N. 1945 21

REQUEST FOR ARMY INFORMATION

TYPE C

Insurance Waiver

WD AGO FORM 53 SERIES REC VED ☐ YES ☐ NO

LOCATION OF REQUESTING OFFICE	ORGANIZATION UNIT	DATE
Central Office	Disability Insurance Claims Service	9DCE MW/rcl 5-19-47

If VA entry is correct, enter "c" in corresponding WD box; if not, make correct entry.

To be completed by Veterans Administration	To be completed by War Department
1. LAST NAME - FIRST NAME - MIDDLE INITIAL: PROVOO, John D.	1. LAST NAME - FIRST NAME - MIDDLE INITIAL: C C C
2. ARMY SERIAL NO.: 19 052 533	2. ARMY SERIAL NO.: C
3. C. NO.: C- 11 022 635	3. C. NO.: C-
4. CONVERTED INS. NO.: K-	4. CONVERTED INS. NO.: K-
5. NAT. SER. LIFE INS. NO.: N- 1 815 301	5. NAT. SER. LIFE INS. NO.: N-
6. DATE(S) OF ENTRY INTO ACTIVE SERVICE: 5-14-41	6. DATE(S) OF ENTRY INTO ACTIVE SERVICE: C
7. DATE(S) OF DISCHARGE(S) OR RELEASE FROM ACTIVE SERVICE: 8-17-46 re-enlisted 9-5-46	7. DATE(S) OF DISCHARGE(S) OR RELEASE FROM ACTIVE SERVICE: C
8. CHARACTER OF DISCHARGE(S):	8. CHARACTER OF DISCHARGE(S): Hon.
9. LAST GRADE AND ORGANIZATION: S/Sgt. Hq. Philippine Det.	9. LAST GRADE AND ORGANIZATION: C C
10. DATE OF DEATH:	10. DATE OF DEATH:
11. PLACE OF LAST DISCHARGE:	11. PLACE OF LAST DISCHARGE: Ft Dix, New Jersey
12. HOME ADDRESS:	12. HOME ADDRESS: 1774 Hayes St., San Francisco, Cal.
13. DATE OF BIRTH: 8-6-17	13. DATE OF BIRTH: C
14. PLACE OF BIRTH:	14. PLACE OF BIRTH: San Francisco, California

ALLEGED DISEASE OR INJURY

DATE INCURRED

HOSPITAL OR INFIRMARY

DIAGNOSIS

ORGANIZATION WITH WHICH SERVING

SIGNATURE: H. H. Milks
H. H. MILKS, Director

ADDITIONAL INFORMATION

All medical and clinical records from May 6, 1942 to August 17, 1946.

Cause of discharge: Demobilization.

Information relative to re-enlistment on 5 Sep 46 may be obtained from Personnel Information Branch, Pentagon Building, Washington, D. C.

Prior report furnished VAF, Regional Office, San Francisco, California on 15 Nov 46, under claim #11 022 635.

7/9/47

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DATE: 8 - JUL 1947

EDWARD F. WITSELL
Major General
The Adjutant General

By: fb/Sub-Sec. 6

☆ U. S. GOVERNMENT PRINTING OFFICE 1946

REQUEST FOR ARMY INFORMATION

WD AGO 10M 55 SERIES [illegible] NO

LOCATION OF REQUESTING OFFICE: Central Office

ORGANIZATION: Disability Insurance Claims Service

DATE: 9DCS MW/rcl

Insurance Waiver

If VA entry is correct, enter "c" in corresponding WD item; if not, make correct entry.

To be completed by Veterans Administration

1. LAST NAME - FIRST NAME - MIDDLE INITIAL: PROVOO, John D.

2. ARMY SERIAL NO.: 19 092 533

3. C NO.: C- 11 022 635

4. CONVERTED INS. NO.: K-

5. NAT. SER. LIFE INS. NO.: N- 1 815 301

6. DATE(S) OF ENTRY INTO ACTIVE SERVICE: 5-14-41

7. DATE(S) OF DISCHARGE(S) OR RELEASE FROM ACTIVE SERVICE: 8-17-46 re-enlisted 9-5-46

8. CHARACTER OF DISCHARGE(S):

9. LAST GRADE AND ORGANIZATION: S/Sgt. Hq. Philippine Det.

10. DATE OF DEATH:

11. PLACE OF LAST DISCHARGE:

12. HOME ADDRESS:

13. DATE OF BIRTH: 8-6-17

14. PLACE OF BIRTH:

ALLEGED DISEASE OR INJURY:

DATE INCURRED:

HOSPITAL OR INFIRMARY:

DIAGNOSIS:

ORGANIZATION WITH WHICH SERVING:

SIGNATURE: H. H. MILES, Director

ADDITIONAL INFORMATION

All medical and clinical records from May 6, 1942 to August 17, 1946.

To be completed by War Department

1. LAST NAME - FIRST NAME - MIDDLE INITIAL: C C C

2. ARMY SERIAL NO.: C

3. C NO.: C-

4. CONVERTED INS. NO.: K-

5. NAT. SER. LIFE INS. NO.: N-

6. DATE(S) OF ENTRY INTO ACTIVE SERVICE: C

7. DATE(S) OF DISCHARGE(S) OR RELEASE FROM ACTIVE SERVICE: C

8. CHARACTER OF DISCHARGE(S): HON.

9. LAST GRADE AND ORGANIZATION: C C

10. DATE OF DEATH:

11. PLACE OF LAST DISCHARGE: Ft Dix, New Jersey

12. HOME ADDRESS: 1774 Hayes St., San Francisco, Cal.

13. DATE OF BIRTH: C

14. PLACE OF BIRTH: San Francisco, California

Cause of discharge: Demobilization.

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Prior report furnished Vet. Regional Office, San Francisco, California on 15 Nov 46 under claim #11 022 635.

RECEIVED JUL 22 1947 C SECTION 7

RECEIVED JUL 9 1947 PACIFIC INFORMATION

RECEIVED JUL 22 1947 N-1 SECTION

MAY 27 1947

18 JUN 1947 St. Louis, Mo. Demob. Pers. Ser. Br.

3 - JUL 1947

Fb/Sub-Sec. 6

I Dupl Req Tes.

Petition of John David PROVOO for a Writ of Habeas Corpus.

UNITED STATES of America

v.

John David PROVOO.

Civ. A. No. 8025.

Crim. A. No. 23076.

United States District Court, D. Maryland.

March 14, 1955.

Prosecution for treason. On defendant's petition for writ of habeas corpus and motions to dismiss indictment on ground that defendant had been denied a speedy trial and that further prosecution of charge would deprive him of rights under the Fifth Amendment, the District Court, Thomsen, J., held that where delay in bringing case to trial was caused by deliberate act of government in bringing action in New York when government knew that venue in New York was doubtful but took chance for supposed advantage to government of proceeding in New York, delay of trial until 1955 on charges formally made in 1949 against the defendant, who had been in prison more than five years awaiting trial during which time he had no opportunity to locate and interview possible witnesses, many of whom had died or had been lost track of, constituted denial of constitutional right of speedy trial.

Motion to dismiss granted.

See also 16 F.R.D. 341.

1. Estoppel ⇐6

Where defendant, in motion to vacate conviction in New York for treason, contended that he was not "found" in New York but that he was "found" in Maryland, defendant was thereafter estopped to deny that he was "found" in Maryland. 18 U.S.C.A. § 3238.

2. Indictment and Information ⇐144

In proceeding on motion to dismiss indictment on ground that defendant was not "found" within district of the court, evidence established that defendant had not been arrested for the offense charged in New Jersey and he was not "found" there within meaning of venue statute. 18 U.S.C.A. § 3238.

See publication Words and Phrases, for other judicial constructions and definitions of "Found".

3. Criminal Law ⇐113

Where accused, who had been held as military prisoner in Maryland on a sodomy charge, was brought to New York by army for purpose of effectuating his dishonorable discharge in Southern District of New York so that he could be arrested, indicted and tried for treason in Southern District of New York, accused was "found" in Maryland within meaning of venue statute. 18 U.S.C.A. § 3238.

4. Criminal Law ⇐576(5)

The right to a speedy trial may be waived, and is waived unless it is demanded by the accused. U.S.C.A.Const. Amend. 6.

5. Criminal Law ⇐106

Questions of venue in criminal cases raise deep issues of public policy in light of which legislation must be construed, and are not merely matters of formal legal procedure. U.S.C.A.Const. Amend. 6.

6. Criminal Law ⇐113

Although government may, when it has a choice of venues, elect to prosecute in district of its choice almost for any reason, where government chooses to proceed in certain district in a doubtful case of venue, when venue in another district is clear, government must be held responsible for effects of its election. 18 U.S.C.A. § 3238; Fed.Rules Crim.Proc. rule 48(b), 18 U.S.C.A.

7. Criminal Law ⇐573

Where delay in bringing case to trial was caused by deliberate act of govern-

ment in bringing action in New York when government knew that venue in New York was doubtful, delay of trial until 1955 on charges formally made in 1949 against defendant, who had been in prison more than five years awaiting trial, during which time he had no opportunity to locate and interview possible witnesses, many of whom had died or had been lost track of, constituted a denial of constitutional right of speedy trial. Fed.Rules Crim.Proc. rules 12, 48 (b), 18 U.S.C.A.; U.S.C.A.Const. Amends, 5, 6; Uniform Code of Military Justice, arts. 125, 134, 50 U.S.C.A. §§ 719, 728; 18 U.S.C.A. § 3238.

George Cochran Doub, U. S. Atty., and Herbert F. Murray, Asst. U. S. Atty., Baltimore, and Ernest McRae, Sp. Asst. to the Atty. Gen., for the United States.

Frederick J. Green, Jr., Theodore C. Waters, Jr., John Martin Jones, Jr., and David Ross, Baltimore, Md., for petitioner and defendant.

THOMSEN, District Judge.

John David Provoo, indicted for treason, has filed a petition for a writ of habeas corpus and motions to dismiss the indictment under Rules 12 and 48(b), Fed.Rules Crim.Proc. 18 U.S.C.A., claiming that he has been denied a speedy trial, as guaranteed by the Sixth Amendment, and that further prosecution of the charge would deprive him of rights under the Fifth Amendment. He has also filed a motion questioning venue.

The indictment charges continuous treasonable conduct from May 6, 1942, to August 14, 1945, in the Philippine Islands, Formosa and Japan. Provoo, who was a prisoner of war during that period, is charged with having adhered to the enemy by offering his services to and working for the Japanese as an interpreter, guide, adviser, radio speaker, etc., by persuading others to give restricted information to the Japanese, and by spying and reporting on the activities of other prisoners. Five of the overt acts are alleged to have occurred on Corregidor: (1) The offer of services; (2) An attempt to persuade a POW to give the Japanese information about secret American codes and ciphers; (3) Ordering a POW to give his boots to a Japanese officer and striking and beating the POW; (4) Advising a POW to give the Japanese information about certain hidden silver money; and (5) Reporting to the Japanese that a POW, Captain Thomson, was uncooperative, anti-Japanese and a threat to the internal security of the military occupation of Corregidor by Japan, which report resulted in the execution of Captain Thomson by the Japanese forces. Two of the overt acts deal with broadcasting over Radio Tokyo in Japan.

An indictment for treason charging these and other overt acts was filed in the Southern District of New York in 1949. Trial was had in 1952–3; Provoo was found guilty of four of the overt acts alleged, and sentenced to life imprisonment. The Court of Appeals for the Second Circuit, in August 1954, reversed the conviction because of the admission of certain improper evidence, and ruled that the District Court should have granted a post-sentence motion filed by defendant on the ground that venue is in the District of Maryland and not in the Southern District of New York. 124 F.Supp. 185. United States v. Provoo, 215 F.2d 531. The grand jury for the District of Maryland filed the present indictment on October 27, 1954.

The pending motions, together with the petition for a writ of habeas corpus ad subjiciendum, raise the following points: (1) that the defendant has been denied a speedy trial, as guaranteed by the Sixth Amendment; (2) that trial at this time would deny him due process of law as guaranteed by the Fifth Amendment, in view of the alleged prejudicial and oppressive delays and resultant loss of evidence material to the defense; (3) that such trial would deny him his right to procure witnesses, as guaranteed by

the Sixth Amendment; (4) that such trial would deny him his right to a fair trial within the spirit and meaning of the Fifth and Sixth Amendments; and (5) that under all the circumstances, a trial at this time could not be had in accordance with the civilized standards of criminal justice established for criminal trials by the Supreme Court of the United States.

Provoo has also filed a motion challenging venue in this district, on the ground of an alleged arrest at Fort Dix, New Jersey, in 1946.

Findings of Fact

The facts, as I have found them from testimony and exhibits offered in support of and in opposition to said petition and motions, will be stated chronologically.

Provoo was born in San Francisco, California, in 1917, and was reared and educated there. He had the equivalent of a high school education and two further years of study. He worked several years for a bank, for the Matson Line, for a radio station, and for his father, who was a painting and decorating contractor. He became interested in Buddhism in early adolescence, was converted to that faith, and in 1940 went to Japan, where he lived in a Buddhist monastery, taught school, and studied Buddhist philosophy. While in Japan he developed his ability to speak Japanese.

Early in 1941 the State Department recommended that all Americans leave Japan. Provoo returned to the United States and enlisted in the United States Army on May 14, 1941. He was sent to the Philippines in June, 1941, was promoted to corporal in January, 1942, and to sergeant in March, 1942, on Bataan. He was captured by the Japanese at the fall of Corregidor on May 6, 1942, and was held as a POW on Corregidor, on Formosa, and in Japan.

It was on Corregidor that several overt acts, including the overt act leading to Captain Thomson's death, are alleged to have occurred. No overt act is alleged to have occurred on Formosa. In 1943 Provoo was transferred to Japan, and was taken by the Kempei-Tai, the Japanese thought police, to Camp Omori, a POW and punishment camp, and later to Camp Bunka, where most of the allied prisoners who were broadcasting over Radio Tokyo were confined. Two of the overt acts deal with Provoo's broadcasting. He denies that he was guilty of any treasonable acts.

The records of the Army show that Provoo was placed under arrest in quarters by the senior American Army Officers at Camp Bunka on or about August 14, 1945, that this state of verbal arrest continued when he was moved to Camp Omori on August 24, 1945, and that on the latter date he was placed in the custody of Captain Ince, an American officer at Camp Omori, by verbal order of Commander Mahrer, USN, to whom command of that camp had been turned over by the Japanese. Provoo testified that he was arrested by Captain Ince and an Australian officer, Major Cousins, that on the day when the prisoners were liberated Captain Ince requested the Commanding Officer of the liberating forces to arrest Provoo, but that officer refused, and that Captain Ince thereupon rearrested him. In 1945-6 the CIC investigated the participation of Provoo, Ince and others in the broadcasting; in 1948-9 the FBI made a similar investigation, and took long statements from Provoo in connection therewith, which the government offered in evidence in this proceeding; Ince was not called by the government at the New York trial; he was subpoenaed by the defendant there but did not appear.

On August 29, 1945, Provoo was evacuated from Camp Omori to the hospital ship Benevolence and remained in custody on that ship and elsewhere until September 12, 1945. He was then arrested by an Army CIC Unit, under an order issued pursuant to authority contained in a radio message from GHQ, AFPAC (General MacArthur's headquarters), dated September 11, 1945,

subject "Apprehension and Detention of Certain Individuals", addressed to the Commanding Generals of the Sixth, Eighth and Tenth Armies and the XXIV Corps. The important part of that message, which was confirmed by a letter, is as follows:

"The Apprehension And Detention Of Persons By United States Forces In Japan And Korea Within Actual Zones Of Occupation And Within The Following Categories Is Authorized Cln Paren One Paren Citizens And Nationals Of The United Nations Suspected Of Guilt Of Treason Cma Sedition Cma Or War Crimes Pd Paren Two Paren Citizens And Nationals Of Neutral Countries Suspected Of Guilt Of War Crime Or Who Commit Overt Acts Endangering The Security Of Our Forces Pd (CAX 51822) Paren Three Paren Citizens And Nationals Of Any Country With Which Any Of The United Nations Is Or Has Been At War Cma Except Japan Cma Who Are Officially Identified By The Counter Intelligence Corps As Constituting A Threat To The Security Of Our Forces Pd * * * Compounds For The Detention Of The Above Mentioned Persons Cma Pending Their Disposition By This Headquarters Cma Will Be Established By The Commanding General * * * Eighth Army * * * Within Their Respective Areas."

Ince and Cousins were held in house arrest in Tokyo. Provoo was taken to a jail in Yokohama, and on the next day removed to the XI Corps Stockade. He remained in that stockade until November 16, 1945, when he was removed to Sugamo Prison in Tokyo, where he was held until April 4, 1946. While in the Yokohama stockade and in Sugamo Prison, he was interviewed by five or six representatives of CIC units of the Army, who took two signed statements from him. I find as a fact that the FBI did not interview Provoo at that time. The FBI had two agents in Tokyo, who served as liaison with the CIC and had access to their reports, but did not participate in this investigation or in any other investigation of military personnel at that time.

Sugamo Prison was guarded by an American MP unit. Besides Provoo, there were only two Americans confined there: Mark Streeter and Mrs. Iva Ikuko Toguri D'Aquino, sometimes called "Tokyo Rose", civilians being investigated in connection with the broadcasting. There were a few European prisoners, some non-Japanese orientals, and several hundred Japanese. Provoo was held in close confinement. The CIC agents who interviewed him in Sugamo Prison testified that for some weeks he was so emotionally upset that he was disoriented and incoherent, but that they finally obtained a statement from him. His physical condition otherwise was satisfactory. I find that the agents did not use any force, threats, promises, or insulting language in obtaining the statements from Provoo beyond the duress inherent in his confinement and situation.

During the questioning by CIC agent Belinkie, Provoo asked Belinkie to represent him as counsel. Belinkie said he could not do so, since he was in the armed forces. Corporal Pray, who was a chaplain's assistant at Sugamo, testified that almost all of the men in Sugamo asked for counsel but that no counsel were available. Provoo could not remember whether or not he asked for counsel while at Sugamo, but testified that he asked to be returned to duty. During the time he was in confinement, he was never tried or given a hearing of any sort. On or about March 22, 1946, Provoo sent to the Commanding General of the Eighth Army a 51-page statement, in which he detailed his version of his activities from the date of his enlistment in May, 1941, and denied any treasonable conduct while a POW. The Chief of Legal Section, AFPAC, recommended that no charges be preferred, and on April 3, 1946, orders for the release of

Provoo from Sugamo were given. He was released on April 4, 1946. On the same day he was raised in grade to staff sergeant under a Presidential order, which had awarded an advancement of one grade to all military personnel who had been prisoners of war. He understood that he had been completely cleared of all accusations of treasonable conduct. Two days later he was shipped back to the United States under orders.

Upon arrival in the United States, he was sent to Fort Dix, New Jersey, where he was transferred from duty to recuperative leave on April 30, 1946. Some of the records at Fort Dix have been destroyed in ordinary course, but the available records indicate that he remained on recuperative leave until August 13, 1946. Provoo testified that during that period he and his wife (since divorced) visited relatives, but returned to Fort Dix once to obtain some back pay and because Provoo had heard that MPs were looking for him. He testified that in the Finance Office at Camp Dix he was taken into custody by military police and held over two nights; that he was then released and told that he had been picked up on the old flier which has been issued in September, 1945. The morning reports of Provoo's company do not show any such confinement, and in the ordinary course they should have shown it if it had happened. In his application for OCS in 1947, in response to a question whether he had ever been arrested, Provoo gave in his answer the arrest in Japan but did not mention any arrest at Fort Dix. Whether or not Provoo was apprehended and put under moral restraint or confined at Fort Dix by the Provost Marshal in 1946, I find that he was not apprehended for treason in New Jersey and that he was not "found" there within the meaning of Title 18 U.S.C.A. § 3238, but that any detention at Fort Dix was for investigation and by mistake.

Provoo received an honorable discharge from the Army on August 17, 1946, at Fort Dix. On September 5, 1946, at Camp Beal, California, he reenlisted in grade in the regular army for a period of three years. He was given various duty assignments and on occasions received hospitalization and rehabilitation until August, 1948, when the Department of Justice, through the FBI, initiated an investigation of Provoo's activities as a POW. The Department of Justice requested the Army to keep Provoo close to Washington, and in August, 1948, he was assigned to HQ and HQ Co., 2101 ASU, Fort Meade, Maryland. On that assignment he had no regular duties, but received occasional duties, one of which was to serve as sergeant of a guard which brought a military prisoner from Fort Leavenworth to Fort Meade in March, 1949. Upon his return to Fort Meade, a complaint was made that Provoo had been guilty of sodomy and other offenses under the 93rd and 96th Articles of War * on the train from Fort Leavenworth to Fort Meade. The Army began to investigate the matter, and on April 2, 1949, Provoo was sent, without protest, to Walter Reed Hospital for two months for evaluation in connection with that charge.

The Department of Justice was keeping in touch with the Department of the Army, and on April 1, 1949, Justice requested that Provoo be not confined or tried on those charges. On April 5 a conference was held in the office of the Director of Intelligence of the General Staff, U. S. Army, in Washington, at which the Inspector General and Judge Advocate of the Second Army were instructed that Provoo should not be tried on the charges under the 93rd and 96th Articles of War without prior clearance from the office of the Director of Intelligence of the General Staff. On some date which has not been clearly established, but was probably as early as August 3, 1948, Justice had requested Army not to discharge Provoo until Justice had completed its investigation, and the Ad-

* Now 50 U.S.C.A. §§ 719, 728.

jutant General sent instructions to the Commanding General of the Second Army at Fort Meade not to discharge Provoo without the express approval of the Secretary of the Army.

During the first part of Provoo's stay at Walter Reed Hospital, he was emotionally disturbed, but he improved while he was there. Colonel Inwood, the doctor in charge, testified that he was not suffering from any mental disease but from emotional lability; he was and is easily upset, and his mood switches are more marked than in the average person but not enough to put him in the psychotic group. The file of Provoo's case at Walter Reed Hospital, including the history given by him to his attending psychiatrists, was made available to the Department of Justice. On or about April 7, while he was in confinement in the psychiatric ward, he was interviewed by FBI agents. The interview was approved in advance by Colonel Inwood. Thereafter, FBI agents interviewed Provoo four or five times during May, 1949, in the psychiatric ward, and took a signed statement from him. I find as a fact that the FBI agents did not obtain the statement by any threats or promises, that Provoo was advised of his rights, and that no insulting or degrading language was used to him. The statement taken at Walter Reed Hospital dealt with certain records of the Tokyo broadcasts, which the FBI agents had with them, and which they played back so that Provoo could identify the voices.

That statement, dated 11 May 1949 and signed by Provoo, recited in its preamble that he had been advised of his right to counsel and that he did not desire counsel at that time. But by military letter dated 12 May 1949 and forwarded through channels to the Commanding General of the Washington Military District, Provoo requested that military counsel be assigned him under the 46th (sic) Article of War † because he was under investigation on charges of treason. This request was denied by an endorsement dated 18 May 1949 on the ground that the Article of War authorized the appointment of military counsel only in the case of servicemen undergoing formal investigation by the service under court-martial charges.

