Anatomy of a Court-Martial: The Trial and Execution of Private William Buckner in World War I

Fred L. Borch III
Regimental Historian & Archivist

"I am not guilty of raping Georgette Thiebaux. She consented to the intercourse."[1] These thirteen words, spoken by Private (PVT) William Buckner late in the afternoon on 5 September 1918, could not save him from the fate that awaited him. A little more than twelve hours later, at 6 a.m. on 6 September, PVT Buckner "ascended the scaffold" that had been erected in a field near Arrentierres, France. A "black cap was placed on his head" and a noose placed around his neck.[2] Minutes later, he was dead. He was buried in France and is buried there still.

Accused of "forcibly and feloniously . . . having carnal knowledge of one Georgette Thiebaux"[3] on 2 July 1918, Buckner was tried by a general court-martial that began hearing evidence on 27 July—less than a month after the alleged offense. Found guilty on 30 July of raping this twenty-three-year-old French woman, the efficiency of the court-martial process, and the limited character of the appellate process, were such that Buckner's capital sentence was carried out just five weeks after being announced in open court.[4]

What follows is an anatomy of a court-martial that was both typical and atypical for World War I. Typical in that the accused apparently had no legally qualified counsel to defend him. Typical in that the capital offense of rape[5] was heard by a general court-martial, and that the accused was one of a handful of African-American Soldiers tried and executed in Europe in World War I.[6] But atypical in that a lawyer from the Judge Advocate General's Department was present (though typical in that this lawyer was the prosecutor, that the other "judge advocates" present were from other branches of service, and that they may not have been lawyers at all).

Some facts were not in dispute. Both the accused and the victim testified that they had had sexual intercourse. This sex occurred in an oat field near the town of Arrentieres, about 9:30 p.m. on 2 July 1918. Private Buckner and Ms. Thiebaux also agreed that they were not married.[7] The problem for the accused was that the young French woman testified that the sex was against her will.[8]

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[1] Letter from Captain Herbert E. Watkins, to Chief of Artillery, First Army, American Expeditionary Force (AEF), subject: Report of Execution of Private William Buckner (6 Sept. 1918) (on file with the Records of the Judge Advocate General, Record Group 153, Box 8942, General Courts-Martial 121766).

[2] *Id*. According to the report, the execution was not performed in full view of the company (as would normally have been the case), because of "military necessity." As the execution took place during the allied "Hundred Days Offensive" that ended the war, this is unsurprising.

[3] Under the Articles of War, rape was a criminal offense under Article 92. The 1917 *Manual for Courts-Martial* (*MCM*) defined it as "the having of unlawful carnal knowledge of a woman by force and without consent" (in keeping with the common law definition). This is why the specification uses the words "carnal knowledge" instead of "rape." MANUAL FOR COURTS-MARTIAL UNITED STATES 251 (1917) [hereinafter 1917 *MCM*] (Punitive Articles (Rape)).

[4] Under Article 92 of the Articles of War, "any person subject to military law" who was found guilty by a court-martial of "murder or rape" was required to be sentenced to either "death or imprisonment for life." *Id.* at 248. Having found Private (PVT) Buckner guilty, the court chose the more severe punishment of death by hanging. Note that Article 92, which became effective on 29 August 1916, also provided that, in time of peace, no person could be court-martialed for a murder or rape committed "in the States of the Union and the District of Columbia." *Id*. Of course, this provision did not apply to Buckner, because he was overseas and Congress had declared war.

[5] Rape was a capital offense in many U.S. jurisdictions, including the military, until *Coker v. Georgia*. 433 U.S. 584 (1977). *Coker* held that the death penalty is "grossly disproportionate and excessive punishment for the rape of an adult woman," and is "therefore forbidden by the Eighth Amendment as cruel and unusual punishment." *Id*. at 592 (plurality opinion).

[6] *Inquiry Gets Record of Army Executions*, N.Y. TIMES, Dec. 9, 1921, *available at* http://query.nytimes.com/mem/archive-free/pdf?res=F60E17F83E5D14738DDDA00894DA415B818EF1D3; *see also* JACK D. FONER, BLACKS AND THE MILITARY IN AMERICAN HISTORY 124 (1974). A number of Black Soldiers were also hanged in the United States after being convicted by courts-martial during World War I. *See* Fred L. Borch, *The Largest Murder Trial in the History of the United States: The Houston Riots Court-Martial of 1917*, ARMY LAW., Feb. 2011, at 1–3.

