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ILLEGAL ACTIONS IN THE CONSTRUCTION OF THE AIRFIELD AT FORT LEE, VA.

SEVENTEENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT OPERATIONS

JUNE 20, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

House of Representatives,
Washington, D.C., June 20, 1962.

Hon. John McCormack,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: By direction of the Committee on Government Operations, I submit herewith the committee's 17th report to the 87th Congress. The committee's report is based on a study made by its Executive and Legislative Reorganization Subcommittee.

William L. Dawson, *Chairman.*

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87TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 1858

ILLEGAL ACTIONS IN THE CONSTRUCTION OF THE AIRFIELD AT FORT LEE, VA.

JUNE 20, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations, submitted the following

SEVENTEENTH REPORT

BASED ON A STUDY BY THE EXECUTIVE AND LEGISLATIVE REORGANIZATION SUBCOMMITTEE

On June 20, 1962, the Committee on Government Operations had before it for consideration a report entitled "Illegal Actions in the Construction of the Airfield at Fort Lee, Va." Upon motion made and seconded, the report was approved and adopted as the report of the full committee. The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTORY STATEMENT [1]

In January 1961 the Comptroller General sent to Congress an audit report entitled "Review of Programing and Financing of Selected Facilities Constructed at Army, Navy, and Air Force Installations, Department of Defense." This report was referred to the Committee on Government Operations. Since the staff of its Military Operations Subcommittee was tied up on other work, the chairman assigned the matter to the Executive and Legislative Reorganization Subcommittee to be investigated under the direction of the full committee staff. At the chairman's request, the Comptroller General assigned one employee, and at times two, to assist in the investigation. Two statutory duties of the Committee on Government Operations are involved: (1) Receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the House as it deems necessary or desirable in connection with the subject matter of such reports, and (2) studying the operation of

[1] References throughout this report to "Hearings" refer to "Illegal Actions in the Construction of an Airfield at Fort Lee, Va.—Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 87th Cong., 2d Sess."

Government activities at all levels with a view to determining its economy and efficiency.

In some respects the most serious matter dealt with in the Comptroller General's report was the construction of the airfield at Fort Lee, Va., by the Quartermaster Corps. It appeared that a number of statutes and sections of the Uniform Code of Military Justice had been deliberately violated by several officers who had signed or conspired in the signing of documents falsely charging purchases of material and services used in constructing the airfield to other projects in order to hide the fact that both a statutory and an administrative limitation on funds was being exceeded; who had deliberately expended or conspired to expend moneys in excess of statutory and administrative limitations, and who had removed and destroyed or conspired to remove and destroy records which would have revealed their illegal actions to General Accounting Office auditors.

The committee's investigation uncovered a number of other illegal and improper actions. It also demonstrated the existence of what may be called a "system" among officers of the U.S. Army under which subordinate officers felt compelled to go along with their superiors in the performance of acts which they knew were illegal and improper even after they had protested to their superiors regarding such illegality and impropriety, and under which the superiors felt they could compel such subservience on the part of the subordinates. These officers were disloyal to their public trust, to their subordinates, and to the Army. Conduct of this kind which brings into public disrepute high-ranking officers can only result in loss of confidence in the integrity of our Military Establishment.

The operation of the "system" was further demonstrated by the failure of the responsible officers to bring court-martial proceedings against those guilty of the offenses, by their failure to investigate the matter except under extreme pressure, by their general reluctance to take disciplinary action, and by their attempts to cover up and excuse the offenses rather than to get to the bottom of the whole affair.

The Executive and Legislative Reorganization Subcommittee held 8 days of hearings on the Fort Lee matter in March 1962. The following persons testified, all under oath. They are listed in order of appearance:

William A. Newman, Director, Defense Accounting and Auditing Division, U.S. General Accounting Office, accompanied by John Moore, attorney.

Hyman Baras, supervisory accountant, U.S. General Accounting Office, on assignment to House Committee on Government Operations.

David C. Kelly, supervisory auditor, Norfolk Regional Office, U.S. General Accounting Office.

Maj. Thomas S. Swartz, U.S. Army Reserve (retired), former assistant post engineer, Fort Lee, Va.

Lt. Col. Julian E. Pylant, post engineer, Fort Lee, Va.

Col. James W. Connor, U.S. Army (retired)

Col. Walter R. Ridlehuber, Director of Warehousing, Memphis General Depot, Memphis, Tenn.

Col. Louis H. Shirley, U.S. Army (retired).

Robert G. MacDonald, Chief, Facilities Branch, Quartermaster General's Office.

Lt. Col. William H. Jarrett, U.S. Army (retired).
Col. Grant N. Healey, Quartermaster Corps, U. S. Army.
Col. James C. Pennington, General Staff, Assistant Chief of Staff, G–4, U.S. Army, Ryukyu Islands.
Maj. Gen. Alfred B. Denniston, U.S. Army, commanding general, the Quartermaster Training Command, Fort Lee, Va.
Lt. Gen. David W. Traub, Comptroller of the Army.
Robert L. Tracy, legal adviser to the Comptroller of the Army.
Col. James E. Godwin, Staff Judge Advocate, Headquarters, Second Army.

Because the facts uncovered are so serious, the committee is making this separate report on the Fort Lee airfield construction. We intend to cover other items in the January 1961 General Accounting Office report in a later report to the House.

II. Findings and Conclusions [2]

1. The construction of an airstrip to cost $876,000 was included in the military construction program submitted by the Quartermaster Corps officials at Fort Lee, February 17, 1956, for the fiscal year 1958 and was not approved by the Army. The airfield project had also been turned down in 1955 for inclusion in the fiscal year 1957 military construction program.

2. Despite the disapproval of the airstrip item in the 1958 military construction program, officials at Fort Lee determined to build it anyway using funds appropriated for operation and maintenance and labor of troops borrowed from the Corps of Engineers at Fort Belvoir, Va.

3. (*a*) Applicable law [3] authorized administrative approval of the use of operation and maintenance funds to construct an urgently required minor construction project the cost of which did not exceed $25,000.

(*b*) Department of Defense Directive 4270.6 of October 10, 1957, paragraph III. A. 2., required that in order to qualify for approval under section 408 of Public Law 968—

> the project [be] such that it could not reasonably have been anticipated in time for inclusion in the regular military construction program and completed prior to need.

4. On September 17, 1957, an individual project estimate on form DA5–25, submitted by Lt. Col. William H. Jarrett, post engineer, and approved by Col. Louis H. Shirley, deputy post commander, was submitted by Fort Lee to the Office of the Quartermaster General to provide for the construction of a flexible pavement landing strip 75 by 1,500 feet, the minimum necessary overruns, paved taxiways, and parking aprons, and including a 995-foot paved access road. This estimate provided for a total project cost of $110,095, of which $73,086 represented the value of labor and supplies on hand or available for which funds did not have to be requested. Funds were requested in the amount of $37,009 to complete the project. Subsequently, Lieutenant Colonel Jarrett was notified by an officer in the Washington office of the Corps of Engineers that the project estimate would not be approved because the funds requested exceeded $25,000 and because the runway was only 1,500 feet long and the depth of the paving only 1½ inches. The reason given at this time for reducing the funds requested was to keep the project within the $25,000 approval authority of the Chief of Engineers and to avoid having to secure approval by the Secretary of the Army under section 408. The decision to utilize operation and maintenance funds was made later when the

[2] For references to documents and testimony supporting the findings and conclusions, see app. I; for elaboration of certain findings and conclusions, see pt. IV, infra, headed "Commentary."

[3] Public Law 968, 84th Cong., sec. 408 (act of Aug. 3, 1956; 70 Stat. 1016), and its successor provision, 10 U.S.C. 2674 (act of Sept. 2, 1958; 72 Stat. 1437, 1459). Both provisions are printed in app. II of the report. Hereafter in this report, unless otherwise indicated, reference to 10 U.S.C. 2674, or merely to "sec. 2674," is intended to include sec. 408 of Public Law 968, 84th Cong. This section also authorizes administrative approval of the use of military construction funds for urgent minor projects costing not more than $200,000.

revised project was approved. (See Findings Nos. 5 and 9.) This brought the $25,000 statutory limit referred to in the preceding paragraph into effect.

5. On November 1, 1957, Fort Lee submitted a revised project estimate again signed by Lieutenant Colonel Jarrett and approved by Colonel Shirley for the construction of a landing strip 75 by 2,500 feet with minimum necessary overruns, paved taxiways, and parking apron and including a 545-foot paved access road. The thickness of the paving was to be 2 inches. This estimate provided for a total cost of $141,537, of which $116,589 represented the value of labor or supplies on hand or available, for which funds were not requested. An amount of $24,948 was requested to complete the project. Lieutenant Colonel Jarrett, who was post engineer at the time, and Maj. Thomas S. Swartz, who was assistant post engineer (both now retired), testified that the figures in the revised estimate were arbitrary and were merely put down to meet the requirement for lowering the funds requested below $25,000. They testified that no attempt was made to secure accurate figures for the revised project estimate. In fact, they testified that it was obvious to them and should have been obvious to others that the length of the runway could not be increased by 1,000 feet and the depth of the pavement increased by one-half inch and at the same time the amount of requested funds reduced by over $12,000. Colonel Shirley testified that he made no effort to ascertain whether the figures were realistic and did not question the incongruity of enlarging the project while at the same time decreasing the funds requested. In the memorandum transmitting the revised project request, it was indicated that the officials at Fort Lee would use the amount requested and then request more. However, in approving the request, the Quartermaster General placed limitations on the total amount of funds to be expended for the airfield project and designated that operation and maintenance funds would be used, thus also bringing the $25,000 statutory limit into effect. (See Finding No. 9.) Colonel Ridlehuber, the Fort Lee G-4 (Logistics) Assistant Chief of Staff, in a teletype of April 8, 1958, clearly recognized the limitation placed on the project in the Quartermaster General's approval.

6. So far as the committee could ascertain, there was no indication in the records of the Quartermaster Corps in Washington or at Fort Lee that the project was "urgently required," as the statute demands.

7. The committee finds that Major Swartz and Lieutenant Colonel Jarrett presented a revised project estimate which they knew was not and could not be supported. Colonel Shirley, who approved the submission of both the original and revised project estimates, should have known that the project could not be enlarged in scope and reduced in cost in the manner indicated by the estimates. This fact should also have been obvious to the officials in the Office of the Quartermaster General and the Corps of Engineers who finally approved the project. While it is conceivable that the approving officers were only incompetent or negligent, the pattern of events indicated that they were all willfully conniving in the violation of the law.

8. On November 27, 1957, the Office of the Quartermaster General approved the revised project request for the airfield. Such approval was contrary to the provisions of Department of Defense Directive 4270.6 of October 10, 1957, cited under paragraph 3 above, because the project, having actually been included in the request for the 1958

military construction program submitted by Fort Lee, failed to meet the requirement that it be such that it could not have been reasonably anticipated in time for inclusion in the regular military construction program. Since this clause in the directive defined the nature of urgency under section 408 of Public Law 968 of August 3, 1956, the approval of the project also violated the provision of that law that the project be "urgently required."

9. In approving the airstrip project, the Quartermaster General limited the total estimated cost to $141,537 and the total expenditure of operation and maintenance funds to $24,948 for supplies and indirect costs. The approval also provided that no work should be accomplished that would conflict with the ultimate completion of the airstrip in full accordance with the criteria for a standard Army airfield, contained in the applicable Corps of Engineers manual. The approval particularly required that all prescribed clearances for structures or other obstructions be maintained during present and future stages of construction. (See Finding No. 12.)

10. The responsible officials at Fort Lee violated the limitations in the approval and in the law, with respect to funds, as follows:

(*a*) The operation and maintenance funds expended for materials and services were at least $66,605 or over $41,000 more than the $24,948 authorized. The total cost of the project, not including the hangar, was $508,305 or over $366,000 more than the $141,537 authorized as the total cost of the project. In addition, a hangar was constructed costing about $28,000, which is properly chargeable to the project because it was part of the project as originally conceived. This would raise the total cost of the project to $536,373 and the total amount of operation and maintenance funds spent to over $94,000. The figures stated are the minimum ascertainable by the committee, for it is admitted that records were falsified and purchases charged to other projects. Some of these deceitful actions may have escaped detection. Further, the committee, the General Accounting Office, and the Army Audit Agency agree that $84,121, paid by Fort Lee out of operation and maintenance funds to provide for the transportation and per diem of engineer troop labor from Fort Belvoir, should also have been charged against the operation and maintenance fund limitation since clearly such funds were used for this purpose and were part of the cost of the project. In short, at a minimum, operation and maintenance funds totaling $153,000 were expended on the project despite the statutory requirement that a project built with operation and maintenance funds may not cost over $25,000.

(*b*) The expenditures described in the preceding paragraph plainly violated section 408 of Public Law 968, 84th Congress (10 U.S.C. 2674), and Revised Statute 3679, as amended (31 U.S.C. sec. 665). These sections are set forth in full in the appendix to this report. The officers directly responsible for these violations include: Col. Walter R. Ridlehuber, Col. Louis H. Shirley, Col. James W. Connor, Lt. Col. William H. Jarrett, Lt. Col. Julian E. Pylant, and Maj. Thomas S. Swartz. Also directly responsible in the case of the hangar are Col. James C. Pennington and Mr. Robert G. MacDonald. Detail on the hangar will be found in Finding No. 14 as well as under part IV, infra.

11. Besides the aforementioned illegal overage in operation and maintenance expenditures, the Fort Lee airfield project shows the

Army's resort to other, more subtle, devices to circumvent the purposes and limitations of section 2674.

In connection with the cost of the airfield project, the Army distinguished between "funded" costs and "unfunded" costs. These terms can be explained by reference to the project estimate form (DA5-25), listing two categories of costs: (1) "Estimated cost of labor, supplies, etc., on hand or available for which funds are not requested" and (2) "Total estimated cost of the project." Item (1) costs were considered "unfunded" costs; for purposes of meeting the statutory cost limitation, the Army did not concern itself with them. The difference between item (2) costs and item (1) costs was regarded as "funded" costs. The latter (sometimes called "out-of-pocket" costs) represented additional funds required to complete the project.

