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## PROLONGED ABSENCE AS PROOF OF INTENT TO DESERT

Alfred Avins\*

### I. INTRODUCTION

RECENTLY, the United States Court of Military Appeals, in *United States v. Cothorn*,<sup>1</sup> reversed a long line of military precedents, dating back at least a century and a half, which had settled the rule in the law of desertion<sup>2</sup> that there being an unexplained prolonged absence, "the court will be justified in inferring from that alone an intent to remain absent permanently."<sup>3</sup> This oft-criticized case<sup>4</sup> has disturbed military lawyers more than any other decision by that Court in recent years.

This article constitutes the second half of a study made of

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<sup>1</sup> 8 USCMA 158, 23 CMR 382 (1957).

<sup>2</sup> UCMJ, Art. 85a(1), 10 U. S. C. Sec. 885 (1958).

<sup>3</sup> Manual for Courts-Martial, U. S., 1951, ¶ 164. In Hearings Before a Subcommittee of the Senate Committee on Military Affairs, 66th Cong., 1st Sess., on S. 64, A Bill to Establish Military Justice 1375 (1919), Professor Edmund M. Morgan "read a provision of the court-martial manual which said that if a man was absent without leave for an extended period, that justified an inference of desertion."

<sup>4</sup> For the latest attack on it, see Fratcher, "Presidential Power to Regulate Military Justice: A Critical Study of Decisions of the Court of Military Appeals," 34 N. Y. U. L. Rev. 861, 881-2 (1959).

the prolonged absence rule by this author. In the first half,<sup>5</sup> this author discussed the history, importance, function, and current status of the prolonged absence rule in the military offense of desertion. This half will deal with the much litigated question of what constitutes a prolonged absence within the meaning of the rule.

This study was undertaken at the suggestion of several reviewers of this author's book on AWOL,<sup>6</sup> who drew attention in their reviews to the need for an examination of this area in light of the Cothern decision.<sup>7</sup> Their expertise in this field makes those suggestions significant in showing the importance of this area of the military law.

## II. THE FUNCTIONAL BASIS FOR DETERMINING WHAT IS A "PROLONGED ABSENCE"

One of the most difficult problems in trying a case of desertion, where the accused is charged with absence without leave with intent to remain away permanently, and the prolonged absence rule is sought to be applied, is to determine the question of how long a period of absence will constitute a "prolonged" absence. The Manual for Courts-Martial gives no guide for this.

This problem is by no means new. It must invariably arise whenever the prolonged absence rule is sought to be applied to a particular case. It has been wrestled with since the earliest reported desertion cases.

To solve the dilemma of finding what a prolonged absence is, there appears to be four solutions, viz.:

1. Junk the prolonged absence rule completely.
2. Leave the determination of what a prolonged absence is to the court in all cases.

<sup>5</sup> Avins, "Proof of Desertion Through Prolonged Absence," 44 Cornell L. Q. 356 (1959).

<sup>6</sup> Avins, *The Law of AWOL* (New York, 1957).

<sup>7</sup> Proof of Desertion, *supra*, n. 5 at p. 357, n. 10. For a later suggestion, see Barron, *Review*, 25 U. of Chi. L. Rev. 698 (1958).

3. Set an arbitrary standard of time beyond which an absence will be deemed prolonged.

4. Attempt to deduce what period of absence can be considered prolonged, taking into consideration the function of the rule and how it can be expected to operate in light of modern living conditions.

Little needs to be said in respect to the first "solution." To eliminate a prolonged absence as a factor from which a court may infer an intent to desert is to virtually repeal Article 85a(1). To treat all unauthorized absentees, regardless of their intent, alike, has a very questionable policy basis. At any rate, this question belongs in the legislative, and not the military judicial branch.

The second solution, although it has inherent vices almost as great as the first, is at least not without some precedent. Thus, one Army Board of Review had this to say:

Determination of the question as to whether an absence is 'much prolonged' \* \* \* within the meaning of the quoted clause, must depend upon the circumstances of the absence. An arbitrary yardstick of time may not be applied. The absence must be so prolonged that, considered in the light of proved causes and motives or in the light of a lack of rational explanation, it leads in sound reason to a conclusion that the soldier did not intend to return.<sup>8</sup>

In spite of the sweet reasonableness which the above so-called "solution" exudes on the surface, it is in fact not a solution but an abdication. It is a confession by military lawyers that they are incapable of further defining the word "prolonged" than to say that it is an absence from which one may infer an intent to desert, with the further note appended that such intent may only be inferred from an absence which is "prolonged." Such circular definition is in reality an abandonment of the entire

<sup>8</sup> CM 213817, Fairchild, 10 BR 287, 289 (1940).

attempt at law formation to a military jury of officers who are even less qualified to determine what absence is prolonged than is a lawyer. This resolution of the problem, with the inevitable crazy-quilt pattern of results, wherein one court will find an absence of five days prolonged while another finds that five months is not prolonged, lacks even the benefits of a lawyer-imposed arbitrary uniformity by which a defendant can at least know at what point the court will switch labels (and punishments) on his unauthorized sojourn. It is a wholesale surrender to the rough justice of the lay fact-finder. Admittedly, there are often times when the law cannot provide precise boundary lines, and when a jury of laymen can come to as satisfactory a solution as a lawyer, in a border area, but this is no excuse for allowing a court-martial to roam as it will throughout the entire range without signposts or markers. The existence of twilight or dusk should not prevent a law officer of a court-martial from declaring that, as a matter of law, noon occurs during the day and midnight during the night. For this reason, the second solution cannot be deemed satisfactory except in very limited circumstances.

The third solution, to select an arbitrary point of time beyond which an absence will be deemed to be prolonged, at least has the merit of being uniform. Indeed, any process by which a point of time is finally selected partakes to some extent of the third solution, for to pick a point of time after which an absence becomes "prolonged" and before which it is not is admittedly somewhat of an arbitrary process. Thus, if 30 days is selected, it is hard to say why 29 days should not be considered as a prolonged absence also. Yet, it must not be forgotten that the selection of some period of time has distinct advantages both for the accused as well as the government. The law is thus rendered certain, and an absentee thereby knows when he begins to run the risk of being tagged a deserter.

However, the selection of a purely arbitrary period of time does have some drawbacks. Chief among them is the fact that it is a dubious test for the statutory standard that the accused

did in fact entertain an intent to make his estrangement from the service a permanent one. (It is only denominated "dubious" because, if the period were well-publicized, it would tend to induce those absentees who intended to come back to do so before their absence became "prolonged," as thus defined, to avoid the more severe penalties of desertion, and thus increase the correlation between prolonged absences and intention to desert in fact.) Another serious objection, although of a much more transitory nature, is that at least one of the judges of the Court of Military Appeals is not likely to take kindly to the idea of having what a "prolonged" absence is determined through a process whereby one of the Judge Advocates General is blindfolded and picks a number out of a hat.<sup>9</sup> There are other disadvantages inherent in a set, arbitrary figure, of a more minor nature, and it therefore appears clear that a better scheme for determining how protracted the absence must be should be found.

The last, and it would seem, the best way of determining what a prolonged absence is would be to use, as a guide, the function of the prolonged absence rule in determining whether the accused entertained the requisite intent to desert, and how the operation of that rule would be affected in light of other factors in society generally which impel or deter this intent.

In discussing the function of the prolonged absence rule, it must always be remembered that a finding of intent to desert is not a necessary consequence of a prolonged absence. Thus, there is no conclusive presumption, or more properly, rule of law, which declares that a person who is absent without authority for a protracted period is guilty of desertion, as there is where a person fraudulently enlists in service without a proper separation from the one in which he currently serves.<sup>10</sup> At most, only an inference is created.

<sup>9</sup> This is the way this author reads Chief Judge Quinn's views in *United States v. Deain*, 5 USCMA 44, 17 CMR 44 (1954).

<sup>10</sup> Art. 85a(3), UCMJ.

One commentator has thus characterized presumptions:

The presumptions which operate to compel the assumption of B upon the establishment of A owe their existence to judicial demands for instruments (a) to furnish an escape from an otherwise inescapable dilemma or to work a purely procedural convenience, (b) to require the litigant to whom information as to the facts is the more readily accessible to make them known, (c) to make more likely a finding in accord with the balance of probability, or (d) to encourage a finding consonant with the judicial judgment as to sound social policy.<sup>11</sup>

Basing an analysis of the prolonged absence rule on the above paragraph, it seems clear that (d) is inapplicable. There appears to be no social policy either in favor of or against inferring an intent to desert from a protracted absence.

On the surface, it might appear that (c) does have some application. Certainly, when an absence is much prolonged, it is more probable than not that the accused at some time decided not to return. However, in a desertion case, the prosecution must prove the requisite intent beyond a reasonable doubt. A mere preponderance of the probabilities cannot suffice. Tested by these standards, therefore, the fact that it is more likely than not that the absentee did entertain the requisite intent, when standing alone, does not justify the presence of the prolonged absence rule.

The situation used to illustrate the first reason given above for the existence of presumptions has an interesting parallel to the prolonged absence rule. Professor Morgan declares in his article that the presumption that a person absent for seven years is dead is designed to solve an otherwise insoluble problem as to whether the person has died or not.<sup>12</sup> Likewise, the prolonged absence rule permits, in a somewhat analogous fashion, the solution of the question as to whether an unauthorized absentee has deserted or not.

<sup>11</sup> Morgan, "Instructing the Jury on Presumptions and Burden of Proof," 47 *Harv. L. Rev.* 59, 77 (1933).

<sup>12</sup> *Id.*, at p. 78.

As Professor Morgan notes, the presumption of death after seven years "has no basis at all in human experience." Quite the contrary, it is generally very much at war with human experience. If a man, 20 years of age, should vanish, his life expectancy would be 50 years more. Of this we have scientific evidence. Moreover, we could not be morally certain that he was dead for at least another 30 years. And yet we fix the time of his demise at only seven years, for we can wait no longer for the settlement of human affairs.

When a recruit of 20 goes absent, we also cannot be certain that he will not return until 80 years have elapsed. Indeed, it is within the range of possibility (however remote) that he has at no time entertained an intent to desert. But, unlike the death of the recruit, it is highly improbable. Human experience would contradict such a holding.

To bridge the gap between the probability that prolonged absence indicates an intent to desert and the requisite moral certainty necessary to convict, one student commentator has suggested, in a somewhat different context, military necessity.<sup>13</sup> The analogy to judicial necessity as the lever which elevates the seven year presumption-of-death rule from a scientific improbability to a rule of judicial conduct normally adopted only when supported by a preponderance of probabilities seems striking. The suggestion of military necessity is not without merit, but it appears that a firmer basis for the rule can be found.

In determining the proper function of the prolonged absence rule, it must always be borne in mind that an inference of intent to desert may not be drawn merely from the prolonged absence alone. The rule also requires that there be "no satisfactory explanation of it." It is therefore always open to the defendant to rebut the possible inference by coming forward and explaining the reason for his absence. This being true, it therefore appears that the main function of the prolonged absence rule is to shift the burden of coming forward with evidence which is almost

<sup>13</sup> Note, 46 Geo. L. J. 354, 359 (1958).



always in the exclusive possession of the defendant. When the defendant fails to adduce evidence, the only logical inference is that his activities during his absence are inconsistent with any other state of mind than an intent to remain away permanently. When he adduces evidence, whether this evidence is enough to dispel the inference created by his absence is a question of fact, and is properly left to the court to determine. As Professor Morgan has declared:

The reasons behind this class of presumptions also require that the evidence produced should be credited by the trier of fact. The control over, or peculiar knowledge of, the actual relevant evidence is not to have its burdensome consequences dissipated by the production of matter which the trier cannot accept as worthy of credence. Such control and knowledge present too fruitful opportunities for fabrication to permit the mere introduction of uncredited testimony to destroy the presumption.<sup>14</sup>

Since the real function of the prolonged absence rule is not to determine what period of absence logically gives rise to an inference of intent to desert *in vacuo*, but rather after what period of time it is logical to shift the burden of explanation to the defendant, it follows that the absence must be long enough so that there is a reasonable probability at the very least that the requisite intent was formed. Since all absentees are aware of all the circumstances surrounding their absences, if they thereafter refuse to divulge those circumstances, it can only mean that these unknown circumstances, taken together with the length of absence, lead in sound reason to the conclusion that at some time the absentee harbored the intent not to come back.

To determine how this minimal period is to be fixed, it is first necessary to decide what test may rationally be used to find the requisite intent. An examination of the circumstances, other than prolonged absence, which are commonly used to find the necessary

<sup>14</sup> Morgan, "Some Observations Concerning Presumptions," 44 Harv. L. Rev. 906, 927 (1931). See also *United States v. Green*, 5 CMR 588, 592 (ACM, 1952).

intent discloses in respect to a surprisingly large number of them a single common denominator, viz., that the accused was reminded of his obligation to be present with his military unit and rejected this obligation in his own mind.

For example, one of the factors mentioned in the Manual for Courts-Martial is that the accused was in the vicinity of military installations and yet failed to surrender. The reason why this would tend to indicate that he had the intent to desert is that each time he saw the installation or various servicemen he must necessarily have been reminded that he was AWOL, yet he consciously chose not to return. Likewise, it has been repeatedly held that where an accused evades apprehension, by assuming a false identity, for instance, this tends to prove that he intended not to return. The reason for this is the same; each time the accused gave a false name or rank, he was reminded in his own mind of his dereliction, yet each of these times he chose not to return. On the other hand, it has been repeatedly held that when an accused is drunk while AWOL, this would tend to lessen the probability that he intended to desert; during the period of his intoxication he probably had no reminders or made no choices not to return.

Of course, it may be argued that each time the accused made the choice not to return, his choice was limited to a temporary sojourn. As to each individual choice, it is true that it is just as probable that the dereliction intended was temporary as it is that it was permanent. However, this is not true collectively. By the laws of chance, as the choices in favor of absence multiply, the chances also multiply that some one of those choices was in favor of a permanent absence. Thus, as the absence becomes more and more prolonged, and the choices made in favor of absence increase, it becomes progressively more probable that one of those choices (and not, of course, necessarily the last one), was made in favor of desertion, until a point is reached where a court-martial of reasonable military men can be morally certain that

one of those choices was made in favor of a permanent absence.<sup>15</sup> And to prove desertion, the prosecution need not prove which choice made was the vital one; it is sufficient to establish that some one of them was, for an absence without leave becomes desertion when the accused entertains, even for a fleeting moment, the intent not to return. Hence, to find the minimum period which could be categorized as "prolonged," one must find that period during which a sufficient number of reminders were presented to the defendant so that his failure to return gives rise to the inference that during one of these reminders he decided not to return at all.

In selecting a period of time, military courts should not operate *in vacuo*. They should select that period of time which is most likely to be of actual significance to an absentee. While the selection of a month is, admittedly, to some extent arbitrary, it appears to be less arbitrary than any other period of time.

A month is a definite and distinct period in time in American life. The end of the month constitutes a time of special significance in the commercial world. Bills are sent monthly, bank statements are sent monthly, and numerous other everyday business transactions are on a month-to-month basis. Typically, the period of grace for the late payment of an insurance premium is 30 days. Indeed, it may be said to be an analogy to AWOL, although it is somewhat perverted, that vacations in industry and furloughs in the service generally last no more than a month. American servicemen, being part of the American community, know the significance of the end of a month's time as a period of reassessment of one's position.

More to the point, after a month of AWOL has elapsed, the absentee has failed to receive a pay check, and is thus graphically reminded of the ever-growing length of his absence. The elapse of a month's time therefore becomes a logical and convenient time

<sup>15</sup> That is why the period during which an accused was in jail, although counted as AWOL, is not considered part of the prolonged absence necessary to prove the requisite intent to desert. During this period, the accused had no opportunity to make choices to stay away. See *United States v. Mize*, 11 CMR 587 (NCM, 1953).

for an absentee to reassess his position, and if he still does not return, a court of men familiar with the significance of this period, under some circumstances may reasonably begin to believe that the absentee harbored, deep in the recesses of his mind, an intent not to come back at all.

Such fragmentary scientific and social science evidence as is available tends to support the conclusion that the loss of a pay check and the withdrawal of a source of funds from the accused for an entire month, especially where he is subsisting without benefit of military rations or messes, barracks or quarters, and other necessities of life normally provided by the military service, constitutes a sharp reminder to the accused of his dereliction. Thus, in one of the earliest studies of the causes of desertion, it was noted that the financial difficulties of the accused, and the attractiveness of higher pay from civilian jobs, was a major cause for desertion, and more significantly, as a motive, it caused proportionately more desertions than AWOLs.<sup>16</sup> The commentator then went on to note that "In general, the statement is correct that desertion occurs when the 'pull outward' exceeds the 'pull inward.'" <sup>17</sup> Since the fact that accused has lost his source of funds is a strong "pull inward," it appears to follow that such a strong "pull outward" as would outweigh this factor after the accused begins to feel the financial pinch resulting from his absence may properly serve as the basis for an inference that this urge has impelled the accused to contemplate a permanent separation from the service.

Several naval studies made at the end of World War II also cast light on this problem. In one study of a thousand sailors who had committed desertion, AWOL, or AOL, it was found that only 30% are absent over 30 days, and the percentage absent over 90 days is only 7%.<sup>18</sup> Since, in another study of motives for

<sup>16</sup> Woodbury, "Causes for Military Desertion; A Study in Criminal Motives," 12 J. Crim. L. & Crim. 213 (1921).

<sup>17</sup> *Id.*, at p. 218.

<sup>18</sup> Locke, Cornsweet, Bromberg and Apuzzo, "Study of One Thousand Sixty-Three Naval Offenders," 44 U. S. Naval Medical Bulletin 73 (Jan. 1945). Of this group, selected at random, 1,000 had been sentenced because of unauthorized ab-

these unauthorized absences, it has been shown that the reasons given for absence without leave are almost all of a very non-compelling nature,<sup>19</sup> it would seem to follow that any serviceman who goes absent without leave should be able to return in a relatively short period of time if he intends to return at all, and that most of those who do intend to return do come back in a relatively short period of time.

In one study of particular interest, the authors found that, of the men interviewed, 76% had intended to remain away less than 30 days.<sup>20</sup> They also stated that, according to the admissions of the absentees themselves, "Money problems played a role in causing 48% to absent themselves. About 45% of the group surrendered when they were 'broke.'"<sup>21</sup> They have also concluded:

Invariably the man who surrenders is broke. Many who are apprehended freely admit that they would have surrendered earlier except that their money held out or that civilian employment was so easily obtained.

There is a close correlation between pay day and absence. Most absences occur immediately after men draw pay.<sup>22</sup>

From all of the above, it can be concluded that a period of absence of no less than 30 days should be necessary for a finding of a prolonged absence. Only after 30 days has elapsed can it be said that the absentee has been gone sufficiently long so that the

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sence. Of these 1,000 absentees, 758 had been AOL and 242 had been AWOL. The average absence over leave was 33.09 days; the median was 15.93 days. The average absence without leave was 36.25 days; the median was 23.20 days. Those AOL over 90 days were 52 in number; between 60 and 90 days, 52 in number; and between 30 and 60 days, 122 in number. Those AWOL over 90 days were 17 in number, between 60 and 90 days, 16 in number, and between 30 and 60 days, 49 in number. No distinction was made between those convicted of desertion and those convicted only of unauthorized absence.

<sup>19</sup> Bromberg, Apuzzo, and Locke, "A Psychological Study of Desertion and Over-leave in the Navy," 44 U. S. Naval Medical Bulletin 558 (March 1945).

<sup>20</sup> Boshes and Hermann, "Study of the Naval Delinquent by Questionnaire," 38 J. Crim. Law & Crim. 218 (1947) at 224, #24.

<sup>21</sup> *Id.*, at 227, #43. For the financial effect on the family of a serviceman who is AWOL, see Chappell, "Naval Offenders and Their Treatment," 9 Federal Probation, April-June 1945, No. 2, p. 3.

<sup>22</sup> *Id.*, at 230.

burden of explanation should be shifted to him under any circumstances.

For reasons similar to those noted above, it appears from a functional standpoint that the outermost limit which a court ought to be able to go in finding that an absence was not prolonged is 90 days. It seems clear that after a quarter of a year an accused has had sufficient choice-points so that his failure to return should invariably place upon him the burden of explanation. In addition, a three-month period also has significance of its own. Many business transactions are on a quarterly basis, such as the payment of various kinds of taxes, insurance premiums, dividends, and interest. Here again is another turning-point period, and if the accused still fails to return, it seems that any rational group of military men can logically infer, absent a sufficient explanation, that the accused at some point intended never to do so.

### III. THE PRECEDENT BASIS FOR THE DETERMINATION

#### 1. WHAT PRECEDENTS CAN BE INCLUDED

The section above has formulated a functional basis for determining what a "prolonged" absence is. The precedent basis for making that determination will now be taken up.

Before discussing specific precedents, however, it must be noted that not all desertion cases which are found in the appendix will be discussed herein. The large majority of these cases will not be discussed specifically.

While all of the cases in the appendix bear to a greater or a lesser extent on what a "prolonged" absence is, most of them turned in large part on other circumstances in the case, or are repetitive of cases which will be discussed and which are better known or of more significance. The only cases which will be discussed specifically herein are those in which the reviewing tribunal explicitly, in its opinion, dealt with the question of

whether the absence was prolonged or not, or, in a few instances, where the decision is for other reasons of special interest. For all other cases, reference should be made to the appendix.

Cases, for the purposes of discussion, have been divided up into seven groups according to the length of absence involved. The first group, involving absences from a fraction of a day to ten days, was chosen because old Army and Navy regulations required that an accused be dropped as a deserter after a ten-day absence.<sup>23</sup> The second group, involving absences from 11 days to 30 days, was selected because current service regulations provide that an absentee be dropped as a deserter after 30 days and because the 1954 Amendment to the Table of Maximum Punishments provides for a substantially higher maximum penalty for AWOL in excess of 30 days.<sup>24</sup> The third group, involving absences from 31 days to 60 days, was set up because the Table of Maximum Punishments of the 1951 Manual provided for a substantially higher maximum penalty for unauthorized absences in excess of 60 days.<sup>25</sup> The remaining groups, absence from 61 days to 90 days, absence from 91 days to six months, and absence for over six months, were selected on the basis of the groups which the precedents themselves seemed to fall into most readily, on the functional basis of the rule itself, and on the basis of periods beyond which a higher penalty might be imposed for unauthorized absence or desertion in present or past tables of maximum punishments and other similar sources.<sup>26</sup>

<sup>23</sup> See *Reed v. United States*, 252 Fed. 21 (2d Cir., 1918); *Howland*, Dig. Ops. JAG 1862-1912 (Wash. 1912), Desertion, XVIC5, p. 421.