[7] Under the Articles of War, marriage was a complete defense to rape (because an element of the crime was that the intercourse had to be "unlawful," i.e., not between husband and wife). As a matter of law, a husband who forcibly and without consent had carnal knowledge of his wife was not guilty of rape. 1917 *MCM*, *supra* note 3, ch. XVII, sec. VI (Punitive Articles (Rape)). This was also the prevailing law in civilian jurisdictions. *See Criminal Responsibility of Husband for Rape, or Assault to Commit Rape, on Wife*, 18 A.L.R. 1063 (1922). The husband might still be guilty of assault, but not rape, of his wife. *See* State v. Dowell, 11 S.E. 525, 526 (N.C. 1890) (Merrimon, C.J., dissenting); Bailey v. People, 130 P. 832, 835–36 (Colo. 1913) (denying the right of a husband "to control the acts and will of his wife by physical force," collecting cases). *See also* WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 718 & n.52, 731 (2d ed. 1920) (open abuse, including assault, of a servicemember's wife could be punished under the general article, or as conduct unbecoming an officer and gentleman).

[8] Georgette Thiebaux testified in French; her statements were translated into English by a French Army lieutenant who had been sworn as an interpreter. As shown below, her inability to speak English was a material issue at trial.

On 27 July 1918, Georgette Thiebaux took the witness stand, swore to tell the truth, and then told the court members that she had been walking along the road when she was accosted by the accused, whom she had never seen before. He seized her and, despite her screams and struggles, threw her down, dragged her into the field, choked her, stuffed a handkerchief in her mouth, and then raped her. On cross-examination, she insisted that she had been raped and that while she did her "best to resist and defend myself . . . fear took my strength from me . . . I was afraid of only one thing, that he would kill me."[9] This testimony was important in light of the instructions on consent drawn from the 1917 *Manual for Courts-Martial* (*MCM*). These were read to the court by Major (MAJ) Patrick J. Hurley, the Judge Advocate, who served both as prosecutor and legal advisor to the members-only court:[10]

> There is no consent where . . . the woman is insensible . . . or where her apparent consent was extorted by violence to her person or fear of sudden violence. . . .
>
> Mere verbal protestations and a pretense of resistance do not of course show a want of consent, but the contrary, and where a woman fails to take such measures to frustrate the execution of the man's design as she is able to and are called for by the circumstances the same conclusion may be drawn. . . .
>
> It has been said of this offense that "it is true that rape is a most detestable crime . . . but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent."[11]

A telling point for the defense came out on cross-examination, and the alleged victim's prior sexual history was almost raised:

> Q [by defense counsel]. Did the intercourse with the accused pain you?
>
> A. I never felt anything.
>
> Q. This had never happened to you before?
>
> Prosecution: I believe we should give the defense the widest latitude in examining the witness, but this is getting into a personal matter, the bearing of which, on this case, I do not understand. However, I will not object if counsel considers the virginity of the witness a matter of importance in this case.
>
> Defense: I withdraw the question.[12]

To corroborate Mmse. Thiebaux's testimony, MAJ Hurley called two French soldiers as witnesses. These men testified that they had been walking along the road when they heard some screams. They then saw the accused and Ms. Thiebaux coming out of the oat field. When she saw them, the two Frenchmen testified that she ran toward them and exclaimed, "Kill him, he has raped me." They further testified that she was agitated, "looked like a mad woman," and that her clothing was disheveled. Hurley also called a local French gendarme to the stand. The gendarme testified that Ms. Thiebaux reported the rape to the police authorities the following morning and that, when they examined the crime scene, the gendarmes had found the alleged victim's hair comb, breast pin, and the heel of her shoe.[13] Major Hurley also provided Mmse. Thiebaux's bloody clothes for

[9] Record of Trial at 15–16, United States v. William Buckner (Courts-Martial No. 121766) [hereinafter Buckner ROT].

