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TAKANO, MASAYOSHI

(21 OCT 1946)

(154039)

0002

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Case of  
Sergeant Takano, Masayoshi, Imperial Japanese Army.  
October 21, 1946

RECORD OF PROCEEDINGS  
of a  
MILITARY COMMISSION  
Convened at  
United States Pacific Fleet,  
Commander Marianas  
Guam, Marianas Islands,  
by order of  
Commander Marianas Area.

**RECEIVED**  
10 DEC 1946  
OFFICE OF JUDGE  
ADVOCATE GENERAL  
G. C. M. SECTION

154039

0003

TAKANO, MASAYOSHI  
 Sergeant, Imperial Japanese Army.  
 Trial by Military Commission  
 At Guam  
 Marianas Islands.  
 October 21, 1946.

INDEX	Page
Organization of Commission.....	1
Introduction of counsel.....	1
Challenges.....	1, 2
Members, Judge Advocates, Reporters sworn.....	3, 10
Arraignment.....	4, 5
Pleas.....	5
Adjournments.....	17, 22
Prosecution rests.....	17
Defense rests.....	18
Findings.....	19
Sentence.....	21

TESTIMONY

Name of witness	Direct and Redirect	Cross and Recross	Commission
Prosecution			
Ito, Kikuji, lieutenant colonel, IJA.	6	8	
Kido, Matsutaro, superior private, IJA.	11	13	
Frederick A. Savory.	15		
Defense			
Toda, Masanao, civilian	19		

EXHIBITS

Exhibit	Character of	Admitted in evidence.
1	Statement of Takano, Masayoshi, Sergeant, IJA.	16
2	English translation of "Exhibit 1".	16
3	Statement by Sergeant Kishimoto, Masao, IJA, in Japanese, in behalf of the accused.	20
4	English translation of "Exhibit 3".	20
5	Statement by Captain Nakano, Masani, IJA, in Japanese, in behalf of the accused.	20
6	English translation of "Exhibit 5".	20

0004

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12  
13-JDM-gmr

Serial: 12841

15 October 1946.

From: The Commander Marianas Area.  
To: Rear Admiral Arthur G. ROBINSON, U. S. Navy.

Subject: Precept for a Military Commission.

1. Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area and further by the specific authority vested in me by the Commander-in-Chief, U. S. Pacific Fleet (CinCPac conf. serial 0558, of March 8, 1946), and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas, and by the Judge Advocate General of the Navy (JAG despatch 311730Z, August 1946), a Military Commission is hereby ordered to convene at the Headquarters, Commander Marianas on Guam, Marianas Islands, at 10 o'clock a.m. on Monday, October 21, 1946, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The Military Commission is composed of the following members, any five of whom are empowered to act, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President,  
Colonel Adolph L. RAMON, Army of the United States,  
Colonel Douglass G. PAMPLIN, Army of the United States,  
Lieutenant Colonel Adolph ZUBER, U. S. Marine Corps,  
Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy,  
Commander Vance O. SMITH, U. S. Naval Reserve, and of

Lieutenant Daniel FLYNN, U. S. Naval Reserve, Lieutenant Edward L. FIELD, U. S. Naval Reserve, and Lieutenant Fredric T. SUSS, U. S. Naval Reserve, as judge advocates, any of whom is authorized to act as such.

Commander Martin E. CARLSON, U. S. Naval Reserve, Lieutenant Commander Donald H. DICKEY, U. S. Naval Reserve, and Masanao TODA, and Kenro ITO, of Tokyo, Japan, both furnished by the Japanese Government, all of whom are lawyers, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by accused.

Observers designated by the French and Swiss Governments are authorized to attend trials wherein an accused is alleged to have unlawfully killed French and Swiss nationals. A duly accredited native of the Marshall Islands is also authorized to participate as an observer in any trial of an accused charged with offenses against Marshallese.

3. The Military Commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over all persons in the custody of the convening authority at the time of the trial.

CERTIFIED TO BE A TRUE COPY

"A" - 1 -

*Edward L. Field*  
Lieutenant U.S.N.R.

0005

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12/  
13-JDM-gmr

15 October 1946.

Serial: 12841

Subject: Precept for a Military Commission. (continued).

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charged with war crimes committed against United States nationals, persons referred to in the despatch of the Judge Advocate General of the Navy cited in paragraph one (1) above, and any white person whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established.

4. The Military Commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper.

5. The proceedings of the Military Commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals,") as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

6. This commission is hereby authorized and directed to take up the cases of Lieutenant TOMITA; Ryoji, IJN, Captain TANAKA, Masaharu, IJN, et al, and Sergeant TAKANO, Masayoshi, IJA, ordered tried by charges and specifications dated respectively 26 August 1946, 26 August 1946, and 16 September 1946, and such other cases as may be now pending before the Military Commissions of which Rear Admiral Arthur G. Robinson, U. S. Navy, is President, convened respectively by my precepts of August 2, 1946 and August 24, 1946, except such cases the trial of which may have been commenced.

7. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of the commission. Specific orders for such relief are necessary.

8. Power of adjournment is granted the commission, and adjourned sessions may be held at such times and at such places as the commission may determine.

C. A. FOWNALL,  
Rear Admiral, U. S. Navy,  
The Commander Marianas Area.

CERTIFIED TO BE A TRUE COPY

*Edward L. Field*  
Lieutenant, U.S.N.

- 2 -

0006

Copies to:  
Members of the Commission.  
Judge Advocates.  
Judge Advocate General, U. S. Navy.

Certified to be a true copy:

Fredric T. Suss,  
Lieutenant, USNR,  
Judge Advocate

CERTIFIED TO BE A TRUE COPY

*Edward L. Field*  
Lieutenant USNR.

048 -3-

0007

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12/  
13-JDM-ro

11410

16 September 1946.

Serial: ~~11409~~

From: The Commander Marianas Area.  
To : Lieutenant Daniel FLYNN, USNR, and/or  
Lieutenant Edward L. FIELD, USNR, and/or  
Lieutenant Fredric T. SUSS, USNR, and/or  
your successors in office as Judge Advocates,  
Military Commission, Commander Marianas.

Subject: Charge and Specification - in the case of:  
Sergeant TAKANO, Masayoshi, Imperial Japanese Army.

1. The above named person will be tried before the Military Commission of which you are Judge Advocate upon the following charge and specification. You will notify the President of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE

MURDER

SPECIFICATION

In that TAKANO, Masayoshi, then a sergeant, Imperial Japanese Army, attached to the 307th Independent Infantry Battalion, First Mixed Brigade, military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands, and while so serving at said military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands, acting jointly with ITO, Kikuji, then a lieutenant colonel, IJA, HIGASHIGI, Seiji, then a captain, IJA, IKAWA, Shigeo, then a first lieutenant, IJA, SHIMURA, Hisao, then a leading private, IJA, and other persons unknown, in pursuance of a common intent, did, on or about 7 August, 1944, on Chichi Jima, Bonin Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by bayoneting with a fixed bayonet, an American prisoner of war, name to the relator unknown, then and there held captive by the armed forces of Japan, this in violation of the laws and customs of war.

*C. A. Pownall*  
C. A. POWNALL,  
Rear Admiral, U.S. Navy,  
The Commander Marianas Area.

Copy to:  
Judge Advocate General.

"B"

0008

Received a true and correct copy, both in English and Japanese, of this charge and specification on the 16<sup>th</sup> day of September, 1946.

高野正義  
Takano, Masayoshi.

The above receipt was translated to the accused by me on this 18<sup>th</sup> day of September, 1946.

Ernest S. Kirsch  
English Japanese interpreter.

Received a true and correct copy, both in English and Japanese, of this charge and specification on the 16th day of September, 1946.

RECEIVED  
1946

TO :  
FROM :

DATE:

11-10-46  
WTC-5/11/46

OFFICE OF THE PROSECUTOR GENERAL  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

0009



昭和二十二年九月十六日

弁マリアナ方面司令官

宛 マリアナ方面司令部附法務官

米國海軍大尉「タニエル」

米國海軍大尉「エドワードルネール」

米國海軍大尉「フレドリックトマス」

或ハ法務官トシテノ貴官等ノ役仕者

記

大日本帝國陸軍軍曹 高野正義

前記ノ者ハ貴官ガ法務官タル軍法會議ニ

於テ後記ノ告訴並ニ罪狀項目ニツキ、裁判

セラルベシ。貴官ハ裁判長ニ之ヲ報告シ、被告

ニ裁判ノ日時ヲ通知シ原告並ニ被告ノ

全證人ヲ集合セシムベシ。

Certified to be a true translation. "C" (1)

Frederick F. Tremayne  
Lt(jg) USNR

0010

告 訴  
殺 人

罪 狀 項 目

大日本帝國陸軍軍曹(當時)高野正義八小堂原  
列島父島所在、大日本帝國陸軍第一混成旅團  
第三獨立步兵大隊二處勤務中、大日本帝國  
陸軍中佐(當時)伊藤喜久三、大日本帝國陸軍大尉  
(當時)東本誠治、大日本帝國陸軍中尉(當時)井川繁雄  
大日本帝國陸軍兵長友村久雄、其ノ他不詳  
者ト共同テ、共通ノ目的達成ノ為、了力ニ奮發  
國ト大日本帝國トガ戰爭狀態ニ在リタル昭和九  
年八月七月頃、意思的ニ違法的ニ企圖ト悪意ヲ  
以テ正當ナ理由モテ、適當トシテ公判其他然ルキ  
ヲ續キモモズ大日本帝國軍隊ノ中ニ抑留シテリシ  
姓名不詳ノ米作隊一名ヲ着ケタ銃劊ヲ空キ刺  
シタルヨリ殺害セリ、爾ト右行爲ハ戰爭  
法規並ニ慣習ニ違反シタルモノナリ。

「コリア」方面司令官

米國海軍少將

~~シム・ボウネル~~  
シム・ボウネル

Certified to be a true translation (2)  
Frederick F. Dumayre  
#637 USNR

FIRST DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, October 21, 1946.

The commission met at 10:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Colonel Adolph L. Ramon, Army of the United States,  
Colonel Douglass G. Pamplin, Army of the United States,  
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,  
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,  
Commander Vance O. Smith, U. S. Naval Reserve, members, and  
Lieutenant Edward L. Field, U. S. Naval Reserve, and  
Lieutenant Fredric T. Suss, U. S. Naval Reserve, judge advocates.

Earl J. Criego, Platoon Sergeant, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Vivian Kilner, civilian, as reporter.

The accused requested that Commander Martin E. Carlson, U. S. Naval Reserve, and Mr. Masanao Toda and Mr. Kenro Ito act as his counsel. Commander Carlson, Mr. Toda and Mr. Ito took seats as counsel for the accused.

The judge advocate read the precept, copy prefixed marked "A".

An interpreter read the precept in Japanese.

The judge advocate did not object to any member.

The accused objected to Lieutenant Colonel Adolph Zuber, U. S. Marine Corps, because he sat as a member of the military commission which tried General Tachibana, Private Kido and other persons upon charges based on the same transaction concerning which the accused is on trial, and further that Colonel Zuber was a member of the military commission which heard this accused testify and admit by incriminating answers to questions put to him by the prosecution certain very damaging statements which cannot but prejudice the challenged member against the accused. The accused asked that the challenged member admit that he did sit as a member of the said military commission and that therefore in accordance with section 388 (e) Naval Courts and Boards, this commission sustain his objection to Lieutenant Colonel Zuber as a member of this commission. The accused further asked that this commission when ruling on his challenge announce in open court and read into the record any basis for any rulings which it makes regarding this challenge.

The judge advocate made the following statement:

Before the challenged member replies and with the permission of the Commission, I would like to read two dispatches for the consideration and guidance of the Commission in view of the challenge of the accused.

The president directed the judge advocate to read the dispatches in question.

The judge advocate read a dispatch as follows:

From: Commander Marianas

Action to: SecNav (JAG)

Info to: CinCPac/Pea

Subject is challenge of members Military Commission trying War Crimes X

JAG (WAR CRIMES DIVISION) 062125 March permits Military Commission relax rules for Naval Courts to meet necessities of trial x Interpret this to permit Military Commission when authorized by Convening Authority to relax rule stated in Section 388 (Easy) Naval Courts and Boards x Unless otherwise instructed propose to direct commission to deny challenge of member when challenged member declares in open court that he can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission x The rules of evidence prescribed for the trial x The customs of war in like cases and his own conscience x Estimate approximately twenty suspected war criminals from Chichi Jima will be tried in the future for different offenses growing out of similar state of facts x There is personnel available for only one military commission x If new commission required for each trial war crimes trials will be indefinitely delayed x Acknowledge xx Date 4 July 1946. Date Time Group 042355.

The judge advocate then read another dispatch as follows:

From: JAG

Action to: ComMarianas

Info to: CinCPac/Pea.

Interpretation and proposed action contained urdis 042355 approved x Consider SCAP Rule 3 pertinent xx Date 10 July 1946. Date Time Group 101635.

An interpreter read both of these dispatches in Japanese.

The challenged member replied as follows:

I acknowledge that the statements of the defense counsel are substantially correct; however, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared. The challenged member withdrawing.

The commission was open<sup>d</sup>. All parties to the trial entered; the commission announced that the objection of the accused was not sustained. CLF

The accused objected to Rear Admiral Arthur G. Robinson because he sat as a member of the military commission which tried General Tachibana, Private Kido, Lieutenant Colonel Ito, Captain Higashigi, First Lieutenant Ikawa, Private Shimura and other persons upon charges based on the same transaction concerning which the accused is on trial, and further that Admiral Robinson was a member of the military commission which heard this accused testify and admit by incriminating answers to questions put to him by the prosecution certain very damaging statements which cannot but prejudice the challenged member against the accused, Takano. He asked that the challenged member admit that he did sit as a member of the said military commission and that therefore in accordance with Section 388 (E), Naval Courts and Boards, this commission sustain his objection to Rear Admiral Robinson as a member of this commission. He further asked that this commission when ruling on his challenge, announce in open court and read into the record the basis for any rulings which it make<sup>s</sup> regarding the challenge. CLF

The judge advocate stated that the two dispatches read previously should also be considered by the commission in ruling upon this challenge by the accused.

The challenged member replied as follows:

I acknowledge that the statements of the defense counsel are substantially correct; however, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared. The challenged member withdrawing.

The commission was opened. All parties to the trial entered; the commission announced that the challenge of the accused was not sustained.

The judge advocates, each member and the reporter were duly sworn.

The judge advocate introduced Lieutenant (junior grade) Frederick F. Tremayne, U. S. Naval Reserve, Mr. Fred Savory, and Mr. Sam Ueda, as interpreters, and they were duly sworn.

The accused stated that he had received a copy of the charge and specification preferred against him, both in English and Japanese, on September 18, 1946.

The judge advocate asked the accused if he had any objection to make to the charge and specification.

The accused replied in the affirmative, stating as follows:

I object to the charge and the specification because although it is designated murder it does not follow the sample specification in Section 53 of Naval Courts and Boards. The statement that the accused did kill is

a conclusion of the pleader instead of a statement of fact, and does not make a good specification for the charge of murder. If this is only a violation of the laws and customs of war, then I ask that the particular law or custom of war be set out in the specification in order that the accused be fully advised of all the circumstances so as to enable me to make any defense I may have to this charge. I further object because the particular law or custom of war is not set out in the specification, and thus I am not able to properly prepare my defense which may well be a defense of a plea in bar as to the jurisdiction of this commission to try this case or the jurisdiction of this commission to try violations of the laws and customs of war.

CLF

The objection of the accused was read in Japanese by an interpreter.

The accused further objected to the charge and specification as follows:

Gentlemen of the Commission:

The defendant Takano objects to the charge in this case. The prosecution persists that the defendant, Takano, then a sergeant, IJA, did, on or about 7 August 1944, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill by bayoneting with a fixed bayonet, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the laws and customs of war. However, we persist that there are no laws and customs of war which can be applied to this case.

CLF

First, the prosecution will insist in this case, as follows: The charge is that of murder which is one of man's oldest vices, originating with Cain and Abel. It is highly proper that murder is considered a war crime. The accused, charged with murder in this case, was thoroughly aware that his act was both illegal and unjust. Malice is not necessarily meant in the law a malignant spirit, a malignant intention to produce a particular evil.

If a man intentionally does a wrongful act, an act which he knows is likely to injure another, that in the law is malice.

We maintain that the prosecution is mistaking law for morals. Murder cannot always form a crime immediately. However malicious it may be, we can not punish if we have no laws or regulations to decide it. Generally speaking, it is a definite criminal theory of the world that no crime can be existent without any criminal intent. Though the charge states: "wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, or without proper trial or other due process," the defendant, Takano, was then attached to the 3rd Section of the 3rd Company of the 307th Independent Infantry Battalion, Chichi Jima, he did not commit the so-called murder. As I stated above, it is a mistake to regard "murder" as "one of man's oldest vices originating with Cain and Abel" and to insist that murder is considered a war crime. CL7

The prosecution will base their case upon the laws of international conventions. In the Hague Convention No. 4 of 1907 it is provided in article four that: "Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated." Also article 23c states, "It is especially forbidden - to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion." Japan has ratified this convention as long ago as 1907 and is bound by its terms. In the Geneva (POW) Convention of 27 July 1929, it is provided that: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against the acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited. Prisoners of war have the right to have their honor respected". CL7

But we ask the Commission and prosecution; can the charge and the specification against the defendant, Takano, be based upon the foregoing conventions? Since neither Italy nor Bulgaria has ratified the 1907 convention, this defendant insists that he is not bound by Article 23c, although Japan did sign the convention, and that the 1929 convention has not yet been ratified by Japan. CL7

The judge advocate replied.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the objection of the accused was overruled and that the commission found the charge and specification in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The judge advocate read the letter containing the charge and specification, original prefixed marked "B", in English; then an interpreter read a copy in Japanese, prefixed marked "C".

The accused was arraigned as follows by the judge advocate:

Q. Takano, Masayoshi, Sergeant, Imperial Japanese Army, you have heard the charge and specification preferred against you; how say you to the specification of the charge, guilty or not guilty?

A. I plead not guilty.

Q. To the charge, guilty or not guilty?  
A. I plead not guilty.

The prosecution began.

The judge advocate made the following statement:

Gentlemen of the Commission:

No part of the opening statement of the prosecution is offered as evidence in the present case. It is offered merely as an outline of what we hope to prove. Our evidence will show that around August 7, 1944, two American prisoners of war were executed on Chichi Jima, Bonin Islands. The execution was supervised by Lieutenant Colonel Ito, who had the prisoners bayoneted by four men, two men stabbing each prisoner twice. It will be shown that the accused, Sergeant Takano, bayoneted one of the prisoners. After the bayoneting, Lieutenant Colonel Ito beheaded the prisoners. These American prisoners of war were given no trial and absolutely no justification existed to prompt these brutal executions. CLF

The judge advocate asked the commission to take judicial notice of the following:

That during the year 1944, a state of war existed between the Imperial Government of Japan and the Government of the United States, its allies and dependencies.

That the island of Chichi Jima is part of the territory under the command of the Commander Marianas Area.

The Hague Convention of October 18, 1907, and especially Article 23(c); "It is especially forbidden to kill or wound an enemy who, having laid down his arms or having no longer any means of defense, has surrendered at discretion". Japan ratified and signed this convention.

The Geneva Prisoners of War Convention of July 27, 1929, and especially Article 2: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity."

The forword of the War Department Technical Manual 27-251 in which it states that although Japan has not ratified or formally adhered to the Prisoners of War convention, it has, through the Swiss Government, agreed to apply the provisions thereof to prisoners of war under its control, and also, insofar as practicable, to interned civilians. CLF

The accused objected to the Commission taking judicial notice of the Hague Convention of 1907 and the Prisoner of War Convention of 1929 and asked that the judge advocate prove these conventions like any other fact as they are required to do by section 27 and 309, Naval Courts and Boards. This commission is bound by Section 309 to require that the prosecution prove these conventions like any other fact since the defense is basing their defense on a plea in bar as to the jurisdiction of this commission to try



this accused, a sergeant in the Japanese Army, for a violation of a law and a custom of war which is set out in these conventions. The authority of this commission to try individuals for violations of these conventions must be established in accordance with Section 405, Naval Courts and Beards, ~~we~~ hereby offer this plea in bar, a plea that the accused Sergeant Takano is not subject to the court's jurisdiction for the trial of an offense in violation of articles of these conventions and laws and customs of war. CLF

The judge advocate replied.

The commission announced that the objection was overruled and that the plea in bar is denied.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.  
A. Ito, Kikuji, Lieutenant Colonel, Imperial Japanese Army.
2. Q. Are you presently confined on Guam?  
A. Yes.
3. Q. If you recognize the accused will you state as whom?  
A. Takano.
4. Q. Were you ever stationed on Chichi Jima with the Japanese Army?  
A. Yes.
5. Q. Between what dates were you stationed on Chichi Jima?  
A. I was stationed on Chichi Jima during 10 July 1944 to the first of July 1945.
6. Q. To what organization were you attached on Chichi Jima?  
A. I was attached to the First Mixed Brigade Headquarters under General Tachibana.
7. Q. Do you know to what organization the accused was attached?  
A. No, I do not know. CLF
8. Q. Did you ever see any prisoners of war on Chichi Jima?  
A. Yes.
9. Q. Do you remember the date?  
A. It was in the beginning of August 1944. I cannot recall the exact date.
10. Q. Where did you see these prisoners on Chichi Jima?  
A. I saw the prisoners at the guard house of the 307th Battalion which was the Kato unit.
11. Q. Did you receive any orders with regard to these prisoners?  
A. Yes.
12. Q. What were these orders?

A. I was ordered as follows: "It has been decided that two American aviators should be put to death. You, Lieutenant Colonel Ito, supervise the execution." The time was some time in the beginning of August 1944. I was told to pick up the two prisoners at the guard house of the 307th Battalion. I was also told that two men, a non-commissioned officer and a superior private from units other than the Brigade Headquarters would be sent as executioners. I was also told to furnish other executioners from the Brigade Headquarters. CLF

13. Q. Do you remember who gave you this order?

A. I received this order from the adjutant, Captain Higashigi, of the Brigade Headquarters. CLF

14. Q. Did you carry out this order?

A. Yes.

15. Q. Will you describe the execution as it took place?

A. The scene of the execution was at a clearing about 50 meters from the road leading over Nakayama pass. The execution took place on a slope that sloped down from the south toward the north and it was held in a grassy grown clearing, that was about 20 meters square. To the east of the clearing was the dug-out, about 1 meter deep. In front of this dug out four stakes were driven into the ground. Each prisoner was made to sit down and was tied to two of the stakes. The distance between the positions was two or three meters. After the prisoners were tied, I measured off a distance for the bayoneteers in order that with one thrust their bayonets could pierce the chest right to the back. I arranged the bayoneteers as follows: One non-commissioned officer that came from a unit other than the Brigade Headquarters to the prisoner on the right, that is facing the prisoner. The superior private that came from a unit other than the Brigade Headquarters to the prisoner on the left. Behind the non-commissioned officer I designated Kido to take the position and behind the superior private, I designated Shimura. About 20 meters to the south of the prisoners I arranged the spectators in double ranks. The number of men was about 20. These men had come for rifle practice, however I brought them to the scene and made them stand in double ranks. CLF

16. Q. Did these four men actually bayonet the prisoner?

A. Yes.

17. Q. How many times did each man bayonet the prisoner?

A. Each man bayoneted the prisoner two times; that is to say, the two men arranged behind the prisoner on the right bayoneted him twice, and vice versa for the one on the left.

18. Q. You have mentioned the names of two of the bayoneteers as Kido and Shimura. Do you know the names of the other two men?

A. That I do not know.

19. Q. Were these prisoners given a trial?

A. I do not know. I only believed that as they were to be executed, a justifiable cause was behind the execution.

20. Q. Do you know if these men had done anything to justify their execution?

A. No, I do not know.

21. Q. When you received the order to execute these prisoners, were you told from what units the executioners would be chosen?

A. At that time I heard they would come from Divisional Headquarters.

22. Q. Are you sure about Divisional Headquarters?

A. No, it was not Divisional Headquarters. It was from other units of the First Mixed Brigade. I later heard it was the 307th Battalion. I do not know if the men came from artillery units, infantry units or engineering units. CF

The accused objected to that part of the answer beginning with, "I later heard..." and moved it be stricken from the record on the ground that it was hearsay.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

23. Q. After the prisoners were bayoneted, what happened then, if anything?

A. After they were dead, or killed, I beheaded them.

Cross-examined by the accused.

24. Q. How long have you known the accused?

A. I saw the accused when I assembled the men at the scene of the execution and I saw him from that time to the end of the bayoneting.

25. Q. Did you know who he was?

A. Not at that time.

26. Q. How do you fix the date when you saw the prisoners of war on Chichi Jima?

A. Because I remember that the executions took place on the day picked for target practice, and I also recall that I made an entry in my diary regarding this matter some time after the executions. Besides this, I also heard in this court regarding the date.

The accused objected to that part of the answer beginning, "I also heard in this court..." and requested it be stricken from the record on the ground that this answer is hearsay and the date is a material issue in this trial.

The judge advocate stated that he had no objection to that part of the answer being stricken from the record.

The commission announced that the objection was sustained and directed that that part of the answer beginning, "I also heard..." be stricken from the record.

27. Q. How do you know that the persons executed were prisoners of war?

A. I was told to go and pick up the prisoners at the guard house of the 307th Battalion. I received them in front of the guard house, and it was then that I knew that these men were the prisoners that I was ordered to execute.

28. Q. How did you know that they were Americans?

A. At the time there were no other persons except Japanese on Chichi Jima, and as I was told that there were prisoners at the Brigade Headquarters, I did not doubt their word.

The accused objected to the last part of the answer beginning, "and as I was told..." and moved that it be stricken from the record.

The judge advocate replied.

The commission announced that the objection was not sustained.

29. Q. Did these prisoners have any identification marks on them?

A. I do not know.

30. Q. Did you yourself execute certain persons on August 7, 1944?

A. The day 7 August is not clear to me.

31. Q. Did you execute any persons on Chichi Jima while you were there?

A. No.

32. Q. Have you ever been tried for executing any persons on Chichi Jima?

A. I was tried here.

33. Q. What sentence was imposed upon you at this time?

The judge advocate objected to this question on the ground that it is irrelevant.

