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DEFINITION OF SPY--NATURE AND PROOF OF THE OFFENCE.

A spy is a person who, without authority and secfetely, or under a false pretext, contrives to enter within the lines of an army for the purpose of obtaining material information and communicating it to the enemy; or who, being by authority within the lines, attempts secretly to accomplish such purpose (citing fn 92: Project of Brussels Conference, Art. 19; Bluntschli 629; Halleck, Int.; Law., 560; Lieber, Instructions, G. O. 100 of 1863; 88, Manual of Mil. Law, 270; G. O. 13, Dept. of the Mo., 1861; Do. 39, Id., 1863; Do. 23, Dept. of Kans., 1864.) The information is commonly such as relates to the numbers of resources of the enemy, the state of his defences, the positions of his forces, military or naval, (citing 93: Note the case of Samuel Stacy, arrested in July, 1813, by Commodore Isaac Chauncey of the Navy, for spying upon of fleet at Sackett's Harbor, and giving information to the enemy. In re Stacy, 10 Johns, 328), their propose movements or operations, and the like. The clandestine character of his proceedings and the deception thus practised constitutethe gist or rather aggravation of the offence of the spy. (94: Authorities cited in last note; also Digest, 708; G. O. 174 of 1862; Do. 74, Dept. of the Ohio, 1863.) The statute refers to him as "lurking"; and Halledk describes him as "insinuating himself among the enemy." The concealment is in general contrived by his disguising himself by a change of dress, (95: In a case in G. O. 92, Dept. of the Ohio, 1864, a female spy, when arrested,was disguised as a man.) by assuming the enemy's uniform, (97: Cases of "Col. Williams" and "Lieut. Dunlop" of the Confederate army. VII Rebellion Record, 6, 287.) by coloring the hair, (97: Case of S. B. Davis alias Willoughby Cummings. See Digest, 709) removing the beard or wearing a false one, assuming a false name, (98: See cases in G. C. M. O. 215 of 1864; G. O. 24, Dept. of the East, 1865, (case of Kennedy;) Do. 92 Dept of the Ohio, 1864; also Andres case, Printed Trial, Philad., 1780; 2 Chandler Crim. Trials, 157.) &c.; as also by false representations, by personating another individual, (99. Case of Williams and Dunlop ante, who personated a Colonel and Major of our army sent to inspect outposts.) or by any other false pretence or form or fraud. During the recent war (Civil War) the majority of the persons tried and convicted as spies were officers or soldiers 1194) of the enemy's army, who, in penetrating our lines, had abandoned their proper uniform for the dress of a civilian; (100: See cases in G. O. 267, 269, of 1863; Do. 5, 41, of 1864; G. C. M. O. 93, 152, 248, of 1864, G. O. 57, Middle Dept., 1863; Do. 3, Dept. of the Ohio, 1864; Do. 14,, Dept of the East, 1864, (case of Beall;) Digest, 709. So,,Major Andre was disguised in a suit of clothes belong to Joshua Hett Smith. 2 Chandler, C. T., 185.) and it was held that such an officer or soldier, discovered thus disguised, was in general to be treated, not as a prisoner of war, but as being prima facie a spy. (1: See Lieber's Instructions 83; Digest, 708; G. O. 30, Dept. of the Mo. 1863; Do. 21, Middle Dept. 1863; Do. 23, Dept. of Va. & No. Ca., 1863; Do. 74, Dept. of the Ohio, 1863; Do. 10, Dept of the Tenn., 1863; Do. 23, Dept. of Kans., 1864.) This presumption, however, might--it was ruled-- (2: Digest, 706. And see G. C. M. O. 110 of 1864.) be rebutted by evidence that the party had come within the lines for a comparatively innocent purpose--as to visit his family; or, having been detained within the lines by being separated from his regiment, &c., on a retreat, had changed his dress merely to facilitate a return to the other side. (3. See case in G. O. 59, Dept. of the Susquehanna, 1864.) In such a case indeed the clearest proof would properly be required before accepting the defence.

But to be charged with the offence of the spy, it is not essential that the accused be a member of the army or resident of the country of the enemy; he may be a citizen or even a soldier of the nation or people

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against whom he offends, and, at the time of his offence, legally within their lines. (4: See case in G. O. 26, Dept. of Va. & No. Ca., 1864, of a soldier of the federal army convicted as a spy.) So he may either be an emissary of the enemy (5: Thacher, Mil, Jour., 195, refers to "three emissaries from the enemy," tried and hanged as spies in New Jersey in 1780.) or one acting of his own accord.

Beside the coming within the hostile lines without authority, being ir disguise, (6: In G. O. 10, Dept. of the Tenn. 1863, General Grant orders that guerillas or southern soldiers, "caught within our lines in Federal uniform, or in citizen's dress, will be treated as spies.") making false representations, &c., a most significant circumstance going to fix upon the suspected person the animus of the spy is the concealment of important papers or written information, (7: Thus Andre carried official returns of the forces and state of the defences at West Point, concealed in his boots. In May, 1863, a "Miss Hozier" of Suffolk, Va., was arrested while attempting to pass our lines and reach Richmond. Concealed "in the handle of her parasol" were diagrams and papers describing the fortifications near Suffolk, and giving the strength of their garrisons. VI Rebellion Record, 77.) or the destruction of attempted destruction by him, upon being detected, or letters, dispatches, or other writings in his possession, containing information for the enemy." (8. Case in Digest, 709 & 3. A well-remembered instance is that of Daniel Taylor, who, upon his apprehension, after the capture of Forts Montgomery and Clinton, in October, 1777, swallowed a silver bullet which contained a dispatch from Sir Henry Clinton to Burgoyne.) So, of the presenting of forged or false orders purporting to be issued by the commander of the army to which the spy pretends to belong. (9: Williams and Dunlop, See an te,) presented forged orders purporting to be signed by Gen. Rosecrans and Adjt. Gen. Townsend.) Another suspicious circumstance is an attempt to b bribe the arresting party to allow him to proceed. (10: This was a feature in the case of Andre.)

But to prove him to be a spy, it is not necessary that the accused should be shown to have communicated, or even to have obtained, the desired information, or any information whatever. (11. Lieber's Instructions 88.) The fact that he was "lurking" or "acting" with intent to obtain material information, to be communicated by himself or another to the enemy, is all that is required to complete the offense. (12: See the definitions above cited; also case in G. O. 92, Dept. of the Ohio, 1864.)

Further, it is not necessary that the spy should be within the lines without authority. (13: See G. O. 346 of 1863.) One who, being legally admitted under a flag of truce, abuses his privilege by secretely collecting facts for the use of the enemy, renders himself liable to the punishment of the spy. (14: Lieber's Instructions 114.) Such was the situation in the case of Andre, who moreover, held a passport from Arnold. But this could not protect him from being treated as a spy, since having been given by one who was in criminal complicity with him, it was null and void as a safe-conduct. (15: See Halleck, 408. A false passport given for the purpose of concealing the identity of the party was a feature in the case of Kennedy. G. O. 24, Dept. of the East, 1865.

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JURISDICTION. A spy, under capture, is not treated as a prisoner of war but as an outlaw, and is to be tried and punished as such. Under the law of nations and of war, his offense is an exclusively military one, co cognizable only by military tribunals. (Citing: Smith v. Shaw, 12 Johns, 257; in re Martin 45 Barb., 142; Do. 31 How. Pr., 228.) In our law, as we have seen, an express statute has, since August, 1776, made this crime triable by court-martial, and since March, 1863, jurisdiction of the same has been given also th the military commission, a species of tribunal to be considered in Part II of this treatise.

It has always been legal, however, and would still be so in time of war, notwithstanding the statute, to proceed summarily without trial against spies; and in some of our earlier cases--that of Andre, for example (Citing: So, in the case of Thomas Shanks, G. O. Army Headquarters, June 3, 1878.) the investigation was had, not by a court-martial, but by a court of inquiry or board ordered for the purpose, upon whose report, to the effect that the accused was found to be a spy, the death penalty was presently executed. (Citing: 24; As to the form of investigation in Andre's case, see Chapter IV, "Courts of inquiry".) Modern codes, however, call for a trial of the offender. Thus, in the Manual of the Institute ofInternational Law, of 1880, one of the most complete of the projets of the laws of war, it is said "To guard against the abuse to which accusations of acting as a spy give rise in time of war, it must clearly be understood that--"No person accused of being a spy can be punished without trial."

Special Principles. A military court, in passing upon a case of an alleged spy, is to be governed not only by the ordinary rules of evidence but by the principles established by the usages of war as recognized in the law of nations. Of the latter there are to be noticed two jurisdictional principles peculiarly applicable to cases of spies, to wit:---

1. A spy, to be triable as such, must be taken in flagrante delicto, or rather before he succeeds in getting through the lines and returning to the territory or army of his own nation or people. If he thus makes good his return without being arrested, the jurisdiction for his offence does not attach but lapses, and if, subsequently to such return, he is taken prisoner in battle or otherwise captured, he is not triable to trial or punishment for the original offense. (Citing: 25: Project of Brussels Conference, Art. 21; Manual, Inst. Int. Law 26; Lieber's Instructions 104; In re Martin, Ante; Digest, 710; G. O. 24, Dept of the East, 1865, (Kennedy's case.) But he will be liable upon such re-capture, to be subjected to a closer surveillance. Bluntschli 633. In Kennedy's case the point is properly taken that for an alleged confederate spy to have escaped, without arrest, into Canada, (where there were agents of his government,) was not such a return as to have discharged him from liability to trial and punishment for his offence.)

2. Further, a spy, to be punished as such, must be brought to trial and convicted during the existence, i. e. before the end of, the war. (Citing: 26: In re Martin, 45 Barb., 142; Do. 31, How. Pr. 228; Well, Jur. of Courts 577.) Thus, in the case of Robert Martin, above cited, it was held that as the alleged offender had not been arrested as a spy till after the surrender of the Confederate armies and the termination of hostilities,(Citing: 27: This was the view of the court at the time. As a matter of fact, the war, at the date of Martin's arrest, (December, 1865,) had not yet ended--according to the subsequent rulings of the SupremeCourt, heretofore cited. See under Fifty-Eighth Article, ante p. 669.) he was not subject to trial by a military tribunal; and he was accordingly discharged on habeas corpus from the custody of the military authorities. But, as will be noticed in a subsequent part of this treatise, (Citing 28: PartII---"Jurisdiction of the Military Commission.") this second principle is not peculiar to the case of the spy alone, but applies toother cases of persons offending in time of war against the laws of war.

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PUNISHMENT: By the law of nations the crime of the spy is punishable with death, (Citing 29: Vattel, Book 111, p. 179; Manual, 270; Halleck, 406, 407; Lieber sec. 88; Smith v. Shaw, ante; In re Martin, ante; G. O. 13, Dept of the Mo., 1861; Do. 23, Dept. of Kans., 1864.) and by our statute this penalty is made mandatory upon conviction. Such penalty may be executed either by shooting or hanging. The sentence "to be shot" was in a few instances imposed during the late war; (Citing 30: G. O 174 of 1862; Do. 346 of 1863; Do. 39, Dept. of the Mo., 1863; Do. 4, Dept. of Ky., 1864.) but, in the great majority of cases, the form of death by hanging, as the more ignominious and severe, (Citing 31: See Halleck, 407; G. O. 107, Dept. of the Mo., 1863.) was adjudged. In some instances, women (who,by reason the natural subtelty of their sex, were especially qualified for the role of the spy) were sentenced to be hung as spies, though in their case, this punishment was rarely if ever enforced. (Citing 32: See cases in G. O. 208, Dept. of the Mo., 1864, Do 92, Dept of the Cohio, 1864, in which the death sentence was "disapproved." Other cases of females tried as spies are contained in G. O. 43, 93, 121, Middle Dept., 1864; Do. 102, Dept. of Va. & No. Ca., 1864; Do. 14, Dept of the Mo. 1865.) In a considerable proportion of the other cases the capital punishment adjudged was executed, and commonly on the next day or within a brief period after the approval of the proceedings. (Citing 33: As in the case of Andre and that of Palmer (see post). And compare case in G. O. 8, Mid. Mil. Dept., 1865, also case in Do. 92, Dept of the East, 1864, where it is announced by Gen. Dix that a certain class of alleged spies will, upon conviction, "be executed without the delay of a single day." In a case in G. O. 58, Dept. of Va & No. Ca., 1864, it was ordered that the sentence of hanging be executed as near as practicable to the place of the arrest, "for the purpose of the example.")

It may be observed, however, thatthe extreme penalty is not attached to the crime of the spy because of any peculiar depravity attaching to the act. The employment of spies is not unfrequently resorted to by military commanders, and is sanctioned by the usages of civilized warfare; (Citing 34: Vattel, Book 111, p. 179; Halleck, 406.) and the spy himself may by an order, to assume the office of spy; he must volunteer for the purpose; (Citing 35: Halleck, 406, 409; Manual, 270.) and where so volunteering, not on account of special rewards offered or expected, but from a courageous spirit and a patriotic motive, he generously exposes himself to imminent danger for the public good and is worthy of high honor. (Citing 36: Note the circumstances of the case of Capt. Nathan Hale. Halleck, 407.) Where indeed a member of the army or citizen of the country assumes to act as a spy against his own government in the interest of the enemy, he is chargeable with perfidy and treachery, and fully merits the punishment of hanging; (Citing 37: In the case in G. O. 26, Dep. of Va. & No. Ca., 1864, of a U. S. Soldier convicted as a spy, the accused was sentenced to be hung, and the sentence was approved and executed. Lieut. Palmer, whose sentence was so summarily executed by Gen. Putnam, in 1777, was an American who had taken a commission in the service of the enemy.) but--generally speaking--the death penalty is awarded this crime because, on account of the secrecy and fraud by means of which it is consummated, it may expose an army, without warning, to the gravest peril; and, as Vattel (Citing 38: Book 111, p. 179) observes, "puisque l'on n' a gueres d'autre moyen de se garantir du mal qu'ils peuvent faire."

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In order to find Inoue guilty of the first charge murder every allegation contained in specifications one and two must be proved. Section 154, Naval Courts and Boards reads:

"The lawpresumes every man innocent of crime. The prosecution has in each case the burden of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of not guilty every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof never shifts to the accused. It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi."

It has been seen fit to not only charge Inoue with common law murder but merged into the same charge it is also specified he did this "in violation of effective law, especially Article 199 of the Criminal Code of Japan."

On page 158 of the American Jurisprudence Criminal Law we read:

"There are no common law offenses against the United States and the crime of murder or manslaughter as such is not known to the Federal Government except in places over which it may exercise exclusive jurisdiction and where by Act of Congress such offenses are recognized and made punishable." citing 194 US 205, Pettit v. Walsho, 18 USA, 451 et seq.

Can it be said that this commission had exclusive jurisdiction on Jaluit April 8, 1945, and April 13, 1945, particularly when even at this date the accused is charged with both common law murder but also Japanese statute law. Cirtainly it is common knowledge and this commission must take judicial notice that there is no Act of Congress giving the Navy Department exclusive judicial jurisdiction on Jaluit in April 1945.

Inoue is charged with having "wilfully, feloniously, with premeditation and malice aforethough, and without justifiable cause, assault, strike, kill, and cause to be killed, with an instrument, a deadly weapon.

On page 2067 of Bouvier's,Malice is defined as "The doing a wrongful act intentionally without just cause or excuse. 4 B&C 255; Com v. York, 9 Metc. (Mass), 104; 43 Am Dec 373; Zimmerman v. Whitely;134 Mich. 39, 95 NW 989. A wicked and mischievous purpose which characterizes the perpetration of an injurious act without lawful excuse. 4 B&C 255; Com v. York, 9 Metc. (Mass.) 104, 43 Am. Dec. 373."

In Wharton's Criminal Law, Vol. 1, paragraph 421, pp. 634-636, we read, "Murder is distinguished from other kinds of killing by the condition of malice aforethough....."

"Premeditation and deliberation, as an element in murder, consists in the exercise of the judgment in weighing and considering and forming and determining the intent or design to kill." State v. Roberson (1909) 150 N. C. 837, 648 S. E. 182.

"The corpus delicti, or the fact that a crime has been committed, is an important element entering into the trial of every person charged with the commission of a crime. In theory, if not in practice, the prosecution is required to establish the fact that a crime has been committed before it can either (1) introduce evidence to show that the accused committed the crime, or (2) require the accused to show that he did not do so. In otherwords, the corpus delicti must be established by satisfactory evidence before the accused can be put upon his defense.....

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"The phrase "corpus delicti" means, literally, the body of the aggression charged, the essense of the crime or offense committed; the existence of the substantial fact that a crime or offense has been committed. . . . .

"The essential elements of the corpus delicti are (1) the existence of a certain state of fact or result forming the basis of the criminal act charged and (2) the existence of a criminal act or agency or cause in bringing the state of fact into existence; e.g., that a man has died, ...and that some person wrongfully brought about this state of fact..."

"Some of the cases go a step further and require (3) that the defendant's criminal agency in the production of the state of fact shall also be established; citing "The language of other decisions, however, seems to require proof of the criminal agency of the accused as part of the corpus delicti. See State v. Dickson (1883) 78 Mo. 438; State v. Shackelford (1899) 148 Mo. 493, 50 S.W. 105; Lovelady v. State (1883) 14 Tex. App. 560, (1884) 17 Tex. App. 287; Jackson v. State (1891) 29 Tex. App. 458, 16 S.W. 274; Josef v. State (1895) 34 Tex. Crim. Rep. 446, 30 S.W. 1067; Little v. State (1898) 39 Tex Crim Rep. 654, 47 S.W. 984."

"Before a conviction can rightfully be had on a criminal charge, the prosecution must show (1) the corpus delicti (2) that it was produced by a criminal act or agency, (3) that the accused did the criminal act, or set in motion the criminal agency, or sustains responsible complicity therewith...

"First essential fact to be proved is the corpus delicti, and this must be established beyond a reasonable doubt. Tatus v. State (1907) 1 Ga. App. 778, 57 S.E. 956.

"A conviction very seldom occurs without direct proof of the corpus delicti, either by eyewitness of the homicide or by subsequent discovery of the dead body; yet there may be exceptions, where corpus delicti may be proved circumstantially or inferentially, e.g. as where the body is consumed by fire, or boiled in potash, or dissolved in acids, rendering it impossible that it should ever be produced. Citing People v. Alviso (1880) 55 Cal. 230; Rines v. State (1903) 118 Ga. 320, 68 L.R.A. 33, 45 S.E. 376, 12 Am. Crim. Rep. 205; State v. Cardell (1886) 19 Nev. 319, 10 Pac. 433; People v. Beckwith (1888), 108 N.Y. 67, 15 N.E. 53; Lovelady v. State (1883) 14 Tex. App. 548; Walker v. State (1883) 14 Tex. App. 609.

In the case of McBride v. People (1894) 5 Col. App. 91, 37 Pac. 593, it was held that "The confession of defendant without aliunde cannot establish the corpus delicti."

Want of proof of the corpus delicti cannot be supplied by proof of the extrajudicial confession of the accused. People v. Besold (1908) 154 Cal. 363, 97 Pac. 871...

Thus in a prosecution for murder, proof of the corpus delicti involves the establishment (1) that the person named is dead (2) that he *car* to his death through the criminal act or agency of another human being...

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The facts forming the basis of the offense, that is, the corpus delicti, must be proved either (1) by direct testimony, or (2) by presumptive or circumstantial evidence; and where the evidence is of the latter class, it must be of the most cogent or irresistible kind...

In some of the states it is held that the elements constituting the legal corpus delicti, that is, (1) the state of facts constituting the basis of the prosecution, (2) the criminal agency of some other human being in bringing them about, must be established by direct evidence; citing two New York cases, Ruloff v. People (1858) 18 N.Y. 179 and People v. Bennett (1872) 49 N.Y. 137.

Lord Chief Justice Hale says: "I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or, at least, the body found dead." 2 Hale P.C. 290.

Wharton's Criminal Law, Vol I, pp. 449-458: "It seems now pretty generally held that circumstantial evidence is admissible to establish the corpus delicti in a trial for murder, but that it must be strong and cogent. Chancellor Walworth, however, says: 'One rule which is never to be departed from is that no one should be convicted of murder upon circumstantial evidence, unless the body of the person supposed to have been murdered has been found, or there is clear and irresistible proof that such person is actually dead.' citing People v. Videto (1825) 1 Park. Crim. Rep. (N.Y.) 603. In New York it is held that in trials for murder, the people must establish by positive evidence either (1) the corpus delicti or (2) the criminal agency producing it; and that after either is thus established, the other may be shown by circumstantial evidence. Ruloff v. People (1858) 18 N.Y. 179; People v. Bennett (1872) 49 N.Y. 137 (by divided court). In such a prosecution the corpus delicti is established by proof of the finding of the body of a human being under such circumstances as indicate that the death or killing was felonious, and not by accident or suicide. State v. Potter (1879) 52 Vt. 33. But the proof of the identity of the dead body must be established by evidence outside of the death of the party alleged; the remains of the deceased, or a portion of them, must be sufficiently identified to establish the death of the party. Lovelady v. State (1883) 14 Tex. App. 545; Gay v. State (1901) 42 Tex Crim Rep. 450, 60 S.W. 771.

Wharton's Criminal Law, Vol I, pp. 459-460. What Blackstone said of confessions was certainly true of the admission which the prosecution introduced in this case; "confessions even in cases of felony at common law, were the weakest and most suspicious of all testimony, very likely to be obtained by artifice, false hopes, promises of favor, or menaces; seldom remembered accurately, or reported with precision, incapable in their nature, of being disproved by other negative testimony." 4 Bl. Com. 357.

Let us turn again to Winthrop. He defines murder as follows:

"Murder, at common law, is the unlawful killing, by a person of sound memory and discretion, of any reasonable creature in being and under the peace of the State, with malice aforethought either express or implied. Citing Coke, 3 Inst., 47; 6 Black. Com., 195; 1 East, P.C., 214; 1 Russel, 482; 1 Gabbett, 454; 3 Greenl. En. 1430; 1 Wharton C.L. 303; 2 Bishop, C.L. 732, and notes; Com. v. Webster, 5 Cush., 304; G.O. 23, Dept. of Col., 1865.

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The homicide must be unlawful, that is to say "felonious" or other than "justifiable" or "excusable"; it must be committed by one who is neither non-compos nor an infant under the age of criminal capacity; the person assailed must be a living being, (not an unborn; child) such person must be entitled to the protection of the laws, not a public enemy nor a pirate; and lastly the act must be characterized by "malice aforethought" or "malice prepense", i.e. evil and deliberate purpose. A brief description of murder which would cover all cases likely to arise under the present Article would be - the unlawful killing, with malice aforethought, by a legally responsible person, of any other person not a public enemy; or, as all killing with malice aforethought must be unlawful as a person not legally responsible cannot be charged with malice aforethought, and as no killing of a public enemy can be regarded as committed with such malice, - murder, at common law and unaffected by statute, may be simply and briefly described as homicide with malice aforethought."

