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By: NARA **NARA Date:** 1976

MATSUKICHI KOBAYASHI

(10 APR 1945)

(128473)

0398

Case of
Matsukichi Kobayashi
April 10, 1945.

RECORD OF PROCEEDINGS
of a
MILITARY COMMISSION
convened at
Agana, Guam
by order of
The Island Commander

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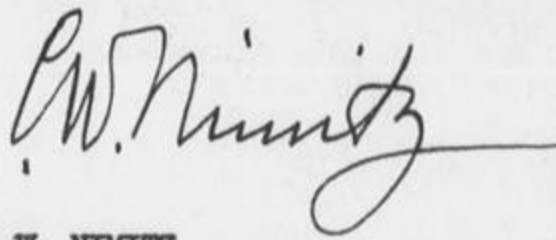
UNITED STATES PACIFIC FLEET
AND PACIFIC OCEAN AREAS
HEADQUARTERS OF THE COMMANDER IN CHIEF

Serial 06157

5 JUN 1945

~~CONFIDENTIAL~~

The proceedings, finding, and sentence in the foregoing case of Matsukichi Kobayashi, and the action of the convening officer thereon are approved.



C. W. NIMITZ
Fleet Admiral, U. S. Navy,
Commander in Chief, U. S. Pacific Fleet
and Pacific Ocean Areas,
and Military Governor, GUAM

To: Judge Advocate General.
Re: Trial by Military Commission convened by the Island Commander,
GUAM, of Matsukichi Kobayashi.

0400

AL7-10
FF12/08-cw
Serial 01871

UNITED STATES PACIFIC FLEET
FORWARD AREA, CENTRAL PACIFIC



28 MAY 1945

FIRST ENDORSEMENT on
IsComGUAM conf. ltr.
ser. 05644, dated
23 May 1945.

From: Commander Forward Area, Central Pacific.
To : The Secretary of the Navy (Office of the Judge
Advocate General).
Via : (1) Commander in Chief, U. S. Pacific Fleet and
Pacific Ocean Areas.
(2) War Crimes Officer, U. S. Pacific Fleet and
Pacific Ocean Areas.
Subject: Trial by Military Commission, case of Matsukichi
Kobayashi.
1. Forwarded.

JOHN H. MAGRUDER, Jr.,
Deputy ComForward Area CenPac.

0401

RECEIVED
MAY 24 1945

1-00-00-65
(610)-wka

ComFwdAreaCenPac

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

Serial No. 05644

HEADQUARTERS,
ISLAND COMMAND, GUAM.

MAY 23 1945

From: The Island Commander.
To : The Secretary of the Navy (Office of the Judge
Advocate General).
Via : (1) Commander Forward Area, Central Pacific.
(2) Commander in Chief, U. S. Pacific Fleet and
Pacific Ocean Areas.
(3) War Crimes Officer, U. S. Pacific Fleet and
Pacific Ocean Areas.
Subject: Trial by Military Commission, case of Matsukichi
Kobayashi.
Reference: (a) Cincpac letter 3 May 1945, serial 30472.
(paragraph 3).
Enclosure: (A) Record of proceedings of Military Commission.
1. In accordance with paragraph 3 of reference (a),
enclosure (A) is transmitted herewith.

Henry L. Larsen
HENRY L. LARSEN.

A17-10

0402

1400-30-65
(610)-gwh

Serial No. 05574

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM

18 May 1945.

The proceedings, finding and sentence, in the foregoing case
of Matsukichi Kobayashi, an inhabitant of Guam, are approved.

Classification of this record of proceedings is hereby raised
to [REDACTED]

Henry L. Larsen
HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

[REDACTED]
CONFIDENTIAL

0403

CA ACTION

0404

Matsukichi Kobayashi
Trial by Military Commission
in the
Municipality of Agana, Guam

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TESTIMONY

Name of Witness	Direct and Redirect	Cross and Recross	Commission
Prosecution			
Jose P. Villagomez, civilian	7,8,9,14	10,11,12, 13,14,15	-----
Teresa C. Baza, civilian	15,16	-----	16
Beatrice C. Baza, civilian	16,17	-----	17,18
Nicolas T. Sablan, civilian	19,20,21, 23,24	21,22,23, 24	23
Defense			
Matsukichi Kobayashi, accused	26,27	27	-----
Willard Mitchell, 1stLt., USMCR	28	28	-----

0405

1400-30-65
(610)-wka

Serial No. 3529

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

January 19, 1945.

From: The Island Commander.
To: Colonel Samuel A. Woods, Junior, U.S. Marine Corps.
Subject: Precept convening Military Commission of Guam.
Reference: (a) Proclamation No. 4, Military Government of Guam.

1. Pursuant to the authority vested in me by Admiral of the Fleet Chester W. Nimitz, United States Navy, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, Military Governor of Guam, a Military Commission is hereby ordered to convene at Agana, Guam, on the 22nd day of January 1945, or as soon thereafter as practicable, for the trial of such persons as may legally be brought before it.

2. The commission will be constituted as follows:

Colonel Samuel A. Woods, Junior, U.S. Marine Corps, senior member,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve,
Lieutenant Commander Herbert H. Dawson, U.S. Naval Reserve,
Lieutenant Commander James M. Bridges, U.S. Naval Reserve,
Lieutenant James B. Shahan, U.S. Naval Reserve,
Lieutenant Arthur L. Shepard, U.S. Naval Reserve, members,

and

Lieutenant Colonel Teller Ammons, Army of the United States,
judge advocate.

3. This commission shall be competent to try all offenses with in the jurisdiction of the Exceptional Military Courts, including offenses in violation of the Penal Code of Guam, and to impose any lawful punishment.

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

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

A true copy. Attest:

Teller Ammons
TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"A"

0406

1400-30-65
(610)-wka

Serial No. 4204

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Feb. 7, 1945.

From: The Island Commander.
To: Colonel Samuel A. Woods, Junior, U. S. Marine Corps,
Senior Member, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Colonel Walter T.H. Galliford, U.S. Marine Corps, is hereby appointed a member of the Military Commission of which you are senior member, convened by my precept of January 19, 1945, vice Colonel Samuel A. Woods, Junior, U.S. Marine Corps, hereby relieved.

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

Copies to: Colonel Walter T.H. Galliford, U.S. Marine Corps,
A-1 Section.

A true copy. Attest.

Teller Ammons
TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"B"

0407

1400-30-65
(610)-jam

Serial No.

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

20 March 1945.

From: The Island Commander.
To: Colonel Walter T.H. Galliford, U. S. Marine Corps, Senior
Member, Military Commission, Guam.
Subject: Change in membership of Commission.

1. Major Foster H. Krug, U. S. Marine Corps Reserve, is hereby
appointed a member of the Military Commission of which you are senior mem-
ber, convened by my precept of January 19, 1945, vice Lieutenant James B.
Shahan, U. S. Naval Reserve, hereby relieved.

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

Copies to: Major Foster H. Krug, U. S. Marine Corps Reserve, 5th Field
Depot,
Lieutenant James B. Shahan, U. S. Naval Reserve, Island
Command,
Lieutenant Colonel Teller Ammons, Army of the United States,
Judge Advocate, Military Commission, Island Command.
A-1 Section, Island Command.

A true copy. Attest:

Teller Ammons
TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"C"

0408

1400-30-65
(610)-jam

Serial No.

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

March 20, 1945.

From: The Island Commander.
To: Colonel Walter T. H. Galliford, U. S. Marine Corps, Senior
Member, Military Commission, Guam.
Subject: Change in membership of Commission.

1. Major Richard P. Rice, U. S. Marine Corps Reserve, is hereby
appointed a member of the Military Commission of which you are senior mem-
ber, convened by my precept of January 19, 1945, vice Lieutenant Arthur L.
Shepard, U. S. Naval Reserve, hereby relieved.

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

Copies to: Major Richard P. Rice, U. S. Marine Corps Reserve, 9th AAA Bn.,
Lieutenant Arthur L. Shepard, U. S. Naval Reserve, Island
Command.
Lieutenant Colonel Teller Ammons, Army of the United States,
Judge Advocate, Military Commission, Island Command,
A-1 Section, Island Command.

A true copy. Attest:

Teller Ammons

TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"D"

0409

1400-30-65
(610)-jam

Serial No.

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

20 March 1945.

From: The Island Commander.
To: Colonel Walter T. H. Galliford, U. S. Marine Corps, Senior
Member, Military Commission, Guam.
Subject: Change in membership of Commission.

1. Major Samuel A. Gardner, U. S. Marine Corps Reserve, is hereby appointed a member of the Military Commission of which you are senior member, convened by my precept of January 19, 1945, vice Lieutenant Commander Herbert H. Dawson, U. S. Naval Reserve, hereby relieved.

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

Copies to: Major Samuel A. Gardner, U. S. Marine Corps Reserve, 14th
AAA Bn.,
Lieutenant Commander Herbert H. Dawson, U. S. Naval Reserve,
Island Command,
Lieutenant Colonel Teller Ammons, Army of the United States,
Judge Advocate, Military Commission, Island Command,
A-1 Section, Island Command.