In April, 1949, before the statement was given, Provoo had a talk with a Washington attorney experienced in criminal cases, who told him that he could go into court and ask for a clarification of his status. Provoo testified that he did not employ the attorney for two reasons: (1) because he felt that the Army would straighten the matter out, and (2) because of lack of funds.

On June 2, 1949, Provoo was released from Walter Reed Hospital, was taken to Fort Meade, notified of the formal charges under the 93rd and 96th Articles of War, and confined in the stockade.

The effect of the decision of the Secretary of the Army not to try Provoo on these charges and not to discharge him meant that he was being held indefinitely in confinement. He obtained military counsel on these charges, but his counsel was shortly thereafter transferred, and he did not obtain new counsel until sometime in August. His military counsel were not authorized to advise him in connection with the FBI investigation.

While Provoo was in confinement at Fort Meade, he sent a message to FBI Agent Davis, through his then fiancee, a WAC Sergeant, to the effect that he would like to tell them his side of the story or to give them some statements he would prepare himself. Agent Davis thereupon interviewed Provoo in a room in the administration building adjoining the stockade at Fort Meade, and returned on twelve occasions during the month of August. He was accompanied during the first interviews by Agent Nelson and during the later interviews by Agent

† Now 50 U.S.C.A. § 591.

Anenson; they took four signed statements from Provoo. I find as a fact that the FBI agents did not obtain the statements by any threats or promises, that Provoo was advised of his rights, and that no insulting or degrading language was used to him. However, these interviews continued until August 31, 1949, when Provoo was called away from an uncompleted interview for physical examination preparatory to his transfer to Fort Jay, as hereinafter set out.

While at Fort Meade, Provoo received religious instruction and instruction in Scholastic Philosophy from Chaplain Hayes, who testified that he was singularly lacking in an understanding of Western morality.

Sometime during the summer of 1949, the commanding officer of the stockade at Fort Meade was changed, and for no reason that appears in the record Provoo was removed from the stockade to a cellblock in the fire house at Fort Meade, where he was held in individual confinement. On August 22, 1949, General Gerow wrote the Director of Intelligence of the General Staff, reviewing the case, stating that the investigation of the sodomy charges had been completed, and concluding as follows:

> "As Provoo has been in confinement since 2 June 1949, action must now be taken to dispose of the charges. In the event he is found guilty of the offenses alleged, it is probable that any sentence imposed will include a dishonorable discharge. In view of the instructions by your office and the directives contained in the foregoing communications, instructions as to the disposition of this case are requested."

This letter precipitated a conference on August 23 between representatives of Army and Justice. On that morning, or the evening before, Noel E. Story, an attorney in the Department of Justice, was given a brief résumé of the case by his superiors, Raymond P. Whearty, First Assistant Attorney General, Criminal Division, and William P. Foley, head of the Internal Security Section of the Criminal Division, and was instructed to attend the conference. Victor C. Woerheide, who had handled the case for Justice up to that time, was out of the country. Present at the conference were Colonel Sargent, Staff Judge Advocate, Second Army, Fort Meade, and Colonel Barlow, from the Intelligence Division of the General Staff, as well as Colonel Miller, the liaison between Army and Justice. Story made the following memorandum of the conference:

> "* * * Colonel Sargent stated that it was not the Army policy to proceed with charges of sodomy in the Second Army, in view of the fact that Army medical officials hold that Provoo's actions are not criminal but are as a result of illness. The Department of the Army has held Provoo in confinement at the request of the Department of Justice. In view of the fact that the Second Army does not contemplate proceeding against Provoo for a court martial, the Army cannot hold Provoo in confinement indefinitely. The Army desires to proceed against Provoo before a Section VIII Board with the hopes of obtaining Provoo's release from the Army. Army officials state that it is impossible to return Provoo to duty at an Army installation because of his moral character. The Army desired an answer from the Department of Justice as to whether it desired Provoo to remain in the service."

At the hearing on the instant motions, Story testified that the statement: "The Department of the Army has held Provoo in confinement at the request of the Department of Justice" was not accurate; that Provoo was originally held on the Army charges, but that sometime during the summer the Army decided not to press those charges and thereafter held Provoo at the request of the Department of Justice. I find this to be the fact.

Following the conference in the Pentagon, Story had another conference with Whearty and Foley. Story's memorandum of August 23, 1949, continues:

"At the conference with Mr. Whearty and Mr. Foley, the Army's views on the Provoo case were discussed. Mr. Whearty does not desire that Provoo be released from confinement and from the Army as long as there is a possibility that the Department may proceed against him in a case of treason. Mr. Whearty advised that he desired the FBI headquarters to wire Mr. Fred Tillman in San Francisco for an opinion on the Provoo case, and to inform this Department as to whether or not he was able to develop overt acts by the requisite number of witnesses to justify the filing of a complaint on Provoo in the near future in the event he is discharged from the Army and released from confinement.

"Information from Mr. Gorman, of the treason section of the FBI, is to the effect that he has received word from Mr. Tillman recently that the Provoo investigation in Japan had been completed and that his report of investigation should arrive in the Department in the near future."

Following these conferences, Story called Colonel Miller at the Pentagon on the telephone. A memorandum of the conversation was prepared. The material parts of the memorandum were as follows:

"Mr. Story: I discussed Provoo situation with Mr. Whearty and Mr. Foley. You people have to take some action; would it be possible for the Army to go ahead and take action under Section 8, and if the action is to the effect that Provoo will be released from the Army, would it be possible that he be discharged in New York so as to bring him within the jurisdiction of the Eastern (Story testified he meant Southern) District Court? The reason for this is that if we pick him up or arrest him in San Francisco, we have to take action within a very short time. We have a little more liberal set-up in New York. We can hold him for a longer time and finish the investigation before seeking indictment. Is it possible for the Army to discharge Provoo in the Eastern (Southern) District of New York, at Governor's Island?

"Col. Miller: Do you have any idea where he entered the service?

"Mr. Story: No, probably in San Francisco, his home. From our standpoint, San Francisco would have been a good place to have him discharged, but because of the fact that we will have to be ready to seek an indictment at the time he will be released, we will have difficulty in having him discharged in San Francisco.

"Col. Miller: Do you plan to have complaint ready at the time of his discharge, and then if you were in New York, you would have more leeway in getting indictment and holding him in the meantime.

"Mr. Story: You understand jurisdiction in treason cases, wherever man is found, or if we bring him from overseas, the point at which he entered the United States. We would have to work out an agreement when you get ready to release him; we will have someone there to arrest him and put him in custody.

"Col. Miller: What is jurisdiction if he is at Fort Meade?

"Mr. Story: We do not want that because it is an undesirable place for us to proceed in cases of treason. We do not get cooperation from the U. S. Attorney or the District Judge.

"Col. Miller: I can't answer offhand. * * *

"Mr. Story: Are you familiar with Section 8 Board? How long to get action?

"Col. Miller: It does not involve too much time. Fort Meade has to have board of officers, under 615, 368, habits and traits of character undesirable. Board meets and considers evidence and reaches its conclusion. There is usually a psychiatric examination.

"Mr. Story: If the Army takes action under Section 8, no reason why they would have to rush things?

"Col. Miller: Some of the generals want it expedited. I think that General Gerow has some idea that he is in an untenable position. I can ask Col. Sargent what his estimate is of the time element.

"Mr. Story: If this is arranged where he can be discharged in New York, we would like to know the exact time when the Army will release him so we can pick him up and get jurisdiction.

"Col. Miller: OK."

Story testified that Whearty told him that one of the reasons for preferring New York was that the staff of the United States Attorney's office in New York was much larger than the staff in Baltimore, and also said that Japanese witnesses might have difficulty finding good hotels in Baltimore. Neither of these reasons appeared in the memorandum, and they were not the controlling reasons. Story testified and reiterated several times that the main consideration of the Department of Justice was that Provoo be held in confinement and not released on bail between the date of arrest and indictment. He further testified that the District Judge in Maryland to whom he referred in the memorandum was the Senior District Judge, now Chief Judge of this court, William C. Coleman; that he did not know the judge, and that he was merely reporting to Colonel Miller what Whearty had told him. The government did not produce Whearty (who is no longer with the Department of Justice) at the hearing on these motions, and offered no evidence to explain the statement that Maryland would be "an undesirable place for us to proceed in cases of treason. We do not get cooperation from the U. S. Attorney or the District Judge." There had been no treason case in Maryland in over 100 years. Of course, it is not the function of a judge to "cooperate" with either the government or the defendant in a criminal case; and the suggestion that Judge Coleman had not treated properly the representatives of the government in the criminal cases that had come before him, or would not do so in any future case, is entirely without foundation in the evidence and in fact.

Bernard J. Flynn was then and had been for 15 years United States Attorney for the District of Maryland. The suggestion that he would not cooperate with the Department of Justice in a treason case in any way, except that he would not have been a party to denying a defendant his constitutional or other rights, is equally without foundation in the evidence and in fact.

The government also called my attention to the fact that there were then twelve district judges in the Southern District of New York and only two in the District of Maryland. Despite the small size of the staff of the United States Attorney, and the fact that there were only two judges, the District of Maryland had only forty-nine criminal cases undisposed of on June 30, 1949. The ability of Flynn and his staff to prosecute important criminal cases is shown by the record of the prosecution of Philip Frankfeld, et al. the third large communist conspiracy case tried in the United States. In that case the defendants were tried and convicted and the convictions were affirmed by the Fourth Circuit in less than thirteen months after the first indictment. United States v. Frankfeld, D.C., 100 F.Supp. 934; Id., D.C., 101 F.Supp. 449; Id., D.C., 102 F. Supp. 422; Id., D.C., 103 F.Supp. 48;

Frankfeld v. United States, 4 Cir., 198 F.2d 679.

On August 26, the Assistant Judge Advocate General wrote the Director of Intelligence reporting on the conference of August 23 and the subsequent request from Whearty (evidently through Story) that Justice be informed in advance of the time and place of the separation and, if possible, that the discharge be accomplished within the Southern District of New York. He stated that JAG recommended that the Department of the Army withdraw the restrictions theretofore imposed in connection with Provoo's separation from the service, and that JAG concurred in the request of Justice that the proposed separation be accomplished at Fort Jay, Governor's Island, New York. He further recommended that in view of the court-martial charges then pending against Provoo and the serious character of the offense for which Justice would seek an indictment, that Provoo's transfer from the Second Army to the First Army be accomplished under guard. Thereupon, arrangements were made for the undesirable discharge of Provoo by direction of the Secretary of the Army under AR 615-365, rather than under AR 615-368 and -369, which would have required a hearing before a Board of Officers. The FBI was notified that the discharge would be effected at Fort Jay, Governor's Island, New York, on September 2, 1949. No action was taken on the charges under the 93rd and 96th Articles of War.

In the meantime, the FBI agents were interviewing Provoo practically every day, and taking statements from him. There is no evidence that the FBI had been notified that the Criminal Division of the Department of Justice had decided to seek an indictment. The agents elicited more and more information from Provoo about his activities, and the statement which he signed on August 26, 1949, was the most damaging of all to him, although it was not a confession of treason, and was ruled inadmissible in the New York trial. During the interviews with the FBI agents at Fort Meade, the question whether Provoo should have counsel present was discussed. On one occasion Provoo said that he did not wish to proceed without counsel, but within a matter of minutes changed his mind and stated that he wished to get on with the statement.

On September 2, 1949, Provoo was taken under guard from Fort Meade to the Headquarters of the First Army at Fort Jay, Governor's Island, New York, and required to accept an undesirable discharge. He was immediately arrested by the FBI, taken before a U. S. Commissioner in the Southern District of New York, charged with treason, and removed to the Federal Detention Center, where he was held without bail.

The first witnesses from Japan arrived at the Department of Justice on or about October 1, 1949. Story interviewed them for a week or so in Washington, then proceeded to New York sometime in the latter part of October, when hearings before the grand jury were begun. Provoo was indicted for treason by the grand jury for the Southern District of New York on November 17, 1949. He was financially unable to employ counsel, and there was some difficulty in arranging for court-appointed counsel who were able to devote the necessary time to prepare the defense.

In May, 1950, defense counsel began their efforts to secure an order for the taking of oral depositions in Japan. Several applications were denied on the ground either that the request was for the depositions of too many witnesses or that proper procedure had not been followed in that what was expected to be proved by the witnesses was not sufficiently shown. Finally, on October 17, 1950, a motion to take the depositions of six witnesses in Japan was granted, but the final order was not signed until February 26, 1951, so that the question whether the expenses of defense counsel should be paid by the Department of Justice or by the Administrative Office of the Courts could be decided. On March

15, 1951, Murray Gottesman, one of defendant's counsel, went to Japan and Australia to take depositions.

Meanwhile, on March 11, 1951, Provoo filed a petition for a writ of habeas corpus on the grounds that he was "not a civilian * * * subject to the jurisdiction of the District Court of the Southern District of New York, by virtue of the fact that his purported discharge from the Army was illegal * * *", that he was not "found" in the Southern District of New York but "forceably thrust therein", and that he had been denied a fair and speedy trial on the charges against him. Neither at that hearing nor at the trial in New York did the government produce the Army records later obtained from the Army by defendant's appellate counsel, nor Story's memoranda produced at the hearing before me.

At the hearing, on March 16, 1951, Provoo asked for an immediate trial, although his counsel stated that he would refuse to go to trial without the depositions and would withdraw if forced to do so. Judge Goddard dismissed the petition for writ of habeas corpus on the ground that any remedy was by motion under Rule 12, F.R.Cr.P. and not by habeas corpus.

On May 17, 1951, a defense motion to permit counsel then in Japan to take additional depositions of witnesses was denied. All of the depositions which had been taken were filed in court on or before June 9, 1951.

Defendant's counsel, Gottesman and Plotkin, testified before me that they were ready in the summer of 1951 to proceed to trial, but in October, 1951, the case was taken off the trial docket at the request of the government, which then assigned new trial counsel to the case. There is a conflict in the recollection of counsel for the government and counsel for the defendant as to whether the defendant objected to the case being taken off the docket. I find that counsel for the defendant were ready to proceed to trial in the summer of 1951 and objected to that and most subsequent continuances.

On March 3, 1952, Dr. Zinkin, of the USPHS, examined Provoo and reported that "although he is considered legally sane, he is emotionally unstable, prone to hysterical states and has suffered severely under the pressure of long confinement. He shows judgment which is not always of the best in critical situations and his insight from the psychological point of view into his own personality make up is extremely poor. The diagnosis that we place on him for clinical purposes is severe mixed psychoneurosis. The laboratory examination was negative. Patient refused a physical examination".

In June, 1952, defendant's counsel moved for an order dismissing the indictment or setting the case down for trial. In July, 1952, Judge Knox set the case for trial before Judge Noonan on October 6, 1952. Defendant's counsel moved for additional particulars in September, 1952, including all administrative and personnel records of the Army. Some of the items requested, but not the essential papers, were furnished after the trial started. The trial actually began on October 27, 1952, and continued to February 11, 1953. Counsel for defendant made certain oral motions to dismiss the indictment, which were denied; but at that time defendant did not have the information, hereinafter referred to, obtained by defendant's appellate counsel after judgment and sentence, nor the facts testified to by Story in the proceedings before me.

When the government closed its case unexpectedly early in December, 1952, defense counsel asked and obtained leave to take depositions of certain witnesses in Japan, Australia and England. The trial was to resume on January 5, 1953. The taking of depositions was handicapped by the long Japanese New Year celebrations, which required the omission of the proposed visit to Australia.

An attempt to take the deposition of a witness in England on the return to New York was frustrated by the fact that the United States consul in London was unable to obtain a court stenographer in a shorter period than three weeks.

Defendant was convicted on four overt acts: the offer of services to the Japanese, the Captain Thomson incident, and participation in two Tokyo broadcasts. The jury disagreed with respect to three overt acts, the government withdrew three overt acts, and the judge directed a verdict for the defendant on two overt acts. The sentence was life imprisonment.

On June 5, 1953, Circuit Judge Swan appointed Colonel Spiegelberg, formerly on the G4 staff of General Eisenhower, to be chief appellate counsel for the defendant. On October 9, 1953, Spiegelberg began his efforts to secure information as to the circumstances surrounding the transfer of Provoo from Fort Meade to Fort Jay, by correspondence with counsel for the Secretary of Defense, who made available to Spiegelberg early in 1954 all of the Army documents covering the period from April 2, 1949, to September 2, 1949, referred to in these findings of facts. Provoo thereupon (April 13, 1954) filed a motion to set aside the sentence of conviction of treason on the ground that he was tried in the wrong district, in violation of Title 18 U.S.C.A. § 3238. The motion included an affidavit by Spiegelberg in which he contended that Provoo was "found" in Maryland within the meaning of the venue section. The motion was denied by Judge Noonan on May 12, 1954. United States v. Provoo, D.C., 124 F.Supp. 185.

The appeal from the judgment of conviction and the appeal from the denial of that motion were heard together by the Court of Appeals for the Second Circuit on June 17, 1954. On August 27, 1954, the Second Circuit filed its opinion, reversing the judgment of conviction because of the admission of evidence of homosexuality, refusing to pass on other alleged errors in the trial, and reversing Judge Noonan's ruling on the venue motion. United States v. Provoo, 2 Cir., 215 F.2d 531. On the latter point, the court said: "Had the newly discovered evidence been before the jury, we do not believe that the jury would, or could legally, have found that Provoo was 'first apprehended or arrested or taken into custody' in the southern district of New York under the charges of treason on which he was later indicted. * * * We cannot blind our eyes to the fact that the real purpose in bringing him to New York was to meet the wish of the Department of Justice to have him tried for treason under the indictment subsequently filed here. Consequently we hold that the continuance of Provoo's restraint in Fort Meade, after the Army had dropped the sodomy charge, for the purpose of bringing him to New York for trial, was an apprehension for treason and that he was 'found' in Maryland within the meaning of the venue statute." 215 F.2d at page 538. The government did not seek certiorari.

Defendant was not released, but was indicted by the grand jury for the District of Maryland on October 27, 1954, was brought to Maryland shortly thereafter, and has been in custody here ever since.

General Wainwright, who testified for the defense in the New York trial, has since died. Warrant Officer Conley, another defense witness has also died since the trial. General Moore, who Provoo says authorized him to interpret on Corregidor, died in 1949. The government has offered in evidence an affidavit indicating on double hearsay that General Moore would not have testified as claimed. Provoo named a dozen or so other members of the armed forces, most of them high ranking officers, who he says were familiar with his activities at various prison camps, who he believes would

have testified for him, and who died before October, 1949.

It thus appears that Provoo was held in custody in the XI Corps Stockade and in Sugamo prison for over seven months in 1945 and 1946 pending investigation and without any charges being filed against him; that he was held in custody for some time at Fort Meade in 1949 under instructions to the commanding general not to try him on the military charges and not to release him, so that the FBI investigation begun in 1948 could be completed; and that he was taken to New York in September, 1949, charged with treason, and held in custody for more than five years before being indicted and brought to trial in a district having jurisdiction to try the case.

The government must have known that venue in New York was at least doubtful, in view of the decision of the Supreme Court in Ex parte Bollman, 4 Cranch 75, 136, 2 L.Ed. 554; yet the government caused Provoo to be taken under guard from Fort Meade to Fort Jay, for the supposed advantage of proceeding in New York rather than in Maryland. It therefore appears that a large part of the long delay—at least five years—has been due to the deliberate choice of the government, exercised for a supposed advantage.

At the hearing on these motions, the United States Attorney stated that he is disturbed by the fact "that Provoo has been under detention for five years as a result of the error of the Department of Justice". He suggested first that the time in custody should be deducted from the ultimate sentence, if the defendant is found guilty.[1] He suggested later that the court might consider releasing Provoo from custody now, overruling the motions, and proceeding to trial in three weeks. But the damage cannot be cured in that way. The long periods of imprisonment have caused other prejudice to the defendant beside the deprivation of his freedom, with a capital charge hanging over him. He has been handicapped in his ability to locate and keep in touch with possible witnesses. But even more serious has been the effect on Provoo himself. In 1952, Dr. Zinkin, of the United States Public Health Service, diagnosed Provoo's condition as a severe mixed psychoneurosis, and said that "although he is considered legally sane, he is emotionally unstable, prone to hysterical states and has suffered severely under the pressure of long confinement". It is evident to a layman who has observed Provoo in court and in chambers on a considerable number of occasions, that his condition is no better now. His ability to cooperate with his counsel in preparing his defense, and to testify in his own behalf with respect to matters which occurred from 1942 to 1945, has obviously deteriorated during the years in prison.

Conclusions of Law

Venue

Provoo's motion to dismiss the indictment on the ground that he was not "found" in the District of Maryland within the meaning of Title 18 U.S.C.A. § 3238, must be denied, for two reasons:

[1] 1. In his motion to vacate the conviction in New York he contended that he was not "found" in New York but that he was "found" in Maryland. On appeal from the ruling of the District Court on that motion, the Second Circuit held "that he was 'found' in Maryland within the meaning of the

1. The United States Attorney evidently had in mind United States ex rel. Leguillou v. Davis, D.C.V.I., 115 F.Supp. 392, where Judge Maris set aside the conviction because of an improper jury panel, ordered the defendant held for a new trial on the original charge, and said that if he were convicted on retrial the sentencing judge would undoubtedly take into account the time already served. The long opinion did not discuss the question of speedy trial, which apparently was not raised by the relator.

venue statute." 215 F.2d at page 538. Therefore, Provoo is now estopped to deny that he was "found" in Maryland. Nolan v. United States, 8 Cir., 163 F.2d 768, 770, certiorari denied 333 U.S. 846, 68 S.Ct. 649, 92 L.Ed. 1130; Holdsworth v. United States, 1 Cir., 179 F.2d 933.

[2, 3] 2. On the evidence, he was "found" in Maryland. The facts on this question are essentially the same as the facts before the Second Circuit. Provoo was not apprehended for treason at Fort Dix in 1946, and was not "found" in New Jersey within the meaning of the venue statute.

Constitutional Questions

The seriousness of the charges, particularly those in connection with the secret codes and ciphers and the death of Captain Thomson, on the one hand, and Provoo's long periods of confinement on the other, give point to the admonition of Chief Justice Marshall in Ex Parte Bollman:

> "As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry. Whether this inquiry be directed to the fact or to the law, none can be more solemn, none more important to the citizen or to the government; none can more affect the safety of both." 4 Cranch at page 125.

The offenses charged could not be more serious. But it would be a poor tribute to Captain Thomson to deny to this defendant the rights for which Captain Thomson gave his life.

