

## Lore of the Corps

### The Trial of a Korean War “Turncoat”: The Court-Martial of Corporal Edward S. Dickenson

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On 4 May 1954, a court-martial sitting at Fort McNair, Virginia, convicted Corporal (CPL) Edward S. Dickenson of “collaborating with the Reds”<sup>1</sup> while held as a prisoner of war (POW) in North Korea. Dickenson was also found guilty of “informing on his prison camp buddies”<sup>2</sup> while a POW. As a result of this conviction for aiding the enemy and misconduct while a POW, Dickenson was sentenced to ten years confinement at hard labor, total forfeitures, and a dishonorable discharge. Dickenson’s trial was the first court-martial of a Soldier for misconduct as a POW to come out of the Korean War, and the proceedings received widespread coverage in the media. While this alone makes it a story worth telling, *United States v. Dickenson* also is worth examining for a second reason: for the first time in military legal history, an accused sought an acquittal on the basis that he had been so mistreated and “brainwashed” while a POW that he was not responsible for any acts of collaboration with the enemy.

Born and raised in Cracker’s Neck, Virginia, Edward S. Dickenson enlisted in the Army on 31 March 1950. He might have hoped for a tour as a peace-time Soldier but this was not to be, as some 75,000 North Korean People’s Army troops crossed the 38th parallel into the Republic of Korea on 25 June 1950. For Dickenson, this meant that after completing basic training, he shipped out to join the fight on the Korean peninsula. Arriving on 22 September 1950, just a week after successful Allied amphibious landings at Inchon, Dickenson joined Company K, 8th Cavalry Regiment. Less than two months later, on 4 November 1950, he was captured by the enemy. He spent the remainder of the Korean War as a POW at a Chinese-run camp in North Korea.<sup>3</sup>

After fighting in Korea ceased, however, Dickenson did not immediately return to U.S. control. On the contrary, during *Operation Big Switch*, when Allied prisoners were repatriated, CPL Dickenson was one of a group of American Soldiers who refused to return, preferring instead “to throw

in their lot with the Communists.”<sup>4</sup> Two months later, however, twenty-three-year old Dickenson “changed his mind about staying with the Reds.”<sup>5</sup> On 21 October 1953, he “appeared at a United Nations camp”<sup>6</sup> and asked to be sent home. He was the first of twenty-three Americans who initially decided to stay behind with their Chinese captors but then changed their minds and asked to return home.<sup>7</sup> Dickenson was finally returned to U.S. control on 20 November 1953.

On 22 January 1954, Dickenson was charged with committing various offenses while being held as a POW. About 500 U.S. military personnel had been held captive in the same camp as Dickenson and statements about their POW experience were taken from each of them after they were repatriated. Some ninety-five<sup>8</sup> of these statements mentioned the accused and this provided the basis for charging him with a variety of offenses under the Uniform Code of Military Justice (UCMJ) Articles 104 and 105,<sup>9</sup> including “aiding the enemy to influence prisoners of war to accept communism,” “corresponding with the enemy by informing him of a fellow prisoner’s failure to sign a peace petition,” and “reporting escape plans of fellow prisoners of war for the purpose of securing favorable treatment.”<sup>10</sup> Since the UCMJ had only been in effect since 1951, Dickenson was the first Soldier to be charged under the new military criminal code with the military equivalent of treason.<sup>11</sup>

When trial began at Fort McNair on 19 April 1954, Colonel (COL) Walter J. Wolfe presided over the eight-

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<sup>1</sup> *Dickenson Is Guilty; Gets 10 Years in Jail*, WASH. POST, May 5, 1954, at 1.

<sup>2</sup> *Id.*

<sup>3</sup> Dickenson was held at Camp Number Five, Pyoktong, Korea. *United States v. Dickenson*, 17 C.M.R. 438, 443 (C.M.A. 1954).

<sup>4</sup> *Army Orders Dickenson to Stand Trial*, WASH. POST, Feb. 19, 1954, at 12.

<sup>5</sup> *Id.*

<sup>6</sup> *Dickenson v. Davis*, 245 F.2d 317 (10th Cir. 1957).

<sup>7</sup> *Dickenson*, 17 C.M.R. at 443.

<sup>8</sup> *Id.* at 444.

<sup>9</sup> *Id.* at 441–43.

<sup>10</sup> *Id.* at 438–40.

<sup>11</sup> Treason is not an enumerated offense under the Uniform Code of Military Justice (UCMJ); the closest similar offense is aiding the enemy, Article 104. See Fred L. Borch, *Tried for Treason: The Court-Martial of Private First Class Maple*, ARMY LAW., Nov. 2010, at 4.

member panel of officers;<sup>12</sup> they were assisted with legal matters by COL Richard F. Scarborough, the judge advocate law officer. The lead trial counsel was COL C. Robert Bard, a West Point graduate who had gained considerable court experience from prosecuting war crimes trials in Heidelberg after World War II.<sup>13</sup> Assisting Bard were two judge advocates: Captain (CPT) Harvey S. Boyd and First Lieutenant Andrew K. McColpin.

