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TOMITA, RYOJI

(21 NOV 1946)

(157166)

0279

Case of
Lieutenant Temita, Ryoji, Imperial Japanese Navy.
November 21, 1946 .

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

RECEIVED
5 MAY 1947

OFFICE OF JUDGE
ADVOCATE GENERAL
S.C.M. SECTION

Revised-File-804

157166

0280

Lieutenant Tomita, Ryeji, Imperial Japanese Navy,

Trial by Military Commission

at Guam

Marianas Islands.

November 21, 1946.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

A16-2/FPL2
13-JDM-gnr

Serial: 12841

15 October 1946.

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy.
Subject: Precept for a Military Commission.

1. Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and Deputy Military Governor Marianas Area and further by the specific authority vested in me by the Commander-in-Chief, U. S. Pacific Fleet (CinCPac conf. serial 0558, of March 8, 1946), and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas, and by the Judge Advocate General of the Navy (JAG despatch 311730Z, August 1946), a Military Commission is hereby ordered to convene at the Headquarters, Commander Marianas on Guam, Marianas Islands, at 10 o'clock a.m. on Monday, October 21, 1946, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

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

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President,
Colonel Adolph L. RAMON, Army of the United States,
Colonel Douglass G. PAMPLIN, Army of the United States,
Lieutenant Colonel Adolph ZUBER, U. S. Marine Corps,
Commander Ramon J. WALLENBORN, Dental Corps, U. S. Navy,
Commander Vance O. SMITH, U. S. Naval Reserve, and of

Lieutenant Daniel FLYNN, U. S. Naval Reserve, Lieutenant Edward L. FIELD, U. S. Naval Reserve, and Lieutenant Fredric T. SUSS, U. S. Naval Reserve, as judge advocates, any of whom is authorized to act as such.

Commander Martin E. CARLSON, U. S. Naval Reserve, Lieutenant Commander Donald H. DICKEY, U. S. Naval Reserve, and Masanao TODA, and Kenro ITO, of Tokyo, Japan, both furnished by the Japanese Government, all of whom are lawyers, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by accused.

Observers designated by the French and Swiss Governments are authorized to attend trials wherein an accused is alleged to have unlawfully killed French and Swiss nationals. A duly accredited native of the Marshall Islands is also authorized to participate as an observer in any trial of an accused charged with offenses against Marshallese.

3. The Military Commission shall be competent to try all offenses within the jurisdiction of exceptional military courts. It shall have jurisdiction over all persons in the custody of the convening authority at the time of the trial.

CERTIFIED TO BE A TRUE COPY

"A - 1 - "

Edward L. Field
St. John

0282

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

AL6-2/PFL2/
13-JDM-gmr

15 October 1946.

Serial: 12841

Subject: Precept for a Military Commission. (continued).

charged with war crimes committed against United States nationals, persons referred to in the despatch of the Judge Advocate General of the Navy cited in paragraph one (1) above, and any white person whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established.

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

5. The proceedings of the Military Commission will be governed by the provisions of Naval Courts and Boards, except that the commission is permitted to relax the rules for naval courts to meet the necessities for any particular trial, and may use such rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers, (Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 A.G. 000.5 (5 Dec. 45) LS, Subject: "Regulations Governing the Trials of Accused War Criminals,") as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

6. This commission is hereby authorized and directed to take up the cases of Lieutenant TOMITA, Ryoji, IJN, Captain TANAKA, Masaharu, IJN, et al, and Sergeant TAKANO, Masayoshi, IJA, ordered tried by charges and specifications dated respectively 26 August 1946, 26 August 1946, and 16 September 1946, and such other cases as may be now pending before the Military Commissions of which Rear Admiral Arthur G. Robinson, U. S. Navy, is President, convened respectively by my precepts of August 2, 1946 and August 24, 1946, except such cases the trial of which may have been commenced.

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

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

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

CERTIFIED TO BE A TRUE COPY

Edward L. Ford
Lt USAF

"A - 2 - "

0283

Copies to:
Members of the Commission.
Judge Advocates.
Judge Advocate General, U. S. Navy.

Certified to be a true copy:

Fredric T. Suss,
Lieutenant, USNR,
Judge Advocate

CERTIFIED TO BE A TRUE COPY

Edward L. Field
LT USN

"A-3"

0284

14
A17-25/FF12
13-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

1 November 1946

Serial: 18599

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U.S. Navy,
President, Military Commission, Guam.

Subject: Relief as Judge Advocate from Military Commission.

1. Lieutenant Fredric T. SUSS, U. S. Naval Reserve, is hereby relieved as Judge Advocate of the Military Commissions of which you are president, convened by my precepts of 5 April 1946, 2 August 1946, 24 August 1946, and 15 October 1946.

C.A. POWNALL,
Rear Admiral, U. S. Navy.

Copy to:
Lt. Fredric T. SUSS.

CERTIFIED TO BE A TRUE COPY

Edward L. Field
B. V. R.

"B"

0285

A17-25/FF12
13-JDM-ala

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

15 Nov 1946

Serial: 18848

From: The Commander Marianas Area.
To : Rear Admiral Arthur G. ROBINSON, U.S. Navy,
President, Military Commission, Guam.
Subject: Relief as Judge Advocate from Military Commission.

1. Lieutenant Daniel FLYNN, U. S. Naval Reserve, is hereby relieved as Judge Advocate of the Military Commissions of which you are president, convened by my precepts of 5 April 1946, 2 August 1946, 24 August 1946, and 15 October 1946.

C. A. POWNALL,
Rear Admiral, U.S. Navy.

Copy to:
Lt. Daniel FLYNN.

CERTIFIED TO BE A TRUE COPY

Edward L. Field
Abraham

"C"

0286

Argument in objection to the Charges and Specifications in the case of Tomita, Ryoji, Lieutenant, Imperial Japanese Navy, deliberated by Lieutenant Commander Donald H. Dickey, U. S. Naval Reserve, defense counsel on 21 November 1946 before the Military Commission convened by the Commander Marianas Area at Guam, Marianas Islands.

The accused objects to inclusion of the term "Moral standards of civilized society" in specifications 1 and 2 of Charge I as improper, non-legal and surplusage.

Lieutenant Commander James J. Robinson of the Navy Judge Advocate General's Office addressed the Joint Meeting of the Military and Naval Law Committees of the American Bar Association and the Federal Bar Association in Washington, D.C. on April 20, 1945 with the obvious approval of the Judge Advocate General of the Navy, on the subject of "Legal Charges and Specifications in War Crimes Cases." In his address he spent much time defining a "War Crime." He states "The definition which is most general both in its terms and in its acceptance is that 'A war crime is a violation of the law of war.' He then goes on to point out that this is too general to show the required circumstances and essential elements which the formal accusation that is, the charges and specifications, must contain if it is to set forth a war crime. After considering the definitions of Professor Shelton Glueck of Harvard, the Inter-American Conference on Problems of War and Peace, and Professor H. Lauterpacht of Cambridge University, Commander Robinson suggests the following as a definition.

"A war crime is an act forbidden by the law of war and committed in any place in time of war by a person who is connected or acting with a belligerent nation and who acts with intent unlawfully to injure a person, or property, or government connected with an opposing belligerent nation or with a neutral nation. The penalty is determined by the court in its discretion and may extend to the death penalty unless otherwise provided by law."

Then he goes on to use a specific example - the Massacre at Palawan in October 1944 of American prisoners of war held captive there. Based on the available facts in that case, he proceeds to build up a proper specification, and his specification contains no mention of any violation of the "Moral standards of civilized society." This information is contained in a Navy Department release, and again may I emphasize with the obvious approval of the Navy Department. Now a Navy convened Commission, trying accused war criminals, is asked to consider charges that the crimes not only violated the laws of war, but in addition violated the "moral standards of civilized society."

"Crime" is defined by Bouvier as "an act committed or omitted in violation of a public law forbidding or commanding it." The crimes charged in the specification fall directly under the definition of crimes, whether laid under public laws or international public laws. The inclusion of the disputed phraseology is obvious surplusage. It does not properly define any code or concept under which the acts charged here have any acknowledged place greater than their place as a violation of international law and the laws of war.

We further contend that the phraseology has no parallel or precedent either in Martial law or in criminal law. No specification set forth in Naval Courts and Boards including the specifications on murder, make any mention of a violation of "moral standards." No indictment in the criminal courts of the United States includes this phraseology, no matter how heinous the crime. On page 111 in his book "War Criminals, Their Prosecution and Punishment" Professor Glueck states as follows: "First, as to the substantive law, which defines crimes, it is generally found that there are public wrongs (crimes) and private wrongs (torts); that legal systems do not customarily take cognizance of offenses against the moral order, unless these have also been prohibited by law (statutory or common);..." May I repeat that last part for emphasis: "Legal systems do not customarily take cognizance of offenses against the moral order unless these have also been prohibited by law (statutory or common)." It is definitely non-legal, and should have no place in the charges and specifications brought before this Navy convened commission.

Furthermore, the phrase is without means of proper definition. This commission is being called upon to sit as philosophers, sociologists and historians in order to determine for the future that the crimes charged here are not only violations of the ordinary concepts of law, whether the laws of war or the laws of nations, but that all these previous concepts of rights and wrongs that have crystallized into stated laws are not sufficient basis on which to charge wrong doing. I have searched in vain through the books of International Law available here, and nowhere do I find any definition of "moral standards". The separate words may be found in any dictionary, but where are we to find an explanation of the criterion by which this Commission is now called upon to judge. Even more nebulous is the expression "civilized society". What society, based on what civilization, is to be the only limiting factor on the moral standards of civilized society. Is it western civilization, with its occidental teachings, or is it to be the ancient civilization of the East. Remember, this Commission has before it as accused, people of the Oriental nations, who were only in contact with western civilization for less than 90 years. Do you now plan to judge them, after 2600 years of their own civilization, by only 90 years of contact with the Occidentals? Although it certainly is not binding on this military commission, it certainly should be persuasive that in no other war crimes tribunal has it been found necessary or desirable to include that the offenses were in violation of the "moral standards of civilized society." The trials in Germany before the International Court assembled there, the trials in Tokyo, the trials in Manila and Yokohama none of them are required to try accused on the underfined grounds. In these places it is considered that the defendants have violated the laws of war, and that violation of laws of war is sufficient for the charge.

Donald H. Dickey

DONALD H. DICKEY,
Lt. Comdr., USNR.
Defense Counsel.

If it please the commission, the defense is not yet ready for trial. We have no inclination or desire to delay the proceedings here, but we have requested witnesses which have not yet been made available to us. Over a month ago, we asked that the commanding officer who immediately preceded the accused as officer in charge of Mille, or any of his staff officers, be made available to us as witnesses. To date we have not had any report on the progress of this request. Only this past week did we discover that there was on Guam, in the Truk prisoner of war stockade, a Japanese naval officer who had formerly served on Mille at the time in question, and from him we were able to learn more accurately the name of the executive officer at that time, which information we immediately gave to the judge advocate. We were also advised by that person that it was his belief that Commander Fukumi, the prior commanding officer, had died in Japan shortly after the incident charged here.

It should be pointed out that the defense has neither the funds nor the necessary means of investigation to undertake private inquiry for witnesses, particularly those located in Japan, and must depend on the facilities of the convening authority's office for this. If this fails we are helpless. The witness which we have requested is considered so essential to the defense of the accused that we do not feel we can properly go to trial until he has arrived and we have had an opportunity to talk with him. In other words, gentlemen, we are dependent upon this witness not only for an affirmative defense, but for the negative defense; we cannot properly cross examine the prosecution's witnesses until we have the information which this witness possesses.

What I am about to say will have no evidentiary value of course, but these are the circumstances with which the defense are confronted. At the exact time alleged in the specifications, the entire garrison force at Mille was replaced. This was not merely the commanding officers or the subordinate officers - every man in the Japanese forces who had been on Mille in the months preceding November 5, 1942 was taken from that island and an entirely fresh contingent of troops installed. The two alleged victims had been on Mille prior to the arrival of these new troops. The accused in this case was with the new forces, and had not been there previously. Therefore he has no knowledge of what happened before his arrival there with regard to these priests. This knowledge is absolutely essential for the defense of this case. The prosecution's witnesses are beyond doubt extremely prejudiced against the Japanese. Unless we can obtain the facts from someone who was present at Mille during the time when the priests were there, we cannot even cross examine the prosecution's witnesses properly, let alone attempt to impeach them or shake their testimony. We literally do not know what questions to ask them. For all we know, the priests may have fully deserved to die - they may have been tried by proper courts and legally sentenced. The witness we have now requested, was the executive officer of the prior unit. Commander Fukumi, the former commanding officer, is apparently not available. The officer who is on Guam at present was in charge of one of the defense sectors and was not at the staff headquarters, so he unfortunately knows nothing about the priests except that they were at the headquarters; therefore he cannot supply us with the necessary information. But since the priests were at headquarters, there is every reason to believe that the executive officer there would be fully cognizant of the facts surrounding the priests. This man, or someone of his station, is a material witness and essential to the case of the defense.

It is not enough for the prosecution to stipulate or admit or otherwise agree that Commander Fukumi gave orders to the accused with regard to the execution of the priests. Such a stipulation before this commission would be of no harm to the prosecution and of no benefit to the absolute defense of the accused, since it has been repeatedly upheld here that "obedience to the orders of a superior officer shall not constitute a defense." We decline to go into further details of the case for the defense as forewarning the prosecution to the detriment of the accused. Suffice it to say that if this trial should proceed without permitting the defense to have the benefit of their witness's information, the rights of the accused will be so jeopardized that he will in effect have no chance at all to defend himself against

the charges set forth against him. In view of the fact that the failure to have the witnesses here at this time was not due to any act or omission on the part of the accused, we earnestly request that the trial be delayed until the arrival of a witness. We assure the commission that if this delay is granted, we will be prepared for trial within 24 hours after the witness appears at Guam.

Donald H. Dickey
DONALD H. DICKEY,
Lieutenant Commander, USNR

裁判官轄、抗弁並ニ法、適用ニ關スル異議

井藤文士 秋元勇一郎

裁判長閣下並ニ要員諸君

私、本件審理ニ先ク此官轄、抗弁並ニ法、
適用ニ關スル異議ヲ提出致度イト存じます

第一、裁判官轄ニ對スル抗弁

本件起訴狀第一條及第二條ニ就テ「被害人
富田良治、昭和十七年十一月五日頃マーシャル諸
島ニシテフランス國宣教師ルイ・デュラント
及スイス國人レオ・マークリスヲ殺害シ又殺害せし
タリ、如行爲、戰爭法規並ニ慣習及文明社會
ノ道義ニ違反シタルモノニシテ本軍法會議ニ就テ
裁判セラルベキモノナリ」とアルデアリマス

然レガウ私ノ信スル処ニ依リマス、前記事
實ニ對シテハ本軍法會議、裁判官官轄權
ヲ有セス本心訴、當然棄却セラルベキアルト
信スルデアリマス

ソモ「一國ノ國民、其屬スル國家又、其居
住スル國家、法律ニ依テ保護せラルベキ權利
ヲ有スルデアリマス

從テ人的關係ニ於テ、或國民が犯罪ヲ侵
シ又、侵サレタル場合ニ於テ、其ノ國民、屬スル
國家が其、裁判、管轄權ヲ有シ

土地的關係ニ於テ、或犯罪が一國、領土又、其
國、國旗ノ下ニアル艦船就空機等此ニ於テ行ハ
タル場合ニ於テ、其國家が管轄權ヲ有スルモ、
テラス

其、國際法普通、原則デアリマスデニ米國
大審院ニ於テ認めラレテ居ルニ、今更申ス迄
モナイコトデアリマス

從テ或犯罪行為が自國民ニ依リテ行ハ
ル自國民ニ對シテ行ハルモノデナク又自國、
領土或、其、國旗ノ下ニアル艦船就空機等、
此ニ行ハタルモノデモナイ場合 按言スルハ外國
ノ統治權下ニ於テ行ハタル外國人、行為又、
其、國人、權利ノ侵害セラル場合ニ於テ、
其、裁判權ヲ有スル國家が其、犯罪、行ハタル
土地ヲ統治スル國家又、其、行為者、屬スル國
家ニシテ其以外、國家ノ何等法律的利益關係
ヲ有セス從テ其裁判權ヲ有セラルコトに勿論ナリ
マス

鑑テ本件ハ訴訟事實ニ依リ日本軍性統治
下ニアル マーシャル諸島ミシ島ニ於テフランス
國人及スイス國人ニ對シテ行ハタル犯罪デアリ^{スガ}又
フランス國及スイス國ハ對日本ト戦争状態ニナ
リ^タデアル故ニ本件ハ戦争犯罪トシテ考ヘ^ル
ベキデナイト信スルヤデアラス

從テ本件ハ人的關係ニ於テモ土地的關係ニ
於テモ其統治權ヲ有スル日本國ニ於テモ
裁判權ヲ有スルデアリ^ミテ何ぞ人的又土地
的ニ法律關係ヲ有セサル來國ニ管轄權ヲ有
スルトニ考ヘ^ルニヤデアラス

私ハ前述ノ私ノ主張、正シサヲ立証スルタメ、
來國ハバート大學教授 ジョージ グラフトン
ウィルソン博士著 國際法 一三〇—一三一頁
全一四七—一四八頁^ニ引用致シ度イト信ジマス

⑨ウィルソン国際法

人的関係に於ける管轄権 (一三〇頁)

國民上の或國家に屬し其の保護を享有する
人々を指すモノニシテ「市民」「臣民」と呼ぶ
國民法に於ける資格、如何なる一定の國家に
忠誠を守り其の保護を享有する權利を有す
ルベシ

一國の裁判權、下ニ其の國民に對し完全
たる權利を有するモノデアル

又、裁判權の界は其の領土のみに止らず其の
旗、下ニアル^{他國}海上又の空上ニアル自ら、船舶
航空機ニアル人々ニ及ブデアル

Lex Loci, Lex fori : 本國大法院に於て
視する所の原則に於ける或行為が合憲たりや
違憲たりや決定するに其の行為の^主たる國家
に屬する權限に對し一般の普遍的原則デ
アル。

一國の外國の港ニアル自ら、旗、下ニアル國
籍^{他國}に於ける或行為が始終せしむる場合ニ於て
其の國民に對する裁判權は其の國家に屬するモノ
デアル

Savarker 事件

即 印度裁判所ニ就テ審理中デアリ、印度人
サバルカーガ佛國アルセイニ港に在リ、英國
船より此處ヲ企テ佛國ニ就テ佛國官憲ニ
依リ捕ヘラレ、佛國官憲ニ付セラル、
此ガ之ニ對シテフランスノ裁判權ニ依
リ刑罰ニ科セラル、カフタノデアリ

一定ノ國民ニ對シテ、屬スル國家ノ權力、下ニアル、テア
ラフ外國ノ裁判權ヨリ免ル、ノデアリ

(一四七頁)

保護權ニ關シ最モ尤ウ議論セラル、事件ノ一ハ
Martine Kaszta、事件デアラ、一八五八年ニ起ル
タ、カズタ、役ハ、ハガリヤ人、一八四八年一八四九年
ノ事件ニ參加シ、トルコニ在リ、此地ニ就テ捕ヘ
ラレ、國外ニ送ルコトヲ條件トシテ解放サントデ
アル、Kasztaハ、一八五二年七月三十一日來國ニ来リ
全國ノ市民タルベク宣言シ、一八五三年和申、
タリ、トルコニ歸リ、在トルコ東國代表ハ、役、
タリ、旅ヲ行、并々サナリ

然ルニ、スミルサニ就テ捕ヘラル、オーストリア軍艦

1) Luygar 号、衆望ニ依リ恥收ニ監禁せず、
デアレ。アメリカ代表：今人、釈放ヲ要求シ
タルヲ拒絶セリ。要ニ軍艦、来着サント
場合、依リ強カヲ行使スルコトアルベシト強硬
ナル要求サントナル結果、吾ニ東國及オースリ
ア國、交渉纏ヒ止。今人サフランス総領事
、抑留ニ付スコト、ナリ。結極オースリア、及対
ニ不拘東國ニ永住、宣言ヲ指摘シ、意ニ東
國ニ帰ルコトヲ許サントリ

Secretary Marcy：其國、出生ニ依リ國民
ニアルトモ定住ニ依リ人民、保護又權、正
義、確固タル根本保別ニ堪ラズニテ之ヲ無視
スノ自由、許サルヘキ事ニアルトモナリ

即ち
同博士、所論に私、是を以て之と
同趣をテアリマス其、事柄トシテ *Sanarker*
又 *Martin Kazyta* 事件ヲ挙ゲテ居ルデ
アリマス

一、英國、統治權ニ服スル印度人 *サバルカ*
ガ *アリス* 國ニ於テニ定泊中、英國船ヨリ
述セシ *アリス* 官憲ニ捕ヘシ其裁判ニ
付セシタルハ *アリス* 英國ニ之ヲ違法トシテ
抗議シ之ヲ印度裁判ニ取リ戻シムデアリ
マス

二、*Martin Kazyta* 事件： *ハカリヤ* 人タル
Kazyta ハ一八四八年一八四九年ノ革命事
件ニ関係シ、トルコニ於テ全國ニ於テ投獄
セラルタル條件付解放ニ依リ英國ニ來住
シ全國市民タルベク宣言シテ *アリス*
ガ英國ニ於テ來國市民タルヲ認メ、後々
カ *オースリア* 軍艦ニヨリ監禁セラルタル來
國代表、之ニ抗議シ一度、拒絶セラルデ
アリス ガ更ニ來國軍艦ノ來着ニ依リ
弛緩ナル抗議ヲシ之ヲ解放セシタリ *アリス*

ド・ウイリソ博士：佐論にテ

「國民に其屬する國家、裁判權ニ服スベキモノテ
外國、裁判權ヲ、免除セラルベキ」

言フヲ居ル、デアリマス

又 Secretary Marcy:

「之、國民保護、權利、正義、確固タル
根本原則ニ基クテニ、之ヲ監視スル、
自由、與ヘラルベキモノナリ」

ト申シテ居リマス

以上陳述スルカ如ク本件ヲ本軍法會議ニ於
テ審理裁判スル、國際法、原則ニ違反スル
デアリマス速ニ心算意算、御裁判
ヲおイル次第デアリマス

第二、^法適用ニ關スル異議デアリマス

本件軍法項目オ一、及オ二ニ於テ「右行為、
戰爭法規至、慣習及文明社會、道義
ニ違反シタルモノナリ」トアル、デアリマスガ

右、如何ナル法規、如何ナル慣習ヲ指スヤ?

又「文明社會ノ通義」ト何ヲ意味スルヤ?
明カナラス 苟モ或行爲ヲ犯罪ナリトシテ処罰
スルモノニハ其ノ法、根拠ヲ明示シナケレバナラ
ナイデアリアス。何トナレバ如何ナル人トモ法律
ニ依ルナスレテ処罰モセラル。コトナキハ法治
國ノ根本原則デアリアス

一本本件ニ就テ將ニテ如何ナル法規、如何ナル
慣習ニ違反シタリトイフヤ大ニ疑問ナキ
然ハヌデアリアス

又此ハ本件行爲ノ當時將ニテ如何ナル如キ國
際法規慣習カ存在シタルヤヲ疑フモノデ
アリマス

若シ夫レハ法規カヘーグ條約ヲ指スモノト
致シマスレバ該條約ハ締約國イタリ、ブル
ガリヤ兩國ノ批准ヲ受ケタルモノ國際條約
トシテ、効力ヲ果生ぜザルモノナシ。該法規
ヲ適用スルモノハ憲法デメント依ルモノデアリアス
果シテ然ラハ本件ハ如何ナル國際法規ニ違反
シタリトイフカ了解ニ基キテデアリアス

又「文明社會通義」を「通義」ニ付テ、一層大なる
疑問ナキハ、ナラザルヤ

一作「文明社會、通義」ト、何ヲイフデアルカ
通義、觀念コソ、時ト土比ニ依リ相異ル
相對的觀念ナラザルヤ 今日、通義必スシ
モ明日、通義デハナイ。西洋、通義必スシモ
東洋、通義ト一致スルモノミナ、ナラザルヤ
殊ニ戦争ニ對スル觀念、戦争前ト終戦
後、今日ニ就テ、甚しく相違スルコト、何人モ
否認シ得ナイ如クアラザルヤ

而モ上記「文明社會、通義」ナル言葉、
今次戦争裁判創設ニ伴ヒ戦勝聯合國
ニ依リ初メテ Create せラル觀念ヲニシテ從來ノ
法律觀念ナラザルヤ

從テ將來、國際通徳ノ規準ヲ定メトスル
政治的目的、範圍ニ就テ、之ヲ是認シ得
ルデアルヤセウ 即倫理的觀念トシテ今日モ
明日、社會ノタメ、研究題目トシテ好國
ノ問題デアルデアルヤセウ

然し其が如く、如き不確定且漠然たる觀念
ヲ以テ恰も已定、國際法、原則デデモアルカ、
如く考へ之ニ依ッテ亂カニ認定セシムルコ
トガ果シテ正義デアラフヤウカ

又之カ法治國、刑事手続ニ於テ是認セ
来ルヲアラフヤウカ 我ニ致ラズト主張スルヤ
アリマス

爾レハ其が如き不確定ニシテ漠然タル文ニ
テ先訴狀ヨリ削除セラルンコトヲ本に依テ
アリマス

第三、先訴狀ハ一、及ハ二、ニ於テ^{（福生）}富田良治
自令ニ付大日本帝國海軍大尉（當時）ト
記載セラレ居ルカ、被控人、當時海軍
中尉デアラス、デアリマス之ヲ以テ心セラルンコ
トナリ

ARGUMENT IN OBJECTION
TO THE
JURISDICTION AND THE APPLICATION OF THE LAWS

DELIVERED BY MR. AKIMOTO, YUICHIRO

The defendant TOMITA, Ryoji objects to the mistake in jurisdiction and application of the laws on the part of the prosecution.

Specification 1 of the charge states that TOMITA, Ryoji, the accused in this case, did, on or about 5 November 1942, on Mille Atoll, Marshall Islands, kill one Father Louis Durand, a Catholic priest, a French National. Specification 2 of the same charge states that he did, on or about 5 November 1942, on Mille Atoll, Marshall Islands, kill, one Father Leo Marquis, a Catholic priest, a Swiss National,, this in violation of the laws and customs of war and the moral standards of civilized society.

However, I believe that this Commission has no jurisdiction over the said offense and that these specifications of the charge ought to be rejected.

Generally speaking, a national has a right to be protected by the law of the state to which he belongs. Therefore, (1) concerning to the person, the state has the jurisdiction over offenses committed by its nationals or against its nationals, and (2) concerning the place, it has jurisdiction over offenses committed in its dominion or in the ships or planes under its flag. This is the universal principle of international law, and I think it unnecessary to state that the United States Supreme Court admits the principle.

Therefore, in general, a state does not have the jurisdiction over offenses which do not infringe on the rights of her nationals or which were not committed in its dominion or in the ships or planes under its flag. That is to say, the state which governs the place where the offenses were committed or the state to which the criminals belong has jurisdiction over these offenses. The other states, having no legal interests in the offenses, have no jurisdiction over them.

According to the charge of this case, this offense was committed against a French and a Swiss national whose countries were not in a state of war with Japan at that time, at Mille Atoll, Marshall Islands, which were then mandated to Japan. Therefore this case can not be deemed a war crime. (1) concerning the person and (2) concerning the place, over which Japan has jurisdiction, has the jurisdiction, we cannot think that the United States, which has no legal interest either in the victims or the place, has the jurisdiction.

In order to prove this opinion, I would like to cite P130-131 and P147-148 of "International Law" written by George Grafton Wilson, professor at Harvard University.

"Nationals are persons who owe allegiance to a state and are entitled to its protection. 'Citizen subjects' owe allegiance to and are entitled to the protection of a given state whatever their status under domestic law.

Over its nationals within its own jurisdiction a state has full authority. This jurisdiction extends, not merely to its domain, but to craft under its flag on the sea or in the air outside the jurisdiction of another state.

Lex loci, lex fori, is the accepted principle as stated by the Supreme Court, 'general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.

A state has, in general, jurisdiction over its nationals when in a foreign port on a vessel, flying its flag, for acts beginning and ending on board the vessel, or for acts which do not take effect outside the vessel.

In the case of Savasker, a Hindu on route for trial in India, who attempted to escape from a British vessel while the vessel was in port at Marseille, it was

held by the arbitral tribunal that his arrest on French territory by a French officer, assisted by some of the Englishmen of the vessel, was irregular, but did not impose an obligation to restore the prisoner to French jurisdiction.

Certain prisoners are by practice exempt from foreign jurisdiction, and are under the authority of the state to which they owe allegiance, as in case of a diplomat and the persons connected with his suite.

One of the most widely discussed cases of protection arose in 1853.

Martin Koszta, a Hungarian who participated in the Revolution of 1848-49, fled to Turkey, was imprisoned and was released on condition that he would leave that state. Koszta came to the United States, declared his intention to become a citizen on July 31, 1852, and returned to Turkey in 1853, as he alleged, on private business of a temporary character.

The American representatives in Turkey furnished him with a Tezkere-akind, a passport and letter of safe conduct.

While in Smyrna he was seized, taken aboard a small boat and thrown over board. He was picked up by a crew from the Austrian vessel of war Huzzar taken on board the ship, and confined in irons.

American representatives requested Koszta's release which was not granted. Upon arrival of an American war-ship in the harbor, Koszta's release was demanded with an intimation that force would be used. Koszta was then delivered into the custody of the French consul general, to be kept by him until the United States and Austria should agree as to the manner of disposing of him. Koszta was allowed to return to the United States though Austria maintained her right to proceed against him if he should again return to Turkey. After mentioning that Koszta had by declaration manifested the intention of making the United States his permanent abode, Secretary Marcy says: 'The establishment of his domicile here invested him with the national character of this country and with that character he acquired the right to claim protection from the United States, and they had the right to extend it to him as long as that character continued. This right to protect persons having a domicile though not native born or naturalized citizens rests on the firm foundation of justice and the claim to be protected is earned by consideration which the protecting power is not at liberty to disregard'."

The aim of this theory is quite the same as mine. He cited, as examples the case of Savasker and the famous case of Martin Koszta.

(1) The case of Savasker, an Indian called Savasker, who was under the government of English, escaped from the ship which was at anchor in the port of Marseille, and was captured by the French authorities and tried in the French court, to which the English government objected as it was in violation of international law, and brought him back to India for trial.

(2) The case of Martin Koszta, Martin Koszta, a Hungarian, who participated in the revolution of 1848-49, escaped to Turkey, was put in jail in that country, and after his conditional release, he went to the United States and announced his intention of becoming a citizen which was afterwards admitted by the United States government. When he was detained by the Austrian government made a strong objection again on arrival of the U. S. war-ships, and he was released after all.

Mr. Wilson concludes this as follows:

"A national is subjected to the jurisdiction of his state and is exempted from those of other states".

Secretary Marcy also says:

"The right to protect the nation is based upon the fundamental rule of justice, and no one is able to disregard it freely".

As I have mentioned, it is in violation of international law to try this case in this court. I ask the commission to reject the charge and specifications.

Specifications 1 and 2 of the charge state that TOMITA'S act is in violation of the laws and customs of war and the moral standards of civilized society. But it is not evident what laws and customs it indicates and what the meaning of the moral standards of civilized society is.

In order to punish an act at all, the law upon which the punishment is based must be shown clearly. Because, it is the general principle in the constitutional state that any punishment must be based upon the law. I can not help wondering what laws and customs this act violates. I wonder if laws and customs of war existed at the time when the act was done.

The prosecution may introduce one Hague Convention as the law of war. But, since it is not ratified by Italy and Bulgaria, it has no efficacy as the international law. Therefore, it is not the law applicable in this case.

Further, I wonder whether this is in violation of the moral standards of civilized society.

What does "moral standards of civilized society" mean? The conception of moral is a relative term which differs according to the difference of time and place. The morality of today is not always that of tomorrow. Morality in the European countries does not coincide with that in the Orient. No one can deny that our thought concerning the war is remarkably different after the termination of the war than it was during and before the war. The conception of the moral standards of civilized society has been created by the victorious Allied Forces with the establishment of war crimes trials, and we can find no such legal conception heretofore.

For the political purpose of determining the international moral standards, the use of such phraseology is admissible. That is to say, as an ethical conception, it is a good question for the study of tomorrow's society.

However, is it just to determine guilt by taking such an uncertain, vague conception as the principle of international law? Is that admissible in the criminal procedure of the constitutional states? I maintain it is not.

I ask the commission to reject such an uncertain, vague phraseology from the charge.

Thirdly, though it is a trifling matter, I would like to point out a mistake in the specifications. The 1st and 2nd specifications state that TOMITA was then a Lieutenant, IJN, but he was then a lieutenant (jg), IJN. I think, that this shows well the carelessness of the prosecution in preparing charges and specifications. I ask the commission to correct the mistake.

AKIMOTO, YUICHI.

I certify the above to be a true and complete translation of the original argument in Japanese to the best of my ability.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg), U.S.N.R.
Interpreter.

Objection to and Special Pleas to the Jurisdiction of the Court to try Lieutenant TOMITA, Ryoji, Imperial Japanese Navy, delivered by Commander Martin E. CARLSON, United States Naval Reserve. December 9, 1946.

The accused objects to the jurisdiction of this Commission to try this case and holds that there are errors in substance in the charge and specifications and because at this stage of the trial there has been appointed a new defense counsel for the accused and because these errors in substance are manifest at this time such errors are objected to in accordance with Section 593 Naval Courts and Boards. These defects we hold vitiate the entire proceedings because of the irregularities in convening the Commission and in drawing up the charge and specifications. Because of these irregularities the accused contends this Commission is without jurisdiction to try this case.

We respectfully call your attention to certain facts regarding the precepts by which this Commission was ordered to try this case. The precept Commander Marianas Serial 12841 dated October 15, 1946 states in paragraph 6, "This Commission is hereby authorized and directed to take up the cases of Lieutenant TOMITA, Ryoji, Imperial Japanese Navy....., ordered tried by charges and specifications dated respectively 26 August 1946....., convened respectively by my precepts of August 2, 1946 and August 24, 1946....."

Let us look at two facts which have already been brought out in this trial. The charge and the specifications are dated August 26, 1946, and they were served on the accused on August 29, 1946. The record already shows this.

But now let us review the precept of August 24, 1946. It is dated two days prior to the charge and specifications. This is in accordance with prescribed practice and as stated in section 345 of Naval Courts and Boards:

"The precept must be drawn before the order for trial and the reference of the charges and specifications to the judge advocate, as otherwise the latter is issued to an officer non-existent."

But let us examine the precept itself and particularly paragraph one which cites the authority for convening this commission. One authority for this is, "Judge Advocate General's despatch dated August 31, 1946, is cited as authority for convening a commission in a precept dated August 24, 1946. Moreover, this reference despatch refers directly to the case now before this commission. Remember also that the accused was served with the charge and the specifications on Guam, on August 29, 1946 at least two days before this despatch originated in the Judge Advocate General's office, Navy Department, Washington, D.C.

Just to complete the picture, let us examine the precept of August 2, 1946 and the precept of April 5, 1946, particularly paragraph three which refers to jurisdiction. In both the precepts we read:

"The Military Commission shall be competent to try all offenses within the jurisdiction of Exceptional Military Courts. It shall have jurisdiction over all persons in the custody of the convening authority at the time of the trial charged with War Crimes committed against United States Nationals and any white person whose nationality has not prior to the ordering of the trial been established to the satisfaction of the convening authority."

I repeat for emphasis, "War Crimes committed against United States Nationals and any white person whose nationality has not prior to the ordering of the trial been established". Clearly, therefore, these prior precepts gave this Commission no jurisdiction over this accused for the offense charged on the specifications dated August 26, 1946.

The precept dated August 24, 1946 gives no greater jurisdiction than the previous precepts since it is improper on its face. I do not think that the members of this Commission will believe that the precept dated August 24, 1946, was actually signed on that date or before August 31, 1946, in view of the incorporation of the Judge Advocate General's despatch therein bearing the date

of August 31, 1946. On August 26, 1946, the date when the charge and specifications were signed and on August 29, 1946 when they were served on the accused Lieutenant TOMITA, there was therefore no Commission in existence having jurisdiction to try this case or any Judge Advocate.

The latest precept, Commander Marianas serial 12841 dated October 15, 1946, cannot cure that lack of jurisdiction.

To repeat, Section 345, of Naval Courts and Boards requires that "The precept must be drawn before the order for trial and the reference of the charge and specifications to the judge advocate...."

Reference in paragraph 6 of the latest precept, Commander Marianas serial 12841 dated October 15, 1946, to the previous precepts fails to establish a proper of jurisdictional continuity since the previous precepts did not convey legal jurisdiction over the offense alleged in this case. A non-existent Commission and a non-existent judge advocate cannot try even one who is charged with a war crime. Not even the so-called S.C.A.P. rules, the last resort of the prosecution in these War Crimes trials for all their mistakes, blunders, irregularities and illegalities, and which they solemnly invoke in order to gain convictions, authorizes any such irregularity in convening a commission to try a Japanese national for an alleged offense committed on the sovereign soil of Japan against citizens of neutral countries. No, the Supreme Commander for the Allied Powers did not foresee such a contingency.

On this ground therefore we move that the proceedings be dismissed.

The accused maintain that this Commission has no legal power, right or authority to hear and determine this case or to adjudge a sentence.

We hold that the Fifth Amendment of the Constitution of the United States of America is a declaratory recognition and sanction of an existing military jurisdiction rather than a source of original provision initiating such jurisdiction. The jurisdiction of this Commission is statutory. This Commission is a court of limited jurisdiction and the record must show affirmatively that this Commission has the authority to hear and determine this present case. We insist that the prosecution affirmatively show the jurisdiction as regards to the place, the time, the person of the accused and the offense.

The attention of the Commission is called to the fact that the place where the alleged crime is said to have been committed was Mili (Milio) Atoll, Marshall Islands which was mandated to Japan by the Treaty of Versailles on June 28, 1919, article 119. It is located about 6° North latitude and 172° East longitude. About 225 miles south the island of Makin is located. This is in the Gilberts group and came under Great Britain, in 1892 and were annexed as a colony and in 1926 transferred to New Zealand.

It is true that Japan is a defeated nation but Japan is still a nation and particularly on November 5, 1942 she was a nation and the doctrine of the supremacy of territorial sovereign as it applies to jurisdiction on Mili was Japan's absolute and exclusive right.

Your attention is called to what is said on this subject in Moore's, 'A Digest of International Law, Volume II (1906) page 4:

"The jurisdiction of the nation within its territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

Marshall C. J. Schooner Exchange v. McFaddon (1812) 7 Crance, 116, 36. Green Haywood Hackworth in his Digest of International Law Volume II page and 2 says this same thing in these words quoting John Bassett Moore in the

course of his dissenting opinion in the case of the S.S. Lotus, decided by the Permanent Court of International Justice:

" It is an admitted principle of international law that a nation possesses and exercises within its own territory an absolute and exclusive jurisdiction and that any exception to this right must be traced to the consent of the nation, either express or implied (Schooner Exchange v. McFaddon (1812), 7 Cranch 116, 136). The benefit of this principle equally enures to all independent and sovereign States, and is attended with a corresponding responsibility for what takes place within the national territory.

The tribunal established by the United States and Great Britain pursuant to the special agreement signed January 27, 1909 for the arbitration of questions relating to the North Atlantic Coast Fisheries held that....." a line which would limit the exercise of sovereignty of a state within the limits of its own territory can be drawn only on the ground of express stipulation, and not by implication from stipulation concerning a different subject matter." Hackworth, Digest of International Law, Volume II, page 5.

Citing the letter of Mr. Gresham, Secretary of State, to Messrs. Wightman Bros, June 8, 1893, 192 M.S. Dom. Let. 233, reference Moore's Digest of International Law, pages 7 and 8, "The United States having acquiesced in the establishment by Great Britain of a protectorate over the Gilbert Islands should not undertake to remonstrate against the British regulations of trade with the natives by which all traders, without distinction of nationality, are prohibited from selling firearms and liquor to the natives, and from giving them credit".

In this present case this commission is asked to take jurisdiction of an offense committed abroad by a Japanese national upon a French and Swiss national. We ask what country has ever claimed such a right. Even criminal offenses committed outside of the state by foreigners against citizens or subjects are not punished under any conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain, or Switzerland.

We again quote from Moore, Digest of International Law, Volume II page 260:

"I have said that crimes committed outside of the national territory by foreigners against citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain or Switzerland. Before showing that I pronounced the Mexican contention that the claim to punish foreigners for offenses committed against Mexicans outside of the national territory was sustained by the French Code, to be wholly unfounded. I shall now show that such a claim has been pronounced by the highest judicial tribunal in France to be unwarranted by the principles of international law.

I refer to the case of Raymond Fornage, decided by the court of cassation, or supreme court of France, at Paris in 1873, and reported in the journal du Palais (p. 299 et seq.) for that year.

This court being the highest judicial tribunal in France, its decisions in respect to the French law are not to be questioned. The circumstances of the case of Fornage are as follows: The prisoner was indicted by the 'Chambre des mises en accusation' (grand jury) of the court of appeal of Chambéry for the crime of larceny, which was described in the indictment as having been committed in the Canton of Vaud, Switzerland; and the case was referred for trial before a jury to the court of assizes (composed, in departments where there are courts of appeal, of three judges of that court) sitting at Haute-Savoie. The prisoner did not take an appeal, as he had a legal right to do, from the judgment of reference, but proposed before the court of assizes an exception to

competency of that court, based on the ground that, having the quality of a foreigner, the French tribunals could not try him for a crime committed in a foreign country. But the court of assizes, regarding itself as irrevocably clothed with jurisdiction by the judgment of reference from the court of appeal, which had not been attacked, declared that the exception of the accused was not receivable. Upon these facts the case was argued at length before the court of cassation by M. Requier, a counsellor and reporter of the court, and M. Beaurrier, advocate-general, both of whom, while admitting that the rule was settled that a court of assizes could not declare itself incompetent to take cognizance of a case of which it had been possessed by a judgment of reference from which no appeal was taken within the periods established by law, nevertheless argued that there were considerations of a higher order in the case of Fornage, which ought to make it an exception to the general rule. In this relation I quote from the argument of M. Requier, the following passage:

"The right to punish has no foundation except the right of sovereignty, which expires at the frontier. If the French law permits the prosecution of Frenchmen for crimes or misdemeanors committed abroad, it is because the criminal law has something of the character at the same time of a personal statute and of a territorial statute. A Frenchman, when he has reached a foreign country, does not remain the less a citizen of his own country; and, as such, subject to the French law, which holds him again when he reenters France. But the law can not give to the French tribunals the power to judge foreigners for crimes or misdemeanors committed outside of the territory of France; that exorbitant jurisdiction, which would be founded neither on the personal statute nor on the territorial statute, would constitute a violation of international law and an attempt against the sovereignty of neighboring nations. There exists a single exception to that rule of the law of nations. When a foreigner has committed, even outside of the territory, a crime against the safety of the state, he can be prosecuted, judged and punished in France. But, save that exception, founded on the right of legitimate self-defense, foreigners are justiciable only by the tribunals of their own country for acts done by them outside of the territory. The French tribunals, in punishing an act of that nature, would commit a veritable usurpation of sovereignty, which might disturb the good relations of France with neighboring nations...When a crime has been committed outside of the territory by a foreigner the culprit is not subjected by that act to the French law; the French tribunals have no jurisdiction over him; the incompetence is radical and absolute. The criminal court, in punishing the act, would commit an abuse of powers; it would usurp a right of sovereignty appertaining to a foreign power. Would it not be contrary to all the principles of justice to oblige the magistrates to render themselves guilty of an arbitrary act, of a violation of international law?"

"Not only did the court of cassation adopt this view, but in its judgment (the full text of which is given herewith as Exhibit B) the rule of international law, as laid down by the Government of the United States in the cutting case, is expressed in terms, which, for force, precision, and freedom from doubt or qualification, have not been surpassed. Translated, the material parts of the judgment are as follows:

"Whereas, if, as a general principle, the courts of assizes, possessed of a case by a judgment of the chamber of indictments not attached within the times fixed by Article 296 of the Code of Criminal Procedure, cannot declare themselves incompetent,....this rule is founded on this, that the courts of assizes, being invested with full jurisdiction in criminal matters, can, without committing any excess of power and without transgressing the limits of their attributes, take cognizance of all acts punished by the French law; but this jurisdiction, however general it may be, cannot extend to offenses committed outside of the territory by foreigners, who, by reason of such acts, are not justiciable by the French tribunals; seeing that, indeed, the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory; that, except in the cases specified by Article 7 of the Code of Criminal Procedure, the provision of which is founded on the right of legitimate defense, the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived, neither by the silence

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nor by the consent of the accused; that it exists always the same, at every stage of the proceedings; whereas, indeed, Raymond Fornage, was brought before the court of assizes of Haute Savoie, accused of larceny committed in the canton of Vaud, Switzerland,....., and, in ordering the trial to proceed, without passing upon the question of nationality raised by the accused, it (the court) violated article 408 of the Code, and disregarded the rights of the defense.

"Annul, etc."

"This judgment may be regarded as finally and conclusively answering the contention that a precedent for Article 1136 may be found in the French Code."

"The earliest bestowal by Congress upon the Federal Courts of jurisdiction over offenses committed outside of the territory, actual or constructive, of the United States, was in the crimes act of 1790, which, as read in the text, has sometimes been supposed by writers to have conferred a far more extensive jurisdiction on the courts of the United States than the decisions of those tribunals have attributed to it."

Even in the case of crimes committed aboard ship the rule is:

"The crimes of murder and robbery, committed by foreigners on board of a foreign vessel, on the high seas, are not justiciable in the tribunals of another country than that to which the vessel belongs;" quoting Wheaton in his Elements of International Law cited by Moore, a Digest of International Law Volume II page 264.

The general rule that the laws of a nation have no binding force, except as to citizens, outside of the national territory, actual or constructive, was again laid down by the Supreme Court in 1824, in the case of Apollon; 9 Wheaton, 362. In that case, Mr. Justice Story speaking for the court said:

"The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."

In a still later case heard before him in the circuit court of United States at Boston (United States v Davis)(1837, 2 Sumner cc 482). Mr. Justice Story again had occasion to consider and decide the question of jurisdiction over offenses committed outside of the national territory: "Of offenses committed on the high seas on board of foreign vessels not being a piratical vessel, but belonging to persons under the acknowledge government of a foreign country, this court has no jurisdiction under the act of 1790, ch 36 P 12. That was the doctrine of the Supreme Court in United States v. Palmer, (3 Wheat. R. 610), and United States v. Holmes (5 Wheat, 412) and United States v. Klintock (5 Wheat 144); applied it is true, to another class of cases; but in its scope embracing the present.....

