

THE BROWNSVILLE AFFRAY

Report of the Inspector-General of the Army; Order of the President Discharging Enlisted Men of Companies B, C, and D, Twenty-fifth Infantry; Messages of the President to the Senate; and Majority and Minority Reports of the Senate Committee on Military Affairs

MARCH 11, 1908.—Ordered to be printed

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THE BROWNSVILLE AFFRAY.

REPORT OF THE INSPECTOR-GENERAL OF THE ARMY.

WAR DEPARTMENT,
OFFICE OF THE INSPECTOR-GENERAL,
Washington, October 22, 1906.

SIR: I have the honor to submit the following report of an investigation made at Fort Sam Houston, Tex., and Fort Reno, Okla., pursuant to the following letter of instructions:

WAR DEPARTMENT,
Washington, October 4, 1906.

Brig. Gen. E. A. GARLINGTON,
Inspector-General, U. S. Army.

SIR: The President directs that you proceed to the places named in the accompanying letter and endeavor to secure information that will lead to the apprehension and punishment of the men of the Twenty-fifth Infantry believed to have participated in the riotous disturbance which occurred in Brownsville, Tex., on the night of the 13th of August, 1906, resulting in the death of one and the wounding of another citizen of that city.

You are authorized to call upon the commanding general, Southwestern Division, and the commanding officers of Fort Sam Houston and Fort Reno in the prosecution of this investigation for such assistance as it may be within their power to give.

The President authorizes you to make known to those concerned the orders given by him in this case, namely: "If the guilty parties can not be discovered, the President approves the recommendation that the whole three companies implicated in this atrocious outrage should be dismissed and the men forever debarred from reenlisting in the Army or Navy of the United States."

And in this connection, the President further authorizes you to make known to those concerned that unless such enlisted men of the Twenty-fifth Infantry as may have knowledge of the facts relating to the shooting, killing, and riotous conduct on the part of the men with the organizations serving at Fort Brown, Tex., on the night of the 13th of August, 1906, report to you such facts and all other circumstances within their knowledge which will assist in apprehending the guilty parties, orders will be immediately issued from the War Department discharging every man in Companies B, C, and D of the Twenty-fifth Infantry, without honor, and forever debarring them from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government.

The time to be given to the enlisted men of Companies B, C, and D, Twenty-fifth Infantry, for consideration of this ultimatum will be determined by you. If at the end of the time designated the facts and circumstances of the occurrence in question have not been established sufficiently clearly to indicate a reasonable certainty of securing a conviction of the guilty parties by evidence obtained from enlisted men of the First Battalion, Twenty-fifth Infantry, you will report the condition by wire to The Military Secretary.

Very respectfully,

ROBERT SHAW OLIVER,
Acting Secretary of War.

I proceeded from Washington to the headquarters of the Southwestern Division, Oklahoma City, Okla., to consult with Maj. A. P. Blocksom, inspector-general, who had, under orders from the commanding general Southwestern Division, made an exhaustive investi-

gation of the affair at Fort Brown, Tex., of August 13, 1906, and who had submitted on August 29, 1906, a full report of the circumstances connected therewith (1157577). As a result of this consultation nothing new was developed beyond the fact that on October 4, 1906, Lieut. Col. Leonard A. Lovering, inspector-general Southwestern Division, made an investigation at Fort Reno, Okla., into certain collateral circumstances connected with the trouble at Fort Brown, by direction of the commanding general Southwestern Division. * * * No material facts germane to the main issue were developed by this investigation.

I then proceeded to the headquarters, Department of Texas, Fort Sam Houston, Tex., for the purpose of examining the men of the Twenty-fifth Infantry confined in the guardhouse at that place, for whom warrants had been issued at Brownsville immediately after the affair of August 13. On the eve of my departure from Washington I had received papers informing me that the grand jury in Brownsville, Tex., had failed to find true bills against these prisoners. I examined each of the prisoners very carefully, first, in the form of general conversation, referring to the personal history of the man, including the place of birth, home, former occupation, and relations in civil life. I found several of them had lived in localities with which I was more or less familiar, one having lived at my own home, and then subjected them to a rigid examination. As soon as the subject of the trouble at Brownsville was introduced the countenance of the individual being interviewed assumed a wooden, stolid look, and each man positively denied any knowledge of the circumstances connected with or individuals concerned in the affair. Under close inquiry it was admitted by each man that he knew of the discrimination made by saloon keepers against the enlisted men of the Twenty-fifth Infantry; that he knew Newton had been hit by a revolver in the hands of a citizen of Brownsville, and that Reed had been pushed into the mud by another citizen.

Each man admitted that these occurrences had been talked of and discussed within their hearing in the barracks of their respective companies, but I could extract no admission from any man that this discrimination and these acts of violence had caused any feeling of animosity on the part of the enlisted men of the Twenty-fifth Infantry against citizens of Brownsville. When this attitude on the part of the enlisted men under examination was developed, it became apparent that I could get no information from them that would assist me in locating the men actually guilty of the firing on the night of the 13th of August, 1906. I spent several hours in this interview with the men, taking each separately and immediately afterward separating him from the rest of the prisoners, so that there might be no communication between them during the examination. The next morning I called the men before me again, four at a time, beginning with the men of the longest service. I again talked with them, endeavoring to elicit information, and upon failure to succeed I notified them of the orders of the President in the case and gave them until 5 o'clock that afternoon to consider the matter. At the time set I received nothing from them.

The men confined in the Fort Sam Houston guardhouse were the noncommissioned officers holding the keys of the arm racks of the respective companies, the sergeant of the guard, and the sentinel on

post in rear of company barracks on the night of the 13th of August, 1906; an enlisted man, part owner of a saloon in Brownsville; a man whose cap was alleged to have been found in the city on the night of the 13th of August (not substantiated); Private Newton, who had been assaulted; Private Reed, who had also been assaulted, and the men who were with him at the time.

From Fort Sam Houston I proceeded to Fort Reno, Okla. I called together the officers present at the station who were on duty with the Fort Brown battalion on the night of August 13, 1906. I discussed with them the means and methods employed by them, contemporaneously with the occurrence and subsequently, to locate the guilty individuals. I found that absolutely nothing had been discovered; that they had found no enlisted men who would admit any knowledge of the shooting or of any circumstances, immediate or remote, connected with the same.

I then called before me, individually, a number of the enlisted men, noncommissioned officers, and privates, of long service in the Twenty-fifth Infantry, ranging from twenty-six years to five or six. I proceeded with them practically along the same lines as with the prisoners at Fort Sam Houston, and found the same mental attitude on their part; could discover absolutely nothing that would throw any light on the affair, and received the same denial that any feeling of animosity or spirit of revenge existed among the enlisted men of the Twenty-fifth Infantry against the citizens of Brownsville on account of discrimination against them in the way of equal privileges in saloons or on account of the two acts of violence against their comrades. Each man questioned admitted that he knew of these acts of violence; each had heard it talked of in his barracks; but each denied that any feeling was displayed at any time by individuals of the respective companies or by the enlisted men of the companies as a whole. I could get no explanation of this apparent indifference to the indications of hostility that such acts on the part of citizens of Brownsville disclosed, except in one instance where a sergeant of the company to which Private Newton belonged, said: The fact that Newton had been assaulted made no special impression upon him, because Newton was liable to get into a row almost any time and had been battered up on previous occasions at Fort Niobrara.

The uniform denial on the part of the enlisted men concerning the "barrack talk" in regard to these acts of hostility upon the part of certain citizens of Brownsville indicated a possible general understanding among the enlisted men of this battalion as to the position they would take in the premises, but I could find no evidence of such understanding. The secretive nature of the race, where crimes charged to members of their color are made, is well known. Under such circumstances self-protection or self-interest is the only lever by which the casket of their minds can be pried open. Acting upon this principle, the history and record of the regiment to which they belong, the part played by these old soldiers in this record, were pointed out and enlarged upon. The odium and disgrace to the battalion and to its individual members by this crime was indicated. The future effect upon the individuals and upon the battalion as a whole was referred to; and, finally, the concern of the President of the United States in the matter, his desire and the desire of the War Department to separate the innocent from the guilty were explained; all without effect.

The next day the battalion was paraded without arms, every officer and enlisted man being present except two men sick in hospital. The battalion was formed in convenient arrangement. I then addressed them, stating who I was, namely, the Inspector-General of the Army, sent there by order of the President of the United States to afford the men of the Twenty-fifth Infantry an opportunity to give such information as might be within their power that would lead to the detection of the few men guilty of the crime of firing during the night upon citizens of a sleeping town, and talked to them along the same lines as I had done to the old soldiers; and, in conclusion, read to them the orders of the President and of the Acting Secretary of War in the premises. I informed them that they would be given until 9 o'clock the next day to consider the matter, and that I would be accessible during that limit to any soldier who possessed information and had a desire to make it known. Only one man presented himself, and that was *not* to give information, but to urge his own case for exemption from the penalty imposed by the President, but still disclaiming any knowledge of the affair, and stating his inability to make any discovery connected therewith. This was First Sergt. Mingo Sanders, Company B, Twenty-fifth Infantry—a man with twenty-six years' service.

I decided upon a short period for the consideration of the ultimatum given because I thought it more probable to bring results. Two months had elapsed since the occurrence on the very day I made the ultimatum known, and it appeared to me that further time for reflection was unnecessary and that the time limit set by me would be more likely to convince the men that the penalty in case of failure was sure to follow; whereas if a longer period had been given it might have impressed them with the idea that it was made more in the nature of a threat for effect.

The following men of the Twenty-fifth Infantry were not in the vicinity of the post on the night of the firing, the 13th of August, 1906: Private Ruby Wilson, Company B, absent sick; Sergt. William Blaney, Company B, on furlough; Private Charles W. Johnson, Company B, on furlough; Private Lewis C. Owens, Company B, absent sick; Artificer Thomas H. Jones, Company B, detached service at Fort Sill, Okla.; First Sergt. William Turner, Company C, at Fort Sill, Okla.; Corpl. John Young, Company C, absent at Kansas City, Mo.; Private James Williams, Company C, absent at Fort Bayard, N. Mex.; Sergt. George Derrett, Company D, detached service, Fort Sill, Okla.

The following changes have occurred in the companies of the battalion since August 13, 1906: Private Samuel R. Hopkins, Company B, discharged by expiration of service; Private Robert James, Company C, discharged by expiration of service, reenlisted for the Ninth Cavalry; Private Joseph Carter, Company C, discharged by expiration of service; Private John W. Lewis, Company C, discharged by expiration of service, reenlisted in Tenth Cavalry; Private Perry Cisco, Company C, discharged by expiration of service, reenlisted in the Tenth Cavalry; Private James A. Simmons, Company C, transferred to Company A, Twenty-fifth Infantry; Private August Williams, Company C, transferred to Company A, Twenty-fifth Infantry; Private Taylor Stoudemire, Company D, discharged by expiration of service, reenlisted in Ninth Cavalry; Cook James Duncan, Company D, discharged by expiration of service, reenlisted in Second Battalion, Twenty-fifth Infantry, Fort Bliss, Tex.; Private Alexander

Ash, Company D, discharged by expiration of service, reenlisted in Ninth Cavalry; Sergt. Jacob Frazier, Company D, discharged by expiration of service, reenlisted in company—on furlough; Private Chester Garrard, Company D, discharged by expiration of service; Private Luther Cotton, Company D, discharged by expiration of service; Private Henry H. Davis, Company D, discharged by expiration of service; Private William H. Birdsong, Company D, discharged by expiration of service; Private John Henry, Company D, deserted.

CONCLUSION.

I recommend that orders be issued as soon as practicable discharging, without honor, every man in Companies B, C, and D of the Twenty-fifth Infantry, serving at Fort Brown, Tex., on the night of August 13, 1906, and forever debarring them from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government. In making this recommendation I recognize the fact that a number of men who have no direct knowledge as to the identity of the men of the Twenty-fifth Infantry who actually fired the shots on the night of the 13th of August, 1906, will incur this extreme penalty.

It has been established, by careful investigation, beyond reasonable doubt, that the firing into the houses of the citizens of Brownsville, while the inhabitants thereof were pursuing their peaceful vocation or sleeping, and by which one citizen was killed and the chief of police so seriously wounded that he lost an arm, was done by enlisted men of the Twenty-fifth Infantry belonging to the battalion stationed at Fort Brown. After due opportunity and notice, the enlisted men of the Twenty-fifth Infantry have failed to tell all that it is reasonable to believe they know concerning the shooting. If they had done so, if they had been willing to relate all the circumstances—instances preliminary to the trouble—it is extremely probable that a clue sufficiently definite to lead to results would have been disclosed. They appear to stand together in a determination to resist the detection of the guilty; therefore they should stand together when the penalty falls. A forceful lesson should be given to the Army at large, and especially to the noncommissioned officers, that their duty does not cease upon the drill ground, with the calling of the company rolls, making check inspections, and other duty of formal character, but that their responsibilities of office accompany them everywhere and at all times; that it is their duty to become thoroughly acquainted with the individual members of their respective units; to know their characteristics; to be able at all times to gauge their temper, in order to discover the beginning of discontent or of mutinous intentions, and to anticipate any organized act of disorder; that they must notify their officers at once of any such conditions. Moreover, the people of the United States, wherever they live, must feel assured that the men wearing the uniform of the Army are their protectors, and not midnight assassins or riotous disturbers of the peace of the community in which they may be stationed.

No absolutely accurate verification of the rifles and men of the battalion was made on the night of the 13th of August in time to account for all the rifles or all the men at the beginning of the firing or immediately upon its conclusion. This failure is explained as follows: The

commanding officer and his associates, when the alarm was sounded and they heard the firing, assumed that it came from the city of Brownsville, and that the guns were in the hands of civilians; in other words, that the garrison was being fired into from the outside by civilians. It does not appear to have occurred to any of them that certain enlisted men of the Twenty-fifth Infantry had possession of their arms, and were committing the crime of firing into the houses and upon the citizens of Brownsville until the mayor of the city came into the garrison and informed the commanding officer, Major Penrose, that one man had been killed and another wounded by his soldiers.

I return herewith all the papers in the case.

Very respectfully.

E. A. GARLINGTON,
Inspector-General.

THE MILITARY SECRETARY,
War Department.

THE PRESIDENT'S ORDER.

THE WHITE HOUSE,
Washington, November 5, 1906.

The SECRETARY OF WAR:

I have read through General Garlington's report, dated October 22, submitted to me by you. I direct that the recommendations of General Garlington be complied with, and that at the same time the concluding portion of his report be published with our sanction as giving the reasons for the action.

THEODORE ROOSEVELT.

**WAR DEPARTMENT ORDER DISCHARGING WITHOUT HONOR
ENLISTED MEN OF COMPANIES B, C, AND D, TWENTY-FIFTH
INFANTRY.**

SPECIAL ORDERS, }
No. 266. }

WAR DEPARTMENT,
Washington, November 9, 1906.

EXTRACT.

1. By direction of the President, the following-named enlisted men who, on August 13, 1906, were members of Companies B, C, and D, Twenty-fifth Infantry, certain members of which organizations participated in the riotous disturbance which occurred in Brownsville, Tex., on the night of August 13, 1906, will be discharged without honor from the Army by their respective commanding officers and forever debarred from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government:

Company B, Twenty-fifth Infantry.

First Sergt. Mingo Sanders; Q. M. Sergt. Walker McCurdy; Sergts. James R. Reid, George Jackson, and Luther T. Thornton; Corpls. Jones A. Coltrane, Edward L. Daniels, Ray Burdett, Wade H. Wat-

lington, and Anthony Franklin; Cooks Leroy Horn and Solomon Johnson; Musician Henry Odom; Privates James Allen, John B. Anderson, William Anderson, Battier Bailey, James Bailey, Elmer Brown, John Brown, William Brown, William J. Carlton, Harry Carmichael, George Conn, John Cook, Charles E. Cooper, Boyd Conyers, Lawrence Daniel, Carolina De Saussure, Ernest English, Shepherd Glenn, Isaac Goolsby, William Harden, Charley Hairston, John Holomon, James Johnson, Frank Jones, Henry Jones, William J. Kernan, George Lawson, Willie Lemons, Samuel McGhee, George W. Mitchell, Isaiah Raynor, Stansberry Roberts, William Smith, Thomas Taylor, William Thomas, Alexander Walker, Edward Warfield, Julius Wilkins, Alfred N. Williams, Brister Williams, and Joseph L. Wilson.

Company C, Twenty-fifth Infantry.

Q. M. Sergt. George W. McMurray; Sergts. Samuel W. Harley, Newton Carlisle, Darby W. O. Brawner, and George Thomas; Corples. Charles H. Madison, Solomon P. O'Neil, Preston Washington, Willie H. Miller, and John H. Hill; Cooks George Grier and Lewis J. Baker; Musicians James E. Armstrong and Walter Banks; Artificer Charles E. Rudy; Privates Clifford I. Adair, Henry W. Arvin, Charles W. Askew, Frank Bounsler, Robert L. Collier, Erasmus T. Dabbs, Mark Garmon, George W. Gray, Joseph H. Gray, James T. Harden, George W. Harris, John T. Hawkins, Alphonso Holland, Thomas Jefferson, Edward Johnson, George Johnson, John Kirkpatrick, Edward Lee, Frank J. Lipscomb, West Logan, William Mapp, William McGuire, jr., Thomas L. Mosley, Andrew Mitchell, James W. Newton, George W. Perkins, James Perry, Oscar W. Reid, Joseph Rogers, James Sinkler, Calvin Smith, George Smith, John Smith, John Streater, Robert Turner, Leartis Webb, Lewis Williams, and James Woodson.

Company D, Twenty-fifth Infantry.

First Sergt. Israel Harris; Q. M. Sergt. Thomas J. Green; Sergts. Jerry E. Reeves and Jacob Frazier; Corples. Temple Thornton, David Powell, Winter Washington, Albert Roland, and James H. Ballard; Musicians Hoytt Robinson and Joseph Jones; Cooks Charles Dade and Robert Williams; Artificer George W. Newton; Privates Samuel Wheeler, Charles Hawkins, Henry Barclay, Sam M. Battle, Henry T. W. Brown, John Butler, Richard Crooks, Strowder Darnell, Elias Gant, James C. Gill, John Green, Alonzo Haley, George W. Hall, Barney Harris, Joseph H. Howard, John A. Jackson, Benjamin F. Johnson, Walter Johnson, Charles Jones, John R. Jones, William E. Jones, William R. Jones, Edward Jordan, Wesley Mapp, William A. Matthews, James Newton, Elmer Peters, Len Reeves, Edward Robinson, Henry Robinson, Robert L. Rogan, Samuel E. Scott, Joseph Shanks, John Slow, Zachariah Sparks, William Van Hook, Edward Wickersham, and Dorsie Willis.

Company A, Twenty-fifth Infantry.

Privates James A. Simmons and August Williams.

Company G, Twenty-fifth Infantry.

Private James Duncan.

Unassigned, Twenty-fifth Infantry.

Private Perry Cisco.

Troop C, Ninth Cavalry.

Privates Alexander Ash, Taylor Stroudemire, and Robert James.

Troop H, Tenth Cavalry.

Private John W. Lewis.

The discharge certificate in each case will show that the discharge without honor is in consequence of paragraph 1, Special Orders, No. 266, War Department, November 9, 1906. These soldiers are entitled to travel pay.

* * * * *

By order of the Acting Secretary of War:

ARTHUR MURRAY,
Chief of Artillery, Acting Chief of Staff.

Official:

HENRY P. McCAIN,
Military Secretary.

FORM OF DISCHARGE CERTIFICATE USED IN DISCHARGING ENLISTED MEN PURSUANT TO SPECIAL ORDERS, NO. 266, WAR DEPARTMENT, NOVEMBER 9, 1906.

ARMY OF THE UNITED STATES.

To all whom it may concern:

Know ye, That _____, a _____ of _____ of the _____ Regiment of _____, who was enlisted the _____ day of _____, one thousand nine hundred and _____, to serve _____ years, is hereby discharged without honor from the Army of the United States, in consequence of _____.

Said _____ was born in _____, in the State of _____, and when enlisted was _____ years of age, by occupation a _____, had _____ eyes, _____ hair, _____ complexion, and was _____ feet _____ inches in height.

Given under my hand, at _____, this _____ day of _____, one thousand nine hundred and _____.

_____,
_____,
Commanding _____.

PRESIDENT'S MESSAGES.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING CERTAIN DOCUMENTS, CORRESPONDENCE, ETC.

[DECEMBER 19, 1906.—Ordered to be printed.]

To the Senate:

In response to Senate resolution of December 6 addressed to me, and to the two Senate resolutions addressed to him, the Secretary of War has, by my direction, submitted to me a report which I herewith send to the Senate, together with several documents, including a letter of General Nettleton and memoranda as to precedents for the summary discharge or mustering out of regiments or companies, some or all of the members of which had been guilty of misconduct.

I ordered the discharge of nearly all the members of Companies B, C, and D, of the Twenty-fifth Infantry by name, in the exercise of my constitutional power and in pursuance of what, after full consideration, I found to be my constitutional duty as Commander in Chief of the United States Army. I am glad to avail myself of the opportunity afforded by these resolutions to lay before the Senate the following facts as to the murderous conduct of certain members of the companies in question and as to the conspiracy by which many of the other members of these companies saved the criminals from justice, to the disgrace of the United States uniform.

I call your attention to the accompanying reports of Maj. Augustus P. Blocksom, of Lieut. Col. Leonard A. Lovering, and of Brig. Gen. Ernest A. Garlington, the Inspector-General of the United States Army, of their investigation into the conduct of the troops in question. An effort has been made to discredit the fairness of the investigation into the conduct of these colored troops by pointing out that General Garlington is a Southerner. Precisely the same action would have been taken had the troops been white—indeed, the discharge would probably have been made in more summary fashion. General Garlington is a native of South Carolina; Lieutenant-Colonel Lovering is a native of New Hampshire; Major Blocksom is a native of Ohio. As it happens, the disclosure of the guilt of the troops was made in the report of the officer who comes from Ohio, and the efforts of the officer who comes from South Carolina were confined to the endeavor to shield the innocent men of the companies in question, if any such there were, by securing information which would enable us adequately to punish the guilty. But I wish it distinctly understood that the fact of the birthplace of either officer is one which I absolutely refuse to consider. The standard of professional honor and of loyalty to the flag and the service is the same for all officers and all enlisted men of the United States Army, and I resent with the keenest indignation any effort to draw any line among them based upon birthplace, creed, or any other consideration of the kind. I should put the same entire faith in these reports if it had happened that they were all made by men coming from some one State, whether in the South or the North, the East or the West, as I now do, when, as it happens, they were made by officers born in different States.

Major Blocksom's report is most careful, is based upon the testimony of scores of eyewitnesses—testimony which conflicted only in nonessentials and which established the essential facts beyond chance

of successful contradiction. Not only has no successful effort been made to traverse his findings in any essential particular, but, as a matter of fact, every trustworthy report from outsiders amply corroborates them, by far the best of these outside reports being that of Gen. A. B. Nettleton, made in a letter to the Secretary of War, which I herewith append, General Nettleton being an ex-Union soldier, a consistent friend of the colored man throughout his life, a lifelong Republican, a citizen of Illinois, and Assistant Secretary of the Treasury under President Harrison.

It appears that in Brownsville, the city immediately beside which Fort Brown is situated, there had been considerable feeling between the citizens and the colored troops of the garrison companies. Difficulties had occurred, there being a conflict of evidence as to whether the citizens or the colored troops were to blame. My impression is that, as a matter of fact, in these difficulties there was blame attached to both sides; but this is a wholly unimportant matter for our present purpose, as nothing that occurred offered in any shape or way an excuse or justification for the atrocious conduct of the troops when, in lawless and murderous spirit, and under cover of the night, they made their attack upon the citizens.

The attack was made near midnight on August 13. The following facts as to this attack are made clear by Major Blocksom's investigation and have not been, and, in my judgment, can not be, successfully controverted. From 9 to 15 or 20 of the colored soldiers took part in the attack. They leaped over the walls from the barracks and hurried through the town. They shot at whomever they saw moving, and they shot into houses where they saw lights. In some of these houses there were women and children, as the would-be murderers must have known. In one house in which there were two women and five children some ten shots went through at a height of about $4\frac{1}{2}$ feet above the floor, one putting out the lamp upon the table. The lieutenant of police of the town heard the firing and rode toward it. He met the raiders, who, as he stated, were about 15 colored soldiers. They instantly started firing upon him. He turned and rode off, and they continued firing upon him until they had killed his horse. They shot him in the right arm (it was afterwards amputated above the elbow). A number of shots were also fired at two other policemen. The raiders fired several times into a hotel, some of the shots being aimed at a guest sitting by a window. They shot into a saloon, killing the bartender and wounding another man. At the same time other raiders fired into another house in which women and children were sleeping, two of the shots going through the mosquito bar over the bed in which the mistress of the house and her two children were lying. Several other houses were struck by bullets. It was at night, and the streets of the town are poorly lighted, so that none of the individual raiders were recognized; but the evidence of many witnesses of all classes was conclusive to the effect that the raiders were negro soldiers. The shattered bullets, shells, and clips of the Government rifles, which were found on the ground, are merely corroborative. So are the bullet holes in the houses, some of which it appears must, from the direction, have been fired from the fort just at the moment when the soldiers left it. Not a bullet hole appears in any of the structures of the fort.

The townspeople were completely surprised by the unprovoked and murderous savagery of the attack. The soldiers were the aggressors

from start to finish. They met with no substantial resistance, and one and all who took part in that raid stand as deliberate murderers, who did murder one man, who tried to murder others, and who tried to murder women and children. The act was one of horrible atrocity, and, so far as I am aware, unparalleled for infamy in the annals of the United States Army.

The white officers of the companies were completely taken by surprise, and at first evidently believed that the firing meant that the townspeople were attacking the soldiers. It was not until 2 or 3 o'clock in the morning that any of them became aware of the truth. I have directed a careful investigation into the conduct of the officers, to see if any of them were blameworthy, and I have approved the recommendation of the War Department that two be brought before a court-martial.

As to the noncommissioned officers and enlisted men, there can be no doubt whatever that many were necessarily privy, after if not before the attack, to the conduct of those who took actual part in this murderous riot. I refer to Major Blocksom's report for proof of the fact that certainly some and probably all of the noncommissioned officers in charge of quarters who were responsible for the gun racks and had keys thereto in their personal possession knew what men were engaged in the attack.

Major Penrose, in command of the post, in his letter (included in the Appendix) gives the reasons why he was reluctantly convinced that some of the men under him—as he thinks, from 7 to 10—got their rifles, slipped out of quarters to do the shooting, and returned to the barracks without being discovered, the shooting all occurring within two and a half short blocks of the barracks. It was possible for the raiders to go from the fort to the farthest point of firing and return in less than ten minutes, for the distance did not exceed 350 yards.

Such are the facts of this case. General Nettleton, in his letter herewith appended, states that next door to where he is writing in Brownsville is a small cottage where a children's party had just broken up before the house was riddled by United States bullets, fired by United States troops, from United States Springfield rifles, at close range, with the purpose of killing or maiming the inmates, including the parents and children who were still in the well-lighted house, and whose escape from death under such circumstances was astonishing. He states that on another street he daily looks upon fresh bullet scars where a volley from similar Government rifles was fired into the side and windows of a hotel occupied at the time by sleeping or frightened guests from abroad who could not possibly have given any offense to the assailants. He writes that the chief of the Brownsville police is again on duty from hospital, and carries an empty sleeve because he was shot by Federal soldiers from the adjacent garrison in the course of their murderous foray; and not far away is the fresh grave of an unoffending citizen of the place, a boy in years, who was wantonly shot down by these United States soldiers while unarmed and attempting to escape.

The effort to confute this testimony so far has consisted in the assertion or implication that the townspeople shot one another in order to discredit the soldiers—an absurdity too gross to need discussion and unsupported by a shred of evidence. There is no question as to the murder and the attempted murders; there is no question that some of the soldiers were guilty thereof; there is no question that many of

their comrades privy to the deed have combined to shelter the criminals from justice. These comrades of the murderers, by their own action, have rendered it necessary either to leave all the men, including the murderers, in the Army, or to turn them all out; and under such circumstances there was no alternative, for the usefulness of the Army would be at an end were we to permit such an outrage to be committed with impunity.

In short, the evidence proves conclusively that a number of the soldiers engaged in a deliberate and concerted attack, as cold-blooded as it was cowardly, the purpose being to terrorize the community and to kill or injure men, women, and children in their homes and beds or on the streets, and this at an hour of the night when concerted or effective resistance or defense was out of the question and when detection by identification of the criminals in the United States uniform was well-nigh impossible. So much for the original crime. A blacker never stained the annals of our Army. It has been supplemented by another, only less black, in the shape of a successful conspiracy of silence for the purpose of shielding those who took part in the original conspiracy of murder. These soldiers were not schoolboys on a frolic. They were full-grown men, in the uniform of the United States Army, armed with deadly weapons, sworn to uphold the laws of the United States, and under every obligation of oath and honor not merely to refrain from criminality, but with the sturdiest rigor to hunt down criminality; and the crime they committed or connived at was murder. They perverted the power put into their hands to sustain the law into the most deadly violation of the law. The non-commissioned officers are primarily responsible for the discipline and good conduct of the men; they are appointed to their positions for the very purpose of preserving this discipline and good conduct, and of detecting and securing the punishment of every enlisted man who does what is wrong. They fill, with reference to the discipline, a part that the commissioned officers are of course unable to fill, although the ultimate responsibility for the discipline can never be shifted from the shoulders of the latter. Under any ordinary circumstances the first duty of the noncommissioned officers, as of the commissioned officers, is to train the private in the ranks so that he may be an efficient fighting man against a foreign foe. But there is an even higher duty, so obvious that it is not under ordinary circumstances necessary so much as to allude to it—the duty of training the soldier so that he shall be a protection and not a menace to his peaceful fellow-citizens, and above all to the women and children of the nation. Unless this duty is well performed, the Army becomes a mere dangerous mob; and if conduct such as that of the murderers in question is not, where possible, punished, and, where this not possible, unless the chance of its repetition is guarded against in the most thoroughgoing fashion, it would be better that the entire Army should be disbanded. It is vital for the Army to be imbued with the spirit which will make every man in it, and above all, the officers and noncommissioned officers, feel it a matter of highest obligation to discover and punish, and not to shield the criminal in uniform.

Yet some of the noncommissioned officers and many of the men of the three companies in question have banded together in a conspiracy to protect the assassins and would-be assassins who have disgraced their

uniform by the conduct above related. Many of these noncommissioned officers and men must have known, and all of them may have known, circumstances which would have led to the conviction of those engaged in the murderous assault. They have stolidly and as one man broken their oaths of enlistment and refused to help discover the criminals.

By my direction every effort was made to persuade those innocent of murder among them to separate themselves from the guilty by helping bring the criminals to justice. They were warned that if they did not take advantage of the offer they would all be discharged from the service and forbidden again to enter the employ of the Government. They refused to profit by the warning. I accordingly had them discharged. If any organization of troops in the service, white or black, is guilty of similar conduct in the future I shall follow precisely the same course. Under no circumstances will I consent to keep in the service bodies of men whom the circumstances show to be a menace to the country. Incidentally I may add that the soldiers of longest service and highest position who suffered because of the order, so far from being those who deserve most sympathy, deserve least, for they are the very men upon whom we should be able especially to rely to prevent mutiny and murder.

People have spoken as if this discharge from the service was a punishment. I deny emphatically that such is the case, because as punishment it is utterly inadequate. The punishment meet for mutineers and murderers such as those guilty of the Brownsville assault is death; and a punishment only less severe ought to be meted out to those who have aided and abetted mutiny and murder and treason by refusing to help in their detection. I would that it were possible for me to have punished the guilty men. I regret most keenly that I have not been able to do so.

Be it remembered always that these men were all in the service of the United States under contracts of enlistment, which by their terms and by statute were terminable by my direction as Commander in Chief of the Army. It was my clear duty to terminate those contracts when the public interest demanded it; and it would have been a betrayal of the public interest on my part not to terminate the contracts which were keeping in the service of the United States a body of mutineers and murderers.

Any assertion that these men were dealt with harshly because they were colored men is utterly without foundation. Officers or enlisted men, white men or colored men, who were guilty of such conduct, would have been treated in precisely the same way; for there can be nothing more important than for the United States Army, in all its membership, to understand that its arms can not be turned with impunity against the peace and order of the civil community.

There are plenty of precedents for the action taken. I call your attention to the memoranda herewith submitted from The Military Secretary's office of the War Department, and a memorandum from The Military Secretary inclosing a piece by ex-Corporal Hesse, now chief of division in The Military Secretary's office, together with a letter from District Attorney James Wilkinson, of New Orleans. The district attorney's letter recites several cases in which white United States soldiers, being arrested for crime, were tried, and every soldier and employee of the regiment, or in the fort at which the soldier was

stationed, volunteered all they knew, both before and at the trial, so as to secure justice. In one case the soldier was acquitted. In another case the soldier was convicted of murder, the conviction resulting from the fact that every soldier, from the commanding officer to the humblest private, united in securing all the evidence in their power about the crime. In other cases, for less offense, soldiers were convicted purely because their comrades in arms, in a spirit of fine loyalty to the honor of the service, at once told the whole story of the troubles and declined to identify themselves with the criminals.

During the civil war numerous precedents for the action taken by me occurred in the shape of the summary discharge of regiments or companies because of misconduct on the part of some or all of their members. The Sixtieth Ohio was summarily discharged on the ground that the regiment was disorganized, mutinous, and worthless. The Eleventh New York was discharged by reason of general demoralization and numerous desertions. Three companies of the Fifth Missouri Cavalry and one company of the Fourth Missouri Cavalry were mustered out of the service of the United States without trial by court-martial by reason of mutinous conduct and disaffection *of the majority of the members of these companies* (an almost exact parallel to my action). Another Missouri regiment was mustered out of service because it was in a state bordering closely on mutiny. Other examples, including New Jersey, Maryland, and other organizations, are given in the inclosed papers.

I call your particular attention to the special field order of Brig. Gen. U. S. Grant, issued from the headquarters of the Thirteenth Army Corps on November 16, 1862, in reference to the Twentieth Illinois. Members of this regiment had broken into a store and taken goods to the value of some \$1,240, and the rest of the regiment, including especially two officers, failed, in the words of General Grant, to "exercise their authority to ferret out the men guilty of the offenses." General Grant accordingly mustered out of the service of the United States the two officers in question, and assessed the sum of \$1,240 against the said regiment as a whole, officers and men to be assessed pro rata on their pay. In its essence this action is precisely similar to that I have taken; although the offense was of course trivial compared to the offense with which I had to deal.

Ex-Corporal Hesse recites what occurred in a United States regular regiment in the spring of 1860. (Corporal Hesse subsequently, when the regiment was surrendered to the Confederates by General Twiggs, saved the regimental colors by wrapping them about his body, under his clothing, and brought them north in safety, receiving a medal of honor for his action.) It appears that certain members of the regiment lynched a barkeeper who had killed one of the soldiers. Being unable to discover the culprits, Col. Robert E. Lee, then in command of the Department of Texas, ordered the company to be disbanded and the members transferred to other companies and discharged at the end of their enlistment, without honor. Owing to the outbreak of the civil war, and the consequent loss of records and confusion, it is not possible to say what finally became of this case.

When General Lee was in command of the Army of Northern Virginia, as will appear from the inclosed clipping from the Charlotte Observer, he issued an order in October, 1864, disbanding a certain battalion for cowardly conduct, stating at the time his regret that there

were some officers and men belonging to the organization who, although not deserving it, were obliged to share in the common disgrace because the good of the service demanded it.

In addition to the discharges of organizations, which are of course infrequent, there are continual cases of the discharge of individual enlisted men without honor and without trial by court-martial. The official record shows that during the fiscal year ending June 30, last, such discharges were issued by the War Department without trial by court-martial in the cases of 352 enlisted men of the Regular Army, 35 of them being on account of "having become disqualified for service through own misconduct." Moreover, in addition to the discharges without honor ordered by the War Department, there were a considerable number of discharges without honor issued by subordinate military authorities under paragraph 148 of the Army Regulations, "where the service has not been honest and faithful—that is, where the service does not warrant reenlistment."

So much for the military side of the case. But I wish to say something additional, from the standpoint of the race question. In my message at the opening of the Congress I discussed the matter of lynching. In it I gave utterance to the abhorrence which all decent citizens should feel for the deeds of the men (in almost all cases white men) who take part in lynchings, and at the same time I condemned, as all decent men of any color should condemn, the action of those colored men who actively or passively shield the colored criminal from the law. In the case of these companies we had to deal with men who in the first place were guilty of what is practically the worst possible form of lynching—for a lynching is in its essence lawless and murderous vengeance taken by an armed mob for real or fancied wrongs—and who in the second place covered up the crime of lynching by standing with a vicious solidarity to protect the criminals.

It is of the utmost importance to all our people that we shall deal with each man on his merits as a man, and not deal with him merely as a member of a given race; that we shall judge each man by his conduct and not his color. This is important for the white man, and it is far more important for the colored man. More evil and sinister counsel never was given to any people than that given to colored men by those advisers, whether black or white, who, by apology and condonation, encourage conduct such as that of the three companies in question. If the colored men elect to stand by criminals of their own race because they are of their own race, they assuredly lay up for themselves the most dreadful day of reckoning. Every farsighted friend of the colored race in its efforts to strive onward and upward should teach first, as the most important lesson, alike to the white man and the black, the duty of treating the individual man strictly on his worth as he shows it. Any conduct by colored people which tends to substitute for this rule the rule of standing by and shielding an evil doer because he is a member of their race, means the inevitable degradation of the colored race. It may and probably does mean damage to the white race, but it means ruin to the black race.

