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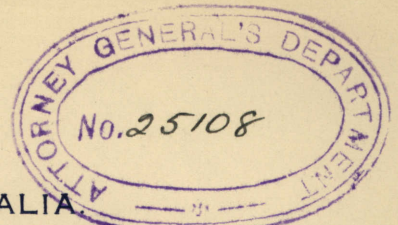
Series number: A471

Control symbol: 25108

Barcode: 7835860

Number of pages: 32

[McGRATH Neville James (Private) : Service Number - N45996 : Unit - 34th Battalion Australian Imperial Force : Date of Court Martial - 13 March 1942]



TELEPHONES :
MXY 440.
CENTRAL 7185.

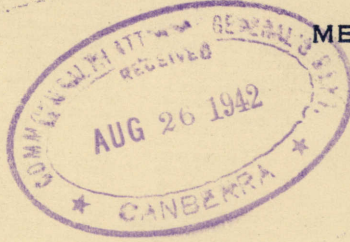
COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF THE ARMY.

No. _____

96336

MELBOURNE, S.C.1.



25 AUG 1942

MEMORANDUM For :-

The Secretary,
Attorney-General's Department,
CANBERRA A.C.T.

D.C.M. N 45996 - Pte. N.J. McGrath.

34 Bn.

I forward herewith the proceedings of the above Court-Martial held at H.G. 34 Bn. on the 13th of March 1942 for record in your Department. I should be glad if you would insert your registration number of the proceedings in the pink form attached and return it to my Department.

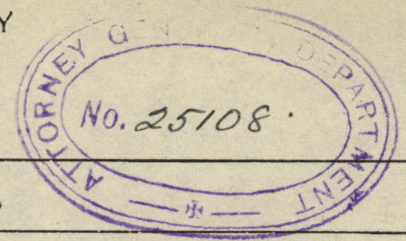
Fr. *2/8/42* *DONE*
Accountant, Attorney-General's Dept.
28 SEP 1942

[Signature]
Accountant
(F. R. Sinclair)
Secretary. *26 18 19 42*
[Signature]

DEPARTMENT OF THE ARMY

MINUTE PAPER

C.3977/40



SUBJECT: D.C.M. N45996, PTE. N.J. McGRATH, 34 BN.

A.G.

With reference to the above District Court Martial held at H.Q., 34 Bn., Balgownie on 13th March, 1942, I have read through the proceedings and report as follows.

2. The order convening the Court was in order, the Officers being of the required rank and having held their commissions for the necessary length of time.

3. The charge sheet was correctly drawn. The accused pleaded not guilty to a charge of absence without leave and was found not guilty and I have no comments to make.

---- 4. I return herewith the proceedings.

J. Horn

8.7.42.

JUDGE ADVOCATE GENERAL.

**AUSTRALIAN MILITARY FORCES
RECORDS OF COURTS MARTIAL**

1. Proceedings of a* District court martial assembled at H.Q., 34 Bn., Balgownie on 13 / 3 / 19 42 for trial of † N.45996, Pte. Neville James McGrath, 34 Bn. convened by order of ‡ Maj.-Gen. C.A. Clowes, D.S.O., M.C., G.O.C., 1 Division dated 10 / 3 / 19 42

	Rank.	Name.	Unit.	Date of first commission.
President	<u>Major</u>	<u>C.A.Hill</u>	<u>A.A.L.D.</u>	<u>1 / 9 / 25</u>
}	<u>Major</u>	<u>E.J.Gerling</u>	<u>34 Bn.</u>	<u>15 / 10 / 26</u>
	<u>Captain</u>	<u>H.C.Edgell,</u>	<u>13 Garr.Bn.</u>	<u>23 / 9 / 18</u>
		<u>M.M.</u>		<u>/ /</u>
				<u>/ /</u>

Number of § Charge	Statement of Offence in Charge	Plea of Guilty or Not Guilty	Finding
1. A.A. Sec.15(1)	Absenting himself without leave in that he at Ingleburn absented himself without leave from 1200 hours on 23rd November 1941 till 0900 hours on 12th January 1942.	Not Guilty	Not Guilty

2. Plea to jurisdiction or in bar, if any, and how disposed of:—

3. Sentence (including recommendation to mercy, if any):—

Date of original signature of President...../...../19.....

*Whether General, District or Field General.
 †No., rank, name and unit of accused.
 ‡Rank, name and appointment of convening authority.
 §Alternative charges to be indicated.

4. Recommendation of suspension of sentence, if any:—

5. Proceedings before confirmation reported upon by:—

6. Minute of confirming authority:—

Signed on...../...../19.....by¶

7. Date of promulgation...../...../19.....

8. Mitigation, remission, commutation or suspension of sentence, if any, subsequent to confirmation, and by whom ordered:—

9. By whom proceedings reported upon after ~~confirmation~~:—

Judge Advocate General

10. Nature of Report:—

Finding valid

11. Remarks:—

¶Name, rank and appointment of confirming authority.

AUSTRALIAN MILITARY FORCES

Form of Proceedings for General and District
Courts-Martial

*All printed matter
not applicable to the
circumstances of the
case should be struck
out and initialed by
the President. See
also instructions on
back of this sheet.

