "taps" that night?—A. No, sir; I did not.

Q. You do not know whether he was there or not?—A. No, sir. Excused.

SAMUEL WHEELER, a witness for the prosecution, was duly sworn, and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. What is your name, residence, and present occupation?—A. My name is Samuel Wheeler. My residence is 702 Choctaw avenue, El Reno, Okla.

Q. And your occupation is what?—A. I am employed now by the El Reno Compress Company.

Q. Were you ever a soldier in the United States service?—A. Yes, sir.

Q. For how long a time?—A. About eighteen years and eleven months and about twenty-nine days.

Q. This service was mainly in what regiments or companies?—A. I served eight years in the Ninth Cavalry, five years in the Tenth Cavalry, and five years eleven months and seven days in the Twenty-fifth Infantry.

Q. In what company of the Twenty-fifth Infantry did you serve?—A. D Company, sir.

Q. Were you in D Company of the Twenty-fifth Infantry on the 13th of August, 1906?—A. Yes, sir.

Q. Stationed at what place?—A. Fort Brownville, Tex.

Q. Fort Brown, Tex?—A. Yes, sir; Fort Brown, Tex.

Q. You were at that time a noncommissioned officer, were you not?—A. Yes, sir; I was a corporal in Company D.

Q. Did you mount guard on the morning of August 13, 1906?—A. Yes, sir.

Q. And you acted as corporal of one of the reliefs, did you not?—A. Yes, sir; I was corporal of the first relief.

Q. Did the officer of the day visit the guardhouse at any time on the 13th in your presence?—A. Yes, sir.

Q. And did he inspect the No. 1 of your relief at the guardhouse at any time, or do you know?—A. I won't be certain, sir, that he did; but he was there.

Q. And about "retreat," did he give you any instructions—did the officer of the day give you any special instructions?—A. Well, yes, sir—that is, shortly after retreat.

Q. What were they?—A. Well, he gave me instructions to take my relief and patrol a certain part of the town and to order in all men that I seen out and around in this part of the town, and those that would not come in that I order, that were not there on my return, to bring them—not finding them in the quarters—to bring them in and report them immediately to him.

Q. Did you seek to ascertain from the officer of the day the cause

of this order? Did you ever ask him why this was ordered?—A. I did, after I had performed this duty and reported to the officer of the day, when I came in. That was about 8 o'clock—after I got through.

Q. What did he tell you was the cause of it?—A. I asked the officer of the day for permission to speak to him, to find out. I said I would like to ask the officer of the day a question. He said, "What is it, Corporal?" I said, "Everything is very peaceable; the men are not drinking—not acting ugly or anything." I said, "Why is it you are so particular about their being in at this hour?" He said, "Yes, that is very true. I have been out myself right behind you, and found that you made a good, clean sweep of them. I didn't see any one, and everything seems to be peaceable, but this lady"—Mrs. Brown, I think was the name—"had claimed that some of the men of the battalion had attempted an assault on her, and for that reason they were trying to give them some trouble," and it seems as though they were trying to get everybody in to avoid some trouble. Mrs. Evans, I think, was the lady—I am not sure—but anyhow, this lady, he said, on account of some one attempting an assault on her, they were preparing to give the garrison some trouble, or the soldiers.

Q. Was this your own idea, or was this told to you?—A. No; this was told to me by the officer of the day.

Q. What was the name of this lady?—A. I won't be sure.

Q. Mrs. Ivens, or Mrs. Evans?—A. I don't know; I might call it wrong. It might be either one; I am not sure.

Q. Was "call to quarters" and "taps" sounded as usual that night?—A. Yes, sir.

Q. Were any other patrols sent out—other guards—by the officer of the day on the same mission as that on which yours was sent out?—A. Yes, sir; two more.

Q. Two more?—A. Yes, sir.

Q. What time did the last one come back, about, as near as you can remember?—A. I reckon they got back about "call to quarters," somewhere along about that time.

Q. You are not sure about the time?—A. I am not sure, no, sir; I was not noticing the time. It taken about an hour, as near as I can estimate the time, to go out and return.

Q. When was the last time the officer of the day visited the guard-house, so far as you personally know?—A. That night or—

Q. That night.—A. At 11 o'clock—well, not at 11 o'clock, but between "call to quarters" and 11 o'clock, because he went right from there, I think, out in the parade—

Q. To receive the report?—A. To receive the report; yes, sir.

Q. So he was there between 11 o'clock and a quarter to 11, you think?—A. Yes, sir.

Q. And when did you next see the officer of the day?—A. Well, I next saw the officer of the day—

Q. Approximately.—A. Well, that was sometime after the shooting, thirty or forty minutes, probably. I was not to say right up close to him, but I knew it was him, I knew his voice, and he had a lantern and seemed to be establishing some post along the fence, or around there.

Q. You did not see him, however, between "taps" and the time of the shooting?—A. No, sir.

Q. Did anything unusual happen about midnight or a little after midnight on August 13?—A. Yes, sir.

Q. What was this unusual thing that happened?—A. This outrage—this shooting down there—it was something quite unusual.

Q. You were awake at the time, were you?—A. Yes, sir.

Q. Were you in the guardhouse?—A. In the guardhouse; yes, sir.

Q. When you heard the first shots what did you do?—A. I didn't do anything, only I just noticed the two shots, and the other shots followed up so quickly behind those I began to stir around and to alarm the guard after the first two shots.

Q. Did you hear the sergeant of the guard give any command at that time?—A. Yes, sir.

Q. What did he call out?—A. He says, "Outside, guard!" in a very rushing manner—hollered three or four times; hollered to me to get them out.

Q. And the guard turned out, did it?—A. Yes, sir.

Q. Where was the shooting that alarmed the guard apparently taking place, with reference to B Company barracks?—A. Well, it seemed to be over from that part of town called the west—or south part of town.

Q. Well, was it from the part of town in the vicinity of the post?—A. Yes, sir.

Q. And the shooting apparently came from in front or from the rear of the line of the barracks?—A. It must have come from the rear.

Q. Of the line of barracks, or not?—A. Yes, sir. It was over in that part of town, it was bound to have been; yes, sir. It was not in front of the barracks; if it had been I would have been able to have seen just about where it came from.

Q. And about how long did this shooting keep up, can you give us an idea?—A. Oh, it must have been about fifteen or twenty minutes, estimating the time—lasted about that long.

Q. Did the shooting seem to be done by people who stood in one place all the time, or were they moving away from the post?—

A. They moving, and moving away from the post; I don't say all, but one gun made a very loud report and I noticed every time it shot it was getting farther and farther away.

Q. Was most of the shooting rifle shots or pistol shots?—A. I don't know, sir, whether any of it was rifle shooting or not; it was mixed up. Some of it sounded kind of sharp and other flat, and others something like shotguns—I would have thought at first it was shotguns.

Q. Were there any other unusual sounds made at this time other than reports of rifles—were there any trumpet calls?—A. Yes, sir.

Q. Where was the first trumpet call sounded?—A. Well, I couldn't say just where the first call was sounded, but I think it was sounded at the guardhouse; I don't know just where it was.

Q. And was it taken up apparently by the other trumpeters in the other barracks or in front of the barracks?—A. Yes, sir. It was either taken up by those down here or by those up this way, I don't know which.

Q. How long were the trumpeters sounding the alarm altogether do you suppose—how long did they keep it up?—A. Oh, probably a couple of minutes.

Q. Soon after the sergeant of the guard had formed the guard in

front of the guardhouse did he give orders to any member of the guard to go and find anyone?—A. Yes, sir.

Q. Did you hear him give this order to any member of the guard? If so, to whom did he give the order and what did he direct him to do? State just how the thing occurred.—A. Why, during the formation, or forming of the guard, we had a call from No. 2. As soon as the guard was formed he sent Corporal Burnett—

Q. Who sent him?—A. The sergeant of the guard sent Corporal Burnett and two privates to this call—

Q. That is, to post No. 2.—A. To post No. 2; and about—along about the same time he sent a man to the officer of the day's quarters.

Q. What was this man's name?—A. Rogers.

Q. Of what company?—A. Private Rogers, of C Company.

Q. Did the sergeant of the guard state why he sent this man instead of some other man, or did he first start to send somebody else and then change it and send Rogers?—A. Why, yes, sir; he first started to send a man—I think the man said he didn't know where the officer of the day lived, and he had some C Company men there and Rogers was near him, and he asked Rogers if he didn't know where he lived. Rogers said yes, sir, he knew where the captain lived, and the sergeant said, "All right. Go up and notify the captain of this alarm."

Q. That was Captain Macklin?—A. Yes, sir; the officer of the day. He called to him because it was his captain; he would know then; he knew exactly where to go—going to his captain's quarters.

Q. And did Rogers at once start off on this errand?—A. Yes, sir.

Q. How long was he gone, do you suppose, or to the best of your recollection?—A. I don't know just how long he was gone, but I think it must have taken him eight or ten minutes to have gone up there and come back, if he had stepped lively—if he had stepped out in a good lively manner, as he should have.

Q. Was the shooting going on when he left?—A. When he left; yes, sir.

Q. Had it about ceased when he got back, or was it still going on?—A. I think it had about ceased by the time he had gotten back.

Q. You do not know whether it was over or not?—A. No, sir.

Q. Were you there when Private Rogers returned and reported to the sergeant of the guard?—A. Yes, sir.

Q. Did you hear what he said, what conversation took place between the sergeant of the guard and this man Rogers?—A. Why, there was not much conversation. They were about as far from me as up to that stage, or probably the wall, and I heard him say, Did he wake him up—

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court. I want to call attention to the fact that that is not relevant testimony, but I do not wish to object to it.

Q. When Private Rogers came back, he was halted by the sentinel on post No. 1 or not?—A. I don't know whether he was halted by just No. 1 or not, because we had sentinels all along there; but he was halted and advanced by the sergeant of the guard.

Q. Why didn't you advance him?—A. Why, the sergeant of the guard was right there and said, "Never mind, Corporal. I know who it is," and he advanced him himself. He wanted to get the information, I suppose, as soon as possible.

Q. So you were right there when this man Rogers came in and reported to the sergeant of the guard?—A. Yes, sir; within about 30 or 40 feet of him.

Q. Well, I mean, you were within hearing distance?—A. Yes, sir.

Q. Do you know where the officer of the day slept that night?—A. No, sir.

Q. What was the name of the sergeant of the guard?—A. Sergeant Reid.

Q. Of what company?—A. Company B, sir.

Q. Do you know where this Sergeant Reid is now?—A. No, sir.

Cross-examination by the Accused:

Q. Corporal Wheeler—A. Yes, sir.

Q. You are a pretty old soldier, aren't you?—A. Yes, sir—have seen quite a bit of service, sir.

Q. You served some little while with Captain Macklin?—A. Yes, sir.

Q. Did he have, as far as you know, any confidence in you as a noncommissioned officer?—A. Why, I always thought he had, sir; yes, sir.

Q. He sent out certain patrols, you testified, on that night of the 13th of August?—A. Yes, sir.

Q. Were those patrols that he sent out selected men? For instance, was Ash, the man that was sent down to the ferry, was he a selected man, selected by the officer of the day particularly?—A. Yes, sir; Ash was selected particularly by the officer of the day. He had me to step my relief out to one side and had about recognized all of us, and he said, "Oh, yes: this is Corporal Wheeler." and he said, "I want you to take this patrol up to the tenderloin district."

Q. Why did he select Ash, Corporal?—A. Why did he select Ash?

Q. Yes.—A. I suppose he selected him because he was a quiet, peaceable man.

Q. And knew his business?—A. And knew his business. A quiet, responsible man, who would carry out what he was told to do.

Q. And you felt that he had that same confidence in you, did you?—A. Yes, sir; I did; from the way he spoke.

Q. Did he make any patrols himself there, in addition to the patrols of the enlisted men he sent out?—A. I think he must have.

Q. And after all these duties had been completed, and feeling that it had been satisfactorily completed, relying upon the fact that you were an old soldier and you had some confidence in Captain Macklin and he an equal amount of confidence in you, you had this conversation relative to the cause of the patrols being sent out: is that the idea?—A. Yes, sir.

Q. It was not a question of any order—A. As a duty or anything of that sort; no, sir; it was not.

Q. It was simply in that capacity?—A. Yes, sir.

Q. And the talk you had with Captain Macklin was a very free and open one?—A. Yes, sir. He was standing at one side to receive the reports of the noncommissioned officers after the patrol, and I reported to him and asked him for permission to ask him this question, and there was no harm about it.

Q. There was no reservation about his manner, was there? He gave you that permission fully and freely, did he?—A. Yes, sir.

Q. Corporal, did you report to the officer of the day there, in connection with that conversation, any information you had about it?—
A. Why, I can not just understand the question.

Q. Well, I think I can clear your mind on that. As I understand your direct testimony, you said you had a conversation with Captain Macklin, which was occasioned by your asking what was the purpose of those patrols having gone into town, and he said that a Mrs. Evans had reported to the commanding officer that she had been assaulted by a soldier of the command, and that in consequence of that report the commanding officer had directed the officer of the day to send patrols to take all the men back into the barracks, in order to avoid any possibility of those men getting into any trouble in Brownsville.—A. Yes, sir.

Q. Now, did you go on to explain to the officer of the day any matter that had been within your knowledge with respect to that assault?—A. Yes, sir; I understand now. Then I explained to him. I says, "Oh, yes;" and also he says that she reports that they are continuously annoyed by the soldiers, you know. Then I says to the officer of the day, "Why, she couldn't help being annoyed by the soldiers, if annoyed at all, because she is living right here all amongst them." He said, "Is that so? Whereabouts?" Then I pointed out to him the house, and I said, "I understand three families live in there." He said he didn't know it, and then I went on and said, "I think there is a mistake about Mrs. Evans or anybody else being annoyed." He said, "Do you know these other people living in that house?" I told him I did not know, but would be able to find out, because I was well acquainted with a girl in service there.

Q. Who was that girl, Corporal?—A. Her name was Viola Taylor.

Q. Where is she living now?—A. I don't know. I left her in Brownsville.

Q. Is she living down near Laredo?—A. I don't know. I haven't heard from the girl since I left there.

Q. Is she the daughter of a soldier?—A. Of a retired soldier, B Taylor, of the Ninth Cavalry.

Q. Go on.—A. He said, "I wish you would try to find out." I said, "Very well." And as soon as I got a few spare seconds I reminded the sergeant of it and told him I wanted to step over and find it out. He said all right—because I was anxious to have the matter investigated and have that sort of trouble let out—and so I stepped over and saw the young mistress and asked her if she was still in service there, she said ye—

The JUDGE-ADVOCATE. So far as concerns any report the witness made to Captain Macklin which may have been the basis for some of Captain Macklin's actions, there is of course no objection to this witness stating just what he reported to Captain Macklin; but so far as his stating to the court here just what he did and what they told him, that, it seems to me, is inadmissible on the ground that it is absolutely hearsay and can not come under the head of *res gestæ* at all. But if the witness will merely state, and if counsel will ask him to state, what he reported to Captain Macklin in consequence of the trip made by him, there will be no objection at all on the part of the prosecution.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, in answer to the objection of the judge-advocate, at the risk of being a little roundabout and somewhat tiresome, I asked this particular

witness on the stand a number of questions, the sole purpose of which was to show the nature of the conversation he was having with the officer of the day on that particular night, and I wanted to see from the witness what character of conversation it was—that it was not any private report that was made to him, but was opened up by a question that was asked by the officer of the day, and as the result of that particular question all this matter that the witness is now testifying to came within the personal knowledge of the officer of the day and affecting his mental attitude with respect to the different charges upon which he is being tried.

THE JUDGE-ADVOCATE. May it please the court, so far as the witness continuing his answer and stating what he was told by any one up in this tenderloin district, or by Mrs. Evans or the people in that vicinity, I object to that as hearsay testimony. But if he wants—if counsel will change the form of the question, and ask him what he reported to the officer of the day, and if the witness will state as near as he can remember the substance of what he told the officer of the day, there is absolutely no objection to it; but there is a decided objection to the witness stating here to the court something that may be entirely different from what he told the officer of the day, or that may go considerably more into detail or less in detail; I do not know and have no means of telling, now, but if the corporal will just state what he stated to Captain Macklin there will be no objection.

COUNSEL FOR THE ACCUSED. The statement made in the form of official report takes it out of hearsay, and there can be no objection. But if you were attempting to establish before this court some fact, and were attempting to establish that fact by means of hearsay testimony, that testimony would be clearly inadmissible. But, may it please the court, I am attempting to establish no fact through the means of this hearsay testimony, given by this witness. The sole purpose of that hearsay testimony was to establish what was the mental attitude of the officer of the day on that night—the night that is covered by this specification upon which he is being tried, and how his mental attitude affected his performance of his duty as officer of the day, which put him into a condition to accept seriously or not the report which the judge-advocate has made the basis of his prosecution in this case. This conversation being testified to as having been had with the accused does not establish a single fact in evidence, and it is competent—the most competent testimony that could appear before this court.

THE COURT. I would like to ask the counsel for accused if this witness will later testify that he reported these things he related to the officer of the day?

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, the cross-examination of this witness is intended simply to cover a question brought out by the prosecution in this case, and at the present time we have no knowledge as to whether or not we shall introduce this witness as a witness of our own to establish the conversation in this case. This is simply to clear up a matter brought out by the prosecution.

THE JUDGE-ADVOCATE. As I stated before, the prosecution has no objection to the witness stating just what he told Captain Macklin, or as near as he can remember what he told him—there is absolutely no objection to that, because that undoubtedly had something to do

with the formation of Captain Macklin's ideas. But as to the witness coming up here and stating, "I did so and so, and so and so and so told me such a thing," the prosecution does object to that.

The COURT. I would like to ask whether the objection is meant to apply to the answer already recorded?

The JUDGE-ADVOCATE. I have no objection to the answer already recorded. But I do object to the witness stating what he had learned from other people.

The COURT. On the ground of what?

The JUDGE-ADVOCATE. On the ground that it is absolutely hearsay evidence, and it has not been brought out that he reported those facts in that way to the officer of the day. It is merely an objection to the form of the questioning. We object because of the fact that it has not been shown that what he is now telling the court was, as near as he can recollect it, just what he told the officer of the day and which formed a basis for the officer of the day's attitude on the question.

The accused, his counsels, the reporter, and judge-advocate withdrew and the court was closed, and on being opened the president announced as follows:

The objection of the judge-advocate is not sustained. The witness will continue his answer.

The question and the last answer of the witness were reread by the reporter. Whereupon the witness continued his answer as follows:

A. So I asked her for the names of the families who lived in this house; she verbally spoke them out to me, and for fear I would forget them—I wanted to have them correct—I asked her to write them down for me, so she got up and got a piece of paper and a pencil and did so; and I asked her—I was looking for this information—I explained it to her; she said, "Oh, yes; my mistress has spoken to me about it," and she said, "It will be nice, I hope you do get it straightened out," and she handed me the piece of paper and I returned to the guardhouse with those names and waited for the officer of the day to come. He came there to meet the next patrol that came in, and just as soon as he met the patrol and they reported to him, I stepped up and handed him this piece of paper. Mrs. Evans's name was the first one on the paper, and he said, "This is the one that inclined to make us trouble, and I am very glad you got this, Corporal, and I will report this to the commanding officer, and we will investigate this right away." He says, "I don't think anybody will disturb Mrs. Evans or anybody else. There is not an officer that believes a word of this." And that was about all the conversation between us.

Q. From your investigation, Corporal, and the report which you made to the officer of the day, what impression did you get from Viola Taylor as to the truth of this assault that was alleged to have been made?

The JUDGE-ADVOCATE. I object to that question as calling purely for a matter of opinion.

(The question was withdrawn.)

Q. Did you make any report to the officer of the day, the result, as it appeared to you, of your investigation as to the truth of this alleged assault upon Mrs. Evans? Do you understand me, Corporal?—A. Well, now, I think I do. That is, you want to understand what Miss Taylor said to me about it?

Q. I think you have told that briefly—not briefly, either—but what I want you to do is to tell me what you told the officer of the day as to the result of this conversation with Viola Taylor—the result with respect to the truth of that report of the alleged assault upon Mrs. Evans? Do you understand me now?—A. Yes, sir; I think so. I stated to the officer of the day that Miss Taylor told me that her madam told her that she did not think it was—said Mrs. Evans was kind of flighty, anyhow, and might have bumped her head against a post or the porch, or something of that sort, and thought some one grabbed her. She didn't tell a word of it. They were staying right in the house and didn't hear any alarm from her. As I understand, that is the question you want to get at?

Q. Yes. And that was Mrs. Byron, was it, she said was her madam?—A. I don't know whether that was the name or not.

Q. She lived in the same house?—A. She lived in the same house with Mrs. Evans; yes, sir.

Q. Corporal, you told the officer of the day the location of this house, didn't you?—A. Yes, sir; I tried to point it out to him.

Q. And what was that location? In what district of the town was that house located?—A. Right near the—the house set right between the street that ran along and divided the post from the town and the next street. I understood that was the tenderloin district out over there—whatever the tenderloin district might be—that was the location of the building.

Q. Corporal, who was the musician of the guard that night?—A. Musician Howard Robinson of D Company.

Q. Did he know the location of Captain Macklin's quarters?—A. I couldn't say that he did, but he should. As a rule, all the musicians knew where the officers lived at after they had been a while at the post.

Q. Did you hear any instructions given by the officer of the day about waking him for reveille?—A. No, sir; I did not hear the instructions.

Q. That was the usual practice, wasn't it?—A. Yes, sir. Always, as a rule, when the officer makes about his last round to the guard-house he leaves word with the musician to wake him at a certain time—to blow "first call" and then go to his quarters and wake him up.

Q. What was the time at which you made that last report to the officer of the day about this conversation—about what time of night was it?—A. That was about 10 o'clock.

Q. The next time that Captain Macklin was down at the guard-house was when? You stated it in your direct testimony.—A. About a quarter of 11; something like that.

Q. You spoke of Corporal "Burnett." That was Corpl. Ray Burdett, wasn't it?—A. Burdett; yes, sir; I called him Burnett.

Questions by the Court:

Q. You stated that Private Rogers came back and reported to the sergeant of the guard that he had waked up Captain Macklin?—A. Yes, sir.

Q. Did he state anything else; is that all he said?—A. I never heard any more conversation; I think that is about all he said. The sergeant of the guard asked him did he wake up the officer of the day; he said "yes, sir," and came on back to the guard.

Q. Was that the man's name, Rogers—Private Rogers?—A. Yes, sir; that was his name.

Q. What time was that?—A. Well, I guess at that time it must have been something like fifteen or twenty minutes to 1; I didn't take the time, but it must have been about that time.

Q. Who was the sergeant of the guard?—A. Sergeant Reid, sir, of Company B, Twenty-fifth.

Q. Did the sergeant send this man down there shortly after the guard was formed?—A. Yes, sir.

Q. About how long was he gone?—A. I should think it must have taken him about eight or ten minutes, if he hurried up—had he went down like he should have; in that case it wouldn't have taken him over eight or ten minutes.

Q. Was the guard formed soon after the shots were fired and soon after the trumpets blew?—A. Well, we formed the guard during the shooting. The guard was formed before the trumpeting.

Q. About what time was the shooting?—A. About eighteen minutes past 12 o'clock, sir.

Redirect examination by the JUDGE-ADVOCATE:

Q. This shooting kept up about how long did you state?—A. I think about fifteen or twenty minutes.

Q. And Private Rogers was sent away in the early part of the shooting, wasn't he?—A. Yes, sir.

Q. Immediately after the guard was formed and immediately after the "call to arms" was sounded, wasn't it, or before?—A. Well, I guess right after the "call to arms" had been sounded; it was all did in a very short space of time.

Q. You are not absolutely certain as to whether the "call to arms" was sounded and then he went right afterwards or as to whether he went and then the "call to arms" came right afterwards?—A. Oh, I know he didn't go before; that was the first thing, the call to the guard, and having the "call to arms" sounded was the first thing; he didn't go until we got this first call from No. 2 post.

Q. They sent Corporal Burdett and two privates up there, and at the same time sent a man to the officer of the day's quarters? So they started this man off to the officer of the day's quarters very soon after the call from No. 2 post was heard?—A. Yes, sir.

Q. By whose order was the "call to arms" sounded, do you know?—A. I do not, sir.

(Excused.)

The court then, at 12.30 o'clock p. m., adjourned to meet at 9 o'clock a. m., April 18, 1907.

ROGER S. FITCH,
First Lieutenant, First Cavalry,
Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 18, 1907.

The court met pursuant to adjournment at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of April 17 was dispensed with.

The judge-advocate addressed the court as follows:

Before introducing the next witness, I wish to state that it was shown by the testimony of Lieutenant Grier in the Penrose court-martial, and later in this court-martial, that he met Acting First Sergt. Samuel W. Harley, of O Company, while he, Lieutenant Grier, was on his way to the company quarters, and that this Sergeant Harley was apparently going toward Captain Macklin's quarters and so told Lieutenant Grier, and I merely wish to call this witness now to clear up that point.

SAMUEL W. HARLEY, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. What is your name, present occupation, and residence?—A. My name is Samuel W. Harley; Harrisburg, Pa.; I am a teamster.

Q. Were you ever in the United States Army?—A. Yes, sir.

Q. How many years did you serve as a soldier?—A. Lacking fourteen days of sixteen years.

Q. In what company and regiment were you, if any, during the month of August, 1906?—A. Company C, Twenty-fifth Infantry.

Q. Who was in command of that company at that time?—A. Captain Macklin.

Q. Is he the accused in this case?—A. Yes, sir.

Q. On the night of August 13, 1906, was there any shooting in the vicinity of Fort Brown?—A. Yes, sir.

Q. Did you, after that shooting began, leave the company barracks and start for the officers' quarters?—A. Yes, sir.

Q. With what purpose?—A. I was looking for my company commander to find out what steps to take in regard to the company—as I woke up and did not hear "call to arms."

Q. Did you meet anyone while you were crossing the parade ground?—A. Yes, sir; I met Lieutenant Grier I guess about three-quarters of the way across.

Q. And did he halt you and speak to you?—A. Yes, sir.

Q. What did he say?—A. He says, "Sergeant, where are you going?"

Q. What did you say?—A. I told him I was looking for my company commander; that we were being fired on; and he says, "Where is he at," and, waking up from sleep, I told him I didn't know; and he says, "Well, go and fall the company in under arms; I will take charge."

Q. Are you sure that Lieutenant Grier told you that he would take charge of the company?—A. Yes, sir.

Q. Are you sure that it happened at that time and not later on that he told you he had been directed to take command of the company?—A. He told me at that time. He says, "I will take charge." Told me to fall in.

Q. He did not, however, order you not to go for Captain Macklin, did he?—A. No, sir.

Q. Did you continue on toward Captain Macklin's quarters or not?—A. No, sir; I returned back in a double time, or a run, back to the company.

Q. So, did you, on any occasion that night, go to Captain Macklin's quarters?—A. No, sir.

Associate counsel for the accused here addressed the court, as follows:

May it please the court: We thank the judge-advocate for the introduction of this particular testimony to clear up that point as to whether or not Sergeant Harley did visit Captain Macklin's quarters. We don't wish to cross-examine him on that point. There is one question I would like to ask him.

Cross-examination by the ACCUSED:

Q. Sergeant, where did you sleep in your company barracks that night?—A. In rear of the orderly room; room of the first sergeant.

Q. You say you did not hear "call to arms" that night?—A. No, sir.

Q. So you were not awakened by it?—A. No, sir.

Examination by the COURT:

Q. What did waken you that night?—A. The firing woke me, sir.

Redirect examination by the JUDGE-ADVOCATE:

Q. Had you been drinking on the night of August 13 at all, or were you very tired?—A. I was very tired.

Q. Had you been drinking at all during the day?—A. Well, yes, sir; I drank a couple of glasses of beer that evening just about retreat, right after retreat.

Q. Whereabouts did you drink this?—A. Down near the colored saloon.

Q. At Allison's saloon?—A. Yes, sir.

Q. Are you sure you didn't have three or four glasses of beer?—A. No, sir; I didn't have three or four. It's very little I drink, anyway; never did drink any to amount to anything.

Q. Had you been on a practice march that day, the 13th?—A. I don't remember; I don't think we were.

Q. But you were very tired that night, were you?—A. Yes, sir.

Q. What time did you go to bed?—A. I went to bed, I think, between 9 and 10 o'clock; I am not sure, I didn't keep any track of time.

Reexamination by the COURT:

Q. Was there any call sounded after you woke up that night? Any call to arms sounded after you woke up that night?—A. No, sir.

Q. Didn't hear any call to arms at all then that night?—A. No, sir; didn't hear any at all.

Q. After you woke up did you hear any trumpets sound at all that night?—A. No, sir.

Q. You say you were awakened by firing?—A. Yes, sir.

Q. What firing?—A. Well, the firing of guns.

Q. Firing of guns?—A. Yes, sir.

Q. And that the call to arms had already sounded and you didn't hear that?—A. No, sir; I didn't hear that.

Q. Did you hear the firing after the call to arms had sounded? Is that it?—A. Yes, sir.

Q. About how much firing was there that wakened you, and in what apparent locality was it?—A. Well, the firing—I don't know how many shots there were; I couldn't say, but it sounded to me, though, like six-shooters and Winchesters firing, because when I woke up that's the first thing I listened to see whether I could hear any of

our guns or not, and I can tell the difference between our gun and any other, the same as the operator can tell the sound on the—

Q. Sergeant, you are sure after you wakened there were no more trumpet calls in the way of alarm sounded in the garrison?—A. No, sir; not as I know of.

Q. But still there was sufficient firing going on to arouse you from sleep?—A. Yes, sir.

Re-direct examination by the JUDGE-ADVOCATE:

Q. Sergeant Harley, were you undressed at the time?—A. Yes, sir.

Q. Did you, after you were wakened, put on your clothes?—A. Yes, sir.

Q. Did you get any arms?—A. No, sir.

Q. Before leaving the barracks?—A. No, sir.

Q. And then you left the barracks as soon as you had gotten dressed and started across the parade ground?—A. Yes, sir.

Q. And met Lieutenant Grier about three-quarters of the way over?—A. Yes, sir.

Q. How long do you suppose it took you to get dressed? You had no light in the quarters did you?—A. No, sir; but I kept my clothes where I could get at them, and the clothes I put on I suppose I could put on in about thirty-five seconds, 'cause I just slipped on my shoes—didn't lace them up—and put on my trousers and grabbed my jacket and hat on the run, and I got out very quick. What clothes I put on I could put on in thirty seconds and get out, and probably if I had time, maybe less, but I didn't have time. I know the clothes I put on I could put on in thirty seconds.

Recross-examination by the ACCUSED:

Q. Who was noncommissioned officer in charge of quarters of C Company that night?—A. Sergeant Brawler.

Q. Did he come down to see you?—A. Yes, sir; he come down and when I ran out he says, "Sergeant, shall I unlock the gun racks?" and I told him to wait for orders.

Q. Did he come down before you had gotten up out of bed?—A. Well, he come down just about the time I ran out.

Q. He didn't arouse you, though?—A. No, sir.

Q. You think it was the firing that actually aroused you—not any man in the company?—A. The firing that actually aroused me I am pretty sure.

Reexamination by the COURT:

Q. About how many shots did you hear fired after you woke up?—A. I don't know, sir; I couldn't say.

Q. About how long did it continue?—A. Well, I couldn't say that, because that's something I didn't pay much attention to and I couldn't make any statement on it whatever. I don't think, at the time, because when a person wakes up out of a sleep and through excitement, why, time is liable to be shorter or longer a good deal.

Q. Was firing going on when you met Lieutenant Grier?—A. Yes, sir.

Q. Was it going on when you got back to your company?—A. Yes, sir; just when I got back; yes, sir.

Redirect examination by the JUDGE-ADVOCATE:

Q. Sergeant, when you met Lieutenant Grier, was there considerable firing going on, or just scattered shots?—A. Well, it seemed to be kind of scattered.

Q. And when you went back to the company, after you had met Lieutenant Grier, you say the firing was still going on; was there any considerable volume or scattered shots?—A. Well, it was about the same.

Q. Did it sound any nearer or any farther away than the firing you first heard? The firing that woke you up.—A. Well, it seemed to be farther away.

CHARLES HAIRSTON, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, residence, and present occupation.—
A. Charles Hairston, No. 410 First street northwest, Washington, D. C. Occupation, janitor.

Q. Do you know the accused? If so, state who he is.—A. Captain Macklin.

Q. Were you ever a soldier?—A. Yes, sir.

Q. In what company and regiment have you served?—A. Company B, of the Twenty-fifth Infantry.

Q. What rank did you hold?—A. Private.

Q. Were you a private in Company B, Twenty-fifth Infantry, on August 13, 1906?—A. Yes, sir.

Q. Where were you stationed at that time?—A. Fort Brown, Tex.

Q. Did you go on guard on the morning of August 13?—A. Yes, sir.

Q. To what relief were you assigned?—A. First relief.

Q. And to what post?—A. No. 3.

Q. Was No. 3 a post that was kept up during the day as well as during the night?—A. Yes, sir.

Q. Where did it extend during the day?—A. Extended during the day in rear of the officers' quarters, and after retreat in the evening in rear and front.

Q. So that between retreat and reveille you walked entirely around the officers' line, keeping them—A. On the left.

Q. Who mounted guard as officer of the day at the same time you went on guard?—A. Captain Macklin.

Q. Did he inspect you at any time when you were on post?—
A. Yes, sir; inspected me between half past 4 and 5 o'clock in the evening.

Q. And did he inspect you again when you went on post, about 10.30?—A. No, sir.

Q. You were on post, or supposed to be on post, from 10.30—
A. Until 12.30.

Q. At or about midnight August 13, you were on post, were you not?—A. Yes, sir; I was on post.

Q. Did you hear any unusual sounds about this time, coming from the direction of town?—A. No, sir.

Q. Did you hear any sounds of shooting at this time, coming from the direction of town?—A. Yes, sir.

Q. What did you do?—A. At first when the shooting come up I had just got toward the corner of Major Penrose's quarters, and he rushed out. At the time he asked me what was the matter and I told him I think they were firing upon the soldiers' quarters, and he said, "Have the trumpeter of the guard sound call to arms," and so I did give the order to No. 1, and about that time he began to sound call to arms, and I ran across from his quarters to the company.

Q. To what company?—A. Company B, and after the company was formed and the roll was called I come back to my post, and then after I went back to my post Sergeant Reid, sergeant of the guard, sent word by Private De Saussure to have me call Captain Macklin at once, and I went to the door and knocked on the door, rapped something like three or four times, and he answered.

Q. What did he say?—A. He said, "All right," just in that tone, and I told him the sergeant of the guard wanted him at the guardhouse at once, and he says, "All right," so I turned in and walked down the walk for a few steps.

Q. Down which way?—A. Back. Turned to the right.

Q. Toward Major Penrose's quarters?—A. Yes; I didn't walk around the post any more.

Q. After this shooting you continued merely to walk up and down in front of the officers' quarters, and did not longer continue to go around them?—A. No, sir.

Q. So, after you walked back toward Major Penrose's quarters, or in that direction, what did you do?—A. Went back and called him again.

Q. How did you call him this time?—A. Called him again, just in the same tone, and told him they wanted him at the guardhouse at once, and he said "all right," again.

Q. Did you knock this time?—A. Yes, sir; knocked the same way.

Q. Then what did you do?—A. Turned and went off again for a few minutes, and he didn't seem to come out, and I went back again and said the same thing.

Q. How did you call him this time?—A. Just in the same way I did the first time.

Q. Did you knock?—A. Yes, sir.

Q. With your rifle or your hand?—A. No, sir; with my hand.

Q. And did he reply?—A. Yes, sir.

Q. What did he say?—A. He says, "All right; I will get up right now." That's the last word.

Q. Then what did you do?—A. I left; then about that time Corporal Burdett met me in about 40 or 50 feet of the house and asked me if I could get Captain Macklin up. I told him no; and he said, "Come; I will get him up." So he went and he rapped on the door and he told Captain Macklin then the whole results and what was the matter.

Q. What did he say?—A. He told Captain Macklin to get up; they were shooting on the quarters; they wanted him at once. So he gotten up and he come out of the house immediately; I guess a minute after he told him.

Q. I hand you this photograph and ask you if you recognize it.

If so, as what [handing witness picture, marked, for convenience, No. 3, already in evidence and hereto appended and marked "3"]?—

A. Officers' quarters.

Q. Whereabouts—what post?—A. At Fort Brown, Tex.

Q. Which end of the officers' quarters is it?—A. This is the west end, next to the river.

Q. What is that small building on the right?—A. Quartermaster clerk's residence.

Q. Can you see in the picture the building that you believed at the time was occupied by Captain Macklin?—A. Yes, sir; this building; on this side of it were the side I was thinking he were living [indicating the first set of officers' quarters, in the center of the picture].

Q. You believed on the night of August 13, 1906, that Captain Macklin lived in that building shown in the center of that photograph, but in the side toward the west—toward the river?—A. Yes, sir; on the west end.

Q. Have you since found out differently?—A. Yes, sir.

Q. Which side?—A. Left. On the east side.

Q. So that on the night of August 13 you were under the impression that Captain Macklin lived on the west side of the house shown in that picture?—A. Yes, sir.

Q. And the number of that house is what?—A. No. 12, sir.

Q. Was that the house you went to to call him?—A. Yes, sir.

Q. On the night of August 13?—A. Yes, sir.

Q. Was it at that house that Corporal Burdett knocked?—A. Yes, sir.

Q. Do you know how Corporal Burdett happened to be there; what duty he was on when you met him?—A. Yes, sir; he was sent over, I think, by Major Penrose's order.

Q. What for?—A. Guardian of the ladies—officers' wives.

Q. These ladies were in what officer's quarters?—A. I am not sure. I don't know whether they were in Lieutenant Grier's quarters or Captain Lyon's. One of the two. I don't remember.

Q. Was Private De Saussure one of the men with Corporal Burdett on this duty?—A. Yes, sir.

Q. Are you able to remember now the name of the other man, or state who you think he was?—A. No, sir. I don't know exactly who they were; seemed to me it was Private Rogers or Battle; I don't remember; one of those two men.

Q. You don't remember, however, for certain?—A. No, sir.

Q. In this house—this double house, No. 11 and 12—was there any light at all?—A. Yes, sir; it was a dim light; seemed to me a light were turned very low.

Q. Which side of the house was it on—on the west or east side?—A. On the west side.

Q. Was this a very dim light or not?—A. Yes, sir; a very dim light, sir.

Q. Are you sure that it was from this house, either 11 or 12, that Captain Macklin came when Corporal Burdett finally called him?—A. Yes, sir; he came out one of the doors, but I was such a distance from the house I could not tell exactly which house he came from. I was about 40 feet—about 50 feet, I guess—from the door when he came out.

Q. So you left Corporal Burdett before Captain Macklin came out?—A. No, sir; Corporal Burdett left me and went off down the walk.

Q. You were which way from Captain Macklin's house at the time Corporal Burdett was knocking at the door and at the time Captain Macklin came out, a minute or so later? Were you to the east of Captain Macklin's house or to the west?—A. I was to the east.

Q. You had gone back walking your post?—A. Yes, sir.

Q. Are you very familiar with maps?—A. Yes, sir; I think I understand that one.

Q. Did you ever see a map like that before?—A. Yes, sir.

Q. Whereabouts?—A. In Washington.

Q. When you testified before the Senate committee?—A. Yes, sir; but I didn't understand that one as well as I does that one.

Q. Was it the same kind of a map as that?—A. Yes, sir; it was as large, but different drawing.

Q. (Explaining map to witness.) This northern or left-hand side of the map represents a portion of Brownsville, Tex.; this place marked "road" is the road dividing the post from the town; here are D Company barracks, B Company, C Company, and the vacant barracks; here's the guardhouse; here's the administration building, and this is the line of officers' quarters. Here's the Rio Grande River. Now, can you take this pointer and point out on the map Major Penrose's quarters, first?—A. [Witness places pointer on building marked "A."]

Q. Now point out on the map the small building occupied by the civilian quartermaster clerk.—A. [Witness indicates small building marked "B."]

Q. Point out the quarters that you believed, on the night of August 13, 1906, were occupied by Captain Macklin.—A. [Indicating building marked "12"—the western side of the building.]

Q. Which are the quarters you afterwards ascertained he lived in?—A. Here in No. 11.

Q. Hairston, you were on post at call to quarters and taps on the night of August 13?—A. Yes, sir.

Q. Did you see the officer of the day about the time, or just prior to the time, he received the reports of check roll call?—A. Yes, sir.

Q. Where was he when you first saw him?—A. Standing in the middle—I saw him when he left his quarters and went out in the middle of the parade ground.

Q. How close were you to his quarters when he left them?—A. I think I was something like 100 yards down.

Q. Could you see him and recognize him, or could you just tell some one was leaving there, and then afterwards—hearing the reports—knew it must be the officer of the day?—A. Yes, sir; I could recognize him by his saber rattling, and then I naturally knew his walk.

Q. You were nearly 100 yards away when he left his quarters?—A. Yes, sir.

Q. And did you hear the noncommissioned officers report?—A. Yes, sir.

Q. And afterwards did you notice where the officer of the day went?—A. Yes, sir.

Q. Where did he go?—A. He went across between B and C Companies—seemed to me he went right in between quarters B and C.

Q. This was a dark night, was it not?—A. Yes, sir; it was a dark night, but you could see from the lights at the barracks and the lights on the officers' line; you could see anybody walking across the parade ground.

Q. You couldn't see him all the time, but you could catch him here and there under the lights, when he was walking across?—A. I could see him pass the lights. You could always see anyone cross the parade ground at night.

Q. Why did you pay such particular attention to where Captain Macklin was going?—A. Well, any sentinel on post will watch the officer of the day, always.

Q. Did you again see Captain Macklin?—A. Yes, sir; saw him about fifteen or twenty minutes after that come across the parade ground and went to his quarters.

Q. How close were you to his quarters when he entered them?—A. I think I was something, well, about 25 yards, I think, down the walk—down the road.

Q. Did you notice which side of the building—marked 11 and 12 on that map—he entered?—A. Yes, sir; but I don't know which side he went in, but I know he went in that building.

Q. Which way were you walking at the time he entered the building? Let's see; you kept the buildings on your left?—A. I was coming up toward his house.

Q. Toward the river?—A. Yes, sir.

Q. And in front of the quarters, or not?—A. Yes, sir; I was in front.

Cross-examination by the Accused:

Q. Hairston, if you will just remember in your answers to just take your time to it and think of what you are going to say and talk as loud as you can. Can you remember that?—A. Yes, sir.

Q. How long had you been in the service?—A. I think I lack about seven days of serving eighteen months. Enlisted May 26, 1905, at Muskogee, Ind. T., and was discharged November 19, 1906, Fort Reno, Okla.

Q. What was the general condition of your company as far as regards the length of service of the men?—A. Well, some men there had in as high as twenty-six years.

Q. Very few had as little service as you?—A. Oh, yes, sir; eight or ten in the company had less service than I.

Q. Had you ever been under fire?—A. No, sir.

Q. What kind of a night was it on the 13th of August when you were on guard?—A. It was a dark night.

Q. And your post was No. 3?—A. Yes, sir.

Q. Will you come up to the map? Just point out the limits of your post during the nighttime.—A. [Witness indicated that the post extended from the front of quarters marked "A," westward along the front of officers' line; between quarters marked "12" and building marked "B;" thence southward to the southwest corner of quarters 12, and thence eastward in rear of the officers' quarters to starting point.]

Q. Can you give any estimate of the time it took you to walk

around that post?—A. Yes, sir; I could go around it in at least eight or ten minutes.

Q. Now, after the shooting began that night, you only walked on a certain portion of the post; will you point that out?—A. Yes, sir. From No. 12 to A [indicating front of line of officers' quarters]. The front, not in rear.

Q. Were there many lights along that walk?—A. Yes, sir; I don't know exactly whether from the quarters or far from the quarters, but something like that—it is very light. You could see good; see persons walking down the walk any place.

Q. Do you remember what was the closest light to quarters No. 12?—A. No, sir; I could not, but I think it is the light right in toward this second quarters, or at the corner of these.

Q. You think there is a light between quarters 11 and 12 and 9 and 10?—A. Yes, sir.

Q. You don't think the nearest light to No. 12 is between quarters 9 and 10 and 7 and 8?—A. No, sir; I don't think it is, but it might be. I could not tell.

Q. Were there any lights on the parade or bordering the parade, from that walk, over to the company's barracks?—A. I don't remember; I don't think it were.

Q. How far away on a night like that was could you distinguish people walking across the parade?—A. I could distinguish them all the way, for the reason why, lights over here show up out to the middle of the parade ground. There is light in front of these barracks, and then that shows the whole parade ground or any person crossing it.

Q. What is the character of those lights—quartermaster lights, the same as you had at Niobrara, for instance?—A. Yes, sir.

Q. Do you happen to know who lived in quarters No. 10?—A. No, sir; I don't remember. I halfway believe that was the officers' mess, I am not sure. Somewhere along there, but I wouldn't say it was.

Q. You think it was the officers' mess; No. 10?—A. Yes, sir.

Q. You happen to remember who lived in No. 9?—A. No, sir; I doesn't.

Q. In No. 3?—A. Lieutenant Grier; I am not sure.

Q. You think Lieutenant Grier lived in No. 3?—A. Yes, sir.

Q. Happen to know who lived in No. 7?—A. No, sir.

Q. The quarters you say you went to to waken Captain Macklin on that night were quarters No. 12?—A. Yes, sir; quarters No. 12, sir.

Q. Did you ever testify before on this point, Hairston?—A. No, sir.

Q. Proba'ly you don't understand me. Have you ever been examined as a witness in any case before, dealing with this Brownsville affair?—A. Oh, yes, sir; I have.

Q. Where were you a witness?—A. I was examined before Captain Lyon at Fort Reno, Okla., and examined by Gilchrist Stewart at El Reno, and I was examined by the Senate committee in Washington.

Q. Was any question asked you by the Senate committee as to the location of Captain Macklin's quarters?—A. I think there were; yes, sir.

Q. Do you remember how you described it?—A. Yes, sir; had the map turned around wrong.

Q. You were confused on it. You first described his quarters as being those of Major Penrose?—A. Yes, sir.

Q. And later, when you got your mind straightened out as to which side of the post you were on, you made another location of Captain Macklin's quarters?—A. Yes, sir.

Q. Just let me make this plain to your mind. When you were asked where Captain Macklin lived you first pointed at this house, didn't you, "A"?—A. Yes, sir.

Q. And later, when you were instructed by the committee that the location of Fort Brown was such that this was the eastern half of the garrison, and this the western half toward the Rio Grande River, you pointed out another house?—A. Yes, sir.

Q. Do you happen to remember, after this explanation was made to you and after your mind was made clear as to the particular line of officers' quarters, what house was pointed out as Captain Macklin's?—A. Yes, sir; second house from the end there.

Q. Just come up and point it out to the court.—A. This one, No. 12.

Q. You think you pointed out No. 12?—A. Yes, sir.

Q. How were those houses numbered, Hairston, from A to the river?—A. I don't understand. I never paid any attention to the number of the houses.

Q. That is, quarters No. 1, were they farther from the river than quarters No. 12?—A. No, sir; closer. No. 1 as situated? Yes, sir; it was farther.

Q. Hairston, who occupied that last house on the officers' line, the one nearest to the river?—A. They says, so I learned later, that the quartermaster clerk occupies that.

Q. You didn't know that at that time?—A. No, sir; I didn't know at that time. I thought the sergeant-major occupied that.

Q. And who do you think occupied the second house at that time—the second real set of double quarters?—A. I first say the quartermaster clerk occupied that.

Q. What do you mean by that time? Do you mean the time you were testifying before the Senate committee?—A. Yes, sir.

Q. When was that, Hairston?—A. I don't exactly know; I think it were on the 21st or 22d day of February.

Q. Did you tell the Senate committee, Hairston, that the sergeant-major occupied that same house?—A. I think I did, sir.

Q. As shown on the map here?—A. I think I did.

Q. And that the quartermaster clerk occupied the second house?—A. Yes, sir.

Q. And the third house was occupied by Captain Macklin?—A. That's what I first stated.

Q. And in order to show you that there was no confusion in your mind as to whether or not it was a single or double set of quarters, did they ask you—

By the JUDGE-ADVOCATE. May it please the court: I think that inasmuch as the testimony given by this witness before the Senate committee, or copies of that testimony, are in the possession of both the defense and the prosecution in this case, that if it is the intention to impeach the testimony of this witness, or to show that he made previous inconsistent statements, that, after he has stated here as to

where Captain Macklin's quarters were and where he went, the proper method of impeaching his testimony is to read to him from this report of the Senate committee the questions and answers as recorded there, and not continue the line of questioning as it is at present being conducted.

By ASSOCIATE COUNSEL. I regret very much, may it please the court, that the form of my examination has found disfavor with the judge-advocate. I have not the slightest desire in the world to impeach the testimony of this witness. I believe this man is telling the truth in his direct examination and in his cross-examination and in his examination before the Senate committee. I am trying to show, may it please the court—if I have to state that—the fact that this man is a young and inexperienced soldier, who, under certain unusual conditions, brought out in his testimony, was naturally confused; and his mind was confused, not only with unfamiliarity with the occupancy of these buildings at Fort Brown, but also by the incidents of that night, and in every statement, may it please the court, that is of record, that we have before us, he has shown that confusion by pointing out the different localities of the building occupied by Captain Macklin. It is only fair to us, it is only fair to the truth, that this man does actually show to the court whether or not he is certain of that building or whether or not he is confused about it. He is willing to tell me the truth, just as he is willing to tell the prosecution, who introduced him as a witness, and he is willing to tell the court. I am trying to get out nothing from him; I believe he is a credible witness.

By the JUDGE-ADVOCATE. In view of the statement of the associate counsel, the prosecution has no objection to the continuation of this line of questioning. It was my belief at the time that the defense was attempting to attack the witness's credibility, but, inasmuch as such is not the case, the prosecution, of course, can have no objection to testing the accuracy of the witness's knowledge or what impression he had at that time.

By the PRESIDENT OF THE COURT. The objection of the judge-advocate being withdrawn, the counsel will continue his examination.

(Last question, as recorded, was read to counsel, and completed as follows:)

Q. Did they ask you the number of the house occupied by Captain Macklin—ask you in this form: "Was it quarters 9 and 10?" and did you reply: "Yes; marked 9 and 10?"—A. I think I did; by not understanding the diagram of the map.

Q. I misquoted. I should have said it was explained to you by these Senators asking if it was quarters 9 and 10 in a conversation between themselves; but was that your idea before them, that it was quarters 9 and 10?—A. Yes, sir; I think it was, after getting the quartermaster clerk's house mixed up.

Q. Hairston, when you first went into what you think was Captain Macklin's quarters, what officers had you seen in the post?—A. No one more than Captain Lyon, Lieutenant Grier, and Major Penrose.

Q. Just when did you go over to Captain Macklin's quarters after you had first seen Major Penrose?—A. Immediately after I left the company from Major Penrose.

Q. Do I understand you to mean, Hairston, that after Major Penrose rushed out of his quarters that night and gave you this order to

have the alarm sounded, that you rushed across the parade and then back to your post?—A. Rushed across the parade to Company B and then back to my post, and by the time I got back to my post I met Private De Saussure and he gave me that order, and I called Captain Macklin.

Q. And on your return from the company towards your post you met Private De Saussure?—A. Yes, sir.

Q. And he gave you the order from the sergeant of the guard to waken Captain Macklin?—A. Yes, sir.

Q. And in response to that order you went over to his quarters, as you thought?—A. Yes, sir.

Q. What officer besides Major Penrose had you seen, if any?—A. Captain Lyon and Lieutenant Grier, I think—I am not sure—but I think I saw them coming across the parade ground.

Q. I would like you to be sure. Think about that.—A. I am not sure, but I think that's the only two I seen.

Q. Do you think you saw them?—A. Yes, sir; I does.

Q. You think you saw both Lieutenant Grier and Captain Lyon?—A. Yes, sir.

Q. You don't know what quarters Lieutenant Lawrason occupied, do you?—A. I think it was the officers' mess quarters; I don't know exactly, but I think it were those.

Q. Could you point that out on the map?—A. No, sir; I couldn't; I was not well acquainted.

Q. You would not be able to point out Lieutenant Lawrason's quarters?—A. No, sir.

Q. Was his house a furnished house, do you know?—A. No, sir; I never were in it.

Q. Do you know whether it was a lighted house that night?—A. No, sir; I doesn't.

Q. The house you actually went to to waken Captain Macklin you say was lighted?—A. Yes, sir; had a dim light in it.

Q. Were there any shades on the front windows?—A. Yes, sir.

Q. Were those shades drawn?—A. Drawn; yes, sir.

Q. Was there any furniture on the porch?—A. I never noticed, sir; I am not sure of it.

Q. Was there any table on the porch?—A. Don't remember that.

Q. Was there any saber?—A. Don't remember that; never seen any.

Q. Now, Hairston, you say that later that night Corporal Burdett came up from the guardhouse, inquired from you why you had not wakened Captain Macklin and said that he would do it; is that right?—A. Yes; he said, "Come with me, I will wake him." just like that, and he went and he done the rapping and calling, and he explained the matter to the captain, what was the matter.

Q. You didn't actually go up to the house with Corporal Burdett, did you, Hairston?—A. Yes, sir; I did.

Q. Did you see Captain Macklin and speak to him?—A. Yes, sir; spoke to him; I didn't see him, but heard him when he spoke; he said all right, he would get up right away.

Q. You didn't see Captain Macklin come out of that place?—A. Yes, sir; I did.

Q. Where were you when you saw him?—A. I was about 30 or 40 feet down the walk, east from the door, when he came out.

Q. You were on your post, as I understand you, and about 30 or 40 feet along the walk there?—A. From the door: yes, sir.

Q. Do you happen to know about what time that was—what time of night?—A. Well, I think mighty near—guessing—something like about 10 or 15 minutes to 1.

Q. It was considerable time after Major Penrose had left his quarters, was it?—A. Yes, sir; a good while.

Q. What did you think of that shooting that night?—A. What did I think of it? I couldn't think anything of it no more than I thought it was civilians firing on the quarters.

Q. Did you think you were in any danger there?—A. Indeed I did.

Q. Why so?—A. Because I didn't know but what they may shoot at me.

Q. You were armed, weren't you?—A. I were. That couldn't keep them from shooting at me at all.

Redirect examination by the JUDGE-ADVOCATE:

Q. You didn't hear any bullets, however, did you, Hairston?—A. Yes, sir.

Q. How many did you hear?—A. I couldn't count them: I couldn't say how many there were. I don't know, quite a lot of them, it seemed to me like.

Q. Did you have any watch with you that night?—A. No, sir. I didn't.

Q. No means of telling the time, did you?—A. No, sir.

Q. So it is purely guesswork at the time, the accurate hour Captain Macklin left his quarters. You have no means of being certain that it was 10 or 15 minutes to 1, have you?—A. No, sir, but my just guessing at the time; something like that, I think.

Q. It may, however, have been considerably later or considerably earlier, might it not?—A. Yes, sir; might have been later or might have been earlier: I couldn't tell.

Q. Did Corporal Burdett go to the same house and rap—that is, the same house at which you rapped?—A. Yes, sir.

Q. Are you absolutely certain about that or not?—A. Yes, sir: I went with him right back to the same door.

Q. Did you ever rap or did you see him rap at all at the door of No. 11?—A. No, sir.

Q. Did you go on that side of the little division railing at all?—A. No, sir.

Q. So that there might have been a saber against that door and you not have seen it?—A. Yes, sir; might have been there, but I didn't see it.

Q. When you stated in your cross-examination that Corporal Burdett explained the situation to Captain Macklin, did you mean he explained it to him after he left the house or just while he was calling to him?—A. No, sir; at the door, after he called him and he answered; why, he explained what was the matter there.

Q. Just how was this? Corporal Burdett knocked at the door?—A. Yes, sir; Corporal Burdett did the knocking.

Q. And did Captain Macklin then reply?—A. Yes, sir.

Q. And then Corporal Burdett made this explanation, did he not?—A. Yes, sir; made this—

Q. And then a minute or so later Captain Macklin came out?—A. Yes, sir.

Q. Did he stop then to talk with Corporal Burdett?—A. No, sir; didn't stop then at all; when he came out the door he came out buckling on his saber, and he ran right down towards the guard-house.

Q. At the time you were examined before the Senate committee you had never had very much experience in reading maps, had you?—A. No, sir.

Q. Did you ever make a road sketch?—A. No, sir; I tried to, but I didn't.

Q. Did you ever use a compass at all?—A. No, sir.

Q. Are you familiar with the points of the compass?—A. No, sir.

Q. You say you have tried to make a road sketch?—A. Yes, sir. What I had reference to, thinking you meant to plan out the roads around the garrison. I thought that was what you meant. I never had any experience with that; I tried to, but couldn't.

Q. But now you feel more familiar with maps since you have testified so much?—A. Yes, sir.

Q. And been shown different maps?—A. Yes, sir.

Recross-examination by the ACCUSED:

Q. Was there any dividing rail between the quarters down there, Hairston—11 and 12, for instance, or 9 and 10?—A. No, sir; I don't think it were. Now, what does you mean? Does you mean between the yards or the porches between the quarters?

Q. I mean between 11 and 12?—A. Porches?

Q. I mean a rail way.—A. I think there was a rail way between all the quarters; I am not sure, but I think there was.

Q. And in that double set of quarters there is a railing dividing 9 and 10?—A. I am not sure, but I think there was.

Redirect examination by the JUDGE-ADVOCATE:

Q. And between 11 and 12, do you think?—A. Yes, sir.

Recross-examination by the ACCUSED:

Q. Now, Hairston, what I mean is this: That in that quarters, 11 and 12, down there, there is a porch running along the entire double set of quarters.—A. Yes, sir.

Q. Is there any railing on that porch that divides the quarters 11 from the quarters 12?—A. That's what I say—I think they are.

Examination by the COURT:

Q. You stated, Hairston, that you went to quarters No. 12 and wakened Captain Macklin?—A. Yes, sir.

Q. And spoke to him and he spoke to you?—A. Yes, sir.

Q. Did you go inside of the outer door of these quarters?—A. No, sir; I did not.

Q. Then you spoke to him through the door?—A. Yes, sir; I knocked; he answered each time I knocked.

Q. Can you state it was Captain Macklin's voice that answered you?—A. No, sir; I could not. It were a coarse voice, sounded as a man's voice.

Q. Did the voice indicate to you what was the location of the man, whether he was on the ground floor or the upper floor?—A. Yes, sir; seemed he was on the upper floor, sir.

Q. Upstairs?—A. Yes, sir.

Q. You went back again with Corporal Burdett?—A. I went three times by myself, the last time with Corporal Burdett.

Q. And while you and Corporal Burdett were together did Corporal Burdett speak to Captain Macklin in the same way—through the door?—A. Yes, sir.

Q. He didn't open the door?—A. No, sir.

Q. And you heard Captain Macklin speak to him?—A. Yes, sir.

Q. Still from the upstairs?—A. Yes, sir; from upstairs.

Q. Did it have a sound as if it might have been from the other side of these quarters upstairs?—A. I couldn't say it was; it sounded very low, you could hear him—just as if you would be upstairs and holler down to a person, the person couldn't tell very well what part of the house you were in.

Q. You never saw Captain Macklin until he came downstairs and out the door?—A. Until he came out the door.

Q. And you are sure he came out of the house you went to originally?—A. Yes, sir.

Q. Will you point out the place where you were when you heard the firing?—A. Yes, sir. Standing right at the corner of this building. [Indicating northeast corner of building marked "A."]