It would be useless to attempt to collect all the declarations and applications by the State Courts of the principle that penal laws have no extraterritorial force." Moore Ibid, pp 267 - 268.

On pages 179 - Hackworth in Digest of International Law paragraph 135 Extraterritorial Crime, American Territorial Theory of Criminal Jurisprudence says:

"An American citizen disappeared in China in the summer of 1905, under circumstances pointing to the suspicion that he had been murdered by a French citizen, E. H. LeVergier. In response to an inquiry by the brother of the deceased as to whether LeVergier might be apprehended and returned to China from Algiers for trial, the Department of State said that the United States Government does not exercise jurisdiction over crimes committed beyond the territorial limits of this country, except a few involving extraordinary elements in which category the one mentioned by you is not included.

In 1909 the German Foreign office addressed a note verbal to the American embassy in Berlin with regard to one Max Runge who was being sought by New York Police. The note pointed out that the individual in question would not

seen to be extraditable as the offense against him was not included in the extradition treaty of June 16, 1852 but that if he was a German subject he might be prosecuted before the German courts, if this was requested by the United States Government and the assurance given of reciprocal treatment on the part of the United States in similar cases, the Department of State instructed the ambassador as follows:

"Inasmuch as, under Anglo-Saxon legal theory, crime is territorial, not personal, and therefore the criminal jurisdiction of the United States does not, as a general rule, extend to crimes committed outside of its jurisdiction, whether by American citizens or aliens, it is not possible to meet the suggestion of the German note verbal that this Government guarantee, in cases the reverse of Max Runge's case, the criminal prosecution in this country of an American citizen charged with the commission of a crime in Germany.

Charge Hill to Secretary Know, no. 527, December 6, 1909, and Assistant Secretary Wilson to Ambassador Hill, no 299, January 11, 1911, M. S. Department of State, file 22867, See also 1910, For. Rel. 517-518

In the case of the United States v. Bowman brought to the Supreme Court of the United States on writ of error for a review of the ruling of the District Court of the United States for the Southern District of New York Chief Justice Taft speaking said:

"We have in this case a question of statutory construction.... Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement, and frauds of all kinds which affect the peace and good order of the community, must of course, be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard." Hackworth, Digest of International Law, Volume II, pp 197 - 198.

Moore in a Digest of International Law, Volume II, says on page 362:

"A sovereign, according to modern international law, can not exercise the prerogatives of sovereignty in any dominions but his own.

Mr. Jefferson, Secretary of State, to Mr. Fernant, French minister, May 15, 1793, American State Papers, For. Rel. 1. 147.

The cases cited, and the principles of law enunciated show clearly a lack of jurisdiction for this commission to try the accused, a Japanese national for an alleged crime committed on Mili (Mille) Atoll, a Japanese mandated island.

We ask that this commission take judicial notice of the fact that in 1942 there was no state of war between the Republic of France and the Empire of Japan and no state of war between the Swiss Republic and the Empire of Japan, and that the Mili (Mille) Atoll, Marshall Islands was one of the islands mandated to Japan in accordance with the Treaty of Versailles June 28, 1919, and was still under the sovereign control of Japan on November 5, 1942.

The alleged crime is we contend not a violation of the laws and customs of war but a violation of the criminal laws of Japan and as such should be tried by the Japanese in their courts, and not by this United States Commission. This conclusion is well established by our previous citations.

The allegation "then and there held captive" is a conclusion of the plender, apparent on the face because it is further alleged that these two persons were one a French national and the other a Swiss national, therefore plainly not subject to capture since their countries were not at war with Japan. Being so apparent it must unless strong and convincing proof is offered

by the prosecution be stricken from the specifications.

The allegation "this in violation of the laws and customs of war" is also a conclusion of the pleader. There is absolutely nothing alleged in the specifications to show that the offenses charged violated a law or custom of war. The fact that the accused is an officer of the Japanese Navy on duty at Hill does not make the offense a war crime, nor does the allegation "at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire", make the offense a war crime. On the contrary the specifications clearly show that the offense charged is a local crime punishable by the sovereign state at the place where the offense was committed, in this instance by Japan.

The nations of the world, including Japan have at different times signed treaties governing the conduct of war and outlawing certain kinds of behavior by the forces of the belligerents. The most relevant sources of this written law are the Hague Convention of 18 October 1907, which is a revision and extension of 1899 Convention, the Geneva (Prisoners of War) Convention of July 27, 1929, and the Geneva (Red Cross) Convention of July 27, 1929.

Nowhere in these conventions can we find that the victims described on the specifications are referred to as unarmed non combatants. On the contrary, The Hague Convention of 1907 Chapter II, Article 16 reads:

The nationals of a state which is not taking part in the war are considered as neutrals." We object therefore to the words "an unarmed non combatant" in both specifications.

The charge is alleged to be murder and yet the offense is said to be in violation of the laws and customs of war. In order to properly prepare a defense, and it was Mr. Justice Rutledge in the Yamashita Case who said, "It is not our tradition for anyone to be charged with crime..... in language not sufficient to inform him of the nature of the offense or to enable him to make defense and in compliance with Section 27 of Naval Courts and Boards, we ask the prosecution to inform us by amending the specifications, setting forth verbatim the specific laws or customs of war which the accused is charged with having violated.

If this commission over rules us on this point we wish to point out that the law of nations is binding only on sovereign states, and not on individuals. The accused Lieutenant Tomita is not subject to this court's jurisdiction for a violation of the Hague Convention of 1907 or of the Geneva Prisoners of War Convention or the Geneva Red Cross Convention of July 27, 1929.

International Law such as the Hague Convention provides neither courts or punishments for individuals who violate the laws and customs of war. We ask that the prosecution show by what authority the law of nations permits the trial of individuals or what punishment are provided for the violation of the laws and customs of war. We hold that the state and not the soldier is liable for violation of the laws of war. It is incumbent upon the prosecution to furnish legal authority and for specific rulings in order that this commission may hold otherwise.

If the accused is charged with having violated the Hague Convention No. IV of 18 October 1907, then we cite Article 2 of this convention which provides that the provisions do not apply if all of the belligerents are not parties to the Convention. Since neither Italy or Bulgaria has ratified the 1907 Hague Convention the accused claims that he is not bound by the convention although Japan did sign the convention.

If the accused is charged with having violated the Geneva prisoner of war convention of 1929, we point out that Japan has not ratified or formally adhered to the prisoners of war convention. The mere fact that Japan did through the Swiss Government agree to observe the provisions of this convention makes no difference legally.

Not only is the offense charged to be in violation of the laws and customs of war but this Navy convened Commission is asked to consider an offense which

is said to be a violation of the "moral standards of civilized society". The inclusion of this phrase does not properly define any code or concept under which the act alleged is greater than a violation of the laws and customs of war. It is obvious surplusage.

The phraseology has no precedent either in Martial law or in Criminal law. No specification in Naval Courts and Boards makes any mention of a violation of "the moral standards of civilized society". No indictment in the criminal courts of the United States includes this phraseology. It is definitely non-legal and should have no place in the charges and specifications brought before this Navy convened Commission.

Further the phrase is without proper definition. The prosecution cannot prove or define the phrase. They only make the same vague general statement to the effect that everyone knows what is meant by moral standards of civilized society but they cannot explain it. You, gentlemen of the commission, must determine what is legally meant by the phrase and when you do so you must admit that the crime alleged is not only a violation of the ordinary concept of law but that all previous concepts of rights and wrongs that have crystallized into stated laws are not sufficient basis on which to charge wrong doing. If you cannot determine what is meant legally by the phrase "moral standards of civilized society", then you should strike the words.

The accused requested that they be fully informed as to the meaning of this phrase "moral standards of civilized society", in order to properly prepare a defense.

"Civilized society" is a very nebulous expression. We ask, what society, based on what civilization is meant to be included in the definition of the term? The accused are people of an oriental nation with a civilization of at least 2600 years but have been in contact with western civilization only 90 years. Is the accused to be judged on the moral standards of their own oriental civilization or is he to be judged on our western civilization?

If he is to be judged by occidental concepts where do you find the legal basis for so doing?

Although it is certainly not binding on this military commission, it should be persuasive that in no other war crimes tribunal has it been found necessary or desirable to include that the offenses charged were in violation of the "moral standards of civilized society". No other war crimes are being tried and the accused judged on such unlawful grounds.

For all these reasons the accused, Lieutenant TOMITA, Ryoji, A Japanese national objects to the charge and the specifications.

Is it only a coincidence that you gentlemen of the commission, officers of the Navy, the Army, the Marine Corps, are asked today December 9, 1946, at Guam, to withstand an attack against the sovereignty of the United States of America. You fought back abruptly at Pearl harbor that Sunday morning five years ago. We are indeed living in a changing world but somethings are as true today as they were when they were first said. Was it to have been that this little court room should prove that the pen is mightier than the sword?

If you today decide that that this commission has jurisdiction of this case you are setting the precedent that a sovereign nation no longer has the right to punish its own citizen criminals for crimes which are committed upon its own sovereign soil, yes, to even decide whether the individual has committed a crime. In effect you are opening the door to every other nation to do this same thing that is being done today, you are establishing the precedent that it is legal that these United States of America must yield up any citizen of the United States to be whisked away to a foreign country to be tried for an alleged crime said to have been committed in any island possession city or village of the United States. Oh to be sure we might be invited to send an observer. Deliberate long before you decide this momentous question realizing full well that the pen is mightier than the sword. Yes! more is at stake than the fate of this accused.

Martin E. Carlson
MARTIN E. CARLSON,
Commander, U.S.N.R.

"I"

-8

03 12

Al6-2/rf12/
13-JIM-gmr

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

26 August 1946.

Serial: 10717

From: The Commander Marianas Area.
To : Lieutenant Daniel FLYNN, USNR, and/or
Lieutenant Edward L. FIELD, USNR, and/or
Lieutenant Fredric T. SUSS, USNR, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charge and Specifications - in the case of:
Lieutenant TOMITA, Ryoji, Imperial Japanese Navy.

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

CHARGE

MURDER

SPECIFICATION 1

In that TOMITA, Ryoji, then a lieutenant, IJN, Commanding Officer, Mili (Mille) Atoll, Marshall Islands, acting with TSUTA (SHIMA), Ken, now deceased, then a warrant officer, IJN, Commanding Officer, First Platoon, Headquarters, said Mili (Mille) Atoll, and other persons unknown, all attached to the military installations of the Imperial Japanese armed forces, Mili (Mille) Atoll, Marshall Islands, and while so serving at said military installations of the Imperial Japanese armed forces, at Mili (Mille) Atoll, Marshall Islands, did, on or about November 5, 1942, on Mili (Mille) Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, maliciously, feloniously, with premeditation and malice aforethought, without justifiable cause, and without trial or other due process, assault, strike, cause to be killed, and kill with an instrument, a deadly weapon, exact description to the relator unknown, one Father Louis Durand, Catholic priest, an unarmed non-combatant, a French national, then and there held captive by the armed forces of Japan, by inflicting a mortal wound in and upon the body of the said Durand, and did therein and thereby mortally wound the said Durand, of which said mortal wound so inflicted, as aforesaid, the said Durand died on or about 5 November 1942 on the said Mili (Mille) Atoll, this in violation of the laws and customs of war and the moral standards of civilized society.

NO OTHERS

THE ABOVE CHARGE AND SPECIFICATION ARE TO BE READ TO THE ACCUSED IN THE PRESENCE OF THE PRESIDENT OF THE COMMISSION AND THE JUDGE ADVOCATE GENERAL

10717

THIS CHARGE AND SPECIFICATION ARE TO BE READ TO THE ACCUSED IN THE PRESENCE OF THE PRESIDENT OF THE COMMISSION AND THE JUDGE ADVOCATE GENERAL

"J (1)"

0313

Received true and correct copies, both in English and Japanese,
of this Charge and specifications on the 29 day of August, 1946

富田 良治 Tomita Ryoji

Tomita, Ryoji

The above acknowledgement read to the accused in Japanese before
he signed.

Eugene P. Kennedy
Lt. OSAR

0314

10717

SPECIFICATION 2

In that TOMITA, Ryoji, then a lieutenant, IJN, Commanding Officer, Mili (Mille) Atoll, Marshall Islands, acting with TSUTA (Shima), Ken, now deceased, then a warrant officer, IJN, Commanding Officer, First Platoon, Headquarters, Mili (Mille) Atoll, and other persons unknown, all attached to the military installations of the Imperial Japanese armed forces, Mili (Mille) Atoll, Marshall Islands, and while so serving at said military installations of the Imperial Japanese armed forces, at Mili (Mille) Atoll, Marshall Islands, did, on or about November 5, 1942 on Mili (Mille) Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, maliciously, feloniously, with premeditation and malice aforethought, without justifiable cause, and without trial or other due process, assault, strike, cause to be killed, and kill with an instrument, a deadly weapon, exact description to the relator unknown, one Father Leo Marquis, Catholic priest, an unarmed non-combatant, a Swiss national, then and there held captive by the armed forces of Japan, by inflicting a mortal wound in and upon the body of the said Marquis, and did therein and thereby mortally wound the said Marquis, of which mortal wound so inflicted, as aforesaid, the said Marquis died on or about 5 November 1942 on the said Mili (Mille) Atoll, this in violation of the laws and customs of war and the moral standards of civilized society.

C. A. Pownall

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

"J (2)"

03 15

昭和二十一年六月二十日

第...方面司令官

第...方面司令部法務官

米口海軍大尉 (タニシ、フミ)

同 海軍大尉 エドワード・ルイス・ブーランド

同 海軍大尉 フレドリック・トマス・サース

或ハ法務官トシテ貴官等ノ後任者

記

大日本帝國海軍大尉 富田良二

前記ノ者ハ貴官ガ法務官タル軍法會議ニ於テ

後記ノ告訴並ニ罪狀項目ニツキ裁判セラルベシ

貴官ハ裁判長ニ之ヲ通告シ被告ニ裁判ノ日時
ヲ通知シ原告並ニ被告兩側ノ全證人ヲ集合セシム
ベシ。

CERTIFIED TO BE A TRUE COPY

Eugene K. Gmelch
Lt. USNR "K(2)"

03 16

第一告訢
殺人

罪狀項目 其一

「ミニヤル」諸島「ミ」環状珊瑚島指揮官タリシ
大日本帝國海軍大尉(當時)富田良一、既ニ死歿セル
同「ミ」環状珊瑚島司令部第一小隊長大日本帝國
海軍大書長(當時)甘島(島)健及ヒ不詳者ハ天々
共ニ「ミ」諸島「ミ」環状珊瑚島、大日本帝國
軍隊ニ配屬中、文同「ミ」諸島「ミ」環状珊瑚
島、大日本帝國軍隊ニ勤務中、アメリカ、合衆國
及ヒソノ同盟諸國、屬領ト大日本帝國トガ戦争
状態ニアル、昭和七年十二月五日頃「ミ」諸島
諸島「ミ」環状珊瑚島ニテ、意思的ニ、要領的ニ
違法的ニ企圖ト要意ヲ以テ、^{在當十埋曲手}開十公判其他
然ルベキ手續モセズ、當時同処ニテ大日本帝國
軍隊、チニ抑留ニアリシ、フランス、國人武装セザル
非戦闘員「キリスト、甚致宣教師」ルイス・テラント、
ヲ器具、危険ヲ武器(詳細不明)ヲ以テ襲ヒ、

と記すに、〇〇、身體ニ致命傷ヲ負ハシ〇事ニヨリ、
コレヲ被害ニ、又被害セシメタリ。と記し、如ク致命傷
ヲ負ヒタリと記すに、〇〇、前記ノ〇〇、環状珊瑚島
ニテ、昭和十七年十一月五日頃と記し、致命傷ノ爲ニ
死亡セリ。右行爲ハ戦争法規並ニ習慣習俗及文明
社會ノ道義ニ違反スルモノナリ。

CERTIFIED TO BE A TRUE COPY

Signature
HVS MR

"K(3)"

03 18

第二告訴 (續前)

罪狀項目 其二

「マーシャル諸島」に環状珊瑚島指揮官として
大日本帝國海軍大尉(當時)富田良二、既に死没
セル同「環状珊瑚島」司令部第一小隊長、大日本帝國
海軍兵曹長(島)健及び不詳者、夫共ニ
「マーシャル諸島」に環状珊瑚島、大日本帝國軍隊
ニ配屬中、又同「マーシャル諸島」に環状珊瑚島、
大日本帝國軍隊ニ勤務中、アメリカ、合衆國及び其、
同盟諸國、屬領ト大日本帝國トガ戦争状態ニ
アリタル昭和十七年十一月五日頃「マーシャル諸島」に
環状珊瑚島ニ、意思的ニ、要領的ニ、違法的ニ、企圖ト
惡意ヲ以テ、正當ト理由モナク、適當ト公判其他然ル
ベキ手續モセズ當時同處ニテ大日本帝國軍隊ノチニ
抑留シ「アリスス」人、武裝セザル非戦闘員、キリスト、
基督教宣教師「オ、マークス」、器具、危險ヲ武器詳細明
ラサザル上記「マークス」ノ身體ニ致命傷ヲ與ヘル事ニ
ヨリコラ被害ニ、又被害セシメタリ、上記ノ如ク致命傷ヲ
與ヒタル上記「マークス」ハ前記ノ「環状珊瑚島」ニテ、昭和
十七年十一月五日頃上記ノ致命傷ノ爲ニ死セリ、右
行為ハ戦争法規並ニ慣習及ビ文明社會ノ道義
ニ違反シタルモノナリ。

"K(4) CERTIFIED TRUE COPY
Exhibit 140524

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, November 21, 1946.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.

Earl J. Crieago, platoon sergeant, U. S. Marine Corps, entered with the accused and reported as provost marshal.

The judge advocate introduced Vivian Kilner, civilian, as reporter.

The accused requested that Lieutenant Commander Donald H. Dickey, U. S. Naval Reserve, Mr. Masanao Toda, and Mr. Yuichiro Akimoto act as his counsel. Lieutenant Commander Dickey, Mr. Toda and Mr. Akimoto took seats as counsel for the accused.

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

The judge advocate did not object to any member.

The accused stated that he did not object to any member.

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

The judge advocate introduced Lieutenant Eugene E. Kerrick, U. S. Naval Reserve, Lieutenant (junior grade) Frederick F. Tremayne, U. S. Naval Reserve, Mr. Frederick A. Savory, and Mr. Shigeo Yamanouchi, as interpreters, and they were duly sworn.

The accused stated that he had received a copy of the charge and specifications preferred against him, both in English and Japanese, on August 29, 1946.

The judge advocate asked the accused if he had any objections to make to the charge and specifications. The accused replied in the affirmative and read a written statement, copy prefixed marked "D".

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered. The commission announced that the objection of the accused to the charge and specifications was not sustained and that the commission found the charge and specifications in due form and technically correct.

The accused stated that he was not ready for trial, requested a postponement of the trial and read a written statement prefixed marked "E".

The judge advocate replied.

The commission was cleared.

The commission was opened. All parties to the trial entered. The commission directed the judge advocate to summon the witness desired by the accused.

The commission announced that it would adjourn to await a reply to the dispatch sent by the judge advocate to Tokyo relative to the availability of the witness requested. In the meantime the commission desired that every possible effort be made to obtain early information as to the status of this witness in order that the progress of this trial will not be unduly delayed.

The accused requested that copies of the precepts of August 2, and August 24, 1946, respectively, and a copy of JAG dispatch 311730Z of August 1946, all of which are referred to in the precept that convened this commission be made available to the counsel for the accused.

The commission directed the judge advocate to supply these requested references to the counsel for the accused.

The commission then, at 10:45 a.m., adjourned to await further information concerning the status and availability of the material witness desired by the accused.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, December 9, 1946.

The Commission met at 9:37 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused and his counsel and the interpreters.

The accused requested Commander Martin E. Carlson, U. S. Naval Reserve, and Mr. Susuki, Saizo act as his counsel in addition to the counsel he has previously selected to represent him. Commander Carlson and Mr. Susuki took seats as counsel for the accused.

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

The judge advocate stated that the witness requested by the accused had been made available to him and is now on Guam. The judge advocate further stated that the copies of the precepts of August 2 and August 24, 1946 and JAG dispatch 311730Z of August 1946 that were requested by the accused have also been furnished him.

The judge advocate read a letter from the attending medical officer to Commander Marianas concerning the illness of a member of the commission, Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, copy appended marked "F".

The judge advocate introduced George Kumai as interpreter. Mr. Kumai was duly sworn.

The accused was asked if he was ready for trial.

Mr. Akimoto, Yuichiro, counsel for the accused, read a written objection in Japanese to the jurisdiction of the commission over the accused, original prefixed marked "G".

An interpreter then read an English translation of the objection of Mr. Akimoto, prefixed marked "H".

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the jurisdiction of the commission over the accused, original prefixed marked "I".

The judge advocate replied and stated as follows:

I must call to the attention of the commission that counsel for the accused have in their allegations concerning the lack of jurisdiction of the commission over the person of the accused failed in each instance to read the last sentence of paragraph three of each of the respective precepts of August 2, August 24, and October 15, 1946. This sentence reads as follows: "Nothing herein limits the jurisdiction of the Military Commission as to persons and offenses which may be otherwise properly established".

If it please the commission it is the contention of the prosecution that the jurisdiction of this case at bar has been "otherwise properly established".

It is to be further noted that in all the cases cited by the counsel for the accused in their able arguments attacking the jurisdiction of this commission to try the accused that there is not a single case cited that involved war crimes or was in violation of the laws of war.

The Convening Authority has fully anticipated the jurisdictional objection that has been raised by the accused. The entire matter was presented to the Judge Advocate General of the Navy. I have in my possession certified true copies of two dispatches; JAG dispatch 311730Z of August 1946 and JAG dispatch 071615Z of November 1946. Since both of these are classified dispatches, I shall dispense with reading them in open court, but I shall present them to the accused and to the commission for proper consideration prior to ruling upon the objection by the accused and to the jurisdiction of this commission. c17

The certified true copies of the two dispatches; JAG dispatch 311730Z of August 1946 and JAG dispatch 071615Z of November 1946, were presented by the judge advocate and to the accused and to the commission.

The accused stated there was no objection to the commission considering these dispatches before ruling upon his objection to the jurisdiction of the commission to try him.

The commission was cleared.

The commission was opened. All parties to the trial entered and the commission announced that the plea to the jurisdiction and objection raised by the accused were not sustained.

The commission then, at 11:26 a.m., took a recess until 2:00 p.m., at which time it reconvened.

Present:

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

The Judge Advocate introduced Robert Oldham, yeoman third class, U. S. Navy, as reporter.

The reporter was duly sworn.

The accused stated that he was ready for trial.

No witnesses not otherwise connected with the trial were present.

The judge advocate read the letter containing the charge and specifications, original prefixed marked "J", in English; then an interpreter read a copy in Japanese, prefixed marked "K".

The accused was arraigned by the judge advocate as follows:

Q. Tomita, Ryoji, lieutenant, Imperial Japanese Navy, you have heard the charge and specifications preferred against you; how say you to the first specification of the charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

Q. To the charge, guilty or not guilty?

A. Not guilty.

The prosecution began.

The judge advocate made an opening statement, copy appended marked "L".

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

That from December 8, 1941 to August 14, 1945 a state of war existed between the Imperial Government of Japan and the Government of the United States of America.

That Mille Atoll, Marshall Islands is part of the territory under the command of the Commander Marianas Area.

The Hague Convention of October 18, 1907 and especially article 23(c): "It is especially forbidden to kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion". Japan ratified and signed this convention.

The Geneva Prisoner of War Convention of July 27, 1929; and especially the following three articles:

Article 2. Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity.

Article 61. No prisoner of war may be sentenced without having opportunity to defend himself.

Article 66. If the death penalty is pronounced against a prisoner of war, a communique setting forth in detail the nature and circumstances of the offense shall be sent as soon as possible to the representative of the protecting power, for transmission to the power in whose armies the prisoner served. The sentence shall not be executed before the expiration period of at least three months after this communique.

It is further requested that judicial notice be taken of the Forword War Department Technical Manual 27-251 in which it states although Japan has not ratified or formally adhered to the Prisoners of War Convention, it has, through the Swiss Government, agreed to apply the provisions thereof to prisoners of war under its control, and also, so far as practicable, to interned civilians.

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The accused objected to the commission taking judicial notice of the Hague Convention of 1907 and the Prisoner of War Convention of 1929 and asked that the judge advocate prove these conventions like any other fact as they are required to do by sections 27 and 309 of Naval Courts and Boards and stated as follows: "This commission is bound by Section 309 to require that the prosecution prove these conventions like any other fact since the accused is basing his defense on a plea to the jurisdiction of this commission to try him, a lieutenant, in the Japanese Navy, for a violation of a law and a custom of war which is set out in these conventions. The authority of this commission to try individuals for violations of these conventions must be established in accordance with Section 405, Naval Courts and Boards, by this plea to the jurisdiction the accused contends that he is not subject to the court's jurisdiction for a trial of an offense in violation of these conventions and laws and customs of war.

The accused also holds that the two victims were not prisoners of war, nor were they unarmed non combatants, but that they were neutrals."

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.
A. My name is John Iman.
2. Q. You are a native of where?
A. I am a native of the Gilbert Islands.
3. Q. What island in the Gilbert Islands is your home?
A. My island in the Gilberts is Maraki Atoll.
4. Q. Are you presently living on Guam?
A. Yes.
5. Q. Where do you live on Guam?
A. I am attending the Naval Medical School at Guam.
6. Q. If you recognize the accused in this case will you please point him out and name him?
A. Yes, I do recognize him. He is sitting behind the lawyers.
7. Q. Do you know his name?
A. I know his name. His name is Tomita. Tomita is the name I knew.
8. Q. Do you know the rank of this man?
A. I am not sure of the rank.
9. Q. Have you ever been on Mille Atoll?
A. Yes, I have.

10. Q. When did you arrive on Mille Atoll?

A. I arrived in 1942, on September 19th.

11. Q. Can you recall approximately when you left Mille Atoll?

A. I left Mille Atoll in 1945, about in June.

12. Q. How did you happen to be on Mille Atoll on September 19th 1942?

A. I was shipwrecked on Mille Atoll with some of my friends.

13. Q. Who was with you at the time you were shipwrecked?

A. There were sixteen people with me, including two Catholic priests.

14. Q. Do you know the names of these two Catholic priests?

A. Yes, I do.

15. Q. Will you please give their names?

A. One of them was Father Louis Durand; the other Father Les^e Marquis. c17

16. Q. Approximately how long had you known Father Durand at the time of the shipwreck?

A. I have known Father Durand for years; because he was my school teacher. Father Marquis was a parish priest on the same island where I went to school.

17. Q. Do you happen to know the nationalities of either or both of these priests?

A. I know that Father Durand came from France. Only when we got to Mille did I find out that Father Marquis came from Switzerland. I used to think of him as a Frenchman before this.

18. Q. How did you happen to find out that Father Marquis was a Swiss national?

A. Father Marquis told me that he was a Swiss. When we were picked up, we came from the Gilberts toward the Marshalls and we met a Japanese warship and we were taken aboard the ship. They asked the two Fathers about their nationality and they asked me at the same time and I told them that both of them were French. When I asked Father Marquis later, he told me that he was not a Frenchman, but he was a Swiss national.

19. Q. You stated that you were shipwrecked on Mille Atoll, approximately how many days had you been at sea when you were shipwrecked?

A. About 19 days.

20. Q. Now, will you tell the commission what happened to you and your associates after you were shipwrecked on Mille Atoll? c18

A. We were shipwrecked on Mille Atoll at one of the native villages and we were taken care of by the natives for the first night after we went ashore. The following morning the Japanese came over and took us down to the concentration camp.

21. Q. Now, do you remember the names of any of your fellow natives who were with you at the time?

A. Yes, I do.

22. Q. Can you name a few of them?

A. Some of them are, Tabae; Aravartu; Tito; Kiata; and Tabauaka; and some others.

23. Q. You have mentioned Tabae. Is that his last or first name or do you know?

A. I should say the last name because we only have one name as is our custom.

24. Q. Do you know whether this man has any first name?

A. I know that he has a Christian name which would be his first name. That is Joseph. clt

25. Q. Would you continue to relate what happened. What took place after you and your fellow natives and the two priests were removed to the concentration camp?

A. We got to the concentration camp in the evening, then we were put in one tent, all of us, and we had a Japanese guard with a gun and bayonet in front of the door. When we wanted to go to the head or something like that, the guard would take us over and bring us back again. The following days we were made to work for the Japanese in the kitchen. The first work we did was digging holes for the big stumps for the breadfruit trees to be planted. We continued to work for them while the two Fathers were not made to work. After we came back from our work, we took what food the Japanese gave us and we went back to eat it in our tent and gave some to the Fathers.

26. Q. At the end of each days work did you always come back to the tent?

A. Yes.

27. Q. At the end of each days work when you returned, were the Fathers always present in the tent?

A. Yes.

28. Q. Insofar as you know were either of these Priests ever allowed out of the tent other than to go to the head?

A. Yes, I remember later on the Japanese didn't guard us and the Fathers could go to the head and come back to the tent again, but they didn't go far outside because they were afraid of the Japanese.

29. Q. Did the Fathers continue to live in the tent with you?

A. Yes, we always lived with them.

30. Q. Approximately how long did you live with the Fathers in this tent if you can recall?

A. As far as I can recall, I think it was around two months.

31. Q. How did it happen that after about two months the Priests did not live in the tent with you?

A. One morning when we were ready to go to work we saw some Japanese with guns outside our tent, about five or six of them outside. From our tent we saw one officer. They all carried guns and I saw two of them had blindfolds. We went to work that morning and when we came back in the afternoon the Fathers were gone.

32. Q. Now, how many Japanese soldiers did you see on this occasion with one officer.

A. I don't remember the exact number, but I think that there were around six.

33. Q. Were all of these soldiers armed?

A. They were.

34. Q. Can you recall whether anyone else besides the two Fathers happened to be in the tent on that day?

A. Yes, there were two of my friends. They stayed with the Fathers there because one of them was sick and the other one had to stay with him to take care of him so they were with the Fathers when we left the tent to go to work that morning.

35. Q. Do you know where either or both of these friends are now?

A. One of them has died already, the one who was sick, and the other is still alive and he is now in the Marshall Islands.

36. Q. Do you recall the name of this man who is still alive and you think is in the Marshall Islands?

A. The name is Aravartu, the one I mentioned before.

37. Q. Can you recall the day that you saw these Japanese soldiers outside this tent?

A. As far as I can remember, I think it was around the first few days of November, I don't remember the exact date.

38. Q. This was November of what year?

A. November of 1942, the same year we arrived in the Marshalls.

39. Q. Now, you testified that these soldiers were accompanied by one officer, do you know the name of this officer who accompanied them?

A. No, I do not know his name.

40. Q. Do you see this officer in this court today?

A. No, I don't see him in the court right now.

41. Q. When you saw these soldiers arrive outside the tent did you continue to watch to see what happened?

A. No, I had to go to work because there was a Japanese forcing us to go ahead and we had to leave there to go to our work.

42. Q. Up until the time the soldiers appeared outside the tent are you certain that the two Fathers were inside the tent?

A. I am certain they were.

43. Q. At anytime after you left the tent that morning did you ever see the Fathers again?

A. No, I haven't seen them since.

44. Q. When you returned to the tent in the evening did you make any inquiry concerning the Priests?

A. I asked those two friends of mine who stayed with the Fathers in the tent and they said that two of the Japs whom we saw outside came in with their guns with bayonets and took the two Fathers away from the tent.

The accused objected to that part of the answer concerning what the witnesses friends had told him as hearsay.

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

The commission then, at 3:10 p.m., took a recess until 3:25 p.m., at which time it reconvened.

Present:

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

45. Q. Now, you have previously identified the accused Tomita, can you recall the first time that you saw this man?

A. As far as I can remember, Tomita and his troops came to the island after the other group of Japs left the island which was about the beginning of November. I don't remember the exact date, in the year 1942.

46. Q. Can you remember exactly when you first saw Tomita on Mille Atoll?

The judge advocate, with the permission of the commission, withdrew the question.

47. Q. Can you remember exactly under what circumstances you first saw Tomita on Mille Atoll?

A. The day that Tomita and his group arrived I saw Tomita himself giving a speech. He was standing on a table in front of the Japanese group. That was the first time I saw him when he gave a speech to this group.

48. Q. You said you do not recall the exact rank of Tomita. Do you recall whether he was an enlisted man or an officer at the time you saw him make this speech?

A. I remember that he was an officer when he gave this speech.

49. Q. Now, at the time you saw Tomita give this speech was this before or after the time when you saw the soldiers in front of the tent?

A. It was before I saw the soldiers outside our tent.

50. Q. Can you recall approximately how long before you saw the soldiers outside your tent you saw him make this speech?

A. As I remember, I think it was the following day after Tomita arrived that I saw these Japanese outside the tent.

51. Q. Then it is correct that the day he arrived is the day you saw him make this speech?

A. That is correct.

52. Q. Approximately how many Japanese did you see around when Tomita made this speech?

A. I don't recall the exact number, but I might say that it was around 2,000. I couldn't remember the exact number.

53. Q. Did you hear any or all of this speech that he made?

A. No, I did not hear because I was a distance away from the place where he made this speech.

54. Q. At the time you saw Tomita make this speech did you know what his official position was, if any?

A. I had learned from some of the Japanese in the group that came that this was called Tomita Unit and that is why I know he was the commanding officer.

The accused objected to this answer on the ground that it was hearsay, and requested that it be stricken from the record.

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

55. Q. Now, was Tomita in the army or the navy?

A. Tomita was in the navy.

Cross-examined by the accused:

56. Q. The witness says that he was shipwrecked when he came to Mille Atoll, but what was the purpose of this trip?

A. We were shipwrecked on Mille as a result of drifting away from our trip. We made a trip from one island to another inside the Gilbert group, but we could not make our destination and we were drifting away. Finally we were shipwrecked on Mille Atoll.

57. Q. When you were shipwrecked you said you were picked up by a Japanese warship, but where were you picked up?

A. We were picked up by a Japanese warship north of the Gilbert Islands. That is what the Japanese aboard the ship told us and we figured we were between the Marshall and Gilbert Islands. c27

58. Q. How far was the place where you were picked up from the place you left?

A. I don't know how far it was because we didn't have anything to tell the distance with. Another reason was that the Japanese didn't tell us how far we were and where we were in the sea. They refused to let us know when we asked them.

59. Q. Since you left the island and until you were picked up by the Japanese warship how many days elapsed between the time? c27

A. Eight days.

60. Q. What happened after you were picked up by the Japanese warship?

A. There were only three of us taken aboard the Japanese warship. That was the two Fathers and myself. We were asked a lot of questions by the Japanese officers. We were blindfolded when we first reached the deck and we were led to a water closet; there they untied our blindfolds and they asked us a lot of questions about where we were drifting to and for what purpose. We told them that we were just on a trip to one of our islands and we happened to be drifting away.

61. Q. What happened then?

A. Our boat was still along side the warship when we were aboard. When the three of us were aboard the warship the rest of them were still in the little boat. After they finished questioning us, we asked them for some food because we were very hungry and they gave us a few biscuits and a jug of water so we ate this. Then Father Durand asked the officers if he could take us back to the Gilberts or anywhere because we were lost and we didn't know where we were in the sea. The Japanese officer refused and told us to go back to our boat. Before we did we asked them again to spare some food for the rest of the people in our little boat and some water because we hadn't eaten for six days. We had food for the first two days, but for six days we didn't have any food or water. The Japanese, when we said this put us into the canoe and said "Go, no water!", that is the last word that they told us.

62. Q. A wrecked ship means that the ship is damaged, doesn't it?

A. Well, concerning the wrecked ship, we went back to our canoe when they sent us from the ship and they just left us in the sea and after eleven more days we got shipwrecked on Mille Atoll in the Marshall Islands.

63. Q. Is the canoe that was picked up by the Japanese warship and the canoe which was wrecked and arrived at Mille the same canoe?

A. That is right, the same canoe.

64. Q. It was a large canoe with sails, wasn't it?

A. Yes.

65. Q. From the place you were shipwrecked to Mille Atoll, how far is the distance?

A. We were shipwrecked right on Mille Atoll. One particular spot of the atoll was the concentration camp of which we were taken from the place we were shipwrecked which was about 15 miles away according to the natives at that place.

66. Q. I recall having heard that the place where you were shipwrecked was somewhere between the Marshall and the Gilbert Islands, is that true?

A. No, that is not true. We were shipwrecked on Mille Atoll.

67. Q. Then you were not shipwrecked when you were picked up by the warship, is that right?

A. No. We were not shipwrecked then because we were in the middle of the sea and we just met the Japanese warship in the middle of the ocean, there was no land to be shipwrecked on.

68. Q. Then, you could have returned from there to the Gilbert Islands couldn't you?

A. No, we could not.

69. Q. Why could you not return?

A. It was because we were exhausted. Furthermore, we didn't know where we were. Even if we did know where we were, in the middle of the sea, we might try to go back to the Gilberts, but we couldn't because the weather was not good. Some days it would be good, some days there would be a storm we could not go back to the Gilberts because we were exhausted.

70. Q. Then the reason for you going to Mille is that you had Mille for your destination?

A. No, that is not right. We had no intention to go anywhere because we didn't know where we were in the sea, but we just happened to be shipwrecked on Mille by accident.

71. Q. Tell me the conditions when you first landed on Mille?

A. We landed on Mille. We were shipwrecked on Mille in the morning and it was raining and some of the natives came around the side of the reef from their village. Then one of them swam out and towed our little boat. He took the canoe, with us, through the little channel. Then we went ashore and we were well taken care of by the natives. We were given food by the natives and dry clothes until the Japanese came the following day.

72. Q. What happened to the canoe after that?

A. The Japs took the canoe with them to the concentration camp and they made use of it.

73. Q. Then the canoe was not damaged, was it?

A. No, the canoe was not damaged.

74. Q. The judge advocate was questioning you about the time between when Tomita made his speech before his men and the time when the soldiers came in front of your tent. What did the soldiers come for?

A. We did not know the reason for their being there; just that we suspected they might do something to the Fathers. We suspected that they might be going to kill the Fathers, that is what we had in mind because of these two blindfolds and the two Fathers and we just had the suspicion.

75. Q. Then did the two Priests disappear on that day?

A. They did.

76. Q. Then I would like to ask again, was that day the day before Tomita gave his speech?

A. It was not before, it was after.

77. Q. You told the judge advocate that Tomita made his speech on the day of his arrival is that true?

A. That is true.

78. Q. When you went out to work what arrangements were made for your ^{noon} lunch? ext

A. We had the usual arrangements. We carried out food to our tents from the kitchen. ext

79. Q. Then you came back and had lunch, is that right?

A. That is right.

80. Q. You testified for the judge advocate that when you left in the morning to go out to work that the two Priests were there, but when you came back for supper you said that the two Priests were not there. Should you have known that when you came back for noon that ~~if~~ the two Priests were there or not? Shouldn't you have recognized the fact then? ext

A. I did not say for the evening meal. We came back for our meal and we found out that the Priests were gone already and that is;... I meant that when we came back to eat our meal after we worked and we got our food and came back to the tent that is when we found out the Priests were gone.

81. Q. Then you know that the Priests were gone when you came back for your noon lunch, is that right?

A. That is right.

82. Q. To what country do you owe allegiance? Of what country are you a citizen?

A. I am only a native of the Gilbert Islands and I am a British subject.

83. Q. What island did you live on in the Gilberts before you started on this boat trip? 627

A. I was attending the missionary school on Abaiang Atoll in the Gilbert group.

84. Q. Is this island under the control of the British?

A. Yes, it is.

85. Q. The missionaries that taught at this school, were they British subjects?

A. As far as I know, they were not British subjects.

86. Q. What country were they subjects of?

A. Father Durand was a Frenchman, while Father Marquis was a Swiss, as I found out when we got shipwrecked.

87. Q. Were both these priests at the missionary school?

A. Not both of them. Father Durand was a teacher, he was teaching at the school while Father Marquis was only a parish priest on the island.

88. Q. How many students were in the school?

A. The student number was around, I can't recall exactly because it has been a long time. I think it was not more than 30.

89. Q. How many people were in the parish?

A. About a thousand.

90. Q. Are these people at the parish and at the school all British subjects?

A. They were all natives and, of course, they were British subjects, but the parish was not part of the school.

91. Q. These two priests, were these the only white people in the Gilberts?

A. No, they were not the only two white men in the Gilbert Islands. There were many English subjects and many French Priests, as well as Swiss and Nuns and Brothers.

92. Q. To what order of priests did Father Durand and Father Leo Marquis belong?

A. Both Father Durand and Father Marquis belong to the Sacred Heart Mission.

93. Q. How did you know that they were both French subjects?

A. I didn't say that they were both French subjects. I know that Father Durand was a French subject because he came from France and he spoke French. In the first place he always told us about France and his home, and his family back in France.

94. Q. When did he first come to the Gilberts?

A. He came to the Gilberts quite a long time ago. I don't remember exactly, but I think it was around 1936 or 1935. I am not sure.

95. Q. When did Father Marquis come to the Gilberts? 627

A. I do not know when he came because he was a parish priest on one of the islands in the Gilberts where I have never been before. I know he has been in the Gilberts longer than Father Durand had been in the Gilberts.

96. Q. You testified there were about 2,000 people that had heard this speech of Lieutenant Tomita's. Was this the entire garrison unit?

A. I do not know whether the entire garrison had met and heard it or not. I thought it was.

97. Q. Was the Japanese garrison at Mille soldiers or sailors?

A. They were sailors.

98. Q. They were sailors?

A. I mean they were Japanese sailors. They used to call them "kaigun no heitai" in Japanese and we used to interpret that as "sailors".

99. Q. Were there any other sailors except the Tomita unit on Mille?

A. There was an army garrison there, but I don't know when it came to the island. I am not sure of the time the garrison came whether they came before Tomita or after.

100. Q. Was Tomita the only officer on Mille?

A. No, there were many officers besides Tomita.

101. Q. Were there other units on Mille besides the Tomita unit?

A. I do not think so except that army unit I said.

102. Q. These six soldiers that you testified about being in front of your tent, were they part of the Tomita unit?

A. They were.

103. Q. How do you know that?

A. I know that because the place where we were was the headquarters of the unit.

104. Q. What was Tomita's rank?

A. I do not know his rank. I couldn't tell Japanese rank at that time.

105. Q. You testified that he was the highest ranking officer on Mille. How did you know that then?

A. I say that because he was the first one to give a speech and because of his name being used for a name of the garrison. "Tomita Unit", that is what I meant by the highest ranking officer in the garrison.

106. Q. Who was there before Tomita?

A. There was another garrison before Tomita came, but I do not know the name of the garrison because we weren't with them for a long time, only two months.

107. Q. You were with them two months, but you were only with Tomita two days, when this happened. How is it that you knew his name?

A. I never asked the name of the Japanese of the first unit because of the lack of knowledge I had of Japanese, that is one reason. The reason for my knowing the name of the Tomita Unit, is because all the sailors on the island kept talking about the unit that was going to relieve them and they always talked about the Tomita Unit. That is how I learned the name of the Tomita Unit.

108. Q. When did the other garrison leave?

A. I don't know the date when they left, but they left the beginning of November, somewhere around there. It may be the fourth or the third, I am not sure.

109. Q. How soon after the Tomita Unit arrived did the old garrison leave, how many days?

A. I think they left about the same day he arrived, on exactly the same ship. I think they left the same day Tomita arrived.

110. Q. How many were in the old garrison?

A. That I never knew how many were there.

111. Q. How many were in the Tomita Unit?

A. I estimated from looking at the group that there was quite a big group. I thought it was somewhere around 2,000 or something like that.

112. Q. Did you think that the new unit came off the ship and that the old unit boarded the same ship on the same day?

A. That is what I think.

113. Q. When you noticed that these Priests disappeared, was this on the same day also?

A. They didn't disappear on the same day.

114. Q. Before the Tomita Unit came aboard?

A. It was after the Tomita Unit came to the island.

115. Q. How many days after the Tomita Unit came?

A. It was not very long, I think it was about the following day when they disappeared.

116. Q. Could it have been the day before?

A. It couldn't have been.

117. Q. When you first came to the island you said you were put into a tent. Where was this tent situated?

A. The tent was situated right by the headquarters post.

118. Q. How far was it from headquarters?

A. It was about five or six yards from where they had their office.

119. Q. What kind of a tent was it?

A. Just like an American tent. I mean the material was red tarpaulin. That is what it was made of.

120. Q. Could you see the inside from outside?

A. Yes. You could see the inside if you looked through the front entrance. *clt*

121. Q. How long were you confined in the tent?

A. It was more than a week we had a guard every day and night; then they discontinued that activity. *clt*

122. Q. They, you and the priests, were free to go about where you wanted to? *clt*

A. We were free to go to the head and the same for the Priests. They were free to go outside of the headquarters. I think that is all they were allowed to go. We were more free than the Priests and we could go and rest sometimes if we felt like it.

123. Q. In answer to the judge advocates' questions you said that there were about five or six soldiers with one officer and you said that they had blindfolds. What kind of a blindfold did they have? *clt*

A. They were just pieces of white cloth.

124. Q. How many soldiers had these white pieces of cloth?

A. Two.

125. Q. Where did they have them?

A. They had the blindfolds right among the group I mentioned, five or six.

126. Q. Where did the soldiers carry these blindfolds?

A. While I was looking, they still had them in their hands, but I didn't see where they took them to because I had to leave for my work and I didn't see what happened.

127. Q. Was this white piece of cloth some sort of a towel?

A. I couldn't tell what kind of material it was because I was just peeping out of my tent window and I couldn't tell the material.

128. Q. Then how can you tell that these white cloths were for blindfolds?

A. First, with the two blindfolds they put them on two of the Japanese soldiers, that is two of the six men. They put the two cloths around their eyes. I don't know why they did it, but they did.

129. Q. You replied to the judge advocate's question that the time when you came back to the tent after your work, your two friends told you that these two Priests were taken away. Did your friends tell you about the happenings in a more detailed way?

A. They told me that two of those men outside came in the tent with both of them carrying guns and bayonets fixed in front of their rifles and they pointed to the Fathers and told them to go out with them. There was a truck in the road waiting for the Fathers and then they led the two Fathers in front of them and made them get on the truck. That was all that they told us and then they drove them away from there and they could not see them any more.

