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TACHIBANA, Yoshio et al. (1946 ?)

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0146



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0147

OPENING ARGUMENT FOR THE PROSECUTION

Delivered by

DANIEL FLYNN
Lieutenant, USNR.

Gentlemen of the commission:

The prosecution will begin the presentation of this case after this opening statement, which is not to be considered as evidence against the defendants or in any way substantiating the charges, but is made only with the intention of giving the commission a brief outline of the case we intend to present.

There are three charges: Murder, Violation of the Laws and Customs of War, and Neglect of Duty in Violation of the Laws and Customs of War.

There are 38 specifications under the Charges. Several of these specifications allege the wanton destruction of human life in most fantastic and unusual manners.

Several of the specifications allege the commission of acts which are so revolting to the human mind that man long ago decided it unnecessary to legislate directly against their commission.

The framing of these specifications so as to allege the commission of a crime was a tedious proposition of legal drafting.

There is no doubt in our minds that the series of offenses these defendants have committed rank with the most startling ever to be heard in a criminal court. It is our hope that never again will the like of these cases have to be presented.

The scene of these crimes is the Island of Chichi Jima in the Bonin Islands group which lie several hundred miles to the southern coast of the Japanese homeland.

The first American air raids over Chichi Jima occurred in June of 1944.

At that time on the island there was an Army command called the Fortress Headquarters - commanded by Major General Koto Osuga.

Also, there was a Naval Organization on the island called the Special Navy Base Headquarters on the Island of Chichi Jima. The Naval Organization was under the command of Rear Admiral Kuniiso Mori, who is now before this court for trial.

On June 30th 1944 the Imperial Japanese Army Headquarters established the 109th Infantry Division on Iwo Jima and Chichi Jima. This division was composed of two mixed brigades, and under the command of Lieutenant General Kuribayashi whose headquarters were established on Iwo Jima.

The First Mixed Brigade of the 109th Division was located on Chichi Jima under command of Major General Tachibana now before this court for trial and the Second Mixed Brigade was located on Iwo Jima.

On 30 June 1944 the Fortress Headquarters became part of the First Mixed Brigade, and Major General Osuga was transferred to Iwo Jima.

Also, in July 1944 there was established on Chichi Jima the Detached Headquarters of the 109th Division under the command of Major Yoshitaka Horie who was one of General Kuribayashi's staff officers.

This Detached Headquarters Unit was to act as an Intelligence, Communication, and Supply Unit between the Imperial Japanese Army Headquarters and the Island of Iwo Jima.

Rear Admiral Mori was Senior Officer present on Chichi Jima before and from June 1944 until March 1945.

From June 1944 to March 1945 the command and military organization on the island remained as I have described.

The Japanese consider Iwo Jima to have fallen on February 23rd 1944 and it is presumed that on or about that date Lieutenant General Kuribayashi died with his troops in the last days of that historic campaign.

After the fall of Iwo Jima Major General Tachibana was promoted to Lieutenant General and placed in command of the remnants of the 109th Division with headquarters on Chichi Jima. With this promotion Lieutenant General Tachibana became Senior Officer present on Chichi Jima.

The Detached Headquarters of the 109th Division was dissolved and Major Horie became Chief of Staff to General Tachibana.

By agreement between the Army and Navy on Chichi Jima prisoners of war were to be handled by the Army. This was decided upon in a meeting in August 1944 at which Tachibana and Mori were present, and upon suggestion of Mori.

On or about July 4th, 1944 an American aviator was captured on Ani Jima, an island in the Bonin Island group near Chichi Jima. Woellhof was delivered to the Major Horie's headquarters and was there interrogated. This prisoner was Lloyd Richard Woellhof an Aviation Radioman Second Class.

After the interrogation he was kept in a garage for about a month and then on or about August 5th, taken again to Major Horie's headquarters for further interrogation.

On or about August 7th, 1944 on orders of Lieutenant General Tachibana, Imperial Japanese Army, Woellhof and another American, whose name we do not know, was killed by a group of Japanese soldiers under the direct supervision of Lieutenant Colonel Ito, Imperial Japanese Army, with bayonets. Matsutaro Kido, who is now before this commission for trial, was one of the bayoneteers. Lieutenant Colonel Ito and several others who took part in an execution have been tried and convicted of murder by a Military Commission here on Guam.

On or about the night of August 4th, 1944 an American plane was shot down near the Navy Base on Chichi Jima. Two airmen survived this crash. However, one was so badly injured that he died shortly after being taken ashore.

The uninjured flyer was interrogated by two officers from the Navy Base.

The following day this prisoner was left tied to a tree at the Navy Base during the time the island was being shelled by units of the American fleet. The next day he was sent to the Fortress Headquarters where he remained only a few hours, and on the afternoon of that day was transferred together with Woellhof on to the Haken Sheribu which was Major Horie's headquarters and was the unknown American flyer who was executed with Woellhof under the supervision of Lieutenant Colonel Ito. One of the bayoneteers was Kido, who is before this commission for trial.

On or about February 18th, 1944 two American Aviators were rescued from the water between Ani Jima and Chichi Jima and taken prisoner.

One of these prisoners was Ensign Floyd Ewing Hall, United States Naval Reserve. The other was identified as Marvie William Mershon, Aviation Radioman third class. This man will be mentioned throughout the testimony as the one who wore only long white underwear.

The two prisoners were taken to the headquarters of the 308th Battalion.

The next day the two prisoners were taken to the headquarters of General Tachibana of the First Mixed Brigade and there left tied to trees.

During one of the days they were tied to a tree and a bombing raid took place. Two Japanese officers were taking the prisoners to the air raid shelter.

On the way they were stopped by Major General Tachibana and ordered not to give the prisoners shelter, food nor water. The prisoners were left out during the raid.

Later the prisoners were taken to the Detached Headquarters of the 109th and remained there in custody of Major Horie for interrogation.

When the interrogation of Mershon was completed a call was put into the Headquarters of the 308th Battalion to send for the prisoner. The prisoner was then transferred to the 308th Battalion Headquarters.

Lieutenant (junior grade) Jitsuro Suyeyoshi, Imperial Japanese Navy, Commanding Officer of the 8th anti-aircraft battery, who is now before this commission for trial, was told by Major Matoba, Imperial Japanese Army, Commanding Officer of the 308th Infantry Battalion, who is now before this commission for trial, that when the prisoners were brought back from the Detached Headquarters of the 109th - he would send one of the prisoners to Suyeyoshi's command for disposal.

Mershon was then sent to the 8th anti-aircraft unit, where he was beheaded by Lieutenant (junior grade) Hironobu Morishita on or about February 23rd, 1945. Hironobu Morishita later committed suicide.

On or about the evening of the 24th of February, 1945 at a party at the headquarters of the 307th Infantry Battalion, Tachibana asked Major Matoba to send for some meat.

Major Matoba called his adjutant on the telephone and ordered him to have the body of Mershon exhumed, and the liver and some of the flesh removed and sent to him at the Headquarters of the 307th Battalion.

A doctor and a corpsman dissected the body, removed the liver and a piece of flesh from the leg of Mershon who had already been buried the day before. The flesh and liver was then delivered to Major Matoba at the 307th Headquarters, cooked and eaten at the party.

Hall remained at the Detached Headquarters of the 109th Division, until on or about March 26th, 1945 when Hall was returned to the Headquarters of the 308th Battalion.

Major Matoba ordered Captain Kesichichi Sato, Imperial Japanese Army, to execute Hall. Corporal Shigenobu Nakamura, Imperial Japanese Army, beheaded Hall under the supervision of Captain Sato. Captain Sato then ordered Sergeant Yasamasu Mori, Imperial Japanese Army, to bayonet Hall's body after he was beheaded. Sergeant Mori then bayoneted Hall's body.

On orders from Major Matoba a doctor and a corpsman removed the liver and some flesh from Hall's thighs. The liver was delivered to Matoba's galley, prepared by his cook and served at a party given by Matoba. There was sake to drink and liver to eat.

The remainder of the liver was dried, by hanging it out in the sun in front of Matoba's quarters for several days, and then delivered to the Navy Base where it was eaten in Admiral Mori's mess.

Also around February 18th two men parachuted down on Ani Jima and were taken prisoners. These prisoners were United States Naval personnel.

One was Grady Alvin York, aviation ordnanceman third class. The other was James Wesley Dye, radioman third class -

They were taken to the Brigade Headquarters, and then sent to the Detached Headquarters of the 109th Division for interrogation.

After their interrogation they were both returned to the Brigade Headquarters on or about February 23, 1945.

Grady Alvin York was sent directly to the headquarters of the 307th Infantry Battalion for execution on orders of General Tachibana. Upon receiving these orders Colonel Kato, Commanding Officer of the 307th Battalion selected Lieutenant Masao Yamashita to carry out the execution.

Yamashita selected several enlisted men for the execution, and on or about February 25, 1945, Grady Alvin York was put to death by stabbing with bamboo spears and bayoneting. Colonel Kato, Yamashita, and several others have been convicted by a Military Commission here on Guam of the crime of murder. Tachibana is here charged with this murder.

On or about February 23rd Tachibana ordered his adjutant to have Dye executed with bamboo spears, however, before this execution was performed Captain Shizuo Yoshii, Commanding Officer of the Yoake Wireless Station obtained permission from Tachibana to use Dye in decoding messages.

Dye was then transferred to the Yoake Wireless Station, and where he remained for a short time, on or about the 24th of February 1945 was taken from his quarters at the Yoake Wireless Station, brought to a spot within the station area where all the personnel of the station were assembled, he was blindfolded, his hands tied behind him, and made to kneel or sit beside his own grave. Then by order of Captain Yoshii, Ensign Minoru Hayashi, Imperial Japanese Navy, attempted to behead Dye with a sword. However, Hayashi's blow failed to decapitate the prisoner entirely, so Lieutenant, junior grade, Shinichi Masutani, now before this court for trial, then stepped up with a sword, and under orders from Captain Yoshii completed the beheading of Dye.

Yoshii then ordered Surgeon Lieutenant Mitsuyoshi Sasaki, who is one of the accused in this court, to remove the liver of Dye. The liver was removed from Dye's body by Sasaki and delivered it to Yoshii's cook, who in turn delivered it to Yoshii. Yoshii ate some of the liver and offered it to some of his officers and men at a party that night.

On or about 23rd of February 1945, men of the 307th Battalion rescued an American Aviator swimming in the water off Chichi Jima and took him prisoner. This person was Second Lieutenant Warren Earl Vaughn, United States Marine Corps Reserve.

He was taken to the Brigade Headquarters where he was interrogated and then transferred on to the Detached Headquarters of the 109th Division.

Captain Yoshii received permission from General Tachibana to obtain custody of Vaughn and requested the Detached Headquarters to turn Vaughn over to him to use in decoding messages.

He was sent to the Yoake Wireless Station where he remained for several days, and was then transferred to the Torpedo Boat Squadron on orders from Captain Yoshii.

On or about March 5th, 1945 Lieutenant Yasuo Kurasaki, Imperial Japanese Navy, Commanding Officer of the Torpedo Boat Squadron ordered Ensign Takao Koyama, Imperial Japanese Navy, to behead Vaughn, and on this date Vaughn was lead blindfolded before about 150 officers and men of the Torpedo Boat Squadron, told he was going to die, asked if he was ready to die, answered that he was, and even helped the Japanese roll his collar down far enough so the sword could cut a clean stroke on his neck, and on that day beheaded.

Captain Yoshii ordered Surgeon Lieutenant Kanahisa Matsushita, Imperial Japanese Navy, now before this court for trial to remove the liver from Vaughn's body, and this was done as ordered. The liver was carried off in a pail, and part taken by Captain Yoshii, and part by Lieutenant Kurasaki. Lieutenant Kurasaki was later killed in action, and Ensign Koyama committed suicide.

On or about February 23rd, 1945 two men of the 308th Battalion captured an American flyer on Ani Jima.

This was Glenn Junior Frazier, aviation ordnanceman second class. The prisoner was taken to the 308th Headquarters. There was a party in progress at Major Matoba's headquarters. Captain Noboru Nakajima walked out from

this party, came upon the prisoner near the headquarters and attempted to question him.

During the questioning Nakajima began beating the prisoner with a stick and beat him to death there on the ground. Matoba was Commanding Officer of the 308th Battalion.

The prosecution expects to show that it was the policy of General Tachibana to execute prisoners of war to boost the morale of his troops, and that his policy was supported and carried out by Commander Yoshii, Major Matoba, Captain Higashigi, and that he ordered most of these executions. A majority of the officers on Chichi Jima opposed this policy, but were overruled in their attempts to obtain better treatment for the prisoners.

The prosecution will further show when it appeared that the days of these criminal escapades were coming to an end, that several of these accused in full knowledge that they had committed most dispicable crimes attempted various means of keeping the knowledge of these crimes from the Allied Occupation Forces.

We have many witnesses to call and much evidence to produce, but we believe that by presenting the evidence of the murders many of the specifications in the other charges will be proved and most of the presentation will be completed.

Daniel Flynn
Daniel FLYNN,
Lieutenant, USNR.

陸軍部

陸軍部主計課

從來、我が國の軍備、強メテ日成
ノ兵ヲ要スルモノナシトシテ、
加ヘテ軍備、盡ク減シ、
不十分ナルモノトシテ、
開始セシメ、父國ノ進攻力ヲ
抑セシメ、
部、努力ニ拘ルニ、
予期、
絶ニ現地自治、
ハ生テ行ハシ、
此トナシ、
玉碎、
甚ク支復ニシテ、

日夜、
努力ニシテ、

父の、母の、叔父の数、
確かな作戦後、得た国債上
は、対大田の対地、
他、何の国債と数値を、
一、二、三、四、五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、一百、

主犯部夫

STATEMENT OF GENERAL TACHIBANA.

The previous fortifications on Chichi Jima were very much out of date, and it was a fortress only in name. Furthermore, the quality of our forces had deteriorated, and they lacked training.

Even at the time when the invasion of Iwo Jima had begun and the American landing was expected on Chichi Jima itself, in spite of the efforts of the officers the fortifications and training had not progressed as expected.

The bombing became more severe, the supply line was cut off and it was acutely felt that it would be difficult for us to force a survival unless we took exhaustive steps to strengthen our self-sustaining powers. We overcame these obstacles and continued our work in building fortifications, in training, and in self-sustenance day and night with a firm determination to act in a way not shameful to these seniors and colleagues who had died on other battlefields. 215
816

The number of prisoners taken at Chichi Jima were few. After the Iwo campaign, due to the scarcity of ammunition, all anti-aircraft guns were converted into field artillery. Thus, there was almost no opportunity for the Chichi Jima forces to shoot down any enemy planes, and even after the Division was placed on Chichi Jima, I did not feel the necessity to establish a special policy for prisoners.

TACHIBANA, Yeshio.
General, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

陳述

海軍中將 森 國造

私、父島、防備構築等特ニ飛行場、整備
ニ全カク注ギマシタ 又 幸而、防空作戦ニ

寸刻、油断モ許サレマセンデシタ。

父島、右独立海軍部隊ニ指揮下ニアリマセ

ンデシタ 父島、右独立海軍部隊ニ何レモ横
須賀鎮守府ニ直屬ニ私ニ防備及ビ作戦

関係以外ニ命令ヲ出スコトハ出来マセンデ
シタ。

海軍部隊、司令ニ對シテ、終ラ陸海軍協
定ヲ嚴守スル様ニ又 倭方ト関係ニイテ

命令ニマシタカ終戦後 始メヲ知ツツカレ
リ 自分、指揮下ニ被テ「ナカソノヲ」自分、

警告ヲ指示シ毛現ニマシタ

私ハ海軍司令ニ對シ陸軍部隊長ト、交
陣ヲ隨ケル様格有ニマシカ終戦後私

ハ彼等カ私、警告ニ及ニテ陸軍部隊長
等ヲ訪問シ居ツテ事ヲ知リマシ。

矢島通信隊ハ作戦的ニ^{實際上}独立シテ居リマシ

通信隊司令ハ非常ニ其、専門、通信ニ
於テ有能ト人物デアリマシ彼ハ日本海軍通

信將校、先任者、一人ヲ夜明通信隊ヲ
指揮ニ運用ニテ行フニ充分、資格ヲ備ヘテ

居リマシ。

佐藤、收着保庫ハ陸軍、任務デアリマシ
ハテ海軍ハ佐藤ト関係スベキデアリマシ

デシ。

矢島、先任海軍將校デアツテ私ハ横須賀
鎮守府長官、令命下ニアリ私、受テ

余今又作新將校トシテアリマシテ 余ハ父
島ノ大独立海軍部隊ノ内部行政ニ関

シテハ權力ヲ持ツテ居リマセンデシヨ 此等部
隊ハ總テ独立シテ部隊デアツテ父島ノ

海軍部隊ノ組織ハ米海軍ノソレト違
フ様デアリマス 是等ノ事件ノ事實ヲ若

ク知ツテ居ラレハ 余ハ此ヲ横須賀鎮守府
司令長官ニ報告ニシテアロウ。

父島所在ノ陸軍ト^{私トハ間ニハ}何等ノ指揮
關係モ~~アリ~~アリマセンデシヨ。

昭和二十一年九月 日

海軍中將 赤 國 造

STATEMENT OF MORI, KUNZIO

I was busy with defense measures, particularly on that of the airfield, and did not have a moment's rest from planning anti-air defense.

The separate independent naval units on Chichi Jima were not under my command, but were attached directly to the Yokosuka Naval Base. I did not have authority to issue orders except on defense and operational matters.

Orders were given to all Navy commanders to abide strictly with the Army-Navy agreement, and to have nothing to do with prisoners, but since they were not under my control, the Navy unit commanders disregarded my warnings and instructions as I found out after the war.

I also found out after the war ended that though I had warned the Naval unit commanders to avoid associating with the Army heads they had not heeded my words but had been visiting with them.

The Chichi Jima Radio Station was practically independent, even on operational matters. The commanding officer of the radio station was a very efficient officer and highly qualified in his specialty, communications. He was one of the senior communication officers of the Japanese Navy and fully qualified to command, operate, and administrate the Yosake Wireless Station.

As the custody and treatment of all prisoners was the Army's duties the Navy units should not have had anything to do with prisoners.

As the senior Naval Officer on Chichi Jima I was under the orders of the Yokosuka Naval Base, and my orders were as an operational officer. Thus, I had absolutely nothing to do with the administration of the separate Naval units on Chichi Jima. These units were all separate commands and it would seem that our Japanese Navy organization on Chichi Jima is different than the American Navy organization. If I had known about these incidents, I would have surely reported them to the Yokosuka Naval Base.

There was absolutely no inter-relational connection between myself and the Army units on Chichi Jima.

MORI, Kunzio.
Vice Admiral, IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Smith
USAP

陳 成 書

士 呂 井 靜 雄

我ニ今度、戦争デ日本軍、敗レタ原因、一トシテ
陸海両軍、通信ガ一元化ナラス 各、何時、連絡ナ
ク対立シテ知又コトニ成リ上信ニタス

私ニ本林司令官カラ陸軍トハ餘リ交際スルヲ
又行クナト注意ヲ受ケタミタカ 我ハ父島デハ
陸海軍ガ通信ヲ一元化スルタメ先ツ陸軍ト
隊長ト仲リタメニセバナラヌト、強キ信念ヲ持
ツテ居リマシタ

依ツテ本林司令官ニ知ラシ又林ニ居テ陸軍、各
部隊長ヲ訪問ニマシタ 本林司令官ハ最後
マデ此ノコトニ気が付カシカニ又告グニ

ソハ私ニ海軍ハモ高位ノ將校デアリ又通信ニ付
イトハ絶対ノ信用ヲ得テ居タカニデス

然レ私ハ戦ニ勝テ度イ事又自分、信念デ
行動シ其ノ結果戦争犯罪人トシテ指名サ
レ審判サレタガミ

私ニ海軍海軍員令ガ父島部隊、其ノ犯
行ヲ爲セハ動機即チ若シ我々が 我々
ノミナト加ニシ居ニカ如ク行動シテ居タト
スレバ何カ我々ヲ責ムセバヌカト云フ事ヲ
懐疑ニシテ居タガミ

戦ハ激シク我ハ引続ク凄惨ナ空襲ニ
皆頭がぶつかミテ居タ 我々十四名、被出
ヨリモ更ニ不幸ナ人間ガ幾百ノモ居タ

米國ノ爆彈ニミテ命中ニ被害ニ木甚モ微塵ニ
吹き飛サシタ

空襲ノ被害ニ唯タ空襲中ニ止メテなく其ノ
終ツタ後ニモアツタ 我々各ヲ言ヘバ空襲
警報ガ解除サレテカラ一時暗後ニアツタガ
公用ニ特根ニ行カントシテ居タ所 頭上ニ墜
上テ 米國ノ時限爆彈ガ爆発シタ

私ハ彼令シガ麻痺ニテ居テ全ク使
ヘナクトモ右腕ヲカシスニ持ツテ居ルコト
ヲ有難ク思フ

昭和二十一年九月 日

吉井新雄

STATEMENT OF YOSHII.

I believe that one of the reasons Japan lost this war was because she did not establish a joint communication system between her land, sea and air forces, and there was no means of direct contact between them.

I received a warning from Admiral Meri not to visit with the Army and associate with them, but I had a strong belief that it was necessary for me to get acquainted with the Army unit commanders to succeed in establishing a joint Army-Navy communication system on Chichi Jima. So I visited the Army in a manner that it was impossible for Admiral Meri to find out. Admiral Meri must have been unaware of this to the last. That was because I was one of the senior officers in the Navy and had absolute trust in my specialty, communication.

I acted according to my beliefs because I wanted to win the war, and as a result, I was named as a war criminal and am now being tried as one.

I ask that the Commission consider carefully the motives of the Chichi Jima Forces, that is, what happened to us that made us act so, if we did act as has been testified to.

The war was terrible and everyone of us was mentally affected by these merciless and deadly bombings. There were hundreds that were not as fortunate as we fourteen accused are. I may say so because many of the American bombs were effective and many of our comrades were killed by being blown to bits.

It was not only during the actual raids but long afterwards that we felt the results of the bombings. In my own case, it was more than an hour after the all-clear had sounded and I was on my way to the Naval Base on official duty that an American time bomb exploded on an overhanging cliff as I passed. I feel thankful that I still have my right arm although it is almost entirely paralyzed and practically useless.

YOSHII, Shizue.
Captain, IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

何れに正しき事柄の御賢察上。正察にたつて
愚念又特別に事情、下は、この行爲に對する便
宜（この事）を實現する爲に、各員に應ずる利の與
（この事）の御察に致したス

血 藥 示 明

陳述書

的場赤男

事件発主當時日本軍、敗戦、敗戦、敗戦、敗戦、
硫黄島、戦況、状況、日本軍、不利、悲惨、
七戦、七戦、七戦、七戦、七戦、七戦、七戦、七戦、
頃、父島、母島、爆撃、敵、事、加、硫黄島、
同僚、同、非、運、目、血、戦、事、事、事、事、
た、訓、此、地、激、烈、至、敵、三、三、三、三、三、三、三、三、
事、訓、事、事、事、事、事、事、事、事、事、事、事、事、
糧、事、事、事、事、事、事、事、事、事、事、事、事、
二、三、三、三、三、三、三、三、三、三、三、三、三、三、
三、三、三、三、三、三、三、三、三、三、三、三、三、三、
内、三、三、三、三、三、三、三、三、三、三、三、三、三、

た、戦、戦、戦、戦、戦、戦、戦、戦、戦、戦、戦、戦、
三、三、三、三、三、三、三、三、三、三、三、三、三、三、
三、三、三、三、三、三、三、三、三、三、三、三、三、三、
我、今、三、三、三、三、三、三、三、三、三、三、三、三、
食、食、食、食、食、食、食、食、食、食、食、食、食、食、
解、解、解、解、解、解、解、解、解、解、解、解、解、解、
先、先、先、先、先、先、先、先、先、先、先、先、先、先、
カ、若、若、若、若、若、若、若、若、若、若、若、若、若、若、
我、我、我、我、我、我、我、我、我、我、我、我、我、我、
出、出、出、出、出、出、出、出、出、出、出、出、出、出、

和ハ十字ノ老母カノミ 會ニシテ妻ヲ弱メ女
 ニカノミ 結婚セシメテ十年ノミ 同棲ニシテ
 子ノミ 同親ニシテ老母長 夫婦 親子ノミ 老母
 子ノミ
 何ナキヤ 諸事情ノ御覽ナシ 止メテナシ
 婚合又特別ノ事情ノミ 行方ナシ 便
 ニ與ハシ 事ノミ 原因ニシテ 罰ノミ
 (一) 事ノミ 彼ノミ

男 不 場 的

STATEMENT OF MATOBA.

The time that these incidents occurred was when Japan was meeting defeat after defeat. The battle situation on Iwo Jima was becoming desperate for the Japanese Forces, and tragic reports of the terrific battle and advice were received as were sent by dispatches from Iwo.

The air raids against Chichi Jima increased in ferocity, and we became extremely excited as we felt that soon we would face the same fate as our comrades on Iwo presently were. Vehement instructions and scoldings, encouragements, and to the last man orders were issued by the superior officers. In the Japanese Military Handbook "Battlefront Teachings", it is stressed never to have the disgrace of prisoner of war befall you. The food situation became critical, and even on half of our normal rations they would last us only a few months more. Much of our food was blasted by the bombings and before us was death by starvation or death in action, there was only death remaining for us. Because of such dire conditions the personnel on Chichi Jima became excited, agitated, and seething with uncontrollable rage. These conditions affected not only physical but also mentally the officers and men. None of us were really normal and knew what he was doing. We were all definitely abnormal.

And further we were hungry, we tried every eatable animal and plants like rats, mice, dogs, lizards, etc. I hardly know what happened after that - we were not normal.

Reflecting upon my acts now, I regret deeply anything I have done which was abnormal. My acts at this time absolutely were not of the nature of my everyday life. What made us do the things for which we are being accused of, I do not know. Maybe mental doctors may be able to find out if given an opportunity. We really are not cannibals.

I have an aged father and mother over eighty years old. My family is poor, and my wife who has two small daughters, is sickly. Though it has been ten years since we married, we have lived together only two years because of my duties. I have never had a chance to perform any duties to my parents, wife and children.

I ask your lenient verdict in this respect and ask that punishment be in accordance with the accepted principles of punishment of individuals who have done certain acts under very unusual circumstances and at a time when they were not normal.

MATOKA, Sueo,
Major, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

陳述書

佐藤今朝吉

一、當時自分、不當極の命令に知り、
之を之より直ぐに實施せしむを得ず
之の場、在りたり就中大隊長に
對し命令、實施、即時之より
行つて、之をアツタ

本事件、之に於て、大隊長と中
隊長と、中間に在り、口舌に
絶つて、困難を來せり

二、家庭状況

私、昭和、年九月、三月、備役ニ歸
入、軍隊以外、場所所、就ニ歸
せし、之を、月給、四十五圓ニ、
其他、収入、之より、年、後ニ
五十七圓、之より、又、子共
ニ、生活ニ、之より、又、難
以上、如ニ、月給、之より、
金、之より、之より、之より、
昭和十二年二月、之より、
生計、之より、之より、
之より、之より、之より、
昭和十六年、之より、之より、

0169

男^イ (十一才) A^ウ
妻^ニ 也^ニ 労働^ニ タ^ニ 賃金^ニ 依^ニ
現在 年^ノ 月^ノ 日^ノ 粥^ノ 食^ヲ + X 食
命^ヲ 絶^セ A^ニ 又^一 国^ノ 才^ヲ
二 食^ヲ + K^ニ 又^一 食^ヲ 食物
困^ル 窮^ス 又^ニ 才^ノ 明^ノ 瞭^ト
私^ノ 才^ノ 交^ス 新^ス 又^ニ 才^ノ 以^テ 上^ト
其^ヲ 持^テ 御^ニ 配^ス 恩^ヲ 御^ニ 願^ス
也^ト + 才^ノ

佐藤今朝也

STATEMENT OF SATO.

At that time, I was in a situation in which I had to do what I was ordered, even if I knew it might be unjust. No matter what the situation was, we had to obey every order. Not only in this affair, but at all times I found myself in an awkward position, having to give Major Matoba's orders to the company commanders.

Conditions at home:

I was transferred to the First Reserve in September 1933 and was employed in a non-military business. My monthly pay was 45 yen which increased to only 57 yen in two years. Consequently, I had great difficulty in supporting my family - a wife and child. Under these conditions I could never save any money.

I was called to active duty again in February 1937 which made it much more difficult for my family to live. But they were able to exist on the money I sent home from the front. Though I was demobilized in June 1941, I was recalled twice. Therefore, it was impossible for me to look after my family. Moreover, the expenses for the education of our child increased year by year, and the family was hardly able to exist on the money I was able to send home.

At the end of the war I returned home to manage my household and to improve the conditions under which we were living. However I could not do what I wanted because of the controls on prices and materials. As we could not get a home to live in, we went back to my native town and borrowed a room containing eight straw mats.

It was difficult to live in this manner. As our rations were very short we had to purchase extra vegetables at black market prices. My wife is forty-two, in good health, but has no occupation. I have three daughters, one 17; one 15; and one five years old, and one son ten years old.

I beg that you will take the things I have just mentioned into your kind consideration when you punish me.

SATO, Kesakichi.
Captain, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

家世：李全主，豐稷集，生計井流，妻女三十八三男半女
(死亡三長男二男長女二女哥兄弟事家藏字中) 次弟三子三
弟生死不明三弟二十七下

2
本経、農林学校卒業後海軍に入籍下士官となり、除隊本文長男として、
農業に従事する予定となるが、事変後戦争、為不可能となり、
十七年三月少尉となり、二十年五月大尉となり、二十一年十月
復員農林業に従事、二十二年二月未だ犯罪人指名
が三月十日「果鳴」所、同三月二十一日が「収容所」
変更入所、現在上より。（海軍在籍中兵科砲術）

3
般見 海軍在役中一九三二年 横須賀艦隊軍艦艇手ニ米國兵海
海岸ニ巡航、數回サ、米國人ニ好感ヲ有セリ。
支那事変中、北支青島ニ勤務中、米英艦隊が在泊
ニ國際法規、重傷女性ト嚴守スベキトテ痛感セリ。

4
本意は佛教、信者より教次、戦闘に従事せざる無慈悲
タト思ふ美事地又部下命令タト絶列ナシ。
常我々國家、為大敵戦ハテ各個人何も罪ハ
ナシ、タト言ハテ針ナ有、正々堂堂タト戦ハテハ又
國民、前英皇、前、取リテ部下、教育、前、ナモ
ナシ、職責、金ナシ。

力能并上

又島トト十^二月米入^二名^一、我陣地^ニ、
短時間^ニ、取^レ扱^ハ「^ニタイスチー^一」其^ニ吞^リ、彼等
「名^ヲ喜^ミ」有^リ、^ニ際^ニ、^ニ聖書^一、中^ニ、
「^ニ人^ノ情^ノ幸^ニ、神^ヲ見^ル」トおま^ル、言^ハ葉^ト
「宋教^ニ、國境^ヲ、」ト云^フ、夫^レ、眞^ニ味^ハ、
「おま^ル得^ル」ト、私^ニ、^ニ賜^ハ、信^ハ、
終^ニ、平和^ヲ、眞^ニ味^ハ、
「^ニ最^ニ、^ニ道^ニ」。

米 田 子 子

2

STATEMENT OF SUYEHOSHI.

1. Family conditions:

I am head of the middle class family engaged in agriculture. My family consists of my wife, who is thirty-five years old, my third son (seven years old), and my mother (sixty years old). (My first and second son and first and second daughter died during the war). My second brother is missing in Burma.

2. Record of my life:

After graduating from agricultural school, I enlisted in the navy and was appointed to non-commissioned officer. Being the eldest son, I intended to engage in agriculture after demobilization, but it was impossible owing to the outbreak of the war. I was appointed to Ensign in March 1942, Lieutenant in May, 1945 and was demobilized in November, 1945. At the end of February when I was engaging in agriculture, I was accused as a war criminal and put in Sugamo Prison. I was sent to Guam stockade on the 26th of March. (I was an artillery officer in the navy.)

3. My general opinion:

When I was in the navy ⁱⁿ 1932 I made a voyage along the western coast of the United States on the training ship the IWATE. I was, at that time, welcomed by Americans and have entertained good will toward them since then. 134

When I was serving at Tsingtao during the Sino-Japanese Incident, the United States and British fleet, anchored there, and I felt keenly the importance of the international law.

4. My personal intention:

Since I am a Buddhist, I never did myself or ordered my men to do what might be thought cruel during the several battles in which we engaged. It was my opinion that we were fighting for our country and that we fought fairly so that we need not be ashamed for our nation or for those who died at the front. I also discharged my duty completely as to the training of my men.

5. The event and moral:

I dealt kindly with two American pilots at the end of February of 1945 in our position. I drank whiskey with the two and they thanked me. Then I could understand the truth of what was stated in the Bible "If we are pure-minded, we are happy. We are able to stand in front of God" and "There is no border in religion". The war was over, and we are enjoying peace. I am intending to do my best for the eternal peace of the world.

SUYEHOSHI, Jitsuro.
Lieutenant, IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

SASAKI

陳述書

佐々木光慶

私は東北帝國大學醫學專門部卒業後直ちに
海軍軍醫として元山海軍に勤務及ぶ海軍軍醫學校
に於て約六ヶ月間基礎教育を受けた。その間は、
士官であつたが訓練教育は下士官兵に對する態度
とせしめ義勇を旨目的實行とせる愛國義勇奉公
等の諸義的言語を以てする將來に對する死の強要
であつた。海軍軍醫學校卒業後私は初めの支
地勤務を父島で遂げた。其の間崇高な人格の所
有者たる森司令官、酒井正軍醫長に仕へたが、肉親
のやうに私達を事も思ひ下れる上官に對して喜んで
命令と服するやうになつた。

戦争が劇然となり生地環境がひどくなる程司令官
軍醫長に對する私達の信頼は厚くなり、其の後砲臺
島作戦が始まり急に夜明け通信隊勤務となり極端
に敵格化を司令官に仕へるやうになつた。

當時の全體状況は最も劇然であり戦傷者増加、生老
状況は極度に緊迫し、原爆空襲を強られ其上夏まどくとも
連日風も吹く。本土爆撃に郷土の父母兄弟を懐くもの
、敵父至來襲に對する彈藥、食糧、被服等の不足、然るに

0175

STATEMENT OF SASAKI.

Immediately after I had graduated from the Medical College of the Northeast Imperial University, I had to enter the Navy as a naval doctor. I received six months of basic training at the Motogama Naval Air Force and the Naval Medical School. We were officers in name only; the attitude toward our teaching and training was no different from that given the enlisted men. There was only blind execution of orders. The demand was made for your death in the future, using the seductive words of "Sacrifice without thought of self, loyalty to the Emperor, Love of Country".

After graduating from the Naval Medical School I had my first actual duty on Chichi Jima. During that time I served under Admiral Mori and the Senior medical officer Sakai, Tadashi who were persons of admirable character. It was a pleasure to obey their orders. These superior persons looked after us like real parents. As the war became more fierce, and the hardships of our life and environment increased, our belief in the Commanders, Admiral and Senior medical officer became deeper. Later began the Iwo Jima campaign and I was suddenly dispatched to take up duties at the Yoake Communication Station. Thus, I came to serve under the extremely strict Commanding Officer, Yoshii.

At that time the air raid conditions became much worse. The number of casualties continued to mount. General feeling became extremely tense, and primitive living conditions were forced on us. Besides this, we were made to realize the continued bombings of the home land. My thoughts went to my mother in Japan. The shortage of ammunition, provisions and medical supplies for combating the inevitable air raids, the complete blockade of the supply routes and the promise of death always imminent brought about feelings of despair, and fear. The deplorable conditions and physical fatigue were something beyond imagination. Life was a living hell. In the incident which happened under these conditions I had no alternative but to carry out the order. My will had nothing to do with it. I had no evil intent. For this reason I could not feel that I had done wrong when I was not responsible for my acts.

I am an only child. My father died suddenly when I was two years old. At that time my mother was 23. She did not remarry and centered all her efforts on bringing me up. To put me through medical school and make me a doctor my motive underwent many hardships and difficulties; for example, she took on boarders, taught flower arrangement and tea ceremony. Because of this war I had to leave her. During the war she prayed every day for my safe return. How my mother must have thanked God for my unexpected return home. I was planning to care for my god-like mother with all my devotion when this thing happened. How my mother, who was never too strong, must be worrying. I have heard that at present she is again ill.

SASAKI, Mitsuyoshi.
Surgeon Lieutenant, IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

昭和二年九月

陳述書

①

第三西衛能隊軍医長海軍少佐大村 松下 孝久

医科大学卒業後、海軍軍医(義務年限二年)に編入せし、青島
に於て四月間、蘭芝山基礎訓練隊、海軍軍医學校に於て、
五月間、海軍医学、同大校を卒業シタリ。
即日本軍隊、所謂軍人勅諭、五ヶ條ニ基き、徹底に訓練
シ、命令、遵守、自己理性、判断ヲ抑、トナシ、勿論絶対
許セズ、極度重炸ヲ受連シ、移スルヲタテ、トナシタリ。
私達所謂普通、學校出身者ニトシ、今更ニ自然、無理、
探ス、日時ヲ費シ、自由ニ生活ス、及ビ、軍隊ニ、極テ平然
長ク在見シタリ。即自己、理性ヲ抑、若痛ヲ甘受ス、トナシ、
既生カタルニ、知リタリ。解決ニ困難ヲ伴フ所謂死ノ哲學、
軍隊ニ於テ、極テ簡單、命令、遵守ニ、以テ説明セザル、
トシ、若キ將校既員、トモ分塞セザルベシ。
西衛能隊、独之ニ艦外部隊、若キ兵學校出身、倉庫
司令、我々、絶対、命令者ナリ、我々若キ兵士、トナシ、
職務、同シ、勿論日常生活ニ、我々嚴格ニ指導シ、司令
ニ、我々、復習、使シ、同達ニ、ト話シ、居セタリ。
軍医トシ、私人、病院、如キ多数君ニ、養ヒ、要ス、トナシ、
司令、命令、直接、使ヘタリ。職務、同シ、嚴格ニ指導シ、
普通、医者ト異リ、軍隊、医者、ク、エ、テ、強制セザル、
トナシ、申シ、一病人形、一、個ノ生命ヲ、得タルニ、過ガレ、
知リ、病人形、ニ、トナシ、年輩、トナシ、
三

②

其當時、父島、本國ニ見捨テラヌノ希望ナシ一孤島ナリ、之ニ
倭人間、不毛、魚、採、飢、餓、恐怖、存、所謂「戦争神種」也
ナリ、之ヲ獲ル、何、ナリ、ナリ。

夢、現、境、ノ、交、換、ヲ、ナシ、精、神、大、急、需、能、降、テ、ア、ラ、シ、得、ラ、ス、患、者、
一、割、死、ヲ、受、破、シ、殊、ニ、脚、部、患、者、増、加、一、途、ヲ、迷、テ、ナ、リ、ナリ。

主、ニ、病、者、ト、モ、シ、テ、ハ、脚、部、患、者、急、性、慢、性、胃、腸、疾、患、ノ、方、々、性、患、者、
ア、リ、ト、亦、割、ハ、ナ、リ、ス、存、同、不、明、ノ、然、性、疾、患、カ、内、科、疾、患、ト、モ、シ、
テ、ハ、外、科、疾、患、ナリ、戦、傷、カ、モ、ナ、リ、ナリ、ナリ。

其、高、丸、砲、火、後、ハ、際、ハ、急、需、能、出、動、後、ハ、医、務、科、生、計、科、
整、備、員、ノ、三、陸、上、ニ、疎、隔、ス、ル、ナ、リ、ス、ハ、多、三、日、月、山、ノ、中、腹、ニ、重、傷、若、
收、容、ノ、タ、タ、ノ、疾、ヲ、患、シ、ナ、リ、ナリ、即、衝、カ、ス、西、方、ニ、徹、夜、ヲ、作、業、ヲ、
續、テ、不、馴、ニ、抱、テ、人、子、ヲ、タ、タ、自、ラ、タ、タ、ト、使、テ、オ、リ、ナリ、
本、部、ニ、衛、生、員、ト、新、ニ、人、ヲ、患、者、ノ、大、小、便、通、交、換、ス、ル、多、能、
日、ヲ、送、テ、オ、リ、ナリ。

偶、ニ、カ、カ、ノ、状、態、ト、モ、治、療、所、ノ、大、壺、作、業、視、察、歸、隊、直、後、司、令、
ヲ、傳、令、タ、タ、知、テ、事、件、ヲ、知、リ、タ、タ。命、令、ノ、実、行、モ、ナ、リ、死、体、
ヲ、掘、出、ス、正、當、ニ、理、由、ヲ、求、テ、モ、抱、テ、理、由、ノ、ア、リ、ス、又、セ、
テ、南、ニ、拒、絶、ス、モ、抱、テ、司、令、ノ、衝、テ、ト、テ、命、令、ノ、遂、行、ヲ、ホ、
ス、テ、タ、タ、命、令、ノ、遂、行、ヲ、果、ス、テ、遂、行、中、ノ、自、身、ノ、戦、死、
ヲ、自、覺、シ、存、在、正、當、ニ、部、利、ニ、理、由、ヲ、求、テ、司、令、ノ、實、行、ニ、對、シ、
解、釈、ノ、説、明、ヲ、ナ、リ、今、迄、ノ、経、験、ヲ、基、ト、シ、患、者、ト、テ、取、扱、シ、行、爲、
ヲ、行、ヒ、タ、タ。死、体、ニ、對、シ、テ、敬、禮、ノ、礼、儀、ヲ、行、ヒ、タ、タ。得、テ、モ、
ア、リ、自、己、ノ、行、爲、ノ、良、心、的、ニ、モ、ナ、リ、亦、ス、死、体、ニ、對、シ、テ、礼、儀、ヲ、行、ヒ、タ、タ。

③

拙者、猶、之、求、之、司、令、自、身、と、共、ニ、シ、テ、日、暮、
了、創、ヲ、癒、合、シ、テ、頭、部、ヲ、縫、ヒ、身、体、ヲ、調、整、シ、テ、
私、其、時、ノ、行、爲、に、私、と、モ、正、當、ナ、リ、絶、對、ニ、恥、ヂ、テ、
司、令、ノ、命、ヲ、受、テ、不、可、抗、力、ヲ、受、ケ、タ、リ、
私、性、格、上、ニ、ハ、虫、一、匹、後、ニ、露、骨、ト、人、向、ケ、テ、
「医、人、ハ、術、ヲ、シ、テ、評、判、ス、ル、事、ハ、代、表、ス、ル、人、ナ、リ、ト、司、令、ノ、稱、
讃、ノ、名、義、表、ス、ル、書、カ、ヲ、受、ケ、テ、
戦、後、時、代、に、生、キ、テ、讀、ミ、宗、教、ヲ、信、シ、テ、
「幸福、ハ、心、ノ、清、キ、者、ト、ハ、神、ノ、恩、ト、ハ、語、リ、
私、ノ、性、格、も、決、シ、テ、思、フ、思、フ、カ、立、チ、
「本、當、美、シ、サ、ト、モ、ハ、課、切、ト、愛、ノ、行、ノ、内、ニ、コ、シ、
下、ニ、私、ノ、忠、者、ニ、對、シ、テ、信、仰、ス、ル、
兄、ト、モ、医、者、ナ、リ、人、ノ、命、ヲ、救、フ、事、ヲ、
負、傷、シ、テ、院、中、ニ、シ、テ、人、ノ、命、ヲ、救、フ、事、ヲ、
ト、モ、戦、死、シ、タ、
長、兄、ト、モ、長、兄、ト、モ、ハ、方、ト、親、シ、テ、
又、戦、後、時、代、外、人、教、師、ニ、モ、教、育、ス、ル、事、ヲ、
利、便、ニ、シ、テ、
死、シ、テ、後、死、シ、テ、兄、ト、モ、冥、福、ヲ、日、夜、祈、ル、事、ヲ、
戦、争、ノ、人、間、理、性、ヲ、考、ヘ、戦、争、ノ、理、性、能、ク、
戦、争、ノ、生、命、ヲ、奪、フ、事、ヲ、
戦、争、ノ、理、性、能、ク、
戦、争、ノ、理、性、能、ク、

STATEMENT OF MATSUSHITA.

Immediately after graduating from the medical college, I was enrolled into the Navy as a doctor with two years compulsory service, underwent a four months grueling basic training and at the Naval Medical College took two months lessons of Naval Medicine.

The principle of discipline was based upon the spirit of the Imperial Rescript for the Imperial Japanese Army and Navy, orders were imperative, personal judgment was strictly prohibited and only absolute obedience to and immediate execution of orders were demanded. I found the military life contradictory to the free way of living spent in pursuance of truth, and that the endurance of the spiritual agony resulting from the suppression of individual judgment meant military life. The philosophy of death, so hard to solve became the infinitely more simplified matter of 'obedience to orders' and this misleading idea gave birth to a group of young men called "Special attackers."

The Commanding Officer, Kurasaki, recently coming from the Naval Academy and heading the Torpedo Boat Squadron which was an independent unit, was our absolute order giver and his guiding hand reached to every minute of our life and he used to say "You'll be doing all right if you model after me."

His orders were given me directly because I was the only doctor in the unit and was not working in a hospital among many co-officers.

I was intensely trained to become a Naval doctor, and naturally the training was absolutely different from that of a civilian doctor.

Although called an officer, it meant an inanimate puppet and in order to become a puppet I had to be most persevering.

At the time in question, Chichi Jima was a completely isolated island, hopeless of homeland aid and thrown into the depth of unrest, worry, hunger, and terror.

The people living on the island suffered from the psychological effect of continuous fighting.

Though the Torpedo Boat Squadron was a crack unit composed of young men, the sick were over 10 per cent of the whole personnel and beri-beri cases constantly increased. Chief diseases were beri-beri, acute and chronic intestinal ailments, catarrhic jaundice, amoebic dysentery and some fevers whose causes were unknown, plus battle wounds.

An enemy raid brought the Torpedo Boats out to sea, leaving behind only the medical, paymaster and ground personnel and we were digging caves into the side of the mountain. I had only four corpsmen under me and though I was quite unfamiliar with dynamiting, we were so short handed that I had to do the dynamiting myself and also at the headquarters I, with only one corpsman, had to take complete care of the patients, even disposing of their waste. It was under these circumstances that I received that order all of a sudden, and though I asked for the reason, it was bluntly denied me. And although I refused two or three times, I was compelled to obey the

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order. I took it for granted that it was a reasonable and necessary dissection and automatically answered each of the Commanding Officer, Kurasaki's questions. I did everything in my knowledge, to deserve the name of a Naval doctor, and I saluted the body to show my respect; when I wanted what I had excised, to put it back, it was gone, as was the Commanding Officer, so I sewed up the cuts in the belly and neck, wiped off the body and left in the gathering darkness.

I am not in the least ashamed of what I did at that time which I had to do as an order of my Commanding Officer.

It is not given to me to kill any little creature. The Commanding Officer admired me as representing the saying 'medicine is a benevolent art'.

I read the Bible in my school days and know something of religions. 'Blessed are the pure in heart, for they shall see God' is clear in my memory. I cannot stand any evil being perpetrated in front of my eyes. I believe that beauty consists in benevolence. My two brothers are doctors, one of whom is being treated for the wound from the atomic bomb which he got while he was looking after one of his patients and the other was killed in New Guinea as an Army doctor. The eldest brother associated with some Englishmen in Nagasaki in April of 1945 and so did I; also I was educated by foreign missionaries in school and my cousins are in the United States. I hope there will not be another war, which I hate extremely because it is bound to take many lives and rob mankind of their reason and subject them to war psychology.

MATSUSHITA, Kanehisa,
Surgeon Lieutenant, IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

A.
陳述書

磯貝 軍二

「私の同僚に、真面目な、上官が居る。彼が或時「集団生活をして居る時、筆が物を失ったやうな場合、何人が自分も疑はしなうか」と思つて心配になり、その心配の爲に、何々自分の行動が不自然になり、その不自然さを意識する時、どうにも仕様が無くなる」と私に語った。私もそんな経験があるので大いに同感したことがあった。調査委員会に出頭した時にも私はこんなふうにした氣持が働いてゐたやうに

思ふ。かゝる家持が調査委員に面會する

前後の心の混雑に一層混亂を加へるため

のと思はれる。

一兎に角私は人肉を食せん端と思つた事は

絶対に無い。私は小隊長となつて多々の

人を指揮するやうになつて特に凶暴な事を

重大と思つてゐた。それが證人が述べて

居るやうに私が下士官・兵に親しまれたので

原因でもあると信ずる。此の家持を私は

國際的にまで及ぼして居たつもりである。

私が父島に到着した當時から約一年半の間

B.