A true copy. Attest:

Teller Ammons
TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"E"

0410

1400-30-65
(610)-jam

Serial No.

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

20 March 1945.

From: The Island Commander.
To: Colonel Walter T. H. Galliford, U. S. Marine Corps, Senior
Member, Military Commission, Guam.

Subject: Change in membership of Commission.

1. Lieutenant Colonel Jay H. Augustin, U. S. Marine Corps Reserve, is hereby appointed a member of the Military Commission of which you are senior member, convened by my precept of January 19, 1945, vice Lieutenant Commander James M. Bridges, U. S. Naval Reserve, hereby relieved.

/s/HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

Copies to: Lieutenant Colonel Jay H. Augustin, U. S. Marine Corps Reserve, 2nd Prov. AAA G.,
Lieutenant Commander James M. Bridges, U. S. Naval Reserve, Island Command,
Lieutenant Colonel Teller Ammons, Army of the United States, Judge Advocate, Military Commission, Island Command, A-1 Section, Island Command.

A true copy. Attest:

Teller Ammons

TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

1400-30-65
(610)-jam

Serial No. 6718

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

April 8, 1945.

From: The Island Commander.
To : Colonel Walter T. H. Galliford, U. S. Marine Corps, Senior
Member, Military Commission, Guam.
Subject: Change in membership of Commission.

1. Lieutenant Colonel George E. Congdon, U. S. Marine Corps Reserve, is hereby appointed a member of the Military Commission of which you are senior member, convened by my precept of January 19, 1945, vice Lieutenant Colonel Jay H. Augustin, U. S. Marine Corps Reserve, hereby relieved.

/s/ROBERT BLAKE
Brigadier General, U. S. Marine Corps,
The Island Commander.

Copies to: Lieutenant Colonel George E. Congdon, U. S. Marine Corps Reserve, MAG 21,
Lieutenant Colonel Jay H. Augustin, U. S. Marine Corps Reserve, 2nd Prov. AAA G.,
Lieutenant Colonel Teller Ammons, Army of the United States, Judge Advocate, Military Commission, Island Command, A-1 Section, Island Command.

A true copy. Attest:

Teller Ammons

TELLER AMMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"G"

04 12

1400-30-65
(610)-wka

Serial No. 4885

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

FEB 23 1945

From: The Island Commander.
To : Lieutenant Colonel Teller Ammons, Army of the
United States, Judge Advocate, Military
Commission of Guam.
Subject: Charge and specification in the case of
Matsukichi Kobayashi, an inhabitant of Guam.

1. The above-named man will be tried before the
Military Commission of which you are judge advocate upon the
following charge and specification. You will notify the
senior member of the Commission accordingly, inform the
accused of the date set for his trial, and summon all witnesses,
both for the prosecution and the defense. You will carefully
comply with the procedure set forth in Section 2, Article IV
of Proclamation No. 4, dated 29 August 1944.

CHARGE

MURDER

Specification

In that Matsukichi Kobayashi, an inhabitant of
Guam, and subject to the Military Government thereof, did, in
and about the month of June, 1944, at or near Sinajana, Guam,
wilfully, feloniously, with premeditation and malice afore-
thought, and without justifiable cause, strike one Vicente
Sablan Baza, an inhabitant of Guam, with a sharp sword, and
did therein and thereby, then and there, decapitate the said
Vicente Sablan Baza, as a consequence of which the said Vicente
Sablan Baza then and there died.

Henry L. Larsen
HENRY L. LARSEN,
Major General, U. S. Marine Corps,
The Island Commander.

0413

First Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Tuesday, 10 April 1945.

The commission met at 9:00 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,
Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Corporal Thomas R. Brown, U.S. Marine Corps Reserve, entered with the
accused and reported as provost marshal.

The judge advocate introduced Joaquin C. Perez, civilian, as reporter,
and Jorge A. Cristobal, CCK, U.S. Navy, as interpreter.

The accused requested that Lieutenant Alexander Akerman, Junior, act
as his counsel. Lieutenant Akerman took seat as counsel for the accused.

The judge advocate submitted the precept and modifications thereof,
copies prefixed marked "A", "B", "C", "D", "E", and "F", to the accused for
his information and inspection and read a modification copy prefixed marked
"G".

The judge advocate did not object to any member.

The accused did not object to any member.

The judge advocate, each member, the reporter and the interpreter were
duly sworn.

The accused stated that he had received a copy of the charge and specifi-
cation preferred against him about 4 days ago. (April 6, 1945)

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

The accused replied in the affirmative, and stated that he objected to
the specification on the ground that the crime was not alleged as defined
in the Penal Code of Guam, in that the word "deliberately", was omitted from
the specification, and on the further ground that the date of the death of
the deceased was not set forth in the specification.

The commission was cleared.

The commission was opened. All parties to the trial entered, and the
commission announced that the objection of the accused was overruled, and

that the commission found the charge and specification in due form and technically correct.

The accused requested a postponement of the trial in order to give him time to prepare his defense.

The commission was cleared.

The commission was opened. All parties to the trial entered.

The commission then, at 9:45 a.m., adjourned until 9:00 a.m. Monday, April 16, 1945.

Second Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Monday, 16 April 1945.

The commission met at 9:15 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,
Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Joaquin C. Perez, civilian, reporter.
The accused and his counsel.

The judge advocate introduced Lieutenant Willard F. Mitchell, U.S. Marine Corps Reserve, as interpreter, who was duly sworn.

The accused requested that Jorge A. Cristobal, CCK, U.S. Navy, act as his counsel in the capacity of interpreter to assist in the preparation of his defense. Cristobal took seat as counsel for the accused.

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

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The accused made a plea in bar of trial to the charge and specification on the ground that the accused is a prisoner of war, or of such status which entitles him to receive the protection of the Geneva Prisoner of War Convention. He further objected to this trial proceeding until the protecting power of the Japanese has been notified of the time and place of this trial and of the charge filed against the accused, and requested that the protecting power be given the right to have its representative present at this trial as set forth in the Geneva Prisoner of War Convention. ✓
✓
✓

In support of his plea, the accused desired to call a witness.

The accused was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. State your name.
A. Matsukichi Kobayashi.
2. Q. Are you the accused in this case?
A. Yes.

Examined by the accused:

3. Q. When and where were you born?
A. At Hiroshima Prefect, Japan, in 1902.
4. Q. Have you ever lived anywhere except in Japan?
A. I lived at Saipan for 13 years and then came to Guam on April 1, 1944.
5. Q. Are you a citizen of the Japanese Empire?
A. Yes.
6. Q. When did you come to Guam?
A. April 1, 1944.
7. Q. What business were you in, if any, after you came to Guam?
A. Restaurant business.
8. Q. Did you also work for the Kempetai about June 1, 1944?
A. That is true.
9. Q. What did you do there; what were your duties?
A. Cooking.
10. Q. What else?
A. I had no other duties.
11. Q. Did you drive automobiles and trucks and repair them for the Kempetai?
A. That is true; I drove and repaired trucks.
12. Q. When the Americans occupied this Island and you surrendered to them, where were you taken?
A. On the coast at Pati Point.
13. Q. After you were taken prisoner, where were you placed?
A. After I became a prisoner, I lived in the former stockade, Island Command.
14. Q. When were you taken prisoner?
A. I think it was about August 18.
15. Q. 1944?
A. Yes.
16. Q. Did you remain in the stockade ever since that day until this date, under custody of the American forces?
A. Yes, that is true.

Cross-examined by the judge advocate:

17. Q. Were you in any other business other than the restaurant business on Guam?

A. I was only in the restaurant business prior to the time I drove, repaired, and cooked for the Military Police.

18. Q. Did you remain in the stockade of Guam at all times since you were taken by the American forces?

A. Yes.

19. Q. What kind of clothing did you wear from the time you came to Guam to the time you were taken prisoner?

A. I wore gray trousers and shirts and sometimes dark trousers.

20. Q. Was that the uniform that the Japanese forces wore on the Island?

A. That was not the uniform, but my own private clothing.

21. Q. What kind of identification did you have as to your status?

A. I had my drivers license issued by the Naval Guard Force Commander which was issued to all drivers on Guam and my identification as cook for the Military Police.

22. Q. Was that rating as cook a military rating?

A. I am not sure that that was equivalent to a military rating although I heard that my position was that of a militarized worker. My identification was worded as a cook, military police, for a certain period of time. It did not give the rank, just occupied as a cook.

23. Q. Did you have any other identification with you?

A. No.

24. Q. When you were taken prisoner, did you have any identification with you?

A. I had only my drivers license when taken prisoner.

25. Q. When you were taken prisoner what kind of clothing were you wearing?

A. Pair of gray trousers and shirt.

26. Q. Was that the kind of clothing the members of the Japanese armed forces wore that time?

A. No, it was different. That was my own personal clothes.

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

The witness said that he had nothing further to state.