130. Q. Did your friends tell you about the reason why these two Priests were taken away by the Japanese?

A. They did not know the reason when I asked them, but they said, "Maybe the Fathers will be killed". That is what they told us.

131. Q. Do you know if the Tomita Unit relieved the old unit?

A. Yes.

132. Q. Was this disappearance of the two Priests, before or after Tomita relieved the old unit?

A. It was after.

Re-examined by the judge advocate:

133. Q. The five or six men that you saw in front of the tent, from what unit were they?

A. They were part of the garrison that was left in the headquarters. They were some of the unit that were in the garrison according to the soldiers. I mean some Japanese relieved the other group because they had about three or four divisions they distributed their people to.

134. Q. Were they navy or army personnel?

A. They were navy personnel.

Recross-examined by the accused:

135. Q. They were not a part of the old garrison?

A. They were part of the new garrison.

136. Q. Did you see any officers in the headquarters that morning when the soldiers were there?

A. I saw only one officer with those men outside. There was only one officer with them and they were lined up.

137. Q. Was he an officer of the old garrison?

A. No. He was an officer of the new garrison.

138. Q. Are you sure that he came with Tomita?

A. I am sure that he came with Tomita.

139. Q. Was Tomita at the headquarters when you saw him?

A. I don't know where he was, but I only saw one officer outside.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 4:50 p.m., adjourned until 9:00 Tuesday, December 10, 1946.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, December 10, 1946.

The commission met at 9:12 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical officer to Commander Marianas concerning the illness of Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, member of the commission, copy appended marked "M".

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. What is your name?
A. My name is Joseph Tabae.
2. Q. And you are a native^{of} where?
A. Gilbertese native.
3. Q. What is your home island in the Gilberts?
A. My home is Maraki Atoll.
4. Q. Have you ever been on Mille Atoll?
A. Yes.
5. Q. How did you happen to get on Mille Atoll?
A. We drifted from the Gilbert Islands. We were going to this island and the wind was very hard.
6. Q. You have testified you have been on Mille. Do you recall when you first went to Mille?
A. I arrived on Mille on the 19th of September.
7. Q. That was the 19th of September in what year?
A. 1942.

8. Q. Was anyone with you when you arrived at Mille Atoll on the 19th of September 1942?

A. Some other native boys and two Priests.

9. Q. Do you recall the names of the two Priests who were with you when you arrived?

A. A French Priest and the other was Swiss.

10. Q. Do you know the name of the Priest who was a Frenchman?

A. The name of the French Priest was Father Durand.

11. Q. Do you know the name of the Priest who was a native of Switzerland?

A. The Swiss Priest's name was Father Marquis.

12. Q. Do you recall the name of any other native boys who were with you at that time?

A. John Iman, Kaita, Noi, Toboka, Ataneporo and some others.

13. Q. How did this group consisting of yourself, the two Priests, and these natives including John Iman, happen to get to Mille Atoll?

The witness did not understand the question and the judge advocate, with the permission of the commission, reworded the question.

14. Q. You have testified that on the 19th of September 1942 you arrived on Mille. Where had you been before that?

A. The first time we arrived at the native village.

15. Q. By what means did you come to Mille?

A. We do not like to go to Mille. We got lost and drifted to Mille.

16. Q. By what means did you come to Mille Atoll?

The judge advocate with the permission of the commission reworded the question.

17. Q. Did you come to Mille in a boat?

A. Oh! Yes, we came in a canoe.

18. Q. Was this group of people you mentioned in the same canoe with you?

A. Not the same.

19. Q. Was John Iman and the two Fathers in the same canoe with you?

A. Yes, in the same canoe.

20. Q. When you got to Mille what happened to you?

A. We arrived on Mille one day among the natives and then the Japanese Navy came and took us boys to the Jap headquarters.

21. Q. Did the Japanese take all the persons who were in the canoe with you to the headquarters?

A. Yes, all of them.

22. What did you do at the headquarters?

A. We helped the Japs get fire wood.

23. Q. While you were at the headquarters and worked for the Japanese do you know whether the two Priests worked for the Japanese also?
A. No sir, only the natives. The Priests did not work.

24. Q. Did you live in the same place at the headquarters that the two Priests lived?
A. Yes, the same place.

25. Q. How long did you live at the headquarters?
A. I do not remember that.

26. Q. Did the Fathers live there at the headquarters as long as you did?
A. Yes.

27. Q. When you were living at the headquarters did you see the Fathers every day?
A. Yes, I did.

28. Q. Do you know how long the Fathers lived at the headquarters?
A. I do not remember that.

29. Q. Did the Fathers get to live there as long as you did?
A. Yes.

30. Q. One day did the Fathers disappear from the headquarters?

The accused objected to this question on the ground that it was a leading question.

The judge advocate, with the permission of the commission, withdrew the question.

31. Q. Joseph, will you tell just what happened to the Fathers at the headquarters?
A. One day we left the Priests for work and when we came back from work we cannot see the Priests.

32. Q. Did you ever see the Fathers alive after they disappeared on this day?
A. I did not see them again alive.

33. Q. Do you recall approximately when it was that these Fathers disappeared on this day?
A. I think it was about the 5th of November.

34. Q. This was the 5th of November of what year?
A. 1942.

35. Q. After they disappeared, tell me what happened, insofar as you know, to the Fathers?
A. At the time the Priests disappeared and after seven days after the execution I saw the bodies of the two Priests.

36. Q. How did you happen to see the bodies of the two Priests?
A. One of the Japs came and took myself and some other fellows to bury the bodies.

37. Q. Did you and your group of friends bury the bodies of the two Priests?
A. Yes.

38. Q. When you buried the bodies did the bodies have any clothes on them?
A. There were no clothes on the bodies.

39. Q. Will you tell what the bodies looked like when you saw them?
A. I saw them on the beach. I saw a hole in the hearts. I think from bayonets.

40. Q. Did you see that each of the two Priests had a hole in his heart?
A. Yes, I saw ^{on} each body.

41. Q. Now, Tabae, when did you first know Father Durand?
A. I know Father Durand because he is bigger than Father Marquis.

42. Q. How long had you known Father Durand?
A. He was my teacher in school in the Gilbert Islands for two years.

43. Q. Where did Father Durand teach you in the school?
A. On Abaiang Atoll in the Gilbert Islands.

44. Q. How long had you gone to that school as a pupil of Father Durand?
A. Two years.

45. Q. How long had you known Father Marquis?
A. I remember Father Marquis one year.

46. Q. Was Father Marquis connected with the school?
A. Father Marquis is a Priest for the parish at Abaiang Atoll.

47. Q. Are you absolutely certain that the two bodies you said you saw with the holes in the hearts are the bodies of Father Durand and Father Marquis?
A. Yes.

48. Q. On the day you went to bury these bodies did they look like they had just been killed?
A. I think after the time they disappeared they were soon killed.

49. Q. What makes you think these bodies were not killed on the day you buried them?
A. I do not remember.

50. Q. In what condition were the bodies when you saw them the day you buried them?
A. We buried them on the beach.

51. Q. What was the condition of the bodies as you looked at them?
A. The bodies had swelled.

52. Q. Tabae, I want you to look at the accused in this case and tell me if you recognize him.
A. I saw Tomita many times and make a speech to the group of Jap Navy.

The accused was asked to stand and then resumed his seat.

53. Q. Then, is this the man you said you heard make a speech to the Japanese Naval Unit on Mille?

A.. Yes.

54. Q. What is his name?

A. Tomita.

55. Q. How long did you get to stay on Mille Atoll?

A. I think nearly four years on Mille Atoll.

56. Q. Did you leave Mille Atoll before the war was over?

A. During the war, I came on Mille and I was among the Jap group when the war was finished.

57. Q. It is correct then you stayed on Mille Atoll until the war was over?

A. Yes.

58. Q. Did you ever see the man Tomita on Mille Atoll?

A. Yes, I saw him.

59. Q. Can you recall the first time you saw him on Mille Atoll?

A. The first time I see Tomita he speak to the Japanese group and Tomita is standing on the top of a table to speak to his group.

60. Q. Do you recall whether the day you heard him make the speech was before or after you buried the bodies?

A. It was before I buried the bodies. c/f

61. Q. When the Japanese came to get you to bury these bodies, did they tell you whose bodies they were?

A. They did not tell us.

62. Q. Did you know what bodies you were going to bury before you saw them?

A. I do not know.

The commission, then at 9:50 a.m., took a recess until 10:15 a.m., at which time it reconvened.

Present:

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

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the accused:

63. Q. Before you reached Mille did you meet a Japanese warship?

A. Yes.

64. Q. Where was this when you met the Japanese warship?

A. I do not remember that.

65. Q. Did you try to get back to the Gilberts then?

A. Yes, we want to go back to the Gilberts, but we can't tell the commanding officer at that time because we cannot speak Japanese. *ex*

66. Q. Everybody was well acquainted with the running of the canoe?

A. No.

67. Q. How did you get shipwrecked?

A. I do not know that.

68. Q. After you met the Japanese warship, did you try to go back home?

A. I do not know that because I am staying in the canoe. Only John and the two Priests they took into the ship.

69. Q. Where were you at that time?

A. In the canoe.

70. Q. Did you try to get back after you met the Japanese warship?

A. Yes. We asked the way of the warship and John went on the Jap ship and it is not good on the Jap ship and the Jap ship sent him back to the canoe and we trip again.

71. Q. The question I want you to answer is did you try to go back after this?

A. I do not know that.

72. Q. Do you say that John and the two priests know that, but you did not know?

A. I do not remember.

73. Q. How did you come to Mille?

A. We tripped in the Gilbert Islands from Abaiang to ~~Marake~~^{Marake} but we do not go to ~~Marake~~^{Marake} Atoll because the wind is very strong and the waves very high and the wind to the northwest, and then we arrived on Mille Atoll. *ex*

74. Q. I want to ask you how did you come to Mille after you met the Japanese warship?

A. We do not like to go to Mille. The first time we think it is the Gilbert Islands and then we arrive. Some natives come to us and talked not the same language and we ask them what is this island and then they say this island is Mille Atoll in the Marshall Islands.

75. Q. The canoe you came in, was it still useable? Could it still sail? *ex*

A. Yes.

76. Q. Sometimes they still used the sail?

A. Yes.

77. Q. Was there a sail on that canoe?

A. Yes.

78. Q. Then you could have gone back to the Gilberts in that canoe if you wanted to?

A. We cannot go because we do not know the course.

79. Q. If you tried to maybe you could have?

A. I cannot answer that.

80. Q. If the Japanese force said you could go back to the Gilberts then you could have gone back?

A. They did not say.

81. Q. If they said?

A. I do not know.

82. Q. I would like to ask you about the Priests. You said on November 5th they disappeared. What were you doing on that day?

A. We gone work with the Japanese.

83. Q. What kind of work?

A. Cut fire wood.

84. Q. What time do you go to work?

A. I think it was from eight o'clock until eleven-thirty.

85. Q. During that time the Priests were still there on that day?

A. The Priests disappeared.

86. Q. Before you went to work were the Priests there?

A. We left the Priests in our tent.

87. Q. On that day were you in your tent for noon-day lunch?

A. In our tent.

88. Q. You came home and ate?

A. Yes.

89. Q. When you came back to eat were the Priests still there?

A. No, they disappeared.

90. Q. From that day what were you doing for one week following the day the Priests disappeared. *CTF*

A. We work by the Japanese and get wood.

91. Q. The Japanese were soldiers?

A. Yes.

92. Q. One week after this day what kind of a person came to you?

A. A Deck Petty Officer.

93. Q. What did he say?

A. He came and caught myself and some other boys. The first time we came with him we know when we came on the body we know to bury the body.

94. Q. What did the Petty Officer say to you? *CTF*

A. He said, "Come on, let's go to work." That is all.

95. Q. What was he holding in his hand?

A. Nothing. He was one of the Japanese and he came and took us. We have a shovel.

96. Q. Did you carry anything with you?

A. We carried shovels.

97. Q. Who went with you other than yourself?

A. Myself, Kaita, Weiss and Popolke.

98. Q. Did they all come with you in the canoe?

A. Yes.

99. Q. What are these persons doing now?

A. One died. The other boys are in the Gilbert Islands now.

100. Q. They are at home in the Gilberts?

A. Yes.

101. Q. Who was the man that died?

A. Kaita.

102. Q. How was the weather on that day?

A. I do not remember that.

103. Q. Was it raining or was the sun shining?

A. I do not remember because it is a long time ago.

104. Q. Do you know the exact place where you and the other men and this petty officer went to?

A. We go to the place where the bodies were.

105. Q. Where was this body? What kind of a place was it?

A. On the side of a lagoon.

106. Q. Could you make a picture of it right now?

A. I could not.

107. Q. Do you remember any particular thing at that spot?

A. Yes, when I see it. I know the place where the body was buried. I know that place when I see it.

108. Q. Could you describe that place?

A. It is on the beach.

109. Q. Is that all you remember - the beach and the sand?

A. I remember when I see it again.

110. Q. You cannot describe the place on the beach?

A. Yes.

111. Q. Explain to me when you first saw the dead bodies, what condition were they in?

A. That time when I saw the body, I saw the hole in the heart, like from a bayonet.

112. Q. I would like to get an answer to what I asked. In what condition was the body laid on the beach?

A. The body is on the rock, like this, and the body is over the rock.

113. Q. Was there water at this place?
A. No.

114. Q. Could you give the position of the two bodies?
A. Close together.

115. Q. How far from the water?
A. Not very far. At that time the tide was low and when the tide comes up I think the water can come to the body.

116. Q. When the tide come up then you think the body will be in the water?
A. Yes, I think so.

117. Q. What was on the body?
A. Nothing on the body, no clothes, just the body.

118. Q. When you say nothing, that means he did not have any coat on?
A. No, no coat, no pants.

119. Q. Then you could see the whole naked body?
A. I saw the whole body of the Priest. Saw the whole skin. c17

120. Q. You have stated that there was a hole in the breast. Was there any other cuts or holes on the body?
A. I saw the big hole in the heart and I think that crabs had been biting the arms.

121. Q. In what position was the body lying on the beach?
A. I do not remember. We saw the body when we came to the place where we bury them and we roll the body inside.

122. Q. When you first went there did you see it right away?
A. Yes, the first time.

123. Q. When you first saw them what position was the body in?
A. I do not remember that. c17

124. Q. When did you see the hole in the chest?
A. When we were lowering it.

125. Q. Then there were no other cuts or holes?
A. Just only one.

126. Q. Other than the hole in the breast did you see any particular change in the body?
A. I saw the crab bites.

127. Q. The body was not rotten?
A. No, it was swelled.

128. Q. That is all?
A. Yes.

129. Q. In the tropic countries where it is hot and near the water and there is no decay in the body, for one week isn't the stink plenty?
A. It did not stink too bad. I think when the body was killed the body was put into the water and the wave threw them up on the beach.

130. Q. Then you think the bodies were put into the water and the waves washed them up?

A. Yes.

131. Q. Did it look that way to you?

A. Yes.

132. Q. The rock was high or low where the body was?

A. Very high. With the tide up it can go on the rock.

133. Q. How far apart were the bodies?

A. Not too far - 15 feet.

134. Q. Both of the bodies were on the rock?

A. One was on the beach.

135. Q. Were both of the bodies in the same condition?

A. Yes.

136. Q. Did you know right away when you saw the bodies that one was Father Burand's body and the other was Father Marquis' body?

A. Yes.

137. Q. A dead body is in the water one week, it is usually rotten, but it was not rotten when you saw it?

A. It is not spoiled. There is not a very bad stink. We can work on it.

138. Q. How did you bury the body?

A. We bury in the same position we saw them. We dig the hole with the shovels and put the body inside.

139. Q. How deep was the hole?

A. I think one yard, three feet.

140. Q. Was this hole back from the beach?

A. No, it was on the beach.

141. Q. Is there some way you could identify the place, like a tree?

A. Yes, I know the place when I see it.

142. Q. Can you remember some kind of a tree or bush near the grave?

A. I remember when I see the rock.

143. Q. Then if you go there now you know where the grave is?

A. Yes.

144. Q. Could you get the body?

A. The time I went again with the American soldiers we go to find the body but we can not find it. I think the wave took it out in the ocean.

145. Q. Did you look for it?

A. Yes, I look, but we can not get it.

146. Q. Did you bring the Americans over there yourself?

A. Yes, I and some other boys buried the bodies.

147. Q. Who was the American who came with you to find the bodies?

A. I do not remember his name.

148. Q. Was he a soldier or a sailor?

A. A soldier.

149. Q. Do you know his rank?

A. I do not remember.

150. Q. How many persons came this time?

A. I think it is a hundred.

151. Q. When did they come?

A. I do not remember.

152. Q. About what time?

A. When the war finished. A few months after the war the American soldiers came and took us and some other fellows and we go back to find the body.

153. Q. How many persons went to find the body?

A. I do not remember, but the time we go to find the body of the priests, the American soldiers came. The American airplane come to Mille and fall down and kill the people by the beach and the American wants to get the bodies of the Americans. A Korean took them to the beach where they buried the Americans and some others came with me to find the body of the priests.

154. Q. This American force, was it Army or Navy?

A. I do not know.

155. Q. How did the Americans know about these priests' bodies?

A. They know ^{as} cause they ask me for the news and because of John Iman. He got to the Americans and told them what happened to the priests and to the Gilbertese boys who were among the Japs. c17

156. Q. Can you give the date when the Americans came?

A. I do not remember.

157. Q. What year?

A. When the war was over.

158. Q. What month?

A. I forget. I do not remember the month or the day.

159. Q. These atolls that you were living on and going to school, who governed them? c17

A. There is a native governor, the British government.

160. Q. Were you living on one of these islands before you came to Guam?

A. Yes. In the Gilberts, on Abaiang and Tarawa.

161. Q. Which one did you come from when you came to Guam?

A. Tarawa Atoll. I was in school on Abaiang, but one of the Americans, the commanding officer in the Gilbert Islands, he took me out of the school and took me to Tarawa to get transportation here.

162. Q. How far is it from your island, Maraki to the Mille Atoll?
A. I do not know how far, but in the plane it is about two hours to Mille.

163. Q. In the boat you went to Mille in, how long did it take you?
A. Nineteen days.

164. Q. How long had Father Durand lived in the Gilbert Islands?
A. I was with Father Durand two years in school.

165. Q. Had he been in the Gilbert Islands longer than that?
A. Father Durand came in the Gilbert Islands before I went to school.

166. Q. Did he ever say to you how long he had been in the Gilbert Islands?
A. I do not remember.

167. Q. Did he ever say to you that he belonged to the French government?
A. No. Father Durand is a French national. It is not government.

168. Q. If he came from France, did he belong to the French government or to the English?
A. I do not know about that.

169. Q. He never told you?
A. No.

170. Q. Did he ever live in England?
A. Yes, he can speak English.

171. Q. But did he ever live in England?
A. I do not know.

172. Q. Father Marquis, where did he come from?
A. He came from Switzerland.

173. Q. Did he tell you that?
A. He did not tell me, but I know it from somebody that told me.

174. Q. Did he speak English?
A. I do not know about Father Marquis. Father Durand can speak English, but Father Marquis I do not remember.

175. Q. Did he speak French?
A. Oh yes, all the Switzerland people speak French.

176. Q. When they set out in their boat trip with you what kind of clothes were they wearing?
A. They were wearing the uniform of the Priest, long clothes.

177. Q. Long robes?
A. Long white cloak.

178. Q. To what order of Priests did they belong?
A. I do not remember.

179. Q. Were you going to the Priests' school?
A. Yes, at that time I had been in school.

180. Q. But you do not remember what order the school was?
A. The school is the Catholic school with the Roman teaching.

181. Q. When the Priests went out on the boat with you did they carry their crosses?
A. Yes. They both brought their rosaries at that time.

182. Q. When they arrived at Mille did they have all their clothes they started out with?
A. Yes.

183. Q. And they had their rosaries?
A. Yes.

184. Q. The time they lived in the tent did they still keep their own clothes and rosaries?
A. Yes.

185. Q. You said one day the Priests disappeared. Did you see anyone take them away?
A. I do not see the person come and take the Priests.

186. Q. Did a ship come to Mille while you were there?
A. I do not remember.

187. Q. How many days after the Priests disappeared did they come and get you to bury the bodies?
A. About seven days.

188. Q. When you saw the bodies did they have the rosaries on them?
A. No, only just the body; skin, no clothes on the body.

189. Q. Ordinarily when they bury bodies are they buried with rosaries on them?
A. No, I do not see.

190. Q. When you bury other bodies do you bury them with rosaries on them?
A. No.

191. Q. If you bury a native do you bury a rosary on him?
A. No. If the native die, we hire some other fellow, make hole, and put inside.

192. Q. No rosary?
A. No.

193. Q. Did you mark the graves where you buried the Priests?
A. No.

194. Q. What do you think happened to the bodies?
A. I think killed by bayonets.

195. Q. What happened to the bodies that you couldn't find them when you went back with the Americans?
A. I think the tide came in and took out the sand ~~the~~ that the bodies were buried in and the sand take out the bodies with it. When we came back the beach is very steep. The beach used to be sloping.

196. Q. Did any Japanese ever tell you that they were the bodies of the two Priests?

A. Some of the Japanese told us, but we do not believe. When he said your Priest was killed we do not believe.

197. Q. How did they say they were killed?

A. He said they were spies. One of the Japanese told us the Fathers were killed because they were like spies.

198. Q. How many military Japanese were on Mille?

A. I do not think so, but I remember about 2,000.

199. Q. How many officers?

A. Many officers, but I did not count them.

200. Q. You do not know how many officers?

A. I do not remember.

The witness was duly warned.

The commission then, at 11:34 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present:

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

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

201. Q. These bodies that you were asked to bury and you did bury, were they different than any other bodies? How did you identify them as the bodies of these two Priests?

A. I don't know about this.

202. Q. How were you sure that they were the bodies of the two Priests?

A. I know the bodies because they were not broken.

203. Q. You buried two bodies and you testified that you thought they were the bodies of the Priests. What made you think that they were the bodies of the Priests?

A. I don't know how to explain this.

204. Q. Were there any marks of identification on the bodies of Father Durand and Father Marquis that you could identify?

A. I know the bodies of Father Durand and Father Marquis. Only the bodies were swelled. When we saw the bodies we knew Father Durand and the other was Father Marquis.

205. Q. Did you ever ask any of the Japanese what happened to the two Priests?

A. When the Japanese say, "Do you know these bodies?" and we say, "Ah Yeah! We recognize them as the bodies of the Priests." One of the Japanese, a deck petty officer, asked us, "Do you know these bodies?" and we say, "Ah Yeah! We know these bodies is the bodies of the two Priests", and then the Japanese don't answer. c/f

206. Q. Explain under what circumstances the Japanese asked you these questions; when and where?

A. I can not answer it.

207. Q. Where were you at the time and when was it?

A. When we came on the bodies.

208. Q. Did you discover the bodies?

A. No, the Japanese directed us to the bodies.

209. Q. Where were the bodies when you first saw them, were they in the water?

A. No, on the beach, they laid down on the beach. c/f

210. Q. Had they been washed ashore?

A. I think the tide had come in and brought the bodies to the beach.

211. Q. What were you doing on the beach at that time?

A. We came to the beach because the Japanese directed us to the beach.

212. Q. Did the Japanese know that the bodies were there before they brought you down to the beach? c/f

A. Yes, I think so, I think the Japanese knew before.

213. Q. Why did you think so?

A. Because that Japanese came, took myself and somebody else and we buried the Priests. At first I don't know what kind of work we do. We know when they shout and give us the shovel and go to the Priests bodies. So these bodies, we buried them. c/f

214. Q. How long after the Priests disappeared did this happen?

A. Seven days after the execution.

215. Q. You say "execution", but you didn't see these Priests executed?

A. Seven days after the Priests disappeared.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The judge advocate was called as a witness for the prosecution and he was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Edward L. Field, lieutenant, United States Naval Reserve.

2. Q. Are you a judge advocate of this military commission?

A. Yes, I am one of the judge advocates of this military commission.

3. Q. If you recognize the accused state as whom?

A. The accused in this case is Lieutenant Tomita Ryoji, Imperial Japanese Navy.

4. Q. Are you the legal custodian of a document you desire to offer into evidence?

A. Yes, I have in my possession an original document that I desire to offer into evidence.

5. Q. Does it pertain to matters concerned in this trial?

A. It does.

6. Q. Will you explain to the commission how this document came into your possession?

A. In December of 1945, I was stationed at Kwajalein, Marshall Islands, with duties in connection with war crimes. The accused, Lieutenant Tomita, was at that time confined in the war crimes stockade at Kwajalein. On the morning of December 28, 1945, a conversation took place in the office of Commander George Murphy, United States Naval Reserve, who was at that time the Director of War Crimes in the Marshall Gilberts Area. I was present along with Lieutenant (junior grade) Fredrick Madrigan. We were working on another war crimes case and at that time, since the Tomita case did not involve Americans, little or nothing had been done in the development of the facts. I myself did not know the facts of this case at that time. Since Lieutenant Madrigan and I were going to be at the stockade in the afternoon of that day interrogating some other witnesses, it was decided that we ask Lieutenant Tomita to write a statement. In the company of Lieutenant Madrigan we went to the stockade that afternoon and proceeded to interrogate certain witnesses in whom we were interested. During the process of this investigation Lieutenant Madrigan stated that he would call out Lieutenant Tomita and ask him to write a statement. He had jotted down in my presence several points he would ask Lieutenant Tomita. Leaving me, he went to the entrance of the stockade and had Lieutenant Tomita brought outside. This was approximately fifty yards from where I was then located in a tent and I could not see any of the transactions that took place. Since we only had one qualified interpreter with us, and at the moment I was using him, we decided to use a Japanese national who himself was confined in the stockade, named Akamatu. Lieutenant Madrigan told me that he told the interpreter to inform Tomita the gist of the points he would like to know about and the interpreter so instructed Tomita. In approximately 45 minutes Lieutenant Madrigan returned to the tent in which I was working, and in response to my question as to what information he had obtained he told me he didn't know as yet since the statement which he was then holding was written in Japanese by Tomita and it had not been translated. It was not until several days later that a translation was made of this original Japanese statement.

7. Q. Were you present at any time during the time Lieutenant Madrigan was with Lieutenant Tomita?

A. No, I was not.

8. Q. Do you know the present whereabouts of Lieutenant Madrigan?

A. He has been discharged from the military service and is now in the United States.

9. Q. Do you know the present whereabouts of the Japanese who served as an interpreter, named Akamatu?

A. He has been returned to Japan.

The original statement in Japanese of the accused, Lieutenant Tomita, Ryoji, Imperial Japanese Navy, and an English translation thereof, were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the admission of this document in evidence as follows:

Mr. Suzuki, Saizo, a counsel for the accused, read a written objection, appended marked "N".

An interpreter read the English translation of Mr. Suzuki's objection, copy appended marked "O".

Commander Martin E. Carlson, United States Naval Reserve, a counsel for the accused, further objected to the admission of this document and read a written statement, copy appended marked "P".

The judge advocate replied.

The commission was cleared.

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

The judge advocate resumed his status as a witness.

Examined by the commission:

10. Q. Before giving the commission's decision we would like to know if the document now submitted to the commission is the same document submitted by the accused to Lieutenant Madrigan?

A. Yes. The original in Japanese was obtained by Lieutenant Madrigan from Lieutenant Tomita. After a translation had been made of this statement by Lieutenant Tomita, the original statement was filed at the Staff Legal Office, Marshall Gilberts Area and it was in turn passed to the Commander Marianas Legal Officer where it has remained on file until the present time.

The commission announced that the objections of the accused were not sustained and that this document would be received in evidence.

The original statement of Lieutenant Tomita, Ryoji, Imperial Japanese Navy, in Japanese and the English translation thereof were so received in evidence and are appended marked "Exhibit 1" and "Exhibit 2" respectively.

11. Q. I ask the witness to read the English translation of Lieutenant Tomita's statement.

The witness read the English translation of the statement of Lieutenant Tomita, Ryoji, Imperial Japanese Navy, copy appended marked "Exhibit 2".

An interpreter read the original statement in Japanese of Lieutenant Tomita, Ryoji, Imperial Japanese Navy, appended marked "Exhibit 1".

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

Neither 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 seat as judge advocate.

The prosecution rested.

The commission then, at 4:00 p.m., adjourned until 9:00⁵ a.m., Wednesday, December 11, 1946. c17

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Wednesday, December 11, 1946.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical officer to Commander Marianas concerning the illness of Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, member of the commission, copy appended marked "Q".

The defense began.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Lieutenant Commander Yamabe, Masao, Imperial Japanese Navy.
2. Q. If you recognize the accused in this case will you please state as whom?
A. Navy Lieutenant Tomita, Ryoji.

Examined by the accused:

3. Q. Where are you now situated?
A. I am in the Guam stockade.
4. Q. Have you been to Mille under the Japanese Navy?
A. I have.
5. Q. When did you go to Mille?
A. In the beginning of September, 1942.

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6. Q. When did you leave Mille?
A. I left in 1942, November the 5th.
7. Q. Name the organization to which you belonged.
A. The 3rd Special Marines of the Yokosuka Naval Headquarters; another name is the Fukumi Butai.
8. Q. What were your duties?
A. Company commander.
9. Q. Who was the commanding officer of the 3rd Marine Forces under the Yokosuka Naval Headquarters?
A. Commander Fukumi, Keichi.
10. Q. You have stated to the judge advocate that you knew the accused, Tomita, but where did you know him?
A. I was in the same class as Tomita in the Naval Academy.
11. Q. When did you later meet him?
A. Later I met him at the Yokosuka Naval Officers' Club and two or three days before November 5th at Mille.
12. Q. When did Tomita come to Mille?
A. 1942. November 3rd.
13. Q. What was Tomita's duty at Mille?
A. Defense of Mille.
14. Q. Who was defending Mille before Tomita?
A. The 3rd Special Marines under the Yokosuka Naval Headquarters.
15. Q. Did you belong to that?
A. Yes, I did.
16. Q. Then the troops you belonged to were to be replaced by the troops of Tomita?
A. Yes.
17. Q. When did the replacement take place?
A. When our forces left, which is the 5th of November.
18. Q. From November 3rd to 5th, the Fukumi Butai and the Tomita Butai were there. What was their relationship during that time?
A. During that period the old forces took the defense until all the work of transferring to the new battalion was completed and after the work had been transferred to the new battalion the new battalion took the defense.
19. Q. When was all the work turned over to the new forces?
A. Turning the work over to the new forces will take considerable time for all the work to be transferred on each side of the defense.
20. Q. When was it completed?
A. The time is when the former commanding officer and the new commanding officer have exchanged their jobs.

21. Q. But during that time the Fukumi Butai and the Tomita Butai will have dual duties. Is that right?

A. Yes.

22. Q. Then, if there is a difference of rank in the commanding officer, who takes the command?

A. In the Japanese Navy when there are two commanding officers in the same place the senior officer will take the post of commander.

23. Q. What was the rank of Fukumi who was the commanding officer of the Fukumi Butai?

A. Navy Commander.

24. Q. What was the rank of Tomita, the commanding officer of the Tomita Butai, at that time?

A. Navy lieutenant (junior grade).

25. Q. Then Tomita was under Fukumi at that time?

A. No, he was not under his orders.

26. Q. Why isn't he under Fukumi's command when Fukumi was the senior officer at that time?

A. There is no set rule for the line of orders to be given, but the one I just stated before was that when there are two commanding officers in one place, then the senior will take the commanding post.

27. Q. Tomita being a lieutenant (junior grade), and Fukumi being a commander, doesn't this take place?

A. Yes, it does.

28. Q. Then Tomita will be under Fukumi, but when will Tomita take the full command post? Is it after Fukumi leaves the island?

A. Yes, it is.

29. Q. Then Fukumi has command until his ship sails. Is that true?

A. Yes.

30. Q. Do you know the difference between the jurisdiction of Fukumi and Tomita?

A. When there is a very important problem to deal with, the two commanding officers will get together and discuss the problem and eventually the senior commander will make up his mind and do what he thinks best.

31. Q. While you were at Mille do you remember the French and Swiss Priest's coming to Mille?

A. Yes, I do.

32. Q. When did they arrive?

A. I think it was between the beginning and the middle of October, 1942.

33. Q. Tell me all you know on this problem.

A. As I stated above, they came to Mille about the beginning or middle of October. While my company was taking charge of a little less than one-half of Mille, I was independent, and sometimes I used to go to headquarters for liaison purposes, and at that time I have seen a tent near the headquarters where the two priests were staying.

34. Q. Do you know what motive these Priests had to come to Mille?
A. I do not know what their motive was, but the hearsay was that they were spies and they came to see the defenses of Mille.
35. Q. Have you interrogated the Priests?
A. I did not.
36. Q. Did your commanding officer interrogate the Priests?
A. I have not seen him do it.
37. Q. Have you seen the Priests?
A. I have.
38. Q. Did you know if anything happened to the Priests after that?
A. I did not know.
39. Q. If, in your forces, there is any problem concerning a criminal case, who takes care of it?
A. The company commander.
40. Q. You said the organization commander takes care of all criminal cases, is that right?
A. Yes.
41. Q. What is an organization leader?
A. This is quite a long answer so I will break it up. The organization leader is the leader of the organization. The conception of an organization is that it is the basic unit for military administration and warfare, of which the Navy is composed. And further, he has special duties, that is to say, their command works independently and this is established by the will of the military headquarters or the military authorities. I have stated before that it is for the military administration and warfare, but there are some organizations that do military administration and some do warfare, and some do both. Concretely, warships and cruisers are an organization. When it comes to destroyers, 3 or 4 destroyers will make an organization. Hospitals, schools, special marines and garrisons are all organizations. That is all for organizations, and the commanding officer of the organization is called the organization leader.
42. Q. Then the 3rd Marines of the Yokosuka Headquarters were an organization? *elt*
A. It was an organization.
43. Q. Who was the organization leader? *elt*
A. Navy Commander Fukumi, Koichi.
44. Q. Was Tomita's force an organization?
A. Tomita's forces were not an organization.
45. Q. Then Tomita's forces belonged to another organization?
A. Yes.
46. Q. Do you know what organization?
A. I do not know the organization, but it belonged to some organization, that is sure.

47. Q. When the problem arises as to these two Priests, when the Tomita Butai was there and the Fukumi Butai, who gives orders?

A. When the Fukumi forces were on Mille, its commanding officer takes the responsibility.

48. Q. After Fukumi's forces left Mille, what is the standing of Tomita as to the organization leader and its powers?

A. Tomita's forces will belong to some other organization.

49. Q. Then Tomita will have to have an order from the organization leader in order to carry out any problem in this case?

A. No, he can not.

50. Q. You have stated you were a classmate of Tomita's. Do you know what kind of a person Tomita is?

A. I do.

51. Q. Then I would like you to describe the character of Tomita.

A. I was in the same class as Tomita in the Naval Academy and was one of his best classmates. We studied in the same class, drilled on the same field, and worked together. The classmates considered him a quiet, kind, and fine person. After graduation I have met him several times in the Naval Officer's Club and again at Mille. When we met I talked to him as a classmate and again he is the same fine person. Again I would like to state that he is one of the finest persons of the class and I would represent the whole class to state this without any regrets.

52. Q. When Tomita came here as a detachment leader, was this his first duty as a commanding officer?

A. Yes, that was his first.

53. Q. When a person takes a command post for the first time, do you know what he goes through?

A. There are lots of things he has to worry about, and one of the things he always keeps in mind is how to fulfill his duties.

54. Q. Tomita, being a commanding officer for the first time and undergoing these mental difficulties, and also being a young officer, and of the character you just stated, could he have ordered anyone killed?

A. He being one of the finest persons and taking the commanding post for his first time, he could not have made any fast decisions or settle things for the first time. Therefore I absolutely am sure he could not have ordered them to be killed.

55. Q. When did these two Priests come to Mille?

A. From the beginning to the middle of October, 1942.

56. Q. Where did these two Priests and the others land on Mille?

A. I do not know where they landed on Mille.

57. Q. Can you describe Mille Atoll?

A. Roughly I can.

58. Q. Will you so describe Mille Atoll?

A. The diameter of Mille Atoll is about 12 to 13 miles and is composed of about 10 islands, the largest being Mille. Mille is about 3000 meters long and 1500 meters wide. Mille and the other islands, which are smaller, are in about the same condition. All of these islands are sandy and covered with coconut trees. Just outside the atoll the sea is very deep, but inside the atoll it is very shallow and reefs are sticking out of the water here and there, which makes navigation very difficult. There are only one or two channels for only a small transport.

59. Q. Where are the Japanese garrisons located as far as the atolls are concerned?

A. When our forces were there we were only on Mille.

60. Q. Who occupied the other atolls?

A. Only natives on the other islands.

61. Q. Did the two Priests and the natives that came with them land on the large atoll which the Japanese soldiers occupied?

A. I do not know anything concerning this because the first time I saw the two Priests they were in the tent near the headquarters.

62. Q. What kind of a boat did they come to Mille in?

A. Near the tent I saw a small boat with sails. I do not know if they came in this, but I suppose they did come in this boat.

63. Q. How large was this boat?

A. I think it was about 6 or 7 meters long. Something like a large yacht. ccf

64. Q. Did the Japanese use this boat afterwards?

A. I did not see the Japanese using it.

65. Q. Did the two people report to the Japanese garrison that they had landed on Mille?

A. I do not know.

66. Q. How did the garrison find out that the two Priests had landed on Mille?

A. I do not know.

67. Q. Did the Japanese have any patrols around Mille to stop the landing of strange boats?

A. They had outposts.

68. Q. Did these outposts discover the strange boat coming to Mille?

A. I do not know anything concerning this.

69. Q. Why did these two Priests land on Mille?

A. It is only hearsay, but it has been said that one member of the crew said that they were going to Makin or Tarawa in the Gilberts. I don't know, but they said they were driven to Mille by bad waves and unfavorable winds.

70. Q. What was the command relationship between the Mille Garrison and the Jaluit Garrison?

A. Jaluit and Mille were on the same level. ccf

71. Q. What do you mean by that?

A. Jaluit was a separate unit from Mille, but both were separate units. What I just stated about the relationship between Jaluit and Mille just concerned the garrison which I belonged to. I do not know for sure, but on some island there was a headquarters of guard units and under this headquarters there were garrisons on Mille, Jaluit and other small islands.

72. Q. Was the headquarters for Mille located at Jaluit?

A. I do not remember, but it might have been Jaluit.

73. Q. The question was - what was the relationship between Jaluit and Mille and you have stated that your forces were separate from Jaluit. Does that mean that Mille itself was separate from Jaluit or only your unit was separate from Jaluit?

A. I will state again. Jaluit, Mille and other islands in this area had a garrison of which I do not know the name. In this area there were lots of garrisons and I think the headquarters of these garrisons was on Jaluit. When we were on Mille we were an organization and we were on the same basis as another organization. Mille itself, or its guard unit belonged to the guard unit, the headquarters of which I think was at Jaluit. C17

74. Q. You said your forces, does this mean the Fukumi Butai?

A. Yes, it does.

Cross-examined by the judge advocate:

75. Q. In the Japanese Navy does a great bond of loyalty exist between classmates of the Naval Academy?

A. It is a tradition the classmate will consult another classmate of all his troubles more than he does with his parents. They are very intimate with each other.

76. Q. Approximately how many men would you say were under the command of Lieutenant Tomita when his unit relieved your unit? C17

A. It is only a guess, but I think it is about 300.

77. Q. Approximately how many men were in the unit commanded by Commander Fukumi?

A. About 500.

78. Q. You have testified that the Fukumi unit was considered an organization within itself and that Tomita's unit was not an organization within itself. Is it not normal procedure that one organization relieve another organization?

A. Ordinarily Mille does possess an organization, but on our way to Japan there were only a few persons at Mille so we were asked to stay there only for a time and we happened to be there.

79. Q. You have testified that the Fukumi Unit on Mille, of which you were a member, was considered an organization and you further testified that the unit commanded by Tomita was not. Would not it be the normal procedure that one organization would be relieved by another organization unit?

A. Ordinarily an organization is to be relieved by another organization, but at that time the war had elongated and the strength of the Japanese Navy was declining so they could not send a complete organization to take the place of another organization.

80. Q. Prior to the arrival of the Tomita Unit did your unit know they were coming to relieve them?

A. We did not know the Tomita Butai was coming, but when we took the defense of Mille it was promised that within a month we were to be relieved.

81. Q. Did the Tomita Unit take over the same duties that the Fukumi Butai had previously assumed?

A. They were supposed to have taken over the entire duties.

82. Q. If an execution is to take place within a unit of this size, from whom would the authority to carry out this execution originate?

A. The authority is with the military commission, but the organization leader had the power to determine whether it is to be sent to the military commission or not.

83. Q. When you say organization leader, do you mean the commanding officer?

A. Yes, commanding officer. c17

Re-examined by the accused:

84. Q. What was Lieutenant Tomita's rank when he was on Mille?

A. Lieutenant (junior grade).

85. Q. Do you know why such a young and inexperienced officer like Lieutenant Tomita was selected to take a post as a garrison commander at Mille?

A. I do not know.

86. Q. How did the Fukumi Unit happen to be ordered to Mille?

A. We were on the way back to Japan, but at that time the conditions in the Gilberts and Tulagi were bad. The headquarters could not send troops from Japan to Mille so Mille was without troops. They told us to move our troops to Mille until they were able to send troops from Japan to Mille. That is why I went.

87. Q. How long was the Fukumi Unit on Mille?

A. About two months.

88. Q. Would the guard commander have authority to execute two neutrals?

A. From the strict point of law and regulations, he would not have the authority.

89. Q. Would Lieutenant (junior grade) Tomita have the authority?

A. As to that, it is all the more true.

90. Q. By that you mean he had less authority? c17

A. Yes.

91. Q. The witness in answering the judge advocate's question a little while ago stated that the authority of the organization is with its commanding officer. But the meaning of commanding officer could be changeable, that is to say the commanding officer of a squad, platoon, company or battalion. In this case I would like to know, what do you mean by commanding officer in this particular case? Fukumi or Tomita? c17

A. I have stated that the authority of an organization is with the commanding officer, but I meant the organization leader in this case.

92. Q. Then in this case you would say for sure that the Fukumi Unit was an organization and the Tomita Unit was not?

A. Yes, I can.

93. Q. To be an organization leader, what should be his rank?

A. A Navy commander, or a captain and rarely a rear admiral.

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

The commission did not desire to examine this witness.

The witness made the following statement:

As to Tomita's character I would represent my whole class and state that he is a good and fine person. That is all.

The witness was duly warned and withdrew.

The commission then, at 11:21 a.m., took a recess until 2:15 p.m., at which time it reconvened.

Present:

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

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

A witness for the defense entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Ito, Hiroshi, former lieutenant commander, Imperial Japanese Navy.

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

A. Tomita, Ryoji.

Examined by the accused:

3. Q. Were you ever attached to the Naval Unit on Mille Atoll?

A. Yes.

4. Q. When did you arrive at Mille Atoll?

A. It was between the beginning and the middle of September 1942.

5. Q. Did you come with your unit?

A. Part of our unit we left at Truk, but most of them came over to Mille.

6. Q. What was the number of men in your unit?

A. The number that came over to Mille was about 500.

7. Q. Including the men you left at Truk, how many were in all?

A. About 750.

8. Q. 750, is that the total number in your unit?

A. That is the total men in my unit.

9. Q. What was the reason for your unit coming to Mille?

A. On Truk we were getting ready to go back to Japan and the preparations for the shipping were already made. Just before we were to leave Truk the conditions in the Gilberts, Marshalls and Tulagi became acute. It was said that American submarines were making landings on these islands. To reinforce the troops at Mille we were sent to Mille temporarily for about one month.

10. Q. What is the name of that unit?

A. The Third Marine Unit of Yokosuka Naval Base. The other name we called it Fukumi Unit.

11. Q. Who was the commanding officer of this unit?

A. The commanding officer was Commander Fukumi, Koichi. cxf

12. Q. What was your duty at Mille?

A. I was adjutant.

13. Q. What is the work of the adjutant?

A. My work as adjutant was to help the commanding officer. At that time we were to go back to Japan and we were very busy. Most of my time was spent in preparing the records and merits of the men.

14. Q. How did you happen to know Tomita, Ryoji?

A. I know him because he was the commanding officer of the unit which relieved our unit.

15. Q. What was the rank of Tomita at that time?

A. I think it was Lieutenant (junior grade), Imperial Japanese Navy.

16. Q. Do you know when the Tomita Unit came to Mille?

A. Yes, I do.

17. Q. When did they come?

A. I recall it was on November 3, 1942.

18. Q. When did your unit leave Mille?

A. I recall leaving Mille on November 5, 1942.

19. Q. What time did you leave?

A. It was 3 o'clock in the afternoon.

20. Q. There were a few days period when Tomita's Unit came and before your unit left. There were two units on Mille. Who was the commanding officer then?

A. As this was a relief of units and our commanding officer was the senior, Commander Fukumi had the command.

21. Q. Did this command continue until the Fukumi Unit left Mille?

A. Yes.

22. Q. Is there any difference in rights in authority between Fukumi and Tomita?

A. They were both commanding officers. In concerning this point it was the same, but the Tomita Unit was a Detachment and our unit was an Organization so from this point I think there was a difference.

23. Q. Did you know that a French and Swiss Priest landed on Mille?

A. Yes, I do.

24. Q. When did they come to Mille?

A. It was some day between the first and the middle part of October 1942.

25. Q. Explain the situation when these two Priests landed upon Mille?

A. On that day on an island south of Mille Atoll it was said that the enemy made a landing. This assertion a native reported. I did not hear this directly from this native and a research party was dispatched from our headquarters. The next morning I saw near the headquarters the crew. First we had fear that this landing party was dispatched from an American submarine but this was not so.

26. Q. Why did these priests come to Mille Atoll?

A. I did not hear this directly, but I was told by someone that the commanding officer investigated and found them to be spies.

27. Q. Did you hear that from Commander Fukumi?

A. Yes.

28. Q. Did you see Commander Fukumi investigate these Priests?

A. In front of the headquarters I saw the commanding officer investigate these Priests.

29. Q. Did you hear of anything concerning the disposal of these Priests after the investigation.

A. I heard after the investigation that he found them to be spies and he said he would have to execute them, so I heard.

30. Q. When Tomita took over matters from Fukumi do you know what matters were taken over then?

A. As we were busily preparing to go home and I was in charge of the loading work, I was always at the ship so I do not know what matters were taken over by Tomita.