Q. You were right there, were you?—A. Yes, sir.

Q. What did you do, first thing?—A. The first thing, Major Penrose came out to me right here in the road and says to me, "What is the matter?" [Indicating that Major Penrose came to him at point in front of building marked "A."] And I said, "I think they are firing on the quarters," and he said, "Well, have the trumpeter of the guard sound 'call to arms,'" and I were somewhat pretty much interested in it myself, and I ran then across to Company B with Major Penrose and I stands here in front of the company until the company was formed and the roll was called and I seen all the men were out—I was that much interested; wanted to see—and then I came back to my post, and come place right along in here [indicating point along sidewalk about opposite center of officers' line], I don't know exactly, but some place along in here between these buildings, and Private De Saussure came to me and told me—the commander of the guard, Sergeant Reid, said for me to call Captain Macklin.

Q. Who was that you said came up and told you to call Captain Macklin?—A. Private De Saussure—member of the guard.

Q. How long was this you have just narrated—about how long do you think that was after the firing?—A. After the firing? I think it had been eight or ten minutes—something like that.

Q. Could it have been half an hour?—A. No, sir; it wasn't that late.

Q. Was your post on the sidewalk or in the road?—A. On the sidewalk, sir; supposed to walk in the road, but I always walked on the sidewalk at night.

Q. You walked on the sidewalk at night?—A. Yes, sir.

Q. Before that firing began you had been walking your post, had you?—A. Yes, sir: been walking 'round and 'round, until the firing came up and caught me there.

Q. Did you notice any lights in the officers' quarters—any of them—before the firing?—A. There was a light in Major Penrose's quarters, sir.

Q. There was?—A. Yes, sir.

Q. In any other set?—A. None, to my remembrance. What I mean is, none I remember I seen before I came to Captain Macklin's.

Q. When you went up there with the corporal to Captain Macklin's house, you heard a voice, you say. Was that Captain Macklin's voice, did you think, or did you know?—A. I wouldn't say it were Captain Macklin's voice. I could not swear that, of course; I believe it was a man's voice—very coarse voice—and it sounded to me like his voice. I couldn't say it was him; I didn't know—I didn't see him, and couldn't swear to something I didn't see.

Q. The first time you went to his quarters, you say, was how long after the firing?—A. I guess eight or ten minutes after the firing ceased.

Q. What did you do when you got to his quarters?—A. Not anything more than went up and rapped on the door and he answered, and I told him they wanted him at the guardhouse at once, and he said, "All right."

Q. You say he answered?—A. Yes, sir; he answered. At least I thought it were him. A man's voice—I could not believe it were any other than him. His family were not there at the time and I didn't think anyone was living in the quarters but him alone.

Q. Did you recognize his voice—Captain Macklin's?—A. I think I did, sir.

Q. What did you do then?—A. I returned then, walked my post a little distance down the walk and came back again after he didn't come out, and called him again and told him the same words.

Q. Why did you come back again?—A. Come back again because I was interested—him not getting up.

Q. What did you do then?—A. I called him again and explained the same results, and I walked down then and meets Corporal Burdett coming up to see what was the matter.

Q. Well, as near as you can estimate, how long did all this take—from the time you first went to his quarters until he finally came out?—A. I guess twenty or twenty-five minutes.

Q. When you went to arouse Captain Macklin, did you call his name at any time?—A. Yes, sir; called "Captain Macklin."

Q. You did?—A. Yes, sir.

Q. The first time you called Captain Macklin, did you just call his name?—A. Yes, sir; I called him just in an ordinary—just like any private would call any officer, and he answered, "Hello!"

Q. That's all he said?—A. Yes, sir; "Hello!" I told him they wanted him at the guardhouse at once, and he said "All right"—just in that tone—"All right."

Q. The second time you called Captain Macklin what did he say?—A. I said the same words; he said the same.

Q. And the third time you called?—A. Did the same thing.

Q. You said the same and he said the same?—A. Yes, sir.

Q. The fourth time, when Corporal Burdett went back there and called, you went with the corporal, you say?—A. Yes, sir.

Q. What did the corporal say?—A. The corporal he called him and, after he answered, the corporal explained the matter to him.

Q. Just state what he said.—A. The corporal told him to get up; they wanted him at the guardhouse at once; they had been firing on the quarters and they wanted him, and he said, "All right," and I

turned from the door and so did the corporal, and he came out a minute after I turned from the door.

Q. Did you stand on the porch until he came out?—A. I walked on down the walk, I guess about 30 or 40 feet, something like that, from the door.

Q. I would like to ask him if he has an idea, if he can think satisfactorily to himself to tell the court, about how long it was from the time he saw Major Penrose until he saw Captain Macklin come out of his quarters?—A. I guess it was very near 1 o'clock; something like that. I don't think it was any more than 8 or 10 minutes to 1—I know it was pushing close—from the time the shooting took place, about 10 minutes to 12, until that time.

Q. You think from 10 minutes to 12 until 1?—A. Yes, sir.

Q. You said when you came out of Captain Macklin's quarters that you went off down the walk?—A. I didn't say I come out of his quarters.

Q. When you came off the porch of the quarters, after you left Corporal Burdett?—A. Yes, sir.

Q. Take the pointer there and show exactly where you went after you came out.—A. After leaving, Corporal Burdett went away to the front of me at the time—front of quarters No. 12—I came back in that direction. I was right along in front of these quarters somewhere when he came out. [Indicating that he walked from quarters No. 12 to a point eastward about in front of quarters Nos. 9 and 10.]

Q. You testified, I believe, that in No. 12 quarters there was a light burning?—A. Yes, sir; it were.

Q. Where was that?—A. It seemed to me a dim light. I couldn't tell whether the light were downstairs or on the steps or where it were, but I could see a dim light. The window shades were down, and I couldn't tell where the light was at. That's the reason I went to those quarters and knocked.

Q. Are you sure that light was in No. 12 quarters?—A. No, sir.

Q. You say you are not sure it was in No. 12?—A. No, sir; not perfectly sure.

Q. What do you mean? You mean it might have been in No. 11; is that what you mean?—A. What I mean—I didn't know whether it were in 12 or not, but I could see the light halfway shine under the blind, as far as I could see. Seemed there was a lamp turned down low, from the length of the light that were in the house.

Lieut. W. C. JOHNSON, Twenty-sixth Infantry, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. Wait C. Johnson; first lieutenant, Twenty-sixth Infantry; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do. Captain Macklin, Twenty-fifth Infantry.

Q. Were you ever stationed at Fort Brown, Tex.? If so, please state, approximately, the date of your arrival and the date of your departure.—A. I was stationed there at two different times.

Q. The last time is the one I have particular reference to.—A. From about the 20th of May until the 5th of July.

Q. What year?—A. 1906.

Q. You left there the 5th day of July?—A. Yes, sir.

Q. Did practically the entire garrison leave about the same time?—

A. The entire garrison left, with the exception of Lieutenant Thompson and about 40 men.

Q. The garrison between the dates you have just mentioned consisted of certain companies of the Twenty-sixth Infantry, did it not?—A. It did. The Third Battalion.

Q. And from the 5th of July on until the arrival of the First Battalion of the Twenty-fifth Infantry from Fort Niobrara, the post was garrisoned merely by Lieutenant Thompson, and how many men?—A. About 40.

Q. Where did Lieutenant Thompson live while you were there, do you remember the number of his quarters?—A. I think it was quarters No. 8.

Q. He was living there at the time you left?—A. He was.

Q. Which quarters did you occupy during the time you were there?—A. Eleven and 12.

Q. You used both sides of the building?—A. I did.

Q. With reference to the partition wall between the set marked 11 on the map there and the set marked 12; will you please state whether that was a sound proof wall or what kind of a wall it was? Both upstairs and down.—A. To the best of my knowledge, the wall below was plastered, and upstairs, between the back rooms, it was merely a board wall.

Q. Between the two back bedrooms, you mean? The rooms ordinarily used as sleeping quarters?—A. Yes; the ones used as sleeping quarters; that is, the ones we used as sleeping quarters.

Q. Was there a door in the partition between these two bedrooms?—A. There was.

Q. Was that door kept open all the time you were there?—A. During our occupancy of the quarters it was left open all the time.

Q. Was it locked when you left there?—A. Not to my knowledge.

Q. Was there any lock on it, or any key to it that you know of?—A. I think there was a snap lock or bolt on the door, but I never saw a key to it.

Q. And when you left, it is the best of your recollection the door was left open?—A. It is.

Q. Even with that door shut was it possible to hear ordinary conversation from one side of the partition to the other?—A. As I remember, Mrs. Johnson and I used to occasionally talk through the partition, when the door was shut.

Q. That is, you were in the—A. I was in the back room of No. 12 and Mrs. Johnson in the back room of No. 11.

Q. Did you have to raise your voice to do that?—A. Not particularly; I presume I did talk a little louder than I am talking at the present time.

Q. But so far as an obstacle to the carriage of sound is concerned, that wall was not as efficacious as an ordinary division wall between rooms, was it?—A. I should say not.

Q. Even downstairs could you hear people talking on the other side of the partition?—A. Not particularly well.

Q. But you could distinguish the fact they were talking; you could hear mumbling?—A. Oh, you could hear mumbling.

Q. If a person raised his voice you could distinguish what he said, could you not?—A. Yes.

Q. The stairways in No. 11 and 12 started on the ground floor at the rear of the hall, or in the front of the hall?—A. At the rear of the hall.

Q. And thence ran upward towards the front of the house, did they not?—A. Towards the front of the house.

Q. If anyone pounded on the front door of No. 12, could a person in the back room of No. 11 hear equally as well as a person in the back room of No. 12 upstairs or not?—A. No, sir; I don't think so.

Q. Not so well. If the door in the partition between the two back bedrooms was open, would the sound carry approximately the same to either bedroom from either front door?—A. It would, except that it was farther. That's all.

Q. In quarters 9 and 10 which way did the staircases run?—A. To the best of my recollection they ran at right angles to the hall.

Q. And therefore at right angles to the stairways in quarters 11 and 12?—A. Yes.

Q. And in 7 and 8, do you remember which way they ran?—A. Seven and 8, they ran the same as they did in 11 and 12.

Q. That is, parallel to the hall?—A. Parallel to the hall.

Cross-examination by the ACCUSED:

Q. How long did you live down at Fort Brown, Lieutenant Johnson, all together?—A. About four months.

Q. How many houses did you live in down there?—A. I lived the first time in No. 5; the last time in 11 and 12.

Q. Are you intimately familiar with the construction of houses 9 and 10?—A. Not particularly so.

Q. The construction of the double set of quarters 11 and 12 is the same in each side; 11 is constructed similarly to 12?—A. I believe it is.

Q. Do you know positively about that?—A. Well, there is a bathroom on the side of 11 that there isn't on the side of 12.

Q. There is no bathroom on the side of 12?—A. No bathroom in that house?

Q. Yes.—A. Downstairs in the back room.

Q. What is the construction of No. 12 upstairs?

By the JUDGE-ADVOCATE. May it please the court: The next witness, who is outside now and who was not ready to come on the stand at the time I called this witness, has prepared, at my suggestion, four diagrams showing the upstairs and downstairs of quarters 9 and 10 and 11 and 12, and he was quartermaster down there for some time and he probably can, by means of the map, state very clearly how things were.

(Last question repeated to witness as recorded.)

A. One front room and one back room.

Q. What is the connection between the front and back rooms upstairs of 12?—A. A doorway leading through a hall way at the head of the stairs.

Q. Excepting for that doorway the rooms are separate?—A. This little hall way at the head of the stairs, and there is a door from the head of the stairs to the front room and another door to the back room.

Q. But as far as the connection between the front and back bedroom of No. 12?—A. There is no connection between them except those two doors.

Q. What is the length of these quarters, Mr. Johnson?—A. You mean the rooms or the whole building?

Q. The whole building.—A. I should say about 40 feet.

Q. What house did Lieutenant Leckie live in when you and he were stationed there together?—A. In the same house, 11 and 12.

Q. Which side of the house?—A. He was there but a short time after my arrival there the second time; he lived—slept in the back room of No. 12.

Q. Are you sure of that—that he slept in the back bedroom of No. 12?—A. It is the back or the front, I think; and Mrs. Leckie occupied the front room of No. 11 and Mrs. Johnson and myself occupied the back room of No. 11. That is upstairs, and downstairs we used the same rooms.

Q. Any shower bath in quarters No. 11?—A. Yes; out in the rear in the "L."

Q. How about quarters No. 12?—A. Bathroom?

Q. Yes; shower bath?—A. None downstairs; there is a bathroom, but no shower bath.

Redirect examination by the JUDGE-ADVOCATE:

Q. Mr. Johnson, when you stated there is no bathroom in quarters No. 11, you meant there was no bathroom at the time you left there, did you not?—A. No. 11?

Q. Or do you know now?—A. If I stated there was none in No. 11, it was a mistake; I don't remember I stated there was none in No. 11.

Q. I may be unintentionally misquoting you; I thought you stated with reference to bathroom, in either one of the other set of quarters, "there is no bathroom."

By ASSOCIATE COUNSEL. My understanding is he said in quarters No. 12 there is no bathroom between the front and back rooms.

Q. It might have been changed since then, however?—A. Oh, yes.

Q. About what was the depth of each room in the house from front to rear—the front bedroom, do you suppose?—A. About 12 or 15 feet, I guess.

Q. And the back bedroom, what was that? As deep or not?—A. I should say about the same.

Q. The length of the main hall downstairs was about what?—

A. About 20 feet—24 feet.

Q. With reference to the map on the wall, do you recognize the officers' quarters at Fort Brown?—A. I do.

Q. That portion of each side of the officers' quarters that is represented on the map as being almost square, in front, is that two story or one story?—A. Two story.

Q. And the long portion extending from the rear of this front part of each double set of quarters, back towards the lagoon, is that two story or one story?—A. One story.

Q. Was it customary down there at Fort Brown for the officers to sleep with the windows and doors open in the summer time?—A. I can't say about all of them.

Q. You personally did it?—A. I did.

Q. You wanted to take advantage of every breath of air that was stirring, did you not?—A. All that was coming.

Lieut. H. G. LECHE, Twenty-sixth Infantry, a witness for the prosecution, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. Harry G. Leckie; second lieutenant, Twenty-sixth Infantry; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir. Captain Macklin, Twenty-fifth Infantry.

Q. Were you ever stationed at Fort Brown, Tex? If so, please state the approximate dates of such stay.—A. I was stationed at Fort Brown, Tex., from the 6th of September, 1903, to the 2d of June, 1906.

Q. Did you at any time during this stay act as quartermaster of the post?—A. I was quartermaster for about two years of that time; not quite two years.

Q. And are you familiar with the interior arrangement of rooms and the construction of the officers' quarters down there?—A. Yes, sir.

Q. Did you ever live in quarters 11 and 12?—A. I lived in quarters 11 and 12 all the time I was stationed at Fort Brown.

Q. Lieutenant Johnson lived there during part of the time he was there, too?—A. Lieutenant Johnson took the quarters when I left there in June; in fact, he took them a little while before I left there.

Q. So for a short time his family and yours occupied quarters 11 and 12 together?—A. Yes, sir.

Q. But for a considerable period before that you had occupied them by yourself?—A. Yes, sir.

Q. Did you use both sides of the house?—A. Yes, sir.

Q. When you and your wife were living there alone?—A. Yes, sir.

Q. Was there any advantage that the back bedroom upstairs had over the other rooms in the house, so far as comfort is concerned, in the summer time?—A. The back bedrooms were a good deal cooler; you could not sleep in the front bedrooms on account of the heat.

Q. In quarters 11 and 12 did the staircases run at right angles to the front hall way or parallel?—A. Ran parallel.

Q. In quarters 9 and 10 how did they run?—A. Right angles.

Q. And in alternate sets of officers' quarters; that is, alternate double sets of officers' quarters, all the way down the line, as far as the commanding officer's quarters, did this same thing hold true, that one set would have staircases at right angles?—A. The majority of them, but I do not know that all of them did.

Q. You know such was the case in 9 and 10 and 11 and 12?—A. Yes, sir.

Q. About what was the depth of the front bedroom upstairs in quarters 11, approximately?—A. About 10 by 14, I guess.

Q. Which was the depth, measured from front to rear, the 10 or the 14?—A. I don't understand you.

Q. Fourteen across the front section of the house?—A. Yes.

Q. And 10 feet from front to rear?—A. To the partition between the two rooms.

Q. Then was there a landing or hall way before one came to the back bedroom, or was that adjacent to the front one?—A. There is a small landing about 4 feet square that you entered into the front room going straight up the steps, and you turned to the right to enter the door to the back bedroom.

Q. So that the back bedroom and the front bedroom have merely a partition wall between them for the greater part of their width?—A. They have a partition running between the two sets of quarters.

Q. I mean a transverse partition between the front bedroom and the back bedroom in quarters No. 11.—A. Yes, sir.

Q. There is no hall way extending up?—A. No hall way; nothing but a partition made of "ceiling."

Q. And about what's the dimension of the back bedroom in quarters No. 11?—A. About 11 by 14.

Q. Is 11 the depth or width?—A. Eleven is the depth.

Q. So that each of these rooms is about 14 feet wide from east to west, and the front one about 10 feet deep and the rear one about 11 feet deep?—A. Yes, sir.

Q. Did the stairway leading from the ground floor to the second story, in quarters No. 11, start on the ground floor in the rear part of the hall and then run towards the front of the house, or vice versa?—A. It started in rear of the part of the house at the back door entering the room before you went into the kitchen.

Q. And thence inclined?—A. Entered at the partition of the two upstairs rooms.

Q. So that it ran from the lower floor to the second floor in a direction inclining towards the front of the house?—A. Yes, sir.

Q. So one would have to go to the rear of the hall, then turn to go upstairs?—A. Yes, sir.

Q. Now, the partition wall between quarters 11 and 12; was that a sound-proof wall, or not?—A. The partition between quarters 11 and 12 on the ground floor was plastered, two coats of plaster both sides. I mean by that two coats of plaster on 11 side and two coats of plaster on 12 side, with 2 by 4 uprights, and laths on both sides; and the partition upstairs was "ceiling," about one-quarter inch by about 4 inches wide; just common ceiling.

Q. I will now hand to you, Mr. Leckie, certain diagrams marked "W," "X," "Y," and "Z," and ask you to please state to the court what these diagrams are and by whom they were made.—A. Diagram "W," made by myself, and it shows the quarters Nos. 11 and 12, Fort Brown, Tex., first floor 11 and 12; letters indicate doors, numbers indicate windows; scale, 6 feet equal to about 1 inch. "X" represents second story of quarters 11 and 12, Fort Brown, Tex.; letters indicate doors, numbers indicate windows; scale, 6 feet to an inch. "Y," floor plan, first story, quarters 9 and 10; letters indicate doors, numbers indicate windows; scale, 6 feet to 1 inch. Drawn by me. "Z" indicates second story to quarters 9 and 10, floor plan; letters indicate doors, numbers indicate windows; scale, 6 feet to 1 inch. Drawn by me.

Q. Quarters Nos. 11 and 12 were practically the same in construction and arrangement of rooms, were they not?—A. Yes, sir; with the exception that quarters 11 had a bathroom upstairs and quarters 12 did not. The bathroom of 11 was taken from part of the front room—partitioned off from the front room upstairs.

Q. During your occupancy of this house did you keep the partition door locked between the two back bedrooms, or not?—A. No, sir.

Q. Was that kept wide open during the summer time?—A. It was kept open during the summer time, as a rule.

Q. Was there any key to this, so far as you know?—A. There were latches on both sides.

Q. You don't remember whether there was a lock on it or not?—A. There was a lock; I don't know whether there was a key to it or not.

Q. You never saw a key to that lock?—A. I don't remember.

Q. And downstairs there was a door in the partition between 11 and 12, in the one-story addition to the house, just after you left the two-story part of the house; is that not correct?—A. There was a door that entered the kitchen to No. 12 from a little room that had the ice box in it for No. 11; the ice box was usually kept there.

Q. So the way to go from No. 11 to No. 12 downstairs would be to go through this door, and upstairs the only means of communication was—A. Between the two back bedrooms.

Q. Could you hear from one side of the house to the other what was going on in the other side—conversation, singing, etc.?—A. If the wind was not blowing and it was quiet you would know some one was talking, but you could not understand the conversation.

Q. That is downstairs?—A. Downstairs.

Q. But upstairs, where there was only a board partition between the two back bedrooms of this part of the house, that did not make as great an obstacle to the carriage of sounds as an ordinary plastered wall between rooms, did it?—A. No.

Q. On a still night, when there was no wind blowing, would knocking on the front door of No. 11 or No. 12 be heard equally well in either of the second-story back bedrooms?—A. If the doors were open I think it would.

Q. The depth of the front hall, from front to rear, is what?—A. About 24 feet.

Q. And about how far is it from the front door to the foot of the front stairs?—A. About 20 feet—21 or 22.

Cross-examination by the Accused:

Q. Mr. Leckie, what interruption was there in the ceiling downstairs of quarters 11 and 12?—A. In the ceiling, sir?

Q. Yes; in the hall?—A. The hallway is plastered—the ceilings for the hallway and then the flooring—but there is no building paper that I remember.

Q. I mean it, of course, wasn't extended the entire hallway, because there was a stairway; but was there any other interruption?—A. Not there, sir.

Q. This is drawn to scale, as I understand. [Referring to plans drawn by witness.]—A. No, sir; drawn from memory.

Q. Approximately?—A. Yes. That shows 12 by 12 those rooms; they are either 10 by 12 or 12 by 14; I didn't remember; downstairs rooms.

Q. Just where is the stairway here in No. 12?—A. There's the hall to 11; there's the hall to 12; there's the front door to 12. "E" is the back door to 12, and "F" is the back door to 11. [Witness indicated on drawing marked "W."]

Q. You were asked with respect to knocking on the door of quarters No. 12 being heard in the back bedroom of No. 11, and whether or not that would be as distinct as heard in that room as if the knocking was on the front door of quarters No. 11.—A. Yes, sir.

Q. What is your estimate of that, Mr. Leckie, again, please?—A. I think if the doors are open, sir, it would be as distinctly heard from one door as the other—either 11 or 12. If the doors are closed, of course it would make a good deal of difference, because the frame of the house is practically one house, and then that thin partition between the two quarters; that is, if the wind was not blowing. The wind generally prevails from the south, and when the wind is from the south you would very often be in the back room and not hear the front door bell ring.

Q. Have you ever had that experience of being up in the back room and having the doorbell ring or having a knock on the door and not heard it?—A. Yes, sir. I have slept through retreat twice; in the back room when the wind was blowing you could not hear calls.

Q. How far does that lagoon extend in the back of the sets of quarters at Fort Brown east and west with regard to the officers' sets of quarters at Fort Brown? Does it extend in the rear of any of the sets of quarters?—A. It extends in rear of all the quarters, sir, except quarters marked "B," the small quarters on the river bank.

At this point, there being a motion before the court to adjourn, the judge-advocate addressed the court as follows:

The judge-advocate would like to know the pleasure of the court before adjourning as to whether it desires him to summon Corporal Burdett. I know his address, but did not summon him before because he was not one of the men who made unsuccessful attempts to waken Captain Macklin, and I did not know until the arrival of Halston here a few days ago that Burdett had anything to do with calling Captain Macklin. I can request the adjutant-general to wire for him if it be the desire of the court to have Corporal Burdett here. I should have done so myself had he made an unsuccessful effort to call Captain Macklin; but as long as he was successful I did not see the necessity of possibly delaying the conclusion of this trial just to wait for a man who did succeed.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew, and the court was closed, and on being opened the president announced, in their presence, as follows:

The court wishes the judge-advocate to subpoena Corporal Burdett.

(The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocate resumed their seats.)

(Cross-examination, Lieutenant LECKIE, continued.)

Q. Mr. Leckie, in your testimony this morning you spoke of certain instances of not having been aroused or had your attention called to knocks on your front door while living in quarters 11 and 12. Do you recall any further instances of that fact?—A. A number of times when some one would knock on the door we would know it by their cards being left or by an orderly telling me he had been there, but on account of the wind blowing, being in the back room, I did not hear it.

Q. Were you stationed at Fort Brown a considerable length of time?—A. Yes, sir.

Q. At all seasons of the year?—A. Yes, sir.

Q. And you are familiar with the weather conditions down there at these different periods of the year?—A. Yes, sir.

Q. What is the condition with respect to wind during the month of August at Fort Brown?—A. There are very few days in August that the wind is not blowing hard. It is so hot in August you can hardly stand the heat; you can't sleep.

Q. Have you found it is impossible to sleep on an August night at Fort Brown when the wind is not blowing?—A. I could not say positively an August night; there have been nights there I could not sleep on account of the heat, in the up-stairs rooms.

Q. Did you think that in order for anyone to sleep to any degree comfortably during a summer's night there it was necessary for the wind to be blowing?—A. Unless a norther was up the conditions in August—when I was there—in would be necessary to be some breeze to sleep in those upstairs rooms.

Q. Will you please go to the map? On that map, Mr. Leckie, there is represented a walk running from the line of officers' quarters over to the line of company barracks. [Indicating walk running from quarters No. 9 towards the garrison gate.] Will you please state whether or not that walk is correctly located on that map?—A. The walk is not correctly located. The walk should begin here on the right-hand side of the road going out of the garrison, if you went straight across parallel to the walk.

Q. So that a man going from the Elizabeth street gate to quarters 9 and 10 would always be on the left-hand side of that walk, would he?—A. Yes, sir; the walk runs—there is the location of the walk. [Indicating a line from eastern side of the garrison gate and parallel to the walk shown on the map and terminating about opposite the west side of quarters No. 8.]

Q. Are you familiar with the location of the street lights that border the walk along the officers' quarters at Fort Brown?—A. Yes, sir.

Q. Will you please locate on that map the nearest street lamp to quarters 11 and 12?—A. The nearest street lamp is there, sir. [Indicating point opposite quarters marked 8.] Then the next lamp is in front of the administration building. [Indicating point opposite administration building on east side of road.]

Q. There is no street lamp between quarters 10 and 11, is there?—A. No, sir; not unless it has been put there since I was there.

Q. You left there when?—A. I left there the 2d of June, and I have been there since three times.

Redirect examination by the JUDGE-ADVOCATE:

Q. Mr. Leckie, during the summer did the evening breeze ordinarily blow up from the Gulf, from a southerly direction?—A. The prevailing winds are from the south always.

Q. On days in mid-summer, even when there was no breeze during the day, very often a high breeze would spring up in the evening, would there not?—A. Yes, sir.

Q. And was it not usual for this breeze to die down before midnight?—A. No, sir; as a rule, the breeze died down a little bit before daybreak.

Q. And was this breeze fairly regular in its velocity, or some nights would it blow strongly and others just barely blow?—A. Some nights it would blow a good deal stronger, but, as a rule, there was always a hard wind at night.

Q. That was during the two summers you were there?—A. Yes, sir.

Q. These various occasions you have described, when you failed to be awakened by people knocking at your front door, or on occasions when you believed that people had knocked on your front door, the wind was always blowing hard at these times, was it not?—A. The wind was blowing. Oftentimes I would be awake—not be asleep. It would be in the afternoon or in the morning, but the wind would be blowing—the house would be open.

Q. Front doors wide open?—A. The front door was open; all the doors in the house.

Q. So that there was a draft right through the house from rear to front—a strong draft?—A. Yes, sir.

Q. Did you ever fail to hear anybody knocking at the front door when you were awake in the quarters—in the main part of your quarters—and when there was no breeze blowing?—A. That I don't know.

Q. Your best recollection is, however, that you did not or that you have?—A. I don't remember any time, when the wind wasn't blowing, of anyone knocking and my not hearing them if I was in the house—in the downstairs part.

Q. Do you recall any instance of anyone knocking hard at the front door and calling your name and your not hearing them, even though at the time you happened to be upstairs?—A. No.

Recross-examination by the Accused:

Q. What kind of a sleeper are you, Mr. Leckie?—A. I am a light sleeper.

Examination by the Court:

Q. I understood you to say that on two occasions you slept through retreat. Do you mean by that that you had left an order to be called at the time and hadn't heard the call, or that you failed to hear the gun and the trumpets?—A. I mean, sir, the first thing I knew of retreat would be the cannon—the firing of the cannon, the retreat gun.

Q. Meaning you left an order to be called?—A. No, sir; I did not leave any order to be called, but I failed to hear the call, sir.

Q. I would like, with reference to the staircases there in 11 and 12, to ask you in going upstairs, say, in No. 11, when you got at the top of the last stair, what do you find immediately in front of you?—A. A little landing, sir, about 4 feet square, I think, sir.

Q. You are then facing the front of the house?—A. You are facing the front of the house then; yes, sir.

Q. What's next beyond that landing?—A. That landing?

Q. Yes.—A. Then, sir, right in front of you going upstairs is the door to the front room.

Q. First the landing, then the door to the front room?—A. Yes, sir; a landing there, about 4 feet square, and then the door to the front room; and on the right-hand side going up to the landing is a door to go into the back room.

Q. The two doors are there together?—A. Yes, sir.

Q. Is the same not true of No. 12, except the door to the back room is immediately to your left instead of your right?—A. Yes, sir; same thing true of No. 12, except the left instead of the right.

Q. On this landing that you have described, are there any other doors on that landing?—A. None but the two, sir, in 11 and 12.

Q. In that house, quarters Nos. 11 and 12 upstairs, is there not a door that communicates from one to the other upstairs?—A. Yes, sir; in No. 11 it is; in No. 12 it is not.

Q. In No. 11 upstairs you can go from the back room to the front room—A. Through the bathroom. The bathroom is over next to the quarters you used to occupy.

Q. I would like to ask if there is such a difference between the appearance, due to the arrangement of the hall, etc., the appearance of things in building 11 and 12 and the building 9 and 10 as to be very noticeable; if a man should find himself, for instance, in that building, 9 and 10, with the idea that he had entered 11 and 12, would he recognize it from the surroundings—in referring to the little diagram here?—A. The only difference, sir, in 9 and 10 about midway of the hall the steps enter going up; in 11 and 12 you have to go back the full distance of the hall to go up the steps, the steps going from the back room. The doors leading into the front room are the same in both quarters, the hall about the same length, and the rooms about the same size.

Q. How about the door to the back room?—A. About located the same, sir.

Q. A man coming into those quarters and going to the door of the back room would at once discover his mistake?—A. If you could see the steps, sir, a man familiar with the house would discover his mistake; a man not familiar with the house would not, not knowing which way the steps are located.

Q. You don't understand. If a man knew how things appeared in the ground floor of 11 and 12, because the stairway runs from rear to front, parallel to the hall, if that same man found himself downstairs in quarters 9 and 10 on his way to the back room, wouldn't the location of the stairs, the direction of it, tell him at once he was not in 11 and 12?—A. Yes, sir; if he was familiar with the house, it would. If he knew where the stairs were located, it would tell him; if he didn't, it wouldn't, because that's the only difference, except the location of the door to the back room in No. 11 is on the right-hand side of the room facing back of the house and in 9 it is on the left-hand side near the window, and there is a little closet in there under the steps, and the other closet is in the hall in No. 11, under the steps.

Q. I was not paying very close attention in describing that walk. Where is the south end of that walk, the one leading from the Elizabeth street gate; where does it come out on the road to the south?—A. This would be the south end of it. [Indicating a point nearly opposite the line in prolongation of the west side of quarters No. 8.]

Q. That walk that's drawn there in front of the administration building is right?—A. That's about right, sir; it ought to be a little closer to the building. The walk's nearer in here. [Indicating that the walk should be indicated nearer the administration building than it is shown on the map.]

Q. If a man came from the road leading out of the post to that Elizabeth street entrance—if he came from there and went diagonally across to Captain Macklin's quarters, he wouldn't cross that walk at all, would he?—A. From this road?

Q. Yes.—A. No, sir.

Q. And went straight across the parade to Captain Macklin's house, he wouldn't cross any of the cross walks, would he?—A. No,

sir; except the walk here, sir; the walk running from the administration building to the guardhouse. [Not shown on the map.]

Q. Would he cross that road that's in front of the administration building? Would he touch that?—A. He could come across this road, sir. [Indicating road just south of Elizabeth street gate.] He could come into that entrance of the post and come straight across instead of taking that turn in the road towards the river—come diagonally across and not strike any walk, except this walk in front of the house.

Q. And the walk you said from the administration building to the guardhouse?—A. Yes, sir; the walk runs clear across here. [Indicating that walk runs from the administration building to the guardhouse across center of parade ground.]

Q. If he went the same way, then, came from the same gate, and went to quarters 9 and 10, would he cross any walks?—A. He would come across the same two walks. That crosses in there, sir; the road crosses right in here. This road, sir, ought to be where that "X" is. [Indicating point about opposite prolongation of western half of quarters No. 8, intersection of that line and the sidewalk.]

Q. If a man told you he had been in one of those buildings and he went to the other end of the hall downstairs and then went upstairs straight towards the front of the building, would you say he had been in 11 and 12 or 9 and 10? Which building would you say he had been in?—A. I would say he had been in 11 and 12, sir.

Q. What was the size of the garrison of Fort Brown on the two days you have testified you over-slept yourself at retreat?—A. Three companies, sir.

Q. Will you indicate on the map where the formation for retreat took place and which direction it faces, the line?—A. The musicians stand in front of administration building facing the guardhouse. [Indicating point on east side of the garrison road opposite center of administration building.] The place marked "A" is the guardhouse; they stood about where "X" is. Then the companies were in front of their respective barracks. The officer of the day generally stood about the center of the three companies, sir. [Indicating a point near the end of "Fort Brown" and in front of B barracks.]

Q. From your knowledge of the number of musicians present on the post at that time, what would you say was the strength of the field music in that post on these two occasions?—A. From four to five, sir; at times maybe six.

Q. Mr. Leckie—before you leave there—you knew where Major Penrose lived?—A. Only by what I have been told, sir. I know where the commanding officer's quarters are. Quarters A, sir.

Q. About what is the distance from the east end of the commanding officer's quarters down to the west end of quarters No. 12? There is no scale on that map.—A. About 400 feet, sir.

Q. That would be about 130 yards?—A. Yes, sir.

Q. Mr. Leckie, do you remember the front door of quarters No. 11 at Fort Brown?—A. Yes, sir.

Q. Very distinct recollection of it?—A. Yes, sir.

Q. Will you please describe it to the court?—A. It was an inch and a half panel door, with two panels; the lower panels were about 18 inches high, and the upper panels filled the door, with the exception of about 2 feet.

Q. Was it what you would call a heavy or a very light door?—A. It was a heavy door, sir.

Q. Was the front door of quarters No. 12 similar to that in No. 11?—A. Same thing, sir; same material and gotten out at the same time.

Q. Were they double or single doors?—A. Single doors, sir.

Q. Did you ever have occasion while there in quarters 11 and 12 to call to anyone on the inside of the house while the front door was closed—to call through the front doors to them?—A. Not that I remember, sir.

Q. Do you recall anybody ever calling to you through the closed doors?—A. No, sir.

Q. Would it have been practicable for them to have done so? If you had been on the lower floor, would you have been likely to have heard them?—A. If I had been on the lower floor?

Q. And awake.—A. Yes, sir; if they had called loud enough, I would.

Q. How about if you had been upstairs?

By the JUDGE ADVOCATE. May it please the court. The witness has stated that he had no recollection of ever having had such an experience. I think it is pretty much a matter of opinion, unless it is on the ground of expert opinion, but the prosecution will make no objection to the question. I will not make any formal objection.

By a MEMBER. I will withdraw the question.

Q. I understand from several answers you have given, Mr. Leekie, that on two occasions you slept through retreat?—A. Yes, sir.

Q. When the field music sounded the call in front of the administration building?—A. Yes, sir.

Q. You were in quarters No. 11 at the time?—A. Yes, sir.

Q. Slept upstairs in the back room?—A. I slept in the back room upstairs in 11 and 12, part of the time in 11 and part of the time in 12, while I was there.

Q. Do you remember what time of year that was?—A. The first time, sir, was in September, I think, right after we got to Fort Brown in 1903. I don't remember the next time, what time of year it was, sir.

Q. The windows were open, weren't they?—A. Yes, sir; the windows were open to the house; it was warm weather, a warm day.

Q. Do you know whether the front door was open or not on these occasions?—A. I could not say positively the front door was open, sir. I think it was, from the fact that the front door stayed open all the time in warm weather, with the screen door fastened.

Q. Mr. Leekie, how long had you been asleep each time?—A. I don't know how long.

Q. More than half an hour?—A. Retreat is about 6 o'clock, sir, and I must have gone to sleep some time between 4 and 6.

Q. Is there a railing, Mr. Leekie, separating the porch of No. 11 and 12 quarters?—A. No, sir.

Q. There is no railing?—A. No, sir.

Q. Is there a railing separating the porch of No. 9 and 10?—A. Doctor Church put a railing on the east side of the porch and in front of it. I don't know whether he put a railing separating it or not. I don't think he did, sir.

Q. I don't understand the stairs in No. 9 and 10—where they begin

or how they run. I do understand 11 and 12 from the way you describe it. (Witness describes on diagrams Y and Z position, etc., of staircases.)

Q. In approaching 11 and 12, or 9 and 10, is there anything on the porch of either house to make a man readily distinguish one door from the other; any railings or posts or color of the house or anything?—A. No, sir; all the houses are painted the same color.

Q. Is there much difference in trees in front of the quarters, or are there trees?—A. There is a difference in them, sir, but they are all the same kind of tree and of about the same size.

Q. Was there any difference last summer in the vines, or anything of that kind, on the porches there which would readily distinguish them?—A. Not up to June 2, 1906, sir; I don't know about after that, whether there were any vines planted or not.

Q. I would like to ask about lights on that entire parade ground, both in front of the officers' quarters—all of the lights, in fact. Can you give the court an idea of about the number of them, the frequency with which they occur, and the effect of the light? For instance, would there on a very dark night be sufficient light to light up the post?—A. The whole post, sir?

Q. Light it up so you could see plainly?—A. No, sir. There is a light here, sir [indicating point near the sidewalk, opposite west side of quarters No. 8], and then a light right in there [indicating point near sidewalk opposite center line of quarters 3 and 4]. I think, but I am not positive, there's a light between the commanding officer's quarters and quarters 1, along in there, sir. I think—I am not positive.

Q. Then there are not more than three lights on that line?—A. About three, sir. And then the next one is over here. [Indicating intersection of road running in front of officers' quarters and the road running in front of guardhouse.] And then on the center of this walk, sir—center of the parade—there's a light. [Indicating sidewalk shown on map as running from between barracks B and D towards quarters No. 9.] There's a light in front of the administration building. [Indicating a point opposite center of building and on east side of road.] Three lights at the gate, sir, one over the gate at the walk, and two at the big gate. [Indicating Elizabeth street gate.] These lights, sir, are the same lights that were afterwards put up in the new cavalry and artillery post—street lamps.

Q. Coal-oil lamps?—A. Yes, sir; and this light at the south end of the walk coming across the parade, between quarters 8 and 9, threw no light at all at quarters 11 and 12.

Q. And there's no other light between that house and that lamp—that's the nearest light to it?—A. That's the nearest light.

Q. How about the barracks? Wasn't there some lights in front of the barracks?—A. In front of these—used to be I. Company barracks, sir—there's a light there. [Indicating point near walk on south side of barracks marked C.] About opposite the center of the barracks. There's a light in there, sir. [Indicating point near east side of road between barracks marked B and D.] That is all of the lights.

Q. The post was lighted, was it, Mr. Leckie, according to the schedule approved for that post?—A. Yes, sir.

Q. All the lights were up and lighted, authorized?—A. Yes, sir; the lights in front of the guardhouse and light over in front of the hospital.

Q. That being the case, did you consider that the post was well lighted on a dark night?—A. No, sir. There were some other lights, sir, in the upper end—near the corral, and other places.

Q. Suppose you were standing in front of quarters No. 11 and 12 there at night—dark night—could you look across the parade ground and, by the light given by the street lamp which you said was about in this position [indicating point opposite west end of B Company barracks]—could you distinguish people passing along that road—for instance, could you state whether a man going along there was a soldier or civilian, and, if a soldier, whether he was an officer or an enlisted man?—A. No, sir. If a man was directly in front of that light I could tell the object, and I believe I could tell it was a person, but don't believe I could tell whether a soldier or civilian.

Q. Are you nearsighted—are your eyes normal?—A. I think so.

Q. What is the distance across there, Mr. Leckie, about?—A. About 300 feet across there.

Q. About 100 yards?—A. Yes, sir; more than that. About 100 or 125 yards to that light. Oh, that light, you mean? That would be 150 or 160 yards, sir.

Q. I meant under that light—person coming along that road.—A. From in front of quarters No. 11, the walk in front of quarters No. 11, to the light on the west end of B barracks, I believe would be 150 or 160 yards.

Q. Now, from that same light to the east end of the commanding officer's quarters—northeast end of the commanding officer's quarters—about what would be that distance, approximately?—A. Be about—pretty close to 300 yards, I should think, sir.

Q. You don't think that map is accurately drawn, then?—A. No, sir.

Q. Mr. Leckie, under the circumstances as just stated—a man passing under one of those lights—could you see if he had on a saber?—A. If he was right under the light, Captain, you might notice the bright object. I don't think I could tell whether it was a saber or a piece of metal, or what it was.

Q. If it was after "check" and you were sentinel on post and saw a man at that light with a bright object, who would you think it was?—A. I would naturally think it was an officer or sergeant-major. I would think from the conditions it was an officer.

Q. What officer? Any particular officer?—A. I should think, if I was a sentry, that it was the officer of the day coming around for inspection.

Q. And if you knew he was out inspecting what would you think?—A. I would think it was the officer of the day. A sentinel is always looking for the officer of the day.

Q. If you were standing very near quarters 11 and 12, in conversation, say, with the officer of the day, and he left you and walked over towards the barracks, could you follow him entirely across the parade and see between which barracks he went, with the conditions as supposed?—A. Could I see towards which barracks the officer of the day went?

Q. If you were talking to the officer of the day—if you were sentinel

on that post, on the walk near 11 and 12—and the officer of the day left you and struck out across the parade ground towards the barracks, could you continue to distinguish him until he passed beyond the line of barracks on a dark night with the conditions as you described?—A. And not pass under that light?

Q. Not pass under that light.—A. No, sir; I don't think I could.

Q. Between B and C Company barracks, for instance?—A. I don't think I could; not unless he went under some light.

Redirect examination by the JUDGE-ADVOCATE:

Q. If you were sentinel on No. 3 post and walking in front of the officers' quarters, and had seen the officer of the day just a few moments before leave his quarters and start across the parade ground, don't you think it is possible for you to catch him at a sufficient number of places—that is, where he would cross between you and some one of the lights on the other side of the parade—to enable you to judge approximately the direction he was going, towards which particular barracks?—A. Is No. 3 post up and down the officers' line?

Q. Yes.—A. Well, there is only one light between the officers' line across the parade to the barracks; there would be a light in front of the guardhouse and a light in front of the administration building on this walk.

Q. Very good. But if the officer of the day left quarters No. 11, walked over to the point near the end of the name "Fort Brown" on the parade ground, stood there and received the reports, you could identify him then as the officer of the day, could you not?—A. On a dark night?

Q. If you heard him receive the reports there, would you not naturally believe it was the officer of the day?—A. I would naturally believe it was the officer of the day.

Q. And then, if you were in front of the officers' quarters and he, instead of coming towards you, apparently went across the parade ground—unless you saw him pass between you and the light at the west end of B Company barracks, or between you and the light opposite center of C Company barracks, would you not suppose he went between B and C Company barracks?—A. I don't know.

Q. Or in that direction?—A. I couldn't say; it was too dark for me to know where the officer of the day was going.

Q. If you were paying especial attention to the movements of the officer of the day, and you were somewhere along the middle of the line of officers' quarters, and the officer of the day was in the middle of the parade ground and started away across the parade—if he did not pass between you and this light at the west end of B Company barracks, or between you and the light in front of C Company barracks, and did not come towards you, would it not seem to you that he must, instead, have gone in the general direction of a line leading between B and C Company barracks?—A. I would think he would either have gone between B and C Company barracks or gone in B Company barracks.

Reexamination by the COURT:

Q. Please point out again the outside lights around Fort Brown; around the parade ground.—A. One light here, south end of the walk coming across the parade entering from the gate. Another light be-

tween—somewhere near quarters 3 and 4—I think it's a light between commanding officer's quarters and quarters 1. There's a light in front of the guardhouse. Light at the bridge—little bridge that goes across to the hospital. A light in front of the hospital. A light in front of barracks marked C, and a light between barracks marked B and the right-hand side of the road going out of the post—the east side; and one in front of the administration building. Two lights over the gate, one on each side of the main gate, the big gate, and one over the small gate at the walk. All other lights are back in the old post, around in the corral and points up in the old post.

Redirect examination by the JUDGE-ADVOCATE:

Q. Was there not also a light in the middle of the parade ground, near the sidewalk?—A. Yes, a light about the center of the parade on the walk running from the entrance at the gate to the officers' quarters.

Q. Was there not a light near the other sidewalk running from C Company barracks to quarters 2 and 3?—A. No.

Q. Positive of that?—A. Positive.

Q. Those lights that were near the officers' quarters, you have spoken about them as being between quarters "A" and "1," for instance; do you mean actually between the quarters or on the west side of the sidewalk, opposite the interval between these quarters?—A. The walk runs east and west. I should have said they were on the south side of the walk, between the quarters "A" and "1."

Q. That was the case in all those street lamps in front of the officers' quarters; they were over near the sidewalk, were they not?—A. They were right at the sidewalk.

Q. You say your impression is there was a light between the commanding officer's quarters and quarters marked No. 1?—A. Yes, sir.

Q. And then there was another light between the quarters marked 3 and those marked 4?—A. A light right in there somewhere, in front of those quarters. May have been in front of 4 and 5, or somewhere along in there. [Indicating any place between 5 and 3.]

Q. So your recollection as to those lights is somewhat hazy, is it not?—A. No, sir.

Q. You are sure, however, there are no lights down near quarters 11 and 12, or were none at the time you were situated there?—A. I know positively there was not.

Q. And none was ever kept burning there during the time you were there?—A. No street lamps of any kind.

Q. With regard to the front door of quarters No. 11, you said that was a heavy door. Do you mean extraordinarily heavy, or just such a door as you find here?—A. The framing of the door was 2-inch stuff, the panels were an inch and a half.

Q. Do you mean this door was unusually heavy, or was an ordinarily heavy door?—A. It was not unusually heavy; it was a heavy door.

Q. Was there any hand railing separating the veranda of quarters No. 9 from the veranda of quarters No. 10?—A. No; it wasn't.

Q. Are you sure that there was none between the veranda or porch of quarters No. 11 and quarters No. 12?—A. I am sure there was not.

Q. Are you positive that there has never, since the time you lived there, been a hand rail separating the porches of the last two quarters

mentioned?—A. There may have been a rail put there after I left and taken away before I went back again. There was no rail when I went there the last time—in March.

Q. If I would show you a photograph taken a few months ago, and satisfy you that it was taken of quarters No. 11 and 12, which showed there was a railing there, would you still care to make the same statement that there was none there?

By ASSOCIATE COUNSEL. May it please the court: In justice to the witness, I will say he need not accept that admission in that question as correct, if, as I take it, these are the photographs referred to.

By WITNESS. Shall I answer the question?

By JUDGE-ADVOCATE. If it has been objected to, there is no need for your answering that question. How long is it, however, since you were there?

A. I was there in March.

Q. Did you inspect these quarters particularly at that time?—A. I was in the quarters at that time.

Q. So you would have noticed, then, if there had been any hand rail?—A. I would.

By the JUDGE-ADVOCATE: I desire to state to the court that I was laboring under the impression there was a hand rail between there; it looked so in a photograph I myself took of these quarters, and I am not sure. In fact, I think now it is not a hand rail. It is photograph marked No. 4, which was identified by Mr. Grier as being a photograph of some one of the double sets down there, although he was unable to state just which one.

Recross-examination by the Accused:

Q. Do you recognize that photograph, Mr. Lækie? [Handing witness photograph marked for convenience "No. 1," already in evidence as Exhibit 1.]—A. Yes, sir.

Q. Upon close examination, does it bear out your testimony with respect to that walk running north and south from company barracks to officers' quarters, and the location of the lamp with respect to that walk?—A. The photograph does not show the walk, sir.

Q. Look at it closely and see if you notice any distinction.—A. There is a walk running from the administration building towards the guardhouse, but I can't see any walk running from the entrance of the post towards the officers' quarters.

Q. Do you see a lamp-post?—A. That one lamp-post, iron post, was put there when I was quartermaster.

Q. Will you notice the coloring of the ground just below that lamp-post, and at the point where it intersects the officers' line? Is that coloring similar to that walk you described running from the administration building to the guardhouse?—A. No, sir; that walk's a red and yellow brick walk.

Q. You don't think this line shows that—A. This picture was taken slanting; there is too large a difference between the lamp-post and the quarters.

Q. You could only fix that with reference to that lamp-post; the walk?—A. Yes; that's all.

Q. Mr. Lækie, is there any pointed difference between quarters 9 and 10 and 11 and 12 that would strike the eye of a man at night, from the outside?—A. No, sir. If I may state an instance that shows

no difference in the houses: In forwarding report required by the quartermaster-general, which required the dimensions of the quarters and also a photograph of the different buildings, there were only three pictures taken for the officers' line—one for the commanding officers' quarters, marked A; one for quarters from 1 to 12, and one for quarters B. Quarters from 1 to 12 are the same, with the exception of quarters 3 having an extra room on the east side, in their outside appearance.

Q. Would a man previously unfamiliar with the interior construction of either set of quarters—9 and 10 or 11 and 12—be able to know, after he had come out of them, which set of quarters he had been in?

By the JUDGE-ADVOCATE. I object to that question as being purely a matter of opinion.

By ASSOCIATE COUNSEL. I withdraw it, may it please the court. That's all the examination.

Reexamination by the Court:

Q. Does the situation of quarters 11 and 12, at the end of the officers' line, make it any different from the others as to locating it?—

A. It would in the daytime, sir. A dark night it is very hard to tell that B quarters are smaller or any different in construction from the other quarters, but in the daytime there is a road running between quarters 12 and quarters B.

Redirect examination by the JUDGE-ADVOCATE:

Q. As to a matter of fact, Mr. Leckie, does not the road running southward from the vicinity of D Company barracks towards the officers' line—does not that strike the road that runs along in front of the officers' quarters at a point just about in front of quarters 11 and 12?—A. Yes, sir.

Q. So that that in itself would be a means of identification of that building in distinction from buildings 9 and 10 or 7 and 8?—A. Right in here, sir, are trees, trees that would throw a shadow, and trees along here; I have come across here at night and would not be positive of quarters 11 and 12 until I was right near.

Q. The road comes in there, does it not?—A. The road comes in here and turns in front of the officers' quarters, and another at an angle between 12 and B.

Q. Is there any other officers' quarters along the line that is so situated with reference to roads?—A. No, sir.

Q. And is it not a fact that the light in front of the administration building on the east side of the road is opposite quarters No. 11, so that would be another means of identification?—A. That light in front of the administration building does not give any more light than the one over here.

Q. I am not talking about the amount of light given, but the fact that such a light exists in front of these quarters would serve as a means of telling—A. The light being over there, you would know you were on the end of the line next the river, not in front of the commanding officer's quarters, but you would not know you were in front of 9 or 10 or 11 or 12 unless a man stopped and studied it out.

Q. The appearance of that small house, B, in daytime is entirely different from the rest?—A. Oh, yes.

Q. And at night would not the fact that it is a low house and not a two-story house be apparent? Would you see the outline against the sky?—A. A dark night—these quarters are one story and a half high, and B quarters are a story and a third—and a dark night you can not tell the shape of the house. A light starlight night, of course, you could.

Q. A man, however, who was accustomed to the surroundings there and who—did you ever have any trouble in finding your own house at night?—A. There have been times, late at night, when I would come across, I would not know whether I was in front of 9 and 10 or 11 and 12. The same conditions prevail now in the upper post here as to quarters; a man has to be positive about his quarters to know what quarters he is going into in the dark.

Upon motion of a member, the accused, his counsels, the reporter, and the judge-advocate then withdrew, and the court was closed, and on being opened the president announced, in their presence, as follows:

The court desires to recall the witness Private Hulston for further examination. I understood you had some other witnesses, have you, Mr. Judge-Advocate?

By the JUDGE-ADVOCATE. May it please the court, I did expect to call Sergeant Taliaferro and Corporal Madison again, in view of the recent evidence showing differences in the interior construction of these houses at Fort Brown, and question them a little further as to the location of the stairways. That is all.

By the PRESIDENT OF THE COURT. All right, Mr. Judge-Advocate, call them in your own order.

(The court then took a recess until 3.30 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocate resumed their seats.)

The judge-advocate addressed the court as follows:

May it please the court, I have Sergeant Taliaferro here as the next witness, but in view of the fact that the reporter has more work on hand now than is possible to get out this afternoon and possibly to-morrow morning, I request the court, if it suits its pleasure, would adjourn until to-morrow morning, on account of the reporter more than anything else.

The court then, at 3.40 o'clock p. m., adjourned to meet at 9 o'clock Friday morning, April 19, 1907.

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 19, 1907.

The court met, pursuant to adjournment, at 9 o'clock a. m.

Present: All the members of the court and the judge-advocate.

The accused, his counsels, and the reporter were also present.

The reading of the proceedings of April 18 was dispensed with.

The PRESIDENT. A member of the court asked to have the testimony read before this witness is called, regarding the occupation of the houses. I think it is the testimony of Lieutenant Grier.

The JUDGE-ADVOCATE. Yes, sir. I have the pages marked.

The PRESIDENT. Very well; if there is no objection, please read it.

The JUDGE-ADVOCATE. On page 5 of the court-martial record appears the following, under the direct examination of Major Penrose:

Q. Will you kindly point out on the map, Major, the house occupied by each officer of the post?—A. Building marked "A" I occupied; 3, Captain Lyon; 5, Lieutenant Grier; 9, I believe—I am not sure whether Lieutenant Lawrason or Lieutenant Hay, or both lived in the same house, I think he was in 9 and Hay was in 10; Captain Macklin lived in No. 11.

On page 49, however, of the cross-examination of Lieutenant Grier is the question:

Q. Who occupied the quarters No. 9 at Fort Brown?—A. Lieutenant Hay.

On page 50:

Q. Who occupied quarters No. 10 at Fort Brown?—A. Lieutenant Lawrason.

Then, in Lieutenant Lawrason's testimony, direct examination, page 55:

Q. What was the number of the quarters occupied by you?—A. No. 10.

So that Major Penrose's answer was in error merely as to whether Lieutenant Hay or Lieutenant Lawrason occupied quarters 9 or 10. It should be just the reverse.

A MEMBER. Then, I understand "A" was occupied by Major Penrose; quarters 1 and 2 were not occupied, so far as the record shows; No. 3, Captain Lyon; No. 4, vacant; No. 5, Lieutenant Grier; No. 6, vacant; 7 and 8, vacant; and 9, Lieutenant Hay; and 10, Lieutenant Lawrason; and 11, Captain Macklin.

The JUDGE-ADVOCATE. Yes, sir. The prosecution desires to recall Sergeant Taliaferro to emphasize certain points.

Sergt. Maj. SPOTSWOOD W. TALIAFERRO, of the Twenty-fifth Infantry, being reminded that he was still under oath, further testified, as follows:

Redirect examination by the JUDGE-ADVOCATE:

Q. Sergeant Taliaferro, when you were sent by Major Penrose to awaken Captain Macklin early on the morning of August 14, 1906, did you go directly to his quarters or to the quarters you believed he occupied?—A. I went directly to the quarters that I believed he occupied.

Q. And are you absolutely certain as to which quarters those were?—A. Yes, sir.

Q. What was the position of the house to which you went with reference to the officers' line?—A. It was the first set of quarters on the officers' line after leaving the administration building.

Q. That is, it was the extreme western set of quarters?—A. Yes, sir.

Q. Now, when you entered the hall of this first building—quarters No. 12—and after you had rapped and called him, you stated that you went upstairs?—A. Yes, sir.

Q. Please state where you went to go upstairs.—A. I went to the rear of the hall way and entered the stairs from the rear—and the stairs ran from the rear towards the front.

Q. So that when you got on the second story you were nearer the front of the house than you were when you were at the foot of the stairs?—A. Yes, sir.

Q. And do you know the position of the door you opened upstairs?—A. No, sir. The door seemed to be open; I don't remember opening any doors at all.

Q. Are you absolutely positive that the stairway in the quarters you first entered and in which you went upstairs ran from the rear of the hall upward towards the front of the upper story?—A. Yes, sir; I am absolutely certain in that.

Q. Are you positive that the stairway could not have run at right angles to the hall way?—A. I am positive it could not have run at right angles.

Q. Now, is there any possibility that you went to quarters 7 and 8 instead of to quarters 11 and 12?—A. No, sir; I don't think there is any possibility that I went to any other than the first set of quarters on the line.

Q. Did you, in going from the gate to quarters No. 12, follow any line of the sidewalk?—A. No, sir.

Q. What sidewalks did you cross on the way over there?—A. I crossed the sidewalk in front of the officers' line, of course, until I got to the building.

Q. Was there also a sidewalk running from the administration building down to the guardhouse?—A. There was an old pathway there, an old walk, covered all mostly with grass.

Q. It was a brick walk, wasn't it?—A. Yes, sir; I think so.

Q. Pretty well covered with grass?—A. Yes, sir; an old walk.

Q. So you were west of the sidewalk, as indicated on the map there, as running between B and D Company barracks southward towards quarters No. 8, weren't you? First, by way of explanation to the witness, I desire to state that it was shown by the quartermaster of the post, or by an officer who had been quartermaster there for a few years, that this sidewalk is erroneously shown on the map, and should run on the east side of the road entering the garrison gate over towards quarters No. 8 instead of quarters No. 9—that is, it should be a little bit more towards the east. Now, when you left Major Penrose, did you go straight across to No. 12?—A. Yes, sir; I went straight across the parade ground; I didn't follow the sidewalk at all.

Q. You didn't touch that sidewalk at all, did you?—A. No, sir; I went out across the parade ground.

Q. In reaching quarters 7 or 8 you would have to cross that sidewalk, would you? Remember, that sidewalk is erroneously shown on the map; it should be a little farther up.—A. I would have gone right along that walk there, right up to the next quarters there. If I had been going to any of the quarters lower down, I would doubtless have crossed on that sidewalk.

Q. But if you had been going to quarters 9 and 10, or 7 and 8, that walk would have been about the shortest you could have followed?—A. Yes, sir.

Q. But instead of that you cut off to the right of the walk and went to the quarters occupied by Captain Macklin?—A. Yes, sir. I didn't cross the sidewalk.

Q. Were you ever in other quarters at Fort Brown?—A. No, sir; not to my knowledge—not that I remember.

Q. Are you positive that after you left Major Penrose and had passed between B and D Company barracks—say, to the vicinity of

the brick walk that runs along in front of the barracks—that you headed directly for quarters No. 12 and kept to the west of that sidewalk all the while?—A. Yes, sir.

Q. And whether that sidewalk is shown correctly on the map or whether it should more probably be shown still farther to the east in going in a direct line from the vicinity of the garrison gate to the quarters Nos. 7 and 8, you would have to cross that sidewalk, wouldn't you?—A. Yes, sir; in going to 7 and 8 I would have to cross it.

[Associate counsel for the accused indicated the direction on the map.]

Q. That is where the sidewalk should run?—A. Yes; I know exactly how it runs.

Q. That is a well-defined walk, isn't it?—A. Yes, sir.

Q. And there is a street lamp near the center, isn't there?—A. I don't remember whether there is a street lamp there or not. I remember the walk very well; I know which way it runs, just like he is pointing there now. [Indicating line from the east side of the road, between B and D Company barracks, southward to a point nearly in prolongation of the west side of quarters No. 8.]

Recross-examination by the Accused:

Q. Come up here. Just point again where the major was standing when he sent you over to Captain Macklin's quarters.—A. Right about in here [indicating on map a point in the road leading into the garrison from Elizabeth street, about midway between the gate and the line of barracks].

