

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

HARA, CHUICHI (27 OCT 1948)

(VOL. I)

(167174)

0461

ADDRESS REPLY TO

NAVY DEPARTMENT
WASHINGTON 25, D. C.

AND REFER TO

JAG:I:EHK:bem
OO-HARA, Chuichi/A17-10 OQ
(6-27-49) 167174

1 JUL 1949

The proceedings, findings and sentence in the foregoing military commission case of Chuichi Hara, former vice admiral, Imperial Japanese Navy, the actions of the convening and reviewing authorities thereon, are approved.

Sam C. Kimball
DAN A. KIMBALL
Acting Secretary of the Navy.

FORMED-FRE 75 JUL 1949

0462

In reply refer to Initials
and No.

Op222B/mm
Serial 649P22

NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON 25, D. C.



24 JUN 1949

From: Chief of Naval Operations.
To: Judge Advocate General. ✓
Subject: Case of CHUICI, Hara.
Enclosure: (A) File of proceedings in the case of
CHUICI, Hara.
1. Enclosure (A) is returned with contents
noted.



P. G. Hale
P. G. Hale,
By Direction.

RECEIVED
27 JUN 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
S.C.M. SECTION

0463

OO-CHUICI, Har. 17-10
OQ I (6-13-49) EHN:mas 167174

MEMORANDUM IN THE MILITARY COMMISSION CASE OF: Hara CHUICI
Formerly Vice Adm., IJN

Place tried:
Headquarters of the Commander
Naval Forces Marianas

Date tried:
27 Oct 1948

Date received:
6 Apr 1949

CHARGE:

Plea: Findings:

VIOLATION OF THE LAW AND CUSTOMS OF WAR

NG G

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan viz British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Nauru, and Ocean Islands as follows:

NG P

(a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 1944, Marshalls)

NG NP

(b) 20 June, 1944, Dublon Is., kill one American P.O.W. by stabbing.

P

(c) 20 June 1944, kill one American prisoner by beheading.

NG P

(d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 2 June 1944, Dublon Is., Truk Atoll.

P

(e) 20 July 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.

P

(f) Torture, abuse, and inhumanely treat six civilians, residents of Nauru, by beating them.

NP

(g) Torture, abuse and inhumanely treat one civilian by beating him. Three day period. Nauru Is., Sept 1944.

NG NP

(h) 3 Dec 1944, kill one Chinese at Nauru by beating him.

NG NP

(i) 8 Apr 1945, Jaluit Atoll Marshall Islands, punish as spies natives without giving them a trial.

NG P

(j) 13 Apr 1944, Jaluit Atoll, punish as spy, a native without trial.

NG P

(k) 10 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.

NG P

(l) 20 Aug. 1945, Ocean Is., kill 200 British Nationals.

NG NP

Spec 2 Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Is, said Island occupied by the armed forces of Japan under his command. Occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

NG P

0464

	<u>Pleas:</u>	<u>Findings:</u>
(a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and stabbing.	NG	NP
(b) 20 June 1944, ^{Dublon Is.} Truk Atoll, kill one American P.O.W. by stabbing.	NG	P
(c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.	NG	P
(d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W.	NG	P
(e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.	NG	P
(f) September 1944, Nauru Is., torture, abuse and inhumanely treat a civilian at Nauru Is.	NG	NP
(g) 3 Dec 1944, kill a Chinese civilian.	NG	NP
(h) 20 Aug 1944, Ocean Is., kill two hundred British Nationals.	NG	NP

SENTENCE: The commission on 11 January sentenced the accused to be confined for a period of six years.

CA ACTION: The convening authority approved the proceedings, findings and sentence, but reduced the period of confinement to three years and six months.

FACTS:

The accused, a former Vice Admiral in the IJN was on February 23, 1944 and up to and including the time of the Surrender on September 2, 1945, Commander in Chief of the Fourth Fleet, IJN. From Feb 23, 1944 to Aug 15, 1945 a state of War existed between the United States, its Allies and dependencies and the Imperial Japanese Government. The accused had as subordinate commanders who were directly responsible to him and who had charge of the following places. Former Captain Asano had command of the 41st Naval Guard at Truk where the incidents described in sub-section (b), (c) and (d) of both specifications took place, and

Captain Iwanami and Naval Personnel of the Naval Hospital at Truk where the incident described under (e) of both specifications took place. In incidents in sub-sections (i), (j) (k) of specification 1 the accused was directly involved. The accused at the time of his assumption of Command at Truk was an experienced Japanese Naval Officer. He had come to this command from a former command where he was commandant of a vast air training station where he trained his personnel in International Law and in the law and customs of war. On his assumption of the Command for the first time at Truk on February 23, 1944, he did not receive any instructions from his predecessor on the proper methods of treatment of prisoners of war. The accused did not issue any instructions on treatment of war prisoners at that time or at any time subsequently, with the sole exception that he wanted them as far as possible sent to Japan. At the time of all of these incidents the Hague Convention Rules for Treatment of Prisoners of War and others was in force.

Incident in sub-section (B) under both specifications took place at Dublon Island on June 20, 1944. Captain Asano was commanding officer of this Island, Nakase was executive officer, and Ueno was medical officer. There had been air raids on the place, and during the raids there were five prisoners of war in the stockade. Three prisoners were killed and two were injured. Of the two who survived, Nakase gave orders that they were to be executed. After a medical experiment which will be described later the following took place: The prisoners who were positively identified as American Airmen first taken in a truck past the medical Hospital. A Japanese Chief Petty Officer was with them. At the time of passing

the medical hospital, the accused was seated on a verandah of the hospital, and the distance from the accused to the American P.O.W.'s in the execution truck was at most 30 meters. (Approximately 100 feet) The truck made a loud noise, and climbed a hill. There was ample evidence that one ~~WILLIAMS~~ was killed by beheading, and that the other American Airman was stabbed to death by Japanese Naval personnel. This execution took place on the hospital grounds. The Airman who had previously been medically experimented upon was executed last by stabbing. Testimony to this was furnished by Captain Surgeon Asano, Commander Ueno, and others who were in the Hospital unit. The executioner of the first American Airman was a Jap Chief Petty Officer who used a sword. General Assembly call was played prior to the execution, and there were approximately sixty people there including a female who was the Chief Nurse. There is no evidence that the accused was personally present at the execution. A subordinate of the accused made a speech at the execution grounds. The evidence supporting sub-section (d) of both specifications is as follows. At the Jap Naval hospital wardroom there was discussion as to what unit would execute two remaining American flyers. This discussion took place immediately after an American Air raid. Commander Ueno, IJN, had one American flyer brought to the Naval Hospital. At a field dressing station in the hospital, Ueno performed an operation on the American aviator in the presence of six of his subordinates. This operation included incisions of the testicles, right foot, and chest of the victim. Before the operation was completed another Naval unit came for the victim. Ueno who had lied that he merely wanted to make an examination of the victim was forced to sew up the victim. The airman was taken away from the hospital, carried to the execution field and there dispatched by stabbing. There was corroboration of this operation by superiors of Ueno to whom Ueno had confessed that he performed this operation without getting clearance from them.

The evidence supporting the incident described in sub-section (e) of both specifications is as follows: A Fleet conference took place in September of 1944. The accused was the senior officer present at this conference. At the conference the execution of two American Aviators was described. The method of execution was described as spearing and bayoneting. At the conference officers complained on the low quality of spears used, in that the shanks of the spears were hollow and would bend on use. The opinion was advanced that in the future spears with wooden handles should be used; or that as an alternative, resort to bayoneting should be used. During this conference Haruda, made no remarks.

The incidents described in sub-sections (i) (j) (k) of specification one are supported by testimony that natives were punished without any semblance of trial. Subordinate officers who were well in a position to know all of the details, testified that no trials were held. The Japs were angry at the natives on Jaluit Atoll, and the punishments were given without any hearings.

Evidence was introduced by the defense that at the time of these occurrences that the whole Jap military establishment was in a state of despair. Communications were very poor between Truk and its satellite commands. Code books had fallen into the hands of the Americans, and it was thought improper to send any but very few communications. It was testified that it was the policy of the accused to send prisoners of war to the Jap homeland, but that at the time he assumed command at Truk, no ships were available for the purpose. The accused denied any knowledge of these wrongdoings. He said that at the time he assumed command that no instructions were given him as to the proper treatment of prisoners of war from his predecessor. The accused did not attend any of these executions in person. The accused, and also witnesses in his behalf testified that he was of kind disposition, and was interested in the weak and the sick.

LAW AND DISCUSSION:

The accused objected to the charge and specifications thereunder on the grounds that specifications alleged as sub-sections under specification 2 were

00-CHUICI, Hara/A17-10 OQ

duplicitous. This objection was not well taken since specification 2 alleges a breach of accused's duty to protect prisoners of war under his command and specification 1 alleges a breach of accused's duty to control the acts of his subordinates in relation to the same P.O.W.s.

The accused raised a plea in bar on the grounds that the statute of limitations had run against the offenses for which he was about to be tried, and that the prosecution was barred from going forward. This plea in bar was properly overruled. The accused was not on trial as a prisoner of war, but was on trial as a war criminal. This ruling of the court was in accordance with U.S. v. Yamashita 327 U.S. 1 and also S.C.A.P. Rules 000.5 (5 Dec 1945) 2 b (2). It is apparent that no statute of limitations exists with respect to the offenses here charged.

The accused also entered a plea in abatement based on Article 60, Geneva Prisoners of War Convention, which was properly overruled as applying only to prisoners of war and not to war criminals, the category in which the accused belonged. (Yamashita Case)

A motion by accused for a bill of particulars was also properly overruled since the purpose of such had already been accomplished by objections to the charges and specifications, the methods provided by Naval Courts and Boards.

Throughout the trial the accused made numerous objections to the introduction of documentary evidence of other trials bearing on the incidents alleged in the specifications in the instant case. In view of the provisions thereon contained in S.C.A.P. rules these objections were properly overruled.

It is clear from the evidence that the accused knew, or if he did not know of these incidents, certainly should have known of them in his position as Commander in Chief of the Fourth Fleet IJN. Certainly there was evidence in respect to the hospital incidents from which the court could well draw the inference that he did in fact have actual knowledge of these atrocities. It was urged that the accused was never personally present at any of these happenings and as a result, was blameless. The case of United States v. Yamashita 327 U.S. 1 supra has directly decided this question. There the issue was presented showing that the accused had no actual knowledge of the offenses of his subordinates. The case holds that even though there is no direct knowledge, that in the case of the crime of "Violation of the Law and Custom of War" that knowledge of atrocities can be imputed to a commanding officer where the offenses are recurrent. While there are dissenting opinions in this case by Mr. Justice Rutledge and Mr. Justice Murphy, the rule of the Yamashita case is the law and is controlling here.

RECOMMENDATION:

It is recommended that the case be passed as legal without comment.

I have read subject case and concur with the above.

E. H. Nichols
E. H. NICHOLS

ICDR, USN

W. A. Collier
W. A. COLLIER
ICDR., USN

NAVY REFERRAL
NAVE 00-2634 (REV. 7-47)

mas 6-14-49

GENERAL COURT MARTIAL CASE NO. 167174

Hara CHUICI

Formerly Vice Adm., IJN, Mil. Com. Case.

DATE RECEIVED
6 Apr 1949

TRIAL HELD (Place)

Hq of the Commander Naval Forces Marianas

DATE OF TRIAL
27 Oct 1948

PRESENT OFFENSE(S)

I VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan viz British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Nauru, and Ocean Islands as follows:

- (a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 44, Marshalls)
- (b) 20 June 1944, Dublon Is., kill one American P.O.W. by stabbing.
- (c) 20 June 1944, kill one American prisoner by beheading.
- (d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 20 June 1944, Dublon Is., Truk Atoll.
- (e) 20 July 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) Torture, abuse, and inhumanely treat six civilians, residents of Nauru, by beating them.
- (g) Torture, abuse and inhumanely treat one civilian by beating him. Three day period. Nauru Is., Sept. 1944. (OVER)

PLEA

NG to all

FINDING Spec 2 and (b) (c) (d) (e)-proved; (a) (f) (g) (h)-Not proved; (1)
G (spec 1 and (b) (c) (d) (e) (i) (j) (k)-Proved; (a) (f) (g) (h)-Not proved;

SENTENCE

Conf. for 6 years.

C.A. ACTION

PF&S approved, but conf. red. to 3 years, 6 months.

DATE

2 Mar 1949

Sugamo Prison, Tokyo, Japan

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL

22 JUN 1949

FROM: THE JUDGE ADVOCATE GENERAL
TO: THE CHIEF OF NAVAL PERSONNEL Operations
~~THE COMMANDER OF THE MARINE CORPS~~

THE PROCEEDINGS, FINDINGS, AND SENTENCE IN THE FOREGOING ~~GENERAL COURT MARTIAL CASE~~,
AND THE ACTION OF THE CONVENING AUTHORITY THEREON, ~~IN THE OPINION OF THIS OFFICE, ARE LEGAL.~~
and reviewed the authority to

REFERRED FOR ~~CONSIDERATION OF THE JUDGE ADVOCATE GENERAL~~ information.

G. L. Russell
G. L. RUSSELL
JUDGE ADVOCATE GENERAL OF THE NAVY

BY ORDER

D-9199

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CHG I CONTINUED

- (h) 3 Dec 1944, kill one Chinese at Nauru by beating him.
- (i) 8 Apr 1945, Jaluit Atoll Marshall Islands, punish as spies natives without giving them a trial.
- (j) 13 Apr 1944, Jaluit Atoll, punish as spy, a native without trial.
- (k) 10 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.
- (l) 20 Aug 1945, ~~Jaluit Atoll, punish as spies without previous trial one native by assaulting with~~ Ocean Is, kill 200 British Nationals.

Spec 2 Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

- (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and stabbing.
- (b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by stabbing.
- (c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.
- (d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W.
- (e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) September 1944, Nauru Is., torture, abuse and inhumanely treat a civilian at Nauru Island.
- (g) 3 Dec 1944, kill a Chinese civilian.
- (h) 20 Aug 1944, Ocean Island, kill two hundred British Nationals.

0469

GENERAL COURT MARTIAL CASE NO.

720

Formerly Vice Adm., I&N, R.I. Com. Cmdr.

PROSODY SYSTEMS

Ed of the Commander Naval Forces Division

27 Oct 1945

X VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan via British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Rauru, and Ocean Islands as follows:

- (a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 44, (Marshall)
- (b) 20 June 1944, Dublin Is., kill one American P.O.W. by stabbing.
- (c) 20 June 1944, kill one American prisoner by beheading.
- (d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 20 June 1944, Dublin Is., Truk Atoll.
- (e) 20 July 1944, Dublin Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) Torture, abuse, and inhumanely treat six civilians, residents of Enara, by beating them.

PLA- (b) (7) (D) During, source was intimately with one civilian
(b) (7) (D) during period. Approx. 10/1, Sept. 1944. (over)

~~SECRET~~

Page 2 and (b) (6) (c) (d) (e) (f) (g) (h) - Not proved; (i) - Not proved.

Page 1 and (b) (6) (c) (d) (e) (f) (g) (h) - Proved; (i) (j) (k) (l) (m) (n) - Not proved.

~~SECRET~~

C. Case No. 6-9484 INDIAN IS. WILLIAM W. WILSON DATE
(1) DO NOT TALK MOVING IS. WILLIAM W. WILSON DATE
FILE removed, but conf. red. to 3 years, 6 months. 2 Mar 1949

Miyano Prison, Tokyo, Japan

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL

FROM: THE JUDGE ADVOCATE GENERAL, U.S. NAVY, WASHINGTON, D.C. 20340
TO: THE CHIEF OF NAVAL PERSONNEL, 1100 N. 17TH ST., WASHINGTON, D.C. 20036
THE COMMANDANT OF THE NAVAL JUDGE ADVOCATE GENERAL'S OFFICE

- THE PROCEEDINGS, FINDINGS, AND SENTENCE IN THE CONSIDERED CASE, AND THE ACTION OF THE CONVENING AUTHORITY THEREON, IN THE OPINION OF THE JUDGE ADVOCATE GENERAL, REFERRED FOR COMMENT AS TO THE DISCIPLINARY FEATURES OF THE CASE, AND THE INFORMATION.

BY DIRECTION

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

0470

(b) 3 Dec 1944, kill one Chinese at Hsueh by beating him.
(c) 8 Apr 1945, Jinai Atoll Marshall Islands, punish as spies natives without giving them a trial.
(d) 13 Apr 1945, Jinai Atoll, punish as spy, & native without trial.
(e) 10 Aug 1945, Jinai Atoll, punish as spy without previous trial one native by executing with a deadly weapon.
(f) 20 Aug 1945, Jinai Atoll, punish as spy without previous trial one native by executing with a deadly weapon.
Summation: Over 100 kill 200 British Nationals.

Exhibit 2. Failed to protect American prisoners of war then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by committing the following:

- (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and
 (b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by shooting.
 (c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.
 (d) 20 June 1944, Dublon Is., torture, abuse and infamously treat by surgery one
 American P.O.W.
 (e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by
 "executions" (shooting and beheading).
 (f) 20 September 1944, Maura Is., torture, abuse and infamously treat a civilian
 at Maura Island.
 (g) 5 Dec 1944, kill a Chinese prisoner of war.
 (h) 20 Jan 1945, Oboe Island, kill the last of the prisoners of war.

- [illegible]

[illegible]

0471

BEST COPY AVAILABLE

GCM REFERRAL

NAVEFORM-2034 (REV. 7-57)

GENERAL COURT MARTIAL CASE NO.

NAME

DATE OF BIRTH

DATE RECEIVED

TRIAL NAME

Formerly Vice Adm., I&M, Mil. Com. Case

DATE OF TRIAL

PRESENTED BY: The Commander Naval Forces Marianas

27 Oct 1945

I VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan via British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Maura, and Ocean Islands as follows:

- (a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 44, Marshalls)
- (b) 20 June 1944, Dublin Is., kill one American P.O.W. by stabbing.
- (c) 20 June 1944, kill one American prisoner by beheading.
- (d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 20 June 1944, Dublin Is., Truk Atoll.
- (e) 20 July 1944, Dublin Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) Torture, abuse, and inhumanely treat six civilians, residents of Maura, by beating them.

(g) (h) Torture, abuse and inhumanely treat one civilian by beating him. Three (over)

PLEA

FINDING

SENTENCE

C.A. NO.

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(T) TO THE JUDGE ADVOCATE GENERAL, THE CHIEF OF NAVAL PERSONNEL, THE COMMANDANT OF THE MARINE CORPS, AND THE ACTION OF THE CONVERTING AUTHORITY THEREON, UNDER THE LEGAL INFORMATION.

BY DIRECTION

8-9100

0472

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- (b) 3 Dec 1944, kill one Chinese at Haura by beating him.
(1) 8 Apr 1945, Jaluit Atoll, Marshall Islands, punish as spies natives without giving them a trial.
(j) 13 Apr 1945, Jaluit Atoll, punish as spy, a native without trial.
(k) 10 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.
(1) 30 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.
Spec 2: Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Haura and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

- (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and stabbing.
(b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by stabbing.
(c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.
(d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W.
(e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by beheading, spearing and beheading.
(f) September 1944, Haura Is., torture, abuse and inhumanely treat a civilian at Haura Island.
(g) 3 Dec 1944, kill a Chinese civilian.
(h) 30 Aug 1945, Ocean Island, kill two British Nationals.

- (1) Japanese, American and Japanese, kill one American P.O.W. by shooting and stabbing.
(e) 30 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by beheading.
(c) Japanese, American and Japanese, kill one American P.O.W. by beheading.
(e) 30 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by beheading.
(d) 30 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by beheading.
(f) 30 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by beheading.
(g) 30 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by beheading.

of the following: Japanese, American and Japanese, kill one American P.O.W. by shooting and stabbing.
in 1944, Japanese, American and Japanese, kill one American P.O.W. by shooting and stabbing.
Spec 2: Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Haura and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

SECRET
BA 01 SECTION
2-2121
SPEC 2: Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Haura and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

27 Oct 1948

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0-0730

- 10: THE CHIEF OF NAVY

Controlled Space and supervision by permitting the following.

- (g) ? Declassification Authority: [redacted] DATE: [redacted]

- OF THE SUBJECTS' NATIONALITY AND OTHER MATTERS AS FOLLOWS:
 AS FOLLOWS OF THESE ARE LISTED MATTERS, A CHINESE STATUTE, AND LEGISLATION.
 CHINESE, WHITE, JAPANESE, AND OTHER MATTERS OF THE YEAR 1911, CHINESE
 MATTERS AS CHINESE, CHINESE, AND OTHER MATTERS OF THE YEAR 1911, CHINESE
 MATTERS OF THE YEAR 1911, CHINESE, AND OTHER MATTERS OF THE YEAR 1911, CHINESE

5087511 OFFENSE(S)

~~NO. 01 FOR COMMUNIST PARTY KOREAN REVOLUTION~~

51-000-7278

ALIVE AND WELL (1990)

HOLD CHOICE

БОТНИКОВА АНТОНИИ ИВАНОВИЧ

1991 46:10307

ש' יצחק יצחק

a. West

$$y \in \mathcal{A} \cap \mathcal{B} \Rightarrow y \in \mathcal{A} \cap \mathcal{B} \cap \mathcal{C} \cup \mathcal{A} \cap \mathcal{B} \cap \mathcal{C}^c$$

1992 9-11-78

REMARKS CODED BY LINE CVR0 807

D. E. KILGUS AND

TESTS

0475

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GCM REFERRAL
NAVEFORM-2634 (REV. 7-47)

GENERAL COURT MARTIAL CASE NO.

NAME

RANK OR RATING

DATE RECEIVED

Spec CHUIX

Formerly Vice Adm., I&M, Mil. Com. Case.

4 Apr 1949

Spec of the Commander Naval Forces Marianas

27 Oct 1948

I VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan via British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Ruru, and Ocean Islands as follows:

- (a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 44, (Marshall)
- (b) 20 June 1944, Dublin Is., kill one American P.O.W. by stabbing.
- (c) 20 June 1944, kill one American prisoner by beheading.
- (d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 20 June 1944, Dublin Is., Truk Atoll.
- (e) 20 July 1944, Dublin Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) Torture, abuse, and inhumanely treat six civilians, residents of Ruru, by beating them.
- (g) Torture, abuse and inhumanely treat one civilian by beating him. Three day period. Ruru Is., Sept. 1944. (over)

PLEA

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C.A. ACTION

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NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL

22 JUN 1949

FROM: THE JUDGE ADVOCATE GENERAL
TO: THE CHIEF OF NAVAL PERSONNEL
THE COMMANDANT OF THE NAVAL CRIMINAL

THE PROCEEDINGS, FINDINGS, AND SENTENCE IN THE FOREGOING CASE, AND THE ACTION OF THE CONVENING AUTHORITY THEREON, ARE LEGAL

REFERRED FOR COMMENT AS TO THE DISCIPLINARY FEATURES.

JUDGE ADVOCATE GENERAL OF THE NAVY

BY DIRECTION

9-5108

0476

BEST COPY AVAILABLE

CHG I CONTINUED

- (h) 3 Dec 1944, kill one Chinese at Nauru by beating him.
- (i) 8 Apr 1945, Jaluit Atoll Marshall Islands, punish as spies natives without giving them a trial.
- (j) 13 Apr 1944, Jaluit Atoll, punish as spy, a native without trial.
- (k) 10 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.
- (l) 20 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.

Spec 2 Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Island, said islands occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

- (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and beheading.
- (b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by stabbing.
- (c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.
- (d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W.
- (e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) September 1944, Nauru Is., torture, abuse and inhumanely treat a civilian at Nauru Island.
- (g) 3 Dec 1944, kill a Chinese civilian.
- (h) 20 Aug 1945, Ocean Island, kill two hundred British Nationals.

of the following: (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and beheading. (b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by stabbing. (c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading. (d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W. (e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading. (f) September 1944, Nauru Is., torture, abuse and inhumanely treat a civilian at Nauru Island. (g) 3 Dec 1944, kill a Chinese civilian. (h) 20 Aug 1945, Ocean Island, kill two hundred British Nationals.

DATE	31 DEC 1945
TIME	10 00 AM
PLACE	WASH DC
TO	NAVY
FROM	NAVY
SUBJECT	CHG I CONTINUED

GCM REFERRAL
NAVEDOS-2634 (REV. 7-47)
NAME

GENERAL COURT MARTIAL CASE NO.

nos 6-14-49

RANK OR RATING

757174

TRIAL HELD (Place)

Nara CHUGI

Formerly Vice Adm., IJN, Mil. Com. Case.

DATE OF TRIAL

PRESENT OFFENSE(S)

Hq of the Commander Naval Forces Mariannas

27 Oct 1948

I VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill prisoners of war then held captive by forces of Japan viz British Nationals, a Chinese civilian, and residents of the Caroline, Marshall, Nauru, and Ocenk Islands as follows:

- (a) Kill three American P.O.W.'s by shooting and stabbing on 10 Mar 44, Marshalls)
- (b) 20 June 1944, Dublon Is., kill one American P.O.W. by stabbing.
- (c) 20 June 1944, kill one American prisoner by beheading.
- (d) Torture, abuse and inhumanely treat by surgery one American prisoner of war on 20 June 1944, Dublon Is., Truk Atoll.
- (e) 20 July 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) Torture, abuse, and inhumanely treat six civilians, residents of Nauru, by beating them.
- (g) Torture, abuse and inhumanely treat one civilian by beating him. Three day period. Nauru Is., Sept. 1944. (OVER)

PLEA

FINDING

is to all

SENTENCE

Spec 2 and (b) (c) (d) (e) proved; (a) (f) (g) (h) not proved; (i) 6 (Spec 1 and (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) - Proved; (a) (f) (g) (h) not proved;

C.A. ACTION

Conf. for 6 years.

DATE

PMS approved, but conf. red. to 3 years, 6 months.

2 Mar 1949

Sagami Prison, Tokyo, Japan

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL

22 JUN 1949

FROM: THE JUDGE ADVOCATE GENERAL
TO: THE CHIEF OF NAVAL PERSONNEL

THE COMMANDANT, MARINE CORPS OPERATIONS

THE PROCEEDINGS, FINDINGS, AND SENTENCE IN THE FOREGOING ~~military commission~~ SE,
AND THE ACTION OF THE CONVENING AUTHORITY THEREON, IN THE ~~ORIGINAL~~ ~~LEGAL~~ ~~AND~~ ~~REVIEWING~~ ~~AUTHORITY~~

REFERRED FOR COMMENT AS TO THE DISCIPLINARY FEATURES.

~~information~~

JUDGE ADVOCATE GENERAL OF THE NAVY

BY DIRECTION

A-1701

0478

BEST COPY AVAILABLE

CHG I CONTINUED

- (h) 3 Dec 1944, kill one Chinese at Nauru by beating him.
- (i) 8 Apr 1945, Jaluit Atoll Marshall Islands, punish as spies natives without giving them a trial.
- (j) 13 Apr 1944, Jaluit Atoll, punish as spy, a native without trial.
- (k) 10 Aug 1945, Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.
- (l) 20 Aug 1945, ~~Jaluit Atoll, punish as spies without previous trial one native by assaulting with a deadly weapon.~~ Ocean Is., kill 200 British Nationals.

Spec 2 Failed to protect American Prisoners of War then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Island, said Island occupied by the armed forces of Japan under his command, and subject to his control and supervision by permitting the following:

- (a) 10 Mar 1944, Marshall Islands, kill three American P.O.W.'s by shooting and stabbing.
- (b) 20 June 1944, Dublon Is., Truk Atoll, kill one American P.O.W. by stabbing.
- (c) 20 June 1944, Dublon Is., kill one American P.O.W. by beheading.
- (d) 20 June 1944, Dublon Is., torture, abuse and inhumanely treat by surgery one American P.O.W.
- (e) 20 June 1944, Dublon Is., Truk Atoll, kill two American prisoners of war by bayoneting, spearing and beheading.
- (f) September 1944, Nauru Is., torture, abuse and inhumanely treat a civilian at Nauru Island.
- (g) 3 Dec 1944, kill a Chinese civilian.
- (h) 20 Aug 1944, Ocean Island, kill two hundred British Nationals.

GENERAL COURT MARTIAL DATA SHEET

Hera
(Last Name)

Chvici
(First Name) (Middle Initial)

Former
(Rating)

Vedma JN
(Service)

(Review Panel No.)

(Reviewing Officer)

167174
(Docket No.)

	Yes	No	Remarks
1. Was the court convened by proper authority?	✓		
2. Are the precept and any modifications thereof in letter form certified as true copies by the judge advocate?	✓		
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)?			
4. Are all letter modifications to the charges and specifications, including authority for "nolle prosequi", signed by the convening authority?			
5. Did the court have jurisdiction of the person of the accused?	✓		
6. Did the court have jurisdiction of the offenses charged?	✓		
7. Does each specification state an offense?	✓		
8. Does each specification support the charge under which laid?	✓		
9. Does the record show place and date of initial meeting of the court and any subsequent meetings?	✓		
10. Were the members and judge advocate, shown to be present when the court met, named in the precept or its modifications?	✓		
11. Were any members legally assigned not present or accounted for?		✓	
12. Were there five members or more present at every meeting?	✓		
13. Was the accused asked whether he desired counsel?	✓		
14. Was the accused extended the right of challenge as to members?	✓		
15. Were the judge advocate, the members, the reporter and the interpreter sworn?	✓		
16. Did the accused acknowledge receipt of a copy of the charges and specifications?	✓		
17. Was the accused asked if he had any objection to the charges and specifications?	✓		
18. Did the accused object to the charges and specifications or to any of them?	✓		
19. Is the Statute of Limitations involved?		✓	
20. Did the accused state that he was ready for trial?	✓		
21. Does the record show that no witnesses not otherwise connected with the trial were present?	✓		

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John B. Michael
(Signature of reviewing officer)

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.
Commander Naval Forces, Marianas.

Subject: Review of the Record of Trial by a Military Commission
of former Vice Admiral HARA, Chuichi, IJN.

Reference: (a) CinCPac/POA Rest. Desp. 170150 Dec. 1945.
(b) CinCPac and U.S. PacFlt Staff Instructions 1948,
paragraph 2 I 3 (f).

Enclosure: (A) Record of subject case (original and three copies; one
copy for CinCPacFlt; one copy for SecNav for delivery to
United Nations War Crimes Commission; and one copy for
Commander Naval Forces, Marianas.
(B) Proposed action to be taken by Commander Naval Forces,
Marianas on subject case.
(C) Proposed action to be taken by Commander in Chief, U.S.
Pacific Fleet, on subject case.

1. In accordance with references (a), (b) and verbal instructions
of Commander Naval Forces, Marianas, this brief, which contains my comments and
recommendations, is submitted.

2. TRIAL:

a. Offense.

CHARGE - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that HARA, Chuichi, then a vice admiral, IJN, Commander in Chief of the
Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in
Chief of the said Fourth Fleet, did, at the Caroline Islands, the Marshall Islands,
Nauru Island, Ocean Island, and other places within the area of his command, during
the period from February 23, 1944 to September 2, 1945, at a time when a state of
war existed between the United States of America, its allies and dependencies, and
the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty
as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty
to do, the operations of members of his command and persons subject to his control
and supervision, permitting them to torture, abuse, inhumanely treat and kill
American prisoners of war held captive by the armed forces of Japan, British
nationals, a Chinese civilian, and residents of the Caroline Islands, the Marshall
Islands, Nauru Island and Ocean Island, in violation of the law and customs of war,
as follows:

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02-JDM-fsk

Serial:

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Subject: Review of the Record of Trial by a Military Commission of
former Vice Admiral HARA, Chuichi, IJN.

(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.

(b) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by stabbing, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the Forty-first Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the Forty-first Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(c) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by beheading, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the Forty-first Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(d) The unlawful torture, abuse and inhumane treatment of one (1) American prisoner of war, name to the relator unknown, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, on or about June 20, 1944, at Dublon Island, Truk Atoll,

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Serial:

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Subject: Review of the Record of Trial by a Military Commission of
former Vice Admiral HARA, Chuichi, IJN.

Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(e) The unlawful killing of two (2) American prisoners of war, names to the relator unknown, by bayoneting, spearing, and beheading, on or about July 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital and Chief Surgeon of the Fourth Fleet, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, KAMIKAWA, Hidehiro, then a surgeon lieutenant, IJN, OISHI, Tetsuo, then a surgeon lieutenant, IJN, ASAMURA, Shunpei, then an ensign, IJN, YOSHIZAWA, Kensaburo, then a corpsman chief petty officer, IJN, HOMMA, Hachiro, then a corpsman chief petty officer, IJN, WATANABE, Mitsuo, then a paymaster chief petty officer, IJN, TANABE, Mamoru, then a corpsman chief petty officer, IJN, MUKAI, Yoshihisa, then a corpsman chief petty officer, IJN, KAWASHIMA, Tatsusaburo, then a corpsman petty officer first class, IJN, SAWADA, Tsuneo, then a paymaster petty officer first class, IJN, TANAKA, Tokunosuke, then a corpsman petty officer first class, IJN, TAKAISHI, Susumu, then a corpsman petty officer first class, IJN, AKABORI, Toichiro, then a corpsman petty officer second class, IJN, KUWABARA, Hiroyuki, then a corpsman petty officer second class, IJN, NAMATAME, Kazuo, then a corpsman petty officer second class, IJN, TSUTSUI, Kisaburo, then a corpsman petty officer second class, IJN, MITSUHASHI, Kichigoro, then a corpsman petty officer second class, IJN, all attached to and serving at the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, at Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(f) The unlawful torture, abuse and inhumane treatment of six (6) civilians, residents of Nauru Island, namely, Ruben FOLIAPE, Marie FOLIAPE, Rudolph HARRIS, Albert HARRIS, Father Pierre CLIVAZ, and Father Alois KAYSER, by cruelly beating them, on or about August 28, 1944, at Truk Atoll, Caroline Islands, by SHOJI, Takashi, also known as SYOJI, Takashi, civilian employee of the Imperial Japanese Navy, ISHIWARA, first name unknown, a naval civil guard, TAKENOUCHI, first name unknown, a naval civil guard, SHOJI, Hideo, also known as SYOJI, Hideo, a naval civil guard, ANETAI, Soji, a naval civil guard, all attached to the Fourth Naval Construction Department, SAKAMOTO, Takaharu,

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Serial:

Subject: Review of the Record of Trial by a Military Commission of
former Vice Admiral HARA, Chuichi, IJN.

sergeant of the Japanese Military Police Corps, and others, names to the relator unknown, all attached to the Imperial Japanese armed forces at Truk Atoll, Caroline Islands.

(g) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(h) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozo, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneco, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(i) The unlawful punishment as spies, without previous trial, of seven (7) unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be RALIEJAP, the wife of RALIEJAP, NIEBET, ANCHIO, OCHIRA, SIRO, and LACQJIRIK, by assaulting, striking, wounding, and killing, with an instrument, a deadly weapon, exact description to the relator unknown, on or about April 8, 1945, on Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, then a rear admiral, IJN, commanding officer of the Sixty-second Naval Guards, Jaluit Atoll, Marshall Islands, and INOUE, Fumio, then a captain, IJA, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 June 1949

Subject: Review of the Record of Trial by a Military Commission
of former Vice Admiral HARA, Chuichi, IJN.

(j) The unlawful punishment as spies, without previous trial, of one
(1) unarmed native inhabitant of the Marshall Islands, exact name to the
relator unknown, but believed to be RALIME, by assaulting, striking, wounding,
and killing, with an instrument, a deadly weapon, exact description to the
relator unknown, on or about April 13, 1945, on Jaluit Atoll, Marshall Islands,
by MASUDA, Nisuki, then a rear admiral, IJN, commanding officer of the Sixty-
second Naval Guards, Jaluit Atoll, Marshall Islands, and INOUE, Fumio, then a
captain, IJA, attached to the Second Battalion, First South Seas Detachment,
attached to the military installations of the Imperial Japanese armed forces,
Jaluit Atoll, Marshall Islands.

(k) The unlawful punishment as spies, without previous trial, of two
(2) unarmed native inhabitants of the Marshall Islands, exact names to the
relator unknown, but believed to be MEJKANE and MELEIN, by assaulting, striking,
wounding, and killing, with an instrument, a deadly weapon, exact description
to the relator unknown, on or about August 10, 1945, on Jaluit Atoll, Marshall
Islands, by MASUDA, Nisuki, rear admiral, IJN, commanding officer of the Sixty-
second Naval Guards, and FURUKI, Hidesaku, then a major, IJA, commanding
officer of the Second Battalion, First South Seas Detachment, of the Imperial
Japanese armed forces, Jaluit Atoll, Marshall Islands.

(l) The unlawful killing of about two hundred (200) British nationals,
namely, UEANTEITI, FALAILIVA, and other persons unknown, all civilian residents
of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20,
1945, at Ocean Island, by SUZUKI, Naommi, lieutenant commander, IJN, NARA,
Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOHARA, Naoyoshi,
lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieu-
tenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant,
IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN,
ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO,
Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade,
IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieu-
tenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade,
IJN, TSUCHIIKE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant
junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO,
Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the
Sixty-seventh Naval Garrison Unit.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Serial:

Subject: Review of the Record of Trial by a Military Commission of
former Vice Admiral HARA, Chuichi, IJN.

Specification 2

In that HARA, Chuichi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at the Caroline Islands, the Marshall Islands, Nauru Island, Ocean Island, and other places within the area of his command, during the period from February 23, 1944 to September 2, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war and said residents of Nauru Island and Ocean Island, by members of the armed forces of Japan, in violation of the law and customs of war as follows:

(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.

(b) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by stabbing, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the Forty-first Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the Forty-first Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

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COMMANDER MARIANAS

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Serial:

Subject: Review of the Record of Trial by a Military Commission
of former Vice Admiral HARA, Chuichi, IJN.

(c) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by beheading, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the Forty-first Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(d) The unlawful torture, abuse and inhumane treatment of one (1) American prisoner of war, name to the relator unknown, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(e) The unlawful killing of two (2) American prisoners of war, names to the relator unknown, by bayoneting, spearing, and beheading, on or about July 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital and Chief Surgeon of the Fourth Fleet, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, KAMIKAWA, Hidehiro, then a surgeon lieutenant, IJN, OISHI, Tetsuo, then a surgeon lieutenant, IJN, ASAMURA, Shunpei, then an ensign, IJN, YOSHIKAWA, Kensaburo, then a corpsman chief petty officer, IJN, HOMMA, Hachiro, then a corpsman chief petty officer, IJN, WATANABE, Mitsuo, then a paymaster chief petty officer, IJN, TANABE, Mamoru, then a corpsman chief petty officer, IJN, MUKAI, Yoshihisa, then a corpsman chief petty officer, IJN, KAWASHIMA, Tatsusaburo, then a corpsman petty officer first class, IJN, SAWADA, Tsuneo, then a paymaster petty officer first class, IJN, TANAKA,

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Serial:

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Vice Admiral HARA, Chuichi, IJN.

Tokunosuke, then a corpsman petty officer first class, IJN, TAKAISHI, Susumu, then a corpsman petty officer first class, IJN, AKABORI, Toichiro, then a corpsman petty officer second class, IJN, KUWABARA, Hiroyuki, then a corpsman petty officer second class, IJN, NAMATAME, Kazuo, then a corpsman petty officer second class, IJN, TSUTSUI, Kisaburo, then a corpsman petty officer second class, IJN, MITSUHASHI, Kichigoro, then a corpsman petty officer second class, IJN, all attached to and serving at the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, at Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(f) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(g) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIRA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(h) The unlawful killing of about two hundred (200) British nationals, namely, UEANTEITI, FALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieutenant junior grade, IJN, IJIMA, Tadashi, ensign, IJN, SAKATA,

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02-JDM-fsk
Serial:

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Subject: Review of the Record of Trial by a Military Commission
of former Vice Admiral HARA, Chuichi, IJN.

Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIKE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

b. Pleas:

To the Charge	- Not guilty	(R.p. 13)
To Specification 1	- Not guilty	(R.p. 13)
To Specification 2	- Not guilty	(R.p. 13)

c. Findings:

On the Charge	- Guilty	(R.p. 553)
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On Specification 1 - Proved in part* (R.p. 550-553)

Proved except the words "Nauru Island, Ocean Island," in line four,

the words "British nationals, a Chinese civilian," in lines twelve and thirteen,

the words "the Caroline Islands," in line thirteen,

the words "Nauru Island and Ocean Island," in line fourteen,

the words "(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands."

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the words "(f) The unlawful torture, abuse and inhumane treatment of six (6) civilians, residents of Nauru Island, namely, Ruben FOLIAPE, Marie FOLIAPE, Rudolph HARRIS, Albert HARRIS, Father Pierre CLIVAZ, and Father Alois KAYSER, by cruelly beating them, on or about August 28, 1944, at Truk Atoll, Caroline Islands, by SHOJI, Takashi, also known as SYOJI, Takashi, civilian employee of the Imperial Japanese Navy, ISHIWARA, first name unknown, a naval civil guard, TAKENOUCHI, first name unknown, a naval civil guard, SHOJI, Hideo, also known as SYOJI, Hideo, a naval civil guard, ANETAI, Soji, a naval civil guard, all attached to the Fourth Naval Construction Department, SAKAMOTO, Takaharu, sergeant of the Japanese Military Police Corps, and others, names to the relator unknown, all attached to the Imperial Japanese armed forces at Truk Atoll, Caroline Islands."

the words "(g) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(h) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

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the words "(1) The unlawful killing of about two hundred (200) British nationals, namely, UEANTEITI, FALAJIIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KOYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieutenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIKE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit." which words are not proved.

On Specification 2 - Proved in part* (R.p. 552,553)
Proved except the words "the Marshall Islands, Nauru Island, Ocean Island," in line four,

the words "and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision," in lines twelve, thirteen, fourteen, and fifteen.

the words "and said residents of Nauru Island and Ocean Island," in lines sixteen and seventeen,

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The words "(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands."

the words "(f) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

the words "(g) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit."

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the words "(h) The unlawful killing of about two hundred (200) British nationals, namely, UEANTETI, FALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Satazo, lieutenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiji, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit." which words are not proved.

* See discussion in paragraph 6 c. below.

d. Sentence.

Six (6) years confinement (R.p. 555).

e. Maximum Sentence.

Death.

f. Convening Authority.

Rear Admiral C. A. POWNALL,
United States Navy,
The Commander Naval Forces Marianas.

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g. Place of Trial.

The auditorium, Headquarters, Commander Naval Forces
Marianas, Guam, Marianas Islands (R.p. 1).

h. Date of Trial.

27 October 1948 to 11 January 1949.
Arraignment: 29 October 1948. (R.p. 13).
Sentence: 11 January 1949.

3. FORMAL MATTERS:

a. Authority for the commission to act.

The authority was the same as that used in previous trials.

b. Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, appointed a member of the military commission by Commander Naval Forces, Marianas precept dated 25 October 1948, was present during the proceedings of the first day in the instant trial on 27 October 1948 (R.p. 1). Due to continuous illness Lieutenant Commander Lee was absent from the proceedings from 28 October 1948 to 4 November 1948 inclusive (R.p. 5, 12, 14, 26, 39, 44; Prefix "BB"), and on 5 November 1948, Lieutenant Commander Lee was relieved as a member of the military commission (Prefix "CC").

On 29 October 1948 Captain Daniel J. Sweeney, U.S. Navy, was appointed a member of the military commission (Prefix "U"). Captain Sweeney was duly sworn and took his seat as a member of the commission on 1 November 1948 (R.p. 14). The record of proceedings of the preceding days of trial was read in the presence of the new member. The only evidence which had been presented during the proceedings, prior to the seating of Captain Sweeney, consisted of the oral testimony of the accused who had been examined on his voir dire concerning jurisdiction. The accused was called before the commission, informed that his oath previously taken was still binding, heard his own testimony read, and Captain Sweeney not desiring to question him, he pronounced his testimony correct and resumed his status as accused.

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On 3 and 4 November 1948 Captain Kermit H. Shelly, U.S. Marine Corps, member, was absent from proceedings due to illness (R.p. 39, 44; Prefix "Z", "AA"). When he resumed his seat as a member on 5 November 1948, the witness who testified during the absence of Captain Shelly, was called before the commission, informed that his oath previously taken was still binding, heard his own testimony read, and Captain Shelly not desiring to question this witness, he pronounced his testimony correct (R.p. 66).

Except as noted in the foregoing, all members of the commission were present throughout the trial.

c. All members of the commission, judge advocate, reporters, interpreters and witnesses were sworn (R.p. 1, 3, 14, 17, 205, 221, 246, 264, 284, 306, 327, 349, 362, 413, 427, 461, 468, 482).

d. The charge and specifications were shown to have been served on the accused on 8 October 1948 (R.p. 3).

e. The accused was represented by counsel of his own choice (R.p. 1).

f. The accused challenged two members of the commission, Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, and Rear Admiral Arthur G. Robinson, U.S. Navy, on the ground that they sat as members of the military commissions which tried persons for the offenses set out in Specification 1 (b), (d), (e), (i), (j), (k), and Specification 2 (b), (c), (d) and (e).

Each of the challenged members replied that while he served on such commissions, he had formed no opinion as to the guilt or innocence of the accused and that he could try the present case without prejudice or partiality (R.p. 1, 2, 3).

The commission properly denied the challenge (R.p. 2, 3; Sec. 388, N.C. & B., 1937; and JAG Desp. 101635 July '46).

In addition the accused challenged Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, on the ground that half of the members of the commission were not senior in rank to the accused. The accused similarly challenged Rear Admiral Arthur G. Robinson, U.S. Navy, on the ground that he was junior in rank to the accused (R.p. 1, 2). This ground of challenge is without merit. No provision of military or international law establishes such requirement in the case of the trial

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of war criminals before military commissions. An accused war criminal may properly be tried by a civilian court, as well as by military commission composed of members who are junior in rank to the accused. The provisions of Naval Courts and Boards (Sec. 346) with regard to relative seniority between the accused and members of the commission, are based on considerations of intra-service policy. The presence on the commission of a rear admiral and a captain of the United States Navy as members adequately safeguards any substantial interests of the accused in being tried by persons qualified to comprehend the nature of the duties and the problems faced by the accused in the exercise of his command during prevailing war conditions.

g. The accused objected to the charge and specifications (R.p. 4; Prefix "E", "F") in effect upon the following grounds:

Objection 1: Specification 2 is duplicative of Specification 1.