生活してゐた「玄、浜」の兵舎の近くに歸化人が居た。「イルマシ」家であつた。だがそれは米國人であつた。主人のあまり酒癖のよくな、事を知つて居た私はそれでも彼等と挨拶を交はす時には非常に氣持が良かった。特に三男は真面目な青年であつたので私は好みてあつた。彼も亦他人に打明け難いと思はれるやうな家庭の事情を私に語り、彼自身の職業のことまで相談してくれたことがある。私は自分の公正な氣持が理解されたやうに非常に嬉しかつた。

私は人種的にも如何なる場合に於ても

偏見を持つと言ふ事は嫌ひである。

「私は悪、行爲は憎むが人を憎まな、主義

である。時に戦地に於て此の考を強へた。

それは吾々は何時死ぬかも知れぬと思つた

からである。私は人が罪を犯したまへ或は刑罰

を受けたまふ死んで行くのを悲しむべき事である

と思つてゐた。特に少くとも私の部下には死後

まで刑を負ふことのなやまうに努めさせ、若し

過失を發見しても現場でその人をしてゐるが上官

には報告しなかつた止むを得ず上官に知れた

場合も歎願して時間的な、有期の懲罰を

しないよう努めた。私の部下は再び過失を起す

やうな者は無かつた。之も部下が私を父親と

思つた原因の一つであらうと思ふ。要するに

死後まで生前の過失を責める事は嫌ひで

あつたのである。

一 調査委員会へかゝる返答をした事に

就ては既に本法に於て述べてあるが

又それに次の事を附け加へるべきであらう。

私は其の當時酒を飲むと愉快になり意識

を失つた行動を屢々爲し、後日人から

「酔つてゐる間君はかう言つた」と言はれは

そのまゝ信ずるやうになつてゐた。「まり酒を

飲んだ時の自分の行動に自信が持てなかつた

のである。然し私は酒が好きでもあるし他人が

許さぬやうな過失しかしてゐないと思つてゐた

ので飲酒は續けてゐた。

「私。錯覚。失言であつた」とも絶対信じて

戴く事を切望すると同時に此の嚴正なる

法廷に關係ある諸宣並に被害方は多大。

迷惑をおかけしたことを認むたと思ひます

左 磯貝 軍二

STATEMENT OF ISOGAI.

1. There was an earnest officer among my comrades. He once told me that, when they were living in a group and someone's belongings were lost, his behavior became unnatural at the thought of being suspected by anyone, and when he was conscious of his unnatural state of mind caused by his anxiety, he would become confused in thought. Since I also have had experiences of the same sort, my mind reacted as his did.

When I appeared before the Board of Investigation, I think I might have been suffering from the same feelings I have described. So my confusion was intensified when I was confronted by the Board members.

2. At any rate, I have never thought of eating human flesh. When I became the platoon leader commanding many soldiers, I thought it of first importance to be fair. I believe, this is the reason why I was loved by my non-coms and soldiers as the witnesses have stated. I think I did everything in that way and extended this feeling to part in international affairs.

After I arrived at Chichi Jima, there were nationalized people living near the Miyanojima barracks where I was quartered for about one year and a half. This was Norman's family who had formerly been Americans. Although I knew that the master was a quarrelsome drinker, it was a pleasure for me to exchange greetings with them. I loved his third son especially, because he was an earnest young man. He told me his domestic troubles which he found hard to tell to others, and he even consulted me once about his future occupation. I was glad to think that my fairness was understood by him. I hated racial prejudice under any conditions.

3. I hated bad behavior, but never the man himself who behaved badly. This belief of mine became stronger especially when I was at the front. This was because, we at the front could not know when we would die. It seemed to me pitiful that men should die in guilt or undergoing punishment. Particularly, I made efforts that such would not be the case with the men of my unit. When I did find faults in any of my men, I only gave them advice then and there, and never reported them to my superior. If their faults became known to my superior's in spite of this I made a petition to him pleading that the accused would not be sentenced to serve time. Thus, my soldiers never made mistakes again. I think this was one of the reasons why I was loved by my soldiers as if I were their father.

In short, I disliked to censure the faults of my men even after their death.

The reason why I gave such answers as I did before the Board of Investigation will be clear by what I have said in this court, but I think it necessary to add the following:

At that time I used to become gay and lost my senses when I drank liquor, which made me believe the words of other people who later told me of my behavior while I was intoxicated. That is, I could not trust myself when I drank. But, since I liked drinking, and my faults on account of it were not serious, I did not give it up.

4. I beg you to believe that many of my words at the Board of Investigation were illusions and erroneous statements, and apologize that I have troubled the members of the Commission and the other accused persons.

ISOGAI, Gunji.
First Lieutenant, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene Kerrick
EUGENE. KERRICK.
Lieutenant, USNR.

陳述書

杯

宴

私にナラスモ停廢死刑、執行、命ヲ承諾シ、
勿論私、好ミサル所デアツタ。然レ上命ニ反シテ場
合ニ當然生ズル所ノ罪、重大サヲ恐レテ止ムヲ
得ズ從フタ。私、海軍入隊以來一途ニ上官、
命、嚴正ニシテ他對ナルコト。戰時ニ於テ上命
ニ反スル場合死ヌ、此ニ次グ重罪ヲ問ハレルトス
コトヲ教ヘラレタ。

明治天皇ヨリ發シタル軍人勅諭、吾々軍人
ニト、神聖ニシテ犯ス可カラザルモデアツタ。

ソノ一節ニ上官、命ヲ承ルコト實ニ直ニ唯ガ命
ヲ承ル義ヲ得ヨト申サレ居ル。

軍人勅諭、我々日本、學生、中學校、高等學校
以來教ヘラレタモデアル。

海軍入隊以後モ我々、上官、命ニ對シテ
事ノ如何ヲ問ハズ、好ミ好マサルトニ抱ハラズ
唯一途ニ盲目的服從ヲ強制サレタ。

海軍ニ於ケル我等學生出身ノ上官、地位ニ實ニ
裝飾的、モデアリ實際、權威、下上官兵ニ
等シカツタ。勿論吾々意見等全ク用ヒラレ
モデナカツタ。

個人ト個人ト、立場カウ見ビ、私、行爲、當然
不正行爲デアル。然レ軍人トシテ軍律ニ從フタ
私ノ行動、全ク不正ナ所、ナレト信ズル

私：四人一母一人の兄が二人。両親は十人兄。
父：豊一が十人家計から私を教育せよと呉れた。
私：昭和十一年高等工業学校卒業。一度電
氣會社に就職し直に海軍技術科に入社して
了る。

杯 宴

STATEMENT OF HAYASHI.

I obeyed the order of execution against my will. Of course, I did not wish to kill the prisoner. I excused myself as firmly as possible, but I was obliged to obey it being afraid of the seriousness of the crime of disobedience.

Since I entered the Navy, I was taught that the order of superiors were absolute, and that if we did not obey it during the war time, we should be sentenced to death or imprisonment. The Imperial Rescript granted to military personnel was sacred and could never be violated.

One paragraph says that we must obey our superiors as if it were the order of His Majesty, the Emperor. All Japanese students have been taught this Rescript. After we entered the Navy, we were compelled to obey any orders blindly even if we did not wish to do so.


Rank for the officers who were called in the middle of their school lives was nothing but an ornament, and our actual authority was as little as an enlisted man's. Of course, our advices were never accepted by superiors.

If it had been done between two individuals, my behavior would have been wrong of course. But I believe I did nothing wrong as a military personnel; because I obeyed the military law.

I have four elder sisters and a elder brother. I have no parents. Though we were poor my elder brother allowed me to go to school. I graduated from the Industrial College in October 1943, was employed in a electric company and then entered the technical department of the Navy.

HAYASHI, Minoru,
Lieutenant (jg), IJN.

I certify this to be a true and correct translation to the best of my ability.


EUGENE E. KERRICK,
Lieutenant, USNR.

MASUHAN

陳述書

増谷真一

一、當時、状況感想

何時父島ニモ来寇アルヤ知ラズ状況デアリマシタ。從テ訓練モ
非常ニ嚴シク通信隊司令、命令、絶対服從ヲ通信隊士官
並ニ兵員全体ニ對シテ要求サレマシタ。又私、海軍生治、
経験ガ少イ為メ特ニ司令ヨリ非常ニ嚴格ニ訓育サレマシタ。
通信隊ノ士官、中私ト林少尉(當時)ヲ除イタ他、全部
特務士官デアリ年モトリ海軍生治、経験モ深クモニ
對シテ、司令ハ「特務士官ハモウ己ニ老成シタ者デアリコシカラ
訓育シタモ始マラス。君達若イ士官ハコシカラ日本ヲ背ッテ
エツンデアリ。又海軍、経験モナイカラ特ニ嚴格ニ訓育
スル」ト申サテ居リマシタ。我々豫備士官、位置ハ下士官
兵並デアリ我々ノ意見ハ全然有ミラナイ有様デシタ。
當時司令ハ海軍中佐デアリ他ノ士官ハ少尉ト兵曹長デ
アリ。アマリニ司令ハ高級デアリマシタ。

私ハ私、行為ニ就テハ全然責任ヲ感ジテ居リマセシ。

私ハ意思ナクシテソレハ為サレタ行為デアリ私ハソレ以外ニ
ドウスル事モ出来ナカッタデアリマス。

二、家庭、状況

父母弟三人妹三人アリマス。次弟、昭和十八年十二月海軍ニ
入り應召サレ目下復員シ其、次ノ弟、昭和十八年十二月應召
陸軍ニ入り目下中支ノ野戦病院内科ニ入院中ノ手紙
ガアツタママ消息不明未ダ復員セズ父母妹三人第一人ハ
満洲ニ居リマシタガ、グムテ受取ツタ手紙ニヨルト六月下旬

①

三二

氏

滿洲カラ着、着ノマデ内地ニ引揚ゲテ来ミタ。
内地デハ親戚モ罹災シテ居リマス。又物價
高ノ爲メ持參金ヲ殆ト費消シ商賣ヲ始メル事モ
出来ス非常ニ困窮シテ居リマス。父ハ私が應召シタ
翌年カラ腎臓病デ長ク向寢テ居リマシタ。母ハ
性未強健デアリマセン。私ハ長男デアリマス。
父母ハ私が早ク學校ヲ出テ一處ニ暮ラスノヲ非
常ニ待テ望ンデ居リマシタ。今度ノ様ニ滿洲カラ
引揚ゲテ来タ時コソ如何ニ私ガ力ニナルカト考テ
居リマス。父ハ五十九 母ハ五十デアリマス。

(終)

増谷真一

STATEMENT OF MATSUTANI.

1. Circumstances at the time:

At that time we had no way of knowing when the United States Forces would attack Chichi Jima. Therefore, we received rigorous training, and the commander of the Communication Station compelled his officers and enlisted men to observe strict obedience to his orders.

As my naval experience had been short, I had to be trained much more than anyone else. At the Communication Station, all officers were special service officers except Ensign Hayashi and myself. The other officers were older and had much experience as navy officers. The Commander used to say that the special service officers did not have to be trained any more as they were older and experienced, but that as we young officers had to serve for the future of Japan and had only a little naval experience, he would train us as strictly as he could.

The position of the reserve officers was as lowly as that of enlisted men, and our advice was not listened to. Also he was a Commander, at that time, while the ranks of the other officers were Ensign and Warrent. The difference between his rank and ours was very great.

Since I was obliged to do what I did the compulsory ^{by} ~~of my~~ order of my superior I cannot feel responsible for what I did. It was done against my will, and I could do nothing else but obey the order. SK

2. Condition of my family:

I have parents, three younger brothers and three younger sisters. My second brother entered the Navy in December 1943 and was demobilized after the war. My third brother entered the Army in December of 1943 and has not been heard from since his letter informing us that he was in the Field Hospital in Central China. My parents, three sisters and a brother were in Manchuria, and were repatriated at the end of June with nothing but the clothes on their back. They have written: Since my relatives in Japan were all air-raid victims, they have used up all their money and are suffering because they have no business left. My father fell ill of a kidney disease one year after my enlistment. My mother is not healthy by nature. I am their eldest son and they were looking forward to the days when I should graduate from my school and be able to care for them. Since they are nothing but miserable repatriates now, they are relying upon me more than ever. My father is nine and fifty, and my mother fifty. SK

MASUTANI, Shinichi.
Lieutenant (jg), IJN.

I certify this to be a true and correct translation to the best of my ability.

Eugene B. Kerrick
EUGENE B. KERRICK,
Lieutenant, USNR.

mori (58)

陳述 陸軍々曹 森 安正

私ノ家ニハ63ト64ニナル老イタル父母ト一人ノ子共ト妻
ガ居リマス私ハ6人ノ兄弟ガアリマス姉3人ハ已ニ他家ニ嫁キ居
リマセン男3人ノ内ノ一人ハ支那ニ出征シ3年余リ音信不通ノタメ其
ノ消息ヲ氣ツカリテ居リマス今一人ハ海軍トシテ内地ニ居リマシ
タカノ年余リノ病院生活ヲシ現在家ニ帰ツテ居リマスガ病氣
全快セズ療養ニテ居リマス妻ハ胃ノ持病アリ思フ様仕事モ
出来マセン私ハ長男トシテ老イタル父母ノ世話ヲシ弱キ者ヲ助
ケツツ少シハカリノ田畑ヲ耕シ生活シテ居リマシタ私不在ノ居
弱キ妻ガ老イタル父母ノ世話ヲシナケレバナリマセン
其レ故田畑ハ荒廢シ生活状態ガ氣ツカハレテナリマセン

何トソノ裁判長及メ裁判官御一同ノ情ケアル親心ヲ
御援ケ下サル様義理ニモ御願ヒ申上マス

森 安正

STATEMENT OF MORI, YASUMASU.

At my home I have a father and mother, who are 64 and 63 years old. A wife and one child. I have six brothers and sisters. Of the sisters all are married, and have their own homes. Of the brothers one went overseas to China and has not been heard of for three years. I am very much worried about him. One entered the Navy and has been sick in the Naval Hospital for over a year. He is home now, but has not recovered. My wife has chronic stomach trouble and can not work as she wishes. As the eldest son I cultivated a little bit of rice paddies and fields and took care of my parents and the weak. Since I am not at home, my weak wife has to look after my old parents.

For this reason the rice paddies and field have gone to weeds and I am very much worried about their living conditions.

I request the chairman of the commission and its members many times that I may receive your sympathetic feeling in this case.

MORI, Yasumasu.
Sergeant, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kendrick
EUGENE E. KENDRICK,
Lieutenant, USNR.

一 日本軍隊は満洲事変を期として一大進歩をこころ
日本軍隊が出来たより約七十年の間に満洲事変の末期
より支那事変の當初此の時期が一番少壯士官の志氣盛なる
一過度期で、又かの有名な三三六事件のありましたのも
此の時です。私は此の過度期の昭和元年十二月より同十二年十月
迄現役兵として厳正なる軍規と規則正しく軍隊教育を
受けてきた。私は此の現役の二十年と又昭和十六年九月召集
以来の四年間を繰返一貫現在に忠實なる事と自己の階級
に対し恥しと愧しを覚めぬと約束する軍人にならんと努めました
で有る故に上官に対しては絶対に服従し又下級者に対しては出来
るだけ親切に教へ導く事に努めました
今回の事件の時も上官の命令に服し行動する事は自介にあてられ
たは事に忠實で有ると信じて私は命令に服しました
若し私が帶刀を必要とする任務を有せずまた處刑の現場
を通らざればはなうぬ命令受領者で無くと又處刑を見學す
する爲現場に立止まらず通過したならば今日の様な状態に
はなう無かつたでせう

二 私は昭和十六年九月召集で水戸を出たより約五十年になり
ます。家には六十才の父と七十三才の母がおります
又姉が二人妹が二人おりますがすでに他家に嫁しており男
は皆命を失つて了

戦争中は家の事は心配せずお国の爲一生果敢と命を
はけましの便りが有りましたが戦争が終つた今私の現在の

状態を知つたうどんな気が持たろうと思ひます

自分の家は、大島の海岸に有り、母が昭和十九年の夏軍の
命令に依り山のオに移動したと便りが有り、母は

物資不足の折家を連れる事も出来なかつたと思ひます

又昭和二十年六月便りが有り、母が其の後音信不通です

何處に居るか生きて居るか死人かわかりません

左 中 村 重 信

0200

STATEMENT OF NAKAMURA

1. With the Manchurian Incident as the turning point the Japanese Army made a great step forward. This was about 70 years after the Japanese Army had been established, and the period from the end of the Manchurian Incident to the beginning of the China Incident was the transition period in which the spirit of the young middle rank officers was in bloom.

This is the period in which the famous February 22nd Incident occurred. During this transition period from December 1934 to October 1936 I received strict disciplinary and regimenting military training as a regular soldier. During these two years of regular active duty and also after I was recalled in September of 1941 for four more years of service, I have tried to be without variation in my present duties,--a soldier who could perform the duties his rank required without shame. Because of this, to my superior officers I gave absolute obedience, the persons below myself in rank I taught and advised with as much kindness as possible. As for this incident, in submitting to and doing the orders of a superior officer I believed it was carrying out sincerely the duties allotted to me, and so, I submitted to the order.

If I did not have duties that required me to wear a sword; if I had not been a liaison man and required to pass on the scene of the execution; if I had not stopped at the scene of the execution and had gone on past, it might well be that I would not have come to my present position.

2. It is about five years since I left home having been recalled into the service in September of 1941. At home I have a father 66 years old, and a mother who is 73 years old. I also have two elder sisters and one younger sister, all of whom are married. I am the only son. During the war I received letters from home telling me not to worry, and to strive with all my heart for my country spurring me on. Since the end of the war, if they know about my situation, I can guess how they feel. My home was located on the sea-shore on Hachijo Jima, but I received a letter from home saying that in the summer of 1944 they had been ordered to move toward the top of the mountain by the Army and that they had moved; this was at a time when materials were short. I think they could not even build a house. In June of 1945 I again received a letter, but I have had no letters since that time, so I do not know where they are, whether they are alive or dead.

NAKAMURA, Shigenobu.
Corporal, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

"FF"

52

0201

1100

千九百零六年九月十四日

陸軍一等兵 木下松太郎

1122

私ハ大正八年七月十四ニウクレタシタ。ソレ
大正十年五月長野縣ノアム家ニエラフレ
マシタ。私ガエラフシタ。家ヲソウトヲ
サメ。サンガナリマシタト。キヨクシテ。ワタシハ
私ハ正和三年。六ノハナシタ。ソダテハ父
ニオキマシタ。ソダテハ父ガヤクザシタメニ。家
ニ魚ガナリマシタ。ソレニイッテ。ソノ
キタ。タメニ。家ニ田魚トナシテ。ソノ
ノハナシタ。父ハ病ニナリ。私ハ正和四年五月
横濱ニエラフシタ。家ニ七年。ソノ
ソノハナシタ。父ハ正和七年八月ナクナリマシタ。父ハ
ソノハナシタ。ソノハナシタ。七年カニ。ソノハ
ソノハナシタ。ソノハナシタ。母ハトコニイッテ。カ
アハ。ソノハナシタ。父ハ。キヨクイモナシ
ソノハナシタ。ソノハナシタ。家ニナリマシタ。ソノ
正和十四年十二月。ソノハナシタ。大隊ニマシタ
私ハ正和十二年。二年ガアキマシタ。ソレカラ私ハ
ジブニテ。ニヤクニヨラ。ソレラリマシタガ
私ハ入隊シレニツキ。ツア。子供。ソノハナシタ。父ハ
家ニアツタテ。イキマシタ。ソレテ正和十六年
十月九日。家ニカエリマシタ。ソレカラ。ソノハナシタ
エラキズ。コバニハタラキマシタ。ソノ月ハ元
ミジカ。カッタト。ソノハナシタ。タツタハ月デス

11

8

0202

正和十九年六月二十三日、二回ノ新ニエヲウケマシ
シ。私ワマタツマト子共ニハコシテ、
私ワ入隊スミシタ。父島ニ正和十九年七月
百九ニダシ、シレ部本部ニテシレイトニニ
キニムシマシタ。正和二十一年二月二日、父島ヲ
サリマシタ。ソレカラ正和二十一年二月九日ニ
家ニカエリマシタ。家ハ正和二十年四月五日
クニユニヨツテリサイラシテオリアシタ、ソレガ
メキノシ、キーマアデス。ソレカラ私ワ
コウバニ四月ホドシカ、ハタラキマセデシタガ
内地ワアカガタカタ一月七百田クライ
トツタノデウ、タレマセデシタ、ソレニ私ガ
ラリアセニデ。私ワ家ノ事がババデス
マヘウ、軍事ホジヨフ、モリツテ、イマシタガ
ササイナ、モノデシタ。私ワ軍隊ハセカツオ長
トカイニハタラクトエウ事がアリマセデシタ
又ツマワ、アメリジヨブ、デワアリマセニデシタ
又私ワ父母モキヨダイモサリサビシイタタバ
ス。私ワは地ニイルツマ子共ガドウシニ
コレカラ、セイカツヲシテ、イクカトババデス
私ワ軍隊ワ、ギベス、キムム、一ヨモ軍隊ワ
スキデワ、有リアセシタガ、キムテキナメイレ
ニヨツテ、キムムシマシタ。木戸松太郎

STATEMENT OF KIDO.

I was born on the 20th of July, 1919. I was adopted in a family in Nagano Prefecture in May, 1921. I remember that our family was rich. I heard from my adoptive parents the story that, as my adoptive father had dissipated greatly, both my house and my fields had been mortgaged, and that the mortgages had been foreclosed, because our debt had become overdue.

Later my father fell ill, and I was apprenticed for seven years to a farmer at Yokohama.

My father died in August 1932. Then I borrowed money in advance from my master which I was to repay in seven years. Then my mother disappeared. Therefore, I have no parents and brothers now.

In such circumstances, I continued my apprenticeship which terminated in 1936, and then I engaged myself in agriculture. I was drafted on the 1st of December 1939, and left my wife and children.

I was demobilized on the 9th of October, 1943. Since I was then unable to engage in agriculture, I worked at the factory which continued only eight months, I remember.

I was called for the second time on the 23rd of June, 1944. I left my children with my wife's parents and was enlisted.

Since July, 1944, I served at the 109th Divisional Headquarters as a messenger. I left Chichi Jima on the 2nd of January, 1946, demobilized and returned home on January 9, 1946. Then I found my house damaged on account of the air-raids. Therefore, we had nothing but the clothes on our backs.

I worked at the factory for four months, but as the prices were very high, my monthly pay of 700 yen was too little for our living expenses.

If I cannot work, my family will suffer from severe trials of life, I am so anxious about it. We received a war-time allowance before, but that was too little also. Since my military service was long, I could not work. My wife is not so healthy. I have no parents or brothers. Therefore, I feel lonely. I am very anxious how my wife and children will get on hereafter.

Though I did not like military service, I had to enter the army, because it was my duty.

14 September 1946

KIDO, Matsutaro,
Superior Private, IJA.

I certify this to be a true and correct translation to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR.

OPENING ARGUMENT FOR THE PROSECUTION

DELIVERED BY

LIEUTENANT EDWARD L. FIELD, USNR

If it please the commission: At the origination of this trial the prosecution saw fit to arraign the 14 defendants brought before you under three charges and 38 specifications. During the past 25 days of the proceedings you have heard witnesses for the prosecution relate a series of outrageous incidents including the execution of 2 American prisoners of war and the cannibalistic events that followed concerning 4 of the victims. We have proceeded to prove the allegations of the charges and specifications against the respective accused. You of the commission have carefully and intently followed the revelation of these incidents and now the responsibility becomes yours to weigh this evidence and give it proper consideration. With the exception of the 2 international war crimes trials in Berlin and in Tokyo it is believed that this is the longest War Crimes trial on record. The evidence has been long and complicated, but now that the die has been cast and all the evidence is in, it is the belief of the prosecution that this commission can distinguish each murder separately and as an individual crime in itself and also simultaneously observe how these murders fit into the pattern of the overall plan and design of the accused.

If it please the commission: As this trial of the 14 accused now before you comes to an end, it is fitting that I should briefly sum up the evidence as presented by the prosecution. The testimony of the witnesses called by the prosecution is too voluminous to relate it in detail, I shall however give a synopsis of its substance. I shall review the evidence by tracing the murders that took place in their chronological order, as presented through the testimony of the prosecution's witnesses.

The first executions at Chichi Jima took place on or about August 7, 1944 at which time two American prisoners of war, one named Woellhof and the other, whose name is unknown, were executed with fixed bayonets and by beheading. Woellhof had been captured on nearby Ani Jima on about 4 July 1944 and was passed up the chain of command until he was delivered to the Detached Headquarters of Major Horie where he remained until the approximate date of his execution. The unknown flyer was captured by the Navy on or about 4 August 1944 and he too was in turn passed through the chain of command, including the Brigade Headquarters, until he was finally put in the custody of Major Horie for questioning and interrogation. This commission has heard Major Horie identify Woellhof by name and describe the appearance of the other unknown victim.

The prosecution called as a witness Captain Higashigi, the senior adjutant of the Brigade Headquarters, and he testified that the order for the execution of these two flyers originated with the defendant, General Tachibana, and that Tachibana implied the reason that prompted these executions was an outgrowth of the war in China in which prisoners were executed in order to boost the fighting morale of the Japanese troops. This then was the underlying purpose behind the execution of these two flyers in August 1944 on Chichi Jima and became the guiding policy concerning all later treatment of prisoners of war. This commission has heard how these first executions set the example for the future treatment of all prisoners of war at Chichi Jima from the prosecutions witnesses Major Horie and Captain Kosuga as well as Captain Higashigi.

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The execution of these two flyers was carried out under the supervision of Colonel Ito in the Kominato area. The prisoners were executed by first being run through with bayonets and later both men were beheaded by Colonel Ito, himself. This commission has heard from the lips of Colonel Ito the detailed account of this heinous crime. Colonel Ito has named the defendant, Superior Private Kido, as one of the bayoneteers and this has been corroborated by the prosecution's witness Takano who has testified as an eyewitness to this crime that he saw the defendant Kido bayonet one of the helpless victims. Kido's confession confirms this entire account!

The commission has heard Colonel Ito testify that he received authority to carry out these executions by way of Captain Higashiga as a Brigade order. The commission has further heard Colonel Ito state that upon completion of the executions that he reported the same to the defendant, General Tachibana. Therefore it is entirely evident that the full responsibility for the origination of this initial execution on Chichi Jima falls entirely on the defendant Tachibana who authorized this scandalous atrocity without the least bit of justification or provocation. Thus we see that it is the cruel sadistic lust of this man, General Tachibana, as the Commanding Officer of the First Mixed Brigade that brought about the first execution and set into motion the overall execution policy.

The commission has heard the prosecution's witness Soya relate how he captured two flyers on or about 18 February 1945 and that he delivered these two flyers to Captain Kanmuri at the 308th Battalion. Captain Kanmuri has testified he in turn passed the flyers on to Captain Kosuga at Brigade Headquarters. Captain Kanmuri further testified that while the flyers were at the 308th Battalion they were tied to trees with rope and that the defendant, General Tachibana, reprimanded officers who attempted to take these flyers into an air raid shelter. Captain Kanmuri further testified Tachibana had ordered that prisoners were not to be given shelter, food or water. This testimony has been corroborated by Captain Harashima who served as General Tachibana's intelligence officer at the Brigade Headquarters. Captain Kosuga testified that the two prisoners were passed on by him from the Brigade Headquarters to the custody of Major Horie and Major Horie has identified the two prisoners as Ensign Hall and the other being the man in the long white underwear to whom he gave a pair of Japanese tabi. Captain Harashima has identified this man in the long white underwear as being Mershon and this is corroborated by the prosecution's dispatches from the Bureau of Naval Personnel.

Major Horie has testified that the petty officer in the long white underwear remained in his custody until about 21 February, 1945, at which time he was returned to the 308th Battalion. Captain Kanmuri has testified that this flyer who had previously been seen by the defendant Lieutenant Suyeyoshi at the 308th Battalion was immediately transferred to the unit commanded by Lieutenant Suyeyoshi. You have heard the witness Iwakawa state that Lieutenant Suyeyoshi in a speech to his men had pointed out that the prisoner was not afraid due to the hatred that the prisoner had for the enemy. The witnesses Iwakawa, Uzaki and Yoshida have all testified that this flyer was executed at the Suyeyoshi unit by Lieutenant (junior grade) Morishita, now deceased, who was second in command and directly under the supervision of the defendant Lieutenant Suyeyoshi. The commission has further heard through the witnesses Captain Kanmuri, Captain Ikawa, Sergeant Kanemori, and Sergeant Sugiyama that this victim was beheaded, and on the night following his execution his body was exhumed and the liver and parts of the flesh were removed

from the body and delivered to the headquarters of the 307th Battalion in accord with an order from Major Matoba. Captain Ikawa has related to the commission how he cooked parts of this flesh and served it at a riotous party at the 307th Battalion Headquarters to the defendants, General Tachibana and Major Matoba and witnessed them eat it. Ikawa has further testified that some of the leftovers from this beastly orgy were delivered the next morning to the 308th Battalion which was commanded by the defendant, Major Matoba.

Ensign Hall remained with Major Horie at the Detached Headquarters until about 25 March, when he was returned to the 308th Battalion. The commission has heard Major Horie testify that he feared what might happen to Hall as soon as he was returned to the 308th Battalion, and further heard Captain Kanmuri testify that Major Horie instructed him not to allow anything to happen to Ensign Hall. However, decent treatment of prisoners of war was unknown by this time on Chichi Jima and Ensign Hall was executed almost immediately upon his delivery to the 308th Battalion. The defendant, Major Matoba, authorized this execution which was carried out by the defendant, Corporal Nakamura, by beheading the flyer under the supervision of the defendant, Captain Sato. These facts were related by the prosecution's witnesses Sergeant Kanemori, Private Sato and Private Iso, and are corroborated by the confession of Corporal Nakamura himself. Following the beheading of Ensign Hall by Corporal Nakamura, the defendant Sergeant Mori with orders from the defendant Captain Sato bayoneted the body of the victim at least twice. This is admitted by Sergeant Mori in his confession and is corroborated by the testimony of Sergeant Major Wada and Superior Privates Sato and Iso. The latter two saw the bayonet wounds in the chest of the victim. The commission then heard a fiendish account by Sergeant Kanemori of the dissection of Hall's body and its demonstration to the corpsmen by Doctor Teraki. The commission has heard Superior Private Konishi testify that the liver of Hall was delivered to Matoba's quarters and that parts of it were served at a party for officers of the Battalion. The commission has further heard in the confession of Matoba and the corroborating testimony of the prosecution's witnesses Lieutenant Commander Shinoda and Lieutenant (junior grade) Iijima that parts of this flyer's liver, cooked on bamboo spits, were delivered by Matoba to the Naval Base Headquarters and there eaten by Major Matoba and the defendant Vice Admiral Mori.

The commission has further heard from the confession of the defendant Isogai that he had eaten human flesh at the 308th Battalion and also at the Navy Base.

On about February 18, 1945, two American aviators parachuted down on Ani Jima from a TBF. One of these men is identified as Aviation Radioman third class, James Wesley Dye, USN and the other has been identified as Aviation Ordnanceman third class, Grady Alvin York, USN. These men in turn were delivered to the Brigade Headquarters of Major Horie for interrogation. The commission has heard Major Horie identify Dye by name and give a very accurate description of York and how he recalls that his name sounded like "York". The prosecution's evidence, by way of dispatches from the Bureau of Naval Personnel, have completed the identification of York. The commission has heard testimony from prosecution's witnesses Captain Kosuga that York was returned to the Brigade Headquarters on about the 23rd of February and he was immediately transferred to the 307th Battalion. Colonel Kato, Commanding Officer of the 307th Battalion has testified before this commission that, the defendant, General Tachibana, had previously informed him that a flyer would be turned over to his Battalion for disposal. Colonel Kato further related that on the day the prisoner was sent to his unit, a telephone call was received from the Brigade Head-

quarters informing him that the prisoner was being sent for execution. Colonel Kato has further testified how he selected Captain Yamashita to supervise this execution and the commission has heard Captain Yamashita testify that he selected enlisted men Sergeant Kishimoto, Corporal Tanyama and Privates Oshita and Morito to perform the actual deed. Captain Yamashita has further related that bamboo spears and fixed bayonets were used to execute this prisoner. It will be noted that among the spectators mentioned by Captain Yamashita as being present at this execution were some personnel from the navy.

Major Horie has given this commission a very accurate and vivid account of how the defendant Captain Yoshii came to the Detached Headquarters and requested from Major Horie a flyer to assist in the interception of messages. Major Horie further testified that Captain Yoshii informed him he had the permission of General Tachibana to obtain a prisoner for such purposes, and this has been corroborated by the prosecution's witness, Harashima, who served as the defendant Tachibana's intelligence officer. The American flyer, Dye, was thus turned over to the Yoake Wireless Station, which was commanded by the defendant Captain Yoshii and placed in the custody of petty officer first class Tamamura. The commission has heard Tamamura testify that on the day following Dye's arrival at the wireless station, Captain Yoshii informed him that Dye was to be executed and that Dye never performed the least bit of work concerning message interception. It is obvious from this that Captain Yoshii only used this as a subterfuge in order to secure Dye from Major Horie with the immediate intention that he would execute him. The witness Tamamura has further testified how the defendant, Yoshii, assembled all the personnel of the wireless station to witness the execution and how the defendants, Lieutenant (junior grade) Hayashi and Lieutenant (junior grade) Masutani proceeded to execute this flyer on orders from the defendant, Captain Yoshii, who personally supervised the crime. The defendant Surgeon Sasaki then proceeded to remove the liver of this victim. The commission has heard the prosecution witness, petty officer, Suzuki relate how he in turn delivered part of this liver to the room of Captain Yoshii and he further testified that the quarters of Captain Yoshii contained utensils for the cooking of his own personal food.

On or about February 23rd, Warrant Officer Soya delivered a captured flyer to the 308th Battalion and this luckless victim arrived just at the time a party was being held by the officers of the 308th Battalion of which the defendant Major Matoba was the Commanding Officer. The prosecution's witness, Captain Nakajima has testified how he went out from this party and after an unsuccessful effort to interrogate the prisoner, proceeded to beat this prisoner to death with a walking stick. Nakajima then told this commission how he related the incident to the defendant, Major Matoba, and received a very light reprimand. The commission has heard the prosecution witness, Sergeant Major Kurimoto identify the location of the grave of this man and the commission also heard testimony from Major Shaffer, member of the Bonin Island Board of Investigation, to the effect that from this grave a pencil was found containing the name "Glenn J. Frazier". Checking this name with the prosecution's despatch from the Casualty Section of the Bureau of Naval Personnel, shows that Frazier was lost in operations on or about the date he was captured on Chichi Jima and clearly establishes the identity of the victim.

Another American flyer identified by Major Horie as Marine Lieutenant Vaughn was captured on about February 23, 1945 and he was in turn passed to Major Horie for interrogation. Major Horie has testified that the defendant, Captain Yoshii

again requested that he turn a prisoner of war over to him for decoding purposes and the commission has further heard Major Horie testify that he first rejected this request as he had heard of the fate bestowed upon the victim Dye and fearing the same might happen to Lieutenant Vaughn. However, upon repeated requests by defendant Captain Yoshii, Vaughn was turned over to him and he remained in his custody about one week and then Vaughn was turned over to the Second Torpedo Squadron commanded by Lieutenant Kurasaki, Imperial Japanese Navy, now deceased. Kurasaki then immediately ordered the execution of Lieutenant Vaughn and Vaughn was beheaded by Ensign Koyama who later committed suicide. The prosecution has offered a most vivid and accurate account of this murder by the witnesses Lieutenant (junior grade) Hida and Lieutenant Okubo. The commission has heard how a large number of officers and men were present to see this execution and that the defendant, Surgeon Lieutenant Matsushita, on orders from the Commanding Officer of the Torpedo Boat Squadron removed the liver of the victim. Lieutenant (junior grade) Hida has further testified how he passed on a package to the defendant Captain Yoshii, immediately after the execution, which Hida is certain contained human liver and that the defendant Captain Yoshii drove off in his car to his headquarters with this package.

In brief then, this is the substance of what the prosecution has proved.

In order for the commission to adequately obtain an overall view of these atrocities, it is necessary that we observe the military command relationship as well as the conditions that prevailed at Chichi Jima during this period from 1944 to 1945. The commission has heard of the joint conference held by the army and navy personnel in which it was agreed the army would handle matters pertaining to prisoners of war. It is to be noted that the defendant, Admiral Mori, personally participated in this plan and as the Senior Officer present, gave his consent to this overall scheme, and by such participation, indicates that he is in accord with whatever treatment prisoners of war may receive at a later date. The prosecution has presented numerous witnesses who have testified that the senior military officer on Chichi Jima from August 1944 until the fall of Iwo Jima, in March 1945 was the defendant Vice Admiral Mori and that in case of an invasion, Admiral Mori would be the Supreme Commander of all Japanese forces, including the army.

Another factor in the overall picture that must be considered is the general war situation covering this period. It has been admitted by numerous witnesses by the prosecution, as well as the defense, that the Japanese military situation at Chichi Jima began to slowly deteriorate from August 1944 and with the fall of Iwo Jima conditions became critical. The bombings of Iwo Jima night and day by the American naval and air forces and the resultant heavy casualties, along with the reduced rations of food tended to shatter the morale of the forces under the command of these senior officers present in the defendants row. In an effort to overcome the complete under-mining of the spirit of their troops, the senior officers resorted to the most despicable and heinous atrocities in the hopes that they might stimulate the sagging morale of their forces. As stated by a witness for the defense, Ensign Watanabe, the conditions on Chichi Jima had reached such a sad plight that the feeling of the men was that, "They did not care", and it is exactly just this feeling of not caring that prompted the defendants in this court to commit the most horrifying and diabolical crimes with not the slightest regard for law or order. It was into this abyss of depraved men that the eight American victims had the untimely fate to fall as prisoners of war. Every witness that has taken the stand, either for the prosecution or for the defense, as well as the nine

defendants, who took the witness stand on their behalf, have without exception, stated that there was no justification whatsoever for any of the crimes that occurred! There is not a single instance that any of these victims had done anything to justify even the slightest reprimand, yet they were brutally executed, died agonizing deaths and had their bodies eaten for no other reason than the mad lust and felonious desires of the accused now before you! It is indeed ironic that the perpetrators of these foul deeds could be accorded every right to defend themselves in this American court, when the same accused afforded the eight hapless victims not a single right or privilege! These eight victims died in accordance with the overall sordid plan that prisoners of war should be executed in order that the fighting spirit of troops on Chichi Jima might be boosted or inspired!

The nine defendants who took the stand in their own behalf with the exception of Lieutenant Suyeyoshi and First Lieutenant Isogai have fully admitted the part that they played in these crimes and have proven their part in them, by their own admissions. Each of them has attempted to offer an alibi and each has filled the record with self-serving statements, the vast majority of which have been thought up since they appeared before the Board of Investigation. Such self-serving testimony comes as no surprise to the prosecution and fails in anyway to hide the facts of the particular case. The defendant, Private Kido, testified before this commission to his part in the execution of August the 7th, 1944, but states that he did so on orders from Colonel Ito. It is interesting to note however, that he admitted before this commission while a witness in his own behalf, that he liked to use the bayonet and that he could defeat eight out of ten soldiers with the bayonet. Such testimony seems to conform perfectly with the statement of Colonel Ito before this commission that when he asked for persons proficient in the use of the bayonet to raise their hands, Kido was among the group that so did. It is only normal that he would deny any voluntary participation, when he appears before the commission, but there is not the slightest reason to believe that Colonel Ito would make such an assertion were there no foundation for such.

Corporal Nakamura likewise took the stand and fully confessed to his participation in the crime as charged. He too offers the alibi that he was under orders from the defendant Captain Sato and in further self-serving testimony states that he objected to such orders. It is interesting to note that no such objection on his part was found in his statement as submitted to the Board of Investigation and offered as evidence by the prosecution! Lieutenants (junior grade) Hayashi and Masutani have likewise fully confessed before this commission that they beheaded an American prisoner of war as charged and likewise they both now claim to have been under orders and that they did not voluntarily participate. The prosecution has never contended that either of these two men volunteered their position as an executioner. It must be noted that it is most convenient for them to now offer such self-serving testimony of the account of their objections to their participation in the crime. Surgeon Sasaki and Matsushita have likewise taken the witness stand in their own behalf and given a full account of their participation in the separate crimes for which they are charged. They also attempted to explain their conduct by saying that they were under orders to so participate. They in turn have put into the record their trumped up objections to carrying out these orders. The purpose of which is obvious on its face and should be accorded its appropriate weight by the commission.

The accused, First Lieutenant Isogai has found it convenient to take the stand in an attempt to explain away his own previous confession. The prosecution has offered into evidence the interrogation of First Lieutenant Isogai before the Board of Investigation in which he on two separate occasions; first at a party at the 308th Battalion and second at a party at Special Naval Base, admitted that he was a cannibal of his own free will and volition. He now takes the stand and with the mock excuse that these statements were brought about by sea sickness which occurred five days previously to the interrogation. He would have this commission believe that these statements were the result of an upset stomach. Such shabby and trite explanations speak for themselves!

Lieutenant Suyeyoshi, the commanding officer of the 8th Anti-aircraft Battery has taken the stand in his own behalf and in a series of carefully worded lies would have this commission believe that he considered Major Matoba to be joking when he said a flyer would be returned to the 8th Anti-aircraft Battery from the 308th Battalion for disposal. The prosecution concedes that there may be some truth in such a statement. By this time at Chichi Jima the life of an American flyer would hardly receive the consideration of being a joke! This defendant does admit however that he passed on the word that the flyer would be turned over to his unit for execution to his second in command, Lieutenant Morishita (now deceased), and further that Morishita told him that he would carry out the execution. The defendant, Suyeyoshi, would further have us believe that he did not know the flyer had returned to his unit and executed until after the execution had occurred. He maintained such an assertion most emphatically three times before this commission. To him goes the top honors for the membership in the Ananias club among the defendants! The prosecution has proved beyond all reasonable doubt that the testimony of the defendant, Suyeyoshi, on the witness stand in his own behalf before this commission, was a total and absolute falsification! The prosecution's witness Petty Officer Iwakawa has testified that Suyeyoshi called a large group of personnel together after the flyer had been returned to his unit and quoted Suyeyoshi as saying, that the flyer was not afraid as he stood before this Japanese audience due to his instilled hatred for them, the enemy. The prosecution has carefully impeached Lieutenant Suyeyoshi by showing that he told the Board of Investigation that he saw the flyer on the road to his headquarters prior to the flyer's delivery and later that he saw the flyer in the custody of Lieutenant Morishita on the way to the scene of the execution and by further showing that Suyeyoshi of his own free will voluntarily submitted a statement some sixteen days after the interrogation in which he states in substance the same facts. All of which, I might add, he denied most emphatically while appearing as a witness in his own behalf. To make his case even more absurd Suyeyoshi has testified that he never once inquired from Lieutenant Morishita or anyway ascertained whether or not his unit executed this flyer. Such absurd assertions speak for themselves and do not justify further comment. The truth of the case is that Suyeyoshi deliberately obtained this flyer from Major Matoba with but one purpose in view and that was, that the flyer would be executed by his unit in an effort to boost the diminishing morale of his forces. The defendant, Suyeyoshi, has stated himself that his units were undergoing severe punishment from the American forces.

The defendant Sato, as a witness in his own behalf, has testified that he supervised the execution of the flyer Hall on orders from the defendant Major Matoba. It is to be noted however, that Sato states that he never once asked or that he made not the slightest inquiry as to the reason or purpose of this execution.

and so far as he knew the flyer had done nothing to justify such an execution. Sato has further testified that he of his own volition selected Sergeant Furushika and then later the defendant Corporal Nakamura to be the sword wielder. He has further testified that he selected the site of the scene for the execution and that it was on his instructions to the guards that the flyer was brought to the scene. Need anything further be added to the full account of the defendant, Sato, as a witness in his own behalf, to prove the allegations against him?

To sum up then, the testimony of the aforementioned nine witnesses who took the stand in their own behalf did the following: First, proved the prosecutions case by full confessions in every respect with an exception of the defendants Suyeyoshi and Isogai. Second, filled the record with self serving testimony by the defendants. Third, saw the defendants, Captain Sato, Lieutenant Suyeyoshi, and First Lieutenant Isogai establish themselves as perjurers, liars and falsifiers of the first magnitude before this commission.

Let us next observe the charges drawn against the defendants in the light of evidence presented. Charge I is that of "murder" which one of man's oldest vices originating with Cain and Abel. It is highly proper that murder is considered a war crime. Murder is defined by Naval Courts and Boards as "The unlawful killing of a human being with malice aforethought". Everyone of the accused, charged with murder in this case, was thoroughly aware that their acts were both illegal and unjust. What then is malice? We find in U.S. v. Reed, 312, Federal Reports, the following definition: "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. It is the wilful purpose, the wilful doing of an act which he knows is likely to injure another regardless of the consequences, that is malice, although the man may not have had a special intention to hurt a particular individual." Can any of the accused be heard to say he did not intend the acts he did? The eight American victims whose heads and bodies rolled up in dust at Chichi Jima were killed not by accident, but by the deliberate intention of the defendants. The evidence clearly shows that a set of plans and agreements were reached in the carrying out of this overall scheme to dispose of all prisoners of war as well as the conduction of the individual murders themselves.

General Tachibana is charged with the murder on August 7, 1944 by members of his own Brigade Headquarters headed by Colonel Ito, of the two Americans namely Woellhof and one whose name is unknown. This commission has heard this charge proved in its absolute entirety and beyond all reasonable doubt by the prosecutions' witness Colonel Ito. He testified that he received the order for such an execution from Tachibana's Adjutant, Captain Higashigi and that after the execution that he, Ito, reported the same to the defendant, General Tachibana. Captain Higashigi has related to this commission that the motive which prompted this flagrant offense, as stated by General Tachibana, was the boosting of the morale of his troops on Chichi Jima. Private Kido was also charged with this murder. He has confessed fully his participation in this crime as he is charged before this commission.

The defendant, General Tachibana, is likewise charged with the execution of the flyer Dye by the Yoake Wireless Station. We have heard the testimony of Major Horie and Captain Harashima, that the defendant, Captain Yoshii who is also charged with this murder, obtained this flyer from the custody of Major Horie with the

permission of the defendant, General Tachibana. The commission has seen how Dye was executed the day after his delivery to the Yoake Wireless Station on the orders and under the supervision of the defendant, Captain Yoshii. The allegation of the specifications against General Tachibana and Captain Yoshii are proved beyond all reasonable doubt and it is most obvious that the sole purpose underlying the transfer of Dye to the Yoake Wireless Station was his immediate execution before the assembled personnel of the Yoake Wireless Station. The defendants Masutani and Hayashi, who were the actual sword wielders for this outrageous act, have full confessed their participation before this commission. Captain Yoshii's full responsibility for the removal and eating of the viscera of the body of the victim Dye was likewise clearly proved by the prosecution's witness and the testimony of the defendant Sasaki.

General Tachibana is further charged with the murder of the victim York who was executed by the 307th Battalion. The commission has heard Colonel Kato the Commanding Officer of the 307th Battalion testify Tachibana informed him the flyer would be turned over to his unit for execution and further how such an act did occur and if the execution of the flyer that followed. Colonel Kato has also testified that he reported the execution to the defendant, General Tachibana. It is emphatically clear that the starting point of this outrageous act is the defendant General Tachibana.

General Tachibana is likewise charged with the murder of Hall by the 308th Battalion. The commission has heard how Hall was transferred to the 308th Battalion at the time Major Matoba became Chief of Staff to General Tachibana. The defendant, Sato, has confessed to this commission that he supervised this execution for which he is likewise charged with murder. Sato has related that he was told by the defendant, Major Matoba, also charged with this murder, that Hall's execution was on the orders of the defendant, General Tachibana. Sato has further testified that he received this order directly from the defendant, Major Matoba, and that he selected the defendant Corporal Nakamura, to behead the victim. The four defendants General Tachibana, Major Matoba, Captain Sato and Corporal Nakamura are therefore properly charged with this murder and the charge is proved against each of them. The defendant, Major Matoba, is charged in aggravation with the removal of the flesh and viscera of the body of Hall. The commission has heard the complete account of this most diabolical outrage from the defendant Sato and the prosecution's witness Sergeant Kanemori. The commission has heard of the removal of the liver and approximately 16 pounds of flesh from the thighs of Hall and that parts of this flesh were eaten at the 308th Battalion parties and other parts of the body were eaten at the Special Naval Base.

The defendant, Major Matoba and the defendant, Lieutenant Suyeyoshi, are charged with the murder of the flyer Mershon. The commission has heard from the lips of the defendant Suyeyoshi himself how Major Matoba told him the flyer would be sent to his unit for disposal. The prosecution has further shown over the lies of the defendant Suyeyoshi, by impeaching his statements before this commission, that such an act was carried out with the full knowledge and acquiescence of the defendant, Suyeyoshi, in accord with his plans to improve the decreasing morale of his troops. The charge of murder is therefore beyond all reasonable doubt proved against this defendant and he must be held strictly accountable for his misdeeds. The commission has heard Captain Kanmuri, Sergeant Kanemori and Sergeant Sugiyama, all witnesses for the prosecution, describe the wild and depraved orgy that took

place the day after this victim was buried when his body was dug up on the orders of the defendant, Major Matoba, and parts of the flesh and liver removed and how this was later eaten by numerous persons including the defendants Major Matoba. Thus, this most revolting and aggravating element of the murder of the victim as charged against the defendant Matoba is proved to the full satisfaction of this commission.

The defendant, Captain Yoshii, is charged with the murder of Lieutenant Vaughn. Major Horie has informed this commission how Captain Yoshii wrangled Vaughn from his custody and how he, Horie, told Captain Yoshii that nothing should happen to Vaughn but the commission has heard the stories of the prosecutions' witnesses Hido and Okubo and how Vaughn was transferred to the Motor Torpedo Boat Squadron and his subsequent execution. Captain Yoshii's direct participation in this murder is clearly shown by the testimony of the witness Hido who stated that he saw Captain Yoshii soon after the execution leaving the scene with a package containing part of the liver of the victim.