After obtaining administrative approval of an apparently minor project on the basis of the "funded" costs involved, the Army actually created a project of major proportions simply by the infusion of heavy quantities of troop labor, and supplies and equipment on hand. Thus, by 1960, the total costs for the airfield (excluding the hangar) aggregated $508,305, more than $483,000 over the applicable statutory limitation. All but $66,605 of this constituted "unfunded" costs.

The committee has found no statutory recognition of an intended differentiation in section 2674 between "funded" and "unfunded" project costs. It does not approve of the creation of major projects by large-scale use of troop labor and equipment and supplies on hand. When total project costs exceed the limitations of section 2674, the proposed project should be disclosed in the military construction program and submitted to Congress for its consideration.

Section 2674 provides that a project using operation and maintenance funds may not cost more than $25,000. Obviously, the Fort Lee airfield, with a total estimated cost of $141,537, was beyond any administrative approval authorized by that section.

By subdividing the airfield project into what it terms separate "usable facilities," the Army demonstrated another technique for obtaining more than it was authorized to have. It endeavored to augment the airfield project with a hangar project, purportedly for special use of an aerial detachment. (See Finding No. 14.) Thus, by improperly applied definitions and criteria relating to the concept of "project," a major development can be built up piecemeal by the accretion of several minor projects. Palpably this is an evasion of section 2674.

Still another method of ignoring section 2674 is the "foot in the door" technique whereby administrative approval of a project is first obtained and then, after considerable sums, both "funded" and "unfunded," have been spent, plans for further construction and improvement of the facility are included in the military construction program submitted to Congress. The justification is that further funds are necessary to protect or enhance an already large investment which has not yet resulted in full realization of its objective. At the time of the GAO's review of the Fort Lee airfield, not only had costs of $536,373 been incurred (including the hangar) but $1 million more had been programed.

The committee condemns all such stratagems as violating both the letter and the spirit of section 2674.

12. Despite the conditions and limitations in the approval relating to the maintenance of all prescribed clearances for structures and other obstructions during the present and future stages of construction, so that the airfield could eventually be utilized as a standard Army airfield, the airfield was sited in an area where at least nine obstructions violate the applicable Army criteria. As a result, the airfield cannot be used for instrument landings or takeoffs. The responsible officers of the Quartermaster Corps knew of the existence of the obstructions and hoped and attempted to have them waived. On the basis of mere hope, they proceeded with the construction without first obtaining the necessary waivers. The waivers were, in fact, denied. Even after the denial, the responsible officials continued to expend funds to construct the airfield, and some of them attempted to conceal the true situation from the officers in charge of the engineer troops for fear that the construction would be stopped. It appears, however, that the Corps of Engineers took no action to stop construction even though they knew of the existence of the obstructions, the denial of the waivers, and that construction was continuing.

The officers responsible for continuing the project despite the existence of known obstructions which violated the Army criteria and who thereby failed to follow the instructions contained in the approval of the airfield include: Col. Walter R. Ridlehuber, Lt. Col. William H. Jarrett, Col. James C. Pennington, and Brig. Gen. R. T. Evans, Jr. Col. James C. Pennington testified that he had informed the deputy post commander, Col. Louis H. Shirley, of the denial of waivers on February 19, 1959, at which time it was decided to go ahead with the construction. Colonel Shirley testified that Colonel Pennington did not tell him that waivers had been denied.

13. When, in the first half of calendar year 1959, the assistant post engineer at Fort Lee, Major Swartz, informed his superiors that the statutory fund limitation of $25,000 (administrative limitation of $24,948) had about been reached, several responsible officers conspired to and did initiate, sign, approve, and process purchase requests for materials and services to be used in the construction of the airfield, which purchase requests falsely stated that the materials and services were to be used on other projects. When some of the officers who initiated this practice were routinely transferred to other positions, the officers who replaced them continued to falsify the purchase requests. At least two officers, Maj. Thomas Swartz and Lt. Col. Julian E. Pylant, objected about these actions to their superiors to no avail; whereupon they both participated in the practices themselves. In addition, other purchase requests for material to be used in the airfield construction which indicated upon their faces that the material was to be used for "improvements" to the airfield were not charged against the project account and hence contributed to the overexpenditure of funds. The failure to charge these to the project account was deliberate.

The officers who participated in the conspiracy and who knowingly initiated, signed, or processed the false documents include: Lt. Col. William H. Jarrett, Lt. Col. Julian E. Pylant, Col. James W. Connor, Col. Walter R. Ridlehuber, Col. Louis H. Shirley, and Maj. Thomas S. Swartz. Colonel Ridlehuber and Colonel Shirley testified that they had informed the post commander, Maj. Gen. Alfred B. Denniston, that material and services for the airfield were being charged to other projects. Major General Denniston denied that he was so informed.

Other officers and civilian employees may also have been involved in the conspiracy; but the committee, having identified the principal figures involved, saw no point in its pursuing every minor functionary.

14. In mid-1959 the officials at Fort Lee initiated action to build a hangar for the airfield but as a separate project. A hangar had been planned and included in the military construction request for the fiscal year 1957, which had been turned down. It was again planned in a memorandum of September 18, 1957, just 1 day after the submission of the original project request to the Quartermaster General's Office for approval. It had also been included in the military construction request for the fiscal year 1960 program and had been turned down.

Having been part of the complete project as initially and continuously planned, the subdividing of the project into airfield and hangar was obviously a deliberate attempt to avoid the $25,000 statutory limitation. Further, since the item had been included in a military construction program and turned down it could not qualify as an urgently needed project under Defense Department Directive 4270.6. Nevertheless, responsible officials of the Quartermaster Corps in Fort Lee and Washington employed the subterfuge of designating the hangar as a building for the aerial detachment at Fort Lee and of building it under this guise. The post commander testified that the building was in fact a hangar for the airfield. It is the committee's opinion that about $28,000 was improperly and illegally spent in building the hangar. The record indicates that the following were responsible for pushing through the hangar project under the subterfuge; Col. Walter R. Ridlehuber, Col. James C. Pennington, and Mr. Robert G. MacDonald, Facilities Branch, Quartermaster General's Office. The testimony and correspondence clearly implicate these individuals. Others may have been involved in a lesser capacity.

15. In a letter of June 2, 1959, Colonel Pennington reminded Colonel Ridlehuber of the $25,000 limitation as follows:

> As you know, and as I mentioned in our telephone conversation on May 29, the Quartermaster General is limited to a funded cost of $25,000 for new construction. This limitation applies to the entire "airfield" as one project and not to various elements or increments. In other words, the project completed with $25,000 funded cost must be a usable facility in itself.

Three days later, on June 5, 1959, Colonel Ridlehuber had a purchase request for an estimated $13,200 processed to purchase 5,500 tons of stone for the airfield. The testimony before the committee showed that almost all, if not all, of this stone was used in the airfield project as approved on November 27, 1957. The purchase request was drawn up to state that the stone was required for a training exercise called "Operation Mobex." This purchase should have been charged against the airfield project since the stone was used in the project and the designation of the Mobex project was an admitted subterfuge to disguise the true use of the material. Furthermore, even if the purchase request were to be regarded as covering material for a separate construction project, its approval at the installation level would violate section 7 of Army Regulations No. 420–10 of September 4, 1957, which limited such approval for new projects to $5,000.

16. When the officials at Fort Lee learned that the General Accounting Office was going to audit some of the construction activities at the fort, instructions were issued to the assistant post engineer to remove from his files any material which might prove embarrassing to the command. The assistant post engineer carried out his instructions and removed certain parts of the records from the file and later destroyed them.

The testimony on this point is clear as to the actions taken but conflicting with respect to the source of the orders. Major Swartz, the assistant post engineer, admits that he removed documents from the files and destroyed them; Lieutenant Colonel Jarrett admits that he ordered Major Swartz to remove the documents but states that he did not instruct him to destroy them. Lieutenant Colonel Jarrett testified that he had been ordered by Colonel Shirley to have the files cleansed and that subsequently Colonel Shirley asked him whether this had been done and he replied in the affirmative. Colonel Shirley, on the other hand, testified that he merely told Colonel Jarrett to get the files in order for the GAO auditors. Colonel Connor, who was subordinate to Colonel Shirley at the time, testified that he had understood Colonel Shirley's orders to mean that embarrassing documents should be removed from the files. He stated that a day or two later he told Colonel Shirley that he would not be a party to the removal and concealment of documents. Regarding Colonel Connor's statement, Colonel Shirley stated, "I don't recall that, but he could have done that." Major Swartz testified that he had objected to Colonel Jarrett regarding the removal of records from the files but that Lieutenant Colonel Jarrett had told him that someone even superior to him wanted that done. Major Swartz stated that on the same day or on the following day Lieutenant Colonel Jarrett came down to his office to find out if he had followed his instructions. Major Swartz testified that to the best of his recollection the materials removed from the files and destroyed were copies of purchase requests and some project working estimates.

17. (*a*) After the Fort Lee matter was uncovered by the General Accounting Office, the responsible military officers in the Department of the Army made every effort to play down the seriousness of the offenses and to avoid enforcing the law. Maj. Gen. Alfred B. Denniston, the post commander at Fort Lee, attempted to let the offenders off with a mere oral admonishment, except for Colonel Ridlehuber, to whom he gave a written admonishment. Representatives of the Army Comptroller's Office pointed out to the Office of the Quartermaster General that the Secretary of Defense had not accepted mere verbal admonishments in the cases of violations of Revised Statute 3679. Consequently, they advised the Quartermaster General's Office that further action should be taken with respect to the Revised Statute violation alone. Their advice did not encompass the violations of the laws concerning false statements and the removal and destruction of records. Nor did it encompass the several other violations of regulations and orders which had occurred. Subsequently, Major General Denniston issued written reprimands to the other officers involved besides Colonel Ridlehuber, and he, himself, received a reprimand from the Quartermaster General. The Quartermaster General, however, still attributed the illegal actions to overzealousness and sought to excuse them.

(*b*) The report of the violation of Revised Statute 3679 made to Congress as required by law did not mention the falsification of documents nor the removal of documents from the files and their destruction. Moreover, so far as the committee can ascertain, the investigation made by the various elements of the Army overlooked the complicity of the Washington office of the Quartermaster Corps in the Fort Lee affair.

(*c*) General Denniston's revised report (June 14, 1960) of violation of AR 37–20, advised that disciplinary action had been taken in the form of written reprimands to the officers involved. On receiving this report, the Office of the Quartermaster General discussed the sufficiency of this disciplinary action with the Office of the General Counsel, Department of the Army. An official of the latter office expressed the opinion that since Fort Lee, the convening authority for general courts-martial, had already determined that courts-martial were not warranted, "absent unusual circumstances," a directive by higher authority to take such action could be considered the exercise of "command influence" in contravention of articles 37 and 98 of the Uniform Code of Military Justice.[4] Thereupon, the Quartermaster General forwarded General Denniston's report to the Department of the Army with an endorsement approving the disciplinary action taken by Fort Lee.

Thus, both the Office of the Quartermaster General and officials of the Department of the Army abdicated their supervisory responsibility for the adequacy of the disciplinary measures in this aggravated case and let General Denniston's action stand, despite his own personal involvement and his demonstrated reluctance to find any willfulness or culpability on the part of his subordinates.

(*d*) When, as a result of the interest of the Secretary of the Army, the matter was belatedly referred to the commanding general of the 2d Army in April 1961 to consider bringing court-martial proceedings, the 2-year statute of limitations had almost run against the offenses under the Uniform Code of Military Justice. Charges were hastily drawn and filed against Colonel Ridlehuber and Lieutenant Colonel Jarrett. However, these were soon dismissed, and the offenders were allowed to escape court-martial proceedings under the Uniform Code. The committee does not know precisely what information the responsible officials of the 2d Army had before them, but the staff judge advocate of that army testified that he reviewed hundreds of pages of testimony. The action by the 2d Army in dismissing the charges and failing to bring court-martial proceedings against the responsible officers was taken without any effort to investigate further any questions which might be unanswered in the record.

(*e*) The staff judge advocate testified that the following factors were among those leading to his determination to recommend against court-martial proceedings:

(i) Written reprimands had previously been issued by the post commander at Fort Lee.

(ii) It did not appear that it had been planned in advance of construction to use unauthorized money or circumvent the statutes and regulations.

[4] Art. 37 prohibits, inter alia, coercion, or influence *by any unlawful means*, of the action of any convening, approving, or reviewing authority with respect to his judicial acts. Art. 98 merely makes punishable by court-martial unnecessary delay in disposing of an offense and intentional noncompliance with the provisions of the code regulating proceedings before, during, or after trial of an accused.

(iii) In his own opinion, the admissible evidence failed to establish with sufficient clarity, the commission of offenses "involving a knowing and willful-type act."

(iv) There was no discernible personal gain or financial benefit on the part of the officers involved.

(v) It was his own opinion that a conviction was unlikely because a court-martial panel would probably not convict when the accused defended on the ground he was carrying out what were, or were mistakenly believed by him to be, the instructions or desires of his superiors.

The committee believes these reasons are either irrelevant or insupportable.

It is clear that the responsible officials in the Second Army viewed the matter basically as one involving the expenditure of funds in excess of the statutory limitation, an offense for which administrative discipline would, under the law, suffice, and disregarded the fact that officers of the U.S. Army had conspired to and did knowingly and willfully make false official statements, had violated a Department of Defense directive, had ignored and disobeyed orders and instructions given to them in the project approval and elsewhere, and finally had conspired to and did remove documents from the official record and destroyed them.

In view of the testimony of the guilty officers before the committee and the relative ease with which the committee staff obtained admissions from them earlier, the committee must conclude that the responsible officials of the Second Army were grossly negligent, if not willfully deficient, in performing their duty to take proper disciplinary action in this case. Nor is the committee satisfied that the commanding general at Fort Lee performed his duty in this respect.