The right to a speedy trial is of long standing and has been jealously guarded over the centuries. Magna Carta states: "To no one will we sell, to no one deny or delay, right or justice." This provision was implemented by special writs of jail delivery, and later by commissions of general jail delivery, under which special judges cleared the jails twice a year.[2] In 1679 Parliament passed the Habeas Corpus Act, 31 Car II, ch. 2, which required that prisoners indicted for treason or felony be tried at the next sessions or released on bail, "unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions, or General Gaol Delivery; (2) and if any Person or Persons committed as aforesaid, upon his Prayer or Petition in open Court the first Week of the Term or first Day of the Sessions * * *, to be brought to his Trial, shall not be indicted and tried the second Term, Sessions * * * or General Gaol-delivery, after his Commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment." That Act, which Blackstone called "the Bulwark of the British Constitution",[3] was still cherished by the British people at the time our Constitution was adopted,[4] and by American patriots and lawyers, nurtured on Blackstone. Some thought the right of speedy trial and similar rights were so clearly a part of our "liberty" that no Bill of Rights was necessary.[5] But the American people wanted to be sure, and gave the right of speedy trial first place in the Sixth Amendment:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory

2. II Coke Inst. 43.

3. Comm. Vol. 4, p. 438.

4. Hale's History of the Common Law, 5th Ed., p. 87 et seq.

5. The Federalist, No. 84.

process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Congress did not pass any statute defining the term "speedy trial", and I have been referred to no early federal case construing it. But most of the states which ratified the first ten amendments included a provision for speedy trial in their constitutions, and either adopted the British Habeas Corpus Act itself, or passed a similar act.[6] These acts and the decisions of state courts during the next generation[7] throw some light on what the men who adopted and ratified the Sixth Amendment meant by the term "speedy trial".

The period fixed in many of the early statutes was substantially the same as that in the British Habeas Corpus Act, and in many cases defendants were discharged if trial was not had within the specified period. The right was accorded to a slave charged with rape,[8] as well as to free men charged with capital and other serious crimes.[9] Some judges seem to have felt that the accused should be discharged no matter what caused the delay, unless it was caused by the accused;[10] others felt that discharge should be refused where the delay was not the fault of the prosecution.[11] Judge Tod, speaking for the Supreme Court of Pennsylvania in 1827, said:[12]

"I think it was intended to provide against the abuse of a protracted trial, to provide not only against the malice of a prosecutor, but against his negligence, against all *his* delays whether with cause or without cause, against every possible act, or want of action, of the prosecutor; but not to shield a prisoner in any case from the consequences of any delay made necessary by the law itself."

In Beavers v. Haubert,[13] the Supreme Court said:

"* * * The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice."

Professor Black, repeating an oft-quoted definition, says that a speedy trial as provided by the Sixth Amendment, means a trial "free from vexatious, capricious, and oppressive delays manufactured by the ministers of justice".[14]

6. N.J.—Act 1795, Paterson's Rev.Laws, N.J. 1703-99, p. 168; Md.—Act 1809, c. 125, § 7; S.C.—Eng. Act, State v. Spergen, 1822, 1 McCord 563; State v. Stalnaker, 1806, 2 Brev. 44; Del.—Act 1793, c. IV, s. 3; Pa.—Act Feb. 18, 1785, Sec. 3; Commonwealth v. Sheriff & Gaoler of Allegheny County, 16 Serg. & R. 304; N.Y.—Act 1801, c. 65, s. 6; R.I.—S. 11, Habeas Corpus Act p. 237; Rev. Public Laws R.I. 1798; Va.—Act 1786, c. 57; Ex parte Joseph Santee, 2 Va.Cas. 363; Ga.—Eng. Act; State v. Maurignos, 1805, T.U.P.Charlt. 24; Mass.—Act 1784, c. 72, s. 13.

7. See e. g., State v. Sims, 1807, 1 Tenn. 253; State v. Stalnaker, 1806, 2 Brev., S.C., 44; State v. Spergen, 1822, 1 McCord, S.C., 563; Ex parte Joseph Santee, 1823, 2 Va.Cas.(4 Va.) 363; Commonwealth v. Cawood, 1826, 2 Va.Cas.(4 Va.) 527; State v. Maurignos, 1805, T.U.P. Charlt., Ga., 24; Nolan v. State, 1875, 55 Ga. 521; Nixon v. State, 1844, 2 Smedes & M., Miss., 497; State v. Phil, 1827, 1 Stew., Ala., 31; Commonwealth v. Sheriff & Gaoler of Allegheny County, 1827, 16 Serg. & R., Pa., 304.

8. State v. Phil, 1827, 1 Stew., Ala., 31.

9. State v. Maurignos; State v. Sims; State v. Stalnaker, note 7 supra.

10. State v. Phil; State v. Maurignos; State v. Sims; State v. Stalnaker; Ex parte Joseph Santee (dissent), note 7 supra.

11. Ex parte Joseph Santee; Commonwealth v. Sheriff & Gaoler of Allegheny County; Nixon v. State, note 7 supra.

12. Commonwealth v. Sheriff & Gaoler of Allegheny County, note 7 supra.

13. 198 U.S. 77, 87, 25 S.Ct. 573, 576, 49 L.Ed. 950, 954.

14. Black's Constitutional Law, Sec. 266; quoting Nixon v. State, note 7 supra.

Cooley[15] states:

"Again, it is required that the trial be *speedy;* and here also the injunction is addressed to the sense of justice and sound judgment of the court. In this country, where officers are specially appointed or elected to represent the people in these prosecutions, their position gives them an immense power for oppression; and it is to be feared they do not always sufficiently appreciate the responsibility, and wield the power with due regard to the legal rights and privileges of the accused. When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, except only that which is necessary for proper preparation and to secure the attendance of witnesses. * * *"

This rule was applied in United States v. Fox,[16] where the indictment was returned at the November Term 1879; the defendant was tried at that term but the jury disagreed; a second trial at that term resulted in a mistrial because a juror became sick; and the government did not supply funds for the next term. The court held that the prosecution had been guilty of laches and neglect of duty in failing to prosecute, that such failure was a denial to the defendant of his constitutional rights, and that he should be discharged.

The same rule has been applied with the same result in many state cases.[17] The defendants were not required to show prejudice in fact. Prejudice may arise from the restraint on liberty for an unreasonable length of time before a conviction, from the harassment of criminal prosecution and anxiety resulting therefrom, and from the possible loss of witnesses by reason of faded memory and inability to locate them.[18]

[4] The right to a speedy trial may be waived, and is waived unless it is demanded by the accused. Most of the federal cases have gone off on this ground.[19]

15. Constitutional Limitations (8th Ed., 1927), Vol. 1, p. 645, et seq.

16. Supreme Court of Montana, 1880, 3 Mont. 512.

17. Dickoff v. Dewell, 1942, 152 Fla. 240, 9 So.2d 804; People v. Molinari, 1937, 23 Cal.App.2d Supp. 761, 67 P.2d 767; Harris v. Municipal Court, 1930, 209 Cal. 55, 285 P. 699; Ex parte Miller, 1919, 66 Colo. 261, 180 P. 749; Von Feldstein v. State, 1915, 17 Ariz. 215, 150 P. 235; Yule v. State, 1914, 16 Ariz. 134, 141 P. 570; In re Begerow, 1901, 133 Cal. 349, 65 P. 828, 56 L.R.A. 513; State v. Phil, 1827, 1 Stew., Ala., 31; State v. Sims, 1807, 1 Tenn. 253; State v. Stalnaker, 1806, 2 Brev., S.C., 44; State v. Maurignos, 1805, T.U.P.Charlt., Ga., 24.

18. Frankel v. Woodrough, 8 Cir.1925, 7 F.2d 796; United States v. McWilliams, 1947, 82 U.S.App.D.C. 259, 163 F.2d 695; Ex parte Altman, D.C.S.D.Cal. 1940, 34 F.Supp. 106; United States v. Fox, 1880, 3 Mont. 512; In re Begerow, 1901, 133 Cal. 349, 65 P. 828, 56 L.R.A. 513; U. S. v. Kojima, U.S.D.C.Hawaii, 1909, 3 Hawaii Fed. 381.

19. MacKnight v. United States, 1 Cir., 1920, 263 F. 832; Gerardino v. People of Puerto Rico, 1 Cir., 1928, 29 F.2d 517; United States v. Rumrich, 2 Cir., 1950, 180 F.2d 575; United States v. Holmes, 3 Cir., 1948, 168 F.2d 888; Hart v. United States, 6 Cir., 1910, 183 F. 368; Carter v. State of Tenn., 6 Cir., 1927, 18 F.2d 850; Worthington v. United States, 7 Cir., 1924, 1 F.2d 154; O'Brien v. United States, 7 Cir., 1928, 25 F.2d 90; Bayless v. United States, 8 Cir., 1945, 147 F.2d 169; Phillips v. United States, 8 Cir., 1912, 201 F. 259; Collins v. United States, 8 Cir., 1927, 20 F.2d 574; Poffenbarger v. United States, 8 Cir., 1927, 20 F.2d 42; Shepherd v. United States, 8 Cir., 1947, 163 F.2d 974; Daniels v. United States, 9 Cir., 1927, 17 F.2d 339; Collins v. United States, 9 Cir., 1946, 157 F.2d 409; Danziger v. United States, 9 Cir., 1947, 161 F.2d 299; Pietch v. United States, 10 Cir., 1940, 110 F.2d 817, 129 A.L.R. 563; Fowler v. Hunter, 10 Cir., 1947, 164 F.2d 668; Morland v. United States, 10 Cir., 1951, 193 F.2d 297; Ex parte Pickerill, D.C.N.D.Tex.1942, 44 F. Supp. 741.

In Frankel v. Woodrough, 8 Cir., 1925, 7 F.2d 796, 796, the following dictum appears:

"The Constitutions of most of the states have provisions similar to the Sixth Amendment and many of the states have statutory definitions of the time or number of court terms within which criminal accusations must be tried. Such statutes provide usually for the discharge of accused unless the trial is within the limits so defined. The United States has no such statutory provisions and we think an accused would not be entitled to a discharge even though he were denied a speedy trial within the meaning of the Constitution. His right and only remedy would be to apply to the proper appellate court for a writ of mandamus to compel trial."

This dictum has been repeated in a number of later cases,[20] although in the great majority of federal cases before and after Frankel v. Woodrough the court recognized expressly or impliedly that if a defendant does not waive his rights by failing to ask for a speedy trial, he may, in a proper case, be entitled to a discharge because of unreasonable delay in bringing his case to trial.[21] Even in the later Eighth Circuit cases, the court recognized the right to release in a proper case.[22]

In Ex parte Pickerill, D.C.S.D.Cal.1940, 34 F.Supp. 102, 103, Judge Yankwich said:

"* * * it is not questioned that the Court, in the exercise of its jurisdiction, has the inherent power to order a dismissal for failure to prosecute. * * *

"We can conceive the anarchy which would result if the power to terminate a criminal proceeding for want of prosecution did not exist. Defendants might have prosecutions hang over their heads, like the sword of Damocles, for years, without an effort being made to bring them to trial. And yet, if the prosecutor should refuse to try them, and the court acquiesce, they would be at his mercy. The constitutional guaranty of speedy trial (United States Constitution, Amendment VI) would be brought to nought, if, when the court set a cause for trial and the prosecutor was not prepared to proceed, the Court were powerless to dismiss it for failure to proceed diligently."

The dictum in Frankel v. Woodrough was based upon the fact that there was no statutory provision directing a discharge. In 1944, the Supreme Court adopted the Federal Rules of Criminal Procedure. Rule 48 deals with "Dis-

20. Shepherd v. United States, 8 Cir., 1947, 163 F.2d 974; Daniels v. United States, 9 Cir., 1927, 17 F.2d 339; McDonald v. Hudspeth, 10 Cir., 1940, 113 F.2d 984; Fowler v. Hunter, 10 Cir., 1947, 164 F.2d 668; Miller v. Overholser, 1953, 92 U.S.App.D.C. 110, 206 F.2d 415.

21. MacKnight v. United States; Gerardino v. People of Puerto Rico; United States v. Holmes; Hart v. United States; Carter v. State of Tenn.; Worthington v. United States; O'Brien v. United States; Bayless v. United States; Phillips v. United States; Collins v. United States, 8 Cir., supra; Poffenbarger v. United States; Collins v. United States, 9 Cir., supra; Dunziger v. United States; Pietch v. United States; Morland v. United States; Ex parte Pickerill, supra note 19; Beavers v. Haubert, 1905, 198 U.S. 77, 25 S.Ct. 573, 49 L.Ed. 950; Kong v. United States, 9 Cir., 1954, 216 F.2d 665; Germany v. Hudspeth, 10 Cir., 1954, 209 F.2d 15; D'Aquino v. United States, 9 Cir., 1951, 192 F.2d 338, rehearing denied 203 F.2d 390; United States v. McWilliams, 1947, 82 U.S.App.D.C. 259, 163 F.2d 695; Nolan v. United States, 8 Cir., 1947, 163 F.2d 768; Story v. Hunter, 10 Cir., 1947, 158 F.2d 825; Frizzell v. United States, 1924, 55 App.D.C. 103, 2 F.2d 398.

22. Collins v. United States, 8 Cir., 1927, 20 F.2d 574; Poffenbarger v. United States, 8 Cir., 1927, 20 F.2d 42; Shepherd v. United States, 8 Cir., 1947, 163 F.2d 974; Nolan v. United States, 8 Cir., 1947, 163 F.2d 768.

missal"; subdivision (b) of that rule is as follows:

"(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint."

The note by the Advisory Committee on Rules to subdivision (b) was terse: "This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. Ex parte Altman, 34 F.Supp. 106, [D.C.] S.D. Cal."

Rule 48(b) has the same effect in implementing the Sixth Amendment as an Act of Congress would have had. The question was presented to the United States Court of Appeals for the District of Columbia in United States v. McWilliams, 1947, 82 U.S.App.D.C. 259, 163 F.2d 695. In that case an indictment had been returned on January 3, 1944, charging defendants with subversive activities in violation of 18 U.S.C.A. §§ 9, 11 [1948 Revision, 18 U.S.C.A. §§ 2385, 2387]. The case went to trial before Judge Eicher and a jury on April 17, 1944, and ended in a mistrial some eight months later as a result of Judge Eicher's death. Thereafter on several occasions various defendants moved for trial but without result. In the early part of 1946, Judge Laws was assigned to the case and had a number of hearings on the pending motions to dismiss. The government was not ready to go forward, and on three occasions time was extended in order that new evidence might be obtained if possible. In November, 1946, Judge Laws concluded that it was his plain duty to dismiss the indictments for lack of prosecution. D.C., 69 F.Supp. 812.

On appeal, the majority of the court, speaking through Chief Justice Groner, said [82 U.S.App.D.C. 259, 163 F.2d 696]:

"The question for decision on the appeal is (a), whether an action on a motion to dismiss for lack of prosecution is within the sound judicial discretion of the trial judge and (b), if so, under what circumstances may its exercise be controlled on appeal? The answer to the first query is obvious, not only from the provisions of the New Criminal Rules, 18 U.S.C.A. following section 687, but also by the general recognition of the right prior to their enactment. Thus, Rule 48(b) provides inter alia, '* * * or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information on (sic) complaint.' See also Ex parte Altman, D.C.S.D.Cal. 1940, 34 F.Supp. 106, 108. * * *

"In this case the record shows that from January, 1946, to the dismissal order entered near the end of that year the trial court, at the instance of some of the defendants, again and again sought to compel action which would either result in a trial or dismissal. Its final decision to adopt the latter course seems to us altogether reasonable and proper, and in fact we are not prepared to say it was not compelled in the light of the facts then shown to exist."

No doubt the appropriate procedure in the ordinary case is for the defendant to demand an immediate trial in the district court, and if it is refused, to apply to the proper appellate court for a writ of mandamus to compel trial. But that remedy is not an effective remedy in this case, and was not an effective remedy in New York, where the only speedy trial which could have been obtained was a trial in a district which had no jurisdiction over the offense. The government admitted as much at the hearing on these pending motions

but contended that the delay in New York was due to defendant's counsel and not to the government. I do not find this to be the fact. I find that defendant's counsel proceeded with reasonable dispatch, and that about one year's delay was due to the fact that the government assigned trial counsel or new trial counsel to the case after defendant and his counsel were ready for trial. But the principal delays in New York were the law's delays.

Defendant has not waived his right to a speedy trial, in New York or here. In March, 1951, he filed a petition for a writ of habeas corpus based upon improper venue and denial of a speedy trial. His counsel were ready for trial in the summer of 1951 and objected to further continuances. His counsel moved for a speedy trial or dismissal of the indictment in June, 1952. They also moved to dismiss the indictment when the case was called for trial in October, 1952. The pending motions were filed in this court promptly after indictment and appointment of counsel.

The serious delay in this case was not the delay in bringing the New York case to trial, but the delay caused by the deliberate act of the government in bringing the case in New York in the first place, when the government must have known that venue in New York was at best doubtful, and took the chance for the supposed advantage to the government of proceeding in New York.

It was the duty of the United States Attorney and the Attorney General to disclose the true facts to the court at the various hearings in New York.[23] The Army records were not made available until they were obtained from the Department of Defense by Provoo's appellate counsel in 1954, although his trial counsel had called on the government to produce the administrative and personnel records dealing with Provoo. The Second Circuit said:

> "* * * Had the newly discovered evidence been before the jury, we do not believe that the jury would, or could legally, have found that Provoo was 'first apprehended or arrested or taken into custody' in the southern district of New York under the charges of treason on which he was later indicted." 215 F.2d at page 538.

The records of the Department of Justice were not produced until the hearing on the present motions.

The government contends that venue is a technical matter, unimportant to the defendant in this case; that the government frequently has a choice of venue, and can exercise that choice for any reason it sees fit, and cannot be required to account for its choice; that the decision to bring the prosecution in New York was an error, similar to an error made by a judge in the trial of a case which brings about a reversal and a new trial, and did not deprive the defendant of any constitutional right.

[5] But questions of venue in criminal cases "are not merely matters of formal legal procedure. They raise deep issues of public policy in the light of which legislation must be construed." United States v. Johnson, 323 U.S. 273, at page 276, 65 S.Ct. 249, at page 251, 89 L.Ed. 236. United States v. Provoo, 2 Cir., 215 F.2d at page 539. U.S.Const. 6th Amend. quoted supra.

[6] It is true that when the government has a choice of venue it may elect to prosecute in the district of its choice for almost any reason, and that in the ordinary case, at least, the court will not inquire into the reasons for its choice. But where the government chooses to proceed in a certain district in a doubtful case of venue, when venue

23. Griffin v. United States, 87 U.S.App. D.C. 172, 183 F.2d 990; United States v. Schneiderman, D.C., 106 F.Supp. 731; United States ex rel. Montgomery v. Ragen, D.C., 86 F.Supp. 382; Hicks v. Hiatt, D.C., 64 F.Supp. 238. See also Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314.

in another district is clear, the government must be held responsible for the effects of its election.

[7] Counsel for defendant argue that the choice was made in bad faith. The government argues that it was an honest mistake. I find merely that it was a deliberate choice for a supposed advantage, which caused as much oppressive delay and damage to the defendant as it would have caused if it had been made in bad faith.

The government concedes that *if* the court should find that the defendant cannot have a fair trial at this time, or that further prosecution would deny due process of law, the indictment should be dismissed, but argues that the right to a speedy trial under the Sixth Amendment goes no further than that.

It is not necessary in this case to decide how far rights under the speedy trial provision of the Sixth Amendment may go. It is only necessary to decide the effect of the facts in this case.

The government argued in its brief that defendant's imprisonment in Japan was irrelevant to the issues raised in this proceeding. In D'Aquino v. United States, 9 Cir., 192 F.2d 338 and 203 F. 2d 390, 391, in dealing with her detention in Japan, the court held first that:

> "* * * wholly apart from whether that detention was or was not in accordance with law, it has no bearing whatever upon the question of her right to a speedy trial, which is one that arises after a formal complaint is lodged against the defendant in a criminal case." 192 F.2d at page 350.

On rehearing, the court said:

> "What appellant argues is that she must be immune to this prosecution because at some former time she was detained for a period when no prosecution was proceeding. First the detention was by the military. Second, whatever may be the situation where detention so immediately precedes the attempted prosecution as fairly to be deemed a part thereof, here, the detention had long since terminated. For both these reasons, it was clearly no part of the prosecution here under way.
>
> "We think that the detention by the military authorities which so long preceded the initiation of the present prosecution is simply not relevant to the question of a speedy trial." 203 F.2d at page 391.

Although Provoo's detention in Yokohama and Sugamo prison for seven months without any charges being placed against him may, under that case, be irrelevant to the issue of "speedy trial", the effect of that imprisonment is a circumstance to be considered in deciding whether, under all the facts of this case, trial in 1955 on the charges formally made against Provoo in 1949 for acts alleged to have been committed in 1942–45, could be a "fair trial", as that term is used in recent cases.[24]

In discharging the alleged conspirators in United States v. McWilliams, Judge Laws said, *inter alia:*

24. See Rochin v. People of California, 342 U.S. 165, 169, 72 S.Ct. 205, 96 L.Ed. 183; Malinski v. People of State of New York, 324 U.S. 401, 410, 414, 416–417, 65 S.Ct. 781, 89 L.Ed. 1029; Buchalter v. People of State of New York, 319 U.S. 427, 429, 63 S.Ct. 1129, 87 L.Ed. 1492; McNabb v. United States, 318 U.S. 332, 340, 63 S.Ct. 608, 87 L.Ed. 819; Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268; Lisenba v. People of State of Cal., 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166; Chambers v. State of Fla., 309 U.S. 227, 235–236, 60 S.Ct. 472, 84 L.Ed. 716; Snyder v. Commonwealth of Mass., 291 U.S. 97, 105, 116, 54 S.Ct. 330, 78 L.Ed. 674; Powell v. State of Ala., 287 U.S. 45, 65, 67, 53 S.Ct. 55, 77 L.Ed. 158; Gouled v. United States, 255 U.S. 298, 304, 41 S.Ct. 261, 65 L.Ed. 647; Hebert v. State of La., 272 U.S. 312, 316, 47 S.Ct. 103, 71 L.Ed. 270; Clemons v. United States, 4 Cir., 137 F.2d 302, 304, 305.

"'The defendants have been before the Court upon these charges for nearly four and one-half years. All of them were brought here from other parts of the country to stand trial. Because of the impoverished state of eighteen of the defendants, they were represented by counsel not of their own choice, but assigned by the Court to serve without compensation. As in all long-delayed cases, the witnesses now are scattered; some are not accessible, more particularly to the defendants who are without funds; the memories of witnesses as to events occurring many years ago are not clear. It is for these reasons among others that the Constitution of the United States requires a speedy trial and that the Congress of the United States has imposed Statute of Limitations to prevent long-delayed prosecutions. I do not see how these defendants now can possibly obtain fair trials.'" Quoted in 163 F.2d at page 696.