The witness resumed his status as accused.

In reply to the plea of the accused, the judge advocate desired to call a witness.

A witness for the prosecution in reply to the plea of the accused entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank and present station.

A. Nicholas Savage, Captain, U.S. Marine Corps Reserve, attached to the Island Command, Guam.

2. Q. In your present station, do you have custody of the records of the

inmates of the Island Command Stockade?

A. Yes.

3. Q. Did you bring those records with you?

A. Yes, sir.

4. Q. Please consult your record and see if you can find the name of Matsukichi Kobayashi.

A. On the roster made up for the prisoners of the stockade dated 29 August, 1944, which roster was the first record of all people in the stockade, the name appears as a civilian internee.

5. Q. Has that classification ever been changed according to your record?

A. No, sir.

6. Q. How many classifications did you have of the inmates?

A. Two classifications, civilian detainee which is the same as civilian internee and the military prisoners of war.

7. Q. Has the accused always been classified as a detainee or internee?

A. To the best of my knowledge, he was always classified as internee or detainee - essentially he was a civilian in custody of the occupying force.

Cross-examined by the accused:

8. Q. You stated you have two classifications of the Island Command Stockade prisoner of war camp?

A. Yes.

9. Q. One of those you call military prisoners of war?

A. Yes.

10. Q. Who are placed in that classification?

A. People captured are considered military prisoners of war if they are formal members of an enemy armed force and by "formal" in that respect, I mean uniformed, recruited and militarily handled personnel; also high ranking government officials and members of the royal family even though they might not be formal members of the armed forces.

11. Q. Was any other category classified as a prisoner of war in that prisoner of war camp?

A. To my knowledge, no man has ever been classified as a prisoner of war in the Island Command Stockade unless he had some recognized connection with the enemy armed forces.

12. Q. By recognized connection, you mean unless a Japanese soldier, sailor or marine?

A. Not entirely.

13. Q. Will you define that term?

A. For example, if a man were a member of the armed guard of the Japanese, which organization differs from our own in the semi militarized civilian group, it has been our custom to consider them prisoners of war.

14. Q. All others were classified as civilian internees, is that right?

A. Yes.

15. Q. Was notification of such internments forwarded to the Japanese Government?

A. I cannot answer that question, as I do not know whether it has. I presume probably it has.

16. Q. It is customary to notify the protecting power of civilian internees of their internment? ✓

A. Yes.

Reexamined by the judge advocate:

17. Q. In addition to that reason for putting enemy nationals in the stockade, is it not true that civilian internees were in there for the purpose of investigations and security so far as our forces are concerned?

A. I believe it was.

18. Q. You had Guamanians there as well, did you not?

A. Yes.

Recross-examined by the accused:

19. Q. Are all the Japanese nationals on the Island interned or not? ✓

A. To the best of my knowledge, yes.

Reexamined by the judge advocate:

20. Q. You mean, all those that were caught so far, is that right?

A. Yes.

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.

Neither the accused nor the judge advocate desired to make an argument.

The commission was cleared.

The commission was opened. All parties to the trial entered, and the commission announced that the motion of the accused was overruled. ✓

The judge advocate asked the accused if he had any further plea to offer.

The accused made a plea to the jurisdiction of the commission on the ground that the accused is a prisoner of war or of a status which entitles him to the rights of a prisoner of war, and that this commission is convened under Proclamation No. 4 of the Military Government of Guam, and Proclamation No. 4 specifically states that military commissions do not have jurisdiction over prisoners of war. ✓

In support of his plea, the accused requested that the testimony given in support of his previous plea be considered testimony in support of this plea.

The commission announced that the request was granted.

In reply to the plea of the accused, the judge advocate requested that the testimony given in reply to the previous plea be considered testimony in reply to this plea.

The commission announced that the request was granted.

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that the plea of the accused was overruled. ✓ ✓

The judge advocate asked the accused if he had any further plea to offer.

The accused replied in the negative.

The judge advocate read the letter containing the charge and specification original prefixed marked "H", and arraigned the accused as follows:

Q. Matsukichi Kobayashi, you have heard the charge and specification preferred against you; how say you to the specification of the charge, guilty or not guilty?

A. Not guilty.

Q. To the charge, guilty or not guilty?

A. Not guilty.

The prosecution began.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence and occupation.
A. Jose P. Villagomez, 34 years, Island Command Stockade, Guam, working at odd jobs.
2. Q. If you recognize the accused, state as whom?
A. I do, as Matsukichi Kobayashi.
3. Q. Were you on the Island of Guam in the year 1944?
A. Yes.
4. Q. Did you see the accused on Guam in 1944?
A. Yes.
5. Q. Did you know Vicente Sablan Baza?
A. Yes.
6. Q. Did you have occasions to see Baza on Guam in 1944?
A. Yes.
7. Q. Please describe him as to his features, appearance, age, and in general what he looked like?
A. He was about 57 or 58 years, somewhat stouter than me, slightly gray and about as tall as myself.
8. Q. Did he have any other distinguishing features about his face?
A. His right eye was slightly closed - somewhat smaller than the left.
9. Q. Did you know where Baza lived on Guam?
A. He lived at Yona Village.
10. Q. Do you know of anything unusual that happened in which the accused and Baza were involved? 7

A. On July, 1944, Baza was summoned to the police headquarters and I went with the accused from Sinajana to Fonte. At that time, the accused had in his possession a policeman's sword and with it he decapitated Baza.

11. Q. Who was present at the time Baza was decapitated?

A. There were five interpreters, four policemen and two military police and myself.

12. Q. Give the names of those interpreters.

A. Jose P. Villagomez, Nicolas Sablan, Antonio R. Camacho, Antonio Cabrera, and Vicente Camacho.

13. Q. Where are they now, if you know?

A. Sablan and myself are at the Island Command Stockade, two of them have gone to Saipan and one still at liberty.

14. Q. Do you know where the others are - those that were present?

A. Howachi is in the stockade. I do not know the whereabouts of the other three. Hosobakawa is in the Island Command Stockade. I do not know the whereabouts of Kato, M.P. Corporal.

15. Q. Explain in detail what you did and what you saw at the time Baza was killed, starting from the time they took Baza to the place where he was killed.

A. About 5:30 p.m. on this day, the people I have mentioned left together from the headquarters of the military police at Sinajana. At that time I was ordered by Kawachi, military police, to go along as interpreter. About 15 minutes after we left the headquarters we came to a small valley in the vicinity of Fonte and stopped there. The five interpreters were ordered by Kawachi, M.P., to dig two graves at a distance of about 30 feet up the valley from the place where we stopped. After we dug the graves, Baza was ordered by Hosobakawa, M.P., to kneel down in one of the holes and then he was decapitated by the accused.

16. Q. What instrument was used to decapitate Baza?

A. The instrument used being a Japanese sword with a length of about 3 feet.

17. Q. Did you see the sword in the hands of the accused that time?

A. Yes, I saw the sword in the hands of the accused.

18. Q. Explain to the commission just what happened - what relative position existed between Baza and the accused that time?

A. The accused was facing north and raised up his hands like this. Baza was kneeling like this and sort of stooping forward facing the hole, when he was struck. The head was not entirely separated from the body. After Baza was executed in that manner, the interpreters were ordered to fill up the grave and completed the burial. (witness demonstrating)

19. Q. How many times was Baza struck?

A. Once.

20. Q. How much was left that was not severed completely through?

A. It went through his throat completely except for the skin of the front part of the throat.

21. Q. And then what happened? Did you see Baza in the grave after he was killed?

A. After being struck, he fell forward on his face and was laying in that position when I saw him in the hole.

22. Q. What did you do or see?

A. I found the body in the position described. We, the interpreters, were ordered to straighten the body and bury it. We did this and I placed a cross over the grave and Kato came back and told me that a cross was not necessary and took it down.

23. Q. Have you ever returned to that grave since that day?

A. I returned to that place twice since the Americans reoccupied Guam.

24. Q. Under what circumstances did you return?

A. The first time I went there with the judge advocate and I showed him the grave and the second time I was with the officer of the Island Command and I dug the grave so that the bones showed and a photograph was taken of the remains.

25. Q. Do you remember the names of those with whom you went the second time?

A. I went with Lieutenant Savage and Nicolas Sablan, an internee.

26. Q. Was any body else present?

A. Three others, but I do not remember their names.

27. Q. Did you show them the same grave that you showed the judge advocate?

A. Yes.

28. Q. Did they find any bones in the grave that they dug up at the time Lieutenant Savage and others were with you?

A. The skull and ribs were found in the grave.

29. Q. Did you hear any shot fired at the time Baza was killed?

A. No.

30. Q. Did you see anybody fire any weapon around the grave at the time Baza was killed?

A. They had weapons, but to my knowledge none were fired that time. I heard no sound.

31. Q. Were you present at the time they dug the grave and saw personally the remains of the deceased?

A. I dug it myself and saw it with my own eyes.

32. Q. What condition was the skeleton in - what position was it?

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

The judge advocate made no reply.