<sup>24</sup> Executive Order 10565, September 28, 1954. The 1917 manual also used thirty days for this purpose. Manual for Courts-Martial, U. S. Army, 1917, ¶ 349, p. 162. In regard to current regulations regarding dropping absentees as deserters, see AR 630-10, ¶ 2d; U. S. Navy BuPers Manual Art. c-7806, p. 174; and AFM 171-6, Chap. 3, § A, ¶ 2d, p. 18. See also *Pay of Knicker*, 23 Comp. Gen. 44 (1943).

<sup>25</sup> Manual for Courts-Martial, U. S., 1951, ¶ 127c, p. 220. This is also true for certain prior manuals. See Manual for Courts-Martial, U. S. Army, 1921, ¶ 349, p. 277; Manual for Courts-Martial, U. S. Army, 1928, ¶ 104c, p. 97; Manual for Courts-Martial, U. S. Army and U. S. A. F., 1949, ¶ 117c, p. 134.

<sup>26</sup> For example, after an unauthorized absence of three months, the President was formerly authorized to drop an officer from the rolls of the Army for desertion. Act of Jan. 19, 1911, c. 22, 36 Stat. 894, and R. S. § 1229, formerly 10 U. S. C. A. §§ 574, 575, repealed May 5, 1950, c. 169, §§ 14(b) and (c), 64 Stat. 147. And see *Newton v. United States*, 18 Ct. Cl. 435 (1883). In the New York State Con-

## 2. ABSENCE FROM A FRACTION OF A DAY TO TEN DAYS

An examination of the precedents wherein the defendant was convicted of desertion for an absence without leave which did not exceed ten days reveals that in almost all of the cases, both where the appellate tribunal sustained the conviction as well as where it reversed the finding of intent to desert, there were other circumstances in the case which would, or seemed as if it might have, under different circumstances, justified an inference of intent to desert. In no case whatsoever was a conviction sustained on the mere length of absence alone. Typically, the reviewing tribunal would discuss at length the other circumstances, and not consider the period of absence at all. As one Board of Review declared of a six-day absence: "It is no matter that the absence was short; the brevity thereof was not of his making."<sup>27</sup> After detailing the other circumstances, the Board also declared: "Under such circumstances the duration of the absence has but little weight."<sup>28</sup>

The few cases which have categorized absences of ten days or less have uniformly agreed that under no circumstances could they be considered "prolonged." One Air Force Board of Review, for example, in affirming a conviction for desertion where the accused was absent only two days, made it clear that the length of absence was not at all probative.<sup>29</sup> And one Army Board of Review called an absence of seven days a "brief period" of absence,<sup>30</sup> while another said of the same period of time: "It is obvious that the findings of guilty of desertion in this case does not and may not rest on the length of accused's unauthorized

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stitution, Art. 12, § 6, the Governor may remove an officer who has been AWOL for six months. The maximum limit of punishment for unauthorized absence was increased in the 1895 table of maximum punishments after 10 days, after 30 days, and after 90 days, and for desertion after 30 days. Manual for Courts-Martial, U. S. Army, 1895, p. 53 et seq.

<sup>27</sup> ETO 9843, McClain, 21 ETO 223, 225 (1945).

<sup>28</sup> *Ibid.*

<sup>29</sup> United States v. Patton, 3 (AF)CMR 156 (ACM 1950).

<sup>30</sup> ETO 7379, Keiser, 18 ETO 109 (1945).



absence, but on other circumstances shown by the record of trial.'<sup>31</sup>

Of special significance is the holding of the Court of Military Appeals in *United States v. Isenberg*.<sup>32</sup> In this case, the accused was convicted of desertion, based on a ten-day unauthorized absence and a confession of intent to desert. The court held that such a short absence could not serve as the corpus delicti upon which to allow the introduction of a confession of desertion, and hence there was insufficient evidence of the requisite intent. It declared:

Evidence of a short absence without leave does not show that the offense of desertion has probably been committed. There is a total absence of facts or circumstances from which an intent not to return to the service may be inferred. \* \* \* Summed up, we find ten days' unauthorized and unexplained absence as the only fact from which we must find that the offense of desertion was probably committed. Without such a finding the confession cannot be used in evidence. When we consider the probabilities which might be extracted from these facts, they are weighted in favor of absence without leave and against desertion.<sup>33</sup>

It is thus clear that an unauthorized absence of ten days or less may never be found to be "prolonged." Hence, it must be held not to be a "prolonged" absence as a matter of law.

### 3. ABSENCE FROM ELEVEN TO THIRTY DAYS

The precedents dealing with unauthorized absences for periods between eleven and thirty days are of particular interest because, although they do not generally hold that such absences

<sup>31</sup> CM 336419, Halprin, 5 JC 301, 321 (1950).

<sup>32</sup> 2 USCOMA 349, 8 CMR 149 (1953).

<sup>33</sup> *Id.*, at p. 156. See also 1919 Senate Hearings, *supra*, n. 3 at p. 186, in which former Acting Judge Advocate General Ansell said: "that would indicate that he was not a deserter, less than 10 days, which is the presumptive period changing absence without leave into desertion."

are prolonged, nevertheless, they do approach the borderline area as to what a prolonged absence is. There are a fairly representative group of cases in this area, both sustaining convictions of desertion below, as well as reversing such convictions.

In all of the cases in which convictions of desertion were reversed, the opinions are clear that an absence of thirty days or less is not a prolonged absence. To this effect, and of special interest, are a group of pre-World War II Army Board of Review cases. Thus, one Board made reference to "the brevity of his unauthorized absence" in speaking of a 14-day absence without leave.<sup>34</sup> Likewise, where the period of unauthorized absence was 18 days, it was held: "The Board of Review is convinced that the absence in this case cannot properly be deemed 'much prolonged.'"<sup>35</sup>

Somewhat longer periods have received a similar treatment. Thus, a 24-day period of AWOL was characterized as "not prolonged" in one case,<sup>36</sup> while a 20-day period was held to be an "absence \* \* \* of short duration" in another.<sup>37</sup> And in one of the earliest reported Army Board of Review cases, speaking of an absence of 20 days, it was held: "The Board of Review is convinced that the absence cannot be deemed 'prolonged' when viewed in the light of all the circumstances of the case."<sup>38</sup>

Several later cases have taken the same position in regard to comparable periods of absence.<sup>39</sup> Thus, in one early case from the European Theater of Operations, which involved an absence of 22 days, a Board held that "a period of unauthorized absence as short as the one in this case, together with the circumstances of his apprehension, are insufficient to justify the inference of an

<sup>34</sup> CM 195988, Parr, 2 BR 313, 315 (1931).

<sup>35</sup> CM 196187, Roath, 2 BR 333, 334 (1931).

<sup>36</sup> CM 223648, Nugent, 14 BR 39, 41 (1942).

<sup>37</sup> CM 198750, Knouff, 3 BR 299, 300 (1932).

<sup>38</sup> CM 189658, Hawkins, 1 BR 175, 177 (1930).

<sup>39</sup> United States v. Smith, 5 CMR 178 (CM 1952) (19 days); ETO 16196, Leone et al, 30 BR 257 (1945) (20 days); United States v. Geving, 4 (AF)CMR 128 (ACM 1950) (24 days). In all of these cases the absence was held not to be "much prolonged."

intent to desert the service.’<sup>40</sup> In a somewhat later case, it was likewise held: “In this case the absence was of 25 days’ duration, a period which is not so ‘much prolonged’ as to raise in and of itself an inference of the required intent.”<sup>41</sup> And in a case decided just before the commencement of the Korean War, a Board characterized as a “tenuous assumption that an unexplained absence of 26 days was sufficient to show an intent to desert.”<sup>42</sup>

A decision in this area of particular interest is *Private Rowland’s Case*.<sup>43</sup> In this case, the accused was gone a full 30 days. Nevertheless, a conviction of desertion was reversed, with the Board of Review describing the absence as a “short period”<sup>44</sup> in one place and a “comparatively brief period of absence”<sup>45</sup> in another. And in evaluating these holdings, it must be remembered that the power of Army Boards of Review prior to 1951 was not as extensive as it is today. The present boards may weigh the evidence, and reverse as a matter of fact,<sup>46</sup> but the old boards were, as a rule, limited solely to errors of law.<sup>47</sup> Hence, these cases in effect hold that an absence of less than thirty days is not prolonged as a matter of law.

A group of cases in which a finding of intent to desert was upheld also reinforced the above doctrine.<sup>48</sup> Thus, one case de-

<sup>40</sup> ETO 1567, Spicocchi, 5 ETO 57, 58 (1944). See also CM 213817, Fairchild, 10 BR 287 (1940).

<sup>41</sup> ETO 8631, Hamilton, 19 ETO 355, 357 (1945).

<sup>42</sup> CM 344253, Murphy, 10 JC 125, 128 (1950) (BR) rev. on other grounds, 10 JC 130 (1950) (JC, TJAG). See also CM 229525, Sower, 17 BR 167 (1943).

<sup>43</sup> CM 200601, Rowland, 4 BR 351 (1933).

<sup>44</sup> *Id.*, at p. 352.

<sup>45</sup> *Id.*, at p. 353.

<sup>46</sup> UCMJ, Art. 66, 10 U. S. C. A. § 866.

<sup>47</sup> Article of War 50½, 10 U. S. C. A. § 1522.

<sup>48</sup> *United States v. Cochran*, 7 CMR 490 (ACM 1952) (11 days); ETO 9333, Odom, 20 ETO 301 (1945) (20 days); ETO 8632, Golding, 19 ETO 361 (1945) (29 days); *United States v. Roux*, 3 CMR 232 (CM 1952) (29 days). In all of these cases, it was held that an intent to desert could not be inferred from the period of absence alone; and that it was, however, properly inferred from other factors present in the case. In 1919 Senate Hearings, *supra*, n. 3 at p. 508, Capt. Eastwood, British Army, Court-Martial Officer, District of London, during World War I said to the same effect: “If a man is absent under a month and surrenders, then we alter the charge to absence without leave. If absent over a month, and arrested, let the charge go and let the court hear it [desertion]. It is a rough rule we have in the office.”

scribes an absence of 18 days as "of comparatively short duration,"<sup>49</sup> another declares that absences of 19 days and 23 days "were not of long duration,"<sup>50</sup> while still a third categorizes a 22-day absence as a "brief period" of AWOL,<sup>51</sup> and each of them hold that it is only the other circumstances in the case which permit the finding of an intent to stay away permanently. Likewise, in a case in which there were three consecutive AWOLs, a Board had this to say: "As for the first absence, \* \* \* the duration (17 days) is too short to give rise in itself to any such inference."<sup>52</sup> And in a similar case, another Board declared: "As to the first desertion \* \* \* the duration of the absence (25 days) is not in itself sufficient to raise such inference."<sup>53</sup>

Opposed to the authority outlined above are a small group of cases which hold or imply that an absence of less than thirty days is, or can be under some circumstances, prolonged. The earliest of these cases is a very old English decision in which an officer who was AWOL for 28 days, and then was arrested, was held to be properly convicted of desertion,<sup>54</sup> but there was no opinion written on this. A similar implication can be found in a more recent American naval decision.<sup>55</sup>

The third decision implying that an absence of this duration

<sup>49</sup> ETO 15814, DeLoggio, 30 ETO 19, 21 (1945).

<sup>50</sup> CM 270939, O'Gara, 45 BR 371, 378 (1945).

<sup>51</sup> ETO 7379, Keiser, 18 ETO 109 (1945).

<sup>52</sup> ETO 9681, Bennett, 21 ETO 159, 162 (1945).

<sup>53</sup> ETO 9957, Robinson, 21 ETO 255, 257 (1945).

<sup>54</sup> James, *A Collection of the Charges, Opinions, and Sentences of General Courts-Martial (1795-1820)* p. 300 (London, 1820), Asst. Surgeon J. H. Kennedy (1809).

<sup>55</sup> In CMO 11-1928, P. 8, the accused was AWOL for 24 days, when he was apprehended. The convening authority disapproved the finding and sentence, holding that the intent to desert was not proved, and that only absence over leave was proved. The Judge Advocate General of the Navy said, however:

"The evidence adduced in this case was sufficient to justify a finding of guilty of the charge of desertion. The judge advocate proved that the accused was granted liberty to expire at 7:30 a. m., June 1, 1928, that he failed to return from that liberty, and that he was delivered on board the U. S. S. *Rigel* on June 25, 1928, thereby establishing a prima facie case.

"The specific intent (to permanently abandon the naval service) may be inferred, and generally must be, from the acts of the accused—circumstances and duration of unauthorized absence, or the fact that he was apprehended and forcibly returned, or other circumstances of the case."

may be prolonged, *Captain Lowrance's Case*,<sup>56</sup> involved an AWOL of only 12 days. This holding is an example of the general sloppiness which some pre-1951 Boards of Review on occasion approached cases before them.<sup>57</sup> The accused, a captain in command of a mess company, was ordered to have his cooks in white uniform for a general's inspection. They were unavailable, and he could not comply. On April 27, 1941, accused called his commander long distance, told him that he had been relieved of his command, and was going home. On April 28, accused was marked AWOL. On April 29, accused's commander received a telegram from the accused at his home town reading as follows: "Have retired to my home 110 North Hinckley Street, Holdenville, Oklahoma. Am available at any time to transfer or adjust any responsibilities which came under my command." On May 10, accused voluntarily returned to his station.

Authority is well-nigh unanimous that an AWOL of 12 days is insufficient to prove intent to desert, even where an accused is apprehended. Furthermore, it is manifestly contrary to reason that an officer with 18 years of service who intended to desert should not only retire to his known home address but, the day after leaving his station, notify his commanding officer of exactly where he may be apprehended. Significantly, the two members of the Board who sat in this case discussed not a single military precedent in reaching their decision. By the "clear and conclusive" (to use the Board's own terminology in affirming the conviction) weight of both precedent and reason, this case is not good law.

Several more cases have categorized an absence of thirty days or less as prolonged. Thus, one opinion referred to a 22-day AWOL as "this prolonged absence";<sup>58</sup> another described a 24-day AWOL as a "considerably prolonged absence";<sup>59</sup> still a third

<sup>56</sup> CM 218579, Lowrance, 12 BR 93 (1941).

<sup>57</sup> This case is a good example of what this author was talking about in his article, *Military Law Brief-Writing*, 4 *The Practical Lawyer* 77, 86 (No. 4, April, 1958).

<sup>58</sup> CM 233688, Aievoli, 20 BR 49, 59 (1943).

<sup>59</sup> CM 316347, Fever, 65 BR 305, 307 (1946).

characterized an absence of 27 days as one "of an extended duration";<sup>60</sup> while a fourth referred to a "protracted" 29 day absence without leave in its decision.<sup>61</sup> However, it is important to note that each of these statements was dictum, for in each of these cases, there were sufficient other factors to justify a finding of intent to desert. Thus, in the first of these cases, the accused had fled a considerable distance from his station after committing murder; in the second, he had embezzled money; in the third, he admitted the intent not to return; and in the last, he had escaped from confinement after expressing dissatisfaction with his military status. Thus, in none of these cases was a finding of a prolonged absence necessary. When this is considered along with the fact that the statements were made in an off-hand manner without consideration, it is clear that they are not of much weight as precedents.

Of somewhat more value is a case from the Mediterranean Theater of Operations in which there were two absences, one of 49 days and another of 30 days.<sup>62</sup> The accused was apprehended after both in an active theater of military operations. The Board of Review declared: "As to each specification, an intention to remain permanently absent may be inferred from accused's unexplained, prolonged absence, \* \* \* (and other factors noted)."<sup>63</sup> However, as to the 30-day absence, the precedent value of the case is weakened by the fact that the Board referred to the AWOL in an off-hand, formalized statement, coupling this single reference with a discussion of the first absence which there is ample authority to call "prolonged" under the circumstances. This case therefore cannot be taken to be a positive holding that a 30-day absence may be a "protracted" one.

It follows, therefore, that by the overwhelming weight of sound authority, an absence of not over thirty days can never be

<sup>60</sup> CM A-286, Stapleton, 1 A-P 87, 93 (1943).

<sup>61</sup> CM 259789, Blaich, 39 BR 21, 26 (1944).

<sup>62</sup> MTO 4958, Kallas, 6 NATO-MTO 47 (1945).

<sup>63</sup> *Id.*, at p. 49.

considered as a prolonged absence. Hence, it is therefore clear that an absence of thirty days or less is not prolonged as a matter of law.

#### 4. ABSENCE FROM THIRTY-ONE TO SIXTY DAYS

##### a. *The "No-Man's Land" Area*

In considering whether an absence from 31 to 60 days is "prolonged" or not, the easiest thing to do is to break this period up into two parts. The first part of this area includes absences from 31 to 36 days. This area is in reality a no-man's land area, with the decisions in unreconcilable conflict. There are holdings both that an absence of this period is prolonged, as well as holdings that such a period is not prolonged. In some cases, such contradictory holdings were made by the same tribunals.

For example, there is one naval case declaring that an absence of 31 days is sufficient to prove an intent to desert.<sup>64</sup> This case was decided in peacetime. Nevertheless, in another naval case, where the AWOL was 35 days, it was held that "as a matter of law, a finding of the charge of 'Desertion in time of war' could not be sustained."<sup>65</sup>

Army Boards of Review have sustained convictions of desertion where the length of absence was 35 days,<sup>66</sup> 33 days,<sup>67</sup> and even 32 days.<sup>68</sup> In one of the last-mentioned cases, the Board held: "The duration of accused's unauthorized absence and the manner in which it was initiated justify an inference of his intent to remain away permanently."<sup>69</sup> Nevertheless, another Army

<sup>64</sup> CMO 1-1925, P. 4.

<sup>65</sup> CMO 9-1945, P. 388. And see *United States v. Lawler*, 7 CMR 462 (NCM 1953), where a Navy Board of Review held that an absence of 32 days was not prolonged.

<sup>66</sup> CM 205811, Fagan, 8 BR 229 (1936).

<sup>67</sup> CM 234716, Stinson, 21 BR 147 (1943). However, in this case there was an additional factor, since the Board declared at p. 151: "Since this item of proof (order to report to the New York Port of Embarkation for overseas service) tends strongly to show a reason for the accused to desert the service."

<sup>68</sup> CM 238349, Smith, 24 BR 227 (1943); CM 279399, Williams, 52 BR 201 (1945).

<sup>69</sup> Williams, *supra*, at p. 205.

Board reversed a conviction for desertion where the AWOL was for 32 days,<sup>70</sup> and in two World War I cases, the Judge Advocate General reversed convictions of desertion although the absence in one case was for 33 days and the accused was apprehended,<sup>71</sup> while in the other the AWOL, for 35 days, was initiated when the accused ran away from his company while it was engaged with the enemy.<sup>72</sup> Likewise, two later cases affirmed convictions for desertion where the accused was gone for 34 days,<sup>73</sup> while another one characterized as a "tenuous assumption that an unexplained absence of thirty-one days was sufficient to justify an intent to desert."<sup>74</sup>

This conflict has not escaped the United States Court of Military Appeals. Thus, in one case, by a two to one vote, the Court held that an intent to desert may be inferred from a 35-day AWOL.<sup>75</sup> On the other hand, also by votes of two to one, in two cases the Court held that such intent may not be inferred from an absence of 33 days.<sup>76</sup> In each of these three cases, there were other factors in the record which the Court considered, so the question of whether the absence was "prolonged" or not is somewhat blurred.

The high-water mark of pre-1951 holdings that an absence without leave is not prolonged as a matter of law is *Private Standlee's Case*.<sup>77</sup> In this case, the Judge Advocate General of the Army declared that an absence of 36 days, terminated by apprehension, was insufficient to justify a finding of intent to

<sup>70</sup> CM 230196, Kennedy, 17 BR 305 (1943).

<sup>71</sup> CM 124248 (1919), Dig. Ops. JAG 1912-40, § 416(9), p. 269.

<sup>72</sup> CM 129801, Cahn (1919), Dig. CM Rev. (1920), p. 276.

<sup>73</sup> ETO 16869, Henry, 31 ETO 197 (1945); ETO 13708, Muldrow, 27 ETO 87 (1945).

<sup>74</sup> SpCM 427, Kallenberger, 4 JC 441, 443 (1949). And see *United States v. Ayala*, 3 CMR 284, 287 (CM, 1952), holding an absence of 31 days to be "not prolonged."

<sup>75</sup> *United States v. Knoph*, 2 USCMA 108, 6 CMR 108 (1952).

<sup>76</sup> *United States v. Logas*, 2 USCMA 489, 9 CMR 119 (1953); *United States v. Oliver*, 2 USCMA 613, 10 CMR 111 (1953). See also, to the same effect, *United States v. Northern*, 4 CMR 761 (ACM 1952) (absence of 34 days).

<sup>77</sup> CM 123404, *Standlee* (1918), Dig. Ops. JAG 1912-40, § 416(8), p. 268.



desert. This oft-cited opinion is the longest period of time, prior to the Uniform Code, which has been held not to be prolonged as a matter of law. Thereafter, all AWOLs have been held to be prolonged.

*b. Private O'Donnell's Case*

Probably the most important case ever decided which bears on desertion is *United States v. O'Donnell*.<sup>78</sup> This landmark decision, in sharp contrast to the meandering course of previous cases, stands out like a rock which clearly delimits what a prolonged absence is.

In *O'Donnell's Case*, the accused received a 36-hour pass and went absent on leave in England during January, 1944, taking no equipment. At the expiration of his pass, he remained AWOL for 37 days and then surrendered. Although he always wore his uniform, he had no explanation or reason for his absence. Having been charged with desertion, he was convicted of that offense. The original Army Board of Review for the European Theater of Operations, Riter, Chairman,<sup>79</sup> and Van Benschoten and Sar-

<sup>78</sup> ETO 1629, O'Donnell, 5 ETO 119 (1944).

<sup>79</sup> But General Riter has since changed his mind about the value and validity of the prolonged absence rule. The first inkling this author had of this was in his review of "The Law of AWOL" in 6 Utah Law Review 150 (1958) where he states at p. 151:

"This 'prolonged absence' rule effectively made a deserter out of a soldier or sailor whose only real offense was unauthorized absence for sixty days or more. One writer on the subject has aptly said: 'If he chose not to testify to explain his absence, the rule devoured him.' A great many critics of military justice have for several years condemned this rule but the service persisted in retaining it. Finally COMA has buried it. There are few mourners."

