

DECLASSIFIED

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By: NARA NARA Date: 1976

TERAKI, TADASHI

(4 MAR 1949)

(VOL. I)

(167855)

PAGE 4

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In reply refer to Initials
and No.

Opp222B/wj
Serial 620P22

NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.



16 JUN 1949

From: Chief of Naval Operations.
To: Judge Advocate General.
Subject: Case of TERAHI, Tadashi.
Enclosure: (A) File of proceedings in the case of TERAHI, Tadashi.
1. Enclosure (A) is returned with contents noted.

P. G. Hale
P. G. Hale,
By Direction

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CG TERAKI, Tadashi/ALV-10 OQ
I (S-7-49) HWS:ben 167855

MEMORANDUM IN THE MILITARY COMMISSION CASE OF:

Tadashi TERAKI,
formerly 2nd Lt., IJN

Place Tried:
U.S. PacFt.,
Com. Naval Forces
Marianas,
Guam, Marianas.

Date of Trial:
4 March 1949

Date Received:
24 May 1949

CHARGE	PLEA	FINDINGS
VIOLATION OF THE LAW AND CUSTOMS OF WAR	NO	C
Spec 1 - 23 Feb. 1945, Chichi Jima, Bonin Is., did, at a time when a state of war existed, willfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie Wm. Marshon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disintering the body of said POW and removing the liver and flesh from the thigh of said POW.	NO	P in P
Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	NO	P in P
Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	NO	P in P
Spec 4 - 26 Mar. 1945, same place, did prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.	NO	P in P
Spec 5 - 26 Mar. 1945, same place, did kill an American POW, Namely, Floyd Ewing Hall, by beheading with a sword.	NO	Not Proved

SENTENCE: To be confined for a period of four years.

C.A. ACTION: PFAS approved. Reduced period of confinement to three years, and five months.

FACTS: The accused, Teraki, Tadashi, was a surgeon attached to the 308th or Matoba Battalion of the General Tachibana Division of the IJA stationed on Chichi Jima, Bonin Is. He was one of two medical officers serving at the dispensary of the Matoba unit. All of the incidents alleged in specifications 1, 2, 3, and 4 occurred at Chichi Jima, Bonin Is. as follows: On or about Feb. 23, 1945, an American POW was beheaded at Chichi Jima. After he was interred, the accused went to the grave where he ordered the body exhumed. The accused removed the liver and part of the flesh of the thigh of the deceased. These remains were wrapped up and given to a sergeant who took them to Matoba. These remains were eaten at the mess. On or about February 25, 1945, an American POW was beheaded, and later the accused went to the body and removed the liver of the deceased. He gave orders that flesh from the thigh be removed. These

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OO:TERAKI, Tadashi/A17-10 OQ

remains were taken to the battalion commander's room. On or about March 26, 1945, the accused after a POW, one Hall was beheaded, performed a dissection exhibition. Also removed the liver and thigh of the deceased. Later Matoba ate this flesh.

Defense: The accused introduced evidence to the effect that he was a probationary medical officer. He was subordinate to the medical office at 308th Battalion dispensary. All of the officers of the 308th Battalion were in fear of the CO, Major Matoba, who was a cruel, barbaric man. The accused was ordered by the major to remove the flesh of the two deceased POW's. He was ordered to perform the dissection of Hall by order of the adjutant of Major Matoba, and also was later ordered to remove the liver and the flesh.

LAW AND DISCUSSION:- Objections were raised as to:

1. Accused objected to the jurisdiction on the grounds:
 - (a) U.S. Forces were not in Chichi Jima at time of occurrence.
 - (b) Chichi Jima is not in area of command of convening authority.
 - (c) Convening authority is not the civil administrator of the area.

All of these objections are not well taken. Yamashita v. Styer, 327 U.S. 1 and SCAP Rules.

2. The accused objected to specifications in that they do not state an offense supporting the charge. This objection is disposed of on the grounds that the IJN had accepted the provisions of the Hague convention of October 1907, pertaining to prisoners of war.

3. The accused made a plea in abatement on the grounds that no notice was given to the protecting power of the accused in accordance with Article 60 Geneva Prisoners of War Convention of July 27, 1929. This plea was properly denied as this point is covered in the Yamashita case 327 U.S. 1.

4. The accused filed a motion of a bill of particulars which motion was denied. This was correct. There is no provision in Naval Courts and Boards, sec. 404.

It is the opinion of the undersigned that there was ample evidence to sustain the court's findings in the instant case.

RECOMMENDATION AND CONCLUSION: It is recommended that the case be passed as legal without comment.

E. H. Nichols
E. H. NICHOLS
LCDR., USN

I have read the subject case and concur.

Mitchell K. Disney
Mitchell K. Disney, LCDR., USN

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ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO:

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

15 JUN 1949

To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.



G. L. RUSSELL
Judge Advocate General of the Navy.

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MILITARY COMMISSION REFERRAL 6-7-49 bem Case No. 167855

Name	Rank	Date Received
Tadashi TERAKI,	former 2nd Lt., IJN	24 May 1949

Trial Held	Date of Trial
U.S. PacFlt., Com. Nav Forces, Guam, Marianas.	4 March 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - 23 Feb. 1945, Chichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie William Mershon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.

Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Ewing Hall, by beheading with a sword.

Pleas

NG to Charge and 5 specs.

FINDINGS

G (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCE:

To be confined for a period of four (4) years.

C.A. ACTION:

PF&S approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the CG 8th U.S. Army via the first available transportation to arrive at Angamo Prison Tokyo, Japan. 26 April 1949

Reviewing Authority Action: 18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence as mitigated, and the action of the C.A. are approved.

The record is, in conformity with App. D-14, NC&B, 1937, and CNO Ser. OLP22 of 28 Nov. 1945, transmitted to the JAG.

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MILITARY COMMISSION REFERRAL 6-7-49 Doc Case No. 167855

Name	Rank	Date Received
Tadashi TERAKI,	former 2nd Lt., IJN	24 May 1949
Trial Held		Date of Trial
U.S. PacFlt.,		4 March 1949
Com. Nav Forces,		
Guam, Marianas.		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - 23 Feb. 1945, Onichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie William Marston, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.

Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Ring Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Ring Hall, by beheading with a sword.

Plans

NS to Charge and 5 specs.

FINDINGS

6 (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCES

To be confined for a period of four (4) years.

C.A. ACTION:

26 April 1949

PFAS approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the CG, 8th U.S. Navy, via the first available transportation to arrive at 18 Bureau Prison Tokyo, Japan.

Reviewing Authority Action:

18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence as mitigated, and the action of the C.A. are approved. The record is, in conformity with App. B-14, HCSA, 1937, and GPO Ser. OIP22 of 26 Nov. 1945, transmitted to the JAG.

15 JUN 1949

To: The Chief of Naval Operations (Op-32)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

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MILITARY COMMISSION REFERRAL 6-7-49 bsm		Case No. 167855
Name	Rank	Date Received
Tadashi TERAKI,	former 2nd Lt., IJN	24 May 1949
Trial Held		Date of Trial
U.S. PacFt., Com. Nav Forces, Guam, Marianas.		4 March 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

- Spec 1 - 28 Feb. 1945, Chichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie William Marshen, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.
- Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.
- Spec 3 - 28 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.
- Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.
- Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Ewing Hall, by beheading with a sword.

Pleas

NS to Charge and 5 specs.

FINDINGS

6 (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCE:

To be confined for a period of four (4) years.

C.A. ACTION:

26 April 1949

PFAS approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the CG, 8th U.S. Army, via the first available transportation to serve out in Sugamo Prison Tokyo, Japan.

Reviewing Authority Action:

18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence

as mitigated, and the action of the C.A. are approved.

The record is, in conformity with App. B-14, NCMR, 1937, and GHO

---. OLF22 of 28 Nov. 1948, transmitted to the JAG.

15 JUN 1949

To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

MILITARY COMMISSION REFERRAL 6-7-49 ben Case No. 167855

Name Rank Date Received
Tadashi TERAKI, former 2nd Lt., IJN 24 May 1949

Trial Held Date of Trial
U.S. PacFlt., 4 March 1949
Com. Nav Forces,
Guam, Marianas.

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - 28 Feb. 1945, Onichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relater unknown, but believed to be Marvie William Wershon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.

Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Bwing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Bwing Hall, by beheading with a sword.

Pleas

NS to Charge and 5 specs.

FINDINGS

6 (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCE:

To be confined for a period of four (4) years.

C.A. ACTION:

26 April 1949

PF&S approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the CG, 8th U.S. Army, via the first available transportation to arrive post in Luzon Prison Tokyo, Japan.

Reviewing Authority Action:

18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence

as mitigated, and the action of the C.A. are approved.

The record is, in conformity with App. B-14, HCAR, 1937, and GHO Ser. OLP22 of 26 Nov. 1945, transmitted to the JAG.

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15 JUN 1949

To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

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MILITARY COMMISSION REFERRAL 6-7-49 bsm Case No. 167855

Name	Rank	Date Received
Tadaaki TERAKI,	former 2nd Lt., IJN	24 May 1949
Trial Held		Date of Trial
U.S. PacFt.,		4 March 1949
Com. Nav Forces,		
Guam, Marianas.		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - 23 Feb. 1945, Chichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie William Marshon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.

Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Ewing Hall, by beheading with a sword.

Pleas

NO to Charge and 5 specs.

FINDINGS

6 (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCE:

To be confined for a period of four (4) years.

C.A. ACTION:

26 April 1949

PFAS approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the 60 8th U.S. Army. via the first available transportation to arrive sent to Sugamo Prison Tokyo, Japan.

Reviewing Authority Action:

18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence as mitigated, and the action of the C.A. are approved.

The record is, in conformity with App. B-14, NCAS, 1937, and GHO Ser. OLP22 of 28 Nov. 1945, transmitted to the JAG.

15 JUN 1949

To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. I. RUSSELL
Judge Advocate General of the Navy.

MILITARY COMMISSION REFERRAL 6-7-49 Item Case No. 157865

Name	Rank	Date Received
Tadashi TERAKI,	former 2nd Lt., IJN	24 May 1949
Trial Held		Date of Trial
U.S. PacFt.,		4 March 1949
Com. Nav Forces,		
Guam, Marianas.		

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - 23 Feb. 1945, Chichi Jima, Bonin Is., did, at a time when a state of war existed between the U.S. of America, its allies and dependencies, and Imperial Japanese Empire, wilfully disrespect the grave of an American POW, name to the relator unknown, but believed to be Marvie William Marshon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said POW and removing the liver and flesh from the thigh of said POW.

Spec 2 - At same time and place, did prevent the honorable burial of an American POW, exact name unknown, but believed to be above-mentioned American POW, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 3 - 25 Feb. 1945, same place, did prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 4 - 26 March 1945, same place, did prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.

Spec 5 - 26 Mar. 1945, same place, did kill an American POW, namely, Floyd Ewing Hall, by beheading with a sword.

Facts

NO to Charges and 5 specs.

FINDINGS

C (specs 1, 2, 3 and 4, proved in part; spec 5, not proved)

SENTENCE:

To be confined for a period of four (4) years.

G.A. ACTION:

26 April 1949

PFAS approved. Reduced period of confinement to three (3) years and five (5) months. Will be trans. to the custody of the CG 8th U.S. Army, via the first available transportation to arrive at Sugamo Prison Tokyo, Japan.

Reviewing Authority Action:

18 May 1949

Proceedings, findings on specs 1, 2, 3, & 4, and sentence as mitigated, and the action of the G.A. are approved.

The record is, in conformity with App. D-14, HCSA, 1937, and GPO Ser. OLP22 of 28 Nov. 1945, transmitted to the JAG.

15 JUN 1949

To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentence in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT
WASHINGTON 25, D. C.

JAG:I:MKD:lmh
OO-Teraki, Tadashi/A17-10 OQ
(6-16-49) 167855

6/14
4 JUN 1949

The proceedings, findings and sentence in the foregoing military commission case, the actions of the convening and reviewing authorities thereon, are approved.

Dan A. Kimball.
DAN A. KIMBALL
Acting Secretary of the Navy.

FINISHED FILE 4 JUN 1949 *Smith*

0331

Case of
TERAKI, Tadashi
March 4, 1949

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
convened at
United States Pacific Fleet
Commander Naval Forces, Marianas
Guam, Marianas Islands,
by order of
The Commander Naval Forces, Marianas

RECEIVED
24 MAY 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

FINISHED FILE 24 JUN 1949
VOLUME 167855

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FF12/A17-10(2)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 2599

26 APR 1949

MILITARY COMMISSION ORDER NO. 50

(In the case of former Surgeon
Second Lieutenant TERAKI, Tadashi, IJA).

1. During period 4 March 1949 to 17 March 1949, TERAKI, Tadashi, former surgeon second lieutenant, Imperial Japanese Army, was tried by a United States Military Commission, convened by order of the Commander Naval Forces, Marianas, dated 19 January 1949, at the Headquarters Commander Naval Forces, Marianas, on the below listed charge and specifications.

CHARGE: VIOLATION OF THE LAW AND CUSTOMS OF WAR (five specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place and Date of Offenses</u>	<u>Name of Accused</u>
1.	Disrespect the grave of an American POW by unlawfully disinterring the body of said POW, exact name unknown, but believed to be Marvie William Mershon, and removing the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 23 Feb. 1945.	TERAKI
2.	Prevent the honorable burial of an American POW, exact name unknown, but believed to be Marvie William Mershon, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 23 Feb. 1945.	TERAKI
3.	Prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 25 Feb. 1945.	TERAKI
4.	Prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 26 Mar. 1945.	TERAKI
5.	Kill an American POW, Floyd Ewing Hall, by beheading with a sword.	Chichi Jima, Bonin Islands, 26 Mar. 1945.	TERAKI

FINDINGS: The commission on 16 March 1949 made the following findings:

"The first specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

FF12/A17-10(2)
02-JDM-fsk

Serial: 2599

MILITARY COMMISSION ORDER NO. 50

26 APR 1949

(In the case of former Surgeon Second
Lieutenant TERAOKI, Tadashi, IJA).

"The second specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The third specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The fourth specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The fifth specification of the charge not proved.

"And that the accused, Teraki, Tadashi, is of the charge guilty."

SENTENCE: The commission on 17 March 1949 sentenced the accused as follows:

"The commission, therefore, sentences him, Teraki, Tadashi, to be confined for a period of four (4) years."

2. On 26 April 1949 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings on specification 1, 2, 3 and 4 and on the charge, and sentence in the foregoing case of TERAOKI, Tadashi, former surgeon second lieutenant, IJA, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since 6 August 1948, the period of confinement is reduced to three (3) years and five (5) months.

"TERAOKI, Tadashi, former surgeon second lieutenant, IJA, will be transferred to the custody of the Commanding General, 8th U.S. Army, via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

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

cc: CinCPacFlt (3)
JAG, USN (3) ✓
SCAP (3)
ComdGen U.S. 8th Army, Japan (3)
JAG, U.S. Army, War Crimes Div (3)
CO, Marine Barracks (3)
ComMarianas Liaison Officer, Tokyo, Japan (3)
CO, Sugamo Prison, Tokyo, Japan (3)

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON,
Flag Secretary.

0334

FF12/Al7-19
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

25 APR 1949

MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.
Commander Naval Forces, Marianas.

Subject: Review of the Record of Trial by a Military Commission of
former surgeon second lieutenant TERAOKI, Tadashi, IJA.

References: (a) CinCPac/POA Rest. Desp. 170150 Dec. 1945.
(b) CinCPac and U.S. PacFleet Staff Instructions 1948,
paragraph 2 I 3 (f).

Enclosures: (A) Record of subject case (original and three copies; one copy
for CinCPacFleet; one copy for SeeNav for delivery to United
Nations War Crimes Commission; and one copy for Commander
Naval Forces, Marianas).
(B) Proposed action to be taken by Commander Naval Forces,
Marianas on subject case.
(C) Proposed action to be taken by Commander in Chief, U.S.
Pacific Fleet, on subject case.

1. In accordance with references (a), (b) and verbal instructions of
Commander Naval Forces, Marianas, this brief, which contains my comments and
recommendations, is submitted.

2. TRIAL:

a. Offense.

CHARGE - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that TERAOKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the
military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and
while so serving at said military installations, did, at said Chichi Jima, Bonin
Islands, on or about February 23, 1945, at a time when a state of war existed between
the United States of America, its allies and dependencies, and the Imperial Japanese
Empire, wilfully disrespect the grave of an American prisoner of war, name to the
relator unknown, but believed to be Marvie William Mereshon, who died in the captivity
of and was buried by the Japanese armed forces, by unlawfully disinterring the body of
said prisoner of war and removing the liver and flesh from the thigh of said prisoner
of war, this in violation of the law and customs of war.

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Specification 2

In that TERAOKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 23, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, but believed to be Marvie William Merston, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 3

In that TERAOKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 25, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 4

In that TERAOKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about March 26, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of Floyd Ewing Hall, an American prisoner of war, who died in the captivity of the Japanese armed forces, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

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Specification 5

In that TERAOKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, acting with SATO, Kesakichi, then a first lieutenant, IJA, and NAKAMURA, Shigenobu, then a corporal, IJA, both attached to the military installations of the Imperial Japanese Army, did, at Chichi Jima, Bonin Islands, on or about March 26, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed by beheading with a sword, Floyd Ewing Hall, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

b. Pleas:

To the Charge	- Not guilty	(R.p. 4)
To Specification 1	- Not guilty	(R.p. 4)
To Specification 2	- Not guilty	(R.p. 4)
To Specification 3	- Not guilty	(R.p. 4)
To Specification 4	- Not guilty	(R.p. 4)
To Specification 5	- Not guilty	(R.p. 4)

c. Findings:

On the Charge	- Guilty	(R.p. 74)
On Specification 1	- Proved in part	(R.p. 74)
Proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve", which words are proved.		
On Specification 2	- Proved in part	(R.p. 74)
Proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve," which words are proved.		
On Specification 3	- Proved in part	(R.p. 74)
Proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve," which words are proved.		

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On Specification 4 - Proved in part (R.p. 74)
Proved except the words "surgeon second lieutenant, IJA",
which words are not proved, and for which the commission
substitutes the words "probationary officer, Medical Depart-
ment, Imperial Japanese Army Reserve", which words are proved.
On Specification 5 - Not proved (R.p. 74)

d. Sentence:

Four (4) years confinement (R.p. 77)

e. Maximum Sentence:

Death.

f. Convening Authority:

Rear Admiral C. A. POWNALL,
United States Navy,
The Commander Naval Forces Marianas.

g. Place of Trial:

The auditorium, Headquarters, Commander Naval Forces
Marianas, Guam, Marianas Islands (R.p. 1).

h. Date of Trial:

4 March 1949 to 17 March 1949
Arraignment: 4 March 1949 (R.p. 4).
Sentence: 17 March 1949 (R.p. 77).

3. FORMAL MATTERS:

a. Authority for the commission to act.

The authority was the same as that used in previous trials.

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- b. All members of the commission were present throughout the trial.
- c. All members of the commission, judge advocate, reporters, interpreters, and witnesses were sworn (R.p. 1, 2, 7, 13, 25, 30, 34, 36, 39, 44, 46, 52, 69).
- d. The accused was represented by counsel of his own choice (R.p. 1).
- e. The charge and specifications were shown to have been served on the accused on 14 February 1949 (R.p. 2).
- f. The accused challenged Rear Admiral Arthur G. Robinson, U.S. Navy, president of the military commission, on the ground that he had sat as the president of the military commission that tried Lieutenant General TACHIBANA, Yoshio, et al, on charges based on the same incidents concerning which the accused is now on trial.

Rear Admiral Robinson replied and acknowledged that while the statement of defense counsel was substantially correct that he could try the present case without prejudice or partiality according to the evidence which shall come before the commission (R.p. 2).

The commission properly denied the challenge (R.p. 2; Sec. 388, N.C. & B., 1937; and JAG Desp. 101635 July 46).

g. The accused objected to the charge and specifications (R.p. 2; App. "F", "G") in effect upon the following grounds:

Objection 1: Specification 2 is duplicative of Specification 1.

Comment: While the offense set forth in Specification 1 and the offense set forth in Specification 2 grew out of the same incidents, two distinct offenses are charged and may properly be pleaded in separate specifications. "Different offenses, however, if of the same nature, should be included in separate specifications under the same charge (N.C. & B., 1937, Sec. 23).

Objection 2: The specifications are defective in that they do not set out the specific law and customs of war which the accused allegedly violated.

Comment: It is not necessary that the laws and customs of war be set forth verbatim. The commission is empowered to take judicial notice of treaties,

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statutes, etc., and such matter need not be charged (Sec. 309, N.C. & B., 1937). Similar pleading in cases tried before military commissions in this area have been upheld by reviewing authorities (viz. trial of TACHIBANA, Yoshio, et al, Charge II, Specification 7).

Objection 3: The alleged offenses charged in Specifications 1, 2, 3 and 4 do not constitute offenses in violation of the law and customs of war.

Comment: The law and customs of war in this respect has been set forth in numerous treaties and convention provisions and is well settled in international law (Hague Convention No. X, Art. 16; Art. 3 and 4, Geneva Red Cross Convention; Art. 76, Geneva Prisoner of War Convention). Conviction of accused war criminals for prevention of honorable burial under similar circumstances has been upheld by reviewing authorities (trial of TACHIBANA, Yoshio, et al, Charge II, Specification 7).

Objection 4: In accordance with Naval Courts and Boards, Specification 5 should precede Specification 4 because of chronology and that failure to do so is prejudicial to the substantive rights of the accused.

Comment: Section 24 of Naval Courts and Boards is merely a guide for clarity and simplicity in the presentation of charges and specifications and provides: "So far as practicable, charges and specifications should also be placed in chronological order." In the instant case the offenses charged in Specifications 4 and 5 occurred on the same day. It was deemed preferable to place the murder specification after the specification with regard to honorable burial, in view of the fact that it was the only specification charging the accused with such an offense. Clearly no substantive right of the accused was prejudiced thereby.

h. The commission ruled that the objections to the charge and specifications were not sustained and found the charge and specifications in due form and technically correct (R.p. 3).

The action of the commission in overruling the objections to the charge and specifications was, in my opinion, correct for the reasons stated in the above comments.

i. The accused was properly arraigned (R.p. 4).

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4. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 3; App. "J",
"K") in effect upon the following grounds:

- (1) The United States armed forces were not in occupation of Chichi Jima at the time the alleged offenses were committed.
- (2) Chichi Jima is not currently within the area of command of the convening authority, nor is he the civil administrator of that area.
- (3) Specifications 1, 2, 3 and 4 do not set forth a recognized offense in violation of the law and customs of war.

The plea to the jurisdiction was denied (R.p. 3).

The action of the commission in denying the plea was, in my opinion, proper for the reasons stated in paragraph 6. a. below.

b. The accused made a plea in bar of trial (R.p. 3; App. "M") in effect upon the ground that the accused had been previously placed in jeopardy for the offenses with which he is now charged since he was named in certain specifications in the case of Lieutenant General TACHIBANA, Yoshio, et al.

Comment: In the TACHIBANA, et al case, TERAOKI was mentioned as a person who Lieutenant General TACHIBANA failed to control (Specification 3, Charge III) and who Major MATOBA failed to control (Specification 20, Charge III). However, TERAOKI was not named as an accused in the letter containing the charges and specifications; he did not in fact appear at the trial; and was not placed on trial in the TACHIBANA case. In short, he was not placed in jeopardy, and therefore, this plea of former jeopardy entered in his own trial was groundless. The law, in this regard, is clear and definite. "In order, however, to sustain a plea of former jeopardy, the accused must show that: (1) Upon a former trial, he had been actually acquitted or convicted; or (2) upon a former trial, after he had been arraigned and the prosecution had rested its case, the convening authority entered a nolle prosequi (or withdrawal or discontinuance), over the objection of the accused, in order to prevent the court martial from arriving at a finding...." (Sec. 408, N.C. & B., 1937).

The plea in bar of trial was, in my opinion, properly denied
(R.p. 3).

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c. The accused made a plea in abatement (R.p. 3; App. "O") on the ground that no notice was given to the protecting power of the trial of the accused, as provided for in Article 60 of the Geneva Prisoners of War Convention of July 27, 1929.

Comment: The Supreme Court of the United States considered this identical question in the Yamashita case (327 U.S. 1) and held "...we conclude that Article 60 of the Geneva Convention....applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war." In the instant case the accused was arrested as a suspected war criminal for offenses committed prior to the time he became a prisoner of war.

The plea in abatement was, in my opinion, properly denied (R.p. 4).

d. The accused made a motion for a bill of particulars (R.p. 4; App. "Q")

Comment: There is no provision in Naval Courts for such a motion (N.C. & B., 1937, Sec. 404). The function of the motion for the bill of particulars, as used in civilian courts, is to obtain amplification of the information or indictment, where it does not sufficiently inform the accused of the crime with which he is charged, in order to enable him to properly prepare his defense. In naval courts, the charges and specifications are the indictment and the accused by timely objections to the charges and specifications may accomplish the same end sought in a request for a bill of particulars. The accused had already objected to the charge and specifications on the same ground raised in his motion for a bill of particulars (R.p. 2; App. "F", "G").

The motion was, in my opinion, properly denied (R.p. 4).

e. The accused pleaded "not guilty" to the charge and specifications (R.p. 4).

f. The accused made a motion to suppress the use of any evidence of the trial of TACHIBANA, Yoshie, et al, against him (R.p. 5).

Comment: At the time this motion was made no testimony or document from the TACHIBANA trial had been offered in evidence. Objections to the introduction of evidence in a case like this, where there is no question of returning to the accused illegally obtained evidence, should be made by the party concerned at the time such evidence is presented and offered in evidence. The instant motion, relative to the rejection of evidence which the defense presumes the prosecution may intend to introduce at a later time, would be hypothetical in nature, and a decision by the commission sustaining such motion (i.e. rejecting evidence which has not been offered), would be a feckless act.

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The commission's action in denying the motion at this point in the proceedings was proper (R.p. 5).

g. The accused objected (R.p. 7; App. "W") to the prosecution's request that the commission take judicial notice of: (1) The Hague Convention No. IV of October 1907, and the annex thereto, ratified by both the United States and Japan, particularly Articles 4 and 19; (2) The Hague Convention No. X of 1907, ratified by both the United States and Japan, particularly Article 16 thereof; (3) The Geneva Prisoners of War Convention of July 27, 1929, and of that fact that although Japan had not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Title 1, Articles 2 and 76 thereof; (4) The Geneva Red Cross Convention of 27 July 1929 (for the amelioration of the condition of the wounded and sick of armies in the field), ratified by both the United States and Japan, particularly Articles 3 and 4 thereof; (5) The Potsdam Declaration of 26 July 1945, particularly paragraph 10; (6) That a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies, during the period from December 7, 1941 to September 2, 1945; and (7) The Instrument of Surrender from the Japanese Government and the Imperial General Headquarters signed September 2, 1945, proclaiming unconditional surrender to the Allied Forces.

Comment: The commission announced it would take judicial notice of the items requested by the judge advocate (R.p. 7). The action of the commission was, in my opinion, legal. Section 309, N.C. & B., 1937, provides: "Courts should take judicial notice of: (a) Facts forming part of the common knowledge of every person of ordinary understanding and intelligence....; well-known....historical....facts; (b) Matters which are so easily ascertainable in authentic form that the court may readily inform itself by reference to some authentic, accessible source of information; (c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties...."

5. EVIDENCE: Briefly summarized the competent evidence is to the following effect:

a. For the prosecution.

The accused, TERAOKI, Tadashi, was a surgeon attached to the 308th or MATOBA Battalion of the General TACHIBANA division of the Imperial Japanese Army, stationed on Chichi Jima, Bonin Islands (R.p. 13). TERAOKI was one of two medical officers serving at the dispensary of the MATOBA unit (R.p. 13). The incidents alleged in the specifications all occurred on Chichi Jima, Bonin Islands, as follows:

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On or about February 23, 1945, an American prisoner of war, believed to be Marvie William Mershon, was beheaded. Major MATOBA participated in this murder (R.p. 11). On the day following this beheading, under orders from commanding officer Major MATOBA, TERAOKI and several of his subordinates proceeded to the place of burial (Exh. 4(a)). In accordance with these orders TERAOKI ordered the disinterring of the body. When the body was exhumed, TERAOKI removed the liver from the body and ordered KANEMORI, one of corpsmen sergeants, to remove about one kan (8.26 lbs.) of flesh from the thigh of the corpse (R.p. 15). TERAOKI was aware of the brutality of the act (Exh. 4(a)), and did not know of any reason for the removal of the liver and flesh (R.p. 14). The liver and flesh was placed in cellophane paper and delivered to a sergeant from battalion headquarters. The body of the prisoner of war was then reburied (R.p. 14). The sergeant departed in a truck for the 307th Battalion Headquarters, where MATOBA awaited the delivery of the package (Exh. 4(a)). The flesh and liver of the victim was eaten by MATOBA and others at the 307th Battalion Headquarters, and later rumors of the eating of human flesh spread around the island (R.p. 11, 51).

On or about February 25, 1945, an American prisoner of war, name unknown, was beaten and stabbed to death at the headquarters of the 308th Battalion. Under orders from the commanding officer MATOBA, TERAOKI proceeded to the scene of the killing, and removed the liver and ordered the removal of the flesh from the thigh of the prisoner of war. The liver and flesh was taken to the battalion commander's room (R.p. 26; Exh. 4).

On or about March 26, 1945, an American prisoner of war, named Floyd Ewing Hall (R.p. 11; Exh. 1) was taken to a place near the headquarters of the 308th Battalion (Exh. 2(a), 3(a)). TERAOKI, who had been ordered by MATOBA to perform a dissection for the training of the medical personnel of the dispensary (Exh. 4(a)), was present at the scene. A total of about twenty to forty persons were present (R.p. 31; Exh. 3(a)). TERAOKI ordered the guards to sit the prisoner down cross-legged (Exh. 2(a)). TERAOKI also requested Captain SATO, who was the officer in charge of the execution (R.p. 15; Exh. 3(a)), to "please execute quickly as there will be air raids and they will interfere with the instruction" (Exh. 3(a)). The prisoner was beheaded by NAKAMURA (Exh. 2(a)). After the beheading, TERAOKI performed a demonstration dissection of the body of the prisoner for the instruction of the assembled medical personnel (R.p. 16, 31; Exh. 4(a)). TERAOKI, in accordance with previous orders, removed the liver and had KANEMORI remove about one kan of the flesh from the thigh of the prisoner (R.p. 16, 31; Exh. 4(a)). TERAOKI told KANEMORI that he did not know what was to be done with the flesh (R.p. 16). The liver and flesh was taken away by the orderlies (R.p. 16; Exh. 4(a)). Enlisted personnel were ordered to bury the body (R.p. 16). Later, MATOBA ate the flesh and liver (R.p. 11, 51; Exh. 1).

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b. For the defense.

The accused TERAHI, at the time of the incidents, was a probationary medical officer (R.p. 57; Exh. 8(a), 9(a)). He was subordinate to surgeon second lieutenant SAKABE, who was the medical officer of the 308th Battalion dispensary (R.p. 53).

All of the officers of the 308th Battalion, including TERAHI, were in great fear of the commanding officer Major MATOBA who was a cruel barbaric man (R.p. 50, 57; Exh. 3(a), 4(a), 8(a), 9(a)).

On or about February 23, 1945, and about February 25, 1945, the accused was ordered by Major MATOBA to remove the liver and flesh from the bodies of the two prisoners of war (R.p. 48, 54).

Similarly, the participation of TERAHI in the incident in late March 1945 was done under orders of Major MATOBA (R.p. 54). TERAHI, who was in charge of training of auxiliary corpsmen, was ordered by Major MATOBA to perform a demonstration dissection for the training of the medical corpsmen when the next prisoner of war was executed. On the day of the execution MATOBA's adjutant, KANMURI, ordered TERAHI to proceed to the scene of the execution and remove liver and flesh from the body and to dissect the body for the training of the corpsmen. TERAHI proceeded to the scene. Upon arrival at the scene he found a large group assembled, and he joined the crowd (R.p. 15, 55). The prisoner was already seated (R.p. 19, 54). Captain SATO was in charge of the execution. TERAHI did not speak to either NAKAMURA or SATO prior to the execution (R.p. 20, 54, 55, 56). NAKAMURA beheaded the prisoner. TERAHI waited 15 or 20 minutes to ascertain that the prisoner was dead, and then in accordance with MATOBA's orders (R.p. 50), removed the liver and flesh, and performed a dissection of the body of the prisoner of war (R.p. 56).

6. DISCUSSION:

a. As to jurisdiction.

Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander in Chief, United States Pacific Fleet, in his confidential serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a military commander (App. D., N.C. & B., 1937; Yamashita v. Styer, 327 U.S. 1). The Commander in Chief, Pacific and U.S. Pacific Fleet, changed the title "Commander Marianas Area" to "Commander Naval

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Forces Marianas" effective 1 August 1948 (CinCPac and CinCPacFlt ltr serial 2682, dated 11 June 1948, Subject: Pacific Fleet Letter 2L-47; Third Revision). By letter dated 1 August 1948, CinCPac serial 2955 and CinCPacFlt serial 3490, the Commander in Chief, Pacific and U.S. Pacific Fleet vested in the Commander Naval Forces, Marianas all authority in connection with war crimes heretofore vested in the Commander Marianas Area by virtue of his authority as Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief, Pacific and U.S. Pacific Fleet.

It is well established that a military commission convened by authority of the Commander in Chief, United States Pacific Fleet and/or any military commander has jurisdiction to try war crimes and accused war criminals (Yamashita v. Styer, 327 U.S. 1; App. D., N.C. & B., 1937; SecNav ltr. re war crimes dated 13 Jan. 1945; and CinC U.S. Fleet ltr. serial 2812, dated 6 April 1945).

The accused made a plea to the jurisdiction on the grounds set forth in paragraph 4.a. above. The first two grounds of this plea were based on the contentions that: the United States armed forces were not in occupation of Chichi Jima at the time the offenses were committed; and that Chichi Jima is not currently within the area of command of the convening authority, and he is not the civil administrator of that area. These grounds of objection to the jurisdiction of the commission are not valid.

The precept in the instant case constituted a full and complete grant of authority to the instant military commission to try "all offenses within the jurisdiction of exceptional military courts," and nothing in the precept limits the jurisdiction of the commission so as to exclude the accused or the offenses charged in the instant case. On the contrary, the precept in addition to its broad grant of authority specifically provides that "nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

Paragraph 4 of the precept provides that "The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts....It shall have jurisdiction over all Japanese nationals....charged with offenses committed against United States nationals..... Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

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Similarly, note that CinCPac and CinCPacFlt letter dated 1 August 1948, CinCPac serial 2955 and CinCPacFlt serial 3490, referred to in paragraph 1 of the precept, in addition to confirming the authority of Commander Naval Forces, Marianas to exercise all authority in connection with war crimesheretofore vested in the Commander Marianas Area, specifically notes that "Nothing in this letter limits the inherent authority of a military commander to convene military commissions."

Examined in the light of the fundamental law of jurisdiction with regard to military commissions and war crimes offenses, it is clearly established that the commission possessed the necessary authority and jurisdiction to try the accused for offenses in violation of the law and customs of war committed on Chichi Jima. The relevant law of jurisdiction in war crimes cases, is discussed at length in my review of the trial of Vice Admiral HARA, Sec. 6.a., pages 31, 32, and 33, wherein it is pointed out that such jurisdiction extends to "offenses against the common law of nations, by whomsoever and wheresoever committed."

The remaining ground of the accused's plea to jurisdiction was based on the contention that the offenses alleged in Specifications 1, 2, 3 and 4 do not constitute offenses in violation of the law and customs of war. Specification 1 alleges disrespect to the grave of an American prisoner of war, and Specifications 2, 3 and 4 allege the offense of unlawful prevention of honorable burial. This ground of objection to the jurisdiction is invalid. It is discussed in paragraph 3.g. (Objection 3) of this memorandum in connection with a similar objection made by the accused to the charge and specifications.

b. As to procedure.

(1) Selection of the commission followed the approved practice of including Army, Navy and Marine Corps officers as members of the commission (see my memorandum dated 20 February 1946 in the case of Colonel OISHI, et al). Prosecution and defense personnel were duly authorized and appointed by the convening authority.

(2) The proceedings of the commission, as authorized in the precept, were governed by the provisions of Naval Courts and Boards, except that the commission was permitted to relax the rules for naval courts and use the rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (APO 500, 5 Dec. 1945 AG 000.5), where necessary to obtain justice.

(3) The accused was advised of and accorded all rights prescribed.

(4) The sentence is legal.

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02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Surgeon Second Lieutenant TERAOKI, Tadashi, IJA.

c. As to evidence.

Referring to the charge and specifications thereunder, there is sufficient competent evidence to support the commission's finding of guilty relative to the accused TERAOKI.

Five specifications were alleged under the charge. The prosecution clearly proved, and the accused made no effort to rebut the proof of the first four specifications (R.p. 53; Exh. 4(a)), which involved: the disinterment of the body of a prisoner of war and removal of liver and flesh from the thigh thereof, on or about February 23, 1945 (Specifications 1 and 2); the removal of the liver and flesh from the thigh of a prisoner of war, on or about February 25, 1945 (Specification 3); and the dissection and removal of liver and flesh from the thigh of a prisoner of war, on or about March 26, 1945 (Specification 4).

The prosecution proved that the removal of the liver and flesh was not performed for any lawful purpose as the liver and flesh was eaten by the cannibalistic MATOBA and others (R.p. 11, 51; Exh. 1), and circumstantially the prosecution established that the accused did not know of any lawful purpose, or believe that there was any lawful purpose, for the removal of liver and flesh from the dead bodies, or the performance of the dissection (R.p. 14, 16, 51; Exh. 4(a)).

The accused did not attempt to controvert this proof, or contend that he believed that there was any lawful reason for the removal of the liver and flesh from the bodies of the prisoners. On the contrary, TERAOKI in his confession admits that at the time of obeying the orders for removal of the liver and flesh and the dissection, he knew they were brutal orders, and that on each occasion he attempted to refuse to obey the orders (Exh. 4(a)).

The only defense offered by the accused to the allegations of Specifications 1, 2, 3 and 4 was the contention that he acted pursuant to the orders of his commanding officer, Major MATOBA. The defense of "superior orders" does not constitute a defense to a crime, but may merely be considered in mitigation of punishment (SCAP Regulations, para. 5d(6), Basic ltr. SCAP 000.5, 5 Dec. 1945, cited in paragraph 6 of instant precept; War Criminals, Their Prosecution and Punishment, GLUECK, p. 140; 67 LRA 294; Judgement of International Tribunal at Nuremberg, Sept. 1946; Judgement, International Military Tribunal for the Far East, 1 Nov. 1948, p. 25, 26).

The commission properly rejected this defense and found Specifications 1, 2, 3, and 4 proved (in part), and the accused guilty of the charge.

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NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Surgeon Second Lieutenant TERAHI, Tadashi, IJA.

Specifications 1, 2, 3 and 4 were found proved, except for the words "surgeon second lieutenant, IJA", for which the commission substituted the words "probationary officer, Medical Department, Imperial Japanese Army Reserve" which words were found proved (R.p. 74). The commission's finding of "proved in part" as to Specifications 1, 2, 3 and 4 does not affect the legality of the finding of guilty as to the charge, inasmuch as the exceptions made by the commission leave the specifications still supporting the charge (Sec. 429, N.C. & B., 1937).

The commission found Specification 5 of the charge not proved (R.p. 74). However, since the remaining specifications 1 through 4 which were found proved in part adequately support the charge, the accused was properly found guilty of the charge.

Sufficiency of the evidence to sustain the finding of the court should be considered by the reviewing authority, keeping in mind the duties of the court in weighing the evidence (N.C. & B., 1937, Sec. 472(c)). The question for the reviewing authority with regard to the findings is whether there is sufficient evidence to support such a finding, not whether an opposite finding would have been justified (CMD 4-1935, p. 5). Applying this standard of review, it is my opinion that the action of the commission, in finding Specification 5 not proved, is sustainable. No inference is to be drawn therefrom as to approval or disapproval of the findings of the commission in this regard (Sec. 472 $\frac{1}{2}$, N.C. & B., 1937). Parenthetically, it may be noted that error, if made by the commission in finding Specification 5 not proved, would not be prejudicial to the accused.

Specification 5, ~~in effect~~, charged the accused TERAHI with murder. The accused TERAHI did not order the execution, nor personally commit the execution, and was not in command or supervision at the scene of the execution. The contention of the prosecution was that TERAHI was guilty of murder because: (a) TERAHI at the scene of the execution actively aided and abetted the commission of the murder by seating the victim, and by encouraging NAKAMURA and SATO to have the execution performed quickly; and/or (b) the murder of the victim, and the subsequent dissection and removal of the liver and flesh, were in fact part of a single planned incident; TERAHI was present at the scene of the execution for the purpose of dissection of the body and removal of the liver and flesh; the murder of the victim was a necessary preliminary to that disposition of the body; TERAHI was present when the victim was murdered and 20 minutes later removed the liver and flesh and commenced the dissection; therefore, TERAHI could not disclaim responsibility for the murder, which was anticipated and was a concatenated part of the incident.

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HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Surgeon Second Lieutenant TERAHI, Tadashi, IJA.

The evidence was conflicting as to whether or not TERAHI had aided and abetted at the scene of the execution. NAKAMURA's statements indicated: that TERAHI under orders from SATO ordered the guards to seat the prisoner cross-legged; that NAKAMURA heard Medical Officer TERAHI explain to Captain SATO that it was difficult for foreigners to sit in the higher squatting position (used by Japanese); and that TERAHI told NAKAMURA to perform the execution quickly (Exh. 2(a)). SATO in his statement testified that TERAHI came to him at the execution and asked him to please execute quickly (Exh. 3(a)).

However, certain features of the SATO statement raised the question of conflict in the prosecution's evidence. SATO in his statement did not say that he ordered TERAHI to seat the prisoner or that TERAHI spoke to him about the seating of the prisoner of war. SATO did say in his statement that the prisoner of war was already seated when SATO arrived at the scene of the execution (Exh. 3(a)).

Additional conflict in the prosecution evidence with regard to the seating of the victim was developed when prosecution witness KANEMORI testified that TERAHI arrived at the scene shortly after KANEMORI and stood beside him; that the prisoner was seated; that TERAHI did not speak with SATO or NAKAMURA at the time; that the prisoner was blindfolded and SATO demonstrated to NAKAMURA the stance for the execution (R.p. 15, 19, 20, 22, 23). However, KANEMORI did leave the scene of execution prior to the execution and returned after the execution had occurred (R.p. 15).

The accused TERAHI took the stand in his own behalf, and testified that he did not speak to SATO or NAKAMURA prior to the execution, but merely remained in the crowd and that he did not assist in the seating of the prisoner for the prisoner was already seated when he arrived (R.p. 54).

The commission, in its capacity as jurors, had the power and duty to weigh the evidence and could properly believe one witness and disbelieve others whose testimony was in conflict therewith (Sec. 304, N.C. & B., 1937). The testimony of TERAHI, if believed, clearly disproved the allegation of actively aiding and abetting the commission of the murder by seating the victim, and encouraging SATO or NAKAMURA to perform the execution quickly.

Similarly, the commission could properly find upon the evidence that: the murder of HALL by NAKAMURA and SATO was distinct and separate from the subsequent removal of the liver and flesh and the dissection performed by TERAHI under specific orders from MATOBA; and/or, that the prosecution failed to prove the existence of any connected plan or failed to prove that TERAHI participated in any such plan (testimony of MATOBA, R.p. 50; Testimony of TERAHI, R.p. 54).

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of trial by a Military Commission
of former Surgeon Second Lieutenant TERAOKI, Tadashi, IJA.

There were, as was to be expected, numerous conflicts in the evidence throughout the record. It was the duty of the members of the commission in their capacity as jurors to weigh the evidence (Sec. 304, N.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Sec. 304 and following, N.C. & B., 1937) or exceeded his allowed discretion in the matter.

d. As to sentence.

The accused was sentenced to confinement for a period of four (4) years. The sentence is legal.

In the absence of an established policy by higher authority as to the appropriate schedule of punishments, the commission must rely upon its own judgment in determining what is a just punishment in a particular case. The accused was convicted of four offenses, as set forth in Specifications 1 through 4. These involved three incidents in which the accused removed the liver and ordered the removal of flesh from the thigh of a dead prisoner of war. With regard to the first of these incidents, the accused ordered the disinterring of the buried body of the victim, and with regard to the third incident, the accused performed a demonstration dissection in addition to the removal of the liver and flesh. No direct or circumstantial evidence was produced by the prosecution to establish that the accused TERAOKI knew until after the delivery of the liver and flesh from the third victim, that such liver and flesh was being eaten by MATOBA. For this reason, the punishment of the accused for his offense of disrespect to the grave and prevention of honorable burial should not be aggravated by the heinousness of MATOBA's cannibalism.

The sentence of the accused TERAOKI is not disproportionate to the offenses committed when viewed in the light of comparable civil crimes under the Anglo-Saxon theory of law. Unlawful disinterment of a body is punished by statute in some states as a misdemeanor, and in others as a felony (Burdick, Law of Crime, Sec. 978, fn. 97). At common law it was a misdemeanor to disinter a dead body (Burdick, op.cit. Sec. 978; Bouvier's Law Dictionary Rawle 3rd Edition, Dead Bodies; Wharton's Criminal Law, 12th Ed. Vol. 2, Sec. 1704). Similarly, the unlawful dissection or removal of portions of the dead body constituted a misdemeanor at common law and under statutory law (Wharton's op.cit. Vol. 2, Sec. 1704 and fn. 19). Since the four offenses of which the accused was convicted are properly comparable to misdemeanor offenses, which commonly bear a maximum penalty of one year imprisonment, it cannot be said that the sentence of four (4) years is improper.

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02-JDM-fsk

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HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Surgeon Second Lieutenant TERAKI, Tadashi, IJA.

The recent recodification of the United States Code, Crimes and Criminal Procedure, Title 18, U.S. Code, Public Law 772, 80th Congress, 2nd Session, classifies offenses as follows: "Sec. 1 Offenses classified. Notwithstanding any Act of Congress to the contrary: (1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony. (2) Any other offense is a misdemeanor. (3)"

The accused was apprehended and placed in confinement in Sugamo Prison, Tokyo, Japan on 6 August 1948. He has been continuously held in close custody and confinement from that date to the date of trial which commenced on 4 March 1949. It is my opinion that the period of confinement of seven (7) months while under investigation and awaiting trial justifies reduction of the sentence by the convening authority, and that the action of the convening authority should affirmatively evidence that such reduction is based upon the period of confinement of the accused while awaiting trial.

e. Generally.

During the trial the defense made many objections to the admissibility of documentary evidence. The judge advocate also made certain objections. Each of these objections and the rulings of the commission have been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interests of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

While the incidents enumerated in Specifications 1 and 2 are identical, the specifications are not duplicative, for the offense charged in Specification 1 is separate and distinct from the offense charged in Specification 2.

In accordance with the Judge Advocate General's action (OO-Tachibana, Yoshio, et al/A17-20 I(3-19-47 HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld A17-20/00 (6-25-47) 154578) and the Judge Advocate General's action (OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:HMM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem OO-INOUE, Fumio/A17-10 OQ(2-20-48) 159116), the findings on either Specification 1 or Specification 2 could be set aside. It is my opinion that any action with a view to setting aside the findings should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Naval Forces, Marianas or the Commander in Chief, Pacific and U.S. Pacific Fleet.