While the prosecution was formidable, the defense team was no less impressive. Dickenson-lead defense counsel was civilian attorney R. Guy Emery. A West Point graduate, Emery was a decorated Soldier who had lost a leg in combat. After the war, he had graduated from the University of Virginia's law school and was practicing law in the District of Columbia when he was retained by Dickenson to represent him.<sup>14</sup> Emery was assisted by Lieutenant Colonel William Fleischaker and CPT Wilton B. "Will" Persons Jr. For Persons, who had only recently graduated from Harvard Law School but had considerable experience prosecuting and defending special courts as an armored cavalry officer in post-war Austria and Germany, it was a memorable event: *United States v. Dickenson* was the first general court-martial that Persons had seen. As the junior defense lawyer

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<sup>12</sup> The members of the panel were: Colonel (COL) Wolfe (president); COLs Alcorn B Johnson and Ralph R. Burr, Lieutenant Colonel (LTC) Owen D. Boorum; Majors Paul M. Martin, Edwin D. Bowman and John W. Reser; and Captain Harold H. Hartstein. Note that although the new UCMJ permitted Dickenson to have a court-martial panel consisting of at least one-third enlisted members, Dickenson elected to have an all-officer panel hear his case. There was no possibility for trial by judge alone; this option did not exist until enactment of the Military Justice Act of 1968.

<sup>13</sup> Born in New York in February 1907, Charles Robert Bard graduated from the U.S. Military Academy in 1931 and was commissioned in the Coast Artillery Corps. He transferred to the Judge Advocate General's Department prior to World War II, and subsequently served as Staff Judge Advocate (SJA), XV Corps, and SJA, 7th Army, in the European Theater of Operations. Colonel Bard was serving in the Office of The Judge Advocate General when he was assigned to prosecute the *Dickenson* case. Bard retired from active duty in 1958 and died in 1980. ASS'N OF GRADUATES, REGISTER OF GRADUATES (1992) (Class of 1931).

<sup>14</sup> Born in North Dakota in July 1909, Russell Guy Emery graduated from West Point in 1930 and qualified for his wings in the Army Air Corps. He then transferred to the Infantry, and was serving as the commander of an infantry regiment in Luxembourg in January 1945 when he lost a leg and was awarded the Silver Star for saving a fellow Soldier from a minefield. After being medically retired with the rank of colonel, Emery entered law school at the University of Virginia and, after graduating in 1949, was recalled to active duty to serve as an Assistant Professor of Law at West Point. He remained on active duty until 1952, when he retired a second time and moved to the District of Columbia. From 1953 to 1958, he was associated with the firm of Ansell and Ansell (the same Ansell who had been a Judge Advocate brigadier general and served as acting The Judge Advocate General during World War I). In 1958, Emery left that firm to create his own firm, Emery and Wood. Emery "died quite suddenly at his home" in Falls Church, Virginia, in November 1964. He was fifty-five-years old. *Guy Emery*, ASS'N OF GRADUATES, ASSEMBLY 96 (Spring 1965) [hereinafter ASSEMBLY].

on the team, Persons interviewed witnesses, including some of Dickenson's fellow POWs, and did legal research.<sup>15</sup>

The prosecution's case was fairly straightforward; it relied chiefly on the testimonies of Dickenson's fellow POWs. The evidence presented showed that during his three years as a POW, Dickenson repeatedly relayed information about his fellow POWs to his captors in order to get cigarettes and better food. One witness told the eight-officer panel that Dickenson was "sneaky" and a "rat." Others testified that Dickenson had told the Chinese about the escape plans of fellow POW Edward M. Gaither. As a result of this information, Gaither was severely beaten with clubs and "was placed by the enemy before a mock firing squad on three occasions." Gaither also spent seven months in solitary confinement.<sup>16</sup>

As for aiding the enemy, one witness testified that Dickenson asked his fellow POWs to sign a "peace petition" critical of American involvement on the Korean peninsula and that Dickenson had tried to convince at least eight fellow POWs "to accept and follow the philosophies and tenets of Communism."<sup>17</sup> The prosecution also introduced evidence that Dickenson had recorded pro-communist speeches intended for later radio broadcasts to United Nations forces. This evidence complemented testimony from CPL Billy L. Rittenberry, who related under oath that Dickenson had pledged to "overthrow the United States Government so that it would follow socialist principles."<sup>18</sup>