The commission was cleared.

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

The question was repeated.

A. We dug the grave enough so that the skeleton appeared about the waist up. The head was joined to the rest of the body in the front of the neck, but you could tell from the condition of the spine in the back of the neck that the man had been struck a blow there and had been severed.

The witness was duly warned.

The commission then, at 11:45 a.m., adjourned until 9:00 a.m. Tuesday, April 17, 1945.

Third Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Tuesday, 17 April 1945.

The commission met at 9:00 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,
Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Joaquin C. Perez, civilian, reporter.

Lieutenant Willard F. Mitchell, U.S. Marine Corps Reserve, interpreter.

The accused and his counsel.

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

No witnesses not otherwise connected with the trial were present.

Jose P. Villagomez, the witness under examination when the commission adjourned, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Cross-examined by the accused:

33. Q. Villagomez, how many people were executed up there that day you have testified about?

A. Two.

34. Q. Did you know Koda Chui, the head of the military police company?

A. Yes.

35. Q. Was he present at the execution?

A. No, he was not present.

36. Q. Were you present at the headquarters when the order for the execution of these two natives was made by Koda Chui?

The judge advocate objected to this question, on the ground that it was improper cross examination.

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that the objection was sustained.

37. Q. Do you know where the headquarters of the Kempetai was at that time?

A. Sinajana.

38. Q. Did you go into the headquarters and into the presence of Koda Chui, Taicho of the Kempetai shortly before this execution?

A. I never at any time entered the headquarters of the military police.

39. Q. From whom did you receive the order to dig the grave?

A. Policeman, Kawachi.

40. Q. Kanzo Kawachi?

A. Yes.

41. Q. Was he a policeman?

A. Yes.

42. Q. Civilian or Military?

A. He belongs to the military. He was hired and employed by the military.

43. Q. Was there a Japanese by the name of Hosokawa present at the execution?

A. He was present.

44. Q. Was he a civilian or military?

A. Since he belonged to the military police I believe he was a military man.

45. Q. What was his rank?

A. I cannot say what his rank was. He was known as Honcho (equivalent to a squad leader).

46. Q. Was he known as Hasocho, and what was his equivalent in rank?

A. I do not know.

47. Q. What other members of the Kempetai were present in the execution?

A. Hosobakawa, corporal Kato and the accused.

48. Q. Is the accused a member of the Kempetai?

A. To my knowledge, the accused was hired as a driver by the military police.

49. Q. What other members of the civilian police force were present other than you Saipanese Chamorros?

A. Kawachi, Igawa, Kamitani, the interpreters namely, myself, Nicolas Sablan, Antonio Cabrera and Antonio R. Camacho.

50. Q. The only other policemen present were Igawa and Kawachi, is that correct?

A. No, I believe there was one in addition to the three whose name I forgot.

51. Q. Where was Hirata?

A. He remained at the headquarters.

52. Q. What position did Hirata hold that time?

A. Chief of Police.

53. Q. Was Hirata present when Kawachi Kanzo gave you your order to go with the execution party?

A. At the time I received the order, I was outside the building and Hirata was inside.

54. Q. Who was present when you received your order to go on this execution party?

A. The interpreters I have listed before and the three policemen whose

names I have given.

55. Q. You testified that you saw the accused leaving the area of the Kempetai headquarters with a sword in his hand. From where did the accused come?

✓ A. I would like to revise my statement regarding the sword. The accused received the sword from one of the policemen just prior to decapitating the victim. When the accused left the military police headquarters, he did not have a sword in his possession.

56. Q. With whom was the accused; what building did he leave immediately before going to the executing party?

A. Prior to leaving, the accused was in the headquarters of the military police.

57. Q. Within the building of the military police headquarters?

A. Yes.

58. Q. When he came out of the building of the headquarters of the military police, was Hosobakawa with him?

A. Yes.

59. Q. What, if anything, did Hosobakawa have in his hand?

A. He had, at that time, his own Japanese sword.

60. Q. Did he have a revolver either in his hand or on his person, if you know?

A. I do not remember.

61. Q. What part, if any, did Kamitani have in this execution that day?

A. Kamitani was at the headquarters of the military police before he set out to accompany us, but he did not do anything at the place of execution. He simply accompanied the party.

62. Q. What part did Igawa have with the execution?

A. Igawa, like the accused, decapitated the other victim.

63. Q. Who was the other man executed?

The judge advocate objected to the question on the ground that it was irrelevant, incompetent and immaterial.

The accused replied.

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that the objection was overruled.

The question was repeated.

A. Vicente Lizama.

64. Q. How far away from the headquarters of the Kempetai did this execution take place?

A. About 200 meters.

65. Q. And you received your orders to go along from Kawachi, is that right?

A. The order for all interpreters to go along was issued by Kawachi.

66. Q. And Hosobakawa was present at all times, is that right?

A. That is true.

67. Q. When you reached this valley, which one was executed first Baza or Lizama?

A. Vicente Baza was the first.

68. Q. Who gave the order as to which one to be executed first?

A. I do not know definitely, but I believe it was Hosobakawa.

69. Q. Hosobakawa was in charge of the execution party, wasn't he?

Judge advocate objected to the question on the ground that it was improper cross examination.

The accused made no reply.

The commission was cleared.

The commission was opened. All parties to the trial entered, and the commission announced that the objection was sustained.

70. Q. Who was in charge of this execution party, if you know?

A. I cannot say who was in charge, but I believe Hosobakawa because he was the man with the highest rank in the group.

71. Q. Villagomez, have you witnessed other executions on the Island of Guam.

Judge advocate objected to the question on the ground that it was immaterial, irrelevant and was improper cross examination.

The accused replied.

The commission was cleared.

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

The question was repeated.

A. No, this was the only one I witnessed.

72. Q. Now when the execution party reached this valley, was the first thing that was done, your order to dig the grave?

A. Yes.

73. Q. Did Hosokawa have a revolver in his hand at this time?

A. I do not remember definitely.

74. Q. Do you remember whether, if at any time, during the execution Hosokawa had the revolver in his hand?

A. I saw a pistol in the holster on his hip while walking from the M.P., to the valley.

75. Q. Do you remember whether at any time Hosokawa took his pistol out of the holster and held it in his hand?

A. I do not remember seeing the pistol in his hand.

76. Q. What did Kamitani do in this execution party?

A. Kamitani accompanied the party from the M.P. headquarters and during that time he had possession of the Japanese sword. In the valley he helped us, the interpreters, dig the grave and gave his sword to the accused and then he accompanied the party on its return.

77. Q. Do you know whose sword that was?

A. It was Kamitani's.

78. Q. Did you know a man in the M.P. by the name of Susuki?

A. I knew a man by the name of Susuki whom I heard was in the M.P., but on that day Susuki was sick.

79. Q. What did Susuki see that day?

A. I do not know.

80. Q. Were any photographs taken of this execution?

A. Pictures were not taken on the day of the execution.

Reexamined by the judge advocate:

81. Q. Were you present at any time that pictures were taken of this grave?

A. I was present with Lieutenant Savage when we went out and took pictures of the grave.

82. Q. Was that the time that you dug the grave and found the skelton there?

The accused objected to the question on the ground that it was improper redirect examination.

The judge advocate made no reply.

The commission was cleared.

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

The question was repeated.

A. Yes, the same day.

83. Q. Who was present on that day that you remember of?

A. Myself, Nicolas Sablan, Lieutenant Savage and two other officers with ranks higher than Lieutenant Savage, whose names I do not remember and two other Chamorros.

Recross-examined by the accused:

84. Q. Did you dig up the body of Vicente Lizama at that same time?

The judge advocate objected to the question on the ground that it was improper recross-examination.

The accused made no reply.

The commission was cleared.

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

The question was repeated.

A. No, we did not.

85. Q. On the day the two men were buried, standing at the foot of Baza's grave, facing towards the body was the grave of Lizama to the right or left of Baza's grave?

A. The grave ran north and south. Facing north on this valley, the grave of Baza was on the left and Lizama on the right.

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.

The judge advocate introduced Isabel T. Perez, a civilian, to act as interpreter from Chamorro to English and vice versa.

The interpreter was duly sworn.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, residence and occupation.
A. Teresa Cepeda Baza, resident of Yona, doing domestic work.
2. Q. If you recognize the accused, state as whom.
A. I do not know him.
3. Q. What is your husband's name?
A. Vicente Baza Sablan.
4. Q. Is he also known as Vicente Sablan Baza?
A. Yes.
5. Q. When was the last time you saw your husband?
A. In June, 1944.
6. Q. Where was he then?
A. At my ranch.
7. Q. Have you heard from him since that time?
A. No.
8. Q. How old was your husband?
A. 59 years old.
9. Q. How long have you lived on Guam?
A. About 50 years.
10. Q. How many children do you have in your family?