This author thereafter wrote to General Riter about the apparent inconsistency between this comment and O'Donnell, and received the following reply, by letter dated July 17, 1958:

"With respect to *United States v. Cothorn*, and its antecedent ETO such as *O'Donnell*, I am glad you confronted me with the conflict in view point. Frankly, I changed my mind at the time the Manual for the U. C. M. J. was being drafted. *O'Donnell* was decided under the influence of war time conditions but, as I recall, it was a case which arose not under battle line conditions, but was a 'garrison' case in England before D Day. Had this been a battle line case such as arose during the "Battle of the Bulge" I could justify it. (See opinion in the case of *Slovick* which I wrote.) It was when I compared *Slovick* with *O'Donnell* that I changed my mind, but this comparison was not made until the present Manual was in course of preparation. I had nothing to do with its preparation, as I was then out of the service. From time to time information as to its proposed contents came across my desk and it was then that I questioned the validity of the 'prolonged absence' presumption and finally rejected it."

gent, JA's, held that the evidence was sufficient as a matter of law for a finding of an intent to desert. The Board, after quoting from that part of the 1928 Manual for Courts-Martial which deals with right of a court-martial to infer an intent to desert from a prolonged absence had this to say:

The offense occurred in an active theater of operation in an allied foreign country, subject to intermittent attack from air, sea and land, and was, in its compact entirety, at that time, the base and starting point of American and allied military operations of the greatest magnitude and of supreme importance. There was then hardly a town in England that was not in the neighborhood of an American military post; certainly there were many such posts in and around Bournemouth, \* \* \*

In deciding that: "Mere absence for a short period \* \* \* is not desertion in the absence of other circumstances indicating an intent to remain away permanently." A recent holding of the Board of Review (sitting in Washington, D. C.) asserts that: "While such circumstances occur more frequently during war than peace, the mere fact that it is time of war does not make a short absence desertion. CM 226261 (1942)" (Bull. JAG, Nov. 1942, Vol. 1, No. 6, sec. 416(9), p. 325). Winthrop, on the other hand, while recognizing that: "To infer such intent (not to return) solely from unauthorized absence of but brief duration, especially if followed by a voluntary return, will commonly be unwarranted," significantly qualifies the rule by adding to his statement of it that: "an absence, however, for a few days or even a part of a day, may, under certain circumstances, fully justify such an inference; and, *in time of war, an absence of slight duration may be as significant as a considerably longer one in time of peace.*" (Winthrop's Military Law & Precedents—Reprint—p. 638). (Underscoring supplied.) To the extent that the view expressed in the foregoing quotation from the Bulletin conflicts with Winthrop's qualification of the rule, the latter

appears to be sounder when applied in an active theater of operation subject to enemy attack.

In the instant case, accused's own testimony shows that when his pass expired he was at Bournemouth, which is but a two-hours' train ride from his station. He was also at Bournemouth when he surrendered. Whether he spent the intervening 37 days there or elsewhere is not disclosed by the record. In either case, his unauthorized absence for the period shown under prevailing conditions, without any explanation whatsoever, is wholly consistent with the court's inference that at some time during the period of his absence he intended not to return. \* \* \* "A prompt repentance and return, while material in extenuation, is no defense" (MCM, 1928, par. 130a, p. 142). Under the circumstances shown, the accused's "repentance and return" are not entitled to be characterized as "prompt."

*O'Donnell's Case* was one of the earliest desertion cases decided in the European Theater of Operations. It was repeatedly cited thereafter by the Boards in that theater whenever any substantial question arose in a desertion case.<sup>80</sup> This alone would be enough to make it an important case, for the European Theater of Operations had a heavy load of desertion cases, as shown by the fact that almost a quarter of all of the cases cited in the appendix are from the Boards in that theater. However, its importance was increased by the fact that it was cited by boards in other theaters<sup>81</sup> and in Washington<sup>82</sup> and eventually by other services

<sup>80</sup> See, for example, ETO 17679, Darpino, 32 ETO 377 (1945), in which the Board of Review, in a case in which the accused was absent for 41 days, held: "It is unnecessary to consider how much longer accused was out of military control since, in the absence of an explanation satisfactory to the court this period itself at a time when hostile forces were active in the theater, is sufficient to justify the inference that he intended to remain away and the findings of guilty of desertion may be sustained (CM ETO 1629, O'Donnell)."

<sup>81</sup> See CM P-1236, Wilson, 4 A-P 371 (1945).

<sup>82</sup> CM 266918, Freeman, 43 BR 317 (1944); CM 302974, Malarchok, 59 BR 337 (1946); CM 307120, Seewagen, 60 BR 305 (1946); CM 312022, Kavchak, 61 BR 329 (1946); CM 312092, Currey et al, 61 BR 363 (1946); United States v. Mitchell, 1 CMR 191 (CM 1951); United States v. Pascal, 3 CMR 379 (CM 1952).

as well.<sup>83</sup> As a recent decision labeled it, this is "a leading case."<sup>84</sup>

The *O'Donnell Case*, or one with an absence of a few days less than that, represents the lowest zone within which a court may find an absence to have been prolonged under any circumstances. That this is the proper interpretation of this case is shown by the following statement made in a subsequent case in the same theater:

To hold that the record of trial supports a finding of desertion as to La Brake would be, in effect, to extend the doctrine of CM ETO 1629, *O'Donnell*. The Board is not disposed so to do.<sup>85</sup>

However, the *O'Donnell Case* should not be taken to mean that an absence 37 days is always prolonged as a matter of law. This is not true. The Board of Review, it should be noted, stressed the fact that the absence occurred during war-time in an active theater of operations, where there were many military installations. Each of these factors, while not serving as an independent basis for inferring the requisite intent, does tend to support the inference because it would tend to increase the number of times the accused was made aware of his dereliction and yet chose to remain away. Thus, since these factors necessarily increased the frequency of "choice-points," the duration of the AWOL could be reduced and yet there would be a sufficient number of "choice-points" to support the requisite inference that during one of them a permanent separation was contemplated. This appears to be the interpretation which the Board impliedly gave to the passage which it cited from Winthrop, and rightly so. As a later decision, interpreting the case, declared:

<sup>83</sup> *United States v. McCrary*, 1 CMR 780 (ACM 1951), aff'd 1 USCMA 1, 1 CMR 1 (1951).

<sup>84</sup> *United States v. Roux*, 3 CMR 232, 236 (CM 1952).

<sup>85</sup> ETO 16196, *LaBrake et al*, 30 ETO 257, 261 (1945). Except for the length of absence, which was twenty days, this case supports a finding of desertion even more strongly than does *O'Donnell*, for here the accused went AWOL in a combat zone, and he was apprehended, and did not surrender.

In \* \* \* O'Donnell, it was held that under conditions then prevailing in the European Theater of Operations, proof of a soldier's wholly unexplained absence without leave from his station in England, for a period of 37 days terminated by voluntary surrender is legally sufficient to support the inference that he intended not to return. The mentioned Board of Review stresses in its holding that the offense occurred in an active theater of operations. However, the case does establish that an absence of 37 days is considered under the circumstances of that case "much prolonged."<sup>86</sup>

It may be argued, as an alternative interpretation of the passage cited from Winthrop, that the Board of Review, *sub silentio* considered the possibility that the accused, by his absence, intended to avoid the hazards of combat incident to war-time service overseas, and that this supplied a motive for his unexplained AWOL. If this interpretation were accepted, it would supply an additional independent factor on which to base a finding of intent to desert, and weaken correspondingly the conclusion that the Board was concerned with, and held that, the presence of war-time conditions described in its opinion served as more frequent reminders to the accused of his offense and hence increased the frequency of his decisions to stay away within a given period of time. Such an alternative interpretation gains some support from a much later case wherein the accused went absent after the end of the war in Europe. In this case, a Board held:

Further, the fact that his absence took place after the cessation of hostilities in this Theater makes it unlikely that he entertained the intent to remain permanently away from the service. In general, it may be said that Americans are not *now* deserting in Europe.<sup>87</sup>

However, it appears that this possible alternative interpretation will not withstand close analysis. The accused in *O'Don-*

<sup>86</sup> United States v. McCrary, *supra*, n. 83, at p. 784.

<sup>87</sup> ETO 16104, Blanchette, 30 ETO 203, 205 (1945). The same statement was made in ETO 15442, Bifano, 29 ETO 165, 168 (1945).

*nell's Case* went AWOL in England in January of 1944. He was subjected to no hazards other than those which faced the English people as a whole. Of course, it was always possible that he might be shipped to a fighting front, but it was just as possible that he would remain in England for the duration of the war. When accused went AWOL the Normandy invasion was still six months away. The Board of Review itself handed down its opinion a full month before the Normandy invasion, and while it was, presumably at least, top secret. Hence, there was no specific hazardous duty which the accused would probably desire to avoid, and it follows that the references to war-time operations must be taken to mean that they constituted reminders to the accused of his obligations.

A quite similar situation was before the United States Court of Military Appeals in *United States v. Shuler*.<sup>88</sup> In this case, the accused was also gone for 37 days, when he was apprehended. The absence took place in Korea during the Korean War, but there is no indication in the opinion that the accused attempted to avoid the hazards of combat. The accused, in this case as in *O'Donnell*, was on or near military installations. Likewise, he could offer no satisfactory explanation for his absence. A unanimous court, speaking through Judge Brosman, upheld the conviction for desertion. He said:

The Government here established a thirty-seven day unauthorized absence terminated by apprehension. Accused would have us hold that an absence for thirty-seven days' duration is insufficient in any case—even when terminated by apprehension—to establish an intent not to return. We cannot at all subscribe to so broad a proposition.<sup>89</sup>

Therefore, the *O'Donnell Case* establishes the doctrine that an absence of a month or a little over it is the shortest period of time which can be considered as a "prolonged" absence, and

<sup>88</sup> 2 USCMA 611, 10 CMR 109 (1953).

<sup>89</sup> *Id.*, at p. 110.

that an absence of this duration is only prolonged when there are other circumstances which would tend to increase the frequency of reminders to the accused during this period of AWOL.

*c. Thirty-Seven to Sixty Days' Duration*

Having established the fact that under some circumstances, an absence of 37 days is "prolonged", it now remains to be determined what the effect of an ever increasing period of AWOL is on the necessity for the presence of these circumstances. In doing so, it must be remembered that "an absence of 37 days is not clearly an instance of prolonged absence."<sup>90</sup> It is, in fact, only the minimum period which can be found to be prolonged even when other circumstances are present. Thus, in a case from the European Theater of Operations, an accused who was AWOL for 39 days was tried for desertion terminated by apprehension.<sup>91</sup> He said that he had surrendered, but hearsay evidence was introduced that he had been apprehended. The Board of Review, in reducing a finding of desertion to that of AWOL, declared:

The admissible evidence approximates the minimum of competent, substantial evidence heretofore held, in the absence of prejudicial errors or irregularities, legally sufficient to support the inference of intent not to return in a desertion case. (CM ETO 1629, *O'Donnell*.) It is certainly not compelling; and Captain Malkus' erroneously admitted testimony of apprehension was of a character to preclude the possibility of the court's giving any credence whatsoever to the explanation involved in the accused's unsworn statement. The record, fairly regarded, raises a bona fide issue as to accused's intent, in view of which the hearsay evidence of apprehension cannot in reason be presumed not to have injuriously affected the substantial rights of the accused.<sup>92</sup>

<sup>90</sup> United States v. Spruill, 23 CMR 485, 488 (CM 1957).

<sup>91</sup> ETO 5740, Gowins, 15 ETO 315 (1945).

<sup>92</sup> *Id.*, at p. 317.

In view of the fact that an AWOL with a duration of 37 days to one of 60 days is not always a prolonged absence as a matter of law, one would expect to find differing decisions as to whether such a period was sufficient to prove the requisite intent, depending upon the facts of the case other than the length of absence. This has proved to be so in actuality.

Thus, absences of 40<sup>93</sup> and 41 days<sup>94</sup> have been held sufficient in some cases, while in another an absence of 41 days was held to be insufficient.<sup>95</sup> Likewise, a Board of Review in the North African Theater of Operations, speaking of an AWOL of 42 days, declared, "The intention to remain permanently absent can be inferred from his unexplained prolonged absence and the attendant circumstances."<sup>96</sup> However, in *United States v. Peterson*,<sup>97</sup> the Court of Military Appeals held that an absence of 46 days was insufficient to prove desertion as a matter of law under the circumstances of that particular case because of the explanation of the accused. It might be noted that the court did imply that a 46-day AWOL might be prolonged under some circumstances in the *Peterson* case.

As the period of absence begins to lengthen, however, an increasingly large number of cases denominate it as "prolonged." In the case of an absence of seven full weeks, no less than five cases have held that such an absence is prolonged and that an

<sup>93</sup> CM 106147, McMillen (1917), Dig. CM Rev. (1920), p. 270; ETO 9978, Green et al, 21 ETO 269 (1945).

<sup>94</sup> ETO 527, Astrella, 2 ETO 79 (1943). This case preceded the decision in O'Donnell by a number of months, but here, while the accused also surrendered, the Board found specifically that he had entertained an intent to shirk important service also. By a 2 to 1 vote, the Board held that the absence herein was a "prolonged absence." See p. 84. See also ETO 9978, Gates et al, 21 ETO 269 (1945).

<sup>95</sup> *United States v. Hedges*, 16 CMR 412 (NCM 1954). It might be noted that here the Board did not specify whether its decision was based on law or fact.

<sup>96</sup> NATO 2022, Donnelly, 3 NATO-MTO 343, 347 (1944). See also ETO 15689, Fors, 29 ETO 309, 311 (1945), where the Board declared:

"From the mere length of either of such absences alone, for 62 days and 45 days respectively, in an active theater of operations, the court was authorized to infer an intent on the part of accused to remain permanently away from the service."

<sup>97</sup> 2 USCMA 645, 3 CMR 51 (1952).



intent to desert may be inferred therefrom.<sup>98</sup> One of these is the first decision in this line of cases where the AWOL took place in the continental United States before the start of World War II, and in this case the Board declared that "Time is a decisive factor which alone, if much prolonged, permits an inference of intent to desert."<sup>99</sup> However, in that case not only was the accused apprehended, but also he had sent in his resignation as an officer and taken civilian employment. Hence, this holding must be taken to mean that the absence was prolonged under the circumstances.

Likewise, periods of 53 days,<sup>100</sup> 55 days,<sup>101</sup> and 56 days,<sup>102</sup> all terminated by apprehension have been held to be sufficient for a finding of the requisite intent. And in two cases from overseas theaters, where the length of AWOL was 58 days, the Boards held that such absence was a prolonged one.<sup>103</sup> Yet one of the judges of the Court of Military Appeals has expressed the view that an absence of 60 days is not a prolonged absence.<sup>104</sup>

From an examination of all of the above cases, it can be seen that there is a conflict as to what period of time between 30 and 60 days is a prolonged absence. However, a careful analysis of the cases holding that the absence was prolonged indicates that almost all of them had other factors which increased the frequency with which the accused was reminded of his dereliction. This is particularly true of the majority of cases, those which occurred

<sup>98</sup> CM 216904, Frankie, 11 BR 183 (1941); ETO 1515, Smith, 4 ETO 375, 378 (1944), wherein a "prolonged absence" was referred to; ETO 14135, Cerrito, 27 ETO 229, 231 (1945), where the Board declared that "the absence is so prolonged that intent to desert could have been inferred"; ETO 15206, Burton, 28 ETO 393, 394 (1945), where "the long absence of 49 days" is discussed; MTO 4958, Kallas, 6 NATO-MTO 47 (1945); and see *United States v. Alexander*, 1 CMR 465 (NCM 1951).

<sup>99</sup> Frankie, *supra*, at p. 185.

<sup>100</sup> *United States v. Uhland*, 10 CMR 620 (ACM 1953).

<sup>101</sup> *United States v. Hensley*, 12 CMR 577 (CM 1953).

<sup>102</sup> *United States v. Vetter*, 13 CMR 517 (NCM 1953).

<sup>103</sup> ETO 11856, Debeau, 24 ETO 338 (1945); MTO 4796, DiGiovachini, 6 NATO-MTO 25 (1945).

<sup>104</sup> *United States v. Deain*, 5 USCMA 44, 51, 17 CMR 44, 51 (1954), opinion of Chief Judge Quinn; *United States v. McCrary*, 1 USCMA 1, 14, 1 CMR 1, 14 (1951), dissenting opinion of Chief Judge Quinn.

in the overseas theaters during wartime. Hence, it can be concluded that an absence between 30 and 60 days is not necessarily prolonged as a matter of law. It can also be concluded that such a length of absence may be presumed not to be prolonged unless additional facts are presented by the prosecution which show that the frequency of reminders to the accused was increased. Of course, as the absence becomes progressively longer within this period, the circumstances needed to overcome the presumption may become progressively fewer, until by the end of the period in question there is no presumption at all. However, in all cases within this time period, whether the additional factors are sufficient to raise the frequency-of-reminder level enough so that the absence may be denominated a "prolonged" one must be considered as a question of fact.

##### 5. ABSENCE FROM SIXTY-ONE TO NINETY DAYS

As mentioned above, as the length of absence increases, the cases indicate that the circumstances which would be required to show that the absence was "prolonged" decrease progressively. In this scale or spectrum, the period around 60 days appears to be a turning point. Thereafter, no special circumstances need be shown for the court to decide that such a period was a protracted one. On the contrary, it seems that circumstances must appear, adduced either by the accused, or coming otherwise to the attention of the court, which would tend to reduce the frequency of the number of reminders which the accused would normally be expected to have, before it could at any time be said that as a matter of law the absence was not a prolonged one.

An examination of the cases wherein the accused was AWOL for periods ranging from 60 to 90 days reveals that in none of them was it held that such a period could not be prolonged as a matter of law. Those cases finding that the absence was prolonged and affirming a conviction range throughout the entire

period. Thus, absences of 65 days,<sup>105</sup> of 66 days,<sup>106</sup> 67 days,<sup>107</sup> 68 days,<sup>108</sup> 73 days,<sup>109</sup> 74 days,<sup>110</sup> 76 days,<sup>111</sup> 77 days,<sup>112</sup> 78 days,<sup>113</sup> 80 days,<sup>114</sup> 82 days,<sup>115</sup> 85 days,<sup>116</sup> 89 days,<sup>117</sup> and 90 days<sup>118</sup> can all be found which have been characterized as prolonged. Indeed, in one case from the European Theater of Operations, which involved an AWOL of 67 days initiated by escape from confinement and terminated by apprehension, the Board of Review declared:

Therefore, assuming that the evidence improperly admitted as to other specifications (of AWOL) might have resulted normally in disapproval of the findings \* \* \*, the competent evidence from which an intent to desert might be inferred is so compelling and convincing that accused's substantial rights were not prejudiced.<sup>119</sup>

Of perhaps greater significance are those cases within this period wherein a finding of intent to desert was reversed. For example, in one of them which involved an absence of 81 days,

<sup>105</sup> United States v. Pascal, 3 CMR 379 (CM 1952).

<sup>106</sup> ETO 913, Pierno, 3 ETO 149 (1943).

<sup>107</sup> CM 235607, Poli, 22 BR 151 (1943).

<sup>108</sup> ETO 1519, Bartel, 4 ETO 381 (1944). This was described as a "long continued absence" at page 382.

<sup>109</sup> CM A-2244, Tyree, 3 A-P 195 (1945). The Board in this case declared at page 200 that "Accused's absence of 73 days in a combat zone was 'much prolonged.'"

<sup>110</sup> ETO 800, Ungard, 2 ETO 331 (1943).

<sup>111</sup> In NATO 73, Walters, 1 NATO-MTO 43 (1943), this is described at page 46 as "this absence of long duration." To the same effect see MTO 4373, Ashby, 5 NATO-MTO 165 (1944) and MTO 4957, Millican, 6 NATO-MTO 43 (1945).

<sup>112</sup> ETO 5966, Whidbee, 16 ETO 77 (1945).

<sup>113</sup> In ETO 14625, Fassnacht, 28 ETO 119, 122 (1945), the Board declared: "The court was justified in finding that the accused was absent without leave from his organization for a period of two and one-half months, and from this protracted absence it had the right to infer intent to desert and to find him guilty as charged (CM ETO 1629, O'Donnell)."

<sup>114</sup> CM 234458, Williams, 20 BR 391 (1943).

<sup>115</sup> ETO 6948, Damron, 17 ETO 269 (1945).

<sup>116</sup> ETO 1543, Woody, 5 ETO 1 (1944).

<sup>117</sup> MTO 4687, Ruggiero, 5 NATO-MTO 271 (1945).

<sup>118</sup> CM 129946, Hazelhurse (1919), Dig. CM Rev. (1920), p. 272; CM 261405, Bailey, 40 BR 229 (1944).

<sup>119</sup> ETO 14735, Clark et al, 28 ETO 183, 189 (1945).

the Board of Review conceded that the absence was prolonged and relied on the accused's explanation to reverse.<sup>120</sup> The same thing happened in another case involving a 77-day AWOL.<sup>121</sup> And in still a third case, *United States v. Henderson*,<sup>122</sup> where the accused was absent for 82 days, the Judicial Council of the Air Force, in reversing a finding of intent to desert, relied upon other factors in the case not dealing with the length of absence for this holding. They also considered the fact "that he was intoxicated at the inception and during the greater part of his absence."<sup>123</sup> This last factor, of course, goes to the question of whether the absence can be considered prolonged under the circumstances, for when the accused is intoxicated, he is less likely to have deliberately chosen to stay away; hence this fact tends to reduce the number of "choice-points" during which the accused chose to remain away and therefore lengthens the time necessary for an absence to be prolonged.

Thus, it appears that an absence of between 60 days and 90 days is presumed to be prolonged. The presumption is weak in the early part of this period, but it becomes progressively stronger as time goes on, until at the end it becomes a conclusive presumption, or in fact a rule of law.

#### 6. ABSENCE FROM NINETY-ONE DAYS TO SIX MONTHS

An absence from a period of over ninety days to a half year has been labeled as "prolonged" by the overwhelming weight of authority, without regard to the attendant circumstances. Here again, there are many cases so holding. Thus, absences of 96 days,<sup>124</sup> of 97 days,<sup>125</sup> of 103 days,<sup>126</sup> of 110 days,<sup>127</sup> of 116 days,<sup>128</sup>

<sup>120</sup> *United States v. Alexander*, 4 CMR 226 (CM 1952).

<sup>121</sup> *United States v. Arocho*, 8 CMR 289 (CM 1953).

<sup>122</sup> 2 (AF) CMR 390 (ACM 1949).