I reiterate; that every allegation contained in each of the six specifications under the charge of murder are substantially proved in their complete entirety and that the defendants charged with these crimes, who now appear before this commission, are guilty of murder, committed in the most atrocious diabolical fashion! Justice demands a strict accountability of each of these malefactors for his foul deeds!

Next let us observe the specifications under charge number two which involves the violation of the laws and customs of war. Throughout the ages, man has struggled to eliminate the dreadful curse of war. Among the many steps in this direction has been the recognition that certain practices must be outlawed, even in war. Civilized countries have found it agreeable to promulgate certain rules and regulations which would be recognized and heeded in the waging of war by all nations! The great Geneva and Hague Conventions and Declarations represent man's noblest efforts to prescribe that certain rules and regulations for the conduct of war would be recognized as fundamental by all civilized nations. Such great treaties have become incorporated into international law and it is the violation of this international law about which we are concerned in this charge. It is true that Japan did not sign the Geneva Prisoner of War Convention of 1929, but Japan did on her own initiative inform the United States Government shortly after the attack on Pearl Harbor that she would apply the provisions of that convention to American Prisoners of War. It is the failure to abide by this commitment that brought the defendants before this commission and specifically the defendants have violated articles 2, 61, 66 and 76 of the Geneva Prisoners of War Convention.

Specification one, charge two is brought against the defendant, General Tachibana, and the defendant, Major Matoba, for the dishonorable burial of the victim Mershon who was executed by the Suyeyoshi Unit. The full story of this dastardly crime has been revealed to this commission by prosecutions' witnesses Captain Kanmuri, Sergeant Kanemori and Sergeant Sugiyama. All evidence points that the mutilation of this body was directly on the orders of Major Matoba with the acquiescence of General Tachibana in order that flesh might be supplied to them for their own personal consumption at a party at the 307th Battalion. Selden has the account of a dastardly performance been recorded before in any court!

Specification two, charges General Tachibana with the mistreatment of American prisoners of war by issuing orders denying to them food, water and shelter. The prosecution has presented Captain Kammuri, Adjutant to the 308th Battalion, who testified that Tachibana ordered no food and water to be given to prisoners of war and that Tachibana further ordered that prisoners of war would be tied to pine trees and left exposed to the bombing of Chichi Jima by American Forces. Captain Kammuri further testified that General Tachibana reprimanded officers who attempted to take prisoners into a cave for protection during the midst of an air raid. The prosecution witness Harashima, who served on the staff of the defendant Tachibana as his intelligence officer, has corroborated this testimony in every detail and the defense has brought forth not the slightest assertion that any of these allegations are not true! The proving of this specification is just another link in the chain to show the unfortunate fate that befell the prisoners of war on Chichi Jima.

Specification three, charges the defendants Admiral Mori, Major Matoba, and First Lieutenant Isogai, with the violation of the laws and customs of war by preventing the honorable burial of an American Prisoner of War by the human consumption of each of these defendants of parts of his body. The prosecutions witnesses Lieutenant Commander Shinoda, Ensign Iijima along with the witness for the accused Lieutenant Commander Miyaziki have all testified that Admiral Mori and Major Matoba consumed human flesh at a party at the Special Naval Base. The defendant Isogai has, by his own admission in his confession, stated that he likewise consumed human flesh at the navy base. The defense in the recall of Commander Shinoda and Commander Miyazika, has led them to testify that Matoba said that the flesh that he brought was "goat meat" and it was only after its consumption that it became established that this flesh was actually that of the prisoner. Careful observation of the testimony of Commander Shinoda, who appeared as a witness for the prosecution fails to reveal any such comment about "goat meat" then and the testimony of Ensign Iijima shows that all parties were suspicious of this flesh the moment Matoba delivered it, when he said it was a "delicacy." The prosecution points out that Commanders Shinoda and Miyaziki, who are cannibals as a result of participating in this party, made not the slightest effort to ascertain the source of this flesh even after they were certain it was that of a human being, if there was any doubt beforehand. Furthermore there has not been the slightest assertion that Admiral Mori in any way reprimanded Major Matoba for serving him human flesh as the defense would have us believe, by trickery. Is it reasonable to believe that a Major would serve human flesh to a vice admiral if he were not certain that all parties concerned were in accord with his conduct? The commission must keep in mind that it is only normal that the officers on the staff of the Admiral would attempt in every way possible to protect him in their testimony at this trial. It is the contention of the prosecution that every allegation in specification three under charge two is proved.

Specification four under charge two alleges the dishonorable burial of the victim Dye due to the consumption of parts of his body by the defendant Captain Yoshii. The commission has heard from prosecutions witnesses, as well as the confession of the defendant Surgeon Sasaki, how the liver of Dye was removed on the specific orders from the defendant Yoshii and we have further heard from petty officer Suzuki how he personally delivered part of this liver to the quarters of Captain Yoshii. Suzuki has further testified that Yoshii warned him that he should never reveal such facts! Can there be the slightest doubt by any members of this commission that this specification is not proved? The answer is emphatically none whatsoever!

Specification five, charge two, also involves the defendant Yoshii, as well as the defendant Surgeon Matsushita. The commission has seen from the testimony of the prosecution witnesses and as corroborated by the defendant Matsushita himself, when he appeared as a witness in his own behalf, that the liver of Lieutenant Vaught was likewise removed after his execution. The defendant, Surgeon Matsushita, testified that this removal was on the direct orders of the defendant, Captain Yoshii. The prosecution witness Lieutenant (junior grade) Hida, has testified that he personally passed to Captain Yoshii as he was leaving the scene of the execution, a package containing a part of the liver of this victim. I ask again; Can any member of this commission have the slightest doubt that any aspect of this specification has not been proved? The answer remains the same!

Specification six is drawn against the defendant, Major Matoba, and the defendant, First Lieutenant Isogai, for the dishonorable burial of Ensign Hall due to the removing and eating of the flesh and viscera of the body of the said Hall. Matoba's part in the fulfillment of this specification is well known by the commission, through the testimony of the witness Sergeant Kanemori and the confession of Major Matoba himself. The dissection of this flyer is so savage that it defies the imagination and clearly establishes Matoba as an infamous brute!

The direct evidence against the defendant, Isogai is his own confession that he committed cannibalism. The prosecution has proved that Hall's body was served at a part of the 308th Battalion and this coupled with his confession is sufficient to convict him of the charge of cannibalism. The prosecution concedes that the part of the specification charging Isogai with the removal of the flesh is not proved, but otherwise the entire specification is proved in full.

Specification seven charges the defendant Surgeon Lieutenant Sasaki with the dishonorable burial of the victim Dye. Numerous prosecutions witnesses including petty officer Tamamura have testified that Sasaki removed the liver of the victim after he was executed and Sasaki has fully confessed the same as a witness in his own behalf before this commission.

The final specification under charge two is drawn against the defendant, Sergeant Mori, and concerns the bayoneting of the body of Hall after he had been beheaded by the defendant, Nakamura. Sergeant Major Wada has testified for the prosecution that he saw Sergeant Mori standing beside the body with a fixed bayonet and warned him that he should not bayonet the body. Sergeant Major Wada further testified that Mori was the only person present with a fixed bayonet. The prosecutions witnesses Privates Sato and Corporal Iso have both testified that they observed that the body had two bayonet wounds in its chest just before Doctor Teraki performed the dissection. This testimony is entirely in accord with the confession of Sergeant Mori introduced by the prosecution that he did bayonet the body. Captain Sato had confessed supervision of the crime and his participation therein. Coupled with the confession of Sergeant Mori that he received these orders from Captain Sato this is sufficient evidence to prove this specification, against both Captain Sato and Sergeant Mori. It is the contention of the prosecution that the allegations against each of the accused under charge two are proved beyond any reasonable doubt!

The third charge against the defendants is that of neglect of duty in violation of the laws and customs of war. This charge is based upon the duty that is inherent with a command and therefore this duty reverts to the commanding officer himself. Before there can be neglect of duty, there must be the imposition of a duty. What then is the duty that has been neglected by the defendants under charge three? As the Commanding Officer of military units, the defendants General Tachibana, Admiral Mori, Captain Yoshii, Major Matoba and Lieutenant Suyeyoshi were obligated and had imposed upon them by international law the solemn and absolute responsibility to protect prisoners of war while in their custody! Article 23(c) of the Hague Convention of 1907 states as follows: "In addition to the prohibitions provided by such convention it is especially forbidden, to kill or wound an enemy who has laid down his arms or having no longer means of defense, has surrendered at discretion." Article two of the Geneva Prisoner of War Convention of July 1929 states in part as follows: "They (meaning prisoners of war) must at all times be humanely treated and protected particularly against all violence, insults and public curiosity." These two articles alone impose upon Commanding Officers, who have in their custody prisoners of war, the responsibility of seeing that these prisoners of war are in no way mistreated. It is the deliberate and intentional failure on the part of the five defendants, listed in charge three, to protect prisoners of war when in the custody and under their control that has resulted in the promulgation of this charge against them! The failure to act where there is a duty to do so is just as culpable and just as criminal as is the doing of an overt act in violation of a prescribed rule or regulation and the degree of culpability is equally as great!

Since the basis of this duty grows out of the command relationship of the defendants, I shall not attempt to further amplify the individual omissions and failures of these five defendants to protect the eight prisoners of war involved under this charge. The proof of the first two charges and specification in and of itself automatically proves the third charge since the latter is but an outgrowth of the former. The duty imposed on the defendants is to protect these eight American prisoners of war while they were in their custody and subject to the control of the respective defendants and the open, flagrant and wilful failure to afford this protection to these victims brands these accused as culprits of the highest degree!

The most important defendant in this case in so far as the prosecution is concerned, is the defendant, Vice Admiral Mori. The prosecution of murders as a war crime includes little or nothing more than the usual criminal law conception of murder. The prosecution of Admiral Mori who is not charged directly with murder, but who is charged in one count with violation of laws and customs of war and in six counts with neglect of duty in violation of the laws and customs of war evolves us into the wider conception of what constitutes a war crime. Certainly it is not to be denied that one of the cardinal functions of the prosecution of a war crime is that examples and precedents will be set which shall serve as a notice to future despots that if they wage illegal warfare they should be held strictly accountable for such. The case against Admiral Mori offers us the striking example of establishing such a precedent.

Let us now carefully review the evidence as presented against Admiral Mori. It has been clearly established that from July 1944 until the fall of Iwo Jima in March of 1945, Admiral Mori was the senior military officer in the Bonin Island area as well as the Commanding Officer of all naval forces and it has likewise been proved that in case of an invasion of Chichi Jima during this period, Admiral

Mori, as the senior military officer, would become the supreme commander of all military forces, both army and navy in the Bonin Island area and direct the operations in defense of that area. It has been further proven, that Admiral Mori attended personally the conference held in August 1944, at which time it was decided that the handling of prisoners of war would be delegated to the army. The prosecution has strived in vain to find out from its own witnesses, as well as those of the defendants, the details of just what agreements were reached at this conference and other than broad general statements we still do not know the exact terms and commitments decided upon. A close reading of the testimony presented before this commission will reveal that none of the witnesses mentioned that this conference delegated who would be responsible for the actual execution of prisoners of war and it seems at best that this specific point was left undetermined. It is immaterial however, whether this conference actually agreed that the army or the navy or neither or both would in fact dispose of the prisoners of war. The important point is that Admiral Mori as the senior officer present at this conference acquiesced and consented to its terms and if the army did have the responsibility concerning the control of prisoners of war, then Admiral Mori has by his participation at this conference fully agreed and consented to whatever treatment the army might impose on prisoners of war. Such concurrence and harmony with the plan as drawn up at this conference, places Admiral Mori in a position of knowing who was to handle prisoners of war and demonstrates his complete cooperation and sympathy with such a plan. International law placed a duty upon Admiral Mori to protect these prisoners of war. He might delegate that duty to whom he pleased, but the responsibility still rested on his shoulders to protect all prisoners of war in the Bon Island area!

The defense would have us believe that as a result of this conference the navy has washed its hands of all matters concerning prisoners of war. The fallacy of such an assertion is demonstrated by the fact that a few months later, three prisoners of war were executed by naval units directly under the command of Admiral Mori. We have heard the witness, Lieutenant Commander Miyzaki, testify, as a witness for the defense, that Commander Komiura, the senior staff officer under Admiral Mori, called in all units under the command of the Special Naval Base and explained the terms of the agreement reached at this conference in August of 1944 soon after the conference was held. It becomes therefore obvious that if the navy had washed its hands of prisoners of war, that the unit commanders of the Torpedo Boat Squadron, the Yoake Wireless Station and the Suyeyoshi Tai would never have executed these prisoners in violation of the August 1944 agreement provided such an agreement was in fact established, unless they had the specific authority and agreement of their supreme commander; the defendant Vice Admiral Mori! The only conclusions that can be drawn are; one the navy did not wash its hands of the control of prisoners by this August 1944 meeting or two if the navy did wash its hands of prisoners of war by this August 1944 meeting, the three executions by the navy units under the command of Vice Admiral Mori could not have taken place without his consent. It is the contention of the prosecution that Admiral Mori fully consented to these executions and acquiesced fully to their being carried out!

Let us observe the circumstances surrounding each of these executions. The victim Morshon was executed by the Suyeyoshi unit in accordance with the intentions of Lieutenant Suyeyoshi, the Commanding Officer. This unit was directly under the command of Admiral Mori. This commission has heard how the defendant Suyeyoshi

gathered his troops together and in a fiery speech before them, in an effort to boost their sinking morale used the victim Morshon as an example of an American with hatred for the Japanese because he showed no fear at the time of this public insult. We have further heard how this execution took place and was witnessed by some twenty to thirty persons, and that it was not conducted in secret, but that personnel of the unit were well aware, both that the prisoner was to be executed and later that he had been so executed.

The execution of Lieutenant Vaughn at the Torpedo Boat Squadron again was a public execution with all personnel of that unit assembled to see this victim have his head severed but for the one purpose of increasing the animosity of the personnel present. Again we note that this execution was not carried out in secret but that it was most public with all the personnel of the unit assembled to see the performance and it is further noted that this execution took place a relatively short distance from the headquarters of Admiral Mori himself.

The execution of the victim Dye at the Yake Wireless Station, again was a public spectacle viewed by large numbers of the personnel of that unit in order that the morale of troops might be boosted by seeing the "superman" American die an agonizing death before the eyes of the curious Japanese onlookers.

"It is further noted that among the spectators at the execution of York by the 307th Battalion on or about 25 February 1945 were navy personnel in the form of onlookers. We therefore have four murders on separate occasions in February and March of 1945 at which navy personnel were present and three of which were carried out entirely by officers subordinate to the defendant, Admiral Mori. You have seen that each of these murders were public performances and known by the rank and file of the personnel within the units. Does the contention of the defense that the defendant Admiral Mori did not know that these executions were taking place deserve any consideration in the light of these facts? Is it reasonable to believe that the lowest seaman in three naval units under his command could be spectators at these atrocious deeds while the Admiral sat in his headquarters and knew nothing about what was taking place?

This commission must never overlook the fact that the defendant, Mori, is a Vice Admiral in the Imperial Japanese Navy and he did not acquire such a vaulted position by not knowing what took place within his command! For the defense to contend that he did not know these executions were taking place makes a travesty of his position as a Vice Admiral in the Imperial Japanese Navy and would degrade him to the position of being a blundering, stupid ignoramus and dope. This, I must add, is in sharp contrast to the description of Admiral Mori as given to this commission by several of his staff officers when appearing as witnesses for the defense.

Another factor which we must consider is that the prosecution has proved through the testimonies of Ensign Iijima, Lieutenant Commander Shinoda and Lieutenant Commander Miyazaki that the defendant Admiral Mori is a cannibal. It is of further interest to note that if Admiral Mori did not know the flesh delivered by Matoba was human flesh, as the defense now contends, that there has been not the slightest indication to show that he attempted to find out the source of this human flesh after he had been informed of its nature. The reason for this is obviously clear.

He did not ask or inquire about the source of this flesh because he knew at the time it was brought by Major Matoba, not only that it was human flesh but from whence it came! Yes, it is entirely correct that Admiral Mori did not inquire about the source of this flesh, for such information he already know.

The prosecution asks the commission to take particular notice of a statement made by Lieutenant Commander Miyazaki, one of Admiral Mori's Staff officer, when he appeared as a witness for the defense. In this statement Commander Miyazaki quotes Admiral Mori as saying, "Many people say that the execution of a prisoner will bring up the spirit, but as for myself I have the opposite opinion. The spirit goes down." Why then would Admiral Mori make or be prompted to make such a statement if he did not know that such acts were taking place round about him? Every aspect of the circumstantial evidence concerning these points indicates clearly that Admiral Mori not only knew what was taking place, but fully acquiesced therein.

Who would believe for a moment that a Major in the army would deliberately cause a vice admiral and members of his staff to commit cannibalism, within his presence, if the major did not know, that the Admiral and his staff fully acquiesced in their participation? If it please the commission, the prosecution wishes to most explicitly point out that we contend that Admiral Mori not only knew of the executions by the navy, but gave his approval to the same. However, the prime fact remains, that it is entirely immaterial insofar as the charges against Admiral Mori are concerned whether he knew or did not know that these executions were taking place! The duty imposed upon him as the Commanding Officer of all naval forces in the Bonin Island area and the senior military officer in that area requires that he should have so known! If he did not know, it is entirely immaterial insofar as the charges are concerned. The duty placed upon him requires that he should have known what type of treatment prisoners of war were receiving by units under his command, and his failure to know, as the defense would have us believe, in no way mitigates or lessens his responsibility. Admiral Mori's crime is one of omission in that he has failed to carry out his duties as he was so obligated to do.

It is only natural that officers from his staff should attempt to cover up and confuse the issues involved in this case in order that they might protect their former commander, the defendant Admiral Mori, as much as possible. Such a procedure is both expected and routine. Much has been said by these witnesses for the defense about how good and noble and how fine a character the defendant, Admiral Mori possesses and he has been described as sitting in this court looking as gracious as Buddha himself. Such flowery talk in no way hides the fact that this man is a cannibal who knowingly allowed men under his command to perform the most infamous of crimes in violation of international law. I can but remark in respect to his appearance in this court that a lion in a cage never looks as ferocious as when stalking his prey in the jungle.

This commission must never overlook the very pertinent fact that Admiral Mori was the senior military officer in the Bonin Island area as well as on Chichi Jima at the time of the execution by the Brigade Headquarters on August 7, 1944 of Woellhof and the unknown flyer as well as in February 1945 when the 307th Battalion under the command of Colonel Kato executed York. The fact that these executions were carried out by army units in no way lessens the responsibility of the senior military officer on Chichi Jima to protect these prisoners while they were in his military custody. Even if we agree with the defense and concede that the army had

custody of prisoners of war and that the defendant, Admiral Mori, delegated his duties, concerning prisoners to the army, this in no way alters the pertinent point at issue in that his responsibility, which he could not delegate remains the same, and that he was at all times responsible for the protection of these prisoners!

The contention of the defense that Admiral Mori did not know the murders were taking place by various navy and army units on Chichi Jima can in no way be sustained in view of the evidence presented by the prosecution. This commission has heard the testimony of Captain Kosuga, the junior adjutant of the defendant, General Tachibana at the Brigade Headquarters, that it was not only general knowledge at the Brigade Headquarters that these executions were taking place, but that such information was known everywhere he went. The striking proof, however that these executions and dishonorable burials were the general knowledge of all personnel on Chichi Jima, both army and navy, is clearly demonstrated by the parade of nearly two score of witnesses before this commission both for the prosecution as well as those of the defense who have testified from their own personal knowledge concerning murders, cannibalism and other atrocious events. These witnesses represent numerous separate army and navy units scattered over various parts of the island. That all of these persons should have known that these crimes were being committed speaks for itself to conclusively prove to this commission that knowledge of the commitment of these atrocious crimes was known throughout the width and breadth of Chichi Jima by personnel of all ranks and stations. Therefore such knowledge must be imputed to the defendant Admiral Mori. Is it in any way possible to believe that such a cross-section of the personnel on the island of Chichi Jima including officers and enlisted men could testify concerning these facts and Admiral Mori who was the senior military officer on the island at the time, know nothing about it? In the light of these facts to ask this question is but to answer it?

This commission must not overlook the very important fact that the defendants deliberately destroyed all traces of evidence concerning these prisoners of war on Chichi Jima and confronted the Board of Investigation with innumerable falseifications concerning the whereabouts of prisoners of war. The destruction of these documents was in direct violation of the Potsdam Agreement. This commission should also bear in mind the location of Chichi Jima. Beginning with the establishment of American Bases in the Marianas Islands, for the purpose of attacking Japan, Chichi Jima became subject to a tremendous aerial bombardment as it lay directly on the route to Japan. Planes returning from Japan often discharged their bombs there and after the fall of Iwo Jima the island was subject to almost continuous attack by fighter planes, as well as from units of the fleet. The army and navy and marine corps show long lists of persons missing in action in the Bonin Islands and the total reaches several hundred. We concede that most of these persons met their deaths in accidents or combat, but the law of averages requires that a great number of them would get ashore safely and be captured as prisoners in that area. We are only able to prove the deaths of eight men, but the ringing indictment stands against these defendants that from July of 1944 until the end of the war there is not a single American alive who ever fell into the hands of the defendants in that area! Such an indictment alone should convict every one of these accused!

The prosecution contends that the fourteen defendants stand before this commission guilty beyond all reasonable doubt of the charges as preferred against them. They have been brought into this court and given every opportunity to defend themselves in a fair and impartial trial. All the rights that they so ruthlessly failed to give to the victims on Chichi Jima have been afforded to them by this commission and they have been weighed in the judgment and found wanting.

The United States Government warned Japan on too numerous occasions for me to cite, that it would hold strictly accountable all persons who have committed such outrageous acts. These defendants are classic examples of the type of persons to whom President Roosevelt directed his warning of August 1, 1942 when he said, "It is only fair that they should have this warning. The time will come when they will have to stand in courts of law in the very countries which they are now oppressing and answer for their acts". Indeed the time has not come! The International Law Documents for 1943 contains the list of forty-two specific protests that the State Department sent to Japan in the year 1942 in an effort to obtain from Japan the fulfillment of its commitment to treat American prisoners of war with humane and civilized principals and it further lists forty-five specific protests to the Japanese government in 1943. It is the fulfillment of these solemn pledges of our government that has brought these defendants before this commission and demonstrates to the world that these pledges by our government were not idle gestures.

The senior officers present before this commission are not youthful war zealots inspired by a sudden fanaticism, but these are men who have made a lifetime career out of the promulgation of this wild Japanese obsession to conquer the world. They are not being tried for the waging of warfare, as such, for had they waged legal and lawful warfare they would not be before this commission today, but they would have been long ago demobilized in their homeland. They are before this commission because they waged illegal and unlawful warfare in violation of international law! These senior defendants are the careful, calculating and scheming intriguers who fostered Japanese military expansion in order to increase their own personal power and glory and what cared such obsessed mad men for the lives of prisoners of war? These defendants are the converts of a mad militaristic inebriation that constitutes not a "Lost Weekend", but a lost destiny!

The world stands on the threshold of a new era and man continues to struggle to rid himself of his greatest enemy, war. These defendants before this commission will never again be in a position to repeat their despicable acts. They stand before us crushed and broken. Any sympathy on this score for these defendants would have a profound effect on future generations. It has been so ably stated by Winston Churchill, to the effect that the punishment of such men as these shall stand as an example through the annals of time as a warning to all who would repeat the same.

Of some men it is said that they are wolves in sheep's clothing. I say to this commission that the principal defendants of this case are beasts in the form of men! They stand before you proven beyond all reasonable doubt as the instigators and performers of some of the most wicked and inhuman crimes ever heard in any court, anywhere, and at any time. The prosecution demands that this commission return a finding of guilty against all fourteen defendants with due consideration of their military position and station in life. The prosecution further demands that this commission return sentences calling for the supreme penalty to be paid by the defendants General Tachibana, Admiral Mori, Captain Yoshii, Major Matoba, Captain Sato and Lieutenant Suyeyoshi! World society has no place nor need for such sadistical maniacs and depraved men! In respect to the eight defenseless victims who received such ignominious deaths and in further respect to our comrades who gave their lives that we might enjoy the blessings of freedom, such a sentence must be returned! To break faith with them would make us not worthy of the blessings they have secured for us. Although we hold no malice or hatred for these defendants, we do condemn them in the light of what they have done as revealed to this commission

and this is not the place or time for sympathy in their behalf! The lapse of time and the termination of hostilities tend to make us forget and forgive, but I say to this commission that the eyes of the world watch your decision and the hopes of future generations rest on it. We cannot allow ourselves to become soft hearted and close our eyes to such deeds nor forget them!

With this commission rests the responsibility of carrying out the solemn pledges of our government, and of keeping faith with our fallen comrades in arms. Will it be said of us as the Germans remarked at the end of the last war that we are too soft and too forgetful?

In conclusion I wish to leave you with this thought, as so aptly expressed in the great words of Rudyard Kipling, "Lord God of Hosts, be with us yet, less we forget, less we forget!"

Edward L. Field
Edward L. Field

EDWARD L. FIELD
JEWELRY, USNR

CLOSING ARGUMENT FOR THE ACCUSED

Captain Sato, Lieutenant Suyeyoshi, Surgeon Lieutenant Saki, Surgeon Lieutenant Matsushita, First Lieutenant Isogai, Lieutenant (jg) Hayashi, Lieutenant (jg) Masutani, Sergeant Mori, Corporal Nakamura, Superior Private Kido.

DELIVERED BY

LIEUTENANT COMMANDER DONALD H. DICKEY, USNR

Members of the Commission:

As I present this argument in behalf of ten of the accused, I do not intend to touch greatly on the legalistic aspects of the charges and specifications, except as they apply specifically to certain specifications. The legal phase will be covered generally by the Senior Defense Counsel.

Before I enter upon a discussion of the evidence and testimony, I should like to review briefly the background of the defendants charged here as war criminals. In order to consider properly and judicially every phase of this trial, the commission should understand the general character of the Japanese. And yet, that phrase in itself is an anachronism. May I quote from the "Pocket Guide to Japan", a booklet published by the Army Information Branch, I&E Division and approved by Fleet Admiral Nimitz. "You will never fully understand the way the Japanese think or do things today, because in almost every way our ideas are exactly opposite to theirs, and, as a result, our actions are too." Contrast this with the peoples of the other Axis nations. The Germans, fundamentally, are very similar in thought, action, and reaction to our own people. The Italians can be compared basically with the hodgepodge that is called American. Their backgrounds show similarities to ours in culture, and ideology. Music, art, government science, literature - all of these things are known and appreciated alike both by the other Axis nations and by our own civilization. True it is that their desire for power in recent years precipitated this terrible war - but certainly you can understand the German mind, and expect him to be governed to a large extent by the same basic principles which govern the other Caucasian nations. But contrast this with the Oriental - whose ideas are exactly opposite to ours, and as a result, their actions are, too".

The booklet goes on to say, "In time, the Japanese nation can be taught to think that other people have rights." Please note, "In time." Still quoting, "Three main factors have more to do than anything else with the strange ideas and actions of the Japs. These three influences have been bearing down on the lives of the people of Japan for so long that finally they have shaped the personality of the nation. They are:

1. Shinto (the religion),
2. Tenno (the Emperor), and
3. Bushido (the Way of the Warrior).

"Shinto is the national religion of Japan. To begin with, Shinto was based on worship of nature - the birds, trees, waterfalls, etc. This original type of Shinto still exists. However, in the course of recent history the warlords and politicians moved in on Shinto and developed State Shinto, which is the enforced religion of all Japanese today. Under State Shinto, which is ancestor worship twisted to fit a scheme of slavery and conquest, the Emperor is divine. He worships the Sun Goddess and the Imperial ancestors. The rest of the nation worships the Imperial ancestors as well as their own ancestors. Both Imperial and common ancestors are linked together in the Japanese mind.

"Two other principles of State Shinto are (1) that Japan is the land of the Gods; that, as such, it is a sacred land, and (2) that Japan has a mission on earth - the mission of saving the world. Hence the Japanese slogan "the whole world under
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one roof", and the belief that the world must accept and submit to the leadership of Japan.

"Perhaps the most serious thing about State Shinto from our point of view is the belief that Jap soldiers killed in battle become protective gods who watch over the homeland. They are enshrined in the Yasukuni shrine in Tokyo, where their names are listed on little tablets."

"Knowing this about the religion of Japan, it is easier to understand why Jap soldiers don't expect to return when they go off to war and why they are so willing to be killed in battle."

To the Japanese the Emperor is sacred. Prince Ito, who wrote Japan's constitution said of the Emperor:

"The Emperor is heaven-descended, divine and sacred; he is pre-eminent above all his subjects. He must be revered and is inviolable, he has indeed to pay respect to the law, but the law has no power to hold him accountable to it. Not only shall there be no irreverence for the Emperor's person, but also he shall not be made a topic of derogatory comment nor one of discussion."

"Ito wrote these lines 50 years ago, but the Japanese people have clung to his teaching. Ever since, the war lords have used the Emperor to promote their own schemes of conquest. He has been their tool. They have used him to stir up the Japanese people to new heights of fanaticism."

"To sum up, to the Japanese, the Emperor is a demigod, as well as their political ruler. He is religion and politics in one. No one can stand above him or look down on him. When he passes through the streets, blinds must be tightly drawn on all windows above the first floor. He cannot be imitated. Only the Imperial family may own a maroon car. No one can touch him. All things emanate from the Emperor - the crops, life, victory. It is in the name of the Emperor that Japan set out to bring "peace, enlightenment, truth, justice, and co-prosperity" to the rest of the world."

"Bushido (the way of the warrior): After defeat the Japs will be vengeful. That is part of their code of behavior. It is a code handed down from feudal times. It is known by the one word: "Bushido".

"Bushido" is a word known to every Japanese boy from the time he is old enough to toddle. Literally, "Bushido" means "The way of the warrior". It is a code based on tradition and legend. There is no actual written formula for it, but it stresses loyalty above all else - loyalty to a master. In feudal times it was loyalty to a feudal lord who was the big boss. In modern times the war lords have focussed "Bushido" on loyalty to the Emperor. It is a one-sided code which calls for loyalty and sacrifice on the part of the underdog but puts no corresponding obligation on the master. Under "Bushido" the little fellow pays. The Japanese don't believe that loyalty begins at the top.

"Bushido" taught its followers to keep cool, and not to draw a sword except to use it. The old version taught not to hit an opponent when he is down, but the Japs have discarded that part of it as obsolete.

"Under the "Bushido Code", deceit and treachery are perfectly permissible, if they are employed to achieve a desirable end.

"The classic example of how "Bushido" works is to be found in the famous "Tale of the Forty-seven Ronin". The story is familiar to every Jap. He considers it a perfect example of the way he would act. It is told to the smallest children by their fathers.

"The story is about a feudal lord named Asano, who was in attendance on the Shogun. The Shogun was the big chief - the ruler who stole the Emperor's powers.

"Another feudal lord named Kiro insulted Asano. This happened in the Shogun's palace but Asano drew his sword and went to work on Kiro, without killing him.

"A private brawl in the palace could not be tolerated, so when the Shogun heard of it he ordered Asano to kill himself by committing harakiri the same evening. Asano followed instructions. Afterward, his castle was confiscated, his family declared extinct, and his followers were disbanded. They became "ronin."

"Asano's 47 "ronin" scattered all over the country. They took small jobs here and there to avoid suspicion but all the time they were plotting and scheming.

"Suddenly, on a snowy night two years later, they joined in an attack on Kiro's mansion. This time the job on Kiro was complete. The "ronin" carried his head through the streets to the temple yard where Asano was buried and set it up on their master's grave. For doing this they were ordered to commit harakiri. They also followed instructions and were buried in the same temple yard as their master. Their graves in Tokyo have since been honored as national monuments. That's the difference between the way we regard gangsters and the way they do.

"What we think is decent, and count on in other people we deal with, means nothing to the Japanese. His notion of honor is entirely different from yours."

Further information about the Japanese ideology can be found in "The Pacific World", edited by Fairfield Osborn and published as a part of "The Infantry Journal".

"The educational system of Japan, to which American scholars have substantially contributed, is thorough and efficient. When one realizes that all learning has to be superimposed on the cumbersome system of character writing used by the Japanese, it is amazing that they have accomplished so much, and that the percentage of literacy is one of the highest in the world. Education is compulsory through the sixth grade, even though there are no free schools.

This educational system is directed toward creating a state of individual repression. From the primary schools on, everything is regimented. The children are little automatons, and the principal orders his teachers about as a general does his officers. Even the sports are cut and dried, and entered into with deadly seriousness.

The people themselves are dominated by two forces - tradition and repression. The heavy hand of tradition may be illustrated by their capital city. The census of 1940 gave Tokyo a population of well over 7,000,000. It has large

business districts and several large newspapers with a daily circulation running into the millions. It's modern subways are cool and clean, have indirect lighting and are decorated with vases of artificial flowers. The railroad trains coming into its three large stations arrive and start with such promptness that people set their watches by them. Yet, in this great city, the street with a very few exceptions are not named, and the houses in a given area are numbered in the order of erection, without regard to their relative position. The hold of tradition is also evidenced in the written language.

There is no such thing as individualism in Japan. From the time the child is old enough to go to school, he ceases to be an individual and becomes a unit in a group - a cog in a machine. First he belongs to the family. All his doings are decided for him by family council - his education, his subsequent occupation, his marriage, his future. If he fails he may commit suicide - not because of discouragement, but because through his failure his family has lost face. If his parents lose money and cannot see him through his education, it becomes an obligation upon the whole family or clan, not because of sympathy with the young man, but because the family would lose face if one of its members started something that he could not finish. If a Japanese businessman in a foreign city is about to become insolvent, the other Japanese merchants in the city will unite to help him out, for the same reason. These impersonal relations held in all areas of life - family, school, university, place of business and state.

In Tokyo there is a great shrine, the Yasukuni, where the names of all Japanese soldiers who have given their lives in battle are inscribed. They are thus deified, and, according to general belief, their spirits help the living in their struggle against the enemy. On the eve of battle, comrades fill their canteen cups with cold water and drink the toast, "Till we meet at Yasukuni!" Then they charge the enemy. It is all part of a pattern that was cut for them centuries ago, and from which the Japanese people have not deviated. Nor will they, until the military power of Japan is destroyed and the people develop or are exposed to a new philosophy of life.

We see a people sheeplike in their enthusiasm to follow, amenable to propaganda, who believe with fierce fanaticism that they are the seed of the sun, the beloved of the gods, the predestined saviors of civilization."

These quotations and references could be multiplied considerably, but it would seem that these were sufficient to point out clearly and unequivocally that the defendants in this case should not and cannot be judged in their conduct by general standards. In a civilization over 2600 years old, they have had contact with the western world for only approximately 90 years. I have seen Sumurai swords which were over 500 years old, handed down from father to son throughout the generations. Do you realize that these swords were forged before America was even discovered. Can you expect a people who have followed a completely alien philosophy and way of life for that period of time to suddenly reverse entirely and immediately assume the standards - and the responsibilities - of the newer nations. Because we have conquered them, we now are in the process of judging their deeds - not by the code which they know and to which they conform, but by our own code, which we have imposed upon them after the act. I have heard the Christian doctrine cited as a basis for condemning their deed; unfortunately, possibly, the Christian doctrines have not yet been accepted to any extent in the Orient. Execution by the sword has been condemned

in this court as a particularly heinous form of death - yet it is the warrior's death in Japan, and the accepted mode of execution - so much so that Kendo experts are looked up to and revered for their ability, as we award medals for marksmanship

If this commission is to act in an impartial manner in judging these defendants then it should take into its consideration the ideological differences between the Japanese and the western world, as well as the actual facts in each case. It may be at some future date that their way of thinking will conform to our way of thinking. To quote the "Guide to Japan" again, "The peace-loving nations of the world must cure the Japanese habit of mind which is dangerous to peace and the rights of other peoples". In time, the Japanese nation can be taught to think that other people have rights" -- but until that time comes, we should not judge past events by future expectations.

Generally speaking, we shall attempt to argue the facts in this case with reference to the defendants by grouping them according to the charges. This again punctuates another of the inconsistencies in this trial. The judge advocate argued and apparently effectively, since the commission upheld his argument - that it was necessary to try all 14 defendants in joinder since they were so intricately involved one with the other that trying them separately was impossible - and then the judge advocate immediately reverses himself by presenting the evidence in groupings corresponding to the various charges, and separately attempts to prove each murder. The defense found it very simple to follow the same line of presentation in behalf of the accused, since there was a natural and inevitable division between the various events that took place on Chichi Jima - and which are charged jointly here.

The accused Kido, has been charged jointly with Tachibana in the murder of two prisoners of war. Stated in that way, it seems a possibly proper joinder; but let us put their ranks before their names; Superior Private Kido and Lieutenant General Tachibana are charged jointly with the murder of two prisoners of war; a general and a private cooperated to cause the death of two victims - that's what the specification says.

It seems rather futile to argue before this commission in the case of Kido. Five of the seven members of this commission have already sat in judgement on another private charged with the same offense against the same prisoners at the same time and place - and in sitting on that other case, they heard the name of the defendant Kido time and again. There is not one of them who can erase the memory of what he heard previously from his mind while they hear the testimony in this case - it is psychologically impossible; memory is too persistent to be eliminated at the will of the mind. Nevertheless, Kido deserves the best argument possible. Here we have as a "war criminal" the orderly of a high-ranking officer. One day at bayonet practice he is ordered to carry out an execution using his bayonet as the weapon. He is naturally hesitant to employ his weapon against a living human - but this is war, he is a soldier - and he has received an order. He obeys that order - and a year later finds himself charged with violation of the laws and customs of war and the moral standards of civilized society. What does Kido know about the laws and customs of war and in fact, what does he know about civilized society. Kido has received at the most three years of schooling - which is much less than usual in Japan - and actually less than the equivalent amount of time spent in three grades in the United States. The terrifically involved Japanese language and method of writing require much more time to be mastered than the American language. Kido can barely read and write - yet now he is supposed to know all about International law

and the proper treatment of prisoners and the Geneva and Hague conventions. All that Kido knew was how to farm and care for his family - how to be a loyal obedient Japanese soldier - and how to carry out orders without questions. The entire boundary of his "civilized society" was the small property which he cultivated - and the outposts of an army defense garrison. No amount of "presumptions" and "duties" and similar phraseology advanced by the prosecution can impart to Kido an actual knowledge of the violation of the laws and customs he is supposed to have committed. The only law and custom of war which he knew was to obey the orders of a superior officer - and to fight to the death in honor of the Emperor.

Kido is even more unfortunate than the other accused who have appeared before this commission in his family relationship. As you have heard, he is an orphan, with no brothers or sisters. He does have a wife and child. This lack of relatives is to the Japanese much more tragic than in our own country. In Japan, the family ties are very strong, and it is the duty of all members of the family to look out for the welfare of every other member of the family. If the father and mother become incapacitated, it is required that they be cared for by the children. If one son has the misfortune to do badly in business or otherwise suffers loss - the other brothers and sisters automatically care for him and his family, even at great sacrifice to themselves. To do otherwise would mean loss of face for the whole family. Therefore, an orphan has no one to whom to turn for help if things go badly - and I can assure you that "friends" do not extend their friendship to that extent. I can recall one specific incident that I believe shocked me more than any other thing I ran into during the war. One late evening in Okinawa we were stopped in our jeep by a group of natives on their way home from working in the fields. They finally made us understand that something was wrong back the road away, so we returned and were led about 200 yards from the road into the middle of a field, where we found a youngster about 4 years old (though he was no larger than an 18 month old American boy) with his head badly cut, barely conscious and thin to the point of emaciation. After getting him to a hospital, we discovered that they had left him there (anyone of them could have carried him with no trouble at all) because he was an orphan and therefore none of them had any obligation to care for him. Actually, they felt very magnanimous in having told us about him at all. Kido has left behind him in Japan a wife and a small child - and there will be no help for them with Kido absent, neither from friends or the state - for the family of a convicted war criminal has no chance of help from the government.

The SCAP rules state that "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." Quite properly under these rules, the defense might well introduce testimony as to obedience to orders after the findings of the commission. Nevertheless, the defense has taken the position that these SCAP rules are only permissive, so far as this commission is concerned, and that the defense will be presented in accordance with the rules and regulations of our own military forces. And does this commission realize just what the difference is between the rules set up in SCAP for the trial of war criminals and those set forth in the rules of our own army. I refer the commission to the Rules of Land Warfare Basic Field Manual FM 27-10 and particularly to section 345.1 of chapter 11, "Penalties for Violations of the Laws of War." In this section it is stated:

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"Individuals and organizations who violate accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished."

By order of the Secretary of War;

G.C. Marshall, Chief of Staff.

15 November, 1944.

Thus we come to the greatest inconsistency of all; a soldier in the Japanese army who followed that army's rule of absolute obedience to orders cannot avail himself of that defense when tried by an American court - but a soldier in the U.S. Army has that defense available to him under the same circumstances. And please note that General Marshall has not qualified that defense by making it obedience to a legal order" - the statement is unequivocal. Will you judge this man by a special set of rules and regulations, established after the end of the war - or will you judge him by the standards established for our own army in time of war -

Kido in his own mind and by his own standards and by the standards of the army with which he served and by our standards is innocent of murder. He did not volunteer - you have heard considerable testimony to the fact that he was selected by Colonel Ito for this task; he was given direct orders by a colonel in the army in front of a large group of men; to have refused to carry out the order would have been the most serious kind of disobedience - and furthermore, so far as Kido knew, it was a legitimate order; he was not versed in the technical details of how a man was condemned to death; the army said he should die, and that Kido should carry out the execution. So far as he knew, that was the proper way to treat prisoners in time of war. From what he'd been told through propaganda and otherwise - as this commission knows of it's own knowledge, he could expect no better treatment if he were captured by the enemy; in fact, he might expect worse, by having the execution preceded by torture. Therefore, Kido carried out the order - and the prosecution would have you believe that there was no justifiable cause in Kido's case.

Comparing the proof offered by the prosecution with the specification it is obvious at once that many of the items have not been proved so far as Kido is concerned. There is absolutely no proof that Tachibana and Kido "acted jointly". The gap between general and private precludes any such possibility. The greatest discrepancy, however, is the failure to prove that Kido had any part in the slaying of both prisoners. The proof offered shows only that Kido was concerned with one prisoner, "the one on the right" and had nothing to do with any other prisoner. Neither did Kido act in any way to behead the prisoners with a sword, as set forth in the specification. To hold Kido responsible for the killing of the second prisoner and for beheading both prisoners is obviously farcial. He did not cause it; he could not have prevented it.

The next specification of the first charge alleges that Hayashi and Matsutani, together with Yoshii, the Commanding Officer of their unit, and General Tachibana, the Commanding General of the First Mixed Brigade, acted jointly to kill an American prisoner of war. It is further alleged that they acted "in pursuance of a common

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intent". This specification brings out the great advantage given to the prosecution in trying these persons in joinder. The only reason for the acts performed by the defendants Hayashi and Matsutani were the orders received by them - and yet, to plead those orders as a defense immediately throws the onus of responsibility on a co-defendant. The position is deplorable, both from the point of view of the accused and from the point of view of their counsel. The judge advocate need do little more than throw out a few items of testimony - including the introduction into evidence of the interrogation of one of the accused given under the questioning of a rather unorthodox Board of Investigation - and then sit back while the defendants prove his case.

So, much as we dislike it, we must at this time point out to the commission that the only reason that these two men are before this commission as criminals is because they followed orders. They were selected for the task by their commanding officer - and their only qualification was that they were young and untrained. Both of them were in what corresponds to the Naval Reserves - with little or no experience as officers. They were not experts in Kendo, they were not vicious, bloodthirsty militarists anxious to show their skill before a crowd of admiring onlookers - they were simply inexperienced communication officers, capable of handling the radio traffic, but certainly not of the militaristic cabal which precipitated this war. Each of them went privately to the Commanding Officer, begging to be excused - and were told in no uncertain terms that they would obey the orders they received "or else". Neither of them was expert enough to make a clean cut. They even had to be coached at the scene of the execution by the Commanding Officer so that they would not cut themselves and could take the proper position and stance. Did they "pursue a common intent" with the other named defendants? The testimony is obviously to the contrary. We have the confirmation of another officer present at the meal at which they received their orders that they were summarily told what they would do. They did not volunteer for this task - they were forced into it. SCAP says this is no defense - our own war department says that it is? Whom will you follow - the Secretary of War or the Supreme Commander of the Allied Powers? You cannot rely upon the Supreme Court of the United States to give sanction to the SCAP rules - they specifically disclaimed any opinion on that subject as not reviewable by them.

We come to the further question in this case of "when is a man dead". Is it when his heart finally stops beating and his lungs stop breathing, or is it when he is so wounded that there is no possible hope of recovery, even under the miracles performed by modern surgeons. A man has his neck severed from the back to such an extent that the spinal column and all of the nerves contained therein are forever separated. Perhaps the heart continues to function automatically for a few minutes more - especially if the jugular vein has not been cut and the bleeding is thus slower. But the man cannot live longer than the time necessary for the heart to cease beating. Is a blow struck under these conditions murder? Can a person this far dead, with no hopes of recovery, be further "killed" by another blow? If he cannot - then Matsutani is not guilty of murder, but of some lesser offense. The evidence goes even farther than this - the prosecution's witness Tamamura stated that he did not see the blow of Matsutani enter the previous cut, but slide off the back, because of the awkward position of the body after the first blow. We contend that the accused Matsutani is not guilty of murder in any degree, and the words "kill" in the specification have not been proven as to this particular defendant. We further contend that both Matsutani and Hayashi had "justifiable cause" from their point of view - just as would any executioner in any state of the union or any firing squad in the military forces. They were ordered to do the deed - and that was their justification for their act.

The next specification involving the accused whom I represent as counsel is the fourth under Charge I. In that, it is alleged that Captain Sato and Corporal Nakamura acted jointly and in pursuance of a common intent with a Major and a General. The facility which enlisted men and high-ranking officers got together with their plots and plans, according to this arraignment, is a great contrast to similar situations in the Allied armed forces. Again we are confronted with the unpleasant task of placing the blame for this episode where we think it proper - on those who issued the original orders and not on those who carried out those orders - and in so doing, we strike again at co-defendants, to the great assistance of the prosecution. From the witness Sugiyama, we heard how Captain (then First Lieutenant) Sato was summoned suddenly to the office of the Battalion Commander and abruptly ordered to prepare to execute a prisoner. Captain Sato has given us further testimony on that fact, including the unexpectedness of the order. The captain had gone to the office in the full belief that he was to be questioned about the reports he was making on positions - his primary assignment with the battalion at that time - then, without warning, he is ordered to behead a prisoner. The prosecution will undoubtedly emphasize and re-emphasize that it was Sato's duty to refuse to obey such an order, and that because he did not, he is guilty of violating a host of conventions and customs as well as the moral standards of some nebulous "civilized society" which the prosecution, for five long trials has never defined. I submit to the commission that to expect an officer in Sato's position to refuse to obey such an order is to be entirely ignorant of the Japanese mind and temperament. And I will go further, gentlemen, and submit that if a comparable order had been given by a Marine Corps major to a Marine Corps first lieutenant to take a firing squad and shoot a Jap prisoner on Iwo Jima at the same time that these events took place on Chichi Jima - that the first lieutenant would not have hesitated any longer nor protested any more than First Lieutenant Sato did. Orders under the grueling, pounding stress of battle assume a far different aspect than they do in peaceful surroundings on a quiet military installation. The most significant aspect of those orders, and one on which we wish to harp least, is the source of those orders. First Lieutenant Sato was unfortunate in having as his superior officer one who would brook no argument or refusal - and is said to have enforced obedience by the most drastic physical means - and by his own hand. A commanding officer who, by his own admission, was abnormal. Sato followed his orders - and in so doing, was compelled to give orders which involved others. The prosecution would have you believe that Sato received orders applicable only to himself; in other words, that Sato himself should have carried out the execution, and not delegated that task to his subordinates. We contend that this position is untenable. In accordance with military tradition and custom, both in the Japanese army and the Allied military forces, it is expected that the officer to whom an order is given will merely supervise its execution - not that he will carry it out himself, unless he is so directed by specific instructions, as in the case of Hayashi and Matsutani. Accordingly, Sato was under no obligation to use his own sword on the prisoner - he was merely required to see that the orders of his superior officer were carried out in an expeditious manner and proper fashion.

This brings us logically to the next accused - Nakamura. I think without doubt that he is one of the most unfortunate of all persons to be brought before this commission. Let me review the picture for you, both as brought out by the testimony of Captain Sato and by the testimony of the prosecution's witnesses. Captain Sato had planned that the execution would take place in the evening, when the men would be absent from the place and no longer on working details at the position fortifications. His plans are changed by the appearance of Doctor Teraki,

who explains that the Battalion Commander has directed that Teraki perform an autopsy for the benefit of the corpsmen, and that this should take place as quickly as possible. Sato has already arranged that Sergeant Furushika shall act as executioner - but with the present change in plans as regards time, Furushika is not available he has gone elsewhere about his regular duties, expecting that his task will take place in the evening, as he was told. Messengers are sent to find him, and since the prisoner has already been taken to the site, Sato hurries there and is urged again and again by Teraki to hurry the execution so that the autopsy can begin.

