

UNITED STATES v Private (E-1) STEPHEN R. ROWLAND,
556-70-4281, US Army; Private (E-1) ROY A. PULLEY, 555-80-2635, US Army;
Private (E-1) ALAN L. RUPERT, 585-28-8594, US Army; Private (E-1) DANNY R.
SEALS, 562-64-9895, US Army; Private (E-1) RICHARD B. STEVENS, 545-78-3744,
US Army; all of Special Processing Detachment; Private (E-1) RICHARD N. DUNCAN,
TSN 56829186, US Army; Private (E-1) MICHAEL J. MARINO, 567-60-2175, US
Army; Private (E-1) FRANCIS E. SCHIRO, 262-86-7567, US Army; Private (E-1)
BUDDY J. SHAW, TSN 18920140, US Army; Private (E-1) ERNEST C. TREFETHEN,
062-40-3599, US Army; Private (E-1) DANNY L. WILKINS, 561-74-3765, US Army;
Private (E-1) PATRICK A. WRIGHT, 551-74-7286, US Army; all of Correctional
Holding Detachment; and Private (E-2) RICHARD L. GENTILE, 144-38-4174, US
Army, Headquarters Company, Sixth US Army Special Troops, all of Presidio of San
Francisco, California 94129

: CM 421750

* Petition for review by USCMA denied, 42 CMR 356.

United States Army Court of Military Review

42 C.M.R. 668; 1970 CMR LEXIS 743

June 30, 1970

PRIOR HISTORY: [1]** General Court-Martial Convened by Headquarters Sixth United States Army, Presidio of San Francisco, California 94129 (J. A. Hagan, Military Judge).

Sentences adjudged 7 June 1969. Approved sentences: ROWLAND & SHAW: Dishonorable discharge, forfeiture of fifty dollars a month for fifteen months, confinement at hard labor for fifteen months and reduction to the lowest enlisted grade; RUPERT; SCHIRO; TREFETHEN & WRIGHT: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for one year, and reduction to the lowest enlisted grade; DUNCAN: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for twelve months, and reduction to the lowest enlisted grade; MARINO & PULLEY: Dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for fifteen months, and reduction to the lowest enlisted grade; STEVENS: Dishonorable discharge, forfeiture of fifty dollars a month for twelve months, confinement at hard labor for twelve months, and reduction to the lowest enlisted grade; WILKINS: Dishonorable discharge, forfeiture of fifty dollars a month for nine months, confinement at hard labor for nine months, [**2] and reduction to the lowest enlisted grade; SEALS & GENTILE: Bad conduct discharge, forfeiture of all pay and allowances, confinement at hard labor for six months, and reduction to the lowest enlisted grade.

CORE TERMS: sentence, hard labor, confinement, forfeiture, bad conduct discharge, military authority, override, mutiny, concerted, allowances, lawful, usurp, insubordination, evince, disobedience, requisite, military, lesser, willful, invoke,

companion cases, lawful command, defy authority, commissioned officer, factually, amply

COUNSEL: Appearances: Appellate Counsel for the Accused: CPT Paul C. Saunders, JAGC, CPT Monte Engler, JAGC, COL Daniel T. Ghent, JAGC. Appellate Counsel for the United States: CPT Merle F. Wilberding, JAGC, CPT James S. Mathews, JAGC, CPT Benjamin G. Porter, JAGC, COL David T. Bryant, JAGC.

JUDGES: HAGOPIAN, Judge; Senior Judge PORCELLA and Judge BAILEY concur

OPINION BY: HAGOPIAN

OPINION

[*669] OPINION OF THE COURT

HAGOPIAN, Judge:

The appellants were tried in common and stand convicted by general court-martial for the offense of mutiny, ¹ in violation of Article 94, Uniform Code of Military Justice, 10 USC § 894. The offense was allegedly done in conjunction with 14 other persons at the Presidio Stockade, Presidio of San Francisco, California on 14 October 1968. ² At trial each appellant pleaded not guilty and their cases are before this Court on automatic appellate review. Article 66, Code, supra, 10 USC § 866.

FOOTNOTES

¹ The appellant Seals, however, was acquitted of mutiny and found guilty of the lesser included offense of willful disobedience in violation of Article 90, Uniform Code of Military Justice, 10 USC § 890.

² The instant cases are the last of the alleged mutiny cases tried at the Presidio of San Francisco.

[3]** The Congress has conferred factfinding power in this Court which we invoke today on the factual question of each appellants' guilt of the alleged offense of mutiny. Article 66, Code, supra, 10 USC § 866.

In the cases at bar, Government counsel seeks to factually distinguish the instant cases from those of *United States v Sood*, 42 CMR -- (ACMR 16 June 1970) and its companion cases which were disposed of by this Court on the basis of our factual holding in *Sood*, supra.

Government urges that the facts here, unlike those in *Sood*, supra and its companion