While there is no statute of limitations applicable in treason cases, the other considerations cited by Judge Laws apply with added force in the case at bar. Not only was Provoo imprisoned in Japan for over seven months and released without any charge ever being placed against him, but he has been held in confinement at Walter Reed Hospital, at Fort Meade, and elsewhere ever since the time he was first interviewed by FBI agents in the spring of 1949. He has had no opportunity to locate and interview possible witnesses, many of whom have died or been lost track of. He has been imprisoned more than five years awaiting trial and pending appeal on a capital charge, and has been subject to "the pain and anxiety which must inevitably be suffered by a prisoner who is thus kept on a mental rack", to use the words of Mr. Justice Lamar.[25] The effect on Provoo is shown by the report of Dr. Zinkin, quoted above, and I have found as a fact that it has seriously impaired his ability to defend himself against the charge of treason.

The cases hold that prejudice is presumed, or necessarily follows, from long delay; *a fortiori* it follows when the defendant is imprisoned over the years before trial. But if the government's contention is correct and prejudice in fact must be proved, I find as a fact that such prejudice has been shown.

I conclude that Provoo cannot have a fair trial at this late date, that he has been denied the right of speedy trial within the meaning of the Sixth Amendment, and that there have been unnecessary delays in indicting him and bringing him to trial. Further prosecution of the indictment would violate the fundamental principles of justice and fairness which we must apply even in the case of those charged with the most heinous offenses.

The fairness of the United States Attorney and of the other representatives of the Department of Justice at the hearings on these motions is reassuring. The services of court-appointed counsel for this defendant are a demonstration that the Bar today, as in the past, will protect our liberties with ability and devotion.

Many authorities hold that habeas corpus would be a proper remedy in this case.[26] But in view of the adoption of the Federal Rules of Criminal Procedure, and especially Rules 12 and 48(b), it seems to me that it would be the better practice to grant defendant's motions to dismiss the indictment. I will sign appropriate orders in accordance with this opinion.

25. Dissenting in Diaz v. United States, 223 U.S. 442, 467, 32 S.Ct. 250, 258, 56 L.Ed. 500.

26. United States v. Fox, 1880, 3 Mont. 512; Griswold v. State, 1919, 77 Fla. 505, 82 So. 41; Ex parte Bracey, 1918, 82 W.Va. 69, 95 S.E. 593; Von Feldstein v. State, 1915, 17 Ariz. 245, 150 P. 235; Yule v. State, 1914, 16 Ariz. 134, 141 P. 570. See cases collected at 58 A.L.R. 1512–1515.

HEADQUARTERS FOURTH ARMY
Fort Sam Houston, Texas

4A 150375 (I) AKADB

15 March 1948

SUBJECT: PROVOO, John D, S Sgt, ASN 19 052 533

TO: Commander-in-Chief, Far East
APO 500, c/o Postmaster
San Francisco, California
ATTENTION: Investigation Division, Legal Section, GHQ, SCAP

1. Investigation of PROVOO has been closed by this headquarters and results forwarded to Director of Intelligence, General Staff, United States Army.

2. No further investigative activity is contemplated by this headquarters.

FOR THE COMMANDING GENERAL:

/s/ James B. Riggs
for MORRILL ROSS
Colonel, GSC
AC of S, G-2

In view of the fact that the controlling office has discontinued all investigation and no further action is contemplated, the Legal Section considers this case (GFAT) as closed.

SECRET

Date March, 1948

Report of Investigation Division, Legal Section, GHQ, SCAP.

No.	CRD No.	Report by:
2717	1438	Frank J. BONS, Jr. Lt., CMP O-944653

Title: PECOVCO, John David, Staff Sergeant, ASN 319 052 533

Synopsis of facts:

AC of S, G-2, Fort Sam Houston, Texas (Headquarters 4th United States Army) advises no further investigation contemplated on case. Case closed.

- C -

DETAILS

At Tokyo:

On 9 April 1947, the Legal Section, SCAP, received from AC of S, G-2 Fort Sam Houston, Texas, a request for a complete investigation and all available information concerning the subject, his activities, and associations with the Japanese Occupation Forces on Corregidor in March 1942.

A check of the indices of the Criminal Registry Division, Legal Section, showed that the subject had been under investigation by this Division in 1945. A copy of all available information, with the requested data, was forwarded to the concerning office.

This case involved the alleged treasonable activities, and the participation of the subject in the murder of an American officer, Capt. Burton "Stretch" THOMPSON, on Corregidor in May 1942. The subject has further been identified as one of a selected group of Allied personnel who participated in propaganda broadcasts in Tokyo during the war.

On 26 March, 1948, this Section received from AC of S, G-2, Fort Sam Houston, Texas, a letter dated 15 March 1948, identified as 4A 15 375 (I) ARADB, which advised no further investigation was contemplated, and that the case had been closed in that office. The original of this correspondence will be forwarded to the classified files maintained by this Section. The letter reads in full as follows:

Distribution:

5 Headquarters, 4th Army, U. S.
1 Classified File, Legal Section

Do not write in this space.

Temporary File Copy

30 September 1947

This statement, for use in the trial of S/Sgt John D. Provoo, is substantially as follows:

During the period of October 1941 to 6 May 1942, I served in the capacity of chief clerk, to the Assistant Chief of Staff, G-2, USAFFE, (General MacArthur's headquarters until date of his departure, about 10 March 1942; and then until the surrender under General Wainwright's headquarters).

Some time during the early part of December, 1941, the need for competent Japanese linguists became quite urgent, and I found that the above named John D. Provoo had spent some time in Japan during 1940-1941, so I personally checked up on him for use in G-2 in this capacity. I found that he had been used for several weeks by the Counter-Intelligence Police, Philippine Headquarters, which organization was under the jurisdiction of the A C of S, G-2, USAFFE. Upon contacting Major Raymond, who at that time was in charge of this organization, I found that he had used Provoo for several weeks and had then released him from this duty; one of the reasons for his release was a letter from Provoo's brother, who lived (I think) in San Francisco, California, stating that he personally had reason to doubt the loyalty of his brother, John D. Provoo, who had recently spent, as I recall it between one year and eighteen months in Japan, studying Buddhism for the purpose of becoming a priest in this order. He stated his own loyalty to the United States (which could not be doubted in view of the information he was stating regarding his own brother) and requested that the Army keep a very close watch on said John D. Provoo. This much I recall vividly from my one reading of this letter.

After the removal of our headquarters from Manila to Corregidor, and later the removal of the Philippine Headquarters from Bataan to Corregidor, I renewed my friendship with CWO Clinton W. Sperry, who informed me that Provoo was being watched and guarded 24 hours daily; they had reason to believe that he would attempt to contact Japanese Army units, and he personally advised me that should Provoo attempt any signalling (such as flares, etc) that the guard has been given orders to shoot Provoo.

Upon the surrender of Corregidor, I was subjected to considerable questioning by the Japanese regarding the workings of the G-2 organization. I was very uneasy during this questioning, for at this time, Provoo had collaborated with the Japanese authorities; was quite friendly with one or more of their non-commissioned officers, and had the run of Corregidor. In fact he was the only one who could go anywhere on the island at any time, without a Japanese guard, and at this time he was in and out daily of the space set aside for questioning of myself and other prisoners of war. Having spent some time in the Counter Intelligence Police, and knowing that I was chief clerk to the A C of S, G-2, I was very much afraid that I would be turned in by Provoo to the Japanese as knowing too much about the details they wished to learn of; this was particularly true after he made the following statement to me: " I was responsible for the removal of Captain Thompson from the Hospital Mess. He refused to give me containers of coffee and other items, (cups and saucers, etc., ostensibly for the Japanese) and I felt he needed a lesson, so I personally reported his failure to cooperate with the Imperial Japanese forces to the Japanese officers"; the outcome being the death of Captain Thompson.

All classified records of G-2, including all sub-sections, were destroyed by burning over a period of approximately three to four weeks, by M/Sgt James J. Rubard, and myself. This included all the records that had been obtained over a period of years dealing with residents of the Philippines from foreign countries.

The fact of my having destroyed all these records by burning before the fall of Corregidor was reported to the Japanese officials, either by John D. Provoo or a Philippine by the name of Norman Reyes. These were the only two persons who had an opportunity of reporting this information, and I still do not know which one did actually make this report, but I do wish to state that it embarrassed me to the point where I was not at all sure that I wouldn't take the same kind of a "walk" that Captain Thompson took, as the threat had been made twice.

Maynard E. Lee
MAYNARD E. LEE
CWO, USA
Administrative Assistant
Office of A.C. of S. G-2, F.E.C.

DEPARTMENT OF THE ARMY
OFFICE OF THE UNDER SECRETARY
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS
WASHINGTON, D. C. 20310

RE: SHAKA, NICHIJO
ASN: AKA, PROVOO, JOHN DAVID
C: RA 19052 533
11 022 635

SAOMR/ Mr. Gibson/79515/ym

Manager
Veterans Administration Regional Office
211 Main Street
San Francisco, California 94105

Dear Sir:

It is requested that this office be furnished, in connection with the subject's application for correction of military record, the records indicated below:

[X] Army Clinical and Medical Records, and/or Physical Examinations

[X] VA Clinical and Medical Records, and/or Physical Examinations

[X] Statement of Compensation, including date originally filed; summary of initial rating and subsequent changes with diagnosis; code number and percentage of disability; date(s) of physical examination(s)

[X] Other Information pertaining to the applicant's separation under other than honorable conditions on 2 September 1949.

[ ] VA Claims Folder

Subject records will be returned when they have served the purpose for which requested.

Sincerely yours,

Raymond J. Williams
Executive Secretary
Army Board for Correction
of Military Records

B 1682739

AGAR-SC-B 201 Provoo,
John D., 19 052 533
(11 Jun 59)

Conviction by Federal Court

TJAG

TAG

1 JUL 1959

Mr Belnap/71984

1. The attached letter is forwarded for appropriate action regarding Mr. John D. Provoo's conviction by a Federal court.

2. John D. Provoo, 19 052 533, enlisted in the Regular Army 14 May 1941; was honorably discharged 17 August 1946 by reason of demobilization; reenlisted in the Regular Army 5 September 1946; and was discharged 2 September 1949 under conditions other than honorable (undesirable) by order of the Secretary of the Army (alleged homosexuality). On 2 September 1949 military authorities released him for trial by the Department of Justice.

3. The writer has not been informed of this referral.

FOR THE ADJUTANT GENERAL:

R. B. DUMAP
Admin. Officer

1 Incl
Ltr 11 Jun 59

for: NED H. WOODMAN, Colonel, AGC
Chief, Admin Svc Div, TAGO

RBD

MEMO FOR RECORD
EM rel to Dept of Justice 2 Sep 49 for trial for treason.

FILE IN CLASSIFIED REC SEC

Irving/jsr-Corr Sec

PC

JOHN B. GREENHOLTZ
DEPUTY WARDEN

State of Nebraska

STATE PENITENTIARY
LINCOLN
June 11, 1959

Chief, Demobilized Personnel Records Branch
Building 109
Records Administration Center, NPO
4300 Goodfellow Boulevard
St. Louis 20, Missouri

Re: [illegible] Provoo No. 20697

Gentlemen:

The above named individual was received at this institution 21 Jan 59 to serve a 3 year term for SODOMY having been convicted in District Court of Lancaster County, on 29 Aug 58

Subject claims the following service in the Armed Forces of the United States, Name John David Provoo
Service number 19 052 533 Entered: May 14, 1941
Discharged: September 1949 with an Undesirable Discharge.

NOTE: This man was convicted of Treason by a federal court, but later released from his life sentence. Please furnish details, if possible.

For the benefit of our Classification System, we would appreciate verification of the above or a transcript of subjects Military Record.

Very truly yours,

John B. Greenholtz

John B. Greenholtz
~~[illegible]~~
ACTING WARDEN

209 [illegible]

Form approved
Budget Bureau No. 76-R355.1

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: Staff Sergeant - PROVOO, John D. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

c- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

The undersigned requests that the following claims be paid at the earliest convenience of the government:

Travel pay from Fort Dix, New York, to Camp Beale, California.

Bonus awarded by the Congress to former prisoners of war, for three years and five months.

A compensatory restoration of the disability compensation previously awarded me, retroactive from September 2, 1949; the fixing of which must be based upon a due consideration of my present condition.

Also, that any other accrued monies, pay, mustering-out pay, travel pay or allowances, due the undersigned at the time of his forceful separation from the Service (September 2, 1949) be paid now.

To the best of my knowledge and belief, I have never received the pay accrued during the five months I was held by the Army at the behest of the civil authorities - for the most part incommunicado - immediately preceding the separation referred to above.

Before our liberation from prison camp - which for me was from the Omori Camp, located on a small island on Tokyo Bay, by Commander Stassen, U. S. Navy - there was an order out for my apprehension. The Federal Courts later held that the cause against me, which eventuated in the construction of a treason case, originated at a high level (Cabinet). Shortly after our release from prison camp, I was seized on the hospital ship Benevolence, where I was receiving

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

ADDRESS: Hommonbutsuji, P.O. Box 25, Pahoa, Hi. 96778

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VA FORM JAN 1967 **21-4138**

EXISTING STOCK OF VA FORM 21-4138, JAN 1963, WILL BE USED.

☆ GPO : 1967 O - 252-192 (219)

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: PROVOO, John D., Staff Sergeant RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

emergency treatment for prolonged malnutrition and dietary deficiency diseases, contracted during the years in prison camps (since May, 1942). A Presidential Order concerning liberated prisoners of war stated that we were all to be speedily repatriated, and rehabilitated by prompt medical care; also, that we were to have extended leave time, and we were raised one grade in rank, irreducible, as of the date of liberation. Despite the directives outlined above, this is what actually happened.

I was taken off the Benevolence under arrest, and to the 8th Army Stockade, (old Yokohama Prison) where I was confined with the top echelon war criminals, under control of the War Crimes Commission. This was not a place for the confinement of our own military personnel, and my detention there was strictly contrary to both the Code of Military Justice, and the top level orders governing treatment of "Project J Personnel", liberated P.O.W.'s. My rehabilitation and medical treatment was abruptly terminated; and besides not getting to come home until long after the parades were over, I never did receive the hospitalization and treatment that I needed after a near-starvation diet, sickness, and all manner of hardship and stress, for well over three years.

At the old Yokohama prison, I was subjected to weeks of interrogation by various agents of the Government. This, in effect, was the first investigation - carried on at the scene of alleged crimes - and where many witnesses among both our own personnel, and the Japanese, were readily available. After going on two

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

ADDRESS: Hommonbutsuji P.O. Box 25, Pahoa, Hi. 96778

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: PROVOO, John D. - Staff Sgt. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C-11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

months' confinement there, I was told that I was "going home", and escorted under guard to a ship in the harbor. On board, I was at liberty less than two hours, when the Captain of the ship arrested me again, and I was immediately placed in close confinement, in the brig. I was subsequently removed from this vessel at night, and taken to Sugamo Prison, on the outskirts of Tokyo. There, the facilities had been set up to expedite the investigations, trials, and executions, of war criminals. Needless to say, I was the only American serviceman, so detained. It was not until sometime after my incarceration there, that I even received an issue of proper clothing - commensurate with my rank and status. I was also belatedly advised of my legal rights for the first time, and permitted a limited, censored correspondence. My brother-in-law, Lieutenant, U. S. Army, was allowed to see me once, to tell me of my mother's recent death. While held in Sugamo Prison, I was "put on display" in this setting, before the eyes of U. S. Congressmen. Even the guards were instructed not to speak to me, and I cannot think of this period even until this day, without considerable emotional trauma.

I prepared a lengthy statement - after months of confinement without formal charge, counsel, or a hearing of any kind, and submitted this to the Commanding General of Eighth Army, in whose custody I was. This statement was brought to the attention of General McArthur; and by his order, I was cleared of doubts or complicity, and released from confinement - to the control of other military authorities. I was required to make a formal statement "requesting repatriation".

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

ADDRESS: Hommonbutsuji P.O. Box 25, Pahoa, Hi. 96778

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

Form approved
Budget Bureau No. 76-R355.1 4.

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: PROVOO, John D. - Staff Sgt. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

This, again, was at total variance with existing directives governing treatment of liberated American ex-prisoners of war. Some five months after our liberation, I was told that I had been cleared, and taken aboard a vessel of the United States Army transport service, to come home. Some of my decorations were belatedly given me by fellow servicemen on the ship, and for the first time since we got out of prison camp, I was at least restored to the proper appearance of a soldier of the Regular Army.

We disembarked at Seattle, and proceeded by train to Fort Dix, N. J., where my father and brother came to take me on a much-needed recuperative leave (108 days). Even while on this leave, agents of the Government went to my relatives in several states, ostensibly, to arrest me. When I received knowledge of this, I went myself to the nearest military installation; identified myself; and was briefly detained. Here again, I was first told that I would be "held for trial"; then, that I was released without restriction. All of these arrest and detentions - coming on the heels of years as a prisoner of war, and without medical rehabilitation - had a pronounced deleterious effect upon my general health, and retarded recovery.

I received an Honorable Discharge from the Army, August 17, 1946, at Fort Dix, N. J., and went to my home in California. By this time, I was fully aware of the fact that I had left the Service "under a cloud"; and was in fact, the object of suspicions, in high civilian quarters. In early September, 1946, I went to a

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

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VA FORM JAN 1967 **21-4138** EXISTING STOCK OF VA FORM 21-4138, JAN 1963, WILL BE USED.

☆ GPO : 1967 O - 252-192 (219)

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: PROVOO, John D. - Staff Sgt. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

nearby Army Camp, with my brother, with the intention of re-enlisting in the Army and was strongly advised to do so by the Commanding General there (whom I knew, from P. W. days). I re-enlisted on September 5, 1946, at Camp Beale, California, some 18 days after my first discharge.

During the course of the next three years, there were continuing investigations - by both civil and military authorities. I was repeatedly arrested, temporarily confined, subjected to interrogations, held in medical confinement, denied counsel or a proper hearing, and publicly decorated on parade, at Fort Sill, Oklahoma. The rebuilding of my health, had to be a self-gathering process, in between accusations, recriminations, and confinements. It came to my knowledge that a voluminous dossier on me - containing the strongest possible unsubstantiated statements - was being systematically sent around to every camp, post or station, to which I was assigned, and was not even kept within restricted or proper channels of perusal. This resulted in many incidents adverse to the keeping of good order and discipline in the military service; to say nothing of the discrimination and prejudice it aroused towards me, among my superiors. I was on active duty, but "persona non grata". This was a hard row to hoe.

In the third year of my enlistment period after World War II, I was sent to Fort George G. Meade, Md., and assigned to a housekeeping company, with only nominal duties. I was advised, unofficially, that there was an important investigation in progress in Washington, D. C. - relative my "case" - and that I had been

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Michijo Shaka

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VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

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CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

PROVOO, John D. - Staff Sgt. RA 19 052 533
SHAKA, Nichijo Rev.

C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

stationed at Fort Meade, to be readily available for questioning. At this point, inasmuch as my status in the military service had been seriously questioned, hampered, and curtailed, I demanded a Court of Inquiry - my right under the Uniform Code of Military Justice. This was denied.

Shortly thereafter, in the spring of 1949, I was seized by the Army - at the behest of the civil authorities - and spirited to a place of close confinement, where I was held incommunicado for months. A Congressman was importuned in my behalf, and due in part to his remonstrances, I was moved to the Post Stockade, at Fort Meade. During the period of confinement in a cellblock in back of a fire-house, agents of the Government had prepared statements for my signature. Though I was, at the time, a Sergeant in the Army, I was denied counsel; a Court of Inquiry; or the Courts Martial that I petitioned for.

At the behest of the Department of Justice, I was taken to New York under arrest and heavy restraints; and, at Fort Jay, Governor's Island, N. Y., my uniform was literally stripped from my person. This treatment was accorded a permanent ranking first three grader, a veteran of wartime service in a zone of hostilities overseas, and survivor of over three years' gruelling adversity and privations, as a prisoner of war. I have no words to adequately convey the extent of depredation this constituted, against my rights as a soldier and citizen.

Moreover, a piece of paper - purporting to be a legal "Undesirable Discharge" was hastily prepared at Fort Jay. Later, the Secretary of the Army, whose

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

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Form approved
Budget Bureau No. 76-R355.1

7.

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

NOTE.--If additional space is needed, use reverse.

CLAIM NO.

LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN *(Type or print)*

Formerly: PROVOO, John D. - Staff Sgt. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C-11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

appearance was required by the defense at my second trial, in Baltimore, Md., testified that this discharge was issued without his knowledge or authority. The Courts have so held. I maintain N.B. that it was fraudulent and illegal, and that it was prepared entirely incidental to the process of bringing me into Federal Court, illegally, as a purported "civilian", and that it did, in fact, subject me to great degradation without trial or a hearing, or any other redress indicated in basic, civilized concepts of justice.

In confinement in New York, I held in one hand an "Undesirable Discharge", and in the other, an indictment charging me with many acts of alleged treason against the United States Government. I pleaded not guilty, and asked for the "fair and speedy" trial that was my right under the Constitution. Naturally, I could do nothing about the discharge at that time - other than to protest in writing, to the Defense Department, the Army, and the courts. Later - much later, my rights were to some extent acknowledged, and my points of argument sustained, but the Government has never accepted the ruling of the Supreme Court in this case; nor taken the slightest action to implement its implications in terms of restoring my rightful status as a Veteran, and an honorable man.

From the time that I pleaded not guilty in Federal Court, until a trial was had on the issues, about five years had passed. During all this time, I was held in confinement, bail denied. I was never permitted to make a public statement; nor was the press allowed to interview me. I suffered years of imprisonment -

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

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VA FORM JAN 1967 **21-4138**

EXISTING STOCK OF VA FORM 21-4138, JAN 1963, WILL BE USED.

☆ GPO : 1967 O - 252-192 (219)

VETERANS ADMINISTRATION

STATEMENT IN SUPPORT OF CLAIM

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Formerly: PROVOO, John D. - Staff Sgt. RA 19 052 533
Presently: SHAKA, Nichijo Rev.

C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

punishment without trial - at the hands of the Government. It was clearly indicated that I was considered to be a person without any rights whatsoever; and every sacred memory of honor and association I have, was defamed and reviled. Words would fail me here, if I attempted to describe what was perpetrated as a "fair trial" - under color of the authority of the United States. Sufficient to say that after this ordeal of complete defamation, ridicule, slander, lies and conspiracy, a new - and legal - hearing was ordered by the Federal Courts.

The second hearing was had in Baltimore, Md., where, by law, I should have been heard in the first instance - if at all, in Federal Court. It resulted in my release, after many motions, and the hearing of many witnesses. The Court issued a lengthy opinion, and I then took the matter to the Supreme Court. The Supreme Court considered the entire record, and sustained Judge Thompson's ruling - in my favor. They also handed down a 17-page opinion on the case. There was no dissenting opinion.