Malice aforethought. The term malice, as ordinarily employed in criminal law, is a strictly legal term, meaning not personal spite or hostility but simply the wrongful intent essential to the commission of crime. When used, however, in connection with the word "aforethought" or "prepense," in defining the particular crime of murder, it signifies the same evil intent, as the result of a determined purpose, premeditation, deliberation, or brooding, and therefore as indicating, in the view of the law, a malignant or depraved nature, or, as the early writer, Foster, has expressed it, "a heart regardless of social duty and fatally bent upon mischief." The deliberate purpose need not have been long entertained; it is sufficient if it exist at the moment of the act. Malice aforethought is either "express" or "implied;" express, where the intent - as manifested by previous enmity, threats, the absence of any or of sufficient provocation, &c, - is to take the life of the particular person killed, or, since a specific purpose to kill is not essential to constitute murder, to inflict upon him some excessive bodily infury which may naturally result in death; implied, where the intent is to commit a felonious or unlawful act but not to kill or injure the particular person - as where a party, intending to kill by shooting, &c., one person, actually hits and kills another; or, when detected in a burglary, fires his pistol in the dark to aid his escape and kills an inmate of the house; or, in resisting an officer of justice engaged in the execution of his duty, unintentionally kills him, &c. Thus a soldier who resists a military superior, when legally engaged in making an arrest or executing any other duty, and in resisting kills him, though not purposely, is guilty of murder in law.

In every case of apparently deliberate and unjustifiable killing, the law presumes the existence of the malice necessary to constitute murder, and devolves upon the accused the onus of rebutting the presumption. In other words, where in the fact and circumstances of the killing as committed no defense appears, the accused must show that the act was either no crime at all or a crime less than murder; otherwise it will be held to be murder in law. Justifiable and excusable homicide. The definition of Murder is well illustrated by the two defenses apposite to this charge, viz: 1, that the killing was not murder but manslaughter; i.e. a killing without "malice;" 2, that it was not felonious but justifiable or excusable in law. The distinction between murder and manslaughter will be further noted presently. Homicide is said to be justifiable when committed by a public officer in the due execution of the laws or administration of public justice, or when committed by any person in the due prevention of a violent crime. Thus homicide is justifiable where committed by an officer of the army, or at his instance,

in the suppression of an actual mutiny or other violent disorder, or in the capture of an escaping prisoner or deserter, where no other adequate means are available for the purpose. Homicide is in law "excusable" where it is the result of accident or mishap, or where it is committed in self-defense.

Now let us read what there is in Corpus Juris:

"Intent - the fixed purpose of the mind in connection with a given act; citing State v. Goldston 103 N.C. 323 33 C.J. p. 168. the purpose of the mind including such knowledge as is essential to such intent, citing Powe v. State 48 N.J.L. 34, 36, 2A662; 33 C.J. p. 168. Intent implies premeditation, citing Ernest v. State, 20 Fla. 383, 388; (33 c.j. 168) In law there is a clear distinction between motive and intent and they are not regarded as synonymous."

cc Fla. 1908 "Malice, legally speaking in relation to murder is a conscious violation of law to prejudice of another citing U.S. v. Hart, 162 F. 192."

All the evidence clearly shows that Inoue did not consciously violate the law when he was ordered by his superior officer, Admiral Masuda, to carry out the sentence of execution.

In American Jurisprudence Criminal Law on page 178 we read:

"Intent is the state of mind of the slayer that is sought to be described. On page 181 we find a clear statement of the difference between murder and manslaughter."

"In the absence of any expressed or implied malice the crime if any is manslaughter."

Since the absence of intent express or implied is clearly shown by the evidence the commission cannot find the accused, Inoue, guilty of murder.

"A homicide committed by a soldier without malice in the performance of duty,..... or kills another under the order of a superior officer, citing Commonwealth v. Shortall, 55 A. 952, 206 Pa. 165, 98 Am. S.R. 759; Riggs v. State, 3 Coldw. 85. See Army & Navy paragraph 37 d (2) which does not expressly and clearly show its illegality on its face is justifiable. Citing in re. Fair, cc Neb. 100F. 149"

In 40 Corpus Juris Secundum page 956 we read:

"Justifiable homicide is the necessary killing of another in the performance of a legal duty. It is a homicide authorized by law. Citing State v. Walker 14 Del. 464. Gill v. Commonwealth, 31 S.W. 2d, 608. By order of court, citing State v. Bridge 137 A244, 246, 126 Me. 223, 53A L.R. 241."

Inoue was in the performance of his legal duty as judge advocate as head of the special police force on Jaluit when he executed the eight Mille natives who were found guilty of several crimes, principally of the crime of spying.

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On page 959 40 C.J. Secundum we read: "However a person is not criminally responsible for a homicide committed by him by reason of a mistake as to facts, where his ignorance or mistake was not due to negligence or bad faith on his part and where he would have been exempt from criminal liability if the facts were as he had supposed them to be. Citing US. v. Ah Chong 15 Philippines 488 (cit. Cooks Case, Car. 538, 79 Repring 1063) 30 C.J. p. 38 note 38."

All the evidence shows that Inoue is not criminally responsible for the homicide he committed thinking that he was carrying out the execution by reason of a sentence of the senior officers of Jaluit. There was no negligence or bad faith on the part of Inoue.

In 40 Corpus Juris Secundum on page 960 we read that: "An accused is entitled to full acquittal and discharge where the homicide is excusable or justifiable. citing Erwin v. State, 29 Ohio State 186."

Inoue the accused in this case is therefore entitled to a full acquittal.

The prosecution must prove each and every allegation. We call the commission's attention to the following evidence. On the tenth day Major Furuki testified as follows in answer to question 94.

"Right after the decision was made Admiral Masuda gave Captain Inoue orders concerning the execution. He wrote these orders on the botton part of the judgment paper and read it to Captain Inoue. It stated as follows: 'Captain Inoue on April 9,'I do not know the exact date,' '1945, you shall execute the sentence of death on the seven natives other than Ralime, by shooting.' Captain Inoue after hearing this order was silent for a short time, after which he stated the following opinion to Admiral Masuda: 'As for myself, the execution of the children I can not do because I feel very sorry for them and I wish I could be excepted from the execution of these children or at least postpone the execution for two or three days so I may have time to think of means other than the execution.' At this time Admiral Masuda raised his voice and stated definitely that this was an order of execution and that this order of execution was reached after an examination and consultation and you should know better than any of the men on Jaluit what an order is. 'I shall not tolerate any further opinions on this order. In the evening I shall go to tell the natives their sentence. Captain Inoue, you shall accompany me.' After this Captain Inoue told me as follows: 'It is very difficult for me to execute these children, but as I have been ordered to do so I can not get out of performing the execution. Never before have I felt as I do not how hard the life of a soldier is.' That evening Captain Inoue went with Admiral Masuda on a motorcycle with a side car attached to where the natives were confined to read the sentences to them. Two days later when Ralime was captured Admiral Masuda called all the judges and Captain Inoue to him and at the bottom of the judgment paper wrote the following: 'About the eleventh of April (I do not know the exact day) '1945, after sentence of death passed on Ralime, Captain Inoue shall perform the execution by shooting.' On the evening of that day Admiral Masuda accompanied by Captain Inoue went to tell the sentence to Ralime at his place of confinement."

To question 124 as to why no inquiry was made upon Mille regarding the natives and the crimes they had committed there, Major Furuki answered:

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"The reasons were (1) Eight natives had confessed and it was evident that their guilt was established and thought not necessary to probe further; (2) was from the standpoint of operations, through fear of interception of their messages which was undesirable to the defense garrison of Jaluit."

To question 133 on the 13th day Inoue testified as follows: "How I came to execute the sentence is as follows: At the time of the last examination and consultation on the ninth of April, as a result of this examination and consultation, Admiral Masuda gave the natives the decision of death. At this time, with Shintome and Furuki present, Admiral Masuda ordered me, who was head of the special police section at this time, to execute the death sentence. After this order was written at the end of the judgment paper and reading the order to me, I was relayed this order. As a result of the examination and consultation, Admiral Masuda gave the death sentence and read the sentence to each native. I was convinced that it was legal; therefore, I was convinced that it was legal and lawful act to execute the order. After I was ordered to perform the execution, I expressed what opinion I was allowed concerning the execution of these two children to Admiral Masuda. In other words, I asked was there some way to save the children, at least postpone the execution for two or three days so I could think of other means to save them. To this Admiral Masuda would not listen to my opinion, reprimanding me, he said: 'Execute the order tonight.' Returning to my quarters, I went to Major Furuki who was my commanding officer. I told Furuki of my difficult position in having to execute the children and asked his advice. Major Furuki said that he and Shintome had also expressed opposite opinions, but the Admiral would not listen. 'There is no other way but to do as ordered.' The execution of the two children; I was convinced that this was a legal act and I had no doubt that this was a rightful act."

To question 149, "How did you understand your position in rejecting the order of Admiral Masuda?" Answer: "As a soldier and as a person who is responsible for the maintenance of discipline on Jaluit, it was absolutely impossible to disobey the order, especially as this order was put out after the highest examination and consultation on Jaluit by the ranking officers was decided upon; and this placed me in a position where I was unable to disobey Admiral Masuda's order.

To question 312 on cross-examination by the judge advocate, Inoue answered: "Admiral Masuda himself told them the specifications and stated according to Japanese law you are sentenced to death."

To question 365 Inoue answered that he saw Admiral Masuda write the judgment paper and to question 366 he answered that he saw Admiral Masuda write in the sentence. To question 393, "Was the proceeding of examination and consultation held in regard to the Mille natives a trial?" Inoue answered after the commission directed his answer be stricken on the grounds that it was not responsive. "From that time I have thought in substance that it was a trial."

To question 398 "Then did you understand that this examination and consultation procedure was to be a trial when Admiral Masuda told you that you, Shintome, and Furuki were to act as judges and judge advocate in this case?" Inoue answered: "I understood it to be a trial in substance."

The judge advocate read from a document which he did not at the time offer into evidence question 171 and asked the witness Inoue if he had so answered. We objected by were overruled.

Inoue testified as follows: "What I answered at that time, that is not what I answered at that time. I do not believe that was what I answered at that time of the previous trial due to the shortage of words I feel sorry that the exact true meaning was not grasped. What I really meant was that at the end of the war I came to understand clearly that the examination and consultation procedure that was taken at that time could be called a trial. At the time of this examination and consultation no doubt as to whether this was a trial or not, I had no doubts as to whether this would be called a trial or not. At the time of this examination and consultation I felt not doubt whether this was a trial or not. The reason for this was because I believed that this examination and consultation procedure was a legal one and the only one possible under the battle conditions, and I was under the impression that that was how I explained this. Due to the shortage in the words I used, I do not remember how it was written down."

Question 414 on the 15th day by the judge advocate to Inoue, "And when you executed the natives you knew that they did not have a trial by regular procedure. Is that correct." Inoue answered as follows: "When I did the execution I had no questions in my mind whether this was a regular trial procedure or not. I thought this was a lawful examination and consultation procedure and believed that it was right. No question arose in my mind as to whether this was a regular trial procedure or not."

On reexamination Inoue on the 16th day was asked Question 439 "When you were ordered to execute the natives by Admiral Masuda did you consider the order was legal?" He answered: "Yes, because by this authority of Admiral Masuda, the death sentence was given them, after an examination and consultation and Admiral Masuda himself had given the sentence to each native and they were prisoners who were sentenced to death, and I thought these were lawful orders and that the order of Admiral Masuda was the order of the court; and therefore, legal and right."

To question 462: "In your statement when you stated that to certain criminals after the highest examination and consultation on Jaluit they were given a sentence. Did you understand this to be a trial?" Inoue answered: "As it was an examination and consultation called together and held by Admiral Masuda who had the authority I firmly believed that it was a trial."

Then when all parties had indicated that they had no more questions to ask the witness Inoue, the Commission informed him that he took an oath to state everything within his knowledge in relation to the charges and he could make any further statement necessary to fulfill his oath as long as it was relevant. Inoue made the following statement from the witness stand: "Concerning the examination and consultation procedure taken in this incident by Admiral Masuda. Admiral Masuda especially cleared a part of his quarters and made use of it for this purpose. Matsui and Izumi, two orderlies were placed as guards at the entrance, carefully guarded so that no one could come in. Especially at the last examination and consultation when the sentence was to be decided, Admiral Masuda, the judges, and myself, were all called to attention. He solemnly heard our opinions and decided the decision. During my two years period of duties on Jaluit the fact that the commanding officer cleared a part of his quarters for any purpose this was the only time. (2) Immediately after the end of the war Admiral Masuda was called by Commander McKinson to the destroyer, and at this time he was asked the

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following question: 'There should be eight natives here who came from Mille. What did you do with them?' The Admiral answered, 'As the natives had committed crimes by my authority and according to Japanese law by lawful procedure they were executed.' Commander McKinson then asked what did you do with the two children. Admiral Masuda replied, 'The two children were the same as the adults. They were spies and knew well as the adults the conditions on Jaluit. As there was no other way these two children were executed to prevent the desertion of military, gunzokus, and natives and the leaking of military secrets which was dangerous to Jaluit, to retain discipline and the lives of the four thousand people on Jaluit they had to be executed.' Present at this time were McKinson, his adjutant, myself, and an army interpreter who was Sergeant Major Akamatsu, Isamu. Admiral Masuda submitted a report stating that Admiral Masuda had ordered Captain Inoue to perform this execution. This report was taken back together with other documents by Commander McKinson on the fifth of October 1945 at the headquarters of the defense garrison on Emidj. Witnesses to this are Major Furuki, Lieutenant Commander Shintome, Suzuki, and Nakamura, myself and Sergeant Major Akamatsu. (4) At this time I did not know the Hague Convention nor the laws of land warfare of the Hague Convention and the report that Admiral Masuda submitted that they had committed the crime of spying stated that the law for spying, article 85 of the Japanese Criminal Code was applied."

We have brought all this testimony introduced by the defense to the attention of the Commission because this evidence clearly shows that the accused, Inoue, did not "wilfully, feloniously, with premeditation and malice aforethought and without justifiable cause."

The burden of proof is however upon the judge advocate to prove every allegation. How did he attempt to do it? The first witness for the prosecution, Sergeant Major, Imperial Japanese Navy, Fukatsu, Tadashi, on the third day of the trial, May 6, 1947 in answer to question 12 stated in part: "Then Inoue said to us, 'They were executed after investigation as spies and because they had committed murder at Mille; they had been consulted and examined.' And he also stated that he had been ordered to do this execution by the commanding officer. He had been ordered to do this by the commanding officer and I executed them. It sounded as if Captain Jinno was asking him did he also kill the children and Captain Inoue answered he could not help but kill them, he expressed his opinion many times to the commanding officer, but the commanding officer did not heed me. I can not help but shed tears. I made myself blind to the tears and executed them. Next he stated that we are going to bury the natives; you shall help in this and he started to throw dirt in the hole. After we had finished, the four of us gave prayers for the dead natives and went back toward the truck."

The prosecution would have the Commission believe that this proves Inoue was guilty of murder. We think otherwise. We hold it proves conclusively Inoue did not commit murder.

This same witness testified as to the incident later in the month and in answer to question 28 stated in part:

"When I went there Captain Inoue said that the person came here to spy and that he had committed murder at Mille, he was the worst one among them and by the orders of the commanding officer he was executed. He said we are going to bury him, so help me, so we buried the native. After he was buried prayers were offered."

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As before we hold this proves that Inoue was anything but a murderer.

On cross-examination this same witness said in answer to a question "How did he appear to you when the first of the natives were taken off the truck and when he went into the jungle with them?" Answer, "He seemed a little different from his usual self. He looked sad.
Q. And how did he look when the next group were taken into the jungle?"
"Answer. When he came out to take the next group in, when Captain Jinno asked him, 'What were those shots?' he said nothing as if he could not hear us and looked as if he was thinking deeply."
"Q. How did he look when he took the two children in?"
"Answer. "The same as when he took the others. He looked very sad."
The next answer was: "He did not look happy." "Q. You testified that he said, 'I cannot help but shed tears; I made myself blind to tears.' Did you see any tears in his eyes?" Answer: "At that time I did not look at his face, but I saw that he was very sad." On that same day the fourth day of this trial May 7, 1947, Warrant Officer, Imperial Japanese Navy, Takamatsu, Minoru, testifying for the prosecution in reply to question number nine stated in part as follows: "Captain Inoue solemnly said that on Mille as a result of an investigation it was found that these natives had killed a person on Mille and came to spy on Jaluit. An examination and consultation was held. I, Inoue, was ordered to execute them by the Commanding Officer, and I have just done so. And he also stated: "Now I am going to bury them. Assist me." At this time First Lieutenant Jinno asked him did he also execute the two children. Captain Inoue seemed very grave and he stated that on this I expressed my opinion many times to the commanding officer to confine them to another island but he did not heed my opinion." He looked very low-spirited." This was the testimony of another of the witnesses for the prosecution. His testimony shows Inoue had no malice; Inoue did not do the act wilfully, feloniously or with premeditation.

On the fourth day Captain Jinno, Shigeru, Imperial Japanese Army, another witness for the prosecution testified in answer to question 11 in part as follows: "Then Captain Inoue said to the three of us, 'The natives you brought today were found upon investigation that in escaping from Mille Island had killed a soldier and sneaked into Jaluit to spy; consultation was held and I was ordered to do the executions by the commanding officer and I just did it.' Then at this point I asked Captain Inoue, 'Did you also kill the children?' Concerning the children Inoue said, 'I expressed my opinion many times that they should be confined on another island, but the commanding officer did not heed and had them executed.' After this he stated that we were going to bury them, so we assisted him. The four of us buried the natives. Captain Inoue said, 'Let us offer our prayers and return.' We offered our prayers and we returned."

Does this evidence prove that the allegation as set out in the specifications under Charge I are proved. Quite to the contrary it proves that the accused, Captain Inoue did not commit murder.

The facts thus testified to even by the witnesses for the prosecution prove there was no murder. Winthrop on page 672 says: "And as no killing of a public enemy can be regarded as committed with such malice." Winthrop continues: "When used, however, in connection with the word "aforethought" or "prepense" in defining the particular crime of murder, it signifies the same evil intent, as the result of a determined purpose, premeditation, deliberation, or brooding, and therefore as indicating in the view of the law, a malignant or depraved nature, or

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as the early writer, Foster, has expressed it, 'a heart regardless of social duty and fatally bent upon mischief.' citing Crown Law, p. 257, 262. In Com v. Webster, 5 Cush. 304, Shaw, C.J. says of "Malice" in the terms "malice aforethought" that it is "used in a technical sense, including not only anger, hatred, and revenge, but every other unlawful act and unjustifiable motive. It is not confined to ill will toward one or more individual persons, but is intended to denote an action flowing from any wicked and corrupt motive." and see the case of murder, indicating a malignant animus, commented upon by Gen. McDowell in G.O. 23, Dept. of Cal., 1865 & U.S. v. King, 34 Fed 366, and U.S. v. Meagher, 37 Fed. 878-879."

At this time we call to the attention of the Commission one of our own court martial orders. In C.M.O. 4-1935 we read: "Had there been specific orders to fire in this case the general rule laid down would be excusable if committed by a military guard, without malice, and in the performance of his supposed duty as a soldier, unless it was manifestly beyond the scope of his authority, or was such that a man of ordinary sense and understanding would know that it was illegal. 'See also In re Fair, 100 Fed 149.

Commenting on this same point, namely, the extent to which a military guard is protected by his orders, the court in McCall v. McDowell, 1 Abb. 212, 15 Fed. Cas. No. 8673, said:

"Between an order plainly legal and one palpably otherwise..... there is a wide middle ground, where the ultimate legality and propriety of orders depends or may depend upon circumstances and conditions, of which it cannot be expected that the inferior is informed or advised. In such cases, justice to the subordinate demands, and the necessities and efficiency of the public service require, that the order of the superior should protect the inferior; leaving the responsibility where it properly belongs - upon the officer who gave the command."

That the wilfull killing of a soldier by a military guard on duty is not necessarily a justifiable homicide is illustrated by the case of United States v. Carr, 1 Woods 480, 25 Fed. Cas. No. 14732, but regarding the responsibility of such a guard and his duty to carry out orders, the court in McCall v. McDowell, supra, went on to say:

"The first duty of a soldier is obedience and without this there can be neither discipline nor efficiency in the Army. If every subordinate officer and soldier were at liberty to question the legality of the orders of the commander, and obey them or not as he may consider them valid or invalid, the camp would be turned into a debating school, where the precious moment for action would be wasted in wordy conflict between the advocates of conflicting opinions."

See in this connection Digest J.A.G. Army opinions 1895, pp. 486 and 487; Manley v. State, 62 Tex. Cr. R. 392, 137 S.W. 1137; (P. 16) and United States v. Lipsett, 156 Fed. 65. See also C.M.O. 37, 1915, in which many of the above citations appear.

The weight of authority is to the effect that due to the difference in legal relationship of the parties, the standard set by the civil courts should not be followed by military authorities much less by binding upon them. The following remarks appear in the opinion of the court in United States v. Clark, supra:

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"It would be extremely unwise for the civil courts to lay down general principles of law which would tend to impair the efficiency of the military arm, or which would seem to justify or condone conduct prejudicial to good order and military discipline. An army is a necessity - perhaps I ought to say an unfortunate necessity - under every system of government, and no civilized state in modern times has been able to dispense with one. To insure efficiency, an army must be, to a certain extent, a despotism. Each officer, from the general to the corporal, is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army waives, in some particulars, his rights as a civilian, surrenders his personal liberty during the term of his enlistment, and consents to come and go at the will of his superior officers. He agrees to become amenable to the military courts, to be disciplined for offenses unknown to the civil law, to relinquish his right to trial by jury, and to receive punishments which, to the civilian, seem out of all proportion to the magnitude of the offense." In quoting the above, the court In re Fair, supra, said:

"The wisdom, expediency, or justness of the military laws, rules, and regulations adopted and prescribed by the United States are no concern of the state. The proper endorsement of such laws, rules, and regulations cannot be measured and determined by state laws." See sec. 1028 N.C.B., 1923; File: MM-Spivey, Howard A. / 417-25 (350304), April 8, 1935, approved April 26, 1935.

Let us consider some of the procedure used by the judge advocate in his attempt to gain a conviction.

On the fourth day of the trial the prosecution put on the witness stand, Lieutenant Edward L. Field and offered into evidence a document purporting to have been signed by the accused. Although we objected to this document it was admitted into evidence. This notwithstanding that the witness testified in answer to question 4 in part as follows: "This document was not written in my present, but was later delivered to the guards at the stockade by Captain Inoue after he had written it and it was in turn delivered to my custody." So this witness not having seen the document prepared was in no way qualified to testify regarding it.

This admission is what would be known as a circumstantial confession if it were a confession. It is however just an admission. Strictly speaking the statement of the accused which the judge advocate introduced into evidence is strictly speaking not a "confession," but an "admission." Confession is a voluntary acknowledgement of guilt. Admission is an acknowledgement of facts tending to establish guilty. People v. Sevetsky, 323 Ill. 133, 153 N.E. 615. Statements, declaration, or admissions of fact incriminating in their nature or tending to prove guilt are admissions and not confessions. People v. Rupert, 316 Ill. 38, 146 N.E. 456.

On the 13th day of the trial the defense tried to get into evidence a written document dated September 11, 1946 which in our opinion tended to explain the so-called admission which the judge advocate had introduced into evidence. The judge advocate objected and the document was not admitted into evidence. On the fourteenth day the judge advocate in cross-examining the accused began reading from a document which he had not offered into evidence. Question 189 that day was taken from what the judge advocate said was testimony from a board of investigation concerning war crimes. We objected but our objection was not sustained. At this time we cite for the Commission CMO 1-1923 as follows:

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CMO 1-1923, p. 11-12.

