

THE WHITE HOUSE
WASHINGTON

COPY

October 2, 2000

Mr. J. Robert Lunney
Lunney & Murtagh
81 Main Street
White Plains, New York 10601

Dear Mr. Lunney:

Thank you very much for your letters about the Medal of Honor for Peter Tomich. President Clinton greatly appreciates the trust and confidence you have shown in him by writing, and I'm sorry I was unable to respond to you sooner.

I want you to know that while staff in the White House are investigating this case, I have also forwarded your letters to the Department of Defense for review and any appropriate action. While this process may take some time, I want to assure you that the issues you have raised are being carefully and thoroughly evaluated.

Many thanks for your patience.

Sincerely,



Delia A. Cohen
Special Assistant to the President
Director of Correspondence and
Presidential Messages



White House Military Office

PHONE: (202) 757 - 2151

FAX: (202) 757 - 1204

FROM:

Sgt Smith

TO:

Helen Castleman

OFFICE:

Agency Liaison

PHONE:

FAX:

6-2992

DATE:

29 Sep

PAGES:

5 + COVER SHEET

SUBJECT:

Lunney - Sep Memo

REMARKS:

Sorry it took so
long.

LWS

Copy sent
LUNNEY & MERTAGH, LLC
ATTORNEYS AT LAW
81 MAIN STREET
WHITE PLAINS, N.Y. 10601
TEL: (914) 686-1776
FAX: (914) 686-1785
e-mail: LUNMURT@aol.com

25
11/10
SEP-29-2000
September 1, 2000

Hon. William J. Clinton, President of
the United States
Commander in Chief
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Chief Watertender Peter Tomich
Medal of Honor, Awarded 1942

Dear President Clinton,

I have not received a response to my letter of May 24, 2000 requesting your help in correcting an injustice (copy enclosed). Chief Watertender Tomich, who sacrificed his life at Pearl Harbor on December 7, 1941, was awarded the Medal of Honor, posthumously, by President Roosevelt in 1942. However, the Medal has never been presented and you now have the opportunity of bringing great credit to your legacy as Commander in Chief by presenting this Medal to Tomich's family.

Please respond and let me know that you can help correct this long standing oversight and plan to present this Medal of Honor on or before December 7th.

Very respectfully yours,

J. Robert Lunney
J. Robert Lunney, Administrator
of the Estate of Peter Tomich

LUNNEY & MURTAGH, LLC

ATTORNEYS AT LAW

81 MAIN STREET

WHITE PLAINS, N.Y. 10601

TEL: (914) 686-1776

FAX: (914) 686-1785

e-mail: LUNMURT@aol.com

May 24, 2000

FedEx

Hon. William J. Clinton, President of the
United States
Commander-in-Chief
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Chief Watertender Peter Tomich
Medal of Honor, Awarded 1942

Dear-President Clinton,

I write to appeal for your action in correcting a long outstanding injustice by presenting a Medal of Honor to a proper representative of the only American hero in this century who was awarded the Medal but which Medal has never been presented.

On December 7, 1941, at Pearl Harbor, Peter Tomich, then a twenty year veteran of the U.S. Navy, while serving as a Chief Watertender aboard a former battleship, the USS UTAH, distinguished himself by gallantry and intrepidity beyond the call of duty. Chief Tomich displaying "extraordinary courage and disregard of his own safety" remained at his post in the engine room until all boilers were secure and all personnel had left their station. He sacrificed his life to save his men and other crew members. In 1942 President Franklin D. Roosevelt awarded Chief Tomich our Nation's highest award, the Medal of Honor, posthumously. Tomich is one of fifty-eight crewmen still entombed in his ship at the bottom of Pearl Harbor.

Navy service records clearly show that Chief Tomich listed his cousin, John Tonich then living in California, as his next of kin and beneficiary. Any attempts by the Navy to communicate with John Tonich in 1942 were unsuccessful because he had returned to Croatia in the early 1920's (where he died in 1948). Thereafter the Navy did nothing further to locate any representative to present the Medal.

During 1997 the Commander of the New York Naval Militia, (part of a New York State government agency) RADM Robert A. Rosen, NYNM, requested that I, as the Naval Militia Judge Advocate General, research this matter as Chief Tomich had first enlisted in the US Army during WWI in New York and later enlisted in the U.S. Navy from New Jersey.

The New York Naval Militia is one of the major components of the New York State agency known as the Division of Military and Naval Affairs and together with the Army National Guard, the Air National Guard and the State Guard, form a force available to the State and Federal Government in times of need and emergency. The New York Naval Militia is a federally recognized command of approximately 5,500 persons. It is comprised of the Navy Reserve, Marine Corps Reserve, the Coast Guard Reserve and volunteers. It has a proud history of more than 200 years and is recognized under New York law, and also Title 10 U.S. Code.

I traveled to Bosnia and Hercegovina on my own initiative and after locating Tomich's family, I reviewed Church records, conducted interviews, reviewed extensive additional materials and therefrom identified the descendents of John Tonich (the person named as next of kin). Dragutin Herceg Tonić, son of John Tonich is now over 75 years of age and has requested that his son, Screcko Herceg Tonić, be designated as the representative to be presented with the Medal of Honor on behalf of the entire Tomich family.