The accused replied.

The commission announced that the objection of the judge advocate was sustained.

34. Q. Who was the prisoner on the right hand side?

A. I do not know the names of both of them.

35. Q. Who bayoneted the prisoner on the right?

A. The prisoner on the right was bayoneted by the non-commissioned officer that came from a unit other than the Brigade Headquarters and Private Kido, who came from the Brigade Headquarters.

36. Q. Who bayoneted the prisoner on the left?

A. The prisoner on the left was bayoneted by a superior private that came from a unit other than the Brigade Headquarters and Private Shimura.

37. Q. How far apart were the prisoners tied?

A. I believe it was about two meters.

38. Q. Where were you standing in relation to the prisoners when they were bayoneted?

A. I was standing a little to the side in front of the right prisoner at a distance of about one meter.

39. Q. How far away from the prisoner on the left were you?

A. I was standing about three meters from the prisoner on the left. I was standing in a position that I could see clearly what happened.

40. Q. Why do you wear glasses?

The judge advocate objected to this question on the ground that it was incompetent, irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. I was told by the doctor that I was near sighted and these lenses were prescribed for me.

41. Q. How long have you worn these glasses?

A. About three years.

42. Q. Did you wear these glasses at the time of the execution?

A. Yes.

43. Q. How old are you?

A. Sixty-two.

44. Q. You testified that you received orders from Captain Higashigi to execute these people. Where did you receive these orders?

A. In the office at Brigade Headquarters.

45. Q. Who else was present when you received these orders?

A. I do not recall who was present. However, as the office was also used as living quarters by the officers and the Commander of the Brigade, I presume they were present. I also think there were some non-commissioned officers present.

46. Q. Were these written or verbal orders?

A. Verbal orders.

The witness was duly warned.

The commission then, at 11:40 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

The judge advocate introduced Robert Oldham, yeoman third class, U. S. Navy, as reporter.

The reporter was duly sworn.

Ito, Kikaji, lieutenant colonel, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Cross-examination continued.)

47. Q. The orders you received that you testified about this morning, did you object to carrying out these orders?

A. No.

48. Q. Did you select all the people to help you in the execution?

A. I only picked the two men from the Brigade Headquarters.

49. Q. What is the name of the accused in this case?

A. Takano.

50. Q. Was he a member of the Brigade Headquarters?

A. No, he was not a member of the Brigade Headquarters.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

I received the orders for the carrying out of the execution from Adjutant Higashigi. The order did not come directly from the Brigade Commander although we lived in the same quarters. This was due to the fact that there was friction in our relations. I was scheduled to return to Japan as a school instructor in August 1944. I do not know why I was not returned. Not so long ago Okomoto, a witness, testified in this court that it seemed to him that there were more than four bayoneteers. In fact, I believed that there were five or six others mixed up in the bayoneting. I would like to state that this is absolutely false. The execution was carried out as a ceremony. Okomoto also testified that one of the prisoners moved his head three times after he was bayoneted. This is also false. I swear that both prisoners bled out of their mouths as soon as the prisoners were bayoneted in the chest. I have nothing further to add. c/f

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank?

A. Imperial Japanese Army, Superior Private Kido, Matsutaro.

2. Q. Are you presently confined on Guam?

A. I am.

3. Q. If you recognize the accused in this case will you point him out and name him?

The accused stood when pointed out and then resumed his seat.

A. Sergeant Takano.

4. Q. Superior Private Kido, were you ever stationed on Chichi Jima in the Japanese Army?

A. Yes.

5. Q. When did you arrive on Chichi Jima?

A. In July of 1944.

6. Q. When did you leave Chichi Jima?

A. On the second of January 1946.

7. Q. While stationed on Chichi Jima to what unit were you attached?

A. Brigade Headquarters.

8. Q. While at the Brigade Headquarters did you ever have the occasion to see any prisoners of war?

A. I saw some.

9. Q. When did you see these?

A. I do not remember the day and month.

10. Q. Did you also witness an execution of an American prisoner of war?

A. I have.

11. Q. When did this take place?

A. I think it was in the beginning of August 1944.

12. Q. At this time was one, or more than one prisoner executed?

A. Two were executed.

13. Q. Will you tell the commission what took place at the scene of the execution as you saw it?

A. I saw two prisoners who were tied down to stakes. I remember one prisoner was tall and one was shorter. They were blindfolded, I remember Colonel Ito bowing toward the Imperial Palace, after this the execution was conducted.

14. Q. How was this execution conducted?

A. They were pierced by bayonets and beheaded by a sword.

15. Q. How many persons did you see pierce the prisoner with bayonets?

A. I saw two persons.

16. Q. Do you know the names of the two persons that you saw?

A. They were two non-commissioned officers.

17. Q. Do you know the name of either or both of these non-commissioned officers?

A. I remember the ranks of Corporal and Sergeant, but I do not know their names.

18. Q. Did you participate in this bayoneting yourself?

A. I did.

19. Q. Were you the first person to bayonet the prisoner or had someone else preceded you?

A. I remember a Sergeant pierced before me.

20. Q. Do you know the name of that Sergeant?

A. I remember him in this court room.

21. Q. Do you see this Sergeant present in this court today?

A. I do.

22. Q. Will you please point him out and indicate who he is?

The accused stood when pointed out and resumed his seat.

A. Sergeant Takano.

23. Q. How many times did you see Sergeant Takano bayonet this prisoner?

A. I remember it was two or three times.

24. Q. Do you recall the nationality of this prisoner?

A. I do not know the nationality. I remember that one was tall and one was shorter.

25. Q. What was the color of the skin of these two men?

A. They looked like foreigners.

26. Q. Would you say they were white men, black men, yellow men or what color?

A. The tall one had black hair but the shorter one had, I think, a reddish color hair.

27. Q. Do you recall the color of their skin?

A. I do not know.

28. Q. Insofar as you know was any trial given to either or both of these men that you saw executed?

A. I do not know.

29. Q. Insofar as you know had either or both of these men done anything to justify being executed?

A. I do not know.

30. Q. Private Kido, do you know why either of these men were executed or what was the purpose that brought about their executions?

A. I do not know.

Cross-examined by the accused:

31. Q. How far from the prisoner were you during the bayoneting?

A. I think it was about fifteen to eighteen feet.



32. Q. Was the person bayoneting the prisoner whom you saw, was he between the prisoner and you?

A. I was standing at a point between about twelve to eighteen feet back of where the prisoner was tied and about the middle of both of them.

33. Q. When were these prisoner<sup>s</sup> blindfolded? 8/17

A. Before they were executed.

34. Q. Were they blindfolded when you were at the scene of the execution?

A. Yes.

35. Q. Were you the first to bayonet this prisoner that you bayoneted?

A. I was ordered after the non-commissioned officer was ordered to do so.

36. Q. Who ordered you to bayonet the prisoner?

A. Sergeant Takano.

37. Q. Who ordered you to attend the scene of the execution?

A. It was the order of the Brigade Commander.

38. Q. Was this a written order?

A. I was ordered by the head of the orderlies. He said it was the order of the Brigade Commander and to go to Kominato and receive instructions from Colonel Ito.

39. Q. Did you go to the scene of the execution alone?

A. I went with many people to the scene of the execution, but I went by myself to Kominato.

40. Q. At the scene of the execution did Colonel Ito order Sergeant Takano to pierce the prisoner?

A. There was a non-commissioned officer standing in front of each prisoner and Colonel Ito said: "Stab". 8/17

41. Q. Before Sergeant Takano was ordered to stab, did you see him come before the prisoner?

A. I saw him go to a point about four to five feet in front of the prisoner.

42. Q. Before that time did you know where Sergeant Takano was standing?

A. He was near that vicinity.

43. Q. About how far was he?

A. He was with the people who were all lined up.

44. Q. Was not Sergeant Takano hiding behind a crowd of people?

A. I think he was with everybody else.

45. Q. Who was he with?

A. I do not remember, but I remember that he was together with the rest in a group.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said he had nothing further to state.

The witness was duly warned and withdrew.

Frederick A. Savory, was called as a witness for the prosecution and duly sworn.

1. Q. State your name.  
A. Frederick A. Savory.
2. Q. Are you presently employed on Guam?  
A. Yes.
3. Q. If you recognize the accused state as whom?  
A. Sergeant Takano.
4. Q. By whom are you employed on Guam?  
A. Commander Marianas.
5. Q. In what capacity?  
A. Interpreter for War Crimes.
6. Q. In your capacity as interpreter for the Commander Marianas do you have in your possession an original statement in Japanese submitted to Major Shaffer by the accused?  
A. I do. 817
7. Q. Do you have in your possession a translation of that statement?  
A. I do.
8. Q. By whom was that statement written?  
A. It was written by Sergeant Takano.
9. Q. By whom was it translated?  
A. I translated it myself.
10. Q. Was anyone present with the accused when he wrote this statement who could speak to him and be understood by him?  
A. No.
11. Q. Were you present when this statement was submitted by the accused to Major Shaffer?  
A. Yes.
12. Q. Were any promises made to the accused or threats to induce him to give this statement?  
A. No.

The statements of the accused, Sergeant Takano, Masayoshi, Imperial Japanese Navy in Japanese and the English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence. 817

The accused objected to the admission of this evidence on the following ground:

We object to this statement of the accused being received into evidence. Nowhere in this document is there any evidence or does it appear that the accused was ever accorded the rights of a defendant. Nowhere can we find that Section 734(c), Naval Courts and Boards was complied with. It is very prejudicial to the rights of this accused.

Nowhere does it appear in this statement that he was ever notified by a so-called senior member of the Board of Investigation of the gist of the evidence intended to implicate him nor that he was instructed that he would be accorded the rights of the accused for a court martial; namely the right to have counsel.

Such an accused does have the right to refuse to answer incriminating or degrading questions. This right was never explained to this accused. The offering of this document into evidence will result in the accused being made to testify against himself. This is strictly at variance with the fifth and sixth amendments of the American Constitution. We maintain that to admit this document into evidence will be most prejudicial to the rights of the accused in this case, and we object to this statement being received into evidence.

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered.

No witnesses not otherwise connected with the trial were present.

The commission announced that the objection of the accused was not sustained.

The statement of Sergeant Takano, Masayoshi, Imperial Japanese Army, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

13. Q. I ask the witness to read the English translation of Takano's statement.

The witness read the English translation of the statement of Takano, Masayoshi, Sergeant, IJA, copy appended marked "Exhibit 2".

An interpreter read the original statement in Japanese of Sergeant Takano, Masayoshi, IJA, appended marked "Exhibit 1".

The accused did not desire to cross-examine this witness.

The judge advocate did not desire further to examine this witness.

The commission did not desire to examine this witness.

The witness was duly warned and resumed his seat as an interpreter.

The prosecution rested.

The accused at 3:25 p.m., requested an adjournment until 9:00 a.m. tomorrow morning, Tuesday, October 22, 1946, to complete the preparation of his defense.

The commission announced that the request of the accused was granted.

The commission then, at 3:25 p.m., adjourned until 9:00 a.m., Tuesday, October 22, 1946.

SECOND DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, October 22, 1946.

The commission met at 9:07 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Colonel Adolph L. Ramon, Army of the United States,  
Colonel Douglass G. Pamplin, Army of the United States,  
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,  
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,  
Commander Vance O. Smith, U. S. Naval Reserve, members, and  
Lieutenant Edward L. Field, U. S. Naval Reserve, and  
Lieutenant Fredric T. Suss, U. S. Naval Reserve, judge advocates.  
Vivian Kilner, civilian, reporter.  
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

The record of proceedings of the first day of the trial was read and approved.

The defense offered no evidence.

The accused read a written statement in his defense in Japanese, appended marked "D".

An interpreter read the statement of the accused in English, appended marked "E".

The judge advocate read his opening argument, appended marked "F".

The commission then, at 9:55 a.m., took a recess until 10:17 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the reporter, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

Mr. Ito, Kenro, a Japanese counsel for the accused, stated that inasmuch as the Japanese counsel for the accused were familiar with the opening argument of the judge advocate, the accused waived the right to have the opening argument of the judge advocate read in Japanese in open court.

Mr. Masanao Toda, a counsel for the accused, read a written argument in Japanese, appended marked "G".

An interpreter read the argument of Mr. Toda in English, appended marked "H".

Mr. Kenro Ito, counsel for the accused, read a written argument in Japanese, appended marked "I".

An interpreter read the argument of Mr. Ito in English, appended marked "J".

Martin E. Carlson, Commander, U. S. Naval Reserve, a counsel for the accused, read a written argument appended marked "K".

The commission announced that in response to the request of the accused as embodied in this argument, it would determine the sentence in accordance with the authority granted to it by the precept.

The accused waived the right to have the argument of Commander Carlson read in Japanese in open court.

The judge advocate read his written closing argument, appended marked "L".

The accused waived the right to have the closing argument of the judge advocate read in Japanese in open court.

The trial was finished.

The commission was cleared.

The judge advocates were recalled and directed to record the following findings:

The specification of the charge proved.  
And that the accused, TAKANO, Masayoshi, Sergeant, Imperial Japanese Army, is of the charge guilty.

The commission was opened. All parties to the trial entered.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

The commission announced that it was prepared to hear evidence in mitigation.

Toda, Masanao, a counsel for the accused, was duly sworn as a witness for the accused.

Examined by the judge advocate:

1. Q. State your name.
- A. Toda, Masanao.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
- A. Yes, I am.

3. Q. Do you have certain documents in your possession that you wish to introduce into evidence?

A. I have two documents, the originals of which are in Japanese.

4. Q. Are these documents evidence of character for the defendant, Takano, for mitigation purposes?

A. Yes.

5. Q. Have these documents been translated into English?

A. Yes, they have been translated into English.

6. Q. Do you wish to offer these documents in evidence in behalf of Sergeant Takano.

A. Yes.

Two documents in Japanese and the English translations thereof, were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection they were so received.

7. Q. Will you read the first of these two documents in Japanese?

A. I shall read the affidavit of Sergeant Kishimoto, Masao, Imperial Japanese Army.

The witness read in Japanese the affidavit of Sergeant Kishimoto, Masao, Imperial Japanese Army, appended marked "Exhibit 3".

An interpreter then read the English translation of "Exhibit 3", appended marked "Exhibit 4".

8. Q. Will you read the second of these two documents in Japanese?

A. I shall read the affidavit of Captain Nakano, Masani, Imperial Japanese Army.

The witness read in Japanese the affidavit of Captain Nakano, Masani, Imperial Japanese Army, appended marked "Exhibit 5".

An interpreter then read the English translation of "Exhibit 5" appended marked "Exhibit 6".

The judge advocate did not desire to cross-examine this witness.

The accused did not desire further to examine this witness.

The commission did not desire to examine this witness.

The witness resumed his seat as a counsel for the accused.

The commission was cleared to consider the sentence of the accused.

The judge advocates were recalled and directed to record the sentence of the commission as follows:

The commission, therefore, sentenced him, Takano, Masayoshi, sergeant, Imperial Japanese Army, to be confined for a period of nine (9) years.

*Arthur G. Robinson*  
ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

*Adolph L. Ramon*  
ADOLPH L. RAMON,  
Colonel, Army of the United States, Member.

*Douglas G. Pamplin*  
DOUGLASS G. PAMPLIN,  
Colonel, Army of the United States, Member.

*Adolph Zuber*  
ADOLPH ZUBER,  
Lieutenant Colonel, U.S. Marine Corps, Member.

*Ramon J. Wallenborn*  
RAMON J. WALLENBORN,  
Commander, Dental Corps, U.S. Navy, Member.

*Vance O. Smith*  
VANCE O. SMITH,  
Commander, U.S. Naval Reserve, Member.

*Edward L. Field*  
EDWARD L. FIELD,  
Lieutenant, U.S. Naval Reserve, Judge Advocate.

*Fredric T. Suss*  
FREDRIC T. SUSS,  
Lieutenant, U.S. Naval Reserve, Judge Advocate.



The commission was opened. All parties to the trial entered.

The commission then read and pronounced the sentence to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

*Arthur G. Robinson*

ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

*Edward L. Field*

EDWARD L. FIELD,  
Lieutenant, U. S. Naval Reserve, Judge Advocate.

*Fredric T. Suss*

FREDRIC T. SUSS,  
Lieutenant, U. S. Naval Reserve, Judge Advocate.

陳述書

私は昭和三年一月十日南嶺にて甲府聯隊に入隊し國家の干城として色々と訓練を受け昭和四年七月九日歸休除隊となりまして

昭和十二年七月支那事變が勃発致しまして私は九月五日召集令状を受けましてそれから二年半ばかりの間中支で國家の爲に戦ひ復員後は家業の農業に勤めておりました

然るに昭和十六年十二月八日日本と米國とが戦争状態に入り私も昭和十九年三月四日召集され父島の獨立歩兵第三〇七大隊第三中隊の一分隊長として銃を取る身となりまして

然し私は余りにも不幸でありまして父島では私の一人の命令にも服従せねばならずしてそして偶々命令により一擲虜虜も処刑し血床で令けづらの拘置所へ毎日を送ってあります

父島で上級者の命を奪つた事に行動し多の事として殺人罪を告訴されたのが私にはさつぱりかりませぬ

私は此の処刑に關しては只大隊長命令を土田少尉から受けその通りを行つて参りました私は決して意志的によつたものではありませぬ

まして企圖や悪意が絶対持ち合せはおりませぬ私は又盲目的にそうするのが正しいの事と信じてやりました

私は絶対に上官も信じて命令は必ず行なれるべきことと對し此かの疑もせしはせぬ事とはなつてます

私は死刑の目的を人への命を下しなことは絶対と  
し又努めて此の死刑に参加することを止めようとして努力  
しなした。私は本死刑に於ける最もやる気のない参  
加者であり目撃者でありなした。

その日は私たちにとつて最も呪はしい日でありなした。  
どうして多勢の中から私たちが選ばれたか全  
判断に苦しむのである。そして其れにも不拘 私達  
は命令を行つた故も以て処罪せよともしるが  
私達は教育程度が低く又私達の社会秩序は貴國  
よりも随分異つておるが命令を実行する  
為に選出せられた。私達の運命が如何にせよ  
つかよくおありと申すと思ひます。どうか充分に理  
解の上寛大の処置を祈願するものであります。

私はいつも家族の事が心配をかりなした。私の家は貧しい  
百姓で年と一女六十八才の父と妻と二人の子供あるだけ  
で今は誰も働く者がありません。私はしてどうして此  
の家族に生計の道があらう。若し私が戦争犯罪  
人になつてしまふら私の家族は餓死してしまふ。そんな  
気がします。

どうか以上の事と就き序考慮下さりなして何卒寛大  
な判決あらん事を切に祈るものであります。

昭和二十一年十月二十二日

右  
三

高野正義

STATEMENT OF TAKANO MASAYOSHI.

When I reached the conscription age, on the 10th of January, 1928, I was assigned to the Kofu Regiment where I received military training for the defense of our fatherland, and was demobilized and returned home on the 9th of July, 1929.

In July, 1937, the Sino-Japanese Incident broke out. I was called on September 5th, and served for our country in Central China for two years and a half, and, after that, I engaged in agriculture. But on December 8, 1941, a war broke out between the United States and Japan. I was called again on March 6, 1944, and served as the leader of a squad of the third company of the 307th Independent Infantry Battalion.

However, I was very unhappy. On Chichi Jima, I was forced to obey all orders. I was given orders and executed a prisoner on Chichi Jima, and now I am spending my days in the stockade at Guam Island.

I can not understand how my superior officers on Chichi Jima could make it possible for me to be accused of murder because they ordered me to carry out their orders.

Anything which I did in connection with this execution was done because of battalion orders received from 2nd lieutenant TSUCHIDA. I had been trained to obey without questioning, and, therefore, could do nothing but to obey. We soldiers in the Japanese Army knew nothing but strict obedience to orders. Anyone who knows the Japanese Army will readily understand that when a Japanese soldier is given an order he must obey it. JH  
JH

In connection with this incident, I had no will to kill any prisoner. What I did was not done wilfully; there was no premeditation or malice on my part. I blindly carried out an order with only the idea that to do so is the right thing. I trust implicitly my superior officers and never for one moment doubted but that their orders were to be carried out.

I never gave anyone orders at the scene of the execution and tried the best way I knew to avoid becoming a participant in this execution. I was a most unwilling participant and observer in this execution.

We were ordered to attend bayonet drill, and then, when assembled, certain of us were ordered to bayonet. None of us knew why we were ordered or why we did what we did on that day.

That day was a most unhappy day for us, and it is difficult to understand why we four, out of all the others, were selected. Now, we are to be punished for carrying out orders.

With our limited education and a social order different than you Americans, we hope you will understand how unfortunate is our lot, we who were selected by officers to carry out orders. I ask your leniency and understanding.

I am always very anxious about my family. My family is poor and engages

in agriculture. I have an aged, weak father of 68 years old, my wife and two children. There is no one in my family to work now. It will be very difficult for them to sustain their living without me. I am afraid that they will starve to death if I become a war criminal.

I beg your kind considerations concerning what I have just mentioned and deal leniently with me.

TAKANO MASAYOSHI.

I certify the above to be a true and complete translation to the best of my ability of the original statement written in Japanese by TAKANO, Masayoshi.

*Frederick F. Tremayne*  
FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"E" (2)

0038

OPENING ARGUMENT FOR THE PROSECUTION  
DELIVERED BY  
LIEUTENANT EDWARD L. FIELD, USNR

In summing up this case the prosecution feels that the case has been most simple and the pertinent facts are very clear to all parties of this trial. We found it only necessary to bring two witnesses before this commission in order to prove the charge and specification, and we have corroborated this with the confession of the accused.

I wish to consider each allegation of the specification and show how each allegation of the specification has been proved.

The first allegation of the specification names the accused, Takano, Masayoshi. We have seen two witnesses identify the accused by name and identify him as a participant in this crime, and there can be no doubt that the accused in this court is Masayoshi Takano.

The commission has heard Colonel Ito state that two of the bayoneteers that were supplied from units other than the Brigade Headquarters were petty officers. The witness, Kido, stated that Sergeant Takano bayoneted just ahead of him. This clearly established that the allegation "then a sergeant", is substantially proved by the evidence and the additional allegation "Imperial Japanese Army" has been also proved.

Concerning the allegation "attached to the 307th Battalion" we observe that Colonel Ito has testified that two of the bayoneteers other than those he supplied himself, were from other units of the First Mixed Brigade, and that he heard they were from the 307th Battalion. That is the only evidence that this man was from the 307th Battalion, but in the absence of any rebuttal on the part of the accused, the assumption is that he was from the 307th Battalion, and therefore this allegation is proved.

Colonel Ito testified that units of the First Mixed Brigade other than the Brigade Headquarters supplied two of the executioners and it follows that if Takano was attached to the 307th Battalion he was likewise attached to the First Mixed Brigade.

The allegation "military installations of the Imperial Japanese Armed Forces," is likewise proved by the testimony of the witnesses, Colonel Ito and Private Kido, in which they show all parties participating in this crime including the accused, were Japanese military personnel.

From the testimony of these witnesses that the crime occurred on Chichi Jima, the allegation "Chichi Jima, Bonin Islands" is proved.

"..while so serving at said military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands,..." Each of the witnesses identified Takano and one of them described exactly his part in this crime, and we have seen that this man was attached to the 307th Battalion, therefore he was serving at the said military installations.

"F 1"

0039

The allegation "acting jointly" is proved when it is shown by the evidence submitted by the prosecution's witnesses that the accused and the persons hereafter named in the specification participated together in the carrying out of this crime. The accused, as well as the other participants, were all aware of the part they were portraying in the carrying out of this unlawful performance and the conduct of each is but as a unit of the entire plan. The deeds of each of the participants in order to carry out this execution were but an integral part of the over-all scheme to execute this victim. Each was dependant upon the other in order that the final consummation of this plan to murder the victim would take place. The allegation "acting jointly" is therefore proved beyond a reasonable doubt.

Colonel Ito has told of his part in this atrocity and he testified that he received orders from Captain Higashigi to execute the prisoners of war. Captain Ikawa has been mentioned in the confession of the accused who stated Ikawa directed him to participate. Shimura was one of the bayoneteers selected by Ito and his participation in the crime is corroborated by the witness Kido.

As to the allegation "and other persons unknown" - it is not necessary for the prosecution to prove all parties to this crime. It is sufficient when the accused is adequately informed of the persons participating in order that he might prepare his defense, and it is not necessary that the prosecution prove all parties who may have been involved in this crime.

The allegation "in pursuance of a common intent" means that the accused and the other persons mentioned in the specification with whom he is charged as acting jointly, were carrying out the same over-all plan when they murdered this victim. All the evidence shows that the participants were aware that the purpose underlying their actions was the bayoneting and the subsequent beheading of the victim. The actions of the accused with the aforementioned other participants were designed to see that this execution did take place as they fully intended it should. All these parties therefore intended to do but one deed, and that was the execution of the victim. It is evident that this was the common intent of all of the participants in the crime.

"On or about 7 August 1944" is the date we allege the execution took place. Both witnesses testified that the execution took place in the beginning of August 1944. It is not necessary to prove the specific date, so long as we prove within a reasonable limit of time that the execution took place as alleged. This evidence is sufficient to prove the alleged "on or about 7 August 1944".

The evidence shows that the crime did take place on Chichi Jima, Bonin Islands.

The year 1944 shows that a state of war did exist between the United States of America, its allies and dependencies, and the Japanese Empire. Further, we asked the commission to take judicial notice of the fact that during the entire year 1944 a state of war did exist between the United States Government and the Japanese Empire.

Now we come to the most important part of the specification - the technical terms used to describe the murder. First of these is "wilfully". "Wilfully" is defined in Bouvier's Law Dictionary as "in an indictment charging a wilful killing, it means intentional and not by accident." Can the accused claim that the victim was killed by accident or by mistake? The answer is emphatically no. The accused intended to bayonet this specific victim and he did just exactly that, therefore he wilfully participated in this crime.