Comment: Specifications 1 and 2 of the Charge alleged different offenses in that they each allege the violation of a different and distinct duty placed upon the accused HARA by the law of war. "Different offenses, however, of the same nature, should be included in separate specifications under the same charge" (N.C. & B., 1937, Sec. 23; see KOBAYASHI review dated 9 Nov. 1948, para. 6 e., p. 29).

Objection 2: The charge does not show what law and customs of war were violated by the accused.

Comment: Similar pleading in cases tried before military commissions in this area has been upheld by reviewing authorities (viz. trial of IWANAMI, Hiroshi, et al, Charge II, Specifications 2 and 3). The sufficiency of the pleading of the offense charged is evident from the discussion of the U.S. Supreme Court of a similar charge in the Yamashita case (327 U.S. 1).

Objection 3: The alleged offenses do not constitute a crime.

Comment: The incidents set out in the specifications allege the mistreatment and murder of various American prisoners of war and civilians in occupied territory. The accused is charged with neglect of duty in having permitted these incidents to occur. The mistreatment and murder of unarmed prisoners of war and civilians in occupied territory is a war crime, being violative of the Geneva Prisoners of War Convention of July 27, 1929 (Art. 2) and Hague Convention IV of 18 October 1907 (Annex, Art. 4, 43, 46).

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Neglect of duty in violation of the law and customs of war is a war crime within the jurisdiction of a military commission appointed to try war crimes (Yamashita v. Styer, 327 U.S. 1).

Objection 4: The charge and specifications were issued to a non-existent officer since the precept was drawn after the date of the issuance of the charge and the specifications.

Comment: The charge and specifications in the instant case were dated 5 October 1948 and the judge advocate was instructed thereby to try this case before a military commission of which he was the duly appointed judge advocate. The military commission convened by precept dated 27 July 1948 was in existence at that time and duly empowered to hear the charge and specifications in the instant case. The charge and specifications were therefore legally and properly issued by the convening authority. Since the charge and specifications were legally issued, the convening authority could subsequently order the trial of such pending case before a duly constituted commission convened subsequent to the legal issue of the charge and specifications (Sec. 542, fn. 13, N.C. & B., 1937). The instant precept dated 25 October 1948 specifically authorizes and directs the commission to hear cases pending before the military commission convened by precept of 27 July 1948 (Prefix "A", para. 3).

h. The commission ruled that the objections to the charge and specifications were not sustained and found the charge and specifications in due form and technically correct (R.p. 4).

The action of the commission in overruling the objections to the charge and specifications was, in my opinion, correct for the reasons stated in the above comments.

It is noted that the charge and specifications contain a manifest clerical error which was not corrected during the course of the proceedings. The last line of subparagraph (d) of Specification 2 contains the words "Dublon Islands". The inclusion of the letter "s" is a manifest clerical error since Dublon Island is properly spelled in the similar subparagraph (d) of Specification 1, and in numerous other instances where it appears in the specifications. This error is not prejudicial to the accused.

i. The accused was properly arraigned (R.p. 13).

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4. MOTIONS AND PLEAS:

a. The accused made a plea to the jurisdiction (R.p. 10, App. "I", "J") in effect upon the following grounds:

(1) The jurisdiction of the commission is limited to war crimes and the alleged offense is one of neglect of duty to control subordinates and therefore not a war crime.

(2) The commission does not have jurisdiction over offenses committed against Nauruan and Marshallese natives, Chinese nationals, and British nationals as charged in the incidents set forth in Specification 1, subparagraphs (f), (h), (i), (j), (k), and (l), and Specification 2, subparagraphs (f), (g) and (h).

(3) The United States armed forces were not in occupation of the islands where the offenses were committed at the time these offenses were committed.

The plea to the jurisdiction was denied (R.p. 11).

The action of the commission in denying the plea was, in my opinion, proper for the reasons stated in paragraph 6 a. below.

b. The accused made a plea in bar of trial (R.p. 11; App. "L") in effect upon the ground that the alleged offenses were committed three and four years prior to the drawing of the charge and specifications.

Comment: In war crimes there is no statute of limitations. "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or immediately prior to the Mukden Incident of 18 December 1931," (Regulations Governing the Trials of Accused War Criminals, dated 5 Dec. 1945, issued by SCAP file AG 000.5 (5 Dec. 1945); Nazi Conspiracy and Aggression, Vol. 1, p. 5; and Potsdam Declaration, paragraph 10). An indictment for any offense punishable by death may be found at any time without any regard to any statute of limitations (18 U.S.C.A., Sec. 581a). By the precept dated 25 October 1948, paragraph 5, the commission was empowered to impose upon the accused the death penalty.

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The action of the commission in overruling the plea (R.p. 12) was, in my opinion, proper.

c. The accused made a plea in abatement (R.p. 12; App. "O") on the ground that no notice was given to the protecting power of the trial of this accused, as provided for in Article 60 of the Geneva Prisoners of War Convention of July 27, 1929.

Comment: The accused was arrested as a war criminal for offenses committed prior to the time he became a prisoner of war. The Supreme Court of The United States considered this identical question in the Yamashita case (327 U.S. 1) and held "...we conclude that Article 60 of the Geneva Convention, applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war."

The plea in abatement was, in my opinion, properly denied (R.p. 12).

d. The accused made a motion for a bill of particulars (R.p. 13; App. "Q").

Comment: There is no provision in Naval Courts and Boards for such a motion (N.C. & B., 1937, Sec. 404). The function of the motion for the bill of particulars, as used in civilian courts, is to obtain amplification of the information or indictment, where it does not sufficiently inform the accused of the crime with which he is charged, in order to enable him to properly prepare his defense. In naval courts, the charges and specifications are the indictment and the accused by timely objections to the charges and specifications may accomplish the same end sought in a request for a bill of particulars. The accused had already objected to the charge and specifications on the same ground raised in his motion for a bill of particulars (R.p. 4; App. "E", "F").

The motion was, in my opinion, properly denied (R.p. 13).

e. At the close of the prosecution's case and before the defense began, the accused made a motion for a directed acquittal on the ground that the evidence had not proved the charge against the accused, beyond a reasonable doubt (R.p. 352).

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Comment: The prosecution had presented evidence from which the commission might properly find: That the incidents set forth in the subparagraphs of the specifications occurred, and were committed by members of the command and persons subject to the control and supervision of the accused; that the accused issued no specific orders or instructions regarding the proper treatment or protection of prisoners of war and civilians in occupied territory; that the accused failed to designate any responsible subordinate member of his staff or person under his command to supervise and direct prisoner of war matters; that the accused failed to take any other appropriate affirmative action for the protection of prisoners of war and civilians in occupied territory. From the foregoing the commission could properly find, beyond a reasonable doubt that the accused was guilty of disregarding and failing to discharge his duty as Commander in Chief of the Fourth Fleet to control his subordinates and to protect prisoners of war and civilians, as charged.

The action of the commission in denying the motion for a directed acquittal (R.p. 352) was, in my opinion, proper.

f. The accused pleaded not guilty to the charge and specifications (R.p. 13).

g. The defense objected (R.p. 16; App. "X", "Y") to the prosecution's request that the commission take judicial notice of the following: (1) The Hague Convention IV of 18 October 1907 and the Annex thereto; (2) the Geneva Prisoner of War Convention of 27 July 1929, and of the fact that although Japan had not formally ratified this convention, it agreed through the Swiss government to apply the provisions thereof to prisoners of war under its control....; (3) the Potsdam Declaration of 26 July 1945, particularly paragraph 10....; (4) that a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies, during the period December 7, 1941 to September 2, 1945; (5) the instrument of surrender from the Japanese government and the Imperial General Headquarters signed September 2, 1945.....

Comment: The commission announced that it would take judicial notice of the items requested by the judge advocate (R.p. 16). The action of the commission was in my opinion legal, for Section 309, N.C. & B., 1937, provides: Courts should take judicial notice of: (a) Facts forming part of the common knowledge of every person of ordinary understanding and intelligence.....; well-known.....historical.....facts; (b) Matters which are so easily

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ascertainable in authentic form that the court may readily inform itself by reference to some authentic, accessible source of information.....; (c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties....."

5. EVIDENCE: Briefly summarized the competent evidence is to the following effect.

a. For the prosecution.

HARA, Chuichi, former vice admiral, IJN, assumed command as Commander in Chief of the Fourth Fleet on February 23, 1944 and served in that capacity until the surrender on September 2, 1945 (R.p. 262, 263). During the tour of duty of the accused and at the times of each of the incidents alleged, the subordinate naval units, whose personnel were involved in the incidents, were directly subordinate to the Fourth Fleet as follows:

On or about March 10, 1944, April 8, 1945, April 13, 1945, and August 10, 1945, the Sixty-second Naval Guard Unit on Jaluit Atoll, Marshall Islands; on or about June 20, 1944, the Forty-first Naval Guard Unit on Dublon Island, Truk Atoll, Caroline Islands; on or about July 20, 1944, the Fourth Naval Hospital on Dublon Island, Truk Atoll, Caroline Islands; on or about August 28, 1944, the Fourth Naval Construction Department, Truk Atoll, Caroline Islands; in September 1944 and on or about December 23, 1944, the Sixty-seventh Naval Guard Unit on Nauru Island; and on or about August 20, 1945, the detachment of the Sixty-seventh Naval Guard Unit stationed on Ocean Island (R.p. 248, 249, 250, 251, 252, 266, 267, 504, 505).

Four incidents occurred on Jaluit Atoll, Marshall Islands as alleged in subparagraphs (a) in Specifications 1 and 2, and subparagraphs (i), (j) and (k) in Specification 1:

(a) The unlawful killing of three (3) American prisoners of war, on or about March 10, 1944, by MASUDA, Nisuki, rear admiral, IJN and other naval personnel;

(i) The unlawful punishment as spies without previous trial by killing seven (7) unarmed native inhabitants of the Marshall Islands, on or about April 8, 1945, by MASUDA, Nisuki, rear admiral, IJN and INOUE, Fumio, then a captain, IJA;

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(j) The unlawful punishment as spies without previous trial by killing one (1) unarmed native inhabitant of the Marshall Islands, on or about April 13, 1945, by MASUDA, Nisuki, rear admiral, IJN, and INOUE, Fumio, then a captain, IJA; and

(k) The unlawful punishment as spies without previous trial by killing two (2) unarmed native inhabitants of the Marshall Islands, on or about August 10, 1945, by MASUDA, Nisuki, rear admiral, IJN, and FURUKI, Hidesaku, then a major, IJA.

Five incidents occurred on Truk Atoll where the Fourth Fleet maintained its headquarters (R.p. 267, 483; Exh. 23), as alleged in subparagraphs (b), (c), (d) and (e) of Specifications 1 and 2, and subparagraph (f) of Specification 1:

(b) The unlawful killing of one (1) American prisoner of war, on or about June 20, 1944, by ASANO, Shimpei, former captain, IJN and other naval personnel;

(c) The unlawful killing of one (1) American prisoner of war, on or about June 20, 1944, by ASANO, Shimpei and other naval personnel;

(d) The unlawful torture...of one (1) American prisoner of war, on or about June 20, 1944, by ASANO, Shimpei and other naval personnel;

(e) The unlawful killing of two (2) American prisoners of war, on or about July 20, 1944, by IWANAMI, Hiroshi, former surgeon captain, IJN and other naval personnel;

(f) The unlawful torture...of six (6) civilians, residents of Nauru Island, by civilian employees and guards of the Imperial Japanese Navy, and by a sergeant of the Japanese Military Police Corps.

Two incidents occurred on Nauru Island, and one incident occurred on Ocean Island as alleged in subparagraphs (g), (h), and (i) of Specification 1, and subparagraphs (f), (g) and (h) of Specification 2:

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(g) The unlawful torture...of one (1) civilian, resident of Nauru Island, during September 1944 by OGAWA, Haruzi, former lieutenant junior grade, IJN, and other naval personnel;

(h) The unlawful killing of one (1) Chinese civilian, resident of Nauru Island, on or about December 3, 1944, by HATAKEYAMA, Yasunori, a paymaster warrant officer, and other naval personnel;

(1) The unlawful killing of two hundred (200) British nationals, on or about August 20, 1945, by SUZUKI, Naomichi, lieutenant commander, IJN, and other naval personnel.

The prosecution established the occurrence of all of the incidents alleged and the participation of the persons directly involved, by the introduction of documentary evidence from the records of the trial of persons directly involved in these incidents.

Certified excerpts of the pertinent portions of the action of the commission, the convening authority, the reviewing authority, and the Secretary of the Navy were introduced from the record of the war crimes trials held before United States Military Commission in the following cases: MASUDA, Nisuki, et al (Exh. 5); ASANO, Shimpei, et al (Exh. 7); IWANAMI, Hiroshi, et al (Exh. 8); INOUE, Fumio (Exh. 9); and FURUKI, Hidesaku (Exh. 11). Additional exhibits from the record of the MASUDA trial (Exh. 6), the INOUE trial (Exh. 10), and the FURUKI trial (Exh. 12), and certain testimony from the record of the INOUE and FURUKI trials (testimony of Cdr. H. L. Ogden, USN, 6th, 7th and 8th day of proceedings) were introduced in order to more fully establish the nature of the incidents which occurred on Jaluit, and the participation of Rear Admiral MASUDA therein. The entire records of the Australian military commission proceedings in the war crimes trials of SAKAMOTO, et al (Exh. 13); SAKODA, et al (Exh. 14); HATAKEYAMA, et al (Exh. 15); SUZUKI, et al; MIYASAKA, et al; SAKATA, et al; SAKUMA, et al; and YAMAGUCHI, et al (Exh. 16, 17, 18, 19, and 20 respectively) were introduced to establish the incidents which occurred on Nauru Island and Ocean Island (Specification 1, subparagraphs (g), (h) and (1)), and the beating of Nauruan residents at Truk, alleged in Specification 1, subparagraph (f).

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In addition to establishing that the incidents alleged occurred, and that members of the command, and other persons subject to the control and supervision of the accused directly participated in the incidents, the prosecution produced additional evidence to prove that the accused neglected his duty to control his subordinates and to protect prisoners of war and civilians in occupied territory. The more significant of this evidence consisted of the following:

The accused, Vice Admiral HARA, was an experienced commanding officer familiar with international law, and fully cognizant of his responsibility to control his subordinates (R.p. 514). Prior to the tour of duty of the accused, the Fourth Fleet had not issued any standing orders or instructions concerning the treatment of prisoners of war (R.p. 209, 210, 227, 253, 268). During his tour of duty as Commander in Chief of the Fourth Fleet, HARA did not issue any orders to any of his subordinates regarding the treatment or protection of prisoners of war (R.p. 227, 255, 268, 294). The Fourth Fleet did not establish any system of accounting for or reporting the number of prisoners of war captured or confined by subordinate units of the Fourth Fleet (R.p. 268). Reports of the capture or confinement of prisoners of war at the Forty-first Naval Guard Unit on Truk were made to the Fourth Fleet (R.p. 287, 288, 444, 446, 464, 474, 475). Staff officers of the Fourth Fleet Headquarters interrogated such prisoners of war (R.p. 229, 286, 287, 289, 296). The accused himself admits that he did learn of the confinement of prisoners of war on Truk on several occasions (R.p. 520). The accused HARA did not assign the duty to handle prisoner of war matters to any member of his staff and with the exception of one occasion in January 1945 never took steps to ascertain how prisoners of war were being treated by the subordinate units of the Fourth Fleet (R.p. 517, 519, 524).

High-ranking subordinates and staff officers of the Fourth Fleet knew of numerous incidents of torture and murder of prisoners of war and civilians by personnel of the Fourth Fleet which occurred prior to and during the tour of duty of the accused (R.p. 230, 232, 272, 290, 306, 309, 398, 457, 458, 471, 474, 477). In addition, rumors concerning the murder and mistreatment of prisoners of war confined by the Fourth Fleet on Truk, circulated throughout the command on Truk (R.p. 272, 290, 306, 457, 458, 471, 474).

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The training of the personnel of the Fourth Fleet with regard to proper treatment of prisoners of war was loose and ineffective as evidenced not only from the fact that the incidents occurred, but also from the widely accepted attitude and opinions of subordinates, including high-ranking subordinate commanding officers, that in accordance with long continued practice or policy within the Fourth Fleet, prisoners of war could be disposed of or maltreated (R.p. 176, 177, 188, 189, 190, 207, 231, 272, 283, 284, 306; Exh. 6, p. 2; Exh. 16, p. 28).

High-ranking responsible subordinate officers of the accused ordered or personally committed the following incidents: Rear Admiral MASUDA, commanding officer of the Sixty-second Naval Guard Unit at Jaluit (Exh. 6, p. 2; Exh. 10, p. 1; Exh. 12, p. 1) as set forth in Specification 1, subparagraphs (a), (i), (j) and (k); former Captain ASANO, commanding officer of the Forty-first Naval Guard Unit at Truk (Exh. 7) as set forth in Specification 1, subparagraphs (b), (c) and (d); Captain IWANAMI, commanding officer of the Fourth Naval Hospital and chief medical officer of the Fourth Fleet (Exh. 8) as set forth in Specification 1, subparagraph (e); Lieutenant Commander SUZUKI, commanding officer of the Sixty-seventh Naval Garrison Unit Detachment at Ocean Island (Exh. 16), as set forth in Specification 1, subparagraph (1).

The accused took over command of the Fourth Fleet on February 23, 1944. During his tour of duty he remained ashore and was the senior naval officer present ashore at Truk Atoll. The headquarters of the accused was located at Dublon Island, a small island approximately 3,500 yards by 5,000 yards (R.p. 225). Incidents of torture and murder of prisoners of war were committed on Dublon Island by subordinate units of the Fourth Fleet, as follows:

On February 17, 1944, six days prior to the time the accused took command of the Fourth Fleet, a mass execution of prisoners of war was held at the Forty-first Naval Guard Unit, and high-ranking subordinate officers and members of the staff of the accused HARA knew of the incident (R.p. 229, 272, 306; Exh. 21).

On or about June 20, 1944 at the Forty-first Naval Guard Unit on Dublon Island, the incidents set forth in Specifications 1 and 2, subparagraphs (b), (c) and (d) occurred (Exh. 7). Medical experiments, consisting of exploratory

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operations upon the body of a living prisoner of war were performed. Thereafter this prisoner of war was beheaded and another was stabbed to death at a public execution attended by dispensary personnel and an additional forty or fifty naval personnel (R.p. 288, 308, 309, 311).

On or about July 20, 1944, at the Fourth Naval Hospital on Dublon Island, at a public execution attended by fifteen officers and about sixty enlisted personnel, two prisoners of war were speared to death (R.p. 333, 334, 335; Exh. 8). This execution was ordered by the Commanding Officer of the Naval Hospital (R.p. 334). On the very day of the execution, and just prior to its occurrence, the accused HARA was personally present at the Hospital (R.p. 328). The commanding officer and executive officers of the Forty-first Guard Unit testified that prior to obtaining the prisoners from the guard unit, the commanding officer of the hospital had stated that he had the approval of the Fourth Fleet. (R.p. 277, 477).

At a monthly conference in September 1944 attended by the accused and commanding officers of the subordinate units of the Fourth Fleet on Truk, IWANAMI, the commanding officer of the hospital, during a discussion of the use of spears, spoke about the spearing of the prisoners of war at the hospital. According to the testimony of SUMIKAWA, chief of staff of the Fourth Fleet, and of ASANO, the commanding officer of the Forty-first Naval Guard Unit, the accused made no comment or statement when IWANAMI told of the incident (R.p. 254, 255, 292). Subsequent to this conference the accused never investigated the incident or punished or disciplined the perpetrators of this brutal and inhumane spearing of living prisoners of war (R.p. 255, 256).

b. For the defense.

At the time the accused HARA took command of the Fourth Fleet on February 23, 1944, Truk was in a state of dire confusion and chaos as a result of the major task force raid of February 17th and 18th, 1944, during which almost all the warships and airplanes of the Fourth Fleet were destroyed (R.p. 434, 462, 483). Judicial notice was taken of certain attacks made by the Allied Forces in the area (R.p. 353, 354, 355). Sea and air supremacy in the Marshalls and Eastern

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Carolines had passed completely into the hands of the Americans, surface and air transportation to these areas were severed, and communication with these areas was extremely difficult (R.p. 483, 491, 492).

The Fourth Fleet was a large, widely scattered command. When the accused took command of the Fourth Fleet, there were approximately 70,000 persons under his command (approximately 40,000 naval personnel, 10,000 gunzokus (civilians attached to the military forces), and 20,000 civilian employees of the Navy), and the area of jurisdiction of the Fourth Fleet extended approximately 2,000 miles east to west, and 1,000 miles north to south, and included the Marshalls, the Marianas, Eastern and Western Carolines, Wake Island, Nauru, and Ocean Islands (R.p. 483, 484, 486, 528, 529). During the brief existence of the Central Pacific Fleet, from March to late July 1944, the personnel under the command of the Fourth Fleet was reduced to 50,000 men, and the area of jurisdiction of the Fourth Fleet was reduced to the Eastern Caroline Group, what remained of the Marshall Islands, Wake Island, Nauru and Ocean Islands, and Woleai of the Western Carolines (R.p. 248). After the annihilation of the Central Pacific Fleet, the remnants of the units from the Fourth Fleet which had been transferred directly under the Central Pacific Area Fleet again came under the jurisdiction of the Fourth Fleet (R.p. 248, 249).

The civil government was not included under the command of the Fourth Fleet in the areas within which the Fourth Fleet maintained its jurisdiction over naval forces (R.p. 356, 357, 435, 436, 490, 507; Exh. 47, 48).

The exercise of command over Jaluit, Nauru and Ocean Islands during the tour of duty of the accused was extremely difficult. Due to the lack of transportation outside of Truk Atoll, and the complete air and sea supremacy of the American forces, the accused was unable to provide any ammunition or food to these commands, or support their operations or withdraw them from these islands (R.p. 430, 491, 533). Similarly, due to the bombing of installations, the natural deterioration of the wireless equipment, and the compromise of Japanese codes, communication with the outlying areas under the command of the Fourth Fleet deteriorated rapidly and was almost impossible from the latter half of 1944 (with the exception of communication with Jaluit Atoll) (R.p. 430, 438, 439, 491, 492, 493).

The defense established that there were Japanese Naval Regulations setting forth the duties of personnel with regard to proper handling of prisoners of war (R.p. 218, 365, 516; Exh. 27); that naval personnel of the Fourth Fleet were

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trained in these regulations and the observance of international law (R.p. 218, 428, 471, 519); and that subordinate commanding officers were issued a copy of the Japanese Wartime International Law Manual which set forth the international law with regard to treatment of prisoners of war (R.p. 218, 366; Exh. 28, 37, 38). The accused testified that while he did not take any direct steps to implement these naval regulations regarding treatment of prisoners of war, because he believed them to be adequate and comprehensive, he did instruct his subordinates to send prisoners of war to Japan as soon as possible (R.p. 516, 517).

The Fourth Fleet Headquarters did not order or authorize the commission of any of the incidents which were committed by the subordinate units under its command (R.p. 357, 430, 437, 438, 439, 450, 474). The accused HARA did not personally know of the commission of any of these incidents other than the spearing of prisoners of war on July 20, 1944 (R.p. 493, 494, 495, 496, 499, 500). The accused learned of this July incident during the September conference. The accused testified that at the conclusion of this conference he cautioned his subordinates against further mistreatment of prisoners of war (R.p. 497). The accused testified that he did not anticipate that additional prisoners of war would be captured from the large aircraft used by the American forces in their attacks on Truk (R.p. 498), but that he resolved to prevent any recurrence of such an incident on Truk, and when in January 1945 a prisoner was captured, the Chief of Staff of the Fourth Fleet, under orders of the accused, saw to it that the prisoner was sent safely to Japan (R.p. 259, 260, 501, 517, 523, 532).

In addition, with regard to specific incidents, the defense established the following:

The incident which occurred on Truk Atoll, on or about August 28, 1944, involving the beating of six civilian residents of Nauru Island (Specification 1, subparagraph (f)), was the result of an investigation of an alleged spy incident on Tarik Island, a relatively small island in Truk Atoll; that while naval civil employees participated in this investigation, they were under the control of an army military police sergeant attached to the 3rd Section of the South Seas Kempetai (Exh. 52, 53; R.p. 356, 360); and that the investigation was conducted by the Army Kempetai, which was not under the control of the Fourth Fleet (R.p. 234, 356).

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At the time of the December 3, 1944 incident on Nauru (Specification 1, subparagraph (h), Specification 2, subparagraph (g)), and of the August 20, 1945 incident on Ocean Island (Specification 1, subparagraph (l), Specification 2, subparagraph (h)), Captain SOEDA, Hisayuki, commanding officer of the Sixty-seventh Naval Guard Unit, stationed at Nauru, had no knowledge of the incidents, did not receive any reports concerning them, and in fact did not learn about them until after the war (Deposition of SOEDA, Exh. 49). The deposition of SOEDA inferentially establishes that he was never tried or convicted of participation in any of the incidents which occurred on Nauru or Ocean Islands (Exh. 49). The Fourth Fleet did not receive any reports concerning any of the incidents which occurred on Nauru or Ocean Islands (R.p. 438, 439, 499).

With regard to the Ocean Island incident which occurred on August 20, 1945 (Specification 1, subparagraph (l); Specification 2, subparagraph (h)), the defense established that on August 15th the Fourth Fleet Headquarters received an Imperial Rescript, and an order for immediate termination of hostile activity, which they relayed to all subordinate units, with the added caution to maintain order and carry out the surrender (R.p. 358, 501). On August 15th acknowledgement of the receipt of this message was made by all the subordinate units (R.p. 359). No report was received by the Fourth Fleet concerning the death of the two hundred natives on Ocean Island on August 20, 1945 (R.p. 439, 500).

6. DISCUSSION:

a. As to jurisdiction.

Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander in Chief, United States Pacific Fleet, in his confidential serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a military commander (App. D, N.C. & B., 1937; In re Yamashita, 327 U.S. 1). The Commander in Chief, Pacific and U.S. Pacific Fleet, changed the title "Commander Marianas Area" to "Commander Naval Forces Marianas" effective 1 August 1948 (Commander in Chief Pacific and U.S. Pacific Fleet letter serial 2682, dated 11 June 1948, Subject: Pacific Fleet Letter 2L-47; Third Revision). By letter dated 1 August 1948, CinCPac serial 2955 and CinCPacFlt serial 3490, the Commander in Chief, Pacific and U.S. Pacific Fleet vests in the Commander Naval Forces, Marianas all authority in connection with war crimes heretofore vested in the Commander Marianas Area, by virtue of his authority as Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief, Pacific and U.S. Pacific Fleet.

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It is well established that a military commission convened by authority of the Commander in Chief, United States Pacific Fleet and/or any military commander has jurisdiction to try war crimes and accused war criminals (Yamashita v. Styer, 327 U.S. 1; App. D, N.C. & B., 1937; SecNav ltr. re war crimes dated 13 Jan. 1945; and CinC U.S. Fleet ltr. serial 2812, dated 6 April 1945).

The accused made a plea to the jurisdiction on the grounds set forth in paragraph 4 a. above. The first ground for this plea was based on the contention that the offense charged was not a crime under the law and customs of war. This objection to jurisdiction is not sound. The law with regard to the objection is thoroughly discussed in paragraph 6 a. (p. 16 and 17) of my review of the trial of WAKABAYASHI, Seisaku. Neglect of duty arising from command responsibility and involving the failure to control subordinates and to protect prisoners of war and civilians, is a well recognized war crime (Yamashita v. Styer, 327 U.S. 1; Trial of TOJO, Hideki, et al, Judgement of the International Military Tribunal, Far East, p. 28-33, 1155, 1175, 1185, 1207).

As set forth in paragraphs 4 a. (2) and 4 a. (3), the accused also objected to the jurisdiction on the grounds that the commission did not have jurisdiction over offenses committed against Nauruan and Marshallese natives, Chinese nationals, and British nationals, and that the U.S. armed forces were not in occupation of the islands where the offenses were committed at the time the offenses were committed. These grounds of objection are not sound.

The despatches referred to in paragraph 1 of the precept of the military commission in the instant case, specifically authorized the convening authority to include under the charge of neglect of duty of the accused Vice Admiral HARA, those war crimes committed within the area of his command, for which Japanese war criminals had been tried and convicted by Australian courts.

In addition, paragraph 4 of the precept provides that the military commission shall be competent to try "all offenses within the jurisdiction of exceptional military courts....It shall have jurisdiction over all Japanese nationals....in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above....Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

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Similarly, note that CinCPac and CinCPacFlt letter dated 1 August 1948, CinCPac serial 2955 and CinCPacFlt serial 3490, referred to in paragraph 1 of the precept, in addition to confirming the authority of Commander Naval Forces, Marianas to exercise all authority in connection with war crimes....heretofore vested in the Commander Marianas Area, specifically notes that "Nothing in this letter limits the inherent authority of a military commander to convene military commissions."

From the foregoing it is clear that the precept constituted a full and complete grant of authority to the instant military commission to try "all offenses within the jurisdiction of exceptional military courts," and nothing in the precept limits the jurisdiction of the commission so as to exclude offenses committed against Nauruan and Marshallese natives, or Chinese or British nationals. On the contrary, the precept in addition to its broad grant of authority specifically provides that "nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established."

The jurisdiction of the instant military commission must, therefore, be examined in the light of the fundamental law of jurisdiction with regard to military commissions and war crimes offenses.

Military commissions have jurisdiction to try war crimes and accused war criminals (Yamashita v. Styer, 327 U.S. 1). Jurisdiction in war crimes cases does not depend upon territorial control at the time the offenses occurred. The territorial principle of jurisdiction, familiar to domestic courts and ordinary crimes, is not applicable to war crimes cases. War crimes are one of a number of exceptions to this concept (see Glueck, War Criminals and their Punishment, p. 81, and fn. 14, 15, on p. 215). The international nature of the crimes, and the realistic necessity of their punishment by the injured States, are cogent reasons for departure from the ordinary concept of territorial jurisdiction (see Glueck, op. cit. p. 81). For these, and other reasons, jurisdiction in war crimes cases is primarily based upon custody of the accused at the time of trial.

War crimes are international crimes in the sense that they are crimes against all civilized nations. In this respect war crimes are like the crime of piracy and the war criminal like the pirate, as expressed by Grotius (1583-1645) De Jure Belli ac Pacis, vol. 2 cap. 20, sec. 40 is "hostis humani generis" (enemy of mankind) and as such he is justiciable by any state anywhere. Hackworth, International Law, Vol. 2, p. 187.

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As early as 1612, Grotius stated: "The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishment not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any person whatsoever." Grotius, *De Jure Belli Ac Pacis* (1612) Carnegie Trans, 1925, p. 504.

Similarly: Wheaton in his *Elements of International Law*, 6th Ed., Vol. I, (1929), p. 269, declares that the judicial process of every independent state extends to the punishment of "offenses against the common law of nations, by whomsoever and wheresoever committed." Hall in his *Treatise on International Law* (8th Ed., (1924), Sec. 135) states that a belligerent possesses "the right of punishing persons who have violated the laws of war if they afterward fall into his hands." Oppenheim says, "the right of the belligerent to punish, during the war, such war criminals as fall into his hands is a well recognized principle of international law. It is a right of which he may effectively avail himself after he has occupied all or part of enemy territory and is thus in the position to seize war criminals who happen to be there" (Oppenheim, *International Law*, 6th Ed., Rev., Vol. II, 1944, Sec. 257a).

The opinions of leading jurists in this regard, cited above, reflect the prevailing view on this subject. An interesting application of the principles involved herein is found in the Judge Advocate General's Opinion, Memorandum for the Joint Intelligence Committee, The Joint Chiefs of Staff, file: SPJGW 1943/17671, subject: "Jurisdiction to Punish War Criminals," dated 13 December 1943: "In October of 1943, shortly after the capture by American troops of the town of Caiazzo on the Volturno River, in Italy, some German troops fighting there executed without trial 23 Italian civilians whom they accused of aiding the American troops. The killing took place on the same day that the Badoglio government declared war on Germany and on which it was recognized as a co-belligerent of the United Nations. The Germans responsible for the executions were subsequently captured by the Americans. In an exhaustive consideration of the evidence and law pertaining to the occurrence, the Judge Advocate General of the United States Army concluded as follows:

'a. The putting to death by German troops without trial of twenty-three Italian civilians at Caiazzo constituted an offense against the laws of war.

'b. The United States Army, by military commission, and the Italian government,....by whatever tribunal its laws provide, have concurrent jurisdiction to punish those committing the above offense.

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'c. Whether the accused shall be tried by a military commission of the United States or by an Italian tribunal is a question of policy.'

The prevailing view that war crimes jurisdiction extends to those offenses which "violate the law of nations in regard to any person whatsoever" (Grotius cit.) and to "offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton cit.), has been implicitly accepted by the office of the Judge Advocate General of the Navy in his action in the following war crimes cases held in this area, in which the accused were charged and tried with violation of the law and customs of war for offenses committed against British nationals, Colombian nationals, and Spanish nationals, and against native residents of the Marshall Islands: Trial of AJIOKA, Masao; trial of FURUKI, Hidesaku; trial of INOUE, Fumio (CMD 3-1948, p. 97); trial of NAKAMURA, Kazuo, et al; and the trial of YAMAMOTO, Kazuharu, et al.

b. As to procedure.

(1) Selection of the commission followed the approved practice of including Army, Navy and Marine Corps officers as members of the commission (see my memorandum dated 20 February 1946 in the case of Colonel OISHI, et al). Prosecution and defense personnel were duly authorized and appointed by the convening authority.

(2) The proceedings of the commission, as authorized in the precept, were governed by the provisions of Naval Courts and Boards, except that the commission was permitted to relax the rules for naval courts and use the rules of evidence and procedure, issued and promulgated by the Supreme Commander for the Allied Powers (APO 500, 5 Dec. 1945 AG 000.5), where necessary to obtain justice.

(3) The accused was advised of and accorded all rights prescribed.

(4) The sentence is legal.

c. As to evidence.

Referring to the charge and specifications thereunder, there is sufficient competent evidence to support the commission's finding of guilty relative to the accused HARA.

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The commission found Specifications 1 and 2 "proved in part," proved except for the incidents set forth in Specification 1, subparagraphs (a), (f), (g), (h), and (l), and subparagraphs (a), (f), (g), and (h) of Specification 2, having found proved the incidents alleged in subparagraphs (b), (c), (d), (e), (i), (j), and (k) of Specification 1 and in subparagraphs (b), (c), (d), and (e) of Specification 2. The commission's finding of "proved in part" as to Specifications 1 and 2 does not affect the legality of the finding of "Guilty" as to the charge, inasmuch as the exceptions made by the commission leave the specifications still supporting the charge (Sec. 429, N.C. & B., 1937).

Sufficiency of the evidence to sustain the finding of the court should be considered by the reviewing authority, keeping in mind the duties of the court in weighing the evidence (N.C. & B., Sec. 472 (c)). The question for the reviewing authority with regard to the findings is whether there is sufficient evidence to support such a finding, not whether an opposite finding would have been justified (CMO 4-1935, p.5). Applying this standard of review, it is my opinion that the action of the commission in finding subparagraphs (a), (f), (g), (h), and (l) of Specification 1, and subparagraphs (a), (f), (g), and (h) of Specification 2 not proved, is sustainable. No inference is to be drawn therefrom as to approval or disapproval of the findings of the commission in this regard (N.C. & B., Sec. 472 $\frac{1}{2}$). Parenthetically it may be noted that error, if made by the commission in finding certain subparagraphs not proved, would not be prejudicial to the accused.

The defense presented evidence to establish:

With regard to subparagraph (a) of Specifications 1 and 2: that the incident occurred within less than three weeks of the time that the accused took command of the Fourth Fleet, which had been seriously disorganized as a result of the tremendous damage inflicted upon Truk by the surprise air attack of February 17th and 18th, 1944; and that the incident occurred at Jaluit Atoll, Marshall Islands, more than a thousand miles from the headquarters of the accused.

With regard to subparagraph (f) of Specification 1: that the incident which involved the beating of six civilians, did not occur on Dublon Island where the accused had his headquarters, but occurred on one of the smaller islands of Truk Atoll; that no responsible officer was directly involved in the incident or knew of the mistreatment of the victims at the time of the incident; that the persons who committed the beatings were certain civilian

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employees of the Navy and an Army sergeant attached to the military police; that the incident arose during the course of an investigation of an alleged spy incident; that the Army sergeant of the military police, who was not under the command of the accused, was in charge of the investigation and that the civilians who participated were acting under him (R.p. 356, 360; Exh. 52, 53).

With regard to subparagraphs (g) and (h) of Specification 1 (and similar subparagraphs (f) and (g) of Specification 2): that these incidents occurred on Nauru Island more than 1,000 miles from the headquarters of the accused; that the highest ranking participant in the first of these incidents was a lieutenant junior grade, and in the second incident, a warrant officer; that the unit commanding officer Captain Soeda, stationed at Nauru did not authorize or know of the commission of either incident prior to its occurrence and was never tried for responsibility in connection with these incidents; that communication with Nauru was extremely difficult due to its isolation, the compromise of codes, and the damage and deterioration of communication equipment.

With regard to subparagraph (1) of Specification 1 (and subparagraph (h) of Specification 2): that this killing of 200 natives under the direct orders of the detachment commander at Ocean Island occurred on August 20, 1945; that five days prior to this date the accused HARA forwarded to this subordinate unit at Ocean Island, the Imperial Rescript of the Emperor of Japan regarding surrender, together with proper instructions concerning the surrender and maintenance of order; that the accused had no knowledge that such an incident was contemplated, and received no reports concerning it.

The accused as a military commander, the Commander in Chief of the Fourth Fleet, had the duty under international law to control his subordinates (Yamashita v. Styer, 327 U.S. 1; Rules of Land Warfare (RM 27-10); Annex to the Hague Convention; Geneva Red Cross Convention). The accused was personally aware of his responsibility under military law to control his subordinates (R.p. 514). Whether the accused actually neglected his duty was a factual question which was decided by the findings of the commission. The evidence supports the conclusion that the accused did neglect his duty. The accused himself testified that the only steps he took to secure proper treatment of prisoners of war was the issuance of

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instructions on various occasions that prisoners of war should be sent to Japan (R.p. 517). Prior to his tour of duty, and during his tour of duty, the Fourth Fleet issued no standing orders or instructions to assure the proper treatment of prisoners of war by subordinate units under its command. The accused took no action to ascertain how prisoners of war or civilians were being treated by the subordinate units under his command (R.p. 518). Even after the accused learned at the conference in September 1944, of the spearing of prisoners of war, he took no steps to investigate the incident or to ascertain whether other prisoners had been mistreated, or to discipline or punish the perpetrators of the incident; and he never issued any orders to his subordinates that prisoners of war should not be mistreated or killed (R.p. 255, 256, 527).

Assuming that the accused did not personally order or know of any incident prior to its occurrence, the commission could nevertheless properly find the accused guilty of a criminal neglect of duty as charged. It is well established that command responsibility carries with it certain fundamental duties and that failure to perform these duties may constitute a criminal offense regardless of actual knowledge of the occurrence of incidents relative to such an offense. This is supported by the U.S. Supreme Court in the Yamashita case (327 U.S. 1) in applying the law and customs of war relative to war crimes, and in the recent judgment of the International Military Tribunal for the Far East in the trial of TOJO, Hideki, et al (p. 28-33, 1155, 1175, 1185, 1207). It is further supported by U.S. military courts in applying military law to U.S. military personnel as shown in the Colonel James A. Killian, U.S.A., case, approved by the Judge Advocate General, U.S. Army, 22 July 1947 (JAG F CM 318513).

There were, as was to be expected, numerous conflicts in the evidence throughout the record. It was the duty of the members of the commission in their capacity as jurors to weigh the evidence (Sec. 304, N.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Sec. 304 and following, N.C. & B., 1937), or exceeded his allowed discretion in the matter.

d. As to sentence.

The accused was sentenced to confinement for a period of six (6) years. The sentence is legal.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

2 MAR 1949

Subject: Review of the Record of Trial by a Military Commission
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In the absence of an established policy by higher authority as to the appropriate schedule of punishments, the commission must rely upon its own judgement in determining what is a just punishment in a particular case. The accused was convicted of neglect of duty on the basis of incidents which resulted in the torture of one (1) American prisoner of war, and the killing of four (4) American prisoners of war, and ten (10) natives of the Marshall Islands. These incidents occurred at Dublon Island, Truk Atoll, where the accused had his headquarters, and at Jaluit Atoll, Marshall Islands.

The accused inherited from his predecessor a severely damaged and widely scattered command. Throughout his tour of duty, transportation and communication was crippled by the vast air and sea supremacy of the United States forces in the area, which virtually held the accused a prisoner on Truk and subjected him to frequent and devastating air attacks. In view of all the circumstances surrounding the incidents which occurred on Truk and Jaluit, particularly the prevailing war time conditions, the extensive duties of the accused, and the nature of the neglect of duty, it cannot be said that the sentence is improper.

The accused was placed in confinement at Guam, War Criminal Stockade, 22 August 1946. He has been continuously held in close custody and confinement from that date to the date of trial which commenced on October 27, 1948. It is my opinion that the period of confinement of more than 26 months while under investigation and awaiting trial justifies reduction of the sentence by the convening authority, and that the action of the convening authority should affirmatively evidence that such reduction is based upon the period of confinement of the accused while awaiting trial.

e. Generally.

During the trial the defense made many objections to the admissibility of documentary evidence. The judge advocate also made certain objections. Each of these objections and the rulings of the commission have been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interests of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

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While the incidents enumerated in subparagraphs (b), (c), (d) and (e) of Specification 1 are identical with the incidents enumerated in subparagraphs (b), (c), (d) and (e) of Specification 2, the specifications are not duplicative, for the offense charged in Specification 1 is separate and distinct from the offense charged in Specification 2.

Subparagraphs (i), (j) and (k) of Specification deal with incidents in which the victims were native residents of the Marshall Islands. These incidents were not alleged in Specification 2 which dealt with the duty under the law and customs of war to protect prisoners of war and civilians in occupied territory. The enumeration of these incidents under Specification 2 would have resulted in unnecessary complications regarding the war-time status of territory previously mandated to Japan. Extensive legal controversy on this subject would inevitably arise from consideration of the question of whether these natives of Japanese ex-mandated territory (the Marshall Islands) were entitled under the law and customs of war to protection by the commanding officer of armed forces, either as residents in an enemy occupied territory, or because of their peculiar international status.

In accordance with the Judge Advocate General's action (OO-Tachibana, Yoshio, et al/A17-20 I(3-19-47 HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld A17-20/00 (6-25-47) 154578) and the Judge Advocate General's action (OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:HMM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem OO-INOUE, Fumio/A17-10 OQ(2-20-48) 159116), the findings on either subparagraphs (b), (c), (d) and (e) of Specification 1, or subparagraphs (b), (c), (d) and (e) of Specification 2 could be set aside. It is my opinion that any action with a view to setting aside the findings should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Naval Forces, Marianas or the Commander in Chief, Pacific and U.S. Pacific Fleet.

7. OPINION: It is the opinion of the undersigned that:
- The military commission was legally constituted.
 - The commission had jurisdiction of the person and offenses.
 - The evidence supports the findings of "proved in part" and

"guilty."

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d. The record discloses no errors materially prejudicial to the
accused.

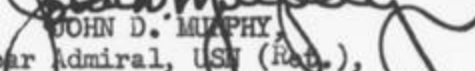
e. The sentence is legal.

8. RECOMMENDATIONS:

It is recommended: (1) that the proceedings, findings and sentence be approved by the convening and reviewing authorities; (2) that in view of the fact that the accused has been confined under investigation and awaiting trial since 22 August 1946, the convening authority accordingly reduce the sentence of the accused a period equal to the time already served in confinement; (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

9. ACTION:

Actions designed to carry the above recommendations into effect, should they meet with your approval, are submitted herewith as enclosures (B) and (C).


JOHN D. MURPHY
Rear Admiral, USN (Ret.),
Director War Crimes, Pacific Fleet.

cc: JAG, USN.

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FF12/Al7-10(2)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

The military commission, composed of Army, Navy and Marine Corps officers, in the foregoing case, by precept dated 25 October 1948, was ordered convened 25 October 1948, or as soon thereafter as practicable by the Commander Naval Forces, Marianas pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, Pacific and U.S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. 1946; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinCPac and CinCPacFlt ltr dtd. 1 August 1948, CinCPac serial 2955 and CinCPacFlt serial 3490) and by the Judge Advocate General of the Navy (JAG Desp. 311730Z July '46). The commission was authorized to try this case as indicated in the precept. The order for trial (charge and specifications) was issued 5 October 1948 and served on the accused 8 October 1948. The trial was held under 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 December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

The proceedings, findings, and sentence in the foregoing case of HARA, Chuichi, former vice admiral, IJN, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since August 22, 1946, the period of confinement is reduced to three (3) years and six (6) months.

HARA, Chuichi, former vice admiral, IJN, will be transferred to the custody of the Commanding General of the 8th U.S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan.

C. A. Pownall
C. A. POWNALL,
Rear Admiral, U.S. Navy,
The Commander Naval Forces Marianas.

ENCLOSURE (B)

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

Headquarters of the Commander in Chief

CinCPacFlt File

c/o Fleet Post Office,
San Francisco, California.

Serial:

The proceedings, findings, and sentence as mitigated in the foregoing case of HARA, Chuichi, former vice admiral, IJN, and the action of the convening authority are approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial 01P22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy.

DEWITT C. RAMSEY,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

ENCLOSURE (C)

0522

INFO REF//ARCH//JAG//

13 JAN 1945

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

THE UNITED STATES MILITARY COMMISSION TRIAL IN CASE OF SHIMIZU
YASUO FOR THE VICE ADMIRAL IJN ON CHARGE OF VIOLATION OF THE LAW AND
OF THE SPECIFICATIONS NAMELY PARAGRAPH ONE PARAGRAPH TWO OF
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AND ABUSE AMERICAN PRISONERS OF WAR AND CIVILIAN RESIDENTS OF
THE MARIANA ISLANDS AND PARAGRAPH TWO PARAGRAPH THREE OF ARTICLE 36
FAILURE TO PROTECT AMERICAN PRISONERS OF WAR FROM MISTREATMENT AND
MURDER COMPLETED 11 JANUARY 49 WITH FOLLOWING RESULTS X BOTH
SPECIFICATIONS PROVED IN PART X GUILTY UNDER
X X SENTENCED SIX

11/07232 JAN BNPH

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02-JDM-hn

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 1362

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

1. During period 27 October 1948 to 11 January 1949, HARA, Chuichi, former vice admiral, Imperial Japanese Navy, was tried by a United States Military Commission, convened by order of the Commander Naval Forces, Marianas, dated 25 October 1948, at the Headquarters, Commander Naval Forces, Marianas, Guam, Marianas Islands, on the below listed charge and specifications.