Meanwhile, what of Nakamura? Only that day, for the first time, has he resumed his duties as the liaison man between the Battalion Headquarters and the Brigade Headquarters, after having been ill with a fever for quite some time. His job requires that he carry messages and codes between the two headquarters, pick up the official orders for the area from the Brigade adjutant and similar tasks - and both as a protection and as insignia of his office, that he wear a sword while carrying out these duties. On his way to the Brigade Headquarters, he hears that a prisoner is to be beheaded - and stops along the path to see the prisoner and the excitement. He has heard that Sergeant Furushika is to be the executioner, and he lingers there while they search for the sergeant. Suddenly Captain Sato sees him standing there with a sword; Doctor Teraki is urging haste; - and so Nakamura is ordered to act the role originally scheduled for another. He begs to be excused, since it is Furushika's job - but without success. He must obey the order. Think of all the fates chuckling to think of the way they trapped Nakamura. If he had still been ill and stayed in his quarters or the sick bay another day; if the execution had taken place at the time for which it was originally scheduled; if his duties had not required him to wear a sword; or even if there had been another present with a sword, he might be back in Japan at this very moment. But everything conspires against Nakamura to make him a victim in the post-war era. Surely you do not expect Nakamura to know the Geneva and Hague conventions. Surely you do not expect him to refuse absolutely the order of a superior officer, particularly in the presence of many other soldiers and the medical officer. Nakamura was a non-commissioned officer, and as such, in charge of many privates. He had been long trained, both at school and in the army, in obedience to orders - and do not fail to recall that at this time, war was a very real and close affair on Chichi Jima - not a theory to be met at some far distant date. Surely the defense accorded to American soldiers by our own war department in the Rules of Land Warfare should apply to the soldiers of another nation now being tried for violations of the laws of war. Can we set up one criterion for them, contrary to the one by which we would judge our own people? How else would you have had him act under the circumstances. Unless you find him not guilty, you will for the future armed forces, place a premium on disobedience, not only in other nations, but in our own army as well.

Captain Sato is further charged with Sergeant Mori in Specification 8 of Charge II with preventing the honorable burial of a prisoner of war by the bayonetting and mutilation of the body of the prisoner. And what is the proof offered by the prosecution in this case? As you are undoubtedly well aware, there is no proof. And what is the evidence which the prosecution would have you believe constitutes their case? The "confession", so-called, of Mori himself. Not one person could testify that they saw Sergeant Mori bayonet the prisoner - and this, members of the commission, in spite of the fact that there were present at the scene a great many people - soldiers and corpsmen, who were eye-witnesses. All of these people could have been available to the prosecution. The Board of Investigation which preceded this trial had every facility for interviewing and questioning every person left on

Chichi Jima when the Occupation forces landed. They must have had the roster of all personnel on that base at the time of the occupation, before they were repatriated to Japan. And yet, not one single person was brought before this court to confirm the charges set forth against Mori.

The testimony of Mori before the Board of Investigation was entered in the record over the objections of the accused, these objections being based on what we consider the most proper grounds. You must recall, gentlemen, that the Board of Investigation which was convened to investigate the occurrences at Chichi Jima was set up under the usual Naval Courts and Boards, and I have yet to be shown wherein the precept permitted them to relax the rules, particularly Section 734 and that part which is so important that it is italicized in Naval Courts and Boards. The prosecution airily dismisses the elimination of all the rights of a defendant with the bland assertion, made in open court, that the "rights of the defendants were not in any way prejudiced". I will never be convinced that the rights of the defendants were not prejudiced. If those rights were to be abrogated because they were enemy nationals - then it would appear that the Board should never have been set up under the rules of the Navy, but a separate investigating body should have been appointed which did not bear the stamp of an authentic Navy Board of Investigation. Approval of the proceedings of such a Board throws wide open to all future Navy Boards of Investigation the right to do away with the rules which for so many years have been considered necessary for the protection of the accused - and without reference to whether those who appear before the Board are our own military personnel or enemy nationals. This is not a problem for this commission, naturally, but if the proceedings of this Board of Investigation are approved by the Office of the Judge Advocate General, then it opens wide the door for any recorder in any future Board of Investigation to question a potential defendant at length before making him a party defendant - and have the approval of these proceedings as his authority to do so. For this reason I doubt that the Judge Advocate General's office will condone such practices. Since we consider that the actions of the Board were so improper as to constitute fatal error, we believe that the testimony given by those who appeared before the Board should have no place before this body.

Since this document has been entered, however, may we further point out the fundamental fact in both military and civil procedure, that an accused cannot be convicted on his extra-judicial confession alone. It must be corroborated by independent evidence. Can you honestly eliminate the testimony of Mori given before the Board of Investigation, and find any evidence left which would prove the specification in this case? What slight testimony the prosecution has offered is so far from what should satisfy the court beyond a reasonable doubt that the offense was committed that the accused should be acquitted forthwith.

But even if the commission takes the document from the Board of Investigation at its full face value - there is no proof that an offense has been committed. The specification alleges that Mori and Sato prevented the "honorable burial" of the prisoner. Just what constitutes an honorable burial. Since that is the crux of this charge, it must be defined before the commission can decide whether the accused is guilty of a crime. The Commission certainly cannot take judicial notice of what constitutes an "honorable burial". I have searched through what few source books are available at this place and nowhere do I find anywhere the rites and rituals which would allow a definition of "honorable burial" to be set up. Is it required that a man be buried whole and unmarred? Gentlemen, this was war, and I submit that not one person killed in any battle was buried whole and unmarred. Must he be

given the burial ritual of his own religion? I doubt that one Japanese buried by the American forces was given the rites of Shinto or Buddha. Until the commission has before it a proper delineation of this term, it would appear impossible for you to decide judicially what acts do and do not constitute "prevention of honorable burial".

Let us review a little farther this question of "honorable burial". Every race, every sect, has its own ideas on what is necessary at the last rites. The ancient Egyptians built their elaborate tombs for proper burial. The Moslems along the Ganges require huge funeral pyres. A catholic is not accorded a proper burial unless his body is laid in sanctified ground blessed by his own church. In Okinawa the bodies of the dead are laid in tombs for three years, after which the remaining bones are cleaned and stored in earthen jars. Yet there is not one of these that requires as a condition that the body be untouched, intact and whole. Such a requirement would prevent a post-mortem diagnosis and we all know that these are usual and proper wherever the practice of medicine has outgrown the mumbo-jumbo of the medicine man. Therefore, until it is shown what law has been violated, this commission should not find Sato and Mori guilty of the commission of a crime.

In this same connection, it becomes interesting to note a peculiar situation which must be apparent to the commission. I realize fully that this commission is authorized to try only such people and on such charges as are properly brought before it. Nevertheless, we feel compelled to point out this anomalous situation. Sato and Mori are accused of preventing honorable burial by the bayoneting and mutilation of a body of a prisoner. You are aware of the testimony adduced in this connection - even the most favorable to the prosecution, the penetration of a body by a fixed bayonet - which we do not admit or think has been proven. Nevertheless, for contrast purposes, we have the testimony of the witness, Sergeant Kanemori, that he removed the flesh from the thigh of a prisoner after the prisoner's death. On a comparative basis - who caused the most mutilation of a body - Mori or Kanemori? Yet one is an accused and the other merely a witness. In view of the testimony which you have heard, if you find Mori guilty, will you not feel constrained both as individuals and as a commission hearing this testimony, to recommend to the proper authorities that Kanemori also be brought to trial on the same basic charge. Surely if one is guilty, the other must be. Each did no more than carry out the orders of his superior - who in turn apparently had received orders from a still higher-ranking officer. If on the other hand, you do not feel that the corpsman's acts were sufficient to make him a war criminal - how can you find that the acts of Mori are criminal? I believe the logic is irrefutable.

We contend, therefore, that Mori has not been proved guilty, that the crime with which he is charged is not sufficiently defined to permit of a proper consideration by this body - and that whatever acts he may have done, they were not in any way incomparable with the acts of his fellow soldiers who are not accused as war criminals nor forced to stand trial for violation of the laws and customs of war.

The defendant Isogai has been accused under two specifications of having prevented honorable burial of a prisoner of war "by removing and causing to be removed and eating the flesh and viscera". One of these is alleged to have occurred at the Special Naval Base, in company with Admiral Mori and Major Matoba, and the other at the 308th Battalion. And what is the proof offered of these alleged crimes? There is no proof. The only item of evidence offered by the prosecution was the interrogation of Isogai by a Board of Investigation which was admitted into

evidence over the objections of the accused. The tactics of the Board become even more evident in this document. The document offered in evidence plainly states on its face that "The witness verified his testimony" - and yet, there is ample proof the witness was not allowed to correct his answers, that the questions and answers were not read back to him for verification, and that his attempt to change his answers or submit a statement were not heeded by the Board. If this were not so, then rebuttal testimony to this effect should have been offered by the prosecution; the interpreter who served the board was also present as an interpreter for this court. For this reason alone, the commission should disregard the evidence introduced against the defendant Isogai.

In addition, may we again point out to the commission the fundamental rule that an accused cannot be convicted on his extra-judicial confession alone. We moved that the commission bring in a directed verdict of "Not guilty", which was also overruled. In this instance however, the accused Isogai later took the stand as a witness in his own behalf.

The offenses set forth in these two specifications are but thinly veiled charges of cannibalism, under the guise of "preventing honorable burial". But what is the evidence that Isogai in any way prevented the burial of any person - there is not one iota. There is no evidence that Isogai removed or caused to be removed any part of the body of any person, either by himself or jointly with Matoba. There is no evidence that Isogai even saw a dead body, and certainly none that he ordered any such acts to be performed - or stood by when he might have prevented it. Those elements of the specification have not been proved against Isogai, and therefore the commission can properly bring in a finding of "not proved" as to this accused. The only remaining element is the eating of the flesh and viscera - or to put it in the less elaborate term used throughout this trial, the liver.

Cannibalism of course has no legal background. It is our contention however, that the element of intent must be a necessary part of the act. Section 151, Naval Courts and Boards has this to say about intent:

"In respect to the element of intent, crimes are distinguished as follows: Those in which a distinct and specific intent, independent of the mere act, is essential to constitute the offense, as murder, larceny, burglary, desertion, and mutiny, etc.; and those in which the act is the principal feature, the existence of the wrongful intent being simply inferable therefrom, as rape, sleeping on watch, drunkenness, neglect of duty, etc. In cases of the former class, the characteristic intent must be established affirmatively as a separate fact; in the latter class of cases it is only necessary to prove the unlawful act."

The mere eating of flesh - any kind of flesh - is not wrongful in itself. Eating of human flesh is considered contrary to all right thinking - providing it is done knowingly and intentionally. We hold no brief for the man who eats human flesh deliberately - but when such flesh is eaten without the knowledge that the meat came from the human body - then it becomes obvious that there is no guilt or criminality. The act is not done wilfully nor designedly. The knowledge that the flesh is human flesh must be had before the consumption of that flesh. What's more, it must be actual knowledge. There can be no implied knowledge that the flesh about to be consumed is human flesh - such an occurrence is so rare that there would be complete justification in disbelieving anyone who told that the meat served was

human. And as stated, it is not unlawful under the present codes and laws to eat human flesh. It revolts every sense of decency - but it has not been legislated against.

How are these facts applicable to the accused Isogai? Isogai has admitted on the stand that at one time he may have eaten human flesh. This was on the occasion set forth in specification 6 of Charge II. At the meal that day, he was served something which he could not recognize. Actually that was not too unusual in those days. Various items were being tried as food - turtles, rats, dogs, mice, lizards, etc. When Isogai jokingly got around to suggesting that it was human flesh, he was told that "he might be right". It wasn't until much later - not that day but days and weeks later, that he was finally made to realize that the food that day might actually have been flesh from the body of a human being. As a consequence, at the time the food was consumed, Isogai was a completely innocent partaker. His act was not intentional - it was not wilful - it was not done designedly. Accordingly, he cannot be held responsible for that act nor is he guilty of the specification and charge.

The other alleged incident is said to have occurred at the Navy Base headquarters. We have shown by several witnesses that Isogai was not even present at that meal. This is the more remarkable in corroboration since none of the witnesses were friends or even acquaintances of Isogai. Some of them had seen him only once - one of them had seen him two times. They were Navy people - he was an army man. They would have no reason in the world to alibi Isogai - and yet without exception they swore that Isogai was not present on the occasion when it was said that human flesh was served at the Special Naval Base. Surely no war criminal could have a better defense than to be absent from the scene where the alleged acts with which he is charged occurred. The room was small and well lighted; to have eaten the human flesh at that time, he would have had to be in the room - and yet not one of them saw him there, Isogai is not guilty of the specification and charge.

In Charge I, specification 5, we find the accused Suyeyoshi is charged with the murder of an American flyer, it being alleged that Suyeyoshi acted jointly with Major Matoba. Later, in specifications 23 and 24 of Charge III, Suyeyoshi is accused of "neglect of duty" for the same event, for "Failing to control and restrain members of his command" from killing a prisoner of war and "failure to protect the prisoners of war under his protection".

Let us set forth the facts as we believe that they have been proven. In mid-February, Suyeyoshi was required by his duties to call on Major Matoba at the Battalion Headquarters. Suyeyoshi was the officer in charge of the 8th Anti-aircraft Battery, a Naval installation - but located in the Northern Defense sector which was under the supervision of Matoba. As a consequence, the defense installations, etc., were subject to Matoba's approval and direction, and occasional consultation with him was required. At the time of this visit, there were two prisoners of war held captive at the Battalion, soon to be transferred to the Brigade Headquarters. Since Suyeyoshi was head of the Anti-aircraft Battery, he was particularly interested in those whom his battery had brought down, and knew that his men would also be interested in seeing a flyer. As a consequence, he requested that when the men were transferred to the Brigade Headquarters, they stop at his unit, which was nearby, for a few minutes. This was Lieutenant Suyeyoshi's request for prisoners to Major Matoba - and his only request.

That this request was fulfilled has been shown and corroborated and at that time, Lieutenant Suyeyoshi made a short speech, variously quoted by different witnesses. That there should be variations is not surprising - after all, this occurred over 18 months ago, at a critical period. The prisoners then proceeded safely on their way.

As Lieutenant Suyeyoshi was about to leave Major Matoba, he was told that a prisoner would be turned over to his unit for "disposal". Since he was aware that the Navy did not handle prisoners of war, he was of the opinion that the Major was joking - or at least so he hoped. He did report this statement to his new executive officer, Lieutenant Morishita. And then went about his very arduous and strenuous duties as head of the Anti-aircraft group.

We have here another strange inconsistency. The accused Suyeyoshi is accused in one specification with having committed a murder - a positive act - and then in two other specifications charged with neglect of duty for the same act - a negative act. Naval courts and boards has this to say of the charge "neglect of duty". A person may neglect his duty by never entering upon it, in whole or in part, it is an omission, rather than an act. So we have Suyeyoshi in one breath committing a murder, according to the charges, and in the next breath, omitting preventing a murder. Does this mean that he should have prevented himself from committing a murder? When the defense is confronted with such inconsistencies, it is indeed difficult to know just wherein the offense lies and causes untold confusion. It apparently resolves itself into the state that the accused is charged with a positively negative deed or a negatively positive act. There is this result, however - it is difficult to see how the commission could find him guilty of all charges. The next two or three weeks were extremely taut and tense ones. At some time during that period, apparently about 3 or 4 days after the day when they stopped on their way to the Brigade Headquarters, one of the prisoners was returned to the Suyeyoshi unit and allegedly killed by Lieutenant Morishita. It is for this that Suyeyoshi is now charged with neglect of duty.

Let us look at the war situation at Chichi Jima at this time. We have had numerous witnesses tell the commission about the continuous air raids by the American planes - raids that occurred day and night, raids by bombers, raids by strafing planes. And if there is any activity that is busy during air raids, it is an anti-aircraft battery. When all other personnel can flee to the air raid shelters, the Anti-aircraft battery must stand at its posts and protect the island. Where the other defenses were set up to repel an invasion or perhaps fleet attacks by using motor torpedo boats and such, they need only wait and perfect their positions and continue their training. The anti-aircraft unit is continually on the alert, with lookouts, radar and recognition crews. It was under such circumstances that the event alleged here took place. Members of the Commission, just where would you consider that your duty lay under similar circumstances? Suyeyoshi spent all of his time at his command post atop a high point in the northern sector. He ate there, he slept there. His only contact with the other people was by telephone line, or an occasional officer or messenger reporting to his command post. Is it any wonder that things could take place at the main area of which he knew nothing? We have learned that it was impossible to see the execution site from the command post because of the trees and the hills.

So now the question comes up; was Suyeyoshi's greatest duty to his position as defender of the northern sector against planes - or was it immediate and intimate control of his personnel from violating the laws and customs of war. We contend that his primary duties as officer in charge of the anti-aircraft battery quite properly occupied his full time. If he failed in this, it could quite easily mean the death and destruction of thousands of soldiers on Chichi Jima - one bombing plane that dropped it's full load without warning might well wipe out large detachments of men.

But this man is now accused of neglect of duty for failing to control something of which he knew nothing and for permitting his men so to act as to violate the laws and customs of war. In this regard, I should like to quote from the opinion of Justice Murphy of the Supreme Court in the Yamashita case, concurred in by Justice Rutledge, and before I am accused of misquoting law, let me assure the Commission that this is a dissenting opinion, and as such has no legal standing. Nevertheless, the opinion of an eminent jurist, even when at variance with the decision of the majority of the court, should have some persuasive value - and certainly, it's logic gives one food for thought. Justice Murphy says, with regard to the charges that Yamashita was guilty of neglect of duty in the Philippines:

"The petitioner was accused of having 'unlawfully disregarded and failed to discharge his duty as commander in control of the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes.' The bills of particulars further alleged that specific acts of atrocity were committed by 'members of the armed forces of Japan under the command of the accused.' Nowhere was it alleged that the petitioner personally committed any of the atrocities or that he ordered their commission or that he had any knowledge of the commission thereof by members of his command."

"In other words, read against the background of military events in the Philippines subsequent to October 8, 1944, these charges amount to this: 'we, the victorious American forces, have done everything possible to destroy and disorganize your lines of communication, your effective control of your personnel, your ability to wage war. In those respects we have succeeded. We have defeated and crushed your forces. And now we charge and condemn you for having been inefficient in maintaining control of your troops during the period when we were so effectively besieging and eliminating your forces and blocking your ability to maintain effective control. Many terrible atrocities were committed by your disorganized troops. Because these atrocities were so widespread, we will not bother to charge or prove that you committed, condoned or ordered any of these. We will assume that they must have resulted from your inefficiency and negligence as a commander. In short, we charge you with the crime of inefficiency in controlling your troops. We will judge the discharge of your duties by the disorganization which we ourselves created in a large part. Our standards of judgement are whatever we wish to make them.'"

"Nothing in all history or in international law, at least as far as I am aware, justifies such a charge against the fallen commander of a defeated force. To use the very inefficiency and disorganization created by the victorious forces as the primary basis for condemning officers of the defeated armies bears no resemblance to justice or military reality."

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victor's judgement is an unfortunate but unescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits, indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct."

How applicable this logic of Justice Murphy's is to the present situation. The enemy planes require 24 hour per day duty on the part of the accused. Without his knowledge, without his consent, without his direction, an execution takes place at a point where he cannot see or hear it. No report is made to him of it - he does hear rumors, but under the stress of the day by day and hour by hour bombing, he has no time to investigate - and without investigation he cannot report the affair to his commanding officer. Such an event had not happened before, nor did it happen again at his unit; this was a single isolated instance which occurred in the midst of the most strenuous war conditions which beset Chichi Jima. After the fall of Iwo and the decision to base the next attack on Okinawa, the attacks on the island died down - but during this period of February, war was at its height for the anti-aircraft battery.

The prosecution has failed to prove that Suyeyoshi had any part in the execution of the prisoner, as charged in specification 5 of the first charge - the statement of Matoba offered in evidence clearly shows that he was the order - not a request by Suyeyoshi for a prisoner for execution purposes. The prosecution has shown too that Lieutenant Morishita when told of this order by Suyeyoshi - volunteered to perform the deed "if it is an order" - meaning if Matoba was not joking, as Suyeyoshi hoped, but had actually intended an official order by his remarks, he, Morishita, would act. There is no indication anywhere that Morishita received an order from Suyeyoshi to carry out this execution - all that was said was Suyeyoshi's report to Morishita of Matoba's earlier statement - and Morishita's statement that he would carry out the job if it should happen that Matoba meant what he said.

We also contend that Suyeyoshi's actions during this period were such that he should not be found guilty of neglect of duty - since he was so engaged by the enemy at this time that any failure to control his personnel must be laid directly at the door of the attacking American forces. And as for failing to provide proper protection for a prisoner of war - since he had no information that the prisoner had arrived at his unit, and since he was under the impression that no prisoner would or should be sent, he was under no duty, real or implied, to make provisions for his safe-keeping and protection.

The charges against the accused Matsushita and against the accused Sasaki are substantially the same, differing only in the allegations of time and place. The question arises - are you going to judge these men only on the elements of the specification, or will you be influenced by the testimony introduced at length as ultimate effects of the alleged mutilation. Obviously, your decision should be based only on the immediate specification, and not on any further information acquired during the course of this trial. If this trial were not in joinder, such questions would not arise.

Let us review the evidence as it surrounds these specifications. We find two young doctors, fresh out of medical school, taken up and thrust into the Navy, given a brief intensive course in Naval medical school - and shipped overseas to an advance base. They are both unfortunate enough to eventually be assigned to duty with a "regular navy" commanding officer who has little or no patience with the reserves, and in order to make them conform as quickly as possible with the usual Japanese naval ideas of obedience and subservience to the superior in command, imposes rigid discipline upon them. I think probably Doctor Sasaki was the luckier of the two - he served for quite a period with the kindly, decent Doctor Sakai at the Special Naval Base - but on the other hand, when he was suddenly assigned to the Yoake Wireless Station sickbay, with no senior medical officer to take the brunt of the Commanding Officer's ideas on discipline, the contrast was the more impressive - and the more frightening. We do not know too much about Lieutenant Kurisaki, to whom Doctor Matsushita was assigned for duty - but we have learned from numerous witnesses that he also resented the reserve officers and tended to make them toe the mark strictly - particularly so since his rank was not too high, and his age not great, and therefore he felt it even more necessary to impress on them his superiority and the fact that they were subordinate to him.

At any rate, each of these doctors was ordered summarily to remove the liver from the body of an executed prisoner of war. Each of them inquired to the extent of wanting to know "why" a non-medical man should want the liver of a deceased person, and were advised in each case to the general effect that it was none of their business, and that the commanding officer would take the responsibility for deciding what and what not should be done. Since they had been newly impressed with the necessity of obedience to orders, and since the autopsy or post-mortem examination of bodies was not new to them - they obeyed the orders.

We again return to the question, "What is an honorable burial?" There is no medical officer in our armed forces who has not seen an autopsy performed, in which parts of the body were removed, never to be replaced. The present miracles in eye surgery require that parts of the eye be removed from the body of the dead, for later transplanting to the eye of a living person.

Bouvier's Law Dictionary, at page 772 has this to say:

"The leaving unburied the corpse of a person for whom the defendant is bound to provide Christian burial, as a wife or child, is an indictable misdemeanor if he is shown to have been of the ability to provide such burial; 2 Den, C,C,325; or preventing a dead body from being buried; 2 Term 734; 4 East 460; 1 Russ Cr. 415 n. or interring one found in a river without first sending for a coroner; 1 Ld Ken. 250; or to cast into a river; Kanavan's Case, 1 Greel. (Me)226. And every householder in whose house a dead body lies

is bound by the common law, if he has the means to do so, to inter the body decently; and this principle applies where a person dies in the house of a parish or a union; 12 A&E 773. The expense for such burial may be paid out of the effects of deceased; 3 Camp. 298."

"It is the duty of the coroner after death by violence to cause an autopsy to be made; the surgeon who makes it can recover from the county for his labor; Allegheny County v. Shaw, 34 Pa.301; Board of Com'rs of Bartholomew County v. Jameson, 86 Ind. 154. If the work be done with ordinary care, he is not liable to the family for mutilation of the body, even tho acting without their consent. Young v. College of Physicians and Surgeons, 81 Md. 358, 32 Atl. 177, 31 L.R.A. 540; and though he removes and keeps in possession by direction of the coroner, portions of the body; Palemr v. Broder, 78 Wis. 483, 47 N.W. 744. Where the rule of a board of health requires a certificate as to the cause of death before issuing a burial permit, an attending physician is not liable for performing an autopsy without the family's consent; Meyers v. Clarke, 122 Ky. 866, 90 S.W. 1094, 93 S.W. 43, 5 L.R.A. (N.S.) 727; so where a mere incision was made to ascertain the cause of death, as authorized by the board of health and city ordinance; Rushing v. Medical College, Ga. App. 823, 62 S.E. 563."

Clark and Marshall on crimes, Sect. 475, also states:

"Offenses with Respect to Dead Bodies. --It is a misdemeanor at common law so to treat or deal with a dead body as to shock the public sense of decency."

"Thus, it has been held a misdemeanor indecently to throw the dead body of a child into a river, instead of burying it, or causing it to be buried; inexcusably to leave a dead body exposed, instead of causing it to be buried; unlawfully to disinter a dead body for the purpose of dissection, or for any other unlawful purpose; to sell it, without lawful authority, for the purpose of dissection, or to take it with intent to sell it. It is not a misdemeanor to cremate a body instead of burying it, unless it is done for an unlawful purpose, or in such a way to amount to a public nuisance. To burn or otherwise dispose of a dead body to prevent the holding of a coroner's inquest thereon is a misdemeanor. This subject is now very generally regulated by statute."

Let us see how this summary of the law applies in this case. In the first place, you will note that the gravest offenses are no more than misdemeanors-not felonies. Moreover, it states that there is no liability to the family for mutilation of a body, even if acting without their consent, if the work is done with ordinary care; and this is true if he removes and keeps in possession, by direction of the coroner, portions of the body. There can be no doubt here that the work was done with ordinary care; the testimony of the witnesses in each case confirms that; furthermore, the doctor sewed up the corpse and prepared it properly for burial. There is of course, no coroner in this case; but surely the orders of a commanding officer in time of war at a place where invasion appears imminent and continual air attack is present would have the same force and effect on a subordinate as the directions of a coroner to a physician, so far as responsibility and liability for the act is concerned. For certainly, being of the military yourselves, you know better than I that the force and absoluteness of orders rises materially in effect during actual combat conditions, as compared with peaceful, remote military installations. Since the courts of our own country have held so universally that the doctor is not guilty of mutilation of a dead body under the conditions described, would it not be ironical to hold an enemy surgeon guilty for the same thing?

Since it is not considered in the United States that the acts of which the doctors are accused constitute prevention of honorable burial or mutilation of the body of the dead, under the general conditions described, then it follows logically that they are not offenses under the laws of war. It might be otherwise if the accused had known the purpose for which the portions removed from the body were intended to be used - but they were not told by their commanding officer nor did they have any reason to suspect. Not one iota of evidence has been given to even imply that they should have had knowledge of this nature. Sasaki had been at his new station only a few days - Matsushita was attached to a Motor Torpedo Boat Squadron isolated on the banks of the ocean. There had been no previous executions at either place. Accordingly, there was no background for them to understand why such an order was given to them by their respective commanding officers. And even if you should decide that they are guilty, then they are guilty of nothing more than a misdemeanor, according to the point of view of our own courts.

As a technical matter, we wish to point out that there has been no proof offered that any flesh was removed from the body of either prisoner of war. The specification states that they removed "flesh and viscera"; that part of the specification which alleges "flesh" has definitely not been shown to have occurred, and therefore is not proved.

We submit to the commission that neither of these accused are guilty of a violation of the laws and customs of war under the chain of events shown before this court.

The prosecution has indulged in its prerogative of name-calling, branding the defendants variously as liars, murderers (using a great many adjectives), cannibals, etc. They have also seen fit to remark frequently about the "self-serving" statements of the defendants, seeming to imply that any statement which the accused makes after he has voluntarily taken the stand in his own defense which does not agree with or bolster the prosecution's case, and which seeks to deny or explain the acts alleged to have been committed, is completely improper. The prosecution has even gone so far as to attempt to impeach some of the defendants by showing that they previously denied the acts which they now admit in open court. It is the first time I have ever happened to encounter an impeachment which tended to throw doubt on the admissions against interest - but if the commission will believe their previous denials, the accused have no objections. Broadly speaking, however, we expect that the Commission is capable of judging the facts as proved and the defense as offered without being too greatly influenced by the judge advocates freely offered judgment of their character and veracity, and what appears to be an attempt to cover up a paucity of evidence in various instances by name-calling. Many of the items cited by the judge advocate as testimony need reference to and confirmation by the record itself. May we recommend that his assertions of "proof" be carefully considered in the light of the reported proceedings.

In conclusion, we wish to beg this commission to review the evidence in a most judicious as well as judicial manner. Over the objections of the accused, we have heard the admission of hearsay evidence almost as frequently as direct evidence. The record is replete with opinions voiced by the witnesses without proper qualifying background; documents and interrogatories obtained by one of the most remarkable Boards of Investigation it has ever been my lot to see; leading questions were permitted time and again in direct examination. By every standard of military court procedure and civilian court procedure, the rights of the accused have been

so prejudiced by the admission of evidence of this type that under any other conditions this would be declared a mistrial.

This trial also differs in another fundamental respect from every previous military or civilian situation of a comparable nature, and this difference lies in the fact that at least five members of the commission - sufficient number to impose the death sentence on any defendant - have previously sat as members of a commission which tried and found guilty other members of the Japanese forces on Chichi Jima on charges growing out of identical incidents on which charges and specifications in this case are based, and for which several of the accused could properly be tried in joinder. There are numerous Court Martial orders supporting the positive rule in section 390, Naval Courts and Boards, that a challenge on this ground, if properly supported by the facts shall be sustained. This is also true in civilian courts. No jurymen is allowed to sit on a case under similar circumstances - and a change of venue must be granted by any judge in any court of the United States on the same grounds. Therefore, we have the unique situation here of finding a positive deviation from all the previous practices and rules which have been established for protection of the rights of the accused. That the Office of the Judge Advocate General of the Navy seems to have approved this deviation is indicated in the dispatches offered by the judge advocate. Nevertheless, we contend that the rights of the accused must necessarily suffer under the circumstances, if for no other reason than that the board might feel itself constrained to be consistent in its findings and sentences with previous decisions. Such feelings might redound to the benefit of the accused, it is true, but there will always be the underlying idea that if this commission had not acted previously, the decision might be "not guilty", or the sentence much lighter.

For decades the courts of our own countries and those whose judicial procedure is similar to ours have adhered most strongly to the rules of evidence which it appeared would most truly give the actual picture in each case, and by long years of experience have determined that certain types of testimony could have so little or improbably probative value that it was better to forbid it than to permit the judge and jury to be swayed by such evidence. Then suddenly in a system of trials which is making history and precedence for the future, all of these safeguards and checks and balances are thrown overboard. This commission has operated under the terms of the precept. May I again emphasize that the precept was merely permissive. There was no direction therein that these trials must be conducted under the SCAP rules. The precept says:

"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 of naval courts to meet the necessities of any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander of the Allied Powers."

Furthermore, the rules and regulations commonly known as the SCAP rules have not been approved by the Supreme Court of the United States, as the prosecution would have you believe. May we quote again from the Yamashita decision which refers to these rules:

"We cannot say that the commission in admitting evidence to which objection is now made, violated any act of congress, treaty or military command now

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defining the commission's authority. For the reasons already stated we hold that the commission rulings on evidence and on the mode of conducting these proceedings against the petitioner are not reviewable by the courts, but only by the reviewing military authorities. From this viewpoint it is unnecessary to consider what, in other situations, the Fifth Amendment might require, and as to that no intimation one way or the other is to be implied. Nothing we have said is to be taken as indicating any opinion on the question of the wisdom of considering such evidence, or whether the action of a military tribunal in admitting evidence, which Congress or controlling military command has directed to be excluded, may be drawn in question by petition for habeas corpus or prohibition."

In the *Homma* case, the Supreme Court did not mention the question of the SCAP rules again - it merely reaffirmed its previous decision in the *Yamashita* case. No new law was added, nor was anything said with reference to the SCAP rules - although the court has been advised to the contrary by the judge advocate.

I should like the commissions indulgence in reading a portion of the dissenting opinion of Justice Rutledge in the *Yamashita* case as it pertains to the SCAP rules; I should like it made clear that no dissenting opinion is law or can be considered as such. Nevertheless, I think his remarks so pertinent to the whole question of procedure and the objections of the accused that they should be heard.

Justice Rutledge, whose opinion is concurred in by Justice Murphy, says this:

"Wholly apart from the violation of the Articles of War and of the Geneva Convention, I am completely unable to accept or to understand the Court's ruling concerning the applicability of the due process clause of the Fifth Amendment to this case. Not heretofore has it been held that any human being is beyond its universally protecting spread in the guaranty of a fair trial in the most fundamental sense. That door is dangerous to open. I will have no part in opening it. For once it is ajar, even for enemy belligerents, it can be pushed back wider for others, perhaps ultimately for all."

"The Court does not declare expressly that petitioner as an enemy belligerent has no constitutional rights, a ruling I could understand but not accept. Neither does it affirm that he has some, if but little, constitutional protection. Nor does the Court defend what was done. I think the effect of what it does is in substance to deny him all such safeguards. And this is the great issue in the cause."

"For it is exactly here we enter wholly untrodden ground. The safe signposts to the rear are not in the sum of protections surrounding jury trials or any other proceeding known to our law. Nor is the essence of the Fifth Amendment's elementary protection comprehended in any single one of our time-honored specific constitutional safeguards in trial, though there are some without which the words "fair trial" and all they connote become a mockery."

"Apart from a tribunal concerned that the law as applied shall be an instrument of justice, albeit stern in measure to the guilty established, the heart of the security lies in two things. One is that conviction shall not rest in any essential part upon unchecked rumor, report, or the results of the prosecutions ex parte investigations, but shall stand on proven fact; the other,

correlative, lies in a fair chance to defend. This embraces at the least the rights to know with reasonable clarity in advance of the trial the exact nature of the offense with which one is to be charged; to have reasonable time for preparing to meet the charge and to have the aid of counsel in doing so, as also in the trial itself; and if, during its course, one is taken by surprise, through the injection of new charges or reversal of rulings which brings forth new masses of evidence, then to have further reasonable time for meeting the unexpected shift."

"So far as I know, it has not yet been held that any tribunal in our system, of whatever character, is free to receive "such evidence as in its opinion" would be "of assistance in proving or disproving the charge" or, again as in its opinion, "would have probative value in the mind of a reasonable man"; and, having received what in its unlimited discretion it regards as sufficient, is also free to determine what weight may be given to the evidence received without restraint."

"When to this fatal defect in the directive, however innocently made, are added the broad departures from the fundamentals of fair play in the proof and in the right to defend which occurred throughout the proceeding, there can be no accommodation with the due process of law which the Fifth Amendment demands."

"All this the Court puts to one side with the short assertion that no question of due process under the Fifth Amendment or jurisdiction reviewable here is presented. I do not think this meets the issue, standing alone or in conjunction with the suggestion which follows that the Court gives no intimation one way or the other concerning what Fifth Amendment due process might require in other situations."

"It may be appropriate to add here that, although without doubt the directive was drawn in good faith in the belief that it would expedite the trial and that enemy belligerents in petitioner's position were not entitled to more, that state of mind and purpose cannot cure the nullification of basic constitutional standards which has taken place."

"It is not necessary to recapitulate. The difference between the Court's view of this proceeding and my own comes down in the end to the view, on the one hand, that there is no law restrictive upon those proceedings other than whatever rules and regulations may be prescribed for their government by the executive authority or the military and, on the other hand, that the provisions of the Articles of War, of the Geneva Convention and the Fifth Amendment apply."

"I cannot accept the view that anywhere in our system resides or lurks a power so unrestrained to deal with any human being through any process of trial. What military agencies or authorities may do with our enemies in battle or invasion, apart from proceedings in the nature of trial and some semblance of judicial action, is beside the point. Nor has any human being heretofore been held to be wholly beyond elementary procedural protection by the Fifth Amendment. I cannot consent to even implied departure from that great absolute.

It was a great patriot who said:

"He that would make his own liberty secure must guard even his enemy from

oppression; for if he violates this duty he establishes a precedent that will reach himself."

Donald H. Dickey
Donald H. Dickey
DONALD H. DICKEY,
LIEUTENANT COMMANDER, USNR

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辯論

辯護人

伊藤憲郎

1. 本辯護人は未だ學生の上級セクスピアの作品、「ベニスの商人」の中に書かれてある「人肉裁判」の一節を読み法律の適用に關し深く教へらるゝと共に、其の輕きユーモアに文學的の喜びを覺えたことがあります。

今回關らずともこのカーニバリズムに關する事件に、辯護人として立ち件の「人肉裁判」とは大いに趣を異にし法律學的には勿論社會學又は心理學上色々困難な現實の問題があること、而も之等を解決するには大いなる努力を要するものと考へ今さらに辯護の責任の重さを痛感する、幸ひ優れた人を相辯護人として持つてゐるのでその人から學術的主張があると思ひます。いや既に本法庭に於ては、戰爭犯罪に關する裁判があり相當の議論が行はれたのであります。

私としては被告磯貝被告佐藤被告末吉の三人に付て辯護をします。

戰爭犯罪及戰爭裁判に關する根本理論例へば、國際法上に於ける個人的責任又は事後法 *ex post facto*、禁止に關する原則が現在も東京極東國際軍事裁判所に於て最も劇しく論ぜらるゝところであります。

私としては被告らが名もなきしがなき軍人であり又父島駐屯中は、勿論、未だ *Scap rule* はあつたことを主張しない。唯、

犯罪の成立に關する立法論はこれを勘案し、只答刑を輕くする見地に於て力説する。

新しき世界、新しき文明は新しき犯罪理論を要求します。固より被告らは新しき時代に處して之れに従ふべきでありますが、何卒裁判所は従来の「戦争は國と國との争にして、個人は責任を負はず」、「刑法の効力は既往に遡らず」との原則を參照し寛大なる處置あらんことを望みます。

又 本件起訴狀の示すところによれば、被告等は日本軍人として或は陸軍に属し或は海軍に属し小笠原列島父島に於て勤務中日本が戦争状態にありたる昭和十九年八月より昭和二十年三月迄の間に於て同島に降下したる米軍俘虜を殺害し或る者はその身体の一部乃至肝臓を食料として埋葬をなす等戦争法規及文明社会の道義に違反し或る者は上官としての職務の怠慢とあるといふのであります。

この基本的事實に付隨して觀察が下されるわけではあります、私は次の事實の觀察に従ひ辯論を進めたいと思ひます。

第一、人を考へます。本件の被告は何れも軍人であり、命令至上主義に生きるものであります。大君の辺にこそ死なぬ返り見はせじ命令とあらば火にも水にも赴く習慣を持つて居ました。

第二、時を考へます。犯行ありたりとすれ、當時の國運を迫るこの有様であります。

第三、父島の状況であります。

第四、行為の内容であります。

即ち被告等は如何なる人で如何なる時に如何なるところに於て如何なる事をなしたか——斯く見ることが刑事政策乃至犯罪學の要求するところであり、人、時、場所、行為——被告隊員被告俘虜被告米軍がこの各要素に照らし觀察されるべきであるが、而も本件の他の被告にも同様の事がいひ得るのであります。

3 (1) 被告は何人であるか、如何なる地位にあらたか、如何なる性格を帯びたか — 被告磯貝軍二は當時陸軍少尉、第一混成旅團第一〇八独立歩兵大隊付、國學院大學出身の學徒兵であります。長年月の青年であります。被告佐藤今朝吉は當時陸軍中尉、これ又第一混成旅團第一〇八独立歩兵大隊付、特任の將校、東北地方の農家出身の士族出身の性格の人であります。被告末吉は當時海軍中尉、父島特別根據地隊第九分隊長兼第一防空砲台長、特任の將校、これ又九州左の農家出身勤勞努力の人であります。…… 何れも軍人の階級としてその地位低く、優越をその地位に於て独断に処刑又は処令するの權限を有しつたのであります。被告末吉は砲台長とあり、分隊長として「特根」に属してゐるが、そんな地位は高くない。被告磯貝、被告佐藤に於ては更に低い。父島には當時一萬五千の予備兵あり、被告らは戦場の心理として、決してインテリゲンツを握るものでない。戦場には隊長心理、部下心理、戦友愛あり、こゝに特有なる命令を作る隊長の命令、方針が強く被告らに働き且、動くのであります。

(2) 本件起訴狀の記載によれば、被告磯貝の犯行ありといはれるのは、20年3月25日又は同月28日とされ、又被告佐藤の犯行ありといはれるのは、20年2月26日とされ、又被告末吉の犯行ありといはれるのは、2月23日とされてゐます。この當時は米海軍の本土空襲劇烈、硫黄島陥落後は父島にも米軍近しとの緊急せる事態であつたのであります。これはこの法廷に於ても各證人により詳細に證されたいのであります。混み雜みたる當時の父島の状況を考へることは本件犯罪を認定する上にこれ又必要不可欠であります。

(3) 又本件犯行ありといふ父島の地理的状況如何 — これは小笠原列島中の一、小島にして島は平地にあり、險い、山坂であり、硫黄島陥落後は孤島無援となり、島内の交通上困難となり、食糧事情にも次第に窮乏を加へ不安動搖を増したことは證人の言葉により明かてあります。

(4) 被告等は斯く環境の下に既に長期に亘る戦争に疲勞し、彼らはいよいよ父島駐在一萬五千の將兵は、時に戦意昂揚の必要を感ずる時に、能く望むる事、破局に備へんと思ふのであります。

然るに人間の心理として想像も付かぬ極言すれば「普通の平和」の時の普通の常識を以ては全く理解し難き環境にあったと思ふのであります。

(外) 而して如何なる人は如何なる性格を持つか而して異常なる環境の下に於て明瞭に浮き出されしと思ふ。父島に於ける悪条件こそないに本件事件の発生を見込に至った。それは後ほど相弁護人より詳細に論ぜらるゝでありませう。私はここに一定の環境の影響の下に犯罪を行はせられたものなり環境に支配された方面の犯人をとりあげ、これを弁護するものである。これを役目とするものであります。

進んで各論的に被告磯貝 被告佐藤 被告末吉の環境による行爲を論じて行きたい。

4 被告磯貝は charge II の戦時法規權創設及としてその(三)なる(外)に於て告訴されております。

被告磯貝は調査委員会への自白は虚偽なりと否認にゐる。

— 即ち、(1) charge II の(三)は昭和二十年三月二十八日頃海軍基地に於て米國俘虜の肉及肝臓を食し各等お慰安を防止したといふのであるが 既に 証人 藤田 飯島 宮崎 等の供述によれば「特報」の一室に於て人肉を食した宴會には一回にして而もその宴會には被告磯貝が出席せられたと述べてあります。

(2) charge II の(外)は昭和二十年三月二十六日頃米國俘虜の肉及肝臓を食し各等お慰安を防止したといふのであるが 証人 黒澤の供述によれば 308 部隊に於て食食数回あり。そのうち最も記憶するものは偶に夕方行はれた宴會に一皿の人間の肝が出た。そのとき被告磯貝は出席せられたと明かしてあります。

然るに 被告磯貝は調査委員会に於て自白したとされております。被告磯貝にとり最も不利なる点であります。

この點に關しては據に上の自白の性質を考へてはなりません。抑、自白は常に各等お慰安のものでなく一般原則としては自白のみによつて

本件に於て被差人磯貝が果して差人を自由としたかについては 被差人の物言中にて、精神が乱れ甚し、又その際 充分物言に譯に當つてゐた。前述の如く charge にいふ宴會には磯貝は出席しなかつた——これは二人の述べてゐます。却て宴會に於て被差人の自由を差人と断定するは更に別には人間の肉の出来といふ宴會に出席してゐたといふ二人の出てゐる以上——一應 彼の自由は混亂せる結果ではなかつたが、…… 此を認めざるを得ない。

尚、洞を食ふ食の記録を依れば、オホ向に於て(向)人向の肉を食ふか(答)後の噂を依れば人向の肉を食ふか(いぬ又オ=+三向に於て(向)貴下は人向の肉を食ふか(答)ハイと云てゐる、然し(いぬは見るに依れば人向の肉、肝臓を食ふは食ふ石か何れも後から、あれは人向の肉、肝臓であることを知った、つまり、いぬとしては人向の肉や肝臓を食ふことを希むとして食ふた一かゝる見方から成立すると思ふ。若しこの場合、角白としてオホは貴下は何時何地で如何に何処で誰と食ふかといふ向を生かぬは完全といへぬので、この場合、おつ！といふ答を得て始めて正確に上層位ありといふことにある。

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いふてゐるか。これは九月十四日の島に延に於ける分、飯島、高橋、
篠田等の証言により完全に証明されてゐる。

大佐「特根」に於ける件の人肉を食ふと目せらるゝ室は、小
室に二層の中にある。照明輝くところである。作戦謀議に真
面目な幕僚の八つの眼が正しく物を見たと思ふ。宜しく活眼達
識の御判断あらんことを願ひます。

5. 告訴状のIの(四)に依れば 被告佐藤は被告之花 被告の場
被告中村と共同して昭和二十年三月二十六日頃 米國修務一名を日本刀を
以て殺害し戦争法規並に慣習及文明社会の道義に違反したといふのであ
ります。

この事は被告佐藤の自ら認むところであり 被告中村、被告の場
の事案も佐藤の供述により認めざるを得ない。唯その動機を以て、被
告佐藤は被告の場の部下としてその命令を受け更にこれを被告中村に傳
達しこれを以て殺害せしめたことはこれ又南條佐六の供述により明

かである。即ちその日佐藤は朝早く宿舎を出てカニ中島の陸地機
築の指導に行き午前九時頃至るまで其の結果を報告する。認
めてゐるといふ。部隊長たる被告の場も、佐藤に来て直ぐ来いと云ふ。心
に陣地のことであらうと思ひかき足で行った。佐藤の室に入ると意外にも
米國修務を処刑せよといふのであり、而かも二度述べたといふので、拒む
ことも出来ず処刑の現場に赴き 被告中村に処刑場所を云う命令だ。

被告佐藤は永く陸軍に勤務してゐたからよく上官の命令を承けた
のである。佐藤は部隊長の命令により被告中村に付した。即ち部隊長の
命令を被告中村に傳達したに止るのであります。實際彼には計画
よく開始よく準備よく唯盲目的に部隊長の命令を機械的に実行
したのみであります。彼の経歴、彼の地位からいへばこれを容れざる

告訴状Ⅱの(イ)に依れば、被告林金吾は赤王の親王
が長次郎陸軍軍曹 被告森安正と共同し昭和二十三年三月二十六日に
此項の米軍俘虜を銃剣で突き身体を殺すに依り名譽ある埋
葬を防止し戦争に現役兵要に違反したといふのであります。

調査委員会の被告森軍曹に對する調査記録によれば被告
林は被告森安正の命令に被告森安正は銃剣を以て俘虜の三ヶ人
を二、三回突き刺したと書いてあります。——これは正しく明白でありますか
これを裏書すべきに據るべきであります。いかのみふすふいふに、他
人加田陸軍軍曹の供述によれば、一被告森は三ヶ人より斬られたに銃剣
を挿した。森は本に何ものはぬ、私は森に依り三ヶ人に対して突き刺した。銃で
突いた時に銃が曲がったといふ。森は自分の罪を認めたと思ふ。——といふ。
これは反對に據るべきであります。他に明白と裏書すべきに據るべきであります。
この裏に附しては相井度人より詳細論せしむる筈であります。右森の明白は
信用し難くはたは據不足と思ふのであります。

⑥ 告訴状Ⅱの(ロ)に依れば 被告森吉は被告的場と共同し昭和二十三年
二月二十三日大村集地に於て米國俘虜一名を殺害したといふ。被告森吉は
被告的場の命令を受けたといふ。又森下少尉の命令を受けたといふ
といふのであります。

而して森下少尉が前日の場所の於て右殺害行為をしたことは、証人岩
川吉田、宇崎の供述により明かでありまして是の際 被告森吉はその場合の
命令に依りて行つたといふことが明かであります。

被告的場は調査委員会の調査に依り極めて不利益な供述をしてゐます
がそれによつて被告森吉が処刑され、又森下に処刑せられたといふ明かには申
てありません

被告末吉が果して森下少尉に処刑せしめられたか少しも明かになっていません。確実に被告末吉が何時何処で森下に如何なる命令を受けたかの点に限り犯罪の責任をきくものと考えます。

大体江ノ島崎の供述は當時父島に於ける空襲状況劇しく被告末吉は終始見張所において防空の任務に従事したことは明かになっております。彼は俘虜処刑の如きには殆ど関係する時間はないのであります。此の點は被告末吉も自ら本誌誌面に於て之を認むるところであります。

何れ被告末吉は最も関係深い森下少尉の俘虜殺害に関係せしめられ、
-----この抗弁は一見尤もな事と思はれる。然しこれは認められまい。

當時俘虜の取扱は専ら陸軍に於て負担し海軍の用するところにあらず。一陸海軍の現地協定によりての徹底徹底普及せしめてあることは、既に江ノ島の供述により明かとなつてゐる。海軍に属する被告末吉が終始俘虜処刑に関し消極的態度を執つて居たことが肯定出来ると思ひます。

又支那の聖人の言葉として、危きに近寄らずといふ言葉があります。彼は指揮所に居り本隊及大尉墓地に行はれたことを嘆として聞き流し極力傍觀的態度をとつたのであつた。これは人間の心理として肯定出来ると思ひます。

江ノ島川は末吉大尉は將校と仲良く下士官をかばふ気持がなかつたといつてゐます。処刑後森下少尉と話しはかつたのも肯定出来ず。其の後、間もなく他に転勤してゐるのであり若し被告末吉が更に俘虜をみし処刑する意思があつたらう二月十九日二名の俘虜と逢つたときこの意思があらはれたと思ふ江ノ島の言葉によれば彼はむしろ俘虜を優遇してゐるのであります。劇しい空襲の戦場に死を覚悟してゐたにも関わらず戦ひ抜いてゐたのであります。勿論彼はカーニバリスムを欲せず。俘虜の肉を食する関係にあつたとは思ひ難いのであります。

Charge Ⅲ (十三) 及 (十四) に依れば 被害者末吉実郎はカハ對空砲台長として海軍少佐の森下廣信の俘虜殺害の行為にみだり職務怠慢の責任あり戦争法規に違反したといふのであります。

証人 吉田 岩川 宇崎の供述によれば、右森下の行為は明瞭ありといはれざるを得ない。而して右森下が被害者末吉の指揮する前にカハ對空砲台に属する先任分隊長としてその部長たることは被害者末吉自身の認むるところであります。外に既に前段に述べた如く右森下がカハ對空砲台に在りて昭和二十年二月十三日正午俘虜を殺害したる時は父島に在りて米軍空襲の最も盛りに在りてあります。

証人 宇崎の供述によれば硫黄島の作戦がはじまり米國機動部隊は東京よりの歸途父島にも来襲し彈幕は空を蔽ひ飛行機の数が判らぬ程度であつた、而もそれが日に四、五回に及ぶといふのであつた。被害者末吉のカハ對空砲台長としての役目が如何に多種多量に如何に多忙を極めたかは既に述べた通りによりまことに明瞭であります。即ち彼は常に見張所兼指揮所にあり、色えず担任見張の對空見張を爲し区域及び状況を司令部に報告し、若し米機出現したときは自己の見張りに於て適宜の處置を講じ或は高射砲或は高射砲或は機銃或は夫々の兵器を使用し大型機、小型機に對する射撃を命じ晝間は勿論夜間には更に探照燈を使用する等随分多忙であつたのであります。

二月十五日米軍硫黄島に砲撃を開始し十八日上陸に成功した後は父島にも大部隊が上陸するの形勢となり彼の防室に在る軍務は寸時も油断を許さず非常なものであります。米機の来襲は頻りに十一日から二十五日の間は本隊へ行つのは用便位であつた。彼は始終見張所兼指揮所において本来の仕事

に従ひ他を顧みず眠るはふかつたのであります。それに空腹のため疲労に著し眠るでもあれば睡眠をとるといふ始末で、全く森下少尉の行為に對し之を防止するといふ余裕はふかつたのであります。斯うした場合被害者に聴取を侵す責任を向ふのは不可能を強ゆるものである。

刑法理論として「合理的な普通人を標準として考へ、かやうな場合にはかかる行為に出でふことが期待されふことは、その行為は犯罪を構成するものでない、——この教科書は教へてゐる。被害者に對し charge III の (23) (24) の責任を向ふのは真に酷ふりと確信するものであります。

7. 以上被害者磯貝 被告佐藤 被害末吉の地位人格常時の環境を考へ寛大なる処分あらんことを望みます。

この本弁護人の拙い且、旅中支那に恵まれる貧窮なる弁論を終はるに當り甚だ厚顔の至りではありますが、一つの物語を話したい。それは曾て北京に於て聞いたのです。或るアメリカ宣教師の話であります。

彼は支那の奥地深く傳道に参りました。そこは人喰ひ人種の部落でありました。彼の熱心は次第に神の愛を彼らの心の中に植へかけたのであります。不圖のこと彼等は原始本能に服しその宣教師を殺してしまふ。如何に悔むべき行為であります。恰もその頃彼の愛妻は用件があり北京の方へ来ておまは。彼女は身の振り方に困つたのであります。アメリカに飯を食べか、此れぞ、彼女は焚火の中に乱舞する人喰ひ人種の饗宴を頭の中に描きつゝ、夫の跡を慕ひて再び愛地へ神の愛を説くべく飯つて行つたといふのであります。彼女の神を愛し夫を思ふの精神は只驚嘆するばかりであります。

如何に敗戦の痛苦とはいひたゞ祖國を遠く離れこゝに裁判を、被害者の身上を思ひ又復讐の一日も早かれと願ふ被害者の家族に代り重ねて寛大なる処分を與へらるゝことを希望します。

以上
辯護人

伊藤 案 郎

ARGUMENT FOR THE ACCUSED
DELIVERED BY
MR. ITO, KENRO.