The term feloniously is a technical word used in an indictment for a felony and it has the equivocal connotation of purposefully or unlawfully. Did the accused purposely intend to bayonet the victim? All of the prosecution's evidence indicates that he most certainly did purposely bayonet this prisoner, fully cognizant of what he was doing. Can the accused for a moment claim that he did not know that the bayoneting of a defenseless and entirely innocent prisoner of war without any justifiable cause was not unlawful? The answer again is most emphatically in the negative.

"With premeditation and malice aforethought" - Premeditation is defined as "a design to commit a crime or to do some other act before it is actually done". The accused knowing that he is to bayonet the prisoner well in advance of the actual deed is shown to have thus formed the design to do so prior to the actual carrying out of the deed. The term "malice aforethought" in the description of murder does not imply deliberation or the lapse of a period of considerable time between the malicious intent and the actual execution of that intent, but rather denotes purpose and design in contradistinction to accident and mischance. Malice in the law does not necessarily mean a malignant spirit, a malignant intention to produce a particular evil. If a man intentionally does wrongful act, an act which he knows is likely to injure another, that in the law is malice". The prosecution's evidence clearly shows that the accused, Takano, intentionally bayoneted the prisoner knowing that by so doing the victim would die and it is this intentional doing of that wrongful act that proves beyond all reasonable doubt these technical words of the specification are proved against him.

The allegation "without justifiable cause" means that the acts of the accused were done without his having any legal right to do it. Both witnesses for the prosecution have testified that insofar as they knew, there was absolutely no justification for the execution of this prisoner of war. All the prosecution's evidence shows that the accused was acting on no legal rights when he deliberately bayoneted this defenseless victim.

We have asked Colonel Ito, who supervised this execution, and also the witness Kido, insofar as they knew, was any trial given this prisoner of war. They both have answered in the negative. That this victim was merely dragged out on a hillside and summarily killed is conclusively shown by the prosecution's evidence.

"Assault" means the putting in fear of bodily harm or apprehension of immediate peril. The evidence shows that the victim was blindfolded and then tied to stakes and even though he may not have been told what fate was in store for him, he must have fully realized what was taking place under these circumstances. The unlawful bayoneting of this prisoner of war clearly constitutes assault.



The piercing of the victims body by the bayonet fulfills the allegation "strike"

"Kill" is a general term used for depriving of life and it is the contention of the prosecution that the evidence clearly shows that this victim was killed and that the defendant, Takano, as one of the participants in this crime, is either himself fully responsible, or jointly responsible with the others, for the death of this American prisoner of war. It is entirely immaterial whether Takano was the sole cause of the execution or whether the other participants with him aided in bringing about this execution. The defendant, Takano, participated in this crime with the intention of deliberately executing the victim and this intent plus his overt act of bayoneting the victim places him in the position to be correctly charged with this killing, and the evidence shows the victim did die as a result of the action of the accused.

Regarding the allegation "bayoneting with a fixed bayonet" - we have heard Colonel Ito testify that he ordered the men to bayonet the prisoner with fixed bayonets. A fixed bayonet is merely a bayonet on the end of a rifle.

Colonel Ito testified, as to "American prisoner of war", that there was no one else on Chichi Jima except Japanese other than these prisoners and he knew they were American. Kido was unable to give the nationality of the prisoner, but stated that he looked like a foreigner to him. This evidence clearly establishes the prima facie allegation that this victim was an American prisoner of war.

It is the prerogative of the convening authority to allege or not to allege the name of the victim. It is never necessary to prove the name of the victim in order to establish the charge of murder.

Both witnesses testified that the victim was a prisoner and was in the custody of the armed forces of Japan.

The defense objected to the allegation of the specification "this is violation of the laws and customs of war", in that it did not specifically state what law and what custom of war had been violated. This commission properly overruled that objection. This allegation is sufficiently clear to give the accused reasonable notice of the law he is charged with violating. My colleague will amplify these points, but I will briefly state that the accused has violated among others Article 23(c) of the Hague Convention of 1907, and Article 2 of the Geneva Prisoner of War Convention of 1929.

The case against the accused, Takano, as shown by the prosecution's evidence is that Takano knowingly participated in an unlawful act and that he intended to do just what he in fact did do. It is the further contention of the prosecution that all the allegations of the specification against the accused, Takano, are proved beyond a reasonable doubt and that the charge of murder is sustained, and that the accused stands before this commission guilty as charged.

*Edward L. Field*  
EDWARD L. FIELD,  
Lieutenant, USNR

"P 4"

0042

Tada 〇

辯論

相辯護人等ニヨリ後ニ充分辯論致シルコトニナツテ居  
リマスノテ敢テ私ヨリ申上ル必要が無イノデアリマ  
スガ極メテ簡單ニ辯論致シマス

告訴殺人罪状項目ニ於テ

「大日本帝國陸軍軍曹高野正義ハ昭和十九年八月  
七日頃意思的ニ違法的ニ企圖ト悪意ヲ以テ正當ナ  
理由モナク適當ナ公判其他然ルヘキ手續キモセズ  
米俘虏一名ヲ着ケタ銃剣ヲ突キ刺シタルニセリ  
殺害セリ仍テ右行為ハ戦争法規並ニ慣習ニ違反シ  
タルモノナリ」ト謂フニ在リマスガ

第一ニ被告高野ニ「意思的ニ違法的ニ」俘虏ヲ突キ  
刺シタモノデアアルカドウカト言フ莫デアリマス  
假ニ被告高野ガ俘虏ヲ刺シタリトスルモ私ハ彼  
ガ意思的ニ違法的ニ為シタルモノニ非サルコトヲ断言  
致シマス

何ントナレバ被告高野ハ俘虏處刑ノ大隊長命令ヲ  
高野ノ直屬ノ少隊長デアアル土田少尉ヨリ命令ヲ受  
ケ更ニ現場ニ於テ伊藤中佐ヨリ俘虏處刑ノ命  
令ヲ受ケタノデアツテ高野ノ意思ニヨツテ為シタ  
ルモノニ非サルコトハ頗ル明瞭デアリマス

從ツテ高野ガ意思的ニ違法的ニ為シタモノニ非サ  
ルコトヲ軍法委員會ニ要求致シマス



2

第二 = 被告高野が「企圖ト悪意」トヲ持ツテ居タ  
カドウカト言フ矣テアリマス

私ハ此ノ矣ニ付イテモ 被告高野ガ 俘虜處刑ニ對ス  
ル 企圖ト悪意ナキコトヲ 断言致シマス

企圖トハ 計劃ニテアリマスガ 被告高野ハ 一軍曹ニ過  
ギマセン、一軍曹ニ過ギサル者ガ 果シテ 俘虜處刑、  
計劃ヲ 為シ得ルヤ 否ヤハ 本軍法委員諸氏ノ 充分  
御承知ノ 處テアロウト思ヒマス

果シテ 然ラバ 高野ガ 俘虜ニ對シ 悪意ヲ 有シタリ  
ヤ 否 ヤテ アリマスガ 被告高野ハ 俘虜ヲ 見マシタ  
ル 其ノ 處刑ノ 當日 初メテテ アリマス

命令ヲ 受ケ 處刑ノ 現場ニ 於テ 初メテ 俘虜ヲ 發  
見シタル 級ガ 悪意ヲ 持ツヘキ 理由ガ ナク 又 其ノ 必  
要ガ アリマセン

私ハ此ノ矣ニ 付テモ 彼ガ 企圖ト 悪意ナキコトヲ  
軍法委員ノ 前ニ 要求 致シマス

第三 = 「正當ノ理由モナク 適當ナ公判 其ノ他 然ルヘ  
キ手續キモセズ」ト アリマスガ 日本軍隊ノ 組織 命  
令 性格等ニ 付テハ 今迄、 數多クノ 事件ニ ヨリマシ  
テ 本軍法委員會ハ 既ニ 充分 智識ヲ 得ラシテ 居  
ルト 信ジマスガ 軍曹ト 言フ 低イ 階級ニ アル 下士官ニ  
トツテ 果シテ ソレガ 正當ノ理由 アリシモノナリヤ、 適  
當ナ公判ガ アリシモノナリヤ 或ハ 其他 然ルヘキ手

3

續キガアリシモノナリヤ否ヤハ到底知ル由モナイノ  
デアリマス。

況ヤ日本軍隊ニ於ケル命令ハ正邪ノ判断ヲ容レル余  
地ヲ持タナイノデアリマス

從ツテ被告高野ハ正當ナ理由ガナカツタモノカ  
或ハ公判ガ無カツタモノカ或ハ朕ルヘキ手續キガ  
無カツタモノデアルカヲ知ラナカツタノデアリマス

却ツテ私ハ被告高野ハ正當ナ理由アリト信ジタノ  
デハナイカト信スルノデアリマス

證人伊藤喜久ニハ『此ノ俘虜ハ裁判ヲ受ケタカ』  
トノ検事ノ質問ニ對シ『左様ナ事ハ自分トシテハ  
知リマセン。無論罪惡ガアツテ當然處刑サレル  
モノト自分デハ思ツテ居タ』ト答ヘテ居リマス

陸軍中佐ト言フ高イ地位ニアル伊藤ニシテスラ裁  
判ガアツタカドウカ知ラン・ノデアリマス

却ツテ處刑サレルベキ正當ナ理由ガアツタト思ッ  
テ居ルノデアリマス

況ヤ被告高野ガ俘虜處刑ノ正當ナ理由ガアツ  
タト信ズルノハ敢テ疑フ余地ガナイノデアリマス  
被告高野ガ以上ノ諸矢ヲ考慮スルニハ彼ノ智  
識ハ余リニモ低イノデアリマス

日本、小學校ハ斯ル智識ヲ全然教エテ居リマセン  
訴狀ハ右行爲ハ戰爭法規並ニ慣習ニ違反シタル

4.

モノナリト結論致シテ居リマスガ彼、低キ智識ヲ以テシテハ到底知り得ル由モナイ、テアリマス、日本ノ刑法第三十八條「罪ヲ犯ス意ナキ行為ハ之ヲ罰セス」と言フ規定ガアリマス

犯意ナキ行為ハ之ヲ罰セサルコトハ吾界各國ニ於ケル刑法ノ大原則デアリマス

國際法規亦然リテナケレバナリマス、

犯意ナク法規ノ認識ナキ行為ニ對シテ刑罰ヲ課スルコトハ甚クシキ法ノ誤謬テアルト信シマス

日本刑法第三十五條ハ「法令又ハ正當ナ業務ニ因リ爲シタル行為ハ之ヲ罰セス」と言フ規定ガアリマス。此レハ死刑執行人ノ刑ノ執行ハ此ノ適例トシテ挙げラレテ居リマス

本件ノ如キ命令ニヨル行為ハ矢張り此ノ適例ニ入ルテアリマス、

訴狀ハ「大日本帝國陸軍中佐伊藤喜久ニ同陸軍大尉東木誠治同陸軍中尉井川繁雄陸軍兵長志村久雄其他不詳者ト共同シテ共通目的達成、爲トアリマスガ被告高野ガ此等ノ者等ト共通目的ヲ有セザルコトハ此ノ矢ニ對スル檢事側、何等ノ立證ハアリマセン

從ツテ共通目的ヲ有セザリシコトハ寔ニ明瞭デアリマス

5.

本法院ニ檢事側ヨリ提供サレタル各證人ニヨツテハ  
果シテ正確ニ本法院ニ於ケル被告高野ガ浮虜ヲ  
刺シタリトノ立證ハ未ダ充分デハアリマセシ  
私ハ檢事提出ノ證據ヲ以テハ證據不充分ナリト信  
シマス

私ハ以上ノ諸矢ニ付キ極メテ簡單ニ論述致シマ  
シタ。ドウカ被告高野正義ニ對シ無罪ノ判決アラ  
ンコトヲ謹シテ軍法委員會ニ要求致シマス

昭和三十一年十月二十二日

右

辯護士 戸田正直

ARGUMENT FOR THE ACCUSED

Delivered by

MR. TODA, MASANAO

Since my colleagues will present sufficient arguments I am going to make my statement as concise as possible.

The specification of the charge "murder" states that TAKANO, Masayoshi, then a sergeant, Imperial Japanese Army, ... did, on or about 7 August, 1944, ... wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by bayoneting with a fixed bayonet, an American prisoner of war, ... this in violation of the laws and customs of war.

The first point which I can not but suspect is whether he bayoneted the prisoner "wilfully and feloniously". If we presume that he did bayonet the prisoner, we persist in our belief that it was neither wilful nor felonious because 2nd lieutenant TSUCHIDA, the leader of his platoon, ordered him to bayonet the prisoner and lieutenant colonel ITO also ordered it at the scene of the execution. It is evident that he bayoneted the prisoner against his own will. And we maintain to the Members of the Commission that TAKANO did not bayonet the prisoner wilfully and unlawfully.

In the second place, there is the point concerning whether or not the defendant TAKANO, had any premeditation or malice aforethought. On this point I am positive that the defendant TAKANO, had no premeditation or malice aforethought in bayoneting the prisoner. The defendant is but a mere sergeant and premeditation means to plan. I believe it is well known by the members of the commission whether or not a mere sergeant can plan the execution of a prisoner of war.

Next is the question whether or not TAKANO, had any malice aforethought toward the prisoner. The defendant TAKANO saw the prisoner on the day of the execution for the first time. It was not necessary and there was no reason for TAKANO to hold any malice aforethought for a prisoner whom he saw for the first time, upon arriving at the scene according to orders. And, on this point also, we maintain to the members of the commission that TAKANO, did not have any premeditation or malice aforethought.

Third, there is the statement in the charge, "without justifiable cause, and without proper trial or other due process". I sincerely believe that the commission is well acquainted through the many cases tried before it concerning the organization, orders and the characteristics of the Japanese Armed Forces. How can it be known to a non-commissioned officer with such a low rank as sergeant, whether there was a justifiable cause, or whether, there was a proper trial, or other due procedure. No! There is absolutely no way of knowing this. Moreover the orders in the Japanese Armed Forces leave no room for judging right or wrong and because of this the defendant TAKANO, did not know whether or not there was a justifiable cause, or a proper trial, or due procedure. Contrary

to this, I believe sincerely that he may have thought there was a justifiable cause.

The witness, ITO, Kikuji, has testified, in answer to the question of the prosecution, "Did these prisoners have a trial?" as follows: "As for myself I do not know of any such thing. Personally I believed he had committed a crime and naturally was to be executed." Even ITO who holds the high rank of a lieutenant colonel in the Army did not know whether there was a trial or not. On the other hand he believed that there must have been a justifiable cause for the execution. Can there be any doubt that the defendant TAKANO believed that there was a justifiable cause for the execution of the prisoners?

The education of Sergeant TAKANO is too low to take the above points into consideration. They do not teach such things in the primary schools in Japan. The charges and specification conclude that the above acts were in violation of the laws and customs of war. With his limited education there is no way for him to know this. According to the Japanese Criminal Code, Article 38, there is a rule that: "Acts with no intent to commit a crime shall not be punished." That punishment shall not be administered to acts committed without criminal intent is a major principle in the criminal codes of the various nations of this world. And this is the way International Law should be. To administer punishment for actions, done without criminal intent and in ignorance of the law is, I believe, a gross miscarriage of justice. There is a rule in the Japanese Criminal Code, Article 35, that: "For actions done by righteous duties or by laws shall not be punished." A good example of this is the case of the executioner in conducting an execution. Similar to the actions in this case actions done on orders shall fall into the same category as the above example.

The specification reads as follows: "Acting jointly with ITO, Kikuji, lieutenant colonel, IJA, HIGASHIGI, Seiji, Captain, IJA, IKAWA, Shigeo, first lieutenant, IJA, SHIMURA, Hisao, Leading Private, IJA, and other persons unknown, in pursuance of a common intent". There has been no evidence presented by the prosecution on this point. But it is very clear that the defendant, Sergeant TAKANO, did not have any common intent with any of these people.

It has not been proved beyond a reasonable doubt by the evidence of the various witnesses presented by the prosecution in this court that it was definitely the defendant TAKANO, who is in court today, who bayoneted a prisoner of war. I believe the evidence presented by the prosecution is insufficient evidence.

Having argued roughly on the above points I ask that the commission find the defendant not guilty.  
22 October 1946

MR. TODA, MASANAO.

I certify the above to be a true and complete translation of the original argument in Japanese of TODA, MASANAO, to the best of my ability.

*Frederick F. Tremayne*  
FREDERICK F. TREMAYNE,  
Lieutenant, (jg), USNR.  
Interpreter.

"H" (2)

0049



et  
辯論 (1)

軍曹高野正義の事件に付

伊藤憲郎

裁判長閣下並裁判官諸賢

自由なき者の行爲に對し強く責任を問ふことは人道に反し、又法律を知らざる者に重い刑罰與へることは、酷害であります。

日本はペリーの浦賀訪問以來その封建思想を清算近代國家へと進進したのです。

一千九百一十八年以來日本の軍國主義者は三洲から支那へ次でアジアの各地へその力を伸して日本民族の發展を計つて行つたが、その爲に平和を愛する數百萬人の人を兵隊とした。彼等は徒らにその自由を奪はれて木綿へと馬鹿立てられたのです。

此等の兵隊が若し戦争に行くことと拒み又戰場に於て上官の命令に反するときは軍法會議に附せられ死刑にせらるゝ處せられたのです。

名前は兵隊であるが、その内容は一個の憐れな奴隷であるのです。日本は多くの封建思想を清算し得た。就中其の軍國主義の冒險は、ジョン・ヘイの通牒からスチムソン・ドクトリンに現は

る、アメリカのアジア政策と衝突した。この事は、<sup>(2)</sup>  
例へばエール大学のクリスウォールト教授、コロンビア大学  
のエルトリッチ教授の詳しく論ずるところでありました。

外に一千九百四十一年以来四年間の悲しみは  
日米戦争と云った。斯くて日本は之に敗戦し、就中  
サイロン、英領川、太平洋各地に孤立せし部隊  
は積勢挽回に無慮し、愈々兵士は殆ど理由なき命令  
の犠牲と云った。假令それが違法な命令であつても、  
之に反対す、方法はなかつた。彼等は如何なる命令に  
付ても反対す、自由はなかつたのです。

本委員等は斯くて自由なき行為に對し強い責任を  
向ふことを避けられぬのです。

而して終戦後ポツダム宣言に従ふ戦争裁判は  
自由なき兵士の行為に及んだが、斯くて兵士の多くは教  
育なきため自由を尊重する法律の存在する事を知らず、多  
くの不利益を蒙つたのです。

此に一つの例があります。一千九百四十六年八  
月二十一日午前ガム島の国際軍事法廷に於て一人の日本  
兵士が證人として證人台に立った。外にこの兵士は、  
法律を知らざるため訊問のはじめに於て「犯罪にお  
りて答へはしなくてもよい」と注意せられた。物がその  
言葉を理解する力なく、自分の犯罪事実を述べ不幸に

も其の後告新さん同じ法廷に被告として立つに至ったのです。

この愚かき兵士こそは只今法廷に立つ被告高野軍曹であります。本委員余はこの事を法廷に於ける一つの実話として不向に附むに非ず、法律を知りし者の演ずる悲はつて而し戦争か生んぬ悔もせず日本兵士を題材とする法廷戯曲とすへ法律の運用に格別の注意を拂はねばいけません。

恐らくトリスト、ドストエフスキ、トマス・マンの如き文豪は、戦争の様相となつた被告高野軍曹の如き一兵士に對しては深い同情を寄せてこれを好箇の題材として優れたい説と素にたあらうと思ひます。

本作に對する私の年輪は三つに分かれる——

一 告訴に於て

本作告訴及び項目に於て被告高野正義は伊藤中佐、東木大尉、尾形兵長、井川中尉等と昭和十九年八月七日自共同に米俘虜に對し銃剣を突刺し戦争法規に違反し當りせりといふは被告高野は彼等の行為に對し何等の關係も有るものでありません。

因より告訴は被告高野軍曹は米國俘虜一名を刺したことに於て責任を負ふのであるが、この責任を向て戦争法規に違反しは在らぬ。既にこの案に於て本年十一月一日



議をなしたる重むて論はせん。二つの俘虜に関する條約即ち一千九百十年の海牙條約一千九百二十年の赤十字條約は國際法として世界的性質を有したるもので一千九百四十年の日本のアメリカに對する最後通牒には從ふまいと解したいのであります。

● 犯意に於て

告訴狀に依れば被告高野は意圖的に違法的に正當な理由なく適法に公判其の他外に手續せず本件行爲を及ぼしたといふも、被告高野は昭和十九年八月六日午後七時頃父島袋澤に於て獨立歩兵第三百七大隊に中隊が三小隊長土田少尉より大隊長命令にて捕虜処刑の命令を受け翌七日中山峠の処刑場に赴き伊藤中佐の指示に従い將兵三十餘名の監視の下に合法にして善意の意思を以て俘虜に對し銃剣を以てその胸を刺したるのであります。

而して被告高野は教育程度低く上記中山峠に於ける俘虜処刑を適法手段によるの確信を有したのであります。被告高野は犯意なきといふべく無罪たるべきのであります。

證人伊藤中佐の供述によれば伊藤中佐は旅團司令部の事務室で多數の人のいるところで東村少尉より命令を受け此を合法的のたのとして部下に付し処刑したのであります。

被告高野軍曹は合法のものとしてこの命令の下に処刑されたことは明らかであります。

3 動本機に於て

本件告訴状に於て被告高野は企圖と悪意として本件行状を為したと申し、被告はその上官たる前記第三小隊長の傳へる大隊長命令を行つたのに過ぎず、現場に赴きたるが、その現場に於ては捕虜を、伊藤中佐から突け、と、強制的に命令に従い本件行状を為したと申し、明らかであります。

尚外処刑は厳肅なる儀式の形式を以て行はれたことは証人伊藤中佐本人の供述により明らかであります。

被告高野軍曹は約三十八才の若年の軍曹にして昭和三年三月陸軍に入隊し、その家庭は貧困な環境に育つたのであります。

この捕虜兵士はその処刑の動本機に於て、正令に上級の命令を行つたので要し、動本機によつて為したもので、明らかであります。

以上三箇の理由より、被告高野の是非たることを主張すると共に、假りに彼が有罪なりとするとその罪状が命令に従いしむべく行ひ、且つその動本機に於て極めて同情すべきものあり



161

比と力説し、意大に此命と受おりので  
あります。

右 伊藤素郎

"I" (6)

0055

ARGUMENT FOR THE ACCUSED

Delivered by

Mr. ITO, KENRO.

Your Honor, The President and Members of the Commission:

It is a crime against humanity to lay responsibility upon those whose acts are limited by their superiors, and it is also cruel to condemn those to heavy punishment who do not know the law.

Since Perry's visit to Uraga, Japan shed her feudal thoughts and began anew as a modern state. However, since 1928, the Japanese militarists planned to develop their country by their invasion of Manchuria, China and other various districts in Asia, and millions of men who loved peace were deprived of their liberty and were forced to go to the front. Anyone of these soldiers who refused to go to the front or violated the orders of their superiors were court-martialed and often condemned to death. Though they were called, "soldiers", they were, in reality, nothing but pitiable slaves. In fact, Japan could not yet sweep away her feudalism. And her militaristic adventure conflicted with the United States' policy in Asia, namely, the Communication of John Hay, the Stimson Doctrine, etc. Professor Griswold of Yale University and Professor Eldridge of Columbia University have made, in detail, an excellent report about that.

As the war went on, the Japanese Armed Forces came to be defeated everywhere, and since the fall of Saipan, many Japanese troops isolated on islands in the Pacific Ocean busied themselves in recovering their losses which made many more soldiers the victims of unreasonable orders. If the orders were unjust they had no means by which to refuse them, nor were they at liberty to stand against these orders.

I maintain that this commission must not lay heavy responsibility upon these miserable soldiers who had no liberty. However, according to the Potsdam Declaration, the acts of these soldiers have come to be tried at the International War Tribunals. Since these soldiers have been very poorly educated, they are quite ignorant of the existence of the laws which honor liberty. So they were very often at a disadvantage.

On August 21, 1946, in the afternoon, a Japanese soldier bore witness at the International War Tribunal at Guam Island. He did not know these laws. Therefore, in spite of being warned at the beginning of the questioning that he did not need to testify about anything that was disadvantageous to himself, he related his crime, being incapable of understanding the warning. He was charged afterward and unfortunately has come to attend this same court as an accused. This poor soldier is the defendant TAKANO, sergeant, Imperial Japanese Army, who is now before you.

I hope this commission will not deal with this matter as a funny story of this court, but will consider it as a sad court-drama acted by a man who is a pitiable Japanese soldier, a victim of war, and ignorant of law, and that this commission will be especially careful in applying laws to this case. I think, the great writers such as Tolstoy, Dostoevsky or Thomas Mann would have the greatest sympathy for TAKANO, the victim of tragic war, and would have written a good novel on this sergeant.

"J"(1)

0056

My argument concerning this case will be divided in three parts:

1. On the charge.

According to the charge and the specification of this case, it is said that the defendant TAKANO, Masayoshi, acting jointly with lieutenant colonel ITO, captain HIGASHIGI, first lieutenant IKAWA, leading private SHIMURA, and other persons unknown, in pursuance of a common intent, did, on or about 7 August, 1944, assault, strike and kill by bayoneting with fixed bayonets, an American prisoner of war, this in violation of the laws and customs of war.

However, the defendant TAKANO was not in concert with their actions. Of course, the defendant TAKANO is responsible for bayoneting an American prisoner of war, but there are no laws or customs of war which regulate his responsibility. As I already made an objection on the 21st of this month concerning this point, I will not discuss this matter again. I think it possible to consider that two conventions concerning prisoners of war, namely the 1907, Hague Convention and the 1927 Geneva Convention had no international value from the standpoint of international laws. Probably, they were not included in the last communication from Japan to the United States in 1941.

2. On his intent.

The charge states that the defendant TAKANO committed the action of this case, wilfully, feloniously, without justifiable cause, and without proper trials or other due process.

But the defendant TAKANO received, about seven p.m., on the 6th of August, 1944, the order of the Battalion Commander to execute the prisoner from Second lieutenant TSUCHIDA, then the leader of the third platoon of the 3rd Company of the 307th Independent Infantry Battalion, which was then at Fukurozawa, Chichi Jima. TAKANO went to the scene of execution and bayoneted with fixed bayonet, lawfully and with good faith, according to the direction of lieutenant colonel ITO, in the presence of thirty officers and soldiers. As the defendant TAKANO had received very little education, he was certain that the execution of the prisoners at Nakayama Pass was legal. Therefore, the defendant TAKANO had no criminal intent, and ought not to be guilty.

