

Authority UND 755040
 By SK NARA Date 5-14-9



DEPARTMENT OF THE
 OFFICE OF THE JUDGE ADVOCATE GENERAL
 WASHINGTON 25, D. C.

IN REPLY REFER TO

JAG: I: S: RNC: edn

12 SEP 1950

From: The Judge Advocate General
 To: Chief of Naval Personnel
 Via: Chief, Bureau of Medicine and Surgery
 Subj: MARSH, Stanley B., 202 93 17, StM1, USNR; line of duty
 and conduct status in the cases of.
 Ref: (a) BuPers ltr to JAG Pers-6143-rra dtd 7 Aug 1950

1. In reference (a) the Chief of Naval Personnel requested an opinion as to subject man's duty and conduct status at the time of death in connection with the payment of the six months' death gratuity.
2. It has been ascertained by the Judge Advocate General that on 16 February 1944 subject man was ashore at Herta Bay, Azores, in an unauthorized absence status from the U.S.S. OWL. While in the unauthorized absence status ashore he, apparently without provocation, stabbed two Portuguese soldiers, killing one of them and seriously injuring the other. He was arrested by the civilian police before returning to naval jurisdiction, and was charged with murder. Trial was conducted in a Portuguese court sitting in the Azores in March 1945. Subject man was convicted and sentenced to six years imprisonment and ten years in a penal colony. On appeal to a higher court in Lisbon the conviction by the trial court was affirmed and the sentence was increased to eight years imprisonment and twenty years in a penal colony. Marsh died of Pott's disease, abscess, on 21 March 1948 in the penitentiary at Lisbon, Portugal.
3. In 8 Comp. Gen. 217 the Comptroller General held that an enlisted man who was absent without leave earned no pay during the period of his absence and was therefore not in a pay status and had no rate of pay upon which the death gratuity could be based. This rule was changed, however, by section 4(b) of the Armed Forces Leave Act of 1946, 60 Stat. 964, as amended by the Act of August 4, 1947, 61 Stat. 746, 37 U.S.C., Sup. III, 33(b). The Comptroller General, interpreting the Armed Forces Leave Act, held in 29 Comp. Gen. 294 that enlisted men continue in a pay status, although they are not entitled to receive pay, during periods of unauthorized absence. The effective date of the Armed Forces Leave Act was 31 August 1946. Since Marsh's unauthorized absence status commenced prior to 31 August 1946, and was not interrupted thereafter, he was not in a pay status on the date of his death. The Armed Forces Leave Act did not operate to create a pay status

S-E-C-R-E-T-

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of the men on watch had any cognizance of their leaving.
As a result of this incident, a third armed security watch
has been stationed on and around the vicinity of the stern,
and bum boats are forbidden to come alongside at anytime.
For leaving the ship on unauthorized liberty, and as it was
in a neutral foreign port, all eight men have been awarded
by Captain's Mast a summary court martial. ^{out}

J. C. W. White
J.C.W. WHITE.

Copy to:
BuPers
ComSerForLant
SBNO Horta.
SOPA
American Maritime Delegate.

U.S.S. ...
c/o Fleet Post
New York,

Authority WND 755040
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released, and the services of Doctor Mesquita were terminated.

3. The knife used by Marsh was a standard Navy issue knife, which he admitted carrying with him when he left the ship.

4. Marsh's personal effects have all been delivered to him, but, as this report is submitted, his records and accounts are still on board the ship. Unless otherwise directed, these records and accounts will be transferred to ComNav/Azores prior to sailing.

5. All local bills contracted incident to this event, including lawyers fee, food for the nine men while being detained, and property damage caused by the fighting have been payed jointly by the other eight men involved.

6. The local British Naval authorities were most cooperative with the S.O.P.A., and myself during the entire proceedings, and the Portuguese Police, while being most thorough, were exceptionally fair and unbiased during the investigation, and the men detained by them were given every care and consideration for their personal well-being. These facts are, in my opinion, worthy of mention.

7. The names of the Portuguese soldiers involved are; Dead: Soldier No. 76/43, Franklin Pessoa Duarte. Wounded: 1st Corporal 268/43, José Fernandes. Both from 1st Company of the Battalion of Infantry No.1.

8. Legal copies of the statements made by the nine men will not be obtainable until the trial of Marsh has gotten underway, which, I have been informed, will not, commence for about five months. Arrangements have been made to forward the statements to this command by the American Maritime Delegate.