To Your Honor, The President and the Members of the Commission:

When I was still a student, I read in one of Shakespeare's plays, the Merchant of Venice, the part concerning the trial of removal of human flesh, which taught me a great deal concerning the adoption of law in this case. Together with its light humor, it actually gave me much enjoyment.

At this time, without previous knowledge, I have come to act as defense lawyer in a case related to cannibalism. This case is different in all respects to the Shakespearian trial concerning human flesh and there are various kinds of difficult and realistic problems from the academic standpoint of psychology, sociology, and law. To solve these problems, a great amount of effort is needed, and I have come to realize the heavy responsibility that rests upon defense lawyers.

I am fortunate enough to have excellent lawyers as my associates, and from them I think you will hear the arguments from an academic standpoint. Already this court has had experience with trials related to war crimes, and I have heard that a considerable amount of argument concerning this subject taken place.

I am going to present the arguments of the three defendants, Isogai, Sato, and Suyoyoshi.

Fundamental arguments about War Crimes trials and war crimes (for example, the responsibility of an individual in international rules concerning *ex post facto* law) are, at present, being argued fiercely at the Tokyo International Military trial.

These defendants are unknown, unimportant, low ranking military personnel. While they were stationed at Chichi Jima, I claim that the SCAP rules did not exist. I am not going to take up whether this criminal offense will stand up under the theory of law, but I am arguing from the standpoint of mitigating their sentence.

A new world, a new civilization will make a new criminal theory necessary. Naturally the defense should go ahead in obedience to the new era, but we hope the commission will take into consideration the former rules, namely that war is a struggle between nations and the individuals carried no responsibility and we also hope that the commission will consider the *ex post facto* law and render a lenient sentence.

According to charges brought forth in this case, the defendants as members of the Imperial Japanese armed forces, attached to the army or the navy, Chichi Jima, Bonin Islands, and while so serving at said installations, Chichi Jima, Bonin Islands, at a time when a state of war existed between the United States of America and the Japanese Empire, some are charged with

killing an American prisoner of war, some with eating flesh or the liver of the human body and preventing an honorable burial, this in violation of the laws and customs of war and the moral standards of civilized society; some with, unlawful disregard, neglect and failure to discharge their duty as a superior officer. Upon these fundamental facts various observations have been made. I should like to base my argument on the observation of the facts. First we shall think about the persons involved. All the defendants in this case are military personnel. They live by the code of absolute obedience to orders. Because they would never hesitate to die by the side of the Emperor, they were accustomed to going through water or fire if they were so ordered. The next thing we would have to take in consideration is the circumstances at that time. The third is the conditions at Chichi Jima. The fourth is the details of the case. What is asked from a standpoint of criminology and the politics of crime, by what persons, under what circumstances, when and where, time, place, and deed. How are the defendants Isogai, Sato, and Sueyoshi to be observed under these facts? Also the same thing can be said of the other defendants in this trial.

Who is the defendant? What was his station? What sort of character did he have? The defendant Isogai, Gunji was at that time 2nd Lt., IJA attached to the 308th Independent Infantry Battalion of the 1st Mixed Brigade. He is a graduate of the Koku Gakuin University and a very serious going man. The defendant Sato, Kesakichi, was at that time also attached to the 308th Independent Infantry Battalion of the 1st Mixed Brigade.

According to the charges the criminal offense that defendant Isogai was alleged to have committed was supposed to have been on the 25th and the 28th of March 1945. The time that the defendant Sato was said to have committed his offense was on the 26th of March 1945. The time the defendant Sueyoshi was said to have committed his offense was on the 23rd of February 1945. At that time the naval air raids on the Japanese Homeland were fierce. After the fall of Iwo Jima, I think the conditions were that they expected an invasion of Chichi Jima. This has been testified to in detail before this commission by the various witnesses. In judging this case it is absolutely necessary to take into consideration the confused conditions that existed at that time on Chichi Jima. What are the geographical conditions of Chichi Jima where these offenses were said to have occurred? This is a small island in the Bonin Island group. It is not a flat level island but is mountainous. After the fall of Iwo Jima, Chichi Jima was alone and without help. Because of this many difficulties came up about short rations. They were spiritually disturbed and unstable and I think there were many times when they were not normal.

The defendants were under this environment. They had been fighting a war a long time and they were tired. These people, the 15,000 people stationed on Chichi Jima, at times would call for the need of lifting the fighting spirit and at other times were troubled about the end of a battle to the last man. This is something that cannot be comprehended by human psychology. In other words, it was an environment which cannot be understood by average common sense and in usual peace times.

What sort of character do some people have under these unusual environments which have been clearly defined? The bad conditions that existed on Chichi Jima caused this case and incident to occur. This I believe will be argued in detail by my lawyer colleague. For persons who have committed criminal offenses under the influence of criminal characters or persons who have become a criminal through their environment, the main defense is based on their environment and associates.

I shall go ahead and explain in separate arguments the offenses brought about by the environments of the defendants Isogai, Sato, and Suyeyoshi. The defendant Isogai is charged in Charge II and specifications 3 and 6 with violating the laws and customs of war. The defendant Isogai claims that the confession at the Board of Investigation was caused by unfair means and he has denied all these charges in front of this commission

In specification 3 of charge II it is said the defendant Isogai did with the defendant Mori, Kunizo and defendant Matoba, each and together, on or about 28th of March 1945 at the navy base headquarters, prevent the honorable burial of an American prisoner of war, by eating the flesh and viscera of the body of said prisoner of war. According to the testimony of the witnesses Shinoda, Iijima, and Miyazaki, the number of times that human flesh was eaten in a room at the special naval base was only once and it is clear that the defendant Isogai was not present. In specification 6 it is stated that the defendant Isogai did, on or about 28th of March 1945, prevent the honorable burial of an American prisoner of war, one Floyd Ewing Hall, Ensign, U.S. Naval Reserve, by removing and eating the flesh and viscera of the body of the said prisoner.

According to the testimony of Kurozawa, "There were many dinner parties given at the 308th Battalion, but the one I remember the most was one in which one small dish of human liver was served." It is clear that the defendant Isogai was not present. The defendant Isogai made a confession in front of the Board of Investigation. This is a very great disadvantage to the defendant Isogai. At this time the quality of the confession would have to be considered according to the laws of evidence. In the first place a confession is not absolute and generally it is forbidden to determine the facts by confession alone. But in the SCAP Rules there is a special ruling on this. Even this has to go by the ruling of the commission on actual value. Whether the defendant Isogai made a true confession or not can be determined by the fact that he was confused and was in a disturbed state of mind. It was done under hampering conditions of speech. Every person who was present at the dinner party in which human flesh was served at which time the defendant Isogai was supposed to have eaten human flesh has stated that he was not present. How will you determine if the confession of the defendant before the Board of Investigation was the truth or not, unless there are people who can say that he was present at that dinner party where human flesh was served? We care nothing but to recognize the fact that his confession may have been the result of his confusion. At least, in this instance, I think it would be dangerous to make him bear the great responsibility of the criminal law on a confession only made outside the court. In conclusion I believe there is not enough evidence

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to convict him.

Also in the record of the Board of Investigation, there is the sixth question, "Have you ever eaten human flesh?" In answer to this he said, "According to rumor I heard later I may have eaten human flesh." In the 23rd question, "Have you ever eaten human liver?" He answered, "Yes." This can be taken many ways. He had actually eaten human flesh and liver, but he did not learn that this was human flesh and liver until afterwards. I believe this way of thinking is also possible. I ate it but at the time I did not know it was human flesh. Unless the question was put to him in this manner, knowing it was human liver, when, where, and by what means and with whom did you eat it, and he had answered in detail, it should not have any value under the laws of evidence.

The defendant Matoba stated at the Board of Investigation that 1st Lieutenant Isogai at the special naval base, together with Kamiura, Shinoda, Mori, Miyazaki, and Iijima, knowing it was human, ate liver spitted with bamboo. This testimony was completely broken down by the testimonies of Kamuri, Iijima, Miyazaki, and Shinoda on the 14th of September in court. The room at the special naval base in which the said human flesh was said to have been eaten, was a small room in a cave, where lighting was good. I believe the four pairs of eyes of the staff, deep in their operational planning could see truthfully. I hope for your good judgment through your superior knowledge and insight.

According to Charge I, Specification 4, the defendants Sato, Matoba, and Nakamura, acting jointly, did, each and together, on or about 26th of March, 1945, strike and kill, by beheading with a sword, an American prisoner of war, namely, Floyd Dwing Hall, Ensign, U.S. Naval Reserve, violating the laws and customs of war and the moral standards of civilized society. This fact we cannot help but recognize by his own testimony, that of defendant Nakamura, and that of Matoba. Speaking of the motive of the defendant, Sato, as a subordinate of defendant Matoba, he received orders from him, relaying this order to defendant Nakamura, and having the prisoner executed. This also is clear by the witnesses' testimony connected with this case. In other words Sato at that time, had been serving in the Army a long time. He had obeyed the orders of his superior officer well.

The defendant Sato had defendant Nakamura execute the prisoner on orders of the commanding officer. In other words he had only relayed the orders of the commanding officer to Nakamura. The defendant Sato, did not initiate, plan or prepare this. He just blindly and mechanically carried out the orders of the commanding officer. This is shown fully by his position and history.

According to Charge II, Specification 8, defendant Sato, Kesakichi, and Mori, Yasumasu, then a sergeant, IJA, attached to the 308th Independent Infantry Battalion, acting jointly, did, each and together, on or about 26 March 1945, prevent the honorable burial of an American prisoner of war, namely, one Floyd Dwing Hall, Ensign, U.S. Naval Reserve, by bayoneting and mutilating a dead body of the said prisoner of war, thereby violating the laws and customs of war.

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According to the record of the Board of Investigation for defendant Sergeant Mori, the defendant Mori, had, by the orders of the defendant Sato, stabbed the dead body of a prisoner of war two or three times. This is a confession.

According to the testimony of witness Sergeant Major Tado, Mori was standing at a place apart from the prisoner with a rifle with fixed bayonet, Tado said, "Mori did not say anything to me. I said to Mori, 'If you stab a dead body with a bayonet, it will bend!' I think Mori took my advice." The above is the prosecution's evidence. There is no other reliable evidence. Later I believe my associate lawyers will present arguments on this point.

In regard to the record of the Board of Investigation, it has already been argued several times that going by the confession of the above mentioned Mori alone is dangerous. This is not a thing that has to be argued deeply to be known.

According to the Charge I, specification 5, the defendant Suyeyoshi, defendant Matoba, with subordinate Lt. (jg) Morishita, acting jointly, did each and together, on or about the 23rd of February 1945, at Omura Cemetery have killed an American prisoner of war, namely, one Marvin William Marshon aviation radioman third class, U.S. Navy. The defendant Suyeyoshi has stated that he had never received an order from Major Matoba, to execute the above prisoner nor had he ordered Lieutenant (jg) Morishita to do so. But it is clear by the testimonies of Uzaki, Yoshida, Iwakura that Lieutenant (jg) Morishita had executed the above mentioned Marshon at the time, date, and place stated before. Also it is clear that at that time the defendant Suyeyoshi was not there. The defendant Matoba made some very damning testimony before the Board of Investigation but he has not stated that defendant Suyeyoshi or the Lieutenant (jg) Morishita had executed the prisoner. Whether the defendant Suyeyoshi ordered Lieutenant (jg) Morishita cannot be determined because of the lack of substantial evidence. As long as there is no evidence to show what sort of orders Lieutenant (jg) Morishita received and whether or not he received these from the defendant Suyeyoshi, I believe Suyeyoshi has no responsibility for that offense. According to the testimony of Ensign Uzaki, at that time the air raid conditions were very fierce and it is clear that the defendant Suyeyoshi was busy with anti-aircraft duties at his command post and did not have the time for such a thing as an execution of a prisoner of war. Also the defendant Suyeyoshi stated this clearly and explicitly in court himself.

At first the argument that defendant Suyeyoshi, who was so closely related to Ensign Morishita, had nothing to do with the execution, may sound very unusual. Morishita was the senior officer of the division and also a lookout man. The handling of prisoners of war had been done entirely by the army and it did not concern the navy. It is clear through the testimony of the witnesses that the results of this decision which was rendered through an agreement made by the army and the navy were thoroughly made known to all. It can be understood why defendant Suyeyoshi who was of the navy was always hesitant in his attitude toward prisoners of war. There is

a saying of a great Chinese philosopher, "Go not near danger". Suyeyoshi was at his command post, and threw off the rumors as rumors. He took the attitude of a bystander. This can be understood as human psychology. The witness Iwakawa has stated that Lieutenant Suyeyoshi did not get along well with the officers and made every effort to shield the enlisted men. Why he did not talk to Ensign Morishita is apparent. Soon after this incident, Morishita was transferred. If the defendant Suyeyoshi really had any intention of executing the prisoner of war, I believe it would have been shown when he received the two prisoners on the 19th. According to the testimony of the witnesses he treated them well instead of mistreating them. He fought through a hard fight at the anti-aircraft battery in a battle of the air. He did not wish for cannibalism; he did not wish for the flesh of a prisoner of war. No connection with this can be seen. Charge I, Specification 5 does not apply to him.

According to Charge III, Specifications 23 and 24, the defendant Suyeyoshi, Jitsuro, then commanding officer of the 8th Naval Anti-Aircraft Battery, did neglect and fail to discharge his duty, in that he permitted Lieutenant (junior grade), Morishita, Hironobu, Imperial Japanese Navy, to execute a prisoner of war, thereby violating the laws and customs of war. By the statement of witnesses Yoshido, Iwakawa and Uzaki, the above mentioned Lieutenant (junior grade) Morishita was a member and also the senior division officer of the 8th Anti-aircraft Battery, of which Suyeyoshi was the commanding officer. A fact that the defendant Suyeyoshi acknowledges. As it has been stated before, the time that Morishita executed a prisoner at the Omura cemetery, on or about February 23rd, 1945, the American air raids against Chichi Jima were at their fiercest.

According to the testimony of the witness Uzaki the Iwo Jima campaign had already begun, and an American task force on its way back from an attack on Tokyo, attacked Chichi Jima. Bullets filled the skies and the planes were so many the number could not be distinguished. This was repeated 4 to 5 times a day. It is clear through the defendant's Suyeyoshi's testimony in front of this court how numerous, complicated, and how very busy the duties as the commanding officer of the 8th Anti-aircraft Battery were.

Suyeyoshi was always at the lookout, command post, on air raid watch over his allotted area, reporting the conditions in his area to headquarters. When enemy aircraft appeared, according to his judgment he made the necessary preparations such as ordering the firing of anti-aircraft guns, anti-aircraft cannon, high angle guns and other ordnance at large type and small type aircraft. Naturally during the daytime he was very busy, at night there was the manning of the searchlights and others. He must have been very busy. The American Forces began the bombing and bombardment of Iwo Jima on the 15th and after they had succeeded in establishing a beach-head on Iwo Jima on the 18th, it looked as if a large force would invade Chichi Jima. The condition did not permit a moment's napping in Suyeyoshi's anti-aircraft duties. The number of raids by American planes became very frequent. In the period from the 21st and 25th, the only time he went down to the main establishment was to wash. Suyeyoshi was always at the lookout and command post performing his duties and he did not have time for anything else. On top of this he became very tired from the short rations and if he had any spare moments he would try to get as much sleep as possible. He absolutely did not have the time to stop the act of Ensign Morishita. In such an instance I do not believe you can accuse defendant Suyeyoshi of neglect of duty. By a thing of criminal law, using the average reasonable person as a standard, in such an instance, if the

person could not be expected to do this sort of an act, this act would not compromise a criminal offense. The defendant Suyeyoshi, as the commanding officer of the 8th anti-aircraft unit has fulfilled his duties completely. And I believe sincerely it is very harsh to charge the defendant Suyeyoshi for the responsibility on Charge III, Specifications 23 and 24.

In concluding this poor and unsholarly argument, I feel very forward but I would like to tell this story.

This is something I had heard in Peiping about an American missionary. This missionary arrived deep in inner China, where there was a tribe of cannibals. His earnestness gradually spread the love of God in the souls of the barbarians. A little time later because of a small incident the barbarian's reverted suddenly to their wild instincts and killed the missionary, an act which is very despicable. Just at this time the missionary's wife had come to Peiping on an errand. When she heard of this, she did not know what to do. Should she go back to America? No, she did not. Picturing the cannibals dancing around the open fire at their feast she followed in her husband's foot steps and went into the land of the cannibals to preach the Gospel of God. All I could do was to wonder at her love of God and husband.

When I think about these defendants who have felt deeply this pain of losing the war and after this are being tried in this court far from their fatherland and in view of the fact that their families are waiting for their speedy repatriation, I again repeat my request that a lenient and just verdict be given them.

Mr. ITO, Kenro.

I certify this to be a true and correct translation of the original argument of Ito, Kenro, in Japanese to the best of my ability.

Eugene E. Kerrick

EUGENE E. KERRICK,
Lieutenant, USNR.
Interpreter.

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辯論

私の申し上げます辯論は被告、内村下大尉、中村
佐長、森軍曹の三名に就いてあります。

事中に就き、この一般論より、命令に關します

事柄は既に仔細辯護人から申述へられて、此事

に即答いたしますのに、重複と辨けず、尚に茲に之を

援用いたします。これは重ねて之を申し上げますに

致します。

又、内村下に（い）申上げます。

第一告辭の狀、狀項目其五に依りますと、彼は

當時海軍中佐佐井靜雄と大々共同して、共通

の目的達成のため昭和六年三月五日頃日本

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軍隊に捕はれ、内臓を取出し、米字標の身布を毀
損し、内臓と不化に摘出し、取出せしめ
あり、この戦争を規程に慣習の違及行爲
にあると云つて居ります。

之の第一に考へます事は、被告松下の老井司令
と夫々共同して共通の目的達成の爲と云ふ事
實があつたのけふの事とあります。通信項
目には、老井静雄は夜明通信隊の
司令であり、松下は第二奥雷艇隊の第一軍
隊であります。通信隊、奥雷艇隊共に父島
に置かれ、海軍の部隊であり、其向
に何等指揮命令の關係のない独立部隊であ

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ります。従而松下に対した甘司令の何事命令した事と無ければ又實際共同した事実であるといひます。検事側から提出した証拠と精査しつゝも、これと事付ける何物と無さるゝといひます。

次に考へます事は肉と内臓と摘出し又は摘出せられたりとの事といひます。検事側から提出した証拠に依り、これと肉を取つたとの証拠は何処にも無いといひます。被告松下の証言に於てもこれと否認して居るゝといひます。

従而以上の二点は被告松下に全然無関係といひます事は申す處にないといひます。

4.

第三に考へます事は松下は何の政に肝臓を摘
出したのかを考へます。

彼の証言に據りますと彼は「一入腹を切らう」と
言ふらしく、あるとき「命令が来つて命令が」一食
所へ歸ります。——平んを食ふと云ふ
意は「命令の傍に赴けば信譽が失却せられ
て」命令に背く故であると言ふこと
であります。彼は従軍の故であると言ふこと
であります。此の意外に「命令は従軍から肝臓を
取り出すのである」とあります。彼は事の意外に驚き
何故であるかと云ふと「何故か」と云ふに
「肝臓を」云ふ。彼は自らに「肝臓を」云ふ

を命令していただきます。彼は父島にあり、数々の患者
の発生を見せ、PCRに希釈、カタル性黄疽の研
究のためにとりかかると述べています。

彼が司令から命令をいって再三強要せられ、その事
は報告自身の証言により、明らかとなり、その証言に
あつて肥田中尉の証言は、このことを徹し得る父であ
ります。証人金梅、これは朝鮮人に設置隊の
一隊を率いて、証言を述べています。その
下は、本人の証言として、所々に述べられてい
る。男である。自分から進んで、本年に年々、その様
子である。証言は、金梅司令の命令だ、と思ふ
と、その証言を述べている。更に証人

6.

久保し張引独裁の倉崎に張母せくれと記さし
こける次第であつた。

彼は屍体に対し軍医として敬禮をせしめて
頸部を検査し、次に腹部の解剖をせむのであ

る。彼のメスの動きにこれ倉崎司令は傍らに

在り、この内臓に一種の設けをせむのであ

ります。彼ら下は矢張り部下の斃れ、ある

黄痘の対症研究のためと考へ、肝臓を

摘出し、これを布に臍の上になせむのであ

る。頸部と縫合し、この屍体と下層にふたを

り、この腹部と縫合は終つて、この肝臓と

見れば、これは既に持ちこたへて置かれてゐるであ

7

「です。又にはこの役は止ちまゝ其儘腹部と
随分したつてあります。」

役柄下は軍医であります。医師と云ふことは、屍体
と解剖してと検査致します。事は、屍体と毀
損し、冒瀆する事にはありません。肝臓を摘出
致し、そのことは名義ある埋葬の道にはあらず
あることあります。事件の場合に於て、この役は
完全肝臓の摘出を命ぜられ、其目的が那
にあるかと解し得るものをおめ躊躇し、其理由
を記して直ちに之にたしめることあります。

事件は部下のやうな戦死者を捜査に慣習の軍
医と云ふことなり、この検査は公訴事實の陳述に

8
これには、フーコー的第七の条の違反行為と
あると主張もれす。だが、松下の行為が、何らに於
各項に違反するものと断するがゆゑには松下に於
解剖行為自体が不法であるとの認識があつた事と
証明する事と必要と致します。然るに彼松下は
覺悟に申上り、松下に解剖の行為が不法である
認識は之を度し持つて居たのであるとあります。
肝臓が他に持ちこんだ肝臓等の認識は更にないた
つてあります。因らう其後に適当に埋葬せらるゝこと
と考へて居たのであるとあります。これは検事の反対
記向に対する松下の答弁により、却つて
其反対の事實が明かとなつた次第であります。

事件は肝臓が食せられたとの噂と、摘出した事実
 と併せて、下が今日も、既に摘出の事実を否認し
 ています。事から彼らが食せられた事と認識
 して、これを解したのであらうとの予断として、起訴
 せられたものであると述べております。

彼ら之を否認しますが、それは被疑者としての彼
 の権利として行使したに過ぎないのであります。

此肝臓摘出に、彼らが否認している事も
 事について、お井大佐の指示にあらと述べよう
 ながら、これはあくまで事件の問題が起きている限り
 自己に不利なる事實は自白せんことをし、即ち
 お前の被疑者の権利として行使せよとの趣旨の指示
 である。

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と受け止めることをしております。

私は被害者には無罪であると主張するつもりであります。

次に中村佐良氏について申し上げます。

第一告発の罪状項目其四に記載されている事

實であります。中村は当時の師團長兼花中

将、三〇、一、大隊長の地位に及んで大隊長の地位

大尉と共同して共通の目的達成のため昭和廿

年三月十六日頃米字標を斬首したとの事

實であります。

佐良に現はれようかと命令を出したとの事

佐良は佐良大尉に対し米字標の処置を命じ

佐良大尉は事實上、おと中村に命じ中村

は命令に従って米字標を斬首した事實であ

ります。

佐藤大尉は死刑の命令と目には覆に背く事。
死刑の時刻が早まるのをに予定せられ、右覆に
見せられ、このことである。

當時中村佐長は三〇、大尉の本部は、この命
令受領者である。本部の佐長は、
ある被害者は、このことになり、
は當日命令受領に立掛け、
佐藤大尉の死刑である、この死刑の現物に立寄
る、このことである。

死刑の準備は整ひ、死刑者が、

佐藤大尉は現物に立寄、中村に命じ、

であります。その命令の通り、事實はたゞ
大尉、村山軍曹、磯田長吉の名記述に
通りであります。

次に申すのは森軍曹に就いてあります。
第二者群の死体項目裏へに記載される——森
軍曹はたゞ大尉と共について共通の目的達成の
ためと、共同して決める米器場と銃剣とに
て突刺したとの事實であります。

この事實は遺体生に証拠として提出される——
森軍曹の調査委員会、新聞記者の中の自由
のためにとある——に於けるのであります。

自由のためと、有罪であることの証拠をいふ——

事は中止しては=ませんが、本軍に會議と文
 通し=を=する所請スヤツフルーニは=な=す
 其自由の保障とやら=を=する=の=は=一=つ=に=本=軍=を
 會議=と=は=な=す。=は=に=た=と=傳=記=する=の=も=あ=る
 然るに自由は採用せ=る=に=た=る=く=た=る=の=と=は=な=す
 する=の=と=は=な=す。=却=入=者=の=証=を=精=査=し
 て=見=る=こ=と=を=要=求=する=証=を=見=當=り=な=す。
 却=入=者=と=却=入=国=は=証=を=送=り=な=す。=蘇=林
 軍=費=を=見=た=と=は=統=計=に=ら=一=つ=離=れ=る=父=に=銃
 剣=を=持=つ=と=な=す。=蘇=林=は=自=ら=に=何=に=も=証=を=送=ら=な=す
 が、=自=ら=は=蘇=林=に=對=し=統=計=に=對=し=送=ら=な=す。=蘇=林
 剣=が=曲=る=と=な=す。=蘇=林=は=た=に=對=し=た=ら=に=た=ら=

記憶はあり。林は私の見れば私の意見であつた
 には思ふ」と。却つて林は決かなつたのは
 ないといふと推察させる程の反響地帯がある
 あります。

疑はしめたと罰せしめしめしめしめしめしめ
 への罰則と罰せしめしめしめしめしめしめしめ
 はらに及ぶものがある。地帯地帯に及ぶ
 しめしめしめしめしめしめしめしめしめしめ
 あります。

以上の論議に於て、中核、林に於て、
 だが、その通意強ひたは、林の軍隊に
 ける命令服従の地帯に及ぶ。

15.

は命令服従の態度に異常に嚴格である事は
既に前者が再々述べた通りである。申すに
する事柄である。更に更事新しう申すに
是なる事柄である。此處に於て
は伊勢守護人の事を述べた通りである。事柄
はである。特に又滿意と稱する事は命令
を下した者の一人である。となす事である。
形下の命令は命令命令である。彼は
二隻雷艇の地の海軍である。彼は
である。彼の部下の士は是である。彼の
師士である。大勢は命令である。事
柄である。彼の事柄から申すに、是なる事柄

らしきものといふことである。若くは「独立部
 隊の司令とあり二万七千名の隊員を統率して居
 る司令官は部下に対しては、特に予備士
 にならず、これは証人肥田にのみならず、相馬強硬に
 自らの意見を述べてゐることである。証人太田は
 には「あると倉崎は強て独裁してゐることであ
 ります。

中村、林の両人は何故かは知らぬことである
 が、これは隊長の命令であるといふことであ
 ります。彼の隊長の地位より命令の徹底から
 の事は既に／＼に遺憾生に顕著な事實であ
 り、これがまた知らしめてゐることも又同しであ

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いふにふくまふ。

彼の大敵にたふ命令の如く何れのものにたふ明

のいふにふくまふ。所望の如くふくまふに

従つて何れも抗ふものとせらるゝものとせらるゝ

とせらるゝ。然るに何れもの如くせらるゝに

は彼等が何れもの如くせらるゝ。然るに何れもの如く

の如くせらるゝ。然るに何れもの如くせらるゝ。

何れもの如くせらるゝ。然るに何れもの如くせらるゝ。

何れもの如くせらるゝ。

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ARGUMENT OF THE ACCUSED

DELIVERED BY

MR. SHIGEATSU IJICHI

The argument which I am going to give concerns Lieutenant Matsushita, Corporal Nakamura and Sergeant Mori. Since Lawyer ITO has already given a general argument concerning the military orders of these cases, I shall omit them to avoid duplication and not repeat them again in this argument.

First of all I want to discuss the case concerning Matsushita. According to Specification 5 of Charge II, he, acting jointly and in pursuance of a common intent with Commander Yoshii, Shizuo, desecrated the body of an American prisoner of war while in the custody of the Japanese forces on or about the 5th of March, 1945 and unlawfully had flesh and viscera removed, this in violation of the laws and customs of war.

First, did the accused Matsushita and Commander Yoshii act jointly and in pursuance of a common intent? As was stated in the specification, Yoshii was the Commanding Officer of the Yoake Wireless Station while Matsushita was one of the surgeons attached to the Second Motor Torpedo Boat Corps. The two units were situated on Chichi Jima but were independent of each other, having no common command. Therefore, Commander Yoshii never gave orders to Matsushita nor did the two act jointly. After thoroughly examining evidence presented by the prosecution, I cannot find anything to support the allegation.

What we must investigate next is whether or not he removed or caused to be removed the flesh and viscera. In the evidence presented by the prosecution there is nothing to prove that flesh was taken. The accused Matsushita denied it in his testimony. Therefore it goes without saying that the above two points have no connection with the accused Matsushita.

What should be examined thirdly is the reason why Matsushita removed the liver. According to his testimony he was going to dine alone on that day, when a messenger came and informed him that the Commanding Officer, Lieutenant Kurasaki, was calling for him. He then hurried to the Commanding Officer. The prisoner had already been executed and the Commanding Officer ordered him to make haste in disposing of the corpse. Matsushita thought that "to dispose" meant to bury the dead body. Quite unexpectedly, the Commanding Officer ordered him to remove the liver from the corpse. He was very astonished at this and asked why, but the Commanding Officer repeated his orders, saying "Remove the liver and leave the rest up to me". He took the scalpel, thinking that it would help him in his research concerning amoebic dysentery and catarrhal jaundice which were then prevalent on Chichi Jima. The fact that he was forced to do this by the repeated orders of the Commanding Officer is clear not only from the testimony of the accused himself but from the testimony of Lieutenant (jg) Hida. The witness Kanaumi, who is a Korean and one of the laborers of the Construction Corps, also testified that Matsushita was an unusually mild man for a Japanese military surgeon and that he would not have touched the corpse

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of his own accord, but that he was obliged to obey the order of the Commanding Officer. I think that the above testimony supports this point. Besides, Lieut. Okubo also testified that he was forced to do so by the stubborn and self-willed Kurasaki.

Matsushita saluted the dead body as a surgeon. He examined the neck first and then began to dissect the abdomen. Commander Kurasaki who was standing by him asked for an explanation on the internal organs as his scalpel moved. Matsushita himself, thinking that it was for research concerning jaundice from which the men were suffering that he was dissecting the corpse, removed the liver and put it on a medical tray covered with gauze. He then sewed the neck of the corpse, cleaned the body and was about to sew up the abdomen when he discovered that they had taken away the liver. Then he was obliged to sew up the body in that condition.

Matsushita was a surgeon. It is not desecration or abuse of a dead body to dissect it and examine it as a surgeon. Though he may have removed the liver, this does not mean that he prevented the honorable burial. On that occasion he hesitated as he was ordered so abruptly that he could not understand the reason. He asked the reason first and did not act at once.

It is alleged in this case that the act of Matsushita's violated the laws and customs of war, the judge advocate claiming in his opening argument that this was in violation of Article 76 of the Geneva Convention. I believe that in order to say that Matsushita's act was in violation of this article, it requires testimony to prove Matsushita's cognizance of the unlawful nature of his act of dissection. As I have previously mentioned, Matsushita had no cognizance whatever of the unlawful nature of the dissection, nor did he know that the liver would be taken away. This was also made clear by Matsushita's reply to the Judge Advocate's cross examination.

I believe that Matsushita's indictment was based on the facts that, though he had actually taken out the liver, he had until this day denied doing it, and denied rumors that human liver had been eaten. He only exercised his rights as a defendant against self-incrimination when he denied this. Matsushita has testified that the reason he had denied taking out the liver was because he had been instructed to do so by Captain Yoshii. I think that when a question arose about the commission of this act, he was told so with the idea that he did not have to state any facts incriminating himself. I plead not guilty for the accused Matsushita.

Next, I will speak on Corporal Nakamura. In specification 4 of Charge I, it is alleged that Corporal Nakamura acting jointly and in pursuance of a common intent with the then Division Commander General Tachibana, the Commanding Officer of the 308th Battalion, Major Matoba and the officer attached to the same Battalion, Captain Sato, on or about March 26, 1945 beheaded an American prisoner.

Concentrating what evidence has been presented in court, Major Matoba gave orders to Captain Sato to execute the prisoner. Captain Sato then ordered Corporal Nakamura to actually carry out this act, and Sato did issue orders to Furushika to carry out this execution, but executioner Furushika could not be located. At that time, Corporal Nakamura was attached to the 308th Battalion Headquarters and was a messenger for receiving orders and delivering them. It

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was a rule for all personnel attached to the Headquarters who were of the rank of corporal or above to carry a sword with them. When the accused Nakamura was about to go to receive the orders for the day, he heard that there was to be an execution and stopped by at the scene. The preparations had been completed, but there was no executioner. Thus Captain Sato gave the orders to Corporal Nakamura who chanced to be on the scene. Captain Sato, Sergeant Sugiyama and Corporal Iso have all testified about this order.

Next, I will speak on Sergeant Mori. In specification 8 of Charge II, it is alleged that Sergeant Mori acting jointly and in pursuance of a common intent with Captain Sato, stabbed the body of a dead American prisoner with a fixed bayonet. This was shown only by the testimony made by Sergeant Mori before the Board of Investigation in his interrogation, which was presented in this court as evidence. Though it is needless to say that one's guilt cannot be decided by his own confession alone, it is stated in the SCAP rules which prevail in this court that it is entirely up to the Commission to decide upon the truthfulness of this confession. I firmly believe that unless there is other evidence which supports this confession, it should not be recognized as evidence. Thorough investigation of the witness's testimony shows there is nothing which backs up this confession. The witness Wada, in his testimony, stated, "When I saw Sergeant Mori, he was standing a small distance from the prisoner holding a rifle with a fixed bayonet in his hand. Sergeant Mori did not say anything to me, but I told Mori that his bayonet would bend if he attempted to stab the corpse. I do not remember whether Mori made any answer or not. From what I saw, I believe that Mori heeded my words." This testimony tends to prove that Mori may not have stabbed the body. It is a rule in penology not to punish the suspected. This principle applies fully in Mori's case, and I am confident that he will receive your decision of not guilty.

I have spoken a few words on the cases of Matsushita, Nakamura and Mori. But the point on which I beg your special consideration is the strict observance of orders in the Japanese armed forces. This observation of orders is strictly enforced, and these facts have been made clear before this Commission on previous occasions, and I believe has gained your full comprehension. My colleague, Mr. Ito, has already enlarged on this point but I ask your kind consideration of the source of these orders. In the case of Matsushita it was Commanding Officer Kurasaki. He was the only officer who was a graduate of the Naval Academy at the Second Motor Torpedo Boat Squadron. His subordinates were almost all reserves who had just entered the Navy from non-military school life. Most of them were older than the Commanding Officer and had greater education. The Commanding Officer, young but the head of a unit including well over 300 persons was, according to the witness Hida, firm and headstrong in his ideas, especially when expressing them to the reserve officers. According to the witness Okubo, Kurasaki was coercive and arbitrary. In the case of Mori and Nakamura, it was Captain Sato who gave them the orders, but it is clear that he was under the Battalion Commander, Major Matoba's orders. I do not see the necessity of stressing this. Matoba's character and his severity in having his orders carried out have become quite obvious on many occasions. It apparent exactly what orders meant in Major Matoba's Battalion.

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0284

In the SCAP rules it is stated that an act in pursuance of a superior's orders does not constitute a defense but may be considered in mitigation of punishment if the Commission determines that justice so requires. I firmly believe that last sentence was written to be applied to such cases as these. I beg your full consideration of this point.

IJICHI SHIGEATSU.

I certify this to be a true and correct translation of the original argument of IJICHI SHIGEATSU, in Japanese to the best of my ability.

Eugene E. Kerrick
EUGENE E. KERRICK,
Lieutenant, USNR,
Interpreter.

"NN 4"

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0285

論 辯

裁判長閣下ニ並ニ裁判官諸賢
 今回初メテアメリカノ軍法委員會ニ列席シテ
 アメリカノ公正ニシテ個人ノ權利ヲ尊重シタル鄭重
 ナル御審理ニ對シ衷心ヨリ敬意ヲ表スルモデアリ
 マス

昭和十七年七月下旬ノエトデアリマス。長驅濠州
 シドニー湾ニ突入シ壯烈無比ナル戦死ヲ遂ゲタ
 我カ日本海軍、特殊潜航艇、勇士、遺骸ガ
 極テ鄭重ニ取扱ハシ白木ノ棺ニ收メタトニ受タ用、
 軍刀ヲ毛割ヘテ日本ニ送り届ケラシタデアリマス。
 流石ニ日没スル所ナシト誇ツタ大英帝國デアリマス。
 宣旨テ第一次世思リ大戦ノ時青島要塞攻略
 ノ時、巫山ノ陣地ヲ攻惠シタ日本部隊ノ地形ガ嶮
 峻デアツタタメ多数ノ死傷者ヲ出シタデアリマス
 然レ終ニ之ヲ占領シタ。其ノ時彼逸例ノ堅
 固ノ陣地ニ據ツテ居タタメ一名ノ負傷者モ出
 サズ日本軍ガ近接スルニ突入寸前ニキヲ止メテ
 降伏シテ来タデアリマス。日本軍ハソノ寸所マデ
 怒リニ煙エテ居タニ拘ラス其ノ怒ヲ抑ヘテ彼逸
 兵ニ對シテ何等ノ暴行ヲ加フルコトナリ捕虜トシ
 テ待遇致シタデアリマス。此ノ日本軍ノ武士的態
 度ハ痛ク彼逸例ヲ感激セシメタモデアリマス
 日露戦争ニ於テ我日本軍二十萬ニ近キ損耗

(一)

ヲ與ヘタ旅順西面を、露西軍ガ力盡キテ日本
軍ニ降伏スルヤ、ステツモに將軍以下、將兵、佩刀
ヲ許サレ、武人ノ名譽ヲ保タレタラント云フエト
デアリマス

然ルニ昭和十七年四月十八日イスパカニ搭
乗シ航立母艦ホーネット号ヨリ發進シ我が日本
本土ヲ爆轟シタニ後支那大陸ニ進ミ燃料遂ニ盡
キテ試運拙ウ我が日本軍ノ占領地域ニ降下セ
數名ノ者キアメリカ、將校ト士官ニ對スル処置
ニ就テ、色々ト取沙汰サレタデアリマスガ遂ニ此
アメリカノ者キ勇士ニ其後上海ニ送ラレ最重
タル処ニ付ケタデアリマス、日本ノラヂオハ之ヲ全
世界ニ向テ放送シタデアリマス、嗚ハ、武士道遂ニ
地ニ墜セタデアリマス

戦フ可カラザレ戦ヲ為ラズ、東條一派ノ軍閥、
驕慢ト專横、遂ニ血氣ヲ逸シ現地ノ將兵ニテ
浸透シタデアリマス

本件犯罪、行ニタ當時ニ要衝サイパン、硫
黄島又玉碎シ日本本土又熾烈ニ爆轟ニ
サラサレ本土決戦間近ニ迫リ實ニ日本ノ興亡、
岐路ニ至テ出ツ然ルニ時デアリマス、又島ニ於テ
ハ証人ノ言ニヨリ明カニ如ク連日連夜ニ至極
ニ敵ノ上陸すル間ニ至テ情勢下ニ於テ行ハ
シタデアリマス、事物ノ環境ト比喩景トヲ無視シ
ニ事物ノ真ノ姿ヲ發見スルニ出来タリ、ハ謂
フヲ按タナシデアリマス

(三)

多クノ証言ニヨリテ立証セラレテ居ル通リ當時
父島ニ於テハ食糧者ニシテ窮乏ヲ告ゲテ居
タリデアリマス 証人、中ニ「死ニ損ツタハ米國、
穴工藝、為ヨリ食物、為デアリタリ 三度々々オッテ
山、木、実ヲトツテ喰ベテ苦勞シテ来タ穴工後、
列、ソトキ、十五回カラ二十回モアツタ」ト証言シテ
居ルデアリマス 父島在島、將矢ガ連日、如ク
父島上穴工ヲ大編隊ヲ以テ彼等、家族、生ハ
日本爆薬ニ往復スル敵機ヲ眺メテ如何トモス
コガ出来ズ内地ト、連絡ハ断新サシ孤立無
援ハ然ルニナリ、而モ敵、上陸ハ必至ト予想セシ
食糧ハ最早短時日ニテ消耗サレシコトハ明白デア
ルコトヲ希望主ト光明トヲ失ヒ彼等、生命又明
日ヲ期シ得ナク絶望下ニ於テ彼等ガ思慮ト自
暴自棄的ニ陥ルコトハ聖人カラガ自身、宣決シテ
無理カラヌ所デアラウト云ハデアリマス

戦争、道德ニ及ボス影響戦争、文化ニ及ボス
影響ニ付テハ私ハ今此処ニ論ズニ余格ヲ持テ
スセ、然レ其、非悪ト悟ル猶、云フニ凡ソガモガ
アリマス 責ムベキハ戦争デアリ 憎ムベキハ戦争デア
リス

日本敗戦、直接、契機トナツタ原子爆弾、出
現ハ人類、戦争ニ終止付ヲ打ツタモノト私ハ確信
致シマス 若シ果シテ然リトセバ日本及日本人、
歩ムベキ道ハ自ラ明白デアリマス 民主主義、徹
底ト平和國家、建設ヲ以テ世思、文化ニ貢
献シテハナリタセム 願ハクニ裁判長閣下並

二裁判官各位、以上、諸君は、深き御理解を以て
御審理下さることを、次第であります。

二、

私に被生、中海軍中尉林實、同海軍中尉増
右真一、同海軍軍医大尉佐々木久慶、同陸軍
上等兵本中松太郎に對し辯論を致します。

三、

第一告訴罪状項目其三ニ於て陸軍少将(当時)
立花芳雄及夜明通信隊司令海軍中佐(当時)
吉井静雄及夜明通信隊ニ配属せし海軍
少尉(当時)林實、海軍中尉(当時)増右真一
ハ十五原列島父島ニ於て米軍俘虜一名ヲ
日本刀ヲ以テ斬首スルニ付殺害セリト云フニ任
リマス。林實ハ夜明通信隊司令吉井中佐(当時)
トニ配属セリ電波探知機整備ヲ任務トシテ
オカシ昭和二十年二月二十四日頃、朝食後吉井司令
ヨリ「今日、午後四時俘虜ヲ処刑スル者ハ將校、
度胸ヲツケル者ニヤラセ、」林、増右、二人ヲ斬
シト命令サレタリマス。林ハ証言ニ於テ「ヨリ言
フ所ニテアリマス。此、命令ヲ受ケタリキ。大變ナリト
テ仰付カケタリ思フテ「ハ、困リマス」ト云ヒタリ。スト
司令ガ命令ガ「ヤラセ」ト申サレタリ。以上斬リ
モ大勢、士氣、前テ何カ恥辱ニ付テ「スト」云ハレヤセヌ
カト思フテ「先デ承諾」シタリ。ソレヲ食事、後
一人ヲ司令室ニ行ツテ再び私ニ「ハ、」モ人ヲ斬リタリ

(四)

に出来たりと断り置きた。難力地、者ヲ選ビテヤリシ
ニ貫ラズト言ヒタリ然レシ司令に上官、命令ニ
従ハカシタ場合ニオテ、身ニ如何ナル事が
起ルカ知ラズナリタラト云ハシタ。司令に當時
口辭、稱ニ通信隊員ニシテ司令、命ニ従ハカシモ
「ドビ」(処罰)スルト言ヒタリタリ。ソレヲ私に
若シ私が断リ通シ場合ヲ相想ヒ嫌々ナリ
承諾シタリト謂ヒ又現場ニ在リ其処ヲ
再び司令カウ斬リト命令ヲ受ケタリ。司令カ
ラ刀、使ヒ方ニツキテ余リカラ入リテヤリト自分
傷ツケルカウ氣ヲ付ケテヤリト注意セラルト云
ヒタリマス。之ヲ見タリモ林、自ラ進ミ
ヤツタ、デハナシ否軍人トシテ珍ナリ拒絶シヤ
ト試ミタリデアリマス。然レドモ司令、之ヲ許サ
カシタリデアリマス。大島ニ在リシ空軍に列、リ
夜間通信隊、非常ニ人オモカラ此「ドビ」空
軍、爲困難ト通信、勤務カシタリ。此、情
況ヲ基礎トシテ司令、非常ニ嚴格ト命令、
実行ヲおナタリデアリマス。

林モオツテナリ通シ「司令、私的ニ非常ニ好
ムデタカ一旦ハ、問題ニナリト非常ニ嚴格
デタリシ上官下上官ニ付スル命令、遂行、
徹底的ニ遂行スルヲ要求シタリ。吾々上官
トモ司令カウ命令ヲ受ケタリ事極ニ付テモ自分
自由意志ニモ行動、全ク不可能デタリト
オツテ居リマス。林ガ司令、命令ニヨリテ自
ラ進ミタリモ「非ガ」ニ「林、玉林、渡辺、各
(五)