[10] 1917 *MCM*, *supra* note 3, at 47–49. The Judge Advocate of a court-martial (or Trial Judge Advocate) served both as prosecutor and legal advisor to the court, which consisted of commissioned officers only. Enlisted panels and Military Judges did not yet exist. Major Hurley's "assistant judge advocate," First Lieutenant (1LT) Lee C. Knotts, was a Coast Artillery officer. Buckner ROT, *supra* note 9, at 2. Major Hurley is listed as a member of the Judge Advocate Reserve Corps; whether 1LT Knotts or Private Buckner's defense counsel had any legal background is unclear from the record. According to Major General (MG) E.H. Crowder, Judge Advocate General of the Army in 1919, "[w]hile no direct proof by statistics can be adduced, it is common knowledge that the commanding generals in the assignment of counsel . . . have sought to utilize the services of those officers who have already had legal experience." U.S. ARMY OFFICE OF THE JUDGE ADVOCATE GENERAL, MILITARY JUSTICE DURING THE WAR: A LETTER FROM THE JUDGE ADVOCATE GENERAL OF THE ARMY TO THE SECRETARY OF WAR 28 (1919) [hereinafter CROWDER]. According to MG Crowder, the trial judge advocate was normally not a lawyer from the Judge Advocate General's Department "except in a few special cases." *Id.* at 27. The *MCM* did not require the trial judge advocate to be a lawyer, but did require that the judge advocate of a general court-martial have experience as a court member or assistant judge advocate. 1917 *MCM*, *supra* note 3, at 47–48.

[11] Buckner ROT, *supra* note 9, at 6 (quoting 1917 MCM, *supra* note 3, at 252). The defense explicitly relied on these instructions in making the case for consent. *Id.* at 152. The instructions on rape were read to the court-martial *before* any evidence was taken, and were less than a page in length. *Id.* at 6. There were no opening statements; after the Judge Advocate read the charge and the instructions, the president of the court-martial instructed him to "plead the case," and testimony began.

[12] *Id.* at 16. Under the rape instructions read by the Judge Advocate, Mmse. Thiebaux's sexual past would not have been a defense to rape, since "the offense may be committed on a female of any age, on a man's mistress, or on a common harlot." *Id.* at 6. However, over half a century before "rape shield" rules, it might have been allowed to show Mmse. Thiebaux's general propensity to have sex with near-strangers, or even with black men in particular. *See* Story v. State, 59 So. 480, 482–83 (Ala. 1912) (*Story* overturned the conviction of a black man for raping a white prostitute, because the defense had not been allowed to introduce evidence that the prostitute had a reputation for consorting with black men; its brief but explicit discussion of relations between the "dominant" and "inferior" races must be read to be believed.).

[13] Buckner ROT, *supra* note 9, at 21–22, 51–52.

the court's examination (though he did not enter them as exhibits, because they would not travel well with a paper record). Moreover, one of Private Buckner's comrades testified that Private Buckner had boasted about "doing business" with a lady he met on the road, and that this lady had run away, but that he had caught her and dragged her into a wheat field before he "did business to her."[14]

Nineteen-year old PVT Buckner told a radically different story. He had only been in the Army since February 1918, and after completing basic training had been assigned to the 313th Labor Battalion of the American Expeditionary Force (AEF) in France.[15] After being called to the stand, Buckner testified that he had met Georgette Thiebaux at a grocery store and that they had later met several times. They had drunk wine together and also exchanged gifts: she had given him her photograph and some prayer beads; he had given her his watch.

