

**CIVIL RIGHTS SHOULD NOT BE
EXTINGUISHED BY MILITARY LAW.**

Courts martial can discharge a useful purpose in satisfying military authorities as to the conduct of military personnel. But the more familiar the public becomes with this form of inquiry, the more it is apparent that courts martial cannot be regarded as a substitute for the country's civil courts which safeguard the civil rights of citizen soldiers. It would be an archaic view to assume that a man entering the army forfeits his civil rights, or to regard a military tribunal as the final court for determining those rights.

In a court martial at Fredericton, a medical officer was charged with having negligently failed to cause further medical examination of Charles Fraser Smith when the latter, appearing before a medical board of which the medical officer was a member, stated that he was diabetic and had been taking insulin. At the conclusion of the trial, Col. Stairs, the presiding officer, declared that the court found the accused not guilty and discharged him from custody. After adjournment Col. Stairs informally called the accused forward and shook hands with him, as did the other military officers. It was unfortunately impossible for them to call Charles Fraser Smith forward and shake hands with him as he had died in the Fredericton military hospital three days after he was approved for military service.

The last witness for the defense was a Halifax

diabetes expert, who felt that the accused had made the only test available at the time—an urinalysis—and believed that he had come to a very reasonable conclusion in believing that the man was malingering. The value of this evidence is destroyed by the assumption that other tests were barred because they were not "available." Every test should have been available where death would follow failure to continue insulin treatments if the man's story was right. It has been stated that Smith had forgotten the name of the doctor who had treated him ten years before, but it should have been possible, by inquiry, to have ascertained from the man where he was treated and thus to have narrowed down the search for the doctor who could have supplied the man's case history.

The defending officer told the court that "to any reasonable man, Smith's story and claim of having diabetes must have sounded like a 'cock and bull' story." Medical boards may have to listen to many cock and bull stories, but these boards could be composed of laymen if the cases before them are to be disposed of by guesswork as to whether the men are malingering or by anything less than the fullest investigation. Medical boards are composed of doctors so that cases may be disposed of in the light of medical knowledge, not on the rough and ready theory that the story of any case sounds like a cock and bull story.

The defending officer further said that the accused "should have approbation rather than find himself haled before this court." The reason for this extraordinary statement is not apparent. It is important only as showing the atmosphere of the court martial.

Apparently the accused was not charged with contributing to the death of Smith, but simply with failure to cause further medical examination of him. For this reason there was no evidence presented to show that Smith had died of diabetes. This, of itself, indicates that the court martial has not satisfactorily dealt with the questions involved in the ordering of a diabetic patient into the army.

This is manifestly a case which should be probed to the bottom and in which the blame, if any, should be placed where it belongs. It is eminently a case in which the Minister of Justice should see that justice is done, and one in which it should be established that civil rights are not to be extinguished by military law.

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