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FF12/AL7-19
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

25 APR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Surgeon Second Lieutenant TERAOKI, Tadashi, IJA.

7. OPINION: It is the opinion of the undersigned that:

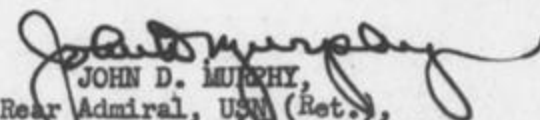
- a. The military commission was legally constituted.
- b. The commission had jurisdiction of the person and offenses.
- c. The evidence supports the findings of "proved in part" and "guilty."
- d. The record discloses no errors materially prejudicial to the
accused.
- e. The sentence is legal.

8. RECOMMENDATIONS:

It is recommended: (1) that the proceedings, findings on specifications 1, 2, 3 and 4 and on the charge, and sentence be approved by the convening and reviewing authorities; (2) that in view of the fact that the accused has been confined under investigation and awaiting trial since 6 August 1948, the convening authority accordingly reduce the sentence of the accused a period equal to the time already served in confinement; (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

9. ACTIONS:

Actions designed to carry the above recommendations into effect, should they meet with your approval, are submitted herewith as enclosures (B) and (C).


JOHN D. MURPHY,
Rear Admiral, USN (Ret.),
Director War Crimes, Pacific Fleet.

cc: JAG, USN.

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS - CAROLINES AND MARSHALLS - CAROLINES AREA

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated 19 January 1949, was ordered convened January 24, 1949, or as soon thereafter as practicable by the Commander Naval Forces, Marianas pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt Serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinCPac and CinCPacFlt ltr. dtd 1 Aug. 1948, CinCPac Serial 2955 and CinCPacFlt Serial 3490) and by the Judge Advocate General of the Navy (JAG Desp. 311730Z July '46). The commission was authorized to try this case as indicated in the precept. The order for trial (charge and specifications) was issued 14 February 1949 and served on the accused on the same date. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

The proceedings, findings on specifications 1, 2, 3 and 4 and on the charge, and sentence in the foregoing case of TERAHI, Tadashi, former surgeon second lieutenant, IJA, are approved. In view, however, of the fact that the accused has been in confinement under investigation and awaiting trial since 6 August 1948, the period of confinement is reduced to three (3) years and five (5) months.

TERAKI, Tadashi, former surgeon second lieutenant, IJA, will be transferred to the custody of the Commanding General, 8th U. S. Army, via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

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

ENCLOSURE (B)

0354

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

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

The proceedings, findings on specifications 1, 2, 3, and 4 and on the charge, and sentence as mitigated in the foregoing case of TERAOKI, Tadashi, former surgeon second lieutenant, IJA, and the action of the convening authority are approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial 01P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

DeWITT C. RAMSEY,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

ENCLOSURE (C)

0355

VF12/ALT-13(2)
02-JUN-64

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial:

964

14 FEB 1945

From: Commander Naval Forces, Marianas.
To : Lieutenant Commander Joseph A. Regan, USN and/or
Lieutenant David Bolton, USN and/or
your successors in office as Judge Advocate, Military
Commission, Commander Naval Forces, Marianas.

Subject: Charge and Specifications in the case of TERAKI, Tadashi.

1. The above named person will be tried before the military commission of which you are judge advocate upon the following charge and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that TERAKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 23, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully disrespect the grave of an American prisoner of war, name to the relator unknown, but believed to be Marvin William Hershen, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disintering the body of said prisoner of war and removing the liver and flesh from the thigh of said prisoner of war, this in violation of the law and customs of war.

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Specification 2

In that TERAKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 23, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, but believed to be Marvin William Marshon, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 3

In that TERAKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 25, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 4

In that TERAKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about March 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of Floyd Hsing Hall, an American prisoner of war, who died in the captivity of the Japanese armed forces, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.



Specification 5

In that TERAKI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, acting with SATO, Kosekiichi, then a first lieutenant, IJA, and HAKAMURA, Shigenobu, then a corporal, IJA, both attached to the military installations of the Imperial Japanese Army, did, at Chichi Jima, Bonin Islands, on or about March 26, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed by beheading with a sword, Floyd Boring Hall, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

G. A. POWHALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces Marianas.

cc: JAG, USN ✓

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FF12/A17-10(2)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 2599

26 APR 1949

MILITARY COMMISSION ORDER NO. 50

(In the case of former Surgeon
Second Lieutenant TERAHI, Tadashi, IJA).

1. During period 4 March 1949 to 17 March 1949, TERAHI, Tadashi, former surgeon second lieutenant, Imperial Japanese Army, was tried by a United States Military Commission, convened by order of the Commander Naval Forces, Marianas, dated 19 January 1949, at the Headquarters Commander Naval Forces, Marianas, on the below listed charge and specifications.

CHARGE: VIOLATION OF THE LAW AND CUSTOMS OF WAR (five specifications).

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place and Date of Offenses</u>	<u>Name of Accused</u>
1.	Disrespect the grave of an American POW by unlawfully disinterring the body of said POW, exact name unknown, but believed to be Marvie William Mershon, and removing the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 23 Feb. 1945.	TERAHI
2.	Prevent the honorable burial of an American POW, exact name unknown, but believed to be Marvie William Mershon, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 23 Feb. 1945.	TERAHI
3.	Prevent the honorable burial of an American POW, exact name unknown, by mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 25 Feb. 1945.	TERAHI
4.	Prevent the honorable burial of an American POW, Floyd Ewing Hall, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said POW.	Chichi Jima, Bonin Islands, 26 Mar. 1945.	TERAHI
5.	Kill an American POW, Floyd Ewing Hall, by beheading with a sword.	Chichi Jima, Bonin Islands, 26 Mar. 1945.	TERAHI

FINDINGS: The commission on 16 March 1949 made the following findings:

"The first specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

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FF12/A17-10(2)
02-JDM-fsk

Serial: 2599

MILITARY COMMISSION ORDER NO. 50

26 APR 1949

(In the case of former Surgeon Second
Lieutenant TERAHI, Tadashi, IJA).

"The second specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The third specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The fourth specification of the charge proved in part, proved except the words 'surgeon second lieutenant, IJA', which words are not proved, and for which the commission substitutes the words 'probationary officer, Medical Department, Imperial Japanese Army Reserve', which words are proved.

"The fifth specification of the charge not proved.

"And that the accused, Teraki, Tadashi, is of the charge guilty."

SENTENCE: The commission on 17 March 1949 sentenced the accused as follows:

"The commission, therefore, sentences him, Teraki, Tadashi, to be confined for a period of four (4) years."

2. On 26 April 1949 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings on specification 1, 2, 3 and 4 and on the charge, and sentence in the foregoing case of TERAHI, Tadashi, former surgeon second lieutenant, IJA, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since 6 August 1948, the period of confinement is reduced to three (3) years and five (5) months.

"TERAHI, Tadashi, former surgeon second lieutenant, IJA, will be transferred to the custody of the Commanding General, 8th U.S. Army, via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

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

cc: CinCPacFlt (3) ✓
JAG, USN (3)
SCAP (3)
ComdGen U.S. 8th Army, Japan (3)
JAG, U.S. Army, War Crimes Div (3)
CO, Marine Barracks (3)
ComMarianas Liaison Officer, Tokyo, Japan (3)
CG, Sugamo Prison, Tokyo, Japan (3)

AUTHENTICATED:

H. D. Vanston
H. D. VANSTON,
Flag Secretary.

0360

TERAKI, Tadashi
Former Surgeon Second Lieutenant, IJA

Trial by Military Commission at the Headquarters,
Commander Naval Forces, Marianas
March 4, 1949

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Name of witness	Direct and redirect	Cross and recross	Commiss- ion
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Herbert L. Ogden, cdr., USN.....	7,10	8	-----
Kanemori, Kazutoshi, corp. sgt., IJA.....	13,22	17	24
Matsui, Masakatsu, pfc, IJA.....	25,29	27	-----
Iso, Shunichiro, corp. cpl., IJA.....	30,34	31	-----
David Bolton, judge advocate.....	36,39	38	-----
Maurice E. Currie, cdr., USNR.....	39	40	-----
Defense			
Senagi, Sadamu, defense counsel.....	44,45,62,75	45	-----
Herbert L. Ogden, cdr., USN.....	46,49	48,51	-----
Teraki, Tadashi, accused.....	52,65	57,66	-----
Martin E. Carlson, cdr., USNR.....	69	-----	-----

EXHIBITS

Ex- hibit	Character of --	Admitted in evi- dence
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0362

FF12/A17-10(1)
02-JDI/-ga

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 380

19 JAN 1949

From: The Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. ROBINSON, U. S. Navy.
Subject: Procept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as the Commander Naval Forces, Marianas and further by the specific authority vested in me by the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt Serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinC-PacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinCPac and CinCPacFlt ltr. dtd. 1 Aug. '48, CinCPac Serial 2955 and CinCPacFlt Serial 3490), and by the Judge Advocate General of the Navy (JAG Desp. 311730Z July '46), a military commission is hereby ordered to convene at the Headquarters, Commander Naval Forces, Marianas on Guam, Marianas Islands at 10 o'clock a.m., on Monday, January 24, 1949, or as soon thereafter as practicable, at the call of the president, for the trial of such persons as may be legally brought before it.

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

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President,
Lieutenant Colonel Harry W. McCORMICK, Quartermaster Corps,
United States Army,
Major John H. LOTT, Corps of Military Police, United States
Army,
Lieutenant Commander Loyd S. BJORLO, Supply Corps, U. S. Navy,
Lieutenant Henry E. WAHL, U. S. Navy,
Captain Kermit H. SHELLEY, U. S. Marine Corps, and of
Lieutenant Commander Joseph A. REGAN, U. S. Navy, and Lieutenant David
BOLTON, U. S. Navy, as judge advocates, either of whom is authorized to act
as such.

TAKANO, Junjiro, furnished by the Japanese Government, and
Commander Martin E. CARLSON, U. S. Naval Reserve, both of whom are lawyers,
and SAKAGI, Sadamu, a former captain, Imperial Japanese Navy, furnished by the
Japanese Government, are available and authorized to act as defense counsel.
This authorization does not preclude as defense counsel others who are
available and are desired by the accused.

In trials of accused charged with offenses against nationals
of foreign governments and natives of islands of the Trust Territory of the
Pacific Islands duly accredited representatives of the governments and natives
concerned are authorized to participate as observers.

0363

FF12/117-10(1)
02-JDM-ga

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 380

19 JAN 1949

Subject: Precept for a military commission.

3. This military commission is hereby authorized and directed to take up such cases, if any, as may be now pending before the military commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is president appointed by Commander Naval Forces, Marianas precept of October 25, 1948 except such cases the trial of which may have been commenced.

4. The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including offenses referred to in the Commander Marianas despatch cited in paragraph 1 above. It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

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

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

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

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

/s/ C. I. Pownall

C. I. POWNALL,

Rear Admiral, U. S. Navy,

The Commander Naval Forces, Marianas.

Copies to:

Members of the Commission.

Judge Advocates.

Judge Advocate General, U.S. Navy.

A true copy. Attest.

David Bolton

David Bolton,

Lieutenant, U. S. Navy,

Judge Advocate.

- 2 -

4 (2)

0364

FF12/117-10(1)
02-JDM-ce

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 1231

25 FEB 1949

From: Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Commander Naval
Forces, Marianas (Guam, Marianas Islands).

Subject: Relief of member of military commission.

1. Lieutenant Henry E. Wahl, U. S. Navy, is hereby relieved as
a member of the military commission convened by my precept of January 19, 1949,
except in event of revision of cases already tried.

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

Copies to:
Lieutenant Henry E. Wahl, USN
Judge Advocate, Military Commission
Judge Advocate General, U. S. Navy

A true copy. Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

B

0365

FF12/417-10(1)
02-JDM-ga

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 1232

25 FEB 1949

From: Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Commander Naval
Forces, Marianas (Guam, Marianas Islands).

Subject: Change in membership of military commission.

1. Major Wilbur R. Helmer, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of January 19, 1949, vice Captain Kermit H. Shelly, U. S. Marine Corps, hereby relieved, except in event of revision of cases already tried.

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

Copies to:
Major Wilbur R. Helmer, USMC
Captain Kermit H. Shelly, USMC
Judge Advocate, Military Commission
Judge Advocate General, U. S. Navy
Commanding Officer, Marine Barracks, Guam
Commanding Officer, Fifth Service Depot, Guam

A true copy. Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

C

0366

FF12/A17-10(1)
02-JDM-ce

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 1273

1 MAR 1949

From: Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Commander Naval
Forces, Marianas (Guam, Marianas Islands).

Subject: Change in membership of military commission.

1. Major Laurance B. Payne, Transportation Corps, United States Army, is hereby appointed a member of the military commission of which you are president, convened by my precept of January 19, 1949, vice Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army, hereby relieved, except in event of revision of cases already tried.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

Copies to:

Major Laurance B. Payne, TC, USA
Lieutenant Colonel Harry W. McCormick, QC, USA
Judge Advocate, Military Commission
Judge Advocate General, U. S. Navy
Commanding General, Marianas Bonins Command

A true copy, Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

D

0367

FF12/AL7-13(2)
O2-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: **964**

14 FEB 1949

From: Commander Naval Forces, Marianas.
To : Lieutenant Commander Joseph A. Regan, USN and/or
Lieutenant David Bolton, USN and/or
your successors in office as Judge Advocate, Military
Commission, Commander Naval Forces, Marianas.

Subject: Charge and Specifications in the case of TERAKEI, Tadashi.

1. The above named person will be tried before the military commission of which you are judge advocate upon the following charge and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that TERAKEI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 23, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully disrespect the grave of an American prisoner of war, name to the relator unknown, but believed to be Marvie William Mershon, who died in the captivity of and was buried by the Japanese armed forces, by unlawfully disinterring the body of said prisoner of war and removing the liver and flesh from the thigh of said prisoner of war, this in violation of the law and customs of war.

RECEIVED

14 FEB 1949

RECEIVED
ON 14 FEB 1949

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On 14th day of February 1949 received a copy of the Charge and Specifications in English and Japanese.

寺木 忠

TERAKI, Tadashi.

RECEIVED

1949 FEB 14

1949

TO : THE ATTORNEY GENERAL
FROM : THE ATTORNEY GENERAL
SUBJECT: [illegible]

TO : THE ATTORNEY GENERAL
FROM : THE ATTORNEY GENERAL
SUBJECT: [illegible]

1949 FEB 14

1949 FEB 14

RECEIVED
1949 FEB 14

1949 FEB 14

1949 FEB 14

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Specification 2

In that TERAHI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 23, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, but believed to be Marvie William Mershon, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 3

In that TERAHI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about February 25, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of an American prisoner of war, name to the relator unknown, who died in the captivity of the Japanese armed forces, by mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 4

In that TERAHI, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, did, at said Chichi Jima, Bonin Islands, on or about March 26, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully and unlawfully prevent and cause to be prevented the honorable burial of Floyd Ewing Hall, an American prisoner of war, who died in the captivity of the Japanese armed forces, by dissection and mutilation of the body and removal of the liver and flesh from the thigh of said prisoner, this in violation of the law and customs of war.

Specification 5

In that TERAKE, Tadashi, then a surgeon second lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said military installations, acting with SATO, Kesakichi, then a first lieutenant, IJA, and NAKAMURA, Shigenobu, then a corporal, IJA, both attached to the military installations of the Imperial Japanese Army, did, at Chichi Jima, Bonin Islands, on or about March 26, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed by beheading with a sword, Floyd Ewing Hall, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

C. A. Pownall

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

cc: JAG, USN

太平洋方面部隊
及合衆国太平洋艦隊

マリアナ海軍部隊 ミッドウェー海軍部隊
及ミッドウェー方面司令部司令部

第六四 号

昭和二十四年二月十四日

設 マリアナ海軍部隊司令部

合衆国海軍ヤ佐ジョセフ A リーガン 及び又は

合衆国海軍大尉ジョージ D ホルトン 及び又は

マリアナ海軍部隊司令部軍法委員會付 複事

とて。委員の後任者

記 本不承の訴訟に於ける起訴及罪状項目

一 前記の人は委員が複事會たる軍法委員會
に於て前記の起訴及罪状項目につき裁判せらるるで
あらう。よつて委員はその日を軍法委員長の通知
し裁判の日時を被告に通知し複事例及び復例の
全記人を召喚せよ。

起訴

戦争法規並に慣習の違反

罪状項目 一

小笠原諸島父島の日本帝國陸軍軍事施設に
屬せられたるに當時陸軍軍医少尉本不承は前記
軍事施設に於て勤務中アメリカ合衆國軍司令
諸國及其の属領に日本帝國と戦争状態に在るを昭
和二十年二月二十三日頃前記小笠原諸島父島に於て
日本軍隊に於て捕へられたる間に死亡し埋葬せられ
た。マーグー、ワリアム、ミッドウェーと名づける墓
不詳の未人骨の死体も不法に發掘し肝臓及大
腿部の肉を前記骨より取り除いたことにより故意
に前記骨の完全性を損じ非禮の行為を行つた。如行
為は戦争法規並に慣習に違反するものである。

(1)

(2)

四非状項目二

小笠原諸島父島の日本帝國陸軍軍事施設に配
属せられたる當時陸軍軍医少尉吉本忠仁は前記
軍事施設に於て勤務中アメリカ合衆国連合諸国
及其の属領が日本帝國と戦争状態に在つた昭和二十
二年三月二十三日頃前記小笠原諸島父島に於て日本
軍隊に於て捕へられたる間に死したフランク・ウィ
ンガム・ジョンソンと思はれる吉本局には姓名不詳の外人作業者の
死体をも切り肝臓及大腿部の肉を取り除いたことにより
前記作業者の名誉ある埋葬を故意に不法に妨止し
又妨止せしめた。右行為は戦争法規並に慣習に違反
するものである。

四非状項目三

小笠原諸島父島の日本帝國陸軍軍事施設に配
属せられたる當時陸軍軍医少尉吉本忠仁は前記
軍事施設に於て勤務中アメリカ合衆国連合諸国及
其の属領が日本帝國と戦争状態に在つた昭和二十年
二月二十五日頃日本軍隊に於て捕へられたる間に死
した吉本局には姓名不詳の外人作業者の身体を切り肝
臓及大腿部の肉を取り除いたことにより前記作業者の
名誉ある埋葬を故意に不法に妨止し又妨止せ
しめた。右行為は戦争法規並に慣習に違反するもの
である。

四非状項目四

小笠原諸島父島の日本帝國陸軍軍事施設に配
属せられたる當時陸軍軍医少尉吉本忠仁は前記軍
事施設に於て勤務中アメリカ合衆国連合諸国及其
属領が日本帝國と戦争状態に在つた昭和二十年三月
二十日頃日本軍隊に於て捕へられたる間に死した末
人作業者フランク・ウィンガム・ジョンソンの身体を解剖し、切り、肝
臓及大腿部の肉を取り除いたことにより前記作業者の
名誉ある埋葬を故意に不法に妨止し又妨止せしめ
た。右行為は戦争法規並に慣習に違反するものである。

(2)

四 罪状項目

小笠原諸島父島。日本主権国陸軍重事施設に所属せられしわん多時陸軍重事区司令部に於て、前記重事施設に於て勤務中、小笠原諸島父島の日本主権国陸軍重事施設に所属せられしわん多時陸軍司令部に於て、昭和二十年三月二十六日、小笠原諸島父島に於て、故意に違法的に、倉庫と重宝とを以て正當な理由なく、同時に同様に、日本重隊により押留せられしわん多時人、阿部、フロイド、コーン、木、を重刀で斬首することにより、故意に殺害し、又殺害せしむ。右行為は戦争法規に悞りて違反するものである。

C A ホーネ
合衆国海軍少将
アメリカ海軍司令官

高平元 陸軍部長

FIRST DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, March 4, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.

Private first class Theodore J. Ferdinand, U. S. Marine Corps, entered
with the accused and reported as provost marshal.

The judge advocate introduced Paul F. Coste, junior, yeoman first class,
U. S. Navy, Archie L. Haden, junior, yeoman first class, U. S. Navy, and
Elvin G. Gluba, yeoman first class, U. S. Navy as reporters and they were duly
sworn.

The judge advocate introduced Lieutenant (junior grade) Eugene F. Clark,
U. S. Navy, Mr. Kimio Tsuji, Mr. Kan Akatani, and Mr. Yoshio Akatani as
interpreters, and they were duly sworn.

The accused requested that Commander Martin E. Carlson, U. S. Naval
Reserve, Mr. Junjiro Takano, and Mr. Sadamu Sanagi act as his counsel.
Commander Carlson, Mr. Takano, and Mr. Sanagi took seat as counsel for the
accused.

The judge advocate read the precept and modifications thereof, copies
prefixed marked "A", "B", "C", and "D".

An interpreter read a Japanese translation of the precept and modifi-
cations thereof.

The accused objected to Rear Admiral Arthur G. Robinson, U. S. Navy, as
follows:

The accused, Teraki, Tadashi, challenges the president of the Commission,
Rear Admiral Arthur G. Robinson, U. S. Navy, because he sat as the president
of the Commission which tried Lieutenant General Tachibana, Yoshio; Major
Matoba, Sueo; Captain Sato, Kesakichi; Corporal Nakamura, Shigenobu, et al,
under the charges and specifications dated July 22, 1946, charges growing out
of the identical incidents on which the charges in this case are based.
(Section 388(e) Naval Courts and Boards).

The judge advocate replied as follows:

The challenge by the accused to Rear Admiral Arthur G. Robinson, U. S.
Navy, is in the opinion of the judge advocate not a valid ground for objection
to this member. The accused has never been tried before Rear Admiral Arthur
G. Robinson, and the accused has not alleged that this member of the commis-

sion is antagonistic or prejudiced against him or has formed any opinion concerning his guilt or innocence. In accordance with the duly authorized prior precedents of this and other military commissions the challenge to a member of a military commission should not be sustained when the challenged member is able to declare in open court that he can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and his own conscience. Assuming that Rear Admiral Robinson is able to so truly state, the challenge can properly be denied for challenges similar to those made by the accused in the instant case have been made in prior cases before military commissions sitting here on Guam. The challenges were not sustained in such cases and these cases have been reviewed and approved by convening authority, reviewing authority, and the Judge Advocate General of the Navy. These cases stand as sound precedent with regard to the instant challenge.

The challenged member replied as follows:

It is quite true that I have sat in the previous trial mentioned by defense, however I wish to solemnly assure the accused and all parties to this trial of my belief that I can truly try without prejudice or partiality the case now depending according to the evidence adduced before this commission, the rules of evidence prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared, the challenged member withdrawing.

The commission was opened. All parties to the trial entered, and the commission announced that the objection was not sustained.

The judge advocate and each member were duly sworn.

The accused stated that he had received two copies of the charge and specifications preferred against him, one in English and one in Japanese, on February 14, 1949.

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

The accused replied in the affirmative.

Takano, Junjiro, a counsel for the accused, read a written objection to the charge and specifications, appended marked "E".

An interpreter read an English translation of Mr. Takano's objection, appended marked "F".

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the charge and specifications, appended marked "G".

The accused waived the reading of Commander Carlson's objection in Japanese in open court.

The judge advocate read a written reply to the objections to the charge and specifications, appended marked "H".

The accused waived the reading of this reply in Japanese in open court.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

The commission announced that the objections to the charge and specifications were not sustained and that it found the charge and specifications in due form and technically correct.

The accused stated that he was ready for trial.

Mr. Takano, Junjiro, a counsel for the accused, read a written plea to the jurisdiction in Japanese, appended marked "I".

An interpreter read an English translation of Mr. Takano's plea, appended marked "J".

Commander Martin E. Carlson, a counsel for the accused, read a further written plea to the jurisdiction, appended marked "K".

The accused waived the reading of this plea in Japanese in open court.

The judge advocate read a written reply to the pleas to the jurisdiction, appended marked "L".

The accused waived the reading of this reply in Japanese in open court.

The commission announced that the pleas to the jurisdiction were not sustained.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, read a written plea in bar of trial, appended marked "M".

The accused waived the reading of Commander Carlson's plea in Japanese in open court.

The judge advocate read a written reply to the plea in bar of trial, appended marked "N".

The accused waived the reading of the judge advocate's reply in Japanese in open court.

The commission announced that the plea in bar of trial was not sustained.

Commander Martin E. Carlson, a counsel for the accused, read a written plea in abatement, appended marked "O".

The accused waived the reading of Commander Carlson's plea in Japanese in open court.

The judge advocate read a written reply to the plea in abatement, appended marked "P".

The accused waived the reading of the judge advocate's reply in Japanese in open court.

The commission announced that the plea in abatement was not sustained.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a bill of particulars, appended marked "Q".

The accused waived the reading of Commander Carlson's motion in Japanese in open court.

The judge advocate read a written reply to the motion for a bill of particulars, appended marked "R".

The accused waived the reading of the judge advocate's reply in Japanese in open court.

The commission announced that the motion for a bill of particulars was not sustained.

The judge advocate read the charge and specifications in English, prefixed marked "S".

An interpreter read the charge and specifications in Japanese, prefixed marked "T".

The judge advocate arraigned the accused as follows:

Q. Teraki, Tadashi, you have heard the charge and specifications preferred against you. How say you to the first specification of the charge; guilty or not guilty?

A. Not guilty.

Q. To the second specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the third specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the fourth specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the fifth specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the charge, guilty or not guilty?

A. Not guilty.

The commission then, at 2:40 p.m., took a recess until 2:50 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

The prosecution began.

The judge advocate read his written opening statement, appended marked "U".

An interpreter read a Japanese translation of the judge advocate's opening statement.

Commander Martin E. Carlson, a counsel for the accused, made a motion to suppress any evidence which might be introduced before this commission that was taken from the Tachibana, et al case on the grounds: that Teraki was not made a party to that trial; he was not present; he could not cross-examine witnesses; and that to allow any portion of this trial to be introduced in evidence would be prejudicial to the substantive rights of the accused.

The judge advocate replied.

The commission announced that the motion was not sustained as it was untimely, and that the correct time for such an objection was at the time such document was offered in evidence.

The judge advocate requested that the commission take judicial notice of the following:

1. The Hague Convention No. IV of 18 October 1907 and the Annex thereto, ratified by both the United States and Japan, particularly the following portions of the annex thereof:

Article 4

"Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated."

Article 19

"The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army. The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank."

2. The Hague Convention No. X of 1907, ratified by both the United States and Japan, particularly Article 16 thereof, which reads as follows:

Article 16

"After every engagement, the two belligerents, so far as military interests permit shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill treatment."

3. The Geneva Prisoners of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Title 1, Articles 2 and 76 thereof, which read as follows:

Article 2

"Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited."

Article 76

"Belligerents shall see that prisoners of war dying in captivity are honorably buried and that the graves bear all due information, are respected and properly maintained."

4. The Geneva Red Cross Convention of 27 July 1929 (for the amelioration of the condition of the wounded and sick of armies in the field), ratified by both the United States and Japan, particularly Articles 3 and 4 thereof, which read as follows:

Article 3

"After every engagement, the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and the dead and to protect them from robbery and ill treatment."

Article 4

"They shall further see that they are honorably buried and that the graves are treated with respect and may always be found again."

5. The Potsdam Declaration of 26 July 1945, particularly paragraph 10 which reads in part as follows:

"We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

6. That a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies, during the period from December 7, 1941 to September 2, 1945.

7. The Instrument of Surrender from the Japanese Government and the Imperial General Headquarters signed September 2, 1945, proclaiming unconditional surrender to the Allied Powers, particularly the following paragraph:

"We hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration."

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the request for judicial notice, appended marked "V".

An interpreter read an English translation of Mr. Takano's objection, appended marked "W".

The accused further objected to the commission taking judicial notice of the items requested by the judge advocate on the ground that they were irrelevant and immaterial.

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

The commission announced that the objections were not sustained and that it would take judicial notice of the items requested by the judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and rank, please?
A. Herbert L. Ogden, commander, U. S. Navy.
2. Q. If you recognize the accused, state as whom.
A. Lieutenant Teraki.
3. Q. What is your present duty?
A. I am attached to the office Director War Crimes, Pacific Fleet.
4. Q. Do you have in your possession certified copies of the charges and specifications, findings, action of the convening authority, action of the reviewing authority, and action of the Secretary of the Navy in the case of Lieutenant General Yoshio Tachibana, I.J.A., et al?
A. I have.
5. Q. What is the first charge against Tachibana?
A. Murder.
6. Q. Do any specifications under this charge relate to alleged incidents on February 23, 1945 or on March 26, 1945?
A. Specifications 4 and 5 under Charge I relate to incidents on those dates.
7. Q. Are the victims named or otherwise identified in Specifications 4 and 5?
A. They are.
8. Q. What is the name of the victim and the date of the incident set forth in Specification 5?
A. Specification 5 alleges the murder of an American prisoner of war, name to the relator not definitely known, but believed to be one Marvie William Mershon. The date is on or about February 23, 1945.

9. Q. What is the name or other identification of the victim and the date in Specification 4 of Charge I in the Tachibana trial?

A. Specification 4 alleges the murder of an American prisoner of war, Floyd Ewing Hall. The date is on or about 26 March 1945.

10. Q. Who certified the charges and specifications?

A. They are certified by E. E. Woods, acting Judge Advocate General of the Navy, for the Secretary of the Navy.

11. Q. Are these certified to be true copies of the charge and specifications in the military commission case of Lieutenant General Yoshio Tachibana, I.J.A., et al?

A. They are.

12. Q. Will the witness give the name of the certifying officer with regard to the finding, with regard to the action of the convening authority, with regard to the action of the reviewing authority?

A. Copies of the findings, of the action of Commander Marianas, and the action of the Commander in Chief, Pacific Fleet are all certified by E. E. Woods, Acting Judge Advocate General of the Navy for the Secretary of the Navy.

13. Q. Are these certified to be true copies respectively of the findings, action of the convening authority, and action of the reviewing authority in the Tachibana case?

A. They are.

14. Q. Does the witness have in his possession a certified copy of the action of the Secretary of the Navy in the Tachibana case?

A. I have.

15. Q. Who certified this to be a true copy of the action of the Secretary of the Navy?

A. I have certified this to be a true copy of the original which I also have in my possession.

The certified copies of the charges and specifications, findings, action of the convening authority, action of the reviewing authority, and action of the Secretary of the Navy, from the record of the trial of Tachibana, et al, produced by the witness, were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused:

16. Q. Concerning Specification 4, where does it state that the incident occurred which is mentioned in that specification?

A. On Chichi Jima, Bonin Islands.

17. Q. What is the unit involved as stated in that specification?

A. I am not sure I understand that, do you mean the unit of the accused or the unit of the victims?

18. Q. The unit to which the accused is connected.

A. It states that Tachibana was Commanding General of the 109th Division. The accused Matoba was commanding officer of the 308th Independent Infantry Battalion, defendant Sato was attached to the 308th Infantry Battalion, defendant Nakamura was attached to the 308th Infantry Battalion.

19. Q. Where did the incident in Specification 5 take place?

A. On Chichi Jima, Bonin Islands.

20. Q. What units were involved in that incident according to the specification?

A. The accused Matoba was commanding officer of the 308th Independent Infantry Battalion; the accused Suyeyoshi was commanding officer of the 8th Naval Anti-aircraft Battery.

21. Q. Are these certified documents that are here being offered into evidence the only certified documents that are available in the office of the Director War Crimes, Pacific Fleet, from the record of the Tachibana trial?

A. The office of Director War Crimes had a copy of the Tachibana record, but not certified copies. The only certified copies we have are those which have been offered.

22. Q. Do the specifications all show that these offenses alleged were in violation of the moral standards of civilized society?

A. The majority of the specifications include that term.

23. Q. Do you know if the specifications were amended by striking out these words "and in violation of the moral standards of civilized society"?

A. The specifications as they now stand in the record include that term.

24. Q. Then your answer is they were not amended by any subsequent proceedings during the trial?

A. In my opinion they were not.

25. Q. Do any of the specifications include and name in the specifications Teraki, Tadashi?

A. He is not named as an accused. I would have to examine them to ascertain if he is named in any of them in any other status.

26. Q. Will you examine Specification 20 of Charge III and see if in that specification the name Teraki, Tadashi appears?

A. It does.

27. Q. Do you know if the Teraki, Tadashi mentioned in that specification is the accused here at this trial and whom you have recognized as Teraki, Tadashi?

A. It is.

The witness was duly warned.

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Saturday, March 5, 1949.

SECOND DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, March 5, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

The accused objected to the receipt in evidence of the excerpts from the record of the trial of Tachibana, Yoshio et al on the grounds: that they were incomplete, irrelevant, immaterial, and incompetent; that although the accused in the instant case had been named in some of the specifications he was not present at the Tachibana trial to cross-examine witnesses; that they were not the best evidence available to prove the fact of the death of Floyd Ewing Hall which the accused Teraki is charged with; that the documents were hearsay unless the judge advocate offered the entire document in accordance with Rule 5, Section 200, Naval Courts and Boards.

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that the objection was not sustained, but that any portions of the document read in open court would be subject to objections in the same manner as other documents, such as depositions or statements.

There being no further objection, the documents were so received and are appended marked "Exhibit 1".

Reexamined by the judge advocate:

28. Q. Will the witness read Specifications 4 and 5 of Charge I of Exhibit 1, which consists of certified documents from the military commission trial of Lieutenant General Yoshio Tachibana, et al?

The witness read from Exhibit 1 as follows:

"Charge I, Murder. Specification 4. In that TACHIBANA, Yoshio, then a lieutenant general, IJA, Commanding General of the 109th Division, MATOBA, Sueo, then a major, IJA, Commanding Officer of the 308th Independent Infantry Battalion, SATO, Kesakichi, then a first lieutenant, IJA, attached to the 308th Independent Infantry Battalion, and NAKAMURA, Shigenobu, then a corporal, IJA, attached to the 308th Independent Infantry Battalion, all attached to the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, and while so serving at said army installations, Chichi Jima, Bonin Islands, acting jointly and in pursuance of a common intent, did each and together, on or about 26 March 1945, on Chichi Jima, Bonin Islands, at a time when a state of war existed between the United States of America and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by beheading with a sword, an American prisoner of war, namely, Floyd Ewing HALL, ensign, U. S. Naval Reserve, then and there held captive by the armed forces of Japan, in aggravation of which the said MATOBA did, after the death of the said HALL, eat the flesh and viscera of the body of the said HALL, all this in violation of the laws and customs of war and the moral standards of civilized society."

"Specification 5. In that MATOBA, Sueo, then a major, IJA, Commanding Officer of the 308th Independent Infantry Battalion and SUKEYOSHI, Jitsuro, then a lieutenant (jg), IJN, Commanding Officer of the Eighth Naval Antiaircraft Battery, both attached to the military installation of the Imperial Japanese armed forces, Chichi Jima, Bonin Islands, and while so serving at said installations, Chichi Jima, Bonin Islands, acting jointly and in pursuance of a common intent with one MORISHITA, Hironobu, then a lieutenant (jg), IJN, now deceased, did, each and together, on or about 23 February 1945, on Chichi Jima, Bonin Islands, at a time when a state of war existed between the United States of America and the Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, without justifiable cause, and without proper trial or other due process, assault, strike and kill, by beheading with a sword, an American prisoner of war, name to the relator not definitely known, but believed to be one Marvie William MERSHON, aviation radioman third class, U. S. Navy, then and there held captive by the armed forces of Japan, in aggravation of which the said MATOBA did, after the death of the said American prisoner of war believed to be MERSHON, eat the flesh and viscera of the body of said prisoner, all this in violation of the laws and customs of war and the moral standards of civilized society."

29. Q. Will the witness consult the findings in Exhibit 1 and read therefrom the findings as they relate to Specification 4 of Charge I?

The witness read from Exhibit 1 as follows:

"As to the accused, TACHIBANA, Yoshio:
The fourth specification of the first charge proved.
And that the accused, TACHIBANA, Yoshio, Lieutenant General, Imperial Japanese Army, is of the first charge guilty."

"As to the accused, MATOBA, Sueo:
The fourth specification of the first charge proved.
And that the accused, MATOBA, Sueo, Major, Imperial Japanese Army, is of the first charge guilty."

"As to the accused, SATO, Kesakichi:
The fourth specification of the first charge proved.
And that the accused, SATO, Kesakichi, Captain, Imperial Japanese Army, is of the first charge guilty."

"As to the accused, NAKAMURA, Shigenobu:
The fourth specification of the first charge proved.
And that the accused, NAKAMURA, Shigenobu, Corporal, Imperial
Japanese Army, is of the first charge guilty."

30. Q. Will the witness consult the findings and read therefrom the findings as to Specification 5 of Charge I?

The witness read from Exhibit 1 as follows:

"As to the accused, MATOBA, Sueo:
The fifth specification of the first charge proved in part,
proved except the words 'and Suyeyoshi, Jitsuro, then a
lieutenant (j.g.), IJN, Commanding Officer of the Eighth
Naval Antiaircraft Battery, both' and the words 'each and
together,' which words are not proved.
And that the accused, MATOBA, Sueo, Major, Imperial
Japanese Army, is of the first charge guilty."

"As to the accused, SUYEYOSHI, Jitsuro:
The fifth specification of the first charge not proved.
And that the accused, SUYEYOSHI, Jitsuro, Lieutenant,
Imperial Japanese Navy, is of the first charge not guilty;
and the commission does therefore acquit the said SUYEYOSHI,
Jitsuro, Lieutenant, Imperial Japanese Navy, of the first
charge."

31. Q. Has the witness read the remaining action of the convening authority and of the reviewing authority and of the Secretary of the Navy in Exhibit 1?
A. I have.

32. Q. What action was taken by these authorities with regard to the findings of the commission, with regard to Specifications 4 and 5 of Charge I which you have read?

This question was objected to by the accused on the ground that it called for an opinion of the witness as the document could speak for itself.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They were approved by the convening authority, Commander Marianas, by the reviewing authority, Commander in Chief, Pacific Fleet, and by the Secretary of the Navy.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and former rate in the Imperial Japanese armed forces?
A. Kanemori, Kazutoshi, former corpsman sergeant, Imperial Japanese Army.
2. Q. If you recognize the accused, state as whom.
A. Teraki, Tadashi.
3. Q. Did you ever serve on Chichi Jima in the Bonin Islands during the course of the late war?
A. Yes, I did.
4. Q. During what period of time did you serve on Chichi Jima?
A. From the 25th of April 1944 until the 25th of November 1945.
5. Q. Where were you attached during this tour of duty?
A. Until July of 1944 I was attached to the 305th Battalion. From then onwards I was attached to the 308th or Matoba Battalion.
6. Q. Who was the commanding officer of this 308th or Matoba Battalion?
A. Matoba, Sueo, major, Imperial Japanese Army.
7. Q. To what superior organization was the 308th Battalion attached?
A. It was attached to the division of General Tachibana.
8. Q. What were your functions with the Matoba unit?
A. My duties were with the dispensary attached to the 308th Battalion.
9. Q. Do you know to what organization the accused Teraki, Tadashi was attached?
A. Yes, I do.
10. Q. To what organization was he attached?
A. He was attached to the same unit as I, namely, the 308th or Matoba Battalion.
11. Q. What were his functions or duties?
A. He was a surgeon attached to the unit.
12. Q. Were there any other medical officers attached to the unit?
A. Yes.
13. Q. Who were the other medical officers attached to that unit?
A. The other surgeon was Surgeon Second Lieutenant, Imperial Japanese Army, Sakabe, Takao.
14. Q. Do you recall any unusual incident involving prisoners of war which occurred on or about February of 1945?
A. Yes, I do recall.
15. Q. Will you state what occurred giving the particulars of what you know including the date and things you observed?

A. The first instance that I noted took place on about the 16th of February 1945. Two prisoners of war were kept at my unit for one or two days, after which they were sent to the division. As I recall one of the prisoners was an officer and the other a non-commissioned officer. As I remember the name of the officer was Hall; I do not recall the name of the non-commissioned officer. It was about a week after they had been sent to the division, around the 22nd or 23rd of February, 1945, when I was in the dispensary that Surgeon Teraki came into the dispensary and told me to get ready the medical equipment and he told us, that is, myself and an auxiliary corpsman whom I think was named Kumizawa, to go with him. At that time two or three soldiers, I do not know whether they came from the company or whether they came from the headquarters, arrived at the dispensary and reported that they were to receive instructions from Surgeon Teraki. The group of us following Surgeon Teraki went first in the direction of the Suyeyoshi unit and when we arrived at the Suyeyoshi unit one man, I believe he was a sailor, approached us and he guided us from there on. The place where this man guided us to was the Omura cemetery. When we arrived at the cemetery Kumizawa went to get some water and at the cemetery the sailor pointed out the place and said "this is the place". Thereupon Teraki told the soldiers to begin digging. When I saw the exhumed body I recognized it to have been one of the prisoners of war who had arrived at my unit a week previously. Teraki removed the shirt from the body that had been exhumed and he removed the liver by using what is commonly known as a wide scalpel.

The commission then, at 10:20 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Kanemori, Kazutoshi, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Examination continued.)

16. Q. Will the witness continue with his answer?

A. Teraki told me to cut the flesh. I asked Teraki what was going to be done with the flesh and the liver that were to be removed. Teraki replied that he also did not know what was going to be done with the flesh and the liver but as it was an order of Major Matoba that he was going to remove the flesh and the liver. I therefore borrowed this wide scalpel and cut about one kan (T.N. 8.26 pounds) of flesh from the thigh of the corpse. I took some cotton wadding and applying it to where the flesh was removed bound it up with a bandage. After I had finished this bandaging I put the trousers back onto the body. As the shirt had been replaced when I finished putting on the trousers and as it was ordered to bury the body, the body was accordingly buried. The flesh and the liver that had been removed were placed in cellophane paper. After we left the place and had walked for perhaps fifty or seventy meters, we met a Sergeant Sugiyama who was attached to the battalion headquarters. Sergeant Sugiyama saluted Surgeon Teraki and said something to the latter but I do not know what was said. Surgeon Teraki thereupon said to hand the package to Sergeant Sugiyama. I therefore handed the package to Sergeant Sugiyama and returned with Surgeon Teraki.

17. Q. When Teraki told you to cut the flesh did he tell you how much flesh to cut?

A. He said about one kan.

18. Q. From what part of the body did you remove this flesh?

A. From the thigh.

19. Q. Will you describe how you cut the thigh in order to remove this flesh?

A. First I made two parallel circular incisions and then I made a cut joining these two parallel cuts and thus removed the flesh.

20. Q. By circular cuts do you mean cuts around the thigh as you have indicated?

A. That is what I mean.

21. Q. How deep were these cuts?

A. To the bone.

22. Q. How far apart were these two parallel cuts?

A. Approximately twenty centimeters (8 inches).

23. Q. How deep was the cut which you have indicated you made at right angles between these two parallel cuts around the leg?

A. Also to the bone.

24. Q. Did the flesh between the parallel cuts come off the bone when you made your cut from one parallel cut to the other?

A. The flesh did not fall off the bone.

25. Q. How did the flesh come off the bone?

A. The scalpel was used to disconnect the flesh from the bone.

26. Q. Do you recall any other incidents which occurred involving prisoners of war in approximately March of 1945?

A. Yes, I know of another.

27. Q. Will you tell what occurred at that time and give the date and other details?

A. It was around the fourteenth or fifteenth of March 1945. I went to the battalion headquarters office and in front of the guardhouse there was this officer to whom I have referred by the name of Hall in front of the guardhouse being watched by guards. The time of the day was about ten or half past ten in the morning. I heard that there was to be an execution and there were quite a few people about the place at that time. It was around eleven o'clock now and I believe it was Captain Sato who told the guard to lead the prisoner to the place of the execution. All the people assembled there including myself followed the group. The place to which we were led was sixty or seventy meters away from the dispensary where there was a bomb crater. As I recall, I noted that on the way to the scene of the execution seeing Teraki coming up towards the scene of the execution following a by-path which led from the dispensary to the scene of the execution. I arrived at the scene of the execution and Captain Sato ordered Corporal Nakamura to give the prisoner a cigarette to smoke. A day or so prior to this execution I had heard a rumor to the effect that at the next execution instructions would be given to the corpsmen. I did not personally hear of this order. When I went to the scene of the execution Surgeon Teraki told me to fetch the wide scalpel and I returned to the dispensary to get it. When I returned from the dispensary the prisoner had already been executed. Corporal Nakamura

A6.

was standing by the corpse and his sword was still wet. Captain Sato was standing close to Corporal Nakamura. Teraki was standing away from them, about three meters away from them, with the rest of the people assembled. As I recall it was fifteen or twenty minutes after the execution when Surgeon Teraki ordered all corpsmen to gather around as he was about to commence dissection. Teraki first removed the suit and commenced dissection. What I first saw was the liver. It was followed by the stomach and the lungs. After the dissection was over he said that he had again been ordered by Matoba to remove the liver and flesh and he took up the liver. Captain Sato was standing with the group of corpsmen in the front row and watching the proceedings and Teraki then said "Sergeant Kanemori, cut the flesh". I asked Surgeon Teraki what was going to be done with the flesh and he said he did not know and Surgeon Teraki turned to Captain Sato and asked "Do you know what is to be done with them?" and he also did not say anything. As I had the impression that they were being removed for the purpose of burial, I removed one kan of flesh from the right thigh. I removed this flesh in the same manner as on the previous occasion whereupon Captain Sato, when that was concluded, ordered some enlisted men, I forget whether they were ordinary enlisted men or enlisted corpsmen, to bury the body. When I returned to the dispensary it was exactly twelve noon.

28. Q. What happened to the liver and flesh which was removed from this body by Teraki and yourself?

A. As I recall, an orderly came to receive the liver and flesh.

29. Q. Where was the orderly from?

A. There were three orderlies attached to the battalion and one orderly attached to Major Matoba who was stationed close to Major Matoba's room. I do not recall which of the four came, but it was one of them.

30. Q. What happened to the liver and flesh that had been removed from the prisoner after that?

A. It was, I believe, about a week afterwards when I heard rumors from the persons who came to the dispensary that the flesh had been eaten by a party and I was shocked.

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate stated that he concurred.

The commission directed that the answer be stricken out.

The witness was duly warned.

The commission then, at 11:20 a.m., adjourned until 9 a.m., Monday, March 7, 1949.

THIRD DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, March 7, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Kanemori, Kazutoshi, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

31. Q. Who was the head of the medical department of the 308th Battalion to which battalion you were attached?

A. Surgeon Second Lieutenant Sakabe, Taro.

32. Q. What was the rank of the accused Teraki around February or March of 1945?

A. He was probationary officer of the Medical Department.

33. Q. Do you know when he was appointed surgeon second lieutenant?

A. As I recall, it was around October or November of 1945 that he was appointed surgeon second lieutenant.

34. Q. You testified that around the fifteenth of February 1945 two prisoners stayed for a night or two nights at the 308th Battalion. What did these prisoners do at the battalion?

A. They were doing nothing at the battalion. I saw them at the guard house and also in the dugout.

35. Q. Did you often see these two prisoners of war when they were staying overnight or for two nights at the battalion?

This question and line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. I saw them on two or three occasions.

36. Q. You testified that one of the two prisoners was a commissioned officer and the other a non-commissioned officer. How did you determine this?