Private Buckner testified that he and Ms. Thiebaux had had consensual sexual relations on 30 June and on 1 July, and had such relations again on 2 July. Specifically, he said he "had connection" with her three times in the oat field that day and that she had not struggled or screamed during the sex acts. But then things had gone awry. Said Buckner: "When we got through she caught me by the arm and she had my watch and she broke a minute hand off it. Then I took the watch away from her."[16] As this was the watch that Buckner had previously given to her, "she got mad." After telling him "me and you are finish," Ms. Thiebaux left the oat field and, once on the road, told two French soldiers walking nearby that she had been raped. Buckner also testified that shortly after his arrest on 5 July, he had gone with Captain (CPT) R. B. Parker, his defense counsel, to see MAJ Hurley. Private Buckner had then told Hurley the whole story of his relationship with Georgette Thiebaux. The three Soldiers—Buckner, Parker, and Hurley—had visited the town and other locations where the accused said he had met the victim and had relations with her.[17]

In rebuttal, the prosecution called witnesses who testified that Mmse. Thiebaux could not have been with the accused on 30 June and 1 July—because she was at her parents' home and at the residence of her sister. Contradicting Private Buckner's testimony that he had conversed with Mmse. Thiebaux in English on these prior occasions, several French witnesses (including her father) testified that she spoke no English; her father also testified that she had never possessed the prayer beads Private Buckner claimed to have gotten from her. The picture he claimed to have gotten from her was damaged, was inscribed "modern dancers" (Mmse. Thiebaux worked in a dry goods store), and could not be identified as hers in court, though a friend of Private Buckner said it had previously depicted Mmse. Thiebaux. No witnesses corroborated their prior meetings. The sister of the owner of the café where Private Buckner said Mmse. Thiebaux had given him wine testified that he, Private Buckner, had been there on the day of the incident, but that Mmse. Thiebaux had not been with him. The alleged victim's parents and the town's mayor also testified "as to her deplorable conditions at the time she reached her home" after the alleged rape.[18]

At the close of the evidence, both sides presented argument. Captain Parker, the defense counsel, went first. He argued a number of factors that, he stressed, indicated consent. When the gendarmes first saw PVT Buckner and Mmse. Thiebaux together, they appeared to be talking together, until she saw them. Mmse. Thiebaux had testified that her clothes had gotten bloody during a struggle with the accused, and that she thought most of the blood was his. But there were "no marks of any character on the accused," there was "not a spot of blood" on his clothes (either the ones he wore or the ones in his barracks bag), and his clothes were not torn: evidence that there had not been a struggle. She claimed to have "felt nothing" during repeated forcible intercourse. The defense counsel pointed out several inconsistencies in the prosecution evidence (such as differing accounts of what Mmse. Thiebaux did after PVT Buckner left the scene), and reminded the court of PVT Buckner's conduct in speaking freely to the prosecutor and showing him where the intercourse had taken place. The defense counsel closed with the following statement:

> In summing up, I would say, that it is the opinion and the firm belief of the counsel for the defense that the one who has made the accusation, Georgette Thiebaux, who has accused William Buckner, made no resistance but consented to intercourse with him. And so we firmly believe, after working upon this case, that William Buckner is not guilty of the charge.[19]

As for the prosecution, MAJ Hurley argued that since the accused admitted that he had sexual intercourse with Ms. Thiebaux, "the only element of rape left to be proved is that

[14] *Id.* at 45.

[15] About 200,000 African-American Soldiers served in the American Expeditionary Force (AEF), of whom 160,000 served as laborers in the Service of Supplies. "They worked night and day, twelve to sixteen hours at a stretch, performing many difficult and necessary tasks." Those in labor battalions, like PVT Buckner, "built and repaired roads, railroads, and warehouses and performed general fatigue duty." FONER, *supra* note 6, at 121.

[16] Buckner ROT, *supra* note 9, at 110.

[17] *Id.* at 103–12.

[18] *Id.* at 155–56. This article can give only highlights from the evidence. In all, twenty-five witnesses testified, and the verbatim transcript fills 187 legal-sized pages.

[19] *Id.* at 153–54.

the carnal knowledge was had by force and without the consent of Georgette Thiebaux." In Hurley's view, the evidence he had introduced – particularly her screams during the incident and her conduct right after – showed that "she was assaulted forcefully and violently" and that the "uncorroborated word of the accused" was the only evidence to the contrary.[20]

Having heard the witnesses, and having had an opportunity to evaluate their credibility under oath, the thirteen members of the court closed for deliberation.[21] When they reconvened, they found the accused guilty as charged. After MAJ Hurley stated that "he had no evidence of previous convictions" of the accused to submit as evidence, the court closed to vote on a sentence. When the panel members reconvened, Colonel Edward P. O'Hern, the president of the court-martial, announced that PVT William Buckner was "to be hanged by the neck until dead" and that "two thirds of the members of the court concurred in the sentence."[22]

