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(6) ISSUES OF MENTAL COMPETENCY IN THE MILITARY (and Mock Sanity Board)

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## INTRODUCTION

Mental Competency Evaluations. A number of issues are important in determinations of mental competency. The implications of a determination of incompetency are grave and cannot be considered lightly. Requests for determinations of mental competency are characteristically vague and there is a consistent failure to inform the examining psychiatrist what questions are to be answered. Most importantly, many psychiatrists do not understand the principles determinating incompetency. A review of fundamental considerations may facilitate this procedure.

The Constitutation of the United States alleges that every citizen, whether mentally ill or not, is entitled to due process of law. In order to be tried for a criminal offense, to enter into a contract, to make a will, to be a parent, etc., an individual must be not only be physically present but also mentally and intellectually competent to perform the act in question. This protection of the individul's rights is the basis for the legal concept of competency. The final decision as to competency is a legal one, but legal officials and courts frequently request an advisory opinion from psychiatrists. The major failure of psychiatrists is their tendency to view these requests in an exclusively medical frame of reference. Although it is absolutely incorrect, psychotics are frequently viewed as uniformaly incompetent. All too often in

ABSTRACT

Issues of Mental Competency in the Military
(and Mock Sanity Board)

This paper was part of an orientation course for psychiatry residents and for psychiatrists newly entering the Army with distribution of 300 copies to Army psychiatrists. It describes philosophy and procedures for mental competency evaluations with pertinent historical references and bibliography and has a copy of the Mock Sanity Board evaluation utilized in the production of the forensic psychiatry teaching motion picture entitled "A Case in Question" (Joe Miller, Producer/Director, 1981).

his competency determination, the psychiatrist will omit any mention of competency and refer only to the presence of mental illness and the need for hospitalization. This information, although important and relevant, fails to answer the question asked.

In responding to a consultation to determine mental competency of a patient the psychiatrist should immediately inquire as to competency FOR WHAT. As illustrated in Table 1, there are many legal areas involving competency. An individual may be incompetent to make a will (testamentary capacity), but quite competent to operate a motor vehicle. A physician may be incompetent to practice medicine, but competent to be married, become a parent, hold property, etc. Because these are legal areas, representative tests have arisen in English common law and have been incorporated into the statutory or case law of all of the United States. Examples of some representative tests are provided in Table. Essentially, determinations of competency depend upon whether the individual "meets the test" of the capacity being determined. Psychiatric diagnosis does not mean mental incompetence. An individual may have schizophrenia, but be competent to handle his finances, stand trial, or become married.

Because courts in this country have expressed growing concern for the constitutional rights of accused individuals, competency to stand trial has especially been emphasized. Assessment instruments to assist in this determination have been compiled. Table 3 provides one such instrument.

PROTECTION OF INDIVIDUAL'S RIGHTS. The Fifth Amendment of the United States Constitution and a number of Supreme Court decisions have affirmed the rights of the individual against self incrimination. This concept has been broadly

defined to include even potentially degoratory information. It also recognizes the complexity of the legal process as being so great that legal counsel is a virtual necessity. The attached form, Acknowledgement of Rights, should be understood by patients who may reveal criminal acts and in some cases should be signed by the patient.

INSANITY DEFENSE. Table 4 outlines the historical development of the insanity defense while Table 5 describes some legal tests of insanity and Table 6 indicates jurisdiction in which some tests are used.

## PROCEDURE FOR SANITY INQUIRIES

Purpose. ~~The following~~ This report describes the procedure for the forensic psychiatrist's accepting and processing requests for professional inquiries into the sanity of service members facing court-martial charges. These procedures are also generally applicable to individuals pending administrative elimination.

Requests. Any commander, investigating officer UP Article 32, Manual for Courts Martial (MCM), trial counsel or defense counsel, having reason to believe an individual pending a court-martial is insane or was insane at the time of the alleged offense(s), should report that fact and the basis of the observation through channels to the appropriate convening authority in order that an inquiry into the individual's mental condition may be made. When the report indicates a reasonable basis for the belief, the matter will be referred to a board of one or more medical officers for their observation and report, and the board should be fully informed of the reasoning for doubting the sanity of the individual involved. The documentation mentioned in paragraph 6-10, AR 40-3, is essential for a proper psychiatric evaluation of an accused. In addition to forwarding a

copy of the charge sheet, Article 32 investigation and all witness statements, any background information that is available should be reported also, e.g., explanation of the site of the offense, photographs, diagrams, experience and results of prior interrugations, etc. If the individual is not assigned/attached to the evaluating medical facility, but the services of the forensic psychiatrist are desired, the convening authority should notify the commander of the medical facility of the need in order to arrange for examination of the individual. If an initial request has been denied, the request may be reviewed at the time of trial and the military judge may, upon motion of counsel or the court, or upon his own motion, rule that an inquiry into sanity be made.