The results of my extensive investigation in Bosnia and here in the States together with all family and foreign court documentation were delivered to the Navy with the recommendation that the Medal be presented to Screcko Herceg Tonić. Unfortunately the Navy contends that definitive evidence does not exist to identify a proper representative and continues to do nothing to locate such a representative. The Navy has never explained, despite repeated requests, what else is required.

Because of the frustrating bureaucratic circumstances I sought judicial review of the entire record. Based upon my extensive legal investigation for over three years the Surrogate's Court, County of Queens, New York has entered a Decree appointing me the Administrator of the Estate of Peter Tomich. As the Administrator I am to administer all goods, chattels and credits of Peter Tomich including the right to bring any legal action on his behalf. The Federal courts, if called upon to review these proceedings will generally give full faith and credit to such a State decree. A certified copy of the Letters of Administration, dated May 19, 2000 is enclosed. This decree was granted only after all genealogical and other concerns were raised. The Court and the Public Administrator carefully reviewed all the records I obtained and only after resolving all issues of fact and law did the Court issue the Decree.

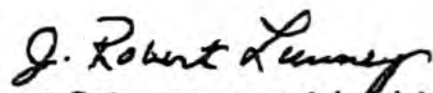
All these efforts by me have been extended through my own personal funds and resources. I have not and will not accept any payment or reimbursement. This has been a matter of seeking honor and justice and has been motivated solely by a desire to perform a public service. By way of introducing myself, I am commissioned as a Rear Admiral in the New York Naval Militia and serve as its Judge Advocate General. I have served honorably in the United States Naval Reserve for 43 years with overseas duty in WWII and Korea. I received a Doctor of Law degree from the Cornell Law School (1954) and have practiced for over 45 years having served as an Assistant U.S. attorney in New York for five years. In 1994 I was decorated by the Secretary of the Navy with the Navy Distinguished Public Service Award for improving "the capabilities of the Department of Defense to carry out essential wartime missions". In 1997 and 1998 I was approved by the Department of Defense to monitor joint recovery operations of MIA personnel in North Korea. I am also the past National President of the Naval Reserve Association, an organization of over 25,000 Naval Reserve Officers

This Medal of Honor has already been awarded and now should be presented to a proper representative. The Medal itself is being held by the Navy for display purposes and this presents no problem to the Tomich family. Once it is properly presented by you they will accept a reproduction or duplicate and allow the Navy to retain the original for appropriate public display at mutually agreeable museums and other prominent locations.

Chief Tomich's bravery has already been recognized by the Navy in naming training facilities at Newport and Great Lakes in his honor. However the presentation of the Medal of Honor by you to his family would bring even greater credit to the Navy and all the armed forces and the nation. Such a presentation would not only correct an injustice, which you have done many times during your Presidency, but bring great credit to your legacy as Commander in Chief. Such a presentation perhaps could be made by you and the First Lady at any venue you choose or here in New York City aboard the USS INTREPID, a perfect forum to celebrate the conspicuous service of our Naval hero. Wouldn't it be wonderful if this presentation can be made on or before December 7th. This year will mark the 59th year that Chief Tomich gave his life for our nation.

Please set this matter straight and obtain great credit for all of us in correcting a long standing oversight. I would most appreciate a response after your serious consideration.

Very respectfully yours,


J. Robert Lunney, Administrator
of the Estate of Peter Tomich

STATE OF NEW YORK
SURROGATE'S COURT
COUNTY OF QUEENS

355614

FILE # 2121 / 1999

-----THE PEOPLE OF THE STATE OF NEW YORK-----
TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, GREETINGS:

On the date written below letters were granted by the Surrogate's Court of Queens County, New York as follows:

Name of Decedent: PETER TOMICH, PETER TONICH, PETER HERCEG TONIC, PETAR HERCEG TONIC

Date of Death: December 7, 1941

Domicile of Decedent: USS UTAH (AG-16) U.S. NAVY

Date Letters Issued: 05-12-2000

Name of Each Administrator: J. ROBERT LUNNEY

Classifications of Letters Issued:

LETTERS OF ADMINISTRATION

LIMITATIONS ON LETTERS:

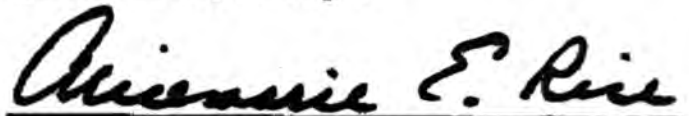
NONE

and that it does not appear by said records that said letters have been revoked.

Dated 19-May-00
Queens, New York

IN TESTIMONY WHEREOF, the seal of the Queens County Surrogate's Court has been hereunto affixed.

WITNESS HON. ROBERT L. NAHMAN
Queens County Surrogate



ALICEMARIE E. RICE
Chief Clerk of the Surrogate's Court

THIS CERTIFICATE IS NOT VALID WITHOUT A RAISED SEAL OF THE COURT

106th CONGRESS

2d Session

H. CON. RES. 408

CONCURRENT RESOLUTION

Expressing appreciation for the United States service members who were aboard the British transport HMT ROHNA when it sank, the families of these service members, and the rescuers of the HMT ROHNA's passengers and crew.