Under the Articles of War and the 1917 *MCM*, there was no requirement for PVT Buckner to be represented by a lawyer. Rather, Article 17 stated that "the accused shall have the right to be represented before the court by counsel of his own selection of his defense, if such counsel be reasonably available" ("counsel" in this context did not imply "legally trained counsel"). However, the prosecutor, MAJ Hurley, was an attorney and a member of the Judge Advocate General's Department (JAGD) and that may explain why Buckner had two counsel representing him: Captain R. B. Parker and First Lieutenant (1LT) A. C. Oliver. Interestingly, CPT Parker was a Medical Reserve Corps officer and 1LT Oliver was an Army chaplain (both were present for the execution, and 1LT Oliver gave PVT Buckner his last spiritual comfort). Although the Judge Advocate was charged with the duty of prosecuting a case, the 1917 *MCM* also required him to "do his utmost to preserve the whole truth of the matter in question," and to "oppose every attempt to suppress facts or to distort them."[23] In keeping with this duty, MAJ Hurley raised almost no objections to the defense conduct of the case – preferring a polite inquiry about the relevance of Mmse. Thiebaux's virginity, to which the defense responded by withdrawing the question.

Was there sufficient evidence to find the accused guilty as charged? The accused having admitted under oath that he had had sexual intercourse with the victim, the only element in dispute was whether the sex was by force and without consent. Since the victim was adamant that she had been raped, and there was considerable evidence of "fresh complaint," the court members had enough evidence before them. Ultimately, they weighed the credibility of the French victim against the American accused in making their decision. Doubtless the corroborating details for her story—such as the screams, the blood, his admissions to a fellow Soldier, and the locals' insistence that she spoke no English—assisted them in making this determination; as did the comparative lack of corroboration for his story.

What about the defense? Was it adequate? The apparent lack of legally trained defense counsel meant that the accused was at a serious disadvantage at trial—a disadvantage amplified by the fact that the prosecutor was a lawyer and judge advocate. But the two defense counsel mounted a spirited defense, which included a vigorous cross-examination of the victim that highlighted inconsistencies in her testimony. Their arguments were cogent, making a logical, fact-based argument for consent in the face of a strong prosecution case. It is difficult to imagine how their strategy could have been much improved, even by seasoned defense counsel. Private Buckner had already admitted the sex to a fellow Soldier, so having him keep quiet and fighting the identification case would not likely have helped.[24] The defense's decision to bring MAJ Hurley along while investigating the case in town seems strange, but is understandable under the circumstances. CPT Parker's client had presumably told him the tale of the prior

[20] *Id.* at 155. Like most lawyers faced with inconsistencies in their own sides' testimony, MAJ Hurley had a rehearsed argument as to how common this is in human affairs: "It would be passing strange if such minor conflicts did not exist. The four Gospels are in hopeless conflict on certain minor details, but they all corroborate the salient facts of the incident concerning which they were written." *Id.* at 154.

[21] Convened by Special Orders No. 173, Headquarters Army Artillery, 1st Army, dated 26 July 1918, the court consisted of thirteen officers: two colonels, one lieutenant colonel, two majors, two captains, five first lieutenants and one second lieutenant. Buckner ROT, *supra* note 9, allied papers. The large number of panel members was not an accident, as Article 5 of the Articles of War stated that while a general court-martial "may consist of any number of officers from five to thirteen," it should "not consist of less than thirteen when that number can be convened without manifest injury to the service." Given that PVT Buckner was facing the death penalty, the convening authority likely believed that having thirteen court members was prudent. 1917 *MCM*, *supra* note 3, Articles of War, art. 5.

[22] Buckner ROT, *supra* note 9, at 157.