Inquiry and Report. On 25 Jul 1977 in the case of U.S. v. Frederick. 3 M.J. 230 (CMA 1977) the Court of Military Appeals adopted a new test of insanity, the American Law Institute (ALI) Test:

1. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

2. The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Following this precedent the following questions must be answered in such cases:

a. Did subject at the time of the alleged offense have any mental disease

or defect which would deprive him of the substantial capacity to appreciate the criminality of the alleged conduct?

b. Did subject at the time of the alleged offense have any mental disease or defect which would deprive him of the substantial capacity to conform his conduct to the requirements of the law?

c. Does subject at the present time possess sufficient mental capacity to understand the nature of the proceedings against him and to conduct or cooperate intelligently in his own defense.

A fourth question often asked in military courts, especially in alcohol and drug cases, is whether the subject at the time of the alleges misbehavior was sufficiently free of mental disease or defect to form the specific intent to commit the specified misbehavior.

Copies of the report should be furnished to the convening authority and the individual making the request.

Non-adversary Nature of Sanity Boards. There is no provision regulatory or otherwise, which permits a sanity board to be an adversary proceeding. It is recognized that the subject of the board of inquiry has a right to be present and consequently to be represented by defense counsel, but the extent of defense counsel's participation will be to protect the accused's rights against self-incrimination, i.e., Article 31, UCMJ. If defense counsel insists on extending this participation to the point of disrupting board proceedings, he should be excluded and the inquiry should continue to completion.

Appearance of Expert Witnesses. The trial counsel will take action to provide

for the attendance of all witnesses, including experts, necessary to the presentation of the prosecution and defense cases. When there is a disagreement between the trial and defense counsel as to whether the testimony of a witness requested is necessary, the matter will be referred to the convening authority or the military judge, according to whether the question arises before or after the trial begins. The attendance of a military witness stationed at or so near the place of trial so as not to require travel at government expense, will normally be obtained by the trial counsel notifying the witness and/or his commander. If travel is involved, i.e., other than that available through the motor pool, the convening authority of the court will communicate with the convening authority having jurisdiction over the witness and formally request attendance and furnish a fund citation for the travel involved. Military witnesses will normally appear when requested unless circumstances make their appearance impossible. When there is a request which involves a fund citation, the requestor may employ a civilian expert witness UP paragraph 116, MCM.

References:

a. Paragraphs 115, 116, 121, MCM

b. TM 8-240; Psychiatry in Military Law

c. Paragraph 6-10, AR 40-3

TABLE 1

LEGAL AREAS INVOLVING COMPETENCY

1. Making a will (testametary capacity)
2. Making a contract, deed, sale
3. Being responsible for a criminal act
4. Standing trial for a ciiminal charge
5. Being punished for a criminal act
6. Being Married
7. Being Divorced
8. Adopting a child
9. Being a fit parent
10. Suing or being sued
11. Receiving property
12. Holding property
13. Making a gift
14. Having a guardian, committees or trustees appointed
15. Being committed to a mental institution

16. Being discharged from a mental institution

17. Being paroled or put upon probation

18. Being responsible for a tortious civil wrong

19. Being fit for military service

20. Being subject to discharge from miltiary service

21. Operating a vehicle

22. Giving a valid consent

23. Giving a binding release or waiver

24. Voting

25. Being a witness (testimonial capacity)

26. Being a judge or juror

27. Acting in a professional capacity - as a lawyer, teacher, physician

28. Acting in a public representative capacity - as a governor, legislator

29. Acting in a fiduciary capacity - as a trustee, executor

30. Managing or participating in business - as a director, stockholder

31. Receiving compensation for inability to work as a result of an injury

TABLE 2

Pepresentative Tests of Some Common Capacities

| CAPACITY | DEFINITION OF TEST |
|---|---|
| 1. Making a will | Knows what property he has and those relatives who would be his natural objects of bounty and understands the nature of the disposition of the property he has made and does not suffer from a delusion which influenced the disposition of the property. |
| 2. Making a contract | Possesses sufficient mind or reason to enable him to comprehend the nature, terms and effects of the particular transaction in which he is engaged. |
| 3. Being not responsible for a criminal act, i.e., to be excused. | Unable to distinguish between right and wrong or incapable of resisting an impulse which led to the commission of a crime. |
| 4. Standing trial | Possesses sufficient present ability to consult with his attorney with a reasonable degree of rational understanding of the nature of the proceedings against him. |
| 5. Being married | Able to understand the nature of the marriage relation and the duties and obligations involved. |