Throughout my term of service in the Presidency I have acted on the principle thus advocated. In the North as in the South I have appointed colored men of high character to office, utterly disregarding the protests of those who would have kept them out of office because they

were colored men. So far as was in my power, I have sought to secure for the colored people all their rights under the law. I have done all I could to secure them equal school training when young, equal opportunity to earn their livelihood, and achieve their happiness when old. I have striven to break up peonage; I have upheld the hands of those who, like Judge Jones and Judge Speer, have warred against this peonage, because I would hold myself unfit to be President if I did not feel the same revolt at wrong done a colored man as I feel at wrong done a white man. I have condemned in unstinted terms the crime of lynching perpetrated by white men, and I should take instant advantage of any opportunity whereby I could bring to justice a mob of lynchers. In precisely the same spirit I have now acted with reference to these colored men who have been guilty of a black and dastardly crime. In one policy, as in the other, I do not claim as a favor, but I challenge as a right, the support of every citizen of this country, whatever his color, provided only he has in him the spirit of genuine and farsighted patriotism.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
December 19, 1906.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING ADDITIONAL TESTIMONY IN THE BROWNSVILLE CASE.

[JANUARY 14, 1907.—Ordered to be printed with maps and illustrations.]

To the Senate:

In my message to the Senate treating of the dismissal, without honor, of certain named members of the three companies of the Twenty-fifth Infantry, I gave the reports of the officers upon which the dismissal was based. These reports were made in accordance with the custom in such cases; for it would, of course, be impossible to preserve discipline in the Army save by pursuing precisely the course that in this case was pursued. Inasmuch, however, as in the Senate question was raised as to the sufficiency of the evidence, I deemed it wise to send Major Blocksom, and Assistant to the Attorney-General Purdy, to Brownsville to make a thorough investigation on the ground in reference to the matter. I herewith transmit Secretary Taft's report, and the testimony taken under oath of the various witnesses examined in the course of the investigation. I also submit various exhibits, including maps of Brownsville and Fort Brown, photographs of various buildings, a letter from Judge Parks to his wife, together with a bandoleer, 33 empty shells, 7 ball cartridges, and 4 clips picked up in the streets of Brownsville within a few hours after the shooting; 3 steel-jacketed bullets and some scraps of the casings of other bullets picked out of the houses into which they had been fired. A telegram from United States Commissioner R. B. Creager, at Brownsville, announces that 6 additional bullets—like the others, from Springfield rifles—taken from buildings in Brownsville, with supporting affidavits, have since been sent to the Secretary of War.

It appears from the testimony that on the night of the 13th of August, 1906, several crimes were committed by some person or persons in the city of Brownsville. Among these were the following:

(a) The murder of Frank Natus.

(b) The assault with intent to kill the lieutenant of police, Dominguez, whose horse was killed under him and whose arm was shot so severely that it had to be amputated.

(c) The assault with intent to kill Mr. and Mrs. Hale Odin, and their little boy, who were in the window of the Miller Hotel.

(d) The shooting into several private residences in the city of Brownsville, three of them containing women and children.

(e) The shooting at and slightly wounding of Preciado.

These crimes were certainly committed by somebody.

As to the motive for the commission of the crimes, it appears that trouble of a more or less serious kind had occurred between individual members of the companies and individual citizens of Brownsville, culminating in complaints which resulted in the soldiers being confined within the limits of the garrison on the evening of the day in question.

The evidence, as will be seen, shows beyond any possibility of honest question that some individuals among the colored troops whom I have dismissed committed the outrages mentioned; and that some or all of the other individuals whom I dismissed had knowledge of the deed and shielded from the law those who committed it.

The only motive suggested as possibly influencing anyone else was a desire to get rid of the colored troops, so strong that it impelled the citizens of Brownsville to shoot up their own houses, to kill one of their own number, to assault their own police, wounding the lieutenant, who had been an officer for twenty years—all with the purpose of discrediting the negro troops. The suggestion is on its face so ludicrously impossible that it is difficult to treat it as honestly made. This theory supposes that the assailants succeeded in obtaining the uniform of the negro soldiers; that before starting on their raid they got over the fence of the fort unchallenged, and without discovery by the negro troops opened fire on the town from within the fort; that they blacked their faces so that at least fourteen eyewitnesses mistook them for negroes; that they disguised their voices so that at least six witnesses who heard them speak mistook their voices as being those of negroes. They were not Mexicans, for they were heard by various witnesses to speak in English. The weapons they used were Springfield rifles; for the ammunition which they used was that of the Springfield rifle and no other, and could not have been used in any gun in Texas or any part of the Union or Mexico, or in any other part of the world, save only in the Springfield now used by the United States troops, including the negro troops in the garrison at Brownsville, and by no other persons save these troops—a weapon which had only been in use by the United States troops for some four or five months prior to the shooting in question, and which is not in the possession of private citizens.

The cartridge used will go into one other rifle used in the United States, when specially chambered—the Winchester of the '95 model—but it will rarely if ever go off when in it; and, moreover, the bullets picked out of the buildings show the markings of the four so-called "lands" which come from being fired through the Springfield, but

not through the Winchester, the latter showing six. The bullets which I herewith submit, which were found in the houses, could not therefore have been fired from a Winchester or any other sporting rifle, although the cartridges might have been put into a Winchester model of '95. The bullets might have been fired from a Krag, but the cartridges would not have gone into a Krag. Taking the shells and the bullets together, the proof is conclusive that the new Springfield rifle was the weapon used by the midnight assassins, and could not by any possibility have been any other rifle of any kind in the world. This of itself establishes the fact that the assailants were United States soldiers, and would be conclusive on this point if not one soldier had been seen or heard by any residents in Brownsville on the night in question, and if nothing were known save the finding of the shells, clips, and bullets.

Fourteen eyewitnesses, namely, Charles R. Chase, Amado Martinez, Mrs. Kate Leahy, Palermo Preciado, Ygnacio Dominguez, Macedonio Ramirez, George W. Rendall, Jose Martinez, J. P. McDonald, F. H. A. Sanborn, Herbert Elkins, Hale Odin, Mrs. Hale Odin, and Judge Parks, testified that they saw the assailants or some of them at varying distances, and that they were negro troops, most of the witnesses giving their testimony in such shape that there is no possibility of their having been mistaken. Two other witnesses, Joseph Bodin and Genero Padron, saw some of the assailants and testified that they were soldiers (the only soldiers in the neighborhood being the colored troops). Four other witnesses, namely, S. C. Moore, Doctor Thorn, Charles S. Canada, and Charles A. Hammond, testified to hearing the shooting and hearing the voices of the men who were doing it, and that these voices were the voices of negroes, but did not actually see the men who were doing the shooting. About 25 other witnesses gave testimony corroborating to a greater or less degree the testimony of those who thus saw the shooters or heard them. The testimony of these eye and ear witnesses would establish beyond all possibility of contradiction the fact that the shooting was committed by ten or fifteen or more of the negro troops from the garrison, and this testimony of theirs would be amply sufficient in itself if not a cartridge or bullet had been found; exactly as the bullets and cartridges that were found would have established the guilt of the troops even had not a single eyewitness seen them or other witness heard them.

The testimony of the witnesses and the position of the bullet holes show that fifteen or twenty of the negro troops gathered inside the fort, and that the first shots fired into the town were fired from within the fort; some of them at least from the upper galleries of the barracks.

The testimony further shows that the troops then came out over the walls, some of them perhaps going through the gate, and advanced a distance of 300 yards or thereabouts into the town. During their advance they shot into two hotels and some nine or ten other houses. Three of the private houses into which they fired contained women and children. They deliberately killed Frank Natus, the bartender, shooting him down from a distance of about 15 yards. They shot at a man and woman, Mr. and Mrs. Odin, and their little boy, as they stood in the window of the Miller Hotel, the bullet going less than 2 inches from the head of the woman. They shot down the lieutenant of police,

who was on horseback, killing his horse and wounding him so that his arm had to be amputated. They attempted to kill the two policemen who were his companions, shooting one through the hat. They shot at least 8 bullets into the Cowen house, putting out a lighted lamp on the dining-room table. Mrs. Cowen and her five children were in the house; they at once threw themselves prone on the floor and were not hit. They fired into the Starck house, the bullets going through the mosquito bar of a bed from 18 to 20 inches above where little children were sleeping. There was a light in the children's room.

The shooting took place near midnight. The panic caused by the utterly unexpected attack was great. The darkness, of course, increased the confusion. There is conflict of testimony on some of the minor points, but every essential point is established beyond possibility of honest question. The careful examination of Mr. Purdy, assistant to the Attorney-General, resulted merely in strengthening the reports already made by the regular army authorities. The shooting, it appears, occupied about ten minutes, although it may have been some minutes more or less. It is out of the question that the fifteen or twenty men engaged in the assault could have gathered behind the wall of the fort, begun firing, some of them on the porches of the barracks, gone out into the town, fired in the neighborhood of 200 shots in the town, and then returned—the total time occupied from the time of the first shot to the time of their return being somewhere in the neighborhood of ten minutes—without many of their comrades knowing what they had done. Indeed, the fuller details as established by the additional evidence taken since I last communicated with the Senate make it likely that there were very few, if any, of the soldiers dismissed who could have been ignorant of what occurred. It is well-nigh impossible that any of the noncommissioned officers who were at the barracks should not have known what occurred.

The additional evidence thus taken renders it in my opinion impossible to question the conclusions upon which my order was based. I have gone most carefully over every issue of law and fact that has been raised. I am now satisfied that the effect of my order dismissing these men without honor was not to bar them from all civil employment under the Government, and therefore that the part of the order which consisted of a declaration to this effect was lacking in validity, and I have directed that such portion be revoked. As to the rest of the order, dismissing the individuals in question without honor, and declaring the effect of such discharge under the law and regulations to be a bar to their future reenlistment either in the Army or the Navy, there is no doubt of my constitutional and legal power. The order was within my discretion, under the Constitution and the laws, and can not be reviewed or reversed save by another Executive order. The facts did not merely warrant the action I took—they rendered such action imperative unless I was to prove false to my sworn duty.

If any one of the men discharged hereafter shows to my satisfaction that he is clear of guilt, or of shielding the guilty, I will take what action is warranted; but the circumstances I have above detailed most certainly put upon any such man the burden of thus clearing himself.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
January 14, 1907.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATING TO THE EXTENSION BY ACT OF CONGRESS OF TIME LIMIT FOR REINSTATEMENT OF SOLDIERS DISCHARGED WITHOUT HONOR FROM COMPANIES B, C, AND D, TWENTY-FIFTH INFANTRY.

[March 11, 1908.—Read; referred to the Committee on Military Affairs and ordered to be printed.]

To the Senate:

On December 12, 1906, the Secretary of War by my direction issued the following order:

“Applications to reenlist from former members of Companies B, C, and D, Twenty-fifth Infantry, who were discharged under the provisions of Special Orders, No. 266, War Department, November 9, 1906, must be made in writing and be accompanied by such evidence, also in writing, as the applicant may desire to submit to show that he was neither implicated in the raid on Brownsville, Tex., on the night of August 13, 1906, nor withheld any evidence that might lead to the discovery of the perpetrators thereof.”

Proceedings were begun under this order; but shortly thereafter an investigation was directed by the Senate, and the proceedings under the order were stopped. The Senate committee intrusted with the work has now completed its investigation, and finds that the facts upon which my order of discharge of November 9, 1906, was based are substantiated by the evidence. The testimony secured by the committee is therefore now available, and I desire to revive the order of December 12, 1906, and to have it carried out in whatever shape may be necessary to achieve the purpose therein set forth; any additional evidence being taken which may be of aid in the ascertainment of the truth. The time limit during which it was possible to reinstate any individual soldier in accordance with the terms of this order has, however, expired. I therefore recommend the passage of a law extending this time limit, so far as the soldiers concerned are affected, until a year after the passage of the law, and permitting the reinstatement by direction of the President of any man who in his judgment shall appear not to be within the class whose discharge was deemed necessary in order to maintain the discipline and morale of the Army.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 11, 1908.*

MAJORITY AND MINORITY REPORTS OF SENATE COMMITTEE ON
MILITARY AFFAIRS.

MARCH 11, 1908.—Ordered to be printed.

[PART I.]

MR. WARREN, from the Committee on Military Affairs, submitted the following

REPORT.

[Pursuant to Senate resolution No. 208, 59th Cong., 2d sess., agreed to January 22, 1907.]

The Committee on Military Affairs, pursuant to the authority and direction given it by the following resolution—

Resolved, That, without questioning the legality or justice of any act of the President in relation thereto, the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the affray at Brownsville, Texas, on the night of August thirteenth-fourteenth, nineteen hundred and six. Said committee is authorized to send for persons and papers, to administer oaths, to sit during sessions or recess of the Senate, and, if deemed advisable, at Brownsville, or elsewhere; the expenses of the investigation to be paid from the contingent fund of the Senate—

hereby reports to the Senate due performance of the duty imposed upon it, and presents herewith three large volumes of testimony given before the committee, two volumes of proceedings of general courts-martial which sat in San Antonio, Tex., to investigate certain charges growing out of the Brownsville affray, and one volume (in three parts) containing the President's messages regarding the Brownsville affray (S. Doc. 155, 59th Cong., 2d sess., pts. 1 and 2); letter from the Secretary of War transmitting additional testimony and exhibits (pt. 3); these volumes covering, in all, nearly 6,000 pages. Each volume of matter has been fully and carefully indexed under the direction of your committee for the convenience of the Senate.

The committee commenced taking testimony February 4, 1907, and continued until June 14, 1907. Meetings were again resumed November 18, 1907, and concluded March 10, 1908. One hundred and sixty or more witnesses were brought before the committee and testified under direct and cross examination. All documents (regular and irregular), printed matter, letters, telegrams, petitions, etc., pertaining to the case were laid before the committee and received due consideration.

There is considerable contradiction in the testimony. Much of it is, however, upon irrelevant and immaterial points.

Taking the evidence as a whole, and reconciling it where possible, and giving it due and proper weight in view of admitted facts and circumstances, your committee has considered and agreed to the following resolutions:

First. That in the opinion of this committee the shooting in the affray at Brownsville, on the night of August 13-14, 1906, was done

by some of the soldiers belonging to the Twenty-fifth United States Infantry then stationed at Fort Brown, Tex.

Second. That the testimony fails to identify the particular soldier or soldiers who participated in the shooting affray at Brownsville, Tex., on the night of August 13-14, 1906.

The following facts, in the opinion of your committee, have been proven and established:

About the hour of midnight on the night of August 13-14, 1906, a number of soldiers of the First Battalion, Twenty-fifth U. S. Infantry, then stationed at Fort Brown, Tex., armed with the new model (1903) Springfield rifle and Government ammunition, then in use in that battalion, jumped over the wall of the Government reservation separating the post from the town, went hurriedly into the nearby town of Brownsville, and wantonly shot into the houses and attacked the citizens thereof. This squad of soldiers, numbering, perhaps, not less than eight nor more than twenty, deliberately attacked and shot at citizens wherever seen in the streets, and shot into many houses. They fired into hotels filled with guests, and into residences occupied by men, women, and children. In fact, their conduct indicated a wanton purpose to terrorize the inhabitants of the town, and to kill and destroy with utter and reckless disregard of age, sex, or condition of helplessness. In carrying out their unlawful purpose they respected neither the sanctity of the home nor the innocence and helplessness of women and children. They fired into houses where women and children were sleeping, in some instances the bullets passing through the rooms and only a few feet over the beds in which the people were lying.

In this midnight raid one unoffending citizen, Frank Natus, was killed in his place of business; the lieutenant of police, M. Ygnacio Dominguez, was so severely wounded in the arm that amputation was necessary; the horse he was riding was killed under him; and the inhabitants of the town, men, women, and children, were aroused to a high state of excitement and fear.

We believe that the above facts are clearly established by incontestable evidence. Fifteen eyewitnesses testified that they saw and recognized the raiders who did the shooting as persons dressed in the uniforms of United States soldiers, with guns, and most of these witnesses recognized them as negroes. Two witnesses testified that they saw a number of men (one recognizing them as soldiers) on the inside of the wall of the reservation, moving rapidly to the point where they went over the wall. Five witnesses testified to firing occurring inside the wall of the fort. One witness heard voices inside the wall of the reservation calling to others to "Hurry up!" to "Jump!" etc., and heard the men when they jumped the wall and proceeded up the alley where the firing continued. Several witnesses, who were situated so as not to be able to see, heard the voices of members of the attacking party, and recognized them as the voices of negroes. They spoke in English. One witness saw a negro soldier, with his gun, returning from the direction of the town where the firing had occurred, and saw him enter the reservation immediately after the shooting had ceased. Three witnesses testified as to having seen the men, carrying their guns, running back in the direction of the fort immediately after the shooting ceased, and others to having heard them. The greatest distance from the fort at which any firing occurred did not exceed three hundred and fifty yards, and the entire time consumed in the raid was probably not more than ten or twelve minutes.

These witnesses, so far as the committee could ascertain, were respectable and trustworthy people; no one of them was impeached; neither was his or her reputation for honesty or truthfulness seriously questioned. The testimony of these witnesses alone would be sufficient to establish the fact beyond reasonable question that the shooting was done by negro soldiers, and there were no negro soldiers in that part of the country except those of Companies B, C, and D, of the Twenty-fifth Infantry.

But there are other facts and circumstances corroborative of the positive testimony of the eyewitnesses which, when taken in connection therewith, are conclusive of the guilt of some of said soldiers:

First. There is no evidence whatever on which to base a claim that the shooting was done by any person or persons other than by soldiers of the Twenty-fifth Infantry. There was no class of people or individuals in that vicinity known to entertain any hostility toward the people of Brownsville. There was no friction between the citizens and the police, nor ill feeling of one part of the citizenship against any other part.

Second. Early in the morning of August 14, soon after the shooting, there were picked up in the streets of Brownsville, at the points where the firing had occurred, a large number of empty shells, some loaded cartridges, clips, and one bandolier. Of this ammunition picked up in the streets, 32 empty shells, 7 loaded cartridges, 2 or 3 clips, and 1 bandolier were presented in evidence to this committee and identified as those manufactured for and used with the Springfield rifle, model of 1903, with which the colored battalion was armed. A number of bullets were extracted from the houses into which they had been fired on the night of August 13-14, 1906, and were found to be substantially of the weight, size, and material, as shown by analyses, of those used in the Springfield rifle.

It further appears from the marks of the four lands upon the bullets, from actual tests and other evidence, that these cartridges, with these bullets and shells in combination, could not have been fired from any gun other than the Springfield rifle, model of 1903, and that the only rifles of that kind in that section of the country were those with which the First Battalion, Twenty-fifth Infantry, was armed.

It was further established from the sound of the explosions that the firing was from high-power rifles. Many witnesses testified to the peculiar sound made by loading the guns and working the levers in extracting the empty shells during the progress of the firing as similar to that made by the Springfield rifle.

From the foregoing facts and circumstances, and many others corroborative thereof to be found in the voluminous evidence taken, we do not entertain any doubt that the midnight attack of August 13-14, 1906, on the people of Brownsville was made by members of the First Battalion of the Twenty-fifth Infantry.

Third. Although the committee has devoted much time to the investigation and has diligently followed every clue that has been suggested, and while the proof is abundant and conclusive that members of the Twenty-fifth Infantry were the perpetrators of this unprovoked attack, the evidence, we regret to say, fails to identify the particular soldier or soldiers who participated in the affray. It is perfectly manifest, however, both from the nature and character of the attack and the number of persons engaged in it, that it was preconcerted and prob-

ably deliberately planned and executed. And it is reasonably certain that soldiers who did not actually participate in the attack must have known of it and aided those actively engaged in it in procuring their arms and ammunition and in concealing their identity when they returned.

When we consider the fact that from ten to twenty guns had to be taken from the garrison, some of them from the gun racks, supposedly locked, and located near to the sleeping bunks of the soldiers upstairs; when we consider the testimony with relation to the first firing—that it was within the reservation wall; that there were a number of shots fired from the upper porches of the barracks; when we consider the fact of the firing of volley after volley by from ten to twenty men, beginning just back of the barracks, extending into the town, and lasting from ten to twelve minutes; that this shooting began within 400 or 500 feet of a guard, with a sergeant and several privates on duty; that the participants had to return to the reservation after the firing had ceased and join their companies, then being formed, we are forced to the conclusion that soldiers other than those who actively participated in the raid must have known of what was taking place, and were aiders and abettors thereof, either before or after the fact.

F. E. WARREN.

H. C. LODGE.

WM. WARNER.

H. A. DU PONT.

JAMES P. TALIAFERRO.

MURPHY J. FOSTER.

LEE S. OVERMAN.

J. B. FRAZIER.

JAMES B. MCCREARY.

The undersigned members of your committee desire to add the following to the above report:

While under the evidence it has been shown that the assault was perpetrated by members of the aforesaid battalion, it is reasonable to believe, as appears in the report of the committee, that all the soldiers were not concerned in the commission of the crime, either as principals or accessories.

It is unquestionably true that in military administration the maintenance of discipline is ever a primary consideration and of paramount importance, for without it no degree of efficiency can be attained or preserved. Hence, it will sometimes happen that honest and guiltless men must be subjected to injustice to the end that vicious men may be deprived of the opportunity to weaken or destroy the morale of the Army. In the present case, however, it would seem but justice to restore to all the innocent men of these companies the rights and privileges which had accrued to them by reason of their previous service in the Army, and of which they will be permanently deprived unless their former status shall be restored by legislation, for the reason that under existing statutes the time has already expired in which they could have reenlisted and secured the benefits of their prior service had they been honorably discharged because of the expiration of their several terms of enlistment.

On many occasions in the past the Nation has had reason to be proud of the enlisted men serving in the four colored regiments of our Regular Army. The action of the soldiers who participated in or with-

held knowledge of the attack on the town of Brownsville was not only a crime under the statutes of the United States, but was also a grievous wrong to their colored comrades in the Army, whose good name and fame it should have been their duty to sustain.

We recommend the enactment of a bill reading as follows:

"A BILL For the relief of certain former members of the Twenty-fifth Regiment of United States Infantry.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if at any time within one year after the approval of this Act the President shall be satisfied that any former enlisted man of the Twenty-fifth Regiment of United States Infantry, who was discharged from the military service as a member of said regiment under the provisions of a special order numbered two hundred and sixty-six, and dated at the War Department on the ninth day of November, nineteen hundred and six, had no participation in or guilty knowledge of the affray that took place at Brownsville, Texas, on the night of August thirteenth-fourteenth, nineteen hundred and six, the President may authorize the enlistment of said man, and any man who shall enlist in the military service under authority so given by the President shall be held and considered, from the date of his enlistment under such authority, to have reenlisted on said date and to be entitled to the pay, allowances, and other rights and benefits that he would be entitled to receive from said date of enlistment if he had been honorably discharged under the provisions of the special order hereinbefore cited and had reenlisted immediately."

F. E. WARREN.
H. C. LODGE.
WM. WARNER.
H. A. DU PONT.

[PART II.]

Mr. SCOTT, from the Committee on Military Affairs, submitted the following as the

VIEWS OF A MINORITY.

[Pursuant to Senate resolution No. 208, 59th Cong., 2d sess., agreed to January 22, 1907.]

On August 13, 1906, about midnight, a shooting affray occurred in the city of Brownsville, Tex., in which Frank Natus, a bartender in the Ruby saloon, was killed; M. Ygnacio Dominguez, a lieutenant of police, was wounded and had his horse shot under him.

At this time Companies B, C, and D, of the First Battalion of the Twenty-fifth U. S. Infantry, colored, were at Fort Brown, Brownsville, Tex., which has a population of from 6,000 to 8,000 people, of which perhaps five-sixths are Mexican. After an investigation by the War Department, the following order was issued on November 9, 1906:

SPECIAL ORDERS, }
No. 266. }

WAR DEPARTMENT,
Washington, November 9, 1906.

1. By direction of the President, the following-named enlisted men, who on August 13, 1906, were members of Companies B, C, and D, Twenty-fifth Infantry, certain members of which organizations participated in the riotous disturbance which occurred in Brownsville, Tex., on the night of August 13, 1906, will be discharged without honor from the Army by their respective commanding officers and forever debarred

from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government. * * *

By order of the Acting Secretary of War:

ARTHUR MURRAY,
Chief of Artillery, Acting Chief of Staff.

Official:

HENRY P. McCAIN,
Military Secretary.

On the 2d day of December, 1906, the following resolution was adopted by the United States Senate:

Resolved, That, without questioning the legality or justice of any act of the President in relation thereto, the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the affray at Brownsville, Texas, on the night of August thirteenth-fourteenth, nineteen hundred and six. Said committee is authorized to send for persons or papers, to administer oaths, to sit during sessions or recess of the Senate, and, if deemed advisable, at Brownsville or elsewhere, the expenses of the investigation to be paid from the contingent fund of the Senate.

Pursuant to the above resolution, the Committee on Military Affairs took "testimony for the purpose of ascertaining all of the facts with reference to or connected with the affray at Brownsville, Tex., on the night of August 13-14, 1906."

The testimony taken was as thorough as it was possible to obtain, but it is very unsatisfactory, indefinite, and conflicting in its nature.

We have been unable to arrive at any conclusions as to what motive could be alleged that the colored troops might have had to incite them to do this shooting. The only evidence produced which would in any way give the least color to a motive is the evidence that shows that there were eight gambling houses conducted in connection with saloons in the city of Brownsville, Tex., and that while the white soldiers were stationed at Brownsville a number of them frequented the saloons and gambling houses and that these gambling houses profited largely from their patronage, and that under the rules of the gambling houses the colored soldiers could not be admitted. This resulted in great loss of business to these concerns, and it is evident that the parties engaged in the gambling and saloon business were extremely anxious to have the colored troops withdrawn from Brownsville and replaced by white soldiers. We are led to doubt, however, whether or not the gamblers who conducted these eight places in Brownsville, Tex., have given the committee as complete information as they could give in regard to this shooting affray.

While Major Penrose and other officers of the battalion at first concluded that some of the members of these companies were guilty, yet they later became convinced that the men of the battalion had nothing whatever to do with the shooting, and so testified before the Committee on Military Affairs. It should be remembered in this connection that these officers are white men and some of them born and reared in the South.

It is proper to note in this connection that a grand jury of citizens of Cameron County, Tex., after investigation, failed to find sufficient evidence to indict the members of this battalion who were suspected and who were held at Fort Sam Houston, Tex., awaiting action by the grand jury.

We have not felt that the conflicting and circumstantial evidence given by many of those who testified against the members of this

battalion should be given more consideration, and in many instances even as much consideration, as the testimony of the officers and of the soldiers themselves, many of whom had served their country loyally and faithfully for a number of years, and some of whom have been wounded in battle, having participated in the Indian wars, in the Spanish-American war, and in the Philippine service.

The strongest evidence, if undisputed, implicates no greater number than from 7 to 12, and even if it were admitted for the sake of argument that from 7 to 12 of these soldiers were guilty (which fact has not been proven), that fact could not, in our opinion, justify a discharge of the whole battalion without honor.

It is not our purpose nor desire to uphold any guilty party nor to criticise necessary army discipline, but we do feel that it is essential to stand by those who are giving their services to their country and who obey the law. The persons who were guilty of the shooting affray at Brownsville, Tex., should be severely punished—after they are proven guilty.

Therefore, having carefully considered all the testimony, we have reached the following conclusions:

1. The testimony wholly fails to identify the particular individuals, or any of them, who participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

2. The testimony wholly fails to show that the discharged soldiers of the Twenty-fifth U. S. Infantry, or any of them, entered into any agreement or so-called "conspiracy of silence," or that they had among themselves any understanding of any nature to withhold any information of which they, or any of them, might be possessed concerning the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

3. The testimony is so contradictory, and much of it so unreliable, that it is not sufficient to sustain the charge that soldiers of the Twenty-fifth U. S. Infantry, or any of them, participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

4. Whereas the testimony shows that the discharged men had a good record as soldiers, and that many of them had by their long and faithful service acquired valuable rights of which they are deprived by a discharge without honor; and

Whereas the testimony shows beyond a reasonable doubt that whatever may be the fact as to who did the shooting, many of the men so discharged were innocent of any offense in connection therewith; therefore it is, in our opinion, the duty of Congress to provide by appropriate legislation for the correction of their record and for their reenlistment and reinstatement in the Army, and for the restoration to them of all the rights of which they have been deprived, and we so recommend.

N. B. SCOTT.
J. B. FORAKER.
J. A. HEMENWAY.
M. G. BULKELEY.

Mr. Foraker and Mr. Bulkeley, in addition to the conclusions set forth in the foregoing minority report, make also the following finding, namely:

The weight of the testimony shows that none of the soldiers of the Twenty-fifth U. S. Infantry participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

J. B. FORAKER,
M. G. BULKELEY.

[PART III.]

Mr. FORAKER, from the Committee on Military Affairs, on behalf of himself and Mr. Bulkeley, submitted the following

VIEWS.

[Pursuant to Senate resolution No. 208, 59th Cong., 2d sess., agreed to January 22, 1907.]

The Committee on Military Affairs having completed the investigation authorized by the following resolution (Senate resolution 208, Fifty-ninth Congress, second session, January 21, 1907):

Resolved, That, without questioning the legality or justice of any act of the President in relation thereto, the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the affray at Brownsville, Texas, on the night of August thirteenth-fourteenth, nineteen hundred and six. Said committee is authorized to send for persons and papers, to administer oaths, to sit during sessions or recess of the Senate, and, if deemed advisable, at Brownsville or elsewhere; the expenses of the investigation to be paid from the contingent fund of the Senate—

Mr. FORAKER, with leave of the committee and the Senate, on behalf of Mr. Bulkeley and himself, submitted the following report of their views of the testimony in support of the conclusions reached by them.

I.

THE AFFRAY.

On the night of Monday, August 13, 1906, commencing about eight or ten minutes before midnight, a shooting affray occurred in the town of Brownsville, Tex., in the course of which one man, a private citizen by the name of Frank Natus, employed at the time as a barkeeper in the Ruby saloon, otherwise known as Tillman's saloon, was killed, and the lieutenant of police, M. Y. Dominguez, was wounded and had his horse shot under him, and another citizen by the name of Paulino S. Preciado, the editor of a newspaper, called *El Porvenir*, published in Brownsville, in the Spanish language, claimed to have been slightly injured by a bullet grazing the back of his hand and passing through his clothing, striking and injuring a pair of spectacles he carried in his pocket.

OFFICERS OF BATTALION.

Companies B, C, and D of the First Battalion of the Twenty-fifth United States Infantry, colored, were at the time stationed at Fort Brown.

The commanding officer of the battalion and the post was Maj. Charles W. Penrose.

The companies were respectively commanded as follows: B Company, by Second Lieut. George C. Lawrason; C Company, by Capt. E. A. Macklin; D Company, by Capt. Samuel P. Lyon; Lieut. Harry S. Grier was quartermaster and commissary of the post, and also acting adjutant.

Major Penrose, Lieutenant Lawrason, and Lieutenant Grier were all graduates of West Point: Major Penrose of the class of 1884, Lieutenant Grier of the class of 1899, Lieutenant Lawrason of the class of 1904.

Captain Macklin was appointed from civil life in 1892. He has been in the service fifteen years, and been a commissioned officer since July 9, 1898. Captain Lyon entered the service as an enlisted man in 1890, and was promoted to the rank of a commissioned officer in 1895.

These officers had therefore, respectively, been in the service: Major Penrose, for twenty-seven years, including four years at the Academy; Captain Lyon, seventeen years; Captain Macklin, fifteen years; Lieutenant Grier, twelve years, including four years at the Academy; Lieutenant Lawrason, seven years, including four years at the Academy.

The testimony shows that the record of each down to the time of this shooting affray was without any kind of stain or blemish, and that all these officers were of high character not only as officers of the Army, but as men; that they were honorable, upright, truthful, and trustworthy in every sense of the word.

ENLISTED MEN OF THE BATTALION.

The testimony further shows that these three companies had, to quote the exact language of Major Blocksom, "an excellent reputation up to the 13th of August," the date of the shooting.

This statement of Major Blocksom is confirmed by even stronger and more elaborate statements by every witness familiar with the record of these companies who testified on the subject.

There will be found in the record official reports from the War Department of two or three shooting affrays and difficulties of one kind and another occurring during the forty years of service since the regiment was organized with which other companies of the Twenty-fifth Infantry were identified, or in which they had some kind of participation, or to which they had some kind of relation, or for which they had some sort of responsibility, but, so far as these three companies which were at Brownsville are concerned, there is no stain whatever on the record of any one of them. No company in all the Army had any clearer or better record for discipline and for the general conduct of the men belonging to it than had each and all of these companies down to August 13, 1906.

Almost all the men in these companies had served more than one enlistment. Their respective terms of service ranged in duration all the way from five or six years up to more than twenty years. One of them, Sergt. Mingo Sanders, of Company B, had served continuously for twenty-six years; a part of that service had been outside of the United States, and for that reason he was entitled to double time therefor, on account of which he would have been entitled after

eighteen months of additional service to retire on three-quarters pay and with all the rights and allowances provided by law for men who serve continuously for thirty years.

The following extracts from the evidence given by the different witnesses named show the exceptionally high character of the men of these three companies and their good record as soldiers:

Major PENROSE says, as to character of men (page 3023):

By Senator FORAKER:

Q. Now, something was said by Captain Kelly (a citizen of Brownsville) and some others about your troops being not well disciplined. Can you tell us what the record of your battalion is in that respect, down to the 13th of August?—A. I think the records will show, sir, that it was an excellently disciplined battalion.

Q. And well drilled?—A. Well drilled. I consider it one of the best that I have ever seen.

Q. Were the men of a character hard to get along with or otherwise?—A. No, sir; they were very easy to discipline.

Q. As a rule, deported themselves well?—A. As a rule, they behaved themselves very well. That can be borne out by the records of the post, the summary court record, the records of courts-martial, and also, I think, by any officers who have seen them, either before this occurrence or afterwards.

Q. Now, afterwards, since August 13, and particularly since they have been discharged, what has been their records, in so far as you know, as to deporting themselves properly?—A. So far as I know, their record has been excellent. I know at the time of their discharge, when we were discharging them at Fort Reno, I was in constant communication with the chief of police at El Reno, the town 5 miles distant, and he told me that he did not see a drunken man nor did he have any disorder among those men of any kind. He told me that he would not know that the men were being discharged at all.

* * * * *

Finally the order came for their discharge. They were discharged at that post, a half a company at a time. They were paid off. They had anywhere from fifty to sixty dollars to—some of them—twelve or thirteen hundred dollars. They went to this little town, which was full of temptations, and, as I stated before, there was not a single man found drunk nor was there a disturbance of any kind or character reported of these men, and I talked with the chief of police over the telephone frequently. Now, taking into consideration the conduct of these men both before and afterwards, and what I have before stated, leads me to believe that the men did not do that shooting.

* * * * *

(Page 3103.)

By Senator HEMENWAY:

Q. Do you know Captain Kelly?—A. Capt. William Kelly?

Q. Yes.—A. Yes, sir.

Q. You heard his statement, or heard of his statement, before this committee that he would be as quick to believe the colored soldiers as he would the Mexican residents, barring a few of the leading families, did you, and that he would not care to believe either?—A. Yes, sir; I have heard that he made such a statement.

Q. How many men in your battalion had been under fire, either in battles or in skirmishes?—A. Well, I do not know that I could answer that positively at all, Senator, but as a rough estimate I should think that there probably were 30 per cent of them, maybe 40 per cent of them.

Q. From your knowledge of these men, their bravery in battle, following the flag of their country, and their general behavior, would you believe them on oath?—A. I would, sir.

Q. You think their evidence should be given the same weight as that of any other American citizen?—A. I do, sir.

Q. You think it equally as good as the testimony of the Mexican residents of Brownsville?—A. Yes, sir; I do.

Brig. Gen. ANDREW S. BURT (retired 1902) was commander as colonel of the Twenty-fifth Infantry for about ten years. *As to character of men he says* (pages 3189, 3190, 3191, 3192, 3193, and 3195):

Q. Give the stenographer your full name, General, and your present position.—A. Andrew S. Burt, brigadier-general, U. S. Army, retired, Washington, D. C.

Q. What time did you retire?—A. In 1902; in May of that year.

Q. What regiment were you in command of when you were promoted to a brigadier-general?—A. The Twenty-fifth Infantry.

Q. How long had you been commander of it?—A. For about ten years, excepting the time I was brigadier-general of volunteers, during the Spanish-American war. That was a very short time, only a few months. I joined it in 1892, and was mustered out, or rather promoted to brigadier-general, retired, in 1902. It was about ten years.

Q. General, the question has come up before the committee as to the character of some of the men of the battalion which was dismissed from the service without honor last year. I will name over some of the men in that battalion, and as I name them I would like you to give me your opinion as to their reliability and their truth; whether they could be trusted or their word taken. The first man I find here is this man Sanders—Mingo Sanders.—A. Sergt. Mingo Sanders?