IMPEACHMENT OF WITNESS: Improper Method.

In a recent trial during the cross-examination of a material witness for the defense the judge advocate attempted to impeach the witness by showing that he had given testimony before a previous board of investigation to an effect contrary to his testimony before the present court. In attempting to thus impeach the witness on the stand the judge advocate was well within his rights but it so happened that he was permitted, over objection, to bring before the court in an improper manner an unverified version of what had been the witness's testimony before the above-mentioned board of investigation. The following excerpt from the record of the testimony of the witness illustrates what is meant:

"87. Q. Now, can you explain why you failed to tell the Board of Investigation that (bad table manners) as a reason for 'bawling out' Mr. A. instead of Seamanship questions? They created quite an impression on your mind and you have no difficulty at all in stating that it was for that reason and no other he was 'bawled out'; and yet before the Board of Investigation you said nothing whatever about it and assigned as the reason for his 'bawling out,' failure to answer Seamanship questions. Can you explain that discrepancy?

"A. I do not know that I waid Seamanship questions. I said 'bawling out' because I thought it was misconduct. It was the same as ill table manners.

"88. Q. But why did you say before the Board of Investigation that he was 'bawled out' for failure to answer Seamanship questions and you did not mention his table manners. Now, can you explain the discrepancy or do you explain it?

"A. If I remember rightly I never mentioned his 'bawling out' at the table in my former testimony.

"89. Q. You didn't mention table manners before the Board of Investigation?

"Objected to by the counsel for the accused on the ground of the line of questioning by the judge advocate. He is making a supposition and is not quoting exactly from the record of the Board of Investigation. He has improper reasons to suspect this and is bringing out the evidence without quoting anything from the Board of Investigation.

"The judge advocate replied that he can impeach this witness in any way he pleases, whether by contradictory statements in answer to oral statements, or by referring to the Board of Investigation without bringing it into the record.

"The court was cleared.

F. M "The court was opened. All parties to the trial entered and the president announced that the objection by the counsel for the accused is not sustained. It is the understanding of the court that the judge advocate is proceeding along the line of questioning for the purpose that the witness has made contradictory statements before a properly constituted Board of Investigation and that such questioning is permitted by rules of evidence, page 164, paragraph 167."

In connection with the foregoing it is important to note that at no time during the trial was the record of the board of investigation brought into evidence for the purpose of showing by reading therefrom, which is the only way in which it could properly have been shown, what testimony the witness M did actually give before said board.

An examination of the context of Section 167 Naval Courts and Boards shows that it in no way supports the above ruling which the court attempted to base upon it. On the contrary, the section in question distinctly requires that the contradictory statements of a witness be proved. It is true that reference is made to certain preliminary questioning in regard to contradictory statements but such questioning is permitted only for

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CMO 1-192
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MM(34)

the purpose of laying the foundation for furture impeaching evidence. It in no way takes the place of such evidence. As stated above no proper impeaching evidence was later introduced in this case, and the impression is created, from the reading of the above-quoted excerpt from the record th that the judge advocate's unsworn version of what the record of the board of investigation contained was accepted by the court as evidencing what such record did not actually contain. From this it would appear that the judge advocate was permitted to testify without being placed under oath and was permitted to testify in regard to a matter as to which the record of the board of investigation itself and not the testimony of the judge advocate would have been the best evidence. The proper procedure would have been for the judge advocate to have asked the witness questions in regard to the testimony previously given by him before the board of investigation and thus lay the foundation for later impeachment in the event of inconsistency; but in order to have properly brought before the court the impeaching evidence, the judge advocate should have taken the stand as the custodian of the record of the board of investigation and should have introduced such record into evidence and read therefrom the testimony with which he intended to impeach the witness.

It is not known to what extent the improper procedure commented upon above affected the court in giving or denying credence to the testimony of the witness M, but it is considered that the court's ruling in failing to sustain counsel's objection to such procedure was erroneous. It is necessary, therefore, to determine whether such erroneous ruling prejudiced the interests of the accused [P. 12] to such an extent as to invalidate the proceedings in this case; or, in other words, whether the interests of the accused were materially affected by such a ruling. On this question it is the opinion of the Department that, for reasons hereinbefore set forth in full, the credibility of the material witnesses as to facts in this case was of the utmost importance in aiding the court to arrive at its findings and that, in view of the fact that the erroneous ruling of the court now under consideration was on a point that involved the credibility of a material witness for the defense, it must be held that such error was fatal to the proceedings in this case (File 26262-10008, J. A. G., Dec. 16, 1922; G. C. M. Rec. No. 56875).

"MM(31)"

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On the fifteenth day of the trial the judge advocate again started to read this time from the proceedings of the trial of Major Furuki. Starting with question 400 that day the judge advocate brought into the record of this trial questions and answers given at that trial. We objected and particularly to question 404 wherein the judge advocate read from the Furuki trial question 171 and the answer thereto.

However the witness did answer as follows: "What I answered at that time, that is not what I answered at that time. I do not believe that was what I answered at that time of the previous trial due to the shortage of words. I feel sorry that the exact true meaning was not grasped. What I really meant was that at the end of the war I came to clearly understand that the examination and consultation procedure that was taken at that time could be called a trial. At the time of this examination and consultation I had no doubt as to whether this was a trial or not, I had no doubt as to whether this could be called a trial or not. At the time of this examination and consultation I felt no doubt whether this was a trial or not. The reason for this was because I believed that this examination and consultation procedure was a legal one and the only one possible under the battle conditions and I was under the impression that was how I had explained this. Due to the shortage in the words used, I do not remember how it was written down.

The judge advocate then read questions 167 to 173 from the Furuki trial and the answers thereto and asked the witness if he had given the answers. We again objected but were overruled. Then in question 408 the judge advocate read question 17 from the Board of Investigation. We objected but were overruled. The witness in answer to question 409 did testify however, "I remember distinctly that a regular trial was not given them, but as I remember, I remember stating that an examination and consultation was held for them by the high ranking officers."

We feel that CMO 1-1923 is directly in point and would like to again read into the record what the judge advocate general said:

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CMO 1-1923, p. 11-12.

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In a recent trial during the cross-examination of a material witness for the defense the judge advocate attempted to impeach the witness by showing that he had given testimony before a previous board of investigation to an effect contrary to his testimony before the present court. In attempting to thus impeach the witness on the stand the judge advocate was well within his rights but it so happened that he was permitted, over objection, to bring before the court in an improper manner an unverified version of what had been the witness's testimony before the above-mentioned board of investigation. The following excerpt from the record of the testimony of the witness illustrates what is meant:

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Insert: MM(31)
MM(34)

the purpose of laying the foundation for furture impeaching evidende. It in no way takes the place of such evidence. As stated above no proper impeaching evidence was later introduced in this case, and the impression is created, from the reading of the above-quoted excerpt from the record t[illegible] that the judge advocate's unsworn version of what the record of the board of investigation contained was accepted by the court as evidencing what such record did not actually contain. From this it would appear that the judge advocate was permitted to testify without being placed under oath and was permitted to testify in regard to a matter as to which the record of the board of investigation itself and not the testimony of the judge advocate would have been the best evidence. The proper procedure would have been for the judge advocate to have asked the witness questions in regard to the testimony previously given by him before the board of investigation and thus lay the foundation for later impeachment in the event of inconsistency; but in order to have properly brought before the court the impeaching evidence, the judge advocate should have taken the stand as the custodian of the record of the board of investigation and should have introduced such record into evidence and read therefrom the testimony with which he intended to impeach the witness.

It is not known to what extent the improper procedure commented upon above affected the court in giving or denying credence to the testimony of the witness M, but it is considered that the court's ruling in failing to sustain counsel's objection to such procedure was erroneous. It is necessary, therefore, to determine whether such erroneous ruling prejudiced the interests of the accused [P. 12] to such an extent as to invalidate the proceedings in this case; or, in other words, whether the interests of the accused were materially affected by such a ruling. On this question it is the opinion of the Department that, for reasons hereinbefore set forth in full, the credibility of the material witnesses as to facts in this case was of the utmost importance in aiding the court to arrive at its findings and that, in view of the fact that the erroneous ruling of the court now under consideration was on a point that involved the credibility of a material witness for the defense, it must be held that such error was fatal to the proceedings in this case (File 26262-10008, J. A. G., Dec. 16, 1922; G. C. M. Rec. No. 56875).

"MM(34)"

0181

Question 414 asked by the judge advocate that day and the answer which the accused gave should leave no doubt as to what Inoue thought about the trial given these eight natives.

"Q. 414. And when you executed the natives you knew that they did not have a trial by regular procedure. Is that correct?

"A. When I did the execution I had no questions in my mind whether this was a regular trial procedure or not. I thought this was a lawful examination and consultation procedure and believed it was right. No question arose in my mind as to whether this was a regular trial procedure or not."

This was certainly not the answer the judge advocate wanted and he quickly moved to strike the answer. The Commission however did not sustain his motion and this answer is evidence in the record.

We call the Commission's attention to the following three C.M.O.'s and read into the record at this time as part of our argument:

"Court Martial Order 1914 - 1918

"Written statements: Not admissible in evidence in substitution for testimony of witness before court.

"It was noted, in a recent general court martial case, that several statements, apparently prepared and signed by witnesses who were before the court, were offered and received in evidence. The witness in each instance while on the stand was shown a statement, asked if he had signed it, and if it were true; the statement was then offered in evidence by the judge advocate. In one instance the witness was not further question ed. These statements were recitals of what the witness knew of the case on trial. In another instance the statement was read to the witness before it was submitted to the accused or the court and opportunity afforded either to object to its use or introduction as evidence. The course thus adopted in this case was highly irregular and contrary to all recognized legal procedure and most prejudicial to the interests of the accused. The introduction of these statements, which were simply recitals of what the witnesses knew relative to the case on trial, was contrary to all recognized legal procedure and the fundamental rules of evidence. (File 26262 - 4918, G.C.M. Rec. No. 39689.)"

"Court Martial Order 237 - 1919.

"Evidence: Copy of statement of a witness as.

"In a recent trial before a military commission the judge advocate took the stand and testified that he was the legal custodian of the papers in the case and that among such papers was a copy of a statement signed by a witness which copy was then submitted to the accused and the court, and by the judge advocate offered in evidence. There being no objection it was thus received. The author of the statement was then called, and in reply to the question whether he had made a statement in reference to the murder in question testified that he had made such a statement; that he could not read or write; but if the same were read to him he could identify it. Upon its being read to him by the interpreter the witness stated that he identified it as the statement made by him; that it was a voluntary and correct statement made by him to the interpreter.

"MM 35"

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"(P. 14) The impropriety of the course pursued by the judge advocate in introducing in evidence a copy of the statement purporting to have been made by the witness who was present at the trial is self-evident. The oral testimony of the witness was the best evidence as to the subject matter which could have been procured from him, and the only evidence coming from said witness which, under the circumstances, legally could have been introduced and used against the accused. The matter contained in the copy of the statement could have been testified to by the witness in response to questions by the judge advocate, thus placing such matter in evidence and affording the accused an opportunity to cross examine the witness thereon, but the admission of the copy of a written statement cannot be considered as evidence touching upon the facts related therein. The copy of the statement in question, therefore, should not have been admitted in evidence. (File 16870 -47: 289, J.A.G.: July 24, 1919.)"

"Court Martial Order No. 6 - 1927

(P.8.) "In reviewing the record of proceedings in the general court martial case of Pay Clerk Myron A. Poole, U. S. Navy, whose trial was commenced April 6, 1927, at the U. S. Naval Operating Base, San Diego, Calif., it is noted on page 14 of the record that the judge advocate introduced in evidence over the objection of the accused a statement purporting to have been signed by one Eads, who was then a witness on the stand. The objection of the accused was not sustained and the statement was admitted in evidence, marked exhibit 6. The statement contained matter which the witness was testifying to on the stand.

"The court erred in allowing the admission in evidence of the written statement of the witness Eads, as the contents of such statement was not the best evidence obtainable. The witness was present in court and could testify as to any matter contained in the statement and therefore its contents was not the best evidence. The admission of the statement in this instance was highly irregular and contrary to all legal procedure. (See Court Martial Order 114, 1918, 30.)

"The contents of the statement mentioned above agreed in most part with the testimony of the witness Eads on the stand and therefore the only apparent reason for the introduction of the statement was for matter of evidence of the contents thereof. Had the contents of the statement contradicted the testimony of the witness, it could have been introduced for impeachment purposes, but not as evidence as to its contents. (40 Cyc., p. 2764.)

"In the case of Illinois Central Railroad Co. v. Wade (69 N.E. Reporter 565.), the court remarked as follows:

"'That the statement of a witness made out of court, orally or in writing, if contradictory on a material point to his sworn statements as a witness, may be introduced in evidence, not as substantive proof of the truth of (P.9) such statements but as tending to discredit the witness has been so frequently declared by courts and law writers, and is so universally understood and accepted, that the citation of authorities in support of the proposition is considered entirely unnecessary.'

"The error on the part of the court in allowing the admission of the written statement in evidence did not prejudice the rights of the accused inasmuch as the witness testified with but slight difference as to the contents of that statement."

"MM 36"

"On May 12, 1927, the sentence was confirmed by the President."

On the seventeenth day the judge advocate took the stand as a witness for the prosecution and "The record of proceedings of the War Crimes Investigation containing the full testimony of Inoue, Fumio on October 9, 1945 was submitted to the Commission and by the judge advocate questions three and seventeen and the answers thereto of the before-named witness was offered in evidence."

We objected to the introduction as the record shows but were over-ruled. In questioning the witness we asked if the document was a confidential document. Q. 33 on the 17th day. This question was objected to on the ground that it was irrelevant and immaterial. We feel that it is very material and cite Winthrop, Military Law and Precedents p. 330 "Evidence excluded from consideration of Public Policy. State papers, Public Documents, etc. Under this head is to be noted - first - confidential archives and "secrets of state" pertaining to the administration of the government, the disclosure of which would be prejudicial to public interest, of this kind of evidence would be the ....., reports of investigations and other official communications made in the line of duty by officers of the army or navy to their military or naval superiors, and records of advisory boards and courts of inquiry. Such papers are esteemed of so privileged a character that heads of departments or others in whose legal custody they are, cannot in general be required to furnish the same (or copies) to be produced in court, if it be determined by them not to be for the public interest that their contents should be disclosed; nor if furnished will the courts in general admit them if objected to."

The defense objected to the document as shown by the record. This was principally because it was offered into evidence when the witness who was alleged to have testified at the Board of Investigation was not on the witness stand. The prosecution also offered into evidence only questions three and seventeen instead of the entire document.

Then the judge advocate submitted to the accused and to the Commission the record of the proceedings of the Furuki trial and such portions thereof that contain the testimony of Inoue, Fumio at the trial of Major Furuki, that relate to the trials of natives on Jaluit was offered in evidence.

We objected to the trial of Furuki or any part of it being offered into evidence. Our objection is made a part of the record by a copy appended marked "CC."

The Commission admitted into evidence questions 167 to 172 from the Furuki trial. The judge advocate therefore has read into this trial testimony from a former trial which has not yet been approved and which trial is for an altogether different incident and has read into this trial at a time when the witness Inoue is no longer on the witness stand. The rule laid down in Wharton's Criminal Evidence section 638 is "Testimony taken at a trial cannot be read at a subsequent trial if the witness is obtainable."

I will not say anything regarding the prosecution witness Shintome, Sanjiro because this has been covered in the arguments of my colleagues. Suffice to say he gave no testimony regarding the read issues of this trial.

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One thing that the witness Shintome did bring out very clearly however is that any document purporting to be an admission, a confession, or statement, or answers to interrogatories made by any Japanese taken in connection with War Crimes investigations must be taken and read with a great many reservations. On the nineteenth day of the trial Shintome was asked on cross-examination question 83 "To question 21 'Were the natives given a court trial before execution?' you answered, 'I would imagine that a trial had been given the natives, as it was thought they were spies.' Is this correct?" Shintome answered as follows: "At Tokyo, I was asked concerning spies and I answered as the defense counsel has pointed out, 'I think a trial was held.' After this I was again questioned and I was told that Inui who was a paymaster Lieutenant, said there was no trial. Inui says he thinks there was none and you say you think there was. Why is this? As they were spies, it is natural that they be investigated; a trial held before they were punished, and this I presumed as common sense; I presumed this and I replied."

We ask therefore that the Commission find the accused Inoue, Fumio not guilty of Charge I.

In Charge II the prosecution have failed to prove that the crime alleged is a war crime.

We have denied the homicide and "In a murder trial, if the homicide is denied, the burden of proving the crime beyond a reasonable doubt in all its constituent elements, i.e. the corpus delicti and the malicious intent is upon the state throughout." p. 1143 Underhill's Criminal Evidence. On page 1147 we read "some states hold that mitigating circumstances require an acquittal if they raise a reasonable doubt as to the guilty of the def." citing Frank v. U.S. 42 Fed (2d) 623. Ill. People v. Durand 307 Ill. 611, People v. Duncan 315 Ill. 106, People v. Meyer 331 Ill. 608. Then we read on page 1149 "If any fact proved against him by the prosecution satisfies the jury that the killing was excusable or justifiable, they jury should acquit him" citing Walker v. State 220 Ala 544, State v. Castle 133 N.Car. 769, State v. Vacos 40 Utah 169.

Winthrop, Military Laws Precedents, pp. 296-297.

"OBEDIENCE TO ORDERS. That the act charged as an offense was done in obedience to the order - verbal or written - of a military superior, is, in general, a good defense at military law.

"The act, however, must have been duly done - must not have been either wanton or in excess of the authority or discretion conferred by the order. Thus an officer or soldier ordered to suppress a mutiny or disorder or to make an arrest, a guard ordered to keep in custody a prisoner, or a sentinel ordered to prevent persons from passing his post, will not be justified in taking life or in resorting to extreme violence, where the object of the order can be effectually accomplished by more moderate and customary means: otherwise where the forcible resistance of the party, his persistence in disregarding warnings, his sudden flight, &c., render it impracticable to seize or stop him without extreme violence or the use of a deadly weapon.

"Further the order, to constitute a defense, must be a legal one. It must emanate from a proper officer - a superior authorized to give it - and it must command a thing not in itself unlawful or prohibited by law. In other words, it must be an order which the inferior is bound to

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obey. While obedience by inferiors is the fundamental principle of the military service, it is yet required to be rendered only to a lawful order. It is "the lawful orders of the superiors appointed over them" that "all inferiors" are, by par. 1 of the Army Regulations, "required to obey strictly and to execute promptly;" and it is the "lawful command of his superior officer" which by the 21st Article of War, "any officer or soldier" may be punished even with death for disobeying. But for the inferior to assume to determine the question of the lawfulness of an order given him by a superior would of itself, as a general rule, amount to insubordination, and such an assumption carried into practice would subvert military discipline. Where the order is apparently regular and lawful on its face, he is not to go behind it to satisfy himself that his superior has proceeded with authority, but is to obey it according to its terms, the only exceptions recognized to the rule of obedience being cases of orders so manifestly beyond the legal power or discretion of the commander as to admit of no rational doubt of their unlawfulness. Such would be a command to violate a specific law of the land or an established custom or written law of the military service, or arbitrary command imposing an obligation not justified by law or usage, or a command imposing to do a thing wholly irregular and improper given by a superior when incapacitated by intoxication or otherwise to perform his duty.

"Except in such instances of palpable irregularity, which must be of rare occurrence the inferior should presume that the order was lawful and authorized and obey it accordingly, and in obeying it he can scarcely fail to be held justified by a military court.

"It may be added that an order which might not be regarded as legal in time of peace, may furnish to the inferior obeying it a complete defense in time of war, as being warranted by the laws and usages of war. This point, as also this title in general, will be illustrated in treating of the civil amenability of military persons in Part III."

My associates, Mr. Akimoto, Yuichiro, and Mr. Suzuki, Saizo, have both shown that there is neither jurisdiction to try Captain Inoue nor is the crime alleged in Charge I in violation of effective law especially Article 199 of the Criminal Code of Japan.

Section D-13, Appendix D, Naval Courts and Boards, states "These exceptional military courts unlike the court-martial, derive their sanction from the laws of war and not from the enactments of Congress." Our question then is, what are the laws of war that give sanction to this court to try the accused Captain Inoue, for an offense said to be in violation of Article 199 of the Criminal Code of Japan and second for the same identical offense but described under Charge II as punishing as spies by killing native inhabitants of the Marshall Islands, "this in violation of the laws and customs of war."

We objected to all specifications under Charge II because the specific laws and customs of war were not set forth verbatim as required by section 27, Naval Courts and Boards. We are still not sure what the laws and customs of war are that the accused Captain Inoue violated when he was ordered by the Atoll Commander, Admiral Masuda, to carry out his duties as a judge advocate and to execute by shooting the native inhabitants guilty of criminal acts in the face of the enemy.

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Section 333, Naval Courts and Boards, states that "under the laws of war and the provisions of the Geneva (Prisoners of War) Convention of 1929, prisoners of war are subject to the jurisdiction of a naval court martial." Article 45, Prisoners of War, Geneva (Prisoners of War) Convention of 27 July 1929 reads as follows: "Prisoners of war shall be subject to the laws; regulations, and orders in force in the armies of the detaining power." /Reference to section 333 NC&B is apparent misquote./

We hold, however, that this does not give this commission jurisdiction to try a Japanese national for an alleged crime committed on Japanese sovereign soil against native inhabitants of this same area over which Japan ruled supreme, and during a war, and at a time when the island atoll of Jaluit was a besieged area. It certainly can confer no jurisdiction on this Commission to try the accused, Captain Inoue, for a violation of a Japanese Law, Article 199 of the Criminal Code of Japan.

Under Charge II it is alleged that the native inhabitants were punished as spies. The judge advocate has failed to prove that any of the eight victims were spies. We however feel that we have proved that all eight natives were spies and were punished as such.

Section 154 Naval Courts and Boards states: "Burden of proof. The law presumes every man innocent of crime. The prosecution has in each case the burden of overcoming this presumption. The accused's guilt must be established by substantive proof. By the plea of not guilty, every element of the crime specified is debated, and the prosecution must affirmatively prove it, even though it be a matter of negative averment in the specification, proof of which is peculiarly within the knowledge of the accused. The burden of proof never shifts to the accused. It is immaterial that the accused sets up a defense by way of justification or excuse, as insanity, or an alibi."

This is so fundamental that it seems unnecessary to remind the commission. However, since it was alleged that the victims were punished as spies, then it must be proved by the prosecution. Chapter 2, Laws and Customs of War on Land, Hague Convention IV of 1907, Annex to the Convention, Chapter II, Spies, Article 29 reads:

"A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party." Since the prosecution alleged that Captain Inoue punished the natives as spies, the prosecution must prove that allegation. The definition of a spy as found on pages 766-767 Winthrop's Military Law and Precedents is in point. We quote in part only: "But to be charged with the offense of the spy, it is not essential that the accused be a member of the army of resident of the country of the enemy; he may be a citizen or even a soldier of the nation or people against whom he offends, and, at the time of the offense legally within their lines."