The accused objected to this question on the ground that it was immaterial and irrelevant.

The judge advocate replied.

The commission was cleared.

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

The question was repeated.

A. Nine.

11. Q. Is the name of one of those children Beatrice Baza?

The accused objected to this question on the ground that it was irrelevant and immaterial.

The senior member announced that the objection was not sustained.

The question was repeated.

A. Yes.

12. Q. Do you know where your husband is now?

A. I do not know.

The accused moved to strike out the last answers of this witness regarding the number in her family, one of them being Beatrice Baza, on the ground that it was irrelevant and immaterial.

The senior member announced that the objection was not sustained.

Examined by the commission:

13. Q. Do you know what has become of your husband?

A. I do not know.

14. Q. Is he alive?

A. I do not know, but he was taken by the Japanese.

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

The witness said that she 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. State your name, residence and occupation.

A. Beatrice Cepeda Baza, Yona, laundress.

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

A. I do not know.

3. Q. What is your mother's name?

A. Teresa Cepeda Baza.

4. Q. What is your father's name?

A. Vicente Sablan Baza.

5. Q. Were you living on Guam during the year 1944?

A. Yes.

6. Q. Where did you live then?

A. Yona.

7. Q. Who were you living with?

A. My mother and brothers and sisters.

8. Q. Was your father living there too?

A. Yes, we lived with father at that time until the Japanese took him away.

9. Q. About what time was that that the Japanese took him away?

A. July, 1944.

10. Q. Please give a description of your father as to his physical features.

A. He was rather tall, his right eye was small, and he was rather gray.

11. Q. About how old was he?

A. 59 years old.

12. Q. Explain the circumstances under which you saw him the last time.

A. I saw him last during the month of July when the Japanese came and took him.

13. Q. Do you know any of the Japanese that came there and took him?

A. I know two of them who came and took him. There were three of them.

14. Q. What are their names?

A. Shimada and Chuako.

15. Q. Do you know where your father is now?

A. I do not know.

16. Q. Have you heard from him since the last time you saw him?

A. No.

17. Q. Have you ever inquired on the Island of Guam from anyone in an attempt to find him?

A. I just wanted to know what happened to him, where he was put.

18. Q. What do you mean by that, "Where he was put"?

A. Where he was locked up.

19. Q. Did you ever inquire from anyone if he knew where he was?

A. Yes, and relatives wanted to find out where he was put last.

20. Q. But you have never seen him since the Japanese took him in July, 1944.

A. No.

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

Examined by the commission:

21. Q. Did you see the Japanese leading your father away?

A. Yes.

22. Q. Why did they lead him away?

A. It was about a gun.

23. Q. Did you or any member of your family try to keep in touch with your father after he was taken away by the Japanese?

A. I tried to keep in touch with him through Nicolas Sablan. I told Sablan when he was there to take my father, that if my father was to be locked up to please let me know where he was locked up, so I can give him clothes.

24. Q. Did you do that, give him his clothes?

A. No, I never saw Sablan after that.

25. Q. Did you or any member of your family receive any communication from the Japanese authorities as to what had happened to your father?

A. No.

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

The witness made the following statement:

My father was taken by the Japanese twice. The first time he was taken, I went to find out because I understood he was going to be locked up. I went to try and find out where he was locked up, on the following day after he was taken. I went to Sablan's house and asked him to do me a favor and tell me where my father was. I asked Sablan if he could do me a favor to find out where my father was, so I could give him food and clothing and he told me to go home since he did not know himself, but to come the next day and he would try to find out. The next morning Sablan told me I could give food to my father, if it is going to be regular, but if it is only going to be now and then, not to do so because they can feed him. For that reason I stayed in Agana so that I could give my father his regular meals. I did that for about two weeks and when the bombings became regular I left and went back to Yona. About two days later my father came and told me that he escaped from jail because the jail had been bombed already. I then tried to find out if he had permission to leave and I found out through him that he just left his place. On that very same afternoon, the Japanese came to get him. Sablan and Villagomez and three other Japanese, among them were Chuako and Shimada were the ones who came to get my father. At the time when they came we were praying and I heard some one saying, "Where is that Beatrice Baza who was bringing food to her father", and I told them I was the one. They then told me to get out. Shimada wanted to know where my father was and I told him he was not at home, then he slapped me because they told me I was telling a lie. That they knew my father was then at the ranch. That was the last time, they told my father to clean up, change his clothes, get his supper and then took him away. That is all.

The witness was duly warned and withdrew.

The commission then, at 11:55 a.m., adjourned until 9:00 a.m. tomorrow, Wednesday, April 18, 1945.

Fourth Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Wednesday, 18 April 1945.

The commission met at 9:05 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,

Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Joaquin C. Perez, civilian, reporter.
Lieutenant Willard F. Mitchell, U.S. Marine Corps Reserve, interpreter.
Isabel T. Perez, civilian, interpreter.
The accused and his counsel.

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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and residence.
A. Nicolas T. Sablan, Island Command Stockade.
2. Q. If you recognize the accused, state as whom.
A. I do, as Matsukichi Kobayashi.
3. Q. Were you on Guam in the year 1944?
A. Yes.
4. Q. Did you see the accused on Guam in the year 1944?
A. Yes.
5. Q. What was his occupation that time, if you know?
A. He ran a whore house, house of prostitutes.
6. Q. Did you know Vicente Sablan Baza?
A. I do.
7. Q. Was he on Guam in the year 1944?
A. Yes.
8. Q. Please describe the physical features of this man, as to his age and what he looked like.
A. He was built somewhat like the judge advocate and the same size, slightly gray, there was something wrong with either of his two eyes, it was slightly closed, and his age was about 50 years.
9. Q. Do you know where he lived on Guam?
A. Yona.
10. Q. Were you ever at his ranch at Yona?
A. Yes.
11. Q. Under what circumstances?
A. At the time when we went there to arrest him.
12. Q. Relate what you knew and what you saw involving the accused and Vicente Sablan Baza.
A. The civilian police received an order from the military police that we should go to Yona to get Baza and to bring him to Tutujan.
13. Q. Whom did you refer to when you said, "We"?
A. Igawa, Shimada, Jose Villagomez, Antonio Cabrera, Antonio Camacho and myself.

14. Q. When you said, "We", you meant all of these people?

A. Yes.

15. Q. Go ahead.

A. At about 12:00 o'clock, noon, we were told to get our shovels and go to Fonte. Hirata, Kamitani and two other members of the military police went with us, the six I have mentioned.

16. Q. Where was Baza taken to when he was taken from his ranch?

A. To the Kempetai headquarters at Tutujan.

17. Q. Is that close to Sinajana?

A. Yes.

18. Q. Both on Guam?

A. Yes.

19. Q. When was the last time that you saw Baza?

A. The last time I saw him was the time when he was beheaded.

20. Q. Did you see him beheaded?

A. Yes.

21. Q. Please relate the circumstances.

A. He was made to kneel down at one end of the grave with his head stooping forward, then the accused struck him with his sword. The head was not entirely separated from the body. A piece of skin was holding it.

22. Q. Did you see this?

A. Yes.

23. Q. Who did you say struck the blow?

A. Matsukichi Kobayashi.

24. Q. Is that the accused?

A. Yes.

25. Q. Then what did you do?

A. After that we buried him and then we left.

26. Q. Who was present at the execution?

A. Igawa, Kamitani, Hirata, Shimada, Kato a corporal, Hosokawa, Antonio Camacho, Jose Villagomez, Antonio Cabrera, the accused and myself.

27. Q. Did you ever return to that same grave?

A. Yes.

28. Q. When did you return?

A. December, 1944.

29. Q. What did you do and see at that time?

A. We dug the grave for the officials to see the remains.

30. Q. Was that the same grave that you saw Baza buried in?

A. Yes.

31. Q. Who was present at that time?

A. Jose Villagomez, Lieutenant Savage and about four or five other officers, I do not know their names.

32. Q. Did you help dig the grave?
A. Yes.

33. Q. What did you find?
A. We found bones.

34. Q. What kind of bones, if you know?
A. We found bones from the knees up.

35. Q. Do you know what the bones of a human being looked like?
A. Yes.

36. Q. What did these bones look like?
A. It looked like bones of a human being. It was the bones of Vicente Sablan Baza.

Cross-examined by the accused:

37. Q. You say Hirata was present at the execution, is that correct?
A. Yes.

✓ 38. Q. What was his official position on the Island of Guam at that time?
A. Chief of Police at the time.

39. Q. Was Hosokawa present?
A. Yes.

40. Q. Who is Hosokawa?
A. A member of the Kempetai.

41. Q. Was that an army organization under the Japanese?
A. Army.

42. Q. What was his rank? Describe his insignia.
A. He had three stars, which I know designates a low rank equivalent to a sergeant.