According to the statement of lieutenant colonel ITO, the witness in this case, he /TN-ITO/ was informed of the order from Captain Higashigi with many people present in the office of the Brigade Headquarters. He thought that the order was quite a reasonable one and relayed it to his subordinates. It is clear that sergeant TAKANO, on receiving this order, thought it just and legal, and obeyed it in executing the prisoner.

3. On his motive.

According to the charge, the defendant TAKANO committed the action with premeditation and malice aforethought, but the fact was that he only carried out what he was ordered by Second Lieutenant TSUCHIDA, the leader of the 3rd Platoon. He went to the scene of execution against his own will, and hesitated in front of the prisoner. It is evident that he bayoneted the prisoner according to the order



of lieutenant colonel ITO, and it is also evident, by the testimony of ITO, that the execution took place solemnly and ceremoniously.

The defendant TAKANO was an aged sergeant of thirty-eight years. He entered the Army in 1928. His family was poor and is engaged in agriculture.

I maintain that the defendant TAKANO, this pitiable soldier, did only carry out what he was ordered, and that he had no evil motive.

Because of those three reasons which I have stated above, I assert that the defendant TAKANO is not guilty. And if he is found guilty, I hope that he will be dealt with leniently, maintaining that he was forced to obey the order and that he can be sympathized with in his motive

MR. ITO, KENRO.

I certify the above to be a true and complete translation of the original argument of ITO, KENRO, in Japanese to the best of my ability.

*Frederick F. Tremayne*  
FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"J" (3)

0058

CLOSING ARGUMENT FOR THE ACCUSED  
DELIVERED BY  
MARTIN E. CARLSON, COMMANDER, USNR

Gentlemen of the Commission:

According to military court-martial procedure the accused is afforded an opportunity to present an argument before submitting his case to the court. Section 421 Naval Courts and Boards states that the defense should make a closing argument in order to properly present their case not only for the benefit of the court but also for the reviewing authority. We present the following argument.

The charge is alleged to be murder and yet as we said in our objections to the charge and the specification it is alleged that the facts are in violation of the laws and customs of war. The Commission overruled our objections and found the charge and specification in due form and technically correct. We are therefore led to believe that the offense alleged is in violation of the laws and customs of war.

We argue as do most international lawyers that the law of nations is binding only on sovereign states, and not on individuals.

This accused, Sergeant Takano, Masayoshi, can only be punished under the law of Japan or of the law of the United States.

We entered a plea in bar to the effect that this accused is not subject to the court's jurisdiction for a violation of the Hague Convention of 1907 or of the Geneva Prisoners of War Convention of 1929. Article 405 of Naval Courts and Boards states that lack of jurisdiction is a fatal defect and the plea may be made at anytime.

When it comes to individuals who violate the laws and customs of war, international law, such as the Hague Convention, provides neither courts or punishments. The prosecution has failed to show that the law of nations permits the trial of individuals or provides punishments for violations of the laws and customs of war.

Legally we hold that the state and not the soldier is liable for violations of the laws of war. It is incumbent upon the prosecution to furnish legal authority and/or specific rulings in order that this Commission may hold otherwise.

In order to properly prepare a defense we asked the Commission and the prosecution to inform us as to what specific law or custom of war this accused is charged with having violated. We are still without an answer although the prosecution asked the Commission to take judicial notice of the Hague Convention of 1907. We objected to the Commission taking judicial notice of this Convention but were overruled. If the accused is charged with having violated the Hague Convention No. IV of 18 October 1907 then we cite Article 2 of this Convention which provides that the provisions do not apply if all of the belligerents are not

"K 1"

0059

parties to the Convention. Since neither Italy nor Bulgaria has ratified the 1907 Hague Convention the accused claims that he is not bound by the Convention although Japan did sign the Convention.

If the accused is charged with having violated the Geneva Prisoners of War Convention of 1929 we point out that Japan has not ratified or formally adhered to it. The mere fact that Japan did through the Swiss Government agree to observe the provisions of this Convention make no difference legally.

This case is being tried by a judicial Commission and its findings must be legal and the sentence imposed only if there has been a legal violation or crime. It is not clear to the accused upon what law the charge and the specification is based. Mr. Justice Rutledge in the dissenting opinion in the Yamashita case said: "It is not our tradition for anyone to be charged with crime..., in language not sufficient to inform him of the nature of the offense or to enable him to make defense."

The prosecution has failed to show that the accused, Sergeant Takano, Masayosi acted jointly with Lieutenant Colonel Ito, Captain Higashigi, First Lieutenant Ikawa and/or Leading Private Shimura and other persons.

Lieutenant Colonel Ito was put on the witness stand by the prosecution and he testified he did not select Sergeant Takano as one of the bayoneteers. This witness testified he was in charge of the execution and yet he failed to identify Sergeant Takano as one of the bayoneteers.

We maintain that this witness did not by his testimony establish or prove the corpus delicti. Section 149 of Naval Courts and Boards states: "Corpus delicti, literally 'the body of substance of the crime', may be defined in its primary sense as the fact that a crime has actually been committed. It is the general fact without which there could be no guilt, ... and must be established before any one can be convicted of the perpetration of the alleged crime; otherwise, the accused might be convicted of murder, for example, when the person alleged to have been murdered was still alive...."

Although Lieutenant Colonel Ito stated there was no one on Chichi Jima except Japanese it is common knowledge that there were other persons on Chichi Jima except Japanese Military, such persons were impressed as laborers and made to perform arduous labor. Is it not possible that it might have been one of these that was executed in August 1944 since neither of the witnesses was able to identify the prisoners as Americans. We hold the corpus delicti has not been proved.

We also hold that the prosecution failed to show that the accused, Sergeant Takano, did the act specified. The witness Superior Private Kido, who was convicted of bayoneting an American prisoner of war was asked by the prosecution to testify that he saw the accused, Sergeant Takano, bayonet a prisoner of war. On the witness stand he said that he saw two persons bayonet, two non-commissions.

"K 2"

0060

officers. He remembered their ranks but not their names. Then he remembers a sergeant piercing before he did. Finally he remembers that he is in the court room and points him out. This is the kind of evidence that the prosecution is asking the Commission to convict the accused of for murder of a prisoner of war whose name is not even known. Kido who has already been convicted and sentenced for this act comes before this court as a witness against the accused, Sergeant Takano. The accused in this case, Sergeant Takano, was a witness against Superior Private Kido and Kido was convicted of murder. Is it not natural that Kido should have a certain animus against the accused, Sergeant Takano. It is for the Commission to consider this point in weighing the evidence. Kido admitted on cross-examination that he was 15 to 18 feet away from the prisoner when the prisoner was bayoneted.

The prosecution, the United States of America, are charging the accused with having violated the Geneva (Prisoners of War) Convention of 27 July 1929 and then the prosecution violate this same Convention when they introduce into evidence a written statement signed by the accused. Article 61 of this Convention states: "No prisoner may be obliged to admit himself guilty of the act of which he is accused".

We objected to the statement of the accused being admitted into evidence because the accused is thereby made to testify against himself. No person can be made to testify against himself. This is a right guaranteed by the Fifth Amendment to our Constitution. The Sixth Amendment of this same Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall have the assistance of counsel for his defense. This, he did not have when he was made to sign the statement which went into evidence. Although this statement was signed before Major Shaffer, U.S. Marine Corps, who designated himself as Senior Member the statement or attached papers do not show that the accused was ever accorded the rights of a defendant or the privileges of an interested party. Section 734, Naval Courts and Boards also states: "A person granted the privileges of an interested party may be called as a witness, but, of course, can not be required to incriminate himself.

The prosecution has stated that the Supreme Commander Allied Powers abrogated all these fundamental rules and the Fifth and Sixth Amendment of the Constitution of the United States of America. But does the prosecution have the affrontery and do they dare to ask this Commission to convict this accused of a violation of the Geneva (Prisoners of War) Convention of 1929 when in the same breath they say that Article 61 of this Convention which states: "No prisoner may be obliged to admit himself guilty of the act of which he is accused" is abrogated and does not apply in this case but that the accused must be obliged to admit himself guilty of the act alleged. This is no mere technicality or rule of procedure which is being violated but a substantial right guaranteed by the Constitution of the United States of America.

"K 3"

0061

There can be no doubt but that this accused, a Japanese National, should be afforded all the rights and privileges guaranteed by our Constitution to any citizen who is accused of a crime. It is for this Commission to see to it that this accused is afforded such rights.

But the prosecution state that this statement is corroborated by two witnesses. Let us again consider these two witnesses. The specification alleges that the accused acted jointly with these two witnesses naming Lieutenant Colonel Ito and as to Private Kido he is included in the phrase "and other persons unknown" and in pursuance of a common intent. Wharton's Criminal Evidence, Volume 2, Section 714 states "narratives of past events after the conspiracy is fully executed are to measures taken in execution or furtherance of the common purpose inadmissible against conspirators.

One conspirator does not...by its execution under his authority, authorize his conspirator to make confessions or admissions of guilty for him, or to narrate past events. State v Huckins, 212 Iowa 283.

"When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirators is permitted by any subsequent action or declaration of his own to affect the others." Wharton's Criminal Evidence, Vol. 2, par 714 citing Logan v United States, 144 US 263; Brown v U.S. 150 US 93; Sorenson v State (C.C.A. 8th) 143 F. 820; Gall v U.S. (166 F. 419); Hauger v U.S. 173 F. 54; Morrow v U.S. 11 F (2d) 256; Lane v U.S. 34 F. (2d) 413; Collenger v U.S. 50 F (2d) 345; Minner v U.S. 57 F. (2d) 506; Dandagarda v U.S. (C.C.A. 10th) 64 F. (2d) 182; U.S. v White 5 Crunch CCA 38 Fed Cas. No. 16-675.

In Jarrel v Com. 132 Va 551, 1108 E 430 it was held that the admission against the defendant, of a statement by a co-defendant charged jointly with the defendant who was on trial for murder was error. We submit that the admission of the evidence of the witnesses Lieutenant Colonel Ito and Private Kido is error.

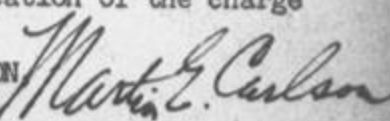
Since there has been no showing by the prosecution that the accused did "willfully, feloniously, with premeditation and malice aforethought" do the bayoneting, and since the defense has shown by cross-examination of the witness, Lieutenant Colonel Ito that he, Lieutenant Colonel Ito gave the orders for the bayoneting, this is with justifiable cause, we maintain that the prosecution has failed to prove the necessary allegations of murder as set out in the specification.

Court Martial Order 5-1921 states that when malice aforethought does not exist the homicide cannot be murder.

Section 158 of Naval Courts and Boards states: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted." We ask the Commission to find as to the accused, Sergeant Takano, Masayoshi, the specification not proved and the accused is of the charge not guilty and the commission does therefore acquit the said Sergeant Takano, Masayoshi of the specification of the charge of murder.

MARTIN E. CARLSON  
Commander, USNR.

"K 4"



0062

CLOSING

ARGUMENT FOR THE PROSECUTION

Delivered by

FREDRIC T. SUSS,

Lieutenant, U.S.N.R.

May it please the court:

Much has been said about criminal intent. May I reiterate the statements of my colleague on this point as well as on the other elements of murder?

Wilfully is defined as intentionally. In an indictment charging a wilful killing, it means intentionally and not by accident. It is synonymous with intentionally, designedly, without lawful excuse, and, therefore, not accidentally. A wilful act is one that is done knowingly and purposely, with the direct object in view of injuring another.

Malice aforethought. In the description of murder the words do not imply deliberation, or the lapse of considerable time between the malicious intent to take life and the actual execution of that intent, but rather denote purpose and design in contradistinction to accident and mischance; and the intent necessary to constitute malice aforethought need not have existed for any particular time before the act of killing, but it may spring up at the instant and may be inferred from the fact of killing.

Premeditation. A design formed to commit a crime or to do some other thing before it is done. Intent before the act, but not necessarily existing any extended time before. Premeditation differs essentially from will, which constitutes the crime; because it supposed, besides an actual will, a deliberation and a continued persistence which indicate more perversity. The preparation of arms or other instruments required for the execution of the crime are indications of premeditation but are not absolute proof of it; as these preparations may have been intended for other purposes, and then suddenly changed to the performance of the criminal act.

Defense counsel has contended that we have not proven this crime nor have we proven the corpus delicti. Permit me to read the analysis of the proof of crime as given in Wharton's Criminal Evidence Section 640:

"The proof of every crime devolves into two component parts, to wit: (1) Proof that the crime charged has been committed by someone; and (2) proof that the defendant is the perpetrator of the crime. The first element is the body of the crime or the corpus delicti; the second is the proof of the defendant's connection with the crime, i.e., his guilty participation therein.

Let us now consider the province of an extrajudicial confession in the proof of crime as thus treated.

It is practically universally held that the corpus delicti of a crime cannot be proved by an extrajudicial confession standing alone, but must be proven independently of it. Moreover, a verdict of guilty and a subsequent conviction cannot be sustained upon an extrajudicial confession only.

Stated conversely, the rule is that an extrajudicial confession of the accused must be corroborated by independent proof of the corpus delicti of the crime.....Such corroborating or independent evidence of the corpus delicti may be direct or circumstantial.

The overwhelming weight of authority, however, recognizes that such a confession, or admission may be considered in connection with other evidence to establish the corpus delicti, and that it is not necessary to prove it by evidence which entirely excludes a consideration of the confession."

We have proven the corpus delicti by two eye-witnesses brought before this court. They have testified very definitely that the murder was committed and it was not necessary that they testify to the accused's guilty participation. This testimony taken together with the confession of the accused is sufficient evidence to convict him of the crime.

In addition to establishing the corpus delicti these witnesses have testified as to the accused's guilty participation therein. Therefore, we have produced more proof than is necessary to establish the accused's guilt of this crime.

It has been stated that there is no proof that the victim was an American. The evidence has been very clear that the order of the Brigade under which the victim was executed stated that two American aviators would be executed. This evidence was clear and unmistakable.

We concede to the defense's contention that two of our witnesses were accomplices in the crime. However, this fact does not render the testimony incompetent. In Underhill's Criminal Evidence page 257:

"The credibility of witnesses, and the weight of their testimony, whether they are accomplices or not, is for the jury exclusively; and the jury should carefully consider accomplice's testimony in the light of all other evidence and the influence under which it is given. But the jury may believe an accomplice's testimony notwithstanding the introduction of evidence tending to impeach an accomplice."

May we point out to the Commission that these witnesses were not co-defendants although they may have been accomplices. They are not tried together in the same trial. Therefore, the law with regard to the testimony of co-defendants is not applicable.

Counsel has made the contention that there is no individual responsibility for such crimes under International law but the responsibility is merely that of the sovereign state.

Let us see what the Japanese government has to say about this:  
The government of Japan included these rules of international conventions in the Army Operational Handbook and in the Navy Regulations and in addition to this the Japanese War Ministry issued a notification in March 1942, covering regulations for the Treatment of Prisoners of War. This document recognizes the obligations of international treaties and customs by stating as follows:

"A prisoner of war, as defined in these regulations, is any enemy combatant who has fallen into the power of the Empire or any other person who is to be accorded the treatment of a prisoner of war by virtue of international treaties and customs."

"A prisoner of war shall be humanely treated and in no case shall any insult or maltreatment be inflicted upon him".

This, gentlemen, is Japanese law.

It has been argued that there was no common intent between the accused and the persons alleged in the specification. We have shown that the accused acted jointly with each of the persons mentioned in the specification. Our evidence clearly shows the part that each of these persons played in the crime. That the accused knew that his action was wrongful is apparent from the fact that he said he had done everything he knew to avoid such action.

Some mention has been made of the testimony given by the accused in a previous trial. The Commission will note from the date appearing on the confession that this complete confession was submitted before the accused appeared as a witness in that trial.

It has also been contended that the accused is entitled to the privileges of a prisoner of war under the Geneva Convention. The Geneva Convention does not apply in any way to the accused. There is no evidence that the accused was ever a prisoner of war. On the contrary when he was apprehended he was living as a civilian in Japan. He was never apprehended during the war, therefore, he can not claim to have been a prisoner of war at any time. Even if the Geneva Convention did apply in this case the provision cited has in no way been violated. This provision referred to by defense counsel states that a prisoner of war must not be obliged to admit his guilt of charges brought against him. This accused was never obliged to admit his guilt of charges brought against him. On the contrary the evidence shows the accused submitted a voluntary statement. The accused was in no way forced to make such a statement. It has also been contended that under the court martial orders when a deposition is used to convict an accused the sentence must be limited. When have we used a deposition in this trial? The record does not show that any deposition was presented before this commission.

The only defense offered by the accused is that he was acting under orders. Let us look to the pertinent law on this subject.

In the famous American case of US v. Jones, 3 Wash. CC209, the court said, "We do not mean to go further than to say that the participation of the inferior officer in an act which he knows, or ought to know, to be illegal, will not be excused by the order of his superior".

This was upheld in CMO 4-1929 where the court said, "In reference to the contention of the accused that he was acting in the performance of duty, it is deemed pertinent to refer briefly to the law pertaining to homicide committed by persons in the military service. It is a general rule that a soldier (or sailor) is bound to obey all lawful orders, and all he may do in obeying such lawful orders constitutes no offense as to him. But an order illegal in itself and not justified by the rules and usages of war, or in its substance clearly illegal, so that a man of ordinary sense and understanding would know as soon as he heard the order read or given that it was illegal, will afford no protection for a homicide, provided the act with which he may be charged has all the ingredients in it which may be necessary to constitute the same a crime in law".

In CMO 121 of 1919, it was said, "A soldier is bound to obey only the lawful orders of his superiors. If he receives an order to do an unlawful act,



he is bound neither by his duty, nor his oath to do it. So far from such order being a justification, it makes the party giving the order an accomplice in the crime."

Under international law it has also been held that an act in obedience to a military order of a superior is not justifiable when that act is known or under the circumstances should have been known, to be illegal under the laws and customs of warfare. This doctrine in international law is clearly demonstrated in the celebrated German case called the Llandovery Castle Case. In this case the German Supreme Court trying German defendants for the machine-gunning of open life-boats declared, "Military subordinates are under no obligation to question the order of their superior officers and they can count upon its legality. But no such confidence can be held to exist if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law..... They should, therefore, have refused to obey. As they did not do so, they must be punished."

In the Mexican War case of Mitchell v. Harmony, Chief Justice Taney of the United States Supreme Court wrote, "It can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior. The order may palliate but it cannot justify".

Defense counsel has seen fit to attack the rules laid down by the Supreme Commander for the Allied Powers. Reference to the record will show that we have not resorted to the SCAP rules in this case. We have produced enough evidence to convict the accused without resorting to such rules and under such procedure which would be accepted in any civilian or military court. We have referred to the SCAP rules with regard to judicial notice but in this instance the rule of judicial notice is the same before any civilian or military tribunal. Any court will take judicial notice of facts of common knowledge. The only SCAP rule which we ask the court to apply is one that operates in favor of the accused, and it is as follows:

"Action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires."

Fredric T. Suss  
FREDRIC T. SUSS,  
Lieutenant, USNR.

独立歩兵第三〇七大隊第三中隊  
高野正義

昭和十九年八月中小峠の途中に於ける捕縛ヨシヨシ  
ケイに付き私の関係したる事申立自首致し  
私は大隊長命令書も小隊長土田少尉より傳  
達せしめ当日午前九時頃小港兵舎ニ行  
大隊長命令高野軍曹八捕縛ヨシ一名を刺突  
スベシ其外より中小峠現場に行き二名、捕縛ヨ  
シ刺突ス（此ニモ三名若くは三名の者が刺突致し  
其後を伊東中佐が首ヲ切つぬのぞす  
其時指示は井川中尉がしたのぞす  
此の時一巻縮居りし多將校は加藤中佐伊東  
中佐井川中尉山下中尉甚、他にも將校が居  
り、多事と思フ所がチオクがありませ  
以上も自首致しテケイケイ、事は御取調  
の上申上テす

昭和十九年七月二十七日 高野正義

上司様



DEPARTMENT OF STATE  
OFFICE OF THE SECRETARY

TAKANO,

+  
Kido

(also ordered)  
Tobacco  
'order of the Bureau'  
E-2-

0068

STATEMENT OF TAKANO MASAYOSHI  
Former Sergeant, IJA.

27 July, 1946.

1. Regarding the execution of prisoners of war in August, 1944 half way up Nakayama Pass, I will confess to my part in the execution. I received the Battalion Commander's order thru Platoon Leader Tsuchida and acting on this order I went to the Kominato Barracks around 9 o'clock in the morning on this date.  
(The Battalion Commander's order: Sergeant Takano must stab a prisoner of war).

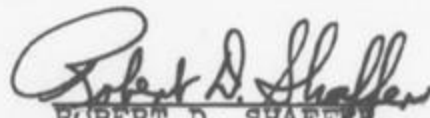
2. Then I went to Nakayama Pass, the scene of the execution, and there stabbed a prisoner of war. There were two (2) or three (3) others who also stabbed the prisoner of war. After this, Lieutenant Colonel Ito beheaded them. At the time, I acted on instructions from First Lieutenant Ikawa. The officers present at this time, I believe, were: Lieutenant Colonel Ito, Lieutenant Colonel Kato, First Lieutenant Ikawa, First Lieutenant Yamashita, there were some others; however, I do not remember clearly.

3. I make the above confession. I will talk of the details when I am cross-examined.

July 27th, 1946.

高野正義  
TAKANO, MASAYOSHI

Subscribed and sworn to before me this 27th day of July, 1946.

  
ROBERT D. SHAFER,  
Major, U.S.M.C.,  
Senior Member.

I, TAKANO, Masayoshi, being duly sworn on oath, state that I have had read to me, and understood the translation of my statement consisting of one (1) page, and it is the truth to the best of my knowledge and belief.

高野正義  
TAKANO, MASAYOSHI

"EXHIBIT (2)" (1)

0069

COMMANDER OCCUPATION FORCES)  
GUAM, MARIANAS ISLANDS)

I, Frederick Arthur Savory, civilian, interpreter, being duly sworn on oath, state that I have truly translated the foregoing statement given from Japanese to English and from English to Japanese respectively, and that after being transcribed, I truly translated the foregoing statement containing one (1) page to the witness, that the witness thereupon in my presence affixed his signature thereto.

*Frederick Arthur Savory*  
FREDERICK ARTHUR SAVORY

Subscribed and sworn to before me this 27th day of July, 1946.

*Robert D. Shaffer*  
ROBERT D. SHAFFER,  
Major, U.S.M.C.,  
Senior Member

COMMANDER OCCUPATION FORCES)  
GUAM, MARIANAS ISLANDS)

I, Robert D. Shaffer, Major, 06652, U. S. Marine Corps, certify that on 27th day of July, 1946, personally appeared before me Takano, Masayoshi, and according to Frederick Arthur Savory, interpreter, gave the foregoing statement and that after his statement have been transcribed the said Takano, Masayoshi had read to him by the said interpreter, the same and affixed his signature thereto in my presence.

*Robert D. Shaffer*  
ROBERT D. SHAFFER,  
Major, U.S.M.C.,  
Senior Member.

EXHIBIT (2) (2)

0070

右キ一頁 = 後ル私ノ證言書ハキヨウハク的 =  
ニ語尊的 = 或ハ実行出来又約束ノ爲メ  
書初レタ證言書デハナイ  
右キ證言書ハ自由 = 目個意シ的 = 信實  
オフクムモノト思イ書レタモノ成リ

高野正義

Guam, Marianas Islands,  
27 July, 1946.

The foregoing statement consisting of one (1) page, made by me, was not obtained by threats, promises, or inducements of any kind. I wrote the foregoing statement freely and willingly, and it is true to the best of my knowledge and belief.

高野正義

TAKANO, MASAYOSHI,  
Former sergeant,  
Imperial Japanese Army.

"EXHIBIT (2)" (3)

0071

陸軍中隊長 高野正義 人格證言

陸軍

尊敬の裁判長閣下ニ謹ニ申上ケマス

高野中隊長は第一七大隊、山下隊に属シテ少隊長、分隊長トシテ日頃常に上司ヲ敬ヒ部下ヲ愛シ日夜陣地構築ニ其他諸勤務ニ精勵シ居リマシタ。私ハ他隊ニ轉属前高野中隊長トハ数週間、同じ少隊長ニ勤務シテ居リマシタ。高野中隊長ハ純朴ナ極メテ温厚篤實テ人物ガアリテニ諸作業ニ対シテモ眞面目デアリ、克ク上司ノ命ニ從ヒ實行ニ移シ、且善悪ヲ承知ヲマキマヘ善ニ進ミ悪ニ退キ熱心ニ其ノ任務ニ對シテハ献身的努力ニ傾注スルヲ氣持、持主デアル様デシタ。彼ハ日頃從順デアリ、上司ヨリノ信頼モ厚ク、又同僚間於テモ信用トシ風評モ良イ彼デシタ。

(原田光雄空)



社

陸軍

高野曹長は農家出身でありマシテ家庭デハ一家ノ扶  
 持トナリテ働ラカシレバ妻子ヲ扶養スル事ハ出来ナイノ  
 ニ戦争ノ為止ムテ妻子ヲ訣別シ現在ニ至ツテハ金ヲ自分ガ  
 居テケレバ家庭ハ非常ニ苦シイ立場ニアルト言フ事等ヲ聞  
 カレテ事モアリマシタ。高野曹長ハ斯レテ家庭情況ニア  
 リスレバ今事件ニ就キマシテモ消極的ナリ且止ムテマシヌ  
 場ニアツクノデハナイカト思ヒマス

宜シク裁判長閣下高野ノ家庭ヲ御考慮願ヒ情々酌量  
 下シテ事ヲ心カラ御願ヒ申セカマス

一九四六年 九月三十日

谷島陸軍 軍曹

岸本正雄

米國戦争犯罪裁判長閣下

(竹堂光國田原)

"Exhibit 3" (2)

0073



AFFIDAVIT FOR THE CHARACTER OF FORMER SERGEANT MAJOR TAKANO, MASAYOSHI.