The commission is reminded that Article 4, United States Navy Regulations, 1920, provides: "The punishment of death, or such other punishment as a court-martial may adjudge may be inflicted on any person in the naval service:

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(1) Who makes or attempts to make, or unites with any mutiny or mutinous assembly, or being witness to or present at any mutinous assembly, or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;
(2) Or disobeys the lawful orders of his superior officer;
(3) Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;
(4) Or gives any intelligence to, or holds or entertains any intercourse with an enemy or rebel without leave from the President, the Secretary of the Navy, the Commander in Chief of the fleet, the commander of the squadron, or in case of a vessel acting singly, from his commanding officer;
(6) Or in time of war, deserts or entices others to desert;
(7) Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust."

Article 5 reads: "All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge." (R.S., sec. 1624, art. 5.)

We note that the United States laws provide death as the penalty for the above offenses in the discretion of the court. But these are United States laws you say and the accused is a Japanese Army officer who punished Japanese subjects for crimes committed against Japan in the face of the enemy.

Article 20, Part II of the Japanese Criminal Law provides "Those who have formed a clique and have been in arms engaged in rebellion shall be condemned as follows:
1. The leader shall be condemned to death.
2. Those who have been engaged in the plan or led a crowd shall be condemned to death, or to life term or above five years servitude or confinement."

Article 21. "Those who have with the purpose of starting rebellion formed a clique and stolen arms, ammunition and other munitions shall be condemned according to the previous article."

Article 22. "Those who have done the following action shall be condemned to death.....
2. To spy for the benefit of the enemy or help the enemy's spy.
3. To give the naval secret to the enemy....."

Article 23. "Those who have done the following action for the benefit of the enemy shall be condemned to death.....
6. To inform or make false orders, information or reports.
7. To spread false information or to make uproars in the face of the enemy."

Article 24. "Those who have given naval facilities to the enemy or injured the Japanese Navy with ways other than those stated in the foregoing two articles shall be condemned to death, or life term or above five years imprisonment."

Article 25. "Those who have done the action of the above three articles for the benefit of those who have raised rebellion or civil war shall be condemned to death, or life term or above three years imprisonment or confinement."

Article 25. "The attempted crimes of the above six articles shall be punished."

That is the pertinent Japanese Naval Criminal Law. Article 17 of that same law protects persons who enforce the law because it provides:

"Article 17. The action which has been done in order to quell the people who used violence or to keep naval discipline in the face of the enemy or when the ship is in danger, shall not be punished."

The prosecution have failed to show in a single instance any provisions in The Hague Convention, the Geneva Prisoners of War Convention, or the Geneva Red Cross Convention which provides punishment by a victorious belligerent over an individual of the vanquished power for the action he took in order to quell the people who used violence in the face of the enemy or carried out the orders of his superior under such circumstances.

Since the prosecution charge violation of the laws and customs of war it is incumbent upon them to state this law and to cite cases.

During the First World War, Germany confiscated French and Belgian machinery. Actions for the receipt of stolen goods were instituted against Rhenish entrepreneurs who were in possession of the machines. The most sensational case that of Robert and Hermann Röchling, leading industrialists of the Saar Basin, were indicted for having transferred 8,000 tons of machines and materials from French factories to their own enterprise.

Reading from Ernst Fraenkel's book, "Military Occupation and the Rule of Law" page 59, Prosecution of War Criminals:

"Robert's defense, that he had acted on command of superior authorities, was rejected by the French military tribunal in Amiens which tried the case (Journal du droit international, 1921, vol. 48, pp. 363-363). The looting of foreign factories for one's own benefit was considered to be punishable, even if it had been done on the command of superiors; the Röshling brothers were considered to have acted not as soldiers but as industrialists. It is worth emphasizing, however, that in a total war, where there is no clear line of demarcation between military and industrialist activities, any distinction between non-military persons and soldiers, in regard to the recognition granted the respondeat superior defense may lead to very arbitrary results. Robert and Hermann Röchling, the latter in absentia were sentenced to ten years imprisonment and a fine of ten million francs (Grimm, pp. 58ff.) but the decision of the Amiens court was revised, on appeal, by the superior military tribunal in Nancy. The reversal, according to the French writer (Cardoux, p. 459), 'was motivated by the fact that the responsibility for the incriminating acts - however verified and vile these were - rested on the German authorities whose orders were executed by brothers as officers.'

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"Almost all the leading Rhenish industrialists were in danger of criminal prosecution for possession of French or Belgian machinery and aftersevwrl others had been arrested, the German government asked R. von Hippel, the Gottingen professor of international law, to prepare a memorandum on the legality of the German measures and of the arrest of German managers for the purchase of such machines. Von Hippel (whose memorandum was published in 1920 in Niemeyers Zeitschrift Für internationales Recht, vol. 28, pp. 183-206.) Contended that the German military authorities had exercised the right of eminent domain in the occupied Belgian and French territories, with respect to all property that they considered essential for the pursuit of the war. He admitted that no exception had yet been recognized to the rule of international law according to which the private property of the residents of an occupied territory should be protected. He maintained, however, that such protection should be granted only under the same reservations that The Hague Convention (Article 23g) stipulates in regard to private property in an area of actual fighting, since urgent necessities justify infringements of property rights in an occupied as well as in a fighting zone. This principle, he said, was particularly applicable to the German confiscation of Belgian and French machines, because Germany under the British blockade was in a 'state of distress' (Notstand), and was entitled to take all measures necessary to overcome it. Von Hippel concluded this section of his memorandum with the words (p. 94) that such procedures as those against German industrialists, 'which may prove basic significance in the future, can hardly be reconciled with the true French interests. France would implicitly deny that in case of war, recognition would be granted to a right of distress, aimed at the preservation of (the nation's) existence, and thus would create a precedent which might be applicable to herself in the event of a future war.' At the time this memorandum was presented to the victors of the war, the peace treaty had not yet been signed.

"From the point of view of criminal law, von Hippel denied that the French had jurisdiction in regard to crimes committed by Germans in Germany, even if French interests were violated. (Cf. the Cutting case, in which the government of the United States denied the rights of the Mexican Government to punish an American citizen for having insulted a Mexican citizen on American soil (Moore Digest, vol. 2, p. 233). This contention raised the question of evidence, which was almost as difficult in the confiscation cases as in the more general war-criminal cases, though for quite different reasons. The military authorities in the Rhineland followed the principle that possession of such machines was sufficient to subject the holder to the suspicion that he had violated the criminal provisions on receiving stolen goods. But if the defendant declared that he had bought the machines on German territory, it was almost impossible for the prosecuting government to refute his statement. And Von Hippel had a strong argument in his favor when he said that the French had no jurisdiction in criminal cases of this kind if the crime was committed in Germany. Neither French nor German law permits the prosecution of a foreign subject for a crime violating individual rights of nationals if the crime was committed on foreign territory - though both permit such prosecutions if the crime was an attack on the security of the state. In an article on the German confiscations, published in 1919, Hast explicitly stated ('Les sanctions penales.....' pp. 120, 127) that criminal prosecution for the purchase of stolen goods was out of the question if the goods had been acquired on German territory. Actually, all evidence difficulties concerning the Rhenish industrialists could have been overcome by applying the maxim <u>res ipsa loquitur</u>, but this was impossible so long as the 'territorial' principle was adhered to.

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"In a conference in Brussels, on 23 March 1919, the Industrial Sub-Committee of the Inter-Allied Armistice Commission decided to abstain from further criminal prosecution of Germans who had benefited from the looting of Belgian and French factories, provided that Germany enacted a statute permitting the return of the material. Such a statute was enacted on 28 March (Reichsgesetzblatt, 1919, p. 349), and thereafter, in accordance with orders of Marshall Foch, proceedings were instituted only against persons who had not declared or had destroyed the confiscated material (Nast, 'L' occupation.....' p. 157; Der Waffenstillstand, vol. 3, pp. 99-103; vol 2, pp. 265-331.) The material returned to Belgium and France during the armistice period alone amounted to 164,000 tons, with a value of 135,000,000 gold marks (Der Waffenstillstand, vol 2, p. 331.) The delicacy of the whole problem is indicated in the fact that on several occasions German workers threatened to demolish the machines rather than see them removed (Hunt, p. 233.)

"The Brussels decision represented a German victory in the war criminal question. The available sources do not reveal whether the occupying powers were unable or unwilling to overcome the legalistic objections that were used as justification for the gesture of conciliation. Shortly afterward, the occupation authorities extended their lenient attitude from the criminal to the administrative side of the looted-machinery problem. On the ground that many of these machines were in the hands of 'virtually innocent purchasers' they decided to apply 'business arrangements' rather than arbitrary 'methods to the question of retransfer' (Allen, Occupation, p. 67.)

"Although the Reich was compelled to return the confiscated machines to Belgium and France, the Germans clung to the theory that because of German 'distress' during the war, the confiscations had been lawful. This principle was adopted by the German supreme court in a civil case decided on 1 November 1922 (105 RGZ 326; Annual Digest, 1919-22, case 296, p. 427.) The court declared that the requisition although contrary to the Hague Convention, was lawful, for 'it is a principle which is recognized in international law, and which must be applied also to the Hague Convention, that a states right to self-preservation is superior to all obligations undertaken in treaties, and that in case of necessity, a state may depart from and go beyond the provisions of the Hague Convention.' Thus the Reichsgericht, four years after the end of hostilities, repeated the principle which Germany had used during the war as justification for her violation of Belgian neutrality and for many other violations of international law. This principle, contained in the German Manual of War, 'when carried out to its logical conclusion leads to the absolute supremacy of strategical interests as expressed in the ancient maxim, '<u>Omnia licere quæ necessaria ad finem belli</u>' (Garner, German War Code.....p. 11.)"
Ernest Frenkel, Military Occupation and the Rule of Law, pp. 59-63.

The prosecution have also failed to show wherein these conventions provide courts of punishments for individuals who violate the laws and customs of war.

The prosecution allege that the accused violated the laws and customs of war. We pointed out that Article 2, Chapter 2, Laws and Customs of War on Land, Hague Convention No. IV of October 1907, provides that the provisions do not apply in the case. Article 1 reads:

"The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention."

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Article 2.

"The provisions contained in the Regulations referred to in Article 1, as well as in the present convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."

Since neither Italy or Bulgaria ratified this 1907 Convention, Japan as a Contracting Power is not bound and certainly the accused Captain Inoue cannot be bound by this Convention.

As to the Geneva Prisoners of War Convention of 27 July 1929, Japan did not even ratify this convention or did she formally adhere to this Prisoners of War Convention. Even though Japan did through the Swiss Government agree to apply the provisions thereof to prisoners of war under its control, and also so far as practicable, to interned civilians. (See Foreword to War Department Technical Manual TM 27-25, "Treaties Governing Land Warfare.") This makes no difference legally.

On the other hand we have the distinguished author and professor at Harvard Law School who says in his book "War Criminals and Their Prosecution and Punishment" pp. 14-15.

"In our day and age, one major aim of the administration of justice in international affairs is to demonstrate beyond doubt that lawlessness, whether indulged in by Heads of States, members of military general staff, members of political cliques, or persons of lesser status, entails prosecution and punishment."

This Military Commission must decide if the offense charged is a war crime. There can be no doubt, that, only if the offenses charged is a war crime is there jurisdiction to try the accused, Captain Inoue. In Section D-13, Appendix D, Naval Courts and Boards, we read: "These exceptional military courts, unlike the court-martial, derive their sanction from the laws of war.

It is incumbent upon the judge advocate to define a war crime. He has not done so during the trial, or has he proved that the crime alleged is a war crime. All that he has done so far is to show by an admission of the accused (to which we objected), introduced into evidence, that the accused admitted that he executed the native inhabitants by reason of his duty as judge advocate and by orders of his superior, Admiral Masuda.

In paragraph 347 of the Rules of Land Warfare, we find the following statement: "Individuals of the armed forces will not be punished for these offenses /violations of the customs and laws of war/ in case they are committed under the orders or sanction of their government commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

Under this rule, the ordinary soldier is excused, but his commander or government is liable. Captain Inoue is the ordinary soldier; Admiral Masuda was the commander.

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You have seen Captain Inoue since the trial started April 23, 1947, and you have heard his testimony. All the circumstances justify any acts which he may have admitted during those awful days when we Americans were making a living hell of Jaluit.

Everyone has testified as to the loyalty of the natives on Jaluit to Japan, but the Americans had a way to break down the most loyal natives. The Americans bombed Jaluit continuously, food was scarce, starvation imminent, and ammunition and guns pitifully inadequate. The Japanese garrison on Jaluit was indeed in a state of distress. Then occurred the native incidents, the subject of this criminal case. How did the garrison on Jaluit handle them? It was all tied up in the problem of the right of self-preservation. There is such a principle as the absolute supremacy of strategical interests. Witnesses have testified that the Jaluit Commander tried to handle the situation the best way possible.

We have heard of the long and thorough investigations, the impossibility of a regular trial, but the holding of the best trial possible.

What is meant by a trial? Bouvier says: "Trial is Practice. The examination before a competent tribunal according to the laws of the land of the facts, put in issue in a cause, for the purpose of determining such issue." U.S. v. Curtis, 4 Mass 232, Fed Cas. No. 14905, p. 3320, Bouvier's Law Dictionary, vol. 2.

Historically trial has meant many different things. There was the trial by ordeal. Bouvier tells of trial by Wager of Battle.

We hold that the evidence shows that these spies were investigated, there was a trial procedure, the best under the exigencies of the circumstances, and the eight natives found guilty as spies and sentenced to death by shooting.

Winthrop says on page 769:

"A spy under capture, is not treated as a prisoner of war but as an outlaw, and is to be tried and punished as such. Under the law of nations and of war, his offense is an exclusively military one, cognizable only by military tribunals.....It has always been legal however, and would still be so in time of war notwithstanding the statute, to proceed summarily without trial against spies, and in some of our earlier cases - that of Andre, for example - the investigation was had, not by a court-martial, but by a court of inquiry or board ordered for the purpose upon whose report, if to the effect that the accused was found to be a spy, the death penalty was presently executed.

So all the things which we said about Charge I apply equally to Charge II because it is the same offense but in Charge II it is said to be in violation of the laws and customs of war and in Charge I it is called murder.

We hold that Inoue had a complete defense, superior orders. In time of war under the circumstances it is a complete defense. All the things that Winthrop said about obedience to orders being a defense, a complete defense is true in this case.

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Inoue certainly did not have the power and the authority to prevent the execution of these eight natives who had been investigated, had been tried under a procedure as was warranted by the exigencies of the circumstances, found guilty as spies and of having committed other crimes, had been sentenced to death by shooting.

Inoue testified as we have pointed out that he firmly believed the eight natives had been given a sufficient trial, and that he believed the order to execute these natives was legal and right and that he was under solemn duty to obey the order.

We read from the booklet, "What Shall be done with the War Criminals", EM 11 - G - 1 Roundtable:

"One of the most difficult problems to be faced in trying war criminals is that of determining the guilt of men who claim that they were operating under orders of their superior that they did not commit offenses of their own free will.

"You will find in paragraph 347 of the Rules of Land Warfare the following statement: "Individuals of the armed forces will not be punished for these offenses (violations of the customs and laws of war) in case they are committed under the orders or sanction of their government or commander. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops may be punished by the belligerent into whose hands they may fall."

Notice that under this rule the ordinary soldier is excused but his commander or government is liable.

The question is being raised whether the rule as to superior orders should not be changed. It should be noted that it did not enter the American Rules until 1914. Before that the rules failed to mention "superior orders" and American courts martial upheld the principle that a soldier obeying his commander's order is not protected if the order is unlawful.

We again cite what was said in C.M.O. 4-1935:

"Had there been specific orders to fire in this case the general rule laid down in United States v. Clark, 31 Fed. 710, would apply, this rule being that a homicide would be excusable if committed by a military guard, without malice, and in the performance of his supposed duty as a soldier, unless it was manifestly beyond the scope of his authority, or was such that a man of ordinary sense and understanding would know that it was illegal. See also In re Fair, 100 Fed 149.

"Commenting on this same point, namely, the extent to which a military guard is protected by his orders, the court in McCall v. McDowell, 1 Abb. 212, 15 Fed. Cas. No. 8673, said:

'Between an order plainly legal and one palpably otherwise..... there is a wide middle ground, where the ultimate legality and propriety of orders depends or may depend upon circumstances and conditions, of which it cannot be expected that the inferior is informed or advised. In such cases, justice to the subordinate demands, and the necessities and efficiency of the public service require, that the order of the superior should protect the inferior; leaving the responsibility where it properly belongs - upon the officer who gave the command.'

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"That the wilful killing of a soldier by a military guard on duty is not necessarily a justifiable homicide is illustrated by the case of United States v. Carr, 1 Woods 480, 25 Fed. Cas. No. 14732, but regarding the responsibility of such a guard and his duty to carry out orders, the court in McCall v. McDowell, supra, went on to say:

'The first duty of a soldier is obedience and without this there can be neither discipline nor efficiency in the Army. If every subordinate officer and soldier were at liberty to question the legality of the orders of the commander, and obey them or not as he may consider them valid or invalid, the camp would be turned into a debating school, where the precious moment for action would be wasted in wordy conflict between the advocates of conflicting opinions.'

"See in this connection Digest J. A. G. Army opinions 1895, pp. 486 and 487; Manley v. State, 62 Tex. Cr. R. 392, 137 S. W. 1137; (P.16) and United States v. Lipsett, 156 Fed. 65. See also C.M.O. 37, 1915, in which many of the above citations appear.

"The weight of authority is to the effect that due to the difference in legal relationship of the parties, the standard set by the civil courts should not be followed by military authorities much less be binding upon them. The following remarks appear in the opinion of the court in United States v. Clark, supra:

'It would be extremely unwise for the civil courts to lay down general principles of law which would tend to impair the efficiency of the military arm, or which would seem to justify or condone conduct prejudicial to good order and military discipline. An army is a necessity - perhaps I ought to say an unfortunate necessity - under every system of government, and no civilized state in modern times has been able to dispense with one. To insure efficiency, an army must be, to a certain extent, a despotism. Each officer, from the general to the corporal, is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army waives, in some particulars his rights as a civilian, surrenders his personal liberty during the term of his enlistment, and consents to come and go at the will of his superior officers. He agrees to become amenable to the military courts, to be disciplined for offenses unknown to the civil law, to relinquish his right of trial by jury, and to receive punishments which, to the civilian, seem out of all proportion to the magnitude of the offense."

In quoting the above [illegible], the court In re Fair, supra, said:

'The wisdom, expediency, or justness of the military laws, rules, and regulations adopted and prescribed by the United States are no concern of the state. The proper endorsement of such laws, rules, and regulations cannot be measured and determined by state laws.'"

See sec. 1C28, NCB, 1923; File: MM-Snivey, Howard A./A17-25 (350304), April 8, 1935, approved April 26,1935.

Lest we forget may we remind the commission how important corpus delicti is and how the body of the victim should generally be produced. The eight natives from Mille confessed to the murder of Tanaka. Now after two years we find out that Tanaka escaped death and is still alive. Yet the Japanese garrison on Jaluit took the confession of these eight natives that they had killed Tanaka and among the other crimes such as spying, stealing food intended for the military and stealing military boats, they also found them guilty of murder.

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Murder is an ugly word. The accused, Captain Inoue is charged with murder. You have observed the accused as he sat in court day after day, and you heard him on the witness stand. He testified as to his utter lack of criminal intent. In all criminal cases there must be a criminal intent. This is the most important thing in a criminal case. The commission must find out what the state of the mind of the accused was at the time he committed the offense.

We again remind you what the accused Captain Inoue said on cross-examination by the judge advocate: "Q. 414. And when you executed the natives you know that they did not have a trial by regular procedure. Is that correct?" Answer: "When I did the execution I had no questions in my mind whether this was a regular trial procedure or not. I thought this was a lawful examination and consultation procedure and believed it was right. No question arose in my mind as to whether this was a regular procedure or not."

The prosecution witness, Fukatsu, Tadashi; Wakamatsu, Minori, and Jinno, Shigeru, all testified as to what Captain Inoue said, how he looked and acted prior to the time of the execution and immediately thereafter. You remember well how the accused honestly admitted the acts which he did. You remember the testimony of all witnesses, prosecution and defense, to the effect that Inoue is not a man who would commit murder. All had only words of praise for this honest and upright man, a soldier it is true, but a soldier who was called into service from his civilian occupation.

We ask only justice for him, justice as we in America know it, and which Mr. Justice Rutledge in the dissenting opinion in the General Yomoyuki Yamashita Petitioner case said:

"But there can be and should be justice administered according to law. In this stage of war's aftermath, it is too early for Lincoln's great spirit, best lighted in the Second Inaugural, to have wide hold for the treatment of foes. It is not too early, it is never too early, for the nation steadfastly to follow its great constitutional traditions, none older or more universally protective against unbridled power than due process of law in the trial and punishment of men, that is of all men, whether citizens, aliens, enemies, or enemy belligerents. It can become too late.

"This long-held attachment marks the great divide between our enemies and ourselves..... Every departure weakens the tradition whether it touches the high or the low, the powerful or the weak, the triumphant or the conquered. If we need not or cannot be magnanimous, we can keep our own law on the plane from which it has not descended hitherto and to which the defeated foes never rose."

The accused, Captain Inoue, Fumio, Imperial Japanese Army, is charged with murder in Charge I and with the violation of the law and customs of war in Charge II.

Section 158, Naval Courts states a fundamental rule: If there is a reasonable doubt as to the guilt of the accused, he must be acquitted.

We ask the commission therefore, to find as to the accused, Captain Inoue, Fumio, specifications one and two of Charge I not proved, and the accused is of the charge of murder not guilty and the commission does therefore acquit the said Captain Inoue, Fumio, of the specifications and of the charge of murder and to find as to the accused, Captain

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Inoue, Fumio, specifications one and two of Charge II not proved and the accused is of the charge of Violation of the Law and Customs of War, not guilty, and the commission does therefore acquit the said Captain Inoue, Fumio of the specifications and of the charge of Violations of the Law and Customs of War.

Respectfully,

Martin Emilius Carlson

MARTIN EMILIUS CARLSON,
Commander, U. S. Naval Reserve.

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CLOSING ARGUMENT FOR THE PROSECUTION

delivered by

Lieutenant David Bolton, U. S. Navy.

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CLOSING ARGUMENT FOR THE PROSECUTION
delivered by
Lieutenant David Bolton, U. S. Navy.

Part I. A. INTRODUCTION.

The road and the hope of civilization is man's continued struggle against chaos and crime. The function of criminal law in this struggle is the vigilant, stern, quick application of preventive, corrective and deterrent measures to control these individuals who disregard or destroy the rights and lives of others. The true focus of criminal law is not the past, but the future. It is concerned not with moral vengeance for a crime committed, but rather with the intimidation, reform or incapacitation of the criminal and the deterrence of others. This commission is a vital instrument of that law and justice. It sits as a tribunal with international and local function, dedicated to the principle of humanity, assuring the accused of an impartial and fair trial, and assuring society that if after such trial he is found guilty he will be convicted and appropriately sentenced.

While Charge I - Murder constitutes essentially a local crime, and Charge II - Violation of the Laws and Customs of War, constitutes an international crime, the problems which this Commission faces are basicly the same. The facts and the law must be ascertained. The accused if guilty must be convicted and punished. It is your function to safeguard and protect organized civilized society. It is your stern duty to exercise the vital power of deterrence so that others who may "be drunk with the consciousness of overwhelming power" or faced with the "exigencies of the moment" will stop and think.