CHARGE: VIOLATION OF THE LAW AND CUSTOMS OF WAR (two specifications)

<u>Spec.</u>	<u>Nature of Offense</u>	<u>Place and Date of offenses</u>	<u>Name of Accused</u>
1	Failed to control operations of members of his command by permitting them to torture, abuse, inhumanely treat and kill American prisoners of war then held captive by the armed forces of Japan, British nationals, a Chinese civilian, and residents of the Caroline, Marshall, Nauru, and Ocean Islands, as follows:		HARA
(a)	Kill three American prisoners of war by shooting and stabbing.	Marshall Islands, 10 March 1944	
(b)	Kill one American prisoner of war by stabbing.	Dublon Island, Truk Atoll, 20 June 1944	
(c)	Kill one American prisoner of war by beheading.	Dublon Island, Truk Atoll, 20 June 1944.	
(d)	Torture, abuse and inhumane treatment by surgical explorations of one American prisoner of war.	Dublon Island, Truk Atoll, 20 June 1944.	
(e)	Kill two American prisoners of war by bayoneting, spearing, and beheading.	Dublon Island, Truk Atoll, 20 July 1944.	
(f)	Torture, abuse and inhumane treatment of six civilians, residents of Nauru Island, by beating them.	Nauru Island 28 August 1944	
(g)	Torture, abuse and inhumane treatment of one civilian, resident of Nauru Island, by beating him.	Nauru Island About three days during Sept. 1944.	
(h)	Kill one Chinese civilian, resident of Nauru Island, by beating with sticks.	Nauru Island 3 December 1944	



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Serial: 1362

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48 (Continued)

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

- (i) Punish as spies, without previous trial, seven natives, by assaulting, striking, wounding and killing, with a deadly weapon. Jaluit Atoll, Marshall Islands, 8 April 1945
- (j) Punish as a spy, without previous trial one native by assaulting, striking, wounding, and killing, with a deadly weapon. Jaluit Atoll, Marshall Islands, 13 April 1945
- (k) Punish as spies, without previous trial two natives, by assaulting, striking, wounding, and killing, with a deadly weapon. Jaluit Atoll, Marshall Islands, 10 August 1945
- (l) Kill two hundred (200) British nationals all civilian residents of the Gilbert and Ellice Islands Colony, by shooting. Ocean Island 20 August 1945
- 2 Failed to protect American prisoners of war then held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru and Ocean Islands, said islands occupied by armed forces of Japan under his command and subject to his control and supervision by permitting the following: HARA
- (a) Kill three American prisoners of war by shooting and stabbing. Marshall Islands, 10 March 1944
- (b) Kill one American prisoner of war by stabbing. Dublon Island, Truk Atoll, 20 June 1944.
- (c) Kill one American prisoner of war by beheading. Dublon Island, Truk Atoll, 20 June 1944.
- (d) Torture, abuse and inhumane treatment by surgical explorations of one American prisoner of war. Dublon Island, Truk Atoll, 20 June 1944.
- (e) Kill two American prisoners of war by bayoneting, spearing, and beheading. Dublon Island, Truk Atoll, 20 July 1944.
- (f) Torture, abuse and inhumane treatment of one civilian, resident of Nauru Island, by beating him. Nauru Island, About three days during Sept. 1944.
- (g) Kill one Chinese civilian, resident of Nauru Island, by beating with sticks. Nauru Island, 3 December 1944.

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02-JDM-hn

Serial: 1752

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48 (Continued)

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

- (h) Kill two hundred (200) British Ocean Island
nationals, all civilian residents of 20 August 1945
the Gilbert and Ellice Islands Colony,
by shooting.

FINDINGS: The Commission on 11 January 1949 made the following findings:

"The first specification of the charge proved in part, proved except the words 'Nauru Island, Ocean Island,' in line four, the words 'British nationals, a Chinese civilian,' in lines twelve and thirteen,

the words 'the Caroline Islands,' in line thirteen, the words 'Nauru Island and Ocean Island,' in line fourteen, the words '(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Lineman, Jaluit Atoll, Marshall Islands, by M. SUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASHIKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.'

the words '(f) The unlawful torture, abuse and inhumane treatment of six (6) civilians, residents of Nauru Island, namely, Ruben FOIAPPE, Marie FOIAPPE, Rudolph HARRIS, Albert HARRIS, Father Pierre CLIVAZ, and Father Alois KLYSER, by cruelly beating them, on or about August 28, 1944, at Truk Atoll, Caroline Islands, by SHOJI, Takashi, also known as SYOJI, Takashi, civilian employee of the Imperial Japanese Navy, ISHIWARA, first name unknown, a naval civil guard, TAKENOUCHI, first name unknown, a naval civil guard, SHOJI, Hideo, also known as SYOJI, Hideo, a naval civil guard, ANETAI, Soji, a naval civil guard, all attached to the Fourth Naval Construction Department, SAKAMOTO, Takaharu, sergeant of the Japanese Military Police Corps, and others, names to the relator unknown, all attached to the Imperial Japanese armed forces at Truk Atoll, Caroline Islands.'

the words '(g) The unlawful torture, abuse and inhumane treatment of EUMI, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUYADA, Eiyo, then a warrant officer, IJN, TANAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.'

the words '(h) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hasuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.'

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02-JDM-hn

Serial: 1362

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48 (Continued)

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

the words '(1) The unlawful killing of about two hundred (200) British nationals, namely, UENATEITI, FALAILIV, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KOYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieutenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATO, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKURA, Vataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiji, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit.' which words are not proved.

The second specification of the charge proved in part, proved except the words 'the Marshall Islands, Nauru Island, Ocean Island,' in line four, the words 'and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision,' in lines twelve, thirteen, fourteen, and fifteen.

the words 'and said residents of Nauru Island and Ocean Island,' in lines sixteen and seventeen,

the words '(a) The unlawful killing of three unarmed

American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aneaman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAWA, Toshimoto, warrant officer, IJN, all attached to the military installations of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.'

the words '(f) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, MAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.'

FF12/117-10(2)
02-JDM-hn

Serial: 1362

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48 (Continued)

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

the words '(g) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozo, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.'

the words '(h) The unlawful killing of about two hundred (200) British nationals, namely, UELANTEITI, PALAILIWA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIKUCHI, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadato, also known as TSHII, Sadato, lieutenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIKE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit.'

which words are not proved.

And that the accused, Hara, Chuichi, is of the charge guilty."

SENTENCE: The Commission on 11 January 1949 sentenced the accused as follows:

"The commission, therefore, sentences him, Hara, Chuichi, to be confined for a period of six (6) years."

2. On 2 March 1949 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings, and sentence in the foregoing case of HARA, Chuichi, former vice admiral, IJN, are approved. In view, however, of the fact that the accused has been held in confinement under investigation and awaiting trial since August 22, 1946, the period of confinement is reduced to three (3) years and six (6) months.

FF12/117-10(2)
02-JDM-hn

Serial: 1362

3 MAR 1949

MILITARY COMMISSION ORDER NO. 48 (Continued)

(In the case of HARA, Chuichi, former Vice Admiral, Imperial Japanese Navy)

"HARA, Chuichi, former vice admiral, IJN, will be transferred to the custody of the Commanding General of the 8th U.S. Army via the first available transportation to serve his sentence of confinement in Sugamo Prison, Tokyo, Japan."

C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

cc: CinCPacFlt (3)
JAG, USN (3) ✓
SCAP (3)
ComGen U.S. 8th Army, Japan (3)
JAG, U.S. Army, War Crimes Division (3)
CO, Marine Barracks (3)
ComMarianas Liaison Officer, Tokyo, Japan (3)
CO, Sugamo Prison, Tokyo, Japan (3)

AUTHENTICATED:

H. D. Winston
H. D. WINSTON,
Flag Secretary.

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Case of
HARA, Chuichi
October 27, 1948

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

VOLUME 1

0530

Case of
HARA, Chuichi
October 27, 1948

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

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02-JDM-hn

THE PACIFIC COMMAND
UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 16462

25 OCT 1948

From: The Commander Naval Forces, Marianas.
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 the Commander Naval Forces, Marianas and further by the specific authority vested in me by the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinC-PacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinCPac and CinCPacFlt ltr. dtd. 1 Aug. 1948, CinCPac Serial 2955 and CinCPacFlt Serial 3490), and by the Judge Advocate General of the Navy (JAG Desp. 311730Z, July 1946), a military commission is hereby ordered to convene at the Headquarters, Commander Naval Forces, Marianas on Guam, Marianas Islands at 10 o'clock a.m., on Monday, October 25, 1948, 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,
Lieutenant Colonel Harry F. McCORMICK, Quartermaster Corps,
United States Army Reserve,
Lieutenant Colonel Newton L. CHAMBERLAIN, Signal Corps,
United States Army,
Lieutenant Commander Brander W. LEE, junior, U. S. Naval Reserve,
Lieutenant Commander Ralph I. GERBER, U. S. Navy,
Captain Kermit H. SHELLEY, U. S. Marine Corps, and of
Lieutenant Commander Joseph A. REGAN, U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, either of whom is authorized to act as such.

TAKANO, Junjiro, furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, both of whom are lawyers, and SANAGI, Sadamu, a former captain, Imperial Japanese Navy, furnished by the Japanese Government, 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 the accused.

In trials of accused charged with offenses against nationals of foreign governments and natives of islands of the Trust Territory of the Pacific Islands duly accredited representatives of the governments and natives concerned are authorized to participate as observers.

3. This military commission is hereby authorized and directed to take up such cases, if any, as may be now pending before the military commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is president appointed by Commander Marianas Area precept of July 27, 1948, except such cases the trial of which may have been commenced.

0538

FF12/417-10(1)
02-JDM-hn

THE PACIFIC COMMAND
UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 16462

25 OCT 1948

Subject: Precept for a military commission.

4. The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including offenses referred to in the Commander Marianas despatch cited in paragraph 1 above. It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above and white persons 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.

5. 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 punishments as the commission shall determine to be proper.

6. 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", and modifications thereof), as are necessary to obtain justice. The commission may adopt such other rules and forms, not inconsistent herewith, as it considers appropriate.

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 this 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.

/s/ C. A. POWNALL,
C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

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

4 true copy. Attest:

David Bolton
DAVID BOLTON,
Lieutenant, U. S. Navy,
Judge Advocate.

- 2 -

A (2)

0539

NH44/A17-10(1)

U. S. NAVAL HOSPITAL
NAVAL MEDICAL CENTER
GUAM, MARIANAS ISLANDS

October 29, 1948.

From: Lieutenant Commander Maurice A. Canon,
Medical Corps, U.S. Navy.
To : Commander Naval Forces, 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 28 October 1948, I found Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, sick and unfit for duty. I estimate that his illness will continue for an indefinite period.

/s/ Maurice A. Canon.

FF12/A17-10(1)
02-AGR-fsk

UNITED STATES PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS

FIRST ENDORSEMENT

30 October 1948.

From: Rear Admiral Arthur G. ROBINSON, U. S. Navy,
President, Military Commission, Guam, Marianas Islands.
To : Commander Naval Forces, Marianas.
1. Forwarded.

/s/ Arthur G. Robinson.

A true copy. Attest.

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

M

0540

FF12/A17-13(2)
02-JDM-hn

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial:

14375

5 OCT 1948

From:
To:

Commander Naval Forces, Marianas.
Lieutenant Commander Joseph A. Regan, USN and/or
Lieutenant David Bolton, USN and/or
Lieutenant James P. Kenny, USN and/or
your successor in office as Judge Advocate, Military
Commission, Commander Naval Forces, Marianas.

Subject:

Charge and Specifications in the case of HARA, Chuichi.

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.

RECEIVED
OCT 10 1948
JDM

THE ABOVE CHARGE AND SPECIFICATIONS WERE RECEIVED BY THE COMMANDER NAVAL FORCES MARIANAS ON OCTOBER 10, 1948.

RECEIVED
OCT 10 1948
JDM

THE CHARGE AND SPECIFICATIONS WERE RECEIVED BY THE COMMANDER NAVAL FORCES MARIANAS ON OCTOBER 10, 1948.

0541

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that HARA, Chuichi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at the Caroline Islands, the Marshall Islands, Nauru Island, Ocean Island, and other places within the area of his command, during the period from February 23, 1944 to September 2, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, British nationals, a Chinese civilian, and residents of the Caroline Islands, the Marshall Islands, Nauru Island and Ocean Island, in violation of the law and customs of war, as follows:

- (a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.
- (b) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by stabbing, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the Forty-first Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the Forty-first Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.
- (c) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by beheading, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the Forty-first Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

Received a true and correct copy, both in English and Japanese, of the Charge and specifications thereunder on the 8th day of October 1948.

C. Hara
HARA, Chuichi.

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

Eugene E. Kerrick, junior
Eugene E. Kerrick, junior,
Lieutenant, U.S. Naval Reserve,
Interpreter.

0543

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that HARA, Chuichi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at the Caroline Islands, the Marshall Islands, Nauru Island, Ocean Island, and other places within the area of his command, during the period from February 23, 1944 to September 2, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet, to control, as it was his duty to do, the operations of members of his command and persons subject to his control and supervision, permitting them to torture, abuse, inhumanely treat and kill American prisoners of war held captive by the armed forces of Japan, British nationals, a Chinese civilian, and residents of the Caroline Islands, the Marshall Islands, Nauru Island and Ocean Island, in violation of the law and customs of war, as follows:

- (a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.
- (b) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by stabbing, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the Forty-first Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the Forty-first Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.
- (c) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by beheading, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the Forty-first Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(d) The unlawful torture, abuse and inhumane treatment of one (1) American prisoner of war, name to the relator unknown, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(e) The unlawful killing of two (2) American prisoners of war, names to the relator unknown, by bayoneting, spearing, and beheading, on or about July 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital and Chief Surgeon of the Fourth Fleet, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, KAMIKAWA, Hidehiro, then a surgeon lieutenant, IJN, OISHI, Tetsuo, then a surgeon lieutenant, IJN, ASAGURA, Shunpei, then an ensign, IJN, YOSHIZAWA, Kensaburo, then a corpsman chief petty officer, IJN, KIKKA, Machiro, then a corpsman chief petty officer, IJN, WATANABE, Mitsuo, then a paymaster chief petty officer, IJN, TANABE, Mamoru, then a corpsman chief petty officer, IJN, IUKAI, Yoshihisa, then a corpsman chief petty officer, IJN, KAWASHIMA, Tatsusaburo, then a corpsman petty officer first class, IJN, SAWADA, Tsuneo, then a paymaster petty officer first class, IJN, TANAKA, Tokunosuke, then a corpsman petty officer first class, IJN, TAKAISHI, Susumu, then a corpsman petty officer first class, IJN, ANABORI, Teichiro, then a corpsman petty officer second class, IJN, KUHABARA, Hiroyuki, then a corpsman petty officer second class, IJN, NAMATAME, Kazuo, then a corpsman petty officer second class, IJN, TSUTSUI, Kisa-buro, then a corpsman petty officer second class, IJN, MITSUNASHI, Kichigoro, then a corpsman petty officer second class, IJN, all attached to and serving at the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, at Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(f) The unlawful torture, abuse and inhumane treatment of six (6) civilians, residents of Maura Island, namely, Ruben FOLIAPE, Marie FOLIAPE, Rudolph HARRIS, Albert HARRIS, Father Pierre CLIVAZ, and Father Alois MAYSER, by cruelly beating them, on or about August 26, 1944, at Truk Atoll, Caroline Islands, by SHOJI, Takashi, also known as SYOJI, Takashi, civilian employee of the Imperial Japanese Navy, ISHIWARA, first name unknown, a naval civil guard, TAKENOUCHI, first name unknown, a naval civil guard, SHOJI, Hideo, also known as SYOJI, Hideo, a naval civil guard, ANETAI, Soji, a naval civil guard, all attached to the Fourth Naval Construction Department, SAKAMOTO, Takaharu, sergeant of the Japanese Military Police Corps, and others, names to the relator unknown, all attached to the Imperial Japanese armed forces at Truk Atoll, Caroline Islands.

(g) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(h) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island by HATAKEYAMA, Yasunori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIWUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozi, also known as TOMINAGA, Gorozi, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(i) The unlawful punishment as spies, without previous trial, of seven (7) unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be RALIEJAP, the wife of RALIEJAP, NEIBET, ANCHIO, OCHIRA, SIRO, and LACQJIRIK, by assaulting, striking, wounding, and killing, with an instrument, a deadly weapon, exact description to the relator unknown, on or about April 8, 1945, on Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, then a rear admiral, IJN, commanding officer of the Sixty-second Naval Guards, Jaluit Atoll, Marshall Islands, and INOUE, Fumio, then a captain, IJA, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands.

(j) The unlawful punishment as spies, without previous trial, of one (1) unarmed native inhabitant of the Marshall Islands, exact name to the relator unknown, but believed to be RALIME, by assaulting, striking, wounding, and killing, with an instrument, a deadly weapon, exact description to the relator unknown, on or about April 13, 1945, on Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, then a rear admiral, IJN, commanding officer of the Sixty-second Naval Guards, Jaluit Atoll, Marshall Islands, and INOUE, Fumio, then a captain, IJA, attached to the Second Battalion, First South Seas Detachment, attached to the military installations of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands.

(k) The unlawful punishment as spies, without previous trial, of two (2) unarmed native inhabitants of the Marshall Islands, exact names to the relator unknown, but believed to be MEJKANE and MELEIN, by assaulting, striking, wounding, and killing, with an instrument, a deadly weapon, exact description to the relator unknown, on or about August 10, 1945, on Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, commanding officer of the Sixty-second Naval Guards, and FURUKI, Hidesaku, then a major, IJA, commanding officer of the Second Battalion, First South Seas Detachment, of the Imperial Japanese armed forces, Jaluit Atoll, Marshall Islands.

(1) The unlawful killing of about two hundred (200) British nationals, namely, UEAUTEITI, FALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOMURA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Sadazo, lieutenant junior grade, IJN, IIJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKURA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiji, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Haruaki, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

Specification 2

In that HARA, Chuichi, then a vice admiral, IJN, Commander in Chief of the Fourth Fleet, Imperial Japanese Navy, and while so serving as the Commander in Chief of the said Fourth Fleet, did, at the Caroline Islands, the Marshall Islands, Nauru Island, Ocean Island, and other places within the area of his command, during the period from February 23, 1944 to September 2, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the Commander in Chief of the said Fourth Fleet to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, American prisoners of war, held captive by the armed forces of Japan under his command and subject to his control and supervision, and residents of Nauru Island and Ocean Island, then residing at said Nauru Island and Ocean Island occupied by armed forces of Japan under his command and subject to his control and supervision, in that he permitted the unlawful torture, abuse, inhumane treatment, and killing of said prisoners of war and said residents of Nauru Island and Ocean Island, by members of the armed forces of Japan, in violation of the law and customs of war as follows:

(a) The unlawful killing of three (3) unarmed American prisoners of war, names to the relator unknown, by shooting and stabbing, on or about March 10, 1944, on the island of Aineman, Jaluit Atoll, Marshall Islands, by MASUDA, Nisuki, rear admiral, IJN, YOSHIMURA, Tsugio, lieutenant junior grade, IJN, KAWACHI, Mamoru, ensign, IJN, TASAKI, Tadashi, ensign, IJN, TANAKA, Toshimoto, warrant officer, IJN, all attached to the military installation of the Imperial Japanese Navy at Jaluit Atoll, Marshall Islands.

(b) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by stabbing, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, NAGASHIMA, Mitsuo, then a chief petty officer, IJN, attached to the Forty-first Naval Guards, TANAKA, Sueta, then a leading seaman, IJN, attached to the Forty-first Naval Guards, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(c) The unlawful killing of one (1) American prisoner of war, name to the relator unknown, by beheading, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, NAKASE, Shohichi, then a lieutenant commander, IJN, and acting executive officer of the Forty-first Naval Guards, ERIGUCHI, Takeshi, then a dentist ensign, IJN, attached to the Forty-first Naval Guards, KOBAYASHI, Kazumi, then a corpsman warrant officer, IJN, attached to the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands.

(d) The unlawful torture, abuse and inhumane treatment of one (1) American prisoner of war, name to the relator unknown, by conducting, before a group of Japanese nationals, surgical explorations in and upon the live body of said American prisoner of war, consisting of subcutaneous cuts on the breast, abdomen, scrotum, right thigh, and right foot of the said American prisoner of war, on or about June 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by ASANO, Shimpei, then a captain, IJN, and commandant of the Forty-first Naval Guards, UENO, Chisato, then a surgeon lieutenant commander, IJN, and acting head medical officer of the Forty-first Naval Guards, and others to the relator unknown, all attached to the military installations of the Imperial Japanese Navy, Dublon Islands, Truk Atoll, Caroline Islands.

(e) The unlawful killing of two (2) American prisoners of war, names to the relator unknown, by bayoneting, spearing, and beheading, on or about July 20, 1944, at Dublon Island, Truk Atoll, Caroline Islands, by IWANAMI, Hiroshi, then a surgeon captain, IJN, Commanding Officer of the Fourth Naval Hospital and Chief Surgeon of the Fourth Fleet, attached to the military installations of the Imperial Japanese Navy, Dublon Island, Truk Atoll, Caroline Islands, KAMIKAWA, Hidehiro, then a surgeon lieutenant, IJN, OISHI, Tetsuo, then a surgeon lieutenant, IJN, ASAMURA, Shunpei, then an ensign, IJN, YOSHIZAWA, Kensaburo, then a corpsman chief petty officer, IJN, HOMMA, Hachiro, then a corpsman chief petty officer, IJN, WATANABE, Mitsuo, then a paymaster chief petty officer, IJN, TANABE, Mamoru, then a corpsman chief petty officer, IJN, MUKAI, Yoshihisa, then a corpsman chief petty officer, IJN, KAWASHIMA, Tatsusaburo, then a corpsman petty officer first class, IJN, SAWADA, Tsuneo, then a paymaster petty officer first class, IJN, TANAKA, Tokunosuke, then a corpsman petty officer first class, IJN, TAKAISHI, Susumu, then a corpsman petty officer first class, IJN, AKABORI, Toichiro, then a corpsman petty officer second class, IJN, KUWABARA, Hiroyuki, then a corpsman petty officer second class, IJN, NAMATAME, Kazuo, then a corpsman petty officer second class, IJN, TSUTSUI, Kisaburo, then a corpsman petty officer second class, IJN, MITSUHASHI, Kichigoro, then a corpsman petty officer second class, IJN, all attached to and serving at the Fourth Naval Hospital, attached to the military installations of the Imperial Japanese Navy, at Dublon Island, Truk Atoll, Caroline Islands, and others to the relator unknown.

(f) The unlawful torture, abuse and inhumane treatment of RUKA, a civilian, resident of Nauru Island, by beating him upon the head and body with sticks and closed fists, and by tying him to a tree for approximately two nights and three days, during the period of about three days during the month of September 1944, at Nauru Island by OGAWA, Haruzo, then a lieutenant junior grade, IJN, SAKODA, Hiroe, also known as SEKOTA, Hiroe, then a lieutenant junior grade, IJN, NAKAJIMA, Hiroshi, then a warrant officer, IJN, TAIRA, Tokuji, also known as TAIRI, Tokuji, then a warrant officer, IJN, TSUKADA, Eizo, then a warrant officer, IJN, TAKAHASHI, Shigenobu, then a warrant officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(g) The unlawful killing of NG LEE, a Chinese civilian, resident of Nauru Island, by beating with sticks, on or about December 3, 1944, at Nauru Island, by HATAKEYAMA, Yasuori, also known as HATAKEYAMA, Yosutaki, paymaster warrant officer, IJN, TORIUMI, Tomeo, also known as TORIUMI, Tomeo, engineering petty officer, IJN, TOMINAGA, Gorozo, also known as TOMINAGA, Gorozo, paymaster chief petty officer, IJN, SANO, Takeo, chief petty officer, IJN, ITO, Hiroshi, paymaster chief petty officer, IJN, SASAKI, Azuma, also known as SASAKI, Hazuma, paymaster chief petty officer, IJN, and CHIBA, Tsuneo, paymaster chief petty officer, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

(h) The unlawful killing of about two hundred (200) British nationals, namely, UBANTEITI, PALAILIVA, and other persons unknown, all civilian residents of the Gilbert and Ellice Islands Colony, by shooting, on or about August 20, 1945, at Ocean Island, by SUZUKI, Naomichi, lieutenant commander, IJN, NARA, Yoshio, lieutenant, IJN, MIYASAKA, Denji, lieutenant, IJN, KIYOHARA, Naoyoshi, lieutenant junior grade, IJN, ISHII, Sadazo, also known as ISHIE, Satazo, lieutenant junior grade, IJN, IJIMA, Tadashi, ensign, IJN, SAKATA, Jiro, lieutenant, IJN, SHINOZAWA, Yoshiharu, ensign, IJN, KONNO, Hiroshi, warrant officer, IJN, ARAI, Kakuzo, chief petty officer, IJN, SAKUMA, Wataru, lieutenant, IJN, OTOMO, Torizo, lieutenant junior grade, IJN, SAKAMOTO, Chujiro, lieutenant junior grade, IJN, YAJIMA, Eiichi, lieutenant junior grade, IJN, YAMAGUCHI, Nobuaki, lieutenant, IJN, HIRAKI, Sakae, also known as HIRAKI, Sakai, lieutenant junior grade, IJN, TSUCHIIE, Masataro, lieutenant junior grade, IJN, HANAWA, Eiichi, lieutenant junior grade, IJN, YOSHIDA, Itsuo, lieutenant junior grade, IJN, SUGINO, Tsuchinosuke, ensign, IJN, and YASUDA, Harumi, ensign, IJN, all attached to the Sixty-seventh Naval Garrison Unit.

C. A. Pownall

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

cc: JAG, USN

太平洋方面部隊
及合衆國太平洋艦隊

FF-11/AE-1111
O-1111-1111

ニリト海軍部隊ニリトカロリニ海軍部隊
及トニトカロリニ海軍司令部
大一小七五五五 昭和三十三年一月五日

発 二リト海軍部隊司令部
合衆國海軍少佐 ジョージ・A・リーガン及又は
合衆國海軍大尉 デビッド・ホルト及又は
合衆國海軍大尉 ジョージ・ス・P・ケニ及又は
ニリト海軍部隊司令部軍法委員会所長
トニトの貴官の後任者

記 序 一、訴訟に於ける起訴及非状項目

一、前記の者は貴官が所長たる軍法委員会
に於て前記の起訴及非状項目につき裁判せら
るべきである。よって貴官は之の旨を軍法委員会に
は通報し、裁判の日時を被告に通報し、被告側
弁護士の全証人を召喚せよ。

起訴

戦争法規並に習慣に違反

罪状項目一

日本帝國海軍や四艦隊司令長官當時日本帝國

海軍中將原由一、前記の四艦隊司令長官

として勤務中、アメリカ合衆国連合諸国及その属領

が日本帝國と戦争状態に在り昭和十九年二月

二日より昭和二十年九月二日に至る間カリン諸島より

マーヤ諸島、パール島、マーヤン島其他数島の指揮

区域内の場所を在る彼、指揮下の人々及び彼の

抑留施設下には延擧して人々の行動を抑制

する、前記の四艦隊司令長官としての職責を

それか彼の職責を有するに拘らず違法的にこれ

を無視し遂行する、彼等に當時日本軍隊に抑留

されてゐたアメリカ合衆国、中国人^{（名）}カリン

諸島、マーヤに諸島、パール島、マーヤン島の住

民を苛責、酷使虐待及殺害すること許可

し以て左記の如く戦争法規及慣習に違反

せり。

(A) 昭和十九年三月十日頃「マーシャル諸島ヤル」
環礁「アイネマ」島に於て「マーシャル諸島ヤル」
環礁の日本帝国海軍軍事施設に配属せられて
ゐた海軍少将升田仁助海軍中尉吉村次男
海軍少尉河内守、海軍少尉田崎正、海軍
兵曹長田中俊文による射撃及刺突による
当局には姓名不詳の三名の武装してゐない
アメリカ俘虜の違法的殺害。

(B) 昭和十九年六月二十日頃「カロリ」諸島「トラツク」環礁
夏島の日本帝国海軍軍事施設に配属せられて
ゐた「十四」警備隊司令当時海軍大佐浅野新平
「十四」警備隊軍医長代理当時海軍軍医少佐
上野千里、「十四」警備隊副長代理当時海軍
少佐中瀬庄七、「十四」警備隊付当時海軍上等兵
曹永島光男、「十四」警備隊所当時水兵長田中
未太其他当局には姓名不詳者による刺突による
当局には姓名不詳の一名の「アメリカ」俘虜の違法的
殺害。

(C) 昭和十九年六月二十日頃カロリン諸島トラック
環礁(夏島)に於てカロリン諸島トラック環礁(夏島)
の日本帝國海軍軍事施設に配属せられていた
カ四十警備隊司令当時海軍大佐浅野
新平、カ四十警備隊軍医長代理当時海
軍軍医少佐上野千星、カ四十警備隊
副長代理当時海軍少佐中瀬立七、カ四
十警備隊附当時海軍歯科医少尉
江里口武、カ四十警備隊附当時衛生兵
曹長小林和三及其他当局には姓名不
詳者による斬首による当局者には姓名不詳
の一人のアメリカ俘虜の連発的殺害。

(D) 昭和十九年六月二十二日頃カロリン諸島トラック環礁
(夏島)に於てカロリン諸島トラック環礁(夏島)の日
本帝國海軍軍事施設に配属せられていたカ四十
警備隊司令当時海軍大佐浅野新平、カ四十
警備隊軍医長代理当時海軍軍医少佐上野
千星其他当局には姓名不詳者が一団の日本人
面前に於て一名の当局に姓名不詳のアメリカ
俘虜の胸部腹部陰囊、右大腿部及右足

(E)

昭和十九年七月二十日、カリニン諸島トウ
ツク環礁自父島に於てカリニン諸島トウ
ツク環礁自父島の日本帝國海軍軍施設
に配属せられたる、オ四海軍病院長
オ四海軍隊軍医長、当時海軍軍医大佐
岩波浩、カリニン諸島トウツク環礁自父島
の日本帝國海軍軍施設に配属せられたる、オ四海
軍病院に配属、重傷部中の、当時海軍軍
医大尉、神川平、当時海軍軍医大尉
大石鉄夫、当時海軍軍医大尉、津村春平、当時
海軍上士衛生兵曹、日澤建三郎、当時海
軍上士衛生兵曹、本間八郎、当時海軍上
士衛生兵曹、日澤一夫、当時海軍上士
衛生兵曹、七部衛、当時海軍上士衛生兵
曹、向井義久、当時海軍上士衛生兵曹、河嶋
辰三郎、当時海軍上士衛生兵曹、日澤恒
雄、当時海軍上士衛生兵曹、田中恵二、当時
海軍上士衛生兵曹、向井進、当時海軍上
士衛生兵曹、赤塚宗一郎、当時海軍上
士衛生兵曹、日澤原博之、当時海軍上士
衛生兵曹、全田目一田、当時海軍上士衛生
兵曹、日澤井三郎、当時海軍上士衛生兵
曹、三橋志立郎、及其他姓名不詳者が、当
局には姓名不詳の二名の、一より、終常も
銃剣で刺し、槍で刺し、斬首し、違法的に殺
害したと。

(ii)

(4)

(44)

当時海軍上士主計兵曹千原喜雄がサカ
島居住の中国民間人2名を殺害した
ことにより、違法的に殺害したと。

(I) 昭和三十三年四月八日、東京に諸島ヤマト環礁
に於て東京に諸島ヤマト環礁の日本軍国
軍事施設に配属せられた、東京に諸島ヤマト
隊司令官は海軍少将井田に力及、南洋支
隊第二大隊、当時陸軍大尉中上文夫が正
確なる姓名は当局には不明なものと
目付けられた。一名の武蔵一、東京に諸島
の原住民を忌み、即ち当局には詳細不明
の先遣隊、武蔵一、東京に諸島
殺害することにより、裁判に訴え、東京に諸島
の違法行為を処罰を行つた。

(J) 昭和三十三年四月十三日、東京に諸島ヤマト環礁
に於て東京に諸島ヤマト環礁の日本軍国
軍事施設に配属せられた、東京に諸島ヤマト
隊司令官は海軍少将井田に力及、南洋支
隊第二大隊、当時陸軍大尉中上文夫が正
確なる姓名は当局には不明なものと
目付けられた。一名の武蔵一、東京に諸島
の原住民を忌み、即ち当局には詳細不明
の先遣隊、武蔵一、東京に諸島
殺害することにより、裁判に訴え、東京に諸島
の違法行為を処罰を行つた。

(K)

昭和二十年八月十日頃 マーシャル諸島ヤマト環礁
に於てマーシャル諸島ヤマト環礁の日本赤国重
隊のオカキ無弦備隊司令当時海軍少将什田
仁助及オカキ南洋支隊オカキ大隊長当時陸軍
少佐三木不承が正確なる姓名は当局には不
明なるオカキニ及オカキと目にはある二人の
武官を「おかい」マーシャル諸島の原住民を名
具即ち当局には詳細不明の先渡する武官に
よつて「おかい」攻撃偽言及殺害するといふ
裁判するところにはスパイとして。違法的に処
を行つたこと。

(L)

昭和二十年八月二十日頃 マーシャル諸島に於てオカキ
大務備隊所海軍少佐鈴木通彦海軍大尉
奈良原直美海軍大尉佐々木傳治海軍中尉
清原直美海軍中尉正井定藏又はインエ
サタツウ海軍少尉飯島重海軍大尉後田
二郎海軍少尉佐藤美春海軍大尉曹長
今野浩海軍上士矢野志にオカキ海軍
大尉佐久間彌海軍中尉大友西蔵海軍
中尉山本忠次郎海軍中尉大嶋エイイチ海
軍大尉山口健章海軍中尉平木繁木又は平
木サカイ海軍中尉土池政太郎海軍中尉高
木次海軍中尉土田急進海軍少尉石野
士生助海軍少尉安田春美がギンバート及エ
リス諸島植民地に居住の民間人として。名
のオカキ人即ちウエアンチ、フレイリ、その他当
局には不明の人々を射殺し、違法的に殺害
したこと。

四 非 特 項 目 二

日本帝國海軍や四艦隊司令長官當時日本帝國海軍中將原忠一は前記の艦隊司令長官として勤務中、アメリカ合衆國連合諸國及その属領、日本帝國と戦争状態に在り、昭和十九年二月三日より昭和二十年九月二日に至る間、カロリン諸島、マーシャル諸島、ミッドウェー島、マーシャル島其他の指揮区域内の場所をたゞ彼の指揮下にあり、彼の抑留施設目下にある日本軍隊によつて拘束せしむる米國俘虜及級、指揮下にあり、彼の抑留施設目下にある日本軍隊の統領として、ミッドウェー島の住民に対し司令長官として彼の権限内で事情に適合する保護を與ふる艦置をもつてあり、又、彼の職務に於ては拘捕せず、これを違法的に無視し遂行せず、日本軍による戦争俘虜及び前記のミッドウェー島の住民に対し苛責酷使虐待及殺害をも許可する、とより左記の如く戦争法規及慣習に違反せり。

(A) 昭和十九年三月十日頃、マーシャル諸島ヤルット環礁にあり、日本帝國海軍軍事施設に配属せられていた海軍少將升田に助海軍中尉吉村次男、海軍少尉河内守、海軍少尉田崎正、海軍兵曹長田中俊元等による村集兩族に於て、正当な姓名不詳の三名の武装米人俘虜の違法殺害した事。

(B) マーシャル諸島ヤルット環礁アイネマニ島に於て、昭和十九年六月二十日頃、カロリン諸島、マーシャル諸島、ミッドウェー島の日本帝國海軍軍事施設に配属せられていた第四艦隊司令部當時海軍大佐浅野新平や第四艦隊軍医長代理當時海軍軍医少佐上野千里や第四艦隊副

長代理当時海軍少佐中瀬庄七、中四一警備隊附当時海軍
上等兵曹永島光男、中四一警備隊附水兵長田中末太
其の他当局は姓名不詳者により、利根兵による当局には姓
名不詳の一名の米人俘虜の合法的殺害。

(C) 昭和十九年六月二日頃カリニ諸島トラン環礁、夏島に
なつかカリニ諸島トラン環礁、夏島の日本帝国海軍
軍事施設に配属されて、中四一警備隊司令当時海
軍大佐浅野新平、中四一警備隊軍医長代理当時海
軍軍医少佐上野千里、中四一警備隊副長代理当
時海軍少佐中瀬庄七、中四一警備隊附当時海軍齒
科医少尉江里口武、中四一警備隊附当時衛生兵
曹長小林和三及其他当局は姓名不詳者により、斬
首により当局者には姓名不詳の一名アメリカ俘虜、合法的
殺害。

(D) 昭和十九年六月二日頃カリニ諸島トラン環礁、夏島に
なつかカリニ諸島トラン環礁、夏島の日本帝国海軍軍
事施設に配属されて、中四一警備隊司令当時海軍大
佐浅野新平、中四一警備隊軍医長代理当時海軍軍
医少佐上野千里其他当局は姓名不詳者、一団の日本人
の面前に在り、この当局には姓名不詳のアメリカ俘虜の胸部
陰囊腹部、右大腿部及右足及下切開より成る前記
アメリカ俘虜の生体及外科的実験を行うことにより、
前記アメリカ俘虜を合法的に苛責酷使虐待した事。

(E) 昭和十九年七月二日頃カリニ諸島トラン環礁、夏島に在
るなつかカリニ諸島トラン環礁、夏島の日本帝国海軍軍事施設
に配属されて、中四一警備隊司令当時海軍大佐浅野新平、
中四一警備隊軍医長代理当時海軍軍医少佐上野千里、
中四一警備隊副長代理当時海軍軍医大尉神川秀博、当時海軍軍
医大尉石谷天、当時海軍少尉深村春平、当時海軍上

寺衛全兵曹吉沢建三郎当時海軍上等主計兵曹渡
辺光英当時海軍上等衛全兵曹向井義久当時海軍
一等衛全兵曹河島辰三郎当時海軍一等主計兵曹日没田
恒旺当時海軍一等衛全兵曹田中憲之助当時海軍
一等衛全兵曹高石進当時海軍二等衛全兵曹赤坂統
一郎当時海軍二等衛全兵曹志原博之助当時海軍三等
衛全兵曹生田日男当時海軍三等衛全兵曹向井喜三郎
当時海軍三等衛全兵曹二橋五郎及其他姓名
不詳者か當面には姓名不詳の二名のみアリ、仔細を銃
剣で刺し槍で刺し斬首して違法的に殺害したこと。

(F) 昭和十九年九月十九日、約三日間にわたる島にこわく、
警備隊に配属されて、当時海軍中尉サコタヒロエ又、道田
泰之衛当時海軍兵曹長は島弘当時海軍兵曹長平徳
治、又、タニミトク、当時海軍兵曹長、坂田栄藏、当時
海軍兵曹長高橋重信、この島に在る民間人、この
頭及身体を棒及び鞭で打つた二日二晩に亘り彼を木
に縛りつけておいたことにより違法的に苛責、酷使及虐待等を

(G) 昭和十九年十二月五日頃、この島にこわく、警備隊前
当時海軍主計兵曹長山保徳又、山本タキ、当時海
軍技術兵曹島海留旺、又、トリウミトキ、当時海軍
主計二等兵曹吉永五郎藏又、吉永つらじ、当時海
軍上等兵曹佐野猛男、当時海軍上等主計兵曹伊藤博
当時海軍主計上等兵曹佐々木東又、佐々木ハスミ
当時海軍上等主計兵曹十草幸雄、この島に在る
の中国民間人、N G リー、棒で打つたことにより違法
的に殺害したこと。

U.A. 275-1-2
金沢国海軍少将
ニニニ海軍少将司令官

FF12/A17-10(1)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 16550

29 OCT 1948

From: The Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. ROBINSON, U.S. Navy,
President, Military Commission, Guam.
Subject: Appointment of member of commission.

1. Captain Daniel J. SWEENEY, U.S. Navy, is hereby appointed a member of the military commission of which you are president convened by my precept of October 25, 1948.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces Marianas.

cc: Capt. Daniel J. SWEENEY, USN
Judge Advocate, Military Commission
JAG, USN.

A true copy. Attest:

David Bolton

David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

U

0563

1690-5
17/VAC-hep

MEDICAL DEPARTMENT
HEADQUARTERS AND SERVICE COMPANY
FIFTH SERVICE DEPOT, SERVICE COMMAND
FLEET MARINE FORCE

4 November 1948.

From: Lieutenant(jg) Vincent A. Christ, Medical Corps, U.S. Naval Reserve.
To : Commander Naval Forces, Marianas.
Via : Rear Admiral Arthur G. Robinson U.S.N., President Military Commission, Guam.
Subj: Sickness of member of War Crimes Commission.
Ref : Naval Courts & Boards, section 377.

1. In accordance with reference, I have to report that on 3 November 1948, I found Captain Kermit H. Shelly, U.S. Marine Corps, sick and unfit for duty. I estimate that his illness will continue for about two days.

/s/ Vincent A. Christ
Vincent A. Christ.

FF12/A17-10(1)
02-AGR-hn

UNITED STATES PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS

FIRST ENDORSEMENT

4 November 1948.

From: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam, Marianas Islands.
To: Commander Naval Forces, Marianas.

1. Forwarded.

/s/ Arthur G. Robinson
ARTHUR G. ROBINSON.

A true copy. Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

1690-5
17/VAC-hep

MEDICAL DEPARTMENT
HEADQUARTERS AND SERVICE COMPANY
FIFTH SERVICE DEPOT, SERVICE COMMAND
FLEET MARINE FORCE

5 November 1948

From: Lieutenant(jg) Vincent A. Christ, Medical Corps, U.S. Naval Reserve.
To : Commander Naval Forces, Marianas.
Via : Rear Admiral Arthur G. Robinson, U.S.N., President Military Commission, Guam.
Subj: Sickness of member of War Crimes Commission.
Ref : Naval Courts & Board, section 377.

1. In accordance with reference, I have to report that on 4 November 1948, I found Captain Kermit H. Shelly, U.S. Marine Corps, sick and unfit for duty. I estimate that he will be fit for duty on 5 November.

/s/ Vincent A. Christ
Vincent A. Christ.

FF12/A17-10(1)
02-AGR-hn

UNITED STATES PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS

5 November 1948.

FIRST ENDORSEMENT

From: Rear Admiral Arthur G. Robinson, U. S. Navy,
President, Military Commission, Guam, Marianas Islands.
To: Commander Naval Forces, Marianas.

1. Forwarded.

ARTHUR G. ROBINSON.

A true copy. Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

AA

0565

NH4/A17-10(1)

U. S. NAVAL HOSPITAL
NAVAL MEDICAL CENTER
GUAM, MARIANAS ISLANDS

5 November 1948.

From: Lieutenant Commander Maurice A. Canon,
Medical Corps, U. S. Navy.
To : Commander Naval Forces, Marianas.
Via : Rear Admiral Arthur G. Robinson, U.S. Navy, President,
Military Commission, Commander Naval Forces, Marianas
(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 from 28 October 1948 to 4 November 1948 inclusive, I found Lieutenant Commander Bradner W. LEE, Jr., U.S. Naval Reserve, continuously sick and unfit for duty. I estimate that his illness will continue for an indefinite period.

/s/ Maurice A. Canon
Maurice A. Canon.

FF12/A17-10(1)
02-AGR-ce

UNITED STATES PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS

FIRST ENDORSEMENT

5 November 1948.

From: Rear Admiral Arthur G. ROBINSON, U. S. Navy,
President, Military Commission, Guam, Marianas Islands.
To: Commander Naval Forces, Marianas.

1. Forwarded.

/s/ Arthur G. Robinson
ARTHUR G. ROBINSON

A true copy. Attest.

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

BB

0566

FF12/A17-10(1)
02-JDM-fsk

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
NAVAL FORCES MARSHALLS-CAROLINES AND MARSHALLS-CAROLINES AREA

Serial: 16705

5 NOV 48

From: Commander Naval Forces, Marianas.
To : Rear Admiral Arthur G. ROBINSON, U. S. Navy,
President, Military Commission, Commander Naval
Forces, Marianas (Guam, Marianas Islands).
Subject: Relief of member of military commission.

1. Due to present illness and indefinite hospitalization of
Lieutenant Commander Bradner W. LEE, Jr., U.S. Naval Reserve, he is hereby
relieved as a member of the military commission of which you are president
convened by my precept of October 25, 1948, except in event of revision of
cases already tried.

/s/ C. A. Pownall
C. A. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Naval Forces, Marianas.

cc: LCDR. Bradner W. LEE, Jr., USNR
Judge Advocate, Military Commission
Judge Advocate General, U.S. Navy

A true copy. Attest:

David Bolton
David Bolton,
Lieutenant, U. S. Navy,
Judge Advocate.

CC

0567

FIRST DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, October 27, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.

Sergeant John W. Goar, U. S. Marine Corps, entered with the accused and
reported as provost marshal.

The judge advocate introduced Paul F. Coste, junior, yeoman first class,
U. S. Navy; Archie L. Haden, junior, yeoman first class, U. S. Navy; and
Elvin G. Gluba, yeoman first class, U. S. Navy, as reporters, and they were
duly sworn.

The judge advocate introduced Lieutenant Eugene E. Kerrick, junior, U. S.
Naval Reserve, George Kumai, Kimio Tsuji, Kan Akatani, and Yoshio Akatani, as
interpreters, and they were duly sworn.

The accused requested that Commander Martin E. Carlson, U. S. Naval
Reserve, Mr. Takano, Junjiro and Mr. Sanagi, Sadamu, act as his counsel.
Commander Carlson, Mr. Takano, and Mr. Sanagi took seat as counsel for the
accused.

The judge advocate read the precept, prefixed marked "A".

An interpreter read a Japanese translation of the precept.