[23] 1917 *MCM*, *supra* note 3, at 49. Major General Crowder also stated that a trial judge advocate was supposed "to conduct the prosecution, not indeed with the ruthless partisanship frequently to be observed in civil prosecuting attorneys, yet with the thoroughness suitable to the proper performance of his duties." CROWDER, *supra* note 10, at 27. *See also* WINTHROP, *supra* note 7, at 185 (discussing qualifications of the trial judge advocate: "While an officer may readily make himself familiar with the routine of the prosecution of a brief and simple trial, a special training and a considerable body of legal knowledge are required . . . in a case of real difficulty and importance").

[24] Had the accused kept quiet from the beginning, the dynamics of the case might have changed dramatically. On cross-examination, Mmse. Thiebaux admitted that she had not looked at her assailant's face, stating, "He was so ugly that I would not look at him . . . I say he is ugly because he is a [negro] and [negroes] are disgusting." Buckner ROT, *supra* note 9, at 14. While she had later picked him out of his all-black unit a few days later, the alleged attack occurred in the evening, the gendarmes who saw PVT Buckner were not able to identify him, he was not arrested until three days later, and a serious case for doubt might have been made.

relationship, and said where the witnesses were who would back him up. If they *had* backed him up in front of MAJ Hurley, the entire prosecution might have been dropped. When they did not, the defense was still able to argue that Private Buckner's cooperative behavior bespoke his innocence.[25]

In the wake of the disastrous Houston Riots court-martial, the promulgation of General Orders No. 7 meant that Buckner's case was reviewed for legal sufficiency by a Board of Review consisting of three senior judge advocates in the Office of the Acting Judge Advocate General (JAG) for the AEF in Europe.[26] After the convening authority approved the sentence on 8 August 1918, Buckner's case was forwarded to the AEF commander, General John J. Pershing, for action. Under Article 48, only Pershing could confirm the death sentence and, while Pershing did confirm the sentence on 17 August 1918, it was held in abeyance pending review by the Board.

The report of the three officers who reviewed the proceedings, signed by Brigadier General Edward A. Kreger,[27] the Acting JAG, is contained in the allied papers. This report cited several specific pieces of evidence that supported the verdict.[28] The Board of Review concluded that the "conflict of testimony" between Buckner and Thiebaux "presented a question for determination by the court." The Board also found that the "record is without suggestion of substantial error, or of any irregularity justifying comment." Finally, the three judge advocates concluded that "the record in the case is legally sufficient to support the sentence adjudged, approved and confirmed."[29] Kreger's signature reflected that, as the senior ranking judge advocate in Europe, he concurred with the Board's opinion.

Measured by modern standards of due process, PVT Buckner's trial was seriously flawed. First, the prosecutor was a lawyer from the Judge Advocate General's Department while the defense counsel were not, such that MAJ Hurley was much more adept at trying courts-martial. As a military lawyer, Hurley doubtless had more credibility with the members than did his opponents.[30] Second, the death penalty was imposed by a less than unanimous vote and without evidence presented in extenuation or mitigation; and the case was prepared and tried at a breakneck pace that would be unthinkable for a capital case now. Third, the panel that heard the case consisted only of officers; the accused had no right to enlisted members. Fourth, there was no military judge (or other legally trained officer) to rule on evidentiary matters or otherwise ensure procedural due process at the trial; the panel received its instructions from the prosecutor. Fifth, while the accused's case was reviewed by a Board of Review, he did not have counsel representing him in that quasi-appellate forum, though the prosecutor's own review was before them. Nor did he have the opportunity, much less the right, to present evidence to that Board.[31]

These shortcomings aside, a final question remains. Was it possible for an African-American Soldier on trial for raping a white woman to get a full and fair hearing in the Army in 1918? After all, this was a racially segregated Army where racist attitudes toward Black Soldiers were official policy. Army Expeditionary Force authorities issued orders forbidding African-American Soldiers "from conversing or associating with French women, attending

[25] *Id.* at 152. A more cautious strategy would have been to distrust the client and talk to the witnesses *before* involving the prosecution, but this strategy would have had limited value. When the witnesses failed to back up the accused, the defense would still have been fighting a corroborated story with an uncorroborated one in the face of a damning admission by the client.

[26] War Dep't, Gen. Orders No. 7 (17 Jan. 1918). This general order required that any death sentence be suspended pending review of its legality in the Office of the Judge Advocate General, although the reviewing authority was free to disregard any opinion or advice resulting from such review. Given the distance of the AEF in France from Washington, D.C., Acting JAG Kreger established a three-man Board of Review for the AEF, and this body examined PVT Buckner's record.