証言ニヨリテ明白ナリマス。

林ハ当法廷ニ於ケル機嫌、貞因ニ對シ欺瞞ニ
合年シテ居リマス。

質問、処刑サレニ理由ヲ知ラセカ、

答、命令ヲ受ケル前一日夕夜明山カウ四軒
離ラ中央山ニ三日程行ツテ居テ夕方歸ツテ
来タ次一日、事デ信濃ヲ開シテ、ロ一人連シテ来テ
アルト云フ詔ヲ聞クタケケデス。然レ司令官ノ命令
ヲ受ケタトキ、私ハ信濃ヲ処刑スル正當ナ理由カ
アルト信ヅテアリタリ。ソレデ敢テ尋ネ称トモ致シ
マセデラ。

質問、信濃ニ裁判ガアリタリカ、

答、知リマセン。

尚林ハ「私ハ人ヲ斬ルコトハ勿論好ム処デハ有ラ
然レ信濃ヲ処刑ニスルコトニ付テハ一途ニ上ルガ
信ヅテ有ラ、ト云フテ居リマス。

林ハ現社ニ三才オ山新高孝義ヲ在ナ業
ス。直ニ海軍ニ入リタリ。其モ校一門ヨリ海軍、
内ハ彼ハ本分社會、實情ヲ觀クヌナリシタス。ウ
命令服従ニテ三教有テ受ケテ来タデアリマス。彼
ノ父ハ四年乙卯ニ死シ、母ハ昨年彼、出征中死シ
シ此ノ悲シキ境遇ニ遭カシタ。若キ青年、將來、
為亮ナル御同情ヲ賜リタイデアリマス。

四、

次ニ増谷真一デアリマス。彼モ又吉井司令、指揮
下ニ夜明通信隊、暗号ヲヤツテアリタリ。昭和三十

天)

二月二十四日頃、朝食後土井司令ヨリ林ト共ニ
信濃ヲ処刑スル命令ヲ受ケタリデアルマス、増谷、
其、場ニ於テ此、命令ニ對シ「陸軍カウ信濃リテ来リ
信濃ヲ勝手ニ処刑シヨク、デスカ」ト反問シテサレ、
デアルマス、此、場合ニ於ケル増谷、ニ對シ、信濃取
扱ニ関スル陸海、関係ヲ問フ事ズシテ信濃処
刑ニ對スル暗黙、抗議デアリタリデアルマスサレバコ
其、後再び司令、室ヲ訪シ「私ハ信濃ヲ斬ル、
嫌デスドウシテモ処刑シタレバセウナリデアルマスナ
バ他ノ人ニ代ヘテ世間ニ對スル総願、デアリマスガ
司令、復トシ聞カズ、一々理由ヲ問フカニモヨク、命
令ニ違反ラウ、ドウモウエニナリ兼テ知リテ亦、苦
ダ、ト、強圧的、命令、前ニ遂ニ服サザルヲ得ナ
クデアリマス。

土井司令ガ如何ニ命令ニ對シテ嚴格デアリタリカ
又命令違反ニ對シテ若シ懲罰、カ、証人等、
言ハヨク明白デアリマス。

増谷、日本ニ於ケル最高學府デアリ東京帝國
大學ニ政治學ヲ専攻スル所謂、インテリデアルマス。
彼ガ海軍ニ入リテ二年海軍生活、経験浅クマ
ダ學生氣分ガ抜ケス自由主義的傾向アリトシテ
特ニ嚴格ナル取扱ヲ受ケタリデアルマス。

彼ハ流石ニ於テ告白シテ居リマス。「林ガ信濃
ヲ斬ル、トキ私ハグット、ミ、ト云フテ居リ証人
渡辺、次郎モ又「自ラガ処刑ノ現場ニ行キ
トキ林増谷ガ蒼白ト顔ニ興奮色ヲ見セリデ

立ッテ来ニ一ヲ見タリト証言致シテオリマス。以上、
事實ニヨリマス。増巻が如何ニ信慮、処刑ヲ好
マカシタカソシテ強圧ニ余令ノ前ニ押倒サレリカ
「明白デアリマス」

私ハ茲ニ増巻ト同じ東京帝國大学、一学生デ
ス。証人飯島俊雄、証言ヲ引用致シマス。

私ハ一学生トシテ在ル中デアリ、真理ヲ愛シ、
之ヲ追求スルコトニ私ハ全生命ヲ抛フモノデアリ。僅
カニ一年半、軍隊生活、中ニ心ニ反省スルコトハ、アツテ
外部ニハ盲目的ニ行動ヲ強制サレタ。之ハ私一個、
所デアリガ日本軍隊、自取モ痛マシク欠陥デア
リタ。今此処に居ニ被出、中ニ若キ学生出身、若
シ人カ居ニ彼等が若シ戦争法規ニ触ル、称ナ行
キマシテ居ニテ、彼等ハハナズモソシテ強制サレ中
モ、ハナズモ信ズ。有量ナル将来アル私ノ兄弟ニ付
シ寛大ナル処置ヲトスルコトヲ希望致シマス。此一言
其ノ中ニ真理ヲ愛シ真理ヲ追求スル、ソレヲ盲目
的ニ行動ヲ強制セタ日本軍隊、痛マシク欠陥ニ
付テ、絶エズ増巻、胸中ニ秘タリシタニ、慍ニ、
アツタデアラウト信ズ。モデアリマス。

五、

オニ出告罪狀項目其七ニ於テ「海軍軍医中尉
(當時)佐々木光慶、夜間通信隊ニ勤務中昭和
二十年二月二十四日頃米軍信慮、身体ヲ毀損シ
不都合ニシ、肉ト内臓トヲ摘出スルコトニヨリ米信慮

(八)

三

「名譽」の煙草ヲ防止セリ」ト云フニ在リマス
佐々木ハ昭和十八年四月三十一日父島海軍特別根
拠地司令部付トナリ(直屬上官 軍医長酒井正)
昭和二十年二月中旬夜明通信隊勤務トナリ夜明通
信隊司令海軍中佐(當時)古井靜雄一指揮下ニ在
リタリデアリマス

昭和二十年二月二十四日夜明通信隊ニ於テ夜明
通信隊司令古井中佐ハ「命令ヨリ林実ヲ尉(當
時)及増谷真一中尉(當時)ヲ「米信書ヲ知利
セリ」ト云フ後軍医中尉佐々木光彦ヲ「作偽」
肝臓ヲ摘出セリ」ト云フ証人玉村文雄同渡辺竹次
郎同増谷真一同佐々木本人ハ証言ニ「争ハベカ
ラザ」ト云フ事案デアリマス

次ニ起訴狀ニ「不都合ニ「肉」ト内臓ヲ摘出スニ「
「ヨリ」トアリマスが佐々木ガ肉ヲ摘出ラ「事案全
然無ク」証人此ハ「實ニ聞」テ「無」キデアリマス

佐々木ハ直屬上官ハ古井中佐デアルコトハ明瞭デ
アリマス古井司令ガ如何ニ命令ニ對シテ嚴格ナル
人デアリタカハ既ニ多ク証人ニヨリテ証明セリテ居
リマス佐々木ガ知利、當日、昼食後始メテ肝臓
摘出、命令ヲ受ケタリデアリマス佐々木ハ余リ完全
ニ事デアリ也、者、肝臓、エト「如何ニ」テ「力」分
ラ「力」カ、其、後「度司令室」ニ「聞」ニ「古井司令
ニ會」フ「何故肝臓」ニ「摘」カ「ト聞」ク「タリ」デアリマス
「ト司令」ハ「顔色」ヲ「変」ヘ「テ」「エ」テ「ハ」リ「ア」ゲ「何」ヲ「云
フカ、ソ「事」ハ「聞」ク「必要」ガ「ナ」ク、後「心」配セ「デ」ヤ「レ

今ノ若ク者ハ度胸ガナシテ困ルト云フデモ、
何ノ問答ニ於テ佐々木ガ「何故肝ヲトルデスカ」ト云フ
ストハ正固カウ拒絶シ得ル場合、暗黙、抗議デ
アリマス。何トモ司令ガ其レニ對シテ云フナシトナリ
ハケケ事ニヨツテモ明瞭デアリマス。

茲デ私ハナリ日本ノ國民性ガ貴國アメリカノ國民
性ト著ク相違アルコトヲ申述べサレテ頂キタリ
由來日本人ハ言葉オトシニ直デモ、デアリマス。或
ニ事ヲ拒絶スル場合ニ於テモ正固カウハナリ新ニ事
ハ失禮ガト云ヘンデアリマス。

之ニ付テ私ハ今斯様ヲ語ラ思ヒ出シマシタ。之
ハ貴國アメリカニ於ケル話ガナリト記憶シマスガ……
或ハアメリカノ老富豪ニ日本ノ女性ガ永ク家政婦
トシテ勤メテ居リマシタ。此ノ老富豪ハ痲痺ニ
ナリマシタ。此ノ日本ノ家政婦ハ日夜獻身的ニ看
護ヲシタデマスガ其ノ努力ハ甲斐モナリ此ノ老人
ハ死ニマシタ。間モナリ其ノ老人ノ子息ガ政州カウ
帰リマシタ。其ノ日本ノ家政婦ハ其子息ニ對シ
泣ク「私ノ力ガ足りナシトウ」オ父サハセ
ウナリマシタ。私が殺シタ称ナモデス。何トモ申譯有
リマセシト云フデアリマス。スレト此ノアメリカノ子息
ハ云ハレ此ノ日本ノ家政婦ガ殺サレタラウト云フ
ヒタリテ此ガ問題ニツタト云フ事ヲ聞キマシタガ
此ノ場合日本ノ家政婦ハ自分ノ身ヲ顧リマシズ不
眠不休ノ看護ニ相違ナシデス。ナルニ日本人
ト云フ者ハ此ノ場合ニ於テモ矢張り自分が重ク

カフト云々者ナ、デアリマス。此、に理狀能、或、仲々
理解、難、知、デセウガ。此、が東洋、美德ト云、
に、講讓、ト云フモ、デアリマス。

佐々木が調査委員會、陳述ニ於テ、部隊長
、命令ヲ問ヒ合ス、が私、任務デハナリ。私、正、シ、
事ヲヤツテホルト思フ。然、シ、今、私、犯罪ヲ、
思フ。私、犯罪ニ對シ、責任ヲ持ケマス。ト述べテ居リ
マス。佐々木、当、法廷ニ於ケル、供述ニ明カナル如ク、若
シ、私、犯罪ガアルハ、ト云フ言、葉ヲ申述ベテオイク、
デアリマス。此、調査委員會、陳述書ニ記載
サレタカ、デアリマス。此、場合、佐々木、心境、記
ス、所ニ申上ゲタ、政婦、場合ト同、講讓、ト氣
持、カ、左、様ニ申述ベタ、デアリマス。

司令、命令、不可抗カ、デアリマス。佐々木、死、体ヨリ
肝臓ヲ摘出、後、頸部、腹部、縫合、血ヲキ、シ、ニ、拭
キ、取リ、キヲ組ニ合セ、ソ、シ、テ、死、体ヲ、封、シ、ウ、ヤ、ク、シ、ウ、テ、手
巾、ヲ、シ、タ、見、テ、居、タ、兵、隊ニ、送、ル、程、佐々木、態
度、ニ、嚴、肅、デ、ア、ラ、ス。彼、に、軍、医、ト、シ、テ、禮、儀、ニ、
合、意、ラ、タ、デアリマス。彼、が、自、ら、道、ニ、テ、ヤ、ッ、タ、テ、ニ、作、ル、所、ニ、
寢、ニ、明、命、デアリマス。午、四、時、信、屬、処、刑、事、実ヲ、知
リ、テ、ウ、彼、に、処、刑、現、場、ニ、行、ッ、テ、居、リ、マ、セ、ン。兵、カ、司令
ヨリ、言、ハ、テ、呼、ビ、来、ル、マ、デ、ハ、彼、に、行、ッ、テ、キ、デアリマス。然
シ、好、ミ、ガ、レ、テ、ハ、ア、ラ、カ、彼、に、命令、絶、對、ヲ、信、ジ、マ、ル、ソ、シ、テ
此、一、兵、ニ、是、事、に、今、向、彼、に、正、シ、キ、コ、トヲ、ヤ、ッ、タ、ト、確、信、シ、テ
居、ル、デアリマス。

(十一)

六

次ニ本戸松太郎ニ付テ申上ゲス

第一生計昨狀項目其一ニ於テ陸軍力將立花
芳雄及陸軍上等兵本戸松太郎二人、米仔虜ヲ
着々々銃劍ヲ突キ刺ツト云フニ在リマスガ御承知、
通リ本戸ハ一介ノ兵隊ニ過キナイモノデアルコトヲ御留
意願ヒタイデアリマス

敵ハ旅団司令部は特攻隊令デアリタリガ昭和十九
年八月七日、朝傳令班長飛田野竜田若ヨリ「今日、
午前午後二回ニ分ケテ小湊ニ於テ実施射撃ガル師
團長ノ命令ヨリ小湊ニ移ラテ伊藤中佐、指示ヲ受
ケロト、コトニテ小湊ニ行キタル現場ニ於テ伊藤中
佐ヨリ志村ト共ニ俘虜刺殺ノ命令ヲ受ケタリマス。

演習ガアツテカウ銃劍術ニ自信アルモノハ午ヲ過キテ
ロトナル午ヲ過ゲタト云フ様ト事實ナキコト、各証人
ノ証言ニヨリ明瞭デアリマス。

伊藤中佐ノ命ニヨリ二人、俘虜ニ對シ他ノ下士官伍長
ト軍曹トガ先ニ立ケ本戸ハ高野軍曹志村ハ伍長、
後ニ立ツタデアリマス。此ノ實ニ對スル証言ハ志村ノ言
ニヨリ明ラカデアリマス。

本戸ハ伊藤中佐ノ命ニヨリ突ケ、トナルノトキ俘虜
ノ口胸カウ血ガ流シ出テ居ツタヲ見テ「カ、モ突
ク氣ニハナシカッタ、再ビ」突ケ、命令ニヨリ止メタリ
俘虜ノ左脇下ヲ胸、横ナ種、所ヲ目ガケテ突ラタリマス

本戸ハ小学校三年カ行カヌ殆ド女學同様にナリ

(五)

讀ニ書キスラ不自由ト人間デアリマス 彼が受ケタモ、
ハ軍隊ニ於ケル訓練デアリ 彼ニ教ヘラシタモ、ハ只、命令
服従デアリマス
彼ハ只一個、機械トシテ命令、実行ヲサスニ過ギヌ
ハ定ニ想像ニ難シキデアリマス。私に一度思ヒヨ彼、
家郷ニ走ラストキ一擲、涙ヲ禁ジ得ヌデアリマス 彼、
家族ハ如何ニシテ憂ヘリトモニアリマスヤカ 彼ニハ父母ナ
ク兄弟ナク財産ナク哀シムベキ境遇デアリマス 彼ニハ
妻女ニ子供一人デアリマス 彼が永年軍隊生活、間妻、
病身、身体ニ辛ウジテ生計ヲタビツラキアリマス。ソ
彼ハ師團司令部ヨリ軍事補助ヲ受ケテハ只一人
人間デアリマス。日本ノ食糧難ト更ニ性イニツキ哀
シナル彼等一上ニシクト迫リテ居リマス。餓エ泣キ
彼ノ妻子ノ身、上ヲ思フトキ私に執キ涙ヲ禁ジ得
ヌデアリマス

小宮大尉ハ此一上突ニ付テ余カ証言致シテ居
マス 何事カ余カ此同情ヲ賜リタイデアリマス

七
林増右佐々木ニ付テ余カ付ケ加ヘサシテ復キ
マス。

林増右ハ共ニ予備士官デアリマス。此等一若キ
子生上リ士官ニ對スル吉井司令、能ク度々ハ林増
右、佐々木渡辺等、証言ニヨリ明カデアリマス

夜明通信隊ニ於ケル予備士官、地位ハ非常ニ
低ク、彼等士官、意見ヲ述べバコトヲ許サナク、

(十三)

デアリマス。特ニ夜明通信隊ニ、副長が欠員デアラ
為 吉井司令ト此等、者、間、等級、差が甚ら
司令、命令、直接彼等、上ニカリ、彼等、絶対服従
ヲ強ヒシモ司令、若く士官、教育ニ重トス置
キ短期間養成、多備なる生ニ対シ其、自由主義的
思想ニ叩キ直ス、トナリ、下ニ特ニ嚴格ナル命
令、実行が要求セラレタリデアリマス 従ツテ多備な
生、取扱ハ殆ビト士官兵ト何者異ニ所ナカラ
デアリマス

佐々木又若キ者生上リ、軍隊トシテ林増巻同
様命令、絶対ヲ強ヒラセト、ト云フ様ナリデアリ
マス

日本軍隊ニ於ケル命令、今更申上ニ必要ナリ
は最早明瞭デアラウト思ヒマス

彼等が今戦争犯罪人トシテ此、法廷ニ立ツル
コトハ私ハ敢テ運命、蓋ダト云ヒタリデアリマス。何
トモ、何人カが彼等、地位ニ置カレタリ、タラバ、果
シテ其、人ハ此、立場カウ免レ得タデアリマセウカ私
ハ其、人モ又同ジ運命ニオカレタデアロウト思フデ
アリマス

他、何人デアルモ矢張り彼等ト同ジ結果ヲ免
レタリト云フ、其、場合其、人ニ責任ヲ負ハス
トハ果シテ正當ナルモデアリマセウ

戦ハ幾歳慘憺タル苦シヲ越エ遂ニ祖國ノ敗戦
ニ怛然自失シ今亦戦争結末、犠牲者トシテ其、
責ヲ負ハントスニ實ニ同情ニ堪エタリデアリマス

(十四)

ハ
裁判ニ私情ト感情ヲ交ヘテ、不可ニテ、此ヲ承
知シテオリマス。然レバ、私が日本ノ辯護人トシテ
同じ同胞が今此ノ法廷ニ裁カレトシテ、アルトキ此等
十四名ノ被害者等ニ其罪安カト祈ルコト、果シテ
無理ナコトデアリマセウカ

日本ノ言モ、昨ヲ憎ミ、其人ヲ憎マス、ト云フ
理ガアリマス。私ハ此ノ言モ、コリ戦争ノ場合ニ最モ
當數ニモデアルト信ズルデアリマス。私ハ平和ト正義
ト自由ヲ標榜スル貴國アメリカノ裁判が公正デアリ
ト確信シテ疑ヒマセ。

最後ニ私ハ聖書ノ一部ヲ引用シテ私ノ弁論ヲ終
マス

おんがの隣を愛し、おんがの仇もいとむべし、と
云へるもあるも、おんがを殺し、されど我はおんがを生じ、
おんがの仇を愛し、おんがを責むるもの、おんがの祈れ、
之天に祈れ、おんがの父の子とあり、人なかり、天の
父は、その日を愛し、その上にも愛す、者の上にも愛
し、せ、雨を正し、その上にも正し、かりぬ、あるも降らせ給
ふあり、おんが、おんが己を愛するものも愛す、も何の
報をの得へき、取税人も然、する、非、おんが兄弟のみ
挨拶す、も何の勝る、も、ある、異邦人も然、する、い、
ら、おんが、然、らば、おんがの天の父の全きが如く、おんがも全
れ

右 辯護人 中田正直

(手記)

ARGUMENT OF THE ACCUSED

DELIVERED BY

MR. MASANAO TODA

To Your Honor, the President and the Members of the Commission:

I should like to take this opportunity to pay my deepest respect to your thorough justice which honors the individual rights of the accused.

At the end of July 1942, the special submarines of the Japanese Navy attacked Sydney, Australia. The remains of the dead were treated with utmost courtesy and were sent to Japan in coffins of unpainted wood with their swords. I was struck with admiration for that nation which was then at war with Japan.

When the Japanese army attacked Tsingtao fortress during World War I, the high outer fortress of Fusan caused many dead and injured among our units which attacked it. It finally was captured, but since the fortress was so strong, there were no injured among the German forces. They surrendered before we broke into the fortress. Though we were enraged just before their surrender, we controlled our fury and dealt with them kindly, without any atrocities. This honorable attitude of our army was highly admired by them.

At the time of the Russo-Japanese War, when the Russian Army of the Port Arthur Fortress which killed as many as one hundred thousand Japanese soldiers surrendered, we allowed them to wear swords for the sake of the honor of military men.

However, several young American officers and non commissioned officers, who started from the carrier "Hornet" in B-25's to bomb Japan but were captured in the occupation area of the Japanese Army when they landed there because their fuel supply was exhausted, were sent to Shanghai afterward and received severe punishments. This was broadcast from Japan all over the world. Alas the reputation for chivalry of the Japanese fell to the ground!

The arrogance and arbitrariness of the militarist Tojo and those of his ilk penetrated to the hot-blooded hearts of the soldiers at the front. The strategic bases of Saipan and Iwo Jima fell. Our main land was subjected to the terrible air raids of the U. S. bombers and the decisive battle was about to be held.

This crime was committed when Japan was at the critical point where she would either rise or fall. As is evident from the testimony of witnesses, these acts were committed when the Japanese Army at Chichi Jima was suffering from air raids day and night and at a time when they were certain the enemy would land there soon. It goes without saying that we cannot discover the true state of affairs if we neglect the environment and background of the men on the island.

As has been testified by many witnesses, the food crisis was serious then at Chichi Jima. Some of them stated, "It was due to the short rations, not to the air raids of the U. S. forces, that we were at the point of death. We had only measly rice soups and fruits from the forest. We had fifteen to twenty air raids in a day when the attack was at its height."

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The soldiers at Chichi Jima saw the enemy planes in huge formations go to bomb their fatherland. The communication between Japan proper and Chichi Jima was cut off. The enemy's attack would soon be concentrated on Chichi Jima. Rations remained for only a very short time. Thus they lost their hopes and promises. Who could foretell their future? Since they were not philosophers it was quite natural that they worried themselves and became desperate in that condition, I think. I shall not discuss wartime reactions on morals and culture here, but the crime and disaster during war is far beyond description. It is the war that is to blame and that is to be hated. I believe, that the appearance of the A-bomb which was the direct cause of the surrender of Japan concluded all war between the various people of the earth. If this is so, how Japan or the Japanese shall get on hereafter will be made clear. We must contribute to the world's civilization by our thoroughgoing democracy and the reconstruction of a peaceful country. Your Honor, the President and the Members of the Commission, I beg you to give deep consideration to what I have just mentioned.

Now, I am going to argue for former Lieutenant (junior grade) Hayashi, Minoru, Lieutenant (junior grade) Masutani, Shinichi, Lieutenant (surgeon) Sasaki, Mitsuyoshi and Superior Private Kido, Matsutaro.

Specification two of Charge I states that: Tachibana, Yoshio, Yoshii, Shizuo, Masutani, Shinichi, and Hayashi, Minoru, the last three attached to the Yoake Wireless Station, struck and killed by beheading with swords, an American prisoner of war.

However, Hayashi, Minoru, then an Ensign, Imperial Japanese Navy, was subordinate to Yoshii, then a Commander, Imperial Japanese Navy, commanding officer of the Yoake Wireless Station, and assigned the duties of maintaining the radars. He was ordered by the commanding officer on or about 24 February 1945, in the morning, "We are going to execute the prisoner at 4 p.m. today. I think it is a good chance to increase the courage of young officers. Hayashi and Masutani, behead him!" Hayashi testified about it as follows: "When I was ordered to execute him, I felt very terrible and I answered that it would embarrass me too much, whereupon my commanding officer replied that I had to obey his order. I was afraid that I had to obey his order. I was afraid to be shamed before my fellow officers if I excused myself, and gave my consent for the time being. After supper, I went to the commanding officer's room and said that I could not behead the prisoner and that I wished the commander to choose someone to act in my place. But the commanding officer replied that if I disobeyed his order, I knew how he would punish me. The commanding officer used to say at that time that he would punish those who did not obey him then and there. As I was afraid of the punishment if I opposed him, I agreed with him against my will." And as to the execution, "When I was ordered again to behead the prisoner, the commanding officer advised me not to use the sword with full strength, because it might hurt me." By these paragraphs, you will understand that Hayashi did not execute the prisoner of his own accord, and that he attempted to refuse to do it, unusual among military personnel. But he could not absolutely refuse it, because it was an order. Air raids were very severe then at Chichi Jima. The Yoake Wireless Station had few members, and it was hard for them to continue their duty under the severe air raids. Under these circumstances, the commanding officer forced his men to obey his orders to the letter. Hayashi stated "The Commanding Officer was a very good person in his private affairs, but he was very strict in his official duties. He required his officers and enlisted men to

discharge thoroughly what they were ordered. Even we officers could not act on our own initiative in carrying out orders". That Hayashi obeyed the order of his commanding officer and did not act of his own accord is already clear from the testimonies of Hayashi, Tamamura and Watanabe.

Hayashi answered the questions of the prosecutors in this trial as follows:

Question: Did you know the reason why the prisoner was executed?

Answer: I had been at Chuo hill for three days which was four kilometers away from Yosake-Hama till the day when I received the order, and came back in the evening. As for the prisoner, I heard that there was a prisoner brought to our unit and nothing else.

Question: Was there a trial for the prisoner?

Answer: I do not know.

Then Hayashi added, "Of course, I did not want to behead a human being. But I believed the commanding officer concerning the execution of the prisoner.

Hayashi is now twenty-three years old. After graduation from the Yamaguchi Industrial College, he entered the Navy. Going directly from the college into the navy, he could not observe the real circumstances of the military society during that time. He was only taught to obey the orders on any account. His father died four years ago and his mother last year. I beg your kind sympathy for the future of this young man who is in such a pitiful situation. Secondly, I want to argue on behalf of Masutani, Shinichi. His duty was coding and decoding under the commanding officer Yoshii. He received the order to execute the prisoner with Hayashi, on or about 24 February 1945, he replied, then and there, protesting the order, "Is it right to execute the prisoner whom you have borrowed from the army without permission?" He did not ask the relation of the army and the navy concerning the execution of the prisoner, but protested tacitly against the execution. That is when he met the commanding officer at his room again and petitioned that he did not want to behead the prisoner and that if it was necessary to execute him he wanted someone to do the execution in his stead. But the commanding officer did not listen to him and said, "There is no need for you to ask me the reason. You ought to know the punishment when you disobey my order." And he was obliged to obey this compulsory order.

How strict Commander Yoshii was about his orders and how severe his punishment for disobedience is clear from the testimony of witnesses.

Masutani is known as an intelligent person who studied politics at the Tokyo Imperial University. Since he had had only a year of naval experience, he was still influenced by his school life. Therefore, he was treated strictly because he had a liberal inclination.

He confessed the court as follows: "I shuddered when I saw Hayashi cut the prisoner." Witness Watanabe, Takejiro testified, "When I arrived at the scene of the execution, I saw Hayashi and Masutani pale with excitement." The fact mentioned above tells eloquently how Masutani did not want to carry out the execution and how he was obliged to obey the compulsory order.

I quote here the testimony of Iijima, Toshio who is also a student from the Tokyo Imperial University. "I am now in the University as a student. I love truth and am willing to sacrifice my life to pursue it. During my military career of two and a half years, I was compelled to act blindly even though I had some thoughts of my own on the subject. Though it is my poor opinion, I believe that it is the most distressing defect of the Japanese Army. I can find several young students among the accused here. If they perpetrated a deed that violates the law of war, I believe they were compelled to do so. I beg you to deal leniently with these promising comrades. I believe that to love the truth, to pursue the truth on the one hand the the distressing defect of the Japanese Army by which all personnel were compelled to act blindly would cause agony in Masutani's heart.

Specification seven of Charge II states, that Sasaki; Mitsuyoshi, then a surgeon Lieutenant (junior grade), Imperial Japanese Navy, while serving at the Yoake wireless station prevented the honorable burial of an American prisoner of war, by mutilating and improperly removing flesh and viscera from the body.

Sasaki was attached to the Special Naval Base, Chichi Jima on 21 April 1945 (his direct superior was chief surgeon, Sakai, Tadashi), and served at the Yoake Wireless Station after about the middle of February 1945 where he was under the control of Yoshii, Shizuo, then a Commander, Imperial Japanese Navy, the commanding officer of the Yoake Wireless Station.

The fact that, on 24 February, 1945, at the Yoake Wireless Station, the commanding officer Yoshii, ordered Hayashi, Minoru, then an Ensign and Masutani, Shinichi, then a Lieutenant (junior grade) to execute the American prisoner, and that Yoshii ordered Sasaki, Mitsuyoshi, then a surgeon Lieutenant (junior grade) to remove the liver of the prisoner was made clear by the witnesses Tamamura, Fumio, Watanabe, Takejiro, Masutani, Shinichi and by Sasaki himself.

Secondly, though the charge stated that he removed improperly flesh and viscera of the body, the flesh was not removed nor have the prosecutors any proof of this. So he must be innocent in regard to this point.

It is evident that Sasaki's direct superior was Commander Yoshii. How severe commanding officer, Yoshii was concerning his orders was evident from the testimony of many witnesses. Sasaki received the order to remove the liver after lunch on the day when the execution was held. The order was so sudden that Sasaki could not know what to do before his comrades and the other officers. After that he met Yoshii at the door of the commanding officers room, and asked, "Why." The commanding officer changed color and said in a loud voice, "What's that?" "It's unnecessary for you to ask about it. Never mind the consequences. I am very sorry that young men of your age are cowards." When Sasaki asked the reason it was a tacit protest, as he could not refuse openly. Because of this you will understand why the commanding officer rebuked him so excitedly. Here, I want to state the difference between the background of Americans and that of the citizens of the Japanese Empire. Basically the Japanese are not frank in their speech. They think it impolite to refuse openly when they must refuse.

I can recall the following story concerning this difference.

I remember that it is a story from your country. There was a Japanese woman

who served an American millionaire as a housekeeper. When this millionaire fell ill, she devoted herself to nursing him day and night. In spite of her efforts, however, he died. Then his son returned from Europe. She said to the son with tears in her eyes, "Your father died because I did not nurse him well. I am sorry but it was I who killed him." The son, who was an American, thought that she had meant to kill him, and this gave rise to dissention. In this case, the Japanese housekeeper certainly nursed him without sleeping and to the extent of sacrificing her own life if necessary. But the Japanese will say, even in such a case that they are to blame. This mental attitude will be difficult for you to understand, but it is the "modesty", which we call the virtue of the Orient.

Sasaki said about his statement to the Board of Investigation, "It's not my duty to inquire about the orders of my commanding officer. I thought that I did what was right. But I think now, that I committed a crime. I am responsible for what I did", which was not translated correctly in the testimony. These words of his were based on the same modest assumption of responsibility for something which could not be helped, as was the housekeepers.

Nothing could be done about the orders of the commanding officer. After Sasaki had removed the liver from the dead body, he sewed the incision and also the neck. Wiping the blood from the body, he folded his arms and respectfully saluted the body. He was so respectful that the soldiers who were around laughed. Sasaki's attitude was grave and as a doctor he did everything that could possibly have been done for the body. It is clear that this was something which he did not volunteer to do. He knew that a prisoner was to be executed at 4:00 o'clock in the afternoon, but he did not go to witness it. He did not go to witness it. He did not leave until a messenger came to call him regarding orders from the commanding officer. He did not like to do this but believed his orders were absolute. Concerning this point he is still convinced that he was right in obeying these orders.

Next I would like to speak a few words on behalf of Kido, Matsutaro.

In charge I, specification one, it is stated that Tachibana, Yoshio, then a Major General, and Kido, Matsutaro, then a Superior Private, Imperial Japanese Army, acting jointly in pursuance of a common intent, did each and together, did strike and kill by bayoneting with fixed bayonet, an American, prisoner of war.

I ask that the commission take notice of the fact that Kido is but a mere enlisted man. He was attached to the Brigade Headquarters as an officers' orderly. On the morning of 7 August 1944 he was told by Corporal Hidano, Raiderwa, who supervised the orderlies at that time that there was to be target practice at Kominato Area two times, in the morning and in the afternoon. Hidano said that it was the order of the Divisional Command that Kido go there and take orders from Lieutenant Colonel Ito. When he arrived at Kominato, he was given orders by Lieutenant Colonel Ito: "You and Shimura, bayonet the prisoners." It is clear from the testimony of the witnesses, that after the target practice was over, it was not asked that people who were skilled in bayoneting raise their hand. There was no testimony to that effect that Kido had raised his hand. By the orders of Lieutenant Colonel Ito, two non commissioned officers, a sergeant and a corporal stood in front of the prisoner before Kido and Shimura. In front of Kido was Sergeant Takano, in front of Shimura, was a corporal. This point is clear from the testimony of Shimura.

When Kido was ordered by Lieutenant Colonel Ito to stab, seeing blood flowing from the mouth and chest of the prisoner he could not bring himself to stab the prisoner. When he was again ordered to stab, he could do nothing else. He stabbed at a point ten centimeters to the left of the breast in the arm. Kido is a person who has had but three years of schooling, which is almost as good as no schooling at all. He had difficulties in even reading and writing.

What he has been taught was military training and what he was taught in this training was obedience to orders. It is not difficult to conceive that all he did was to obey and execute this order mechanically.

I cannot help but shed tears when I think of his home. How is his family living? He has no parents, no brothers and sisters, no property. He lived in a pitiful environment. He has a wife and one child. During the long years he has been in the service his sick wife, forcing herself on, has barely been able to keep alive. He was the only one at the Divisional Headquarters who was receiving military subsidy allowance. The food shortage and inflation that exists in Japan today is knocking at their door. When I think of his wife and child dying from hunger, I cannot keep from shedding hot tears for them. The testimony of Captain Kosugi verified this point I am sure. I ask your full sympathy in this case.

I would like to add a few things more concerning Hayashi, Masutani and Sasaki:

Both Hayashi and Masutani, are naval reserve officers. It is clear from the testimony of Hayashi, Masutani, Sasaki and Watanabe, Takejiro, what the attitude of the commanding officer Yoshii, was toward these young officers who were graduates of colleges and Universities. The status of the reserve officers at the Yoake Communication Station was very low. These officers were not allowed to express their opinions. Especially in the case of the Yoake Communication Station, where there was no executive officer, the difference in rank between the commanding officer Yoshii, and his subordinates was very great. The orders of the commanding officer were given to them directly and absolute obedience was expected. The commanding officer also placed stress on the training of the young officer. To these young reserve officers, who were trained in such a short time, he said, "I will hammer out your liberal learnings." Under this policy he expected the execution of his strict orders. Because of this there was no difference in the handling of these officers than in the handling of the enlisted men.

Sasaki is also a young college graduate doctor and he also had been forced by absolute orders, this does not have to be reiterated again.

I believe it is clearly understood without my saying anything concerning the strictness of obedience to orders in the Japanese military service.

I would like to state that a trick of fate has brought these people to stand in court this day as war criminals. The reason I state this is that if other persons had been there in their places, these others would have been able to remove themselves from this situation. I believe that those people would have been in the same circumstances these people now find themselves. And if these other persons could not escape, I wonder if it would be right to have these present defendants carry the responsibility.

I understand fully that, in judging, personal feelings and emotions cannot be considered. I wonder if it is unreasonable that I, as a Japanese lawyer acting in the defense of the 14 defendants, who are my countrymen, standing before this commission to be judged can but pray that their sentences be light. There is a saying in Japanese that, "The crime should be despised and not the individual". I sincerely pray that this saying can be applied fully in these war crimes. I have complete confidence in the righteousness of American trial, which is governed by the aims of peace, justice and liberty.

In concluding my argument, I would like to recite some verses from the Bible St. Matthew, Chapter five:

- "44. Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you;
45. That ye may be the children of your father which is in heaven for he sendeth his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.
46. And if ye salute your brethren only, what do you more than others? Do not even the publicans so?
48. Be ye therefore perfect, even as your Father which is in Heaven is perfect

MR. TODA, MASANAO

I certify this to be a true and correct translation of the original argument of Mr. TODA, Masanao, in Japanese to the best of my ability.

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

"pp 7"

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TACHIBANA, YOSHIO et al.

(154598)
PART 2 OF 4

8030

論 華

閣下は、各氏「勝の事、ハハ最
シク、宜クハ事ハ最ニ善ニシ、ハハ」
私ハ茲ニ裁カシマトル十日名、被告ハ
事ハ前ニシテ辨護スルニ當リ、此ハ言
葉ノ想ハ出シテ無量、感ニ打スルニ
ハハトニハス。

今日迄提出セラルル四十数名、検事側
ハ證言及一部、被告、調査委員会
ニ於テハ證言・陳述書ヲ觀テ、本件ハ
及、辨護士自治ニ於テ初メ出會ハ
大事件ニテハ、恐ニ今後新ハ事
件ハ辨護スル機會ニ觀テハ信ニ
ハハトニハス。 米軍、好意ニ依

一 華族ノ、一 皇ニ加ヘシタ事、
我ニ對シテ、光榮ニ存スル文書
トナル。

本件ノ日本國カ、ナリテ舊國事ナ
リ、目前ニ現ハル「結果」

ハ、據ヒテ、ナリテ可ナキコト、解

明ナリ、何レモ、一 感ニシテ、ハシトナル。

何レモ、ナリテ、人々ノ食ハル、ナリテ、

ナリテ、言フ、法律問題トシテ、我ニ

思ハルニ、事實カ、摘發ナリテ居リ、

ナリテ、聞ク、キ法律、日本、法律ニ

解フ、又、審問ニシテ、也、國ニテ、

ナリテ、法律、ナリテ、存スル、ナリテ、ナル。

此、問題ニ就テハ、法律ハ、ニ據リテ
之、判断シテ宜ミイモ、テアリヤサカ、
類ニ若慮スルモ、テアリマス。此、事件
ハ、一人、法律家ハ、ニ依リテ取扱フ事
ト、ニ非スミテ、他、部門、學問、即
世界、醫學^{外科}、生理學、權威者
ニ依リテモ、此、充分ニ研究シ、ハ、意

見テ謂ヒテ審理スルニ非レバ、眞、
審判ハ、策來ナイモ、ト考ヘサルヲ得
ナイモ、テアリマス。 辯護人ト

致シマスミテハ、若シ許サレハ、ナレバ、著名
ナル醫學者及生理學者、事喚問
ヲ御願ヒシタイ、テアリマスガ、ハ、時
間モ無ク、此、儘審理ヲ仰グ事ハ、

遺憾至極ニ存スル次第ニテアリマス。

本件が如何ニシテ惹起サレタカ、

少シトモ本舞臺ノ人々ノ前ニ其ノ原因ヲ

探研スル必要ヲ痛切ニ感ズルモノト

アリマス。

先ヅ去迄ノ現シタル経言ニ依リ、事

件當時ノ戦争状態ヲ観スルニ、

昭和二十年二月・三月ノ米軍ノ硫

黄島作戦中ニテアリ、此際戦況

ニ未タ曾テ見ザル激戦ト稱スル

同島ノ日本軍ニ數三千ノ死

全部玉碎ト言フ悲惨事ヲ憶

セシタハテアリマス。加ヘテ米空

軍ノ日本本土ノ本格的な攻撃ヲ

實施シ、父島在島部隊ハ、在
 還リテ現實ニ目撃シテ居リ、又
 同時、父島自体ハ猛烈ニ空爆カ
 シ、アタテアリス。既ニ日本軍
 ハ敗戦ニ次グ敗戦、本土防衛、東
 一線、將ニ破レイトシ、本土ホ一回、
 空襲ニテ、用東大度々、走ク大
 衆、蒙リ、父島將兵ニ同、平時
 ニガハント同等、心理状態、果シテ
 何ク持テ得タテアリスカ。

昭和十九年九月、父島在住、軍部
 関係以外、男、女、一人残ニス、
 本國ニ引揚ゲ、ア、ホ、ホ、島ニ、
 一萬五千、將兵及軍属、ハ、

"QQ-5"

5

何等、能く其の生活に居る
ハテアラス。

私に當る

「参りて来りて四月ニカテアラス」
此等、出ル外定メタル集會、外
一歩も外出ニタイハテアラス。其、何
何等、其機關を動かす合ハテ
アラス。其、結果一トアラス。

今迄、其の附カテアラス、非
常ニ其の利々シク、シテアラス
「モ腹、立テ事」張出、其の附
ハテアラス。此、体験ニ致シ

アラス、人間トイハル、何等、其
其設備、其の度ニ其の間、其
其ニトイハル、相當ニ教育ハ、

「QQ-6」

6

自判力、アル者デモ精神状態、
普通デハナラハテアハス。然レ
戦争中長イ期間殺伐ナル集團生活
ヲ致シ、個人、自由、一切没却セシ
絶對、命令ニ依リ日夜、強ヒテ、刺
戟戰、悲報ト、頻繁ナル空襲トヲ
終始致シ在ルデアリス。斯ノ如キ状

况ニ在テ如何ナル事態ヲ起シ易イモハ
凡カ、相像ニ余ニアリテアハス
以上ノ如キ事情下ニ本件ニ惹起セラル
モノナリト、前提ノ下ニ、本件、其ノ
觀察セラルベキモノト信スルモハ
アリトス

又テ

検事側ヨリ證據トシテ提出セラ
レタル、調査委員会ニ於テの場少
ク、調書並、陳述書が證據ト
シテ價值アリヤ、否ヤ、私ハ頗ル
疑ヒヲ持ツモノデアリマス。一
般人、自白、證據カアリ

SUARE RULE ニハ規定ニテ
アリマスガ、之ハ機械的、
其、値、鵜呑ミニ取スコトハ、危
キ限至極デアリマス。日本、法律
ニ於キアルハ、既ニ申上テ置タ
ル、周、自白、證據トシテ最モ
重キ觀サレテ居タリマス。

然ルニ、今から十数年前「帝人事件」
ト稱せられた時、商議内閣、ロ、
島、銅、當時、中島商工大臣モ
連座シ、今、商工大臣河合良成氏
モ亦連座シタ有名ナル帝國人絹
株式會社、横濱問題カアジタシ
トラス。之ニ、帝國人絹株式會社、
「取締役、自由ヲ基トナシテ發
展シタ事件」トアラス。此、事件
ハ十年間モカハシテ、漸ク事實
ノ證明ナシトシテ無罪、判決カ
アジタ、トアラスカ。此、事件ニ東
自白ハ、ニ據シテ事件ヲ判斷
スル事、危險ナルモナイニト

ミテ、自白ハミテ證據トシテ、採
用シタイコトニ、事實上取扱ハミテ
居ルハデアリマス。

私ハ本法定ニ列邦致シテ、
アメリカ、法律、個人、權利
ヲ尊重セラル、事ニ驚嘆致シテ
居ルハデアリマス。之ニ比シテ、日本

ハ法律的生涯、貧弱ナニ亦驚嘆
致シタルハデアリマス。此ハ米國
法ニ違ヒテ居ル日本、法律ニ於テ
スラ自白ハ證據トシテ、ナラス、ト
イフ傾向ニ於リシハアルニモ拘ニス
最モ進歩タル米國法ヲ適用サレ
ル諸法定ニ於テ、自白ハ其、證

16
"QQ-10"

10

証人として提出せられたことは、
私に奇異之感を打たせしめて、
大審院判事としての態度、山下
事件に関する意見書の中、特
に第五回憲法改正、其に付、
私に頗る関心を持たせ、
である。

然し SUPREMACY、解釋
として報告し、自白の證據に
して採用するに否か、――審
問会、権限を越して言ひ解
した、甚だしく持しめて、
である。

茲に私の場合の先、調査を

限會、讀書及陳述書「カ」據
 トニテ無價値ノモノトナリト云フコト
 「希絶致」ニ見度シ、テ「ア」ツ
 的場少佐、讀書、事實ニ
 相違カ「ト」ト「取」上テ「コ」ト
 「其」實ニ「絶」ノ「カ」ハ「テ」目カ
 「例」ヲ「舉」ゲ「テ」見「タ」ト「思」フ「ル」也。

“Q Q. 12”

12

即、
 「二十年二月頃御國瓜分
 御合戦ノミナリヲ「第」ス、戦後
 「諸藩諸縣」ニ「轉」ハ「タ」リ「テ」
 「縣」ト「シ」テ「戰」斗「ハ」タ「リ」タ「ル」也。
 「戦」ノ「人」肉「モ」食「ハ」ネ「ク」タ「ル」也、ト
 言「フ」也。 戦「後」カ「ル」ニ「金」藏
 「ニ」住「ス」也、其「ノ」實「情」ハ「ト」ニ

禁固令血、并糖、海田
用之糖、其小糖、」一
此、陳海、」一、其、
海田用之糖、其小糖、」一、
此、其、其、其、其、
明、其、其、其、其、

又、其、其、其、其、其、
又、其、其、其、其、其、
其、其、其、其、其、其、
其、其、其、其、其、其、
其、其、其、其、其、其、
其、其、其、其、其、其、
其、其、其、其、其、其、

康政の $P \rightarrow P \times R$ 式、其、種
 田、田舎、農田、彼 \rightarrow 、式
 事、事、事 \rightarrow 、明 \rightarrow
 事 \rightarrow 、事 \rightarrow 、事 \rightarrow

"Q Q - 14"

又、 Γ 、 Π 、 Δ 、 Σ 、 Θ 、 Λ
 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow
 "カ、肉 \rightarrow 、食 \rightarrow 、 \rightarrow 、健康

11

"タ、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow
 子、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow
 "、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow
 "、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow

二十二年三月末、通、
 命令、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow
 5、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow 、 \rightarrow

「約束は通り、く、所へ持ッテ
来タ、ト食ベル前ニ言ッテ。」ト陳
述シテ居リマスガ、篠田・岩崎・飯島
ノ證言ニ據ッテ虚言ナルコトハ、ハ
キリ致シテ居リマス。

尙其ノ上ニ「間違ヘタ事ヲ言
ハカモ知ラヌ。」ト言フ言葉ガ調

書ニ載ッテ居ル位デ、如何ニモ、
調書ガ措信スベカラサルモノデアリカ
最早言フ俟タサル所ト確信スルデ
デアリマス。

斯ノ如ク間違ッタ事實ガ記載
サレテ居ル以上、辨證人ノ答如キナル
調書ニ於テ、何ラ真トシ、何ラマ

113
"Q-Q-15"

14-15

偽トスルカ、人間、力ニ及ビサル所デア

リアス。

故ニ私、此、調書全部

ヲ信憑力ナキモノト断定致スルデア

リアス。

本調書、他、記録ニ依

リテ裏附ケ得ルニ限リ、凡テ虚偽ナ

ト断スルモデアリアス。尤ヤ検事、

提出ニ係ル的場、陳述書ナシトシ、

「シ、（的場少佐）、創作ニ因サズモ

デアリアス。此、陳述書、同前

デアリアトハ私ガ「一列證スル迄モ

ナク、賢明ナル委員諸公、既ニ了知

セシアル是ナリト信スルモデアリアス

此、其ニ觀テハナクハ、職ホク毎

ニタイ所デアリアス。

"Q-Q-16"

15-16

"..."

以上、地方、調査委員会、調査
及陳述書ニ就テ申述スルハデアドリス
ガ、尙之ニ付法律的意见ヲ申述
度ヒト思ヒマス。

海軍律ノ三〇條ニ據リマスト、被告人
トシテ陳述スル場合ニハ豫メ其旨ヲ
告テ、自己ニ不利ナル手紙ハ陳述

スル手ナシ、又被告人トシテ有スル權利
ハ又テ詳述スルナラズ、ナリ又ハテ
アドリス。

一九四三年一月一日デスニ一言ニ於
テ戦争犯罪ニ對スル一言、中ニハ
ニ適用セラルベキ法律、被告人
屬スル國家及被告人受ケル國ハ

"Q-Q 17"

17

0325

表律：振 八 十 二 十 十 二

$$H_2 - H - R - R' - R''$$

2. 强度 = 抗拉强度 $\approx \frac{1}{\sqrt{2}}$ 屈服强度

SCAD RJL 发布

ホニテ 居ラヌガ、 本件、裁

判二於二、海軍軍令又適

III → long with Ho 2-11 P-11 P-11

$P \times 7 P$ - 鐵板 2 片 - 15x2 -

個人權利之基本法

解：设 $\angle A = x$

信のPZ分置、私、調査

李貞金・荆楚・豫・鄂

~~III~~ III - IV - V - VI P x r p ✓

一、 α 爲一個入、權可。

我、順、序、我、叫、的、是、周、松、
2、1、井、松、心、人。

第 1 讲 数

① 罪狀項目其一日、魂ノ入ニシテ、
其代ナリ、的物ノ代、伏魔ナリ。
其代ナリ；其日、以テ其代ナリ。
其代ナリ、其代ナリ、其代ナリ。

第2次收票-票号: mlt. 的付
5 pt + r - Dr - NN° 此单是: 確

和田、美穂、明子、美穂、 $\log K \approx \ln 11$

[illegible]

目的: 求 $\lim_{x \rightarrow 0} \frac{\sin x}{x}$

2. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} = 1$ for p.d.