The accused objected to Lieutenant Commander Bradner W. Lee, junior,
U. S. Naval Reserve, as follows:

The accused challenges Lieutenant Commander Bradner W. Lee, junior,
U. S. Naval Reserve, on the ground that he sat as a member of the Military
Commission which tried Asano, Shimpei; Ueno, Chisato; Nakase, Shohichi;
Tanaka, Sueta; Eriguchi, Takeshi; Kobayashi, Kazumi; Iwanami, Hiroshi, et al;
Inoue, Fumio; and Furuki, Hidesaku, for the offenses set out in specifications
1 (b), (c), (d), (e), (i), (j), (k), 2 (b) (c) (d), and (e). In accordance
with Section 388 (e), Naval Courts and Boards, this is a valid challenge. We
further challenge Lieutenant Commander Bradner W. Lee, junior, U. S. Naval
Reserve, on the grounds that Section 346, Naval Courts and Boards, requires
that at least one-half of the members of the commission be senior to the
accused. The accused in this case is Vice Admiral Hara, Chuichi, Imperial
Japanese Navy, a prisoner of war, who surrendered on September 2, 1945.

The judge advocate replied as follows:

The challenge by the accused to Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, is in the opinion of the judge advocate not a valid ground for objection to this member. The accused has never been tried before Lieutenant Commander Bradner W. Lee, and the accused has not alleged that this member of the commission is antagonistic or prejudiced against him or has formed any opinion concerning his guilt or innocence. In accordance with the duly authorized prior precedent of this and other military commissions the challenge to a member of a military commission should not be sustained when the challenged member is able to declare in open court that he can truly try without prejudice or partiality the case now depending according to the evidence which shall come before the commission, the rules of evidence prescribed for the trial, the customs of war in like cases, and his own conscience. Assuming that Lieutenant Commander Lee is able to so truly state, the challenge can properly be denied for challenges similar to those made by the accused in the instant case have been made in prior cases before military commissions sitting here on Guam. The challenges were not sustained in such cases and they have been reviewed and approved by convening authority, reviewing authority, and the Judge Advocate General of the Navy, and these cases should stand as sound procedure with regard to the instant challenge.

The challenged member replied as follows:

I, Bradner W. Lee, junior, lieutenant commander, U. S. Naval Reserve, state that it is true that I sat in the previous trials mentioned by defense counsel. I wish to state that I have formed no opinion as to the guilt or innocence of this accused, nor am I prejudiced against him. Furthermore I desire to assure all parties to this trial in my belief that I can truly try without prejudice or partiality the case now depending according to the evidence adduced before this commission, the rules of evidence prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared, the challenged member withdrawing.

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

The accused objected to Rear Admiral Arthur G. Robinson, U. S. Navy, as follows:

The accused objects to and challenges Rear Admiral Arthur G. Robinson, U. S. Navy, because he is junior in rank to the accused, Vice Admiral Hara, Chuichi, Imperial Japanese Navy. Section 346, Naval Courts and Boards and Article 39, Articles for the Government of the Navy, require "Except where it can be avoided without injury to the service, at least one-half of the members be senior to the accused. As a matter of policy in such cases all should be senior to the accused." Section D-14, Appendix D, Naval Courts and Boards, requires Exceptional Military Courts to be constituted in the manner provided for naval courts martial so far as the exigencies of the service may permit. If conditions on Guam do not permit the detailing of officers to the commission in accordance with the above sections of Naval Courts and Boards or if the policy of the Navy Department has been changed, there should be a statement in the precept or in the proceedings to this effect. The accused further challenges Rear Admiral Arthur G. Robinson on the ground that he sat as a member, the president, of the Military Commission which tried Asano, Shimpei; Ueno, Chisato; Nakase, Shohichi; Tanaka, Sueta; Eriguchi, Takeshi; Kobayashi, Kazumi; and others unknown; Iwanami, Hiroshi, et al; Inoue, Fumio; and Furuki, Hidesaku; for the offenses set out in specifications 1 (b), (c), (d), (e), (i), (j), (k), 2 (b), (c), (d), and (e). In accordance with Section 388 (e), Naval Courts and Boards, if admitted by the challenged member it should be sustained despite any declaration the challenged member may make.

The judge advocate replied as follows:

What I have previously replied with regard to the challenge of Lieutenant Commander Lee is equally applicable here. The additional feature that has been argued by defense counsel is without merit. I refer to the argument that the members of the commission need to be senior to the accused. Defense counsel is in error. There is no provision requiring this to be true in regard to military commissions. The portions of Naval Courts and Boards cited by defense counsel are not applicable to military commissions, but are applicable to courts martial, where considerations of intra-service policy are involved. The provision in Section D-14, Naval Courts and Boards, Appendix D, requiring exceptional military courts to be constituted in a manner provided for naval courts martial is a general provision and has no applicability to the special situation with regard to members of military commissions as the instant military commission trying war crimes.

The challenged member replied as follows:

In connection with this challenge made by defense counsel, I wish to state it is true that I sat in the trials mentioned by defense counsel, that I wish to state that I have formed no opinion as to the guilt or innocence of this accused, nor am I prejudiced against him. Furthermore, I desire to assure all parties to this trial in my belief that I can truly try without prejudice or partiality the case now depending according to the evidence adduced before this commission, the rules of evidence prescribed for this trial, the customs of war in like cases, and my own conscience.

The commission was cleared, the challenged member withdrawing.

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

The judge advocate and each member were duly sworn.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a change of venue, appended marked "B".

The accused waived the reading of this motion in Japanese in open court.

The judge advocate made an oral reply to the motion of Commander Carlson, a brief of which is appended marked "C".

The accused waived the translation of this reply in Japanese in open court.

The commission announced that the motion was not sustained.

The accused stated that he had received two copies of the charge and specifications preferred against him, one in English and one in Japanese, on October 8, 1948.

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

The accused replied in the affirmative.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the charge and specifications, appended marked "D".

An interpreter read an English translation of Mr. Takano's argument, appended marked "E".

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the charge and specifications, appended marked "F".

The accused waived the reading of this objection in Japanese in open court.

The judge advocate made an oral reply to the objections to the charge and specifications, a brief of which is appended marked "G".

The accused waived the translation of this reply in Japanese in open court.

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

The commission then, at 11:40 a.m., adjourned until 9 a.m., tomorrow, Thursday, October 28, 1948.

SECOND DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, October 28, 1948.

The commission met at 10:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army, ^{Reserve}
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate announced that the reason for Lieutenant Commander Bradner W. Lee's absence was sudden illness, and that a copy of a letter from the medical officer would be read in court when received.

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

No witnesses not otherwise connected with the trial were present.

The accused stated that he was ready for trial.

The accused, upon his own request, took the stand and was examined on his voir dire in connection with his arrest and confinement as follows:

Examined by the judge advocate:

1. Q. What is your name?

A. Hara, Chuichi.

2. Q. Are you the accused in the instant case?

A. Yes.

Examined by the accused:

3. Q. Were you ever the Commander in Chief of the Fourth Fleet, and if so, please state the period during which you were Commander in Chief of the Fourth Fleet?

A. Yes, I was Commander in Chief at one time. I was appointed Commander in Chief of the Fourth Fleet on 19 February 1944, but it was on the 23rd of February of the same year that I relieved my predecessor and actually assumed command. I left my post as Commander in Chief Fourth Fleet on September 2, 1945. In actual fact however, after August 15, 1945 I was not in complete control of all the duties connected with it.

The judge advocate moved to strike out the last sentence of this answer on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the motion to strike was not sustained.

4. Q. On what day did you surrender as Commander in Chief of the Fourth Fleet?

A. I surrendered on the 2nd of September 1945.

5. Q. What orders did you receive from the Japanese Government concerning the surrender?

A. On August 15, 1945 I received the order to surrender from the Emperor of Japan, following which I received orders that units surrender locally and independently to Allied commanders in charge of these areas, by which I mean that these instructions were carried out in the specific area and each unit was ordered to surrender to the respective Allied commander, American or Australian locally.

6. Q. Please state in what groups the units under the jurisdiction of the Commander in Chief of the Fourth Fleet surrendered to the Allied commanders?

A. As the units surrendered independently I do not know the details, but I believe they surrendered more or less as follows:

The judge advocate objected to this line of questioning on the ground that it was irrelevant and immaterial to the issues of this voir dire and made a motion to strike out all portions of the entire testimony of the witness relating to surrender, which referred to anything that happened prior to September 2, 1945.

The accused replied.

The commission announced that the motion was sustained.

7. Q. To whom did you surrender?

A. I surrendered to Vice Admiral Murray, United States Navy.

8. Q. What was your status after your surrender?

A. My status was that of a prisoner of war and I was under the impression that I would be sent back to Japan and be demobilized whenever the opportunity presented itself. 06

9. Q. Did you return to Japan after you surrendered?

A. No, I have not returned.

10. Q. When did you arrive on Guam?

A. I arrived on Guam on August 1, 1946.

11. Q. Where did you stay on arrival on Guam?

A. At that time there were 5,000 Japanese prisoners of war on Guam. I landed and I was ordered to stay at their camp. The commander of the POW camp ordered me to supervise and direct these 5,000 Japanese prisoners of war who were at the time engaged in construction work for the American forces.

12. Q. When and by whom were you arrested?

A. I was arrested by a lieutenant (jg) who was in charge of the prisoners of war from Truk who came to where I was resting and told me to go with him and I was taken to the stockade on August 22 of the same year, namely 1946.

13. Q. Were you shown a warrant of arrest at that time?

A. No, I was not shown a warrant of arrest and I was interned and placed in solitary confinement.

14. Q. When you were interned, were you shown any charge or charges?

A. No.

15. Q. When were you served with a charge or charges?

A. On the eighth of October of this year.

Cross-examined by the judge advocate:

16. Q. When you refer to the stockade that you were confined in, in August of 1946, do you mean the War Criminal Stockade at Guam?

A. Yes.

17. Q. Have you been constantly at the War Criminal Stockade on Guam?

A. Yes, up until the present day.

18. Q. Since when have you known that this is the war criminal stockade?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Immediately upon entering the stockade.

Reexamined by the accused:

19. Q. You testified that upon entering you knew it was a War Criminal Stockade; did you see any notices posted in the area which stated this was the War Criminal Stockade?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

20. Q. When you were placed in solitary confinement, were you told that you were being placed there for a period of any certain length of time, such as thirty days or sixty days?

This question was objected to by the judge advocate on the ground that it was outside the scope of the cross-examination, and also irrelevant and immaterial.

The commission announced that the objection was sustained.

21. Q. When you were placed in solitary confinement by this lieutenant (Jg), did he tell you by what authority and for what reason he was placing you in solitary confinement?

A. No, he did not say anything.

22. Q. All during the time you have been in solitary confinement, up until the time charges and specifications were served on you on 5 October 1948, have you ever been told why you were being held in solitary confinement?

A. No, I have never heard anything.

Recross-examined by the judge advocate:

23. Q. When were you first interrogated after you were placed in the War Criminal Stockade?

A. I do not know what you mean by interrogated, but I was questioned by investigating officers, although they did not touch upon any questions relating to my guilt. I never was interrogated on any premises relating to my guilt.

24. Q. When did these questionings begin that you have referred to?

A. I do not recall when these questionings began, but I was asked various matters concerning incidents related to other persons which the investigating officer apparently desired for purposes of reference.

25. Q. Then you are unable to state even approximately when these questionings began or when they were going on?

A. On certain occasions I was even asked how I had conducted certain operations. I cannot definitely state even vaguely when these questionings began.

26. Q. Is there any month or year that you can give as to your earliest recollection of interrogations concerning the commission of war crimes by any of your subordinates on Truk or any area under your command?

A. I do not have a sufficient recollection to give you a clear answer here.

27. Q. Then you cannot recall any month or year during which such questioning was going on?

A. No, not definitely.

28. Q. All told, can you give us approximately within ten numbers, of how many times you have been questioned during the period you have been down at the War Crimes Stockade?

A. I was questioned by investigating officers on various incidents, by which I mean incidents other than war crimes, et cetera; I cannot recall how many times I was questioned.

29. Q. Including the number of times you were questioned about incidents not relating to war crimes, can you approximate within ten numbers the number of times you were questioned?

A. As I just said, I do not have sufficient recollection to give you a number.

30. Q. Yet even though you cannot give the month or year in which you were first questioned with regard to any war crimes incidents, and even though you cannot give within an approximation of ten numbers the total number of times you were questioned, you do not recollect being told during any of the questionings that you were a war criminal, is that correct?

A. I do not recall an investigating officer telling me that I was a war criminal suspect, that is true, but there is a card pinned in front of my cell which reads "awaiting trial".

32. Q. You are not able to recall the dates even roughly or approximately within a month or year and you are not able to recall the subject matter of various conferences or to say when you were questioned about war crimes, and yet you are able to recollect that during all these conferences you were never told that you were a war criminal suspect, is that true?

A. As there was a plaque in front of my cell which read "awaiting trial" I was aware that I was a war criminal suspect, but I do not think an investigating officer declared to me that I was a war criminal suspect and the only occasion when something could be interpreted as meaning such a declaration was made was when the judge advocate, Lieutenant Bolton, said to me before his questioning that "I am questioning in my capacity as judge advocate", and as you know the questions put to me were concerning organizations of the Central Pacific Fleet such as the condition of the communications station at Truk, et cetera.

33. Q. When you were questioned earlier, you were asked questions with regard to war crimes. Were those related to war criminals on Truk or any of your subordinates?

A. My recollection is not sufficiently clear for me to state anything under oath, but I was not questioned regarding facts of the crimes committed by my subordinates, but rather facts related to questions concerned, relating to these crimes, for example, whether I had talked in public concerning these acts, et cetera. - 88

34. Q. How long has the sign been up in front of your cell saying "awaiting trial"?

A. At first the card was not there. After a time when it was posted I realized that I was awaiting trial, that I was a war criminal suspect.

35. Q. When you arrived at the War Crimes Stockade you had come from a former stockade, a prisoner of war stockade, is that correct?

A. Yes, that is correct.

36. Q. You knew at that time your status had changed, is that correct?

A. How do you mean status?

37. Q. You knew that you were no longer like the other prisoners of war remaining in the POW stockade, but that you were now transferred to a special stockade which dealt with war crimes and war criminals, is that correct?

This question was objected to by the accused on the ground that it was repetitious, irrelevant, and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Can you explain what you mean by status?

38. Q. Did you know that the people confined at the War Crimes Stockade included persons accused of war crimes?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was sustained.

39. Q. During the period of your confinement at the stockade have you been permitted to participate in group activities such as recreation and exercise?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Exercise at volley ball is the only group activity permitted in the stockade. This was permitted beginning two or three months ago and I have been participating in this sport. And I would like to add that participating in this activity is ordered and we participate.

40. Q. Prior to that, were the prisoners at the stockade, yourself included, permitted to play baseball?

A. This baseball was permitted under certain restrictions. The men falling out at the order of the guard and with the understanding, with the order, that no conversation was to be held among the prisoners, and the participants in this game were four or five prisoners at a time, and I do not think that this primitive form of a game could be called baseball.

The commission did not desire to examine this witness.

The accused did not desire to reexamine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as accused.

The commission then, at 11:30 a.m., took a recess until 2:15 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Hudson, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, read a written plea to the jurisdiction, appended marked "H".

An interpreter read an English translation of the plea of Mr. Takano, appended marked "I".

Commander Martin E. Carlson, a counsel for the accused, read a further written plea to the jurisdiction, appended marked "J".

The accused waived the reading of the plea of Commander Carlson in Japanese in open court.

The judge advocate read a written reply to the plea to the jurisdiction, appended marked "K".

The accused waived the reading of the reply of the judge advocate in Japanese in open court.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

The commission announced that the plea to the jurisdiction was overruled.

Commander Martin E. Carlson, a counsel for the accused, read a written plea in bar of trial, appended marked "L".

The accused waived the reading of the plea of Commander Carlson in Japanese in open court.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Friday, October 29, 1948.

THIRD DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, October 29, 1948.

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate read a letter from Lieutenant Commander Maurice A. Canon, Medical Corps, U. S. Navy, copy prefixed marked "M", accounting for the absence of Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, during yesterday's proceedings, which evidenced that Lieutenant Commander Lee would be ill for an indefinite period of time. The judge advocate announced that he had been in communication with the medical officer and that the illness noted in letter "M" continued necessitating Lieutenant Commander Lee's absence from today's proceedings. A6

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

No witnesses not otherwise connected with the trial were present.

The judge advocate made an oral reply to the plea in bar of trial, a brief of which is appended marked "N".

The accused waived the translation of this reply into Japanese in open court.

The commission announced that the plea in bar of trial was overruled.

Commander Martin E. Carlson, a counsel for the accused, read a written plea in abatement, appended marked "O".

The accused waived the reading of this plea in Japanese in open court.

The judge advocate made an oral reply to the plea in abatement, a brief of which is appended marked "P".

The accused waived the translation of this reply into Japanese in open court.

The commission announced that the plea in abatement was overruled.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a bill of particulars, appended marked "Q".

The accused waived the reading of this motion in Japanese in open court.

The judge advocate made an oral reply to the motion for a bill of particulars, a brief of which is appended marked "R".

The accused waived the translation of this reply into Japanese in open court.

The commission announced that the motion for a bill of particulars was not sustained.

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate read the charge and specifications in English, prefixed marked "S".

An interpreter read the charge and specifications in Japanese, prefixed marked "T".

The judge advocate arraigned the accused as follows:

Q. Hara, Chuichi, 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 commission then, at 11:40 a.m., adjourned until 9 a.m., Monday, November 1, 1948.

FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, November 1, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States
Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate announced that he had been in communication with the medical officer and was advised that Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, would be unable to attend today's session of the proceedings of the commission because of continuance of the illness, set forth in the medical officer's letter, copy already prefixed marked "M".

The judge advocate read an order from the convening authority, copy prefixed marked "U", appointing Captain Daniel J. Sweeney, U. S. Navy, as a member of the commission.

The judge advocate and the accused stated that they did not object to this member.

Captain Daniel J. Sweeney, U. S. Navy, was duly sworn.

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

The judge advocate read the record of proceedings of the first and second days of the trial.

No witnesses not otherwise connected with the trial were present.

The accused, who had been examined on his voir dire concerning jurisdiction during the absence of Captain Sweeney, was called before the commission, informed that his oath previously taken was still binding, heard his own testimony read, and Captain Sweeney not desiring to question him, he pronounced his testimony correct. The witness resumed his status as accused. AG

The commission announced that Captain Sweeney had read the precept, the charge and specifications, and all pleas, motions, objections, and arguments given by the defense and the prosecution.

The prosecution began.

The judge advocate commenced the reading of his opening statement for the prosecution, appended marked "v".

The commission then, at 10:10 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

The judge advocate concluded the reading of his opening statement for the prosecution, appended marked "v".

The accused waived the reading of the judge advocate's opening statement in Japanese in open court and announced that he had received a copy of this statement in Japanese and had read same.

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

1. The Hague Convention No. IV of 18 October 1907.
2. The Annex to Hague Convention No. IV of 18 October 1907, particularly the following portions thereof:

Article 1

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates."

Article 4

"Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them. They must be humanely treated."

AB

3. The Geneva Prisoners of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control; particularly Title 1, Article 2 thereof, which reads as follows:

"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.

"Measures of reprisal against them are prohibited."

4. The Potsdam Declaration of 26 July 1945, particularly paragraph 10 which reads in part as follows:

"We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."

5. That a state of war existed between the Imperial Japanese Empire and the United States of America, its allies and dependencies, during the period from December 7, 1941 to September 2, 1945.

6. The Instrument of Surrender from the Japanese Government and the Imperial General Headquarters signed September 2, 1945, proclaiming unconditional surrender to the Allied Powers, particularly the following paragraph:

"We hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration."

An interpreter read a translation of the judge advocate's request for judicial notice.

Mr. Takano, Junjiro, a counsel for the accused, read a written objection to the request for judicial notice by the judge advocate, appended marked "W".

An interpreter read an English translation of Mr. Takano's objection to the request for judicial notice, appended marked "X".

Commander Martin E. Carlson, a counsel for the accused, read a further written objection to the request for judicial notice by the judge advocate, appended marked "Y".

The accused waived the reading of Commander Carlson's objection to the request for judicial notice in Japanese in open court.

The commission then, at 11:25 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate replied to the objection to judicial notice.

The accused waived the translation of the judge advocate's reply into Japanese in open court.

The commission announced that the objections were not sustained and that it would take judicial notice of the items requested by the judge advocate.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank, and present station.
A. Herbert L. Ogden, commander, U. S. Navy, attached to the office of the Director of War Crimes, U. S. Pacific Fleet.
2. Q. If you recognize the accused, state as whom.
A. Former Vice Admiral Hara, Imperial Japanese Navy.
3. Q. Are you attached to the office of the Director of War Crimes, Pacific Fleet, Commander Naval Forces Marianas?
A. I am.
4. Q. Are you the legal custodian of certain documents?
A. I am.
5. Q. Are these documents which you refer to part of the official records and files of the Director of War Crimes?

This question was objected to by the accused on the ground that it was leading.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

- A. They are.

Examined by the judge advocate concerning prosecution document #5.

6. Q. Do you have in your possession a document which is identified as prosecution document number five consisting of a letter from the Central Liaison Office, Tokyo, dated 19 September 1947 and related charts?
A. I have.
7. Q. Do you have in your possession the original letter of transmittal plus the original charts which were forwarded in connection with this subject matter?
A. I have.

The original document produced by the witness was submitted by the judge advocate to the accused and to the commission for the purpose of examination and identification.

8. Q. Do you have in your possession certified copy of the letter of transmittal and of annex charts number three and four?
A. I have.
9. Q. Have these been certified by you to be true copies of the original which was previously marked for identification?
A. They have.
10. Q. Are these certified copies true and certified copies of those documents?

This question was objected to by the accused on the ground that the witness cannot be allowed, by parol evidence, to change the nature of the document.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They are.

The certified copies of the document produced by the witness were submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #5:

11. Q. What is the contents of prosecution document number five?

A. Prosecution document number five consists of a covering letter from the Central Liaison Officer of the Japanese Government to General Headquarters, Supreme Commander for the Allied Powers. It includes four blueprints and six tables together with annex table number 1 and 2. These charts and tables all deal with the organization and geographical jurisdiction of the Fourth Fleet of the Imperial Japanese Navy.

12. Q. What is meant by the geographical jurisdiction of the Fourth Fleet?

A. The area over which the Fourth Fleet had command.

13. Q. Do you know whether there were army units besides navy units in that area of jurisdiction of the Fourth Fleet?

This question was objected to by the judge advocate on the ground that it was irrelevant to the issue of admissibility and immaterial.

The accused replied.

The commission announced that the objection was sustained.

14. Q. By what authority did you become legal custodian of certain documents you have testified about and when did you become the legal custodian of these documents?

This question was objected to by the judge advocate on the ground that the words "and when did you become the legal custodian of these documents" are irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was not sustained.

A. I became custodian by my assignment to the office of the Director of War Crimes, Pacific Fleet, Commander Marianas in February 1947.

15. Q. You testified that these documents are a part of the official files of the Director of War Crimes, Pacific Fleet. Can you explain why they are not marked as set forth in Section 196, Naval Courts and Boards, if they are such a part of the official records?

This question was objected to by the judge advocate on the ground that it was ambiguous, vague, called for an opinion of the witness, and is misleading.

The accused replied.

The commission announced that the objection was sustained.

16. Q. This document is headed "To the: General Headquarters for the Supreme Commander for the Allied Powers" but there are no forwarding endorsements to show how it came into your possession. How did it come into your possession?

A. The documents from the Japanese Government are obtained by our office through the Commander Marianas Liaison Officer in Tokyo who in turn obtains them from SCAP. This document was so obtained.

17. Q. Do you know when it was so obtained?

A. I do not know the date without checking the official mail records of our office.

18. Q. Where on this covering sheet do you find the two charts, annex charts three and four, referred to and made a part of the record?

A. Paragraph two states that four blueprints and six tables showing the geographical jurisdiction and organization of the Fourth Fleet are enclosed. AB

19. Q. Did you personally receive this covering letter so that you can state that these two charts are the charts that were received?

This question was objected to by the judge advocate on the ground that it was irrelevant and a double question.

The accused replied.

The commission announced that the objection was sustained.

20. Q. This annex chart number three contains the legend "Central Pacific Area Fleet". Can you explain what is meant by that?

This question was objected to by the judge advocate on the ground that it did not relate to admissibility, but concerned the weight of the evidence.

The accused made no reply.

The commission announced that the objection was sustained.

21. Q. Were you present when this document was made?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

The accused objected to the receipt of prosecution document number five in evidence on the grounds that the maker of the document has not been proven by this witness, and that the maker should be brought to court as a witness; no opportunity was given the accused to be present at the time of the making of this document; no opportunity was given the accused to submit interrogatories until recently; and it violates the best evidence rule since it is not an original. The accused cited Rule number one and Section 196 of Naval Courts and Boards.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no other objections, the document was so received and is appended marked "Exhibit 1".

Examined by the judge advocate concerning prosecution document #8:

22. Q. Do you have in your possession a document from the Central Liaison Office dated 16 September 1947?

A. I have.

23. Q. Is this an original document?

A. It is.

24. Q. Whose signature does this document bear?

A. Y. Katsuno, Chief of the Liaison Section, Central Liaison Office.

25. Q. To what subject matter does this document relate?

A. The document relates to the periods of tours of duty of the various Commanders in Chief, Fourth Fleet and subordinate officers.

26. Q. Is this document taken from the official files of the Director of War Crimes, Pacific Fleet?

A. It is.

The document produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #8:

27. Q. Is the witness acquainted with the signature of Y. Katsuno?

A. From documents received in our office only.

28. Q. So you cannot testify as to the authenticity of this signature, can you?

This question was objected to by the judge advocate on the ground that it called for a legal opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. Only as I have stated that this is the signature that appears on all the documents that we have received from the Chief of the Liaison Section, Central Liaison Office.

29. Q. Do you have any documents in your office or any information that leads you to believe that you can testify as to whether Y. Katsuno is the Chief of the Liaison Section, Central Liaison Office?

A. I have seen no such documents.

30. Q. This tenure of officially assuming duty in the case of Admiral Hara reads "From 23 February 1944 to end of war". This is ambiguous. Can you testify what is meant by "to the end of war"?

This question was objected to by the judge advocate on the ground that it did not relate to the admissibility of the document.

The accused made no reply.

The commission announced that the objection was sustained.

The accused objected to the receipt in evidence of this document on the same grounds raised in objection to prosecution document number five.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objections, it was so received and is appended marked "Exhibit 2".

The commission then, at 3:20 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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:)

Examined by the judge advocate concerning Exhibit 2:

31. Q. Will the witness read from Exhibit 2 the portion thereof which relates to the duty of Hara, Chuichi?

(The witness read from Exhibit 2 as requested.)

Examined by the judge advocate concerning prosecution document #11:

A6

32. Q. Does the witness have in his possession a document from the files of the Director of War Crimes, Pacific Fleet, relating to the organization on Nauru and Ocean Islands of the Japanese armed forces there?

A. I have.

33. Q. Of what does this document consist?

A. This document consists of a check sheet from the Legal Section of SCAP to the Liaison Section of the Japanese Government, a reply thereto from the Central Liaison and Coordination Office to SCAP enclosing a report of the commanding officers on Nauru and Ocean Islands and a certificate thereon.

34. Q. Is the check sheet you refer to an original or is it a copy of the original document?

A. The check sheet is a certified copy.

35. Q. Is the letter from the Central Liaison Office which encloses the certificate and annex concerning the commanding officers on Nauru and Ocean Islands an original letter?

A. It is.

36. Q. With regard to the check sheet, do you have any information as to where the original of that check sheet is?

A. The original would be in the possession of the Central Liaison and Coordination Office of the Japanese Government.

37. Q. From whom is the check sheet sent and to whom is it addressed?

A. It is from the Legal Section of General Headquarters of SCAP and directed to Japanese Liaison, G-2.

Prosecution document #11 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #11:

38. Q. This original - Central Liaison and Coordination Office to General Headquarters, Supreme Commander for the Allied Powers has the legend "a report and a certificate with its English translation". Does that mean the report is originally made from Japanese?

A. It states that a certificate with English translation is enclosed. However the English translation is signed by the Director of the Second Demobilization Bureau. I did not receive the Japanese of that certificate.

39. Q. Do you know where the Japanese of that certificate is?

A. I do not.

The accused objected to the receipt in evidence of this document on the ground that it was not a complete document, the witness could not testify as to its authenticity and for the reasons set forth in his objection to prosecution document number five.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objection, it was so received and is appended marked "Exhibit 3".

Examined by the judge advocate concerning Exhibit 3:

40. Q. Will the witness read the body of the check sheet establishing the request?

(The witness read from Exhibit 3 as requested.)

41. Q. Will the witness read the certificate from I. Kawai?

(The witness read from Exhibit 3 as requested.)

42. Q. Will the witness read the annex to the certificate?

(The witness read from Exhibit 3 as requested.)

Examined by the judge advocate concerning prosecution document #7:

43. Q. Does the witness have in his possession a document from the Central Liaison Office dated 15 September 1947 and enclosure thereto?
A. I have.

44. Q. Is this document from the files of the Director of War Crimes, Pacific Fleet?
A. It is.

45. Q. Is this the original document received in the Office of the Director of War Crimes?
A. It is.

46. Q. What does it consist of?
A. It consists of a letter of transmittal from the Central Liaison Office to General Headquarters of SCAP enclosing English and Japanese copies of "Naval Staff Regulations".

47. Q. Does this document relate to the duties of staff officers?
A. It does.

Prosecution document number 7 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the receipt in evidence of this document on the same ground set forth in his objection to the receipt in evidence of prosecution document number 5.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, it was so received, and is appended marked "Exhibit 4".

Examined by the judge advocate concerning Exhibit 4:

48. Q. Will the witness read paragraphs Roman numerals I, II, III through Article 36 of Roman numeral paragraph III of the enclosure?

(The witness read from Exhibit 4 as requested.)

Examined by the judge advocate concerning the record of the trial of Nisuki Masuda, et al:

49. Q. Does the witness have in his possession from the files of the Director of War Crimes, Pacific Fleet the record in the case of one Nisuki Masuda, et al?

A. I have the Commander Marianas certified copy of that record.

50. Q. Do you know where the original record in that case is?

A. The original record was forwarded to the Judge Advocate General of the Navy.

51. Q. Is the copy you have in your possession the official copy from the files of the Director, War Crimes, Pacific Fleet?

A. It is.

52. Q. Is that a certified copy of the record?
A. It is.

53. Q. Do you know if this record contains certain restricted dispatches?
A. It does.

The judge advocate announced that he had specific authorization from the Commander Naval Forces, Marianas to use in open court so much thereof from the Masuda record which had been classified "restricted" as is deemed necessary.

The record of proceedings of the Nisuki Masuda, et al, trial was submitted to the accused and to the commission and the judge advocate made the following announcement: The record of the Masuda case is submitted to defense counsel and to the accused. The portion thereof which contains the restricted dispatches has been covered with a sheet of paper with the request that only one of defense counsel be authorized to examine the restricted dispatches, namely Commander Carlson, who is a member of the U. S. Navy. The other defense counsel will be allowed to examine the remainder of the record and the record is submitted for examination and then will be submitted to the court and marked for identification only.

Cross-examined by the accused concerning the record of the trial of Nisuki Masuda et al:

54. Q. When was this document received in the office of Director of War Crimes, Pacific Fleet?

A. It is the Commander Marianas copy which was retained by Commander Marianas when the original was forwarded to the Judge Advocate General of the Navy. It was later forwarded to the Judge Advocate General of the Navy for certification and return to Commander Marianas. 68

55. Q. Is the copy you have a complete copy?
A. It is.

56. Q. Is the copy you have marked an official copy by the Director of War Crimes, Pacific Fleet?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

57. Q. Has any effort been made by the office of Director War Crimes to declassify the restricted material which is a part of the record of this document?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

Examined by the judge advocate concerning prosecution document #501:

58. Q. Do you have in your possession certified copies of excerpts taken from the record in the Masuda case?
A. I have.

59. Q. What do these certified excerpts consist of?

A. The charge and specification, nolle pros, military commission order, action of the convening authority, action of the reviewing authority, and action of the confirming authority.

60. Q. Consulting the original record, what was the date of the action of the reviewing authority?

A. 8 March 1946.

61. Q. What is the date of the action of the confirming authority, consulting the original record?

A. 10 March 1947.

62. Q. Have you certified the excerpts that you have taken as true excerpts from the official record in the case of Nisuki Masuda?

A. I have.

63. Q. Does this record deal with an incident alleged to have occurred on March 10, 1944 on the island of Aineman in Jaluit Atoll?

A. It does.

Prosecution document number 501 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #501:

64. Q. Does the witness know the meaning of the phrase "moral standards of civilized society" which is in this record?

This question was objected to by the judge advocate on the ground that it called for the opinion of the witness and that it did not relate to the admissibility of the document being offered in evidence.

The accused replied.

The commission announced that the objection was sustained.

The accused objected to the receipt in evidence of prosecution document number 501 for the same reasons set forth in his objection to prosecution document number 5, that the whole document was not being offered in evidence, and that the document contained classified matter which had not been made available to the accused.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, it was so received and is appended marked "Exhibit 5".

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, November 2, 1948.

FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, November 2, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States
Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate announced that he had been in communication with the medical officer and was advised that Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, would be unable to attend today's session of the proceedings of the commission because of continuance of the illness, set forth in the medical officer's letter, copy already prefixed marked "M".

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

Herbert L. Ogden, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued:)

Examined by the judge advocate concerning Exhibit 5:

65. Q. Will the witness read from Exhibit 5, page 2, the charge and specification of the Masuda, et al case?

(The witness read from Exhibit 5 as requested.)

66. Q. Will the witness read page 4 and 4a of Exhibit 5, the Military Commission order of Commander Marshalls-Gilberts Area?

(The witness read pages 4 and 4a of Exhibit 5 as requested.)

67. Q. Will the witness read the action of the convening authority, Commander Marshalls-Gilberts Area, page 5 of Exhibit 5?

(The witness read page 5 of Exhibit 5 as requested.)

68. Q. Does Exhibit 5 contain the complete action by the Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas, who was the reviewing authority in this case?

A. It does.

69. Q. Will the witness read pages 8 and 9, the action of the Secretary of the Navy in review of this case?

(The witness read pages 8 and 9 of Exhibit 5 as requested.)

Cross-examined by the accused concerning Exhibit 5:

70. Q. According to the record of the Masuda case, Masuda committed suicide, but do you know the reason of the suicide?

A. I do not know.

71. Q. Do you know if the authorities investigated the reason of the suicide?

This question was objected to by the judge advocate on the ground that it was irrelevant.

The accused replied.

The commission announced that the objection was not sustained.

A. I have never seen any investigator's report of this matter, and I do not know if any was made by some other activity or not.

72. Q. Do you know whether or not in the restricted portion of this record contains any reason of Masuda's suicide; the portion of the record which cannot be seen by the Japanese counsel.

A. It does not.

73. Q. When did C. A. Pownall become Commander Marshalls-Gilberts Area?

A. I do not know.

74. Q. When did he sign the Military Commission Order Number 2?

A. According to the certified copies in the record, it is dated 5 February 1946.

75. Q. Does the record which you have, contain the original Military Commission Order Number 2?

A. It does not.

76. Q. Do you know where the original is?

A. I do not.

77. Q. The record contains the statement or petition from Lieutenant Sakuda of the 62nd Defense Garrison which is dated October 18, 1946. Will the witness read that statement?

This question was objected to by the judge advocate on the ground that no foundation to establish the relevance of the document had been made.

The accused replied.

The commission announced that the objection was sustained.

78. Q. The statement of Sakuda dated October 18, 1946; is that statement contained in the record of the Masuda trial which you have in your possession?

A. It is.

79. Q. Does it pertain to the Masuda trial?

A. It is entitled a petition on the commutation of Lieutenant Yoshimura, Ensign Kawachi and Warrant Officer Tanaka. It states the circumstances of the execution and gives character evidence on behalf of each of the accused.

80. Q. Does it relate to the issues of the trial?

A. It relates to the issues of the Masuda case.

81. Q. Will the witness read from the record this Sakuda statement or petition dated October 18, 1946?

The witness read from the statement of Lieutenant Sawaaki Sakuda as follows:

"

October 18th, 1946.

From: Lt. (s.g.) Sawaaki Sakuda, the 62nd Defense Garrison.
To : Director of War Criminals on Guam.

Subject: Petition on the Commutation of -

Lt. Yoshimura, Ensign Kawachi, and W.O. Tanaka.

These three officers have got death penalties (hanged) as a result of War Criminal Trial on Kwajalein for the reason that they had executed three American fliers in March 1944 by the order of the late admiral Masuda Nisuke, the commander of the Jaluet Defense Garrison.

When, in this stockade, I hear of the progress and the result of the trials on Chichi Jima, I cannot but admire the fair trial, based on humanity and justice, on this island, and on the other hand, think that the death sentence of Yoshimura, Kawachi, and Tanaka whom I had shared with pleasure and pain on Jaluet Atoll, had been a little too cruel compared with that of Chichi Jima.

Mankind are born legally equal. Is it not legally incorrect that men should be handled by bitter law in one place, and by generous one in another?

In March 1944 the late Admiral Masuda Nisuke, who considered it as a great disadvantage to keep watch on the three prisoners of war, when the situations of the Marshall Islands had become rapidly critical, decided to execute three of them.

One day at night in March '44, admiral secretly summoned Yoshimura (W.O. at that time) and ordered that the prisoners be executed, telling to choose two men for his aid. Thereupon, Yoshimura chose Kawachi (W.O.) and Tanaka (C.P.O.)

They executed three fliers by admiral's order.

While they were being tried on Kwajalein, an American lawyer told them that because what they had done had been by order, they would never get severe penalties.

But the fact was, contrary to the anticipation of the lawyer and our hopes, they were given death.

According to the newspaper of Kwajalein at that time, and to the prosecution, it seemed emphasized that admiral Masuda collaborated with them.

Admiral, however, stated in his will very clearly that he had ordered the execution, and it is neither possible nor reasonable that an admiral (captain at that time) should have collaborated with a warrant officer, instead of giving order.

Isn't the military orders universally absolute throughout army armed forces of the world?

I have never lost hope that they would ever get commuted, and have waited for the news these ten months in vain.

While I am convinced that the U.S. authorities are already taking it into consideration, yet I am afraid that they would never get it after all. I can't help appealing your excellency on their commutation, being afraid to annoy your excellency by my impoliteness.

Please sympathize with me, and do me your excellency's favour of taking care that they be commuted as quick as possible.

I am convinced that they had executed the prisoners of war, because they could not disobey the order as men of Japanese armed forces, without the least malice, and with the same sense of justice as of legal executors.

Now, I should like to write about their characteristic merits in order to prove that it was true.

....."

The commission then, at 10:20 a.m., took a recess until 10:35 a.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.)

Examined by the judge advocate concerning prosecution document #525:

82. Q. Does the witness have in his possession certified true copy of the official translation of the statement of Masuda, Nisuki, accepted in the trial of Masuda, et al, contained therein as Exhibit 7B? A6

A. I have.

83. Q. Does this statement relate to the incident charged in the Masuda case?

A. It does.

84. Q. Have you certified this copy to be a true copy of the exhibit as contained in the official record previously marked for identification?

A. I have.

The document produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

AB

Cross-examined by the accused concerning prosecution document #525:

85. Q. Do you know when this document was made?

A. The document is undated and I do not know when it was made.

86. Q. Is there other material in that record which shows when that document was made?

A. The only portion of the record bearing on that statement is contained in the record on page forty. This shows that this record was translated by Larry Watanabe, T/3, U. S. Army together with Sergeant Sunamoto, on temporary duty with Commander Marshalls-Gilberts.

87. Q. Do you know whether Masuda made this statement voluntarily or whether the American authorities ordered Masuda to make this statement?

This question was objected to by the judge advocate on the ground that there was no foundation in the record indicating that the statement was made to the American authorities; that it was a double question and irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

A. I do not know and the record does not so state.

88. Q. Have you ever seen the original of this statement?

A. I have.

89. Q. Do you know where the original is?

A. The original is with the original record presently in custody of the Judge Advocate General of the U. S. Navy. The Commander Marianas copy contains a photostatic copy of that original.

90. Q. Then, not having seen the original, you cannot testify that the photostat is a true copy of the original, can you?

This question was objected to by the judge advocate on the ground that it was argumentative.

The accused made no reply.

The commission announced that the objection was sustained.

The accused objected to the receipt in evidence of this document on the grounds set forth in the objection to prosecution document number five and on the further grounds this document as offered violates rule in Naval Courts and Boards in that it has not been personally authenticated; that the judge advocate has not shown that it was freely made by the affiant; that there is no proof that affiant is dead; and that it is irrelevant, incompetent, immaterial and hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objections, the document was so received and is appended marked "Exhibit 6".

Examined by the judge advocate concerning Exhibit 6:

91. Q. Will the witness please read the preliminary portion and paragraphs one, four and five of Exhibit 6?

(The witness read from Exhibit 6 as requested.)

Cross-examined by the accused concerning Exhibit 6:

92. Q. Was this Exhibit 6 ever offered into evidence in the trial of Admiral Masuda?

A. On page 40 of the Masuda record the following appears: "7. Q. Are the contents of Exhibit 7B an accurate translation of the contents of Exhibit 7A? A. To the best of my knowledge, yes. Exhibit 7A and 7B was offered in evidence by the judge advocate. There being no objection it was so received and is appended marked 'Exhibit 7A' and 'Exhibit 7B'."

93. Q. Does this record show why this civilian, Tsutsumi, was not tried for this offense when this statement of Admiral Masuda states it was actually done by a civilian?

This question was objected to by the judge advocate on the ground that it was irrelevant.

The accused replied.

The commission announced that the objection was sustained.

94. Q. Does the record of the Masuda trial show that one of the victims was Ensign Goranson, either in the charge or in the proceedings?

A. The victims are not named in the record.

Examined by the judge advocate concerning the record of the trial of Shimpei Asano, et al:

95. Q. Does the witness have in his possession from the office of the Director of War Crimes the official record of that office in connection with the trial of Asano and others?

A. I have.

96. Q. Is this the official record of the office of the Director of War Crimes, Pacific Fleet?

A. It is.

97. Q. Does this record relate to the trial of Asano and others for incidents alleged to have occurred on the 20th of June 1944? AB

A. It does.

The document produced by the witness was submitted to the accused and to the commission for examination and identification.

Examined by the judge advocate concerning prosecution document #502:

98. Q. Does the witness have in his possession certain certified excerpts taken from the official record of the Asano trial?

A. I have.

99. Q. What do these excerpts consist of?

A. Excerpts from the charge and specifications, Military Commission Order, convening authority's action, action of the reviewing authority, and the action of the confirming authority.

100. Q. Does the witness know where the original record of the Asano case is?

A. The original record was forwarded to the Judge Advocate General of the U. S. Navy.

101. Q. Do the certified excerpts that you have taken from the official record of the office of the Director of War Crimes relate to an incident which occurred on June 20, 1944 on Dublon Island?

A. They do.

The document produced by the witness was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #502:

102. Q. Do you know where Asano, the accused of the Asano case, is now?

A. Admiral Asano is presently confined at the War Criminal Stockade.

103. Q. Where is Ueno, Chisato?

A. He is likewise confined at the War Criminal Stockade.

104. Q. Where is Nakase, Shohichi?

A. Also at the War Criminal Stockade, Guam.

105. Q. Are Asano and the five other persons available as witnesses?

This question and line of questioning was objected to by the judge advocate on the ground that it was irrelevant and immaterial to the issue of admissibility of those excerpts.

As

The accused replied.

The commission announced that the objection was not sustained.

A. Asano, Ueno, and Nakase are presently on Guam and available to this court. Eriguchi, Tanaka, and Kobayashi have been transferred to Sugamo Prison, Tokyo.

106. Q. In this excerpt, all of Charge II is not included in this excerpt, but was the rest of Charge II omitted?

A. The remaining specifications of Charge II were omitted from the excerpts.

107. Q. Do you know why that portion was omitted?

A. They were omitted because they are neglect of duty specifications.

108. Q. Who prepared this excerpt?

A. These excerpts were prepared by myself and the judge advocate.

109. Q. Whose idea was it to omit part of Charge II?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial to the issue of admissibility of this document.

The accused replied.

The commission announced that the objection was sustained.

Reexamined by the judge advocate concerning prosecution document #502:

110. Q. You noted that subsequent specifications in Charge II were omitted and that they dealt with Neglect of Duty. Will you state what incidents those concern and whether they are set forth in Charge I of those charges and specifications?

A. These remaining specifications deal with neglect of duty on the part of Asano and Ueno in connection with the execution of the same prisoners of war which are covered in the other specifications excerpted.

Recross-examined by the accused concerning prosecution document #502:

111. Q. Were Ueno and the others that were charged with these neglect of duty specifications found guilty thereof?

A. Asano was found guilty of the second specification of the second charge and the third specification of the second charge and Ueno was found guilty of the fourth specification of the second charge.

The accused objected to the receipt in evidence of this document on the grounds that the accused in the case of Asano, et al are available as witnesses, and that the entire document should be submitted. 28

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The judge advocate replied.

The commission announced that the objections were not sustained. There being no further objection, the document was so received and is appended marked "Exhibit 7".

Herbert L. Ogden, 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.

Examined by the judge advocate concerning Exhibit 7:

112. Q. Will the witness read from Exhibit 7 the excerpted charge one and specifications one and two as set forth in the excerpts?

(The witness read from Exhibit 7 as requested.)

113. Q. Were the persons mentioned in specifications one and two of Charge I and specification one of Charge II found guilty and the findings in each case approved, as shown by the Military Commission Order Number 40, by the convening authority?

A. They were all found guilty with the exception that Nakase and Kobayashi were found not guilty of the second charge.

114. Q. Of what specification of the second charge?

A. Specification one.

115. Q. That first specification of Charge II deals with the torture of a prisoner of war, is that correct?

A. That is correct.

116. Q. Will the witness read the action of the Acting Secretary of the Navy dated 27 July 1948, paragraphs three, four and five thereof?

(The witness read from Exhibit 7 as requested.)

Examined by the judge advocate concerning the record of the trial of Hiroshi Iwanami, et al:

117. Q. Does the witness have in his possession a copy of the record in the case of Iwanami, Hiroshi, et al?

A. I have.

118. Q. Is this record the official copy of the office of the Director of War Crimes, Pacific Fleet?

A. It is.

119. Q. Does specification three of Charge I in this case deal with an incident alleged to have occurred on the 20th of July 1944 at Dublon Island?