<sup>123</sup> *Id.*, at p. 394.

<sup>124</sup> ETO 3004, Nelson, 8 ETO 227 (1944).

<sup>125</sup> CM 241285, Moudy, 26 BR 251 (1943); see also James, *op. cit.*, *supra*, n. 54, at p. 110, Quartermaster Robert Young (1802).

<sup>126</sup> MTO 4434, Elizondo, 5 NATO-MTO 185 (1945).

<sup>127</sup> NATO 2669, Bliss, 4 NATO-MTO 189 (1944).

<sup>128</sup> MTO 4544, Gill, 5 NATO-MTO 237 (1944).

of 119 days,<sup>129</sup> of four months,<sup>130</sup> of four and one-half months,<sup>131</sup> of five months,<sup>132</sup> and of five and one-half months<sup>133</sup> have been so regarded. Although all of the above cases were ones in which a finding of desertion was upheld, even most of the cases wherein such finding was reversed have held that an absence of over three months is a prolonged one.

For example, a Coast Guard Board of Review held an absence of 106 days sufficient in law for a court to infer an intent to desert in *United States v. Rotski*,<sup>134</sup> but reversed as a matter of fact because of accused's explanation. The same result was reached by an Army Board in a case where the length of AWOL was 105 days,<sup>135</sup> and where the absence was for 96 days.<sup>136</sup> An Air Force Board reached substantially the same result where the AWOL was for 114 days,<sup>137</sup> and two Navy Boards, in one case where the absence was for 110 days<sup>138</sup> and in another where it was for 113 days,<sup>139</sup> also held the same way.

Opposed to these holdings are the isolated decisions of two Air Force Boards. In one of them, it was held:

To us it appears that it should also be clear that an absence without leave for 95 days should raise *doubts* in reasonable minds as to *what* the accused intended. He may reasonably at all times have intended to return or have had no specific intent on the subject one way or the other; or, equally reasonably, he may have intended to remain permanently absent.

<sup>129</sup> MTO 4689, Tucker, 5 NATO-MTO 275 (1945).

<sup>130</sup> MTO 4895, McMahon, 6 NATO-MTO 39 (1945).

<sup>131</sup> MTO 4513, Paul, 5 NATO-MTO 233 (1944); CM 335904, Young, 2 JC 317 (1949). See also *Beauchamp v. United States*, 154 F. 2d 413 (6 Cir., 1946).

<sup>132</sup> CM 326004, Shelby, 75 BR 111 (1947); ETO 12120, Campbell, 25 ETO 41 (1945).

<sup>133</sup> NATO 2373, DiMauro et al, 4 NATO-MTO 53 (1944).

<sup>134</sup> 12 CMR 649 (CGCM 1953). It is arguable that the AWOL here was only 74 days. See Avins, *op. cit.*, *supra*, n. 6, at p. 178.

<sup>135</sup> *United States v. James*, 13 CMR 506 (CM 1953).

<sup>136</sup> *United States v. Wilson*, 8 CMR 194 (CM 1952).

<sup>137</sup> *United States v. Palmer*, 8 CMR 633 (ACM 1953).

<sup>138</sup> *United States v. DeGraffenreid*, 23 CMR 659 (NCM 1957).

<sup>139</sup> *United States v. Boland*, 16 CMR 417 (NCM 1954).

On the basis of such an absence, neither extreme is more likely than the other. We say this because in our experience it is as likely, if not more than likely, that a person who has been so absent for 95 days intends to and will return. \* \* \* Hence we conclude no legal inference may be drawn solely from an absence without leave for 95 days.<sup>140</sup>

In the other case, which involved an AWOL of 100 days, the Board declared:

We do not feel that an absence without leave for a period of three months and eight days alone and of itself, without any other circumstances, is such a prolonged period as to justify the drawing of this permissive inference, and predicate thereon a finding that beyond a reasonable doubt, the accused did not intend to return, and thereby convict him of so serious a charge as desertion.<sup>141</sup>

While it would be easy to dismiss these two cases as wrong and against the weight of authority, and let it go at that, these cases do deserve some attention. They graphically represent the *in vacuo* approach to the prolonged absence rule. To say that absences of this length are not prolonged as a matter of law, and thus that reasonable men may not infer therefrom the necessary intent, without an examination of the effect of this absence on the accused's own activities, is as much an *ipse dixit* holding as it would be to say that such an absence is desertion as a matter of law. A discussion of the rule in refined legal terminology is no substitute for an examination of the period of absence in context.

At any rate, the above two cases cannot be considered good law in light of the recent decision of the United States Court of Military Appeals in *United States v. Hendon*.<sup>142</sup> In this case, the Court held that a decision by a Board of Review holding that an

<sup>140</sup> *United States v. Howe*, 6 CMR 753, 760 (ACM 1952).

<sup>141</sup> *United States v. Green*, 5 CMR 588, 589 (ACM 1952).

<sup>142</sup> 7 USCMA 429, 22 CMR 219 (1956).

AWOL of 112 days was insufficient as a matter of law to sustain a finding of intent to desert was erroneous. Judge Latimer declared that "Of course, an absence is 'much prolonged' if a reasonable person could so regard it, and here such a person could."<sup>143</sup> In light of this holding and of previous cases, it must be considered that an absence of over ninety days is prolonged as a matter of law.

#### 7. ABSENCE FOR OVER SIX MONTHS

There can be not the slightest doubt, based on past precedents, that an absence without leave in excess of six months is "prolonged" as a matter of law. The cases are all uniform on this point. A few representative cases hold that an AWOL of six months,<sup>144</sup> six and one-half months,<sup>145</sup> seven and one-half months,<sup>146</sup> nine and one-half months,<sup>147</sup> thirteen months,<sup>148</sup> and

<sup>143</sup> *Id.*, at p. 222.

<sup>144</sup> ETO 17551, Yanofsky, 32 ETO 241 (1945). In GCMO 39, Navy Dept., Feb. 26, 1901, #3, the Judge Advocate General of the Navy, speaking of a six-month absence said: "The long period of absence of the accused raises a presumption of his guilt of the charge of desertion which can only be dispelled by a reasonable explanation thereof." And in 1919 Senate Hearings, *supra*, n. 3, at p. 507, Capt. Eastwood, British Army, Court-Martial Officer of the District of London during World War I stated: "In an ordinary case of desertion—man absent six months the charge may be of desertion. A witness comes in and identifies the man in the jug. That is all you want to prove your case." It is also noteworthy that the National Defense Act of Canada of 1950, c. 43, 3 Rev. Stat. Canada 3824, chap. 184, § 79(3) (1952) provides: "A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary be proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be."

<sup>145</sup> ETO 15074, Sutherland, 28 ETO 285 (1945).

<sup>146</sup> ETO 17521, Bell, 32 ETO 209 (1945).

<sup>147</sup> CM A-1640, Wozniakowski, 2 A-P 297 (1944). In *United States v. Uzzo*, 3 USCMA 563, 13 CMR 119 (1953), Chief Judge Quinn, speaking of an absence of this length, declared for a unanimous court: "The prolonged nature of the accused's absence was sufficient basis for an inference that he intended to remain away permanently." See, to the same effect, CMO 22, 1913, P. 2, calling an absence of 8½ months a "long unauthorized absence" which required the accused "to rebut the presumption of desertion" and CMO 22, 1913, P. 4, Naval Digest, P. 174, #75, also so characterizing the same period of time. And in CMO 76, 1901, P. 1, Naval Digest, p. 172, #68, the Judge Advocate General of the Navy, with the Secretary's approval, stated: "Such a long absence remaining unexplained necessarily tends to establish the intention to desert."

<sup>148</sup> *United States v. Muench*, 14 CMR 857 (ACM 1954).

twenty-three months<sup>149</sup> are prolonged and sufficient to sustain a finding of desertion. Furthermore, in one case where the accused was gone for two years,<sup>150</sup> and in another where he was gone for two and one-half years,<sup>151</sup> Boards of Review in the Air Force and Coast Guard respectively held that erroneous admission of evidence bearing on his intent was harmless since such intent would have been inferred from the length of absence anyway.

In the only two fully reported cases wherein a finding of desertion for an absence of over six months was reversed, it was nevertheless held that such a period of AWOL made out a prima facie case of desertion. In one, the accused's reason for absence, fully corroborated, negated the inference arising out of a six-month AWOL.<sup>152</sup> In the other, the Judge Advocate General of the Army declared of a one year absence:

Absence without leave for the period alleged and the termination of his absence is shown by competent evidence. However, although a prima facie case was made in support of the prosecution's burden of proving intent to desert, the strong showing that the unauthorized absence was actually impelled by the efforts of a psychoneurotic soldier, mentally weakened by the monotony of a long stay on a lonely island, to evade what he envisaged as imminent insanity by a change of environment (illegal, it is true), with the expectation of then returning to duty, creates a reasonable doubt that he

<sup>149</sup> CM 331508, Harvey, 80 BR 43 (1948). In *United States v. Stetson*, 3 CMR 674 (ACM, 1952), an Air Force Board of Review, speaking of an absence of seventeen months combined with other factors, declared at p. 678 that "proof of desertion was virtually conclusive" and that the evidence "was so strongly indicative of desertion, rather than of mere absence without leave . . . that no lesser included offense was reasonably raised as an issue in the case." Likewise, in GCMO 22, Navy Dept., Jan. 29, 1903, where the absence was four years, the Judge Advocate General, with the approval of the Secretary of the Navy, said: "unless the accused were able to explain such an extraordinary absence, it would, in my opinion, have constituted evidence entirely sufficient to convict him of desertion."

<sup>150</sup> *United States v. Hanlow*, 16 CMR 933 (ACM 1954). And in Report of the Select Committee of the House of Commons on the Army and Air Force Act, 1953-4 (London, 1954), minutes of evidence, p. 20, Assistant Judge Advocate General C. M. Cahn declared that "if he has been absent for 2 years that would in itself be sufficient to justify a charge of desertion."

<sup>151</sup> *United States v. Yzaguirre*, 19 CMR 585 (CGCM 1955).

<sup>152</sup> *United States v. Kazmorck*, 12 CMR 603 (CM 1953).



intended to remain permanently absent from Army service. This is especially confirmed by post-trial events which shed new light upon the fading mental powers of this unfortunate man, revealing that his fears of insanity were justified, not imaginary. The peculiar and unique circumstances in the instant matter distinguish it from the many sound and established cases in which it has been correctly held that civilian employment and other circumstances similar to those in many respects during unauthorized absence may establish desertion.<sup>153</sup>

It therefore follows that an absence without leave of over six months must be considered as "prolonged" as a matter of law under all circumstances.

#### IV. A RATIONALE OF THE PROLONGED ABSENCE RULE

Having examined the prolonged absence rule, both from a functional standpoint as well as from the viewpoint of precedent, it now remains to be determined whether any rational synthesis can be formulated from this mass of confusing, and sometimes conflicting cases and other authorities. In other words, to put the question in its simplest form, just how long is "prolonged" within the meaning of this rule?

Some case reports have frankly thrown up their hands and surrendered when forced to face this question squarely. They have bluntly declared that the question cannot be answered. In one of the clearest of the cases which takes this position, *United States v. Green*,<sup>154</sup> an Air Force Board of Review stated:

It is just as difficult for us to define how long is a 'much prolonged absence' as to define how high is up or how hard is hard or how soft is soft. It is all a matter of relativity. In cases of absence as the one here in question we should not attempt to set up a yardstick nor to define the difference

<sup>153</sup> CM 315600, Allen, MO-JAGA 163, 167 (1950).

<sup>154</sup> *Supra*, n. 141.

between desertion and absence without leave by the measure of the length of the absence alone.<sup>155</sup>

The above case, as well as the passage cited, strikingly illustrates the infirmities of the *in vacuo* approach to the prolonged absence rule. The question presented is not how long is "long," considered as an abstract question, but how long is "long" within the context of what the rule is attempting to define.

A period of time is long, of course, depending on what it is being used for. A minute is a long time to hang; but three years is not long for a person to get a legal education. The question of how long is "long" herein is to be determined in light of the problem of how many reminders or "choice-points" the accused had before his AWOL was terminated.

The clearest type of reminder for an accused to get would occur when a member of his unit met him, told him that he was AWOL, and said: "Why don't you come back?" If this happened once or twice, most people would not think that it indicated an intent not to return. If it happened ten times, people would, in the absence of an explanation, begin to suspect that the accused did not intend to return. If it occurred 30 times, reasonable people would strongly suspect that the accused did not intend to return; and if this happened 60 or 90 times they would, absent some explanation, have no doubt of it.

Of course, there are other types of reminders. Most absentees would be reminded of their own dereliction by seeing a man in uniform walking down the street towards them. The frequency of such reminders would be increased during wartime because there are more men in uniform. The reading of a newspaper article or headline about the military would also serve as a reminder. Seeing a recruiting poster would also serve as a reminder. A multitude of other things would serve the same purpose.

<sup>155</sup> *Id.*, at p. 593.

Furthermore, time itself, in the case of an absentee, brings its own types of reminders. When a person has a daily routine and a job that he likes, when he is busy with his job and other normal activities, and when he has no guilt for his present status nor worries of future punishment, days, weeks, and even months slip by unnoticed. But this is not so with the absentee without leave. Normally, he has less to occupy his mind with and may think of his status even more.

In addition, as such absentee's funds run out, he begins to endure privations because of his AWOL. Of course, it is possible that he may have an independent source of funds. If this comes from civilian employment it constitutes strong evidence of desertion. Otherwise, it is unlikely that he has such income; few absentees are in the social register or spend their days clipping coupons from a trust fund. Without such income, the longer the absence is, the more the accused will feel the pinch financially; and each time he does so, he is reminded of his status. An absentee who must stand in the rain and hitchhike is reminded of the comforts of his barracks; one who does not get enough to eat is bound to picture in his mind the bounty of the mess-hall. An absentee who repeatedly rejects these reminders to return, and deliberately continues to endure privations, must dislike the service intensely to do so. Hence, length of absence supplies an inference of intent to desert both through motive and by virtue of the reminders and accumulation of "choice-points" it presents to the accused.

Of course, the circumstances of particular absences may reduce the frequency of "choice-points" or reminders. Probably the most common of such situations is the fact that the accused went home to care for a sick or needy spouse, child, or other relative. These factors are generally given probative weight because they supply a motive for a limited AWOL, and hence reduce the probability that at one of the "choice-points" the accused chose not to return at all. However, they also go to the very question of whether the AWOL was prolonged or not, for

such factors would tend to keep the accused preoccupied in his mind with the problems and therefore reduce the number of times he thought about his status, resulting in the diminution of the gross number of "choice-points" in any given period.

The choice of a month as the minimum period which a court may find to be prolonged under any circumstances means that an absence under 30 days is not prolonged as a matter of law. Of course, it does not mean that one who is AWOL less than a month cannot be a deserter; it merely means that an absence of less than a month always lacks probative value as far as the intent is concerned. As has been shown above, an absence of less than a month is too unlikely to present sufficient "choice-points" to the accused for any inference to be drawn therefrom.

On the other hand, an absence of over 90 days should always be considered as prolonged as a matter of law. Such an absence, under any circumstances, presents sufficient "choice-points" to the accused so that he should be called upon to dispel the otherwise logical inference that during at least one of these he contemplated a permanent separation.

Between these two periods of 30 days to 90 days lies an interim period, wherein whether the absence is prolonged or not depends so much on circumstances in the case, and is so intertwined with the facts of the case, that it must be denominated as a mixed question of law and fact, rather than a question of law, and so left to the triers of the fact. The circumstances necessary to find that the absence is prolonged must necessarily be strongest nearest to the 30-day period; they may get progressively weaker as the absence lengthens. Likewise, the circumstances necessary to dispel the presumption that the absence is prolonged must be strongest when the absence is for almost 90 days, and may get progressively weaker as the period of absence gets progressively smaller. In summary, therefore, it appears that an absence of less than thirty days is not prolonged as a matter of law; an absence of thirty to sixty days is presumed not to be prolonged, the presumption getting progressively weaker; there is no pre-

sumption either way as to an absence of sixty days; an absence from sixty to ninety days is presumed to be prolonged, the presumption getting progressively stronger; and an absence of over ninety days is prolonged as a matter of law. It is believed that the above rule provides the most satisfactory solution to an otherwise hopelessly insoluble problem.

## V. CONCLUSION

The difference in treatment between absentees without leave and deserters in military law has existed for centuries. This distinction has been founded on sound military personnel policies which require that even those persons who go AWOL be encouraged to return and deterred from staying away permanently. In effectuating this significant military policy, the separate article denouncing desertion has played a prime part.

In large measure, reliance to prove desertion must be placed on the prolonged absence rule. The objection made to the use of this rule, in its final analysis, invariably boils down to an objection to the use of circumstantial evidence to prove intent to desert. The short answer to these objections was once stated by the late Judge Jerome N. Frank as follows:

Implicit in petitioner's argument is a basic objection to reliance upon so-called 'circumstantial evidence.' But courts and other triers of facts, in a multitude of cases, must rely upon such evidence, *i.e.*, inferences from testimony as to attitudes, acts and deeds; where such matters as purpose, plans, designs, motives, intent, or similar matters, are involved, the use of such inferences is often indispensable. Persons engaged in unlawful conduct seldom write letters or make public pronouncements explicitly stating their attitudes or objectives; such facts must usually be discovered by in-

ference; the evidence does not come in packages labelled, 'Use me,' like the cake, bearing the words 'Eat me,' which Alice found helpful in Wonderland.<sup>156</sup>

In light of the above, the prolonged absence rule performs an indispensable function in the military law of desertion. Its restoration and proper use will result in upholding military discipline while observing fairness to the accused.

<sup>156</sup> *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. 2d 658, 660 (2d Cir., 1941). In ETO 13956, Depero, 27 ETO 147, 148 (1945), the Board declared: "The longer the absence, the stronger, in general, is the presumption of the intent to remain permanently absent and unless admitted by accused, such intent is only provable by presumptions and inferences arising from the circumstances shown to have existed. . . . [a] prolonged and unexplained absence raises a strong presumption . . . [of intent to desert]."

## APPENDIX.

Note: This appendix contains a list of all reported desertion cases found by the author which in his opinion involve the question of whether the absence without leave found was "prolonged" or not. The list of cases is arranged in two columns, one in which an intent to desert was held to be "not proved," and one in which such intent was held to be "proved".

Except in the very rare instance where the reporting court was also the trial court, these reports are all from appellate tribunals. Different tribunals, of course, have different scopes of review. One may review only questions of law. Another may be authorized to weigh the evidence as well. It is assumed that the reader is familiar with the scope of review of the several appellate military tribunals. The words "not proved" mean that the finding of an intent to desert by the court-martial below was reversed because the evidence adduced, as a matter of law, or fact, as the case may be, did not permit such an inference, or because, where noted, of prejudicial error. The word "proved" means that such finding was affirmed.

Each entry below contains the case citation. Next to it is the number of days, months, or years during which the accused was absent. Entries are made, starting with the cases in which the AWOL ran for the smallest period of time, and running consecutively to those cases in which the AWOL was most protracted. Next to that is a brief list of the principal factors, other than the length of absence, which indicated whether the accused had an intent to desert or not.

Due to the large number of cases cited, and the limited amount of space, it is obviously impossible to discuss how much weight the appellate tribunal gave to each factor or piece of evidence in reaching its conclusion. The best that can be done is merely to list the factors, leaving more detailed analysis to the reader.

Certain common indicia of intent to desert or lack thereof reoccur so frequently that to save space, abbreviations have been assigned to them. The key to these abbreviations is listed below, and in the entries, only the abbreviated symbol is used. Where other factors closely resemble those listed below, and are of about the same probative weight, the symbol below will be used for them. Thus, where an accused sought a civilian job, the symbol for his actually having gotten the job is used, as these factors are of the same probative weight in indicating intent.

### ABBREVIATIONS.

- A: The absence of accused was terminated by apprehension.
- bla: While AWOL, the accused engaged in black market activities.
- cc: The accused wore civilian clothes while AWOL.
- cha: The accused went AWOL while charged with an offense.
- che: The accused passed worthless checks before or during his AWOL.
- cj: The accused worked at a civilian job while AWOL.
- com: The accused evaded combat duty by absenting himself.
- con: The accused admitted an intent to remain away permanently.
- cri: The accused committed other crimes or offenses before or during AWOL.
- da: Number of days accused was AWOL.
- dfs: The accused traveled a great distance from his station while absent.
- dis: The accused disliked his unit or the military service.
- efc: Accused's absence was initiated by an escape from confinement.
- emb: Accused committed embezzlement before or during his AWOL.
- fi: The accused assumed a false identity while absent. For example, he pretended to be a lieutenant when he was only a private.
- fn: The accused gave a false name or serial number.
- for: The accused committed forgery before or during his AWOL.

- fs: The accused assumed a false status while absent. For example, he said that he was discharged when he was AWOL.
- lar: The accused committed larceny before or during his AWOL.
- lea: The accused left the country in which he was stationed while AWOL.
- mo: Number of months accused was AWOL.
- oth: The accused committed other AWOLs or desertions which showed his intent.
- pe: The court below committed prejudicial error.
- rob: The accused committed robbery before or during his AWOL.
- rs: The accused went AWOL to aid a sick relative, spouse, or child or one in financial need.
- S: The absence of accused was terminated by surrender.
- sea: The accused evaded overseas shipment by absenting himself.
- yr: Number of years accused was AWOL.