31. Q. Do you know what happened to the Priests after that?

A. No, I do not know.

32. Q. Don't you know what kind of conversation took place between Tomita and Fukumi?

A. No, I do not know.

33. Q. Did you have any course planned to go by when your unit was to go back to Japan.

A. Our first orders we received were to stop at Truk and pick up the rest of the unit which we left there, but as the ship was very small and it was a cargo ship when we loaded the men on the ship at Mille, the ship was already full and there was no more space. At that time the area around Truk was under the menace of American submarines so we changed and directly headed for Japan.

34. Q. Weren't there any other ways of going to Truk?

A. At that time there were ships (transportation ships) from Japan to Truk, but from Mille to Truk there was no transportation.

35. Q. Where was the military court situated which had jurisdiction over the Mille area?

A. It was in the headquarters of the 4th Fleet situated on Truk.

36. Q. When such cases as the Priest case occurred who had the authority to sentence them to court martial or to handle this matter?

A. The commanding officer had the authority.

37. Q. Who do you mean by the commanding officer?

A. I mean the organization leader.

38. Q. Then did Tomita have the authority to handle this Priest case?

A. I think he did not have authority.

Cross-examined by the judge advocate:

39. Q. You have testified that the commanding officer of this unit was Commander Fukumi, do you know the present whereabouts of Commander Fukumi?
A. Commander Fukumi went back to Japan with us, but as soon as he reached Japan he was confined to the Yokosuka Naval Hospital and at the end of January or the beginning of February 1943 he died at the Tokyo Medical School.

40. Q. You have testified that the Tomita unit was a Detachment, just what do you mean by a Detachment?

A. At that time there was no guard unit on Mille so in order to organize a guard unit on Mille as advance troops the Tomita Unit was sent to Mille, so I have heard.

41. Q. Insofar as you know did the Tomita Unit relieve the Fukumi Unit of the same responsibilities and duties?

A. Yes.

42. Q. Insofar as the actual operations of Mille Atoll were concerned Lieutenant Tomita replaced Commander Fukumi as the commanding officer, is that correct?

A. Yes.

43. Q. If a unit is going to execute someone, from whom does the authority to carry out that execution originate?

A. I think the military court should give this decision. When such cases occurred it is proper to send them to a military court.

44. Q. Now you have testified that you think these Priests arrived on Mille some time from the first to the middle of October 1942, did you yourself interrogate these Priests?

A. No.

45. Q. Did the Priests ever appear before the military court insofar as you know?

A. I saw the commanding officer investigate them but it is unknown whether they were sent to the military court or not.

46. Q. If there had been a military court would you as adjutant have known about it?

A. If they were to send them to a military court I would have heard about it.

47. Q. Is it correct then that you did not hear of any military court?
A. Yes.

48. Q. Now, this interrogation that you say you saw; investigation that you say you saw Fukumi give these Priests, describe what you saw?
A. The headquarters was just like this place here and it had stairs and the commanding officer was above and the Priests were below and in this position he was investigating them.

49. Q. Were any of the natives present that accompanied the Priests at the investigation?
A. They were there.

50. Q. How many natives did you see present?
A. I saw several natives, I do not remember the exact number.

51. Q. Who else besides Commander Fukumi was present, ^W what Japanese personnel ~~CLF~~ besides Commander Fukumi were present?
A. I recall that there was no one there besides Commander Fukumi.

52. Q. In what language was Commander Fukumi speaking?
A. I recall he was speaking in English.

53. Q. Do you understand English?
A. I understand a little.

54. Q. Now, who was next in command within the Fukumi Unit to the commanding officer? That is, who was second in command?
A. The various company commanders came next.

55. Q. Was your position as adjutant the same as that of executive officer? ~~CLF~~
A. It is different.

56. Q. You have testified that your duties as adjutant were primarily concerned in keeping the records, did you make any record when these Priests and natives arrived?
A. The record which I was taking care of was concerned to that of warfare.

57. Q. Did you not consider the presence of these two Priests and ~~two~~ ^{no} natives to be concerned with warfare? ~~CLF~~
A. I think there is a slight misunderstanding in the meaning of records. I was keeping the records of previous battles. I was ordered to keep the records and make them clear since we were leaving for Japan. Previous battle records and also records concerning the merits of the soldiers.

58. Q. Was a daily log kept at the headquarters of what took place in the unit?
A. No, we did not take a daily record.

59. Q. Did you keep any log at all at the headquarters of the transactions that took place within the unit?
A. When there was nothing to write about we did not take down anything, but when there was some particular thing to write down usually the communication personnel wrote a very brief account.

60. Q. Do you know if the communication personnel wrote an account of the arrival of these two Priests and 14 natives on Mille?
A. I do not remember.

61. Q. Where were these Priests and natives confined?

A. They were confined in a tent which was alongside the headquarters about 20 meters away.

62. Q. Were they under guard?

A. As there was a sentry in the headquarters we did not have special guards over the Priests.

63. Q. You testified that you heard these men were spies. Does it seem reasonable that spies would not be guarded? CLF

A. As it was next to the headquarters it was just the same as if to have a guard.

64. Q. Is that true even at night?

A. Yes.

65. Q. As I understand you stated that the sentry was inside the headquarters, is that correct?

A. There were two or three sentries outside of the headquarters.

66. Q. How far away from the headquarters was this tent?

A. About 10 meters.

67. Q. As a military man do you consider that if these two men were spies they were amply guarded?

A. Yes.

68. Q. Now you said you thought the Priests or heard the Priests were spies, do you also hear that the natives were spies? CLF

A. No, I did not hear about it.

69. Q. Why was it that you should hear that the Priests were spies and didn't hear anything about the natives?

A. There was nothing said about it.

70. Q. Now, do you know the nationality of either or both of these Priests? CLF

A. I heard that they were French and Swiss.

71. Q. Is it reasonable to believe that a man from Switzerland was a spy?

A. I do not know if it is reasonable or not, but I just heard that they were.

72. Q. Now, who did you hear this from?

A. Commander Fukumi, after the investigation of these two Priests, I heard him say it.

73. Q. Just what did this Commander Fukumi say?

A. "On investigating these Priests I found them to be spies so I must execute them", he said.

74. Q. Did he ask you whether you consented to this execution or not?

A. I did not reply. What Commander Fukumi said then was that, "He did not mean to execute them right now". It was not an order it was just what he stated.

75. Q. How long after the Priests arrived did this so-called investigation take place?

A. Right after they came.

76. Q. Would it not be the policy that if these men were spies you would execute them as soon as possible?

A. What his intentions were, to execute them right away or to send them to the rear, I can not tell concerning this execution. After that I did not hear anything about it.

77. Q. If Fukumi thought these men were spies why didn't he have them executed before he left Mille?

The accused objected to this question on the ground that it is asking for an opinion of the witness.

The judge advocate, with the permission of the commission, withdrew the question.

78. Q. Were these two men executed at any time prior to Fukumi's departure?

A. I do not know;

79. Q. Do you know when they were executed?

A. I did not know that they were executed until I came here.

80. Q. Now, if these two Priests were considered spies, did Fukumi make any comment as to what he considered the natives to be?

A. He thought they were members of the crew.

81. Q. Would not they be considered spies?

A. It is my opinion, I think that they were doing a part of the spying.

82. Q. Did you happen to hear how the Priests happened to come to Mille?

A. No, I do not know.

83. Q. How soon after they arrived did you first see them?

A. The morning when they brought them over.

84. Q. What was the physical condition of the Priests and natives on the morning that they were brought in?

A. I recall having seen none of these persons in a bad physical condition.

85. Q. You have stated that insofar as you know these Priests did not appear before a military court or at least you did not hear of any military court. Can a commanding officer order the execution of two men without having them first appear before a military court? c17

The accused objected to this question on the ground that the question was too general and any answer that the witness might give would be prejudicial to the rights of the accused.

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

The question was repeated.

A. I don't think they can do that.

The commission then, at 3:25 p.m., took a recess until 3:50 p.m., at which time it reconvened.

Present:

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

No witnesses not otherwise connected with the trial were present.

Ite, Hiroshi, lieutenant commander, Imperial Japanese Navy, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

Re-examined by the accused:

86. Q. Where did Lieutenant Tomita live during the two days that the ship which brought his unit to Mille and the time that your unit left Mille?

A. I do not recall it very clearly, but I think some time he lived on the ship and other times on land.

87. Q. Ordinarily while the war was going on would you, as a Japanese naval officer, be more suspicious of white men than natives of the South Pacific islands?

A. In general I think I can say that.

88. Q. Now, did Commander Fukumi run his organization, his unit, without asking your advice regarding matters?

A. As I have stated before, Commander Fukumi ordered me to prepare for the return to Japan and I was busily doing everything in preparation so Commander Fukumi did everything about the unit.

89. Q. Was that his usual way of doing things? Did he do things himself without asking your advice or opinion in matters?

A. During the war and especially when a unit is preparing to return I think this was the general way in which matters were handled.

90. Q. How does a Japanese soldier feel about the death of another Japanese, that is, would it be possible to blame a person who is dead for a crime in order that a person alive might escape punishment?

A. I think that is not the right way a Japanese would act.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 4:00 p.m., adjourned until 9:09 a.m., Thursday, December 12, 1946.

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, December 12, 1946.

The commission met at 9:09 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical authority to Commander Marianas regarding the illness of Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, member of the commission, copy appended marked "R".

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 Tomita, Ryoji, lieutenant, Imperial Japanese Navy, the accused in this case?
- A. I am.

Examined by the accused:

2. Q. Were you ever attached for duty at Mille?
- A. Yes.
3. Q. Name the unit to which you belonged.
- A. I belonged to the Mille Detachment of the 62nd Guard Unit.
4. Q. How many men were in your unit?
- A. About 550 men.
5. Q. When did you arrive on Mille?
- A. I arrived November 3, 1942.
6. Q. Under what orders did you come to Mille?
- A. With these men I was ordered to go to Mille and relieve the former unit that was there and I was told to take over the defense of the island. I was ordered that in the near future the 66th Guard Unit was to be organized there. I was to go there in preparation for the organization of this 66th Guard Unit. I was to be there temporarily until this 66th Guard Unit was organized.

7. Q. Before you came to Mille, was another unit there before you? 82f
A. What do you mean?
8. Q. Was there a unit at Mille, before you came there, that was taking over the guard of Mille?
A. Yes.
9. Q. What unit was it? 82f
A. It was not a guard unit, but it was the 3rd Special Marines of the Yokosuka Naval Base.
10. Q. What happened to the Marine Unit that was there when you arrived?
A. When we took over the guard from the Marine Unit they went back to Japan.
11. Q. When did your unit arrive on Mille?
A. We arrived on November 3, 1942.
12. Q. When did you leave Mille?
A. After the war, on September 27, 1945, I left Mille.
13. Q. Who was your direct commanding officer when you arrived at Mille?
A. Until we relieved the former unit of the defense, Commander Fukumi had the unified command. After we had relieved them, Captain Masuda was my commanding officer.
14. Q. Who is this Fukumi?
A. Commander Fukumi was the commanding officer of the 3rd Special Marine Troops of the Yokosuka Naval Base.
15. Q. Was Fukumi the commanding officer of the unit which was to be relieved by you?
A. Yes.
16. Q. Who was Captain Masuda?
A. Captain Masuda was my commanding officer.
17. Q. Then did Commander Fukumi and Captain Masuda have the same authority?
A. Yes.
18. Q. Until you relieved the former unit you said that Commander Fukumi had the command. What do you mean by that? 82f
A. When a unit with the same duties and at the same place was to relieve another, the senior officer would have the unified command.
19. Q. What was the rank of Fukumi and your rank at the time?
A. Fukumi was then a commander and I was a lieutenant (junior grade).
20. Q. Then would you say that you were under the command of Fukumi?
A. Yes.
21. Q. When did your unit relieve Fukumi's Unit of their duties at Mille?
A. I relieved him on the 5th of November, the third day after my arrival on Mille.

22. Q. When did you take over matters from Fukumi?

A. I took over matters from Fukumi on November 5, 1942.

23. Q. Tell me what were the matters that you took over from Fukumi?

A. I took over the following matters from Commander Fukumi. Mille Atoll was situated in the extreme east of the South Pacific and it was strategically very important as an air base. Therefore in defending these islands we must do our best. First of all I took over matters concerning duties as follows: On the landing of the enemy, repel them vigorously; when the enemy planes come over, attack them; look out for the enemy submarines; general look out; the collection of various information. Second, I was explained concerning the enemy's conditions at that time. The Americans were all set to make a big counter attack and the course in which the Americans were going to make this attack was as follows: First from the north down by the Aleutian Islands. The course from the South Pacific and then the course from the Central Pacific. In the north Attu Island had already been taken by the Americans in May. At that time winter was near, and we considered that the attack from the north was impossible. In the Solomons district there was fierce fighting at Guadalcanal. In the Central Pacific near the Marshalls, the Americans had made a surprise landing on Makin. The battles in the Solomons were very fierce, but it was considered that the Americans would make a more vigorous attack on the Marshalls. Third, I discussed the arrangements of our forces. What units were stationed at the various islands. The explanation as to what air corps units were in the islands. The explanation of our air corps duties. The explanation as to the lookouts on anti-submarine attacks. Explanation of our communications. Fourth, the plans for our defense. The plans for defense by the Fukumi units were this way: My unit should follow the same way of defending the island as Fukumi's Unit. Fifth: He explained how Mille was to be constructed in the future, how many barracks were to be built, how many heavy artillery were to come, and how the airfields were to be constructed. The above was the explanation which Fukumi gave to me. Sixth: He explained to me how the Americans made their surprise landing on Makin by submarine. Seventh: The conditions of the battles in the Solomon's area, the organization, equipment and how the American Marine Corps fought. Ninth: How to lead the young soldiers of my marine unit. The situation of Mille Atoll. Lastly he explained to me about the Priests. These Priests with several Gilbertese natives were making operations in the outer seas without any permission. They falsely stated they had drifted to Mille and in reality they were spying on the arrangements of troops and defenses. They were not American or English, but they were of the intention to communicate with the enemy. They were spies so we would have to execute them. CAF

24. Q. When Commander Fukumi explained to you about the Priests what was your reply?

A. When I heard this explanation from Fukumi I was perplexed. As Fukumi had captured them and suspected them as spies himself, it was his duty and it was under his authority to dispose of these Priests, I thought. I was then very young and it was only a few days since my arrival. I did not know anything about these Priests. I placed my opinion before Commander Fukumi as follows: I thought that as this case was investigated by Fukumi it was proper for him to handle the case so I said to Fukumi that as he was going back to Japan, would he take these Priests back with him on the boat. He answered and said that he would take them back with him. CAF

25. Q. Concerning this Priest case, did you have any authority to handle this case without the knowledge of Fukumi?

A. No, I did not.

26. Q. If there is any difference in authority between you and Fukumi, will you tell me what it is?

A. Fukumi was the commanding officer of the 3rd Marine Unit. I was the division leader of the 62nd Guard Unit. Therefore he was a commander, I was a lieutenant (junior grade). He was an organization leader; I was a division leader.

27. Q. What were the authorities of this organization leader besides defense?

A. I think there are various authorities, but concerning crime, he had authority to send them to court martial.

28. Q. Has he authority to investigate?

A. Of course he has.

29. Q. Then you did not have authority to send them back home or to send them to martial courts? Is that right?

A. No, I don't have any.

30. Q. After Fukumi left the island, who had this authority?

A. My commanding officer, Captain Masuda, had this authority.

31. Q. Where was he stationed?

A. He was stationed at Jaluit.

32. Q. After that did anything happen to the Priests?

A. After he left I was writing a report to my commanding officer, Captain Masuda, of the 62nd Guard Unit. I was writing a report concerning how we were detached here and concerning our ammunition, provisions and so forth. Just when I was making this report, an officer, Shima, came to me and said, "I, Shima, was ordered by Fukumi to execute these Priests because they were spies and after I executed them, he, Fukumi, told me to report directly to him". "So, receiving this order from Fukumi, I went to the west shore and I have executed them by musketry." Then for the first time I was aware that Fukumi did not take these Priests back as I asked him but had ordered Shima to execute these Priests. When my officer made this report to me I scolded him and said, "When you were ordered to do this why did you not report it to me?" I said such things should never happen again in the future and whenever he had anything to do you must report to me beforehand. I ran out of my room and went to the shore and looked and I saw that the ship had already left. I wanted to signal to the ship, but there was no means to do it. I said to Shima: "As you directly received this order from Fukumi, you must report it directly to Fukumi by yourself."

33. Q. Have you ever seen these Priests?

A. No, I have never directly seen them.

34. Q. These Priests were right close to the headquarters, so wouldn't it be natural for you to see them?

A. Yes, this tent was close to the headquarters. It was made of canvas. The exit was parallel to the road and if one did not enter this entrance he could not see inside. I had just come to Mille and it was only a few days since I arrived here. My mind was filled with the defense of the island and I had no time to think of these Priests. That is the reason why I did not go and see them.

35. Q. When you arrived, until Fukumi left, where were you living?

A. I was living on the ship. Of course I went on land in the daytime to do work.

36. Q. When did you move to the headquarters?

A. I came off the ship on November 5, 1942, after breakfast.

37. Q. When Fukumi gave orders to Shima and Shima executed these Priests, what time do you think this was done?

A. I am firmly convinced that it was before the ship left.

38. Q. What is your reason?

A. Because Shima reported to me right after the ship left. Because it would have taken time to make this execution and return to the headquarters, I am convinced that it was done before the ship left.

39. Q. When did the ship leave?

A. I cannot recall the exact time, but I believe it was on November 5, 1942 about 3 o'clock in the afternoon.

40. Q. Yesterday the judge advocate introduced in this court your confession. Where did you make this confession?

A. I made it at Kwajalein.

41. Q. I think there is a difference between this confession that was produced in this court yesterday and the facts that you have just given me. Under what circumstances did you make that confession?

A. It was at the end of December last year at Kwajalein. The American Naval officer had made a draft copy in Japanese and pressed me to ^{write} right it. It was written, based on my statement made at Majuro. I was investigated at Majuro right after the termination of the war. In the war I was under the continuous and heavy air raids of the American planes, and for more than a year I was struggling with starvation. My subordinates were dying from malnutrition and many were killed by the various air raids. With the realization that my men were dying from malnutrition I had to undergo many hardships to get food for them every day. I was exerting all my efforts in the daily battle and the battle for food. I was very tired and exhausted. I was worried over my colleagues who were involved in the case of the American aviators and so worried I could not get sufficient sleep at night. My Commanding Officer, Captain Shiga committed suicide with a nervous breakdown. Under these circumstances I was questioned concerning the case of the American aviators. Then unexpectedly, I was questioned concerning the case of Commander Fukumi. I was perplexed. I was confused. As this Priest case occurred because the senior Commanding Officer, Fukumi, had given orders to Warrant Officer Shima, I said that this Priest case was not concerned with me and it was Fukumi who ordered it. It was Warrant Officer Shima who received this direct order and actually did the act of execution. Shima was a very able man as deck officer and as a man he was a noble character, but he died an honorable death by the air raid. When I considered that Shima had done this act, even if Shima had done this, I could not forbear disgracing a man who had died an honorable death. Japan was defeated in the war. I was desperate and did not care what happened. Therefore, I thought it was real friendship toward Shima and I said that I received orders from Fukumi and

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relayed them to Shima. From there I was sent to Kwajalein. There I found that my colleagues who were involved in the American aviators case were sentenced as guilty. These colleagues had fought with me under very hard situations in Mille. They were found guilty in the American aviator case so I felt a great sympathy for them and was very sorry. I was always in a state of sorrow. Just at that time the American officer came to me with a draft and told me to rewrite this and sign it. I was under the emotion that I just stated above and therefore I thought it was for the sake of my beloved subordinate and the thought of this cheap heroism adhered to my mind always. I recalled that in March I had said that I had received orders from Fukumi and relayed it to Shima, so as I was requested by this American officer, I wrote this statement.

The commission then, at 10:20 a.m., took a recess until 10:46 a.m., at which time it reconvened.

Present:

All the members, the judge advocate, the reporter, the accused and his counsel and the interpreters. *etc*

Tomita, Ryoji, lieutenant, Imperial Japanese Navy, the witness under examination when the recess was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

42. Q. What is your feeling toward this now?

A. Recovering my reason now, the case is one in which Fukumi and Shima were wholly involved and in which I had nothing to do. I thought that I should not shoulder a responsibility which is the responsibility of another and I am of the firm belief that I should not do it. As the eldest son in the family, I am responsible to look after my aged mother and brother and sisters. Considering this, it was not the thing to do as I had done. By this cheap heroism I should not shoulder the responsibility of another. My way to live hereafter is to look after my mother and brother and sisters. That is my responsibility. Therefore I wish to cancel my previous false statement and I am confessing the truth now. I am convinced that it is the right thing for me to do now. *etc*

43. Q. Who is in your family at present?

A. In my family now is my aged mother, my sister and two brothers.

44. Q. How is your family getting along?

A. My father died 17 years ago and since then my mother took care of us and brought our five brothers and sisters up. During the war my home was burned down twice.

45. Q. Who is looking after your family now? Where does your family get the expenses for living?

A. For four years I have not been home so I do not know exactly, but I have heard that one of my brothers is working.

46. Q. As the eldest son do you have the responsibility of looking after the family?

A. Yes.

47. Q. Yesterday and the day before Gilbertese natives named Iman and Tabae came as witnesses, do you know them?

A. Yes, I do.

48. Q. How did you come to know them?

A. When I came to Mille these natives were still there. John, I don't know exactly how many times before the end of the war, tried to make an escape, but he failed. The second time with a canoe he escaped. So I know him very well.

49. Q. Were you listening to what these two witnesses said?

A. Yes.

50. Q. What do you think of their testimony?

A. I think that it was all false.

51. Q. What points do you think were false?

A. The first point is that after 7 days these natives with a certain officer went to bury the Priests. This is the first time that I have heard of such a thing. If the officer, the deck petty officer, did such a thing he would have reported it to me. I heard that these natives came to this island the month before I came. Since only one month had passed I can not believe that these natives can speak Japanese freely with the deck petty officer. They said that at that time there were 2,000 men. When he said 2,000 he must have had a reason for saying it. If it was 2,000 men it was probably after the garrison was organized. That is, it was after June, 1943. Again they testified that there were army soldiers there. At that time there were no army soldiers on Mille. If there were soldiers there it was probably after the Army battalion arrived. This was in September, 1943 when the army battalion arrived. Their memory is confused between the time that I came to Mille and one year after. Your honor, the president of the commission, also has a doubt on this point. They said that I made a speech in front of the tent. This I absolutely did not do. Even if there were not 2,000 men, but only 400 men at that time, it was impossible to have them all gathered and make a speech to them because there is no wide space in front of headquarters. There was a road and opposite the road there were the barracks. I do not know what the natives mean by speech, but before we go to work it is our custom to assemble and then go to work. I believe they were pointing to this. They say before I arrived they knew the Tomita Unit was coming, but as Yamabe stated yesterday when I arrived and saw him, this was the first time that Yamabe heard of my coming to Mille. That is all. C17

52. Q. Witness Tabae stated there were many officers in the unit. How many officers were there?

A. I was the only officer there and besides myself there were ten warrant officers.

The commission then, at 11:30 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present:

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

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Tomita, Ryoji, lieutenant, Imperial Japanese Navy, the witness under examination when the recess was taken resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding and continued his testimony.

Cross-examined by the judge advocate:

53. Q. When were you promoted to the rank of lieutenant?

A. November 1, 1943.

54. Q. When were you promoted to the rank of lieutenant (junior grade)?

A. I believe it was in May 1942.

55. Q. What was the purpose of your garrison or unit going to Mille Atoll?

A. In the near future they were going to organize the 66th Guard Unit on Mille and we were sent there as advance troops to prepare for the organization of the 66th Guard Unit. As we were military personnel, we took over the defense of Mille Atoll.

56. Q. After the Fukumi Unit departed from Mille, just what troops were then located on the Atoll?

A. The Detached Unit of the 62nd Guard Unit, Air Corps, and Construction Units.

57. Q. On November 5, 1942, after the departure of the Fukumi Unit what troops were then present on Mille?

A. The above mentioned three units were left.

58. Q. Who was the commanding officer of the troops that remained on Mille Atoll after the Fukumi Unit had departed?

A. The Detached Unit of the 66th Guard Unit, I was the commanding officer, the Air Corps had a commanding officer and the Construction Units also had a commanding officer.

59. Q. What was the relationship of the Air Corps, and the Construction Units to your unit?

A. As the duties of them were different from mine, it did not have a special relationship.

60. Q. Who then was the senior over-all commanding officer on Mille at this time?

A. No over-all commanding officer existed then.

61. Q. In case of an invasion who would have had the over-all defense of the island at this time?

A. Then the most senior officer at that time would take the command.

62. Q. Who was this most senior officer at this time?

A. There was a lieutenant in the Air Corps whose name I do not remember.

63. Q. Do you mean to say you do not recall who this senior officer was on Mille at this time, if he was senior to you?

A. As I have stated before, our duties were difference^T, so we did not have any connection, but in case of an invasion then all three groups had to defend it and the senior officer would have to take command. c17

64. Q. At the time Commander Fukumi was on Mille who actually was the senior officer present?

A. Commander Fukumi.

65. Q. What commanding officer did you relieve?

A. I relieved the officer who was in charge of the defense of Mille.

66. Q. Who was this officer?

A. Commander Fukumi.

67. Q. When was the very first time that you heard anything about the presence of the two Priests and the natives being on Mille?

A. Two days after my arrival I made a trip around the island in an automobile and then I was told that they were confined in the tent.

68. Q. By "two days after my arrival", what exact date do you mean?

A. November 4, 1942.

69. Q. During the period between November 3, which you testified as the time that you arrived at Mille, and November 5, the time which you testified that Commander Fukumi departed, did you ever visit the headquarters?

A. Yes, I visited it.

70. Q. Approximately how many times would you say you visited the headquarters during this period?

A. I do not recall exactly how many times I visited the headquarters, but two times I do recall very clearly.

71. Q. During these two times, approximately how long would you say you were at the headquarters?

A. The first time I went to the headquarters was to pay my respects and there we talked about unloading our ship and I think it was about thirty minutes that I stayed there. The second time was when I made that trip around the island I believe it was around ten minutes.

72. Q. When you first heard about these Priests were you told where they were confined?

A. Yes. As I was on the trip around the island, I was told where they were confined.

73. Q. Were you told whether they were under guard or not?

A. I have no memory.

74. Q. Now, in your preparations to take over the command of the islands do you make any plans for the security of these two Priests and natives?

A. No.

75. Q. Now, you have testified that Fukumi told you that these men were spies. If you thought that they were spies would you have considered their security and guarding as you took over the command?

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

The judge advocate did not reply.

The commission announced that the objection of the accused was sustained.

76. Q. I want you to tell this commission exactly what Commander Fukumi told you concerning the disposition of these two Priests.

A. It is as I have testified in the morning session.

77. Q. I would like for you to repeat just exactly what Commander Fukumi told you concerning the disposition of the two Priests.

A. He said, "Two Priests and several natives embarked on a large size canoe and made military operations in our area without permission. They came from the Gilberts and without any permission made military operations in our area. They falsely stated that they were drifted to Mille Atoll and they searched our arrangements of forces and defenses. They were not American or English, but they were of the intentions to give information to them. They are spies so execute them."

78. Q. Did Commander Fukumi tell you when these so-called spies arrived on Mille?

A. He said that they had arrived about one month before.

79. Q. Did he explain to you why he did not execute them prior to this time?

A. No, he did not explain about it.

80. Q. If a spy is caught in the act of spying on the enemy, can he be executed immediately?

A. I think it was in the Hague Convention that when a spy is caught in the act of spying he is to be tried before a court martial and then executed.

81. Q. Did Commander Fukumi tell you whether or not these two men had been given a court martial?

A. I did not hear anything about it.

82. Q. Did Commander Fukumi mention anything concerning the natives?

A. "These natives were hired as sailors and they did not know anything so look after them well". That is what Commander Fukumi told me about the natives.

83. Q. Were they also considered spies?

A. I do not know what Fukumi thought about them, but in my own mind I thought he did not think of them as spies.

84. Q. What did you think of the natives yourself?

The accused objected to this question on the ground that it is irrelevant.

The judge advocate did not reply.

The commission announced that the objection of the accused was not sustained.

The question was repeated.

A. I do not recall what I thought of them at any time.

85. Q. Did you at any time see these two Priests?

A. No, I did not see them.

86. Q. Even after you learned they were considered spies, did you or any of your subordinates under your command go to inspect them or see them?

A. I do not know whether my subordinates went to see them or not, but I did not go.

87. Q. After you assumed the command did you take any steps to see that they did not escape?

A. What do you mean by "they"?

88. Q. Did you see that the so-called spies did not escape?

A. As I asked Commander Fukumi to take them back, I did not take any steps to have them guarded.

89. Q. Did Fukumi state that he would take them back?

A. Yes, he did.

90. Q. Did Commander Fukumi take them back with him?

A. I was fully convinced that he did take them back to Japan, but the fact turned out to be the contrary.

91. Q. You have related an account before this commission in which you stated to the effect that Warrant Officer Shima reported to you that he, on direct orders from Commander Fukumi, executed the two Priests. Is that the correct account that you gave this morning?

A. That is correct.

92. Q. How do you explain that Warrant Officer Shima who was under your command was directed by Commander Fukumi without consulting you?

A. I do not know why Shima received direct orders from Fukumi.

93. Q. You have further testified that Shima reported to you that the Priests had been killed. Did he tell you where he killed them?

A. On the west coast.

94. Q. Did he tell you what disposition had been made of their bodies?

A. He reported that he had buried them.

95. Q. Did you ever see the spot where the bodies were reported to have been buried?

A. As I asked Fukumi to bring these Priests back and as my mind was filled with the defense of the island, I did not go to the point. I was told that they were buried in the spot what we call the "Central Area."

96. Q. Who besides yourself and Warrant Officer Shima knew that these Priests had been executed and buried?

A. I do not know.

97. Q. Did any of your troops know these Priests who had been executed?

A. I do not know.

98. Q. Now you have testified that Warrant Officer Shima informed you that the execution had taken place the very same day that Commander Fukumi departed, are you absolutely certain of that?

A. That is absolutely correct.

99. Q. Do you recall when you were interrogated at Majuro?

A. No, I do not. I can not recall the day.

100. Q. Do you know that you were interrogated by American authorities at Majuro?

A. Yes, I can recall that.

101. Q. Can you remember the approximate month and year that this took place?

A. It was the year when the war ended and the month was October.

102. Q. Do you recall at any time that you were questioned concerning these two Priests?

A. No, I can not recall that.

103. Q. I show you this document and ask you if this is your signature signed at the end of this document?

(A document was shown to the witness.)

A. Yes, that is mine.

104. Q. Do you recall signing this document?

A. Yes, I recall it.

105. Q. Do you recall testifying as follows:

"The witness, Lieutenant TOMITA, stated that the information he had given previously was in error and he will now make corrections. I confess that I told a lie this morning and will take the responsibility for the killing of the two priests".

Did you testify to that effect?

A. I do not recall it.

106. Q. Do you further recall whether or not you were then asked this question and answered accordingly:

"Tell us the whole story?" and you answered "When this Commander FUKUMI had suggested to me that I could kill these two priests he said it was because of their bad behavior".

A. I do not recall it.

107. Q. To the next question ^{did} you testify as follows:

"Just how did you go about it?" and you answered, "On that day or the following day, November 5th or 6th, I had ordered Warrant Officer Ken SHIMA to carry out the execution but now he's dead".

A. Yes, I recall a part of it.

108. Q. This morning you testified that you recalled submitting a statement when you were at Kwajalein in December 1945. Were you interrogated by any American authorities between the time you were interrogated at Majuro and the time you were interrogated at Kwajalein?

A. I was not interrogated at Kwajalein.

109. Q. At any time between the time you submitted the statement at Kwajalein and you were interrogated at Majuro did you come in contact with any American authorities who were investigating war crimes?

A. I did not have any contact with them at any time.

110. Q. You testified that you recall submitting a statement at Kwajalein. Do you recall who was the interpreter at the time you submitted that statement?

A. Yes, I do.

111. Q. What was the nationality of the interpreter?

A. He was Japanese.

112. Q. Was he also confined in the stockade with you?

A. Yes, he was confined in the stockade with me then.

113. Q. When the American talked to you and conveyed to you the matters he wished you to write about was this passed on to you through this interpreter?

A. I was not asked what to write about.

114. Q. What were you asked to do?

A. I do not recall exactly, but I was given a draft written in Japanese and was told to rewrite it.

115. Q. Were you forced to rewrite this draft?

A. Yes.

116. Q. How were you forced to rewrite it?

A. I was told to write it and sign.

117. Q. Did you write and sign in your own handwriting this statement?

A. I did not want to write. But as the circumstances were as I stated in the morning I wrote it.

118. Q. I show you this document and ask you if you can identify it?

(A document was shown to the witness.)

A. Yes, it is in my handwriting.

119. Q. Did you write that entire document in your own handwriting?

A. The date is also my handwriting, but this written by Akamatu is written by him. I wrote down to this date and from there it was written by Akamatu.

120. Q. With the exception of the statement of Akamatu that he witnessed the writing of this document, is the rest of the document in your own handwriting?

A. Yes, it is entirely mine.

121. Q. Did you sign each and every page of that document?

A. Yes, I did.

122. Q. Did you on point number five write as follows:

"On the same day immediately following Commander FUKUMI'S departure (5 November 1942), I ordered W.O. SHIMA Ken (killed in action) to execute the missionaries by musketry. At that point SHIMA was the leader of the 1st Platoon which was attached to headquarters".

A. Yes, I wrote it.

123. Q. Have you at any time since you wrote either or both of these statements attempted to contact American authorities to try to change the account that you wrote?

A. I tried to contact American authorities.

124. Q. When did you try this?

A. In approximately February of this year I recovered my reason and thought out how to make this procedure.

125. Q. What efforts did you make to contact American authorities?

A. In the end of August of this year I tried to correct my false statement to the judge advocate of the headquarters of Commander Marianas.

126. Q. Did you submit a statement in writing?

A. I was thinking of how to make this procedure when the charge and specifications were presented to me.

127. Q. Therefore, it is correct then until you took the stand in your own defense today that you had never previously given the account that you related on this stand in your own behalf?

A. Yes.

The commission then, at 3:10 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present:

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

No witnesses not otherwise connected with the trial were present.

Tomita, Ryeji, lieutenant, Imperial Japanese Navy, the witness under examination when the recess was taken resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding and continued his testimony.

(Cross-examination continued.)

128. Q. Had the troops under your command gotten any combat experience?
A. During my time as commanding officer of the Detachment Unit we had not had any combat experience.

129. Q. On November 5, 1942 had the troops under your command been in combat previously?
A. No.

130. Q. What proportion of these troops would you say were new recruits, if any?
A. What do you mean by "new recruits?"

131. Q. Men who did not have military experience other than their basic training.
A. About one-third were new recruits.

132. Q. Now, with one-third of these men recruits and as none of them had undergone combat, were you anxious to make a very good impression as commanding officer?
A. I believe I was a good officer.

133. Q. How old were you on November 5, 1942?
A. I was 25 years old.

134. Q. What would you as a 25 year old commanding officer think the effect on the morale of your troops would be if immediately after you assume command you could execute two spies?
A. I have no memory as to their morale.

135. Q. If under those circumstances two spies were executed would that tend to enhance the prestige of the commanding officer?
A. I do not know if it would or not.

Re-examined by the accused:

136. Q. You testified on cross examination that you tried to contact American authorities, explain again how you tried to do this?
A. I did not know how to contact the American authorities. I tried to think of a way, but I could not do so. I thought it was the best thing to consult with the lawyers.

137. Q. Did you actually write a statement in Japanese?
A. Yes, I did.

138. Q. To whom did you address this statement?
A. I addressed it to the judge advocate of the Marianas Headquarters.

139. Q. What did you do with the statement?
A. Just a day before I signed my name to the charge I was allowed by the judge advocate to meet the lawyers. So I gave my statement to them and asked them to give it to the authorities.

140. Q. I show you this document, is this the document that you wrote and signed?

(A document was shown to the witness.)

A. Yes, it is.

141. Q. Is it in your own handwriting?

A. Yes, it is.

142. Q. Is it signed by you?

A. Yes, it is.

The statement of the accused, Lieutenant Tomita, Ryoji, Imperial Japanese Navy, in Japanese was submitted to the judge advocate and to the commission, and by the accused offered in evidence.

The judge advocate objected to the admission of this document in evidence on the ground that the document itself has not been translated therefore the contents of the document are unknown.

The accused replied.

The commission announced that it would adjourn until 9:10 a.m., Friday, December 13, 1946 in order that a translation of this document may be made.

The witness was duly warned.

The commission, then at 3:40 p.m., adjourned until 9:10 a.m., Friday, December 13, 1946.

0387

SIXTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, December 13, 1946.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinsen, U. S. Navy,
Colonel Adelph L. Ramen, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adelph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical authority to Commander Marianas regarding the illness of Commander Ramen J. Wallenbern, Dental Corps, U. S. Navy, member of the commission, copy appended marked "S".

Tomita, Ryeji, lieutenant, Imperial Japanese Navy, the witness under examination when the adjournment was taken resumed his seat as a witness in his own behalf. He was warned that the oath previously taken was still binding and continued his testimony.

(Re-examination continued.)

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, stated that the translation of the document offered in evidence at the conclusion of yesterday's proceedings was finished.

The original statement of the accused, Tomita, Ryeji, lieutenant, Imperial Japanese Navy, in Japanese was resubmitted to the judge advocate and to the commission and the English translation thereof was submitted to the judge advocate and to the commission and by the accused offered in evidence.

The judge advocate objected to the commission receiving this document in evidence and stated as follows:

Prior to stating the ground for my objection to this document I would like to point out that the accused has testified before this commission as a witness in his own behalf to the effect that he wrote this document prior to the receipt of the charge and specifications. The English translation of this document that the accused now desires to offer into evidence indicates that this document is dated September 4, 1946. The record of this trial reveals that the accused has stated that he received a copy of the charge and specifications on 29 August 1946. Furthermore, the opening phrase of this document states that the accused had already received an indictment prior to the writing of this document. Such

inconsistencies and contradictions speak for themselves.

My objection to any or all of this document being received as evidence by this commission comes under the general rule of evidence that prohibits a court from admitting into evidence any self-serving declaration made by an accused. This basic principle is laid down in Wharton's Criminal Evidence, eleventh edition, section 505 which states as follows:

"Declarations made by a defendant in his own favor, unless part of the res gestae, or of a confession offered by the prosecution, are not admissible for the defense..... Hence, though the court may prove statements made by a defendant which tend to establish his guilt, the defendant cannot ordinarily introduce self-serving statements made by him tending to show his innocence. The reason that self-serving declarations are excluded is that there is nothing about them to guarantee their testimonial trustworthiness. Such declarations are excluded because more often than not they would lead to fabrication and falsehood, and would confuse rather than enlighten the jury. If such evidence were competent, anyone guilty of a crime could supply himself with evidence by making statements in his own behalf and favor which he could introduce in the trial of the crime with which he was charged to show his innocence. Nor is the result changed by the statutes enabling a party to be called as a witness in his own behalf. That which he could prove by his sworn statements he is not permitted to prove by statements which are unsworn. In any view, therefore, the extrajudicial self-serving declarations of a party are inadmissible for him, with the exceptions hereafter stated, as evidence to prove his case."

This declaration that the accused now desires to offer into evidence falls squarely within the line and spirit of the aforementioned section of Wharton's Criminal Evidence and therefore must be excluded by this commission.

I also wish to point out to the commission that section 203, Naval Courts and Boards was cited by counsel for the accused, in ^{support} of his contention that the commission should receive this document into evidence, does not apply and has no application to a set of circumstances such as those in this case when the accused has voluntarily taken the witness stand in his own behalf.

The accused replied.

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

No witnesses not otherwise connected with the trial were present.

The commission announced that the objection of the judge advocate was not sustained and the document in question will be received in evidence.

The original statement in Japanese by Tomita, Ryoji, lieutenant, Imperial Japanese Navy, and the English translation thereof were so received and are appended marked "Exhibit 3" and "Exhibit 4" respectively.

143. Q. I will ask the witness to read the document in Japanese.

The accused, Tomita, Ryoji, lieutenant, Imperial Japanese Navy, read the statement in Japanese, appended marked "Exhibit 3".

An interpreter read the English translation of the statement of Lieutenant Tomita, appended marked "Exhibit 4".

Recross-examined by the judge advocates

144. Q. Are you now confined in solitary confinement?

A. Yes.

145. Q. When were you placed in solitary confinement?

A. September 5 of this year.

146. Q. Where were you confined prior to September 5th of this year after you arrived on Guam?

A. I was in the hut just in back of the hut that I am in now.

147. Q. Since you have been on Guam has there ever been a single day that you have not seen American authorities?

A. On August 29th I received my charge.

The judge advocate, with the permission of the commission repeated the question since the answer given was not responsive.

148. Q. Has there ever been a single hour of every day since you have been on Guam that you did not see American personnel?

A. Yes, I have seen them.

149. Q. When did you come to Guam?

A. I believe it was in April of this year.

150. Q. Yet, you never produced that statement until after you were served with the charge and specifications, is that right?

A. When I arrived at Guam, I was eagerly awaiting another investigation. I thought it would be tomorrow or the day after tomorrow. I was waiting very eagerly, but July came and still no re-investigation. I thought it was better for me to write a statement and withdraw my previous false statement, and state the truth. So about the middle of August I wrote the statement I have just produced.

151. Q. Do you know Major Furuki?

A. I do.

152. Q. Do you know Captain Inoue?

A. Yes.

153. Q. Before you were put in solitary confinement do you know where they were living at the stockade?

A. They were living in back of the hut I am in now.

154. Q. Was that hut the same one in which you were previously living?

A. Yes.

155. Q. Do you know whether or not Major Furuki or Captain Inoue ever wrote petitions or statements and sent them to the American authorities at the time you were with them?

A. I do not know.

156. Q. Are you absolutely certain of that answer?

A. I am certain.

157. Q. Did you ever know whether Captain Inoue or Major Furuki ever contacted American authorities?

A. What do you mean by contact?

158. Q. Did you know either by vocal or written means that Major Furuki or Captain Inoue were presenting petitions to the American authorities?

A. I saw them writing something, but I did not know whether they were doing it to contact American authorities or not. CLT

159. Q. What were they writing?

A. I did not see what they were writing so I do not know.

160. Q. Did they tell you what they were writing?

A. I have not heard them tell.

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

The commission did not desire to examine this witness.

The witness stated that he had nothing further to state.

The witness resumed his status as accused.

The defense rested.

The accused read a written statement in Japanese in his defense, appended marked "T".

An interpreter read the English translation of the statement of the accused, appended marked "U".

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

Present:

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

No witnesses not otherwise connected with the trial were present.

The judge advocate requested a recess until 2:00 p.m., in order to obtain a witness in rebuttal.

The commission announced that the request of the judge advocate was granted.

The commission then, at 10:47 a.m., took a recess until 2:00 p.m., at which time it reconvened.

Present:

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

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The rebuttal began:

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.
A. Furuki, Hidesaku, major, Imperial Japanese Army.
2. Q. If you recognize the accused in this case will you please point him out and name him?
A. Yes, I do. Lieutenant Tomita.
3. Q. Major, where did you first get to know Lieutenant Tomita?
A. I came to know him first in November of last year at the stockade at Kwajalein.
4. Q. When did you come to Guam?
A. Beginning of April of this year.
5. Q. Where were you first confined when you came to Guam?
A. I was confined at the Japanese prisoner of war stockade.
6. Q. Were you living at this time by yourself?
A. I was living with about twenty men.
7. Q. Major, how long did you continue to live with this group?
A. About seven months.
8. Q. Among this group of twenty men was the accused Lieutenant Tomita included?
A. Yes.
9. Q. During the seven months, approximately seven months, that you lived with this group of persons did you submit any petitions to the American authorities?
A. Yes.
10. Q. Can you remember approximately how many petitions you submitted for this time?
A. About five.
11. Q. Can you give the approximate dates that you submitted those petitions?
A. One on April 9th, one on June 10th, two in September and one in October. The dates and the number which I submitted are just a rough estimate.
12. Q. Major, were any of these petitions brought back to you at a later date, if so, were you allowed to revise them?
A. Yes. Once.
13. Q. During these seven months that you lived with this group of persons did you have an opportunity to submit a petition or statement at any time you got ready?
A. Yes, I was able to submit them when I was ready.

14. Q. Were writing materials available to you to submit these petitions at any time you desired?

A. I had these writing materials by myself.

15. Q. Was the same opportunity to submit a petition available to all persons in this group with whom you were living?

The accused objected to this question on the ground that the question was asking for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection of the accused was not sustained.

The question was repeated.

A. When they desired to submit a statement or petition they would have a chance.

The accused did not desire to cross examine this witness.

The judge advocate did not desire to further examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and rank.

A. Inoue, Fumio, captain, Imperial Japanese Army.

2. Q. If you recognize the accused in this case will you please point him out and name him?

A. Tomita, Ryoji, lieutenant, Imperial Japanese Navy.

3. Q. When did you first get to know Lieutenant Tomita?

A. From November 1945 I came to know him.

4. Q. Where were you when you came to know him?

A. At Kwajalein.

5. Q. When did you come to Guam?

A. I recall having come to Guam in the beginning of April of this year.

6. Q. At that time where were you confined?

A. At first I was confined at the Japanese prisoner of war stockade with the prisoners of war who had come from Rota.

7. Q. Did you live with anyone at this time?

A. The officers who had come from Kwajalein were living with us there.

8. Q. How long did you continue to live with this group of persons?

A. I recall having lived with them about a month and a half, I do not remember exactly.

9. Q. After this month and a half where did you live?

A. We were moved to the corner of the prisoner's stockade.

10. Q. How long did you continue to live in this place?

A. We lived there until the second of November.

11. Q. Of what year?

A. This year.

12. Q. During that time did the accused, Lieutenant Tomita, live with you?

A. Until Lieutenant Tomita was confined, that was the last of August, we lived together.

13. Q. During this time which you lived with Tomita did you have any occasions to submit statements or petitions to American authorities?

A. If one had an intention to write these documents there was plenty of time to do so.

14. Q. Did you yourself submit any petitions or statements?

A. Yes, I did.

15. Q. Were writing facilities available for you and all the other persons in this group to write and make petitions if you cared to do so?

A. If we asked for them they were available.

The accused did not desire to cross examine this witness.

The judge advocate did not desire further to examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The rebuttal ended.

The accused did not desire to offer any evidence in surrebuttal.

The judge advocate desired to make no opening argument.

Mr. Akimoto, Yuichiro, a counsel for the accused read a written argument in Japanese, original appended marked "V".