Q. And your remembrance is that this is the correct position of that sidewalk at Fort Brown?—A. The correct position of this sidewalk brings it right down near this side [indicating]—not on the D Company side, but on B Company's side of the barracks.

Q. You think it is on B Company's side of the road?—A. Yes, sir; towards B Company's side of the barracks the walk comes down that side and not on this side [indicating].

Q. Sergeant, if I lay my pointer on the easternmost line of that road, and if you would come even to quarters 9 and 10, would you have followed that sidewalk at all from the point you mentioned that you were with Major Penrose, and going over to Nos. 9 and 10—would you have followed the sidewalk at all?—A. I don't know whether I would or not.

Q. I mean is that in a direct line of the sidewalk?—A. No; the sidewalk is not in direct line from 9 and 10, according to the position.

Q. Sergeant, you still believe that you went into quarters No. 12?—A. Yes, sir.

Q. Does this still represent about your ideas of the situation that night?—A. Yes, sir.

Q. I am going to read to you a part of your former testimony:

I am not familiar with the entire house at all; I was never in it before, never been in it since. It was a time of great excitement, and I simply rushed up the steps, called Captain Macklin, and rushed out. I didn't notice anything inside of the building at all. I never thought a moment I would be called and questioned as to another house, and it is a matter of impossibility for me to give a better description.

Does that still represent your ideas of the situation?

It is a matter of impossibility for me to give any further description than I have already given.

A. I did not mean to say that what I had said was not correct, but I meant it was a matter of impossibility for me to give any further description than I had already given.

Q. Sergeant, that answer was given in reply to the following question:

Sergeant-Major, please describe the direction you took after leaving the head of the stairway to enter the room you went to.—A. It is my impression I simply went to my left; I might not be right in that.

By the PRESIDENT OF THE COURT: The court will want a more full description than that, Sergeant.

In answer to that question you gave the answer just quoted. Now, Sergeant, when you came into that house to go upstairs, which way did you turn?—A. When I came into the house to go upstairs?

Q. Yes.—A. I went to the rear of the hall way and I went up the steps.

Q. Well, to go up the steps, which way did you turn?—A. Entering the hall way, going to the rear, I naturally turned to my left; going back that way, then, to go up the steps towards the front, I would naturally turn to my left.

Q. I am not asking how you figure it out now. But I want to know what your remembrance is, or have you any?—A. Let me see; I said I went into the room downstairs first?

Q. Yes.—A. And I came out of the room downstairs and then went upstairs.

Q. Now, Sergeant, have you any distinct recollection of how you went up that stairway at all?—A. Yes, sir; I went to the rear of the hall way and went upstairs. The stairs run from the rear towards the front.

Q. Now, which way did you turn after you got to the rear of the hall to go upstairs?—A. Why, it would be natural for me to turn to the left.

Q. Don't you know which way you turned?—A. It would be the most natural thing to turn to the left. The stairway is towards the side of the partition, it is not towards the other side.

Q. How is it in any of the other houses there, do you know?—A. I have never been in any other house, to my knowledge.

Q. After you got up to the top of the stairs what was the location of the rooms up there?—A. I couldn't really describe the location of the rooms.

Q. You don't remember how they were situated with respect to the head of the stairway?—A. No, sir.

Q. You have not any recollection at all?—A. No, sir; I really have none.

Q. You still feel, Sergeant, that that was a furnished house and lighted house that you went into that night?—A. Yes, sir; as I said, the impression of everything seemed to me that the house was ready for occupants; if it had been empty, no furniture in there at all, it would have attracted my attention; naturally, I would have thought at the time I was in the wrong place, that nobody lived there; but the house being furnished, of course, is what made me think I was in the right place.

Q. Are you pretty sure with respect to the lights in the house?—
A. Yes, sir; there were lights in the house.

Q. Sergeant, do you happen to remember whether either one or both doors at the top of the stairs was open?—A. I am not certain now whether both were open or both closed—might have been both open.

Q. You don't remember?—A. I don't remember opening any door upstairs, so it must have been open.

Redirect examination by the JUDGE-ADVOCATE:

Q. Sergeant Taliaferro, did you ever go into any of the officer's quarters before in which the stairs ran from the rear of the hall upward towards the front of the house—did you ever see that peculiar arrangement of the stairs before in any officer's quarters anywhere?—
A. I don't remember, sir.

Q. Did that fact impress you as being rather peculiar in that the stairway ran just opposite to the way it ordinarily does in ordinary quarters and in ordinary houses?—A. I don't know as I had any thought about the matter just at the time—I was simply after going upstairs, and I saw which way to go up, and I simply went on up.

Questions by the COURT:

Q. When you were told to go over and wake Captain Macklin, did you go over in a run or walk, or how did you go?—A. Well, I went as fast as I could, sir.

Q. You ran?—A. Yes, sir. I was not told to go and wake Captain Macklin, sir.

Q. When you were told to go over for Captain Macklin?—A. Yes, sir.

Q. Did you run?—A. Yes, sir; I went as rapidly as I could.

Q. You were in a good deal of a hurry?—A. Yes, sir.

Q. Excited?—A. Well, not very much excited, probably a little—of course the excitement of the night had not died away. I was excited when I was first aroused that night.

Q. The night was dark?—A. Yes, sir; it was dark.

Q. Couldn't it have made it pretty easy for you to have gone into one of those other quarters there?—A. I don't think so, sir.

Q. Sergeant, when you went into those quarters, do you remember whether you opened the door or not?—A. The front door?

Q. Yes.—A. Yes, sir; I opened the front door.

Q. It was closed, was it?—A. Yes, sir. I knocked on the door first, and then no one answered, and then I opened the door and entered the hall way.

Q. The door was closed?—A. Yes, sir.

Q. You knocked on it and then opened it?—A. Yes, sir.

Q. Now, what set of quarters was that?—A. That was in the first set, what is known as No. 12.

Q. Just point that out on the map.—A. [Witness here indicates building marked "No. 12."]

Q. All right. Now, did you go into the next set, No. 11?—A. I went into the hall—just entered the hall; I didn't go into any of the rooms of No. 11 at all. I simply pushed the front door open and called in the hall way.

Q. Well, you came out of No. 12 first, did you?—A. Yes, sir; I came out of No. 12.

Q. Did you shut the door after you when you came out, or do you remember?—A. I think I did.

Q. And then went over to No. 11?—A. Yes, sir.

Q. And do you remember how far you found the door of No. 11?—A. I think that was closed also, sir.

Q. Well, do you remember it?—A. Yes, sir; the door was closed.

Q. It was closed?—A. Yes, sir.

Q. The door of No. 11, the front door?—A. Yes, sir.

Q. Did you knock on it?—A. Yes, sir.

Q. And then opened it?—A. Then opened it, and then called in the hall way.

Q. When you came out, do you remember whether you shut the door or not?—A. I think I did, sir.

Q. You are not positive?—A. There is nothing to make it very positive in my mind, only it would be natural for me to close the door behind me. I close every door I have opened.

Q. When going upstairs in No. 12, that quarters you went upstairs in, was it light enough so you could see to go up, or did you have to feel your way up on account of the dark?—A. It was light.

Q. So you had no difficulty in going up the stairway?—A. No difficulty at all, sir.

Q. You didn't have to feel your way around by the banisters, or anything of that kind?—A. No, sir.

Q. Where did that light come from?—A. The light that shone on the staircase?

Q. Yes.—A. It came from the room downstairs.

Q. The front room downstairs?—A. Yes, sir.

Q. That door was open, was it?—A. Yes, sir; open in the hall way, as the light was shining right out on the stairway.

Q. That was after you had opened the door, was it?—A. Well, I didn't open that door that leads in the hall way. I opened the front door.

Q. The door to the room was open, was it?—A. It seems to me the door leading from the hall way into the room was open when I entered the hall.

Q. The light that furnished the light to the hall, you say, came from the front room?—A. Yes, sir.

Q. You have also testified that you went into the back room before you went upstairs?—A. No, sir. I didn't go into but one room downstairs.

Q. Do you remember that you testified that you called into the back room?—A. No, sir.

A MEMBER. I would like to have the stenographer read the witness's answer to the question of counsel as to how he turned before he went upstairs.

(The reporter referred to his notes of the cross-examination by the accused and read therefrom the following testimony:)

Q. Now, Sergeant, when you came into that house, going upstairs, which way did you turn?—A. When I came into the house, going upstairs?

Q. Yes.—A. I went to the rear of the hall way and I went up the steps.

Q. Well, going up the steps, which way did you turn?—A. Entering the hall way to go to the rear. I naturally turned to my left, going back that way; then, to come up the steps towards the front, I would naturally turn to my left.

Q. I am not asking how you figure it out now, but what your remembrance is, or have you any?—A. Let me see. I said I went into the room downstairs first?

Q. Yes.—A. And I came out of the room downstairs and then went upstairs.
Q. Now, Sergeant, have you any distinct recollection of how you went up that stairway at all?—A. Yes, sir; I went to the rear of the hall way and went upstairs. The stairs run from the rear towards the front.

Q. Now, which way did you turn after you got to the rear of the hall, going upstairs?—A. Why, it would be natural for me to turn to the left.

Q. Don't you know which way you turned?—A. It would be the most natural way to turn to the left. The stairway is towards the side of the partition; it is not towards the other side.

Q. Do you mean to state that you went into the room downstairs first; do you mean the back room or the front room?—A. It was the front room downstairs.

Q. That is, when you went into the hall?—A. Yes; I only went into one room downstairs.

Q. When you went into that room, did you look around for Captain Macklin?—A. Yes, sir.

Q. Then you saw what was in the room?—A. Yes, sir; of course I saw.

Q. Well, what was in the room?—A. Well, there wasn't anything really that attracted my attention at all. I was simply looking for Captain Macklin and didn't see him. I didn't think of anything else.

Q. Well, didn't you see the lamp that was giving this light?—A. I didn't notice it.

Q. Sergeant, you testified about going up this stairway. Do you remember, in going up that stairway, whether there was a banister?—A. Yes, sir.

Q. Ordinary banister?—A. Yes, sir.

Q. I understand, then, you to state the stairway was not boarded up?—A. No, sir; there was a banister—hand railing—that upright piece along by the side.

Q. Then a person going up that stairway could be seen by anybody in the hall?—A. Yes, sir.

Q. All the way?—A. Yes, sir.

Q. When you were on the stairway you could see down in the hall?—A. Yes, sir.

Q. In seeing down in the hall way, going up the stairs, would you have to turn around and look upward, or would you turn to the right or to the left to look into the hall?—A. In going down the hall way?

Q. Yes.—A. Simply looking to the left, right over that way [indicating].

Q. This stairway, then, did not have a wall on both sides?—A. The stairway did not have a wall on both sides?

Q. I mean did the stairway have walls on both sides—I mean walled up on both sides?—A. The stairway, as I stated before, is nearest the partition. Now, you know the hall, of course, and you can walk—there is a space between the walls and the stairway that separates the other room—right over here is a room, of course [indicating to the right], and right over here is a partition [indicating to the left]. To my right is the room, and then of course there is a hall way.

Q. And then the staircase is in this hall way towards the side of the partition, but there is space enough between the stairway and the room and the walls of the room to the right for one to walk?—A. I don't know exactly how wide it is. It probably may be 3 feet.

Q. And as you walk into the hall way, walking back towards this stairway, did you see the banisters on the stairs?—A. Yes, sir.

Q. You could see it?—A. Yes, sir.

Q. They were not close up with the wall?—A. No, sir. It was a hand railing and straight uprights from the steps up to the hand railing.

Q. Sergeant, on this night—the 13th and 14th of August—when you went to call Captain Macklin, you are positive you went to No. 12, the farthest indicated on that map?—A. Yes, sir.

Q. You are positive also that the lights were burning?—A. Yes, sir.

Q. In the downstairs room and upstairs room?—A. Yes, sir.

Q. And that that house was furnished—people lived in it?—A. Yes, sir.

Q. You are positive of that?—A. Yes, sir.

Q. Now, as I remember, you stated in your former examination that the next morning you heard that Captain Macklin did not live in these quarters?—A. Yes, sir.

Q. How did you learn that?—A. His striker told me he lived in the left side instead of the right—that is, in No. 11 instead of No. 12.

Q. Did you learn anything else about No. 12 about that time?—A. No, sir.

Q. Did you learn who did live in No. 12?—A. No, sir.

Q. Did you learn whether or not it was occupied?—A. No, sir; I didn't make any inquiry further than that.

A MEMBER. I would like for the judge-advocate to read further from that record his answers to the same line of questioning that he has had now—that is, with regard to the room that he entered downstairs to call Captain Macklin.

The JUDGE-ADVOCATE. I read from page 75:

Q. What did you then do?—A. I went to the building I have just indicated on the map.

Q. What number is it on the map?—A. I went to No. 12, and I called Captain Macklin and knocked on the door. No one answered. I opened the door, went into the room downstairs—the front room downstairs—looked around, saw no one. I went out of that room.

Q. Did you call in there?—A. Yes, sir; and I went and called in the hall-way also. Then I went upstairs and called upstairs. No one answered. Then I came downstairs, and I thought Captain Macklin might be in No. 11, so I knocked on No. 11, but no one answered.

And then he goes on to state further what he did.

Q. You said you opened the front door when you went in. Do you mean by that you opened the screen door or the wooden door?—A. Yes, sir.

Q. You stated you knocked and then went in. Do you remember whether it was the screen door that you opened or the regular wooden front door, or both of them, or do you remember?—A. I don't remember, really, now, as to the nature of the door. I don't remember opening but one door, you know—I don't remember opening but one door.

Q. And whether that was a screen door or not you can not say?—A. I couldn't be positive about that; I don't think it was, though, because if it had been a screen door, why, I would have seen the light in the hallway before opening the door.

Q. But do you remember that you did not see any light before opening the door?—A. I don't remember seeing the light in the hall at all until I did open the door.

Q. Is the same thing true on the other side—No. 11? Do you remember whether you opened the screen door and the wooden door?—A. I couldn't be positive about that, either.

Q. You just simply remember that you opened the door?—A. I remember that I opened the door.

Q. You knocked on the door?—A. Knocked on the door and opened it.

Q. You knocked on the door and opened it, and you don't remember and can not say whether they were screen doors or wooden doors?—A. No, sir.

Recross-examination by the ACCUSED:

Q. Sergeant, was there anything on the porch of quarters 11 and 12 that you remember at all?—A. I didn't see anything, sir.

Q. Did you see a saber there?—A. No, sir.

Q. Did you see a table there?—A. No, sir.

Q. If there had been a table there near the front door of No. 12 would it have attracted your attention, do you think?—A. I don't know, sir, whether it would or not; it probably might have and then might not—I couldn't tell. It is very difficult for me to tell what would have attracted my attention under such circumstances. I could only tell what did attract my attention.

Q. Now, Sergeant, if a table had interfered with the opening of that door to No. 12, would you have noticed that; would you have remembered that?—A. It seems I would, sir.

Q. Did any such thing as that happen?—A. No, sir; it never interfered with the opening of the door, to my knowledge.

Q. Sergeant, when you went from No. 12 to No. 11, did you step over a railing on the porch between?—A. No, sir.

Q. You just walked straight through?—A. Yes, sir.

(Excused.)

CHARLES H. MADISON, former corporal of Company C. Twenty-fifth Infantry, was recalled by the prosecution, and being reminded that he was still under oath, further testified as follows:

Redirect examination by the JUDGE-ADVOCATE:

Q. Corporal Madison, when you were on the stand before, you testified, on pages 108 and 109, as follows:

Question by ASSOCIATE COUNSEL:

Now, I just want you to think a moment, Corporal, before you answer that—that was with regard to the position of the entrance to the stairway—

now, I just want you to think a moment, Corporal, before you answer that, and see if you can remember whether or not that entry to that stairway was to the front or to the rear?—A. I can suggest, but I can not give a definite statement.

Q. Where do you think it was?—A. I think it was in the rear.

And then, after that, the counsel and the judge-advocate spoke for a few minutes upon the admissibility of that question. Now, I would like to have you state, Corporal Madison, or can you give to the court your impression as to the location of that stairway in quarters

No. 11?—A. I can not give a definite statement, because I don't exactly know, but my opinion is that the stairway ran up from the rear.

Q. And ran—A. To the front.

Q. To the front of the house?—A. Yes, sir.

Q. Upstairs? Well, now, if, upon opening the front door of No. 11, on the various occasions on which you had been to Captain Macklin's quarters, you walked down the hall way towards the second room back, would you have noticed whether or not the stairway ran to the left between the front room and the bedroom—sort of cut in between the two rooms and run sort of at right angles to the hall?—A. Well, if it had been to my left, between the first room and the second room, I might have noticed it, sir; but any farther back than that I would not.

Q. If, however, it had been between the first and second rooms, so you would have had to pass right by the foot of it in going from the door to the second room back, you would have noticed that. wouldn't you?—A. I might have, sir.

Q. But don't you think a peculiar construction like that would have been noticed by you?—A. Why, if it would have interfered with the other rooms I might have noticed it, sir; but I can not give a definite statement in regard to that.

Q. You never went upstairs in that house at all, I understand?—A. I have never been upstairs; no, sir.

Q. And all you can state to be certain is that the stairway began in the hall and ran from the rear to the front of the house?—A. Yes, sir.

Recross-examination by the ACCUSED:

Q. Corporal, do you remember anything more definite than you did the other day with respect to the time that you went into Captain Macklin's quarters last, before the 13th of August?—A. I do not, sir.

Questions by the COURT:

Q. When you went into No. 11, was the front door open or closed?—A. It was open on that night, sir, at the time I went there.

Q. Was it a screen door or a wooden door?—A. If my memory serves me right, I don't remember whether there were any screen doors on the quarters or not. I don't remember.

Q. Did you have to open any door to go in?—A. I disremember, sir; but the wooden door was open.

Q. What time was that?—A. I don't know what time the firing, or whatever it was, taken place, sir.

Q. Well, how long after the firing commenced?—A. Why, I suppose about five or seven minutes, something like that—maybe not quite so long—just time enough for me to go upstairs after the racks being opened, get my rifle, fall in line, and receive the order and proceed.

Q. When you came into the hall way in the morning, when you brought the sick report to Captain Macklin, could you see the steps going upstairs, or was the side of the steps boarded up?—A. I never paid that much attention to the quarters, sir.

(Excused.)

The JUDGE-ADVOCATE. I would like to read to the court a telegram which I received yesterday with reference to Private Rogers. Rogers

is a particularly important witness, as he was a member of the guard, and he was sent to awaken Captain Macklin after the shooting of August 13 began. It is essential that he be brought here as a witness if it is at all possible to do so. I received word from Lieutenant Bonaffon at Washington Barracks, or rather, on April 10 I wrote a letter to the adjutant-general of the Department of Texas, requesting that a telegram be sent to the Adjutant-General of the Army, requesting that every effort be made to serve the subpoenas upon Sergeant Harley and Private Rogers. The subpoenas had gone off some time before—I am not sure as to the exact date, but on the 10th of April just prior to my writing that letter, I received word from Lieutenant Bonaffon that Harley and Rogers had left Washington; he was unable to serve the subpoenas. That was the occasion of that letter. And on the 11th I learned where these men had gone. Rogers had returned to his home in Atchison, Kans. Last evening I received the following telegram:

WASHINGTON, D. C., Apr. 18.

Lieut. ROGER S. FITCH.
*Judge-Advocate, Court-Martial,
 Fort Sam Houston, Tex.*

Following telegram just received from commanding officer, Fort Leavenworth: "Reference your telegram yesterday, Captain Slevert again visits Atchison and offered Rogers transportation to San Antonio, who refused same, saying he was going to Boston to-day to join his wife. Believe Rogers is unwilling to appear as witness. Papers returned by mail."

McCain, *Adj. Genl.*

Now, inasmuch as Rogers is by far the most important witness of the prosecution, and it is apparent that he can not be induced to come here and testify before the court, I desire to send interrogatories and depositions to him, and I have practically completed the interrogatories for the prosecution and desire to know the pleasure of the court as to ordering the defense and myself to prepare our interrogatories and submit them to the court for them to add such interrogatories as they please. It is absolutely necessary, it seems to me, to get something from this witness if we can. Or if the defense is willing to admit that if Rogers were to answer the interrogatories propounded, that his testimony would in effect be the same as his testimony given on pages 82, 83, 84, and 85, 92, 93, 94, 97, and 98 of the record of the testimony taken before the Senate investigating committee—if, as I stated, the defense is willing to grant that his testimony would be to the same effect, why, I am willing to let the interrogatories go. In that case the prosecution can close by to-morrow morning at the latest.

THE COURT. How about that witness from Washington?

THE JUDGE-ADVOCATE. Unless that witness be regarded as being called by the court, the prosecution will close. As I stated before, I did not think it essential that he be summoned, and the defense can go on with their case. That rests with the court.

A MEMBER. I want to ask you what assurance you have that you would be able to find that man Rogers in order to serve those interrogatories and get his deposition.

THE JUDGE-ADVOCATE. The only thing I can do, sir, is to send them to the proper authorities. I think he has left for Boston. I suppose they would have to send them there and through the Department of the East, and it would take some time.

A MEMBER. Can not the attendance of that witness be compelled?

The JUDGE-ADVOCATE. May it please the court, the attendance of a civilian witness, as probably the court knows, can not be enforced when that civilian lives outside of the district, State, or Territory where the court sits. We have absolutely no means of getting him.

A MEMBER. Mr. President, it strikes me that if the depositions are obtained under these conditions—it is stated this man left for Boston; possibly they do not know his address—I do not see that we could postpone the session of the court indefinitely for that reason. We might never get the man, unless he can be found.

The JUDGE-ADVOCATE. Well, the first proposition I have to make is to ask the defense whether, in view of the fact that it will doubtless take some time to get the depositions back from this man in case he is found, whether they are willing to admit that if placed upon the stand he would testify to the same facts as he did before the Senate committee a month or so ago, and if they are willing to let the court accept as evidence his statement taken under oath before the Senate committee I will be willing to omit the sending of the interrogatories.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, the defense can not make this admission that is desired by the judge-advocate. In the first place, we have no assurance that this man will testify or that his testimony would be the same as that given and brought out before this Senate committee. Moreover, some of these witnesses who have testified in this case also testified in the Senate committee, and their testimony here differed very materially from that brought out in the Senate investigation. As regards the taking of this testimony by depositions, we object to any testimony by depositions. It seems to us that in this case especially the witness should be here. A large part of the evidence consists of exhibits—maps, photographs, and matters of that kind—and we object to the admission of any testimony where we have not the witness before us, subject to our cross-examination.

The JUDGE-ADVOCATE. May it please the court, as the court doubtless knows, the ordinary method of obtaining testimony from civilian witnesses, residents of States, districts, or Territories other than the one in which the court-martial happens to be sitting, is ordinarily procured by sending interrogatories and obtaining the depositions. It is, as a matter of fact, unusual for such witness to be summoned from a great distance, though in this case—as in the preceding case—the defense, like the prosecution, has been allowed very great latitude by the court in getting witnesses. Personally, I would much rather have this man present to testify before the court; but inasmuch as we can not get him, and can not force him to come, the only other way of obtaining his evidence is to send interrogatories, and it is a right that the prosecution has, and is not subject to objection on the part of the defense. The defense has the right to prepare any cross-interrogatories, and if he does not care to do so, well and good; but the defense can not object to the prosecution's sending interrogatories and getting the testimony of the absent witness in that manner.

A MEMBER. I would like to ask the judge-advocate a question: I suppose, in view of what has come up, that you have looked up the law on the subject, Mr. Fitch. Suppose this man got the interroga-

tories, suppose you sent them to him, and suppose he declined to answer, is there any method to compel him to do it?

The JUDGE-ADVOCATE. I know of no method by which he can be compelled to appear. A writ of attachment possibly could not—

A MEMBER. I want to know whether a man can be compelled, in Boston, for instance, to answer the questions.

The JUDGE-ADVOCATE. I believe he can not be compelled to answer the questions. And according to this telegram he is on his way, or about to leave Atchison, Kans., to go to Boston to join his wife, and it may be for personal reasons—doubtless to avoid a long trip down here and a long trip back again—and it seems to me if this was sent to him he would doubtless be willing to give his testimony and receive his fees for same. I do not think it is due to the fact that this man is unwilling to testify.

A MEMBER. Are you sure about the law, Judge-Advocate, about making the witness answer questions by depositions? I was under the impression that he would be compelled to answer.

The JUDGE-ADVOCATE. A writ of attachment, it states very distinctly, does not run if the witness is not in the district, State, or Territory in which the court-martial sits [reading]:

A writ of attachment does not run beyond the State, Territory, or district in which the court-martial sits. The testimony of civilian witnesses residing beyond such State, Territory, or district will ordinarily be taken by deposition under the ninety-first article of war; but this can not be done when it is necessary that they should be confronted with the accused. In such cases their testimony can only be taken on their voluntary appearing before the court.

A MEMBER. That is not the question.

The JUDGE-ADVOCATE. I know it, sir; but there is nothing in the Court-Martial Manual that shows that people can be forced to come and answer interrogatories when they are in States, Territories, and districts other than that in which the court is sitting. They are merely allowed the fees of witnesses, and if they refuse to appear I believe they can not be forced to do so.

A MEMBER. Mr. President, I believe I have had occasion to know it within the last few months, that in civil courts a man can not be compelled to answer depositions. So, by analogy, that would be the rule with us, if there is no definite law upon the subject.

The JUDGE-ADVOCATE. That is my understanding, sir.

The PRESIDENT. Mr. Judge-Advocate, the court would like to ask, in substance, what you expect to prove by that witness—in substance?

The JUDGE-ADVOCATE. Well, sir, I expect to prove by that witness that right after the shooting began, on the night of August 13, a sergeant of the guard—Sergeant Reid—came to him, knowing that he was a member of Captain Macklin's company—C Company—and knew where Captain Macklin lived, and told him to run to Captain Macklin's quarters and call him or awaken him; and that this man jumped up at once and started to run across the parade ground towards Captain Macklin's quarters; that on the way there he passed close to Major Penrose, or heard Major Penrose call to the trumpeter of the guards to sound the call to arms, and that the call to arms was first sounded while he was on his way to Captain Macklin's quarters; that he reached Captain Macklin's quarters, which he identified as being the last set of quarters on the officers' row, and that he knocked, waked up Captain Macklin, who replied, "All-right;" that this was

while the firing was still going on, apparently in the rear of C and B Company quarters, right in the little alley near the garrison road, some place; and that he said he did not know whether Captain Macklin got up or not, but that he replied, "All right," and that he then went back and reported to the sergeant of the guard; that Captain Macklin did not come to the guardhouse then, but that the next morning he asked him whether he, Private Rogers, woke him up the night before, and that he, Private Rogers, told him yes, and that Captain Macklin then asked him what he said, and that the witness told him he, Captain Macklin, replied, "All right," and that Captain Macklin then said probably he thought he was dreaming, that he thought somebody awakened him, but didn't know whether he was dreaming or not, and that Captain Macklin ascertained from the sergeant of the guard that he was the man who was sent as messenger; and that after he had rapped and called Captain Macklin the latter replied and said, "All right," and that then the witness told him the sergeant of the guard told him that he must report to the guardhouse, that he must come to the guardhouse right away, and he said, "All right." He said. "I didn't go to his room; I knocked below his room; his room was right up above where I knocked; he could easily hear." Asked whether he recognized Captain Macklin's voice—whether he knew his voice—he said he did; and that the witness returned to the guardhouse while the firing was still going on, and the guard was formed when he got there. That is in substance what this man testified to.

ASSOCIATE COUNSEL FOR THE ACCUSED. Now, may it please the court, I have listened to all this discussion which has taken place with respect to the testimony of Private Rogers, and I believe the whole thing from beginning to end is wrong. The principle of criminal law, in the first place, sets forth that when the accused is on trial he is entitled to be confronted with the witnesses against him, and the only true way that that testimony can be attacked is by cross-examination—that is, the only method known to law—and that principle is so well regarded in the Constitution of the United States that it is contained in the amendments. There are certain features of evidence that can not come before the court in the way of depositions, and there is abundance of authority in all the text-books to show that certain matters can not be testified to before any court by depositions. If the court please, the identity of a person can not be testified to by deposition. You can find a statement of that in our own military law—and this particularly is a question of identity. The fact that is claimed by several witnesses there at Fort Brown, several of them, that they went to the house occupied by Captain Macklin, is an important one. They may have been honest in that statement and may have been dishonest in that statement. If they were honest in the statement, they may have been mistaken as to the location of Captain Macklin's quarters. There are many reasons why they should be thus mistaken—the conditions attending their going there that night, the conditions in the post at the time they went, the absolute identity of the quarters as far as outside appearance is concerned, the unfamiliarity of some of these men with reference to where the officers resided at Fort Brown. Now, may it please the court, the judge-advocate asked this court that they allow him to bring before them the testimony of one Private Rogers, of Com-

pany C, Twenty-fifth Infantry, who appeared before the Senate. We would under no circumstances permit that testimony to be produced before the court. And then in answer to a question by the court as to what he expects to prove by the witness, he interjects this statement that he has made before this court; and may it please the court, there is no statement that can have no effect on the court—it may not affect them weightily, but it affects them in a minor way—and it is absolutely improper that this testimony be furnished before the court in statement of counsel. We do want Private Rogers, and we want him to appear before this court, and we want to subject him to the test of cross-examination, and we will make that as rigid a cross-examination as we know how to make it.

A MEMBER. The only thing I want to say is, I understood that question of the president of the court merely to ask what the intention was to prove by this witness, and the statement of what was intended to be proved by this witness is very often stated by counsel in courts of law, and these statements are frequently made in the presence of the jury, I think. And with regard to the matter of the deposition, I imagine that if the deposition is taken, of course it is taken at whatever value is placed on it as testimony by a jury.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, I do not wish to be misunderstood as making any claim that the question that was asked by the president of the court of the judge-advocate was in any sense an improper question. It was a proper question; but I do object to the lengthy answer on the part of the judge-advocate which brings in all the matter to which we have previously objected. The answer should have come in some form in which the question showed, and its interjection of that testimony before the court is what I object to. I feel pretty confident that if this deposition did come before the court they would give it what weight should attach to it. And I also wish to state that that statute which compels the attendance of a witness before a court-martial when not residing in a State, Territory, or District, as the judge-advocate thought, limits the call of that witness under that statute to this particular State. He would have no more authority to call that witness before some officer and take his affidavit or his deposition in some other State than he would have to compel his attendance. If that witness refused, the only way he could be compelled to appear before that officer to take his deposition would be by writ of attachment. This court has no jurisdiction to issue a writ of attachment running outside of the State of Texas; it is limited to this particular State. If it could issue a writ of attachment to compel him to answer that deposition, it could compel him to appear as a witness before this court. There is no power of punishment if he failed to obey that writ.

The JUDGE-ADVOCATE. May it please the court, I think I have already stated before the court that there is no law that I know of authorizing a general court-martial or judge-advocate thereof to compel attendance of any witness for the purpose of giving his deposition when such witness is outside of the State, Territory, or District where the court-martial is sitting, and the remarks of the counsel are entirely in accordance with the law on the subject, though possibly superfluous.

The accused, his counsels, the reporter, and the judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence as follows:

The court is reopened. No decision will be announced until to-morrow morning.

(The court then, at 11 o'clock a. m., adjourned to meet at 9 o'clock a. m. the following day.)

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 20, 1907.

The court met pursuant to adjournment at 9 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of April the 19th was dispensed with.

On the opening of the court the president stated:

The question before the court is the matter of the evidence of the witness, Rogers.

The JUDGE-ADVOCATE. May it please the court, I desire to state that yesterday afternoon I wired Joseph Rogers, at Atchison, Kans., asking him what time he expected to leave for Boston, and what his address in Boston would be. I also told him that his presence here was very much desired, and that if he could come that we would not keep him here more than a day or two, and he could return right away, and I told him about the fees he would get and the mileage, for fear he would not know that. I have not yet received any reply from that communication, and I have not very much hope that he will respond by coming here in person.

The PRESIDENT. Did you have a definite address in Atchison, Kans., or did you just send it to Joseph Rogers, Atchison, Kans.?

The JUDGE-ADVOCATE. I did not. But the telegraph company will send me word in case the message is not delivered. I now submit interrogatories to the defense for the addition of such interrogatories as they see fit to propound; and in that connection I would like to read to the court from page 513 of Davis's Treatise on Military Law of the United States, which quotes the ninety-first article of war:

The depositions of witnesses residing beyond the limits of the State, Territory, or District in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.

Also on page 516:

This article [referring to the ninety-first article of war just read] in any case within its terms, and in which its conditions are complied with, entitles either party to have depositions taken and "read in evidence." The court alone has the power to decide that a deposition, where legal and material, shall not be taken.

A deposition duly taken under the article on the part of the prosecution is not subject to objection by the accused, and can not be rejected by the court merely upon the ground that it is declared in the Sixth Amendment of the Constitution that "in all criminal prosecutions the accused shall enjoy the

right . . . to be confronted with the witnesses against him." This constitutional provision has no application to courts-martial; the "criminal prosecutions" referred to are prosecutions in United States civil courts.

The **PRESIDENT**. A member has just asked if what you read from the law was Davis's own statement of the law, or was it quotations from authorities.

The **JUDGE-ADVOCATE**. The first paragraph, which ended with the sentence "The court alone has no power to decide that a deposition where legal and material shall not be taken," has a reference number, which refers to the corresponding number at the foot of the page: "Digest J. A. Gen., 105, paragraph 7;" and the second clause refers to the same authority, 107, paragraph 18. I will just hand this book to the court, so it can see what part I read [passing book to the president].

The **PRESIDENT**. Now, is the judge-advocate through?

The **JUDGE-ADVOCATE**. I have nothing further to state, sir. I have handed the interrogatories addressed to this man Rogers to the defense, and if the defense will submit the cross-interrogatories, and the court will add such as it pleases, and we will get them off to-day to the headquarters of the Department, I think we may be able to catch that man before he leaves for Boston.

A **MEMBER**. Mr. President, in this connection I would like to ask the judge-advocate what Davis, or other authority in law available, has to say about taking depositions where questions of identity are involved.

The **JUDGE-ADVOCATE**. Davis, I am sure, has nothing to say on that subject at all, sir. It may be that the defense has looked up that question, inasmuch as it was made an objection yesterday. In Winthrop's Military Law, second edition, on page 534, under the heading, "Testimony by Deposition," and with reference to the ninety-first article of war, it states—

The effect of that statute—

That is, the ninety-first article of war—

is deemed to be not merely to indicate when this deposition shall be admissible as evidence, but to entitle parties in cases within the article to have depositions "read in evidence." If, therefore, the deposition be in proper form, and material as testimony, the court can not refuse to receive and consider it. In all cases, except where a question of identity is at issue, depositions of distant witnesses may in general be substituted for personal testimony.

Now, my understanding of this expression, "question of identity," is that it refers merely to a case where it is necessary that the accused be identified and not with regard to the identification by a witness of localities or anything of that kind; it seems to me it refers to a case where the witness has to be present before the court and state whether he recognizes a certain person or persons, or in cases where certain material objects, usually exhibits, which he has to be shown before the court, and which have to be recognized by him, and which it is impracticable to send him for identification. I do not see that the question of identity enters into the testimony of this witness at all, further than his statement as to what house he went to on the night in question. He stated that at that house, after he had called out to Captain Mucklin, that Captain Macklin replied, and that, it seems to me, identifies the house fairly well, and I think he can state in evidence what he knows about the place.

(At this juncture the judge-advocate was interrupted for the purpose of receiving two telegrams which were brought by messenger. He then proceeded with his remarks, as follows:)

If it please the court, I will interrupt at this stage just to read a telegram received from one C. J. Rogers.

ATCHISON, KANSAS.

Lieutenant Fitch,
Fort Sam Houston, Texas:

I will not be able to come until Wednesday, on account of my wife being sick.
C. J. ROGERS.

I have also a note from the Postal Telegraph Company stating:

Your 70 paid Government date, Joseph Howard, signed Lieutenant Fitch, delivered to C. J. Rogers, an ex-soldier 25th Infantry. He was here. The message was for him. Advise Atchison, Kansas.

The PRESIDENT. I do not quite understand that, Mr. Judge-Advocate. Howard, you say?

The JUDGE-ADVOCATE. Joseph Howard. Now, according to the testimony before the Senate committee, this man's name is Joseph Rogers, not C. J. Rogers; and in the pamphlet entitled "Discharge of Enlisted Men of the Twenty-fifth Infantry," his name is just given as "Private Rogers." His name is given on page 158 of the pamphlet discharging the enlisted men of the Twenty-fifth Infantry, in the list of men of Company C, signed by Captain Mucklin, merely as "Private" Joseph Rogers; but from this telegram it appears it must be the same man. It says, "He was here. The message was for him. Advise." If the court desires, I will send another telegram and address it to Joseph Rogers, late private of Company C, Twenty-fifth Infantry, and find out for certain whether he is the man or not and whether he has promised to come.

A MEMBER. I move that the judge-advocate be instructed to telegraph to Fort Leavenworth and ask them to send out a representative and try to get him.

A MEMBER. I second that motion. I believe that man's attendance can be secured here if we ask some representative of the Government to go and hunt him down.

A MEMBER (to the judge-advocate). Can you find another man by the name of Rogers in the list?

The JUDGE-ADVOCATE. There is no other man of the name of Rogers in the list of either B, D, or C Company that I can find.

The PRESIDENT. By request of a member, the court will be closed.

The accused, his counsels, the reporter, and the judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence as follows:

The court desires that if possible the attendance of Private Rogers be secured as a witness before this court. It desires that the judge-advocate use every effort to secure his attendance and to ascertain definitely if it can be accomplished. The court is ready to proceed.

The JUDGE-ADVOCATE. I would like to ask the court, in the first place, sir, whether it desires that all witnesses be excluded from the court room--the witnesses for either side whose testimony can not be affected by hearing what is going on--whether they shall be allowed to stay here.

The PRESIDENT. The question of witnesses in the court room, the judge-advocate brings up the question.

The **JUDGE-ADVOCATE**. Lieutenant Johnson has been here during the session this morning, but there was no testimony given, and a witness for the defense is at present here, too, and I would like to know whether the court has any objection to their remaining during the taking of testimony?

The **COURT**. We think that might be subject to agreement between the judge-advocate and counsel.

COUNSEL FOR THE ACCUSED. May it please the court, the defense has no objection to the presence of any witness whose testimony is not apt to be affected by what he hears in the court room. That applies, of course, to the officers especially.

The **PRESIDENT**. The judge-advocate has no objection?

The **JUDGE-ADVOCATE**. No, sir.

The **PRESIDENT**. Very well, then.

Lieut. **WAIT C. JOHNSON**, of the Twenty-sixth Infantry, was recalled by the prosecution, and being reminded that he was still under oath, further testified as follows:

Reexamination by the **JUDGE-ADVOCATE**:

Q. Mr. Johnson, during the time that you lived in quarters Nos. 11 and 12, at Fort Brown, did you ever notice whether the stairways had the ordinary hand rail, banisters, or whether they were boarded up or not—the front stairway I refer to?—**A**. The stairway was open, with an ordinary hand rail; it was not boarded up.

Q. So that a person starting upstairs from the foot of the stairway could glance over into the hall; is that right?—**A**. Yes, sir.

Q. Do you know whether the stairway was similarly constructed in quarters 7 and 8 or not?—**A**. To the best of my recollection, it was—open stairway.

Q. And with reference to quarters 3 and 4; do you recollect how they were?—**A**. I think they were also open stairway.

Q. The houses Nos. 1 and 2, 5 and 6, and 9 and 10, in which the stairways ran at right angles to the hall; will you state to the court how they were arranged?—**A**. They were between two walls and were—well, there was a plastered wall on either side of the stairway all the way up.

Q. But there was a small hand rail, was there, on either side, but not regular banisters, or how was that? Or was there any rail?—**A**. To the best of my recollection, in 1 and 2 there was just an ordinary piece of water pipe that ran up for you to take hold of when you were going upstairs.

Q. Do you recollect how it was in 9 and 10?—**A**. In 9 and 10, I can not say.

Q. Or in 5 and 6?—**A**. In 5 and 6 there was a piece of wood that ran along up there that you could place your hand on.

Q. There was no regularly constructed railing?—**A**. There was no regularly constructed railing.

Q. And in all these quarters in which the stairways ran at right angles to the hall ways the stairs ran up between two plastered walls?—**A**. Between two plastered walls.

Q. And these walls were what color down there?—**A**. White—that is, I think they were.

Cross-examination by the ACCUSED:

Q. Mr. Johnson, in any of those houses where the stairway ran up in an open way, was it open like the stairways are in the quarters here, for instance, or was it cased in the upper story and open from the landing?—A. It was just a hand rail from the bottom to the top of the stairs.

Q. From the landing, you mean?—A. To the top of the landing; it was open all the way to the top of the stairs.

(Excused.)

The JUDGE-ADVOCATE. The court stated to me the other day that it desired to recall Private Hairston for some questioning. Private Hairston is here, if the court desires to recall him at this time.

The PRESIDENT. Very well.

CHARLES HAIRSTON, a witness for the prosecution, was recalled by direction of the court, and, being reminded that he was still under oath, further testified as follows:

Reexamination by the COURT:

Q. Hairston, you stated in your direct testimony before the court the other day that after you left your post the firing commenced, and before you returned to your post that you went to B Company barracks; is that correct?—A. Yes, sir.

Q. Why did you go there?—A. Because I was interested in the shooting, and I went on that account.

Q. Did Major Penrose or anybody else tell you to go there?—A. No, sir; I was with Major Penrose; he did not tell me not to go, and I went on with him.

Q. When the firing commenced, was your rifle loaded?—A. No, sir.

Q. Did you load your rifle at any time after the firing commenced?—A. Yes, sir.

Q. When?—A. After I went back to my post.

Q. Did you fire your rifle at any time?—A. No, sir.

Q. When you went to quarters No. 12 to wake up Captain Macklin, was the front door closed or open?—A. It was closed.

A MEMBER. Is this man's testimony that he went to quarters No. 12, is that right?

The PRESIDENT. Yes, sir.

The JUDGE-ADVOCATE. Yes, sir.

Q. You are sure that door was not ajar?—A. No, sir; it was not open.

Q. It was closed every time you went to it?—A. Yes, sir.

Q. Now, after you went the first time to wake Captain Macklin, about how long was it before you went the second time?—A. Well, something like three or four minutes, I think.

Q. And between those times, did you walk your post?—A. Yes, sir. Not all the way, but just a distance down the walk and back.

Q. Down the walk?—A. Yes, sir.

Q. In what direction?—A. In the east end of it, back towards the lower end, from the river.

Q. Whilst you were walking your post in front of the officers' quarters—that is, after you returned to your post from B Company, and whilst you were walking, did you see any soldiers?—A. No, sir;

no more than some of the members of the guard—that was Corporal Burdett and Private De Saussure, and some other private.

Q. Did you see Sergeant Taliaferro?—A. No, sir; I didn't.

Q. During that time?—A. No, sir.

Q. Did you see Corporal Madison during that time?—A. No, sir.

Q. What made you think that Captain Macklin lived in quarters No. 12?—A. Well, because I saw him go in those quarters, at least go in that building; I don't know which door he went in, but I was guessing at those quarters; I believed he lived in those quarters.

Q. Do you mean that you saw him go in that night, or do you mean that you saw him do it habitually?—A. Yes, sir; I saw him go in that night, and other times, too. I was not sure of that, but I went there anyway.

Q. You testified on your direct examination that a conversation took place on the porch. Did that conversation take place while Corporal Burdett was at the door of No. 11 or 12—I have forgotten which?—A. No. 12; the same door I went to.

Q. No. 12; and Captain Macklin was in the house? Did you hear that conversation, or did Corporal Burdett tell you about it afterwards?—A. I heard what I stated.

Q. You heard what Corporal Burdett said?—A. Yes, sir.

Q. And you heard Captain Macklin's answer?—A. Yes, sir.

Q. How far did you say you were from Corporal Burdett during the time you heard this conversation?—A. I was at the door with him at the time he called him.

Q. Did Corporal Burdett see Captain Macklin?—A. He called Captain Macklin until he answered, told him to get up, they wanted him at the guardhouse at once, that they were firing on the quarters, and he said "All right," and got up immediately afterwards.

Q. Who got up immediately afterwards?—A. Captain Macklin.

Q. How do you know he did?—A. Well, I was not but a few steps from the door when he came out, and it wasn't but a few minutes after he had been called—I don't think more than a minute and a half, if that.

Q. You stated that the door was closed to No. 12? What kind of door was it?—A. I never noticed that—what kind of door it was.

Q. Was it a screen door or a wooden door?—A. I don't remember what kind of door it was.

Q. How do you account for the fact that Corporal Burdett succeeded in waking him up and you did not?—A. I woke him up and he answered each time that I called him, but he didn't get up.

Q. How do you account for the fact that he got up when Corporal Burdett called him?—A. Because I was there with him, and I was close to his door, immediately after he came out, when Corporal Burdett called him.

Q. I do not mean that. I mean, why did he get up when Corporal Burdett called him and did not get up when you called him?—A. I don't know; but I guess Corporal Burdett stated the facts to him, what was the matter; I guess that is the reason he got up.

Q. When you called Captain Macklin, what did you say?—A. I called him, "Captain Macklin! Captain Macklin!" just like that, until he answered, and I told him to get up; told him they wanted him at the guardhouse at once, and he said "All right," just in that manner.

Q. Now, Hairston, after the second time you called Captain Macklin, did you stay in his quarters, or did you walk to your post; walk off?—A. No; I walked down the walk each time to give him time to get up, and after he didn't get up I continued calling him.

Q. But during these intervals, did you walk just a few paces from his house, or did you walk your post?—A. Just a few paces from his house. I didn't walk all around the post, as I was supposed to.

Q. And after the third time you called him, did you just walk a few paces off then?—A. Yes, sir; a few paces then, until I met Corporal Burdett.

Q. So how many minutes was it from the first time you called him until Corporal Burdett called him and woke him up?—A. I don't remember that.

Q. Well, twelve or fifteen minutes?—A. Something like that, maybe; I ain't sure.

Q. But each time you walked a few paces from his house?—A. Yes, sir; a little ways down the walk.

Q. Did it take you fifteen minutes to walk those few paces each time?—A. Well, I wouldn't say fifteen minutes. I say it probably did; might have taken me that long, I don't know.

Cross-examination by the ACCUSED:

Q. I want to read you questions that were asked you the other day and your answers:

Q. Are you sure that it was from this house, either 11 or 12, that Captain Macklin came when Corporal Burdett finally called him?—A. Yes, sir; he came out of one of the doors, but I was such a distance from the house I couldn't tell exactly which house he came from—I was about 40 feet, about 50 feet, I guess, from the door when he came out.

Q. So you left Corporal Burdett before Captain Macklin came out?—A. No, sir; Corporal Burdett left me and went off down the walk.

Q. You were which way from Captain Macklin's house at the time Corporal Burdett was knocking at the door and at the time Captain Macklin came out a minute or so later, were you to the east of Captain Macklin's house or to the west?—A. I was to the east.

Is that correct?—A. No, sir.

Q. That is not correct?—A. No, sir; for I first stated that I was with Corporal Burdett at the time he was at the door, and then when he left the door Corporal Burdett left me and went down the walk. It was only a few steps when Captain Macklin came out.

Q. Did you ever go to No. 11 that night?—A. No, sir.

Q. Did Corporal Burdett?—A. No, sir.

Q. Have you a distinct recollection of the officers' quarters that night, Hairston—that is, the outside appearance of any of them, what appearance they showed, whether light or not?—A. Well, no, sir; not more than Major Penrose's there, and Captain Macklin's. I wouldn't have noticed his lights if I hadn't been to his quarters.

Q. You do not think you were mistaken about Major Penrose's?—A. No, sir; I know I am not.

Q. Now, will you describe that house, its appearance, as far as that light was concerned?—A. Major Penrose's?

Q. Yes.—A. Why, yes, sir. There was on the east side of the house, towards the guardhouse, his blind was up, and there was a lamp burning on the center table there, and Major Penrose and his wife were seated in the parlor talking at the time this came up. I just seen them as I passed the window.

Q. That was downstairs, was it?—A. Yes, sir; that was downstairs.

Q. And that was when the shooting occurred?—A. Yes, sir.

Q. And so Major Penrose came out from that room downstairs and saw you right away?—A. Yes, sir.

Redirect examination by the JUDGE-ADVOCATE:

Q. Hairston, you saw this light in Major Penrose's quarters and saw Major Penrose?—A. Yes, sir.

Q. Seated at a table?—A. I don't think—

Q. When you were coming up from the east side of his quarters just a very short time before the shooting began—is that right?—A. He was not seated at a table; it seemed they were sitting back in the parlor.

Q. That was a little while before the shooting began, was it?—A. Yes, sir; I don't guess it was a minute beforehand.

Q. Were you walking past rapidly then or were you—A. No, sir; I was just merely moping along there.

Q. Did you notice any lights in any of the houses that were occupied by the ladies on that night, where Corporal Burdett and his guard were stationed, were there any lights there, do you know?—A. Yes, sir; I think—I am not sure—but I think there was a light in the quarters.

Q. I refer, you understand, Hairston, to the house where the ladies, or the officers' wives, were all together, and at the house where Corporal Burdett was stationed. Do you remember whether there was any light there or not?—A. Yes, sir; I think they lit a light—I am not sure of it, but I think after that they did.

Q. Did you go back the line as far as Major Penrose's quarters at any time after you returned to your post from B Company?—A. Yes, sir; I walked up and down in front of the officers' line. I didn't go all the way around it any more that night.

Q. When you spoke to the court about just going a few paces away from Captain Macklin's quarters, do you mean that you walked up and down right by his quarters, or did you walk down in front of the line?—A. Yes, sir; a few steps down the walk, and then back. I was trying to get him up before I walked my post any more.

Q. How far down the line did you go—two sets of quarters or three, or how many?—A. Yes, sir; something like that—about two or two and a half.

Q. You are sure you did not go any more?—A. No, sir; I didn't.

Q. So you confined your walking practically to the western half of the front line of the officers' quarters?—A. Yes, sir.

Q. So you do not know whether in Major Penrose's quarters the light was put out later on or not?—A. No, sir.

Q. Do you know when it was put out?—A. No, sir.

(Excused.)

Maj. A. P. BLOCKSOM, a witness for the prosecution, was duly sworn, and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. A. P. Blocksom; acting inspector-general, Southwestern Division, United States Army; station, St. Louis, Mo.

Q: Do you know the accused? If so, state who he is.—A. Capt. E. A. Macklin, Twenty-fifth Infantry.

Q. How long service have you had, Major Blocksom?—A. I have had thirty years as a commissioned officer this June.

Q. What duty were you on about August 18, 1906, and where were you at that time?—A. I was on duty as assistant inspector-general of the Southwestern Division, at Oklahoma City, Okla.

Q. Oklahoma City was at that time a headquarters of a division?—A. Headquarters of the Southwestern Division.

Q. Did you receive any orders then, or within the next few days, to make a certain inspection in Texas?—A. I received written orders to proceed to Brownsville, Tex., on the 16th of August.

Q. For what purpose?—A. To proceed to Brownsville and investigate the alleged shooting in the town on the night of August 13 by soldiers of the Twenty-fifth Infantry.

Q. Did you, in obedience to those orders, soon afterwards leave for Brownsville?—A. Yes, sir; I left that night.

Q. And arrived there?—A. Arrived at Brownsville on the night of the 18th, about 6 o'clock.

Q. Did you in the course of your investigation there learn the general reputation of Mr. and Mrs. Evans, whose names were connected with the case in connection with an alleged assault?—A. I did.

Q. What was the character, or what was the reputation, rather, of those two people?—A. Their reputation was excellent.

Q. Where was their house with reference to what was called the tenderloin district?—A. I should say it was about 50 yards, possibly more, from the end of the tenderloin district.

The COURT. We would like to ask the major if he can indicate on the map where that location is.—A. I can; only approximately. I was shown the house. [Steps to the map.]

The COURT. In the first place, Major, will you point out what you understand as the tenderloin district?—A. The tenderloin district, as shown to me by a driver in the buckboard which I was in one day inspecting this part of the city—told me the tenderloin district was right along here [indicating] somewhere; I have forgotten where the end of it was. [Indicating northern side of the road marked "garrison road," and in a general northerly direction from the guard-house and vacant set of barracks.] It may have begun right here; I am not certain; I believe it did begin right there [indicating an easterly direction from the corner of Adams street and the garrison road]. It is possible it may have begun there; I don't remember.

The JUDGE-ADVOCATE. I would like to state to the court that I did not ask Major Blocksom to point it out on the map, because that eastern section of the map, especially in the vicinity of the north corner on the map, is not shown accurately, and my own impression is that the house lies on a street that is not shown on that map, and so I did not ask the major to point it out.—A. The house of Mr. and Mrs. Evans—that is, the house they occupied when the alleged assault took place—was somewhere over in here [indicating]; I am pretty sure it was on this side of the street. [Indicating a point near the north corner.] If the tenderloin district begins there, the house was about there. That is about the only description that I can give of its location.

The JUDGE-ADVOCATE (to the court). Is that satisfactory?

The COURT. Yes, sir.

(The witness resumed the witness chair.)

Q. This house was, therefore, off the edge of the district known as the "tenderloin"?—A. Yes.

Q. And the character of the people—or, rather, the character of Mr. and Mrs. Evans—was not in any way affected by their living in the vicinity of that district, was it?—A. It was not.

Q. Was it or not at that time very difficult at all to rent houses in Brownsville, on account of the influx of immigrants and settlers?—A. I am not certain about that—I think I heard one or two people say so—at least one—but I don't know that I heard any more.

Q. You do not know what the circumstances were that required them to live in that vicinity, do you?—A. No, sir; I do not.

Q. But their reputation was what?—A. Was excellent. I inquired of quite a number of people about it, all responsible people.

Q. How long were you at Brownsville altogether on this particular inspection, Major?—A. I was there from the 18th of August until, I think, the 4th of September.

Q. A matter of two weeks or more?—A. Two weeks—a little over two weeks.

Q. Did you, during the course of your investigation with reference to the shooting of August the 13th, make any inquiries of Captain Macklin as to his actions on the night of the 12th, the day of the 13th, and the night of the 13th?—A. I did.

Q. Please state fully to the court all that you recall of what was said to you by Captain Macklin on this occasion in this connection.—

A. To the best of my recollection, Captain Macklin told me that on the night of the 12th he had gone over to Matamoros with a number of officers and, I believe, ladies, all together—I am not certain about the latter—he had been over there until quite late—although I do not think he told me the hour of their leaving—at any rate, he said that he was very tired and in want of sleep on the night of the 13th. After having sent out certain patrols, which he was ordered to do, and having gone into town himself, either with a patrol or alone, I don't remember which, he received the reports after taps, and went around the barracks and inspected sentinel No. 2, and shortly after that went to his quarters. I do not remember whether he told me he inspected the guard at that time or not—I do not think he mentioned the fact, but I understood he only inspected the sentinel.

Q. The sentinel on No. 2?—A. The sentinel on No. 2—that is, the sentinel around the barracks.

Q. After he returned to his house, what did he do, according to his statement?—A. After he returned to his house he told me he sat down for quite a while and drank a bottle of beer.

Q. Did he say a bottle of beer, or bottle, or say beer—do you remember?—A. My recollection is that he said a bottle of beer.

Q. He did not state—A. He did not state the size of the bottle.

Q. Then what did he do?—A. At least, I don't think he did.

Q. Then what did he do?—A. He said he then went to bed, and, to the best of my recollection, he said in the back room; that he did not hear any shooting that occurred after he went to bed, and that he did not wake up—or was not wakened, I do not remember which expression he used—until about 1 o'clock.

Q. Did he get up at that time, 1 o'clock, or did he state anything—A. My recollection is he said he got up at 1 o'clock, about 1 o'clock.

Q. He said he got up about 1 o'clock?—A. Yes.

Q. Did he say anything to you about having the impression that he had been awakened at some previous time?—A. I have no recollection of his having made any statement of that kind.

Q. So you do not recall his having stated that he was awakened at some prior occasion before he finally did get up?—A. As I stated before, I have no recollection of it, although he may have stated something of that kind.

Q. During your investigation down there and examination of the officers and enlisted men, did you find anyone else who had, like Captain Macklin, slept through the entire firing or shooting on the night of August the 13th?—A. No; I did not find out anybody nor did I hear of anybody.

Q. What was the distance, Major Blocksom, from the front of the officers' line to the line of the barracks? Did you ever pace that off?—A. I paced it off while there on that occasion—

Q. What was the distance?—A. And I made it 175 yards.

Q. From the front line of the officers' quarters to the barracks?—A. From the front line of the officers' quarters to the barracks, but—

Q. And the distance from the barracks—pardon me?—A. But I am not certain whether it was between the quarters themselves and the barracks themselves or from the walks in front of the quarters to the walks in front of the barracks, but I think it was between the buildings themselves.

Q. Did you similarly pace off the distance between the rear of B or C Company barracks to the garrison walls?—A. Yes, sir.

Q. What was that distance?—A. By pacing, I found that to be 25 yards.

Q. So the distance from the front line of the officers' quarters to the garrison road would be 200 yards plus the depth of the barracks, which is about how much, approximately?—A. The depth of the barracks and porches was about between 35 and 40 feet—no; possibly I am mistaken about that. It may have been a little less than that.

Q. So that the total distance from the front line of the officers' quarters to the garrison road, according to your pacing and estimation, would be about 210 or 215 yards?—A. It would be something over 200 yards, counting the depth of the quarters—that is, to the road outside of the barracks wall it would be over 200 yards.

Q. Did you look at any of the buildings that were shot up that night, buildings that had the marks of the bullet holes in them?—A. I looked at them, but only casually.

Q. How far away from the post was the farthest house that had bullet marks in it, that you examined?—A. Oh, you mean outside of the—

Q. Outside of the reservation?—A. I would like to have that other question read over to me. I do not think I understood it.

The reporter read the question, as follows:

Did you look at any of the buildings that were shot up that night, buildings that had the marks of the bullet holes in them?

A. You mean in town?

Q. Yes.—A. Yes; I did. I was thinking you referred to the barracks.

Q. How far away from the post was the farthest house that showed signs of having been shot up on that night?—A. Tillman's saloon was the farthest, I think.

Q. Will you kindly point out Tillman's saloon on the map?—A. (Stepping to the map.) I think that whole square there is Tillman's saloon—it runs clear back to the alley.

Q. What is the number on that, please, Major?—A. No. 8—there are two numbers on it, No. 8 and No. 3. [Indicating a building on Elizabeth street, between Twelfth and Thirteenth, a little north of the center of the block.]

Q. And will you kindly point out and name each of the other buildings that you examined, that showed signs of having been shot up on the night of August the 13th?—A. There was the Miller Hotel. [Indicating building corner of Thirteenth street and the alley running parallel to and between Washington and Elizabeth streets.] The rear of Doctor Thorn's house.

Q. Will you please indicate the Cowen alley on that map, what was called the Cowen alley?—A. You mean where Cowen's house was?

Q. Yes?—A. That is the alley. [Indicating alley running parallel to and between Washington and Elizabeth streets.]

Q. Now, will you kindly point out Doctor Thorn's house again? (The witness here indicates the back part of house on the Cowen alley, halfway between Thirteenth and Fourteenth streets.)

Q. And what other houses, Major?—A. The rear of the Leahy Hotel. [Indicating building corner Elizabeth and Fourteenth streets.] The Cowen house. [Indicating building corner of Fourteenth street and Cowen alley.] The Garza house. [Indicating house opposite Cowen house.] The Yturria house—no; that was not the Yturria house. This is the Yturria house here. [Indicating building marked 7, a large building at the corner of Elizabeth street and the garrison road.]

Q. And what other building, Major?—A. The sitting room in Mr. Reynold's house. [Indicating building corner Elizabeth street and garrison road.]