I humbly make my statement before Your Honor, The President of the Military Commission.

Sergeant Major TAKANO was attached to the YAMASHITA unit of the 307th Battalion and was the Squad leader of the 1st section. He respected his superiors, loved his subordinates, and exerted himself every day and night in constructing our positions and discharging his duty. Before I was transferred to another unit I was on duty with him in the same section for several weeks.

Sergeant Major TAKANO was simple mild and honest in nature. He was earnest in his operations, obedient to the orders of his superiors, loved what was right, abhorred what was wrong, and did his best in discharging his duty. He was always gentle, relied on by his superiors and comrades, and had a good reputation.

He is a native of a farming family. If he is not able to work at his farm it will be difficult for his family to make a living. He was forced to part with his wife and children because of war, but his military service will make his family's living miserable. He often told me the above. As he was in the above situation, he ought to be opposed to such an action. Therefore, I cannot but imagine that he was obliged to do so.

I beg your kind consideration for his poor family and that you deal leniently with him.

23 September 1946.

To Your Honor, The President of the Military Commission.

Sergeant IJA, Chichi Jima.  
KISHIMOTO, Masao.

I certify the above to be a true and complete translation to the best of my ability of the original affidavit written in Japanese.

*Frederick F. Tremayne*  
FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"Exhibit 4"

0074

高野曹長ニ對スル人権証言書

高野曹長ニ對スル人権証言ヲナシテ存シタリ

I humbly state here concerning the character of Sergeant Major TAMANO.

高野曹長トハ同一大隊ニ屬シ中隊ニ異テテ居リタルガ當テ

同一地ニ於テ終戦ツレヨリ短期間ニテアリタルガ終戦ニ到

ルテノ間陣地構築作業ニ從事シテモアリマス其ノ時

於テ高野曹長ノ言部ニ就テ感シタリト

性質極テ温厚從價アリ任節ニ對スル熱意ハ感シタリ

トシテ而テ常ニ寡黙ニシテ温情味ヲ有シテ居リ下級者ナラシ

信望モアリタリ此類ナル一例ニテモアリマスガ作業從事ニ當テハ

常ニ平允ニテ下級者ニ對シテ指導ハ極テ懇切ノ實アリタリ

右高野曹長ノ人権、現レ一短ク申述シタルガ以テ高野曹長

人権ノ主張トシテ御賞察賜テ奉ル事ト極メテ此書アリマス

萬隆軍大尉

中野正巳

裁判長閣下

"Exhibit 5"

"Exhibit 6"

0075

高野曹長ニ對スル人権証言書

高野曹長ニ對スル人権証言ヲサセテ頂キマス

高野曹長ト同一大隊ニ在リ中隊ニ異ツテ居リマスガ當ツテ  
同一地ニ於テ終戦少シ前ヨリ短期間テハアリマスガ終戦ニ到  
ルマデ同陣地構築作業ニ從事シタエトガアリマス其ノ時  
於テ高野曹長ノ言部ニ就テ感シタエト...

性質極ク温厚従順ガアリ任命ニ對スル熱意ハ感シタリ  
マス而シテ常ニ寡黙ニシテ温情味ヲ有シテ居リ下級者ナリ  
信望モアリマス此類ナル一例ガアリマスガ作業從事ニ當リテハ  
常ニ平定ニ下級者ニ對シ指導ハ極ク懇切丁寧ガアリマス

至高野曹長ノ人権ノ現シ一短ク申述シマスガ以テ高野曹長  
人権ノ主張ナルトテ御賞察賜テ幸ニ甚ト感スル次第ガアリマス

萬隆年大尉

中野正巳

裁判長閣下

"Exhibit 5"

AFFIDAVIT FOR THE CHARACTER OF SERGEANT MAJOR TAKANO.

I humbly state here concerning the character of Sergeant Major TAKANO.

Sergeant Major TAKANO and I were attached to the same battalion. Though our units were different, we engaged together in constructing our positions at the same place for a short time before the termination of the war. Therefore, I will tell you what I knew about him during this period.

He was very mild and obedient in nature, earnest in his duty; besides he was a man of few words. He was so kind to his subordinates that he was loved by them. He took the lead in the operations and taught his men kindly how to work.

I beg your kind consideration of what I have just mentioned and that you will understand the noble character of Sergeant Major TAKANO.

Former Captain NAKANO, Masani.

To Your Honor, The President of the Military Commission.

I certify the above to be a true and complete translation to the best of my ability of the original affidavit written in Japanese.

*Frederick F. Tremayne*  
FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"Exhibit 6"

0077

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

26 NOV 1946

Serial: 19157a

The military commission, composed of Army, Navy and Marine Corps Officers, in the foregoing case, was convened 15 October 1946, by the Commander Marianas Area pursuant to his inherent authority as a Military Commander and the specific authorization of the Commander in Chief United States Pacific Fleet (CinCPac conf. serial 0558 of 8 March, 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas. The commission was specifically authorized to take up the present case and other cases the trial of which had not been commenced which had been ordered tried before the Military Commissions convened by the precepts dated August 2, 1946 and August 24, 1946. The order for trial (charge and specification) was issued 16 September 1946 and served on the accused on 18 September 1946. The trial was held under the authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of Naval Courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

The evidence clearly shows that the defendant Sergeant Masayoshi Takano, IJA, while attached to the 307th Independent Infantry Battalion, First Mixed Brigade, IJA, on Chichi Jima, Bonin Islands executed an American prisoner of war by bayoneting in obedience to an illegal order received by him from higher authority. The command of a superior neither excuses nor justifies an unlawful act. (Clark and Marshall, The Law of Crimes, 4th Ed., Sec. 71, n. 310; CMO 212, 1919, 5; CMO 4, 1929, 19; para 345.1, FM 27-10, 1 Oct. 1940).

Subject to the above remarks, the proceedings in the foregoing case of Sergeant Masayoshi Takano are approved. The findings on the charge and the specification thereunder and the sentence are approved.

The War Criminal Stockade, Guam, is designated as the place of confinement of Sergeant Masayoshi Takano, until approval of his sentence by the Commander in Chief United States Pacific Fleet and Pacific Ocean Areas, at which time he will be transferred to the custody of the Commanding General, United States Eighth Army, Tokyo, Japan, for confinement in Sugamo Prison, Tokyo, Japan.

*C. A. Pownall*  
C. A. POWNALL,  
Rear Admiral, U. S. Navy,  
The Commander Marianas Area.

To: Commander in Chief United States Pacific Fleet and Pacific Ocean Areas.  
Re: Record of Proceedings of Military Commission - case of Sergeant Masayoshi Takano, IJA.

Copy to:  
Island Commander, GUAM.

0078

UNITED STATES PACIFIC FLEET  
AND PACIFIC OCEAN AREAS  
Headquarters of the Commander in Chief

Cincpac File  
A17-25

c/o Fleet Post Office,  
San Francisco, California.

Serial 11495

7 DEC 1946

In reviewing the record of proceedings, it is noted that on page one "an interpreter read the precept in Japanese." No interpreters are shown to have been present and it is not until page three of the record that interpreters are first shown to have been introduced and sworn. No objection was made to this irregularity. It is not considered, therefore, that the rights of the defendant have been prejudiced.

Subject to the foregoing, the proceedings, findings, sentence and the action of the convening authority thereon, in the foregoing case of Sergeant Masayoshi Takano, IJA, are approved.

The record is, in conformity with section D-14, Naval Courts and Boards, and Chief of Naval Operations Serial #01P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy for revision and record.



J. H. TOWERS  
Admiral, U.S. Navy,  
Commander in Chief,  
United States Pacific Fleet,  
and Pacific Ocean Areas,  
and the Military Governor of the  
Pacific Ocean Areas.

To: Judge Advocate General.

Re: Record of proceedings of Military Commission - case of Sergeant Masayoshi TAKANO, IJA.

Copies to:  
ComMARIANAS  
War Crimes Director POA (GUAM)  
IsComGUAM

0079

From Sir Mac for delivery  
to Sec. Gen. for the United Nations  
War Crimes Commission.

0080

Case of  
Sergeant Takano, Masayoshi, Imperial Japanese Army.  
October 21, 1946

RECORD OF PROCEEDINGS  
of a  
MILITARY COMMISSION  
Convened at  
United States Pacific Fleet,  
Commander Marianas  
Camp, Marianas Islands,  
by order of  
Commander Marianas Area.

0081



**TAKANO, MASAYOSHI**  
**Sergeant, Imperial Japanese Army.**  
**Trial by Military Commission**  
**At Guam**  
**Marianas Islands.**  
**October 21, 1946.**

INDEX	Page
Organization of Commission.....	1
Introduction of counsel.....	1
Challenges.....	1, 2
Members, Judge Advocates, Reporters sworn.....	3, 10
Arraignment.....	4, 5
Pleas.....	5
Adjournments.....	17, 22
Prosecution rests.....	17
Defense rests.....	18
Finding.....	19
Sentence.....	21

TESTIMONY			
Name of witness	Direct and Redirect	Cross and Recross	Commission
<b>Prosecution</b>			
Ito, Kimuji, lieutenant colonel, IJA.	6	8	
Kido, Matsutaro, superior private, IJA.	11	13	
Frederick A. Savory.	15		
<b>Defense</b>			
Toda, Masanao, civilian	19		

EXHIBITS		
Exhibit	Character of	Admitted in evidence.
1	Statement of Takano, Masayoshi, Sergeant, IJA.	16
2	English translation of "Exhibit 1".	16
3	Statement by Sergeant Kishimoto, Masuo, IJA, in Japanese, in behalf of the accused.	20
4	English translation of "Exhibit 3".	20
5	Statement by Captain Nakano, Masumi, IJA, in Japanese, in behalf of the accused.	20
6	English translation of "Exhibit 5".	20

0082

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12  
13-JDM-gmr

Serial: 12841

15 October 1946.

From: The Commander Marianas Area.  
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.

Subject: Precept for a Military Commission.

1. Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area and further by the specific authority vested in me by the Commander-in-Chief, U. S. Pacific Fleet (CinCPac conf. serial 0558, of March 8, 1946), and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas, and by the Judge Advocate General of the Navy (JAG despatch 311730Z, August 1946), a Military Commission is hereby ordered to convene at the Headquarters, Commander Marianas on Guam, Marianas Islands, at 10 o'clock a.m. on Monday, October 21, 1946, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The Military Commission is composed of the following members, any five of whom are empowered to act, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President,  
Colonel Adolph L. RAMON, Army of the United States,  
Colonel Douglass G. PAMPLIN, Army of the United States,  
Lieutenant Colonel Adolph ZUBER, U. S. Marine Corps,  
Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy,  
Commander Vance O. SMITH, U. S. Naval Reserve, and of

Lieutenant Daniel FLYNN, U. S. Naval Reserve, Lieutenant Edward L. FIELD, U. S. Naval Reserve, and Lieutenant Fredric T. SUSS, U. S. Naval Reserve, as judge advocates, any of whom is authorized to act as such.

Commander Martin E. CARLSON, U. S. Naval Reserve, Lieutenant Commander Donald H. DICKEY, U. S. Naval Reserve, and Masanao TODA, and Kenro ITO, of Tokyo, Japan, both furnished by the Japanese Government, all of whom are lawyers, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by accused.

Observers designated by the French and Swiss Governments are authorized to attend trials wherein an accused is alleged to have unlawfully killed French and Swiss nationals. A duly accredited native of the Marshall Islands is also authorized to participate as an observer in any trial of an accused charged with offenses against Marshallese.

3. The Military Commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over all persons in the custody of the convening authority at the time of the trial.

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

A16-2/FF12/  
13-JDM-gnr

15 October 1946.

Serial: 12841

Subject: Precept for a Military Commission. (continued).

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charged with war crimes committed against United States nationals, persons referred to in the despatch of the Judge Advocate General of the Navy cited in paragraph one (1) above, and any white person whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established.

4. The Military Commission upon conviction of an accused is empowered to impose upon such accused any lawful punishment including the death sentence, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper.

5. The proceedings of the Military Commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals,") as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

6. This commission is hereby authorized and directed to take up the cases of Lieutenant TOMITA, Ryoji, IJN, Captain TANAKA, Masaharu, IJN, et al, and Sergeant TAKANO, Masayoshi, IJA, ordered tried by charges and specifications dated respectively 26 August 1946, 26 August 1946, and 16 September 1946, and such other cases as may be now pending before the Military Commissions of which Rear Admiral Arthur G. Robinson, U. S. Navy, is President, convened respectively by my precepts of August 2, 1946 and August 24, 1946, except such cases the trial of which may have been commenced.

7. Detachment of an officer from his ship or station does not of itself relieve him from duty as a member or judge advocate of the commission. Specific orders for such relief are necessary.

8. Power of adjournment is granted the commission, and adjourned sessions may be held at such times and at such places as the commission may determine.

C. A. POWNALL,  
Rear Admiral, U. S. Navy,  
The Commander Marianas Area.

Copies to:

Members of the Commission.

Judge Advocates.

Judge Advocate General, U. S. Navy.

Certified to be a true copy:

Fredric T. Suss,  
Lieutenant, USNR,  
Judge Advocate

116-2/7712/  
13-30-46

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

16 September 1946.

Serial: 11410

From: The Commander Marianas Area.  
To : Lieutenant Daniel FLYNN, USNR, and/or  
Lieutenant Edward L. FIELD, USNR, and/or  
Lieutenant Fredric T. SUND, USNR, and/or  
your successors in office as Judge Advocates,  
Military Commission, Commander Marianas.

Subject: Charge and Specification - in the case of:  
Sergeant TAKANO, Masayoshi, Imperial Japanese Army.

1. The above named person will be tried before the Military Commission of which you are Judge Advocate upon the following charge and specification. You will notify the President of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE

MURDER

SPECIFICATION

In that TAKANO, Masayoshi, then a sergeant, Imperial Japanese Army, attached to the 307th Independent Infantry Battalion, First Mixed Brigade, military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands, and while so serving at said military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands, acting jointly with ITO, Kikaji, then a lieutenant colonel, IJA, HIGASHIGI, Seiji, then a captain, IJA, IKAWA, Shigeo, then a first lieutenant, IJA, SHIMURA, Hiroyasu, then a leading private, IJA, and other persons unknown, in pursuance of a common intent, did, on or about 7 August, 1944, on Chichi Jima, Bonin Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by bayoneting with a fixed bayonet, an American prisoner of war, name to the relator unknown, then and there held captive by the armed forces of Japan, this in violation of the laws and customs of war.

C. A. POWHALL,  
Rear Admiral, U.S. Navy,  
The Commander Marianas Area.

Copy to:  
Judge Advocate General.

0086

BEST COPY AVAILABLE

昭和二十二年九月二六日

奔マリアナ方面司令官

宛マリアナ方面司令部附法官

米國海軍大尉「エル」

米國海軍大尉「エドワード・ルネ」

米國海軍大尉「フレッド・トリス」

或ハ法務官トシテノ貴官等ノ後任者

記

大日本帝國陸軍軍曹 高野正義

前記ノ者ハ貴官ガ法務官タル軍法會議ニ

於テ後記ノ告訴並ニ罪狀項目ニツキ、裁判

セラルベシ。貴官ハ裁判長ニ之ヲ報告シ、被告

ニ裁判ノ日時ヲ通知シ原告並ニ被告ノ

全證人ヲ集合セシムベシ。

告 誣  
殺 人

罪 狀 項 目

大日本帝國陸軍軍曹(當時)高野正義、小笠原  
列島父島所在、大日本帝國陸軍第一混成旅團  
第三獨立步兵大隊二區屬勤務中、大日本帝國  
陸軍中佐(當時)伊藤喜久、大日本帝國陸軍大尉  
(當時)東本誠、大日本帝國陸軍大尉(當時)井川繁雄、  
大日本帝國陸軍兵長交村久雄、其、他不詳  
者ト共同テ、共通ノ目的達成ノ為、了メカ、最  
國ト大日本帝國トガ戰爭狀態ニ在リタル昭和十九  
年八月七日頃、意思的ニ違法的ニ企圖ト惡意ヲ  
以テ、正當ナ理由モナリ、適當ナ公判其他然ルベキ  
手續キモモ、大日本帝國軍隊ノ手ニ抑留ニリシ  
姓名不詳ノ米作係一カヲ着ケタ銃劔ヲ突キ刺  
シタルヨリ殺害セリ、此等右行為ハ戰爭  
法規並ニ慣習ニ違反シタルモノナリ。

三十三方面司令部

米國海軍少將

C. A. ホウネル



FIRST DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Monday, October 21, 1946.

The commission met at 10:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Colonel Adolph L. Ramon, Army of the United States,  
Colonel Douglass G. Pamplin, Army of the United States,  
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,  
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,  
Commander Vance O. Smith, U. S. Naval Reserve, members, and  
Lieutenant Edward L. Field, U. S. Naval Reserve, and  
Lieutenant Fredric T. Suss, U. S. Naval Reserve, judge advocates.

Earl J. Griego, Platoon Sergeant, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Vivian Kilner, civilian, as reporter.

The accused requested that Commander Martin E. Carlson, U. S. Naval Reserve, and Mr. Masanao Toda and Mr. Kenro Ito act as his counsel. Commander Carlson, Mr. Toda and Mr. Ito took seats as counsel for the accused.

The judge advocate read the precept, copy prefixed marked "A".

An interpreter read the precept in Japanese.

The judge advocate did not object to any member.

The accused objected to Lieutenant Colonel Adolph Zuber, U. S. Marine Corps, because he sat as a member of the military commission which tried General Tachibana, Private Kido and other persons upon charges based on the same transaction concerning which the accused is on trial, and further that Colonel Zuber was a member of the military commission which heard this accused testify and admit by incriminating answers to questions put to him by the prosecution certain very damaging statements which cannot but prejudice the challenged member against the accused. The accused asked that the challenged member admit that he did sit as a member of the said military commission and that therefore in accordance with section 368 (e) Naval Courts and Boards, this commission sustain his objection to Lieutenant Colonel Zuber as a member of this commission. The accused further asked that this commission when ruling on his challenge announce in open court and read into the record any basis for any rulings which it makes regarding this challenge.

The judge advocate made the following statement:

0089



Before the challenged member replies and with the permission of the Commission, I would like to read two dispatches for the consideration and guidance of the Commission in view of the challenge of the accused.

The president directed the judge advocate to read the dispatches in question.

The judge advocate read a dispatch as follows:

From: Commander Marianas

Action to: SecNav (JAG)

Info to: CinCPac/Poa

Subject is challenge of members Military Commission trying War Crimes I

JAG (WAR CRIMES DIVISION) 062125 March permits Military Commission relax rules for Naval Courts to meet necessities of trial x Interpret this to permit Military Commission when authorized by Convening Authority to relax rule stated in Section 388 (Easy) Naval Courts and Boards x Unless otherwise instructed propose to direct commission to deny challenge of member when challenged member declares in open court that he can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission x The rules of evidence prescribed for the trial x The customs of war in like cases and his own conscience x Estimate approximately twenty suspected war criminals from Chichi Jima will be tried in the future for different offenses growing out of similar state of facts x There is personnel available for only one military commission x If new commission required for each trial war crimes trials will be indefinitely delayed x Acknowledge xx Date 4 July 1946, Date Time Group 042355.

The judge advocate then read another dispatch as follows:

From: JAG

Action to: ComMarianas

Info to: CinCPac/Poa.

Interpretation and proposed action contained urdis 042355 approved x Consider SCAP Rule 3 pertinent xx Date 10 July 1946, Date Time Group 101635.

An interpreter read both of these dispatches in Japanese.

The challenged member replied as follows:

I acknowledge that the statements of the defense counsel are substantially correct; however, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared. The challenged member withdrawing.

The commission was open,<sup>ED</sup> All parties to the trial entered; the commission announced that the objection of the accused was not sustained. *CLF*

The accused objected to Rear Admiral Arthur G. Robinson because he sat as a member of the military commission which tried General Tachibana, Private Kido, Lieutenant Colonel Ito, Captain Higashigi, First Lieutenant Ikawa, Private Shimura and other persons upon charges based on the same transaction concerning which the accused is on trial, and further that Admiral Robinson was a member of the military commission which heard this accused testify and admit by incriminating answers to questions put to him by the prosecution certain very damaging statements which cannot but prejudice the challenged member against the accused, Takano. He asked that the challenged member admit that he did sit as a member of the said military commission and that therefore in accordance with Section 368 (E), Naval Courts and Boards, this commission sustain his objection to Rear Admiral Robinson as a member of this commission. He further asked that this commission when ruling on his challenge, announce in open court and read into the record the basis for any rulings which it makes regarding the challenge. *CLF*

The judge advocate stated that the two dispatches read previously should also be considered by the commission in ruling upon this challenge by the accused.

The challenged member replied as follows:

I acknowledge that the statements of the defense counsel are substantially correct; however, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared. The challenged member withdrawing.

The commission was opened. All parties to the trial entered; the commission announced that the challenge of the accused was not sustained.

The judge advocates, each member and the reporter were duly sworn.

The judge advocate introduced Lieutenant (junior grade) Frederick F. Tremayne, U. S. Naval Reserve, Mr. Fred Savory, and Mr. Sam Ueda, as interpreters, and they were duly sworn.

The accused stated that he had received a copy of the charge and specification preferred against him, both in English and Japanese, on September 18, 1946.

The judge advocate asked the accused if he had any objection to make to the charge and specification.

The accused replied in the affirmative, stating as follows:

I object to the charge and the specification because although it is designated murder it does not follow the sample specification in Section 53 of Naval Courts and Boards. The statement that the accused did kill is

a conclusion of the pleader instead of a statement of fact, and does not make a good specification for the charge of murder. If this is only a violation of the laws and customs of war, then I ask that the particular law or custom of war be set out in the specification in order that the accused be fully advised of all the circumstances so as to enable me to make any defense I may have to this charge. I further object because the particular law or custom of war is not set out in the specification, and thus I am not able to properly prepare my defense which may well be a defense of a plea in bar as to the jurisdiction of this commission to try this case or the jurisdiction of this commission to try violations of the laws and customs of war. CKF

The objection of the accused was read in Japanese by an interpreter.

The accused further objected to the charge and specification as follows:

Gentlemen of the Commission:

The defendant Takano objects to the charge in this case. The prosecution persists that the defendant, Takano, then a sergeant, IJA, did, on or about 7 August 1944, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill by bayoneting with a fixed bayonet, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the laws and customs of war. However, we persist that there are no laws and customs of war which can be applied to this case. CKF

First, the prosecution will insist in this case, as follows: The charge is that of murder which is one of man's oldest vices, originating with Cain and Abel. It is highly proper that murder is considered a war crime. The accused, charged with murder in this case, was thoroughly aware that his act was both illegal and unjust. Malice is not necessarily meant in the law a malignant spirit, a malignant intention to produce a particular evil.

If a man intentionally does a wrongful act, an act which he knows is likely to injure another, that in the law is malice.

We maintain that the prosecution is mistaking law for morals. Murder cannot always form a crime immediately. However malicious it may be, we can not punish if we have no laws or regulations to decide it. *Generally speaking, C17* it is a definite criminal theory of the world that no crime can be existent without any criminal intent. Though the charge states: "wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, or without proper trial or other due process," the defendant, Takano, was then attached to the 3rd Section of the 3rd Company of the 307th Independent Infantry Battalion, Chichi Jima, he did not commit the so-called murder. As I stated above, it is a mistake to regard "murder" as "one of man's oldest vices originating with Cain and Abel" and to insist that murder is considered a war crime.

The prosecution will base their case upon the laws of international conventions. In the Hague Convention No. 4 of 1907 it is provided in article four that: "Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated." Also article 23c states, "It is especially forbidden - to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion." Japan has ratified this convention as long ago as 1907 and is bound by its terms. In the Geneva (POW) Convention of 27 July 1929, it is provided that: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against the acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited. Prisoners of war have the right to have their honor respected".

But we ask the Commission and prosecution; can the charge and the specification *C17* against the defendant, Takano, be based upon the foregoing conventions? *C17* Since neither Italy nor Bulgaria has ratified the 1907 convention, this defendant insists that he is not bound by Article 23c, although Japan did sign the convention, and that the 1929 convention has not yet been ratified by Japan.

The judge advocate replied.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that the objection of the accused was overruled and that the commission found the charge and specification in due form and technically correct.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The judge advocate read the letter containing the charge and specification, original prefixed marked "B", in English; then an interpreter read a copy in Japanese, prefixed marked "C".

The accused was arraigned as follows by the judge advocate:

Q. Takano, Masayoshi, Sergeant, Imperial Japanese Army, you have heard the charge and specification preferred against you; how say you to the specification of the charge, guilty or not guilty?

A. I plead not guilty.

Q. To the charge, guilty or not guilty?

A. I plead not guilty.

The prosecution began.

The judge advocate made the following statement:

Gentlemen of the Commission:

No part of the opening statement of the prosecution is offered as evidence in the present case. It is offered merely as an outline of what we hope to prove. Our evidence will show that around August 7, 1944, two American prisoners of war were executed on Chichi Jima, Bonin Islands. The execution was supervised by Lieutenant Colonel Ito, who had the prisoners bayoneted by four men, two men stabbing each prisoner twice. It will be shown that the accused, Sergeant Takano, bayoneted one of the prisoners. After the bayoneting, Lieutenant Colonel Ito beheaded the prisoners. These American prisoners of war were given no trial and absolutely no justification existed to prompt these brutal executions.

The judge advocate asked the commission to take judicial notice of the following:

That during the year 1944, a state of war existed between the Imperial Government of Japan and the Government of the United States, its allies and dependencies.

That the island of Chichi Jima is part of the territory under the command of the Commander Marianas Area.

The Hague Convention of October 18, 1907, and especially Article 23(e); "It is especially forbidden to kill or wound an enemy who, having laid down his arms or having no longer any means of defense, has surrendered at discretion". Japan ratified and signed this convention.

The Geneva Prisoners of War Convention of July 27, 1929, and especially Article 2: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity."

The forward of the War Department Technical Manual 27-251 in which it states that although Japan has not ratified or formally adhered to the Prisoners of War convention, it has, through the Swiss Government, agreed to apply the provisions thereof to prisoners of war under its control, and also, insofar as practicable, to interned civilians.