## NOT PROVED.

*a. 0-10 days.*

- U. S. v. Scheaffer, 9 CMR 847 (ACM, 1953), 15 minutes, A, etc, lar.  
 CM 261112, Allen, 40 BR 145 (1944), 1 hour, S, etc (dicta).  
 CMO 1-1945, P. 9, 2 hours 55 minutes, A.  
 CMO 3-1944, P. 439, 6 hours, A, etc.  
 CM 221491, Peloquin, 13 BR 175 (1942), 14 hours, A.  
 CM 223489, Madison, 14 BR 1 (1942), 1 da, A, dfs.  
 CM 223517, Rebraca, 14 BR 15 (1942), 1 da, A.  
 CMO 2-1943, P. 91, 2 da, A, etc.  
 CMO 12-1946, P. 385, 2 da, A, etc.  
 Winthrop, Dig. Ops. JAG, 1895, p. 347, # 28, 3 da, A.  
 U. S. v. Bedner, 13 CMR 556 (NCM, 1953), 3 da, A, etc.  
 CM 249731, Marlin, 32 BR 177 (1944), 4 da, A, prepared to return.  
 CMO 4-1927, P. 14, 4 da.  
 CMO 2-1946, P. 49, 4 da, A.  
 CM 125887, Ford (1919), Dig. CM Rev. (1920), p. 271, 5 da, A.  
 CM 208462, Meier, 9 BR 9 (1937), 5 da, S, dfs, cc, near home.  
 CM 245568, Clancy, 29 BR 215 (1943), 5 da, A.  
 CM 261111, Kuykendall, 40 BR 141 (1944), 5 da, A, dfs.  
 CM 330310, Rucker, 79 BR 1 (1948), 5 da.  
 ETO 16104, Blanchette, 30 ETO 203 (1945), 5 da, A, illegal activities.  
 GCMO 36, Navy Dept., Feb. 23, 1901, 5 da, S, rs.  
 CMO 8-1932, P. 7, 5 da, A.  
 U. S. v. Isham, 11 CMR 880 (ACM, 1953), 5 da, A, etc.  
 CM 220237, Neusom, 12 BR 369 (1942), 6 da, A.  
 CM 318467, Johnson, 67 BR 325 (1947), 6 da, A, breached restriction.  
 ETO 12128, Bailey, 25 ETO 45 (1945), 6 da, A, etc.  
 ETO 15442, Bifano, 29 ETO 165 (1945), 6 da, A, etc.  
 U. S. v. Huff, 19 CMR 603 (CGCM, 1955), 6 da.  
 CM 222861, Fragassi, 13 BR 329 (1942), 7 da, A, returning.  
 ETO 5593, Jarvis, 15 ETO 229 (1945), 7 da.  
 CMO 1-1943, P. 64, 7 da, S.  
 GCMO 118, Navy Dept., Oct. 11, 1897, 8 da, A, cc, bought tools for cj, kept uniform.  
 CM 213822, Pettitt, 10 BR 291 (1940), 8 da, S.  
 CM 216361, Weber, 11 BR 133 (1941), 9 da, S.



CM 133701, MacDonald (1919), Dig. CM Rev. (1920), p. 277, 10 da, S.  
 CM 262347, Moore, 41 BR 43 (1944), 10 da, S.  
 ETO 5234, Stubinski, 14 ETO 257 (1945), 10 da, S.  
 Naval Digest, p. 168, # 4, CMO 30, 1910, P. 6, 10 da.  
 CMO 4-1950, P. 185, 10 da, A.  
 U. S. v. Isenberg, 2 USCMA 349, 8 CMR 149 (1953), 10 da.  
 U. S. v. Leon, 10 CMR 630 (ACM, 1953), 10 da, A, etc, went home, returning to base.

*b. 11-30 days.*

CM 125904, Moore (1919), Dig. Ops. JAG 1912-40, Sec. 416(8), p. 268, 11 da, A.  
 ETO 1395, Saunders, 4 ETO 261 (1944), 11 da, S, etc.  
 CM 127372, Diamond (1919), Dig. Ops. JAG 1912-40, Sec. 416(9), p. 268, 12 da, S.  
 U. S. v. Jenkins, 1 USCMA 329, 3 CMR 63 (1952), 12 da (dicta).  
 CM 226261, Wilcox, 15 BR 55 (1942), 13 da, A.  
 CM 195988, Parr, 2 BR 313 (1931), 14 da, A, cc.  
 ETO 5593, Jarvis, 15 ETO 229 (1945), 14 da.  
 U. S. v. Arnold, 10 CMR 233 (CM, 1953), 14 da.  
 GCMO 81, Navy Dept., July 15, 1897, 15 da, A.  
 CM 130352, Denault (1919), Dig. CM Rev. (1920), p. 274, 15 da, A, fn, took no  
 baggage.  
 CM 245568, Clancy, 29 BR 215 (1943), 15 da, S.  
 ETO 13655, Click, 27 ETO 71 (1945), 15 da.  
 CM 120894, Allen (1918), Dig. Ops. JAG 1912-40, Sec. 416(8), p. 267, 16 da, A, fn.  
 CMO 10-1945, P. 412, 16 da, A.  
 CMO 1-1947, P. 13, 16 da, A.  
 CM 205916, Williams, 8 BR 235 (1936), 17 da, S, dfs.  
 CM 196187, Roath, 2 BR 333 (1931), 18 da, A, cc.  
 NATO 219, Keir, 1 NATO-MTO 165 (1943), 18 da, A.  
 CM 196776, Maialoha, 3 BR 35 (1931), 19 da, A, cc.  
 CM 225533, Kauffman, 14 BR 291 (1942), 19 da, A, dfs, dis, (BR-proved) by TJAG.  
 U. S. v. Smith, 5 CMR 178 (CM, 1952), 19 da, oth, cj, rs, went home.  
 CM 122759, Rush (1919), Dig. CM Rev. (1920), p. 275, 20 da, A.  
 CM 189658, Hawkins, 1 BR 175 (1930), 20 da, A, rs, telephoned post.  
 CM 198750, Knouff, 3 BR 299 (1932), 20 da, S.  
 CM 216361, Weber, 11 BR 133 (1941), 20 da, S, breach of arrest.  
 ETO 5234, Stubinski, 14 ETO 257 (1945), 20 da, S.  
 ETO 16196, Leone et al., 30 ETO 257 (1945), 20 da, A.  
 CM 218817, Fairchild, 10 BR 287 (1940), 22 da, A, near post.  
 ETO 1567, Spicocchi, 5 ETO 57 (1944), 22 da, A.  
 CM 196867, Swenson, 3 BR 43 (1931), 23 da, S, cc.  
 CM 223648, Nugent, 14 BR 39 (1942), 24 da, S, oth, dfs, disobeyed order to return,  
 home (proved-BR) by TJAG.  
 ETO 6497, Gary, 17 ETO 67 (1945), 24 da.  
 ETO 11924, Polidoro, 24 ETO 370 (1945), 24 da, A.  
 U. S. v. Geving, 4 (AF) CMR 128 (ACM, 1950), 24 da, S.  
 ETO 6039, Brown, 16 ETO 89 (1945), 25 da, S.  
 ETO 8631, Hamilton, 19 ETO 355 (1945), 25 da, A.  
 CM 344253, Murphy, 10 JC 125 (1950), 26 da, A (dicta).  
 CM 229525, Sower, 17 BR 167 (1943), 27 da, S, dfs.  
 ETO 13174, Druce, 26 ETO 177 (1945), 28 da, S.  
 U. S. v. Green, 2 (AF) CMR 523 (ACM, 1950), 28 da, S.

CM 126150, Abels (1919), Dig. CM Rev. (1920), p. 271, 30 da, A.  
 CM 200601, Rowland, 4 BR 351 (1933), 30 da, S.  
 CM 223160, Libonati, 13 BR 359 (1942), 30 da, S.  
 U. S. v. Morris, 20 CMR 412 (CM, 1955), 30 da.

*c. 31-60 days.*

SpCM 427, Kallenberger, 4 JC 441 (1949), 31 da, A (dicta).  
 U. S. v. Ayala, 3 CMR 284 (CM, 1952), 31 da (dicta).  
 CM 230196, Kennedy, 17 BR 305 (1943), 32 da, S.  
 U. S. v. Lawler, 7 CMR 462 (NCM, 1953), 32 da, A, etc, cc.  
 CM 124248 (1919), Dig. Ops. JAG 1912-40, Sec. 416(9), p. 269, 33 da, A, rs.  
 U. S. v. Logas, 2 USCMA 489, 9 CMR 119 (1953), 33 da A (2-1).  
 U. S. v. Ohver, 2 USCMA 613, 10 CMR 111 (1953), 33 da, A, rs, went home.  
 U. S. v. Northern, 4 CMR 761 (ACM, 1952), 34 da, dfs, oth.  
 CM 129801, Cahn (1919), Dig. CM Rev. (1920), p. 276, 35 da, S, com.  
 CMO 9-1945, P. 388, 35 da, A, cc, rs, returning to base.  
 CM 123404, Standlea (1918), Dig. Ops. JAG 1912-40, Sec. 416(8), p. 268, 36 da, A.  
 U. S. v. Spruill, 23 CMR 485 (CM, 1957), 37 da, A, dfs, dis, cj, pe.  
 CM 294895, Hatfield, 58 BR 9 (1945), 39 da, pe.  
 ETO 5740, Gowins, 15 ETO 315 (1945), 39 da, pe.  
 U. S. v. Hedges, 16 CMR 412 (NCM, 1954), 41 da.  
 U. S. v. Peterson, 2 USCMA 645, 3 CMR 51 (1952), 46 da, S, re-enlisted.  
 U. S. v. Robles-Robles, 14 CMR 250 (CM, 1953), 46 da, A, rs, cc, dfs, at home.  
 CM 115452, Sperry (1918), Dig. CM Rev. (1920), p. 271, 47 da, A.  
 GCMO 14, Navy Dept., Mar. 11, 1895, 48 da, S, cc, denied intent, communicated with Navy.  
 U. S. v. Alexander, 1 CMR 465 (NCM, 1951), 49 da, S, testified intent to return.  
 CMO 37, 1909, P. 8, 49 da, S (dicta).  
 U. S. v. Arocho, 8 CMR 289 (CM, 1953), 51 da, S, rs.  
 CMO 5-1949, P. 110, 51 da, pe.  
 U. S. v. Uhland, 10 CMR 620 (ACM, 1953), 53 da, A, cc, rs.  
 U. S. v. Evans, 1 (AF)CMR 114 (ACM, 1948), 57 da, A, cj, rs, pe.  
 U. S. v. Mize, 11 CMR 587 (NCM, 1953), 59 da, A, rs.

*d. Over 60 days.*

CM 231469, Marcellino, 18 BR 217 (1943), 62 da, A, pe.  
 U. S. v. Nash, 1 USCMA 538, 4 CMR 130 (1952), 65 da, pe.  
 GCMO 140, Navy Dept., Nov. 23, 1896, 68 da, S.  
 U. S. v. Ingraham, 1 (AF)CMR 520 (ACM, 1949), 68 da, A, dfs, cc, cj, fn, sea, rs, veteran, gave address, debts, liked service.  
 U. S. v. Cantu, 2 CMR 220 (CM, 1951), 72 da, S, rs, sea.  
 U. S. v. Arocho, 8 CMR 289 (CM, 1953), 77 da, S, marital trouble.  
 U. S. v. Alexander, 4 CMR 226 (CM, 1952), 81 da, S, sea, attempted return.  
 U. S. v. Henderson, 2 (AF) CMR 390 (ACM, 1949), 82 da, S, drunk, expressed intent to return.  
 CMO 11-1933, P. 6, 94 da, S, cj, debts.  
 Hough, Precedents in Military Law (1855), p. 148, 94 da, A, drunk.  
 U. S. v. Howe, 6 CMR 752 (ACM, 1952), 95 da, S, dis.  
 U. S. v. Wilson, 8 CMR 194 (CM, 1952), 96 da, A, rs, round trip ticket.  
 U. S. v. Carlson, 12 CMR 643 (NCM, 1953), 96 da, pe.

- U. S. v. Green, 5 CMR 588 (ACM, 1952), 100 da, S.  
 GCMO 121, Navy Dept., Nov. 4, 1896, 103 da, S.  
 U. S. v. James, 13 CMR 506 (CM, 1953), 105 da, A, rs.  
 U. S. v. Rotski, 12 CMR 649 (CGCM, 1953), 106 da, A, rs.  
 U. S. v. DeGraffenreid, 23 CMR 659 (NCM, 1957), 110 da, A, said intended to return (2-1).  
 GCMO 132, Navy Dept., Nov. 21, 1896, 113 da, S.  
 U. S. v. Boland, 16 CMR 417 (NCM, 1954), 113 da, A, told reason.  
 U. S. v. Palmer, 8 CMR 633 (ACM, 1953), 114 da, dfs, said intended to return.  
 Griffin v. United States, 115 F. Supp. 509 (W. D. Ark., 1953), rev. on other grounds, 216 F. 2d 217 (8 Cir., 1954), 116 da, cj, ill, home, stated intent to return.  
 U. S. v. Brussow, 3 CMR 290 (CM, 1952), 143 da, A, fi, fs, pe.  
 CMO 1-1951, P. 18, 4 mo, A, pe.  
 GCMO 158, Navy Dept., Dec. 21, 1897, 5 mo, S, denied intent, pe.  
 U. S. v. Lee, 15 CMR 495 (CM, 1954), 5 mo, A, cc, pe.  
 CM 343838, Smith, 9 JC 347 (1950), 5½ mo, A, rs, cj, pe.  
 U. S. v. Kazmorck, 12 CMR 603 (CM, 1953), 6 mo, A, rs, at home.  
 GCMO 159, Navy Dept., Dec. 21, 1899, 6½ mo, A, pe.  
 GCMO 51, Navy Dept., June 26, 1894, 9 mo, S.  
 GCMO 55, Navy Dept., June 7, 1897, 9 mo, S, denied intent, pe.  
 GCMO 12, Navy Dept., Feb. 1, 1897, 10 mo, S, pe.  
 CMO 6-1949, P. 137, 11½ mo, A, pe.  
 CM 315600, Allen, MO-JAGA 163 (1950), 1 yr, A, cc, cj, nearly insane.  
 CM 135431, Phillips (1919), Dig. CM Rev. (1920), p. 278, 1½ yr, S, rs.  
 U. S. v. Peters, 19 CMR 600 (CGCM, 1955), 1 yr. 7 mo, A, evaded A, dis, cj, pe.  
 CM 279842, Potens, 52 BR 345 (1945), 1 yr 9 mo, A, pe.  
 CM 313446, Cunnagin, 63 BR 71 (1946), 2 yr, S, cc, cj, rs (pe 2-1), rev. on other grounds by TJAG and Und. Secy. of War, 81 BR 443 (1946).  
 CM 320618, Gardner, 70 BR 71 (1947), 2 yr 7 mo, pe.  
 U. S. v. Swain, 8 USCMA 387, 24 CMR 197 (1957), 12 yr, A (pe 2-1).

PROVED.

*a. 0-10 days.*

- Winthrop, Military Law and Precedents, 2d Ed. 1920 Reprint, p. 638, n. 32, G.C.M.O. 33, Dept. of the Mo., 1870, 1 hour, A, fleeing.  
 ETO 12045, Friedman, 25 ETO 17 (1945), 2 hours 15 minutes, com, prior desertion.  
 CM 192882, Hilburn et al, 2 BR 43 (1930), 5½ hours, A, etc, ran from officers.  
 Ram v. Tafe, 33 J. P. 38 (Q. B. 1868), 10 hours, A, etc, emb.  
 CM 234964, Furtado, 21 BR 217 (1943), 20 hours, A, etc, lar, violence.  
 CM 193003, Simpkins, 2 BR 67 (1930), 1 da, A, conspired to desert.  
 CM 202951, Wyatt, 6 BR 385 (1935), 1 da, A, lar.  
 CM 211898, Shelton, 10 BR 153 (1939), 1 da, A, con.  
 CM 226833, Joseph, 15 BR 149 (1942), 1 da, A, con, rob, fi, fs.  
 CM 234601, Giardina, 21 BR 69 (1943), 1 da, A, con, cc.  
 CM 235227, Bernard, 21 BR 341 (1943), 1 da, A, etc, oth, lar, cri.  
 CM 235668, Udovich et al, 22 BR 189 (1943), 1 da, A, etc, rob, cri, cc, lea.  
 CM 255741, Parker, 36 BR 175 (1944), 1 da, etc, under long sentence.  
 CM 257550, O'Connor, 37 BR 163 (1944), 1 da, A, etc, dfs, cri.  
 CM 312890, Craver, 62 BR 319 (1946), 1 da, A, etc, for murder.  
 ETO 2828, Kulaga, 8 ETO 61 (1944), 1 da, A, etc.  
 U. S. v. Isham, 11 CMR 880 (ACM, 1953), 1 da, A, etc, dfs, tried to finance trip.

CM 226512, Lubow, 15 BR 105 (1943), 2 da, A, lar, requested funds.  
 U. S. v. Patton, 3 (AF)CMR 156 (ACM, 1950), 2 da, A, cc, lea, lar, con.  
 CM 196619, Goyette et al, 3 BR 27 (1931), 3 da, A, rob, lar.  
 CM 227204, Hughes, 15 BR 213 (1942), 3 da, A, cc, dfs.  
 CM 238485, Rideau, 24 BR 263 (1943), 3 da, A, efc, cc, cj.  
 CM 257165, Maple, 37 BR 47 (1944), 3 da, A, dis, lea, fn, fi, aided enemy.  
 CM 196619, Curtis et al, 3 BR 27 (1931), 4 da, A, rob, lar.  
 CM 136061, Weatherby (1920), Dig. CM Rev. (1920), p. 272, 5 da, A, cc, lar, fn.  
 CM 196619, Bland et al, 3 BR 27 (1931), 5 da, A, rob, lar.  
 ETO 960, Fazio et al, 3 ETO 189 (1943), 5 da, A, efc, fn, lea.  
 CM 229813, Turner, 17 BR 225 (1943), 6 da, S, efc, cc, dfs, cha.  
 CM 270591, Vanzant, 45 BR 313 (1945), 6 da, A, efc, dfs, oth.  
 CM 274989, Smith, 47 BR 393 (1945), 6 da, A, cha, concealed self.  
 CM 274990, Baxley, 48 BR 1 (1945), 6 da, A, cha, cc, concealed self.  
 ETO 960, Nelson et al, 3 ETO 189 (1943), 6 da, A, efc, fn, lea.  
 ETO 9843, McClain, 21 ETO 223 (1945), 6 da, A, cc, fi.  
 ETO 11201, Livingston, 24 ETO 1 (1945), 6 da, efc, lea.  
 ETO 11202, Moore, 24 ETO 7 (1945), 6 da, efc, lea.  
 ETO 11830, Green et al, 24 ETO 313 (1945), 6 da, A, at gun point, cri, bla, con.  
 CM 221662, Knight, 13 BR 211 (1942), 7 da, A, oth.  
 ETO 1645, Gregory, 5 ETO 167 (1944), 7 da, S, efc, fn, fi, reluctant to return.  
 ETO 7379, Keiser, 18 ETO 109 (1945), 7 da, A, efc, oth, resisted arrest.  
 NATO 2376, Shrum, 4 NATO-MTO 63 (1944), 7 da, A, oth, fi.  
 CM 336419, Halprin, 5 JC 301 (1950), 7 da, A, lea, cc, fi, che, false orders.  
 ETO 1036, Harris, 3 ETO 293 (1943), 8 da, A, cc, fi.  
 CM 196199, Casey, 2 BR 343 (1931), 9 da, A, cc, dfs, emb.  
 CM 187800, Michalowski, 49 BR 9 (1929), 9 da, A, cc, lar.  
 ETO 656, Taylor, 2 ETO 205 (1943), 9 da, A, efc, lea, con, fi.  
 NATO 2490, Waddell, 4 NATO-MTO 107 (1944), 9 da, A, dfs, con.  
 CM A-1747, Jenkins, 2 A-P 362 (1945), 9 da, A, efc, dfs, cc, fi, cri.  
 CM 229635, Farris, 17 BR 205 (1943), 10 da, A, dfs, lar, con, went with prisoners.  
 ETO 16342, Wiseman, 30 ETO 323 (1945), 10 da, A, con.  
 U. S. v. O'Brien, 2 CMR 531 (CM, 1952), 10 da, efc, lea, cha.

*b. 11-20 days.*

CM 195705, Tyson, 2 BR 267 (1931), 11 da, A, cc, lar.  
 CM 236503, Gain, 23 BR 21 (1943), 11 da, A, efc, cc, cri.  
 ETO 2410, McLaren, 6 ETO 365 (1944), 11 da, A, cc, cj.  
 ETO 9681, Bennett, 21 ETO 159 (1945), 11 da, A, efc, oth.  
 U. S. v. Cochran, 7 CMR 490 (ACM, 1952), 11 da, A, dfs, lar.  
 CM 161833 (1924), Dig. Ops. JAG 1912-40, Sec. 416(9), p. 269, 12 da, dfs.  
 CM 218579, Lowrance, 12 BR 93 (1941), 12 da, S, went home.  
 CM 226871, Green, 15 BR 171 (1942), 12 da, A, dis, oth.  
 CM 230290, Crouch, 17 BR 355 (1943), 12 da, con.  
 ETO 12239, Blackshear, 25 ETO 89 (1945), 12 da, A, efc, resisted arrest.  
 ETO 16620, Tarver, 31 ETO 71 (1945), 12 da, efc, other escapes.  
 CM A-1747, Jenkins, 2 A-P 362 (1945), 12 da, A, efc, dfs, cc, fi, cri.  
 CM 345000, Langley, 12 JC 215 (1951), 12 da, A, cc, oth, cha.  
 CM 226512, Lubow, 15 BR 105 (1943), 13 da, A, efc, dfs, cc.  
 NATO 3041, Dorsey, 4 NATO-MTO 371 (1944), 13 da, A, fn, cri, was escaped prisoner.

U. S. v. Packard, 11 CMR 640 (NCM, 1953), 13 da, A, oth.  
 CM 309496, Mathieu, MO-JAGA 449 (1950), 14 da, A, efc, fn, fi.  
 CM 226871, Green, 15 BR 171 (1942), 15 da, A, oth, dis, cc, avoided A.  
 CM 234521, Culberson, 21 BR 29 (1943), 15 da, A, efc, dfs, fi.  
 CM 234522, Ford, 21 BR 35 (1943), 15 da, A, efc, dfs, fi.  
 ETO 875, Fazio, 3 ETO 31 (1943), 15 da, A, efc, cc, cj, con.  
 ETO 1674, Russo, 5 ETO 213 (1944), 15 da, A.  
 ETO 1856, Swartz, 5 ETO 331 (1944), 15 da, A, efc.  
 ETO 9595, DeLaurier, 21 ETO 115 (1945), 15 da, A, cc, con.  
 ETO 15548, Clark, 29 ETO 223 (1945), 15 da, A, oth.  
 IBT 658 (CT 49), Smolley et al, 3 CBI-IBT 201 (1945), 15 da, A, efc, cri.  
 CM 236985, Douglas, 23 BR 203 (1943), 16 da, S, dfs, rob.  
 ETO 11830, Green et al, 24 ETO 313 (1945), 16 da, A, at gun point, cri, bla, con.  
 IBT 658 (CT 49), Smolley et al, 3 CBI-IBT 201 (1945), 16 da, A, efc, cri.  
 CM 228239, Parks, 16 BR 105 (1942), 17 da, A, cc, dis.  
 ETO 1100, Simmons, 4 ETO 1 (1944), 17 da, A, efc, oth.  
 ETO 9681, Bennett, 21 ETO 159 (1945), 17 da, A, cri.  
 ETO 13174, Druce, 26 ETO 177 (1945), 17 da, A, efc.  
 CM A-216, Hovi, 1 A-P 59 (1943), 17 da.  
 ETO 15154, Sohn, 28 ETO 339 (1945), 18 da, A, emb.  
 ETO 15814, DeLoggio, 30 ETO 19 (1945), 18 da, A, efc, cha.  
 CM 336607, Hosick, 3 JC 151 (1949), 18 da, A, dfs, cha, che.  
 CM 252646, Miller, 34 BR 119 (1944), 19 da, A, efc, cc.  
 CM 270939, O'Gara, 45 BR 371 (1945), 19 da, A, dfs, for.  
 ETO 11830, Green et al, 24 ETO 313 (1945), 19 da, A at gun point, cri, bla, con.  
 MTO 4512, Campione, 5 NATO-MTO 229 (1944), 19 da, A.  
 CM 234837, Shiley, 21 BR 179 (1943), 20 da, A, efc under life sentence, cc.  
 CM 262735, Kaslow, 41 BR 113 (1944), 20 da, A, efc, lar, for, resisted arrest.  
 ETO 3056, Walker, 8 ETO 273 (1944), 20 da, A, efc, lar, oth.  
 ETO 9333, Odom, 20 ETO 301 (1945), 20 da, A, oth.  
 ETO 13482, Ianuzzo, 27 ETO 1 (1945), 20 da, A, efc, oth.