43. Q. Was there any gold stripe or something?
A. No.

44. Q. Do you know what insignia designates a Heisocho?
A. Three red stars.

45. Q. Was that what this man wore?
A. Yes.

46. Q. Do you know a Japanese officer by the name of Koda?
A. I do not know.

47. Q. Do you know who was the ranking officer or the Taicho of the military police?
A. I knew him, but I do not know his name. He was only known as Kempetai Taicho.

48. Q. What does that mean - head of military police?
A. Yes, the highest ranking officer of the military police.

49. Q. Did you see him the day of this execution?
A. I did not.

50. Q. When did you first see the accused in connection with this execution?
A. I saw him at the military police.
51. Q. Did you all go together from the M.P. to the place of the execution?
A. Yes.
52. Q. Was there more than one person executed that time?
A. Yes, two.
53. Q. What was the name of the other person, if you know?
A. Vicente Lizama.
54. Q. Which one was executed first?
A. Vicente Sablan Baza.
55. Q. Was there a Japanese policeman by the name of Kamitani present at the execution?
A. Yes.
56. Q. What did he do at the execution?
A. Igawa, Kamitani and myself dug the grave of Lizama. ✓
57. Q. Who executed Lizama?
A. Igawa.
58. Q. Was Hosokawa present during this entire time?
A. Yes.
59. Q. Did he have a revolver or pistol in his hand?
A. I did not notice.
60. Q. Was he in charge of the execution party?
A. Yes.
61. Q. You say Kato was there. Who was he?
A. He was the next in rank to Hosokawa in the M.P.
62. Q. What part, if any, did he take in the execution?
A. While we were digging the grave, Kato was talking to Baza and Lizama.
63. Q. Was he armed?
A. I did not notice.
64. Q. Who did you receive your orders from to go on this execution party?
A. Hirata our Chief of Police.
65. Q. Was the accused present at this time when you received your orders?
A. I did not notice.
66. Q. Do you know when the accused was given the sword?
A. I do not know.
67. Q. Are you familiar with the directions out there at the grave? Do you know where the north and east are out there?
A. Yes.

68. Q. If you were standing at the grave facing north on which side was Baza buried and on which side was Lizama buried?

A. On the right was Baza and Lizama on the left side.

Reexamined by the judge advocate:

69. Q. Did you see the sword in the hands of the accused?
A. Yes.

70. Q. Did you see him strike Baza with that sword?
A. Yes.

71. Q. How many times did he strike?
A. Once.

Examined by the commission:

72. Q. Were there any sightseers of this execution, militarists or anybody?
A. No.

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

The witness made the following statement:

After we dug the grave of Vicente Lizama, Kamitani held his sword with his two hands and said to the accused, "Let me strike him because my sword is new; it has not been used." Then the accused asked to do it himself and he used the sword of Kamitani. Vicente Baza was the man who was beheaded at this time.

The commission was cleared.

The commission was opened. All parties to the trial entered, and the commission announced that in view of the foregoing statement, further examination of the witness would be in order.

Examined by the commission:

73. Q. Whom do you mean by "Him", when Kamitani asked the accused to strike him?
A. At this time I did not know who was going to be beheaded.

74. Q. You only heard these words?
A. Yes.

75. Q. What language were they in?
A. Japanese.

76. Q. What were the exact words in Japanese?
A. Kamitani said, "My sword is unused, let me kill him". Then the accused said, "Let me kill him".

Reexamined by the judge advocate:

77. Q. You related to the commission about how the accused got the sword with which he killed Baza. Now state to the commission in detail about those circumstances.

A. The accused took Kamitani's sword and Baza was requested to kneel down and then the accused struck one blow.

78. Q. What were the circumstances in the exchange of the sword from Kamitani to the accused?

A. Kamitani drew his sword, held it with his two hands and said, "My sword is unused, I will behead him", then the accused said, "Let me do it".

79. Q. And then what happened?

A. Kobayashi took the sword and beheaded the man.

80. Q. Is that Kobayashi the accused?

A. Yes.

Recross-examined by the accused?

81. Q. When you talked with Colonel Ammons before taking the witness stand, did you tell Colonel Ammons about this statement?

A. I did not tell him at first because I forgot about it, but then I asked someone to call him so I could tell him about it.

82. Q. You had forgotten about this statement, is that correct?

A. I forgot to tell the colonel about it, but when Lieutenant Savage first questioned me, I told him about that.

83. Q. You remember the exact conversation between Kamitani and the accused?

A. Yes.

84. Q. You gave us the exact conversation of what Kamitani said to the accused. Now can you give us the exact words the accused said? Didn't the accused state to Kamitani this, "Since I have been ordered to behead this man, I must do it". Wasn't that what he said?

A. I did not hear that. I only heard him say, "I will do it".

85. Q. Give the exact words you heard the accused say to Kamitani?

A. Let me cut him.

86. Q. Was that the only thing you heard the accused say?

A. That is all.

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

The witness said he had nothing further to state.

The witness was duly warned and withdrew.

The prosecution rested.

The commission then, at 10:30 a.m., adjourned until 9:00 a.m. tomorrow, Thursday, April 19, 1945.

Fifth Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Thursday, 19 April 1945.

The commission met at 9:00 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,
Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Joaquin C. Perez, civilian, reporter.

Lieutenant Willard F. Mitchell, U.S. Marine Corps Reserve, interpreter.
The accused and his counsel.

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 accused moved to strike the testimony of witness Nicolas T. Sablan
on the ground that testimony revealed that the witness is an accomplice and
that his testimony was given in corroboration of another accomplice, Jose P.
Villagomez. 1/9 ✓

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered and the
commission announced that the motion of the accused was overruled.

The accused requested a ruling from the commission as to whether the
quantum of proof, in order to sustain conviction as set forth in the Penal
Code of Guam, is applicable in this case; that the request was made so the
accused would know how to proceed with its defense. The accused further cit-
ed Section 1111, Penal Code of Guam, which reads: 2

CONVICTION ON TESTIMONY OF ACCOMPLICE. - A conviction cannot be had
upon the testimony of an accomplice unless it be corroborated by such
other evidence as shall tend to connect the defendant with the com-
mission of the offense; and the corroboration is not sufficient if it
merely shows the commission of the offense or the circumstances there-
of. ✓

as contradictory to Section 236, of the Naval Courts and Boards, which reads:
TESTIMONY OF AN ACCOMPLICE. - An accomplice is always competent to
testify, whether he be charged jointly or separately. He is privi-
leged to refuse to answer and cannot be required to answer questions whose
answers might tend to incriminate him, but this privilege is personal
and may be claimed by the accomplice only when as a witness he is asked
a question the answer to which might tend to incriminate him. ✓

The privilege ceases, however, when his own trial is completed.
The convening authority may promise not to prefer charges against one
man on consideration of his testifying, but this should only be done
when absolutely necessary to prevent the defeat of justice and when
the accomplice is a participant in the crime to a minor degree.

The weight to be given testimony of accomplices is for the court.
There is no absolute rule of law preventing conviction on the testi-
mony of accomplices if juries believe them. Such uncorroborated
testimony should, however, be viewed with suspicion and examined
critically. ✓

In advising the commission concerning this request; the judge advocate stated that the accused was being tried for violation of the Penal Code of Guam, and that the procedure in the trial of the case is that prescribed by Naval Courts and Boards, for General Court-Martial. 1

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that in so far as the particular point mentioned was concerned, the commission would be guided by Section 236 of the Naval Courts and Boards of 1937. 2

The commission then, at 10:00 a.m., adjourned until tomorrow, Friday, April 20, 1945.

Sixth Day

HEADQUARTERS,
ISLAND COMMAND, GUAM.

Friday, 20 April 1945.

The commission met at 9:00 a.m.

Present:

Colonel Walter T.H. Galliford, U.S. Marine Corps,
Lieutenant Colonel George E. Congdon, U.S. Marine Corps Reserve,
Major Foster H. Krug, U.S. Marine Corps Reserve,
Major Richard P. Rice, U.S. Marine Corps Reserve,
Major Samuel A. Gardner, U.S. Marine Corps Reserve,
Lieutenant Commander Avery W. Thompson, U.S. Naval Reserve,
Lieutenant Commander Ralph L. Coffelt, U.S. Naval Reserve, members, and
Lieutenant Colonel Teller Ammons, Army of the United States, judge
advocate.

Joaquin C. Perez, civilian, reporter.

Lieutenant Willard F. Mitchell, U.S. Marine Corps Reserve, interpreter.

The accused and his counsel.

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.

The defense began.

The accused, was at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Are you the accused in this case?
A. Yes.

Examined by the accused:

2. Q. Why did you participate in this execution?
A. I participated in this execution because I was ordered to by the head of the military police.

3. Q. What was the name of the head of the M.P.?
A. I do not know his name, but his surname was Koda.
4. Q. Was he a Japanese Army Officer?
A. He was a first lieutenant of the Japanese army.
5. Q. At that time, were you working for and employed by the Japanese M.P.?
A. You cannot really say that I was hired by them. They knew that I knew how to repair automobiles and so I was ordered to help them out as a mechanic.