Proceedings of a District Court-Martial held at H.Q. 34th Battalion
on the 12th day of March 1927 by order of Major General
C.F. Bowen D.S.O., M.C.E. Commanding 1st Division
dated the 12th day of March 1927

Instructions

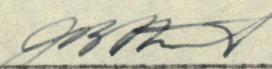
- (1) All documents to be annexed to the proceedings should be signed by the President, marked with a reference letter, and be attached at the end of the proceedings in the order of their production to the Court. The charge sheet will be attached as indicated on Sheet B.
- (2) All questions should be numbered throughout consecutively in a single series.
- (3) All erasures of written or printed matter and all corrections should be initialed by the President.
- (4) All refusals to cross-examine or re-examine a witness should be recorded.
- (5) The fact that R.P. 83 (b) has been complied with should always be recorded.
- (6) Pages should be numbered consecutively up to the end of the proceedings after they have been put together in the proper order.
- (7) The lettering of the sheets "A," "B," "C," "CC," "D," "DD," "E," "F," and "F," corresponds with the similar lettering of the subject-matter in the form of proceedings contained in the Second Appendix to the Rules of Procedure, 1926.
- (8) When no plea of "Guilty" is proceeded with, the sheets lettered "CC" and "DD" will be omitted from the proceedings. When no plea of "Not Guilty" is proceeded with, sheets lettered "C," "D," and "E(1)" will be omitted.
- (9) For any variation of this form, see the Second Appendix to Rules of Procedure, 1926.

The order convening the Court is read, and (if copy thereof) is marked
by the President, and attached to the proceedings.
The names of the President and members of the Court are read over
in the hearing of the accused, and they severally answer to their names.
Do you object to be tried by me as President, or by any of the officers
whose names you have heard read over? Answer—
(When an objection is made it should be recorded together with the consequential procedure
on a separate sheet to follow sheet A.) (For procedure see Second Appendix to R.P. 1926.)

I have satisfied myself that none of the officers detailed as members
of the Court has previously served upon any Court of Inquiry respecting
the matters forming the subject of the charge [charges] before this Court-
Martial.

I certify that N.45996, Pte. N.J. McGrath, is in a good state of health and is fit to undergo trial by Court Martial and that he is *fit* to undergo imprisonment with or without hard labour or detention and this his present appearance and previous medical history both justify the belief that hard labour employment will not be likely to originate or reproduce disease of any description.

Dated at Balgownie 13 Mar. 42.



 (J.B. STREET) M.O. 34 Bn. Capt.

District	COURT MARTIAL
No. N.45996 Pte McGrath M.T.	
EXHIBIT	<i>Medical Certificate</i>
	<i>Cashell</i>
13 MAR 1942	MAJOR President.

A3
SHEET No. 3
TELEPHONE— UJ5352

Australian  Military Forces
Eastern Command

Please quote this Number when replying

--	--	--

Address H.Q. 1 Div.
"Springfort,"
Date STRATHFIELD N.S.W.

ORDER FOR THE ASSEMBLY OF A DISTRICT COURT-MARTIAL.

Orders by Major-General C.A. Clowes D.S.O., M.C., General Officer Command, 1st Division.

The officers mentioned below will assemble at H.Q., 34 Bn. Balgownie, on the thirteenth day of March 1942 at 1100 hours for the purpose of trying by a District Court-Martial the accused persons named in the margin, and such other persons as may be brought before them.

PRESIDENT.

Major C.A. Hill A.A.L.D.) is appointed
President.

MEMBERS.

Major E.J. Gerling 34 Bn.) are appointed
Capt. H.C. Edgell MM. 13 Garr. Bn.) Members

WAITING MEMBER.

Capt. D.C. Ford A.A.S.C.1 Div.) are appointed
Capt. W.F. Jones 13 Garr Bn.) waiting Members

PROSECUTOR.

Capt. A.C. Wallace, A.A.L.D. H.Q. 28 Inf.) is appointed
Bde.) Prosecutor.

DEFENDING OFFICER

Lieut. O.J. Thomas, General Staff E.C.) is appointed
attached 13 Bn.V.D.C.) Defending Officer.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to the A.A. & Q.M.G. 1 Division.

SIGNED this *13th* day of March 1942.

C. Clowes

Major-General,
General Officer Commanding, 1st Division.

C. Hill

Major

PRESIDENT

20 Bn
20 Bn
34 Bn
34 Bn
34 Bn

CARLING Trevor James
WALSH John Vincent
LUKE Edward
BRADES Victor
WALTERS Harold
McCRATH Neville James

Pte
Pte
Pte
Pte
Pte

N 196145
N 30842
N 265547
N 45351
N 130462
N 45996

B

and
The president, members, ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn:

Rank.	Name.	Regiment.
.....
.....
.....
.....
.....
.....

Question to the accused.

Do you object to Spl. G. A. Nicol as shorthand writer?

Answer.

No sir
N218030 Spl. G. A. Nicol is duly sworn as shorthand writer.

Charge-Sheet

The charge-sheet is signed by the president, marked B 2, and annexed to the proceedings next after this sheet.

Instruction.
If the accused has elected to be tried under the A.A., the D.A., or the A.M.R., the fact should be here recorded.

At 1150 hours the trial is adjourned

pending the hearing of other cases

At 1620 hours the trial is resumed.

Present the same members.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read?

Answer.

Not guilty

Question.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Answer.

Question.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Answer.

Question.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Answer.

Question.

Are you guilty or not guilty of the fifth charge against you, which you have heard read?

Answer.

The accused having pleaded Guilty to the charge(s), the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

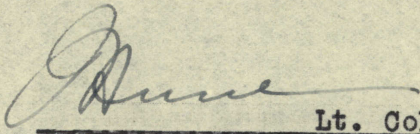
If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge.

CHARGE SHEET

The accused N45996 McGrath Pte. N.J. of "B" Coy. 34 Bn. is charged with having whilst being a soldier of the Military Forces of the Commonwealth of Australia on War Service committed the following offence:-

ARMY ACTSec 15(1)

Absenting himself without leave in that he at Ingleburn absented himself without leave from 1200 hours, on 23rd. Nov 1941 till 0900 hours on 12th. Jan 42.