To counter this evidence of misconduct, R. Guy Emery adopted a two-pronged strategy. First, Emery hoped to generate sympathy for his client by showing that Dickenson, an uneducated farm boy who hailed from the hill country of Virginia, had suffered greatly as a POW. He had not only been exposed to bitter cold and "starvation rations" but also had been threatened with death if he did not cooperate with his Chinese captors.<sup>19</sup> Additionally, Dickenson's seventy-eight year old father and his mother (said to be in her forties) attended the trial at Fort McNair, and their presence let the

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<sup>15</sup> Telephone Interview with Major General (Retired) Wilton B. Persons Jr. (Feb. 11, 2013) [hereinafter Persons Telephone Interview]. As assistant defense counsel, Persons interviewed Corporal (CPL) Claude J. Bachelor, who was subsequently court-martialed for similar prisoner of war (POW) misconduct. See *United States v. Bachelor*, 19 C.M.R. 452 (C.M.A. 1955). For more on Persons, see Michael E. Smith, *Major General Wilton Burton Persons, Jr. United States Army (Retired) The Judge Advocate General of the Army (1975-1979)*, 153 MIL. L. REV. 177 (1996).

<sup>16</sup> *United States v. Dickenson*, 17 C.M.R. 442 (C.M.A. 1954).

<sup>17</sup> *Id.*

<sup>18</sup> *Dickenson Acquitted on One Charge That He Informed on Fellow Prisoner*, WASH. POST, Apr. 27, 1954, at 1.

<sup>19</sup> Don Olesen, *2 Doctors Say Reds Could Break Anyone*, WASH. POST, Apr. 29, 1954, at 3.

panel members see that they stood by their son. Both father and mother also gave statements to the press. The older Dickenson indicated that he believed his son's three years of captivity was punishment enough. Dickenson's mother insisted that her son, whom she described as "the little fellow" was sick. She certainly did not believe that her son had sought favorable treatment at the expense of his fellow POWs. "I don't understand what he could have done to any of them boys," she told a newspaper reporter.<sup>20</sup>

While sympathy for Dickenson would almost certainly benefit him at sentencing, Emery realized that it might also help his client on the merits, as the second prong of the defense case, to show that Dickenson's freedom of will had been so overcome by "brainwashing" and mistreatment that the young Soldier lacked the mens rea necessary to support a conviction under Articles 104 and 105. Emery certainly had good reason to believe he might be successful: Colonel Scarborough would later instruct the panel that it must acquit Dickenson if it found that "the Reds forced him to collaborate with them" and that "mental irresponsibility" was a "complete defense" to the charges.<sup>21</sup>

This explains why Emery presented expert testimony from psychiatrists who had examined the accused. Dr. Morris Kleinerman, who had been a psychiatrist at hospitals in Belgium, England, and the United States during World War II, testified that Dickenson had a "passive-aggressive personality" and was "basically emotionally unstable." He also was the kind of person who was "easily intimidated." Kleinerman's testimony buttressed the defense theory that Dickenson was not responsible for his actions while a POW because his long period of imprisonment made him "interested solely in his own survival." Similarly, Dr. Winfred Overholser, the superintendent of St. Elizabeth's Hospital in Washington, D.C., testified that the treatment Dickenson had received from his Chinese captors "could be pushed to a point where almost anyone would submit."<sup>22</sup>

At the close of an eleven-day trial, and after the accused declined to take the stand on his own behalf, the panel heard arguments from both sides. Colonel Bard argued that Dickenson was a "willing collaborator" who had aided the enemy because of inherent "character defects."<sup>23</sup> In an argument of "nearly two hours," R. Guy Emery countered the government's case was "plainly contemptible" in that it "created an atmosphere of assumed guilt." For Emery, the court-martial was "not so much a trial of law as preparation

for a crucifixion."<sup>24</sup> Dickenson had been "mentally incapable of resisting Red pressure in Korea" and consequently lacked the criminal intent necessary to support a finding of guilty.<sup>25</sup> Interestingly, Emery told the panel that Dickenson had not testified in his own behalf because he had suffered too much "mental damage" in Korea—damage from which he had not yet recovered.<sup>26</sup> Certainly Dickenson looked the part; then-CPT Persons remembered that he "looked scared to death" sitting at the defense table and reminded Persons of a "whipped dog."<sup>27</sup>

After instructions from the law officer, the court closed to deliberate. The following day, after a total of ten and one-half hours behind closed doors, COL Wolfe and the members were back with a verdict: guilty of one specification of aiding the enemy in violation of Article 104, and guilty of one specification of misconduct as a POW, in violation of Article 105, UCMJ.<sup>28</sup> While the maximum penalty was death, the panel sentenced Dickenson to ten years confinement at hard labor, total forfeitures of all pay and allowances, and a dishonorable discharge.