| | |
|---|---|
| 6. Being divorced | Suffering from incurable insanity as evidenced by medical testimony and 3 years of continuous institutionalization. |
| 7. Having a guardian or committee appointed | Not necessarily insane but by reason of old age, disease or weakness of mind unable to manage his property unassisted and by reason thereof likely to be deceived by some artful person. |
| 8. Being committed to an institution | Rendered by mental illness so deficient in judgment or emotional control that he is in danger of causing physical harm to himself or to others or the wanton destruction of valuable property. |
| 9. Being discharged from an institution | Recovered his sanity and will not in the reasonable future be dangerous to himself or others. |
| 10. Being a witness | Able to understand the moral obligation to speak the truth and the nature of the question asked, and able to form and communicate an intelligent answer. |
| 11. Receiving compensation | Unable to engage in any substantially gainful activity by reason of a medically determinable mental impairment which can be expected to be of long continued and indefinite duration. |

TABLE 3

COMPETENCY TO STAND TRIAL

ASSESSMENT INSTRUMENT

Degree of Incapacity

| | Total | Severe | Moderate | Mild | None | Unratable |
|---|---|---|---|---|---|---|
| 1. Appraisal of available legal defenses | 1 | 2 | 3 | 4 | 5 | 6 |
| 2. Unmanageable behavior | 1 | 2 | 3 | 4 | 5 | 6 |
| 3. Quality of relating to attorney | 1 | 2 | 3 | 4 | 5 | 6 |
| 4. Planning of legal strategy, including guility plea to lesser charges when pertinent | 1 | 2 | 3 | 4 | 5 | 6 |
| 5. Appraisal of role of: | | | | | | |
| a. Defense counsel | 1 | 2 | 3 | 4 | 5 | 6 |
| b. Prosecuting attorney | 1 | 2 | 3 | 4 | 5 | 6 |
| c. Judge | 1 | 2 | 3 | 4 | 5 | 6 |
| d. Jury | 1 | 2 | 3 | 4 | 5 | 6 |
| e. Defendant | 1 | 2 | 3 | 4 | 5 | 6 |
| f. Witnesses | 1 | 2 | 3 | 4 | 5 | 6 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 6. Understanding of court procedure | 1 | 2 | 3 | 4 | 5 | 6 |
| 7. Appreciation of charges | 1 | 2 | 3 | 4 | 5 | 6 |
| 8. Appreciation of range and nature of possible penalties | 1 | 2 | 3 | 4 | 5 | 6 |
| 9. Appraisal of likely outcome | 1 | 2 | 3 | 4 | 5 | 6 |
| 10. Capacity to disclose to attorney available pertinent facts surrounding the offense including the defendant's movements, timing, mental state, actions at the time of the offense | 1 | 2 | 3 | 4 | 5 | 6 |
| 11. Capacity realistically to challenge prosecution witnesses | 1 | 2 | 3 | 4 | 5 | 6 |
| 12. Capacity to testify relevantly | 1 | 2 | 3 | 4 | 5 | 6 |
| 13. Self-defeating v. self-serving motivation (legal sense) | 1 | 2 | 3 | 4 | 5 | 6 |

Examinee_____ _____ Examiner_____

ACKNOWLEDGEMENT OF RIGHTS

I, _____, state that before I was examined by _____, he identified himself to me as _____. He told me that I was suspected of being involved in the offense(s) of _____

_____

_____.

He explained that the scope and purposes of the examination were _____

_____

_____.

I understand that he is neither "for me" or "against me".

_____

He told me and I understand that:

(1) I have the right to remain silent, that is, say nothing at all

(2) Any statement I make, oral or written, may be used as evidence against me in a trial or in other judicial or administrative proceedings;

(3) I have the right to consult with a lawyer;

(4) I have the right to have a lawyer present during this interview;

(5) I may obtain a civilian lawyer of my own choosing, at my own expense;

(6) If I cannot afford a lawyer, the court will give me reasonable assistance in obtaining one;

(7) I may request a lawyer at any time during this interview;

(8) If I decide to answer questions without a lawyer present, I may stop the questioning at any time.

I have also read the foregoing language. I completely understand my rights. I (DO) (DO NOT) wish to exercise my right to remain silent. (I DO WANT A LAWYER.) (I DO NOT WANT A LAWYER.) I (WANT) (DO NOT WANT) to participate in this examination voluntarily and of my own free will. No promises or threats have been made to me and no pressure for coercion of any kind have been used against me.