Q. Was there a house on Washington street that was also shot up?—A. Oh, yes; there was a house up here, Mr. Starck's house. [Indicating house marked No. 6 (or 9) on Washington street, and between Twelfth and Thirteenth streets.] There was also a house across the street from the Starck house, which had one bullet mark on it—Mr. Turk's house. By the way, there was another house which had marks on it, too—the house across the street from the Miller Hotel on Thirteenth street, which was occupied—

Q. Called the King Building, wasn't it?—A. Called the King Building. It was occupied largely by offices, and also on the first floor by a wholesale merchant.

Q. By offices?—A. Law offices, principally, on the second floor.

Q. Did you find any signs indicating that the people who did the shooting on the night of August 13 did any shooting at points farther from the post than, say, the corner of Washington and Twelfth streets, or the corner of Elizabeth and Twelfth streets? The

shooting apparently had taken place between Twelfth street and the post, hadn't it, or in the post?—A. There was no evidence to show that the main part of the shooting was beyond the corner of Twelfth street and the Cowen alley. I think this is Twelfth street, that last street that way. [Indicating on map.]

Q. Yes; it is.—A. I think there was one witness testifying to some shooting, I think, beyond there—that is, told me of it.

Q. Major, I hand you now a manual of guard duty of the United States Army, approved June 14, 1902, and issued from the Government Printing Office under date of 1902. It is, I believe, the last manual of guard duty. I will ask you if you recognize it as such, and to please read to the court paragraph 58. [Hands book to witness.]—A. I do recognize it.

The JUDGE-ADVOCATE. We have asked the defense if they have any objection to being read in evidence this particular copy of the Guard Manual, which is not stamped with the official seal of the War Department, but it is the ordinary manual of guard duty, and the defense have stated that they have no objection to its being read in evidence. Is that correct?

COUNSEL FOR THE ACCUSED. That is correct.

A. (The witness reads from paragraph 58, page 12:)

In case of an alarm of any kind the officer of the day will at once take such steps as may be necessary to insure the safety of public property and preserve order in the command, disposing his guard so as best to accomplish this result.

Q. I will ask you now, Major, to read paragraph 55 on the preceding page, and also a certain paragraph of General Orders, No. 189, of the War Department, dated Washington, November 15, 1906, which modifies that paragraph?—A. Paragraph 55 of the Manual, page 11, reads:

In the absence of special instructions from the commanding officer, the officer of the day will inspect the guard and sentinels during the day and night at such times as he may deem necessary.

The JUDGE-ADVOCATE. And this order, the same remarks apply with respect to this order. This order has not the official stamp of the War Department, but the defense has stated it has no objection.—

A. The order is "General Orders, No. 189, War Department, Washington, November 15, 1906. II. Paragraphs 55 and 69, Manual of Guard Duty, are amended to read as follows:

55. In the absence of special instructions from the commanding officer, the officer of the day will inspect the guard and sentinels during the day and night at such times as he may deem necessary. He will visit them at least once between 12 o'clock midnight and daylight; and when there is no officer of the guard he will visit each relief at least once while it is on post.

A MEMBER. I would like to ask the date of that order.

The JUDGE-ADVOCATE. November 15, 1906.

Q. Do you know how that order came to be issued, or upon whose recommendation it was issued—this modification of paragraph 55, as given in that general order, No. 189, just read by you?—A. I only know that the inspector-general of the Army told me of the matter at Oklahoma City in October of last year when he was on his road to Fort Reno to further investigate the Brownsville affair. He told me among other things that he intended to recommend that the officer of the day should inspect the guard between midnight and reveille, as had been the custom years ago.

Q. You say that was the custom years ago?—A. Yes.

Q. Do you know that of your personal knowledge?—A. Yes.

Q. And in the later editions of the Guard Manual, or in late years, at any rate—A. That has been omitted.

Q. That has been omitted from the—A. Instructions.

Q. From the instructions covering the officer of the day's duties?—A. Yes.

Q. And that was until what time?—A. I do not remember how long ago. It was quite a number of years ago—probably eight or ten years ago. I do not really remember, however.

Q. Do you know what the custom of the service is in that particular—whether it is ordinarily expected that an officer will inspect after midnight or after taps, or when?—A. The officer of the day is supposed to use his own judgment in the matter. That has been the custom until this new order was issued. He was entirely untrammelled, unless he had special orders from the commanding officer.

Cross-examination by the Accused:

Q. Major, will you read paragraph 75 of that Guard Manual?—A. (Reading:)

When an alarm is raised in a camp or garrison, the guard will be formed immediately. If the case be serious the proper call will be sounded and the commander of the guard will cause the commanding officer and the officer of the day to be at once notified.

Q. Major, I understand that the orders in force at Fort Brown, as determined by your investigation, were, as far as they related to the officer of the day—were those orders that were contained in the Guard Manual, paragraphs of which you have just read?—A. Yes.

Q. Did you find that there were any special orders issued to the officer of the day on this particular date regarding his duties as officer of the day, other than to make certain patrols in town?—A. He was ordered to send certain patrols into the town. There were three of them made during the evening of the 13th, and the officer of the day was either ordered or went of his own accord into town himself, as a patrol, or with a patrol.

Q. Do you know of any other orders having been issued to the officer of the day on that date?—A. He was directed to bring in all the men in town who were found during those patrols and to notify them that all passes were up at 8 o'clock.

Q. But I mean anything else than these orders relating to the patrol—were there any other special orders concerning any inspection to be made by him, or anything of that kind, or was he under the usual orders of the officer of the day at the post?—A. Otherwise, I understood that he was under the usual regulations or usual orders—that no other special regulations were given.

Q. Were there any other general orders existing there at Fort Brown which required anything further than the Guard Manual required as regards inspections by the officer of the day?—A. No, sir.

The JUDGE-ADVOCATE. I wish to state here that all the officers that have appeared thus far as witnesses for the prosecution and who were actually present on the night of August 13, are still here and available to give first-hand evidence as to the actual conditions existing there at that time. I have tried to avoid asking Major Blockson anything relating to the conditions there about which he

could have no first-hand knowledge or which was not told him by the accused himself; and the prosecution will have to object to hearsay testimony, even though it was given to an officer acting as an inspector.

Q. Major, as an inspector, you are familiar with the customs of the service, are you not?—A. I am.

Q. What is the custom of the service with respect to the officer of the day going to bed?—A. Unless he receives special instructions to the contrary from the commanding officer or unless there is some unusual danger in prospect, he, I may say, always goes to bed.

Q. Was there any old-time custom in the Army in which the officer of the day kept his clothes on in going to bed?—A. Not since my entry into the service.

Q. You never heard of any of the old officers performing officer of the day's duties by keeping their clothes on all night, even though they laid down?—A. Not in peace times, I never heard of it.

Q. That is not a modern practice, is it, with the officer of the day?—A. That is, going to bed?

Q. I mean that is not modern practice to go to bed with his clothes on—to lie down with his clothes on?—A. It is not the modern practice.

Q. Major, in that investigation that you made up there at Fort Brown, as I understand it, one of the purposes of that investigation was to determine whether or not—or, rather, to determine who had done the shooting down there that took place; and another purpose of the investigation was to determine whether or not any responsibility rested upon the commanding officer of that post or on the part of any other officers in connection with the shooting that took place down there on August 13?—A. Yes.

Q. Now, did you approach these officers, particularly the commanding officer, to determine whether or not he had any responsibility and try to find out everything from him that you could?—A. Yes.

Q. And similarly with respect to the officer of the day?—A. Yes.

Q. Now, I want to ask you the attitude in which Captain Macklin, the officer of the day, received your questions or your investigation—was it one of frankness or was it one of trying to hold something back and one which necessitated pointed questions being asked him by you?—A. It was one of frankness.

Q. Was it one that impressed you with a belief that he was honest in what he said to you?—A. It was.

Q. Did he seem to be making a full statement of his actions on that night in question?—A. He did.

Q. Did he seem to think it was necessary that he give fully all the light that there was on the question?

THE JUDGE-ADVOCATE. If counsel would just modify that question slightly, there would be no objection. That is a thing that is pretty difficult for the witness to state, I should think.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, I am trying to get at a certain particular point in connection with Captain Macklin's statement. I do not very well see how I can approach it in any other way. All I expect to ask of the witness is that he answer as to what his knowledge is of the particular question. He may not know to what the question relates and may not be able to answer it. I shall be satisfied with his answer. The witness may not

be able to understand the point I am trying to make, he may not be able to answer it definitely at all, but if he does so answer it it will give me an opportunity to frame my question so as to put it more clearly before him. I can not see very well how I can approach the witness and get a definite answer without leading the witness. I will try it, however.

The JUDGE-ADVOCATE. I will ask the reporter to please read the question.

(The reporter read the question.)

ASSOCIATE COUNSEL FOR THE ACCUSED. I will withdraw that question.

Q. Major, Captain Macklin understood that he was the subject of investigation; did he not?—A. Yes.

Q. Did he impress you that he felt it necessary to explain all his movements on that particular night, and cover, as near as possible, the periods of time that were in question?—A. Although he answered fully my questions in the matter, I do not think that he did understand that he was to show what he did during the whole of that night—that is, before he went to bed.

Q. Well, I do not quite understand that, Major—what do you mean by that?—A. That is, I mean to say he did not seem to understand that he was to show what he did each hour, for instance, or minute of time until he went to bed that night.

Q. That is, his statement was not so full that it covered the entire period from—A. Not categorically; no.

Q. Not categorically?—A. No.

Q. But you did not get the impression that he was holding back a single thing in connection with that period, did you?—A. I certainly did not get such an impression.

Q. Were you or not impressed with the honesty of the statement of Captain Macklin?—A. I was impressed with the honesty of his statement; I believed he was telling me the truth, and I believe so now.

Q. He stated to you, did he not, that he drank a bottle of beer before he went to bed?—A. Yes.

Q. Did you consider at that time that it was necessary for him to volunteer that information?—A. No.

Q. What impression, then, did that form on your mind?—A. It did not make a bad impression; although on account of it I believe now I questioned the commanding officer concerning Captain Macklin's actions on that night and asked him if Captain Macklin was—

The JUDGE-ADVOCATE. There is no objection to the witness's stating what he asked Major Penrose; but it seems to me that Major Penrose's replies and what he said would better be brought out at first hand from Major Penrose himself, as a witness for the defense, rather than making a witness for the defense out of Major Blocksom on cross-examination.

ASSOCIATE COUNSEL FOR THE ACCUSED. Is the question formally objected to, may it please the court?

The JUDGE-ADVOCATE. I will ask the reporter to read the question and answer.

(The reporter read the last question and answer.)

The JUDGE-ADVOCATE. We have no objection to the witness continuing his answer and stating what he asked Major Penrose.

The President. The witness will proceed.

A. I asked Major Penrose whether Captain Macklin had performed his duties properly on that evening, whether he had noticed his condition as to sobriety, and also whether Captain Macklin was in the habit of drinking intoxicating liquors to excess.

Q. Did you get satisfactory replies from the commanding officer, Major?—**A.** I did.

Q. Did you get any information from the commanding officer with respect to Captain Macklin's performance of the officer of the day's duty, his general performance of that, if you happen to remember?—

A. Yes; he told me that Captain Macklin—

The Judge-Advocate. I will have to object to that. Major Penrose is here and will be put on the stand, and can state just exactly what he believes as to the manner in which Captain Macklin performed his duties, and it seems to me that that is the best evidence—and inasmuch as it is easily obtainable, I think I shall have to object to this.

ASSOCIATE COUNSEL FOR THE ACCUSED. I am somewhat surprised at the judge-advocate, after introducing before this court a witness who arrived down there at Fort Brown on the 18th of August, and therefore had in his possession not a single primary piece of evidence, after having presented him as a witness before this court, a witness for the prosecution, to make this objection. The nature of his testimony must then of necessity have been hearsay testimony, and as such determined by him as official investigator of the Inspector-General's Department of the Army of the United States, and after having presented him as a witness before this court for the prosecution, yet, upon our cross-examination of this witness he seeks to debar us from such cross-examination along the same lines and same efforts. An extensive examination of this witness was permitted, which would not, I believe, have been allowed if we had objected to it; but we want, may it please the court, a full and free investigation of this investigation of Captain Macklin. He feels, and we feel, that he has got nothing to conceal about it, and we feel that anything this particular witness has to say we want to hear it. If the court permitted it, and certainly if they permitted it on direct examination we feel we are entitled to cross-examine him along the same line and in the same particulars.

The Judge-Advocate. May it please the court, I would have no objection to this coming out by the testimony of the witness now on the stand were it not for the fact that the statements made to him by persons other than the accused, and with reference to which the cross-examination is now being conducted, were all made by officers now present in the post and who can state exactly what they told Major Blocksom at that time and what the circumstances were at that time; and the direct examination of the witness on the stand did not bring in any conversation, as I remember it, with parties other than the accused—and that is the only way that conversation could be brought out. But I believe in other respects that hearsay testimony has been avoided. The admission of the accused is not hearsay. I will have to object formally to this manner of questioning.

The accused, his counsels, the reporter, and judge-advocate withdrew, and the court was closed, and upon being opened the president announced in their presence as follows:

The objection of the judge-advocate is not sustained. The witness will answer the question.

The JUDGE-ADVOCATE. I will ask the reporter to read the question and answer, so far as given.

The reporter read the question and answer, as follows:

Q. Did you get any information from the commanding officer with respect to Captain Macklin's performance of officer of the day's duty—his general performance of that—if you happen to remember?—A. Yes. He told me that Captain Macklin—

Q. Now, continue your answer, Major.—A. Does that refer particularly to that night only?

Q. No, sir.—A. Generally?

Q. Generally.—A. He told me that Captain Macklin had complied fully with his instructions on that night; that he was an excellent officer in the performance of duty generally, and did not drink intoxicating liquors to excess.

Q. Major, did you make any investigation as to why Captain Macklin was not awakened that night—that is, did that point come up at all, as to his being wakened by the guard or others?—A. I questioned the sergeant of the guard on that subject, and he told me, to the best of my recollection, that he had sent a member of the guard several times up to the quarters of Captain Macklin to wake him up, but that he was unable to do so.

Q. You developed from your investigation that the sergeant-major also had been sent up to awaken him?—A. Yes.

Q. Now, with reference to the attempt made by the battalion sergeant-major to awaken Captain Macklin, that was not investigated by you further than simply you knew that an effort had been made?—A. That was all.

Q. Now, with reference to these efforts that had been made by members of the guard, did you believe that was an honest effort that had been made by members of the guard to awaken Captain Macklin?

The JUDGE-ADVOCATE. Now, I will have to object to questions that are simply questions of opinion and belief, and I will have to object to that question.

ASSOCIATE COUNSEL FOR THE ACCUSED. I will modify it, may it please the court.

The PRESIDENT. Very well.

Q. From your investigation of that matter, Major, was the result of that investigation that the effort made was an honest effort or not on the part of the guard?—A. It was a matter of opinion simply.

The JUDGE-ADVOCATE. I will have to object to that.

The PRESIDENT. The court will be cleared.

A MEMBER. I would like to submit, sir, that the judge-advocate did not state the cause of his objection to this particular question.

The JUDGE-ADVOCATE. The judge-advocate will state the objection is made on the same grounds as previously stated to the former question—that it is merely a matter of opinion.

ASSOCIATE COUNSEL FOR THE ACCUSED. And, may it please the court, substantially the reply of the defense to that objection is the same as the reply to the previous objection.

The accused, his counsels, the reporter, and judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence as follows:

The objection of the judge-advocate is sustained.

The **JUDGE-ADVOCATE**. May it please the court, I desire to state that I have just come from the adjutant-general's office. I told him of the court's desire, and the department commander has sent a telegram to the commanding general of the division requesting that every effort be made to induce this man Rogers to start here at once.

Q. Major, do you know where Captain Macklin slept that night?—**A.** In what part of his quarters? No.

Q. Do you know what part of the house was usually occupied as the sleeping apartments of the different officers down there at Fort Brown?—**A.** Well, I can only say what my impression was. The back rooms were usually used.

Q. Was there any reason for that, Major?—**A.** On account of the prevailing wind at night coming from the direction of—I don't know what they call it, a pond.

Q. Lagoon?—**A.** Lagoon there, yes; and my recollection is, also, that that is from the Gulf—the wind comes from the Gulf in that direction.

Q. That room is towards the south, is it?—**A.** Yes.

Q. Did it develop from your investigation that Captain Macklin followed out the custom of the post in that regard?—**A.** That is my impression—my recollection.

Q. Major, what conclusion did you get as to Captain Macklin's sleep that night?

The **JUDGE-ADVOCATE**. I will have to object to that.

The **COURT**. What is the question?

(The reporter read the question.)

The **JUDGE-ADVOCATE**. The prosecution will have to object to that, as it did to the last question, on the ground that it is a mere matter of opinion. Major Blocksom, the witness, was not there that night, and it seems to me that it is not proper to ask him to state what his opinion was on the subject in question.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, as I have stated previously, this witness is a witness who has been brought in largely to testify as to the results of a certain investigation he made down there at Fort Brown, and he has been permitted to testify about the results of this investigation. Now, one of the particular features of the investigation by him was an effort to determine the responsibility on the part of the officers at Fort Brown, and we have shown through the witness that he made use of very exhaustive efforts to determine that. And there are certain points that were developed by this witness in reaching that determination that we think proper to appear before this court. There were witnesses at the command of this officer, as inspector down there, who are not available to us to present here before this court; the conditions have been changed so largely; the post has been abandoned; we would not have the facility for bringing these things before the court; we could not bring the witnesses; but this officer, who investigated it, is before the court, and we have shown, and he has been permitted to show in person, and the prosecution has been permitted to show, just in what capacity this officer went down there, and he has given his testimony along these lines; and this question refers to exactly the same thing, may it please the court. It refers particularly, also, to certain paragraphs in the Guard Manual, to which this witness has already testified, and that come under this examination of the para-

graphs of the Guard Manual. It was certainly the duty of this officer to determine whether these paragraphs in the Guard Manual were carried out, and we want the result of that particular investigation on the part of the witness. Technically, may it please the court, it may be a question of opinion, but broadly it is for the result of the investigation of the conditions that were existing on the 13th of August.

THE JUDGE-ADVOCATE. May it please the court, it is immaterial whether this was developed in the course of official investigation or not. It remains simply a matter of opinion, and my understanding of the facts is that Major Blocksom went there primarily to investigate the shooting up of the town, which occurred on the night of August 13, and only incidentally in the course of this investigation about the shooting did the question of the actions of the officers on that night come up. He was not making an investigation, as I understand it, with the view of ascertaining whether any of the officers were guilty of any neglect at all, but he was down there to investigate the shooting and to try to find out who did the shooting, and that was the purpose he was sent there for. The question as asked calls purely for a matter of opinion, and on that ground I object to it.

THE PRESIDENT. Let the stenographer read the question again, please.

The reporter read the question to the court, as follows:

Q. Major, what conclusion did you get as to Captain Macklin's sleep that night?

The accused, his counsels, the reporter, and judge-advocate withdrew, and the court was closed; and, on being opened, the president announced in their presence as follows:

The objection of the judge-advocate is sustained.

Q. Major, did you make any investigation as to whether or not anybody else was sleeping throughout the trouble at Brownsville on the night of August 13?—**A.** I did not make any special investigation, but I heard of no other person so sleeping.

Q. Major, did you investigate to see whether or not this particular paragraph of the manual was carried out:

When an alarm is raised in camp or garrison the guard will be formed immediately. If the case be serious, the proper call will be sounded, and the commander of the guard will cause the commanding officer and the officer of the day to be at once notified?

A. Yes, sir. The sergeant of the guard told me that he had formed the guard immediately and sent for the officer of the day, and, I believe, the commanding officer; but I think the commanding officer was out there before the messenger got to his house. That is my recollection.

Q. Did you ever previously state that you believed this not to have been an honest effort?

THE JUDGE-ADVOCATE. Just one moment. Inasmuch as the court sustained the objection of the prosecution as to Major Blocksom's opinion as to whether an honest effort was made by the sergeant of the guard to arouse the officer of the day or send word to the commanding officer, I think that this question is objectionable, because

if such statement ever were made, it would simply be a question of opinion.

(By request of the court the reporter read the question.)

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, I judge from the objection of the judge-advocate that it is based upon the specific ground that this is a matter of opinion, this being testified to by the witness now. If it please the court, I am examining this witness on a certain paragraph of the manual which he has knowledge of and which he had in mind at the time of making the investigation down there at Fort Brown, and he has so far been considered as an expert in the performance of this kind of duty; full reliance has been placed upon his conclusions in all this particular matter. When this officer appeared before the investigating committee he testified upon this particular matter, and it is in relation to that particular investigation in which his evidence was considered as that of an expert, which was the only means that they had of determining that point, and I ask that this particular matter be allowed to come before this court in the same way.

THE JUDGE-ADVOCATE. May it please the court, the witness was not called as an expert. He was called because he was an officer sent down there to investigate the circumstances, in the course of which investigation he had occasion to talk with the officer of the day with reference to his whereabouts at the time of the shooting on August 13. That is the main point for which Major Blocksom was called. He was also asked whether he saw marks of bullet holes in the house, and where they were. Aside from that I do not think that the prosecution has gone very deeply into his investigation down there; and it makes absolutely no difference whether he was there investigating, or whether he was there unofficially, in so far as the admissibility or nonadmissibility of testimony showing what his opinion was is concerned—that is, now, about anything that happened down there; and it is merely another method, it seems to me, of getting before the court matter that has been objected to and the objection to which has been sustained—it is merely another method of bringing it out, and I object to it.

THE PRESIDENT. I will ask the stenographer to again read the question.

THE JUDGE-ADVOCATE. I will ask the reporter to read the previous question, the objection to which was sustained by the court, and then read the present question.

The reporter referred back to his notes and read the questions, as follows:

Q. From your investigation of that matter, Major, was the result of that investigation that the effort made was an honest effort or not on the part of the guard?

(Objection of prosecution sustained by the court.)

Q. Did you ever previously state that you believed this not to have been an honest effort?

THE JUDGE-ADVOCATE. I have nothing further to state, may it please the court, except I merely call attention to the form in which this question was asked before and to the present form. It is merely another way of getting at the same result, and does not change the force of the objection. It is a matter of opinion, pure and simple.

The accused, his counsels, the reporter, and judge-advocate with-

drew, and the court was closed; and, on being opened, the president announced in their presence as follows:

The objection of the judge-advocate is sustained.

Redirect examination by the JUDGE-ADVOCATE:

Q. Major, how many people did you talk to who were members of the garrison of Fort Brown and who were present in the post at the time this shooting occurred and the bugles were sounded, who told you that they were awakened by either the shooting or the bugle calls, approximately? Were there a dozen or twenty or more or less, or what?—A. Well, everybody that I spoke to on the subject, except possibly two or three, said they were awakened by the sound of the shooting.

Q. Downtown did you question a considerable number of people who lived out a distance from the post?—A. I did.

Q. And about how many residents of Brownsville did you question about the occurrences of the night of August 13?—A. Oh, I questioned somewhere—probably all together, somewhere between 60 and 100.

Q. Did any of these people you questioned claim that they slept through the shooting?—A. As far as I can recollect, the immediate witnesses of the shooting, or of the sound of the shooting, were awakened by the shooting itself. There may have been a few who were awakened by others, but I do not remember any.

Question by the COURT:

Q. Did the people whom you questioned relative to their being awakened live nearer the approximate locality of this firing than Captain Macklin, or farther?—A. They lived closer to the shooting than Captain Macklin—than Captain Macklin's house was.

A MEMBER requested that the court be closed.

The accused, his counsels, the reporter, and judge-advocate withdrew, and the court was closed; and, on being opened, the president announced in their presence as follows:

The court wishes to continue the examination of Major Blocksom so far as to ask a few more questions by the court.

(The court then, at 1 o'clock p. m., adjourned to meet at 2 o'clock p. m. of the same day.)

The court met, pursuant to adjournment, at 2 o'clock p. m., April 20, 1907.

Present: All the members of the court and the judge-advocate.

The accused, his counsels, and the reporter were also present.

The PRESIDENT. At the request of a member the court will be closed.

(The accused, his counsels, the reporter, and the judge-advocate withdrew and the court was closed, and on being opened the president announced as follows:

The court desires to ask Major Blocksom a few questions.

Maj. A. P. BLOCKSOM, a witness for the prosecution, was recalled by direction of the court, and being reminded that he was still under oath, further testified as follows:

Reexamination by the COURT:

Q. Major Blocksom, during your investigation upon the Brownsville affair, whom did you converse with who said he went to awaken Captain Macklin?—A. I conversed with the sergeant-major.

Q. His name was Taliaferro?—**A.** His name was Taliaferro; but I do not recollect what the conversation was, whether I asked him about going to wake up the officer of the day or not—I have forgotten. I had several conversations with him.

Q. That was Sergeant-Major Taliaferro?—**A.** Yes.

Q. Did you talk to anyone else who said he went to awaken Captain Macklin; do you remember questioning anyone else?—**A.** I do not recollect of anyone else.

Q. For instance, Corporal Madison?—**A.** I talked with Corporal Madison, but I do not recollect whether I asked him that question or not; and I do not know whether I talked with Private Hairston or not. I do not believe that I did.

Q. You do not remember?—**A.** No.

Q. You do not remember, then, of talking with anyone else?—**A.** No.

Q. With any other witness?—**A.** No.

Q. I think the witness understands—but we want him to tell us what person or persons he conversed with on his investigation who had stated they had gone or were sent to awaken Captain Macklin?—

A. That is right. I do not remember certainly that I asked those questions. I know that I conversed with those men that I have stated I did.

Q. Then did you converse with anyone who told you anything concerning his effort or efforts to awaken Captain Macklin?—**A.** Nothing but what I have stated. I do not remember anyone else. I think it is probable that I might have talked to the sergeant-major on the subject, but I do not remember what he told me.

Q. You do not remember what he told you?—**A.** No; and the same with Corporal Madison.

Q. If you talked with them, you do not remember what they told you about it?—**A.** I do not remember what they told me; no.

Q. I will ask one more question. Is there any fact within your knowledge tending to show the character of the effort made by anyone to awaken Captain Macklin?—**A.** No direct testimony that I know of. The only thing—the only evidence that I know of is what I have already related; what Captain Macklin himself told me, what the commanding officer himself told me, what the sergeant of the guard told me.

Q. And that is all?—**A.** That is all.

Q. And that you have already related?—**A.** That I have already related.

Q. I would like to ask Major Blocksom if in connection with his investigation at Brownsville he went into the matter of Captain Macklin's alleged failure to turn out at the time of this alarm; and if he did so, what was the result of his inquiry at that time?—**A.** I would like to have that read over.

(The reporter read the question.)

A. Yes; I was convinced—

A MEMBER. I would like to say, before the Major answers that question, I would like to say to the court that that question is in line with the questions that have been objected to, but inasmuch as it comes from the court, of course it will be construed legitimately by the court.

The JUDGE-ADVOCATE. Does the prosecution understand this question is by the court or by a member of the court?

The PRESIDENT. It is a question by a member, of course.

The JUDGE-ADVOCATE. Then, if that be the case, the prosecution will have to object to the answer to the last part of that question, as to the conclusions Major Blocksom reached in the matter. I think if he were to amplify his answer to the first part it would be brought out to the court that he did not make any especial attempt or, rather, any thorough examination of the facts connected with Captain Macklin's absence that night; that merely came in incidentally during the investigation in which he was trying to determine who did this shooting, and I think if that fact is made clear to the court possibly it would save a loss of time by the prosecution's objecting to opinion evidence. I think if the member would be kind enough to ask Major Blocksom to state the degree of thoroughness that he went into this subject of Captain Macklin's alleged failure to appear, it would show that the witness did not investigate that point particularly.

A MEMBER. Mr. President, I will say, in explanation of this question, that it has been entirely the object of counsel to get at the result of Major Blocksom's investigation at the time he was on the ground, and the judge-advocate has objected to that line of questioning and the court has decided that it was improper. I think it is entirely within the province of the court to go into that. We can control the nature of the evidence, and that will assist us in judging this case. I think it is a legitimate question to find out from this witness what were his conclusions at the time he was on the ground.

The PRESIDENT. Is the member willing to have his question modified?

A MEMBER. Yes, sir.

The PRESIDENT. Then let the stenographer strike out the part that is objected to.

The reporter thereupon read the question as modified, as follows:

Q. I would like to ask Major Blocksom if in connection with his investigation at Brownsville he went into the matter of Captain Macklin's alleged failure to turn out at the time of this alarm?

The PRESIDENT. Now, if there is no objection, will the witness please answer the question as modified?—**A.** I went into it to a certain extent, which I have related almost in full as far as I recollect. I drew my conclusions mainly from what Major Penrose told me, from what Captain Macklin himself told me, from what the sergeant of the guard told me, and I think from what Sergeant-Major Talliafero told me in the matter. I might add, also, which I did not state in my original examination, that Major Penrose told me that when Captain Macklin reported to him, about 1 o'clock, that he was in perfectly proper condition—I think I left that out—and I think one or two other officers told me that same thing. I have forgotten who they were.

Q. I would like to ask Major Blocksom what the sergeant of the guard did tell him, so far as he can remember—I would like for the witness to tell us in detail what the sergeant of the guard did tell him about his efforts?

The JUDGE-ADVOCATE. If the court please, that is absolutely bear-

say testimony, but the prosecution has no objections if the defense has none.

The defense did not indicate that they had any objections to the witness's answering the question.

A. The sergoant of the guard told me that he formed the guard when the shots were fired and the call was made by the sentinel, that he sent for the officer of the day and the commanding officer, and that a few minutes—well, a very short while after the firing commenced, that he himself had the call to arms sounded. He said that he had sent a man up several times—that is, to the best of my recollection—but that he could not find him. I did not ask of him—or at least I have no recollection of asking him or receiving a reply—as to whether the man sent up there finally found Captain Macklin. I did not go further into the subject, because I was convinced—that is, I had already drawn my conclusions (I am not going to say what they were) from what I had already heard.

Q. Major, you have stated that you went into this particular feature of your investigation to a certain extent?—A. Yes.

Q. Will you please tell the court why you pushed this particular feature of your inquiry no further?—A. Because, as I just said, the evidence I had already received convinced me there was no use in going any further; I had received sufficient evidence already.

Q. Do you remember the name of the sergoant of the guard?—A. Reid—Sergeant Reid was his name.

Redirect examination by the JUDGE-ADVOCATE:

Q. Major Blocksom, when you were sent to Fort Brown, you were sent there for the purpose of investigating the shooting up of the town of Brownsville, alleged to have been committed by certain enlisted men of the Twenty-fifth Infantry, weren't you?—A. Yes.

Q. And you were not sent down there for the purpose of investigating the conduct of any of the officers stationed down there, further than to find out what they knew about the shooting and to try and determine the responsibility for that shooting; was that not so?—A. That was the main object of it.

Q. And this question of Captain Macklin's alleged failure to be present with the guard or with the troops after the alarms were given on the night of August 13 did not come up until after you reached there, did it?—A. No; it did not come up until several days after I had reached there.

Q. And then you were satisfied by your conversation with Captain Macklin and other circumstances that you knew of down there that his statements as to his whereabouts on that night were correct—you were satisfied in your own mind that he was where he claimed to be?—A. I was.

Q. And you consequently pushed this matter no further and did not interview or try to get hold of all the messengers that were sent to wake him up, did you?—A. No; I did not.

Q. And, Major, when you stated that your impression was that the sergoant of the guard told you that he sent a man up there several times, are you sure that he said he sent a man up there several times or that he sent up there several times? Or did you think that he sent the same messenger up each time?—A. My remembrance is that he used the expression he "sent a man up there several times."

Q. It might have been——A. It might have been different men.

Recross-examination by the ACCUSED:

Q. Major, did you ever recommend the trial of Captain Macklin?—A. No.

Q. And you were called before a committee that was investigating this matter as a witness for that purpose?

The JUDGE-ADVOCATE. If the court please, if the defense wants to go into a lot of new matter outside of what has been brought out by the court, the prosecution, I think, will—

ASSOCIATE COUNSEL FOR THE ACCUSED. Just that question, may it please the court. That is the only remaining question.

(The reporter read the question.)

ASSOCIATE COUNSEL FOR THE ACCUSED. I will modify the question to read:

You were called before a committee that was investigating this question as a witness?

The JUDGE-ADVOCATE. I will have to further object to that. I will have to ask the counsel as to what "this question" refers, whether it refers particularly to Captain Macklin or to the conditions generally down there?

ASSOCIATE COUNSEL FOR THE ACCUSED. The conditions generally, provided it is assumed that it includes this question also. I do not mean for my question to refer to this particular matter exclusively, but the question assumes that this entire matter was being investigated, including the question of the responsibility of Captain Macklin. This committee was investigating that particular feature in connection with the others.

The JUDGE-ADVOCATE. May it please the court, then, if counsel will kindly just reframe that question, so that it will be absolutely clear.

ASSOCIATE COUNSEL FOR THE ACCUSED. All right, sir.

Q. Were you called before the second division of the General Staff, Major Blockson, as a witness?—A. I was not called exactly as a witness. I was called to tell them certain results of my investigation at Brownsville, with a view—well, I will end with that.

Q. What was the purpose of this examination of that General Staff?—A. The purpose of it, as I understood it, was to determine whether or not Major Penrose and Captain Macklin should be tried before a general court-martial.

Redirect examination by the JUDGE-ADVOCATE:

Q. No charges up to that time had been preferred against either Major Penrose or Captain Macklin, had they?—A. None.

Q. And do you know whether the charges in this case were prepared as a result of that investigation by direction of the Chief of Staff?—A. They were prepared, but not altogether, as the result of that investigation.

(Excused.)

The JUDGE-ADVOCATE. May it please the court, the prosecution is unable to proceed further until the arrival of two witnesses, Private Rogers and Corporal Burdett.

The court thereupon adjourned at 3 o'clock p. m. to meet at the call of the president.

ROGER S. FITCH,
First Lieutenant, First Cavalry,
Judge-Advocate.

**HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 27, 1907.**

The court met, pursuant to call of the president, at 1.30 o'clock p. m. Present: Maj. Everard E. Hatch, Twenty-sixth Infantry; Maj. Harris L. Roberts, Twenty-sixth Infantry; Maj. George W. Gatchell, Artillery Corps; Capt. George W. Goode, First Cavalry; Capt. David J. Baker, jr., Twenty-sixth Infantry; Capt. De Rosey C. Cabell, First Cavalry; Capt. Hanson E. Ely, Twenty-sixth Infantry; Capt. George E. Houle, Twenty-sixth Infantry; Capt. Lincoln F. Kilbourne, Twenty-sixth Infantry; Capt. John F. Preston, Twenty-sixth Infantry; Capt. Murray Baldwin, Twenty-sixth Infantry; Capt. Samuel B. Arnold, First Cavalry; Capt. Adrian S. Fleming, Artillery Corps; First Lieut. Roger S. Fitch, First Cavalry, judge-advocate.

The accused, his counsels, and the reporter were also present.

The reading of the proceedings of previous meetings was dispensed with.

The judge-advocate then addressed the court as follows:

Since our last adjournment a member who has been absent through the proceedings up to date has returned—Capt. Hanson E. Ely, Twenty-sixth Infantry. Has the defense any objection to his sitting as a member of this court?

By COUNSEL FOR ACCUSED. The defense has no objection.

By the JUDGE-ADVOCATE. Then, may it please the court, the prosecution will have to object to Captain Ely, on the ground that he has been absent during the taking of material and important evidence, and, hence, by paragraph 4, on page 28 of the Manual for Courts-Martial, he should not sit in this case. There have been about three hundred and thirty-odd pages of record up to date, and the prosecution must object to Captain Ely sitting on the court.

The challenged member had no reply to make.

The accused, his counsels, the reporter, the challenged member, and the judge-advocate then withdrew and the court was closed, and on being opened the president announced, in their presence, as follows:

The objection of the judge-advocate is sustained, and the member is excused from further attendance in this case.

Captain Ely then withdrew.

JOSEPH ROGERS, a witness for the prosecution, was duly sworn, and testified as follows:

Redirect examination by the JUDGE-ADVOCATE:

Q. What is your name, residence, and present occupation?—A. Joseph Rogers is my name; Atchison, Kans.; railroad porter; that is my occupation at present—for a while.

(Upon motion of a member, the accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew and the court was closed, and on being opened the accused, his counsels, the witness, the reporter, and the judge-advocate resumed their seats. There was no announcement made by the court.)

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Captain Macklin.

Q. What regiment?—Twenty-fifth Infantry.

Q. Did you ever serve in Company C, Twenty-fifth Infantry?—A. Yes, sir.

- Q. Did you ever serve in any other company?—A. No, sir.
- Q. How long were you a member of Company C, Twenty-fifth Infantry?—A. About six years and some months. I can't remember exactly how many months, but it was six years.
- Q. Were you a private soldier on August 13, 1900, in Company C, Twenty-fifth Infantry?—A. Yes, sir.
- Q. Where were you stationed at that time?—A. Fort Brown, Tex.
- Q. Did you go on guard on the morning of August 13?—A. August 12—August 13; yes, sir.
- Q. To what post and what relief were you assigned?—A. No. 3 post and third relief.
- Q. Who was corporal of that relief?—A. Corporal Franklin.
- Q. Did you hear anything unusual at or about midnight on August 13?—A. Yes, sir.
- Q. Where were you at the time?—A. I was at the guardhouse.
- Q. What were you doing?—A. I was lying on my bunk, reading.
- Q. What was it you heard?—A. I heard firing on the outside.
- Q. State how many shots you heard, and what happened right after that, so far as you are concerned.—A. I heard about two or three shots, and then the sergeant of the guard, he came over and pulled me by the shoulder and asked me to go over and wake the officer of the day up and tell him to report to the guardhouse right away, and I went over.
- Q. Was there shooting going on at the time you left the guardhouse?—A. Yes, sir; the shooting was going on then.
- Q. What kind of shooting?—A. I don't exactly know what kind; I couldn't tell what kind of guns; but shooting on the outside.
- Q. Much or little of it?—A. No, sir; it was going on rapid when I started.
- Q. Now, state what happened after you left the guardhouse.—A. Just as I was crossing in front of Major Penrose's quarters—I crossed over behind him, about 15 or 20 yards—then I heard him hollering towards the guardhouse to sound "Call to arms," and then I went on to Captain Macklin's house.
- Q. Was there any response to this order of Major Penrose's to sound "Call to arms"?—A. Why, yes; the trumpeter sounded "Call to arms" right away.
- Q. What trumpeter?—A. The trumpeter that was on guard—Robinson was his name.
- Q. Did you hear any more trumpets than that?—A. Yes, sir; I heard one or two.
- Q. How long did they continue to sound "Call to arms"?—A. I guess about five minutes or more, probably.
- Q. You say you went on to Captain Macklin's house?—A. Yes, sir.
- Q. How long did it take you to go from the guardhouse to Captain Macklin's quarters?—A. I don't know.
- Q. Were you walking or running or how?—A. Well, I doubled timed a while and walked a while, so I don't know exactly how long it took me to go over there.
- Q. About how long do you think it took you—a minute or two minutes?—A. Probably about two minutes; between two and three minutes.

Q. Had you ever been to Captain Macklin's quarters before—A. Yes, sir.

Q. When?—A. Oh, several times before. I had fatigued over there, and different times—various times—I went over there with messages, and then I went over to see him on favors for one stuff and another. I have been there very frequent.

Q. You say you were on fatigue over at his house, what kind of fatigue?—A. Helping to move his furniture in the house, etc.

Q. That is, when you first went to Fort Brown?—A. Yes, sir.

Q. Now, which were Captain Macklin's quarters down there?—A. The last quarters that was next the river; that is, next to the house the quartermaster's clerk lived in; that is, his house was next to the river and Captain Macklin's next, the road divided the two of them, the road that went around in rear of the officers' quarters, that road divided the two of them.

Q. So that Captain Macklin's quarters were the last set of officers' quarters towards the river, is that right?—A. It was the last set, but not on the corner, though. It was in the quarters before you came to the last end. It was on the east side, I think, he was staying in.

Q. Which was east down there, towards the river or towards the hospital?—A. No; the river was west and towards the hospital was supposed to be east.

Q. Now, state again where Captain Macklin lived.—A. Why he lived in the last house and in the set of quarters next to the hospital; that is on this side, on the east side.

Q. Captain Macklin didn't occupy the whole house then?—A. No, sir.

Q. Did he live in the side towards the hospital or the side towards the river?—A. In the side toward the hospital.

Q. Here's a photograph. I will ask you whether you recognize that at all and what it is? [Handing witness photograph, marked for convenience "6" and hereto appended and marked "6."]—A. This here's the quarters.

Q. What is that small building on the right?—A. Small building is where the quartermaster's clerk lived, and here's where Captain Macklin lived, and in this end here is where he lived. This was the vacant end right here on the corner.

Q. So that that building you see in the center of the photograph is the double set of quarters Captain Macklin lived in?—A. Yes, sir.

Q. And did he live in the side you see or the other side?—A. In the other side, right here.

Q. You say you helped move furniture in there?—A. Yes, sir.

Q. In those quarters?—A. Yes, sir.

Q. Where did Captain Macklin sleep in the various times you had been over to see him, do you know?—A. I understood he slept upstairs.

Q. Did you ever go upstairs to his bedroom?—A. Yes; I was up there once.

Q. Under what circumstances?—A. One morning I was up there—I was on sick report and had to go to the hospital, and as the rule was, I had to report to him before going to the hospital, and the man in charge of quarters took me up there to his room.

Q. Where did you go when you went upstairs? Did you go straight ahead or did you turn to go into his room, or what?—A. I

just stopped at the head of the stairs, because that was all that was needed. The man that had the book he stopped at his door—knocked at his door.

Q. Do you remember how many doors there were up there?—
A. No, sir; I can't remember.

Q. Well, now, on this night of the 13th of August, when you were carrying this message to the officer of the day, state just what you did when you reached Captain Macklin's quarters.—A. Why, I went and knocked.

Q. Did you open the door; were either or both doors closed?—
A. Both doors was closed and I opened them both and knocked—that is, on the side of the stairway.

Q. Did you knock with your hand or how?—A. First I knocked for a while with my hand—that is, about two raps with my hand, and then I took the butt end of the gun and rapped.

Q. What else did you do?—A. Then he answered. I told him, "The sergeant of the guard says to report over to the guardhouse right away," and he said, "All right."

Q. Then what did you do?—A. I went back to the guardhouse.

Q. Was the shooting still going on when you reached the guardhouse or had it stopped?—A. No; it was going on still.

Q. Was it going on when you were in Captain Macklin's quarters?—A. Yes, sir.

Q. How do you know it was going on then?—A. I could hear it.

Q. Could you hear it plainly or indistinctly?—A. No, sir; I could hear it plainly—that is, just the same as if I was outside. The doors were open. Heard it just as plainly as if I was on the outside.

Q. Was there anything on the porch of Captain Macklin's quarters at all, do you remember?—A. Why, yes; there was about two or three chairs and a little table.

Q. What kind of a table?—A. A little folding table, supposed to be a field table, I think they call it.

Q. One of those tables that has legs that fold up, or was it an ordinary quartermaster table?—A. No; the legs folds up to the table itself. Folding legs, just like—something, I don't know—just made on the order of a cot.

Q. So that the legs fold up?—A. Yes, sir.

Q. Had you ever seen those there before?—A. Yes; I helped fix them.

Q. You what?—A. I fixed it there once.

Q. You put it up?—A. The man he had working for him, him and me fixed it up there once; that is, straightened it out.

Q. Did you see any light in those quarters?—A. No, sir; I couldn't.

Q. Could you see any light from the outside?—A. No, sir.

Q. After you got inside, could you see any light?—A. No, sir.

Q. Did you have any talk with Captain Macklin the next day with reference to your calling him the night before? If so, state when and where it was.—A. Why, yes; the next morning the sergeant of the guard told me to report in to the officer of the day in the guardhouse; said he wanted to see me, and when I went in he asked me if I had been to his house last night, and I told him yes; he asked me if I called him and I told him yes; he said, "What did I say?" and I said, "All right," and that was all.

Q. Did he say anything to you?—A. Oh, he said he was asleep;

probably thought he was dreaming or something of the kind. He didn't exactly understand and probably was dreaming, he said.

Q. Did you go uptown on the night of August 13 as a member of the patrol?—A. Yes, sir.

Q. Whom were you with?—A. Corporal Franklin and about four other men.

Q. What did you go uptown for on this patrol?—A. Why, we were sent out there to—we was told; that is, the orders was if we seen any soldiers out in town to line 'em up and bring 'em in, march them in, as passes was cut off at 8 o'clock.

Q. Do you know why these passes were cut off?—A. No, sir.

Q. What time did you get back from this patrol, about?—A. I don't know; a little after 9 o'clock, somewhere about that, I think.

Q. Did you have a watch that night?—A. No, sir.

Q. Was every sentinel on guard posted at the regular time, or did the patrol make any difference?—A. Yes, sir; the patrol caused them—the time to be split up on account of the patrol being sent out, and the guard wasn't regular.

Q. Who relieved you on No. 3 post that night, do you remember, before the shooting began?—A. Hairston, of B Company.

Q. Hairston?—A. Yes, sir.

Q. Do you remember what time it was you were relieved, approximately; just your best judgment as to when it was?—A. Between ten and fifteen minutes after 11.

Q. You think you were relieved after—taps is at 11 o'clock down there?—A. Yes, sir.

Q. And you think you were relieved at 10 or 15 minutes after 11?—A. Yes, sir; about that time.

Q. Where did you meet Private Hairston when you were relieved by him; do you remember?—A. Right in rear of Major Penrose's quarters, at the east-end corner, just as I was about to come around in front, why, I hit the relief there.

Q. Was Hairston alone or was some noncommissioned officer with him?—A. No, sir; Corporal Wheeler was with him; that's the corporal of his relief.

Q. And it's your best recollection that that happened after taps and not before taps?—A. What happened?

Q. That you were relieved by Hairston.—A. Yes; I wasn't relieved until after taps.

Q. When you met Major Penrose as you were crossing the parade ground, or when you crossed in rear of him, were you near enough to him to see him, or did you merely tell who it was by his voice?—A. Oh, I could see him, and then I could tell him, too, by his voice—that is, I wasn't any farther from him than about 15 yards—between 15 and 20.

Q. Now, are you positive you went to Captain Macklin's quarters that night or not? Couldn't you have gone to some other quarters by mistake?—A. No, sir; there wasn't any mistake, because the quarters is plain enough for anybody to understand, even if they had only been there a day.

Q. Had you ever seen those chairs and this table out on the porch before?—A. Yes, sir.

Q. They had been there before on other occasions when you visited his quarters?—A. He generally kept them there, because he generally

wrote—he writes, you know, generally had to do some writing there in the day. I guess he couldn't—it was too warm on the inside and he kept the table out there. He was always there every time I went there.

Q. So that that made you feel certain it was his quarters, did it?—

A. Yes, sir.

Q. How many sets of quarters down there, officers' quarters, aside from the commanding officers' quarters: do you remember?—A. Between five and six, sir; I can't exactly say, but I think there were five or six sets.

Q. That is, single sets or double sets?—A. No, sir; they are all double.

Q. You mean six double sets, or do you mean six single sets?—A. Six double sets.

Q. How did the stairway run in these houses—in this house you went into? You said you pounded on the stairway with your gun.—

A. The stairway run up against the wall, right straight up against the wall, that way.

Q. As you went in the front door was the stairway to your right or your left?—A. To the right.

Q. Whereabouts did it start and which way did it run? How would you get in there to go upstairs? Say you entered the front door and wanted to go upstairs; describe how you would go in.—A. Just as though you were coming in that door: come right straight in and then you would have to go this way to go upstairs.

Q. You turn which way, to the right or left?—A. To the right as you come in.

Q. Then which way do the stairs slant? Do they run from the ground floor towards the rear or do they run from the rear of the hall towards the front?—A. Yes; that's it, they run from the rear of the hall—that is, the floor—towards the front room.

Q. Are you sure they didn't run at right angles to the hall—that is, run up sideways in the quarters?—A. No, sir; there's only one set, just that one stairway, and it runs straight from back to front, or from rear to front.

Q. You said it ran alongside the wall, I believe?—A. Yes, sir.

Q. Was this stairway boarded up, or did it have an ordinary hand rail on it?—A. It is boarded up from the bottom to the steps.

Q. But so far as the hand rail or the banisters were concerned, were they boarded up, or were they the way they are in ordinary stairs?—

A. Why, no; they have got banisters and then board down below—that is, they are nailed on below the steps. Here's the steps and here's the banisters and the board is down here [indicating boarding is below level of steps rather than above].

Q. How far down does this boarding run: does it run to the floor or does it extend part way or what? How wide is it?—A. I don't exactly know how wide it is or how long, but I know the board is made in a way to hide the bottom of the stairs—that is, the steps covered. That's the best way—I don't know any more about it.

Q. I would like to have you explain whether this—the stairs run from the ground floor to the second floor: now, is all the space under the stairs boarded up or is there just some boards nailed on there, or how is it?—A. The whole stairs is boarded up.

Q. By how much board?—A. I can't say, I don't know, and I can't guess at it because I don't know how much board.

Q. You don't know how far that extended?—A. No.

Q. But there was enough for you to pound on with your hands and with the butt of your rifle?—A. Yes, sir.

Q. Did this boarding run up above the level of the steps—that is, where the hand rail was—or was that ordinary banisters?—A. I don't know; I can't remember that much about it. I don't really know how it was fixed up, but I know there was boarding down there where I knocked on. I guess it was put there for that purpose, to hide the stairway—that is, the steps.

Q. Can you make a drawing here and show what it was like, looking at it from the side.

(Witness could not draw diagram, so the judge-advocate drew one, which is hereto appended and marked "7.")

Q. Now, in this diagram, say you are looking at the side of the steps from the hall, this lower line represents the first floor, see?—A. Yes, sir.

Q. That's the second floor, here are the steps going up; whereabouts is that board?—A. Why, right here.

Q. Can you draw it on there?—A. Yes, sir; here's the board [witness indicates on plat].

Q. Where does the board run?—A. Covers the whole of the step here like that, from the floor.

Q. So is this the only board or is all that board?—A. All of this is board here, supposed to be boarded right along the steps.

Q. What is this?—A. This is the floor. Here is the door, you come in here, and here are the boards the first thing you open the door, that board covers the steps.

Q. As you go into the quarters and open the front door what is on your right?—A. The steps.

Q. But before you get to the steps what is there on your right?—A. I don't know; I can't remember.

Q. Do you remember what there is on the left? Where do you go to get into the rooms in that house?—A. There is a room to the left just as you come in the house. Just as you come in the door there's one room right to the left.

Q. Any other rooms downstairs?—A. Yes, sir; there is a kitchen—two rooms down below, I think. I can't be sure, but I think two rooms down below and the kitchen.

Q. Then upstairs, do you know how many rooms there are?—A. No, sir; I don't.

Q. Was there anything in the hall there at all, that you saw, that night?—A. Yes, sir; I think there was some of his furniture back there; some of his baggage and stuff back there in the hall that had not been unpacked.

Q. In the front part of the hall or the back part, do you remember?—A. In the back part, just going in towards the kitchen.

Q. I don't understand about this boarding of those stairs.—A. Well, I explained it the best way I could; I don't know any more about it.

The court then took a brief recess, while a set of steps was procured by the judge-advocate and brought into the court room. The

members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocate then resumed their seats.

Q. Show on this set of steps, Rogers, the way the boarding on that staircase was; just go over there and point it out and explain to the court.—A. Here is the door, coming this way, and here is supposed to be the boarding, that covers this place all through here. Just like this, instead of coming here and stopping it goes all the way down. There's the place I rapped [witness indicated that the boarding ran from the steps down to the floor].

Q. Does that space marked "B" on this Exhibit 7 represent the space that was covered by those boards?—A. Yes, sir.

Cross-examination by the Accused:

Q. Where do you live, Rogers?—A. Why, in Atchison, Kans., for the present.

Q. What is your name—full name?—A. Joseph Rogers, sir.

Q. Is your name C. J. Rogers?—A. Joseph Rogers or Charles J. Rogers.

Q. Which is it, Joseph or Charles J.?—A. Well, it is either one, according to which I want to say.

Q. Did you receive a telegram from Captain Lyon on the 22d of this month?—A. Yes, sir.

Q. What was that telegram?—A. Why, he requested me to appear here on this case, if possible.

Q. Did you answer that?—A. Yes, sir.

Q. A telegram addressed to you as Joseph Rogers or C. J. Rogers in Atchison would reach you?—A. Either one of them would reach me, just the same either way.

Q. Since you have been discharged, how many times have you testified about this case?—A. Once, to my knowledge.

Q. Where was that, Rogers?—A. In Washington.

Q. And before whom?—A. Why, the committee there; that's all I know.

Q. Senate committee?—A. Yes, sir.

Q. Before you were discharged did you make any affidavits about the 13th of August—the night of the 13th of August—what occurred and your connection with it?—A. Yes, sir.

Q. How many of those affidavits?—A. Why, I can't readily say.

Q. What ones do you remember?—A. I can remember one before I left Brownsville.

Q. Yes; before whom was that made—before what officer?—A. Captain Lyon.

Q. Were you examined by any inspecting officers?—A. Yes, sir.

Q. What ones?—A. I don't remember their names—his name—in fact, but he was at Fort Reno.

Q. Was it Colonel Lovering?—A. I think that's his name. That's what I heard; I don't know if that's his name.

Q. Now, where were you, Rogers, on the night of the 13th of August, when this shooting began?—A. I was on guard and at the guardhouse.

Q. What were you doing at the guardhouse?—A. I was lying on my bunk reading.

Q. What were you reading?—A. A novel, I think, or some other kind of book; I picked it up in the guardhouse there.

Q. You don't happen to know what it was, do you?—A. Not exactly.

Q. Did you ever testify before that you were asleep at the time this shooting occurred?—A. Why, yes, sir. I never testified before I was asleep, but they asked me that in Washington and I told them it was a mistake; I was not asleep. I never went to sleep that night at all.

Q. Do you recognize that affidavit? Your signature there, particularly? [Handing witness paper.]—A. Yes, sir; that's my signature.

Q. What does that affidavit say about where you were at the time this shooting occurred? A. (Reading from affidavit.) Says that "he was on guard and asleep inside the guardhouse when he was awakened by the sergeant of the guard calling 'Outside guard.'" Well, of course, that's a mistake all through there. Simply because everybody else was asleep, you know, that don't signify they had to put that on there that I was asleep. I was not asleep and didn't tell anybody that I was asleep.

Q. What you signed there isn't correct?—A. I didn't read it or else I could have told them that before. They asked me the same thing in Washington and I told them no, it was a mistake, because I was not asleep.

Q. When Colonel Lovering examined you did he ask you that question, where you were on August 13, 1906, when the shooting occurred?—A. Yes, sir.

Q. And what did you answer?—A. I told him I was on guard. He asked me where I was, and I said at the guardhouse.

Q. Did he ask you whether you were asleep or awake?—A. No, sir; he never asked me if I were asleep.

Q. I will read you your affidavit before Colonel Lovering.

By the JUDGE-ADVOCATE. Have you an official copy of the affidavit made before Captain Lyon?

By ASSOCIATE COUNSEL. No; but I will append this one to the record. [A true copy of said affidavit is hereto appended and marked "8."]

By the JUDGE-ADVOCATE. It is the desire of the prosecution that that affidavit be appended to the record. And with respect to the affidavit taken before Colonel Lovering, has the defense that affidavit?

By ASSOCIATE COUNSEL. May it please the court, we have only the record as it appears in the Senate document under Colonel Lovering's investigation at Fort Reno. There is an official copy of that document in the post, and the extract therefrom is proper evidence before a court-martial. This is identically the same thing; it is not marked "official copy" is all.

By the JUDGE-ADVOCATE. I have an official copy of that.

By ASSOCIATE COUNSEL. Yes; I will use that, then.

(The court then took a recess until 3 o'clock p. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocate resumed their seats.)

Q. Rogers, on page 112 of the War Department publication, entitled "Discharge of Enlisted Men of the Twenty-fifth United States Infantry," there appears, as testimony given by you before Colonel Lovering, of the Inspector-General's Department, who examined you at Fort Reno, the following questions and answers. Please

state whether or not you made those answers to the questions asked you.

By the JUDGE-ADVOCATE. At what time was this?

By ASSOCIATE COUNSEL. September 25, 1906. Col. L. A. Lovering, Fourth Infantry, Acting Inspector-General. This testimony was sworn testimony.

Q. Where were you on August 13, 1906, when the shooting commenced?—A. I was at the guardhouse.

Q. Asleep or awake?—A. Asleep, sir.

Q. Who did you first see when you awoke?—A. The sergeant of the guard.

Q. Are those your answers to the questions?—A. Yes, sir; all but the asleep; I never told him I was asleep; he never asked me.

Q. Then that is correct, except to the statement you were asleep?—A. Yes, sir.

Q. And you did not answer you were asleep?—A. Because he didn't ask me.

Q. How many times have you been examined with respect to the particular house in which Captain Macklin lived? Has anybody asked you any questions about that house before you appeared here on the witness stand?—A. Yes, sir.

Q. What particular points were you questioned on?—A. They didn't exactly ask me. I can't exactly remember, but they asked me in Washington about how was the officers' line situated, and that was all about the houses they asked me about. I can't rightly remember whether they asked me anything about his house; I don't think they did, though.

Q. Were you ever examined at this place, before you testified as a witness, as to the construction of that house, No. 11 or 12?—A. No, sir.

Q. Did anybody ask you any questions about that at all?—A. No, sir.

Q. Captain Lyon didn't ask you any questions about that?—A. No, sir; I don't think he did.

Q. You didn't tell Captain Lyon that you went to the side of the quarters nearest the river to waken Captain Macklin, did you?—A. When he examined me before?

Q. This morning. Did you ever tell—A. Yes; I was telling him that, but at the same time I couldn't remember rightly; I told Lieutenant Fitch here I couldn't remember at the time when he asked me, because that was something I never kept in my mind, because I didn't think they were going to ask me about it.

Q. How did you happen to get your mind straightened out on that particular feature?—A. Just because I simply remembered I had to come to his quarters coming down the sidewalk. I come to his quarters first before going to the road, and then I remembered by walking around in the back that his kitchen was to the east-side corner of the building—that is, the stable; there is a stable running right back of the kitchen, a small stable.

Q. How is it you didn't happen to remember that, talking to Captain Lyon?—A. Oh, well, he just caught me coming along the walk and I didn't have time to straighten myself out or him either, and I just told him it was on the left; but at the same time I told

him I didn't think it was right, and I told Lieutenant Fitch I made a mistake telling Captain Lyon it was on the left.

Q. Did Captain Lyon describe the house for you, with reference to the administration building there at Fort Brown?—A. I can't readily say if he did or not.

Q. What did you tell Captain Lyon with respect to the side of the house you went to that night?—A. He asked me if I went to Captain Macklin's house and I told him yes, and he asked me on which side of the building did he live, or did he occupy. I told him at the time, next to the river; at the time I was talking about the last building next to the river. I wasn't exactly paying any attention to the double quarters, of course.

Q. Did or did not Captain Lyon point out the situation to you, with respect to the adjutant's office right here in this post, and ask you to describe the house with reference to that, assuming the conditions the same at Fort Brown, for your clear information?—A. He was fixing to ask me and at the time he stepped across and went over to the mess; he didn't ask me any more.

Q. Do you understand this particular map, Roger?—A. Yes, sir.

Q. I don't want you to be confused about it. This to the left of the road is the town of Brownsville, understand, and as you look at the map, to the right of the road is the post of Fort Brown, and marked on the post of Fort Brown, under the title "A," is the guardhouse. On the opposite end of the parade ground is marked the administration building. To the right of the parade ground, as we look at the map, is marked the line of officers' quarters. What particular house did you go to that night to waken Captain Macklin?—A. The house here, next to the river.