*c. 21-30 days.*

CM 228239, Parks, 16 BR 105 (1942), 21 da, A, efc, cc.  
 CM 233688, Aievoli, 20 BR 49 (1943), 22 da, dfs, cri, rs, planned to return.  
 CM 285344, Burdett, 56 BR 51 (1945), 22 da, A, dfs, cc, fn, fi.  
 ETO 7379, Keiser, 18 ETO 109 (1945), 22 da, A, oth.  
 Rex v. Mahoney (1956), 3 All E. R. 799 (Ct. Mar. App. Ct.), 22 da (dicta).  
 CM 105154, Weiss (1917), Dig. CM Rev. (1920), p. 273, 23 da, S, dfs.  
 CM 231925, Lyons, 18 BR 317 (1943), 23 da, A, efc, con, for, fn, fi.  
 CM 270939, O'Gara, 45 BR 371 (1945), 23 da, A, dfs, for, broke arrest.  
 ETO 2723, Copprue, 7 ETO 341 (1944), 23 da, A, efc, fi, eluded arrest.  
 ETO 5596, Reynolds, 15 ETO 243 (1945), 23 da, A, con.  
 CM 228562, Martin et al, 16 BR 223 (1943), 24 da, A, efc, cha.  
 CM 316347, Fever, 65 BR 305 (1946), 24 da, A, dfs, emb.  
 ETO 14456, Fowler, 28 ETO 1 (1945), 24 da, A, fi.  
 CMO 11-1928, P. 8, 24 da, A.  
 CMO 10-1945, P. 423, 24 da, A.  
 CM 227546, Shirley, 15 BR 315 (1942), 25 da, A, dfs, fraudulent enlistment.  
 CM 268694, Hamm, 44 BR 323 (1945), 25 da, A, cc, cri.  
 ETO 9957, Robinson, 21 ETO 255 (1945), 25 da, A, oth.

ETO 15548, Clark, 29 ETO 223 (1945), 25 da, A, oth.  
 CM 226871, Green, 15 BR 171 (1942), 26 da, A, dis, cc, oth.  
 CM 312124, Juett, 62 BR 1 (1946), 26 da, S, cri.  
 ETO 1691, Artwell, 5 ETO 229 (1944), 26 da, A, cri, con.  
 ETO 18725, Juett, 34 ETO 135 (1946), 26 da, S, com, con.  
 CM 238349, Smith, 24 BR 227 (1943), 27 da, A, efc, fn, fi.  
 ETO 11830, Green et al, 24 ETO 313 (1945), 27 da, A at gun point, cri, bla, con.  
 CM A-286, Stapleton, 1 A-P 87 (1943), 27 da, A, dfs, cc, cj, con.  
 U. S. v. Barrett, 3 USCA 294, 12 CMR 50 (1953), 27 da, A, dfs, breach of arrest.  
 James, Collection of Courts-Martial (London, 1820), p. 300, Asst. Surgeon J. H. Kennedy (1809), 28 da, A.  
 CM 265699, Ferry, 43 BR 91 (1944), 28 da, A, cc, dis.  
 ETO 6195, Odhner, 16 ETO 179 (1945), 28 da, A, dfs, emb, lea.  
 ETO 13263, Kelley, 26 ETO 217 (1945), 28 da, com.  
 CM 259789, Blach, 39 BR 21 (1944), 29 da, A, efc, cc, dis.  
 CM 270591, Vanzant, 45 BR 313 (1945), 29 da, A, efc, dfs, oth.  
 ETO 2842, Flowers, 8 ETO 83 (1944), 29 da, A, cc, cj, con, concealed self.  
 ETO 8632, Golding, 19 ETO 361 (1945), 29 da, A, efc, cc, cha, oth.  
 ETO 13463, Weeks, 26 ETO 393 (1945), 29 da, A, oth.  
 U. S. v. Roux, 3 CMR 232 (CM, 1952), 29 da, oth.  
 In re Spencer, 40 F. 149 (D. C. Kan., 1889), 30 da, A (dicta).  
 ETO 1103, Burns, 4 ETO 5 (1943), 30 da, A, lar.  
 ETO 1981, Fraley, 6 ETO 63 (1944), 30 da, A, efc.  
 ETO 2901, Childrey et al, 8 ETO 131 (1944), 30 da, A, efc, lar, fn, fi.  
 ETO 15441, Romanowski, 29 ETO 159 (1945), 30 da, efc, com, oth.  
 MTO 4958, Kallas, 6 NATO-MTO 47 (1945), 30 da, A, oth.  
 CMO 1-1940, P. 60, 30 da, S, con.  
 CMO 3-1944, P. 400, 30 da, S, missed ship (dicta).  
 U. S. v. Savoy, 11 CMR 397 (CM, 1953), 30 da, A, evaded arrest.

*d. 31-40 days.*

CM 229183, Mulock, 17 BR 79 (1943), 31 da, A, cc, cj, fn.  
 ETO 13818, Villanti, 27 ETO 123 (1945), 31 da, A, oth.  
 ETO 14575, Dugges, 28 ETO 59 (1945), 31 da, A, cc, bla.  
 CMO 1-1925, P. 4, 31 da, A (dicta).  
 CM 228274, Small, 16 BR 111 (1942), 32 da, A, dfs, cc, lar, evaded arrest.  
 CM 238349, Smith, 24 BR 227 (1943), 32 da, A, fi.  
 CM 279399, Williams, 52 BR 201 (1945), 32 da, efc, oth.  
 ETO 12381, Porter, 25 ETO 131 (1945), 32 da, A, cri.  
 ETO 15268, Cosentino, 29 ETO 61 (1945), 32 da, A, efc, fi, cri.  
 NATO 603, Suci, 2 NATO-MTO 59 (1943), 32 da, A, efc, dis.  
 U. S. v. Martin, 7 CMR 542 (ACM, 1952), 32 da, S, dis, con, evaded arrest.  
 CM 234716, Stinson, 21 BR 147 (1943), 33 da, A, evaded transfer.  
 ETO 952, Mosser, 3 ETO 177 (1943), 33 da, A, fn, fi, rob, cri.  
 ETO 2901, Childrey et al, 8 ETO 131 (1944), 33 da, A, lar, fi.  
 ETO 3062, Osther, 8 ETO 283 (1944), 33 da, S, efc, enlist in foreign service.  
 ETO 15343, Deason, 29 ETO 121 (1945), 33 da, A, bla, cc, tried to break arrest.  
 NATO 2376, Shrum, 4 NATO-MTO 63 (1944), 33 da, oth, fi.  
 ETO 13708, Muldrow, 27 ETO 87 (1945), 34 da, A.  
 ETO 16869, Henry, 31 ETO 197 (1945), 34 da, A, cc.  
 U. S. v. Good, 16 CMR 886 (ACM, 1954), 34 da, A by force, oth, repeated escapes.

CM 205811, Fagan, 8 BR 229 (1936), 35 da, A, cc.  
 CM 317526, McClellan, 66 BR 355 (1947), 35 da, A, lea, cha.  
 ETO 14133, Corriveau et al, 27 ETO 223 (1945), 35 da, A, efc, oth.  
 U. S. v. Knoph, 2 USCMA 108, 6 CMR 108 (1952), 35 da, A.  
 ETO 12224, Ciullo, 25 ETO 83 (1945), 36 da, A, bla, cri, reaffirmed, CM 301239,  
 Ciullo, MO-JAGA 355 (1950).  
 ETO 1629, O'Donnell, 5 ETO 119 (1944), 37 da, S.  
 ETO 13482, Ianuzzo, 27 ETO 1 (1945), 37 da, A, oth.  
 ETO 18200, Davis, 33 ETO 255 (1945), 37 da, A, efc, cri.  
 U. S. v. Shuler, 2 USCMA 611, 10 CMR 109 (1953), 37 da, A.  
 CM 270939, O'Gara, 45 BR 371 (1945), 38 da, A, efc, dfs.  
 CM 312092, Currey et al, 61 BR 363 (1946), 38 da, A, cri.  
 CM 338827, Dobbins, 4 JC 313 (1949), 38 da, A, oth.  
 ETO 9978, Carriso et al, 21 ETO 269 (1945), 39 da, A.  
 ETO 14595, Arnett, 28 ETO 85 (1945), 39 da, A, oth.  
 ETO 15154, Sohn, 28 ETO 239 (1945), 39 da, A, emb.  
 CM 106147, McMillen (1917), Dig. CM Rev. (1920), p. 270, 40 da, A.  
 ETO 9978, Green et al, 21 ETO 269 (1945), 40 da, A.  
 ETO 15593, Joseph, 29 ETO 265 (1945), 40 da, A, cri.

*e. 41-50 days.*

CM 208545, Polk, 9 BR 15 (1937), 41 da, A, emb. fraudulent enlistment.  
 CM 235258, Smith, 21 BR 355 (1943), 41 da, A, dfs, rob, con.  
 ETO 527, Astrella, 2 ETO 79 (1943), 41 da, S, shirked duty (dicta, 2-1).  
 ETO 9978, Gates et al, 21 ETO 269 (1945), 41 da, A.  
 ETO 14583, Lajoce, 28 ETO 67 (1945), 41 da, A, oth, breached arrest.  
 ETO 15196, Nicholas, 28 ETO 371 (1945), 41 da, A, cc.  
 ETO 17679, Darpino, 32 ETO 377 (1945), 41 da.  
 CM 187542, Lanier, 1 BR 49 (1929), 42 da, A, fraudulent enlistment.  
 CM 243674, Bever, 28 BR 43 (1944), 42 da, A, fn, fi, fs, cc, cj, dis.  
 ETO 2901, Cuddy et al, 8 ETO 131 (1944), 42 da, A, lar, fn, fi.  
 ETO 15776, Butler, 29 ETO 377 (1945), 42 da, A.  
 NATO 2022, Donnelly, 3 NATO-MTO 343 (1944), 42 da, A.  
 CMO 5-1948, P. 157, 42 da, broke arrest.  
 ETO 5958, Perry et al, 16 ETO 61 (1945), 43 da, S, fi.  
 MTO 4571, Camberdella, 5 NATO-MTO 245 (1945), 43 da, A.  
 CM 232160, McCloudy, 18 BR 389 (1943), 44 da, A, efc, cc, cj.  
 ETO 4526, Archuletta, 13 ETO 21 (1945), 45 da, A, efc, cc, fi.  
 ETO 12045, Friedman, 25 ETO 17 (1945), 45 da.  
 ETO 15689, Fors, 29 ETO 309 (1945), 45 da, S, oth, com.  
 CMO 1-1928, P. 13, 45 da.  
 CM 191876, Miller, 49 BR 21 (1930), 46 da, S, efc.  
 ETO 15197, Blackburn, 28 ETO 375 (1945), 46 da, A, cc, bla.  
 CBI 141, Jackson, 1 CBI-IBT 139 (1944), 46 da, A, efc.  
 U. S. v. Anderson, 2 CMR 238 (CM, 1951), 46 da, efc, cha.  
 ETO 11972, Allison, 24 ETO 408 (1945), 47 da, A, efc, cha, oth.  
 ETO 14069, Marziano, 27 ETO 199 (1945), 48 da, A, dfs, fn, lea.  
 ETO 18159, Orem, 33 ETO 203 (1945), 48 da, A, efc, lea.  
 U. S. v. Ferretti, 1 USCMA 323, 3 CMR 57 (1952), 48 da, A, dfs.  
 CM 216904, Frankie, 11 BR 183 (1941), 49 da, A, cj, con, tried to resign.  
 CM 229183, Mulock, 17 BR 79 (1943), 49 da, A, fi, dis, evaded arrest.

ETO 1515, Smith, 4 ETO 375 (1944), 49 da, A, cc, fi.  
 ETO 1691, Artwell, 5 ETO 229 (1944), 49 da, A, efc, fi.  
 ETO 14135, Cerrito, 27 ETO 229 (1945), 49 da.  
 ETO 14595, Arnett, 28 ETO 85 (1945), 49 da, A, oth.  
 ETO 15206, Burton, 28 ETO 393 (1945), 49 da, A, con.  
 MTO 4958, Kallas, 6 NATO-MTO 47 (1945), 49 da, A, oth.  
 U. S. v. Swisher, 3 CMR 367 (CM, 1952), 49 da, A, efc, cha.  
 CM 238349, Smith, 24 BR 227 (1943), 50 da, A, efc, dfs, cj, lea.  
 ETO 823, Potest, 2 ETO 371 (1943), 50 da, A, cc, fn, fi, fs.  
 NATO 2887, Durham, 4 NATO-MTO 265 (1944), 50 da, A, rob.  
 U. S. v. Herring, 23 CMR 489 (CM, 1957), 50 da, A, dis, cj.

*f. 51-60 days.*

CM 217788, Allen, 11 BR 323 (1941), 51 da.  
 CM 318507, Hayes, 71 BR 391 (1947), 52 da, A, cc.  
 ETO 9406, Sullivan, 20 ETO 359 (1945), 52 da, A, cc, cri, lived with prostitute.  
 ETO 9470, Safford, 21 ETO 61 (1945), 52 da, A.  
 ETO 15184, Newland, 28 ETO 357 (1945), 52 da, A, efc.  
 ETO 15901, Hicks, 30 ETO 125 (1945), 52 da, A.  
 ETO 16620, Tarver, 31 ETO 71 (1945), 52 da, A, fn.  
 CM 279864, Grimlan, MO-JAGA 378 (1950), 52 da, A, efc, oth, fraudulent enlistment.  
 CM 317526, McClellan, 66 BR 355 (1947), 53 da, A, efc, cc, cj, fn, lea.  
 NATO 3213, Boros, 4 NATO-MTO 415 (1944), 53 da, oth, com.  
 U. S. v. Powell, 3 USCMA 64, 11 CMR 64 (1953), 53 da, A, dfs, cc.  
 CMO 30, 1910, P. 9, 53 da, A, cc, cj, dfs, left ship while drunk.  
 CM 258314, Reeser, 37 BR 367 (1944), 54 da, A, emb, che.  
 ETO 2293, Mills, 6 ETO 285 (1944), 54 da, A, cc, for (dicta).  
 ETO 2444, Warner, 6 ETO 393 (1944), 54 da, A, cc, for (dicta).  
 ETO 14298, Michels, 27 ETO 323 (1945), 54 da, A.  
 CMO 1-1932, P. 10, 54 da, broke arrest.  
 U. S. v. Mitchell, 1 CMR 191 (CM, 1951), 54 da, S, com.  
 U. S. v. Hensley, 12 CMR 577 (CM, 1953), 55 da, A.  
 ETO 1926, Hollifield, 6 ETO 25 (1944), 56 da, A.  
 NATO 3215, Lynch, 5 NATO-MTO 1 (1944), 56 da, oth.  
 U. S. v. Vetter, 13 CMR 517 (NCM, 1953), 56 da, A.  
 ETO 17556, Houston, 32 ETO 261 (1945), 57 da, A, oth.  
 U. S. v. Thompson, 13 CMR 648 (ACM, 1953), 57 da, A, lar, con, evaded arrest.  
 ETO 11856, Debeau, 24 ETO 338 (1945), 58 da, A, efc, oth.  
 ETO 15511, Thomas, 29 ETO 183 (1945), 58 da, A, cc, evaded arrest.  
 MTO 4796, DiGiovachini, 6 NATO-MTO 25 (1945), 58 da, A, con.  
 ETO 2289, Grimes, 6 ETO 281 (1944), 59 da, A.  
 ETO 10568, Ritchie, 22 ETO 349 (1945), 59 da, A, cc, fi.  
 CM 245325, Kennon, 29 BR 163 (1943), 60 da, A, dfs.  
 CM 270462, Ricker, 45 BR 295 (1945), 60 da, A, dfs, cj, cha.  
 CM 280875, Bechard, 53 BR 385 (1945), 60 da, A, dfs.  
 Naval Digest, p. 173, # 72, CMO 30, 1910, P. 10, 60 da.  
 CMO 10-1923, P. 13, 60 da, S, efc.  
 U. S. v. McCrary, 1 USCMA 1, 1 CMR 1 (1951), 60 da, S, dfs, sea (2-1).  
 U. S. v. Linacre, 6 CMR 417 (CM, 1952), 60 da, A, cc, che, evaded arrest.



*g. 61-70 days.*

- CM 230484, McGinnis, 17 BR 379 (1943), 61 da, A, cc, cj, fn, fi, con.  
 CM 312657, Peck et al, 62 BR 247 (1946), 61 da, A, efc, fi, lea, gambled.  
 ETO 13484, DeVito, 27 ETO 7 (1945), 61 da, A.  
 CMO 28, 1910, P. 6, 61 da, A, cc, cj, dfs.  
 ETO 15689, Fors, 29 ETO 309 (1945), 62 da, A, oth, com.  
 CM 233461, Binninger, 19 BR 391 (1943), 63 da, A, cc, fn, for.  
 ETO 13154, Furman et al, 26 ETO 159 (1945), 63 da, A.  
 ETO 13818, Villanti, 27 ETO 123 (1945), 63 da, S, oth.  
 U. S. v. Clette, 9 CMR 289 (CM, 1953), 63 da, A.  
 CM 231163, Sinclair, 18 BR 153 (1943), 64 da, A, cj (dicta).  
 CM 228524, Moser, 16 BR 219 (1942), 65 da, A, dfs, cc, cj.  
 CM 234964, Furtado, 21 BR 217 (1943), 65 da, A, dfs.  
 CM 192823, Rawlins, 49 BR 53 (1930), 65 da, A, cj, dis.  
 ETO 14362, Campise, 27 ETO 359 (1945), 65 da, A.  
 ETO 15556, Gammon, 29 ETO 245 (1945), 65 da, A.  
 CM 346362, Kearns, 12 JC 235 (1951), 65 da, A, cc, fs.  
 U. S. v. Pascal, 3 CMR 379 (CM, 1952), 65 da, oth.  
 ETO 913, Pierno, 3 ETO 149 (1943), 66 da, A, cc, lar, fi, con.  
 ETO 9257, Schewe, 20 ETO 163 (1945), 66 da, A.  
 ETO 12580, Groin, 25 ETO 249 (1945), 66 da, dis, com.  
 CM 235607, Poli, 22 BR 151 (1943), 67 da, S, efc, cc, cj, fn (dicta).  
 CM 307378, Keller et al, 61 BR 87 (1946), 67 da, S, efc, lea, fn, fs, fi.  
 ETO 13285, Fraught, 26 ETO 253 (1945), 67 da, A, resisted arrest by force.  
 ETO 14574, Wood, 28 ETO 53 (1945), 67 da, A, cc.  
 ETO 14735, Clark et al, 28 ETO 183 (1945), 67 da, A, efc.  
 CM 104952, Schulz (1917), Dig. CM Rev. (1920), p. 270, 68 da, S, took equipment.  
 ETO 1519, Bartel, 4 ETO 381 (1944), 68 da, A, cc.  
 ETO 9288, Mills, 20 ETO 211 (1945), 68 da, A, bla.  
 ETO 9978, Gates et al, 21 ETO 269 (1945), 68 da, A.  
 ETO 15272, Melillo et al, 29 ETO 67 (1945), 68 da, A.  
 U. S. v. Sparks, 8 CMR 831 (ACM, 1953), 68 da, S, sea.  
 ETO 13154, Furman et al, 26 ETO 159 (1945), 69 da, A.  
 U. S. v. Graham, 5 USCMA 265, 17 CMR 265 (1954), 69 da, S, oth (2-1).  
 CM 230826, McGrath, 18 BR 53 (1943), 70 da, A, cc, cj (dicta).  
 CM 233806, McCaslin, 20 BR 139 (1943), 70 da, A, efc.  
 ETO 6093, Ingersoll, 16 ETO 117 (1945), 70 da.  
 ETO 14866, Tuppe, 28 ETO 241 (1945), 70 da, A, oth.

*h. 71-80 days.*

- CM 189741, Malkey, 1 BR 183 (1930), 71 da, S, lar, cc, con.  
 CM 235227, Bernard, 21 BR 341 (1943), 71 da, A, fi.  
 CM 312092, Vasaturo et al, 61 BR 363 (1946), 71 da, A, cri.  
 ETO 13154, Furman et al, 26 ETO 159 (1945), 71 da, A.  
 U. S. v. Buskin, 3 (AF)CMR 362 (ACM, 1950), 71 da, A, dfs, cc, cj.  
 U. S. v. Palmer, 8 CMR 633 (ACM, 1953), 71 da, A, cc, cj, fn, breached restriction.  
 ETO 2289, Grimes, 6 ETO 281 (1944), 72 da, A.  
 CMO 9-1932, P. 8, 72 da, S.