The accused objected to the Commission taking judicial notice of the Hague Convention of 1907 and the Prisoner of War Convention of 1929 and asked that the judge advocate prove these conventions like any other fact as they are required to do by section 27 and 309, Naval Courts and Boards. This commission is bound by Section 309 to require that the prosecution prove these conventions like any other fact since the defense is basing their defense on a plea in bar as to the jurisdiction of this commission to try

this accused, a sergeant in the Japanese Army, for a violation of a law and a custom of war which is set out in these conventions. The authority of this commission to try individuals for violations of these conventions must be established in accordance with Section 405, Naval Courts and Boards, *we hereby* offer this plea in bar, a plea that the accused Sergeant Takano is not subject to the court's jurisdiction for the trial of an offense in violation of articles of these conventions and laws and customs of war. *CLF*

The judge advocate replied.

The commission announced that the objection was overruled and that the plea in bar is denied.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.  
A. Ito, Kikuji, Lieutenant Colonel, Imperial Japanese Army.
2. Q. Are you presently confined on Guam?  
A. Yes.
3. Q. If you recognize the accused will you state as whom?  
A. Takano.
4. Q. Were you ever stationed on Chichi Jima with the Japanese Army?  
A. Yes.
5. Q. Between what dates were you stationed on Chichi Jima?  
A. I was stationed on Chichi Jima during 10 July 1944 to the first of July 1945.
6. Q. To what organization were you attached on Chichi Jima?  
A. I was attached to the First Mixed Brigade Headquarters under General Tachibana.
7. Q. Do you know to what organization the accused was attached? *CLF*  
A. No, I do not know.
8. Q. Did you ever see any prisoners of war on Chichi Jima?  
A. Yes.
9. Q. Do you remember the date?  
A. It was in the beginning of August 1944. I cannot recall the exact date.
10. Q. Where did you see these prisoners on Chichi Jima?  
A. I saw the prisoners at the guard house of the 307th Battalion which was the Kato unit.
11. Q. Did you receive any orders with regard to these prisoners?  
A. Yes.
12. Q. What were these orders?

A. I was ordered as follows: "It has been decided that two American aviators should be put to death. You, Lieutenant Colonel Ito, supervise the execution." The time was some time in the beginning of August 1944. I was told to pick up the two prisoners at the guard house of the 307th Battalion. I was also told that two men, a non-commissioned officer and a superior private from units other than the Brigade Headquarters would be sent as executioners. I was also told to furnish other executioners from the Brigade Headquarters.

13. Q. Do you remember who gave you this order?

A. I received this order from the adjutant, Captain Higashigi, of the Brigade Headquarters.

14. Q. Did you carry out this order?

A. Yes.

15. Q. Will you describe the execution as it took place?

A. The scene of the execution was at a clearing about 50 meters from the road leading over Nakayama pass. The execution took place on a slope that sloped down from the south toward the north and it was held in a grassy grown clearing, that was about 20 meters square. To the east of the clearing was the dug-out, about 1 meter deep. In front of this dug out four stakes were driven into the ground. Each prisoner was made to sit down and was tied to two of the stakes. The distance between the positions was two or three meters. After the prisoners were tied, I measured off a distance for the bayoneteers in order that with one thrust their bayonets could pierce the chest right to the back. I arranged the bayoneteers as follows: One non-commissioned officer that came from a unit other than the Brigade Headquarters to the prisoner on the right, that is facing the prisoner. The superior private that came from a unit other than the Brigade Headquarters to the prisoner on the left. Behind the non-commissioned officer I designated Kido to take the position and behind the superior private, I designated Shimura. About 20 meters to the south of the prisoners I arranged the spectators in double ranks. The number of men was about 20. These men had come for rifle practice, however I brought them to the scene and made them stand in double ranks.

16. Q. Did these four men actually bayonet the prisoner?

A. Yes.

17. Q. How many times did each man bayonet the prisoner?

A. Each man bayoneted the prisoner two times; that is to say, the two men arranged behind the prisoner on the right bayoneted him twice, and vice versa for the one on the left.

18. Q. You have mentioned the names of two of the bayoneteers as Kido and Shimura. Do you know the names of the other two men?

A. That I do not know.

19. Q. Were these prisoners given a trial?

A. I do not know. I only believed that as they were to be executed, a justifiable cause was behind the execution.

20. Q. Do you know if these men had done anything to justify their execution?

A. No, I do not know.

21. Q. When you received the order to execute these prisoners, were you told from what units the executioners would be chosen?

A. At that time I heard they would come from Divisional Headquarters.

22. Q. Are you sure about Divisional Headquarters?

A. No, it was not Divisional Headquarters. It was from other units of the First Mixed Brigade. I later heard it was the 307th Battalion. I do not know if the men came from artillery units, infantry units or engineering units.

The accused objected to that part of the answer beginning with, "I later heard..." and moved it to be stricken from the record on the ground that it was hearsay.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

23. Q. After the prisoners were bayoneted, what happened then, if anything?

A. After they were dead, or killed, I beheaded them.

Cross-examined by the accused.

24. Q. How long have you known the accused?

A. I saw the accused when I assembled the men at the scene of the execution and I saw him from that time to the end of the bayoneting.

25. Q. Did you know who he was?

A. Not at that time.

26. Q. How do you fix the date when you saw the prisoners of war on Chichi Jima?

A. Because I remember that the executions took place on the day picked for target practice, and I also recall that I made an entry in my diary regarding this matter some time after the executions. Besides this, I also heard in this court regarding the date.

The accused objected to that part of the answer beginning, "I also heard in this court..." and requested it be stricken from the record on the ground that this answer is hearsay and the date is a material issue in this trial.

The judge advocate stated that he had no objection to that part of the answer being stricken from the record.

The commission announced that the objection was sustained and directed that that part of the answer beginning, "I also heard..." be stricken from the record.

27. Q. How do you know that the persons executed were prisoners of war?

A. I was told to go and pick up the prisoners at the guard house of the 307th Battalion. I received them in front of the guard house, and it was then that I knew that these men were the prisoners that I was ordered to execute.



28. Q. How did you know that they were Americans?

A. At the time there were no other persons except Japanese on Chichi Jima, and as I was told that there were prisoners at the Brigade Headquarters, I did not doubt their word.

The accused objected to the last part of the answer beginning, "and as I was told..." and moved that it be stricken from the record.

The judge advocate replied.

The commission announced that the objection was not sustained.

29. Q. Did these prisoners have any identification marks on them?

A. I do not know.

30. Q. Did you yourself execute certain persons on August 7, 1944?

A. The day 7 August is not clear to me.

31. Q. Did you execute any persons on Chichi Jima while you were there?

A. No.

32. Q. Have you ever been tried for executing any persons on Chichi Jima?

A. I was tried here.

33. Q. What sentence was imposed upon you at this time?

The judge advocate objected to this question on the ground that it is irrelevant.

The accused replied.

The commission announced that the objection of the judge advocate was sustained.

34. Q. Who was the prisoner on the right hand side?

A. I do not know the names of both of them.

35. Q. Who bayoneted the prisoner on the right?

A. The prisoner on the right was bayoneted by the non-commissioned officer that came from a unit other than the Brigade Headquarters and Private Kido, who came from the Brigade Headquarters.

36. Q. Who bayoneted the prisoner on the left?

A. The prisoner on the left was bayoneted by a superior private that came from a unit other than the Brigade Headquarters and Private Shimura.

37. Q. How far apart were the prisoners tied?

A. I believe it was about two meters.

38. Q. Where were you standing in relation to the prisoners when they were bayoneted?

A. I was standing a little to the side in front of the right prisoner at a distance of about one meter.

39. Q. How far away from the prisoner on the left were you?

A. I was standing about three meters from the prisoner on the left. I was standing in a position that I could see clearly what happened.

40. Q. Why do you wear glasses?

The judge advocate objected to this question on the ground that it was incompetent, irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. I was told by the doctor that I was near sighted and these lenses were prescribed for me.

41. Q. How long have you worn these glasses?

A. About three years.

42. Q. Did you wear these glasses at the time of the execution?

A. Yes.

43. Q. How old are you?

A. Sixty-two.

44. Q. You testified that you received orders from Captain Higashigi to execute these people. Where did you receive these orders?

A. In the office at Brigade Headquarters.

45. Q. Who else was present when you received these orders?

A. I do not recall who was present. However, as the office was also used as living quarters by the officers and the Commander of the Brigade, I presume they were present. I also think there were some non-commissioned officers present.

46. Q. Were these written or verbal orders?

A. Verbal orders.

The witness was duly warned.

The commission then, at 11:40 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present:

All the members, the judge advocates, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

The judge advocate introduced Robert Oldham, yeoman third class, U. S. Navy, as reporter.

The reporter was duly sworn.

Ito, Kikuji, lieutenant colonel, Imperial Japanese Army, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Cross-examination continued.)

47. Q. The orders you received that you testified about this morning, did you object to carrying out these orders?

A. No.

48. Q. Did you select all the people to help you in the execution?

A. I only picked the two men from the Brigade Headquarters.

49. Q. What is the name of the accused in this case?

A. Takano.

50. Q. Was he a member of the Brigade Headquarters?

A. No, he was not a member of the Brigade Headquarters.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness made the following statement:

I received the orders for the carrying out of the execution from Adjutant Higashigi. The order did not come directly from the Brigade Commander although we lived in the same quarters. This was due to the fact that there was friction in our relations. I was scheduled to return to Japan as a school instructor in August 1944. I do not know why I was not returned. Not so long ago Okamoto, a witness, testified in this court that it seemed to him that there were more than four bayoneteers. In fact, I believed that there were five or six others mixed up in the bayoneting. I would like to state that this is absolutely false. The execution was carried out as a ceremony. Okamoto also testified that one of the prisoners moved his head three times after he was bayoneted. This is also false. I swear that both prisoners bled out of their mouths as soon as the prisoners were bayoneted in the chest. I have nothing further to add. c/f

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank?

A. Imperial Japanese Army, Superior Private Kido, Matsutaro.

2. Q. Are you presently confined on Guam?

A. I am.

3. Q. If you recognize the accused in this case will you point him out and name him?

The accused stood when pointed out and then resumed his seat.

A. Sergeant Takano.

4. Q. Superior Private Kido, were you ever stationed on Chichi Jima in the Japanese Army?

A. Yes.

5. Q. When did you arrive on Chichi Jima?

A. In July of 1944.

6. Q. When did you leave Chichi Jima?

A. On the second of January 1946.

7. Q. While stationed on Chichi Jima to what unit were you attached?

A. Brigade Headquarters.

8. Q. While at the Brigade Headquarters did you ever have the occasion to see any prisoners of war?

A. I saw some.

9. Q. When did you see these?

A. I do not remember the day and month.

10. Q. Did you also witness an execution of an American prisoner of war?

A. I have.

11. Q. When did this take place?

A. I think it was in the beginning of August 1944.

12. Q. At this time was one, or more than one prisoner executed?

A. Two were executed.

13. Q. Will you tell the commission what took place at the scene of the execution as you saw it?

A. I saw two prisoners who were tied down to stakes. I remember one prisoner was tall and one was shorter. They were blindfolded, I remember Colonel Ito bowing toward the Imperial Palace, after this the execution was conducted.

14. Q. How was this execution conducted?

A. They were pierced by bayonets and beheaded by a sword.

15. Q. How many persons did you see pierce the prisoner with bayonets?

A. I saw two persons.

16. Q. Do you know the names of the two persons that you saw?

A. They were two non-commissioned officers.

17. Q. Do you know the name of either or both of these non-commissioned officers?

A. I remember the ranks of Corporal and Sergeant, but I do not know their names.

18. Q. Did you participate in this bayoneting yourself?

A. I did.

19. Q. Were you the first person to bayonet the prisoner or had someone else preceded you?

A. I remember a Sergeant pierced before me.

20. Q. Do you know the name of that Sergeant?

A. I remember him in this court room.

21. Q. Do you see this Sergeant present in this court today?

A. I do.

22. Q. Will you please point him out and indicate who he is?

The accused stood when pointed out and resumed his seat.

A. Sergeant Takano.

23. Q. How many times did you see Sergeant Takano bayonet this prisoner?

A. I remember it was two or three times.

24. Q. Do you recall the nationality of this prisoner?

A. I do not know the nationality. I remember that one was tall and one was shorter.

25. Q. What was the color of the skin of these two men?

A. They looked like foreigners.

26. Q. Would you say they were white men, black men, yellow men or what color?

A. The tall one had black hair but the shorter one had, I think, a reddish color hair.

27. Q. Do you recall the color of their skin?

A. I do not know.

28. Q. Insofar as you know was any trial given to either or both of these men that you saw executed?

A. I do not know.

29. Q. Insofar as you know had either or both of these men done anything to justify being executed?

A. I do not know.

30. Q. Private Kido, do you know why either of these men were executed or what was the purpose that brought about their executions?

A. I do not know.

Cross-examined by the accused:

31. Q. How far from the prisoner were you during the bayoneting?

A. I think it was about fifteen to eighteen feet.

32. Q. Was the person bayoneting the prisoner whom you saw, was he between the prisoner and you?

A. I was standing at a point between about twelve to eighteen feet back of where the prisoner was tied and about the middle of both of them.

33. Q. When were these prisoners blindfolded? cct

A. Before they were executed.

34. Q. Were they blindfolded when you were at the scene of the execution?

A. Yes.

35. Q. Were you the first to bayonet this prisoner that you bayoneted?

A. I was ordered after the non-commissioned officer was ordered to do so.

36. Q. Who ordered you to bayonet the prisoner?

A. Sergeant Takano.

37. Q. Who ordered you to attend the scene of the execution?

A. It was the order of the Brigade Commander.

38. Q. Was this a written order?

A. I was ordered by the head of the orderlies. He said it was the order of the Brigade Commander and to go to Kominato and receive instructions from Colonel Ito.

39. Q. Did you go to the scene of the execution alone?

A. I went with many people to the scene of the execution, but I went by myself to Kominato.

40. Q. At the scene of the execution did Colonel Ito order Sergeant Takano to pierce the prisoner?

A. There was a non-commissioned officer standing in front of each prisoner and Colonel Ito said: "Stab". cct

41. Q. Before Sergeant Takano was ordered to stab, did you see him come before the prisoner?

A. I saw him go to a point about four to five feet in front of the prisoner.

42. Q. Before that time did you know where Sergeant Takano was standing?

A. He was near that vicinity.

43. Q. About how far was he?

A. He was with the people who were all lined up.

44. Q. Was not Sergeant Takano hiding behind a crowd of people?

A. I think he was with everybody else.

45. Q. Who was he with?

A. I do not remember, but I remember that he was together with the rest in a group.

Neither the judge advocate nor the accused desired further to examine this witness.

The commission did not desire to examine this witness.

The witness said he had nothing further to state.

The witness was duly warned and withdrew.

Frederick A. Savory, was called as a witness for the prosecution and duly sworn.

1. Q. State your name.

A. Frederick A. Savory.

2. Q. Are you presently employed on Guam?

A. Yes.

3. Q. If you recognize the accused state as whom?

A. Sergeant Takano.

4. Q. By whom are you employed on Guam?

A. Commander Marianas.

5. Q. In what capacity?

A. Interpreter for War Crimes.

6. Q. In your capacity as interpreter for the Commander Marianas do you have in your possession an original statement in Japanese submitted to Major Shaffer by the accused?

A. I do. ckf

7. Q. Do you have in your possession a translation of that statement?

A. I do.

8. Q. By whom was that statement written?

A. It was written by Sergeant Takano.

9. Q. By whom was it translated?

A. I translated it myself.

10. Q. Was anyone present with the accused when he wrote this statement who could speak to him and be understood by him?

A. No.

11. Q. Were you present when this statement was submitted by the accused to Major Shaffer?

A. Yes.

12. Q. Were any promises made to the accused or threats to induce him to give this statement?

A. No.

The statements of the accused, Sergeant Takano, Masayoshi, Imperial Japanese Navy in Japanese and the English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the admission of this evidence on the following grounds:

We object to this statement of the accused being received into evidence. Nowhere in this document is there any evidence or does it appear that the accused was ever accorded the rights of a defendant. Nowhere can we find that Section 734(c), Naval Courts and Boards was complied with. It is very prejudicial to the rights of this accused.

Nowhere does it appear in this statement that he was ever notified by a so-called senior member of the Board of Investigation of the gist of the evidence intended to implicate him nor that he was instructed that he would be accorded the rights of the accused for a court martial; namely the right to have counsel.

Such an accused does have the right to refuse to answer incriminating or degrading questions. This right was never explained to this accused. The offering of this document into evidence will result in the accused being made to testify against himself. This is strictly at variance with the fifth and sixth amendments of the American Constitution. We maintain that to admit this document into evidence will be most prejudicial to the rights of the accused in this case, and we object to this statement being received into evidence.

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered.

No witnesses not otherwise connected with the trial were present.

The commission announced that the objection of the accused was not sustained.

The statement of Sergeant Takano, Masayoshi, Imperial Japanese Army, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

13. Q. I ask the witness to read the English translation of Takano's statement.

The witness read the English translation of the statement of Takano, Masayoshi, Sergeant, IJA, copy appended marked "Exhibit 2".

An interpreter read the original statement in Japanese of Sergeant Takano, Masayoshi, IJA, appended marked "Exhibit 1".

The accused did not desire to cross-examine this witness.

The judge advocate did not desire further to examine this witness



The commission did not desire to examine this witness.

The witness was duly warned and resumed his seat as an interpreter.

The prosecution rested.

The accused at 3:25 p.m., requested an adjournment until 9:00 a.m. tomorrow morning, Tuesday, October 22, 1946, to complete the preparation of his defense.

The commission announced that the request of the accused was granted.

The commission then, at 3:25 p.m., adjourned until 9:00 a.m., Tuesday, October 22, 1946.

SECOND DAY

United States Pacific Fleet,  
Commander Marianas,  
Guam, Marianas Islands.  
Tuesday, October 22, 1946.

The commission met at 9:07 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,  
Colonel Adolph L. Ramon, Army of the United States,  
Colonel Douglas G. Pamplin, Army of the United States,  
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,  
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,  
Commander Vance O. Smith, U. S. Naval Reserve, members, and  
Lieutenant Edward L. Field, U. S. Naval Reserve, and  
Lieutenant Fredric T. Suss, U. S. Naval Reserve, judge advocates.  
Vivian Kilner, civilian, reporter.  
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

The record of proceedings of the first day of the trial was read and approved.

The defense offered no evidence.

The accused read a written statement in his defense in Japanese, appended marked "D".

An interpreter read the statement of the accused in English, appended marked "E".

The judge advocate read his opening argument, appended marked "F".

The commission then, at 9:55 a.m., took a recess until 10:17 a.m., at which time it reconvened.

Present:

All the members, the judge advocates, the reporter, the interpreters, the accused and his counsel.

No witnesses not otherwise connected with the trial were present.

Mr. Ito, Karro, a Japanese counsel for the accused, stated that inasmuch as the Japanese counsel for the accused were familiar with the opening argument of the judge advocates, the accused waived the right to have the opening argument of the judge advocate read in Japanese in open court.

Mr. Masano Toda, a counsel for the accused, read a written argument in Japanese, appended marked "G".

An interpreter read the argument of Mr. Toda in English, appended marked "H".

Mr. Kenro Ito, counsel for the accused, read a written argument in Japanese, appended marked "I".

An interpreter read the argument of Mr. Ito in English, appended marked "J".

Martin E. Carlson, Commander, U. S. Naval Reserve, a counsel for the accused, read a written argument appended marked "K".

The commission announced that in response to the request of the accused as embodied in this argument, it would determine the sentence in accordance with the authority granted to it by the precept.

The accused waived the right to have the argument of Commander Carlson read in Japanese in open court.

The judge advocate read his written closing argument, appended marked "L".

The accused waived the right to have the closing argument of the judge advocate read in Japanese in open court.

The trial was finished.

The commission was cleared.

The judge advocates were recalled and directed to record the following findings:

The specification of the charge proved.  
And that the accused, TAKANO, Masayoshi, Sergeant, Imperial Japanese Army, is of the charge guilty.

The commission was opened. All parties to the trial entered.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The commission announced its findings.

The commission announced that it was prepared to hear evidence in mitigation.

Toda, Masanao, a counsel for the accused, was duly sworn as a witness for the accused.

Examined by the judge advocate:

1. Q. State your name.
- A. Toda, Masanao.

Examined by the accused:

2. Q. Are you a defense counsel in this case?
- A. Yes, I am.

3. Q. Do you have certain documents in your possession that you wish to introduce into evidence?

A. I have two documents, the originals of which are in Japanese.

4. Q. Are these documents evidence of character for the defendant, Takano, for mitigation purposes? c/f

A. Yes.

5. Q. Have these documents been translated into English?

A. Yes, they have been translated into English.

6. Q. Do you wish to offer these documents in evidence in behalf of Sergeant Takano.

A. Yes.

Two documents in Japanese and the English translations thereof, were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection they were so received.

7. Q. Will you read the first of these two documents in Japanese?

A. I shall read the affidavit of Sergeant Kishimoto, Masao, Imperial Japanese Army.

The witness read in Japanese the affidavit of Sergeant Kishimoto, Masao, Imperial Japanese Army, appended marked "Exhibit 3".

An interpreter then read the English translation of "Exhibit 3", appended marked "Exhibit 4".

8. Q. Will you read the second of these two documents in Japanese?

A. I shall read the affidavit of Captain Nakano, Masani, Imperial Japanese Army.

The witness read in Japanese the affidavit of Captain Nakano, Masani, Imperial Japanese Army, appended marked "Exhibit 5".

An interpreter then read the English translation of "Exhibit 5" appended marked "Exhibit 6".

The judge advocate did not desire to cross-examine this witness.

The accused did not desire further to examine this witness.

The commission did not desire to examine this witness.

The witness resumed his seat as a counsel for the accused.

The commission was cleared to consider the sentence of the accused.

The judge advocates were recalled and directed to record the sentence of the commission as follows:

The commission, therefore, sentences him, ~~Shigeno~~, Masayoshi, sergeant, Special Japanese Army, to be confined for a period of nine (9) years.

ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

ADOLPH L. RAMON,  
Colonel, Army of the United States, Member.

DOUGLASS G. PANPLIN,  
Colonel, Army of the United States, Member.

ADOLPH ZUBER,  
Lieutenant Colonel, U.S. Marine Corps, Member.

RAMON J. WALLENBORN,  
Commander, Dental Corps, U.S. Navy, Member.

VANCE O. SMITH,  
Commander, U.S. Naval Reserve, Member.

EDWARD L. FIELD,  
Lieutenant, U.S. Naval Reserve, Judge Advocate.

FREDRIC T. SUSS,  
Lieutenant, U.S. Naval Reserve, Judge Advocate.

The commission was opened. All parties to the trial entered.

The commission then read and pronounced the sentence to the accused.

The commission, having no more cases before it, adjourned to await the action of the convening authority.

ARTHUR G. ROBINSON,  
Rear Admiral, U. S. Navy, President.

EDWARD L. FIELD,  
Lieutenant, U. S. Naval Reserve, Judge Advocate.

FREDRIC T. SUSS,  
Lieutenant, U. S. Naval Reserve, Judge Advocate.

STATEMENT OF TAKANO MASAYOSHI.

When I reached the conscription age, on the 10th of January, 1928, I was assigned to the Kofu Regiment where I received military training for the defense of our fatherland, and was demobilized and returned home on the 9th of July, 1929.

In July, 1937, the Sino-Japanese Incident broke out. I was called on September 5th, and served for our country in Central China for two years and a half, and, after that, I engaged in agriculture. But on December 8, 1941, a war broke out between the United States and Japan. I was called again on March 6, 1944, and served as the leader of a squad of the third company of the 307th Independent Infantry Battalion.

However, I was very unhappy. On Chichi Jima, I was forced to obey all orders. I was given orders and executed a prisoner on Chichi Jima, and now I am spending my days in the stockade at Guam Island.

I can not understand how my superior officers on Chichi Jima could make it possible for me to be accused of murder because they ordered me to carry out their orders.

Anything which I did in connection with this execution was done because of battalion orders received from 2nd lieutenant TSUCHIDA. I had been trained to obey without questioning, and, therefore, could do nothing but to obey. We soldiers in the Japanese Army knew nothing but strict obedience to orders. Anyone, who knows the Japanese Army will readily understand that when a Japanese soldier is given an order he must obey it.

In connection with this incident, I had no will to kill any prisoner. What I did was not done wilfully; there was no premeditation or malice on my part. I blindly carried out an order with only the idea that to do so is the right thing. I trust implicitly my superior officers and never for one moment doubted but that their orders were to be carried out.

I never gave anyone orders at the scene of the execution and tried the best way I knew to avoid becoming a participant in this execution. I was a most unwilling participant and observer in this execution.

We were ordered to attend bayonet drill, and then, when assembled, certain of us were ordered to bayonet. None of us knew why we were ordered or why we did what we did on that day.

That day was a most unhappy day for us, and it is difficult to understand why we four, out of all the others, were selected. Now, we are to be punished for carrying out orders.

With our limited education and a social order different than you Americans, we hope you will understand how unfortunate is our lot, we who were selected by officers to carry out orders. I ask your leniency and understanding.

I am always very anxious about my family. My family is poor and engages

in agriculture. I have an aged, weak father of 68 years old, my wife and two children. There is no one in my family to work now. It will be very difficult for them to sustain their living without me. I am afraid that they will starve to death if I become a war criminal.

I beg your kind considerations concerning what I have just mentioned and deal leniently with me.

TAKANO MASAYOSHI.

I certify the above to be a true and complete translation to the best of my ability of the original statement written in Japanese by TAKANO, Masayoshi.

FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.



OPENING ARGUMENT FOR THE PROSECUTION  
DELIVERED BY  
LIEUTENANT EDWARD L. FIELD, USNR

In summing up this case the prosecution feels that the case has been most simple and the pertinent facts are very clear to all parties of this trial. We found it only necessary to bring two witnesses before this commission in order to prove the charge and specification, and we have corroborated this with the confession of the accused.

I wish to consider each allegation of the specification and show how each allegation of the specification has been proved.

The first allegation of the specification names the accused, Takano, Masayoshi. We have seen two witnesses identify the accused by name and identify him as a participant in this crime, and there can be no doubt that the accused in this court is Masayoshi Takano.