B. MISCELLANEOUS DEFENSE ARGUMENTS.

There are certain defense arguments which because they have already been fully considered by the Commission after thorough argument, do not merit further serious consideration by the Commission at this time, and I will briefly dispose of them before entering the main issues now properly before the Commission.

1. Rulings on Evidence.

The defense counsel Commander Carlson in his argument has spent valuable time in a redundant discussion of the admission of certain statements made in the Furuki trial, and made before the War Crimes Investigation. The statements were carefully limited to prior contradictory statements. Defense were given every opportunity to attempt to establish that these prior statements were not in fact contradictory to the testimony of the accused. It is unnecessary to do more than note that Commander Carlson in the very argument he has given cites rulings indicating that it is proper to use prior statements for purposes of contradiction or impeachment. The matter has been thoroughly discussed, carefully considered and definitely ruled upon. Further discussion is meaningless.

The voluntary confession of the accused - no part of whose contents have been denied by the accused, and which in fact has been used by accused and defense counsel in their effort to establish a defense - was properly introduced and correctly admitted into evidence.

Even the most cursory examination of the record reveals that this Commission in its rulings on evidence has given the accused every opportunity to attempt to establish a defense. How far they deviated from the normal rules of evidence in favor of the accused is illustrated by the alleged conversation of Admiral Masuda and Commander McKinson. The Commission denied the motion by judge advocate to strike from the record the answer of the witness Ingus which contains

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clearly objectionable matter in the form of an alleged conversation between the deceased Admiral Masuda, and an alleged officer of the U. S. Navy, a Commander Mc Kinson. The Commission in denying the judge advocate's motion stated that it would give the answer its proper weight. It is clear that no weight should be given to such remote hearsay.

The defense was trying to prove that the accused Inoue had an innocent motive and did not have a sense of guilt. To prove this they used as indicated by Mr. Suzuki, a statement allegedly made by Masuda when after the investigation he called the officers of Jaluit together and reported that he had reported to McKinson that "by the authority vested in him, he had executed the natives etc." So we have the witness Inoue testifying as to what Admiral Masuda said, that he Masuda had said to McKinson. The defense offered this testimonial evidence; it was accepted; and the defense have used it in their arguments.

No the accused has no grounds on which he can legitimately claim that he has been prejudiced by the rulings of the court with regard to admission of evidence.

2. Punishment of Individuals for violation of International Law.

As to Charge II, defense have argued that an individual cannot be punished for international or war crimes, such as violation of the Hague Convention. This contention has previously been answered at length, and the Commission is well aware of the fact that our domestic courts, as evidenced by the Pennsylvania decision in Respublica v De Longchamps, foreign courts, as evidenced by the German Llandovery Castle Case, and international courts, as evidenced by the Nuremberg and other War Crimes decisions, have all unequivocally held that individuals are subject to international law and are criminally punishable for violation of the laws and customs of war.

3. Charges and Specifications:

Mr. Suzuki has argued that there are errors in the charges and specifications. This entire subject was thoroughly and exhaustively argued before the Commission earlier in this case. The Commission after careful consideration rejected the specious argument of defense. Charge I is clearly laid under effective local law - the Japanese local law - and the specific statutory provision is cited in the specifications. Charge II clearly charges violation of the laws and customs of war, and the specifications establish that the crime charged is the wilful, unlawful punishment of the natives as spies, without previous trial. Clearly the charges and specifications under Charges I and II, fairly apprise the accused of the acts and crimes with which he is charged.

4. Jurisdiction.

The Commission has previously heard extended arguments on the subject of jurisdiction, and has correctly, and unequivocally rejected the misleading and fallacious arguments of defense. The defense have added nothing to their previous arguments, they continue to cite generalized concepts of law, completely inapplicable to the present case, and still fail to cite a single case which relates to the condition of military occupancy and denies the right of the military occupant to exercise jurisdiction in the occupied area over crimes committed within that area. The defense fails to cite any case denying this power, because they have been unable to find any such case. It is necessary in rebuttal merely to refer the commission to the previous argument of the judge advocate with regard to jurisdiction and to reiterate that jurisdiction over the instant case is firmly recognized under established principles of international law authorizing such jurisdiction under the power of military occupancy, as well as the related concept of quasi-sovereignty which similarly empowers the armed forces of the United States under current conditions, as the military occupant, to try the accused criminal Inoue by military commission for the crimes charged.

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PART II - THE LAW AND THE FACTS ESTABLISH THE GUILT OF THE ACCUSED.

Whether the acts of the accused Captain Inoue constitute a crime depends upon both the law and the facts. The defense counsel and the judge advocate are in considerable disagreement not only as to the facts and their proper interpretation, but also as to certain questions of law - and it therefore becomes the task of this Commission to resolve both problems. The Commission must determine what the law is, and then in accordance with that law must determine whether the facts establish the guilt of the accused beyond a reasonable doubt.

A. REASONABLE DOUBT.

The law requires that the accused must be proven guilty beyond a reasonable doubt. This requirement is set forth at length in Naval Courts and Boards, Sections 158 and 159. In part, these sections state:

"It is not necessary that each particular fact advanced by the prosecution should be proved beyond a reasonable doubt; it is sufficient to warrant conviction if, on the whole evidence, the court is satisfied beyond such doubt that the accused is guilty..... By reasonable doubt, is meant an honest, substantial misgiving generated by insufficiency of proof. It is not a captious doubt, not a doubt suggested by the ingenuity of counsel or court and unwarranted by the testimony, nor is it a doubt born of a merciful inclination to permit the accused to escape conviction nor prompted by sympathy for him or those connected with him....."

The accused INOUE, Fumio, Captain, Imperial Japanese Army, is charged in four specifications with two crimes: Charge I, Murder, Charge II, Violation of the Laws and Customs of War. The evidence clearly establishes the guilty of the accused as to all Charges and Specifications, beyond a reasonable doubt.

B. CHARGE I - MURDER.

Charge I in two specifications charges the accused with murder. It has been proved and thereafter the accused Captain Inoue admitted that on Jaluit Atoll, Marshall Islands he killed eight unarmed natives. There is no question that the accused intended to kill the natives. He took them to the place of execution with the intention of killing them, and after they arrived at the place he did kill them. The defense have not sought to deny this. They deny however that this constituted a crime. Their denial consists of the contention that the accused did not have the requisite criminal intent, that the killing was done pursuant to superior orders, and that the killing itself was not illegal but was the result of proper trial under the circumstances.

The Commission must determine whether under the circumstances of the instant case, the intentional killing of eight human beings constitutes murder.

The specifications of Charge I in addition to applying the broad language of the homicide provision of the Japanese Criminal Code, utilize the phraseology commonly employed in charging murder in American courts. Upon analysis of these historical legal terms according to their technical usage it is readily demonstrated that in the instant case, the words "wilfully, premeditation, malice aforethought, feloniously, and without justifiable cause", like the corresponding concepts of the Japanese law, require only that the killings be proved to be intentional and "without legal justification or legal excuse."

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1. American Statutory and common law terms.

a. Murder.

Since Inoue intended to kill the natives, it is clear that this is not a case of involuntary manslaughter, for in such homicide the killing must be accidental. Similarly this is not a case of voluntary manslaughter, for, as it is described in Naval Courts and Boards, Section 119, "Voluntary manslaughter is distinguished from murder by the fact that it is committed not with malice aforethought, express or implied, but in the heat of passion or heat of blood caused by reasonable provocation." It follows therefore, that where the killing is intended (which is all that malice aforethought means) there can be no manslaughter and the killing must be either murder or legally justifiable or excusable.

Naval Courts and Boards, section 53, defines Murder, as "The unlawful killing of a human being with malice aforethought..... 'unlawful" means without legal justification or excuse. Malice does not necessarily mean hatred or personal ill-will toward the person killed, nor an actual intent to take his life, or even to take anyone's life. The use of the word 'aforethought' does not mean that the malice must exist for any particular time before commission of the act, or that the intention to kill must have previously existed. It is sufficient that it exist at the time the act is committed."

Specifications 1 and 2 of Charge I, allege that Inoue wilfully with premeditation and malice aforethought, feloniously and without justifiable cause, killed eight unarmed natives.

A layman approaching the law of homicide for the first time, may well wonder at the peculiar phrasing and technical wording of these specifications of murder. While some of the words used in the specification have an everyday meaning and usage, their legal meaning is special and technical. It must be remembered that these terms are historical concepts which arose in order to make certain differentiations between the punishments allowed by the law for the different degrees of the crime of homicide.

Whenever non-lawyers have been confronted with these terms, confusion occurs. American Jurisprudence, 26, 528, citing State v. McGuire, 84 Conn. 470, 80 A. 761, 38 LRA(NS) 1045 and ANNO: 38 LRA(NS) 1064, in discussing malice states:

".....Indeed, it has been observed by high authority that it is practically impossible so to define and explain the term 'malice' as to bring it within the comprehension of the average juror, and it is said to be the better practice for the trial judge in charging the jury not to attempt a definition of malice, but to say, rather, that if the jurors find the fact of death and that it was accomplished by the defendant without legal justification or excuse and without circumstances of extenuation, then the crime proved is murder."

Why the law continues to use these archaic and confusing terms is difficult to explain. Perhaps as Cardozo implies, certain of the terms were designed to give the jury the opportunity to find the lesser degree of murder and thus forestall the imposition of the death sentence. In discussing the standard of premeditation, used in New York in distinguishing first degree murder from second degree murder, Cardozo "What Medicine Can Do for Law," pp. 100-101 states:

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"What we have is merely a privilege offered to the jury to find the lesser degree when the suddenness of the intent, the vehemance of the passion, seems to call irresistably for the exercise of mercy. I have no objection to giving them this dispensing power, but it should be given to them directly and not in a mystifying cloud of words. The present distinction is so obscure that no jury hearing it for the first time can fairly be expected to assimilate and understand it. I am not at all sure that I understand it myself after trying to apply it for many years and after diligent study of what has been written in the books."

The terms wilfully, with premeditation and malice aforethought, feloniously, and without justifiable cause, are all legal terms, terms of art whose applied meaning must be ascertained by consulting legal authorities and case precedent. Let us examine these terms, see what they mean as applied in the law, and then ascertain whether the evidence educed at the trial establishes them.

b. - Wilfully.

The word "wilfully" means simply intentionally and not by accident In Bouvier's Law Dictionary (Rawles 3rd edition), for the word "wilfully", the term "intentionally" is used as the defining word, and the definition continues in part as follows: "In charging certain offenses it is required that they should be stated to be wilfully done..... In an indictment charging a wilful killing, it means intentionally and not by accident. State v. Schaefer 116 Mo. 96, 22 S.W. 447.....It is synonymous with intentionally, designedly, without lawful excuse, and therefore not accidentally. Mille v. State (Okl) 130 Pac. 813." In the instant case, Inoue admits he intended to execute the natives. He intended to kill them, therefore, the killing was intentional and not accidental. It is therefore clear and unequivocal from the admission of the defense, that the killings were wilful.

c. - Premeditation.

Simply stated, the term "premeditation" means that the decision to kill was made some appreciable time before the commission of the act. The requirement of premeditation was derived from the American statute and case law, seeking to differentiate between those murders justifying capital punishment. (First degree murder) and those murders which do not warrant capital punishment. (26 American Jurisprudence.) Wechsler and Michael in their study "A Rationale of the Law of Homicide" 37 Col. Law Review 706 note "For the most part therefore, the functions performed by all English definitions of murder - the determination of what homicides may be capitally punished - is performed in the United States by the 'deliberation and premeditation' formula..... However, the balance of the common law of murder performs under American statutes the analogous function of singling out those homicides which, though not capital, are nevertheless punishable more severely for the most part than the other criminal homicides....."

As to premeditation in the instant case it is obvious that prior to the actual killing Inoue had made his decision to kill these natives. He went for them in a truck; he took them bound to the place where he killed them; and then after instructing the guards not to let any passersby come into the area, he took the natives into the jungle

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and there killed them. It is clear that for some appreciable time prior to the killing of the natives, the accused had the design and intention to kill them. It is clear therefore that the prosecution has established the existence of premeditation.

d. - Malice Aforethought.

Defense counsel has cited some archaic language concerning malice which appears in Winthrop's Military Law and Precedents (1920 reprint.) The language cited is from a 1920 reprint of a text originally written in 1886. The inference is obvious.

Of course it is true that occasionally the dicta in some judicial opinion speaks of a requirement of express malice in language similar to that cited by Commander Carlson; but upon examination of the decisions it is readily seen that even the words "express malice" mean merely an intention to commit the act, and not an intention to commit any crime. Thus the court in People v. Motuzos 352 Ill. 340, 185 N.E. 614,617, in a homicide case states: "Express malice is the deliberate intention to take the life of another - which is manifested by circumstances capable of proof.

Malice aforethought is a concept closely related to that of "premeditation." The word "aforethought" in its popular sense conveys some of the sense of premeditation. But the legal terms "with premeditation and malice aforethought" mean little more than the existence of the intention to kill at tht time of or just prior to the killing. Wechsler and Michael in their "A Rationale of the Law of Homicide," op. cit., pp. 702-708, explain this briefly as follows:

"The most striking phase of the development of the English law was the reduction of 'malice aforethought' to a term of art signifying neither 'malice' nor 'forethought' in the popular sense. Strikingly analogous in the judicial development of the American law of homicide is the narrow interpretation of 'deliberation' and 'premeditation' to exclude the two elements which the words normally signify: a determination to kill reached (1) calmly and (2) some appreciable time prior to the homicide. The elimination of these elements leaves, as Judge Cardozo pointed out, nothing precise as the crucial state of mind but the intention to kill."

Similarly, American Jurisprudence, Vol. 26, p. 182, states: "Malice in the sense of hatred or malevolence toward the deceased is not necessary to constitute murder in the first degree, nor is it necessary to show what motive, if any, inspired the killing." Similarly, on page 183, "Malice is an essential ingredient or element of murder at common law and also under statutes which have been enacted in many jurisdictions. However the term 'malice' as used in the law of homicide is difficult to define, for in its technical sense it comprehends a considerable number of different conditions of mind. The term has often been defined as the intentional killing of one human being by another without legal justification or excuse and under circumstances which are insufficient to reduce the crime to manslaughter. It is said to include all those states and conditions of mind which accompany a homicide committed without legal excuse or extenuation....."

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The definitations of malice aforethought, as set forth in Naval Courts and Boards, American Jurisprudence, and numerous other authoritative texts reflects the decisions of the courts. Two typical leading cases are Mann v. State 124 Ga. 760, 52 S.E. 324, LRA(NS) 934: "Legal malice is the intent unlawfully to take human life in cases where the law neither mitigates nor justifies the killing." Comm. v. Maderious 255 Mass. 304, 151 N.E. 297, 47 A.L.R. 962 "Malice as an element to murder does not necessarily imply ill-will toward the person killed; any intentional killing of a human being without legal justification or excuse, with no extenuating circumstances sufficient in law to reduce the crime to manslaughter, is malicious."

Once it is established that the accused intended to commit the homicide, his motive is completely irrelevant in determining the question of guilt, although it may be considered in mitigation of punishment. In Roberts v. People, 221 Michigan 187 (1920) the defendant at the request of his incurably sick wife provided her with the means to commit suicide. The defendant was found guilty. Similarly note the Japanese case cited by Mr. Suzuki of the woman who was convicted of homicide who killed her child due to their conditions of very extreme poverty.

Since it has been proved that the accused Inoue intended to kill the natives, he must be judged solely on the basis of whether his acts were in fact legally justifiable or excusable. His motives may have been excellent or revolting, it is immaterial, except in mitigation or aggravation of the punishment.

In the foregoing discussion the judge advocate has established that Inoue killed these natives intentionally, and that in fact this intention to kill existed for some time prior to the actual killing of each group of natives. Therefore, the legal requirements of "wilfullness, premoditation and malice aforethought" have been clearly established. Under the specifications of Charge I, two terms remain to be considered, "feloniously" and "without justifiable cause." In its broader application, the term feloniously includes the term "without justifiable cause," for it means merely that the act was done unlawfully, that is to say without legal justification or legal excuse.

e. - Feloniously.

Bouvier's Law Dictionary (Rawle's Third Revision) defines "feloniously" as follows: "Feloniously. This is a technical word which at common law was essential to every indictment for a felony, charging the offense to have been committed feloniously; no other word nor any circumlocution could supply its place.... It is necessary in describing a common-law felony, or where its use is prescribed by statute; Wharton's Criminal Pleading, Section 260; Bowler v. State 41 Miss 570;.....In an indictment it is equivalent to purposely or unlawfully; State v. Bush, 47 Kan 201, 27 Pac 834, 13 L.R.A. 607."

Felonious homicide is defined in Bouvier as: "Felonious Homicide. The killing of a human creature, of any age or sex, without justification or excuse. It may include killing oneself as well as any other person; 4 Bla. Com 188....."

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The prosecution has established that the terms "wilfully, premeditation, malice aforethought, feloniously, and without justifiable cause" require only that the killings be proved to be intentional and "without legal justification or legal excuse." The fact that the killings were intentional has been proven without contradiction from the accused. The remaining question - whether there existed legal justification or legal excuse - will be discussed at length after full consideration of the scope of the requirement of intent under Japanese law.

2. Requirements under effective local law - the Japanese law.

Despite lengthy and learned argument by defense counsel, careful analysis of the pertinent Japanese law reveals that there is little practical difference between the application of the Japanese law, and that of the American statutory and common law. While the language of Section 199 of the Japanese Criminal Code is very broad, its contents must be read in the light of certain limiting provisions contained in Chapter VII, Book I of the Japanese Criminal Code. In essence, these provisions, like the corresponding provisions of statutory and common law require merely that the killings be intentional and without legal justification or legal excuse.

In the language of Article 199 of the Criminal Code of Japan, which was the effective local law on Jaluit at the time the offense was committed, there are no expressed requirements other than the homicide to establish the crime. The language of this provision reads:

"Every person who has killed another person shall be condemned to death or punished with penal servitude for life, or not less than three years."

Chapter VII of the Criminal Code of Japan contains general provisions which provide that under certain circumstances, acts which would ordinarily constitute a crime are not criminal, and that under other circumstances acts which are criminal should receive a lesser punishment because of mitigating factors present. These provisions have been discussed at length by defense counsel but certain provisions thereof have been erroneously interpreted and fallaciously applied to facts in the instant case, and we must therefore reexamine them minutely and accurately with reference to the facts in issue in the Inoue case.

Chapter VII consists of Article 35 through 42. Certain articles of Chapter VII are clearly inapplicable and will be briefly disposed of prior to consideration of the instant case. Article 39 relates to acts of persons of unsound mind. Article 40 relates to acts of deaf mutes. Article 42 relates to mitigation of punishment for those who denounce themselves before official detection. Article 41 relates to the punishment of persons under the age of fourteen, and will be discussed subsequently. The remaining articles 35 through 38 of this chapter will be briefly discussed in order to establish that the pertinent portions thereof are included in the common law concept of murder as an intentional killing, without legal justification or legal excuse.

a. Criminal Intent under Japanese law.

(1) Article 38.

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Article 38 of the Japanese Criminal Code deals with criminal intent. It provides: "Except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable

"A person who without knowledge (of the fact) has committed a grave offense (crime) cannot be punished in proportion to its gravity.

"Ignorance of the law cannot be invoked to establish absence of criminal intent, but the punishment may be mitigated according to circumstances."

From the foregoing it would appear that the requirement of criminal intent under Japanese law is less stringent than the requirement under common law - for the second paragraph of article 38 appears to provide that for all serious crimes even ignorance of the facts will only be considered in mitigation; this paragraph reads "A person who without knowledge of the fact has committed a grave offense.....cannot be punished in proportion to its gravity." The provision however seems to have been given a narrow interpretation. and for practical purposes it would appear that Article 38 is similar to our concept of criminal intent.

(2) Stare Decisis.

The judge advocate and the defense counsel disagree as to the correct interpretation and application of the provisons of Article 38 of the Japanese Criminal Code. In connection with Charge I, the Commission must determine the meaning and correct application of these provisions to the instant case. The defense counsel in their argument have cited certain text writers and extracts of certain court cases. The judge advocate believes that defense counsel have misinterpreted and misapplied the opinions of the courts; but if defense counsel correctly interpreted these opinions it is clear that these decisions incorrectly interpret and apply the Japanese law. The judge advocate will prove this be citation of contrary Japanese case law, citation of Japanese legal authorities, and by reference to elementary universal principles of criminal jurisprudence.

In considering cases cited by defense counsel, the Commission should give them due weight and consideration as a judicial interpretation, but the Commission should not feel bound to follow clearly erroneous decisions. Even in the United States, where we follow the doctrine of stare decisis, the courts do not feel bound to perpetuate bad decisions.

This doctrine of stare decisis says, that the courts should abide by or adhere to decided cases. Bouvier's Law Dictionary (Rawles Third Revision) in discussing stare decisis says "It is a general maxim that when a point of law has been settled by decision, it forms a precedent which is not afterwards to be departed from." As was stated in The Madrid, 40 Fed. 677, "The rule of stare decisis means, in general, that when a point has been once settled by judicial decision, it forms a precedent for the guidance of courts in similar cases."

But despite the fact that the American courts follow the doctrine of stare decisis, it is clear that they are not bound by and will not follow clearly erroneous authority. "The rule is founded on public policy and does not require a court to follow a clearly erroneous authority", (Bouvier, op.cit. citing pertinent cases.)

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Despite the rule of stare decisis, Bouvier points out that there are many hundreds of overruled cases. If the interpretation of the law in certain previous Japanese cases is wrong, then I urge upon the Commission the language of Justice Howard, who in Ellison v. R. Co. 87 Ga. 691, 13 S.E. 809, said, "Let this decision be right whether other decisions were right or not."

The Japanese law does not follow the doctrine of stare decisis. It does not in theory recognize the binding force of prior decisions, but merely utilizes them as a guide to the proper interpretation of the law. William J. Sebald, of Kobe Japan, who is an outstanding authority on Japanese criminal law, in the introduction to his famous translation and annotation of the Criminal Code of Japan, comments briefly upon the theory of judicial decision in Japan, on pg. vii. he states "No attempt has been made to present the decisions of the Supreme Court as an orderly body of case law, principally because Japan has not adopted the doctrine of stare decisis, and to do so might easily give rise to erroneous conclusions. Hence upon almost identical facts, contrary decisions are often reached. Many such instances will be found in this work."

In view of this fact that Japan does not follow the doctrine of stare decisis, it is clear that the Commission is not bound to follow any individual case precedent which erroneously interprets the law.

(3) Defense arguments re criminal intent upon Japanese law.

The defense counsel have advanced several ingenious arguments designed to persuade the commission that the Japanese requirement of criminal intent is a requirement of subjective personal malevolence and that the accused did not possess this malevolence and therefore cannot be found guilty of the crime of murder in violation of effective local law.

Note that the defense counsel have not denied that Inoue intended to kill the natives. They merely argue as to the requirement of criminal intent: that he intended merely to obey the superior orders of Admiral Masuda; that he did not intend to commit a crime; that he believed that what he was doing was lawful;that he believed that the examination and consultation and the subsequent execution was the best possible procedure under all the circumstances.

In the course of discussion of the applicable law the judge advocate will consider and dispose of each of these arguments. The judge advocate will cite outstanding Japanese legal authority to evidence the fact that the defense has misinterpreted the applicable law. The judge advocate will then prove that even under the defense's subjective theory of criminal intent, (a standard of personal responsibility in the recognition of a wrongful or unlawful act) the accused clearly and irrefutably possessed the knowledge or the responsibility of knowing that his acts were morally and legally wrong; and therefore the accused possessed the requisite criminal intent under that concept of subjective criminal intent.