U. S. v. McConnell, 1 CMR 320 (CM, 1951), 72 da, A, fn, evaded arrest.  
 U. S. v. Charlton, 16 CMR 384 (NCM, 1954), 72 da, A.  
 ETO 10864, Smith, 23 ETO 215 (1945), 73 da, A, bla.  
 CM A-2244, Tyree, 3 A-P 195 (1945), 73 da, A, fi.  
 U. S. v. Cirelli, 1 USCMA 568, 4 CMR 160 (1952), 73 da, A, com.  
 ETO 740, Lane, 2 ETO 281 (1943), 74 da, A, cc, cj, fn, fs, fi.  
 ETO 800, Ungard, 2 ETO 331 (1943), 74 da, A, fi, lar, attempted escape.  
 MTO 4571, Camberdella, 5 NATO-MTO 245 (1945), 74 da, S, oth.  
 CM 187168, Greene, 1 BR 1 (1929), 75 da, A, lar.  
 CM 312092, Padgett et al, 61 BR 363 (1946), 75 da, A, cri.  
 ETO 15272, Nichols et al, 29 ETO 67 (1945), 75 da, A, com.  
 ETO 16078, Martens, 30 ETO 195 (1945), 75 da, A, com.  
 ETO 16343, Cucolo, 30 ETO 329 (1945), 75 da, A, cri.  
 CMO 7-1947, P. 224, 75 da, A.  
 CM 302974, Malarchok, 59 BR 337 (1946), 76 da, oth.  
 ETO 8690, Barbin et al, 19 ETO 379 (1945), 76 da, A, evaded arrest.  
 NATO 73, Walters, 1 NATO-MTO 43 (1943), 76 da, S, con.  
 MTO 4373, Ashby, 5 NATO-MTO 165 (1944), 76 da, A.  
 MTO 4957, Millican, 6 NATO-MTO 43 (1945), 76 da, A.  
 CMO 5-1947, P. 118, 76 da, A.  
 U. S. v. Miller, 2 CMR 395 (CM, 1952), 76 da.  
 CM 307378, Tennis et al, 61 BR 87 (1946), 77 da, A, efc, cc, fn, fs, fi, lea.  
 ETO 5966, Whidbee, 16 ETO 77 (1945), 77 da, A, efc.  
 ETO 6260, Kelley et al, 16 ETO 317 (1945), 77 da, A, fi.  
 ETO 10629, Conrad, 23 ETO 9 (1945), 77 da, A.  
 CM 263301, Blachura, 41 BR 245 (1944), 78 da, A, efc.  
 CM 312092, Williams et al, 61 BR 363 (1946), 78 da, A, cri.  
 ETO 14625, Fassnacht, 28 ETO 119 (1945), 78 da, S.  
 ETO 17555, Brady, 32 ETO 257 (1945), 78 da, A, lea.  
 CM 203036, Gemeke, 7 BR 37 (1935), 79 da, S, lar.  
 ETO 6260, Calderon et al, 16 ETO 317 (1945), 79 da, A, fi.  
 CMO 9-1936, P. 19, 79 da, A.  
 U. S. v. Reed, 13 CMR 925 (ACM, 1953), 79 da, A, efc, dfs, cc.  
 CM 234458, Williams, 20 BR 391 (1943), 80 da, A, dfs, fi, che.  
 ETO 6857, Dongan, 17 ETO 243 (1945), 80 da, A, fi.

*i. 81-90 days.*

Pay of Knicker, 23 Comp. Gen. 44 (1943), 81 da, A.  
 ETO 15243, Napolitano, 29 ETO 27 (1945), 81 da, S, com.  
 ETO 6948, Damron, 17 ETO 269 (1945), 82 da, A.  
 ETO 9681, Bennett, 21 ETO 159 (1945), 82 da, A.  
 U. S. v. Palsenberger, 3 CMR 157 (CM, 1952), 82 da.  
 CM 307378, Taylor et al, 61 BR 87 (1946), 83 da, A, cc, fn, fs, fi, lea.  
 ETO 4914, Solomon, 13 ETO 353 (1944), 83 da, S.  
 ETO 10189, Sluder, 22 ETO 109 (1945), 83 da, A, fn.  
 ETO 15851, Wolfe, 30 ETO 63 (1945), 83 da, A, cri.  
 CMO 10-1925, P. 9, 83 da, S.  
 CMO 1-1942, P. 272, 83 da, A.  
 U. S. v. Stuckey, 8 CMR 583 (NCM, 1953), 83 da, A, dfs, cc, cj, under sentence.  
 ETO 1543. Woody, 5 ETO 1 (1944), 85 da, S, com.

ETO 1549, Copprue et al, 5 ETO 5 (1944), 86 da, A, efc, fn, cc.  
 ETO 2216, Gallagher, 6 ETO 261 (1944), 86 da, A, cc, for (dicta).  
 ETO 12239, Blackshear, 25 ETO 89 (1945), 86 da, A.  
 U. S. v. Packard, 11 CMR 640 (NCM, 1953), 86 da, A.  
 ETO 17840, Bronson, 33 ETO 91 (1945), 87 da, S, com.  
 MTO 5009, Dailey, 6 NATO-MTO 57 (1945), 87 da, A.  
 McConologue's Case, 107 Mass. 154 (1871), 88 da, S (dicta).  
 CMO 10-1948, P. 286, 88 da, A.  
 ETO 10331, Jones, 22 ETO 173 (1945), 89 da, A, lar, evaded arrest.  
 ETO 15442, Bifano, 29 ETO 165 (1945), 89 da, com.  
 MTO 4687, Ruggiero, 5 NATO-MTO 271 (1945), 89 da, A.  
 CM 129946, Hazelhurse (1919), Dig. CM Rev. (1920), p. 272, 90 da, A.  
 CM 211586, Gerber, 10 BR 107 (1939), 90 da, S.  
 CM 261405, Bailey, 40 BR 229 (1944), 90 da, A, dfs, cha, che, fn, debts.  
 CM 270591, Vanzant, 45 BR 313 (1945), 90 da, A, dfs, oth.  
 U. S. v. Tibbs, 4 (AF)CMR 537 (ACM, 1951), 90 da, S, dfs, cc, cj, fs.  
 U. S. v. Kelley, 11 CMR 721 (ACM, 1953), 90 da, A, che.  
 U. S. v. Guerrero, 23 CMR 569 (CM, 1957), 90 da, A.

*j. 91-100 days.*

CM 312092, Jimmerson et al, 61 BR 363 (1946), 91 da, A, cri.  
 ETO 15194, Roling, 28 ETO 361 (1945), 91 da, A.  
 U. S. v. Brown, 2 CMR 495 (CM, 1952), 91 da.  
 U. S. v. Jewel, 20 CMR 706 (ACM, 1955), 91 da, A, dfs, cha.  
 ETO 16880, Ferrara, 31 ETO 219 (1945), 92 da, A, com.  
 ETO 17723, Seballos, 33 ETO 29 (1945), 93 da, A, efc, fn, lar, oth.  
 CM 221307, Stolworthy, 13 BR 151 (1942), 94 da, A.  
 ETO 17696, Horvath, 32 ETO 381 (1945), 94 da, A, cc, cri.  
 CM 307378, Walker et al, 61 BR 87 (1946), 95 da, A, efc, cc, fn, fs, fi, lea.  
 ETO 9541, Onofreo et al, 21 ETO 67 (1945), 95 da, A, lar.  
 CM 230674, Wood, 17 BR 399 (1943), 96 da, A, dfs, dis.  
 ETO 1737, Mosser, 5 ETO 269 (1944), 96 da, A, efc, fi, cri.  
 ETO 3004, Nelson, 8 ETO 227 (1944), 96 da, A.  
 ETO 5414, White, 14 ETO 399 (1945), 96 da.  
 ETO 13484, DeVito, 27 ETO 7 (1945), 96 da, A.  
 ETO 16108, Keeton et al, 30 ETO 207 (1945), 96 da, A, lea, com.  
 James, Collection of Courts-Martial (London, 1820), p. 110, Quartermaster Robert Young (1802), 97 da, emb.  
 CM 241285, Moudy, 26 BR 251 (1943), 97 da, S, dfs, cc, lea, withdrew money.  
 ETO 6435, Noe, 17 ETO 45 (1945), 97 da, S.  
 U. S. v. Rushlow, 2 USCMA 641, 10 CMR 139 (1953), 97 da, A, cj.  
 CM 269791, Summerford, 45 BR 133 (1945), 98 da, A, dfs.  
 ETO 1577, LeVan, 5 ETO 63 (1944), 99 da, A.  
 Smith v. United States, 32 F. Supp. 657 (D. Mont., 1940), 100 da, A.  
 CM 330356, Stockton, 79 BR 5 (1948), 100 da, A, efc.  
 ETO 9292, Chiles et al, 20 ETO 239 (1945), 100 da, A.  
 ETO 10713, Clark, 23 ETO 49 (1945), 100 da, A.  
 ETO 15147, Wooten, 28 ETO 333 (1945), 100 da, A.  
 ETO 17629, Guyette, 32 ETO 329 (1945), 100 da, A.

*k. 101-121 days.*

- ETO 10212, Balsamo, 22 ETO 135 (1945), 101 da, A.  
 U. S. v. Carpenter, 13 CMR 522 (NCM, 1953), 101 da, A.  
 ETO 1856, Swartz, 5 ETO 331 (1944), 103 da, A.  
 MTO 4434, Elizondo, 5 NATO-MTO 185 (1945), 103 da, A.  
 CM 133786, Frederick (1919), Dig. CM Rev. (1920), p. 272, 104 da, A, fn.  
 CM 253604, Mann, 35 BR 1 (1944), 104 da, A, dfs, dis, fi, che.  
 CM 307181, Christ, 60 BR 397 (1946), 104 da, A, fn, fs, fi.  
 ETO 16108, Lemme et al, 30 ETO 207 (1945), 104 da, S, lea, com.  
 NATO 3138, Becerra, 4 NATO-MTO 393 (1944), 104 da, S.  
 U. S. v. Lema, 21 CMR 515 (NCM, 1956), 105 da, A.  
 CM 229031, Heine, 17 BR 25 (1943), 106 da.  
 ETO 2433, Meyer, 6 ETO 389 (1944), 106 da, S, dis.  
 U. S. v. Anderson, 3 (AF)CMR 293 (ACM, 1950), 107 da, A, efc.  
 CM 279399, Williams, 52 BR 201 (1945), 108 da, efc, oth.  
 U. S. v. Roux, 3 CMR 232 (CM, 1952), 108 da.  
 U. S. v. Cooper, 3 CMR 406 (NCM, 1952), 108 da, A.  
 CM 230827, Sheffler, 18 BR 59 (1943), 109 da, A, cj (dicta).  
 CM 242604, Roush, 27 BR 121 (1943), 109 da, A, sea.  
 CMO 2-1944, P. 274, 109 da, S, missed ship (dicta).  
 CM 319392, Barison, 68 BR 265 (1947), 110 da, A, cc, cj, fi, lar.  
 ETO 15604, Agnew, 29 ETO 269 (1945), 110 da, A.  
 NATO 2669, Bliss, 4 NATO-MTO 189 (1944), 110 da, A.  
 U. S. v. Ostrander, 8 CMR 560 (NCM, 1953), 110 da.  
 ETO 1957, Ward, 6 ETO 55 (1944), 111 da, A.  
 ETO 9978, Sgro, 21 ETO 269 (1945), 111 da, A.  
 U. S. v. West, 1 USCMA 590, 5 CMR 18 (1952), 111 da, A, sea, cha.  
 CMO 7-1947, P. 226, 112 da, A (dicta).  
 U. S. v. Hendon, 7 USCMA 429, 22 CMR 219 (1956), 112 da, A, oth.  
 ETO 15852, Casey, 31 BR 69 (1945), 113 da, A, lived by gambling.  
 ETO 7735, Bledsoe, 18 ETO 241 (1945), 114 da, A.  
 ETO 7814, Hardigan, 18 ETO 253 (1945), 114 da, A, fi.  
 ETO 15549, Hartman et al, 29 ETO 229 (1945), 114 da, A.  
 CMO 4-1948, P. 134, 114 da, S, missed ship.  
 James, Collection of Courts-Martial (London, 1820), p. 747, Lieut. Harry T. Heath (1816), 115 da, A.  
 ETO 14357, Keller, 27 ETO 351 (1945), 115 da, A.  
 ETO 14362, Campise, 27 ETO 359 (1945), 115 da, A.  
 U. S. v. Faraco, 1 CMR 356 (CM, 1956), 115 da, A, rob, lar, evaded arrest.  
 U. S. v. Johnsey, 11 CMR 798 (ACM, 1953), 115 da, A, efc.  
 CM 225871, Anglin, 14 BR 367 (1942), 116 da, A, dfs, cc, cj, cha, evaded arrest.  
 ETO 9978, Coelho et al, 21 ETO 269 (1945), 116 da, A.  
 ETO 18201, Merchant, 33 ETO 263 (1945), 116 da, A, efc.  
 MTO 4544, Gill, 5 NATO-MTO 237 (1944), 116 da, A.  
 CM 338827, Dobbins, 4 JC 313 (1949), 116 da, A, oth.  
 U. S. v. Larmon, 1 (AF)CMR 650 (ACM, 1949), 117 da, A, dfs, cj, fs, bla, che.  
 U. S. v. Shepard, 2 CMR 202 (CM, 1951), 117 da, A, efc, evaded arrest, aff'd 1 USCMA 487, 4 CMR 79 (1952), 117 da, A, fi, bla, cri, announced purpose to hide from military and get wealth.  
 CM 278114, Stubbs, 51 BR 321 (1945), 119 da, A, efc, cc, cj.

MTO 4689, Tucker, 5 NATO-MTO 275 (1945), 119 da, A.  
 CMO 133-1920, P. 13, 119 da, A.  
 ETO 14576, Hargett, 28 ETO 63 (1945), 120 da, A, for.  
 U. S. v. Affronte, 7 CMR 815 (ACM, 1952), 120 da, alleged rs, partial con (2-1).  
 U. S. v. Ziglinski, 4 CMR 209 (CM, 1952), 121 da, A, evaded arrest.

*k. 4-4½ months.*

CM 323006, Paradise, 72 BR 1 (1947), 4 mo, A.  
 ETO 1726, Green, 5 ETO 255 (1944), 4 mo, A, cc, fi.  
 ETO 9957, Robinson, 21 ETO 255 (1945), 4 mo, A.  
 ETO 10211, Stoner, 22 ETO 131 (1945), 4 mo, A.  
 ETO 13104, Fingland, 26 ETO 129 (1945), 4 mo.  
 ETO 14359, Hart, 27 ETO 355 (1945), 4 mo, A.  
 ETO 15074, Sutherland, 28 ETO 285 (1945), 4 mo, A, cc, cri.  
 ETO 15184, Newland, 28 ETO 357 (1945), 4 mo, A.  
 ETO 15199, Sansone, 28 ETO 383 (1945), 4 mo, A.  
 ETO 15512, Miller, 29 ETO 189 (1945), 4 mo, A, fi.  
 ETO 17558, DeLezier, 32 ETO 275 (1945), 4 mo, com.  
 NATO 1647, Kirinich, 3 NATO-MTO 215 (1944), 4 mo, A, efc, cc.  
 NATO 2139, Grabowski, 3 NATO-MTO 383 (1944), 4 mo, A.  
 MTO 4895, McMahan, 6 NATO-MTO 39 (1945), 4 mo, S.  
 IBT 317, Price, 2 CBI-IBT 123 (1944), 4 mo, A, cc.  
 POA 337, Alaniz, 1 POA 229 (1945), 4 mo, A, cc.  
 CMO 2-1925, P. 4, 4 mo, A. (dicta).  
 U. S. v. McCormick, 2 (AF)CMR 108 (ACM, 1949), 4 mo, S, dfs.  
 U. S. v. Huffman, 6 CMR 244 (CM, 1952), 4 mo, A, dfs, evaded arrest.  
 Beauchamp v. United States, 154 F. 2d 413 (6 Cir., 1946), 4½ mo, A, cc, cj, fs.  
 CM 199270, Andrews, 3 BR 343 (1932), 4½ mo, A.  
 CM 235227, Bernard, 21 BR 341 (1943), 4½ mo, A, efc.  
 CM 318130, Scott, 67 BR 151 (1947), 4½ mo, S, rs.  
 ETO 1259, Rusniaczyk, 4 ETO 153 (1944), 4½ mo, A, cc, fi.  
 ETO 1965, Lemishow, 6 ETO 59 (1944), 4½ mo, A.  
 ETO 2460, Williams, 7 ETO 11 (1944), 4½ mo, A.  
 ETO 2828, Kulaga, 8 ETO 61 (1944), 4½ mo, A, lar.  
 ETO 7489, Rigsby, 18 ETO 141 (1945), 4½ mo.  
 ETO 9072, Diodato, 20 ETO 105 (1945), 4½ mo, A.  
 ETO 10250, Kates, 22 ETO 151 (1945), 4½ mo, A.  
 ETO 10741, Smith, 23 ETO 105 (1945), 4½ mo, A.  
 ETO 11173, Jenkins, 23 ETO 325 (1945), 4½ mo, A.  
 ETO 13896, Nadler et al, 27 ETO 135 (1945), 4½ mo.  
 ETO 14171, Payne, 27 ETO 249 (1945), 4½ mo, S.  
 ETO 14584, McNamara, 28 ETO 71 (1945), 4½ mo, S.  
 ETO 14764, Collins et al, 28 ETO 201 (1945), 4½ mo, A, rob.  
 ETO 16628, Quintanilla, 31 ETO 115 (1945), 4½ mo, A, fi, cri.  
 ETO 16869, Henry, 31 ETO 197 (1945), 4½ mo, A, cc, fi, cri.  
 ETO 17697, Hopkins, 32 ETO 387 (1945), 4½ mo, A, com.  
 NATO 3138, Becerra, 4 NATO-MTO 393 (1944), 4½ mo, S.  
 MTO 4513, Paul, 5 NATO-MTO 233 (1944), 4½ mo, A.  
 MTO 5009, Dailey, 6 NATO-MTO 57 (1945), 4½ mo, A.  
 IBT 284, Perry, 2 CBI-IBT 51 (1944), 4½ mo, A, fn, cj, marriage.

CM 335904, Young, 2 JC 317 (1949), 4½ mo, A.  
 U. S. v. Trejo, 2 (AF)CMR 591 (ACM, 1950), 4½ mo, A.  
 U. S. v. Justice, 1 USCMA 643, 5 CMR 71 (1952), 4½ mo, sea.  
 U. S. v. Brussow, 3 CMR 290 (CM, 1952), 4½ mo, A, oth, evaded arrest.  
 U. S. v. Lambert, 11 CMR 868 (ACM, 1953), 4½ mo, A.  
 Op JAGN 1952/127, 20 Nov. 1952, 2 Dig. Ops. JAG Armed Forces, Desertion, § 61.1,  
 p. 241, 4½ mo, A, cc, cj.

*l. 5-5½ months.*

Dillingham v. Booker, 163 F. 696 (4 Cir., 1908), 5 mo, A (dicta).  
 CM 187542, Lanier, 1 BR 49 (1929), 5 mo, A, fraudulent enlistment.  
 CM 188571, Simmons, 1 BR 123 (1929), 5 mo, S, lar.  
 CM 326004, Shelby, 75 BR 111 (1947), 5 mo, A, dfs, cj.  
 ETO 823, Poteet, 2 ETO 371 (1943), 5 mo, A, efc, cc, fn, fi, lived with prostitutes.  
 ETO 2343, Welbes, 6 ETO 325 (1944), 5 mo, A, cc, cj, fn, fi, fs.  
 ETO 2911 Arndt, 8 ETO 165 (1944), 5 mo, A, lar.  
 ETO 5406, Aldinger, 14 ETO 395 (1945), 5 mo.  
 ETO 10314, White, 22 ETO 169 (1945), 5 mo.  
 ETO 10354, Bear, 22 ETO 203 (1945), 5 mo, A.  
 ETO 12120, Campbell, 25 ETO 41 (1945), 5 mo, A.  
 ETO 13303, Sweezy, 26 ETO 277 (1945), 5 mo, S.  
 ETO 14764, Sweet et al, 28 ETO 201 (1945), 5 mo, A, rob.  
 ETO 15444, Marchione, 29 ETO 169 (1945), 5 mo.  
 ETO 15850, Miller, 30 ETO 57 (1945), 5 mo, A, cc.  
 ETO 16666, Shuman, 31 ETO 139 (1945), 5 mo, A, com.  
 Naval Digest, p. 173, # 70, CMO 33, 1901, P. 1, 5 mo, cj.  
 Naval Digest, p. 173, #73, CMO 16, 1913, P. 5, 5 mo, S, cc.  
 Naval Digest, p. 178, # 111, CMO 29, 1914, P. 8, 5 mo, A, cj.  
 CMO 12-1922, P. 7, 5 mo.  
 CMO 11-1949, P. 288, 5 mo, S (dicta).  
 U. S. v. Merency, 1 (AF)CMR 497 (ACM, 1949), 5 mo, S, efc.  
 U. S. v. Smith, 3 CMR 469 (NCM, 1952), 5 mo, A.  
 U. S. v. Linerode, 11 CMR 262 (CM, 1953), 5 mo, S, dfs, sea.  
 U. S. v. Ellerbe, 12 CMR 438 (CM, 1953), 5 mo, A.  
 Firpo v. United States, 261 Fed. 850 (2 Cir., 1919), 5½ mo, con.  
 Mancuso v. United States, 162 F. 2d 772 (6 Cir., 1947), 5½ mo.  
 CM 133316, Nafz (1919), Dig. CM Rev. (1920), p. 274, 5½ mo, A, fn, lar.  
 CM 191076, Porter, 1 BR 231 (1930), 5½ mo, A, cc, emb.  
 CM 322156, Boughton, 71 BR 67 (1947), 5½ mo, S, efc.  
 ETO 12043, Noe, 25 ETO 7 (1945), 5½ mo.  
 ETO 12749, Scalamonti, 25 ETO 361 (1945), 5½ mo, A.  
 NATO 2373, DiMauro et al, 4 NATO-MTO 53 (1944), 5½ mo, A.  
 Naval Digest, p. 175, # 78, CMO 42, 1909, P. 5, 5½ mo, A, dfs, cc, cj.  
 CMO 4-1943, P. 47, 5½ mo, S.  
 U. S. v. Urban, 2 CMR 246 (CM, 1951), 5½ mo.  
 U. S. v. Pace, 7 CMR 451 (NCM, 1953), 5½ mo, A.  
 U. S. v. Kidd, 20 CMR 713 (ACM, 1955), 5½ mo, A, cj, fs.