9. At the time the nine men left the ship, there were on watch, in addition to the duty officer, a gangway watch, who was patrolling the vicinity of the gangway, which was on the starboard side just aft of amidships, and a roving security watch, whose duty it is to make a continuous patrol of the ship. Upon questioning the remaining eight men concerning their leaving the ship, it was found that they went over the stern, which was darkened due to port regulations, into bum boats, and that neither

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police, with the aid of an interpreter, in the following order: Busby, Permenter, Combs, Jordon, Popovich, Mon, Durham, O'Donnell, and Marsh. The investigation continued until approximately 2300 the same evening, when it was adjourned until 0900 February 18, 1944. At the time of adjourning, all statements had been heard except O'Donnell and Marsh. The first seven men, with the exception of Jordon, were then released and returned to the ship. Jordon was held as a material witness. At 0900 February 18, 1944, the investigation was reopened, with the same people present as mentioned before. O'Donnell's statement was taken, after which he was released, and then Marsh was brought in. At first he denied everything, saying he had no knife, saw no soldiers, etc. According to his statement, he had left his knife on his bunk on the ship. The investigation was then temporarily adjourned, and all present proceeded to the spot near the boat landing where, according to Jordons statement, Marsh had thrown his knife in the water. A diver was engaged to search for the knife, and, while this was going on, the Chief of Police, a Mr. Leles, assistant to the American Maritime Delegate, who acted temporarily as interpreter, and myself went to the ship and searched Marsh's bunk, locker, and surrounding vicinity for the knife. We did not find it, which collaborated with all the statements of the other eight men, as they saw him wearing his knife while in town. When we rejoined the remainder of the investigating group, it was decided to take Marsh to the hospital for possible identification by the wounded soldier. Upon arrival at the hospital, Marsh and Jordon were taken to the ward in which the wounded soldier lay, and, in the presence of the investigating party, he (the soldier) positively and instantaneously identified Marsh as the assailant of both him and his dead companion. The group then proceeded to the street on which the crime was committed, with intentions of locating the spot on which the stabbing occurred. However, as it was quite dark at the time of the incident, and none of the men involved had previously been ashore in town, the exact location was not ascertained. Returning to the police station, Marsh was again questioned, and, confronted with all the evidence against him, in addition to his positive identification by the injured soldier, he (Marsh) made a full and complete confession, which he signed, admitting to all charges against him, and, according to his statement, he had no perceptible reason for stabbing the soldiers. The investigation then being completed, Marsh was bound over to the police for trial and sentence, Jordon was

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Portuguese soldier had been stabbed to death, and another seriously injured, and that nine members of the crew were being held by local police authorities in connection with the crime. I immediately went to the police station, where it was decided by the Commandant of the Police, the Commandant of the Portuguese Army Detachment, the American Maritime Delegate, Mr. John B. Keogh, and myself to commence the investigation of the crime at 1030 February 17, 1944, holding all nine men there at the police station for the night. Before leaving the station, I talked to the nine men being held, but learned nothing from them. I then returned to the ship.

2. At 0900 February 17, 1944, Mach. H. J. Smith and I went to the quarters of the American Maritime Delegate, where it was decided to engage the legal services of Dr. Antonio Xavier de Mesquita, who is the leading attorney of Horta, and who speaks English, on behalf of the nine American Navy men being held, during the period of investigation of the crime and interrogation of the criminal. The S.O.P.A., Commander L. F. Teuscher, USN, on board the U.S.S. LST #44, was also informed of the incident, and either for his representative was present during the entire investigation.

The investigation began at 1030 in the office of the Chief of Police in the presence of the following:

Commandant of the Police
Chief of Police.

Dr. Antonio Xavier de Mesquita.

Hugo Xavier de Mesquita, (who acted as interpreter)

The S.O.P.A., - Comdr. L. F. Teuscher, USN.

American Maritime Delegate, Mr. J.B. Keogh.

Mach. H. J. Smith and myself.