Q. This house?—A. That house [indicating building marked 11 and 12].

Q. Which side of the house did you go to?—A. On the other side.

Q. Which, 11 or 12?—A. On No. 11.

Q. Which side did you tell Captain Lyon you went to?—A. I told Captain Lyon I went to the left of the building.

Q. To No. 12?—A. I told him the building; yes, sir, at the time, and then I recollected myself after I got up here, after the Lieutenant here asked me here; I told him I made a mistake by telling him I went to that building.

Q. My understanding is you told Captain Lyon you went to No. 12 side of that building.—A. I didn't; I said I told him that, but I made a mistake when I told him that.

Q. And you understand, he tried to fix in your mind, through the administration building here, referring that to the administration building at Fort Brown, just to fix in your mind which side of the house you did go to.—A. Just as I said, he started to and at the time he was otherwise employed and he stepped across from the adjutant's office and went across there and didn't ask me all the questions he was going to ask me. Probably that was what he was going to ask me and didn't have time, I guess; he went across about his business and I went up the other way.

Q. As I understand it, later you thought you made a mistake and decided you went in 11?—A. Yes, sir.

Q. Did you find out anything further about this house; did you

think of anything else except whether you went to 11 or 12? Did you think about anything else—about the stairway, for instance?—

A. In what case?

By the JUDGE-ADVOCATE. I think, may it please the court, if the counsel is attempting to impeach this witness's testimony, that the better method of doing it is to ask him whether he made certain statements and introduced evidence to that effect. I have, however, no objection to his going to any limits that are proper to test this man's credibility.

By ASSOCIATE COUNSEL. May it please the court, in that case I will be glad to be permitted to continue this line of examination.

Q. I want to make that question plain to you, Rogers. You said after you had had this conversation with Captain Lyon that you found out you had been mistaken with respect to the particular side of the house you went to. Now, at this time, did you find out anything about the house you went to; did you fix in your mind anything about that house at the same time you fixed the correct side of the house you went to?—A. Yes; I can remember, because just as I went in the door the table that I spoke about here before—

Q. No, you don't understand. At this particular time you made up your mind you went in 11 instead of 12, did you also fix in your mind anything about quarters No. 11, stairway or anything inside these quarters; did you think anything about connection with the stairway?—A. No; I just remembered they was the quarters I come to before getting to the corner. I just called to mind which side he was living on, and for fear I would tell them wrong—I thought I was telling them right, and I explained the best I could by telling him the quarters was on this end; that is, the east end.

Q. You say you helped move some furniture in the house occupied by Captain Muecklin when you were on fatigue one day; do you remember in which side of the house you moved that furniture?—A. Yes, sir

Q. Which side?—A. Around in back of the house where he was living.

Q. In No. 11 or 12?—A. 11.

Q. Didn't move any in 12?—A. No, sir.

Q. You say in your direct testimony that when you went into the quarters that night there was some unpacked furniture in the back of the hall.—A. There was some unpacked furniture.

Q. At the back of the hall?—A. Yes.

Q. And that's the place where that stairway is that goes upstairs?—A. Why, no; it is just like you come in the door here and those are the stairs right there, and the hall leads right through to the kitchen over there; why, that is where some of his furniture was; that is, baggage, I don't know whether furniture or not; I know baggage, not unpacked; it was over there running in the hall; that is, running toward the kitchen. Here were the stairs and you could see it right back there next the kitchen door.

Q. Did you ever state to anybody, Rogers, that you never entered Captain Muecklin's quarters at all that night?—A. No, sir; nobody had never asked me anything about them before.

Q. You say you were examined by the Senate committee in Washington?—A. Yes, sir.

Q. Did you give this testimony? Page 902, Senate document, Affray at Brownsville.

Q. You knew where Captain Macklin usually slept?—A. Yes, sir.

Q. Did you find him in the room that night, where he usually slept?—A. No; I did not go to his room; I knocked on the door below his room; his room was right up above where I knocked, he could easily hear.

Q. You knew where that room was?—A. Yes, sir.

Q. So you knocked in that usual place?—A. Yes, sir.

Q. He answered from the room where he usually slept?—A. Yes, sir.

Q. You are quite clear about that?—A. Yes, sir; he answered.

Now, then, have you ever stated, before you made the statement to this court that you went inside the house occupied by Captain Macklin, that you went ever farther than the front door of any house?—A. Before?

Q. Have you ever, before this afternoon when you testified before this court, made the statement that you went inside any house in search of Captain Macklin; any farther than the front door of any house?—A. Why, no; I can't remember of ever testifying I didn't, because I have always said I went in the door, I opened the door and knocked down below; that is what I have always said—that is, to anybody that ever asked me about it.

Q. You didn't tell the Senate committee that, did you?—A. I think I did.

By the JUDGE-ADVOCATE. Will the counsel state what particular question? Because to ask "you didn't tell the Senate committee that" is rather indefinite, and it ought to be more definite.

By ASSOCIATE COUNSEL. I will clear that up.

Q. You did not tell the Senate committee that you had gone any farther than the front door of Captain Macklin's house, did you?

By the JUDGE-ADVOCATE. May it please the court, there is nothing here I can find on page 902 that says front door. It says, "I knocked on the door below his room," and furthermore says, "his room was above where I knocked;" so if he knew where Captain Macklin was sleeping and knew where Captain Macklin actually slept that night, it seems to me it is not front door he refers to.

Q. Rogers, what did you mean in that particular testimony when you said, "I knocked at the door below his room?"—A. This is similar to the same thing. Instead of telling them I knocked on the stairway I said a door.

Q. So your idea was when you testified before the Senate committee that you knocked on that door, that you came inside some set of quarters and knocked on a door in the rear of the hall of that set of quarters?—A. It was not in the rear of the hall; it was where he was supposed to be sleeping is where I knocked; right under where he is supposed to be sleeping.

Q. Where was he supposed to be sleeping?—A. Right there. Naturally there is a division from the stairway, and where I knocked on the stairway he could hear me where his room was supposed to be, sitting right there at the stairway; right over the stairway.

Q. Forget about the stairway for a minute. What had you in mind when you gave that testimony before the Senate committee with respect to that door? Did you mean the front door of the house or did you mean some door inside the house, or what did you mean?—A. I didn't mean the front door, because he couldn't hear me from

the front door, I don't think. Well, when I told him the door—there was a door to the left as you went in the hall, and I might have told them that, and I didn't exactly mean. I knocked on the stairway which was nearer to him than the door was—it was nearly the same thing. In order to wake him up I had to knock on one of the two of them. That is, the wooden part of the building I knocked on. I might have told him the door, but it was the stairway I knocked on.

Q. So when you gave that testimony you didn't have in mind a door at all?—A. What testimony?

Q. This testimony right here before the Senate committee in Washington. When you gave that testimony about knocking at a door just below the room in which Captain Macklin slept you had no door in mind at all?—A. I don't know. Probably I might have had, because there was a door next to me, and probably because I might have said that. I went into the hall, and here are the stairs [indicating to right] and here are the door [indicating to left].

Q. Did you knock on any door?—A. No, sir; I knocked on the stairway.

Q. Did you knock on the front door?—A. No, sir; didn't have to knock on the front door.

Q. Then the front door was not closed and you opened it, as you testified in your direct examination?—A. The front door was closed, but not locked.

Q. But both front doors, did you testify in your direct examination, were closed and you opened them? That's not so?—A. Yes, sir; I opened them.

Q. Both front doors?—A. Yes, sir.

Q. Before you knocked?—A. Yes, sir; I had to go inside and knock.

Q. Then after you opened the front door you knocked. Is that right?—A. Yes, sir.

Q. On that door?—A. I didn't knock on the door, I just said the door. I might have been talking too fast when they asked me, and instead of saying stairway I said door. In answering I said that. The door was next to me on my left and the stairway to the right, and they was that close together, and probably by talking too fast I said door, but then I meant stairway when I said door.

Q. You are not talking too fast now?—A. No; I am not talking too fast now.

Q. You are pretty clear in what you are saying?—A. Yes.

Q. You don't want to be understood that anything you say now is due to the fact you are talking too fast?—A. I don't think I am talking too fast.

Q. You think you might have talked too fast before the Senate committee?—A. I might of. Of course I has been cross-questioned so much I got halfway tied up and I could not tell them the stairway at the time, and I said door. I said the quickest thing that come to me anyway.

Q. Will you go to the map, Rogers. Start in there at the guardhouse and describe, pointing it out, what you did before you met Major Penrose.—A. You want to know when I started from the guardhouse?

Q. Yes; and up to and including the time you met Major Pen-

rose.—A. Here's where I started, right across here—right there—and just as I got here and stepped off from the road, Major Penrose had gone by and was just about that far away from me. I was in the road then and he was right here. [Witness indicates that he went in a general direction from the guardhouse towards quarters 1 and 2, and that Major Penrose had crossed from his quarters towards Company C just in front of the witness—just before witness reached him.]

Q. What kind of a night was that, Rogers?—A. What do you mean, dark or light?

Q. Dark or light?—A. Yes, sir; it was pretty dark.

Q. Were there many lights in the post that lit up the place well—could you see in good shape?—A. No, sir; there was never so many lights.

Q. It was pretty dark?—A. Yes, sir.

Q. How close do you believe you were to Major Penrose, so you recognized him?—A. I don't exactly know; I didn't exactly have to see him to recognize him; but I heard his voice, too, you know; but then I saw him, too, you know—just about 15 yards—15 or 20.

Q. Did he see you; say anything to you?—A. He didn't see me, because I was in rear of him.

Q. I thought you said you were going pretty fast down there.—A. No; I didn't say I was going pretty fast.

Q. Weren't double timing?—A. I said I double timed awhile and walked awhile.

Q. Then you weren't going very fast when you met Major Penrose?—A. I didn't meet him.

Q. When you saw him?—A. No, sir; when I got to about here [indicating point about opposite quarters marked "A"] I stopped double timing and walked before going in the street here.

Q. So just before you saw Major Penrose was when you came down to a quick time?—A. Major Penrose was about here, going this way, and I was coming this way.

Q. How was he going; what rate of speed, quick or double time?—A. Just ordinary stepping—I guess ordinary steps he was taking.

Q. You were on post, you say, that night at 11 o'clock?—A. Yes, sir.

Q. How do you happen to know that?—A. Why, because "taps" went when I was on post.

Q. You don't mean "call to quarters," you mean "taps," do you?—A. Yes, sir.

Q. Did you hear the reports being made to the officer of the day?—A. Well, I think I did; I can't hardly say if I did or not, because I wasn't exactly paying any attention to reports.

Q. Or the officer of the day, either?—A. No, sir.

Q. You didn't care about the officer of the day particularly; you weren't particularly looking out for him?—A. Oh, yes, I was looking out for him, because his general round is about 11 o'clock. The very time you have got to look out for them is at 11 o'clock.

Q. If that is true, did he receive the reports out there at 11 o'clock?—A. I don't have to know him receiving reports, you know, because he comes around at 11 o'clock.

Q. Did he come around?—A. He didn't come around; he might have come around to the guard that relieved me, but he didn't come

around to me; but he had been around several times to and fro from the guardhouse.

Q. You feel positive you were on post at the time "taps" went and Hairston, who relieved you, was not on post?—A. No, sir, I don't think he was on post, because when 11 o'clock went—taps went—I was standing, I think—no, I was walking slow in rear of Captain Lyon's quarters.

Q. What quarters did Captain Lyon live in?—A. In the quarters—I can't readily say—about in the next quarters to Major Penrose. Next set of quarters, I think.

Q. Will you point out on the map, Rogers, what quarters Captain Lyon lived in?—A. He was in one of these buildings, but then I don't know which he was in—this one or this one. [Indicating buildings marked "1" and "2" and "3" and "4."] If he was in this building, he lived in this end. The building marked "3."

Q. And if in building 1 and 2?—A. Living here, but I think in building No. 3; I don't know.

Q. Do you know where Lieutenant Grier lived?—A. No, sir; can't remember.

Q. Or Lieutenant Lawrason?—A. No, sir.

Q. Lieutenant Hay?—A. No, sir.

Q. Lieutenant Chandler?—A. No, sir.

Q. Lieutenant Thompson?—A. No, sir.

Q. Major Penrose?—A. Yes, sir.

Q. What quarters?—A. This set of quarters. [Indicating building marked "A."]

Q. Was there any light, dim or otherwise, in the house you testified you went in, Rogers?—A. Well, the reason why I say there wasn't any light is because I can't remember if there was any light or not around the house.

Q. Do you know what right angles means?—A. Right angles?

Q. Yes.—A. No; I don't exactly know—I don't think I do.

Q. How did that firing impress you that night, Rogers—how did you feel about it?—A. How do you mean?

Q. Well, you said it was something unusual that occurred down there. Did you have an unusual feeling, or did you feel about the same as you always did?—A. I guess I had an unusual feeling, just like everybody else did. I was scared as well as everybody else did, I guess.

Q. With respect to the length of that shooting, Rogers, how long was it going on? You say it was going on when you left the guardhouse and was going on while you were crossing the parade and continued while you were in Captain Macklin's quarters, and was still going on when you got back to the guardhouse. Are you sure about all that?—A. Yes, sir.

Q. While you were in Captain Macklin's quarters are you sure you heard the shooting?—A. Yes, sir; I heard it.

Q. Were the doors all open then?—A. Yes, sir; the two I went through.

Q. Front doors?—A. Yes, sir.

Q. Do you happen to remember about any others—any other doors being open?—A. No, sir; not that I can remember of—that is, I wasn't examining the doors around there.

Q. You weren't making a close examination of anything, were you?—A. No, sir; not exactly.

Redirect examination by the JUDGE-ADVOCATE:

Q. When your statement before Colonel Lovering was taken was there a stenographer present who took your statement down in shorthand, or do you remember?—A. No, sir; I can't remember. I don't know whether there was anybody in there but him.

Q. You don't remember about that?—A. No, sir; I can't.

Q. Do you remember whether you read over your statement or not to him?—A. No, sir—if I read it?

Q. Yes.—A. No, sir; I didn't.

Q. You were sworn by him, were you?—A. Yes, sir.

Q. Did you sign this statement afterwards, or not?—A. Yes, sir; I signed it.

Q. That night did any bullets come flying over your head or not?—A. No, sir; I never heard any.

Q. So you didn't think they were trying to shoot you up then, did you?—A. Well, I didn't know much about that. I couldn't exactly say what they were trying to do, because I didn't know who was doing the shooting and I couldn't tell where it was it was coming from at the time of crossing the parade ground.

Q. Where did it sound to you as if it was?—A. I never did see or tell anything about the shooting until I got back to the guardhouse. All I could hear was the trumpets going after I started back, and the guard was formed outside and then everybody seemed to be pointing down through this little alley below—just in rear of C Company, between C and B Company, I think right in between there—and the shooting seemed as though it was coming from out that alley.

Q. How many shots do you suppose you heard?—A. I don't know; I should say about—that is, up until the time—about 45 or something about there. That's making a rough estimation.

Q. You didn't count them?—A. No, sir; couldn't, and nobody else.

Examination by the Court:

Q. Rogers, can you explain to the court, if you were going up those steps you describe, after you got up, say halfway up, could you see down into the hall?—A. Yes, sir.

Q. You are sure of that, are you?—A. Yes, sir.

Q. You say, Rogers, that you didn't notice any light in this house you went into to call Captain Muecklin?—A. No, sir.

Q. Did you notice any light in the house next door to it?—A. No, sir.

Q. Do you know whether there was any light there or not?—A. No, sir; I don't know; I don't think there were any.

Q. Did you notice any light in the house No. 10, next towards the guardhouse? Did you notice any light in that house?—A. No, sir. Well, I can't say. No, sir; I didn't notice any. I wasn't paying any attention to nothing else except the errand I was on, and when I served that I went back to the guardhouse, but as far as paying attention to other things, I didn't do it.

Q. Rogers, have you ever been under fire, or been in action?—A. Why, in no close fire exactly. I have had small attacks, though.

Q. Whereabouts?—A. That is, I had an attack once on a hike with Lieutenant Briggs, in the Philippines, one night about 12 o'clock—

Q. That's all right; I don't want you to go into details.

Recross-examination by the Accused:

Q. Rogers, were you ever tried by a court-martial during your period of service?—A. Yes, sir; I was tried.

Q. Many times or not?—A. Well, I don't exactly know now. Well, yes; I would say many times.

Q. Do you happen to remember how many times up to June 23, 1906, from June 13, 1901?—A. If I can remember how many?

Q. Yes.—A. No, sir; I can't.

Q. Many as three?—A. Probably might have had that much.

Q. Four?—A. I don't know.

Q. Five?—A. I don't know, sir. I just really didn't pay any attention to them.

Q. Were you tried as many as six times?—A. Do you mean total enlistments?

Q. No; just that period.—A. 'Three years' time or a year?

Q. June 13, 1901, until June 23, 1906.—A. No, sir; I don't think I was tried six times. I might have been five—I don't know.

Examination by the Court:

Q. Rogers, you say Captain Mucklin answered you when you knocked on the side of the staircase?—A. Yes, sir.

Q. What did he say?—A. He said "All right."

Q. Was that the first time you knocked that he answered you?—A. No; I rapped about four or five times before I heard anything.

Q. And then what did you do after he called "All right?"—A. I reported back to the guardhouse.

Q. So that altogether you rapped four or five times?—A. Yes, sir; about that number of times.

Q. He answered once, or did he answer more than once?—A. Well, he answered.

Q. Did you leave as soon as he answered?—A. Yes, sir.

Redirect examination by the Judge-Advocate:

Q. Rogers, state exactly what you did when you went in the hall there—what you said and what was said by the person who replied to your call. Just state exactly what happened.—A. Just as I went in I rapped on the boarded side of the stairway there—that is, I rapped quick—and I guess when he heard it he answered.

Q. Did you say anything at that time or not?—A. Yes, sir.

Q. What did you say? Just state exactly what happened and in the order in which it happened.—A. When I rapped and he said "Hello," I said, "The sergeant of the guard says report over there right away," and he said, "All right."

Q. Did you leave the quarters at once or not?—A. Yes, sir; I left; went back to the guardhouse.

Q. How long had Captain Mucklin been in command of your company, do you remember?—A. No, sir; I can't remember.

Q. Are you sure that voice you heard was his or not?—A. Well, that is something else I don't exactly know. His voice was like after a man wakes up out of sleep, you know; he has got a different tone

to his voice altogether; you don't know his voice from anybody's then when he wakes up.

Q. But this was in Captain Macklin's quarters that you rapped?—

A. Yes, sir; it was in his quarters.

Q. Did any soldier of the company sleep over there as a striker, or not?—A. I don't know; I don't think so.

Reexamination by the COURT:

Q. Did you rap with your hand or with your gun?—A. With both; I first rapped with my hand and then with the butt of the gun.

Q. Rogers, when you went in these quarters did you call anybody's name?—A. No, sir; I didn't call no name.

By the JUDGE-ADVOCATE. May it please the court, I desire to state that Ray Burdett, whose presence the court desired here as a witness, is expected here at 9 o'clock Monday morning. We have not heard yet as to whether he will be here at that time, but the department commander to-day wired to ascertain the time he left Washington and to ask that if he had not already left that the time of his departure be wired to him. I can proceed no further, sir, until he arrives.

(The court then, at 3.40 o'clock p. m., adjourned to meet at the call of the president.)

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 29, 1907.

The court met (at the call of the president) at 2 o'clock p. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The JUDGE-ADVOCATE. The prosecution desires to read to the court certain telegrams in connection with the summoning of Ray Burdett. The first is an official copy furnished me as judge-advocate of the court, and is as follows:

WASHINGTON, D. C., April 27, 1907.

COMMANDING OFFICER, DEPARTMENT OF TEXAS,
San Antonio, Tex.:

Subpoena for Ray Burdett sent to Summary Court Officer, Washington Barracks, April 26 for service. Summary court officer has not informed this office whether Burdett located.

McCAIN, *Adjutant-General.*

After the receipt of this copy yesterday morning I wired direct to the Summary Court Officer, Washington Barracks, as follows:

FORT SAM HOUSTON, April 28, 1907.

S. C. OFFICER,
Washington Barracks, Washington, D. C.:

Has subpoena been served on Ray Burdett? If so, when will he start?

FITCH, *Judge-Advocate.*

No reply has yet been received to this last telegram, but the prosecution has two or three witnesses whom it desires to call for brief questioning, and thereafter will close. It is my understanding that the defense has no objection to Ray Burdett being called as a witness,

even by the prosecution, though the court, of course, has undoubtedly the right to let him testify at any time, inasmuch as he has been summoned at its order; but I have these few witnesses whom I can put on now.

The **PRESIDENT**. When he comes the court will decide as to his testifying.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, in respect to that particular question the defense would be very glad to have his testimony submitted before the court; of course, if he arrives at any stage of the proceedings we would be glad to have him as a witness in any capacity.

First Lieut. **WAIT C. JOHNSON**, Twenty-sixth Infantry, was recalled by the prosecution, and, being reminded that he was still under oath, further testified as follows:

Reexamination by the **JUDGE-ADVOCATE**:

Q. Mr. Johnson, in your previous examination before the court you testified, on page 198 of the record, that you were at Fort Brown, Tex., the last time from about the 20th of May to the 5th of July, 1906, and that you occupied quarters Nos. 11 and 12 during that period?—**A.** Yes, sir.

Q. Now, with reference to the front staircase in quarters No. 11, was the bottom of the staircase screened from view in any way? If so, please state how.—**A.** Underneath the staircase was a cupboard, or closet, boarded up from the side.

Q. So that, looking at the staircase in quarters No. 11 from the hall way opposite the staircase, there was practically a triangular-shaped board wall in front of you extending from the floor up to the level of the steps. Is that correct?—**A.** Exactly.

Q. And how was the staircase arranged in quarters No. 12?—**A.** Similarly—the same way.

Q. This material in this hall was boards?—**A.** Matched lumber.

(The judge-advocate announced that he had no further questions, and the accused declined to cross-examine the witness.)

By the Court:

Q. Did this boarding extend above the steps, or did it end with the steps?—**A.** It ended underneath the steps.

(Excused.)

Capt. **SAMUEL P. LYON**, Twenty-fifth Infantry, was recalled by the prosecution, and, being reminded that he was still under oath, further testified as follows:

Reexamination by the **JUDGE-ADVOCATE**:

Q. Captain Lyon, in your previous examination in this case I omitted to ask you whether you recollected having any conversation with Captain Macklin after the occurrences of August 13-14 relative to his whereabouts on that night, or relative to the causes of his absence—will you please state to the court if you recollect any such statement at that time?—**A.** I have talked with Captain Macklin several times on that subject. I think the first time was the next day, August 14—during the day of August 14—and he told me that he had not heard any firing, that he awakened once under the impres-

sion that he had been called—to the best of my recollection, that he got up and looked at his clock and noticed the hour—I forget what time he said it then was—but he got the impression that it was the orderly trumpeter calling him for reveille, but when he noted the hour then he thought that he must have dreamed it, and went to sleep again.

Q. That is all you recollect with reference to any statement of his of this nature?—A. I think that is, yes—that is all.

Q. Now, on your direct examination, page 61 of the record, you said that the last time that you saw Captain Macklin, on August 13, 1906, was between half 9 and 10 o'clock in the evening. Will you please state the circumstances of your seeing him at that time?—A. Mr. Lawrason and I had taken a walk down through the main street of the town—I think it was Elizabeth street—and when we came in, on our return, Captain Macklin was on his porch, was sitting in a chair on the grass near his porch, and it was then that I saw him; it was about this time, as near as I could fix it, that I stopped and spoke to him and went on down to my quarters.

Q. And Lieutenant Lawrason remained there?—A. Lieutenant Lawrason remained there with Captain Macklin.

Q. Do you remember if there were any other chairs on the porch at that time?—A. I do not recall whether the chairs were on the porch at that particular time, or on the grass near the porch.

Q. How many chairs were there altogether there; do you know?—A. I could not say. There were usually two or three chairs on the porch or near the porch.

Q. Do you recollect whether there was a table on the porch or not?—A. I did not notice at that particular time the table, but I know that there was a table habitually on the porch, usually in front of quarters No. 12, near the door, used by Captain Macklin as a writing table.

Cross-examination by the ACCUSED:

Q. Captain, what was the position of that table with respect to the door in quarters No. 12?—A. The usual place of that table was in front of the door of quarters No. 12, on the porch.

Redirect examination by the JUDGE-ADVOCATE:

Q. Were there any chairs or tables on the front porch of quarters 9 and 10?—A. I do not recall any.

Q. Those quarters were unoccupied at that time, were they not?—A. No. No. 10 was occupied by Lieutenant Lawrason and No. 9 was occupied by Lieutenant Hay, who was absent at Fort Sill.

Q. And on the porch of quarters Nos. 7 and 8 were there any chairs or tables?—A. I recall nothing about those porches.

Q. Those porches were vacant, were they not?—A. I can not say positively whether they were or not.

Recross-examination by the ACCUSED:

Q. Did Lieutenant Chandler occupy quarters No. 7?—A. I think he did. I am not positive.

Q. Do you recall that Lieutenant Thompson occupied quarters No. 8?—A. Well, I think he did, but I am not positive as to the exact occupancy of those quarters.

Q. Do you recall about what time, with respect to the 13th of

August, Lieutenant Thompson left Fort Brown?—A. It was either the 13th or the 12th or somewhere along approximately about that time—just before.

Q. Then Lieutenant Chandler had been living at Fort Brown between July 28 and August 13, had he?—A. Yes; he had lived there for a few days.

Redirect examination by the JUDGE-ADVOCATE:

Q. Lieutenant Chandler had left prior to the night of August 13, had he not?—A. Yes.

Q. How long before; do you recollect?—A. No; I don't know exactly. I think those officers ordered to Fort Sill went about the 1st or the 2d of the month.

(Excused.)

Lieut. GEORGE C. LAWRASON, Twenty-fifth Infantry, was recalled by the prosecution, and being reminded that he was still under oath, further testified as follows:

Reexamination by the JUDGE-ADVOCATE:

Q. Mr. Lawrason, do you recollect having had any conversation with Captain Macklin subsequent to midnight of August 13, 1906, relative to his whereabouts on that night?—A. I recollect no particular conversation, although it is probable that I have had several with him since that time on that subject.

Q. You have not, however, a sufficiently clear recollection to state in regard to any particular conversation what Captain Macklin stated to you?—A. No, sir; I have not. I have formed a general idea of his whereabouts on that night.

Q. From?—A. Probably from these conversations; but I recollect no particular one, nor his particular statements to me in regard to this.

The JUDGE-ADVOCATE. May it please the court, it is apparent that Mr. Lawrason's recollection of these conversations is rather vague. He doubtless had several of them and can not differentiate between them. I would like to ask if the defense has any objection to Mr. Lawrason's stating what the general substance was of these various conversations, inasmuch as he is unable to fix upon any particular one or upon any particular statement. Has the defense any particular objection?

ASSOCIATE COUNSEL FOR THE ACCUSED. We have not the slightest objection, may it please the court.

Q. Then, Mr. Lawrason, will you please state to the court the substance of those conversations as you recollect them?—A. It seems to me that Captain Macklin told me that he went to bed some time in the neighborhood of 12 o'clock, after making an inspection—after check, I believe—and remained asleep until waked up—it seems that he said some man came into his room and touched him.

Q. You do not, however, recollect his stating anything about having been previously awakened and then going back to bed?—A. No; I do not recollect his ever saying anything about this to me.

Q. Now, on your direct examination, Mr. Lawrason, I omitted to ask you if you saw Captain Macklin on the evening of August 13, 1906, and I will request you now to state whether you did see him or

not, and, if so, under what circumstances?—A. I did see him on this evening.

Q. About what time was it?—A. About between the hours of 9 p. m. and 10.35 p. m. I visited him at his quarters during this time and was with him, I believe, from about 9 to 10.45 p. m.

Q. I will ask you whether or not you were alone, or were you in company with another officer at that time, do you know?—A. I am not positive whether I went there alone or in company with Captain Lyon. If I went there with Captain Lyon, he did not remain very long, because I believe that I was alone with Captain Macklin during most of this time.

Q. What were you and he doing at this time?—A. Reading, talking, and we had a bottle of beer during this time.

Q. Just one bottle for both of you, or did each of you have a bottle?—A. I recollect that I drank one bottle. I do not recollect whether Captain Macklin drank one or not. I believe he drank one bottle during this time.

Q. Was your conversation general, or was it mainly directed towards the events of that day?—A. I believe it to have been general; I do not recollect discussing any particular subject.

Cross-examination by the ACCUSED:

Q. Mr. Lawrason, what was the size of that bottle of beer that you drank?—A. It was a pint bottle, sir.

Q. And that one that Captain Macklin drank?—A. A pint bottle also.

Q. Did he drink any more beer than that?—A. I do not believe he did, sir.

By the COURT:

Q. When you left your quarters during that firing on the night of the 13th, did you leave the light in your quarters?—A. I believe I left a light in my lower front room, sir—I lit a light in my room and lighted myself out of the quarters by this light, and I believe I left it in the front room downstairs.

Q. Was there any light in quarters No. 9 at that time?—A. I saw no light in quarters No. 9, sir. I do not think there was one, although I do not know.

Q. What were your quarters, what number?—A. No. 10, sir.

Q. What room did you occupy?—A. The back room upstairs.

Q. Did you occupy the front room downstairs for any purpose?—A. I used that as a sitting room, sir, and for writing.

Q. Was it furnished?—A. Yes, sir.

Recross-examination by the ACCUSED:

Q. Mr. Lawrason, with reference to that quarters No. 9, was it occupied by anybody after Lieutenant Hay left?—A. Yes, sir; it was occupied by a soldier who worked for Lieutenant Hay, and he slept there during Lieutenant Hay's absence.

Q. Do you recall having seen that particular soldier that night after this shooting had occurred?—A. He called to me after I had gotten up, from the adjoining quarters, that the call to arms was being sounded.

Q. What company did he belong to, Mr. Lawrason?—A. He belonged to Company C.

Redirect examination by the JUDGE-ADVOCATE:

Q. Were quarters Nos. 7 and 8 vacant at that time or not, do you recollect?—A. I believe they were vacant. Those quarters had been occupied by Lieutenants Chandler and Higgins and Lieutenant Thompson of the Twenty-sixth Infantry, but they were all away at this time, I believe.

Q. Was there any furniture on the front porch—any tables or chairs on the front porch of quarters 7 or 8?—A. I believe Lieutenant Chandler had some furniture in crates, or unpacked—I don't know which—on the porch of No. 7.

Q. How about the furniture in your quarters No. 10 and the adjoining quarters, do you recollect? That is, on the porches?—A. There may have been a chair—a rocking chair—on this porch. I do not believe there was any other furniture out.

Recross-examination by the ACCUSED:

Q. How did Lieutenant Chandler happen to be away, Mr. Lawrason, at that time?—A. He was detailed, I believe, as range officer on division rifle competition at Fort Sill, Okla.

Q. What was his position in that battalion of the Twenty-fifth Infantry?—A. He was battalion adjutant.

Q. Did he expect to return to the post at Fort Brown?—A. Yes, sir; he did.

Q. And as far as you know he made no preparations towards packing his furniture prior to leaving for Fort Reno?—A. No, sir; I believe he made none at all.

By the Court:

Q. In going to your quarters at night, did you ever have any difficulty in distinguishing the quarters, or did it ever happen that you went by, for instance, to another's quarters because they were similar, or anything of that kind?—A. I do not believe I ever made a mistake, sir. The walk leading from about near my company and the gate to town came out near my quarters, and in getting to the sidewalk running along in front of the officers' quarters I would just turn to the right and my quarters would be right there.

(Excused.)

The judge-advocate announced that the prosecution here rested.

The PRESIDENT. Is the defense ready to proceed?

COUNSEL FOR THE ACCUSED. We would like to ask until to-morrow morning before commencing our defense, may it please the court.

The accused, his counsels, the reporter, and judge-advocate then withdrew and the court was closed, and on being opened the president announced in their presence as follows:

If there is no objection, the court stands adjourned to meet to-morrow morning at 9 o'clock.

Whereupon the court adjourned at 3.15 o'clock p. m.

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., April 30, 1907.

The court met, pursuant to adjournment, at 9 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The accused, at his own request, was duly sworn as a witness and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. Edgar A. Macklin, captain, Twenty-fifth Infantry; station, El Reno, Okla.

By the COUNSEL FOR THE ACCUSED:

Q. How long have you been in the service?—A. For fifteen years.

Q. Will you please state in detail what this service has been?—

A. I was in the Fifth Artillery for six years, four months, and two days as private, corporal, sergeant, and color-sergeant. The balance of my service has been as a commissioned officer in the Eleventh Infantry and the Twenty-fifth Infantry. I served in the Eleventh Infantry as second and first lieutenant from July 9, 1898, until the 28th of September, 1904, when I was promoted to captain, and I transferred to and joined the Twenty-fifth Infantry on the 12th of December, 1904.

Q. And since December 12, 1904, you have been what?—A. I have been serving in command of Company C, Twenty-fifth Infantry, since that date.

Q. Where were you on August 13 and 14, 1906?—A. At Fort Brown, Tex.

Q. How long had you been at Fort Brown, Tex., on those dates?—

A. Since July 28 of that year.

Q. And how long did you serve at Fort Brown after the 13th of August?—A. Until the 24th of August—25th of August.

Q. Upon what duty were you while you were stationed at Fort Brown?—A. I was in command of Company C, Twenty-fifth Infantry.

Q. On the 13th and 14th of August were you on any other duty other than that of commanding Company C?—A. Yes; I was on duty as officer of the day on that date.

Q. About what time did you enter on this particular tour of duty as officer of the day?—A. I think it was between half past 10 and 11 o'clock on the morning of August the 13th.

Q. On that morning was the guard mounting a formal guard mounting?—A. It was.

Q. Who mounted the guard?—A. Lieutenant Grier, the acting post adjutant at that time.

Q. Captain Macklin, whom did you relieve as old officer of the day that morning?—A. Lieutenant Grier.

Q. What orders, if any, did Lieutenant Grier turn over to you as old officer of the day?—A. None. He told me that the usual orders—there was no change in the orders, and to carry out the usual orders.

Q. To whom did you report on that morning as new officer of the day?—A. To Major Penrose, the commanding officer.

Q. Did you and Lieutenant Grier both report together?—A. We did.

Q. What orders relative to the performance of your duties as officer of the day did Major Penrose, the commanding officer, give you?—A. He told me to carry out the usual instructions, and it was on that guard, or the one previous, I am quite positive, that he gave me instructions to inform the sentinel on post No. 3, which was in rear of the men's quarters in the daytime, to keep out all small boys who had been coming in there about meal times, as our property was all on the back porches and had not been entirely unpacked or put into the storerooms.

Q. What post was this?—A. Post No. 3—2, I should say.

Q. You are sure it was post No. 2?—A. Yes; I am sure it was post No. 2, the one in the rear of the men's quarters.

Q. What other special orders, if any, did the commanding officer give you at some later time in the afternoon or evening of August the 13th relative to your duties?—A. About 5.30 in the evening the commanding officer came down towards my quarters and gave me instructions to send out into the town three patrols, to notify my own company that all passes were revoked or rescinded at 8 o'clock, or would be up at 8 o'clock that night. I was to send these patrols out into the town and bring in all the men who were out.

Q. Were there any other special orders given you that day, up to 5.30 p. m., when you received these orders about the patrols—were there any other orders given you by the commanding officer?—A. None.

Q. Captain, during the time that you were stationed at Fort Brown did you regularly do duty as officer of the day?—A. I did.

Q. About how often did you go on as officer of the day?—A. At the time when I went on, on August the 13th, was the third day. Before that we had been going on with two nights off.

Q. Then, about how many tours as officer of the day did you do at Fort Brown up to and including the one of August the 13th?—A. I think it was about six.

Q. Captain, what were the orders in force at Fort Brown during the time you were stationed there, and prior to August the 14th, other than those contained in the authorized manual of guard duty?—A. The order was that the officer of the day would inspect each sentinel on post at least once during his tour—each sentinel of each relief.

Q. Was this inspection of each sentinel on post by the officer of the day the usual custom under the regimental commander of the Twenty-fifth Infantry, Colonel Hoyt, and the commanding officer of the First Battalion, Major Penrose?—A. It was—had been ever since I joined the regiment.

Q. Not only at Fort Brown, but at Fort Niobrara also?—A. Yes, sir.

Q. Captain, what orders, if any, were in force at Fort Brown, Tex., up to August 13 and 14, 1906, requiring the officer of the day to visit the guard and sentinels between midnight and reveille?—A. There were no orders other than what the Guard Manual calls for.

Q. Then, there were no orders in force requiring the officer of the day to visit the guard between midnight and reveille?—A. There were none; no.

Q. You said in the previous answer that you had received certain orders from the commanding officer, about half past 5 in the after-

noon of August 13, requiring you to send out certain patrols. Did you carry out these instructions?—A. I did.

Q. Will you please state in what manner you carried out these special instructions of the commanding officer?—A. In the first place, I notified my first sergeant of the orders of the commanding officer, directed him to send two noncommissioned officers into the town to notify all the men of my company to come in—that is, who were on pass—that all passes had been revoked to take effect at 8 o'clock that night. At about half past 7 I went to the guardhouse, had the guard formed, and designated a corporal and two privates of his relief to go out with the first patrol. The second patrol went out about fifteen minutes later, consisting of one man, Private Ash, of Company D, Twenty-fifth Infantry. This man I instructed to go to the wharf on the Rio Grande River, which crossed leading to Matamoros, told him to stay there until 9 o'clock, to instruct any men who were going to or coming from Matamoros to return to the post, as their passes had been revoked. At about 8 o'clock I sent out another patrol, consisting of a noncommissioned officer and two men. About 9 o'clock I sent out another patrol of a noncommissioned officer and two men. The fifth patrol went out about 9.30, consisting of a noncommissioned officer and two men. I sent these men into different parts of the town, with orders to notify the men to return to the garrison, that the passes had been revoked. When Major Penrose first gave me the orders to send out the patrols, I asked him if he wished me to go out into town; he said he did not care particularly; that if I felt that it would be of any benefit, or if I thought it necessary, that I could go into the town. So after the first three patrols went out, I myself went through the town; covered probably fifteen blocks; went down different streets to see if I could find any of the men, or see any of the men, and also to see that the patrols carried out their duty.

Q. Did you determine whether or not these patrols did their duty? Were you satisfied?—A. I was perfectly satisfied that they did. They found some men and told them to return, and finally found out that all the men were in, with the exception of two or three who were on pass, and they could not be found.

Q. Captain, were there any orders given you by the commanding officer directing you to exercise any special vigilance on the night of or during your tour of August the 13th-14th?—A. There were none.

Q. Were there any suggestions or information given to you by the commanding officer which might indicate that any special vigilance on your part was necessary?—A. There was not.

Q. Was there anything in his manner which might indicate this?—A. There was not.

Q. Captain, had there been any occurrences in the vicinity of Fort Brown which might indicate that any special vigilance on this particular night was necessary on your part?—A. There was not—there had not been.

Q. Why were those passes rescinded and the men ordered to remain in the garrison after 8 p. m. on the night of August the 13th?—A. The passes were rescinded on account of an alleged attack on a Mrs. Evans by one of our men, which was reported to the commanding officer by Mayor Combe, and Mayor Combe suggested to the commanding officer that he thought it was advisable to keep the men in

the post, as there might be trouble, that a few of the men going around alone might be assaulted or hurt.

Q. Well, you say he said there might be trouble? What did he mean by that?—A. Well, the mayor was afraid that the people would become indignant and might assault these men.

Q. What men?—A. Any of the men who were out in single groups or alone.

Q. By groups you mean—A. I mean one or two men together—two or three men together, rather.

Q. When did you first hear of this alleged assault on Mrs. Evans?—A. I think it was about 5.30 that evening—that evening of August the 13th.

Q. Did you receive any further reports or information regarding this alleged assault?—A. Later in the evening Corporal Wheeler, who was one of the corporals of the guard, asked me why the passes had been revoked and I told him, and he said that he lived near this Mrs. Evans, and I told him that he ought to try to find out all he could about the matter so as to clear up any suspicions on the men.

Q. Did you have any further conversation with him?—A. Later Corporal Wheeler told me that he had been over home, had seen his wife, and had found out what the trouble was. It seems that this Mrs. Evans lived in the tenderloin, or in the vicinity of the tenderloin district, and he reported to me that she leaned over the fence and some man came down the street, and put his hand on her head and said, "Hello, pet," or something of that kind, and passed on.

The JUDGE-ADVOCATE. This, as I understand it, was the report made by Corporal Wheeler to Captain Macklin at that time?—A. Yes.

Q. How long had you known this Corporal Wheeler?—A. I had known Corporal Wheeler since about April 1, 1904, I think—a little over two years and three or four months.

Q. Had you ever had occasion to notice him especially?—A. I have; I had.

Q. Did he or did he not have your confidence?—A. He did have my confidence.

Q. Captain, was the commanding officer—or what opinion, if any, did the commanding officer express to you as to the truth of this Evans report?—A. He said he did not believe there was any truth in it at all. I told him that I did not either.

Q. What impression upon your mind did this report of Corporal Wheeler, and the expressed opinion of the commanding officer make—what impression did you receive?—A. I received the impression that there was not any truth in the matter at all, and that it was just an exaggerated story. I did not believe that any of our men had done it; I had seen them under all circumstances in Nebraska, and never heard of an occasion of that kind, of any woman ever being insulted by one of the men.

Q. Did you or did you not anticipate serious difficulty as the outcome of this alleged assault?—A. No; I did not at all.

Q. Captain Macklin, about how often and at about what times did you visit the guard during your tour as officer of the day on August 13-14?—A. I first went there at guard mounting, then once during the afternoon, at retreat, at 7.30, and then shortly after 9 o'clock; then immediately after check roll call or "taps;" and the next visit

was some time in the morning, about reveille; and then once after that, between that and guard mount.

A MEMBER. I would like to have the stenographer read that question and answer.

The reporter read the question and answer, and the witness further stated:

A. I might add to that answer I think I visited the guard once in the morning, but I am not quite positive.

Q. Then, from the time you mounted guard, up to midnight of the 13th of August, you visited your guard five or six times?—A. Yes.

Q. Captain, did you make the inspection of the sentinels on post required by special orders of the post at Fort Brown?—A. I did. All those sentinels were inspected except one. He was Private Ash, on post No. 4. I saw him walking his post, but did not take his orders.

Q. Why was it that you did not actually take this man's, Ash, orders?—A. I had inspected Ash a good many times, knew him to be an excellent soldier, and very attentive to his duties. I did not think it necessary.

Q. Where was he when you saw him?—A. He was in the vicinity of the commissary storehouse.

Q. Was that part of his post?—A. It was. He was on his post at the time.

Q. Where were you?—A. I was on the sidewalk, right near.

Q. About how far from him?—A. Why, I don't know—about, maybe, 20 yards—15 or 20 yards. I could see him plainly.

Q. Were you satisfied that this man Ash on post No. 4 was performing his duties properly?—A. I was entirely, sir.

Q. Were you confident that he was perfectly familiar with his orders?—A. I was.

Q. Captain Mucklin, "taps" at Fort Brown was at the usual time?—A. It was at 11 o'clock.

Q. Was it the custom there to carry out the usual orders regarding the 11 o'clock checkroll?—A. I do not understand that.

Q. Was it the custom there to carry out the usual orders regarding the 11 o'clock checkroll?—A. It was.

Q. Who received the reports?—A. The officer of the day.

Q. Did you receive the reports at "taps" on the 13th of August?—A. I did.

Q. Captain, what was the result of this checkroll call as reported to you?—A. All the companies were reported present.

Q. By present do you mean, did you understand by this report made to you that all were present—did you understand that that meant that every man was actually in post or in the quarters?—A. No; because I knew some were out on pass—for instance, in my own company there were two out on pass that we could not find. All were present except those who were out with an authorized pass.

Q. How was it, Captain, that there were these two men of your company absent, or out on pass, rather?—A. They had been granted a pass on the morning of August 13 by the commanding officer, and neither the patrols nor the noncommissioned officers that I sent out could find these men. It was presumed that they had gone to Matamoros—in fact, I am very certain that at least one of them was in Matamoros.

Q. Where is Matamoros?—A. Matamoros is directly across the river from Brownsville, in Mexico.

Q. Captain, after receiving these reports at "taps," where did you then go?—A. I first went into my own house for a moment, then came out, went up to the guardhouse, had the guard turn out and verified the prisoners afterwards. Then I left the guardhouse and went over between the vacant set of barracks and my own company quarters and went in rear of my own quarters.

Q. Captain, about what time was it when you were at the guardhouse?—A. I think it was very close to a quarter after or twenty minutes after 11.

Q. You say you had your guard turn out and verified the prisoners? Did you give any special instructions to anyone there relative to yourself?—A. I did. I instructed the trumpeter of the guard to call me for reveille.

Q. Who was this trumpeter of the guard, if you remember?—A. I really can not recall his name now.

Q. Why did you select the trumpeter of the guard as the one to awaken you?—A. Why, I think—that is, he knew my quarters and I think that was the usual custom; he was perfectly familiar with all of the officers' quarters, delivering messages, etc., and I knew that he could find my quarters.

Q. Captain, you say that you left the guardhouse and went over between the vacant set of quarters on the east end of the line of barracks and C Company barracks, and in rear of your own company? Why did you take this particular route?—A. I went over there to see if the orders that I had given the first sergeant a few days before had been carried out. The men had been in the habit of sitting on the back porches there and disturbing the other men by loud talking, and I went over there on purpose to see if any of them were sitting out there.

Q. While you were in rear of these quarters did anything out of the ordinary occur that you recall?—A. Yes. When I got up near the west end of my quarters I saw up in front of the gate what I thought was a couple struggling, which appeared to me to be a man and woman or two men and two women, so I unhooked my saber and ran up there as fast as I could, and when I got there on the walk between B and D Companies' quarters I found six or seven or eight children, and they were all huddled together, and a big black dog that belonged to B Company was there growling at them, and they were frightened, and what I took to be their struggling I found was their moving around with each other, because they were all very much frightened, and some of the little girls were crying. I took those children and went out onto the middle walk with them and halfway across the parade ground, and asked the oldest one of them where they had been, and they told me they had been at a party over at Mr. Cowen's house, which was in the vicinity of the garrison. This was about 11:25 then—a little after 11:30.

Q. Well, when you took these children out to about the middle of the parade ground on the walk what did you do then?—A. I then went back and met the sentinel on that post, took his orders, then went over to the main gate and stood there for a few minutes, probably no more than an instant or two; then I came back and went over home to my own quarters.

Q. Who was this sentinel on post No. 2?—A. Private Howard, Company D, Twenty-fifth Infantry.

Q. Was this sentinel on No. 2, Private Howard, the last sentinel to be inspected?—A. He was.

Q. When you went to your quarters what did you do then?—A. I left my saber on the front porch, right against the doorsill, and I went into the back room, as I always used it for a sitting room, where I had my desk, and I got a bottle of beer out of the ice box and sat down and drank that and looked at the headlines of a paper that had come in that evening's mail. I sat in there probably for about ten minutes, not over that—I do not think that long—then blew out my lamp, took my lantern, and went upstairs to bed.

Q. Captain, you say you left your saber on the porch, leaning against the side of the door? Was your belt on the saber?—A. It was.

Q. What was the size of this bottle of beer that you drank?—A. A pint bottle.

Q. Did you drink more than one bottle?—A. I did not.

Q. Other than this pint bottle of beer you have just stated that you drank, what else had you drank during your tour of guard duty?—A. I drank another pint of beer a little earlier in the evening with Lieutenant Lawrason. That was all I drank during that day after marching on guard.

Q. Then you say you blew out the lamp? Where was this lamp?—A. The lamp was on the corner of the desk.

Q. Downstairs?—A. Downstairs; yes, sir.

Q. In the front or back room?—A. In the back room.

Q. Then you took your lantern and went upstairs to bed? Which room did you occupy in your quarters or sleeping apartments, Captain?—A. I occupied the back bedroom; that is, the second room upstairs.

Q. The back bedroom upstairs?—A. The back bedroom upstairs; yes, sir; in the main part of the house.

Q. What preparation did you make—that is, with regard to your dress—in going to bed, going to sleep?—A. I put the lantern down a little behind the door so that the light would not shine in my eyes, and I think I then took off my blouse—that is the only article of clothing that I took off, though—and lay down just as I was.

Q. How was it, Captain, that you removed only your blouse?—A. When I am alone I very rarely undress when I am officer of the day; I nearly always sleep with my entire clothing on.

Q. That is your custom?—A. That is my custom; yes.

Q. Captain, which quarters did you occupy at Fort Brown during your stay there?—A. Quarters No. 11.

Q. Quarters No. 11?—A. That is, the east side—well, quarters No. 11.

Q. Yes; the east side of the—A. Of the last set of quarters.

Q. On the west or east end of the officers' line?—A. On the west line of the officers' line.

Q. The last set, or last double set?—A. The last double set of officers' quarters on the west side of the line.

Q. Captain, if they were occupied, who occupied No. 12?—A. The house was vacant; no one occupied it.

Q. Had you been in these quarters No. 12 a number of times?—A.

I had been in there a good many times; I had some of my things put in there that were unpacked.

Q. That were what?—A. Unpacked—I mean packed, I should say. I used it as a kind of storeroom.

Q. Were those quarters furnished?—A. They were not.

Q. Was any of the property your personal property that you had in No. 12? Was any of it unpacked or uncrated?—A. None of it; no. It was all crated or in boxes.

Q. Captain, were those quarters No. 12 lighted in any way on the night of August the 13th?—A. They were not.

Q. You say those quarters No. 12 were unfurnished? Were there any shades to the windows?—A. There were not; no.

Q. I wish you would please describe the light that you had in your quarters when you went to sleep—one or more—and tell its location?—A. The door was about halfway closed, and I put the lantern behind that door so that the light would not shine on the bed, for I was sleeping almost opposite the door.

Q. Did this lantern illuminate or light the lower hall of your quarters?—A. I do not think it would have been possible to have done so. It was in such a position that I do not think the light would have shone downstairs.

Q. Captain, why did you select this particular second-story back room for sleeping purposes?—A. It was the room or side from which the prevailing breeze came, and everyone, I think, used that for a bedroom.

Q. Captain Macklin, how were your personal quarters No. 11 furnished?—A. Downstairs in the front room I had a couple of chairs, one of which, I think, was a Morris chair; the other was probably a quartermaster's chair. I had also in there a couch that was wrapped in burlap and had not been unpacked. In the back room downstairs I had a quartermaster's desk and a couple of Government chairs and a table. Upstairs I had nothing at all except a white enameled bed that I had unpacked. That was the only article of my own furniture, outside of two or three chairs, that I had unpacked.

Q. What kind of desk was this?—A. It was a high-top desk; not a roller desk; but just a high-top, common quartermaster's desk.

Q. Captain, when you returned to your quarters after making your last inspection of the sentinels, what was your physical condition—I mean as to being wearied?—A. I was very much tired out; very tired, indeed.

Q. About what time was it, to the best of your recollection, when you went to bed or when you went to sleep?—A. I think it was about ten minutes of 12.

Q. At about 12 o'clock midnight on the 13th of August did you hear any shooting?—A. I did not.

Q. You have learned, though, that there was shooting?—A. Yes, sir.

Q. Since then?—A. Yes.

Q. How was it that you did not hear the shooting?—A. I was asleep, and I did not awaken.

Q. Captain, when did you first wake up after having gone to sleep?—A. I first woke up about five minutes of 1. I thought I heard a knock downstairs, and I called out, "All right." I got up and looked at the clock, and I said, "Why, I must have been dream-

ing." The impression was that that call was a call for reveille—that is, the knock was the orderly trumpeter calling me for reveille—and I lay down again and went to sleep.

Q. When did you finally fully awake, or when were you awakened?—A. I think it was a quarter after 1. I was awakened by a noncommissioned officer running into the room, touching me on the foot, and he told me that the commanding officer wanted me immediately; that they had been shooting up the post; that the town people had been shooting up the post and that the whole garrison was out and that Major Penrose was very anxious to find me or to know where I was; that they had been looking for me everywhere.

Q. Do you know who this noncommissioned officer was?—A. I am not quite positive, but I think it was Corporal Burdett.

Q. After you had been awakened by this noncommissioned officer, Captain, what did you do?—A. I ran over to the main gate. Went over as fast as I could to the main gate, where these men told me the commanding officer was, and then I reported to the commanding officer there.

Q. On your way over to the main gate, Captain, did you meet any officer?—A. Yes; I met Captain Lyon. He told he that the major wanted me right away.

Q. Was he the first officer you met?—A. He was.

Q. Captain, what comment, if any, did the commanding officer make because you had not appeared during the shooting?—A. He first said, "My God, boy, where have you been? I have been so worried about you. I thought you had gone out at first shooting and might perhaps have been killed; so I sent Lyon and his company into town to try and find you." He then directed me to take command of my company.

Q. Were those the only comments he made? Did he reprimand you in any way for not appearing?—A. Oh, no; there was no reprimand whatever. He asked me where I was. I told him I was asleep. He made no reprimanding comments whatever.

Q. What orders did he give you then?—A. Well, he directed me to take command of my company and verify it.

Q. And you then took command of your company?—A. I did; immediately. I relieved Lieutenant Grier. He had been placed in temporary command of the company.

Q. Captain, when were you relieved as officer of the day at the expiration of this tour of August 13-14?—A. Well, guard mounting was about 9.30. It was about 9.30 the next morning—August the 14th.

Q. Did you report to Major Penrose as old officer of the day?—A. I did.

Q. And he relieved you?—A. He relieved me; yes.

Q. When he relieved you did he say anything which might indicate to you that he was not entirely satisfied with the manner in which you had performed your duties during this particular officer of the day tour?—A. He did not, sir.

Q. Aside from any actual words, was there anything in his manner which would indicate that he was not perfectly satisfied with your performance of your duties?—A. Nothing whatever. He gave me the impression that he was perfectly satisfied.

Q. Captain, as company commander of course you have a certain amount of writing to do. Is that right?—A. I have; yes.

Q. While you were at Fort Brown, where did you usually do this writing?—A. On the front porch of my quarters. I had a table almost directly in front of the door of No. 12. I had the door open and I could get the breeze right through there from the rear to the front of the house.

Q. What kind of table was this?—A. It was one of those folding field tables.

Q. About how large?—A. Why, I should think it was about 2 feet wide by probably 3 long.

Q. And what height? The ordinary height?—A. The ordinary height table; yes.

Q. It was not a small, not an especially small table, was it?—A. No; it was the usual large field table.

Q. And you say that this table was usually standing where?—A. Almost directly in front of the door of No. 12—it was partly covering the doorway.

Q. Where was this table on the night of August 13-14?—A. It was almost up against the door, because I had been sitting there in the early part of the afternoon writing, and had put it up there and put some weights on the papers that I had there.

Q. Captain, do you recollect the construction of your stairway in these quarters that you occupied—No. 11?—A. Yes; it was an inclosed stairway with a rail on it, and from about the fourth or fifth step down it was entirely boarded up from the ceiling to the floor. The rest of the distance was open.

Q. You say from about the fourth or fifth step down. Do you mean the fourth or fifth step up from the bottom?—A. I mean from the top—the fourth or fifth step down from the top.

Q. Then, the last four or five steps as you go up were boarded up, were they?—A. Yes; from the ceiling to the floor.

Q. How did that stairway run—from the front to the rear or from the rear to the front?—A. It runs from the rear to the front.

Q. How many doors were there at the head of the stairway?—A. Right at the head of the stairway to the right was the door which led into my room—the one I used as a bedroom. Right straight ahead of this little landing that was at the head of the stairway was the door leading into the front bedroom. They were separate doors.

Q. How did those doors open, out or in?—A. Well, I never had them closed, and to tell the truth I can not tell you—I think it was in, though. There was a screen door on each room, also.

Q. Were there any connecting doors upstairs—I mean between quarters 11 and 12?—A. Yes; there was a door between the two back bedrooms—that is, the back bedroom of 11 and the back bedroom of 12.

Q. Did you usually keep this door open or closed?—A. I always kept it open.

Q. Do you know as to the doors leading into the bedrooms in No. 12—that is, leading into the bedroom from the stairway, whether both or either of those doors were locked?—A. There was one door from the back bedroom of No. 12 going downstairs, and I had that door locked so that no one could come in from No. 12 into my bedroom.

Q. The door in the back bedroom connecting 11 and 12—those two bedrooms—was open, you say?—A. Yes, sir.

Q. What connections or communications were there between quarters 11 and 12 downstairs?—A. There was none in the main portion of the house, but there was in that long gallery way that ran in the rear of the quarters, that ran back in the back part of the quarters.

Cross-examination by the JUDGE-ADVOCATE:

Q. Captain Macklin, the question of whether or not differences had arisen between any of the soldiers of the command and the townspeople was touched upon in your direct examination. Had there not been some friction?—A. There had been three or four instances; yes, sir.

Q. Now, Major Penrose informed you of the cause of his issuing this order relative to cutting off the passes on the night of August the 13th, did he not?—A. Yes.

Q. He told you that the mayor of the city, and the husband of this woman who was alleged to have been assaulted, had reported the alleged circumstance to him?—A. He told me that Mayor Combé and a Mr. Evans had come up and reported this alleged assault; yes.

Q. Did he also tell you that the mayor of the city had advised him to keep his men in the post that night on account of possible trouble arising on account of the ill feeling occasioned in the town against the soldiers because of this alleged assault?—A. He said the mayor told him he thought it was advisable to keep the men in—in the garrison—that night.

Q. Do you remember the major's also telling you anything further relative to the feeling existing on the part of the townspeople?—A. No; I do not recall anything else.

Q. Now, at any time previous to this during your service, had occasion arisen to send patrols in the town to bring the soldiers in at 8 o'clock or during the evening?—A. Never before, that I recall.

Q. You had had one pay day there, had you not?—A. We had.

Q. That passed off quietly, I believe?—A. Pay day was August the 11th, one of the most quiet pay days I ever saw.

Q. There was no occasion then to send any patrols to town?—A. None at all.

Q. At any previous time in your service with the Twenty-fifth Infantry had you, as officer of the day, received orders to send out patrols from your company as a company officer, or from your guard as officer of the day, to bring the men in at a certain time in the evening for fear of trouble?—A. I do not recall of any.

Q. So this was the first time in your experience with the Twenty-fifth Infantry that you had received orders from your commanding officer to make efforts to bring in all men of the garrison within the limits of the post before a specified time in the evening?—A. Yes.

Q. As I recollect, the commanding officer told you to use your discretion in going uptown yourself on a patrol; that if you felt it was necessary or advisable to go, you could do so, but he left it with you, in other words?—A. He did; yes.

Q. And you did go uptown, and you made a pretty long patrol by yourself?—A. I did; yes.

Q. There were no men with you at this time at all?—A. Not at all; no, sir.

Q. What made you believe it necessary for you yourself to make a patrol?—A. I did not believe it necessary, but I went uptown for the express purpose of seeing that the patrols carried out their orders and, if possible, to send in any men that I might find. Everything was absolutely quiet.

Q. And this was about what time, Captain Macklin?—A. I think that I went into town about 8 o'clock.

Q. And you returned about when?—A. Probably about 8.30. I was not gone very long. I walked very fast.

Q. You kept going on; you were just making this patrol, were you not?—A. I do not understand your question.

Q. I say, you did not stop to look in any house to find if any of the soldiers were there?—A. I did; I looked in one place—a place fronting on Market square—I went inside—probably two or three feet inside of the door—and spoke to a man there and asked him if he had seen any soldiers; he said no, that he had seen a patrol go by a few minutes before.

Q. Other than that, you just kept on walking?—A. Yes. I was not there a minute.

Q. Now, with reference to these three or four, or four or five, instances you mentioned of friction between individuals of the command and individual townspeople, were there any of those instances that were still under investigation on August the 13th and in which the fault of the respective parties had not been determined in any way?—A. Well, in the Tate-Newton affair Major Penrose was going to lay that matter before the collector of customs, a Mr. Vann, who was at the time absent. That, I think, was the only one that was still under investigation, except, in the case of Adair, I intended, as company commander, to see the collector of customs about his case and, if possible, to recover the penholder that was taken from him by one of the collectors down at the wharf leading to Matamoros.