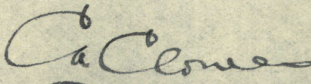

Lt. Col.

J. ANSCHAU
Comd. 34 Bn.

BALGOWNIE

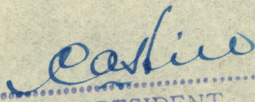
10th. March 1942.

TO BE TRIED BY DISTRICT COURT MARTIAL


Maj. Gen.
C.A. CLOWES
G.O.C. 1 DIV

"Broughton"
Burwood

10 March 1942.


Major
PRESIDENT

Proceedings on Plea of Not Guilty

*Omit this if the accused is represented by counsel or a defending officer.

~~*The President explains to the accused his rights under Rules of Procedure 14 and 15.~~

Question to the accused.

†See R.P. 39 (A).

†Do you wish to apply for an adjournment on the ground that any of the Rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence *on the ground that a legally qualified officer is prosecutor and that you have not had seven days notice of his name rank corps appointment and legal qualifications and desire to obtain legal assistance.*

Answer.

No sir

‡The address, if oral, need not be recorded further than the Court think proper, or the prosecutor requires. R.P.95 (c).

~~§The prosecutor [being required by the Court] makes an opening address [hands in a written address, which is read, marked signed by the President, and attached to the proceedings].~~ *states that he does not desire to address and is not required to do so by the Court*

When Accused does not give Evidence as a Witness

First witness for prosecution.

The prosecutor proceeds to call witnesses.

**Here insert No., Rank, Full Name, Regiment or Corps, and Appointment (if any). If the witness is a civilian, add address.

N265078 Pte John White

being duly sworn, is examined by the prosecutor.

Vide transcript

Notes.—(1) See notes on procedure on back.
(2) The evidence for the prosecution will be taken on separate sheets annexed to the proceedings next after this sheet.

Notes on Procedure on Plea of Not Guilty

Prosecution

The prosecutor may, and if required by the Court must, make an opening address. (R.P. 39 (B).) Use Sheet C, and, if necessary, insert a sheet or sheets and commence the record of evidence at the end of the record of the address.

The evidence for the prosecution will be taken. (R.P. 39 (c).)

Defence

The Court will comply with R.P. 40 (A), and if the accused is not represented by counsel or a defending officer will inform the accused of the provisions of R.P. 30, 40 (c) and (d), and 41 (A) and (B) (i).

The accused will be asked whether he wishes to give evidence himself, and whether he intends to call any witness to the facts of the case other than himself. (R.P. 40 (B).)

If the accused, being represented by counsel or a defending officer, does not wish to give evidence himself, he will be asked whether he wishes to make a statement in addition to the address of his counsel or defending officer.

The subsequent procedure will be according to such one of the following outlines as is appropriate.

When Accused gives Evidence as a Witness,

I.

But calls no other witness to the FACTS of the case—

- (1) Accused will give his evidence. (R.P. 40 (c) (i).) Use sheet D (2).
- (2) Accused may call witnesses as to his character (R.P. 40 (c) (ii).) Use sheet D (3).
- (3) (a) If the accused has called a witness as to character or given evidence of his own good character, the prosecutor may call or recall witnesses to prove a previous conviction or entries in the conduct sheet against the accused. (R.P. 86 (c).) Use sheet D (4).
- (b) By the leave of the Court the prosecutor may call or recall any witness to rebut any material evidence for the defence or give evidence on a new matter which the prosecutor could not reasonably have foreseen. (R.P. 86 (b).) Use sheet D (4).
- (4) Prosecutor may address. (R.P. 40 (c) (iii).) Use sheet D (5).
- (5) Accused or, if he is defended, his counsel or defending officer may reply. (R.P. 40 (c) (iv).) Use sheet D (6).

II.

And calls another witness to the FACTS of the case—

- (1) Accused or, if defended, his counsel or defending officer may address. (R.P. 41 (A) (i).) Insert a sheet for this.
- (2) Accused will give his evidence and call his witnesses, including those, if any, as to character. (R.P. 41 (A) (ii).) Use sheets D (2) and (3).
- (3) As in I. (3) (a) and (b). (R.P. 86 (c) and (b).) Use sheet D (4).
- (4) Accused or, if defended, his counsel or defending officer may address. (R.P. 41 (A) (iii).) Use sheet D (6).
- (5) Prosecutor may reply. (R.P. 41 (A) (iv).) Use sheet D (5).

When Accused does not give Evidence as a Witness,

III.

And does not call any witness to the FACTS of the case—
(a) WHEN NOT REPRESENTED by Counsel or a defending officer—

- (1) Accused may call witnesses as to his character. (R.P. 40 (d) (i) (a).) Use sheet D (3).
 - (2) As in I. (3) (a). (R.P. 86 (c).) Use sheet D (4).
 - (3) Prosecutor may address. (R.P. 40 (d) (i) (b).) Use sheet D (5).
 - (4) Accused may address. (R.P. 40 (d) (i) (c).) Use sheet D (6).
- (b) WHEN REPRESENTED by Counsel or a defending officer—
- (1) Accused may make a statement. (R.P. 40 (d) (ii) (a).) Use sheet D (6).
 - (2) Accused may call witnesses as to character. (R.P. 40 (d) (ii) (b).) Use sheet D (3).
 - (3) As in I. (3) (a) and (b). (R.P. 86 (c).) Use sheet D (4).
 - (4) If the accused has made a statement, counsel or the defending officer, or if the accused has not made a statement, the prosecutor may address. (R.P. 40 (d) (ii) (c).) Use sheet D (5) for prosecutor or insert a sheet for counsel or defending officer.
 - (5) The prosecutor or counsel or defending officer, according to circumstances, may reply. (R.P. 40 (d) (ii) (d).) Use sheet D (5) for prosecutor or insert a sheet for counsel or defending officer.