I was free - stripped of my rank, years of service, and reputation. For one thing, none of the usual forms were made out on me at the time of my forceful separation from the Army at Fort Jay. The "Undesirable" carried certain penalties, and my status as a Veteran was impaired. To the best of my knowledge and belief, I was never paid for the some five months I spent in confinement before being taken to New York for trial; nor did I receive travel pay from Fort Jay, N. Y., to Camp Beale, California, the place of my enlistment. Doubtless, I was

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

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VETERANS ADMINISTRATION

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C- 11 022 635

The following statement is made in connection with a claim for benefits in the case of the above named veteran:

never expected to get there. I have also been deprived of the disability compensation awarded at the time of my discharge after World War II; and the $3.00 a day bonus pay given us by the Congress for prisoner of war years. My claim was denied while I was held in confinement under charges that were never sustained by the courts. Every time I have requested the hearing on the "Undesirable Discharge" that I am entitled to, there is one stall after another; procrastination and delay; the net result being that I have been unable to obtain this hearing, to date.

On the trial of my case in New York, I defended my record as a soldier. Though stripped and degraded, and imprisoned for years before trial, I defended the honor of the Service. Many came to my defense - starting with General Johnathan Wainwright. There was nothing too depraved to be insinuated into the efforts of the prosecution to obtain a conviction, and even in the conduct of the trial, my constitutional rights were ignored and trammeled. These things, of course, the appeals courts took cognizance of - and remedied, insofar as they were able, but as a result of my having been twice indicted and tried for alleged treason, I have suffered near-irreparable personal injury in the loss of my rank, status, reputation, emoluments, and health. That is not to mention the physical hardships and loss of time, the anguish, soul-searching and frustrations, of years of confinement - not a day of which was ever served on a sentence awarded me by a competent court, after a fair trial. Certainly I have had the strangest,

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

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Form approved
Budget Bureau No. 76-R355.1 10.

VETERANS ADMINISTRATION

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The following statement is made in connection with a claim for benefits in the case of the above named veteran:

most agonizing and protracted change of status - from Staff Sergeant on duty in the Army, to civilian social parish and economic outcast, that any American has ever undergone. The authorities have acted, and continue to act, from the false presumption that there was validity in the constructed case pressed against me. For my part, I have been so mistreated as to be literally forced into the streets in destitution, when not dependent upon the charity of interested persons.

The above listed minimal claims are by no means to be considered a "suit for restitution". Restitution for ruin is beyond the power of government: as is adequate rehabilitation for those systematically defamed, degraded and "convicted", while being denied their right to a speedy trial, or any other avenue of redress.

These claims are instituted solely for the purpose of an administrative adjudication, in keeping with the facts, the law, and court decisions applicable.

It is earnestly urged that these claims be fairly considered, adjudicated and paid, at the earliest practicable date.

Respectfully submitted,

Nichijo Shaka

Rev. Nichijo Shaka
(Formerly John D. Provoo)

I CERTIFY that the foregoing statements are true and correct to the best of my knowledge and belief.

DATE SIGNED: July 24, 1973

SIGNATURE: SIGN HERE ▶ Rev. Nichijo Shaka

ADDRESS: Hommonbutsuji, P.O. Box 25, Pahoa, Hi. 96778

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APPLICATION FOR CORRECTION OF MILITARY OR NAVAL RECORD UNDER THE PROVISIONS OF TITLE 10, U.S. CODE, SEC. 1552

(See instructions on reverse side BEFORE completing application.)

Form Approved
Budget Bureau No. 22-R009

BRANCH OF SERVICE: [X] ARMY [ ] NAVY [ ] AIR FORCE [ ] MARINE CORPS [ ] COAST GUARD

1. NAME (Last-first-middle initial)(Please print)	2. PRESENT RATE, GRADE	3. SERVICE NUMBER	4. SOCIAL SECURITY ACCOUNT NUMBER
SHAKA, Nichijo		RA 19 052 533	[redacted]

5. TYPE OF DISCHARGE (If by court-martial, state type of court.)	6. PRESENT STATUS, IF ANY, WITH RESPECT TO THE ARMED SERVICES (Active duty, retired, reserve, etc.)	7. DATE OF DISCHARGE OR RELEASE FROM ACTIVE DUTY
"Undesirable"	Inactive Reserves	Sept. 2, 1949

8. ORGANIZATION AT TIME OF ALLEGED ERROR IN RECORD
Hdqs. Co., Ft. George G. Meade, Md.

9. I DESIRE TO APPEAR BEFORE THE BOARD IN WASHINGTON, D.C. (No expense to the Government.) [ ] YES [X] NO

10. NAME AND ADDRESS OF COUNSEL (If any) ~~DAV~~. (PoT Counsel see Ltr attch)

11. I REQUEST THE FOLLOWING CORRECTION OF ERROR OR INJUSTICE:
That the discharge dated 2 Sept. 1949 be changed to an Honorable Discharge, or to state "under honorable conditions"; and that it be otherwise corrected as to true organization, mustering out pay, travel pay, etc.

12. I BELIEVE THE RECORD TO BE IN ERROR OR UNJUST IN THE FOLLOWING PARTICULARS:
It was forced upon me under applied duress after months of confinement without counsel or a hearing of any kind (petitioned for) without the knowledge or authority of the Secretary of the Army; is erroneous as to organization and pay status; and constituted degradation without due process: moreover, if my service was to be terminated, I was entitled to a separation under honorable conditions which was well ~~earned. (Note: See statement of undersigned submitted to VA in 7/73 through the~~ (over)

13. IN SUPPORT OF THIS APPLICATION I SUBMIT AS EVIDENCE THE FOLLOWING: (If Veterans Administration records are pertinent to your case, give Regional Office location and Claim Number.)
Statement of ten pages previously submitted to the VA office, Honolulu, Hawaii, through the Disabled American Veterans Service Organization (July, 1973).
VA office, Honolulu, HI
Claim No. C-11 022 635

14. a. THE DATE OF THE DISCOVERY OF THE ALLEGED ERROR OR INJUSTICE WAS September 2, 1949. b. IF MORE THAN THREE YEARS SINCE THE ALLEGED ERROR OR INJUSTICE WAS DISCOVERED, STATE WHY THE BOARD SHOULD FIND IT IN THE INTEREST OF JUSTICE TO CONSIDER THIS APPLICATION.
In view of the forceful, illegal, erroneous and unjustified manner in which the discharge was hastily prepared and executed, contrary to the Uniform Code of Military Justice, the Constitution of the United States, and numerous other laws and statutes made and provided. Relief has been previously petitioned for, repeatedly, without recognition or success. The undersigned has suffered the continuing loss of innumera- and incalculable rights, interests, privileges and status, as a result of the (over)

15. APPLICANT MUST SIGN IN THE SPACE PROVIDED. IF THE RECORD IN QUESTION IS THAT OF A PERSON WHO IS DECEASED OR INCOMPETENT, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY APPLICATION. IF APPLICATION IS SIGNED BY SPOUSE, WIDOW OR WIDOWER, NEXT OF KIN OR LEGAL REPRESENTATIVE, INDICATE RELATIONSHIP OR STATUS IN APPROPRIATE BOX.
[ ] SPOUSE [ ] WIDOW [ ] WIDOWER [ ] NEXT OF KIN [ ] LEGAL REPRESENTATIVE [ ] OTHER (Specify)

16. I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILFULLY MAKING A FALSE STATEMENT OR CLAIM. (U.S. Code, Title 18, Sec. 287, 1001, provides a penalty of not more than $10,000 fine or not more than 5 years imprisonment or both.)

17. COMPLETE ADDRESS, INCLUDING ZIP CODE (Applicant should forward notification of all changes of address.)
Hommonbotsuji, P.O. Box 25, Pahoa, Hi. 96778

DOCUMENT NUMBER (DO NOT WRITE IN THIS SPACE)
73-3752

18. DATE 8/15/73

19. SIGNATURE (Applicant must sign here.) Nichijo Shaka

DD FORM 1 APR 69 149 PREVIOUS EDITION OF THIS FORM WILL BE USED UNTIL STOCK IS EXHAUSTED

ADRB no record

INSTRUCTIONS

1. For detailed information see:
   Air Force Regulation 31-3
   Army Regulations 15-185
   Coast Guard, Code of Federal Regulations
   Title 33, Part 52
   Navy, NAVEXOS P-473, as revised
2. Submit original only of this form.
3. Complete all items. If the question is not applicable, mark--"None".
4. If space is insufficient, use "Remarks" or attach additional sheet if necessary.
5. Various veterans and service organizations furnish counsel without charge. These organizations prefer that arrangements for representation be made through local posts or chapters.
6. List all attachments or inclosures.
7. ITEMS 9 and 10. Personal appearance of you and your witnesses or representation by counsel is not required to insure full and impartial consideration of applications. Appearances and representations are permitted, at no expense to the Government when a hearing is authorized.
8. ITEM 11. State the specific correction of record desired.
9. ITEM 12. In order to justify correction of a military or naval record, it is necessary for you to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. Evidence may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting application. All evidence not already included in your record must be submitted by you. The responsibility for securing new evidence rests with you.
10. ITEM 14. 10 U.S.C. 1552b provides that no correction may be made unless request is made within three years after the discovery of the error or injustice, but that the Board may excuse failure to file within three years after discovery if it finds it to be in the interest of justice.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

ARMY	NAVY AND MARINE CORPS	COAST GUARD	AIR FORCE
Army Board for Correction of Military Records Department of the Army Washington, D.C. 20310	Board for Correction of Naval Records Department of the Navy Washington, D.C. 20370	U.S. Coast Guard ATTN: Senior Member Board for Correction of Coast Guard Records Washington, D.C. 20591	USAFMPC (AFPMDRAIB) RANDOLPH AFB TEX 78148

REMARKS

Continued:

12. Disabled American Veterans Service Organization, pages 6, 7, 8 & 9).

14. "Undesirable Discharge", which was grossly unjust and illegal.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1970 O - 372-545

D-23774

[2,38]

Undesirable Discharge

Unsol

DISABLED AMERICAN VETERANS

NATIONAL SERVICE HEADQUARTERS
1221 MASSACHUSETTS AVENUE, N. W.
WASHINGTON, D. C. 20005
202 - 737 - 2434

OFFICE OF:
Associate Deputy National Service Director
ALBERT CUERVO

September 6, 1973

RE: Nichijo Shaka

Mr. Raymond J. Williams
Executive Secretary
Army Board for Correction of
Military Records
The Pentagon, Room 1E-517
Washington, D. C. 20310

Dear Sir:

We are enclosing DD Form 149 duly executed by the above-named veteran for the Army Correction Board's consideration.

Kindly institute the necessary action and the appropriate development in this case, and advise us when these records are ready for our review and action.

Thanking you for your cooperation in this matter, I am

Sincerely,

Albert Cuervo

ALBERT CUERVO
Assoc. Deputy National Service Director

AC:ft
Enclosure: 3
cc: Shaka
NSO Pajo

RECEIVED

1973 SEP 13 AM 8 32

ARMY BOARD FOR CORRECTION
OF MILITARY RECORDS

DEPARTMENT OF THE ARMY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20310

4 October 1973

Disabled American Veterans
1221 Massachusetts Avenue, N. W.
Washington, D. C. 20005

RE: SHAKA, Nichijo

ASN: 19 052 533 [redacted]

Dear Sir:

The application for correction of military records in the case of the above-named individual has been received.

It is anticipated that the military records will have been received by this office within twenty-one days from the above date. Such records may be examined before the Board determines whether or not a formal hearing will be granted. If examination of the records in this office is desired, so indicate in the appropriate space below and return to this office promptly to allow adequate time for making the necessary arrangements. If reply is not received within thirty days, it will be presumed that examination of the records is not desired and the Board will consider the case on the basis of the available evidence.

Normally, the Board will make its determination, either that a formal hearing will be granted or denied, within sixty days of the date of this letter.

If the Board determines from a review of the application and military records that a formal hearing is authorized, you will be advised sufficiently in advance of such hearing in order to make adequate presentation of your case.

Sincerely yours,

for Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

✓ Undersigned desires to examine military records in Room 1E-517, The Pentagon Building on (Date) when available.

____ Examination of military records is not desired.

Date: 10/11/73 Signed: Albert Cuevas

[2, 40]

Approved Exception to SF 180

1A. ADDRESS CODE: 13

VETERANS ADMINISTRATION
REQUEST FOR INFORMATION

1B. TYPE OF CLAIM: ~~Original~~ Disability/ Suppl.

2. SEPARATION FORMS ON FILE: [X] YES [ ] NO

3. DATA REQUESTED: [X] SERVICE [X] MEDICAL [ ] DENTAL [ ] OTHER

4. BRANCH OF SERVICE: [X] ARMY [ ] NAVY [ ] AIR FORCE [ ] MARINE CORPS [ ] COAST GUARD [ ] NATIONAL GUARD (Army) [ ] NATIONAL GUARD (Air) [ ] OTHER (Specify)

FROM

5A. NAME AND ADDRESS OF VA REQUESTING OFFICE:
VETERANS ADMINISTRATION
Veterans Benefits Office
2033 M Street, N. W.
Washington, D. C. 20421

5B. ORIGINATING UNIT: 372/210/8

6. CLAIM NO.: C- 11-022-635

7. INSURANCE NO.:

8. LAST NAME - FIRST NAME - MIDDLE INITIAL (Under which served): ARROYO, JOHN DAVID

9A. ALL SERVICE NOS.: 19052533

9B. SOCIAL SECURITY NO.: [redacted]

10. DATE OF BIRTH: 8/6/17

11. PLACE OF BIRTH: SAN FRANCISCO Ca.

12. DATE OF DEATH:

	13. DATE ENTERED ACTIVE DUTY	14. DATE SEPARATED FROM ACTIVE DUTY	15. CHARACTER OF SEPARATION OR DISCHARGE	16. LAST GRADE, RATE OR RANK, AND ORGANIZATION
A.	5/14/41	8/17/46	~~SSN~~ Hon	
B.	9/5/46	9/2/49	~~Sgt~~ Hon	Sgt.
C.				

	17. ALLEGED DISEASE OR INJURY	18. DATES OF TREATMENT	19. PLACE OF TREATMENT	20. TYPE (Check) HOSPITAL	OP
A.	MALARIA	1942 + 43-45	UNK		
B.	Dysentery	" "			
C.	Colitis				

21. ADDITIONAL INFORMATION REQUESTED
Please submit all medical Record to include enlistment and discharge exam
Also verify all Ser.

22A. SUBSEQUENT RESERVE OR RETIRED STATUS: [X] NONE [ ] RESERVE OBLIGATION (Complete Item 22B) [ ] RETIRED (Complete Item 22C) [ ] UNKNOWN

22B. OBLIGATION TERMINAL DATE:

22C. RETIRED STATUS: [ ] IN PAY STATUS [ ] NONPAY STATUS [ ] TEMPORARY DISABILITY RETIRED LIST [ ] RETIRED—STATUS UNKNOWN

23. DATE: ~~12-12-73~~ 10-31-75

24. SIGNATURE AND TITLE OF VA OFFICIAL: J. Rath adj officer

ENDORSEMENT — VERIFICATION BY SERVICE DEPARTMENT (Check applicable box(es))

[ ] AVAILABLE REQUESTED RECORDS FORWARDED

[ ] ITEMS 8 & 9, AND 13 THROUGH 15 VERIFIED CORRECT

[X] ITEMS 8 & 9, AND 13 THROUGH 15 VERIFIED CORRECT, EXCEPT:

15B UHC
MED RECORDS
SENT CRIMINAL OFFICE
7-8-47 CTHS CH
6998A FOR ANY OTHER MEDS

NO. OF ENCLOSURES	ORIG.	COPY	NO. ENCLS. (Cont.)	ORIG.	COPY		DATE	SIGNATURE AND TITLE
HEALTH RECORDS			CLINICAL RECORDS			SERVICE INFORMATION		
PHYSICAL EXAMINATIONS AT ENTRANCE			X-RAYS					
			DENTAL RECORDS			MEDICAL RECORDS	DATE	SIGNATURE AND TITLE
PHYSICAL EXAMINATIONS AT SEPARATION			MEDICAL RECORDS					
			OTHER RECORDS					

VA FORM AUG 1971 07-3101

EXISTING STOCKS OF VA FORM 07-3101, JUL 1970, WILL BE USED.

[2,41]

[redacted]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON 25, D. C.

383 RST 7-3-74

IDENTIFICATION DIVISION

The following FBI record, NUMBER 4 946 434, is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER *	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Army	John David Provoo #19 052 533	5-14-41 San Fran., Calif.		
Army	John D. Provoo #RA-19 052 533	9-5-46 Camp Beale Calif.		
USM, New York N.Y.	John David Provoo #C 91 270	9-2-49	Treason	pending
Fed Detention Headquarters NY NY	John David Provoo #58628	9-2-49	treason by S-NY Marshal 1-24-52 to Marine Hosp by S-NY Marshal on chg of unlawful & treasonably did adhere to the Imperial Japanese Gov't with whom US was at war	11-23-49 to Bellevue Hosp for Observation 3-30-51 to Bellevue Hosp by S-NY Marshal
USM Balto Md	John David Provoo #17726	11-10-54 delivered by USM NY NY	Treason	
PD Lincoln Nebr	John D. Provoo #22754	9-6-57	cont to del of a minor	
SO Lincoln Nebr	John David Provoo #2821	9-6-57	cont to del minor	
SRef For Men Lincoln Nebr	John David Provoo #7491	8-29-58	Sodomy	3 yrs Nebr SRef Lincoln Nebr trans to Lincoln SHosp for mentally ill 12-26-58
SP Lincoln Nebr	John David Provoo #20697	1-21-59 SRef transfer	sodomy	3 yrs exp of sent 10-30-60

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on data formerly furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

16—70582-5 U.S. GOVERNMENT PRINTING OFFICE

RECEIVED

1974 JUL 9 PM 2 22

ARMY BOARD FOR CORRECTION
OF MILITARY RECORDS

[24/2]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON 25, D. C.

383 RST 7-3-74

2

IDENTIFICATION DIVISION

The following FBI record, NUMBER 4 946 434, is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Zanesville Ohio	John David Provoo #3795	11-23-60	inv of defrauding inn-keeper	11-23-60 rel on Waiver #40

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on data formerly furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

16—70582-3 U.S. GOVERNMENT PRINTING OFFICE

RETURN SLIP FOR VA INQUIRY

We cannot locate the records needed to reply to your request. Before a more extensive
made, additional information is required as indicated below.

- [ ] Verify branch of service and name used during service (last, first, middle). Furnish ALL names u
the veteran.
- [ ] Verify or furnish ALL service numbers and social security number. The service/social security number y
gave is assigned to _____.
- [ ] Furnish in item 21 dates of any service (active, Reserve or National Guard) after date(s) shown in item 14. Include branch of service for dates shown. If National Guard, furnish name of state.
- [ ] Furnish in items 22a through 22c present status of individual, i.e., Reserve, Retired, etc.
- [ ] Furnish date and place of entry into service.
- [ ] Furnish home address at time of entry into service (street, city, county, state).
- [x] Please furnish copy of latest separation form on file.
- [x] If veteran received inpatient treatment, furnish name of hospital and approximate dates of hospitalization. If not, furnish full organizational designation (unit and subunit) to which assigned at time of illness or injury.
- [ ] Furnish full organizational designations (units and subunits) and approximate dates of assignment thereto.
- [ ] If veteran has any documents (i.e., Special Orders, letters, commendation, etc) pertaining to his military service, suggest he submit copies in support of his claim. Any documents submitted could facilitate search of auxillary records.
- [ ] Other

NATIONAL PERSONNEL RECORDS CENTER, GSA
(Military Personnel Records)
9700 Page Boulevard
St. Louis, Missouri 63132

NCP MACBR

Date 11/20/73 cd

PLEASE RETURN THIS FORM WITH YOUR REPLY

2-28-74

REQUEST FOR MILITARY RECORDS/INFORMATION (VA FILES)

DATE 4-30-74

TO:
VARO
San Francisco, CA

IDENTIFICATION: *(For NPRC use only)*

Analyst: D. Stafford

Date of inquiry: 10-4-73

Source: ABCMR

Suspend *(Date)*

RECORDS OF THE VETERAN IDENTIFIED BELOW ARE NOT AVAILABLE AT NPRC

LAST NAME, FIRST NAME, MIDDLE INITIAL	SERVICE NUMBER/SSN	DATE OF BIRTH
Perez John D.	19052533	
BRANCH OF SERVICE	DATES OF SERVICE	
Army	FROM 9-5-46 TO 9-2-49	
VA CLAIM NUMBER	OTHER VA IDENTIFICATION *(If applicable)*	
11 022 635		

RECORDS OR DATA CHECKED BELOW ARE REQUIRED TO RESPOND TO AN INQUIRY RECEIVED IN THIS CENTER CONCERNING THE MILITARY SERVICE OF SUBJECT VETERAN

✓	REPORT OF SEPARATION OR STATEMENT OF SERVICE *(If neither available send copies of all VA Forms 3101)*		REPORT OF INVESTIGATION *(Date of injury)*
	FACTS AND CIRCUMSTANCES, OTH DISCHARGE *(Include Court Martial information if applicable)*	✓	ALL AVAILABLE MILITARY MEDICAL/DENTAL RECORDS
	LOD DETERMINATION REPORT		ADDRESS OF RECORD:
	PHYSICAL EVALUATION PROCEEDINGS	✓	OTHER: all records in file

REPLY

	RECORDS ENCLOSED		**EXCEPT:**

REMARKS:

2nd request

Checked

5-28-74

RECORDS RECONSTRUCTION CASE

Return to:

NATIONAL PERSONNEL RECORDS CENTER
(Military Personnel Records)
9700 Page Boulevard
St. Louis, Missouri 63132

NCPM A-CDR

PLEASE RETURN THIS FORM WITH YOUR REPLY

Furnished by:

Date:

GSA FORM 7161 (10/73)

CC: HDCMR TRACER B1682739 (Classified)

REQUEST FOR MILITARY RECORDS/INFORMATION (VA FILES)

DATE 3-28-74

TO: VGRC San Francisco

IDENTIFICATION: (For NPRC use only)

Analyst: Hosten

Date of inquiry: 10-4-72

Source: ARGAR

Suspend (Date) 4/28/74

RECORDS OF THE VETERAN IDENTIFIED BELOW ARE NOT AVAILABLE AT NPRC

LAST NAME, FIRST NAME, MIDDLE INITIAL	SERVICE NUMBER/SSN	DATE OF BIRTH
Proves, John D.	19052533	
BRANCH OF SERVICE	DATES OF SERVICE FROM TO	
Army	9/2/49	
VA CLAIM NUMBER	OTHER VA IDENTIFICATION (If applicable)	
CH 11022635		

RECORDS OR DATA CHECKED BELOW ARE REQUIRED TO RESPOND TO AN INQUIRY RECEIVED IN THIS CENTER CONCERNING THE MILITARY SERVICE OF SUBJECT VETERAN

✓	REPORT OF SEPARATION OR STATEMENT OF SERVICE (If neither available send copies of all VA Forms 3101)		REPORT OF INVESTIGATION (Date of injury)
✓	FACTS AND CIRCUMSTANCES, OTH DISCHARGE (Include Court Martial information if applicable)	✓	ALL AVAILABLE MILITARY MEDICAL/DENTAL RECORDS
	LOD DETERMINATION REPORT		ADDRESS OF RECORD:
	PHYSICAL EVALUATION PROCEEDINGS		OTHER:

REPLY

	RECORDS ENCLOSED		EXCEPT:

REMARKS:

AKH Shaka, Nichiro

Please furnish all records pertaining to veh. Correction Board case

2ND Request

5-28 apr 74 (Classified)

RECORDS RECONSTRUCTION CASE

Return to:

NATIONAL PERSONNEL RECORDS CENTER
(Military Personnel Records)
9700 Page Boulevard
St. Louis, Missouri 63132

NCPM R.F.B.