HCON 408 EH

106th CONGRESS

2d Session

H. CON. RES. 408

CONCURRENT RESOLUTION

Whereas on November 26, 1943, a German bomber off the coast of North Africa sunk the British transport HMT ROHNA with a radio-controlled, rocket-boosted bomb;

Whereas 1,015 United States service members and more than 100 British and Allied officers and crewmen perished as a result of the attack;

Whereas hundreds died immediately when the bomb struck and hundreds more died when darkness and rough seas limited rescue efforts;

Whereas many families still do not know the circumstances of the deaths of loved ones who died as a result of the attack;

Whereas more than 900 United States service members survived the attack under extremely adverse circumstances;

Whereas United States, British, and French rescuers worked valiantly to save the passengers and crew who made it off the HMT ROHNA into the sea;

Whereas one United States ship, the USS PIONEER, picked up many of those who were saved;

Whereas because of inadequate record keeping, some survivors of the attack struggled for years to verify the details of the sinking of the HMT ROHNA;

Whereas the men who died as a result of the attack on the HMT ROHNA have been largely forgotten by the Nation; and

→ JDP.

→ MIL OFFICE.

WHERE DID THIS
END UP.

Whereas the Congress and the people of the United States have never recognized the bravery and sacrifice of the United States service members who died as a result of the sinking of the HMT ROHNA or the United States service members who survived the sinking and continued to serve the Nation valiantly abroad during the war: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress expresses appreciation for--

- (1) the United States service members who died in the sinking of the HMT ROHNA, for the heroic sacrifice they made for freedom and the defense of the Nation;
- (2) the United States service members who survived the sinking of the HMT ROHNA, for their bravery in the face of disaster and their subsequent service during the war on behalf of the Nation;
- (3) the families of all of these service members; and
- (4) the United States, British, and French rescuers, especially the crew of the USS PIONEER, who endangered their lives to save the passengers and crew of the HMT ROHNA.

Passed the House of Representatives October 10, 2000.

Attest:

Clerk.

END

Bill Summary & Status for the 106th Congress

[NEW SEARCH](#) | [HOME](#) | [HELP](#) | [ABOUT STATUS](#)

H.CON.RES.408Sponsor: [Rep Metcalf, Jack](#) (introduced 9/25/2000)

Latest Major Action: 10/11/2000 Received in the Senate.

Title: Expressing appreciation for the United States service members who were aboard the British transport HMT ROHNA when it sank, the families of these service members, and the rescuers of the HMT ROHNA's passengers and crew.

STATUS: *(color indicates Senate actions)***9/25/2000:**

Referred to the House Committee on Armed Services.

10/10/2000 9:36pm:

Mr. Bartlett moved to suspend the rules and agree to the resolution.

10/10/2000 9:37pm:Considered under suspension of the rules. (consideration: CR [H9597-9599](#))**10/10/2000 9:46pm:**On motion to suspend the rules and agree to the resolution Agreed to by voice vote. (text: CR [H9597-9598](#))**10/10/2000 9:46pm:**

Motion to reconsider laid on the table Agreed to without objection.

10/11/2000:

Received in the Senate.

THE WHITE HOUSE
WASHINGTON

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7-20-00

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Per Tim, this is

DOD issue solely. To
Burkhardt for letter
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ALR

DOD almost has something
more

7-27-00 - HOLD FOR NERLY

LUNNEY & MURTAGH, LLC

ATTORNEYS AT LAW

81 MAIN STREET

WHITE PLAINS, N.Y. 10601

TEL: (914) 686-1776

FAX: (914) 686-1785

e-mail: LUNMURT@aol.com

00 JUN 26 PM 7:24

CC: Lise | Loy

May 24, 2000

FedEx

Hon. William J. Clinton, President of the
United States
Commander-in-Chief
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Chief Watertender Peter Tomich
Medal of Honor, Awarded 1942

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On December 7, 1941, at Pearl Harbor, Peter Tomich, then a twenty year veteran of the U.S. Navy, while serving as a Chief Watertender aboard a former battleship, the USS UTAH, distinguished himself by gallantry and intrepidity beyond the call of duty. Chief Tomich displaying "extraordinary courage and disregard of his own safety" remained at his post in the engine room until all boilers were secure and all personnel had left their station. He sacrificed his life to save his men and other crew members. In 1942 President Franklin D. Roosevelt awarded Chief Tomich our Nation's highest award, the Medal of Honor, posthumously. Tomich is one of fifty-eight crewmen still entombed in his ship at the bottom of Pearl Harbor.

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cc: Tim
Lawa
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cas Affs
FVI
W done
-AB
6-27-00
Sent to
Pod
John
C. Bowles
(E. Bowles)

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The New York Naval Militia is one of the major components of the New York State agency known as the Division of Military and Naval Affairs and together with the Army National Guard, the Air National Guard and the State Guard, form a force available to the State and Federal Government in times of need and emergency. The New York Naval Militia is a federally recognized command of approximately 5,500 persons. It is comprised of the Navy Reserve, Marine Corps Reserve, the Coast Guard Reserve and volunteers. It has a proud history of more than 200 years and is recognized under New York law, and also Title 10 U.S. Code.