(*f*) At the Fort Lee level the actions of the officials responsible for seeing that proper disciplinary action was taken obviously were influenced by friendship for and personal acquaintance with the officers involved. At the Second Army level the decisions seemed dictated (*a*) by a desire to avoid bringing military officers before a court-martial, (*b*) by a tendency to excuse willfully illegal actions and violations of orders and directives on the ground that securing the desired end justified using any illegal means, and (*c*) by a blind resistance to accepting the fact that military officers had willfully falsified, concealed, and destroyed records. The responsible officials at the Second Army level were: Col. James P. Godwin, staff judge advocate, and Lt. Gen. Ridgely Gaither, commanding general of the Second Army, who had acted upon the advice of the staff judge advocate.

18. Although a system of spot checks of military construction projects has been instituted at Fort Lee as well as a system of keeping track of individual project expenditures in the post finance office, a practice which was not in effect when the incident under investigation occurred, the committee is highly concerned over the testimony of both the Comptroller of the Army, Lt. Gen. David W. Traub, and the former post comptroller at Fort Lee, Col. Grant Healey, that the Fort Lee incident did not reveal any deficiencies in the Army's accounting and auditing system. The committee believes (*a*) the fact that seven different accounts had to be consulted in order to determine the amount of funds expended upon the project and (*b*) the fact that the only consolidated project record was kept in the post engineer's

office under the officials who would be most concerned with avoiding limitations on funds, as well as (*c*) the fact that a number of obviously altered purchase orders were processed through the post finance office without detection, are all strong indications of accounting and auditing deficiencies which deserve careful study on a servicewide basis.

19. The testimony presented to the committee demonstrated clearly the existence of a "system" in the military services which is exceedingly dangerous to the principle of civilian control. It led directly to an erosion of honor and respect for the law among the officers concerned in the Fort Lee matter. The committee is determined to continue its investigations in order to prevent the covering up of violations of laws, regulations, and orders through the open and tacit connivance of military officers who condone and encourage such violations, who seek to hide them when they are in danger of detection, and who protect and excuse the offenders.

Testimony before the committee unveiled several aspects of the "system."

(*a*) Several officers testified that they believed it was not improper to obey orders which they knew violated the law, particularly if they had once made a verbal objection to such orders. They felt no need or duty to report the fact that they had been ordered to violate the law to higher authorities or to refuse to act in violation of the law. The committee notes that articles 90, 91, and 92 of the Uniform Code of Military Justice (10 U.S.C. secs. 890, 891, and 892) provide only for punishment of persons who willfully disobey lawful commands, orders, and regulations. A command of a superior commissioned officer to disobey a Federal statute, an Army regulation, a Department of Defense directive, and an article of the Uniform Code of Military Justice cannot be regarded as a lawful command; and the fact that such a command has been issued is no excuse to a person who willfully commits such violation.

(*b*) Testimony given to the committee showed, however, that the power that an immediate superior has over his subordinates in such matters as performance ratings, assignments, and generally on the course of subordinate's career, as well as on his life and associations on the post and with other military officers, is so great that the subordinates feel compelled to follow orders and instructions which they know are illegal and which they know their superiors know are illegal. It is easy enough for a post commander or higher official to say that his door is always open to his subordinates, but the subordinates know that the results of their going over the heads of their immediate superiors may be seriously detrimental to them for a long time.

(*c*) Further, it seemed to be the general attitude of the officers directly involved, as well as of other officers having responsibilities in the case, that since the officers at Fort Lee had not diverted any of the funds to their own pockets, there was nothing seriously wrong with their violating the statutory and administrative restrictions on the use of funds, at least so long as they could get away with it. The interests of the taxpayers generally and the concern of Congress with the expenditure of funds seem to be of no importance to the officers. Their primary crime seemed to be the fact that they had been caught in their illegal actions.

(*d*) The final aspect of the "system" which was brought out at the hearings is the general feeling, if not determination, among military officers that they must cover up, condone, and excuse to the greatest extent possible offenses committed by their fellow officers. At almost every step among the officers involved attempts were made to avoid punishing and particularly to avoid taking court-martial proceedings against their fellow officers. In some cases personal friendship was a large factor, but even where personal friendships were not involved, the officers reviewing the case were obviously more interested in thinking up reasons for not taking action than they were in carrying out their duties under the Uniform Code of Military Justice and other law. If this had occurred only in an isolated instance, the committee could be critical only of the individuals involved, but this determination to avoid seeing that proper punishment was meted out to their fellow officers appeared at every stage of the Army's proceedings.

It is obvious to the committee that in these days when hundreds of billions of dollars are being spent on the military services, many military officers cannot be trusted to police their own ranks to see that the laws governing these expenditures are carried out. To them such laws and the related regulations, directives, and orders are merely troublesome, civilian-imposed obstacles which are to be violated or evaded with impunity unless one is caught by civilians. Even then the military ranks are to be closed and the offender shielded by all possible means. For these reasons constant surveillance by the General Accounting Office and the appropriate committees of Congress is necessary and must be maintained.

20. The committee finds that the following statutes were violated by the personnel involved in the Fort Lee matter. (The texts of the statutes cited appear in appendix II.)

A. Section 408 of the act of August 3, 1956 (70 Stat. 991 at 1016).
B. Section 2674 of title 10, United States Code.
C. Revised Statutes, section 3679 (31 U.S.C., sec. 665).
D. Section 2 of title 18, United States Code.
E. Section 3 of title 18, United States Code.
F. Section 4 of title 18, United States Code.
G. Section 371 of title 18, United States Code.
H. Section 641 of title 18, United States Code.
I. Section 1001 of title 18, United States Code.
J. Section 2071 of title 18, United States Code.
K. Section 2073 of title 18, United States Code.
L. Article 78 of the Uniform Code of Military Justice (10 U.S.C. 878).
M. Article 81 of the Uniform Code of Military Justice (10 U.S.C. 881).
N. Article 92 of the Uniform Code of Military Justice (10 U.S.C. 892).
O. Article 107 of the Uniform Code of Military Justice (10 U.S.C. 907).
P. Article 108 of the Uniform Code of Military Justice (10 U.S.C. 908).
Q. Article 134 of the Uniform Code of Military Justice (10 U.S.C. 934).

III. Recommendations

The following recommendations are made by the committee on the basis of this study of the Fort Lee airfield construction. The committee will undoubtedly have further recommendations to make to the Congress when it completes its study of other military construction projects.

The committee recommends that—

1. Section 2674 of title 10, United States Code, which provides for the establishment and development of military facilities and installations costing less than $200,000, when urgently needed, without specific authorization by Congress, be amended in the following respects: (*a*) The officer or official approving a project under this section should be required to certify, giving his reasons therefor, that he has determined it is urgently needed. (*b*) In the case of all projects costing over $5,000 which are constructed under title 10, United States Code, section 2674, the post engineer, the post comptroller, and the post commander, or their equivalents, should be required to submit, within 60 days after the completion of the project, and at the end of each full fiscal year after approval and before completion, a statement certifying (i) the total cost of the project, including materials, services, supplies, and equipment purchased or rented for use in the project, the cost or value of materials, services, supplies, and the rental value of equipment on hand, and the cost of troop labor and all costs incidental thereto, utilized in the project; and (ii) that such total cost has not exceeded the authorized cost of the project. If a contract dispute should delay the ascertainment of costs and consequently the submission of a report due 60 days after completion, then such report should be submitted as soon as the dispute has been resolved.

2. The regulations of the Department of Defense and of the military departments be revised (*a*) to make clear that the project cost limitations in section 2674 of title 10, United States Code, apply to the total cost of the project regardless of the source of the funds used to pay for materials, services, equipment use, and labor (including troop labor) which go into the project and that the cost of materials and of the use of equipment on hand is included; (*b*) to define a project under section 2674 as including all related incremental and supplemental military construction contemplated by the submitting organization for initiation within 5 years after the start of first construction; and (*c*) to require that accompanying all applications for minor construction projects there be a full disclosure of all reasonably foreseeable needs for additions, improvements, and enlargements to the proposed project.

The committee further recommends that the Comptroller General give serious consideration to the adoption of these criteria in disallowing the accounts of accountable officers and employees of the Military Establishment. Both the Secretary of Defense and the Comptroller General are requested to report to the committee not

later than December 31, 1962, on actions taken pursuant to this recommendation.

3. The General Accounting Office, the Bureau of the Budget, and the Office of the Secretary of Defense make a joint and detailed study of the accounting procedures in effect at Fort Lee and at other Army installations with a view to determining whether weaknesses of the type revealed in the Fort Lee investigations have been remedied and whether the optimum amount of reasonable control through the accounting procedures, installation audit procedures, and Army Audit Agency procedures has been attained. The committee requests that a report on the joint study by these agencies be submitted to it not later than December 31, 1962.

4. The record of the proceedings be transmitted to the Secretary of Defense, the Secretary of the Army, and the Attorney General for thorough review and for consideration of appropriate corrective, disciplinary, and criminal proceedings. Each of the named officials is requested to report to the Committee on Government Operations not later than December 31, 1962, regarding actions taken pursuant to this recommendation.

5. The Comptroller General report promptly to the Committee on Government Operations any actions taken or decisions made with respect to the exceptions taken to the accounts of the accountable officers involved in this case.

6. Appropriate administrative and, if necessary, legislative action be taken (a) to insure that the Secretaries of the three military services exercise without encumbrance, legal or otherwise, their discretionary authority under the Uniform Code of Military Justice to convene courts-martial in cases of offenses against the code and (b) to make the same authority available to the Secretary of Defense. Procedures should be adopted to insure that the Secretaries are kept informed concerning instances where offenses committed by officers have resulted only in admonishments or reprimands. The committee believes that these are the minimum steps that can be taken to reassert the principle of civilian control over the Armed Forces. The Secretary of Defense is requested to report to the committee not later than July 31, 1962, regarding the administrative and legislative actions necessary to achieve this end and the extent to which such administrative actions have been taken.

7. The Secretary of Defense—

(*a*) Study, with a view to remedying the problem of allaying fear and reluctance on the part of officers of the armed services to oppose wrongdoing and impropriety which is being forced on them by their superiors;

(*b*) Take steps to insure (i) that the periodic explanation to enlisted personnel of portions of the Uniform Code of Military Justice required by article 137 thereof is being thoroughly and effectively carried out and (ii) that the officer's corps likewise have the benefit of such periodic explanations;

(*c*) Issue and give the widest possible circulation to a policy statement emphasizing (i) article 138 of the Uniform Code of Military Justice, which provides a procedure for the submitting and receiving of complaints of members of the armed services who believe themselves wronged by their commanding officers

and (ii) articles 90, 91, and 92 of the code, which require obedience only to *lawful* commands, orders, and regulations;

(*d*) Study the need to provide a procedure for the reporting of unlawful and improper actions to the offices of the Secretaries of the three armed services which would afford protection from unfair retributive sanctions by the officers' corps; and

(*e*) See that periodic publicity is given to armed services personnel concerning the constitutional guarantee of the right of the people of the United States to petition their Government for a redress of grievances.

The Secretary of Defense is requested to report to the committee not later than December 31, 1962, regarding actions taken to carry out items (*a*) through (*e*).

IV. Commentary

The findings and conclusions of the committee, commencing at page 4, supra, set forth the basic facts of the Fort Lee airfield construction episode. The documents and parts of the testimony which support the findings and conclusions, paragraph by paragraph, are cited in the appendix of the report. The basic facts are stated so fully in the findings and conclusions as documented in the transcript of the committee hearings that we will not attempt to repeat the same material in narrative form.

Instead, we shall in this commentary present material elaborating upon certain points in the findings and conclusions. The fact that other points are not discussed in the commentary does not mean that the committee considers them to be unimportant. It means rather that the committee believes the matter has already been discussed sufficiently elsewhere in this report.

CONFLICTS IN TESTIMONY

As shown in the findings and conclusions, there were four major points upon which the committee received conflicting testimony. They were:

(*a*) Col. James C. Pennington testified that he had informed the deputy post commander at Fort Lee, Col. Louis H. Shirley, on February 19, 1959, that the request for waiving the obstructions on the Fort Lee airfield had been denied. Colonel Shirley testified that Colonel Pennington did not tell him that such waivers had been denied. (See Finding No. 12.)

(*b*) Col. Walter R. Ridlehuber testified that he had told the post commander, Maj. Gen. Alfred B. Denniston, that material and services for the airfield were being charged to other projects. Major General Denniston denied that he was so informed. (See Finding No. 13.)

(*c*) Col. Louis H. Shirley testified that he had informed Major General Denniston that materials and services for the airfield were being charged to other projects. Major General Denniston also denied this. (See Finding No. 13.)

(*d*) Lt. Col. William H. Jarrett testified that Col. Louis H. Shirley ordered him to have the Fort Lee files cleansed of any embarrassing material when it was learned that the General Accounting Office auditors were coming to the post. Colonel Shirley, on the other hand, testified that he merely told Colonel Jarrett to get the files in order for the General Accounting Office auditors. Col. James W. Connor supported Lieutenant Colonel Jarrett's version by testifying that he had been in Lieutenant Colonel Jarrett's and Colonel Shirley's presence when the latter gave his order concerning the files and that he, Colonel Connor, subsequently expressed to Colonel Shirley his objection that any attempt should be made to remove papers from the files. Colonel Shirley testified he did not recall Colonel Connor's objection. (See Finding No. 16.)

In one other instance a direct conflict of testimony appeared during the hearings. Lt. Col. Julian E. Plyant testified that he had told Col. Walter R. Ridlehuber, when he was instructed to charge airfield expenses to other projects, that "I am not going to the pen for this." [5] When he testified, Colonel Ridlehuber denied that Lieutenant Colonel Pylant had made this remark to him. When, however, Lieutenant Colonel Pylant repeated the statement in Colonel Ridlehuber's and the committee's presence, Colonel Ridlehuber stated that he did not recall the incident.[6]

The committee cannot determine which officers were telling the truth in these instances and which were not. We do, however, regard the existence of these conflicts as a serious reflection on the standards of conduct of the officer's corps of the Army.

On the other hand, witnesses such as Maj. Thomas S. Swartz (retired) and Lt. Col. William H. Jarrett (retired) seemed to be extremely frank and aboveboard in their testimony before the committee. While the committee cannot condone their actions, it does appreciate the open manner in which they testified.