(4) Criminal intent is not subjective.

Criminal intent does not require proof of a malevolent state of mind, or a psychological realization of wrongfulness or unlawfulness.

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Defense counsel have argued that Inoue believed that he was performing his legal duty, that he had no anti-social intention, no sense of moral wrong, and therefore cannot be found guilty, for the law requires proof of criminal intent. They have attempted to interpret criminal intent as a personal psychological state of consciousness of the socially wrongful or illegal nature of one's act.

At this point we are concerned with the legal rather than the factual aspects of this argument, and the judge advocate will try to establish that the defense counsel have misinterpreted and misapplied the Japanese law of criminal intent.

The defense counsel have argued what might be called a "subjective" theory of criminal responsibility as opposed to a social or "objective" theory of criminal responsibility. The judge advocate will at length examine these two theories and show that in application they are fundamentally the same, both apply objective standards - that is to say social rather than individual standards of conduct.

Before discussing these theories and the defense argument, it should be carefully noted that we are discussing theories of criminal intent in the determination of guilt, and not theories of criminal punishment or penological treatment. The theories and the practice are distinct and different. In the determination of guilt, primarily objective social standards are applied. In the determination of the individual's sentence, subjective matters are properly considered. The individual's subjective standards of responsibility, his motives, as well as numerous other individual psychological and social factors in extenuation or aggravation are properly considered in the determination of sentence. Similarly after sentence is pronounced, the law in penological treatment applies subjective standards in the preventive, corrective, and incapacitative methods of treatment. The judge advocate agrees that modern theory applies subjective standards to the criminal - but these subjective standards are standards of sentence and of penological treatment. It is only after the determination of guilt that individual subjective standards can be applied. It is only after the determination of guilt that the law provides the time, the control of the individual who has committed the criminal act, the experts and expert facilities for the study of the individual and his social background, and the power to exercise methods of reeducation and rehabilitation.

The numerous reasons why a subjective theory of criminal responsibility and treatment is not applied until after the finding of guilt, will be discussed at length after consideration of the defense's argument.

The defense have argued that in order to possess criminal responsibility the individual must realize that his act is unlawful. Defense counsel have cited several Japanese legal authors who express a theory of subjective criminal responsibility. Their purpose is to convince the Commission that at least the accused is not guilty of Charge I. The judge advocate has not heretofore discussed any abstract theories of law, because he believes that this Commission as a court of law is concerned with specific provisions of the law and the application of those provisions, rather than with abstract theory.

Some of the language cited by the defense counsel from so-called subjective theorists would appear to conflict with the judge advocate's application of the provisions of Japanese criminal law to the instant case. The judge advocate will first discuss this theory and show that this so-called subjective theory, does both in theory and practice, apply objective standards.....so that apparent contradictions are largely theory rather than application. The judge advocate will then briefly present some of the Japanese authority, and Japanese case law, which proves that in Japanese, as in American criminal law, objective standards, are applied - and the law of homicide merely requires that the judge advocate by objective proof establish that the accused intended to kill the natives, and that the homicide was without legal excuse or legal justification. After establishing what the judge advocate believes to be the correct application of the Japanese law of criminal intent in homicide cases, the judge advocate will demonstrate that even under the theory of law argued by defense counsel, the evidence clearly proves that the accused had the necessary subjective criminal intent.

(a) The so-called subjective theory applies objective or social norms.

Let us first examine the writings of these so-called subjective theorists and see what they themselves have recognized in this regard. Mr. Akimoto has cited from Ono Seiichiro's Lectures on the Criminal Code, certain language which clearly indicates that Ono Seiichiro realizes that we cannot probe into an individual's mind, but must make and apply external objective standards from which to determine his acts. He states "However although knowledge of the law is unnecessary, it is necessary that one be conscious or at least that one can be conscious that the act violates a norm or a criterion of society or is anti-social." Note the language "or at least that one can be conscious that the act violates a norm". Clearly here the author is applying an objective standard, a standard of what the individual should have known rather than a standard of what he actually did know. The portion quoted by Mr. Akimoto also contains the following language "I interpret the conditions of criminal intent in the Criminal Code, approximately as follows 1. to recognize that an act constitutes a crime and do it while knowing that it is a crime. 2. to recognize the unlawfulness of the act. 3. From the concrete circumstances of the time when he did the act it can be expected that he might be able to act otherwise, or should not act so." This third kind of criminal intent is clearly not a subjective, but an objective standard. It reads "3. From the concrete circumstances of the time when he did the act it can be expected that he might be able to act otherwise or should not act so."

The analysis of this language shows that even the Japanese so-called subjective theorists admit the existence of criminal intent when the accused "should have known" that his act was wrong or illegal. An even clearer expression of this is found in the article by Takikawa Koshen, in Volume IV of Horitzu Gaku Jiten, a famous Japanese dictionary of jurisprudence, consisting of a five volume compilation of notes by eminent Japanese jurists. Koshen believes in the theory that criminal law is based on subjective responsibility, but nevertheless recognizes the fact that it is necessary to apply social norm standards, rather than subjective standards of right and wrong. With regard to criminal intent, he states in part:

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"1. Responsible factors Condition. In order to punish a person for illegal acts, we must say that the act was based on intention or on negligence. This is called responsible condition. The criminal code says this, but is silent on what is intention or what is negligence. It merely provides 'except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable.' The crimes set forth in the criminal code - commence with article 73 et seq., and are based on the principle of crimes requiring intention. In this way, intention and negligence are made responsible conditions, but the significance of the terms is left to theory. As a result, as far as theory goes, there is a split in the meaning and significance of intention and negligence.

"2. Significance of intention. The intention set forth in the criminal code is a development of the Roman law of Dolus. Intention in criminal law does not stress the psychological fact of knowing the value and significance, and the factual relationship of the act by the committer; for if this consciousness existed, then the committer would have used this sense of responsibility and had the opposite motive. Thus the stress is placed on the norm - and the fact that the motive should have been opposite....."

Note particularly the language "The stress is placed on the norm - and the fact that the motive should have been opposite."

Once it is realized that the subjective theory applies the standard of what an individual should have known - as well as what he actually knew, the practical differences in application between a subjective and objective theory become negligible.

Under both theories it is recognized that there are certain subjective elements that the law requires - for example, the law requires that for criminal responsibility to exist a man must either act or fail to act when he has the responsibility of acting. In the concept of the word act - or failure to act, the law recognizes a volitional state of mind and a physical ability to control the act. In addition, in certain crimes the law requires a specific type of knowledge and a specific type of intent - thus in order to constitute larceny it is necessary that the criminal know that the property belong to another person. In addition, in other crimes the law requires proof that a man intends his act, as in the case of an intentional homicide - or intends the reasonably forseeable consequences of his act, as in the case of a criminally negligent homicide. All these illustrations are cited to show that the objective theory also applies standards of responsibility which are based upon the individual and his knowledge of the facts and circumstances.

It is clear therefore that both the subjective and objective theories of criminal responsibility apply social norms and that implicit in these social norms is full consideration of certain social requirements of proof of individual responsibility. But it is the social norm, and not the individual's standards, not his concept of what is right and wrong, but society's concept of what he is presumed to know and what he should have known, which determines the existence of criminal intent. The law will presume that he know or should have known they were wrong, and therefore regardless of whether in fact he knew them to be wrong or not, the law will presume that he had the requisite criminal intent.

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Even where mistake of fact is involved, the law is clear that where the accused should have known the facts, his ignorance of the facts does not negate criminal intent. So that even if the accused, as he testified, really believed that his acts were legal, and even if this erroneous belief was based on ignorance of the facts, his ignorance cannot excuse him. For if he should have known the wrongful or illegal nature of his acts, the law will conclusively presume that he did know and will conclusively presume the existence of criminal intent.

The rule is expressed in 22 Corpus Juris Secundum Sec. 47, as follows: "And the general rule is that such ignorance or mistake of fact will exempt one from criminal responsibility unless the mistake arises from a want of proper care on the part of the accused." See Townsend v. U.S. 95 F.2d.352, certiorari denied 303 U.S.664, 82 L.Ed 1121.

Similarly, 39 Amer. Jur. p.236,237 expresses the rule as follows:

"Means of knowledge and knowledge itself are, in legal effect, the same thing where there is enough to put a party on inquiry. Knowledge which one has or ought to have under the circumstances is imputed to him.....In other words, whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand; and if he omits to inquire, he is then chargeable with all the facts which, by a proper inquiry, he might have ascertained. A person has no right to shut his eyes or his ears to avoid information, and then say that he had no notice); he does wrong not to heed to 'signs and signals' seen by him. It will not do to remain wilfully ignorant of a thing readily ascertainable, and it is no excuse for failure to make an inquiry, that if made, it might have failed to develop the truth....."

(b) Japanese law clearly indicates that an objective standard of criminal responsibility is applied.

From the discussion of the Japanese authors on the subjective theory, it has been demonstrated that even in their interpretation of the Japanese law, the objective standards of what should have been known or what should have been intended, is applied.

The judge advocate in a later portion of this argument dealing with ignorance of law will cite numerous eminent Japanese jurists, and Japanese supreme court cases which prove conclusively that the Japanese law, like our law, applies an objective standard of criminal responsibility. At this time it need merely be pointed out that while the vague and broad language of paragraph 1 of Article 38 provides that "except as otherwise provided by special provisions of law, acts done without criminal intent are not punishable", it is apparent from examination of the other provisions of this article, and of other articles in the code, that there is no requirement that the accused have a "guilty state of mind" - a personal psychological recognition of the wrongful or illegal nature of his act. Paragraphs 2 and 3 of Article 38 - clearly indicate that criminal intent can exist even though there are mistakes of law and certain mistakes of fact. Under those conditions, ignorance or mistake of fact or law, clearly the accused cannot have a sense of moral or legal wrong, because he does not even know the true facts or law. This proves

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that a subjective standard is not used. Similarly the fact that negligence can constitute the basis of a criminal conviction under Japanese law as well as under our own, is also clear proof that criminal intent does not require proof of a psychological state of mind - a personal subjective standard of realization of moral or legal guilty. See Horitzu Gaku Jiten (Dictionary of Jurisprudence) Volume 1, pages 229-231, by Takikawa Koshen.

(c) Fundamental requirements and theories of jurisprudence require the application of objective, social norms.

When any theory of criminal jurisprudence, even the so-called subjective theory of criminal intent, is examined from the practical standpoint of application, it is obvious that objective standards must be applied.

In the first place, in the application of any theory of criminal jurisprudence we are faced with the practical problem of proof. Clearly for proof we must look to objective proof. The science of psychology has not progressed sufficiently, to accurately probe the subjective mind of all accused criminals in order to establish what the accused actually knew or whether he actually believed his act to be legally or morally wrong. Whenever the science of psychology does progress that far, society will have to determine whether it will give up the legal system of objective proof of guilt in favor of a scientific laboratory technique of psychological experts. Until such time we are compelled to judge the accused individual, not by his psychological subjective state of mind, and not by his subjective intentions, but by objective standards namely the things that he has done and the acts that he has performed.

The accused will argue that even though we use objective standards of proof, one of the things that we must establish by such objective means, is the fact that the accused knew or should have known that his acts were morally or legally wrong. The judge advocate has by objective standards established that the accused Inoue intended to commit the act - the act of killing the natives. Unlawful homicide is a crime where no further specific intent is required - and therefore it is not necessary to establish even by objective standards that the accused knew or should have known it was morally and legally wrong. In such a case, if the acts were legally prohibited, and the accused intended to commit the acts, then the law conclusively presumes the existence of the requisite criminal intent.

Criminal law is not a system of moral retribution. It is a vital system of social control. Society is just as interested in corrective, preventive, and incapacitative treatment of those who commit wrongs without knowing the acts are wrong, as it is in treating those individuals who commit illegal or wrong acts knowing their acts to be illegal or wrong. In fact it is probably considerably more important for society to give appropriate penal treatment to those individuals whose ignorance or underdeveloped or warped sense of social or moral responsibility permits them to commit serious crimes without even knowing them to be wrong. Many of our most vicious and even some of our so-called hardened criminals fall in this category.

No - the law does not require proof of a specific intention to commit a crime or a mental state of mind to do an evil or a wrong act. In fact a man may be convicted of crime although he clearly establishes that he had the most excellent of motives and the very best of intentions.

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It may seem strange to the layman that a man with a good heart or a good character can be found guilty of a crime, but we are dealing with the practical problems of an organized society and in determining guilt, we cannot probe into nor seek justification in the innermost motives of the criminal. Society has determined what circumstances constitute legal justification or legal excuse for acts which would otherwise be criminal. Society does not, and cannot recognize personal motives, or other persons justifications or excuses, as means of escaping criminal liability. The law does permit these things to be considered in determining the extent of punishment - but to permit it to determine the existence or non-existence of guilt, would mean the destruction of the entire system of law, and of organized society itself.

Wharton in his Criminal Evidence (11th ed. vol. 1, p. 283) explains this as follows: "There is no bad act which the perpetrator does not summon up good motives to excuse. An assassination, for instance is rarely for the exclusive purpose of satiating private hate. A bad man is to be removed from the world, or some good deeds are to be aided by part of the plunder. If whenever good intentions are mingled with the bad intention, there could be no conviction, there could be no conviction in any case..... The law is: No matter what may be the motives leading to a particular act, if the act is illegal, it is indictable, notwithstanding some one or more of the motives inducing the act may be meritorious."

This is the law not only in our courts, but is the Japanese law as well. Defense counsel Mr. Suzuki proved this and at the same time inadvertently proved that his whole theory of "the mental state and personality" as the basis of criminal intent, is definitely not the law in Japan. Mr. Suzuki cited the case of the mother who because of extreme poverty killed her child. Here the woman clearly believed that the motive to prevent continued starvation and suffering of her child justified killing the child. She did kill the child. But the law, despite her motive and her sense of the dire necessity and bitter compulsion of her circumstances, found her guilty of the crime of homicide. The court was convinced that her motive was good and that she believed in the righteousness of her act, and the court considered these factors, but it considered them in mitigation of sentence, and the court clearly held that the motive did not negate "criminal intent" or constitute a legal excuse. Note that Mr. Suzuki admits that such cases are numerous in the judgment cases of Japan. This case clearly proves that the "mental state or personality of the accused", a consciousness of guilty, is not required in order to constitute criminal intent under the Japanese law.

(5) Ignorance or mistake of law does not negate criminal intent.

The fact that Article 38 of the Japanese Criminal Code specifically provides in paragraph 3, that "Ignorance of the law cannot be invoked to establish absence of criminal intent" would appear to clearly and unequivocally destroy any possible contention by defense that a Japanese criminal law requires that it be proved that the accused knowingly intended to commit a crime or a wrongful act. But the defense have contended: that the provision of law does not mean what it says; it does not mean in the Japanese law what it means in other systems of criminal jurisprudence; that instead it has a specialized meaning, it means that ignorance of specific punitive provisions does not negate criminal intent, but ignorance of the

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illegality of an act does negate criminal intent.

Under this theory the language of paragraph 3 is limited to the stipulations of punishment, but it is still necessary to prove that the accused knew his acts were illegal, in order to establish the existence of the criminal intent. Clearly such an interpretation completely vitiates the meaning and significance of this provision which reads: "Ignorance of the law cannot be invoked to establish absence of criminal intent, but the punishment may be mitigated accordingly."

This ingenious argument rests upon the identical fallacies and falls under the weight of the same proof we have discussed in connection with criminal intent in general. The practical problems of proof, and the sociological impossibility of adopting the subjective standard for the determination of guilt or innocence, demonstrate why Japanese law like our own rejects the interpretation and argument of the defense.

Earlier in this argument I spoke of the doctrine of stare decisis, the binding force of prior precedents, and I demonstrated the very obvious fact that even the courts which follow this doctrine overrule decisions which are erroneous. I speak of this now because I am about to speak of the Amakasu or Masahiko case. This case is a bad decision - not only as regards the alleged doctrine of subjective intent for which defense counsel have cited it, but it is so clearly and patently wrong on the facts and alleged application of that doctrine as to have absolutely no value. It does not serve as a guide to the law of Japan. It does not reflect that law. It does not reflect any law.

When we examine this case - it is apparent that it sharply conflicts with the customary and correct interpretation of Article 38, as reflected in the numerous decisions of the Japanese Supreme Court.

Before briefly discussing this case to show how erroneous and valueless it is - let me first point out that even in this decision it is clear that innocence of motive even if believed does not negate criminal intent. Masahiko and Keijiro who had a good motive to "eradicate the evil roots in the nation" were held guilty. Similarly let me point out that even with regard to the two privates first class who were acquitted, there is this clear distinction - namely that they were two privates first class, and not officers with 7 years of officer experience. Note that Makino says, and I quote from defense counsel's argument "if the accused had a proper knowledge of the law, it would have been their duty to disobey the order." Clearly as privates first class they could not be presumed to know military law - and in their participation in the incident it was clearly shown that they did not know all the facts. Inoue on the other hand is an officer with 7 years of experience - and by his own testimony clearly participated in every phase of this incident, from the early investigation through the alleged meetings, and to the very act of personal execution. Inoue should have known and knew the wrongful and illegal nature of his acts. Thus it will later be proved that even under Makino's interpretion of the Amakasu case - the accused Inoue is clearly guilty.

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The judge advocate however does not wish to deal in fine distinctions where the errors are so obvious and the decisions so patently wrong. The defense counsel have cited what I understand is extracted from an Essay on Criminal Intent written by Makino in 1923, the year that the crime was committed and the court martial held. Makino whom defense cite as an authority on the subjectivism criminal theory in Japan apparently interpreted this case as determining that the accused had no criminal intent.

Makino himself states that this Amakasu case furnished us with "new material." He also states that "this judgment was pronounced at the Court Martial of the First Division. Since there was no appeal, this finding was the conclusive one. So Makino points out what we should bear in mind - first it was a "new" case. Secondly, it was decided by court martial - with no appeal taken, and obviously no judicial review.

The vital and significant parts of this decision were not pointed out: the fact that this case occurred during a period of Martial Law; the fact that it was decided by a court martial; and the fact that the Militarists were by this same policy of assassination eliminating opposition and criticism, and gaining full control over the Japanese empire. The fact that this decision by a military court martial was not universally condemned by every lawyer and every jurist of Japan - can be understood, but not praised. This was a political decision which makes the French court martial case, the infamous Dreyfuss case, a comparative paragon of justice.

Note the obvious pattern of this assassination. The accused Masahiko was head of the Shibuya Detachment of the Tokyo Military Police. The accused Keijiro was attached to the Special Higher Police Section of the M.P. Headquarters. While "most of the socialists were arrested by the police", the regular Yodabashi police had not arrested Osugi, the "leader of the anarchists regarded as most dangerous." They were tailing him. The police informed Keijiro that they would release their man who was tailing Osugi, and would support the M.P. by other means. They apparently "hinted" that the military should kill him. The police told Masahiko and Keijiro of the movements of Osugi - they told him of Osugi's habits, and movements, and on the very day of the execution the police of the Yodabashi station told them where Osugi had gone and when he would return. The pattern of assassination, the cooperation between the police and the Military Police, is clear indication of the political nature of the assassination, which is so openly evidenced throughout the discussion of the so-called judgment of the court martial.

This assassination was not an isolated incident. It was part and parcel of the military move to gain complete control and dominance over the Japanese government and empire. Assassination was one of the accepted and standard means of gaining that control. The militarists ordered, organized, planned, and personally carried out political assassinations. Is it surprising therefore that a military court martial should vindicate two privates first class for carrying out these very crimes of political assassination. No, the Amakasu case is not a guide to the law of Japan. The conviction and sentence of Masahiko and Keijiro to relatively short terms of imprisonment - 10 and 3 years - was a meagre sop to public indignation, and was clearly justified because of the stupidity with which

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the assassinations were carried out - a 7 year old child, and a woman, as well as Osugi, were strangled in the Military Police Headquarters. This was stupid enough, but to have the information leak out, clearly was sufficient reason for punishment even by the militarists.

The Amakasu decision - in its language, in its approach to the interpretation of the evidence, in its attempted exculpation of a man who strangled a 7 year old child - and in its meagre 10 and 3 year sentences to those police officers who planned and carried out these assassinations - is the clearest proof that this was not a judicial decision. It is not a precedent which this or any court should consider except to condemn it as part and parcel of that same inhuman, criminal militarism which because of its countless other atrocities and war crimes, has evoked the bitterest condemnation of every civilized human being. No, the Amakasu case does not help the accused.

The defense theory of interpretation of paragraph 3 of Article 38, is not the law of Japan. It is one of many theories of interpretation of this provision. It is not a majority view, and is obviously not a sound view: and the Commission should reject this misleading and sterile doctrine.

In Volume 2, page 1042, column 2, paragraph 3 of Horitsu Gaku Jiten, responsible editors, Suyehiro, Gentaro and Tanaka, Kotaro, the following brief comment appears with regard to interpretation of this provision regarding ignorance or mistake of law:

"Concerning the interpretation of article 38, paragraph 3 there are the following 5 schools of thought:

1) The first is that having the conditions identical to a judicial precedent, a mistake of criminal law does not negate the establishment of the criminal intent. On this point there shall be no difference between natural and statutory crimes.
2) The second is that the mistake of law when it concerns civil law and regulations also negates the intent.
3) The third is that in the case where one believes his acts are not contrary to law, there is no establishment of intent. It is not necessary to know the various punishments so far as Article 38 para 3 is concerned.
4) The fourth is that in the case where there is ignorance of the law, (while) there is theoretically no existence of (actual) intent, but (yet) on the fact of being ignorant, the situation is considered the same as where there is an (actual) intent.
5) The fifth is that although a person believes his acts to be permitted by law, as long as the facts of the crime are known, it cannot be said that the intent did not exist. This principle applies only to natural crimes. As for statutory crimes, intent exists as long as violation of the law was known in the matter..... (i.e. ignorance of the law is an excuse in statutory crimes.)"

The third of these five schools of thought gives credence to the doctrine advanced by the defense counsel. It is apparent that the defense theory of interpretation of paragraph 3 is only one of many schools of thought, and that the other schools of thought apparently reject this fallacious and erroneous doctrine. In general the authorities agree with the interpretation which has been given in

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all countries to the rule that "ignorance of the law is not an excuse." And they do not seek to apply any narrow restrictive, aborting doctrine like that advanced by the defense.

In Horitsu Goku Jiten, Vol. II, Page 1040 (column 2 and ff), the fact that the doctrine follows the general interpretation of such provisions, is clearly and specifically noted. "It has been argued whether or not intention requires the element of cognition of illegality. According to the usual doctrine, Law, mentioned in paragraph 3 of Article 38, refers to criminal or penal law. The term penal law is not used in the strict sense, which would limit it to general norms, it also includes merely prohibited acts. It is shown therefore that for criminal intent, a consciousness of the law or illegality, is not necessary. In all countries it is held that 'ignorance of the law is not an excuse' and Article 38, para 3 'Ignorance of the law cannot be invoked to establish absence of criminal intent' virtually expresses the same thought."