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All these efforts by me have been extended through my own personal funds and resources. I have not and will not accept any payment or reimbursement. This has been a matter of seeking honor and justice and has been motivated solely by a desire to perform a public service. By way of introducing myself, I am commissioned as a Rear Admiral in the New York Naval Militia and serve as its Judge Advocate General. I have served honorably in the United States Naval Reserve for 43 years with overseas duty in WWII and Korea. I received a Doctor of Law degree from the Cornell Law School (1954) and have practiced for over 45 years having served as an Assistant U.S. attorney in New York for five years. In 1994 I was decorated by the Secretary of the Navy with the Navy Distinguished Public Service Award for improving "the capabilities of the Department of Defense to carry out essential wartime missions". In 1997 and 1998 I was approved by the Department of Defense to monitor joint recovery operations of MIA personnel in North Korea. I am also the past National President of the Naval Reserve Association, an organization of over 25,000 Naval Reserve Officers

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Very respectfully yours,


J. Robert Lunney, Administrator
of the Estate of Peter Tomich

STATE OF NEW YORK
SURROGATE'S COURT
COUNTY OF QUEENS

355613

FILE # 2121 / 1999

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TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, GREETINGS:

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Domicile of Decedent: USS UTAH (AG-16) U.S. NAVY

Date Letters Issued: 05-12-2000

Name of Each Administrator: J. ROBERT LUNNEY

Classifications of Letters Issued:

LETTERS OF ADMINISTRATION

LIMITATIONS ON LETTERS:

NONE

and that it does not appear by said records that said letters have been revoked.

Dated 19-May-00
Queens, New York

IN TESTIMONY WHEREOF, the seal of the Queens County Surrogate's Court has been hereunto affixed.

WITNESS HON. ROBERT L. NAHMAN
Queens County Surrogate



ALICEMARIE E. RICE
Chief Clerk of the Surrogate's Court

Ref.
255805
.L355
v.2
WH

MEDAL OF HONOR RECIPIENTS 1863-1994

Volume II World War II to Somalia

Compiled by George Lang, M.H.,
Raymond L. Collins and
Gerard F. White



Facts On File, Inc.

AN INFOBASE HOLDINGS COMPANY

killed, but his magnificent courage and supreme self-sacrifice prevented the injury and possible death of his comrades and remain with them as a lasting inspiration.

2974 ♦ *TIMMERMAN, GRANT FREDERICK

Rank: Sergeant
Service: U.S. Marine Corps
Birthday: 14 February 1919
Place of Birth: Americus, Lyon County, Kansas
Date of Death: 8 July 1944
Cemetery: National Memorial Cemetery of the Pacific (A-844) (MH)—Honolulu, Hawaii
Entered Service at: Kansas
Unit: 2d Battalion, 6th Marines, 2d Marine Division
Served as: Tank Commander
Battle or Place of Action: Saipan, Mariana Islands
Date of Action: 8 July 1944
Citation: For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty as tank commander serving with the 2d Battalion, 6th Marines, 2d Marine Division, during action against enemy Japanese forces on Saipan, Mariana Islands, on 8 July 1944. Advancing with his tank a few yards ahead of the infantry in support of a vigorous attack on hostile positions, Sgt. Timmerman maintained steady fire from his antiaircraft sky-mount machine gun until progress was impeded by a series of enemy trenches and pillboxes. Observing a target of opportunity, he immediately ordered the tank stopped and, mindful of the danger from the muzzle blast as he prepared to open fire with the 75-mm, fearlessly stood up in the exposed turret and ordered the infantry to hit the deck. Quick to act, as a grenade, hurled by the Japanese, was about to drop into the open turret hatch, Sgt. Timmerman unhesitatingly blocked the opening with his body, holding the grenade against his chest and taking the brunt of the explosion. His exceptional valor and loyalty in saving his men at the cost of his own life reflect the highest credit upon Sgt. Timmerman and the U.S. Naval Service. He gallantly gave his life in the service of his country.

2975 ♦ *TOMICH, PETER

Rank: Chief Watertender
Service: U.S. Navy
Birthday: 3 June 1893
Place of Birth: Prolog, Austria
Date of Death: 7 December 1941
Cemetery: National Memorial Cemetery of the Pacific (Wall of the Missing)—Honolulu, Hawaii
Entered Service at: New Jersey
Unit: U.S.S. *Utah*
Served as: Chief Watertender
Battle or Place of Action: Pearl Harbor, Territory of Hawaii
Date of Action: 7 December 1941
Date of Presentation: 4 January 1944
Place of Presentation: U.S.S. *Tomich*, presented to the ship by Rear Adm. Monroe Kelly. When the ship was decommissioned on September 20, 1946, Tomich's Medal of Honor was returned to the Navy Department. (No living relatives

could be found.) On May 25, 1947 Utah Gov. Herbert B. Maw formally named Tomich an honorary citizen of Utah, the state in whose honor the battleship on which Tomich gave his life was named. On the occasion Rear Adm. Mahlon S. Tisdale, Commander of the U.S. Navy Base, San Francisco, awarded Tomich's Medal of Honor to the State of Utah as the official guardian of the dead hero. The presentation was made with full military honors in the rotunda of the Utah Capitol.

Citation: For distinguished conduct in the line of his profession, and extraordinary courage and disregard of his own safety, during the attack on the Fleet in Pearl Harbor by the Japanese forces on 7 December 1941. Although realizing that the ship was capsizing as a result of enemy bombing and torpedoing, Tomich remained at his post in the engineering plant of the U.S.S. *Utah* until he saw that all boilers were secured and all fireroom personnel had left their stations, and by so doing lost his own life.