A. It does.

The judge advocate submitted the record of the trial in the case of Iwanami, Hiroshi, et al, to the accused and to the commission and requested that it be marked for identification. There being no objection, it was so marked.

Examined by the judge advocate concerning prosecution document #503:

120. Q. Has the witness prepared excerpts from this official record of the trial of Iwanami and others?

A. I have prepared excerpts from the charges and specifications, the Military Commission Order, the action of the convening authority, the action of the reviewing authority, and the action of the confirming authority.

121. Q. Has the witness certified these excerpts to be, and are these, true excerpts from that record?

A. I have, and they are.

Prosecution document number 503 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #503:

122. Q. Do you know if Iwanami is available as a witness for this trial?

A. He is presently confined in the War Criminal Stockade, Guam.

123. Q. The copy which you have tendered to us only has a covering sheet which is marked and certified that they are true excerpts from the official record. Why haven't the other sheets been marked and certified?

This question was objected to by the judge advocate on the ground that it was immaterial and on the further ground that since some were excerpts they could not be certified as a true copy as they were not complete copies.

The accused made no reply.

The commission announced that the objection was sustained and stated that the question seemed to be argumentative and time-wasting. AR

The accused objected to the receipt in evidence of prosecution document number 503 on the ground that it was irrelevant, immaterial, that it was improper to use prior convictions of others to prove the guilt of an accused, that it deprived the accused of the right of confrontation of witnesses, that it was hearsay, that Iwanami, Hiroshi, was on Guam and was available to be called as a witness, that the whole record should be admitted and not just a portion of it, and that the whole charges and specifications should be excerpted not just a portion of them.

The judge advocate replied.

The commission announced that the objections were not sustained. There being no further objection, the document was so received and is appended marked "Exhibit 8".

Examined by the judge advocate concerning Exhibit 8:

124. Q. Will the witness read specification number three as set forth in the charges and specifications?

(The witness read from Exhibit 8 as requested.)

125. Q. Does the action of the convening authority dated November 8, 1947 confirm the findings of guilty with regard to Charge I and the sentence of the commission in the case?

A. It does.

126. Q. Does the action of the Commander in Chief, Pacific and United States Pacific Fleet similarly confirm the findings of guilty and the sentence in regard to the persons in specification three?

A. It does.

127. Q. Will the witness read the action of the Secretary of the Navy, paragraph 4 thereof?

(The witness read from Exhibit 8 as requested.)

The commission then, at 3:10 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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:)

Examined by the judge advocate concerning the record of the trial of Fumio Inoue, et al:

128. Q. Does the witness have in his possession a copy of the record of the trial of Captain Inoue, Fumio?

A. I have.

129. Q. Is this record the official record of the Director of War Crimes of the Pacific Fleet?

A. It is.

130. Q. Do you know where the original record in the case of the trial of Captain Inoue is?

A. The original record was forwarded to the office of the Judge Advocate General of the Navy.

131. Q. Have you read the record of the Inoue case and have you prepared therefrom certain excerpts?

A. I have.

132. Q. Does the Inoue record and do these excerpts deal with an incident that occurred on April 8, 1945 in Jaluit Atoll Islands?

A. It deals with two incidents, one occurring about 8 April 1945 and the other about 13 April 1945.

133. Q. How many charges were preferred in the case of Inoue, Fumio?

A. Two.

134. Q. What was the first charge?

A. Murder.

135. Q. And what was the second charge?

A. Violations of the laws and customs of war.

136. Q. How many specifications were included under the first charge?

A. Two.

137. Q. How many specifications were included under the second charge?

A. Two.

138. Q. Was the incident alleged in specification one of Charge I the same incident that was alleged in specification one of Charge II?

A. It is.

139. Q. Is the incident related in specification two of Charge I the same incident related in specification two of Charge II?

A. It is.

The judge advocate submitted the record of the trial in the case of Inoue, Fumio, to the accused and to the commission and requested that it be marked for identification. There being no objection, it was so marked.

140. Q. In the trial of Inoue, Fumio, the record of which you read; was the accused Inoue convicted of specifications one and two of Charge I and specifications one and two of Charge II?

A. He was.

141. Q. Was this action of conviction of these offenses acted upon by the convening authority and confirmed by him?

A. It was.

142. Q. Was this action reviewed by the reviewing authority and confirmed by the reviewing authority?

A. It was.

143. Q. Was an opinion filed in this case by the Judge Advocate General stating that there were four offenses which grew out of two acts?

A. There was.

144. Q. Did the action of the Judge Advocate General recommend that, since there were only two series of acts that, the specifications of Charge II which related to identical incidents set forth in the specifications of Charge I not be confirmed?

A. The opinion of the Judge Advocate General made such a recommendation.

145. Q. And did the Secretary of the Navy set aside the conviction on specifications one and two of Charge II stating that this was done for the reasons given by the Judge Advocate General?

A. That is correct.

146. Q. And is it true that no other reasons are stated in that Secretary of the Navy action for setting aside these two specifications?

A. That is true.

Examined by the judge advocate concerning prosecution document #504:

147. Q. Has the witness in his possession certain excerpts from the Inoue case?

A. I have.

148. Q. Are these excerpts certified to be true excerpts taken from the official record of this case?

A. They are.

149. Q. Do these excerpts deal with Charge II, the violation of the law and customs of war?

A. They do.

150. Q. Do these excerpts contain the full military commission order, the complete action of the convening authority, the complete action of the reviewing authority, the opinion of the Judge Advocate General, and the action of the Secretary of the Navy?

A. They do.

Prosecution document number 504, the excerpts from the Inoue, Fumio record was submitted to the accused, and to the commission, and by the judge advocate offered in evidence.

The accused objected to the receipt in evidence of prosecution document number 504 on the ground that it made reference to secret dispatches that were not available to the accused since he was Japanese, and on the grounds of prior objection to prosecution document number 503.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objections, the document was so received, and is appended marked "Exhibit 9".

Examined by the judge advocate concerning Exhibit 9:

151. Q. Will the witness read the charges and specifications dated 13 March 1947? 88

(The witness read the charges and specifications as requested.)

152. Q. Will the witness read the Military Commission Order number 38?

(The witness read the Military Commission Order number 38.)

153. Q. Will the witness read the action of the Commander in Chief, U. S. Pacific Fleet?

(The witness read the action of the Commander in Chief, U. S. Pacific Fleet as requested.)

154. Q. Will the witness read the Judge Advocate General's letter of 26 January 1948?

(The witness read the letter from the Judge Advocate General as requested.)

155. Q. Will the witness read paragraph four of the letter dated 3 March 1948?

(The witness read paragraph four of the letter as requested.)

The witness was duly warned.

The commission then, at 4:35 p.m., adjourned until 9 a.m., tomorrow, Wednesday, November 3, 1948.

SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, November 3, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate announced that he had been in communication with the
medical officer and was advised that Lieutenant Commander Bradner W. Lee,
junior, would be unable to attend today's session of the proceedings of the
Commission because of continuance of the illness set forth in the medical
officer's letter, copy already prefixed marked "M".

The judge advocate further announced that Captain Kermit H. Shelly, U. S.
Marine Corps, would be unable to attend today's session of the proceedings of
the Commission because of illness and that a letter from the medical officer
would be forthcoming.

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

No witnesses not otherwise connected with the trial were present.

The accused submitted to the commission for approval interrogatories to
be propounded to various witnesses.

The judge advocate did not desire to add any cross-interrogatories.

The commission was cleared.

The commission was opened and all parties to the trial entered.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

The commission announced that it assented to the submission of the
interrogatories and directed the judge advocate to forward them to the proper
authorities.

Herbert L. Ogden, the witness under examination when the adjournment
was taken, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Examination continued.)

The judge advocate submitted to the accused and to the commission the record of the trial of Inoue, Fumio, previously identified, and offered in evidence so much thereof as contains the testimony of Jinno, Shigeru; Morikawa, Shigeru; Ieki, Tamonori; Sakuda, Sawaaki; and Inoue, Fumio. 28

There being no objection, it was so received.

156. Q. Will the witness read from the testimony of Jinno, Shigeru, such portions as relate to the question of spying by the natives?

The witness read from the testimony of Jinno, Shigeru as follows:

"31. Q. Was the fact of these executions made public?

"A. I think it was about one week after the natives were executed that this was made public under the name of Admiral Masuda.

"32. Q. Do you know the contents of that publication?

"A. I only remember the gist of it.

"33. Q. Please tell the commission the gist of it.

"A. The natives who sneaked into Jaluit and Chitogen in the latter part of March committed murder and spied, therefore all were executed."

157. Q. Will the witness read from the testimony of Morikawa, Shigeru, such portions as relate to the question of spying by the natives?

This line of questioning was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness read from the testimony of Morikawa, Shigeru as follows:

"30. Q. After the completion of this investigation, do you know what was done with these natives?

"A. I do.

"31. Q. How did you learn what had happened to them?

"A. On the fifteenth of April, 1945, I was called by Admiral Masuda and told to make up a letter to the following, and dispatch it to the various commanders on the island. The gist of the letter was as follows: The natives who sneaked into Jaluit and Chitogen and various areas in the latter part of March are natives who had killed a Japanese soldier and escaped and had come to our island as spies. They were felonious criminals; therefore, they have been executed."

158. Q. Will the witness read from the testimony of Ieki, Tamonori, such portions as relate to spying by the natives?

The witness read from the testimony of Ieki, Tamonori as follows:

"7. Q. Was this publication made public?

"A. A circular was put out. It was put out by the commanding officer of the Jaluit Defense Garrison and it stated that the natives who sneaked in from Mille had committed felonies at Mille and had committed spying on Jaluit, therefore all of them had been executed. At this time I was a platoon leader in charge of some positions. This was put out in the middle of April 1945. I received this circular."

159. Q. Will the witness read from the testimony of Sakuda, Sawaaki, such portions as relate to the question of spying by the natives?

The witness read from the testimony of Sakuda, Sawaaki, as follows:

"11. Q. Do you remember if it was stated that the natives were executed?

"A. As I recall, it stated that the natives had committed murder at Mille, and they had sneaked into Jaluit as spies."

160. Q. Will the witness read from the testimony of Inoue, Fumio, such portions as relate to the question of spying by the natives?

The witness read from the testimony of Inoue, Fumio as follows:

"59. Q. What did you find out?

A. The following was found. That on Mille Raliejap and three other natives, Ralime and three other natives, a total of eight natives, after plotting killed a soldier, stole a military boat and provisions and they all departed to the enemy and in the open sea out of Mille they were taken in by an American ship and they were brought by this same boat to the waters adjacent to Jaluit. Raliejap and three other natives were to sneak into Jaluit. Ralime and three other natives were to sneak into another place on Jaluit and that on this American ship they received a mission to which I have testified previously. After this mission was achieved they planned to escape from Jaluit.

"108. Q. You stated that these natives violated the crime of spying in the Japanese Criminal Code in your opinion. What acts or duties did you find that violated the act of spying as set forth in the Japanese Criminal Code?"

This question was objected to by the accused on the ground that it was irrelevant and immaterial and prejudiced the substantive rights of the accused.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness continued to read from the testimony of Inoue, Fumio as follows:

"A. The acts which violated the act of spying set down in Japanese Criminal Code, was that the eight natives, supported by the Americans with will to tell the natives saying that they had drifted. They asked about the dispositions of soldiers which were a military secret in the neighborhood that they drifted ashore. And also, they relayed that 'about a month later, American ships would come and get you, that the natives on the north assemble and the natives from the south assemble on an island where there are no soldiers to be taken away.' And also relayed detailed instructions concerning this. And the fact also that they had relayed about the executing of natives on Mille, as were stated by the same method about a month later, six hundred natives of Jaluit escaped; the same method that these natives had stated about."

AB

The accused moved to strike out all this witness' testimony concerning excerpts from the record of the trial of Inoue, Fumio on the ground that said excerpts were irrelevant and immaterial.

The judge advocate replied.

The commission was cleared.

The commission was opened and all parties to the trial entered.

The commission announced that the motion was not sustained.

The judge advocate submitted to the accused and to the commission the record of the trial of Inoue, Fumio, previously identified, and offered in evidence so much thereof as contains the testimony of James P. Kenny.

There being no objection, it was so received.

161. Q. Will the witness read from the testimony of James P. Kenny such portions thereof which relate to the question of trial of some natives on Jaluit?

The witness read from the testimony of James P. Kenny as follows:

"2. Q. Are you the legal custodian of the record of proceedings of the war crimes investigation at Jaluit, Majuro and Kwajalein Atolls, Marshall Islands, by order of the Commander Marshalls-Gilberts Area to inquire into war crimes and atrocities on Jaluit Atoll?
"A. I am.

"5. Q. What portion of the proceedings do you desire to introduce into evidence?

"A. That portion of the testimony of the witness, Inoue, Fumio, captain, Imperial Japanese Army which deals with the question of trial of some Mille natives on Jaluit Atoll.

"6. Q. Refer to these documents and read from the testimony of the accused, Inoue, Fumio, on October 9, 1945, questions three and seventeen and the answers thereto."

This question was objected to by the accused on the ground that the witnesses, Lieutenant James P. Kenny and Inoue, Fumio were available and should be called and that it was irrelevant.

The judge advocate replied.

The accused requested an adjournment at this time, prior to ruling by the commission, in order to examine the record of the board of investigation.

The commission announced that the request was granted.

The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Thursday, November 4, 1948.

SEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, November 4, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy, members, and
Lieutenant David Bolton, U. S. Navy, judge Advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate announced that he had been in communication with the medical officer and was advised that Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, would be unable to attend today's session of the proceedings of the commission because of continuance of the illness, set forth in the medical officer's letter, copy already prefixed marked "M."

The judge advocate further announced that he had been in communication with the medical officer and was advised that Captain Kermit H. Shelly, U. S. Marine Corps, would be unable to attend today's session of the proceedings of the commission because of continuance of his illness.

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.

Herbert L. Ogden, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

The judge advocate produced the original record of the Board of Investigation of War Crimes in Jaluit, etc., and announced that the accused had examined this original record.

The commission announced that the objection by accused to the reading of the testimony taken from the record of the Board of Investigation was not sustained.

(Examination continued:*)

(The witness continued to read from the testimony of James P. Kenny as follows:)

The witness read the answer ~~the answer~~ to Question 6:

"A. The witness read from the testimony of Inoue, Fumio, as follows:

"3 Q. Tell all you know about the execution of the eight natives who were captured April 1945, their capture and all the things leading up to it.

A. About six months have elapsed so I might have the dates and the names of the natives mixed up but I will give you the true story of it. At that time I was Naval Police Commander. My duties were to check on the civilians and Navy and Army personnel from not eating more than they were allowed to. About the end of March this year there were reports to headquarters that four natives had drifted down to Jaluit. On the following day we had a report that four other natives had also landed on the island north of Medyai. At that time Warrant Officer Omura on Jaluit Island and First Lieutenant Furuno on Chitogen Island notified that the natives had drifted over here. Headquarters had me check on the eight natives because they thought the natives were sent here by the Americans to make some scheme to get the other natives off. Therefore the eight natives were sent to the headquarters. At that time these natives were sent to the headquarters they didn't have any particular person in charge to look after the natives in native cases so the admiral ordered me to investigate these natives. On this atoll here the Army and Navy got along very harmoniously so whatever we did we had full cooperation among the units, the Naval police were composed of Army and Navy personnel. I was the commander of the Navy and Army police. The natives that were brought from Jaluit were kept on Aineman and the other four were kept at ammunition dump on Emidj. I and First Lieutenant Morikawa, intelligence officer, and Shiroshita, civilian interpreter, the three of us interrogated these eight natives. I first asked this question, 'Why did you desert Mille?', the natives replied 'Because many of the other natives were being rescued by the other American ships and we had heard an order by the commander of Mille that if any more natives tried to escape or escaped that all the natives left on Mille would be executed; so we made up our minds to take a chance in trying to get picked up by an American ship or drift to Majuro.

"The four on Chitogen and the four on Jaluit had conferred with each other before they left Mille. A8

"17. Q. What kind of trial did they have, or was your investigation the only thing used?

A. They did not have a trial here because even a Japanese soldier they never have a trial and they just investigate and decide what to do according to the report."

The accused moved to strike out all this witness' testimony, pertaining to the testimony of Lt. James P. Kenny given in the trial of Inoue, Fumio, on the ground that it was irrelevant and immaterial and that Lt. Kenny is available as a witness.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

Examined by the judge advocate concerning prosecution document #528:

162. Q. Does the witness have in his possession excerpts taken from the record of the Inoue, Fumio case, consisting of the statement of Inoue, Fumio?
A. I have prepared a certified copy of this statement which was Exhibit 2 of the Inoue record.

163. Q. Does this excerpt from the Inoue case deal with the question of the execution of the natives?
A. It does.

164. Q. Have you certified this to be a true and correct copy of that statement as contained in the Inoue record?
A. I have.

Prosecution document number 528 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

~~Cross-~~Examined by the accused concerning prosecution document #528:

165. Q. Is the affiant Inoue, Fumio available as a witness?
A. Inoue, Fumio is presently confined in Sugamo Prison, Tokyo.

The accused objected to the receipt in evidence of prosecution document number 528 on the same ground as the objection to the receipt in evidence of prosecution document number 525.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objection it was so received, and is appended marked "Exhibit 10".

Examined by the judge advocate concerning Exhibit 10:

166. Q. Will the witness read from this exhibit the first paragraph and the paragraph numbered 1?

(The witness read the first paragraph and the paragraph numbered 1 as requested.)

The accused moved to strike Exhibit 10 from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

Examined by the judge advocate concerning the record of the trial of Hidesaku FURUKI:

167. Q. Does the witness have in his possession from the files of the Director of War Crimes, Pacific Fleet, the record in the case of one Furuki, Hidasku?
A. I have.

168. Q. Is this the official record of the Director of War Crimes, Pacific Fleet?
A. It is.

169. Q. Does the witness know where the original of the Furuki, Hidesaku record is?
A. The original record was forwarded to the Judge Advocate General's Office of the Navy.

The judge advocate submitted the record of the trial in the case of Furuki, Hidesaku, to the accused and to the commission and requested that it be marked for identification. There being no objection, it was so marked.

Examined by the judge advocate concerning prosecution document #505:

170. Q. Has the witness prepared certified portions of this record?
A. I have prepared certified excerpts from this record of the charges and specifications, the Military Commission Order No. 37, the action of the convening authority, action of the reviewing authority, the opinion of the Judge Advocate General of the U. S. Navy, and the action of the confirming authority.

171. Q. Have you certified these to be true excerpts from the record of this case?
A. I have.

172. Q. Are these the certified excerpts?
A. They are.

Cross-examined by the accused concerning prosecution document #505:

173. Q. How many charges are there in the Furuki case?
A. Two.

174. Q. What is the offense alleged in the first charge?
A. Murder.

175. Q. What law was applied in this charge?
A. This charge is alleged in violation of the Criminal Code of Japan.

176. Q. In the first charge, does it show that the victim had anything to do with spying?
A. Spying is not mentioned in the first charge.

177. Q. What is the second charge?
A. Violation of the laws and customs of war.

178. Q. How many specifications are in Charge II?
A. Five.

179. Q. Have the specifications 1 through 4 of Charge II been disapproved by the convening authority?
A. That is correct.

180. Q. Has it been disapproved by the reviewing authority?
A. That is correct.

181. Q. Is specification 5 of Charge II approved by the convening authority?
A. That was approved by the convening authority.

182. Q. Is it approved by the reviewing authority?
A. It was approved by the reviewing authority.

183. Q. Was specification 5 of Charge II set aside by the Secretary of the Navy?
A. That is correct.

184. Q. Was Admiral Masuda tried for this crime?
A. He was not.

185. Q. At the time of the offense was Major Furuki a member of the Japanese Imperial Army?
A. He was.

Reexamined by the judge advocate concerning prosecution document #505:

186. Q. In your excerpt of the charges and specifications which specifications did you excerpt?

A. Specification 5 of Charge I and specification 5 of Charge II.

187. Q. Do these specifications both refer to the same incident?

A. They do.

The accused moved to strike out this answer on the ground that it was an opinion of the witness.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

188. Q. Do these specifications, number 5 of Charge I and 5 of Charge II, relate to an incident that occurred on or about 10 August 1945 in regard to the killing of a native on Jaluit Atoll by Furuki, Hidesaku?

A. They do.

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion to strike was not sustained.

Prosecution document #505 was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the receipt in evidence of prosecution document number 505 on the ground that specification 5 of Charge II which is cited in this excerpt was set aside by the Secretary of the Navy, and that the remainder of the excerpt is irrelevant to the charge and specifications in the instant case.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objections it was so received, and is appended marked "Exhibit 11".

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

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.

Examined by the judge advocate concerning Exhibit 11:

189. Q. Will the witness read from Exhibit 11, Charge I and the excerpted specification and Charge II and the excerpted specification?

(The witness read from Exhibit 11 as requested.)

190. Q. Will the witness read page nine of this excerpt?

(The witness read from Exhibit 11 as requested.)

The accused moved to strike the excerpted specification five of the second charge from Exhibit 11 from the record on the ground that it was set aside by the Navy Department.

The judge advocate replied.

The commission announced that the motion was not sustained.

191. Q. Does the witness know the whereabouts of Sakuda, Sawaaki; Shintome, Sanjiro; and Furuki, Hidesaku?

A. They are in Japan.

The proceedings of the Military Commission in the case of Furuki, Hidesaku were submitted to the accused and to the commission, and by the judge advocate so much thereof as contains the testimony of Sakuda, Sawaaki; Shintome, Sanjiro; and Furuki, Hidesaku was offered in evidence.

There being no objection it was so received.

The accused requested that the commission recess in order to allow the accused additional time to examine the testimony contained in this record.

The witness was duly warned.

The commission then, at 11:05 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.)

192. Q. Will the witness read from the testimony of Sakuda, Sawaaki, the preliminary identifying questions number 1, 4, 7, 8, 9 and 10 and the answers thereto?

The witness read from the testimony of Sakuda, Sawaaki as follows:

"1. Q. State your name and rank.

A. Sakuda, Sawaaki, former lieutenant, Imperial Japanese Navy." AB

"4. Q. Were you ever stationed on Jaluit Atoll, Marshall Islands? AC

A. I was."

"7. Q. Do you know what Major Furuki's command was at that time?

A. He was the Battalion Commander of the Second Battalion of the First South Seas Detachment.

"8. Q. What was the nature of your duties on Jaluit Atoll?

A. I was attached to the headquarters on the 62nd Naval Guard Unit.

"9. Q. Will you explain briefly what the command organization was with regard to Admiral Masuda, Major Furuki, and your own status?

A. From what period.

"10. Q. During the period from May of 1945 until the middle of August.

A. Major Furuki as a member of the defense garrison worked as head of the defense section under Admiral Masuda and I worked under Major Furuki."

193. Q. Will the witness read from the testimony of Sakuda, Sawaaki, in the record of the Furuki case such portions as relate to the question of the trial of natives?

The witness read from the testimony of Sakuda, Sawaaki as follows:

"62. Q. Do you recall any trial, the knowledge of which came to you in the course of your official duties serving with Major Furuki, which involved any of the natives which you have spoken about in the course of this trial?

"A. As I have stated before, I have not seen or heard of or been in a trial which was public such as this one, but I have seen Admiral Masuda, Major Furuki, Shintome and Inoue arguing about these natives many times in the office of the commanding officer."

"63. Q. Your answer is not responsive to the question, I did not ask you if you heard any arguments concerning these natives, I asked you, and I repeat, did you hear of any trial of these natives?"

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A. I have not seen or heard of any trial such as this one."

Cross-examined by the accused concerning the testimony of Sakuda, Sawaaki, from the record of the trial of Furuki, Hidesaku:

194. Q. Will you please read questions 23, 65, 66, 128 through 131, 61, 87, 92, 96 and 319 and the answers thereto?

The witness read from the testimony of Sakuda, Sawaaki as follows:

"23. Q. Will you describe the documents that referred to Lesohr, Kohri and Kozina?

A. I do not remember it exactly, but on it was the name of the criminal, the law applied to the crime, the specifications of the crime, the degree in which the criminal was involved, Major Furuki's opinion on the crime and the admiral's verdict. I would like to change the first part of my answer. What I mean when I say I do not remember exactly is, that I do not remember word for word what was written down and not that I do not remember. It is not vague, everything on there I remember, but I do not remember the details word for word."

"65. Q. In your testimony you referred to certain arguments between Admiral Masuda, Commander Shintome, Major Furuki and Captain Inoue which were held in Admiral Masuda's quarters, did you ever appear before them and testify during the period of these arguments?

A. No.

"66. Q. Did you ever see any of the natives present in the quarters of Admiral Masuda when these arguments were going on?

A. No."

"128. Q. You were asked by the judge advocate whether there was a trial. In answering this, what was your understanding of the word 'trial'.

A. I was thinking of the arguments they had on the natives by the commanding officer, Major Furuki, Shintome and Inoue, and also I was thinking of the opinion sheet of Major Furuki on the natives. What I understand of trial is that there is a presiding judge, other judges, the judge advocates, and the trial was based upon investigation and it was the result of the specifications of the crime. What makes up a trial I do not know, as I am not familiar with the procedure.

"129.Q. Then in answering the questions of the judge advocate and the counsel about trials, you did not know exactly what a trial was, and especially what a trial was in Japan, or by law?
A. Yes.

"130.Q. Then all you testified concerning trial, especially all as to the judge advocate, was based on your opinion, and what you thought it should be. Is it not so?
A. This was what I judged from what I had seen concerning the natives on Jaluit.

"131.Q. You stated that by a trial you meant there was a presiding judge, other judges and a judge advocate and they determined on the specifications. Was there such a forum on the cases you investigated?
A. I think there was."

"61. Q. In the course of your official duties serving with and under Major Furuki did you ever hear of trials of any of these natives?
A. I have."

"87. Q. The witness testified this morning that he had seen a paper put out by the commanding officer in which the name of the criminal; the law applied to the crime; the specifications of the crime; the degree the criminal was involved in the crime; Major Furuki's opinion and the verdict of the Admiral. I would like to know if the persons were released by the same form?
A. Yes."

"92. Q. This Okamoto whom you looked into, investigated as a witness. What relationship did he have to this incident; if he had any relationship what was it?
A. Okamoto was a person that Echibaru, Lesohr, Arden planned to kill."

"96. Q. What did Okamoto report?
A. In the evening of that day when Petty Officer Okamoto was going down by the north end of Jaluit Island, by Ren Island, Imrodj and Medyai, and as he came by a channel there, Echibaru, who was in the same canoe with him tried to strangle him with a cord from behind. Petty Officer Okamoto unconsciously moved his head and Echibaru did not succeed. Recovering Okamoto threw Echibaru into the sea. At this time Arden and Lesohr, who were in the same canoe both came at him with oars, but, because he had overcome Echibaru so quickly they became subdued in the canoe. In another canoe, the one which Okamoto was pulling, the natives in the other boat were about to assault a gunzoku, named Muraoka, but, as Okamoto had overcome the other so quickly, they did not do anything. Guarding them, he brought them in and reported on his arrival."

"319.Q. In your testimony you spoke of Shintome and Inoue as participating in certain discussions or arguments in the commanding officer's room. Will you please tell the commission briefly what the official capacity of these two persons were,

that is, Shintome and Inoue?

A. Lieutenant Commander Shintome was the executive officer of the 62nd Naval Guard Unit and acted in place of Admiral Masuda as the commanding officer of the 62nd Naval Guard Unit. Inoue was attached to the Second Battalion headquarters at the same time he was the head of a special police which was organized at Jaluit by the Jaluit Defense Garrison. I believe the interpreter misunderstood my remarks pertaining to Lieutenant Commander Shintome and I would like to repeat my answer. 'He was acting executive officer of the 62nd Naval Guard Unit and assisted the commanding officer of the 62nd Naval Guard Unit.' "

Reexamined by the judge advocate concerning the testimony of Sakuda, Sawaaki, from the record of the trial of Furuki, Hidesaku:

195. Q. Will the witness read from the same testimony, questions 66, 80, 81, 115, and 295 through 303, and the answers thereto?

The witness read from the testimony of Sakuda, Sawaaki as follows:

"66. Q. Did you ever see any of the natives present in the quarters of Admiral Masuda when these arguments were going on?

A. No."

"80. Q. You testified this morning that you submitted a report addressed to Admiral Masuda via Major Furuki. From whom did you receive the order to investigate?

A. An order to investigate the native crimes was..... Major Furuki was ordered by Admiral Masuda to investigate the native's crimes.

"81. Q. Then the order was originated by Admiral Masuda?

A. Yes."

"115.Q. Was any type of trial held?

A. I do not know."

"295.Q. You were asked the following question. 'Do you remember in regard to the many trials you have heard about or read about in which the witnesses against the accused were brought in, in which the accused was not present.' You answered, 'I do not know of any cases.' Did you mean, thereby, that you do not know of any case in which the witness against the accused were brought in that the accused was not present?"

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

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness continued to read from the testimony of Sakuda, Sawaaki as follows:

"A. I know of what trial was held for what person, but I do not remember the law.

296.Q. Do you remember any case in which you have heard the accused was not present during the trial?

A. This is something for a man in the law profession to think about and not for me who is an outsider.

297.Q. Do you remember any case in which you have heard the accused was not present during the trial.

A. I do not know if I had read or heard about it.

298.Q. Do you remember any case that you read or heard about in which the accused was not present?

A. No I do not know of any case in which the accused was not present.

299.Q. Do you remember any case in which the accused was not present when the witness testified against him?

A. I do not know of any case in which the accused was not present when the witness testified against him.

300.Q. Do you remember any case in which the accused did not have the right to have a lawyer present when he was on trial?

A. I do not know of any trial in which the accused did not have the right to have counsel.

301.Q. Do you remember any trial in which the accused did not have the opportunity to call witnesses in his own behalf?

A. I do not know of any case in which the accused did not have the right to call witnesses.

302.Q. Do you remember any case in which the witnesses against the accused were not either sworn, or otherwise warned, that they must tell the truth, on threat of penalty if they did not tell the truth?

A. I do not know of any case in which the witnesses were not either sworn, or otherwise warned, that they must tell the truth, on threat of penalty if they did not tell the truth.

303.Q. You were asked yesterday, "Are your ideas of what a trial is, based upon what you have heard or read concerning trials?" You answered that with the word 'Yes.' Do you have any ideas of what a trial is based on, other than what you have testified to before this commission?

A. No."

Examined by the judge advocate concerning the testimony of Shintome, Sanjiro, from the record of the trial of Furuki, Hidesaku:

196. Q. Will the witness read from the testimony of Shintome, Sanjiro, the preliminary identifying questions number 1, 4, 5, 6, and 8?

The witness read from the testimony of Shintome, Sanjiro as follows:

"1. Q. State your name and rank.

A. Former Lieutenant Commander, Imperial Japanese Navy, Shintome, Sanjiro."

"4. Q. Were you in the Marshall Islands during the period from May to the end of the war, in 1945?

A. Yes.

5. Q. What were your duties during this period and to what organization were you attached?

A. I was attached to the Jaluit Defense Unit. My duties were engineering officer, construction officer, communications officer, transportation officer; I also had collateral duties as executive officer."

"8. Q. Were you ever present at any official meeting, where any of these natives were discussed?

A. I do not believe it was an official meeting, but I did happen to come upon Major Furuki while he was making a report to the commanding officer."

197. Q. Will the witness read from the testimony of Shintome such portions as relate to the question of trial, particularly questions 20, 21, 22, 23, and 24?

The witness read from the testimony of Shintome, Sanjiro as follows:

"20. Q. Were you a judge at this meeting?

A. No, I wasn't anything.

21. Q. Do you know if anyone in the meeting was a judge advocate?

A. No, I never heard.

22. Q. Was anyone else at the meeting referred to, or did anyone else at the meeting act in the capacity, as a judge?

A. I do not know. I never heard any reference to anyone as a judge or acting in the capacity of a judge.

23. Q. Were any native defendants present at this meeting?

A. No.

24. Q. Were any defense lawyers present?

A. No, No lawyers were present."

Cross-examined by the accused concerning the testimony of Shintome, Sanjiro from the record of the trial of Furuki, Hidesaku:

198. Q. Will the witness read questions 7, 17, 18, 28, 37, and the answers thereto?

The witness read from the testimony of Shintome, Sanjiro as follows:

"7. Q. Do you know anything about the execution of any natives on Jaluit?

A. I never heard anything. I do not know."

"17. Q. In addition to saying, 'It's a pity to execute the natives,' did you make any other statement?

A. I did wish they would wait a while, thus meaning to stop the execution.

18. Q. When you said that it is a pity to execute the natives, did you give any reason for your belief?

A. Yes, as previously stated. First, because they had given excellent cooperation; second, one and all natives were necessary for our self-support. Instead of killing them, it would be to our advantage to let them live and gather for us a pint or two more of coconut toddy."

"28. Q. Does the witness know about the incident where natives attempted to kill gunzoku Muraoka and petty officer Okamoto?"

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial in that it did not relate to the incident charged against the accused not to the subject matter of trial or spying.

The accused replied.

The commission announced that the objection was sustained.

The witness continued to read from the testimony of Shintome, Sanjiro as follows:

"37. Q. Then the work of Major Furuki, was it not the work of a judge advocate?

A. If I may say so, Major Furuki's duty corresponded to that of a judge advocate, I would think."

199. Q. Will the witness read the statement made by the witness Shintome, Sanjiro as made on the witness stand and as found on pages 373-374 of the record of the trial of Furuki, Hidesaku?

The witness read from the testimony of Shintome, Sanjiro as follows:

"The witness made the following statement:

As I stated this morning I happened to be present when Major Furuki was making a report to the commanding officer from some documents. This report was made regarding the case of the natives. Major Furuki was making his report stating

everything according to the law. In regard to this report, I heard the commanding officer say that a certain number of natives must be executed. I do not recall the exact number. Although my opinion was not called upon, I stated that it was a pity to kill the natives. The natives, even though they were criminals, had shown good cooperation. Moreover, this was the time when every hand was needed for our self-support. For these two important reasons I instantly asked to stay the execution. The natives were necessary to make coconut toddy and gather coconuts for this was our main food. It would be to our advantage to use them in this work and it would be an easy way out of the question. I so advised and I recall that Major Furuki also expressed the same opinion as this measure would be advantageous to our self-support and also in the viewpoint of operations. The commanding officer stated that this crime, the punishment for this crime and the weight of the punishment could not be compared in the light of other matters. To look upon this in the same light of other matters would be destructive to military discipline. Moreover, it would be detrimental to the prestige of the commanding officer. Moreover, considering the extreme shortage of food and difficult operational conditions this cannot be done. Therefore, although it is very unfortunate for the natives they must be punished according to the law. I remember that he said words to the foregoing effect. We were very sorry to hear the commanding officer say the foregoing; however, that was his different opinion. We did not know much about law. We could not do anything about it. I do not know what was settled or what was decided upon after this. I recall that at that moment my duties were pressing and I left. I do not have anything further to add."

Examined by the judge advocate concerning the testimony of Furuki, Hidesaku, from the record of the trial of Furuki, Hidesaku:

200. Q. Will the witness read from the testimony of Furuki, Hidesaku the following identifying questions and the answers thereto: 1, 2, 8, 9, 10, 11, 12, and 16?

The witness read from the testimony of Furuki, Hidesaku as follows:

- "1. Q. State your name and rank.
A. Major, Imperial Japanese Army, Furuki, Hidesaku.
- 2. Q. Are you the accused in this trial?
A. Yes."
- "8. Q. To what unit were you attached on Jaluit?
A. Sixty-second Naval Guard Unit.
- 9. Q. What was the name of your organization?
A. Second Battalion, First South Seas Detachment.

10. Q. What was your position in this detachment?
A. I was battalion commander.

11. Q. What were your duties at Jaluit during 1945?
A. I was head of the Defense Section and also head of the commission of Defense Preparation.

12. Q. Who was your commanding officer?
A. Rear Admiral Masuda, Nisuke."

"16. Q. In the answer to the question, 'Did you first come under the command of the Navy on Jaluit?' you answered, 'No, I did not first come under the command of the Navy.' Then when did you come under the command of the Navy?
A. In September, 1943, upon my arrival at Wotje, I came under the command of the Commanding Officer of the Sixty-fourth Naval Guard Unit."

201. Q. Will the witness read from the testimony of Furuki, Hidesaku such portions as relate to the question of spying, particularly question 101 and the answer thereto?

The witness read from the testimony of Furuki, Hidesaku as follows:

"101. Q. What was your opinion in punishment of Melein and Mejkane and what were the laws that were applied?
A. My opinion expressed in the case of Melein was death, in the case of Mejkane, fifteen years hard labor. The laws applied to Melein, the same as Mandala and Laperia and in addition to this spying and the articles in the Japanese Criminal Code concerning spying and the articles in the military secrets protection law concerning intentional relaying of information to the enemy. In the case of Mejkane, the Naval Criminal Code, desertion to the enemy and spying, to the Japanese Criminal Code and the article concerning relaying of information as to the enemy of the Military Secrets Protection Law. Also as a special notice it was written that Melein was the main plotter and intent was very strong and in the case of Mejkane, she was not the main plotter, but was involved, and intent was strong. This was expressed and also in the other cases whether intent was weak or strong and whether the person was the main plotter or not was written in."

Cross-examined by the accused concerning the testimony of Furuki, Hidesaku from the record of the trial of Furuki, Hidesaku:

202. Q. Will the witness read question 20 and the answer thereto?

The witness read from the testimony of Furuki, Hidesaku as follows:

"20. Q. Please state what were the circumstances of this."

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and that it went beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was not sustained.

The witness continued to read from the testimony of Furuki, Hidesaku as follows:

"A. At that time, due to the supremacy of the air by the American Air Force, only small numbers could be moved at a time. Commanding a purely battle unit I came to Kwajalein and then to Jaluit. Right after leaving Kwajalein, Kwajalein fell and the men I had left behind on Kwajalein, about one hundred fifty, died there. On Wotje, about three hundred still remained. After the fall of Kwajalein, the American forces had control of the air and the sea and to move troops became impossible. The ones remaining on Wotje stayed there."

The judge advocate moved to strike out this answer on the ground that it was irrelevant and immaterial, that it was not directly related to any issues in the instant case, and that it went outside the scope of the direct examination taken from the testimony of Furuki, Hidesaku.

The accused replied.

The commission announced that the motion was not sustained.

The commission cautioned the accused that his questions should be confined to relevant cross-examination and that in general the accused should submit matters pertaining to the defense of the accused when the defense opened its case.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: The same members as before, the judge advocate, the accused, his counsel, and the interpreters.

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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 concerning the testimony of Furuki, Hidesaku from the record of the trial of Furuki, Hidesaku continued.)

203. Q. Will the witness read questions 47, 97, 99, 100, 102, 103, 111, 186, 264, 299, 327, 330, 342, 347, 353, 354, 356, 366, 367, 373, 374, 407, 408, 409, 410, 411, and 412, and the answers thereto?

The witness read from the testimony of Furuki, Hidesaku as follows:

"47. Q. Tell us how they were disposed of.

"A. For the ones that were captured, Admiral Masuda held examination and consultation. When the Imordj incident occurred, Admiral Masuda called myself, Shintome and Inoue to his room and told us as follows: 'This native crime on Jaluit, this is an important crime. As they could not be sent back to where they can be disposed of due to the war conditions, they shall have to be disposed of on Jaluit by my authority. Under these war conditions, a formal trial cannot be conducted. They shall be examined and consultation held by special procedure done by my authority and under the battle conditions the best possible procedure; and in following this procedure, each shall

be given duties. You who receive these duties shall perform them. You shall perform your duties impartially and carefully, as your duties require you to judge on people. Lieutenant (jg) Sakuda shall act as investigator, Furuki, you shall act as a judge advocate, Lieutenant Shintome and Captain Inoue and myself shall act as judges. The investigators shall assemble the required witnesses and investigate thoroughly, and reports shall be made to me at least once a day. If I am busy, they shall be reported to Major Furuki, Furuki shall later report them to me. After the investigation is over, evidence should be made clear in a detailed report submitted to me. Major Furuki shall be present when reports are made to me. And Major Furuki, in the last examination and consultation, you shall express your opinion as to punishment. I shall show you the form to use later. Inoue and Shintome shall express your opinions as judges.' Last it was ordered the investigations be made. After the report was submitted to Admiral Masuda, Admiral Masuda, taking me with him, went to where the natives were confined and interrogated them. In the last examination and consultation, Admiral Masuda assembled Shintome, Inoue and myself and stated as follows: 'We shall conduct the last examination and consultation. As judges, you shall express your impartial opinions.' He then read the investigation report. Next Admiral Masuda stated: 'I have investigated, myself, and the specifications are as stated.' I expressed my opinions by my opinion paper which I had prepared. Masuda and Shintome expressed their opinions. After hearing this, Admiral Masuda stated that he would deliberate further on this and held the report and opinion paper and this examination and consultation was over. About a day or a day and a half later, Admiral Masuda called the three of us and made up a judgment paper in which he pronounced sentence; taking me with him, we went to where the natives were confined and pronounced sentence on them."

"97. Q. Do you know the case of Melein and Mejkane?
A. I do."

"99. Q. Then please state what you know concerning the case of Melein and Mejkane.
A. The specifications that came to light upon investigation of the Melein and Mejkane case were that Melein had ordered Mejkane to get the natives to desert from all the islands from Pingelap to Jaluit Islands and also to spy upon the defense garrison military secrets and to give the information to the Americans. They planned and executed this. Mejkane was only able to go up to Menge Island and to all the islands up to this point she handed the letter of Melein, trying to get the natives to desert, to the leader of each island. How this incident came to light was because Mejkane was missing from Pingelap and about ten days later returned. The District Commanding Officer of Pingelap investigated Mejkane. She acted crazy and the investigation was of no avail. The she was sent to headquarters. First Lieutenant Kadota was ordered as investigator and investigated the case. She continued to act crazy and information could not be obtained. A short time later a report came from the District.

Commanding Officer of Majilric Island which stated that a woman named Mejkane had been hiding there. This Kadota told Mejkane, and Mejkane stopped acting crazy and confessed that she had come to Menge Island acting on Melein's orders. Mejkane also related that the head of the village of Pingelap, Ichiro, Mark, Saburo and Melein who were prominent men of that village had held counsel and planned to desert. Melein, Ichiro, Mark and Saburo were called to Emdj Island. As the case became larger Morikawa and Ieki were added as investigators. The investigation was held on Emdj Island, the investigators were at the spot of the crime and investigated. Ieki went to Ooa, Medyai and Menge Islands twice. Kadota went to Jaluit and Ooa twice and also went to Pingelap once to investigate. Each person who was believed to have been involved in this case from Medyai, Menge, Ooa and Jaluit were called to Emdj and investigated. From Jaluit Island the head of the village, Levitikos was called. As a result of the investigation Melein confessed and the persons who were involved from Medyai and Menge Islands confessed that they had seen the letter brought by Mejkane. Also as a result of the investigation there came out that Mark, Ichiro and Saburo and another had no part in this plan. This is the case of Melein and Mejkane.

"100.Q. As a result of the investigation how did you dispose of Melein, Mejkane, Ichiro, Mark, Saburo and the others?

A. In the Melein and Mejkane case the same procedure of examination and consultation was held as in the case of Mandala and Laperia. As for Mark, Ichiro and Saburo they were cleared of suspicion as a result of the investigation and were released. The two leaders from Medyai Island and Menge Island, I forget if they were punished or not. Witnesses of other islands were returned to their islands after the investigations were over."

"102.Q. What was the decision as a result of the investigation?

A. Melein and Mejkane were sentenced to death.

"103.Q. The form of the judgment document, the name, the signature, and the opinion and the laws applied, were these all the same as the other cases?

A. Yes."

"111.Q. You stated that the commanding officer, Admiral Masuda, said that: 'Under the war conditions now existing, the formal procedure could not be taken and that by my authority a special procedure will be held.' Do you know why this special procedure had to be conducted?

A. I do."

"186.Q. Do you remember the judgment that related to Melein and Mejkane, Obetto and Paul?

A. I remember the judgment document in the case of Melein and Mejkane."

"264.Q. Did the words 'judgment paper' appear at the top of this sheet of paper?

A. Yes."

"299.Q. Do you remember where the execution sentence in the case of Melein and Mejkane was written?

A. It was either one of the three I mentioned before, but I cannot remember exactly which it was."

"327.Q. In your first day of testimony, you related in detail the type of examination and consultation which was held with regard to each of the native cases and you testified that Admiral Masuda, after the original consultation, with you, Shintome, and Inoue, called you back a day or so later and made up a judgment paper. Is that what happened in each of the native cases?

A. Yes."

"330.Q. Were the initials of Shintome, Inoue and yourself placed on this sheet of paper after the sentence was written in?

A. Yes."

"342.Q. Do you remember having seen the names of Melein and Mejkane on a judgment paper?

A. I have."

"347.Q. Did Admiral Masuda have the authority to order a trial for the natives?

A. He did."

"353.Q. You testified yesterday that the opinion you wrote contained the laws applied in each case. Is that correct?

A. Yes."

"354.Q. Did you act as the judge advocate in these proceedings?

A. Yes."

"356.Q. You testified in response to the question 'Why was it impossible to hold a regular trial?' 'The war conditions on Jaluit did not permit a large number of men to assemble and conduct an examination and consultation undisturbed.' Did Admiral Masuda, Lieutenant Commander Shintome, Major Furuki and Captain Inoue assemble in Admiral Masuda's room?

A. Yes."

"366.Q. Were Admiral Masuda, Lieutenant Commander Shintome, Major Furuki, and Captain Inoue present at each conference?

A. Yes."

"367.Q. Were they present both at the conference where the investigation report was considered and later at the conference where Admiral Masuda announced his decision?

A. Yes."

"373.Q. Were you present at the conference concerning the Mejkane incident?

A. Yes.

"374.Q. Were Shintome and Inoue present as judges?

A. Yes."

"407.Q. Did you ever go to where the natives were confined and personally question them?

A. To Melein I went by myself and the other instances I went together with Admiral Masuda.

"408.Q. Do you know if Admiral Masuda went to see Mejkane?

A. I do."

"410.Q. Did you go with him when he went to see Mejkane?

A. Yes.

"411.Q. You testified that all the natives confessed. Were you present when they confessed?