Q. Yes.—A. I know him very well, sir. He served with me. There is no better first sergeant in the United States Army than Sergt. Mingo Sanders. His veracity, as he sees a thing, is beyond question.

Q. How about Sergeant McCurdy? Do you remember him?—A. McCurdy is a good man and a trustworthy man. I do not know him as well as I do Sanders.

* * * * *

I can say in general terms that those men are all to be believed on their oath. I would believe them if I were sitting on a court-martial and they were even called in their own defense.

Captain MACKLIN says (pp. 1788–1789):

Q. What was the character of the men who constituted that battalion, speaking in a general way? Were they a peaceable, orderly, well-behaved set of soldiers or not?—A. They were, sir; those reports in these books to the contrary notwithstanding.

Q. Had this battalion or any company of it or any men in it had special trouble during all the time you were connected with it?—A. Never; no, sir. There were individual fights, you understand, sir.

Q. They would fight one another?—A. Among themselves, sir, over drinking or something of that kind, but no other disturbances.

Q. State whether or not they did any drinking to excess as compared with other soldiers.—A. No; they did not. I have commanded white soldiers a good deal, and I found that the drinking among our men was much less.

Q. Drinking among the colored soldiers was less than among the white soldiers?—A. Yes, sir; very much.

Q. You would get through pay day with fewer arrests?—A. Well, sir, they were through that pay day at Brownsville and there was only one single arrest in town.

Q. In the whole battalion?—A. In the whole battalion. There was not an arrest in the post at all.

Capt. SAMUEL P. LYON says (pp. 1836–1838):

Q. So that you have had a good deal of experience not only with these men, but with other commands. I want to ask you how, in your opinion, this battalion, Companies B, C, and D, compared as soldiers with other soldiers of the United States Army?—A. In my opinion they would compare most favorably.

Q. Was it or not a battalion that was well disciplined and well drilled?—A. Yes, sir; the drill and discipline were excellent. I never saw better.

Q. As to the conduct of the men generally as men, what is your opinion as to that?—A. It was in my opinion exceptionally good.

Q. I want to ask you particularly as to the older men in service in that battalion, particularly the noncommissioned officers. What kind of men were they?—A. They were a most excellent lot of men, and an excellent lot of noncommissioned officers.

CONDUCT OF MEN AT BROWNSVILLE.

This battalion had been, together with other companies of the regiment, stationed at Fort Niobrara, Nebr., for two or three years immediately prior to their going to Brownsville, and prior to that they had served in the Philippines, in Cuba, on the frontier, and elsewhere. They arrived at Fort Brown on Saturday, the 28th of July, 1906. They had been there only two weeks and two days when this shooting occurred. There is practically no conflict in the testimony as to their conduct at Brownsville. The great preponderance is in accord with the statement made by Victoriano Fernandez, a member of the police force of Brownsville, who testified in part as follows (pp. 2257-2258):

By Senator SCOTT:

Q. Witness (Victoriano Fernandez, policeman), do you know any reason why these soldiers would have any spite against the citizens of Brownsville, to want to shoot up the town and kill people?—A. No, sir; I don't know anything about it.

Q. And you never heard them threaten anybody who was in the barracks, did you?—A. No, sir; oh, no. They used to treat everybody right there.

By Senator FORAKER:

Q. They were very well-behaved people, were they not?—A. Yes, sir; very orderly, and I never saw one drunk.

Q. You never saw one drunk, and you were on this Elizabeth street beat?—A. Always; yes, sir.

Q. Every day?—A. Every day and sometimes part of the night.

Q. And you never saw one of them drunk?—A. No, sir.

Q. During the whole time?—A. No, sir.

Q. It was your business to watch?—A. Yes, sir.

Q. Do you remember when they had pay day?—A. Yes, sir; it was the quietest day I ever saw.

Q. It was very different when the white soldiers were there?—A. Yes, sir; the white soldiers used to know lots of people and just have a little fun, but it didn't amount to nothing.

Q. The white soldiers, when they had pay day, would go and spend a good deal of their money in saloons?—A. Yes, sir.

Q. But the colored soldiers were much better in that respect?—A. Yes, sir; they used to go to the saloon and have drinks in the back there, and they never said a word and would go out.

Q. They were fine, orderly looking soldiers?—A. Yes, sir.

Q. Good discipline?—A. Yes, sir; good soldiers. Good discipline, too.

Q. Favorably with the Twenty-sixth Infantry, the white regiment there just ahead of them?—A. Well, of course I don't know nothing about—

Q. Or any other regiment.

Senator WARREN. Let him answer.

A. But they were all right. To my knowledge I think they were better than the white soldiers—that is, on discipline.

By Senator FORAKER:

Q. Better in discipline?—A. Yes, sir.

Q. If anything, they were a good deal better in their habits, apparently?—A. Well, two or three months they were there; yes.

Q. You never saw one of them drunk all the time you were there?—A. No, sir.

Q. You were in a situation where you could have known about it if they had been drunk, were you?—A. Certainly.

Q. Or disorderly?—A. Certainly.

Q. You never arrested one?—A. No, sir.

TROUBLES AT BROWNSVILLE.

When they went to Brownsville they relieved a battalion of the Twenty-sixth United States Infantry, white soldiers, which had been stationed there for about one and one-half years.

Although the battalion did not reach Brownsville until the 28th of July, it was announced in the newspapers as early as the latter part of May, 1906, that it was to be sent there. There is some conflict in the testimony as to the feeling of the citizens of Brownsville toward negro soldiers, but the overwhelming weight of testimony is to the effect, as stated by Major Blocksom in his official report, found at page 61 of Senate Document 155, Part 1:

2. The people did not desire the colored troops and thought they should not be sent there. I learned this * * * from prominent citizens, members of the committee of safety, etc.

Major BLOCKSOM further finds, page 61, Senate Document 155, Part 1:

3. Soldiers of the Twenty-fifth were not allowed to drink with white people at the principal bars in town, though in some cases saloon keepers put up a separate bar for their use.

The testimony shows that in many of these saloons, particularly those kept by Mexicans, there was no such discrimination.

There is no proof that the soldiers showed any resentment on account of this regulation debarring them from the saloons by either words or conduct. In so far as there is any testimony on the subject it is all to the effect that they observed the regulations without any complaint and without showing any resentment whatever on that account. The testimony further shows that they frequented such saloons as they were at liberty to visit but very little, and that on Saturday, August 11, two days before the shooting affray occurred, one of their number, William Allison by name, was discharged on account of the expiration of his term of service, and that he at once opened a saloon for their special accommodation, which they all patronized, spending their money there with their discharged comrade instead of in the saloons kept by the citizens of Brownsville.

During their short stay there were three altercations between the citizens and the soldiers, but only two of them were of serious enough character to really merit mention.

Major BLOCKSOM (page 61, Senate Document 155) refers to these cases as follows:

4. Tate-Newton, Baker-Reed cases, etc. (see B and B''). Tate-Newton case was that of a party of ladies standing on street side sidewalk, claimed that two colored soldiers rudely jostled them. Mr. Tate, inspector of customs, husband of one of the ladies, knocked down one of the soldiers with his revolver. The ladies were obstructing the sidewalk, although anybody could have easily gotten by them. The soldier was rude and probably insulting in his manner. Tate's remedy was too drastic. It was "in the manner of the South." He told me he would have used it against any man, white or black. Mr. Vann, collector of customs, invited Major Penrose to assist at an investigation of this case, but latter had no time after the 13th. Reed and another colored soldier were at ferry landing, having returned from Matamoros. Mr. Baker, inspector of customs, claimed they were drunk and disorderly (confirmed by an unprejudiced witness), that he told them to move on, and finally pushed one, who fell off plank walk into mud and water about knee-deep, more through his condition than strength of the push. Baker probably used more force than he acknowledged. Facts in these two cases were exaggerated on both sides and increased the bitter feeling between soldiers and citizens. I heard of several cases of threats from both sides before the 13th, but believe them manufactured.

THE EVANS AFFAIR.

In addition it was claimed that the night before the shooting a soldier assaulted a Mrs. Evans and that the people of Brownsville were greatly incensed toward the soldiers on that account, but no testimony has been adduced to prove such assault, and if there had been it would only constitute a reason why the citizens might attack the soldiers and not a reason why the soldiers should attack the citizens. It is not necessary, therefore, to give the matter special consideration in this connection.

There is positive conflict and contradiction as to the facts connected with the other difficulties, but the testimony most unfavorable to the soldiers does not make the cases worse for the soldiers than the statement of Major Blocksom, while, according to the testimony of the soldiers, the assault upon Newton was unprovoked and without any excuse whatever.

THE NEWTON CASE.

Private NEWTON testified on this point, at page 2959, as follows:

By Senator FORAKER:

Q. It has been testified here that there was some trouble in Brownsville between a man by the name of Tate and a soldier by the name of Newton who belonged to Company C. Are you the soldier?—A. Yes, sir; I am.

Q. Please describe to us what occurred. Tell us all about it in your own way. First, let me ask you when it was, if you can tell?—A. The 5th of August.

Q. On the 5th day of August, 1906?—A. Yes, sir.

Q. You remember what day of the week that was?—A. It was on a Sunday, if I am not mistaken.

Q. About what time was it—what o'clock?—A. Between 8 and 9 o'clock, as nearly as I can recollect it.

Q. In the evening?—A. Yes, sir.

Q. Was it before or after dark?—A. After dark, sir.

Q. Well, now, where did it happen?—A. It happened below the post-office, sir; in that section.

Q. Can you tell us on what street the post-office is situated?—A. I don't know but one street; I think it is Elizabeth street. That is the only street I know there.

Q. Is it situated on the street that leads out from the gate of the garrison?—A. I think it is, sir.

Q. At your left is a map hanging on the wall [referring to the map]. This is the reservation. Here are the barracks. That is Elizabeth street.—A. Yes, sir.

Q. Here is D barracks, and B barracks, and C barracks, and the unoccupied barracks.—A. Yes, sir.

Q. The guardhouse up here, the hospital over here, the officers' quarters over here, and the administration building here. Now, where is the post-office? Is it on this street that you enter when you go out at the gate and proceed in a straight direction?—A. Yes, sir; I think that is the street it is on, sir.

Q. You think it is. Well, about how far from the garrison is the post-office situated, if you can tell?—A. I think it is three or four blocks, more or less, sir.

Q. You don't know exactly?—A. No, sir.

Q. You were not familiar with the streets there?—A. No, sir.

Q. How long had you been at Brownsville?—A. I had been there ever since my battalion arrived there.

Q. Only about a week prior to this time, I suppose?—A. Yes, sir.

Q. The testimony is that you arrived there on the 28th of July?—A. Yes, sir.

Q. And this was the 5th of August?—A. Yes, sir.

Q. Had you been around through the town any, up to that time?—A. I think I had taken a walk about three times.

Q. Had you become familiar with the streets?—A. No, sir; not very.

Q. Or with the location of the buildings?—A. No, sir.

Q. Well, this was Sunday evening, August 5, between 8 and 9 o'clock. Where were you going and were you in company with anybody; and if so, with whom?—A. With Private Frank J. Lipscomb.

Q. Was he of that same company?—A. Yes, sir.

Q. Where were you going?—A. We were taking a walk, and had been by the post-office, sir.

Q. You had been by the post-office?—A. Yes, sir; and on the way from there up the street.

Q. And you were beyond the post-office, were you, going from the garrison?—A. Yes, sir.

Q. Were you armed?—A. No, sir.

Q. Neither of you?—A. No, sir.

Q. Did you have any kind of weapon?—A. No, sir.

Q. Were either of you drunk?—A. No, sir.

Q. Had either of you been drinking?—A. No, sir.

Q. It was Sunday evening. Well, now, what occurred? Just tell that in your own way.—A. As we passed beyond the post-office here, there was a party of ladies standing on the sidewalk, and they were standing in such a position that we had to walk by file in order to pass them, and as I passed them I said something to Frank—I have forgotten what it was—and when I looked around this way again, why, some one had drawn back, and as I turned that way he struck me with a revolver and knocked me down.

Q. Did you pass through that crowd of ladies?—A. No, sir.

Q. Standing on the sidewalk?—A. No, sir; between them and the fence.

Q. You went between them and the fence?—A. Yes, sir; they standing around to my left—to our left—and we had to walk by file in order to keep from pushing against them.

Q. Were you going from the post still?—A. Yes, sir.

Q. On which side of the street were you—the right-hand side as you went out?—A. The right-hand side; yes, sir.

Q. And the ladies were standing on the sidewalk?—A. Yes, sir.

Q. And there was a space to the right between them and the fence?—A. Yes, sir.

Q. Between the sidewalk and the fence?—A. Yes, sir.

Q. And when you came up you say you stepped off towards the fence and passed around in single file?—A. Yes, sir.

Q. Did you strike any lady?—A. No, sir.

Q. Or jostle any lady?—A. No, sir.

Q. Or touch any lady?—A. No, sir.

Q. Did you try to go through the crowd of ladies?—A. No, sir.

Q. Did you speak to any of the ladies?—A. No, sir.

Q. Did you speak to anybody?—A. No one at all, only my comrade who was with me, sir.

Q. Did you know the man was going to strike you until he did so?—A. No, sir.

Q. What was it he struck you with?—A. It was a revolver, sir.

Q. And what effect did it have on you?—A. It knocked me insensible for a few seconds.

Q. You fell?—A. Yes, sir.

Q. Then what did you do?—A. After I came to myself he was covering me with his revolver, and he told me to get up and leave.

He is confirmed in all he says by his comrade, Private Lipscomb, who was with him.

NEWTON'S CHARACTER.

Captain MACKLIN says of Newton:

* * * He was not incensed or angry, but he felt hurt. Newton was a splendid soldier, a man of good habits, and I do not believe, knowing the man, that he would deliberately pass any people on the sidewalk, white or colored, and brush against them or knock them off. He was my company clerk for a long time, and was extremely polite and obedient.—*Penrose Court-Martial*, p. 548.

Captain MACKLIN was further interrogated about the Newton trouble (p. 1784, Senate committee), as follows:

Q. Did you investigate it sufficiently to find out whether or not he pushed his way through among the ladies, jostling them as he did so?—A. I investigated the matter as far as I could with Privates Lipscomb and Newton. They were both very reliable men and very quiet soldiers, very inoffensive in their manner and everything, and I tried to find out and did find out who the man was that struck Newton, and also made a report to the commanding officer, and the commanding officer said that he would make a report to the collector of customs, a Mr. Van. I went down and got Mr. Van's name, and I also found out from the cashier of one of the banks in town the name of the man that struck Newton. It seemed that he had bragged about it in town, and the cashier had a little hesitancy in telling me his name, but finally gave it to me. I gave his name to the commanding officer, and the commanding officer said he would make a complaint and go down and see Mr. Van, but Mr. Van was out of the city.

Q. It has been testified here that Newton was a quarrelsome man, and was in the habit of getting drunk and getting into trouble. Is that true or not?—A. No; it is not. He was my company clerk for about a year and I came into intimate contact with him every day.

Q. Was his conduct that of a good man as well as a good soldier or not?—A. Yes, sir; it was. I would be glad to have him back any time. He was the kind of a man that any captain would like to have in his company.

Q. A truthful, reliable man?—A. Yes, sir.

Q. Would you believe his statement?—A. Yes, sir; I would.

Q. Do you know of anything at all in his character or in his record that would warrant you in distrusting a statement he would make under oath?—A. Not in any way; no, sir.

Q. Was he or not a man who would be offensive, especially in a city like that where there was, perhaps naturally, some prejudice against colored men, when he was passing white people as he was passing those people?—A. I do not think he would speak to anybody or offend anyone, Senator. He had a good deal of sense.

Q. What kind of a man was Lipscomb, who was with him?—A. Lipscomb was very much the same kind of a man; very quiet and inoffensive, a man who very seldom spoke.

Q. Where were they going when they got into this trouble?—A. They reported to me that they were simply taking a walk on Elizabeth street. The position they were in was somewhere out in the residence district. The walks were broad and it was the best street to walk on.

Q. Did Newton report that he had any warning whatever that he was going to be struck with this revolver in this way?—A. No, sir. Do you want the report he made to me?

Q. What did he say as to whether or not Mr. Tate gave him any warning whatever that he was going to strike him?—A. None whatever; no, sir.

Q. Just as he came around by the ladies?—A. Just as he got opposite to him he whipped out a revolver and hit him in the head with it.

Q. Knocked him down, did he?—A. Yes, sir.

Q. Was he badly wounded or not?—A. No, sir; he did not seem to be. He seemed to be feeling bad, offended about it.

Q. What did he say about it?—A. He said he thought as long as they were going along and both behaving themselves it was a very unjust thing, and I told him I would lay the whole matter before the commanding officer, Major Penrose, and that I was sure he would take the matter up. We did not know at that time who it was that hit him.

Q. Did that seem to be satisfactory to him or not?—A. Yes, sir; entirely so. I talked to him the next day. He was not excited any more than anyone would be over a thing of that kind.

Q. Did he show any revengeful disposition or make any remarks that indicated he would seek to revenge himself for this kind of treatment?—A. Not in the least; no, sir.

Q. Was he a man who would, in your judgment, be likely, even though mistreated in the way he claimed, to hatch a conspiracy or organize it to go out and shoot up a whole town full of men, women, and children indiscriminately at midnight?—A. No, sir; he was not that kind of a man.

Q. Was not that kind of a man at all?—A. No, sir.

Q. Did you ever hear of his making any threats of revenge at all at any time before this firing?—A. No, sir. I talked with him several times about the thing, and I told him that Major Penrose and myself had taken the matter up, and we would try and have it fixed, and I also told him the name of the man.

Q. Did that seem to be satisfactory?—A. Yes, sir

Q. He did not even know the name of the man?—A. No, sir; he did not know the name of the man.

Captain MACKLIN further testified, at page 3125, Senate Committee—

* * * A. Soon after I took command of my company—Company C of the Twenty-fifth Infantry—which was in December, 1904, I made Newton my company clerk. I always regarded him as a very trustworthy man and a man of very good character.

In addition to what Captain Macklin thus says as to the character of man Private Newton was, it was manifest to the committee before which he appeared, and where he was examined and cross-examined most exhaustively, that he was entirely too nonaggressive a man to have conceived such a scheme for the resentment of his wrongs as was involved in the charge of forming and executing such a conspiracy as must have been entered into if the shooting was done by the soldiers. Moreover, Newton testifies, and is supported in this by the testimony of Captain Macklin and others, that he did not know the name of the man who struck him, nor know anything about him—either who he was, or where he lived, or in what business he was engaged.

Captain Macklin describes in the following manner the other two difficulties. We quote his testimony in full to show their inadequacy and the extreme improbability, in view of the character of the soldiers, that they furnished a motive for the affray. (Page 1785 et seq., Senate hearings.)

Q. Others of your men had trouble also—one man by the name of Clifford Adair had some kind of trouble. Can you tell us what that was?—A. Adair came over from Matamoros and brought with him a little silver pen.

Q. Was that a pen or a pin?—A. A pen.

Q. I have seen it sometimes put down in the reports as a pin.—A. It was a penholder.

Q. Something that he had bought at Matamoros?—A. He told me he paid a dollar Mex. for it, 50 cents gold, and he brought it over and had it in his pocket, and as soon as he came opposite the custom-house one of the officials there came out and stopped him, and he said, "Here, I will not allow any nigger to bring anything over here. You are smuggling; I am going to report you to your company commander." He said, "All right, go ahead and report it," and he took the penholder away from him.

Q. How did the custom-house officer know that he had this pen?—A. He searched him, sir.

Q. Searched him and found it?—A. Yes, sir.

Q. And then he used that language to him?—A. Yes, sir.

Q. What was the rule or the custom as to exhibiting articles for inspection to the custom-house officer when they were not in packages?—A. Well, I really could not tell you, sir. I have not been over there but once. I was there once, and they never inspected officers at all; but I have understood that they never inspected for any small packages at all, and that that penholder was a nondutiable article.

Q. What did that officer do about the pen? Did he leave it with Adair or did he take it away from him?—A. He took it away from him, and we have never seen it since.

Q. He kept it, did he?—A. Yes, sir.

Q. Did he make any report to the officers about it?—A. Adair reported to me.

Q. What was it?—A. He reported it to me on the morning of August 12—that was Sunday morning—and I told Adair that I would endeavor to get the penholder for him, but the affair came up on the 13th, and I was never allowed in town after that time. None of us were allowed in town.

Q. Never got to investigate it?—A. No, sir; I never had any opportunity at all.

Q. You did not have any opportunity to see the customs officer or take it away from him?—A. No, sir; he has the penholder yet. Adair told this man he was perfectly willing to pay the duty on it; and the man said: "No; I am going to report you for trying to smuggle."

Q. How much did the man claim the duty was?—A. He did not claim there was any duty. He told Adair he would not let him pay it.

Q. As a matter of fact, was there any duty on it?—A. I don't think so; no, sir. As a matter of fact, they brought in cigars and everything there.

Q. What kind of a soldier was Clifford Adair?—A. Clifford Adair was an excellent soldier. He was what we call an "orderly character," very neat and clean; nearly always got orderly for the commanding officer when he went on guard.

Q. Was he a quarrelsome man?—A. Not in the least; no, sir.

Q. Or the reverse of it?—A. Yes, sir.

Q. A quiet, peaceable man?—A. Well, he talked a good deal, like a good many colored men do, but he was inoffensive, and a very neat, clean soldier.

Q. Was he or not a man who was impertinent in his manner, or the reverse of that?—A. He was not impertinent; no, sir.

Q. Was he a truthful man?—A. I have always found him so; yes, sir.

Q. Now, there was one other trouble—Private Reed had some trouble. What was that, if you remember?—A. Private Reed was also returning from Matamoros, and he came along the board walk there and one of the custom-house men boosted him off the sidewalk into the river.

Q. What were the facts about that, if you know?—A. I took the matter up and investigated it as far as I could with the other men, and had Reed in the next day, and he laughed and told me that he thought he had gotten just what he deserved.

Q. He had been drinking, hadn't he?—A. Yes, sir; he had been drinking and was noisy, and he said he was perfectly satisfied to let the matter drop.

Q. That was on Sunday evening, the 12th, was it not?—A. I think that was the night; yes, sir.

Q. And it was, the next day, the 13th, when he told you this?—A. Yes, sir; I investigated it the following morning.

Q. Did he look as though he was busy at that time getting up a shooting party to shoot up the town?—A. No, sir; he was a happy, good-natured sort of a man.

Q. He did not have any murderous instincts, as far as you were aware?—A. No, sir.

Senator WARNER. Let me ask one question right there.

Senator FORAKER. Certainly.

By Senator WARNER:

Q. Could you tell whether he had any such purpose? Could you tell from his looks whether he had any such purpose or not?—A. No, sir; I did not think so.

By Senator FORAKER:

Q. There was nothing in his manner, and nothing in his tone, and nothing in his language, as I understand you, to indicate that he was seriously offended even?—A. No, sir.

Q. On the contrary, he said he got just about what he deserved?—A. Yes, sir; that is exactly what he told me. He laughed and told me those words.

Q. Did not ask you to do anything further?—A. He said he thought he had better let the matter drop.

Q. Were there any other troubles of any kind that your men got into there?—A. Those are the only ones that I recall at this time, sir. I don't think there were any others at all.

BROWNSVILLE.

The testimony shows that Brownsville has a population of from 6,000 to 8,000, and that it is perhaps five-sixths Mexican. It is situated on the Rio Grande River immediately opposite Matamoros.

The testimony further shows that the town, like other frontier towns, has had its fair share, if not more, of one kind and another of violators of the law. Smuggling has been quite common. The testimony shows that there are some seven or eight mounted customs officers constantly on duty, looking out for smugglers at that point and up and down the river in that locality. One of these customs officers, Mr. Fred E. Starck, testified that in the nine years of his service he had made more than 600 arrests. Others, presumably, in so far as the testimony throws any light on the subject, had the same general experience.

The following testimony of Doctor COMBE, the mayor, shows that the citizens were well supplied with firearms and ready to use them on short notice:

He says, at page 2405:

Q. Are you reasonably familiar with the arms that are used (in Brownsville)? There are a good many people have guns, do they not?—A. Yes, sir.

Q. You may state if you are reasonably acquainted with the kind or character of arms there.—A. Well, the most common weapon there is the .44 or .45 caliber Colt, so far as pistols are concerned. It is a hunting country, a cowboy country, and almost every family has arms.

* * * * *

He further testified, at page 2429, that "it was a very common thing for the citizens of Brownsville to carry arms; that he was the first man to enforce the law."

Q. Was it not a very customary thing for men to be going about with pistols strapped to them?—A. Yes, sir; but you must remember that Brownsville is the only town in that vicinity, and these ranchmen coming in there for a number of miles around would ride into town with their six-shooters on.

Q. I am not finding any fault, but it was the custom?—A. Yes, sir; but I was talking about concealed weapons.

Q. Well, concealed weapons. Did not almost every man carry some kind of an arm?—A. No, sir.

Q. Those that came in from the ranges would?—A. Oh, yes, sir.

Q. They had a carbine or a pistol?—A. Or a pistol; yes, sir.

Q. That was not an uncommon thing?—A. That was not an uncommon thing.

Before the Penrose court-martial, he testified, at page 172, that immediately after the firing he found assembled in front of the Ruby saloon "the chief of police, and all of the policemen that had been called in from their beats, and quite a number of citizens armed with shotguns, pistols, and rifles and such weapons as they could get together. * * * The people were quite excited, and they addressed me especially to lead them down to the post;" but that he appealed to them and persuaded them to desist from such a purpose.

He made a similar statement before Mr. Purdy, reported at page 146 of the Purdy testimony, Senate Document 155, Part 2.

Captain LYON, at page 1856, Senate hearings, testified as to what Mayor Combe said to him that night—

Q. Did the people seem to be excited?—A. They were quiet then, but Mayor Combe told me that he had just succeeded in dispersing a band of about 200 armed men who were headed toward the post.

The testimony also shows that the town had a full supply of saloons and that they were generously patronized by the citizens of the place and of that vicinity, and that in the conversation carried on in these drinking places before the arrival of the negro soldiers, after it was learned that they had been ordered there, and after their arrival, and before the shooting affray and subsequent thereto, many ugly expressions were employed, among them numerous threats of violence, coupled with such announcements as that "the negro

soldiers would not stay long if they did come;" that "they would soon get rid of them," etc.

At page 23, Senate Document 155, appears the following telegram from Senator CULBERSON to the Secretary of War:

[Telegram.]

DALLAS, TEX., August 17, 1906.

SECRETARY OF WAR,
Washington, D. C.:

Some time ago I called your attention to the danger of locating negro troops in Texas, especially at Brownsville. The recent outrageous conduct of such troops there fully justifies the fact of the people of that locality. Can not these troops be removed at once?

C. A. CULBERSON.

At page 165, same document, appears the following affidavit, made by Lieut. E. P. THOMPSON, Twenty-sixth U. S. Infantry:

SAN ANTONIO, COUNTY OF BEXAR, *The State of Texas*, ss:

Personally appeared before me, the undersigned authority, one Edwin P. Thompson, who, being sworn, deposes and says:

"That he is a second lieutenant in the Army of the United States; that in such capacity he served at Fort Brown, Brownsville, Cameron County, State of Texas, from September 4, 1903, until August 13, 1906; that when it was known that a battalion of the Twenty-fifth United States Infantry was to garrison the post many derogatory remarks were made before its arrival by some citizens in reference to the colored soldiers in words as follows, or words to the like effect: 'We don't want the damn niggers here;' 'Niggers will always cause trouble;' 'To hell with the colored soldiers; we want white men,' and that he is unable to fix any one of such remarks upon any one citizen owing to the frequency with which like remarks were made and the period of time covered; that various minor clashes occurred between the individual citizens of the town and the soldiers; that one Teofilo Crixell, a saloon keeper of Brownsville, Tex., told him that a row had occurred in the 'White Elephant' saloon, owned by one Vicente Crixell, in words to this effect, to wit: That one Bates, a Federal officer, was at the bar drinking when a colored soldier entered and asked for a drink; that the said Bates then turned to the soldier and said no nigger could drink at the same bar with him, and that upon the soldier remarking that he was as good as any white man said Bates drew his revolver and hit the soldier over the head; said Bates then going to the police headquarters and offering to pay his own fine.

"Further deponent saith not.

"E. P. THOMPSON,

"Second Lieutenant, Twenty-sixth Infantry."²

Sworn to and subscribed before me this 27th day of September, 1906.

L. M. PURCELL,

Second Lieutenant, Twenty-sixth Infantry, Judge-Advocate.

Hundreds of pages of additional testimony might be cited to the same effect.

On account of the story of the alleged assault on Mrs. Evans there was on Monday, the 13th of August, much excitement among the citizens, accompanied with expressions of a hostile and menacing character toward the soldiers.

The situation was such that Mayor Combe deemed it his duty to call at about 5 o'clock of the afternoon of the 13th of August upon Major Penrose, who had not heard the story, and told him about it and requested him to keep his men in quarters that night, on the ground that they might be harshly dealt with by the citizens if they should be found in the town.

His exact language was, as given in his own testimony, at page 2382:

Major, this is a terrible affair. The people in town are very much incensed and excited, and I protest against any of your officers or men—I do not remember now whether I said “officers,” but positively I said his men—“going into town to-night.” Then I made use of one or the other of these expressions, “Major, if you allow those men to go into town to-night I will not be responsible for their lives,” or “Major, do not allow your men to go out of the post, because there is a great deal of danger in town.” One or the other of those expressions I used; I am not sure which.

While this testimony of Mayor Combe shows that the citizens were in a frame of mind to “shoot up” the soldiers, there is no testimony in connection with either that matter or any other to show that the soldiers ever thought of such a thing as “shooting up” the town.

On the contrary, the testimony shows, and shows conclusively, that in the Tate-Newton affair, where Newton was knocked down with a revolver, Newton made no resistance to Tate and made no threats of revenge and exhibited no special resentment; that Private Reed, who was pushed off the gang plank into the water, reported the matter to his captain, but laughingly remarked that he “guessed he got about what he deserved,” or words to that effect, while the Adair matter was so trifling in character as to be hardly worthy of notice, yet the testimony shows with respect to it that the soldier was not at fault, and that he showed no resentment and made no threats against anybody.

Newton, Reed, and Adair all belonged to Company C, and are all satisfactorily accounted for and shown beyond any room for doubt not to have participated in any way in the shooting affray.

This, in connection with the breaking open of their gun racks, and the fact that they had no ammunition of the character indicated by the shells, bullets, and cartridges that were found the next morning at the places where the shooting occurred, would seem to make a conclusive showing that nobody belonging to Company C had any part in the shooting.

Not a man in either Company B or Company D had any trouble of any kind with anybody at Brownsville. There is not a word of testimony to indicate that anybody in either of these two companies had any reason for the slightest disposition to shoot up the town to revenge the wrongs, real or imaginary, of their comrades in Company C.

Hence there was an entire absence of motive for them or any of them to have engaged in such a raid.

THE FIRST SHOTS.

Major PENROSE said:

Q. Please tell us about the occurrences of the night of August 13-14, 1906, with reference to the shooting affray which occurred in Brownsville that night. Where were you when it commenced?—A. I was in my quarters, sir.

Q. What time of night was it when it commenced, as nearly as you can tell?—A. It was soon after midnight, sir.

Q. Had you retired for the night?—A. I had retired for the night.

Q. Were you awake or asleep?—A. I was awake, sir.

Q. Just proceed in your own way—though I may interrupt now and then—to tell us all you can recollect about what occurred that night—what you did, and what you saw, and what you ordered, and so forth and so on.—A. Yes, sir. I was awakened by two shots first.

Q. You say you were awakened? I understood you to say you were awake.—A. I mean to say I was aroused—my attention was called—by two shots. I was not asleep, sir; I was awake. I had spoken to my wife only a moment before. The two shots

were followed almost immediately by six or seven shots, fired very rapidly. Then there were three shots that stood out prominently, more so than the others, and that was immediately followed by a number of other shots fired irregularly. Some of them might have been attempts at volleys.

Q. Now, let me interrupt you there to ask you where, as nearly as you could tell, were those first shots fired from?—A. The first shots were fired, as nearly as I could locate them, from some point between the vacant staff barracks and the guardhouse.

Q. Inside or outside the reservation?—A. They were outside of the reservation, sir.

Q. You were in your room at the time?—A. I was in my room at that time.

Q. And in your bed at that time?—A. I jumped at once out of bed and commenced to dress. My wife said: "What is that? Do you suppose it is a fire?" Almost instantly after that these several shots that I spoke of sounded.

Q. Where did they seem to be fired from?—A. They seemed to me to be in the rear of C Company or B Company barracks, in that direction of the town.

Q. Could you tell from where you were whether they were outside or inside the reservation?—A. I took them to be outside of the reservation, sir.

Q. Can you tell us what kind of firearms those shots were fired from?—A. *The first two shots I heard were undoubtedly pistol shots*, sir, and I think they were fired with black powder. The other shots that I heard were from high-power guns undoubtedly.

Q. By high-power guns, what kind of guns would be included in that term?—A. Well, sir, the Springfield rifle, such as we use in the Army now, is one; the Winchester, and all the sporting rifles.

Q. The Krag?—A. The Krag is one of them; yes, sir.

Q. The Savage?—A. The Savage and the Mannlicher.

Q. The Marlin?—A. Yes, sir.

Q. The Mauser?—A. Yes, sir.

Q. They are all high-power rifles?—A. Yes, sir.

On this point Captain LYON said:

Q. How many shots did you hear at that time?—A. I heard two shots first.

Q. Do you know whether or not they were the first shots fired?—A. I do not, sir; they were the first I heard.

Q. They were the first you heard. About where were they fired from—about what location?—A. They were fired apparently from the road dividing the post from the town and over beyond the building No. 41, the commissary-sergeant's quarters; off in that direction somewhere. That is where they appeared to me.

Q. That would be about opposite the guardhouse, you mean? I will ask Senator Scott to explain the map to you.—A. I think I understand it.

Q. You do understand it? Can you indicate about where you think those first shots were?—A. In this general direction here [indicating on map].

Q. Yes. You heard two shots?—A. Yes, sir.

Q. Can you tell from what kind of a firearm they were fired?—A. Those shots were *undoubtedly revolver shots*; black powder.

Q. What?—A. Black powder.

Q. Black powder?—A. Yes, sir.

Q. Those were the first you heard. Then what did you do?—A. After I heard those first two shots there were five or six shots fired at a few seconds' interval—that is, a few seconds after the first two—and they were also, in my mind, revolver shots. They were fired in rapid succession.

Q. About where were they located?—A. I could not attempt to locate them definitely, but they were apparently down more in the direction of the quarters here; somewhere about here [indicating on map].

Q. Some little time elapsed between the firing of the two shots and the firing of those others?—A. Yes, sir.

Q. Then what did you next hear?—A. Almost immediately following those revolver shots there were a number of shots fired which, in my opinion, were fired from small-caliber high-power rifles.

Q. When you say high-power rifles what kind of rifles do you refer to?—A. The modern rifles of approximately .30 caliber, using a smokeless powder, and of high velocity, having a muzzle velocity of 1,700 feet or over.

Q. How many rifles are there that might be described by the term high-power rifles?—A. I do not think that I could name them all. The Winchester people make several patterns of high-power rifles. Then there is the Marlin, and the Savage, and the Ballard.

Q. It might have been any of those kinds of rifles?—A. Yes, sir.

Q. You do not mean, necessarily, when you say high-power rifles, the Springfield rifle?—A. No, sir.

By Senator OVERMAN:

Q. But it might have been the Springfield rifle?—A. Yes, sir.

Q. The Springfield is a high-power rifle?—A. Yes, sir.

Lieutenant GRIER said (pp. 1689–1690):

Q. What awakened you?—A. I was awakened by *what I thought were two pistol shots*.

Q. Can you tell from where they seem to have been—the firing—at what location?—A. Yes; they seemed to be back over here in the rear of B Company barracks.

Q. Outside or inside of the wall?—A. I could not state.

Q. You were in the officers' quarters. Were you upstairs or downstairs?—A. Upstairs.

Q. You only heard the sound coming from that general direction?—A. That is the idea.

Q. It seemed to you to be somewhere over in the rear of B quarters?—A. Yes, sir.

GEORGE W. RENDALL testified at pages 2039–2040 about the first shots, as follows:

Q. Do you know anything about how many shots were fired before you got awake?—

A. No, sir; I do not.

Q. You do not?—A. No, sir.

Q. All you know is that you were awakened by firing?—A. Yes, sir.

Q. Now, what kind of shots were they?—A. I couldn't say.

Q. Out of what kind of an arm were they fired?—A. *I think they were pistols*.

Q. Yes; you have so testified, have you not, that they were pistol shots?—A. I don't know whether I have or not, but *that was my impression at the time, that they were pistol shots*, because they were so close together that it was peculiar, and I took more notice of it.

Q. You testified before the citizens' committee, did you not?—A. No, sir; there was no testimony taken—

Q. You made a statement, did you not?—A. Yes, sir.

Q. Did you not state before the citizens' committee the following day after this occurrence, or within a day or two afterwards?—A. Maybe so, sir.

Q. (Continuing.) That these were pistol shots?—A. No, sir.

Q. You did not?—A. No, sir; I do not think so.

Q. We will see, after a while. Then you testified before Mr. Purdy?—A. Yes, sir.

Q. And you told him that these were pistol shots, did you not?—A. I told him that the shots that I saw the flashes from were pistol shots.