2976 ♦ TOMINAC, JOHN JOSEPH

Rank: First Lieutenant (highest rank: Colonel)
Service: U.S. Army
Birthday: 29 April 1922
Place of Birth: Conemaugh, Cambria County, Pennsylvania
Entered Service at: Conemaugh, Cambria County, Pennsylvania
Unit: 3d Platoon, Company I, 3d Battalion, 15th Infantry, 3d Infantry Division
Served as: Platoon Leader
Battle or Place of Action: Saulx de Vesoul, France
Date of Action: 12 September 1944
G.O. Number, Date: 20, 29 March 1945
Date of Presentation: 23 April 1945
Place of Presentation: Zepman Stadium, Nuremberg, Germany, presented by Lt. Gen. Alexander M. Patch III
Citation: For conspicuous gallantry and intrepidity at the risk of life above and beyond the call of duty on 12 September 1944, in an attack on Saulx de Vesoul, France. First Lt. Tominac charged alone over 50 yards of exposed terrain onto an enemy roadblock to dispatch a three-man crew of German machine gunners with a single burst from his Thompson machine gun. After smashing the enemy outpost, he led one of his squads in the annihilation of a second hostile group defended by mortar, machine-gun, automatic-pistol, rifle, and grenade fire, killing about 30 of the enemy. Reaching the suburbs of the town, he advanced 50 yards ahead of his men to reconnoiter a third enemy position which commanded the road with a 77-mm SP gun supported by infantry elements. The SP gun opened fire on his supporting tank, setting it afire with a direct hit. A fragment from the same shell painfully wounded 1st Lt. Tominac in the shoulder, knocking him to the ground. As the crew abandoned the M-4 tank, which was running downhill toward the enemy, 1st Lt. Tominac picked himself up and jumped onto the hull of the burning vehicle. Despite withering enemy machine-gun, mortar, pistol, and sniper fire, which was ricocheting off the hull and turret of the M-4, 1st Lt. Tominac climbed into the turret and gripped the .50-caliber antiaircraft machine gun.



THE SECRETARY OF THE NAVY
WASHINGTON, D. C. 20350-1000

18 July 2000

The Honorable John Podesta
Chief of Staff to the President
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. ^{John} Podesta:

Thank you for your interest in the presentation of the Medal of Honor in the case of Chief Peter Tomich, U.S. Navy. I understand that Rear Admiral J. Robert Lunney of the New York Naval Militia has requested that the White House review his case.

The record demonstrates that my predecessor, John Dalton, the Navy Awards Board, and the Navy Judge Advocate General conducted a complete review of this case in 1998. During its 1998 review, the Navy Awards Board reviewed a detailed brief submitted by Rear Admiral Lunney. In addition, the Navy Awards Board and the Naval Historical Center have thoroughly researched this matter several times at the request of various organizations. None of these investigations, however, definitively ascertained Chief Tomich's next of kin. Without positive verification of this next of kin claim, the Navy cannot, in good faith, transfer custody of Chief Tomich's Medal of Honor.

[Handwritten signature/initials on the right margin]

It would do Chief Tomich no greater honor than to find his true next of kin; however, at present, the evidence does not support the case presented to you by Rear Admiral Lunney. Navy representatives have discussed their concerns with Rear Admiral Lunney on several occasions including a meeting on Capitol Hill in 1998 attended by Rear Admiral Lunney and members of Senators Torricelli and Cleland's staffs.

I regret that I cannot provide a more favorable response to you or Admiral Lunney. If I can be of any further assistance in this matter, please do not hesitate to call me.

Sincerely,

[Handwritten signature: Richard]

Richard Danzig

NDBDM
CDR Mahar
18 Mar 98

ISSUE

The Medal of Honor for Chief Tomich has been unclaimed since Pearl Harbor. A decision on next of kin custody of the medal needs to be rendered.

BACKGROUND

Though the case has continued to be researched by many people, the following summary details the case history:

- 07 Dec 41: Chief Tomich earns the MOH aboard USS UTAH.
- 04 Mar 42: Award of the MOH (posthumous).
- 04 Jan 44: No next of kin found; award presented for the President to USS TOMICH by ADM Kelly.
- 20 Sep 46: Decommissioning of the USS TOMICH.
- 25 May 47: Medal loaned to the State of Utah (displayed in the Capital Rotunda at WWII/USS UTAH Memorial).
- 20 Dec 50: Utah Historical Society requests custody.
- 05 Jan 51: Request approved.
- 11 Dec 75: The Serbian Broadcasting Corporation requests information and photograph for a show on Serbian-Americans, as funded by HEW Department; information on Chief Tomich provided.
- 28 Nov 78: Medal transferred to Navy Museum custody.
- 11 Feb 85: Air Force publishes an article about the Medal of Honor and includes a piece on the unclaimed Tomich Medal stating it is lost and offers a finder's reward.
- 07 Mar 86: SSC GLAKES requests the medal for display at the Tomich Steam Propulsion Plant. The request was denied due to the fact that Navy thought it better that the medal remain with the State of Utah; it was at the Navy Museum.
- 14 Nov 96: Congressional MOH Society reports the MOH is on display at SSC GLAKES and Tomich Hall (SEA) Newport. These are replica MOHs; the real one is still at the Navy Museum.
- 20 Feb 87: Navy responded to a request from USDAO Belgrade to re-open the case for Mr. Dragomir Stevanovic who claimed

to be the next of kin. No verification documentation was received per the request, therefore no action was taken.