6. Q. You have heard the testimony of Nicolas T. Sablan concerning the conversation between you and Kamitani. I wish you will tell us exactly what was said in that conversation?

A. On the way out, I said to Kamitani, "Please, lend me your sword", Kamitani said, "My sword is new, I do not know whether it will cut or not", then Kamitani said, "This is my sword so I will like to try it", then I said to Kamitani, "Since I have been ordered to do this execution, I will do it".

Cross-examined by the judge advocate:

7. Q. What was your part in the execution?

The accused objected to the question on the ground that it was improper cross-examination, in that it was not in cross of anything brought out in direct examination.

The judge advocate replied.

The commission was cleared.

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

The question was repeated.

A. I was ordered by the head of the military police and thus participated in the execution.

8. Q. What do you mean when you say, "Participated in the execution"?
A. I merely meant that I was employed by the military police as a cook and received an order.

9. Q. What was the order?
A. An order to decapitate.

10. Q. Is that what you mean by participation in the decapitation?
A. Being ordered to decapitate, I participated in the execution.

11. Q. Did you participate in the execution?
A. After receiving an order, I participated in the execution.

12. Q. What did you do?
A. I did not know his name exactly, but I heard it was Baza or something like that and I decapitated him.

13. Q. Is that on the Island of Guam?
A. Yes, it was on Guam.

19 APR 45
FINDING

0441

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

The witness said that he had nothing further to state.

The witness resumed his status as accused.

A witness for the accused entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Willard Mitchell, first lieutenant, U.S. Marine Corps Reserve, Third Marine Division.
2. Q. If you recognize the accused, state as whom.
A. Matsukichi Kobayashi. Outside of this case, I have no connection with him.

Examined by the accused:

3. Q. Are you the official interpreter for this trial from English to Japanese and vice versa?
A. Yes, sir.
4. Q. How do you say in Japanese, "Lend me", or "Let me have your sword"?
A. There are several ways of saying it depending on the degree of politeness.
5. Q. Take these two phrases: "Lend me your sword", and "Let me decapitate him." How close are they together?
A. If we put the two statements in the same degree of politeness, "Lend me your sword", would be, "Ore ni kirashite kure", and "Let me decapitate him", "Ore ni kashite kure".

Cross-examined by the judge advocate:

6. Q. Were you the interpreter in this court at the time the witness Nicolas T. Sablan was on the stand?
A. Yes.

Neither the accused, the judge advocate, 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.

The defense rested.

The accused offered a written statement in his defense, appended, marked "T". (Translation appended, marked "T-1")

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

The accused made an oral argument as follows:

In a charge of murder, according to law certain words must appear in the charge and each of these words must be proven beyond a reasonable doubt by the prosecution. Quite often we are inclined to overlook those words, however in this case they are very important. In the specification in this case, we have these words, "Wilfully, feloniously, with premeditation and malice aforethought". What does feloniously mean? It means against the law. What does malice aforethought mean? It means a guilty knowledge. So in this case we have two questions; first: Has the prosecution proven beyond a reasonable doubt that the execution of Baza was not a legal execution? If it was a legal execution, then it was not murder. It is incumbent upon the prosecution to prove that it was a felonious homicide. There is throughout the evidence, scattered bits of information which we must piece together and decide whether or not it was a legal execution. First, the Japanese authorities were in control of the Island of Guam, at that time under military government. The daughter of the deceased said her father was arrested because of his having a gun. Under military government, possession of a firearm is a capital offense. The second fact, her father had escaped from prison. The commanding officer of the military police ordered this execution. There were present at this execution, a sergeant major and corporal of the military police. In addition there were the Japanese Chief of Police, two other policemen, and 5 Chamorro interpreters of Guam. Gentlemen, if there is any reasonable doubt in the mind of any of you, you must vote for acquittal. It was incumbent upon the prosecution to prove beyond a reasonable doubt that this was not a legal execution.

The second question, let us assume for the sake of this second question only, that this was not a legal execution, then has the prosecution proved malice aforethought? Is it incumbent upon persons employed as this man was, by the military police to question the orders of the commanding officer of the military police? What would be the normal course of events for an execution to be performed? The military police would get the order to execute the man and in turn would pick out the executioner. So, even though this might not have been a legal execution, still having received the order from the commanding officer of the military police company, there was no malice aforethought; there was no guilty knowledge on the part of the accused.

The judge advocate read his written closing argument, appended, marked "v".

The trial was finished.

The commission was cleared.

The judge advocate was recalled and directed to record the following findings:

The specification of the charge proved, And that the accused, Matsukichi Kobayashi, a civilian, is of the charge guilty.

The judge advocate stated that he had no record of previous conviction.

The commission was cleared.

The judge advocate was recalled, and directed to record the sentence of the commission as follows:

The Military Commission, therefore sentenced him, Matsukichi Kobayashi, a civilian, to confinement in prison for life.

W.T.H. Galliford
WALTER T.H. GALLIFORD,

Colonel, U.S. Marine Corps, Senior Member,

George E. Condon
GEORGE E. CONDON,

Lieutenant Colonel, U.S. Marine Corps Reserve, Member,

Foster H. Krug
FOSTER H. KRUG,

Major, U.S. Marine Corps Reserve, Member,

Richard P. Rice
RICHARD P. RICE,

Major, U.S. Marine Corps Reserve, Member,

Samuel A. Gardner
SAMUEL A. GARDNER,

Major, U.S. Marine Corps Reserve, Member,

Avery W. Thompson
AVERY W. THOMPSON,

Lieutenant Commander, U.S. Naval Reserve, Member,

Ralph L. Coffelt
RALPH L. COFFELT,

Lieutenant Commander, U.S. Naval Reserve, Member,

Teller Ammons
TELLER AMMONS,

Lieutenant Colonel, Army of the U.S., Judge Advocate.

The commission then, at 11:45 a.m., adjourned to await the call of the senior member.

W.T.H. Galliford
WALTER T.H. GALLIFORD,

Colonel, U.S. Marine Corps, Senior Member,

Teller Ammons
TELLER AMMONS,

Lieutenant Colonel, Army of the U.S., Judge Advocate.

小林増吉

にレナレバナラヌ。
 てもどしともエノ命令に従ふ事
 グラム島に管轄ヲ守つて誰
 の所へ行きまされた。日本軍陸は
 ナイレバナラヌナイ。にとして、執行
 士官ヨウ命令ヲ言いたのて行方
 貰ひました。私は日本陸軍
 シオレ、私は強ひるとなせし
 憲兵隊で働いたでゴザイマセシ
 ねは願つた事について

小林増吉

利をばかりナラシ
 號ヲナゲ出して逃げろ爲ル
 逃げていろ所と一
 に黙つていつた。また、又のグラム人
 の所へ連れて行かされた。私は憲兵
 に出した。一カキニ逃げた。世話
 とひふ事についてグラム人に
 はレオセレでした。レオセ、世話
 せつたに押しをメエタ事
 私はグラム島人にとりて、

小林増吉

事は出来ませう、

彼の命令に問題ナシ

すう事は出来ませう、マタ、

コレで人はぜったいに反證ヲ

ソノ上には日本陸軍カラ命令

で貰ひたいのでございませう、コレヲ、

私は全權に軍敬ヲ

考慮ス

日本人にコレヲ、

0446

Written statement of accused.
(Translation)

I did not work for the M.P. at my own request. On the contrary they coercively compelled me. Since I was ordered by an officer of the Japanese Army, I went under compulsion to the execution. The Jap Army exercised jurisdiction over Guam, and everyone had to follow its orders. I never oppressed the people of Guam, but tried as much as possible in my power to serve their needs. Once I knew where a Chamorro, who had escaped, was hiding but said nothing to the M.P. Again, while a Guamanian was escaping, I signalled him and helped him escape. I want consideration as a Japanese subject. Moreover when ordered by the Jap Army, the individual cannot argue against the order nor can he question the order.

小林 増吉
MATSUKICHI KOBAYASHI

"T-1"

0447

Judge Advocate's written opening argument.

The accused came to the Island of Guam as a civilian and at all times remained a civilian and is now a civilian and never has been and is not now a member of any Japanese military organization. While he was on Guam he was in the restaurant business, was a cook for the Kempetai, drove automobiles and trucks and repaired them for the Kempetai. When he was taken prisoner by the Americans, the only identification he had with him was a driver's license. Two eye witnesses, Jose P. Villagomez and Nicolas T. Sablan testified that they saw the accused decapitate Vicente S. Baza, and the accused admitted that he decapitated Baza with a sword. Villagomez testified that accused received a sword, with which he decapitated deceased Baza, from one of the policeman present, just prior to decapitating Baza, and Villagomez further stated that it was Kamitani who gave his sword to the accused just prior to the execution. Witness Sablan, testified that he heard him say in the presence of Sablan and the accused, "My sword is unused, I will decapitate him". And the accused then said, "I'll do it". The accused then took the sword and decapitated deceased Baza. Villagomez and Sablan were present at the time that Baza was killed; and they helped to dig the grave in which he was buried. After the Americans occupied Guam these two men took the authorities to the grave and they were present at the time the grave was opened; and they saw the remains where they had helped bury it. - The charge against the accused is murder. The act took place during the Japanese occupation of the Island. The Penal Code of Guam was in effect at that time. The accused was a civilian. According to the accused's statement, he was a cook and automobile repairman. He said he had received orders to commit this crime. He introduced no testimony to support that, other than his own statement. The evidence of the prosecution shows that he asked for the sword to do the killing. Assuming that he was acting under orders when he committed this murder, that is no defense, and could only be considered by way of mitigation.