X _____

SIGNATURE

X _____ _____ _____

SIGNATURE OF INTERVIEWER TIME DATE

_____

LOCATION

Table 4

HISTORICAL DEVELOPMENT OF INSANITY DEFENSE

| DATE | CONCEPT | WRITINGS, CASE or statute |
|---|---|---|
| 13th Century | "Insane Person" not far removed from the brutes | Writings of Bracton |
| 1326 | "Madness" relieves responsibility | |
| 16th Century | "Idiot" cannot number twenty pence | Writings of Fitzherbert |
| 1600's | "Child of Fourteen Years Test"<br>"Total Insanity vs. Partial Insanity" | Writings of Lord Halifax |
| 1700's | "Good and Evil" (abstract) | Writings of Hawkins |
| 1724 | "Wild Beast Test" | Arnold's Case |
| 1760 | "Moral Good and Evil"<br>"Total Want of Reason vs. Partial Degree of Reason" | Ferrer's Case |
| 1800 | "Presence of Delusions" | Hadfield's Case |
| 1812 | "Good from Evil, Right from Wrong" (Abstract) | Bellingham's Case |
| 1832 | "Musical Letters" (Doe-Ray Correspondence) and Publication of Insanity and Jurisprudence | Writings of Isaac Ray |
| 1834 | "Power to Choose" | Thompson v Ohio |

| | | |
|---|---|---|
| 1840 | "Nature, Character and Consequences of Act"<br>"Could Not Resist" | Oxford's Case |
| 1843 | "Right and Wrong" (Particular Act) | M'Naghten's Case |
| 1867 | "Diminished Responsiblity" | Scotland |
| 1869 | "Mere Questions of Fact for the Jury" (All legal tests of insanity rejected)--N.H.Rule | Pike v New Hampshire |
| 1886 | "Power to Choose" ("Irresistible Impulse") | Parsons v Alabama |
| 1915 | "Legal Wrong vs. Moral Wrong" | Schmidt v New York |
| 1954 | "Product of Mental Disease" | Durham v D.C. |
| 1957 | "Irresistible Impulse"<br>"Diminished Responsibility" | Great Britain's Homicide Act of 1957 |
| 1961 | "Adequate Capacity to Conform Conduct" | Currens v US |
| 1966 | "Substantial Capacity to Appreciate Criminality Or Conform Conduct" (ALI Test) | Freeman v US |
| 1977 | Military accepts ALI Test | US v. Frederick |

Table 5

LEGAL TESTS OF INSANITY

1. M'NAGHTEN RULE

"To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong."

2. M'NAGHTEN PLUS "IRRESISTIBLE IMPULSE"--VARIANT OF THE MCM TEST

"If the accused possessed the knowledge of right and wrong in regard to the act charged he may, nevertheless, not be legally rsponsible if the following condition occured:

'If by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed.'"

3. DURHAM RULE

"An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

4. AMERICAN LAW INSTITUTE, MODEL PENAL CODE

"a. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

"b. The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

5. CURRENS RULE

"A person is not criminally responsible for an act if, at the time of the commission of such act, as a substantial consequence of mental disorder, he did not have adequate capacity to conform his conduct to the requirements of the law which he is alleged to have violated."

6. NEW HAMPSHIRE RULE

"...All symptoms and all tests of mental disease were purely matters of fact to be determined by the jury."

Table 6

| M'NAGHTEN RULE | M'NAGHTEN RULE VARIATIONS | M'NAGHTEN RULE PLUS CONTROL RULE ("IRRESISTIBLE IMPULSE") | ALI MODEL PENAL CODE | ALI RULE VARIATIONS | DURHAM RULE | NEW HAMPSHIRE DOCTRINE | CURRENS RULE | HOMICIDE ACT OF 1957 |
|---|---|---|---|---|---|---|---|---|
| Alaska | California | Alabama | Connecticut | Ohio | District of Columbia | New Hampshire | Virgin Is. | |
| Arizona | Georgia | Arkansas | Idaho | Vermont | | | | |
| Florida | New Jersey | Colorado | Illinois | | | | | |
| Hawaii | New York | Delaware | Maryland | | Maine | | | |
| Iowa | North Carolina | Indiana | Massachusetts | | | | | |
| Kansas | | Kentucky | Wisconsin | | | | | |
| Minnesota | | Louisiana | US Military | | | | | |
| Mississippi | | Michigan | | | | | | |
| Missouri | | Montana | | | | | | |
| Nebraska | | New Mexico | | | | | | |
| Nevada | | Utah | | | | | | |
| North Dakota | | Virginia | | | | | | |
| Oklahoma | | Wyoming | | | | | | |
| Oregon | | | | | | | | |