A. When I went to investigate the natives, the natives confessed to Admiral Masuda and myself.

"412.Q. Were you present when Mejkane confessed?

A. Yes."

Reexamined by the judge advocate concerning the testimony of Furuki, Hidesaku from the record of the trial of Furuki, Hidesaku:

205. Q. Will the witness read questions numbered 348, 355, 358, 372, 379, 398, and the answers thereto?

The witness read from the testimony of Furuki, Hidesaku, as follows:

"348.Q. In your answer to the last question yesterday you stated 'There were no court systems', but it is true that Admiral Masuda had the power to convene and hold a trial?
A. Yes."

"355.Q. Now, I ask you again the original question. Was there anyone on Jaluit Atoll who was familiar with the law to be applied in native trials?
A. There was."

"358.Q. Were the natives ever present at these conferences in Admiral Masuda's office?
A. They were never present at the times of examination and consultation."

"372.Q. I remind you of defense witness Inoue's testimony that he did not know there was a trial until after the end of the war. You have testified that at this first conference Admiral Masuda at various times referred to Shintome and Inoue as judges and instructed them to act as judges. Being reminded of Inoue's testimony, do you desire to change your testimony?

"A. What I have testified to was what I remember. There can be no change in this. I do not remember well what Inoue testified to.

"379. Q. Do you remember if Shintome said that Mejkane should be allowed to go home?

"A. I do not remember."

"398. Q. Now, Masuda, Shintome, and Inoue, you have stated, were judges, and you were the judge advocate. Was there any defense counsel present at these conferences?

"A. There was no one."

Recross-examined by the accused concerning the testimony of Furuki, Hidesaku from the record of the trial of Furuki, Hidesaku:

206. Q. Will the witness read questions 359 and 360 and the answers thereto?

The witness read from the testimony of Furuki, Hidesaku as follows:

"359. Q. Do you know why they were not present?

"A. I do.

"360. Q. Was it because you feared for their lives because of the absence of a proper bomb shelter?

"A. At the time the conditions were that they could not let the natives be brought near the command post because the natives were continually deserting to the Americans. The command post area was the most vital part of the defense of Jaluit. To show them or let them see this part could not be permitted through military reasons. Actually in the case of a spy who came into Jaluit and escaped, he was looked for for two days and two nights. Also, a native who was brought from the outlying islands escaped and we had much difficulty in locating him. To show the natives who might desert the head and heart of Jaluit could not be done."

Reexamined by the judge advocate concerning the testimony of Furuki, Hidesaku from the record of the trial of Furuki, Hidesaku:

207. Q. Will the witness read questions 361, 362, and 363 and the answers thereto?

The witness read from the testimony of Furuki, Hidesaku as follows:

"361. Q. As a Japanese army officer are you familiar with the use of blindfolds?

"A. I am familiar.

"362. Q. As a Japanese army officer are you familiar with the methods of restriction of the movements of the body and restricting the possibility of escape by tying the hands and legs?

"A. I am familiar.

"363.Q. As a matter of fact, is it not true that the natives, when they were brought to Jaluit, were bound hand and foot and blindfolded?

A. Their hands and feet were tied, but as the natives made great efforts to escape some did escape."

The witness was duly warned.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Friday, November 5, 1948.

EIGHTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, November 5, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

The judge advocate read two letters from the medical officer, Lieutenant
Christ, explaining the absence of Captain Shelly on the third and fourth of
November 1948, prefixed marked "Z" and "AA".

The judge advocate read a letter from the medical officer, Lieutenant
Commander Canon, explaining the absence of Lieutenant Commander Bradner W.
Lee, junior, U. S. Naval Reserve, from October 28, 1948 to 4 November 1948,
prefixed marked "BB".

The judge advocate read a letter from the convening authority, prefixed
marked "CC", relieving Lieutenant Commander Bradner W. Lee, junior, U. S.
Naval Reserve, as a member of the commission.

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

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, a witness who testified during the absence of Captain
Shelly, entered, and was warned that the oath previously taken was still
binding, heard his testimony read, pronounced the same correct, and Captain
Shelly, not desiring to examine him, continued his testimony.

The commission then, at 10:30 a.m., took a recess until 10:50 a.m., at
which time it reconvened.

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

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.)

Examined by the judge advocate concerning prosecution document #529:

208. Q. Does the witness have in his possession an excerpt taken from the record in the trial of Furuki, Hidesaku dated 3 December 1946 consisting of a statement of Furuki, Hidesaku concerning the execution of Mejkane and Melein, which is alleged to have occurred on or about 10 August 1945?

A. I have.

209. Q. Does the witness know where Furuki, Hidesaku is currently?

A. He is presently confined at Sugamo Prison, Tokyo, Japan.

210. Q. Was this statement which you have excerpted, a part of the record in the trial of Furuki, Hidesaku?

A. It was Exhibit 2 of that record.

211. Q. Have you certified this document to be a true copy of the exhibit appearing in the Furuki record?

A. I have.

Prosecution document #529 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #529:

212. Q. Do you know whether the maker of this statement, Major Furuki, appeared as a witness at the trial in which you state this statement of his was a part of the trial?

A. He did.

213. Q. Were you present when Major Furuki made this statement?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

214. Q. Do you know if this statement was made in English by Major Furuki?

A. The original statement was made in Japanese.

Reexamined by the judge advocate concerning prosecution document #529:

215. Q. Does the statement, Exhibit 2, show that it was translated by the court interpreter in that case?

A. It does.

216. Q. Is that certified to be a true translation by the court interpreter?

A. It is.

The accused objected to the receipt in evidence of prosecution document #529 on the ground that it was not the original statement, that the maker of the statement was available as a witness, and that the judge advocate had not shown that the maker made the statement voluntarily. AS

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, it was so received and is appended marked "Exhibit 12".

Examined by the judge advocate concerning Exhibit 12:

217. Q. Will the witness read from Exhibit 12 from paragraph one, the preliminary portion, and the portion which relates to Mejkane and Melein?

(The witness read from Exhibit 12 as requested.)

218. Q. Will the witness read paragraph number eight of the statement by Furuki, Hidesaku?

(The witness read from Exhibit 12 as requested.)

Cross-examined by the accused concerning Exhibit 12:

219. Q. Will the witness read paragraph number four?

(The witness read from Exhibit 12 as requested.)

The accused moved to strike out Exhibit 12 on the ground that it was irrelevant, immaterial, incompetent, inadequate, and hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

Examined by the judge advocate:

220. Q. For purposes of the record does the witness know where Fumio Inoue is?

A. He is presently confined at Sugamo Prison in Tokyo, Japan.

221. Q. Similarly for purposes of the record, does the witness know where Jinno, Shigeru; Morikawa, Shigeru; Ieki, Tamonori; and Sakuda, Sawaaki are presently? AS

This line of questioning was objected to by the accused on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. At the conclusion of the Jaluit trials they were returned to Japan. I believe they are presently in Japan.

The accused moved to strike out this answer on the ground that it was not responsive and an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

Examined by the judge advocate concerning prosecution document #510:

222. Q. Are you the official custodian of a certified photostatic copy of the record of the trial of Sawamoto, Takaharu; Shoji, Takashi; and Anetai, Soji, tried by an Australian military court on March 10, 1946?

This question was objected to by the accused on the ground that no groundwork had been laid for it and that the judge advocate was testifying and that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I am.

223. Q. Do you have this certified photostatic copy in your possession?

A. I have.

224. Q. Was this copy which you have produced obtained by the office of the Director War Crimes, Pacific Fleet, from the government of the Commonwealth of Australia?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They were obtained from the Department of the Army of the government of the Commonwealth of Australia. AS

225. Q. Who certified this to be a true photostatic copy of the record of proceedings in that case?

A. Major Douglas John McBain of the Australian military forces.

226. Q. Has the witness read this record?

A. I have.

227. Q. Does this record relate to an incident which occurred on Truk on or about August 28, 1944?

A. It does.

228. Q. Does this incident concern the beating of certain civilians?

A. It does.

Prosecution document number 510 was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #510:

229. Q. This record which is to be introduced into evidence, is it shown therein that this trial was convened under the 1945 Australian War Crimes Act?

A. It does.

230. Q. In the document which is being offered in evidence, is the War Crimes Act included in it?

A. It is not.

231. Q. Is the charge and specifications issued by the convening authority included in the document to be introduced?

A. The Australian form does not correspond exactly to our form for charges and specifications, but it does have a schedule and one of the items under that schedule is offense charged. It also shows the number, rank, name, and unit of the accused, the plea, the finding, if convicted, the sentence, and the action of the confirming authority.

232. Q. Do you know whether a charge sheet is handed to the accused issued by the convening authority of the Australian military court?

A. I do not know.

At this point the accused requested a recess until 3 p.m. in order to more fully examine prosecution document #510 to prepare objections to its receipt in evidence.

The judge advocate replied that the accused had had adequate time and opportunity to examine this document and prepare objections since the time of the serving of the charge and specifications.

The commission announced that the request was granted.

The witness was duly warned.

The commission then, at 11:35 a.m., took a recess until 3 p.m., at which time it reconvened.

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

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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 concerning prosecution document #510 continued.)

233. Q. Does the witness know the signature of McBain?

A. Not other than it appears on the certificates of all the Australian records.

The accused moved to strike out this answer on the ground that it was evasive.

The judge advocate replied.

The commission announced that the motion was not sustained.

Reexamined by the judge advocate concerning prosecution document #510:

234. Q. Does the certificate of McBain state that he is the proper custodian of the original proceedings from which this certified photostatic copy was made?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. The certificate does so state.

235. Q. Is the certificate of McBain attached to the photostatic copy, and does it state the total number of sheets of that photostatic copy of the record?

A. It does.

236. Q. Does the photostatic copy of the record contain what purports to be the signature of the convening officer and the promulgating certificate, and a certificate of the military court?

A. It does.

237. Q. Does the record contain a certificate of confirmation of sentence which purports to be signed by the confirming officer?

A. It does.

238. Q. Does the record contain a certificate of promulgation signed by what is purported to be the signature of the promulgating officer?

A. It does.

239. Q. Does the record contain a statement signed by what purports to be the signature of the convening officer which includes the statement that he is authorized to convene a military court under the War Crimes Act of 1945?

A. It does.

240. Q. In addition to this photostatic record, has the office of the Director, War Crimes obtained other records of proceedings from Australian military courts?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Other Australian records have been obtained.

241. Q. Did this witness examine these other Australian records as well as the record about which he is now testifying?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I have.

242. Q. Are these other Australian records prepared in the same form in which the instant record is prepared?

A. They are.

Recross-examined by the accused concerning prosecution document #510:

243. Q. Were any of the other documents which you testified to original documents?

A. They were not.

244. Q. In your testimony regarding these documents, it is not based upon knowledge of any of the original documents, is that correct?

A. That is correct.

245. Q. Do you know what the Australian statutes provide as to certification of public judicial records?

This question was objected to by the judge advocate on the ground that it called for a legal opinion of the witness.

The accused replied.

The commission announced that the objection was not sustained.

A. I do not know.

Reexamined by the judge advocate concerning prosecution document #510:

246. Q. These other documents that you referred to having received, were they also certified photostatic copies of the original records of the trials sent under the official certificate of the official custodian of such documents?

A. They were.

The accused objected to the receipt in evidence of prosecution document #510 on the ground that the War Crimes Act of 1945 which authorized the convening of these military courts is an ex post facto law; that the introduction of this record by use of this witness is hearsay because this witness did not prepare the certified copy; that this copy does not bear a court seal; that it is not established that this is a full copy; that there is no showing that the original record is unavailable.

The judge advocate replied.

The commission announced that the objection was not sustained.

There being no further objection, it was so received and is appended marked "Exhibit 13".

The witness was duly warned.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Saturday, November 6, 1948.

NINTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, November 6, 1948.

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, the witness under examination when the adjournment
was taken, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Examination continued.)

Examined by the judge advocate concerning Exhibit 13:

247. Q. Will the witness first read the certification of the official
custodian?

The witness read from Exhibit 13 as follows:

"I, SK10334 Douglas John McBAIN, a Major in the Australian
Military Forces holding the appointment of Deputy Assistant
Adjutant General in the Directorate of Prisoners of War and
Internees at Australian Army Headquarters Melbourne hereby
certify that the attached thirty-three (33) sheets numbered
consecutively from 'R74-1' to 'R74-33' (both inclusive) are
a true copy of the original proceedings of the Military
Court which at RAHIGL on the 10th day of May 1946 tried Sgt
SAKAMOTO Takaharu, Civ SYOJI Takashi Civ ANETAI Soji And
That I am the officer having, in the course of my duties,
the proper custody of such original proceedings. Dated at

AB
AB

Melbourne this 24th day of October 1947. (Signed) Douglas McBain, Major, D.A.A.G. D.P.W. and I., AHQ. Witness (Signed) S. Arnold, Capt. - an officer of the Australian Military Forces."

248. Q. Will the witness read the schedule which appears on page R74-1?

The witness read from Exhibit 13 as follows:

"Number, Rank, Rate and Unit of Accused	Offence Charged	Plea	Finding, and if Convicted, Sentence	How dealt with by confirming officer
Sgt. SAKAMOTO Kakaharu of Jap MP Corps	Violation of the Laws and Usages of War in that he at	All plead Not Guilty	All accused Guilty of the charge, excepting the words 'Diema Karl Hartman, Willie	Findings and Sentences against Sgt. SAKAMOTO and Syoji confirmed.
Civilian Employee SYOJI Takashi attd to Japanese navy	TRUK on or about 28 Aug 44 cruelly beat the following civilians namely RUBEN FOLIAPE		Hartman, Emanuel	Findings and Sentence against ANETAI Not confirmed. (Signed)
Civilian Employee ANETAI Soji attached to Japanese Navy	MARIE FOLIAPE RUDOLPH HARRIS ALBERT HARRIS JULIUS CAPELLE DIEMA KARL HARTMAN WILLIE HARTMAN EMANUEL HARTMAN KARTEN FATHER PIERRE CLIVAZ and FATHER ALOIS KAYSER		Hartman, Karten. Sgt. SAKAMOTO Civilian Employee SYOJI Civilian Employee ANETAI each to be imprisoned for 5 years.	V.A.H. Sturdee Lt. Gen."

249. Q. Does page one also contain a statement by the convening officer that he is duly authorized to convene a military court under the War Crimes Act and thereby convenes the court named?

This question was objected to by the accused on the ground that it was leading.

The judge advocate replied.

The commission announced that the objection was sustained.

250. Q. Does page one also contain the order convening the military court?
A. It does.

251. Q. Does this state the authority of the officer convening said court?
A. It does.

252. Q. Does this page contain the signed order convening that court?
A. It does.

253. Q. Will the witness read from page 3 paragraphs "B" and "C"?

The witness read from Exhibit 13 as follows:

"B. I certify that the above Court assembled on the 10th day of May 1946 and duly tried the person named in the Schedule, and that the Plea, Finding, and Sentence in the case of such person were as stated in the third and fourth columns of that Schedule and that the Regulations for the trial of War Criminals have been complied with.

I also certify that:

1. The Members of the Court
2. The Judge Advocate
3. The Witnesses
4. The Interpreter
5. The Shorthand writer

were duly sworn.

Signed this 10th day of May 1946

(Signed) J. Moyes, Lt. Col.
President of the Military Court.

C. I have dealt with the findings and sentence in the manner stated in the last column of the Schedule, and, subject to what I have stated, I hereby confirm the above findings and sentence.

Except in case of ANETAI.

(Signed) V.A.H. Sturdee, Lt. Gen.
Confirming Officer

2 Aug 46"

254. Q. Will the witness read from page 7 the sentence identifying the witness who testified at that time?

The witness read from Exhibit 13 as follows:

"Sgt SAKAMOTO Takaharu being duly sworn is examined by the Defending Officer through the interpreter NOZAWA."

255. Q. Will the witness read the four lines following that sentence?

The witness read from Exhibit 13 as follows:

"I am Sgt SAKAMOTO Takaharu of the Japanese MP Corps.
(3rd MP Corps)
The accused is shown a statement signed by him.

That is my signature.
The statement has been read over to me in Japanese and it is true and correct.
The statement is tendered, admitted in evidence, read, marked Exhibit G, signed by the President and annexed to the Proceedings."

The judge advocate informed the commission that the statement will subsequently be referred to in the testimony of this witness and it was desired at this time to establish that such statements were sworn to in court.

256. Q. Will the witness read the cross-examination of Sergeant Sakamoto?

The witness read from Exhibit 13 as follows:

"Cross examined

Q. Is it not a fact that the Nauruans referred to in the statement had been brought from Nauru?
A. Yes.

Q. Were they not brought there by the Japanese?
A. I do not know.

Q. Is it not a fact that the Missionaries referred to in your statement had been brought from Nauru?
A. I heard that they had been brought from Nauru.

Q. Tell us the full name of the man you refer to in your statement as Anetai?
A. Anetai Soji."

The accused moved to strike the words "I heard that they had been brought from Nauru" out of the answer on the ground that they were hearsay.

The judge advocate replied.

The commission directed that the words be stricken out.

257. Q. Will the witness read from page 8 the name of the witness and the paragraph beginning with "I am..."?

The witness read from Exhibit 13 as follows:

"Anetai Soji being duly sworn is examined by the Defending Officer through the interpreter NOZAWA."

"I am Anetai Soji attached to the HQ 4th Construction Unit. Witness is shown a statement signed by him.
That is my signature.
The statement has been read over to me in Japanese and it is true and correct.
The statement is tendered, admitted in evidence, read, marked Exhibit H, signed by the President, and annexed to the Proceedings."

The judge advocate informed the commission that the statement will subsequently be referred to in the testimony of this witness and it was desired at this time to establish that such statements were sworn to in court.

The accused moved to strike out all testimony pertaining to the statement of Anetai, Soji on the ground that it was irrelevant and immaterial in that the findings and sentence in the case of Anetai, Soji had not ^{been} confirmed. AB

The judge advocate replied.

The commission announced that the motion was not sustained.

258. Q. Will the witness read from page 9 the portion which identifies the witness at that time and read the preliminary paragraph?

The witness read from Exhibit 13 as follows:

"Syoji Takashi being duly sworn is examined by the Defending Officer through the interpreter MOZATA.

"I am Syoji Takashi attached to the Police Section of the 4th Naval Construction Coy.

Witness is shown a statement signed by him.

That is my signature.

The statement has been read over to me in Japanese and it is true and correct.

The statement is tendered, admitted in evidence, read, marked Exhibit J, signed by the President, and annexed to the Proceedings."

The judge advocate informed the commission that the statement will subsequently be referred to in the testimony of this witness and it was desired at this time to establish that such statements were sworn to in court.

259. Q. Will the witness read the cross-examination of Syoji, Takashi as it appears on page 9?

The witness read from Exhibit 13 as follows:

"Cross examined

Q. Is the man named Anetai referred to in your statement identical with that man in the Court (Points to Anetai)

A. Yes.

Q. And is the man named Sakamoto referred to in your statement identical with Sakamoto in the Court?

A. Yes.

Q. What is his full name?

A. Sakamoto Takaharu.

Q. Were the two Missionaries referred to in your statement from Nauru?

A. Yes.

Q. Were they brought to Truk by the Japanese?

A. I think so."

The accused moved to strike the words "I think so" out of the answer on the ground that they were hearsay and opinion of the witness Syoji, Takashi.

The judge advocate replied.

The commission announced that the motion was not sustained.

The witness continued to read from Exhibit 13 as follows:

"Q. When?

A. I think it was in 1943.

Q. Are the Nauruan natives referred to in this statement brought from Nauru by the Japanese?

A. Yes.

Q. When?

A. I think it was in 1943."

260. Q. Will the witness read page 11 and 12 of the exhibit starting with the words "First Witness...?"

The witness read from Exhibit 13 as follows:

"First Witness

Rudolph Harris, Nauruan on oath states:

I was with the second party of Nauruans brought to Truk by the Japanese on 21 August 1943. I was mostly employed on Japanese farms on Tarik Island but occasionally was sent to Param to work on the airfield.

On 28 August 1944, at about 5 a.m. I was asleep in my house on Tarik when I was awakened by Shoji Takashi, 4th Construction Department, who had charge of the Japanese labor Police on Param. He asked me where Father Kayser and Cliv^z lived and I replied 'next house'. I then heard him call the two fathers out.

A little while later he came back with the two fathers and Julius Capelle, the latter had his hands tied behind his back. They then tied the two Fathers to Julius, I was not tied as there was insufficient rope.

We were then marched to Karl Hartman's house where I saw Hideo ~~Syaji~~ Navy worker attached to 4th Fleet Headquarters, and a Japanese Navy Policeman slapping Willie Hartman and a Trukese named Karten. Hideo Shoji then tied all the Hartman family, including the children, together in a group.

I was tied to a Trukese with my hands behind my back and the rope made fast around my neck and then made fast to a stump in the ground.

Shoji Takashi then asked where my brother Albert was. I told him and he was arrested also.

Hideo Shoji then asked me my name and struck me across the head with his covered sword. He then left me.

Anetai Soji 4th Construction Department then asked me for my pistol, when I said I did not have one he slapped my face and beat me with a stick.

I then saw Shoji Takashi beating my brother Albert. Ruben's wife Marie was then brought in, her hands tied behind her back and she was beaten. All of us were tied to trees when we were being questioned and beaten.

Corporal Sakamoto Takaharu who had charge of the Army Police and the one in charge of the Navy police were the ones ordered the beating. Both of them beat us also.

They then asked me where was Ruben Foilape and I said on Param. Two hours later he was brought in. During that time they continued to question and beat us.

They bound Ruben's wrists and tied him to a tree with his hands above his head and toes just touching the ground. They then beat him and left in that position while they went for lunch.

After lunch they came back and continued to beat us. We were then released and allowed to go home with instructions not to leave Tarik until further notice.

The following morning Corporal Sakamoto, Takaharu and Shoji Takashi, got us altogether again, questioned and slapped us.

We, with the exception of Albert Harris, were taken to Dublon. On arrival we were marched to the Native School, then Headquarters of the Military Police. We were left standing outside with our hands tied behind our backs but not questioned. They gave us a ball of rice (size of a tennis ball) three times a day. At night we were placed, with our hands still tied behind our backs, in small dugout.

Next day we were marched up to the school again and taken into the office one at a time and questioned. All day we were kept standing with our hands tied behind our backs and at night taken to the small dugout. We were given the same food, three small balls of rice a day, but were not beaten.

On the third day they brought us all up the office again. They said that all of us, with the exception of the two Fathers and Ruben Foilape, would be released. They then drove us to the dock in a motor truck and sent us to Tarik via Param.

On arrival on Tarik we were taken before the Commanding Officer Captain Miyakawa Yoshihisa who advised us to be good and do nothing wrong. We were then allowed to go home.

Two weeks later they brought back the two Fathers and Ruben Foilape, they also were taken before Captain Miyakawa, then allowed to go home.

Father Kayser looked very ill and went to bed when he got home. He did not recover and died 36 days later.

(Signed) Rudolph Harris."

The commission then, at 10:15 a.m., took a recess until 10:35 a.m., at which time it reconvened.

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

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.)

Examined by the judge advocate concerning Exhibit 13:

261. Q. Will the witness read page 13 and 14 through the answer which began on page 13 and ended on page 14?

The witness read from Exhibit 13 as follows:

"Second witness: RUBEN FOILAPE, Nauruan on oath states.

I was with the second party of Nauruans brought to Truk by the Japanese in August 1943. I was employed by the Japanese on the construction of the airfield on Param.

I am a qualified Wireless Operator and was employed as such before the war by the Administration of Nauru.

At 7.00 a.m., August 28, 1944, I was employed on the airfield at Param. I was informed by Mr. Alexis Sawyer, a Nauruan interpreter for the Japanese, that the Japanese Labor Police wanted to see me. I reported to him as ordered and he notified me that I was being taken to Tarik. The name of the police officer was SHOJI TAKASHI. He forced me to enter a small boat. The passengers of the boat were Soji, the policeman, Mr. Alexis Sawyer, Mr. Makin and Mr. Agogotsi, Nauruans, who were to row the boat from Param to Tarik. Upon arrival at Tarik we were met by a member of the army military police, Corporal SAKAMOTO, and we were all escorted to the place where they were holding residents of Tarik. The names of the persons detained were, my wife Mrs. Maria Foilape, Mr. Rudolph Harris, Mr. Albert Harris, Mr. Julius Capelle, Father Kaysner, Father Clivaz, Mr. and Mrs. Karl Hartman and their two sons Emanuel and Willie Hartman, and two of their daughters, Hiko and Teresita and several of his grandchildren. As I approached I saw that the Japanese were whipping some of these persons. I noticed my wife and Mr. Karl Hartman had their hands tied behind their back and were being whipped with a stick about four feet long and two inches in diameter across their buttocks and their calves. I was asked my name and if I was a wireless operator, to which I answered yes. They inquired as to whether or not I owned a radio set. I replied in the negative. They tied my hands behind my back and punched me on both sides of my face and then they removed their belts and used them on my face. Then another Japanese started to strike me across my back with a stick about four feet long and two inches in diameter. They then untied my hands, led me to a coconut tree, tied my hands above my head and then hung me from my hands to that tree so that my feet were about three inches from the ground. I was kept in this position for about five minutes and at the same time they hit me on the shins with a stick. I was then untied and forced to kneel and informed that I was to be killed. My hands were now tied behind my back and I was informed that if

b6
b7C

b6

I admitted having a radio they would not kill me. They asked me if I wanted to die. I told them I didn't care. Corporal Sakamoto took out his sword, informed me to look at my wife and then asked me if I loved her. I assured him that I did. He cautioned me that if I told the truth I would live. I asked him what truth he was searching. He told me to admit that I had a radio set. I tried impressively to assure him that I did not own a radio set. I was directed to rise and he replaced his sword in a sheath, drew his pistol and asked if I knew what it was. Then he told me that he was going to shoot me. I was suffering from their maltreatment so informed him that I didn't care. He replaced his pistol and told the labor policeman to whip me. The labor policeman and the navy policeman started whipping me with a stick across my back, buttocks, legs down to my ankles. They whipped me until I passed into a state of unconsciousness. They then poured water over my face and body until I was revived and told me to take a rest. While I was resting they began to whip my wife, Mr. Albert Harris, Mr. Rudolph Harris, Father Kayser, Father Clivaz, Mr. Julius Capelle and Mr. Karl Hartman. All my friends had their hands tied behind their backs and they were placed in a large circle. The Navy policeman, four labor policeman, two of whose names are SHOJI HIDEO and Corporal SAKAMOTO TAKAHARA, were administering the punishment. They kept this up for about three hours. At intervals they would rest and ask questions and then continue with the punishment. Finally the women and the priests were sent home and the rest of us they took to the wharf. We were forced to remain there under guard while they went to lunch. About a half hour later they returned and we were all sent home. About 9.00 a.m. the following day Mr. Alexis Sawyer was sent by Corporal SAKAMOTO to notify me, Mr. Albert Harris, Mr. Rudolph Harris, Father Kayser, Father Clivaz, Mr. Julius Capelle, his son Albert, Mr. Diema, Mr. Karl Hartman, his two sons Emanuel and Willie, and Karten to meet at the wharf. All the persons mentioned except Mr. Albert Harris were transported to Dublon. During the trip everyone had his hands tied behind his back. Upon arrival at Dublon we were all placed in jail. Mr. Rudolph Harris, Julius Capelle and his son Albert, Mr. Karl Hartman and his two sons, and Mr. Diema were all released after the third day. On the fifth day, the eighth day and the fifteenth day they questioned me and after the questioning returned me to my cell. On the fifteenth day Father Kayser, Father Clivaz, Karten and I were allowed to return home. 36 days after Father Kayser, 67 years old, was released he passed away."

262. Q. Will the witness read the third, fourth and fifth questions on that page beginning with the word "Will...?"

The witness read from Exhibit 13 as follows:

- "Q. Will you give me the names of all Japanese who helped punish the persons you have mentioned?
A. Corporal SAKAMOTO, Army military police, two members of the labor police who had the same name, SHOJI HIDEO and SHOJI TAKASHI.

Q. Were other men used to administer punishment?

A. Yes.

Q. Who?

A. One Navy policeman, two more labor policemen, and several soldiers."

263. Q. Will the witness read from page 19 the last question which appears on that page and the answer thereto which appears on page 20, first stating whose statement this is taken from?

The witness read from Exhibit 13 as follows:

From the interrogation of Sergeant Sakamoto Takaharu.

"Q. Who were the spies you arrested or questioned?

A. Two white missionaries, I do not remember their names, but the younger was Swiss and the elder was French. There were also four Nauruan natives named ALBERT, TULET, RUDOLPH, and RUBEN. There were also two Truk natives."

264. Q. From the same interrogation, will the witness read on the bottom of page 20 the last question and the answer which appears on page 21, and the question and answer following that?

The witness read from Exhibit 13 as follows:

"Q. Who else was there - Japanese?

A. Myself and naval guards ISHIHARA, TAKENUCHI, ANETAI, and SYOJI (not SYOJI Takashi), and SYOJI Takashi was there as a guide.

Q. Who was the senior one of the naval guard there?

A. ISHIHARA."

265. Q. Will the witness turn to page 24 and read from the testimony of SYOJI Takashi the second and seventh questions and answers set forth there?

The witness read from Exhibit 13 as follows:

"Q. Are you SYOJI Takashi, a civilian employe attached to the 4th Naval Construction Unit?

A. Yes."

"Q. Who was in charge of the Navy Guard?

A. The guard ISHIHARA was the senior guard."

266. Q. Will the witness turn to page 27 and state whose testimony appears there?

A. ANETAI Soji, civilian employe attached to the 4th Naval Construction Unit.

267. Q. Will you read the second, seventh, eighth and last questions appearing on that page and the answers thereto?

The witness read from Exhibit 13 as follows:

"Q. Are you ANETAI Soji, civilian employe attached to 4th Naval Construction Unit?

A. Yes."

"Q. Who were the Japanese you saw doing the questioning?
A. There were two groups and in each group there was one Japanese. In one group there was SYOJI Hideo and in the other Takenouchi.

Q. Did you see any of the spies being beaten or slapped?
A. SYOJI was hitting a native with a stick."

"Q. Did you see Reuben there that morning?
A. That morning Reuben came from another island and I questioned him asking him where the wireless set was hidden. Reuben said the wireless is over there, and pointing to the place. Then I went with Reuben to the spot. It was a swamp and I said to Reuben 'Is it in here' and he said 'No, No,' in Japanese. I had a look in the swamp but there was no wireless set there. I said to Reuben 'You told a lie.' Reuben answer in Japanese again 'No, No.' Then I became irritated with him and I beat him. I slapped him on the face with my left hand. I then took Reuben back to ROBERTS' house where all the natives were assembled, and then I went to a farmhouse about 500 metres away and had breakfast. I am not sure but I think Sgt. SAKAMOTO was in the farm house having breakfast."

268. Q. Whose statement appears on page 29?
A. The statement of Sergeant Sakamoto Takaharu.

269. Q. Will the witness read the first, fourth and sixth paragraphs?

This question was objected to by the accused on the ground that the statement had not been sworn to.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness read from Exhibit 13 as follows:

"I am Sgt SAKAMOTO Takaharu of the 3rd M.P. Corps. From June 1944 to the Armistice I had been stationed at the M.P. H.Q. in Dublon Island. The chief of M/P there was W/O HATTORI and I served under him."

"W/O HATTORI then ordered me to investigate into the matter and if necessary to arrest the suspects. In the early morning of 28th, about 2 a.m. I set out to TARIK IS. with SHOJI Hideo, ISHIWARA, TAKENOUCHI and ANETAI, all Naval Civil Guards of 4th Naval Construction Department and with SHOJI Takeshi, civilian of the same Unit. As the guide for he was well acquainted with the affairs of the NAURUANS."

"To our request Capt MIYAKAWA offered us two (2) platoons of armed soldiers. It was about 4 a.m. Then I gave orders to each of our party as to the object of investigation. The Japanese guards and the houses of NAURUANS to be visited by them were as follows:

SAKAMOTO - - - - -
 ANETAI - - - - - RUBEN's

 SHOJI Hideo- - - - - KARL HARTMAN's
 ISHIWARA - - - - - Father ALOIS KAYSER's
 SAKAMOTO - - - - - Father CLIVAZ's
 TAKENOUCHI - - - - - RUDOLPH HARRIS'"

270. Q. Whose statement appears on page 31 of that record?
 A. The statement of Anetai, Soji.

271. Q. Will the witness read the first paragraph of that statement?

This question was objected to by the accused on the ground that it was not a sworn statement.

The judge advocate made no reply.

The commission announced that the objection was not sustained.

The witness read from Exhibit 13 as follows:

"I was attached to the Hq of 4th Construction Department in DUBLON Islands in August 1944. On the morning of 24th Aug., I went to RUMAN Is. with Civil Guards TAKENOUCHI and ISHIWARA according to the order of Capt KANEKO, chief of the Police Section of the Unit, to help the arrest of a TRUKESE called ULI who was suspected to be a chief of an espionage incident."

272. Q. Whose statement appears on page 33?
 A. The statement of Shoji Takashi.

273. Q. Will the witness read the first paragraph of this statement?

The witness read from Exhibit 13 as follows:

"I was attached to the police section of 4th Naval Construction Department in PARAM Is. on August 1944. In 28th August, I was in RUMAN Is. to stay with Civil Guards SHOJI Hideo and ANETAI (the latter had come from DUBLON.)."

The accused moved to strike out this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

Cross-examined by the accused concerning Exhibit 13:

274. Q. According to Exhibit 13, three persons, namely, Sakamoto, Anetai, and Shoji were tried by the Australian Military Court on the tenth of May 1946, but the guilt of only two of them, namely, Sakamoto and Shoji, was confirmed, is that true?

A. That is true.

275. Q. Do you know whether Ishihara, Takenouchi and Soji, Hideo were tried concerning this incident?

A. I do not know.

276. Q. Does the witness recall whether or not Exhibit 13 shows that Ishiwara; Takenouchi; Shoji; Soji, Hideo; and Anetai were all attached to the Fourth Naval Construction Corps?

A. I do not recall without a further examination of the record.

The witness was duly warned.

The commission then, at 11:25 a.m., adjourned until 9 a.m., Monday, November 8, 1948.

TENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, November 8, 1948.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

Herbert L. Ogden, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding and continued his testimony.

Cross-examined by the accused concerning Exhibit 13:

277. Q. Will the witness read the second question on the fourteenth page of Exhibit 13, testimony of Ruben Foliapae?

The witness read from Exhibit 13 as follows:

"Q. Was there any officer around while this was taking place?
A. No."

278. Q. Will the witness read from the nineteenth page of the exhibit the seventh question to Sakamoto the witness?

The witness read from Exhibit 13 as follows:

"Q. Were there also Japanese Naval Police on the island?
A. There were no naval police on Natsushima but the Military Police controlled both the military and the navy."

279. Q. Will you read the fifth question on page 20 (testimony of Sakamoto)?

The witness read from Exhibit 13 as follows:

"Q. On whose instructions did you arrest the two missionaries, and the other natives you have mentioned - The Nauruans and the Trukese?

A. I arrested them on the instructions of W/O HATTORI and Lt.Col ARETA, Intelligence Staff Officer."

280. Q. Will you read from the same page the second question from the bottom?

The witness read from Exhibit 13 as follows:

"Q. Who was in charge of the party the first time you arrested them?

A. I was in charge."

281. Q. Will you read the seventh and eighth questions of page 20?

The witness read from Exhibit 13 as follows:

"Q. What happened when you arrested these men?

A. When I arrested them first I did not find any pistols or wireless sets or evidence against them. I reported to W/O HATTORI who later ordered me to arrest them again.

Q. What happened then?

A. I took these men to the MP HQ. Then I took them to the HQ of the Branch of the Govt in TRUK."

282. Q. Will the witness read from the twenty-fourth page the fifth and sixth questions to SYOJI, Takashi?

The witness read from Exhibit 13 as follows:

"Q. Did you not go to the village with SAKAMOTO the first time he went there?

A. Yes, on SAKAMOTO's instructions I went down as a guide only.

Q. SAKAMOTO was in charge of the party, was he not?

A. Yes."

283. Q. Will the witness read from the twenty-seventh page testimony of Anetai Soji the third and fourth questions from the bottom?

The witness read from Exhibit 13 as follows:

"Q. Was TAKENOUCHI beating them?

A. No.

Q. Did you see any other Japanese beating the natives that morning?

A. No."

284. Q. Will you read the fifth paragraph of Sakamoto's Statement from the twenty-ninth page?

The witness read from Exhibit 13 as follows:

"Around 3.30 a.m. of 28th, our party arrived at TARIK IS. and went to Captain MIYAKAWA, commander of the Garrison Coy of the Is., to ask for the despatch of some armed force, as there was the fear of resistance on the part of the inhabitants."

285. Q. Will you read the second paragraph from the top on the thirtieth page Sakamoto's statement?

The witness read from Exhibit 13 as follows:

"Throughout the questioning of MARIA, we never beat her though we were excited a little in the expectation of the radio set. After that I questioned Father CLIVAZ for a short time whether he had any weapon or not to which he replied that he had none as he was given to his missionary work."

286. Q. From the same page, please read the second paragraph from the bottom.

The witness read from Exhibit 13 as follows:

"Throughout the visitation we were excited to some extent in the anticipation of resistance of the natives, and slapped some of them, but I have never ~~beaten~~ MARIA and the Fathers. Neither I threatened RUBEN with my sword, as I left it in RUBEN's house. On the next morning I went again to TARIK according to the order of W/O MATTORI and arrested the natives and the two Fathers to the Branch of the Government HQ on DUBLON Island."

AB
AB

287. Q. Please read the third paragraph from the bottom on page 32 Anetai's statement?

The witness read from Exhibit 13 as follows:

"I saw SAKAMOTO come up with NAURUANS whose hands were bound behind their back, and after a short conversation with Capt. MIYAKAWA, he untied and released them all."

288. Q. Please read the last paragraph of the statement of SHOJI Takashi page 33?

The witness read from Exhibit 13 as follows:

"I brought the meal to a garden and prepared it for our party. A little past 7 a.m. they finished the breakfast and went away. I also followed them a little later. It was about 8 a.m. that we left TARIK Is. I did not attend the investigation at all as I was not in the island throughout the time it was carried out by the other members of the party."

289. Q. Does this exhibit show abbreviations throughout such as on page 1 the trial of "SAKAMOTO, Sgt."?

A. It does.

This question was objected to by the judge advocate on the ground that it was vague, irrelevant and immaterial.

The accused replied.

The commission announced that the objection was not sustained.

290. Q. Will the witness read from page 15 testimony of Ruben Foliapae the question starting with "Why were the Japanese treating"?

The witness read from Exhibit 13 as follows:

"Q. Why were the Japanese treating you and your friends as they did?

A. Father Clivaz and Father Kayser were accused of being American spies, I was accused of having a radio, the rest of either having concealed weapons or collaborating with the Americans."

291. Q. Isn't it true that the record shows the nationality of these priests?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission accounced that the objection was not sustained.

A. As I recall part of the record previously read does indicate the nationality of the two priests.

292. Q. And doesn't the record show that the nationality of one was Swiss?

This question was objected to by the judge advocate.

The accused withdrew the question.

293. Q. Doesn't the testimony of a witness show that the nationality of one of the witnesses was Swiss?

A. There is such testimony in the record.

294. Q. Will the witness read from page thirty statement of Sakamoto the paragraph at the top of the page?

The witness read from Exhibit 13 as follows:

"Giving up the search we came back to ROBERT's house with MARIA, ROODY the interpreter, and 10 soldiers of the garrison and there I repeated the question as to whether she knew anything about the radio set and what her husband was going to do."

295. Q. Will the witness continue and read the next four paragraphs?

The witness read from Exhibit 13 as follows:

"Throughout the questioning of MARIA, we never beat her though we were excited a little in the expectation of the radio set. After that I questioned Father CLIVAZ for a short time whether he had any weapon or not to which he replied that he had none as he was given to his missionary work.

When I was telling the result of visitation to Capt MIYAKAWA just after that, I heard ISHIWARA and SHOJI disputing.

I told them in loud voice to stop the dispute, and as someone told us that the breakfast was ready, we went to take it in a garden nearby, asking the soldiers of the garrison to watch the natives. It was around 7 a.m.

While I was taking my meal, I heard that ANETAI had gone again to look out the radio set accompanying RUBEN. So I went to the place where the natives were gathered. I saw ANETAI and a native whom ANETAI told me to be RUBEN. I questioned him whether he had a radio set and told him that I would forgive him if he told me the truth and that he should tell the truth if he loved his wife."

296. Q. Will the witness read from page 19 interrogation of Sakamoto the question "Do you know Captain MIYAKAWA" and the answer thereto?

The witness read from Exhibit 13 as follows:

"Q. Do you know Capt MIYAKAWA Yoshihisa?
A. Yes."

297. Q. Please read the question "Was your unit of Military Police under the command of Captain MIYAKAWA" and the answer thereto.

The witness read from Exhibit 13 as follows:

"Q. Was your Unit of M P under the command of Capt MIYAKAWA?
A. No, the system of control is quite different."

Re-examined by the judge advocate concerning Exhibit 13:

298. Q. Will the witness read the second paragraph of page 11 and the fourth paragraph of page 11 testimony of Rudolph Harris?

The witness read from Exhibit 13 as follows:

"On 28 August 1944, at about 5 a.m. I was asleep in my house on Tarik when I was awakened by SHOJI TAKASHI, 4th Construction Department, who had charge of the Japanese labor Police on Param. He asked me where Father Kayser and Clivaz lived and I replied 'next house'. I then heard him call the two fathers out."

"We were then marched to Karl Hartman's house where I saw HIDEO SHOJI Navy worker attached to 4th Fleet Headquarters,..."

The accused moved to strike this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission directed that the words "We were then marched to Karl Hartman's house" be stricken from the record.

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The witness continued reading from Exhibit 13 as follows:

"and a Japanese Navy Policeman slapping Willie Hartman and a Trukese named Karten. HIDEO SHOJI then tied all the Hartman family, including the children, together in a group."

The accused moved to strike the remainder of this answer on the ground that it was irrelevant and immaterial.

The judge advocate consented to the striking of this portion of the answer.

The commission announced that the motion was sustained.

299. Q. On page 13 testimony of Ruben Foliaple will the witness read from the third paragraph the second and the fourth lines?

The witness read from Exhibit 13 as follows:

"I was informed by Mr. Alexis Sawyer, a Nauruan interpreter for the Japanese, that the Japanese Labor Police wanted to see me."

300. Q. Will the witness read from the testimony of SAKAMOTO, Takaharu, one of the accused, on page nineteen the third from the bottom and the following questions and answers?

The witness read from Exhibit 13 as follows:

"Q. Do you know a man named SYOJI TAKASHI?
A. Yes I know him."

"Q. Who was he?
A. He was civilian attached to the Navy, was in charge of the guard attached to the 4th Navy Construction Unit on KAEDE Is. in TRUK."

The accused moved to strike Exhibit 13 and all evidence relating thereto from the record on the ground that it was irrelevant, immaterial, vague, and misleading.

The judge advocate replied.

The commission announced that the motion was not sustained.

Examined by the judge advocate concerning prosecution document #511:

301. Q. Is the witness the custodian of a record of the trial of Lieutenant Sakoda, Lieutenant Ogawa and others held before an Australian Military Court at Rabaul of the 26th, 27th, and 29th of April 1946?
A. I am.

302. Q. Does the witness know where the original record in this case is?
A. The original record is in the custody of the Australian government.

303. Q. Is the copy which you have in your possession a certified photostatic copy of that record received from the Australian government by the Director of War Crimes Pacific Fleet.
A. It is.

304. Q. Does this photostatic copy consist of 57 sheets numbered consecutively from 54-1 to 54-57 inclusive?

A. It does.

305. Q. Is there attached to this photostatic copy a certificate signed by Major Douglas J. McBain who states that he is the officer having proper custody of this record in the execution of his duties?

A. There is.

306. Q. Does this certificate certify that the attached photostatic copy is a true copy of the original proceedings of the Military Court?

A. It does.

307. Q. Has the witness read this record?

A. I have.

308. Q. Does this record deal with the offense of torturing a civilian at Nauru Island, the civilian being a native, Ruka?

A. It does.

309. Q. Does the record indicate that this offense occurred in the early part of September 1944?

A. It does.

310. Q. Does it indicate that the offense occurred over a period of time of approximately three days?

A. It does.

The record of trial of Sakoda, et al, prosecution document number 511, was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #511:

311. Q. What evidence does the witness have showing the whereabouts of the original record?

This question was objected to by the judge advocate on the ground that use of the word "evidence" in the question was improper.

The accused made no reply.

The commission announced that the objection was not sustained.

A. The certificate itself states that the original is in the possession of the Australian Military Forces.

312. Q. Isn't it true that the certificate states that "I am the officer having, in the course of my duties, the proper custody of such original proceedings" and that that statement is dated October 24, 1947?

A. That is true.

313. Q. Has the witness read the original record?
A. I have not.

314. Q. Isn't it true that this photostat is not an exemplified copy of the proceedings?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied.

The commission announced that the objection was sustained.

The accused objected to the receipt of this document in evidence for the same reasons set forth in the objection to Exhibit 13.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objection, the document was so received and is appended marked "Exhibit 14".

Examined by the judge advocate concerning Exhibit 14:

315. Q. Will the witness read the certificate that is attached to this record?

The witness read from Exhibit 14 as follows:

"I, SX10334 Douglas John McBain, a Major in the Australian Military Forces holding the appointment of Deputy Assistant Adjutant General in the Directorate of Prisoners of War and Internees at Australian Army Headquarters, Melbourne, hereby certify that the attached fifty-seven (57) sheets numbered consecutively from "54-1" to "54-57" (both inclusive) are a true copy of the original proceedings of the Military Court which at RABUL on the 26th, 27th and 29th day of April 1946 tried 1/Lt. SAKODA, Hiroe, 1/Lt OGAWA, Haruzo, 2/Lt NAKAJIMA Hiroshi, 2/Lt TAIRI Tokuji, 2/Lt TSUKADA Eizo, Navy WO TAKAHASHI Shigenobu

And That I am the officer having, in the course of my duties, the proper custody of such original proceedings.

Dated at MELBOURNE this 24th day of October 1947.

/s/ Douglas McBain, Major
D.A.A.G.
DPW & I, AHQ.

WITNESS /s/. S. Arnold Capt.
an officer of the Australian Military Forces."