EVASION OF PROJECT COST LIMITATIONS OF TITLE 10, UNITED STATES CODE, SECTION 2674

The Fort Lee Airport project exemplifies the Army's distortion and misuse of section 408 of Public Law 968, 84th Congress, and of title 10, United States Code, section 2674.[7] Those sections provide that appropriations available for military construction may be used for building urgently required projects costing less than $200,000. In addition, the military services may spend from operation and maintenance appropriations, "amounts necessary for any urgently required project costing not more than $25,000."

In connection with the "costing" of projects, a distinction has been drawn between so-called "funded" and "unfunded" costs. Funded costs (sometimes referred to as "out-of-pocket" costs) are those to be met from an allocation of appropriated funds made specifically and solely for the project; for example, the cost of materials purchased. "Unfunded" costs, on the other hand, would represent moneys already required and earmarked for normal operating expenses, such as the pay of troops. "Unfunded" costs may also include the money value of supplies on hand and the use of equipment on hand.

The committee has found no express or implied statutory recognition of the distinction between "funded" and "unfunded" costs for the purposes of sections 408 and 2674; and for reasons to be discussed, the committee does not accept an interpretation of the law which supports this distinction.

The Army has interpreted the dollar limitations in these sections as referring only to "funded" costs. Thus an urgently required minor construction project representing a total investment of hundreds of thousands, even millions of dollars could be administratively authorized so long as the cost of supplies and services to be procured out of military construction appropriations did not exceed $200,000, or so long as such procurement out of operation and maintenance appropriations did not exceed $25,000. The remainder of the project

[5] Hearings, p. 53.
[6] Hearings, pp. 69, 70.
[7] See app. II, infra.

investment would comprise the value of troop labor and the use of equipment and supplies already on hand.

As mentioned previously, total costs for the Fort Lee airfield (not including the hangar) for 1958, 1959, and 1960 amounted to $508,305. This is made up of—

Troop labor at standard rates	$225, 812
Troop transportation, including per diem	84, 121
Assigned rental cost of engineer construction equipment	131, 767
Materials and services purchased	66, 605
Total	508, 305

With respect to this project, the Army had considered that the cost of troop labor, equipment rental, and troop transportation plus per diem were primarily related to engineer troop training; hence these amounts were not regarded as part of the cost of the project for purposes of staying within statutory and administrative dollar limitations.

Representatives of the General Accounting Office have taken a firm position that in this case the cost of troop transportation and per diem, being directly related to the project, must be regarded as "funded" costs paid from operation and maintenance appropriations and hence falling within the $25,000 limitation. On the other hand, they have indicated that the value of both troop labor and the use of equipment on hand could probably be considered as so-called "unfunded" costs and thus outside the limitations, since such cost components were part of normal operations and overhead. Nevertheless, putting these technicalities aside, a GAO official (Mr. William A. Newman) testified before the committee that in the GAO's opinion all components of the overall cost of the airfield "should have been disclosed by the Army in its military construction program submitted for approval of the Congress." [8]

The committee endorses this statement by Mr. Newman. Large injections of troop labor plus equipment and supplies on hand can convert an ostensibly minor project into a major project, for which congressional approval should be obtained. The committee is not here concerned with normal overhead or indirect costs incident to the carrying out of a minor construction project.

The commanding officer at Fort Lee revealed the intent to wring a major project out of a minor one in his revised report to the Department of the Army, dated June 14, 1960, on the violation of the administrative restrictions imposed on Project 10–57 (the airfield). In discussing some of the reasons he felt that the written reprimand to Colonel Ridlehuber was sufficient punishment, General Denniston stated:

> * * * *Colonel Ridlehuber was aggressively endeavoring to accomplish what was, in fact, a major project under procedures designed for projects of a minor, urgent nature.* Although it is recognized that he was a principal participant in the planning stages of this project and, in view of his many years of experience, should have foreseen the difficulties, he should not be adjudged entirely responsible for inadequacies or deficiencies over which he had no control. Major projects are subject to strict controls both operationally and in the

[8] Hearings, p. 5.

> maintenance of records. It is therefore logical to assume that greater possibility of committing errors exists when one is attempting to accomplish a major project without the benefit of the procedures and controls that ordinarily govern such projects. * * * [Emphasis supplied.] [9]

The committee does not approve of the device of enlarging the scope of minor construction projects through the use of "unfunded" costs which carry the total project cost beyond the dollar limits laid down in sections 408 and 2674.[10]

Even had the Fort Lee airfield project been held to the total estimated cost set forth in the project application, it would in the committee's view, have remained an improperly authorized minor construction project. The reason is that the total estimated cost of the project, as "approved" by the Chief of Engineers, was $141,537, including $24,948 to be financed from operation and maintenance appropriations; whereas section 2674 limits, as did section 408, the total cost of a minor construction project to be built with O. & M. funds to $25,000. In this connection, Senate Report No. 2364, 84th Congress, declares, at page 27:

> *Projects which do not exceed $25,000* may use maintenance and operations funds as distinguished from the military construction funds which must be used for all projects in excess of this amount.[11] [Emphasis supplied.]

Either military construction appropriations or operation and maintenance appropriations could have been designated as the source of funds for the Fort Lee airfield. The reason that operation and maintenance appropriations were so designated appears to be that such funds happened to be more readily available at the time.[12] But once this source was selected, the Army was limited to a project costing not more than $25,000. Moreover, the later addition of military construction funds (within the overall $200,000 limitation for minor construction projects) would not be in accordance with the statutes.

Some individuals in the Army seem to believe that section 2674 would permit the combined use of operation and maintenance and military construction funds in one project costing more than $25,000 but less than $200,000.[13] The committee believes that section 2674 clearly prohibits any such combining of the two fund sources, either at the time of project approval or later.

The minor construction project authority of section 2674 is subject to two other abuses. Both involve the transformation or evolution of minor construction projects into major construction projects. Furthermore, both abuses are illustrated by the Fort Lee airfield matter.

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[9] For additional discussion of this report, see p. 11, supra. The complete report is available in the committee's files.

[10] On Apr. 8, 1959, the Army amended par. 7 of AR 420-10 ("Repairs and Utilities—General Provisions") to require that estimated project costs, for the purpose of determining the appropriate level of authority for administrative approval, should be total estimated costs, excluding only troop labor.

[11] S. Rept. 2364, 84th Cong., relates to the act of Aug. 3, 1956, whose sec. 408 is the predecessor of sec. 2674. These two sections do not differ materially in their language relating to O. & M. funds.

[12] See Hearings, exhibit 2, p. 254.

[13] See exhibit No. 47, Inclosure (Hearings, p. 355) headed "Fact Sheet from Deputy Quartermaster General," dated July 7, 1960, stating in part; "AR 429-10 and 10 U.S.C. 2674 limit the use of Operation and Maintenance funds for minor construction projects to $25,000." Also, in a proposed statement prepared in the Office of the Quartermaster General for presentation to the House Committee on Appropriations on or about Apr. 5, 1961, it is suggested: "The project could have been administratively approved by the Department of Defense in the amount of the funded costs actually incurred within the existing statutory authority (10 U.S.C. 2674). The failure to disclose the actual cost of the project and to stop work and obtain necessary additional approvals when the fund limita ion was reached caused the improper use of the funds in this case." (Document available in committee files)

As discussed earlier, the Army regarded the proposed hangar for the airfield as a separate project. Officials employed as the criterion for a separate project the concept of a "usable facility." It was determined that the "airstrip" was a "usable facility," hence a separate project and that likewise the hangar building (assertedly for the support of an aerial unit) was also a "usable facility,' 'hence a separate project.[14] Thus a major project can be developed piecemeal by amalgamating several minor projects, which, although closely related as to function, would be regarded by the Army as individual "usable facilities."

The other abuse of the minor construction authority is the technique for achieving a major project by approving a minor project which in reality is but the first stage of a major development. A minor project, augmented by large amounts of "unfunded" costs, will arrive at a point of construction where new and allegedly unanticipated requirements for the project become apparent. Then, on the ground that further funds are necessary to protect an already large investment, the Army will seek military construction funds from Congress. Both the Congress and higher executive branch echelons responsible for the budget are thus placed unfairly on the horns of a dilemma.

Mr. Newman of the General Accounting Office pointed out at the committee hearing that at the time of the GAO's review, not only had costs of $536,373 been incurred for the Fort Lee airfield (including the hangar) but $1 million more had been programed.[15]

All such "foot-in-the-door" techniques involving section 2674 could be repressed by higher executive echelons insisting that in applications for minor construction projects there be a full disclosure of all reasonably foreseeable requirements for additions, improvements, and enlargements to the proposed project.

FAILURE TO JUSTIFY THE AIRSTRIP PROJECT AS "URGENTLY REQUIRED"

Congress has attempted to maintain some control over the expenditures of the military departments for construction by requiring that projects be authorized in the annual military construction legislation. Congress has also recognized that projects may, from time to time, become urgently required which were not anticipated when the military construction program was presented. For this reason it provided in section 408 of the act of August 3, 1956 (70 Stat. 991 at 1016), that the military departments may expend for projects "determined to be urgently required" and not otherwise authorized by law, military construction funds when the cost of the project is not in excess of $200,000 and operation and maintenance funds when the cost is not in excess of $25,000. In 1958, similar legislation was reenacted as part of title 10 United States Code, "Armed Forces." (See 10 U.S.C. 2674.)

Since neither the original nor the revised project request for the Fort Lee airfield, nor the justifications submitted with them, made any mention of urgency, the committee asked the Office of the Quartermaster General for evidence that the Project 10–57 had been approved

[14] Hearings, pp. 109, 110, quoted in part, p. 30, infra.

[15] Hearings, p. 5. General Denniston's report of June 14, 1960 (see footnote 9), concluded with the following sentence: "It is also recommended that this headquarters be authorized to submit proposals for further development of the airfield."

as an urgently needed project. In response the Quartermaster General supplied the committee with the following statement:

> Fort Lee Project No. 10–57 (Rev) was approved by the Chief, Installations Division, Office of the Quartermaster General by 1st Indorsement to Fort Lee dated 27 November 1957. The O. & M. funded costs of the project were limited to $24,948. 10 U.S.C. 2674, the only authority for use of O. & M. funds for construction, permitted expenditure of such funds, not to exceed $25,000, for urgently needed construction. The project was deemed urgent on the basis of the justification submitted by Fort Lee with the project estimate and was approved pursuant to AR 420–10 and 10 U.S.C. 2674. Copies of the approval and the project justification have been submitted to the committee.

(References in the foregoing statement to 10 U.S.C. 2674 are apparently meant to include section 408 of Public Law 968, 84th Cong., the statute in effect at the time the project was approved.)

In essence, then, the only evidence provided the committee that this had been approved as an urgently required project is the fact that it had been submitted as a minor construction project for administrative authorization and approved for the use of operation and maintenance funds. No showing of urgency seems to have been made anywhere along the line. The justification cited in the foregoing statement as demonstrating urgency is, in fact, devoid of anything remotely suggestive of urgency.[16]

As stated in the findings and conclusions, approval of the project violated the criteria of the Department of Defense for the approval of an urgently needed project. The fact that the Army itself had refused to approve the project for both the 1956 and 1957 fiscal year military construction programs is a strong indication of the lack of urgency. It should also be noted that at the time the airfield was built there was already a grass airstrip in existence at Fort Lee which was used by the light planes stationed there and that the Petersburg Airport, 12 miles distant, and the Camp Pickett Blackstone Airport, 41 miles distant, were available for Quartermaster training purposes.

While the building of a new airfield might have seemed desirable to the responsible officials at Fort Lee, it must be concluded that there was no real urgency for the project, as required by law.

It should be noted that one of the reasons given for cutting the estimate of funded costs to $25,000 was to keep the approval within the jurisdiction of the Corps of Engineers. Otherwise it would have been necessary to demonstrate to higher echelons in the Department that the project was "urgently required."

FALSIFICATION OF PURCHASE REQUESTS

As we have indicated, the committee is not certain that all falsified purchase requests for material used on the Fort Lee airfield have been detected, and the auditors of the General Accounting Office have so testified. There is no doubt, however, regarding the following:

Local purchase request No. 1900 dated May 13, 1959,[17] was for the purchase of 2,150 tons of 2-inch crusher run stone, and stated on its face that the stone was required for "maintenance of roads." This purchase request was typed up on the basis of a written note from

[16] Hearings, exhibits 1 and 3, pp. 251 and 255.
[17] Hearings, exhibit 23, p. 303.

Maj. Thomas Swartz, the assistant post engineer. On that note Major Swartz wrote the following to an employee in the post engineer's office: "Mr. Fussell—I would like a copy of this PR. This order will be followed by additional orders and I will have to keep a record of them. Actually although charged to road maintenance this material will be used in the airfield." (Signed T.S.) [18]

Lt. Col. William H. Jarrett, who signed this purchase request as initiating officer, testified that he knew the material was to be used in the airfield.[19] Col. W. R. Ridlehuber, who signed as approving for the commanding officer, also testified that he knew the material was to be used in the airfield.[20]

Purchase request No. 92G, dated July 24, 1959, was for 1,730 tons of 2-inch crusher run stone and 870 tons of 1-inch crusher run stone.[21] It is stated to be required for "R. & U. maintenance—for maintenance of roads in training areas." This purchase request was accompanied by a memorandum dated July 24, 1959, signed by Lt. Col. Julian E. Pylant, post engineer, in which he stated:

> Attached hereto are purchase requests for materials required to complete the construction of the airfield facilities by Company A, 87th Engineer Battalion (construction). * * * If the crushed stone required on PR 92–G is not made available beginning August 10, 1959, the access road, aircraft parking apron, and the taxiway cannot be completed by Company A, and although a paved runway will be installed, it will not be usable without the remaining facilities.[22]

This purchase was approved in a memorandum dated July 28, 1959,[23] signed by J. W. Connor, colonel, General Staff, in which he stated, "These funds are and will be utilized from your normal operating funds for maintenance." These documents and the related testimony show clearly that Lt. Col. Julian E. Pylant and Col. J. W. Connor, the initiating and approving officers, knew that the material requested in this purchase request was to be used in the construction of the airfield.[24]

Purchase request No. 111 dated July 29, 1959 states in the box headed "required for:" the following, "R. & U. Maintenance." However, in the detailed statement on the purchase request the following appears:

> Request contract be let to furnish all plant, labor, equipment, supplies, and materials to perform all operations in connection with the bituminous paving of the aircraft parking apron at the Fort Lee airstrip in accordance with the attached description of the work.[25]

This purchase request was not charged against the airfield project limitation, but rather was charged against the account, "maintenance and repair of real property." [26] The initiating officer was Lt. Col. Julian E. Pylant and the approving officer was Col. J. W. Connor.