23 Apr 97: LA Times posted a major article concerning the hunt for the next of kin. It quotes noted genealogist Adam Eterovich as saying "he suspects that Tomich's closest living relative is a descendant of Tomich's Los Angeles cousin" [who was not found in 1942]. He continued that "the man, now living in Bosnia-Herzegovina, would probably support a plan to put Tomich's medal on permanent display at the Croatian Fraternal Union (CFU) headquarters in Pittsburgh."

29 Oct 97: RADMs Rosen and Lunney, New York Naval Militia, followed on the lead of Mr. Eterovich, then wrote to ADM Johnson requesting that the MOH be given to Srecko Herceg-Tonic, son of Dragomir Stevanovic, grandson of the Los Angeles cousin, who is a Colonel in the Croatian Army. He was told that definitive proof still does not exist and that the case is still open.

18 Nov 97: Jerry White, former Director, Congressional Medal of Honor Society, followed on the lead of Mr. Eterovich also and wrote to ADM Johnson to have the MOH presented to the CFU. He was told it is still an open case and Navy is retaining custody.

DISCUSSION

The source documents of both Immigration and Enlistment were used to ascertain:

Last name spelling as either Tomich or Tonich.

Prolog, Austria as place of birth.

June 3, 1893 as the date of birth.

He was not married and had no children.

Enlisted in the Army at Fort Slocum, NY 06Jun17.

Naturalization Mecklenburg County, NC on 19Oct18.

Navy enlistment was on 23 Jan 1919 at Newark, NJ.

Next of kin: John Tomich, Los Angeles.

1942-44: His designated next of kin was not only not found, but the address was found not to exist. Navy and Red Cross exhausted efforts to find the next of kin.

1987: The case came to light again with the emergence of documents from the Federal Republic of Yugoslavia stating that Dragomir Stevanovic was the nephew of Chief Tomich. His claim asserted:

Last name spelling as Petar Herceg Tomic.

Prolog, Austria as place of birth.
Born 28Jun1893; declared dead on 29Jun57.
He married Anica Misetic; in addition, she made a contract with Dragomir for her life-long care.
He illegally immigrated to the U.S. in 1912.
He lived with Dragomir's uncle, Ivan Herceg Tonic, in Los Angeles; Ivan left America in 1920.

1997: The ADM Lunney Report, enclosed; the NYNM sent him to former Yugoslavia to research the background; he returned with two documents:

- A baptismal certificate dated 02Jul1893 detailing the birth date of 28 June 1893 for Petar Herceg in Prolog to Ante Herceg and Iva Tolj.
- A court document from a Djubinski Court for Dragutin Herceg-Tonic which states he has legal claim to the war decoration and legacy of Peter Herceg-Tonic as the main legatee to the estate of the late legator.

*He added that Chief Tomich married Anica Misetic, had no children, and left her behind when he came to America about 1912. In addition, that the next of kin [John (Ivan) Tomich] was deceased, but his son and grandson are alive. The grandson [Chief Tomich's great nephew] is his representative for receipt of the MOH.

The ADM Lunney research appears to be based on the information attained in the 1987 genealogy claim. The family did not require certification by a local court in Bosnia and Herzegovina; as they were told in 1987, they need only present documentation to the embassy for Navy verification.

SUMMARY

Several problems still exist in the identification of Chief Tomich's next of kin:

(1) The family name shows no consistent link - four names are used interchangeably: Tonic, Tomic, Tonich, and Tomich; the name Herceg is claimed to be the family name, Tonic the clan name. The Navy and INS records do not show the connection to Herceg, the basis of the Prolog documents.

(2) The family name is also a problem when connecting the lost next of kin, John Tonich, to Ivan Herceg. If this could be verified then it could solve Problem #1.

(3) The birth date provided on the Baptismal Certificate is contrary to the Navy and INS records of June 3, 1893. If it

were correct, it could also support the name problem. The fact that it is different makes the waters muddier.

(4) The fact that Chief Tomich listed no spouse, nor did shipmates ever state he talked about one throughout his career; the family statements denote he was married. Further, the Prolog letters detail that the primary next of kin, which would have been the wife if he was married, delegated this authority by a life contract to her in-laws by a probable pre-arranged and obviously estranged marriage.

(5) Tonic (Tonich, Tomic, and/or Tomich) was a common name throughout the region and specified by the genealogist as a clan name.

(6) If we assume that Chief Tomich wished to remain anonymous by changing his name and birth date, then we can also assume that his birth place (Prolog) is also incorrect.

Guidance - SECNAVINST 1650.1F: The normal representative is the next-of-kin. There are no next-of-kin benefits (monetary, status, or dependent child academy entrance) which are transferred with this award. There is also no reference to a second presentation ceremony being warranted; the original presentation was already conducted (ADM Kelly 1944).

Bottom Line: We do not know why Chief Tomich decided to mask his past and not act for over twenty years to ensure his next of kin were informed of his whereabouts.