GEORGE W. RENDALL, at pages 75–76 of Senate Document 155, is reported as testifying August 14, the day after the shooting affray occurred, before the citizens' committee, as follows:

Well, I was sleeping about 10 o'clock and *was woke up by pistol shots fired close to my house*, about 60 feet from garrison, inside of garrison wall.

Later, December 6, 1906, he testified before the grand jury, and said:

I was awakened by the shooting. There were two shots fired before I got up and looked out of the window. *I judge they were pistol shots*. The men I saw moving were inside the garrison wall, and the only shots that I saw as they left the weapons were pointed nearly upward.

Mayor COMBE says (page 2383):

Q. Now, proceed, Doctor, if you please. Just state where your home was.—A. My home was at the corner of Ninth and Elizabeth streets. I read for a while, and, as I said a few moments ago, retired about half past 11. I was sleeping on the back porch. I dozed off and was not very sound asleep when I heard *what I thought to be four or five pistol shots* in a southerly direction from my home.

On this same subject he testified on cross-examination, page 2415, as follows:

Q. Now, what awakened you?—A. Sir?

Q. Did you hear the first shots that were fired; did they awaken you?—A. I think I was awakened with the first shot.

Q. And I understood you to say that you heard four or five shots in quick succession?—A. Yes, sir.

Q. And that they were pistol shots?—A. I was so impressed.

Q. They did not sound like the shots you heard later?—A. No, sir.

Q. Which you describe as appearing to you to be from high-power guns?—A. No, sir.

He testifies as follows at page 2423:

Q. Now, Mr. Mayor, these first shots you say were pistol shots? Where did they seem to you to be located?—A. In a southerly direction.

Q. Down somewhere towards the barracks?—A. Yes, sir; south of my house some distance.

Q. But you could not tell whether they were inside or outside of the wall?—A. No, sir.

Q. You do not pretend to know anything about that?—A. No, sir.

Q. You did not see any of the men who did the firing?—A. No, sir.

Q. And all you know is that on account of this incident there was a very ugly feeling among the citizens, which caused you to request Major Penrose to keep his men in the fort that night?—A. Yes, sir.

Q. And notwithstanding those precautions, about midnight, you were awakened by this firing, and the first shots seemed to be from pistols?—A. Yes, sir.

Q. What kind of pistols were those, if you can tell, .45-caliber pistols?—A. I should imagine it to have been a pistol of a similar character, possibly a .38, but not less than a .38 or a .44 or a .45.

Q. You heard other pistol shots that night, also?—A. Yes, sir; I was wider awake then.

He also testified as follows at page 2440:

By Senator FORAKER:

Q. These first shots you think were fired by the policemen out of their pistols?—A. From what I have heard since I suppose it was Padron—just that one. I do not remember whether there were four or five shots—

Q. I am speaking of the first you heard.—A. No; they were away down in the lower part of the town. The reports of the .45-caliber pistol I have spoken of, that I heard afterwards, were mixed up. There was volley firing, but I could hear the boom of the .45 in contradistinction to the sharp, quick sound of the other.

Q. Mixed in with the rest of the shots?—A. Yes, sir.

Q. First one and then the other. As to the pistol shots, did you make any effort to find out who had fired those pistol shots?—A. Yes; I found out that Padron had.

Q. Those were the first you heard?—A. Not the first; I heard four or five pistol shots immediately followed by the—

Q. Did you find out who that was?—A. No, sir; we all supposed that that came from the garrison, afterwards. It was farther away, the last shots we heard.

Q. What I am trying to get at is whether you made any effort to find out who fired those first four or five pistol shots?—A. None; except two or three days afterwards we were talking, and *Mr. Rendall said he had heard pistol shots.*

Q. Did he say that he had heard pistol shots from the garrison?—A. He thought that he had heard pistol shots, or something of the kind, and I came to the conclusion that those shots were from the garrison.³

Q. And therefore you made no further examination?—A. No, sir; no further investigation.

LOCATION OF FIRST SHOTS.

There is much contradiction as to the location of the first firing that was heard. There were two men more able to give reliable informa-

tion on this point than any others, and they were the sentinel on duty at the time very near to the point where the firing commenced, Private J. H. Howard, of Company D, and Matias Tamayo, a Mexican citizen of Brownsville. He was employed as scavenger for the reservation, and when the firing commenced was in the rear of B barracks near to the place where the first shots were fired. These men were both wide awake. They were in a situation to know accurately and definitely. Both have given intelligent, straightforward testimony.

Howard testifies that as soon as he heard the first fusillade of firing he passed between C and B barracks to a point near the walk in front of the barracks and held his piece in the air, fired it three times, each time calling the guard for the purpose of giving alarm. He testifies that there were no shots fired from within the walls of the reservation, except only these three shots fired by himself.

The scavenger testifies that after the first fusillade of shots he mounted his cart and rapidly drove away; that no shots were fired from within the reservation while he was in the rear of the barracks, but that all the first shots were fired from some place outside the reservation somewhere in the neighborhood of the mouth of the Cowen alley.

Rendall testifies that the firing awakened him; that he at once went to his window, looked out over the reservation in the direction of D barracks; that while so looking he heard a shot to his left that caused him to turn and look to his left, and that he then saw two shots fired, as he thought, in the air. These were undoubtedly the shots fired by the sentinel. It is probable that others who claim that they saw shots fired from the barracks or from inside the reservation wall were misled in the same way. But, however that may be, the testimony of Howard and Tamayo is intelligent. It is based on actual knowledge and there is no excuse for not accepting and believing it except only upon the theory that these men deliberately committed perjury. So far as Howard is concerned, it might be claimed, if he were guilty or his comrades were, that he had a motive for committing perjury, namely, to shield himself and his comrades, but no such motive and no other kind of a motive for committing perjury can be ascribed to Tamayo. He was not a soldier. He practically had no acquaintances among the soldiers. He was a citizen of Brownsville. In so far as he is shown to have any interest whatever in the controversy it was an interest in favor of the community in which he lived rather than for the soldiers. He is not impeached in any way.

The following is the testimony of TAMAYO and HOWARD on this point:

Testimony of Matias G Tamayo.

(Page 1204.)

By Senator FORAKER:

- Q. Please give us your name in full.—A. Matias G. Tamayo.
 Q. Where do you reside?—A. Right now I reside at Fort Brown.
 Q. At Fort Brown?—A. Yes, sir.
 Q. Do you live in the fort or in the city of Brownsville?—A. I live in the fort.
 Q. You live in the fort?—A. Yes, sir.
 Q. How are you occupied there, if at all?—A. Right now?

- Q. Yes.—A. Carpenter in Brownsville.
- Q. Carpenter?—A. Yes, sir; at Brownsville, Tex.
- Q. For the fort, do you mean?—A. No, sir; for Brownsville.
- Q. For Brownsville?—A. Yes, sir.
- Q. That is, your business is the business of a carpenter?—A. Right now; yes, sir.
- Q. Are you employed in any way by the Government?—A. Yes, sir; I have been employed for six years by the Government as a scavenger.
- Q. I mean are you now?—A. No, sir.
- Q. You were the scavenger at Fort Brown, were you?—A. Yes, sir.
- Q. And you held that place for six years?—A. Yes, sir.
- Q. Where were you born?—A. At Brownsville, Tex.
- Q. Lived there all your life?—A. Yes, sir.
- Q. What nationality are you?—A. Mexican.
- Q. Wholly Mexican?—A. Yes, sir.
- Q. A full-blooded Mexican?—A. Yes, sir.
- Q. Your father and mother?—A. Both Mexicans.
- Q. They live there in Brownsville, do they?—A. Yes, sir.
- Q. Did they ever live in Mexico?—A. Yes, sir; I believe my father and mother were born in Mexico.
- Q. Both across the river somewhere in Mexico?—A. Yes, sir.
- Q. And you are how old, did you say?—A. Thirty years old.
- Q. Then, as long ago as six years, when you were 24, you became scavenger for the fort?—A. In 1900, the 30th of November.
- Q. Were you employed as scavenger at Fort Brown in August of last year?—A. No, sir; in November.
- Q. No; I mean were you scavenger in August of last year?—A. Yes, sir.
- Q. At the time when there was a shooting affray?—A. Yes, sir.
- Q. Where were you at the time of that shooting affray, at Fort Brown?—A. I was inside of Fort Brown.
- Q. Were you engaged at that particular time, on that night, as scavenger?—A. Yes, sir.
- Q. Tell us where you were and what occurred, as nearly as you can.—A. I was back of B Company's kitchen, right at the corner of the barracks, while I heard the shooting at Brownsville. I heard two shots, and then I heard all the rest of the shooting.
- Q. Now, at what time did you start on your rounds as scavenger? Did you go around every night?—A. Every night I had to go around between half past 10 and 11 o'clock.
- Q. It was your business to go to the sinks?—A. To the sinks and ash cans.
- Q. To the ash cans, and so forth?—A. Yes, sir.
- Q. Where did you start from on that?—A. I started from the quartermaster's corral and went to the post hospital.
- Q. Yes.—A. From the post hospital to the guardhouse, from the guardhouse to the laundry quarters, where I live now. I can show them to you.
- Senator OVERMAN. Do you understand the map there?
- The WITNESS. Yes, sir.
- Senator FORAKER. Where is the corral?
- (The map was here explained to the witness by Senator Overman.)
- The WITNESS. The wagon shed—I think the corral is right here. Here is the corral right here [indicating].
- The CHAIRMAN. Right near the pump house.
- The WITNESS. This is the wagon shed right here [indicating].
- By Senator FORAKER:
- Q. What sort of vehicle did you have to use in your duty as scavenger?—A. An iron cart.
- Q. With an iron bed, you mean, and an iron lid?—A. Yes, sir; and one mule.
- Q. One mule?—A. Yes, sir.
- Q. Where did you keep it in the daytime?—A. I used to keep it right outside here; right along here, outside this wall of the house here [indicating].
- Q. Did you do all your work in the nighttime?—A. Yes, sir; by myself.
- Q. By yourself. What time did you start that night from the corral on your work?—A. I started about a quarter to 11.
- Q. Tell us now where you went, indicating on the map.—A. I started right here and came along here and came to the post hospital [indicating].
- Senator FORAKER. The post hospital is down to the left there.
- Senator OVERMAN. Here is the hospital right here [indicating].
- The WITNESS. That is it; this place here [indicating].

By Senator FORAKER:

Q. And you were coming down to the hospital?—A. Down this road here, and then to here [indicating].

Q. Did you have to stop at the hospital?—A. Yes, sir; I used to stop there about ten minutes.

Q. Then where did you stop next?—A. I came along here [indicating].

Q. What is the next building?—A. The guardhouse. Here is this road here [indicating].

Q. The road is not marked; but there is a road running around in rear of the guardhouse?—A. Yes, sir.

Q. And you came on that road in rear of the guardhouse. Did you stop at the guardhouse?—A. Yes, sir; I stopped at the guardhouse.

Q. Then where did you go?—A. I went to the laundry quarters; I believe it is here. That is marked on that. That is where the noncommissioned officers stop. I think this is where I live, right here [indicating]. They used to call them the laundry quarters. The commissary-sergeant lives opposite the ice plant.

Q. We know that the map is not correct, so that we will not stop for that. You stopped at the laundry quarters; then where did you go from there?—A. To the company barracks, right here [indicating].

(At this point Senator Overman further explained the map to the witness.)

By Senator FORAKER:

Q. Now tell us how you came.—A. I worked here about ten minutes.

Q. Wait a minute. Is there a road along the wall, between the wall and the barracks?—A. Yes, sir; right here [indicating].

Q. There is a road here?—A. Right there; yes, sir.

Q. Not shown on the map. All right.

The WITNESS. From here I came to B barracks.

Q. You stopped at B, then at C?—A. Right at the entrance to the barracks. I worked there for about ten minutes, and when I got through there I was feeling a little thirsty and I went in the company to get a drink of water, and I came out and jumped on my cart and drove about here, say [indicating].

The CHAIRMAN. What time was that?

The WITNESS. It was pretty near 12 o'clock when I drove to this place here.

By Senator FORAKER:

Q. What did you do after that time?—A. Right here I had an ash can to pick up.

Q. An ash can?—A. Yes, sir.

Q. That was back of the kitchen?—A. Yes, sir; right here [indicating on map].

Q. Did you stop?—A. I stopped right there and took hold of the ash can and emptied it on the cart.

Q. That is, you got off your cart, or were you on the cart?—A. No, sir; I was off the cart.

Q. Got down on the ground and picked up a can and emptied it?—A. Yes, sir; and then I set it on the ground. I heard the first shot.

Q. Where was that fired from?—A. I think it was fired from right along this alley here [indicating on map].

Q. What did you do after that?—A. I heard a lot of shooting.

Q. Then what did you do?—A. I put my lantern out as soon as I heard the first two shots.

Q. Then what did you do?—A. I stood for a little while facing the place where the firing was going on.

Q. Yes.—A. And at the same time I could see the galleries, right here [indicating on map], and the place where the firing was taking place, right in front of me.

Q. What was taking place?—A. The firing taking place.

Q. You are not pointing to the town?—A. No, sir; I am not [pointing on the map].

Q. The firing was in town?—A. Yes, sir.

Q. Did you see any men moving about there before that first shot was fired?—A. No, sir.

Q. Did you see any lights about the barracks?—A. No, sir.

Q. Was there any noise about, anywhere?—A. No, sir; everything was quiet.

Q. Everything was quiet?—A. Yes, sir.

Q. Did you see any men moving about inside the wall near the sink of B Company?—A. No, sir.

Q. Did you see anybody jump over the fence or the wall there in rear of B Company, opposite the mouth of Cowen alley?—A. No, sir.

Q. Or at any other place?—A. No, sir.

Q. If there had been any shots fired from the upper windows of B, C, and D barracks, were you in a situation to have seen them?—A. Yes, sir; I could very easily have seen them, because I could see the barracks here—around right here in front of me [indicating on map].

Q. Now, were any shots fired from the barracks?—A. Not while I was there; no, sir.

Q. How about the first shots?—A. I heard the first shots and then about 20 more shots, and then I drove off.

Q. When they commenced shooting, then you left immediately?—A. I went away immediately.

Q. With your cart?—A. Yes, sir. At the same time when I heard this first shot I heard a few bullets going into the post over the administration building.

Q. That is important. Which way were they going?—A. They went up into the air.

Q. Went up in the air?—A. Yes, sir.

Q. Could you tell which way?—A. Across that way [indicating on map].

Q. Across that way, you thought?—A. Yes, sir.

Q. Then where did you go with your cart?—A. I went toward the administration building, but before I got to the administration building I stopped for a few seconds in front of this company, D [indicating on map].

Q. That is D Company?—A. Yes, sir.

Q. How did you come to stop there?—A. I stopped there to see the men, because the first sound of the bugle had already gone.

Q. What?—A. The first bugle.

Q. You heard the first bugle; when was that?—A. As soon as I jumped from my cart I heard the first bugle call.

SENATOR FOSTER. Where was that?

THE WITNESS. And right after that I heard all the bugles at the barracks.

Q. When the firing commenced and the bugles commenced, what happened in the barracks?—A. Everybody commenced to get up.

Q. Did they make any noise about it?—A. Yes, sir; lots of noise.

Testimony of Joseph H. Howard (colored).

JOSEPH H. HOWARD (colored), after being first duly sworn, testified as follows:

By Senator FORAKER:

Q. Please state your full name.—A. Joseph Henry Howard.

Q. Were you in August last a member of the Twenty-fifth United States Infantry?—A. Yes, sir.

Q. What company did you belong to?—A. Company D.

Q. Who was the captain of that company?—A. Captain Lyon.

Q. Were you with that company at Brownsville, Tex., in August last?—A. Yes, sir.

SENATOR FORAKER. I will put in at this point the record of this soldier as furnished by the War Department, and found at page 271 of Senate Document No. 155.

The record is as follows:

“JOSEPH H. HOWARD.

“Enlisted November 8, 1903; was discharged without honor as a private of Company D, Twenty-fifth Infantry, November 25, 1906.”

By Senator FORAKER:

Q. I observe by looking at this record that you were serving your first enlistment?—

A. Yes, sir.

Q. This shows that you were enlisted November 8, 1903, and that you were discharged November 25, 1906, without honor, as a private of Company D. That is right, is it?—A. Yes, sir.

Q. In what State did you live before you enlisted?—A. Georgia.

Q. Whereabouts in Georgia?—A. Columbus, Ga.

Q. Where were you enlisted?—A. Phoenix, Ala.

Q. Now, where were you on the night of August 13, when this shooting affray occurred in Brownsville?—A. I was on post in the rear of the soldiers' barracks.

Q. You were on guard that night?—A. Yes, sir.

Q. As a detail from Company D?—A. Yes, sir.

Q. And you were on post?—A. Yes, sir.

Q. Tell us just what happened. Wait a moment until that map at your left is explained to you so that we can understand your testimony. That is a map of the fort and a part of Brownsville. Senator Scott will explain it to you.

(Senator Scott pointed out to the witness the various localities as indicated on the map.)

Q. What post were you on?—A. Post No. 2, sir.

Q. Where is post No. 2?—A. In the rear of the soldiers' barracks.

By Senator SCOTT:

Q. In the rear or in front?—A. In the rear. It extends around the soldiers' barracks.

Q. Clear around the barracks?—A. Yes, sir.

By Senator FORAKER:

Q. That is, your beat extended all the way around?—A. Yes, sir.

Q. In walking your beat did you keep the barracks to your left or to your right?

A. To the left.

Q. So that you walked up toward the guardhouse when you were in front of the barracks?—A. Yes, sir.

Q. And down toward the gate and D barracks when you were in rear of the barracks?

A. Yes, sir.

Q. How near were you to the wall?—A. I was right up by the side of the barracks when I was walking.

Q. Your beat ran right along by the barracks, did it?—A. Yes, sir.

Q. How far would you be from the wall when you were walking your beat in the rear of the barracks?—A. Just about 50 feet.

Q. Now, you say you were on post at the time of this shooting. What time did you go on post that night?—A. Half past 10 o'clock.

Q. Do you remember what relief you belonged to?—A. I think it was the first relief.

Q. Who was the corporal of that relief, if you remember?—A. Corporal Wheeler.

Q. You were in his relief?—A. Yes, sir.

Q. Where were you when the firing commenced?—A. I was in the rear of the barracks, in the interval between B and C Companies' quarters.

Q. What did you hear, and tell us as nearly as you can recollect all that occurred?—

A. The first I heard was about two shots down the road.

Q. Whereabouts; what road?—A. Down the road, right outside the gate, along the wall.

By Senator OVERMAN:

Q. Do you mean down toward the river, or the other way?—A. No, sir; they were away from the river, down toward the vacant staff barracks.

Q. That is, you stood behind the wall near the gate, as I understood you. Now, do you mean near the gate or near the barracks?—A. Near the vacant staff barracks.

Q. You heard two shots there?—A. Yes, sir.

Q. Were they inside or outside the wall?—A. They were outside the wall.

Q. Did you see anybody at all about the barracks, up and about at that time?—A. No, sir; not at that present time.

Q. Was there anybody moving about inside this wall behind the barracks at that time?—A. The post scavenger.

Q. Who was that?—A. He is a Mexican. He is the post scavenger.

Q. Is that Matias Tamayo?—A. Yes, sir.

Q. He was post scavenger. Where was he?—A. He was at B Company's sink, over next to the wall.

Q. Over next to the wall?—A. Yes, sir.

Q. How do you know he was there?—A. Because as the firing began he got on his cart and drove off.

Q. Had you seen him before the firing commenced?—A. No, sir.

Q. When the firing commenced what attracted your attention to him?—A. By a wagon rolling off. I heard the noise of his horse and wagon.

Q. Did it make a noise?—A. Yes, sir.

Q. You saw him go away and knew who he was and what it was?—A. I knew it was the scavenger's cart.

Q. Did he come in there or not every night at about that time to do that kind of work?—A. Yes, sir.

Q. Now, you heard two shots. What occurred next?—A. Well, I stopped and looked in that direction—the way I heard the two shots—and then, about thirty seconds after that, I heard a fusillade of shots.

Q. A fusillade of shots?—A. Yes, sir.

Q. Where was the fusillade of shots, as nearly as you can locate it?—A. They were right over to the right of me, across the wall.

Q. That is right behind what barracks?—A. Well, they were to the right of me. I was in the interval between B and C Companies' barracks, and the shooting seemed to be over in that little alley.

Q. There is an alley there, is there?—A. Yes, sir.

Q. And this fusillade seemed to be over about the mouth of that alley?—A. Up in the alley.

Q. Up in the alley?—A. Yes, sir.

Senator FOSTER. What alley does he refer to?

Senator FORAKER. There is an alley between Washington street and Elizabeth street, immediately to his right, where he was posted, in the interval between C barracks and B barracks.

Q. When you heard the fusillade what did you do?—A. I yelled the alarm.

Q. Did you do that in accordance with instructions or not? Was that your duty under such circumstances?—A. Yes, sir.

Q. What alarm did you yell—what did you do?—A. "Guard No. 2."

Q. That is the regular call, is it?—A. Yes, sir.

Q. What does that mean? When a man on post calls "Guard 2," what does that mean?—A. Well, sir, the corporal of the relief at the guardhouse is supposed to come to the sentinel's rescue.

Q. So it was your duty to call out and the duty of the corporal at the guardhouse to come to your rescue?—A. Yes, sir.

Q. Then what further did you do?—A. I think at that time the shooting was still going on, and I came around on the front side of the barracks.

Q. How did you get on the front side of the barracks?—A. Came right through the interval between the barracks.

Q. How far were you up in the interval?—A. I was right out on the parade ground, right in front of the barracks on the parade ground side.

Q. What did you do when you got there?—A. Discharged my piece and called the guard three times.

Q. You discharged your piece and called the guard and what?—A. Three times.

FORMATION OF COMPANIES.

The testimony of the officers and men alike is to the effect that the call to arms was sounded immediately after the first volley of shots was fired upon order of Major Penrose, and that in response to the firing and the call to arms the men in the barracks were aroused, the gun racks were opened, and they were formed on their respective company parade grounds. There was delay in the formation of Company C, because the noncommissioned officer in charge of quarters refused to open the gun racks until he could get an order therefor from some superior officer. On account of this delay Major Penrose ordered the gun racks broken open, and two of them were broken open by the men with the use of axes and other implements. This company was not formed until five or ten minutes after the firing ceased, but D and B Companies were formed, or at least forming, before the firing ceased.

The roll of B Company was called, the call ending at about the time the firing ceased.

Captain Lyon personally inspected his men—Company D—as they fell in line and under orders from Major Penrose immediately placed them behind the wall of the reservation, where the roll was called and every man found to be present or accounted for. The roll call of Company B showed the same result. As soon as Company C was formed and placed in position the men were verified with like result. The officers are all of the opinion that while it was possible that men engaged in the firing could have rejoined their companies before verification, yet all are of the opinion that no one did so join; and they are of this opinion because they failed to observe, as they think

they would have done if such a thing had occurred, any such excitement or quick breathing or other evidence of participation in the shooting affray on the part of any of their men, such as they are confident would necessarily have been observable if they had participated in the shooting, and then, in such haste as must have been necessary, joined their respective companies.

CITIZENS' COMMITTEE.

The next day after the shooting, August 14, the citizens organized a committee and made an investigation to ascertain who had done the shooting. Before this committee a large number of citizens appeared and made statements. These statements were not under oath, but they were reported stenographically. At that time the occurrences of the night before were fresh in their minds and their statements were free from any character of restraint or improper influence, except only that they were under great excitement, and the committee proceeded and the witnesses testified, as the record shows, upon the assumption that the shooting had been done by the negro soldiers and that the only inquiry was which of the soldiers were the guilty parties.

In support of this statement that the committee proceeded upon the theory that the shooting was done by the soldiers and that the witnesses so testified, the following is quoted from the record:

HERBERT ELKINS called to the stand:

Q. You know the object of this meeting. We know that this outrage was committed by negro soldiers. We want any information that will lead to a discovery of who did it.—*Page 85, Senate Document 155.*

Other quotations might be made to the same general effect, but on this point there is practically no dispute.

No one of all the witnesses called before this citizens' committee could say more than that, hearing the firing, he had looked out into the darkness of a very dark night and seen a party of men who appeared to be uniformed and armed like the soldiers from the garrison, and who, on that account, were recognized as soldiers.

It seemed to Major Blocksom and other investigators so improbable that the citizens of Brownsville would thus shoot up their own town, and so natural that the soldiers would, that these statements were readily accepted as satisfactory and sufficient to show their guilt. That it was at least possible, if not probable, that the shooting was done by others than the soldiers might have occurred to the Major and his associate investigators if they had recalled the numerous occurrences of similar character that have happened in other towns.

The following from the newspapers of December 8, 1907, shows that the most unexpected occurrences of that nature are liable to happen in the best-regulated communities:

“NIGHT RIDERS’” WORK—TERRORIZE ENTIRE TOWN—DESTROY PROPERTY VALUED AT \$200,000—“SHOOT UP” HOUSES.

HOPKINSVILLE, KY., *December 7, 1907.*

Five hundred “night riders,” masked and heavily armed, marched into Hopkinsville early to-day and destroyed property valued at over \$200,000, while citizens, in terror of their lives, feared even to open their windows. The police and fire departments, telephone, and telegraph offices, and even the railroad stations, were in possession of a wild mob, shooting right and left, flames from burning buildings meanwhile lighting up the city and the surrounding country until it seemed that the whole town was ablaze.

Windows in the front of business houses and banks on the main street of the city were shot out, and the entire front of the building of one newspaper which had been especially severe in its condemnations of the raids of the “night riders,” and which was owned by the mayor of the city, was demolished.

Only two men were injured, one being Lindsay Mitchell, a tobacco buyer, who was severely beaten with switches and clubs, and the other, a brakeman, who was shot in the back while trying to move his train from the path of the flames.

The raid caught the city unawares, as for some time the depredations resulting from the tobacco war had been of a minor nature, and it was generally thought that in the “dark district” at least the worst was over.

The property destroyed was as follows: W. H. Tandy, independent tobacco warehouse building, owned by J. H. Latham; B. M. Woolridge, association warehouse; Tandy & Fairleigh, buyers, warehouse.

As soon as the “night riders” left town, a posse of about 15, headed by Major Bassett, of the local militia, and Deputy Sheriff Cravens, entered buggies and followed the trail. As soon as the posse could get near enough they opened fire on the fleeing mob, which returned the shots. It is believed none of the “night riders” was hit. The members of the posse escaped injury. They were soon outdistanced by the fleeing men, and after chasing the marauders past Gracey, the officers returned home.

News was later received from all parts of town indicating the spread of the raid of the riders. There was hardly a house in the business section of the city which did not suffer.

Just why no damage was done by the “night riders” to the Imperial or the American Snuff Company warehouses is not known. They probably contained more stock than any other house.

At the intercession of citizens who were being guarded on a street corner the invaders during the raid allowed the fire department to leave their building to save property adjacent to the burning buildings. Had it not been that no wind was blowing, and that the firemen and citizens worked so well, the entire city might have been destroyed.

The girls in the telephone office were forced by 15 men to leave their switchboards until the mob was ready to depart from town.

Governor Beckham to-night, at the request of Mayor Meacham and County Judge Breathitt, ordered the local company of Kentucky State Guards to report to the sheriff for indefinite duty during the “night-riders” trouble, under command of Maj. E. B. Bassett. The local officials believe they will be able to offer protection to secure witnesses who can positively identify members of the party.

When such bloody wickedness can be caused by tobacco in Kentucky, what may not have been born of race prejudice in Texas?

ACTION OF THE CAMERON COUNTY GRAND JURY.

In addition to the investigation made by the citizens’ committee and by the officers of the Twenty-fifth Infantry, the whole case was presented to the grand jury for Cameron County, Tex., of which Brownsville is the county seat, at its September session, with the result that after three weeks of investigation (see report of General McCaskey, p. 107, Senate Doc. No. 155) they found there was no testimony on which to base an indictment of anybody.

The following is the official report of the action of the grand jury made by the presiding judge of that judicial district:

[Telegram.]

SAN ANTONIO, TEX., *September 28, 1906.*

MILITARY SECRETARY,
War Department, Washington, D. C.:
Following received:

BROWNSVILLE, TEX., *September 27, 1906.*

MILITARY SECRETARY, DEPARTMENT OF TEXAS,
San Antonio, Tex.:

Following letter received by me this date repeated for your information:

"DEAR ARCHER,
"First Lieutenant, Twenty-sixth United States Infantry,
"Commanding Fort Brown, Tex.:

"In compliance with my agreement with the United States military authorities I hereby promptly advise you that the grand jury of Cameron County, adjourned this day, have, after investigation, not indicted any of the following-named parties, held at Fort Sam Houston to await the action of the civil authorities, and they are therefore entitled to release: Sergt. W. A. Brawner, Company C, Twenty-fifth Infantry; Corpl. David Powell, Company B, Twenty-fifth Infantry; Sergt. George Jackson, Company B, Twenty-fifth Infantry; Private J. H. Howard, Company D, Twenty-fifth Infantry; Private James W. Newton, Company C, Twenty-fifth Infantry; Private Oscar W. Reed, Company C, Twenty-fifth Infantry; Corporal Madison, Company C, Twenty-fifth Infantry; Private James C. Gill, Company D, Twenty-fifth Infantry; Sergeant Reid, Corpl. Willie H. Miller, Private C. W. Askew, Company C, Twenty-fifth Infantry; Private John Holtman, Company B, Twenty-fifth Infantry.

"STANLEY WELCH,
"Judge Twenty-eighth Judicial District of Texas."
ARCHER,
Commanding.

Request instructions as to disposition these men.

MCCASKEY, *Brigadier-General.*

They made this finding, notwithstanding the fact that the men named had been, on the 23d of August, arrested and placed in confinement on the charge of murder on account of having participated in the shooting or having been accessories thereto. William Allison, who had been discharged from Company B, August 11, and who had started a saloon for the special accommodation of the men of the battalion, was also arrested.

Sergeant Jackson was, on the night of the shooting, in charge of Company B quarters; Sergeant Brawner was in charge of Company C quarters; and Corporal Powell was in charge of Company D quarters; Sergeant Reid was sergeant of the guard on duty at the time of the shooting; Corporal Miller, of Company C, was absent in the town on pass at the time of the shooting; Corporal Madison was corporal of the guard on the night of the shooting; Private Howard was the sentinel on post between the barracks and the reservation wall at the time when the firing commenced; Private Newton was the soldier who was assaulted by Mr. Tate, the customs officer; Private Reed was the soldier who was pushed off the plank into the water by Customs Officer Baker; and Private Askew was thought to be the owner of a soldier's cap found in the streets on the morning after the

shooting; and Private Hollomon, of C Company, was thought to be interested in some way in the Allison saloon.

It was thought by the authorities investigating the matter that these were clues that pointed toward these men. It was rightly assumed that it would have been impossible for a conspiracy to have been organized, the guns to have been secured from the gun racks, and the shooting party to have gone out into the town and to have returned without the noncommissioned officers in charge of the quarters having some knowledge of the affair, without the sergeant and corporals of the guard having some knowledge, without the sentinel on duty having some knowledge; and it was thought in the absence of any other motive that the shooting must have had relation to the offenses committed against Private Newton and Private Reed, and that consequently they would have some knowledge.

Undoubtedly most of these men would of necessity have known something of the facts if the shooting had been done by soldiers, because of the relation they were in to the transaction, but, as already indicated, the grand jury found the testimony wholly insufficient to hold anyone, and they were all discharged. Except only this testimony, mere deduction from acknowledged facts, there has never at any time been any testimony submitted even tending to identify any one of the soldiers as guilty of participation in the affray, and this testimony was pronounced by the grand jury to be utterly insufficient for that purpose. No one will pretend that in all the 3,000 pages of testimony there has been one iota of evidence added to strengthen the case against these men or against any other individual.

MEN CHARGED WITH GUILT.

The officers of the battalion supposed at the time of the shooting that it was done by the citizens. It never occurred to them that anybody connected with the battalion was engaged in it until Doctor Combe, the mayor of Brownsville, visited the fort that night, after the firing was all over, and to Major Penrose made the charge that his men were the guilty parties. Major Penrose was unable to believe that his men were guilty, and remained of that opinion until the following morning, when Mayor Combe brought to him certain exploded shells and cartridges and clips that had been picked up at the places where the shooting had been done, which, upon examination, proved to be cartridges and shells and clips such as were in use by the men of the battalion and such, as it was claimed, were not in the possession of anybody else at Brownsville or in that vicinity.

OPINION OF OFFICERS.

In the face of this testimony Major Penrose and the other officers of the battalion concluded that some of their men must have done the firing. They remained of this opinion until the investigation by the Committee on Military Affairs of the Senate was in progress. During that investigation, on account of certain testimony that had been taken, Major Penrose and all his officers became convinced that the men of the battalion had nothing whatever to do with the shooting. All of them so testified.

CHANGE OF OPINION OF OFFICERS.

Major PENROSE testified as follows (pages 3024, 3025, and 3026) as to change of opinion about guilt of men:

By Senator OVERMAN:

Q. But, Major, you made up your mind that your soldiers had done the shooting without hearing any testimony of the eyewitnesses as to the soldiers being seen?—A. Yes, sir. Mayor Combe, Captain Kelly, and all of the gentlemen of that committee had told me that different people at Brownsville had reported seeing those men.

Q. But didn't you make up your mind that your men had done it when you saw that those were army shells, that they were freshly fired, and you found no bullets through the quarters? Taking that into consideration, didn't you make up your mind then that your soldiers had done it?—A. Yes, sir; I did.

Q. When those gentlemen told you that those men had been seen on the streets, did you not at that time remember the darkness of the night as distinctly as you do to-day?—A. Yes, sir; exactly.

Q. Why did you believe it then and discredit it to-day?—A. Because I thought there might have been some lights that they might have seen them by which I did not know of at that time.

Q. Do you not still concede that there may have been?—A. There may have been in the Cowen house; that is the only thing I know about any lights being seen.

Senator HEMENWAY. I was going to suggest that Senator Pettus has put a question, and that the witness should be allowed to answer it.

Senator OVERMAN. I thought he was through.

By Senator PETTUS:

Q. Will you please finish your answer to my question.—A. Yes, sir.

Q. I want to know fully what produced this change in your mind, in your opinion, as to who did that shooting?—A. I am trying to give it to you, Senator. There was another question or two asked of me, if you will remember.

Q. I want you to explain it fully in your own way.—A. Yes, sir. Well, as I say, the darkness of this night and the finding of those shells—my opinion commenced to change at that time. Then there was the testimony that was produced before this committee as to the experiment that was made at the Frankford Arsenal, where they found that 11 shells were fired from one gun.

Senator FORAKER. A Springfield?

A. One Springfield rifle that had been locked up in the arms chest at Fort Niobrara and was not opened until the morning of the 14th of August. They claim that 11—I think it is 11—of those shells, or 11 shells, fired from that gun were found in the streets of Brownsville. Those shells were brought down from Fort Niobrara to Brownsville. They were open, on the back porch of B Company. They were open there several days, I don't remember how long. I can see no way in the world that those shells could have been fired in the streets of Brownsville. There is another thing: I think they were taken out there and put there. That is the reason that I have changed my opinion, sir.

By Senator LODGE:

Q. You think those shells were put all over the town in order to give the idea that the soldiers did the shooting?—A. I think certainly those 11 shells were, sir.

Q. Well, but it is in testimony and, I think, uncontradicted, that shells were picked up at a great many points?—A. Yes, sir; so I understand.

Q. Your idea is that they must have been put there, at all those points?—A. That is my idea of it, sir.

By Senator OVERMAN:

Q. Do you think those freshly fired shells that were found there at the mouth of the alley were brought down from Niobrara?—A. I think so now.

Q. And put there?—A. I believe they were, sir.

Q. Yet you say they were freshly fired?—A. They had the appearance to me. They had only been fired a month before.

By Senator TALIAFERRO:

Q. Who do you think brought them from Niobrara?—A. B Company brought them down.

Q. Who do you think distributed them in the streets?—A. I don't know, sir, unless some of the people of Brownsville.

Q. How did they get out of the custody of B Company?—A. They were open on the back porch of B Company, and were left there for several days, Senator—this box was. I think the testimony so shows here.

Q. They were at least more accessible to the members of B Company than they were to the public at large?—A. Yes, sir; that would be very possible that they were.

Senator SCOTT. I should like to hear the answer to Senator Pettus's question, if I can get it.

By the CHAIRMAN:

Q. If you have anything further to say in answer to the question of the Senator from Alabama, you will, of course, proceed with it and make full answer.—A. I should state in connection with that that there was the behavior of the men before this shooting occurred. They had been an excellent lot of men. We had never had any trouble with them; they were well disciplined, well drilled, easy to handle. From the time that this shooting occurred none of them was permitted to leave Fort Brown at all. We took them up to Fort Reno, Okla., and there they were confined absolutely to the limits of the post—the post proper. They were not permitted to leave it under any circumstances. I gave them extra drills, extra guard, and had them working at fatigue whenever they were not drilling or on guard, the whole day long. Those men took all that without a murmur or a complaint of any kind. There were five of the men who disobeyed that order and went to town. They were each tried, dishonorably discharged, and sentenced to eighteen months' confinement at the military prison at Fort Leavenworth, Kans., and that was reduced by the reviewing authority to six months. Those five exceptions were the only ones that disobeyed any of the orders that were issued at all. Finally the order came for their discharge. They were discharged at that post, a half a company at a time. They were paid off. They had anywhere from fifty or sixty dollars to, some of them, twelve or thirteen hundred dollars. They went to this little town, which was full of temptations, and, as I stated before, there was not a single man found drunk, nor was there a disturbance of any kind or character reported of these men, and I talked with the chief of police over the telephone frequently. Now, taking into consideration the conduct of these men both before and afterwards, and what I have before stated, leads me to believe that the men did not do that shooting.