Teller Ammons

TELLER AMMONS,

Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"U"

0448

Judge Advocate's written closing argument.

The charge and specification in this case of murder was found in due form and technically correct by this commission. The accused was given every opportunity to prepare his defense and to present to this commission why he killed Baza. The commission has heard all of the evidence presented in the case and in answer to the statements in the accused's argument, I feel it necessary to make some pertinent remarks. The counsel for the accused made the statement that the daughter of the deceased, said her father was arrested, "Because of his having a gun", where as the records show that she said, "It was about a gun", and no further explanation was made. Also the counsel for the accused further stated in his argument, "Under Military Government possession of a firearm is a capital offense". I fail to recall any evidence in which to substantiate this statement. According to the evidence, there was several persons present at the execution. Three of them who were present having testified in this case. They were the accused, Villagomez and Sablan. It does not seem possible that accused could have been ordered to kill Baza and yet was not given any instructions on how to kill him. According to the evidence of the two eye witnesses the accused did not have a weapon until he arrived at the scene of the crime, and it appeared according to the evidence that there was great anxiety between himself and Kamitani as to who would kill Baza. Kamitani apparently was proud of his sword and wanted to try it out but yielded to the desire of the accused to kill Baza and the accused had the last word, when he said, "I will do it". Then immediately thereafter, the evidence shows, and the accused admitted, that Baza was killed by the sword in the hands of the accused and it is clearly established by evidence that one blow was struck which severed the head of Baza, thereby causing immediate death. All of the elements of cold blooded murder have been established in this case.

Teller Amons

TELLER AIMONS,
Lieutenant Colonel, Army of the U.S.,
Judge Advocate.

"V"

0449

In reply address:
The Island Commander,
Navy #926, C/O F.P.O.,
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

16 May 1945.

I hereby acknowledge the receipt of a copy of the record of proceedings
of my trial by Military Commission held April 10 to 20, 1945.

Kobayashi Matsukichi
MATSUKICHI KOBAYASHI

0450

In reply refer to Initials
and No.

Serial No. 0354113

(SC) A17-13/Kobayashi

Op. 13-2/PPG:mtw

Dec 173810 P. 696

NAVY DEPARTMENT

OFFICE OF THE CHIEF OF NAVAL OPERATIONS

WASHINGTON

16 July 1945.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL OF THE NAVY.

Subject: Trial by Military Commission of an
inhabitant of Guam.

Enclosure: (A) Record of Proceedings and Opinion of
the Judge Advocate General in the case
of Matsukichi Kobayashi.

1. The enclosure, which was forwarded to this
office for information, is returned herewith.

R. S. McIver
R. S. McIver,
Captain, USNR,
Acting Officer in Charge,
Military Government Section,
Central Division.

CLASSIFICATION CHANGED

From *Conf*
To *Unclass*
9/17/47

Finished File *BU*

FINISHED FILE

0451

CONFIDENTIAL



CONFIDENTIAL

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

MM-KOBAYASHI, Matsukichi/A17-20
I (7-4-45) fo

5 JUL 1945

The proceedings, findings, and sentence in the foregoing military commission of Matsukichi Kobayashi, an inhabitant of Guam, and the action of the convening authority thereon, in the opinion of the Judge Advocate General, are legal.

Referred to the Chief of Naval Operations (Op 13-2) for information and return to this office.

T. L. GATCH,
Judge Advocate General of the Navy.

FINISHED FILE

CONFIDENTIAL

(50) A17-10/Kobayashi CONFIDENTIAL

Reg. 37 31035-A

0452

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



RE: KOBAYASHI, Matsukichi/A17-20
I (7-4-45) 20

The proceedings, findings, and sentence in the foregoing military commission of Matsukichi Kobayashi, an inhabitant of Guam, and the action of the convening authority thereon, in the opinion of the Judge Advocate General are legal.

Referred to the Chief of Naval Operations (Op 13-2) for information and return to this office.

T. L. GATON,
Judge Advocate General of the Navy.

0453

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



MR. KOBAYASHI, Matsukichi/A17-20
I (7-4-48) 20

The proceedings, findings, and sentence in the foregoing military commission of Matsukichi Kobayashi, an inhabitant of Guam, and the action of the convening authority thereon, in the opinion of the Judge Advocate General are legal.

Referred to the Chief of Naval Operations (Op 13-2) for information and return to this office.

E. L. GATON,
Judge Advocate General of the Navy.

0454

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

NAVY DEPARTMENT

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



AND REFER TO
JAG:III:RGS:dw
(SC) A17-10/Kobayashi
Doc. No. 173810
25 July 1945.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL OF THE NAVY.

Subj: Record of Trial of Matsukichi Kobayashi by Military Commission on Guam.

Ref: (a) Subject record.

1. Subject record erroneously emphasizes (pp. 5, 6 and 7 and Exhibit "U" of the Record) that Kobayashi was not entitled to the protection of the Geneva Convention because he was a civilian internee or detainee, not a prisoner of war, with the result that the record is replete with erroneous evidence.
2. The conclusion that Kobayashi was not entitled to the protection of the Geneva Convention was correct, but the reason therefor is because he was being tried as a criminal for a crime against the Penal Code of Guam which occurred prior to his detention.
3. Under agreement with Japan (Dept. of State Bulletin, Vol VI, 23 May 1942) the provisions of the Geneva Convention are reciprocally applicable to civilian internees as well as to prisoners of war. However, neither civilian internees nor prisoners of war are entitled to the protection of the Geneva Convention with respect to crimes against local law or against the "law of nations" committed prior to detention or capture.
4. It is recommended that a copy of this memorandum be attached to subject record.

Respectfully,

Robert G. Surridge
ROBERT G. SURRIDGE

Approved:

W. H. H. H.
~~Acting Judge Advocate General~~
Chief, General Law Div.

CONFIDENTIAL

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RGs
Mr. Chief
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JAG:III:HOS:dw
(SC) A17-10/Kobayashi
Doc. No. 173810
25 July 1945.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL OF THE NAVY.

Subj: Record of Trial of Matsukichi Kobayashi by Military Commission on Guam.

Ref: (a) Subject record.

1. Subject record erroneously emphasizes (pp. 5, 6 and 7 and Exhibit "U" of the Record) that Kobayashi was not entitled to the protection of the Geneva Convention because he was a civilian internee or detainee, not a prisoner of war, with the result that the record is replete with erroneous evidence.
2. The conclusion that Kobayashi was not entitled to the protection of the Geneva Convention was correct, but the reason therefor is because he was being tried as a criminal for a crime against the Penal Code of Guam which occurred prior to his detention.
3. Under agreement with Japan (Dept. of State Bulletin, Vol VI, 23 May 1942) the provisions of the Geneva Convention are reciprocally applicable to civilian internees as well as to prisoners of war. However, neither civilian internees nor prisoners of war are entitled to the protection of the Geneva Convention with respect to crimes against local law or against the "law of nations" committed prior to detention or capture.
4. It is recommended that a copy of this memorandum be attached to subject record.

Respectfully,

ROBERT G. SURRIDGE

Approved:

Acting Judge Advocate General

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JAG:III:RGS:dw
(SC) A17-10/Kobayashi
Doc. No. 37222

25 July 1945.

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL OF THE NAVY.

Subj: Record of Trial of Matsukichi Kobayashi by Military
Commission on Guam.

Ref: (a) Subject record.

1. Subject record erroneously emphasizes (pp. 5, 6 and 7 and Exhibit "U" of the Record) that Kobayashi was not entitled to the protection of the Geneva Convention because he was a civilian internee or detainee, not a prisoner of war, with the result that the record is replete with erroneous evidence.
2. The conclusion that Kobayashi was not entitled to the protection of the Geneva Convention was correct, but the reason therefor is because he was being tried as a criminal for a crime against the Penal Code of Guam which occurred prior to his detention.
3. Under agreement with Japan (Dept. of State Bulletin, Vol VI, 23 May 1942) the provisions of the Geneva Convention are reciprocally applicable to civilian internees as well as to prisoners of war. However, neither civilian internees nor prisoners of war are entitled to the protection of the Geneva Convention with respect to crimes against local law or against the "law of nations" committed prior to detention or capture.
4. It is recommended that a copy of this memorandum be attached to subject record.

Respectfully,

ROBERT G. SURRIDGE

Approved:

Acting Judge Advocate General

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