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COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
WASHINGTON, D.C. 20510

November 8, 1968

Dr. Hector P. Garcia
1315 Bright
Corpus Christi, Texas 78405

Dear Dr. Garcia:

Enclosed is the written report which I have received from Air Force authorities here concerning the case of Airman Basic Rosendo M. Lerma, Jr. together with a "Memorandum of the Appealate Procedures required by the Uniform Code of Military Justice which will be adhered to during the review of this General Court-Martial Case by a Board of Review."

Hoping this information will be helpful to you and assuring you it is always a pleasure to be of assistance, I am

Yours very sincerely,



Ralph W. Yarborough

RWY/cwb

DEPARTMENT OF THE AIR FORCE
WASHINGTON 20330



OFFICE OF THE SECRETARY

OCT 2 8 1968

Dear Senator Yarborough:

This is in further reply to your inquiry relative to the court-martial of Airman Basic Rosendo M. Lerma, Jr. Doctor Hector P. Garcia wrote to you in this regard.

Charges alleging seven specifications of violation of a lawful general regulation by having more than \$1,000 in Military Payment Certificates in his possession, illegally possessing United States currency, and one specification of signing a false official statement were preferred against Airman Lerma. A fully qualified military attorney was appointed to represent him and, after a thorough investigation, five of the specifications were referred to a general court-martial for trial. The remaining charges were dismissed.

At the trial on August 9-10, 1968, Airman Lerma pleaded not guilty. The court, after hearing all the evidence, acquitted him of two of the specifications but found him guilty of the remaining three. He was sentenced to be dishonorably discharged from the service, to forfeit all pay and allowances, to be confined at hard labor for three years and to be reduced to the grade of airman basic.

The court-martial convening authority approved the findings and sentence, ordered Airman Lerma to be confined at the 3320th Retraining Group, Lowry AFB, Colorado, and forwarded the record of trial to the Office of The Judge Advocate General, USAF, for review by the Air Force Board of Review. A fully qualified appellate defense counsel has been appointed to represent Airman Lerma and his case is now being reviewed by the board. The appellate procedures described in the attached memorandum will be followed during review of the case.

Trial records are prepared only in sufficient copies to provide one each to the accused, his appellate counsel and the government appellate counsel. Airman Lerma was furnished his personal copy on September 14; he may wish to loan it to you for your perusal.

Since Airman Lerma's case is subject to judicial review, any comments at this time would be inappropriate. However, it appears that his case is being properly handled and his rights and privileges fully protected.

A similar letter is being sent to the Honorable John Young, House of Representatives, in response to his inquiry.

Your continued interest in Air Force personnel and the administration of military justice is appreciated.

Sincerely,



JOHN E. LINGO, Colonel, USAF
Congressional Inquiry Division
Office of Legislative Liaison

2 Attachments

Honorable Ralph Yarborough

United States Senate

MEMORANDUM OF THE APPELLATE PROCEDURES REQUIRED BY THE UNIFORM
CODE OF MILITARY JUSTICE WHICH WILL BE ADHERED TO DURING THE
REVIEW OF THIS GENERAL COURT-MARTIAL CASE BY A BOARD OF REVIEW

The Board of Review is composed of three attorneys-at-law, who have been selected for the assignment on the basis of their training, experience, and ability in the field of the law. The Board will determine not only whether the record is legally sufficient to support the findings and sentence, but whether the sentence is appropriate under all the circumstances. The Board will set aside all or such part of the findings and sentence as are not supported in law and fact.

If the Board affirms any part of the findings and sentence, the record will be forwarded to The Judge Advocate General, United States Air Force, for his independent consideration. If he concurs in the decision of the Board he will then determine whether the exercise of his clemency powers with respect to the sentence is justified. In making this determination, The Judge Advocate General considers the post-trial report of the military and civilian background of the accused made by the staff judge advocate to the officer exercising general court-martial jurisdiction; the seriousness of the offense; the circumstances surrounding the commission thereof, including aggravating as well as mitigating and extenuating circumstances; the sentence usually approved in cases of this nature; letters submitted in the accused's behalf; and other factors that may be pertinent.

If The Judge Advocate General concurs in the decision of the Board, a copy of that decision and his concurrence therein will be forwarded to the officer exercising general court-martial jurisdiction over the accused for service upon him. When the accused is served with the decision, he will be advised that he has thirty days within which to petition the United States Court of Military Appeals for a grant of review on any error of law he believes to exist in the case. The Court of Military Appeals consists of three judges appointed from civilian life by The President, by and with the advice and consent of the United States Senate.

If the Court of Military Appeals denies the accused's petition for a grant of review, or if thirty days elapse without petition, the officer exercising general court-martial jurisdiction over the accused will be authorized to order into execution such part of the sentence, as affirmed by the Board of Review and concurred in by The Judge Advocate General, as that officer considers necessary in the interests of justice and discipline.

If the sentence as finally approved and ordered executed includes confinement in a disciplinary barracks the case will be reviewed periodically during the term of confinement by authorities at Air Force Headquarters designated by the Secretary of the Air Force to determine the feasibility of the suspension of the sentence as a matter of clemency or release from confinement on conditions of parole. The initial clemency review takes place approximately six months after arrival at the disciplinary barracks, and provision is made for periodic reviews thereafter. During these reviews, reports and recommendations from authorities at the disciplinary barracks, as well as any other information submitted by or on behalf of the accused, will be given careful consideration. The accused may become eligible for parole consideration after serving one-third of the sentence to confinement, but in no case less than six months. Conditions and requirements in connection with parole will be thoroughly explained to the accused by authorities at the disciplinary barracks, and he will be kept currently advised of any action taken in his case.