Pennsylvania

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Washington

West Virginia

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First Federal Circuit

2nd Fed. Circ

4th Fed. Circ

5th Fed. Circ

6th Fed. Circ

7th Fed. Circ

8th Fed. Circ

9th Fed. Circ

10th Fed. Circ

3rd Fed Circuit

England

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MOCK SANITY BOARD

FOR: A Case in Question - Motion Picture for Forensic Psychiatric Evaluation for General Court-Martial

SOURCE: COL Franklin Del Jones, M.D. - From Several Cases on Record in AMEDD Facilities.

## SANITY BOARD EVALUATION

Identifying Data: Stewart Leroy Simmons is a 22 year old single caucasion PFC with three years active duty, who was referred for psychiatric evaluation, per the attached request from Commander, Camp Glass Army Base, Maryland.

MILITARY HISTORY: The subject volunteered for active duty in the United States Army on 9 March 1977 at the age of 19. He reported for basic training at Fort Benning but he had to repeat this due to illness because of an injury to his testicles incurred on an obstacle course for which he had two weeks on quarters. He took AIT in the supply MOS and was assigned to the 16th Field Service Company, 240th Quartermaster Battalion, Fort Lee, Virginia, on 20 May 1977. However, he was accepted for jump training at Ft Benning and spent only one month at Ft Belvoir. Upon completion of jump training, he was assigned with the 101st Airborne Division, Ft Campbell until a fractured heel bone ended his jump status in May 1979. Subsequently, he reverted to his primary supply MOS and was assigned to Camp Glass, MD in September 1979.

SOCIAL AND FAMILY HISTORY: The subject was born on 24 September 1958 in Allerton, West Virginia and lived there until his entry into the Army. His father is in his mid forties and works as a hospital orderly in Jonesville, Texas. The subject stated that his father has difficulties with excessive alcohol intake, a history of ulcers, continual problems with finances and that he left home about two years ago, just about the same time that the subject entered the service. His mother is in her mid-forties, lives in Allerton, WVA and works as an LPN in a nursing home. He related that she has a psychiatric history including three or four hsopitalizations, the longest lasting up to three weeks, and also has a history of hypertension. He related that he is closest to his mother but is not really close to either parent. He stated that his parents argued frequently when he was growing up and that there was often violence with the mother once being hospitalized with broken facial bones. He was reared as an only child. He described a normal heterosexual development but admitted that he once reacted violently when approached by a homosexual. He never had any close female friends but had relations with prostitutes.

Subject stated that he didn't feel that his childhood was a very happy one. He stated that he stayed "to myself" most of the time. He felt that other children

who lived next door and in fact some of their pets got more attention than he did. He admitted that he has an involved history of being cruel to animals. He used to smash frogs with rocks and on one occasion strangled a neighbor's puppy when he felt the puppy was getting more attention than he was. He also beat a neighbor's dog to death with a tire iron. He recalled feeling that he "just wanted to kill those darn dogs" and that he could control himself but chose to do away with the animals. He stated that when he has one or two drinks be becomes very hostile and verbally abusive. He stated that one or two drinks "can make me act as if I was drunk." The subject denied any civilian lawless behavior or arrest record. He admitted to frequent use of alcohol, from one to four drinks per day, four to seven days a week. He smoked 1/2 pack of cigaretts per day and he admitted to a single use of marijuana: "It made me sick."

PAST MEDICAL HISTORY: The subject had the usual childhood illnesses without sequelae. He had no adult illnesses; however, in basis training he stated that he injured his testicles. His medical records reveal only "contusion of testicles - no treatment indicated except assigned to quarters for two weeks."

In May 1979, he accidentally landed on a paved road on a training parachute jump. This produced a fracture of the relatively avascular portion of the Os calcis and a projection of approximately one to one and one-half year before healing would be complete. He has an L-3 profile with limitations of no heavy duty or jumping.

REVIEW OF SYSTEMS: Subject complained for the past three years of occasional "tension" headaches relieved by drinking. There was no evidence of vascular component, scotomata or seizures. Review of systems was otherwise normal.

SOURCES OF INFORMATION: This information was obtained by joint and individual interviews by three psychiatrists over a one week period of time at the stockade and in the physician's offices, review of the Article 32 investigation, by social worker interview with personnel in subject's unit, by neurological and psychological consultation, by interviews with defense and trial counsels, and by review of subject's 201 and medical records.