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18 Hearings, exhibit 29, p. 309
19 Hearings, p. 117.
20 Hearings p. 80.
21 Hearings, exhibit 27, p. 307.
22 Hearings, exhibit 33, p. 313.
23 Hearings, exhibit 34, p. 314.
24 Hearings, pp. 56 and 66.
25 Hearings, exhibit 28, p. 308.
26 Hearings, p. 37.

Purchase request No. 2107–M dated June 5, 1959,[27] provided for the purchase of over $12,000 worth of 1- and 2-inch crusher run stone. It stated that the stone was required for "AC of S, G–4 (MOBEX)." "Mobex" is a mobilization exercise. In response to a committee inquiry, the Army furnished the committee with the following brief description of Mobex.[28]

> A STRAC mobility text exercise (MOBEX) is a training exercise conducted for the purpose of determining the capabilities of STRAC units to become ready for deployment. These exercises are normally conducted once each year and are funded from those O. & M. funds available for training. Fort Lee participation in these exercises consists of insuring that those units at Lee which are associated with STRAC are capable of responding to the exercise alert. The post G–4 technical services organizations furnished logistics support for these exercises. Costs are incurred for troop movements, transportation of things, packing and trading materials, and other expendables required in the conduct of this exercise by participating QM units.

Major Swartz and Lieutenant Colonel Pylant testified that the material acquired under purchase request 2107–M was used in the construction of the airfield.[29] Colonel Ridlehuber testified that much of the material was used in building a hardstand in front of the hangar. He stated that the hardstand had never been used by the unit for which it was ostensibly built. He also admitted that the designation of the Mobex exercise could be regarded as a subterfuge to acquire material for completion of the airstrip facilities as follows:

> Mr. ANDERSON. If I understand you correctly, you are giving substantially the same explanation now as appears on page 34 of Mr. Baras' statement. That statement on page 35 goes on to say that you did admit to the committee staff that the designation of this Project Mobex is the purpose for which this crushed stone had been procured, that that could be considered a subterfuge.
>
> Colonel RIDLEHUBER. I agreed with Mr. Perlman that it could be at this date.
>
> Mr. ANDERSON. As a matter of fact, that was the reason it was done. It was a subterfuge to get around something that by that time you did realize you were in trouble as far as the statutory limitation was concerned.
>
> Colonel RIDLEHUBER. Yes, sir.[30]

In considering the above items, it should be noted that the revised project request 10–57 described the airfield project as follows:

> Construction of flexible pavement landing strip, 75 feet by 2,500 feet, with minimum necessary overruns, paved taxiways and parking aprons, and including a 545-foot paved access road.[31]

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[27] Hearings, exhibit 26, p. 306.
[28] Hearings, exhibit 40, p. 334.
[29] Hearings, pp. 47, 50.
[30] Hearings, p. 78.
[31] Hearings, exhibit 3, p. 255.

Thus any material acquired for any of the purposes named within the project description should have been charged to the project. The parking apron, paved taxiways, and paved access roads are obviously all part of the project.

Col. Louis A. Shirley testified that he approved at least two project requests which had been falsely charged. He attempted to justify this on the ground that the project had not yet gone up to its financial limit at the time of his approvals. The committee pointed out that the time at which the falsification occurred was immaterial, since purchases falsified and mischarged prior to the time the $25,000 limitation was reached would enable the responsible officials to charge later purchases to the project and still appear to stay within the limitation.[32]

APPROVAL OF THE CONSTRUCTION OF A HANGAR

Finding No. 14 deals with the construction of the hangar for the Fort Lee airfield and concludes that the hangar was a part of the airfield project from the beginning and should have been charged against the initial $25,000 limitation on the project. The committee finds, consequently, that the total cost of the hangar was improperly and illegally spent.

The testimony at the hearings regarding the approval of the hangar at the Washington level of the Quartermaster Corps reached the limit of the committee's capacity to believe. The record shows that on May 25, 1959, a telephone conversation was held between Colonel Ridlehuber at Fort Lee and Mr. Robert G. MacDonald of the Installations Division of the Office of the Quartermaster General in Washington, D.C.[33] While there may be some dispute as to what was actually said, there is no doubt that the question of the hangar for the airfield was discussed.[34]

Colonel Ridlehuber reported the conversation as follows:[35]

> Q AT&D 25 May 1959
>
> FONECON: Colonel Ridlehuber, AC of S, G4, Fort Lee, Virginia, and Mr MacDonald, Installations Division, OQMG, Washington, DC
>
> * * * * *
>
> Col. Ridlehuber stated he is writing a letter today to Colonel J. C. Pennington about the airfield. The Company is here and is doing a good job. Some time between August and September we will have a runway ready, with taxiways and things like that. We have plans for temporary facilities. We are stumped for some type of hangar. We have been shopping around. We can get a metal 80 x 80 hangar building delivered on the site for about $17,000. The Company here would prepare the site for it.
>
> Col. Ridlehuber has asked Post Engineer to prepare a Form 5-25 for this project in the hope that Aerial Detachment may have some P-2000 money at the end of the year with which we can buy it. The complete story will be given in the letter to Colonel Pennington. Col. Ridlehuber said

[32] Hearings, p. 94.
[33] Hearings, exhibit 19, p. 296.
[34] Hearings, exhibit 45, p. 345.
[35] Hearings, exhibit 19, p. 296.

he would appreciate having Mr. MacDonald look out for that 5–25.

Mr. MacDonald is worried about exceeding $25,000 on the funded part of it. Col. Ridlehuber said that as this would be an improvement, it would be an entirely new project. Mr. MacDonald said it's all part of the airfield—that's what bothers him.

Mr. MacDonald asked: "Fort Lee's strip is not going to run over $25,000, is it? Military labor doesn't count. If the funded cost exceeds $25,000, we are all in trouble."

Col. Ridlehuber said this temporary hangar would not be erected on the site of the MCA hangar; if and when we ever get that, this particular building can be moved to meet some of our other critical storage requirements. The temporary hangar would be on the airstrip. Col. Ridlehuber wondered whether that might be considered another project.

Colonel Ridlehuber stated that we will call this a project for the Aerial Detachment. To meet the critical dimensions, we have to go into this larger type building and we will say that is is for storage for the 109th for the Aerial packaging, as well as aircraft maintenance; it will meet both requirements.

Mr. MacDonald said he guessed we had better.

Copies furnished
Post Sig Off, T–8102
Chief, G4 Fac Branch
Mr. Harrison

W. R. RIDLEHUBER
Colonel, GS
AC of S, G4

On the same day, May 25, 1959, Colonel Ridlehuber wrote a letter to Col. James C. Pennington, Chief of the Installation Division of the Quartermaster General in Washington, in which he enumerated some of the items he thought were needed for the airfield and stated:[36]

h. Hangar and operational storage building. This is the problem child.

The following projects were programmed in the FY 60 R&U program:

PR 16–60. Provide electricity and water for aircraft landing field, $16,000.

PR 18–60. Construct temporary control tower for landing field, $9,000.

We have scouted around and are unable to find an excess metal building any place which could be utilized as a hangar. A review of all types of buildings on the market indicates that we can purchase an 80x80 foot truss steel frame metal building, delivered on the site for $17,000.

I requested the Engineers to prepare Project Form 5–25 for one 80x80 foot prefabricated building for the Aerial Detachment, with the hope that sufficient funds under P–2000 may be available to purchase the building before 30 June. In any event, I want to get it on Invitation for Bids in case the funds become available. The Engineer Company will prepare the site for the temporary hangar and the other temporary structures as well. It is quite

[36] Hearings, exhibit 20, p. 298.

likely that they will assist in erecting the building, as it will be good experience. We plan to construct it in any event with troop labor on concrete footings, with the floor to be poured with concrete if and when funds become available. All of the temporary facilities will be located on sites other than those designated for the MCA permanent items.

I discussed this briefly on the telephone with Mr MacDonald today. I wish you would take prompt action on the 5–25. It will be designated as for the Aerial Detachment for use in temporary maintenance of aircraft and for operational storage of aerial supply, cargo and training materials. In this way we will not associate the project with the "Army Airfield," even though it will be erected on the general site.

Yours sincerely,

W. R. RIDLEHUBER
Colonel, GS
AC of S, G4

Copies furnished:
AC of S, G3, T–8000
PE, T–6205
Comptroller, T–8036
G4 Facilities Branch

On May 29, 1959, a telephone conversation was held between Colonel Ridlehuber and Colonel Pennington, which, in part, Colonel Ridlehuber reported as follows:[37]

The immediate problem is the purchase of a metal hangar building for erection by troop labor at a later date. I asked Colonel Pennington to assure the Quartermaster General that we would not recommend anything that would put him in an embarrassing position. In the case of the hangar it will be procured, if the purchase is approved and P2000 funds are available, for the Aerial Detachment and not directly associated with the airfield. In the case of a physical inspection by Department of the Army representatives at some later date, it can be explained that this is a temporary building which will be moved to meet other storage requirements if and when no longer required at the airfield site.

The other facilities required such as water, power, storage building, and lights can be provided as resources become available as improvements to the landing field which will be in existence.

Colonel Pennington said he agreed and to send the DA Form 5–25 on up for the hangar building and he would see that it was approved. I assured him that it would be sent up during the first week in June.

[37] Hearings, exhibit 21, p. 300.

On June 2, 1959, Colonel Pennington replied to Colonel Ridlehuber's May 25 letter as follows:[38]

HEADQUARTERS
DEPARTMENT OF THE ARMY

OFFICE OF THE QUARTERMASTER GENERAL

Washington 25, D.C.

2 JUNE 1959.

Colonel W. R. RIDLEHUBER, QMC
AC of S, G4
The QM Training Command
U.S. Army
Fort Lee, Virginia

DEAR COLONEL RIDLEHUBER: Thank you for your letter of 25 May regarding progress on your airfield project. It is good to know that the Engineer Company is doing such a good job.

As you know and as I mentioned in our telephone conversation on 29 May, The Quartermaster General is limited to a funded cost of $25,000 for new construction. This limitation applies to the entire "airfield" as one project and not to various elements or increments. In other words, the project completed with $25,000 funded cost must be a usable facility in itself. I understand that you are about up to the legal limit now, so it does not appear possible to accomplish PR 16–60 for electricity and water nor PR 18–60 for a temporary control tower from O&MA funds in FY 1960.

It is possible that some of the other support facilities (oil storage, POL storage and dispensing facilities, operations building, fire station, and small control tower) might be accomplished if the funded costs added to those already spent do not exceed the $25,000 limitation. Providing telephones as a communications item would not count against the limitation.

We are awaiting receipt of your project to provide a building for the Aerial Detachment and will take expeditious action on it when received.

Sincerely,

JAMES C. PENNINGTON,
Colonel, QMC,
Chief, Installations Division.

Under date of June 3, 1959, Fort Lee sent a project request No. 72–59 to the Office of the Quartermaster General in which it described the project as follows:

> Construct an 80-foot hangar-type prefabricated metal building, with minimum inside clearance of 20 feet and with concrete floor. Erection to be accomplished by contributed labor under the direction of and with the assistance of the post engineer.[39]

Despite the clear sequence of correspondence and telephone conversations and the continued reference to the need for a hangar and the fact that it would be constructed, both Mr. MacDonald and Colonel

[38] Hearings, exhibit 22, p. 302.
[39] Hearings, exhibit 42, p. 337.

Pennington denied vigorously and repeatedly to the committee that they knew that project request 72–59 was for a building to be used as a hangar. Mr. MacDonald testified as follows: [40]

Mr. LANIGAN. Now in the memorandum which Mr. Anderson read, which was exhibit 19, you stated concern about the hangar, that it was all one project along with the airfield.

Could you tell the committee what action subsequently was taken with respect to the authorization for the hangar?

Mr. MACDONALD. Well, when he brought it up I probably mentioned that it might be considered all one project. In other words, an airfield rather than an airstrip. When the project came in there was a storage building to support an aerial drop unit. It was discussed in the office. Colonel Pennington and I discussed it, and I discussed it with my assistants. I assure you it was no snap judgment that made the decision that it was a separate project.

The airstrip in itself is a usable facility. We were using the criterion "a usable facility" at that time. And that was being used throughout the Department of the Army and the Defense, I believe: "What is a project?" A project in this case was an airstrip. A building at the strip for support of an aerial unit was a separate project. And if that was wrong, then the whole Department of Army policy at that time was wrong. So we considered it sincerely and honestly as a separate project and approved it that way.

Mr. LANIGAN. You were fully aware that the building was to be used as a hangar as well as for any other purpose?

Mr. MACDONALD. No, sir, I was not.

Mr. LANIGAN. You did not know that the building was to be used as a hangar, for which the project——

Mr. MACDONALD. No, sir.

Mr. LANIGAN. Well, you had the conversation with Colonel Ridlehuber on the 25th of May 1959, in which he said he was worried about a hangar, and it did not occur to you that the project request was for the same building that you had discussed with him?

Mr. MACDONALD. My understanding was that it was not to be used as a hangar, that it was to support this aerial facility.

Mr. LANIGAN. And did Colonel Pennington give you that impression, too, that he understood it was not to be used as a hangar?

Mr. MACDONALD. Yes, sir.

Mr. LANIGAN. I want to show you exhibit 21. This is a telecon between Colonel Pennington and Colonel Ridlehuber, dated the 1st of June 1959, and signed by Colonel Ridlehuber in which he refers to a hangar. He says this: The immediate problem is the purchase of a metal hangar building for erection by troop labor at a later date. I asked Colonel Pennington to assure the Quartermaster General that we would not recommend anything that would put him in an embarrassing position. In the case of the hangar it will be

[40] Hearings, pp. 109, 110.

procured, if the purchase is approved and P–2000 funds are available, for the aerial detachment and not directly associated with the airfield. In the case of a physical inspection by the Department of the Army representative at some later date, it can be explained that this is a temporary building which will be moved to meet other storage requirements if and when no longer required at the airfield site."