Similarly, Makino, Eiichi, whom defense counsel themselves cites as an authority on the subjectivism criminal theory of Japan, writing in Vol. 2, page 1042 of Horitzu Gaku Jiten, states: "Our legal precedents follow the usual theory and consider that mistakes of law do not negate the criminal intent, and moreover do not differentiate between natural and statutory crimes."

Makino cites several cases in illustration of the validity of this interpretation. Several of these cases are derived from the Daishinin Keiji Hanrei Yoshi Ruisan (Classified Digests of Criminal Judgments of the Supreme Court), published in 1934 by the Hosokai, a society of distinguished Japanese jurists. Several of these cases are also cited by William Sebald, in annotation of Article 38, in his annotation of the Criminal Code of Japan.

One of the most famous of these cases is the case of the flying squirrel. Makino briefs this case as follows: "When one captures a flying squirrel, not knowing that capture of this animal (provincially known as Momo) is prohibited by law, and believing that capturing this animal does not constitute a crime, nevertheless, since it is ignorance of the law, one is considered as having criminal intent." 3 S.C. N.S. (Daishinin Hanreishu) 367."

In the flying squirrel case the accused captured the flying squirrel, and he believed that capture of this animal did not constitute a crime. Similarly in the Inoue case, Inoue killed the 8 natives, and he claims that he believed that killing these natives did not constitute a crime. As was stated in the flying squirrel case, this is "ignorance of the law, one is considered as having criminal intent."

Another famous Japanese case is reported in 10 S.C.N.S. (Daishinin Hanreishu) 6. This was a narcotics case, in which the accused who was engaged in the lawful business of trading in drugs, brought two packages of morphine into Japan, and he failed to declare them. He was charged with smuggling narcotics. He proved that he did not know of any regulations requiring that narcotics should be specially declared, and it was established that he did not intend to violate the law. Nevertheless he was found guilty of the crime, but his ignorance of the law was considered in mitigation and he was placed on probation for three years, with regard to his sentence at

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hard labor. The court specifically cited paragraph 3 of Article 38 and said: "in statutory crimes, just as in penal crimes, in the establishment of criminal intent, cognition of illegality is not considered necessary."

Inoue has attempted to plead that he was engaged in the lawful duties of an executioner and that he was ignorant of the law, that he believed he had the right to execute the natives, and that he did not intend to violate the law. This was exactly the argument in the narcotics case - and in the narcotics case the court found that the facts were exactly as claimed by the drug dealer, but nevertheless held that the acts still constituted a crime, and the innocent state of mind and blameless intention was merely appropriate in mitigation. Note there are two obvious distinctions between the drug case and the Inoue case. First, in the drug case the accused proved his ignorance of the law and the absence of any intent to commit a wrong; whereas in the Inoue case, the judge advocate will prove that Inoue knew or should have known the law with regard to the illegality of his act. Secondly, in the drug case, the nature of the act was not such as to require a man to be on notice that his actions might be illegal; whereas in the Inoue case, the nature of the act, the taking of human life, is such as to put an individual on notice that society demands the most careful and precise exercise of his duties with regard to the legality of his acts, and that there are laws which specifically relate to his activities.

In view of these two obvious distinctions, it is clear that the Inoue case is an immeasurably stronger case for conviction of the accused than the drug case. If the Japanese law holds, as shown by the opinions of Makino, and the other eminent Japanese writers cited by the judge advocate, and as clearly demonstrated by the two cases cited supra from the Supreme Court of Japan, that ignorance of ones acts does not negate criminal intent - there can be absolutely no argument by the accused that he did not possess the requisite criminal intent. This is doubly true in view of the nature of the case - one of homicide.

The law places a tremendous value upon the human life. As stated in 40 Corpus Juris Secundum, sec. 98, pg. 958 - "It is important that the taking of human life be not excused or justified except in strict accordance with the established law." And specifically with regard to the question of ignorance or mistake of law, 40 Corpus Juris Secundum Sec. 98, pg. 959, states "A homicide is neither justified nor excused by a mistake of law as to the slayer's right to take life", citing People v. Cook 39 Mich. 236, 33 Am.Rep. 380.

From the foregoing discussion of the Japanese law with regard to the requirement of criminal intent, and with regard to the question of mistake of or ignorance of law, the Judge Advocate believes that defense is clearly in error in contending that under Japanese law criminal intent is measured in terms of existence of a subjective intent to commit a wrongful or knowingly illegal act. On the contrary the judge advocate believes that the outstanding authorities, the statutes, and the case law of Japan, clearly demonstrate that Japanese law, like the similar concept under American statutory and common law, recognizes the existence of the required criminal intent, in the proof that the accused intended to commit the act. In the case of a criminal homicide, all that is required is proof that the accused intended to commit the act of killing, and that under the circumstances the homicide was not legally justifiable or legally excusable.

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b. Evidence clearly establishes existence of criminal intent.

The accused Inoue claims that he had no "consciousness of guilt" and he did not know that his acts were illegal or wrong.

The legal authorities and the decisions of the Supreme Court of Japan cited by the judge advocate clearly establish that the subjective state of mind of the accused is totally irrelevant, and that for criminal intent for the crime of homicide all that is required is proof that the accused intended to kill. The prosecution proved, and the accused has not denied, that he intended to kill the natives. Under the law, as interpreted by the judge advocate, this is all that is required to establish the existence of criminal intent.

Defense counsel have cited certain text authorities who support the theory that there must be subjective responsibility - and that it must be shown that the accused knew or should have known the wrongful or illegal nature of his acts. The judge advocate believes that this is a fallacious, meaningless, and negativistic approach to criminal jurisprudence; but even if the Commission accepts the subjective theory of criminal intent the accused is nevertheless clearly guilty, for the evidence unequivocally establishes that he possessed the necessary criminal intent even under the subjective theory advanced by defense counsel.

Even the subjective theory holds a man responsible for what he should have known, as well as what he actually knew. This is partly because of the objective nature of proof, partly because of a recognition of the fact that for certain crimes society must establish and apply standards or norms of conduct regardless of whether the individual actually knows these standards or norms, and partly because even a subjective theory of responsibility must establish minimum external standards of right and wrong. The subjective theory therefore recognizes the fact that an external objective standard is applied, that "knowledge which one.....ought to have under the circumstances is imputed to him", and that when one should have known the illegal or wrongful nature of his acts the law will presume that one did have the criminal intent.

Thus even under the subjective theory, the Commission need not accept the self-serving declarations of the accused as to his mental attitude, but must presume that what he should have known under the circumstances he did in fact know. When the Commission applies this standard, the accused is as readily and conclusively proven guilty of having the requisite criminal intent, as he is under the judge advocate's interpretation of the law, by his own admissions of intention to kill. For the evidence is clear that the accused knew or should have known of the illegal and criminal nature of the killing of these natives.

(1) Objective nature of proof.

The judge advocate established that there is no theory of law which requires the prosecution to prove the actual psychological state of mind of the individual. Even under the subjective theory it is sufficient if the prosecution establishes from external, objective evidence, that the accused knew or should have known that his acts were legally or morally wrong. Objective evidence is all

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that can be required for we cannot even by the most advanced psychological techniques accurately establish the actual mental state of accused criminals. Criminal law cannot engage in a psychological guessing game, and even the fallacious defense theory of subjective criminal intent merely requires that the prosecution prove the facts which establish beyond a reasonable doubt that the accused knew or should have known the illegal or wrongful nature of his acts.

Even under the subjective theory, the law cannot permit a criminal to escape responsibility for his crime by falsely stating that he did not know he was committing an illegal or wrongful act. Not only the testimony of the accused but all the facts must be considered in determining whether the accused knew the act was wrong or illegal. Clearly testimony by the accused that he did not know the act was wrong, and did not intend to commit any crime, is of the weakest and most incredible nature. The commission has heard such testimony but such a self-serving statement can clearly have no probative value and the Commission should reject it, particularly in view of the clear contrary evidence that the accused actually knew and obviously should have known that the executions were legally and morally wrong. But even if the Commission were convinced that in fact Inoue did not know and did not realize that the execution of these natives and children was an illegal and wrongful act, it would be necessary for the Commission to determine whether from a standard of criminal responsibility Inoue should have known the nature of his acts. The law does not permit an individual to escape responsibility by closing his eyes to the wrongful and criminal nature of his acts, and contending that since he did not see that his acts were wrong or illegal he cannot be punished because he did not know the criminal nature of his acts. We need not here become involved in any hair-splitting argument as to whether this was ignorance of the law or ignorance of the fact. Even assuming that this is ignorance of the fact, the law clearly holds as indicated by the authorities I previously cited, that ignorance or mistake of fact will not exempt one from criminal responsibility where the mistake arises from a "want of proper care on the part of the accused."

(2) Proof that the accused knew or should have known that the executions were illegal.

(a) The accused Inoue is not a credible witness.

We cannot accept as true his statement that he honestly believed that his acts were legal and that he carried out the alleged execution order of Masuda under the conviction that it was right and legal. If he had not lied so frequently, so consistently, and so stupidly, the Commission might be persuaded that he actually had this belief in the legality and moral propriety of these execution; and the Commission would therefore have to confine its consideration to whether or not under the circumstances the accused should have known of the illegality and criminality of the act.

But the accused lied so many times from the witness stand that he lost track of his fabrications and they keep tripping him up. Let us briefly examine his testimony in order to demonstrate this.

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(1) Testimony concerning minute details evidences fabrication, not memory.

In the first place, the fact that two years after the events Inoue testified with such minute detail as to the days, times of day, duration, etc. of all the visits with Masuda to the natives, all the periods during which he investigated the natives, all the times when he reported concerning the natives, all the examinations and consultations held concerning the natives, is clear proof that either Inoue is a genius or he is a liar. He did not impress me as a genius.

He testified as to the following alleged days, hours, and incidents: Days and times he went with Masuda to visit the natives: On April the 3rd, about one hour from 7 to 8. On April the 6th, from about 3:30 to 5:30. On the evening of April the 9th, about 10 minutes at the 2nd Ammunition Dump, and about 10 minutes at the transmitting station. On the day Kalimo was executed, about 5 minutes in the morning. Days and hours of his investigation work: April 3rd about 2 hours from 8 to 10 and for about 2½ hours in the afternoon. April 4th about 1½ hours, before 10 a.m. and for about two hours from 1:30 to 3:30, April 5th about 2½ hours in the morning from 8 to 10 a.m., and for two hours from 1 to 3 p.m. April 6th, 1½ hours in the morning from 8:30 to 10, and one hour in the afternoon from 1 to 2. April 7th, 1 hour in the morning from 8:30 to 9:30, and 1½ hours in the afternoon from 1 to 2:30. On April the 8th, only in the afternoon (from about 1:30 to 2:30.) And on April the 9th about 3:30 in the afternoon, after the evening meal.

In addition to all this the accused remembered that every day from 20 to 30 minutes after each morning and afternoon session he reported to Shintome, Furuki, and Masuda concerning his investigation.

In addition he testified and gave the following details concerning the alleged examinations and consultations: On April the 3rd, at about 5:30 a.m. for about 20 to 30 minutes before the morning meal. Also in the afternoon about 3:30 or 4. On April 4th, from 11 to 12:30. On April 5th, from 11 to 12. On April 6th from 10:30 to 12. On April 7th, 3:30 in the evening. On April 8th, 3:30 to 4:30 in the evening. On April 9th from 6 to 9 a.m.

It would take a phenomenal memory to recall such details even three or four months after the events. But it seems inconceivable more than two years after the incidents, particularly after the trying events that have intervened, that any individual could remember such detailed information. I believe the inference is clear.

Inoue has a most powerful motive to fabricate - for his very life is at stake. He took the stand in a desperate gamble to save himself. How desperate his effort was can be seen from his testimony. He tried very hard to persuade the commission that these careful investigations were held and that a great number of careful examinations and consultations were held. He tried so hard to tell a convincing story that he told one that was too good. He told so many details that it seems clear that he was not remembering what had happened, but was inventing and creating details. He talked so hard, and so long that he not only contradicted his own witnesses, but he also kept contradicting himself. Note this phenomenal detailed alleged memory with regard to these alleged visits to the natives,

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investigation periods, reporting periods, and examinations and consultations - and also those long winded detailed reports of alleged conversations with Admiral Masuda, and alleged detailed orders and instructions from Masuda. Compare these as an illustration, with his answer when the judge advocate confronted him with a prior contradictory statement made after the war to the War Crimes Investigation. He then said "After the end of the war, there was much confusion and, I do not remember what I stated." Similarly note his short memory with regard to his testimony in the recent Furuki trial - the judge advocate asked the accused: "In that trial, in question 171 were you asked 'When did you decide that this procedure constituted a trial?' and did you answer 'From the time I was confined at Jaluit as a suspect.'" Inoue in his answer stated "That is not what I answered at that time." Excerpts of the record of that recent trial were introduced by the judge advocate - and clearly establish that Inoue gave that answer. Accepting the most favorable interpretation for the accused, it is clear that at least he has forgotten what he testified to only one month ago - but he claims to remember such precise conversations held with Masuda more than two years ago, and to remember the incredible details he related concerning the hours and days he visited the natives, investigated the natives, reported, and attended these alleged examinations and consultations.

With regard to memory, note also that in answer to question 410, with relation to the Investigation he said "I remember stating that an examination and consultation was held for them....", but in his answer to question 413 - when he was asked whether he had said no trial was given, he said "After the end of the war there was much confusion and I do not remember what I stated."

It is apparent that with regard to things that would tend to help him, the accused developed a fabulous, an unbelievable memory - and that with regard to those matters which contradicted his story, he showed a definite failure of memory. The evidence is inescapable. Inoue does not have a remarkable memory - Inoue was not remembering, he was fabricating.

The proof that he was fabricating is transparent through all the elaborate testimony of the alleged trials, these alleged examinations and consultations. While the judge advocate will at a later portion of this argument establish that even if they were held these alleged examinations and consultations were not a trial and did not constitute a legal excuse for the killing of these natives - we can at this point briefly consider the incredulous nature of the story about the investigations and these alleged examinations and consultations, in order to show that Inoue is a liar, and any statements made by him concerning his alleged state of mind, his alleged intent, etc. are not worthy of any belief.

(2) The testimony concerning the investigation, etc.

The story of the accused was carefully planned - but the inconsistencies and contradictions, and the fundamental nature of the lie, could not be hidden from this commission.

Let us begin with the story of the confession of Niebot. Inoue in cross-examination tried to give the impression that no force or violence was used on this child, and that he gained her confidence and she then confessed. In his answer to question 354 he clearly gave

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the impression that it took some time to persuade her - "As the food given them was not good for the child, and as an investigator, every day when I went to investigate I asked the supply officer for emergency candy, which was made in Jaluit, and took this to the child, then gained her confidence. At first she would not talk, but she later stated, I think it was one afternoon, she stated that if her parents were told she would get scolded, but she stated that they had killed Tanaka and had stolen a boat and food and had deserted from Mille....." But in answer to further questions - 355, 416, 417 he testified that she confessed on the afternoon of the first day of April, which was the first day of questioning as indicated by direct examination question 47.

Now the fact that this was on the first day of questioning indicates very clearly that Inoue testified falsely. He wishes, as indicated by question 360, to have this Commission believe that in one day, by the use of candy, he was able to gain the confidence of this child, imprisoned with her parents, so that she confessed that her parents had killed Tanaka. The story is incredible - if the natives had attacked or killed Tanaka and plotted to spy, the child would have been warned, and the child could not have been trapped by the proffer of candy, to betray its parents, to their death. Inoue could not have gained the confidence of the child in his two visits of investigation on that one day. But the truly absurd nature of this story is revealed when we look at what Inoue said, when he was concentrating on another aspect of the case and was trying to show that the killing of the children was not a vicious, or morally wrong act. At that time, on direct examination, he was asked the age of Niebet, and he replied "Her mind was developed to that almost of an adult, but her size was very small; and from what I remember her age may have been from about ten or twelve or thirteen years old." The contradiction is clear. If Niebet was mentally mature, then Inoue's story of gaining her confidence in his two brief visits on the first day of questioning, by the use of some candy is clearly a lie. If as Inoue testified, he "took this to the child, then gained her confidence. At first she would not talk, but she later stated,..... that if her parents were told she would get scolded", then clearly the child could not have been ten or 12 or 13 years old, with a "mind developed to that almost of an adult."

What are we to believe in view of the clear contradictory nature of these stories? First we are to believe that Inoue is a liar. Secondly we are to believe that he was clearly lying in order to aid himself, so that the facts are contrary to his testimony. Thus we must conclude that - as indicated by other evidence which we will discuss, Niebet was a small child, and there was no confession by these natives. There was merely a brief careless investion, and a cruel inhuman decision to execute all the natives including the children.

The fact that Niebet did not confess is corroborated by a clear inconsistency in the testimony of Inoue. In cross-examination Inoue was asked question 416 - "You testified that Niebet confessed first. Did she tell about how Raliejap and Ralime had met the Americans, and how they had come to Jaluit to spy?" Answer - "Yes." Question 417, "Did she confess all this on the first day of April?" Answer - "The afternoon of the first day of April." It is obvious therefore that if she confessed as Inoue testified she did, as to both groups of

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natives, then on the first of April, Inoue knew that both groups had come to Jaluit to spy. It is clear that Inoue forgot his testimony made on direct examination five days prior to this question. For in question 49 he was asked "Were the four other natives from Mille Island at the Second Ammunition Dump at this time?" And in his answer he stated: "The fact that four other natives had landed in some part of Jaluit was learned after two days of questioning Raliejap.'

This contradiction between Inoue's statement that Niebet confessed everything about Raliejap and Ralime the first of April, and his earlier statement that he did not know about the Ralime group until two days after April first, merely corroborates the inescapable conclusion that Inoue and his statements are not credible.

(3) Testimony concerning trial, and alleged examinations and consultations.

Inoue's testimony concerning the investigation and investigation reports and concerning their use at these alleged examinations and consultations, has other fallacies. Inoue and Furuki tried to persuade the Commission that examinations and consultations were held every day from the third of April to the 9th of April; that Inoue read written investigation reports prepared by himself and Morikawa; that on the third they read a report on Raliejap's group, on the 6th a report on Ralime's group, and on the 8th a supplementary report concerning both groups. Inoue testified in answers 290, 293, and 295 that he had read these three reports at the examination and consultation meetings on the 3rd, 6th, and 8th. But Morikawa, clearly friendly to the accused, had testified that one report was submitted on April 2nd concerning the Raliejap group, and that a second report was submitted on April 8th. He testified that this latter report concerning both groups was the only written report submitted on the Ralime group. This inconsistency leaves some doubt as to whether any written investigation reports were submitted, and it leaves much greater doubt as to whether any "examinations and consultations" were held.

Inoue also tried to bolster his story about examinations and consultations, by indicating that witnesses appeared and testified - and he stated in answer to the question "Were there any witnesses besides yourself who ever testified before that examination and consultation?". He stated "First Lieutenant Morikawa also spoke concerning the facts in the case, and so did Admiral Masuda." Morikawa however was asked "Did you ever take part in any trial for these natives?" Answer - "No."

Another discrepancy between the testimony of Inoue and that of other witnesses indicates the fabricated nature of the testimony. Furuki, testified that the first meeting on April 3rd lasted 3 hours, but Inoue testified (Q.244) that this meeting was held in the morning before breakfast and only lasted 20 to 30 minutes.

The whole story about these numerous examinations and consultations and that Inoue or anyone else believed they were any kind of judicial procedure, is so incredible that it belies belief. In the first place, what did they examine and consult about during all these alleged meetings. As to Raliejap's group the full report of the incident was submitted to Masuda on the 2nd, according to Morikawa, and even according to Inoue, it was read in about 20 minutes before breakfast on the 3rd of April, and was then discussed. Even

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according to Inoue's testimony no other report was submitted until the 6th. So we must speculate on what was discussed on the afternoon of the 3rd, and in the alleged meetings on the 4th and 5th of April. Secondly, during this period from March 31 to April 9, Jaluit was under strafing and bombing by planes, continuously repeated every day - and it is difficult to believe that Masuda, Furuki, Shintome, as well as Inoue - could take so much of their time from their essential military duties in order to hear Inoue make his daily reports, and then hold these examination and consultation meetings. Thirdly - it is difficult to conceive of Inoue delivering his investigation report to Masuda, Furuki and Shintome, in the capacity of investigator, and then suddenly the picture fades and Inoue is now the appointed judge advocate, and Masuda, Furuki and Shintome are judges, and the examination and consultation, the trial, has begun. Fourthly it is difficult to believe that anyone could imagine that a trial could exist based upon irregular, unscheduled meetings, without accused or counsel, particularly when as testified by Inoue - many short examinations and consultations of about 10 minutes were held. (Ans. to Q. 275.) It is obvious that if such meetings took place they were casual conversations concerning the investigation, and not any "examinations and consultations" not any "Temporary Court Martial", and not any kind of judicial procedure.

The testimony of Shintome, that he was present at only one meeting, and that it took place on the wardroom veranda, and not in any air raid shelter, clearly gives the lie to the defense concoction of numerous examinations and consultations. Shintome had no motive to lie - in order to help the prosecution or himself. His extensive character testimony in favor of Inoue, on cross examination question 176, clearly shows how friendly he is toward the accused. But until recently he was home in Japan, and the accused could not persuade him to testify concerning any such concoction of numerous examinations and consultations constituting a trial.

There was no trial. Furuki and Inoue attempted to prove that Masuda, Furuki and Shintome were judges, and Inoue was judge advocate. But Furuki's testimony indicates he was not ordered to act as judge; for on cross examination Furuki was asked - when you were informed you wer to act as a judge Q. 241 - "did you ascertain the duties of a judge?" Answer - "No." Since Furuki is obviously a precise methodical officer it is clear that if he had been ordered to act as a judge he would have ascertained what his duties were. The testimony of Shintome also proves clearly that this alleged order, this alleged conversation with Masuda never took place and Shintome and Furuki wer not directed to perform the duties of a judge in any proceeding concerning these natives. (A.11.) Shintome also testified that he was never present at any time when Admiral Masuda ordered anyone to act as a judge or a judge advocate in connection with these Mille natives.(Q.28.)

Morikawa, also clearly friendly toward the accused, in his testimony proved that there were no "examinations and consultations" and there was no "trial." The testimony of Morikawa, who was the intelligence officer, clearly states: that he never took part in any trial of these natives; that he never saw any document stating that the natives received a trial; that during this period when he did certain of the adjutant's work, he never prepared any document which would indicate that these natives were given a trial; and that to his knowledge he never saw or heard of a trial. This is the testimony of Morikawa. This testimony, as corroborated by Shintome's testimony, clearly and unequivocally proves that Inoue's story about a judicial

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procedure consisting of numerous examinations and consultations, is a transparent unadulterated falsehood.

Analysis of Inoue's own testimony, establishes beyond any doubt, that there was no such procedure, and that Inoue knew and knows that the natives were not afforded any judicial proceedings and were merely investigated and executed without any trial, without any legal procedure. Inoue's own testimony reveals that this entire story of examinations and consultations is an ill conceived, and a poorly executed plan of fabrication.

On direct examination Inoue in answer to questions 102 and 107 testified that on the 3rd of April, and again on the 8th of April, Masuda ordered Inoue to act as judge advocate, and Furuki and Shintome to act with him, as judges. The record of the Furuki trial, and the testimony of Lieutenant Kenny, indicates that at that trial Inoue was asked Q.170 "Have you always since November 1943 believed that such procedure constituted a trial? A. No. Q. 171. When did you decide that this procedure constituted a trial? A. From the time I was confined at Jaluit as a suspect. Q. 172. Was this after the war? A. Yes."