PLEASE RETURN THIS FORM WITH YOUR REPLY

Furnished by:

Date:

GSA FORM 7161 (10/73)

VETERANS ADMINISTRATION
REGIONAL OFFICE
P. O. Box 3198
Honolulu, HI 96801
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

AIR MAIL

POSTAGE AND FEES PAID
VETERANS ADMINISTRATION

VA-601

U.S.MAIL

Army Board for Correction
of Military Records
Department of the Army
Office of the Under Secretary
Washington, DC 20310

Attn: SAOMR/Mr.Gibson/79515

Date: 8/9/74

File No.: C-11-022-635

PROVOO, John D.
(SHAKA,Nichijo)

We have received your request for service medical records regarding Mr. Provoo.

☐ It is being given appropriate attention.

☒ We have referred it to VA Regional Office, 211 Main St., San Francisco, CA 94105 for necessary action.

(Please send any other inquiries on this subject to that office.)

To avoid unnecessary delay, correspondence from or concerning a veteran or person in service should include the full name, VA file number, and social security number.

FL 30
Aug 1972(R)

GPO:1972—O-473-957

[Lh'2]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972—457-127

REQUEST FOR DOSSIER/INDEX CHECK
(AR 381-45)

FOR DCII/USAIRR USE ONLY
63-010348-HOMU

NAME *(Last name - First name - Middle name)*
SHAKA NICHIJA

DATE OF BIRTH *(Month - Day - Year)*: 17 08 06

PLACE OF BIRTH *(State or Country)*: CA

GEO. CODE:

SERVICE NUMBER:

SOCIAL SECURITY NUMBER:

REMARKS *(Requester)*:

REQUEST NUMBER:

DATE: 31 July 74

REQUESTING OFFICE *(Inventory code)*: 3524

SIGNATURE: Norma Snaper

SATISFACTORY NATIONAL AGENCY CHECK

DATE COMPLETED:

DCII		AF-MPRD		CSC		USAAC	
FBI-HQ		BUPERS		CIA		FRC	
FBI-ID		USMC		I & NS		HCUA	
TAG-O		USCG		STATE-S		OTHER	
TAG-E		MPRC		STATE-P		OTHER	

DOSSIER CHARGED TO:

AGENCY:

DATE:

DETAIL LIST NUMBER:

REMARKS:

DA FORM 1 DEC 66 1144

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

DELIVERY COPY 2

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
WASHINGTON, D.C. ~~20375~~ 20318

REPLY TO
ATTENTION OF:

CIDC-R

SUBJECT: Transmittal of CID Report of Investigation
Shaka Nichija

~~Commander/Officer in Charge~~
Office, Sec of the Army
Army Board for Correction of Military Records
Room 1E-517, Pentagon
Washington, DC. 20310

1. Forwarded herewith is a copy of CID Report of Investigation 63-010348-HOMU, less exhibits, requested by Investigator 3524 or your office.

2. Copies of exhibits, if deemed essential to your investigation, will be furnished upon request.

3. Upon completion of your action, documents contained herewith will be destroyed.

FOR THE COMMANDER:

Robert A. Brisentine Jr.

1 Incl
as

ROBERT A. BRISENTINE, JR.
Director
Crime Records Directorate

CID HQ FL 36
1 Apr 74

FOR OFFICIAL USE ONLY

RECEIVED

1974 SEP 13 AM 10 58

ARMY BOARD FOR CORRECTION
OF MILITARY RECORDS

[bh/2]

Provoo
AKA: Shelton

LAW OFFICES
COWAN & FREY

STUART M. COWAN
PHILIP S. FREY

OLD PRIMO BREWERY BUILDING
837 COOKE STREET
HONOLULU, HAWAII 96813
TELEPHONE 533-1767

September 25, 1974

Board for Correction of
Army Records
Washington, D. C.

Gentlemen:

Please be advised this office represents John D. Provoo, RA No. 19 025 533, in connection with an undesirable discharge received by him on or about September 30, 1949.

Would you please forward to us the necessary forms for filing a claim with your office to correct the military records and remove his blemish from his record.

We would appreciate a hearing on the case as soon as conveniently can be scheduled and in connection therewith, I am wondering whether or not you can supply us with a copy of Sgt. Provoo's service record.

Very truly yours,

STUART M. COWAN

SMC:ss

[2/56]

[12,5]

PROVOO, JOHN D. SFMR/Mr.Gibson/cr/53626/16Oct74

[redacted]

SFMR

Mr. Stuart M. Cowan
Attorney at Law
837 Cooke Street
Honolulu, Hawaii 96813

Dear Mr. Cowan:

The purpose of this letter is to advise you that your client, Mr. John D. Provoo, submitted a request for correction of military records to this office on 15 August 1973 and listed the Disabled American Veterans as counsel.

I regret to advise you that the Board has not been able to obtain all of his military records which are necessary for consideration of his appeal. It appears that his military records may have been lost in the fire at the National Personnel Records Center, GSA, St. Louis, Missouri, on 12 July 1973. Efforts are continuing to locate additional records or sufficient information to consider his application to this Board.

Information concerning Mr. Provoo's separation from the Army is contained in Volume 17 of the Federal Rules Decision.

Inclosed is a copy of Army Regulation 15-185 and your attention is invited to Section IV, "Entitlement to Hearing." In addition, the inclosed copies of DD Form 149 Application Forms are for your use if deemed necessary. The Board will act on the previous application unless withdrawn by Mr. Provoo, and you will be shown as designated counsel instead of the Disabled American Veterans upon receipt of written authorization from Mr. Provoo.

Sincerely yours,

(Signed) G. Edwin Frayser

2 Incl
As stated

Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

SFMR
✓OMPF

LAW OFFICES
COWAN & FREY
OLD PRIMO BREWERY BUILDING
837 COOKE STREET
HONOLULU, HAWAII 96813

HONOLULU HAWAII SEP 23 '74

U.S. POSTAGE 0.13

BB METER 1041844

VIA AIR MAIL
CORREO AEREO
PAR AVION

Board for Correction of
Army Records
Washington, D. C.

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

REFERENCE OR OFFICE SYMBOL	SUBJECT
SFMR - SHAKA, NICHIJO AKA - PROVOO, JOHN D [redacted]	Request for Legal Opinion

TO	FROM	DATE	CMT 1
DAJA Room 2E 437 Attn: Maj Murray The Pentagon	OSA, ABCMR Room 1E 517 The Pentagon	18 Oct 74 Mr. Gibson/ym/79515	

1. The above named applicant has requested his records be corrected to show he was separated from the service under honorable conditions on 2 Sep 1949.

2. The applicant's military personnel file was apparently destroyed in the St. Louis Records Center fire and information pertaining to his separation from the Army and subsequent trial and indictment for treason is contained in Volume 17 of the Federal Rules Decision. (FRD)

3. It is requested that the available information be reviewed. If it is determined that the proceedings are legally deficient, it is requested that appropriate administrative action be taken. If the proceedings are deemed legally sufficient, it is further requested that the case be returned to this office with your comment and legal opinion regarding the legal sufficiency of the proceedings.

Raymond J. Williams
Executive Secretary

Incl
DD Form 149 w/ incl
Reconstructed Records

DA FORM 1 FEB 62 2496 REPLACES DD FORM 96, EXISTING SUPPLIES OF WHICH WILL BE ISSUED AND USED UNTIL 1 FEB 63 UNLESS SOONER EXHAUSTED. GPO: 1971 O - 426-725

Watson

DAJA-AL 1974/5197 (18 Oct 74)
SUBJECT: Request for Legal Opinion

TO: OSA, ABCMR FROM DAJA-AL DATE 25 NOV 1974 CMT 2
CPT Needle/jf/76000

1. The file reflects that the former service member was discharged for the convenience of the Government under the provisions of Army Regulation 615-365, 19 July 1949, then in effect. Paragraph 5(1) of that regulation authorized the Secretary of the Army or his designee to direct an other than honorable or general discharge. Accordingly, the issuance of an undesirable discharge to Provoo was authorized by then existing Army regulations.

2. It should be noted however, that the Secretary of Defense had prescribed certain standards for discharge by a memorandum to the service secretaries, dated 2 August 1948. This memorandum, a copy of which is inclosed, provided that an undesirable discharge was to be given only for unfitness or misconduct, and further provided for honorable or general characterization of convenience of the Government discharges. Moreover, the memorandum provided that before an undesirable discharge was issued, the service member was to be informed of the reasons for the contemplated action, and given an opportunity to appear and make a statement in his behalf. The file indicates that Provoo was not afforded these rights. Based upon the foregoing, and the fact that the convenience of the Government discharge was authorized for the purpose of avoiding more time consuming requirements under other regulations that would have afforded Provoo a hearing, it would not be inappropriate to recharacterize his discharge to under honorable conditions.

FOR THE JUDGE ADVOCATE GENERAL:

David C. Davies

DAVID C. DAVIES
Major, JAGC
Acting Chief, Military Personnel Law Team
Administrative Law Division

2 Incl
Added 1 incl
2. Memo dtd 2 Aug 1948

RECEIVED

974 NOV 25 PM 3 20

ARMY BOARD FOR CORRECTION
OF MILITARY RECORDS

DAVID C. DAVIES
Major, JAGC
Acting Chief, Military Personnel Law Team
Administrative Law Division

5 Incl
Added 1 Incl
3. Memo dtd 5 Aug 1948

FOR THE JUDGE ADVOCATE GENERAL:

DAJA-AL 1974/2161 (18 Oct 74)

SUBJECT: Request for legal opinion

TO: OSA, ABCMR FROM DAJA-AL DATE 25 NOV 1974 CMT 5
CPT Moseley/3L/10000

1. The file reflects that the former service member was discharged for the convenience of the Government under the provisions of Army Regulation 615-360, 15 July 1949, then in effect. Paragraph 2(1) of that regulation authorized the Secretary of the Army or his designee to direct an officer then honorable or general discharge. Accordingly, the issuance of an undesirable discharge to Provoo was authorized by then existing Army regulations.

3. It should be noted however, that the Secretary of Defense had prescribed certain standards for discharge by a memorandum to the service secretaries, dated 5 August 1948. This memorandum, a copy of which is inclosed, provided that an undesirable discharge was to be given only for multiness or misconduct, and further provided for honorable or General characterization of convenience of the Government discharges. Moreover, the memorandum provided that before an undesirable discharge was issued, the service member was to be informed of the reasons for the contemplated action, and given an opportunity to appear and make a statement in his behalf. The file indicates that Provoo was not afforded these rights. Based upon the foregoing, and the fact that the convenience of the Government discharge was authorized for the benefit of avoiding more time consuming redundancies under other regulations that would have afforded Provoo a hearing, it would not be inappropriate to recharacterize his discharge to under honorable conditions.

LAW OFFICES
COWAN & FREY

STUART M. COWAN
PHILIP S. FREY

OLD PRIMO BREWERY BUILDING
837 COOKE STREET
HONOLULU, HAWAII 96813
TELEPHONE 533-1767

December 3, 1974

Mr. Raymond J. Williams,
Executive Secretary
Board for Correction of
Military Records
Department of the Army
Office of the Under Secretary
Washington, D. C. 20310

Re: John D. Provoo
RA No. 19 025 533

Dear Mr. Williams:

Pursuant to your recent letter, enclosed herewith is substitution of counsel executed by John D. Provoo.

Very truly yours,

STUART M. COWAN

SMC:ss
Encl.

[2,55]

[J2.5]

BEFORE THE

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

In the Matter of the Application of JOHN D. PROVOO, RA No. 19 025 533 For Correction of Military Records	)

SUBSTITUTION OF COUNSEL

Comes now JOHN D. PROVOO and hereby substitutes STUART M. COWAN, of the law firm of COWAN & FREY, vice the Disabled American Veterans, as counsel in the above entitled matter.

Dated: Pahoa, Hawaii, this 26th day of November, 1974.

John D. Provoo
JOHN D. PROVOO

Above substitution accepted.

Dated: Honolulu, Hawaii, this 3rd day of December, 1974.

COWAN & FREY

By _____
STUART M. COWAN
Old Primo Brewery Building
837 Cooke Street
Honolulu, Hawaii 96813
Tel. No. 533-1767

February 28, 1975

TO WHOM IT MAY CONCERN:

I, Reverend Nichijo Shaka, previously known as John David Provoo, do hereby authorize Steven E. Kroll and/or Barry Graczyk of the Law Offices of Steven E. Kroll to act upon my behalf concerning any and all claims for benefits from the Veterans' Administration or any other agency of the United States Government.

I further authorize Steven E. Kroll and/or Barry Graczyk to request, receive, inspect, copy, or otherwise deal with any or all records concerning or referring to me, whether or not privileged or confidential, in the custody of the Veterans' Administration or any other officer or agency of the United States Government or any other person or entity whatsoever.

I further authorize Steven E. Kroll and/or Barry Graczyk to take all actions which may be in any way useful or necessary to establish my entitlement to any benefits from the United States Government.

Very truly yours,

Rev. Nichijo Shaka
Reverend Nichijo Shaka

John David Provoo
John David Provoo

PARTMENT OF THE ARMY
OFFICE OF THE ADMINISTRATIVE ASSISTANT
WASHINGTON, D.C. 20310

4 December 1974

MEMORANDUM FOR: THE EXECUTIVE SECRETARY
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

The membership of the Army Board for Correction of Military Records is reconstituted as follows:

Mr. Marlin S. Reichley, ICAF
Mr. Roswell M. Yingling, OSA
Mr. Robert V. Prangley, DAEN
Mr. Gordon M. Hobbs, ASA(I&L)
Mr. James W. Bage, ASA(M&RA)
Mr. Carl F. Bess, DAFD
Mr. Adrian U. Dubuisson, DAPE
Mr. Thomas J. Duffy, DAJA
Mr. Oliver Kennedy, DACA
Mr. Patrick J. Sigleo, DAEN
Mr. Herbert W. Taylor, DAMI
Mr. Charles R. Woodside, ASA(R&D)
Mr. Charles A. Chase, ASA-FM
Mr. Dominic R. Ciccotelli, DAPC
Mr. Michael H. Dugan, DALO
Mr. William R. Amis, DAPE
Mr. Jack N. Miller, DAAG
Mr. George E. Western, DAPE
Mr. Donald T. Ruby, DAJA
Mr. Camilleis N. Hoffman, DAMO
Mr. James C. Hise, NGB
Mr. Joseph P. Murphy, DACA
Mr. James L. Stroud, JDSS-W
Mr. Harold B. Johnson, DALO
Mr. Roy B. Root, DAAR

The Board will convene at the call of the Executive Secretary for the consideration and determination of applications in accordance with the regulations and procedures prescribed by AR 15-185. Three members present will constitute a quorum.

All testimony will be given under oath or affirmation administered by the Chairman or Acting Chairman.

BY ORDER OF THE SECRETARY OF THE ARMY:

John G. Connell, Jr.
JOHN G. CONNELL, JR.
Administrative Assistant

February 28, 1975

TO WHOM IT MAY CONCERN:

I, Reverend Nichijo Shaka, previously known as John David Provoo, do hereby authorize Steven E. Kroll and/or Barry Graczyk of the Law Offices of Steven E. Kroll to act upon my behalf concerning any and all claims for benefits from the Veterans' Administration or any other agency of the United States Government.

I further authorize Steven E. Kroll and/or Barry Graczyk to request, receive, inspect, copy, or otherwise deal with any or all records concerning or referring to me, whether or not privileged or confidential, in the custody of the Veterans' Administration or any other officer or agency of the United States Government or any other person or entity whatsoever.

I further authorize Steven E. Kroll and/or Barry Graczyk to take all actions which may be in any way useful or necessary to establish my entitlement to any benefits from the United States Government.

Very truly yours,

Rev. Nichijo Shaka
Reverend Nichijo Shaka

John David Provoo
John David Provoo

DEPARTMENT OF THE ARMY
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

PROCEEDINGS

IN THE CASE OF:
JOHN D. PROVOO
AKA: NICHIJO SHAKA
[redacted]

2 April 1975

I certify that hereinafter is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in the case of the above-named individual. A quorum was present during the hearing and deliberation. The following findings, conclusions and recommendations were adopted by the Board.

Applicant requests correction of military records as stated in application to the Board and restated herein.

The Board convened at the call of the Chairman on the above date and, following consideration of the case and having made its determination thereof, proceeded to other business.

Present:	Mr. Marlin S. Reichley	Chairman
	Mr. Adrian U. Dubuisson	Member
	Mr. Donald T. Ruby	Member
	Mr.	Member
	Mr.	Member
	Mr. Raymond J. Williams	Executive Secretary
	Mr. Edward C. Gibson	Examiner

Applicant (~~XXXX~~ (did not) appear before the Board. He (was) (~~XXXXXXXX~~)X represented by counsel, who did not appear before the Board.

The Board considered the following evidence:

Exhibit A - Application for correction of military records.
Exhibit B - Military Personnel Records
Exhibit C -
Exhibit D -
Exhibit E -

THE BOARD FINDS:

1. That the application was timely filed or the Board has found it to be in the interest of justice to excuse failure to timely file; that the applicant has exhausted all administrative remedies afforded by existing law or regulations.

2. That it incorporates in these proceedings and adopts by reference thereto so much of the Exhibits above, as pertains to the factual showing of the Department of the Army records which generally reflect:

a. that the applicant requests that the undesirable discharge he received on 2 September 1949 be upgraded to an honorable discharge or a discharge under honorable conditions;

b. that the applicant was born on 6 August 1917; that he enlisted in the Army on 14 May 1941; that he was separated with an honorable discharge on 17 August 1946 by reason of demobilization; that he reenlisted on 5 September 1946 for three years; that his highest grade held was Sergeant E5; that he had a total of 99 months creditable service with three days lost time for reasons unknown; that he was separated on 2 September 1949, in the grade of Sergeant E5, under other than honorable conditions for alleged homosexuality by order of the Secretary of the Army, under the provisions of (UP) Army Regulation (AR) 615-365 for the convenience of the government; and that his official military personnel records were apparently destroyed in the National Personnel Records Center fire in July 1973 and the information contained herein was obtained from available documents; and

c. that on 25 November 1974, the Office of The Judge Advocate General, in a reply to an inquiry from the Board, rendered the opinion that the provisions of paragraph 5a(1) of Army Regulation 615-365, 19 July 1949, then in effect authorized the Secretary of the Army or his designee to direct an other than honorable or general discharge; that accordingly, the issuance of an undesirable discharge to the applicant was authorized by then existing Army regulations; that the opinion also pointed out that the Secretary of Defense had prescribed certain standards for discharge by a memorandum to the service secretaries, dated 2 August 1948; that this memorandum provided that an undesirable discharge was to be given only for unfitness or misconduct, and further provided for honorable or general characterization of convenience of the Government discharges; that the memorandum provided that before an undesirable discharge was issued, the service member was to be informed of the reasons for the contemplated action, and given an opportunity to appear and make a statement in his behalf; that the file does not indicate that the applicant was afforded these rights; and that based upon the foregoing, and the fact that the convenience of the Government discharge was authorized for the purpose of avoiding more time consuming requirements under other regulations that would have afforded the applicant a hearing, it would not be inappropriate to recharacterize his discharge to under honorable conditions.

THE BOARD CONCLUDES:

1. That based upon the evidence of record now available and the presumption of administrative regularity, the applicant was properly discharged in accordance with Army Regulations 615-365 in effect at that time.

2. That under the provisions of current regulations and in compliance with the Secretary of Defense's guidance to the Secretary of the Army in 1948, individuals are not normally separated under other than honorable conditions without being afforded an opportunity to appear before a board of officers with counsel and present evidence in their own behalf.

3. That since the applicant's separation was apparently only for convenience of the government without a formal hearing, a more judicial and equitable determination would be to characterize his separation as under honorable conditions for unsuitability due to homosexual tendencies.

4. That in consideration of the foregoing findings and conclusions and taking cognizance of the changes in Department of the Army policy on what constitutes a basis for separation under other than honorable conditions, the circumstances relative to this case would appear to warrant changing the applicant's discharge to one under honorable conditions and, therefore, continuation of the stigma of his discharge under other than honorable conditions is unjust.

5. That the available evidence of record indicates applicant's service was not sufficiently meritorious to warrant an honorable discharge.

THE BOARD RECOMMENDS:

1. That all Department of the Army records of JOHN D. PROVOO be corrected to show that he was separated on a Certificate of General Discharge on 2 September 1949.

2. That the Department of the Army issue to JOHN D. PROVOO a Certificate of General Discharge from the Army of the United States, dated 2 September 1949, in lieu of the Undesirable Discharge of the same date now held by him.

Marlin S. Reichley

Marlin S. Reichley
Chairman

DEPARTMENT OF THE ARMY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D. C.

17 APR 1975

AG 201 - PROVOO, JOHN D.
AKA: SHAKA, NICHIJO
[redacted]

MEMORANDUM FOR THE ADJUTANT GENERAL:

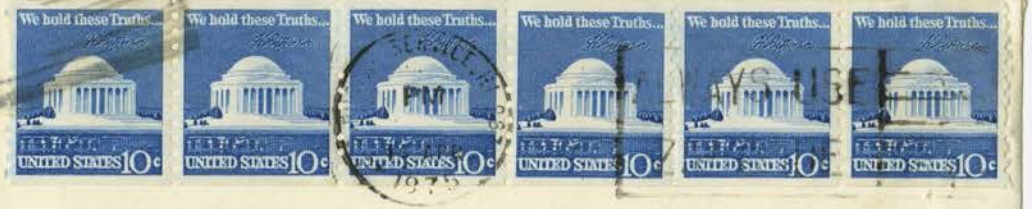
Having approved the findings, conclusions and recommendation of the Army Board for Correction of Military Records, and under the provisions of 10 U.S.C. 1552, it is directed:

1. That all Department of the Army records of JOHN D. PROVOO be corrected to show that he was separated on a Certificate of General Discharge on 2 September 1949.

2. That the Department of the Army issue to JOHN D. PROVOO a Certificate of General Discharge from the Army of the United States, dated 2 September 1949, in lieu of the Undesirable Discharge of the same date now held by him.