(The Portuguese Army officials declared that since the suspected assailant was not a member of the Portuguese Army, the case was in the hands of the local civil authorities - consequently there was no Portuguese Army representative present at the investigation). When I first arrived at the police station, I was informed that the men in custody wanted to make statements concerning the crime and the events surrounding it, but wanted to do so in the presence of the American Maritime Delegate and myself. Because of that, all the men held were brought in, with the exception of Marsh, and related the story as detailed in paragraph one to the above mentioned people present before the official police investigation began. They were then all taken from the room, and brought in one at a time to make official statements to the

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Durham and Mon passed the soldiers, and when the soldiers came abreast of Marsh and Jordon, Jordon stepped off the sidewalk, which was about three feet wide, but Marsh remained on the sidewalk. As the sidewalk was rather narrow, the first soldier bumped elbows with Marsh, who then, for no perceptible reason, drew his knife and stabbed this soldier in the breast, piercing his heart. He then stabbed the second soldier in the right shoulder and left side, just above the hip. According to Jordons statement, the second soldier stabbed was backing away from Marsh when he saw his companion stabbed, although Jordon did not see the second stabbing, as he had started to run from the scene. When the second soldier was stabbed, he screamed, which caused Popovich and Durham to turn around. According to their statements they saw Marsh return the knife to its sheath, which he was carrying on his left hip, as the second soldier sagged to the sidewalk. Popovich, Durham and Mon then commenced hurrying towards the dock, and shortly thereafter Jordon and Marsh ran past them, Jordon in the lead. As he passed Popovich, Durham and Mon, Marsh said to them, "I've just knifed a soldier". Those five men continued on to the dock, where Marsh threw the knife into the water, and disposed of the sheath, the disposition of which was not brought out in the investigation. At the time of this report, the knife has not as yet been recovered. These five men were arrested at the dock by the Portuguese Military Authorities, and taken to the police station.

Meanwhile, O'Donnell, Busby, Permenter and Combs were coming along behind the other men, as previously reported. As the street was narrow and rather winding, and as it was also a dark, moonless night, they did not see the action take place but were attracted to the scene by the screaming of the second soldier. When they arrived, there was no one in sight but the two soldiers lying in the street. The first one stabbed was already dead, so they did not touch him, but took the second soldier into a nearby cafe to see if they could help him. However, seeing how badly injured this man was, they put him in a taxicab, and sent him to the hospital, accompanied by an English sailor who had been in company with them. At the request of a Portuguese Army Officer who came upon the scene as they were putting the soldier in the taxicab, the above mentioned four voluntarily proceeded to the police station.

About 0100 February 17, 1944, I was informed by the chief engineer, Mach. H.J. Smith, who had been ashore, that a

21 February 1944.

S-E-C-R-E-T-

From: Commanding Officer.
 To : The Chief of Naval Operations.
 Via : Commander, U.S. Naval Forces, Azores.
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1. While laying at anchor in Horta Bay, Fayal, Azores on the night of February 16, 1944, the following named men left the ship on unauthorized liberty at approximately 2030 by means of bum boats:

BUSBY, K.L., 618-42-76, EM3c, USNR.
 PERMENTER, T.W., 829-24-91, EM3c, USNR.
 COMBS, E.R., 852-03-60, Slc, USNR.
 JORDON, P.H., 268-13-54, StM2c, USN.
 POPOVICH, T., 615-38-15, Flc, USNR.
 O'DONNELL, C.R., 861-97-80, S2c, USNR.
 MON, L.Y., 707-93-14, Flc, USNR.
 DURHAM, W.D., Jr., 653-89-88, Slc, USNR.
 MARSH, S.B., 202-93-17, StM1c, USNR.

Upon reaching the town of Horta, the above named men proceeded to a bar at the far end of town. At approximately 2300 they became engaged in a brawl with a group of English sailors, and in the ensuing struggle two Portuguese soldiers became involved. As a result of this, a large group of Portuguese soldiers closed in, and the above named men left the struggle and started back to the ship. Although they had all been drinking during the evening, only Mon was intoxicated. On their way back to the ship, Popovich and Durham were in the lead carrying Mon, Marsh and Jordon were approximately thirty feet behind them, and O'Donnell, Permenter, Busby, and Combs were approximately one hundred to one hundred and fifty yards behind Marsh and Jordon. About halfway to the boat landing, the group met two Portuguese soldiers, who had not been near the scene of the previous fighting, coming down the street in the opposite direction. The leading group, Popovich,

General held that an enlisted man
 pay status and had no rate of pay upon which
 affirmed and
 on 21 March 1948
 This rule was changed, however, by
 61 Stat. 748, 37 U.S.C., Sup. 964, as amended
 interpreting the Armed Forces Leave Act, III, 33(b)
 enlisted men continue in a pay status
 during periods of unauthori
 Armed Forces Leave Act was
 he status commenced
 after, he was not
 ss Leave Act