ALTERNATIVES (No Order)

1. Deny the claim; custody should remain with the Navy Museum until definitive evidence is presented proving or disproving the validity of a next of kin.
2. Deny the claim; custody should be transferred to another representative organization.
 - a. CFU
 - b. Tomich Steam Propulsion Plant (GLAKES)
 - c. Tomich Hall (SEA)
3. Approve the claim; make arrangements to transfer custody of the MOH to Dragutin Herceg-Tonic.



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO

1650

Ser 13/1MA12228.98

13 Oct 98

MEMORANDUM FOR SECRETARY, NAVY DEPARTMENT BOARD OF DECORATIONS
AND MEDALS

Via: Assistant Judge Advocate General

Subj: REQUEST FOR LEGAL OPINION REGARDING THE MEDAL OF HONOR
OF CHIEF TOMICH

Ref: (a) Your memo of 3 Sep 98

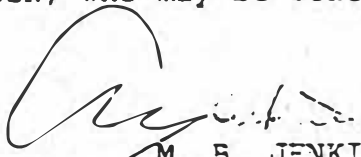
Encl: (1) Legal analysis

1. Purpose. This responds to your reference (a) request for our opinion of whether custody of the Medal of Honor awarded to Chief Watertender Peter Tomich should be transferred from Navy to a person claiming to be Chief Tomich's next of kin.

2. Short Answer. As the Medal of Honor was presented to a representative designated by the President, the Medal is properly in the possession of the Department of the Navy. Transfer of the Medal of Honor to another party is a matter of policy and, subject to applicable restrictions, within the discretion of the Secretary of the Navy. Neither policy nor law compels such a transfer. While there is evidence of kinship, there are significant deficiencies in that evidence.

3. Discussion. Enclosure (i) contains a detailed analysis of this issue.

4. Point of contact. My action officer on this issue is LCDR Barry J. Goehler, JAGC, USN, who may be reached at (703) 604-8212.


M. B. JENKINS

Commander, JAGC, U.S. Navy
Deputy Assistant Judge Advocate
General (Administrative Law)

LEGAL ANALYSIS

1. Issue. Whether custody of the Medal of Honor awarded to Chief Watertender Peter Tomich should be transferred from the Navy to a person claiming to be next of kin?
2. Short Answer. As the Medal of Honor was presented to a representative designated by the President, the Medal is properly in the possession of the Department of the Navy. Transfer of the Medal of Honor to another party is a matter of policy and, subject to applicable restrictions, within the discretion of the Secretary of the Navy. Neither policy nor law compels such a transfer. While there is evidence of kinship, there are significant deficiencies in that evidence.
3. Background. For conspicuous gallantry and intrepidity at the risk of his own life above and beyond the call of duty, Chief Watertender Peter Tomich was posthumously awarded the Medal of Honor for his actions while serving aboard USS UTAH on 7 December 1941. At the time of the award, a search was made for his next of kin. While Chief Tomich named no next of kin, for the purpose of possible payment of a death gratuity, he designated his cousin John Tonich of Los Angeles as beneficiary. The Navy could not locate John Tonich. As no living relatives were found, the Medal was presented to Admiral Kelly, representing Chief Tomich. The Medal is in the Navy's custody and is currently located at the Navy Museum. "[I]n order to identify a proper representative to whom the Medal of Honor may be presented,"¹ a member of the New York Naval Militia conducted a genealogical search and prepared a memorandum regarding the living next of kin of Chief Tomich. This memorandum recommends presentment of the Medal of Honor to Screcko Herceg Tonich, who claims to be the grandson of Chief Tomich's cousin.
4. Discussion. Awarding the Medal of Honor to members of the Navy and Marine Corps is authorized by 10 U.S.C. § 6241. Criteria for this, and other, awards is provided by statute and supplemented through regulations. Any action taken must comport with statutory and regulatory requirements.
 - a. Presentation. The Medal of Honor is awarded by the President and "[w]hen practical, presentation ... shall be made by the President of the United States."² For posthumous awards, 10 U.S.C. § 6250 states that if the recipient dies before the award is made, the award "may be presented, within five years from the date of the act or service justifying the award, to his representative as designated by the President." While this statute gives the President sole discretion to designate a representative to whom the award shall be presented, policy is that such awards are "normally presented to the next of kin."³ In the case of Chief Tomich's

¹ J. Robert Lunney memo of 27 Jul 98.

² Department of Defense Awards Manual, DOD 1348.33-M of 12 Sep 96.

³ SECNAVINST 1650.1P of 8 Aug 91, ¶ 224.1.

award, absent an identified next of kin, the President designated a representative and presented the award. Once presentation of the award has occurred, there is no authority to name a second representative or make a second presentation. The act of presenting the award is final.

b. Entitlement to possession. Because the award has been properly made and presented, Chief Tomich's Medal of Honor is property of the U.S. Navy. No person or entity has a superior claim or property right to this Medal. This conclusion necessarily entails from the fact that, as the award was made after his death, the Medal never became the property of Chief Tomich or his estate.⁴ Thus, no heir or successor in interest may claim entitlement to this Medal under general principles of property or estate law.⁵

c. Gratuitous transfer. As Chief Tomich's Medal of Honor is property of the Navy, the Secretary of the Navy may take any action with respect to the Medal that is not prohibited by statute or regulation.⁶ Within the confines of such requirements, it would not be objectionable to give the Medal as a gratuitous transaction to a proper individual or entity. In determining who would be such a "proper party," the Secretary's discretion should be tempered by larger policy concerns, rather than determined solely by distant ties of kinship.