Herman R. Staudt
Under Secretary of the Army

Law Offices
of
STEVEN E. KROLL
7th Floor, Aloha Tower
Honolulu, Hawaii 96813



CERTIFIED - Return Receipt Requested

Mr. Howard Callaway
Secretary of the Army
Department of the Army
Pentagon
Washington, D.C. 20310

CERTIFIED
No. 571555
MAIL

PENTAGON
APR 18 1975
FIRST REGISTERED

KAAAWA, HI
APR 15 PM 1975
96730

[2,637]

Law Offices
of
STEVEN E. KROLL
7th Floor, Aloha Tower
Honolulu, Hawaii 96813
Tel: (808) 537-5211
Cable Address 'Krollaw'

April 14, 1975

South Pacific Office:
A. D. Meredith Professional Bldg.
Post Office Box 23
Pago Pago
American Samoa 96799

CERTIFIED - Return Receipt Requested

Mr. Howard Callaway
Secretary of the Army
Department of the Army
Pentagon
Washington, D.C. 20310

Re: Reverend Nichijo Shaka, fka John D. Provoo;
Army Serial No. 19-052-533

Dear Mr. Callaway:

This letter is written pursuant to the Freedom of Information Act (5 USC Section 552) to request certain records on our client above-referenced.

Specifically, we hereby respectfully request uncertified copies of all records of whatever description, whether formal or informal, relating to the enlistment(s), service record, and termination of service (if any) of John D. Provoo, Army Serial No. 19-052-533. We are particularly interested in when, if ever, former Sgt. Provoo was terminated from service in the United States Army, and all records and documents showing or touching upon the procedures, if any, by which said Sgt. Provoo was so terminated. By this reference to particularity we do not, however, mean to narrow the generality of our request for the other documents of former Sgt. Provoo's dealings with the United States Army.

We have enclosed herewith a signed authorization from our client for the release of the records indicated. Pursuant to Section 552(a)(6)(A)(i) of Title 5 of the United States Code, we shall expect your response to this request within ten days after your receipt thereof. Failure so to comply with the law will compel us to seek the assistance of the Federal Court here, and should it become necessary we shall not hesitate to pursue all remedies to which we are entitled, including reasonable attorney's fees.

Very truly yours,

Steven E. Kroll

SEK:jes
cc: Reverend Nichijo Shaka

Enclosure

Law Offices
of
STEVEN E. KROLL
7th Floor, Aloha Tower
Honolulu, Hawaii 96813
Tel: (808) 537-5211
Cable Address 'Krollaw'

South Pacific Office:
A. D. Meredith Professional Bldg.
Post Office Box 23
Pago Pago
American Samoa 96799

April 15, 1975

CERTIFIED - Return Receipt Requested

Mr. Raymond J. Williams
Executive Secretary
Army Board for Correction of Military Records
Room 1E-517, The Pentagon
Washington, D.C. 20310

Re: Reverend Nichijo Shaka, f/k/a Provoo, John D.;
Army Serial No. 19-052-533

Dear Mr. Williams:

We understand from Mr. Stuart J. Cody that the Army Correction Board has been advised of the fact that this law office now represents the above-referenced individual. We also understand that Mr. Cody, on behalf of Reverend Shaka, presented DD Form 149 to the Board on September 6, 1973 without any result whatsoever.

In light of the passage of such an inordinate length of time, as well as the destitute financial condition of our client, we hereby request, pursuant to the Freedom of Information Act (5 USC Section 552) that we be sent uncertified copies of all records and documents, whether formal or informal, pertaining to any proceedings held before the Army Correction Board now or in the past, or any other documentation touching upon our client's dealings with the said Board.

As you are undoubtedly aware, compliance with this request is required within ten days after your receipt hereof (5 USC Section 522(a)(6)(A)(i)), and particularly in light of the inexplicable period of time that has passed in connection with others speaking on behalf of Reverend Shaka, we shall expect your transmittal of the requested documents immediately. Failing such transmittal within the time provided by law, we shall be obliged to file an action in the Federal District Court for the District of Hawaii for all relief to which we are entitled by reason of the Freedom of Information Act and other applicable statutes.

Your urgent and immediate attention to this matter will be appreciated.

SEK:jes
cc: Reverend Sha
Encl. Authorizati

DO NOT DETACH THIS SLIP

OFFICE OF THE ADMINISTRATIVE ASSISTANT

DATE 21 APR 1975

TO:

___ UNDER SECRETARY OF THE ARMY
___ ASST. SEC. OF ARMY (FM)
___ ASST. SEC. OF ARMY (I&L)
___ ASST. SEC. OF ARMY (M&RA)
___ ASST. SEC. OF ARMY (R&D)
___ CHIEF OF PUBLIC INFO.
___ CHIEF OF LEG. LIAISON
___ GENERAL COUNSEL
✓ CHIEF OF STAFF
___ COMPT. OF THE ARMY
___ ADJUTANT GENERAL
___ ENGINEERS, CHIEF OF
___ JUDGE ADVOCATE GENERAL

FOR:

✓ APPROPRIATE ACTION
___ DIRECT REPLY
___ PREPARATION OF REPLY FOR SIGNATURE OF SECRETARY OF ARMY
— USE SECRETARY OF THE ARMY PERSONAL LETTERHEAD WITH NAME ONLY AT SIGNATURE BLOCK.
___ PREPARATION OF REPLY FOR SIG. OF ADMINISTRATIVE ASSISTANT
___ INFORMATION ON WHICH TO BASE REPLY
___ FOR COMMENT, RECOMMENDATION OR INITIAL
___ INFORMATION
___ NOTE AND RETURN
___ FILE
___ MARK "PERSONAL ATTENTION OF ADMINISTRATIVE ASSISTANT"
___ FURNISH COPY OF REPLY TO ASG, OSA FOR OSDef.

REMARKS:

FREEDOM OF INFORMATION ACT REQUEST

OSA SUSPENSE: _____

OSD SUSPENSE: _____

BY DIRECTION OF THE SECRETARY OF THE ARMY

CM 52092

John G. Connell, Jr.
Administrative Assistant

OSA FORM 29 (REVISED)
MAY 1972

[2,666]

RECEIVED
APR 25 10 01 AM '75
OFFICE, CHIEF OF STAFF
UNITED STATES ARMY

DISPATCHED
APR 21 10 02 AM '75
OFFICE
SECRETARY OF THE ARMY
ADMINISTRATIVE SUPPORT
GROUP

[2,67]

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF STAFF
REFERRAL SLIP
(Will remain with correspondence)

FILE NUMBER: CS 201 Pro.oo, John F.

DATE: 21 Apr 75

ROUTING	A-Action	I-Information
OSA	ACSI	CINFO
CLL	CNGB	CMH
DCSOPS	A TAG	CAR
DCSPER	COE	OCSA (CAR)
DCSLOG	TSG	OCSA (MISD)
DCSRDA	CCH	OCSA (PA&ED)
COA	TJAG	OCSA (ESO)
MILPERCEN	TIG	OCSA (MD)
CUSAAA	USACIDC	SMA
ARFPC	BMDPM	

ATTN:

- [ ] Prepare reply for CofS signature
- [ ] Direct reply to _____
- Furnish copy of reply to _____
- [ ] Information (_____ has action)
- [ ] Provide assistance, as required _____

- [A] Appropriate action
- [ ] Advance copy
- [ ] Coordinate with _____

REMARKS

FREEDOM OF INFORMATION ACT REQUEST

BY DIRECTION OF THE CHIEF OF STAFF:

ROY H. HERRON
LTC, GS
Assistant to the Director

OCof SA FORM 159, 1 Jun 74 of [ ] SEE REVERSE

TAGO TRANSMITTAL/CONTROL

DATE: 22 Apr

SUSPENSE: 5 MAY

SUBJECT: Request for INFO on John Provoo under FOIA

XO CON NO: TCZ 2204023

OCSA CON NO:

ROUTING — A = ACTION, I = INFO

	Admin Mgt Dir		Rec Dir
	ARFCOS		Mem Affairs Dir
	Casualty Dir	A	OMARC
	Cen Spt Div		Pstl Dir
	CG, RCPAC		Pub Dir
	Compt		RAM2
	DCG, TAGCEN		Sys Dev Dir
	Club Mgt Dir		TIOH
	Ed Dir		
	NAF Dir		

ACTION

- ☐ SEE ATTACHED REMARKS/INSTRUCTIONS
- ☐ PREPARE REPLY FOR SIGNATURE OF _____
- ☐ COORDINATE WITH _____
- ☐ OTHER (Specify)

REMARKS

DIRECTORATE ROUTING

1.
2.
3.
4.

REMARKS

FREEDOM OF INFORMATION ACT REQUEST

FOR THE ADJUTANT GENERAL:

J. M. HELLER
Major, AGC
Assistant Executive Officer, TAGO

TAGO Form 1-18 1 Oct 74

ROUTING AND TRANSMITTAL SLIP

		ACTION
1 TO	INITIALS	CIRCULATE
W O Peterson	DATE	COORDINATION
2	INITIALS	FILE
	DATE	INFORMATION
3	INITIALS	NOTE AND RETURN
	DATE	PER CONVERSATION
4	INITIALS	SEE ME
	DATE	SIGNATURE

REMARKS

Per our tel conv of 22 apr. 75.

Wallace
OMARC
70922

Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions

FROM	DATE
	PHONE

OPTIONAL FORM 41
AUGUST 1967
GSA FPMR (41CFR) 100-11.206

GPO: 1973 OF—525-336 **5041-101**

ROUTING AND TRANSMITTAL SLIP

		ACTION
1 TO Major S. M. Heller Assistant Executive Officer TAGO	INITIALS DATE	CIRCULATE COORDINATION
2	INITIALS DATE	FILE INFORMATION
3	INITIALS DATE	NOTE AND RETURN PER CONVERSATION
4 Subject: Shaka, Nichijo Reverend fka John D. Provoo 19 052 533	INITIALS DATE	SEE ME SIGNATURE

REMARKS

Attached is copy of letter furnished to Mr. Steven E. Kroll the attorney for Reverend Nichijo Shaka, fka John D. Provoo, 19 052 533.

Incl

Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions

FROM	DATE
JPM JAMES S. MILLER, LTC, AGC Director, Personnel Services, RCPAC	30 Apr 75 PHONE 698-7777

OPTIONAL FORM 41
AUGUST 1967
GSA FPMR (41CFR) 100-11.206

★ GPO : 1969 OF—352-829 5041-101

[15,5]

PROVOO, JOHN D., 19 052 533 Mr. Williams/74254/df/23 Apr 75

SFMR 23 April 1975

Mr. Steven E. Kroll
Attorney at Law
7th Floor, Aloha Tower
Honolulu, Hawaii 96813

Dear Mr. Kroll:

This is in response to your letter of 15 April 1975 advising that you represent Mr. John D. Provoo, 19 052 533, also known as Reverand Nighijo Shaka, in the matter of his appeal for change of discharge and requesting certain information under the Freedom of Information Act.

The Army Board for Correction of Military Records considered Mr. Provoo's application and military records on 2 April 1975. Based upon the findings, conclusions and recommendation of the Board, the Under Secretary of the Army on 17 April 1975 directed the correction of military records to show that Mr. Provoo was separated on a Certificate of General Discharge on 2 September 1949. I am inclosing a copy of the Proceedings of the Board and a copy of the decision of the Under Secretary in the matter.

Mr. Provoo will be further advised by the office of The Adjutant General when the necessary administrative procedures have been completed to effect the correction of record directed by the Secretary of the Army. If appropriate, the case will then be referred to the Commander, United States Army Finance and Accounting Center, Attention: Chief, Settlements Operations, Indianapolis, Indiana 46249, for determination of his entitlement to any monetary benefits which may be due as a result of the correction of records.

I regret the delay in processing Mr. Provoo's application. Such delay was the result of the failure of the Board to obtain military records needed in the consideration of his appeal.

Sincerely yours,

(Signed) Raymond J. Williams

2 Incls
1. Board Proceedings
2. Copy of Directive

Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

SFMR
OMPF

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

REFERENCE OR OFFICE SYMBOL	SUBJECT
SFMR - PROVOO, JOHN D. AKA: SHAKA, NICHIJO [redacted]	Correction of Military Records

TO TAGO/RCPAC
SPECIAL DISPATCH VIA AIRMAIL

FROM OSA/ABCMR
Room 1E-517, Pentagon

DATE 28 Apr 75

CMT 1
Mrs. Fravel/74254

Forwarded herewith for appropriate action under the provisions of Paragraph 21, AR 15-185, 4 June 1974, are the decision of the Under Secretary of the Army and the records in the case of the above-named individual(s).

/ / a. Request that the Board Proceedings and Memorandum of the Under Secretary of the Army be placed in the Official Military Personnel File. In view of the denial of the application, no further administrative action is required.

/XXXXXX/ b. Request that necessary administrative action be taken to effect the correction of record indicated. If appropriate, furnish the Commander, United States Army Finance and Accounting Center, Indianapolis, Indiana 46249, a certified copy of the Memorandum for The Adjutant General and such other information as required to effect settlement of claim for pay. Further request that the individual(s) concerned be advised of the correction and that this office be furnished a copy of the action taken.

2 Incl
1. DD Form 149 w/allied papers
2. OMPF

Raymond J. Williams
Executive Secretary
Board for Correction
of Military Records

DA FORM 1 FEB 62 2496 REPLACES DD FORM 96, EXISTING SUPPLIES OF WHICH WILL BE ISSUED AND USED UNTIL 1 FEB 63 UNLESS SOONER EXHAUSTED.

GPO: 1970-407-285

AGUZ-SAD-CO Provoo, John D. (AKA Shaka, Nichijo)
19 052 533 4/131/1

29 APR 1975

Reverend Nichijo Shaka
Honmonbutsuji, P. O. Box 25
Pahoa, HI 96778

1 MAY 1975

Dear Reverend Shaka:

The records have been corrected in accordance with the findings of the Army Board for Correction of Military Records. New separation documents are inclosed.

The Commander, U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249 has been informed of the correction of the records.

Your counsel has been furnished a report of the action taken in your case.

Sincerely,

for Carole Beckett
VERNE L. BOWERS
Major General, USA
The Adjutant General

Inclosures
1. DD FM 257A
2. DA FM 1569

CF: Mr. Steven E. Kroll
Attorney at Law
7th Floor, Aloha Tower
Honolulu, HI 96813

CF: Commander
U. S. Army Finance and Accounting Center
Department 70
Indianapolis, IN 46249
2 INCL
1. CY MEMO FOR TAG w/PROCEEDINGS
2. CY OLD WDAGO FM 53-59 w/cy DA FM 1569

CF: Disabled American Veterans
1221 Massachusetts Avenue, NW
Washington, D. C. 20005

COPY FOR:
☑ ABCMR
☐ ADAB

H. Bickers/Cstm Br./SAD/PSD

[HC.5]

AGUZ-PSD Shaka, Nichijo
19 052 533

30 April 1975

Mr. Steven E. Kroll
7th Floor, Aloha Tower
Honolulu, Hawaii 96811

Dear Mr. Kroll:

I am happy to forward the findings and results of the Army Board for Correction of Military Records.

Additionally, I am inclosing a complete copy of Reverend Nichijo Shaka's military records as you requested.

If I may be of further assistance, please let me know.

Sincerely,

LOUIS J. PROST
Brigadier General, USA
Commanding

Inclosures

CF:
Major S.M. Heller
Assistant Executive Officer
TAGO

FILE: WO1 Peterson/rm/7777

TRANSCRIPT OF MILITARY RECORD

			TYPE OF DISCHARGE OR SEPARATION DISCHARGE
1. LAST NAME - FIRST NAME - MIDDLE INITIAL PROVOO JOHN D		2. SERVICE NUMBER/ SSN RA 19 052 533	3. GRADE AT SEPARATION OR DISCHARGE SGT
4. ARM OR SERVICE AGD	5. COMPONENT RA	6. ORGANIZATION HQ CO FT GEORGE G MEADE MD	
7. DATE OF DISCHARGE OR SEPARATION 2 SEP 49	8. PLACE OF SEPARATION FT JAY NY		9. CHARACTER OF SEPARATION UNDER HONORABLE CONDITIONS
10. DATE OF BIRTH OR AGE AT ENTRY 6 AUG 1917	11. PLACE OF BIRTH SAN FRANCISCO CA		
12. DATE OF INDUCTION NA	13. DATE OF ENLISTMENT 5 SEP 46	14. DATE OF ENTRY INTO ACTIVE SERVICE 5 SEP 46	15. PLACE OF ENTRY INTO SERVICE CP BEALE CA
16. DATE OF DEPARTURE FROM U. S. NONE	17. DATE OF RETURN TO U. S. NONE	18. PRIOR SERVICE YES	

19. REASON AND AUTHORITY FOR SEPARATION
10 USC 1552 (Secretarial Authority)

20. REMARKS (*This space for completion of above items or entry of other items specified in DA Directives*)

Time Lost - 3 days under AW 107

Given by the Department of the Army, Washington, D.C., on 30 April 1975

DA FORM 1 MAY 60 1569 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

UNDESIRABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMP. & TERM OF EN.
Provoo, John D	RA19 052 533	Sgt	AGD	RA 3 Yrs

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
Det of Pnts Walter Reed Gen Hosp Wash 12, D.C.	2 Sept 1949	Separation Point Ft Jay New York

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
1774 Eyes Street, San Francisco, California	6 Aug 1917	San Francisco, Calif.

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPENDENTS
See Item 9	Blue	Black	72	182 Lbs.	0

18. RACE			19. MARITAL STATUS			20. U. S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X			X			X		Unknown

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
	5 Sep 46	5 Sep 46	Camp Beale, California

SELECTIVE SERVICE DATA	26. REGISTERED YES	26. REGISTERED NO	27. LOCAL B. S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
					See Item 9

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i. e., infantry, aviation and markmanship badges, etc.)
Administrative N C O 502	None

32. BATTLES AND CAMPAIGNS

None

33. DECORATIONS AND CITATIONS

None

34. WOUNDS RECEIVED IN ACTION

None

35. LATEST IMMUNIZATION DATES

SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
Unknown	Unknown	Unknown	Unknown

36. SERVICE OUTSIDE CONTINENTAL U. S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
None		

37. TOTAL LENGTH OF SERVICE

CONTINENTAL SERVICE			FOREIGN SERVICE		
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS
2	11	27	0	0	0

38. HIGHEST GRADE HELD: Sgt

39. PRIOR SERVICE

5 Yrs 3 Months 4 Days

40. REASON AND AUTHORITY FOR SEPARATION

AR 615-365 and By order of the Secretary of the Army.

41. SERVICE SCHOOLS ATTENDED

None

42. EDUCATION (Years)

Grammar	High School	College
Unknown		

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
8	2	28	None	None	None	$ None	M W PHOENIX MAJOR FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D. C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None	Allotment	Direct to V. A.				Continue	Continue Only	Discontinue
X		X	X		30 Sep 49	31 Oct 49	$ 6.70			X

RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

3 Days lost under AW 107

56. SIGNATURE OF PERSON BEING SEPARATED: John D. Provoo

57. PERSONNEL OFFICER (Type name, grade and organization—signature): JOHN T CONNOLLY CWO, USA

VOID

1D AGO FORM 1 JUL 47 53-59

SERVICE RECORD COPY

(Affixed to Service Record in accordance with instructions in TM 12-239A.)

22

REQUEST FOR INFORMATION FROM UNIFORMED SERVICES

1. IDENTIFICATION OF VETERAN *(to be completed by Social Security Administration)*

NAME USED IN SERVICE *(Last, first, middle)*	DATE OF BIRTH	DATE OF DEATH	SOCIAL SECURITY NUMBER
PROVOO, John David	08/06/17	--	[redacted]

PERIODS OF ACTIVE MILITARY SERVICE

BRANCH OF SERVICE	DATE ACTIVE DUTY BEGAN	DATE MEMBERSHIP ENDED	SERVICE NUMBER	RATE OR RANK
ARMY	05/14/51 09/05/46	08/17/46 09/02/49	19052533	SSG

PERIODS OF MILITARY RESERVE MEMBERSHIP DATING AFTER DUTY SHOWN ABOVE. IF NONE, CHECK THIS BLOCK. ☐

BRANCH OF SERVICE	DATE MEMBERSHIP BEGAN	DATE MEMBERSHIP ENDED	SERVICE NUMBER	RATE OR RANK

PRESENT STATUS *(or status at death):* ☐ Military Retiree ☒ Discharged *(No current military status)*

2. CERTIFICATION REQUESTED *(Social Security will check applicable blocks)*

☒ active service after Sept. 7, 1939 *(Part A on reverse)* ☐ retired or retainer pay *(Part B on reverse)* ☐ evidence of age or date of birth in military file *(Part C on reverse*

REMARKS BY SOCIAL SECURITY ADMINISTRATION:

Name now being used - Rev. Nichijo Shaka

INSTRUCTIONS FOR UNIFORMED SERVICE OR GSA RECORDS CENTER

In all cases, please verify the veteran's name and service number furnished by the Social Security Administration. If identical with the military file, check "Yes" in the spaces provided on the reverse of this form; if different, check "No" and enter the name and/or service number shown in the military file.

Then certify the information requested by the Social Security Administration in item 2 above. All applicable items in the block are to be filled in by the certifying organization. If you need additional space or remarks are appropriate, use the "Remarks" space on the reverse.

The duplicate copy of this form should be kept in the veteran's military file whenever a certification about retired or retainer pay (Part B) is furnished. If there is ever a subsequent change made in the retirement record which affects the information furnished, the Social Security Administration should be advised accordingly.

PART A – This information permits the Social Security Administration to determine whether the veteran had active military or naval service during World War II (September 16, 1940–July 24, 1947) or post-World War II (July 25, 1947–December 31, 1956) for which military service wage credits may be granted. List each period of service and identify all periods of service designated as "active duty for training."

PART B – Social Security needs this information to determine whether wage credits are precluded because another Federal Agency has determined that a periodic benefit is payable based in whole or part on active military service in World War II or post-World War II.

Military retired pay is based on the WW II or post-WW II period of service, as the case may be, if active service in the period *has ever* been directly credited (used) in establishing eligibility to the retired pay, or in computing the amount of such pay. Transfer to the Fleet Naval (or Marine Corps) Reserve is treated the same as a normal retirement for purposes of completing this form. A decision to retire an individual, when officially approved, constitutes a retirement even though for any reason no retired pay is ever made.

Items 1(c) and (d) – Active service was "used" in establishing eligibility to retired pay if it comprises part of the total minimum service required for retirement according to the provisions of law under which the veteran was actually retired. The fact that he was eligible for retirement under some other provision of law is immaterial.

Item 2(a) – Retired pay is "fixed" when one of several applicable formulas for computing retirement pay is selected. If the individual is given the option of deciding which formula is to be used, the pay is not "fixed" until the selection is made and approved.

Items 2(a), (b) and (c) – A "multiple of active service" is that number used to represent years of active service when computing retirement pay. For purposes of this multiple, fractions of one-half year or more of active service are counted as a whole year. However, when computing longevity retirement and pay from the Public Health Service, the multiple is the last full year.

Item 3 – The terms "active duty" and "active duty for training" have the same meaning as defined in Sec. 102 of Public Law 881, 84th Congress (Servicemen's and Veterans' Survivor Benefits Act).

PART C – This information is requested where proof of the veteran's age is needed to adjudicate his Social Security claim.