The commission then, at 3:45 p.m., took a recess until 4:05 p.m., at which time it reconvened.

Present:

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

No witnesses not otherwise connected with the trial were present.

The commission then, at 4:05 p.m., adjourned until 9:16 a.m., Saturday, December 14, 1946.

SEVENTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Saturday, December 14, 1946.

The commission met at 9:16 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused, his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical authority to Commander Marianas regarding the illness of Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, member of the commission, copy appended marked "W".

An interpreter read a translation of the argument of Mr. Akimoto, in English, copy appended marked "X".

The commission then, at 9:55 a.m., took a recess until 10:10 a.m., at which time it reconvened.

Present:

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

Robert Oldham, yeoman third class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Suzuki, Saizo, counsel for the accused, read a written argument in Japanese, original appended marked "Y".

An interpreter read a translation of the argument of Mr. Suzuki, in English, copy appended marked "Z".

Commander Martin E. Carlson, U. S. Naval Reserve, counsel for the accused, read a written argument appended marked "AA".

The accused waived the right to have the argument of Commander Carlson read in Japanese in open court.

The commission then, at 11:10 a.m., adjourned until 9:10 a.m., Monday, December 16, 1946.

EIGHTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, December 16, 1946.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Colonel Adolph L. Ramon, Army of the United States,
Colonel Douglass G. Pamplin, Army of the United States,
Lieutenant Colonel Adolph Zuber, U. S. Marine Corps,
Commander Vance O. Smith, U. S. Naval Reserve, members, and
Lieutenant Edward L. Field, U. S. Naval Reserve, judge advocate.
Vivian Kilner, civilian, reporter.
The accused and his counsel and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

The judge advocate read a letter from the attending medical officer to Commander Marianas concerning the illness of a member of the commission, Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, copy appended marked "BB".

The judge advocate read a written closing argument, appended marked "CC".

The accused waived the right to have the argument of the judge advocate read in Japanese in open court.

The trial was finished.

The commission was cleared.

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

The first specification of the charge not proved.

The second specification of the charge not proved.

And that the accused, Tomita, Ryoji, lieutenant, Imperial Japanese Navy, is of the charge not guilty; and the commission does therefore acquit the said Tomita, Ryoji, lieutenant, Imperial Japanese Navy of the charge.

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

Adolph L. Ramon
ADOLPH L. RAMON,
Colonel, Army of the United States, Member.

Douglas G. Pamplin
DOUGLASS G. PAMPLIN,
Colonel, Army of the United States, Member.

Adolph Zuber
ADOLPH ZUBER,
Lieutenant Colonel, U. S. Marine Corps, Member.

Vance O. Smith
VANCE O. SMITH,
Commander, U. S. Naval Reserve, Member.

Edward L. Field
EDWARD L. FIELD,
Lieutenant, U. S. Naval Reserve, Judge Advocate.

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

No witnesses not otherwise connected with the trial were present.

Robert Oldham, yeoman third class, U. S. Navy, reporter.

The commission announced its findings.

The commission, having no more cases before it, adjourned at 3:40 p.m., to await the action of the convening authority.

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

Edward L. Field
EDWARD L. FIELD
Lieutenant, U. S. Naval Reserve, Judge Advocate.

103rd U. S. Naval Hospital
Guam, Marianas Islands.
December 9, 1946.

From: Lieutenant (jg) M.V. McClew (MC), USNR.
To : Commander Marianas.
Via : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.
Subject: Sickness of member of military commission.
Reference: (a) Naval Courts and Beards, section 377.

1. In accordance with reference (a), I have to report that on December 9, 1946, I found Commander Ramon J. Wallenbern, Dental Corps, U. S. Navy, sick and unfit for duty.

M.V. McClew,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TO BE A TRUE COPY

Edward L. Fick
Lt. USNR.

upn

0399

OPENING STATEMENT FOR THE PROSECUTION
DELIVERED BY LIEUTENANT EDWARD L. FIELD, U. S. NAVAL RESERVE

If it please the commission, I desire by way of this opening statement to give the commission a brief synopsis of the evidence which I shall present in order that the members of the commission might better follow the sequence of events as revealed through the testimony of the witnesses. Nothing that I shall now say is evidence nor is it in any way to be construed as evidence by this commission.

The pertinent facts of the case at bar are clear and simple. The prosecution's case will consist of the testimony of two Gilbertese natives and the confession of the accused.

My witnesses will reveal that on or about 31 August 1942, a group of fourteen Gilbertese natives accompanied by two Catholic priests, namely Father Louis Durand, a French national, and Father Leo Marquis, a Swiss national, set sail in an open canoe to travel from Abriang Atoll to Maraki Atoll in the Gilbert Islands. This is a voyage of approximately 20 miles, but is not considered a great feat by natives of that locality and our witnesses had made this same journey several times previously. After leaving Abriang Atoll this group, consisting of fourteen Gilbertese natives, two of whom will appear before you as witnesses for the prosecution, and the two priests encountered adverse weather and were blown from their prescribed course.

This little group drifted helplessly for eight days before being overtaken by a Japanese warship. Their meager supplies of food and water were exhausted by this time and they valiantly sought in vain aid from the Japanese warship, nor would the Japanese warship inform them as to their location or take them to safety, but they were forced to continue drifting at the mercy of the open sea.

Some eleven days later, on 19 September 1942, this little band of hapless persons were washed ashore on Mille Atoll. At the time of their arrival on Mille they did not know where they were as they had been entirely lost without any knowledge of their position or the direction in which they had drifted. The first day the group were on Mille they were aided by natives of Mille Atoll, and the following day the entire group was apprehended and placed in custody by the Japanese authorities.

The two witnesses will relate how the natives from the Gilberts were allowed to work, while the priests were continuously confined by the Japanese within a small tent near the headquarters of the Japanese garrison at Mille. Both the Gilbertese natives and the priests continued to sleep together during the time of their confinement.

The prosecution's first witness will relate how he witnessed, one morning on or about 5 November 1942, the arrival of some five or six Japanese soldiers, under the command of an officer, in front of the tent in which the two priests were living. He will testify that this group of Japanese soldiers were armed with rifles and fixed bayonets and that two of the soldiers carried blindfolds. This witness did not see the events that followed as he was forced to depart for his work by the Japanese, but upon his return to the tent for his noon meal, as was the custom to do, the two priests had disappeared and they never again were seen by the witness. A fellow Gilbertese native of the witness who was in the tent at the time of the arrival of the group of Japanese informed the witness that the soldiers had taken away the two priests. This witness will further testify that the accused, Lieutenant Torita, was the commanding officer of the Japanese garrison on Mille Atoll at the time of the disappearance of the two priests and he will also testify that the soldiers whom he saw in front of the tent were personnel under the overall command of the accused.

Our second witness will relate the same account about the sea voyage and their presence upon Mille Atoll. He will further relate that about seven days after the priests had disappeared he was called upon by Japanese soldiers, who were members of the unit under the command of the accused, to accompany them to the beach and there he was instructed to bury two bodies whom he immediately recognized as the bodies of Father Durand and Father Merquis. This witness will further relate that he observed large holes in the chests of each of the bodies in the vicinity of the heart and that the bodies at this time were in a swollen and puffed up state.

The confession of the accused will then be introduced to link the accused with the crime. In the confession the accused states that he ordered the execution of the two priests as suggested to him by his predecessor, Commander Fukumi, due to the alleged "bad behavior" of the priests.

This, then gentlemen, is a brief resume of the facts which the prosecution shall prove to the full and complete satisfaction of this commission.

Edward L. Field
EDWARD L. FIELD,
Lieutenant, USNR

103rd U. S. Naval Hospital
Guam, Marianas Islands.
December 10, 1946.

From: Lieutenant (jg) M.V. McClow (MC), USNR.
To : Commander Marianas.
Via : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.
Subject: Sickness of member of military commission.
Reference: (a) Naval Courts and Boards, section 377.

1. In accordance with reference (a), I have to report that on December 10, 1946, I found Commander Ramon J. Wallenborn, Dental Corps, U. S. Navy, sick and unfit for duty.

M.V. McClow,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TO BE A TRUE COPY

Edward L. Fink
lt USNR

11

0402

502041

被告富田良治、異議申立

辯護士 鈴木才藏

被告富田良治、此事件ニ対シ、今証據トシテ提出
セラシタリ。調トドモガイニステイデーション、調査員ノ記録
ニ対シ、異議ヲ申立テマス。

検事、此、被告富田良治、自白書ヲ本件、証據
トシテ主張スルデアリマス。然レ、自白トハ、自ラ自己、犯罪
ヲ承認スルコトデアリ、從フテ、自白ハ、眞實ニ自由意志ニ基
イテ行ハシタモデナクテハナラセム。ネーバルコックエンドボーズ、
第三章、一七四項ハ、次、如ク説明シテオリマス

自白ガ有効ナル爲ニ、其、自白ガ被告ニ於テ全ク其、
其、自由意志ニ基イテ行ハシタモデアルコトヲ確定的ニ示サ

ネバナラ又、任意ニナレタ自由ト云フ為メハ、ソガ釋放、望ニ

其他利益トナル事柄或ハ權限ヲ有スル人ニヨリテ吹キツクテ罰

又ハ迫害ニ對スル恐怖感ニヨリソノカサレ又場合デナレバナ

ラナト。

米國憲法ヲ大同修正ニ依リ個人ノ權利ハ完全ニ認めル

ニ至ッタデアリマス。タトヘスキャプルールト雖モ米國憲法ニ

於テ個人ニ与ヘラレタ權利ヲ否定スルコトハ出来ナイデアリマス。

天賦ノ權利此レハ何人モ犯スコトハ出来ナイモデアリマス。米

國ノ刑法ニハ自白ニヨリテ自己ヲ罪ニ陷ヌコトハ出来ナイト云フ

規定ガアリマス。

日本ノ刑事訴訟法ヲ三四六條ニハ自白ハ特ニ凶裁判

所事件ト云フ極メテ輕イ犯罪ノ場合ニハ、訴訟關係人ニ

異議^{ナキトキニ}限リ 証^シ據^{トナリ}得^ルノデアツテ、已裁判所事件

以上ノ大ナキ事件ニ対シテハ自白ノミヲ証^シ據^{トナリ}ニ採用スルコトヲ

禁止シテ居^ルデアリマス。

自白ハ嚴密ニ去^レベ一種、傳聞ニ過^ギマセン。従^ツテ自白、

信憑性ハ實際ニ於テ甚^ダ疑^ハシイデアリマス。特^ニ日本人、

従来、傳統^的ナ社會的精神的 雰囲気ハ日本ニ於ケル自白

ノ信憑性ヲ非常ニ弱^クメタデアリマス。此ノ故ニ付本軍法委員

會が特^ニ留意^シシコトヲ強^ク要^スヒマス。

去^レル十一月三日 日本ニ新^ラシイ憲^法が^{制定}公布^サレタ。

此ノ新憲法、九^十八條ハ次ノ如ク規定^シテ居^リマス。

(一) 何人モ不利益^ヲ供述^ヲ強^ク要^サシ^テハ^ハ強制^{拷問}又ハ

脅迫^ニヨリ或ハ長キ不法ナル抑留^{若クハ}拘禁^ノ後ニ^ナサレタ

自白の証拠として用ふるを許さし又曰「自白が自己に不利と

唯一の証拠である場合、有罪とせし又、刑罰を課せうしと

るは自白に關して、非常に大胆に規定せられたる。

本来刑事訴訟法に規定すべき事項を新憲法に規定

せし入るはと言ふと、如何に從來日本に於ては自白の信憑

性が薄弱であることと確かに物語るべきである。

千余年日本人、精神生活を支配する佛教に個人的自

我の否定を教へたる。これに親、子、尊、友人、尊

主人、尊。容易に自己を犠牲するを美德と考へる傾向

を生みたる。然るに半面は、個人的自我の否定、個人的

自我を輕視する弊習を形成し、又社會的・政治的生活に

於ては個人、自己主張を弱くし、非にふべきが傳統を生

ニミシタ。コノ自己主張ニ於ケル弱サが日本ニ於ケル官尊民卑、

陋習ヲ生ニデモクラシーノ發達ヲ阻害シタ、ソレヲ又コノ

自己主張ノ弱サ、日本ノ刑事事事件ニ於テ其ノ自白ノ信憑性

ガ他ノ文明國ニ於ケルヨリ甚ダシク弱イト云フ特殊ノ現象ヲ生

シタノデアリマス。即チ一度犯罪ノ嫌疑ヲ受ケテ官ノ取調べヲ

受ケルヤ取調官ニ對シ強ク自己ノ無実ヲ主張スルコトモセズ

モウモ比較的ニ容易ニ官憲ノ押シツケル其ノ嫌疑事實ヲ

認メテアツル傾向ガアルデアリマス。

他ノ立憲國ニ比較シテ日本ニ於テ無実ノ罪ニ泣クモノガ

多イノハ無理ノ官憲ノ取調べニヨリモ、ソレヲ又日本人ノ

自己主張ノ弱サニ其ノ大半ノ原因ガアルト斷言シ得ルデア

アリマス。

次ニ此留言意願と度イハ此、被告富田、自白書、作成
サシタ時、事情デアリマス。即チ年若キ純情ノ爲、能ク
ニ祖國、必勝ヲ信シテ南海、ハテニ惡戦告關シテ青年
士らが敗戦、結果ニ自死ニ消耗シテナルトモ、戦勝國ナリ
アメリカノ士らニヨリ戦争犯罪ニ関聯シテ取調べヲ受ル又時
、陳述書ヲ基礎ニシテ戦犯名録者トシテ抑留サレタル時
ニ作ラシタ陳述書デアリト言フエトデアリマス。
之ハ自白、信憑性ヲ一層疑ハルル者ヲ客觀的事實
デアリマス。

以上、理由ニヨリ、此、被告富田、陳述書、本件、證據
トシテ認定サルベキデナイト主張シ本抗弁ヲ提出スル次第
デアリマス

ARGUMENT IN OBJECTION

DELIVERED BY

MR. SUZUKI SAIZO, TOKYO.

Gentlemen of the commission:

The accused, TOMITA, Ryoji, objects to the presentation of his confession as evidence before this commission prepared by the Board of Investigation.

The prosecution insists that this confession is evidence in this case. However a confession is an acknowledgement of guilt, and it ought to be entirely voluntary on the part of the accused.

Section 174 of Naval Courts and Boards states: "It must be affirmatively shown that the confession was entirely voluntary on the part of the accused. A confession is, in a legal sense 'voluntary' when it is not induced or materially influenced by hope of release or other benefit or fear of punishment or injury inspired by one in authority.

In the Sixth Amendment of the United States Constitution, the right of the individual are completely recognized. Even the SCAP Rules cannot deny the individual rights recognized by the United States Constitution.

A God given right cannot be violated by any persons. In the United States Criminal Law, there is a stipulation that one cannot incriminate himself by his own confession.

Section 346 of the Japanese Law of Criminal Procedure admits a confession as evidence only in the case of local courts if there is no objection by the parties. Therefore, it prohibits regarding only a confession as evidence in larger cases than those of local courts.

A confession, strictly speaking, is hearsay. Therefore, in reality the reliability of a confession is very doubtful. In particular the traditional atmosphere in the social and spiritual life has weakened the reliability of the confession in Japanese to a great extent. Therefore, I strongly request, the members of the commission to pay special attention to this point.

On November 3rd of this year a constitution for Japan was established and promulgated. In Article 38 of this Constitution it is stipulated as follows:

"No person shall be compelled to make a statement against himself. A confession made under stress, torture or threat; or a confession made after long illegal detention or custody shall not be admissible as evidence. No person, when his confession is the one and only evidence against him, shall be guilty or punished."

The above is a very bold article concerning confessions. To find such an article in the Constitution which should have originally been provided for in the Criminal procedure law proves to us conclusively that the reliability of a confession is weak. The teaching of Buddhism which dominated the spiritual life of the Japanese for over 1,000 years taught us the negation of the individual ego of man. This produced a trend to consider it as a virtue to sacrifice one's self with ease for the sake of one's parent, child, friend and master. But on the other hand, this negation of the individual ego has led to an unfortunate tendency to despise the individual ego, and this in turn gave formulation to a most sorrowful and pitiable tradition which weakened the 'self assertion' of an individual in social and political life. This weakness in self assertion has given rise to the evil custom of the exaltation of official life above private life and hampered the development of democracy in Japan. This made way for a peculiar phenomena, namely, that the reliability of confessions in the Criminal cases in Japan were much weaker than that of other civilized nations. Therefore, when a person is suspected of a crime and placed under official investigation, there is a tendency to submit easily to the oppression by the officials and admit the suspected fact rather than strongly assert his innocence. I can state positively that this is the reason why, there are in Japan more innocent persons who cry for being condemned as guilty, compared to the other constitutional by governed countries because of this weakness.

in self assertion rather than the forced investigation of the officials.


Next, I wish you would take particular notice of the time when this confession of the accused, TOHITA, was written. This young officer, fully convinced of victory for his country, went through unbelievable hardships in the far off island of the South Seas. On the defeat of his country he was mentally and physically exhausted. At this time, in connection with a war crime he was investigated by an American officer and wrote a statement.

On the basis of the above conditions and being confined as a suspect of a war crime, this statement was written. This is an objective fact to prove further the doubtfulness about reliability, of this confession.

Due to the above reasons, I object and assert that the statement by the accused TOHITA should not be entered as evidence in this case.

SUZUKI, SAIZO

I certify the above to be a true and complete translation of the original objection in Japanese to the best of my ability.


EUGENE E. KERRICK, JR.
Lieutenant, USNR.
Interpreter.

The accused Lieutenant Tomita objects to this document being introduced into evidence because it clearly appears that the accused Tomita was denied the right which the Sixth Amendment of the United States Constitution guarantees to every accused in all criminal prosecutions.

The Fifth Amendment of the Constitution of the United States is a further safeguard to all persons in any criminal case. This amendment provides that no person shall be compelled in any criminal case to be a witness against himself.

Section 235, Naval Courts and Boards states:

"The constitution provides that no person shall be compelled to give any evidence against himself".

Section 734 (b) and (c) provides that whenever it becomes evident that a person whose conduct is the subject of investigation is involved in such a way that an accusation against him may be implied he must be informed that he is a defendant, he shall be notified of the gist of the evidence that tends to implicate him, and instructed that he will be accorded the rights of an accused before a courts martial. Namely, the right to be present, to have counsel, to challenge members, to introduce and cross-examine witnesses, to introduce new matter pertinent to the inquiry to testify or declare in his own behalf at his own request and to make a statement and argument. He has the right of any witness to refuse to answer incriminating or degrading questions".

Paragraph (c) states that:

"A person granted the privileges of an interested party may be called as a witness, but of course, can not be required to incriminate himself".

If the rights of a defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect. This is one of the most important rules to be observed.

We hold that Appendix D Article 14, Naval Courts and Boards, in no way permit or authorizes the abrogation of the fundamental rights guaranteed by the Constitution of the United States.

We further hold that the so-called SCAP rules cannot infringe in any way or vitiate the Fifth Amendment and the Sixth Amendment of the Constitution of the United States of America. If this were possible the Constitution would have so provided. Instead we know full well the procedure which is necessary in order to repeal any of the Amendments of our Constitution.

The Geneva Prisoner of War Convention of 1929, Article 61, states:

"No prisoner may be obliged to admit himself guilty of the act of which he is accused".

The accused Lieutenant Tomita was never accorded any of these rights. To admit this document into evidence will be most prejudicial to the rights of the accused. It will result in the accused being made to testify against himself. He will because of the admission of this statement be deprived of all Constitutional guarantees. We object to this statement being admitted into evidence.

Martin E. Carlson
MARTIN E. CARLSON,
Commander, U.S.N. R.
Defense Counsel.

0411

103rd U. S. Naval Hospital
Guam, Marianas Islands.
December 11, 1946.

From: Lieutenant (jg) M.V. McClew (MC), USNR.
To : Commander Marianas.

Via : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.

Subject: Sickness of member of military commission.

Reference: (a) Naval Courts and Boards, section 377.

1. In accordance with reference (a), I have to report that on December 11, 1946, I found Commander Ramon J. Wallenbern, Dental Corps, U. S. Navy, sick and unfit for duty.

M.V. McClew,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TRUE COPY

Edward L. Ford
Lt USNR

04 12

103rd U. S. Naval Hospital.
Guam, Marianas Islands.
December 12, 1946.

From: Lieutenant (jg) M.V. McClew (MC), USNR.
To : Commander Marianas.

Via : Rear Admiral Arthur G. Robinsen, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.

Subject: Sickness of member of military commission.

Reference: (a) Naval Courts and Beards, section 377.

1. In accordance with reference (a), I have to report that on December 12, 1946, I found Commander Ramon J. Wallenborn, Dental Corps, U.S. Navy, sick and unfit for duty.

M.V. McClew,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TO BE A TRUE COPY

Edward L. Fiebert
LT WRN.

WRN

0413

103rd U. S. Naval Hospital
Guam, Marianas Islands.
December 13, 1946.

From: Lieutenant (jg) M.V. McClow (MC), USNR.
To : Commander Marianas.

Via : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.

Subject: Sickness of member of military commission.

Reference: (a) Naval Courts and Boards, section 377.

1. In accordance with reference (a), I have to report that on December 13, 1946, I found Commander Ramon J. Wallenborn, Dental Corps, U.S. Navy, sick and unfit for duty.

M.V. McClow,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TO BE A TRUE COPY

Edward L. Fier
Lt USNR.

"g"

04 14

陳述書

富田良治

私は昭和十年四月海軍に入り、昭和十五年五月海軍少尉

に任官すると、私がミッドウェー島に着任したのは昭和十七年

十一月三日、私が二十五歳の時でした。

終戦後、私は「ダウト」に於て、米軍飛行士処刑事件

の証人として米國海軍士官より訊問されました。その時

全く思ひがけなくも、福見中佐の關係する宣教師問題

について訊問されたことがあります。

當時は事件発生より既に三年経過しており

而も今次大戦中、連日長期に亘る熾烈な米空

軍の爆撃と糧食の乏しい飢餓戦に悩まされてつ

其の日其の日の戦斗及糧食對策に精魂を傾け
 盡す末に擧句、私は心身共に疲れ果てておりました
 加之、米軍飛行士処刑問題に關係し、司令官下
 私の同僚の身上も、案ずるの余り夜も充分眠れ
 ない事が多かったのであります。その中に氣持が混乱
 となる時、突然本事件に對し訊問されたのを
 承ら、私は非常に困惑し、本件は當時、三
 島の最高指揮官たる福見中佐が、直接中島
 舟次長に命令し、爲に起る事件であります
 と承り、私は此の事件は福見中佐が承るものであり
 私の全然、関知する処でないことを、同米海軍士官
 の前が断言致すも

西一三

鶴は私の愛する部下の一人であり、更に前
 命令を受け、實際処刑——それは鶴であり、
 彼は甲板士官として実によく働き、又人間として
 立派な尊敬すべき人であり、彼の犠牲の
 爆薬により名譽の戦死を上げ、
 私は本意に鶴を愛しており、名譽の戦死
 を上げた人とは、假令その人が罪を犯したとしても
 罪人の名前を呼ぶことは出来ぬ。しるしは：愛する部下
 であり、私も彼の時、彼を愛していた。どうしてもしるしは
 彼の自暴自棄の状況にあり、彼は
 が、ある事が愛する部下に対する情實として
 私が福見中佐の命を受け、それを鶴に傳へた。

言ふ虚偽の答をします

「さう」に行つても私は依然として混乱状態
にありまゝ。私の親愛なる同僚達も米軍

飛行士処刑問題に關して裁判され結果

有罪といふたこの報をまゐらうかその時である。

私は今次大戦中「三」島に於てあの悲慘な

状況下 必勝を信じて身命を祖國に捧げて

努力を盡した同僚の運命を思ふに敗者の

心算が身に沁み感じられます。我は敗北

國敗北の何の山河ある。敗戦以来只爲す

事なく拘置所に其の日其の日を過す我が身を

うらやましく感じると女に。いつと愛する部下の

5
為にも 他人の罪を背負うべきではないと

言われ 安原は「ヒロイズム」が私の頭からこぼれ

離れていく。丁太 其の昔 米海軍の一士官が

日本語の 調書。原稿も書くまで。之を海軍に

署名しろと迫る者があつた。又 どうぞ「ヒロイズム」

に眞実に取つてやるにも 拘はる 福見の命令を

寫に依つて ^{セリフ} 必死の思い合せ。虚偽の陳述書

と知つて それに署名しなくてはならない

然るに 時の流れ、あの絶望的の混乱状態から

理性を取戻すには 福見中佐と 高島曹長

の間で発生した。私には全然関係のない事件の罪を

負ふべきではないと信ずるに至る。私は 事實に

又、陳述を為すの非を悟り、かの座席の陳述

と取消すのが私とを為すより最も正一に行き

かならんと確信するに至ります。私は此処に「眞実」

又、陳述を取消す次第であります。

私は十七年前に父を失ひ、私の母は之に「家計

の中から苦心して所産五人の姉弟を養育してく

ると。私の弟は二人とも全部今次戦争中

兵役に服し、私の家も二回に亘り米空軍の

爆撃の爲に罹災し、私は安撫の同情心

にかられ、爲す無実の罪を負ふ戦犯人として

告訴され、最愛の母を泣かせることには、何と

詫いさす方が出来ず

先采ある海軍軍人として微力な日本に盡せる

私は茲に良心を以て正義と博愛とを基調

とする本軍法委員會の前に、私の真実を

告白致します

神は必ず正しきものを賞下さることを信じて疑い

ません

一九四六年十一月十日

右 富田良治

STATEMENT OF TOMITA RYOJI.

I entered the Navy in April 1935. In May 1940 I was appointed Ensign, IJN. I arrived at Mili Atoll on November 3, 1942 when I was 25 years old.

After the termination of the war I was questioned at Majuro as a witness by an American officer concerning the case of the execution of American aviators. Then unexpectedly I was questioned about the priest case which was connected with Commander FUKUMI.

Three years had already elapsed since the case occurred. Moreover I was tired and exhausted because of the ceaseless heavy air-raids by the American planes and by the shortage of food. I had exerted all my efforts in daily battle and in alleviating the food problem which had caused us much suffering. Furthermore, I was so worried over the fate of my commander and my colleagues involved in the execution of American aviators that I could not get sufficient sleep.

My feelings were in such a state of confusion, that when I was questioned about the present case I was confused. This case occurred because the Commanding Officer of Mili Atoll, Commander FUKUMI gave orders to my subordinate, Warrant Officer SHIMA. Therefore, I firmly stated before the American officer that this act was done by Commander FUKUMI and that I had no connection with it whatsoever.

SHIMA was one of my most beloved subordinates. Anyhow, it was SHIMA who received orders and actually did the execution. As a deck officer he worked very well and as a man he was of most respectable character. But he died an honorable death during the severe American air raid.

I truly loved SHIMA. For a man who died an honorable death I could not bear his name being disgraced as a criminal even though he had committed a crime. "We lost the war anyway, I don't care what happens," I thought, and I was desperate. I was of the opinion that it would be love and friendship toward my subordinate so I falsely replied that I received orders from FUKUMI and passed ^{them} to SHIMA.

On coming to Kwajalein, I still was in a state of confusion. It was at this time that I heard my colleagues, involved in the aviator case, were tried and found guilty. I was filled with pity for the defeated when I thought of the fate of my colleagues who had put their lives at stake for the mother country and who were firmly convinced of victory under those miserable conditions in Mili. We were defeated. What was left after that? I could not help feeling sorry for myself doing nothing and passing futile days in the stockade since the defeat in war. I was possessed by a cheap heroic feeling, for the sake of my subordinate. Shouldn't I take over the responsibility of the crime committed by another? Such heroism stuck in my mind and I could not get rid of it. Just at that time an American handed me a draft statement in Japanese and pressed me to rewrite and sign it. As for myself, considering that I was in the aforesaid state of being, and, although what I had stated before was contrary to the truth, I rewrote the statement knowing it was false.

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However, as the days went on and as I recovered my reason, I came to believe that I should not take the responsibility for the crime which was committed by Commander FUKUMI and Warrant Officer SHIMA and with which I had no connection. I came to understand that it had been a mistake to make a false statement and that it was right to retract the statement. That is the reason why I retract here the statement which was quite contradictory to the fact.

I lost my father when I was seventeen. Since we were poor, my mother took great pains in bringing up us five brothers and sisters. Both of my two younger brothers were called during the war and my house was burned twice by the air raids of the U.S. bombers. I really don't know what apology to make to my dearest mother because I was accused in spite of my innocence, as a war criminal on account of my useless sympathy and broke her heart.

I, who served my fatherland as an honorable navy man to the best of my ability do hereby confess the truth with good faith before this military commission which honors righteousness and philanthropy.

I believe that God will have mercy upon upright people.

December 10, 1946.

TOMITA, Ryoji.
Lieutenant, IJN.

I certify the above to be a true and complete translation to the best of my ability.

Frederick F. Tremayne
FREDERICK F. TREMAYNE
Lieutenant (jg), U.S.N.R.
Interpreter.

辯論要旨

被告人 岡田 良治

辩护人 柴田 士 林 元 富 一 郎

一九四六年十二月十四日

裁判長 五・軍法要員各位

私の本論は、先づ今次戦争裁判と法、適用と戦争、外に、開陳致し度いと存して

由來戦争、國家又、民族、發展進歩、取り得る一つ、權利と云ふべきは、思ふに、戦争放棄、如き觀念、個人、學問、に、頼る者、かゝる、ありマス

一九二七年五月東國、コロロヤ大學教授、セー、タイ、ニコト、セル、氏、が國家政策、手段として戦争、放棄、國際條約、締結、スベ、ト提議、する、時、政、家、政治家、き、之、一、笑、を、付、ア、メ、リ、カ、狂人教授、ト、呼、び、付、け、ら、れ、マ、ス

此、如、く、状態、に、於、て、今、思、考、す、る、に、か、如、く、戦争、犯罪、罪、觀念、が、生、じ、出、る、と、思、ふ、に、付、て、ア、リ、マ、ス

此、に、か、う、科、学、進、歩、に、伴、ひ、戦争、範圍、上、其、災、害、の、甚、く、擴大、増、殖、し、た、り、何、人、を、戦争、に、依、り、利益、を、受、け、る、に、出、來、な、う、と、し、る、敗、者、に、つ、き、論、議、者、に、つ、き、何、等、の、利益、を、得、る、戦争、に、犠、牲、と、破、滅、を、蒙、

以下、何者モモテ、得ルコトカ、世界各國、政府
ニ明瞭ニ理解セシム。之ハ、此世界
戦争ニ至ル世界、凡テ、民族、肝ニ銘スルコト
アリ、テ、再、戦争ヲ嫌ハスルニ至ル。テ、
茲ニ、此ヲ、我カ日本ニ、此ヲ、憲法ニ、大義事カ、
之ヲ、全法カ、九条ニ、

日本國民、正義ト秩序ヲ基調トスル國際平和
ヲ、誠實ニ、事ボシ、國際ノ、系、知ル、戦争ト、武力ニ
ヨリ、威嚇又、武力、行使、國際紛争ヲ、解決スル
手段トシテ、永久ニ、之ヲ、放棄スル

前項、目的ヲ、達スル、陸海空軍、其他、武力、
之ヲ、保持シ、テ、國、之、主權、之ヲ、認メ、

ト、明記シ、之ヲ、中外ニ、宣言シ、テ、

之、本文、云、我日本國民カ、平和ニ、對シ、此ヲ
大膽、率直ニ、表明シ、之カ、實現、世界ニ、誓ヒ、且、世界
ニ、要ホ、スル、テ、

戰、這般、聯合國カ、戦争犯罪、概念ヲ、創設シ、
戦争裁判所ヲ、設ケ、之ヲ、審理スルニ、至ル、
旨ニ、此ヲ、将来ノ、安全ナル、世界、平和ノ、實現、
全國、
世界、文明諸國、普遍、妥協、
根本的、道德、規
準ヲ、定メ、
之、
裁、
之、目的
同、
大、
共、
ハ、
テ、

然、
個、
行、
カ、
嚴、
カ、
ニ、
テ、

茲ニ能ク先ヤ一ニ考ヘサレバナラヌコトハ「法」不_レ超_レ及
 / 原創_ニデラマス即_チ法ハ已_ニ生_ニ起_ニラスニテフ原創_ニデ
 ラマス之ハ唯馬法以來洋ノ東西ナ_レ通_ニ凡_ニテ、
 法_ニ諸_ニ國家_ニニ採用セ_レタル蕃_ニ遍_ニ、原創_ニデラマス
 從_テフ或_ハ莫_クニ能_ク起_ニ及_ニヲ認_メタルカキナルニル_ニハ之、
 原創_ニニ起_ル及_セルモノナルコトヲ想起スヘキデア_ニラマス

本件起訴狀第一頁 = 記₂

$$551/50K = 11.02$$

在行爲：戰年法規、五、慣習及文明社會、道義
ニ違反シタルモノニ付本軍法會議ニ於テ裁判
セラルベキモノナリト云フモノアリ

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然に十カう云ひ起訴状事實、如何なる事と
本軍法會議、一應之に起訴を受理し得ん
致し、之を之の審理裁判する、憲法上の本に
訴に當る事都ていふべき事と信するなり

抑も一國の國民は、其の國を重んずる、其の生るる國
家、法律に依りて保護せらるべき權利を有するなり
アリ、其の威國家は、其の領土又、其の國旗、下
艦船、航空機、其の他、これを行はるる行為、又、其の國民、
又、其の國民、これを行はるる行為、これを行はるる行為、
利益を享受するなり、國に對し、
之を、アメリカ合衆國の大總統、これを行はるる行為、
之を、今更申すと云ふなり

従つて或る行為が自國、領土内（其の國旗、下
艦船、航空機、其の他、これを行はるる行為、
自國の國民、權利を侵害せらるる行為、
之を、外國、統治權下、これを行はるる行為、
行為、又、其の三國人、權利を侵害せらるる行為、
之を、之の裁判に付、國家、其の犯罪に對し、
國家、又、其の行為者、主權者、其の國を、
之を、其の國を、權利を享受するなり、
之を、

本件起訴事實、依りて、其の他、
之を、之の國を、之の國を、
之を、之の國を、

日本人、被害者、ドイツ人、スイス人等々
なり茲ニ注意スベキ。被害者、其の國々
佛國及スイス兩國。當時我日本と交戦状態ニあり
しことヲ了ス

從テ本件、戦争犯罪者ヲ捕成ニ得ルモノアリ
一取國籍性、存続ニ依テ父國ニ歸スルハ當然ノ人ナリ。
國籍、此ノ土地の國籍。此ニ對シ、裁判權ハ日本國、
其のルモノアリ

何テ法律の國籍ヲ有セザルニ其來合國ニ對シ
裁判官權限ヲ有セザルニ。明ラニテ從テ來國
ノ法律ニ基テ捕成セラルル來國ノ裁判所ニ本軍
法會議ニ對シテ審判スルニ。前記國籍性ノ存続
ニ照シテ明ニ是レヲ了ス

米、コロンビア大學教授セウ・グ・フ・ト・
ウィリアム・サトウ、著國籍法(P 130-131及
137-138)ニ對シテ同趣旨、記述スル所
ニ「カニカ」事件及ドーバー・ケース事件ヲ其ノ
之ニ援ビシキモノアリ

案二、法ノ適用ニ付

本件現狀項目一、二ニ對シ「本行爲、戦争
法規ニ據ルル及文明社會ノ正義ニ違フモノ
ナリ」と云フモノガ如何ニモ法規如何

(6)

場合ヲ指シテアルカ、又ハ「文明社会ノ道義」
ト、何ヲ意味スルテアルヤカラ、復然トシテ之ヲ
推定スルニ甚しいテアルス

苟モ或行爲ニ對シ刑事責任ヲ負ハルコトヤハ
必ス其ノ適用スル法律ヲ明示シテアルコトヲ要ス
申シテアルス又、何トナレバ何人トモ法律ニ依リ
スルコトヲ罰せらる、コトナキハ、法治國ニ非ズ、刑法
ノ根本原則ニ反スルコトアルス

然レバ本件ニ所謂戦争法規ニ、特ニ「何ヲイフカ、
デアリカ、據事」日本國自ラ批准シタル「ハーグ」条約
ニ違反セリ云々ト叙明セシタル該条約ハ、已ニオ
セリシモノニ於テモハ、締約國タル「イタリヤ」及
ブルガリア兩國ノ批准ヲ受ケ居ル。國際条約タル
効力ハ、發生シタイセテアルス、其リナガラ、批准ヲ
ナシタル日本トシテ、其ノ道義的責任ヲ負フべし
トハ格別デアルカ一個人ノ行爲ニ對シ其ノ刑事責任
ヲ負ハントシ之ヲ効力ナキ條約ヲ適用セシムルハ
法ノ濫用デアラフヲ許サルベキナト信スルコトアル
ス。

又「文明社会ノ道義」ニ違反スト、云々云々トハ
一言大ナル疑問ナキモノアルコトアルス

「道義」ノ觀念コソニ對シ土地トニ依リテ相違
相対的觀念デアラフコトアルモノハ、其ノ義ハ必スシ

(7)

明日、通義デ、タイ、西洋、通義、又、その、東洋、
通義、に、参り、一致、する、マテ、ハ、タイ、デ、ア、ア、ス
殊、ニ、戦争、に、対する、觀念、ハ、戦争、前、戦争、中、
、ソ、レ、ト、統戰、後、ハ、今日、に、於、て、ハ、革命、的、
相違、アリ、デ、ア、ア、ス、

而、又、上記、「文明、社會、通義」ハ、云、々、無、ク、從來、
、法律、觀念、デ、ハ、到底、了解、出来、ナ、キ、新、創、
後、語、デ、ア、ア、ス、

勿論、將來、國際、法、變、ハ、規範、ヲ、定、メ、ト、ス、
政治、的、乃至、倫理、的、目的、ヲ、意、圖、ス、ル、研究、題目、
ト、シ、テ、ハ、詢、ニ、好、國、ハ、問題、ナ、ラ、ア、セ、ン、

然、レ、ト、方、ウ、斯、ク、如、ク、漫、然、ト、不、確定、ノ、觀念、
ヲ、テ、刑事、責任、ヲ、律、セ、ト、ス、ル、ハ、到底、法治、國、ニ、
於、テ、ハ、刑事、手、続、ト、シ、テ、是、認、ス、ル、コ、ト、ハ、出来、ナ、イ、
デ、ア、ア、ス、

石、ハ、本、件、起、訴、状、罪、状、項目、ニ、記載、セ、レ、ル、
如、ク、宣、教師、二、名、ノ、殺、害、ハ、事、出、火、行、に、シ、テ、
致、シ、ア、リ、テ、又、之、ハ、取、調、ベ、權、限、ヲ、有、シ、
横、須、賀、突、撃、隊、三、特別、陸、戰、隊、司令、福、見、孝、一、中、佐、
ノ、所、轄、長、ト、シ、テ、取、調、ノ、結果、^{「ス、バ、イ、」}シ、テ、コ、ト、ガ、
認定、セ、レ、ル、結果、ヲ、テ、^{「ハ、」}シ、テ、^{「ハ、」}シ、テ、正、確、
伊、藤、博、重、^{「富、田、良、治、」}、証、言、ニ、依、テ、主、証、
ト、シ、テ、處、テ、ア、ス、

而之同謀、行爲に對し國、被害、深刻に
 鑑み防衛手段上之必要を以て、又罰則を
 國體信上各國、此に對し

我日本海軍刑法第三十二條

「敵國、爲す同謀ヲ爲す又ハ敵國、同謀
 ヲ補助スルハ、死刑ニ處ス」

「規定に依りて之を犯す者」

之ハ我國、法則に同様に處せらるべきモノナリ

「之ハ之ニ依りて之を犯す者」ニ對し

Appendix-B Offenses Punishable by death

13-7 Article 5. Spies、奸諜

All persons who in time of war, or of
 rebellion against the Supreme authority
 of United States come or are found in
 the capacity of spies, or who bring or
 deliver and seducing letter of message
 from an enemy or rebel, or endeavor
 to corrupt any person in Navy to betray
 his trust shall suffer death

「規定に依りて之を犯す者」

之ハ我國、法則に同様に處せらるべきモノナリ

「之ハ之ニ依りて之を犯す者」ニ對し

「之ハ之ニ依りて之を犯す者」ニ對し

(9)

宣稱即二名と数名、ギルバート島民が大型カブ
＝船＝ミッド島＝上陸するに、金々難船＝依り漂
流するを、チト主張する、チトアスカ
使は僅か二日間、食糧を用意し、ギルバート島
ヲ出帆なり、チト＝不始十九日、日数ヲ至ラシ
島＝上陸して、即ち金々一人、日目＝日本軍艦
ニ於いて、修ヲ見、ビスケット一箱、水ヲ予
う、タル＝是ヲ又トセ、チトガ、在所ヲ改テ帰航シ
ヤ、トセ、セ、更ニ十日、航海ヲ續ケ、ミッド
島＝到着する、チトアスカ之ヲ明ニ使、陳述
、其事ヲ、チタル、チトアスカニ、使、チトアスカ
ヲ長シ、政府ヲ企圖、違背、チトアスカ、チトアスカ
ミッド島＝上陸、其、目的、チトアスカ、チトアスカ
據、チトアスカ、チトアスカ、チトアスカ

第三：殺人、事實、明カナル事
本件起訴狀ニ依リ、「被殺人、マー、ミッド島
ミッド環状珊瑚島、大日本帝國軍隊、現、中
部、中、昭和十七年十月五日、チトアスカ、ミッド島
ミッド環状珊瑚島ニテ、意思的、要領的、意図的
ニ、企圖ト、更、意ヲ、以テ、正當ナル理由モナシ、チトアスカ
チトアスカ、利己的、他、チトアスカ、チトアスカ、チトアスカ、チトアスカ
チトアスカ、大日本帝國軍隊、チトアスカ、抑、チトアスカ、チトアスカ、チトアスカ

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(10)

其後セキ非戦闘受 キント旧教宣教師
ニイヌテニント 及スス國人シオ・アークイヌキ
見老陳ナ其最キニ表ニ上記二名、自他ニ
致金傷ヲ負ハルニ修コトヲ殺害シ又殺
害セリタリ 上記ノ如ク致金傷ヲ負ル
上記二名、ヨシ、環状珊瑚島ニ於テ十七年
十一月五日頃 上記、致金傷、爲メ死亡セリ

トアリ
是ノ之ニ対シ 被害者遺族、証言ニ依リ
「我、昭和十七年十月五日午に福見中佐、生航
直後島兵曹ヲ

「福見中佐、命令ニ依リ宣教師二名ヲ西海部
ニ於テ銃殺処刑シ、埋葬シタリタリ」
トノ報告ヲ受ケ大ニ驚キ何故我ニ告ガサレタ格ナ
コトナリタカト此表ニオコシテ直後福見中佐、
命令ヲヤリ、タカ、オコシテ直後福見中佐ニ報
知セヨト 余ノ島ニ福見、其地ニテ報告シ、
ト申シ、我ニテリス
要スルニ宣教師二名、福見ニ依リ刑罰ヘシタレ
所無クシタリト思ハレシ 福見、命令ニ依リ島兵曹
カ之ヲ処刑シ被害、事後報告ヲ受ケタルニオキ、
彼、~~宣教師~~ 宣教師ヲ見タリコトスナリ又刑セシメ
事ハ元 Hearsayニオキナリタリ

(11)

而して本件起訴事實に對し、原告、自白、之、依り
被告、事實を認定し、之、依り、之、依り、之、依り、
自白、自白、自白、自白、自白、自白、自白、自白、
自白、自白、自白、自白、自白、自白、自白、自白、

第一、起訴事實、被告、証言、と、相違する、
「起訴狀」に、依り、被告、被告、被告、被告、
被告、被告、被告、被告、被告、被告、被告、被告、
被告、被告、被告、被告、被告、被告、被告、被告、

第二、原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、

第三、原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、

第四、原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、

第五、原告、原告、原告、原告、原告、原告、原告、原告、

第六、原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、
原告、原告、原告、原告、原告、原告、原告、原告、

(三) 日本軍、下士、下士、下士、下士、下士、下士、下士、
下士、下士、下士、下士、下士、下士、下士、下士、

(12)

世、宣教師ト同船ニテ来タ、オランダ島民ニ役ヲ
連行スルニ下

(三) 死体：海 = 校也之々方 波 = 依之折上之々方
ト思ハルル方

(四) 此作、双折線、一個「云」上、他「砂」上示強し、
同「砂」上、横ハフミ多。

2. 此外，滿潮時，海水 = 緩急所引起

(四) 死体：一ニモ マト又 裸体デアラウ 自作ノ全部ヲ
見ルモノヲ出来タ、胸ニ銃剣ヲ突ケイタト思ヒル穴
カアツ、腹ニカニガツ、イタト思ヒルワササ穴カ
アツ、又ニ鼻状ニナカツ、唇ヲモエテ又 見喚
セナカツ、一見直ニソノ宣教師「デウアー」又
「マーウアー」デモツガ合フ トイフ

証人、明瞭、証言の爲めに証人、本署に護人、
証人 = 証人、

（二）世ノ死体ヲ埋メニ行フ日カ 晴天ヲ了ルカ 雨天
ヲ了ルカ 知ラズ又受エテ決タイトイフ

凡此作葬又、場所及埋葬之、場所ニ付

一人、收容所々に天にトカラ、道徳を其、修め
、特長を何ニ之知ふとイフ 國解を出来たとイフ

(三) 潜水艇 = 北の海に水中 = 七日間トイフ水に放
置ニアリ死体 = 何ノ異状モナシ、腐敗セズ
嗅覚モナシ一見直ニ宣稱中スルコトヲ認メシ

(31)

而元胞、像史が鏡剣、史像をアツエトカ改メ
今メトイフニ

至平、鹽池より長門まで

海中ニ放テ置キテ之ヲ二個、既体ハ二ツト又同シ成所

「井上氏の『三才図会』と『本草綱目』の比較研究」

知今盧^の吐^の二^の元

「一圓同を至つて張ルデ体ハ積紋ニテ一見難クアル

カ見合テ、付カカ子カ衣服、テ見合テ付イタ

上代をたつちおこしにすべしアツガ

「全裸デ」に「金」をつけてはかたうと云う

$\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

金剛般若心經の要義を説く

その出来たるは、その土地、其の長又其の國に於て

何人二元承祀，出素心至誠，則乃也。

卷之六 白石水中二感二 彭沙一上二 丁子梅紋二

又ハ喫食元ナク、胃作ニ異状ナク、又血ニテニ

及ア一々ニ先此ニテカノ人ヲミナシテ、胸部ノ傷ハ

劍聖、御子に力を合するといふ = 聖子に力合す、

常徳 夫同と又上元、いふ、テタ、タ、タ、何、タ、タ、タ、

カキナキナ

殊² 日本 / 兵隊の宣教師二名 / 死す。子室あり、二

其、仲商フ乙國政ヲ使用シテ、教家ヲ心致スルカ也。

是ヲ演ズルハ何人ニテモハナシテハナシカ

(14)

好、如中言、一、他、他、又、下、
 貴、元、大、利、長、益、之、要、其、者、或、
 神、心、記、得、之、方、之、ト、信、之、ス

多々此作ハ依地トシテ兼見せしヲ厭ナリ.