d. Proof of kinship. The above-mentioned genealogical search and memorandum present some evidence of kinship. However, there remain unresolved issues:

(1) Assumptions. The kinship traced in the memorandum is premised on the assumption that John Tonich of Los Angeles, named by Chief Tomich as his cousin and designated as his beneficiary for the purpose of potential payment of a death gratuity, is the same person as Ivan Tonic of Prolog. While this assumption may be reasonable in light of the small locality and similar name, it is far from conclusive proof of relationship. Unless there is direct evidence that Ivan Tonic is Chief Tomich's cousin, the conclusion that Screcko Herceg Tonic is Chief Tomich's next of kin and the degree of that kinship are tenuous. Perhaps even more basically, the assertion that Chief Peter Tomich was born Petar Herceg Tonic on 28 June 1893 in Prolog is itself an assumption, although again perhaps a reasonable one.

⁴ Discussion of the applicable law of intestate distribution is beyond the scope of this analysis; however, as Chief Tomich was most likely a legal resident of California, any determinations in this regard would probably be based on the law then applicable in that jurisdiction.

⁵ J. Robert Lunney's memorandum includes a "certificate" of a Croatian court, concerning "rights and claims" to the estate of Petar Herceg Tonic. This document has no legal significance and is not relevant to this case. See note 9, *infra*.

⁶ Discussion of the statutes and regulations governing the disposition of government property is beyond the scope of this analysis.

(2) Other relatives. If the documentation presented in the memorandum is accepted on its face,⁷ it shows no more than that Screcko Herceg Tonic is related to Chief Tomich - in fact, the grandson of Chief Tomich's nephew. The memorandum does not show whether there are any other relatives. Most notably, the record indicates that Chief Tomich was married; however, there is no indication that this marriage was ever dissolved. Because the phrase "next of kin" has two meanings, this phrase generally includes both relations by blood and marriage.⁸ Thus, there may be living persons who are related to Chief Tomich by marriage. Additionally, there may be other persons who are blood relations of Chief Tomich. In other words, the information in the record does not extinguish the possibility that a closer relative exists.⁹

(3) Discrepancies in the record. The baptism certificate of Ivan Herceg Tonic has an annotation that reads, "Ivan's father Franjo is the brother of Petar Herceg Tonic." If this annotation is correct, Ivan Tonic would have been Petar Tonic's nephew and not his cousin. The basis for this information is not clear. Notably, Chief Tomich's birth date is generally agreed to have been in 1893. Ivan, son of Chief Tomich's brother Franjo, was born seven years earlier, in 1885. While possible, this sequence of dates seems unlikely. Taken together, these discrepancies raise serious questions about the accuracy of the available documentation and resulting genealogy.

5. Conclusion and Recommendation. Because the Medal of Honor awarded to Chief Tomich was presented to a properly designated representative, another presentation is neither authorized nor appropriate. For this reason, the policy of making presentations of posthumous awards to a recipient's next of kin is not applicable to this case. The Secretary of the Navy may give the Medal to a proper person or entity. Policy considerations should be the primary guide for the Secretary's action in this matter. In any case, given that available documentation cannot conclusively establish the degree or fact of kinship of Screcko Herceg Tonic or that there are no closer living relations, we recommend that the Medal of Honor remain in the possession of the Department of the Navy.

⁷ In his memorandum, J. Robert Lunney opines that such documentation would be admissible under various rules of evidence. It should be noted that such discussion is not relevant because this matter is not justiciable. Further, in this case, the weight to attach to such information is far more important than whether such information would be admissible in court.

⁸ BLACK'S LAW DICTIONARY 940 (5th Ed. 1979). The two meanings are those governed by the laws of consanguinity and of intestacy.

⁹ The inclusion of what purports to be a "certificate" of the "Low Court of Ljubuski" does not settle this question. The certificate is itself specifically limited to the "war decoration" of Petar Herceg Tonic, and issued ex parte to Drago-Dragutin Herceg Tonic. Given the clear legal status of the property involved, no "court" in Bosnia-Herzegovina could rationally claim jurisdiction in the matter. Moreover, the peculiar limitation of the "certificate" to a single item of personalty and the evident ex parte nature of the process should result in little if any credit given to this document.

THE WHITE HOUSE

JULY 26, 2000

RE: TEDDY ROOSEVELT MEDAL OF
HONOR

JOHN -

WE HAVE MIL OFFICE MEMO
RECOMMENDING POTUS MAKE
THIS AWARD (FORWARDS SECDEF/
ARMY'S RECOMMENDATION).

IT'S READY FOR POTUS DECISION,
ALTHOUGH THE MIL OFFICE IS
STILL WAITING FOR ARMY TO
SEND IN A SCHEDULING PROPOSAL.
(TYPICALLY WE FORWARD TO
POTUS SHORTLY BEFORE SCHEDULED
EVENT, THO' CAN DO AT ANY TIME)

IS THERE ANYTHING FURTHER
YOU'D LIKE US TO DO ON THIS?
IF NOT, I'LL HOLD UNTIL WE
HEAR WE'RE READY TO MOVE
FORWARD.

-LISEL