

NANKING HEADQUARTERS COMMAND
Office of the Staff Judge Advocate

Nanking, China
31 July 1946.

JA 201 - Yoshio Nakano
Kiyomi Kawai
Hideichi Imura
Susumu Seki

SUBJECT: Review of the Record of Trial by a Military Commission of
Nakano, Yoshio, Captain, Imperial Japanese Army, et. al.

TO : Commanding General, Nanking Headquarters Command, AFO 909.

1. OFFENSES:

a. Charge: Violation of the Laws of War.

That on or about 30 May 1945, Yoshio Nakano, then a captain, Kiyomi Kawai and Hideichi Imura, then lance corporals and Susumu Seki, then a superior private, all members of the Japanese Imperial Army at that time, while Japan was at war with the United States of America and its Allies, acting in conjunction with each other did, at Taihoku, Formosa, willfully and unlawfully commit cruel, inhuman and brutal atrocities against Lieutenant Ted U. Hart, an American prisoner of war, then held captive by the Japanese Armed Forces, in violation of the Laws and Customs of War.

b. Specification:

That on or about 30 May 1945, at Taihoku, Formosa, Yoshio Nakano, then a captain, Kiyomi Kawai and Hideichi Imura, then lance corporals and Susumu Seki, then a superior private, all members of the Japanese Imperial Army at that time, acting in conjunction with each other, did, willfully and unlawfully, brutally torture Lieutenant Ted U. Hart, an American prisoner of war, then held captive by the Japanese Armed Forces, by pouring water into his mouth and nostrils, by forcing him to swallow large quantities of water as they held him down in a prostrate condition with his hands and feet tied and his nose held, so as to repeatedly cause him to strangle, suffocate and become unconscious, by handcuffing him so tightly that his wrists were cut, by applying pressure to his abdomen to make him vomit, by jumping and standing on his neck and body with hobnailed boots, by threatening him with death as a sword was applied to his neck, and by beating him about the head and face with their fists.

c. Convening Authority:

Lieutenant General Alvin C. Gillem Jr., U.S. Army,
Commanding General, United States Army Forces, China.

d. Place of trial:

Courtroom in the Ward Road Jail, Shanghai, China.

f. Pleas, Findings and Sentences:

	<u>Pleas</u>	<u>Findings</u>	<u>Sentences</u>
Yoshio Nakano Captain	Ch NG Sp NG	G G	CHL for life.
Kiyomi Kawai	Ch NG Sp NG	G	30 years CHL.
Susumu Seki	Ch NG Sp NG	G G	30 years CHL.
Hideichi Imura	Ch NG Sp NG	G	25 years CHL.

2. PRELIMINARY REMARKS.

Pursuant to paragraph 2, Special Orders No. 4, Headquarters, United States Army Forces, China, dated 6 May 1946, a Military Commission was appointed for the trial of persons, units and organizations accused as war criminals, and on completion thereof to transmit the record of trial, including any judgment or sentence, directly to Headquarters, United States Army Forces, China, for action by the appointing authority, the Commanding General, United States Army Forces, China. By first indorsement, dated 1 June 1946, the charges against the accused in the instant case were referred for trial by the Commanding General, United States Army Forces, China, to the Military Commission appointed by paragraph 2, Special Orders No. 4, Headquarters, United States Army Forces, China, dated 6 May 1946. Upon the inactivation of Headquarters, United States Army Forces, China, 1 July 1946, the Commanding General, Nanjing Headquarters Command, was authorized by WD Radio WAR 93445 dated 3 July 1946 to review, approve, and order executed sentences, including death sentences adjudged by military commissions appointed by the Commanding General, United States Army Forces, China.