The oldest record giving the veteran's date of birth or age should be certified. However, if a later record contains discrepant date of birth or age, certify that record as well. (The "Remarks" block may be used as necessary.)

When certifying *age*, it is important to show the date as of which the age was given. For example, some World War I discharge or separation records may show the veteran's age when he entered service. In this case, the date of entry into service is the "Date As of Which Age Was Given" while the date of discharge may be the "Date Record Established."

SOCIAL SECURITY ADMINISTRATION
224 Haili St
Hilo HI 96720

The information requested in item 2 above is needed by the Social Security Administration to adjudicate a claim based on the account of the above veteran. All available identifying information has been provided.

SIGNATURE OF SSA OFFICIAL: Walter R. Nishan

TITLE: Branch Manager DATE: 07/17/75

FORM SSA-654 (5-67)

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

CERTIFICATION BY UNIFORMED SERVICES

In response to the request on the reverse of this form the following information is hereby certified.

NAME OF VETERAN AS SHOWN IN MILITARY FILE

SAME AS FURNISHED BY SSA ☐ YES ☐ NO

SERVICE NUMBER

SAME AS FURNISHED BY SSA ☐ YES ☐ NO

A–CERTIFICATION ABOUT ACTIVE SERVICE AFTER SEPTEMBER 7, 1939

1. DATE(S) OF ENTRY INTO ACTIVE SERVICE	2. DATE(S) OF SEPARATION FROM ACTIVE SERVICE
(a) 11/1/1941	11/6/1946
(b) 11/11/46	8/26/49

3. CHARACTER OF SEPARATION(S) * *(If Bad Conduct,* INDICATE IF GIVEN AS A RESULT OF A *General* COURT MARTIAL)

Honorable (b) Honorable

*IF CHARACTER OF SEPARATION WAS NOT *Honorable, Under Honorable Conditions, Dishonorable,* NOR *Bad Conduct* AS A RESULT OF A *General* COURT MARTIAL, CHECK REASON FOR SEPARATION BELOW:

a. ☐ DESERTION.

b. ☐ RESIGNATION FOR THE GOOD OF THE SERVICE *(Officers Only).*

c. ☐ CONSCIENTIOUS OBJECTOR WHO REFUSED TO WEAR THE UNIFORM OR OTHERWISE TO COMPLY WITH LAWFUL ORDERS OF COMPETENT MILITARY AUTHORITY.

d. ☐ CONVICTION BY A CIVIL COURT FOR TREASON, SABOTAGE, ESPIONAGE, MURDER, RAPE, ARSON, BURGLARY, ROBBERY, KIDNAPPING, ASSAULT WITH INTENT TO KILL, ASSAULT WITH A DANGEROUS WEAPON, OR OF AN ATTEMPT TO COMMIT ANY OF THESE CRIMES.

e. ☒ NONE OF THE ABOVE.

4. *If period of service was less than 90 days,* WAS INDIVIDUAL DISCHARGED OR RELEASED FROM ACTIVE SERVICE AS RESULT OF INJURY OR DISABILITY INCURRED OR AGGRAVATED IN SERVICE IN LINE OF DUTY?

☐ YES ☐ NO

5. IF A PERIOD OF SERVICE HAD AN ENTRY DATE AFTER 12/31/46 AND BEFORE 12/16/50, BY WHICH OF THE FOLLOWING WAS ENTRY EFFECTED?

☐ VOLUNTARY ENLISTMENT ☐ INDUCTION THROUGH MILITARY DRAFT ☐ CALL OR RECALL FROM MILITARY RESERVE

B–SERVICE DEPT. CERTIFICATION ABOUT RETIRED OR RETAINER PAY *(See instructions on reverse side)*

IF THE VETERAN WAS NEVER RETIRED or TRANSFERRED TO THE FLEET RESERVE, check this box. . . . ☐
Sign and return the form without answering items 1, 2 and 3 below.

1. (a) Was this veteran an enlisted member of the Army, Air Force, Navy, Marine Corps, or Coast Guard and retired after September 15, 1940, and before October 1, 1949, because of disability? . . . . . ☐ Yes ☐ No

   (b) Was this veteran ever retired or transferred to the Fleet Naval (or Marine Corps) Reserve after September 15, 1940, for any reason other than disability which is the proximate result of the performance of active duty? . . . . . ☐ Yes ☐ No

   If answer to 1 (a) or 1 (b) is "Yes," answer (c) and (d).

   (c) Was active service after September 15, 1940, and before July 25, 1947, used to establish eligibility to receive retirement or retainer pay? . . . . . ☐ Yes ☐ No

   (d) Was active service after July 24, 1947, and before January 1, 1957, used to establish eligibility to receive retirement or retainer pay? . . . . . ☐ Yes ☐ No

2. (a) Has the retirement (or retainer) pay of this individual ever been fixed under a formula which includes a multiple of active service? . . . . . ☐ Yes ☐ No

   If answer is "Yes," answer (b) and (c).

   (b) Was this multiple increased because of active service occurring after September 15, 1940, and before July 25, 1947? . . . . . ☐ Yes ☐ No

   (c) Was this multiple increase because of active service occurring after July 24, 1947, and before January 1, 1957? . . . . . ☐ Yes ☐ No

3. Did the veteran have active duty or active duty for training after December 31, 1956? . . . ☐ Yes ☐ No

C–CERTIFICATION OF EVIDENCE OF AGE OR DATE OF BIRTH IN MILITARY FILE

NAME OF RECORD OR DOCUMENT	DATE RECORD ESTAB.	PLACE OF BIRTH

DATE OF BIRTH	AGE *(If date of birth not given)*	DATE AS OF WHICH AGE WAS GIVEN *(e.g., date of entry)*

REMARKS BY CERTIFYING ORGANIZATION

8-26-75

NAME OF CERTIFYING ORGANIZATION

SIGNATURE [redacted]

RANK OR TITLE

DATE 6/17/77

For use of this label, see AR 340-15; the proponent agency is The Adjutant General's Office.

SUSPENSE

FREEDOM OF INFORMATION
ACT REQUEST

Do NOT remove until action is completed

DA LABEL 114, 1 Feb 69

* U.S. GOVERNMENT PRINTING OFFICE : 1962 O—657681

ROY SHIGEMASA OSAKI

Col Jones:

Pursuant to your instructions of 14 Apr, I have searched this file (Provo) for the above name, and do not find it -

MSH

15 Apr 54

PRISONER OF WAR (POW) MEDAL APPLICATION/INFORMATION

(Please read Privacy Act Statement and instructions on reverse before completing form. All entries should be typed or printed. If more space is needed, continue in remarks block on reverse.)

Form Approved
OMB No. 0704-0288
Expires Jan 31, 1991

SECTION I - PRISONER OF WAR IDENTIFICATION DATA

1. NAME OF PRISONER OF WAR *(Last, First, Middle)* Provoo, John David	**2. SOCIAL SECURITY NUMBER** [redacted]	**3. VA CLAIM NUMBER** Unknown
4. SERVICE NUMBER 1905 25 33	**5. PLACE OF BIRTH** San Francisco, CA	**6. DATE OF BIRTH** 8/6/17
7. BRANCH OF SERVICE RA	**8. DATE CONFINED AS POW** May 6, 1942	**9. UNIT OF ASSIGNMENT/ATTACHMENT WHEN CAPTURED** Headquarters Company, AG Section, Philippine Dept. (ADM NCO 502)
10. DATE RELEASED AS POW Sept., 1945		

11. ADDITIONAL INFORMATION *(Place of imprisonment, disposition after release, or escape, recapture and release data)*

Captured with fall of Corregidor, PI; concentration camp on Corregidor; Bilibid Prison, Manilla; Karenko and Shirakawa, Taiwan; Omori and Bunkwa camps, Tokyo until liberation, Sept., 1945.

NOTE: PLEASE INCLUDE THE FOLLOWING DOCUMENTATION WITH APPLICATION

- If available, attach copies of WD AGO Form 53-55, DD Form 214, or other appropriate separation document issued at that time confirming POW Status.
- If available, attach copies of documents specifying POW status, i.e., telegram notification to next of kin, POW identification card, newspaper articles.

12. CURRENT STATUS *(X one)*								**13. DATE OF RETIREMENT, DISCHARGE, OR DEATH**
	a. Reserve		b. Retired	X	c. Discharged		d. Deceased	Aug. 17, 1946

SECTION II - APPLICANT INFORMATION / FORWARDING INSTRUCTIONS

14.a. APPLICANT RELATIONSHIP TO POW *(X one)*

	(1) Same person identified in Section I
	(2) Next of Kin *(Specify relationship)*
	(3) Surviving Spouse
	(4) Other *(Specify)*

b. TYPED OR PRINTED NAME
John David Provoo

c. COMPLETE MAILING ADDRESS OF APPLICANT *(Please type or print) (List Name, Street Number, City, State, and ZIP Code)*
2620 Kilauea St., A, # 2,
Hilo, HI 96720

d. TELEPHONE NUMBER *(Include Area Code)*
(No phone)

e. DATE SIGNED
1/5/89

f. SIGNATURE
John David Provoo

15. FORWARD POW MEDAL *(X one)*

X	a. Directly to applicant *(Address shown in Item 14c).*
	b. To the person / organization shown below who has agreed to receive and present medal *(Complete Item 16). (List Name, Organization, Street, Number, City, State, and ZIP Code)*

16. RELEASE AUTHORIZATION, IF REQUIRED

I hereby authorize release of the requested POW medal to the person/organization indicated in Block 15.b.

(Veteran or Next of Kin Signature)

DD Form 2510, FEB 88

577/047

[3,2]

INSTRUCTIONS

- Use typewriter or print legibly all information when completing this form. Submit in original copy only. Complete all items. If the question is not appropriate, type or print "NONE." If requested information is unknown, type or print "UNKNOWN." Attach copies of all documentation available in support of your request.
- If space is insufficient, continue [redacted] 17, "Remarks," below.
- All applications for POW Medals MUST show Service Number if POW status existed prior to 1970.
- Veterans organizations, public officials, etc., are authorized to receive applications from eligible individuals or next of kin, forward them to the appropriate address listed below, and ask that medals be returned to them for subsequent presentation.
- For information on the POW Medal or to obtain copies of this form, you may call the following toll-free telephone number: 1-800-873-3768.

MAIL COMPLETED APPLICATION TO THE APPROPRIATE ADDRESS LISTED BELOW

ARMY	NAVY / MARINE CORPS / COAST GUARD	U.S. AIR FORCE *(Including former Army Air Corps Personnel)*
U.S. Army Reserve Personnel Center ATTN: DARP-PAS-EAW 9700 Page Boulevard St. Louis, Missouri 63132-5200	U.S. Navy Liaison Office National Personnel Records Center 9700 Page Boulevard St. Louis, Missouri 63132-5199	Air Force Reference Branch National Personnel Records Center 9700 Page Boulevard St. Louis, Missouri 63132-5199

17. REMARKS

Very grateful for the recognition, which will be proudly received on behalf of the many who gave their lives in the cause of freedom.

Privacy Act Statement

AUTHORITY: 10 USC 1128; 44 USC 2907, 3101, and 3105; and EO 9397, November 1943 (SSN).

PRINCIPAL PURPOSE: To assist the facility servicing the records in locating those records and verifying entitlement to the POW Medal.

ROUTINE USE: May be used by eligible individuals, their representatives, or next of kin to request issue of the POW Medal.

DISCLOSURE: Voluntary; however, if the requested information is known and withheld, it may not be possible to determine an entitlement to the POW Medal.

DD Form 2510 Reverse, FEB 88

John David Provoo

[redacted]

U. S. Army Reserve Personnel Center
ATTN: DARP-PAS-EAW
9700 Page Boulevard
St. Louis,
MISSOURI 63132-5200

THIS IS DOCUMENT: DOC-7-13PW

Input

PRO[illegible] NOL SLIP FOR PAS-EAW-PW

RECORD STATUS:

[illegible] John Dacus

TYPE OF INQUIRY: Tx

DATE OF INQUIRY: 1-5-89

[illegible] 1850

MSN: 19052533

DATE RECEIVED: 2-3-89

[illegible]

[illegible] UNS: 788

ANALYSTT: 799

POW MEDAL WORK SHEET

AWARDS AND VA BENEFITS
Entitlements Branch
Personnel Services Directorate

8 FEB 89
Date

NAME PROVOO, JOHN DAVID

SSN/SN [redacted] / 19052533

TURN-A-ROUND-LETTER DATED

REASON

APPROVED: DA FORM 1577 DATED 9 FEB 89

DISAPPROVED: LETTER DATED

REASON

MAILING ADDRESS
JOHN D. PROVOO
[redacted]

HOLLAND -799
Analyst's Last Name

IN WW2 BOOK

DARP FORM 3583, 1 Jan 88

IN REPLY REFER TO
DARP-PAS-EAW
PROVOO, JOHN D.
19052533

DEPARTMENT OF THE ARMY
ARPERCEN
ST. LOUIS, MO. 63132-5200

AUTHORIZATION FOR ISSUANCE OF AWARDS

TO: Commander
US Army Support Activity
Philadelphia, PA 19101

DATE 02/15/89

CODE NUMBERS FOR AWARDS

1	MEDAL OF HONOR	14	PURPLE HEART	27	NATIONAL DEFENSE SERVICE MEDAL	40	SERVICE STAR
2	DISTINGUISHED SERVICE CROSS	15	GOOD CONDUCT MEDAL	28	KOREAN SERVICE MEDAL	41	BRONZE ARROWHEAD
3	DEFENSE DISTINGUISHED SERVICE MEDAL	16	PRESIDENTIAL UNIT EMBLEM	29	ANTARTICA SERVICE MEDAL	42	FRENCH FOURRAGERE
4	DISTINGUISHED SERVICE MEDAL	17	MERITORIOUS UNIT EMBLEM	30	ARMED FORCES EXPEDITIONARY MEDAL	43	BELGIAN FOURRAGERE
5	SILVER STAR	18	VALOROUS UNIT EMBLEM	31	VIETNAM SERVICE MEDAL	44	NETHERLANDS ORANGE LANYARD
6	LEGION OF MERIT	19	WOMEN'S ARMY CORPS SERVICE MEDAL	32	ARMED FORCES RESERVE MEDAL	45	PHILIPPINE DEFENSE RIBBON
7	DISTINGUISHED FLYING CROSS	20	AMERICAN DEFENSE SERVICE MEDAL	33	ARMY RESERVE COMPONENTS ACHIEVEMENT MEDAL	46	PHILIPPINE LIBERATION RIBBON
8	SOLDIER'S MEDAL	21	AMERICAN CAMPAIGN MEDAL	34	COMBAT INFANTRYMAN BADGE	47	PHILIPPINE INDEPENDENCE RIBBON
9	BRONZE STAR MEDAL	22	ASIATIC-PACIFIC CAMPAIGN MEDAL	35	EXPERT INFANTRYMAN BADGE	48	UNITED NATIONS SERVICE MEDAL
10	MERITORIOUS SERVICE MEDAL	23	EUROPEAN-AFRICAN-MIDDLE EASTERN CAMPAIGN MEDAL	36	COMBAT MEDICAL BADGE	49	REPUBLIC OF VIETNAM CAMPAIGN RIBBON W/DEVICE (1960)
11	AIR MEDAL	24	WW II VICTORY MEDAL	37	EXPERT FIELD MEDICAL BADGE	50	
12	JOINT SERVICE COMMENDATION MEDAL	25	ARMY OF OCCUPATION MEDAL	38	LETTER "V" DEVICE	51	
13	ARMY COMMENDATION MEDAL	26	MEDAL FOR HUMANE ACTION	39	OAK LEAF CLUSTER	52	

The Secretary of the Army directs that the following awards be engraved according to current regulations and issued to address shown below. (Engraving to be as indicated in classification or below.)

AWARD CODE	STARS		OAK LEAF CLUSTERS		ARROW-HEAD	CLASP
	BRONZE	SILVER	BRONZE	SILVER		
		POW MEDAL				
		///NOTHING FOLLOWS///				

GOLD STAR LAPEL BUTTON

ENGRAVE

ISSUE ☐ COST ☐ GRATUITOUSLY

TYPE ☐ CLUTCH ☐ PIN

REMARKS

There will be a delay in shipment of POW Medals. It is expected that the U.S. Army Support Activity, Phildelphia, PA will issue the award 90 to 120 days from date of this correspondence.

US ARMY SUPPORT CENTER
PHILADELPHIA, PENNSYLVANIA 19101
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE ARMY
DOD - 314

RICHARD W. PEDERSON
LTC, U.S. Army
Assistant Adjutant General

MR JOHN D. PROVOO
[redacted]

DA FORM 1 NOV 75 1577

REPLACES EDITION OF 1 JUL 66, WHICH WILL BE USED.

5

Y 019 05 2533

019 05 2533	PROVOO JOHN D	QT	W070542	290845
019 05 2533	PROVOO JOHN D	QM	C 0155	010 097
019 05 2533	PROVOO JOHN D	QM	P 0000	015 342
019 05 2533	PROVOO JOHN D	AR	B 1 682	739
019 05 2533	PROVOO JOHN D	AR	V 0 101	890
019 05 2533	PROVOO JOHN D	QT	P 7298	010 030

17-12

Army of the United States

SEPARATION QUALIFICATION RECORD

SAVE THIS FORM. IT WILL NOT BE REPLACED IF LOST

This record of job assignments and special training received in the Army is furnished to the soldier when he leaves the service. In its preparation, information is taken from available Army records and supplemented by personal interview. The information about civilian education and work experience is based on the individual's own statements. The veteran may present this document to former employers, prospective employers, representatives of schools or colleges, or use it in any other way that may prove beneficial to him.

1. LAST NAME—FIRST NAME—MIDDLE INITIAL		
PROVOO, JOHN D		
2. ARMY SERIAL No.	3. GRADE	4. SOCIAL SECURITY No.
19 052 533	S SGT	Unknown

5. PERMANENT MAILING ADDRESS (*Street, City, County, State*)

1774 Hayes St
San Francisco 17 San Francisco Co Calif

6. DATE OF ENTRY INTO ACTIVE SERVICE	7. DATE OF SEPARATION	8. DATE OF BIRTH
14 May 1941	17 Aug 1945	6 Aug 1917

PLACE OF SEPARATION

SEPARATION CENTER
FORT DIX, NEW JERSEY

MILITARY OCCUPATIONAL ASSIGNMENTS

10. MONTHS	11. GRADE	12. MILITARY OCCUPATIONAL SPECIALTY
9	S Sgt	Administrative NCO 502

SUMMARY OF MILITARY OCCUPATIONS

13. TITLE—DESCRIPTION—RELATED CIVILIAN OCCUPATION

ADMINISTRATIVE NCO 502: Served with the Headquarter Philippine Department in the Pacific Theater as an administrative NCO for 9 months. Prior to capture and during capture maintained complete causality records for military personnel. Performed numerous clerical and typing duties including the preparation of casality records and forms. Was an expert typist. Additional duties included indexing, filing, and record keeping. Was prisoner of war from March 1942 to September 1945.

WD AGO FORM JUL 1945 100

This form supersedes WD AGO Form 100, 15 July 1944, which will not be us

ENLISTED RECORD AND REPORT OF SEPARATION

HONORABLE DISCHARGE

1. NAME - LAST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
[illegible]ON D	19 [illegible] 533	S SGT	INF	ERC

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
HQ [illegible]IPPINE DEPT	17 AUG 46	SEP CTR FT DIX NJ

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
177½ HAYES ST SAN FRANCISCO CALIF	6 AUG 17	SAN FRANCISCO CALIF

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND.
SEE 9	BL	BN	6-1	180 LBS.	1

18. RACE: WHITE	NEGRO	OTHER (specify)	19. MARITAL STATUS: SINGLE	MARRIED	OTHER (specify)	20. U.S. CITIZEN: YES	NO	21. CIVILIAN OCCUPATION AND NO.
X				X		X		BANK CLERK 0-98.810

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
	14 MAY 41	14 MAY 41	SAN FRANCISCO CALIF

SELECTIVE SERVICE DATA	26. REGISTERED: YES	NO	27. LOCAL S.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
	X		UNKNOWN	SAN FRANCISCO CALIF	SEE 9

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i.e., infantry, aviation and marksmanship badges, etc.)
ADM NCO 502	NONE

32. BATTLES AND CAMPAIGNS

PHILIPPINE ISLANDS
GO 33 WD 45 AS AMENDED

33. DECORATIONS AND CITATIONS AMERICAN DEFENSE SERVICE MEDAL
ASIATIC PACIFIC CAMPAIGN MEDAL DISTINGUISHED UNIT BADGE W/2 OLC
GOOD CONDUCT MEDAL WORLD WAR II VICTORY MEDAL

34. WOUNDS RECEIVED IN ACTION

NONE

35. LATEST IMMUNIZATION DATES: SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
NONE RECORDED			

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN: DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
21 JUN 41	WPTO	JUL 41
18 APR 46	USA	18 APR 46

37. TOTAL LENGTH OF SERVICE: CONTINENTAL SERVICE YEARS	MONTHS	DAYS	FOREIGN SERVICE YEARS	MONTHS	DAYS	38. HIGHEST GRADE HELD
0	5	6	4	9	28	S SGT

39. PRIOR SERVICE

NONE

40. REASON AND AUTHORITY FOR SEPARATION

CONV OF THE GOVT AR 615 365 15 DEC 44 & RR 1-1 DEMOB

41. SERVICE SCHOOLS ATTENDED	42. EDUCATION (Years): Grammar	High School	College
NONE	8	4	3

NO 1012

PAY DATA

43. LONGEVITY FOR PAY PURPOSES: YEARS	MONTHS	DAYS	44. MUSTERING OUT PAY: TOTAL	THIS PAYMENT	45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
5	3	4	$ 300	$ 100	NONE	$ 157.00	$325.33 JM BARNETTE LT COL FD

INSURANCE NOTICE

IMPORTANT — IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D.C.

48. KIND OF INSURANCE: Nat. Serv.	U.S. Govt.	None	49. HOW PAID: Allotment	Direct to V. A.	50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO: Continue	Continue Only	Discontinue
X			X		31 AUG 46	30 SEP 46	$ 6.70	X		

54. RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

LAPEL BUTTON ISSUED ASR SCORE 2SEP45: 139
NO DAYS LOST UNDER AW 107

56. SIGNATURE OF PERSON BEING SEPARATED: [signature]

57. PERSONNEL OFFICER (Type name, grade and organization - signature)
PATRICK JORDAN
CAPT SIG C
[signature]

WD AGO FORM 53 - 55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

5. VETERANS ADMINISTRATION REGIONAL OFFICE COPY
(To: Regional Office responsible for address shown in Item 9)

SSN [redacted] NAME PR T/C ST ROUT PAS-EAW DATE 890920
NEGATIVE

[3,11]

SSN [redacted] NAME PROVOO T/C ST ROUT PAS-EAW DATE 890920
NEGATIVE

AR V 1798
PROVOO, JOHN D.
19 052 533

Deleted V101890 and
B1682739
3/8/90
WCT

PROVOO, JOHN D

19052533

[1'9]