IV.

But calls witnesses to the FACTS of the case—
(a) WHEN NOT REPRESENTED by Counsel, or a defending officer—

- (1) Accused may make an opening address. (R.P. 41 (B) (i) (a).) Use sheet D (6).
 - (2) Accused will call his witnesses, including those, if any, as to character. (R.P. 41 (B) (i) (b).) Use Sheet D (3).
 - (3) As in I. (3) (a) and (b). (R.P. 86 (c) and (b).) Use sheet D (4).
 - (4) Accused may address. (R.P. 41 (B) (i) (c).) Insert a sheet for this.
 - (5) Prosecutor may reply. (R.P. 41 (B) (i) (d).) Use sheet D (5).
- (b) WHEN REPRESENTED by Counsel or a defending officer—
- (1) Accused may make a statement, or counsel or the defending officer may address. (R.P. 41 (B) (ii) (a).) Use sheet D (6).
 - (2) As in IV. (a) (2). (R.P. 42 (B) (ii) (b).) Use sheet D (3).
 - (3) As in I. (3) (a) and (b). (R.P. 86 (c) and (b).) Use sheet D (4).
 - (4) Counsel or the defending officer may address. (R.P. 41 (B) (ii) (c).) Insert a sheet for this.
 - (5) Prosecutor may reply. (R.P. 41 (B) (ii) (d).) Use sheet D (5).

The Judge Advocate will sum up, unless he and the Court consider it unnecessary (R.P. 42 (A).) Such record of the summing up, will be made as will enable the confirming authority to judge the advice tendered to the Court.

1st Witness for the Prosecution.

N 265078 Pte. John WHITE, being duly sworn is examined by the Prosecutor.

TO THE PROSECUTOR.

Q. You are N 265078, Pte. John White and you are a clerk attached to the Orderly Room, 34th. Battalion? A. Yes.

Q. And you have charge of the Roll Books? A. Yes.

Q. And you are responsible for the direction for the posting of all letters relative to the call-up for Military Training?
A. Yes.

Q. And you were responsible for those things from the 18th November till the present date? A. That is right.

Q. And before the 18th? A. Yes, since about the beginning of November.

Q. Do you produce the Office Postage List? A. Yes.

Q. And a letter posted to the accused? A. Yes.

Q. Do you know the accused? A. No.

Q. Did you post a letter to N 45996, Pte. N. J. McGrath? A. Yes.

Q. And was that sent by registered letterpost? A. Yes.

Q. Is that kept by you? A. No by the Postage Clerk.

Q. That is the Official record? Is it signed up by anyone - that records all mail going out? A. Yes.

Q. And how do you know whether it is a registered letter or not?
A. There is a note made to that effect.

Q. Were you in charge of that book? A. No.

Q. Who would be in charge of it? A. The Postal Clerk.

Q. Where is he? A. He is attached to the 20th Battalion.

Q. Could you get hold of him? A. Yes.

Q. Is that book signed by any Officer? A. No.

Q. Do you produce the Postal List for a letter posted on the 21st. October? A. Yes.

Q. And that is stamped? A. Yes.

(List tendered and marked EXHIBIT 1.)

Q. Do you produce a Postage List slip of a registered Letter posted on the 10th October to Pte. N. J. McGath? A. Yes.

DEFENDING OFFICER. (Objecting.)

The only evidence before the Court is that a registered letter was posted to him on a certain date. What that letter contained I do not know. Whether this man put a letter in the envelope at all, I do not know.

TO THE PROSECUTOR.

Q. Do you know that a true copy of the letter was sent to Pte. McGrath on that date? A. Yes.

(Copy of letter tendered and marked EXHIBIT 2.)

Q. If he had reported at Moore Park, was any provision made for him being transferred to this Unit? A. No, He would be transferred to the 51st Battalion.

Q. Do you produce now, the Postage Sheet for the 21st. October?
A. Yes.

PRESIDENT.

(The Postage List of Registered Call-up notices is produced and inspected by the Court, showing that on the 21st October 41, a registered article, No. 5381 was posted at Military Post Office Ingleburn, addressed to Pte. N.J. McGrath Wollongong.)

TO THE PROSECUTOR.

Q. And that is a true copy of the letter sent to him? A. Yes, a Pro Forma of the letter.

Q. I see, a letter of which was a true copy of that letter sent to Pte. McGrath? A. Yes.

(Copy of letter tendered and marked EXHIBIT 3.)

Q. Was that letter returned? A. That was not returned.

Q. If it had been you would know? A. Yes.

Q. During that time, was he on the strength of the Battalion at all?
A. He was on the strength but had not been marched in.

Q. Have you a Casualty Return showing that he was marched in?
A. I produce a Mob2, showing that he was marched in on the 12th Jan.

(The Court inspects the Mob 2 showing that N 45996, Pte. McGrath, Neville James, was born 1916, medical Class 1, marched in on 34th Battalion at Balgownie on 12th January 1942.)

Q. Between the period 1st. January and the 12th January was any leave granted to the accused? A. No.

Q. Was he in hospital through this unit? A. No.

Q. He was not under detention anywhere? A. No.

Q. And not transferred to any other Unit? A. No.

Q. Do you know the name of the man who kept the books? A. Yes. Cpl. Harrison.

Cross- Examination.

TO THE DEFENDING OFFICER.