A. I believe the interpreter interrogated the prisoners and I believe I heard this from the interpreter.

37. Q. Describe the appearances of the prisoners as you saw them. How they looked and in what clothes they were clad.

A. One of the two, the commissioned officer, was tall and he was blond. The non-commissioned officer was shorter than the commissioned officer and was also blond. The commissioned officer was dressed in a nylon flying suit. The non-commissioned officer had on a gray shirt and gray underdrawers and the non-commissioned officer had on black shoes. That is all I recall of their appearances.

38. Q. Were these underdrawers long?

A. Yes, they were long.

39. Q. How did you come to know the name of the officer to have been Hall?

A. The interpreter interrogated this man and it came out that his name was Hall and the bystanders were saying that his name was Hall and that is how I have retained in my recollection his name having been Hall.

40. Q. You testified that Teraki came into the dispensary in the afternoon of the twenty-second or twenty-third of February 1945. At what time did Teraki make his appearance on that afternoon?

A. I believe it was around 4:30 or 5 o'clock in the afternoon.

41. Q. Who were with you at the dispensary at that time?

A. I do not have a recollection, but I believe Kumazawa was with me at the dispensary.

42. Q. Do you recall whether Surgeon Sakabe was at the battalion headquarters on that day?

A. I do not clearly recall this, but I believe that Sakabe was making the rounds of the companies for physical examination on that afternoon.

43. Q. You testified that Teraki, on coming into the dispensary instructed you to prepare the medical instruments. Did he tell you why you were to do this?

A. No, he did not tell me the reason for my having to prepare the medical instruments. About that time there were many persons who became wounded in their work as some work involved dynamiting and I drew the conclusion that it was some such casualty that had cropped up.

44. Q. How far is the Omura cemetery away from the headquarters of the 308th Battalion?

A. I believe about half a league (2000 meters).

45. Q. Did you walk to the cemetery?

A. Yes.

46. Q. On the way to the cemetery did you not meet Surgeon Sakabe?

A. I do not recall.

47. Q. You testified that at the cemetery when the body was dug up you recognized it to have been that of one of the prisoners that you saw a week previously. How did you recognize this body as one of those prisoners?

A. I recognized the body because it was clad in the same clothing, the face was familiar and it had blond hair, and I recognized it when the body was dug up.

48. Q. Have you testified on this matter on the witness stand in the trial of Tachibana, et al which took place around August or September of 1946?

A. I have.

49. Q. Did you not, on that occasion, testify that the body exhumed had on white clothing?

A. No, I do not think so. I believe I testified that his suit was a mottled gray and white.

50. Q. Did you not, in that trial, testify that the prisoner was wearing not a gray suit but a white winter undergarment when you saw this prisoner at the battalion headquarters?

A. No, that is not so. Insofar as I can recall, I believe I testified that the prisoner was wearing a mottled gray and white garment.

51. Q. You testified on Saturday that you saw a prisoner of war under guard in front of the guardhouse at the battalion headquarters around the twenty-fourth or twenty-fifth of March 1945. You further testified that his name was Hall. Is that testimony correct?

A. Yes, I believe so.

52. Q. When as a witness for the prosecution you were on the witness stand in the Tachibana trial and when the question was put to you in the direct examination "Do you know the name of the prisoner in front of the guardhouse at battalion headquarters?" you replied that you did not. Was this testimony correct?

A. I remembered that the prisoner's name began with "Ha" but whether the second vowel was "re", "ro", or "ru" (TH: in Japanese Hall become Horu), I could not recall. Therefore I answered at the trial that I could not remember. However after I was interned in the stockade I did my utmost to recall this name and I succeeded in recalling his name to have been Hall.

53. Q. When did you recall this full name of Hall?

A. It was after I had been interned in the stockade and listening to the guards talking about beerhalls and dancehalls it struck me that that was the name.

54. Q. You testified that at the scene of the execution on the twenty-fourth or twenty-fifth of March Captain Sato ordered Corporal Nakamura to give a cigarette to the prisoner. At this time was Corporal Nakamura already making preparations for the execution?

A. Yes, he was.

55. Q. In what position was the prisoner at this time?

A. He was seated.

56. Q. Did you arrive at the scene of the execution at the same time as the accused, Teraki?

A. We arrived almost simultaneously. Teraki was coming up the hill and perhaps he may have arrived a little later, but he was in sight.

57. Q. Were you standing beside Teraki until you were ordered to go and fetch the wide scalpel?

A. Yes.

58. Q. Before you went to fetch the wide scalpel were there any words exchanged between the accused and Captain Sato?

A. No.

59. Q. Did the accused, Teraki, say anything to Corporal Nakamura before you went to fetch the wide scalpel?

A. No, he did not speak to Corporal Nakamura.

60. Q. Did you hear Captain Sato say anything to Nakamura?

A. I did.

61. Q. What did you hear?

A. As I recall he was showing him where to stand and what stance to take up.

62. Q. Before you went to fetch the medical instrument, was Nakamura preparing for the execution? Did he have his sword drawn?

A. As I recall he had his sword drawn.

63. Q. What period of time elapsed between the time you left for the instrument and the time you returned with it?

A. As I recall two or three minutes.

64. Q. You testified that fifteen or twenty minutes elapsed between the conclusion of the execution and the commencement of the dissection. Was Teraki doing anything in the meantime?

A. As I recall he was merely looking on.

65. Q. Was Captain Sato at the scene of the execution until the conclusion of the dissection?

A. Yes, he was.

66. Q. Are there any definite grounds for that recollection of yours?

A. I recall this definitely because Captain Sato ordered the burial after the dissection.

67. Q. What were the duties of Captain Sato at the 308th Battalion?

A. Captain Sato was the senior officer attached to battalion headquarters. Among other things he handled the personnel matters of officers attached to headquarters. I believe he also assisted the battalion adjutant.

68. Q. Do you recall whether Surgeon Sakabe was at battalion headquarters when this prisoner of war was executed?

A. As I recall Surgeon Sakabe was away on his rounds of the companies on this day as well.

69. Q. Kamekura, when did you first enter the Japanese army?

A. As I recall on 1 September 1938.

70. Q. This 305th battalion that you were attached to on Chichi Jima; who was commanding officer of that battalion?

A. Captain Kudo, Imperial Japanese Army.

71. Q. Was there any special reason why you were transferred to the Matoba unit?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

72. Q. At the time of this first incident to which you testified, how long had you been a member of the Matoba unit?

A. Until Major Matoba assumed command of the unit, that unit was known as the Iimura unit. As I recall Major Matoba assumed command of that unit in August of 1944. As I recall, I was assigned to this unit a month prior to the arrival of Major Matoba.

73. Q. Do you know when this other doctor became a surgeon second lieutenant?

A. As I recall he received his commission in December 1944.

74. Q. So that at the time of these two incidents he was also a probationary officer. Is that true?

A. I do not believe that is correct.

75. Q. Do you remember why you came to battalion headquarters the day that you witnessed this execution?

A. I recall.

76. Q. Why?

A. It was my duty to submit daily reports of the patients at battalion headquarters. I believe I was on this mission on that day.

77. Q. At the trial of General Tachibana you testified that all the men present were talking about the coming execution therefore you decided to stay and witness it. Is that the reason you stayed to witness it?

A. That is correct.

78. Q. Do you know who ordered this execution?

A. As I recall it was Captain Sato.

79. Q. Do you know who ordered Doctor Teraki to be there?

A. I do not know that.

80. Q. Do you know the name of the sailor who guided you at the Suyeyoshi Unit?

A. I do not know his name.

81. Q. Do you remember whether you reported to the commanding officer of the Suyeyoshi Unit or whether you went direct to the cemetery that night?

A. As I recall when we started out for the cemetery and came to the Suyeyoshi Unit the sailor was already waiting outside of that unit.

82. Q. Could you tell from looking at the body in the grave how long it had been buried?

A. I could.

83. Q. How long?

A. The sailor was also saying that he had been buried the day before and therefore I thought he was buried for about twenty-four hours.

84. Q. Do you know why the body was disinterred?
A. I do not.

85. Q. Going back to the other execution. Was Sergeant Mori at this execution?
A. I do not happen to recall that.

86. Q. Do you happen to recall if Sergeant Yamashita, Shizuo was there?
A. No, I do not recall.

87. Q. Do you recall whether Corporal Iso was there?
A. Yes, I recall he was there.

88. Q. Was Corporal Yamamoto there?
A. I do not recall.

Reexamined by the judge advocate:

89. Q. Concerning the Nakamura execution, how long had you been there at the time you left to obtain the scalpel?
A. One or two minutes.

90. Q. How long were you gone?
A. As I recall two or three minutes.

91. Q. When you arrived the first time at the scene of the execution you came up one path and Teraki came up another path. Is that correct?

This question was objected to by the ^{accused} judge advocate on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Yes, that is correct.

92. Q. What did you do as soon as you arrived at the scene?
A. I took up my position among the bystanders who were looking on.

93. Q. Where were these bystanders standing in relation to the path that you had used to come onto the scene?

A. The place where the bystanders were standing was on the road some distance from the scene of the execution and on a decline. (The road leading to the execution was a downhill road and therefore some little way short of there would be up the hill.)

94. Q. About how far from the scene of the execution was this group of bystanders whom you joined standing?

A. They were all about five meters away from the scene of the execution.

The commission then, at 10:20 a.m., took a recess until 10:45 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Kanemori, Kazutoshi, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Reexamination continued.)

95. Q. When you arrived on the scene and joined the bystanders, what did you do at that time?

A. I was just observing.

96. Q. What were you observing?

A. I was observing with the rest of them how Captain Sato was telling someone to give the prisoner a cigarette, telling someone to blindfold the prisoner, et cetera.

97. Q. Where was Nakamura during all this time?

A. As I remember he was standing by Captain Sato.

98. Q. Do you remember whether he was standing by Captain Sato during all of this one or two minutes you were on the scene?

A. Yes.

99. Q. And then you were watching him and Captain Sato during all that time, is that correct?

A. Yes, that is correct.

100. Q. You testified that Teraki and you both came to the scene along different roads. Did these two roads meet at the scene of the execution?

A. The two roads met about ten or fifteen meters removed from the scene of the execution midway up this hill.

101. Q. And then from the point where they met did they go along as a single road to the scene?

A. Yes, that is so.

102. Q. Now, when you saw Teraki on this road on your way to the scene was Teraki ahead of you or was he behind you or was he beside you? What was his relative position?

This question was objected to by the accused on the ground that it was repetitious.

The judge advocate replied.

The commission announced that the objection was sustained.

103. Q. Did you look back at the path after you arrived at the scene of the execution?

A. I did not.

104. Q. How do you know that Teraki arrived at the scene after you did?

A. The two roads, the one that I was on and the one on which Teraki was, were running, as it were, parallel to each other and while I was walking towards the scene of the execution I could see Teraki following the other road.

105. Q. How long after you arrived at the scene of the execution did you see Teraki at the scene?

A. Very soon after.

106. Q. Now, you testified that you assisted in the dissection of the prisoner after the execution. Were you carefully watching the proceedings as you went along?

A. Yes, I was.

107. Q. During the course of the dissection did you look up to see whether Sato was present or not?

A. I recall Captain Sato's presence because he was standing closest to me and that is why the recollection is clear in my mind.

108. Q. At what point in the dissection was he standing closest to you?

A. As I recall Captain Sato was standing right by me from the start of the dissection.

109. Q. And did you see him at any other time during the dissection? Did you look up to see if he was present?

A. I did not look up to see whether he was there, however I recall his having said something during the course of the dissection and that is why I can testify definitely that he was there, but I do not recall what he said.

110. Q. Do you recall at what time during the dissection he said this?

A. It was towards the end of the dissection.

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

Examined by the commission:

111. Q. You testified in the cross-examination that during the period of February and March 1945 that the accused Teraki was a probationary officer of the Medical Department. Do you know whether any rank was attached to that title at that time? The commission wishes to clarify, if possible, his status.

A. The probationary officer does have a rank and Teraki had the rank of a sergeant major, however, he had the insignia of a sergeant major and he had the duties of an officer.

112. Q. Did he wear the uniform of an officer?

A. He does not wear an officer's uniform, but that of an enlisted man - a non-commissioned officer - and his insignia is that of a sergeant major and as to his receiving his commission, the probationary officer sometimes receives it very early, after two or three months, sometimes it takes him a half a year, at other times as long as one year.

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

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and present residence?
A. Matsui, Masakatsu. The address is Number 4, 6-chome, Honcho, Nakano-ku, Tokyo, Japan.
2. Q. If you recognize the accused, state as whom.
A. Probationary officer Teraki.
3. Q. Were you ever a member of the armed forces of Japan during the recent war?
A. I was.
4. Q. What was your rate at that time?
A. First class private, IJA.
5. Q. Were you ever stationed on Chichi Jima Island?
A. Yes, I was.
6. Q. During what period of time were you stationed there?
A. From November 1943 until November 1945.
7. Q. Where were you attached at that time?
A. Watanabe Company, Shibuya Unit.
8. Q. What were your duties at that time?
A. What do you mean by "duties"?
9. Q. What position did you have in your organization?
A. I did not have any special duties.
10. Q. Who was your immediate superior officer?
A. Second Lieutenant Kasuya.
11. Q. To what higher organization was this Watanabe Company that you have referred to attached?
A. It was subordinate to the Shibuya Unit.
12. Q. And to what organization was this Shibuya Unit attached?
A. I do not know.
13. Q. Do you recall any unusual incident which occurred during your tour of duty at Chichi Jima involving prisoners of war?
A. I do recall.
14. Q. Approximately when did this incident occur?
A. It was in February or March of 1945.
15. Q. Where did this incident occur?
A. In the Matoba Battalion.
16. Q. Approximately what time of the day was it when this incident occurred?
A. Around noon.

17. Q. Briefly what happened at that time?

A. Before noon I was told by Second Lieutenant Kikuchi that the prisoner was taken to the battalion headquarters and I was ordered to go to the battalion headquarters in the capacity of an interpreter. Arriving at the battalion headquarters I saw an American prisoner of war tied to a tree which was in the clearing in front of the battalion headquarters. For the purpose of interrogation this prisoner was released from his bonds and was taken into the bathroom and there by orders from Captain Nakajima I interpreted the interrogations. We asked him his name, age, and the fleet he was attached to, the commander of the fleet, and the plane he was flying and his duties. I do not recall which item it was, but he said that he could not give an answer to one of the interrogations and I informed Captain Nakajima to that effect, but I received repeated orders from Nakajima to ask that question. He still insisted that he could not answer. I again told Nakajima to the effect that he would not answer and Nakajima, who was a little intoxicated, struck the head of the prisoner with a stick which he had in his hand, and then he commenced hitting this prisoner without any regard to where he hit. He hit him on his head, his hands, his arms, and the prisoner thereupon fell down and fainted. This unconscious prisoner of war was then taken on a stretcher to the tree which was located in the clearing in front of the guardhouse. He was then taken down from the stretcher and was tied crosswise with a line to the tree and then a guard stabbed him with a bayonet through the heart by orders from, I recall, Captain Nakajima.

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Matsui, Masakatsu, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

18. Q. Will you briefly describe what happened after the prisoner had been killed?

A. He was untied from the tree and he was laid down on the ground facing upwards and probationary officer Teraki came and slit open the shirt with a scalpel then inserted the scalpel into his stomach and removed the liver and the body was then taken away by some soldiers.

19. Q. Was Teraki a medical officer?

A. His status was that he received the treatment of an officer.

20. Q. What was done to the liver that was removed from the body by Teraki?

A. The liver was taken by the soldiers to the room of the battalion commander.

Cross-examined by the accused:

21. Q. You testified regarding the Shibuya Unit and the Matoba battalion. Do you know if there existed any command relationship between those two units?

A. As I was just a private first class, I am ignorant about those command relationships and regarding this I do not know.

22. Q. You testified that you recognized the accused as Teraki, but when did you first know that he was Teraki?

A. It is difficult for me to answer exactly when I came to know him but Teraki was a surgeon attached to the battalion headquarters and I was a mere private in a platoon and as there were not many surgeons in the battalion I came to know that there was a surgeon Teraki in the unit, but I am able to recognize him but I do not know him intimately.

23. Q. Do you know whether there were any other surgeons in the Matoba Unit? If so, please give their names.

A. I know that there were other surgeons but I do not know their faces or their names.

24. Q. You testified that the incident regarding the prisoners of war occurred around February or March of 1945, but could you give an approximate date of this occurrence?

A. I do not know.

25. Q. Did you, on any other occasion, act as an interpreter when a prisoner arrived at the Matoba Unit around February or March of 1945?

A. Prior to this, on one occasion, I did act as such.

26. Q. Do you recall when this happened?

A. I do not recall.

27. Q. Do you recall the name of the prisoner who was interrogated in this incident?

A. I have forgotten.

28. Q. To what unit was Captain Nakajima attached?

A. He was attached to the Matoba Unit.

29. Q. Where in the area did the accused Teraki remove the liver from the prisoner?

A. In front of the guardhouse.

30. Q. From when was Teraki at the scene?

A. To the best of my knowledge, I saw him at the time of the dissection.

31. Q. Do you recall those who were present at the dissection? If so, please state their names?

A. I do not know anyone other than Teraki.

32. Q. Wasn't there an officer at the scene?

A. I did not notice.

33. Q. Did you not see Captain Sato at the scene?

A. Yes, I believe that he was there.

34. Q. Was the name of this prisoner Glenn Junior Frazier?

A. He did not say so.

35. Q. What did he say his name was?
A. I do not recall what he said.

36. Q. Do you recall any questions that you asked this prisoner that day?
A. The questions were as I have testified previously.

37. Q. Did Captain Nakajima call for you and ask you to act as his interpreter?
A. First Lieutenant Kikuchi ordered me.

38. Q. Isn't this the case where Captain Nakajima beat this prisoner to death?

This question was objected to by the judge advocate on the ground that it was leading, irrelevant, immaterial, and called for an opinion of the witness.

The accused replied.

The commission announced that the objection was sustained.

39. Q. Do you remember if this incident occurred on February 23, 1945?
A. I do not recall.

40. Q. Did you testify at a previous trial in the case of Major Matoba regarding this incident?
A. I was not present at the trial of Matoba.

41. Q. Did you testify at the trial of Captain Nakajima for this crime?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. No, I did not.

42. Q. Can you describe this prisoner that was executed that day?
A. It is impossible to describe him in detail.

43. Q. Can you describe him in any way? Did he have black hair or red hair?
A. His hair was brown. He looked very young and that is about all I can recall.

44. Q. Was he wearing an officer's uniform?
A. It is not possible to distinguish by the look of the uniform whether he was an officer or a soldier, but during the course of the interrogation I believe he said he was a non-commissioned officer.

45. Q. How close were you to this person when you say Teraki removed his liver?
A. About four or five meters away.

46. Q. Did anyone assist Doctor Teraki?
A. Nobody assisted him.

47. Q. You say that Doctor Teraki removed the liver. Did you see the liver after he removed it?

A. Yes, I saw it at the scene.

48. Q. What did it look like?

A. It was no different from that of a horse or a cow.

49. Q. Who told you it was a liver that was removed?

A. Teraki said that.

50. Q. Who did he say it to?

A. He said it to those who were around the place.

51. Q. You do not remember anybody who was around there?

A. I do not recall.

52. Q. Was it just a liver that was removed from the body by Teraki?

A. I am not well informed on medical matters but there was something that looked like a small yellow bag besides the liver and Teraki said that was the peptic gland. NB

53. Q. Was it just the chest to which Teraki applied his scalpel?

A. That is so.

54. Q. Is it correct that Teraki did not remove anything but the liver?

A. That is correct.

Reexamined by the judge advocate:

55. Q. You have testified that you think you saw Sato present sometime during the course of this incident. Can you testify whether or not it was during the course of the killing of the prisoner or during the course of the dissection that Sato was present?

A. I recall that he was there when the prisoner was stabbed.

56. Q. Do you recall whether Sato was there when Teraki was performing the dissection?

A. I do not recall.

57. Q. Approximately how long after the prisoner was stabbed did Teraki begin his dissection?

A. At once.

Recross-examined by the accused:

58. Q. Do you recall if this prisoner was wearing a navy uniform?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the redirect examination.

The accused replied.

The commission stated that the question was beyond the scope of the redirect examination, but that it would be allowed.

A. I do not know whether he was wearing a navy uniform but I know that he was a navy personnel.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and present address?

A. Iso, Shunichiro, 81 Ohkoya Mojiroi, Kawamaya-Mura, Ishiki-Gun, Fukushima Ken, Japan.

2. Q. If you recognize the accused, state as whom.

A. The accused is one of the surgeons who was formerly attached to the dispensary of the 308th Infantry Battalion, Teraki, Tadashi.

3. Q. Were you a member of the armed forces of Japan during the recent war?

A. Yes, I was.

4. Q. What was your rate?

A. Corpsman Corporal, Imperial Japanese Army.

5. Q. Were you ever stationed on Chichi Jima?

A. Yes.

6. Q. When were you stationed there?

A. From June 1944 until the termination of the war.

7. Q. To what unit were you attached?

A. The 308th Independent Infantry Battalion.

8. Q. Who was the commanding officer of that battalion?

A. At the time of its organization the commanding officer was Lieutenant Colonel Imura, however I am not certain of this point because at that time I was not attached to headquarters but was attached to the first company.

9. Q. In February or March of 1945 who was commanding officer of the battalion?

A. Major Matoba.

10. Q. What medical officers were attached to the 308th Battalion at that time?

A. There were two men attached to the battalion. One was Surgeon Second Lieutenant Sakabe, Taro and the other was Medical Probationary Officer Teraki.

11. Q. Do you know of any unusual incident regarding prisoners of war which occurred on Chichi Jima in approximately March of 1945?

A. Yes.

12. Q. Do you know the approximate date on which this incident occurred?

A. My memory is in poor condition and I cannot give you the exact date when it took place.

13. Q. Where did this incident take place?

A. An American prisoner of war was executed close to the headquarters of the Karia company, a subordinate unit of the 308th Battalion.

14. Q. Will you describe what occurred at that time?

A. I heard that there was to be an execution on that day from hearing that there was to be a dissection after the execution. With the intention of observing the dissection I went to the scene of the execution, but the execution had not yet begun. The scene at the place of the execution was surrounded by gunzokus. Just at this moment I saw through the crowd a sword raised by Corporal Nakamura and the sword decapitated the prisoner. When I saw the blood spurt from the neck as the sword cut the head off, I felt sick and I went to the company headquarters of the Karia company which was a little distance removed from the scene of the execution. To compose myself, I was drinking water at the company and resting there for approximately twenty minutes. At that time I heard that the dissection was about to commence and so I went to watch the dissection. When I arrived at the scene of the dissection the body was laid out and his coat was opened, leaving the body bare. Surgeon Teraki, taking a small scalpel from a surgeon's kit, made an incision in the chest of the prisoner. Following this, he took a pair of scissors and cut the cartilage away from the sternum on both sides of the chest. After this he lifted the cartilage apart and then the sternum upwards and he explained the names of the internal organs. He especially explained the lungs and I recall his saying on that occasion that the lung as it was then was contracted because it had been exposed to the air. Next he dissected the abdomen. He pointed out the liver, the large and small intestines, and the stomach. At that time he removed the liver. Then he put to the side the large and small intestines and showed the position of the kidneys. The dissection was completed and the abdomen and the lung which had been opened were closed, and the body of the prisoner was wrapped again in the clothes in which he had been dressed.

15. Q. Do you know if anything was done to the thigh of the prisoner?

A. Flesh was removed from the thigh of the prisoner.

16. Q. At the time of the dissection by Teraki how many persons were assembled at the place of the dissection?

A. There were quite a number of people assembled. I believe from thirty or forty persons.

The commission then, at 3:20 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Iso, Shunichiro, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

17. Q. You testified that you were a corpsman corporal. Were you always at the dispensary of the battalion?

A. For the most part I was at the dispensary attached to the headquarters of the battalion, and the reason was when I was assigned to this post I had just been released from the hospital and I was still in a weak condition.

18. Q. You testified that on the day of the execution you heard that an American prisoner of war was to be executed. Did you know that the prisoner was an American?

A. I did know that he was an American prisoner of war.

19. Q. Did someone tell you that?

A. I heard this from Surgeon Sakabe the morning of the day of the execution or on the previous day.

20. Q. Was Surgeon Sakabe at the dispensary on the day of the execution?

A. At the time that the execution took place Surgeon Sakabe was out on his rounds and he could not have been at the headquarters dispensary.

21. Q. Do you know the circumstances why the senior Surgeon Sakabe did not conduct the dissection and the accused Teraki had to perform it?

A. I do not know the reason definitely, but I believe that it came to be so because of the training as doctors that these two men had received prior to their induction into the Army.

22. Q. Do you know whether Teraki conducted the dissection voluntarily or not?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused reframed the question.

23. Q. Do you know for a fact whether some person ordered Teraki to perform this dissection?

A. That he performed the dissection in conformance to orders is understood, but as I was not present when the order was given to Teraki and whether the unit commander gave the order direct to Teraki or whether he passed it on through his adjutant I do not know.

24. Q. Did you go to the scene of the dissection voluntarily on your own volition?

A. I did not go voluntarily. It was on the morning of the execution or on the previous day that I was ordered by Surgeon Sakabe to go and observe the dissection.

25. Q. What were your reasons for going to the scene of the dissection to observe?

A. The purpose of this dissection was to instruct the corpsmen and auxiliary corpsmen attached to the 308th Infantry Battalion. I had spoken to Surgeon Sakabe about the circumstances that I had never seen a dissection of a human body and I was questioned concerning this by Surgeon Sakabe and when I answered that I had not witnessed a dissection I was told to do so without fail and it was because of these instructions that I went to observe the dissection.

26. Q. In connection with the dissection were the auxiliary corpsmen undergoing some training?

A. Training of auxiliary corpsmen was being conducted at that time.

27. Q. When did this training commence in relation to the time of the execution?

A. The training courses were short ones and I believe it was a little past the middle of this course when the execution took place.

28. Q. Did you go to the scene of the execution alone or accompanied by someone?

A. I went alone a little after Surgeon Teraki and another auxiliary corpsman.

29. Q. When you arrived at the scene was Surgeon Teraki there or did he arrive later?

A. When I arrived at the scene of the execution there was a crowd of people assembled there already and I could not ascertain whether Surgeon Teraki was among that crowd.

30. Q. Did you note if there were persons attached to the dispensary among this crowd?

A. What struck my attention at the scene of the execution was the prisoner of war and his execution. My attention was drawn from the personnel of the dispensary and of the unit and furthermore I did not feel the necessity of ascertaining their presence there.

31. Q. When you observed the dissection were you not aware who of the persons attached to the dispensary were present?

A. I wish to put a question to counsel, which is, were you referring to the people at the scene of the execution continuing from the time of the execution down to the time of the dissection?

32. Q. Yes.

A. I wish to change my answer if that was what counsel was intending in his question. At the scene of the dissection there were present Surgeon Teraki, Sergeant Kanemori, Superior Private Sato, and myself from the dispensary.

33. Q. Was there an officer present at the scene?

A. Yes.

34. Q. Will you give me the name or names of the officer or officers present at the scene?

A. There was Captain Sato who was attached to the battalion headquarters and I did not observe any other officers present.

35. Q. Who was in charge ~~of~~ the scene?

This question was objected to by the judge advocate on the ground that it was vague and called for an opinion of the witness.

The accused withdrew the question.

36. Q. Was Captain Sato at the scene after the execution and until the dissection was completed?

A. He was there until the conclusion of the dissection.

37. Q. Who was at the scene throughout the execution and the dissection and who was giving instructions?

A. I did not hear any orders or instructions given at the scene and therefore I do not know who was in charge.

38. Q. Insofar as you know was Captain Sato the only officer present at the scene?

A. Yes, insofar as I know.

39. Q. About how many minutes after the execution did Teraki commence his dissection?

A. As I testified previously I cannot state definitely how long after the execution the dissection started. I believe it was about fifteen or twenty minutes afterwards.

40. Q. Did Teraki at that time take steps to ascertain whether the prisoner was dead?

A. As I was late for the dissection also I did not witness any steps taken to ascertain whether the prisoner was dead and if such were taken by Teraki.

41. Q. Did you return with Teraki?

A. No, I did not return with him.

42. Q. Did you return before he ^{did} or after?

A. I do not recall.

43. Q. Was Captain Sato still there when you returned?

A. I returned before Captain Sato.

44. Q. Did you see Nakamura cut the prisoner with a sword?

A. I did.

45. Q. How close were you to Nakamura when you saw him cut the prisoner with a sword?

A. Seven or eight meters.

46. Q. Did the sword of Nakamura sever the head from the body?

A. It was not completely severed, but about seven-tenths.

47. Q. At this time did you notice Teraki there at the scene?

A. I did not see him at the time of the execution.

48. Q. Do you remember who removed the flesh from the thigh?

A. I have not ascertained this fact, but I do not believe it was Surgeon Teraki.

Reexamined by the judge advocate:

49. Q. You testified concerning the dispensary to which you and Teraki were attached. What was Teraki's position at the dispensary?

A. Surgeon Sakabe was the senior surgeon at the dispensary, and Teraki had duty at the dispensary in turns with Sakabe, in turns coming every alternate day.

50. Q. Who was in charge of this program of instruction of the corpsmen that you spoke about?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Surgeon Sakabe was in charge of training and so also was Surgeon Teraki and he had charge of part of the training.

51. Q. Was Surgeon Sakabe present at the scene of the dissection that you testified about?

A. No, he was not.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 4:15 p.m., adjourned until 9 a.m., tomorrow, Tuesday, March 8, 1949.

FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, March 8, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate was called as a witness for the prosecution and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. David Bolton, lieutenant, U. S. Navy.
2. Q. Are you the judge advocate in the instant case?
A. I am.
3. Q. If you recognize the accused, state as whom.
A. The accused is Teraki, Tadashi, an accused war criminal currently on trial before this commission.
4. Q. Do you have in your possession certain documents which you desire to introduce in evidence before this commission?
A. I do.
5. Q. Will you state the circumstances surrounding the obtaining of these documents?
A. On Tuesday, February 15, at the War Criminal Stockade in my presence and also in the presence of defense counsel Commander Carlson, and others, the accused requested that defense counsel Commander Carlson be permitted to be present at such time as the prosecution obtained certain depositions which it was desired to obtain from prosecution witnesses confined in Sugamo Prison in Japan. The accused desired to have defense counsel present in order to cross-examine these witnesses whom he had been advised by the prosecution were expected to furnish significant and material evidence which would be utilized during the course of the then forthcoming trial of the accused. Consent to having the defense counsel present at such interrogation was given by the judge advocate and confirmed by the office of the Director War Crimes in view of the expected material nature of the testimony to be produced and in view of

the unavailability of these witnesses since they were confined respectively to life imprisonment and to a term of, as I recall, ten years imprisonment in Sugamo Prison. The judge advocate, myself, Lieutenant David Bolton, USN, and Commander Martin E. Carlson, USNR, the defense counsel, proceeded to Japan. On February 21st we interrogated Nakamura and on February 23rd interrogated Sato, and then on the 28th verified the interrogations and further interrogated Nakamura. The interrogations were held in the interview room at Sugamo Prison. The persons present were the witnesses, in one case Nakamura and in the other case Sato, the judge advocate, Lieutenant David Bolton, U. S. Navy, the defense counsel, Commander Martin E. Carlson, USNR, and an interpreter, Lieutenant Frederick F. Tremayne, USNR. The witness was informed that I was the judge advocate in the forthcoming trial of Teraki, Tadashi and that Commander Carlson was the defense counsel for that trial and that we were present for the purpose of obtaining certain information, in response to questions we would ask him, which we intended to present in evidence in the trial of Teraki. The witnesses were both cooperative and willing to testify and they were sworn by me prior to the asking of any questions. As the judge advocate, I, asked them a series of questions which were recorded in Japanese by our interpreter, Mr. Tremayne in writing. While he asked the witness the questions, the answers were written by the witness in Japanese, and these series of questions were retained by Lieutenant Tremayne at that time. The judge advocate concluded and then the defense counsel cross-interrogated the witness and in the same fashion the questions were recorded by Mr. Tremayne in Japanese and then were answered in writing in Japanese by the witness. On the 21st as I have said we interviewed Nakamura, Shigenobu and his interrogations were written down at that time in Japanese and subsequent to the conclusion of the interrogation the answers which the witness had written down were sent out by the guard and delivered to Mr. Tremayne. The questions and answers were then taken by Mr. Tremayne to our liaison office and the Japanese checked and rough translations made at that time so that we could verify the progress of the interrogation to ascertain whether or not the interrogation had completely covered the material which we desired to cover. The proceedings on February 23rd when the witness was Sato, Kesakichi were identical with the proceedings on the 21st when Nakamura was the witness. On Monday the 28th Mr. Tremayne proceeded to Sugamo first, and the witnesses were asked to write their answers in smooth, which they did, in Japanese. Commander Carlson and I then proceeded to Sugamo Prison and we had the witnesses read and initial each page of the questions as they had been recorded in Japanese and in our presence swear to the truth of the answers that had been written by them, and which they signed also the same as I said, being recorded in Japanese. The purpose of having them initial the questions was to ascertain that they definitely did understand the questions that had originally been asked them and to which they had originally recorded their answers in Japanese. We had them sign the answer sheets and thereon verify the fact that these were the answers they had given, for the purpose and with the knowledge that these questions and answers would be utilized for evidence in this forthcoming trial. We again swore them to the truth of the statements they had made in their own handwriting and then rewritten on this Monday the 28th. To the best of my knowledge there were no alterations in the text in any way on Monday the 28th, from any previous recorded testimony by the witness as made on the first day of interrogation, in this process of smoothing out the Japanese answers, except to correct poor writing and the use of poor phraseology as was sometimes perhaps done. That is true with one exception, and that is that defense counsel was permitted to ask a question on the 28th, which was not previously asked by him on the 21st, in the interrogation of Nakamura; and that question and answer are of course recorded.

6. Q. Have these interrogations and depositions thereto been translated into English?

A. They have been translated by the official court interpreter and they are duly certified by Lieutenant (junior grade) Eugene F. Clark as being true and complete translations of the original in Japanese.

7. Q. What do these interrogations relate to?

A. They relate to the incidents alleged in Specifications 4 and 5 of the charge against Teraki.

8. Q. Do you desire to introduce the Japanese and the English translation thereof in evidence?

A. I do.

The depositions of Nakamura, Shigenobu and Sato, Kesakichi, produced by the witness, were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused:

9. Q. When these witnesses were interrogated did the interpreter make an oral translation or did he retain the translation and show it to the witness?

A. The physical setup in Sugamo is such that there can be no direct communication between the persons doing the interrogating and the witness. There are a series of three screens that separate the interrogator from the witness and no document can be passed directly from the interrogator to the witness. In order to pass documents from one group to another they must be given to a guard who walks around through a series of doors and proceeds into the chamber where the witness is seated, and therefore there is no possibility of passing documents physically back and forth directly. That does handicap proceedings and necessitated the procedure that was followed. I might add that this is similar to the type of precautions that are commonly used by most civil prisons in regard to interviews of that nature where persons are already convicted and sentenced. The questions were asked orally and at the same time Mr. Tremayne would write the questions down in "Romaji". On occasion there was some difficulty getting a particular word across or particular idea at which time he consulted with the witness at length and the witness would tell him the word he thought should be in the question and this would be recorded by Mr. Tremayne.

10. Q. Then, is it correct that the witness did not look at the Japanese translation of the questions when they answered the questions?

A. That is true with regard to the first instance, that is when on the first time we interviewed the witness, in the case of Nakamura on the 21st and in the case of Sato on the 23rd. But on the 28th, the witness had in his possession and verified before us the questions and answers, so that that is not true with regard to the swearing and the taking of the depositions on the 28th.

11. Q. Who wrote this Japanese translation of the questions?

A. I believe the questions were written by Mr. Tremayne; the answers were written by the witness.

12. Q. Did Lieutenant Tremayne listen to the oral statement of the witness and translate it into Japanese for the interrogator?

A. Yes, he did on the first occasion when we asked the questions he would first give us the oral translation and then I would record the answer at that time in my own handwriting.

13. Q. Were the witnesses permitted to write down the questions and answers themselves in Japanese, or some of them?

A. The witnesses wrote the answers in Japanese, but there was no point in having the witnesses write the questions as they were being written by Mr. Tremayne; and in view of the fact that we subsequently were going to verify the fact that they knew and understood the questions by having them verify the question and answer sheets.

There being no objection, the depositions were so received, and are appended, marked "Exhibit 2" (Japanese) and "Exhibit 2 (a)" (English translation) and "Exhibit 3" ^(Japanese) and "Exhibit 3 (a)" (English translation).

Reexamined by the judge advocate:

14. Q. Will the witness read from Exhibit 2 (a) the body of the interrogation and the answers thereto?

(The witness read Exhibit 2 (a).)

15. Q. Will you read the body of Exhibit 3 (a)?

(The witness read Exhibit 3 (a).)

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as judge advocate.

The commission then, at 10:25 a.m., took a recess until 10:45 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, ^{ayoman} first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present station?

A. Commander M. E. Currie, attached to the office of the Director War Crimes, Pacific Fleet.

2. Q. If you recognize the accused, state as whom.

A. Teraki, Tadashi.

3. Q. I hand you a document. Do you recognize this document?

A. I do.

4. Q. What is the date of this document?

A. It is dated 4 November 1948. The date of the swearing to this document is 5 November 1948.

5. Q. Do you know under what circumstances this document was obtained?
A. This document was given to me by Teraki, Tadashi. I was notified by SCAP that Teraki, Tadashi was in Sugamo Prison and I went out to interview him. I told him that I had certain information relative to his participation in certain dissections on Chichi Jima and also a letter that he had written indicating that he had participated in these dissections I would like to have a complete story. I said that I would like to have a written statement and I went back to Sugamo some days later and he gave me a written statement. He handed me this statement that he had written and I took it back to the office to have it translated. I sent it to the Army translation section but before I got it back he called and said that he had another statement. I picked it up and it was a supplementary statement. I also sent it over to the translation section and I got them both back. After getting the translations back from the translation section I saw that both statements were relative to the same events. I took both statements back to Teraki and discussed them with him and asked if he would like to put them both into one statement. He said that he would do that and he did. I went back out to see him on November 5 and at that time he gave me this statement. I asked him if it was a complete statement of the facts and he said it was and I said I would like for him to swear to it. I said "Do you swear that it is a complete statement of the facts, to the best of your knowledge and belief?" and he swore that it was.

6. Q. Is this document which you have in your hand -- this Japanese document -- the document which was given to you on the fifth of November by Teraki and sworn to by him on that date?

A. Yes.

7. Q. Were any threats or force used, or promises of reward, or other inducements offered in order to obtain the writing of this statement?

A. None.

8. Q. Do you have a translation of this original Japanese statement in your possession?

A. I do.

9. Q. Who prepared this translation?

A. One of the interpreters attached to the Director War Crimes, Pacific Fleet, Lieutenant (junior grade) Eugene F. Clark.

10. Q. Is he the official court interpreter in this case who is seated near you?

A. He is.

11. Q. Does this statement relate to incidents involving prisoners of war which occurred on Chichi Jima in the early part of 1945?

A. This document relates to Teraki's participation in some dissections of American prisoners of war on Chichi Jima in the early part of 1945.

The document produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused:

12. Q. When you spoke to Teraki was there an interpreter with you?

A. Yes, there was.

13. Q. You said you were attached to the War Crimes office. Are you one of the investigators of that office?

A. Yes, I am.

14. Q. When you first met Teraki did you not notify him to the effect that he did not have to write the statement?

A. I did not.

15. Q. Before the statement was written did you warn Teraki that the statement he was going to write might be used in evidence against him?

A. No, I did not.

16. Q. When you first met Teraki did you not ask him to cooperate with you and that everything was known?

This question was objected to by the judge advocate on the ground that it was double.

The accused made no reply.

The commission announced that the objection was sustained.

17. Q. Did you not ask him to cooperate with you?

A. As I explained when I was explaining the document, I told Teraki what I knew and I told him that I had a copy of a letter he had written stating about these things and that I wanted a complete statement. That is all I told him.

18. Q. Who authorized you and by what authority did you interview Teraki at Sugamo?

A. By arrangement of higher authority, the authority was vested in the investigators of Director War Crimes, Pacific Fleet to interview prisoners in Sugamo. I had a little card giving specific authority, signed by the Chief of the Legal Section, SCAP.

19. Q. Were you aware that Teraki was being confined at Sugamo Prison by orders of the Director War Crimes Pacific Fleet here on Guam as a War Crimes suspect?

A. I was aware that the Director War Crimes Pacific Fleet requested SCAP to have him apprehended as a suspected war criminal and that SCAP did that.

20. Q. Did you inform Teraki that he was suspected of a war crime?

A. I informed Teraki that we had certain information relative to his participation in the dissection of prisoners of war on Chichi Jima.

21. Q. How long had Teraki been kept in confinement at Sugamo at the time you interrogated him?

A. As I remember, it was about a week.

The accused objected to the receipt in evidence of this document on the ground that it was made to a person in authority and therefore not a valid confession; that it was illegally obtained because Teraki was held for a considerable period of time before it was obtained and because Teraki was not warned prior to making the confession.

The judge advocate replied.

The commission announced that the objections were not sustained.

There being no further objection the document was so received and is appended marked "Exhibit 4" (Japanese) and "Exhibit 4(a)" (English translation).

Reexamined by the judge advocate:

22. Q. Will the witness read Exhibit 4(a)?

(The witness read Exhibit 4(a).)

(An interpreter read Exhibit 4.)

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution rested.

The accused requested an adjournment until Thursday, March 10, 1949, to allow time to prepare the defense.

The commission announced that the request was granted.

The commission then, at 11:45 a.m., adjourned until 9 a.m., Thursday, March 10, 1949.

FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, March 10, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The defense began.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written opening statement for the defense, appended marked "X".

An interpreter read an English translation of the opening statement for the defense, appended marked "Y".

The accused requested that the commission take judicial notice of the following:

1. That on February 19, 1945, the American forces landed on Iwo Jima, Volcano Islands, and later occupied the island. (The above information is obtained from "War Report" submitted to the Secretary of the Navy by Admiral King, Commander-in-Chief, United States Navy, United States of America.)
2. We request that the commission take judicial notice of the trial of Isono, Meguru, captain, Imperial Japanese Army and Nakajima, Noboru, captain, Imperial Japanese Army who were tried for murder of an American prisoner of war by charges dated May 28, 1946, Commander Marianas Serial 7031.

This trial was held here on Guam from June 3, 1946 to June 6, 1946. (See Specification 3.)

The judge advocate stated: that there was no objection to the commission taking judicial notice of item 1 requested by defense counsel, but that with regard to item 2 there is no indication as to the manner in which this trial record is relevant to the instant case, and that the judge advocate ~~advocate~~ objected to the commission taking judicial notice of item 2 on the grounds (1) that it was irrelevant and immaterial, and (2) that such portions of the record of the trial as counsel deems relevant and material to the issues of the instant case, should be offered in evidence in the usual manner. AB

The accused replied.

The commission announced that it would take judicial notice of item 1 requested by the accused, but would not take judicial notice of item 2.

Sanagi, Sadamu, a counsel for the accused, was called as a witness for the defense and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name?
A. Sanagi, Sadamu.
2. Q. If you recognize the accused, state as whom.
A. Teraki, Tadashi.
3. Q. Are you a defense counsel for the accused, Teraki, Tadashi?
A. I am.

Examined by the accused:

4. Q. Do you have in your possession documents which you desire to submit in evidence?
A. Yes, I do. I have two documents.
5. Q. What do those documents relate to?
A. One is an excerpt from the Japanese Army Personnel Procurement Ordinance. AB
The other is a certificate indicating that these regulations were in effect during the war.
6. Q. The certificate that you referred to; is it the original or a copy?
A. It is a copy of the original.
7. Q. Who made the original?
A. It was made by Miyama, Yozo, who is the Chief of the General Affairs Section, Demobilization Bureau and who is the person responsible for the custody of official documents.
8. Q. Is there any signature or seal showing that it is an authentic document?
A. It is a custom with the Japanese Government for an official to affix the seal of his official position as a signature and in this case also, that seal is affixed.
9. Q. In what language is the copy written?
A. The copy is written in Japanese, but I have prepared an English translation of it.

The document produced by the witness was submitted to the judge advocate and to the commission and by the accused offered in evidence.

Cross-examined by the judge advocate:

10. Q. Who prepared this certificate of translation?
A. The official interpreter of this court, Lieutenant (jg) Clark.

There being no objection, the document was so received, and is appended marked "Exhibit 5", (Japanese), and "Exhibit 5(a)" (English translation).

Reexamined by the accused:

11. Q. Will the witness read Exhibit 5?

(The witness read Exhibit 5.)

12. Q. Where did you obtain the Japanese Army Personnel Procurement Ordinance which you desire to submit?

A. I obtained it from Volume II of the Army Regulations.

13. Q. Is this Volume II of the Army Regulations certified in Exhibit 5?

A. Yes, it is one volume which is referred to in Exhibit 5.

14. Q. To what does this excerpt relate?

A. The Japanese Army Personnel Procurement Ordinance is applied to the army personnel in general but the excerpt I have taken relates to the procurement of probationary officers and his status and his appointment to commissioned rank and especially that of probationary officer of the medical department.

15. Q. Have you prepared a translation of the excerpts?

A. Yes.

The document produced by the witness was submitted to the judge advocate and to the commission and by the accused offered in evidence.

Cross-examined by the judge advocate:

16. Q. Who made the translation into English which you wish to offer into evidence?

A. Translation was made by the official interpreter to this court, Lieutenant Clark.

There being no objection, the document was so received and is appended marked "Exhibit 6" (Japanese), and "Exhibit 6(a)" (English translation).

Reexamined by the accused:

17. Q. Please omit articles 35 and 36 and read all the rest of Exhibit 6.

(The witness read Exhibit 6 as requested.)

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

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

Herbert L. Ogden, a witness for the prosecution, was recalled as a witness for the defense and was warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. Will you state your name?
A. Herbert L. Ogden.
2. Q. Are you the legal custodian of the Commander Marianas copy of the record of proceedings of the Tachibana, et al trial convened by Commander Marianas at the headquarters of Commander Marianas?
A. I am.
3. Q. Do you have in your possession the Commander Marianas copy of that record?
A. I have.
4. Q. Is the record authenticated to be a true copy of the original?
A. This record purports to be a carbon copy of the original record but it is not a certified copy.
5. Q. Is it correct that the record is in the files of the Commander Naval Forces Marianas?
A. This record is contained in the files of Director War Crimes under Commander Naval Forces Marianas.
6. Q. Does the record contain the testimony of Kanmuri, Yoshiharu?
A. It does.
7. Q. Do you know where Kanmuri, Yoshiharu is residing now?
A. He was returned to Japan and as far as I know is still residing in Japan.
8. Q. Does the testimony of Kanmuri, Yoshiharu relate to an incident concerning prisoners of war which occurred on Chichi Jima about February of 1945 and for which the accused, Teraki, is now on trial?
A. It does.
9. Q. Was Kanmuri duly sworn before making this testimony?
A. He was.

The record of proceedings of the military commission in the trial of Tachibana, Yoshio, et al, was submitted to the judge advocate and to the commission and marked for identification.

The record of proceedings of the military commission in the trial of Tachibana, Yoshio, et al, ~~were~~ submitted to the judge advocate and to the commission, and by the accused, so much thereof as contains the testimony of Kanmuri, Yoshiharu was offered in evidence.