INCIDENT IN QUESTION: The subject admitted that his Army career took a downturn, especially after he lost his jump status in May 1979. He related that everywhere he went there was nothing but trouble. He admitted that he continually felt that people were always watching him and everything he did. The subject stated that he did not really remember events regarding the incident of 19 July 1980. He stated that he remembered being thrown out of the bar and then being arrested during the night but nothing in between. Because of this alleged amnesia, reports of witnesses serve as the primary information on his behavior during the incident.

A summary of pertinent documents (CID Reports and Article 32 Testimony) follows:

Document 1: Sworn statement of PFC William Anderson who accompanied Simmons on

the evening of the alleged incident, taken 22 July 1980. Anderson states that he was approached by Simmons on the evening of Saturday, 19 July 1980 in the barracks. According to Anderson, Simmons claimed to be bored and invited him to "go get a beer." Anderson drove Simmons' car because, "Stu had already had a few ." Driving past the post entrance, they saw SP4 Arnold Johnson and PFC James Rumback and invited them along. Anderson reported that Simmons appeared to be somewhat boisterous but "nothing was unusual" except "Stu kept wanting me to drive faster." Anderson recounts that the four of them drove to Tiffany's Bar, but, "Things got off to a bad start. Stu pulled my chair out and I fell on my ass. Then he tried to bait a black guy and finally we all got thrown out when he threw a match at a fat woman." Anderson stated that Simmons seemed sober enough to drive away and that the group returned to post going to the One-Six Club. Anderson states, "Stu seemed all right until he walked off toward the john. Then he saw this chick, Donna, with Sergeant Caldwell. He had just been telling us how she was hot for him and I guess it was too much. He struck Caldwell in the nose then some guys stopped him. I remember he said something about her making him look like a queer. Then he calmed down and left. We were pretty disgusted and didn't go with him." In answers to questions Anderson verified that Simmons often drank excessively and became boisterous but did not have any mental disease to his knowledge.

Documents 2, 3 and 4 given respectively by SP4 Arnold Johnson, PFC James Rumback and SSG John Caldwell essentially paraphrase Anderson's statement; however, Caldwell adds "I'd only seen Simmons once before. He had no reason to hit me. If I'd know Donna was his broad, I'd have steered clear but she came to me at Tiffany's. I'd never met her before. That Simmons must be crazy."

Document 5. Sworn statment of PFC Donna Sue Collins corroborates the account of Anderson and adds: "I only dated Stu a few times and he acted like he owned me. I was trying to break it off because I could see he had problems, being jealous and all. Once when I just thanked a waiter he claimed I was flirting. When he came at me with that knife, I knew he wanted to kill me." In answer to questions she described having known Simmons only a couple of months and having not had sexual relations with him. She knew of no history of mental illness in him but recalled that he had spoken of being left by himself when his mother went into mental hospitals.

Document 6. Sworn statement of SP5 Frank Jones, Military Policeman who helped apprehend Simmons taken 20 July 1980 reports that subject was found asleep in his barracks bunk. Jones observed the following:

"The SGT sent me to look in Simmons' barracks after talking with the victim. I took the C.Q. with me and we found a white male sleeping in Simmons' bunk. The C.Q. did not know when he came in but he identified him as Simmons. Simmons' shoes were off but otherwise he was fully clothed and asleep. There was blood on his shirt and he smelled of beer. He woke up readily and asked why an MP was looking for him. I told him he was wanted in connection with an assault and I warned him of his rights then told him to come with me. He said, "This must be

a joke" and came right along." In response to questions, Jones related that Simmons' coordination seemed good and that he did not have any trouble tying his shoes."

Document 7. Sworn Statement of PFC Stewart Leroy Simmons taken 20 July 1980. Subject is in essential agreement with Anderson's statement up until the incident in which he was thrown from the bar. He states, "I don't remember anything after this big guy grabbed me and threw me out of the doors. I must of hit my head. In fact, I've got a headache now." In answers to questions he admitted to drinking "maybe a six pack" before the amnesia over the course of about two hours. He stated that he "saw a school counselor" in the 8th grade for "talking smart to a teacher" but denied mental health contact. Asked about his relationship to Collins, he refused further comment.

Document 8. Chronological Record of Care (Health Record) of Simmons reveals several visits to dispensaries for headaches, corrobation of testicle and Os calcis injuries and report of normal physical exam at the Emergency Room, Peterson Hospital on 20 July 80. The examining physician, CPT S. Baker, departed the Army on 1 Aug 80 and is unavailable for a statement. The record does reveal that the "odor of alcohol" ....was present on Simmons and the "neurological exam is normal...Abrasions of the knuckles of the right hand were washed with phisohex and bandaged."