Q. Another letter was posted on the 4th December? A. That is correct.

Q. It was sent to McGrath - and what was contained in that letter? A. I produce a Pro Forma of the letter.

(Court inspects a letter dated 1st. December '41, notifying members of the Unit that they are

required to attend training commencing on or about 1st January 1942, signed by the adjutant 34th Battalion. (M.F.I.A.)

Q. Did you know that McGrath made application for exemption some time at the end of October or the beginning of November?

(Prosecution admits that and that the application for exemption was not approved on the 14th Nov., 1941.)

Q. I think the accused wrote a letter to the Battalion on the 30th December '41. Have you a copy of that letter and a reply written on the 3rd. January 1942? A. Yes. (Letters produced.)

(tendered by consent and marked EXHIBITS 4 & 5.)

Q. That was an Enfield address - what was the address before that?
A. 19 Victoria St., Wollongong.

(Rule of Procedure 83 B is not complied with, the Court being of the opinion that it is unnecessary and the witness not desiring it.)

(WITNESS RETIRES.)

(CASE FOR THE PROSECUTION CLOSED.)

D (1)

Proceedings on Plea of Not Guilty

(Continued)

The prosecution is closed.

Defence

Rule of Procedure 40 (A) is complied with [~~and the accused is informed of the effect of Rule(s) of Procedure 40, 40 (c) and (d), and 41 (a) and (b) (i)].*~~

Can

Question to the accused.

Do you apply to give evidence yourself as a witness?—Answer— *yes sir*

Question.

Do you intend to call any other witness in your defence?—Answer— *no.*

Can

Question.

~~Is he a witness to character only? Answer—~~

Can

Question.

~~Do you desire to make a statement in addition to the address of your counsel [the defending officer]?† Answer—~~

*If the accused is represented by counsel or a defending officer, the words in brackets will be struck out and the explanation omitted.
†If the accused elects to give evidence or is not represented by counsel or a defending officer, this question will be omitted and the entry struck out.

D (2)

R.P. 80 (c)

The accused takes his stand at the place from which other witnesses give their evidence.

[Handwritten mark]
*Insert number, rank, name, regiment or corps, or other description.

The accused* N45996 Pte. Neville James McGrath 3ABn.
being duly sworn [and being examined by ~~counsel~~ (the defending officer)] states:—

Vide transcript

257 BOND

257 BOND

DEFENCE.

ACCUSED. N 45996, Pte. Neville James McGRATH, being duly sworn is examined by the defending Officer.

Q. You are N 45996, Neville James McGRATH and you are attached to the "B" Company, 34 Battalion? A. I was, I am in H.Q. Company now.

Q. You did get a letter sometime towards the end of October notifying you that you would be required to attend a camp commencing 1st January? A. Yes.

Q. When you got that letter you made application for exemption? A. No Sir, I received a letter previous to that.

Q. After you received that letter, you did make application for exemption? A. Towards the end of October.

Q. You got a notification sometime in November that that had been refused. A. Yes Sir.

Q. Then you went away from here? A. Yes.

Q. When did you leave Wollongong? A. On the 25th October.

Q. Where did you go to? A. To Enfield.

Q. And there you were in the employ of G. E. Crane and Sons? A. Yes.

Q. You are a single man? A. Yes.

Q. And prior to going to Sydney you resided at 19 Victoria St., Wollongong. A. Yes.

Q. After being in Sydney you went to the Area Officer at Ashfield. A. Yes. I went to Sydney on the 25th October on a Friday and I was in Sydney about two and a half weeks. Then I went to the Area Officer at Ashfield.

Q. You went along to the Ashfield Area Officer? A. Yes.

Q. And whom did you see there? A. I saw Capt. Davidson.

Q. And did you have a conversation with him? A. Yes.

Q. And what did you tell him? A. That I wanted a transfer from the 34th Battalion to the 2nd. Armoured Car Regiment.

Q. Did you tell him why? A. I told him that I was living at Enfield.

Q. Did you give him your address? A. Yes.

Q. And what did he do? A. He referred me to the clerk who took down the particulars, where I was living and where I had been living before. He told me that I would be included in the next call-up for the 2nd. Armoured Car Regiment and that they would be going into camp at Greta or Cowra.

Q. Following that you got a letter sent on to you by your mother saying that you would be required to report about the 1st. January? A. Yes Sir.

Q. What did you do? A. I went back to the Area Office, and I saw a Lieutenant there this time and he told me I would have to get a transfer from the 34th Battalion.

Q. Following that you wrote that letter which is in evidence?
A. Yes.

Q. And you asked for a transfer? A. Yes.

Q. Then sometime early in January you got a letter from your mother? A. Yes Sir.

Q. And what did she tell you? A. She told me that I had to be in camp on Monday 12th January from what the Military Police had told her.

Q. And what did you do? A. I left Sydney and came back to Wollongong on the Saturday previous to the 10th. I came back to camp on the Sunday the 11th.

Q. Whom did you report to? Capt. Sykes was there in the Orderly Room. They told me to come back on the Monday morning the 12th.

Q. And you have been in camp ever since? A. Yes.

TO THE PROSECUTOR.

Q. You reported on the 10th? A. No, on the 11th.

Q. Did you get a letter about the 18th November - a registered letter? A. I could not say anything about dates.

Q. Have a look at that and see if you got a letter similar to that (passes witness copy of letter.) A. No, Sir, definitely never a letter like that.

Q. Well have a look at that, what is that? (Passes copy of letter.)
A. It is a registered article addressed as follows, 5889, Connolly, and 5980 N. J. McGrath, Wollongong.