There being no objection, it was so received.

10. Q. Will you read from the record of this trial from the testimony of Kanmuri, Yoshiharu, questions and answers 1, 4, 5, 6, 7, 8, 9, 12, 15, 30, 31, 36, 37, 41, 42, 43, 44, 45, 46 and 47?

The witness read as follows:

- "1. Q. State your name and rank.
A. Captain, Imperial Japanese Army, Kanmuri, Yoshiharu."
- "2. Q. Captain, were you ever stationed on Chichi Jima?
A. Yes."

"5. Q. When did you arrive on Chichi Jima?
A. I arrived on 13 July 1944.

"6. Q. When did you leave Chichi Jima.
A. Around the 22nd, I have forgotten the exact date, of February, 1946.

"7. Q. To what unit were you attached on Chichi Jima?
A. I was attached to the 308th Independent Infantry Battalion.

"8. Q. Who was the Commanding Officer of this battalion?
A. Major, Imperial Japanese Army, Matoba.

"9. Q. Captain, what were your duties in the 308th Battalion?
A. For the first month I was just attached to headquarters. After this I became Adjutant."

"12. Q. Captain, did you see two prisoners of war who were delivered to the 308th Battalion by Warrant Officer Soya?
A. Yes, I have seen them."

"15. Q. Captain, will you describe these two prisoners?
A. One of the two men was very tall. He wore a green long suit. He had a slight mustache. His complexion was very fair and he was a very well built man. The other one was wearing a white shirt and long white underwear. He was a very small man and his age was about eighteen years."

"30. Q. Captain, after you delivered this man with the long white underwear to the Brigade Headquarters, did you ever see him again?
A. Yes, about four days after I had delivered him to the Brigade Headquarters, this man was sent back to our unit.

"31. Q. How long did this man continue to stay in your unit?
A. Immediately upon the return of this prisoner, I reported the matter to my Commanding Officer. He told me to give the prisoner to the Suyeyoshi Unit. I carried out this order."

"36. Q. Captain, do you know as a fact from your own knowledge just what happened to this man at the Suyeyoshi Unit?
A. I know that he was executed at the Suyeyoshi Unit.

"37. Q. Captain, how long was it between the time you transferred this flyer from the 308th Battalion to the Suyeyoshi Unit that the execution took place?
A. I believe about a day."

"41. Q. Later that same afternoon did anything take place concerning this incident?
A. On the same day around 4:30 in the afternoon a telephone call came through from my Battalion Commander who was at the time at the 307th Battalion Headquarters.

"42. Q. Captain, did you personally receive this telephone call?
A. Yes.

"43. Q. Will you tell the commission the substance of this telephone call that you had with Major Matoba?

A. At the beginning, Captain Ikawa, Adjutant to the 307th Battalion called me on the phone and from Captain Ikawa I heard that Major Matoba asked that about two kan of flesh was wanted. Then I replied to Captain Ikawa that our unit did not have any meat. At this point Captain Ikawa was replaced on the phone by Major Matoba. Major Matoba also requested meat, however, I also told him that we did not have any, whereupon he told me that if I told Lieutenant Suyeyoshi of this he would know, and he further added that flesh from the body of the prisoner executed at the Suyeyoshi unit should be brought. This request of Major Matoba coincided with what I had heard this same morning. I told the Major that the body had already been buried and so please give up the idea of getting any flesh from it. Although I tried to advise the Major by telling him not to take any flesh from the body, he ordered me to order the Medical Officer to have the body exhumed and to have flesh cut away from it and delivered to him.

"44. Q. Now Captain, did you pass this order on to the Medical Officer?

A. I had no other alternative but to transmit the order to the Medical Officer.

"45. Q. Captain, who was this Medical Officer?

A. Medical Officer Teraki.

"46. Q. Did you personally pass this to Doctor Teraki?

A. Yes.

"47. Q. And at the time you passed this order to Doctor Teraki was anyone else present?

A. I remember that there were two or three other men present, but I cannot remember their names."

11. Q. Do you know where Major Matoba is now?

A. He is deceased.

Cross-examined by the judge advocate:

12. Q. Will the witness read questions 50, 51 and 52 and the answers thereto?

The witness read as follows:

"50. Q. Captain, do you know if this order that you passed on to Doctor Teraki was carried out?

A. Yes, I know.

"51. Q. How do you know that it was carried out?

A. Because I designated Sergeant Sugiyama to deliver the flesh and he did so because upon his return he reported to me that he had delivered what was required of him.

"52. Q. Captain, about three days later did you hear Major Matoba make any comment concerning this incident?

A. I do not know whether it was three or two days after this incident that Major Matoba at a party said that he had eaten flesh."

The accused moved to strike out that portion of the answer containing question and answer 52, on the ground that it was irrelevant, immaterial, and beyond the scope of the charge and specifications.

The judge advocate replied.

The commission directed that the words be stricken out.

Reexamined by the accused:

13. Q. Are you the legal custodian of the Commander Marianas copy of the Board of Investigation convened by the Commanding Officer, Occupation Forces, Bonin Islands, inquiring into War Crimes matters on Chichi Jima?

A. I am.

14. Q. Was the Board of Investigation duly authorized to act as such?

A. It was.

15. Q. Does the record contain the interrogation of Major Matoba?

A. It does.

16. Q. When was the interrogation of Matoba conducted?

A. January 14, 1946.

17. Q. Does the record indicate that Major Matoba was duly sworn before being interrogated?

A. The precept directs that an oath shall be administered to all witnesses and the record does indicate that this witness was sworn. In addition to his testimony on 14 January 1946 this witness also testified before the board on 6 March 1946.

The commission then, at 10:10 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

(Reexamination continued.)

18. Q. Does the interrogation of Matoba contain such portions as relate to the incidents with which the accused Teraki is now on trial?

A. It does.

19. Q. Was the testimony of Major Matoba from this record introduced into evidence at the trial of Yoshio Tachibana, et al?

A. It was.

The proceedings of the Chichi Jima board of investigation was submitted to the judge advocate and to the commission, and marked for identification.

The proceedings of the Chichi Jima board of investigation were submitted to the judge advocate and to the commission, and by the accused, so much thereof as contains the testimony of Matoba, Sueo was offered in evidence.

There being no objection, it was so received.

20. Q. Will you read from this record the preliminary question identifying this witness Matoba as to his name, rank, and his unit?

The witness read as follows:

"1. Q. State your full name, rank, and organization.
A. Sueo Matoba, my rank is major, and I am commander of the Northern end of the island; and commanding officer of the 308th Battalion, of around four thousand (4000) troops."

21. Q. Will you read from Volume II, page 690, questions and answers 125, 128, 129, 130, 143 and 167?

The witness read as follows:

"125.Q. By whose orders did Corporal Nakamura execute Hall?
A. The order for the execution of flyers or prisoners came from General Tachibana or Major Horie. I personally did not know that Hall was returned to my unit. Corporal Nakamura received orders from either Sergeant Major Wada, Captain Sato, or Lieutenant Ono. However, the responsibility lies with me. But it so happens that I did not give the order personally. Therefore, Corporal Nakamura would know who gave him the order."

"128.Q. By whose order was Doctor Teraki to cut out the liver and deliver it to you?
A. By my order."

"129.Q. If you did not order the execution, why did you order Doctor Teraki to be there?
A. Sergeant Major Wada or Captain Sato came and reported the execution to me. I then ordered Doctor Teraki to go and cut out the liver of the flyer. I gave the order after I received the report that the flyer was executed. That is, the order for the removal of the liver."

"130.Q. How was it, that Doctor Teraki was already at the scene of the execution before it occurred with his corpsmen ready to perform the dissection?
A. I did not give any orders previous to the execution, but if it so happens that the circumstances point to me giving the orders, I will take the responsibility."

"143.Q. Exactly what instructions did you give to Doctor Teraki, regarding the disposition of the flyer's body?
A. I ordered Surgeon Teraki to hurry up and remove the liver because I wanted to take it to the naval headquarters."

"167.Q. Then, by your own admission, you are a cannibal?
A. Yes, I was a madman due to the war and that is the only reason I can give for being a cannibal."

Cross-examined by the judge advocate:

22. Q. From the testimony of Matoba, Sueo in the board of investigation of Chichi Jima, will the witness read question number 16 on page 678 and the answer thereto?

The witness read as follows:

"16. Q. When this flesh was cut from the body of the flyer at the Suyeyoshi Tai, was any delivered to and consumed by the Suyeyoshi Tai?

A. I do not know. After we ate human flesh at the 307th Battalion headquarters, various rumors went around the island. I heard of the eating of flesh in other places on the island, and even if it was goat meat, some men would say that it was human flesh, and rumors came on so fast that I do not know."

23. Q. Will the witness read questions and answers 20, 21, 22 and 26?

The witness read as follows:

"20. Q. Did General Tachibana say that this should happen to all of the prisoners of war, following their executions?

A. Yes, at a conference at the division headquarters in February, 1945, General Tachibana said that supplies would diminish and ammunition would run short, and in the end men would have to fight even with rocks, and they would be forced even to eat their own comrades killed in combat, and the flesh of the enemy should be eaten.

"21. Q. You personally heard this?

A. Yes.

"22. Q. Who do you remember was present, who also heard this?

A. Every battalion commander. Not only once or twice, but several times the general said this."

"26. Q. Did General Tachibana, at this conference, mention the fact that all prisoners of war would be executed?

A. Yes, and that the flesh would be eaten."

24. Q. Will the witness read questions and answers 141 and 144?

The witness read as follows:

"141.Q. Why did Corporal Nakamura execute Hall?

A. I do not know the exact reason behind Corporal Nakamura's performance, but I know that the corporal told me that he went looking for Sergeant Furushika and that upon not finding Sergeant Furushika, he executed the flyer in his place."

"144.Q. Who brought the liver to you?

A. Doctor Teraki reported to me that the liver was brought and left in my orderly's room. As I could not go to the naval headquarters due to air raids, I had it sliced and dried."

The accused did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The accused was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Will you state your name?

A. Teraki, Tadashi.

2. Q. Are you the accused in the instant case?

A. Yes.

Examined by the accused:

3. Q. When were you inducted into the Japanese Army?

A. I was inducted on the 28th of September 1944 as corpsman second class private.

4. Q. Before you were conscripted did you have experience as a doctor? If so, state briefly your experience.

A. After graduating from the Imperial University of Hokkaido in March of 1938 I served in the Gunma Prefecture as a health technician for one year, and three and a half years after that I served with the health institute and a year and a half after that I was attached to the naval hospital as a doctor.

5. Q. Did you have a doctor's certificate?

A. I did.

6. Q. Have you served at the military installations of the Imperial Japanese Army on Chichi Jima?

A. I have.

7. Q. State the period.

A. I arrived on Chichi Jima in the latter part of November 1944. For ten days I was attached to the army hospital on Chichi Jima. My rank at that time was corpsman second class. I was promoted to probationary officer of the Medical Department, Imperial Japanese Army Reserve and was assigned to the 308th Battalion which assignment had been decided upon previously and to which unit I was to go as soon as I had received my promotion.

8. Q. What was your rank during your tour of duty at the 308th Independent Infantry Battalion?

A. At first I was probationary officer, Medical Department, Imperial Japanese Army Reserve, and later on August 20, 1945 I was promoted to the rank of surgeon second lieutenant.

9. Q. You have testified to having been a probationary officer. What is the status of a probationary officer?

A. A probationary officer has the rating of a sergeant major, consequently he wears the insignia of a sergeant major and his uniform is also that of a sergeant major.

10. Q. What were your duties while attached to the 308th Infantry Battalion?

A. In the capacity of surgeon I examined the officers and men of the companies and battalion.

11. Q. Who was your immediate superior officer in the 308th Battalion?
A. Sakabe, Taro, surgeon second lieutenant, Imperial Japanese Army Reserve.

12. Q. Who was the unit commander during the time you were attached to the 308th Battalion?
A. Major Matoba, Sueo, Imperial Japanese Army.

13. Q. During your tour of duty at the 308th Battalion did anything unusual occur around March of 1945 involving prisoners of war?
A. There was.

14. Q. When did it take place?
A. As I recall in the latter part of March 1945.

15. Q. What was the incident that occurred?
A. A prisoner of war was executed and his body was dissected afterwards.

16. Q. Where did this take place?
A. Close to the headquarters of the 308th Battalion.

17. Q. Did you go to the scene of the incident?
A. I did.

18. Q. Did you directly participate in the incident?
A. I did.

19. Q. Did you participate in all the phases of the incident?

This question was objected to by the judge advocate on the ground that it was vague and general in form, misleading, and called for an opinion of the witness.

The accused reframed the question.

20. Q. You testified that in this incident a prisoner of war was executed and his liver and flesh removed. In which part of this incident did you participate?

A. I participated in only that part of the incident where the liver was removed.

21. Q. Is it then correct that you did not participate directly or indirectly with the execution part of the incident?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused reframed the question.

22. Q. Did you in actual fact participate in this incident directly or indirectly?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness.

The accused withdrew the question.

23. Q. State the circumstances which led you to go to the scene of the execution.

A. In the latter part of March 1945 I had charge of training of auxiliary corpsmen. While I was giving a talk to these auxiliary corpsmen a soldier came from headquarters and reported that the adjutant desired to speak to the surgeon. In the absence of Surgeon Sakabe I went. When I arrived at the headquarters Adjutant Kanmuri told me that orders had been received from the unit commander that as a prisoner of war was to be executed that I remove the liver and flesh from this prisoner in the same manner as on previous occasions, and as it was a good opportunity to instruct the auxiliary corpsmen then under training through dissection that I take this opportunity to instruct them. As Surgeon Sakabe was away at that time I requested that his return be awaited. Adjutant Kanmuri thereupon said that the unit commander was in a hurry and further that he had specifically ordered that Teraki carry out this order and repeatedly stated this. At that time I recalled that two or three days previous on the morning of the day when the training course for the auxiliary corpsmen was to begin, that by orders of Surgeon Sakabe I had reported to Major Matoba concerning the training. On that occasion I had gone to the major's room. He was in his room at breakfast and I reported that the training of the auxiliary corpsmen would begin that day and submitted the training schedule. Major Matoba had said that as in the near future a prisoner of war would be executed that he desired the liver and flesh removed as on previous occasions and as it was a good opportunity that I take the opportunity to dissect the body and have the auxiliary corpsmen observe the dissection. I recalled the above when I heard the adjutant give the unit commander's order. I had reported the substance of Major Matoba's order to Surgeon Sakabe. As I recalled these things I thought that I had to carry out this order and returning to the dispensary I told Sergeant Kanemori about this. Sergeant Kanemori began preparations. I returned to the lecture room and told the auxiliary corpsmen that I had received orders from the battalion commander to remove the liver and flesh from a prisoner of war and told them that I was going to the scene of the execution and that they would accompany me. I proceeded to the scene of the execution. As I recall Sergeant Kanemori had preceded me with the instruments.

24. Q. At about what time did you arrive at the scene of the execution?
A. I do not clearly recall, but I believe it was early in the afternoon.

25. Q. You testified that "on previous occasions". Had you participated in incidents involving prisoners of war prior to this incident?
A. I had.

26. Q. When did you participate in these incidents?
A. The first incident occurred on the 22nd or 23rd of February 1945. The second took place two days afterwards.

27. Q. What led you to participate in these incidents? Did you do so on your own volition or were made to participate under orders?
A. I did not participate on my own volition, but by orders of Major Matoba.

28. Q. Returning to the third incident, will you describe what occurred after you arrived at the scene of the execution, what was taking place at the time and what occurred after your arrival?
A. When I arrived at the scene with my auxiliary corpsmen I saw about twenty persons gathered at the scene of the execution. Nearing the crowd formed by these persons I saw about ten meters away from this crowd a prisoner of war blindfolded and sitting squatting on the ground.

The commission then, at 11:20 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Teraki, Tadashi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

29. Q. Who were at the scene when you arrived there? Give the names of the persons that you recall having been there.

A. I recall seeing Captain Sato, Corporal Nakamura, and Sergeant Kanemori at the scene. I do not recall the names of any other persons.

30. Q. Were there guards at the scene?

A. I did not see any.

31. Q. Who was in charge at the scene?

A. Captain Sato.

32. Q. Other than Captain Sato were there any officers at the scene at that time?

A. No, there were none.

33. Q. Where were you at the scene of the execution?

A. Until the conclusion of the execution I was standing in the crowd.

34. Q. What was the distance between you and Captain Sato?

A. As I recall fourteen or fifteen meters.

35. Q. What was the distance between yourself and Corporal Nakamura?

A. Approximately ten meters.

36. Q. When did you move from the position that you took up after arriving at the scene?

A. After the execution.

37. Q. You mentioned in your testimony Captain Sato. What duties did he have at the unit?

A. Captain Sato was attached to the 308th Battalion. He was an officer who had risen from the ranks and was well versed in matters concerning the battalion and he had naturally assumed certain of the duties of the adjutant and was assisting the battalion commander.

38. Q. You testified previously that when you arrived the prisoner of war was blindfolded and squatting. What happened after that?

A. When I arrived Corporal Nakamura was standing behind the prisoner with his sword already drawn. Four or five meters away from Corporal Nakamura on the other side of the prisoner was Captain Sato. Corporal Nakamura was taking up his stance behind the prisoner and swinging his sword in practice. Soon thereafter he took up his final position and brought the sword down on the prisoner. The prisoner fell forward after the blow landed.

39. Q. Approximately how many minutes after your arrival at the scene did this occur?

A. This took place one or two minutes after my arrival.

40. Q. Did you speak to Nakamura before he executed the prisoner?

A. I did not say anything to him.

41. Q. Did you speak to Captain Sato?
A. No, I also did not speak to Captain Sato.

42. Q. Was there any command relationship between yourself and this Corporal Nakamura?

A. Corporal Nakamura was a non-commissioned officer attached to the headquarters of the 308th Battalion. His duty was to go daily to the division headquarters to receive the daily orders consequently there was no command relationship between Corporal Nakamura and myself.

43. Q. Previous to the execution were you vested with authority by someone to interfere with Corporal Nakamura?

A. No such authority was vested in me.

44. Q. After Nakamura had performed his work what did you do?

A. I immediately approached Captain Sato and reported to him the order that I had received from Major Matoba which was namely the order to remove the liver and flesh from the prisoner and reported that I would execute the order.

45. Q. You did not at that time then report to Captain Sato that you would dissect the prisoner. Is that correct?

This question was objected to by the judge advocate on the ground that it was leading.

The accused withdrew the question.

46. Q. Did you report anything else to Captain Sato besides the report that you would remove the liver and flesh?

A. No, I reported nothing else.

47. Q. What did you do then?

A. Sato nodded when I reported so I immediately approached the prisoner of war and felt for his pulse, listened to his heartbeat and inspected his pupils to ascertain his death. It was because as the order was to remove the liver and flesh from the corpse and also as I did not desire to insert my scalpel into a body as long as there was any life or any sign of life in it.

48. Q. Please continue.

A. On examination I confirmed the death of the prisoner, however as unconsciousness may be brought about by fear and as that might have been the case here I decided to wait and see that this was not one of these instances. I waited for about fifteen or twenty minutes in the meantime checking his pulse and his pupils.

49. Q. You testified this morning that you received orders from Major Matoba to dissect the body. When you reported to Captain Sato did you tell him that you had orders from Major Matoba to dissect the body?

A. No, I did not at that time.

50. Q. Why didn't you?

A. It was because I did not want to perform the dissection if possible. I hoped that during the time I was removing the liver the captain might go away and that is why I did not report to him at that time.

51. Q. Did you or did you not perform a dissection?

A. I first removed the flesh and liver, however as Captain Sato showed no signs of leaving I reluctantly performed the dissection.

52. Q. How long did the dissection take to perform?

A. As I recall it took twenty or thirty minutes from the time I finished removing the liver until the completion of the dissection.

53. Q. Were there any circumstances at that time which necessiated the expedition of the dissection?

A. No, there were no special circumstances.

54. Q. Do you know when Captain Sato left the scene?

A. When I left the scene he was still there.

55. Q. Do you know when Corporal Nakamura left the scene?

A. I do not recall at all what happened to Corporal Nakamura after he executed the prisoner.

56. Q. Who ordered the burial of the prisoner?

A. I heard later that Captain Sato ordered the burial of the corpse.

57. Q. Did you know the name of the prisoner who was executed?

A. No, I did not.

58. Q. You testified that when you were ordered by Major Matoba to remove the liver and flesh from the prisoner two or three days prior to the execution that you did not feel well. Why did you not refuse this order?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused withdrew the question.

59. Q. Was Major Matoba a strict person in regard to execution of his orders?

A. Major Matoba was a strict person. He would not suffer even the smallest infringement of his authority or slightest disobedience to his orders. If any such did occur he would, without compunction, visit physical punishment on the offender. To cite a few concrete examples -

The judge advocate objected to the use by the witness of specific examples on the ground that they would be irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

(The witness continued.)

To cite a few concrete examples, I saw him strike many officers and on one occasion as I understood from Surgeon Sakabe he had struck even Lieutenant General Tachibana. I myself was struck by Major Matoba and I know of these circumstances and was in great fear of this Major Matoba.

Cross-examined by the judge advocate:

60. Q. When you came upon the scene and saw the prisoner of war in what position was he?

A. He was sitting on the ground with his legs crossed with his head slightly drooped forward.

61. Q. When Nakamura struck him on the neck with his sword how much of the head was severed by the blow?

A. About four-fifths of the head was cut.

62. Q. Did you see how much of the head had been severed when Nakamura completed his stroke with the sword?

A. I could not tell definitely how much of the neck was cut but I could see that the sword had cut deeper than half-way through the neck.

63. Q. Was there a great deal of blood after the sword had cut through the prisoner's neck?

A. Yes, a great deal.

64. Q. And yet you went to this prisoner and you took his pulse and listened to his heart and looked into his pupils to see if he was dead even though you could see that four-fifths of his head had been cut off through his neck. Is that correct?

A. That was the first time that I witnessed an execution and although I thought that the prisoner was dead I took the added precaution and as the body was still warm I did not desire to commence dissection and bided for time.

65. Q. As a medical man did you not know that the blow coming over the back of the neck would sever the spinal column and therefore sever the nervous system and prevent any feeling from being felt by what was left of the body?

A. That I knew, however my specialty in medicine was internal medicine and it was my first occasion to see a body in that condition and I did not feel inclined to insert the scalpel into a body in that condition.

66. Q. You testified before on direct examination that you did not desire to insert your scalpel into this body as long as there was any life left in it. Didn't you ever perform an operation on any live patients?

A. Not on a living human being.

67. Q. In all your previous medical practice you had never performed any operation and had never inserted your scalpel into a living human being?

A. No, I had absolutely no such experience.

68. Q. When you completed your medical training did you perform any internship?

A. About the time that I graduated from the university there was no internship system at the university.

69. Q. Did you ever assist in any operations or were you ever present at any operations on living patients during your medical studies or your medical career?

A. In my student days I did operate on live things but they were dogs and rabbits and such and I did conduct dissections but they were on corpses. After graduating from the university my specialty being internal medicine, I did not perform any operations.

70. Q. Did you ever observe an operation on a living patient?

A. I have seen minor operations performed on living patients but never any major operation such as dissection of the abdomen.

71. Q. And yet you are a specialist in internal medicine. Is that correct?

A.. Yes, internal medicine is my special field.

72. Q. And you have never used your scalpel in any way on a living patient. Is that correct?

A. After entering the army I may have used scalpels on patients for minor injuries but never on major cases as they were immediately sent to the hospital. Furthermore Surgeon Sakabe's professional field was pediatrics and he was not versed in surgery either, therefore whenever a major case requiring surgery occurred in the unit they were always sent to the hospital.

73. Q. Why did you wait fifteen or twenty minutes to perform your dissection?

A. As I stated before, although I was almost certain that the prisoner was dead I did not desire to start the dissection on a body that was still warm and that is why I waited.

74. Q. How long does it take for a body to get cold?

A. I have forgotten exactly how long it takes a body to become cold, but it takes approximately one hour and by that I mean for it to become stone cold. The temperature of the body is dropping all the time.

75. Q. The body was still quite warm when you performed your dissection, wasn't it doctor?

A. It was still warm, but it did not have the temperature of a living human being.

76. Q. And you waited this twenty minutes because you wanted to let this body get a little cooler before you dissected it. Is that correct, doctor?

A. I desired to wait until the body was cold but Captain Sato was standing by me and that was all the time that I could prolong the dissection and the time that I managed to prolong was between fifteen and twenty minutes.

77. Q. Did Captain Sato tell you to begin the dissection?

A. He did not mention about the dissection but he did say to hurry the removal of the liver.

78. Q. What did you do in this fifteen or twenty minutes that you were waiting at the scene?

A. I went from time to time over to where the prisoner was and felt his pulse, etc., and returned to talk to Captain Sato or sometime turned to the auxiliary corpsmen and spoke to them.

79. Q. Do you remember how many times you spoke to Captain Sato during that period?

A. I do not.

80. Q. Do you remember whether you spoke to Nakamura during that period?

A. I have no recollection of having spoken directly to Nakamura.

81. Q. You mean that you have no recollection of having spoken to him during that entire period at the scene of the execution?

A. I did not speak to Nakamura at all.

82. Q. You are certain you did not speak to Nakamura during that ^{entire} period of time at the scene of the execution?

A. I did not speak to Nakamura at the scene insofar as I recollect.

83. Q. Are you sure you didn't speak to him or do you have some doubt as to whether you spoke to him?

A. I have absolutely no recollection of having spoken to him.

84. Q. When you arrived at the scene of the execution and joined the bystanders, where did you stand?

A. They were standing in a semi-circle and I walked to the end and was observing it from there.

85. Q. Where were the corpsmen standing?

A. They were mostly close to me.

86. Q. During the period of time prior to the execution what did you do?
A. As it appeared when I arrived at the scene that the execution was about to take place almost soon thereafter and I stood in my place and watched.

87. Q. Did you speak to anyone while you stood there?
A. I may have spoken but I do not recall that I did speak.

88. Q. Do you recall who you spoke to?
A. If I did speak to anybody it would have been to the auxiliary corpsmen who were there.

89. Q. Were you second in rank at the scene of the execution?
A. Yes.

90. Q. Are you sure you didn't speak to Sato?
A. I did not speak to him prior to the execution. I recall that the reason is that was because the execution appeared to take place immediately I delayed reporting to the captain at that time.

91. Q. Had you spoken to Captain Sato on that day before the execution?
A. No, I did not.

92. Q. During the two minutes that you stood there after your arrival and watched Nakamura, was any change made in the position in which the prisoner was sitting?
A. No, he did not.

93. Q. The corpsmen who came with you to the scene of the execution knew that immediately after that execution the prisoner would be dissected. Is that correct?
A. I did not tell them directly, however when I received the order from Major Matoba I made a report to Surgeon Sakabe. At that time there were present when I was making the report Sergeant Kanemori, Corporal Iso, and two or three auxiliary ~~corpsmen~~ in the room and it may be that some of the other auxiliary corpsmen knew of the dissection that would take place immediately after the execution indirectly through rumors.

94. Q. On the morning of the execution when you were told by the adjutant, did you not inform your training group that there would be a dissection and that they should follow you to the scene?
A. As on receiving the order from the adjutant I returned immediately to the dispensary and went to the scene of the execution it was not in the morning of the day of the execution but in the afternoon of that day and further I did inform the auxiliary corpsmen that I was about to remove the liver and flesh but I did not mention the dissection of the prisoner to these men.

95. Q. Several days prior to this execution had you not discussed with Matoba the dissection of the next prisoner of war to be executed?
A. No, I did not discuss this matter. I received this order when I went to make my report to Major Matoba.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Teraki, Tadashi, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

(Cross-examination continued.)

96. Q. You testified that you received this order to dissect the prisoner after the next execution from Matoba, is that correct?

A. Yes.

97. Q. How many days prior to the execution was this?

A. I am not definite concerning this, however, the execution took place in the middle of the training course that I was conducting for the auxiliary corpsmen and the day on which I received this order was the first day of the training course. I believe it was two or three days prior to the execution.

98. Q. Did you say anything to Major Matoba before he gave you this order?

A. I reported to him that the training of the auxiliary corpsmen would commence that day and I also submitted a training schedule for these auxiliary corpsmen. This schedule was a timetable affair.

99. Q. What did Matoba say when he looked at this timetable schedule?

A. While glancing through the schedule that I submitted to him Major Matoba^{AB} stated that in the near future a prisoner of war will be executed and that he desired the liver and flesh removed from this prisoner, that as it was an opportune time to conduct a dissection for the training of the auxiliary corpsmen, he ordered that that opportunity should be taken.

100. Q. Prior to the time that Matoba^{AB} ordered that this opportunity be availed of, had you not complained to him that your corpsmen were very deficient in their knowledge of human anatomy?

A. I did not.

101. Q. Isn't it true that in fact you are the person that suggested to Matoba that the prisoner be dissected so that you could teach your men properly?

A. That was absolutely not so. As I stated previously I was in fear of this Major Matoba and it was not for me to make suggestions to the unit commander and further I could not do this setting aside Surgeon Sakabe who was my senior in my department.

102. Q. Yet you are the one that gave Major Matoba the schedule of what your training instruction would be, isn't that true?

A. This training course of the auxiliary corpsmen was the third that was being conducted at the unit. The first and second had been conducted under the charge of Surgeon Sakabe and Sakabe had suggested that I, Teraki, be in charge of the third training course and most of the hours of the schedule for this course was consequently assigned to me, and it was under these circumstances that Surgeon Sakabe told me on that morning to report to Major Matoba^{AB} concerning this training course. I refused this two or three times but Surgeon Sakabe insisted and that was what brought me to the unit commander with the schedule.

103. Q. Now, after this meeting with Matoba you knew that the personnel at Matoba's headquarters knew that a dissection would occur after the next execution, isn't that true?

A. As when on returning to the dispensary I reported to Surgeon Sakabe there were two or three auxiliary corpsmen in the room I felt that this information may have been disseminated.

104. Q. And on the day you went to the scene of the execution there were a number of corpsmen who knew that the purpose of your presence was to conduct a dissection as soon as the prisoner was killed, isn't that true?

A. I told the auxiliary corpsmen that I was about to remove the liver and flesh from the prisoner and those auxiliary corpsmen who had heard rumors of the dissection I think must have felt that what they had heard concerning a dissection had been just a rumor.

105. Q. Wasn't it prior to the time you came to the scene that you told these corpsmen that you were going to remove the liver and flesh?

A. Yes, prior to going to the scene of the execution.

106. Q. And prior to going to the scene of the execution you were also speaking with the adjutant, weren't you?

A. Yes.

107. Q. And the adjutant told you there would be a dissection after this execution, didn't he?

A. Yes.

108. Q. And he told you that you were to perform this dissection, didn't he?

A. Yes.

109. Q. And he told you this dissection was under Major Matoba's orders, didn't he?

A. Yes.

110. Q. And you knew that this dissection was to be performed for the benefit of your class of corpsmen, didn't you?

A. Yes.

111. Q. Did you order your corpsmen to be present at the execution?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I desired to remove the liver and flesh from the prisoner and to call that the dissection, and I did order the auxiliary corpsmen to witness the removal of the liver and flesh.

112. Q. And you did inform them that there would be a dissection, did you not, prior to the time you went to the scene?

A. No, I did not tell them that a dissection would be performed. I did tell them, however, that the liver and flesh would be removed.

113. Q. Did you order them to be present at the scene of the execution?

A. I did not order them to go to the scene of the execution. I told them that if any desired to witness this removal of the liver and flesh that they accompany me to the scene of the execution.

114. Q. And this is the way in which you were going to carry out the orders of Major Matoba of whom you were in such mortal dread, is that true?

A. I was hoping that Captain Sato would leave the scene by the time I had removed the liver and flesh, in which event I had intended to report to Major Matoba that I had conducted a dissection and that the auxiliary corpsmen had observed it. Now, it wasn't I alone who was in fear of Major Matoba. In this unit all the men especially those below the rank of non-commissioned officers feared and hated the unit commander. There was no danger of these men informing Major Matoba on me. However, as Captain Sato was standing by and Captain Sato was standing in close relationship with the major it was highly probable that he would report the failure to conduct a dissection on my part to the major, and as long as Captain Sato was looking on, I thought that I could not dispense with the dissection and therefore I resolved to carry out the dissection.

115. Q. Although you feared Major Matoba and although Major Matoba ordered you to perform a dissection for the training of your corpsmen you did not order them to be present at the scene of the execution, is that correct?

A. I did not order them to go to the scene of the execution because I knew that it did not require such an urging on my part as their curiosity had been aroused and they would follow me if I told them to come if they desired.

116. Q. Did you tell all of them to come who were under training?

A. It was in the middle of the lecture and all the corpsmen under training were assembled and therefore I addressed all of them.

117. Q. Approximately how many corpsmen went with you to the scene?

A. There were two auxiliary corpsmen from each company, therefore a total of ten auxiliary corpsmen were with me.

118. Q. And approximately how many other persons were present at the scene when you arrived?

A. Approximately twenty persons.

119. Q. Now, Sato knew that you were to perform this dissection immediately after the execution, didn't he?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I do not think he did.

120. Q. On what basis do you make that answer?

A. At that time I surmised that Sato knew about the removal of the flesh and liver that was to take place after the execution, but that he did not know about the dissection. The grounds for this surmise is that as Major Matoba was in my estimation not a man who would discuss the reasons for his actions with other persons, that Major Matoba had not told Captain Sato concerning this.

121. Q. You surmised that Sato knew that you were to remove the liver and flesh. Did you also surmise that Nakamura knew you were to remove the liver and the flesh?

A. I believe that Nakamura must also have sensed that I was to remove the flesh and liver as they had been removed on two previous occasions and as I had taken the auxiliary corpsmen to the scene with me.

122. Q. And is it true that to the best of your knowledge Nakamura, Sato and a number of the corpsmen present knew that you were there for the purpose of removing the liver and flesh of the prisoner who was to be executed?

This question was objected to by the accused on the ground that it called for an opinion of the witness and was irrelevant and immaterial.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. As for the auxiliary corpsmen they knew that I was there to remove the flesh and liver because I had told them so. As for Nakamura and Sato I do not think that they thought my presence there at the scene meant that I was there to remove the liver and flesh.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Friday, March 11, 1949.

SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, March 11, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Teraki, Tadashi, the accused, the witness under examination when the adjournment was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

Reexamined by the accused:

124. Q. In answer to a question put to you by the judge advocate yesterday, you replied that after Nakamura had executed the prisoner you took the pulse of the prisoner and looked into his pupils, et cetera. Now is it necessary for a doctor to take such steps?

This question was objected to by the judge advocate on the ground that it called for an opinion of the witness, was irrelevant and immaterial, and was vague and general in form.

The accused reframed the question.

125. Q. Is it customary for a doctor to take the pulse of a person or look into his pupils, a person who to a non-professional man would seem to be dead?

The judge advocate objected to the words "who to a non-professional man would seem to be dead" on the ground that they implied a hypothetical situation which was not present in the instant case, namely that a professional man would not also have concluded that this prisoner was dead, without checking pulse, et cetera.

The accused made no reply.

The commission announced that the objection was not sustained.

A. Even after the person does seem to be dead to make certain that he is dead, a doctor customarily goes through the steps of taking his pulse, feeling for a heartbeat, and looking into his pupils. To a conscientious doctor, it is a procedure that is always taken.

126. Q. Did you on that day tell the auxiliary corpsmen to go to watch the execution?

A. I did not tell them to go and watch the execution.

127. Q. You testified in reply to a question put to you by the judge advocate yesterday that at the scene of the execution you were next in rank to Captain Sato. What was your basis for that answer?

A. Insofar as I remembered there were at the scene Captain Sato, Corporal Nakamura, and Sergeant Kanemori, and therefore as far as my recollection went, I was next in rank to Sato. If there actually were any persons superior to me in rank on that day at the scene, then my answer would not have been correct.

128. Q. Was there a Sergeant Major Yamashita at the 308th Battalion?

A. He was the sergeant major of the second company.

129. Q. Was there a Sergeant Major Wada?

A. Sergeant Major Wada was attached to the 308th Battalion Headquarters.

130. Q. Do you know whether Sergeant Majors Yamashita and Wada were at the scene of the execution on that day?

A. I do not recall their having been present.

131. Q. Was Sergeant Major Yamashita senior or junior to you?

A. Do you mean was he appointed sergeant major before me?

132. Q. How did you stand in relation to Sergeant Major Yamashita in order of precedence?

A. Sergeant Major Yamashita was appointed sergeant major a long time before I was and furthermore he was a line sergeant and I was a corpsman sergeant major and therefore he was senior in order of precedence.

133. Q. What of Sergeant Major Wada?

A. Sergeant Major Wada was also appointed sergeant major quite some time before me.

134. Q. What was the business which took you to the scene of the execution on that day?

A. It was for the purpose of executing the order giving ^{me} to me by Major Matoba that I went to the scene of the execution on that day.

135. Q. In other words?

A. In short the order to remove the liver and flesh from the prisoner.

136. Q. Was there not another order of Major Matoba's?

A. The other order was to perform a dissection and for the auxiliary corpsmen to observe it. However, I had the desire not to carry out the latter, if possible.

Recross-examined by the judge advocate:

137. Q. You have just testified that you went to the scene to carry out the orders of Matoba. Do you know whether the purpose of this execution of the prisoner of war was to provide Matoba with liver and flesh and to provide you with the opportunity to demonstrate a dissection before the corpsmen?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. No, I did not know the purpose. I merely went to carry out the order that was given; the purpose was not explained to me.

138. Q. Do you know of any reason for the execution of the prisoner of war other than the carrying out of the two orders that Matoba gave you in regard to the removal of the liver and flesh and in regard to the dissection?

This question was objected to by the accused on the ground that it called for a conclusion on the part of the witness.

The judge advocate replied.

The commission announced that the objection was sustained.

139. Q. Do you know of any reason for the execution of this prisoner of war?

A. No, I absolutely did not know the reason.

140. Q. At the time of this execution did you know that other prisoners of war had been executed under Matoba's orders?

A. Are you referring to the day of this third prisoner of war incident?

141. Q. Yes.

A. No.

142. Q. Prior to the date in March on which you removed the liver and flesh had you previously removed the liver and flesh from other prisoners of war?

A. Yes.

143. Q. On how many occasions?

A. On two previous occasions.

144. Q. Now, you have testified concerning your rank and that of certain sergeant majors. At the time of the incident were you a probationary officer or were you a sergeant major?

A. I was a probationary officer, however the rating of a probationary officer is that of a sergeant major.

145. Q. Isn't it true, however, that a probationary officer while he ranks with a sergeant major, ranks ahead of a sergeant major in seniority?

A. My service in the Japanese Army was not of very long standing and I do not know concerning the matter brought up by the judge advocate. However, I wore the insignia of a sergeant major and I understood my standing to be that of a sergeant major.

146. Q. How long had you been in the armed forces at that time?

A. From the first time I was inducted into the Army, about five months.

147. Q. Prior to this time had you served a year and a half as a doctor in a naval hospital?

A. Yes, I did serve in a naval hospital, but in the capacity of a civilian official.

148. Q. Now, you have testified that a conscientious doctor customarily checks the pulse and heartbeats in order to ascertain whether a person is dead. Isn't the purpose of that in order to help the injured person?

This question was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was sustained.

The accused did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused.

Sanagi, Sadamu, a counsel for the accused, was recalled as a witness for the defense and was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Do you have in your possession a document which you desire to offer into evidence?

A. I do. I have one document.

2. Q. What type of document is it?

A. It is a document composed of Teraki's register of personnel of overseas units and the covering letter to this register.

3. Q. Please explain how you came into possession of this document?

A. Defense counsel requested the First Demobilization Bureau to forward a record of the accused Teraki showing the dates when he was promoted to probationary officer and when he was promoted to surgeon second lieutenant. The First Demobilization Bureau did not have in its possession the military record of the accused Teraki. However, they did forward a document which would serve in its stead which is really the register of personnel of overseas units, which document I have in my possession.

4. Q. When did you receive this document?

A. Yesterday afternoon.

5. Q. Was it after the session for the day had been concluded?

A. After the day's session was over.

6. Q. Who executed this document?

A. The covering letter was written by the Chief of the Legal Investigation Department, Demobilization Bureau, Repatriation Relief Bureau and the register was executed by Nagata, Shigeichi, Chief of the Second Coordination Section, Liquidation Department, Demobilization Bureau.

7. Q. Is there a certificate stating that the register is a true and correct copy of the original?

A. It is certified by Nagata, Shigeichi, the Chief of the Second Coordination Section, Liquidation Department, Demobilization Bureau that the copy is a correct copy of the original.

8. Q. Is the document signed or sealed by the executor?

A. On the covering letter is the official seal of the Chief of the Legal Investigation Department, Demobilization Bureau, and on the register is the seal of Negata, Shigeichi, the Chief of the Second Coordination Section, Demobilization Bureau.

9. Q. In what language is the text of this document?

A. The original text is in Japanese and an English translation has been prepared.

10. Q. Who made the English translation?

A. An official interpreter of this court.

The document produced by the witness was submitted to the judge advocate and to the commission, and by the accused offered in evidence. There being no objection, it was so received and is appended, marked "Exhibit 7" (Japanese) and "Exhibit 7(a)" (English translation).

11. Q. Will the witness read the covering letter and from the heading of the register, the name of the subject of the matter, and the year in which he was commissioned?

(The witness read from Exhibit 7 as requested.)

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

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

The commission then, at 10:10 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Martin E. Carlson, a counsel for the accused, was called as a witness for the defense and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and rank?

A. Martin E. Carlson, commander, U. S. Naval Reserve.

2. Q. If you recognize the accused, state as whom?

A. I recognize him as Teraki, Tadashi.

3. Q. Are you a defense counsel for the accused, Teraki, Tadashi?

A. I am.

Examined by the accused:

4. Q. Have you in your possession certain documents relating to the character of the accused, Teraki, Tadashi, which you desire to introduce in evidence?

A. I do. I have two documents, one from Kanmuri, Yoshiharu and one from Hattori, Hikaru.

5. Q. Explain how you obtained these documents?

A. It was requested when I was in Tokyo that Lieutenant Tremayne bring these two men in for questioning. They came in and after a short questioning they were requested to write a statement concerning the character and general reputation of Teraki, Tadashi and they did. These two documents do cover the general reputation and character of Teraki.

6. Q. Did they take an oath?

A. They were sworn to tell the truth by an oath administered by Lieutenant Tremayne.

7. Q. Have you prepared an English translation for these documents?

A. An English translation has been prepared by the court interpreter, Lieutenant (jg) Clark.

8. Q. Do these documents relate to those traits of Teraki, Tadashi and his general reputation?

A. They do.

9. Q. Do these documents relate to those traits brought into question by the charge under which the accused, Teraki, Tadashi is being tried?

A. They do.

The documents produced by the witness were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection they were so received and are appended marked "Exhibit 8" (Japanese), "Exhibit 8(a)" (English translation), "Exhibit 9" (Japanese), and "Exhibit 9(a)" (English translation).

10. Q. Will the witness read the deposition of Kanmuri, Toshiharu which is Exhibit 8?

(The witness read Exhibit 8(a).)

The accused waived the reading of the Japanese original of Exhibit 8 in open court.

11. Q. Will the witness read Exhibit 9, the affidavit of Hattori?

(The witness read Exhibit 9(a).)

The accused waived the reading of the Japanese original of Exhibit 9 in open court.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The commission announced that it noted that Exhibits 8 and 9 consist largely of material in mitigation properly admissible after findings, but not properly introduced prior to the findings. However, since some minor portions of these Exhibits are properly admissible prior to findings, the entire Exhibits will be allowed to remain in the record and will be accorded due weight as appropriate.

The defense rested.

The accused requested an adjournment until Tuesday, March 15, in order to allow time for preparation of arguments.

The commission announced that the request was granted.

The commission then, at 10:55 a.m., adjourned until 9 a.m., Tuesday, March 15, 1949.

SEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, March 15, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurence B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

An interpreter read an English translation of the accused's statement, appended marked "AA".

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

The accused waived the reading of the judge advocate's opening argument in Japanese in open court.

The commission then, at 10:20 a.m., took a recess until 10:45 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, read a written argument for the defense, appended marked "CC".

The commission then, at 11:30 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

An interpreter read an English translation of Mr. Takano's argument, appended marked "DD".

Commander Martin E. Carlson, a counsel for the accused ~~read~~ his written argument, appended marked "EE".

The accused waived the reading of Commander Carlson's argument in Japanese in open court.

The commission then, at 3:05 p.m., took a recess until 3:20 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

The judge advocate made an oral closing argument, a brief of which is appended marked "FF".

The accused waived the translation of the judge advocate's oral closing argument into Japanese in open court.

The trial was finished.

The commission then, at 3:45 p.m., adjourned until 9 a.m., tomorrow, Wednesday, March 16, 1949.

EIGHTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, March 16, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance P. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

The judge advocate was recalled and directed to record the following findings:

The first specification of the charge proved in part, proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve", which words are proved.

The second specification of the charge proved in part, proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve," which words are proved.

The third specification of the charge proved in part, proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve", which words are proved.

The fourth specification of the charge proved in part, proved except the words "surgeon second lieutenant, IJA", which words are not proved, and for which the commission substitutes the words "probationary officer, Medical Department, Imperial Japanese Army Reserve", which words are proved.

The fifth specification of the charge not proved.

And that the accused, Teraki, Tadashi, is of the charge guilty.

The commission was opened and all parties to the trial entered.

The commission announced its findings in open court.

Sanagi, Sadamu, a counsel for the accused, a witness for the defense, was recalled as a witness for the defense as to matters in mitigation and was warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. Have you in your possession petitions in mitigation for the accused, Teraki, Tadashi?
A. I have 90 petitions.
2. Q. In what language are those petitions written?
A. They are written in Japanese but the English translations of them have been prepared.
3. Q. Who translated these documents?
A. Some of them were translated by the official interpreter of this court and some of the petitions had the English translations attached.
4. Q. Have you looked over all the petitions?
A. Yes, I read them.
5. Q. Do you desire to offer into evidence all these petitions?
A. I wish to introduce all these petitions in mitigation for the accused as evidence in mitigation but desire to read only part of them in open court.
6. Q. From what persons were these documents submitted?
A. Six petitions from his family and relatives, fourteen from those who served on Chichi Jima with Teraki and sixty-three from doctors and persons connected with hospitals and seven petitions from patients.
7. Q. How many petitions do you wish to read in open court?
A. Sixteen.

The documents produced by the witness were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection they were so received and are appended marked "Exhibit 10", through "Exhibit 99", (Japanese originals), and "Exhibit 10(a)", through "Exhibit 99(a)", (English translations).

8. Q. Will the witness read those which he desires?
A. The accused has already seen the Japanese originals so we would like to waive the reading of the Japanese in open court.

(The witness read Exhibits 10(a), 11(a), 12(a), 16(a), 17(a), 18(a), 19(a), 20(a), 21(a), 22(a), 30(a), 31(a), 32(a), 33(a), 93(a), and 94(a).)

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The accused requested that the commission adjourn until tomorrow morning in order to allow an opportunity to ascertain whether further evidence in mitigation expected from Japan would arrive and be desired for presentation by the accused in mitigation.

The commission announced that the request was granted.

The commission then, at 11:25 a.m., adjourned until 10 a.m., tomorrow, Thursday, March 17, 1949.

NINTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, March 17, 1949.

The commission met at 10:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Major Wilbur R. Helmer, U. S. Marine Corps,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Major Laurance B. Payne, Transportation Corps, United States Army,
members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The accused stated that the expected additional petitions did not arrive from Japan, and that if and when such additional petitions arrived they would be submitted to the convening authority for clemency consideration, as appropriate. The accused requested the commission to give due consideration to evidence relevant to mitigation presented prior to the findings.

The commission was cleared.

The judge advocate was recalled, and directed to record the sentence of the commission as follows:

The commission, therefore, sentences him, Teraki, Tadashi, to be confined for a period of four (4) years.

Arthur G. Robinson
Arthur G. Robinson,
Rear Admiral, U. S. Navy, President.

Wilbur R. Helmer
Wilbur R. Helmer,
Major, U. S. Marine Corps, Member.

John H. Lott
John H. Lott,
Major, Corps of Military Police, United States Army, Member.

Lloyd S. Bjork
Lloyd S. Bjork,
Lieutenant Commander, Supply Corps, U. S. Navy, Member.

Laurance B. Payne
Laurance B. Payne,
Major, Transportation Corps, United States Army, Member.

David Bolton
David Bolton,
Lieutenant, U. S. Navy, Judge Advocate.

The commission was opened and all parties to the trial entered.

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

The commission adjourned to await the action of the convening authority.

Arthur G. Robinson
Arthur G. Robinson,
Rear Admiral, U. S. Navy, President.

David Bolton
David Bolton,
Lieutenant, U. S. Navy, Judge Advocate.

E
Section One Charge &
Specifications -
TERAKI CASE,
TAIKANO.

起訴及罪状項目に対する異議の申立

元日本帝國陸軍軍医少尉(事件發生當時陸軍衛生部見習士官)青木忠の辯護人
高野 純一郎

被告人青木忠は下記の理由に因り本件起訴及罪状項目に対する異議を申立てる。

第一 罪状項目其の一は青木忠は小笠原群島大島に於て日本軍隊に勤務中1945年2月23日頃同島に於て當時日本軍隊に収容せられた者一同に死を促し埋葬せしめた者としてアメリカ人俘虜1名の屍体と不法に採取した肝臓と胆嚢と大腸部と肉を切り取り同俘虜の墓に對し非禮な行為を因りて戦争法規並に慣習法に違反したと謂ふのである。

罪状項目其の二は上記罪状項目其の一に記載せられた同一日時同一場所にて同一の俘虜に對し同一の行為を為すことに因り其の俘虜の鄭重たる埋葬を阻止し之に因りて戦争法規並に慣習法に違反したと謂ふのである。

上記罪状項目其の一の標榜官主張の事件と罪状項目其の二の標榜官主張の事件とは其の日時場所、被害者、行為が全く同一であるから此等の標榜官主張の両事件は唯一個の同一事件であることは疑いがない。 並に標榜官は此の唯一個の事件を

(1.)

E (1)

0453

一、親兵より見て被害者の意に對し即禮を所せしに因
り戦死罪を犯したと認め、之を他の親兵より見て
鄭重なる理察を阻止し因りて戦死法規並に慣
習法に違反したと主張するの事。 罪状項目其の
一の根拠官主張の行状は罪状項目其の二の根拠
官主張の行状の先行的手段と認めらる。 本
件の根拠官主張の犯罪の本体は罪状項目其の二
の行状である。 之は恆し或る人か他人、住居外に
侵入して強盜罪を犯した^{事例}と同様である。 即ち此の
場合とは其の犯人は三個の犯行を犯したのである。 一は
家宅侵入、二は assault、三は強盜である。 併し
前二個の行状は最後の犯行の先行的手段及附隨
的行状である。 此等三個の行状は合せて一個の
強盜罪を以て論ずべきであつて二個若は三個の
罪名を以て論ずべきことは不當である。 之と
同様には本件の於ても罪状項目其の一の根拠官主張の行
状は罪状項目其の二の犯行中に吸収せられねばならぬ
而して此等四罪状項目を以て一の罪状項目とすべき
である。 斯かる起訴の重複は被告人の身体的權利
を侵害するものである。

第貳. 假に以上の被告人の主張の理由が正しいと
すべしは罪状項目其の一の記載中の「工
部修原の肝臓と大腸部の内を截り取り」なる字
句は當然削除すべきである。 蓋し斯かる字句は
此の罪状項目に於ては全く不必要の記述計な
ものである。~~の行状は~~ Naval Courts and
Boards 338 に違反するのみならず而も亦被告人
の身体的權利を侵害するものである。

(2.)

E (2)

0454

第 参. 罪状項目其の四は寺木忠は 1945年3月
26日頃父島に於て日本軍隊に収容せ
らるゝ所と同に死した Floyd Ewing HALL なる1名
のアメリカ人俘虜の屍体と解剖し切截し且肝臓等
及大腿部の肉を切り取ることに因り鄭重なる埋葬を
阻止し因つて戦時法規並に慣習法に違反した
と謂ふのである。罪状項目其の五は寺木忠は 19
45年3月26日頃父島に於て佐藤今朝吉及中
村重信と共働して1名を日本軍隊に抑留せら
るゝ所を Floyd Ewing HALL なる1名のアメリカ人俘虜
を故意に何等正當の理由なく殺害殴打殺害し因つ
て戦時法規並に慣習法に違反したと謂ふのである。
即ち横警官は前者の罪状項目に於て寺木の HALL
なる俘虜の鄭重なる埋葬を阻止したと主張し後
者の罪状項目に於ては HALL なる俘虜を殺害
したと主張するものである。上記両罪状項目記
載の横警官主張の犯行の日時、場所、被害者の氏名
の同一なることと観し罪状項目其の四の被害者と
罪状項目其の五の被害者は同一の人であることは
疑がたない。 Naval Courts and Boards の
第24は Charges and Specifications は時間
的順序に之を記載すことを要求する。此の時間的順序とは年月日に付し謂ふことは
勿論であるが一日の時刻に付し謂ふことも
あると解釋すべきである。本件の起訴及罪状
項目は上記 Naval Courts and Boards 第24
の要求に従つて時間的順序に記載せられて
あると考へらるゝのである。並に罪状項目其の
四の俘虜の屍体と罪状項目其の五に於て主張
(3)

とす。"被告は"と云ふことは非論理的である。
斯の如き起訴及罪状項目は Naval Counts
and Boards 第24の違反であるのやうす亦
被告人の身体的権利を侵害するものである。

第四 罪状項目其の五は青木忠は父島に在
りて日本軍隊に勤務中1945年3月26
日頃作藤今朝吉及中村重信と行動を共にし
露路日本軍隊に抑留せられた Floyd Ewing
HALL 等の1名のアメリカ人俘虜を故意に悪意
を以て襲撃殺害し被害者戦軍紀罪に犯したと
謂ふのである。此の作藤今朝吉及中村重信と
"行動を共にし"の字句のの意味が極めて不
明確である。之は果して青木忠、作藤今朝吉、
中村重信の三人が通謀して此の操縦官主張の
犯行を犯したのか或は各自が同種の各別の犯
行を犯したのか此の点については明確では
ない。此の點には依つて本件の辯護の方法も
違つて来るのである。是故斯の如き明確を缺く
起訴及罪状項目は明かに被告人の身体的権
利を侵害するものである。

以上の理由より青木忠に対する本件起訴
及罪状項目を却下するの御刺決を以てことと要
請する。

謹言

高橋純一

OBJECTION TO THE CHARGE AND SPECIFICATIONS

Delivered by TAKANO, Junjiro,

Counsel for the accused, TERAKI, Tadashi,
Former Surgeon Second Lieutenant, IJA,
(at the time of the incidents, Probationary Officer of the Medical Dept.)

The accused, TERAKI, Tadashi objects to the charge and specifications in this case on the following grounds:

1. In Specification 1 it is charged that TERAKI, Tadashi violated the law and customs of war in that while serving at the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, on or about February 23, 1945, wilfully disrespected the grave of an American prisoner of war who died in captivity of and was buried by the Japanese Armed Forces, by unlawfully disinterring the body of said prisoner of war and removing the liver and flesh from the thigh of said prisoner of war.

In Specification 2 it is charged that TERAKI violated the law and custom of war in that he prevented the honorable burial of the same prisoner of war mentioned in Specification 1 by committing the identical acts on the identical day at the identical place on the identical prisoner mentioned in Specification 1.

As the alleged incident of the above mentioned Specification 1 and the alleged incident of Specification 2 occurred on the same day at the same place to the same victim with the alleged offense being identical, there is no doubt that the two incidents alleged by the judge advocate are one and the same incident. Now the judge advocate viewing this one incident from one aspect identifies it as a war crime because it is disrespecting a grave, and viewing it from another angle alleges it to be a violation of the law and customs of war as prevention of an honorable burial. The alleged action of Specification 1 is merely a preliminary means to the alleged action of Specification 2. The substance of the alleged offense in this case is the action of Specification 2. This is similar to the instance where a man breaks into the house of another to commit a burglary. In short, this man in this example has committed three offenses. 1 - breaking into a house, 2 - assault, and 3 - burglary. However, his first two offenses are preliminary means or incidental actions to his final offense. These three separate actions should be merged to form one burglary, and it is not appropriate to consider them as two or three separate offenses. In the same manner, the alleged action of Specification 1 of this charge should be merged into the alleged offense of Specification 2. Hence these two Specifications should be merged into one Specification. Such duplication of the charge is prejudicial to the substantive rights of the accused.

2. Even if the contention of the accused is considered groundless, the words "removing the liver and flesh from the thigh of said prisoner of war" contained in Specification 1 should obviously be deleted. Because such phrase is not only completely extraneous, and a surplusage, in violation of Article 38 of Naval Courts and Boards, but also because it is prejudicial to the substantive rights of the accused.

3. Specification 4 charges that TERAKI, Tadashi on or about 26 March 1945 violated the law and customs of war in that he prevented the honorable burial of Floyd Ewing Hall, an American prisoner of war who died in the

captivity of the Japanese Armed Forces, by dissecting and mutilating the body and removing the liver and flesh from the thigh of said prisoner. Specification 5 charges that TERAOKI, Tadashi on or about 26 March 1945 on Chichi Jima, acting with SATO, Kesakichi and NAKAMURA, Shigenobu, wilfully, without justifiable cause assaulted, struck and killed Floyd Ewing HALL, an American prisoner of war, then and there held captive by the Armed Forces of Japan and thereby violated the law and customs of war. In short the judge advocate is contending that in the former Specification TERAOKI prevented the honorable burial of the prisoner of war, HALL, and in the latter that he killed this prisoner of war, HALL. There is not a doubt from the fact of the day, time, place and name of the victim of the alleged offenses enumerated in the two Specifications being identical, that the victim of the two offenses is one and the same. Naval Courts and Boards, Section 24 stipulates that charges and specifications be placed in chronological order. It is of course meant by chronological order, the order according to days and months and years, but it should also be interpreted to mean order according to the hours of the day. The charge and specifications in this case presumably were drawn up in accordance with the stipulation of Article 24 of the above mentioned Naval Courts and Boards and in chronological order. Then it is illogical to state that the corpse of the prisoner of war of Specification 4 was allegedly "killed" in Specification 5. Such Charge and Specifications are not only in violation of Article 24 of Naval Courts and Boards, but prejudicial to the substantive rights of the accused.

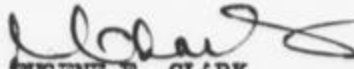
4. Specification 5 charges that TERAOKI, Tadashi while serving at the military installations of the Imperial Japanese Army on Chichi Jima on or about 26 March 1945, acting with SATO, Kesakichi and NAKAMURA, Shigenobu, wilfully and feloniously assaulted, struck, and killed Floyd Ewing HALL, an American prisoner of war then held captive by the armed forces of Japan, and thereby committed a war crime. The phrase "acting with" SATO, Kesakichi and NAKAMURA, Shigenobu is highly ambiguous. It is not clear from this context whether TERAOKI, Tadashi, SATO, Kesakichi and NAKAMURA, Shigenobu committed these alleged offenses in pursuance of a common unlawful design and concert or whether each individual committed several separate offenses of the same character. As the defense procedure depends upon which of the two meanings is implied, a charge and specifications which lacks clarity in this manner is definitely prejudicial to the substantive rights of the accused.

On the above grounds the accused respectfully requests that the charge and specifications of this case against the accused, TERAOKI, Tadashi be quashed.

Respectfully,

/s/ TAKANO, Junjiro.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

OBJECTION TO THE CHARGE AND SPECIFICATIONS
IN THE CASE OF TERAKI, TADASHI
Delivered by
Commander Martin E. Carlson, USNR,
Defense Counsel

In behalf of the accused, Teraki, Tadashi, we object to the charge and the specifications on the following grounds and to the enumerated specifications as follows:

Specification 1 alleges a wilful disrespect of the grave of an American prisoner of war because of unlawfully disinterring the body and removing the liver and flesh, this in violation of the law and customs of war. The laws and customs of war do not specifically set forth that the allegations of this specification constitute disrespect of the grave. The allegations do not constitute a crime under the law and customs of war.

This specification furthermore does not allege a crime because it does not allege criminal intent. To constitute a crime there must always be a criminal intent on the part of the doer and this criminal intent must be alleged in the specifications. In 22 Corpus Juris 29 the necessity of criminal intent is clearly set forth in order to constitute a crime and I quote: "A crime is not committed if the mind of the persons doing the act is innocent. To constitute a crime the accused must be accompanied by a criminal intent on the part of the accused." Since no criminal intent is alleged no crime is set forth.

The prosecution must lay its fingers on the law and customs of war which has been violated. If the prosecution cannot do so in this specification one we ask that our objection to the specification be sustained and our motion to strike the specification be sustained.

Specification 2 alleges a wilful and unlawful prevention of the honorable burial of an American prisoner of war because of the mutilation of the body and the removal of the liver and flesh of the said prisoner, this in violation of the law and customs of war. As co-counsel have set forth ^{AB} this is but a duplication of specification 1 and on that ground is objectionable. For the reasons set forth in our objection to specification 1 we object to Specification 2.

We make a motion to strike this specification 2 on the ground that the specification does not state a crime or an offense at law or by the customs of war.

A crime is a violation of something that is a rule and is punished ^{able} before ^{AB} hand by some sovereign power. The rule is published so that everybody may understand and guide his conduct accordingly.

If there isn't a recognized law we should not prosecute because of our whim or caprice or our own belief. We should stand on the law as recognized. If another commission found similar specifications in other trials in the ^{AB} ^{AB} form and technically correct such a finding is no precedent because that commission may have made a mistake.

Again we say the prosecution must specifically lay its fingers on the law and customs which has been violated. This commission has no power to create offenses and I am sure that they have no desire to do so. It is axiomatic that in law there shall be no punishment without a law and there must be a law before there is a punishment. And in the courts of the United States of America - and this military commission is a United States court -- an ex post facto law is not a valid law to try an accused under (Sec 9(3) Article I of the Constitution of the United States of America).

Dead bodies are not the subjects of property and in time of war the rights of kindred in the dead body must of necessity be curtailed. What is a suitable or honorable burial is not set forth in the Hague Convention or at International Law. The members of the commission all stationed here on Guam know there are no graves of the many thousands of Japanese soldiers who died at the time of the American invasion in July 1944. The circumstances at the time made it impossible to bury all these many thousands of Japanese dead in a separate grave with a marker. Yet, who will say that these Japanese dead here on Guam did not have an honorable burial. The customs of war in regard to the burial of dead is in our opinion largely regulated by the circumstances of the case.

This is a criminal charge and for the most part the source of criminal law in respect of the bodies of deceased persons is in the statutes exclusively. These statutes have for their object the protection of the rights of the public and do not increase the rights of kindred in the dead bodies of their relatives.

Unless the prosecution can lay its fingers on the law and customs of war which has been violated and set it forth in the amended specifications we ask that our motion to strike this specification be sustained and our objection to this specification be sustained.

Specification 3 and 4 is like specification 2 and for the reasons set forth above we object to these specifications and make a motion to strike these specifications 3 and 4.

As to specification 5 our objection is to the allegation "then a surgeon second lieutenant, I.J.A." because this does not correctly describe the status of the accused at that time and it is a material allegation and should be correctly alleged.

For the reasons set forth above we object to the charge and to the specifications and make a motion to strike specifications 1, 2, 3, and 4.

Respectfully,

Martin E. Carlson
Martin E. Carlson.

REPLY TO OBJECTIONS TO THE CHARGE
AND SPECIFICATIONS

Delivered by

DAVID BOLTON,
Lieutenant, U. S. Navy,
Judge Advocate.

The objections to the charge and specifications made by the accused, TERAKI, Tadashi, are without merit and should be overruled by the Commission.

Prior to discussion of the grounds of these objections it should be noted with regard to the objections delivered by Commander Carlson; that they purport to include therein "motions to strike" specifications 1, 2, 3, and 4. In addition to pointing out the impropriety of including such motions in an objection, it should be noted that such motions are improper, ineffectual, and time-wasting. The remedial procedure for charges and specifications which are defective, is provided for in the procedure of naval courts and military commissions, by the objection to charges and specifications. This remedy is complete and effective and no authority is conferred upon the court to sustain a motion to strike a specification or to enter a nolle prosequi. The entering of a nolle prosequi or "striking" of a specification, requires the authority of the convening officer, and the proper procedure in naval courts and military commissions, for invoking such remedial action is through the prescribed media of objection to the charge and specifications. (N.C. & B., Secs. 14, 15, and 18)

The objections to the charge and specifications delivered by defense counsel Mr. Takaro and Cdr. Carlson are short but replete with misstatement and misinterpretation of the relevant law.

OBJECTIONS TO SPECIFICATION 1.

As to Specification 1, Cdr. Carlson has argued that it does not allege an offense against the law and customs of war. The reasoning is rather curious. Counsel apparently admits that disrespect of the grave constitutes a violation of the law and customs of war, but argues that "the law and customs of war do not specifically set forth" that the allegations "unlawfully disinterring the body and removing the liver and flesh" constitutes disrespect of the grave. The defect in counsel's argument is that he has assumed that the law must set forth the "facts" that constitute the offense. Counsel is in error - the law merely sets down the rules of conduct, or misconduct, and it is not essential that the law should state what precise facts constitute such misconduct. The law of murder does not set forth all the fact circumstances which constitute murder, and similarly the law and customs of war with regard to disrespect of the grave does not set forth all the fact circumstances which constitute such disrespect. It is the specification which has the function of setting forth facts sufficient to constitute the particular offense charged. And the commission must determine whether the facts alleged are sufficient to constitute the offense charged.

The offense charged is disrespect of the grave of an American prisoner of war. The judge advocate believes that the answer to Cdr. Carlson's objection is apparent when we ask ourselves - did the unlawful disinterring of the body of the prisoner and removal of liver and flesh therefrom, constitute proper respect for the grave of a prisoner of war?

Counsel Mr. Takano, in his objection to Specification 1, that "removing the liver and flesh" constitutes surplusage, has adopted distorted and rigid interpretation of the nature of the offense of disrespect to the grave. It is obvious that the offense of disrespect to the grave is not limited to acts of disrespect done against the cavity or the place of earth within which the body is placed. The essence of the disrespect - or at least the clearest type of such disrespect to the grave is the disrespect shown the body which has been contained therein. The specification alleges such facts of disrespect, namely the unlawful disinterring of the body, and the removal of liver and flesh. The latter is not surplusage. The disinterring of the body, and the removal of the liver and flesh, are allegations of fact which constitute the offense of disrespect to the grave, charged: both are properly pleaded since both constitute ~~allegation of the facts~~ which constitute the offense charged.

Counsel for the accused argues that to properly charge an offense, the specification must contain an allegation of criminal intent. Counsel is in error, criminal intent must only be alleged where the offense specified is one which requires a specific intent: in such case, no offense is charged unless the specific intent so required is alleged (N.C. & B., Sec. 27, p. 10). The offense of disrespect to the grave, does not specify any particular intent, and therefore the specification need not allege any specific intent. All the specification must do is to allege the facts constituting the offense. The specification in the instant case does properly allege the requisite facts and the objection of the accused is not well-taken.

So much for the question of the allegation in the specification. When we examine the question of proof, we have somewhat different considerations. In the proof of the specification the judge advocate must by the introduction of evidence prove the facts alleged, and the commission must then determine whether the evidence establishes the offense charge.

It is generally, and somewhat misleadingly stated, that to constitute a crime both criminal intent and a prohibited act must concur. (N.C. & B., Sec. 27) In the absence of a requirement of specific intent, because of the peculiar nature of a specific crime, and in the absence of certain particular adopted technical words in particular offenses, (N.C. & B., Sec. 28) the concept of criminal intent becomes rather nebulous and perhaps in certain respects meaningless. The law gathers the intent from the facts connected with the transaction, and in the absence of evidence to the contrary, the law presumes that an unlawful act was done with unlawful intent (N.C. & B., Sec. 311 (1)). The law distinguishes motive from intent, and in this connection I wish to point out the following quotation from Wharton's Criminal Law, Vol. I, 12th Edition, Sec. 155 "The law is, that no matter what may be the motives leading to a particular act, if the act be illegal, it is indictable, notwithstanding that some one or more of the motives may be meritorious. Thus....scientific enthusiasm is no defense to an indictment for disinterring a corpse" (p. 209).

Counsel for the accused, Commander Carlson, has dramatically asked the prosecution to "lay its finger on the law and customs of war which has been violated". The pertinent substantive law in this regard will be discussed at length during the course of the instant trial. However, in view of counsel's request with regard to Specification 1, we cite some of

the pertinent law in this regard as embodied in treaty form: The Geneva (Red Cross) Convention of 27 July 1929, provides that the belligerents shall see "that the graves are treated with respect" (Article 4). Similarly, the Geneva (Prisoner of War) Convention provides that belligerents shall see "that the graves....are respected". Specification 1 charges violation of this law and custom of war in that it alleges that the accused disrespected the grave of an American prisoner of war, by unlawfully disinterring the body of said prisoner of war and removing the liver and flesh from the thigh of said prisoner of war.

OBJECTIONS TO SPECIFICATION 2.

Specification 2 alleges that the accused wilfully and unlawfully prevented and caused to be prevented the honorable burial of an American prisoner of war, by mutilation of the body and removal of the liver and flesh from the thigh. Defense counsel contends that this specification does not allege a violation of the law and customs of war. Counsel is in error. The law and customs of war in this respect has been set forth in numerous treaties and convention provisions and is well settled in international law. I need merely cite briefly the following provisions: Hague Convention No. X, Article 16 provides that belligerents shall protect the dead against pillage and ill treatment; and Article 3 of the Geneva (Red Cross) Convention contains a similar provision. Article 4 of the Geneva (Red Cross) Convention provides that belligerents "shall further see that they are honorably buried...". Similarly Article 76 of the Geneva (Prisoner of War) Convention provides that belligerents "shall see that prisoners of war dying in its captivity are honorably buried...".

It may also be pointed out that convictions based upon similar specifications of prevention of honorable burial, as alleged in prior war crimes trials held in this area, have been upheld and approved upon review by higher authority, including the Secretary of the Navy.

From the foregoing it is clear that the requirement of honorable burial is a fundamental requirement of the law and customs of war. The law and customs of war in this regard was well-established and settled long before the commencement of the instant war, or the commission of the acts alleged in the specification, and therefore counsel is in error in contending that the law is *ex post facto* in application.

Defense counsel Commander Carlson argues that the customs of war with regard to burial of the dead is largely regulated by the circumstances of the case. The judge advocate does not find it necessary to take issue with that view - what constitutes honorable burial may well vary with the circumstances. As counsel pointed out perhaps during the war in certain circumstances it was necessary to bury thousands of war dead without individual markings or separate graves. But that does not have any bearing on the question of whether this accused TERAKE, by his acts committed the offense of prevention of honorable burial as alleged in Specification 2:

In the first place those war dead he refers to were not prisoners of war, nor did they die in the captivity of the armed forces of the United States. As to prisoners of war, clearly the situation is different. Defense counsel knows that not only prisoners of war, but also convicted war criminals (such as AJIOKA) or executed war criminals (such as IWANAMI) are properly buried in individual graves, identified by plot and lot numbers, etc. in an appropriate cemetery here on Guam.

In the second place, we are not concerned here with any issue other than the guilt or innocence of TERAOKI - and whether other persons may or may not be guilty of offenses against the law and customs of war can have no legal bearing upon the issue of the guilt or innocence of TERAOKI.

Defense counsel Mr. Takano contends that Specifications 1 and 2 are duplicative and should be merged. Counsel is in error. While the offense set forth in Specification 1, and the offense set forth in Specification 2 grow out of the same incidents two distinct offenses are charged and may properly be pleaded in separate specifications. (N.C. & B., Sec. 19) While in treaty provisions, the duties upon which these offenses are based, are frequently expressed together, this does not establish that they constitute the same duty or that the breach of these duties constitute the same offense. I need merely cite the commission to the provisions of the Articles for the Government of the Navy to point out that numerous distinct and separate offenses frequently appear in the very same sentence or phrase within a sentence. For example, Article 8, first paragraph, reads: "First (Scandalous conduct). - Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals:". Clearly, falsehood, drunkenness, gambling, fraud, and theft are distinct and separate offenses.

Defense counsel Takano contends that Specification 1 is merely a preliminary means to the alleged action of Specification 2. Counsel is in error, they are separate and distinct offenses, and may exist independently of each other. The acts alleged in Specification 1, of disinterring the body of a prisoner of war and removing the liver and flesh therefrom, clearly constituted disrespect of that grave. The same incidents and acts may also give rise to a separate offense, for, as in this instance as alleged in Specification 2, the mutilation of the body and removal of liver and flesh, prevented the subsequent burial from being an "honorable burial".

The judge advocate intends to prove the guilt of the accused with regard to the offenses charged in both Specification 1 and Specification 2, but for the purposes of consideration of this objection, the commission is also referred to N.C. & B., Sec. 20, which authorizes the preferring of as many charges as may be necessary to provide for every possible contingency in the evidence, etc. The mere fact that Specifications 1 and 2 arise out of the same incident does not make them duplicative, or render them subject to the instant objection.

OBJECTIONS TO SPECIFICATIONS 3 and 4.

Specifications 3 and 4 are similar to Specification 2 and the objections made thereto are adequately answered in the previous portion of this reply.

With regard to Specification 4, defense counsel Takano complains that in accordance with Naval Courts and Boards, Specification 5 should precede Specification 4 because of chronology, and that failure to do so is prejudicial to the substantive rights of the accused. The argument is naive. By no stretch of the imagination could the accused have been misled or prejudiced in any manner by the order in which the specifications appear. Each specification is clear and self-explanatory. Section 24 of Naval Courts and Boards is merely a guide for clarity and simplicity in the presentation of charges and specifications. It does not purport to lay down any rigid rules for presentation, nor to embody any substantive

rights of an accused. It merely provides that "So far as practicable, charges and specifications should also be placed in chronological order". In the instant case the offenses charged in Specifications 4 and 5 occurred on the same day. For purposes of clarity it was apparently deemed preferable to place the murder specification after the specification with regard to honorable burial, in view of the fact that it was the only specification charging the accused with such an offense.

OBJECTIONS TO SPECIFICATION 5.

With regard to specification 5, the objection by Mr. Takano that the phrase "acting with" is ambiguous and the objection by Commander Carlson that the phrase "then a surgeon second lieutenant, I.J.A." does not correctly describe the status of the accused, are objections without merit. The phrase "acting with" is one commonly employed in the charging of offenses where it is intended to apprise the accused of sufficient details to enable him to know what facts are relied upon to constitute the particular offense charged - but where it is not intended to charge the accused with participation in conspiracy, etc. The allegation properly apprises the accused of other persons who are alleged to have participated in the incident. The contention that "then a surgeon second lieutenant, I.J.A." does not correctly describe the status of the accused, is made by Commander Carlson without any indication as to how or in what manner this fails to describe the status of the accused. It is obviously impossible therefore to accurately evaluate this objection or to give it any weight whatsoever. Upon its face, the allegation appears proper and appears to accurately describe the status of the accused. It should be pointed out that this allegation is descriptive in nature and not a material allegation, for the accused is correctly named and identified. Since the accused is apprised of the date and offense charged, he clearly cannot be misled or prejudiced even by an inaccurate description of his status, for clearly he knows what his status was at the time of the incident alleged, and is not misled in preparation of his defense.

In the foregoing brief discussion I have attempted to tersely reply to all the objections raised by the accused to the charge and specifications preferred against him. These objections are without substance or merit, and when viewed in the light of the requirements of a proper specification it is clear that the charge and specifications are in due form and technically correct. The charge designates an offense in general terms. The specifications set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended.

The objections by the accused should be overruled.

Respectfully,

David Bolton
DAVID BOLTON.

元 日本帝國陸軍軍医少尉 (事件發生處
時 陸軍衛生部見習士官) 青木 忠の
筆 殺人 者 として 起訴

高興統一

本件、起訴の5箇の罪状項目に依るに被告人
 長木忠は1945年2月23日頃^日25日頃並に同年
 3月26日頃前後三回に亘り小笠原群島父島に於
 て日本軍隊に勤務中日本軍隊に抑留せしめたるに
 伴り他人の作業者1名の埋葬せしめたる屍体を發掘し
 其の屍体の一部を截取したるに因り其の墓に對し
 非禮を為し且鄭重なる埋葬を阻止し(罪状項目
 其の一及び其の二);他の1名^{傍觀の}の屍体の一部を除去し
 鄭重なる埋葬を阻止し(罪状項目其の三);更に
 他の1名の作業者の屍体~~其の~~の一部を截取し鄭重なる
 埋葬を阻止し且此の作業者に對し暴行を加へ
 殺害し(罪状項目其の四及び其の五)、斯くするに因り戦
 争法規並に慣習法の違反したと云ふべきこと。

現行文明各國の刑事訴訟法上 裁判籍は犯罪地、又は被告人の住所、居所、若は現在地と依るとするものが多い。而して第一次的には犯罪地と依るものが多い。

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通じぬ。(本件では被告人青木の住所、居所又は現在地は問題とはふさふさ。何とせよ彼の住所又は居所(在りしところ)は日本であり又現在地も日本であった。現在青木の Guam への移りかは此地で裁判するに際して送らねばならぬのである。今裁判の地 Guam へ送らねばならぬ被告人青木に対する裁判管轄権の問題となつてゐるのであるから彼の現在地が Guam であるといふことは本件の裁判管轄権を論議するに付して意味をなさぬのである)。

CLARK AND MARSHALL による「犯罪法論」に於て「~~其~~國又は州は - - - 其の地域外に於て犯す小に犯罪に付何人も之を懲罰するに得。然し亦か第則として其の國又は其の州の法律は其の地域的限界を越えては何等作用を為さぬのである。尤も故に通常は一國又は一州の裁判所は其の管轄地域外に於て犯された犯罪に付して之を懲罰する裁判権はふい」と論じてゐる (Clark and Marshall's Law of Crimes, 4 ed. § 488, Jurisdiction in General, p. 650.)

本件の根拠を主張の犯罪は小笠原群島父島に於て犯されたものであることが罪状項目と明記せられてゐる。尤もそのから本件の裁判管轄権が犯罪地であるといふことには父島に裁判権を有する裁判所が本件を裁判すべき裁判権を有するのである。小笠原群島は Mariana 地域外にはない。随つて父島は Mariana 方面海軍司令官である本軍法務員会、召集官の管轄権外の

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少地である。即ち召集官は自己の管轄権外の土地に於て犯された犯罪に對其の犯人を裁判する権限は無い。此の如く本軍法委員会に對する1949年1月19日附 Preceptに依るに召集官は Mariana 方面海軍司令官としての権能及太平洋方面部隊及太平洋艦隊司令長官並に太平洋諸島信託領地長官に授與せられた権限に據りて本軍法委員会を召集する旨が明示せられてゐる。之より召集官の職務権行使の範圍は Mariana 地域であると解する。此の如く召集官は自己が有らざる裁判権を本軍法委員会に付與することは出来ない。之から本軍法委員会は父島に於て生じた横暴官至張事件の裁判権は付與せられてゐない。言ひ換へれば本軍法委員会は本件の裁判管轄権は有らぬといふ結論に至るのである。

上記の理由に因り本件起訴は之と却下すとの御判決を以んことを要請する。

謹 言

高橋 純一

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY
TERAKI, Tadashi.

Delivered by TAKANO, Junjiro,

Counsel for the accused, TERAKI, Tadashi,
former Surgeon 2nd Lieutenant, IJA,
(at the time of the incidents, Probationary Officer of the Medical Dept.)

May it please the Commission,

The accused TERAKI, Tadashi hereby enters his plea to the jurisdiction of this military commission on the following grounds:

According to the five specifications of the charge in the present case, the accused TERAKI, Tadashi on three separate occasions, namely about the 23rd and 25th of February 1945 and around the 26th of March 1945, while serving at the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, (1) wilfully disrespected the grave of an American prisoner of war who died in the captivity of, and was buried by, the Japanese armed forces, by unlawfully disinterring the body of the said prisoner of war, removing parts of the body and preventing the honorable burial of the said prisoner of war (Specifications 1 and 2); (2) prevented the honorable burial of another person by removing parts of that person's body (Specification 3); (3) and prevented the honorable burial of another by removing parts of his body and by attacking and striking and killing him, (Specifications 4 and 5), and thereby violated the law and customs of war.

The principle followed in the law of criminal procedure of civilized countries of the present day is that the forum ^{lies} in the locality of the offenses, or the domicile, residence, or present address of the accused. Primarily the forum lies in the locality of the offense or offenses. (In the present case the question of the domicile, residence, or present address of the accused, TERAKI, does not arise because his domicile, residence and present address (if any) are all in Japan. The presence of TERAKI on Guam today is accounted for by the fact that he is here for the purpose of being tried. As the question is one of jurisdiction to try the accused, TERAKI, who has been brought to Guam for his trial, the fact of his presence here on Guam today has no bearing on the jurisdiction in this case.)

Clark and Marshall in their "Law of Crimes" state as follows:

"A country or state may punish any person, - - - , for offenses committed within its limits, but, as a general rule, the laws of a country or state have no operation beyond its territorial limits, and ordinarily, therefore, the courts of a country or state have no jurisdiction to punish for offenses committed beyond such limits."
(Para. 488, Jurisdiction in general, p. 650.)

It has been clearly shown in the Specifications that the offenses alleged by the prosecution in this case were committed on Chichi Jima, in the Bonin Islands. If it is accepted that the forum of this case is the place where the crime was committed, that a court having the forum over Chichi Jima possesses the jurisdiction to conduct this trial. Chichi Jima, Bonin Islands is not in the Marianas area. Consequently Chichi Jima, Bonin Islands is without the area of jurisdiction of Commander Naval Forces,


Marianas, the Convening Authority which convened this Military Commission. In short the Convening Authority does not have the authority to try an offender for offenses committed outside his area of jurisdiction. However, reference to the precept of 19 January 1949 addressed to this Military Commission clearly shows that the Convening Authority convened this Military Commission by virtue of his office as the Commander Naval Forces, Marianas, and further by the specific authority vested in him by the Commander in Chief, Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands. From this it is understood that the area in which this authority of office of the convening authority may be exercised is the Marianas area. It is legally not possible for the Convening Authority to vest this Military Commission with jurisdiction which he himself does not possess. Consequently this Military Commission is not vested with jurisdiction to try the alleged incidents which occurred on Chichi Jima. In other words, the conclusion is reached that this Military Commission does not possess the jurisdiction to try the accused.

The accused respectfully requests judgment of the charge and specifications and prays that the charge and specifications be quashed.

Respectfully,

/s/ TAKINO, Junjiro.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

PLEA TO THE JURISDICTION OF THE
COMMISSION TO TRY TERAHI, TADASHI.

Delivered by

Commander Martin E. Carlson, USNR,
Defense Counsel.

The accused TERAHI, Tadashi objects to the jurisdiction of this commission to try him for the charge set out in the specifications on the ground that the commission has no jurisdiction over the accused and no jurisdiction over the alleged offenses set forth in the specifications.

The accused is a Japanese citizen and as such subject to jurisdiction for criminal offenses only if the alleged offenses were committed within the United States or in territory occupied by American forces. It is alleged the offenses were committed in February and March 1945 at Chichi Jima. Chichi Jima was not then occupied by American forces nor is it now occupied by American forces.

The accused was regularly demobilized and this military commission lost any jurisdiction it might have had over him when he was demobilized by order of the United States Naval Forces and Marine Forces which forces occupied Chichi Jima.

"A military commission (except where otherwise authorized by statute) can legally assume jurisdiction only of offenses committed within the field of the command of the convening commander. Thus a commission ordered by a commander exercising military government by virtue of his occupation, by his army, of territory of the enemy, cannot take cognizance of an offense committed without such territory." (Footnote 88, Winthrop, Military Law and Precedents, pp 836)

"The place must be the theatre of war or a place where military government or martial law may be legally exercised otherwise a military commission (unless specifically empowered by statute) will have no jurisdiction of offenses committed there." (Footnote 89 on page 836, Winthrop, Military Law and Precedents)

"Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity for maintaining law and order, indispensable to both the inhabitants and to the occupying force." (Rules of Land Warfare of the War Department of the United States, paragraph 273, Basic Field Manual FM 27-10, 1940)

During the period of February and March 1945 all the civilian population of Chichi Jima had already been evacuated by the Japanese because of the heavy bombings by the Americans. There is no necessity for trying the accused on the ground that it is indispensable to the inhabitants of Chichi Jima. The present inhabitants of Chichi Jima are only some 150 persons who have been transferred there from Japan and these 150 persons have elected their own representatives and their president is their elected governing authority. Commander Naval Forces Marianas is not therefore the civil administrator nor has he any civil authority over Chichi Jima.

The members of the commission know that the President of the United States terminated the military government in the former mandated islands on July 18, 1947 and that Public Law 204, 80th Congress approved July 18, 1947 Congress authorized the President of the United States to approve the United Nations Agreement with respect to United States administration of the Trust Territory of the Pacific Islands and further that on July 21, 1947 the Secretary of the Navy directed the U. S. Naval Military Government of Marshall, Caroline and Marianas Islands disestablished as of July 18, 1947 and that the High Commissioner was directed by the Secretary of the Navy to institute civilian administration of the Trust Territory effective July 18, 1947 in accordance with the terms of the Trusteeship Agreement.

All this was done regarding the former Japanese mandated islands. Is there any necessity therefore of this present proceeding by which this Japanese civilian is being tried by a military commission here on Guam for alleged offenses on Chichi Jima in February and March 1945?

We further object to the jurisdiction of this commission over the alleged offenses. The offenses are disrespect of the grave, and the prevention of honorable burial as set forth in the first four specifications.

"The solicitude of civilized people for the proper burial of their dead and the sanctity of human sepulture have, as has previously been stated been made the basis of various civil rights and liabilities. They have likewise been asserted in support of rules of the criminal law. For the most part the source of criminal law in respect of the bodies of deceased persons is in the statute exclusively, and the acts of the particular jurisdiction involved should be consulted. These statutes have for their object the protection of the rights of the public and do not increase the rights of kindred in the dead bodies of their relatives." (Orr v. Dayton and M. Traction Co. 178 Ind. 40, 96 N.E. 462, 48 IRA (N. 8) 474 Am. Cas. 1915 B 1277) ... "Under the English Anatomy Act, the practice of anatomy is lawful and useful though it may involve an unusual means of disposing of dead bodies." (Reg. v. Price. L.R. 12 Q.B. Div. 247, 8 Eng. Rul. Cas. 467) from 15 Am. Jur. p. 857, and 858.

If there isn't a recognized law we should not prosecute nor should we prosecute because some other commission held there was jurisdiction to punish for a similar offense. The prosecution must lay its finger on the law and customs of war and if not then there can be no jurisdiction over an alleged offense which is not a recognized offense at law.

As to the alleged offense set forth in Specification 1 the disinterment of a body we also hold it is incumbent upon the prosecution in order to establish jurisdiction to lay its finger on the law violated.

In the case of Com. v. Marshall, 11 Pick (Mass.) 350, 22 Am. Dec. 377 it was held that an indictment for disinterring dead bodies cannot be sustained when the law under which the offense was committed is repealed without any saving clause. (15 Am. Jur. p. 858)

For the above reasons and since the prosecution has not set forth the particular law or customs of war which was violated we do make this plea to the jurisdiction and the accused TERAOKI, Tadashi does pray judgment of the charge and specifications and does pray that the charge and specifications be quashed.

Respectfully,

Martin E. Carlson
MARTIN E. CARLSON, Commander, USNR,
Counsel for the Accused.

REPLY TO THE PLEA TO THE JURISDICTION

Delivered by

Lieutenant David Bolton, USN
Judge Advocate.

The plea to the jurisdiction by the accused, as presented through his counsel Commander Carlson and Mr. Takano is essentially based upon three contentions. First: that at the time of the offenses Chichi Jima was not occupied by the armed forces of the United States; Secondly, that Chichi Jima is not currently within the area of command of the convening authority, nor is he the civil administrator of that area; Thirdly, that the prosecution must prove the existence of a particular offense under the law and customs of war in order to establish the jurisdiction of the commission.

The fallacious nature of these grounds of objection to jurisdiction is so obvious that they hardly merit the time necessary to refer to them.

As to the first objection: War crimes are ordinarily committed within the area under the control of the armed forces of the accused. It is apparent therefore from the nature of the crime, and the realistic necessity for trial before the tribunals of some power other than the guilty belligerent's, why the law does not require that the forum within which the accused is tried, should be that of the armed forces in military occupation of the area at the time the offenses were committed.

As to the second specification: It is completely irrelevant whether or not Chichi Jima is currently within the area of command, or within the area of civil jurisdiction of the Commander Naval Forces, Marianas. Chichi Jima is within the area of command of the Commander in Chief of the Pacific and U. S. Pacific Fleet, Admiral Ramsey, who is also the High Commissioner of the Trust Territory of the Pacific Islands, and that specific authority was vested by him in the convening authority, as cited in paragraph 1 of the instant precept to appoint military commissions to try war criminals.

The nature of this jurisdiction and the fact that it authorizes exercise of jurisdiction in the instant case can readily be verified by the commission by examination of the dispatch which is cited in paragraph 1 of the precept. There is no need for me to discuss them further as they are essentially self-explanatory. This authority to convene military commissions for the trial of war crimes is also inherent in a military commander. (In Re Yamashita, 327 U.S. 1), and there is nothing contained in the authorization cited in paragraph 1 of the precept, nor is there any inherent limitation, which in any manner limits the jurisdiction to offenses committed within the area under the military control of the Commander Naval Forces, Marianas. On the contrary, the letter of 1 August 1948, from the Commander in Chief, Pacific and U. S. Pacific Fleet, to the Commander Naval Forces, Marianas, expressly recognizes and affirms that the authority previously vested in Commander Marianas, is vested in the Commander Naval Forces, Marianas, and expressly states, (paragraph 3) that "Nothing in this letter limits the inherent authority of a military commander to convene military commissions."

Let us briefly review the jurisdiction of military commissions in the light of the fundamental law of jurisdiction with regard to military commissions and war crimes offenses.

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Military commissions have jurisdiction to try war crimes and accused war criminals (*Yamashita v. Styer*, 327 U.S. 1). Jurisdiction in war crimes cases does not depend upon territorial control at the time the offenses occurred. The territorial principle of jurisdiction, familiar to domestic courts and ordinary crimes, is not applicable to war crimes cases. War crimes are one of a number of exceptions to this concept (see Glueck, *War Criminals and their punishment*, p. 81, and fnns. 14, 15, on p. 215). The international nature of the crimes, and the realistic necessity of their punishment by the injured States, are cogent reasons for departure from the ordinary concept of territorial jurisdiction (see Glueck, *op. cit.* p. 81). For these, and other reasons, jurisdiction in war crimes cases is primarily based upon custody of the accused at the time of trial.

War crimes are international crimes in the sense that they are crimes against all civilized nations. In this respect war crimes are like the crime of piracy and the war criminal like the pirate, as expressed by Grotius (1583-1645) *De Jure Belli ac Pacis*, vol. 2 cap. 20, sec. 40 is "hostis humani generis" (enemy of mankind) and as such he is justiciable by any state anywhere. Hackworth, *International Law*, Vol. 2, p. 187.

As early as 1612, Grotius stated: "The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishment not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any person whatsoever." Grotius, *De Jure Belli ac Pacis* (1612) Carnegie Trans., 1925, p. 504.

Similarly: Wheaton in his *Elements of International Law*, 6th Ed., Vol. I, (1929), p. 269, declares that the judicial process of every independent state extends to the punishment of "offenses against the common law of nations, by whomsoever and wheresoever committed." Hall in his *Treatise on International Law* (8th Ed., (1924), Sec. 135) states that a belligerent possesses "the right of punishing persons who have violated the laws of war if they afterward fall into his hands." Oppenheim says, "the right of the belligerent to punish, during the war, such war criminals as fall into his hands is a well recognized principle of international law. It is a right of which he may effectively avail himself after he has occupied all or part of enemy territory and is thus in the position to seize war criminals who happen to be there" (Oppenheim, *International Law*, 6th Ed., Rev., Vol. II, 1944, Sec. 257a).

The prevailing view that war crimes jurisdiction extends to those offenses which "violate the law of nations in regard to any person whatsoever" (Grotius *cit.*) and to "offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton *cit.*), has been implicitly accepted by the office of the Judge Advocate General of the Navy in his action in the following war crimes cases held in this area, in which the accused were charged and tried with violation of the law and customs of war for offenses committed against British nationals, Colombian nationals, and Spanish nationals, and against native residents of the Marshall Islands: Trial of AJIOKA, Masao; trial of FURUKI, Hidesaku; trial of INOUE, Fumio (CMO 3-1948, p. 97); trial of NAKAMURA, Kazuo, et al; and the trial of YAMAMOTO, Kazuharu, et al, as well as the numerous war crimes cases reviewed which deal with offenses committed against American prisoners of war in areas not under the military command of the convening authority.

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The spurious nature of the plea in the instant case is obvious. In the instant case jurisdiction rests on a double basis: first, the existence of the inherent power of the convening authority to try accused persons for war crimes committed against American prisoners of war, regardless of wherever or by whomsoever committed; and secondly, the fact that express power to convene military commissions for the trial of such offenses, has been delegated to the convening authority by the Commander in Chief Pacific and U. S. Pacific Fleet, who is the military commander (and by virtue of his position as High Commissioner of the Trust Territories, is the civil administrator) of the area within which the offenses occurred.

As to the third ground of objection to jurisdiction, namely, that the prosecution must prove that the charge and specifications allege an offense against the law and customs of war, it should first be noted that the ground of this plea to jurisdiction is identical with one of the objections made by the accused to the charge and specifications, and which was overruled by the Commission. In reply to that objection I cited some of the applicable law which establishes the offense as a violation of the law and customs of war. The treaty provisions are clear, and the law in this regard requires no further exposition, but in view of the fact that defense counsel Commander Carlson has seen fit to cite in a misleading fashion portion excerpted from 15 American Jurisprudence, re Dead Bodies, pages 857 and 858, some brief citation of the law as expressed in that source is necessary in order to correct the erroneous impression counsel has sought to create. Counsel has cited the American Jurisprudence statement concerning the English Anatomy Law (which under certain circumstances authorizes the dissection of bodies), to create the impression that the dissection of human bodies is always acceptable and unobjectionable. Neither the English Anatomy Law nor any other law subscribes to that view. In 15 American Jurisprudence 357, in the same paragraph and immediately prior to the citation of the English Anatomy Law, the following language appears: "The unauthorized sale of the dead body of a human being for gain and profit is a common law misdemeanor of high grade, and an attempt to make an unlawful sale is itself a misdemeanor. The taking of dead bodies for dissection is made criminal by statutes in many states".