The commission has heard Colonel Ito state that two of the bayoneteers that were supplied from units other than the Brigade Headquarters were petty officers. The witness, Kido, stated that Sergeant Takano bayoneted just ahead of him. This clearly established that the allegation "then a sergeant", is substantially proved by the evidence and the additional allegation "Imperial Japanese Army" has been also proved.

Concerning the allegation "attached to the 307th Battalion" we observe that Colonel Ito has testified that two of the bayoneteers other than those he supplied himself, were from other units of the First Mixed Brigade, and that he heard they were from the 307th Battalion. That is the only evidence that this man was from the 307th Battalion, but in the absence of any rebuttal on the part of the accused, the assumption is that he was from the 307th Battalion, and therefore this allegation is proved.

Colonel Ito testified that units of the First Mixed Brigade other than the Brigade Headquarters supplied two of the executioners and it follows that if Takano was attached to the 307th Battalion he was likewise attached to the First Mixed Brigade.

The allegation "military installations of the Imperial Japanese Armed Forces," is likewise proved by the testimony of the witnesses, Colonel Ito and Private Kido, in which they show all parties participating in this crime including the accused, were Japanese military personnel.

From the testimony of these witnesses that the crime occurred on Chichi Jima, the allegation "Chichi Jima, Bonin Islands" is proved.

"...while so serving at said military installations of the Imperial Japanese Armed Forces, Chichi Jima, Bonin Islands,..." Each of the witnesses identified Takano and one of them described exactly his part in this crime, and we have seen that this man was attached to the 307th Battalion, therefore he was serving at the said military installations.

The allegation "acting jointly" is proved when it is shown by the evidence submitted by the prosecution's witnesses that the accused and the persons hereafter named in the specification participated together in the carrying out of this crime. The accused, as well as the other participants, were all aware of the part they were portraying in the carrying out of this unlawful performance and the conduct of each is but as a unit of the entire plan. The deeds of each of the participants in order to carry out this execution were but an integral part of the over-all scheme to execute this victim. Each was dependant upon the other in order that the final consummation of this plan to murder the victim would take place. The allegation "acting jointly" is therefore proved beyond a reasonable doubt.

Colonel Ito has told of his part in this atrocity and he testified that he received orders from Captain Higashigi to execute the prisoners of war. Captain Ikawa has been mentioned in the confession of the accused who stated Ikawa directed him to participate. Shimura was one of the bayoneteers selected by Ito and his participation in the crime is corroborated by the witness Kido.

As to the allegation "and other persons unknown" - it is not necessary for the prosecution to prove all parties to this crime. It is sufficient when the accused is adequately informed of the persons participating in order that he might prepare his defense, and it is not necessary that the prosecution prove all parties who may have been involved in this crime.

The allegation "in pursuance of a common intent" means that the accused and the other persons mentioned in the specification with whom he is charged as acting jointly, were carrying out the same over-all plan when they murdered this victim. All the evidence shows that the participants were aware that the purpose underlying their actions was the bayoneting and the subsequent beheading of the victim. The actions of the accused with the aforementioned other participants were designed to see that this execution did take place as they fully intended it should. All these parties therefore intended to do but one deed, and that was the execution of the victim. It is evident that this was the common intent of all of the participants in the crime.

"On or about 7 August 1944" is the date we allege the execution took place. Both witnesses testified that the execution took place in the beginning of August 1944. It is not necessary to prove the specific date, so long as we prove within a reasonable limit of time that the execution took place as alleged. This evidence is sufficient to prove the alleged "on or about 7 August 1944".

The evidence shows that the crime did take place on Chichi Jima, Bonin Islands.

The year 1944 shows that a state of war did exist between the United States of America, its allies and dependencies, and the Japanese Empire. Further, we asked the commission to take judicial notice of the fact that during the entire year 1944 a state of war did exist between the United States Government and the Japanese Empire.

Now we come to the most important part of the specification - the technical terms used to describe the murder. First of these is "wilfully". "Wilfully" is defined in Bouvier's Law Dictionary as "in an indictment charging a wilful killing, it means intentional and not by accident." Can the accused claim that the victim was killed by accident or by mistake? The answer is emphatically no. The accused intended to bayonet this specific victim and he did just exactly that, therefore he wilfully participated in this crime.

The term feloniously is a technical word used in an indictment for a felony and it has the equivocal connotation of purposefully or unlawfully. Did the accused purposely intend to bayonet the victim? All of the prosecution's evidence indicates that he most certainly did purposely bayonet this prisoner, fully cognizant of what he was doing. Can the accused for a moment claim that he did not know that the bayoneting of a defenseless and entirely innocent prisoner of war without any justifiable cause was not unlawful? The answer again is most emphatically in the negative.

"With premeditation and malice aforethought" - Premeditation is defined as "a design to commit a crime or to do some other act before it is actually done". The accused knowing that he is to bayonet the prisoner well in advance of the actual deed is shown to have thus formed the design to do so prior to the actual carrying out of the deed. The term "malice aforethought" in the description of murder does not imply deliberation or the lapse of a period of considerable time between the malicious intent and the actual execution of that intent, but rather denotes purpose and design in contradistinction to accident and mischance. Malice in the law does not necessarily mean a malignant spirit, a malignant intention to produce a particular evil. If a man intentionally does wrongful act, an act which he knows is likely to injure another, that in the law is malice". The prosecution's evidence clearly shows that the accused, Takano, intentionally bayoneted the prisoner knowing that by so doing the victim would die and it is this intentional doing of that wrongful act that proves beyond all reasonable doubt these technical words of the specification are proved against him.

The allegation "without justifiable cause" means that the acts of the accused were done without his having any legal right to do it. Both witnesses for the prosecution have testified that insofar as they knew, there was absolutely no justification for the execution of this prisoner of war. All the prosecution's evidence shows that the accused was acting on no legal rights when he deliberately bayoneted this defenseless victim.

We have asked Colonel Ito, who supervised this execution, and also the witness Kido, insofar as they knew, was any trial given this prisoner of war. They both have answered in the negative. That this victim was merely dragged out on a hillside and summarily killed is conclusively shown by the prosecution's evidence.

"Assault" means the putting in fear of bodily harm or apprehension of immediate peril. The evidence shows that the victim was blindfolded and then tied to stakes and even though he may not have been told what fate was in store for him, he must have fully realized what was taking place under these circumstances. The unlawful bayoneting of this prisoner of war clearly constitutes assault.

The piercing of the victims body by the bayonet fulfills the allegation "strike"

"Kill" is a general term used for depriving of life and it is the contention of the prosecution that the evidence clearly shows that this victim was killed and that the defendant, Takano, as one of the participants in this crime, is either himself fully responsible, or jointly responsible with the others, for the death of this American prisoner of war. It is entirely immaterial whether Takano was the sole cause of the execution or whether the other participants with him aided in bringing about this execution. The defendant, Takano, participated in this crime with the intention of deliberately executing the victim and this intent plus his overt act of bayoneting the victim places him in the position to be correctly charged with this killing, and the evidence shows the victim did die as a result of the action of the accused.

Regarding the allegation "bayoneting with a fixed bayonet" - we have heard Colonel Ito testify that he ordered the men to bayonet the prisoner with fixed bayonets. A fixed bayonet is merely a bayonet on the end of a rifle.

Colonel Ito testified, as to "American prisoner of war", that there was no one else on Chichi Jima except Japanese other than these prisoners and he knew they were American. Kido was unable to give the nationality of the prisoner, but stated that he looked like a foreigner to him. This evidence clearly establishes the prima facie allegation that this victim was an American prisoner of war.

It is the prerogative of the convening authority to allege or not to allege the name of the victim. It is never necessary to prove the name of the victim in order to establish the charge of murder.

Both witnesses testified that the victim was a prisoner and was in the custody of the armed forces of Japan.

The defense objected to the allegation of the specification "this is violation of the laws and customs of war", in that it did not specifically state what law and what custom of war had been violated. This commission properly overruled that objection. This allegation is sufficiently clear to give the accused reasonable notice of the law he is charged with violating. My colleague will amplify these points, but I will briefly state that the accused has violated among others Article 23(c) of the Hague Convention of 1907, and Article 2 of the Geneva Prisoner of War Convention of 1929.

The case against the accused, Takano, as shown by the prosecution's evidence is that Takano knowingly participated in an unlawful act and that he intended to do just what he in fact did do. It is the further contention of the prosecution that all the allegations of the specification against the accused, Takano, are proved beyond a reasonable doubt and that the charge of murder is sustained, and that the accused stands before this commission guilty as charged.

EDWARD L. FIELD,  
Lieutenant, USNR

"F 4"

0117

ARGUMENT FOR THE ACCUSED

Delivered by

MR. TODA, MASANAO

Since my colleagues will present sufficient arguments I am going to make my statement as concise as possible.

The specification of the charge "murder" states that TAKANO, Masayoshi, then a sergeant, Imperial Japanese Army, ... did, on or about 7 August, 1944, ... wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by bayoneting with a fixed bayonet, an American prisoner of war, ... this in violation of the laws and customs of war.

The first point which I can not but suspect is whether he bayoneted the prisoner "wilfully and feloniously". If we presume that he did bayonet the prisoner, we persist in our belief that it was neither wilful nor felonious because 2nd lieutenant TSUCHIDA, the leader of his platoon, ordered him to bayonet the prisoner and lieutenant colonel ITO also ordered it at the scene of the execution. It is evident that he bayoneted the prisoner against his own will. And we maintain to the Members of the Commission that TAKANO did not bayonet the prisoner wilfully and unlawfully.

In the second place, there is the point concerning whether or not the defendant TAKANO, had any premeditation or malice aforethought. On this point I am positive that the defendant TAKANO, had no premeditation or malice aforethought in bayoneting the prisoner. The defendant is but a mere sergeant and premeditation means to plan. I believe it is well known by the members of the commission whether or not a mere sergeant can plan the execution of a prisoner of war.

Next is the question whether or not TAKANO, had any malice aforethought toward the prisoner. The defendant TAKANO saw the prisoner on the day of the execution for the first time. It was not necessary and there was no reason for TAKANO to hold any malice aforethought for a prisoner whom he saw for the first time, upon arriving at the scene according to orders. And, on this point also, we maintain to the members of the commission that TAKANO, did not have any premeditation or malice aforethought.

Third, there is the statement in the charge, "without justifiable cause, and without proper trial or other due process". I sincerely believe that the commission is well acquainted through the many cases tried before it concerning the organization, orders and the characteristics of the Japanese Armed Forces. How can it be known to a non-commissioned officer with such a low rank as sergeant, whether there was a justifiable cause, or whether, there was a proper trial, or other due procedure. No! There is absolutely no way of knowing this. Moreover the orders in the Japanese Armed Forces leave no room for judging right or wrong and because of this the defendant TAKANO, did not know whether or not there was a justifiable cause, or a proper trial, or due procedure. Contrary

"H" (1)

0118

to this, I believe sincerely that he may have thought there was a justifiable cause.

The witness, ITO, Kikuji, has testified, in answer to the question of the prosecution, "Did these prisoners have a trial?" as follows: "As for myself I do not know of any such thing. Personally I believed he had committed a crime and naturally was to be executed." Even ITO who holds the high rank of a lieutenant colonel in the Army did not know whether there was a trial or not. On the other hand he believed that there must have been a justifiable cause for the execution. Can there be any doubt that the defendant TAKANO believed that there was a justifiable cause for the execution of the prisoners?

The education of Sergeant TAKANO is too low to take the above points into consideration. They do not teach such things in the primary schools in Japan. The charges and specification conclude that the above acts were in violation of the laws and customs of war. With his limited education there is no way for him to know this. According to the Japanese Criminal Code, Article 38, there is a rule that: "Acts with no intent to commit a crime shall not be punished." That punishment shall not be administered to acts committed without criminal intent is a major principle in the criminal codes of the various nations of this world. And this is the way International Law should be. To administer punishment for actions, done without criminal intent and in ignorance of the law is, I believe, a gross miscarriage of justice. There is a rule in the Japanese Criminal Code, Article 35, that: "For actions done by righteous duties or by laws shall not be punished." A good example of this is the case of the executioner in conducting an execution. Similar to the actions in this case actions done on orders shall fall into the same category as the above example.

The specification reads as follows: "Acting jointly with ITO, Kikuji, lieutenant colonel, IJA, HIGASHIGI, Seiji, Captain, IJA, IKAWA, Shigeo, first lieutenant, IJA, SHIMURA, Hisao, Leading Private, IJA, and other persons unknown, in pursuance of a common intent". There has been no evidence presented by the prosecution on this point. But it is very clear that the defendant, Sergeant TAKANO, did not have any common intent with any of these people.

It has not been proved beyond a reasonable doubt by the evidence of the various witnesses presented by the prosecution in this court that it was definitely the defendant TAKANO, who is in court today, who bayoneted a prisoner of war. I believe the evidence presented by the prosecution is insufficient evidence.

Having argued roughly on the above points I ask that the commission find the defendant not guilty.  
22 October 1946

MR. TODA, MASANAO.

I certify the above to be a true and complete translation of the original argument in Japanese of TODA, MASANAO, to the best of my ability.

FREDERICK F. TREMAYNE,  
Lieutenant, (jg), USNR.  
Interpreter.

"H" (2)

0119

ARGUMENT FOR THE ACCUSED

Delivered by

Mr. ITO, KENRO.

Your Honor, The President and Members of the Commission:

It is a crime against humanity to lay responsibility upon those whose acts are limited by their superiors, and it is also cruel to condemn those to heavy punishment who do not know the law.

Since Perry's visit to Uraga, Japan shed her feudal thoughts and began anew as a modern state. However, since 1928, the Japanese militarists planned to develop their country by their invasion of Manchuria, China and other various districts in Asia, and millions of men who loved peace were deprived of their liberty and were forced to go to the front. Anyone of these soldiers who refused to go to the front or violated the orders of their superiors were court-martialed and often condemned to death. Though they were called, "soldiers", they were, in reality, nothing but pitiable slaves. In fact, Japan could not yet sweep away her feudalism. And her militaristic adventure conflicted with the United States' policy in Asia, namely, the Communication of John Hay, the Stimson Doctrine, etc. Professor Griswold of Yale University and Professor Eldridge of Columbia University have made, in detail, an excellent report about that.

As the war went on, the Japanese Armed Forces came to be defeated everywhere, and since the fall of Saipan, many Japanese troops isolated on islands in the Pacific Ocean busied themselves in recovering their losses which made many more soldiers the victims of unreasonable orders. If the orders were unjust they had no means by which to refuse them, nor were they at liberty to stand against these orders.

I maintain that this commission must not lay heavy responsibility upon these miserable soldiers who had no liberty. However, according to the Potsdam Declaration, the acts of these soldiers have come to be tried at the International War Tribunals. Since these soldiers have been very poorly educated, they are quite ignorant of the existence of the laws which honor liberty. So they were very often at a disadvantage.

On August 21, 1946, in the afternoon, a Japanese soldier bore witness at the International War Tribunal at Guam Island. He did not know these laws. Therefore, in spite of being warned at the beginning of the questioning that he did not need to testify about anything that was disadvantageous to himself, he related his crime, being incapable of understanding the warning. He was charged afterward and unfortunately has come to attend this same court as an accused. This poor soldier is the defendant TAKANO, sergeant, Imperial Japanese Army, who is now before you.

I hope this commission will not deal with this matter as a funny story of this court, but will consider it as a sad court-drama acted by a man who is a pitiable Japanese soldier, a victim of war, and ignorant of law, and that this commission will be especially careful in applying laws to this case. I think, the great writers such as Tolstoy, Dostoevsky or Thomas Mann would have the greatest sympathy for TAKANO, the victim of tragic war, and would have written a good novel on this sergeant.

"J"(1)

0120

My argument concerning this case will be divided in three parts:

1. On the charge.

According to the charge and the specification of this case, it is said that the defendant TAKANO, Masayoshi, acting jointly with lieutenant colonel ITO, captain HIGASHIGI, first lieutenant IKAWA, leading private SHIMURA, and other persons unknown, in pursuance of a common intent, did, on or about 7 August, 1944, assault, strike and kill by bayoneting with fixed bayonets, an American prisoner of war, this in violation of the laws and customs of war.

However, the defendant TAKANO was not in concert with their actions. Of course, the defendant TAKANO is responsible for bayoneting an American prisoner of war, but there are no laws or customs of war which regulate his responsibility. As I already made an objection on the 21st of this month concerning this point, I will not discuss this matter again. I think it possible to consider that two conventions concerning prisoners of war, namely the 1907, Hague Convention and the 1927 Geneva Convention had no international value from the standpoint of international laws. Probably, they were not included in the last communication from Japan to the United States in 1941.

2. On his intent.

The charge states that the defendant TAKANO committed the action of this case, wilfully, feloniously, without justifiable cause, and without proper trials or other due process.

But the defendant TAKANO received, about seven p.m., on the 5th of August, 1944, the order of the Battalion Commander to execute the prisoner from Second lieutenant TSUCHIDA, then the leader of the third platoon of the 3rd Company of the 307th Independent Infantry Battalion, which was then at Fukurozawa, Chichi Jima. TAKANO went to the scene of execution and bayoneted with fixed bayonet, lawfully and with good faith, according to the direction of lieutenant colonel ITO, in the presence of thirty officers and soldiers. As the defendant TAKANO had received very little education, he was certain that the execution of the prisoners at Nakayama Pass was legal. Therefore, the defendant TAKANO had no criminal intent, and ought not to be guilty.

According to the statement of lieutenant colonel ITO, the witness in this case, he /TN-ITO/ was informed of the order from Captain Higashigi with many people present in the office of the Brigade Headquarters. He thought that the order was quite a reasonable one and relayed it to his subordinates. It is clear that sergeant TAKANO, on receiving this order, thought it just and legal, and obeyed it in executing the prisoner.

3. On his motive.

According to the charge, the defendant TAKANO committed the action with premeditation and malice aforethought, but the fact was that he only carried out what he was ordered by Second Lieutenant TSUCHIDA, the leader of the 3rd Platoon. He went to the scene of execution against his own will, and hesitated in front of the prisoner. It is evident that he bayoneted the prisoner according to the order



of lieutenant colonel ITO, and it is also evident, by the testimony of ITO, that the execution took place solemnly and ceremoniously.

The defendant TAKANO was an aged sergeant of thirty-eight years. He entered the Army in 1928. His family was poor and is engaged in agriculture.

I maintain that the defendant TAKANO, this pitiable soldier, did only carry out what he was ordered, and that he had no evil motive.

Because of these three reasons which I have stated above, I assert that the defendant TAKANO is not guilty. And if he is found guilty, I hope that he will be dealt with leniently, maintaining that he was forced to obey the order and that he can be sympathized with in his motive

MR. ITO, KENRO.

I certify the above to be a true and complete translation of the original argument of ITO, KENRO, in Japanese to the best of my ability.

FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"J" (3)

0122

CLOSING ARGUMENT FOR THE ACCUSED  
DELIVERED BY  
MARTIN E. CARLSON, COMMANDER, USNR

Gentlemen of the Commission:

According to military court-martial procedure the accused is afforded an opportunity to present an argument before submitting his case to the court. Section 421 Naval Courts and Boards states that the defense should make a closing argument in order to properly present their case not only for the benefit of the court but also for the reviewing authority. We present the following argument.

The charge is alleged to be murder and yet as we said in our objections to the charge and the specification it is alleged that the facts are in violation of the laws and customs of war. The Commission overruled our objections and found the charge and specification in due form and technically correct. We are therefore led to believe that the offense alleged is in violation of the laws and customs of war.

We argue as do most international lawyers that the law of nations is binding only on sovereign states, and not on individuals.

This accused, Sergeant Takano, Masayoshi, can only be punished under the law of Japan or of the law of the United States.

We entered a plea in bar to the effect that this accused is not subject to the court's jurisdiction for a violation of the Hague Convention of 1907 or of the Geneva Prisoners of War Convention of 1929. Article 405 of Naval Courts and Boards states that lack of jurisdiction is a fatal defect and the plea may be made at anytime.

When it comes to individuals who violate the laws and customs of war, international law, such as the Hague Convention, provides neither courts or punishments. The prosecution has failed to show that the law of nations permits the trial of individuals or provides punishments for violations of the laws and customs of war.

Legally we hold that the state and not the soldier is liable for violations of the laws of war. It is incumbent upon the prosecution to furnish legal authority and/or specific rulings in order that this Commission may hold otherwise.

In order to properly prepare a defense we asked the Commission and the prosecution to inform us as to what specific law or custom of war this accused is charged with having violated. We are still without an answer although the prosecution asked the Commission to take judicial notice of the Hague Convention of 1907. We objected to the Commission taking judicial notice of this Convention but were overruled. If the accused is charged with having violated the Hague Convention No. IV of 18 October 1907 then we cite Article 2 of this Convention which provides that the provisions do not apply if all of the belligerents are not

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parties to the Convention. Since neither Italy nor Bulgaria has ratified the 1907 Hague Convention the accused claims that he is not bound by the Convention although Japan did sign the Convention.

If the accused is charged with having violated the Geneva Prisoners of War Convention of 1929 we point out that Japan has not ratified or formally adhered to it. The mere fact that Japan did through the Swiss Government agree to observe the provisions of this Convention make no difference legally.

This case is being tried by a judicial Commission and its findings must be legal and the sentence imposed only if there has been a legal violation or crime. It is not clear to the accused upon what law the charge and the specification is based. Mr. Justice Rutledge in the dissenting opinion in the Yamashita case said: "It is not our tradition for anyone to be charged with crime..., in language not sufficient to inform him of the nature of the offense or to enable him to make defense."

The prosecution has failed to show that the accused, Sergeant Takano, Masayoshi acted jointly with Lieutenant Colonel Ito, Captain Higashigi, First Lieutenant Ikawa and/or Leading Private Shimura and other persons.

Lieutenant Colonel Ito was put on the witness stand by the prosecution and he testified he did not select Sergeant Takano as one of the bayoneteers. This witness testified he was in charge of the execution and yet he failed to identify Sergeant Takano as one of the bayoneteers.

We maintain that this witness did not by his testimony establish or prove the corpus delicti. Section 149 of Naval Courts and Boards states: "Corpus delicti, literally 'the body of substance of the crime', may be defined in its primary sense as the fact that a crime has actually been committed. It is the general fact without which there could be no guilt, ... and must be established before any one can be convicted of the perpetration of the alleged crime; otherwise, the accused might be convicted of murder, for example, when the person alleged to have been murdered was still alive...."

Although Lieutenant Colonel Ito stated there was no one on Chichi Jima except Japanese it is common knowledge that there were other persons on Chichi Jima except Japanese Military, such persons were impressed as laborers and made to perform arduous labor. Is it not possible that it might have been one of these that was executed in August 1944 since neither of the witnesses was able to identify the prisoners as Americans. We hold the corpus delicti has not been proved.

We also hold that the prosecution failed to show that the accused, Sergeant Takano, did the act specified. The witness Superior Private Kido, who was convicted of bayoneting an American prisoner of war was asked by the prosecution to testify that he saw the accused, Sergeant Takano, bayonet a prisoner of war. On the witness stand he said that he saw two persons bayonet, two non-commissioned.

"K 2"

0124

officers. He remembered their ranks but not their names. Then he remembers a sergeant piercing before he did. Finally he remembers that he is in the court room and points him out. This is the kind of evidence that the prosecution is asking the Commission to convict the accused of for murder of a prisoner of war whose name is not even known. Kido who has already been convicted and sentenced for this act comes before this court as a witness against the accused, Sergeant Takano. The accused in this case, Sergeant Takano, was a witness against Superior Private Kido and Kido was convicted of murder. Is it not natural that Kido should have a certain animus against the accused, Sergeant Takano. It is for the Commission to consider this point in weighing the evidence. Kido admitted on cross-examination that he was 15 to 18 feet away from the prisoner when the prisoner was bayoneted.

The prosecution, the United States of America, are charging the accused with having violated the Geneva (Prisoners of War) Convention of 27 July 1929 and then the prosecution violate this same Convention when they introduce into evidence a written statement signed by the accused. Article 61 of this Convention states: "No prisoner may be obliged to admit himself guilty of the act of which he is accused".

We objected to the statement of the accused being admitted into evidence because the accused is thereby made to testify against himself. No person can be made to testify against himself. This is a right guaranteed by the Fifth Amendment to our Constitution. The Sixth Amendment of this same Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall have the assistance of counsel for his defense. This he did not have when he was made to sign the statement which went into evidence. Although this statement was signed before Major Shaffer, U.S. Marine Corps, who designated himself as Senior Member the statement or attached papers do not show that the accused was ever accorded the rights of a defendant or the privileges of an interested party. Section 734 Naval Courts and Boards also states: "A person granted the privileges of an interested party may be called as a witness, but, of course, can not be required to incriminate himself.

The prosecution has stated that the Supreme Commander Allied Powers abrogated all these fundamental rules and the Fifth and Sixth Amendment of the Constitution of the United States of America. But does the prosecution have the affrontery and do they dare to ask this Commission to convict this accused of a violation of the Geneva (Prisoners of War) Convention of 1929 when in the same breath they say that Article 61 of this Convention which states: "No prisoner may be obliged to admit himself guilty of the act of which he is accused" is abrogated and does not apply in this case but that the accused must be obliged to admit himself guilty of the act alleged. This is no mere technicality or rule of procedure which is being violated but a substantial right guaranteed by the Constitution of the United States, of America.

"K 3"

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There can be no doubt but that this accused, a Japanese National, should be afforded all the rights and privileges guaranteed by our Constitution to any citizen who is accused of a crime. It is for this Commission to see to it that this accused is afforded such rights.

But the prosecution state that this statement is corroborated by two witnesses. Let us again consider these two witnesses. The specification alleges that the accused acted jointly with these two witnesses naming Lieutenant Colonel Ito and as to Private Kido he is included in the phrase "and other persons unknown" and in pursuance of a common intent. Wharton's Criminal Evidence, Volume 2, Section 714 states "narratives of past events after the conspiracy is fully executed are to measures taken in execution or furtherance of the common purpose inadmissible against conspirators.

One conspirator does not...by its execution under his authority, authorize his conspirator to make confessions or admissions of guilty for him, or to narrate past events. State v Huckins, 212 Iowa 283.