Q. And what is the date on that? A. 18th November.

Q. And having seen that, you suggest that you did not get a letter about that date? A. No, Sir.

Q. Where was your address at that date? A. 204 Gordon's Pde. Enfield.

Q. And had you notified your change of address before that letter in evidence? A. No, that is the first I wrote.

Q. You gave no written notification of your change of address up till the 20th November '41? A. Yes Sir.

Q. Was your mother still living at the address? A. Yes.

Q. Had you made any arrangements for letters to be forwarded on?
A. She knew my address. She did not send one back because I had to change my address from 204 Gordon's Pde. to 5 Hayden St.

Q. She did not send a letter to you? A. No.

Q. Did you have any idea that you had been called up for Military Service; did you get any notice prior to the 1st. January? A. I received notices to report on the 1st. January, and before that on the 27th. October.

Q. Did you report? A. No Sir, not on the 27th October.

Q. Did you get an exemption from reporting on the 27th October?
A. About 13th. October I got the letter to report on the 27th and I put in for an exemption and about seven days afterwards I

received another letter to report on the 1st. January..

Q. And you did neither? A. I was notified to report on the 27th August and I got another notice to report on the 1st. January.

Q. And you reported neither on the 27th October or on the 1st. January? A. No Sir.

Q. You got no notice to report on the 23rd. November? A. No , I never saw that letter.

TO THE PRESIDENT.

Q. Was it on account of receiving a notice to report on the 1st. January that you wrote this letter on the 30th December? (EXHIBIT 4.) A. Yes.

Q. And you really believed that you would be appointed to the Armoured Car Division? A. Yes, that is what I was told the first time I went there.

Q. Was the H.Q. of the Armoured Regiment the closest Area Officer at which you could report? A. Yes.

Q. It was the closest to 5 Haydon St.? A. Yes.

Q. What is the address? A. It is in the main street at Ashfield - Liverpool Road.

Q. Had you received a notice for the call-up on the 23rd. November, would you have taken action somewhere or other, either by parading or by applying? A. I think so.

NO FURTHER QUESTIONS.

(Rule of Procedure 83 (B) is not complied with, the Court being of the opinion that it is unnecessary and the witness not desiring it.)

(WITNESS RETIRES.)

CASE FOR THE DEFENCE CLOSED.

Pte. Neville J. McGrath
retires.

PROSECUTOR ADDRESSES.

There has been a certian amount of confusion in this case due to the various Call-ups, caused, I presume by the sudden entry of Japan into the war.

There is one thing that stands out, and that is that these men, together with a number of others, have had plenty of letters sent to them.

I think the evidence is clear that he was absent without leave on the 1st, 2nd., 3rd., and on the 10th January and up to the time he reported on the 11th January.

DEFENDING OFFICER ADDRESSES.

I submit that this is a case in which the Court will not find the accused guilty of absence without leave. First of all there is no evidence that he got a call-up round about the 1st. January, and that is the only notification of which, he had.

He had gone along and notified his change of address, as is required by the authorities when he got to Sydney and any evidence of posting of letters, shows that they were posted to Wollongong, and that was not his correct address. That is not sufficient postal address for anybody.

There is definitely no evidence as to the 23rd. November- he got a notice requiring him to report about the 1st. January. He went to Sydney, saw the Area Officer, apparently gave his address there and was misled there.

Nothing more was heard about it and he went along to see what was up. He went and reported himself and immediately made his change of address known and when nothing is heard about it, he goes back again. Then he immediately writes a letter notifying his change of address.

That is not the attitude of a man who is going A.W.L. He gets a letter back saying that he is required to report on the 10th. Any reasonable man would have done the same thing. He might have been one day late. All his actions show that he was bona fide. He has gone and fulfilled his obligations by going back again to the Area Officer. He was there told to write down here and he did.

There was no attempt at evading service, and then finally he comes down here on the 11th and reports for duty and was told to come back on the 12th. The most that can be said about him is that he was one day late.

(COURT CLOSED FOR CONSIDERATION OF FINDING.)

E (1)

Proceedings on Plea of Not Guilty

(Continued)

Finding

The Court is closed for the consideration of the finding.

§Insert number,
rank, name,
regiment or corps,
or other descrip-
tion.

The Court find that the accused§ N 45 996 Dte.
Neville James Mc Grath 34 Bn. is
not guilty of the charge.

The finding is read in
open court and the accused
is released

SIGNED at Balgownie
this 13th day of March 1942

Patino
..... Major
PRESIDENT

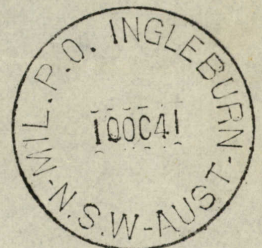
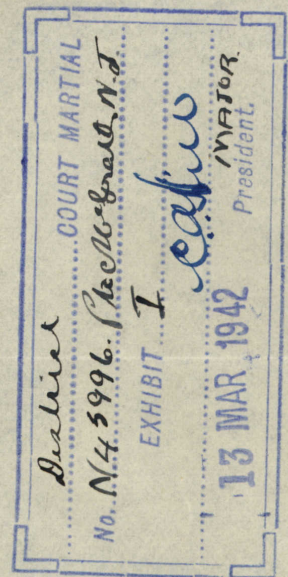
Published in 1 Div. Routine Order No. 12/42
of 24 Mar. 42 and in 34 Bn. Routine Order
No. 30/42 of 27 Mar. 42