Captain MACKLIN says as to change of opinion as to guilt of men (page 3136):

By Senator WARNER:

Q. Did it not look to you as though some of the men had done the shooting?—A. Yes, sir; it seemed so, naturally, on account of the shells.

Q. And if you had not believed so at the time you would have said something to Major Penrose as to differing with him in his judgment, would you not?—A. Well, I do not believe I would, Senator, because Major Penrose was my commanding officer, and I was not called upon to make any remark to him, or any suggestion, or anything.

Q. But it did make the same impression on you?—A. Yes, sir; it seemed so. It looked very much so.

Q. And you continued of that opinion, did you not, Captain?—A. Yes, sir.

Q. Right along?—A. Yes, sir; I could not believe anything else.

Q. Did you ever change your opinion?—A. Yes, sir.

Q. When was that Captain?—A. Well, it was after the time that the men had stood the strain that they were under at Fort Reno, from the time they left Brownsville until their arrival at Reno, and the duty that they did at Fort Reno; and then seeing the discharge of those men.

Captain MACKLIN also said, at page 1788:

Q. Now, Captain, you have investigated the subject a good deal. I understood you to say, so far as your men are concerned, you have taken steps to find out whether or not any of your men were guilty of this shooting.—A. By every means that I thought was possible; yes, sir.

Q. That is, you have talked with them?—A. Yes, sir.

Q. Talked with all of them?—A. Yes, sir.

Q. Questioned them and had your noncommissioned officers try to find out?—A. Yes, sir.

Q. As a result of that, can you tell us who did do that shooting?—A. Well, sir; I do not think the men did it.

Q. You do not think the men did it?—A. No, sir.

Q. You are satisfied of that, are you?—A. I am satisfied of that. I have studied this subject from every phase of it. I think I have read almost every bit of evidence and testimony that has been given, not only that taken by General Garlington and the other inspectors-general, but in Major Penrose's court-martial, and the longer it goes on, the more I feel satisfied that the men did not do the shooting. It is possible that there were a few shots fired from the barracks or some of those quarters by the men in their fright. Even when I joined the command that night the men were still under a heavy excitement and were much frightened.

Q. But you have no knowledge whatever of anybody connected with the battalion firing a shot, have you?—A. No, sir; I have not.

Q. And you have no knowledge of any fact, have you, that leads you to suspect any man in that battalion of having participated in that affair?—A. Not in the least; no, sir.

Lieutenant GRIER says (p. 1726 et seq.):

Q. As I understand, the next morning after the shooting, you were convinced that men of the battalion were engaged in the shooting up of the town of Brownsville.—A. In a manner similar to that in which he was. In other words, the circumstantial evidence was such that no reasonable man could think, hardly, but what some soldiers had been implicated in it.

Q. Yes.—A. Because civilians do not usually carry around bandoliers and Government ammunition—

Q. No.—A. (Continuing.) For one thing—that is, ordinarily.

Q. So that no reasonable man would come to any other conclusion?—A. At that time.

Q. And after coming to that conclusion, you remained of that opinion until the men were discharged without honor?—A. Yes, sir.

Q. When was that?—A. That was some time late in November; I think from about the 20th to the 26th of the month it took to discharge those men.

Q. And you were continually endeavoring to find out all you could regarding this shooting, were you not?—A. I was.

Senator SCOTT:

Q. You say you tried to find out who did the shooting?—A. Yes, sir.

Q. Were you trying to find out whether somebody else than the soldiers did it, or were you trying to fix the blame on the soldiers?—A. I was in a position, stationed at Fort Reno, where we could only get one side of the story. It would be impossible to get anything else. The soldiers never volunteered any information about the townspeople doing the shooting—never claimed so. They said they didn't know who did it, but they had not.

Q. But you did not try to find out whether somebody else did it but the soldiers. You were trying to fasten it on the soldiers?—A. Yes, sir, I was trying to find out something from the soldiers.

By Senator FORAKER:

Q. The question was asked you, and I do not want it to remain in that way, whether you were trying to fasten it on the soldiers.—A. No, sir; I was not trying to fasten it on the soldiers, but I was trying to find out from some of the old men of the regiment, who had been with the regiment before I was born, that I knew were good old men, and would tell the truth, something to clear them.

Q. That is, it is a fact, is it not, Lieutenant, that instead of trying to fasten it on the soldiers, you were attached to your command, as any other officer would be?—A. Yes, sir.

Q. And that you were trying to clear them?—A. Yes, sir; that was my idea, to clear them, and if it had been any of the soldiers to punish the four or five who did it. I wanted to get hold of those who did it, to save the rest of them.

Q. To save the rest of the command?—A. Yes, sir.

By Senator WARNER:

Q. And so you remained of this opinion, that a bunch of the soldiers had done the shooting up of Brownsville from the 13th of August until what day was it?—A. About the 20th of November.

Q. The 20th of November?—A. Up until the time General Garlington came to the post and delivered the ultimatum to the troops.

Q. What was there about that ultimatum that changed your opinion? What fact was there there that could possibly change your opinion, Lieutenant?—A. It was not the ultimatum itself, but it was the effect of it. When these men did not come up and give up anybody—the names of anybody implicated in that raid—when they knew if they did not there was not any joke about it, but they all go out of the service; and I knew old men like Sergeant Sanders, that I have seen personally handle the meanest kind of a soldier, and handle him mighty well, I began right then to think there was considerable doubt about it. You could not convince me that a bad crowd could keep them from telling what they knew.

Q. Then you came to the conclusion that Sergeant Sanders did not know it?—A. Yes, sir.

Q. Did that convince you that nobody in the command did it?—A. I say there were a number of old soldiers.

Q. How many old soldiers did you talk to?—A. I talked to 50 or 100 of them—almost everyone I met.

Q. And none of them suggested that the citizens had done the shooting?—A. They never said so.

Q. Not one of them?—A. They said they didn't know who did it, but that they had not.

Q. Did Sergeant Sanders in any talk that you had with him ever give you any fact that would indicate that the shooting was done by the citizens?—A. No, sir; he did not.

(Pages 1726–1727):

Q. They all were. Now, so that we will have it connected, what was it that occurred when General Garlington was there?—A. Well, he conducted an investigation, and had the men in to make sworn statements, and his investigation developed nothing new, so that the battalion was brought out where he could address it; and I think that was Friday of one week, and he told them if they did not deliver up the men that did the shooting on Monday he would recommend that everyone of the soldiers that was present with the battalion in Brownsville be discharged without honor.

Q. Was there anything about that that changed your opinion as to the evidence and circumstances of the shooting up of Brownsville?—A. It was the effect that it produced on the men that impressed.

Q. That is, instead of changing your opinion, you thought the effect produced on the men would prevent you getting information.—A. No, sir.

Q. What, then? What effect did it produce on the men?—A. When that ultimatum was delivered, and the men knew that they had from Friday until Monday, the officers got busy with all the soldiers, especially the old noncommissioned officers, and put it right up to them, and told them what was in store for them; that there wasn't any bluff or joke about this proposition; that it was a sure thing—they would go out of the service if they did not tell. And we were not able to get anything out of them. And in addition to that was the behavior of those men when they were discharged. There was no need to have a battalion of another regiment up there at all. The post had never been in better condition, better order, better discipline, the whole time previous than right during the time those men were discharged.

Q. Is that all there was that would have an effect upon you as to who it was did the shooting?—A. All at that time; but there have been things since.

Q. What things since?—A. Evidence brought out in the Penrose court-martial.

Q. What evidence do you refer to?—A. I refer to the discrepancies in the testimony, in the evidence of witnesses for the prosecution in regard to distances, and whether or not they could see men on such a night as that. Also the possibility of those people in Brownsville getting hold of Government ammunition, part of which has been brought up here.

Q. Then you still remained of the opinion, did you, practically until the Penrose court-martial evidence?—A. Yes, sir; it impressed a doubt upon my mind. I thought it was awfully funny that those men who were almost ready for retirement allowed themselves to be discharged without honor from the service simply to hide a bunch of criminals, if they were among them.

Q. What did you say about their getting Government ammunition at Brownsville—the citizens?—A. I say there is a possibility they could get it down there. It has been testified to.

Q. What kind of ammunition; Springfield ammunition?—A. Yes, sir; any kind.

Q. How could they? What was the possibility of their getting Springfield ammunition down there?—A. Well, there was ammunition left in the barracks down there. That has been testified to, I understand. Sergeant Osborn found some there when

the Twenty-sixth Infantry left. Then it would have been a possibility to get those shells out of that box on the porch of B Company barracks.

Q. That is a possibility?—A. Yes, sir.

By Senator FORAKER:

Q. I will ask you a question or two. I understood you to say that the conduct of the men, when the ultimatum was put to them by General Garlington, had an effect upon your mind as to whether they were guilty or not?—A. Yes, sir.

Q. By that you mean to refer to the fact that they did not tell anything when they were informed by him and by the officers of the battalion that unless they did tell who the guilty parties were they would be discharged without honor and lose all the rights they acquired by their long service, but still they refused to tell anything, and still insisted that they did not know anything; and that had an effect on your mind, did it not?—A. Yes, sir.

Q. That is, you could not understand why old soldiers like those to whom you have referred would suffer that kind of loss and disgrace for the sake of saving, if they knew of them, a few guilty culprits among their number?—A. That is the idea, exactly, sir.

Q. Now, I will ask you if it was not assumed, from the very moment that these shells were exhibited to Major Penrose by the citizens of Brownsville, that soldiers were guilty, and if all efforts to find the guilty parties were not confined to finding them among the soldiers?—A. Yes, sir.

Q. Was there any effort at all to find anybody but the soldiers guilty of the firing—Senator WARNER. By whom?

Q. (Continuing.) By anybody connected with the battalion, or by anybody else of whom you have knowledge?—A. No, sir; there was none that I know of.

Q. I will ask you if that was not the assumption on which Major Blocksom proceeded in all his investigation, and also the assumption upon which General Garlington proceeded in all his investigation?—A. Yes, sir.

Q. And if that was not the assumption on which all the officers of the battalion proceeded in their investigations from that time on?—A. Yes, sir.

THE PURDY TESTIMONY.

When the testimony taken by the citizens' committee of Brownsville immediately after the firing was printed and submitted to the Senate it seemed insufficient to show that the men of the battalion had done the firing. This being pointed out, the President directed Major Blocksom to return to Brownsville, accompanied by Assistant Attorney-General Purdy, to take more formally and under oath all such testimony as might be available in regard to the shooting affray, with special reference to the question whether the soldiers had participated in it.

Acting under this order Major Blocksom and Mr. Purdy took a great many affidavits of the citizens of Brownsville, detailing their personal experiences at the time of the shooting affray and narrating what they respectively witnessed.

This testimony so taken was submitted to the Secretary of War, who in turn submitted it to the President, with a report as to the nature of it, and thereupon the President sent the same to the Senate, where it was ordered printed, together with other literature bearing on the same general subject, as Senate Document No. 155, Part 2.

All this testimony—that taken by the citizens' committee and also that taken by Major Blocksom and Mr. Purdy—was ex parte, without any opportunity to the soldiers to be present or to be represented, to cross-examine, or put to the test in any way whatever the statements made by the various witnesses.

CONCLUSIONS OF THE PRESIDENT AND SECRETARY OF WAR.

Upon this testimony the Secretary of War and the President seemed to feel perfectly satisfied that it had been established beyond

any reasonable doubt that certain soldiers of the battalion had done the shooting, and that in all probability many other members of the battalion had knowledge of the guilty parties. They reached this conclusion in the face of the fact that every soldier of the battalion had stated under oath that he had no participation whatever in the shooting and had no knowledge whatever as to who did the shooting, and in face of the further fact that, although the officers of the battalion and the officers of the Inspector-General's Department had made the most diligent inquiries and the most careful and persistent efforts to discover the guilty parties, not a clew had been found to indicate who in the battalion, if anyone, had participated in the shooting, and notwithstanding the further fact that all the officers had stated under oath that they found all their men present or accounted for when the companies were formed in response to the call to arms, which was sounded while the firing was still in progress; and notwithstanding the further fact that as soon as Major Penrose learned from Mayor Combe that his men were charged with the shooting he directed that his officers again verify their men, and verify their guns, and verify their ammunition, and that as soon as it was light enough to see they made a careful inspection of the guns to ascertain whether or not any of them had been fired that night, with the result that again the officers found every man present or accounted for, every gun free from any indication of having been fired, and every cartridge accounted for—not a single one missing.

ACTION OF THE PRESIDENT

Upon the testimony so taken and the various reports made to him, the President found that the raiders were soldiers from the garrison and that, in view of the manifest impossibility of the raiders keeping all knowledge of their identity from their comrades, many, if not most of the men of the battalion, knew who the guilty men were, and that inability to get any evidence or even clew to show who they were was due to a "conspiracy of silence," on account of which all had been properly discharged without honor under the following order:

THE WHITE HOUSE,
Washington, November 5, 1906.

The SECRETARY OF WAR:

I have read through General Garlington's report, dated October 22, submitted to me by you. I direct that the recommendations of General Garlington be complied with, and that at the same time the concluding portion of his report be published with our sanction as giving the reasons for the action.

THEODORE ROOSEVELT.

The following is the recommendation of General Garlington referred to in the above order:

I recommend that orders be issued as soon as practicable discharging, without honor, every man in Companies B, C, and D of the Twenty-fifth Infantry, serving at Fort Brown, Tex., on the night of August 13, 1906, and forever debarring them from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government. In making this recommendation I recognize the fact that a number of men who have no direct knowledge as to the identity of the men of the Twenty-fifth Infantry who actually fired the shots on the night of the 13th of August, 1906, will incur this extreme penalty.

Doubtless the reports of Major Blocksom and General Garlington as to what, in their opinion, the testimony established, had as much, if not more, to do than the testimony itself with creating in the mind of the President the belief upon which he acted. Running all through the reports of these officers there are evidences in their statements that they were from the first of the opinion that the men were guilty, and that proceeding upon such assumption everything in their favor was minimized and everything that indicated guilt was magnified.

Major Blocksom, in his report made a few days after he reached Brownsville, August 29, commenced with an unqualified statement that the trouble was caused by the soldiers of the Twenty-fifth Infantry; "that there was no doubt Mrs. Evans was seized by the hair and thrown violently to the ground by a tall negro soldier," a statement that has not, down to this moment, received the support of any sworn testimony; that he was sure the three shots that went through Mr. Yturria's house came from a point near the center of B Company's upper back porch; that Stark's house was shot into, "evidently mistaking it for Tate's house," which was adjoining; that "the raiders were soldiers of the Twenty-fifth Infantry can not be doubted;" that the call to arms was sounded by order of the sergeant of the guard "probably too early during the firing to be genuine," although he should have known, if he did not know, that it was sounded by order of Major Penrose; that "it must be confessed the colored soldier is much more aggressive in his attitude on the social equality question than he used to be."

When the evidence upon which these statements were made was carefully analyzed, it was found utterly insufficient to warrant such conclusions. Nevertheless he embodied in his report the following recommendation:

If satisfactory evidence concerning the identity of the criminals does not come from members of the battalion before a certain date, to be fixed by the War Department, I recommend that all enlisted men of the three companies present on the night of August 13 be discharged the service and debarred from reenlisting in the Army, Navy, or Marine Corps.

Without stopping to review in detail General Garlington's report, it is sufficient to say that in his testimony before the committee he frankly admitted that he entered upon it assuming that the men were guilty, and that all he did was for the purpose of disclosing if he could who the guilty soldiers were. At no time did it occur to him that by any possibility anybody other than the soldiers could have done the shooting. The general character of his report and his general testimony on the subject may be inferred from the following:

Page 2746:

Brig. Gen. ERNEST GARLINGTON (Vol. III, p. 2746):

Q. Just one other thing. You said awhile ago that you would not believe these soldiers without corroboration—would not believe any of them who denied that he had participated in the shooting, or that he had knowledge of the shooting. I understood that, in effect, to be your statement.—A. That is substantially what I stated.

I did not state that I would not believe any of them who denied participation, because I believe that there are a great many of those men who did not participate.

* * * * *
 Q. You would not believe any of them who denied having knowledge as to who did the shooting?—A. Not without corroboration; no, sir; not now.

Q. If anyone would come forward and tell you that he knew who did the shooting, would you believe him?—A. Not unless he had corroboration.

Q. Not without corroboration?—A. No, sir.

Q. You would not believe him either way?—A. No, sir.

* * * * *
 Q. If any man would come forward and say that he shot up the town, or that he knew that this, that, or the other man did it, who was a member of the battalion, you would believe him then?—A. No; I would not accept any one man's information or statement as to another who did the shooting. In other words, I think that the condition now is that you can not get the truth from those people about the Brownsville incident. That is the general proposition that I make.

Q. You said that was the case when you were there, too, didn't you?—A. After I talked to them awhile.

Q. Well, I say you came to that conclusion?—A. Yes, sir.

Q. And yet that is the very thing you were trying to get out of them, and the very thing you recommended that they be dismissed for, because they would not tell you who it was that did it?—A. Yes, sir.

Q. You stood ready, then, to believe any man who would come forward and say, "I did not do it, but somebody else did it?"—A. I stood ready to follow up any clew that any of those men gave me, and then to pass my opinion upon what I found.

Q. But you would not have believed them without corroboration?—A. No, sir.

Q. None of them? How long have you had such a disparaging opinion of the veracity of colored men?—A. I did not say that of colored men. I am talking about the Brownsville battalion.

Q. Do you think colored people, generally, are truthful?—A. No, sir; I do not.

Q. You do not?—A. No.

Q. You would not believe their testimony ordinarily, even under oath, would you?—A. Where their own interest or some special interest was concerned. It depends entirely upon the circumstances.

Q. You think a colored man might testify truthfully about the weather, but that he would not testify truthfully about a crime?—A. He might have some difficulty in testifying about the weather.

Q. Just now he would, but if he were testifying about a crime that he was charged with, or that some of his comrades were charged with, you would not believe him?—A. Not without corroboration.

MOTIVE.

The motive for the crime was thought to be, although there was no such testimony, to visit revenge on the community indiscriminately for the hostile feeling of the citizens and their treatment of the soldiers as to saloons, in the Tate affair, and in the other less important altercations. It does not seem to have occurred to those making this claim that a lot of hoodlums such as usually engage in such affrays may have had as their motive a purpose to get rid of the negro soldiers. It is unnecessary to speculate beyond what may be involved in the question as to the guilt of the soldiers. If it were not, other suggestions might be made as to the possible motives of the raiders if they were not soldiers.

II.

CHARACTER OF THE TESTIMONY.

The testimony against the soldiers may be divided into two classes: (1) That of so-called eyewitnesses, and (2) that which was circumstantial and confirmatory.

THE EYEWITNESSES.

The "eyewitnesses" were citizens of Brownsville. It was natural for them to share the prejudices that had been aroused against the soldiers and to jump to the conclusion that they were doing the shooting. In this way can be accounted for the belief most of them expressed that the soldiers did the shooting and that they saw enough to satisfy them of that fact. But aside from all this their testimony is manifestly unreliable. In the first place because enough is shown as to most of them to make it clear that they were not able to see as claimed because of the darkness of the night and the general situation.

Major BLOCKSOM said in his first report (Senate Document No. 155, part 1, page 63) :

None of the individual raiders was recognized. Streets are poorly lighted, and it was a dark night. Those who saw them were busy trying to keep out of sight themselves.

Without taking up the testimony of each witness in detail, it is enough to say that in a general way all testified that hearing the firing they rushed to the windows of their respective houses, looked out into an unusually dark night, and claimed to see men moving through the streets and alleys at the places of the firing, carrying guns like those used by the soldiers, and wearing soldiers' uniforms, and that in this way, while they could not identify any individuals, they did recognize the firing party as soldiers. The distances at which these witnesses, respectively, saw what they related and recognized the raiders as soldiers vary all the way from 30 feet up to 150 feet and more, and in no instances, except those hereafter specifically mentioned, were any of these witnesses aided by any kind of artificial light.

The general question is, therefore, whether the darkness was of such character as to make it impossible for them to see with such distinctness as would enable them to testify as they have.

A DARK NIGHT.

The testimony establishes beyond question that while it was a starlit night, yet it was unusually dark. A number of instances are testified about to illustrate the character of night and the effect of the darkness upon the vision.

Captain MACKLIN says (p. 3127):

By Senator FORAKER:

Q. Now, can you recall any circumstances that will indicate the darkness of the night, any experience that you had, meeting men, or the difficulty you had in recognizing men?—A. Yes, sir; I had several personal experiences that night. After Major

Penrose put my company on a chain of sentinels, it was necessary for me to visit those sentinels, and at the upper end of the garrison, extending beyond the garrison wall, I had several posts, just how many I have forgotten now, and in one or two instances I could not find them, and had to call out to them to locate them; and in those cases I found the men within 10 or 15 feet of me.

* * * * *

Q. How far away from you, according to your recollection, could you distinguish the kind of clothing the men were wearing, if you could see them, as to whether they wore uniforms or not?—A. Well, I should say 10 or 15 feet, Senator; not over that.

Q. You would not think it possible to tell whether the men you might see were white men or negroes, at a distance of a hundred feet away in the dark?—A. I don't believe you could tell it at 15 feet; in fact, on those visits there that I went on, I carried my revolver in my hand.

Q. All the time?—A. Yes, sir.

Q. And you could not tell whether they had on yellow uniforms or not?—A. You could not see at all. Everything was just a blank.

* * * * *

(Page 3130):

By Senator FORAKER:

Q. Did you have anybody in your company who was so marked with freckles or spots of any kind on his face as to be noticeable?—A. No, sir; I did not. Nearly all the men of our battalion were pretty dark. There were a few light ones, but I don't remember any of them that had freckles.

Q. Was it possible, remembering the darkness of that night, to see freckles or spots on the face of a man any distance away from you?—A. No, sir; I do not think so. I do not believe, in fact, I am very certain, that you could not have told a white man from a colored man 10 feet away.

Captain LYONS says as to darkness of night (page 3154):

By Senator FORAKER:

Q. Can you give us any illustration—can you relate any incidents that came within your personal experience that night, or under your observation, that will enable us to judge how dark it was; I mean any incident that would indicate whether you had difficulty or otherwise in distinguishing persons or objects?—A. I remember that after the company was formed Major Penrose called over to me and asked me if my company was formed. I said that it was. He came over from the direction of B Company barracks—my company—and he had to get very close to me, then, before I could see who it was. Also, in calling the roll I had to use a lantern when the men were behind that wall in order to distinguish who each man was.

Q. Can you tell us how far away, without the aid of any artificial light, you could distinguish whether men were white men or colored men?—A. I should think about 10 feet would be the maximum.

Q. At what distance could you distinguish whether they were clothed in uniforms or other kind of clothes?—A. Of course this is only my opinion—

Q. Yes.—A. I should say about the same distance.

Q. Do you think you could have told whether a man was a white man or a black man, or whether he was in uniform or in citizen's clothing, at a distance of 25 or 30 feet away?—A. I do not, sir.

Lieutenant LAWRASON says, as to darkness of night (page 3146):

By Senator FORAKER:

Q. That is all on that point. Now, Lieutenant, can you recall any incident that happened the night of the 13th, after the firing commenced, that would enable you to give us, by relating it, an idea of how dark it was? What difficulty did you have, if any, in recognizing men or objects?—A. I recollect it was a dark, starlight night—that is, there was no moon; the only light was starlight—there were no clouds in the sky, though—and I came quite close to several men without recognizing them. I remember I passed a man who had been sent over to my quarters to awaken me, as I went out.

I ran past him, and he recognized me, I suppose; I did not recognize him, and he called after me when I had passed, and I turned back and he gave me his message.

Q. How close were you when you passed without recognition?—A. I believe we were inside of 6 feet, sir.

Q. Six feet?—A. I believe about 4 or 5 feet away.

Q. Do you recall any other instance similar to that that would show the difficulty you had in recognizing men or objects?—A. No particular instance, sir. I recollect that I had some difficulty in recognizing some of the men when posting them around, and some of the noncommissioned officers when posting reliefs.

Q. It was so dark, in other words, if I understand you, that you had to be close to a man to recognize him?—A. Yes, sir; go by his voice and general appearance. I knew most of the men.

Lieutenant GRIER, as to character of night (page 1735):

Q. As to the character of this night; it was a dark night?—A. Yes, sir; a dark, starlit night.

Q. So that when you met the sergeant, you could not tell who he was until he got within a very few feet of you?—A. About as close as I am to you.

Q. So that it may be in the record—that is about how far?—A. About 5 or 6 feet.

Senator SCOTT. It is nearer 9 feet.

Senator WARNER. We are doing this.

Senator BULKELEY. It is more than 6 feet.

Senator SCOTT. Say 9 feet.

By Senator BULKELEY:

Q. When you met a man on the parade ground at that distance, could you tell whether he was a white man or a black man?—A. I could tell that he was a soldier, because he had khaki on; but I could not see his face until he got right up close to me.

Q. At that distance you could not tell, on the parade ground, whether he was a white man or a black man?—A. No, sir; I could not, sir.

Major PENROSE says as to night being dark (pages 3017, 3018, 3019, 3020, 3021, 3023):

By Senator FORAKER:

Q. Could you recall any incident, which you could relate to us, which would indicate how dark it was?—A. Yes, sir; I could not tell one of my own officers over 10 feet away.

Q. You could not tell one of your own officers?—A. No, sir.

Q. That you remember very distinctly?—A. Very distinctly.

Q. It was as dark as that?—A. It was as dark as that. I remember in walking up and down the line where the men were all posted, and I recall it when Hairston came to my house.

Q. Hairston?—A. Yes, sir.

Q. He was the sentinel?—A. Yes, sir; No. 3 around the line of officers' quarters. He came around to my quarters, and I almost ran into him when I came out of the door, and I could not distinguish who the man was at all, and I did not know until the next morning at 9 o'clock, when I inquired.

Q. You did not know who he was?—A. I say I ran into him, brushed against him, as I came out of the house. Of course I did not look particularly to see who it was. And in walking up and down the line I had to go very close to the officers to tell whether they were white men or colored men.

Q. Now, I call your attention to the corner of Fourteenth and Washington streets. I am pointing to it [indicating on map.] State whether or not one standing at that corner and looking down Fourteenth street could see men crossing Fourteenth street on the Cowen alley, and see them distinctly enough to count them and tell what kind of clothing they were wearing, and whether they were white men or colored men, without any artificial light and aid. Could one do that?—A. I do not think it is possible, sir.

Q. Yes.—A. I do not think it is possible.

Q. Now, I will ask you whether or not, standing in the window in the second story of the Leahy House, and looking out across Fourteenth street and across the alley to the place to which I now point, namely, the side of the alley opposite the Cowen house,

one could see that night distinctly enough without any artificial light to recognize men and determine whether they were white or colored and how they were dressed?—A. I do not think so, sir.

Senator PETTUS. Say, by the flash of the guns.

By Senator FORAKER:

Q. Well, by the flash of the guns?—A. No, sir; you could not by the flash of the guns.

Q. Now, tell us whether or not the flash of the guns would aid in that?—A. I do not think at all. It is so instantaneous, so slight, that I do not think you can distinguish anything by the flash of the gun.

Q. Could one, looking out of the upper story of the telegraph building, at the corner of Elizabeth street and garrison road, for instance, see people clambering over the wall up about the mouth of the Cowen alley?—A. No, indeed, sir. No, sir; they could not.

Q. There are no lights in there in that locality at all, are there?—A. No, sir; there was a light at the gate.

Q. What kind of a light was that?—A. An oil lamp.

Q. An oil lamp?—A. Yes, sir; I couldn't tell you how many candlepower; I don't know.

Q. At the gate. That is 130 feet from the mouth of the Cowen alley, is it not?—A. About that, I believe, sir. But I was going to say this, Senator: There is an oil house I intended to tell about in here [indicating on map].

Q. Yes; where is that?—A. About between the figure "4" and the letter "F" [indicating on map].

Q. Right in there?—A. Yes, sir.

Q. With reference to B barracks?—A. Yes, sir; it is shown in one of the pictures attached to Mr. Purdy's report. Now, it had been raining and was quite muddy.

Q. It had been raining?—A. Yes, sir.

Q. And it was quite muddy?—A. Yes, sir; and from the light here I could see there was a mud puddle about there [indicating on map].

Q. How far is that point from the gate?—A. I presume that is 40 feet, maybe 30 or 40 feet. Now, I am guessing, gentlemen; I do not know absolutely.

Q. There was a mud puddle there?—A. There was a mud puddle there I could see. When I went down the line I went around this mud puddle, and went right in behind it to inspect these men along the fence, and I got in this mud puddle right around east of this oil house, that I didn't see at all. I got in water that came over the lacings of my shoes.

Q. You got in it before you knew it was there?—A. Yes, sir; before I knew it was there.

Q. And you were looking where you were going?—A. Yes, sir.

Q. State whether or not you could see the men posted as sentinels there.—A. I could not until I got out beyond the oil house. I could not until I got close to them.

Senator TALIAFERRO. Does the witness understand that a number of witnesses have testified that they did see these men under the conditions which you are describing?

Senator FORAKER. I have not recited that to the witness, but I have no objection to doing it if it is desired, at the request of Senator Taliaferro.

By Senator FORAKER:

Q. At the suggestion of Senator Taliaferro, I will say to you that a number of witnesses have testified—Mr. and Mrs. Rendall have testified—that they saw people assembling up near or opposite the mouth of the alley; saw them going over the wall at about that point—I can not give the exact language from recollection—and Lieutenant Dominguez testified that he looked down from the corner of Washington and Fourteenth streets, along Fourteenth street, and saw two squads of soldiers of four men each cross Fourteenth street, in the alley, and recognized their uniforms, and that they were colored soldiers. Now, knowing that that has been testified to—

Senator SCOTT. Mrs. Leahy testified that she saw 16.

Senator FORAKER. I am going to speak of that.

Q. (Continuing.) Knowing that these witnesses have testified to these things, does that change your belief?—A. No, sir; it does not.

Q. Mrs. Leahy has testified, as nearly as I can recall her testimony, that she looked out of her second-story window and saw 16 men come up the alley and cross Fourteenth street after doing a lot of firing in that neighborhood, and she describes them with great accuracy, as to their clothing, and so forth. Would the fact that she so testified change the opinion that you have given, that they could not see them?—A. No, sir; I think they are mistaken.

Q. Mr. McDonald testified that he stood at the corner of the alley, the mouth of the alley, and looked down Fifteenth street and saw men about the gate, about the telegraph office, I think, opposite the gate, and that they divided there and some went up Elizabeth street, but some came up to the alley and turned down the alley, and after they turned down the alley he came to the corner and looked down and saw them firing into the Cowen house, and he said that he could recognize them and distinguish that they were soldiers? Do you think that he could do that?—A. I do not, Senator.

Q. Mrs. Leahy testified not only that she saw 16 men, but that she saw two of the men so distinctly that she could describe them accurately, one as a very dark negro and the other as a mulatto with spots all over his face.—A. At what distance, sir?

Q. He was in the alley, somewhere about the alley and Fourteenth street, somewhere about that corner, and she was upstairs in her house.

By Senator SCOTT:

Q. She testified, when I asked the question, 35 feet.

Senator FORAKER. She said 35 feet, but it was evidently 60 feet [indicating on map].

Senator WARNER. I submit that we should go by the evidence.

By Senator FORAKER:

Q. She said that she should judge it was about 35 feet. Do you think she could—
A. I do not, gentlemen. My recollection of that night is very, very distinct.

If these witnesses were correct in their description of the night and the effect of the darkness upon the vision, then it was impossible for any of the witnesses who testified about seeing the soldiers without the aid of artificial light to have seen them with any such distinctness as to make their testimony at all reliable. All such testimony may be dismissed without further comment.

TESTIMONY OF PRECIADO.

PAÚLINO S. PRECIADO testified that he was at the Tillman saloon and that he saw the men who fired the volley that killed Frank Natus *under the light of the lamps* that were shining in the court, and that he could see distinctly how the men were armed and how they were uniformed, and that he recognized them positively as soldiers. His testimony is that they stepped through the open gateway leading from the alley and advanced into the courtyard the distance of "two or three paces," where he could see them distinctly. If this statement were uncontradicted and unimpeached much might be claimed for it, but it is impeached and contradicted, in the first place, by the testimony of Preciado himself given before the grand jury, where he stated:

(Page 2341:)

GRAND JURY ROOM, September 10, 1906.

PAULINO PRECIADO, being duly sworn, deposes and says:

I live in Brownsville, Texas. On the night of the shooting I was in the Ruby saloon, belonging to Mr. Tillman, near midnight. We—myself, Antonio Torres, Nicolas Sanchez Alanis, and Mr. Tillman—were sitting in the yard, when we heard some shots. Tillman got up at once and left us. We remained with the bartender, Frank Natus; the latter closed the doors toward the street; in the meantime the shooting became heavier. Then the bartender went to close the door towards the alley. He went about twenty feet towards the door, when a volley was fired. Natus exclaimed, "Ay Dios," and fell down; I saw him because I was looking in that direction when the shots were fired. I saw I was in danger and went to one side. *I could not see anybody in the alley, as it was dark out there and I was in the light.* I heard no word spoken. I hid in a corner where a brick wall protected me until the shooting was over, then I went to close the alley gate. While I was in the corner I received a slight flesh wound on the left hand, and another passed through my coat and vest, breaking my specta-

cles, which I carried in the left breast pocket of my coat, but did not hurt me. I think I received the shots at the time Frank Natus fell, but did not notice it at the time. When the shooting was over I went and opened the front door and asked the crowd of people who were there if there was an officer amongst them. Mr. Victoriano Fernandez came forward, and I told him what had happened.

(Signed)

PAULINO S. PRECIADO.

Sworn to and subscribed before me this 10th day of September, 1906.

WM. VOLZ,
Foreman Grand Jury.

The contradiction by this witness in his testimony as given before Mr. Purdy and as given before the grand jury so thoroughly discredited this witness that Secretary Taft addressed to the President the following letter:

WAR DEPARTMENT,
Washington, January 14, 1907.

MY DEAR MR. PRESIDENT: In my letter transmitting the additional evidence in the Brownsville case I had occasion to comment on the circumstances which impaired the weight to be given to the evidence of Paulino Preciado, in which he stated that he saw the four or five men who killed the barkeeper and recognized them as negro soldiers, admitting on examination that he had not made such a statement before, explaining it by saying that he was not asked. Since sending you the evidence and my letter of transmittal, I have come across what purports to be, and what I believe to be, a copy of a report of Preciado's evidence before the grand jury, which expressly contradicts and impeaches his evidence upon this point. I ask that this be forwarded to the Senate with your message and the other papers.

Very respectfully,

WM. H. TAFT, *Secretary of War.*

The PRESIDENT.

EL PORVENIR.

It is further impeached and contradicted by his statement of the occurrences of that night published two days afterward in his newspaper, *El Porvenir*. We quote as follows from that statement:

Translation of an article written in the Spanish language and published in *El Porvenir*, issue of August 16, 1906, a newspaper published in Brownsville, Tex.]

[Translated by J. M. Sheridan.]

UNHEARD-OF AND UNQUALIFIABLE ASSAULT MADE BY COLORED TROOPS ON SEVERAL HOUSES IN THIS CITY THE NIGHT OF THE 13TH AND 14TH OF AUGUST, 1906—ONE DEAD—WOUNDED.

About 11.30 p. m. last Monday several shots were heard in this city in the direction of the barracks (cuartel).

Some saloons (cantinas) on Elizabeth street closed their doors, and the shots continued to increase, creating a sensational alarm.

The audaciousness of the troops was unheard of, savage, criminal.

The number of soldiers who fired into buildings and homes is not known, although it is affirmed that there were 65.

They scattered through the center of the city and kept up a steady fire.

Señor Ignacio Dominguez, lieutenant of police, in the performance of his duty repaired to the point where the firing commenced and received two shots in the right hand and had to have his arm amputated.

He also lost the horse he was riding.

Señor Macedonio Ramirez Prieto, employed in attending to the city lights, had his hat shot off.

The editor (director) of *El Porvenir*, in company with Messrs. Nicolas Sanchez Alanis and Antonio Torres, had just arrived at Señor Thillman's saloon (cantina) when the shooting commenced. The proprietor of the saloon immediately came out into the street, and a young man employed in the establishment, named Frank Natus, proceeded to close the doors opening on the street (calle).

Immediately afterwards he started to close the side street entrance (zaguan del callejon), but he hadn't taken more than five steps when a volley of six or seven shots was fired *through the entrance* (zaguan), one of which, piercing his heart, caused him to fall, whereupon he cried out "Oh, God," and died instantly, his body lying close to the curbstone of the well (brocal del alfiler).