[27] Edward A. Kreger had a remarkable career as an Army lawyer. Born in Iowa in May 1868, he was admitted to the Iowa state bar in the 1890s and practiced law until the Spanish American War. In May 1898, he entered the 52d Iowa Volunteer Infantry as a captain and subsequently saw combat against insurgents in the Philippine Insurrection. In February 1911, Kreger was appointed a major and judge advocate and his subsequent career reflected his amazing talents as a lawyer: Professor of Law at West Point; legal advisor in the Department of State and Justice of the Government of Cuba; Acting Judge Advocate General of the AEF in France; and Acting Judge Advocate General in Washington, D.C. Kreger was appointed The Judge Advocate General in 1928 and retired in 1931. He died in San Antonio, Texas, in May 1955. U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 148–49 (1975).

[28] The allied papers also include a two-page review by MAJ Hurley for his commander, with arguments and page cites to the record for each item of evidence that supports the conviction, and this prosecution-oriented summary may have influenced the board. He appears to have done this in his capacity as staff judge advocate. *See* CROWDER, *supra* note 10, at 27. No brief for the defense (except the transcript of their closing argument) appears in the file.

[29] Since the Board had been created by a War Department regulation, its powers were advisory only; the Board did not have factfinding power (as do the courts of criminal appeals under Article 66, UCMJ) and a convening authority was under no obligation to follow any opinion issued by the Board.

[30] Major Hurley may have carried extra credibility for other reasons. His citation for the Distinguished Service Medal (when he was a lieutenant colonel) states that he also served as Judge Advocate, Adjutant General, and Inspector General for Army Artillery, 1st Army, during the war, and skillfully conducted negotiations between the AEF and the Grand Duchy of Luxembourg. He was awarded the Silver Star for gallantry in action on the last day of the war for "voluntarily making a reconnaissance under heavy enemy fire." *Hall of Valor: Patrick J. Hurley*, MILITARY TIMES, http://militarytimes.com/citations-medals-awards/recipient.php?recipientid=17723 (last visited Dec. 5, 2011).

[31] On the other hand, the instructions on rape, which required some kind of resistance by the victim to prove non-consent, and the rules of evidence, which did not exclude her sexual past, were friendlier to the defense than the current rules are.

social functions, or visiting French homes."[32] The French liaison officer at AEF headquarters advised his countrymen "to prevent any expression of intimacy between white women and black soldiers," as this would "deeply affront white Americans."[33] Given this racial climate, did the panel that heard PVT Buckner's case weigh the evidence fairly? Would a white Soldier have been found guilty—and sentenced to death—under the same facts?

A sad postscript to this case is contained in the record's allied papers: on 11 March 1919, Buckner's mother wrote to the "Adjutant General, U.S. Army" about her son, whom she believed had been killed in action. She had expected to get some Army life insurance proceeds after her son had died but, as she wrote:

> I have been informed . . . that the circumstances surrounding the death of my son . . . was such as to cancel the insurance. I wrote . . . and asked . . . to tell me the circumstances. In reply, they refer me to you.
>
> Will you please write to me at once, telling me about it?
>
> Yours truly,
>
> Mary Buckner
> 316 Seventh Street
> Henderson, Ky.

There is no record in the Buckner file of any reply to his mother.

Addendum to "Colonel Walter T. Tsukamoto: No Judge Advocate Loved America or the Army More" (The Army Lawyer, May 2011)

As a result of the publicity generated by this article, COL Tsukamoto's family learned that he qualifies for the Congressional Gold Medal authorized for "Nisei Soldiers of World War II." Tsukamoto is the first and only judge advocate in history whose service has been recognized with a Congressional Gold Medal.

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

[32] FONER, *supra* note 6, at 122.

[33] *Id.* Such racial attitudes were then common in the civilian world, see *Story v. State*, 59 So. 480, 482 (Ala. 1912), and perhaps even in France, as evinced by Mmse. Thiebaux's testimony that she found all black men "ugly" and "disgusting."