和沈君通上三格一

若し、假令 Δ 州に於て、
信實に共同して殺害したと認め、
兩人の間、殺害の意思、合致する
ことを認める。然るに、此の證據に
しても提出せしむるに足らず、而して、
 Δ 州の實際に斬首した者は、
森下中尉であると。右森下と

末吉、的場と、間、殺害の意思、
合致し、全く無罪であると。
検事に此の事實、何等の證據
も提出せしむるに足らず。従って
私は、此の罪状項目に無罪と
確信致すものとす。

1924 "9924"

六 第三首 辭

罪狀實目其、一、其、三、其、六、
所謂食肉問題トハ、
後「」指「」辭「」見「」思「」。

三 第三首 職務急務

① 罪狀實目其、十八、十九、二十、

「」於「」的場、少、於、三、〇、大隊長

並「」非防備地區、指揮官ト「」ハ、
責任ヲ問「」ハ、テ、居「」ハ、テ、ト「」ハ、

依「」テ、取「」三、〇、大隊長ト「」ハ、責
任、並「」非防備地區指揮官ト「」ハ、

責任「」ハ、今「」ハ、辭「」度「」ハ、
ト「」ハ、

假ニホールノ殺害ガ有罪ナリト
 認メラルルナリ、海軍律十九條
 後段ノ規定ニ依リ、ホール關係
 ノ職務怠慢罪ニホールノ殺害
 ニ合アルモト信ズルハテアリマス。
 何トナリ、殺害ト職務怠慢ト、
 其ノ罪實ト職務怠慢ガ殺害ヨリ

モ輕イ犯罪ナルカテアリマス。
 從テ、ホールノ殺害ガ有罪ト
 スル、當然ニホールニ關スル職
 務怠慢ヲ許追ヒテ居ルナリ、
 十九、二十、ノ罪狀項目ノ無罪
 ラ宣セラルベキモテアリマス。

然レ、此防備地区指揮官トシテ

"QQ26"

27.2.6

"QQ26"

ノ責任如何、ト申ハラスニ、防
備地区指揮官ノ職責ハ作戰
ニ限レルコトデアリテ、俘虜
關スル權限ハ無イデアラス。
從テアーヤンニ關スル職務
怠慢ハ無罪ナリト信スモ、
アラス。

(三) 罪狀項目其ノ一、二ナリ。
就テ、

的場少佐ハ、三〇ノ大隊長トシテ
中島大尉ヲ部下トシ居タリ
ハ明ニカデアラス。然レド、
アーヤント想ハルニ、俘虜
中島大尉、或ハニ、殺害スル

25-2827, "Q-827"

コトハ其ノ殺害後ニ如クハ事トテ、其
殺害ヲ抑制シ又通査ルニ保護
シ得ザリシ事ハ當然デアリス。
此ノ其ノ時、御留意賜ヘ度
所デアリス。

第二 立花関係

第一告辞 殺害

罪狀項目其ノ二、其ノ四ハ共ニ無
罪ナリト信ズルモデアリス。 即

罪狀項目其ノ二、ニ於テ立花ハ吉井
増谷・林等ト共ニ俘虜ガイ
ヲ斬首セリ、トナズ居ルデアリス。
然レガイハ旅團司令部ヨリ

“Q-Q-29”

29

18

吉井海軍大佐、通信、爲ニ父手
トトモニテ、立花ニ此ヲ以テ、金
ノ立花、通知モ無ク殺害シタルコト
トモニテ、立花ト他ノ者ト、問ニ、何
等殺害、意思、合致、無カッタデ
アラス。 検事、提出シタル證
人、辯護人、此、信念ヲ裏切リ

何等、証人モ提出致シ居ラス。
從テ無罪タル事、明カニトス。
又、罪狀項目其、四ニ就テモ
同様デアラス。 何トナシ、擬正
少佐、證言ニ據ラズニ、存房
ホーニ、直轄ニ、大隊ニ、渡シ
立花ニ、報告シタイ、ト言ハレタス。

2429 19-9-29

又、君大尉も堀江少佐から直接、
ホーシヲ戻スト、電話がアッタ、ト
證言致シテ居リマス。尚、杉山
藏、和田、三窪人モ立花、裁判現
場ニ居ナカッタコトヲ證言致シテ居リマス。
立花が積極的、的場ニ、ホーシヲ
裁判セヨト、命令ヲ致シ又證據人全
然無イ、テアリマス。然ルニ、
検事共、共同ニテ共通、目的ヲ持シモ、
ナリトシテ許進シタリコトハ、正ニ、
的外ノ、感ナキニ非ス、テアリマス。
罪状項目其、三、ニ就キマス、トハ、
審判官カ「加藤大佐ニ佐藤ヲ
殺スト言ハタ、テハ、ナイカト思フ。」ト

"Q-Q 30"
2930

言ハ證言ト、加藤大佐ガ文書ヲ以
テ其、處刑ヲ報告シタ。ト、證言
ガアルハテアルカ、加藤大佐、佐藤
處刑、事ハ井川副官ニ、電話命
令、傳言シタリ、加藤大佐、右證
言命令ハ立花ニ確メヌ。ト言フ
證言モアルハテアルカ。

果シテ立花カ加藤大佐ニ佐藤
ニシテ處刑セシ命令ヲ出シ
タカ否カハ判然致サズテアルカ。
勿論現場ニ立花居ラセシ。
其、他確タル證據ハ提出致サシテ
居ラセシ。

2637 "Q-Q-31"

"QQ-22"

記

又、罪状實目其、一、
 信譽、
 東木司理、
 同令部、
 處置、
 一、
 其、
 一、
 可、
 一、
 二、
 的、
 一、
 居、
 現、

$$H + \dots \rightarrow H + \dots$$

若一、蒸氣、石、炭、 $A=1$

N>N' [張 s n # (圖 t' N]

一、原則：基本三化，發展

集韻 - 十 - 十 - 十 - 十 - 十 - 十 - 十 - 十 - 十

P. 5. 1. 1. 1.

果一テ、右ニ件考ニ代、考

同.以共通、同的「普遍」力

百力、意、持、清、弱、十、一、思、今

$$\hat{M}P - pN^0$$

遊園記、花、鹿、海、山

[illegible]

四一ノ、数値表示の表。

有罪十一卷 第N号稿

罪状現目其下 其二 (同)

謝據、著々無罪、宣告後

ハナニト信スルニイダラズ

又其々其日、所、宣告、然らず

ニ因、行、ハナニイダラズ

此果、元分考解、然らず

ハナニト信スルニイダラズ

尚其五、無罪トハ信スルニイ

ハズ 何トハ、系解著

同、証言、據、著、然らず

現場、信、ハナニイダラズ

ハナニ

其他何事、記憶、提、ハナニ

信、ハナニ

Q-Q 34

192

戰勢急慢ニテトコトノ明カナリ

トス。然レドモ、山下事件ニ

於テ貴國大審院ニテトコトノ判事

ノ意見、如ク、集團罪ノ以テ、

直ニ個人ノ罪ナリト断定スルコト

ノ出来ナイコトトス。

戰勢権限ヲ持テ下ラ積極的ニ殺

人ト云フ行爲、本如ク又、之ヲ

知リ得ラ、然レドモ、之ヲ行ハシメ

テ殺害セシメ、又、證明セシメ、

合シ、個人ニ對シテ殺害スルコト、

出来ナイコトトス。

一、條約第一條ニ據リ、

「軍隊ノ責任アル者ニ依リ、統帥

"Q Q 36"

35-2

「これら」ト、規定ニ基キ、立花が保護
ニ對シ防護位置ヲ爲ス義務トナ
スルモ、個人トシテ現其ノ防護ニ
力ヲ有シ、且防護ニ手致ス事
ニ付カタクト信ス事ハ、證據カ
ハズ、ナク、ナクト信ズルハ、ト
テ、是ノ間ニ證據ノ見

$$: \text{JS} \times \mathbb{N} \rightarrow \mathbb{R} \quad \text{JS} \times \mathbb{N} \rightarrow \mathbb{R} \quad \text{JS} \times \mathbb{N} \rightarrow \mathbb{R}$$

故：私、主、其、主、主、主

藏書之寶：一、藏書

不名令と上、考へる元一

$P \rightarrow P \vee Q$

Q Q - 37

25-2

第二若前，罪狀實目其、二、
「依、ハズル、主花、昭和十九年、
月一日乃至昭和二十年三月十五日、
間」姓名下筆、偽造日名、
其、今令「依、國策的。駐米小
人、事實は記載した所ハハズル、
何時、何人ハ偽造、何故ハ
駐米ルニ上進ハ、此、記載
事項ニ據テ、米穀取扱ハ
トス。其ハ此、人ニ對シテ
不々々々々々何用何用、何故ハ
誰ハ駐米ルハ上進事項ハ明
確ニ指摘スル、以、被疑、
駐米ルハ此、ハ無罪ナ

コトハ當ノ事ナリトモ信スルコトナシ。證據ニ
據ルコトヲ觀ルニモ右ノ如ク證據ニ何時、何處
テ、何時、其ノ一本誰テアリカト云フ事實
尙ほ、立證セテ居ナイコトナシ。

此、此、罪狀要目ニ、米軍は傷病四名ニ對シ、食
物、飲料、水、生計ノ具、又樹木ニ對シ、荒
天ト戦斗地域、砲爆撃、危險ニ曝シ、ト、記

載ガドルコトナシカ、日本軍自体、亦ガ諸ニ生計
ニ、不足ニ信リ、米軍、戦局ニ爆撃タ、傷、
未成、壕生ヲ爲シ、ト、時期ニテ、傷病、
爲時、其生計ノ具ニ場所大ニ乏シク、
ト。又當時、日本將士我食ヲ乏シキ事、
空腹ニ感シ居ル事ヲ云フ。然ルニ、傷病
ニ對シ、水及食物ノ具ニ乏シク、

191
'09 40'

38

'00 9 3'

タリト、證據ヲ無クシテ
 從テ此、罪狀項目ノ證據
 不存ナルコト考ヘテアリ
 アス。

“Q Q 42”

38-2

第三、吉井關係
 第一書翰、罪狀項目其ノ一

又、指井が倉前上宿第ニ右意見、

アハハハ、事類元何等立證セシテナ
ラズ。

此、指井關係ニ右テ、事
事、何等、證據モ提出致シ居ラズ。

故ニ此、罪状要旨、無罪タルヲ明カシ
テ、

仍テ第三首詳 罪状要旨、
其、十日、十ヲ、十ヲ、ニ就テモ無罪タル

ヲ明カシテ、何トナシ、前記、如
シテ、指井ニ指揮権カ
イハシテ、

次ニ第一首詳 罪状要旨其、二、
其犯トシテ、起訴セシ居ラズ。

集團罪トシテ起訴セシ居ナイ
ト、

此、其目、トテ、トテ、

十ハトハ、是又、罪罪ナリト主張
 致スルナリトス。何ナリト云ク
 肥田中説、諸言ニ據ラントス、
 「俗言是利、事ト、吉井が歸
 事ト、問、此語何ナリ経國ニ
 言リトハ肥田云ク、肝臓ナリト
 作スル云々大支腹カラス。」ト
 諸言致ハシ居ニルモ、按
 事ハ其義ナリトス。肝臓、何ニ
 ハ依リ得ヌカズトス。
 又、林、諸言ニ據ラントモ、「肝
 臓ヲ食ハタトハ聞カヌ。」ト言シテ
 居ル。尙、吉井、從來
 トシテ鈴木モ亦此ハ主張言ハシ

"QQ 41"

43

"411"

居る。従て、森、武蔵
 への事實、全う無かる。ト
 申さるゝ得ない。ト云ふ。

第四、森、岡田、石井、武蔵
 等、皆、其、其、

等、申さるゝが、森、中、路、

人肉、土、等、此、食、等、ト
 事實、的、場、調査、委員会、

諸、君、在、此、ト云ふ。也、

證據、等、此、居、る、ト云ふ。

然、其、食、食、等、ト云ふ。

飯、島、佐、田、等、等、等、

觀、此、等、此、等、

"Q Q Q"

44

...

食ハタルニ非ズニテ、歸ルニテ食ハタ

事ハ最早發言ノ要ニナリテ
アラス。

起訴狀ニ據リマス

森ハ食肉スルニトニ依リ浮屠ノ

名譽アル埋葬ヲ妨害シタリト、

言フニテアラスガ、何ト言フ浮屠

ノ肉ヲ食ハタト主張サルカ、明確

45

ニナリテ居ナイニテアラス。

森ガ人肉ヲ食スル事ニ依リ、浮

屠ノ名譽アル埋葬ヲ妨害

スル意思カアツカ何ツカ、元

明確ニサレテ居リマス。

認識、要素、犯罪、等、基礎

的ナリテアラス。且裁判ス。

"QQ-49"

$$\text{图: 取 } N = \frac{1}{1 - \frac{1}{2} - \frac{1}{3} - \frac{1}{4} - \frac{1}{5} - \frac{1}{6} - \frac{1}{7} - \frac{1}{8} - \frac{1}{9} - \frac{1}{10}}$$

魔 = 森^カ人肉 + 一 + 言^ハ事
 知^ルス^ハ之^ノ食^ハ一^ハ言^ハ事
 事實^カ到達^シ致^ス其^ニ又^ハ
 森 = 問^ニ限^ル犯^ス其^ハ事^ハ
 事^ハ疑^ハ余^ニ地^ニ一^ハ一^ハ一^ハ一^ハ
 一^ハ一^ハ一^ハ一^ハ

此、問題「前」：既「全員諸公
 」「 α 」 \rightarrow 解「 α 」 \rightarrow 「 β 」 \rightarrow
 $N-1$ $N-2$... $N-n$ N
 本件、無罪と云ふ言へ候々又
 此「 α 」 \rightarrow 「 β 」 \rightarrow

896

Q. Q. 50

9.7

0358

第三告辭、罪狀實其六乃至其十一、
全部無罪ト主張致スベキナ
ラス。 坂江の失言、據之明
カニ示ス如ク、敵は悉ク陸軍
老將の指揮ヲ執リ、敵は陸軍
、海軍、陸軍、各獨ニ
居テ、其間、何等、指揮命
令、關係、無イナラス。
此、其、全ク日本獨断、違前
指ニシテナラス。
據、此留意賜ハントハテ
申ス次第ナラス。
此、其、福田、如前所答
カ裏書ニ致シテ示スナラス。

"995"

47

209

故云：罪狀有目其一大，其一大。

館蔵の二ツカ紙、加井中氏、
 増谷の語、林の語、其、也、不、解、
 者、カ、信、堂、三、名、の、斬、首、は、二、事、
 に、分、け、
 一、信、堂、の、語、は、
 二、事、に、分、け、

ね、此罪状項目に付て、本件
申上りの必要、無くと認むべし、

$P \rightarrow P \vee \neg P$ 若 \neg 假 \neg 在罪状增用

3. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

站，喜住了，趣官，金公，上

1111. 1111, 1111, 1111, 1111

付報者受其之事益多

常用、A之事、如乙由元

For the P.K.

[illegible]

二 問 答 及 今 日 之 事

$\Delta p, \Delta m =$ 質量、速度の増減

$$f_{\nu} \sim \frac{1}{\nu} \quad \rho \sim \rho_K^0$$

凡一歲至五歲外、無知、無

[illegible]
$$P \rightarrow P \vee N^c$$

又取裁要目廿、ノ、ニ部裁也

5A2. 吉井中込、店、本軍橋中込

金剛大經、北門大經、東門

讀者，對 \approx 真經元，次按

$$N \sim N' \text{ 且 } n \geq m \Rightarrow N \setminus A \sim N' \setminus B$$

既ニ申上ノ如ク 此ノ九回

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

信輝、取致、金部、陸軍、

松平、馬、部、其、如、白、城、心、

大本營、部、何、部、心、心、部

信、心、心、心、部、部、部、心、心

、信、部、心、部、心、部、部、部

、金部、信、部、部、心、心、部

心、心、心、心、心、心、部、部

其、心、部、部、部、部、部、部

部、部、信、部、部、部、部、部

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ノ責任問題トハ、責任ノ差ガ、ア
テト、我ハ信シテ疑ハヌモノ、ア
ラズ。

貴國大審院ニ付トシテ刑事
ニ「行為カ大サムニ後」犯罪
ナリト解釋セラルカモ、行為
爲ニ入ラザル事ニ我々、
信スルニ付、集團罪ノ個人
ノ罪ナリトシテ、之ニ轉嫁スルコ
トモハナイ。特ニ其ノ人カ自己、
防衛ノ又ハ直接關係ニ又ハ
権力ト職務トノ者ナクハ、他
人ノ不正行為ヲ防止スル手段
ヲ講ジ大カシト云フ事」カ

"99 57"

53

0365

大蔵大臣、臣も裁量せしむる所、おし

商談して下さる。」「と加へて述べた。

即ち、海軍部隊は各艦艇運用、

事實、その事、おし、大蔵大臣

は、何等、損失大蔵大臣は、おし、

おし、得た、おし、おし、

故に、此に、法律上、責任を

問ふ事、おし、おし、おし、

おし、得た、おし、おし、

検事、論議、中、」「森田司令官、

責任、おし、おし、おし、

父島、おし、おし、おし、

おし、おし、おし、おし、

おし、おし、おし、おし、

然レドモ、韓農人側ニシテ對敵シマ
シタ如ク、日本軍ニ於キテハ、
陸軍ト海軍トハ、全然別個ノモノ
ナリ、檢事ノ職人ナリト云フハ、
「九月廿六日」ヨリ、海、陸、
ニ本軍トナリ、敵ト陸ノ場合初メ
先任カ陸海軍ノ指揮官トナリ、

ト明カニ「發言致シタル事ヲ見逃シ
テ是レヲナリト考ヘテハ、
又檢事ノ同年ノ月ヨリ、陸海
軍協定ニ於テ、存続、取扱ハ陸
軍ニ於テ爲スルモノナリト、決
定シタル事」ト云キ、右ノ「森司令
官」カ爲スルヲ職務ニ委任シタル

「上諭」云々。本件「はた」彼、責
任迄も本任スルニトハ出来ヌ、彼、
事「浮屠保護」責任ヲ有ニテ
居ラモハテ「上諭」云々ハ「上
ト」云々カ、此ハ、検、事創、
事、人、テ「上」云々ハ、依、テ、明、カ、
右協定、大本營、指令トシテ、陸
軍及海軍ニ命令セラル、證言
或、ハ、事、ラ、ハ、ハ、本、見、送、ハ、テ、送、ル
ハ、上、ハ、上、

私ハ根本問題トシテ森司令官ハ
浮屠ニ関スル限リ、右大本營、
命令ニ基キ、職務権限ナキモ
「上」主張或、ハ、上、ハ、上、ハ、上、

検査、一、森中將ニ對スル事情
ノ要索、彼が信屬を以テ、事
實ヲ知シテ居タカ、否カニ、全ク
關係ナシ、空軍方面、海軍部隊
指揮官及艦方面、先出指揮官
トシテ、職務カ、之等、事ヲ知シ
テ、其ト云フ、其、事實ヲ知
シテカシタト云フ事、全ク無關係
ト云フ、ト云フ、其ト云フ、其ト云フ、
此等ノ事實ヲ知シテ居タカト云フ
ノ問題ナシ、其ニ信屬ニ對ス
ル、大本營、指令ニ基キ、職
務進行カ、即チ、其、状況ニ

無カ、ト云フ事ヲ判然此大
ニ聲非致不元、ヲア、マ、

而、ハ、森、周、ニ、数、多、キ、者、
蘇、ニ、全、部、無、罪、タ、ム、ト、ハ、中、ハ、
迄、元、ト、ハ、所、ハ、ア、マ、

又、檢、査、ハ、ニ、フ、カ、如、ク、慥、カ、ニ、有、実、
使、ハ、父、島、ハ、先、任、指、揮、官、ア、マ、
ミ、シ、ク、然、レ、其、有、実、ハ、彼、ハ、先、任、
ヲ、ア、マ、シ、カ、故、ハ、父、島、ア、ル、然、レ、
有、件、ハ、其、之、責、任、ア、マ、ト、云、フ、意、味、
ヲ、ハ、ア、マ、シ、

委、任、諸、公、ハ、大、ニ、高、級、將、校、ト、シ、テ、
最、モ、森、中、將、ハ、地、位、ヲ、ヨ、リ、解、
任、得、ニ、立、場、ハ、ア、マ、シ、マ、

森司令官：作戰上、責任：何に負
 担するにや 然るに今問題トナフは
 事件、因にテ、金、責任：ナク
 ンアウニ

檢事側：森中將カ陸中將
 アツカ病。現、森將カシテ
 事以外、何カ他市テ彼ニ罪
 アウト、即決トナフにテ居マ
 人、階級、高テ社會的地位、
 高ト：其人、自衛的。罪、ニ
 トシテシテアウニヨリ

檢事側：懸念。然、其甲斐ナ
 森中將、其地位、士高テア
 ン事カ、莫然、其地位、錯綜

"9963"

"9963"

॥ १ ॥

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

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依此森可定信。對之。一：

張久、張久、無罪、主張

張久、張久、無罪、主張

南陸海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

六月、海軍部、前、九月四日

之ヲハ、國家ガ違反ハスニエテアツ
 個人ノ對シテハ國ノ法ニ對シテ
 法律上ハ、解セズニエテアツ
 國家ハ、法律上ハ、裁可ナシ
 依テ裁可ニエテハスニカ、
 又如何トモ國ノ法ニエテハス
 之ハスニカ、 抑モトモ

裁可及食肉ノ國ノ法ニ對シテ
 一國ノ法ニ、法律上ハス
 カ、 抑モトモ、國ノ法
 法ハスニカ、法律上ハス
 之ハスニカ、
 右ノ法ニ、裁可ニ對シテ、
 裁可ニ對シテ、法律上ハス

27

"Q. 9. 67"

1961

"Q. 9. 67"

出度、戦争、上下、信譽取扱

二付、右規矩二半據スルニ由、自白ナ

例 1. 设 $A = \begin{pmatrix} 1 & 2 \\ 3 & 4 \end{pmatrix}$, $B = \begin{pmatrix} 4 & 3 \\ 2 & 1 \end{pmatrix}$, 求 $A+B$ 及 $A-B$.

行政的、

题目：若 $A = P^{-1}BP$ ，求 B 的特征值。

$\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

$\lambda \lambda^0$

場合 = 之ヲ法律的に規則スル事

八、法、解釋上出來得ナイ所ナ

$$L \approx \beta N^2$$

九。才、一、~~二~~、~~三~~、~~四~~、~~五~~、~~六~~、~~七~~、~~八~~、~~九~~

八批崔致之天啓之天

右條約、二十三日、^二「^一所署」

此又二自衛、手銃、霰彈、

降ヲムクニ敵ヲ殺傷スルナリ

1. 对于任意 $\epsilon > 0$, 存在 $\delta > 0$, 使得 $|f(x) - f(y)| < \epsilon$ 当 $|x - y| < \delta$.

此、條文ニ違反テ登記トナシ

KN 七^三、同條前第三陸戰、

第二條：「本條約、規定、文戰

國ガ悉ク本條約、當事者十二

十一、限一德正國〃\~N〃

$$\text{H} \quad \text{N}^{\circ} \quad \perp \quad \text{P} = \text{N} \quad \text{N}^{\circ}$$

例ハ日本、同盟國ハ又、供

及「ルカ」に於て、

第 2 个 加 数 是 15

$$\sqrt{1h} A = \rho N^0$$

卷二 本條 = 基本、前記

一、二、三、四、五、六、七、八、九、十

解スニヤアノミ。

此解衆、私リリカ申述メテ
ニシテナク、貴國、法律取ツエハ
全ク、ロビコソク、カミ張ルヲ
サガフミ

衆、リス、然、貴、外、ミ
シ、此、衆、被告、人、ノ、解、述
ル、ニ、法律、一、若、違、フ
所、ハ、不、イ、ラ、ス、ト、信、ス
ル、ガ、ア、リ、ミ。

此基準を示すに於て、我
我、不備たる上、尚ほ
得たる所あり。

之、點に於て、我、及、果、我、國、
戰爭に於て、他、國、及、文明、社会、
、道、義、に、反、し、て、大、に、
違、背、し、て、行、つ、た、事。

而、て、文明、社会、、道、義、に、反、
し、て、行、つ、た、事、は、我、國、の、
本、質、を、損、害、し、て、
以、て、其、の、基、本、に、
反、對、し、て、行、つ、た、事、
は、我、國、の、本、質、を、損、害、し、
て、文明、社会、
、道、義、に、反、し、て、行、つ、た、事、

224

"991"

5965

"1111"

應、文明、社会ニ依ルヲ要ス、
民族、慣習ニ當ルモ亦其ノ
一トス。 制、法律、警察

ニ依ルヲ并テ其ノ要ス、
亦、其ノ要ス、
之ヲ以テ其ノ要ス、
之ヲ以テ其ノ要ス、

之ヲ以テ其ノ要ス、
之ヲ以テ其ノ要ス、
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之ヲ以テ其ノ要ス、
之ヲ以テ其ノ要ス、

[illegible]

戦終る今日、平靜ナル氣持
ヲ以テ食肉ト云フ問題ヲ取扱

上ノ下ニシテ、何ハ國、何ハ人種
 ナリトシテ、誰ゾモ人ノ食ニシテ、
 カ道義ニ反スルハ、此ハ國權ノ出
 ヲハスルニシテ、此ハ一國ノ戰
 争、事ハ此ノ如シ。然レモ、
 此ハ一國ノ戰、然レモ、
 意見ニ、果テハ一國ノ戰ニシテ、

ア・ブ・ノ

食糧を食ふ十一、凡ソルモノ
食ふ體に於て、死ん、肉ヲ食ヌト
イハ事、或ハ、法律の「不」
正當防衛トモ言ハ得ニテトナリ。
從テ道義ニ反カサルモノ、意見
モ、又出ルニカモ知ラレナシ。

観ニテ、本件ヲ靜カニ觀ス
ニ、以テ今申シテアハタ如キ事情
トハ、假令、戰時トハ云々、異
トト思フハ「テ」アリ。

日本人ノ心情ヲ端的ニ「現」
テ居ル言葉トシテ「故天愛人」
ト言フ事「カ」アリ。

日本人：昔より天の恵をくちくはく
し事も固有、性善とナリハズ
モナラズ。

日本人：未だ畜人肉を食ふ
ト云フ事實、決ハズ無キナ
ラズ。故に斯く如キ事
は異常ナル出来事ト云ハズ

ナラズ。

日本、文明、
程度、我々の米國、文明上、
後ハズナリ。

未だ畜人肉を食ふ事
程度、然レ人権ナリト云フ
ナラズ。

能く人、個々別々ニ觀察

文明社會、道義違反トナシ。

此式之解法如下：

一文明國を米國ニトシ給

兒、事件、國、北、十、元、元、元

$$A \cap B \subseteq A \cap C \Rightarrow A \cap B \subseteq A \cap C \cap D$$

我非一病之呻吟也

$N \geq n-1$ 則 n 次多項式

又書之、書。思之、思之、武

二、此乃一、二、三、四、五、六、七、八、九、十、

$$\text{If } N \geq N \setminus \{a\} \rightarrow P \rightarrow P N^0$$

一 我 寫 以 下 之 詩

[illegible]

題：人之哀悼、念

第 二 卷 天 下 人 民

第 二 卷 天 下 人 民

第 二 卷 天 下 人 民

第 二 卷 天 下 人 民

第 二 卷 天 下 人 民

第 二 卷

第 二 卷

ARGUMENT FOR THE ACCUSED

DELIVERED BY

MR. MORIKAWA, SHIZUO.

Your Honor The President, and Members of the Military Commission.

"He who knows only of winning and not of losing will fall". Upon taking the stand as one of the defense counsel for these fourteen accused in their very presence I recall these words with great emotion.

Looking over the testimonies of the two score and several witnesses produced by the Judge Advocate, and the testimonies and statements made before the Board of Investigation, by some of the defendants, I am convinced that this case is the largest one in which I have ever participated during my career as a lawyer, and that never again shall I be given the opportunity to defend a similar case.

I am highly honored to be appointed a member of the defense counsel for this case by the courtesy of the American authorities.

The case with which we are confronted differs from orthodox cases in Japan in that it appears that it may be judged by the "results" which are very apparent, and this, in my own opinion, is a rash procedure.

The reason for this is that one of the crimes alleged is cannibalism, a legal problem without precedent. There is no ruling in Japanese law that deals with cannibalism, and although my knowledge is very limited, I have not heard of any such rule existing in foreign law. Should such a problem therefore be decided merely from a legal viewpoint? I am one who has much doubt about this. I do not think it possible that an honest judgment on this case can be given without having this problem thoroughly investigated not only by students of law, but also by scholars in other fields, such as authorities on medicine and psychiatry. What is their expert opinion? We should listen to them. As one of the defense counsel, I am one who would ask the Commission that the Commission, if possible, call on well known medical and psychiatric specialists to investigate, but as time does not allow this, I deeply regret that we must receive your judgment without having been able to take such steps.

Before I enter the main discourse of my argument, I desire to stress how vital it is to probe deeply into the reasons why these incidents were caused to happen.

It is apparent from what testimony we have heard in court, that when these incidents occurred, that is, during February and March 1945, the situation was as follows:

The Iwo Jima Campaign was on, and this developed into a battle of unprecedented ferocity, and the tragic story of the annihilation of the Japanese Forces on that island, some 23,000 strong, was unfolded. Furthermore, the American Air-Forces staged large scale air-raids against the Japanese homeland, and the coming and going of these planes was witnessed by all. Needless to say, Chichi Jima itself was the center of concentrated air attacks, a thousand planes a day attacking.

"RR 1"

238

0388

Already, the armed forces of Japan had suffered one defeat after another, and even the first line of defense for the Japanese homeland itself was on the verge of collapse. The homeland had sustained, by one air raid alone, greater damage than was wrought by the great Tokyo earthquake. How could any one of the Japanese military personnel maintain their tranquil peacetime state of mind?

In September of 1944, all men and women on Chichi Jima not concerned with military activities were sent back to Japan, leaving 15,000 military personnel and conscripted laborers who were leading a life void of recreation. Although it is only four months since I came to this island of Guam, except for attending this court, I confine myself to my own tent, and thus have no means of amusement. It may be because of this, though I did not notice it until late, that my nerves have become irritated, and I upset myself over trifles. Therefore, speaking from personal experience, I can assert that the mental condition of a person, even with considerable education and powers of self-restraint, will be affected when staying a long time at a place where recreation is not provided.

Needless to say, these military personnel led a bellicose group life. They were deprived of all individual liberty, and day and night were under the constant pressure of carrying out absolute orders. On top of all this, depressing reports of defeat were continuously received, and the men were gradually being bombed out of their senses by the ceaseless bombing. Under such circumstances one can well imagine just what sort of situations would arise. I believe that this case should be observed under the premise that these incidents occurred under such circumstances.

I seriously doubt whether the statement and testimony made by Major Matoba before the Board of Investigation, which was produced by the prosecution as evidence, has any weight at all. Though it is laid down in the SCAP rules that the confession of the accused is permissible as evidence, it is extremely perilous to automatically swallow it whole.

As I have previously stated, in Japanese law, confessions had been considered as most important for a long time. However, the famous "Teijin Incident" occurred a little over ten years ago. Because of this incident, concerning graft in the well known Teikoku Rayon Company, the Saito Cabinet, which was in power at the time, broke up, and among those involved were such people as the Minister for Commerce and Industry, Nakajima, and the present minister for the same department, Kawai Ryosei. The source from which this incident developed into such a complex and involved affair was the confession of one of the directors of the said company. After seven long years of trial after trial, the accused in this case were acquitted on the basis that evidence did not show that the alleged facts have ever existed. After this case, it became apparent that to make a decision upon a confession alone was most hazardous, and since then, it has become the practical rule that a confession alone will not be treated as evidence.

Attending this court, I have been astonished at how the American law protects the rights of the individual. Compared to this, it is deplorable how abstract law is in Japanese life. I feel strange that in this court, which acts under the most highly developed American law, confessions alone have been produced in evidence, when even in our own Japanese law, so out of date compared to that of America, the tendency is that confessions alone will not be considered as evidence.

"RR 2"

229

0389

I have read with great interest Mr. Justice Rutledge's opinion on the Yamashita case particularly what he said about the Fifth Amendment.

But then, it is a great pleasure to be able to believe that the decision of whether to recognize the accused's own confession as evidence or not in interpretation of the SCAP rules is entirely within the authority of the Commission.

At this point, I would like to offer proof that the statement and testimony made by Major Matoba before the Board of Investigation is of no value whatever as evidence. It would be altogether too troublesome to take up every point of Major Matoba's testimony which differs from fact, but I will disprove four or five of the more important points.

In his testimony, Major Matoba states:

"At a Division Headquarters conferences in about February 1945, General Tachibana told us that we must fight being aware of the fact that supplies and ammunition will ultimately run out, and we must eat the enemy's flesh. Major Horie was present at this conference. I am sure of this. Admiral Mori, the staff officers Kamiura and Shinoda were present".

By the testimonies of staff officers Horie and Shinoda, it is obvious at once that there never was such an occurrence.

And at another point of his testimony he states:

"After having eaten flesh at the 307th Battalion, I started back, and met Admiral Mori on the way. Upon telling him of the party at the 307th Battalion Admiral Mori asked me to bring him some of the liver. Shinoda, Miyazaki and Kamiura were also there".

But that this is not a fact has been eloquently proved by the testimony of the staff officers Lieutenant Commander Shinoda and Miyasaki.

And again he states in his testimony:

"I am positive that Adjutant Kosuga ate human flesh at the party held at the 307th Battalion".

This testimony has been disproved by the testimony of Kosuga himself and by that of Captain Ikawa.

Major Matoba asserts in his testimony that in the latter part of March, 1945 he told Admiral Mori at the Naval Headquarters before eating that, "I have brought the human liver as I promised". But it is clear beyond suspicion that this is a falsity by the testimony of Lieutenant Commander Shinoda, Miyazaki and Ensign Iijima.

Furthermore, it is on the record of the testimony that Major Matoba stated in his own words, "I may be mistaken", therefore, I am confident in my belief that it is unnecessary for me to further emphasize the untruthfulness of Major Matoba's confession and interrogations before the Board of Investigation.

Inasmuch as such grossly erroneous statements are recorded in this testimony in which the defense played no part, it is beyond human comprehension to determine

between the truth and the falsity of it. Thus, I come to the conclusion that this entire testimony cannot be relied upon. While this testimony remains alone, unable to be supported by evidence, I assert that it is entirely false. Needless to say, the evidence produced by the prosecution said to be Major Matoba's statement, and that this has been already fully understood by the wise members of the Commission. There is no reason why I should further stress on this point.

I have just spoken on Major Matoba's testimony and statement made before the Board of Investigation, and I would further like to express my legal opinion of this.

In Section 734, of the Naval Courts and Boards, it is stated that when a person becomes a defendant, he is to be notified of this, and has the right of not making any self-incriminating statements. I believe that the defendants should be given all the rights he is legally entitled to.

In the Moscow Declaration of 1 December 1943, it is stated in the part concerning war crimes that the law to be applied in war crime trials was to be the law of the nation to which the accused belonged, and also that of the country suffering the damage.

In actually trying these war crimes suspects, the SCAP rules were promulgated and in this trial, the Naval Courts and Boards has been applied. I believe that the rules in the Naval Courts and Boards have been laid down based on the rights of individuals as stated in the American Constitution. As I have asked that you grant these accused the rights of the individual given American citizens in my objection previously made against the interrogation records of the Board of Investigation, I ask that once the Naval Courts and Boards are applied in this trial, the rights I have just mentioned as stated in the Naval Courts and Boards be given the accused. Section 235 of the Naval Courts and Boards also stresses the rights accorded the individual by the United States Constitution, stating that one cannot be forced to testify against himself.

From these standpoints, I desire to emphasize that the testimony and statement of Major Matoba produced as evidence in this case cannot be recognized as such.

As the defense counsel objected to the charges and specifications of this case at the very beginning of this trial, we hold much doubt concerning the fact that this is a joint trial. My colleague will speak on this particular point. I will leave this to him and proceed with my argument against the charges and specifications, just as they are.

Changing the original order, I will first speak on those related to Major Matoba.

First - Charge I - Murder.

1. In specification 4, it is alleged that General Tachibana, Major Matoba, First Lieutenant Sato, and Corporal Nakamura acting jointly murdered the prisoner. But, the truth is that Tachibana and Matoba were not both on the scene. This has been testified to by the witnesses, Iso, Wada, and Kanemori. If this be the case, can it be said that they acting jointly and in pursuance of a common intent committed the act of murder? As a legal argument, I believe that the prosecution's evidence is inadequate.

"RR 4"

241

0391

I am well aware of your section 332 of the United States Criminal Code: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal". But the charge is in violation of the laws and customs of war and the moral standards of civilized society, and not of the United States statutes.

2. According to Specification 5, Major Matoba and the commanding officer of the Eighth anti-aircraft Battery, Lieutenant Suyeyoshi, Jitsuro, IJN, acting jointly and in pursuance of a common intent, killed a person believed to be Mershor. Nevertheless it is clear from the testimony of the witnesses Uzaki and Yoshida that Major Matoba was not on the scene. Major Horie has testified in the following words:

"At Chichi Jima, by an Army directive of the Imperial Headquarters, after 30 June, 1944, the Army and Navy became independent of each other, each being entrusted with equal and parallel authority".

In other words, unless the enemy did force a landing, the Army and Navy were of equal status and there was no joint Army and Navy. Because of this, Matoba had no authority over Suyeyoshi. If, supposing they jointly killed the prisoner believed to be Mershor, it would be necessary for the pursuance of the common intent to murder to exist between the two parties. Nevertheless, no evidence has been produced to prove this. Furthermore, the person who actually beheaded Mershor was Lieutenant (junior grade) Morishita. There was absolutely no pursuance of common intent to kill between Morishita, Suyeyoshi and Matoba. As the Judge Advocate has not presented any evidence to prove this point, I must maintain that the accused is not guilty of this specification.

Second - On Charge II: As the specifications 1, 3, and 6, are on this so called cannibalism, I will speak on these as a group later.

Third - On Charge III, Neglect of Duty:

1. In Specifications 18, 19, and 20 Major Matoba is charged with the responsibility as the commanding officer of the 308th Battalion and of the North Defense Area. I will present my argument separately for each of the two cases, that is, as a battalion commander and that as the commander of the North Defense Area.

Supposing that the accused is found guilty of the killing of Hall, I believe that the offense of neglect of duty would be included in the murder of Hall, in accordance with the rule laid down clearly in the latter sentence of Section 19, Naval Courts and Boards. The reason for this is that on comparing the nature of the two offenses, murder and neglect of duty, the latter is lighter than the former. So if found guilty of murder, it is only natural that he be found not guilty of the specifications 18, 19 and 20, which charge him with neglect of duty concerning the prisoner Hall.

Then what of his responsibilities as the officer in command of the North Defense Area? The duties of the commanding officer of the North Defense Area are

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limited to only those of military operations, therefore, exclusive of any authority over prisoners. Because of this, I believe that he is not guilty of the neglect of duty he is charged with concerning the prisoner believed to be Mershon.

2. On the specifications 21 and 22.

It is obvious that Major Matoba, as the commanding officer, of the 308th Battalion, had Captain Nakajima under him as his subordinate. But Major Matoba gained knowledge only after the murder had been committed, of the fact that the prisoner believed to be Frazier had been beaten to death by Captain Nakajima. Thus, it was quite natural that he could not have taken steps to prevent this or protect the prisoner properly.

I beg your special consideration of this point.

Second, I would like to speak on the charges and specifications against General Tachibana. Charge I, Murder:

I am confident that General Tachibana will be found not guilty of the specifications 2 and 4. In specification 2, it is alleged that General Tachibana, acting jointly with Captain Yoshii, Masutani and Hayashi, beheaded the prisoner Dye. But Dye had been taken from the Brigade Headquarters by Captain Yoshii, who asked Tachibana for the prisoner saying that he was required in communication work, and then executed him without notifying the general. There was no pursuance of common intent whatever between Tachibana and the other parties in this affair. The prosecution's witnesses have, in their testimony, not spoken a word of evidence which has betrayed the defense counsel's belief in this. Thus, it is clear that Tachibana is not guilty of this offense. The same can be said of specification 4. This is because Major Horie testified that: "The prisoner Hall was turned over directly to the 308th Battalion, and this was not reported to General Tachibana". Captain Kammuri has testified that there was a direct phone call from Major Horie saying that Hall would be returned. Furthermore, 3 of the witnesses, Iso, Wada and Sugiyama have testified to the effect that Tachibana gave positive orders to Matoba to execute Hall. I think I can say the prosecution is a little off the point when it charges these parties as having acted together in pursuance of a common intent.

Concerning specification 3, there is the testimony of Adjutant Kosuga saying, "I think he may have ordered Colonel Kato to kill them", and Colonel Kato's own testimony that he submitted a written report of the execution. But Kato got word of his having to execute prisoners from Adjutant Ikawa, who had received oral orders by phone. Thus, it is not clear whether Tachibana issued orders to execute the prisoner York. Of course, Tachibana was not on the scene. There has been no other definite evidence produced on this specification.

And next on specification 1, which is related to the execution of the prisoner Woellhof by Lieutenant Colonel Ito. The only two testimonies is to be considered as evidence in this case are that of Adjutant Higashigi, who testified that, "There was a phone call from the Detached Headquarters saying they would have the Brigade dispose of a prisoner, (or some prisoners), the next day, and so I reported this just as I heard it to General Tachibana", and that of Lieutenant Colonel Ito, "I made a report to General Tachibana that I had finished the execution". These

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testimonies do not make clear whether Tachibana issued orders for the execution of the prisoners. Tachibana, in this case also, was not at the scene of the execution. If there is any doubt General Tachibana must be found not guilty.

I think that this evidence is not ample to prove that Tachibana acted jointly and in pursuance of a common intent with the other parties in these two cases. I have already once given my argument on this point in the case of Major Matoba, but I am confident that if Tachibana is found not guilty of the murder cases of Woellhof and York, he will be acquitted of the specifications 1 and 2 of Charge III for the same reasons.

General Tachibana was unaware of the occurrence of the incidents charged against him in specifications 3 and 4, which fact I think is worthy of your full consideration. Further, I am sure that he is not guilty of specification 5. It is apparent from the testimony of Yoshida and Kanemori that Tachibana and Matoba were not on the scene.

Major Horie, in his testimony, said that "the responsibility for the prisoners rests with the Division Commander". General Tachibana assumed responsibility for the prisoners after he became the Division Commanding Officer on 23, March 1945, but was not in a responsible position previous to this. When Tachibana arrived at Chichi Jima as the Brigade Commanding Officer, there were almost no defense installations on the island, and he busied himself day and night in constructing fortifications, in preparing the airfield. If Tachibana had neglected his duty of defense, it is obvious that this indeed would be his neglect of duty. But in the opinion given by your Mr. Justice Rutledge, it cannot be decided at once that mass guilt can be imputed to an individual. Unless it is charged or shown that the individual actively participated in or knowingly failed to take action to prevent the wrongs done by others, having both the duty and the power to do so; he cannot be indicted for this.

In Article 1 of the Hague Convention, it is stated "The Army shall be commanded by a responsible person". Based on this rule, if it is interpreted to mean that General Tachibana had the duty to take steps to protect prisoners of war, I believe that it must be proved that Tachibana as an individual actually had the power to protect them, and that he did not take steps to do so. I did not notice any evidence proving this point. Therefore, I think that the evidence is inadequate for the charges of neglect of duty against General Tachibana.

Also, in specification 1 of Charge III, I believe that Tachibana has no connection with the matter, and thus is absolutely not guilty. Sugiyama states in his testimony, "When I brought the package of flesh to the 307th Battalion, I was scolded by Matoba for being late, and Tachibana said, as he put on his shoes 'What's the idea of an enlisted man standing besides me?'" There is no definite evidence that General Tachibana ate human flesh. Quite to the contrary, by Ikawa's testimony, the accusation that Tachibana ate human flesh was denied.

In specification 2, Charge II it is alleged that during the period 1 August 1944 to 25 March 1945, General Tachibana unlawfully had four prisoners their names unknown mistreated. From what is written in this specification it is not clear where or when the prisoners were mistreated, and who the prisoners were. I believe

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that it is unreasonable in dealing punishment to a person to charge him at random without at least pointing out clearly whom he mistreated, when and where. In looking over the evidence we find that it has not been proved accurately when or where the previously mentioned four prisoners were mistreated, and whom they were.

Furthermore, it is alleged in this specification that food, water and shelter were denied four American prisoners, and that they were tied to trees, exposing them to inclement weather and the danger of fire and bombing of a combat zone. But at that time the Japanese forces themselves lacked shelter, and because of the severe American bombings were forced to dwell in unfinished caves. There was no place whatever where they could keep these prisoners safely.

And at the time, the food rations of the Japanese forces had been reduced, and all were suffering from the pangs of hunger. Even then, food and water were provided the prisoner. There is no evidence that the prisoners were starved. That the prisoners were tied to trees was to keep them where they could be safely watched and this for only a short time.

There is no evidence that they were treated in this manner for a long period. There has been no evidence produced that this was done by General Tachibana's order. Although it is alleged that the prisoners were exposed to inclement weather and the fire and bombing of a combat area, there has been no proof of what the actual conditions were. Further, it has not been proven that this was done by Tachibana's orders. Thus, I believe evidence is inadequate to prove this specification.

Next, I will offer my argument on the charges and specifications against Captain Yoshii. I will first speak on specification 6, Charge I. It is alleged in this specification that Yoshii acting jointly with Lieutenant Kurasaki, Ensign Koyama and other unknown persons, beheaded the prisoner Vaughn. But the Radio Station and the Motor Torpedo Corps are entirely separate and independent units, each with a commanding officer and between the two units there is no such relation as one subordinate to the other. Thus, it cannot be said that Yoshii could give or gave orders to the commanding officer of the Motor Torpedo Boat Corps to execute the prisoner. There has been no proof whatever that pursuant to a common intent to execute the prisoner existed between Yoshii and Kurasaki. The prosecution has not brought out any evidence concerning this Yoshii case. For such reasons it is obvious that the accused is not guilty of this specification. Judging from this, it is also obvious that Captain Yoshii is not guilty of the specification 14, 15 and 17 of charge III. The reason for this is that they are independent units, and Yoshii had no authority over them.

Next, in specification 2 of Charge I, he is not charged as having acted in conspiracy. He is also not charged of mass guilt. It is alleged that he "acted jointly", but it has not been proven that he acted with common intent with Tachibana and the others. I believe the evidence for this specification is inadequate.

If he is judged as being guilty of specification 2 of Charge I, I believe that based on the previously mentioned reasons, the nature of the offense, charged in specifications 12, 13 and 16 of Charge III should be included in specification 2 of Charge I, and the accused should be acquitted of these separate charges.

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The same can be said in the case of specification 4 of Charge II. This offense is lighter than the crime of murder, so it should be properly included in specification 2 of Charge I. I ask for your special consideration of the fact that there has been no evidence to prove that flesh was removed from the body, caused to be removed, and was offered and distributed to members of his command and that he ate the flesh and viscera of the prisoner.

I assert that the accused is not guilty of what is alleged in specification 5 of Charge II. The reason is, in witness Hida's testimony he said that an hour had passed from the time of the execution till the time when Yoshii left, and that the package which the witness Hida believes to have been the liver was still quite warm at that time. Listening to this, it cannot be believed that this package mentioned in the testimony is the package of liver which the prosecution is trying to prove was a package of liver. In his statement, Hayashi says, "I have not heard of his eating liver". Suzuki, who was Yoshii's own orderly, also supports this. Thus I come to the inevitable conclusion that what the prosecution alleged to be a fact and has charged to have happened, actually was non-existent.

Fourth, I will speak on Admiral Mori. First concerning specification 3 of Charge II. The only evidence that the Admiral ate the flesh, cognizant of the fact that it was human flesh, appears in Major Matsuba's statement which he made before the Board of Investigation, which I have mentioned before. There is no other evidence to prove this point. Looking over the testimonies of those persons who are alleged to have eaten the flesh with him, Shinoda, Miyazaki and Iijima, it is almost beyond doubt that the admiral did not eat it knowing what it was, but was tricked into doing so. It is alleged in the specification that Admiral Mori prevented the honorable burial of the prisoner by eating the liver. But whose does the prosecution claim this flesh was? This point has not been clarified. Did Admiral Mori have the intent to prevent the honorable burial of the prisoner? This has also not been made clear. The element of knowledge is a basic one, and the courts require it. I believe the Commission has fully understood the truth in this case, and therefore, I feel it quite unnecessary for me to argue further on this subject. It is needless to say that Admiral Mori is not guilty of this specification.

I maintain that Admiral Mori is not guilty of any of the specifications (6 through 11) of Charge II. As was shown clearly in Major Horie's testimony, the senior officer on the island was to take over command of all forces after the enemy had landed on Chichi Jima. Before the enemy landed on Chichi Jima, the Army and Navy were separate and independent and no connection of control or orders existed between the two military organizations. This point, I believe, may be a characteristic peculiar to the Japanese. I beg that you take this into your careful consideration. This particular point has been reaffirmed by the staff officers Lieutenant Commander Shinoda and Lieutenant Commander Miyazaki. If so, it is an obvious fact that the Admiral is not guilty of specifications 9, 10 and 11.

As staff officer Lieutenant Commander Shinoda testified concerning the formation of naval units, the Radio Station and Motor Torpedo Boat Corps, were independent units, enjoying equal status as that of the Naval Base Unit. They were not Admiral Mori's subordinate units. Therefore, the executions of prisoners at the Radio Station and the Motor Torpedo Boat Corps had nothing to do with Admiral Mori. Thus it is only proper that he have no responsibility at all over the beheading of three

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prisoners by Commander Yoshii, Ensign Masutani and Ensign Hayashi, and other unknown persons as alleged in specifications 6 and 7. I believe it is unnecessary for me to speak further on this specification. If this includes the meaning that he is responsible for the alleged killing of Marshon. I am confident that he is quite properly free of all responsibility in this case in that Admiral Mori not only did not receive any report of the execution, but had no means of knowing about this execution. As I have set forth in detail, as long as prisoners of war were conceived, Admiral Mori was not in the least obliged with any duties. This was outside his duty and beyond his authority, and thus it is only proper that he have no responsibility for this.