Q. Now, you have spoken of the Tate-Newton affair. What was that, and when did it occur?

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, I will serve notice on the judge-advocate that if he enters into any detailed questions of any of these instances that occurred prior to Captain Macklin's going on as officer of the day out there, we shall bring in evidence to rebut anything that will reflect in any way on any officer at Fort Brown or that will intimate that in any instance there was a necessity for any special vigilance on the part of any officer stationed there. We feel fully convinced that we are able to establish beyond a shadow of a doubt that none of these instances in the slightest would necessitate any special vigilance on the part of any officer. We stated in the beginning of this trial, on a question asked by the judge-advocate that seemed to indicate he was going into these matters, that they were originally in charges preferred against Captain Macklin. He did not think it necessary to go into it under some questions asked Captain Macklin, which did not intend to relate to any of those instances. The judge-advocate is now cross-examining him upon these instances, and certainly if the judge-advocate continues this cross-examination along these lines, we will enter into them, and enter into them at length. And I object to the question on the ground of being irrelevant.

The PRESIDENT. I would like to have the reporter read the question and answer.

The reporter read the question, as follows:

Q. Now, you have spoken of the Tate-Newton affair; what was that and when did it occur?

The JUDGE-ADVOCATE. May it please the court, I do not believe that in this case, with the charges as they are at present, it is necessary to go into the conditions at Fort Brown prior to the 13th of August—that is, except to bring in such conditions as may possibly have influenced the actions of the officers on that date, or about that date. As I stated at the beginning of the trial, I was not going into these matters, and I did not; but on the direct examination of this witness it left the impression that there had been no instances of difficulty between the soldiers and the townspeople, and there were undoubtedly, as the witness has just stated, some instances; but as to whether those were sufficient to cause a degree of friction that would have necessitated special vigilance on his part, I think inasmuch as they have been cut out of the charges it is my duty not to go into them to any great extent. But I think to merely touch upon them and ascertain the dates on which they occurred—those that were right close to the 13th of August or those that were still under investigation and which had not been determined to be merely slight incidences that did not amount to anything—I think it is proper to go into them, and I therefore think that it is proper for me to go into this question as to what was the Tate-Newton incident and when it occurred. I do not want any detailed statement from the witness, but just a brief synopsis, and we are not going to introduce any witness to show the condition of affairs there.

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, in our opinion that is the worst form of examination that could take place, a light touching-on incidents without thoroughly going into them. That is just exactly what we object to. We do not object to a thorough investigation of all these matters; and if we are permitted to bring in evidence which relates to our side of these matters we do not object to the prosecution's going into them on cross-examination of this witness, nor do we object to the prosecution's going into them through the introduction of witnesses; but we do not wish them touched on at all unless they are touched on thoroughly. If the prosecution wishes to go into them, and the court considers it material to go into them, we are ready to meet that issue, may it please the court. We were not ready to stand any inference that might be left with the court by reference to certain questions asked on cross-examination, and it is that we object to.

A MEMBER. We would like to have the reporter read the previous question and the answer.

The reporter read the previous question and answer, as follows:

Q. Now, with reference to these three or four or five incidences which you mentioned of frictions between individuals of the command and individual townspeople, were there any of those instances that were still under investigation on August the 13th and in which the fault of the respective parties had not been determined in any way?—A. Well, in the Tate-Newton affair, Major Penrose was going to lay that affair before the collector of customs, a Mr. Vann, who was at the time absent; that was, I think, the only one that was still under investigation, except in the case of Adair I intended, as company com-

mander, to see the collector of customs about his case, and, if possible, to recover the penholder that was taken from him by one of the collectors down at the wharf leading to Matamoros.

The JUDGE-ADVOCATE. May it please the court, in order to save extended investigation and realizing that this case has dragged on for a long time now, I will withdraw that question.

Q. Captain Macklin, you stated that it was your belief at that time that this report that Mrs. Evans had been assaulted was not founded upon actual facts? Your belief was that she never had been assaulted?—A. By a soldier.

Q. By a soldier? Well, now, whether the report was true or not, as long as the general belief in town was that it was true, the effect would be just the same, wouldn't it?—A. I know very little about this thing; I had not been in town, had not had any conversation with any of the townspeople with reference to the affair, never knew but very little, except just what the commanding officer told me.

Q. You had served in the South before that time, had you, Captain Macklin?—A. I served once three months at Fort McPherson, Ga., and about a month at Tampa.

Q. Now, during your service in the South, had it been or had it not been your experience that the mere statement that a white woman was assaulted by a negro was sufficient to inflame the feelings of the people?—A. Repeat that again, please.

(The reporter read the question.)

A. I know very little about it.

Q. This paper, the headlines of which you were reading that evening, was that a Brownsville paper or was that a paper from the outside?—A. It was a Houston paper.

Q. You were not a subscriber to the Brownsville Herald?—A. No; I never subscribed for it.

Q. And you did not see any copy of it on the 13th of August?—A. I don't know whether I did or not. It was either that evening or the next day that I saw it; I think it was the next morning.

Q. You think it was not until the morning of the 14th?—A. The morning of the 14th, I think.

Q. Now, in view of the orders you had received from the commanding officer relative to sending out these patrols to bring in various men found in the town and to keep in the post the men already there, did you feel it necessary to give any special orders to the sentinel on No. 2 post, or to any of the members of the guard, to exercise special vigilance?—A. No; I did not. The only orders whatever that No. 2 had was not to allow any of the men out.

Q. Was that special order you gave him on the authority of the orders you had received from the commanding officer?—A. I think the commanding officer directed me to give that order to No. 2.

Q. Regarding the—A. Not to allow any of the men out of the garrison.

Q. No change, however, was made in his beat?—A. No change was made in his regular beat.

Q. Now, at check roll call you said that you knew that a couple of men of your company were still away on a pass, but all were reported present because their absence was authorized?—A. Yes.

Q. Now, knowing that Mayor Combe had reported to Major Penrose his fears for the safety of individual men that might be found

downtown that night, did you not feel some worry about the absence of these men?—A. No; because the first sergeant told me they had gone to Matamoros.

Q. Do you know whether in any other companies from which the report "all present or accounted for" was received at check roll call there were also men absent?—A. I found out the next day that there were a couple out from Company D. I did not know it that night.

Q. So that except in so far as your own company was concerned you had no means of knowing that any other men were out on pass?—A. No.

Q. You spoke of visiting the guard some five or six times during your tour of August the 13th and 14th, I believe. Do you mean that at each of the times mentioned you visited the guardhouse and all the sentinels on post?—A. By visiting the guard I mean visiting the guard proper at the guardhouse.

Q. Your last visit to the guardhouse, I believe, was about 11.15 or 11.20, and at that time you gave orders to the trumpeter to call you at reveille. Did you give any orders to the sergeant of the guard as to what he should do in case an alarm was sounded?—A. I did not. I did not anticipate any alarm. The guard manual covered that.

Q. Were there any other members of the guard aside from the trumpeter who were familiar with your quarters?—A. I do not know, except Private Rogers. I expect the other men of my company who were on guard were also familiar with it. I had different details in there moving in my property when it first came.

Q. Did the sergeant of the guard know where you slept?—A. I do not know whether he did or not.

Q. Did the musician of the guard know that you slept upstairs in the second room or did he just know your quarters?—A. I do not know whether he knew where I slept or not.

Q. You just told him to call you for reveille?—A. Yes.

Q. Now, after you left the guardhouse on this occasion and walked over between the vacant barracks and C Company barracks, and before you heard this commotion caused by the dog barking at the children, did you see Private Howard at all, the sentinel on post No. 2?—A. I don't know, but I think I did. I am not quite positive about that.

Q. Do you recollect whether you stopped and received orders at that time, and that it was after that when you heard the dog and saw the children, or not?—A. No; I did not stop anyone; that is, I did not talk to anyone from the time after I left the guardhouse until I met these children.

Q. And it was after you had escorted the children part of the way across the parade ground that you went back and inspected Private Howard?—A. That is the time that I feel certain I took his orders.

Q. And you think you saw him before, while on the way to those children?—A. I think I saw him under one of the lights as I went between the two barracks, and he was on the front part; I know he was not in the back there, because he would have been near these children.

Q. Are you positive, Captain Macklin, that you did not see a Brownsville paper on the night of August the 13th, before you went to bed?—A. I do not believe I did.

Q. It is possible, however, that you might have, is it?—A. It is possible that I may have read one, but whatever paper I picked up I did not read, I just glanced at the headlines. I know that it was not a Brownsville paper, though, that I had then.

Q. So any newspaper account of this alleged assault it is your best recollection you did not see until the next day?—A. I do not think I did until the next morning some time. My impression is that that Brownsville paper was an evening paper—or a morning paper, rather—but I do not recollect seeing it until—I very seldom ever got it—until this trouble between the—this alleged shooting took place.

Q. Now, how often did you go on as officer of the day down there at Fort Brown prior to August the 13th, Captain Macklin?—A. For about a week before that—up to a week before that, why, we were going on with two nights off, and then, finally, we got three; the commanding officer put Mr. Grier on the roster; there were only Captain Lyon, Lieutenant Lawrason, and myself doing officer of the day duty until the commanding officer put Lieutenant Grier on the roster.

Q. So that for some time prior to August the 13th you had been going on guard with only two or three nights in?—A. Yes.

Q. And that had in fact begun about the time that Lieutenant Hay and Lieutenant Higgins left, had it not?—A. That started—of course that is what caused it, four officers left the post to go to the rifle competition at Fort Sill.

Q. They left about August the 1st, did they not?—A. I don't know what date they left; it was very soon after we got there.

Q. Now, did you on all these occasions, so far as your recollection serves you, sleep with your clothes on, even though you had only two or three nights in—that is, when you were on duty as officer of the day?—A. Yes; I am certain that at Brownsville on every tour that I did there I had my clothes on.

Q. Now, with reference to quarters 11 and 12, did you intend to use both sides of this double set of quarters—that is, both quarters, No. 11 and quarters No. 12, as soon as Mrs. Macklin arrived or after she arrived?—A. I never contemplated using it, because 12 was in a horrible condition and the bath tub was in the dining room.

Q. You expected to continue to use only quarters No. 11, even after her arrival, or did you intend to use the other half of the house, viz, No. 12, for storage purposes, or to occupy it in any way?—A. I did not hear all of that.

(The reporter read the question.)

A. I did not expect to use any part of 12 except the upstairs back bedroom, because that gave a good breeze into the bedroom that I was using.

Q. Was that door which led from the back bedroom of quarters No. 12 to the landing at the head of the stairs fastened securely or locked on the night of August the 13th?—A. It was. I do not think it was ever unlocked from the time I first locked it.

Q. The only light in either quarters 11 or 12 when you went to bed on the night of August the 13th was the light given by your lantern, was it?—A. That was all; yes.

Q. And that was placed behind a half-closed door, I think you stated?—A. Yes.

Q. In such a way as not to shine on your bed?—A. Yes.

Q. Well, now, was this the door that opened from the back bedroom onto the landing at the head of the stairs?—A. It was the door that led from my bedroom downstairs in my own house.

Q. It was the main entrance to the back bedroom from the head of the front stairs, was it not?—A. Yes.

Q. Did that door swing outward from the room or into the room?—A. It swung into the room.

Q. So your lantern was inside of the bedroom?—A. My lantern was inside of the bedroom, between the screen door and the door of the room. The door was probably three-quarters closed.

Q. So the light would shine out to a certain extent upon the head of the stairs, then, the landing?—A. Yes; naturally; yes.

Q. But would not shine directly downstairs or in the hallway?—A. I don't think it was strong enough for that; I do not think it would have been possible to have seen it from downstairs.

Q. Was the door of the front bedroom closed on this night, or was it open?—A. I don't know whether it was open or closed.

Q. Well, whether it was open or closed, could this light from the lantern have been seen outdoors or not?—A. No; not from the front, because there was nothing there but a dormer window in that front bedroom, and the trees in front were very heavy; I don't think it would have been possible to have seen a light from the outside.

Q. It would not have been visible, then, to a person standing on the sidewalk or nearer to the house than that?—A. I don't think so. I think about the only way you could have seen any light in that room from the outside would have been from the side of the house—that is, the side between the—

Q. The east side?—A. Yes; between 10 and 11. If a person stood nearly opposite my window he could possibly have seen a light in my room.

Q. He would have to stand nearly opposite your bedroom to see that light?—A. I think so; yes.

Q. Did you turn the lantern down at all, or was it burning naturally?—A. I think it was burning just naturally—the natural height, the regular height.

Q. Were there no blinds in quarters No. 12 in front of the windows, or any other means of shutting out light?—A. No; the whole house was open, the windows were all open, to the best of my recollection—yes, I know they were all open. I had screens on the front of them, but—

Q. There were no blinds?—A. If there were blinds they were not closed at all; they were all open.

Q. Now, on the veranda on the night of August the 13th, did you leave two or three chairs, or were there two or three chairs?—A. Yes; I think there were four chairs out there. I generally had four or five chairs out on the porch, because all the officers would come down there in the evening, and we would sit out on the grass.

Q. But the chairs—when you went to bed you usually placed them on the porch, did you not?—A. Yes; on account of the dampness.

Q. And that was done on the night of August the 13th?—A. I think so; yes.

Q. Was this folding table of which you spoke and which was on

the porch of quarters 11 and 12, was that one of these little gold medal folding camp tables?—A. Yes, sir.

Q. In which the top folds up, as well as the legs?—A. Yes; that was the kind, only it was unusually large.

Q. Was there any other furniture on the veranda other than this table and the chairs, to the best of your recollection, on the night of August the 13th?—A. To the best of my recollection there was a crate or two on No. 12 side—a crate of chairs, or something of that kind.

Q. Now, this folding table that was on the veranda—when you left it on the night of August the 13th, or the afternoon of August the 13th, was not so placed as to absolutely prevent the opening of the door of either quarters No. 11 or quarters No. 12, was it?—A. Yes; it was in such a position that you could not have gone into 12 without moving the table.

Q. That was what time in the afternoon or evening, if you noticed it?—A. Well, I was writing there in the morning, and also wrote in the afternoon, probably—in fact, I think I was writing when Major Penrose came down at 5.30. That would be the last time that I wrote there, because after that I was busy with the company and took charge.

Q. Was your striker over at your house in the evening?—A. He came over there, I think, about 6 o'clock, and brought my supper over just before retreat, but how long he stayed I do not recollect.

Q. You do not know whether after dark this table was removed by the striker or not, do you?—A. He never touched it. I gave him orders never to touch that table or anything on it.

Q. And it was in the same position the next morning when you got up?—A. It was.

Q. Now, with reference to the staircase in quarters No. 11, there was a closet under the stairs, was there not?—A. Yes; quite a good-sized closet.

Q. And this board, as I understand it, ran in such a way as to inclose the portion of the staircase that was exposed to view from downstairs. Did that practically hide the entire staircase from the view of a person coming from the front of the house—that is, a person standing near the front door would see this covered arrangement with the pair of banisters—or rather one banister—above, and not see the actual steps themselves?—A. Read that question, please. I do not understand it.

(The reporter read the question.)

A. Yes, sir; a person standing at or coming in the front door could not see the stairs themselves. He could see where the stairway was, of course, but I mean he could not see the actual steps; nor could he, I believe, see anybody go up the stairs from the front part of the hall.

Q. You habitually kept the doors and windows open during the summer?—A. Yes. My house was never closed, except one door that led from the back part of the house to this long alleyway back there. That I closed at night.

Q. Did a striker or a servant or anyone except yourself sleep at either quarters 11 or 12?—A. No; I slept there all alone.

Q. Now, were not your quarters so situated with reference to the rest of the officers' line, the administration building and the roads

and the lights in front of them, that they could be readily found even on a dark night?—A. Well, it was the last double house on the line. A person might look around and see and be able to tell in that way. Going diagonally across the parade from company quarters, I always had to look myself to see which house was which.

Q. You stated that about ten minutes of 12 you believed you went to bed, and that at about five minutes of 1 you heard some one knock, and you sat up, looked at the clock, etc. Now, were you certain at the time that some one was knocking, or that some one knocked, or not?—A. I was not certain. When I got up—I was conscious of the hour, because I looked at the clock—and when I got up out of bed I walked from around the foot of the bed to a small table where I kept my alarm clock and looked at the clock and saw the time, and then I felt certain I had been dreaming, that I was mistaken in hearing the knock—there was no word said, or anything, there was just—what I heard was this knock on the front door, or what I thought to be the front door.

Q. But after seeing the clock you were certain you had made a mistake as to this knock?—A. I felt certain then I had been dreaming. I naturally thought when I heard the knock that it was the orderly come to awaken me for reveille.

Q. You had no suspicion that it was anything else?—A. Not in the least, because I lay right down again.

Q. Now, you stated that about 1.15 that morning, the morning of the 14th, you were awakened by a noncommissioned officer touching your foot. Did you ever make inquiry of the commanding officer to ascertain the identity of this noncommissioned officer?—A. I can not say that I did. I think it was Corporal Burdett.

Q. But you are not certain about that?—A. No; I am not positive about that.

Q. You never asked him if he was the man?—A. I do not recall that I ever talked to him about it at all. It is possible I did, but I do not recollect it.

Q. Now, there was a question asked by counsel as to how it was you did not hear the shooting. I do not recollect what your answer was, but will you please explain to the court here, to the best of your ability, why it was that you did not hear this shooting?—A. Yes. Because I was asleep; I was very sound asleep. That is the reason, I think, I did not hear.

Q. You are a heavy sleeper, are you?—A. A very heavy sleeper.

Q. And was your hearing normal at that time?—A. No; it has not been normal for quite a few years.

Q. You were examined for promotion about two years ago, weren't you?—A. Yes; in September, 1904.

Q. Was any defect in your hearing discovered at that time?—A. No; I passed the examination all right.

Q. Have you taken out any life insurance in the last year or two?—A. In 1901 was the last I took out.

Q. Was your hearing tested during those examinations?—A. No.

Q. Now, you were seriously wounded, were you not, in December of last year?—A. Yes.

Q. And a couple of pistol balls passed through your face, or one pistol ball passed through your face and one through your side, did

they not?—A. Well, they didn't pass through; they were cut out. One entered my head and the other entered my side.

Q. Did this wound that entered your head seem to have any effect upon your hearing?—A. It seems to have had. My hearing is getting worse every day.

Q. Well, is it not a fact that it was subsequent to the receiving of these wounds that your hearing began to bother you to any great degree?—A. Oh, yes; it has since then.

Q. Well, prior to the time that you were shot, in December of last year, had you ever had any very great trouble with your hearing?—A. No; I never had any difficulty with it.

Q. You could hear ordinary conversation?—A. Oh, yes; yes, indeed.

Q. So that prior to the time you were shot your hearing might be considered as normal or approximately so?—A. Approximately normal; yes.

Q. So, it was not due to your inability to hear sounds that were readily apparent to people of absolutely normal hearing that you ascribe your failure to wake up that night, in any degree?—A. No. I ascribe my failure to wake up as being due to sleep; I was very soundly asleep.

Q. You never gave any special orders to the trumpeter of the guard to come up to your bedroom and knock because of your inability to hear if he knocked downstairs?—A. No.

Q. You merely told him to call you?—A. I told him to call me for reveille, right after the first call; that is the way I told him.

Q. The trumpeter of the guard who awakened you ordinarily when you were the officer of the day used to knock at the front door, didn't he, when you were upstairs, or did he go upstairs to your bedroom and call you?—A. I recall one or two instances—one instance, I think—where the trumpeter came upstairs, and in addition to instructing the trumpeter of the guard to call me I used an alarm; but ordinarily I am a very early riser, and I am nearly always up when they come.

Q. Well, ordinarily, when you are taking siestas in the afternoon, or, rather, when you were taking siestas in the afternoon at Fort Brown, could you be awakened by orderlies or messengers rapping downstairs?—A. I do not recall that we ever had any orders delivered in the afternoon there. We had a rule in the regiment that no orders were to be delivered between 1 o'clock and 5 o'clock, so I do not recall anyone's ever coming there in the afternoon. In fact, I very seldom ever slept in the afternoon there—it was too hot.

Q. Now, you stated that you were very tired that night, I believe?—A. Yes.

Q. Was this due entirely to your work that day, or did the fact that you had not had very much sleep the night before have anything to do with it?—A. That was one reason. I went over to Matamoros the night before with Lieutenant Lawrason and listened to the concert, and we returned quite late; there were a party of tourists there from the North, and Judge Parks invited us to come back in a special car they had out, so we did not get back until quite late—in fact, I think it was 2 o'clock when we arrived home. I had very little sleep; I had a good deal of work that day, and the guard duty was very severe—you have to cover a good deal of ground.

Q. Has it been your personal experience, Captain Macklin, that beer has a tendency to make you sleep more soundly or not, even though you take only a glass or two?—A. No; that does not have any effect on me at all. I can lie down anywhere—I trained myself to that in my early service—I can lie down anywhere and sleep soundly, without anything.

Q. Those two pints of beer, were they the only drinks of anything of an intoxicating nature that you had during this tour of duty at all?—A. The only thing during that tour of guard duty.

By the COURT:

Q. Captain, when the officer of the day has performed his duties on ordinary tour and goes to bed after performing all his duties and without anything unusual going on, he generally goes to bed in a satisfied frame of mind, expecting that the next thing he will apprehend is reveille—that is, the next thing in the way of duty—that is, in the ordinary course of officer of the day's tour. Now, I would like to ask you, when you went to bed that night, whether you were in that frame of mind or whether the events of these patrols and the events that had taken place recently at Fort Brown had led you to think that you had need to exercise any more than the usual vigilance that night?—A. I was perfectly satisfied, sir. Everything was unusually quiet—not any more than usual—but in the early part of the evening, passing by any company's quarters, the men all seemed to be having a good time, laughing and joking among themselves, a good many of them playing pool, and everything seemed to be perfectly quiet and satisfactory. I was perfectly satisfied.

Q. With reference to your going back after you left these children, will you please state what caused you to return to the gate?—A. I did not hear the last part of that.

(The reporter read the question.)

A. I do not know, sir. I simply walked over there; I was very near there when I saw the sentry; I just simply walked to the gate and looked out. It is possible I went there to see if there was anyone I knew around there.

Q. As I understand, when you went away with the children you were going towards your quarters—in the direction of your quarters?—A. I was on that main walk. I took them out about halfway, as near as I can judge.

Q. Yes; going with the children towards your quarters?—A. Yes, sir.

Q. Well, what I want to get at, what caused you to turn around and go back to the gate?—A. Oh. It was to see the sentry—to get his orders; I had not finished with him.

Q. That was what you had in mind?—A. Yes, sir.

Q. Now, I would like to ask you about your hearing at that time; the examination that has already been conducted does not exactly satisfy—at least I did not exactly gather from it whether on that night you regarded your hearing as normal or not—on that night of August the 13th, at that time?—A. Well, I can not say that I had any difficulty in hearing at that time. It was a little bad; it was not quite normal, but I do not think it interfered with my hearing at all.

Q. You say it was a little bad?—A. Yes, sir.

Q. Was it in both ears, or one ear?—A. In the right ear, sir.

Q. That is, the right ear was not as good as the left?—A. Not quite as good; no, sir.

Q. Captain, I would like to ask you if, in the performance of your guard duty on that day—the 13th—aside from the patrols sent out, and in the performance of your routine duties, did it differ in any way from any ordinary tour of guard duty at Fort Brown?—A. No, sir.

Q. In your method and in the details of what you did in routine duty?—A. No, sir; it did not differ in any way.

Q. I understood you to say that you verified the prisoners after "taps?"—A. Yes, sir.

Q. Did you always do that?—A. I always do that; yes, sir.

Q. How did you verify those prisoners—turn them out?—A. Oh, no—oh, no. I walked inside their cells, or inside of their prison room.

Q. Captain Macklin, will you please state any effect that the report that Corporal Wheeler made to you had on your mind?—A. Why, I looked upon it as a trivial incident, did not believe any of our men had anything whatever to do with it, and, in fact, I did not think anything about it very much. I told him to lay the matter before the commanding officer, and tell him.

Q. There had been a practice march the morning of the 13th?—A. Yes.

Q. Were you on that practice march?—A. No; I was not.

Q. I would like to ask the witness about the doors upstairs in No. 12. Did I understand you to say that the door at the head of the stairs in No. 12, that led into the back room of these quarters, was closed or locked?—A. It was; yes, sir. I might add there, that there was no connection between the front and back room of No. 12, and there was only one door to the back room, and that was the door that was locked, that led downstairs.

Q. Well, wasn't there a door between the back room of No. 12 and the back room of No. 11?—A. There was; yes, sir. That was open.

Recross-examination by the JUDGE-ADVOCATE:

Q. You knew, however, Captain Macklin, that according to Mayor Combe's report to the commanding officer, that the general belief in Brownsville was that an attempt to assault a white woman had been made by a negro soldier, did you not?—A. Yes; I knew that.

Q. You knew that was the general belief downtown?—A. From what the mayor told Major Penrose. I had no conversation with the mayor, and the only thing I knew about it was what the Major told me.

(Excused.)

Lieut. GEORGE C. LAWRASON, Twenty-fifth Infantry, was recalled by the defense, and being reminded that he was still under oath, further testified as follows:

Reexamination by the JUDGE-ADVOCATE:

Q. Please state you full name, rank, and station.—A. George C. Lawrason, second lieutenant, Twenty-fifth Infantry.

Q. And your station.—A. Fort Reno, Okla.

Q. You have already identified the accused in this case?—A. Yes, sir.

By the ACCUSED:

Q. Mr. Lawrason, how long have you been in the military service?—A. A little over nine years, counting cadet service.

Q. Will you please state to the court your services. That is, in what different capacities?—A. Two years and four months at the Naval Academy, about four years at the Military Academy, and about two years and ten months in the Twenty-fifth Infantry as second lieutenant.

Q. Your entire commissioned service has been as second lieutenant in the Twenty-fifth Infantry; is that right?—A. Yes, sir.

Q. Where were you on August the 13th and 14th, 1906, Mr. Lawrason?—A. I was stationed at Fort Brown, Tex.

Q. How long had you been there up to the 13th of August?—A. Something over two weeks—I do not know the exact number of days.

Q. And how long did you remain there after the 13th of August?—A. I believe I remained there about ten days, sir; I am not sure; we left there the latter part of August.

Q. Mr. Lawrason, do you recall the weather conditions that existed at Fort Brown on the night of August the 13th and 14th, 1906?—A. Yes, sir; it was a dark, starlight night; there was no moon.

Q. Was it easy to distinguish objects without the aid of artificial light?—A. No, sir; I believe it was difficult.

Q. What duty were you on during the time you were at Fort Brown?—A. I was commanding Company B, Twenty-fifth Infantry.

Q. Did you regularly perform the duty of officer of the day at Fort Brown according to the roster?—A. Yes, sir; I did.

Q. About how often did you go on as officer of the day?—A. I went on about every third day, I believe, at first—I had about two nights in.

Q. About how many tours did you do while you were stationed at Fort Brown, do you remember?—A. I believe I—

Q. That is, up to the 13th of August?—A. Up to the 13th? Four or five, I believe, sir—about four, I should say.

Q. Mr. Lawrason, up to the 14th of August, what were the instructions governing the officer of the day in the performance of his duties?

The JUDGE-ADVOCATE. Will the counsel make that question a little more definite as to what orders he himself received when he went on these various times as officer of the day?

Q. Mr. Lawrason, what were the post's general and special orders and instructions governing the officer of the day in the performance of his duties up to the 14th of August, 1906?

The JUDGE-ADVOCATE. May it please the court, the prosecution will have to object to that question in its present form. The witness has testified that he went on four or five times—probably four times—during the period he was there, prior to August the 14th, and his testimony is first-hand as to what general and special orders were in force during these tours; but he has no means of knowing what

special orders might have been given by the commanding officer to the other officers when they were on as officer of the day.

COUNSEL FOR THE ACCUSED. I will amend the question.

Q. Mr. Lawrason, what were the general and special orders governing the duties of officer of the day, as turned over to you, given to you, during the four or five tours of guard duty that you performed at Fort Brown up to August the 14th?—A. As I recollect them, sir, they were to inspect each relief of the guard on post, and there was a special order for the sentinel who walked in the vicinity of the enlisted men's barracks to keep the Mexican boys and stragglers from hanging around the porches and stealing.

Q. Other than those special instructions covering inspection of sentinels, and these special orders to the man on No. 2 post, were there any other, or did you receive at any time as officer of the day any other special instructions or any other orders except those you have mentioned and the orders contained in the Manual of Guard Duty?—A. I believe not, sir.

Q. Did you ever receive any instructions or orders requiring you as officer of the day to visit the guard or sentinels between midnight and reveille?—A. No, sir; I did not.

Q. While you were at Fort Brown was it your custom to visit the guard and sentinels, or either, between midnight and reveille?—A. No, sir.

Q. Mr. Lawrason, from your personal experience, how would you describe the duties at Fort Brown?—A. I thought it was hard, sir. After the officers left for the division rifle competition there were at first only three officers on the officer of the day's roster, which put us on rather frequently, and it was quite a long trip around inspecting the sentinels, and I thought the duty was right hard.

Q. Well, what I mean by that question is, What were the general duties of the officers of the garrison?—A. I do not understand the question, sir.

Q. I ask you from your personal experience while at Fort Brown how you would describe the duties there—that is, the general duties that devolved upon the officers?—A. As arduous.

Q. From your personal experience, how would you describe the special duty of the officer of the day at Fort Brown; was it easy or otherwise?—A. I always found it fatiguing, sir.

Q. Was it especially fatiguing at this post?—A. I think so, sir—more so than any post I had been at.

Q. Why was that?—A. On account of the frequency with which it was performed and the heat; the sentinel posts were spread out a good deal—that is, one of them, No. 4, was a long way from the officers' quarters; his post extended around the quartermaster's buildings, and wood pile, etc., and you had to make quite a long trip to get all the sentinels.

Q. Mr. Lawrason, after you had completed the third round of sentinels during any one of your tours as officer of the day, what was your physical condition?—A. I was pretty tired, sir.

Q. Mr. Lawrason, what was your custom when officer of the day as to going to bed—that is, was there any special time before which you did not go to bed?—A. I usually retired right after taking check, 11 o'clock check; I did not inspect each relief on post before this,

and the only time since I have been a commissioned officer before the recent order requiring that an inspection be made after 12 o'clock that I ever made one was that when I had failed to inspect some relief on post and it made it necessary for me to remain up after midnight or to get up before reveille to go to this relief.

Q. Did you undress, as a rule, when you went to bed?—A. Yes, sir; I always did.

Q. Mr. Lawrason, as commanding officer of Company B did you get any orders from the commanding officer during the afternoon or evening of August the 13th regarding your company?—A. I was instructed through the adjutant, I believe, that all passes would expire at 8 o'clock that evening, and to have my company notified to this effect and let them know that no men would be allowed out after 8 o'clock.

Q. Or after retreat?—A. After retreat. All passes were to expire at 8.

Q. Mr. Lawrason, up to midnight on the 13th of August did you know of anything, had you heard of anything, which would lead you to believe that any special vigilance on your part as company commander was necessary?—A. No, sir; I had not.

Q. Had you heard of the alleged assault on Mrs. Evans?—A. Yes, sir.

Q. Did you anticipate any trouble occurring out of this alleged assault?—A. No, sir; I anticipated no trouble.

Q. Mr. Lawrason, when did you last see Captain Macklin on the night of August the 13th, 1906?—A. About call to quarters; which I believe was at 10.45.

Q. Where was he then?—A. He was on the porch of his quarters, preparing to go out and inspect sentinels.

Q. How long had you been with Captain Macklin at his quarters or on the porch at his quarters?—A. I had been with him since, I think, about 9 o'clock that evening.

Q. What were you doing?—A. I was sitting in his back room most of this time. We each drank a bottle of beer and I was looking over his papers, magazines, etc.

Q. Was there any conversation?—A. Yes, sir. I can not remember any particular conversation; we discussed general topics.

Q. Nothing unusual?—A. No, sir; nothing unusual.

Q. Do you remember any discussion of the existing conditions at Fort Brown?—A. I can recollect no such conversation, sir.

Q. It was just an ordinary, friendly conversation?—A. I believe so, sir.

Q. Which quarters did you occupy at Fort Brown, Mr. Lawrason?—A. Quarters No. 10, sir.

Q. Which quarters were occupied by Captain Macklin?—A. 11, I believe, was the number of his quarters, sir.

Q. Was it a double set of quarters?—A. Yes, sir; it was a double set. He occupied the eastern half.

Q. Who occupied the western half of this double set?—A. I believe it was unoccupied at the time; I know of no one's having lived there.

Q. Who occupied the quarters next to you in the same double set?—A. Lieutenant Hay, of the Twenty-fifth Infantry.

Q. Where was Lieutenant Hay, or was or was not Lieutenant Hay present at Fort Brown on August the 13th?—A. He was absent at the division rifle competition at Fort Sill, Okla.

Q. Do you know of your own knowledge whether Lieutenant Hay's front door was kept open or locked or unlocked?—A. I do not believe it was kept locked; it was generally kept shut, but I do not think it was locked.

Q. Do you know if anyone occupied Lieutenant Hay's quarters during his absence?—A. Yes, sir. A private of Company C. named Turner, worked for Lieutenant Hay, and during his absence he slept in his quarters at night.

Q. Mr. Lawrason, did anything unusual happen about midnight on the 13th of August at Fort Brown?—A. Yes, sir. There was—a riot took place in town—shooting.

Q. Did you wake up?—A. Yes, sir; I was awakened by the sound of the firing.

Q. And then you did what?—A. I got up and dressed hurriedly and repaired to my company parade ground.

Q. Mr. Lawrason, when you left your quarters to go to your company, did you leave a light burning in your quarters?—A. I believe I left a light in my front room downstairs.

Q. What kind of a light?—A. A lamp—nickel lamp, with a white shade on it.

Q. Was it a large lamp or a small lamp?—A. It was an ordinary size lamp, with the Rochester burner, I believe.

Q. Did it give a bright light?—A. Yes, sir. I used it for reading.

Q. You say this lamp was downstairs?—A. In the front room; yes, sir.

Q. How did it happen to be lit at that time of night downstairs in the front room?—A. I lit it when I first got up to dress by, and when I went downstairs I carried the lamp with me to light me out of my quarters, which were dark.

Q. The lamp, then, was upstairs when you woke up?—A. Yes, sir.

Q. And you carried it down?—A. Yes, sir.

Q. Mr. Lawrason, was your house—quarters No. 10—furnished?—A. The front room downstairs was furnished, and my bedroom was furnished, but those were the only two rooms that were.

Q. And the front room was where the lamp was burning?—A. Yes, sir.

Q. Was there any light in the back room downstairs?—A. No, sir; there was no light in any other room in the house.

Q. Which room did you use as a bedroom, Mr. Lawrason, in these quarters?—A. The back room upstairs.

Q. Why?—A. Because that was the coolest room in the house—the breeze was from that side, from the rear.

Q. Mr. Lawrason, your quarters were right next to Captain Macklin's?—A. Yes, sir.

Q. Did you spend a good deal of time on Captain Macklin's porch?—A. Yes, sir; I did.

Q. Do you remember whether or not there was a table on his porch?—A. I recollect that there was a small quartermaster's table which he used for writing.

Q. Where did this table usually stand, do you know?—A. As I

recollect it, it was usually just about between quarters 11 and 12, on the porch, about between the two front doors.

Q. Mr. Lawrason, in your quarters, what was the arrangement of the doors leading into the front and back bedrooms upstairs?—

A. There were two doors between the front and the back bedroom; the staircase came up in the rear bedroom, and to go into the front bedroom you had to turn to the right and go through a door near the head of the staircase.

Q. You say the stairway ran right into the rear bedroom?—

A. Yes; came right up into the room.

Q. Was there no door there?—A. No, sir; there was no door between the staircase and the room.

Q. As soon as you got to the top of the stairs you were right in the room?—A. In the room.

Q. And there was a door from the rear?—A. Yes, sir.

Q. Do you remember whether on the night of the 13th of August the front doors of your quarters were shut?—A. The screen door was shut; the heavy door was not.

Q. What kind of division, if any, was there between your porch and the porch of quarters No. 9?—A. There was no division.

Q. No railing?—A. No railing, sir.

Q. Mr. Lawrason, how long have you known Captain Macklin?—

A. Since September, 1904.

Q. Have you served with him continuously since that time?—

A. Yes, sir.

Q. What peculiarities, if any, have you ever noticed with regard to Captain Macklin when sleeping?—A. I have noticed that he is a very sound sleeper.

Q. Have you ever, yourself, tried to wake him up?—A. Yes, sir. I recollect one instance at Fort Reno, Okla., when he was post exchange officer there, I went to town one day and brought some money out for him—some change—and when I came to give it to him he was asleep in an easy-chair in his front room. I shook him by the shoulder and spoke to him several times and told him that I had the money, and he nodded his head and said, "All right," and I was about to put it down and leave when Mrs. Macklin came in and laughed and said he was still asleep. She shook him and spoke to him and woke him up, and he thanked me for bringing the money, and verified it—counted it.

Q. What time of day was this, approximately?—A. About 4 o'clock, I think, in the afternoon.

Q. Have you ever seen any other person who was as difficult to awaken as Captain Macklin?—A. I do not believe I ever have, sir.

Q. Mr. Lawrason, were quarters No. 9, in which you say Lieutenant Hay lived, were those quarters furnished?—A. I believe they were furnished about as mine were—the front room downstairs and the back room upstairs. I do not think Lieutenant Hay had much furniture in any other room, except, possibly, some in the hall way.

Cross-examination by the JUDGE-ADVOCATE:

Q. Mr. Lawrason, your entire service as a commissioned officer in the Army covers about two years and ten months, you stated?—

A. About that, sir.

Q. So that your opinion as to the necessity for special vigilance

on the part of any officer at Fort Brown, on August the 13th, and your opinion as to the gravity of existing conditions were based upon your service of less than three years; is that correct?—A. Yes, sir; that is correct.

Q. Were you ever under fire?—A. No, sir.

Q. Or in any campaign?—A. No, sir.

Q. When you stated that you recollected no conversation held between you and Captain Macklin on the evening of August the 13th relative to conditions then existing at Fort Brown, did you mean that you recollect no such conversation or that you did not or could not recall distinctly anything said in such conversation?—A. I mean that I recollect no such conversation.

Q. That so far as your present recollection extends, then, there was no such conversation?—A. Yes, sir.

Q. You stated that your quarters were furnished downstairs—that is, the front room downstairs—was it furnished to any great extent? Just tell us what was in the room.—A. There was a rug on the floor, covering most of the floor; I had a roller-top desk and a quartermaster's table, a rocking chair—Morris chair—desk chair, and I think a quartermaster's chair in this room.

Q. So, that the room was really as well furnished as the ordinary bachelor officer's room would be?—A. Yes, sir. That was most all of my furniture.

Q. And do you know of your own knowledge whether Lieutenant Hay's quarters were furnished as extensively as your front room was?—A. I think it was; probably furnished a good deal more extensively. Lieutenant Hay has a good deal of furniture.

Q. Had you all unpacked your furniture, or, rather, had you unpacked all your furniture down there?—A. I had unpacked all of mine. I had not intended to unpack it all, but my man did it one day without my telling him.

Q. Do you know of your own knowledge whether Lieutenant Hay had all of his unpacked or not?—A. I do not believe he had it all unpacked, sir, but I believe he had most of it unpacked.

Q. Now, you say you think that his front door was not locked? Had you ever had occasion to enter his front door after his absence—after he departed from Fort Brown?—A. Yes, sir; I was in his quarters several times.

Q. Did you go in the front door?—A. I do not recollect positively going in the front door. I could go in from my room upstairs.

Q. Well, to the best of your recollection, then, you entered his quarters through the room, or through the door in the partition wall upstairs?—A. Yes.

Q. Rather than through his front door?—A. Yes; I generally entered through the partition room upstairs. But I have been on the porch and have seen his man enter, but I do not recollect ever seeing him take out a key and open the door.

Q. But you had seen the man go through there?—A. Yes, sir; through the front door.

Q. But you do not know whether he locked it at night or left it open or not?—A. No, sir; I can not state positively.

Q. You were the second officer to get over to the companies, were you not—you reached there very soon after Major Penrose did?—A. Well, Major Penrose was the only officer who was around there; I

would not have seen the others probably—they were in front of their own companies.

Q. You lit your lamp, I understand, before dressing?—A. Yes, sir.

Q. And carried it downstairs with you. Was there no place in the hall where you could have left it—no table?—A. No, sir; there was nothing in the hall except a hatrack, a row of hooks to hang hats on.

Q. Your impression was at the time that the post was being fired on?—A. Yes, sir; that was my impression at the time.

Q. But you did not stop to blow out your light at all for fear it made a target?—A. No, sir.

Q. This table on Captain Macklin's porch, what kind of table was it? You spoke of it as a quartermaster's table.—A. It was a small, four-legged table, rather light—I thought it was a quartermaster's table. It may not have been—it might have been a folding gold medal table. I remember it was a small, light table.

Q. In your quarters, after you reached the head of the stairs you found yourself in the back room, did you not—in your sleeping room?—A. Yes, sir.

Q. Without having to go through any door at all?—A. Yes, sir; without having to go through any door at all.

Q. And then when you entered the front room you just opened a door to your right hand?—A. Yes, sir.

Q. That was the only door near the head of the stairs?—A. That was the only door at the head of the stairs.

Q. Do you know whether on that afternoon at Fort Reno, when you had this difficulty in awakening Captain Macklin, whether there were any contributing causes of any kind—whether he was unusually tired, or if there was any other reason for his being unusually sleepy?—A. No, sir. I know of no reason why he should have been unusually sleepy.

Q. Now, in your experience as an officer of the Twenty-fifth Infantry, had you ever had occasion as officer of the day to send out patrols and round up men in the adjoining town and bring them into barracks by 8 o'clock in the evening?—A. No, sir; I don't believe I ever had any such experience.

Q. Did you ever know of such a thing being done at any time during your service with the Twenty-fifth Infantry other than—or, rather, prior to August 13?—A. Only in moving from Fort Niobrara to Fort Brown at some of the towns we stopped at, when it would be about time for the train to leave, men would be sent out.

Q. But I mean in any post where you happened to be stationed, was there ever any necessity for sending patrols downtown and bringing in men prior to that time?—A. No, sir; there never had been before. I had only been stationed at one post.

Q. So this sending out patrols and cutting off passes was, so far as your experience goes, an unusual proceeding, was it not?—A. Yes, sir.

Q. Decidedly so?—A. Yes, sir; I think it was unusual.

Q. You state that you have no recollection of any conversation with Captain Macklin relative to the conditions existing on the night of August 13? Does that include an expression of your belief that you had no conversation relative to this alleged assault on Mrs. Evans or the sending out of patrols or anything of a like nature?—A. No, sir. I think it is possible that that night or during the day

I discussed this with Captain Macklin--I am quite sure I did with some of the other officers—but I do not recollect having any conversation with him on this subject.

Q. And during the course of your hour and a half's talk there that evening, or during the course of the time that you were at his quarters prior to the call to quarters, didn't you discuss that phase of the situation at all?—A. I do not recollect doing so.

(Excused.)

The court then, at 12.10 o'clock p. m., adjourned to meet at 9.15 o'clock a. m. on May 1, 1907.

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., May 1, 1907.

The court met, pursuant to adjournment, at 9.15 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The JUDGE-ADVOCATE. Before the next witness is introduced, I desire to state to the court that yesterday I received the following telegram:

WASHINGTON, D. C., *Apl. 30.*

LIEUT. FITCH. *Judge-Advocate-Gen'l Court-Martial,*
Ft. Sam Houston, Texas, San Antonio:

Subpoena Ray Burdett not served. Whereabouts not known.

SMITH, *Capt. Summary Court.*

3.55 p. m.

Lieut. H. S. GRIER, Twenty-fifth Infantry, was recalled by the defense, and being reminded that he was still under oath in this case, further testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Will you please state again your name, rank, and station?—A. H. S. Grier, second-lieutenant, Twenty-fifth Infantry, Fort Reno, Okla.

Q. You have already identified the accused in this case?—A. Yes, sir.

By the ACCUSED:

Q. Mr. Grier, how long have you been in military service?—A. Eight years this June.

Q. Of what has that service consisted?—A. It has consisted of four years at the United States Military Academy; almost four years as a commissioned officer.

Q. In what regiment?—A. In the Twenty-fifth Infantry.

Q. The entire four years in the Twenty-fifth Infantry?—A. Yes.

Q. Mr. Grier, where were you on the 13th and 14th of August, 1906?—A. At Fort Brown, Tex.

Q. How long had you been there up to that time?—A. Two weeks.

Q. How long were you there after that date?—A. I was there until the 22d of September, 1906.

Q. On what duty or duties were you at that time, and how long

had you been on those particular duties?—A. Post quartermaster and commissary from the date of arrival at Fort Brown; acting adjutant of the post from August 3 or thereabouts.

Q. Mr. Grier, do you recall the weather conditions that existed at Fort Brown on the night of the 13th-14th of August last?—A. I do.

Q. What were they?—A. It was a dark, starlit night.

Q. Was it easy or not to distinguish persons or places on that night?—A. It was difficult.

Q. Mr. Grier, who mounted the guard on the morning of August the 13th?—A. I did.

Q. In your capacity as adjutant?—A. Yes, sir.

Q. For the purpose of forming the usual guard mount, was it?—A. Yes, sir.

Q. Who was the old officer of the day?—A. I was.

Q. Who relieved you as new officer of the day?—A. Captain Macklin.

Q. What orders did you transmit to Captain Macklin as old officer of the day when he relieved you?—A. Nothing especially; I simply told him, as I recollect, that there was nothing new—the usual instructions.

Q. What were those usual instructions?—A. Relative to the inspections of the guard that were required to be made by post orders.

Q. Well, what were those inspections that were required to be made by post orders?—A. That the officer of the day must inspect each relief at least once while on post.

Q. Did Captain Macklin, as new officer of the day, and you, as old officer of the day, both report to the commanding officer, Major Penrose, for guard mounting?—A. Yes, sir.

Q. What orders, if any, did you hear Major Penrose give Captain Macklin?—A. My recollection is that as I stepped away after being relieved Major Penrose said to Captain Macklin, "The usual instructions, Captain."

Q. How many tours as officer of the day did you do at Fort Brown, Mr. Grier?—A. I did either two or three; I don't remember—not over three.

Q. Did you ever receive any orders from the commanding officer on any of these tours relative to visiting the guards and sentinels between midnight and reveille?—A. I did not.

Q. What was your custom, or what was the custom, with regard to visiting the guard between midnight and reveille while you were at Fort Brown?—A. I never visited the guard after midnight at Fort Brown while I did duty at that post.

Q. Mr. Grier, how would you describe the duty—that is, the ordinary routine duty—devolving upon the officers at Fort Brown? Would you describe it as easy or otherwise?—A. I should say it was very hard.

Q. During the tours which you did there as officer of the day, you inspected each sentinel on post, did you?—A. Yes, sir.

Q. Do you recall what your physical condition was at the end of the last inspection of sentinels on post?—A. Yes; in connection with other duties I had, after I had made three inspections of the guard I was tired out.

Q. Were those posts widely separated—did they cover considerable ground?—A. Yes; they did—one post in particular.

Q. Mr. Grier, you said that from about the 3d of August until up to and including the 13th and 14th of August you were acting adjutant. In that capacity what orders, if any, did you transmit to Captain Macklin on the 13th of August?—A. I am not absolutely certain that I transmitted any.

Q. Did you transmit any orders to any other officer?—A. I did.

Q. What were those orders?—A. My recollection is that I informed Captain Lyon, Lieutenant Lawrason, that the commanding officer directed that they publish to their companies at retreat that all passes in effect on the night of August the 13th were void after 8 p. m.; that the men would all be gathered in.

Q. Mr. Grier, in your capacity as adjutant, did you transmit to Captain Macklin any orders on the 13th of August requiring him to exercise any special vigilance as officer of the day?—A. I did not.

Q. Had you heard of the alleged assault on Mrs. Evans?—A. Yes. I heard it that night—that is, the night of August the 13th, about half past 5.

Q. Did you know the reason of the commanding officer issuing these orders relative to rescinding the passes and having all men in the garrison by 8 o'clock?—A. Yes, sir.

Q. What was it?—A. Because he feared that as a result of the Evans trouble, if the soldiers in small bunches of two or three, or singly, would go downtown, some of the tougher element might start a fight with them and beat them up.

Q. Mr. Grier, when you were on duty as officer of the day, what was your custom as to going to bed before midnight—did you go, as a rule, before midnight or after?—A. I did—I usually went to bed right after I took check.

Q. What about removing your clothing or any part of it?—A. I always completely undressed.

Q. When you were officer of the day?—A. Yes, sir.

Q. Mr. Grier, how long have you known Captain Macklin?—A. Since March, 1904, I believe.

Q. A little over three years?—A. Yes, sir.

Q. You stated that you were quartermaster and commissary at Fort Brown the entire time you were there, I think. Do you know which quarters were occupied and which unoccupied?—A. I do.

Q. Who occupied these various quarters—that is, what officers occupied the quarters on officers' line?—A. (Stepping to map and indicating.) Quarters A were occupied by Major Penrose; 1 and 2 were vacant; 3 was occupied by Captain Lyon; 4 by Lieutenant West; 5 by Lieutenant Grier; 6 was vacant; 7 by Lieutenant Chandler; 8 by Lieutenant Thompson, and afterwards by Lieutenant Higgins; 9 by Lieutenant Hay; 10 by Lieutenant Lawrason; 11 by Captain Macklin; 12 vacant; B, Quartermaster's Clerk Matlock.

Q. You said that the quarters No. 12, which adjoined the quarters No. 11—the quarters occupied by Captain Macklin—you said that those quarters No. 12 were vacant?—A. Yes, sir.

Q. Do you know whether or not they were furnished in any way?—A. I do not; but I do not believe they were.

Q. Mr. Grier, in your own quarters, which room did you occupy as sleeping apartments?—A. The back bedroom—the one that faced directly on the lagoon.

Q. Was this back bedroom on the first story or second floor?—
A. The second floor.

Q. Why did you choose this particular room?—A. Because, during the summer months at least the prevailing wind is from the south, and there is always a breeze from the south in the evening, at night, and it made it a cooler room to sleep in than any in the house in the summer time.

Q. Mr. Grier, when did you last see Captain Macklin on the night of August 13, 1906?—A. I should say it was shortly before 10 o'clock.

Q. Where did you see him?—A. Right outside his quarters—right east of his own quarters.

Q. Was he alone?—A. No; he was with Lieutenant Lawrason, I believe.

Q. When did you next see Captain Macklin?—A. I saw him about a quarter past 1 on the morning of August the 14th.

Q. Under what conditions did you see him then?—A. He came to relieve me in command of C Company.

Q. C Company was where?—A. C Company was at that time extended along the wall in a general direction east and west from about the middle of its own barracks down to opposite the guardhouse.

Q. What conversation, if any, did you have with Captain Macklin at about 1.15 a. m.?—A. As I recall it, Captain Macklin came up to where I was and said, "All right, Grier, I will take the company." I said, "All right, Captain. It is stretched out from here" [indicating where the left of it was] "to down opposite the guardhouse."

Q. What was Captain Macklin's manner at this time?—A. Well, he appeared to be all right to me--absolutely normal.

Q. Well, as regards any undue excitement?—A. I don't think I noticed anything of that nature about him. I do not believe he showed any nervousness, or any thing of that kind.

Cross-examination by the Judge-Advocate:

Q. Mr. Grier, when you stated that you were quartermaster, commissary, and acting adjutant down at Fort Brown, did you mean that to include the entire period up to September 22, the date you left there?—A. No; only as far as it relates to my being quartermaster and commissary.

Q. Your duties as adjutant ceased when the battalion of the Twenty-fifth left, did they not?—A. They ceased before that. They ceased when Lieutenant Chandler came back from Fort Sill.

Q. You stated about certain quarters being occupied by the following officers: Lieutenant Chandler, Lieutenant West, Lieutenant Thompson, later by Higgins, and Lieutenant Hay. Were any of those officers present in the post on the night of August 13?—A. Who were all those you named?

Q. Lieutenant Chandler, Lieutenant West, Lieutenant Thompson, Lieutenant Higgins, Lieutenant Hay.—A. No; none of them were.

Q. Mr. Grier, during your service with the Twenty-fifth Infantry, extending over a period of almost four years now, did you ever have any personal knowledge of orders, similar to those issued about 5.30 o'clock on the afternoon of August . . . by Major Penrose, having been issued in order to keep the men of the battalion out of possible trouble or danger? I refer, you understand, to revoking passes at

8 o'clock and ordering all of the men into the post?—A. I have seen and known of similar occasions.

Q. Personally?—A. Yes; where the passes were absolutely withdrawn from the men and the guard put on the bridge.

Q. That, however, was subsequent to August the 13th, wasn't it?—A. That was prior—that was when we served at Fort Niobrara.

Q. How long before you went down to Fort Brown?—A. The winter before.

Q. This order, however, that was issued on the evening of August the 13th was an unusual order, wasn't it?—A. Yes; I would say it was out of the ordinary.

Q. And the reason for that order, as you understood from the commanding officer, was his fear that some of the soldiers, if they went downtown—stayed downtown that night—might get into trouble on account of the feeling the townspeople had at that time and that had arisen from the Evans incident, is that right?—A. Yes.

Q. Did you know of your own knowledge that the mayor of the city had called on the commanding officer and advised him to keep his men in the garrison for fear of possible trouble?—A. No.

Q. Did you so understand either from the commanding officer, however, or from Captain Macklin?—A. Major Penrose told me that the mayor of the town had been to see him in regard to the Evans incident. I do not believe that he stated that the mayor advised him to keep the men in; I always understood he took that step of his own accord.

Q. The substance of the report that was made to Major Penrose, and about which he told you, was that an assault was alleged to have been committed upon a white woman by a negro soldier, is that correct?—A. Yes.

Q. Did you go downtown that evening—the evening of August 13?—A. I was in town for about three-quarters of an hour, immediately previous to retreat.

Q. Did you discuss that incident with anyone at that time?—A. You mean the Evans incident?

Q. Yes.—A. I never knew about it until I got back to the post.

Q. You stated that you last saw Captain Macklin on August 13, about 10 p. m., near his quarters? Did you stop and have any conversation with him at that time?—A. I did. I was with him for about a half or three-quarters of an hour, I should say.

Q. What was the subject of your conversation, to the best of your recollection?—A. I do not remember what the topic of the conversation was.

Q. Can you recollect, however, whether during this conversation the Evans incident, or the orders issued in consequence thereof, was discussed at all?—A. I believe it was—it seems to me that Captain Macklin mentioned something about his going out into the town himself, and in all the side streets, looking up some of these men that were still out—it seems to me that he mentioned that at that time.

Q. That is all you recollect of that conversation?—A. Well, the conversation was general, and I do not remember much about it right now.

(Excused.)

Lieut. DONALD D. HAY, Twenty-fifth Infantry, a witness for the defense, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state your name, rank, and station.—A. Donald D. Hay, second lieutenant, Twenty-fifth Infantry, Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. I do. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

By the ACCUSED:

Q. Mr. Hay, how long have you been in military service, sir?—A. Since October 28, 1902.

Q. In what regiment or regiments have you served?—A. All of my service has been with the Twenty-fifth Infantry.

Q. How long have you known Captain Macklin?—A. Since April or May, 1904.

Q. About three years?—A. Three years.

Q. In what company or companies have you served as lieutenant?—A. I have served almost all the time in C Company. I have just been attached to other companies for short periods of time—most all the other companies of the First and Third Battalions.

Q. Who were the company commanders during your service in C Company?—A. Captain Bush, Lieutenant Bates, Lieutenant McManus, and Captain Macklin; those are all I can think of.

Q. About how long have you served under Captain Macklin?—A. I think since about July, 1904—July or August—in the middle of the summer.

Q. Your service with him has been both in garrison and in the field?—A. It has.

Q. What peculiarity, if any, have you noticed in Captain Macklin as regards his sleeping?—A. I have noticed on several occasions that he is a very sound sleeper—hard to awaken.

Q. You say he is hard to awaken?—A. Hard to awaken.

Q. And that is under ordinary normal conditions?—A. Under ordinary conditions.

Q. Have you ever seen any other person who was as difficult or more difficult to awaken than Captain Macklin?—A. No, sir; I have not.

Q. Do you recall any specific instances when you have had difficulty in arousing Captain Macklin from sleep?—A. I do.

Q. What are they?—A. I recall one instance at Fort Brown. I had been most all morning sitting on Captain Macklin's porch, talking with him, and I stepped over to my house, which was next door—the next house—and said I would be back in a few minutes for lunch—I was eating at Captain Macklin's house at the time—and the captain stepped upstairs and laid down. I came back in about ten or fifteen minutes. The striker said lunch was ready, but he said that he had been unable to awaken Captain Macklin: I said I would go upstairs and get him up, and that I could waken him all right, and I went upstairs and called—went to the door and called, and went inside and took him by the arm—but I had to give it up, I could not waken him up. I came downstairs and finished lunch, and he came down after about an hour—about an hour later.

Q. Mr. Hay, did you ever serve at Fort Brown, Tex.?—A. I did.

Q. How long were you there?—**A.** Well, I think about two weeks—maybe a little less than that.

Q. What quarters did you occupy at Fort Brown, Mr. Hay?—**A.** I think the number of them was 9, but I am not sure, though.

Q. Will you please indicate on the map the quarters you occupied there?—**A.** (Witness steps to the map and indicates.) No. 9.

Q. Were your quarters furnished?—**A.** They were; yes, sir.

Q. To what extent?—**A.** They had a rug on the floor in the front room, and two or three chairs—a couple of rocking chairs, I believe, and two or three straight chairs; a table was in there, and a bookcase, I guess.

Q. Were there any other rooms furnished in this house?—**A.** The other rooms all had some furniture in them, but not much.

Q. Which room did you sleep in?—**A.** I slept in the upstairs room, back room upstairs.

Q. Why?—**A.** That was the coolest room in the house.

Q. Mr. Hay, were you sent on any detached service from Fort Brown during the time you were stationed there?—**A.** I was sent to the rifle competition at Fort Sill, Okla.

Q. About what time was this when you left?—**A.** I think I left about the 1st of August.

Q. How long were you away?—**A.** I was away until about the 18th or 19th, I think.

Q. When you left your quarters, or when you left Fort Brown, did you leave the door—the front door of your quarters—locked?—**A.** It was unlocked; I left it unlocked.

Q. Did you leave any orders to have it locked when you left?—**A.** I left no orders to have it locked.

Q. Did you have a key to the front door?—**A.** I do not think I had a key to the front door. I do not exactly remember that.

Q. Mr. Hay, when you left on this detached service, did you leave any person sleeping in your quarters?—**A.** I gave orders to my striker to sleep in the house, to stay around there a good deal.

Q. What was this striker's name?—**A.** Robert Turner.

Q. What company did he belong to?—**A.** To Company C.

Cross-examination by the JUDGE-ADVOCATE:

Q. Mr. Hay, are you a graduate of the Military Academy?—**A.** I am not.

Q. So that all the service mentioned by you has actually been commissioned service?—**A.** Yes, sir.

Q. Now, you arrived at Fort Brown about what time? Do you remember the date?—**A.** I do not remember the date. Some time in the latter part of July.

Q. I think it has already been brought out by other witnesses that the battalion arrived about 3 p. m. on July the 28th. And you left there about August the 1st, you said?—**A.** I think it was about August the 1st; I am not sure of the date.

Q. You had not settled your quarters completely, then, had you—unpacked all your furniture?—**A.** I had unpacked almost everything I had.