3. EVIDENCE:

On or about 27 May 1945, Lieutenant Ted U. Hart, 501st Squadron, 345th Bomb Group, United States Army Air Forces took off from his base at Clark Field, Luzon, P. I. He was flying a B-25 medium bomber aircraft in a combat mission, the target of which was the Japanese controlled railroad yard at En Sui, Formosa (R 15). He reached his target, made his run and dropped his bombs. The aircraft was damaged by enemy anti-aircraft fire necessitating a crash landing about a mile from the target (R 15). Lieutenant Hart survived the crash and about one hour later was captured by Japanese military and taken to a nearby village (R 16). He was then transported by truck and train to Taihoku City, Formosa, where he was imprisoned in a cell in the detention compound of the Japanese Formosa Army Headquarters (R 11, 40). On or about 30 May 1945 at about 1500 hours the accused Lance Corporal Imura, guard, took Lieutenant Hart from his cell to the interrogation room for questioning (R 18, 55). There was a long table in the room behind which sat accused Captain Nakano and accused Lance Corporal Kawai; two unidentified Japanese were also in the room (R 19). Lieutenant Hart's hands were tied in front of him by a piece of Manila rope (R 18). He was made to sit at the table opposite Captain Nakano (R 19). The latter conducted the questioning thru Lance Corporal Kawai who was an English speaking interpreter (R 19). Lieutenant Hart was at this time in excellent health (R 18). Captain Nakano asked Lieutenant Hart his name and rank; then the name of his unit, the number of planes,

squadrons, types of aircraft, supplies, gun installations and finally accused Lieutenant Hart of indiscriminate bombing. Captain Nakano attempted to obtain a confession of the last accusation. Lieutenant Hart denied the charges of indiscriminate bombing and refused to answer the question relating to military information (R 19, 50). Captain Nakano and the others present stated to Lieutenant Hart that they were about to kill him (R 19). Captain Nakano ordered Lieutenant Hart to lie down upon the floor; Lance Corporal Imura held his feet and abdomen assisted by Private Seki. The "water cure" consisting of forcing water into the nose and mouth of Lieutenant Hart was administered with Captain Nakano pouring the water and Lance Corporal Kawai holding Lieutenant Hart's nose (R 20). The treatment caused suffocation, loss of consciousness and revival six times (R 20). Lieutenant Hart was struck from the rear by an unidentified person and slapped from side to side upon the face twenty times by Captain Nakano. Captain Nakano at one point placed his sword upon Lieutenant Hart's neck. Lieutenant Hart was made to vomit the excess of water at least three times by repeated jumping of the accused upon his abdomen with hob nailed boots (R 21). More than 12 quarts of water were forced into him thru these methods. This treatment took place over a period of at least an hour during which time Lieutenant Hart's hands and feet were so tightly bound that lack of circulation caused almost total loss of use (R 20, 21). At one point Lieutenant Hart "begged them to kill me" (R 21). Thereafter witness Major Aoki entered the room and stopped the treatment. All of the accused were present (R 12). Lieutenant Hart lost control of mind and body; he had to be assisted back to his cell and for a time suffered recurring spasms (R 23). Lieutenant Hart was returned to his cell, given a change of clothing but no medical attention was provided (R 12, 13, 42, 56). He was rescued by U.S. Military personnel at a POW Camp on Formosa about 21 August 1945.

The accused Captain Nakano was tried by Japanese Court Martial on 4 November 1945 for violation of Article 71 of the Japanese Army Criminal Law under charge of abuse of official duty. He admitted to the facts testified to in the instant case and on 15 November 1945 was found guilty and sentenced to eleven months confinement. The United States in no way participated in this trial and made an unsuccessful attempt to prevent that proceeding from being carried out (R 26, 30, 31, See Pros Ex. #1).

4. DISCUSSION:

The four accused were tried and found guilty by a United States Military Commission upon the charge of having, in conjunction with each other, willfully and unlawfully committed cruel, inhuman and brutal atrocities against Lieutenant Ted U. Hart, an American Prisoner of war. The atrocities charged and supported by the evidence were (1) more than 12 quarts of water forcibly inducted thru the nose and mouth causing asphyxiation and commonly known as the "water cure"; (2) physical violence inflicted upon the head, legs, arms and abdomen; (3) jumping up and down with hob nailed boots upon the abdomen causing vomiting, pain and suffering; (4) continued threat of immediate death (5) repeated loss of consciousness and revival; (6) application of manacles to the hands and feet with sufficient pressure to cause loss of use due to lack of circulation; (7) mental torture.

The Charge alleges the atrocities to have been committed by each of the accused in conjunction with the other. There is no variance in the proof adduced at trial. Common venture entails common responsibility. Participation however slight is sufficient. The degree thereof is immaterial to the issue of guilt or innocence tho it may be considered in determining the extent of the penalty imposed, as the Commission apparently decided in arriving at the varied sentences.