W.A. Conway (Sgt.) for Major
L.S.O. DIVISION

34 Bn. "I" Block,
Ingleburn,
10 Oct. 41.

REGISTERED LETTERS

<u>NAME</u>	<u>Reg No.</u>	<u>ADDRESS</u>
Pte. D.V. Minch	4771	Fairy Meadow
" C.H. Birch	4772	Bulli
" J.N. Large	4773	Bulli
" J.D. Markham	4774	Wollongong
" H.S. Street	4775	Wollongong
" E.J. Edwards	4769	Wollongong
" H. Lacey	4770	Figtree
" A.S. Lloyd	4791	Wollongong
" E. Meades	4776	Coledale
" E.R. Upward	4777	Kieraville
" J. McGrath	4778	Punchbowl
" L.G. Chalmers	4779	Wollongong
" R. Churchin	4780	Wollongong
" A. Glynn	4781	Wollongong
" N. Richardson	4782	Jerrara
" H. Cribb	4783	Nowra
" F.R. Ruse	4784	Kiama
" L.G. Mansell	4785	Corrimal
" J. Reeves	4786	Roseberry
" L. Dick	4787	Thirroul
" E.R. Jenkins	4788	Port Kembla
" A. Madden	4789	Wollongong
2 " G. Mulligan	4790	Port Kembla
" A.F. Francis	4792	Port Kembla
" K.D. Davies	4793	Austinmere
" D.B. Denlin	4794	Wollongong
X " N.J. McGrath	4795 X	Wollongong
" N.K. Townsend	4796	Wollongong
" H. Wall	4797	Wollongong
" T. Franklin	4798	Wollongong
" R.J. Scuter	4799	wollongong
" C.N. Hardy	4800	Kiama
" J. Gordon	4801	Woonona
" A. Coates	4802	Kieraville
" R.H. Dudgeon	4803	Albion Park
" L.R. Cocks	4804	Wollongong
" G.C. Chambers	4805	Lake Illawarra
" W.K. Kennedy	4806	Wollongong
" R. Higgs	4807	Wollongong
The E.S. & A. Bank	4808	Wollongong



Received from 34 Battalion the above numbered registered articles

H.T. Richards.

H.T. Richards

34 Bn "I" Block,
Ingleburn.

In pursuance of the provisions of Sec. 47 of the Defence Act 1903 - 1941 you are hereby notified that you are required to serve with the 53 Bn. A.M.F. for service in 7 M.D.

You will report to the Recruiting Depot, Moore Park at 0830hrs. on 27 October 1941.

Should you fail to attend in accordance with the requirements of this notice, you will be guilty of an offence under A.M.F. O. and liable to the penalties prescribed.

Dated at Ingleburn 6 Oct. 41.

J. T. Knight
Lient.
(J.T. KNIGHT) Adj't 34 Bn.

District	COURT MARTIAL
No. N.45996, Pt. M'Grath, N.T.	
EXHIBIT 2	
<i>Leahie</i>	MAJOR President.
13 MAR 1942	

N.

Pte.

*Have Warrant Issued
for Journey.*

45784
*Ad. Francis
Bass St
Port Kembla*

A

34 Bn. "I" Block,
Ingleburn.

Atc D. Doney

You are hereby notified that the period during which your Military Training was deferred has now elapsed.

You will be required to attend a camp of Military Training commencing on 1 Jan. 42.

Should exemption from service be required an application must be made immediately on receipt of this notice, notwithstanding any previous application for exemption. This application must be made on the prescribed forms, copies of which may be had on application to the 34 Area Office, Drill Hall, Wollongong.

..... District	COURT MARTIAL
No. N. 48996.	M'Grath N. I.
EXHIBIT 3	<i>Cashie</i>
13 MAR 1942	ANSON President.

(J. T. KNIGHT)
J. T. Knight
 Lieut.
 Adj. G. 34 Bn.

2 copies not 1 or 3
no name
letters
Let Burgers

5 Heydon St
Enfield

30-12-41.

To The Adjutant,

Dear Sir,

I wish to inform you that I have changed my address and will be going to camp with the Armoured Car Division. I reported at their Headquarters a few days ago & was told to inform you of the change.

I could not do so as I have been ill in bed & could not get up till today.

I Remain Yours Faithfully,
P. McGrath.

Received 2-1-42

Index _____

C.O. **AA** _____

Adjt. **gcb** _____

Mr. **gcb** _____

District	COURT MARTIAL
No. N45996	Pte P. McGrath N.J.
EXHIBIT 4	casier
13 MAR 1942	MARJOR. President.

Quarrel	COURT MARTIAL
No. N. 45996. Pte. N. McGrath, N.J.	
EXHIBIT 5	
<i>Carlin</i>	MPJGR. President.
13 MAR 1942	

1928
 34 Bn. H.Q.
 BALGOWNIE,
 3 Jan. 42.

Pte. N. McGrath,
 5 Heydon Street,
ENFIELD.

re Transfer

Reference your letter dated 30 Dec. 41.

You are required to supply immediately a certificate from the Armoured Car Division to the effect that you are at present in camp with them.

On receipt of this communication you will be transferred to that unit. Should you be unable to supply the certificate by 10 Jan. 42, you are required to report to 34 Bn. Orderly Room, Balgownie Camp at 0900 hrs. on that date.

W. J. Sykes
 (W. SYKES) Adj. 34 Bn.
 Lieut.

SUMMARY OF EVIDENCE.

Court.

On the charge : Absenting himself without leave.
A.A 15 (1).

Against : N.45996, Pte. N.J. McGrath of "B" Coy, 34 Bn.
charged as follows:-

In that he at Ingleburn absented himself without leave
from 1200 hrs. on 23 Nov 41 till 0900 hrs. on 12 Jan
42. A period of 50 days.