Defense counsel also misleadingly cites the case of Com. v. Marshall which is cited in a footnote, footnote 6, 15 Am. Juris. 858, along with many other cases cited therein. All of these cases in footnote 6 are cited as authority in support of the statement, and I quote: "The unauthorized disinterring of the body of a deceased human being is an indictable offense both at common law and by statute, regardless of the motive or purpose for which the act is done." The language which refers to Com. v. Marshall in the footnote reads "An indictment for disinterring dead bodies cannot be sustained when the law under which the offense was committed is repealed without any saving clause." Defense counsel misleadingly cites this language when he neglects to point out that footnote 6 and the cases cited therein, is cited as authority for the following statement which appears in the text (15 Am. Juris. 858) "The unauthorized disinterring of the body of a deceased human being is an indictable offense both at common law and by statute, regardless of the motive or purpose for which the act is done."⁶

In view of the fact that the case of Com. v. Marshall, 11 Pick. (Mass) 350, 22 Am. Dec. 377, is not available for examination here on Guam, it is impossible for the judge advocate to state with absolute assurance, the actual holding of the court in that case. It would appear that the case was one in which an indictment was laid under a particular statute, and the statute was then repealed (either with or without a substituting analagous provision), but

L(3)

0475

that in the repealing statute no specific saving clause was incorporated. For this reason, as the court apparently held, an indictment charging an offense under the repealed statute could not be sustained.

The clear disclosure of how completely misleading defense counsel's citations from 15 American Jurisprudence have been, is revealed when we read from the text of this very section from which counsel has cited the language of footnote 6 re the Com. v. Marshall case. Section 4, 15 Am. Juris. 858, Dead Bodies, reads:

"40. Violation of Sepulture.--Civilized countries have always recognized and protected as sacred the right to Christian burial and to an undisturbed repose of the human body when buried. The desecration of burial grounds is an offense both under the common law and modern statutes. The unauthorized disinterring of the body of a deceased human being is an indictable offense both at common law and by statute, regardless of the motive or purpose for which the act is done. But statutes against body stealing are not intended to apply to exhumations made by legally constituted public authorities for the purpose of ascertaining whether crime has been committed in producing the death of the person whose body is exhumed, and when the exhumation is made publicly on application of the proper officer, the persons ~~concerned~~ therewith cannot be held for body stealing though the proceedings may have been irregular in some respects. The opening of a grave in a town cemetery by order of the town officers for the purpose of removing a dead body because the lot in which it is buried has not been paid for is within a statute making it a felony for any person, without due process of law or consent of specified relatives, to open any grave and remove any dead body therefrom, and municipal officers who direct such action cannot escape liability on the ground that they were ignorant of the law and supposed that they had the right to order such removal, or on the ground that they were acting in their official capacity."

This language cited from American Jurisprudence is not merely a reflection of the common law or Anglo-Saxon view. As this section points out, all civilized countries have always recognized and protected as sacred the right to an honorable burial and undisturbed repose of the human body when buried. This fundamental view has been accepted in international law and embodied in various treaty provisions, some of which I have referred to in my reply to the defense objections to the charge and specifications. There is no need to do more than reiterate the fact that under the law and customs of war, as evidenced by these treaty and convention provisions, the right to respect to the grave, and the right to honorable burial, are carefully prescribed and safeguarded. It may be pointed out that Japan expressly ratified certain of these conventions, namely, the Fourth Hague Convention (Annex, Art. 19), the Tenth Hague Convention (Art. 16), and the Geneva (Red Cross) Convention of 27 July 1929 (Arts. 3 and 4), and also expressed its agreement to apply the Geneva Prisoners of War Convention of 27 July 1929 (Article 76), which embody such provisions.

The request by the accused that the prosecution show the law and customs of war violated, is fully satisfied by the foregoing.

In view of the fact that the pertinent law and customs are well-established, and particularly in view of the fact that they are embodied in treaty form, judicial notice of the pertinent law and customs can be taken, and it is unnecessary to allege them in the specifications. (N.C. & B. Sec. 309.. "Matters of which courts may take judicial notice need neither be alleged nor proved.").

The grounds of the plea to the jurisdiction, advanced by the accused, are insubstantial in character, and it is respectfully requested that the commission overrule the plea of the accused.

David Bolton
DAVID BOLTON.

L(4)

0476

PLEA IN BAR OF TRIAL OF TERAKI, TADASHI
delivered by
Commander Martin E. Carlson, Defense Counsel

The accused, Teraki, Tadashi, makes this plea in bar of trial on the ground of former jeopardy.

Under date of July 22, 1946 the Commander Marianas Area preferred charges and specifications against certain members of the 308th Independent Infantry Battalion. Admiral Robinson, the president of this military commission, was also the president of the military commission which tried Lieutenant General Tachibana, Yoshio; Major Matoba, Sueo; Captain Sato, Kesakichi; Corporal Nakamura, Shigenobu, and others. In specification 3 of Charge III dated July 22, 1946 it was alleged that Tachibana, Yoshio on March 26, 1945 failed to discharge his duty as Commanding General of the 109th Division to control among other persons Teraki, Tadashi, in that he permitted Matoba, Sato, Nakamura, and Teraki to kill by beheading with a sword Floyd Ewing Hall.

Charge III specification 18 of the Tachibana charges alleged that Matoba failed to control members of his command namely, Sato, Nakamura, and other persons unknown by permitting them to kill Floyd Ewing Hall by beheading with a sword about March 25, 1945.

In specification 20 of Charge III of the charge of July 22, 1946 it was alleged that Major Matoba failed to control Sato, Kesakichi; Teraki, Tadashi; Mori, Yasamasu, and other persons unknown, permitting them to unlawfully prevent the honorable burial of Floyd Ewing Hall and Marvie William Mershon.

The military commission which tried Lieutenant General Tachibana, Yoshio; Major Matoba, Sueo; Captain Sato, Kesakichi; Corporal Nakamura, Shigenobu; and others found the above specifications proved. Although Teraki, Tadashi was not in court there was evidence presented against him because his name was included in the specifications. Since the commission failed to except as to Teraki, Tadashi in their findings, Teraki, Tadashi was thereby put in jeopardy.

In the chapter on Former Jeopardy in 15 Am. Jur "Criminal Law" Section 359, we find this statement of the law: "It is an established maxim of the common law, in the administration of criminal justice, constantly recognized by elementary writers and courts of judicature from a very early period down to the present time, 'that a man shall not be brought into danger of his life or limb for one and the same offense more than once (citing many cases in footnote 10). It has been said that the test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense (citing the case of State v. Barnes, 29 N.D. 164, 150 N.W. 557, Ann Cas. 1917 C 762.) The rule not only prohibits a second punishment for the same offense but it goes further and forbids a second trial for the same offense, whether the accused has suffered punishment or not in the former trial has been acquitted or convicted. (citing many cases in footnote 12)."

As stated in the above the test of the rule of former jeopardy is not whether the defendant has been tried for the same act, but whether he has been put in jeopardy for the same offense. A study of the trial of Lieutenant General Tachibana, Yoshio, IJA, et al, will show that the accused in this case, Teraki, Tadashi, was put in jeopardy at that trial.

At this time we will not make a special plea of the statute of limitations because "the general and better practice is to raise the issue under a plea of not guilty." citing many cases in footnote 6 including the case of U.S. v. Barber, 219 U.S. 72, 55 L.Ed 79, 31 S.Ct. 209.)

The accused, Teraki, Tadashi, makes this special plea of former jeopardy as a bar to trial for the alleged offenses said to have been committed February 23, 1945, February 25, 1945, and March 26, 1945 and prays of judgment of the charge and that the charge and specifications be quashed.

Respectfully,

Martin E. Carlson
Martin E. Carlson.

M

0477

REPLY TO THE PLEA IN BAR OF TRIAL

Delivered by
Lieutenant David Bolton, USN, Judge Advocate.

This plea in bar of trial delivered by Defense Counsel Commander Carlson, is based on the contention that Teraki has been previously placed in jeopardy for these offenses with which he is now charged. His sole basis for this contention is that Teraki, Tadashi was named in certain specifications in the case of Lieutenant General Tachibana, Yoshio, et al.

The rule as to when Jeopardy attaches is stated in 15 Am. Jur., Criminal Law, Section 369, as follows: "A person is in legal jeopardy when he is put on trial, before a court of competent jurisdiction, on an indictment or information which is sufficient in form and substance to sustain a conviction and a jury has been charged with his deliverance ... Constitutional provisions against double jeopardy do not apply unless an accused has theretofore been placed on trial." Similarly Naval Courts and Boards provides in Section 408: "...A person is twice put in jeopardy if he is twice put on trial for the same offense. In order, however, to sustain a plea of former jeopardy, the accused must show that: (1) Upon a former trial, he had been actually acquitted or convicted; or (2) Upon a former trial, after he had been arraigned and the prosecution had rested its case, the convening authority entered a nolle prosequi (or withdrawal or discontinuance), over the objection of the accused, in order to prevent the court martial from arriving at a finding..."

From an examination of the charges and specifications in the Tachibana case, it is clear that the present accused, Teraki, was not charged with any offense in that case. He is not named as an accused in the letter containing the charges and specifications in that case. Teraki is mentioned in specification 3 of Charge III as a person who Lieutenant General Tachibana failed to control, and in specification 20 of Charge III as a person who Major Matoba failed to control, however the accused in these two specifications are respectively Lieutenant General Tachibana and Major Matoba, and Teraki is not an accused therein.

Teraki has not previously been placed on trial for the offenses charged in the instant charge and specifications. He has not been in former jeopardy, ergo the plea of former jeopardy is without foundation, and should be denied.

Respectfully,

David Bolton
David Bolton.

PLEA IN ABATEMENT

Delivered by

MARTIN E. CARLSON,
Commander, USNR,
Defense Counsel.

The accused TERAKI, Tadashi respectfully interposes this plea in abatement on the ground that there has been no notice of the opening of this judicial proceedings as is required by Article 60, Geneva Prisoners of War Convention of July 27, 1929.

Respectfully,

Martin E. Carlson
MARTIN E. CARLSON.

REPLY TO THE PLEA IN ABATEMENT
Delivered by
Lieutenant David Bolton, USN, Judge Advocate

This plea in abatement delivered by Defence Counsel Commander Carlson is based on the fact that "there has been no notice of the opening of this judicial proceedings as required by Article 60, Geneva Prisoners of War Convention of July 27, 1929."

Article 60, Geneva Prisoners of War Convention, was considered in the Yamashita case by the U. S. Supreme Court. The decision as set forth by the Chief Justice said as follows: "Article 60 of the Geneva Convention of July 27, 1929, 47 Stat. 2051, to which the United States and Japan were signatories, provides that 'At the opening of a judicial proceeding directed against a prisoner of war the detaining power shall advise the representative of the protecting power thereof as soon as possible and always before the date set for the opening of the trial.' Petitioner relies on the failure to give the prescribed notice to the protecting power to establish want of authority in the commission to proceed with the trial. For reasons already stated we conclude that Article 60 of the Geneva Convention, which appears in part 3, Chapter 3, Section V, Title III of the Geneva Convention, applies only to persons who are subject to judicial proceedings for offences committed while prisoners of war." (UN War Crimes Commission War Crime Trial Law Reports Vol. IV, page 42-43, Trial of General Tomoyuki Yamashita).

The judgment is clearly in point and it is unnecessary to remind the commission of the respect to which a judgment of the Supreme Court of the United States is properly entitled.

The judge advocate respectfully requests that the plea in abatement be denied.

David Bolton
David Bolton.

MOTION FOR A BILL OF PARTICULARS

Delivered by

MARTIN E. CARLSON,
Commander, USNR,
Defense Counsel.

The accused TERAHI, Tadashi makes this motion for a more definite statement of the charge and for a bill of particulars in order to enable the accused to properly prepare for trial. (Rule 12 (e) Federal Rules of Civil Procedure for the District Courts of the United States)

The accused prays that all specifications be amended to show what law and what customs of war the accused is alleged to have violated and thereby committed a war crime.

The accused does respectfully ask for particulars as to the recognized law which made the alleged acts to be war crimes and punishable by a military commission.

I have read the specifications and it is my belief that there is good ground to support this motion.

This motion is not interposed for ~~delay~~ but to make the charge and specifications more definite and certain and to effectuate justice and to insure a fair trial to the accused.

Respectfully,


MARTIN E. CARLSON.

0481

REPLY TO MOTION FOR A BILL OF PARTICULARS
Delivered by
Lieutenant David Bolton, USN, Judge Advocate

In naval courts, the Bill of Particulars is not a recognized part of the judicial procedure, for the use of specifications, in addition to a basic charge, obviates the necessity for such a Bill of Particulars. All the requirements of a Bill of Particulars are met by the use of such specifications, and in naval courts the remedy for lack of necessary particularity with regard to the incidents charged, is found in the objection to charges and specifications. The accused has recognized this fact and availed himself of it, and it should be noted that in this objection to charge and specifications he has pursued the identical question which he now again raises in his motion for a Bill of Particulars, namely, that the specifications should set forth with particularity the law and customs of war which the accused has been charged with violating. The merits of this contention were argued at that time, and the commission rejected the argument of the accused.

The function of the Bill of Particulars, as set forth in 27 Am. Jur. Section 113, is "to supply the accused and the court additional information concerning an accusation that the accused has committed an act or acts constituting a criminal offense." The granting or refusal of the defense request for a bill of particulars is a matter resting in the sound discretion of the court. 27 Am. Jur. 111.

Certain grounds for refusal of the request for a bill of particulars are set forth in 27 Am. Jur. Sec. 113, and some of the language there used is particularly appropriate, and establishes the grounds for denial of the instant motion. The following appears on page 674 of 27 Am. Jur.: "A bill of particulars is not necessary where the indictment informs the defendant of the crime with which he is charged sufficiently to enable him to prepare his defense, or where the means of obtaining the facts are as accessible to the defendant as to the state, and the facts are already known to him, or where he has been fully informed as to the matters in question... A motion for a bill of particulars, that, in its nature, is a request for a disclosure of evidence or of matters which are largely evidentiary in character and which, if furnished would unduly limit and embarrass the prosecution and might exclude material evidence may properly be refused... A bill of particulars is sufficient which supplies all necessary information to enable the accused to prepare for trial and after judgement to be able to plead the record in bar of a further prosecution for the same offense."

While the motion for a Bill of Particulars is not provided for by Naval Courts and Boards, such a motion has been allowed in the trial of war crimes before a military commission, for example in the Yamashita case. It should be noted however that in the Yamashita case there was different type of military commission -- an army commission utilizing different procedure -- and that the charge against Yamashita did not furnish detailed information such as that provided in the specifications in the instant case, which follow the pattern used in naval courts. That the specifications in the instant case satisfy all essential requirements of particularity is apparent when we compare them with the items of the Bill of Particulars presented to the commission in the Yamashita case. The fifth paragraph of the Bill of Particulars in that case reads "5. During November 1944 in northern Cebu Province, massacre, without cause or trial, of more than 1,000 unarmed non-combatant civilians". The specifications in the instant case set forth with much greater particularity the incidents which the accused is charged with having committed.

The judge advocate respectfully requests that the motion for a Bill of Particulars be denied.

David Bolton
David Bolton.

R

0482

OPENING STATEMENT FOR THE PROSECUTION

Delivered by

DAVID BOLTON,
Lieutenant, U. S. Navy,
Judge Advocate.

In view of the nature of the instant case and the character of the arguments which have been presented before the Commission, the opening statement of the judge advocate will be brief. The order of presentation of the prosecution's case will follow the order of proof which has been furnished to the commission and defense, except insofar as unforeseeable factors such as unavailability of witnesses or documents, renders it impractical.

The prosecution will commence its case by requesting that the commission take judicial notice of various pertinent treaty provisions and well-known historical facts and documents.

The prosecution will produce and offer in evidence excerpts from the record of the Tachibana trial, consisting of certified copies of the charges and specifications, the findings of the Commission which tried that case, and the action of the convening and reviewing authorities, and the Secretary of the Navy. These documents will not be read in their entirety, in court. The judge advocate will only request the witness to read some of the specifications which relate to the incidents in the instant case against TERAHI. Such excerpted evidence does not disclose the participation of TERAHI in the incidents, but merely establishes the death of the victims, etc. The participation of TERAHI in the incidents, as charged in the specifications of the instant case, will be established by the testimony of eye witnesses to such participation.

The specifications in the instant case deal with three different incidents:

The first of these incidents (Specifications 1 and 2) occurred on or about February 23, 1945, near the Suwayoshi unit. A prisoner had been executed and buried. The following day, TERAHI and a group of enlisted personnel disinterred the body, and removed the liver and flesh from the thigh of the prisoner.

The incident alleged to have occurred on or about February 25, 1945 (Specification 3) occurred near Matoba's headquarters at the 308th Battalion. After the killing of the prisoner of war, TERAHI removed the liver and flesh from the prisoner.

The incident alleged to have occurred on or about March 26, 1945 also occurred at the 308th Battalion (Specifications 4 and 5). TERAHI was present at the scene of the execution, and aided and abetted the performance of that execution. After the beheading of the prisoner TERAHI performed a demonstration dissection for the benefit of medical corpsmen assembled at the scene and then removed the liver and flesh from the body of the prisoner.

The first of the eye witnesses, Kanemori, will testify concerning the incidents on or about February 23, 1945, and on or about March 26, 1945 at which he assisted TERAHI in the removal of the liver and flesh from the body of the prisoner. The next witness Matsui will testify concerning the incident which occurred on or about February 25, 1945 at

which he observed TERAHI's mutilation of the body of the prisoner. The witness Iso will testify concerning the March 26th incident. After the testimony of this witness, Iso, the judge advocate will introduce the depositions of Nakamura, Shigenobu who performed the beheading, and of Sato, Kesakichi who was present and issued orders to Nakamura concerning the execution.

The prosecution will conclude with the presentation and offer in evidence of a statement by the accused made on November 4th and 5th, 1948.

Respectfully,

David Bolton
DAVID BOLTON.

Objection to taking
judicial notice,
TERAKI CASE,
TAKANO.

公知事項として對する異議を申立

元日本帝國陸軍軍医少尉(事件発
生當時陸軍衛生部員習士官)
赤木忠の辯護人

高野 敏二郎

被告人赤木忠は下記、理由1因、檢察官申
請の下記事項の公知事項に之を認定するに
異議を申立てる。

第一、申請第一項の1907年 Hague
條約第十、第16條。

此の條約は "Geneva 條約の原則を海戦
に適用する條約" である。

事件の Charge and Specifications には
檢察官主張の紀行が海戦に關係するところ
の何れとも明確に示されていない。加之事件
被告人赤木は "日本帝國陸軍軍医少尉" である
且 "大島に在ける日本陸軍の軍の施設を勤務中"
と記載されている。仍て申請第一項の條約は本
件とは何等の關係もない。である。

第二、申請第四項の 1929 年 July
27 日の Geneva 赤十字條
約の第三條及第四條。

此等の條約は軍隊の指揮官の職務権限に
關する事項である。即ち Charge and Specifications

(1.)

2 依ふは本件ノ被告人青木は軍医として
過さなかつた（殊に後ノ戦後ノ段階におゝ被告人
におゝる証言より如く東條総生高時は軍医
衛生部ノ見習士官であつた）。是故此並西事
項は本件ノ被告人とは何等ノ関係がなかつた。

第 三 東條元帥の1945年 July
26日の Potsdam Declaration
の第 10 項。

之と前記第二項と同一の理由に
因り本件被告人とは何等ノ関係がなかつた。

第 四 東條元帥の1945年
September 2日の日本の降
服文書。

日本國政府及日本帝國參謀本部の連合國に
對する1945年 September 2日 調印の降服文書は本
件被告人青木忠は陸の模範軍士としての軍紀罪
は如何の直接の關係がなかつたか？ 被告人は其の
關係がなかつた理由を認むるに苦みあつた。

前記第二項に於ける同一の理由に因
り此の降服文書は本件ノ被告人青木とは何等ノ関
係がなかつた。

前記の本案の何等の關係を以て東條に對し公報
記者會の認定 前記は被告人の身体的權利の侵
害である。何れも否認を申請した次第である。

謹 言
高野 純一 氏

(2.)

OBJECTION TO TAKING JUDICIAL NOTICE REQUESTED BY THE
JUDGE ADVOCATE

Delivered by Mr. Junjiro TAKANO, Counsel
for the Accused TERAOKI, Tadashi, Former
Surgeon Second Lieutenant (Probationary
Officer at the time of the Alleged
Incidents), IJA.

The accused, TERAOKI, Tadashi, objects to the commission taking judicial
notice of the following items requested by the judge advocate:

1. Item Two, the Tenth Hague Convention of 1907, particularly Article 16
thereof.

This convention applies to the principles of Geneva Convention to the
sea warfare.

The charge and the specifications of the instant case does not show the
relevancy between the alleged war crimes and sea warfare. The specifications
read that the accused, TERAOKI, was then "a surgeon second lieutenant, IJA,"
and was "serving at the Japanese Army installations on Chichi Jima." There-
fore, Item Two has no bearing upon the issue of this case.

2. Item Four, the Geneva Red Cross Convention of 27 July 1929, particularly
Articles 3 and 4 thereof.

These articles relate to the rights and duties of a commanding officer
in the armed forces. However, according to the charge and the specifications,
the accused, TERAOKI, was nothing but a surgeon second lieutenant. (We shall
further show in the case for the defense that he was merely a medical pro-
bationary officer at the time of the occurrence of the incidents.) Therefore,
these two articles have no bearing upon the accused in the instant case.

3. Item Five, paragraph 10 of the Potsdam Declaration of 26 July 1945.

By the same reason, as mentioned in the preceding paragraph, this item
also has no bearing upon the accused in the instant case.

4. Item Seven, Document of Surrender dated 2 September 1945.


Does the Surrender Document of 2 September 1945 from the Japanese
Government and the Imperial Japanese General Headquarters to the Allied Powers
have any relevancy with the alleged war crimes of the accused, TERAOKI,
Tadashi, in the instant case? It is hard for the accused to determine the
grounds which support such relevancy. By the same reasoning as mentioned in
paragraph 2, this Document of Surrender has no bearing upon the accused in
the instant case.

We object to the commission taking judicial notice of the items which
have nothing to do with the instant case, because taking judicial notice of
such items is most prejudicial to the substantive rights of the accused.

Respectfully,

/s/ TAKANO, Junjiro

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


EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

辯護側冒頭陳述

辯護人 佐 藤 毅

被告与木忠が本裁判=於て訴追せられたる三ツノ事件
=於て彼、爲る行為=就て検事=依り証拠=提出せしむ被告
与木自身、陳述書(証拠書類第四)中=記載せし事項ト目撃
証人、証言ト、間=細部=於て多少、相違ハルが大部分=於て
大體相違ハシ。從て辯護側ハ本事件、詳細ヲ再ヒ茲=繰返
シテ証拠=提出シテ本法庭、時間ヲ長ク費サレトハ思ハス。

然レテテ検事=依リテ提出せし証拠、中=主眼点ナル
事件、發生ル=至リテ終結及之=被告が如何ニシタル=至リテ狀
況、被告=犯意が存シタル否カ、又被告、地位等、被告ヲ裁ク
=當リテ重要ナル事項が缺テ居ル夫故辯護側段階=於てハ
對テ是等、點=關スル証拠、提出シテ思フ。

第一=主眼点ナル事件當時=於テ被告与木、階梯及
地位=就テハ、彼が事件發生當時=見習士官デアリ、中長、階
梯デアリテ外=關シテハ既=検事側証人兼幹が証言シガ之ヲ
公式且權威ナル証拠=依リテ立証スル所=見習士官、地位=
關スル日本陸軍法規及被告与木、履歷、抜擢ヲ証拠=提
出シテ思フ(後者ハ日本政府カラ未著ナルデ別着次第之
ヲ提出シ度イ)

第二=事件が發生ル=至リテ終結及被告与木が之=
如何ニシタル=至リテ狀況=關シテ昭和十一年當軍務委員會ヲ
行ハル五花陸軍中將其他、裁判記録及父与重尙會記録
1中カラ關聯シ且重要ナル部分ヲ証拠=提出シテ思フ。
全記録、中カラハ、主トシテ第一回、事件(罪狀地目1、2)=關スル
1ヲ、又一部第三回事件(罪狀地目4、5)=關スルモノヲ証拠=
提出スルデハ一。

(1)

是等、証據の至るべき事柄が既に戦争犯罪裁判に見られ、被告が積極的・傍聴・対して実験せし企図せしこと、全照然、性質を異にし、犯罪に上當の物カ、命令、前・被告等木の服従せしるべき事情を明示せしこと。

第三、罪状項目第五、事件に於て検事・依つて主張せし品に如く、被告等木・傍聴殺害を補佐し教唆し行爲が功をなした。就て明瞭・このこと、検事・依つて証據提出せし、佐藤今朝吉及中村重信、Deposition中、「被告等木が傍聴、處刑・関の現場に於て佐藤及中村・助言をせし、如く証言が得る。然し、斯かる事實、無かつた云々を明瞭・せし。被告等木自身証人台・立つて証言せしこと。

最後、被告等木、人格・関し一般的事実及事件當時、状況をしるべき証書・通つて証據・提出して辯護し、証據提出せしこと。

(終)

OPENING STATEMENT FOR THE DEFENSE

by

Mr. Sadamu Sanagi, Counsel for the Defense.

As regards the three incidents with which the accused TERAOKI, Tadashi is charged in the instant case, there is no great contradiction as to the actions of the accused between the statement of the accused, himself, (Exhibit 4), and the testimony of the eyewitnesses, except some minute differences. It is not the intention of the defense counsel to waste the time of this commission by reproducing the evidence pertaining to the details of these incidents.

However, the judge advocate failed to show by his evidence such important factors in the trial of the accused as to how the alleged incidents occurred; how the accused came to be involved in these incidents; whether or not the accused had criminal intent; and, what the position of the accused was. Therefore, the counsel for the accused will introduce in his case evidence mainly relating to these factors.

First, we shall show the rate and position of the accused, TERAOKI, at the time of the alleged incidents. As prosecution witness KANEMORI testified, the accused was a probationary officer at the time of the incident, with the rate of sergeant major. In order to further establish this point by official and authenticated evidence, we shall introduce excerpts from the Japanese Army Regulations concerning the position of a probationary officer, and from the record of personal history of the accused, TERAOKI. (Since the latter has not yet arrived from the Japanese Government, we shall introduce it as soon as we receive it.)

Secondly, we shall establish how these alleged incidents occurred and how the accused, TERAOKI, came to be involved in the incidents, by introducing pertinent portions of the record of proceedings in the trial of Lieutenant General TACHIBANA, et al, tried by a military commission in 1946, and of the record of the Board of Investigation of War Crimes conducted on Chichi Jima. We shall offer into evidence such portions of these records as relate to the first incident (Specifications 1 and 2) and the third incident (Specifications 4 and 5).

The above evidence will clearly establish that the accused, TERAOKI, had no positive intention of performing the dissection of prisoners of war as frequently happened in the similar war crimes incidents in which doctors were involved, but that he had to obey the orders of the violent commanding officer, Major MATOBA.

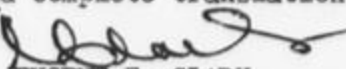
Thirdly, we shall show whether or not the accused, TERAOKI, aided or abetted in the killing of a prisoner of war in the incident of Specification 5, as alleged by the prosecution. In the depositions of SATO, Kesakichi and NAKAMURA, Shigenobu, it is implied that the accused, TERAOKI, advised SATO and NAKAMURA concerning the execution at its scene. However, the accused, TERAOKI, will take the stand in his own behalf to clarify that he did not give such advice.

Lastly, at the closing of the case for the defense, we shall introduce two affidavits showing the general reputation of the accused, TERAOKI, and the circumstances at the time of the alleged incidents.

Respectfully,

/s/ SANAGI, Sadamu.

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


EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

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0490

陳述書

寺本 忠

軍法委員各位

私は自己の代表人名に立って証言をし、又私が起訴せられた事件については昭和三十三年十月四日に作成した私の陳述書に詳細に述べたが、茲に左記の如く個人的な陳述をなす、と思ひます。

私は中学生の時、「将来の希望」と云ふ題の作文を書きました。その時私は、一生懸命に勉強して立派な通者になり、医学博士の学位をとり、病める者、苦むべし者、を慰め、救ひたいと云ふ意味のことを書いたことも未だ記憶して居ります。当時十三、四歳の少年の理想と云へば、陸海軍大將とか、總理大臣になりたいと云ふのが大多数でありましたが、私は通者になりたいと思つて居りました。

日來ては昔から「通は仁術なり」と云はれて居ります。又通者にならんとする者は人格が清潔でなければならぬとも云はれております。

少年時代から医者になることを志しておいた私は、当然、甚だ消極的な人であり、又私の性格も医者に適しておけると人から言われて居りました。実際私はまだ嘗て他人と争ったり喧嘩したりしたことはありませんでした。

幸にも私は二十四二一セプト農科大学教授、博士の南校した大学へ入り、少年時代の夢を実現することが出来ました。私は卒業し、学生時代をとりかへ更に研究をするお口づらとして、戦国の昔附にも出ました公衆衛生院に勤め、此處で野田教授指導の下に結核の研究に没頭し、四年後に待望の医学博士の学位を獲得することが出来ました。

然るに太平洋戦争は既に勃発しておりました。昭和十七年私は師団司令部の軍医部から軍医三席員を志願する按にこの勅告状を受取りました。医学の研究に精進し、私の理想を実現したかった私は、当然、この戦争に捲き込まれることを好みませんでした。勿論私はこの勅告に心せず、研究を続行しました。

併し乍ら此の自紙には、若し私がその軍の指示に従
はなければ、懲罰として二等兵で召喚される
と云ふことが警告されておりました。

翌々昭和十九年になり戦争は益々熾烈となり、
東京の空襲は必至と目されるに至りました。
私は家族と共に田舎に疎開しました。私が疎
開してから二月月の昭和十九年九月二十八日に
私は懲罰召喚を受け、陸軍に入隊させられ
ました。勿論私の階級は衛生二等兵であり
ました。入隊して僅か十日後、私は他の人々と共
に行先も知らせられず、硫黄島に送られて行
き、其処で各部隊に配属せられました。

私は陸軍に入ってから僅か二ヶ月後、即ち昭和十
九年十一月下旬に見習士官となり、曹長の階級
を与えられました。而も私は見習士官としての
正規の教育を受けずおぼせんでした。従つて私
は軍隊の規則とか慣習とか云ふものを殆ど知り
ませんでした。只私の知つておたことは、日本軍
隊では上官の命令は絶対に背くことは出来な
いものであると云ふことだけでありました。

才三。八大隊長の的場少佐は、異常性格
の持主でありました。私達が的場少佐に
就て知っておることが、真実であると思は
れることの出来る人は少く、せう。米軍が硫黄
島に上陸してからの的場少佐の狂暴性は、以前よりも
尚甚しくなり、それが最高潮に達した時、私が
裁判、これなる此等の不幸な事件が起りました。
而も之等の事件は坂部軍医の留守の時、即ち私
が私の部隊で勤務しておる日に起りました。口し
た不幸は偶然の一致を経験せねばならぬやうな
が私の宿舎だったとせうや、併し私が之を宿舎
として構へるとしても、私が私の日頃の正義を米軍に
全然及した行動をせねばならぬやうなのは何たる
不慮な事だせう！

私は年老いた母と、四人の幼児を抱へた妻を家に
残して居ります。私の母は立派な心しい人です。
私は母に負ふところ多く、私に就て長所があつた
なら、それは此母のお蔭です。此の母なくしては
私は這者にはなれなかつたであらうなせう。彼女
は私の為、数多くの犠牲を忍んでくれました。私の
妻はミッドウエーを去る敬虔なウリステヤンで
す。彼等と私が子へた、そしてこれがうも子へつ
けるであらう苦痛を思ふ時、私は胸が張裂け

んゆめうの気がしたします。死を以て反抗すや、
あつた命令に服従した私の不運と弱さのため、
私も私の家族もかうした不幸な身の上にな
つてゐるのです。私はその時の場中佐の命令
に反対することが出来ませんでした。併し私は
決して自発的に又は企図を以て、又は逆者と
しての好意のやう之言の事件に参加したの
なことを私は神と人との前に誓ひます。

軍法を以て各位 といふ當時の戦況、的場
中佐の性格、私の性格と立場、及び私が之等
の事件に参加せざるを得なかつた状況を
考慮に入れ、私に対し深甚なる同情を
お願いいたします。

貴官等の慈悲を乞ひます。

敬 自

寺 不 忠

昭和二十四年三月十五日

STATEMENT OF TERAOKI, TADASHI

Gentlemen of the Commission:

I have taken the witness stand and testified in my own behalf. I have also fully explained in my statement written on November 4, 1945 about the incidents with which I am charged. However, I wish to make some personal declarations, as follows:

When I was a high school boy I wrote an essay entitled "My Future Hope." I still remember that I stated to the effect that I would study hard to be a good doctor; that I would get the degree of doctor; and that I would ease and save those who were sick and helpless. In those days, most of the boys of thirteen or fourteen years old had a hope to become a general, an admiral, or a prime minister. I wanted to be a doctor.

In Japan, it has been said from the old days that "the medical art is the art of benevolence." It is also said that a man who wants to be a doctor must have a fine personality. It was said by many that I, who intended to become a doctor from boyhood, was naturally a very conservative person and well fitted by personality to be a doctor. As a matter of fact, I have never quarreled or fought with others.

I was fortunate enough to realize my boyhood dream when I entered a university, a university founded by an American, Professor Clark of the Massachusetts Agricultural University. After I was graduated and became an M. D., I wanted to study further. I entered the Institute of Public Health established with the contribution of the Rockefeller Foundation where I devoted myself in research of tuberculosis under the instruction of Professor Nobefji. After four years I could get the degree of doctor of science for which I was studying.

However, the Pacific War had already started. In 1942, I received a letter from the medical department of a division headquarters advising me to volunteer as a member of the reserve medical personnel. Since I wanted to realize my ideal by devoting myself to further medical research I naturally did not like to be involved in this war. Needless to say, I did not consent to the proposal. I continued my studies.

However, it was warned in the letter that if I did not follow the instructions of the army, I would be subjected to disciplinary punishment and would be drafted as a private second class.

The war became more and more intense and two years later, 1944, it was expected that the enemy's air raids on Tokyo would be inevitable. I evacuated with my family to the country. Two months after I went to live in the country, namely on September 28, 1944, I was called for disciplinary punishment and drafted into the army. My rate was of course a corpsman, private second class. Only ten days after my conscription I was taken to the front without being notified where I was going, and arrived at Iwo Jima where I and the others were assigned to various units.

Within only two months after I had entered the army, around the latter part of November, I was made a probationary officer with a rate of sergeant major. Besides I had no formal training as a probationary officer. Accordingly, I knew little about the rules and customs in the Army. All I knew was that in the Japanese Army superior orders could never be violated.

After the invasion of Iwo Jima by the American forces, the frenzy of Major Matoba became much more horrifying than before, and at the peak of his insane violence, these unfortunate incidents for which I have been tried occurred. All these incidents occurred at the time when Surgeon Sakabe was absent, and on a day when I was on duty in my unit. It was my fate that I had to experience this unfortunate coincidence. Looking back, what a disaster it is that I had to act entirely in opposition to my principles and philosophy!

I left an aged mother and my wife with four small children. My mother is a fine, just person. That which is fine and good about me I owe to my mother. Without her, I could not have become a doctor. She sacrificed much for me. My wife is a sincere Christian who was graduated from a mission school. When I think of the pain and hardship which I have caused and will cause even from now on, I feel as if my heart were torn to pieces. The misfortune is with me and my family because of my ill-fate and weakness in that I obeyed the orders which I should have disobeyed even at the cost of my life. I could not oppose Major Matoba then. But I swear before God and men that I never participated in these incidents voluntarily or intentionally or out of curiosity as a doctor.

I beg you gentlemen of the commission to consider the battle condition at that time, the abnormal character of Major Matoba, my character and situation, and the circumstances in which I had to participate in these incidents; and that you will have deep sympathy toward me.


I pray for your mercy.

Respectfully,

/s/ TERAOKI, Tadashi.

March 15, 1949.

I hereby certify that the above is a true and complete translation of the original in Japanese, to the best of my ability.


EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

JUDGE ADVOCATE'S OPENING ARGUMENT

Delivered by:

David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

The case of TERAKEI, Tadashi, is in many aspects a relatively simple one. The accused was charged with the commission of five offenses, in violation of the law and customs of war, as set forth in five specifications. These specifications relate to three incidents in which the accused TERAKEI participated. The testimony of the prosecution witnesses, the statement of the accused introduced by the prosecution, and the testimony of the accused himself, establishes his participation in these incidents.

Specifications 1 and 2 relate to the incident alleged to have occurred on or about February 23, 1945. Specification 1 alleges that on or about February 23, 1945 at Chichi Jima, Bonin Islands, the accused wilfully disrespected the grave of an American prisoner of war by unlawfully disinterring the body of a prisoner of war and removing the liver and flesh from the thigh of the prisoner. The duty under the law and customs of war to respect the graves of enemy combatants and of prisoners of war is founded not only on fundamental concepts of human decency and dignity, but upon well recognized and generally accepted principles of international law, specifically recognized and embodied in international conventions, such as Article 4 of the Geneva Red Cross Convention of 27 July 1929, ratified by both the United States of America and Japan, and Article 76 of the Geneva Prisoners of War Convention of July 27, 1929, which Japan specifically agreed to apply to prisoners of war under its control.

The international law in this regard is identical with the prevailing domestic law in all civilized countries. As stated in 15 Am. Juris., Dead Bodies, Section 40: "Civilized countries have always recognized and protected as sacred the right to a Christian burial and to an undisturbed repose of the human body when buried." The Anglo-Saxon law in this regard is demonstrated by the following citations from leading authorities:

"Unauthorized disinterring of the body of a deceased human being is an indictable offense both at common law and by statute, regardless of the motive or purpose for which the act is done. The opening of a grave in a town cemetery by order of the town officers for the purpose of removing a dead body because the lot in which it is buried has not been paid for, is within a statute making it a felony for any person, without due process of law or consent of specified relatives, to open any grave and remove any dead body therefrom, and municipal officers who direct such action cannot escape liability on the ground that they were ignorant of the law and supposed that they had the right to order such removal, or on the ground that they were acting in their official capacity." (citing fn. 9, State v McLean 121 N.C. 539, 28 S.E. 140, 42 L.R.A. 721.) 15 Am. Juris., Section 40, Dead Bodies.

Similarly Burdick, Law of Crime, Section 978, Disinterment, discusses the applicable law as follows: "The violation of the grave or sepulture is generally punished by statute, (fn. 97 - some states is a misdemeanor, in others a felony), and, at common law, it is a misdemeanor to remove from the grave a buried body without

the consent of the owner of the grave, except when permitted or ordered by the law. The criminal disinterment of dead bodies, otherwise known as 'grave robbery', 'body snatching', and, sometimes called 'burkism' from the name of a notorious offender in Scotland, is usually associated with the motive of selling or obtaining dissecting material. In fact, before modern statutes were enacted for the purpose of lawfully providing such material, such practices were common. In the case of *Rex v Lynn*, in 1788, it was strenuously argued that taking up dead bodies for the purpose of dissection was not a criminal offense. The court held, however, that common decency required that the practice should be stopped; that the offense was punishable as a wrong against public decency and morals, and that the taking up of the body was for the purpose of dissection did not make it a less indictable offense. *Rex v Lynn*, 2 T.R. 733, 1 Leach 497; *State v McClure & Blackf.* (Ind) 328; *Com v Cooley* 10 Pick. (Mass) 37.

"An exhumation of a body may be ordered by proper judicial authority upon a sufficient showing for the purpose of obtaining evidence in criminal proceedings, and also, in cases of alleged fraud upon insurance companies. Likewise, in the interest of public health, dead bodies may be removed from their place of burial and transferred, by public authority to other proper places of interment. The next of kin, may also, under the regulations of the statutes, remove a body to another burial place.

"The statutes further provide that dissection material for authorized medical schools may be obtained by delivering to the proper authorities of such schools the unclaimed bodies of persons executed for crime, or the unclaimed bodies of persons dying in prisons, almshouses, or other public institutions where otherwise, such deceased persons would have to be buried at public expense."

Similarly Bouvier's Law Dictionary (Rawle's Third Revision) in discussing dead bodies states: "To disinter a dead body without lawful authority, even for the purpose of dissection is a misdemeanor for which the offender may be indicted at common law." (citing 1 D. & R. 13; *State v McClure*, 1 Blackf. 304; *Kavanaugh's Case*, 1 Grenl. (Me.) 226.)

While the content of the Japanese law in this regard is not directly relevant it is interesting to note that provisions with regard to crimes relating to graves, are contained in the Criminal Code of Japan, (translation and annotation by W. J. Sebald (1936).) Article 189 establishes a criminal penalty for exhuming a grave. Similarly Article 191 provides additional penal punishment for persons who have exhumed the grave and damaged the corpse, remains, or hair of the deceased person. The decisions with regard to these two statutory provisions reflect the approach of the Japanese law to the concept of respect to the grave and the dead body as being similar to that which is referred to by American Jurisprudence as being a concept common to all civilized countries. The ratification by Japan of the treaties noted above which contain such provisions similarly reflect their acceptance of this standard of civilized society.

The testimony of prosecution witness Kanemori, the statement of the accused (Exhibit 4), and the testimony of Kanmuri introduced by the defense, all establish the fact that the accused TERAOKI, taking some of his subordinates with him, proceeded to the cemetery near the Suyeyoshi Unit on Chichi Jima, for the purpose of disinterring the body of a prisoner of war who had been executed there the day before, and of removing the liver and flesh from the thigh of the prisoner, and that the accused TERAOKI upon arriving at the grave, ordered the disinterring of the body.

(Kanemori, q.15,16), and the removal of the flesh from the thigh, and personally cut open the body and removed the liver.

The mutilation of the body and removal of the liver and flesh from the thigh also constituted a separate and distinct offense under international law, since these acts prevented the subsequent honorable burial of these prisoners of war, as required by the law and customs of war. This offense in violation of the law and customs of war, is set forth in Specification 2. The law and customs of war, with regard to honorable burial are an integral part of that body of the law, and have been embodied in numerous international treaty provisions and conventions, such as the Annex to the Fourth Hague Convention of 18 October 1907, (Article 19); the Tenth Hague Convention of 1907 (Article 16); the Geneva Red Cross Convention of 27 July 1929 (Articles 3 and 4); and the Geneva Prisoners of War Convention of 27 July 1929 (Article 76). Note: The first three of these conventions were ratified by both the United States of America and Japan, and Japan also agreed to apply the provisions of the last of these conventions to prisoners of war under its control.

Military commissions convened by naval authority in this area have tried and convicted war criminals accused of this offense of honorable burial. Such convictions, based upon acts similar to those performed by the accused in the instant case, have been reviewed and approved by higher authority, including the Secretary of the Navy: viz: Charge II, Spec. 6, Trial of Surgeon Captain Iwanami, IJN, prevention of honorable burial by dissection and mutilation of bodies of prisoners of war; Charge II, Specs. 5 and 7, Trial of Lieutenant General Tachibana, et al, conviction of Surgeon Lieutenant Matsushita and Surgeon Lieutenant (j. g.) Sasaki respectively for prevention of honorable burial by improper removal of the viscera of a prisoner of war.

The right and duty of honorable burial of the dead is carefully protected in the domestic law of civilized countries, and the law strongly condemns and punishes indecent treatment of the dead. The Japanese domestic law as well as international law and the law of other civilized countries prescribes criminal punishment for the damaging of the corpse (Art. 190, the Criminal Code of Japan, Sebald, op. cit.). What manner of burial is prescribed depends upon the prevailing statutory provisions which may legalize burial in the earth or sea, above ground in a mausoleum, or by cremation. But regardless of what specific manner of burial or preparation for burial is permitted and used, the law unequivocally prescribes that the corpse must be treated with decency and honor. Wharton's Criminal Law, Twelfth Edit., Vol. 2. "Indecency in treatment of a dead human body is an offense at common law, as an insult to public decency." It is a criminal offense to disturb or damage the body. And scientific or even philanthropic intentions are no defense. Com. v. Cooley (1830) 10 Pick. (Mass) 37. The absence of an evil intent, or even the presence of good intention, is no defense. Wharton's op.cit. Sec. 1688, 1689. At common law it was an offense to give, sell, or take dead human bodies for the purpose of dissection. (State v. McClure, 4 Blackf. (Ind) 328; Com. v. Loring, 8 Pick (Mass) 370; Thompson v State, 105 Tenn. 177, 58 S.W. 213; Rex v Cundick D & R 13). While statutes permit dissection where directed by the deceased during his life, or by his relatives after death, etc., the taking of or use of such dead bodies where not specifically authorized by statute, or not in strict conformance to the statutory requirements of consent of relatives, etc. is prescribed and punished as criminal in all jurisdictions. No provision or precedent of the law and customs of war authorizes or permits the dissection of the body of dead prisoners of war. In the absence of such precedents, and more specifically in the light of the provisions against illtreatment of the dead, the duty of honorable burial, and the commonly accepted

standards of decency, with regard to the human body, it is obvious that in the existing law and customs of war the performance of dissections upon the bodies of dead prisoners of war for the purpose of instruction of one's own medical personnel is criminal in the highest degree.

In the instant specification the prevention of honorable burial consisted of the opening of the body and removal of the liver and the removal of flesh from the thigh which clearly constitutes illtreatment of the dead under the law and customs of war. The discussion of dissection, which is part of the offense specified in Specification 4, was made at this time in order to obviate the necessity of further discussion of the nature of the offense of prevention of honorable burial.

The facts in the incident are clear and essentially unchallenged by the accused. All that the accused attempts to establish in this regard, is the alleged existence of orders from Major Matoba. The existence of such superior orders, does not constitute a defense. In almost every war crimes case, the accused has sought to evade his responsibility for his participation by contending that his illegal acts were the results of the orders of a superior officer. This defense has been universally rejected. The acceptance of such a defense would permit a superior officer to confer immunity upon his subordinates for any brutal, bestial, inhuman crime in which they participated. The law does not, and obviously cannot sanction such absolution or immunization from criminal responsibility. (See Glueck, War Criminals, Their Prosecution and Punishment, p. 140) SCAP Regulations Governing the Trials of Accused War Criminals, cited in paragraph 6 of the precept of the instant commission, specifically provides that "...action pursuant to orders 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." The language of the famous International Tribunal at Nuremberg, (Summary of Judgment, released September 30, 1946) is clear in this regard: "The defense of 'Superior Orders' has never been recognized as a defense to a crime, but is considered in mitigation as the charter here provides."

Specification 3 alleges that the accused did, on or about February 25, 1945, at Chichi Jima, prevent the honorable burial of an American prisoner of war by mutilation of the body and removal of the liver and flesh from the thigh of the prisoner. The testimony of prosecution witness Matsui, and the confession of the accused (Exhibit 4), unequivocally establish that the accused committed the acts alleged, and is guilty of the offense charged in Specification 3.