(Exhibit 21—Memorandum of a telephone conversation between Col. James C. Pennington and Col. Walter R. Ridlehuber, May 29, 1959, appears in the appendix on p. 300.)

Mr. LANIGAN. Were you aware of this understanding?

Mr. MACDONALD. I had never seen that before. That was reproduced for the committee about a week or two ago.

Mr. LANIGAN. I asked you, were you aware of this understanding with respect to that building?

Mr. MACDONALD. No, sir.

Colonel Pennington testified:[41]

Chairman DAWSON. And about that hangar.

Colonel PENNINGTON. Yes, sir.

Chairman DAWSON. Did the hangar belong to the airstrip?

Colonel PENNINGTON. May I give you some background?

Chairman DAWSON. You may give me an answer. You know whether it did or didn't.

Colonel PENNINGTON. It did not under the approval——

Chairman DAWSON. I am not talking under the approval.

Colonel PENNINGTON. Of the Quartermaster General.

Chairman DAWSON. But you tried to avoid that by assigning it to somewhere else, the expenses of it, to some other outfit, when you knew it was going to be used with the airstrip, didn't you?

Colonel PENNINGTON. No, sir. If you recall in my letter——

Chairman DAWSON (reading from exhibit 21): "The immediate problem is the purchase of a metal hangar building for erection by troop labor at a later date. I asked Colonel Pennington to assure the Quartermaster General we would not recommend anything that would put him in an embarrassing position."

Colonel PENNINGTON. May I comment on that, sir?

Chairman DAWSON. I haven't quite finished reading it.

Colonel PENNINGTON. Excuse me.

Chairman DAWSON (continues reading): "In the case of the hangar it will be procured if the purchase is approved and the P 2000 funds are available for the aerial detachment and not directly associated with the airfield."

(Exhibit 21—Memorandum of a telephone conversation between Col. James C. Pennington and Col. Walter R. Ridlehuber, May 29, 1959, appears in the appendix on p. 300.)

Chairman DAWSON. But you knew it was going to be and it was intended to be and you were willing to enter into a conspiracy that it wasn't to be.

[41] Hearings, pp. 153–157.

Colonel PENNINGTON. Sir, those are the words of Colonel Ridlehuber. I can't vouch for what he has said was a conversation that he had had but now when he called me and he has left out pertinent facts in this memorandum.

Chairman DAWSON. Now you are placing the blame on Colonel Ridlehuber.

Colonel PENNINGTON. No, sir; I am not.

Chairman DAWSON. Did he deceive you?

Colonel PENNINGTON. May I go on and make my statement, sir?

Chairman DAWSON. You may answer my question.

Colonel PENNINGTON. As to the purpose of the building from the use it was put, I was deceived in this conversation.

My letter of June 2 as the result of this conversation and I had asked him to submit projects, I would not approve projects over the telephone, to submit his projects for review by the Office of the Quartermaster General and we would tell him then what would be approved, what would not be approved, and further this building that he desired for the storage and maintenance for the 109 Aerial Detachment we would also consider that for approval but to send in the projects.

Mr. SMITH. But you never for once thought that this aerial detachment needed that large a building for storage, did you?

Colonel PENNINGTON. I don't know, sir. They generate requirements, the operating people operate the detachment, the requirements. They must justify the requirement through higher headquarters for approval.

So I didn't know how much space was required.

Mr. LANIGAN. In the letter of May 25, 1959, addressed to you by Colonel Ridlehuber, which is exhibit 20, Colonel Ridlehuber said and I quote from the letter: "Hangar and operational storage building, this is a problem child," then in the last paragraph he said:

"I discussed this briefly on the telephone with Mr. MacDonald today. I wish you would take prompt action on the 525. It will be designated as for the aerial detachment's use in temporary maintenance of aircraft and for operational storage of aerial supply, cargo, and training materials. In this way we will not associate the project with the Army airfield even though it will be erected on a general site."

(Exhibit 20—Letter from Col. Walter R. Ridlehuber, Acting Chief of Staff, G–4, to Col. J. C. Pennington, May 25, 1959, appears in the appendix on p. 298.)

Mr. LANIGAN. Then on the 1st of June we have Colonel Ridlehuber's memorandum of his conversation with you which the chairman read; Colonel Ridlehuber's summary of the conversation which is quite in accord with his letter to you of the 25th of May.

On June 2 you wrote to Colonel Ridlehuber and this is exhibit 22 in which you talk about other elements and you warn him against possibly going over $25,000 and you say he can't and then you finish up: "We are awaiting receipts

of your project to provide a building for the aerial detachment and will take expeditious action on it when received."

(Exhibit 22—Letter from Col. James C. Pennington, Installations Division, to Col. W. R. Ridlehuber, June 2, 1959, appears in the appendix on p. 302.)

Mr. LANIGAN. So, in that letter you adopted the device of calling it a building for an aerial detachment although the letter to you of May 25 explained that it was a hangar, isn't that correct?

Colonel PENNINGTON. Well, we did not agree, that is at the two levels in Fort Lee here and at my office, in the conversation that I had had with him so I told him to submit a project, that we would review.

So that we could determine that it fell—they required an aerial detachment maintenance and storage building—that it fell within a separate code that we were within the authority delegated to us to approve.

If you note in my letter we did turn down the projects that were associated with the airfield, I believe they were lights. If I recall he wanted a tower, and I don't know that the water and the electricity were included but we did feel, based on a previous letter of the 24th of February that was sent to us by General Denniston wherein he had indicated he had purchased the materials, that any further purchases would have run them over our authority to approve, and so we deleted them and told him he could not construct those items that pertained to the field itself.

We disapproved those because we did feel that it would possibly kick him over because as I recall one item was $6,000 alone and we could not exceed the statutory authority that had been given to us, and I did indicate in the last paragraph since he still had not sent me a project for the supply building that we were awaiting that.

Mr. LANIGAN. In your letter of January 30, 1958, to the commanding general at Fort Lee, which you signed, you list the aviation facilities that you would like to have there and you include first priority runway, taxiway, hangar, aircraft parking hangar, access apron, and aircraft fuel storage and dispensing.

So back from the very beginning you must have planned on a hangar there.

Colonel PENNINGTON. Oh, absolutely, we had planned on a hangar, sir, for a standard Army airfield.

Mr. LANIGAN. And then when Colonel Ridlehuber says that is the problem child, the hangar, and he wants to designate it for the aerial detachment and not associate it with the airfield, you concurred in that even though you didn't concur in the other items, isn't that correct?

Colonel PENNINGTON. Yes, sir; not necessarily at that time. I told him to send in a justification of 5–25 giving the justification for what type of building, where it was to be situated so that we could determine whether or not in our opinion it was a part of the airfield facilities itself.

Chairman DAWSON. When you say "in our opinion," I notice that is a very common word in use by those who are seeking to avoid responsibility by justifying it "in our opinion," when you have written rules to guide you to tell you what your opinion should be.

You should not go beyond that $25,000 limit. But you are seeking ways now to get around it.

Colonel PENNINGTON. Maybe I used the wrong words, sir.

Chairman DAWSON. You didn't use the wrong word, you didn't use the wrong word. You used a common word used to avoid responsibility, "in my opinion." There are rules there that don't permit you to call for your opinion. You are to abide by them and you didn't seek to do that.

Colonel PENNINGTON. Yes, sir; I did, and asked him to send us——

Chairman DAWSON. Then quit saying "in my opinion." Put your responsibility under the rule.

Colonel PENNINGTON. Yes, sir.

Chairman DAWSON. And then you quickly tie your own hands, trying to justify the items here that you had exceeded by "my own opinion." Follow the rules of the law. There were things to prevent you from your opinion.

Colonel PENNINGTON. We made every effort to abide by them.

Chairman DAWSON. But any effort to do it "on my opinion" is an effort seeking to avoid what the law requires you to do and seeking to justify it, as used by you "in my opinion." That is your way out.

Colonel PENNINGTON. Sir, I am here to be helpful, I am not looking for a way out. I assume full responsibility.

Chairman DAWSON. You are looking for a way out from your very letters which showed you had knowledge of the limitations placed and then your effort to avoid the limitation.

Colonel PENNINGTON. No, sir; I knew the limitation, and I was seeking to keep them from exceeding those limitations.

Chairman DAWSON. And finding ways and means to charge the expenses elsewhere instead of where they ought to be when they were for the airstrip. Why don't you be honest with yourself and look a fact straight in the face?

And then you would have to explain if you are abiding by the Army regulations and what you knew them to be but you are now seeking to try to give a reason for your avoiding them by saying "in my opinion."

What is your opinion worth when it is laid down the way it is prescribed for you by law?

Mr. SMITH. In connection with this project, I understood you to say that you were eliminating the electrical and some other things so as to get it below what you thought would be the $25,000.

Colonel PENNINGTON. No, sir; not below, but so they would not exceed, we would not approve it, we were fearful they would exceed the $25,000 limitation.

Mr. SMITH. Well under the law, do you really have a project if you have eliminated those kind of things?

You only have a portion of a project, don't you?

Colonel PENNINGTON. Oh, no; a usable project for daylight flying would have been a strip, it didn't necessarily have to have lights. It didn't have to have a tower because it would not be used for night operations.

We knew that. It would not give us waivers for night operations but the usable strip could have been used for daylight operations for the aerial detachment, sir.

Chairman DAWSON. It would have to have a hangar, though, wouldn't it?

Colonel PENNINGTON. No, sir; not for aircraft.

Mr. SMITH. How would you repair these planes? Out in the weather?

Colonel PENNINGTON. Yes, sir.

Chairman DAWSON. To justify this strip, they would have to have a hangar. That is the only way you could have justified yourself or sought to justify it because you knew what the requirements are and you were going to put it for training of some detachment, if anybody said something about your misuse of it.

Colonel PENNINGTON. Well, the aerial detachment was part and parcel of the mission assigned to the Quartermaster General at Fort Lee to test drop material and that is what this aerial detachment did. They had all the rigging, the gear, et cetera, that they used in connection with these light aircraft in testing various drop materials. And they needed something to store that material in, make their rigups and what not for the tests.

Chairman DAWSON. But this was a hangar.

Colonel PENNINGTON. Sir, what evolved out of the approval that we gave them and what they diverted it to at a subsequent date, I must agree with you it turned out to be a hangar.

Chairman DAWSON. But you knew it was a hangar all along because you——

Colonel PENNINGTON. I did not, sir.

Chairman DAWSON. If he wants to deny his own correspondence what are we going to do with him?

On the other hand Major General Denniston, the post commander, had no doubt that the building planned by Colonel Ridlehuber and Colonel Pennington is a hangar and was always considered to be a hangar. He testified as follows: [42]

Mr. LANIGAN. Then there is no doubt in your mind that this building that has been used as a hangar, was intended to be a hangar, and is a hangar?

General DENNISTON. There is no question at all in my mind, sir. I might say only that it is incidentally used by the Airborne Department and the Aerial Supply Company, because they do load their—load personnel. They can't bring large enough planes in to load large equipment, any of the large Air Force planes.

[42] Hearings, p. 203.

This particular incident is reported in detail here because it furnishes an almost unbelievable example of the workings of the military and bureaucratic mind. A change in nomenclature, clever gimmick, and an easy acceptance of a subterfuge cannot change a fact, no matter how much the military mind wants them to do so. There can be no doubt that despite the testimony of the officers and other personnel involved, the building at the Fort Lee airstrip is a hangar, was a hangar when it was built, and had always been planned and intended to be a hangar. The amazing thing to the committee is not only that the laws were evaded and violated, but also that, having failed in their scheme to disguise the nature of the building and to deceive any future inspectors of the installation, the personnel involved still persist in the attempted deception.

This incident, however, is typical of the handling of the Fort Lee airfield construction from the beginning to the end. It was conceived in violation of the laws and applicable Army regulations. It was constructed contrary to the law and to specific instructions given to the installation. Falsification and deception accompanied every step of this construction; and in the end when all attempts to cover up the record and destroy relevant papers had failed, the actions of the officers responsible were condoned and excused by their superiors.

This is indeed a sorry record for the Army and for the Nation.

CORRUPTION FROM FAILURE TO ENFORCE ACCOUNTABILITY

The committee investigation uncovered a number of other illegal and improper actions and conditions. Because of the size of the Army, there are practical limits to the extent that civilian supervision, both executive and legislative, can keep a continuous surveillance over lesser organizational and operational matters. In such matters, the Army enjoys in effect a large degree of autonomy. The civilian leadership thus must rely heavily on the ethics, intelligence, sense of responsibility, and devotion to our legal system of the military leadership.

In any organizational unit enjoying a considerable degree of autonomy, the corruptive effect on power inherent in an authoritarian structure can be expected to take hold and spread unless accountability is rigidly enforced. The committee believes that this corruptive effect took hold and spread within the Office of the Quartermaster General, the Quartermaster Training Command at Fort Lee, and perhaps in other organizations of the Army. The accomplishment of a given mission (the Fort Lee airfield), undertaken without expectation that accountability would be checked on or enforced, became an overriding objective. The mission having been decided by higher command without concern for the obvious realities of legal cost limitations and aircraft clearance requirements, the subordinate officers and officials regarded the fulfillment of the mission as paramount and the means for so doing merely incidental, even if illegal.

The committee deplores and is deeply concerned about the lack of accountability within the Office of the Quartermaster General and the Quartermaster Training Command at Fort Lee. The attitudes and practices of those in command at both of these echelons are largely responsible for the attitudes and practices of the subordinate officials at Fort Lee who willfully violated the law of the land.