Document 9. Sworn statement taken 10 Aug 80 of 1LT Roy Halloran, officer in charge of the post stockade section in which Simmons was detained, revealed that Simmons had shown no evidence of mental illness since confinement and except for "keeping to himself" was not different from other prisoners.

MENTAL STATUS EXAMINATION: The subject is a stocky, well-grommed white young adult. He was generally cooperative but occasionally sulky and evasive in his responses. The subject displayed appropriate hygiene, temperature, 98; pulse, 70; blood pressure, 100/70. Examination of the teeth revealed caries in the upper left row. Examination of the heart revealed a widely split second sound which moves normally with respiration. There are scars on the left cheek, left volar wrist and the left second digit. There is mild tenderness over the inferior aspect of the right Os calcis. The remainder of the physical examination was within normal limits.

MENTAL STATUS EXAMINATION: The subject displayed appropriate hygiene, dress, and mannerisms. He was oriented in all spheres. Math, calculation, digit span and memory were all good. The subject's fund of knowledge was fair. Intelligence appears to be in the normal range. Speech flow and content displayed nothing unusual. Mood was even and affect was appropriate to the situation. Proverbs and similarities demonstrated average abstract ability and occasional concretenes. For example, he interpreted the proverb concerning why people who live in glass houses should not throw stones as, "Because they'll break the glass." The subject denied hallucinations or delusions. Ideas of reference were suggested by his tendency to see himself as the center of interest but

nothing delusional. He cooperated well during the interview. His narrative was consistent with information found in the court records. He claims amnesia for the duration of the incidents charged against him. He denies any prior episodes or any subsequent episodes of amnesia. The subject denies any past or present suicidal or homicidal ideation. The subject is convinced that his alleged actions were "stupid" and would not have been committed by him in a normal state. He feels that he cannot comment on the incident in question as he has no memory of its occurrence. Formal testing of his judgment was adequate.

LABORATORY AND X-RAY DATA: Admission CBC, urinalysis, and SMAC-20 were all normal. Chest x-ray, vascular and static brain scan were normal. An electroencephalogram, sleep and awake, was normal. Skull x-rays were normal as was a CAT scan.

CONSULTATIONS: Social Work Officer, CPT Henry Mendez, contacted the subject's unit. His first sergeant SFC Chuck Prexly, reported him to be a marginal soldier. He was in the unit for nearly ten months and was always in fights and did not get along with those in command. It was known that he was drinking excessively. He had several Articles 15, was in debt and was regarded as inpredictable if drinking. Social Work Service attempted to contact his family. Father was unable to be reached. The mother failed to return Social Work Service's repeated requests for a telephone conversation. The subject was evaluated by Dr. Harlan Nelson of the Neurology Service. His impressions were:

a. No neurologic abnormalities on examination.

b. History is not compatible with a seizure disorder, transient amnesia secondary to vascular occlusion, etc. The patient was probably intoxicated during episode but otherwise had no neurological component to his activity."

The recommendation by Dr. Nelson was for no further work-up. The subject was evaluated by MAJ Cecil Thomas of the Psychology Service, as follows:

TESTS ADMINISTERED: Halstead-Reitan Neuropsychological Battery, WAIS, MMPI, HTP, Rorshach, TAT, Bender and BIP, SCT, Shipley-Hartford, Aphasia Screening and Trails. Impression: No evidence can be found to indicate the presence of psychosis or neurological impairment. Intellectually, the subject is functioning in the average range. Although the subject did not verbalize any significant areas of emotional disturbances or concern, personality testing revealed the possible presence of feelings of anger and resentment toward authority, apparently related to unpleasant experiences with parents. Also, noted is a feeling of anger toward women, likely to be manifest in paradoxical intense attachment and detachment in heterosexual relationships. In fact, PFC Simmons' current controlled, peaceful demeanor and his emphasis on a lack of controls in relationships suggest the existence of considerable reaction formation and denial in dealing with strong emotions such as anger. Although these defenses are of potential concern in this subject's adjustment, he seems very well insulated emotionally and may be capable of functioning quite adequately in

environments placing little emphasis on control and authority. HTP and TAT reveal difficulties in sexual relationships and Rorshach reveals paranoid projection with sexual and violent elements. The overall impression is consistent with paranoid personality with passive-aggressive and antisocial elements.

PRESENT CONDITION: The subject's present condition is stable with essentially no change in his mental status in repeated evaluations over one week's duration.