Specification 4 similarly alleges that on or about March 26, 1945 the accused prevented the honorable burial of an American prisoner of war by dissection and mutilation of the body, and removal of the liver and flesh from the thigh of the prisoner. The testimony of prosecution witnesses Kanemori and Iso, and the confession of the accused (Exhibit 4) conclusively establish that the accused is guilty of the offense charged in this specification.

The remaining specification, Specification 5, relates to the same incident as that charged in Specification 4, but alleges in effect, that the accused, acting with Sato and Nakamura, murdered an American prisoner of war. The commission is familiar with the allegations of such charge, and Naval Courts and Boards, Section 53, presents in clear concise fashion a brief discussion of the law of murder, which obviates any necessity of my discussion of the general requirements of proof of the offense.

However, certain aspects of the instant case necessitate additional discussion of the law with regard to the quantum of participation required for criminal responsibility. The accused TERAOKI did not perform the actual beheading. This fact does not negate criminal participation or responsibility in connection with the brutal murder but requires the application of certain principles of the law with which the commission may not be fully conversant, and hence justifies and requires an extensive examination of this phase of the law of criminal responsibility.

While the instant discussion will be directed toward analysis of criminal responsibility of the accused under criminal law as reflected by the Anglo-Saxon law, which is the law familiar to this forum, it may be briefly noted in passing that the criminal law of all civilized countries does not limit criminal responsibility to the immediate and direct perpetrator of the criminal act. Conversely the criminal law of all civilized countries extends criminal responsibility to those who are directly or indirectly responsible for the commission of the criminal offense. Briefly, merely as illustration of the Japanese law in this regard, note the following from Sebald, op. cit. Chapter 11, Articles 60-65 deal with complicity. Article 60 provides "Two or more persons who have cooperated in committing a crime are (joint) principals". The following case is cited thereunder: "The expression '(joint) principals' does not refer solely to those who have participated in the whole or part of the act forming an essential element of a crime. If several persons have conspired to carry out a crime and some of the conspirators have been induced to undertake the execution of the criminal act, those who have thus caused the criminal intention to be carried out are also (joint) principals." 1 Daishinin Hanreishu 233. Similarly Article 61 provides: "A person who has instigated another to commit a crime shall be considered a principal. The same applies to a person who has abetted an instigator." Cited under this article is the following case: "When a person takes part in a crime as a result of advice given by another person the latter is to be dealt with for instigation if the advice has caused a determination to commit the crime or as an accomplice if such advice has merely strengthened a criminal resolution already formed." 76 Daishinin Hoketsu Shoraku 9286. Article 62 provides: "Every person who has aided a principal is an accessory. Every person who has instigated an accessory shall be considered an accomplice." The following pertinent cases are cited under this article: "The crime of an accomplice is formed when the principal's act of execution is aided by an act outside the execution of the crime. The means used for the purpose of complicity may be material aid, such as supplying tools, moral assistance, or giving advice and encouraging the perpetration of the principal crime." 42 Daishinin Hoketsu Shoraku 4371.

"An act of keeping watch at the scene of a murder is itself part of the murder. The watcher is therefore to be punished as one of the principal perpetrators, and not merely as an accomplice." 51 Daishinin Hoketsu Shoraku 5606.

Modern criminal law seeks to apply socially realistic standards in a determination of criminal responsibility and in doing so rejects hyper-technical distinctions or standards of responsibility in order to prevent responsible individuals from escaping criminal punishment for their participation in criminal acts.

While Naval Courts and Boards, Section 41, merely points out that no distinction is to be made in charging principals and accessories before the fact, we must examine the question of criminal participation in greater detail in view of the nature of the instant case.

Burdick's Law of Crime (1946), in discussing participants in crime, presents the following discussion of applicable law: "Section 218...Yet in connection with many offenses, while one or more persons actually do the deed, one or more other persons may be present at the time, taking no active part in the commission of the crime, but giving their encouragement and support to its commission, and ready and willing to aid in it, if necessary. Also, one or more persons who actually commit a crime may have been instigated or procured to do so by one or more other persons who are not present when the act takes place. Even after a crime is committed, the guilty person or persons may be helped to escape by one or more persons who had no previous connection with the crime, but after it was committed knew that the person or persons they aided were the offenders.

"All such participants in crime are divided by the common law into various classes, a participant being often designated as 'particeps criminis', and there are technical rules concerning these various classes especially with reference to their degree of guilt and the time of their respective trials....". Section 219 in discussing the development of the law under the English judges, notes that "Since accessories could not be tried until the principal offenders were tried and convicted, the judges made a new classification, and instead of calling persons who stood near the actual perpetrator to aid and abet him 'accessories at the fact,' called them principals in the second degree, and such persons could be tried as principals although the actual perpetrator had not been tried. (Griffith's case, 1 Plowden 97 (1553))."

Similarly 14 American Jurisprudence, Criminal Law, Section 76 "By most of the ancient writers on the common law of England, persons who were present at the commission of a crime only for the purpose of aiding, countenancing, or encouraging its perpetration were described as accessories at the fact. They could not be brought to trial until the principal offenders had been convicted or outlawed. This circumstance, together with the fact that the distinction between an aider and abettor and a principal was found to be distinction without a difference, long since led to the classifying of aiders and abettors as principals in the second degree. They may be defined as persons who are present at the time a crime is committed, lending their countenance, aid, encouragement, or other mental aid or keeping watch or guard at some convenient distance while another person does the actual criminal act. A mere bystander is not guilty as a principal in the second degree for commission of a crime, if he does not in any way procure, incite, or encourage the act done by the actual perpetrator."

The participation by the accused, TERAHI in the murder of HALL as charged in Specification 5, is similar to that which is commonly described under the heading of principal in the second degree. While international law and more specifically the law and customs of war makes no fine distinctions between degrees of participation, in determining the existence of criminal responsibility, it is nevertheless valuable to examine the participation of the accused in the instant case in the light of the law applicable to principals in the second degree, since it clearly establishes the existence of criminal responsibility for the kind of participation which the accused TERAHI is alleged to have committed.

In many jurisdictions all distinction between the principal in first and second degrees has completely disappeared, since criminal guilt and criminal responsibility is considered similar in both instances. Note 14 Am. Juris., Criminal Law, Sec. 79: "At the present time, especially under modern statutes, the distinction between principals of the first and second degree is not of much practical importance, and in some instances is entirely abolished. Statutes in varying terms make all persons who are present and concerned in the commission of a crime guilty as principals. The principal and an aider and abettor may be indicted or tried jointly or separately."

Burdick, *op. cit.*, discusses principals in the second degree, as follows: "Sec. 221. PRINCIPALS IN SECOND DEGREE. A principal in the second degree is one who does not commit the criminal act himself, but is present and aids and abets it. His presence must be either actual or constructive, and he must participate in the crime by aiding or abetting it in some way, as standing by ready to assist, if necessary, the principal in the first degree, or keeping watch or guard at some convenient distance. Every person present at the commission of the crime, encouraging or inciting it in any way, or any means, (State v Hoerr, 88 Kan. 573, 129 Pac. 153), as by words, gestures, looks or signs, (Hurd v Com., 159 Va. 880, 165 S.E. 536), the law assumes to be an aider and abettor. A person who is present but not assisting in any manner is not guilty as a principal in the second degree, and mentally consenting to the commission of the crime, without affirmative word or act, is not sufficient to make one a participant. An aider and abettor must share the intent or purpose of the principal actor, and there can be no partnership in an act where there is no community of purpose."

26 American Jurisprudence, Homicide discusses the pertinent law in this regard as follows: "...Under the modern law, he who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal. He is a principal even though another does the killing. Presence, either actual or constructive, where coupled with an aiding or abetting, a counseling, inciting, hiring, or in any manner assisting in the commission of a felony will make a person a principal in the offense....." (Sec. 57) "Sec. 58. Principals in Second Degree. - A principal in the crime of murder need not be specifically a party to the killing, if he is present and consenting to the assemblage by which it is perpetrated in pursuance of the common design. All persons present concurring and participating, by some overt act, in the commission of the homicide are equally guilty with the one who struck the fatal blow, fired the fatal shot, etc., and it need not be shown that there was an actual verbal agreement to stand by and aid one another. Those who advise, encourage, aid, or abet the killing of another are as guilty as though they take the person's life with their own hands."

Similarly Sec. 60, 26 American Jurisprudence, Homicide, discusses the question of what constitutes participation in an offense of homicide, as follows:

"In order that a person may be regarded as a participant in a homicide, he must have aided, abetted, assisted, encouraged, or advised the killing, with the intention of encouraging and abetting the commission thereof. Some courts take the view that it is not sufficient, to charge one with murder, that the killing was in pursuance of his advice, counsel, or encouragement, unless it was induced thereby. Others take the view that it is not necessary that the encouragement, etc., induce the commission of the act.

Where there is no preconcert or conspiracy, he must enter into or participate in the homicidal design in order to be guilty of an act perpetrated by another. In order to be present, aiding and abetting in the commission of the offense, the accused must be so situated as to render some aid to him who directly perpetrates the homicidal act.

It is not essential to the guilt of one who aids or encourages the killer by acts or words that the killer have knowledge of such aiding or abetting. One who is merely present and sees that a homicide is about to be committed, and yet in no manner interferes, is not thereby deemed to participate in the commission of the offense. Failure to prevent the homicide, or tacit assent to, silent acquiescence in, secret approval of or consent to the act by one present, generally does not make him guilty, where there is no previous understanding, although as to the consent there are some statements to the contrary. In the absence of preconcert or conspiracy, the inactive presence of the accused, with intent to render aid if necessary, is not sufficient, although in some cases, the rule is qualified by holding the inactive presence, with intent to render aid if necessary, sufficient if the principal knew of the presence with intent to aid. If one brother comes to the assistance of another, who is engaged in a fight and whose adversary is seeking to obtain a club with which to strike the brother with whom he is fighting, the assisting brother is not chargeable with the murderous intent of the fighting brother, unless it is shown that he knew, or might reasonably have known, of such intent. Likewise, if the accused and the deceased were engaged in an altercation, and a third person without preconcert, conspiracy, or connivance with the accused struck the fatal blow, the accused is not guilty of homicide.

If two men engage in shooting at each other in a crowded place, and a bystander is killed, both are guilty of murder, one as principal and the other as an aider and abettor.

It has been held that one who advises and counsels the killing of public officers is guilty of murder without any reference to the question whether he engages in a conspiracy to do or procure the doing of some other unlawful act, if, in pursuance of such advice and counsel and induced thereby, an official is killed. Where a person is charged with participation in a homicide actually committed by another person while the accused was present without preconcert or conspiracy, the view has been taken, in some cases, that the law presumes that when one is present, encouraging, assisting, and advising another to do an unlawful act, the one so acting is induced by the presence and encouragement of the other to commit the act, and it is not necessary that the encouragement, etc., induce the commission of the act; in other cases, the court has said that a charge of aiding and abetting should have the words 'and said killing was induced thereby'."

Whether the accused, TERAHI, participated in the offense of murder charged in Specification 5 is largely a question of fact which the Commission must resolve after full consideration and evaluation of the evidence. Certain facts are clear and undisputed; others, however, present questions of credibility in view of contradictory or conflicting testimony or circumstances presented by the evidence. The presence of the accused, TERAHI, at the scene of the execution prior to its occurrence, is undisputed and has been admitted by the accused in his own testimony before the Commission. According to the testimony of the accused, he did not at the scene of the execution speak to Nakamura or Sato. According to his testimony, therefore, he did not openly disapprove or oppose the commission of the crime which he knew was about to be committed. According to his own testimony, the accused had learned two or three days prior to the execution that a prisoner of war was to be executed and that he, TERAHI, was to perform a dissection for the training of the auxiliary corpsmen and was to deliver the liver and flesh from this prisoner to Matoba. Similarly, on the very day of the execution the accused, according to his own testimony, was called to headquarters some time prior to the execution and informed by the adjutant, Kanmuri, that a prisoner of war was to be executed, and that TERAHI was to remove the liver and flesh and to perform a dissection of the prisoner for the instruction of the corpsmen. The accused therefore, at the scene of the execution, knew of the forthcoming murder of the prisoner and was personally present in order to remove liver and flesh from the thigh. His presence for this criminal purpose is admitted by him. Whether the accused was also present with the intention of performing the dissection as ordered, or whether, as he indicated rather feebly in his testimony, he intended to avoid the carrying out of the dissection allegedly ordered by Matoba, is immaterial in view of his admitted presence for the other criminal purpose, of removing the liver and flesh. The testimony of Kanmuri, Kanemori, Sato, Iso and the accused indicates clearly that the execution of the prisoner of war, the removal of his liver and flesh, and the dissection of his body for the purpose of instructing the corpsmen were all planned and intended (and according to TERAHI, ordered) by Matoba prior to the execution and in fact constituted one concatenated incident.

Since TERAHI, according to his own testimony knew of the planned connected series of events and was present with the intention and for the purpose of carrying out his part in this series of events, namely the removal of the liver and flesh, and/or the dissection, he should not be permitted to escape criminal responsibility with regards to the execution by the feeble contention that he did not personally participate directly in the execution. His position and participation is essentially no different from that of the criminal who, while his confederates murder and rob, in conformity with the original plan, stands by ready to receive and dispose of the loot. TERAHI prior to the execution knew that this murder would be carried out and that he was to receive the body, remove the liver and flesh, and dispose of it to Matoba; he went to the scene with this purpose and carried it out.

In addition to the above there is evidence that TERAHI directly participated in the performance of the execution. According to the evidence presented by the prosecution, in the statements of Sato and Nakamura; the accused aided in the execution by seating the prisoner of war cross-legged and advising this as the position of execution; and also requested both Nakamura and Sato to please perform the execution quickly so that he could commence his instruction of the corpsmen.

The fact that the latter request was not an order to either Sato or Nakamura is immaterial, for we are concerned in this instance with the question of encouragement to perform the execution, rather than the question of whether TERAOKI ordered the commission of the crime.

The accused and certain witnesses who were not direct participants in the execution have indicated that the accused TERAOKI did not send the prisoner. Similarly TERAOKI has testified that he did not speak to Nakamura or Sato prior to the execution. In view of this conflicting evidence a question of credibility and reliability of testimony is presented for the determination of the commission. In considering this question, the commission can properly consider the interest which respective witnesses may have in the outcome of the proceedings. This factor is clearly present and should be considered with regard to the testimony of the accused. With regard to Sato and Nakamura, the commission may consider the fact that they have already been convicted and sentenced for their participation in the incident. With regard to other witnesses the commission may consider not only their possible interest in the outcome of the proceedings, but also whether the observation and memory of such bystanders, who did not directly participate in the incident is equally reliable, as compared to the observation, memory, and credibility of Sato and Nakamura. With regard to the credibility of Sato, it should be pointed out that the accused, TERAOKI, has personally and specifically noted in his sworn statement (Exhibit 4) that Sato is a truthful and reliable person. He stated "Captain Sato was a very honest man of inflexible principles. It was clear, he would make an honest report..."

The above brief analysis of the evidence is sufficient for the purposes of this argument in view of the brevity of the instant trial. In considering the facts of the instant case, however, the commission should properly bear in mind certain additional aspects of the applicable law which appear to be particularly pertinent to the facts of the instant case.

According to most authorities, mere presence at the time of the murder is not alone sufficient to justify a conviction. (Karnes v Com. 125 Va. 758, 99 S.E. 562. 26 Am. Juris. 828).

Note however, the following citation in fn. 6, Wharton's Criminal Law, 12th Ed. Vol. 1, p. 331: "Presence alone may be regarded as encouragement to principal actor and constitute one an aider and abettor. State v Cloninger (1908) 149 N.C. 567, 63 S.E. 154."

Also note the following text material in Wharton's op. cit. Vol. 1, p. 333 "When the bystander is a friend of the perpetrator, and knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement" citing cases from England, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Nebraska, and Wisconsin fn. 11.

The presence of the accused, and his failure to disapprove and oppose the commission of the crime may be considered in determining whether he aided or abetted, etc. the commission of the crime.

As pointed out in fn. 12 of Sec. 60, 26 Am. Juris., Homicide, 200, "It has been said that the presence at a murder without disapproving or opposing it may be considered by the jury, in connection with other circumstances, in the determination of the presence or absence of assent to the crime or of countenance and approval to it. People v. Cione, 293 Ill 321, 127 NE 646, 12 ALR 267."

Similarly Section 89 of 14 Am. Juris., Criminal Law, 829 notes that "...it is certain that proof that a person is present at the commission of a crime, without disapproving or opposing it, may be considered by the jury in connection with other circumstances in determining whether he assented thereto, lent his countenance and approval, and was thereby aiding and abetting therein." (CSee cases cited in fn. 7).

The advice or encouragement that will make one a principal may be given by words, acts, or signs (26 Am. Juris. 829). The nature of the required participation is illustrated by the language of the following citations from leading cases and authorities.

The following case material appears in Wharton's op. cit. Vol. 1 p. 328, et seq, fn. 6: "Being present, giving aid and assistance, or advising, or watching to see if anyone comes to interfere with the perpetration of a criminal act, makes one an accomplice. People v. O'Brien (1908) 125 App. Div. 254, 109 N.Y. Supp. 267." (329); "One may become an accomplice by being present and joining in the criminal act, or by aiding or abetting another in its commission, or by advising or encouraging its commission. State v. District Ct. (1908) 37 Mont. 191, 95 Pac. 593, 15 Ann. Cas. 743" (329); "Presence, with instigation or encouragement toward the commission of a crime, although without actual aid or personal assistance therein, may constitute 'abetting.' Persons passing instruments to a prisoner for the purpose of effecting an escape are jointly guilty of a single offense, notwithstanding the fact that the instruments were passed in to the prisoner at different times, by different parties, but in the presence of each other. State v. Ballew (1909) 83 S.C. 82, 63 S.E. 668, 64 S.E. 1019, 18 Ann. Cas. 569." (328).

Fn. 8, 14 Am. Juris. Criminal Law, Sec. 90 notes: "Any person who is present encouraging or inciting an assault and battery by words, gestures, looks, or signs or who, by any means, approves the same is in law deemed to be an aider and abettor and liable as a principal. Such a person assumes the consequences of the act to its full extent as much as the party who does the deed. See Assault and Battery, Vol. 4, p. 127, Sec. 4." (829).

With regard to the criminal liability of TERAHI based upon the fact that the murder was one step in the connected chain of acts leading to the criminal removal of liver and flesh and dissection by TERAHI, the following case material and text discussions, are particularly pertinent:

Wharton, op. cit. Vol. 1, Sec. 246, fn. 6 notes: "One engaged in doing something in chain of acts leading to the consummation of an offense, though not actually present at the time of its commission, is a principal. Bass v. State (1910) 59 Tex. Crim. Rep. 186, 127 S.W. 1020." (330)

The following language also appears in the same footnote: "All persons concerned in the accomplishment of an unlawful and criminal purpose are principals. State v. Scott (1907) 80 Conn. 317, 68 Atl. 258." (330); "Anyone who commits an offense, or does some act forming a part of one of the steps thereof, or assists in the actual commission, or any act forming a part thereof, becomes a party thereto. Ibid." (330).

The effect of participation in other illegal acts, as determining criminal responsibility for homicide is discussed in the following informative language from 26 Am. Juris., Homicide; "Sec. 66. Nature of Offense Contemplated. - If the unlawful act agreed to be done is dangerous, or homicidal in its character, or if its accomplishment will necessarily or probably require the use of force and violence, which may result in the taking of life unlawfully, every party to such agreement will be held criminally liable for whatever any of his co-conspirators may do in furtherance of the common design. Accordingly, one person may be held liable for the homicidal act of another, where such act results from their combined efforts to commit robbery, burglary, jail delivery, breaking in and stealing, or assault merely. Again, where persons combine to stand by one another in a breach of the peace, with a general resolution of resistance to the death of opposers, and in the execution of their design homicide is committed, all of the company are equally principals in the crime." (204). "Sec. 68. Casual Relation of Offense to Killing. - The rule of criminal responsibility for acts of others done in the prosecution of an unlawful project is subject to the limitation that the particular act of one of a party, for which the associates and confederates are to be held liable, must be shown to have been done for the furtherance, or in the prosecution, of the common object and design for which they combined together, and must have been the ordinary and probable or necessary and probable result or effect of the execution of the conspiracy; the connection between them may be reasonably apparent. There is no criminal liability where the homicide was a fresh and independent product of the mind of one of the confederates, outside of, or foreign to, the common design, or where it did not result from something which was fairly within the common enterprise, and which might have been expected to happen if occasion should arise for anyone to cause it...." (205)

While the foregoing discussion of the law applicable to the instant case has of necessity been brief, the judge advocate considers that sufficient material has been presented to the commission to present a clearer picture of the law to be applied in the instant case.

None of the remaining legal questions require or justify further discussion by the judge advocate. The commission is cognizant of the legal nature of various technical terms used in the specifications and additional discussion of these terms or analysis of pertinent evidence, would be feckless. The question of superior orders was previously discussed in connection with Specification 2. With regard to the question of burden of proof and reasonable doubt, the commission is cited to Naval Courts and Boards, Sections 148, 154, 158 and 159. With regard to credibility of witnesses, the commission is cited to Sections 300 and 301 of Naval Courts and Boards.

Respectfully,

David Bolton

DAVID BOLTON, Lieut., USN,
Judge Advocate.

最終辯論

元日本帝國陸軍軍医が新(事件發生地)
特設衛生部見習士官(本大志の)
辯護人

高野純二郎

軍法審判會委員長並に委員各位

私は被告人本大志の辯護人として茲に最終辯論
を為すに當り、本件之處理が始終公平且眞實に行は
れたることに對し、深甚の感謝の意を表する所である。

第一部 総論

第一 序説

茲に本軍法審判會の前に提出せられた本事件は、
能く今日迄最も多く本軍法審判會に依りて裁判
せられた他の事件に於けると同様に日本軍隊
に於ける上官の命令が問題となつてゐるから、此の外に
強制、脅迫又は威壓に因つてなつた違法行為の如何
否の刑事上の責任に付し論ずること本事件は重要な
問題を有するものである。更に本事件の被告人の刑事責任
を論ずるに當り、緊急避難を看過するに足るものがある
と認めらる。

犯罪行為の行はれた現場に居合せた者は、何
種の犯罪に付し刑事責任を負ふべきものとせらるや？
又は幫助及教唆の問題とせらるや？本事件は重要な

(1)

の関連を有つ事項なる。下は此等の事項に付て
項を分つて簡単に論じて置かむ。

第二. 軍隊に付ける上官の命令.

法語に「要法も法なり」といふことがあつた
如きは「要命令も命令なり」といふことがあつた
~~此の~~日本軍隊に付ける傳統的な信條であつたの
である。今茲に私は此のことの是非善惡を論
ずる資格は有つてゐない。又其の場合にもない。
唯道徳上及び法感情上封建的絶対的
服従を強ひ部下の意思決定の自由の全然無かつた
日本軍隊と個人の意思と責任と隨つて個人の責任
を重んずる民主主義的な Anglo-Saxon 系國家
の軍隊とは上官の命令といふことは付て根本的に
而も本質的に大いに相異を有つてゐると言はんとすべし
である。このことは疑ひない事實であつた。

日本軍隊に付ける「上官の命令」の特異性には
付て多くを熟知せよ。日本軍法務員會の前には附て
此の事柄に付て多言を述べたことは私は敢て言へ
るまい。唯茲に一言だけ言ひ度うことは本件の
被告人舟木忠の「部下は上官の命令の下に絶対無
條件の服従することゝ嚴命せられ其の當不當を
論ずることとは論議の當因理由を質問すること
へ許されず且即時実行を強要せられ其の不服
従は犯罪と看做され之に對しては敵前斬首と
死刑を以てさへ度々罰せられたことは既に知られた
日本軍隊の常なる曹長相當の一員習士官(本件の
事件發生當時)は過言なかつたといふことである。

版次
上記のとおり日本軍隊に於ける上官の命令の特異性
に因りては今日迄本軍法委員会に於て裁罰せしめら
るゝの事件に於て提出せしむべき証拠に徴して明
瞭なり。

第三. 犯意と強制 脅迫又は 威圧に因る犯罪行為。

犯意が犯罪の法的構成要件であることは
今更ふ言を俟たない。随つて強制とて犯意が
無い場合には（過失の場合は別とて）刑事責任
は生じない。或る人の行為が犯罪とて刑事
上の責任を負はしめらるゝのは其の行為に於て心
（mind）と意思（will）が合致するからである。
それであるから「外部からの力或は強圧に因り
て生じた行為は若し斯かる外部からの要因がなく
て生じた場合は犯罪的行為とてその如く其
の行為は心（mind）と意思（will）の合致か
らないから犯意を犯罪の法的要素とすべし限り
刑事上の責任は負はないのである」（Wharton's
Criminal Law, Vol. I, § 137, Malice is
evil intent, and is convertible with dolus,
footnote 2, p. 191.）換言すれば此の他人の
強制、脅迫又は威圧に因りて生じた行為は要約
的に非i traneなる、限り意識的に為さるゝ
べしとせしめらるゝ其の行為は犯罪意思即ち
成文法に明規せしむる意思を以て禁止行為
と爲すことゝふことと缺けてゐるから其の行為者は
刑事上の責任を負はないのである。（意思説に據る。）

亦此の強制、脅迫又は威圧は直接に且現便
の被害又は重大な、身体的傷害の危険に對す
る恐怖を與へる脅迫 (threats) の含まれてゐるこ
とを要するのである。

此の事項は付下に刑法學の權威 Wharton
の語に採用す。

「強制とは、人子に責任なし。強制は之
と二つの面から觀察するに可い。一は
直接の被害者が物理的に或る加害者
に對することを歸係せしむる。場合、例
へば第一者が其の被害者の手と握りて其の
被害者の意思に對し他人を殴打せしむる
如き場合である。此の場合には強制と
して其の被害者は刑事上の責任はない。二
は権力又は恐怖の圧迫が加へる。場合、
例へば自分では犯罪行為を為す意思を有し
て人か自分の抵抗することの出来ない他人か
に強制せしめて犯罪行為を為す場合である。
此の場合に其の強制せしむる人の手と握り
ては強制者に對し責任を所せしむるか又は
劇しい身体的傷害を加へる。こゝに脅迫
の下に犯罪を歸係せしむるに似てゐる場合
である。此の場合には其の犯罪行為者
に刑事上の責任はない。」 (Wharton's Criminal
Law, Vol. I, § 124, p. 174.)

更に同權威は説いて次の如く言つてゐる：

「脅迫せしむるを恐るゝ強制は脅迫の下
に犯罪の行はれたといふ事實は其の犯罪の

訴訟上は、被告の辯護と所得との差。併し
之が辯護と利用に得るは其の恐怖は
根拠ありを以て、これに依りて、而して其の
上は死又は重大なる身体的傷害の直接
且現原の危険があるに依りて、又
其の強制は其の被告人の「世帯」又は自己
防衛と為し得る餘地ない、或る性質の
ものに依りて、これに依りて、(同書、Vol. I, p. 384,
Coercion, Compulsion and Duress, pp.
514-515.)

第四. 緊急避難

本件の原告官を張の責に對する被告人舟木の
刑事責任を論ずるに當り、上記第三の強制又は脅迫
又は威迫は、同の犯罪行為の無責任性が重要な課
題となると同時に、又茲に述べらるる緊急避難も
考慮とされねばならぬ問題である。

今日文明諸國の刑法上緊急避難は一般
に承認せられてゐる。而して刑法上の緊急避
難は自己又は他人の生命、身体、自由若は財産に對
する現在の危難と避ける為己がことを得るに依り
て、その行為を認むるに當り、その行為より生じた害が
その避けるに依りて生じた害の程度を超へない限り之を
罰しないとするものである。即ち生命、身体に關する
緊急避難は責任阻却の事由と認めらるるものである。

緊急避難に關する上掲 Wharton と Clark
and Marshall の所論を下記に採用し、

「緊急避難は次の三個の事實が成立せ

58. 二は辯護となる。即ち一は其の起訴せら
れた行為が常大に且回復し難い、害悪を避くる爲に
行はれたものであること。二は其の行為を致すより他に
及らざる適度の手段の取られたこと。三は其の
救済方法が其の害悪と不均衡の爲となつたこと。
是れである。」(Wharton's Criminal Law, Vol. I §
126, Necessity a defense when life or higher
interests are imperiled, p. 176.)

「犯罪となし得る或る行為をも其の被告人が
次のことをし得たならば免責せよとい
ふ。即ち一は或る結果が発生したるは
自身(中略)に回復すべからざる害悪
の招来する場合に其の結果の発生を避く
る爲に或る行為を爲したること。二は其の
避けるにいたる目的に合理的に必要なる
程度を超へたこと。三は其の加
したる害悪の避け得た害悪と権
衡を失つたことである。」⁽²⁸⁶⁾

脚註(286): 或る違法行為を解免す
くべきは、緊急避難は常に其の
行為を正当化する。何となんば何人も
意思を意圖せし、犯罪行為に付て
は罪責を負はしめらるゝことではないから
である。---」(Clark and Marshall's
Law of Crimes, § 70, Necessity,
pp. 104-105.)

「は同の如くアメリカの法制に於ても緊急

避難は承認せられた原則である緊急避難
難の者に与えたる違法行為は刑事上の責任
を負はないとせらるゝ處の如しである。

第 九 犯罪の幫助と教唆。

人が犯罪行為の現場に居合せといふことの
みで他の人に他の犯罪に誘導せしめて他の犯罪に
体刑事責任を負はせしめることは出来ない。見物人又は
傍観者は決して幫助者又は教唆者ではない。
人の犯罪の幫助者又は教唆者となるが爲には
他の犯罪の遂行に付し何等か積極的の行為を
爲すことが必要條件である。消極的態度は
人を犯罪の幫助者又は教唆者たしめない。

上に述べた私の新見を裏付ける爲に下に
American Jurisprudence の説を採用せり。
「第一に犯罪行為の行はるゝ現場に居合せ
といふことは人と高級犯罪の參與者
としての責任を負はせざることをないことは
明瞭である。若し他の人が唯見物人又は
傍観者として何等犯罪行為を獎勵
すとか否かは是認すべからざる所を爲さ
ない。何れは他の人は刑事上の責任を負ふこ
とはない。蓋し他の人は偶に他の現場に
傍観者として居合せたに過ぎない。之
が其の不法行為の防止を防止する
の積極的の努力を爲さなかつたといふこと
のことであるからである」 (*American*

Jurisprudence, vol. 14, Criminal
Law, § 89, Presence as Spectator or
Bystander, p. 829.)

第六、本件之起訴及罪状項目。

本件之起訴及罪状項目は被告人青木忠は
1945年2月23日頃及同月25日頃並に同年3月
26日頃小笠原群島父島に於て日本軍隊に
勤務中日本軍隊に抑留せしむるにアメリカ人俘
虜1名の埋葬せしむる屍体と築城し其の屍体
の一部を截取するに因り其の墓に對し非禮を
為し且鄭重なる埋葬を阻止し(罪状項目其の
一及其二)；他の1名のアメリカ人俘虜の屍体の
一部を截取し鄭重なる埋葬を阻止し(罪状項
目其の三)；更に他の1名のアメリカ人俘虜の屍体の
一部を截取し鄭重なる埋葬を阻止し且佐藤今
朝吉及中村重信と共働を告げし此の俘虜並
に對し故意に何るに爲る理由なくして襲撃、殺
害を以て殺害し(罪状項目其の四及其の五)、斯く
するに因り戦時法規並に慣習法に違反した
と云ふのである。

被告人青木忠は、就罪状項目其の一乃至其の
四の新犯を為したるに對し、其等の行為とBirt
等は青木の其等の行為を爲すに付ける刑事上の
責任を阻却する事由があるに對し、次に青木は
佐藤今朝吉及中村重信と共働を告げし罪状
項目其の五の襲撃、殺害に參與したるに對し

に付ては 次は 証據に 現はれし 事實に 付て
検討し 見ゆ。

(9)

CC(9)

05 18

第=部 証據=基ノ事實ノ檢討

第一章 一般的事實

一、被告寺本ノ階級地位

被告寺本が主張セル事ト當時、起訴罪狀項目ニ起
載セル如ク陸軍々留少尉ニ非スニテ衛生部見習士官デ
タトハ日本政務司送付ニ段々ノ後、留片名簿(証據書數
第7)及各証人、証言ニ依リ何等、疑ハク立証セシ。

又見習士官ノ常長、身分階級ヲ有ニテ居タトハ日本
陸軍補充令(証據書數第6)ニ依リ立証セシ。又檢事側証
人兼森ニ依リ、其、服裝ニ就テモ併セ証言ガデタリテ之ニ
關シテモ亦何等、疑念、余地ガ無イ。

二、上官ノ命令

二月二十三日事件(Spec. 1. 2)ニ於テ被告寺本が大隊長
の場ナリ、命令ヲ副官冠吉春ヲ通ジテ受ケ、之ニ従ハネバ
ツカツタ狀況ニ就テハ、本法庭ニ証據ニ提出セシ冠吉春、立証
裁判ニ於ケル後、証言中ニ明セラル。

三月二十六日事件(Spec 4. 5)ニ於テ俘虜、肝ト肉トヲ取
ルノ的場ナリ、被告寺本ニ命令ヲ與ヘタトハ、証據ニ提出セ
タ父島査問會ニ於ケル的場訊問記録中、的場、証言ヲ
ツテ明白デアル。

俘虜處刑後、解剖ヲ行フ外ノ的場ガ命令ニシテニ執
テ、寺本ガ証人トニ於テ証言ニシテ、依、據今朝告大時ノ後、
Deposition (Ex 3)中第四十一問ニ對シテ答ニ於テ之ヲ追証シ

居る。

二月二十五日申中 (Spec 3) 請求。報告書本分の場、命令ヲ冠副官ヲ通シテ受領シタルヲ証言シ、之ニ求テ、之ヲ追証スル証據カ得ルナカッタガ、之ニ他ノ「国ト全揚」の場、命令ニ從ワズモ「デパート」合理的ニ推斷シ得ル所デアル。

扱ヲ統事、上官、命令カ辯護ナラヌヲ主張スルデポ。然レテ、報告書本、場合ニ「上官、命令」ニ通常、上官、命令トハ非常ニ異リ、之ニ前記、法律的根拠ニ依リ充分辯護トナリ得ル性質、モ「デパート」、之ヲ証據ニ依リテ検討スルニ、的場ナラ。事件當時彼自身狂人デパート認メテ居ルに、狂暴ノ性格、所有者デパート (父出在尚会記録申の場、第167 頁ニ答) 彼ノ後ノ部下、ミトラス師團長並花中持サヘモ改ワタルナキ、証言、ミトラス他ニ之ヲ追証スル証據ニ提シケータ。依頼今朝告ト尉ニ Deposition 第五十問、答、中ニ彼分の場、カウ改メ斯ラフ人事不有、ナラト述ベテ居ル。報告書本分の場ニ改メの場カ非常ニ恐ロシカッタ述ベテ居ル。

斯ル現状デパートナラ、命令ニ「大ニ合法的デパート、非合法的デパート」之ニ從ハナシ、非常ニ危険ノ身体的危害カ加ヘラレト云フコトガ必定デパート云フ特殊ノ條件カ伴ワテ居ヌ、デパート。

斯ル如ク身体的危害、加ヘラレトが目ニ見エテ居ル上官、命令ニ恐ロシキ、余リニ從フコトガ眞ニ不可抗力のナラデパートナラ、誰モ解出スルデパート。斯ル上官、命令ニ「当然辯護トシテ考慮ルベキデパート」。

三、解剖ニ関スル意義、有無

報告書本カ補助衛生兵、教育、一部トシテ俘虜、人体

(11)

CC(11)

0520

3
1. 解剖ヲ彼カラ的場ニ提案シ、イハタイカト、意味ノコトガ
検事ニ依リ、寺木ニ質問サレ、寺木ハ当然之ヲ否定シ、イデアルガ
斯カル事案、無カッタト云フ事、彼ノ本談ニ於テハ証言
中ニ、佐藤大尉ガ監視ニテ居テカッタヲハ出来得レハ肝ヲ
取ルニ止マ、解剖ヲコタゲカッタ事、補助イ生共ニ解剖
ノ事ニ、詔サレカッタコト（本件ニ、検事側証人、磯ガ坂部ガ
聞クガ寺木カラ聞クコトヲ述ベテ居ラヌコト、及、并森モ、
同クハ聞クガ寺木カラ聞クコトヲ述ベテ居ラヌ事ニ依リ、其
ノ真実性ハ裏付ケラレテ居ル）等ヲ繰返シ証言ニテ居ルコト
依ツテモ推断シ得ルイデアル。

第二章 各事件ニ於ル被告寺木ノ爲ニ行フ、検討

一、二月二十三日事件

本事件ニ関シテハ、検事側証人并森、証言ト被告寺木
ノ陳述書（E24）、陳述ト、同ニ、細部ニ於テハ、差違ハ、ルカ
大節ニ於テ差違ハナシ。

被告寺木ガ慰問室カラ命令ヲ受ケ、状況ニ就テハ立
花裁判記録ニ於テハ、尉、証言ガ之ヲ証明ニテ居ルイデ、茲
ニ更ニ本事件ニ於ル行爲ヲ取ヒテ、検討スル所要ナシ。

二、二月二十五日事件

本事件ニ関シテハ、佐藤、体カラ腿、肉ヲ取ラセカッタ事ヲ
除イテハ、月夜証人 松井、証言及被告寺木、陳述書（E24）
ト大體ニ於テ一致ニテ居ルイデ、多ク云フ所要ナシ。唯、罪状
項目第三ニ記載セラル居ル大腿部、肉ヲ取ツコトハ、被告、自
白書中ニ、并森ガ取ツコト述ベテ居ルニ、過ギズ月夜証人 松
井ニ依ツテモ支持ヲセテ居ラヌ又、并森ニ依ツテモ証言ヲ

4
これら三つは、その報告、記憶相違を見れば分る。

三、三月十六日事件

本通達=証據=提出中の中村電信, Deposition (Ex 2) 及佐藤今朝告, Deposition (Ex 3), 中の事件, 現場=於テ 報告寺木の俘虜, 處刑, 実行=同じ容喙=之=対=責=任=負=つべき行為がアツカ, 如テ証言ガアリ, 之=依リ 検事= 報告寺木ガ俘虜, 殺害ヲ補佐シ教唆シテ主張シ居ル。從テ事件, 現場=於テ報告, 行為=致テハ少シノ疑= 検討=テ 斯カル 事實ガ無カツテ明瞭=ニヨウト思フ。

証據書數第=及第=, 中村及佐藤, Deposition 中の事件 現場=於テ 報告寺木=次, 如テ行為, アツカガ摘指サレ居ル

(1) 佐藤が處刑, 現場=到着シタ時=寺木ハ既=其處=居タ(佐藤第=十=内, 答)

(2) 佐藤, 命令=依リ 寺木ガ俘虜ヲ坐ラセ, 俘虜=足ヲ組ンテ坐ツタ(中村第=十一=内 及第=十一=内, 答)

(3) 寺木ハ衛兵=命令ヲ下シ彼等ヲコテ彼ヲ生ラシメタ(中村第=十三=内, 答)

(4) 寺木ハ佐藤=「外国人ハ眞直ニ生ルハホケ敷イカラ 今, 儘テ此ノ橋=」ト述ベタ(中村第=十五=内, 答)

(5) 寺木ハ中村=「遅クアツタシ 服装モアルカラ 早く切ツテ欲シ」ト云ツタ(中村第=十七=内, 答)

(6) 佐藤ガ現場=着イタ時 既=俘虜ハ生テ居ル約十五分後=傳令ガ来テ占慶軍曹ガ居ナイト云ツタ, 其ノ時 寺木ガ来テ「服装ガアルカヲ知シ又, 又教育ノ好トヒカラ 早く處刑ヲコテ貴ヒ度イ」ト述ベタ(佐藤第=十一=内, 答)

第一=被告寺木が處刑、現場=到着の時機=決テ
兼森、佐藤大尉先導、下=群集、アト=ツテ現場=行ツタ
彼が到着の時一、寸遅レテ寺木が到着、ツテ月撃ニテ
居ル。外ヲ証言シ。兼森モ寺木モ、現場=到着ニテモ、
既=中村ガ力ヲ抜ケ足場ヲ直ニテ處刑、準備ヲシテ居タ所
ヲアツテ証言シテ居ル

是等証據=依リ、前述 (イ) 及 (ハ)、佐藤、証言ニ基
テ認ハシ

第二=寺木が衛兵=命ジテ俘虜ヲ生ラセタ云フ事、及
俘虜、姿勢=決テ彼ガ佐藤=提言ヲシタ云フ事=決テ、
検事側証人兼森モ、斯カル事實、アツタ事ヲ月撃ニテ
居ラズ、又寺木モ現場到着後必刑ニ。佐藤ト語テ計カ
タ事ヲ証言シテ居ル。テ斯カル主張セラル事實ガアツタ云フ
事、甚テ疑ハシ

又中村、反対証言、最後=於テ寺木、自分=命令ヲ下
ス權利ガナカツテ証言シテ居ルガ、衛生部見習士官アツタ
寺木ガ佐藤大尉ヲ差シ指テ、指揮關係、ナシ中村伍長ヤ
衛兵=俘虜=崗ニ命令ヲ下シ、或ハ提言スルガ如キコト、有り得ナ
シ、軍人デアルニ誰モ解出スルデアル。即チ、前述、(ロ)、
(ハ)、(ニ) 項、事實が存在シテ、誰モ合理的=信ジラズ所
デアル。

第三=被告寺木ガ佐藤及中村=早ク處刑ヲヤル様ニト
云フ事ヲ述ベタカ否カ=決テ、アル。兼森、佐藤及中村トハ、
シ離レテ一般、群集ニ=居タ寺木、傍=居タデアルヲ、兼森
寺木ガ斯カル発言ヲシタコトヲ、当然兼森ガ之ヲ聞ケ居ル
筈デアルガ、兼森、寺木ガ何、発言スルニ聞ケ居ラズ。

兼森、現場到着後、一、二分後=病院=受取ヲ取リ、

現場ヲ離レタカラ、不在1箇=斯カル會話ガ無カッタハ云ヘタイ。
然レキ本アリヤニ據レテ明着ニ石炭ニ中村、佐藤、証言ヲ支持ス
ルガ如キ証言ヲシテ居テ10ヲ、斯ル如キ寺木、答言ガフツト云フ
事實ハ如何ニシテ

更ニ有力ナ証據トシテ、兼森ニ石炭ニ炭刑16. 解剖、始マ
ル迄ニ十五分乃至二十分、間隔ガフツト云フ証言ニシテ、被害者寺
木ニ炭刑後、浮腫、腹ヲ見タリ腫孔ヲ検ベタリニシテ、尚体温
、解生ル間、氣持ニ要テ解剖ニ着手セヌ十五分乃至二十分
待ツタ証言ニシテ

若シ佐藤又中村、述べタル如ク寺木ガ早ク炭刑スル様
ニ催促セタルハ何故寺木ガ炭刑後、解剖迄ニ十五分
乃至二十分ヲ待ツヤ要ガフツト云フ理由カ、伊スヤ炭刑後、
直ニ解剖スル肝、取ルニ着手ニシテ相違ナシ、寺木ガ解
剖着手迄ニ十五分乃至二十分ヲ待ツタ云フ事實ハ前述
(水)(ハ)1如キ答言ヲ彼方ニ付カツタ事ヲ裏付ケルニ充分デ
アラリ

以上、概計ニ依リ、中村又佐藤、Deposition中ニ
持出サレタ所、被害者寺木ガ浮腫炭刑、実施ニ容喙セルカ、
如キ事實即チ前述(イ)(ロ)(ハ)(ニ)(ホ)(ヘ)、事實ハ無カッタ
云フコトガ合理的ニ推斷シ得ルニテアル

佐藤今朝告ニ其、Deposition中ニ、解剖ガ始マルト
直ニ、現場ヲ去ツタ証言ニテ居ルガ、彼方解剖、終ル迄ハ
トラス死体ヲ埋ムル作業、指揮ヲナシ、寺木又兼森ガ現場
ヲ去ル時ニ、依然其處ニ居タコトニ就テハ何等、疑ヲ容ル
ル迄ニ立証セシテ、佐藤、証言ニ其、記憶ニ相違、フツ
トテ考慮ニ入ルベキデアル

中村又佐藤、証言、僅適ヲ秤量スルニ當リテ參考ト
ルベキ有經驗者、興味アル言ヲMr. Francis L. Wellman、

著書 "Success in Court" 1 中より引用して置く。

全体的に、著書中 = 悔改す三十年間 証人、証言、價値の
秤量に終極、P. 27 判事 Edward Abbott Parry が引退後 =
著書の著書 "What the Judge Thought" 中、言葉より引用して置く
u. 1 之を再引用して置く。即ち

「証人の彼等が未だ嘗て見せしめて述べ、又怒らう
崗かいかつ會話の繰返して述べれば然し彼等ハ大いに見
又、崗の外、本當 = 正直 = 信じて居るに於て」

又 Mr. Wellman " コロンビア大学、心理学者として有名
+ Edger James Swift 教授、実験、結論より引用して置く
が夫れ……次、如き言が……

「証人の實際 = 起つた……状を極力……使つて僅かに
確固たる知識……持つ……が証明……」

若し犯罪が實際 = 判事……に……彼等、証言……僅かに價
値……持つ……然し大……彼等が……証人……
……大……採擇……が……極力……者……
若し Identification……過……是、Identification

「他…… suggestion、影響……他……取……
……不……」

中村、佐藤、証言……前述、如く……信頼……状況……
於此、引用……充分考慮……信頼……

第三章 報告、人格

報告……報告……又報告……
親……部隊……
大隊、人員……本法……被告
……態度……企圖……
……委員……
充分……信頼……

第三部 結論

第一. 以上の第一部の結論に述べたことより、この第一部の証人として現れたる事実と、合衆国憲法に照らして被告人青木忠が罪状項目其の一「多量の血を吐き、自願せしめた行為を為したことは、voluntarilyに犯意を以て為したものとなく、全く彼の命令に服したる自衛隊隊長の命令に依って為した」とが証拠として明確に示された。而かも其の自衛隊隊長が被告人とは全く性質の強い、単独的人物であったこと、殊に米軍の硫黄島上陸（本件の事件発生當時以前）以来一層彼の場の狂暴性の増強したことは数回の証拠を添えて示すところである。

第二. 若し青木が自衛隊隊長の命令を即時実行しなかったならば、自衛隊の上官と、法規の違ふところより、彼が青木の命令不服従に対する處罰を科せられたら、外に擧げ加へて彼の狂暴性を發揮して青木の身体に甚だ重大なる傷害を加へ、場合によっては青木の生命さへも奪つたことより、危険の現存に存在したことは証拠として明確である。

斯かる危険の現存に存在したことが故に青木は常に自衛隊の命令に対しては、真に甚大なる恐怖を懷いてゐたのである。

青木は1948年11月4日東京下松で作成した彼の Affidavit (Exn. 4) の中で「...、餘りにも惨酷な事だと思つたので私は高級軍医が今

留身にからと云つて断り出した。すると副官は大隊長は非常には急いでみよから大急ぎでやれと云い出した。私は甚だ直ぐ私かやりふかつたよとは命令の違反と云ふ後の場合何に云ふは苛酷な懲罰を受けるからではないかと思ひ出した。この場合何は平生から甚だ乱暴な果てり出した。硫黄島上陸戦が始まって以来は一層狂暴性の増進を云ひ又命令を主として守つて云ひ出した。従つて命令違反と云ふ極刑即ち死刑を知つた彼の口を云ひ出したのは所謂士氣鼓舞の物と云ひ出した。金栗の見せしめとも云ひ出した。……と云へての通り彼は鼠屎、この場合命令の不服従に對しては死又は重大な身体上の危害と被ることを云ひ目之を極度に恐るゝものとなる。換言すれば客觀的にはこの危険は現實に存在し、主觀的には其の危険に對する恐怖と懐く相違の理由はあつたのである。

第三. 杉本の新行は陸軍隊に於ける部下と云ふ上官の命令に従つて行つた新行である。……此外は此場の coercion, compulsion and duress に因つて行つた新行であることが証拠に依つて認められよう。……と云ふから杉本は是等の新行に對しては刑事上の責任を負つてゐないのである。

第四. 更に杉本の新行は彼の生命又は身体に對する急迫の現實の

危難を免れ、爲に爲したる行為即ち緊急避難
たることも断然に依り認定せらるべきである。
之は緊急避難の以上刑事上の責任を負ふ
べき行為ではない。

第五、罪状項目その五は青木が佐藤今朝吉
及中村重信と行動を共にして存蔵を
殺害したと主張せられたのであるがこの「行
動を共にして」といふ語の意味が極めて曖
昧である。果して三人が通謀且共同して行為
を爲したのであれば各自が同種の各別の行為
を爲したのであるが、明瞭確ではない。併し
因若しくは此にも検察官は証拠の優勢に
依りて (by a preponderance of the evidence)
何人も合理的疑念を抱き得ない。果して青木
が此の検察官主張の殺人罪に參與した
ことの事実を立証し得ないのである。

尚ほ青木が其の現場に居たのは兇行に
對する關係に於いて単なる見物人又は傍觀
者として居合せては過るまいのである。其の現場
上程に青木が佐藤又は中村に對し彼等の
行動を勵まし又は是認するかの言動を
得たことが以上其処に居合せてこの事を
以て青木を其の幫助者或は教唆者た
ることは出来ないのである。

第六、最後に Clark and Marshall の Law
of Crimes の中の一節を茲に引用
し後述する:-

「

犯罪と犯す意思は犯罪の要素である。それにもかかわらず或る人が犯したと推定するのことは知らなかった犯罪に付て刑事責任を負ふことと区別することは、内容上、極めて困難である。このことは刑法学上の神聖なる原則である。これは「ノー・マインド」の原則である。この原則は、法が精神的無能力者に自分の行為の性質を了解せしめ、又其の是非を辨别するの出来ない者の子供及び精神病者（中略）並に緊急避難又は脅迫に因りて犯したる人を罰しないのは、此の原則の故である。」（Ibid., § 39, The Necessity for Criminal Intent or Mens Rea at Common Law, pp. 56-57.）

第七. 以上の理由に因り私は寺本忠太郎氏起訴及罪状項目に付無罪であることを主張する次第である。

要旨は、本件被告人寺本忠太郎氏に對し本軍法委員會は無罪の御判決を賜へんことを。

謹言

新井 隆一

ARGUMENT FOR THE ACCUSED IN THE CASE OF
TERAKI, TADASHI

Delivered by TAKANO, Junjirō,
Counsel for the accused, TERAKI,
Tadashi, former Surgeon Second
Lieutenant, Imperial Japanese
Army (at the time of the incidents
Probationary Officer, Medical
Department, Imperial Japanese Army)

The Honorable President and Members of the Commission:

I have the honor to deliver my final argument before this learned Commission in defense of the accused, TERAKI, Tadashi. I desire to express my deep-felt gratitude for the fair and sincere manner in which this trial has been conducted.