316. Q. Does page 1 of the record contain the order convening the court?
A. It does.

317. Q. Does this order contain the phrase "Whereas it appears to me, the undersigned, an Officer authorized to convene a Military Court under the War Crimes Act 1945"?

A. It does.

318. Q. Will the witness read page 5, paragraphs B and C?

The witness read from Exhibit 14 as follows:

"B. I certify that the above Court assembled on the 26th, 27th, and 29th day of April 1946 and duly tried the person named in the Schedule, and that the Plea, Finding, and sentence in the case of such person were as stated in the third and fourth columns of that Schedule and that the Regulations for the trial of War Criminals have been complied with.

I ALSO CERTIFY THAT:

1. The Members of the Court
 2. The Judge Advocate
 3. The Witnesses
 4. The Interpreters
 5. The Shorthand writer
- were duly sworn.

SIGNED this 29th day of April 1946

(signed) J. Moyes, Lt. Col
PRESIDENT OF THE MILITARY COURT

C. I have dealt with the findings and sentence in the manner stated in the last column of the Schedule, and, subject to what I have stated, I HEREBY CONFIRM the above findings and sentence.

(signed) V. A. H. Sturdee
Lt. Gen CONFIRMING OFFICER
19 July 1946"

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319. Q. Will the witness read the schedule from page 1?

The witness read from Exhibit 14 as follows:

"Number, Rank, (a) Name and Unit of Accused	Offence Charged	Plea	Finding, and if Convicted, Sentence (b)	How dealt with by Confirming Officer (c)
1st Lt. SAKODA Hiroe	TORTURE OF A	All plead	All Guilty of Charge	Findings and sentences confirmed
" " OGAWA Haruzo	CIVILIAN in that	Not Guilty	2Lt. NAKAJIMA and WO TAKAHASHI	
2nd Lt NAKAJIMA Hiroshi	they at NAURU Is- land on an		to each suffer death by hang- ing. 1st Lt.	/s/ V.A.H. Sturdee Lt. Gen 19 July 46"
" " TAIRI Tokuji	unknown date, extending		OGAWA and 2nd Lt TSUKADA	
" " TSUKADA Eizo	over three days, tor- tured a		each to be imprisoned for 20 years	
Navy W.O. TAKAHASHI Shigenobu	Native RUKA		1st Lt SAKODA and 2nd Lt TAIRI	
all of 67 Naval Garrison Unit			each to be imprisoned for 15 years	

320. Q. Will the witness read on page 8 from the testimony of Naval Lieutenant Ogawa the portion concerning the date of the incident?

This question was objected to by the accused on the ground that it was not correct to call Ogawa a Naval Lieutenant.

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness read from Exhibit 14 as follows:

"One day at the beginning of September '44 I received a report from 2nd Sub-Lt. NAKAJIMA, 2nd Section leader, that as RUKA, one of the two natives attached to 2nd Section."

321. Q. Similarly, will the witness turn to page 53, the statement of Naval Lieutenant SAKODA, Hiroe, and read from the third paragraph the first and second sentences?

The witness read from Exhibit 14 as follows:

"Towards September 1944 I was busy in self-support of my section, collection of building materials for air-raid shelters ordered as the duty of my Section and building air-raid shelters. At the beginning of September, when I came back from the early morning work, I saw RUKA, a native employee attached to 2nd Section tied to a tree in front of guard box his face swollen and his body covered with mud."

322. Q. With reference to the period of time during which Ruka was tied to a tree read all of the cross-examination of Naval Second Lieutenant Tairi, on page 26.

The witness read from Exhibit 14 as follows:

"Q. Did you go down for your medical examination at about lunch time?

A. At five o'clock in the morning.

Q. Did you go down for your medical examination at lunch time while RUKA was tied to the tree?

A. No.

Q. Where were you sleeping

A. In the officers' quarters, marked P on Exhibit B.

Q. Could you see RUKA from there?

A. No.

Q. How many times did you go for medical examination while RUKA was tied to the tree?

A. Once in every two days.

Q. What was wrong with you?

A. Dengue fever."

The commission then, at 10:15 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: ^{All} The members, the judge advocate, the accused, his counsel, and the interpreters.

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

Herbert L. Ogden, 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.)

Examination concerning Exhibit 14 continued:

323. Q. Will the witness read in relation to the question of tying the native to a tree, the testimony of Wowe, which is contained on page 40 beginning with the 8th question and reading through the 10th?

The witness read from Exhibit 14 as follows:

"Q. Did you see RUKA tied to the tree?

A. Yes for about three days.

Q. During that time what happened to RUKA?

A. During that time I saw the Japanese continuously beat him with sticks, threaten him with a sword to frighten him, poke at his eyes.

Q. What position was he in at the tree?

A. Kneeling against the tree with his hands tied behind him with barbed wire. I saw an officer prick his thigh with a sword."

The accused moved to strike the words "I saw an officer prick his thigh with a sword" out of the answer on the ground that they were irrelevant and immaterial.

The judge advocate consented to striking these words.

The commission directed that the words be stricken out.

324. Q. Will the witness read on page 41 the 3rd and the 9th questions and answers from the testimony of Wowe?

The witness read from Exhibit 14 as follows:

"Q. When did you see RUKA disappear from the tree?

A. He was gone on the fourth day.

Q. Was RUKA untied at any time?

A. No he was tied night and day."

The accused moved to strike the words "he was tied night and day" out of the answer on the ground that they were an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

325. Q. Will the witness read in connection with the beating, the statement of Teitaba which appears on page 7, reading through 7 and 8 to the indented portion, started with the words "I identify. . . ."?

The witness read from Exhibit 14 as follows:

"I identify 2nd Lt. NAKAJIMA and Naval W. O. TAKAHASHI (two of the accused) as being with other Japanese with RUKA. I do not know the names of the Japanese. Witness pointed at the 2 accused.

I saw them beating RUKA on the back and on the head with a carry pole about the size of an arm and about three feet in length.

NAKAJIMA and TAKAHASHI (pointed out by the witness) did the beating. I do not know their names, but I identify them as two of the accused.

The other Japanese also beat him but I do not know their names.

These other Japanese were soldiers. It took them about one hour during which they were beating and questioning him. I could not hear what was being said. I was standing on the road which was about fifty yards from the bottle house, marked on the Sketch with a cross in green and RUKA was standing near the road marked with a circle on the Sketch in green. This would be about 20 yards from where I was standing. The Japanese beat him for a while, then they started to question him and then beat him again. I went back to my house then and so I do not know what happened after that.

When I returned to my house I collected my eating utensils and went to the kitchen. On my way to the kitchen I saw RUKA tied against a coconut tree. The position of the coconut tree is shown on the Sketch as a green circle with a cross through it.

After that the officer that I point out (the accused NAKAJIMA) beat RUKA. He beat RUKA with a big stick about three feet long and as thick as an arm. He beat him on the head and then he poked the same stick into his eyes. RUKA was not beaten for very long.

Then the Japanese whom I point out (the accused TAKAHASHI) came and beat RUKA also.

The first man I pointed out (NAKAJIMA) went away before the second man (TAKAHASHI) came. The second man beat RUKA with the same stick. RUKA was not beaten for very long by this man, I think about ten minutes. I went away while he was still beating RUKA. The first man hit RUKA about ten strokes I think. The second man beat RUKA about five times. The first man poked the stick into RUKA's eye twice. The next morning I saw RUKA being beaten again, by the accused I point to (TSUKADA). This man beat RUKA with a walking stick. The thickest part of this walking stick was about an inch and a half in diameter and tapered down to about half an inch. He beat RUKA about twenty times. On the first day that RUKA was taken away I went back to the kitchen for my evening meal. I saw RUKA in the same place. I could see RUKA clearly from where I was having my evening meal. When I looked at RUKA his face was swollen and his eyes were closed. From where I was sitting in the cook house to where RUKA was would be a distance of about 15 yards. I did not see anything happen to RUKA whilst I was having my evening meal. While I was sitting down to have my meal I saw another Japanese beating RUKA, the time being that of the morning meal of the second day. The Japanese I point out (NAKAJIMA) came and beat RUKA with a big stick about three feet in length and the size of my arm. This man beat RUKA ten times. The man who beat RUKA with the walking stick was still there when this last named man came along. I was at the kitchen when this was going on. I was having my meal. After the two of them had beaten RUKA they went away and left RUKA. Nothing happened after that. After my breakfast I went back to my house.

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I saw RUKA the next morning when I was on my way to the kitchen. RUKA was in the same place. I then saw 4 Japanese untie RUKA from the coconut tree and led him down the road. Two of those Japanese are in Court. I point out the two accused (NAKAJIMA and TAKAHASHI). TAKAHASHI untied RUKA. After RUKA was untied they led him away. RUKA's hands were still tied to his back and he could hardly walk. I do not know where the Japanese and RUKA went to. I then went back to my house. When I arrived at my house I saw a motor cycle pass on the road with RUKA on it and 4 Japanese. 3 of these are in Court. I point out the three accused in Court. (OGAWA, NAKAJIMA, and TAKAHASHI) At that time I had meals three times a day. I saw RUKA again when I went down to the kitchen on the second day for my lunch. I saw the accused whom I point to (SAKODA) beating RUKA. He was beating RUKA with his hands. Witness demonstrates that the accused SAKODA was punching RUKA on each side of the face with his closed fists. He punched RUKA eight times. I attended an identification parade of Japanese at FAROE, I identified all those whom I pointed out in Court."

The accused moved to strike out this answer on the ground that the maker of the statement was available as a witness, that the statement did not show that its maker was sworn, and that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

326. Q. Will the witness read from the testimony of Wowe on page 14 from the words "I don't know. . ." through to the end of the direct testimony on page 16?

The witness read from Exhibit 14 as follows:

"I don't know the names of the Japanese officers but I can recognize them. This is the Japanese referred to in the statement. I picked the photos out. I cannot recognize in the Court the two Japanese who were walking along the road with RUKA. I can see some Japanese who were beating RUKA while he was standing on the road. Witness indicates SAKODA, NAKAJIMA, TAIRI, and TSUKADA, in the court. I do not know the names of these Japanese. They were the Japanese who were beating RUKA about the head and body with walking sticks and big sticks at about 10 a.m. when I went to the cookhouse to get some breakfast. I cannot remember how many strokes these Japanese gave RUKA but they beat him many times. Witness indicates NAKAJIMA as one who was beating RUKA with a big stick. Witness indicates TSUKADA as one who was using a walking stick to beat RUKA. The other two are not present here in Court."

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Q. Do you remember the time when RUKA was tied to a coconut tree?

A. Yes, I remember.

Q. What was the time you first saw RUKA on the day he was tied to the coconut tree?

A. I saw RUKA and 4 Japanese on the road.

Q. Was that the first time that you saw RUKA that day?

A. Yes.

Q. Are any of those 4 Japanese here in Court?

A. Yes, the ones I have pointed out already. Witness again points out SAKODA, NAKAJIMA, TAIRI, and TSUKADA.

Q. What were they doing?

A. They beat RUKA.

Q. Did each of them beat RUKA?

A. Yes, they all beat RUKA.

Q. What did that man (pointing to SAKODA) use?

A. His hands. (Demonstrates to Court hits on the face with closed fists.)

Q. What did the second man (NAKAJIMA) use?

A. He used a big stick about three feet long.

Q. What did the next man (TAIRI) use?

A. He was using his fists. (Demonstrates to Court)

Q. What did the next man (TSUKADA) use?

A. He used a walking stick.

Q. Did you see them go away from RUKA?

A. No.

Q. Did you go away while they were still there?

A. After they beat him they tied him and I was still there.

Q. Where did they tie him?

A. Against a coconut tree.

Q. What was the next thing you saw?

A. I then saw two Japanese officers come out of their house and walk up to RUKA and beat him.

Q. What time of the day was this?

A. About ten o'clock.

Q. Are either of those officers here today?

A. Only one is here.

Q. Who is that?

A. Witness points out NAKAJIMA in the court.

Q. Where did you see this from?

A. From the kitchen.

Q. Were you all the time at the kitchen from when you saw the Japanese on the road and the time you saw NAKAJIMA come out of the house?

A. Yes, I was in the kitchen all the time.

Q. What did NAKAJIMA beat RUKA with on this occasion?

A. With a big stick.

Q. How many times?

A. I can't remember.

Q. Did NAKAJIMA stay with RUKA very long?

A. No, not very long.

Q. What was the next thing you saw happen when you were at the kitchen?

A. I saw three more Japanese come up to RUKA and beat him.

Q. Are any of those here?

A. Yes.

Q. Who are they?

A. Witness points out NAKAJIMA and TSUKADA, the third one is not here.

Q. How did NAKAJIMA beat RUKA?

A. With a big stick.

Q. And the other man?

A. With a walking stick.

Q. Did you see anything else at this time?

A. After that I saw one Japanese untie RUKA from the coconut tree and RUKA fell down. That Japanese helped RUKA up on his feet and led him away. After that I did not see them.

Q. Did you see anything else at that time?

A. I saw the same Japanese who led RUKA away bring him back and tie him to the same tree.

Q. Is that Japanese here today?

A. He is not here but I saw his photo.

Q. Did you see anything else at that time?

A. I can't remember seeing anything else.

Q. When did you go away from the kitchen?

A. I left the kitchen about two o'clock in the afternoon. About twenty minutes after RUKA was again tied up I left the kitchen.

Q. When was the next time you saw RUKA?

A. When I came back to the kitchen for my dinner at four o'clock in the afternoon RUKA was still tied.

Q. While you were having your dinner did you see anything happen to RUKA?

A. No.

Q. When was the next time you saw RUKA?

A. I went back then to my house and when I came back at 6 o'clock in the evening to collect my toddy, RUKA was still tied, his face was swollen and his eyes were closed.

Q. When you came to collect your toddy did you stay with RUKA for any time at all?

A. No, I did not stay near RUKA very long.

Q. When was the next time you saw RUKA?

A. The next morning I saw RUKA again.

Q. Where was he?

A. He was still tied against a coconut tree.

Q. What were you doing when you saw RUKA that time?

A. I saw RUKA when I went to collect my toddy.

Q. Did you stay near RUKA at all or did you just walk past him?

A. I passed RUKA very close.

Q. When was the next time you saw RUKA?

A. The same morning I saw RUKA again when I went to get my breakfast.

Q. Did you see anything happen then?

A. Ruka was still tied.

Q. What was the next time you saw RUKA?
 A. When I went for my lunch.
 Q. While you were having your lunch did you see anything happen to RUKA?
 A. I did not see anything happen to RUKA while I was having my meal.
 Q. Did you see anything happen to RUKA while you were at the kitchen?
 A. No.
 Q. When did you next see RUKA?
 A. At four o'clock when I came to get my dinner RUKA was still tied to the tree.
 Q. All the time you were at the kitchen that time did you see anything happen to RUKA?
 A. No.
 Q. When did you next see RUKA?
 A. When I came to the place where he was tied the next morning I found he was not there.
 Q. Have you seen him since that date?
 A. No."

327. Q. Will the witness read from the testimony of Wowe on page 42 paragraph 7 and paragraphs 8 and 9 on page 43.

The witness read from Exhibit 14 as follows:

- "7. Ensign NAKAJIMA Shiroshi was the Officer I saw accompanied by Petty Officer TAKAHASHI, arrest the native RUKA. I saw him beat the native.
8. Ensign TSUKADA Eiyo was the officer I saw beating the native RUKA on each of the three days the latter was tied to the coconut tree. He beat RUKA harshly with his fists and a thick Stick. I saw him poke the point of a gardening hoe into RUKA's eyes.
9. Ensign TAIRA Tokuzi beat RUKA harshly with his fists and sticks during the first and second days that RUKA was tied to the tree."

328. Q. Will the witness read from page 44, the testimony of Kautoa, the 6th through the 12th questions and answers?

The witness read from Exhibit 14 as follows:

- "Q. Tell me what you know about the death of RUKA?
 A. He was found by the Japanese to have mixed bad water with the toddy. The Japanese led him to their quarters to have him beaten.
 After that they tied him up by a coconut tree and several Japanese beat him freely, one after the other, with a stick about 1" in diameter of a tomara tree.
 They kept beating him for three days with sticks while he was tied to the coconut tree. All his face was battered and the eyes swollen out, blood was streaming down.
 After three days they untied him and he was brought to Section HQ (NOJO) at BUADA and the Japanese tried him there. After that they brought him back to the same place at the coconut tree. The Japanese got barbed wire and tied him to the tree.

The following morning after the fourth day we found he was not there. That is all I can tell.

Q. How long was he tied to the tree?

A. All night and day for three days, then with barbed wire.

Q. Show how he was tied.

A. Witness demonstrated the position against an upright of the building.

He was sitting at the foot of the tree with his hands tied around the tree, facing outwards, with his back to the tree. When he was brought back he was tied with barbed wire.

Q. Was he in that position when he was beaten?

A. Yes they beat him in the face. Sometimes they tried to thrust the stick in his eyes. He was beaten mostly on the head and face as he sat.

Q. Was there a guard whilst RUKA was tied like that?

A. The place where he was tied was close to a sentry, who was guarding the road going to BUADA.

Q. Was RUKA bleeding?

A. Yes, the face was covered with blood.

Q. Did you recognize any of the soldiers who were there?

A. There were two officers who also beat Ruka."

329. Q. Will the witness read from page 45 of the testimony by the same Kauton the 1st, 4th, 5th, 6th and 7th questions and the answers thereto?

The witness read from Exhibit 14 as follows:

"Q. Do you know them?

A. SARODA, who was then 2 i/c of the section and BUADA, but was promoted later from lieutenant to captain (senior lieutenant, navy rank). Then O. C. of the section was rather thin and tall, captain (lieutenant) ONGAI of ICHU TAI."

"Q. Were they here when the Australian forces came?

A. Yes, they were in the first to leave.

Q. What did you see these officers do to RUKA?

A. On the fourth day, in the afternoon, these two officers got a bayonet practice stick (JATO) and thrust at RUKA with a stick.

Q. Did you see any of the officers beat RUKA?

A. On the last day, in the afternoon about four or five o'clock. That was the only time I saw them beat him.

Q. Did they beat him with a stick?

A. With a bayonet stick."

The witness was duly warned.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

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

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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 concerning Exhibit 14:

330. Q. Will the witness read from page 11 the second and third questions and answers thereto of the first witness Teitiba?
The witness read as follows:

"Q. Do you know Sakoda by name?
A. No.

Q. Were you asked this question "Do you know the officers" and was your reply "Yes, Sakoda, he had one star then, two stars when transferred to the Kaimuka and three stars when he left for Torokina, and the three star Officer"?
A. Yes."

331. Q. Will the witness read from page 12 all the questions and answers thereto, and the continuation of the same witness' testimony, namely Teitiba on page 13 to the Reexamination? AR

The witness read as follows:

"Q. Did you tell the truth when you made those two statements?
A. Yes.

Q. Do you remember saying in your evidence yesterday that "none of the four persons who were with Ruka when you first saw him are in Court"?
A. Yes, I remember.

Q. Do you remember saying in one of these statements "You saw Nakajima and Takahashi arrest Ruka"?
A. Yes, I remember.

Q. Since you made that statement have you been told that Nakajima and Takahashi did not arrest Ruka?
A. No.

Q. Do you remember saying yesterday "that in the vehicle that took Ruka away, Nakajima, Takahashi, and Ogawa, were in the vehicle"?
A. Yes, I remember.

Q. Do you remember saying in one of the statements that "Sakoda and Ogawa and 2 soldiers with rifles were in the vehicle"?
A. I can't remember.

Q. Can you remember now who was in the vehicle?
A. Yes, I can.

Q. Who were the 4 Japanese who untied Ruka from the tree?
A. The Japanese in Court whom I indicate - - Nakajima, Takahashi. Two are thus present in Court and two are not.

Q. Did you say in your declaration that "some officers beat Ruka every day"?
A. Yes.

Q. Will you point to any officers in Court that beat Ruka every day?
A. The Japanese in Court whom I indicate - -- Tairi and Nakajima.

Q. Did Takahashi beat Ruka every day?
A. Yes. Witness indicates Takahashi.

Q. Was there any other officer besides those three who beat Ruka every day?
A. No.

Q. Did you say in your declaration that "Tsukada beat Ruka every day"?
A. Yes. Witness indicates Tsukada in Court.

Q. Were you telling the truth yesterday when you told the Court about the persons who beat Ruka?
A. Yes.

Q. Do you remember mentioning Tairi yesterday as having beaten Ruka?
A. I can't remember.

Q. Have you discussed this case with anybody since yesterday?
A. No.

Q. At the time of this incident were you ever close enough to Ogawa to see his badge of rank?
A. Yes. Witness indicates Ogawa in Court.

Q. How many stars did he have?
A. Three.

Q. Do you remember whether it was the third or forth morning that they took Ruka from the tree?
A. I remember, on the third day.

Q. Do you remember saying in your statement that "They took Ruka away on the fourth morning"?
A. I can't remember.

Q. Have you been told lately by anyone that Ruka was taken away on the third morning?

A. No.

Q. Will you describe this vehicle that took Ruka away?

A. A Motor Cycle with a box at the back.

Q. Who was driving the motor cycle?

A. I can't recognize him.

Q. Is this right "On the motor cycle were there a driver, the four persons you mentioned yesterday, and Ruka?"

A. Yes.

Q. Have you ever seen on any other occasion five persons in the box of the motor cycle?

A. I don't remember.

332. Q. Will the witness read from page 16 the cross-examination of the second witness Wowe, from question 1 through 7 and the answers thereto?

The witness read as follows:

"Q. At the time you made those two statements did you tell the truth?"

A. Yes.

Q. Do you remember saying in Court this morning that "two men you saw with Ruka when you first saw him are not present in Court"?

A. Yes, I remember.

Q. Do you remember saying in your statement that you saw Nakajima and Takahashi arrest Ruka?"

A. Yes, I remember, but I did not say their names.

Q. Do you still say it was Nakajima and Takahashi (Defending officer points them out) that arrested Ruka?

A. I did not see them first arrest Ruka.

Q. Did you say in your declaration that "Ruka was tied to the tree three days"?

A. Yes.

Q. Was Ruka taken away on the morning of the fourth or third day?

A. I can't remember exactly.

Q. Has anybody told you lately that he was taken away on the third day?

A. Yes."

333. Q. Will the witness read from page 17 the second question from the bottom of the page and the answer thereto, testimony from the same witness Wowe?

The witness read as follows:

"Q. What was Ruka being punished for, do you know?

A. Yes, I know. Ruka was punished for mixing toddy with water."

334. Q. Will the witness read from page 40 the sixth, fifth, fourth and second questions from the bottom of the page and the answers thereto of the same witness, Wowe?

The witness read as follows:

"Q. Did you see any officers beat him?

A. Yes I saw two.

Q. Do you know them?

A. A Lieutenant (two stars) who wears glasses all the time, and a captain (three stars). I don't know his name. The unit was ICHU TAI.

Q. Do you know the name of the Officer in Charge of ICHU TAI?

A. No.

Q. Do you know the Japanese Officers Sak²da and Ogawa?

A. No."

335. Q. Will the witness read from page 18 paragraph starting with the words "Witness is asked" the testimony of Kautoa?

The witness read as follows:

"Witness is asked to look all around the Court and to tell the Court if there is anyone present whom he saw beating Ruka. Witness indicates Tsukada. He is the only one present in Court, the other one is not here."

336. Q. Will you read the question following that paragraph and the answer thereto?

The witness read as follows:

"Q. On how many different occasions did you see Tsukada beating Ruka?

A. Only once."

337. Q. Will you read from page 19 the cross-examination of the same witness, Kautoa, except the last three questions and answers?

The witness read as follows:

"Q. Now do you remember seeing Ruka being taken away?
Prosecuting Officer calls for the document which was prepared relating to evidence given by the witness. The document is tendered by the Prosecution, admitted in evidence, read, marked Exhibit J, signed by the President and annexed to the Proceedings. The Defending Officer intimates that he has no objection to the document being tendered in full.

The Prosecuting Officer explains that this statement was not tendered by him at the beginning of the evidence of Kautoa because experience with a previous witness indicated that with native witnesses it was better to use oral examination. Before this policy was decided upon a copy of the proposed evidence was handed to the Defending Officer by the Prosecuting Officer.

Q. Do you remember making another statement to the Administrator in this matter?

A. Yes.

Q. Did you tell the truth on that occasion?

A. Yes.

Q. Did you say on that occasion that you saw Ruka being towed away by a Japanese on a motorcycle?

A. I can't remember.

Q. Was it true that Ruka was towed away from the tree by a Japanese driving a motorcycle? (Was he tied behind a motor cycle and pulled away, Ruka being on foot)?

A. I can't remember.

Q. Have you any reason for telling lies against these Japanese?
Defending Officer withdraws the question.

Q. Have you told lies about these Japanese? at any time?
Prosecuting Officer objects to this question.
The President announces that the court upholds the objection.

Q. Have you ever been punished by the Japanese?

A. Yes.

Q. What was the reason for the punishment?

A. I was punished for not looking after my toddy tree."

338. Q. Will the witness read from page 25 questions and answers 4, 5 and 6 of the cross-examination of Lt. Sakoda Hiroe?

The witness read as follows:

"Q. Did you speak to Ruka while he was tied to the tree?

A. No.

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Q. Did you stop and look at him?
A. Yes.

Q. Do you agree with Nakajima that stealing of toddy is a serious offence?"

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial, and called for the opinion of the witness.

The accused made no reply.

The commission announced that the objection was sustained.

339. Q. Will the witness read from page 53 the second and third paragraphs of the statement of Lt. Sakoda Hiroe?

The witness read as follows:

"2. I was 4th Section leader of the First Company (Ichu tai) from October 1943 to February 1945. I was transferred to the civil administration service (Gaimuka) from the first section and engaged in the maintenance of public safety and friendship of the natives.

3. Towards September 1944 I was busy in self-support of my section, collection of building materials for air-raid shelters ordered as the duty of my Section and building air-raid shelters. At the beginning of September, when I came back from the early morning work, I saw Ruka, a native employee attached to 2nd Section tied to a tree in front of guard box his face swollen and his body covered with mud. I was not concerned in the affairs of natives attached to other section. When I was taking breakfast with other officers in the officers' dining room, I heard Nakajima, 2nd Section leader, reporting to Ogawa, the company commander, about crime committed by Ruka. It was not before his report that I knew the details of this affair. As I was very busy in my own duty, neither had I time to inquire and punish the native attached to other section. After I came back from work, I heard in the word-room that Ruka was punished to 3 days' imprisonment on a theft charge."

340. Q. Will the witness read from page 48 from the statement of Lt. Ogawa Haruzo paragraphs 1 through 12 inclusive?

The witness read as follows:

"1. In June 1943, I arrived to Nauru Is. as a division officer of 67th Navy Garrison Unit.

2. I was commander of 1st Coy from Jan. 1944 to Sept. '45. The 1st Coy consisted of Leading Section, leader was 2nd Sub-Lt. Tsukada, (then W. O.); 1st Section, leader, was 2nd Sub-Lt. Taira (then W. O.); 2nd Section, Leader was 2nd Sub-Lt. Nakajima (then W. O.); 3rd Section, leader was 2nd Sub-Lt. Kikuta (then W.O.); 4th Section, leader was Lt. Sakuda (then 2nd Sub-Lt.); and Sub-Lt. Mochizuki was adjutant of my Coy (then W. O.).

3. About eleven natives were attached to my Coy from Lt. Hotta i/c native affairs of the Navy Garrison Unit. The natives had been distributed to each Section, where they were engaged in making toddy out of coconuts."

The judge advocate objected to the reading of the fourth, fifth, sixth, and seventh paragraphs of this statement on the ground that they were irrelevant and immaterial.

The accused replied.

The commission announced that it would hear the paragraphs subject to a motion to strike them from the record.

The witness continued to read as follows:

"4. Since Sept. 1943, as the supply of war munitions and provisions were all cut off. We were obliged to produce food with our own hands in order to live while engaging in battle and defence duty. Self-support was an important duty of ours. Pumpkins and toddy were staple food for us. As a natural result of food shortage, theft of provisions, farm products and toddy occurred frequently. Theft of provisions was an immediate menace to our existence, so we could not help taking preventive measure against theft of provisions as a means of self-defence.

5. In these circumstances, many Japanese and natives were condemned to imprisonment, fasting, hard labour, flogging on the charge of theft of agricultural product and toddy. This kind of punishment was quite commonplace in those days.

6. Furthermore Naval Capt. Soeda, officer commanding the Navy Garrison Unit, issued an order to the effect that those who would steal rations and farm product should be shot. According to this order there was a fact that two Japanese who had stolen rations were shot.

7. In Nauru Is. where the provisions were extremely scarce, theft of provisions was considered as a serious offence."

The judge advocate moved to strike paragraphs four, five, six and seven from the record on the grounds that they were irrelevant and immaterial.

The accused replied.

The commission announced that the motion was not sustained.

The witness continued to read from the same statement as follows:

"8. One day at the beginning of Sept. '44, I received a report from 2nd Sub-Lt. Nakajima, 2nd Section leader, that as Ruka, one of the two natives attached to 2nd Section, stole some toddy and mixed dirty water for fertilizer with the remainder of toddy, watchman caught Ruka and tied him with a rope and placed him in front of the sentry-box. I called Ruka to the officers' office room and questioned him in the presence of Nakajima and 1st petty officer Takanashi, who caught him. I noticed a scratch in his face, which was swollen. His offence was obvious from the

9 bottle of toddy into which dirty water had been mixed and Takanashi's testimony. Ruka confessed that he had stolen toddy several times since June, and that he had stolen more than 20 bottles of toddy in all. I delivered judgement on Ruka in the office room, stating that he would be condemned to 3 days' imprisonment, and I ordered that he receive ten strokes with a bamboo cane daily for the three days from 2nd Sub-Lt. Mochizuki, the Company adjutant. I did not see Mochizuki carry out the punishment, but I have no doubt that he did so.

9. Having no prison, I executed the punishment by trying him to a coconut tree in front of the sentry-box and had the sentry watch him.

10. I reported to Lt. Hotta ¹/_c native affairs and Lt. Commander Nakayama, about Ruka's offence.

11. While Ruka was tied to the tree he was given food and water. He was given his meals three times a day and when he asked for water he was given it. When he wished to go to the latrines he was released and escorted there. He was bound with Manila rope by the wrists. His wrists were crossed behind his back. There was about a metre and a half of rope between his wrists and the tree enough to enable him to lie down. At no time was barbed wire used to bind him.

12. On the morning of the third day, I think, it became clear that there was another offence that made us suspect Ruka. I had Ruka brought again to the office room and questioned him. He confessed to the crime of stealing pumpkins. To ascertain the place of his committed and his guilt, I decided to go to the farm by a truck accompanied by Mochizuki."

Reexamined by the judge advocate concerning Exhibit 14:

341. Q. Will the witness read from page 16 from the testimony of Wowe, the seventh, eighth and ninth questions of the cross-examination?

The witness read as follows:

"Q. Has anybody told you lately that he was taken away on the third day?

A. Yes.

Q. Who told you?

A. Sato.

Q. When did Sato tell you?

A. On the day when Ruka was lost.

The accused moved to strike this answer from the record on the ground that there were two persons with the name of Sato, and the record did not show which Sato was meant.

The judge advocate replied.

The commission announced that the motion was not sustained.

342. Q. To identify that Sato, on page 41 will the witness read the third, fourth and fifth questions and the answers thereto, the testimony of Wowe?

The witness read as follows:

"Q. When did you see Ruka disappear from the tree?

A. He was gone on the fourth day.

Q. Did anyone tell you where he had gone?

A. We understood from the Japanese that he had been killed.

Sgt. Heiso Sato told us that Ruka had been killed.

Q. Did he belong to Ichu Tai when the Australians arrived?

A. Yes."

The accused moved that this answer be stricken from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion to strike was sustained except for that part of the answer which identified Sergeant Sato.

343. Q. Will the witness on the same subject matter, from the statement by the same witness Wowe, read the last question on page 16 and the first question on page 17 and the answers thereto?

The witness read as follows:

"Q. Have you talked about this case with Teitiba or Kautoa?

A. I did not talk with them.

Q. Is it true that since the Australians came back to Nauru up to the present time you have not talked over this case with Teitiba or Kautoa?

A. No. I did not talk about it with either Teitiba or Kautoa."

344. Q. Defense counsel asked you to read from the testimony of Kautoa on page 18 the question beginning with the words "On how many"; that was the last question of that series. Will you now read that question and the next two questions following that, and the answers thereto?

The witness read as follows:

"Q. On how many different occasions did you see Tsukada beating Ruka?

A. Only once.

Q. What did he use to beat Ruka with?

A. He beat Ruka with his walking stick which was an iron pipe.

Q. How many times did he strike Ruka?

A. I don't know how many strokes, but I saw him beating Ruka about five minutes."

Recross-examined by the accused:

345. Q. So that the charge never specified any certain day on which the offense took place, isn't that true?

This question was objected to by the judge advocate on the ground that it was repetitious.

The accused made no reply.

The commission announced that the objection was sustained.

346. Q. Isn't it true that the record which you testified as being a complete record does not show any objection to this charge?

A. That is true.

347. Q. And isn't it true that the record shows no pleas or motions either by the prosecution or the defense?

A. It shows the plea of the accused of not guilty.

348. Q. Other than that, there are no pleas or motions by the defense or by the prosecution?

A. I believe there are no other motions in the record.

349. Q. Now isn't it true also that the schedule is not signed by the convening authority or anyone else?

A. The schedule sheet is signed by the confirming authority.

350. Q. What the confirming authority signed; isn't that the findings and the sentence, rather than the charge?

A. On the schedule sheet the signature appears in the column "How dealt with by Confirming Officer", but by virtue of the fact that the form at the bottom shows a place for signature of the convening officer, I believe it is intended to be signed for the entire sheet.

The accused moved to strike this part of the answer beginning with the words "but by virtue" on the ground that it is an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

351. Q. Now isn't it true that down at the bottom of the sheet of the schedule there is typewritten in there the words "Convening Officer, Eighth Military District" and then the abbreviation Maj-Gen, and that at this place no signature appears?

A. That is true.

352. Q. And no where else in the record is there a charge which has been signed by the convening authority, is that true?

A. That is true.

353. Q. Doesn't the record also show that the native witnesses were examined through an interpreter David Murdock, a Nauruan, and that no translation was made into Japanese?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial.

The accused replied "we will add to our question"; specifically we refer to the first witness as shown on page 7, the first witness for the prosecution, and on page 14 the second witness through the same interpreter.

The commission announced that the objection was sustained. 286

354. Q. On page 6, who was sworn as the Japanese interpreter?

This line of questioning was objected to by the judge advocate on the ground that it went beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was not sustained.

A. The record shows Mishimura Jiro as the Japanese interpreter.

355. Q. Will the witness read on page 7 from the testimony of the first witness Teitiba starting with the words "One morning I woke up" through and including the sentence "I cannot see"? 285

The witness read as follows:

"One morning I woke up at 6 o'clock and I walked up the hill to where I worked. When I got near the place I saw Ruka was tied, his hands at his back. There were four Japanese there. I cannot see any of those Japanese here in Court."

356. Q. Will the witness turn to page 19 and read the paragraph which starts on the second line of the page?

The witness read as follows:

"Prosecuting Officer calls for the document which was prepared relating to evidence given by the witness. The document is tendered by the Prosecutor, admitted in evidence, read, marked Exhibit J, signed by the President and annexed to the Proceedings,"

357. Q. Now read the paragraph starting with the sentence "The Prosecuting Officer explains" from the same page.

This question was objected to by the judge advocate on the ground that it was repetitious.

The accused made no reply.

The commission announced that the objection was sustained.

358. Q. Will the witness read on page 20, from the testimony of the fourth witness Mai Nai Fai from "As I have been in Nauru" to the end of the sentence, and also read the first line on the page also?

The witness read as follows:

"MAI NAI FAI being duly sworn is examined by the Prosecuting Officer.

My full name is Mai Nai Fai. I am a Chinese interpreter of the British Phosphate Commission in Nauru.....As I have been in Nauru for nearly six years and I am quite acquainted with the natives. I have on occasions questioned natives on facts generally. More than once. They are apt to tell you what they think, but anyway they are honest. This is my experience in getting facts from natives."

359. Q. Will the witness read on page 21 the testimony of Lt. Ogawa Haruzo the last sentence just before the cross-examination, beginning with the words "I remember" through the words ending with "breakfast time".

The witness read as follows:

"I remember when I passed sentence on Ruka. It was around noon of that day. I heard the case against Ruka at around breakfast time."

360. Q. On page 22 the testimony of the same witness Lt. Ogawa, will you read the question that begins "Did the Coy adjutant tell you" etc., and the answer thereto?

The witness read as follows:

"Q. Did the Coy adjutant tell you that he had carried out the punishment that your ordered?
A. Yes."

361. Q. On page 23 the testimony of the witness 2nd Lt. Nakajima Hiroshi, will you read the question that begins "How many times" etc., and the answer thereto?

The witness read as follows:

"Q. How many times did you see natives and soldiers beating Ruka?
A. Once."

The witness was duly warned.

The commission then, at 3:40 p.m. adjourned until 9 a.m., tomorrow, Tuesday, November 9, 1948.

ELEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, November 9, 1948.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Captain Daniel J. Sweeney, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United
States Army Reserve,
Lieutenant Colonel Newton L. Chamberlain, Signal Corps, United States
Army,
Lieutenant Commander Ralph I. Gerber, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant David Bolton, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, his counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

Herbert L. Ogden, the witness under examination when the adjournment
was taken, entered. He was warned that the oath previously taken was still
binding, and continued his testimony.

(Cross-examination by the accused concerning Exhibit 14 continued:)

362. Q. Will the witness read from page fifty-two the statement of Takahashi,
the first paragraph and the first seven lines of paragraph two down to the
words "bring him back".?

The witness read from Exhibit 14 as follows:

- "1. I belong to 67th Navy Garrison Unit. Jan. '44 - Sept. '45
I was the senior N.C.O. of 2nd section.
2. At the beginning of Sept. '44, toddy of 2nd section was
often stolen. 1st petty officer TAKANASHI watching by an
order of 2nd Lt. NAKAJIMA, the section leader, found a native
RUKA, an employee of the section, stealing toddy and mixing
muddy water with the rest of toddy. TAKANASHI was about to
catch him, but RUKA ran away. TAKANASHI ran after him and
I saw Takanashi bring him back."

Examined by the judge advocate concerning prosecution document #512:

363. Q. Does the witness have in his possession from the office of Director
of War Crimes, Pacific Fleet, a certified photostatic copy of the record of a
military court held at Rabaul on the first and second of May, 1946 in the case
of Warrant Officer Hatakeyama and others?

A. I have.

364. Q. Is this certified photostatic copy attached to a certificate from Major Douglas John McBain who certifies that he is the custodian of the original proceedings?

A. It is.

365. Q. Does the certified photostatic copy contain a convening order, and duly authenticated certificate of the swearing of members of the court, and of findings and sentences?

A. It does.

366. Q. Does the record of proceedings deal with the alleged offense of murder on or about 3 December 1944 of a Chinese civilian, by name NG LEE?

A. It does.

367. Q. Does the certificate of Major McBain state that the attached record consists of 59 sheets numbered from 69-1 to 69-59 inclusive?

A. It does.

368. Q. Are the photostats attached to this certificate numbered similarly from 69-1 to 69-59?

A. They are.

The record of trial of Warrant Officer Hatakeyama, Yosutaki, and others before an Australian military court, prosecution document number 512, was submitted to the accused and to the commission and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution document #512:

369. Q. Isn't it true that the record shows that the victim, Lee, was a civilian employee of the Japanese military forces?

This question was objected to by the judge advocate on the ground that it was irrelevant and immaterial. 26

The accused made no reply.

The commission announced that the objection was sustained.

370. Q. Isn't it true that the copy which is here offered into evidence does not show a charge that has been signed by the convening authority?

This question was objected to by the judge advocate on the ground that it was misleading.

The accused made no reply.

The commission announced that the objection was not sustained.

A. It does not show a charge separate from the schedule sheet.

371. Q. Isn't it true that the record shows that Captain L. A. Chisholm was the judge advocate of this court and not Major Douglas McBain?

This question was objected to by the judge advocate on the ground that it was double, irrelevant and immaterial.

The accused made no reply.

The commission announced that the objection was sustained.

372. Q. Does the record show who the judge advocate of the court was?
A. It shows the judge advocate in this case was Captain L. A. Chisholm.

373. Q. Isn't it true that Major McBain's statement fails to show that he has ever read the original record of trial or that he has even read the copy he certified?

This question was objected to by the judge advocate on the ground that it was irrelevant, immaterial, misleading and double.

The accused made no reply.

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The commission announced that the objection was sustained.

The accused objected to the receipt of prosecution document number 512 into evidence on the same grounds as given in the objection to prosecution document number 510, and on the further ground that it is not an exemplified copy of the record of proceedings.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objection, the document was so received and is appended marked "Exhibit 15".

Examined by the judge advocate concerning Exhibit 15:

374. Q. Will the witness read from Exhibit 15 the certificate?

The witness read from Exhibit 15 as follows:

"I, SX10334 Douglas John McBAIN, a Major in the Australian Military Forces holding the appointment of Deputy Assistant Adjutant General in the Directorate of Prisoners of War and internees at Australian Army Headquarters Melbourne hereby certify that the attached fifty-nine (59) sheets numbered consecutively from '69-1 to 69-59' (both inclusive) are a true copy of the original proceedings of the Military Court which at Rabaul on the 1st and 2nd day of May 1946 tried W.O. HATAKEYAMA Yosutaki, P/O TORIWUMI Tomeo, CPO TOMINAGA Gorozi, CPO SANO Takeo, CPO ITO Hiroshi, CPO SASAKI Hazuma, CPO CHIBA Tsuneco, Pmr 1/Class SATO Heibei And That I am the officer having, in the course of my duties, the proper custody of such original proceedings.

Dated at MELBOURNE this 24th day of October 1947

/s/ Douglas McBain Major
D.A.A.G.
D.P.W. & I., A.H.Q.

WITNESS /s/ S. Arnold Capt.
An officer in the Australian Military Forces."

375. Q. Does page one of this record contain the signed order convening the court?

A. It does.

376. Q. Does this signed order convening the court contain the statement of the officer convening that court to the effect that he is an officer "authorized to convene a Military Court under the War Crimes Act of 1945"?

A. It does.

377. Q. Will the witness read from page eleven paragraphs B and C thereof?

The witness read from Exhibit 15 as follows:

"B. I CERTIFY that the above Court assembled on the 1st and 2nd day of May 1946 and duly tried the person named in the Schedule, and that the Plea, Finding, and sentence in the case of such person were as stated in the third and fourth columns of that Schedule and that the Regulations for the trial of War Criminals have been complied with.

X I ALSO CERTIFY THAT:

1. The Members of the Court
 2. The Judge Advocate
 3. The Witnesses
 4. The Interpreters
 5. The Shorthand writer
- were duly sworn.

SIGNED this 2nd day of May 1946

/s/ J. Moyes, Lt. Col.
PRESIDENT OF THE MILITARY COURT

C. I have dealt with the findings and sentence in the manner stated in the last column of the Schedule, and, subject to what I have stated, I HEREBY CONFIRM the above findings and sentence.

/s/ V. A. H. Sturdee
Lt. Gen.
CONFIRMING OFFICER"

23 July 1946

378. Q. Will the witness read the schedule which appears on page 1?

The witness read from Exhibit 15 as follows:

"Number, Rank, (a) Name and Unit of Accused	Offence Charged	Flee	Finding, and if convicted, Sentence (b)	How dealt with by confirming Officer (c)
Paymaster W. O. HATAKEYAMA, Yosutaki of 2 Special Land Duty Coy.	MURDER in that they at NAURU IS. on or about 3 Dec 44 murdered a Chinese Civilian, NG LEE	All plead not guilty	Paymaster WO HATAKEYAMA Eng PO TORIWUMI Paymaster CPO TOMINAGA Navy CPO SANO Paymaster CPO ITO Paymaster CPO SASAKI Paymaster CPO CHIRA	Findings and Sentences Confirmed
Eng. F/O TORIWUMI Tomoo			/s/ V.A.H. Sturdee Lt.Gen.	
Paymaster CPO TOMINAGA Gorozi				23 July 46"
Navy CPO SANO Takeo			all guilty of the charge Paymaster 1st Class SATO Not guilty of the charge.	
Paymaster CPO ITO Hiroshi			- - - - - Each accused found guilty to suffer death by hanging.	
Paymaster CPO SASAKI Hazuma				
Paymaster CPO CHIRA, Tsuneo				
Paymaster 1st Class SATO Heibel all of 67 Naval Garrison Unit.				

379. Q. Does the statement of So Kam relate to the beating of NG LEE?
A. It does.

380. Q. Will the witness read the statutory declaration starting on page 45 and succeeding statements of So Kam?

The witness read from Exhibit 15 as follows:

"I, So Kam, c. c. no. 128 a Chinese Employee of British Phosphate Commissioners of NAURU ISLAND, Central Pacific.

Do hereby solemnly and sincerely declare:-

1. On the twenty-sixth and twenty-seventh day of November 1945, I was questioned at NAURU ISLAND by an Australian Army Officer whom I now know to be Lt. A. SPRILYAN of 31/51 Australian Infantry Battalion (A.I.F.)
2. Later a typed copy of the questions and answers was read over to me and I signed it.
3. The typed questions and answers are a true record of the questions I was asked and the answers I gave, and those answers are the truth.

AND I MAKE this solemn declaration concientiously believing the

same to be true and by virtue of the provisions of the Statutory
Declarations Act 1911.

SUBSCRIBED AND DECLARED BY So Kam

At the Office of the Administration of NAURU ISLAND this sixteenth
day of December, One Thousand Nine Hundred and Forty Five.

Before me

So Kam X mark

his

K. Nagothy
ADMINISTRATOR

witness Paul Barri

Witness:

SO KAM, CC. 1280, Chinese coolie, employee of British
Phosphate Commission, NAURU.