When confronted with illegality, these subordinate officers either did not protest or made weak protests which they soon swallowed. These officers indicated by their testimony that they were only too conscious of the traditional techniques for indirect reprisal against a subordinate officer who stands on principle against the desire of his superiors—such techniques as unfavorable fitness reports, delayed promotion, undesirable assignments, early retirement, and social ostracism. There was also awareness of the threat of official reprimand, commanding officer's punishment, and court-martial with its permanent stigma. The committee knows that the officers at Fort Lee who protested the illegal actions which they felt required to take were not without courage and conviction. Nevertheless, none, obviously, thought he could have survived an attempt to expose the illegal actions in which he later participated. Instead, for each one, the comfortable and familiar rule of obedience to orders provided a rationalization.

The following discussion illustrates this point very well: [43]

> Mr. BROWN. Could I ask one other question here?
>
> Now, after you told Colonel Ridlehuber that you did not want to go to the penitentiary for this, did you go ahead and sign the papers?
>
> Colonel PYLANT. Well, he was my superior at that time. Yes, sir, I did.
>
> Mr. BROWN. Did you sign them on the basis that you had changed your mind and might be willing to go to the penitentiary, or what?
>
> Colonel PYLANT. I just want to establish the fact that I knew this was wrong to Colonel Ridlehuber.
>
> Mr. BROWN. But you still signed it?
>
> Colonel PYLANT. I would do it again under the same conditions, yes.
>
> Mr. BROWN. Did he order you to sign it?
>
> Colonel PYLANT. No, sir. He approved. He said, "I will approve it. You do not have to sign it," in that many words.
>
> Mr. BROWN. But you signed it, although he told you you did not have to.
>
> Colonel PYLANT. He would approve it whether I signed it or not; yes, sir. And I was the initiating officer.
>
> Mr. BROWN. Well, wouldn't that have let you off the hook?
>
> Colonel PYLANT. I do not think so, sir, any more than I am.
>
> Mr. BROWN. Well, of course you are on it a little now.
>
> Colonel PYLANT. I am quite a bit on it. I still would have been responsible, by being the initiating officer.
>
> Mr. BROWN. Now, you heard the major talk a while ago with Mr. Anderson as to his query, about the "system." Is that what you are afraid of? Or is that what you were afraid of—that you might be punished under our military system, as we call it?
>
> Colonel PYLANT. Well, I am sure that that had——

[43] Hearings, pp. 54–55. See also Hearings, pp. 47, 120–122, 172, 195, 196.

Mr. ANDERSON. If you did not go along with your superior officer?

Colonel PYLANT. It is a matter, if you do obey your superior.

Mr. BROWN. I realize you are taught to obey your superiors in certain fields. But do you mean to tell me, Colonel—we have heard a lot of talk about the old Army game and this and that and the other thing—that we have a military system in this country where the officers and men must obey, on matters like this, the wishes or the desires or the orders, of their superiors, even though they know it is wrong?

Colonel PYLANT. As a staff officer, if I inform him and he says "do it," I think I am right in doing it, sir.

Mr. BROWN. Do you put down "by order of so-and-so"?

Colonel PYLANT. No, sir.

Mr. BROWN. Wouldn't that protect you?

Colonel PYLANT. Yes, sir. I wrote a DF, if I may say so, the next day or so.

Mr. BROWN. Maybe we ought to put in a course in law up at West Point. Are you a West Point man?

Colonel PYLANT. Absolutely not, sir.

Mr. ANDERSON. Mr. Brown, could I pursue that for just one question?

Now, certainly, if your superior, if your immediate superior officer had told you to go into the safe and take part of the money there that belonged to some post fund, and put it in your pocket, give him half and you keep half, you would not regard that as the kind of order you had to obey, would you?

Colonel PYLANT. No, sir.

Mr. ANDERSON. And yet you knew this was illegal, I mean that this was contrary to statute, to go ahead and cost things to funds that they had no business being costed to. I mean, what is the difference between those illegal acts? I mean how can you rationalize that one is responsive to a superior officer, and therefore you must obey it, and the other you would report him. I am sure you would.

Colonel PYLANT. It is a matter of a person's personal integrity, I would say. In other words, there is no basic law that has been violated—there is no basic——

Mr. BROWN. Well, there is a law violated in this thing.

Colonel PYLANT. Yes, sir—on the instructions about the $25,000. But I mean there is no law against humans involved in this.

Chairman DAWSON. Maybe we ought to put in something, then.

Mr. BROWN. There is a law here that says it shall not be done.

Colonel PYLANT. Yes, sir. I did not mean it that way.

Mr. BROWN. Except under certain circumstances.

Colonel PYLANT. I realize—that is a violation of the code.

Mr. BROWN. I think all of us appreciate, or realize, sometimes military people get put in a terribly bad position. That is the reason why, under the Constitution, the Congress

is given the responsibility of raising and maintaining the Armed Forces, and under the Constitution the military shall always be under civilian control—it is just the purpose to prevent things like this. Since my service on this committee, there have been times that I have been very glad I was not in the armed services, where somebody could crack back at me. I can appreciate some of the situations in which some of you might find yourselves. But it is a pretty bad mess, isn't it, Colonel?

Colonel PYLANT. Yes, sir. I am not happy with any part of it.

Mr. ANDERSON. Neither am I.

Mr. BROWN. This committee has a responsibility, as well as the General Accounting Office, to protect the money of the taxpayers, just as your military police have a responsibility to protect the funds, the post funds, or anything else that might be in that safe that was referred to.

I think that is about all, Mr. Chairman. Thank you.

The committee believes, however, that it is not too much to expect that all officers of the Army make their voices heard at as high a level as necessary when illegality is being attempted. The concealment of wrongdoing is itself an insidiously corruptive influence which spreads its decay far beyond the immediate wrongful act.

Particularly demonstrative of the corruptive effect of lack of accountability enforcement have been the attitudes of persons in authority at Fort Lee after the violations of law had been brought to light by the General Accounting Office. There was, at Fort Lee, almost a complete unreadiness or inability to recognize that anything serious and culpable had occurred.

In a report to the Department of the Army (undated, but approximately May 26, 1960) subject "AR 37-20 Report re Violation of Administrative Restriction—Project 10-57 (Airstrip),"[44] the post commander at Fort Lee concluded that, though there had been human errors and deficiencies in the airfield undertaking, no one should be held legally responsible, inasmuch as the errors were not believed to have been willful. The report went so far as to say:

> There appears to be some question as to whether there was a violation of an administrative restriction as the term is used in AR 37-20. However, in consonance with the Office of the Quartermaster General Inspector General investigation report, for the purposes of this report it is assumed that there was such a violation.

The report stated that Colonel Ridlehuber had been given a written admonition by the post commander and others involved had been orally admonished.

This report was returned to Fort Lee by the Office of the Quartermaster General on June 7, 1960, after informal advice from the Office of the Comptroller of the Army that the disciplinary action taken by Fort Lee was inadequate. The OQMG, in directing that the report be revised and resubmitted, pointed out that the facts made it difficult to conclude that there was no willfulness. Accordingly, as resubmitted

[44] This document is available in the committee files.

on June 14, 1960, the report eliminated references to lack of willfulness and legal responsibility. It also notified that written administrative reprimands had been issued to the other officers involved.[45]

Curiously, the revised report on the one hand concluded that Colonel Ridlehuber's actions were "culpable within the meaning of this term as referred to in section XIIVB(8) of AR 37–20," and on the other qualified this by stating that there were "other factors which remove his [Colonel Ridlehuber's] actions from the area of culpable negligence, including his apparent misunderstanding that no more than $24,948 per fiscal year would be directed to the project."

It is clear that despite certain changes in language and the addition of other officers to the list of those receiving written reprimands, the rejection by the Office of the Quartermaster General of the first report of violation of AR–37–20 effected no change in the basic attitude of the Fort Lee command with respect to this case. The revised report remained an attempt to excuse, condone, and cover up.

The committee feels it is preposterous for Colonel Ridlehuber to claim, and preposterous for the post commander at Fort Lee to believe, the bona fides of the interpretation that the limitation on operation and maintenance funds meant that no more than $24,948 per fiscal year would be charged to the airfield. On this point the statutes, regulations, directives, and the official correspondence, even including that drafted by Colonel Ridlehuber himself, are crystal clear and need no interpretation.

The corrupted sense of responsibility on the part of the higher officers and officials in this case, as well as the impaired sense of duty on the part of their subordinates, are evidence of disloyalty to the public trust, to all other officers and men of the Army, and to the institution of the Army itself, which conduct of this kind brings into public disgrace.

[45] See footnote 9.

APPENDIXES

APPENDIX I

References to Documents and Testimony Referred to in Findings and Conclusions

[References, unless otherwise indicated, are to the Hearings entitled "Illegal Actions in the Construction of the Airfield at Fort Lee, Va.," held by the Committee on Government Operations, House of Representatives, 87th Cong., 2d sess., on March 13, 14, 15, 20, 22, 27, 28, and 29, 1962.]

Finding No. 1. Fiscal year 1958 military construction program appears in exhibit 51. (See Hearings, p. 407.)

The 1955 action on the fiscal year 1957 request is described in the report of the Army Audit Agency. (See Hearings, pp. 426–427.)

Finding No. 2. No specific references are contained in paragraph 2. This conclusion was also reached by the Army Audit Agency. (See Hearings, p. 427.)

Finding No. 3. (*a*) Section 408 of Public Law 968 of August 3, 1958, appears in appendix 1 of the Hearings. (See Hearings, p. 409.) Title 10, United States Code, section 2674 appears in the Hearings. (See Hearings, p. 410.)

(*b*) Department of Defense Directive 4270.6 of October 10, 1957, paragraph III(a)(2) appears in appendix 2 of the Hearings. (See Hearings, p. 417.)

Finding No. 4. Individual project estimate, DA5–25, September 17, 1957, appears in exhibit 1. (See Hearings, p. 251.)

Testimony pertaining to Lt. Col. William H. Jarrett's notification by an officer in the Washington office of the Corps of Engineers to the effect that the project estimate would not be approved because the funds requested exceeded $25,000 and because the runway was only 1,500 feet long and the depth of the paving only 1½ inches. (See Hearings, p. 114.)

Finding No. 5. Revised individual project estimate, DA5–25, November 1, 1957, appears in exhibit 3. (See Hearings, p. 255.)

Testimony of Maj. Thomas Swartz and Lt. Col. William H. Jarrett as to the arbitrary nature of the revised airfield estimate. (See Hearings, pp. 46, 114.)

Testimony of Col. Louis Shirley in which he stated he made no effort to ascertain whether the airfield cost figures were realistic. (See Hearings, pp. 92, 93.)

A copy of the memorandum transmitting the revised project request, dated November 6, 1957, is in the committee files.

Teletype message of April 8, 1958, appears in exhibit 44. (See Hearings, p. 344.)

Finding No. 6. No references.

Finding No. 7. No references.

Finding No. 8. Memorandum of November 27, 1957, from Office of

the Quartermaster General approving revised request for airfield project appears in exhibit 4. (See Hearings, p. 257.)

Defense Department Directive 4270.6 appears in appendix 2. (See Hearings, p. 417.)

Section 408 of Public Law 968 of August 3, 1956, appears in appendix 1 of the Hearings. (See Hearings, p. 409.)

Finding No. 9. Reference same as paragraph 8 (memorandum of November 27, 1957, from Office of the Quartermaster General).

Finding No. 10. (*a*) The cost figures which appear in paragraph 10(*a*) are taken from testimony of General Accounting Office officials. (See Hearings, p. 5). Report of Army Audit Agency, appears in appendix 3. (See Hearings, p. 419.)

For testimony on possibility of undetected costs see testimony of GAO Auditor David C. Kelly. (See Hearings, page 37.)

General Accounting Office view on chargeability of the $84,000 to the statutory limitation. (See Hearings, p. 6.) Army Audit Agency view appears in appendix 3 of the Hearings. (See Hearings, p. 439.)

(*b*) Revised statute 3679, as amended (31 USC Sec. 665) appears in appendix 1 of the Hearings. (See Hearings, p. 411.)

Finding No. 11. Project estimate form DA5–25 appears in exhibits 1 and 3. (See Hearings, pp. 251, 255.)

For cost figures see note to Finding No. 10, supra.

Testimony regarding further program. (See Hearings, p. 5.)

Army Audit Agency report appears in appendix 3 of the Hearings. (See Hearings, p. 440.)

Finding No. 12. Testimony pertaining to the nine obstructions, appears in the remarks of Col. James C. Pennington. (See Hearings, p. 146.) Described in detail in Mr. David C. Kelly's testimony (see Hearings, pp. 37–38), and in Army Engineer report and maps in committee files.

Evidence of knowledge on the part of responsible officers as to the existence of obstructions appears in the Hearings. (See Hearings, pp. 81–83.)

The denial of obstruction waivers appears in exhibits 10, 11, and 13. (See Hearings, pp. 271, 274, 276.)

Orders to continue expenditures after waivers were denied appear in the Hearings. (See Hearings, exhibit 12, p. 275; exhibit 18, p. 294, and exhibits 23 through 32, pp. 303–312.)

Attempt at concealment from officers in charge of Engineer troops appears in exhibits 10 and 11. (See Hearings, p. 13.)

Knowledge of Corps of Engineers; since the Corps of Engineers supplied the troop labor, its officers knew construction was continuing. (See Hearings, p. 164.)

Testimony of Col. James C. Pennington stating he had informed Col. Louis H. Shirley on February 19, 1959, of the denial of waivers. (See Hearings, pp. 159–160.)

For testimony of Col. Louis H. Shirley denying having been informed by Col. James C. Pennington that waivers were not granted. (See Hearings, p. 96.)

Finding No. 13. Purchase requests which falsely stated that material and services were to be used on projects other than the airfield. (See Hearings, exhibit 23, p. 303; exhibit 26, p. 306; exhibit 27, p. 307; and exhibit 28, p. 308.)

Testimony of Maj. Thomas Swartz and Lt. Col. Julian E. Pylant pertaining to objections by those officers with respect to falsification of purchase requests. (See Hearings, pp. 42, 53.)

Purchase requests which were falsely stated to be for "improvements" to the airfield but which were actually used for airfield construction appear in exhibit 24 and exhibit 25. (See Hearings, pp. 304, 305.)

Testimony of Col. Walter Ridlehuber and Col. Louis Shirley pertaining to having informed the post commander, Maj. Gen. Alfred B. Denniston, that material and services for the airfield were being charged to other projects. (See Hearings, pp. 83, 89.)