"When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirators is permitted by any subsequent action or declaration of his own to affect the others." Wharton's Criminal Evidence, Vol. 2, par 714 citing Logan v United States, 144 US 263; Brown v U.S. 150 US 93; Sorenson v State (C.C.A. 8th) 143 F. 820; Gall v U.S. (166 F. 419); Hauger v U.S. 173 F. 54; Morrow v U.S. 11 F (2d) 256; Lane v U.S. 34 F. (2d) 413; Collenger v U.S. 50 F (2d) 345; Minner v U.S. 57 F. (2d) 506; Dandagarda v U.S. (C.C.A. 10th) 64 F. (2d) 182; U.S. v White 5 Crunch CCA 38 Fed Cas. No. 16-675.

In Jarrel v Com. 132 Va 551, 1108 E 430 it was held that the admission against the defendant, of a statement by a co-defendant charged jointly with the defendant who was on trial for murder was error. We submit that the admission of the evidence of the witnesses Lieutenant Colonel Ito and Private Kido is error.

Since there has been no showing by the prosecution that the accused did "wilfully, feloniously, with premeditation and malice aforethought" do the bayoneting, and since the defense has shown by cross-examination of the witness, Lieutenant Colonel Ito that he, Lieutenant Colonel Ito gave the orders for the bayoneting, this is with justifiable cause, we maintain that the prosecution has failed to prove the necessary allegations of murder as set out in the specification.

Court Martial Order 5-1921 states that when malice aforethought does not exist the homicide cannot be murder.

Section 158 of Naval Courts and Boards states: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted." We ask the Commission to find as to the accused, Sergeant Takano, Masayoshi, the specification not proved and the accused is of the charge not guilty and the commission does therefore acquit the said Sergeant Takano, Masayoshi of the specification of the charge of murder.

MARTIN E. CARLSON,  
Commander, USNR.

"K 4"

0126

**CLOSING**

**ARGUMENT FOR THE PROSECUTION**

**Delivered by**

**FREDRIC T. SUSS,**

**Lieutenant, U.S.N.R.**

**May it please the court:**

Much has been said about criminal intent. May I reiterate the statements of my colleagues on this point as well as on the other elements of murder?

**Wilfully** is defined as intentionally. In an indictment charging a wilful killing, it means intentionally and not by accident. It is synonymous with intentionally, designedly, without lawful excuse, and, therefore, not accidentally. A wilful act is one that is done knowingly and purposely, with the direct object in view of injuring another.

**Malice aforethought.** In the description of murder the words do not imply deliberation, or the lapse of considerable time between the malicious intent to take life and the actual execution of that intent, but rather denote purpose and design in contradistinction to accident and mischance; and the intent necessary to constitute malice aforethought need not have existed for any particular time before the act of killing, but it may spring up at the instant and may be inferred from the fact of killing.

**Premeditation.** A design formed to commit a crime or to do some other thing before it is done. Intent before the act, but not necessarily existing any extended time before. Premeditation differs essentially from will, which constitutes the crime; because it supposed, besides an actual will, a deliberation and a continued persistence which indicate more perversity. The preparation of arms or other instruments required for the execution of the crime are indications of premeditation but are not absolute proof of it; as these preparations may have been intended for other purposes, and then suddenly changed to the performance of the criminal act.

Defense counsel has contended that we have not proven this crime nor have we proven the *corpus delicti*. Permit me to read the analysis of the proof of crime as given in Wharton's Criminal Evidence Section 640:

"The proof of every crime devolves into two component parts, to wit: (1) Proof that the crime charged has been committed by someone; and (2) proof that the defendant is the perpetrator of the crime. The first element is the body of the crime or the *corpus delicti*; the second is the proof of the defendant's connection with the crime, i.e., his guilty participation therein.

Let us now consider the province of an extrajudicial confession in the proof of crime as thus treated.

It is practically universally held that the *corpus delicti* of a crime cannot be proved by an extrajudicial confession standing alone, but must be proven independently of it. Moreover, a verdict of guilty and a subsequent conviction cannot be sustained upon an extrajudicial confession only.

Stated conversely, the rule is that an extrajudicial confession of the accused must be corroborated by independent proof of the corpus delicti of the crime.....Such corroborating or independent evidence of the corpus delicti may be direct or circumstantial.

The overwhelming weight of authority, however, recognizes that such a confession, or admission may be considered in connection with other evidence to establish the corpus delicti, and that it is not necessary to prove it by evidence which entirely excludes a consideration of the confession."

We have proven the corpus delicti by two eye-witnesses brought before this court. They have testified very definitely that the murder was committed and it was not necessary that they testify to the accused's guilty participation. This testimony taken together with the confession of the accused is sufficient evidence to convict him of the crime.

In addition to establishing the corpus delicti these witnesses have testified as to the accused's guilty participation therein. Therefore, we have produced more proof than is necessary to establish the accused's guilt of this crime.

It has been stated that there is no proof that the victim was an American. The evidence has been very clear that the order of the Brigade under which the victim was executed stated that two American aviators would be executed. This evidence was clear and unmistakable.

We concede to the defense's contention that two of our witnesses were accomplices in the crime. However, this fact does not render the testimony incompetent. In Underhill's Criminal Evidence page 257:

"The credibility of witnesses, and the weight of their testimony, whether they are accomplices or not, is for the jury exclusively; and the jury should carefully consider accomplice's testimony in the light of all other evidence and the influence under which it is given. But the jury may believe an accomplice's testimony notwithstanding the introduction of evidence tending to impeach an accomplice."

May we point out to the Commission that these witnesses were not co-defendants although they may have been accomplices. They are not tried together in the same trial. Therefore, the law with regard to the testimony of co-defendants is not applicable.

Counsel has made the contention that there is no individual responsibility for such crimes under International law but the responsibility is merely that of the sovereign state.

Let us see what the Japanese government has to say about this:

The government of Japan included these rules of international conventions in the Army Operational Handbook and in the Navy Regulations and in addition to this the Japanese War Ministry issued a notification in March 1942, covering regulations for the Treatment of Prisoners of War. This document recognizes the obligations of international treaties and customs by stating as follows:

"A prisoner of war, as defined in these regulations, is any enemy combatant who has fallen into the power of the Empire or any other person who is to be accorded the treatment of a prisoner of war by virtue of international treaties and customs."

"A prisoner of war shall be humanely treated and in no case shall any insult or maltreatment be inflicted upon him".

This, gentlemen, is Japanese law.

It has been argued that there was no common intent between the accused and the persons alleged in the specification. We have shown that the accused acted jointly with each of the persons mentioned in the specification. Our evidence clearly shows the part that each of these persons played in the crime. That the accused knew that his action was wrongful is apparent from the fact that he said he had done everything he knew to avoid such action.

Some mention has been made of the testimony given by the accused in a previous trial. The Commission will note from the date appearing on the confession that this complete confession was submitted before the accused appeared as a witness in that trial.

It has also been contended that the accused is entitled to the privileges of a prisoner of war under the Geneva Convention. The Geneva Convention does not apply in any way to the accused. There is no evidence that the accused was ever a prisoner of war. On the contrary when he was apprehended he was living as a civilian in Japan. He was never apprehended during the war, therefore, he can not claim to have been a prisoner of war at any time. Even if the Geneva Convention did apply in this case the provision cited has in no way been violated. This provision referred to by defense counsel states that a prisoner of war must not be obliged to admit his guilt of charges brought against him. This accused was never obliged to admit his guilt of charges brought against him. On the contrary the evidence shows the accused submitted a voluntary statement. The accused was in no way forced to make such a statement. It has also been contended that under the court martial orders when a deposition is used to convict an accused the sentence must be limited. When have we used a deposition in this trial? The record does not show that any deposition was presented before this commission.

The only defense offered by the accused is that he was acting under orders. Let us look to the pertinent law on this subject.

In the famous American case of *US v. Jones*, 3 Wash. 66209, the court said, "We do not mean to go further than to say that the participation of the inferior officer in an act which he knows, or ought to know, to be illegal, will not be excused by the order of his superior".

This was upheld in *CNO 4-1929* where the court said, "In reference to the contention of the accused that he was acting in the performance of duty, it is deemed pertinent to refer briefly to the law pertaining to homicide committed by persons in the military service. It is a general rule that a soldier (or sailor) is bound to obey all lawful orders, and all he may do in obeying such lawful orders constitutes no offense as to him. But an order illegal in itself and not justified by the rules and usages of war, or in its substance clearly illegal, so that a man of ordinary sense and understanding would know as soon as he heard the order read or given that it was illegal, will afford no protection for a homicide, provided the act with which he may be charged has all the ingredients in it which may be necessary to constitute the same a crime in law".

In *CNO 121 of 1919*, it was said, "A soldier is bound to obey only the lawful orders of his superiors. If he receives an order to do an unlawful act,



he is bound neither by his duty, nor his oath to do it. So far from such order being a justification, it makes the party giving the order an accomplice in the crime."

Under international law it has also been held that an act in obedience to a military order of a superior is not justifiable when that act is known or under the circumstances should have been known, to be illegal under the laws and customs of warfare. This doctrine in international law is clearly demonstrated in the celebrated German case called the *Llandovery Castle Case*. In this case the German Supreme Court trying German defendants for the machine-gunning of open life-boats declared, "Military subordinates are under no obligation to question the order of their superior officers and they can count upon its legality. But no such confidence can be held to exist if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law..... They should, therefore, have refused to obey. As they did not do so, they must be punished."

In the Mexican War case of *Mitchell v. Harvey*, Chief Justice Tany of the United States Supreme Court wrote, "It can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior. The order may palliate but it cannot justify".

Defense counsel has seen fit to attack the rules laid down by the Supreme Commander for the Allied Powers. Reference to the record will show that we have not resorted to the SCAP rules in this case. We have produced enough evidence to convict the accused without resorting to such rules and under such procedure which would be accepted in any civilian or military court. We have referred to the SCAP rules with regard to judicial notice but in this instance the rule of judicial notice is the same before any civilian or military tribunal. Any court will take judicial notice of facts of common knowledge. The only SCAP rule which we ask the court to apply is one that operates in favor of the accused, and it is as follows:

"Action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires."

FREDRIC T. SUNS,  
Lieutenant, USNR.

STATEMENT OF TAKANO MASAYOSHI  
Former Sergeant, IJA.

27 July, 1946.

1. Regarding the execution of prisoners of war in August, 1944 half way up Nakayama Pass, I will confess to my part in the execution. I received the Battalion Commander's order thru Platoon Leader Tsuchida and acting on this order I went to the Kuzinato Barracks around 9 o'clock in the morning on this date.  
(The Battalion Commander's order: Sergeant Takano must stab a prisoner of war).

2. Then I went to Nakayama Pass, the scene of the execution, and there stabbed a prisoner of war. There were two (2) or three (3) others who also stabbed the prisoner of war. After this, Lieutenant Colonel Ito, beheaded them. At the time, I acted on instructions from First Lieutenant Ihama. The officers present at this time, I believe, were: Lieutenant Colonel Ito, Lieutenant Colonel Kato, First Lieutenant Ihama, First Lieutenant Yamashita, there were some others; however, I do not remember clearly.

3. I make the above confession. I will talk of the details when I am cross-examined.

July 27, 1946.

TAKANO, MASAYOSHI

Subscribed and sworn to before me this 27th day of July, 1946.

ROBERT D. SHAFER,  
Major, U.S.M.C.,  
Senior Member.

I, TAKANO, Masayoshi, being duly sworn on oath, state that I have had read to me, and understood the translation of my statement consisting of one (1) page, and it is the truth to the best of my knowledge and belief.

TAKANO, MASAYOSHI

"EXHIBIT (2)"

0131

BEST COPY AVAILABLE

COMMANDER OCCUPATION FORCES)

GUAM, MARIANAS ISLANDS)

I, Frederick Arthur Savory, civilian, interpreter, being duly sworn on oath, state that I have truly translated the foregoing statement given from Japanese to English and from English to Japanese respectively, and that after being transcribed, I truly translated the foregoing statement containing one (1) page to the witness, that the witness thereupon in my presence affixed his signature thereto.

FREDERICK ARTHUR SAVORY

Subscribed and sworn to before me this 27th day of July, 1946.

ROBERT D. SHAFER,  
Major, U.S.M.C.,  
Senior Member.

COMMANDER OCCUPATION FORCES)

GUAM, MARIANAS ISLANDS)

I, Robert D. Shaffer, Major, 06622, U. S. Marine Corps, certify that on 27th day of July, 1946, personally appeared before me Takano, Masayoshi, and according to Frederick Arthur Savory, interpreter, gave the foregoing statement and that after his statement have been transcribed the said Takano, Masayoshi had read to him by the said interpreter, the same and affixed his signature thereto in my presence.

ROBERT D. SHAFER,  
Major, U.S.M.C.,  
Senior Member.

"EXHIBIT (2)"

0132

BEST COPY AVAILABLE

Guam, Marianas Islands,  
27 July, 1946.

The foregoing statement consisting of one (1) page, made by me, was not obtained by threats, promises, or inducements of any kind. I wrote the foregoing statement freely and willingly, and it is true to the best of my knowledge and belief.

TAKANO, MASAYOSHI,  
Former sergeant,  
Imperial Japanese Army.

"EXHIBIT (2)"

0133

**AFFIDAVIT FOR THE CHARACTER OF FORMER SERGEANT MAJOR TAKANO, MASAYOSHI.**

**I humbly make my statement before Your Honor, The President of the Military Commission.**

Sergeant Major TAKANO was attached to the YAMASHITA unit of the 307th Battalion and was the Squad leader of the 1st section. He respected his superiors, loved his subordinates, and exerted himself every day and night in constructing our positions and discharging his duty. Before I was transferred to another unit I was on duty with him in the same section for several weeks.

Sergeant Major TAKANO was simple mild and honest in nature. He was earnest in his operations, obedient to the orders of his superiors, loved what was right, abhorred what was wrong, and did his best in discharging his duty. He was always gentle, relied on by his superiors and comrades, and had a good reputation.

He is a native of a farming family. If he is not able to work at his farm it will be difficult for his family to make a living. He was forced to part with his wife and children because of war, but his military service will make his family's living miserable. He often told me the above. As he was in the above situation, he ought to be opposed to such an action. Therefore, I cannot but imagine that he was obliged to do so.

I beg your kind consideration for his poor family and that you deal leniently with him.

23 September 1946.

To Your Honor, The President of the Military Commission.

Sergeant IJA, Chichi Jima.  
KISHIMOTO, Masao.

I certify the above to be a true and complete translation to the best of my ability of the original affidavit written in Japanese.

FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"Exhibit 4"

0134

**AFFIDAVIT FOR THE CHARACTER OF SERGEANT MAJOR TAKANO.**

I humbly state here concerning the character of Sergeant Major TAKANO.

Sergeant Major TAKANO and I were attached to the same battalion. Though our units were different, we engaged together in constructing our positions at the same place for a short time before the termination of the war. Therefore, I will tell you what I knew about him during this period.

He was very mild and obedient in nature, earnest in his duty; besides he was a man of few words. He was so kind to his subordinates that he was loved by them. He took the lead in the operations and taught his men kindly how to work.

I beg your kind consideration of what I have just mentioned and that you will understand the noble character of Sergeant Major TAKANO.

Former Captain NAKANO, Masami.

To Your Honor, The President of the Military Commission.

I certify the above to be a true and complete translation to the best of my ability of the original affidavit written in Japanese.

FREDERICK F. TREMAYNE.  
Lieutenant (jg), USNR.  
Interpreter.

"Exhibit 6"

0135

UNITED STATES PACIFIC FLEET  
COMMANDER MARIANAS

9 11 NOV 1946

Serial: 9137 a

The military commission, composed of Army, Navy and Marine Corps Officers, in the foregoing case, was convened 15 October 1946, by the Commander Marianas Area pursuant to his inherent authority as a Military Commander and the specific authorization of the Commander in Chief United States Pacific Fleet (CinCPac conf. serial 0558 of 8 March, 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas. The commission was specifically authorized to take up the present case and other cases the trial of which had not been commenced which had been ordered tried before the Military Commissions convened by precepts dated August 2, 1946 and August 24, 1946. The order for trial (charge and specification) was issued 16 September 1946 and served on the accused on 18 September 1946. The trial was held under the authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of Naval Courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

The evidence clearly shows that the defendant Sergeant Masayoshi Takano, IJA, while attached to the 307th Independent Infantry Battalion, First Mixed Brigade, IJA, on Chichi Jima, Bonin Islands executed an American prisoner of war by bayoneting in obedience to an illegal order received by him from higher authority. The command of a superior neither excuses nor justifies an unlawful act. (Clark and Marshall, The Law of Crimes, 4th Ed., Sec. 71, n. 310; CMO 212, 1919, 5; CMO 4, 1929, 19; para 345.1, FM 27-10, 1 Oct. 1940).

Subject to the above remarks, the proceedings in the foregoing case of Sergeant Masayoshi Takano are approved. The findings on the charge and the specification thereunder and the sentence are approved.

The War Criminal Stockade, Guam, is designated as the place of confinement of Sergeant Masayoshi Takano, until approval of his sentence by the Commander in Chief United States Pacific Fleet and Pacific Ocean Areas, at which time he will be transferred to the custody of the Commanding General, United States Eighth Army, Tokyo, Japan, for confinement in Sugamo Prison, Tokyo, Japan.

G. A. POWHALL,  
Rear Admiral, U.S. Navy,  
The Commander Marianas Area.

To: Commander in Chief United States Pacific Fleet and Pacific Ocean Areas.  
Re: Record of Proceedings of Military Commission - case of Sergeant Masayoshi Takano, IJA.

Copy to:  
Island Commander, Guam.

0136

UNITED STATES PACIFIC FLEET  
AND PACIFIC OCEAN AREAS  
Headquarters of the Commander in Chief

Cincpac File  
A17-25

c/o Fleet Post Office,  
San Francisco, California.

Serial 11495

7 DEC 1946

In reviewing the record of proceedings, it is noted that on page one "an interpreter read the precept in Japanese." No interpreters are shown to have been present and it is not until page three of the record that interpreters are first shown to have been introduced and sworn. No objection was made to this irregularity. It is not considered, therefore, that the rights of the defendant have been prejudiced.

Subject to the foregoing, the proceedings, findings, sentence and the action of the convening authority thereon, in the foregoing case of Sergeant Masayoshi Takano, IJA, are approved.

The record is, in conformity with section D-14, Naval Courts and Boards, and Chief of Naval Operations Serial #01P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy for revision and record.

J. H. TOWERS  
Admiral, U.S. Navy,  
Commander in Chief,  
United States Pacific Fleet,  
and Pacific Ocean Areas,  
and the Military Governor of the  
Pacific Ocean Areas.

To: Judge Advocate General.  
Re: Record of proceedings of Military Commission - case of Sergeant Masayoshi  
TAKANO, IJA.

Copies to:  
ComMARIANAS  
War Crimes Director PMA (GUAM)  
IsComGUAM

0137



In reply refer to Initials  
and No.

Op22D-FLF  
Serial No. 141P22

NAVY DEPARTMENT  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
WASHINGTON 25, D. C.



RECEIVED 48  
24 FEB 1947  
OFFICE OF JUDGE  
ADVOCATE GENERAL

21 FEB 1947

End-1

On Office of JAG Record of Proceedings, MILCOM-TAKANO,  
Masayoshi/A17-20 I (1/3/47) fld, dtd 18 February 1947.

From: Chief of Naval Operations.  
To: Judge Advocate General ✓  
Subject: Record of Proceedings of Military Commission  
at Guam in the case of Masayoshi Takano.  
1. Returned, contents noted.

*W. F. Jennings*  
W. F. Jennings  
By direction.

RECEIVED  
24 FEB 1947  
OFFICE OF JUDGE  
ADVOCATE GENERAL  
G.C.M. SECTION

Filed *[Signature]*

0138

MILCOM-TAKANO, Masayoshi/A17-20  
I (1/8/47)RAC:fld  
154039

BRIEF IN MILITARY COMMISSION CASE OF  
SERGEANT MASAYOSHI TAKANO, IMPERIAL  
JAPANESE ARMY, TRIED 21 OCTOBER 1946.

<u>CHARGE</u>	<u>PLEA</u>	<u>FINDING</u>	<u>C/A ACTION</u>
Murder.	NG	G	Approved
Spec. Murdered an American prisoner of war at Chichi Jima, Bonin Islands.	NG	Proved	Approved

SENTENCE Confinement for a period of nine (9) years.

ACTION OF CONVENING AUTHORITY Approved.

FACTS The accused while attached to the 307th Independent Infantry Battalion, First Mixed Brigade, IJA, on Chichi Jima, Bonin Islands, executed an American prisoner of war by bayoneting him in obedience to an order received by him from Lieutenant Colonel Kikuji Ito, Imperial Japanese Army.

REMARKS The record indicates that other Japanese army personnel were implicated with the accused. The record of proceedings in their cases have either been reviewed or are being reviewed. They are:

Lieut.Colonel Kikuji ITO, case being reviewed.  
Lieut.Colonel Takemune KATO, case has been reviewed.  
First Lieut. (Captain) Shigeo IKAWA, case being reviewed.  
First Lieut. Masao YAMASHITA, case has been reviewed.  
Superior Pvt. Matsutaro KIDO, case being reviewed.

0139

*MS*  
ADDRESS REPLY TO  
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

MILCOM-TAKANO, Masayoshi/

A17-20

I (1/3/47) fld  
*Pen*

NAVY DEPARTMENT

OFFICE OF THE JUDGE ADVOCATE GENERAL

WASHINGTON 25, D. C.

18 FEB 1947

The proceedings, findings and sentence in the foregoing military commission case of Sergeant Masayoshi Takano, Imperial Japanese Army, and the action of the convening and reviewing authorities thereon are, in the opinion of the Judge Advocate General, valid.

Referred to the Chief of Naval Operations (Op22) for information.

*O. S. Colclough*

O. S. COLCLOUGH  
Judge Advocate General of the Navy

0140

ADDRESS REPLY TO  
OFFICE OF THE JUDGE ADVOCATE GEN

NAVY DEPARTMENT

OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON 25, D. C.

AND REFER TO

**MILOM-TAKANO, Masayoshi/**

**A17-20**  
**I (1/3/47) file**

18 FEB 1947

The proceedings, findings and sentence in the foregoing military commission case of Sergeant Masayoshi Takano, Imperial Japanese Army, and the action of the convening and reviewing authorities thereon are, in the opinion of the Judge Advocate General, valid.

Referred to the Chief of Naval Operations (Op21) for information.

G. S. COLCLOUGH  
Acting Judge Advocate General of the Navy

0141

ADDRESS REPLY TO  
OFFICE OF THE JUDGE ADVOCATE GEN

NAVY DEPARTMENT

OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON 25, D. C.

AND REFER TO

**MILOSH-TAKANO, Masayoshi/**

**A37-20**

**I (1/3/47) 21A**

18 FEB 1947

The proceedings, findings and sentence in the foregoing military commission case of Sergeant Masayoshi Takano, Imperial Japanese Army, and the action of the convening and reviewing authorities thereon are, in the opinion of the Judge Advocate General, valid.

Referred to the Chief of Naval Operations (Op22) for information.

C. S. GOLDSBOROUGH

Acting Judge Advocate General of the Navy

0142

ADDRESS ONLY TO  
OFFICE OF THE JUDGE ADVOCATE GEN

**NAVY DEPARTMENT**

OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON 25, D. C.

AND REFER TO

**MIYOKI-TAKANO, Masayoshi/**

**A17-30  
I (1/3/47) 214**

18 FEB 1947

The proceedings, findings and sentence in the foregoing military commission case of Sergeant Masayoshi Takano, Imperial Japanese Army, and the action of the convening and reviewing authorities thereon are, in the opinion of the Judge Advocate General, valid.

Referred to the Chief of Naval Operations (Op22) for information.

**G. S. GOLLOUGH**

Acting Judge Advocate General of the Navy

0143

MILITARY COMMISSION  
GENERAL COURT-MARTIAL DATA SHEET

(21 Nov 1946 - 2000)

TAKANO, Masayoshi (Last Name) / (First Name) (Middle initial) Sgt. I. Javaccor Army (Rating) (Classification)

Docket Number 154039

1. Are the precept and any modifications thereof certified as true copies by the judge advocate?	Yes	No	Remarks
2. Does the record show place and time the court convened?	✓		incom
3. Were there five members or more present at every meeting?	✓		
4. Were the members and judge advocate shown to be present named in the precept or its modifications?	✓		
5. Was the accused asked whether he desired counsel?	✓		
6. Was the accused extended the right of challenge as to members?	✓		
7. Were the judge advocate, the members, and the reporter sworn?	✓		
8. Did the accused acknowledge receipt of a copy of charges and specifications?	✓		
9. Was the accused asked if he had any objection to the charges and specifications?	✓		
10. Was the accused asked if he was ready for trial?	✓		
11. Does the record show that no witnesses not otherwise connected with the trial were present?	✓		
12. Was the accused properly arraigned?	✓		
13. Was the accused warned as to the effect of his pleas of guilty?	✓		How
14. Was the accused's response, if any, recorded?	✓		"
15. Was the accused afforded opportunity to make a statement?	✓		
16. Was the accused afforded opportunity to make an argument?	✓		
17. Were the witnesses, if any, sworn?	✓		
18. Was the sentence authenticated by the signatures of all members of the court and of the judge advocate?	✓		
19. Was the record authenticated by the signature of the president of the court and of the judge advocate?	✓		
20. Was the accused's receipt for a copy of the proceedings appended to the record?	✓		
21. Was the action of the convening authority dated and signed?	✓		

Auditor's initials and date

(OVER)

0144

(CASE)

	Yes	No	Remarks
22. Was the court convened by proper authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
23. Did the court have jurisdiction of the person and offense?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
24. Was the accused's statement consistent with his pleas?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
25. Are the findings properly recorded?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Yes</u>
26. Is the evidence, if any, of previous convictions admissible?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
27. Is the sentence legal and in proper form?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
28. Does the action of the convening authority:			
(a) Expressly approve the proceedings, findings and sentence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
(b) Is the action otherwise legal?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

3 Jan 1947  
Date.  
[Signature]  
Initials of reviewing officer

0145