*m. 6-6½ months.*

- Rex v. Mahoney (1956), 3 All E. R. 799 (Ct. Mar. App. Ct.), 6 mo, A, cc.  
 CM 187252, Hudson, 1 BR 19 (1929), 6 mo, A, fraudulent enlistment.  
 CM 187542, Lanier, 1 BR 49 (1929), 6 mo, A, fraudulent enlistments.  
 CM 281135, Gibson, 54 BR 45 (1945), 6 mo, A.  
 CM 321692, Martinez, 70 BR 351 (1947), 6 mo, A, etc.  
 ETO 1165, Vittitoe, 4 ETO 55 (1944), 6 mo, A, lea, con.  
 ETO 3210, Miller, 9 ETO 91 (1944), 6 mo, A, cc, cj, fn, fi, con, married.  
 ETO 10185, Polander, 22 ETO 105 (1945), 6 mo, A.  
 ETO 12859, Baker, 26 ETO 27 (1945), 6 mo, A.  
 ETO 15195, Evely, 28 ETO 367 (1945), 6 mo, A, cc.  
 ETO 17551, Yanofsky, 32 ETO 241 (1945), 6 mo, S.  
 ETO 17558, DeLezier, 32 ETO 275 (1945), 6 mo, com.  
 ETO 18317, Boggs, 33 ETO 321 (1945), 6 mo, A, etc.  
 ETO 18399, Savo, 33 ETO 356 (1945), 6 mo, A, cj, cri.  
 MTO 4545, Lyons, 5 NATO-MTO 241 (1945), 6 mo, A.  
 MTO 5257, Whelan, 6 NATO-MTO 97 (1945), 6 mo, A, oth, dis.  
 CM P-1236, Wilson, 4 A-P 371 (1945), 6 mo, A, cc, cj, fn, fs.  
 CM 335933, Young, 2 JC 351 (1949), 6 mo.  
 U. S. v. Henderson, 2 (AF) CMR 390 (ACM, 1949), 6 mo, A (dicta).  
 U. S. v. Dailey, 5 CMR 469 (ACM, 1952), 6 mo, A, dfs, fn, cj, tendered resignation.  
 GCMO 39, Navy Dept., Feb. 26, 1901, # 3, 6 mo, S.  
 United States v. Landers, 92 U. S. 77 (1875), 6½ mo, A (dicta).  
 CM 220712, Brennan, 13 BR 55 (1942), 6½ mo, A.  
 CM 221662, Knight, 13 BR 211 (1942), 6½ mo, A.  
 CM 230278, Gunning, 17 BR 349 (1943), 6½ mo.  
 CM 244498, Hatchett, 28 BR 327 (1943), 6½ mo, A, lar, fn.  
 CM 316812, Wallrath, 66 BR 71 (1946), 6½ mo, A, etc, fn, fi, oth.  
 CM 325621, Lyle, 74 BR 367 (1947), 6½ mo, A.  
 ETO 3963, Nelson, 11 ETO 179 (1944), 6½ mo, A.  
 ETO 13018, Ostrowski, 26 ETO 99 (1945), 6½ mo.  
 ETO 15074, Sutherland, 28 ETO 285 (1945), 6½ mo, A, etc, cc, cri.  
 ETO 18161, Stankevich, 33 ETO 207 (1945), 6½ mo, A, lea, com.  
 NATO 2844, Mangerpan, 4 NATO-MTO 225 (1944), 6½ mo, A.  
 MTO 5011, Jarlock, 6 NATO-MTO 61 (1945), 6½ mo, A.  
 CM 336569, Harshman, 3 JC 147 (1949), 6½ mo, A.  
 CMO 20-1913, P. 2, 6½ mo, S, dfs, when near bases did not S.  
 CMO 4-1947, P. 87, 6½ mo.

*o. 7-8½ months.*

- CM 209295, DeArmond, 9 BR 71 (1938), 7 mo, A, lar.  
 CM 234118, Reis, 20 BR 243 (1943), 7 mo, A, cc, rob.  
 CM 274482, Talbott, 47 BR 185 (1945), 7 mo, A, etc, cc, cj, fn, fi, dis.  
 CM 286579, Pfeiffer, 56 BR 265 (1945), 7 mo, A, dfs, cc, dis.  
 CM 310473, Hines, 61 BR 315 (1946), 7 mo, etc.  
 ETO 13638, Kepplin, 27 ETO 67 (1945), 7 mo, S.  
 ETO 14436, Biggers, 27 ETO 391 (1945), 7 mo.  
 ETO 17407, Abraham, 32 ETO 103 (1945), 7 mo, A.  
 SpCM 751, Ellis, 4 JC 473 (1949), 7 mo, A.

U. S. v. Cox, 4 (AF)CMR 73 (ACM, 1950), 7 mo, A, dfs, cc, con.  
 U. S. v. Loewen, 9 CMR 312 (CM, 1953), 7 mo, A, dfs, cc, cj.  
 U. S. v. Frazier, 14 CMR 495 (NCM, 1954), 7 mo, S, intended to go to other station,  
 U. S. v. Bradley, 18 CMR 494 (ACM, 1954), 7 mo, S, cj.  
 CM 222598, Pruett et al, 13 BR 301 (1942), 7½ mo, A.  
 CM 312022, Kavchak, 61 BR 329 (1945), 7½ mo, S, com.  
 CM 323305, Raabe, 72 BR 205 (1947), 7½ mo, A.  
 ETO 1412, Medeiros, 4 ETO 307 (1944), 7½ mo, A, cc.  
 ETO 2546, Eastwood, 7 ETO 133 (1944), 7½ mo, A, lar.  
 ETO 13956, Depero, 27 ETO 147 (1945), 7½ mo, A.  
 ETO 16880, Ferrara, 31 ETO 219 (1945), 7½ mo, A.  
 ETO 17521, Bell, 32 ETO 209 (1945), 7½ mo, A, cc, lar.  
 U. S. v. Johnson, 1 USCA 536, 4 CMR 128 (1952), 7½ mo, S, frequented military  
 area, lived by gambling.  
 CMO 6-1946, P. 205, 7½ mo, S.  
 CM 236323, McClain, 22 BR 379 (1943), 8 mo, A (dicta).  
 CM 280124, Payne, 53 BR 73 (1945), 8 mo, A, dfs.  
 CM 282723, Garvey, 55 BR 1 (1945), 8 mo, A, dis.  
 CM 307120, Seewagen, 60 BR 305 (1946), 8 mo, A.  
 ETO 16897, Bruno, 31 ETO 259 (1945), 8 mo, S.  
 U. S. v. Taylor, 4 CMR 450 (NCM, 1952), 8 mo.  
 U. S. v. Slavick, 5 CMR 616 (ACM, 1952), 8 mo, A, dfs, cc.  
 U. S. v. McLean, 11 CMR 755 (ACM, 1953), 8 mo, A.  
 U. S. v. Davis, 19 CMR 930 (ACM, 1955), 8 mo.  
 CM 281135, Gibson, 54 BR 45 (1945), 8½ mo, S, efc.  
 ETO 2806, Torpey, 8 ETO 53 (1944), 8½ mo, A, dfs.  
 CMO 22, 1913, P. 2, 8½ mo, S, resentful at not being promoted.  
 Naval Digest, p. 174, # 75, CMO 22, 1913, P. 4, 8½ mo, S.  
 U. S. v. Barrett, 12 CMR 619 (NCM, 1953), 8½ mo, A.

*p. 9-11½ months.*

Hough, Practice of Courts-Martial (1825), p. 160, Case 27, G.O.C.C., Madras, Pvt. J. Latimore (1819), 9 mo, S.  
 CM 231926, Leggett, 49 BR 267 (1943), 9 mo, A, dfs, fs.  
 CM 323397, Tervree, 72 BR 231 (1947), 9 mo, S, cj, married.  
 ETO 1603, Haggard, 5 ETO 89 (1944), 9 mo, A, cc, cj, fs.  
 ETO 18747, Doiberry, 34 ETO 181 (1946), 9 mo, A, com.  
 U. S. v. O'Connor, 1 (AF)CMR 436 (ACM, 1949), 9 mo, S.  
 U. S. v. Roux, 3 CMR 232 (CM, 1952), 9 mo.  
 U. S. v. Mischke, 8 CMR 481 (CM, 1952), 9 mo, A, cc, dfs.  
 U. S. v. Privitt, 10 CMR 502 (CM, 1953), 9 mo, A, cj.  
 U. S. v. Shofkom, 11 CMR 740 (ACM, 1953), 9 mo, A, cj.  
 Op JAGN/1952/126, 2 Dec. 1952, 2 Dig. Ops. JAG Armed Forces, Desertion, § 61.1,  
 p. 241, 9 mo, S, cj, cc, dis.  
 CM 232728, Evans, 19 BR 173 (1943), 9½ mo, A, dfs, cc.  
 CM 320957, Boone, 70 BR 223 (1947), 9½ mo, A.  
 CM 325603, Cate, 74 BR 359 (1947), 9½ mo, A.  
 ETO 1017, McCutcheon, 3 ETO 285 (1943), 9½ mo, A, fi, lar, lea.  
 ETO 2587, Tererice, 7 ETO 191 (1944), 9½ mo, A.  
 ETO 17697, Hopkins, 32 ETO 387 (1945), 9½ mo, A, oth.  
 CM A-1640, Wozniakowski, 2 A-P 297 (1944), 9½ mo, S.



U. S. v. Pirisky, 4 (AF)CMR 837 (ACM, 1951), 9½ mo, S, dfs, lar.  
 U. S. v. Uzzo, 3 USCMA 563, 13 CMR 119 (1953), 9½ mo.  
 U. S. v. Farris, 9 USCMA 499, 26 CMR 279 (1958), 9½ mo, A, cha, fs, evaded A.  
 U. S. v. Hopper, 3 CMR 261 (CM, 1952), 9½ mo, A, dfs, cj.  
 CM 234118, Reis, 20 BR 243 (1943) 10 mo, A, cj.  
 U. S. v. McNeill, 2 USCMA 383, 9 CMR 13 (1953), 10 mo, A, sea, evaded arrest.  
 U. S. v. Vestal, 3 CMR 769 (ACM, 1952), 10 mo, sea.  
 U. S. v. Show, 4 CMR 564 (ACM, 1952), 10 mo.  
 U. S. v. Prather, 13 CMR 740 (ACM, 1953), 10 mo, A, con.  
 CM 307004, Butters et al, 60 BR 1 (1946), 10½ mo, A.  
 CM 319367, Welco, 68 BR 259 (1947), 10½ mo, A, efc, cc, lar.  
 CM 319474, Mulvaney, 68 BR 315 (1947), 10½ mo, A, efc, cc, lar.  
 CM 321105, Sanders, 70 BR 267 (1947), 10½ mo, A.  
 ETO 18973, Moen, 34 ETO 291 (1946), 10½ mo, S.  
 U. S. v. Keeton, 9 CMR 447 (CM, 1953), 10½ mo, A, dfs, cj, sea.  
 CM 224325, Michael, 14 BR 117 (1942), 11 mo, A.  
 CM 307004, Yelton et al, 60 BR 1 (1946), 11 mo, A.  
 ETO 2114, Couch, 6 ETO 165 (1944), 11 mo, A.  
 ETO 18705, McGuckin, 34 ETO 123 (1945), 11 mo, S.  
 Naval Digest, p. 172, # 68, CMO 76, 1901, P. 1, 11 mo, S, lea.  
 U. S. v. Beebout, 1 (AF)CMR 479 (ACM, 1949), 11 mo, S.  
 CM 221073, Fout, 13 BR 119 (1942), 11½ mo, S.  
 CM 324779, Hall, 73 BR 357 (1947), 11½ mo.  
 MTO 5890, Vollaro, 6 NATO-MTO 149 (1945), 11½ mo.

*q. 1 year-1 year 11 months.*

CMO 5-1946, P. 179, 1 yr, S.  
 U. S. v. White, 2 CMR 511 (CM, 1952), 1 yr.  
 CM 264387, Dougherty, 42 BR 127 (1944), 1 yr ½ mo, A.  
 U. S. v. Myatt, 17 CMR 533 (NCM, 1954), 1 yr 1 mo, S.  
 U. S. v. Mahoney, 22 CMR 419 (CM, 1956), 1 yr 1 mo.  
 U. S. v. Newcomb, 25 CMR 555 (CM, 1958), 1 yr 1 mo, A.  
 CM 342538, Smith, 8 JC 89 (1950), 1 yr 1½ mo, A, cc, cj.  
 U. S. v. Oster, 3 (AF)CMR 534 (ACM, 1950), 1 yr 1½ mo, A, efc, cc, cj, fn.  
 U. S. v. Muench, 14 CMR 857 (ACM, 1954), 1 yr 1½ mo, under suspended sentence.  
 GCMO 8, Navy Dept., Jan. 20, 1905, P. 3, 1 yr 2 mo, A (dicta).  
 CMO 6-1926, P. 5, 1 yr 2 mo, A, cc, broke arrest (dicta).  
 U. S. v. Whitley, 3 USCMA 639, 14 CMR 57 (1954), 1 yr 2 mo, S.  
 U. S. v. Lea, 1 (AF)CMR 214 (ACM, 1949), 1 yr 2½ mo, A, cj, fraudulent enlistment.  
 OMO 14-1913, P. 3, 1 yr 2½ mo, A, cc, cj, dfs, lea, rs, went home.  
*Snauffer v. Stimson*, 155 F. 2d 861 (C.A.D.C., 1946), 1 yr 3 mo.  
 CMO 14-1913, P. 4, 1 yr 3 mo, A, cj, dfs, rs.  
 CM 266918, Freeman, 43 BR 317 (1944), 1 yr 3½ mo, S, cc.  
 CMO 5-1925, P. 10, 1 yr 4½ mo, S.  
 U. S. v. Charity, 11 CMR 621 (NCM, 1953), 1 yr 4½ mo.  
 CM 313323, Priamiano, 63 BR 61 (1946), 1 yr 5 mo, A, cc, cj, fi.  
 CM 345853, Hodge, 11 JC 265 (1951), 1 yr 5 mo, A, cj, lar, cha, tendered resignation.  
 U. S. v. Stetson, 3 CMR 674 (ACM, 1952), 1 yr 5 mo, S, dis, rob, lea, evaded arrest.  
 U. S. v. Melton, 12 CMR 221 (CM, 1953), 1 yr 5 mo.  
 U. S. v. Coffey, 1 (AF)CMR 150 (ACM, 1948), 1 yr 6 mo, A, dfs, cj, dis.

U. S. v. Campbell, 1 (AF)CMR 362 (ACM, 1948), 1 yr 6 mo, A.  
 U. S. v. Curtis, 3 CMR 735 (ACM, 1952), 1 yr 6 mo, S, cc, cj.  
 CM 187252, Hudson, 1 BR 19 (1929), 1 yr 6½ mo, A, fraudulent enlistments.  
 CM 234522, Ford, 21 BR 35 (1943), 1 yr 6½ mo, A, dfs.  
 U. S. v. Watson, 3 CMR 461 (NCM, 1952), 1 yr 6½ mo, A.  
 CM 236914, Micillo, 23 BR 175 (1943), 1 yr 7 mo.  
 CM 335048, Nelson, 2 JC 7 (1949), 1 yr 7 mo, A.  
 ETO 2547, Rousseau, 7 ETO 137 (1944), 1 yr 7½ mo, A.  
 CM 323736, Yost, 72 BR 387 (1947), 1 yr 8½ mo, A.  
 CM 210612, Maddox, 9 BR 277 (1939), 1 yr 9 mo, S.  
 CM 313595, Thomas, 63 BR 193 (1946), 1 yr 9½ mo.  
 CM 269866, Kunz, 45 BR 153 (1945), 1 yr 11 mo, A, cc, cj, fs, con.  
 CM 331508, Harvey, 80 BR 43 (1948), 1 yr 11 mo, A.  
 U. S. v. Sherwood, 1 (AF)CMR 499 (ACM, 1949), 1 yr 11 mo, A.  
 U. S. v. Runner, 3 CMR 742 (ACM, 1952), 1 yr 11 mo, A, cj, emb.

*r. 2-4 years.*

CM 302998, Hayne, 59 BR 349 (1946), 2 yr, A.  
 CM 324677, St. John, 73 BR 297 (1947), 2 yr, A, fn, lar.  
 CM 340598, Sulecki, 6 JC 97 (1950), 2 yr.  
 CMO 10-1912, P. 7, 2 yr (dicta).  
 CMO 12-1928, P. 8, 2 yr, A.  
 U. S. v. Schauf, 2 (AF)CMR 325 (ACM, 1949), 2 yr (dicta).  
 U. S. v. Boone, 1 USCMA 381, 3 CMR 115 (1952), 2 yr, A, cc, cj, fs, living with woman.  
 U. S. v. Hanlon, 16 CMR 933 (ACM, 1954), 2 yr, dfs.  
 CM 316657, Sheldon, 65 BR 369 (1946), 2 yr 1 mo, S, dfs, cc, cj.  
 CMO 9-1945, P. 390, 2 yr 1 mo, A, cj (dicta).  
 U. S. v. Myer, 3 CMR 667 (ACM, 1952), 2 yr 2 mo.  
 U. S. v. Stowe, 12 CMR 657 (ACM, 1953), 2 yr 2 mo.  
 King v. Graves, 52 N.S.R. 365, 43 D.L.R. 696 (C. A., 1918), 2 yr 3 mo, A.  
 CM 336217, McClure, MO-JAGA 142 (1950), 2 yr 3 mo, S.  
 CM 335931, Kelley, 2 JC 347 (1949), 2 yr 4 mo, A.  
 CM 336607, Hosick, 3 JC 151 (1949), 2 yr 6 mo, S, cc, cj, dis.  
 U. S. v. Yzaguirre, 19 CMR 585 (CGCM, 1955), 2 yr 6 mo.  
 U. S. v. Smith, 3 (AF)CMR 145 (ACM, 1950), 2 yr 7 mo, S, cj.  
 CM 296841, Nott, 58 BR 269 (1946), 2 yr 8 mo, S, dfs, cc, cj, fn, fs.  
 CMO 11-1931, P. 8, 2 yr 8 mo.  
 CM 197643, Smith, 3 BR 143 (1932), 2 yr 9 mo, S.  
 CM 318449, Brown, 67 BR 319 (1947), 2 yr 9 mo, S.  
 CM 337548, Toy, 4 JC 73 (1949), 2 yr 10 mo, A.  
 U. S. v. Williams, 7 CMR 726 (ACM, 1953), 2 yr 10 mo.  
 In re Bogart, 3 Fed. Cas. 796, No. 1,596 (C. C. Calif., 1873), 3 yr, emb.  
 CM 334908, Christman, 1 JC 359 (1949), 3 yr, A, cj, fn, dis, submitted resignation.  
 CM 335328, Scott, 2 JC 115 (1949), 3 yr, A.  
 Naval Digest, p. 173, # 74, CMO 16, 1913, P. 3, 3 yr, S, near station but failed to surrender.  
 CMO 4-1950, P. 165, 3 yr 2 mo, A.  
 CM 321194, Mithen, 70 BR 283 (1947), 3 yr 3 mo, A, cc, cj, fn.  
 CM 283379, Pereira, MO-JAGA 1 (1949), 3 yr 3 mo, A, cc, cj, rs.  
 In re White, 17 Fed. 723 (C. C. Calif., 1883), 3 yr 4 mo, A (dicta).

U. S. v. Lambert, 1 (AF)CMR 344 (ACM, 1948), 3 yr 4 mo, S, evaded arrest.  
 CMO 11-1945, P. 441, 3 yr 6 mo, A, cj (dicta).  
 CM 292616, Richey, 57 BR 249 (1945), 3 yr 7 mo.  
 CM 341070, Butler, MO-JAGA 324 (1950), 3 yr 9 mo, A, cc, cj.  
 GCMO 22, Navy Dept., Jan. 29, 1903, 4 yr, A (dicta).  
 CMO 11-1945, P. 459, 4 yr, A.

*s. Over ½ years.*

CM 335486, Paris, 2 JC 131 (1949), 4½ yr, A.  
 CMO 1-1931, P. 33, 4½ yr, S.  
 U. S. v. Oster, 3 (AF)CMR 534 (ACM, 1950), 4½ yr, S.  
 U. S. v. Green, 4 (AF)CMR 193 (ACM, 1950), 4½ yr, cj.  
 CM 336337, Cote, MO-JAGA 383 (1950), 4½ yr, A, cc, cj.  
 U. S. v. Jaffey, 3 (AF)CMR 51 (ACM, 1950), 4½ yr, A, cj.  
 U. S. v. Severson, 1 (AF)CMR 207 (ACM, 1949), 4½ yr, A.  
 In re Cadwallader, 127 F. 881 (D. C. Mo., 1904), 5 yr, A (dicta).  
 CM 324075, McNish, 73 BR 21 (1947), 5 yr, A.  
 U. S. v. Bloxham, 3 (AF)CMR 214 (ACM, 1950), 5½ yr, A.  
 U. S. v. Stellman, 4 CMR 232 (CM, 1952), 5½ yr, A, cc, cj, fn.  
 U. S. v. Burke, 2 CMR 753 (ACM, 1952), 5½ yr.  
 CM 337720, Heneage, 4 JC 89 (1949), 5½ yr, S, cj.  
 U. S. v. Burkhammer, 1 (AF)CMR 28 (ACM, 1948), 5½ yr, A.  
 CM 330082, Boland, 78 BR 263 (1948), 6 yr, A.  
 U. S. v. Ballew, 2 (AF)CMR 588 (ACM, 1950), 6 yr, S, cj, fn, married.  
 U. S. v. Madro, 7 CMR 690 (ACM, 1952), 6¾ yr, S, dfs.  
 U. S. v. Higgins, 5 CMR 405 (ACM, 1952), 7 yr, A.  
 U. S. v. Jackson, 3 (AF)CMR 53 (ACM, 1950), 7½ yr, A, cj.  
 U. S. v. LaVonture, 4 (AF)CMR 599 (ACM, 1951), 7½ yr, A.  
 U. S. v. Jackson, 1 CMR 764 (ACM, 1951), 7½ yr, A.  
 U. S. v. Percy, 1 CMR 786 (ACM, 1951), 7½ yr, A.  
 Rex v. Secy of State (Ex Parte Halperin), (1951) 2 T.L.R. 302, 8½ yr, A.  
 U. S. v. Bonds, 6 USCMA 231, 19 CMR 357 (1955), 8½ yr.  
 In re Davidson, 4 Fed. 507 (S.D.N.Y., 1880), rev. on other gr. 21 Fed. 618 (C.C.N.Y., 1884), 8¾ yr, A (dicta).  
 U. S. v. Meadows, 2 CMR 306 (CM, 1951), 9 yr, A, dfs, cc.  
 U. S. v. Slabonek, 21 CMR 374 (CM, 1956), 12 yr, S, cj.  
 CM 212634, Bergdoll, 10 BR 249 (1940), 19 yr, A, etc.