I also am confident that he has no responsibility over naval surgeon Lieutenant Sasaki, Lieutenant Kurasaki, Lieutenant Matsushita and other unknown persons as are named in specification 8. As I have previously mentioned by the Army - Navy agreement of 20 August 1944, it was decided that the Army would take over all handling of prisoners, and this being approved of by the Imperial Headquarters, Admiral Mori thoroughly instructed the naval units concerning this agreement. As it was so, Admiral Mori and his staff officers did not even imagine that there were prisoners being held by naval units and that they had been executed by them. As Lieutenant Commander Shinoda testified, the headquarters first gained knowledge of the executions which had taken place at the naval units after the war was terminated, and it was quite proper and natural for Admiral Mori to be unaware of these happenings. Furthermore, at the time the executions by the naval units were carried out, the Iwo Jima Campaign was in full swing, and the naval headquarters was engrossed in its many confusing duties. We cannot help believing the testimony of the Admiral's staff officers. Probing thoroughly through what evidence the prosecution has been able to produce, I find nothing contrary to this belief of mine.

I do not doubt that there is all the difference in the world between Admiral Mori's case and that of General Yamashita in the Philippines. However, Mr. Justice Rutledge of your Supreme Court in his opinion said, "It is not in our tradition for anyone to be charged with crime which is defined after his conduct, alleged to be criminal, has taken place. Mass guilt we do not impute to individuals, perhaps in any case but certainly in none where the person is not charged or shown actively to have participated in or knowingly to have failed in taking action to prevent the wrongs done by others, having both the duty and the power to do so".

I assert that it was not negligence on the part of Admiral Mori that he did not know of the fact that prisoners had been executed by the naval units, and must say that it is too severe to hold him legally responsible for this.

The judge advocate in his argument has stated that the obvious fact that Admiral Mori was the senior officer in the Bonins Area and on Chichi Jima must not be overlooked. I believe the judge advocate himself has overlooked the fact that the defense has amply proved that in the Japanese forces, the Army and Navy are two distinctly separate organizations. The prosecution's own witness Major Horie has testified in this court that, "On 30 June 1944 the Army and Navy became two separate and independent units, and the senior officer was to take overall operational command only after the enemy landed".

Further, the judge advocate has conceded that the Admiral had delegated his duties concerning the custody of prisoners to the Army by the Army - Navy agreement of 20 August 1944 when it was decided that all handling of prisoners was to be taken over by the Army, and has argued that Admiral Mori could not delegate his

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responsibility, and was at all times responsible for the protection of the prisoners.

The judge advocate has overlooked the fact that this point was made clear by the prosecution witness Major Horie when he testified that official notice of this agreement was made to all Army and Navy units as an Imperial Headquarters directive.

As the fundamental issue, I maintain that by this Imperial Headquarters directive Admiral Mori had no duty or power as far as prisoners of war were concerned. The prosecution has argued that the prime fact remains, that it is entirely immaterial insofar as the charges against Admiral Mori are concerned whether he knew it or did not know that these executions were taking place.

As the duty imposed upon him as the commanding officer of all naval forces in the Bonin Area and the senior military officer in the area requires that he should have so known. If he did not know is entirely immaterial insofar as the charges are concerned.

And I, borrowing the judge advocate's own words, emphasize that it is not the main issue whether Admiral Mori knew of these incidents or not, and therefore, I clearly state that by the directive issued by the Imperial Headquarters, he was freed of all duties or authority concerning the custody of prisoners, or in other words he was placed in a position free of responsibility concerning prisoners of war. Therefore, it is needless for me to say that Admiral Mori is not guilty of all of the many cases of neglect of duty charged against him.

True, he was the highest ranking naval officer on the island. But that does not mean that just because of his high position he must assume responsibility for all and every incident which occurred on the island. I believe that the honorable members of the Commission, being high ranking officers, are best qualified to understand the Admiral's position well. Admiral Mori had operational responsibility, but he was free from any responsibility concerning affairs now at issue. The prosecution has tried to give the impression that Admiral Mori, just because he was an Admiral, was guilty of something, if not guilty of the charges brought against him. Does the high rank or social status incriminate a person automatically? Although the prosecution has tried, in vain to entangle Admiral Mori in a nebulous maze of responsibilities as he was the ranking officer there has been evidence giving proof only of the Admiral's limited responsibility. Law demands that the charges against him be proved beyond a reasonable doubt. The defense counsel is confident that Admiral Mori's innocence has been proved beyond a reasonable doubt.

I will repeat. As far as prisoners of war were concerned, the Admiral was not in a position as the commanding officer. In the case of Admiral Mori I most strongly and most emphatically persist that he is innocent. I beg that you take into your special consideration the fact that in about June 1944, before the Army and Navy agreement had been reached, the Naval Headquarters sent prisoners back to Japan without maltreating them in any way.

Next, please allow me to speak a few words on this problem of cannibalism.

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The accused have been charged as having violated Article 76 of the 1929 Geneva Convention, and of also having violated the laws and customs of war. Then, exactly what does "honorable burial", which is in this statute mean?

Can one say definitely that taking flesh from the dead's body prevent an honorat burial? I am sure that this is a problem. And is an individual to be punished for violating the Geneva Convention?

In Article II of the same convention it is stated clearly that, "A prisoner of war is not in the custody of the individuals or corps who capture him, but in that of the power to which these belong". If it is so, it is the nation which has acted in violation of the Geneva Convention, and this statute must be interpreted as not one laid down to punish individuals. In what court is this individual to be tried? And what punishment is there for this individual? What is an honorable burial and the moral standards of civilized society in connection with cannibalism? I believe that the prosecution must make this clear and define these points. Japan has not ratified this Geneva Convention. After Japan entered this war she declared that she would observe the rules laid down in the Geneva Convention concerning prisoners of war. But this declaration meant that in the administration and handling of prisoners of war the statutes would be observed, and was absolutely not in a legal sense.

Japan has ~~not~~ ratified the Hague Convention of 1907. Article 23 (c) of this ~~con~~ convention prohibits the killing or wounding of an enemy who, having laid down his arms, or having no means of defense, has surrendered at his own discretion.

If the prosecution contends that it was in violation of the above statute, I point out that in Article 2 of Section 3 of the "Laws and Customs of War on Land" Hague Convention No IV of 18 October 1907 it is laid down that, "The same convention provisions contained in the Regulations referred to in Article I, as well as in the present convention, do not apply except between contracting powers, and then only if all the belligerents are parties to the convention.

But Italy and Bulgaria, Japan's allies in this war, have not ratified this convention. Therefore, the previously stated Article 23 can not be applied. This interpretation is not only my own opinion, but that of your authority on law, Lieutenant Commander James J. Robinson, United States Naval Reserve.

Unless both parties have ratified this, it is impossible to legally interpret this as a binding rule. Therefore, I believe in charging the accused of having violated this statute, a legal basis must be made clear. Without this legal basis, I must say that the charges in this case are not appropriate.

In the charges and specifications alleging this, it is stated that the act was committed in violation of the laws and customs of war and the moral standards of civilized society. In the initial part of this trial, the defense counsel objected to the use of the words "in violation of the moral standards of civilized society" as a criterion for punishment. As I have said, the limits of this so called moral standards of civilized society are incomprehensibly vast, and differ by the degree of civilization, and again by the custom of each race. We must also understand that there is a considerable difference between the so-called moral standards in times of war and peace. Because of this, I claim that to make this a criterion for punishment is unreasonable. I believe that Japan has its own civilization, and the foreign countries each have their own. Even upon judging on the same subject, it must be kept in mind that though it be the

same, it will differ according to the environment in which it was situated. I think that there would be a great amount of difference when judging upon a certain subject by one who had been continuously victorious and by one who has suffered as many defeats, and was struggling in deep anxiety.

Today, after the war has ended, when we handle this problem of cannibalism in a calm state of mind, we can easily conclude that it is immoral for any one of any race to commit cannibalism. I am sure that upon observing that it took place during a severe battle, perhaps every person may form a different opinion in his mind. If human flesh had been eaten after all the food was gone, and all that was edible had been touched, there may be an opinion that under such circumstances it could be said to be an act of self-defense, and thus not immoral. Reflecting calmly on this case, though it did happen in war time, I think that the circumstances differ from what I have just mentioned.

There is a phrase which explains quite clearly the mind of the Japanese, which is, "Worship God and love thy fellow man". It has been a characteristic of the Japanese from ancient days to act in this manner. Japanese civilization may be behind that of America, yet it has not fallen so low that cannibalism is practiced. We must observe each of the accused as individuals. What caused the alleged incidents to happen, if they did happen? I have nothing more to say than I did in the beginning of my argument.

We Japanese have no doubt about the fact that the American civilization is of the highest standard in the world today. From the beginning of the Meiji Era, Japan has learned from America and we all cannot deny the fact that the level of our civilized society was greatly raised because of America. It is only 80 years since Japan's status of civilized society came to be recognized internationally. Do you say that it is just and proper to deal with these accused Japanese possessing a background of so brief a period of civilized society with the moral standards of your most highly civilized society as a criterion?

Can it be said to be just, to see this case in merely its legal aspect? Is it not necessary to decide upon this from a standpoint of medical science and psychiatry? I believe that it is such an insignificant matter for a nation whose pride is that its civilization is unsurpassed, to sentence a few of the accused to death as simply having violated the laws and customs of war and the moral standards of civilized society.

I fervently hope that you will not deal with these persons from a narrow standpoint of law, but for the sake of civilization and science, that you will give life to them.

I pray from the bottom of my heart for the repose of the souls of those whose blood was shed as a result of these incidents.

I, with the accused, thank you for the patient hearing of our case.

MR. MORIKAWA, SHIZUO.

I certify this to be a true and correct translation of the original argument of Mr. MORIKAWA, Shizuo, in Japanese to the best of my ability.

Eugene E. Kendrick
EUGENE E. KENDRICK,
Lieutenant, USNR,
Interpreter.

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0400

CLOSING ARGUMENT FOR THE ACCUSED
Lieutenant General Tachibana, Yoshio, Vice Admiral Mori, Kunizo,
Captain Yoshii, Shizuo and Major Matoba, Sueo.

Delivered by

Commander Martin E. Carlson, USNR

Gentlemen of the Commission:

A Navy convened Military Commission are now to decide if these fourteen Japanese nationals are guilty of the charges as specified. Each of the accused must be judged only as he is charged. All fourteen are joined in this one trial and, although we objected that there was misjoinder of parties, the Commission ruled that the accused were properly joined.

The first charge is called "Murder". We ask that the Commission carefully consider whether the specifications under Charge I technically and legally allege murder or whether these specifications are only violations of Article 23, paragraph (c) of the 1907 Hague Convention, which states in part "...it is especially forbidden - ... c. To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion, ...". We feel it is of the utmost importance that this Commission decide this point.

If this is a murder charge, then it does not follow the sample specification in Section 53, 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 good specification. The corpus delicti has in our opinion not been proved.

On the other hand, if these specifications are violations of the Hague Convention, then we maintain that the same should be set forth verbatim in the specification and proved like any other fact. Section 27, Naval Courts and Boards

"A specification should contain allegations of all the essential elements of the offense in simple, accurate, and concise language. An essential element is one the omission of which in a specification would be ground for sustaining a timely objection on the part of the accused, or if not objected to and the evidence adduced does not supply the omission, will constitute a fatal defect. For example, a specification of theft should allege:

- (1) A taking and carrying away of the property in question, and manner thereof.
- (2) Description and value of the personal property.
- (3) From the actual or constructive possession of the owner or person entitled to possession as against the accused.

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- (4) Place and time of taking.
- (5) Description of owner or person entitled to possession.
- (6) Intent to deprive the owner permanently of his property.

For the elements of any particular offense the applicable section under sample charges and specifications should be consulted.

It is not essential to state in a specification that an offense was committed in breach of any Federal statute, article of the articles for the government of the Navy, law of the State in which the court is sitting, or general regulation, as the court takes judicial notice of such statute, article, State law, or regulation, under which the charge is laid, but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other fact.

A specification must on its face allege facts which constitute a violation of some law, regulation, or custom of the service. It is not sufficient that the accused be charged generally with having committed an offense, but the particular acts or circumstances attending a specific offense must be complete. It is not sufficient that several specifications taken together may do so.

It is not necessary that a specification be framed with the technical precision of a common law indictment, so long as it clearly shows jurisdiction in the court over the accused and over the offense with which he is charged, and the latter is sufficiently described to advise the accused of the time and place and circumstances under which it is claimed he committed the crime, to enable him to make any defense he may have. The statement of a mere conclusion of law instead of facts will not make a good specification. Thus, it would not be a good specification which merely stated that theft was committed by a certain man at a certain time and place, or that a man unlawfully had in his possession certain property without alleging facts showing wherein the possession was unlawful. Each specification must support the charge under which it is laid.

To constitute a crime both criminal intent and a prohibited act must concur. Where the offense specified is one which requires a specific intent and the act both must be set out. For example, a specification alleging that the accused "did feloniously have in his possession with the intention of removing it from the ship. The mere possession of Government property is not in itself a violation of any law, regulation, or custom of the service, nor is it illegal in itself to take Government property from the ship.

We argue as do most international lawyers that the law of nations is binding only on sovereign states and not on individuals. These accused, the individual offender can be punished only under the law of Japan or of the law of the United States.

When it comes to individuals who violate the laws and customs of war, international law, such as the Hague Convention there are neither courts nor punishments provided. To maintain that the prosecution has not made out a case that the common or customary law of nations does in fact permit the trial of individuals or provides punishment - the death penalty.

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n. The prosecution hold that it would be a mockery of justice for these accused to claim that because no specific code of international criminal law exists, they therefore did not know such actions as the killing of prisoners of war are forbidden. Legally we hold that the state and not the soldier is liable for violations of the laws of war. If and before this Commission holds otherwise, then it is incumbent upon the prosecution to furnish such legal authority and or specific rulings so holding, in order that this Commission may correctly find.

It is not enough that the prosecution state that all war crimes are subject to the death penalty, although a lesser penalty may be imposed.

If the offense is in violation of the moral standards of civilized society, then those moral standards should also be set out verbatim and proved like any other fact. It is not enough for the prosecution to state in his argument, with a wave of the hand and a shrug of the shoulder as it were, that everyone knows what the moral standards of civilized society are.

It is not necessary that a specification be framed with the technical precision of a common law indictment but it should be sufficiently clear so as to enable the accused to make any defense he may have. These offenses are alleged to have taken place in time of war and the prosecution has failed to prove what the moral standards of civilized society are in time of war. We hold that where the offenses are alleged to be in violation of the moral standards of civilized society, this is a mere conclusion of the pleader.

In our objections to the charges and specifications we stressed the importance of framing the specification correctly and cited the address given by Lt. Comdr. James J. Robinson before the Joint Meeting of the Military and Naval Law Committees of the American Bar Association and Federal Bar Association at Washington, D. C., on April 20, 1945. He says:

"A war crime is an act forbidden by the law of war and committed in any place in time of war by a person who is connected or acting with a belligerent nation and who acts with intent unlawfully to injure a person or property or government connected with an opposing belligerent nation or with a neutral nation. The penalty is determined by the court in its discretion and may extend to the death penalty, unless otherwise provided by law."

We again ask this Commission and the prosecution: What law are these accused being charged with having violated? Is it the Hague Convention No. IV, of 18 October 1907, Article 23 c, which reads as follows: "...It is expressly forbidden ... (c) to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion."? If it is, then we cite Article 2 of the same convention which provides that the provisions do not apply if all of the belligerents are not parties to the Convention. Since neither Italy nor Bulgaria has ratified the 1907 Convention, these accused claim they are not bound by Article 23 c, although Japan did sign the Convention.

"SS(3)"

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In the Geneva Prisoners of War Convention of 1929, Article 2 provides that prisoners of war "must at all times be humanely treated and protected, particularly against acts of violence,...". Article 3 of the same Convention provides: "Prisoners of war have the right to have their person and their honor respected."

We point out however that Japan has not ratified or formally adhered to it. The mere fact that Japan has through the Swiss Government agreed to observe these provisions makes no difference legally. This case is being tried by a judicial Commission and all its findings must be legal, and the sentence imposed only if there has been a legal violation or crime. This Commission must not try these accused only because their morals may have been different than ours at the time they committed the alleged acts. There must be another legal basis for the charges. It is not clear to the accused upon what law the charges and specifications are 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."

In specification 1 of Charge I the prosecution will no doubt state that General Tachibana and Private Kido are charged with murder as principals. They will probably cite section 332 of the U. S. Criminal Code as defining a principal: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal".

Then they will state that a man may be guilty of murder even though he did not strike the fatal blow, but if he aided, abetted, counseled, commanded, induced, or procured its commission. They will even go so far as to say a man is guilty of murder if he has done no more than encouraged or advised one to commit the crime. But they fail to define murder as it applies to the individuals of warring nations.

In this first specification of the first charge taking it on the allegations, the prosecution has failed to show that General Tachibana and Private Kido acted jointly with Lieutenant Colonel Ito, Captain Higashigi, Private Shimura, First Lieutenant Ikawa, and others unknown. They have utterly failed to show that General Tachibana, Private Kido and the aforesaid persons did each and together and certain there has been no showing that they did each and together with others unknown.

General Tachibana did not act in concert with these others. The accused Kido testified he was selected by Lieutenant Colonel Ito at target practice. In fact, there has been no showing that he acted at all because in Charge III, Specification 1, General Tachibana is charged with neglect of duty. This clearly proves he did no overt act as he is charged in Specification 1 of Charge I. Lieutenant Colonel Ito bears the entire responsibility for any orders that were issued that day, not the General.

"SS(4)"

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0404

We further criticize this first specification of the first charge because two killings are alleged in one specification. What justification is there for naming two victims in one specification? We objected to the charges and specifications at the proper time but were overruled. The fact that we went to trial in no way cures this and other defective specifications.

Since there was no cooperation of the part of the accused General Tachibana and Private Kido, the specification and the charge must fall.

We go further however, and maintain that the prosecution has failed to prove that General Tachibana commanded the alleged killing by any of the acts alleged; viz: assault, strike, and kill, by bayoneting with fixed bayonets and beheading with a sword. These are the acts enumerated and since they have not been proved in the case of General Tachibana, again the charge and the specification must be found not proved.

It is not incumbent for the defense to define such technical words as wilfully, feloniously, with premeditation and malice aforethought. We do however, refer the Commission to Court Martial Order 5-1921 which clearly states "The distinguishing character of murder is malice aforethought. When it exists, the homicide is always murder. When it does not exist, the homicide cannot be murder,...". The expression 'malice aforethought' is very technical, and cannot be taken in the ordinary sense of the term 'malice'. It must be construed according to the decided cases which have given it a meaning different from that which might be supposed... Chief Justice Shaw said in the celebrated Webster case "...is intended to denote an action flowing from any wicked and corrupt motive - a thing done *malo animo* - where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent on mischief". We continue to quote: "If a man voluntarily and wilfully does an act, the natural and probable consequence of which is to cause another's death, an intent to kill will be presumed."

The prosecution would have the Commission believe that they have properly shown beyond a reasonable doubt that General Tachibana is guilty of murder. Section 158, Naval Courts and Boards, states "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted". The prosecution brought to the witness stand Lieutenant Colonel Ito who has been found guilty of the same offense and sentenced to be hanged until dead. On the witness stand Lieutenant Colonel Ito testified that the act of which he was found guilty took place in 1946, and after some effort, thought it was in 1944. The prosecution failed to show by this witness that General Tachibana had ever ordered him, or anyone else, to execute a prisoner of war, or that General Tachibana knew of the execution before it took place, or that he was at the scene of the execution.

Not a single bit of reliable evidence has been submitted to show General Tachibana to be guilty of Specification 1 Charge I and we ask the Commission to find as to the accused, Lieutenant General Tachibana, the specification one of the first charge not proved, and the accused Lieutenant General Tachibana is of the first charge not guilty and the Commission does therefore acquit the said Lieutenant General Tachibana of the first specification of the first charge.

"88(5)"

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We next turn to specification 2 of Charge I and find that General Tachibana is joined with three Navy officers, Commander Yoshii, Ensign Masutani, and Ensign Hayashi, who were officers attached to the Navy Yoake Wireless station. The same objections and arguments which we advanced regarding specification 1 we place into the record against this specification as regards to General Tachibana.

The commission's attention is called to Communication systems of Japan. They were the same as our organization in that each arm of the service had its own communication system. On Chichi Jima there were at least three separate communication systems: the Army, the Navy, and the Aviation. Each was a separate command and particularly as between the Army and the Navy there was no military or operational relationship whatsoever. Notwithstanding this fact, which was common knowledge, the prosecution saw fit to join General Tachibana with the Commanding Officer of the Navy wireless station and two of his ensigns, charging the four of them as having jointly, and each and together with having assaulted, struck and killed by beheading with swords an American prisoner of war.

Again the prosecution will say it is not necessary for them to prove the words alleged and again we say that as General Tachibana is charged with having done certain acts, it is necessary in order to find him guilty, that he be shown to have done these acts. If the prosecution do not prove the acts alleged or prove some other acts, we maintain that the Commission cannot legally find General Tachibana guilty of the acts alleged. The acts alleged are all easily defined and do not legally include other acts not specified.

The prosecution by one witness, Captain Kosuga, Tadaaki, the Brigade Adjutant, could only show that an officer not identified asked this adjutant, Captain Kosuga, for a prisoner of war to be used to monitor or intercept American broadcasts. So this Adjutant turned an American prisoner of war over to an officer from the Navy wireless station and General Tachibana thereby "did, each and together" jointly with three Navy officers "assault, strike, and kill by beheading with swords, an American prisoner of war". Gentlemen of the Commission, do not forget that this is a legal question and the findings must be in accordance with the acts alleged.

This same witness that turned the prisoner of war over to an officer of the wireless station could not even testify that the prisoner was an American. Is it reasonable to believe that General Tachibana therefore knew the prisoner was an American? No testimony was brought out that General Tachibana ever even saw the prisoner. He was not present at the alleged scene of execution. Under these circumstances how then could he wilfully, feloniously, with premeditation and malice aforethought, assault, strike, and kill, by beheading with swords an American prisoner of war, one James Wesley Dye?

The witness, on cross examination, admitted that General Tachibana ordered the prisoner sent to Detached Headquarters and properly, so. Further, the witness stated that Detached Headquarters, after questioning, sent the prisoner back to the Brigade, not on the request of General Tachibana, but on the orders and responsibility of the staff officer who at that time was in charge of Detached Headquarters,

"SS(6)"

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which was the command post of the Division Commander whose headquarters were on Iwo Jima.

We are, however, not tracing the cause of events that made it possible for this prisoner to be placed in jeopardy of his life, neither should the prosecution. The prosecution must prove the acts alleged; it is not enough to prove some other acts. The burden of proof is still on the prosecution and we maintain that they have failed to show a single overt act on the part of General Tachibana, or any act which is legally included in the definition of the words: "assault, strike, and kill, by beheading with swords".

The prosecution naively prove this specification and charge, by merely saying that although General Tachibana was not present at the alleged scene of execution, had no knowledge of it, and no control over the participants thereof, his conduct was such that by aiding, and abetting the commission of this crime, he is a principal therein and is properly charged with the murder of the defenseless American prisoner of war in February 1945. These are just empty words and conclusions on the part of the prosecution. They have not even shown what the conduct of the General was whereby he is linked in any way with this alleged crime. They would artfully suggest and infer to the commission that the burden of proof shifts from the prosecution to the accused and that the accused must offer evidence that his conduct did not aid or abet the commission of this alleged crime. A man is still innocent in an American court until he is proved guilty. General Tachibana is, after the evidence that the prosecution submitted, still innocent of this charge.

Therefore, we ask this Commission to find as to the accused, Lieutenant General Tachibana specification two of charge one not proved, and the accused Lieutenant General Tachibana is of the first charge not guilty and the Commission does therefore acquit the said Lieutenant General Tachibana of the second specification of the first charge.

Specification 3 of Charge I follows the same pattern as the previous two specifications: General Tachibana is charged with having committed certain acts which were not committed by him at all because he was not even at the scene when these acts are alleged to have taken place, but he is nevertheless charged with having assaulted, struck and killed by spearing with bamboo spears and by bayoneting with fixed bayonets an American prisoner of war, name to the relator not definitely known. The persons who are joined with the General have all been found guilty by the majority of the members of this same commission of having committed these acts. The prosecution are, by joining the General with these already convicted persons, trying to impute their acts to the General on the basis that he was the Commanding General and what anyone did on Chichi Jima, the said Lt. General Tachibana actually did himself.

How does the prosecution attempt to do this? They attempt to show by the testimony of one of the Brigade Adjutants that he heard a conversation between the General and Colonel Kato who were inside an air raid shelter while he, the Adjutant, was outside. He imagined that he heard the General mention "that he was going to

"SS(7)"

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give the prisoner of war to the colonel and for the colonel to have the prisoner executed in order to boost the fighting spirit of the troops". He, the witness, was not even present when this conversation is alleged to have taken place, yet on this evidence, and this evidence alone, the Commanding General at Chichi Jima is charged with murder and the prosecution state that this flimsy bit of evidence is enough to convict the accused, Lt. General Tachibana of murder, he, General Tachibana, who was charged with responsibility for the defences of Chichi Jima at a time when the air raids were said to be just one continuous raid.

The senior adjutant testified that he received instructions by telephone from Detached Headquarters to dispose of prisoners of war. However, the prosecution failed to follow this up and no testimony of any real value was offered by this witness other than his statement that Detached Headquarters phoned him "We would like to have the Brigade Headquarters dispose of the prisoners of war". The inference is that the orders of Detached Headquarters were carried out by General Tachibana, but this is not warranted by the facts.

Witness Yamashita, Masao, Captain, Imperial Japanese Army, who has already been convicted and sentenced by this commission for this crime, testified that he was ordered by Colonel Kato to supervise the execution of this prisoner and did so.

Colonel Kato, on the witness stand, in no way implicated General Tachibana because the only testimony he gave was that he heard it through his Adjutant, who was convicted of this very offense. Someone from Brigade Headquarters is said to have phoned to come and get a prisoner. Colonel Kato made no attempt to verify that this call came from anyone in authority at Brigade Headquarters, or even came from Brigade Headquarters, but ordered the prisoner to be executed as soon as the prisoner was in his custody. It seems strange indeed that he then made a written report but never took the trouble to find out if the General had ever received the report, yet he saw the General often.

There has been no showing that General Tachibana ever saw the prisoner, gave any orders for the execution of the prisoner, or that he was present at the scene of the execution. Yet the prosecution would on such testimony convict the accused Lt. General Tachibana, of the charge of murder. Again we say unless it is proved beyond a reasonable doubt that General Tachibana did jointly with the persons named, wilfully, feloniously, with premeditation and malice aforethought, assault, strike and kill by spearing with bamboo spears and by bayoneting with fixed bayonets an American prisoner of war, name to the relator not definitely known. This specification does not allege they did each and together, so the prosecution must show that the General was joined with the others at the scene. The evidence shows Lt. General Tachibana did not know of the execution, he was not informed it would take place, or was he present at the scene.

We of the Defense objected that there was improper joinder of parties, but our objections were overruled. We still are of the same opinion, particularly in this instance there was improper joinder.

"SS(8)"

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In Court Martial Order 1-1929, the rule is laid down: "It is well settled that the necessary elements for a joint charge and joint trial are that the offense must be one that is not in its nature several, and there must exist a conspiracy or concert of action".

This case quotes: "In Digest of Opinions of the Judge Advocate General of the Army (1901) p. 201, it is stated:

'Properly to warrant the joining of several persons in the same charge and bringing them to trial together thereon, the offense must be such as required for its commission a combination of action and must have been committed by the accused in concert or in pursuance of a common intent.'"

Winthrop's Military Law, p. 208, states: "But whenever the offense is in its nature several, there can be no joinder".

In footnote 3 on page 208, Winthrop quotes 2 Hawkins, c 25, s 89, as follows: "Where the offense indicated doth not wholly arise from the joint act of all the defendants, but from such act joined with some personal and particular defect or omission of each defendant, without which it would be no offense, ...the indictment must charge them severally and not jointly."

This third specification of Charge I is a specification for trial in joinder and yet only one accused is being tried. Court Martial Order 4-1918 and Court Martial Order 30-1918 both hold that this form is intended to be used only when the participants are to be tried in joinder. To use such a form when only one accused is tried is highly irregular.

In making its finding on this specification, the Commission must in accordance with Section 158, Naval Courts and Boards strictly observe the rule that it must reach its conclusion solely from the evidence adduced. This section 158 states: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted."

In specification 1 of Charge III this same accused Lt. General Tachibana is charged with neglect of duty in that he failed to control and restrain these joint conspirators. In view of this other charge and the failure of the prosecution to prove that the accused General Tachibana acted jointly with certain other persons already convicted, we ask the Commission to find as to the accused General Tachibana, the specification number three of the first charge not proved, and the accused General Tachibana is of the first charge not guilty and the Commission does therefore acquit the said General Tachibana of the third specification of the first charge.

In specification four of Charge I, General Tachibana is charged jointly with a major, a first lieutenant, and a corporal, each and together, with assaulting, striking, and killing, by beheading with a sword, an American prisoner of war.

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We contend that there has been no showing that General Tachibana did any of the acts he is alleged to have done, to-wit: assault, strike, and kill by beheading with a sword. We further contend there has been no proof as to even the conduct of General Tachibana in this particular instance.

The prosecution would cite Section 332 of the U. S. Criminal Code, which provides: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

First we ask is the offense charged one defined in any law of the United States. We think not since it is alleged that all this is in violation of the laws and customs of war and the moral standards of civilized society. Since the offense is not alleged to be in violation of a United States law we hold that the definition of a principal stated in Section 332 of the U. S. Criminal Code does not apply in this specification or in any other specification in this case. This we hold to be the law as to principals in this present case. To hold otherwise would be to read into the above definition something which was never intended to be there, or does the prosecution hold that the law makers intended to include any war crime but forgo to say so?

No, Gentlemen of the Commission, this is still a law case and wishful thinking has no place in a case such as this. The present case must be tried according to the rules of law.

This requires, as we have previously stated, proof that the accused, General Tachibana, acting jointly with the persons mentioned, and did each and together, wilfully, feloniously, with premeditation, and malice aforethought, assault, strike, and kill, by beheading with a sword.

This specification charges two of the accused who did not participate directly in the commission of the substantive offense. It happened that Captain Sato was a member of the 308th Battalion and therefore the Commanding Officer of the Battalion must be charged with the commission of the substantive offense. Then simply because the 308th Battalion was a part of the military force on Chichi Jima, the Commanding General, Lt. General Tachibana, is charged with the commission of the substantive offense.

Both Major Matoba and General Tachibana are in other specifications charged with neglect in failing to restrain and control members of their respective commands. See Specification 3 and Specification 18 of Charge III.

Does the prosecution hold this was a conspiracy therefore the General as Brigade Commander and the Major, as Battalion Commander, are properly joined? We respectfully refer the Commission to the opinion of the court delivered by Mr. Justice Rutledge in the case of Kotteakos vs U.S. 66 S.Ct. 1239. He, in that case, differentiates between mass conspiracy and conspiracy. "They do not invite mass trial by their conduct. Nor does our system tolerate it. That way lies the drift toward totalitarian institutions. True this may be inconvenient for prosecution. But our government is not one of mere inconvenience..."

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In *Pinkerton vs U.S.* 66 S. Ct. 1180 "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established". *Clune vs U.S.* 159 U.S. 590.

There has been no evidence to show that General Tachibana participated directly in the commission of the substantive offense. In the case of *U.S. vs Sall*, 116 F. 2d 745 decided by the Circuit Court of Appeals for Third Circuit, cited in 66 S. Ct. 1180 it was "held that participation in the conspiracy was not itself enough to sustain a conviction for the substantive offense even though it was committed in furtherance of the conspiracy. The court held that in addition to evidence the offense was in fact committed in furtherance of the conspiracy, evidence of direct participation in the commission of the substantive offense or other evidence from which participation might fairly be inferred was necessary."

For these reasons we ask this Commission to find as to the accused Lt. General Tachibana, the specification number four of the first charge not proved, and the accused General Tachibana is of the first charge not guilty, and the Commission does therefore acquit the said General Tachibana of the fourth specification of the first charge.

Charge II is designated as "violation of the Laws and Customs of War."

In specification 1 of Charge II, General Tachibana and Major Matoba are joined by charging that they did each and together ... wilfully and unlawfully prevent the honorable burial of an American prisoner of war, name to the relator not definitely known...by removing and causing to be removed and eating the flesh and viscera of the body of the said prisoner of war ... and the said Tachibana and Matoba thereby violated the laws and customs of war and the moral standards of civilized society.

The accused is not clear as to just what the offense is in this specification. We are led to believe that the offense is that General Tachibana and Major Matoba wilfully and unlawfully prevented the honorable burial by removing and causing to be removed and eating the flesh and viscera of the body.

We can only find this statement under Article 76, Chapter 6, Geneva Prisoner of War Convention 1929: "Belligerents shall see that prisoners of war dying in captivity are honorably buried ..." and Article 4 of Geneva (Red Cross) Convention of 27 July 1929: "They shall further see that they are honorably buried".

We quote Court Martial Order 12 - 1925 which states: "It is wholly insufficient to merely allege that an act was done unlawfully or without authority without showing why or in what matter the act was unlawful. Such a statement is a mere conclusion on the part of the convening authority, setting forth no facts or circumstances. For an act to be unlawful it must have been committed in violation of some law, regulation, or order in force at the time of the commission of the act."

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if there be no law, regulation, or order prohibiting the act, a mere statement of unlawfulness cannot create an offense."

In the case of violation of the articles of these conventions, the accepted theory is that only the state and not the individual soldier is liable for his violation of the laws of war. So we ask that the Commission be not shocked into a decision but find according to the evidence and the law. The case is very complicated and it may well be that some evidence was shown in an attempt to prove this specification. It is all very confusing. Was this really Mershon or was it Hall that General Tachibana is charged with preventing honorable burial?

Did the eating take place at the 307th Battalion Headquarters? If so, the evidence is very misleading and we hold that no evidence was produced to show that General Tachibana actually ate any human flesh, or had knowledge that what was eaten at the 207th Battalion headquarters was human flesh. I know of no basis on which a man can properly be charged with eating human flesh as a crime unless he knew it was human flesh. The element of knowledge, or scienter is a basic one, and the courts always require it unless by statute Congress has expressly said that mere possession or a mere act constitutes a violation, even without knowledge. But Congress must expressly say so To Eliminate Scienter as an Element. I do not think that Congress did so in this situation.

We ask therefore that this Commission find as to the accused General Tachibana specification number one of the second charge not proved and the accused General Tachibana is of the second charge not guilty and the Commission does therefore acquit the said General Tachibana of the first specification of the second charge.

Specification 2, Charge II, charges General Tachibana did wilfully and unlawfully mistreat and cause to be mistreated by his orders, four prisoners of war, names unknown, by denying them food, water and shelter, and by tying them to trees, and exposing them to inclement weather and danger of fire and bombing of a combat zone, in violation of the laws and customs of war.

As we have stated before, we find the specification faulty in that the laws and customs of war are not set out which were violated. What particular article was violated and what penalty is provided for the violation of the article?

Article 3 of the Hague Convention No. IV of 1907, Laws and Customs of War on Land provides: "A belligerent party which violates the provisions of the said regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."

Article 2 of the same convention provides that the provisions do not apply if all of the belligerents are not parties to the Convention. Since neither Italy nor Bulgaria ratified the 1907 Convention, Japan is not bound by these articles even although Japan signed the convention.

Article 2 of the Geneva Prisoners of War Convention of 1929 cannot be said to apply because Japan has not ratified or formally adhered to it. The mere fact

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that Japan has, through the Swiss Government, agreed to observe these provisions makes no difference.

Since the individual offender can be punished only under the law of his own or in this case American statutes we hold that this Commission must find the accused not guilty as charged.

My colleague has pointed out such things as lack of names of the victims, and the exposure to dangers of fire and bombing in a combat zone being the same dangers that many Japanese were exposed to on Chichi because there just weren't enough air raid shelters. He has further shown lack of proof as to the phrase "by his orders".

I call the court's attention to the words inclement weather. This is a conclusion of the pleader and must be proved.

Since the crime is the unlawful mistreatment, there were as many unlawful mistreatments committed as the number of persons who were unlawfully mistreated. Mere mechanical difficulties such as typing of additional charge sheets cannot be accepted as sufficient justification for naming all of the victims in one specification.

For all of these reasons we ask the Commission to find as to the accused General Tachibana specification number two of the second charge not proved, and the accused General Tachibana is of the second charge not guilty and the Commission does therefore acquit the said General Tachibana of the second specification of the second charge.

In specification 1 of Charge III, General Tachibana is charged with neglect of duty. In order to acquaint the accused with the particular laws and customs of war which he violated, we should have had a bill of particulars at least setting forth these specific articles.

If these acts are in violation of the laws of war as laid down in Fourth Hague Convention 1907, "the question is whether the law of war imposes on an Army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war..., and whether he may be charged with personal responsibility for his failure to take such measures when violations result." General Tomoyuki Yamashita Nos 61 Miscellaneous and 672 Supreme Court.

We hold that the prosecution has failed to show that there was an affirmative duty on the part of General Tachibana to take measures to protect these prisoners of war.

In General Orders No. 264, Hq. Div. of the Philippines, September 9, 1901, it was held that an officer could not be found guilty for failure to prevent a murder unless it appeared that the accused had the power to prevent it.

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The prosecution has failed to show that the accused General Tachibana had the power to prevent these violations. The Defense has shown that he was not notified that these executions were about to take place, nor was he present at any of these executions. Again we quote Mr. Justice Rutledge in the Yamashita case: "Mass guilt we do not impute to individuals, perhaps in any case, but certainly in none where the person is not charged or shown actively to have participated in or knowingly to have failed in taking action to prevent the wrongs done by others, having both the duty and the power to do so".

This specification 1 of Charge III alleges three separate offenses and we feel should have been laid under three specifications.

As my colleague Mr. Morikawa has said before, these acts alleged to be in violation of laws and customs of war, the Hague Convention IV of 18 October 1907, do not apply to Japan since (note Article 2 of this same convention) Italy nor Bulgaria ratified this 1907 convention.

Finally the law of nations is binding on sovereign states and not on individuals. In this case General Tachibana can be punished only under the law of Japan or under American statutes.

For all these reasons we hold that the Commission should find as to the accused General Tachibana specification 1 of Charge III not proved and the accused General Tachibana is of the third charge not guilty and the Commission does therefore acquit the said General Tachibana of the first specification of the third charge.

Specification 2 of Charge III is practically the same specification, except that this specification charges that General Tachibana neglected to properly protect these same prisoners of war.

For the same reasons that we gave for acquitting General Tachibana of specification one of Charge III we give for acquittal of this specification. The prosecution have failed to show any duty imposed upon the accused by the laws of Japan or our own American laws to properly charge General Tachibana with a crime in this case.

We ask therefore that the Commission find as to the accused General Tachibana specification 2 of Charge III not proved and the accused General Tachibana is of the third charge not guilty and the Commission does therefore acquit the said General Tachibana of the second specification of the third charge.

In specification 3 of Charge III, General Tachibana is charged with neglect of duty in failing to control Major Matoba, First Lieutenant Sato, First Lieutenant Teraki and Corporal Nakamura in that he allowed them to kill a prisoner of war. In specification 4 of Charge I General Tachibana is charged as a principal with having committed the killing by beheading.

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Captain Sato, an accused, on the witness stand testified he made all the arrangements and because the doctor was in a hurry he changed his plans and executed the prisoner quickly in the early afternoon. He testified on cross examination that General Tachibana had not ordered him to execute the prisoner, was not on the scene, and he, Captain Sato, never notified the General he was about to execute a prisoner or that he had executed a prisoner. In other words, General Tachibana had no knowledge of this execution, therefore it was impossible for him to control these executions.

The accused, General Tachibana, did not actively participate in the execution; knowingly fail to take action to prevent this execution.

We ask that the Commission consider all previous objections to similar specifications in addition to the lack of proof in this specification and find as to the accused General Tachibana, specification 3 of Charge III not proved and the accused General Tachibana is of the third charge not guilty and the Commission does therefore acquit the said General Tachibana of the third specification of the third charge.

Specification 4, Charge III charges General Tachibana with neglect of duty by failing to protect a prisoner of war by failing to prevent the killing of Ensign Hall. In specification 4, Charge I, the General is charged as a principal with assaulting, striking, and killing and beheading with assword the prisoner Hall, and in specification 3 of Charge III the General is charged with neglect for not controlling the executioners.

For the same reasons as applied to specification 3 of Charge III, we hold no case has been made as against General Tachibana.

We ask, therefore, that the Commission find as to the accused General Tachibana specification 4 of Charge III not proved and the accused General Tachibana is of the third charge not guilty and the Commission does therefore acquit the said General Tachibana of the fourth specification of the third charge.

Specification 5 of Charge III charges General Tachibana with neglect of duty in that he failed to control Major Matoba because he permitted Major Matoba to prevent honorable burial of a prisoner of war by removing and causing to be removed and eating the flesh and viscera of a prisoner of war not definitely known but believed to be Morshon; all this in violation of the laws and customs of war and the moral standards of civilized society.

In specification 1 of Charge II the General and the Major are charged as each and together preventing honorable burial by removing and eating the flesh and viscera. In this specification the place where the substantive act occurred is fixed at the headquarters of the 307th Battalion. What we said about Specification 1 of Charge II we repeat as regards this specification. Therefore not alone because of the law or lack of law on what constitutes honorable burial but also because the facts as brought out by the prosecution do not clearly establish the

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guilt of the accused General Tachibana, such as his knowledge or as the courts would say, the element of scienter not having been proved, we ask that the Commission find this specification not proved. We ask that the accused General Tachibana be found not guilty of the third charge and acquit the said General Tachibana of the fifth specification of the third charge.

Specification 2, Charge I, alleges that Commander Yoshii, together with Ensign Masutani and Ensign Hayashi, in pursuance of a common intent, did each and together assault, strike and kill a prisoner, Dye.

In order to set up a defense for Ensign Hayashi and Ensign Masutani, the defense had to put these officers on the stand and they both testified that Commander Yoshii ordered them to execute the prisoner. The defense originally objected to the joinder of the accused but were overruled on this point. The substantive rights of the accused Yoshii were prejudiced by the joinder of the two accused Masutani and Hayashi.

Furthermore, Wharton's Criminal Evidence, Volume 2, #714 states: "narratives of past events after the conspiracy is fully executed are to measures taken in the execution or furtherance of the common purpose inadmissible against conspirators*. Confessions of co-conspirators and accomplices are also inadmissible against a co-conspirator or co-defendant on trial, for the reason that a confession is necessarily made after the commission of the crime, and, by its nature, it is not made in furtherance of the purpose of the conspiracy to commit such crime.

"If the declaration sought to be introduced ..., or after the consummation of the purpose thereof, the objection to be made is that such declaration is a hearsay statement and not binding upon the co-conspirator on trial". Hill vs State 113 Crim. Rep. 85, 18 S.W. (2d) 1086. Wharton's Criminal Evidence Volume 2, #699 page 1188. "The co-defendant against whom the act or declaration is not admissible receives his protection from the court's admonition, and it is reversible error for the court to fail to instruct the jury in this respect." State vs Kirkland, 175 N.C. 770, 94. S.E. 725 Wharton's Criminal Evidence, Volume 2, par. 701, p.1190.

One conspirator does not ... by its execution under his authority, authorize his co-conspirator to make confessions or admissions of guilt for him, or to narrate past events. State vs. Huckins, 212 Iowa, 283, 234 N.W. 554. Wharton's Criminal Evidence Volume 2, par 714, p. 1204.

Furthermore, in U.S. vs Sall 116 F 2 cd 745, decided by Circuit Court of

*Citing: Logan vs United States, 144 U.S. 263, L. ed. 429, 12 S. Ct. 617;
Clark vs United States (C.C.A. 5th) 61F (2d) 409;
State vs Sweeney, 180 Minn. 450, 231 N.W. 225, 73 A.L.R. 380;
State vs Violet, 57 S.D. 648, 234 N.W. 623;
State vs De Angeles, 72 Utah, 209, 269, P. 515.

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for Third Circuit cited in 66 S. Ct. 1180, it was held that "evidence of direct participation in the commission of the substantive offense or other evidence from which participation might fairly be inferred was necessary.

In our objections to the charges and specifications we objected to the matter in aggravation particularly since in this specification the matter in aggravation was included as a separate charge and set forth in specification 4 of Charge II.

The Convening Authority stated in his letter of August 19, 1946 that the additional facts in aggravation were a description illustrating the character and the extent of the offense committed and that the offense alleged in specification 4 of Charge II is a completely different offense. This latter is an offense in violation of Article 4 of the Geneva Red Cross Convention 1929 and Article 76 of the Geneva Prisoner of War Convention 1929.

However, these conventions are binding only on sovereign states and not on individuals. Furthermore when it comes to individuals who violate these convention neither courts or punishments are provided.

Since evidence is lacking to prove this matter in aggravation, in arriving at findings we ask therefore that this matter in aggravation be struck by excepting all words having to do with matter in aggravation.

All that we have said regarding the laws and customs of war and the moral standards of civilized society we repeat regarding this specification.

In view of the lack of competent evidence we ask that the Commission find as to the accused Captain Yoshii, specification 2 of Charge I not proved, and the accused Captain Yoshii is of the first charge not guilty and the Commission does therefore acquit the said Captain Yoshii of the second specification of the first charge.

In specification 6 of Charge I Captain Yoshii is charged with acting jointly with Ensigns Kurasaki and Koyama, both now dead, and others in pursuance of a common intent did wilfully, with malice, assault, strike, and kill by beheading with a sword a prisoner, Vaughn, in violation of the laws and customs of war and the moral standards of civilized society.

Some evidence was introduced to show that the prisoner Vaughn was delivered by Detached Headquarters to the Commanding Officer of the Wireless Station, but only in order that his services and knowledge of English might be used in connection with the monitoring of radio transmissions. The evidence is not clear just how this prisoner got into the hands of Lieutenant Kurasaki, who himself is now dead, having been killed in action with an American destroyer in August 1945. But there is no evidence to show that Commander Yoshii was at the scene of the execution and acting jointly with Lieutenant Kurasaki and Ensign Koyama did assault, strike, and kill by beheading with a sword. In this specification it is most important to prove that Commander Yoshii was at the scene and did the acts because the specification does not charge each and together but only that these three and others

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acting jointly did kill the prisoner.

All that has been said previously about the laws and customs of war and the moral standards of civilized society we hold applies to this specification. We ask that the Commission consider our arguments regarding laws and customs of war and the moral standards of civilized society with reference to this specification.

Since there is no evidence to show that Commander Yoshii participated directly in the commission of the substantive offense, the Commission should find as to the accused Captain Yoshii specification 6 of Charge I not proved, and the accused Captain Yoshii is of the first charge not guilty and the Commission does therefore acquit the said Captain Yoshii of the sixth specification of the first charge.

In specification 4, Charge II, Commander Yoshii is charged with unlawfully preventing the honorable burial of prisoner Dye by removing and causing to be removed, offering and distributing to members of his command and eating the flesh and viscera of the body of the prisoner, thereby violating the laws and customs of war and the moral standards of civilized society.

The testimony at this trial was as the judge advocate said, introduced bit by bit, witnesses were called and recalled, testifying one day to a certain specification and then when recalled to another specification. It is our firm belief, however, that at no time was testimony introduced to prove that Commander Yoshii removed, offered and distributed to the members of his command (the wireless station) and ate the flesh and viscera of the body of a prisoner of war, Dye.

What we have previously said about the honorable burial and the removal and eating of the flesh applies in this instance also. Does the prosecution have any previous case or ruling at law by which they can establish the law under these circumstances or are they attempting to make new law out of the circumstances of the incidents which they describe. Is it enough for the prosecution to say that this incident was a violation of Article 76 of the Geneva (Prisoners of War) Convention of 27 July 1929. We hold this to be a mere conclusion of the pleader.

In this instance, as in most of the other specifications the prosecution were undecided upon what to base their charges and instead of selecting only one, it decided to try two. The inference is that the prosecution was not sure about the law in the case. This, however, has been quite unfair to the defense. In the case of Davis vs Com. 150 Va. 611, 143 S.E. 641 cited in Wharton's Criminal Evidence Vol. 2, par. 1031, page 1813 it was held: "a respondent is entitled to know before he makes his defense, what specific acts of his the state relies upon as constituting the offense charged against him in order that he may properly meet the charge. A conviction cannot be sustained upon a different theory than that on which the case has been tried. State vs Mason 93 Vt. 363, 127 A 651. Where one offense is charged and the evidence shows separate and distinct transactions, and either of them would support the charge in the complaint, the state is required to elect upon which it will rely for conviction. State vs Field, 95 Vt. 375, 115A 296; State vs Barr, 78 Vt 97, 62A 43. The time when the state should be compelled to make its election is within the discretion of the court, if the respondent is given

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