Taken by Capt. A.C. Wallace, 28 Inf. Bde. by direction of
Lt. Col. J. Anschau, 34 Bn., the Commanding Officer of the
accused.

The Commanding Officer having directed that the evidence be taken
upon oath, the accused is informed that the evidence will be so
taken.

CASE AGAINST THE ACCUSED.

1st Witness: N.265078, Pte. J. White, 34 Bn., being duly sworn,
states:-

I am a clerk in the Orderly Room of 34 Bn. I am in charge
of the Roll Books of the said Battalion. During November-December
41 I was in charge of the said Roll Books. I am also responsible
for the direction of the postage of all letters relative to call-up
for military training during the same period. I produce the
office Postage List which shows that a registered letter was posted
to Pte. N.J. McGrath, on 21 Oct 41 which omitting formal parts was
as follows:-

"You are hereby notified that the period during which your Military
Training was deferred has now elapsed. You will be required to
attend a Camp of Military Training commencing 1 Jan 42. Should
exemption from service be required an application must be made
immediately on receipt of this notice, notwithstanding any previous
application for exemption. This application must be made on the
prescribed forms, copies of which may be had on application to the
34 Area Officer, Drill Hall, Wollongong."

(see)
I know that the above notice was placed in the said
registered letter and was returned because when any registered letter
are returned to the Orderly Office they are filed and there is no
record of the return of the above letter unclaimed. I produce the
office Postage Book showing that a subsequent letter was sent to
Pte. N.J. McGrath on 18 Nov 41 which, omitting formal parts, was
as follows:-

"In pursuance of the provisions of Section 47 of the Defence Act,
1903-41 and of every other power thereto enabling, you are hereby
required and ordered to report to 34 Bn. Ingleburn, 1200 hrs.
23 Nov. 1941, you are also notified that you may be required to
serve in 7 M.D. at Darwin or elsewhere." Should you fail to
attend as ordered you will be guilty of an offence under the said
Act and the regulations thereunder and liable to the penalty
prescribed."

This notice was not returned unclaimed.

I produce Postage List which shows that a further registered
letter was sent to Pte. N.J. McGrath on 4 Jan 42 which, omitting
formal parts, was as follows:-

"You are hereby notified that you will be required to attend a
camp of Military Training commencing on or about 1 Jan 42.
You will be advised of the time and place of reporting.
Any leave which may have been granted to you is cancelled
forthwith.
Failure to attend in accordance with the requirements of this

with the requirements of this notice will result in disciplinary action being taken.

You are advised to notify your employer of the contents of this notice."

The accused was not advised of the time and place of reporting as set out in the above notice.

I produce postage list which shows that on 12 Dec. 41 a registered letter was sent to Pte. N.J. McGrath which, omitting formal parts, was as follows:-

"In pursuance of the provisions of part IV of the Defence Act 1903-1-3- and the Regulations and Orders made thereunder you are hereby ordered to report to the place of assembly mentioned below at 0900 hrs. on Monday 15 Dec. 41. This order countermands any previous instructions to report on 1 Jan .42 or at any other time. The fact that you claim to be entitled to exemption from service or that an application has been lodged and is still pending is no justification for failure to comply with this order. Failure to report will render you liable to a declaration as a deserter and liable to punishment as provided by the Defence Act and Regulations and Orders in that behalf provided. Clothing and equipment on issue to you will be worn. You are required to bring a cut lunch with you."

This letter was returned by the Postmaster General unclaimed.

The Coy. Roll Book shows the date on which Pte. N.J. McGrath was marched onto strength. There are no records of the accused being present from 23 Nov 41 to 12 Jan 42.

There is no record of the accused being granted leave, being in hospital or transfer to another unit between these dates and there would be a record if same had been done.

Cross Examined by Accused:

Q: Did you receive any letter from me?

A: No.

Evidence read over to witness.

Witness signs. *[Signature]*

Witness withdraws.

DEFENCE.

Question and warning to accused:

Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer: I do not desire to make any statement or give any evidence at present.

N. J. McGrath.

I certify that the above summary of evidence was taken by me at Balgownie, N.S.W. on 10 Mar. 42 and that the requirements of Rules of Procedure, 4, (C) (D) (E) (F) and (G) have been complied with.

*A. G. Wallace Capt.
L. D. O. 28 Inf. Bde*

ROUTE 27

TRAFFIC CONTROL POSTS.

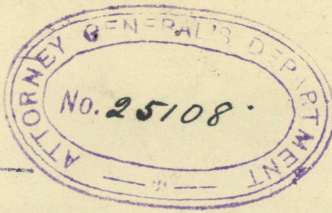
APPENDIX "B"

DESTINATION - LIVERPOOL TO WINDSOR

Via The Oaks, Mulgoa & Penrith.

MAP REF.	LOCATION	DISTANCE M _s . Ch.	ESTIMATED TIME Hrs. M.	TIME PAST POST	CONTROLLED BY	SIGN POST	REMARKS
	Picton cnr. Hume H'way } & Oaks Rd.			Starting Point	Police & Provost Coy.		
	Mowbray Park				Provost		
	The Oaks Hotel	10	43		Cycle Patrol		
	Werombi P.O.						
	Wallaci P.O.	29	53				
	Mulgoa Rd & Great Weatern Rd. Penrith	40	42		Police & Provost Coy.		
	Castlereagh Rd. & Gt. Western Rd.						
	Castlereagh & Windsor Rd.				Bn. Guide		
	Windsor Rd & Richmond Rd.				"		
	Windsor Rd & Blacktown Rd.				"		
	Windsor Rly Crossing				Provost Coy.		
	Windsor P.O.	53	3 32		Police & Provost Coy.		

A471



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