DIAGNOSES:

1. (DSM III Axis II) 301.00 Paranoid personality disorder having passive aggressive and antisocial features, severe, manifested by difficulty with control of both active and passive expressions of hostility toward authority figures, tendency towards projection and referential thinking, episodes of defiance of authority figures, loosened self-control under the influence of alcohol, punishment seeking from authorities in a self-destructive fashion, inability to sustain heterosexual relationships and feelings of inadequacy and excessive jealous; impairment for military duty marked for social and industrial adaptability, none; LOD; No, EPTS.

2. (DSM III) Axis I) 303.00 Substance-induced alcohol intoxication, mild, resolved, manifested by self-reported and witnessed ingestion of six beers in two hours, predisposition, moderate, habitual use of alcohol; stress, unknown; impairment for further military duty and social and industrial adaptability, none. LOD: No, due to own misconduct.

3. (DSM II Axis I) 305.01 Alcohol abuse, continuous, LOD: Not Applicable.

FINDINGS:

It is the opinion of the Sanity Board that:

a. The defendant at the time of the alleged offenses suffered the mental defects of mild alcohol intoxication and a paranoid personality disorder.

b. These defects did not deprive the defendant, at the time of the alleged offenses, from possessing the substantial capacity to appreciate the criminality of his conduct.

c. These defects did not deprive the defendant, at the time of the alleged offenses, from having the substantial capacity to conform his conduct to the requirements of law.

d. The defendant, at the present time, possesses sufficient mental capacity to understand the nature of the proceedings against him and to conduct or cooperate intelligently in his defense.

e. The mental defects, suffered by the defendant at the time of the alleged

offenses, did not prevent the defendant from forming the specific intents to commit the alleged offenses; however, the mental defects may have impaired in part the defendant's ability to appreciate the potential immediate consequences of his actions. The information presented to the Sanity Board suggests that the defendant tends to react adversely with release of repressed impulses when higher critical function is inhibited by the presence of intoxicants or strong emotions. The Sanity Board suggests that had the defendant not been partially intoxicated, his normal judgment might have beneficially restrained his actions. This finding along with that of a long-standing personality disorder should be considered in mitigation and extenuation if he is found guilty of the charges. Note that subject's personality disorder is manifested primarily by repeated criminal and antisocial conduct and therefore eliminates this as a "mental disease or defect" in the legal test of insanity propounded by the American Law Institute, Model Penal Code.

RECOMMENDATIONS: When subject's legal matters have been resolved, it is strongly recommended that he be considered for separation from the Army with provisions for the treatment of the defendant's alcohol abuse in a civilian setting.


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STEAP-JA 22 Aug 1980

SUBJECT: Request for Sanity Board in the Case of the United States v. Stewart Leroy Simmons

Commander
Peterson Army Hospital
Camp Glass, MD 21005

1. As the General Court-Martial Convening Authority in the above-cited case, I am requesting pursuant to Paragraph 121, Manual for Court-Martial, that a Sanity Board be held to examine the accused, PFC Stewart Leroy Simmons, to answer the following questions.

a. Was the accused, at the time of the commission of the offense, suffering from a mental disease or defect?

b. Did the accused, at the time of the alleged offense and as a result of such mental disease or defect, lack substantial capacity to appreciate the criminality of his conduct?

c. Did the accused, at the time of the alleged offense and as a result of such mental disease or defect, lack substantial capacity to conform his conduct to the requirements of the law?

d. If present, was this defect manifested only by repeated or otherwise antisocial behavior?

e. Does the accused possess sufficient mental capacity to understand the nature of the proceedings against him and to intelligently conduct or cooperate in his defense?

f. Did the accused, at the time of the alleged offense and as a result of a mental disease or defect, lack substantial capacity to form or entertain the specific intent or other mental state required?

2. Basis for this request is that MAJ Barry Livingstone, defense counsel has raised the issue of subjects' mental responsibility based on the evaluation of Dr. William Menning, a civilian psychiatrist.

3. The specific charge against the individual is attempted premeditated murder where it is specifically alleged that on 19 July 1980 the accused stabbed PFC Donna Sue Collins with a hunting knife in an attempted premeditated murder.

STEAP-JA
SUBJECT: Request for Sanity Board in the Case of the United States v. Stewart Leroy Simmons

4. An Article 32 Investigation has been completed with much testimony being taken as to the facts and circumstances surrounding the events preceding the act. Upon request to the trial counsel, Captain Alan R. Chambers, any or all of that testimony will be furnished to aid in any examination that may be held.

OSWALD W. PARRISH
Colonel, FA
Commanding