Q. You had no idea at the time you unpacked that you were about to leave in a day or two for this rifle competition?—**A.** No; I had no idea at the time; I did not expect to leave.

Q. Now, this man Turner, to whom you gave orders to sleep in your quarters, was he to occupy the same room that you slept in upstairs?—**A.** He was. I gave him a cot up there in that room.

Q. You let him sleep up there in the same room in which you were accustomed to sleep?—**A.** In the same room.

Q. Do you know whether or not he had a key to the front door?—**A.** I don't know about that now—I won't be certain.

Q. You said that you slept in this upstairs back room. Will you please explain how you reached this bedroom from the front door, how you would go up?—**A.** Go in the front door and go back straight back the hall, straight back, and about halfway back turn to the left, go up the stairs, and then right at the head of the stairs was that room—turn to the right there, and go right into the room.

Q. The front stairways in quarters No. 9 and in quarters No. 10 run at right angles to the hall, then, do they?—**A.** Yes, sir; in both of them.

By request of the judge-advocate the following question and answer were read to the witness, and he was asked to explain just what he meant.

Q. Have you ever seen any other person who was as difficult or more difficult to awaken than Captain Macklin?—**A.** No, sir; I have not.

A. By this I mean that Captain Macklin is the hardest man to awaken when asleep than any man I know of.

Q. Is this under all circumstances?—**A.** Yes, sir; whenever he is asleep.

Q. Now, on this occasion at Fort Brown when, as you state, you and he were talking together and you left and went to your quarters, and upon returning had such difficulty in awakening him—in fact, failed to awaken him—had you or he had any beer or anything else to drink on that morning prior to his going upstairs and lying down?—**A.** I am almost certain that we had not had anything, either of us, because I was with Captain Macklin almost all morning.

(Excused.)

Dr. IRA C. BROWN, a witness for the defense, was duly sworn and testified as follows:

Direct examination by the **JUDGE-ADVOCATE**:

Q. Please state your name, rank, and station, Doctor?—**A.** Ira C. Brown; contract surgeon, U. S. Army; station, Fort McIntosh, Tex.

Q. Do you know the accused? If so, please state who he is.—**A.** I do. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

By the **ACCUSED**:

Q. Doctor Brown, how long have you been connected with the military service?—**A.** A little over nine years.

Q. Will you state to the court in what capacities you have served?—**A.** As medical officer, commissioned officer four years and four months in the volunteer service and the balance as contract surgeon.

Q. What was your rank in the volunteer service?—**A.** Major and brigade surgeon.

Q. Has all of this service been in the United States?—**A.** No, sir.

It has been in Cuba and in the Philippine Islands—the last four years in the United States—a little over four years.

Q. Doctor, how long have you known Captain Macklin?—A. A little over three years.

Q. Where did you know him?—A. At Fort Niobrara, Nebr.

Q. How long were you there in the service at Fort Niobrara with Captain Macklin—do you recall that?—A. I served at Fort Niobrara from February 10, 1903, until the abandonment of the post in July, 1906.

Q. While you were stationed at Fort Niobrara, Nebr., what quarters did you occupy there?—A. No. 4.

Q. What quarters did Captain Macklin occupy at Fort Niobrara?—A. No. 3.

Q. Doctor, did those quarters, 3 and 4, constitute a double set of quarters under one roof?—A. They did.

Q. Then you occupied one-half of the double set and Captain Macklin the other?—A. I did.

Q. How were those quarters divided?—A. They were divided by a lath and plaster partition of moderate thickness.

Q. Were those quarters one story or two story?—A. One-story adobe.

Q. Do you recall the arrangement of the rooms in those quarters?—A. I do.

Q. Will you please tell the court?—A. On Captain Macklin's side, No. 3, the rooms opened to the left, out in the hall; the first room to the left was the sitting room; back of that, off from the hall, was another room; and off from the sitting room was another room, used as a bed room; a front room—two front rooms, then—and one back room; at the end of the hall came the dining room, and on beyond that a kitchen, and back of that the servants' quarters.

Q. And the arrangement of this double set of quarters—yours and Captain Macklin's—was the same except that?—A. Mine opened to the right of the hall and his to the left.

Q. Do you know what room Captain Macklin occupied as a bedroom in the quarters he occupied at Niobrara?—A. I do.

Q. What room was it?—A. The front room off from the room that I called the sitting room—the front bedroom.

Q. Doctor, which room did you occupy in your quarters?—A. The back room was the bedroom.

Q. Doctor, did you ever attend Captain Macklin in your capacity as medical officer?—A. I have.

Q. About how many times?—A. Well, I should say two or three times—perhaps three or four times.

Q. Have you had special opportunities to observe Captain Macklin and note any peculiarity or peculiarities that he may possess?—A. I have had.

Q. What peculiarity, if any, have you ever noticed in Captain Macklin as regards his sleeping?—A. He is a very sound sleeper.

Q. A very sound sleeper? Do you mean an exceptionally sound sleeper?—A. Yes; I should say unusually so.

Q. Do you recall any specific incidents that have come under your observation where it has been difficult to awaken Captain Macklin?—A. Yes; I have in mind several; one in particular that impressed me

was that in trying to awaken Captain Macklin they caught me, and I answered the alarm, thinking they were trying to arouse me, and I found it was a man with the sick book; that Captain Macklin insisted upon signing the book before it went to sick call.

Q. Well, how were you awakened? Where was this man?—A. The man was on the front veranda, pounding on the door.

Q. On whose door?—A. Captain Macklin's.

Q. And you were where?—A. I was in the back room on my side.

Q. Do you happen to know where Captain Macklin was at this time?—A. Yes; I know that he went to bed in the front room that night.

Q. Do you recall any other incident?—A. Well, Captain Macklin's family and mine, as well as the Captain and myself, had signals of pounding on the wall when one or the other was wanted or, in case of my absence or his, if the ladies wanted anything, and I have pounded on the wall on my side, and Captain Macklin was asleep on a divan right on the other side of it, and I could not awaken him.

Q. Do you recall any particular incident when you yourself had difficulty in arousing Captain Macklin?—A. Yes. I had made arrangements to go to Valentine at 1 o'clock in the afternoon, and Captain Macklin was going with me, and he came back from practice march—a 12-mile march—and after his lunch was in his hammock swinging with his little boy, and finally went to sleep about half past 12, and when I shook him and told him to come on, the wagon was coming, and went back into my quarters to get ready, and came out, I found he was still asleep, and I got him out by rolling him out—out of the hammock, to awaken him.

Q. You spoke of a system of signals that you had with Captain Macklin by knocking on the wall, the dividing wall between your quarters. Were you able to use this system of signals as far as Captain Macklin was concerned when he was asleep?—A. Not at all.

Q. No matter how hard you pounded on the wall?—A. Well, I don't know as to that; you couldn't make enough noise without damaging the wall.

Q. Doctor, how long have you been practicing medicine?—A. Twenty years.

Q. What schools did you graduate from?—A. The medical department, University of Buffalo, N. Y.

Q. Do you belong to any medical societies?—A. I do.

Q. What are those societies, Doctor?—A. I belong to the American Medical Association; the Cherry County and Nebraska State Medical Associations; Webb County and Texas State Medical Associations; Erie County and New York State Medical Associations; Western New York Medical Association; Buffalo Academy of Medicine; International Association of Military Surgeons.

Q. You said you had served in the Philippines, Doctor. Did you ever serve in Manila at all?—A. I was on the board of health at Manila.

Q. What position did you occupy there?—A. I was a member of the board, and at times—at one time, president of the board of health.

Q. Did you serve in a similar capacity anywhere else in the Philippines?—A. I served in the same capacity in Iloilo.

Q. Have you passed any examinations lately?—A. Yes; I passed the examination of the State of Texas for pharmacists about a month ago.

Q. Doctor, you stated that you served in Cuba. What was your service there?—A. I was in charge of the second division hospital, Seventh Army Corps, at Quemados.

Q. Did you serve at Montauk Point?—A. Yes. I was in charge of Montauk Point—closed the place.

Q. In charge of what department?—A. The whole of it—from, I think, the latter part of September until the 17th of November, when it was closed. Previous to that I was executive officer.

Q. You were chief surgeon there?—A. I was at that date—I was chief surgeon from the latter part of September until it was closed.

Q. Did you ever serve as chief surgeon on any general officer's staff in the Philippines?—A. I was General Wheaton's chief surgeon.

Q. Did you have any field service with him?—A. I did.

Q. How much was it, and where?—A. Well, all of it was in Cavite Province, and I was with the "Flying Column"—that was the name it went by; I never knew whether it had any regular name or not.

Q. Doctor, before you went into the military service, what was the nature of your medical practice?—A. I was a general practitioner in Buffalo, N. Y.

Q. Varied practice?—A. Yes; medicine and surgery.

Q. This general practice you refer to, did it bring you or did it not bring you into contact with a large number of persons of all sorts and temperaments?—A. Yes. I was connected with the city hospital, and I saw a great number there, and in my private practice.

Q. Doctor, were you, or have you ever qualified anywhere as an expert?—A. Yes; I qualified in the State of New York.

Q. In what subject?—A. Well, all subjects in medicine. The law of New York requires, before you can testify as an expert, certain formalities have to be complied with, which I did.

Q. Doctor, as a matter of professional interest, have you, or not, investigated the phenomenon of sleep?—A. I have.

Q. And also its causes?—A. So far as known.

Q. What has been the result of those investigations that you have made, Doctor?—A. Well, they have been made—all physiological experiments have been made upon animals, principally dogs. Muscular effort produces fatigue, and fatigue is caused by cell change in the blood; for instance, a dog that is thoroughly tired out from muscular effort is bled, and his blood injected into a dog which has had no exercise; the fresh dog will go to sleep at once. Therefore, from that experiment many times physiologists have agreed that there is a cell change, or, possibly, a germ may be worked out of it in time—but at present I do not know of any such—but there is a cell change which can be proved microscopically, and we do know from muscular effort and what is commonly called "tired"—feeling tired—can be transmitted to one who is perfectly fresh, and who will have all the symptoms of having gone through muscular effort, although he has had none.

Q. You said that muscular effort produces fatigue. Has this condition which you describe as fatigue any effect on a person's sleep or manner of sleeping?—A. Yes. The first two hours' sleep are the

soundest in practically all persons. After two hours the scale drops about 40 per cent.

Q. Doctor, you say that muscular effort produces fatigue. Is the result of muscular effort—that is, in the amount of fatigue it produces—is that uniform in all persons or all individuals?—**A.** It is not.

Q. How does it differ in different individuals?—**A.** It differs in different people. Some are capable of undergoing much muscular effort without much apparent fatigue, while others upon slight muscular effort become fatigued, and require sleep. Some require more sleep than others, and some quickly recuperate from a few minutes' sleep, while others require several hours.

Q. Doctor, in which one of these classes would you place Captain Macklin?—**A.** I put Captain Macklin in the class that requires considerable sleep. I have had occasion to watch Captain Macklin in connection with experiments that I have made, and I have found that he was capable of undergoing great muscular effort, and after a refreshing sleep of a few hours he was what I consider perfectly normal; but it has been my observation that those who sleep so profoundly require more than those that are what are commonly called light sleepers.

Q. Do you put Captain Macklin in the class upon whom muscular effort produces excessive fatigue; is that it?—**A.** Yes, sir.

The JUDGE-ADVOCATE. Just one moment. Let the counsel bring out first the amount of knowledge that the witness has of Captain Macklin's sleeping peculiarities. It has merely been brought out, so far, that he has known him for a period of several years, but aside from a few instances to which the witness has testified, nothing has been brought out to show that he has any intimate knowledge of any peculiarities of his sleep.

Q. Doctor Brown, were or were not your relations with Captain Macklin, during the time you were both stationed at Fort Niobrara, intimate?—**A.** They were very intimate.

Q. Were you with him a great deal?—**A.** Yes; we were practically one family, his family and mine.

Q. You have had opportunities to observe him under all conditions?—**A.** I have.

Q. Have you served with him in the field?—**A.** I served with him in the field; yes, sir.

Q. From your knowledge of Captain Macklin, what peculiarity, if any, have you noticed as regards his manner of sleeping?—**A.** I have noticed that he is a very heavy sleeper.

Q. You mean unusually so?—**A.** Unusually so—one of the hardest sleepers that I have in mind.

Q. In your varied experience in the course of your professional duties, do you recall anyone who is a sounder sleeper than Captain Macklin, or harder to arouse from slumber?—**A.** I can not recall any—in a healthy man, I mean—in a normal condition.

Q. Now, in answer to a previous question you stated that Captain Macklin was a man upon whom muscular effort produces excessive fatigue, I think. Has this condition of excessive fatigue anything to do with a person's sleep, with the soundness with which a person sleeps?—**A.** Yes. Individuals that I was about to classify a few minutes ago are those that a moderate amount of fatigue or a moderate amount of muscular effort easily produces fatigue upon, from

which there is a profound sleep—deep sleep—and it is in that class that I think Captain Macklin belongs.

Q. Is this condition in individuals, Doctor, that you described. is this constitutional, or is it something that is more or less under the control of the individual?—A. It is constitutional entirely.

Q. The individual has no control over the matter?—A. He has no control over—I think all individuals by great mental effort can for a time stand off anæmia of the brain, which produces sleep. By a mental effort, strong mental effort, more blood passes into the brain, consequently sleep is for a time deferred.

Q. Lacking in mental effort to overcome this physical condition of the individual—lacking in mental effort, this constitutional peculiarity that you have been talking about, that is something entirely beyond his control?—A. It is—it is constitutional.

Q. He can not overcome that, except in some particular case that you have just illustrated, by a mental effort?—A. No; he can not, he has no control over it. They go to sleep quickly and profoundly, these cases.

Q. Doctor, during which portion of a person's sleep is the slumber deepest?—A. The first two hours.

Q. It would be harder, then, to wake a person during the first two hours of his sleep?—A. Undoubtedly, if it was hard at all.

Cross-examination by the JUDGE-ADVOCATE:

Q. Doctor Brown, you spoke of some experiments which you have conducted with reference to ascertaining Captain Macklin's abilities in the sleeping line. Were those made here or were they made at Fort Niobrara?—A. Oh, they were made eight or nine years ago—no connection with Captain Macklin.

Q. Oh, no connection with Captain Macklin?—A. No; that was simply in some physiological studies.

The JUDGE-ADVOCATE. I do not believe you understood the question. I will ask the reporter to read the question.

The reporter read the question as follows:

Doctor Brown, you spoke of some experiments you have conducted with reference to ascertaining Captain Macklin's abilities in the sleeping line. Were those made here or were they made at Fort Niobrara?

A. You have reference to Captain Macklin's sleeping?

Q. Yes.—A. Then, that physiological answer I don't want in there at this time. My observation of Captain Macklin was made at Fort Niobrara.

Q. Did you conduct regular experiments with him there, or did you merely notice, or simply have him under observation in connection—A. With his condition for which I was treating him.

Q. Then his condition was not normal at that time; he was under medical treatment?—A. He was under medical treatment for—

Q. Isn't it a fact that a person when in a physically run-down condition often needs more sleep and sleeps more soundly than the same person when in perfect health?—A. I believe so.

Q. So that any experiments you made at that time, or any observations you made of Captain Macklin's sleeping powers, were made, so far as Fort Niobrara was concerned, while Captain Macklin was not in perfect health?—A. No, sir. My observation was made of him

in his normal state as well as while he was suffering from various troubles which had no effect whatever upon his sleep.

Q. Had no effect?—A. No. The condition for which I was treating him had no effect upon his sleep; nothing in that connection.

Q. Are you yourself a sound sleeper or a light sleeper?—A. Well, I—at the present time if I have got my right ear on the pillow I am a very sound sleeper, because I do not hear very well with my left ear, but my normal condition is that of a light sleeper—entirely so.

Q. But at Fort Niobrara, when you were awakened by the orderly pounding on Captain Macklin's door, you were at that time a light sleeper, were you not?—A. No; my condition then was the same as now.

Q. You do not happen to recollect which ear you were sleeping on then?—A. I don't recall that.

Q. In quarters 3 and 4 at Niobrara the front doors are very close to each other, are they not?—A. Yes. I think they are, perhaps, 2 feet apart.

Q. Did this instance occur in the summer time or in the winter?—A. No; it was in the fall—cold weather.

Q. So that the windows and doors in both sets of quarters were closed?—A. Yes.

Q. Now, with reference to that partition wall between quarters 3 and 4, are you positive that it is merely a lath and plaster wall, or may it not be an adobe wall plastered over on each side?—A. No; it is lath and plaster. I have driven nails in it to hang up pictures.

Q. And have seen the laths?—A. And I have seen the laths.

Q. About how thick is it, do you recall?—A. Why, I think there is a 2 by 4—the vacuum in there, so to speak, is about—the space between the laths, the 2 by 4, it would make it 4 inches.

Q. Made a 4-inch air space in there?—A. Yes, sir; made a 4-inch air space in there, and then the ordinary lath.

Q. Ordinary lath and plaster on each side?—A. Yes.

Q. Could you hear ordinary conversation going on on the other side of the house?—A. No; you could not hear—not ordinary conversation.

Q. If anyone called out, however, you could hear it?—A. If he called loudly; if you were listening, you could hear it.

Q. It was meant, however, to be a sound-proof wall, wasn't it, so as to keep the ordinary sounds from passing from one house to the other?—A. Yes.

Q. Were you ever at Brownsville?—A. No, sir.

Q. Did you conduct any experiments with reference to Captain Macklin's sleep down here at Fort Sam Houston?—A. I did not.

Q. Now, in this connection, when Captain Macklin came in from practice march and went to sleep in the hammock, and you had such difficulty in arousing him, do you know whether after this practice march he had taken anything to drink at all?—A. I don't think he did. I don't know, however; I would not say positively, but I saw him practically every minute except when he was at the table, and he never drank anything at the table; I know that.

Q. Now, with reference to that time that Captain Macklin was asleep on a divan in the hall and you pounded on the wall without arousing him, do you know whether he had had any beer or anything else to drink a short time before?—A. I don't know.

Q. And, similarly, the time the orderly pounded on his door and failed to awaken him but awakened you, do you know whether or not Captain Macklin had had anything to drink in the line of beer, or anything else, before he went to bed?—A. I do not.

COUNSEL FOR THE ACCUSED (to the reporter). Just read that question, please.

(The reporter read the question.)

COUNSEL FOR THE ACCUSED. I believe you misquoted the doctor. I think he said a man with the sick book.

The JUDGE-ADVOCATE. The judge-advocate accepts the correction. I thought the doctor said orderly, but I remember now he said a man with the sick report.

COUNSEL FOR THE ACCUSED. Furthermore, he did not limit it to one single instance.

The JUDGE-ADVOCATE. I think that question is perfectly right as it stands, with the substitution of the term "man with the sick report" for "orderly." I have no recollection of more than one incident of that nature having been cited by the doctor.

Q. You spoke in your direct examination of but one instance upon which you were asleep in your back bedroom and Captain Macklin in his front bedroom, and when a man with the sick report knocked on his front door and awakened you he failed to awaken him. Is that not correct?—A. I think I said, "I have in mind one particular occasion."

Q. That was the occasion to which my question referred?—A. That was the occasion.

Q. And you so understood it, did you not?—A. Yes.

Q. Now, is it or is it not a fact that beer, even if in very small quantities, if taken just before one retires, has a soporific effect?—A. That depends upon the idiosyncrasy of the individual. Alcohol has two effects—the ordinary beer contains about 5 per cent of alcohol—the immediate effect of alcohol is stimulating and the tendency would be the reverse of sleep.

Q. When does the stimulating effect die away and the soporific effect, if there be such, begin?—A. Well, as I have already stated, it depends upon the individual. Now, take me, for example, if you wish. The depression comes on about three hours after I take alcohol.

Q. Well, what is ordinarily about the average length of time from the time, say, a person drank a moderate quantity of beer until the depressing effect would make itself felt?—A. Is this person accustomed to drinking, or is he a teetotaler?

Q. Well, a person that is a moderate drinker, not a total abstainer?—A. Why, the effect of a small amount of beer on a person who drank moderately, I do not think it would have any effect upon his sleep, but might on his appetite; it would stimulate his appetite, perhaps, but I do not think it would have any effect upon his sleep in the case of a man who was a moderate drinker, unless he drank a sufficient quantity of beer, for instance, to accumulate 35 or 40 per cent of alcohol.

Q. What do you mean by "sufficient quantity"?—A. Well, a bottle of beer contains—well, beer generally contains about 5 per cent alcohol, and champagne, for instance, contains 10. Now, a man will get

action quicker from drinking champagne than he would from beer—just twice as quick.

Q. To repeat my question, Doctor, what, in your opinion, would be—or what amount of beer, in your opinion, would be—needed to affect the sleep of a man who is accustomed to taking a drink occasionally and is not an abstainer?—A. Oh, I should say a half dozen bottles—pint bottles.

Q. You think that two or three bottles would not influence his sleep?—A. I do not think it would in the case of a man who was accustomed to drinking moderately.

Q. That is based upon your experience of the average—you are speaking in general terms?—A. In general terms.

Q. Of the average moderate drinker?—A. And my own self particularly. I have experimented considerably upon myself—I can get more satisfaction out of that than from anybody else.

(Excused.)

Capt. SAMUEL P. LYON, Twenty-fifth Infantry, being recalled by the defense and being reminded that he was still under oath, further testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Please state again, Captain Lyon, your name, rank, and station.—A. Samuel P. Lyon; captain, Twenty-fifth Infantry; Fort Reno, Okla.

Q. You, of course, know the accused and have identified him once or twice?—A. Yes.

Questions by the ACCUSED:

Q. How long have you been in the service, Captain?—A. Seven years and about four months.

Q. What has been the nature of that service?—A. I served from the 28th of January, 1890, until October, 1894, as a private, corporal, and sergeant of Troop A, First Cavalry; and since that time as a second lieutenant, first lieutenant, and captain of infantry.

Q. What company do you command in the Twenty-fifth Infantry?—A. D Company.

Q. How long have you been in command of Company D?—A. Since January 1, 1903.

Q. Where were you stationed on August 13, 1906?—A. At Fort Brown, Tex.

Q. And how long was that your station?—A. I was at Fort Brown from the 28th of July until the 24th or 25th of August, 1906.

Q. How long have you known Captain Macklin?—A. I have known Captain Macklin since the fall of 1894.

Q. Have you known him intimately?—A. Yes; I have.

Q. What is Captain Macklin's reputation in the Twenty-fifth Infantry in regard to the performance of duty?—A. Captain Macklin has the reputation in his regiment of being a most conscientious and painstaking officer in the performance of his military duties, sir.

Q. In what manner does he perform officer of the day duty, especially?—A. He is most particular in the performance of his duty as officer of the day, and most efficient.

Q. What is his reputation for frankness?—A. He has the reputa-

tion of being a man who is absolutely and exceptionally frank in his statements.

Q. When Captain Macklin is asleep, have you or have you not noticed under normal conditions whether it is difficult to arouse him?—A. I have noticed it many times. He is extremely difficult to wake up when he is asleep.

Q. How would you regard him, compared with the average man in your experience?—A. He is much more difficult to awaken than the average man, in my experience.

Q. When did you last see Captain Macklin on the night of August the 13th before the shooting?—A. Between half-past 9 and 10 p. m.

Q. When did you first see Captain Macklin, and where, after the shooting?—A. I met him approximately at 1.15 a. m. on the 14th of August on the walk leading in from the main gate across the parade ground and near the front line—near the front of the line of company barracks.

Q. What was his manner at that time?—A. He was chagrined, apparently, at having slept through certain excitement that had been going on in the garrison for some hour or so, and was in a hurry to get to the commanding officer, but there was nothing remarkable or unusual in his manner otherwise.

Q. While the First Battalion of the Twenty-fifth Infantry was stationed at Fort Brown did you or did you not regularly do duty as officer of the day?—A. I did.

Q. About how often did you go on as officer of the day?—A. Part of the time every two days, or every third day, and the rest of the time every fourth day—that is, up to about the 18th of August, when the officers returned from Sill and made the duty a little easier.

Q. What orders were in force at that time other than those contained in the authorized manual of guard duty?—A. The orders were that the officer of the day should examine each sentinel while on post; and then there were certain orders relative to the sentinel on post No. 2; other than that the guard manual applied.

Q. What were those orders with respect to No. 2?—A. During the day his post was in the rear line of barracks, between the barracks and the wall dividing the post from town. His orders there were to keep Mexicans and people generally away from the rear of the barracks.

Q. What orders, if any, were in force requiring the officer of the day to visit the guard or sentinels between midnight and reveille?—A. There were none.

Q. What was the custom at Fort Brown during the time you were stationed there with regard to the officer of the day going to bed before midnight?—A. My custom usually was to go to bed when I completed my third inspection of sentinels, when I had inspected my last relief; and I think it was the custom of the other officers to do the same thing.

Q. And when did you complete that last inspection of the third relief? Before or after midnight?—A. I usually tried to complete that before midnight; usually finished about "taps."

Q. What was the character of the night of August the 13th?—A. It was clear. The stars were shining, but not brilliant, and the night was dark.

Q. Did any of the men of your company sleep through the firing of August 13, 1906?—A. I know of two that did.

Q. Who were they?—A. There were two men, one named Jones and the other Studemeyer—men who worked for me.

Q. Where were they sleeping?—A. They were sleeping in a room on the gallery in the rear of my quarters.

Q. Did you receive any orders as company commander on August 13 from the commanding officer through his adjutant?—A. I received orders either directly or through his adjutant, I do not remember now how that was, to notify my company at retreat that all passes after 8 o'clock were rescinded and that no men would be allowed out after that hour—out of the post.

Q. Were you disturbed in consequence of this order?—A. I was not.

Q. Did you follow your usual routine, or not?—A. I did; yes, sir.

Q. What was the character of the officer of the day's duties at Fort Brown, Captain?—A. Taken in connection with the other duties and the frequency with which the tours came, it was hard.

Q. What was your physical condition upon retiring at night, after completing your inspection of your sentinels?—A. After what?

Q. After completing your inspection of your sentinels and retiring, what was your physical condition, after performing your duties as officer of the day?—A. I was usually tired and anxious to get to bed—I always was, in fact.

Cross-examination by the JUDGE-ADVOCATE:

Q. Captain Lyon, did you actually see these two men of your company, whom you named as having slept through this affair—did you see them while they were asleep?—A. I did not.

Q. So it is hearsay as to their having slept through it?—A. It was reported to me by my wife.

Q. Did you see these men soon after the firing?—A. I did not return to my quarters until about half past 3.

Q. And they remained at your quarters during this time?—A. They remained at my quarters during all of this time.

Q. They did not waken up at all?—A. Not until long after the firing. They were awakened.

Q. They were called by somebody?—A. Yes, sir; they were called by somebody.

Q. Do you know whether these men had been celebrating pay day the day before or two days before?—A. They were both servants of mine—one was my cook and the other my striker—and I noticed no signs of any celebration.

Question by the COURT:

Q. In order to put it in the record, I will ask Captain Lyon to state the duties of officer of the day—what were the duties of officer of the day at Fort Brown in case of an alarm?—A. I think the Guard Manual provides that in case of alarm the officer of the day shall take such steps as may be necessary for the safety of the camp or garrison.

The JUDGE-ADVOCATE. I would like to state that that was brought out by Major Blockson, who read the paragraph from the Guard Manual specifically covering that point.

Q. There was no other order on that subject except that provided in the Guard Manual?—A. At Fort Brown?

Q. Yes.—A. No, sir; there was no other order.

(Excused.)

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, for the purpose of accounting for the whereabouts of Captain Macklin through disinterested witnesses, on the night of August the 13th, we have subpoenaed two civilian witnesses. One of them is Mr. O. J. Matlock and the other is a boy named Wesley Bailey, living in New Orleans. Mr. Matlock is here and is ready to be introduced before the court; his examination will be a very brief one, limited to his knowledge of Captain Macklin's whereabouts on the night of August the 13th. Mr. Wesley Bailey has not yet appeared. A number of telegrams have been sent in by the judge-advocate, and he has been regularly subpoenaed through the regular authorities. In case he does not appear, his testimony has already been introduced through the witness Private Howard and _____, who have testified they saw him near the gate protecting some children from a dog. This Wesley Bailey was simply one of the children who was being conveyed through the parade ground by the officer of the day. We consider his testimony is not important enough to warrant a delay.

The JUDGE-ADVOCATE. I would like to state, in this connection, that, by the suggestion of senior counsel for the defense, the judge-advocate has just a few moments since sent a telegram to this Mrs. Bailey, the mother of Wesley Bailey, telling her that the court was about to adjourn and that the presence of herself and her son was not desired by the defense. And this was at the request of senior counsel for the defense.

The PRESIDENT. As I understood the counsel to state, this witness had been asked to come here for the purpose of accounting for the whereabouts of the defendant on the night of August the 13th, 1906?

ASSOCIATE COUNSEL FOR THE ACCUSED. Yes, sir.

OSCAR J. MATLOCK, a witness for the defense, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE: .

Q. Please state your name, residence, and occupation, Mr. Matlock.—A. My name is Oscar J. Matlock. I am at present at Jeffersonville, Ind., a clerk in the quartermaster's department there.

Q. Do you know the accused in this case? If so, state who he is.—A. Yes, sir; Captain Macklin.

Q. Of what regiment?—A. Of the Twenty-fifth Infantry.

Questions by the ACCUSED:

Q. Mr. Matlock, were you ever stationed at Fort Brown as quartermaster's clerk?—A. Yes, sir.

Q. Were you stationed there in that capacity on the 13th of August?—A. Yes, sir.

Q. Where did you live at that time?—A. I lived in B quarters, up next to the river, at the end of the officers' line—in that house there, sir [indicating on map].

Q. On the west of quarters Nos. 11 and 12?—A. Yes, sir.

Q. Did you see Captain Macklin on the night of the 13th of

August?—A. I saw him about as late as 6 or 7 o'clock in the evening—I do not remember the exact time.

Q. How did you happen to see him about that hour?—A. Well, his house was just next door to mine, and I saw him on leaving my house in the evening.

Q. Did you hear him any later time that evening?—A. Yes, sir; I heard him pass, making his round of the guards, about 11 o'clock—between 11 and 11.30.

Q. What fixes that on your memory, Mr. Matlock?—A. Well, I was sitting on the porch on that side of the quarters back of the guardhouse, and I heard him coming across the front of the gymnasium toward the guard, and when he got near to the guardhouse the guard halted him, and I heard him reply, "Officer of the day."

Q. You recognized Captain Macklin's voice?—A. Yes, sir.

Q. You are familiar with that, are you?—A. Yes, sir.

Cross-examination by the JUDGE-ADVOCATE:

Q. Where was the gymnasium located? Will you point it out on the map, Mr. Matlock?—A. The gymnasium was located right in this corner here, fronting about even with the guardhouse. [The witness indicated a point in a southerly direction from the guardhouse and near the corner of the road.]

Q. You heard Captain Macklin coming across in front there?—A. Yes, sir.

Q. And this small house in which you were, will you point that out—about where it was?—A. [The witness here indicated the building marked "B," just east of the guardhouse.]

(Excused.)

COUNSEL FOR THE ACCUSED. May it please the court, in the absence of this boy, Wesley Bailey, we have only two more witnesses to introduce—Major Penrose and Colonel Hoyt—and we believe that we can close our defense in an hour and a half. We prefer and request that we take up these two witnesses to-morrow morning; it is now 10 minutes to 12 o'clock, and the examination of Major Penrose, who will be our first witness, is apt to be somewhat extended, and we think if we start in with them to-morrow morning we can close our defense in an hour and a half.

The PRESIDENT. Does that include the arguments, too?

COUNSEL FOR THE ACCUSED. Yes, sir.

The JUDGE-ADVOCATE. May it please the court, if there is no objection on the part of the defense, the prosecution would like to have Dr. Ira C. Brown, who left the stand a few moments ago, recalled. I have another question or two which I wish to ask him.

COUNSEL FOR THE ACCUSED. We have no objection.

Dr. IRA C. BROWN was recalled by the prosecution for further cross-examination, and being reminded that he was still under oath, further testified as follows:

Recross-examination by the JUDGE-ADVOCATE:

Q. Doctor Brown, in the case of light sleepers, does a moderate amount of beer—say a bottle or so—taken a short time before retiring, produce a soporific effect or not?—A. I think it would on most any person who was a novice in the question of drinking, or, to be

more specific, a teetotaler; in his case a little beer would, perhaps, have a quieting effect.

Q. But if a person were not a teetotaler, what effect would it have?—A. A moderate amount of beer?

Q. Yes, sir.—A. A glass of beer, for instance?

Q. Or a bottle—a pint bottle?—A. A pint bottle of beer on a person who was a teetotaler, I think, would act as a mild stimulant.

Q. If he were not a teetotaler, however?—A. If he were not a teetotaler—a moderate drinker—I do not think he would get any effects, except, perhaps, quenching the thirst.

Q. In the case of heavy sleepers—that is, a person who sleeps very soundly indeed, does a moderate amount of beer, taken just before going to bed, have any effect other than that you just stated?—A. I think not.

Q. So it is immaterial whether he is a light or a heavy sleeper?—A. Yes; a small amount of beer.

Q. But in Captain Macklin's own case have you ever noticed whether it had any effect on him or not—a bottle of beer taken before bedtime?—A. Why, I don't know what effect it has had on him, so far as sleeping goes; but I have heard him state that if—

Q. Well, you do not know of your own knowledge or from your own observation?—A. I do not know of my own knowledge what effect it has had on his sleep.

Q. On the soundness of his sleep—you do not know anything about that?—A. I do not know anything about that.

(Excused.)

The court then, at 12 o'clock m., adjourned to meet at 9 o'clock a. m. on Thursday, May 2, 1907.

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., May 2, 1907.

The court met, pursuant to adjournment, at 9 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

WESLEY BAILEY, a witness for the defense, was duly sworn, and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. What is your name?—A. Wesley Bailey.

Q. Where do you live?—A. Brownsville.

Q. Where do you live now?—A. I don't know, now.

Q. Do you know that officer sitting over there [indicating accused]?—A. Yes, sir.

Q. Who is he?—A. Captain Macklin.

Q. How old are you, Wesley?—A. Thirteen.

By the ACCUSED:

Q. Wesley, you are not living down there in Brownsville now, are you?—A. No, sir.

- Q. Where do you live now?—A. I don't know.
- Q. Did you come from New Orleans?—A. Yes, sir.
- Q. How long have you been down there at New Orleans?—
A. About a month or so.
- Q. How long did you live down at Brownsville?—A. I don't know. I lived there for about two years, I think.
- Q. Were you down there on the 13th of last August, do you remember?—A. Yes, sir.
- Q. Do you happen to remember that night?—A. Yes, sir.
- Q. What were you doing that night?—A. I was at the party.
- Q. What party was that?—A. At the Cowen house.
- Q. And that was downtown, was it?—A. Right by the post—one block from the post.
- Q. You lived in the post, didn't you, and went down there?—
A. Yes, sir. I was staying at Mr. Matlock's.
- Q. Now, after this party was over, what time was that, about?—
A. Well, it was after 11—I don't know what time it was.
- Q. What did you do after finishing at the party?—A. I went with the girls in the house, and went over to my house, and looked at some books, and went to bed.
- Q. Now, Wesley, when you were coming from Mr. Cowen's house up to your house, did you have to pass through the garrison gate?—
A. Yes, sir.
- Q. Well, after you had gotten inside of the garrison, did anything happen?—A. Yes, sir. The dogs were barking at us, and all of us got scared, and Captain Macklin came running up, and he let us pass because the dogs were after us.
- Q. He chased the dogs away, did he?—A. Yes, sir.
- Q. And then you people got home all right?—A. Yes, sir.
- Q. And then where did he go after this?—A. He went right to his left, along the side of the walk.

Cross-examination by the JUDGE-ADVOCATE:

- Q. Wesley, did you say the dogs were barking at you?—A. Yes, sir; the dogs were barking at us.
- Q. Were there more than one dog?—A. I think there were two or three; I am not sure.
- (Excused.)

Maj. C. W. PENROSE, Twenty-fifth Infantry, was recalled as a witness for the defense, and being reminded that he was still under oath, testified as follows:

Direct examination by the Accused:

- Q. Major Penrose, how long have you been in military service?—
A. Nearly twenty-three years.
- Q. Will you please give a brief synopsis of your service?—A. I served through the grades of second lieutenant, first lieutenant, and captain of the Eleventh Infantry; I was transferred from the Eleventh Infantry to the Twenty-third; I came from the Twenty-third to the Twenty-eighth; and I was promoted from the Twenty-eighth Infantry to major of the Twenty-fifth Infantry.
- Q. Major, how long have you known Captain Macklin?—A. I have known Captain Macklin nearly twenty years—twenty years this fall, I think it is.

Q. Have you or have you not served with him in any organization or organizations?—A. I have. When Captain Macklin was first appointed a second lieutenant in the Eleventh Infantry he was assigned at my request to my company, and served in that capacity until his promotion—although I was not with the company except for a short time after he joined. He again served with me after his transfer from the Eleventh Infantry to the Twenty-fifth, which brought him to my battalion.

Q. Major, you stated that he was assigned, at your request, to your company. What reason, if any, was there for your making this request to have Captain Macklin assigned to your company?—A. There were some three or four second lieutenants appointed to the regiment, and it was left to the regiment commander to assign them to companies. I had known Captain Macklin a number of years before that; I had been with him on various occasions at Fort Apache, Ariz.; he was a clerk in the exchange at the time I was exchange officer; I got to know him very well then: taking that into consideration, and also the fact that he had served for several years as an enlisted man, I considered that he was a desirable man to have in my company.

Q. Major, where were you on the 13th-14th of August last?—A. I was at Fort Brown, Tex.

Q. How long had you been there up to the 13th of August?—A. We arrived on the 28th—on the afternoon of the 28th of July, 1906.

Q. Upon what duty were you at Fort Brown at this time?—A. I commanded the post at Fort Brown.

Q. Did you command the post at Fort Brown during the entire time that it was garrisoned by a battalion of the Twenty-fifth Infantry?—A. I did.

Q. Do you recall, Major, the climatic conditions, or weather conditions, of that night—the night of August 13-14?—A. Very well.

Q. Will you please describe them?—A. It was a dark, starlight night; there was a slight breeze from the south, which we had. I think, all the time I was there.

Q. With regard to that night, was it easy or otherwise to distinguish individuals or places or buildings?

The JUDGE-ADVOCATE. Will the counsel kindly make that question a little more specific as to distances and objects?

Q. Major Penrose, you were outside of your quarters during that night, were you not?—A. Yes, sir.

Q. Do you recall that it was difficult or otherwise to distinguish buildings or places during that night?—A. It was. It was very difficult; you could not tell a white man from a colored man. I do not think, 6 feet away that night. With reference to buildings you could distinguish them at a farther distance than that, but I do not know exactly how far—you would have to be close on to the building before you would be able to see.

Q. Was there or was there not, about midnight or shortly after on August the 13th, an unusual disturbance at the post of Fort Brown?—A. There was; yes, sir.

Q. What was this disturbance? Briefly, what did this disturbance consist of?—A. It consisted of a great many shots being fired directly

outside the post, which gave me the impression that the post was being attacked, or shot up.

Q. Major, where were you when this firing that you have just mentioned commenced?—A. I was in my quarters.

Q. In your quarters? Were you in bed?—A. I was.

Q. Major, had your whole family retired?—A. We had.

Q. What quarters did you occupy at Fort Brown, Tex.?—A. I occupied the quarters on the eastern end of the line of officers' quarters—"A."

Q. What lights, if any, were burning in your quarters at the time this firing began?—A. There was a lantern turned down low that was in the front room on the second story, on the east side of the building.

Q. Were there any lights on the first floor, the first story, of your quarters?—A. No, sir. The first floor, you say?

Q. Yes, sir; the first floor of your quarters.—A. No, sir; there were not.

Q. You were not downstairs, then, sitting in any of those rooms down below, when the firing began?—A. No, sir—no, sir. I was lying on my bed when the firing began.

Q. Major, was any report made to you on or about the 13th of August, 1906, regarding any offense or alleged offense committed by any member—any enlisted man—of the Twenty-fifth Infantry?—A. There was; yes, sir. About half-past 5 o'clock in the afternoon of August the 13th a Mr. Evans, of Brownsville, and the mayor of the city—Mayor Frederick Combe—came into the garrison, and Mr. Evans reported to me that on the night before, about 9 o'clock, his wife had been grabbed from behind by a man who she was sure was a negro soldier.

Q. Did this cause you to take any special action with regard to your command, as regards the enlisted men?—A. It did; yes, sir. I immediately sought the officer of the day, and I told him that all passes would be revoked after 8 o'clock that night, and I wanted him to send out not less than three patrols into the town of Brownsville, and notify all the enlisted men that they must be in the post by 8 o'clock that night; I told him that if any of the men refused to return they would be arrested and brought in; I further told him that no one would be allowed out of the post after 8 o'clock that night.

Q. Who was this officer of the day, Major, to whom you gave, or sent, these orders?—A. The accused, Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Q. Other than these special instructions that you have just stated, did you give Captain Macklin any other special orders during the day—during the 13th of August, in regard to the performance of his duties as officer of the day?—A. I did not, sir.

Q. From whom did you receive this information about this alleged attack on Mrs. Evans, Major?—A. I received it from Mr. Evans—Lon W. Evans, I think his initials were; he was the husband of this woman who was supposed to have been assaulted.

Q. Did he come out there alone to the post and give you this information?—A. No, sir. As I stated, he came in company with the mayor of Brownsville, Doctor Combe.

Q. Did you have an opportunity to investigate this matter before

this disturbance about midnight on the 13th of August?—A. No, sir; I did not.

Q. Major, what impression did this statement of Mr. Evans make upon your mind as regards this assault?—A. I did not believe that Mrs. Evans had been assaulted by a soldier—I told him so when he made this report to me, that I could not believe it, but that I would do everything that I could to investigate the matter, and if it was one of our men, to ferret out the guilty man. His description, or rather her description that he repeated to me, was very vague indeed. She told him that it was a large, tall, black negro, dressed in a blue shirt, with khaki trousers and a slouch hat. I told Mr. Evans at the time that I had a great many men who would answer that description; that there were probably 50 or 60 men in the command that were large, tall, dark negroes, and that it would be utterly impossible for me at that late time to detect who the man was, but that if, after Mrs. Evans came to—after she recovered from her fright and shock, if she could remember anything about the man at all that would be distinctive, that I wished he would report to me and I would do whatever I could. I also told him that if Mrs. Evans was willing to do so she could come to my office the next morning and I would have each and every man of my command answering this description brought before her singly and she could—or, rather, I would give her an opportunity to recognize the man. Mr. Evans told me that he was positive that his wife would not be able to recognize the man.

Q. So this report did not impress you as anything requiring any extraordinary action on your part other than an ordinary, or a careful, rather, investigation?—A. Not the slightest; there was nothing in the world to cause anything else.

Q. You spoke of certain orders, Major, that you gave the officer of the day relative to rescinding the passes and recalling the men to the garrison. Will you please state your reason for issuing these special orders.—A. My reasons were that whether this story be true or false it would probably be credited by the people of Brownsville as being true, and I feared for the safety of the men who went out either alone or by twos and threes or in small groups, and my order was given for the purpose of protecting the men. I might go back a little further and say that Mr. Evans reported to me at the time that for the last two nights or afternoons previous he had been annoyed by enlisted men congregating in the vicinity of his house; that they used foul and obscene language, and that it annoyed him a great deal. I told him that that part I could absolutely stop, because I could put a guard over his house, if necessary, and, in a slight measure, it was to relieve him from any annoyance of that kind that these patrols were sent out, although the main reason was to protect the men.

Q. The reason, then, for the sending of these patrols mainly was for the purpose simply of notifying the men of the changed conditions as regards the passes; is that right?—A. It was, sir. That they should all be in garrison that night by 8 o'clock and not leave it.

Q. It was not for any special reasons that you thought it was necessary for increased vigilance—these patrols were not considered in the light of being necessary for the protection of the garrison, or in regard to the safety of the garrison?

The JUDGE-ADVOCATE. May it please the court, inasmuch as this witness is on the stand as a witness for the defense at present, the prosecution will have to object to questions that are so very leading in their nature. The witness is a most intelligent officer.

COUNSEL FOR THE ACCUSED. I will change the question.

Q. Was this notification of the men that the passes were rescinded after 8 p. m. the sole object of these patrols, Major?—A. It was to bring them all in, to see that they were in the garrison at that time.

Q. What report, if any, did you receive, and when did you receive this report from the officer of the day as regards these patrols and in regard to your orders?—A. I think it was about 9 o'clock in the evening that the officer of the day called at my house and stated that he had sent out the patrols and that they had turned back a good many of the men into the garrison and notified them to come in; that the last patrol had found no men at all; he told me that he himself had gone around through a certain part of the town to see that the patrols were properly performing their duty, and that he had found no enlisted men at all. I think that was about 9 o'clock in the evening.

Q. That was the last report that he made to you that night relative to those patrols—these special orders you had given him?—A. Yes, sir; that was the last one.

Q. From these reports, Major, were you satisfied that the orders given by you to the officer of the day were fully carried out, both in the spirit and in the letter?—A. I was; yes, sir.

Q. Major, what orders, if any, were in force at Fort Brown, Tex., up to and including the 13th of August, 1906, which required the officer of the day to visit the guard and sentinels between midnight and reveille?—A. There were none.

Q. What were the standing orders at Fort Brown, Tex., at this time regarding the inspection of guards and sentinels by the officer of the day?—A. Each sentinel should be inspected at least once while on post.

Q. Other than this inspection of the sentinels on post by the officer of the day, what other orders were there in force at Fort Brown at this time, excepting those contained in the Guard Manual or other than those contained in the Guard Manual?—A. Well, there were certain special orders that each sentinel had.

Q. That is, each different post?—A. Different posts.

Q. I do not mean that. I mean as regards the officer of the day—governing the performance of his duties.—A. I do not understand that. Please state it again.

(The reporter read the three preceding questions and answers.)

A. There was nothing outside of the Guard Manual that was given to the officer of the day; that governed it entirely.

Q. There were no orders, then, that forbade the officer of the day retiring before midnight?—A. What was that question?

Q. There were no orders in force at Fort Brown at this time which forbade the officer of the day to retire before midnight?—A. No, sir.

Q. There were no orders which forbade him to remove his clothing, or any part of it that he saw fit?—A. No, sir; no, sir; there was nothing of that sort.

Q. Major, about what time or times did you see Captain Macklin on the night of August the 13th and 14th, before this alarm which occurred about midnight that you have heard and have testified to?—

A. I saw him about half past 5—between half past 5 and 6—on the evening of the 13th, about 9 o'clock on that same evening, and about 1.15 or 1.30 on the morning of the 14th—about 1.15—I don't know the exact time that I saw him then.

Q. When you saw him at 1.15, that was after the shooting that you spoke of?—A. Yes, sir.

Q. You did not see Captain Macklin during the progress of this shooting?—A. I did not; no, sir.

Q. Major, when you first saw him after the shooting—which you state was about 1.15—what were the conditions under which you saw him then?—A. Captain Macklin came up to me and said, "Major, I report. I have been asleep, and I do not know anything that has taken place." I think that is about what he said.

Q. Did you give Captain Macklin any orders or instructions then?—A. I did. I told him to take command of his company.

Q. Where was his company then, Major?—A. His company was on the extreme right of the line—the line that I described in my direct examination by the prosecution as extending along that wall to the north of the barracks and separating the post from the town.

Q. Did you in any way reprimand Captain Macklin for not having appeared earlier, or during the shooting?—A. I did not, sir.

Q. As officer of the day, in case of alarm, he should have been there, should he not?—A. He should have been; yes, sir.

Q. Then, why—will you please explain why you did not reprimand him or censure him in any way?—A. He told me that he had been asleep. I believed Captain Macklin; he had all appearance of a man who had just awakened from a heavy sleep. Before this I had felt a good deal of uneasiness about him. I thought that during the firing he might have gone into the town to see what it was and that he might have been injured. I was therefore very glad to see him when he did report; my mind was relieved a great deal to know that nothing had happened to him.

Q. Major, you have stated that the special orders that you gave Captain Macklin as officer of the day on the 13th of August were carried out to your entire satisfaction; you have also stated that you gave him certain orders after he reported to you, or when he reported to you, after the shooting which occurred about midnight. Were those latest orders that you gave him properly carried out?—A. They were, sir.

Q. To your entire satisfaction?—A. Yes, sir.

Q. Major, I believe that you yourself lately appeared before a court-martial under certain charges in reference to this same affair at Fort Brown? Is that correct?—A. Yes, sir.

Q. And was or was not a portion of one of the specifications contained in the charges against you in reference to charging you with neglect to give orders to the officer of the day to exercise special vigilance on the night of August the 13th-14th?

The JUDGE-ADVOCATE. One moment. Has the counsel got a copy of the general order publishing the result of that trial here, which includes that statement?

COUNSEL FOR THE ACCUSED. No, sir.

(The reporter read the question.)

A. It was.

Q. Major, what was the finding of the court as regards this par-

particular allegation?—A. That particular allegation was "Not guilty," as near as I can recall it. That was involved a good deal there, but that particular one was "Not guilty."

The JUDGE-ADVOCATE. There is no objection on the part of the prosecution to handing Major Penrose a copy of the order publishing the charge and allowing him to refresh his memory on the subject. This order has not the official stamp of the War Department, but is accepted by the defense and the prosecution as being correct.

(To which remarks of the judge-advocate the counsel for the defense nodded in the affirmative.)

A. I would like to change that answer, may it please the court, a little bit, after looking this over, on that particular portion of failing to give Captain Macklin any specific orders to make any inspection after midnight of the guard. The court substituted words which found me guilty of that, but attaches no criminality thereto—"Special vigilance" is omitted.

(By request of the defense the reporter read the last three questions and answers.)

Q. The question, Major, was not in regard to any specific or special orders which you may have given Captain Macklin in regard to inspection between midnight and reveille, but as to any orders you gave him to exercise special vigilance on this night of August 13-14. That was a part of your specification?—A. Yes, sir. I was found not guilty on that.

Q. And you have always accepted full responsibility as to not giving Captain Macklin any such orders? Is that correct?—A. I have always, sir.

Q. Why have you?—A. There were no reasons for it at all apparent in any way, shape, or form.

Q. Do you remember when Captain Macklin was relieved as officer of the day on this particular tour, Major, of August the 13th-14th?—A. I think it was late on the morning of the 14th.

Q. Did he report to you as old officer of the day?—A. He did.

Q. Did you think it necessary to comment unfavorably upon Captain Macklin's performance of his duties—that is, to him when he reported to you as old officer of the day?—A. I did not.

Q. So far as you know, as commanding officer of Fort Brown, how did Captain Macklin perform his duties as officer of the day during this tour of August 13-14, 1906?—A. They were performed to my entire satisfaction, sir. I regretted that he had slept through that particular period, but I could not attach any neglect of duty to it.

Q. Then, either during the time that Captain Macklin was acting as officer of the day at this particular time, or when he was relieved by the new officer of the day some time during the morning of August the 14th, you did not think it was incumbent upon you as commanding officer to reprimand or censure him in any way; is that correct?—A. I did not.

Q. Major, how long have you known Captain Macklin?—A. I stated just a while ago that I have known him nearly twenty years—I think it is twenty years this fall.

Q. You have had ample opportunity to observe him in the performance of his duties?—A. I have.

Q. From your knowledge and observation of Captain Macklin, how does he, as a rule, perform his military duties—in what manner?—

A. Captain Macklin I consider a very excellent officer, and he is a man who always performs his duty with a great deal of care and a great deal of pains; and he is a particularly careful company commander in the management of his company—and, in fact, on all duties I have always found Captain Macklin excellent.

Q. Major, have you ever noticed him especially when acting as officer of the day?—**A.** Yes, I have; on several occasions when Captain Macklin has been officer of the day, and reporting off, he has reported to me that he had visited the guard after midnight, and it was so reported on the guard report. This is rather unusual to me, however, because very few officers in my experience ever visit the guard after midnight.

Q. Aside from observing Captain Macklin in his military capacity, you have observed him also as an individual?—**A.** Yes, sir.

Q. As regards frankness, how do you classify Captain Macklin?—**A.** I would say that Captain Macklin is a man that is absolutely frank; he has always impressed me particularly that way, ever since I have known him.

Q. Major, on the morning of the 14th of August, were you—as commanding officer at Fort Brown, Tex., when you relieved Captain Macklin as old officer of the day—were you thoroughly satisfied with the manner in which he performed his duties as officer of the day?—

A. As I stated before, I regretted that he happened to sleep through this hour or more, but I could not think and I do not think it was neglect of duty on his part; it was an accident that might befall any of us or happen at any time.

Q. Then, his statement to you that he had been asleep and simply failed to wake up, or to be properly awakened, during this shooting, satisfied you?—**A.** It did, sir.

Cross-examination by the JUDGE-ADVOCATE:

Q. Now, with reference to Mrs. Evans's description of her alleged assailant, considering all the circumstances, do you think that she, a woman, and frightened at the time, could very well give a detailed description of the man who attempted to throw her down?—**A.** No; I do not.

Q. So that her description was not more meager than might have been expected under the circumstances?—**A.** No. I presume that it might be taken that way.

Q. The night of August the 12th, at the particular time when this alleged attempt to assault occurred, was dark and very similar to the night of August the 13th, was it not—there was no moonlight?—**A.** No; there was no moonlight. I think the two nights, as near as I can recall it, were about the same—although I had no reason to fix the night particularly on my mind.

Q. But her description was as full as she could be expected to give under the circumstances, was it not?—**A.** Well, she undoubtedly gave as good a description as she could to her husband, and he gave it to me.

Q. Now, you stated that one of the reasons why you kept the men in the post that night and ordered those who were out to return, was because it was your belief that whether this report of the alleged assault was true or not the effect on the townspeople would be practically the same?—**A.** I did.

Q. You have served in the South before, have you, Major Penrose?—**A.** No; I have never served in the South—that is, unless you call Arizona south. I do not consider that South in the sense we are using it now at all.

Q. No; I do not, either. But you knew at that time as to the effect of any such story or rumor in a small southern city, did you not—the effect such a story would have upon the populace?—

A. I realized that. But I did not think it was limited to a small southern city at all. I think it would have been apt to have caused feeling anywhere.

Q. This Mrs. Evans, was she not, so far as your knowledge goes—or so far as your knowledge went at that time—an eminently respectable woman?—**A.** I do not know anything to the contrary. I had never heard of Mrs. Evans before that afternoon, and I never saw her until she appeared at Fort Sam Houston during my trial.

Q. Her husband, however, you saw on the evening of August the 13th?—**A.** Yes, sir.

Q. About 5.30 p. m.?—**A.** Yes. He came into the post with Mayor Combe.

Q. His appearance was what? Can you describe him?—**A.** I thought that the man was absolutely frank and honest in his statements, and I thought that—I was convinced that he was telling me exactly what his wife told him.

Q. But you believed that the man could not have been a negro soldier?—**A.** I never believed it. I do not believe it to this day.

Q. Mr. Evans's appearance was that of an ordinary, prosperous business man, or was it not?—**A.** Yes—yes—he had all the appearance of being a prosperous man.

Q. He looked like a reputable citizen, so far as your knowledge went?—**A.** He certainly did.

Q. Now, when you gave Captain Macklin the order to send not less than three patrols into the town, and authorized him to go himself if he thought it advisable or necessary, did you at that time give him any special orders with reference to any particular precautions to be taken with reference to the Evans house, or the vicinity of the Evans house?—**A.** No.

Q. So the main idea, then, was just to get the men in who were already out?—**A.** That was it—to get the men into the post and keep them in the post.

Q. Did you give Captain Macklin any special orders directing a change in orders of sentinel No. 2?—**A.** No, sir.

Q. You had a great deal of confidence in Captain Macklin's ability as an officer, did you not?—**A.** I do not understand your question.

Q. I say you had a great deal of confidence in Captain Macklin's ability as an officer, did you not?—**A.** I thought you said I had not.

Q. No, sir; I said you had a great deal of confidence in Captain Macklin's ability as an officer, did you not?—**A.** I had, and I have.

Q. You had known him for a considerable length of time and realized that he was an officer of mature judgment and experience, did you not?—**A.** Yes, sir.

COUNSEL FOR THE ACCUSED. Let me hear the answer to the previous question.

The reporter read the question and answer, as follows:

Q. You had a great deal of confidence in Captain Macklin's ability as an officer, did you not?—A. I had, and I have.

Q. That being the case, even though the circumstances were rather unusual on the night of August the 13th, you did not feel it necessary to go into details and give him any orders specifically directing vigilance on his part or requiring him to do anything unusual other than to send these patrols uptown?—A. I did not. I did not consider that any other orders were necessary at all.

Q. You referred everything to his judgment?—A. Yes: outside of giving him instructions to send the patrols.

Q. Who, next to the commanding officer, is primarily responsible for the safety of the garrison in case of a sudden alarm or attack?—A. The officer of the day.

Q. And it is ordinarily expected that he will turn out promptly at the first alarm and take such measures as are necessary to preserve public property?—A. Yes.

Q. And to guard the lives of those in the garrison?—A. Yes, sir.

Q. Now, when an officer of long or considerable experience marches on as officer of the day, even though conditions be somewhat unusual, it has been your custom as commanding officer, has it not, to allow him to exercise his initiative to a considerable degree and not to hamper him with a lot of orders or with such orders as you might give to a youngster of a few months' service?—A. That is true. That is very largely done, I think, generally.

Q. And so it depends a good deal upon the officer's experience and his character, I believe, as to the number of special orders that would be given him under circumstances other than the ordinary circumstances—is that not correct, sir?—A. No, sir. An officer—a commanding officer—if he has anything out of the ordinary, would give special instructions to any officer of the day. At this time I wish it distinctly understood there was nothing to indicate in the slightest way that there was anything unusual when Captain Macklin marched on as officer of the day.

Q. Major Penrose, I want to just repeat that question and ask you whether it doesn't make considerable difference, even under unusual circumstances, whether the officer of the day is a man of experience and tried ability or whether he is a youngster inexperienced and unknown?—A. Yes, sir; it does.

Q. And would not you, as commanding officer, make a difference in the way in which you issued the orders—the completeness of the orders and extent of them—in these two cases?—A. If the conditions were different, anything warranted it, I would. A young officer who had been performing his guard duty satisfactorily and properly would require no such instructions.

Q. But an untried officer you would, under unusual circumstances?—A. That is a different matter.

Q. You would give him more particular orders, too, wouldn't you?—A. As I said before, under unusual circumstances I would probably give more explicit instructions to any officer, although an old officer, who had more experience, would not require the amount of special instructions that an inexperienced officer would.

Q. Now, on the 13th of August you had perfect confidence in Cap-

tain Macklin's ability to meet any exigencies that might arise?—A. I had.

Q. You had known him for twenty years or more?—A. About twenty years.

Q. And you had perfect confidence in his ability to handle anything that might turn up, did you not?—A. Yes, sir.

Q. Major, I notice you wear glasses. Is your eyesight normal when aided by the glasses or not?—A. Yes, sir; it is normal with the glasses.

Q. You never had any trouble with night blindness or anything of that kind?—A. No, sir; not at all.

Q. Now, on August the 13th you stated, I believe, that it was necessary to get rather close to buildings even to distinguish them. Now, as a matter of fact, could you not, from the front of one set of officers' quarters see outlined against the sky, which was starlit, the quarters on either side?—A. Yes; I think you could. The officers' quarters you refer to?

Q. Yes?—A. Yes; I think you could.

Q. They are only about 20 yards apart, are they not?—A. They are only a short distance apart.

Q. And all the officers' quarters are considerably higher and considerably larger than that small building at the west end of the line where Mr. Matlock lived, marked "B" on the map?—A. Yes; they are. That one marked "B" is only one story in height, as I recall—it is a smaller building than the others; it is a single building.