實地検証を行ひテナリ。本件ヲ主眼スルニ

the 1st is the 1st - the Hearsay "rule" + the 2nd
applies to the 2nd - the 2nd

木件 四件 事 立文 The corpus delecti: 1/11/21
記 成 廿五張 十一

果作事出、此ハニ其ノ才ニ此作、兼及カ必
要ナラシ表ニ生ラサシ由合ニ何故此作カ致ス
テトイカヲ確信カ抱ルナシト云フナリ、然レ
モ此ノ件ニハ之ノ所ナク等、主此カナリ

Corpus delecti 此乃：欲令之欲飲之酒也
 此乃：欲令之欲飲之酒也

斯，如存疑之證據， γ heat-ray, $\lambda = \text{依}$

皇太后、敎人ノ事實ヲ認定スルヲ果シテ刑事
訴訟手續ニ於テ評サシムルヲウケセラル

其凡係前次之疑案、事件、予之加事之人
認定せしむるに先づ其捨事例、於て當地檢
査ノ上紙條ヲ兼及し之ニ加へ之を信實重
要ニ使用スル結果等、檢証ニ依り具件事實ハ
予國ノ法律ニ反

0437

(15)

看し之しうし。抱膝。ちへ。文字ニえ。宣教師
ハ威。死。ラ。は。有。見。知。し。た。い。父。刑。う。と。悔。ひ。北。上
セ。タ。タ。ウ。コ。ト。モ。ヤ。ス。ニ。絶。死。に。あ。い。た。い

之。ハ。アイ。リ。ン。ビ。ニ。記。し。起。つ。た。問。題。テ。ウ。ア。マ。カ
私。ノ。友。人。テ。本。向。中。将。高。級。参。謀。ト。シ。マ。ニ。ウ。在
勤。中。ア。マ。カ。ウ。陸。軍。中。佐。神。保。信。彦。ハ。高。野
の。兵。隊。ノ。属。タ。ニ。捕。へ。う。し。た。は。ウ。現。アイ。リ。ン。ビ。大。佐
領。田。口。武。ハ。奥。林。人。格。ヲ。惜。み。何。ト。カ。し。テ。助。ケ。タ。い
ト。要。心。修。養。シ。結。果。此。島。人。ハ。ル。ー。ア。ー。ン。ト。ン。合。に
大。概。リ。ノ。サ。ニ。モ。オ。ン。テ。田。口。武。ハ。爆。弾。ニ。タ。オ。シ。タ。ル。に
ウ。悲。し。全。人。ハ。死。之。う。リ。ト。上。司。ニ。報。安。シ。延。命。之。ウ
ホ。シ。セ。リ。タ。ウ。カ。ラ。マ。ス

而。シ。テ。現。在。神。保。ノ。戦。犯。者。ト。シ。テ。中。華。民。国。ニ。抑。留
セ。リ。張。ル。ニ。ウ。田。口。武。ハ。知。リ。恩。義。ノ。酬。に。為。ル
神。保。ノ。人。格。ヲ。死。せ。し。悔。有。石。ハ。命。勤。勞。ヲ。爲。シ
タ。ル。コ。ト。ガ。一。ニ。リ。月。ヲ。日。本。ノ。戦。力。ニ。至。希。土。故。に。私
ハ。常。ニ。感。動。ス。ル。ア。マ。カ。マ。ス

本。件。ニ。就。テ。果。シ。テ。如。ク。如。キ。英。法。コ。ロ。サ。ヤ。ハ。
勿。論。同。然。ト。ス。ル。必。ズ。ア。マ。カ。セ。カ。本。件。ノ。如。ク。罪。ニ
「父。刑。う。と。報。安。カ。ア。マ。カ。ト。イ。フ。ミ。テ。何。子。具。所。的
立。化。ナ。ク。来。世。ノ。傳。言。死。後。ニ。悔。ミ。を。大。し
殺。人。ノ。事。以。テ。認。定。ス。ル。コ。ト。ハ。刑。事。部。公。事。法。ニ。就。テ
許。サ。レ。タ。コ。ト。下。上。長。官。ノ。ウ。カ。ラ。マ。ス

第四 被告、自白「生意」ニ於テハ、チニテ、

本件富田衣流、自白、彼が本件、容疑者トテ取調
 べしタル際ニ爲せタルモノト云フ。又、同第1ナ
 此ノ「来々飛」ト云フ事件ニ就テ著手人トシテ
 取調ヘシ受ケタル際偶々本件ニ及ビ陳述シタル
 デアルヲ、本件取調、時、検察官、モ「作成用書
 タル書」ヲ示シ、之が「引当書名ヲ與ヘシ爲ル」
 モノト云フ決シテ是ハ「ニ」セタルモノト云フ。又、
 本件取調、時、検察官、モ「作成用書」タル書
 名ヲ示シ、之が「引当書名ヲ與ヘシ爲ル」モノト
 云フ。又、本件取調、時、検察官、モ「作成用書」

日本刑事訴訟法 = 元々、被告人、自白：強制上にて
証據力ヲ有セス此簡單に已裁判所、事件ニ付テ
之訴訟關係人、異議ナキトモ、唯、証據力ヲ有
スル例外的規定ヲ有スルニ止マルニテ、之
即刑事訴訟法才三四六年。

「~~已~~裁別 = 此ヲ被告入自白シタルトキハ訴訟關係
人ノ異訴トキトキニ照シ、他ノ證據ヲ取ルベキヲ得
ト規定セシメテアリマス 末ニ法律ニ依リて
口實ヲト思ヒテ

第五、被告人、自白と証言との矛盾ニ付
 論議：何故ニ「眞実」ニ云ふハ自白ナリト云フヤ
 事實ハ何ハハ然ニ然ル、予御心化、供ニ度々
 行ハレ

(19)

戦海軍域ヲ行動ス

b. 役所：海軍部より、船舶のミシ環礁、南諸島
ニ上陸シ、ミシ環礁、其の死守防衛状況ヲ探
リス。

c. 宣教師三名：英東人ニハアサニモ情報ヲ
英米側：提供スル意思ヲ有シ、行ハル。

d. 宣教師三名：スバトト記スル、ニ依リ、父利
セ。

ト命ジ、行ハル。

之ニ対シ、富田：

a. 本宣教師ハ、中貴宮(福見)カ、連棟政調へ、
タノテ、其カ、処刑、申込キ、甚速感ヲ有シ、
今般夜内此行、便船カ、ア、中貴宮(福見)カ、
帰還セラル、今んカ、同船ニ、連行サレ、度。

ト具申ス。

b. 其、結果、福見中佐、処刑ニ、關ス、命令ヲ、所
シ、連行スル、ト、承諾ス。

c. 斯、テ、一、カ、引建テ、行、福見中佐、カ、言、聞、ト
ミ、ス。

d. 而、テ、福見部隊、船カ、出、航、ス、一、昭和十七年
十一月五日午後三時、以、テ、了。

e. 福見中佐、カ、是、富田：カ、十二、部隊、司令、
死、部隊、カ、派遣セラル、経緯、隊、编制、此、所

推乃行、三葉掘食ニ因スル現状報告ヲ提出ス
ベシ之ニ及願、ミズビノタル時、下福見部隊也
既直後、島兵曹長ガ来テ當時ニシ島内方
指揮官テ、下福見中允

「建輝中、宣教師ニ名、スパイ行爲ニ依リ処
刑セザルヲス依テモニ名ヲ銃殺スベシ処刑
後始末ハ、余(福又)ニ報告スベシト」
命令ヲ受ケテ、西海弁ニ此ヲ銃殺処刑
シ、塚野ニテテリ、ト報告シテ事ヲ
「~~中~~大ニ驚キ、福見中佐ヲ自カト」
約米ヲ破ラテ島ニ命ジ、宣教師ヲ処刑セシ
タハ、トテ噴飯シ島ヲ吐棄シ、
而シテ島ニ付、

「才前カ福久ヲ便令サシテ、其等
福久中佐ニ報告セヨ」と命、皇軍ニ大ニ
ニ警備隊ニ之ニ報告ス。之ニテハ
以上カ本件事出、真相デアラス。皇軍、陳述
ニ従ヒテ、デイトラ 確信スルヲナラズ
今世ノ理由ヲモトメ。

一、極見、權須其第三特別陸路隊司令ニシテ
所轄長々ノ管轄下ニシテ島嶼ニ在リテ
居テ、之ヲ從テ司法ニ關スル一定ノ權取
者、下ニ宣教師ニ名ヲ取調ベシヤシト

(24)

以上各証人、証言ニ依り、本件凶殺事件が
起訴状に於て述べた通りであること、同日
昭和十七年十月五日、一年之中、これに
類する事件は発生した。

以上、陳述ニ依り、事件、真相より申上つた
か之等、諸君、致し、此、結論を生じ、
アリス

一 島田部長、行方、福元、命令ニ依り、福元
、在りし島中ニ赴き、行方、たゞし、
二 島田ニ赴き、及ぶべき事、
三 及りし島、行方が福元、出放後、行方、
ト決定する島、福元、命令ニ依り、
立行せしむる、其、時刻、福元、出放
、事後ニ依り、見せ、其、時刻、
、何れ、之、南字、島田ニ赴き、
及ぶ事、
要スル、本件、
三、確信、
賢明、
成、
鑑、
及り、
四、
五、

要スル、本件、
三、確信、
賢明、
成、
鑑、
及り、

賢明、
成、
鑑、
及り、

及り、
四、
五、

(25)

「疑ハシキニ之ヲ罰セス」トハ古今、法ノ
根本ニ在リテ殊ニ人道、國家ニ在リテ
「牛人、野人ヲ受スルニモ」人無味
ヲ罰スル」

トハ刑事罰利、不徳、強引ナルトモナリ
所アリ

又、學田良説、トキ人権ト義理ト
世故ニツイテ其性ニ在リテ世故中心ハ
得マラズ、信ス

然レハ、之ヲ爲シ者ハ、毎果、街利味ヲ
得ハル人類、タリニ再犯工學教セリテ之
伏シテ其家ヲ上ルニ非テ其性ニ在リテ

（終）

103rd U. S. Naval Hospital,
Guam, Marianas Islands.
December 14, 1946.

From: Lieutenant (jg) M.V. McClew (MC), USNR.
To : Commander Marianas.

Via : Rear Admiral Arthur G. Robinsen, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.

Subject: Sickness of member of military commission.

Reference: (a) Naval Courts and Beards, section 377.

1. In accordance with reference (a), I have to report that on December 14, 1946, I found Commander Ramon J. Wallenbern, Dental Corps, U.S. Navy, sick and unfit for duty.

M.V. McClew,
Lt. (jg), (MC), USNR.
Ward Medical Officer

CERTIFIED TO BE A TRUE COPY

Edward K. Fink
CWNR.

"W"

0449

辯論

被告

岡田良治

辯護人

鈴木 戈藏

裁判長並ニ軍法委員各位

此レハ私カ戦争裁判ノ辯護人トシテ当地
ニ参リマシテ、初メテノ辯論デアリマス。日本ヲ
遠クハテ被告達ノ為メ吾々日本人辯護者
ニ辯護ノ機会ヲ與ヘラレマシタコトヲ感謝シ、軍
法委員會各位ニ敬意ヲ表シマス。私ハ当地ニ
参リマス迄、横浜ノ第八軍下ノ戦争犯罪裁判ノ
辯護ヲ致シマシタ。此ノ大平洋ノワサキ島ニ於テモ
横浜ニオケルト同様ノ、或ハ其レ以上ノ熱意トハ平

辯護士 鈴木 戈藏

ト文化ノ薫^{カキ}リヲ含ム嚴正サノモトニ、審議^{シヤウギ}ガ行ハレテ
 升ルノヲ身ヲ以テ體驗シ、深イ感銘ヲ受ケマシタコト
 ヲ茲ニ申上ルヲ喜ビマス。

本件ハ畠田被告ニトリ極メテ、不幸ナ出来事^{コト}デ
 アリマシタ。當時ノ真相ヲ知り、彼ノ無実^{ムジツ}デアルコト
 ヲ證明シテ呉レル人達ハスベテ、彼ニ此ノ不幸ヲ殘
 シタマフ、遠イ死ノ世界ヘ去ツテ了ツタノデアリマス。

今日ノ畠田^{ニトフ}ハ、己ノ以テ己ノ無実ヲ訴ヘル
 以外ニ方法^{ホウホウ}ガナイノデアリマス。彼が当法廷^{トウホウテイ}ヲ證人位
 ニ立ツタ時ニ流シタ涙ハ断^{ツグ}シテ偽リノ涙デハアリマセヌ。
 日本デハ、エテ血涙ヲ絞ルト申スノデアリマス。

裁判長モ、オソラク、彼ノ證言^{シヤウゴン}ガ徒ラニ罪ヲ逃レタイ

為メノ作り事デナイト云フ事定ハ之ヲ充分ニ御
 認メ下サツタコトト信ンジマス。被告が何故ニ先ノ
 ケゼリシニ於ケル自白ヲ取消シテ事ノ真相ヲ訴ヘタ
 上申書ヲモツト早ク、法務官ニ提出シナカッタカ、其
 ノ遅延シタ理由ヲ申述ヘテ置キ度イト思ヒマス。
 被告再調ベラ期待シテ、今日アルカ、明日アルカト待ツ
 テ居リマシタガ、六月モナク七月ニモナク、八月ニモナイ
 コレデハ書面ヲ提出スルヨリ外ハナイト考ヘ八月中
 旬ニ至ツテ、法務官宛ニ上申書ヲ書キマシタ。
 レカシ、之ヲ提出スルニハ、法律上適當ナ方法ニヨラ
 ナケレバト效果がナシト考ヘ、其ノ方法ヲ考ヘラ居リマ
 シタ。若シ、辯護士ニ會ヘタラ其ノ手續ヲ採ツテ貰
 へ

辯護士 令 ト 成

此度イト恩と、其ノ機會ヲ待ツテ升タ處、八月二十九日、
 告訴狀が参り、署名ヲ求メラレマシタ。レカシ、コレニ
 署名スルト、告訴ノ事實ヲ認メタコトニナルト恩と、
 署名ヲ拒ミマシタ。ソシテ、其ノ署名ノ点ニ付イテ、辯
 護士ノ意見ヲキキタイカラ、誰カ辯護士ニ會ハ
 シテ貴ヒ度イト願ツタ所、其ノ中ニ會ハシテ呉レルト
 ノ事デアツタ。其後、九月四日ニソツテ、戸田辯護士ガ
 アメリカノ官憲ノ人ト共ニ來訪シ、署名シテモ、告訴
 ノ事實ヲ認メタコトニナラヌカラ、署名セヨトノ事
 デアツタノデ、署名シタノデアリマス。ソシテ署名ノ日附
 ハ八月二十九日ニ通ツテセヨトノ事デ、其ノ通りニシタ
 ノデアリマス。此ノ時ニ、豫テ、書イテ升タ法務官宛ノ

上申書ヲ提出シテ賞ヒ度イト戸田氏ニ依頼シテ之ヲ
手渡シタノデアリマス。ソレテ、其ノ上申書ノ日附ハ九月
四日ト致シマシタ。其ノ日カラ被告ハ独居ニ移サレタノデ
アリマス。其ノ上申書ハ戸田日牛人辯護士カラ、テツギ
イ氏ニ渡サレ、全氏ガ之ヲ保管シテタモナラマス。
決シテ最近ニソツテ作成シタモナラマセン
叔テ、被告富田ガ其ノ部下ノ島兵曹長ト共ニ、三
レ島ヘ漂着シタ、フランス及ビスイス宣教師ヲ、理由ナ
ク殺害シテ、殺人罪ヲ犯シタトムラ、公訴事實ヲ立
證スル證據ハ唯一ツレカナイデアリマス。而モ、ソレハ
終戦後、ケセリシノ抑留所ニ於テ、アメリカノ調査官
請求ニヨリ、書タ陳述書アリマス。檢事側ノ證人

辯護士 谷 本 子 哉

デアル二人ノ如シキガ、ルバート島々、民ノ證言ハ、
被告富田ガ、右宣教師ノ死トハ、~~関係ナシ~~
ナルコトハ、~~全無ニシテ、~~ 緬レテ年々、テアリ
ケセリシ。於ケル富田ノ陳述書ハ、果シテ、自白トシ
テ、信憑ハ性ヲ有スルモ、テアリマセシカ、
本弁護人ハ、
充分且合理的ナ理由ヲ以テ強ク之ヲ否定致シマ
ス。

此ノ陳述書ハ、元來、昭和三年九月二十日、即
チ終戦後、間モナク、メジュロニ於テ作成セタ、訊
問調書ヲ基礎ニシテ作成セタモノデアリマス。南
海ノハサナ島ニ於ケル長期ニ亘ル戦闘生活カラ来ル
身心ノ極度ノ疲勞、敗戦直後ノ自暴自棄ノ精神、

状態、戦犯容疑者トシテノ抑留生活、軍人トシテ
ハヤヤ溫和ヲ彼ノ精神ノ細サ、其ノ陳述書、ソレノ
基礎ヲナス 訊問調書ガ決シテ平常ノ冷静チ
心理状態ノモトニ作成、提出サレタモノデナイトカ
エトハ、軍法委員会各位モ尤モニ御判リニナルコト
ト存ジマス。敗戦直后ノ日本人ノ受ケタ強イ衝動
、敗戦后ニ来ルベキ暗澹タル日本ノ将来ハ豫想ハ
ラズル自暴自棄的ノ心理、之レハ、オソラク、日本人デ
ナクテハ容易ニ理解スルコトハ出来ナイヲモヤリ
日本人ガ良ク使フ言葉ニ、謝メルト云フ言葉ガアリ
マス。之レハ元來、佛教ノ言葉ヲ、事物ノ本質ヲ理解
スル、人間ノ生命ハハヤサシク見極メラ、物慾ヲ

辯護士 令 ト 子 義

制限スルト云フ意味デアリマス。然ルニ此意味ニ
 係リ、英語ノ「ヤブ」ア「ワ」ニ近イ意味ニ一般ニ且
 使用サレルニ至ツシデアリマス。此一般日本人ノ
 ラメ易イ性格ヲ良ク御理解ニナツテ、此陳述
 作成シ、提出シテ時、軍人トシテ生キル希ミヲ失
 敗我直后ノ此年若キ青年士官ノ心理ヲ先
 即考察下サル様願ヒ度イデアリマス。必ス此
 ノ陳述書ハ眞ノ彼ノ自白ヲハナイ、ト云フ事ハ御利
 リニナルコト存ジマス。

此ノ様ニ信憑人性ノ薄弱ナリ自白ヲ唯一ノ證據トシテ
 殺人罪トシテ重イ罪ノ有罪ヲ認定スルコトハ、近代刑
 事訴訟法ノ精神カエラ許スデアリマセシカ。

私ハアメリカ合衆國ノ法律ハ良ク存トマセ又。從ツテ、
茲ニ、自白ノ證據力ニ付テ、詳細ノ法律論ヲ展開
スルコトハ之ヲ差控ヘマス。

最近、日本ニ新ニ憲法ヲ制定サレマシム。敗戦直後
ノ日本一般民衆ハスヘテ、其ノ前途ニ人格ヲ持ツ
又、奴隸ノ様ナリ、非常ニ暗イ前途ヲ豫想シマシム
然レニ、予ハ合衆國ノ親友ヲ指導ノモトニ出来シコ
ト右ノ日本ノ新憲法ハ奴隸生活ヲ夢想シ一般
日本人ニ却ツテ反對ニ人間個性ノ独立ト、死スヘ
カラナル尊貴性ヲ訓一明ク、強イ、更生ノ道ヲ
拓イタルデアリマス

此ノ日本ノ新憲法ハ其ノ第三章八條ニ

辯護士 令 ト 才 義

何人も自己に不利を為す唯一の證據が本人の自白
である場合には有罪とし、その刑罰を課せられたい
ト云規定ヲ設ケマシタ。

軍法委員會各位、此ノ規定、即チ、敗戦後ノ日本
民衆ニヤリも合終國ヨリ贈ラレタ此ノ贈物ヲ被
告ニモ領受シ與ヘテ戴キ度イ、ソレヲ、本件ニ右ノ
規定ノ精神ヲ適用シテ無罪ノ判決ヲ賜フ、被告
富田ヲ唯一ノ支柱トシ、彼ノ老イタル母ト其ノ妹
弟達ノ待ツ日本へ、此ノ善良ヲ青年ヲ送り歸
シ、他ノ日本民衆ト共ニ明ルイ更生ノ道ヲ共ニ歩
ミ行ク様ナ機會ヲ與ヘテヤシテ戴カシコトヲ
オ願ヒシマス。

次ニ本件が果シテ戦争犯罪ヲ構成スルカ否カ。
本軍法事務局、慎重ナル御考察ヲ御願ヒ
コトイヒマス。

先ツ告訴罪狀項目第一及第二ヲ仔細ニ検討
致シマス。

- (一) 犯罪ノ行ハレタ場所ハ当時、日本ノ委任統治区
域タルマーシャル群島ニ在リマス。即チ、
犯罪ノ場所ハ日本ノ領土ニアラス、今次戦争ニ
ヨリ占領地又ハ外国ノ領土ニアナイコト
- (二) 被害者ハフランス、スイス國民ヲ共ニ西國ト
モ當時日本ト戦争關係中ニ在リマス。即チ、
被害者共ニ宣教師デアリ、スキャポフルニ

辯護士 令 ト 義

規定シラル所謂一般民眾デアルコト

(四)被害者共ニ捕虜デナイト

罪狀項目ニハ日本軍隊ニヨリ抑留サレリシト表現サレタラスノ、捕虜トシテ抑留セラルルコトイハ事實ハ立證サレテ居リマセヌ。檢事側ノ證人ハ、スハイテアルコトヲ否認シタルハトカラ他ノ島ニ接ビテ行ク途中遭難セラレ、ニレ島ヘ漂着シテト證言セラリマス。

右四ツ点ヲ綜合シマス、此ノ本件の場合ノ犯罪ハ大戦中、日本軍人ニヨリ、日本領土内ニ於テハ何ノ關係ヲ持タヌ市民ニ對シテ犯サレタ殺人事件ニスマセヌ。在米ニレハ通常ノ国内犯罪デ

ハアリマスヨイカ。

「スキツポルルハコレニ對シ明白ヲ答ヘテ與ヘテオリマ
セヌ。」^{ソノ根拠ヲ}見タルト、戰時中ノ一般市民ニ對スル殺人ヲスベテ
戰争犯罪トスル様ニモ見受けラレマス。

一併、戰争犯罪トハ何デアリマセウカ。今日、國際法
上、刑法上、コレニ對シテ、ホク、明確ナル答ヘカサレテ

アリマセヌ。本解~~辯~~告訴ノ罪狀項目ニハ、本行為ハ
戰争法規慣習並ニ文明社會ノ道義ニ違反スル
モノナリトアリマス。文明社會ノ道義^{違反}ト云フ漢然ト

シテ用語^の用ヒラレタルストハ、戰争犯罪ノ觀念^の
明白^のデタイ有カテ證據ト思ヒマス

元來、刑罰ハ人トシテノ本質的要素デアル生命、

辯護士 令 ト ナ 義

自由ヲ制奪シ、或ハ制限スル一ツノ社會制度デアリマス
従テ、人間ノ社會生活ニ於テハ、古クカラ、最大ノ関心
ト綿密ナ考慮ハ此ノ制度ニ對シテ拂ハレテ来タノ
デアリマス。

又近代ニ於テ、刑法ノ條文解釈ハ嚴正ナラサルヲ以テ
擴張解釈ヲ許サス。溯及適用ヲ許サス。又ラビ
ナレネーゲ Nulla poena sine lege: 其豫メノ
法律ナクシテ犯罪ナレ、刑罰ナレ、ト云フ様ナ刑法止
ノ格律ハ強調サレテ来リマス。是ハ、刑法ニ對シテ
飽ク迄、犯罪人ノマクテ、カレタラシメントスル由リ
ノアラシデアリマス。然ルニ、ナクヌ時代ノドイツノ刑
法學ニ於テハ、此ノ根本思想ハ否定サレ、反對ニ

其ノ特有ノ全体主義的思想傾向カ、刑罰並ニ
 刑法ハ、犯罪カラドイツ民族ヲ護ル為メ闘争
 ノ手段デアルト云フ大ナル変化ヲ致シマシタ、ソレヲ
 上述ノ様ナ刑法學上ノ格律ヲ過キ個人主義思
 想ノ遺物トシテ嘲笑シ、刑法止カラ、其ノ格律
 ヲ取り去リテトシテテアリマス。
 然レ、吾等ハ刑罰ニオケル巧利の考ヘカラ排シ
 刑罰ヲ他ノ目的ノ手段ニシテ利用スルコトハ慎マシ
 バナラヌト思フデアリマス。
 人類ハ次々ト新レイ型ノ犯罪ヲ創設シ、其ノ
 犯罪ノ階級ヲ登リテ、今日ノ文明社會ヲ築キ止
 ゲテ参リマシタ。新レイ型ノ犯罪ノ處
 辯護士 令 ト

罰の宣言サレ、ソレが美施サレタ事ニ、ソリ高イ
 文明社会ヲ、ソノ地球ニ打建ラントスル高貴ナ
 熱情ノアラワレデアルト私ハ解釈致シマス。従ッテ、
 刑罰及戦争犯罪刑罰ノ理念ハ、当然ニスギタフ
 ルノ規定ノ適用ニ関シ、其處ニ明白ル一定ノ
 範圍ヲ劃スルコトヲ要請シテアルト信ニジマス。
 ハーバート大ニ、セルドン・ガルン教授ハ其著、
 「戦争犯罪人、其ノ訴追ト處罰ト」ニ於テ、戦争
 犯罪ヲ定義シテ、次ノ如ク述ッテ居ラマス。
 「ナチスノ全体主義的戦争ニ付テ考ヘルトキ、我々ハ
 戦争犯罪人ヲ左ノ様ニ定義スルコトハ出来ル。即
 チ、軍事上又ハ政治上ハ階級ノ如何ニ拘ラス戦争

為メ、軍事的、政治的、經濟的、工業的準備又
 ハ戦争遂行ニ關聯聯シテ、其ノ公的資格
 ニ於テ、合法的ナ戦争ノ法規並ニ慣習(2)文明
 國家ニ於テ一般ニ適用スル刑法ノ諸原則ニ反
 スル行為ヲ為シタモノ。又ハ、カ、ル行為ノ遂行ヲ
 オダテ、命令シ、惹起シ、助言シ、共謀シ、或ハ又
 此ノ行為ヲ犯サントシテナルコトヲ知リ、シテ
 防止スル義務及権力ヲ有セルニ拘ラス、シテ防止
 シヨウメ者、此等ノモノハ戦争犯罪人ナラシム。

"Considering the Nazi conception of 'total
 war', and may legitimately define
 war criminals as follows - regard -

譯者

士

譯者

less of military or political rank—
who, in connection with military,
political, economic or industrial
preparation for or waging of war,
have, in their official capacity,
committed acts contrary to (a) the
laws and customs of legitimate war-
fare or (b) the principles of ~~a~~ crime-
nal law generally observed in
~~the~~ civilized states, or who have incited
ordered, procured, counseled or
conspired in the commission of such acts,

"Y-19"

(4)

0467

or having knowledge ~~of~~ that such
acts were about to be committed,
and possessing the duty and power
to prevent them, have failed to do so.

此定義ニ於テ、吾々が注目シテレハオースノハ、戦争
準備或ハ戦争遂行ニ關聯シテ、"incon-
sistent with — preparation for
or waging of war" といふ言辭ト、其ノ

公的資格ニ於テ、"in their official capacity"
ト云フ言辭デアリマス。敵機ハ又ハ戦争遂行
辯護士 令

過程に於て "in the process of conducting warfare" 又「軍事行動に關聯に於て」
"in connection with military operations"

ト云フ表現ヲ用テ示シタル

又「わが軍の犯行が行はれぬと云ふ事を知悉し

て、これを差し止むる義務ト権力を持て居る

と云ふ點を以テト云フ事句を以てして人

ナリタセ

今教授の上述ノ如キ戦争犯罪ノ定義ニヨリテ、

ハコメテ法律學的ニ正確ナ戦争犯罪ノ型ハ

確定セ、法的ニ安定性ヲ確保せんモノ信シタル

今再^{本所}以~~出~~四種狀項目第一及第二之告訴
事實ニ目ヲ轉シテ之ヲ点檢シテ見マセシ。
ソエ

辯護士 冷水才義

ト此ノ事實ヲ見出ストハ出来マセシ、又部下ノ
殺害行為ヲ防止スル義務ヲ怠リタト云フ事實
又アリマセシ、起訴サレタ殺人罪ハ通常犯罪
トシテノ殺人罪ノ要素ヲ備ヘテナルハ、戦争犯
罪トシテノ要素ヲ具備シテ居リマセシ、松ハ公
訴事實ハ戦争犯罪ヲ構成セタト断言シタルニ
アリマス。

要之、検事側ハ被告富田ノ殺害ノ事實ヲ証
明スル事ヲ完全ニ失敗シマシタ。被告ハ証人台ヲ、
島田福見中佐ノ命令ヲ実行シテ富田ニ報告ニ
東ニ迄何モ殺害ニ就クヲ知ラヌト断言シタ
ルヲアリマス

被告富田ハ戦争犯罪人ナリ又ハ又彼ハ殺
害ノ事実ニ就テ有罪ナリ又
軍法委員會ハ被告ニ有罪ノ判決ヲ賜ハシ
スト御願シテ私ノ辯論ヲ終リマス 此

一九四六年十月十四日

ケワム法廷ニ於テ

辯護士 令 ト ト 義

"Y-23-"

0472

ARGUMENT FOR THE ACCUSED

delivered by

MR. AKIMOTO, YUICHIRO

Your honor, the President and the Members of the Commission:

Before I enter my main argument for this case, I would like to state my opinion about the war tribunal and the application of the law to the war-trials.

Originally, the war was deemed and recognized to be the right of states or races for their development or happiness, and the abandonment of war was thought to be the dream of idiots. Therefore, when James T. Shotwell, the professor of Columbia University, proposed, in May, 1927, an international treaty to renounce war as an instrument of national policy, European statesmen laughed at his idea and called him "a crazy American professor". In such circumstances, the idea of a war crime, which is now in question, can never be thought of.

However, as science progresses on, the range and calamity of war grew larger and larger. No one has come to be benefited by the results of war. Not only to the defeated but also to the victorious war brings nothing. It has become clearly understood that war gives to the nations of the world nothing but starvation, ruin, and disease. Especially, as the result of the World War, the people of the world have been deeply impressed by the unhappiness brought by the war, and have come to abhor the war.

Under such circumstances, a great change has been made in the Japanese Constitution. Article 9 of the new Japanese Constitution states:

"We, the people of Japan, faithfully wish for international peace based on righteousness and order, and eternally renounce war, the operation of national power and threat of military power in order to settle international disputes. To achieve the above purpose, we have no army, navy, air force or other military power, nor admit the right to fight".

This article shows fearlessly and frankly the eagerness of the Japanese people for peace and they swear and require its realization in the world.

Lately the Allied Forces provided "war crimes" and established war crimes tribunals for the trial of them. This aims at the realization of peace in the world, and the establishment of moral standards which are to be universal, proper and fundamental for all the civilized society of the world. I believe and hope that these trials will serve for the achievement of these purposes.

However, in order to try these personal acts in the courts and determine the guilt, we must be solemn and impartial in the construction and application of the law in the light of its principles, and must not be influenced by political purposes.

The principle which we must consider first is the ex post facto principle which means that the law can never be retroactive. This has been the universal rule in every place and in every constitution state of the world since the establishment of the Roman law. Therefore, I think that the SCAP rule which admits the ex post facto principle in several places evidently violates the principle.

The first thing in question is the jurisdiction of this court. As we have objected before, it is unjust and a violation of international law to try this case in this court.

Specification I of the Charge states that the defendant TOMITA killed on or about 5 November 1942 at Mili Atoll one Father Louis Durand, Catholic priest, a French national. Specification II of the same Charge also states that the defendant TOMITA killed on or about 5 November 1942 at Mili Atoll one Father Leo Marquis, Catholic priest, a Swiss national, this in violation of the laws and customs of war and the moral standards of civilized society, and, therefore, he ought to be tried by this military commission.

However, if the facts were as is stated in the charge, this commission cannot try this case, although it may take it up. It is a violation of international law, and this charge ought to be rejected.

Generally speaking, a national has a right to be protected by the law of the state to which he belongs. It is the universal rule of international law that a state has the jurisdiction over the crimes committed in its dominion or on the ships or planes under its flag, and the crimes committed by or against its nationals. It is unnecessary to state further that this rule is admitted also by the U. S. Supreme Court.

Therefore, if the crimes are not committed in the dominion of the state (including the ships or planes under its flag), or if they are not in violation of the rights of its nationals, that is, in other words, if they are the acts of third nationals done under the rule of foreign government, or in violation of the rights of the third nationals, they are controlled by the state which governs the place or the state to which the criminal or the victims belong, not by the other states.

According to the charge in this case, the place of the crime was Mili Atoll, Marshall Islands, which was mandated to Japan. The alleged criminal was a Japanese citizen and the victims were French and Swiss nationals. But, what I should like to make clear here is the fact that the countries to which the victims belonged, France and Switzerland, were not in a state of war with Japan at that time. France and Switzerland were no belligerents. Therefore, I wish to stress that this case does not constitute a war crime. Then, the jurisdiction over this case comes (1) as to person; under the country which the person who conducted the act belonged, i.e. Japan (2), as to territory, under the country which had sovereignty at that time, i.e. Japan. It is evident that the United States which has no legal connection with the offense has no jurisdiction. It is in violation of the principles of international law to try this case in this military court which is a court of the United States based upon the United States law.

Professor George Grofton Williams of Columbia University cites two examples; "The Savarkar Case" and "The Martin Koszta Case" and is of the same opinion as my above mentioned theory.

Next, I shall argue about the application of the law for this case.

Specifications 1 and 2 of the charge state that the act of the accused is "in violation of the laws and customs of war and the moral standards of civilized society". What laws and customs of war does the prosecution mean? What is meant by the phraseology of the "moral standards of the civilized society". These conceptions are so vague that I can not understand their meaning.

It goes without saying that when we allege a criminal act we must clearly show the law applicable for the case. Because it is a fundamental principle of criminal law in the constitution states that no one is punished without law. Then what are the laws and customs of war for this case? The prosecution replied that this is in violation of the provisions of the Hague Convention ratified by Japan, but, as we have objected before, it was not ratified by Italy and Bulgaria so that it has no validity as an international law. It may be said that Japan who has ratified the Convention ought to have the moral responsibility for the Convention, but it is an abuse of law to apply an ineffective law for the criminal responsibility of the act of a person, and is not admissible.

We have grave doubts about the phrase that this act is in violation of the "moral standards of civilized society".

"Moral" is a relative idea which has a different meaning at different times and places. The moral of today is not always that of tomorrow. The moral in the western countries does not always coincide with that in the Orient.

Our thoughts concerning war have come to be quite different from those before and during the war. The phraseology of "the moral standards of civilized society" is a newly created term which cannot be understood by the legal ideas of the past.

Of course, the "Moral standards of civilized society" constitutes an excellent problem for study in order to establish an international standard of morals for the future, and in order to attain such political and ethical objectives.

However, it is inadmissible as criminal procedure in constitutional states to allege criminal responsibility by such a vague concertion.

If we assume that the murder of the two priests alleged in the specifications of the charge of this case was actually committed, it is because they were spies. Commander FUKUMI, Koichi, the commanding officer of the 3rd Special Naval Landing Unit of the YOKOSUKA Naval District had the legal authority for questioning the priests. This he did before Lieutenant TOMITA came to Mili. Commander FUKUMI determined after investigation that these two priests were spies. This is shown by the evidence of the testimony of YAMABE, Masao and ITO, Hiroshi.

It has been admitted in international law that spies may be punished because they badly impure belligerent nations.

Article 22 of the Japanese Naval Law states, "Those who spied for the enemy or those who helped the spies of enemy shall be punished by death". Every state in the world has the same kind of provision. In the U. S. Naval Courts and Beards, 1935, it is stated in appendix B as follows: "All persons who in time of war, or of rebellion against the supreme authority of United States come or are found in the capacity of spies, or who bring or deliver and seduce letters or messages from an enemy or rebel, or endeavor to corrupt any person in Navy to betray his trust shall suffer death". The execution of the two priests is on any account not the violation of the moral standards of civilized society.

Witness John Iman testified that the two priests and the natives of Gilberts had drifted in a large canoe and was shipwrecked at Mili Atoll. But he also testified that they had only two day's food and that 19 days after their departure from the Gilberts they arrived at Mili Atoll. They were picked up on the 8th day by a Japanese warship and was given only a few biscuits and a jug full of water. But they never tried to return back to Gilberts, and after 11 days they arrived at Mili Atoll. This shows clearly that his testimony is false. They intended a long voyage from the first and left the Gilberts. We can imagine from this that they arrived at Mili Atoll on the 20th day.

The third thing in question is that the fact of murder is not evident. The specifications of the charge states as follows: "In that TOMITA, Ryoji, then a lieutenant, IJN, Commanding Officer, First Platoon Headquarters, said Mili Atoll, and other persons unknown, all attached to the military installations of the Imperial Japanese armed forces, Mili Atoll, Marshall Islands, and while so serving at said military installations of the Imperial Japanese armed forces, at Mili Atoll, Marshall Islands, did, on or about November 5, 1942, on Mili Atoll, Marshall Islands, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Japanese Empire, wilfully, maliciously, feloniously, with premeditation and malice aforethought, without justifiable cause, and without trial or other due process, assault, strike, cause to be killed, and kill with an instrument, a deadly weapon, exact description to the relator unknown, one Father Louis Durand, a French national, and one Father Leo Marquis, a Swiss national, unarmed non combatant, both then and there held captive by the armed forces of Japan, by inflicting a mortal wound in and upon the body of the said Durand Marquis, and did therein and thereby mortally wound the said Durand and Marquis,

of which said mortal wound so inflicted, as aforesaid, the said Durand and Marquis died on or about 5 November 1942 on the said, Mili Atoll, this in violation of the laws and customs of war and the moral standards of civilized society".

However, the accused TOMITA testified as follows: "On the afternoon of November 5, 1942, soon after the departure of Commander FUKUMI, Warrant Officer SHIMA reported to me that he executed and buried two priests by the order of COMMANDER FUKUMI. I scolded him and said it was wrong to have done so without my permission, and told him that he had to report that to Commander FUKUMI because he did so by his order not, by mine."

In brief, these two priests were examined by Commander FUKUMI who recognized that they were spies and ordered Warrant Officer SHIMA to execute them. TOMITA was given a report only after the execution, and neither saw these priests nor knew that they were executed.

However, the charge of this case determines the fact of murder only by the confession of TOMITA. I would like to explain now that the confession of the accused itself is not voluntary.

The charge of this case and the testimony of the accused intrinsically differ.

The charge states that TOMITA, did, assault, strike, cause to be killed, and kill with an instrument, a deadly weapon, two priests, by inflicting a mortal wound in and upon the body of the said priests, and therein and thereby mortally would the said priests, of which the said mortal wound was so inflicted, as aforesaid, the said priests died.

However, Warrant Officer SHIMA reported to TOMITA that he had shot the two priests on the western coast of Mili Atoll by the order of Commander FUKUMI. This differs from what is stated in the specifications. Moreover, no concrete evidence has been shown before the commission concerning where, how and by what implement they were murdered.

Then, the prosecution introduced Joseph Tabae as a witness in order to prove the fact, but his testimony was quite irresponsible. Even a layman who does not know the law will easily find that his testimony was a false statement fabricated intentionally. I will show some examples:

- 1). He testified that the day when he discovered the dead body was seven days after their disappearance.
- 2). He testified that a Japanese petty officer took the Gilbertese natives in order to bury the corpses of the priests with whom they had arrived at Mili Atoll.
- 3). He testified that the dead bodies lay almost at the same spot on the sea shore, one on the rock and another on the sand.
- 4). He testified that he thinks those corpses were thrown into the sea were washed ashore by waves, and that the corpses lay where water came in at high tide.
- 5). He testified the corpses had no clothing on their body, and he could see all part of the bodies. In the chest of each corpse he could see a hole like wound which he thought to be the wound of bayonet. On the arms of each corpse were small wounds where he thought that crabs had eaten the flesh and there were no other wounds nor bad odor. At first sight they found that they were Father Durand and Father Marquis.

After testifying thus clearly they answered the cross-examination of the defense as follows:

1). He does not remember whether the day when they went out to bury the corpses was shiny or rainy.

2). He does not know how to go from their tent to the place where the corpses lay or the place where they buried the corpses. He does not know the characteristic-features of the place. He said that he can go to the place, but he can not draw the picture of the places.

3). He testified that the corpses which had been in the water for seven days in the tropical zone were neither putrefied nor smelled bad, and he could recognize at first sight that they were Father Durand and Father Marquis. Besides, he could recognize a hole on each of their chest and saw that they were bayonet wounds.

We are quite stupefied with amazement to hear their answer that the two corpse thrown into the sea drifted to the same spot of shore and after seven days in a hot climate.

If he had lied as follows, it would have sounded true: "As it was a week after their disappearance and the corpses were putrefied, I could not discern who they were, but I could identify the corpses at least by the clothing they wore". But if they were nothing, as the witness stated, how could he identify the dead body. Corpses in the water in the tropical zone will swell and putrefy in a day or two. Any one can tell so without asking a doctor about that.

However according to the witness, the dead bodies were in the water or on the hot sand for a week and were neither putrefied nor smelled bad. There were no remarkable changes in the corpses. They could identify at first sight that they were Father Durand and Father Marquis, and could see that the wounds on their chests were those made by bayonets. Even a man who has no common sense will understand that the witness lied and gave false testimony or has a remarkable imagination. No one will never think that Japanese soldiers are so foolish as to use the natives for their burial and to tell about the case, as the witness stated.

I believe that the Members of the Commission would fully understand that such testimonies need be paid no attention.

Moreover, their corpses have never been discovered yet, and an inspection of the locality has never been made. In order to prove this case, the prosecution has only the affidavit of the accused which has no value as an evidence. The corpus delicti has not been proved. In this case the bodies should be discovered or strong and convincing evidence be offered as to why the bodies cannot be found. Legally this must be done otherwise the corpses delicti has not been proved.

In such case can it be allowed in criminal procedure to determine the fact of murder only by the incredible proof, a hearsay?

In order to determine such a doubtful case, the prosecution must examine the place of murder, find the dead body, examine the injury and discover the instruments used for the act. They must show the fact concretely. If they do not do so, one may say that the two priests did not die then. We can also imagine that they were not executed but escaped.

My friend, JIMBO, Nobuhiko, Lieutenant Colonel, Imperial Japanese Army, was serving as the senior staff officer of General HOMMA in Manila Philippine Islands. At that time, Mr. Roxas, who is now the president of the Philippines, was held captive by the Japanese forces, and was to be executed. JIMBO was detained by the Chinese government, as a war criminal suspect. When Mr. Roxas heard this he offered a petition proving his character to Chiang Kai Shek in order to reward his benevolence. This was stated in the Japanese paper a few months ago, and I was very delighted about it.

It is out of question as to whether there is a beautiful story behind this case. But I insist that it is not admissible in criminal procedure to determine the fact of murder only by the report of the execution and hearsay and without any concrete proof.

Fourthly, it is very doubtful whether the confession of the accused was made voluntarily or not. The confession of TOMITA was made not when he was examined as a war criminal suspect as was stated but when he was investigated as a witness in another case with which he had no connection, i.e. the case of an American flier. Besides when he was examined as a war criminal suspect he was not questioned directly. He was forced to rewrite and sign a letter prepared by the investigator, and did so. A confession made by such a method can not be said to be voluntary. In the Japanese code of criminal procedure, a confession was not regarded as evidence, in principle, with the only exception that if in the local court and if there is no objection by the parties. Article 346 of the Japanese code of criminal procedure states:

"The confession of the accused in the local court may be considered as evidence if there is no objection by the parties".

Though I don't know the United States laws well, I believe there is no difference in the source of the law.

Fifthly, I want to explain about the difference between the confession and the testimony of the accused. In connection with the evidential value of the confession I would like to state his psychological condition in which he made a confession which was quite different from the fact when this navy officer was fighting as best as he could being confident of victory, unexpected defeat suddenly appeared before him. He was captured, and had to spend his days in a prison stockade. All his hopes and promises were gone. His intimate comrades were killed in action or executed as war criminals. He was in a complete state of confusion.

At that time he was investigated. Though this execution was alleged to have been done by Warrant Officer SHIMA on the order of Commander FUKUMI and he himself has no connection, the criminal SHIMA was his dearest subordinate. When he thought that SHIMA was killed in action, he came to think that it was vain that only he alone remained alive. He abandoned himself in despair. He thought it better to be burdened by the responsibility of his subordinate and he made a false statement and was forced to do. He signed whatever he was asked to sign. His testimony concerning this point is not unreasonable. I request your honor the president and the members of the commission to consider this point deeply.

Lastly, I would like to introduce the facts of this case.

Specification land 2 state that the accused TOMITA, did, on or about 5 November 1942, on Mili Atoll, cause to be killed, and kill, one Father Louis Durand, a French national, and one Father Leo Marquis, a Swiss national. The prosecution, in order to prove this charge, introduced a document written by TOMITA as an evidence. But this confession is, as I stated before, not voluntary. He was forced to rewrite and sign a document prepared previously by the investigator. This is a kind of compulsion. Besides, the accused does not acknowledge it, because, as he testified in this court, he then gave a false story in such confusion.

The accused has confessed the truth as follows:

1). It was on 3 November 1942 when TOMITA arrived at Mili Atoll as the commanding officer of the Mili Detachment of the 62nd Naval Guard Unit. At that time, there was stationed at Mili Atoll the 3rd Special Naval Landing Unit of the Yokosuka Naval District which took charge of the guard and the commanding officer was Commander FUKUMI.