Major General Denniston's denial of having been informed of the miscoding of projects appears in the testimony. (See Hearings, p. 172.)

Finding No. 14. Action on fiscal year 1957 Fort Lee military construction program is described in the Army Audit Agency report in appendix 3. (See Hearings, p. 426.)

Memorandum of September 18, 1957, containing reference to hangar project appears in exhibit 39. (See Hearings, p. 332.)

Fort Lee military construction request for fiscal year 1960 appears in exhibit 49. (See Hearings, p. 404. Turndown of hangar appears in exhibit 13. (See Hearings, p. 276.)

Defense Department Directive 4270.6 of October 10, 1957, appears in appendix 2 of the Hearings. (See Hearings, p. 417.)

For detailed discussion of subterfuge, see pages 26–36, supra.

Testimony of post commander, Maj. Gen. Alfred Denniston, that aerial detachment building was actually used as a hangar. (See Hearings, p. 202.)

Finding No. 15. Letter of June 2, 1959, from Col. James C. Pennington to Col. W. R. Ridlehuber appears in exhibit 22. (See Hearings, p. 302.)

Purchase request of June 5, 1959 (No. 2107–M) appears in exhibit 26. (See Hearings, p. 306.) The use of the materials acquired by this purchase request appears at page 2, supra.

Finding No. 16. With respect to the removal of records from files and subsequent destruction, see testimony of Mr. Hyman Baras and Maj. Thomas Swartz. (See Hearings, pp. 25, 45, 46.)

For admission by Lt. Col. William Jarrett that Col. Louis Shirley had ordered him to cleanse the file of embarrassing documents, that Lieutenant Colonel Jarrett ordered Major Swartz to remove documents relating to the construction of the airfield from the file, and that later Colonel Shirley asked whether this had been done. (See Hearings, p. 118.)

Testimony of Colonel Shirley in which he testified that he merely told Colonel Jarrett to get the files in order for the GAO auditors. (See Hearings, pp. 87, 88.)

Col. James Connor's testimony stating that he understood Colonel Shirley's orders to mean that embarrassing documents should be removed from the files. (See Hearings, pp. 60, 63, 64, 67.) Colonel Shirley's statement, "I don't recall that, but he could have done that." (See Hearings, p. 88.)

Major Swartz' testimony that he objected to Lieutenant Colonel Jarrett regarding the removal of records from the files but that Lieutenant Colonel Jarrett told him that someone even superior to him wanted it done. (See Hearings, p. 47.)

Major Swartz' testimony that purchase requests and project working estimates had been removed from the files and destroyed. (See Hearings, p. 46.)

Finding No. 17. That Major General Denniston at first sought to let off all offenders save Colonel Ridlehuber with oral admonishments is evidenced in a report to the Department of the Army from Fort Lee (undated—about May 26, 1960), subject "AR 37–20, Report re Violation of Administrative Restriction—Project 10–57 (Airstrip)", a copy of which is available in the committee files. That General Denniston later issued written reprimands and himself received one is shown in a revised report to the Department of the Army dated June 14, 1960, and the first endorsement, dated June 22, 1960, a copy of which is available in the committee files.

Testimony concerning advice by the Army Comptroller's Office to the Office of the Quartermaster General that the Secretary of Defense had not accepted mere verbal admonishments in the cases of violations of Revised Statute 3679. (See Hearings, pp. 222, 225.)

Report to Congress of violation of Revised Statutes 3679, dated November 4, 1960, appears in Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 87th Congress, 1st session, Department of Defense Appropriations for 1962, Part 2, "Operation and Maintenance," page 127.

With respect to the abdication by the Office of the Quartermaster General and the Department of the Army of their supervisory responsibility over the adequacy of the disciplinary action taken by Fort Lee, see the two reports of General Denniston, with endorsements, referred to above, and Memorandum for Record, dated June 21, 1960, by Mr. Karl Kabeiseman, Office of the General Counsel, Department of the Army, subject: "AR 37–20 Report re Violation of Administrative Restriction—Project 10—57 (Airstrip)." A copy of the memorandum is available in the committee files.

For testimony of the Staff Judge Advocate, Second Army, pertaining to the filing of charges, the review of testimony, and the subsequent dismissal of the charges, see statements of Col. James Godwin. (See Hearings, pp. 234, 236, 238, 248; see also exhibit 46, pp. 349–352.)

Testimony of Staff Judge Advocate, Second Army, concerning the significant factors in his recommending against court-martial proceedings. (See Hearings, pp. 241, 243, 244, 245; see also exhibit 46, pp. 349–352.)

Finding No. 18. Testimony of Comptroller of the Army, Lt. Gen. David W. Traub, and of former comptroller at Fort Lee, Col. Grant Healey, to the effect that the Fort Lee incident did not reveal any deficiencies in the Army's accounting and auditing system. (See Hearings, pp. 135, 142, 143, 227, 230, 231.)

Testimony pertaining to the seven different accounts which had to be consulted to determine the amount of funds expended upon a project at Fort Lee. (See Hearings, pp. 142, 143, 230.)

Testimony pertaining to the consolidated project record kept in the Fort Lee post engineer's office. (See Hearings, pp. 132, 138, 139, 141, 142, 143, 230.)

The altered purchase orders which were processed through the Fort Lee Finance Office without detection appear in the Hearings.

(See Hearings, exhibit 26, p. 306; exhibit 27, p. 307; exhibit 28, p. 308; exhibit 30, p. 310; exhibit 31, p. 311; exhibit 32, p. 312.) (In each instance the alteration consists in striking out the words "I certify that.") (See also Hearings, pp. 139, 140, 141.)

Finding No. 19. Testimony pertaining to the existence of a "system" in the military services appears in the statement of Thomas Swartz (see Hearings, p. 47); statement of Maj. Gen. Alfred Denniston (see Hearings, pp. 172, 195); statement of Lt. Col. Julian Pylant (see Hearings, pp. 54, 55, 56, 57); statement of Lt. Col. William Jarrett (see Hearings, pp. 120, 121, 122.)

For officers' testimony to the effect they believed it was not improper to obey orders which they knew were in violation of law appears in the statement of Maj. Thomas Swartz (see Hearings, pp. 42, 43); statement of Lt. Col. Julian Pylant (see Hearings, pp. 54, 56, 67); and statement of Lt. Col. William Jarrett (see Hearings, pp. 120, 121, 122).

Article 90 of the Uniform Code of Military Justice appears in United States Code, title 10, section 890. It is reproduced in appendix II of the report. For testimony relating to the power an immediate superior has over his subordinates to compel the carrying out of orders known by both parties to be illegal, see statement of Thomas Swartz (see Hearings, p. 47); statement of Lt. Col. Julian Pylant (see Hearings, pp. 55, 57); and statement of Lieutenant Colonel Jarrett (see Hearings, pp. 120, 121, 122).

For testimony reflecting the general attitude of officers that since they had not diverted funds to their own pockets there was nothing seriously wrong with violating statutory and administrative restrictions on the use of funds appears in the statement of Lt. Col. Julian Pylant (see Hearings, pp. 55, 56); statement of Col. W. R. Ridlehuber (see Hearings, p. 69); statement of Col. Lewis H. Shirley (see Hearings, p. 90); and statement of Col. James Godwin (see Hearings, p. 244).

(*b*) The determination among military officers to cover up offenses committed by fellow officers is a theme which runs throughout the testimony and official acts of Maj. Gen. Alfred Denniston and Col. James Godwin. To apprehend this theme fully one must read all the testimony of these officers. Specific statements substantiating the determination to cover up appear in the remarks of Colonel Godwin (see Hearings, pp. 237, 238, 241, 243, 244, 245, 248), and General Denniston's initial and revised reports of violation of AR 37–20 in May and June of 1960, copies of which are available in the committee files. Remarks of Major General Denniston bearing on the determination to cover up, as well as on the matter of personal relationships and the taking of disciplinary action. (See Hearings, pp. 174, 175, 176, 186, 191, 193, 194, 195, 210.)

APPENDIX II

Statutes Relating to Possible Violations of Law in Connection With Construction of Airfield at Fort Lee, Va.

1. Act of Aug. 3, 1956, Sec. 408 (70 Stat. 991, 1016) (P.L. 968, 84th Cong.)

SEC. 408.

(a) Under such regulations as may be prescribed by the Secretary of Defense, the Secretaries of the military departments may expend out of appropriations available for military construction such amounts as may be required for the establishment and development of military installations and facilities by acquiring, constructing (except family quarters), converting, extending, or installing permanent or temporary public works determined to be urgently required, including site preparation, appurtenances, utilities, and equipment, for projects not otherwise authorized by law when the cost of the project is not in excess of $200,000, subject to the following limitations:

(1) No such project, the cost of which is in excess of $50,000, shall be authorized unless approved in advance by the Secretary of Defense.

(2) No such project, the cost of which is in excess of $25,000 shall be authorized unless approved in advance by the Secretary of the military department concerned.

(3) Not more than one allotment may be made for any project authorized under this section.

(4) The cost of conversion of existing structures to family quarters may not exceed $50,000 in any fiscal year at any single facility.

(b) The Secretaries of the military departments may expend out of appropriations available for maintenance and operation amounts necessary to accomplish a project which, except for the fact that its cost does not exceed $25,000, would otherwise be authorized to be accomplished under subsection (a).

(c) The Secretary of each department shall report in detail semi-annually to the Armed Services Committees of the Senate and the House of Representatives with respect to the exercise of the authorities granted by this section.

(d) Section 26 of the Act of August 2, 1946 (60 Stat. 853, 856 34 U.S.C. 559), is repealed.

2. Act of Aug. 20, 1958, Sec. 511 (72 Stat. 662)

SEC. 511.

Section 408(a) of the Act of August 3, 1956 (70 Stat. 991, 1016), is amended by adding the following new subsection at the end thereof:

"(5) No determination that a project is urgently required shall be necessary for projects, the cost of which is not in excess of $5,000."

3. Act of Sept. 2, 1958, Sec. 1(51) (72 Stat. 1437, 1459; 10 U.S.C. 2674)

SEC. 2674. ESTABLISHMENT AND DEVELOPMENT OF MILITARY FACILITIES AND INSTALLATIONS COSTING LESS THAN $200,000.

(a) Under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department may acquire, construct, convert, extend, and install, at military installations and facilities, urgently needed permanent or temporary public works not otherwise authorized by law, including the preparation of sites and the furnishing of appurtenances, utilities, and equipment, but excluding the construction of family quarters.

(b) This section does not authorize a project costing more than $200,000. A project costing more than $50,000 must be approved in advance by the Secretary of Defense, and a project costing more than $25,000 must be approved in advance by the Secretary concerned.

(c) Not more than one allotment may be made for any project authorized under this section.

(d) Not more than $50,000 may be spent under this section during a fiscal year to convert structures to family quarters at any one installation or facility.

(e) Appropriations available for military construction may be used for the purposes of this section. In addition, the Secretary concerned may spend, from appropriations available for maintenance and operations, amounts necessary for any project costing not more than $25,000 that is authorized under this section.

(f) The Secretary of each military department shall report in detail every six months to the Committees on Armed Services of the Senate and House of Representatives on the administration of this section. (Added Pub. L. 85–861, Sec. 1(51), Sept. 2, 1958, 72 Stat. 1459.)

* * * * * * *

5. Title 31, U.S.C., "Money and Finance"

SEC. 665. APPROPRIATIONS.

(a) EXPENDITURES OR CONTRACT OBLIGATIONS IN EXCESS OF FUNDS PROHIBITED.

No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.

* * * * * * *

(i) ADMINISTRATIVE DISCIPLINE; REPORTS ON VIOLATIONS.

(1) In addition to any penalty or liability under other law, any officer or employee of the United States who shall violate subsections (a), (b), or (h) of this section shall be subjected to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office; and any officer or employee of the United States who shall knowingly and willfully violate subsections (a), (b), or (h) of this section shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than two years, or both.

(2) In the case of a violation of subsections (a), (b), or (h) of this section by an officer or employee of an agency, or of the District of Columbia, the head of the agency concerned or the Commissioners of the District of Columbia, shall immediately report to the President, through the Director of the Bureau of the Budget, and to the Congress all pertinent facts together with a statement of the action taken thereon.

6. Title 18, U.S.C., "Crimes and Criminal Procedure", Sections 2, 3, 4, 371, 671, 1001, 2071, 2073

SEC. 2. PRINCIPALS.

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

SEC. 3. ACCESSORY AFTER THE FACT.

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

SEC. 4. MISPRISION OF FELONY.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

SEC. 371. CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD UNITED STATES.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

SEC. 641. PUBLIC MONEY, PROPERTY OR RECORDS.

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made

or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

SEC. 1001. STATEMENTS OR ENTRIES GENERALLY.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

SEC. 1621. PERJURY GENERALLY.

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered,[1] that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

SEC. 2071. CONCEALMENT, REMOVAL, OR MUTILATION GENERALLY.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutiliates, obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States.

SEC. 2073. FALSE ENTRIES AND REPORTS OF MONEYS OR SECURITIES.

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving,

[1] See 2 U.S.C., sec. 191, "Oaths to witnesses".

holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities—

Shall be fined not more than $5000 or imprisoned not more than ten years, or both.

7. Title 10, U.S.C. "Armed Forces", Ch. 47—"Uniform Code of Military Justice", Sections, 878 (Art. 78), 881 (Art. 81), 892 (Art. 92), 907 (Art. 107), 908 (Art. 108), 934 (Art. 134).

SEC. 878. ART. 78. ACCESSORY AFTER THE FACT.

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

SEC. 881. ART. 81. CONSPIRACY.

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

SEC. 892. ART. 92. FAILURE TO OBEY ORDER OR REGULATION.

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

SEC. 907. ART. 107. FALSE OFFICIAL STATEMENTS.

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

SEC. 908. ART. 108. MILITARY PROPERTY OF UNITED STATES—LOSS, DAMAGE, DESTRUCTION, OR WRONGFUL DISPOSITION.

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

SEC. 934. ART. 134. GENERAL ARTICLE.

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

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