Q. Now, could not one stand in front of quarters 11 and 12, for instance, and facing the quarters and looking first to the right and then to the left, distinguish a difference in size between this small building marked "B" and quarters 9 and 10?—A. I would like to have that question repeated, please. I do not understand what you mean.

(The reporter read the question.)

A. Well, I should think so, but I do not know whether he could or not. I think, speaking for myself, that probably I could have, but considering the night there may have been some doubt about it.

Q. But that is your best judgment?—A. I don't know.

Q. Your best judgment is that—A. Well, my best judgment is I don't know, because I was not there to try to see—I can not recall now of looking to the right or left when I left my quarters; whether I could have distinguished the quarters next to mine or not, I don't know—I might have done so.

Q. But judging from the clearness—or from the indistinctness with which objects appeared that night, what is your best judgment on the subject?—A. Well, I do not know, I would not like to state whether I could have seen one of those buildings; I might have done so, but I am not at all sure about it.

Q. Major, when this shooting began you were lying in bed, I believe you stated?—A. Yes, sir.

Q. Had undressed and gone to bed?—A. I had undressed and retired.

Q. You had not gone to sleep, however?—A. I was awake; I had not gone to sleep.

Q. Had there been any special—or was there any special cause for your remaining awake? Were you worried or apprehensive or any-

thing of the kind, and therefore lay there without going to sleep?—A. No; not at all. I had wondered, of course, during the evening what I might be able to do about the Evans matter—what investigation it was possible for me to make. I had talked that over with my wife, I think, and I believe with Lieutenant Grier, who was there. But that was not sufficient to keep me awake at all; it was simply that I had not gone to sleep at that time.

Q. How long had you been in bed?—A. Probably a half or three-quarters of an hour; I do not know exactly what time I retired.

Q. So, if the sentinel on post No. 3 said he saw you sitting downstairs at that time, or just prior to the shooting, it must have been on some previous round of his, if he actually saw you?—A. No; he could not have seen me. We were sitting on the porch—I think this same lantern might have been put in the parlor—it was very warm indeed at that time, and we never lighted a lamp excepting a few minutes after the mail came in, about 7 o'clock, I should judge, to glance over the letters.

Q. Now, this lantern you stated was in the front room upstairs, I think?—A. Yes.

Q. Did you habitually keep that burning all night?—A. Yes, sir.

Q. You spoke about the usual breeze blowing that night. Now, is it not a fact that ordinarily down there at that time of the year a more or less cool breeze would spring up about sundown and blow for about two or three hours, and then as a general thing die out again?—A. No, sir; generally that breeze would last until daylight.

Q. Do you recollect that the wind was blowing unusually strong that night?—A. No; I do not recall that.

Q. Do you recollect any wind at all that night?—A. I do not know that I do, that particular night; but probably there was the usual breeze, such as we had there every night.

Q. Now, Major, you stated that Captain Macklin's appearance when he finally reported to you about 1.15 or 1.30 o'clock on the morning of the 14th was that of a man who had just awakened from a sound sleep. Will you please describe his appearance a little further, if you can?—A. Well that is rather a hard matter to do. He came to me, his eyes having the appearance of just having awakened—I do not know that I can tell the expression that we so frequently see on one when we realize he has just wakened up.

Q. Otherwise his condition was normal?—A. His expression, whole demeanor, and everything indicated to me that he had just awakened and come over there.

Q. When Mayor Combe spoke to you with reference to the Evans incident, as I believe you have stated, can you recall approximately the language he used—what he told you?—A. Mayor Combe?

Q. Mayor Combe; yes.—A. Mayor Combe had very little to say about the Evans incident. He introduced me to Mr. Evans—I had never met him before—and Mr. Evans did the principal amount of talking.

Q. But did not Mayor Combe state to you something to the effect that the feeling downtown was rather high over this matter, and that he could not answer for the safety of individual soldiers found downtown—something to that effect?—A. He did not. That was his testimony that you are quoting now before my court. Mayor Combe, after Mr. Evans got through telling me his tale, called me

to one side—we walked off 15 or 20 feet, maybe more, toward the hospital—and he said to me, "Major, I am afraid this is going to create a great deal of feeling; and don't you think it would be best to keep your men in to-night?" Those were Mayor Combe's exact words and the words I testified to before my court.

Q. And what did you say in reply, Major?—A. I told him I was afraid it would create feeling; that that naturally would cause feeling, and I would send out at once and call my men in and keep them in.

Q. You did not give the officer of the day any special orders relative to keeping the men in after they were once brought in?—A. I gave him orders that the men would not be allowed out after 8 o'clock.

Q. You, however, did not believe that any colored soldier had actually attempted to assault Mrs. Evans?—A. No, sir; I did not.

Q. But you did believe Mayor Combe's statement that the incident, or the alleged incident, might cause trouble?—A. Yes, yes; I thought that very probable.

By the Court:

Q. I would like to ask Major Penrose to read the specification and the finding, on the specification in regard to his failure to give any special orders to Captain Macklin, at his trial.—A. (The witness read from the findings of the Penrose court-martial the following:)

Specification II. In that Maj. Charles W. Penrose, Twenty-fifth U. S. Infantry, being aware of the feeling of resentment in his command toward citizens of Brownsville as a result of assaults upon certain individuals of the command, and having been notified by a Mr. Evans, of Brownsville, about 5 p. m. August 13, 1900, of an attack upon his wife by a soldier of the command, and knowing of the inflamed feeling existing in the town toward the soldiers as a result thereof, did nevertheless fail to give any orders to Capt. B. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring special vigilance on his part or that of the guard; or to make frequent inspections or any inspections during the night after 12 o'clock; and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men at his command, or in any manner to watch, restrain, or discipline said men; by reason of which failure certain men of his command, to the number of about 12 or more, were enabled to assemble and did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof.

This at Fort Brown and Brownsville, Tex., August 13 and 14, 1900.

To which charge and specifications the accused pleaded "Not guilty."

FINDINGS.

Of the first specification, "Not guilty."

Of the second specification, "Guilty, except the words 'being aware of the feeling of resentment in his command toward citizens of Brownsville as a result of assaults upon certain individuals of the command and,' and the word 'inflamed,' and the words 'special vigilance on his part or that of the guard or to make,' and the words 'and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command, or in any manner to watch, restrain, or discipline said men, by reason of which failure,' substituting for the words 'by reason of which failure' the words 'after which,' and except the words 'to the number of 12 or more were enabled to assemble and,' and of the excepted words 'not guilty,' and of the substituted words 'guilty.'"

So that the second specification as amended shall read as follows:

Specification II. In that Maj. Charles W. Penrose, Twenty-fifth U. S. Infantry, having been notified by a Mr. Evans, of Brownsville, about 5 p. m. August 13, 1900, of an attack upon his wife by a soldier of the command, and knowing of the feeling existing in the town toward the soldiers as a result thereof, did

nevertheless fail to give any orders to Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring frequent inspections, or any inspections, during the night after 12 o'clock, after which certain men of his command did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof. This at Fort Brown and Brownsville, Tex., August 13 and 14, 1900.

And the court attaches no criminality thereto on his part.

(Witness excused.)

Col. RALPH W. HOYT, Twenty-fifth Infantry, a witness for the defense, was duly sworn and testified as follows:

Direct examination by the JUDGE-ADVOCATE:

Q. Colonel, will you please state your name, rank, and present station and duty?—A. Ralph W. Hoyt; colonel Twenty-fifth Infantry; station at present at Fort Sam Houston, Tex., commanding the Department of Texas.

Q. Do you know the accused? If so, please state who he is.—A. I do. Capt. Edgar A. Macklin, Twenty-fifth Infantry.

Questions by the ACCUSED:

Q. Colonel Hoyt, how long have you been in the military service?—A. Since 1868.

Q. Will you please tell the court in what organizations this service has been?—A. As a cadet at West Point; in the Eleventh Infantry; in the Tenth Infantry; in the Fourteenth Infantry; detailed as Adjutant-General in the Adjutant-General's Department, and in the Twenty-fifth Infantry.

Q. How long, Colonel, have you been in command of the Twenty-fifth Infantry?—A. Since May, 1904.

Q. Colonel, how long have you known Captain Macklin?—A. Since 1878.

Q. Has he ever served with you or under your command?—A. He has, at different times. We served together; he was in the garrison when he was a boy, with his people; afterwards in Manila, and at Fort Niobrara, Nebr.

Q. At Fort Niobrara, Nebr., you were the commanding officer?—A. Yes, sir.

Q. And Captain Macklin at that time was a line officer under your command?—A. He was.

Q. Colonel, have you or have you not observed Captain Macklin sufficiently in his official capacity to enable you to form an estimate of his efficiency as an officer?—A. I have.

Q. Will you please tell the court what is this estimation that you have formed of Captain Macklin in his official capacity.—A. Captain Macklin is a good soldier, he is a good company commander; his mind is open to instruction; he is a willing officer, not captious; and he fully appreciates the responsibility of his office.

Q. Colonel, how do you classify him as to being an efficient or an inefficient officer?—A. As a very efficient officer.

Q. Captain Macklin has reported to you as officer of the day numerous times, has he not, sir?—A. A great many times.

Q. And he has been relieved by you from duty as old officer of the day?—A. He has.

Q. Have you ever had any occasion or cause to reprimand or cen-

sure Captain Macklin for any neglect on his part in the performance of his duties as officer of the day?—A. I have never.

The prosecution declined to cross-examine the witness.

(Excused.)

The accused, having no further testimony to offer, made the following verbal statement in his defense:

ASSOCIATE COUNSEL FOR THE ACCUSED. May it please the court, Capt. Edgar A. Macklin, of the Twenty-fifth Infantry, having been regularly detailed, duly entered upon the duty of officer of the day at Fort Brown, Tex., on August 13, 1906. In the performance of that duty he was governed by the regulations found in the authorized Manual of Guard Duty and by such general and special orders as were existent at the post at Fort Brown, Tex., on that date. He was governed further by the special instructions that were issued to him by the commanding officer about 5.30 p. m. on August the 13th. It appears from the evidence in this case that, as was his usual custom, he faithfully and conscientiously performed the duties of officer of the day, but that an alarm had sounded at Fort Brown shortly after midnight on that date and he failed to respond to that alarm until about 1 or 1.15 o'clock a. m. on the morning of August the 14th. The specification recites that he had retired to his quarters, and the question naturally arises, was he justified therein. May it please the court, he was justified by the custom of the service, in the absence of any order or instructions, in the absence of any condition which modified that custom. Now, there has been conveyed inferentially to this court an ex parte idea that the conditions existent at the post of Fort Brown on the evening of August the 13th did modify that custom. From August the 14th until the present time Captain Macklin has been the subject of numerous reports—a series of reports—which in their abortive fancy charged him with being the white leader of a mob of negro soldiers that shot up the town of Brownsville. These passed by easy stages to the more recent report that Captain Macklin was a member of a poker party at Crixell's or Tillman's saloon while his comrades were hastening to an alarm at Fort Brown, and progressed by the same easy stages from additional charges and specifications to the present single charge and specification, reciting that numerous assaults had been committed upon members of the command at Fort Brown, mentioning the various allegations of the resentment and inflamed and irritated feelings of the people, and alleged that in consequence thereof Captain Macklin failed to exercise that special vigilance that was incumbent upon him in consequence of that feeling and these assaults; an additional charge and specification embodied in legal phraseology, one of the most slanderous of these reports previously referred to, and that additional charge and specification was directly afterwards withdrawn "in toto;" and, further, against the commanding officer of this accused officer there was preferred a charge and specification substantially the same as the original specification preferred against Captain Macklin; it mentioned the same assault, it referred to the same irritated and inflamed feeling, and it charged the commanding officer with having failed to give orders to Captain Macklin, officer of the day, to exercise special vigilance. Now, under these expressed allegations contained in the specification upon which he was arraigned and tried, the opportunity was presented to that officer to introduce before his court a mass of

evidence which, while establishing his whole responsibility in the matter, and while establishing that while he failed to give Captain Macklin any special orders, it established beyond the shadow of a doubt that he issued every order that that night required, and so far as human foresight could anticipate, every order that the occasion required when no special vigilance was incumbent upon him or any other officer of that garrison.

And, now, may it please the court, acting upon our knowledge of the history of this case, and acting upon our presumed knowledge of the proper form of procedure before a military court, we have forborne to introduce any evidence that did not bear directly upon an expressed allegation upon which the accused officer stands arraigned, and we have such full confidence in the membership of this court we have felt that it would be guided by no inferences, and we have felt it was sufficient to trust them with the facts and with the facts alone, and we knew that they could apply cold logic to those facts. This present specification goes on to say that it was "impossible to arouse" the officer of the day "or bring him forth." In support of that allegation the prosecution in this cause has introduced four witnesses: Private Rogers, Private Hairston, Sergeant Taliaferro, and Corporal Madison. At the outset I want to say with respect to the testimony of Private Rogers, we clothe that testimony with a mantle of charity and desire to discuss it no further. Private Hairston testified that he went not to the quarters occupied by Captain Macklin, but to the adjoining vacant set of quarters. He has further testified as to his own state of mind that night, to his own confusion, and he has expressed his doubt with respect to details upon which a competent sentinel would have been accurate, and we maintain, may it please the court, that all the details he heard at that vacant set of quarters were covered by his whole testimony in this case. Sergeant Taliaferro also testified that he went to the vacant set of quarters; he testified that he was mistaken about that set of quarters, that he thought they were the quarters actually occupied by Captain Macklin; and, from a full and fair view of his entire testimony, taken in connection with the testimony of other witnesses, we maintain that he was mistaken as to the house he went to. He did go to the house occupied by Lieutenant Lawrason, and it may be, may it please the court, that Corporal Madison, although he did not raise the cover in the back room downstairs, by his clear and stentorian tones did succeed in arousing Captain Macklin shortly before 1 o'clock—but we have tried to show that neither one of those soldiers carried out fully the order that was given to them, and we have tried to show that there was no attempt to shift responsibility by the officer to his subordinates; if that man ever had carried out his orders, he would have found it no more impossible for him than it was for Corporal Burdett to actually arouse and bring Captain Macklin forth.

We have respected the belief of Captain Macklin that his defense has needed the protection of no barriers raised by quibbles of the law, and we have respected further his expressed wish that there be made to this court no appeals to your sympathy for any sufferings he has undergone, both mental and physical, but on my own responsibility I desire to again call the attention of the court to the fact that from a period of time stretching from August the 13th to the present mo-

ment he has been subjected to these reports—so slanderous and so foul that they besmirch their own authors—and the only relief he has had from these reports has been the consciousness of their falsity. He had had no opportunity for a full hearing or trial on any of these reports; and had the originators of the charges against Captain Macklin accepted his statement, or had they accepted the unbiased opinion of an officer, a fair minded and disinterested man, who was put in a position to know the facts, these charges would have never been brought to trial.

But if you, like that disinterested officer, believe in the sincerity of this accused, and if you believe in the corroborating voices of most creditable witnesses who were presented to this court, we ask you to express that belief in complete nullification of the suggestions that are contained in this specification. We ask no compromise on that proposition, and if you have that belief, we ask for the benefit of it expressed in the form—which is the only form known to the law—of a verdict of not guilty.

COUNSEL FOR THE ACCUSED. May it please the court, the defense has the honor to announce that its case is presented and closed. We have nothing further to offer.

The judge-advocate replied as follows:

Mr. President and Members of the Court: After listening to the eloquent remarks of the associate counsel for the defense, I feel considerable hesitancy in arising to reply thereto—a hesitancy even greater than usual—for I realize my limitations as a speaker; but, inasmuch as this case has already covered a period of two weeks or more, and the record thereof covers more than half a thousand pages of typewritten matter, I feel that a brief review of some of the facts in the case and an attempt to present to you the view point of the prosecution will not be amiss.

First, gentlemen, I ask you to picture to yourself the situation existing in Fort Brown on the night of August the 13th, 1906. There was a little garrisoned post, garrisoned by three companies of colored soldiers; across the way lay the little city of Brownsville. That night a belief was strong in the town that one of the soldiers in this command had attempted to assault a white woman, the wife of a respectable citizen. The mayor of the town had gone to the commanding officer about 5.30 o'clock that evening, in company with the husband of this woman, and had reported the facts to the commanding officer, and had advised him to keep his men in the garrison that night for fear of possible trouble to individuals or small groups of the men. The commanding officer expressed his disbelief in the story that this woman had actually been assaulted, but, realizing that the feeling downtown would be the same whether her story were true or not, he acquiesced in the mayor's suggestion and soon afterwards issued orders to the officer of the day to send out patrols, bring in the men, and keep them in after 8 o'clock. The same order was transmitted through the adjutant to the other company commanders. By 8 o'clock all men found downtown had been rounded up and were in the garrison. The officer of the day himself went uptown between 8 and 8.30 o'clock and made an extended patrol, going about fifteen blocks, and returned to the garrison, having satisfied himself that all was quiet downtown and that no soldiers were out. After his return he spent most of the time in his quarters prior to the call to quarters

and taps, sitting there in company with a young officer of his regiment, during which time Captain Macklin drank a bottle of beer, read the paper, and had a general conversation with this young officer. Soon after call to quarters he went out and received the reports of the non-commissioned officers in charge of quarters, visited the guardhouse, came down and rescued the children from a vicious dog, went back and inspected the sentinel on post No. 2, and then about 11 or half past 11 or 11.35 returned to his quarters. He sat up for a while—eight or ten minutes—reading the headlines of a newspaper, drank a bottle of beer and went to bed, and very soon passed into dream-land. About midnight a couple of pistol shots were heard, followed by a fusillade of rifle shots, apparently taking place just outside of the garrison, in the road in rear of B and C Companies' barracks, a distance of possibly 220 yards from Captain Macklin's quarters. This shooting continued for six or eight or ten minutes, and was confined practically entirely to the Cowen alley, between the garrison road and Twelfth street, or within a block of either side. The shooting had barely begun when the commanding officer of the post, who was lying awake on his bed, jumped out, hurriedly dressed, ran through the front door, calling upon the trumpeter of the guard to sound the call to arms. The trumpeter very soon afterwards sounded the call, which was taken up by the other trumpeters, four or five in number, near their respective company barracks. This sounding of the bugles was kept up for from two or three to five minutes, according to the testimony of various witnesses. During this time the shooting was practically continuous—pistol and rifle fire. As soon as possible after the alarm was given the sergeant of the guard sent Corporal Burdett and two men to respond to the call of Private Howard, the sentinel on No. 2 post, who had called the guard and fired his piece in the early part of the shooting. He also sent Private Rogers, a private of Captain Macklin's company, with orders to go to Captain Macklin's quarters and awaken him. This man started down and, according to his story, crossed in rear of Major Penrose, as the latter was running across the parade, and went to Captain Macklin's quarters. He described very minutely what he did, but as to the value of his testimony the court is the best judge—he was put on the stand here, he was an ignorant man, and the court can judge better as to the truth of his statements than I can tell.

The next messenger of whom we have any knowledge was Corporal Madison, of Company C—a tried noncommissioned officer of long experience, who was sent by Lieutenant Grier (by direction of the commanding officer) to find Captain Macklin. He was especially selected for this because he was a noncommissioned officer upon whom all dependence could be placed. Upon returning he reported to Lieutenant Grier (on p. 41 of the record) that he had found Captain Macklin's saber by the front door, had gone in downstairs, had pounded and called Captain Macklin's name, but had received no reply; he stated that he did not go upstairs. This report of his, made to Lieutenant Grier upon his return, was corroborated by Corporal Madison's own testimony upon the stand. He had been previously to Captain Macklin's quarters a number of times, and that he could be mistaken in those quarters is not believable. He it was, you will remember, who stated that he pounded so loudly that it seemed to him that if anyone were in that house downstairs he

must have been in a trance not to awaken; that he made a very great deal of noise. The next messenger, one who came about the same time as Corporal Madison—possibly only a few moments later, but who left Major Penrose while there were still a few stray shots being fired in the town, as appears in Major Penrose's testimony on page 13—was Sergeant Taliaferro. Although Sergeant Taliaferro was more or less excited at the time, there is no doubt about that, and was unfamiliar with the officers' quarters, he was, nevertheless, certain that he went to quarters No. 12 and later to quarters No. 11. From his description of the construction of the stairways he could not have gone to quarters 9 and 10, though from his description of the lights and the fact that he recollected nothing abnormal about the quarters, and, therefore, concluded that they were furnished, makes it seem possible that he may have gone there. The fact, however, that the interior construction of the houses Nos. 11 and 12 differs so materially from that of quarters Nos. 9 and 10, and the fact that Sergeant Taliaferro's statements are so positive as to where he went makes it seem as though he must have gone to quarters Nos. 11 and 12—but in his excitement he did not pay attention to details sufficiently to enable him to state just exactly as to what he saw and how they were furnished. There were no lights in quarters 7 and 8, the next set of quarters in which the stairways ran parallel to the hall, and the same way as they were in quarters 11 and 12; it seems hardly probable that even in his excitement he would have gone up the line as far as that. We have been unable to secure the attendance of Corporal Burdett as a witness. He it was whose chief claim to glory lies in the fact that he was the man who awoke Captain Macklin.

Private Hairston, this young soldier on post No. 3, testified before the court that he rapped on three separate occasions on the door of No. 12 prior to the time when Corporal Burdett came around and finally succeeded in awakening Captain Macklin. Private Hairston's story is not consistent in all points, but I think that beyond a shadow of a doubt he went there to the building—to the double set of quarters, at any rate—occupied by Captain Macklin. By Captain Macklin's own testimony, he was awakened about five minutes to 1 by hearing some one at the front door; he got up and listened, the knock was not repeated, and he heard no call; he went over and looked at his clock, found it was 5 minutes to 1, then concluded he was dreaming, and went back to bed. That could not have been Corporal Madison; Corporal Madison went over there at least half an hour before that and immediately returned, reporting to his commanding officer, Major Penrose, who sent him off on an errand to the far end of the post—to the artillery and cavalry post. Upon his return, which was about 1.15 o'clock a. m.—about the same time that Captain Macklin finally reported to the commanding officer, he, Corporal Madison, reported to Lieutenant Grier what he had seen and what efforts he had made to find the officer of the day.

It could not have been Sergeant Taliaferro, for Sergeant Taliaferro's call was also made before the shooting was entirely over.

It could not have been Private Rogers, for Corporal Wheeler's testimony shows that Private Rogers was sent by the sergeant of the guard very soon after the first call to arms was sounded, or about

that time, and that he returned while the shooting was still going on and reported that he had been to the house of Captain Macklin.

So this knock which Captain Macklin heard, and which was not inspired by his dreams, must have been made by Private Hairston.

Before Captain Macklin finally appeared, not only had the entire garrison been aroused, with the exception of the officer of the day, but a line of defense had been formed along the wall extending along the garrison road. Everyone thought during the shooting, and until a long time thereafter, that the garrison had been fired upon. Everyone was there, except the officer of the day. Captain Macklin's testimony showed that he replied to the knock at his front door at 12.55 by calling out "All right," which agrees with Private Hairston's story. He, Captain Macklin, was officer of the day at that time, responsible under the commanding officer for the safety of the garrison. The conditions were, by his own testimony, so far as the necessity for sending out patrols and rounding up the men were concerned, unusual—and yet he never made any attempt to find out whether this knock which awakened him at 12.55 was a genuine knock at his door or merely the result of his dreams. Why did he not at least go to a window and call out and find out? Knowing the conditions at the time it seems as though for an officer of the day to be called during the night would not be a surprising thing.

I desire now, in conclusion, to call the attention of the court to the charge and specification in the form in which it was finally referred to me for trial: "Charge: 'Neglect of duty, to the prejudice of good order and military discipline, in violation of the Sixty-second Article of War.'

"Specification: In that Capt. E. A. Macklin, Twenty-fifth Infantry, having been regularly detailed as officer of the day and having regularly entered upon that duty on August 13, 1906, did neglect to perform the duties incumbent upon an officer of the day in case of alarm, retiring to his quarters from which it was found impossible to arouse him or bring him forth during the continuance of a considerable amount of small-arms fire and the alarms sounded in consequence thereof.

"This at Fort Brown, Tex., August 13-14, 1906."

I wish to beg the court's consideration for a brief discussion of the specification in this case, taking it clause by clause.

That Capt. Edgar A. Macklin, Twenty-fifth Infantry, was "regularly detailed as officer of the day," and that he "duly entered upon that duty on August 13, 1906," is admitted on all sides.

That he failed to "perform the duties incumbent upon an officer of the day in case of alarm" is shown by reference to paragraph 58 of the Guard Manual already quoted in evidence, viz, "In case of an alarm of any kind, the officer of the day will at once take such steps as may be necessary to insure the safety of public property and preserve order in the command, disposing his guard so as best to accomplish this result." As to whether he neglected to perform this duty, and whether it was failure or negligence is a question for the court to determine.

That he retired to his quarters there is no doubt. That it was "found impossible to arouse him or bring him forth" has been shown by competent testimony. That during this time a "consider-

able amount of small-arms fire" was going on at or in the vicinity of Fort Brown, Tex., can not be denied. That the alarm was "sounded in consequence thereof" is equally indisputable.

That these occurrences took place "at Fort Brown, Tex., on August 13-14, 1900," there is no doubt.

That the charge under which the specification is laid is the proper one for such specification is not to be denied.

We have now considered separately each clause of the specification, and the prosecution claims that every allegation contained therein has been proven by competent evidence. It is for the court to determine whether Captain Mucklin's failure to turn out when the alarm was given was primarily due to not making arrangements to be promptly called in case of alarm, or was due to lack of appreciation of the likelihood of trouble, or was due to his being so unusually tired, or being such a remarkable sleeper.

I desire to read to the court, in this connection, from page 416 of the record, on the cross-examination of Captain Mucklin:

Q. Did the sergeant of the guard know where you slept?—A. I don't know whether he did or not.

Q. Did the musician of the guard know that you slept upstairs in the second room, or did he just know your quarters? A. I don't know whether he knew where I slept or not.

Q. You just told him to call you for reveille?—A. Yes.

Now, if Captain Mucklin was so unusually tired that night, and realized that he was a very sound sleeper—the conditions were unusual—it seems to me that he should have taken additional precautions to insure his being called by a messenger whose knowledge of Captain Mucklin's apartments was beyond question.

On page 407, under cross-examination of Captain Mucklin:

Q. Now, Major Penrose informed you of the cause of his issuing this order relative to cutting off the passes on the night of August the 13th, did he not?—A. Yes.

Q. He told you that the mayor of the city and the husband of this woman who was alleged to have been assaulted had reported the alleged circumstance to him? A. He told me that Mayor Combe and a Mr. Evans had come up and reported this alleged assault; yes.

Q. Did he also tell you that the mayor of the city had advised him to keep his men in post that night on account of possible trouble arising on account of the ill feeling occasioned in the town against the soldiers because of this alleged assault?—A. He stated the mayor told him he thought it was advisable to keep the men in—in the garrison that night.

Also on page 408, under the same examination of the accused:

Q. So this was the first time in your experience with the Twenty-fifth Infantry that you had received orders from your commanding officer to make efforts to bring in all men of the garrison within the limits of the post before a specified time in the evening?—A. Yes.

Now, it is for the court to determine whether the soundness with which Captain Mucklin slept that night was due solely to the fact that he was tired out from overwork, or whether it was in part due to the fact that he had had little sleep the preceding night, or whether the bottle or two of beer he drank had any influence upon his slumbers.

I read now on pages 427 and 428 of the record:

Q. Now, you stated that you were very tired that night, I believe?—A. Yes.

Q. Was this due entirely to your work that day or did the fact that you had not had very much sleep the night before have anything to do with it?—A. That

was one reason. I went over to Matamoras the night before with Lieutenant Lawrason and listened to the concert, and we returned quite late. There was a party of tourists there from the North, and Judge Parks invited us to come back in a special car they had out, so we did not get to bed until quite late—in fact, I think it was 2 o'clock when we arrived home. I had very little sleep; I had a good deal of work that day and the guard duty was very severe—you have to cover a good deal of ground.

I now leave it to the court to determine whether Captain Macklin was guilty of any neglect of duty; and if so, the degree of culpability. I leave the case in your hands, gentlemen.

Before closing, I desire to thank you for the uniform patience and tolerance which the court has shown the judge-advocate on the many occasions when, possibly, he has been a little long in getting through with his speeches. That is all.

The accused, his counsels, the reporter, and judge-advocate then withdrew, and the court was closed and finds the accused, Capt. E. A. Macklin, Twenty-fifth Infantry:

Of the specification: "Not guilty."

Of the charge: "Not guilty."

And the court does therefore fully and honorably acquit him, Capt. E. A. Macklin, Twenty-fifth Infantry.

The judge-advocate was then recalled, and the court, at 12.40 p. m., adjourned sine die.

E. E. HATCH,
Major, Twenty-sixth Infantry, President.

ROGER S. FITCH,
First Lieutenant, First Cavalry, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., May 6, 1907.

In the foregoing case of Capt. E. A. Macklin, Twenty-fifth Infantry, the proceedings, findings, and acquittal are approved.

R. W. HOYT,
Colonel Twenty-fifth Infantry, Commanding Department.

GENERAL ORDERS, } HEADQUARTERS DEPARTMENT OF TEXAS,
No. 34. } *San Antonio, Tex., May 6, 1907.*

Before a general court-martial which convened at these headquarters pursuant to Special Orders, No. 13, Headquarters Department of Texas, January 16, 1907, and of which Maj. Everard E. Hatch, Twenty-sixth Infantry, was president, and First Lieut. Roger S. Fitch, First Cavalry, was judge-advocate, was arraigned and tried:

Capt. E. A. Macklin, Twenty-fifth U. S. Infantry.

CHARGE. "Neglect of duty, to the prejudice of good order and military discipline, in violation of the sixty-second article of war."

SPECIFICATION. "In that Capt. E. A. Macklin, Twenty-fifth Infantry, having been regularly detailed as officer of the day, and having duly entered upon that duty on August 13, 1906, did neglect and fail to perform the duties enjoined upon an officer of the day in case of

alarm, retiring to his quarters from which it was found impossible to arouse him or bring him forth, during the continuance of a considerable amount of small-arms fire at or in the vicinity of Fort Brown, Tex., and the alarms sounded in consequence thereof. This at Fort Brown, Tex., August 13-14, 1906."

To which charge and specification the accused pleaded "Not guilty."

Findings.—"Not guilty."

"And the court does therefore fully and honorably acquit him, Capt. E. A. Macklin, Twenty-fifth Infantry."

In the foregoing case of Capt. E. A. Macklin, Twenty-fifth Infantry, the proceedings, findings, and acquittal are approved.

By order of Colonel Hoyt:

C. J. CRANE,
Lieutenant-Colonel, Adjutant-General.

Personally appeared before me, the undersigned authority, one Joseph Rogers, a private of Company C, Twenty-fifth Infantry, who, being duly sworn according to law, deposes and says as follows:

That he was on guard and asleep inside the guardhouse on the night of August 13-14, 1906, when he was awakened by the sergeant of the guard calling "outside guard." That he heard shooting and could see the flash of guns in rear of B Company's quarters on the outside of the wall after he got outside of the guardhouse. That he then went and wakened the officer of the day, as he was ordered to do this by the sergeant of the guard.

That he heard about twenty-five shots fired, more or less. That he knows nothing more about the shooting, and has no information that would lead him to suspect any particular person or persons of being concerned in this shooting.

And further the deponent saith not.

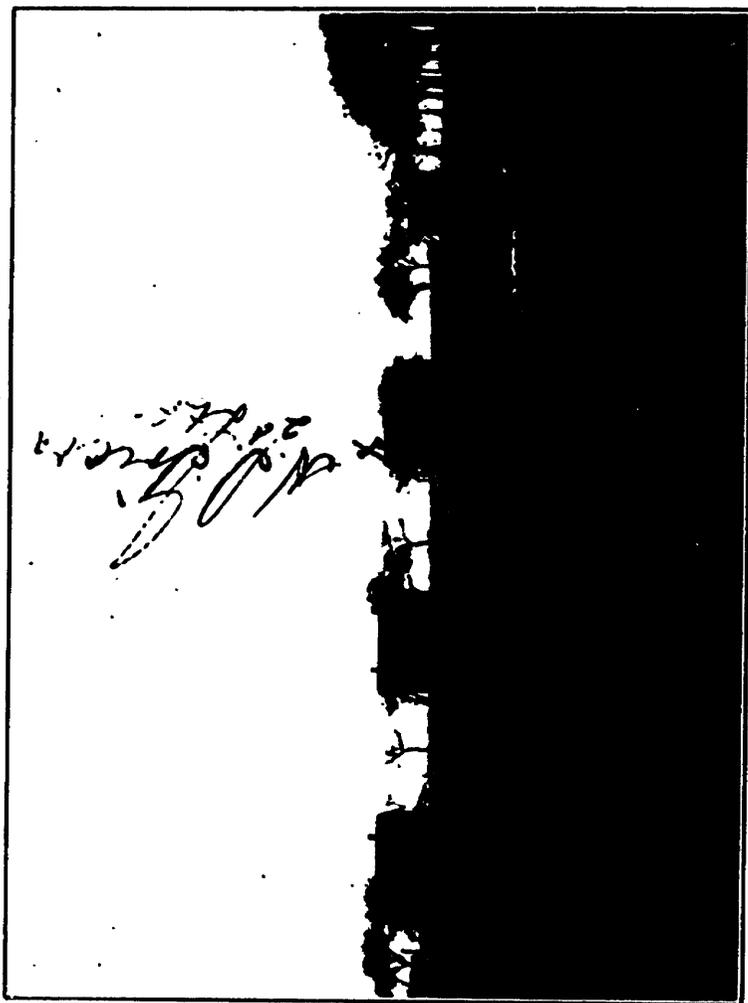
JOSEPH ROGERS,
Company C, Twenty-fifth Infantry.

Sworn to and subscribed before me at Fort Reno, Okla., this 12th day of September, 1906.

SAMUEL P. LYON,
Captain, Twenty-fifth Infantry, Summary Court.

A true copy.

ROGER S. FITCH,
*First Lieutenant, First Cavalry,
Judge-Advocate, General Court-Martial.*



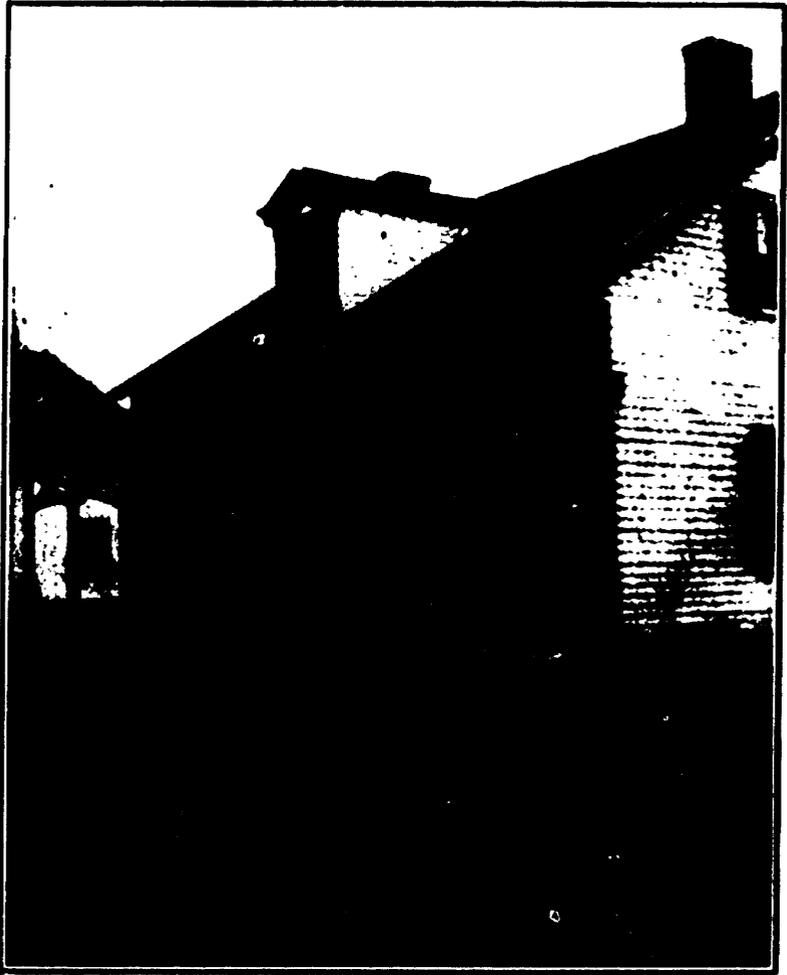
NO. 1.



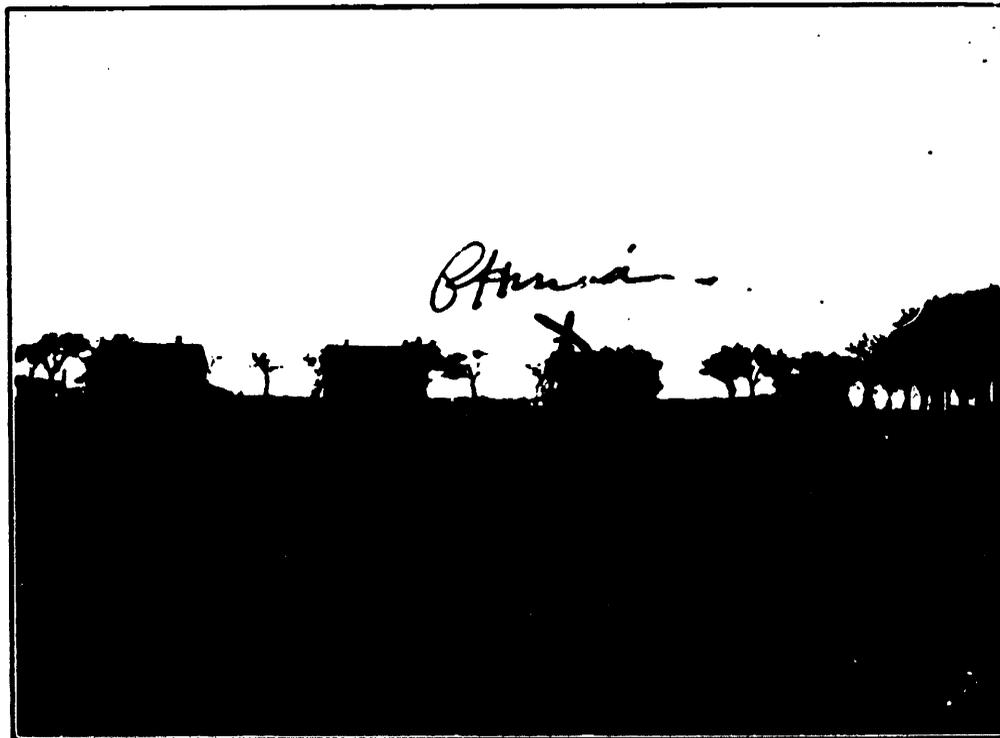
NO. 2.



NO. 3.



NO. 4.



NO. 5.



NO. 8.

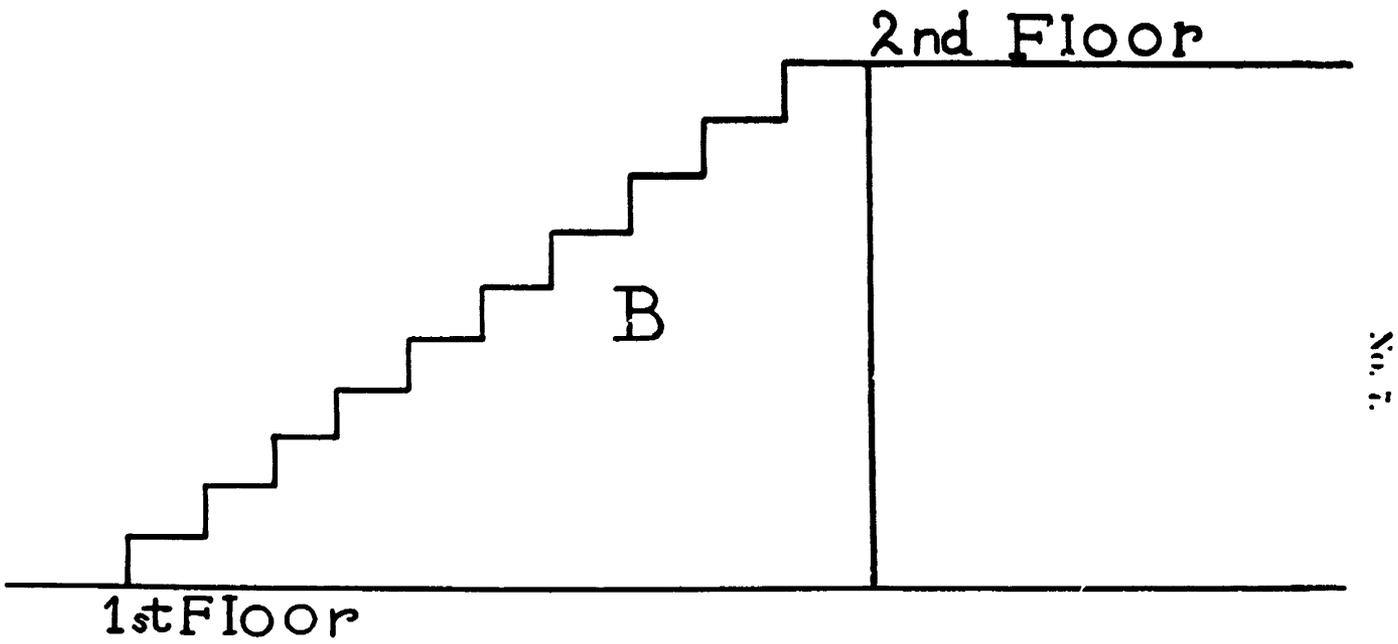
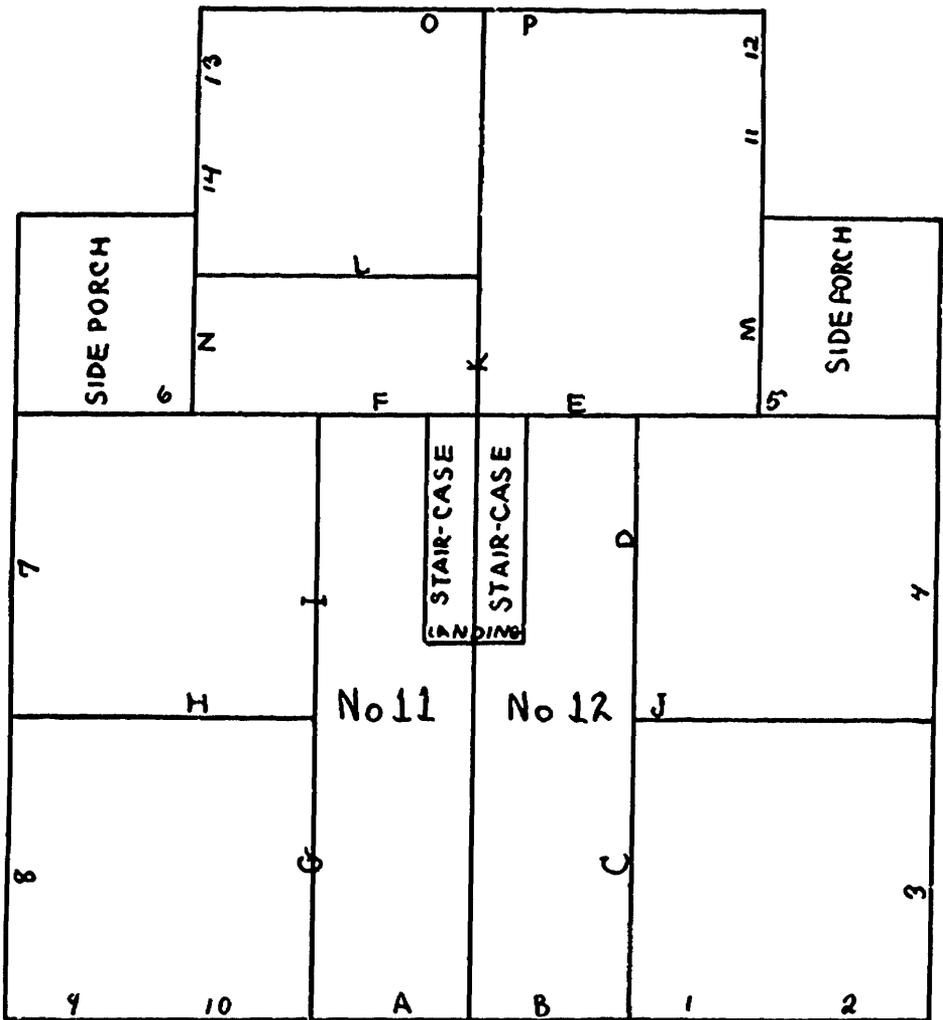


EXHIBIT W.

Plan showing Quarters 11 and 12, Fort Brown, Tex.— First floor of 11 and 12. Letters indicate doors; numbers indicate windows. Scale: 6 ft. = 1 in.



Front of house.

EXHIBIT X.

Floor plan, second story, Quarters 11 and 12, Fort Brown, Tex. Letters indicate doors; numbers indicate windows. Scale: 6 ft. = 1 in.

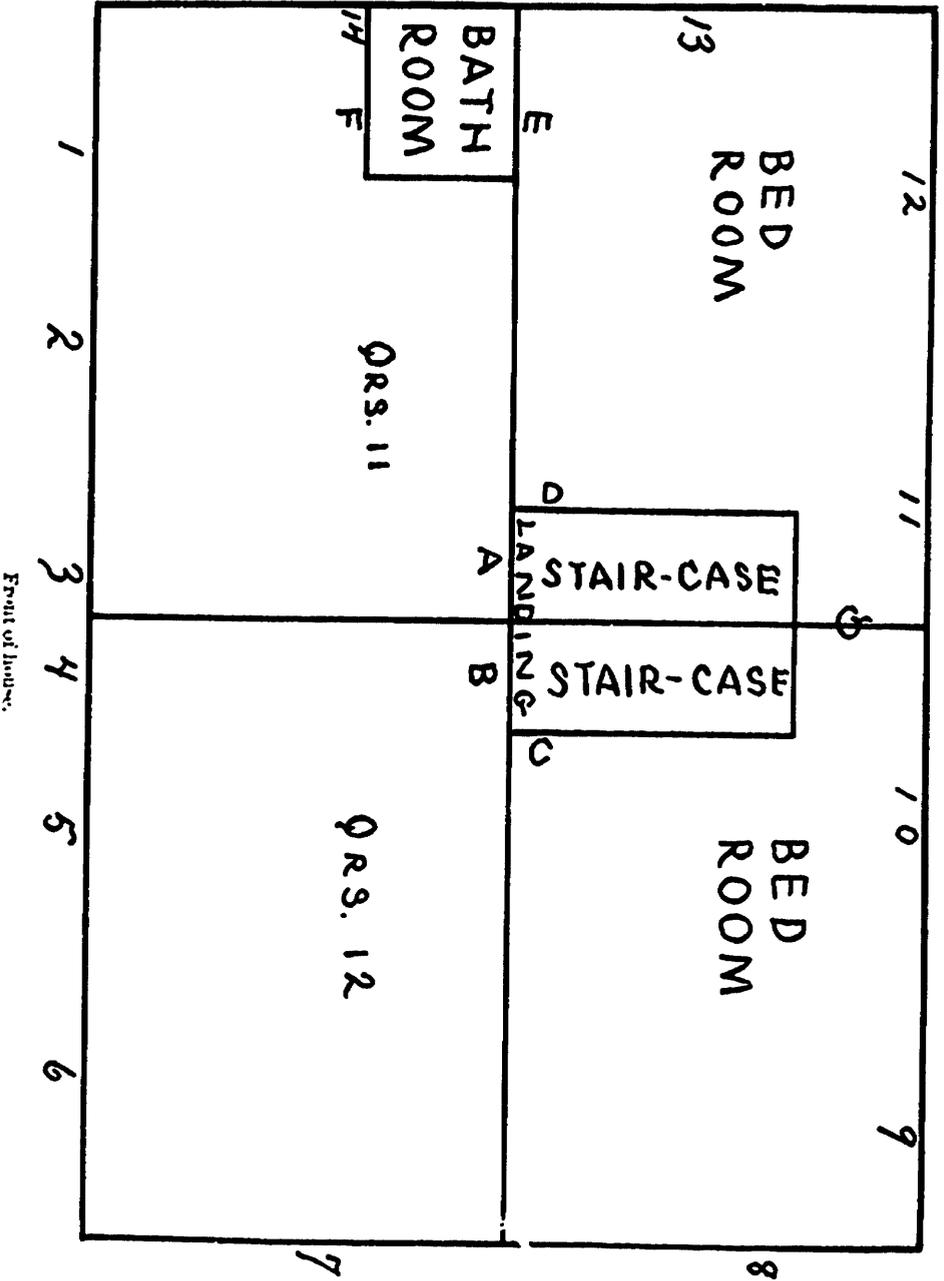


EXHIBIT Y.

Floor plan, first story, Quarters 9 and 10, Fort Brown, Tex. Letters indicate doors; numbers indicate windows. Scale: 6 ft. = 1 in.

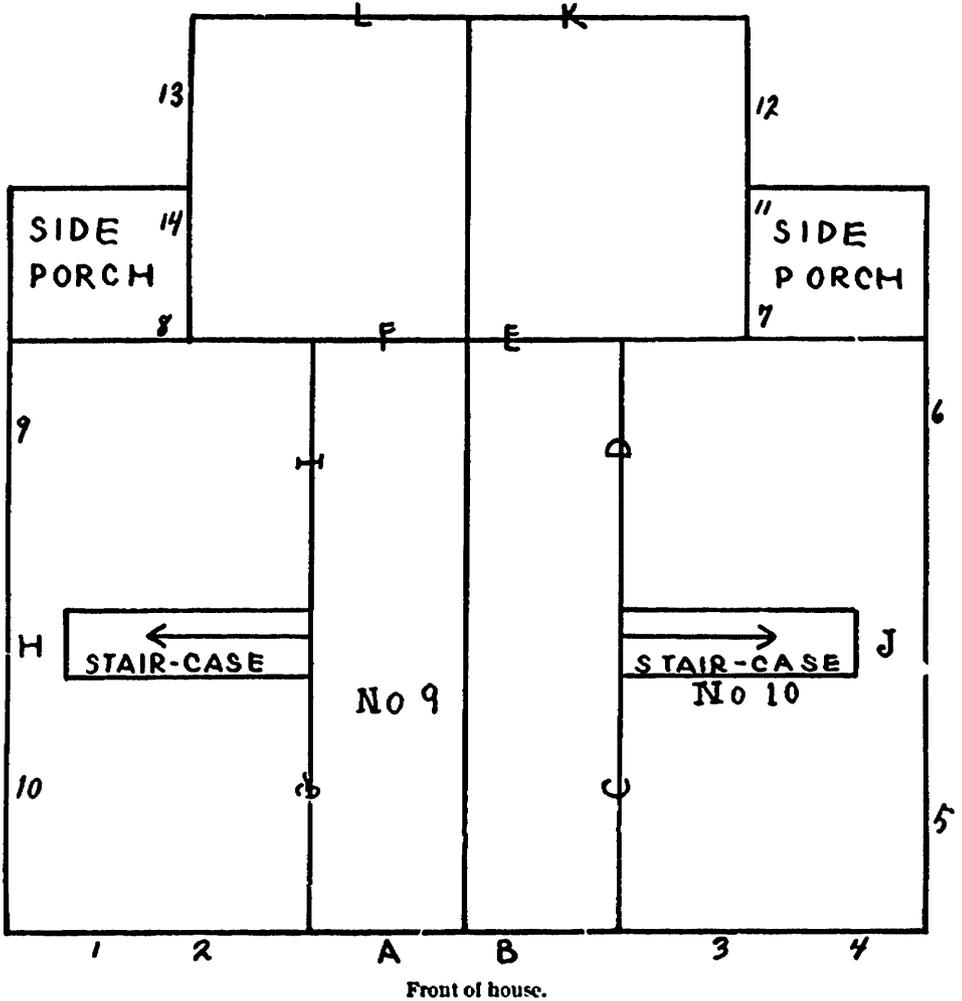
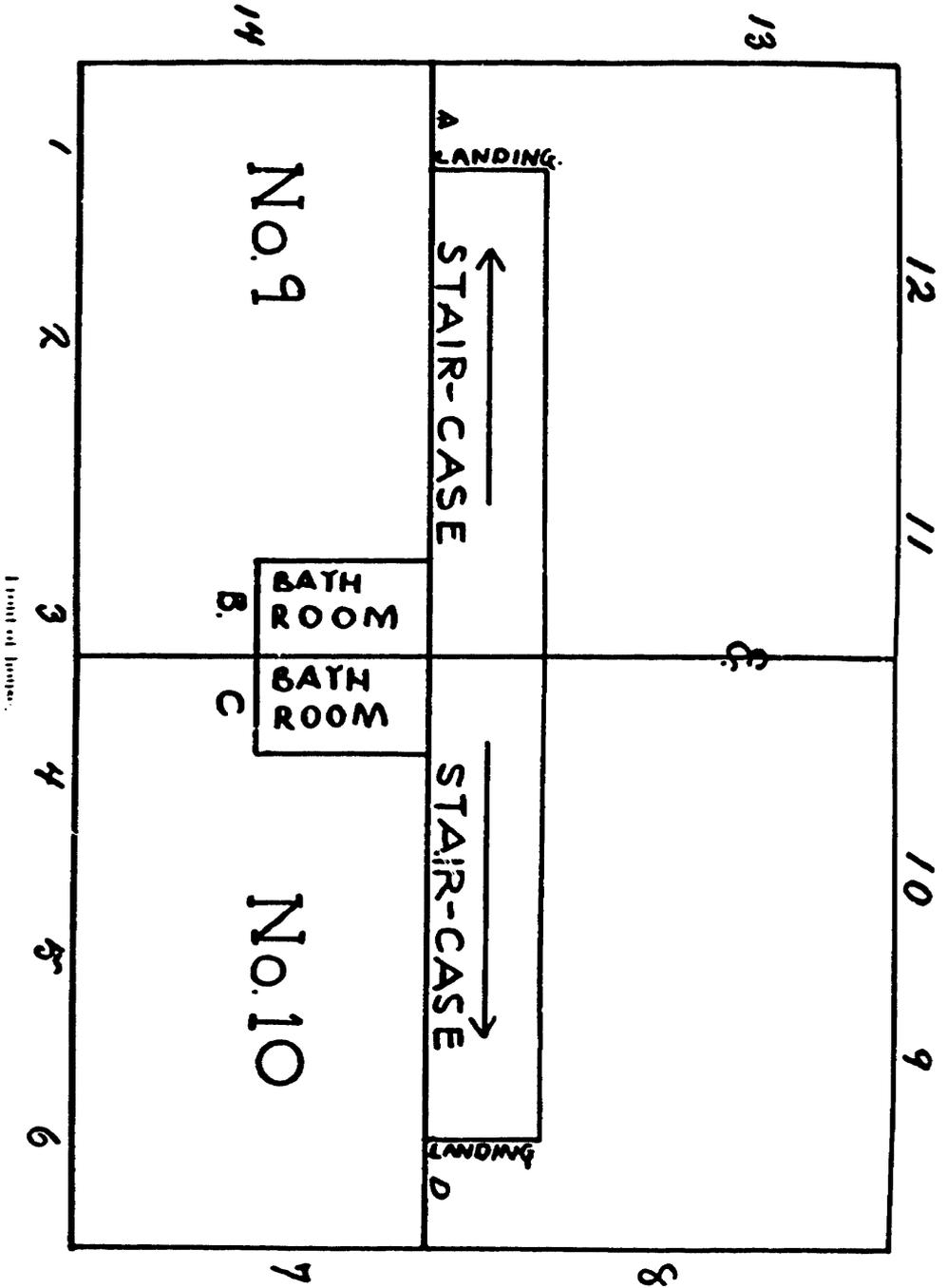
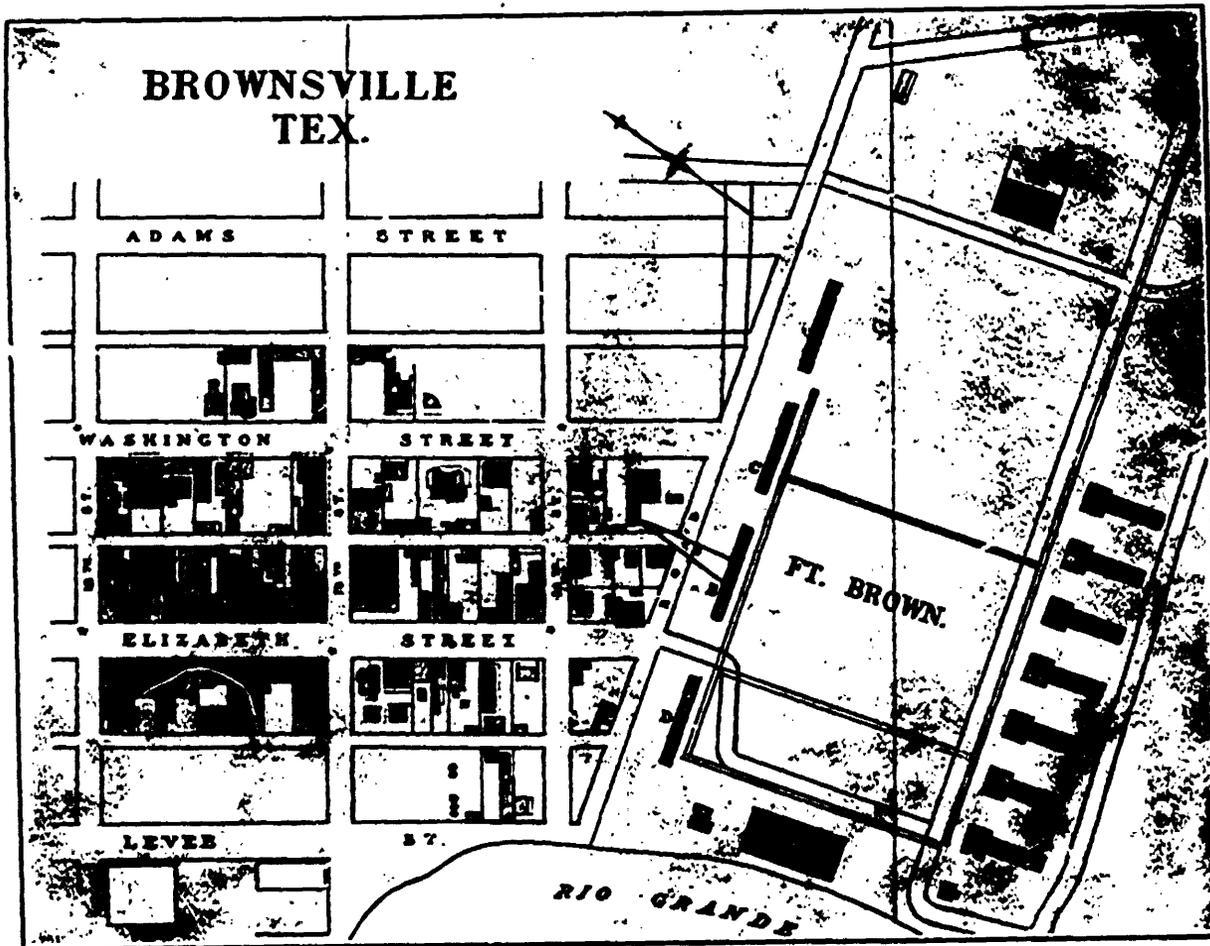


EXHIBIT Z.

Plan view, second story, Quarters 9 and 10, Fort Brown, Tex. Letters indicate doors; numbers indicate windows. Scale: 6 ft. = 1 in.





PHOTOGRAPH OF LARGE WALL MAP USED IN THE COURT ROOM AND REFERRED TO IN THE RECORD AS "THE MAP." original map is in office of the Judge-advocate, Department of Texas, Roger S. Fitch, First Lieut. First Cavalry, J.A., G. C. M.