Q. What was your job when the Japanese were here?

A. I was one of the gardeners for the Japanese at BUADA.

Q. What did you do there?

A. Planted pumpkins.

Q. How long did you work there?

A. About 1 1/2 years, up to the time the Australian forces arrived.

Q. Were there many Chinese working down at BUADA?

A. About 90.

Q. Do you know the Chinese, NG LEE?

A. Yes.

Q. What happened to him?

A. He was beaten to death.

Q. Can you tell how you know that?

A. I saw him beaten.

Q. Can you tell the full circumstances of the incident?

A. NG LEE was suspected of stealing a pumpkin on the farm and his
overseer, HATAKIYAMA, went into NG LEE's house and I heard him
ask NG LEE if he had stolen the pumpkin. NG LEE replied that he
had not stolen it. Then I heard some banging in NG LEE's house
and I saw the two come out of the house. I saw NG LEE run away
from HATAKIYAMA, who chased after him and caught him. HATAKIYAMA
dragged NG LEE back to the office and I saw NG LEE being tied up
with his hands in front of him, with a rope around his wrist.
HATAKIYAMA started beating him and then I saw NG LEE fall to the
ground. One Japanese came to my house and told me to go over to
the office. He was SANO Heiso (serjeant).

He told me to get a bucket of water and pour over NG LEE's body.
After I poured the whole bucket over him NG LEE was still uncon-
scious. The Japanese told me and Chieng Mai to take NG LEE and
put him in the well.

After NG LEE recovered in the well we brought him back to the
office and TORIWUMI tied him to the phosphate basket. Then

TORIWUMI started beating him with a carry pole, and after he was severely beaten NG LEE fell to the ground and the basket fell on top of him. We were told to put the basket up and the Japanese started beating NG LEE again, but told us to go away.

About half an hour later I was told again to come to the office, along with CHAN KAI. I saw NG LEE lying dead on the ground near the phosphate basket. We brought a stretcher and carried him back to the house.

Q. Did anyone else beat NG LEE the second time, besides TORIWUMI?

A. TORIWUMI
HATAKIYAMA
SANO
and one or two others, I didn't know their names.

Q. The first or the second time?

A. The second time.

Q. Would you be able to recognize all these men?

A. Yes.

Q. How many beat NG LEE the first time?

A. Four of them - HATAKIYAMA, TORIWUMI, and TSIBA Heiso, who was secretary to SATO in the office, and another.

Q. Do you know TSIBA?

A. Yes.

Q. How many strokes did NG LEE receive the first time and the second time?

A. About 50 the second time, many more the first time, I can't remember the number.

Q. Did you actually see the beating?

A. Yes.

Q. On what part of the body?

A. The back.

Q. How old was LEE?

A. About 35.

Q. When you picked him up dead was he still tied to the basket?

A. He was untied, lying on the ground.

Q. Are you quite sure that he was dead then?

A. I am quite sure.

Q. Did you see any officers present?

A. After NG LEE died TSIBA rang up the SEKIDAI and tried to get in touch with SATO. SATO came down in a car, with another officer. I don't know his name but I could recognize him.

Q. Do you know an officer WATANABE?

A. No.

Q. Do you know NAKAYAMA?

A. No.

Q. Do you know the name of the unit you were working for?
A. SEKAIDAI NOJO (farm), which was divided into groups. I was working in the western group.

Q. Do you know who was in charge?
A. Lt. SATO.

Q. Would you be able to recognize him now?
A. Yes.

MA NAI FAI: No. 1 Farm was formed of part of the BUADA LAGOON filled in. Half the lagoon, a length of about 500 yards, was filled, with the aid of locomotives, and a gang of 100 Gilbertese. This took two months.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

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

Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.)

The accused moved to strike out the statement of So Kam on the ground that it was incompetent.

The judge advocate replied.

The commission announced that the motion was not sustained.

381. Q. Will the witness read from the testimony of Kong Sang: starting on page 13 where this testimony commences, read the first sentence which identifies the witness and then read all of the questions and answers into the cross-examination on page 15 including the answer "It was about a gallon tin", and then read from the examination of the court which appears on page 15, the second and third questions? A6
16

The witness read from Exhibit 15 as follows:

"KONG SANG being duly sworn is examined by the Prosecuting Officer through the interpreter MA NAI FAI."

"I am a Chinese Coolie employed by the British Phosphates Commission on NAURU Island. In November last year I remember being questioned by Australian Army Officers on NAURU Island."

"Q. Would you be able to recognize the Japanese who went to NG LEE's house?
A. Yes.

Q. Will you look around the Court and see if they are here?
A. Witness indicates the accused, HATAKEYAMA.
Q. With what was NG LEE beaten in front of his house?
A. Witness demonstrates that NG LEE was beaten with both closed fists.
Q. When he was taken to the office, how many Japanese were around the office?
A. There were many Japanese there.
Q. Who beat NG LEE at the office?
A. I saw some Japanese beating him, but as I was too far away I do not recognize them. (I could not recognize them)
Q. Did you recognize the two Japanese who were chasing NG LEE back to his house?
A. Yes, I can remember them.
Q. Can you see them in Court?
A. Yes.
Witness indicates HATAKEYAMA and CHIBA in the Court.
Q. When NG LEE was taken back to the office did you see who tied him to the phosphate basket?
A. I do not remember.
Q. When he was tied to the phosphate basket how many Japanese beat him?
A. About seven.
Q. Did you recognize any of them?
A. Yes, I can recognize them.
Q. Are any of them in Court here?
A. Yes.
Witness indicates HATAKEYAMA, TORIWAMI, TOMINAGA, SAMO, ITO, SASAKI, and CHIBA.
Q. When NG LEE was taken to the well how many other people went over?
A. About three or four Japanese.
Q. Are any of those here in Court this morning?
A. I do not remember who they were.
Q. Who was the Japanese who came over to you and called you to the office?
A. He is in Court here. Witness points out CHIBA. (In the Court)
Q. Did you go over to the office when CHIBA told you to?
A. Yes, I followed him.
Q. Where was NG LEE when you got there?
A. He was outside the office. NG LEE was tied up on the basket already.
Q. Describe a phosphate basket?
A. It is a basket about five feet high, about four feet in diameter, and there were iron chains all around the basket, running from the lip around the bottom and up to the top and there were iron rings around the edge. It had a flat bottom.
Q. What is the basket itself made of?
A. Cane.
Q. How many men would it take to lift it?
A. At least two men.
Q. How was NG LEE tied to the basket?
A. With both his hands outstretched. His body was lying against the side of the basket, facing the basket, and his arms outstretched around the ring. The basket was standing on its end. 46 (on its bottom) His feet were standing on the ground.

Q. Were there any ropes around his body other than the one tying his arms?
A. Yes. Around his chest.
Q. What was the first thing that happened after you got to the office?
A. CHIBA told me to beat NG LEE.
Q. Is the Japanese in Court there who poured boiling water over NG LEE's legs?
A. Witness indicates HATAKEYAMA.
Q. What happened after the boiling water was poured over NG LEE's legs?
A. They kept on hitting him.
Q. Who were they?
A. All the seven I mentioned before.
Q. How long were you at the office after the boiling water was poured over NG LEE's legs?
A. About 30 minutes.
Q. Can you tell us how many strokes each Japanese gave at that time?
A. Each of them gave him more than ten strokes.
Q. How many beat him at the one time?
A. They were taking turns.
Q. Did they use anything else except the carry pole?
A. No.
Q. Do you recognize the man in the back row at the end in Court?
A. Yes, he was there too.
(Note, the Prosecutor indicated SATO)
Q. Was SATO a visitor or one of the Unit?
A. He was in charge of the farm.
Q. Was this farm the only one that the Unit had?
A. There were farms under the control of the Supply Unit. There were three farms.
Q. Was there an Officer in charge of the Unit?
A. There was one Officer in charge of the Farm.
Q. Was he at the office at this time?
A. No. His name is SATO. He was an Ensign and is not the accused SATO in Court.

CROSS EXAMINED

Q. Have you discussed this case with other Chinese since the incident occurred?
A. No.
Q. Did you see the two Chinese carry NG LEE over to the well?
A. Yes.
Q. What were their names?
A. CHAN KAI and SO KAM.
Q. Did you see any Japanese go over to the well?
A. Yes, some Japanese followed them to the well.
Q. How was NG LEE's condition?
A. He was unconscious.
Q. I put it to you that NG LEE ran away and was chased to the well? I suggest this, is that true?
A. No, he was carried to the well.
Q. Besides the persons you have mentioned this morning as having beaten NG LEE did anybody else beat him?
A. There were some but I could not find them on FAROE ISLAND.
Q. Did you see any blood on NG LEE's back?
A. No.
Q. Describe how NG LEE was tied after he had been caught by HATAKEYAMA?

A. He was tied up with his hands around the edge of the basket.
 Q. Did you see him the whole time from when he was caught by HATAKEYAMA?
 A. Yes, I was there all the time.
 Q. When did CHAN KAI come over?
 A. After NG LEE was unconscious.
 Q. Did you see a Chinese called CHENG LEE there?
 (CHENG SUNG LEE)
 A. No.
 Q. Did you feel the water that HATAKEYAMA is alleged to have thrown on NG LEE?
 A. No, he went to the cookhouse and got the boiling water.
 Q. What was this water in?
 A. It was about a gallon tin."
 "Q. How do you know that the water was boiling water?
 A. He went into the cookhouse and brought the water out and I saw the smoke. This was HATAKEYAMA. By smoke I mean steam coming off the water.
 Q. Describe the tin in which the water was brought out in.
 A. It was round in shape with one handle and made of galvanized iron. The handle was on the side similar to a jug."

382. Q. Will the witness read the first sentence on page 17 which identifies the witness Chan Kai and read the direct examination beginning at the top of page 18?

The witness read from Exhibit 15 as follows:

"I am CHAN KAI and a Chinese coolie employed by the British Phosphates Commission at NAURU Island."

"Q. Will you describe the well you took him to?

A. It was a well three feet in length and four feet in width and about two feet below the ground the water level was. At this time the well was about two feet deep.

Q. When you and SO HAM took NG LEE over to the well did anybody else go with you?

A. Yes.

Witness indicates the accused, HATAKEYAMA, TORIWUMI, TOMINAGA, ITO, CHIBA, and SATO.

Q. Who put him in the water?

A. I did.

Q. Did anyone at all touch him whilst he was in the water?

A. Yes.

Witness indicates HATAKEYAMA, TORIWUMI, TOMINAGA, ITO, CHIBA, and SATO in the Court.

Q. What did TOMINAGA do?

A. He used a pole and forced NG LEE into the water.

Q. Can you remember what each of them did while at the well?

A. CHIBA tied the pole to his feet with a rope and lifted his feet up and down. His head was in the water. While NG LEE was in the well the rest of those Japanese beat him with a stick.

Q. What do you mean by a stick?

A. Every overseer had a stick which was about one and a half inches in diameter, and it was about four feet in length.

Q. Will you now point out to us those who beat NG LEE while he was in the water?

Witness indicates HATAKEYAMA, TORIWUMI, TOMINAGA, ITO, CHIBA, and SATO.

Q. When he started moving again what happened?
A. They told us to take him back to the office. I can't remember who said it but they all said it.
Q. What happened after you took him back to the office?
A. Little Moustache and Fatty tied him up.
Witness indicates HATAKEYAMA and TORIWUMI.
They tied him up to the basket.
Q. Did you see anyone beat him at that time?
A. Yes.
Q. Who did you see beat him?
A. Fatty.
Witness indicates TORIWUMI.
Q. Was there anyone else there at that time?
A. Yes, all of them were there.
Q. Were there any others?
A. Yes, two or three others.
Q. Can you tell us how many strokes you saw each of the Japanese you pointed out beat him at the well?
A. I do not remember.
Q. When you saw NG LEE dead was he tied to the basket or was he away from it?
A. He was lying on the ground about eight feet from the basket."

The accused moved to strike the words "Q. When you saw NG LEE dead was he tied to the basket or was he away from it? A. He was lying on the ground about eight feet from the basket" out of the answer on the ground that they were incompetent evidence.

The judge advocate replied.

The commission directed that the words be stricken out.

Cross-examined by the accused concerning Exhibit 15:

383. Q. Will the witness read from page 52 the statement of Paymaster Hatakeyama?

The witness read from Exhibit 15 as follows:

"Statement of Paymaster W.O. Hatakeyama Yasunori.

About Nov. '44, I was in charge of the farm, at Buada in the Nauru Is., One day towards the end of that month, about 3.30 in the afternoon, finding a Chinese coolie Ng Lee, the employee of our farm, in the act of stealing pumpkins from the garden and running away with them, immediately I went there (See the sketch-map A). There I found pumpkin, plucked off, only a short broken, left behind. I went to examine Lee's house. In his hut, there were 40 or 50 pumpkins, and in the kettle, taking off its lid, I found a pumpkin cut into 2 pieces, to which the stalk I brought coincided with its cut-end. Seeing that, Lee hurriedly ran away out of the door. I ran after him, calling, "Halt, Lee halt", and caught him on the road (See the sketch-map B). I brought him to the farm-office, and after slapping 2 or 3 times I bound him to the pillar (See the sketch-map C). The other accused persons who were present there slapped him in turns, too. I did beat him, but did not intend to kill him.

A5

A6

After all, I beat Lee only for punishment, without the least will to kill him. If it had caused of his death, it is regrettable so much.

In those days, however, in the Nauru Is., we had been obliged to reduce the rations from Feb. '44, even to half in July, because the supplies had been cut off since Oct. '43. All the while, the enemies' air-raids were extremely several days and nights and our rations storehouse were destroyed. When the cave in which we had preserved the rations was flooded and they were corrupted, we faced the extreme scarcity of food. For this, our Hq. decided on a policy to concentrate our effort to production of pumpkin as the principal food since July '44. According to this policy, we made our best for cultivation of pumpkin days and nights. Owing to a spell of the dry weather from June to Oct., of that year and devastation by the air-raid, harvest was so bad. In Oct. the average quantity of rations was only about 30 ounces of pumpkin per man per day. In Nov., rice quantity per head was inevitably reduced to about 1 ounce a day. We barely overcame starvation by eating lizards and weeds.

Most of us suffered from nutrition-ataxis, and 2 or 3 men died every day. Major Nakayama will state about these facts.

Under this condition pumpkins in the whole island were stolen more and more day by day. Accordingly around April '44, the Commander ordered that those who stole provisions should be shot to death.

Consequently the following victims came out.

1. Two Japanese, Otake Yosaku and Sato Tsuneo, were shot to death, for they stole provisions in the Construction Unit around June '44.
2. A sailor stole a bottle of toddy in the Hq. Coy., and was struck to death about Aug. 1944.
3. Three Japanese, Kuwabara, Takeo, Saito so and so, and Mizushima so and so stole a pumpkin and a bottle of toddy in the Construction Unit around Oct. '44, and was struck to death.

This bloody cases occurred incessantly every day in all Nauru Island. We who controlled the production of food had great responsibility. Accordingly in order to insure production the idle were made to work even with punishment according to circumstances. I thought inevitable to maintain the lives in the whole island. There were no such cases as industrious Chinese were struck without any reason. We encourage them to fulfill our responsibility. In some cases we imposed upon them penalty of a day's fasting, but we have never tied them to a tree for several days. It was because the man's working ability was more important. Following the commander's strict order and the some order of the head of farm, I gathered all the Chinese coolies and delivered them warning twice. That time we gave pumpkins as food not only to them who worked in the farm but also to those who had no duties.

It can be proved clearly by the fact that only they were not put under hard circumstances; two or three Japanese died every day, but on the contrary, no Chinese.

Despite the above-mentioned strict order Ng Lee stole food as often as five or six times. Every time we warned and reproved him. His every day conduct was wrong; he stole even his Chinese comrades' pumpkins, when I myself mended their quarrel against him. He exchanged even stolen pumpkins for the islanders' fish. He pretended to be sick and stole pumpkins several times while his comrades were working outside of under cover of darkness. Furthermore he did wrong often. He was at last caught in the act of stealing pumpkins. We found more than forty pumpkins in his house. Hereupon, it was obvious that all persons in the island must have faced starvation if neglected him further. In the belief that we could not have performed our duty, I punished him. I believe it the best self-defence from the legal point of view. We of course had lived with him in this isolated island under severe air-raids over one year. Though he committed crimes, I hated the crimes themselves, but not the man. This sympathy through the collective life could not possibly bear up to put him to death. Besides, under the situation of shortage of producing capacity I had no intention to strike him to death. In order to ask him to reflect his conduct and awake his conscience toward the increase of production in the island, the punishment was imposed on him. Judging from the experience, we believe that the punishment imposed on him was not to such a degree as to cause him to die. In condition of malnutrition or decline of physical strength in the Island it is beyond my power to guess the cause of his death whether due to be struck by us, or to bump his head in falling into a well or simultaneous heart-failure from beri-beri, or heart-failure, or any other causes. In consequence of the head paymaster's examination it was decided that his death had been caused by shock when he fell into the well. In charge of his neglected health till too late by us through carelessness, men concerned were imprisoned for ten days. The cause of his death viewed in this light could be proved not due to our striking him."

The witness was duly warned.

The commission then, at 11:35 a.m., took a recess until 2:05 p.m., at which time it reconvened.

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

Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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 concerning Exhibit 15:

384. Q. Will the witness turn to page 21 and read the second line?

The witness read as follows:

"At this stage the witness Chan Kai is recalled by the Prosecuting Officer."

385. Q. Then the question in cross-examination down to "Do you regard this accused, Sato, as an officer" and the answer thereto?

The witness read as follows:

"Q. Do you regard this accused, Sato, as an officer?

A. I do not regard him as an officer as he was only in charge of the people working in the garden."

386. Q. On page 22 the swearing in of Sato, Heibi; will the witness read that?

The witness read as follows:

"Paymaster 1st Class Sato Heibi being duly sworn is examined by the Defending Officer through the interpreter Nozawa."

387. Q. On page 23 will you read the third question?

The witness read as follows:

"Q. Were any of these accused present in Court punished by the Japanese in consequence of NG LEE's death?

A. Yes, there is."

388. Q. On page 42, the testimony of Lt. Comd. Koimura Kimio the question "Who ordered this beating" and the answer thereto and the following question and answer?

The witness read as follows:

"Q. Who ordered this beating?

A. I do not know.

Q. Did you order it?

A. As I wasn't there at the time I do not know."

389. Q. On page 50, the testimony of Cheng Sung Mei will the witness read the question "Do you know who was in charge" and the answer thereto?

The witness read as follows:

"Q. Do you know who was in charge?

A. Sato was officer in charge of the farm of the Sekaidai."

390. Q. Will the witness turn to the schedule on page 1; does this schedule show that the accused designation has been changed by someone, and the change has not been initialed by anyone?

A. The schedule does show some changes in name and rank in the column "Number, Rank, Name and Unit of Accused."

Reexamined by the judge advocate concerning Exhibit 15:

391. Q. Will the witness turn to pages 25 and 26 of the record; does this page show that the court amended the charge sheet correcting the names and ranks of persons there named, as follows: Paymaster W.O. Hatakeyama Yosutaki; Engineering Petty Officer Toriwumi, Tomeo; Paymaster Chief Petty Officer Tominaga, Gorozi; Naval Chief Petty Officer Sano, Takeo; Paymaster Chief Petty Officer Ito, Hiroshi; Naval Paymaster Chief Petty Officer Sasaki, Hazuma; Naval Paymaster Chief Petty Officer Chiba, Tsunio?

A. It does.

392. Q. On examination by defense counsel you read the testimony of Hatakeyama; one of the accused in this record, Exhibit 15; was this accused found guilty and sentenced for his participation in the murder of Lee?

A. He was found guilty of the charge.

The accused made a motion to strike Exhibit 15 from the record on the same ground as the objection as set forth in Exhibits 13 and 14.

The judge advocate replied.

The commission announced that the motion was not sustained.

The judge advocate requested permission from the commission, to establish foundation for admission of the prosecution documents 513 through 517 at one time, in order that he may offer them in evidence and proceed with examination of the witness concerning all of these documents at the same time as they deal with the same incident.

The accused objected to the procedure of the introduction of these documents requested by the judge advocate on the ground that defense had not had sufficient time to examine these documents; that the suggested procedure would be confusing, and it would constitute too much of a burden on defense as it would require working with five records at one time.

The judge advocate replied.

The commission announced that the procedure outlined by the judge advocate would be permitted.

Examined by the judge advocate concerning prosecution documents 513, 514, 515, 516 and 517:

393. Q. Does the witness have in his possession five documents which consist of certified photostatic copies of record of proceedings before Australian Military Courts dealing with an incident which occurred on Ocean Island on or about August 20, 1945 involving the murder of Falailiva, Ueanteiti and a number of other natives?

A. I have.

394. Q. Will the witness examine the first of these records and state whether there is attached thereto a certificate from Douglas McBain certifying that the original record of proceedings in this case, the trial of Lt. Comd. Suzuki, Naomori and Lt. Nara, Yoshio is in his custody, and that this photostatic copy is a true copy of the proceedings in that case?

A. There is.

395. Q. Does this document contain on page one an order of the convening authority of that court in which it is stated that this officer is an officer authorized to convene Military Courts under the War Crimes Act of 1945?

A. It does.

396. Q. Does this record contain a paragraph B certifying the conformance to procedural trial requirements in connection with the trial procedure of this court?

A. It does.

397. Q. Is this similar to the paragraph B which has been read from prior Australian Court records?

A. It is.

398. Q. Is there also a paragraph C in this record on page four which is signed by the confirming officer, in which he confirms the findings and sentence as set forth in the schedule?

A. There is.

399. Q. Will the witness look at the next record dealing with the trial of Lt. Miyasaka Denji, Sub Lt. Kiyohara Naoyoshi, Sub Lt. Ishie Satazo, Ensign Iijima Tadashi, and examine the certificate attached to this record, and state whether it is similar to the one you have just testified to?

A. It is.

400. Q. Does it contain an order of convening authority and a paragraph B and C similar to the one you have just testified about in the first of these records?

A. It does.

401. Q. Will the witness examine the record in the case of Lt. Sakata Jiro, Ensign Yachi Sumio, Ensign Shinozawa Yoshiharu, W/O Konno Hiroshi, Chief Petty Officer Arai Kakuzo, Chief Petty Officer Ono Kaneichi and state whether or not this contains a certified order of convening of the court and a paragraph B and C similar to those you have just referred to in the first of these records, prosecution document number 513?

A. It does.

402. Q. Will the witness examine prosecution document 516 which deals with the accused Lt. Sakuma Wataru, Sub Lt. Otomo Torizo, Sub Lt. Sakamoto Chujiro, Sub Lt. Yajima Elichi, and state whether or not this record similarly contains a certificate and order of convening authority and a paragraph B and C similar to those in prosecution document 513?

A. It does.

403. Q. Will the witness examine prosecution document number 517, the record of the trial of Yamaguchi, Hiraki, Tsuchiike, Hanawa, Yoshida, Sugino, Yasuda, and state whether this similarly contains a certificate and an order of the convening authority and paragraphs B and C similar to those in the record of prosecution document 513?

A. It does.

404. Q. Does the certificate in each of these instances state that the attached photostatic copies are true copies of the original proceedings of the Military Court which is in the proper custody of the officer who prepared and signed these certificates?

A. All of the certificates so state.

Prosecution documents 513 through 517 inclusive were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused concerning prosecution documents 513 through 517 inclusive:

405. Q. Are all these courts convened by the same officer?

A. They are.

406. Q. Isn't it true that none of the schedule sheets are signed in the space provided for Major-General Convening Officer?

A. That is true.

407. Q. Are all the accused in these cases charged with the murder of Falailiva, Ueanteiti?

A. Prosecution document 514, 515, 516 and 517 contains charge of murder of persons unknown.

408. Q. Are any of the persons alleged in specification 1 (1), charged with the murder of Falailiva, Ueanteiti in these records?

A. In the prosecution document 513 Suzuki Naomi and Nara Yoshio are so charged.

409. Q. So that the other persons named in the documents are not charged with the murder of Falailiva as set forth in specification 1 (1)?

A. The only ones specifically charged are those in prosecution document 513. 28

410. Q. All these documents relate to a murder on Ocean Island on 20 August 1945, is that correct?

A. That is correct.

The accused objected to the receipt in evidence of these documents for the same reasons as set forth in his objection to the receipt in evidence of Exhibits 13, 14 and 15.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objections, they were so received, and are appended marked "Exhibit 16", "Exhibit 17", "Exhibit 18", "Exhibit 19" and "Exhibit 20".

Examined by the judge advocate concerning Exhibits 16, 17, 18, 19 and 20:

411. Q. Will the witness read from Exhibit 16 from page 7 in the statement of Kabanare, the third question from the bottom which indicates the number of parties into which the natives were divided?

The witness read from Exhibit 16 as follows:

"Q. Do you remember well the following day when Nara divided them into nine parties?

A. Yes."

The accused moved to strike this answer from the record on the ground that no groundwork had been laid to establish relevance.

The judge advocate replied.

The commission announced that the motion was not sustained.

412. Q. Will the witness read from Exhibit 17 on page 23 the twelfth question from the statement of Lt. Miyasaka concerning the number of natives in his group?

The witness read from Exhibit 17 as follows:

"Q. 12. How many natives were there?
A. 12. About 50."

The accused moved to strike this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

413. Q. Will the witness read question 11 and the answer thereto of the same witness, Lt. Miyasaka?

The witness read from Exhibit 17 as follows:

"Q. 11. Who gave the order to fire?
A. 11. I gave the orders to Kiyohara Ishii and Eijima and they gave the orders to fire to the soldiers."

414. Q. Will the witness go to Exhibit 18 the statement of Shinozawa question 8 on page 40?

The witness read from Exhibit 18 as follows:

"Q. 8. How many natives were there.
A. 8. About 30."

415. Q. Will the witness turn to Exhibit 19 the testimony of Sakuna on page 26 and read the 11th question with regard to the number in that group?

The witness read from Exhibit 19 as follows:

"Q. 11. What action did you take?
A. 11. I gave orders to Sub Lt. Otomo Sub Lt. Sakamoto and Sub Lt. Yajima Eiei to shoot forty natives." 28

The accused moved to strike this answer from the record on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

416. Q. Will the witness turn to Exhibit 20 the statement of Yamaguchi and read therefrom on page 28 and 29 questions 10 and 11?

The witness read from Exhibit 20 as follows:

"Q. 10. How many places of execution were there?
A. 10. There were six.

Q. 11. How many natives were executed at each place?
A. 11. In the place where Sub Lt. Kanawa's men were there were about 25 natives, at the place where Tsuchiike's men were, about 20 natives, at the place where Sugino's men were about 20 natives. In each of the places where Yoshida's, Hiraki's and Yasuda's men were there were about 10 natives."

AB

417. Q. Will the witness now return to Exhibit 16 to the statement of Suzuki Naomi the accused on page 27 and read therefrom his statement of the total number of natives at that time, as appears in question 6?

This question was objected to by the accused on the ground that this was not a sworn statement.

AB

The judge advocate replied.

The commission announced that the objection was not sustained.

The witness read from Exhibit 16 as follows:

"Q. 6. Just prior to the conclusion of the war how many natives were on the island?
A. 6. As far as I remember, about 200 men."

The accused moved to strike this answer from the record on the ground that it was irrelevant and immaterial, and merely an opinion of the individual who made the statement.

The judge advocate replied.

The commission announced that the motion was not sustained.

418. Q. Will the witness read the schedules beginning with Exhibit 16 and read all the schedules in all of these exhibits, namely 16, 17, 18, 19 and 20?

The witness read from Exhibit 16 as follows:

"SCHEDULE

Number, Rank, (a) Name and Unit of Accused	Offence Charged	Plea	Finding, and if convicted, Sentence (b)	How dealt with by Confirming Officer (c)
Lt Comd SUZUKI NAOONI and	MURDER in that they on Ocean Island	Not Guilty	Guilty Death by Hanging	Finding and sentence confirmed
Lt NARA YOSHIO, both of 67 Naval Garrison Unit	on or about 20 August 1945 mur- dered FAIAILIVA, Ueanteiti and other persons unknown.	Not Guilty	Guilty Death by Hanging	Finding confirmed and sentence commuted to 20 years imprisonment Sentence confirmed as commuted

(signed)

V.A.H. Sturdee
LtGen

23 July 46

Maj-Gen
CONVENING OFFICER (d)"

The witness read from Exhibit 17 as follows:

"SCHEDULE

Number, Rank, (a) Name and Unit of Accused	Offence Charged	Plea	Finding, and if convicted, Sentence (b)	How dealt with by Confirming Officer (c)
Lt MIYASAKA Denji	MURDER in that they on Ocean Is-	Not Guilty	death by hanging	Findings
Sub Lt KIYOHARA NAOYOSHI	land on or about 20th August 1945	Not Guilty	GUILTY 20 yrs imprisonment	and
Sub Lt ISHIE Satazo	murdered persons unknown	Not Guilty	GUILTY 20 yrs imprisonment	Sentences Confirmed
Ensign IIJIMA Tadashi		Not Guilty	GUILTY 20 yrs imprisonment	
all of 67 Naval Garrison Unit				

(signed) V. A. H. Sturdee
LtGen

25 July 46

Maj-Gen
CONVENING OFFICER (d)"

The witness read from Exhibit 18 as follows:

"SCHEDULE

Number, Rank, (a) Name and Unit of Accused	Offence Charge	Plea	Finding, and if convicted, Sentence (b)	How dealt with by Confirming Officer (c)
Lt. SAKATA Jiro	MURDER in that	Not Guilty	Guilty death by hanging	Findings
Ensign YACHI Sumio	they on Ocean Is-	Not Guilty	NOT GUILTY	and
Ensign SHINOZAWA Yoshiharu	land on or about 20th August 1945	Not Guilty	GUILTY 15 yrs imprisonment	Sentences Confirmed
W/O KONNO Hiroshi	murdered persons	Not Guilty	GUILTY 7 yrs imprisonment	
Chief Petty Officer ARAI Kakuzo	unknown	Not Guilty	GUILTY 7 yrs imprisonment	
Chief Petty Officer ONO Kaneichi		Not Guilty	NOT GUILTY	
all of 67 Naval Garrison Unit				

(signed) V. A. H. Sturdee
LtGen

23 July 46

MajGen
CONVENING OFFICER (d)"

The witness read from Exhibit 19 as follows:

"SCHEDULE

Number, Rank, (a) Name and Unit of Accused	Offence charged	Flea	Finding, and if convicted, Sentence (b)	How dealt with by Confirming Officer (c)
Lt SAKUMA WATARU	MURDER in that	Not guilty	Guilty Death by Hang- ing.	Findings
Sub Lt OTOMO TORIZO	they on Ocean Is- land on or about	Not guilty	Guilty Death by Hang- ing.	&
Sub Lt SAKAMOTO CHUJIRO	20th August 1945 murdered persons	Not guilty	Guilty Death by Hang- ing.	Sentences
Sub Lt YAJIMA ELICHI	unknown.	Not guilty	Guilty Death by Hang- ing.	Confirmed

all of 67 Naval
Garrison Unit

(signed) V.A.H. Sturdee
LtGen

22 July 46

Maj-Gen
CONVENING OFFICER (d)"

The witness read from Exhibit 20 as follows:

"SCHEDULE

Number, Rank, (a) Name and Unit of Accused	Offence Charged	Plea	Finding, and if convicted, Sentence (b)	How dealt with by Confirming Officer (c)
Lt. YAMAGUCHI Nobjaki	MURDER in that they on	NOT GUILTY	GUILTY death by hanging	Findings and
Sub Lt HIRAKI Sakai	Ocean Island	NOT GUILTY	GUILTY 20 yrs imprisonment	Sentences
Sub Lt TSUCHIIKE Masataro	on or about 20th August	NOT GUILTY	GUILTY 20 yrs imprisonment	Confirmed
Sub Lt HANAWA Eiji	1945 murder-	NOT GUILTY	GUILTY 20 yrs imprisonment	
Sub Lt YOSHIDA Itsuo	ed persons unknown	NOT GUILTY	GUILTY 20 yrs imprisonment	
Ensign SUGINO Tsuchinosuke		NOT GUILTY	GUILTY 15 yrs imprisonment	
Engisn YASUDA Harumi		NOT GUILTY	GUILTY 15 yrs imprisonment	
all of 67 Naval Garrison Unit				

(signed) V. A. H. Sturdee
LtGen

23 July 46

Maj-Gen
CONVENING OFFICER (d)"

419. Q. Will the witness read the interrogation of Lt. Comd. Suzuki Naomi, on page 26 and read through to the conclusion on page 30, in Exhibit 16?

The witness read as follows from Exhibit 16:

"Q1. I am going to ask you some questions. You are not obliged to answer them but whatever you say will be taken down in writing and may be used as evidence. Do you understand?

A1. Yes. I understand.

Q2. Between what dates were you Commander of Ocean Island?

A2. From August 1943 until the end of the war.

Q3. On what date did you learn the war was ended.

A3. I do not remember but I received orders about it on 24th or 25 Aug 45.

Q4. Were you in wireless communication with the outside world?

A4. Yes we heard the radio occasionally - every few days.

Q5. How long before 25 Aug 45 did you know the war was over?

A5. We heard many rumors before that. The first reliable information I got was on 24th or 25th August. About that time Truk radio came on the air. The C. in C spoke and said we were to fight to the finish.

A6

Q6. Just prior to the conclusion of the war how many natives were on the island.

A6. As far as I remember, about 200 men.

Q7. Did you give orders for the execution of those natives?

A7. Yes I did.

Q8. When did you give those orders?

A8. About 18th August. I think I am not certain of the date it may have been as late as 20th August.

Q9. To whom did you give the orders?

A9. To four company commanders, Lt Sakuma, Wataru; Lt. Yamaguchi, Kensho; Lt. Miyasaka, Denji and Lt. Sakota, Jiro.

Q10. What were your orders?

A10. It was a very brief order. As far as I can remember, it was, 'Shoot all the natives on the island.'

Q11. Why did you give that order?

A11. We had heard rumors about Japan going down. We had decided to fight to the finish and inflict as much damage as possible on the allies. We thought the natives would be a hindrance to us so we decided to kill them. The most important reason was an order I had received from Rear Admiral Shibasaki, Keiji who was at Tarawa. The order was to fight to the finish and as the natives were likely to cause trouble, to execute them all.

A8

Q12. When did you receive that order?

A12. Between 15 Aug and 20 Aug. I wanted to be certain about the order so I went by plane to Tarawa and saw Rear Admiral Shibazaki personally. I first went to Truk where I saw a legal officer. On his advice I went to see Shibazaki.

Q13. What did he tell you.

A13. The admiral pointed out that there were 200 natives on the island and since the Japanese were only about 500 strong, the natives would seriously hamper the Japanese defence in the event of a landing. Also as we were unable to trust the natives, if a landing seemed imminent they were all to be killed. It was a definite order to kill the natives if a landing seemed imminent.

Q14. When you gave the order, did a landing seem imminent?

A14. I thought that the Americans would be sure to land.

Q15. What were your reasons for thinking that?

A15. There were American bombing raids every day, so I thought they would land. Also because of the phosphate on the island.

Q16. Who carried out your orders?

A16. I gave the orders to the Company Commanders who passed the orders on through subordinate commanders to the lower ranks.

Q17. Who carried out the execution?

A17. I do not know.

Q18. Who were in command of the firing parties?

A18. I do not know.

Q19. Were all of the natives killed at the same time?

A19. I thought they were all killed on the same day, but I now know that one escaped.

Q20. Were they all killed in the same place?

A20. There were several places. I can't remember how many.

Q21. Were they all killed by shooting?

A21. I ordered them all to be killed by shooting.

Q22. Were they all standing ^{on} the edge of a cliff when they were shot?

A22. One group was shot on the edge of a cliff. The others were killed near the shore. I think there were squads killed inland.

Q24. Did you give any orders for the disposal of the bodies?

A24. I gave no orders for burial. I gave orders that they were to be thrown into the ocean.

Q25. Were you present at the executions?

A25. I was not there. I think most of the other officers were there but there were some not there. I am not sure what there names are. I do not think the following were present: Sub Lt Yoshida, Itsuo, Lt. Nara, Yoshio, Doctor Okada, Tadashi. I am only certain of those men, there may have been others. Neither myself nor my subordinates were keen to carry out the orders but they had to be obeyed. I accept all responsibility.

4 (signed) Suzuki Naomichi

The witness was duly warned.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

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

Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Herbert L. Ogden, 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.

The accused moved that all testimony of the last witness be stricken from the record on the ground that it was hearsay, leading, and an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained and that it would accord the testimony its proper weight.

(Examination by the judge advocate concerning Exhibit 16, Exhibit 17, Exhibit 18, Exhibit 19, and Exhibit 20 continued).

420. Q. Has the witness examined Exhibits 16, 17, 18, 19, and 20?

A. I have.

421. Q. Is there contained in each of these records a statement of one KABUNARE, a native?

A. There is.

422. Q. Do these records show that this native, Kabunare, personally appeared during the proceedings of each of the cases that are recorded in Exhibits 16, 17, 18, 19, and 20 and testified in each of those cases?

This question was objected to by the accused on the ground that it called for an opinion of the witness.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. They do.

423. Q. On page 6 of Exhibit 16, on page 6 of Exhibit 17, on page 6 of Exhibit 18, on page 9 of Exhibit 19 and on page 7 of Exhibit 20 is it shown that Kabunare when he appeared to testify was sworn and stated that this statement which appears in all these records, is a true statement?

A. The records do so state.

424. Q. Will the witness read from Exhibit 16 commencing at page 18 the entire statement which appears in Exhibit 16 on page 18, in Exhibit 17 on page 17, in Exhibit 18 on page 28, Exhibit 19 on page 20, and Exhibit 20 on page 22?

The witness read from Exhibit 16 as follows:

"My name is KABUNARE and I am a native of NIKUNAU ISLAND. I am 28 years of age and single. I signed on with the British Phosphate Commissioners during the 'TRIESTA' recruit at ONOTOA ISLAND about 18 months before the Japanese came to OCEAN IS.

2. My work on OCEAN IS. before the Japanese came was on the cableway.

3. During the Japanese occupation I was employed as a fisherman and lived at TABWEWA VILLAGE. We fished from early in the morning until about 3 pm. Usually two men per canoe. The Japanese collected all the fish but only occasionally gave us a little for our own use. Sometimes the Japanese came down to the shore to meet us coming in but usually we took the fish up to them. The Japanese to whom I took the fish was ('OCEISAN' - phoentic spelling). If we did not catch any fish we were slapped on the face."

The accused moved to strike this answer on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained but announced that it desired the judge advocate to eliminate from the testimony as much irrelevant material as it is feasible to do.

(The witness continued reading from Exhibit 16 as follows:)

"4. I know NABETARI who was also a fisherman. ~~I~~ did not hear that he was planning to escape, but I heard after he had gone. I heard that three canoes had got away and thought that the Japanese would catch them."

425. Q. Will the witness skip down to paragraph 10 and read from there on?

The witness read from Exhibit 16 as follows:

"10. At UMA we joined the fishing section there. The names of the boys there were - ERIU, MITIRE, TUWEWI, TEBOITARU, RAITAU, RUARAKI, URIAM, TETEKKA, ANGKAM, ABA, BANEI AN MAORI. We all lived in one European house up behind the Billiard Room. We fished from early in the morning, sometimes as early as 3 am until afternoon."

11. One evening OSAKISO (phoenetic) the Japanese who was in charge of the fishermen came into our house and told us that next morning we were to come back early from fishing, about nine or ten o'clock.

12. MAORI and I came back from fishing about 7 am the next morning. The rest came back about nine o'clock. We came back early because we had a lot of fish then we all went to our quarters.

13. Somewhere after nine o'clock 'OSAKISO' shouted out from the Billiard Room for all us fishermen to come down. We all came down and gathered beside the road by the Billiard Room. When we got there we found all the other boys on the Island already gathered there. There would be over a hundred.

14. We were all paraded in about five lines along the road. Some of the Japanese were gathered there when we arrived. There would be about 6. 'SUKAISO' (Phoenetic) the No 3 Commander spoke to us through OSAKISO the interpreter. He stood upon the verandah with the other five Japanese. He told us that the war is over but that we must still work for a while, and then the Japanese would be going away and leaving us here. Then we were told to go back to our houses."

426. Q. Will the witness read paragraph 17?

The witness read from Exhibit 16 as follows:

"17. Next morning MAORI and I and everyone else went out fishing as usual about 3 or 4 o'clock while it was still dark. MAORI and I came back very early about eight o'clock because we had a lot of fish. The others came back about nine o'clock they were earlier than usual too, because they had caught a lot of fish.

18. When we arrived back all the natives and a lot of the Japanese soldiers were gathered in the same place as we were gathered the previous day. The native soldiers were told to hand in their uniforms and arms. They handed them all in to the Billiard Room. The native soldiers had marched in, in their repective groups under their Japanese Leader. AB

19. Then OSAKISO called us from our house to come down to the road by the Billiard Room again. We came down and joined in the parade. SUKAISO spoke to us all again. He told us we were going to change over the sections again now. OSAKISO then divided us up into our new sections as instructed by SUKAISO. Our section was the last to be divided up."

427. Q. Will the witness read from paragraph 23?

The witness read from Exhibit 16 as follows: AC

"23. When we arrived at the Police lines we saw a lot of Japanese soldiers in their quarters. They were all inside their houses. The Japanese soldier in charge of us told us to sit down in a line and then told us to face towards the East. Then he took out a little book from his pocket and asked us in turn how old we were. As each man told him how old he was the soldier wrote in his book. That is all we were asked.

24. When the soldier had almost finished writing down the ages, a (SHOTAIISO) came up with another soldier from behind us and walked out in front of us. The (SHOTAIISO) drew his sword and revolver, and the soldier drew a revolver and both pointed them at us. They did not speak to us, but called out for some more soldiers to come out. Eight soldiers came out with guns with bayonets on them and came out in front of us. Each soldier stood in front of one man with the bayonet pointing at his stomach about six inches away.

25. Without anything being said, the soldier who had lead us up tied each man's hands in order with some string he had in his pocket. It was twine that is used for making rope. My hands were tied bery? There was a length of rope left overloose after tying each man's hands."

428. Q. Will the witness read from 30 on?

The witness read from Exhibit 16 as follows:

"30. When we got to the cliff the soldier released the strings and told us to line up on the edge of the cliff and squat down close together. Then our eyes were tied up with cloth. The same man who had tied our hands tied the blindfold on us. Then I could hear movements behind and felt as though the soldiers were behind us. I was the second man to have my eyes tied up.

31. FALAILIVA was the first man to be tied and was on my left. He said to me 'Are you ready?' and I replied 'Yes I am ready to die'. Then FALAILIVA asked 'You remember God?' and I replied 'Yes I remember.'

32. Then everything was quiet for a moment, then I fell over the cliff. I did not try to, but just fell. Almost at the same time I heard a scream and someone fell on top of me. I think it was FALAILIVA. I heard others fall, but no more screams. Then I heard a lot of shots fired. FALAILIVA was still on top of me and some of the bullets I could hear were close to me."

The accused moved to strike out the last paragraph of the answer on the ground that it was an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness continued to read from Exhibit 16 as follows).

"33. This was about three or four o'clock in the afternoon. The water kept breaking over us, but I could breathe as the water receded each time. I could see a little bit out of my left eye past the blindfold, but I did not look up. I stayed there without moving until I thought the Japanese had gone. Then I bit FALAILIVA'S shoulder to see if he was still alive. He was still lying partly on top of me. FALAILIVA did not cry out so I knew he was dead."

The accused moved to strike the words "FALAILIVA did not cry out so I knew he was dead" out of the answer on the ground that they were incompetent.

The judge advocate replied.

The commission directed that the words "so I knew he was dead" be stricken out.

(The witness continued to read from Exhibit 16 as follows:)

"34. I stayed about an hour in the water until I thought the Japanese would be gone, then I got up and went over to a sharp piece of the cliff where I cut the binding from my wrists. It took me 10 to 15 minutes to cut the binding from my wrists. Then I removed the blindfold. Then I went around all the other bodies to see if any were alive. They were all dead and I looked at each man's face. There was a lot of blood about. I cannot say how all were killed, but I remember FALAILIVA had a wound in his left side, and blood was coming from it. UEANTEITI had a bullet hole in his head.

35. After I found they were all dead, I looked for a place to hide and found a cave where I hid myself. I stayed in this cave all night.

36. The next morning I saw some of the bodies floating outside the cave. They were swelled up bodies then. Two of the bodies washed into the entrance of the cave. I did not touch them and stayed inside the cave and only peeped outside."

429. Q. Will the witness now turn to the testimony of Kabanare which appears on page 6 of this record and read?

The witness read from Exhibit 16 as follows:

"KABANARE being duly sworn is examined by Prosecuting officer through interpreter David Murdoch.

My name is Kabanare and I am a native of Omotoa island in the Gilbert Island Group.

Prosecuting officer shows document to witness.

That is my signature on the document. This document has been read to me in my own language and the contents are true.

Prosecuting officer tenders certified copy of statement of Kabanare which is read, admitted in evidence, marked Exhibit A, signed by the President and annexed to the proceedings.

There were about 150 natives on Ocean Island on the day of the killing. They were natives of the Gilbert and Ellis Island Group."

The accused moved that the answer be stricken from the record on the ground that the witness was incompetent.

The judge advocate replied.

The commission announced that the motion was not sustained.

(The witness continued to read from Exhibit 16 as follows).

"On the occasion of the first parade the Japanese on the verandah of the Billiard Room were Nara, Osakiso, Ishie and others. I can now see Nara. Witness indicates accused Nara and identifies him by name. At that parade the natives were told that the war was over and that the Japanese Emperor had surrendered and that they would carry on their work for a while until the Japanese left. After that we went back to our houses. Later on that day we were not told to report to the same place on the next day. We reported to the Billiard room next day. The Japanese Nara Osakiso Ishie and a few others were there. All the natives and gilbertese were gathered there on this occasion. Nara gave instructions to Osakiso to divide the natives into nine groups. After that Osakiso divided the natives. The natives were gathered in one place and Osakiso called each one out by name and told them where to go. After the natives were all divided one Japanese soldier was put in charge of each party and they were led off. The Japanese soldier in charge of the parties was Nara. After that the parties were led away by Nara. Of Nara, Osakiso and Ishie Nara was the senior. He was in charge of this parade. After we were led away I did not see Nara again. The last bombing raid on Ocean Island was long before the execution. It was about 5 or 6 months before the execution. It was not a severe bombing raid. Before the shooting and the killing there was no allied activity against the Japanese."

The judge advocate requested that the commission inform him whether the commission desired that the judge advocate have read from these exhibits further detail concerning the executions by each of the groups involved in this incident of mass execution.

The commission announced that they would advise the judge advocate at the commencement of tomorrow's session.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, November 10, 1948.