The writer was slightly grazed by a bullet on the left hand, and another commenced by destroying some receipts in his breast pocket, broke a pair of eyeglasses, and penetrated his coat and vest, but did not wound him in the chest or elsewhere.

The three gentlemen sought cover in different parts of the house, and after observing profound silence for a few minutes Preciado sought his companions, Señor Torres being first to respond. The former said he was wounded, as he was bleeding, and an examination was made to see if he had received any other wounds. No other injury having been discovered, he went to close the side entrance (zaguan), whereupon Sanchez Alanis warned him not to expose himself. However, as no confusion or noise was heard in the side street Sanchez Alanis (este) assisted him in closing the door.

The three then assembled in the saloon (cantina), commenting upon the case and awaiting the proprietor; but as he was slow in coming, Preciado opened one of the street doors (una puerta de la calle) and called to a group of people standing in front of the saloon (cantina) known as "La International," telling an employee to make known what had happened to the young man, Frank Natus.

The people composing the group came over to look at the corpse, which was left lying on the ground until a justice of the peace could be sent for.

Employees of the city and of the county and private persons gathered, and about two o'clock in the morning we (the writer?) started to our house, people being everywhere on the lookout.

The American element is indignant over the conduct of the colored troops, for those troops of the United States, paid and maintained by the nation, and armed to serve as a guarantee and inspire respect, have committed an offense which must be rigidly curbed, as it was a criminal act.

The majesty of the law, the dignity of our citizens, and the peace of our families demand that steps be taken without loss of time to punish this outrage and later ask that the troops be relieved, to the end that we have in Brownsville the guarantees that are now wanting.

Through an act of Providence we (the writer) are still alive, and we avail ourselves of this occasion to thank all who so kindly inquired after our health, for the first report was to the effect that our wound was serious.

PRECIADO'S CLAIM FOR DAMAGES.

His statement is further discredited by the fact that at the time when he testified he was asserting a claim against the United States for damages for personal injuries he had sustained on the ground that they had been inflicted by the wrongful conduct of the soldiers of the United States. It was absolutely necessary to his damage case when he testified, as well as in the prosecution of his claim, that he should establish as a fact and beyond any question that it was the soldiers who did the shooting.

BULLET FOUND IN CRIXELL POST.

But finally he is *contradicted conclusively* by the fact established beyond any question whatever that one of the shots that was fired through the gateway leading from Tillman's premises into the alley at the time when Natus was killed passed on through the open door into the front room and then through the window of the front room and across the street, where it lodged in a post in front of Crixell's saloon, from which subsequently it was bored out by Lieutenant Leckie and found to be a bullet without any steel jacket and of a different composition from that of any of the bullets used by the soldiers; in other words, a bullet such as the soldiers could not have fired from their rifles.

An analysis by Doctor Hillebrand shows that it was composed of—

Lead.....	96.36
Tin.....	2.05
Antimony.....	1.29

This composition does not correspond to that of the guard cartridge. The composition of that bullet is—

Lead.....	90.00
Tin.....	8.50
Antimony.....	1.50

The tin and antimony of the guard cartridge bullet combined is in proportion to the lead as 1 to 9, while the analysis shows that the composition of the bullet bored out of the Crixell post is tin and antimony combined, 3.34, lead 96.36, or almost exactly 1 part of tin and antimony combined to 29 parts of lead; or, in other words, the tin and antimony combined in the guard cartridge bullet amount to practically three times the quantity of tin and antimony combined in the bullet that was cut out of the Crixell post.

Neither does it correspond to the composition of the bullets made by the Union Metallic Cartridge Company in which antimony was used, for in those bullets the proportion of antimony was 2 per cent.

While in weighing the result of an analysis there must always be an allowance for slight variations, there is no ground for the allowance of any such gross variation as must be assumed to justify the claim that this was either a guard cartridge bullet or a U. M. C. bullet of the antimony variety.

But that this was not a guard cartridge bullet, the testimony is absolutely conclusive. Each company had issued to it only 650 rounds of this kind of ammunition. The testimony shows that each of the companies had every round of this ammunition, not only after the firing, but also when they were finally discharged, and all their ammunition was turned in at Fort Reno in November, 1906, except 5 rounds, belonging to Company D, which were fully accounted for by Captain Lyon.

At pages 273, 274, and 275, Volume I of the record, will be found the ordnance returns for Company C. At page 273 is found the report made at Fort Niobrara, Nebr., June 30, 1906, which shows that the company received May 14, 1906, 650 ball cartridges, reduced range (or guard cartridges), and that at the time of the report there were remaining on hand of these cartridges 650.

On page 274 is found the return for this company, dated at Fort Reno, Okla., January 1, 1907, which shows with respect to guard cartridges as follows:

On hand from last return.....	650
Remaining on hand to be accounted for on next return.....	650

Accompanying the first of these reports is the following certificate:

I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended June 30, 1906, and that the maximum strength of the company during the half year was 65 enlisted men.

Station Fort Niobrara, Nebr., June 30, 1906.

(Signed)

EDGAR A. MACKLIN,
Captain, Twenty-fifth Infantry,
Commanding Company.

The second report is certified to as follows:

I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended December 31, 1906, and that the maximum strength of the company during the half year was 65 enlisted men.

Station, Fort Reno, Okla., January 1, 1907.

(Signed)

EDGAR A. MACKLIN,
Captain, Twenty-fifth Infantry,
Commanding Company.

In his testimony at page 1771 Captain MACKLIN was interrogated as to these reports and testified as follows:

Q. I was going to call your attention to your report, so far as the ammunition is concerned. I have put into the record here at page 273 your ordnance returns, in so far as they relate to small arms and ammunition taken from the War Department. I find at the foot of this report the following certificate:

"I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended June 30, 1906, and that the maximum strength of the company during the half year was 65 enlisted men."

That certificate was truthful and accurate, was it?—A. Yes, sir.

Q. State whether or not the amount of ammunition shown to be in your company, and for which you were responsible, was accurately given in that return.—A. It was, sir.

Q. As the result of actual counting?—A. Yes, sir.

Q. And inspection?—A. Yes, sir.

Q. I see another report by you, which is printed on page 274 of our record, dated January 1, 1907, with a similar certificate. Will you look at that report and state whether that is also accurate?—A. (After examination.) That report, Senator, is accurate as counted by my second lieutenant. I was sick in the hospital at the time that was made, and he made it and verified it and I made the return.

Q. I call your attention to the 5,700 ball cartridges which according to that report remained on hand—the 1,100 blank cartridges, the 130 dummy cartridges, and the 650 ball cartridges, reduced range.—A. Yes, sir; that is correct.

Q. That is correct, is it?—A. Yes, sir; that I have verified since that date

Q. You have verified that since that date?—A. Yes, sir.

Q. You still have that amount on hand?—A. Yes, sir.

Q. And you had that amount of ammunition in your company the night of August 13, 1906, did you?—A. Yes, sir.

Q. Captain, can you tell us what kind of ammunition your company was supplied with on the night of August 13, 1906?—A. Yes, sir; with the cartridge known as the guard cartridge.

Q. The one I last called your attention to on the return?—A. Yes, sir.

Q. That is the reduced range cartridge?—A. Yes, sir.

Q. How many of those did you have in the company?—A. I had 650 rounds.

Q. When did you get those 650 rounds?—A. I got them a year ago this last March.

Q. You got them at Fort Niobrara, along with the other ammunition?—A. Yes, sir.

Q. You never had but 650 of those cartridges, did you?—A. That is all; yes, sir.

Q. And your men had these cartridges in their possession on the night of August 13?—A. Yes, sir. That is the only cartridge they had.

Q. Tell us, now, how it came that they had that kind of cartridge and no other kind of cartridge at that time, if you know?—A. That cartridge was issued by the Ordnance Department of the Army for guard duty only, and in the garrison duty it was the only cartridge that the men were supposed to carry. All other ammunition was turned in, and each soldier of my company had 10 rounds of that ammunition.

Q. Where was this issued to your company?—A. It was issued at Brownsville.

Q. Will your property book show that issue? The book is right before you; will it show it?—A. I think it will, sir. I can not say positively.

Q. The property book is kept by—A. The quartermaster-sergeant.

Senator FORAKER. I will have to recall Sergeant McMurray for that.

The WITNESS (after examination of book). Yes, sir; here it is.

By Senator FORAKER:

Q. I will ask you if the property book of the company does not show that each man had issued to him guard cartridges, 10?—A. Yes, sir.

Q. That runs the same all the way through?—A. It should run the same all the way through.

Q. When you went from Fort Niobrara to Fort Brown, what kind of ammunition did you have?—A. We carried 20 rounds of ball ammunition.

Q. And then when you got to Fort Brown you had that turned in and issued what?—A. In two or three days after arrival at Fort Brown the ball ammunition of my company was turned in.

Q. Yes.—A. And I notified the men that I would make frequent inspection of lockers to see that all the ammunition was turned in, and I was satisfied within a few days afterwards that all my ammunition had been turned in.

Q. The 20 rounds they were charged with and any surplus that might have been accumulated, of any kind, also?—A. Yes, sir.

Q. You made that examination at Fort Brown?—A. Yes, sir; I made several inspections of it.

Q. So that you are able to state that the night of this firing your men had no ammunition whatever in their possession except only this guard ammunition? A. I am perfectly satisfied in my own mind; yes, sir.

Q. This guard ammunition has, as we understand it, only about 15 grains of powder in the cartridge?—A. I don't know exactly how much, but the cartridge itself has a distinctive mark.

Q. And it has a lead bullet, without any steel jacket?—A. Yes, sir; and it has a distinctive mark around the top part of the cartridge.

Q. Did you or not make any examination after the firing to see whether or not your men had all this ammunition?—A. Yes, sir.

Q. This guard ammunition, I mean.—A. Yes, sir.

Q. And it was all there?—A. All accounted for; yes, sir.

The ordnance reports of Company B, made by Lieutenant Lawrason, at Fort Niobrara, June 30, 1906, and found at page 269, shows that 650 rounds of guard cartridges were issued to that company at Fort Niobrara May 7, 1906, and that no other ammunition of that kind was issued to it, and that it had exactly that number of these cartridges on hand at the time when the report was made, which report is certified to in the usual form.

Lieutenant Lawrason, who was in command of Company B the night of the shooting, turned over the command of that company to First Lieut. J. A. Higgins, September 17, 1906, and on that day made a report, found at page 271 of our record, which shows that he had on hand from last return 650 guard cartridges, and that on that date he transferred to Lieutenant Higgins, with other company property, exactly 650 of these cartridges. Lieutenant Lawrason certifies to this report as follows:

I certify that I have made a careful inventory of the various quantities of small-arms ammunition for which I am accountable, and have taken up on my return all surplus ammunition on hand, and that said return shows the actual quantities of small-arms ammunition on hand at the end of the period for which it is rendered.

(Signed)

GEO. C. LAWRASON,
Second Lieutenant, Twenty-fifth Infantry.

He also further certifies:

I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended September 17, 1906, and that the maximum strength of the company during the half year was 63 enlisted men.

Station, Fort Reno, Okla., September 17, 1906.

(Signed)

GEO. C. LAWRASON,
Second Lieutenant, Twenty-fifth Infantry, Commanding Company.

This report is also certified to by J. A. Higgins, first lieutenant, Twenty-fifth Infantry, commanding Company B:

I certify that all the ordnance and ordnance stores enumerated on this return as "transferred to First Lieut. J. A. Higgins, Twenty-fifth Infantry," were this 17th day of September, 1906, received by me from Second Lieut. Geo. C. Lawrason, Twenty-fifth Infantry.

Post-office address, Fort Reno, Okla.

(Signed)

J. A. HIGGINS,
First Lieutenant, Twenty-fifth Infantry, Commanding Company B.

Lieutenant Lawrason testifies to the accuracy of these reports and the certificates attached. At page 1593 he testifies specifically with respect to guard cartridges as follows:

Q. You had 650 of those cartridges. If you will turn to page 273 following there, you will see that Capt. Edgar A. Macklin certified that Company C had 650 reduced-range cartridges?—A. Yes, sir; I believe that is all that was issued to any company of the Twenty-fifth at Fort Niobrara.

Q. Captain Lyon, as you will see by reference to page 278, also had 650 of these cartridges. That is correct, then, is it?—A. Yes, sir.

Q. I have called your attention to this with particularity because you stated you thought you had only a thousand rounds of these cartridges. In fact, you had exactly 650 rounds, did you not?—A. Yes, sir.

Q. And you did not use any of it at all—that is, you did not expend any of it while you were in command of the company?—A. No, sir; none of that was expended.

He further testified, at page 1593, that the next day after the firing he took up the ball ammunition and issued the guard cartridges to his men, 20 rounds to each man as far as it would go. Having only 650 rounds, there was not enough to supply each of his men. Those who did not receive ammunition of this character he supplied with ball ammunition. His testimony on this point is as follows:

Q. On the morning of the 15th when your company came off duty, you say, you took up this ball cartridge to some extent and issued guard cartridges in place of the ball cartridges. That is what I understood you to say?—A. Yes, sir.

Senator WARNER. He took up all the ball cartridges.

Senator FORAKER. No; he said he took up a part.

Senator WARNER. How was that, Lieutenant?

The WITNESS. I do not believe I had enough guard ammunition to go around. I had 20 rounds of ammunition to a man.

By Senator FORAKER:

Q. That is the way I understood it. You took up your 20 rounds of ball cartridges and then issued the guard cartridges, 20 rounds to each man, as far as it would go?—A. Yes, sir.

Q. And then pieced out to the others, who did not receive the guard ammunition, with the ball cartridges?—A. Yes, sir.

Q. And you continued to have only that kind of ammunition until you got ready to leave there?—A. Yes, sir.

Q. Please state, Lieutenant—we are not interested beyond that—whether, when this exchange of ammunition was made on the morning of the 15th, you examined the ammunition to see whether each man had all of his cartridges or not; whether or not each man's ammunition was checked up and found to be intact.—A. Yes, sir; it is my recollection that when the ammunition that was issued the night before—that is, on the night of the 13th—was turned in each man's ammunition was checked up, and it was seen that he retained in his possession only 20 rounds.

Q. That was done, then, on the morning of the 14th?—A. I do not recollect for certain the date, but I remember—

Q. But you do remember distinctly that each man's ammunition was checked up, did you not?—A. Yes, sir.

Q. And it was found to be accurate, to a cartridge, was it not?—A. Yes, sir.

The ordnance returns for Company D made by Captain Lyon, found at pages 276 and 278, show that 650 guard cartridges were issued to his company May 7; that no others were ever issued to it, and that he had all of them on hand when he made his return at Fort Niobrara, June 30, 1906, and that he had remaining on hand 645 when he made his return December 31, 1906, and that the five missing cartridges were expended long after the date of the affray, as set forth in statement made by him on muster and pay roll, to the accuracy of which he certifies in the usual form.

No extra ammunition of this kind was at any time accessible to either of these companies, so they had no opportunity to secure addi-

tional ammunition of this kind. Had any of it been used, even a single cartridge, that fact would have been developed when the ammunition was verified after the firing, as well as at the time when it was returned to the Government when the soldiers were discharged at Fort Reno.

Aside from this positive proof by which every such cartridge was accounted for, there is, in favor of the soldiers, the utter improbability that if they shot up the town they would have used on such an occasion guard cartridges with only 15 grains of powder, not designed for offensive operations, instead of their regular ball cartridges with 40 grains of powder, with which Companies B and D were already supplied, and from which companies, if there was a conspiracy as claimed, a supply might have been obtained for any men of Company C who might have participated.

The testimony shows that one trouble in promptly forming Company C and placing it in position that night was due to the fact that the men were unwilling to go to their position behind the wall for the defense of the reservation, which they supposed was being attacked, until they could be given ball ammunition.

At page 692 Lieutenant Grier, who was in command of Company C at the time of the firing, testified that while his company was forming he found Quartermaster-Sergeant McMurray and Artificer Rood ⁱⁿ right by the company storeroom, where the ammunition was kept.³⁵

Q. What were they doing there?—A. Rood was in an argument with McMurray. He wanted to get into the storeroom and get some ammunition. He said he refused to go out there and be fired at without having anything to fire back, and the old sergeant said he would not open that door until I told him to.

Q. The sergeant was standing guard over the door?—A. Yes, sir.

Q. What did you do?—A. After I checked the company and satisfied myself that with the men in line and with the men on guard, and the sick and the men on detached service, that the company was satisfactorily accounted for, then I ordered them to open up a brand-new box of ammunition and issued the ammunition to the company.

Q. They went into the storeroom?—A. Yes, sir.

Q. And brought out a case?—A. It was opened right in the room.

* * * * *

Q. Why was it Artificer Rood was saying they had no ammunition, and he did not want to go out unless they had some ammunition.—A. As I remember it, C Company was the only company in the post that carried the guard ammunition. They issued 10 rounds per man. I believe they had 650 rounds; I don't remember.

Q. That was the reduced range ammunition?—A. Yes, sir.

Q. We have been calling it here—used only for guard purposes?—A. Yes, sir.

Q. That is a cartridge, as we understand it, that has only about 15 grains of powder in the shell, as against 42 or 43?—A. Yes; and with a lead bullet.

Q. And what kind of a bullet has it?—A. A lead bullet.

Q. No steel jacket on it?—A. No, sir.

Q. How far can they shoot that?—A. They are supposed to be effective 75 or 100 yards.

Q. And the men were not satisfied to go out, or Mr. Rood was not, at any rate, with that kind of ammunition?—A. Yes, sir.

Q. And what he wanted was the regular ball ammunition?—A. Yes, sir.

Q. That is what you directed the quartermaster-sergeant to issue?—A. Yes, sir.

This testimony is quoted to show that men planning to go out and shoot up a hostile town for purposes of revenge would not be likely to supply themselves for such an occasion with an ammunition that they had no confidence in, even for purposes of defense such as they had in contemplation at the time when the occurrence happened about which Lieutenant Grier testified.

TESTIMONY OF LITTLEFIELD.

The testimony of Ambrose Littlefield is that from the mouth of the Cowen alley at Thirteenth street he looked up Thirteenth street 120 feet to the corner of Thirteenth and Washington streets and saw a party of raiders turning to the right from Thirteenth street on to Washington street, and that as they turned into Washington street they passed *near a street lamp*, and that they were passing the street lamp one of the raiders turned and looked in the direction of the witness, and that the witness by the aid of the lamp at that distance from him could see that it was the face of a negro soldier. The testimony of this witness might be analyzed to show that it is unworthy of credit, but that is not necessary in view of the fact that he is completely contradicted by Mr. George Thomas Porter, who lived at the corner of Thirteenth and Washington streets and who testified that he was at his front window looking out at the very time mentioned by Littlefield, and that no men of any kind turned out of Thirteenth street into Washington street in the way described or were anywhere near the lamp under which Littlefield claims to have seen the soldier whom he pretends to have identified.

TESTIMONY OF DOMINGUEZ.

Lieutenant Dominguez, who was wounded, testified that from the corner of Washington and Fourteenth streets he looked down Fourteenth street to the Cowen alley and saw the raiders cross Fourteenth street, going northwardly in the alley toward the Miller House, and that he saw 8 of the raiders four abreast. The fact that he could not have any artificial light to aid him and does not pretend to have had any such help, is enough to discredit this statement. But Officer Padron testifies that he was at the corner of Washington and Fourteenth streets at the time when the raiders were firing on the Cowen house, and that he went from that point northwardly on Washington street to Thirteenth street, and that when about midway of the square he met Lieutenant Dominguez, and that Dominguez there alighted, tightened his saddle girth, remounted, and then went with Padron north on Washington street to Thirteenth, and that he was never nearer Fourteenth street than the point where he met him, which was, as stated, about the middle of the square.

The only other time when Dominguez claims to have seen the soldiers was when he was passing the mouth of the alley on Thirteenth street at the Miller Hotel. He testified that he passed the mouth of the alley in a fast trot, and that as he did pass the mouth of the alley he looked down it toward the garrison and saw at the distance of 25 or 30 feet soldiers coming up the alley toward Thirteenth street; that there were about 15 or 20 of them, and that they were about equally divided into two squads and that they were marching in single file and that these squads were on opposite sides of the alley. This alley was 20 feet in width. On one side at the line of the alley rose a two-story frame building and on the opposite side at the line of the alley rose a three-story brick building, the Miller Hotel. It was, therefore, impossible for Dominguez to look into the alley until he came opposite to it. At that time he was going in a fast trot. It would not take him more than a second, going at that rate of speed, to entirely pass the mouth of the alley. He testifies

that he not only saw the soldiers and made the careful observations he minutely states, but that he saw a lady in the window of one of the upper stories of the hotel and warned some parties who appeared to be at the window, as well as others, of the danger that was coming. There was no light whatever in the alley either at the point 30 feet from the mouth of it, where Dominguez claims to have seen soldiers, or at any other point. On that dark night looking down that alley between the houses that fronted on it in the way described there was nothing whatever to aid the vision. It was not only a dark night, but probably there was not a darker place in all Brownsville at that particular time than was that particular spot.

A fair consideration of these facts, about which there can be no serious dispute, compels the conclusion that it was impossible for Dominguez to have seen and noted with accuracy what he states.

EXPERT TESTIMONY AS TO EFFECT OF DARKNESS ON THE VISION.

On this point of inability to distinguish in the dark, attention is called to the following testimony as to the results of experiments made by certain officers of the Twenty-fifth Infantry, none of them, however, belonging to either of the companies stationed at Brownsville:

(Page 1989):

Testimony of Second Lieut. James Blyth, U. S. Army.

Second Lieut. JAMES BLYTH, U. S. Army, being first duly sworn, testified as follows:

By Senator FORAKER:

- Q. Give us your name in full, Lieutenant.—A. James Blyth.
- Q. You are an officer in the Twenty-fifth U. S. Infantry?—A. Yes, sir; second lieutenant.
- Q. And have been how long?—A. Three years and four months.
- Q. Of what company?—A. Battalion quartermaster and commissary, third battalion.
- Q. Have you at any time been connected with any company?—A. Yes, sir; with K Company.
- Q. What rank have you in the Army?—A. Second lieutenant.
- Q. How long have you been in the Army altogether?—A. Eight years and seven months.
- Q. Are you a graduate of West Point?—A. No, sir.
- Q. You were appointed from civil life?—A. From the ranks.
- Q. Were you present at Fort McIntosh in February and March of this year, when certain experiments were made?—A. Yes, sir.
- Q. As I understand, experiments of two kinds were made, some with respect to the power of vision at night and some with respect to the course of bullets?—A. Yes, sir.
- Q. As to their deflection, and so forth?—A. Yes, sir.
- Q. Tell us first about the experiments made in February concerning the powers of vision at night. Were you present at those experiments?—A. Yes, sir.
- Q. Tell us who else were present?—A. Major O'Neil, Lieutenant Harbold, Lieutenant Elser, and a civilian by the name of Colonel Stucke.
- Q. You were the observers?—A. We were the observers; yes, sir.
- Q. Now, tell us who made the experiments, who conducted them?—A. Lieutenant Wiegenstein.
- Q. Is he an officer of the Twenty-fifth Infantry?—A. Yes, sir.
- Q. Now, go ahead and describe what that experiment was.—A. He arranged to have the men go down there at night. We did not know how he was going to conduct it at all. After everything was ready we went out at about half past 8 in the evening and stood on the edge of an arroyo. The men were down underneath. When the first volley was fired Major O'Neil shouted to him and asked him which way the men were facing. We could not tell. Lieutenant Wiegenstein laughed and said that was a part of the test, that he did not care to say. He wanted us to find out for ourselves.

Then we moved down about 50 feet further, I should say, along the edge of the arroyo. Two more volleys were fired, and some fired at will, but all we could see was the flash of the rifle. We could not see the rifle that fired it.

Q. Have you any memorandum that shows the distances at which you were making the observation?—A. Yes, sir.

Q. Please produce the memorandum, and tell us how far the squad was away from you when the first firing which you have mentioned was done.—A. The first firing on the horizontal was 50 feet and 4 inches, and the vertical height was 21 feet and 2 inches.

Q. That was which firing, the second or the first?—A. It was the first.

Q. You were that far distant?—A. Yes, sir.

Q. And at that distance could you distinguish the men?—A. No, sir.

Q. Could you tell whether they were white men or negroes or Mexicans?—A. The light was not sufficient for us to tell which way they were facing even.

Q. You could not even tell that?—A. No, sir.

Q. Could you tell anything about the different articles of clothing they wore?—A. No, sir.

Q. Was there a further firing?—A. Yes, sir.

Q. Where did that take place? How far were you from them?—A. That was 24 feet on the horizontal and 20 feet and 7 inches above them. The results were the same.

Q. Then was there another trial?—A. Yes, sir; we moved down then.

Q. You moved down or they moved down?—A. We moved down to another place. That was 69 feet 2 inches away and 20 feet 5 inches above them; and looking almost into their faces, when the volleys were fired, all we could see was the flash, that was all.

Q. You moved down or they moved down?—A. We moved down. We could see nothing but the flash.

Q. And you could tell nothing about their clothes?—A. No, sir; we could not even see the rifles that were fired.

Q. You could not even see the rifles?—A. No, sir.

Q. Could not tell whether they were Krags or Springfields or Winchesters or what?—A. No, sir.

Q. Was there any other firing, still another test?—A. Yes, sir; after that they marched down one arroyo and came up another, almost directly underneath us, in single file, but we failed to distinguish anyone, could not tell who they were at all. They were halted, then, underneath us, at that time 20 feet and 5 inches below and 18 feet and 7 inches from us. Then the flash of the rifles would come, and the eye would involuntarily close. The closer it got, the more the noise of the report and the flash of the rifle attracted your eye. Before you could take your eye away to look for anything else the light would disappear, so it was impossible to see anything.

Q. Did you make any further tests?—A. Yes, sir; we brought the men up—

By Senator WARNER:

Q. In order to save time, because I do not care to cross-examine, I will ask this question: They were 22 feet below you?—A. Yes, sir.

Q. And 18 feet from you?—A. Twenty feet 5 inches below us.

Q. And how many feet from you?—A. Eighteen feet 7 inches.

Q. From you?—A. Yes, sir; on a horizontal, and vertically 20 feet and 5 inches.

By Senator OVERMAN:

Q. From the bank to where they were?—A. We were standing on the bank and that was the distance measuring down.

Q. The base of the triangle was 18 feet?—A. Yes, sir.

Q. And you did not measure the hypotenuse?—A. We did not measure that.

By Senator SCOTT:

Q. You were standing up here, as I understand it, and then over here [indicating]?—A. Yes, sir.

Q. The height here was 20 feet and 5 inches?—A. Yes, sir.

Q. And the horizontal distance from here to here was how much?—A. Eighteen feet and 7 inches.

By Senator WARNER:

Q. You did not get the hypotenuse?—A. We did not get that.

By Senator PETTUS:

Q. Do you mean the diagonal distance, or what do you mean?—A. We measured the two sides of the triangle. We did not measure the hypotenuse. We did not figure that out.

Q. You measured it with a tapeline?—A. Yes, sir.

Q. Not with a common rule?—A. Oh, no.

Q. A tapeline, or something of that kind?—A. A steel tapeline, and also with a clinometer.

Q. You did not measure the hypotenuse?—A. No, sir.

By Senator FORAKER:

Q. After these firings in the arroyo, what happened?—A. We brought the men up on the bank—took them up on the road. The road was about 8 feet wide. We divided ourselves into two parties, one party on each side of the road. The moon was shining, and it was a clear starlight night, so there was a good light. The men were marched past, in single file, between us, and we wanted to see if we could distinguish the features of the men. After they all passed by I asked Major O'Neil to have a number of white officers march past, so I could get the exact distance to us from them, to see if I would get the same impression that I did from the soldiers going by. Lieutenant Wiegenstein came back and laughed and said: "Then you don't know that there are white men in the line?" I said: "No; I did not know that." So the detail was halted and I went up and scanned each man's face. We were about 2 feet from them at that time. I peered right into their faces, and I myself picked out one man who was a little lighter colored than the remainder, and he turned out to be a Mexican. The other men I did not distinguish at all. After we had passed he told me that there was a white man in the center of the line, and also a man who, I believe, was an Italian.

Q. Did you have any further experiments?—A. That night, after the moon went down, we went out and had the same experiments.

Q. With the same results?—A. And with the same results. The only difference was that after the moon went down, and at a greater distance—we were 69 feet and 2 inches away—when the rifles were fired by volley what I saw was just a long line of legs with dark material. It seemed to be long trousers that the men had on, but after the experiment was over and they were brought up on the bank I found that they had on khaki breeches and leggings. So I received a false impression.

Q. And you observed as closely as you could?—A. Yes, sir; we cautioned one another to watch. Not only that, but after the first volley was fired we cautioned one another to watch where the faces should be.

Q. What interest had Colonel Stucke, if any, in that investigation?—A. None whatever; no interest at all. He was there as a guest of Major O'Neill to dinner and went out with us after dinner.

Q. He is not connected in any way with the command?—A. No, sir.

Q. Were you all of one mind as to the result of the investigation?—A. As far as it went. It was impossible to distinguish features by the flash of a rifle, or to distinguish color or complexion.

Q. After nightfall, when the firing was in the dark?—A. Yes, sir.

Q. Did you have any further experiments?—A. We had another one on the 11th of March at night. At that time Captain Lewis and Lieutenant Harbold and myself were the observers.

Q. Was that of this same general nature?—A. Of the same nature as in the arroyo. After the firing in the arroyo we came up and went into my house, and went upstairs and looked out of two windows, 3 feet away, down, and the men were marched past underneath the windows, and we failed to recognize any features or any complexion. We could distinguish from the light shining out from my window on the first floor that they had on shirts made of dark material of some kind, and lighter trousers, but what they were we could not tell.

Q. Yes.—A. Then they were moved around in front of the house and marched across the parade ground, and in rear of a light, and when they got about 60 feet away we were unable to see them. They disappeared entirely from view. They were brought back and marched between a street lamp and my porch—we were all sitting there—the distance being about 20 paces. We afterwards measured that. We did not recognize anyone. Then they were brought around, and right along on the sidewalk in front of the house, which is only 5 paces away, and at that distance we failed to recognize Lieutenant Wiegenstein, who was in the center. We did not know he was there. He was the only white man in the lot.

Q. What was the character of the night? Was it an unusually dark night?—A. The stars were shining, and there was no moon.

Q. The stars were shining, and no moon?—A. Yes, sir; with a street lamp only 20 paces away.

Q. Now, if anyone were to say that looking out of a window of a dark night he or she saw a gun fired, and recognized by the flash of that gun, it being a high-power rifle such as you have in use, the face of a man as that of a negro, and was able to detect that he had freckles on his face, what would you think of that kind of a statement, from your observation and experience?—A. I would not believe it.

Q. You would not believe it?—A. No, sir.

Q. And what would you believe of a statement of similar character, to the effect that by the flashes of rifles it could be determined whether the hats worn by the men shooting the rifles were black hats or gray hats, or whether they had cords around them or not?—A. With our rifles the experiments showed that the flash of a rifle was not sufficient to show you anything.

Q. You could not tell what kind of a rifle it was, even?—A. No, sir; you could not even see the rifle that fired the shots.

Q. So that if anyone who was looking out could see such things as I have indicated it was because they had better powers of observation than you had, or else they were mistaken in what they saw or observed?—A. Yes, sir; that is it.

(Page 1913):

Testimony of Maj. Joseph Patrick O'Neil, U. S. Army.

Maj. JOSEPH PATRICK O'NEIL, U. S. Army, being first duly sworn, testified as follows:

By Senator FORAKER:

Q. Please give your name in full.—A. Joseph Patrick O'Neil.

Q. You are in the military service of the United States, are you?—A. I am, sir.

Q. What is your rank?—A. Major, Thirtieth Infantry.

Q. You are now a major of the Thirtieth U. S. Infantry?—A. Yes, sir.

Q. Where are you stationed?—A. Fort Logan H. Roots.

Q. Were you formerly connected with the Twenty-fifth U. S. Infantry?—A. From the summer of 1891 until the 1st of February, 1907, I was an officer of the Twenty-fifth Infantry.

Q. Sixteen years, about?—A. About sixteen years; yes, sir.

Q. That is a pretty long service with one regiment. When were you transferred to the Thirtieth—when you were promoted to be major?—A. Yes, sir; when I was promoted to be a major; the vacancy was in the Thirtieth Infantry, and I went to that vacancy.

Q. When was that?—A. The vacancy occurred on the 31st of January. I did not leave the Twenty-fifth Infantry until the 8th of March.

Q. Of this year?—A. Of this year.

Q. Until the 8th of March of this year, then, you had been with the Twenty-fifth Infantry ever since 1891?—A. Ever since 1891.

Q. You were with the Twenty-fifth at Fort Niobrara?—A. Yes, sir.

Q. And then what company were you connected with at that time?—A. At Fort Niobrara?

Q. Yes.—A. Company M. I was commanding Company M, and the Third Battalion of the regiment.

Q. Where did you go when your regiment left Fort Niobrara in July of last year?—A. We went to Fort McIntosh, Laredo, Tex.

Q. You went there with Company M?—A. And the Third Battalion.

Q. What other companies constituted that Third Battalion?—A. I, K, L, and M.

Q. You were captain of M Company then?—A. I was captain of M Company.

Q. And went with it to Fort McIntosh. You were not at Fort Brown at all?—A. No, sir.

Q. Fort McIntosh is how far from Fort Brown?—A. I would simply have to make a guess, Senator.

Q. Is it 40 or 50 miles?—A. It is between 150 and 200.

Q. It is up at Laredo?—A. It is up at Laredo.

Q. Fort Ringgold is between the two posts?—A. Between the two posts.

Q. You were on the Rio Grande River at Fort McIntosh?—A. Yes, sir.

Q. Now, Major, did you have anything to do with any experiments that were made at Fort McIntosh in February or March of this year with a view to ascertaining what the powers of vision were at night in identifying people and determining who they were?—A. Yes, sir; I ordered some experiments to be made, and the one about recognizing people I personally superintended.

Q. Tell us when that experiment was made and by whom it was made, and what was the nature of it as nearly as you can.—A. It was near the last of February. I do not remember the exact date.

Q. During the month of February. That will answer the present purposes. There is no controversy about the date. We will agree upon that. Where was this experiment made?—A. At Fort McIntosh.

Q. Did you make more than one experiment?—A. Well, we made three altogether. I personally superintended only one.

Q. And that was an experiment to determine what?—A. That was an experiment to determine how far you could recognize men at night, and what was the effect of the flash of our present rifle as to light up a man's face or prominent parts, so that you could distinguish him.

Q. Did you participate in that experiment or did you simply play the part of an observer?—A. Well, I had the experiment conducted before me. I was observing the experiment.

Q. Who conducted that experiment?—A. Well, Lieutenant Wiegenstein was present with the men; Lieutenant Blyth, I think Lieutenant Harbold—I do not remember now for sure—Lieutenant Elser, and Colonel Stucke, an electrical engineer.

Q. With the exception of Colonel Stucke, an electrical engineer, the others whom you name were all officers of your battalion, were they not?—A. Yes, sir.

Q. I understood you to say Lieutenant Wiegenstein conducted the experiment?—A. Yes, sir.

Q. I wish you would tell us just what it was; the nature of it.—A. I directed Lieutenant Wiegenstein to have a number of men, more than ten. I told him I wanted Mexicans and white men and negroes mixed up. I told him the reason I wanted it was that I saw an account of where a person had testified that he could recognize these people 70 or 80 feet away.

Q. That was in the Penrose court-martial?—A. That was in the Penrose court-martial.

Q. And that is what prompted you to have this experiment made, was it?—A. That was what prompted me to have this experiment made.

Q. Now go on.—A. Well, he selected the men. I told him one or two men that I wanted put in, just mentioned casually that I thought they would be good men to put in. He went down into an arroyo—

Q. Explain what an arroyo is. That is a new word with us.—A. An arroyo is a ravine. Generally its sides are perpendicular. That is the difference that we make between an arroyo and a ravine, although arroyo is the word usually used in all Mexican descriptions.

Q. Just proceed.—A. He brought those men down into an arroyo, where we could get an approximate idea of distance—that is, the height of a man in a second story window, and the approximate distance, by standing on top of this arroyo and looking down, the approximate distance as testified.

Q. Was this at night?—A. This was at night.

Q. At about what hour?—A. The one that I attended was between 8 and 10 o'clock at night. It took us some time.

Q. What kind of a night was it?—A. Well, the moon would have set about 12 o'clock. The night was so bright that one of the officers took a newspaper from his pocket and said, "Why, I can almost read this print." I did not stay around close enough to ask him any further questions about it, but it was a particularly bright, clear night.

Q. There was moonlight; was there also starlight?—A. Moonlight and bright starlight. I think there were about eleven men. They were lined up, and they wore khaki leggings, khaki trousers, and blue shirts. The first experiment—the distances I marked at the time. I do not remember what they were. If you would like the distances, I still have the notes that I made at the time.

Q. Yes; you can look at your notes and give us the distances.—A. The distance in the first position—the distance of the squad from the officers—was 50 feet and 4 inches horizontally.

Q. The officers who were observing?—A. Who were observing. That is the horizontal distance. The officers who were observing were 24 feet above the squad—that is, we were on top of the arroyo and the squad was down in the bottom of the arroyo. We were 24 feet above and 50 feet and 4 inches away from them. At the first experiment the men's backs were turned toward us. We did not know anything about what was going to be done. Lieutenant Wiegenstein did that entirely.