The Army Board of Review and the Court of Military Appeals affirmed the findings and sentence. R. Guy Emery, "without a fee, and often at his own expense, fought the decision to the Supreme Court on what he considered to be a matter of principle."<sup>29</sup> While Dickenson's writ of habeas corpus was quashed by the U.S. District Court for the District of Kansas, and Dickenson's appeal from that order was denied by the Tenth Circuit Court of Appeals, Emery did get some relief for his client: Dickenson was paroled after serving five years of his ten-year sentence. Dickenson, who was married, re-entered civilian life and raised a family. He died in 2002.<sup>30</sup>

The story of Korean War "turncoat" CPL Edward S. Dickenson is now almost forgotten. But the issues raised by

<sup>20</sup> *Dickenson Family 'Shocked' at News of Ed's Arrest*, WASH. POST, Jan. 24, 1954, at M4.

<sup>21</sup> *Dickenson Verdict Debate Is Recessed*, WASH. POST, May 4, 1954, at 7.

<sup>22</sup> Olesen, *supra* note 19.

<sup>23</sup> *Dickenson Verdict Debate Is Recessed*, *supra* note 21, at 7.

<sup>24</sup> Don Olesen, *Attorney Accuses Army of 'Crucifying' Dickenson*, WASH. POST, May 1, 1954, at 3.

<sup>25</sup> Olesen, *supra* note 19.

<sup>26</sup> *Dickenson Family 'Shocked' at News of Ed's Arrest*, *supra* note 20.

<sup>27</sup> Persons Telephone Interview, *supra* note 15.

<sup>28</sup> The law officer had previously entered a finding of not guilty to a second specification alleging a violation of Article 105 at the close of the government's case-in-chief; apparently COL Scarborough determined that the government's evidence was insufficient to support the specification alleging that Dickenson had informed on fellow POW CPL Martin Christensen by telling the Chinese that Christensen had a hidden .45 caliber pistol. Arthur Kranish, *Dickenson Acquitted on One Charge That He Informed on Fellow Prisoner*, WASH. POST, Apr. 27, 1954, at 1.

<sup>29</sup> ASSEMBLY, *supra* note 14.

<sup>30</sup> Dickenson was married during the trial. *Psychiatrist Testifies in Dickenson Defense*, ASSOCIATED PRESS, Apr. 28, 1954.

his case and others<sup>31</sup>—most notably the effect of enemy coercion and propaganda on free will—greatly concerned the Army, resulting in a number of official studies and the creation of formal guidance on how U.S. POWs should conduct themselves in captivity.<sup>32</sup> The issues raised by *Dickenson* were again relevant during the Vietnam War, when some Americans held as POWs by the Viet Cong and North Vietnamese collaborated with their captors to the

detriment of their fellow POWs.<sup>33</sup> But that story, and how the U.S. Government handled allegations of misconduct by Vietnam War POWs, must be told another day.<sup>34</sup>

*More historical information can be found at*

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<sup>31</sup> The Army ultimately court-martialed a total of fourteen Soldiers for misconduct while POWs in North Korea. Eleven were convicted and three were acquitted. See EUGENE KINKAID, *IN EVERY WAR BUT ONE* (1959).

<sup>32</sup> Julius Segal, *Factors Related to the Collaboration and Resistance Behavior of U.S. Army PW's in Korea*, HUM. RESOURCES RES. OFFICE TECHNICAL REP. 33 (1956); Exec. Order No. 10,631, 3 C.F.R. 266 (1954–1958), available at <http://www.archives.gov/federal-register/codification/executive-order/10631.html> (establishing the Code of Conduct for U.S. servicemembers), amended by Exec. Order No. 12,633, 3 C.F.R. 561 (1988) [hereinafter Code of Conduct]; U.S. DEP'T OF ARMY, PAM. 360-512, CODE OF THE U.S. FIGHTING FORCE (1 June 1998) [hereinafter DA PAM. 360-512] (providing the Code of Conduct as well as setting forth its principles and standards).

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<sup>33</sup> See, e.g., *United States v. Garwood*, 16 M.J. 863 (N.M.C.M.R. 1983), *aff'd* 20 M.J. 148 (C.M.A. 1985). While Garwood was the only POW to be court-martialed for misconduct committed while a POW, more than a few were investigated for violating Articles 104 and 105.

<sup>34</sup> For an overview of the problem of POW misconduct and an analysis of the Code of Conduct, see Rodney R. LeMay, *Collaboration or Self-Preservation: The Military Code of Conduct* (unpublished M.A. thesis, Louisiana State University, 2002). See also Captain Charles L. Nichols, *Article 105, Misconduct as a POW*, 11 A.F. L. REV. 393 (1969).