2). On 5 November 1942, TOMITA relieved FUKUMI. At that time, TOMITA, received orders from FUKUMI concerning two priests which was then in the custody of the Japanese troops. The order was as follows:

"X #6-"

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(a) These two priests, with several natives of the Gilberts, paddled in a large canoe without permission in our strategic area.

(b) They lied that they drifted ashore. They landed on a southern island of the Mili Atoll and spied our arrangement of military power and defense condition.

(c) Though they are not English or Americans, they intended to offer their intelligence to the United States and England.

(d) Punish the two priests, because they are spies.

To the above order, TOMITA, Answered:

(a) "You captured and investigated these priests, and such order as the execution of them troubles me a great deal. As you are going to go home by a ship, please take them with you".

(b) Then FUKUMI changed his mind and determined to take them back.

(c) Thus TOMITA took over from FUKUMI and saw him off at the hill.

(d) Then the FUKUMI unit left Mili Atoll. It was toward the evening of 5 November 1942.

(e) After seeing FUKUMI off, TOMITA engaged in preparing a report to the commanding officer of the 62nd Naval Guard Unit concerning their despatch, the organization of his unit, and the conditions of armament, medicines, and food. Then Warrant Officer SHIMA came to him and reported, "FUKUMI ordered me to execute the priests by rifle because they are spies and to report the consequence to him. And I shot them at the west coast of the island and buried them". I was so much astonished and get angry as FUKUMI had broken the promise and had ordered SHIMA to execute the priests. I scolded and reprimanded him saying, "Report that to Commander FUKUMI, because he ordered you so to do".

This is the truth in this case, and I believe that TOMITA's statement is quite true. I will show the reason as follows:

(1) FUKUMI was the commander of the 3rd Special Naval Landing Unit of Yokosuka Naval District and under the right of competent authority he was in charge of the defense of Mili Atoll. Therefore, he had a certain judicial power and with this power he investigated the two priests and found them to be spies. So we are able to conclude that before the arrival of TOMITA, FUKUMI intended executing them by the following testimony of FUKUMI's adjutant ITO: that he (FUKUMI) said, "We must execute them because they are spies".

(2) However, TOMITA, Ryoji was at that time only 25 years old. He was a commanding officer, but only a temporary one, of the advance troops to prepare for the organization of the 66th Guard Unit. And this was his first experience as a commanding officer. The defense duty conferred on him was already too heavy for him. His duties were confined to defense only. The judicial matters were vested in the rights of the competent authority (organization leader) Commander MASUDA, Commanding Officer of the 62nd Guard Unit (then in Jaluit). Therefore, in order to carry out the execution he had to consult the competent authority (organization leader) Commander MASUDA. To execute a foreigner by his own decision was too big an act to be done by TOMITA. Therefore, even though FUKUMI was his senior officer and he was under his command at one time, FUKUMI was the competent authority (organization leader) of another unit, so it was proper for TOMITA to not accept the execution even when he was given orders by FUKUMI, because it was outside of his duty. And FUKUMI did the investigation by himself and found them guilty. Moreover, he was returning home and had a chance to send these suspects to the rear. Therefore, TOMITA expressed his opinion to FUKUMI that he should take them back with him. FUKUMI could not help but accept this proper opinion and it is natural that he accepted the idea that he should take them back with him.

(3) According to ITO, Hiroshi's testimony:

FUKUMI's ship was small and worn out. Even all his (approximately 500) men could not be accommodated. The ship sailed with soldiers crammed into even the bunker hatches. So we can see that there was no space to accommodate the foreigners. It is said that at first the schedule was to call at Truk, the site of the Military Court, but on instructions from Japan it was not to call at Truk.

Considering these matters FUKUMI promised TOMITA he intended to take them to Truk, but the course of the ship was changed. If he took them with him he had to take them to Japan. There was no space to permit that. So it can well be imagined that he changed his mind and ignoring the promise that he made to TOMITA, gave orders to Warrant Officer SHIMA, who was the deck officer and had close contact with the headquarters, to do the execution.

(4) Here the problem lies as follows:

(a) Why didn't FUKUMI give orders of execution to one of his own subordinates instead of Warrant Officer SHIMA? I imagine this is because SHIMA was the deck officer and had close connection with the headquarters and also because he knew him well. And it is clear that his subordinates were busy in preparation to go home and did not have leisure time.

(b) Why did he directly give orders to SHIMA without letting TOMITA know? It is natural to conclude that the reason for this was that he had promised TOMITA that he would take the priests back with him.

(5) Concerning the date that Warrant Officer SHIMA had executed the priests:

According to the testimony of John Inan, it was on the 2nd or 3rd day of November 1942, the morning of the day following TOMITA'S arrival. He says, "When we went out for work in the morning, the priests were there, but when we came back for noon lunch they were not there". So it is clear that it was in the morning.

Witness Joseph Tabae says that on the morning of November 5th, when he was going out to work the priests were there, but when he came home for noon lunch they were not there.

Warrant Officer SHIMA reported the execution to TOMITA, Ryoji right after FUKUMI unit left. Considerable time is necessary to perform the act so I am certain that it was done before the ship left. Moreover, witness YAMABE, Masao and ITO, Hiroshi testified that TOMITA unit arrived at the island on November 3rd and the departure of the FUKUMI unit was in the afternoon near evening of November 5th.

(6) The problem of command of Mili Guard Unit:

The FUKUMI unit was relieved by the TOMITA unit on November 5th, 1942. From the time of the arrival of TOMITA unit to the moment the FUKUMI unit left, both units were in a dual arrangement. During this period the command is vested in the senior officer and the junior officer comes under his command. So it is obvious that since FUKUMI was a navy commander and TOMITA was a navy lieutenant (junior grade), TOMITA was under the command of FUKUMI and FUKUMI had the command until the moment the ship sailed. In particular FUKUMI was the competent authority (organization leader) of the Yokosuka 3rd Special Naval Landing Unit and had the rights of defense and judicature. Whereas TOMITA was under the command of then Captain MASUDA competent authority (organization leader), of the 62nd Guard Unit, situated in Jaluit and he had authority only over the defense of the Mili Detachment. Therefore, after the departure of FUKUMI the judicial power in Mili Atoll was vested in Captain MASUDA.

Making a synthesis of the testimony of the witnesses the truth of the case is as I have stated above. Therefore, the conclusion is drawn as follows:

(1) It is clear that the act of Warrant Officer SHIMA was done by orders from FUKUMI while FUKUMI was still on the island, so TOMITA should not take the responsibility.

(2) Even if we should assume that the act of Warrant Officer SHIMA was performed after FUKUMI left, was much as he had done it by orders of FUKUMI, TOMITA who was not connected with it has no reason for taking the responsibility.

All in all, I am of firm belief that TOMITA has absolutely no responsibility in this case.

Heretofore, I have explained in detail (1) the jurisdiction, (2) the application of law, (3) the obscurity of the facts on murder, (4) the insufficient proof, and (5) assuming the fact of murder to exist, no responsibility falls on TOMITA.

Your Honor the President and the Members of the Commission.

I appeal to your wise judgment, and with piercing eyes to seek the truth, I ask you to find the accused innocent.

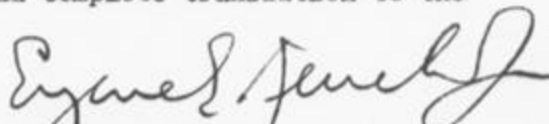
If there should exist a slight doubt, I wish you would recall that famous saying in law, "The doubtful is not condemned". I have heard that in the United States it is the everlasting principle to be solemnly protected in the courts that, "It is better for a thousand guilty to escape rather than have one innocent man condemned unjustly".

I believe, from the many petitions and by his conduct in this court you have recognized his noble character and gentle nature.

In closing my argument, I ask you to find him innocent and enable him to regain his freedom in order to contribute to mankind.

MR. AKIMOTO YUICHIRO

I certify the above to be a true and complete translation to the best of my ability.


EUGENE E. KERRICK, JR.
Lieutenant, U.S.N.R.
Interpreter.

ARGUMENT FOR THE ACCUSED

delivered by

Mr. Suzuki, Saizo, Tokyo.

Gentlemen of the commission:

This is my first argument as a defense counsel at this court, since I arrived at Guam. I would like to express my gratitude for having the opportunity to take my seat as a defense counsel for the Japanese accused who are spending their days at this island far away from their fatherland, and to pay my deepest respect to the Members of the Commission. Till I arrived here, I was the defense counsel at the Yokohama War Crimes Tribunal which is under the authority of the Commanding General, 8th Army. I was filled with great emotion to see with my own eyes that trials are being held as solemnly as the Yokohama Tribunal with earnestness, fairness, and with the essence of civilized culture even on this small island in the Pacific Ocean.

Now, this case was the most unlucky event for the accused TOMITA. Those who knew the true circumstances of that time and can prove his innocence have already died. Misfortune was all that they left for TOMITA. He could only plead for his innocence before this commission with his own words. The tears he shed on the stand when he bore witness on his own behalf were a sign of his deep feeling. We Japanese use such an expression for this as "to shed tears of blood". I think the President would also admit that his testimony is not a lie in order to escape from guilt.

The reason for TOMITA's delay in submitting his letter addressed to the Judge Advocate was because he was waiting for a re-examination. Thinking this re-examination will take place today, tomorrow, day after tomorrow, he waited. But the months of June and July passed in this futile anticipation, so the only way left for him was to write a letter. In the middle of August he wrote a letter to the Judge Advocate. But he thought he should submit this letter through formal procedure. He thought this would be done best if he could have a chance to meet his lawyers and asked them to do it for him. He was waiting for this opportunity. But on August 29, 1946 he received the charge against him. But he did not sign his name to it because in doing so he thought it would be recognizing the facts of the charge. As to signing the charge he wanted to consult a lawyer so he requested to have this arranged. He was told he would be able to meet them in a few days. At last on September 4, 1946, Lawyer Toda with an American authority came to see him. They told him that in signing the charge, it did not mean he was recognizing the facts so they asked him to sign it. The date of the charge he was told was to be retroactive, so he did as he was told. At this time, he gave to Lawyer Toda the letter addressed to the Judge Advocate and asked him to submit it. TOMITA dated his letter to this day, that is September 4, 1946. And from this day (September 4) he was put in solitary confinement. The letter was then given to Lieutenant Commander Dickey by Lawyer Toda and was under his custody.

The prosecution has only one bit of evidence to prove the charge which alleges that Lieutenant TOMITA acting jointly with Warrant Officer SHIMA did commit murder against a French and a Swiss priest who drifted on the shore of Mili Atoll. However, this one and only evidence is the statement he wrote after the termination of the war at the stockade at Kwajalein on the request of an American investigator. The prosecution's witnesses, two natives of Gilbert, did not testify that TOMITA had any connection with the death of the priests.

Is TOMITA's statement prepared at Kwajalein admissible as a voluntary admission? We have sufficient and rational reason to deny the admissibility. This statement was prepared according to his affidavit at Majuro written on 28th of September 1945, soon after the termination of the war. At that time, he was extremely tired and exhausted from his long struggle during the war; he abandoned himself in despair on account of his confined life as a war criminal suspect; he was mild and weak willed as a military man. I

think that the members of the commission will fully understand that this statement was written when he was not in the state of usual calmness. Serious shock to the Japanese caused by their surrender, and their self abandonment due to the uneasiness outlook of their future would never be understood by people other than the Japanese. There is a term "Akirameru" in Japan. This was, originally, the term in Buddhism, and means "to understand the essence of things", that is to say, "to fully understand the transiency of human life and abstain from worldly desire". However, this term has come to be used generally and frequently in the approximate sense to "to give up" in English. I hope you will fully understand the character of the Japanese in general who are apt to give up, and have kind consideration on the psychological condition of this young officer who lost his way of living after the termination of the war. Is it permissible in modern law of criminal procedure to find one guilty of murder, a grave crime, with only such an incredible admission as evidence?

Since I am not well acquainted with the laws of the United States, I will not dare to go into detail about the legal discussion concerning the admission.

Recently, a new constitution was promulgated in Japan. The Japanese people in general soon after the termination of the war imagined their miserable life of the future to be that of slaves who will have no personality. However, the new Japanese constitution prepared under the instruction and support of the United States taught the independency and honor of human individuality to the Japanese people and raved a bright and vigorous way to their reconstruction.

Article 38 of the Japanese new constitution provides:

"No person shall be found guilty or sentenced to punishment in a case where the only evidence against him is his own confession".

Gentlemen of the Commission:

This stipulation was given to the defeated Japanese people as a gift from the United States. I wish you would give a part of this gift to the accused TOMITA, and by finding him not guilty I ask you to give this good young man the opportunity to go back to his aged old mother and brothers and sisters who are waiting for him as the prop and stay of the family, and an opportunity to walk with his fellow country men towards the road of regeneration.

Next we ask the commission to carefully consider whether or not the murder for which Lieutenant TOMITA is alleged does constitute a war crime?

We would like to examine closely the specifications, 1 and 2 of the charge for the accused.

1. The place where the offenses was committed is Mili Atoll, Marshall Islands which was then mandated to Japan since 1919. Therefore, the place is Japanese domain, not territory which she occupied in war nor the domain of other countries.

2. The victims of the murder are alleged to be a French and a Swiss national. Both of the two states were then neutral powers and were not at war with Japan.

3. Both of the victims were priests and are classified as members of the civilian population in the SCAP rule.

4. The two victims were not prisoners of the war. The charge states that they were then and there held captive by the Armed Forces of Japan, but they were not prisoners of the war. The prosecution's witnesses testify that the priests drifted and were shipwrecked on the coast of Mili Atoll and were not spies.

Summing up the above four points, the offense in this case is murder committed during the Pacific War by a Japanese military personnel in Japanese domain against neutral civilians who had then no connection with the war.

Isn't this an ordinary domestic crime? The SCAP rule gives definite answer but at a glance at the rules it seems to answer "Yes".

What is a war crime? A definite answer for this question has not yet been given in the international laws. The specifications read, "this is violation of the laws and customs of war and the moral standards of civilized society". To use such vague phraseology as "violation of the moral standards of civilized society" is a good example showing that the substance of war crime is not clear and definite.

Intrinsically punishment is a social system which deprives or limits life and liberty, the essential elements of human beings. Therefore, in human society, deep concern and deliberate consideration have been paid to criminal laws and the system of punishment since olden times. In modern ages, rigid interpretation of the articles of criminal law, prohibition of extensive interpretation, ex post facto rule nulla poena sine lege (no crime and no punishment without pre-existing law) -- these principles have come to be strongly advocated. This is the manifestation of the current thought that criminal laws should be the Magna Charta for the accused. However, in the German theory at the time of the Nazi power, these fundamental thoughts came to be denied. On the contrary, criminal thoughts underwent a great upheaval and retrogression.

Punishment and criminal law were thought to be the means of combat in order to protect German race from the crimes. This thought appeared hand in hand with their characteristic totalitarianism. They jeered at the aforesaid principles of criminal law as the relic of the past individualism, and swept away these principles from criminal laws.

Men ascend steps of crime one after another and have been creating the civilized society of today. Recently, punishment of war crimes has newly been announced and enforced. I think this is the manifestation of noble passion of mankind for the establishment of higher civilized society on the earth.

I believe that the aforesaid ideal of war crimes, do firmly claim evident limitation concerning the application of the SCAP rule.

Professor Sheldon Glueck of Harvard University in his recent work, "War Criminals - Their Prosecution and Punishment", states, "considering the Nazi conception of total war, we may legitimately define war criminals as persons - regardless of military or political rank - who, in connection with military political, economical or industrial preparation for or waging of war, have, in their official capacity, committed acts contrary to (a) the laws and customs of legitimate warfare or (b) the principles of criminal law generally observed in civilized states; or who have incited, concerned, procured, counseled or conspired in the commission of such acts; or having knowledge that such acts were about to be committed, and possessing the duty and power to prevent them, have failed to do so".

What we must pay attention to in this paragraph is the phrase "in connection with..... preparation for or waging of war" and "in their official capacity". The professor also use such expressions as "in the process of conducting warfare" or "in connection with military operations".

The phrase "or having knowledge that such acts were about to be committed and possessing the duty and power to prevent them have failed to do so".

The prosecution have failed utterly to prove that Lieutenant TOKITA knew anything about the murder, the accused on the stand testifies he knew nothing

of the murder until after SHIMA reported to him he had carried out Commander FUKUMI's order.

Lieutenant TOMITA is not a war criminal. He is not guilty of murder.

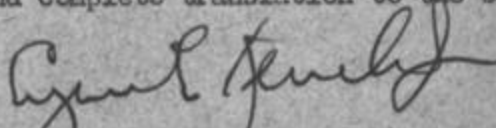
By the above definition of the professor on war crimes, I believe that the legal and precise type of war crime is established and legal stability maintained. Therefore, in order to punish a certain murder committed during the war by a Japanese naval officer as a war crime, I believe it must be committed (a) in connection with military operation and (b) under his official capacity.

Let us again examine closely the charge and specifications. We can only find that murder alleged in the charge was committed against civilians when TOMITA commanded the Mille Detachment as a lieutenant (junior grade) during the war. No such fact is proved as that the offense was committed under his official capacity as a commanding officer and in connection with military operation. That is to say that murder alleged in the charge has the elements of murder as an ordinary crime but has not those of war crime. I affirm that the charge is not legally proved as a war crime. Neither is it proved to be murder.

We ask the Commission therefore that they find Lieutenant TOMITA "not guilty of murder."

MR. SUZUKI, SAIZO.

I certify the above to be a true and complete translation to the best of my ability.



EUGENE E. KERRICK, JR.
Lieutenant, U.S.N.R.
Interpreter.

CLOSING ARGUMENT FOR THE ACCUSED, LIEUTENANT TOMITA, RYOJI, IMPERIAL JAPANESE NAVY,
DELIVERED BY COMMANDER MARTIN E. CARLSON, U.S.N.R. AT GUAM, MARIANAS ISLANDS ON
DECEMBER 14, 1946.

Gentlemen of the Commission:

This closing argument might well be headed the protection of nationals because this present case is an application of international law and the decision of this court will be of profound importance. You, gentlemen of the commission, will either establish new law as regards the jurisdiction of nationals or the old laws which have for so many hundreds of years given to sovereign nations the right to try persons for crimes committed within the boundary lines of the nation will be upheld. In other words the police powers of a nation will be reaffirmed.

The protection of citizens abroad or at home is a legal subject. The protection of this accused, Lieutenant Tomita, Ryoji, Imperial Japanese Navy, is a legal matter. The founders of our government in the preamble of the Constitution said: "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." By article one the legislative powers were vested in a Congress. By article two the executive power was vested in the President. By article three the judicial power of the United States was vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. This court is a judicial court limited in powers, but a court which is independent of the executive or legislative branches of our government. It is for this commission to determine the law pertinent to the facts in the case and to clearly and fearlessly enunciate the principles of law as they apply to this case. Upon the completion of the proceedings they shall be transmitted to the Judge Advocate General of the Navy to be revised and recorded.

Section 333 Naval Courts and Boards states that "Under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial. We hold however, that this does not give this commission jurisdiction to try a Japanese national for an alleged crime committed on Japanese sovereign soil against a citizen of France and against a citizen of Switzerland.

In our special plea to the jurisdiction of this commission to try this case we pointed out the irregularities in drawing up the charge and specifications. We stressed the fact that the Judge Advocate General of the Navy Department cannot confer jurisdiction upon this commission where none exists.

The prosecution failed to answer a single assertion we made regarding lack of jurisdiction. Why? There isn't any answer. There isn't any jurisdiction in this commission to try this case. The introduction of a classified dispatch from the Judge Advocate General of the Navy Department as authority for this commission to try this case in no way answers the ruling case law which we presented as the governing law in this case. Marshall C.J. in *Schooner Exchange v. McFadden* 1812, 7 Cranch, 116, 136, stated the law in these words: "The jurisdiction of the nation within its territory is necessarily exclusive and absolute. It is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions therefore to the full and complete power of a nation within its territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source." The judge advocate of this commission overrules this ancient law simply by saying that we have a despatch which says this is no longer the law, the jurisdiction of Japan to try a citizen of Japan for a crime committed on the sovereign soil of Japan is not a question of the consent of Japan, but is left to the mere whim of some one individual. No reason is given for this departure from all existing law.

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Frederick Sherwood Dunn in his book "The Protection of Nationals" in chapter IV, page 46, states "The law of diplomatic protection is a comparative newcomer in the field of international jurisprudence."

Grotius and his immediate successors had little if anything to say in regard to the legal obligations of a state toward foreigners and foreign property interests within its borders, at least in time of peace."

"Vattel was the first of the classical writers on international law to give much attention to the subject of protection of aliens and their property interests." Ibid p. 48. His celebrated work on "The Law of Nations, or the Principles of Natural Law" was written more than a century after Grotius work had appeared. He stated: "Sovereignty following upon ownership gives a nation jurisdiction over the territory subject to it, to take cognizance of crimes committed therein, and of the differences arising between the citizens."

We quoted from the case of Raymond Fournier decided by the supreme court of France at Paris in 1873. "The right to punish has no foundation except the right of sovereignty, which expires at the frontier. - - -"

But the law can not give to the French tribunal the power to judge foreigners for crimes or misdemeanors committed outside of the territory of France; that exorbitant jurisdiction, which would be founded neither on the personal statute nor on the territorial statute, would constitute a violation of international law and an attempt against the sovereignty of neighboring nations. ---, the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived, neither by the silence nor the consent of the accused."

In the United States the territorial principle is the basis of criminal jurisprudence, and the place of the commission of an offense is generally recognized as the proper and only place for its punishment.

Mr. Justice Story speaking for the court in the case of Appolon; 9 Wheaton 362 said: "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."

We cited many more cases in our special plea to the jurisdiction of this commission to try this case. We hold that the facts showing no jurisdiction were apparent on the face of the specifications. The evidence introduced in this case shows clearly that the accused is a Japanese national, the alleged crime was committed on Mille Atoll, Marshall Islands, a mandated island over which Japan exercised sovereignty and that the victims of the alleged murder were citizens of France and Switzerland. Under these circumstances it is incumbent for this court to rule that it has no jurisdiction in the present case.

The prosecution has failed to show that the two victims were unarmed non-combatants, but it has been shown that they were both neutrals. They come under article 16, chapter III of the Hague Convention of 1907 which states "The nationals of a state which is not taking part in the war are considered as neutrals."

The prosecution have failed to show in a single instance any provisions in the Hague Convention, the Geneva Prisoners of War Convention, or the Geneva Red Cross Convention applicable to neutrals. Clearly therefore this is not an offense in violation of laws and customs of war and the Commission should so rule.

The prosecution have also failed to show where in these conventions provide courts or punishments for individuals who violate the laws and customs of war.

On the other hand we pointed out article 2 of the Hague Convention No. IV of 1907 which provides that the provisions do not apply if all of the belligerents are not parties to the Convention. Since neither Italy or Bulgaria ratified this 1907 Convention the accused is not bound.

Japan did not ratify the Geneva Prisoners of War Convention of 1929. The mere fact that Japan did through the Swiss government agree to observe the provisions of this convention makes no difference legally.

The prosecution not only charge that the offense charged is a violation of the laws and customs of war, but the offense is also charged to be in violation of the "moral standards of civilized society." Since this was objected to previously we will at this time only say that this phraseology has no precedent either in martial law or in criminal law. The phrase should be stricken from the specifications, particularly since the prosecution have offered no proof regarding this matter or did they ask the commission to take judicial notice of the moral standards of civilized society.

Sheldon Glueck has said in his book "War Criminals, Their Prosecution and Punishment", pp 14-15, "In our day and age, one major aim of the administration of justice in international affairs is to demonstrate beyond doubt that lawlessness, whether indulged in by Heads of States, members of military general staff, members of political cliques, or persons of lesser status, entails prosecution and punishment." This commission must decide if this is a war crime and if the accused in this case is responsible and did commit the crime of murder.

Lieutenant (jg) Tomita, a young and inexperienced officer, because of the war suddenly finds himself in command of a garrison on far away Mille Atoll. It is his first command. He arrives about November 3, 1942 and relieves a garrison force commanded by a Commander. You have seen Lieutenant Tomita and heard his testimony. All the circumstances are in mitigation of any act which might have been committed during the short period of two days while one garrison was disembarking from the ship and the old garrison force commanded by Commander Fukumi went aboard ship. There were many things to be done in that short period of time. All seemed to go well, but there was one very pressing problem: Two persons, said to be priests had landed on Mille about a month previous with about fourteen natives of the Gilbert Islands. The priests were white men, Japan was beginning to get jittery because the American forces had started to strike back. Always suspicious of white men the Japanese imagined these men were spies. Is it impossible to believe that under the circumstances the Japanese on Mille thought of them as spies. The accused testified on the witness stand that Commander Fukumi told him the priests were spies and should be put to death. Why then, do you ask, didn't he put them to death when he first captured them? Again, how can we probe the mind of these people who react so differently than we do.

It is Judge Learned Hand, senior judge of the U.S. Circuit Court of Appeals for Second Circuit (New York, Connecticut and Vermont) who said: "The spirit of liberty is the spirit which is not too sure that it is right. The spirit of liberty is the spirit which seeks to understand the minds of other men and women. The spirit of liberty is the spirit which weighs their interests alongside its own without bias."

Commander Fukumi didn't put these priests to death immediately, but he waited until the day Lieutenant (junior grade) Tomita, a boy of 25 years, was ready to relieve him and then told him that the two priests should be executed because he, Commander Fukumi, had found out they were spies. What a stage setting for all this!

Lieutenant (junior grade) Tomita was eager to make a good impression, but, and he wouldn't have been selected for the job if he had not been intelligent, stopped just long enough to consider the full meaning of the instructions.

He suggests that the Commander who had captured them take them with him on the ship to Japan. We will probably never know why this wasn't done. The reason

advanced now is that the ship was overcrowded with the garrison force and the trip was long. Be that as it may, Commander Fukumi sailed away on the ship, but the priests were not aboard. This was late in the afternoon of November 5, 1942.

The young boy, he was only 25 years old, was now in command of the garrison force on Mille and the responsibility was heavy on him. His friend Shima, a trusted officer came to him and said he had carried out the Commanders orders and had shot the priests. How, when, and where? This too we shall probably never know because Commander Fukumi is dead and so is Warrant Officer Shima.

Now what does our young officer do about it. He said he was perplexed. He was indeed perplexed. So in order to avoid all responsibility for the incident, he doesn't want to fear about it. He orders Warrant Officer Shima to report the how, the when and where to Commander Fukumi since the orders came from him. But he suddenly realizes the Commander has sailed on the ship. He thinks of sending a signal, but his better judgment says no. He insists that Shima make a report to Commander Fukumi, however, and with that dismisses the incident. He doesn't want to know about it and all he knows to this day is that Shima, who is now dead told him the priests had been killed. No one has ever been able to find any trace of the bodies.

The war ended and it had been a fierce war so we began an investigation of all that had happened to American prisoners of war while in the hands of the Japanese. As the accused said he felt everything was hopeless. What difference did it make anyway. So when an American officer questioned him about this incident, and prepared a statement for him he wrote one out similar to the one he was shown. Anything to please the Americans. But to his sorrow he found out that what he signed to please the Americans now was keeping him confined as a war criminal. But what could he do?

It was not until months later when he was served with a paper which read that he was charged with murder of the two priests did he realize that he would be tried for murder. Fortunately they told him he now had counsel and so he told the Japanese lawyer that he had written a letter to Commander Marianas and told the real facts as far as he was concerned about the two priests. The letter was written some time previous and signed by Lieutenant Tonita, but now he dated it September 4, 1946 and gave it to the Japanese lawyer. The lawyers were changed in the case on December 9, 1946 and the trial was resumed.

The accused went on the stand as a witness in his own behalf Thursday, December 12, 1946. He told his story and tried to explain in the best way he could about the statements he had previously signed. The cross-examination began, slowly at first, but the grilling was relentless. The accused kept telling the same story, that he was innocent of murder. Then came the question that was going to be hard to answer by the accused.

"Have you at any time since you wrote either or both of these statements attempted to contact American authorities to try to change the account that you wrote?"

The unexpected answer was: "I tried to contact American authorities."

Q. What efforts did you make to contact American authorities.

Ans. In the end of August of this year I tried to correct my false statement to the judge advocate of the headquarters of Commander Marianas.

The prosecution dropped the idea of further questioning along these lines. This was dangerous ground. There was a short recess.

I asked the Japanese lawyers if they knew of such a letter. "Yes. Here it is". It was given them by the former Japanese lawyer and they never realized it was of any importance.

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You remember how we tried to get this letter into evidence in order to effect the inference and to prove that the accused Lieutenant Tomita had tried the best way he knew to communicate with the proper authorities. It was accepted into evidence and correctly so.

The prosecution have charged him with: "wilfully, maliciously, feloniously, with premeditation and malice aforethought, without justifiable cause, and without trial or other due process, assault, strike, cause to be killed, and kill with an instrument, a deadly weapon."

The accused, Lieutenant Tomita, testified that he had never even seen the two priests. Yet he is said to have "wilfully" which means "intentionally and not by accident." Bouvier's Law Dictionary vol. 2 p. 3454. citing 116 Mo. 96, 22SW 447.

On page 2067 of Bouviers, Malice is defined as, "The doing a wrongful act intentionally without just cause or excuse. 4 B&C. 255; Com v York, 9 Mete. (Mass.) 104, 43 Am. Dec 373; Zimmerman v Whitely; 134 Mich 39, 95 N.W. 969. A wicked and mischievous purpose which characterizes the perpetration of an injurious act without lawful excuse. 4 B&C. 255; Com. v York, 9 Mete (Mass.) 104, 43 Am. Dec. 373.

In Whartons Criminal Law Vol 1, par. 421, pp 634-636 we read "Murder is distinguished from other kinds of killing by the condition of malice aforethought,

Premeditation and deliberation, as an element in murder, consists in the exercise of the judgment in weighing and considering and forming and determining the intent or design to kill". State v. Roberson (1909) 150 N.C. 837, 64 S.E. 182.

I say to this commission that Lieutenant Tomita did none of these things. Remember, he never even saw these priests!

"The corpus delicti, or the fact that a crime has been committed, is an important element entering into the trial of every person charged with the commission of a crime. In theory, if not in practice, the prosecution is required to establish the fact that a crime has been committed before it can either (1) introduce evidence to show that the accused committed the crime, or (2) require the accused to show that he did not do so. In other words, the corpus delicti must be established by satisfactory evidence before the accused can be put upon his defense

The phrase corpus delicti means, literally the body of the transgression charged, the essence of the crime or offense committed, the existence of the substantial fact that a crime or offense has been committed

The essential elements of the corpus delicti are (1) the existence of a certain state of fact or result forming the basis of the criminal act charged and (2) the existence of a criminal act or agency or cause in bringing the state of fact into existence; e.g., that a man has died,...., and that some person wrongfully brought about this state of fact...

Some of the cases go a step further and require (3) that the defendant's criminal agency in the production of the state of fact shall also be established; citing "The language of other decisions, however, seems to require proof of the criminal agency of the accused as part of the corpus delicti. See State v. Dickson (1883) 78 Mo. 438; State v. Shookelford (1899) 148 Mo. 493, 50 S.W. 105; Lovelandy v. State (1883) 14 Tex. App. 560, (1884) 17 Tex. App. 287; Jackson v. State (1891) 29 Tex. App. 458, 16 S.W. 247; Josef V. State (1895) 34 Tex. Crim. Rep. 446, 30 S.W. 1067; Little v. State (1898) 39 Tex Crim Rep. 654, 47 S.W. 984.

Before a conviction can rightfully be had on a criminal charge, the prosecution must show (1) the corpus delicti (2) that it was produced by a criminal act or agency, (3) that the accused did the criminal act, or set in motion the criminal agency, or sustains responsible complicity therewith...

First essential fact to be proved is the corpus delicti, and this must be

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established beyond a reasonable doubt. *Tetus v. State* (1907) 1 Ga. App. 778, 57 S.E. 956.

A conviction very seldom occurs without direct proof of the corpus delicti, either by eyewitness of the homicide or by subsequent discovery of the dead body; yet there may be exceptions, where corpus delicti may be proved circumstantially or inferentially, e.g. as where the body is consumed by fire, or boiled in potash, or dissolved in acids, rendering it impossible that it should ever be produced. Citing *People v. Alvise* (1880) 55 Cal. 230; *Rince v. State* (1903) 118 Ga. 320, 68 L.R.A. 33, 45 S.E. 376, 12 Am.Crim.Rep. 205; *State v. Cardoll* (1886) 19 Nev. 319, 10 Pac. 433; *People v. Beckwith* (1888), 108 N.Y. 67, 15 N.E. 53; *Lovelady v. State* (1883) 14 Tex App 548; *Walker v. State* (1883) 14 Tex App. 609.

In the case of *McBride v. People* (1894) 5 Col. App. 91, 37 Pac 593 it was held that "The confession of defendant without proof aliunde cannot establish the corpus delicti."

Want of proof of the corpus delicti cannot be supplied by proof of the extrajudicial confession of the accused. *People v. Besold* (1908) 154 Cal. 363, 97 Pac. 871...

Thus in a prosecution for murder, proof of the corpus delicti involves the establishment (1) that the person named is dead (2) that he came to his death through the criminal act or agency of another human being...

The facts forming the basis of the offense, that is, the corpus delicti, must be proved either (1) by direct testimony, or (2) by presumptive or circumstantial evidence; and where the evidence is of the latter class, it must be of the most cogent or irresistible kind...

In some of the states it is held that the elements constituting the legal corpus delicti, that is, (1) the state of facts constituting the basis of the prosecution, (2) the criminal agency of some other human being in bringing them about, must be established by direct evidence; citing two New York cases, *Ruloff v. People* (1858) 18 N.Y. 179 and *People v. Bennett* (1872) 49 N.Y. 137.

Lord Chief Justice Hale says: "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or, at least, the body found dead." 2 Hale P.C. 290."

Whartons Criminal Law Vol I pp. 449-458: "It seems now pretty generally held that circumstantial evidence is admissible to establish the corpus delicti in a trial for murder, but that it must be strong and cogent. Chancellor Walworth, however, says: One rule which is never to be departed from is that no one should be convicted of murder upon circumstantial evidence, unless the body of the person supposed to have been murdered has been found, or there is clear and irresistible proof that such person is actually dead." citing *People v. Videto* (1825) 1 Park. Crim. Rep. (N.Y.) 603. In New York it is held that in trials for murder, the people must establish by positive evidence either (1) the corpus delicti or (2) the criminal agency producing it; and that after either is thus established, the other may be shown by circumstantial evidence. *Ruloff v. People* (1858) 18 N.Y. 179; *People v. Bennett* (1872) 49 N.Y. 137 (by divided court). In such a prosecution the corpus delicti is established by proof of the finding of the body of a human being under such circumstances as indicate that the death or killing was felonious, and not by accident or suicide. *State v. Potter* (1879) 52 Vt. 33. But the proof of the identity of the dead body must be established by evidence outside of the death of the party alleged; the remains of the deceased, or a portion of them, must be sufficiently identified to establish the death of the party. *Lovelady v. State* (1883) 14 Tex App. 545; *Gay v. State* (1901) 42 Tex Crim Rep. 450, 60 S.W. 771.

Wharton's Criminal Law Vol I pp. 459-460. What Blackstone said of confessions

was certainly true of the admission which the prosecution introduced in this case: "confessions, even in cases of felony at common law, were the weakest and most suspicious of all testimony, very likely to be obtained by artifice, false hopes, promises of favor, or menaces; seldom remembered accurately, or reported with precision, incapable in their nature, of being disproved by other negative testimony." 4 Bl.Com. 357.

The accused on the witness stand explained clearly and logically how the admission introduced by the prosecution was obtained from him by artifice. Yet this admission does not even establish the corpus delicti.

This admission is what is known as a circumstantial confession if it were a confession instead of just an admission. The prosecution have only shown circumstantial evidence and have introduced a circumstantial admission. The circumstantial admission has been denied by the accused and although subjected to a grilling cross-examination this only tended to prove his innocence.

We refer to the statement of the accused which the prosecution put into evidence. Strictly speaking it is not a "confession", but an admission. "Confession is voluntary acknowledgment of guilt. "Admission" is an acknowledgment of facts tending to establish guilt. People v. Sovetsky 323 Ill. 133 153 N.E. 615.

Statements, declarations, or admission of fact incriminating in their nature or tending to prove guilt are admissions and not confessions. People v. Rupert, 316 Ill. 38, 146 N.E. 456.

This admission was denied by the accused and the commission must now weigh the evidence. The commission must determine the credibility of the testimony of the accused under the same rules and principles as with other witnesses.

If the defendant's testimony explaining his act was not improbably and no contradictory evidence to it was introduced, it could not be rejected by the jury. Miller v. State 191 Wisc. 477 211 N.W. 278.

The rule laid down in Section 158 of Naval Courts and Boards: "If there is a reasonable doubt as to the guilt of the accused, he must be acquitted" is most applicable in this case.

We ask the commission therefore, to find as to the accused, Lieutenant Tomita, Ryoji, specifications one and two not proved and the accused is of the charge of murder not guilty, and the commission does therefore acquit the said Lieutenant Tomita, Ryoji of the specifications and of the charge of murder.

Respectfully,

Martin Emilius Carlson
MARTIN EMILIUS CARLSON,
Commander, U.S.N.R.

103rd U. S. Naval Hospital.
Guam, Marianas Islands.
December 16, 1946.

From: Lieutenant (jg) M.V. McCloy (MC), USNR.
To : Commander Marianas.
Via : Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam,
Marianas Islands.
Subject: Sickness of member of military commission.
Reference: (a) Naval Courts and Boards, Section 377.

In accordance with reference (a), I have to report that on December 16, 1946, I found Commander Ramon J. Wallenborn, Dental Corps, U.S. Navy, sick and unfit for duty.

M.V. McCloy,
Lt. (jg), (MC), USNR.
Ward Medical Officer.

CERTIFIED TO BE A TRUE COPY

Edward H. Field
LT USNR.

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CLOSING ARGUMENT FOR THE PROSECUTION
DELIVERED BY
LIEUTENANT EDWARD L. FIELD, U. S. N. R.

If it please the commission:

This commission has heard the very earnest pleas of the three counsel for the accused in their closing arguments in behalf of Lieutenant Tomita. In brief, I would like to comment, first, on some of the aspects of their arguments, and second, I would like to sum up this case as seen from the view point of the prosecution.

Since the accused in this case is a Japanese national, the site of the crime was on Japanese territory and the victims were French and Swiss nationals, the accused has objected to the jurisdiction of this commission at the opening of the proceedings. In their closing arguments, the counsel for the accused have reiterated this objection. The prosecution wishes to point out that in addition to the United States having jurisdiction over this accused, I also believe that France, Switzerland and England, as well as Japan, may have concurrent jurisdiction.

The accused have argued most vehemently that Japan should be conducting these proceedings and not the United States. The answer to this contention was learned at the end of the first World War, when we allowed Germany to try her own war criminals, and the world witnessed the mockery of justice and the travesty of International Law by the Germans that followed. We are acutely aware that should this matter be delegated to Japanese hands the accused would go scot free.

This question of jurisdiction has been fully anticipated by the convening authority and the commission, in ruling upon this objection, had made available to it for considering this point, two classified documents from the Judge Advocate General of the Navy. You have ruled that you have jurisdiction, therefore this question is settled insofar as this commission is concerned!

The duty of this commission now is to try the case on the merits and the facts presented.

The counsel for the accused have further objected in their arguments, to the phrase "moral standards of civilized society". In particular, I would like to ask the Japanese counsel for the accused; what country in the modern world, whether oriental or occidental, whether its philosophy is based on the concepts of Christianity, Mohammedanism, Buddhism, Hinduism, or pagan, does not condemn murder as being in violation of its fundamental principles of right and wrong and its moral standards!

The closing arguments of the counsel for the accused reveal a most interesting situation. On the one hand the counsel for the accused clamor that the victims were neutrals, and therefore this is not a war crime in violation of the laws and customs of war, while on the other hand these same counsel charge these victims were spies and that their execution was therefore justified. Can it be that the victims were both neutrals and spies at the same time? Such a position is untenable and is incongruous and incoherent.

It becomes quite important that we ascertain just what was the status of the two priests. The evidence is uncontested, that one of the priests, Father Durand, was a French national, and the other of the priests, Father Marquis, was a Swiss national. It has been further brought out by the evidence that those two priests had lived for many years in the Gilbert Islands, which is British territory. In section 116, Wigmore's "Guide to American International Law and Practice", it is stated as follows: "The citizen of a neutral state within a belligerent's territory, is in general immune from injury to person or to property except so far as the operations of warfare under military necessity subject him to the same risks and regulations under which the belligerents citizens are subject."

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This general principle is also found in Wharton's "International Law", section 352; Hyde's "International Law", section 630 to 633, and Wilson's "International Law", sections 122-126. We see from this broad principle that if the victims were considered neutrals, they were immune to injury and on the other hand if the victims were combatants they therefore would come under the protection of the laws of war!

The most important point in this case hinges upon the fact that the victims, for whatever might have been the reason, were incarcerated by the accused and under such conditions they there^{by} became entitled to the protection of the laws and customs of war! C.T.

Let us observe a bit further the status of these victims. Wilson, on International Law, states in Section 115 as follows: "The status of a person in time of war, whoever or whatever they may be, may be determined by their conduct usually as (a) combatants or (b) non-combatants." Combatants are then defined as: "those lawfully entitled to carry on hostilities, and as representatives of the state in the conduct of war, are protected from arbitrary treatment by the opposing belligerent". The status of a non-combatant is defined as: "in general extended to those who take no direct part in the war."

The prosecution has alleged in the specifications that the two priests were non-combatants. Who then, may be a non-combatant? Wilson's International Law, section 114 has this to say about non-combatant persons: "the non-combatant person within belligerent territory, may be of the nationality of that belligerent, of the opposing belligerent or neutral." A neutral person is defined in section 115 of Wilson according to the following: "neutral persons, that is those who are nationals of a state not taking part in the war, are generally exempt from interference, although liable to the ordinary effects of war".

From the facts in this case we have seen that the two victims were nationals of a state not taking part in the war, and in general would therefore be considered as neutrals. The question then arises, have these neutrals by their conduct in any way altered their status so as to make them combatants? We have seen from the above that all persons may be considered either as combatants or as non-combatants, depending upon their conduct, and we have seen that neutrals are considered as non-combatants.

What then does the evidence reveal that might alter the status of the victims as a result of their behavior or conduct? This commission has heard the testimony of the witness John Inan to the effect that he and 13 other Gilbertese natives, in the company with the two victims, set out in an open boat to go from Abaiang Atoll to Mureki Atoll in the Gilbert Islands, and as a result of adverse weather they were blown from their course. After 19 days of grueling hardships they were washed ashore on Mille Atoll. The Japanese on the following day placed these natives and the two priests in custody and therefore, by this very act, they brought the victims under the protection of the laws of war. From all accounts, it is indicated that the accused believed, or at least suspected, the victims of being possible spies, and acting on this premise the Japanese confined the victims under guard. This assumption by the accused does not of itself, per se, alter the factual status of the victims, and the crux of this entire case lies in the fact that irrespective of whatever the Japanese may have thought, believed, or considered, the victims to be, if the facts reveal them to be non-combatants and not spies, then the execution of these two victims on the mistaken assumption that they were spies is but murder, pure and simple!

Since the victims were interned by the Japanese and held in military custody by them, the question then arises, did the protection of the laws and customs of war accrue to the victims as a result of their arrest and incarceration. In other words, did the two priests and the natives thereby revert to the status of prisoners of war? Who then may be a prisoner of war and as such be protected by the laws of war? Wilson, on International Law, section 116, states: "A prisoner of war, is an individual whom the enemy captures and temporarily deprives of his

personal liberty on account of his participation, directly or indirectly in the hostilities, and whom the laws of war prescribe shall be treated with certain consideration". In the same section we find the following: "those liable to be made prisoners of war at the present time include: (1) the regular armed forces of the belligerents, such as the members of the army and navy, (2) those who lawfully resist attack, as levies en masse, (3) those who are permitted to accompany the armed forces without forming a part of these forces, as newspaper correspondents, contractors, sutlers, etc., (4) in exceptional cases, persons who may be of special service to the enemy". If it please the commission, it is the contention of the prosecution, that based on the mistaken conception and belief of the Japanese, the two priests fall within the letter and spirit of point (4) in the aforementioned definition as to who may be made a prisoner of war. Therefore, since the Japanese, though incorrect in so concluding, believed that the two priests might be of special service to the enemy and placed them in custody as such, the Japanese, themselves, brought upon and owed to these victims the protection of the laws and customs of war.

Next let us consider the facts that have been revealed by the prosecution's evidence. The commission has heard John Iman state how he and 13 other natives, including the witness Joseph Tabae, accompanied by the two priests, Father Durand and Father Marquis, set out in an open canoe to go from Abeiang to Maraki in the Gilbert Islands. Iman has further related the account of the adverse weather that swept them from their course, their lack of food and water and how they were overhauled by a Japanese war ship after 8 days at sea. The witness, Iman, further related their attempt to obtain food and water from the Japanese war ship and how their request was refused and they were put back in their canoe and left at the mercy of the open sea. Finally this little group was cast ashore at Mille Atoll in the Gilbert Islands on or about the 16th of September 1942.

The first night on Mille the natives and the priests were cared for by some of the natives of Mille and then the next day this shipwrecked group were all arrested and put in custody by the Japanese and remained in custody until the incident concerned in this trial occurred. The commission has heard John Iman's description of how he saw five or six soldiers in the command of an officer approach one morning about the 5th of November 1942, the tent in which Iman was living with the priests. Iman's testimony further revealed that the soldiers carried rifles without bayonets and that two men had white cloths to be used as blindfolds. Iman was certain that these cloths were to be used as blindfolds because he saw two of the soldiers try them on their companions. Iman then testified that he never again saw the priests after this incident. He further testified that he was told by one of his fellow natives that the soldiers came and took the two priests away. Iman has testified that the soldiers whom he saw in front of the tent the morning the priests disappeared belonged to the unit under the command of the accused and he has further testified that this incident took place at a time when Tomita was in command of the garrison at Mille Atoll, and after Tomita's predecessor, Commander Fukuni, had left for Japan.