Q. You knew the men were coming into the arroyo before you could see them?—A. We knew the men were coming into the arroyo. We were told that they were coming in and we were watching for them.

Q. But you did not know which way they would front?—A. We did not know which way they would front, or anything about it. Well, at the first firing the men had their backs to us, and they fired 20 or 30 shots. They fired by file and they fired by volley. The only way that I could distinguish that their backs were toward us was by the flashes of the rifles going away from us. Then I asked a question. I said: "Mr. Wiegenstein, haven't you got them faced the wrong way?" That I understood afterwards was a part of the experiment, but I recognized from the flash of the rifles. I expected the flash of the rifle to come toward me, and instead of that it went away

from me. The next position the distance was 68 feet and 7 inches. The men's faces were toward us. We could not distinguish anything in their faces any more than we could before.

Q. In the first case could you tell anything more than that the men were there at the place where the firing was? Could you tell how they were dressed or who they were?—A. No, sir. I felt that they had on khaki trousers and leggings. I was not exactly sure of the kind of coat they had on. The only reason that I remember this is that I asked Mr. Wiegenstein, "What kind of coats have they on?" He said, "They have blue shirts." I ordered him to go back and change and get into khaki coats, but the light did not show distinctly enough to tell whether they had their khaki coats on or blue shirts. Further than that, Mr. Wiegenstein was in olive-drab uniform. He had on a standing white collar, which came up about an inch above the collar of his coat. He had on his saber. I recognized him distinctly when he was under me, or some distance away while he was marching, walking up toward me or talking to me. When he got down into the squad I looked particularly to find him, and I could not distinguish him in the squad.

Q. Although he had on a white collar and a saber?—A. Although he had on a white collar and a saber.

Q. Did you look for him at the time when the guns were flashing?—A. I did not look for him particularly at that time. It was after the first firing that I thought I would look to see whether I could distinguish him. At first my attention was entirely given up to trying to distinguish particularly the individual men in the squad.

Q. Could you distinguish any of the individual men?—A. No, sir. There was in the squad a man who had worked for me and worked in my house for six months or more, brushed my shoes, and coming to the door and looking after me. I knew him as well, if not better, than any man in the command. I tried particularly to see if I could distinguish him, but I could not distinguish anyone. There were three of those experiments, but in the last one we moved up until we were 24 feet above them.

Q. Before you get away from the first one, you said you had white men and Mexicans and negroes. Could you distinguish the Mexicans from the others?—A. No; I could not distinguish.

Q. Could you distinguish the white men from the others?—A. No; I could not distinguish any of them.

Q. You could not distinguish mulattoes or negroes?—A. You could not tell who they were down there. They might have been anything in color. It was absolutely impossible to distinguish them.

Q. What kind of hats or caps did your men wear?—A. They wore the campaign hat.

Q. Could you tell what kind of hat they had on?—A. I don't remember whether it was—no, sir; we could not distinguish. We did not distinguish the hats until they passed in review.

Q. Now go to the second experiment. The one I have been asking you about, the first one, was where they had their backs to you, when you had expected them to front toward you, as I understand?—A. Yes, sir.

Q. How far away were they?—A. At that time they were 68 feet 7 inches.

Q. What was the result of that—similar to the others?—A. Exactly the same. We could not distinguish anything about them at all.

Q. Now, what was the third experiment?—A. After those two experiments, then I spoke to Mr. Wiegenstein about the coats—that I wanted the khaki coat worn. So he marched the men out of the arroyo and called out this particular man, that I would have known almost any place, told him to go up and get a khaki coat, and I changed the order and told him to have all of them in their khaki coats. Then they came back and went through their third experiment. At that time we were at about the same height, 24 feet above, and the horizontal distance was 18 feet 7 inches.

Q. They were that close to you?—A. They were that close.

Q. If they had been on a level?—A. If they had been on a level they would have been 18 feet 7 inches away. They were in khaki. They had campaign hats on. That we knew. I saw them marching out of the arroyo to go up and get their khaki coats. They went through the same experiment. I think in that experiment they fired a great many more shots than they had in either one of the two, probably more than they did in the first two together. That was the particular point where I tried to recognize Lieutenant Wiegenstein and I could not. That was at a horizontal distance of 18 feet 7 inches.

Q. You measured these distances afterwards, did you?—A. Yes, sir. These distances were measured with a steel tape—an engineer's tape.

Q. Could you tell the white men from the Mexicans or Mexicans from the negroes?—A. No, sir; you could not tell the white men from Mexicans. You could not tell anything about them at all.

Q. Could you tell how they were uniformed, how they were dressed?—A. The test was hardly fair for me then, because I thought that I recognized khaki trousers and khaki leggings. The upper part I could not recognize anything about at all. I could not tell whether they had on a khaki coat or not, but I thought that I recognized khaki leggings and khaki trousers. I knew that they had the khaki trousers and khaki leggings, and I was looking particularly to find it out.

Q. What about their faces when the guns were fired? Did the flash light up their faces so you could distinguish them?—A. At the flash of the rifle you could not distinguish anything. This rifle has such a vivid flash that the eye does not take in anything except the flash. At times your eye might run to the shoulder or to the arm. It might take in that much, but when the flash of the rifle goes off, all that you see is the flash. It is nothing like the black powder and nothing like the shotgun flash.

Q. These were Springfield rifles and smokeless powder?—A. Springfield rifles and smokeless powder.

Q. Your regular ball ammunition?—A. Regular ball ammunition.

Q. Then you could not tell whether a man in the line there had freckles on his face or not?—A. No, sir.

Q. Could you tell what kind of a gun he had in his hand?—A. No, sir.

Q. Could you tell whether it had a blue barrel or whether the barrel was covered with wood?—A. That, I believe, was absolutely impossible.

Q. I ask you these questions only because of these things having been testified about. You were there for the express purpose of making observations?—A. Yes, sir.

Q. You were looking to see what you could in the way of detecting these things?—A. Yes, sir.

Q. And that was not a dark night?—A. No, sir; that was a very bright moonlight night.

Q. What did the men do after that?—A. After they finished the shooting I directed Lieutenant Wiegenstein to march them up the road, and the spectators or the witnesses stood about 5 feet away. The men marched by us, and they would have gotten by us if I had not known—if I was just taking a cursory glance I would not then have noticed any difference in the men; but when they had passed I said, "Halt that squad, Mr. Wiegenstein. I thought I told you to put in some Mexicans and white men;" and he said, "I did, sir." Then we went and walked down the line. There were two men that I thought might have been white men. Then I walked down the line to examine it, and the only man that I picked out was an Italian who had been working in the blacksmith shop, out of the sun. He had a sort of waxy, yellowish complexion; nothing like a mulatto. The white man was in the center of the squad, and he passed me, and I knew he was there. I had specially ordered him out, and I did not recognize him until I halted the line and went up and looked into each individual's face.

Q. And you were only 5 feet away from them as they marched by?—A. It could not have been more than 6 feet.

Q. May have been less than 6?—A. It possibly was less.

Q. It was close, they were marched right by you, and you knew that they had white men and black men and Mexicans in that company, and you were looking to detect the white men?—A. Yes, sir.

Q. And the Mexicans?—A. Yes, sir.

By Senator OVERMAN:

Q. How was the moon at that time?—A. The moon would have set at 12 o'clock that night. The moon was not full, but was very large and very bright; a very clear night. Of course these men were marching through the chaparral. The chaparral brush down there—the mesquite brush—would probably grow 2 feet above the men's heads, but they were marching on a road that was as wide as from here to the wall. They were in the wagon track. That is, they were marched through a cutting in the clearing. It was not used very much as a road. There was an old cart used to go down there, I think, at times, but they were in the wagon track, right in the moonlight. The chaparral may have cast some shadow, but not enough—

By Senator FORAKER:

Q. Where did you stand—in the chaparral at the side of the road?—A. I stood in the chaparral at the side of the road.

Q. And they were on a level with you as they passed by?—A. They were on a level with us.

Q. And there was no chaparral on the road where they marched?—A. The chaparral was on either side of the road.

Q. And the road was as wide as over to the wall?—A. That was the main road where they were marching.

Q. Twelve or 15 feet wide?—A. I may have overestimated the distance. It could not have been over 10 feet wide.

Q. All right, 10 feet wide.—A. It would not be more than 10 feet wide.

Q. And the chaparral, you think, might have been as much as 2 feet higher than the heads of the men?—A. As much as 2 feet higher than the heads of the men.

Q. Was the moon low or high?—A. The moon was high.

Q. It would not cast much of a shadow over the heads of the men, would it?—A. It cast no shadow. In thinking over the experiment, the men were between the moon and me. Now, if the men had had their hats off I do not believe there would have been any difficulty in distinguishing them at all. I think that they were under the shadow of their hats, and they were marched by at what we call quick time. They were going 120 steps to the minute and 30 inches to the step.

Q. When they were halted and you went along the line, then you could pick out these different men?—A. Then we picked out the different men.

Q. How many observers were there in your company who had the same experience?—

A. I don't remember whether Lieutenant Harbold was there or not. I do remember Lieutenant Blythe and Lieutenant Elser and Colonel Stucke.

Q. Colonel Stucke was not in the Army?—A. Not in the Army. I was anxious to have him out there because he is an electrical engineer, and I asked him some pertinent questions at the time.

Q. Then did you experiment further that night or did that close the experiment?—

A. Well, as the moon was so bright and the night was so bright that it did not correspond to the conditions at Brownsville, I ordered them to have the experiment after 12 o'clock, or after the moon went down. I know they had the experiment after that, but I did not attend it.

(Page 1963):

Testimony of Second Lieut. Robert Pattison Harbold, U. S. Army.

Second Lieut. ROBERT PATTISON HARBOLD, U. S. Army, being first duly sworn, testified as follows:

By Senator FORAKER:

* * * * *

(Page 1964):

Q. Lieutenant, tell us whether or not you ever witnessed any experiments recently made at Fort McIntosh with a view to determining the powers of vision in the nighttime as to detecting men who were firing such arms as you were equipped with?—A. Yes, sir; on the night of February 18-19 of this year we made our first experiment at Fort McIntosh to get visual tests, and on the night of March 11 we made another experiment.

Q. Now, go back and tell us about the first experiments, taking them up in their chronological order.—A. In the first experiment, we began the experiment about half past 9 in the evening.

Q. What kind of a night was it?—A. It was a bright moonlight night, the moon being about two hours high—that is, about two hours from down. The light was sufficient so that I could take a typewritten letter and study out the words and make out the letter. The experiment consisted in having a squad of men, of about 10, I think, placed in an arroyo so that they would be about 22 feet below us, and at different points ranging from 200 feet as the maximum to 15 feet as the minimum on the horizontal from us. The composition of this squad was unknown to me at the time, as Lieutenant Wiegenstein of the Twenty-fifth Infantry arranged the squad and the details of the firing.

At the first firing we were in rear of the men and above them at about 200 feet I should say, in rear. At this distance the men could not be distinguished. The only thing that we could see would be a line, indicating that the men were there. It was impossible to tell in which direction the men were facing, and only when they fired could we determine this, as by the flash we could tell that the men were behind the flash, and then there would be firing away from us by them. The light of the flash was not sufficient to determine anything at all. The flash was instantaneous. Although we were trying to concentrate our eyes on the men and looked for features, the flash would draw the eye away involuntarily, and as it was instantaneous, nothing whatever could be seen; nothing of the rifle could be seen, and the articles of dress could not be distinguished. As far as complexion was concerned, why nothing could be seen. Even the face could not be made out.

Q. Could you tell what kinds of hats they had on?—A. Not at that distance.

Q. Whether black or gray?—A. No, sir; we could not.

Q. Could you tell whether they had hat cords around their hats?—A. No, sir; we could not. I would not have been able to tell whether the men had hats on or not at that distance.

Q. That is 200 feet away?—A. Yes, sir; approximately 200 feet, as far as I know, although the distance was actually measured, and Lieutenant Wiegenstein has the actual measurements of the positions.

Q. Let me ask you there, Lieutenant Wiegenstein is still ill, is he?—A. Yes, sir.

Q. Is he here in this city?—A. Yes, sir; he is in the general hospital.

Q. Do you think we can expect him to be able to testify to-morrow?—A. I think so, sir.

Q. Proceed then. That was the first firing, about 200 feet away from you?—A. Yes, sir.

Q. And 22 or 23 feet below you?—A. Yes, sir.

Q. Where did they fire again, if at all?—A. Then we changed our position and went around the head of the arroyo, so that we got directly opposite and on the flank of the squad. They were then, I should say, about 50 feet from us—that is, we were 50 feet on their flank. The results there were the same, although the line of men could be made out a little better than previously, but features and articles of dress could not be recognized or distinguished. The complexions it was absolutely impossible to tell, whether the men were white or black, although we presumed that all the men were negro soldiers.

Q. How many men were present with you observing this experiment as you were?—A. At this time Major O'Neil, of the Thirtieth Infantry, was there; Lieutenant Blyth, of the Twenty-fifth Infantry, was there, and a civilian by the name of Stucke, a civil engineer up at Laredo, Tex.

Q. Was Lieutenant Elser there?—A. Lieutenant Elser was not at the first experiment.

Q. Very well, I only want to get how many.—A. Yes, sir.

Q. You have told us what your experience was as to making observations. Do you know whether or not all the others who were present with you as observers had the same experience?—A. From what they said, they did; they all had identically the same experience.

Q. Did anyone claim to be able to recognize any individual—to tell whether he was white or black or Mexican?—A. No, sir; not at this time; we could not tell anything about them.

Q. Did anyone claim to be able to recognize what kind of hats they had on, and whether they had hat cords on?—A. No, sir; not in this position; but I should like to state that from this position the men were then filed over through a hogback in the arroyo and got directly underneath us, so that the man on the left flank, which was toward us, was not more than 5 feet away from us on the horizontal, although we were about 22 feet above him. In this position we could distinguish light from dark clothing, and hats could be distinguished; that is, we could tell that the men had some head gear on, although whether it was a campaign hat, a sombrero, or any of the soft hats that are common in that community, we could not tell. There was an officer with the command. We could distinguish him by the flash of his saber, and I presumed that it was Lieutenant Wiegenstein, because he had arranged the battalion and had taken his squad out. When the men were firing the results were practically the same. The flash of the rifle was not sufficient and of not long enough duration to obtain any view of the men.

Q. Is your vision normal?—A. My vision is normal and I think it is rather acute.

Q. Well, now, was there any further firing or any further opportunity to observe on that experiment?—A. Well, this firing began at half past 9, and as the moon was up we wished to test it with no moon.

Q. Let me ask you before I forget about it, Was there any attempt to count the shots that were fired?—A. Well, we tried to estimate, as the firing was first by volley and then at will, and we estimated the number of shots. I estimated that about 40 shots had been fired. Later on Lieutenant Wiegenstein, who had actual count of the cartridges, told me, I think, that there were eighty-some shots fired.

Now, another part of the test that we made at this first experiment, the men were then marched out of the arroyo and came up and above and alongside by us. I stationed myself on one side of them and Lieutenant Blyth on the other, and the moon was shining directly on the men, over my shoulder, and when they went by I was about 5 feet from the men. I studied them carefully, looked at them intently, and there were two men who I thought were men of my company, who were, I presumed, mulattoes, but I thought they were men of my company and called them by name. All the others I thought were negro soldiers, and when the men went by Lieutenant Blyth

said that he would like to have some white men go by, so as to get the difference or the distinction in the complexions in that light. Major O'Neil then said that there were some white men in the detachment. The men were then halted when they got by and faced outward, and we walked along the line and studied the men carefully; looked at them intently; got face to face. The man at the rear of the company, who I thought was a mulatto, I found was an Italian, an assistant blacksmith at the post. He is rather pale, and does not have the bronzed, ruddy complexion of the white people in that community. The man at the head of the company that I thought was another mulatto in my company, I found him to be a Mexican, whom I picked out when I got right up on him; recognized him by the mustache that he had. He was a driver in the quartermaster's department, and I was in contact with him daily and knew him very well by sight. I missed, in the middle of the detachment, the white man that was there. This white man is an ex-soldier of the Twenty-sixth Infantry, a man by the name of Bradbury, employed by the quartermaster's department as a driver. He is a very good specimen of the white men in that community, bronzed and ruddy, and undoubtedly he would not be mistaken for a mulatto or a Mexican. I walked by him and did not find him until one of the officers told me that there was a white man there, and then I went back and looked at each man as closely as possible, and then I found this man and called him by name. I said, "This is Bradbury."

Q. And that was a moonlight night?—A. Yes, sir; that was a moonlight night.

Q. Did that end the experiment for that night?—A. That ended it for that time. Then we waited until the moon had gone down, and about 1 o'clock in the morning we made some experiments without the moon. We then found that flash of the rifles was a little greater, that they lighted up better, but the duration was not long enough to obtain any view of the features or complexions. All that I could get by the flash of the rifles at this time was that I could see the hips of the men—the legs. I could not see above that; saw nothing of the rifle whatever, and I could not see below the knees.

The testimony of these officers should not need any corroboration, but it is easy for anyone to experiment for himself any night by simply making an effort to recognize individuals or their clothing, and to determine whether the individuals are white or black, or how, with any degree of accuracy, they may be dressed. Anyone who makes this effort will be astonished to find how impossible it is to see with distinctness unless aided by artificial light. No matter what the character of the night may be he will be thoroughly satisfied that reliable recognitions at the distance of 30 to 100 feet are simply impossible.

COURSE OF BULLETS.

Much prominence has been given to the testimony of Major Blockson and others that the course of certain bullets after they struck the houses into which they were shot that night indicated that they were fired from the upper porch of B barracks.

Lieut. H. G. Leckie, of the Twenty-sixth Infantry, who had no interest whatever in this controversy, was sent by General McCaskey to Brownsville to make an examination and report as to various matters upon which specific and reliable information was desired in the Penrose court-martial, says that he examined the courses of these same bullets, with the result that he does not agree with Major Blockson that they show that they were fired from B barracks or from any other point within the reservation. His statement on this point is that the bullets could not have been fired from B barracks unless they changed their course while in the air, which could not have occurred. His exact language is as follows:

*(Page 3222, Senate Hearings):

By Senator WARNER:

Q. Now, you were asked the question by Senator Foraker in your direct examination whether or not those bullets that entered the Yturria House could have been fired from barracks B?—A. Yes, sir.

Q. You thought they could not?—A. I do not think they could. The reason that I say that they were not fired from B barracks is that they would have had to turn an angle of 90 degrees in the air, without anything to deflect them in any way; and I do not know of any laws of motion for a bullet doing that.

In other words, as he sighted along the courses of the bullets his eye did not go to the upper porch of B barracks or to any other point of the barracks. The result of this testimony is a flat contradiction as to what the courses of the bullets actually indicate; but aside from this contradiction this testimony is even less reliable, if that be possible, than the testimony of the so-called eyewitnesses who saw in the dark.

There is much testimony to support this proposition. It is enough to cite only one witness.

Lieut. R. P. HARBOLD testified, at page 1870 et seq., as follows:

Q. Tell what other experiments, if any, you made or saw made.—A. I made experiments with the Krag-Jørgensen rifle, the Springfield rifle, and the Winchester .30-40 rifle, to get the penetration and the deflection of the different bullets from those rifles.

Q. Let me ask you what you mean by a .30-40 Winchester?—A. The Winchester .30-40 is .30 caliber, and the 40 refers to the chamber, meaning that the chamber is longer than the .30-30. The .30-40 is the Winchester rifle that will shoot the Krag-Jørgensen ammunition. The .30-30 will not shoot it.

Q. Does that refer to the number of grains of powder in the cartridge?—A. Not that one. The Winchester .30-220, which shoots our Springfield ammunition, means a Winchester with thirty one-hundredths of an inch caliber and 220 grains of powder.

Q. A 220-grain bullet, you mean?—A. No, sir; powder of 220 grains.

Q. The official instructions issued by the War Department show that the bullet of the Springfield and the bullet of the Krag weigh 220 grains, and that the powder is 42 or 43 grains. I call your attention to that.—A. Yes, sir; I recall that. That is right.

Q. It has reference, then, to the bullet?—A. Yes, sir; it has reference to the bullet; it is called .30-220. That means that the bullet is thirty one-hundredths of an inch in diameter and that it weighs 220 grains.

Q. When was it and where was it you made this experiment, and how came you to make this experiment?—A. The dates of these experiments were on the boxes which had the exhibits before the court-martial. Those exhibits have been taken from me, and I do not have them, but I made the experiments at Fort McIntosh. I also went out to a small place near there, about 5 miles from there, a place called Nye, where I could get longer ranges. I made my experiments there at about 200 yards.

Q. What did these experiments consist of? First, who participated with you in making them?—A. At the post Lieutenant Blyth and Lieutenant Wiegenstein assisted me. My experiments at Nye were conducted by myself.

Q. Proceed and tell us about them.—A. At Fort McIntosh our experiments were made by arranging targets first and firing into those targets, beginning at 200 yards and coming down to 40 feet; at 200 and 100 and 50 yards, and then at 80 feet and 40 feet. In these experiments we found that it was a general rule that all bullets were deflected after passing through the first material. The rule of deflection could not be determined. It was irregular, as one time it would be deflected to the right, another time would be deflected to the left, and then one would be deflected upward, and another deflected downward. We could not get a general rule as to the direction of deflection; but the only general rule we could get was that the bullets would be deflected. We could not obtain the penetration of the bullets in wood, as at no time could we capture a bullet in our wooden targets. We could put a box of sand behind the target and get the bullets, but we had an actual penetration of 18 inches of wood, and the bullet passed on through. This was at 40 feet. This wood consisted of 4 inches of ordinary red pine, and then we had back of this as a back stop a 2-inch hemlock plank, and the interior targets were 1 inch of white pine, about 8 inches apart; but the deflection was always so great in those cases that it was very seldom we could get our bullets to travel through the entire length of the target.

Q. What was the area of that target?—A. About 12 inches in width, and they were placed in line, and the firer of course was in direct line.

Q. How high were they?—A. They were about 5½ feet high, and we fired low, so that we would have a very good target in the vertical, although in the horizontal it was only about 10 inches.

Q. I do not know whether I understand that exactly. Assuming that this target is $5\frac{1}{2}$ feet high, that is what you mean?—A. We would fire low into the target. That is, we would not fire up at the top. We would make our bull's-eye down low. We would have to change it, but we got it low.

Q. How high from the ground?—A. We put it from 8 inches up to about $3\frac{1}{2}$ feet.

Q. You experimented at all those different points?—A. Yes, sir.

Q. What was the result of the deflection? How much was the deflection? First, let me ask you, assuming that this is the first target, do I understand that there was another target right behind it?—A. Yes, sir; there was another target right behind it, and so on.

Q. And so on back?—A. Yes, sir.

Q. How many did you have there?—A. We were changing them constantly, and at one time we had 18 inches of actual wood to be penetrated.

Q. That would be quite a number of those different targets?—A. Yes, sir. I would like to state that we made another target alongside of that. The first target I am describing now was of oil boxes, such as we have at the post, and our second target consisted of 1-inch red pine. Two pieces were taken, about 8 inches apart. Then 12 feet in rear of that we put two more pieces 8 inches apart, and then 12 feet in rear of that two more pieces 8 inches apart. This was to give us, as nearly as we could get at it, the walls of a house with two rooms, and the deflections in the red pine were just the same as in the white-pine oil boxes.

Q. Describe the deflections. Give us the extent to which they occurred.—A. Well, taking the second target of red pine, two boards placed then 12 feet in the rear, and then two more, one illustration was a triangle. The shots were fired so that the three bullet holes on the first board were about an inch apart—that is, they formed the two legs of a triangle in that way, about an inch apart. On the second board, or the second partition, which would be the wall of the second room, they had changed very much and had gone from 8 to 6 inches apart. Then on the third one of the bullets had left the target entirely, and the other two were about 12 inches apart. Notes were taken of all these things, I should like to state, and the triangles were measured, and Lieutenant Blyth has those notes in his possession. Then there was another experiment made there in which the deflection was about 8 feet to the left in a distance of 30 feet on the ground, and this was actually measured and taken with a steel tape and notes recorded.

Q. Do you mean that the bullet struck the ground?—A. I mean that it struck the target and was deflected to the left, and it struck the ground over there, and the point where it struck the ground was marked. Then, of course, we plotted the triangle and got the deflection to the left and the distance to the ground.

Q. Was it fired squarely at the target?—A. All the shots were fired squarely at the target.

Q. And if it was not deflected it ought to have gone straight through?—A. Yes, sir; if it had not been deflected it should have gone straight through.

Q. But it was deflected so much that at a distance of 30 feet—A. At a distance of 40 feet. We fired at a distance of 40 feet from the first target, but within 30 feet it had gone to the left about 8 or 9 feet.

Q. I mean 30 feet from where it struck the target it deflected 8 or 9 feet.—A. Yes, sir.

Q. And struck the ground?—A. Yes, sir.

Q. I will ask you whether or not all your experiments show practically the same kind of results as to deflection?—A. Yes, sir; every experiment did.

Q. How about going downward, when they would strike, or upward?—A. We had a number of illustrations where the bullets would go up or down in the trajectory.

Q. The same bullet?—A. Yes, sir; the same bullet. I would like to describe to you one illustration that we had. Some of the bullets were fired between two oil boxes, so that we could hit the cracks between them, and it struck between and then went down in the board underneath. Instead of going through that board it just burrowed and kept right along the board for about 6 inches. Then it came up and entered the board of the top oil box, kept along that board for about 6 inches; then it went down again, and just described that wavy motion right along between the oil boxes.

Q. Up and down?—A. Up and down; just a wavy motion, striking first one and then the other.

Q. Plowing a furrow first in one box and then in the other?—A. There was no furrow. It would go in and keep in that inch board for about 6 inches, and then go into the other inch board and keep in that. Then we had another one where that same course was described, and then on one oil box it went along the wood and made an arc of about 90° to the left and left a complete furrow that looked like a quadrant right on the box.

Q. How big was that arc?—A. It was a quadrant, 90° , approximately.

Q. State whether or not in any of these experiments you found a bullet to have turned around when it struck into the partitions or boards.—A. Yes, sir; there was.

Q. Butt end uppermost?—A. There was one bullet that we extracted in which the base was struck in the box and the point of the bullet was pointed toward the firing point, but this bullet had gone through several thicknesses of wood—that is, through several oil boxes, and then struck the sand in rear and turned completely round, and the base buried itself in the far side of the box.

Q. But you did find it sticking into the wood?—A. Yes, sir; sticking into the wood.

Q. So that the bullet in its flight had gone through all these partitions or boxes, whatever they were, all these obstructions?—A. Yes, sir.

Q. And had turned clear around?—A. Yes, sir. And I should like to state that in following the trajectory through our different targets, oftentimes the first target would show a complete penetration. Then the bullet would turn, it would tumble, and the bullet would probably go lengthwise through the second target.

Q. That is, go sidewise?—A. Yes, sir; it would turn and go sidewise, so that we would have a complete vertical diagram of the bullet there. Then on the next target it would take another direction; probably it would turn facing the other way, showing that the bullet was rotating and tumbling throughout the entire trajectory.

Q. Now, tell us whether or not, as a result of your observations and experiments, it would be possible to get an accurate alignment of different holes made by bullets in different walls, so as to sight along and see at what point that bullet had been fired.—A. From my experiments it would not be possible to take one hole. For instance, it would be absolutely impossible to determine the firing point. It would be the same as trying to fire a gun by using only the front sight. It would be impossible to get any results. In taking two holes, where the deflection we proved was always very irregular, and the third point, the firing point, could not be accurately located by means of the two holes. Taking the groove, it would be absolutely impossible to sight along the groove and determine the firing point. We found, taking the grooves which were made on the different boxes, taking the bullet holes, the eye could not with accuracy look along there and locate a definite point. At one time we sighted through a groove to locate the firing point. We would go away and go back and look along the groove, and we would locate another point; and within a horizontal distance of about 300 yards this variation in both the horizontal and the vertical would reach as much as a hundred yards.

Q. The variation would reach a hundred yards?—A. Yes, sir. Now, we determined this by looking through this groove about 300 yards at a building and a high water tower, and taking different sights through this groove we could locate the top of the water tower or we could locate the roof of the building or we could locate a point on the ground.

Q. And they were approximately a hundred yards apart?—A. Approximately a hundred yards apart; yes, sir.

Q. You could locate the top of the tower or strike the ground with the eye?—A. Strike a point on the ground with the eye.

Q. Or you could strike a point—A. To the right or left of that.

Q. Varying a hundred yards?—A. Yes, sir.

Q. In a distance of 300?—A. In a distance of about 300 yards; yes, sir.

Q. Have you completed your story of these experiments which you made, or is there anything else connected with it?—A. My other experiments were merely to determine what ammunition the various rifles would fire.

Q. I want to examine you about that, but first I will ask you what, according to your experience and observation, is the cause of the deflection of one of these high-power bullets?—A. The first thickness of the material in the target from which the deflections were made was 1 inch of white pine, and from my experiments I would say that any material would cause a deflection, no matter what thickness it would be, although if it were very thin the deflection would not be so great.

Q. The deflection depends upon just the direction in which the point or nose of the bullet happens to be turned when it strikes the obstruction?—A. Yes, sir; and I also think it depends upon the material. If the material is very nearly homogeneous the deflection will not be great, and I think that the bullet will always follow the line of least resistance, pick it out and follow it, and that causes the deflection.

Q. Your testimony amounts to this, as I understand it, that when a bullet strikes a house, for instance, it may go to the right or go to the left, or go up or go down?—A. Yes, sir.

A prominent law writer sends the following as a quotation from the opinion of Judge Lumpkin in *Hart v. Powell* (18 Ga., p. 635-42):

It is related by Doctor Hennen as having occurred to a friend of his in the Mediterranean, that a ball which struck about the pomum adami, traveled completely round the neck and was found lying in the very orifice at which it had entered. The same

author states that in one instance which occurred to a soldier, who having his arm extended in the act of endeavoring to climb up a scaling ladder, had the center of his shoulder pierced by a ball, which immediately passed along the limb and over the posterior part of the thorax, coursed along the abdominal muscles, dipped deep through the hypogastric artery, and presented itself on the forepart of the opposite thigh, about midway down.

Now, we have often heard of an individual being "shot all to pieces," but never before by one ball. Who would have doubted—what adept in the science would not have testified—that this poor fellow had been shot a half dozen times?

In another case, a ball which struck the breast of a man standing erect in the ranks lodged in the scrotum. The gallant and ever to be lamented Colonel Craig was shot in the back at Cerro Gordo; the ball pursued a circuitous route around his body, on the outside of the skin, to the breast.

But we forbear to multiply examples. We are sustained by the highest medical authority in asserting that balls take very unusual courses, "not at all to be accounted for by any preconceived theories drawn from the doctrine of projectiles, not to be explained by any diagrams formed upon mathematical rules." (Med. Jour. by J. H. Paris, Fellow of the Royal College of Physicians, and Q. S. M. Fonblanque, esq., Barrister at Law, 2 vol. 126.) "These considerations," continue the learned authors, "ought to render the surgeon very cautious how he delivers his opinion as to the direction the shot was fired."

THE SHELLS, CLIPS, ETC.

A lot of exploded cartridge shells, some clips and cartridges, and a bandoleer were picked up in the alleys and streets of Brownsville the next morning after the shooting.

Until these were brought to the fort and shown to Major Penrose and the other officers of the battalion they would not, any of them, believe it possible that any of the men of the battalion had been engaged in the shooting, but when these were exhibited to them, and they were told that they were picked up at the points where the shooting occurred, they changed their minds and concluded that in view of such evidence their men must have done the shooting. From that moment they put their men under the strictest scrutiny and surveillance and made every effort possible to ascertain who the guilty men were, but all such efforts failed.

In the meanwhile the court-martial of Major Penrose was held at San Antonio and the investigation before the Senate committee commenced. The testimony so taken satisfied the officers, as we have already pointed out, that their men were not guilty, and they have so testified.

They testify that they were influenced to change their opinions and reach the conclusion that their men were not guilty by a number of facts developed, including, among others, the results of a microscopic examination that was made of the exploded shells that were picked up in the streets of Brownsville. In other words, the testimony by which they had been first led to believe that their men were guilty turned out, as a result of this investigation, to be conclusive proof to their minds that their men were not guilty. The part this testimony has thus played shows that it is sufficiently important to receive special consideration.

NUMBER OF SHELLS FOUND.

1. According to the weight of the testimony there were from 150 to 300 shots fired that night in Brownsville by the raiders, whoever they may have been. There should have been found, therefore, that many exploded shells. The testimony shows that careful search was

made to find the shells and every other species of evidence that might tend to show that the soldiers were guilty, but with the result that, all told, only about 40 of these exploded shells were found. In other words, there were from 100 to 200 or 300 exploded shells, according to the theory of those who claim that the soldiers did the firing, scattered somewhere as a result of that firing in the alleys and the streets of Brownsville which have never been found. Nobody pretends that there was any difficulty on account of the nature of the ground or for any other reason about finding any exploded shells there may have been, or ought to have been, in the streets where the firing occurred. Seven of these empty shells were found at the mouth of the Cowen alley near the fort by Captain Macklin. Others were found in the alley and in Washington street at the point where the firing is said to have occurred. These shells so found, except those found by Captain Macklin, were turned over to the authorities and subsequently forwarded to the Senate for use as evidence. There were only 33 of them in all. There may possibly have been a few others picked up that were not turned over, but we have no account of them, and the testimony is of such character as to warrant the conclusion that there could have been but very few, if any, picked up in addition to the 33 mentioned. It is reasonable to conclude that the other shells that must have been exploded, if there were as many shots fired as the witnesses state, were not found to be such shells as the soldiers used, or there must have been some other good reason for not submitting them as evidence. Whatever the explanation may be, the fact remains, and it is a fact that in and of itself discredits the deductions drawn to the prejudice of the soldiers from the finding of the shells that have been submitted.

SHELLS AND CLIPS FOUND BY CAPTAIN MACKLIN.

It is testified by Captain Macklin, who was the officer of the day, that just at the break of dawn he made a careful search for any evidence that would show who had done the firing. In this behalf he searched, both inside the reservation wall and outside, to find shells and clips or other evidence that the soldiers had done the firing as the citizens were at that time charging. He found *no shell, no clip, no evidence of any kind inside the reservation wall, but outside the wall, across the street, in front of the garrison and at the mouth of Cowen alley, where according to the testimony of the guard and the scavenger and other witnesses the first shots were heard, he found 7 shells and 6 clips in a circular area not more than 10 inches in diameter.* The testimony is conclusive that if these shells had fallen from Springfield rifles as they were fired they would have been scattered over an area perhaps 10 feet in diameter. It is the opinion of all the witnesses who testified on that point that the shells found by Captain Macklin could not have fallen in the position in which he found them if they had fallen as they were fired. This fact, coupled with the further fact that with these 7 shells there were found 6 clips, enough to hold 30 cartridges, further discredits the finding of the shells in the alleys and streets as evidence of the guilt of the soldiers.

MICROSCOPIC INVESTIGATION.

But while the investigation was in progress the War Department on its own motion caused all the rifles that were in the hands of the three companies at Brownsville that night to be forwarded to the Springfield Armory, and detailed two officers, who, under instructions from the War Department, caused to be fired out of each of these rifles two cartridges. The indentations on the heads of the exploded shells so fired were put under the microscope and compared with the indentations found on the heads of the 33 exploded shells picked up in the streets of Brownsville, which indentations were similarly magnified. The 33 exploded shells were otherwise subjected to the most careful inspection by these experts. The result of this investigation was submitted to the committee in the form of an official report made by these officers to the Secretary of War. It is found at pages 1309-1325 of the record. Without being unduly tedious, the results were:

1. That there was such an exact identity between the indentations found on the heads of the 33 exploded shells picked up in the streets of Brownsville and the indentations found upon the exploded shells fired from four certain guns belonging to Company B of the Twenty-Fifth Infantry that the officers reported that beyond a reasonable doubt the shells picked up in the streets of Brownsville had been fired out of those four guns.

2. The experts further reported that they found that 3 of the shells picked up in the streets of Brownsville had a double indentation, as though a first attempt to fire them had failed and they had then been put a second time in the piece and struck a second time with the hammer or firing pin before they were exploded.

3. They further officially reported that certain of the shells picked up in the streets of Brownsville, 9 in number, bore marks indicating that they had been twice or oftener inserted in a rifle as though to be fired.

DOUBLE INDENTATIONS.

The officers of the Twenty-fifth Infantry and all the men who were examined on the point testified that when they first received their rifles, about the last of April, 1906, at Fort Niobrara, they were found to be so heavily oiled with cosmoline that the spring which shot the bolt forward with the firing pin to strike the head of the cartridge and explode it was impeded to such an extent that it was a matter of frequent occurrence that cartridges failed to explode at the first stroke, but that after, by the use of coal oil and in other ways, this cosmoline had been entirely removed so that the spring worked freely such a thing as a failure to explode practically never happened; and all testified that long before these troops left Fort Niobrara, where they used their rifles in target practice, they ceased to have any such difficulty and that during all the time they were in Brownsville no such difficulty could have been experienced if they had had occasion to use their rifles.

THE DOUBLE INSERTION.