PART-I -- GENERAL REMARKS

Section 1. -- Introduction.

The question of superior orders in the Japanese armed forces is posed in this trial brought before the Commission as it was in the numerous cases judged by this Commission in the past. In the instant case it is also highly relevant to discuss the criminal responsibility of the perpetrators of illegal acts who committed these acts under coercion, compulsion and duress, over and above the superior orders referred to above. In arguing the criminal responsibility of the accused in the present case necessity also may not be overlooked.

Should all persons who were present at the scene of the offense be held criminally responsible for the offense? This is a question of aiding and abetting and is an important matter related to the present case. I shall argue briefly concerning these matters under appropriate headings.

Section 2: -- Superior Orders in the Armed Forces.

There is a legal maxim which states: "A bad law is nevertheless a law." Now, it was a traditional creed in the Japanese armed forces that: "A bad order is, notwithstanding, an order." And this creed was actually practiced. I do not desire nor is it now the time to discuss the propriety, merits or demerits of such a creed and practice. I merely wish to point out the basic and essential difference between superior orders in the Japanese armed forces which demanded, morally and legally, a feudalistic and absolute obedience and wherein there was absolutely no will or freedom on the part of the subordinate, as against superior orders in the armed forces of the democratic Anglo-Saxon countries which countries respected the individual will and consequently laid heavy emphasis on personal responsibility. Without doubt this was a fact.

I shall refrain from going into this matter in detail before this Commission which is well versed in the special character of "superior orders" in the Japanese armed forces. I only desire to add that the accused TERAKI, Tadashi was a Probationary Officer with a status at the time of the incidents corresponding to that of a Sergeant Major in the Japanese armed forces wherein "a subordinate was under the strictest orders to obey absolutely and unconditionally the orders of his superior officers without even questioning the reasons let alone arguing the propriety or impropriety of such orders, and where instant execution of the orders was enforced, and where

~~instant execution of the orders was enforced~~, and where disobedience was looked upon as an offense which was punishable even with death in the event of its occurring in the face of the enemy."

What has been above cited concerning the special character of superior orders in the Japanese armed forces is clear when seen with reference to the evidence presented to this Commission in numerous previous trials.

Section 3. -- Criminal Intent and Criminal Acts under Coercion, Compulsion, and Duress.

It need not be reiterated that criminal intent is a necessary element in a crime. Consequently on principle, there is no criminal responsibility where there is no criminal intent. (With the exception in the case of negligence.) A person is made to assume criminal responsibility for certain acts being crimes because in his acts the mind and will concur.

Hence:

"Act done by force or compulsion in which the mind and will do not concur, although the act is otherwise criminal, where intent is a necessary element, there is no responsibility." (Wharton's Criminal Law, Vol. I, Para. 137, Malice is evil intent, and is convertible with dolus. Footnote 2, p. 191).

In other words, unless this act, performed under coercion, compulsion or duress by the other party, is done in a somnambulistic manner, it is done with the mind. However, as in this case, criminal intent, i.e., the doing of an act prohibited, with the intent specified in the statute, is lacking, the doer of the act is not criminally responsible. (According to the Theory of the Will.)

In the sphere of coercion, compulsion or duress, is included the threat of infliction of immediate and actual death or the sustaining of great bodily harm.

I will adduce the theory of Wharton, the authority on criminal law, in regard to this point:

"Persons under compulsion irresponsible. Compulsion may be viewed in two aspects: (1) Where the immediate agent is physically forced to do the injury, as where his hand is seized by a person of superior strength, and is used, against his will, to strike a blow, in which case no guilt attaches to the person so coerced. (a) Where the force applied is that of authority or fear. Thus, where a person not intending wrong, is swept along by a party of persons whom he cannot resist, he is not responsible if he is compelled to do wrong by the threats on the part of the offenders instantly to kill him, or to do him grievous bodily harm if he refuses." (Wharton's Criminal Law, Vol. I, Para. 124, p. 174.)

The same authority goes on to state:

"The fact that a crime is committed under coercion and compulsion, in fear of instant death, may be set up as a defense to the prosecution for the commission of such crime; but, to be available as a defense, the fear must be well-founded, and immediate and actual danger of death or great bodily harm must be present; and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat." (Ibid. Vol. I, Para. 384, Coercion, Compulsion, and Duress. pp. 514-515.)

Section 4. -- Necessity.

In discussing the criminal responsibility of the accused, TERAHI, for the facts alleged by the judge advocate in the present case, while irresponsibility for offenses committed under coercion, compulsion and duress set forth in Section 3 would play an important role, the question of necessity which will be discussed here must also be given consideration.

Necessity is generally recognized in criminal law of civilized nations of today. By necessity in criminal law is meant an act undertaken unavoidably by one to circumvent present danger to the life, person, freedom or property of one's own self or of another. Only in an event where the harm arising from the act does not supersede the harm which was meant to be avoided, is the act not punished. In other words, necessity, affecting life and person, is ground for absolving responsibility.

I cite from Wharton, and Clark and Marshall, on Necessity:

"Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportionate to the evil." (Wharton's Criminal Law, Vol. I, Para. 326, Necessity a defense when life or higher interests are imperilled. p. 176.)

"An act which would otherwise be a crime may be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed, would have inflicted upon him, inevitable and irreparable evil; that no more was done than was reasonably necessary for that purpose; and that the evil inflicted by it was not disproportionate to the evil avoided." (Footnote 286. Steph. Dig. Crim. Law, Art. 32, citing Rex v. Stratton, 21 How. St. Tr. 1945, wherein it was said by Lord Mansfield: "Whenever necessity forces a man to do an illegal act, - forces him to do it --- it justifies him, because no man can be guilty of a crime without the will and intention of his mind." (Clark and Marshall's Law of Crimes, Para. 70, Necessity, pp 104-105.)

As seen from the above, Necessity is a principle which is recognized in the American Law, and no criminal responsibility is attached to illegal acts done under necessity.

Section 5. -- Aiding and Abetting.

It is not possible to state that a man is connected with a crime by the fact alone that he was at the scene of the crime and make him assume criminal responsibility for the crime. Spectators and bystanders are never aiders and abettors. For a person to be guilty of aiding and abetting it is a requisite condition that he take an active part in the commission of the crime. A passive attitude cannot make a person an aider or abettor in a crime.

To add weight to the theory above mentioned, permit me to cite from American Jurisprudence:

"It is obvious that the mere presence of a person at the commission of a criminal act does not render him liable as a participator therein. If he is only a spectator and does not act to countenance or approve those who are actors, he is not criminally responsible because he happens to be a looker-on and does not use active endeavours to prevent the commission of the unlawful acts." (American Jurisprudence, Vol. 14, Criminal Law, Para. 89, Presence as Spectator or Bystander, p. 829.)

The five specifications of the charge in the present case allege that the accused TERAOKI, Tadashi on the 23rd of February, the 25th of February, and the 26th of March, 1945 while serving at the military installations of the Imperial Japanese Army, Chichi Jima, Bonin Islands, "(1) wilfully disrespected the grave of an American prisoner of war who died in the captivity of, and was buried by, the Japanese armed forces, by unlawfully disinterring the body of the said prisoner of war, removing parts of the body and preventing the honorable burial of the said prisoner of war" (Specification 1 and 2); "(2) prevented the honorable burial of another person by removing parts of that person's body" (Specification 3); "(3) and prevented the honorable burial of another by removing parts of his body and by attacking and striking and killing him," (Specifications 4 and 5), and thereby violated the law and customs of war.

Whether or not the accused, TERAOKI, committed the acts enumerated in Specifications 1 through 4 related above, and if he did, whether or not there were any grounds to absolve him of criminal responsibility for these acts; and, whether Teraki, acting with SATO and NAKAMURA participated in the attacking, striking and killing of Specification 5, will be discussed below in the examination on the basis of the facts.

PART II EXAMINATION OF FACTS ON THE BASIS OF THE EVIDENCE

Chapter 1. General facts.

1. Grade and Status of the accused TERAKI.

Beyond any reasonable doubt the accused, TERAKI, Tadashi, at the time of the alleged incidents, was not a Surgeon Second Lieutenant as set forth in the Specifications of the Charge but was a Probationary Officer of the Medical Department. This has been established through his Register of Personnel of Overseas Units forwarded by the Japanese Government (Exhibit 7), and through the testimony of the various witnesses.

It has been further shown by the Procurement Ordinance of the Imperial Japanese Army (Exhibit 6) that a Probationary Officer acquired the status and grade of a Sergeant Major. There is no room for doubt on this point in view of Kanemori's testimony as to the uniform worn by Probationary Officers.

2. Superior Orders.

Concerning the incident of February 23, 1945, (Specifications 1 and 2). The circumstances in that incident under which the accused, TERAKI, received the order of the Battalion Commander Major Matoba through Adjutant Kanmuri, Yoshiharu and was made to carry it out, have been clearly set forth in the portions of the testimony of Kanmuri, Yoshiharu in the trial of Tachibana et al which were introduced into evidence in this trial.

It is clear from the testimony of Major Matoba in the Proceedings of the Chichi Jima Investigations, which was offered into evidence, that Major Matoba issued the order to the accused, TERAKI, to remove the liver and flesh from the prisoner of war in the incident of March 26 (Specifications 4 and 5).

The fact that Matoba ordered a dissection after the execution of the prisoner was testified to by the accused, TERAKI, on the witness stand and this testimony has been corroborated by Captain Sato, Kesakichi in his Deposition (Exhibit 3) in his answer to Interrogatory 41.

Thus, in both the incidents of February 23rd and March 26th the accused, TERAKI, acted in all respects in the execution of the orders of Matoba. That he did not exceed his orders in any way has been established beyond all doubt by the testimony of the accused, TERAKI, himself, and by the testimony of others.

In regard to the incident of February 25th (Specification 3), the accused, TERAKI, testified to receiving the order of Major Matoba through Adjutant Kanmuri. Although testimony to corroborate this was not produced, it can be rationally deduced that on this occasion as on the two other occasions, he was carrying out the orders of Major Matoba.

It is presumed that the judge advocate will maintain that superior orders does not constitute a defense. However, in the case of the accused, TERAKI, the "superior orders" here is something very different from ordinary superior orders. From the legal basis stated previously, the "superior orders" in this case are of such a nature that they may fully be used as a defense.

To examine this in the light of the evidence, such was the violent and frenzied character of Matoba that Major Matoba himself acknowledged the fact that at the time of the incidents he was a madman. (Answer of Matoba in the Proceedings of the Chichi Jima Investigations.) TERAHI testified to Major Matoba slapping not only his subordinates but even Lieutenant General Tachibana, which testimony has been corroborated by other evidence offered. Captain Sato in his Deposition in answer to Interrogatory 50, stated that he, too, was struck by Matoba and became unconscious for some time. The accused, TERAHI, also testified that he had been struck by Matoba and was in extreme dread of Matoba.

Such being the circumstances, this special factor was injected into the orders of Matoba; that if they were not carried out, whether they were lawful or unlawful, an extremely dangerous physical harm would be visited upon the person failing to carry them out.

It may be clearly understood that a person under such circumstances would from sheer fear alone, in anticipation of the certain and sure physical harm which would be meted out would become completely incapable of disobeying the orders of his superior officer. Superior orders under such form of duress should obviously be taken into consideration as a defense.

3. As to the Presence or Absence of Initiative in the Conduct of the Dissection.

A question was put to the accused, TERAHI, by the judge advocate which, in effect, was whether he on his part suggested to Matoba the dissection of the prisoner of war as part of the program of training of the auxiliary corpsmen. The accused, TERAHI, naturally denied having done such a thing. That such a thing did not happen may be adduced from the repeated testimony of the accused in this trial where he testified that had not Captain Sato been watching he would have stopped after removing the liver and flesh as he did not desire to conduct a dissection, and further where he testified that he did not tell the auxiliary corpsmen concerning attendance at the dissection. The truthfulness of this statement is corroborated by the testimony of prosecution witness, Iso, who testified that although he heard of the matter from Sakabe, he did not from TERAHI; and by Kanemori, who testified that he heard of it from rumors, but did not hear of it from TERAHI.

Chapter 2, Examination of the Actions of the Accused, TERAHI, in the Incidents.

1. Incident of February 23rd.

Although minor discrepancies are noted in the testimony of Prosecution witness Kanemori and the statement of the accused, TERAHI, (Exhibit 4) concerning this incident, in broad outline there is no difference.

There is no need to examine the circumstances surrounding the receiving of the order from Adjutant Kanmuri by the accused TERAHI as the actions of the accused in this incident are explained in the testimony of Kanmuri in the record of the trial of Tachibana et al.

2. Incident of February 25th.

Concerning this incident lengthy discussion is unnecessary inasmuch as, with the exception of that portion of the testimony where the eyewitness, Matsui, states no flesh was removed from the thigh of the prisoner, there is no discrepancy in his testimony and that of the accused, TERAHI (Exhibit 4). The accused, in his confession, states that Kanemori removed the flesh. As this fact was not supported by the eyewitness, Matsui, and as Kanemori did not testify concerning it, the removal of flesh from the thigh alleged in Specification 3, should, perhaps be considered as an error in the recollection of the accused.

3. Incident of March 26th.

In the deposition of Nakamura (Exhibit 2), and the deposition of Sato (Exhibit 3), which were presented to this Commission, there was testimony to the effect that the accused, TERAHI, at the scene of the execution of the prisoner of war, interjected himself into the proceedings of the execution to the extent that he became a responsible party thereto. The judge advocate, on the basis of this, is alleging that the accused aided and abetted in the killing of the prisoner. I will review the actions of the accused at the scene of the execution in greater detail and will make clear that such was not the case.

In Exhibits 2 and 3, namely in the Depositions of NAKAMURA and SATO, the following actions of the accused, TERAHI, at the scene of the execution are evidenced:

- (a) When SATO arrived at the scene of the execution, TERAHI was already there. (SATO, in answer to Interrogatory 22.)
- (b) TERAHI made the prisoner sit down in accordance with the orders of Captain SATO, and made the prisoner sit down cross-legged. (NAKAMURA in answer to Interrogatories 21, 22.)
- (c) TERAHI gave orders to the guards and had them sit him down. (NAKAMURA in answer to Interrogatory 23.)
- (d) TERAHI said to SATO: "Because it is difficult for foreign people to sit up high, please cut with him as he is." (NAKAMURA in answer to Interrogatory 25.)
- (e) TERAHI said to NAKAMURA: "As it is late and the air raids will come, please do it quickly." (NAKAMURA in answer to Interrogatory 27.)
- (f) When SATO went to the scene, the prisoner was already sitting down. After waiting about fifteen minutes, a messenger came and said that Sergeant FURUSHIKA was not around. At that time TERAHI came and said, "Please execute quickly as there will be air raids and they will interfere with the instruction." (SATO in answer to Interrogatory 21.)

First concerning the time of arrival at the scene of the execution of the accused TERAHI. KANEMORI testified that he went to the scene of the execution following a crowd led by Captain Sato and that he witnessed TERAHI arrive at the scene a short while after he did. Both KANEMORI and TERAHI testified that when they arrived at the scene NAKAMURA had his sword drawn already and was taking up his stance in preparation for the execution.

In view of this testimony, SATO's testimony above cited under (a) and (f), is extremely dubious.

Secondly, concerning TERAHI having ordered the guards to have the prisoner seated, and of TERAHI having made suggestions to SATO concerning the position of the prisoner, prosecution witnesses KANEMORI and ISO who were eyewitnesses of this incident did not testify to such effect. Further, TERAHI also testified that he did not speak to SATO from the time of his arrival at the scene of the execution until the conclusion of the execution. It is highly dubious whether such alleged facts actually occurred.

Again, NAKAMURA testified in answer to the last cross-interrogatory put to him that TERAHI did not have the authority to give orders to him. To a military man it is understandable that it was not possible that TERAHI, a Probationary Officer of the Medical Department, could have issued orders to NAKAMURA who was in no way connected to him by command, or to the guards, concerning the prisoner; thus by-passing Captain SATO nor could he have made suggestions to Captain SATO. In short it is not possible reasonably to believe that the matters set forth in paragraphs (b), (c) and (d) occurred.

Thirdly, in regard to whether or not the accused TERAHI said to SATO and NAKAMURA to hurry the execution. KANEMORI was standing close to TERAHI who was in turn standing in a crowd of people some distance away from SATO and NAKAMURA so that if TERAHI did make such an utterance KANEMORI would naturally have heard what TERAHI said. KANEMORI did not hear TERAHI make any utterance whatsoever.

It may not be said that there was no such conversation during the time KANEMORI was absent from the scene as KANEMORI left for the dispensary a minute or two after arriving at the scene, to fetch some instruments. However, ISO, who arrived a little while after TERAHI, did not testify to anything which supported the testimony of NAKAMURA and SATO. It is extremely doubtful if there was such utterance on the part of TERAHI.

As further convincing evidence, KANEMORI and ISO both testified that there was a period of time of from fifteen minutes to twenty minutes between the execution and commencement of the dissection. The accused, TERAHI, testified that after the execution he felt the pulse of the prisoner and examined his pupils, but as long as the body temperature was still relatively high he felt constrained to wait - not immediately commencing the dissection, but delaying fifteen to twenty minutes.

If, as SATO and NAKAMURA state, TERAHI requested the execution to be hurried, why had TERAHI desired to wait fifteen to twenty minutes after the execution before commencing the dissection? If TERAHI had made the request, as SATO and NAKAMURA state, then TERAHI would doubtless have commenced the dissection immediately after the execution. The fact that TERAHI waited fifteen to twenty minutes before commencing the dissection should be sufficient corroboration that he did not make the statements as set forth in paragraphs (e) and (f).

SATO, Kesakichi, in his deposition, testifies that he left the scene of the execution as soon as the dissection started. However, it has been established beyond a reasonable doubt that not only was he there till the conclusion of the dissection, but he directed the burial of the corpse and was still at the scene of the execution after TERAHI and KANEMORI left.

It is necessary to take into consideration faulty memory in considering the testimony of SATO.

I cite an interesting paragraph from "Success in Court" by Mr. Francis L. Wellman in order that it may serve as a reference when the testimony of NAKAMURA and SATO are weighed. The author quotes from "What the Judge Thought," a book written by Judge Edward Abbot Party, who had thirty years' experience in weighing the testimony of witnesses in London, after his retirement from the Bench:

"Judge Edward Abbot Party of London wrote a book just after his retirement from the bench in England - "What the Judge Thought." He speaks of his own thirty years of experience in weighing the testimony of witnesses who had appeared before him. He says, 'Witnesses would constantly try to narrate things they could never have seen, or repeat conversations they probably never even heard, but which they quite honestly believed they had both seen and heard.'"

Mr. Wellman also quotes the conclusions from the experiments of the noted Professor of Psychology at Washington University, Edgar James Swift as follows:

"The witnesses proved to have had little definite knowledge of what really happened, and had a crime actually been committed, their testimony should have had slight value; yet it would have been accepted because they were eyewitnesses. Only a few identified actors, and in several instances these identifications were so uncertain as to be readily transferred to someone else under the influence of suggestion."

As stated above, there are numerous portions in the testimony of NAKAMURA and SATO which cannot be credited as reliable. Under these circumstances the above quotations are believed to be worth consideration.

Chapter 3 Character of the Accused.

Testimony from the personnel of the 308th Battalion offered has shown that the accused, TERAOKI, was a truly conscientious doctor who was very kind to the patients and enjoyed general respect within the Unit. It is believed that the Commission has observed from the testimony and attitude of the accused, TERAOKI, in court that he was not a man who would have committed the acts alleged wilfully, feloniously, with premeditation and malice aforethought.

PART III CONCLUSION

Section 1. When we review in conjunction together the matters set forth in the general argument of Part I and the facts as they appeared in the evidence in part II, it becomes clear that, from the evidence adduced, that the accused, Teraki, Tadashi did not perform the acts of Specifications 1 through 4 voluntarily and with criminal intent, but only in conformance with the orders of Battalion Commander Matoba, who was his superior officer. The evidence in several sections has shown that Battalion Commander Matoba was an abnormal, violent, ferocious, and half mad person, and that his frenzy and ferocity increased in intensity after the landing on Iwo Jima of the American forces, prior to the occurrence of the incidents of the present case.

Section 2. If Teraki had failed to execute the orders of Battalion Commander Matoba immediately, Matoba, as his superior officer, would undoubtedly not only have punished Teraki for disobedience to orders in conformance to law and regulations, but, manifesting his ferocity, would have inflicted serious bodily harm on the person of Teraki, and would even have threatened his life. That such danger existed has been clear through the testimony adduced.

Because such danger actually existed, Teraki was truly in great fear of the orders of Matoba.

Teraki stated in his affidavit (Exhibit 4) which he executed in Tokyo on the 4th of November 1948: "I thought it was such a brutal thing to do that I refused by saying that the ranking medical officer was out. Then the Adjutant said to do it right away because the Battalion Commander was in a great rush. I thought about the terribly severe punishment Major Matoba would give on the charge of disobeying orders. Major Matoba, a very violent person to begin with, had been showing signs of increased ferocity since the landing operation at Iwo Jima. He believed that nothing was more important than an order. Therefore, I firmly believed that as an example to the entire army and as a means of raising morale, he would not have hesitated to give me the extreme penalty, that is the death sentence, for disobeying orders. He was in the habit of saying that he would do this...."

As he there stated, Teraki sincerely believed, and was in great dread, that disobedience to Matoba's orders would result in the infliction of death or great bodily harm to his person. In other words this danger existed objectively; and subjectively there were reasonable grounds for entertaining fear of such danger.

Section 3. It has been established from the evidence presented that the actions of Teraki above mentioned were the actions not only of a subordinate in the Japanese armed forces carrying out the orders of his superior, but also that they were actions performed under the coercion, compulsion and duress of Matoba. Therefore Teraki cannot be made to assume criminal responsibility for these actions.

Section 4. Furthermore, from the evidence adduced, the actions of Teraki may be recognized as performed under necessity; to avoid imminent and actual danger imperilling his life and person. Insofar as these actions came from necessity, they are not actions for which the accused may be held criminally responsible.

Section 5. Specification 5 charges that Teraki acting with Sato and Nakamura killed the prisoner of war. The phrase "acting with" is highly ambiguous and it is not clear from this context whether the three of them committed this alleged offense in pursuance of a common design and in concert, or whether each individual committed, severally, separate offenses of the same character. Whichever interpretation is placed on the phrase, the judge advocate has not established beyond a reasonable doubt, by a preponderance of the evidence, that Teraki participated in the murder alleged.

Teraki was at the scene merely in the capacity of spectator or bystander. As long as Teraki, at the scene did not countenance or approve the actions at the scene, Teraki, cannot be made an aider or abettor to the actions at the scene by his mere presence alone.

6. In conclusion, I wish to quote from Clark and Marshall's Law of Crimes:

" 'It is a sacred principle of criminal jurisprudence,' said the Tennessee court, 'that the intention to commit the crime is of the essence of the crime, and to hold that a man shall be held criminally responsible for an offense, of the commission of which he was ignorant at the time, would be intolerable tyranny.' It is because of this principle, as we shall presently see at some length, that the law does not punish children of tender age and insane persons, who, by reason of their mental incapacity, are incapable of understanding the nature of their acts, and persons acting under necessity or compulsion.' " (Underlining Counsel's) Ibid., Para. 39 Necessity for Criminal Intent or Mens Rea at Common Law, pp 56 57)

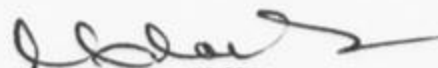
Section 7. For the above reasons I submit that the accused Teraki, Tadashi is not guilty of the Charge and the Specifications of the charge.

I respectfully request that this Military Commission return a verdict of not guilty to the accused Teraki, Tadashi.

Respectfully,

/s/ TAKANO, Junjiro.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

The Summing Up
of the trial of
TERAKI, Tadashi

by

Commander Martin Emilius Carlson, USNR.

Defense Counsel

at

Guam March 15, 1949

INTRODUCTION

It is fortunate for the accused, TERAHI, Tadashi, that the members of the Commission who are to administer justice in his case are all mature and experienced military officers. The president of this Commission, Admiral Arthur G. Robinson, U. S. Navy, has served as president of every War Crimes Commission held here on Guam convened by Commander Marianas since early in 1946, that is for three years.

Admiral Robinson was president of the Commission which tried all the other Chichi Jima cases, the cases of the "unthinkable crime" as they were called by an article appearing in Time Magazine September 16, 1946. I quote in part from that article: "Unthinkable Crime. A U. S. Military Commission on Guam last week read into the record a Japanese Army major's confession of cannibalism....It was ritual cannibalism practiced on the bodies of U. S. flyers who had been decapitated after being shot down in the Bonin Islands....."

"Though three other officers and ten smaller fry were also on trial, arch-villain of the piece was Major Sueyo Matoba, a slim, mild, scholarly Jap with a sadistic nature which had won him the nickname 'Tiger of Chichi Jima.....'"

"Nominally, the crime of devouring human flesh was so unthinkable that it was not listed in international law, was not clearly punishable as a crime in itself."

This was some of the things Time Magazine had to say about the Tachibana, Matoba et al case, the charges and specifications, etc. which were introduced by the judge advocate and accepted into evidence in this case as Exhibit 1.

As in the Tachibana, Matoba, et al trial the specifications in this instant case were based on vague generalities and fragments of international law. All thirty-eight specifications of the Tachibana, Matoba, et al trial alleged "this in violation of the laws and customs of war and the moral standards of civilized society," whereas in this TERAHI case it was only alleged: "this in violation of the law and customs of war."

This trial but further emphasizes the need for a codification of the laws of war because it was necessary to resort to the unwritten customs of international law and fragmentary international law in vague generalities only alleging "this in violation of the laws and customs of war" in the five specifications.

In an article appearing in the New York Times, Sunday, October 31, 1948 George A. McDonough of Boston, Massachusetts clearly sets forth the need for a codification of the laws of war. From the paragraph Collection of Generalities I cite the following appropriate remarks: "During my two years in the War Crimes program in Europe as prosecutor and defense counsel and as a member of a reviewing board and as an arbiter on clemency petitions, I was alarmed to realize that in nine problems out of ten the authorities and the text-books had no answer. A search of all available literature on war crimes trials would produce a minuscule and unrewarding collection of generalities."

"Among other items to be covered by the suggested code should be a solution to the problem of whether the fact that a man committed an act upon the order of a military superior should be available as a defense....

"At the Dachau trials, the claims of the accused that he would have been shot himself if he had not obeyed his superior's orders to commit an act which he, in ignorance, may have believed to be a legal order or knew to be illegal, seemed to be handled by the courts as an issue of fact. The availability of this defense seemed to depend upon the age and the rank of the accused, and the state of battle existing at the time of the offense. Again it would seem high-handed procedure to hold an enlisted man to the knowledge of the illegality of a particular act when the international authorities themselves are in disagreement as to its illegality or have never defined the act at all.

"A major problem the direct cause of the furor about the Ilse Koch case is the question of what should be the basis for the procedural and substantive law to be enforced against a conquered enemy nation. Should the municipal law of the conqueror, the municipal law of the occupied nation, the fragments of international law on war crimes, or the old reliable law of expediency control?"

We say it is indeed fortunate for the accused that he is being tried at Guam by this military commission because we know that the law of expediency will not control you members of the commission in administering justice to the accused, Teraki, Tadashi who was drafted into the Japanese Army on September 28, 1944 as a corpsman second class private (See answer to Q. 3 of direct examination of Teraki on Fifth Day of trial) and sent to Chichi Jima in the latter part of November 1944 as a corpsman second class. At the time of the incidents in February and March 1945 he had been in the Army five months and he was only a non-commissioned officer with the rating of sergeant major. Not until after the end of the war, on August 20, 1945 was he promoted to and commissioned as a second lieutenant, surgeon, Imperial Japanese Army Reserve (See answer to Q. 8 to Teraki on Fifth Day of trial and Exhibit 7.)

We are confident you will be guided by Naval Courts and Boards in arriving at your decision particularly Section 27 which states: "To constitute a crime both criminal intent and a prohibited act must concur.

FACTS OF THE CASE

The facts in this case are that Teraki, Tadashi, a young graduate doctor without any internship experience was drafted into the Japanese Army on September 28, 1944 as a private second class and sent to Chichi Jima. He was attached to the 308th Independent Battalion commanded by Major Matoba, Sueo. At the time of the incidents he had been in the Army but five months and he was a probationary doctor with the rating of sergeant major. He was ordered to remove liver and flesh from the bodies of certain executed prisoners of war. This Teraki did, by orders of his superior officer, the commanding officer of the battalion, Major Matoba. The prosecution alleges this constituted the following crimes: Specification 1. A disrespect of the grave of a prisoner of war on February 23, 1945; Specification 2. The prevention of the honorable burial of a prisoner of war on February 23, 1945; Specification 3. The prevention of the honorable burial of a prisoner of war on February 25, 1945; Specification 4. The prevention of the honorable burial of a prisoner of war on March 26, 1945 and in specification 5 thereby causing the death of the prisoner of war on March 26, 1945.

The facts in the incident set forth in specifications 4 and 5 are that Teraki was ordered to remove the flesh and liver and perform a dissection upon the prisoner as soon as the prisoner was executed. He arrived upon the scene as Nakamura was about to cut the neck of the prisoner with his sword by orders of Captain Sato who was in charge of the scene. After the execution had been carried out and in the presence of Captain Sato, Teraki proceeded to carry out his orders and did remove the liver from the dead body of the prisoner. The prosecution have alleged that the acts of Teraki constituted both prevention of honorable burial and murder or assault with intent to kill or murder.

ARGUMENT OF DEFENSE

It is most unfortunate that the prosecution was not required in this case to set forth the law and customs of war said to have been violated in specification 5 because we will probably never know just what crime it was sought to charge Teraki with in this specification 5. Is it murder? Is it assault with intent to kill or murder? Is Teraki charged as a principal in the second degree for the commission of a crime and if so what crime?

In 26 Am. Jur. "Homicide" section 606, Indictment, it is said: "The general rules relating to indictments for criminal offenses obviously control the general requirements of indictments for attempt to kill or assault with intent to kill ... The intent to kill (People v. Bashic, 306 Ill. 341, 137 N.E. 809) and sufficient physical acts to constitute the crime must be alleged."

In Section 608 Ibid the rule is: "The general principles governing the giving of instructions in criminal cases in the main govern matters of instructions in prosecutions for assault with intent to kill. The jury should be instructed that before they can return a verdict of guilty they must find from the evidence that the accused entertained a design to kill." (citing in footnote 13 State v. McGuire, 84 Conn. 470, 80 A. 761, 38 LRA (US) 1045; State v. Matheson, 142 Iowa 414, 120 N.W. 1036, 134 Am.St.Rep. 426; State v. Kodat, 158 Mo. 125, 59 S.W. 73, 51 LRA 509, 81 Am.St.Rep. 292; Hightower v. State, 56 Tex. Crim. Rep. 248, 119 S.W. 691, 133 Am.St. Rep. 966; State v. Taylor 70 Vt. 139, 39 A. 447, 42 LRA 673, 67 Am.St. Rep. 648.)

From Section 11 Ibid. we quote "Murder at common law is the killing of one human being by another with malice aforethought, either express or implied, that is, with deliberate intent or formed design to do so." ("we have supplied the underscoring.")

The argument of the defense is that the facts of the case as brought out by the testimony and evidence during the trial do not constitute murder at common law or by statute or constitute assault with intent to kill or murder.

Kanemori, Kazutoshi, a corpsman sergeant, testified in answer to Q. 27 that he heard about an execution about 1030 in the morning when he went to battalion headquarters so he stayed and Captain Sato told the guard to lead the prisoner to the place of execution and he, Kanemori, followed with the other assembled people. On the way he saw Teraki walking along a by-path. Kanemori went to the dispensary to get a scalpel and when he returned the prisoner was dead. On cross-examination Kanemori testified that Teraki did not exchange any words with either Captain Sato or Corporal Nakamura but that Captain Sato was showing Nakamura how to stand and what stance to take and Nakamura had his sword drawn and two or three minutes later when he returned the prisoner had been executed. Corporal Nakamura was standing by the corpse and his sword was still wet. Captain Sato was at the scene of the

execution until the conclusion of the dissection and ordered the burial after the dissection and Captain Sato ordered the execution, Kanemori said he was just observing. "I was observing with the rest of them how Captain Sato was telling someone to give the prisoner a cigarette, telling someone to blindfold the prisoner, et cetera."

Iso Shunichiro, a prosecution witness, testified he had been ordered to go to this dissection by Surgeon Sakabe.

Nakamura, Shigenobu, the executioner of this prisoner was tried and convicted together with Major Matoba, Lieutenant General Tachibana and Captain Sato, for the murder of this prisoner. (See specification 4, Charge I, Murder, trial of Lieutenant General Tachibana, et al, exhibit 1 of this case, and exhibit 2, the interrogatories of Nakamura.) Nakamura, Shigenobu is confined at Sugamo Prison, Tokyo and he testified in answer to interrogatories propounded to him at Sugamo Prison that Medical Officer Teraki sat the prisoner down in accordance with orders of Captain Sato (21st Interrogatory exhibit 2) and in answer to 27 interrogatory "Medical Officer Teraki said to me, 'As it is late and the air raids will come, please do it quickly.'"

In answer to 60th Interrogatory "So far as you recall did you behead because you were told something by Surgeon Teraki?" Nakamura answered: "No there was no such thing, because Surgeon Teraki had no right to give me an order."

Sato, Kesakichi, a former captain, IJA, testified by answer to interrogatories propounded to him at Sugamo Prison, Tokyo, where he is serving a life sentence as follows to the 21st question: "Then I went to the scene, the prisoner was already sitting down. After waiting about fifteen minutes, a messenger came and said that Sergeant Furushika was not around. At that time Teraki came and said, 'Please execute quickly as there will be air raids and they will interfere with the instruction,' so, as there was nothing else to do, I gave orders to Corporal Nakamura and carried out the execution?"

From the Board of Investigation inquiring into War Crimes on Chichi Jima the interrogation of Major Matoba which was introduced into evidence at the trial of Lieutenant General Tachibana, Major Matoba, et al, was read into evidence at the instant trial and in answer to Q. 125, Matoba is alleged to have answered: "I personally did not know that Hall was returned to my unit. Corporal Nakamura received orders from either Sergeant Major Wada, Captain Sato, or Lieutenant Ono. However the responsibility lies with me. But it so happens that I did not give the order personally. Therefore Corporal Nakamura would know who gave him the order."

Q. 128 "By whose order was Doctor Teraki to cut out the liver and deliver it to you?" Answer "By my order."

Teraki, Tadashi, the accused in the instant case, took the stand as a witness in his own behalf and testified as follows:

Ans. to Q. 20 "I participated in only that part of the incident where the liver was removed."

Ans. to Q. 28 "Then I arrived at the scene with my auxiliary corpsmen I saw about twenty persons gathered at the scene of the execution. Nearing the crowd formed by these persons I saw about ten meters away from this crowd a prisoner of war blindfolded and sitting squatting on the ground."

Q. 31 "Who was in charge of the scene?"
Ans. "Captain Sato."

Q. 38 "You testified previously that when you arrived the prisoner of war was blindfolded and squatting. What happened after that?"
Ans. "When I arrived Corporal Nakamura was standing behind the prisoner with his sword already drawn. Four or five meters away from Corporal Nakamura on the other side of the prisoner was Captain Sato. Corporal Nakamura was taking up his stance behind the prisoner and swinging his sword in practice. Soon thereafter he took up his final position and brought the sword down on the prisoner. The prisoner fell forward after the blow landed."

Q. 39 "Approximately how many minutes after your arrival at the scene did this take place?"
Ans. "This took place one or two minutes after my arrival."

Q. 40 "Did you speak to Nakamura before he executed the prisoner?"
Ans. "I did not say anything to him."

Q. 41 "Did you speak to Captain Sato?"
Ans. "No, I also did not speak to Captain Sato."

Q. 54 "Do you know when Captain Sato left the scene?"
A. "When I left the scene he was still there."

On cross-examination in answer to many questions Teraki testified he did not speak to Nakamura at all and he did not speak to Captain Sato until after the execution.

As the the corpsmen, Teraki testified in answer to the Q. "Did you order them to be present at the scene of the execution?" Ans. "I did not order them to go to the scene of the execution. I told them that if any desired to witness the removal of the liver and flesh that they accompany me to the scene of the execution."

This answer brought forth the anger of the judge advocate and the judge advocate's next question was "And this is the way in which you were going to carry out the orders of Major Matoba of whom you were in such mortal dread, is that true?" Unruffled and sincerely Teraki pathetically answered this question: "I was hoping that Captain Sato would leave the scene by the time I had intended to report to Major Matoba that I had conducted a dissection and that the auxiliary corpsmen had observed it. Now it wasn't I alone who was in fear of Major Matoba. In this unit all the men especially those below the rank of non-commissioned officers feared and hated the unit commander. There was no danger of these men informing Major Matoba on me. However, as Captain Sato was standing by and Captain Sato was standing in close relationship with the major it was highly probable that he would report the failure to conduct a dissection on my part to the major, and as long as Captain Sato was looking on, I thought that I could not dispense with the dissection and therefore I resolved to carry out the dissection."

Such is the testimony and evidence in this case and we maintain that the judge advocate has not proven the accused guilty of murder at common law, murder by any statute we know of or guilty of assault with intent to kill or murder or that Teraki is guilty as a principal in the second degree.

The evidence and testimony clearly shows there was no intent on the part of TERAHI to kill.

The evidence and testimony clearly shows TERAHI was not a participant in the homicide because he did not aid, abet, assist, encourage or advise the killing with the intention of encouraging and abetting the commission thereof. (26 Am. Jur. "Homicide" Sec. 60)

REFUTATION OF JUDGE ADVOCATE'S POSITION

It is impossible to know the position of the judge advocate as to this Specification 5 because of the vague generalities encompassed in the words "this in violation of the law and customs of war."

The rule of law as to aiding and abetting is: "In order to be present, aiding and abetting in the commission of the offense, the accused must be so situated as to render some aid to him who directly perpetrates the homicidal act. (citing Com. v. Knapp, 9 Pick. (Mass) 496, 20 Am. Dec. 491.)....One who is merely present and sees that a homicide is about to be committed, and yet in no manner interferes, is not thereby deemed to participate in the commission of the offense. (citing in footnote 7, Hicks v United States, 150 U.S. 442, 37 L. ed. 1137, 14 S. Ct. 144; People v. Crone, 293 Ill. 321, 127 N.E. 646, 12 A.L.R. 267, and many other cases.) (26 Am. Jur. "Homicide" Sec. 60)

Any holding by the judge advocate that the accused TERAHI aided and abetted NAKAMURA and Captain SATO is clearly refuted by the testimony and evidence in the case much of which we have quoted in order to point out to the Commission that TERAHI did not aid, abet, or encourage the killers.

CONCLUSION

You have heard the judge advocate discuss disinterment of dead bodies, the prevention of honorable burial and murder, and principals and accessories to murder. He has explained to you how in some localities disinterment is only a misdemeanor. He talks about the domestic laws of civilized countries and cites the ex post fact SCAP laws on superior orders. But gentlemen of the commission, he still leaves unanswered the question under what laws and in violation of what laws is the accused TERAHI, Tadashi being here tried.

Is it the municipal law of Japan?

Is it the fragmentary international law of war?

Is it the vague and unwritten customs of war?

Yes, it is indeed fortunate that TERAHI is being tried here on Guam by this Military Commission for you will I am sure not be confused by the complexities of law sought to be injected into this trial, but will determine whether in fact TERAHI participated in the execution and whether he had the requisite criminal intent to commit murder.

Since you are all military men you realize that this probationary doctor given the rating of a sergeant major had no chance to speak to Captain SATO or to Corporal NAKAMURA as NAKAMURA stood there swinging his sword over the head of the bound and blindfolded prisoner of war. You realize full well how impossible it was for TERAHI to publicly to oppose

the orders of the division commander, Lieutenant General TACHIBANA, or the battalion commander, Major MATOBA or to interfere in any way with the planned carrying out of these orders by MATOBA's close officer, Captain SATO.

From the evidence you have heard that in Chichi Jima there were none who dared to oppose Lieutenant General TACHIBANA and Major MATOBA.

TERAKI had felt and seen with what physical violence Major MATOBA punished officers and enlisted men alike who did not jump when the "Tiger of Chichi Jima", this Major MATOBA, spoke.

It would seem that the judge advocate asks you to find TERAKI guilty of murder because he did not publicly denounce the execution and oppose Captain SATO that day.

You members of the Commission now must decide whether in your honest opinion TERAKI, Tadashi committed murder when he walked upon the scene of this planned execution and saw the executioner Corporal NAKAMURA about to decapitate with his sword the prisoner. It was only a question of a minute or two yes perhaps only a few seconds and the foul deed was done by NAKAMURA.

That gentlemen of the Commission is the issue in this case. Did TERAKI, Tadashi, a probationary officer, thereby commit murder? We are very sure that your answer will be that you find TERAKI, Tadashi not guilty of murder and you do therefore acquit him of the charge of murder.

Respectfully,

Martin E. Carlson
MARTIN E. CARLSON.

CLOSING ARGUMENT OF THE JUDGE ADVOCATE IN THE CASE OF TERAKI, TADASHI.

Defense counsel have asked that we again cite them to the law. The applicable law has been cited to them not once but many times. The law and customs of war is clear and distinct. It is not in the law that we find uncertainty or that we find doubt. It is merely that in the application of the law to specific fact circumstances, we must determine whether those facts fall within the realm and within the sphere of the applicable law.

We have no problem with regard to the fact circumstances as they relate to Specifications 1, 2, 3, and 4. They are clear and they distinctly fall within the specific pattern, within the specific meaning and clear intent of the law and customs of war insofar as they relate to responsibility of respect to the grave, and insofar as they relate to the question of honorable burial. With regard to these, not only is the law definite but the application of the law is clear.

But with regard to Specification 5, we must consider the law in more detail, and have had to consider the facts with greater care, in view of the nature of participation of the accused. However, as I have noted, the law prohibiting the killing of prisoners of war is definite and counsel need have no difficulty in ascertaining what it is.

The accused has made much of his own weakness as an attempted method of escape from his culpability in the instant case. He pleads his cowardice, his fear of Matoba, in an effort to avoid his responsibility. Man cannot lay down his responsibility through fear because man in society has a function and has a responsibility and that is what distinguishes man from the beast and distinguishes the ordered society from the society of chaos, disorder, or bestial violence. The very circumstances of brutality and bestiality, which defense has raised and brought forth before this commission as having existed on Chichi Jima, are a result of that same type of indifference to responsibility that has been exhibited by the accused. The indifference, whether through fear or whether through moral indifference, is, nevertheless, an indifference to responsibility and a failure to carry it out, and the accused cannot escape his responsibility by saying that he was afraid of Matoba and that he as well as the others was afraid of Matoba and of the possible violence of Matoba.

I have previously spoken about superior orders. I have indicated that they are no defense to the commission of crime for a man is not obliged to obey an unlawful order. The defense has raised great issue about alleged coercion, and compulsion, and duress, and necessity. They have sought to persuade the commission that these circumstances absolve the accused from his responsibility with regard to this crime.

Let us examine the citations of defense counsel with regard to the law concerning coercion, compulsion, etc. to ascertain how accurately they reflect the law. First, let us turn to page 2 of Mr. Takano's argument in which he cites Thorton on Criminal Law, page 174, paragraph 124. Counsel has unfortunately cited this in a most misleading fashion partly because he has failed to include the full sentence of the concluding sentence of his excerpt. The sentence reads in its entirety including both the portion that he has cited and the portion he has omitted as follows: "Thus, where a person not intending wrong, is swept along by a party of persons whom he cannot resist, he is not responsible if he is compelled to do wrong by threats on the part of the offenders instantly to kill him, or to do him grievous bodily harm if he refuses; but threats of future injury, or the command of anyone not the husband of the offender do not excuse any offense." That latter stressed portion was omitted from counsel's excerpt.