The witness Joseph Tabae has been the prosecution's chief source to show what actually happened to the two priests. His testimony concerning the saga at sea and the shipwreck on Mille corroborates that of Iman. Tabae has testified that seven days after the priests disappeared he was called upon to bury the victims. He has further testified that the moment he saw the two bodies he recognized them as the bodies of Father Durand and Father Marquis. There can not be the slightest doubt on the part of this commission that the two bodies seen by Tabae were those of Father Durand and Father Marquis! You have heard Tabae tell that Father Durand had been his teacher for two years and that he had known Father Marquis as a parish priest. Tabae had lived with them during the days of the voyage and also during the time they had been confined at Mille. His identification of these two bodies is positive and absolute. It is to be noted that Tabae testified that each of the bodies had a large hole over the heart which he believed to be bayonet wounds and that the bodies were swollen at the time that he buried them. From the testimony of the witness Tabae there can be no doubt that the prisoners met death as a result of violence and foul play!

We then come to the last of the prosecution's evidence; that is the confession of Lieutenant Tomita, dated December 28, 1945. I shall have additional comments to

make concerning his denial of this confession. The confession has been duly admitted in evidence by the commission, and properly so, and therefore must be given full consideration by this commission in determining your findings. The chief part of the confession insofar as the accused is concerned, is that it binds him with actually participating in the crime. In this confession the accused freely admits that he ordered Warrant Officer Shima, Ken, to execute the two priests, and he further stated that it was suggested to him that these two priests be executed for "bad behavior".

What then is the law as it applies to the evidence in this case? This accused is charged with murder, and murder is "the unlawful killing of a human being with malice aforethought without justifiable cause." Before a conviction can be clearly ascertained on a criminal charge, it falls upon the prosecution to prove, first, the corpus delicti; second that the corpus delicti was produced by criminal act or agency; and third, that the accused did the criminal act or set in motion the criminal agency. The question then arises, what is meant by the term corpus delicti? As defined in Bouvier's Law Dictionary, corpus delicti is the "body of the offense" or "the essence of the crime". Some text writers have explained this term as meaning the fact that the crime has been actually perpetrated. As stated in Wharton's Criminal Law, section 348, the essential elements of corpus delicti are: "(1) the existence of a certain set of facts or reasons to form the basis of a criminal act charged", and "(2) the existence of the criminal act or agency or cause in bringing the set of facts into existence".

In section 347, Wharton's Criminal Law, it is stated that in order to establish the corpus delicti, "on a charge of homicide it is necessary to prove that the person alleged in the indictment to have been killed is, first, actually dead, and second, that his death was caused or accompanied by violence or the direct criminal agency of some other human being". Let us examine the prosecution's evidence to ascertain whether the corpus delicti has been proved in this case! The commission has heard the witness Taboe testify that when called upon by Japanese personnel he buried the bodies of the two priests. There can be not the slightest doubt that the corpus delicti is thus proved by the witness Taboe, or can there be the slightest doubt that the two bodies buried by the witness Taboe were other than the bodies of Father Durand and Father Marquis. C17

The next element after establishing the deaths of the alleged victims is the proof that these deaths were caused or accompanied by violence or the direct criminal agency of some other human being. The witness Iman has related how he saw the Japanese soldiers outside of the priests' tent with rifles and blindfolds and that after this incident he never saw the priests again. The witness Taboe has testified that he observed a large hole in the chest of each of the victims in the vicinity of his heart which appeared to him to be a bayonet wound. There is from this testimony every indication beyond a reasonable doubt that the two priests met death by violence at the hands of some human being and that these deaths were not due to natural causes. This, gentlemen, proves beyond a reasonable doubt that the corpus delicti has been established by the prosecution and further this is established by independent and direct evidence that is entirely free of any consideration of the confession of the accused.

We now come to the third and most important part necessary for the prosecution to prove in order that the accused might be convicted of the crime as charged and that is that the accused did the criminal act or set in motion the criminal agency.

Let us examine closely the facts presented in this case in order to properly ascertain the relationship and the responsibility of the accused for the death of the two priests. We have already seen and it has been proven beyond all reasonable doubt that the two priests met their death under violent circumstances and the only legal element necessary to convict the accused of the crime as charged is to show his personal responsibility and connection with the death of the victims. Both of the prosecution's witnesses have identified the accused, Lieutenant Torita, as the commanding officer of the Naval Garrison at the time that the two priests disappeared from the tent which they were confined. ~~That~~ These witnesses have made it absolutely clear that on the day of the disappearance of the two priests that Lieutenant Torita 27

had relieved his predecessor as commanding officer of the garrison. The commission has heard the witness John Inan relate how five or six Japanese military personnel under the command of an officer came to the tent which the Father's were confined early one morning. The witness Inan further testified that these soldiers were armed with rifles and bayonets and that he observed that they carried two pieces of white cloth with them and how he knew that the white cloths carried by the Japanese soldiers were in fact blindfolds since the soldiers tried them on themselves in his presence. The witness Inan has related that he did not see what took place other than the assembly of the soldiers in front of the tent in which the priests lived and which he himself was also living at the same time, due to the fact that he was ordered to leave the area of the tent and proceed to the place where he was working for the Japanese. This same witness has further testified that the officer and group of men whom he saw in front of the tent were the persons attached to and members of the Naval Garrison Unit commanded by the accused, Lieutenant Tomita. It is possible to argue that this much testimony alone is sufficient to establish a prima facie case against the accused Lieutenant Tomita. We need not consider this point, however, as the prosecution has further evidence to show the part played by the accused, Lieutenant Tomita, by way of his full confession.

This commission has very properly overruled the objections of the accused to the admission of the confession of Lieutenant Tomita and properly admitted this voluntary statement written in the personal handwriting of the accused and which was shown to have been written by the accused free of any inducements, threats, or fears.

From the confession of the accused it is shown that he ordered a Warrant Officer under his command by name of Shima Ken to execute the two priests and that he later received a reply from the said Warrant Officer that the execution had been carried out.

Thus we see, gentlemen, that it is clearly established that the accused, Lieutenant Tomita, by ordering the execution of the two priests is solely responsible for the deaths of the two priests and that the necessary elements to convict the accused of the homicide for which he is charged are established and proved upon all reasonable doubt.

The question then arises, "Is it proper to charge the accused, Lieutenant Tomita, with murder when he himself did not actually inflict the mortal blows upon the bodies of the victims?" The answer to this question depends on who may be properly charged as a principal. Section 332 United States Criminal Code states as follows: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures in its commission, is a principal".

It is natural the counsel for the accused has vigorously objected to this law and assert that the aforesaid definition is peculiar to the law of the United States. Let us observe what the Japanese Criminal Code has to say in connection with who may be properly charged as a principal in a crime.

Article 60 in the Japanese Criminal Code states as follows: "Two or more persons who have cooperated in committing a crime are (joint) principals."

The expression '(joint) principals' does not refer solely to those who have participated in the whole or part of the act forming an essential element of a crime. If several persons have conspired to carry out a crime and some of the conspirators have been induced to undertake the execution of the criminal act, those who have thus caused the criminal intention to be carried out are also (joint) principals."

Article 61. "A person who has instigated another to commit a crime shall be considered a principal. The same applies to a person who has abetted an instigator."

This gentleman's Japanese law, not American law and the accused is thus shown to be properly charged as a principal under both American and Japanese law.

The defenses raised by the accused in addition to that of the question of jurisdiction are first; that the victims in this case were spies and therefore their execution was justifiable, and second; a complete and full denial of any participation by the accused in the crime. If either of these defenses are established, the accused must be acquitted.

I have commented previously that the counsel for the accused in their closing arguments, asserted that the victims were both neutrals and spies. The counsel for the accused, and the accused himself when on the stand as a witness in his own behalf, have done a considerable amount of talking about spies without attempting to explain who may be a spy or show any overt act on the part of the victims which would delegate or establish them as spies. The Hague Convention, respecting the Laws and Customs of War in October, 1907, defined a spy as follows: "a person can only be a spy when acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operation of a belligerent with the intention of communicating it to the hostile parties." Article 30 of the same convention states that a spy taken in the act shall not be punished without previous trial. Does the evidence show that these priests were as a matter of fact spies? I reiterate, the accused have shown not a single act on the part of the two priests to indicate that they were spies and this being a matter of defense, places the burden of going forward and establishing the fact that the two victims were spies upon the accused and they have failed in every way to establish this contention!

The accused called Lieutenant Commander Ito as a witness. Lieutenant Commander Ito was the adjutant of Commander Fukumi, who, according to the accused, Lieutenant Torita when on the stand in his own behalf, told him, Lieutenant Torita, that the victims were spies. Lieutenant Commander Ito testified that he had heard from Commander Fukumi that the priests might be spies. This is a most vague and uncertain assertion and other than the statement that the victims might be spies nothing in the way of concrete evidence has been produced though the testimony of Lieutenant Commander Ito to establish that the priests were spies. It is to be noted that Commander Ito testified that only after his arrival at Guan to appear before this commission did he learn that the two priests had been executed. Is it possible to believe, in accord with the contention of the accused, that Commander Fukumi had ordered the execution of the two priests as spies and yet Fukumi's adjutant, who accompanied him on the return trip to Japan, knew nothing of its taking place? Such a contention is unreasonable to the extent of being absurd! It is furthermore noted that if Commander Fukumi believed these victims were spies, as is alleged by the accused, why had he waited so long in carrying out their execution? The accused can give no satisfactory explanation to this question either! All the evidence indicates the victims in the case came to Mille as the sole result of being lost at sea and shipwrecked and there has not been a particle of evidence to support the contention that they were spies. It is to be noted that the Japanese warship which intercepted the group at sea did not find or believe they were spies! The fact that the accused may have thought or suspected they were spies and executed them on the basis of this assumption, when in reality the victims were not spies, is no defense for the accused, for his conduct under these circumstances is none other than that of committing murder.

It must be born in mind by this commission the accused has testified that he was a twenty-five year old commanding officer in charge of 500 men and that approximately one-third of these men were new recruits and none of them had undergone combat. What could enhance his prestige and boost the morale of his troops to a greater extent than could the execution of two so-called spies by such a young commanding officer the second day he assumed command of a garrison? The commission must not overlook the testimony of the accused, as a witness in his own behalf, which reveals that he learned of the presence of the two priests on 4 November and, as he claimed, simultaneously learned they were considered spies. Yet the accused made not the slightest effort to consider the security and guarding of these two so-called spies at a time when he assumed the command of the garrison, nor did he even give the matter sufficient importance to personally or by properly appointed representative, visit or inspect the place used to confine these so-called spies. The reason why the accused did not consider the security of these so-called spies is that as a matter of fact he did not believe they were spies, and his conduct so indicates!

The second defense raised by the accused is that of a complete denial of any participation in the crime. This is not unusual, but on the contrary the normal procedure for a man faced squarely with a murder charge to attempt in any way possible to establish his innocence. Perjury, falsification and lying in the way of self-serving statements are both expected and normal. The prosecution has presented the signed confession of the accused dated December 28, 1945. He attempted to explain away this confession by saying that it was a replica of the statement he had signed previously at Majuro and by asserting that he was forced to sign the confession. Yet, he produces nothing in the way of evidence to support this contention that he was forced to sign this confession, but on the contrary the prosecution has presented evidence to show that this confession was free and voluntary!

The accused attempted to explain away his confession at Majuro by stating that false patriotism and the strain of war induced him to sign this document in which he admitted that he ordered the execution of the two priests. Such trite and trivial explanations can surely not be accepted by this commission, as reasonable men, to believe an accused would voluntarily on two separate occasions sign statements to the effect that he had ordered the execution of the two victims. This entire testimony of the accused is but a self-serving declaration as a witness in his own behalf and must as such be given its appropriate consideration by the commission. The accused has not produced a single cogent or persuasive fact to disprove in any way the truth of the confessions he has signed!

The accused had a distinct advantage in this case in that the two men upon whom he now places the full responsibility, Commander Fukumi andarrant Officer Shima, are both dead. The accused has been able to carefully shift over to these two dead men the responsibility of the crime in which he participated.

The complete denial of the accused has eliminated the defense of superior orders, and I only comment on this point in case the commission should believe the accused ordered the execution of the victims pursuant to the orders of Commander Fukumi. The commission is well versed in the law concerning superior orders and I will only remind you that the SCAP rules state that superior orders do not constitute a defense, but might be considered in mitigation if the commission so desires.

In conclusion I wish to comment on a few points to be considered in the specifications. The material allegations of the specifications are uncontested by the accused and have been proved beyond a reasonable doubt by the prosecution. The testimony indicates that Tomita was on November 5, 1942 a lieutenant, junior grade instead of a lieutenant as alleged in the specifications and the commission should so find. There is contradiction of testimony between the confession of the accused and the testimony of the witness Tabae as to whether the victims were killed by bayonets or shot by musketry. This becomes a fact which the commission must determine and the conclusion in no way alters the principal allegations.

I will not comment on the technical terms used to allege the murder, wilfully, feloniously, with premeditation and malice aforethought, other than to say in substance these words mean intentional. The question involved is; did the accused, Tomita, intend to execute the two priests? The answer is judged from the conduct of the accused through his confession is emphatically in the affirmative!

I wish to again point out that the apprehension of the victims by the Japanese and the resulting confinement that was imposed upon the victims on the suspicion of their being spies, brought the victims fully under the protection of the laws of war, and their subsequent execution, based upon this mistaken suspicion in no way justifies their execution, but unequivocally constitutes murder in a most atrocious and diabolical manner.

I recommend the fate of the accused to this commission and after just consideration of the facts may he receive the punishment he so justly deserves!

E. L. Field
E. L. FIELD,
Lieutenant, USNR

"CC 7"

0500

一、小官は大本帝國海軍大尉 富田良治にす
昭和十七年十一月五日以來昭和二十年度米國軍
に降伏する迄 小官は「三」環礁に於て第六十二
警備隊「三」令遣隊、司賀大佐着任され
第六十六警備隊と「三」かは第六十六警備隊
に配属し居りしに
二、「三」環礁に到着直後 小官は該環礁、
指揮官として 同島 福見中佐と交代し、
昭和十八年七月 小官は 司賀大佐と交代する迄
該環礁に於て第六十二警備隊令隊長
(指揮官に命ぜりふ)として、任務に就き居り
しに
四、昭和十七年十一月五日 福見中佐より「三」島
出發前 拘留されし 宣教師 二名と
不都合、行為に依り殺せし命ぜりふに
同日 福見中佐が出發し直ぐ (昭和十七年
十一月五日) 小官は 海軍兵曹長 高島堅(戦死)
に該牧師と銃殺にせよと命じしに

2050

"EXHIBIT 1" (2)

當時 土島は本部 配属 第一小隊長であった

六 小官は該宣教師に就て訊問を試み、又

裁判手續をも居り、また

七 宣教師三名、死刑終了後 島より死刑完了

せし、報告と小官は受けずん

八 福見中佐は彼等が捕虜又拘留され居る事と

せん報告せし、又此、後仕末は 俺がせると

言はれしを 小官は此、死刑遂行に就ては

正式報告せし、又此、第六十二警備隊司令

にほ 此、状況と報告せし

九 該宣教師は数名「ギバード」島民と一諸

日本、占領区域にある「ギバード」諸島から

「カヌー」何、許可も受けず 外海に乗り出し

「シ」環礁、南雄島に漂着し「シ」防備と

捕らんと 福見中佐は申されずん

九、昭和二十一年九月二十一日（金曜日）「メジロ」に於て

「小官は米國士官に訊問され 甚、調査、降に

「小官は最初 事實と否認し、又 良心的

呵責、為 直ぐ 事實 實らる 事と 自白すし

10. 小官の存する所、此の證言書は事實全部を
含み正確なるものあり自由に又自發的に證言し
るものあり代償契約又脅迫或は強制暴行
によりて證言するものあり
此の證言書は小官に對して將來使用されるもの
ありと云ふに居ます

昭和二十五年十二月二十八日

The above statement was made & written
& signature subscribed thereto by Lt.
Tomita in my presence

J. Akamatu.

28th Dec. 1945

Page 3

富田 良治

STATEMENT OF TOMITA RYOJI

1. I am Lieutenant TOMITA Ryoji of the Imperial Japanese Navy.
2. From 5 November 1942 to the time of surrender to the American forces in 1945, I was attached to the Mille detachment of the 62nd Guard Unit at Mille Atoll. Captain SHIGA arrived and after the Mille detachment became the 66th Guard Unit, I was attached to this 66th Guard Unit.
3. Immediately after arriving at Mille Atoll, I relieved Commander FUKUMI as Commanding Officer of this island. Until July 1943 when I was relieved by Captain SHIGA, I was on duty as a division officer (ordered to be in command) at the 62nd Guard Unit at this atoll.
4. On 5 November 1942 Commander FUKUMI, before leaving Mille Atoll, ordered the execution of two interned missionaries because of improper behavior.
5. On the same day immediately following Commander FUKUMI's departure (5 November 1942), I ordered W.O. SHIMA Ken (killed in action) to execute the missionaries by musketry. At that time SHIMA was the leader of the 1st Platoon which was attached to headquarters.
6. I did not interrogate these missionaries nor did they have any trial.
7. After the execution of the two missionaries, I received a report on the execution from SHIMA. Commander FUKUMI did not report the fact that they were interned or kept as prisoners and said that he would handle those details after the execution. Therefore I did not make any formal report following the execution. However, I did not report the matter to the Commanding Officer of the 62nd Guard Unit.
8. Commander FUKUMI said that these missionaries, together with some natives of the Gilbert Islands, sailed out from the Japanese occupied Gilbert Islands in a canoe without obtaining permission and drifted ashore at Minami Hanare Shima of the Mille Atoll and spied upon the defenses of Mille.
9. I was questioned by an American Officer at Majuro on 28 September 1945. (Friday). During this interrogation I denied the facts, but having a guilty conscience, I quickly confessed the truth.
10. To the best of my knowledge the above statement includes all the facts stated correctly and was made voluntarily and of my own free will. No promise of any compensation or threats or coercive action was made in making this statement. I think this statement may be used in the future against me.

TOMITA, Ryoji.

28 December 1945.

The above statement was made and written and signature subscribed thereto by Lieutenant Tomita in my presence.

28 December 1945.

J. AKAMATU

I certify the above to be a true and complete translation to the best of my ability.

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg), U.S.N.R.
Interpreter.

"Exhibit 2"

0504

九四六年九月四日

大日本帝國海軍大尉 富田 良治

法務官殿

左ノ件 陳情

宣教師三名ノ件ニ關シ、裁判ニ提起ニ付
本件ニ關シ、別紙ノ通り、次第ニ、中官ニ、
關係ノ...

當時ノ事情 陳情ノ間、如何ニ、
ハキヤニ就テ、辯護士ト相談致シ度、考ヘ居、
名モ、其機會ヲ得、茲ニ書類ヲ以テ、
狀況ヲ述ベ、次第ニ、

於此ニ陳述、敗戦直後、絶望的精神
混然状態ニ、加フルニ米國飛行士問題ニ對シ
司令官並ニ同僚ノ身上、案カ、餘、夜、眠、
神經衰弱、衰弱ニ、斯ル時、本件ニ關シ

說明、當時、本件發生ニ至リ、三年經過後、
今日大戦中、連日、熾烈ニ爆轟ト飢餓戰
ニ其ノ日、其ノ夜、戰事並ニ糧食對策ニ精魂ヲ
傾ケ來リ、事件發生當時、記憶、極ニ薄弱
トモ、然レ、宣教師ニ名、處利ニ...

小官、部下も大に活躍し、而して先陣に戦死し、
遂に海軍各官は萬里を為し、福見海軍
中佐より小官が命を受け、而して小官が萬里各官長に
命を言ふ。小官、部下情宜なりと思ひ、敗戦
直後、自死自棄、為、斯う述べても、理性を
取戻した今日、今、福見中佐、萬里各官長、
間、發生した本件に關し、無實、責、負、
不可し、信を至るまで別紙に本件、願、
述べて

(別紙一紙)

(終)

(別紙)

- 一 小官、大日本帝國海軍大尉 富田 良孝、
- 二 宣教師三名、中、關、海軍兵營長 島 聖、
當時、島最高指揮官、福見海軍中佐、
直接、命、受、福見中佐、直接、部下、トシテ
行動セ、行為、小官、全、関係、ナシ、
- 三 事件、顛末
① 小官、第六十二警備隊、今遣隊指揮官、
トシテ、到着セ、昭和十七年十一月三日、當時
福見中佐、指揮、ヲ執、
② 十一日、入港後、小官、直、福見中佐、到着、
挨拶、ヲシ、左、命、受、
③ 福見中佐、先任者、出港迄、兩部隊、
統一指揮、(最高指揮官)ヲ執、
④ 荷物、部隊、出港、迄、運、實施、セ、
⑤ 到着、部隊、荷物、搭載、セ、
福見中佐、荷物、搭載、セ、
⑥ 荷物、積、卸、其、他、関係、警備、兩部隊、
ニ、配、備、トス
⑦ 警備、交代、中、艦、出港、當日、
⑧ 十一日、小官、福見中佐、警備、交代、
中、艦、受、事、宣教師三名、関、

宣教師二名「名」諸島ヨリ数名「名」

大型「名」出シ、何、許可

我、作戦海域、行動せん

(1) 東着「名」偽称「名」南緯島ニ上陸シ、

環礁、兵力配備、防備、状況、探「名」

(2) 宣教師二名、米國人ニ「名」、情報、米軍側

ニ提供スル意志ヲ有セリ

(3) 宣教師二名「名」行為、依、處刑

命令

(4) 小宮、右宣教師ニ関シ、福見中佐ヲ逮捕シ

又今迄取扱ハ、審理サレ来ルモノナシ、申シ送

際、斯ル事ヲ命令スル國ニ「名」、本件、

園ニ中シ送テ、取除キヲ要求シ、今恰度内地

行キ、船モ「名」、而モ同船ニ「名」、歸國スルモノナシ、

極力速行スル様意見具申セリ

(5) 福見中佐、小宮、意見具申ニ「名」、宣教師處刑

命令今「名」、取、消シ、同船ニ「名」、連行サレ「名」、言明

(6) 茲、一應警備交代ノ申シ送テ終リ、^{表作}警備

將「名」、出港時刻ナリト、福見中佐、言ニ

重要事項ナリト調査スル、小宮、福見中佐ヲ

戦「名」、出「名」

(7) 小宮、其後福見中佐カ 船ニ出發サレ「名」、際「名」、

玄關「名」、見送リタリ

(8) 其以後小官、第六十二警備隊司令宛、當隊派遣を以て経緯、當隊、編制、裝備、携行彈藥糧食等、関し、詳細な現状報告ヲ提出スル之ヲ要頭セリ。右現状報告作製を以テリ所、中隊中官より為兵曹長來リ、當時、マダ、此島最高指揮官より福見中佐ヨリ、命令ヲ受テ、宣教師二名ヲ銃殺スル旨、報告ヲ受テリ

(9) 為兵曹長が福見中佐ヨリ受テ、命令ヲ小官ニ述べ、概要を、通リ、

逮捕中、宣教師二名ヲ、スル、行為ニヨリ、

銃殺セザルベカラズ、余(福見中佐)部下、

命令所、此島、前、荷役其他、

余(福見中佐)、部下、多シ、此島、居、

貴官(為兵曹長)、該宣教師二名ヲ

銃殺スル、此、處刑ニ對シ、後仕未、

余(福見中佐)ニテ處理スル、余(福見中佐)

報告スル、

中佐、直接、為兵曹長ニ命テ、宣教師二名ヲ處刑セザルベカラズ、

(10) 福見中佐ハ、報告、直接命ヲ受テ、早報告スル、

命セテ、為兵曹長ヨリ報告スル、此島本件ニ

関スル状況ヲ第六十二警備隊司令宛報告スル、

四、右、事實ニ相異ナキヲ證ス

4 September 1946.

From: TOMITA, Ryoji, Lieutenant, Imperial Japanese Navy.
To : The Judge Advocate of the Commander Marianas Area.

1. I have received an indictment for trial concerning two missionaries but I had absolutely no connection with this incident as is stated in the following document.

2. I was thinking about talking to a lawyer about how to proceed in regard to making a statement concerning the circumstances at the time the incident occurred, but as I have not had a chance to do so up to this time I am going to relate the conditions at that time in this document.

3. When I made a statement at Majuro, I was in a chaotic state of mind in which I felt utterly hopeless at the defeat in the war and in addition I could not sleep at night with worry for the fate of my commanding officer and my fellow officers. I was on the verge of a nervous breakdown. I was questioned at such a time as this about this incident. Three years had already elapsed since this incident had occurred. I concentrated all my energy and will from day to day in countering the food and battle situations in the continuous intense hunger and daily bombings of the recent war. My recollection of the time the incident occurred was very hazy but because the person who did the execution of the two missionaries was SHIMA, Ken, Warrant Officer, IJN, who died honorably in action and who worked well under me, and as I didn't care what happened to me as I thought it was doing a good turn as a superior officer to a subordinate to say that I had received orders from Commander FUKUMI and had given orders to Warrant Officer SHIMA, I said so.

At this time when I have regained my reason, I have come to believe that I cannot assume the false responsibility for an incident which took place between Commander FUKUMI and Warrant Officer SHIMA. I shall give the details of the incident in this document.

I. I am TOMITA, Ryoji, Lieutenant, IJN.

II. Warrant Officer SHIMA received direct orders about the execution of two missionaries from the highest Commanding Officer on Mille Island, at that time Commander FUKUMI, and he acted as a direct subordinate of Commander FUKUMI. I had absolutely no connection with it.

III. Account of the Incident:

(1) When I arrived at Mille on the third of November 1942, as the commanding officer of the Mille Detachment of the Sixty Second Guard Unit, at that time the commanding officer at Mille was Commander FUKUMI.

(2) After I had arrived in the harbor on the third of November I went directly to Commander FUKUMI and paid my respects, and received the following orders:

- 1 -

"EXHIBIT 4"

05 10

(a) As senior officer, Commander FUKUMI, until sailing, will take over-all command (as supreme commander) of both units.

(b) Because of loading and unloading, and other circumstances, a guard from each unit, shall be put in each post.

(c) The transfer of guard duties will be on the day of sailing.

3. I relieved Commander FUKUMI of the guard duties on the fifth of November. I received the following information concerning the two missionaries.

(a) Two missionaries together with several Gilbertese natives put out to sea in a large type canoe. They moved about our operational area without permission.

(b) They falsely stated they had drifted. They landed on a long southern island of Mille Atoll and came to spy on our military dispositions and its defense conditions.

(c) The two missionaries are not American but intend to offer information to the Americans and English.

(d) He ordered that the two missionaries be executed for spy activities.

4. I requested that he withdraw the transfer of the two missionaries as it would place me in a difficult situation if I were ordered to do such a thing, as he was the person who had captured them, handled them up to the present, and had investigated them. There was a ship going to Japan as at the present time and as he was returning on that same ship, I expressed the opinion that he should take them with him in any case.

5. Because I expressed this opinion Commander FUKUMI withdrew his order for the execution of the two missionaries and stated that he would take them on the same ship.

6. At this point we finished discussing the transfer of guard duties. I left the room where Commander FUKUMI remained and went to see if there were any matters or problems connected with the words of Commander FUKUMI when he said that the time of relief would be the time of sailing.

7. I went to the gate after this to see Commander FUKUMI off when the ship was to leave.

8. After this I became engrossed in making up a detailed report addressed to the Commanding Officer of the Sixty Second Guard Unit, about the prevailing conditions such as the amount of provisions, ammunition, armament and organization of our unit and the movements of the unit. While I was making up this report, Warrant Officer SHIMA came and reported that he had received orders from the Supreme Commander of Mille who was still Commander FUKUMI at that time, and he reported that he had shot the two missionaries.

9. The orders that Warrant Officer SHIMA received from Commander FUKUMI as he told them to me are roughly as follows:

"The two missionaries now in custody must be shot for spy activities. You (Warrant Officer SHIMA) shall execute the two missionaries. As I (Commander FUKUMI) shall handle the execution (as I have not yet been relieved) report to me (Commander FUKUMI)."

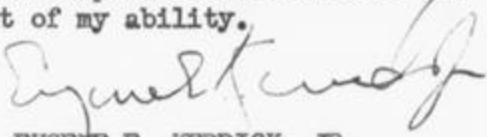
10. When I received this report from Warrant Officer SHIMA, I found out for the first time that FUKUMI had given direct orders to Warrant Officer SHIMA and had the two missionaries executed.

11. The report to Commander FUKUMI was made to FUKUMI by SHIMA who had received direct orders and who was ordered to report. I reported the circumstances of this incident to the commanding officer of the Sixty-second Guard Unit.

IV. I swear that the above is correct.

TOMITA, RYOJI,
Lieutenant, IJN.

I certify the above to be a true and complete translation of the original document in Japanese to the best of my ability.


EUGENE E. KERRICK, JR.
Lieutenant, U.S.N.R.
Interpreter.

In reply refer to Initials
and No.

Op22D-FLP
Serial No. 691P22

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



27 JUN 1947

End-1

On Office of JAG Record of Proceedings, MM-TOMITA, Ryoji/Al7-20
I (5-9-47) sar dtd 23 May 1947.

From: Chief of Naval Operations.
To: Judge Advocate General. ✓
Subject: Record of Proceedings of Military Commission at
Guam in the case of Ryoji Tomita.
1. Returned, contents noted.

W. F. Jennings
W. F. Jennings,
By direction.

RECEIVED
8 JUL 1947
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION

Finished-File-Old

0513

T.N.A.
Jury
J.V.D.

Mil. Com. - Tomita, Ryoji/A17-20
I (S-14-47) THH:vll 157166

MILITARY COMMISSION TRIAL OF LIEUTENANT
RYOJI TOMITA, IMPERIAL JAPANESE NAVY, TRIED
21 NOVEMBER 1946.

<u>CHARGE</u>	<u>PLEA</u>	<u>FINDING</u>	<u>C/A ACTION</u>
I MURDER	NG	Acquitted	Approved
Spec. 1 did on or about 5 Nov 1942 on Mili Atoll, Marshall Islands, cause to be killed one Father Louis Durand, Catholic priest, a French National.	NG	Not proved	"
Spec. 2 did on or about 5 Nov 1942 on Mili Atoll, Marshall Islands, cause to be killed one Father Leo Marquis, Catholic priest, a Swiss National	NG	Not proved	"

SENTENCE Not guilty, acquitted.

ACTION OF CONVENING AUTHORITY Subject to remarks, approved the proceedings.

FACTS The accused was on 5 November 1942 commanding officer of Mili Atoll, Marshall Islands. On that date two priests, one a French national and the other a Swiss national, both residents of the Gilbert Islands were killed on Mili, without previous trial or other legitimate reason, by a warrant officer (Shima by name) who was under the command of the accused. At the time of the execution the victims were held captive by the armed forces of Japan under the command of the accused. The above facts were all admitted by the accused in a sworn statement by him made on Kwajalein 28 December 1945. On the witness stand at the time of the hearing the accused testified in his own behalf and by self serving statements repudiated his confession of 28 December 1945 to the extent that he denied he ordered Shima to execute the missionaries. He further established by hearsay and opinion evidence of two other witnesses (Japanese) that he was not actually in command at the time of the death of the missionaries. The commission found the accused not guilty and acquitted him.

EFFECT OF PREPARED ACTION Pass as legal.

Finished-File-664

0514

P.N.H.

Wm
P. 25
Dm

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE

AND REFER TO

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

MM-TOMITA, Ryoji/A17-20
I (5-9-47) aar

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. N., and the action of the convening
authority thereon, are legal.

C. S. Colclough
C. S. COLCLOUGH
Judge Advocate General of the Navy

Finished-File-Bold

05 15

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

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

MR. TOMITA, Ryoji/A17-20
I (5-9-47) aer

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

05 16

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

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

RE: TOMITA, Ryoji/A17-20
I (5-9-47) aer

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

0517

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GEN

AND REFER TO

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

MR. TOMITA, Ryoji/A17-20
I (5-9-47) scf

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

0518

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

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

MM-TOMITA, Ryoji/A17-20
I (5-9-47) aef

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

05 19

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

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

MR. TOMITA, Ryoji/A17-20
I (5-9-47) 207

23 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryoji Tomita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

0520

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO

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

MR. TONITA, Ryuji/A17-80
I (5-9-47) scf

28 MAY 1947

Referred to the Chief of Naval Operations (Op22) for information.
It is the opinion of this office that the proceedings, findings and
acquittal of the Military Commission in the foregoing case of
Ryuji Tunita, Lieutenant, I. J. A., and the action of the convening
authority thereon, are legal.

O. S. COLCLOUGH
Judge Advocate General of the Navy

0521

(1 March 1947-35)

GENERAL COURT MARTIAL DATA SHEET

TOM ITR Royali Lt. 1st Lt.
(Last Name) (First Name) (Middle Name) (Rating) (Classification)

Docket No 157166

- | | Yes | No | Remarks |
|--|-------------------------------------|-------------------------------------|------------------------------------|
| 1. Was the court convened by proper authority? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 2. Are the precept and any modifications thereof in letter form certified as true copies by the judge advocate? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 3. If there have been modifications by despatch and no confirming letters attached to the record, are the despatches signed by the convening authority (not the judge advocate)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <i>none</i> |
| 4. Does the record show place and date the court met? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 5. Did the court have jurisdiction of the <u>person</u> of the accused? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 6. Did the court have jurisdiction of the <u>offenses</u> charged? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 7. Were the members and judge advocate shown to be present named in the precept or its modification? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 8. Were there five members or more present at every meeting? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 9. Were any "members" present who were not legally assigned? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| 10. Were any members legally assigned <u>not</u> present or accounted for? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| 11. Was the accused asked whether he desired counsel? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 12. Was the accused extended the right of challenge as to members? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 13. Were the judge advocate, the members, the reporter and the interpreter sworn? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 14. Did the accused acknowledge receipt of a copy of the charges and specifications? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 15. Was the accused asked if he had any objection to the charges and specifications? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 16. Did the accused object to the charges and specifications on any of them? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Written objection filed "3"</i> |
| 17. Does each specification state an offense? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 18. Does each specification support the charge under which laid? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 19. Did the court have jurisdiction of the time (Statute of limitations) of offense? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| 20. Was the accused asked if he was ready for trial? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 21. Does the record show that no witnesses not otherwise connected with the trial were present? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

0522

- | | Yes | No | Remarks |
|--|-------------------------------------|----|---------|
| 22. Was the accused properly arraigned? | <input checked="" type="checkbox"/> | | |
| 23. Was the accused warned as to the effect of his pleas of guilty? | <input checked="" type="checkbox"/> | | NG |
| 24. Was the accused's response, if any, recorded? | <input checked="" type="checkbox"/> | | NG |
| 25. Were the witnesses, if any, sworn? | <input checked="" type="checkbox"/> | | |
| 26. Was the accused afforded opportunity to make a statement? | <input checked="" type="checkbox"/> | | |
| 27. Was the accused's statement consistent with his pleas? | <input checked="" type="checkbox"/> | | |
| 28. Was the accused afforded opportunity to make an argument? | <input checked="" type="checkbox"/> | | |
| 29. Are the findings properly recorded? | <input checked="" type="checkbox"/> | | |
| 30. Are the findings in the form prescribed by Naval Courts and Boards? | <input checked="" type="checkbox"/> | | |
| 31. If the finding includes exceptions and substitutions, does the specification as amended support original or lesser included offense? | <input checked="" type="checkbox"/> | | |
| 32. Is the evidence, if any, of previous convictions admissible? | <input checked="" type="checkbox"/> | | |
| 33. Is the sentence legal and in proper form? | <input checked="" type="checkbox"/> | | Ag. |
| 34. Is the sentence within the limitations prescribed by Naval Courts and Boards, section 457? | <input checked="" type="checkbox"/> | | Ag. |
| 35. Was the sentence authenticated by the signatures of all members of the court and of the judge advocate? | <input checked="" type="checkbox"/> | | |
| 36. Was the record authenticated by the signature of the president of the court and of the judge advocate? | <input checked="" type="checkbox"/> | | |
| 37. Was the accused's receipt for a copy of the proceedings appended to the record? | <input checked="" type="checkbox"/> | | |
| 38. Was the action of the convening authority dated and signed? | <input checked="" type="checkbox"/> | | |
| 39. Was the action of the convening authority legal in all respects? | <input checked="" type="checkbox"/> | | |
| 40. Is there any error in law in the action of the convening authority? | <input checked="" type="checkbox"/> | | |
| 41. Does the action of the convening authority: | | | |
| (a) Expressly approve the proceedings, findings and sentence? | <input checked="" type="checkbox"/> | | Ag. |
| (b) Is the action otherwise legal? | <input checked="" type="checkbox"/> | | |
| 42. Was there loss to the Government? | <input checked="" type="checkbox"/> | | |
| 43. Is the general court martial card properly made out? | <input checked="" type="checkbox"/> | | |
| 44. REMARKS: | | | |

DATE

Signature of Reviewing Officer

0523

FF12/A17-10
13-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

7/15/56

Serial: **11021**

31 March 1947.

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, was convened 15 October 1946, by the Commander Marianas Area pursuant to his inherent authority as a Military Commander; the specific authorization of the Commander in Chief, United States Pacific Fleet (CinCPac conf. serial 0558 of 8 March 1946) and Pacific Ocean Areas, and Military Governor of the Pacific Ocean Areas and the Judge Advocate General U.S. Navy (Desp. 311730Z Aug. 46 and 061948 Dec. 46). The commission was specifically authorized to take up this case and other cases the trial of which had not been commenced which had been ordered tried before the Military Commissions convened by precepts dated August 2, 1946, and August 24, 1946. The order for trial (charges and specifications) was issued 26 August 1946 and served on the accused on 29 August 1946. The trial was held under the authority of Naval Courts and Boards, except that the commission was authorized by the precept to relax the rules of Naval Courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

The Convening Authority desires to point out with his comments the following irregularities noted in the record.

1. Throughout the examination in chief of defense witnesses, the accused was permitted to ask leading questions. Such questions should have been objected to by the Judge Advocate and excluded by the Commission (Secs. 275; 276, 277 N.C.B. 1937).
2. Questions by the defense calling for opinions or conclusions of the witnesses were repeatedly permitted (Sec. 279 N.C.B. 1937).
3. The accused, as a witness on the stand in his own behalf, was allowed to comment on testimony of prosecution witnesses. It is the duty of the commission to evaluate the credibility of the testimony of witnesses, and it is believed the commission should not listen to opinions of the accused given as testimony while a witness on the stand with reference to what parts of the prosecution's evidence are false or true.
4. The accused was permitted by the commission to introduce in evidence over the objection of the Judge Advocate, a self serving statement which he had prepared dated 4 September 1946 (R.p. 70) and which stated on its face that he had previously been indicted. If such evidence were competent, anyone guilty of a crime could supply himself with evidence by making statements in his own behalf and favor which he could introduce in the trial of the crime with which he was charged to show his innocence (Wharton's Criminal Ev. 11th Ed. Sec. 505). A statement of the accused is not evidence (Secs. 76 note 25, N.C.B.). Private documents of an ex parte nature, such as the accused's statement of 4 September 1946, are not admissible, if objected to, as evidence of the subject matter therein contained (Sec. 204, N.C.B.).
5. The accused was permitted to submit a written statement, dated 10 December 1946 (R.p. 72, Appx. T & U). This statement is in the nature of an argument and contains averments of material facts. Under the circumstances its admission should have been objected to by the Judge Advocate. In any event it should not have been acted upon by the Commission as evidence (Sec. 419 N.C.B.).

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FF12/A17-10
13-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

31 March 1947.

Serial: 11021

6. There are numerous corrections of typographical errors throughout the record that have not been initialed by the Judge Advocate.

None of the above irregularities are considered errors which injuriously affect the substantial rights of the accused.

Briefly stated the competent evidence in this case is to the following effect. The accused, TOMITA, Ryoji, Lieutenant, IJN, was on 5 November 1942 commanding officer of Mili (Mille) Atoll, Marshall Islands. On or about that date, while he was commanding officer, two priests, one a French National and the other a Swiss National, both residents of the Gilbert Islands, were killed on Mili, without previous trial or other legitimate reason, by a Warrant Officer (SHIMA) who was under the command of Tomita. At the time the victims were held captive by the armed forces of Japan under the command of the accused. All this was admitted by the accused in a statement sworn to by him on Kwajalein 28 December 1945, wherein among other things, referring to the two priests, he said:

"x x x Immediately after arriving at Mille Atoll, I relieved Commander Fukumi as commanding officer of this island. x x x On 5 November 1942 Commander Fukumi, before leaving Mille Atoll, ordered the execution of two interned missionaries because of improper behavior. On the same day immediately following Commander Fukumi's departure (5 November 1942), I ordered W.O. SHIMA, Ken (killed in action) to execute the missionaries by musketry. At that time SHIMA was the leader of the 1st Platoon which was attached to headquarters. I did not interrogate these missionaries nor did they have a trial. After the execution of the two missionaries I received a report on the execution from SHIMA x x x"

The accused as a witness in his own behalf and by self serving statements which he was permitted by the commission to introduce, repudiated his confession of 28 December 1945 to the extent that he denied he ordered SHIMA to execute the missionaries. He further attempted to establish by hearsay and opinion evidence of two other witnesses that although he had relieved Commander Fukumi as commanding officer of Mili and Commander Fukumi had embarked with his relieved troops in a ship for Japan, nevertheless Fukumi had command at Mili at the exact time of the priest's death and was responsible for their illegal killing.

If a reviewing authority does not concur in the findings of a commission, he may so state in his action upon the record, giving such reasons as he may deem appropriate for the information of members of the commission and other reviewing authority, (Sec. 472½ N.C.B. 1937). The Convening Authority does not concur in the commission's findings of "not proved" and "not guilty" in this case, because he believes that a prima facie case was established against the accused, Tomita, which was not overthrown by trustworthy rebutting evidence adduced by the accused.

In cases like this where there is no question or doubt as to the corpus delicti and there are definitely established facts supporting a confession by the accused and indicating guilt of the accused it is the undersigned's opinion that the accused's repudiation of his confession and

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FF12/A17-10
13-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

31 March 1947.

Serial: 11021

the other matter presented by him deserve special scrutiny. The truthfulness of Tomita's confession of 28 December 1945 is supported by the definite facts of the case established by both the prosecution and defense evidence, namely, two persons were killed; they were killed by SHIMA who was under command of TOMITA: TOMITA with his unit relieved FUKUMI and his unit as the Mili Defense Garrison the day the persons were killed. On the other hand, there is in my opinion no substantial trustworthy evidence to establish facts which would cast doubt on the truthfulness of TOMITA's confession.

In addition to the accused, two witnesses were called by the defense. These two witnesses in effect denied any knowledge of the actual executions of the victims but were allowed to answer leading questions which called for opinions concerning who was in command of Mille at the exact moment of said executions. This was one of the main questions that the commission was itself convened to determine. These witnesses were further permitted to give hearsay evidence, in many instances quotations from dead men. Under the circumstances the probative value of such evidence is, in my opinion, negligible.

The members of a commission, in their capacity as judges, must pass upon the admissibility of evidence, and, as jurors, weigh it. (Sec. 304, N.C.&B.). The evidence, according to which the commission must decide the case, means all the matters of fact which the commission permits to be introduced or of which it takes judicial notice, with a view to prove or disprove the charges. Every item of this evidence must be introduced in open court, but nevertheless while their knowledge of the facts must come to them from the evidence, the members are expected to utilize their common sense, their knowledge of human nature, and the ways of the world in weighing the evidence and arriving at a finding. (Sec. 304 N.C.&B.). Further they are expected to consider (1) the nature of the facts to which a witness testifies (2) his interest or want of interest (3) his personal credibility so far as it legitimately appears upon the trial and (4) all the facts and circumstances of the case. (Sec. 305 N.C.&B.). In the light of all the circumstances of the case they should consider the inherent probability or improbability of the evidence given by the several witnesses, and with this in mind the commission may properly believe one witness and disbelieve several whose testimony is in conflict with that of the one (Sec. 304, N.C.&B.).

The fact that a witness is the accused does not of itself condemn him as unworthy of belief, but does create in him an interest greater than that in any other witness and to that extent affects the question of credibility. Aside from the accused's interest in this case it is clearly shown by the record that Tomita, was not consistently truthful. For instance in one breath he says he was forced to make his confession of 28 December 1945 and in the next breath he says it was made voluntarily "for the sake of my beloved subordinate" Shima who died in battle. The record is replete with instances where he has changed his story always apparently with a view to serving what he considered to be his best interests at the moment.

The Convening Authority is reluctant to disregard all the positive and definitely established facts of this case, including the confession of the accused, supported by independent evidence, which establishes

0526

BEST COPY AVAILABLE

FF12/A17-10
13-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 11021

31 March 1947

the guilt of Tomita, and on the contrary believe the accused and his self serving statements as a witness in his own behalf for the purpose of repudiating his confession. There is nothing about these self serving declarations to guarantee their trustworthiness. It is well known that more often than not such declarations lead to fabrication and falsehood and confuse rather than enlighten jurors. (Sec. 505 Wharton's Crim. Evidence, 11th Ed.). It seems to me that the whole pattern of the defense is more likely than not a fabrication and falsehood. There is nothing contained in it that creates in my mind reasonable doubt as to the guilt of the accused.

Subject to the above remarks, the proceedings in the foregoing case of Lieutenant TOMITA, Ryoji, I.J.N. are approved. The record is herewith forwarded to the Commander in Chief Pacific and U. S. Pacific Fleet.

Lieutenant TOMITA, Ryoji, I.J.N., the accused, having been acquitted, was, after his trial, restored to his former status as a disarmed military person and repatriated to Japan 20 December 1946.

C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

To: Commander in Chief Pacific and United States Pacific Fleet.
Re: Record of Proceedings of Military Commission case Lieutenant Ryoji TOMITA, IJN.

Copy to: President Military Commission.

0527

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

**Cincpacflt File
A17-25**

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

29 APR 1947

Serial 2726

The proceedings in the foregoing case of Lieutenant TOMITA, Ryoji, I.J.N., and the comments and action of the Convening Authority thereon are approved.

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

**LOUIS DENFELD
Admiral, U. S. Navy
Commander in Chief Pacific
and United States Pacific Fleet,
and Military Governor of the Marianas Area.**

**To: Judge Advocate General.
Re: Record of proceedings of trial by Military Commission in the case of
Lieutenant Tomita, Ryoji, Imperial Japanese Navy, November 21, 1946.**

**Copies to:
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WarCrimes Officer, Guam**

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c/o Fleet Post Office,
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29 APR 1947

Serial 2726

The proceedings in the foregoing case of Lieutenant TOMITA, Ryoji, I.J.N. and the comments and action of the Convening Authority thereon are approved.

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

Louis Denfeld
LOUIS DENFELD

Admiral, U. S. Navy
Commander in Chief Pacific
and United States Pacific Fleet,
and Military Governor of the Marianas Area.

To: Judge Advocate General.

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