As to the double insertion of cartridges the officers and men all testified that while they were engaged in target practice at Fort Niobrara the call to cease firing very frequently was sounded after a cartridge had been inserted but before it was fired; that this was a matter of practically daily occurrence; that always the soldier was required when the call to cease firing was sounded to at once remove from his gun any cartridge that might have been inserted but not yet fired, and that this cartridge so withdrawn was reinserted and fired when firing was resumed, and that in this way shells would show marks indicating that they had been inserted more than once in the firing piece. The officers and men all testified that except only on the target range at Fort Niobrara there was never in the history of these arms any such double insertion of cartridges or any occasion for such double insertion. It was the opinion of all the officers and men who testified on the subject that these double insertions never could have occurred except only on the target range at Fort Niobrara.

What these officers say shows how improbable it is that such a double insertion could have occurred in connection with the shooting affray at Brownsville, when it is remembered that when an attempt is made to fire a cartridge and the attempt fails the bolt must be drawn backward, with the result that the ejector throws the cartridge out of the chamber and to the distance of anywhere from three to ten feet away from the gun. The idea that a raider would undertake in the darkness of such a night, and under such circumstances, to recover an ejected cartridge that had failed to explode in order that it might be reinserted in the piece, is utterly untenable. The same is equally true as to those cartridges showing double indentations. There could not be any double indentation without pulling back the bolt after the first indentation, with the consequent expulsion of the cartridge from the chamber out into the darkness and to the distance of three to ten feet away from the gun, then recovering and reinserting the cartridge. To suppose that on such an occasion, under such circumstances, any such thing would or could occur is an extreme improbability, if not an actual impossibility.

THE FOUR GUNS.

The four guns out of which the experts found that the shells picked up in Brownsville must have been fired were identified by their numbers. The testimony shows that on the night of the shooting three of these guns were assigned respectively to Thomas Taylor, Joseph L. Wilson, and Ernest English, privates of Company B. These men appeared and testified that they were in their quarters asleep when the firing commenced, that they heard the call to arms, rushed with their comrades to the gun racks, each getting some gun which he carried for that night and which he returned after the company was dismissed for the night to the gun racks, where they were locked up and kept until morning; that the following morning each one found his gun in the rack and that when submitted for inspection it was found to be perfectly clean and bright, showing no evidence whatever of having been fired during the night. All testify that in the excite-

ment and confusion each soldier grabbed the first gun he could get, but that all guns were found in the racks, where they were verified after the firing was over. These witnesses were clear, straightforward, and unqualified in all their statements, and their testimony should be sufficient, in the absence of specific contradiction, to establish the fact that no one of their guns was used in the shooting affray.

They are confirmed by the testimony of their company commander, Lieutenant LAWRASON, who testified, at pages 1579 and 1580, as follows:

Q. Did you learn before your company was dismissed that night that it had been charged by Mayor Combe that the soldiers of the garrison had fired on the town?—A. Yes, sir. I was near the main gate into town when Mayor Combe came up, and I heard part of the conversation with Major Penrose, in which Mayor Combe accused the soldiers of having done the shooting.

Q. Until that time had you any thought of that kind with respect to the matter?—A. No, sir; I did not; I did not believe for an instant that the men had done it.

Q. That was the first intimation you had that anybody made any such claim?—A. Yes, sir; it was.

Q. And then it was after that that Major Penrose dismissed you and told you to make these examinations, was it?—A. Yes, sir.

Q. You took your company back, as I understand you, to the barracks and dismissed the company. Then what did you do in execution of the major's orders?—A. I saw the arms locked in the racks and later—

Q. I will ask you, before you left the racks, whether or not you counted the guns after they were put into the racks?—A. Yes, sir; I counted them.

Q. How many were there, or were they all there?—A. I don't remember the exact number, but I remember adding to the exact number the number of men on guard and the number of rifles that should be in the storehouse, and the first sergeant's rifle, and adding up 70.

Q. That is to say, you accounted for 70 rifles, did you?—A. Yes, sir.

Q. Was that the full number that had been issued to that company?—A. That was all that we had—all the Springfield rifles we had.

Q. And you remember, do you, positively that at that time you knew that you had in the gun racks the full number of rifles that should be there after deducting the other rifles that you accounted for as being elsewhere?—A. Yes, sir.

Q. If there had been 3 rifles missing from the racks, would you or not have detected it?—A. If there had been what?

Q. If there had been 3 rifles missing, would you have detected it?—A. I believe I would have detected 1 short.

Q. You would have detected 1 short. Now, do you remember Thomas Taylor of your company?—A. Yes, sir.

Q. Do you remember seeing him that night?—A. I know that he was present that night, though I don't remember seeing his face in the ranks.

Q. How do you know that he was present—I mean present with your company, and I suppose you mean that?—A. Yes, sir; because I know that he was carried on the rolls of the company at this time, and I checked up the whereabouts of every man in the company that night.

Q. And you know that he answered to his name at the roll call, do you?—A. Yes, sir.

Q. Or if not that, that you found him elsewhere?—A. Yes, sir; I know he was accounted for at that roll call.

Q. You have told us of all who were absent from the ranks when the roll was called and he was not one of them; so therefore it follows that he was in ranks, does it not?—A. Yes, sir.

Q. Now, is that true also of Joseph L. Wilson?—A. Yes, sir; that is true of Joseph L. Wilson also.

Q. Do you remember seeing him in ranks that night?—A. No, sir; I do not. He is on one end of the company, and I believe in the rear rank, or at any rate not directly in front of me in the company. He is smaller than most of the men in the company.

Q. But if he had been absent when his name was called, you would have detected his absence, you would have observed it?—A. Yes, sir.

Q. You were paying particular attention, were you not, to the roll call?—A. Yes, sir; I was, because I believed that the barracks had been fired into, and I wanted to see if any man had possibly been wounded and left upstairs.

Q. And you also stated that you knew the voice of every man so you could distinguish it and recognize it when he answered to his name?—A. Yes, sir; I believe I am familiar with every voice in the company.

Q. Now, is what you have stated as to Thomas Taylor and Joseph L. Wilson also true as to Ernest English?—A. Yes, sir; I believe English was also present.

Q. Do you remember seeing him that night?—A. No, sir; I can not positively state that I saw the face of any man in the ranks that night.

Q. But you do remember distinctly that every man was in ranks answering to his name, except those whom you have given us the names of, who were away on the several duties you have mentioned?—A. Yes, sir.

THE FOURTH GUN.

But however it may be as to the testimony of these three men being sufficient to show that these three guns were not fired that night, the *testimony is absolutely conclusive as to the fourth gun that it was not fired that night.* This fourth gun, being 45683, was originally issued at Fort Niobrara to Sergeant Blaney. Shortly before the battalion left Fort Niobrara for Brownsville his term of enlistment expired, and he reenlisted and took the usual furlough of three months, to which he was entitled. Before starting on his furlough he turned in his gun to the quartermaster-sergeant, Walker McCurdy, who placed his name on a piece of paper and put it in the bore of the gun next to the chamber, and then placed it in the arm chest and locked it up. Sergeant Blaney did not return to the company until after it left Fort Brown. On the night of the shooting his gun, with others, was still in this arm chest. They were all placed there when the battalion left Fort Niobrara. On arrival at Fort Brown this arm chest was put in the storeroom, and for want of room other baggage was piled on top of the chest. On the night of the firing, and immediately after the company was dismissed for the night, Lieutenant Lawrason, the company commander, under orders from Major Penrose, proceeded to verify his rifles. He carefully counted the rifles in the gun racks and found there the exact number that belonged in the racks. He then went to the storeroom, taking with him the quartermaster-sergeant, who unlocked the room, that he might enter. After entering the room he told the quartermaster-sergeant that he wanted to verify the guns in his custody—those in the arm chest. The quartermaster-sergeant thereupon removed the baggage that had been piled on top of the arm chests, unscrewed the lids, opened up the guns, and Lieutenant Lawrason counted them, finding that every gun was there—not one missing. In this way he establishes that Blaney's gun was at the time of the firing in the arm chest, with the lid screwed down and baggage on top of the chest, and the door of the storeroom fastened under lock and key. In other words, it is conclusively shown that as to this one gun at least it was utterly impossible for it to have been fired in Brownsville or that it ever had been fired, except only on the target range at Fort Niobrara before the battalion left there.

Lieutenant LAWRASON'S testimony on this point is as follows:

Q. That night, when the guns were put back in the racks, did you count them?—A. Yes, sir; I counted them as they were placed in the racks.

Q. Were the rifles locked up?—A. They were, sir.

- Q. By whom?—A. By the noncommissioned officer in charge of quarters.
- Q. Who was that?—A. Sergt. George W. Jackson.
- Q. Is he a reliable man, or not?—A. I believe him to be a reliable man, sir.
- Q. And a truthful man?—A. I think so, sir.
- Q. He had been a sergeant in that company for a long time, had he not?—A. He had, for several years, I believe, sir. He was in the company when I joined it.
- Q. And a man of good record in every sense?—A. I believe he was, sir.
- Q. Now, you saw the gun racks locked by him; then what did you do next after you had put the rifles away and locked them up in that manner?—A. I then went down and inspected the rifles in the storehouse.
- Q. Who was in charge of the storehouse, or storeroom, whichever you call it?—A. Quartermaster-Sergeant Walker McCurdy.
- Q. Was he, also, an old sergeant?—A. Yes, sir; he was an old sergeant of Company B.
- Q. Was he or not a reliable and truthful man?—A. I always believed him to be such, sir.
- Q. He had been in the service many years, had he not?—A. Yes, sir; he had.
- Q. And had everybody's confidence as a good soldier and a faithful noncommissioned officer?—A. Yes, sir.
- Q. He was the quartermaster-sergeant. As quartermaster-sergeant, what was his duty with respect to the surplus rifles and surplus ammunition? I mean surplus in the sense that it was not in the hands of the men?—A. He was accountable for it, and it was his business to keep it locked up.
- Q. You went to the storeroom after you locked up the rifles; who went with you to the storeroom?—A. The quartermaster-sergeant.
- Q. Sergeant McCurdy?—A. Yes, sir.
- Q. What did you do, and what did you tell him, and in what condition did you find the room; was it locked or unlocked when you went to it?—A. It was locked and he opened it. He took out a bunch of keys, as I recollect it, and fumbled around and got the right key and unlocked the door. The storeroom was very small, and we could not put all of our quartermaster property in there, and there was some confusion in the way in which the stuff was piled. We had to remove a lot of company property.
- Q. I will come to that in a minute. What did you tell Sergeant McCurdy you wanted in the storeroom when you went there; did you tell him or not what you wanted to do until you got into the storeroom?—A. No, sir; when I got into the storeroom I told him that I wanted to see the rifles that he had in the storeroom.
- Q. That is, rifles that he had in his possession?—A. Yes, sir.
- Q. Did you know how many rifles he had in his possession at the time?—A. I did, by referring to the company property book which was kept there.
- Q. We will speak about that presently. Now, go on and state what you did and what he did when you told him.—A. He told me that the rifles were locked up in the arm chests. I told him to open them, and he opened one full arm chest that contained 10 rifles, and also opened another that, I believe, contained two or three rifles and several old company shotguns.
- Q. Now, before you opened the arm chests, let me ask you whether or not they were easy to get at, or whether there was anything on top of them?—A. No, sir; they were not easy to get at. As I recollect, we removed considerable property before we got the arm chests out and got room to unscrew the lids.
- Q. What kind of property was this?—A. Iron quartermaster bunks and, I believe, some iron uprights to hold mosquito bars—T-shaped things.
- Q. They had been piled on top of these arm chests, had they?—A. Yes, sir; and were standing against the wall, between us and the arm chests.
- Q. When had you last before that seen these arm chests, and where?—A. I had seen them at Fort Niobrara, Nebr., before shipment, and when they were unloaded from the wagons and placed in the storehouse at Fort Brown.
- Q. Where were these extra guns placed in these arm chests, whether at Fort Niobrara or Fort Brown, or where?—A. They were placed in the arm chests at Fort Niobrara.
- Q. Do you remember seeing the guns—rifles—put in the arm chests and the arm chests closed up for shipment at Fort Niobrara?—A. I do not believe I was present when the property was boxed up. It was boxed up some time before our departure, and Captain Shattuck was in command of the company at that time.
- Q. You have told us in what condition you found the chests as to other property being piled on top; this property was removed, was it, from the tops of the chests?—A. Yes, sir.
- Q. And then were the chests opened, or not?—A. They were opened under my supervision and the arms counted.

Q. State in what condition you found the inside of those chests, as to the arms.—
A. The arms were placed in the proper grooves for them, and they were battened down, or held down by cleats that fit in the boxes, to prevent their rattling around during shipment.

Q. They had been fixed that way before they had left Niobrara?—A. Yes, sir.

Q. And were they in that same condition when you opened them that night?—
A. They were in the same condition, sir.

Q. Did you count the rifles when they were opened up?—A. Yes, sir; I counted them.

Q. I will ask you another question—whether or not, before these rifles were shipped from Fort Niobrara, they were coated with cosmoline oil or any other kind of oil?—
A. I believe they were coated with cosmoline oil at the time I looked at them at Fort Brown.

Q. When you looked at them was there any indication that they had been disturbed in any way whatever since they had been boxed up at Fort Niobrara?—A. No, sir; there was not; I did not take out all the rifles; I could count them without taking them out of the boxes; I picked up one or two from the top.

Q. And you did count the rifles in both boxes?—A. Yes, sir.

Q. And you remember that the requisite number of rifles were there, added to the other rifles that you found in the racks, and that you counted as away from there, to make up the number of 70?—A. Yes, sir.

Q. There was not a rifle missing, was there?—A. No, sir.

On this point Quartermaster-Sergeant WALKER McCURDY testified (p. 1658) as follows:

Q. What book is that in front of you there? See if you recognize it.—A. This is the company's property book, sir.

Q. The company property book of Company B?—A. Yes, sir.

Q. Will you turn to that and see what gun Sergeant Blaney had assigned to him, according to that book, when these new Springfield rifles were issued?—
A. (Examining book.) I think it was 45683.

Q. 45683?—A. Yes, sir.

Q. Now, it has been testified to, I believe, that Sergeant Blaney was absent on furlough. When did he go away on furlough?—A. It was about the same time I was made quartermaster-sergeant—about the 9th or 10th of June.

Q. That is, you succeeded him when he went away on furlough?—A. Yes, sir.

Q. Had he returned while you were yet at Brownsville? When did he return?—A. He returned at El Reno.

Q. He was not with you at Fort Brown at all?—A. No, sir.

Q. What was done with his gun when he left to go on furlough the 9th of June, or whatever date it was?—A. He took it up and packed it away.

Q. He turned it in?—A. No, sir; he turned in his own rifle. He will tell you himself that when he returned there was a slip of paper put in the chamber to show whose rifle it was, to keep me from issuing it to anyone else.

Q. Who put that in there?—A. I put it in there myself.

Q. What was on that slip of paper?—A. "William Blaney."

Q. Now, when he returned, were you still with the company?—A. Yes, sir.

Q. At El Reno?—A. Yes, sir.

Q. And you were still quartermaster-sergeant?—A. Yes, sir.

Q. And did you continue as quartermaster-sergeant?—A. Until I was discharged, sir.

Q. Until you were discharged?—A. Yes, sir.

Q. Now, what was done in the matter of providing Sergeant Blaney with a gun?—A. I gave him his same rifle back.

Q. You gave him back that same rifle?—A. Yes, sir.

Q. What does the company book show there as to what ultimately became of it?—A. The company property book only shows here that it was checked off. At least it is struck out now, because it was checked off.

Q. Look at the number of the gun and see whether there are some initials placed over the number?—A. No, sir; only "O. K." here, when it was turned in.

Q. What is that written over the number [indicating on book]?—A. That is the captain's check mark.

Q. That is "C. C. K.?"—A. It is "O. K."

Q. No; "C. C. K."—A. That is the captain's check mark, of Captain Kinney. He could tell you. He did that himself.

Q. The gun was turned in. You were quartermaster-sergeant when the gun was turned in?—A. Yes, sir.

Q. State whether or not when the guns were turned in Captain Kinney was captain of the company.—A. Yes, sir.

Q. And his name is C. C. Kinney?—A. Yes, sir.

Q. State whether or not he checked up every number.—A. He had that book and he checked it up.

Q. Can you tell us where that gun, No. 45683—is that the number?—A. 45683, I think it is, sir. [Examining book.] There is a check over it, but I think that is what it is, No. 45683.

Senator WARNER. That is the number you gave?

Senator FORAKER. Yes.

By Senator FORAKER:

Q. Well, it is the number that is there. State where that gun was on the night of the 13th of August, 1906.—A. It was in the arm chest, sir, in the company.

Q. In the arm chest?—A. Yes, sir.

Q. Was the arm chest open or closed?—A. It was closed, sir.

Q. Where was the arm chest?—A. It was in the storeroom.

Q. How long had it been in that arm chest, and who had placed it there?—

A. I placed it there at Fort Niobrara.

Q. At Niobrara?—A. Yes, sir.

Q. It was one of the guns that were in your charge? It was one of a number in your charge at that time, was it?—A. Yes, sir.

Q. You have already testified that you packed up in arm chests all the guns you had charged to you?—A. All the surplus guns that were not in the hands of the men, sir.

Q. You have a clear, positive, distinct recollection of that fact, have you?—A. Yes, sir.

Q. You can not be mistaken about it?—A. No, sir.

Q. It was No. 45683? That was the number?—A. Yes, sir.

If this gun was not fired that night in Brownsville, as the testimony conclusively shows it was not, then it follows that if the shells picked up in the streets of Brownsville were fired out of this gun they must have been fired at Fort Niobrara. The testimony shows this was both possible and probable.

Before this microscopic inspection was made or any such question was foreseen, it was established by uncontradicted testimony that Company B took with it to Brownsville as a part of its baggage a box containing from 1,600 to 2,000 exploded shells with a proportionate number of clips, and that after arrival at Brownsville this box, opened, stood on the back porch of B barracks, where anyone passing might have access to it and remove shells and clips from it. The microscopic report says that the shells picked in the streets of Brownsville and put in evidence were, beyond a reasonable doubt, fired out of these four guns belonging to B Company. If so, then it also follows that they were fired, not in Brownsville, but at Fort Niobrara, and that they were found in the streets, not because they fell there when fired, but because they had been placed there by persons unknown, who had secured them from this box of shells standing on the back porch and easily accessible to anyone disposed to remove them therefrom. In other words, the microscopic inspection shows conclusively, not that the soldiers were guilty of the firing, but that the soldiers were free from such guilt.

That this microscopic inspection did not establish anything more than that the shells found were fired from the four guns mentioned and did not show the time or place when they were fired or the parties by whom fired, was evidently the conclusion reached by General Cro-

zier, Chief of Ordnance, who concludes his review of this testimony, made in his last annual report (p. 36), as follows:

The bearing of these facts upon the identity of the persons doing the firing and upon the time when the cases and bullets were fired in the guns, is not a concern of this Department.

THE BANDOLEER.

A bandoleer, such as the soldiers use, was picked up in the Cowen alley the next morning after the firing, and that has been put in evidence against the soldiers. Each of the quartermaster-sergeants of the three companies has testified that before they left Fort Niobrara every bandoleer was taken up and returned to the arsenal, and that no bandoleer was issued from the time of their arrival at Brownsville until the companies were formed after the shooting commenced and that consequently the bandoleer that was found could not have belonged to any of the soldiers of the Twenty-fifth Infantry. The testimony further shows that when the Twenty-sixth Infantry left Fort Brown, a few days before the arrival of the Twenty-fifth Infantry, they left some bandoleers in the barracks and that they were gathered up and carried away by scavengers and citizens of Brownsville, along with articles of discarded clothing and other articles left behind. In addition, there would be no reason why the soldiers, if they planned the raid, as is claimed, should carry a bandoleer and throw it away in the streets when they could carry many times more cartridges than they had any need for in their regular belts.

THE BULLETS.

Seven bullets and parts of the steel jackets of two other bullets which were cut from houses into which it is claimed they were fired that night have been put in evidence. These bullets bear the marks of four lands, such as would be made by a Springfield rifle, such as the soldiers had, or a Krag rifle or a Krag carbine or a Mauser rifle. It is insisted that they must have been fired from the Springfield rifle, because the exploded shells that were picked up at the points where the firing occurred were Springfield rifle shells, indicating that the bullets belonged to Springfield rifle cartridges; and it is claimed that these cartridges are too long to be fired out of the Krag rifle or carbine. To this claim it may be answered that disconnecting the bullets that were cut out of the houses and put in evidence from the exploded shells that were picked up at the points where the firing occurred, it is impossible to tell whether the bullets were fired out of a Springfield rifle or from a Krag rifle or Krag carbine. The Springfield and Krag bullets are of the same weight and of the same general appearance. The witnesses all testified that it was impossible, looking at the bullets alone as they were put in evidence, to tell whether they had been fired from the one kind of rifle or the other.

Neither does it follow that if the bullets were fired out of the shells that were picked up at the points where the firing was done that they were fired from Springfield rifles, for the testimony shows that by slightly reaming out the bore of the Krag rifle the Springfield cartridge could be inserted in it and fired from it.

See General Crozier (page 2862):

Q. Now, let me ask you if there is any difficulty about boring that barrel so as to accommodate this cartridge?—A. I take it to be easily done. * * *

* * * * *

By Senator OVERMAN:

Q. Do I understand you to say that if the bore was enlarged that the cartridge could be fired from that gun?—A. I do not see any reason why it should not be fired from the gun, sir; but I should suspect that the extractor would not work very well with it, and that it would not be a very workmanlike piece of mechanism when you get through.

The testimony shows that at least four Krag rifles were disposed of to citizens of Brownsville by the quartermaster-sergeant of Company K of the Twenty-sixth Infantry shortly before the arrival at Brownsville of the battalion of the Twenty-fifth Infantry.

There is evidence to the effect that there were other Krag rifles in the possession of the citizens of Brownsville. Mayor Combe testified that the Texas Rangers were formerly armed with the Krag carbine, out of which Springfield cartridges could have been fired if the bores were reamed, as they might have been.

ANALYSIS OF BULLETS.

A number of bullets taken from the houses of Brownsville, into which they had been fired the night of August 13, 1906, were found by chemical analysis to correspond in composition to a special lot of bullets manufactured and supplied to the Government by the Union Metallic Cartridge Company under a contract dated June 29, 1905.

It is further shown that this composition does not correspond to the composition of any other army bullet of which we have been given any account.

The testimony shows that the negro troops were supplied in part with cartridges from this lot, but the testimony does not show that the cartridges with which the negro troops were supplied out of this special lot were manufactured in December, 1905, the date stamped on the Union Metallic shells picked up in the streets of Brownsville the morning after the affray.

The testimony further shows that the companies of the Twenty-sixth Infantry stationed at Fort Brown, which were relieved by the Twenty-fifth Infantry, were supplied with precisely the same kind of ammunition and that when they left Fort Brown a few days before the arrival of the negro troops, they left many of these cartridges carelessly scattered about the barracks, and that citizens and children were allowed to and did visit the barracks and carry them away at pleasure. (See testimony of Quartermaster Sergt. Rowland Osborn and others.)

Conceding, therefore, that the bullets cut out of the houses of Brownsville were the same in composition as those with which the negro troops were supplied, it must also be conceded that they were the same as those with which the companies of the Twenty-sixth were supplied.

The testimony also shows conclusively that it was possible for the citizens to have acquired these cartridges from those left behind

by the Twenty-sixth, while there is no testimony to show that any of them came from those issued to the Twenty-fifth. On the contrary, the testimony shows, as has been pointed out, that the different companies of the Twenty-fifth accounted for all their ammunition practically to a cartridge.

RECAPITULATION

To recapitulate, the testimony of the eyewitnesses against the soldiers is not reliable, because of the darkness of the night, which made it impossible to see with any distinctness, and because of the many contradictions of the testimony of the various witnesses, especially that of Preciado, Littlefield, and Dominguez.

2. In the second place, the confirmatory or circumstantial evidence of the exploded shells that were picked up in the streets of Brownsville and put in evidence is shown by the microscopic inspection to be conclusive testimony in favor of the innocence of the soldiers.

3. The clips, the bandolier, and the bullets are not of themselves evidence of the guilt of the men, because in view of the testimony not inconsistent with their innocence.

The testimony in favor of the soldiers is—

1. Their good record as both men and soldiers, both before August 13, 1906, and since.

2. Their own testimony as to their innocence. Every man in the battalion who has had an opportunity to testify has stated in the most unequivocal language that he had no part whatever in the shooting and that he has no knowledge whatever as to who did the shooting. In all their testimony they testified as to facts within their personal knowledge, for every man knew whether he had any part in the affray or knowledge thereof. To refuse to believe them is to assert that as fine a body of soldiers and as truthful, according to all their officers, as can be found in the entire Army are conspirators, murderers, and perjurers, and all this upon the uncertain, unreliable, and contradictory statements of witnesses who did not pretend to give personal knowledge, but only conclusions based on what was necessarily uncertain observation.

3. The soldiers are confirmed in the claim that they are innocent by the fact that immediately after the firing their ammunition was verified and not a cartridge was missing, and the next morning as soon as it was light enough their guns were rigidly inspected and not one was found to show any evidence whatever of having been fired the night before. There is much testimony in the record in regard to the length of time required to properly clean a gun after it has been fired so that it would pass such an inspection as these guns were subjected to the following morning. The overwhelming weight of this testimony is that it would require from fifteen to thirty minutes to clean these guns so that they would pass such an inspection as that to which they were subjected, and that it would be impossible to so clean them in the dark or by artificial light, and that the men had no opportunity to clean them that night.

This testimony was given not alone by the colored soldiers of the Twenty-fifth Infantry, but also by a large number of white soldiers from the Twenty-sixth Infantry.

4. So far as Company C is concerned, the testimony shows they had only guard ammunition, lead bullets without steel jackets, and only

650 rounds of that, and that after the firing they were found to have every cartridge. No one pretends that any bullets of this character were found, or that there is a particle of evidence to show that any such ammunition was used. And yet this is the company against which, until it was shown that they had only guard cartridges, all suspicion was directed, due to the fact that all the men who had any trouble at Brownsville—Newton, Reed, and Adair—belonged to this company; and because on account of delay in opening the gun racks, the men broke them open to get their guns and respond to the call to arms, a circumstance that was urged as an evidence of guilt until it was shown it was done by the orders of Major Penrose.

5. As to the other two companies, the calling of the roll in Company B while the firing was yet in progress, and the personal inspection and verification of Company D by Captain Lyon also while the firing was still in progress, coupled with the fact that every man of the company was present or accounted for, with not a missing cartridge or a dirty gun, would seem in any ordinary case to be enough to exonerate them, to say nothing of the unqualified, straightforward testimony that clears all of them. To find these men guilty upon such a state of evidence is to disregard, violate, and reverse every recognized rule for the weighing of testimony, and can be explained only upon the theory that no matter what may be shown in behalf of the soldiers it is to be ignored or held to be unworthy of credence, notwithstanding their good character and reputation for truth and veracity and general reliability and trustworthiness, as testified to by their officers, who knew them better in these respects than it was possible for anybody else to know them. So to ignore and disregard their testimony is to hold that not only are all the men who have testified conspirators, murderers, and perjurers, but also that Major Penrose and all his officers, than whom no officers in all the Army are more honorable and upright and reliable men, together with General Burt, were not entitled to credence when they testified that they believe their men have told the truth and that they are entirely innocent. There is no ground whatever on which to justify such monstrous conclusions.

6. The testimony further shows that the first five or six shots fired were pistol or revolver shots. Major Penrose and his officers and also Mayor Combe, all experts, testified positively that the first shots were pistol shots. They are confirmed in this by a number of other witnesses. The testimony is conclusive that the men of the battalion had no pistols or revolvers in their possession. The only revolvers that had been issued to these companies were still in the boxes in which they had come from the arsenal. If, therefore, the first shots were pistol shots, they could not have been fired by the soldiers. Immediately after these first five or six pistol shots all testify that there was firing from high-power guns, but whether they were Springfield rifles or Krag rifles or Krag carbines or Winchester rifles or Mauser rifles no one could tell from the sound. So far, therefore, as the *reports* or *sounds* of the firing were concerned, they might have been made by the firing of Krag guns or Winchester guns or Mauser guns.

7. But assuming that because of the marks of the four lands on the bullets they were fired from either a Springfield or a Krag rifle or a Krag carbine, the testimony shows that a number of Krag rifles—

four at least—with the numbers effaced had been sold to citizens of Brownsville by the quartermaster-sergeant of one of the companies of the Twenty-sixth Infantry only a short time before the negro soldiers arrived there. In addition, Mayor Combe testified that the Texas Rangers were, until recently, armed with Krag carbines.

8. The bullets taken from houses and put in evidence, as already pointed out, may have been fired either from Krag carbines or Krag rifles, or they might have been fired from Mauser rifles.

9. The location of the 6 shells and 5 clips found by Captain Macklin on a circular area not more than 10 inches in diameter indicates that they must have been placed where he found them, and no one has suggested any purpose the soldiers could have had in placing them there.

10. The bullet cut from the post in front of Crixell's was not a soldier's bullet and could not have been fired from any gun the soldiers had.

11. The microscopic investigation and report.

All these several points are absolutely inconsistent with the theory that the soldiers did the shooting. But in addition to what such evidence proves, there is the improbability of soldiers with such a record as these soldiers had forming and executing any such conspiracy, and especially in the way claimed.

In the first place, the formation and execution of such a conspiracy would require a higher order of ability than any of the men of the battalion possessed; but it is not possible that men capable of planning such a raid and so managing its execution as to defy detection would be so absurdly stupid as to commence their operations by firing from their own quarters and grounds, and then, after they had thus aroused the town and fixed their identity as soldiers, and not until then, jump over the wall and start on their errand of outrage and murder.

NO MOTIVE.

In the second place, there was no sufficient motive. To begin with, the only motive suggested is one of revenge—revenge by indiscriminate murder of men, women, and children—because some of the saloons would not sell to the soldiers except at separate bars, and because one of the soldiers, Private Newton, was hit over the head with a revolver by Customs Officer Tate and knocked down and badly injured without any adequate excuse therefor, and because one or two others of the soldiers had been unfortunate enough to have some petty difficulty. As to this provocation, the testimony is conclusive that the soldiers made no complaint because they were denied the equal privileges of the saloons, and it is further shown that Newton showed no special resentment and took no steps beyond reporting his trouble to his commanding officer, who promised to have it investigated, with which Newton expressed himself as entirely satisfied. The testimony shows, moreover, that Newton is a quiet, inoffensive, peaceable-minded man, who was on guard duty that night, but off post and asleep in the guardhouse when the firing commenced. His character was such that he would be most unlikely to conceive the idea of organizing a conspiracy, or induce men to join one, to shoot up the town in the way alleged, especially one to avenge his wrongs, but of which he was not an active participator.

STARCK'S HOUSE NOT MISTAKEN FOR TATE'S HOUSE

It has been said, as evidence that the motive of the soldiers was to revenge Newton's wrongs, that the raiders fired into Starck's house, adjoining the house in which Customs Officer Tate lived, evidently mistaking it for Tate's house. This is thought to be a strong point to indicate that it was the soldiers who did the shooting and that they were seeking to revenge Newton's wrongs by shooting up the house of the man who had wronged him. The testimony shows that some months prior to the shooting, Starck, whose house was shot into, and who was also a customs officer, had undertaken to arrest a smuggler by the name of Avillo, who lived in Brownsville and who had worked for Starck, and was perfectly familiar with Starck's house and its location, and that Avillo resisted arrest and Starck felled him to the ground with his revolver almost in the identical way that Tate had felled the soldier Newton. The testimony further shows that this smuggler, who was thus knocked down by Starck, was put under bond to appear at court, and that he had forfeited his bond and was at the time of this shooting affair an outlaw and fugitive from justice. It would seem far more likely that Avillo, the outlaw and fugitive from justice, remembering his injuries, had something to do with the shooting up of Starck's house than that Newton, who appeared as a witness, and who showed that he was on guard duty that night, was out with a lot of raiders, or that a lot of raiders were out, on his account, without him accompanying them, trying to shoot up Tate's house, *of the location of which there was no evidence to show they had any knowledge whatever*, and that they fired into Starck's house by mistake. The probabilities are that the men who shot into Mr. Starck's house knew whose house they were shooting into and knew why they were shooting into it. Mr. Starck's testimony was to the effect that he had arrested during the term of his service as a customs officer more than 600 smugglers at Brownsville.

And if a motive be demanded for the shooting of Dominguez it would seem more likely that he received his injuries at the hands of some of the numerous criminals he had arrested and enforced the law against during his long term of service as a municipal officer than that he was singled out by the soldiers to be shot by them, with whom he had had no trouble whatever of any kind. But however all this may be, we are of the opinion that—

1. The testimony wholly fails to identify the particular individuals, or any of them, who participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

2. The testimony wholly fails to show that the discharged soldiers of the Twenty-fifth U. S. Infantry, or any of them, entered into any agreement or so-called "conspiracy of silence," or that they had among themselves any understanding of any nature to withhold any information of which they, or any of them, might be possessed concerning the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

3. The testimony is so contradictory, and much of it so unreliable, that it is not sufficient to sustain the charge that soldiers of the Twenty-fifth U. S. Infantry, or any of them, participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

4. The weight of the testimony shows that none of the soldiers of the Twenty-fifth U. S. Infantry participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

5. Whereas the testimony shows that the discharged men had a good record as soldiers, and that many of them had by their long and faithful service acquired valuable rights of which they are deprived by a discharge without honor; and

Whereas the testimony shows beyond a reasonable doubt that whatever may be the fact as to who did the shooting, many of the men so discharged were innocent of any offense in connection therewith; therefore it is, in our opinion, the duty of Congress to provide by appropriate legislation for the correction of their record and for their reenlistment and reinstatement in the Army, and for the restoration to them of all the rights of which they have been deprived, and we so recommend.

J. B. FORAKER,
M. G. BULKELEY.

As indicating the character of legislation that should be enacted, as above recommended, we attach hereto Senate bill 5729, of which the following is a copy, and recommend its passage:

A BILL

To correct the records and authorize the reenlistment of certain non-commissioned officers and enlisted men belonging to Companies B, C, and D of the Twenty-fifth United States Infantry who were discharged without honor under Special Orders, Numbered Two hundred and sixty-six, War Department, November ninth, nineteen hundred and six, and the restoration to them of all rights of which they have been deprived on account thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any noncommissioned officer or enlisted man belonging to Company B, C, or D of the Twenty-fifth United States Infantry, discharged without honor under Special Orders, Numbered Two hundred and sixty-six, War Department, dated November ninth, nineteen hundred and six, on account of the shooting affray that occurred at Brownsville, Texas, on the night of August thirteenth-fourteenth, nineteen hundred and six, who shall make oath before any duly authorized enlisting officer of the United States Army or Navy that he did not participate in said affray, and that he does not know of any soldier belonging to any of said companies who did participate in the same, and that he has not at any time heretofore and does not now withhold any knowledge with respect to that occurrence which, if made public, would or might lead to the identification of any participant in said shooting affray or any accessory thereto, either before or after the fact, and that he has answered fully to the best of his knowledge and ability all questions that have been lawfully put to him by his officers or others in connection therewith, shall be, and hereby is, made eligible to reenlist in the military or naval forces of the United States on his application therefor at any time within three

months from and after the passage of this act, any statute or provision of law or order or regulation to the contrary notwithstanding; and that upon such reenlistment he shall be allowed full pay, according to the rank he held and the pay he was receiving at the date of discharge until his reenlistment: *Provided*, That all the rights and privileges to which the soldiers reenlisting under the provisions of this act were entitled, respectively, at the time of their discharge shall be, and hereby are, fully restored to them, and the record showing their discharge without honor shall be, and hereby is, annulled, set aside, and held for naught, and the time elapsing since their discharge without honor until the date of such reenlistment shall be computed in determining all rights to which they may be respectively entitled on account of continuous service as though they had been in the service without interruption, and they shall not suffer any forfeiture of any right or privilege by reason of such discharge: *Provided further*, That in any case where the regular term of enlistment which the soldier was serving at the time when discharged without honor has in the meanwhile expired, his record shall be, and hereby is, corrected so as to show an honorable discharge at the time of the expiration of such enlistment, and he shall be allowed full pay and all rights and privileges until that time; and in the event of the reenlistment of such soldier under the provisions of this act his term of reenlistment shall be deemed to have commenced as of the time when his previous enlistment expired, and his service under such reenlistment shall be without prejudice of any kind by reason of his former discharge without honor: *And provided further*, That in case any of the noncommissioned officers or enlisted men belonging to said companies and discharged without honor shall have died since they were so discharged and before the passage of this act, but who shall have testified under oath or made affidavit before their death that they did not participate in said shooting affray or have any knowledge with reference thereto, their respective records shall be, and hereby are, corrected in accordance with the provisions of this act and their legal representatives shall be entitled to all pay that would have become due to them from the time of their discharge until the time of their decease.

SEC. 2. That nothing in this act contained shall be construed to prohibit the prosecution and punishment of any soldier reenlisting under the provisions hereof as to whom it may at any time hereafter appear that he did participate in said shooting affray or have knowledge thereof which he has withheld.

SEC. 3. That all reenlistments under the provisions hereof of soldiers who at the time of their discharge without honor were serving terms of enlistment which have not yet expired shall be held to be for only the remaining portion of said unexpired terms, respectively.

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