"Anyone who aids, abets or assists another in the commission of an offense is as much a principal as the chief offender****" (par 24d TM 27-255, Military Justice Procedure, WD, February

1945.) "The advantage of a joint charge is that all the accused will be tried together at one trial, thus saving time, labor and expense ." (ibid)

It is patent that the acts charged and supported by the credible evidence are war crimes. The perpetrators are properly charged with having violated the laws and customs of war and as such are war criminals, subject to such punishment as the Military Commission deems just and proper.

See 2 Oppenheim, International Law (Lauterpacht, 6th rev.ed.) pp 451, 456.

"Charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment." Yamashita v Styer, 66 Sup Ct Rep 349.

The record in this case is replete with direct evidence of the commission by the accused of the atrocities charged. The victim is torture's best witness. Lieutenant Hart's testimony is fully corroborated by admissions of the accused and a Japanese officer, Major Aoki, a witness without interest in the outcome of the issues in this proceeding. The willful cruel and inhuman treatment accorded Lieutenant Hart while a prisoner of war, in an effort to elicit from him military information and a confession to indiscriminate bombing violated the rules which civilized nations have generally recognized as governing the conduct of war.

The Rules of Land Warfare (FM 27-10, 1940) and the Geneva Prisoner of War Convention (1929) provide:

"Prisoners of War are in the power of the enemy Power but not of the individuals or bodies of troops who capture them (G.P.W., Art. 2)" and further

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"They must at all times be treated with humanity and protected, particularly against acts of violence, insults and public curiosity."

The Japanese Government agreed to comply with the terms of the Geneva Prisoner of War Convention. (R 57, Pros. Ex. #10).

No witness was called by the accused to refute the case for the Prosecution. No motion challenged the sufficiency of proof. At the close of the proofs for the Prosecution the defendants rested their case. The accused's own admissions were before the Court acknowledging the truth of the Charge. The record clearly sustains the propriety and legality of the finding and sentence. We find nothing in the record of this trial which in any way mitigates or justifies the actions of the accused. They stand before the bar of justice bereft of the minimal mandates of the laws of human decency. The penalties imposed are proper. The sentences should be approved.

The trial of accused by a Japanese Court-martial for "Abuse of official authority" and the resulting sentence have no legal significance. No question of "res judicata" is presented or warranted. The statements of accused made theret were properly considered in the instant case as admissions against interest.

5. OPINION:

It is the opinion of this office that:

- a. The Commission was legally constituted;
- b. The Commission had jurisdiction of the persons and the offenses;

- c. The evidence supports the findings of guilty;
 - d. The record discloses no errors injuriously affecting the substantial rights of any of the accused;
 - e. The sentences are legal.
6. It is accordingly recommended that the sentences be approved and ordered executed.

7. ACTION:

Under the authority granted by the Joint Chiefs of Staff, you are empowered to approve and execute any sentences adjudged, including the death sentence. An action designed to carry the above recommendations into effect, should they meet with your approval, is attached.

s/ Robert T. Dwyer
ROBERT T. DWYER
Major, JAGD
Ass't Staff Judge Advocate

s/ John W Martin
t/ JOHN W MARTIN
2nd Lt. JAGD
Ass't Staff Judge Advocate

I have read the record of trial
and concur in the foregoing review.

s/ Edward H. Young
EDWARD H. YOUNG
Colonel, JAGD
Staff Judge Advocate

Hq China Service Command, APO 908, 19 August 1946

A TRUE CERTIFIED COPY:


Sylvio L. Bousquin
SYLVIO L. BOUSQUIN
Lt. Col., A.G.D.
Adjutant General

NANKING HEADQUARTERS COMMAND

APO 909
31 July 1946

In the foregoing case of Yoshio Nakano, Captain;
Kiyomi Kawai, Lance Corporal; Hideichi Imura, Lance Corporal;
and Susumu Seki, Superior Private; all of the Japanese Imperial
Army, the sentences are approved and will be duly executed.

Ward Road Jail, Shanghai, China, is designated as the
temporary place of confinement until such time as a permanent
place of confinement is designated by competent authority.


A. C. GILLEM, JR.
Lieutenant General, U. S. A.
Commanding