Thus Inoue testified that it was not until after the war when he was confined as a war crimes suspect, that he concluded that this examination and consultation procedure was a trial. It is obvious therefore that Inoue never heard Masuda order Furuki and Shintome to act as judges, and he was never ordered to act as a judge advocate for if such orders were given he would have known then and there that this was a trial. Since he did not decide it was a trial until after the war, Inoue was clearly lying when he said that he had heard Furuki and Shintome ordered to act as judges. The fact that he was lying is further proved by the testimony of Shintome that he was never appointed a judge, and never heard Masuda appoint Inoue or anyone else to act as judge advocate in connection with these natives.

The accused Inoue, when he testified on cross-examination on Tuesday, May 20th, made another fatal error which revealed not only that his testimony was a succession of feeble fabrication, but also that he has a poor memory. Inoue with his fabulous memory could not remember that just a short time ago, in the Furuki trial he had testified that he did not know that the examination and consultation was a trial until after the war. Because he did not remember this prior testimony, in which he said he did not know this procedure was a trial until after the war, Inoue testified that from the time of the incident he believed that this procedure was in substance a trial. (I cite answers 394, 463.) In cross examination Inoue was asked "Q. 394. Was the proceeding of examination and consultation held in regard to the Mille natives a trial? A. From that time I have thought in substance that it was a trial." On redirect examination "Q. 463. Referring to the confession "In your statement when you stated that certain criminals, after the highest examination and consultation on Jaluit, were given a sentence. Did you understand this to be a trial? A. As it was an examination and consultation called together and held by Admiral Masuda who had the authority I firmly believed that it was a trial."

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The contradiction is clear, in the instant case Inoue testified that he has always thought that this alleged procedure of examination and consultation was a trial. In the Furuki case, he testified that he did not know it was a trial until after the war.

So much for the element of contradiction, the testimony of Inoue contains other indication that there was no trial or other procedure. The fact that no official or other document mentioned the word trial or procedure in connection with these natives is highly significant. Inoue himself testified concerning a document circulated after the executions to inform the military and other personnel about the native incident. Inoue testified that the document said that the natives had sneaked into the Marshall Islands, that the natives committed murder and spying, and that all were executed. On cross examination in answer to question 376 - Inoue admitted that this document did not use the words trial or procedure. Note also that the Intelligence Officer Morikawa never saw or heard of a trial, and never saw any document indicating that these natives were given a trial.

Finally, let us look at the testimony of Inoue before the War Crimes Investigation. While the accused attempted to weazle out of his testimony at the Furuki trial, and tried to indicate that he always believed there was an examination and consultation procedure which was a trial - at least a special kind of a trial - the record of the Investigation clearly corroborates all the other evidence that he did not have any such belief, and that there were no examination and consultation procedures. At the Investigation Inoue was asked "17. Q. What kind of a 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."

There is no mention of any examination and consultation in this testimony given on October 9, 1945. And there is a clear statement that "they did not have a trial." In connection with this latter statement we should bear in mind the fact that Inoue was specifically asked by the judge advocate, "Q. 475. In October 1945 when you were at Jaluit, did you understand the word trial included a procedure by examination and consultation? A. I understood it to be included in the word trial." It is obvious therefore by his own testimony, that when in October 1945 he said that there was no trial, he was also saying that there was no procedure of examination and consultation.

From all the contradictions in the testimony of Inoue and all these friendly witnesses, it is apparent not only that Inoue knew that there was no trial, but also that there were no examinations and consultations of any kind.

The conclusion is inescapable. Inoue is not a credible witness. His sworn oath is valueless, his testimony is incredible. The Commission cannot accept his incredible story that he honestly believed that the execution of these natives, particularly the children, without a proper trial, was legally and morally justified.

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(b) Even if Inoue believed executions were legal it was a clear mistake of law and not a mistake of fact.

If the Commission were to accept the specious story of Inoue, that when he executed the eight natives he did believe that the natives had received a proper trial and their execution was legally justified, then the Commission must determine whether Inoue's mistaken belief was due to a mistake of law or a mistake of fact. If it were due to a mistake of fact then it could be argued by defense that this negated criminal intent, assuming that the mistake of fact were not caused by failure of the accused to use due diligence and care to ascertain the facts. But if the mistake was a mistake of law, then under the almost universal doctrine that ignorance of the law is no excuse and under the interpretation of paragraph 3 of Article 38, as evidenced by my citations of text and case authorities, the mistake of ignorance of law would not negate criminal intent and the accused should be found guilty and appropriately punished.

Defense counsel contend that Inoue believed "as a fact" that the natives had received a fair and proper trial under the circumstances and that he believed they had been legally executed. There are two things basically wrong with this argument. The first is that merely calling Inoue's alleged state of mind a "fact", and thus a mistake of fact since he was wrong in his alleged belief of legality, is a specious illogical attempt to distort and confuse the question at issue. This alleged fact of what his state of mind is as to legality, etc., is not what the law is concerned with when it provides that mistake of fact may under certain circumstances negate criminal intent. If he did not have this mistaken state of mind as to the legality of his acts, then we are faced with a case of clear acknowledged criminal intent to commit crime, and the law would not have to be concerned with the question of ignorance of fact, because the accused would have admitted that he actually intended to knowingly commit a crime. It is clear therefore that when the law talks about a mistake of fact, it is not concerned with a man's state of mind as to whether his acts are legal or not, for it begins with the assumption that he had a mistaken belief as to the legality of his acts, and the law then considers what are the alleged facts on which the accused made up his decision that his acts were legally justified. If the accused was mistaken as to the facts on which he made his erroneous decision as to the legality of his acts, then we are faced with the question of mistake of fact. If the accused knew the facts, but made a mistake as to the legality of his acts, then we are faced with the situation of ignorance or mistake of law - the preponderant view is that ignorance of the law will not excuse a criminal act. Ignorance of the facts however, under certain circumstances will negate criminal intent. If without intending to kill any person, one pulled the trigger of a gun under the belief that the gun was not loaded, then the law considers this lack of knowledge as to whether the gun was loaded as a mistake of fact. If under all the circumstances, which includes what the accused was doing with the gun, where he was, what he must be presumed to know in view of his age, experience, training, responsibilities, etc., then if under all these circumstances the mistake of fact was reasonable, and the accused used due care and diligence, the law will declare that he lacked the criminal intent and is not guilty of a criminal homicide.

The second thing which is fundamentally wrong with the argument of the accused is that it completely overlooks the fact that Inoue participated in these proceedings in many capacities other than that of a mere executioner. Inoue according to his statements investigated the natives; he made reports concerning them to Admiral Masuda, Shintome and Furuki, and participated as alleged judge advocate at all these alleged examinations and consultations. Inoue was not merely an executioner acting under orders. He had full and complete participation in all the facts. He investigated, reported, acted as alleged judge advocate, and sat in on the very alleged deliberations and consultations of the alleged judges when they stated their opinions. Inoue knew the facts, he even claims a fantastic recollection of minute details more than two years after the executions. So the evidence is clear. Inoue knew the facts; and if any mistake or ignorance existed it was a mistake of law as to whether under all the known facts a legally permissible trial was held and a proper order of execution issued. This is one of the clearest possible illustrations of alleged ignorance or mistake of law, for the accused knew and clearly participated in all the "facts."

(c) The evidence establishes conclusively that Inoue knew and should have known that the executions were illegal.

(1) Inoue's knowledge of the law, is evidenced by his own testimony. He testified as to his familiarity with the law. He testified as to numerous specific provisions of the Criminal Code of Japan under which the accused natives according to his testimony, were found guilty of criminal acts. (Q. 107,431) He has argued this familiarity with the law in order to prove the alleged guilt of the accused natives; and this familiarity with the law establishes his own guilt. This familiarity with the law was a product not only of his 7 years spent during the war as an officer, but was also a product of his specific duty as police officer. Inoue was asked with regard to his police activities, "Q. 384. Were you required to know the criminal code as it was applied to the natives? A. It was necessary." In addition to his actual knowledge of the law, as evidenced by his testimony, we must consider his duties in relation to the native case.

(2) In his alleged capacity as judge advocate and in his capacity as executioner Inoue had specific obligation and duty to know the pertinent law.

As alleged judge advocate it was Inoue's duty to know about trial procedure, to know what his functions in such procedure were, and to know what the laws in regard to crime and punishment were. It should be noted not only that Inoue testified that he gave his opinion as judge advocate before Masuda and the others expressed their opinions - but that the naval court martial law specifically requires the judge advocate to express his opinion. If he had the duty to express his opinion as to the crime and recommended punishment for the natives - then clearly he had an absolute obligation and absolute duty, not only to the Japanese military forces, but also to these natives, to know the law which should be applied to them. If he wilfully neglected that obligation and if this failure contributed to the death of these natives, then on this ground he would clearly be subject to criminal punishment and the Commission could find in that negligence the requisite criminal intent. A wanton, callous disregard or neglect of one's duties when the known or anticipated result can be the death

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of another human being, is criminal under the laws of any country - and even where the law sticks to the archaic language of criminal intent the law conclusively presumes that one intended the natural and probable results of one's acts.

Inoue as judge advocate had the obligation to know the laws relating to crime, and the laws relating to the alleged trial procedure in which he was ordered to participate. At the headquarters of the Naval Guard Unit, there was a copy of the court martial law. Did Inoue consult it? Or did he gamble the lives of these natives on his knowledge of the law? He did not say. But if he had consulted it - then it is clear that he would have testified that he had tried to determine the correct nature of his duties and of trial. And it is also clear that he would have known that the alleged proceedings were illegal and execution based on such proceedings was criminal. Every one has testified that he was a very careful officer - and we must assume either a) that he did consult the court martial law, and therefore knew the proceedings were illegal, or b) that despite the fact that he was such a careful officer, he did not believe that the lives of these natives were sufficiently important to require him to see what the law provided, or c) that in fact there never were any such examination and consultation proceedings and he was never appointed or ordered to act as judge advocate in any such proceedings. It is immaterial which of these possible alternatives we accept, for under each and every one of them the accused Inoue is proved to have the required criminal intent. To repeat - Inoue either a) did consult the court martial law, and therefore knew the proceedings were illegal, or b) despite the fact that he was such a careful officer he did not believe that the lives of the natives were sufficiently important to require him to see what the law provided, or c) in fact there never were any such examination and consultation proceedings, and he was never appointed or ordered to act as judge advocate in any such proceedings.

So much for his capacity as judge advocate. In addition to the duties of that alleged capacity of Inoue - there was the clear obligations and duties he did possess as the executioner of the natives. In this capacity it is clear that Inoue had the absolute legal obligation of knowing whether an alleged punishment was legal. Specifically with regard to the children it was his obligation and duty to know whether children could be punished with the death sentence. Inoue knew the ages of the children - in his confession, and in his testimony before this Commission he placed the age of Niebet and Siro as between 10 and 13. Clearly therefore he knew the age of these children was below 14 years.

Particularly in view of the fact that he was the officer in charge of the execution as well as the actual executioner - and as well as alleged judge advocate - it was his absolute duty to determine whether the death sentence could lawfully be executed on these children. If he did not know whether it was legal or not, his wilful neglect of his duty to ascertain the legality of punishment of children by death sentence, is just as criminal, and is clearly adequate evidence of criminal intent. This is true on three distinct legal grounds - first, ignorance of the law is no excuse; secondly - where there is a legal duty, a special affirmative duty to know the law, wilful breach of this duty is a distinct and separate source of criminal intent; thirdly - where a legal duty is known to involve the lives and safety of others, the law places a special duty of care in the exercise of such functions, in order to protect these lives, and failure to conform to that criminal standard of care in such cases constitutes criminal

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intent. Railroad engineers, doctors, police officers, etc., within the sphere of their particular duties are held to such special standards of care, and wanton or gross failure to exercise such care is presumed in law to constitute criminal intent. With regard to executioners the standard of care is particularly high, for the law requires the strictest care in the taking of human life. Later in my argument I will briefly discuss the extent of this requirement, suffice it to say here, that Inoue in his capacity as executioner should have known the law which prohibits the punishment of children under 14 years of age. If he should have known it, and in fact did not know it, his ignorance of the law is no excuse. Criminal intent is presumed from what one know or should have known.

One feeble attempt by defense counsel to mislead the Commission into believing that Inoue did not know there was no trial for the natives is so transparent that it hardly justifies comment. The defense counsel contended that as executioner Inoue had no responsibility to know anything in connection with the trial. Similarly, as judge advocate Inoue did not even have the right to sit in on deliberations of the judges and therefore had no way of knowing what the opinions or deliberations of the judges were or whether the trial was legal or not. The specious nature of the argument is obvious. First we cannot departmentalize the human mind. What Inoue knew as an investigator, or as an alleged judge advocate, or an executioner are all part of what Inoue knew - and if Inoue in any capacity learned any information which did or should have made him realize that there was no trial then Inoue knew this information and it is totally immaterial in what capacity he learned it. And the fact that Inoue by his admissions participated in activities and knew information which he would not have known if he was a judge advocate and these meetings were judicial proceedings, merely proves that in fact Inoue himself knew that these alleged meetings were not trials.

(3) Inoue knew and should have known that there was no trial.

Inoue's statements as to whether he knew there was a trial are clearly contradictory.

In discussing the fact that the accused Inoue is not a credible witness the judge advocate has pointed out how in his testimony before this commission the accused Inoue was placed in a most untenable position. He had to convince the Commission that at the time he performed the executions, he believed that the natives had been given a proper legal trial, and therefore he had no criminal intent when he executed them but merely believed he was performing his proper legal duty. In order to do this he testified as to appointment of alleged judges and a judge advocate, as to alleged examinations and consultations and that from the time of these examinations and consultations he believed that they constituted a proper special trial procedure - so that when he carried out the execution of the natives he was convinced that it was a legal and rightful act.

The judge advocate pointed out that the testimony of Shintome, and Inoue's own testimony at the Furuki trial, established that no judges were appointed and that Inoue was not ordered to act as a judge advocate with regard to these natives. Similarly it was pointed out that Inoue's testimony that examinations and consultations were held, and that he always believed that this constituted a trial was contradicted not only by Inoue's testimony at the Furuki trial that he did not

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consider this procedure a trial until after the war, but also by Shintome's and Morikawa's testimony that no trial was held, and by Inoue's statement to the War Crimes Investigator that "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 from the report."

This latter statement by Inoue, corroborated by every bit of credible evidence in the record, gives the truth of what happened to the Mille natives on Jaluit.

Some kind of investigation was held, a very poor one, for they never even bothered to contact Mille to find out if Tanaka was dead. They merely assumed that he was dead - and decided that all the natives, including the two women and the two children should be executed. The fact is that Tanaka was not dead, as the commission and accused discovered during the course of this trial.

The fact that the natives were condemned to death for a murder that was never committed, the fact that the Japanese militarists were willing to punish these natives with death without even checking with Mille to determine whether Tanaka had been killed or not, is clear proof of the complete disregard which they had for the lives of these natives, and thus is additional proof that these alleged examinations and consultations which Inoue claims were held, are sheer fiction of his desperate effort to save himself from just punishment. It is clear that there was no trial or lawful procedure, and the accused knew that there was no trial or legal procedure because he knew there were no judicial examinations and consultations. But even if we believed there were such examinations and consultations, regardless of any technical knowledge which Inoue had or should have had in his special capacity as alleged judge advocate, and in his capacity as head of police, there is one positive and irrefutable ground upon which it is clear that Inoue knew and should have known that the accused natives did not have any kind of a trial, and that even this alleged procedure would have constituted absolutely no semblance of a trial. I am referring to the fact that the accused natives were never present at any of the alleged meetings. It is a clear matter of common sense and common knowledge that a trial involving a death penalty cannot be held without having the accused persons present to defend themselves and hear the evidence presented against them. This is not a technical legal question. It is a matter within the common knowledge of every mature individual. It is a matter which the law must conclusively presume that Inoue knew, even disregarding the special capacity and duty of Inoue as head of police and as a captain in the Imperial Japanese Army for over 7 years. The fact that Inoue knew that the accused natives were never present at any of these alleged meetings is thus clear proof that Inoue knew and should have known that these natives never received a trial or proper legal procedure before their "sentence" of execution.

Inoue knew and should have known that the execution of these natives, after only an investigation, or even after examinations and consultations at which these accused natives were not present, was bot' legally and morally wrong. Inoue possessed clear criminal intent under any theory of law and the fact that he may or may not have been acting under superior orders does not legally excuse or justify his acts. This question of superior orders will be discussed in a later portion of this argument, but suffice it to say that even under the the theory expressed by defense counsel, even under the cited language

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of Makino, superior orders cannot be used as an excuse when the person knew or should have known the illegal nature of the orders. A superior officer cannot utilize an inferior to commit a crime: and as stated by Niikuma Motoji, Book II, para. 5 pp. 343-345 even under the theory that an inferior cannot examine the substance of the orders of the superior, "If an inferior officer knows of criminal intent and the use of himself by the commanding officer for the purpose of committing a crime, he must refuse to follow the orders."

Additional proof that Inoue knew the executions of the natives was illegal is apperent when we consider the execution of the children.

(4) Inoue knew and should have known that the execution of these children was illegal.

Defense counsel have attempted to confuse the Commission with regard to the evidence presented concerning the age of the children. In fact Mr. Akimoto tried to persuade the Commission that they were 15 years of age and thus adults. Throughout this trial there has been a definite obvious attempt on the part of defense and certain witnesses to exaggerate the age of these children, and we must therefore look to the evidence. They attempted to place the age of the children between 10 and 13 years of age. Obviously this is a gross exaggeration. Even the accused who attempted to exaggerate the age of the children in both his testimony and in his confession, stated in his confession that the girl Niebet was about 10 years of age, and that the boy Siro was about 10 years of age. In direct examination he testified as to Niebet that he did not remember how old she said she was, but that her mind was developed but her size was very small, and "from what I remember her age may have been from about ten to 12 or 13 years old." Similarly as to the boy Inoue testified he was "from about ten to 13 years of age". Note that even though Inoue obviously tried to exaggerate the age of the children, he never claimed that the children were 14 or over; and that the provision of the Japanese Criminal Code, Article 41 provides clearly that "Acts of persons under 14 years of age are not punishable." So that even under the most favorable interpretation, even under the most extreme exaggerations made by the accused, the children were still below the statutory age, and Inoue knew that they were below the age of 14.

The judge advocate has pointed out that Inoue in his official capacity as police officer used the Japanese Criminal Code. The testimony of Inoue is replete with his references to his use of the Japanese Criminal Code in regard to what specific articles and provisions the natives are alleged to have violated and for which they were alleged to have been sentenced to death. If as he claims he was familiar with the Japanese Criminal Code, then he definitely knew that any punishment of children under the age of 14 was illegal. In addition it was his duty as police officer, and it was his duty as executioner, to know the pertinent provisions regarding punishment - and it was also his duty as alleged judge advocate to know the provisions regarding crime and punishment in order to express his opinion as to what punishment should be given. So that if he did not know the provisions regarding punishment, it was something he definitely should have known, and the law must presume that he did know that punishment of a child under 14 was illegal.

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But regardless of any actual or implied knowledge of any pertinent provisions of the code - the accused Inoue admitted that he had never heard of the execution in Japan of any child under the age of fourteen for criminal acts.

Any human being with any sense of moral decency with any sense of right or wrong knew and should have known that it was morally as well as legally wrong to kill these children. They were clearly under 10 years of age. I think that Tanaka who lived with them, and was in charge of their working party, and who being in Japan has not had any opportunity to be infected with the attempted exaggeration of the age of the children, gave the accurate age of Siro. Note that defense counsel tried to use Tanaka's deposition concerning the age of one Goro - as indication that this was Siro and that he was about 15 years of age. It is apparent that Goro was not Siro. Goro would appear to be either Anchio or Lacojirik. But it is not Siro. For with regard to the boy child, Tanaka specifically states "The child was a boy..... The child was about 6 years old, very small and quite thin." This is Siro, the boy child. This is the child that Inoue killed in the jungles of Jaluit, on April 8, 1945.

Tanaka does not say how old the girl child was, for he states he does not know anything about her family. The other testimony clearly establishes however that Niebet was also a small child. Even Inoue testified that Niebet's size was "very small"; note also that Inoue's testimony with regard to how she was persuaded to confess if true, is further clear indication of how young Niebet really was. According to his testimony she was obviously so young that because of some candy, given to her by the accused on the first day she was imprisoned, she confessed that her parents had killed Tanaka. If this is true, then she was clearly an extremely young child, certainly no more developed than the 6 years old Siro. Whose sense of moral righteousness is so warped that he can believe that Inoue did not and should not have known that it was morally and legally cruel, heinous, and criminal to kill these children. Under these conditions, and in view of the execution of these children, can this commission have any doubt as to whether the accused Inoue had the requisite criminal intent?

The only question which remains to be considered from the standpoint of both the American statutory and common law theory, and from the standpoint of the Japanese Criminal Code, is the question of whether the killing of these natives was without legal excuse or legal justification. If in fact the law permitted or excused the execution of these natives, then regardless of the fact that all the basic requisites of criminal intent are present, the Commission would be compelled to declare the accused not guilty of Charge I, for his acts would not constitute a crime.

3. Absence of legal justification or excuse.

The defense counsel have made extensive, commingled, and confused arguments as attempted legal justification or excuse for the homicides performed by Inoue. In considering these arguments in alleged legal justification or excuse, we must bear in mind the fact that the human life is Gods precious gift, and that under all civilized concepts of law the protection and preservation of human life is society's most sacred obligation. For this reason the law rigidly limits, and restricts those activities which endanger human life, and even more rigidly limits the nature, conditions, and exercise of the legal

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excuse or justification for taking human life. As expressed in 40 Corpus Juris Secundum, Sec. 98, pg. 958,959. "It is important that the taking of human life be not excused or justified except in strict accordance with the established law..... A homicide is neither justified nor excused by a mistake of law as to the slayer's right to take life." Citing People v. Cook, 39 Mich. 236, 33 Am.Rep. 380.

We have already disposed of the defense argument that the accused had no criminal intent. We have also disposed of any argument that a good motive can constitute a legal law, , for it is clear that whether under Japanese, American, or international excuse, the argument of motive is only relevant after the finding of guilty, in regard to the question of mitigation of punishment. As Wharton pointed out "There is no bad act which the perpetrator does not summon up good motives to excuse..... The law is: No matter what may be the motives leading to a particular act, if the act is illegal, it is indictable, notwithstanding some one or more of the motives inducing the act may be meritorious." (Wharton's Criminal Evidence, 11th ed. p. 283, and see numerous cases cited in footnotes.)

Four major arguments of defense counsel remain: a) self-defense, necessity, or self preservation; b) coercion or compulsion; c) superior orders; d) lawful execution. None of the defense arguments are sustained by either the law or the facts under the circumstances of the instant case.

a. Self-defense, necessity, or self preservation.

Defense counsel implied that the conditions on Jaluit were such that the killing of the natives was required by a condition of self-defense or necessity, and that those conditions justified the homicides.

Self defense is a legal justification for intentional homicide. In its broader aspects it includes the defense of others as well as the defense of oneself.

Let us first look to the provisions of the Japanese Criminal Code and see whether under these provisions the killing of the natives by the accused was legally excused or justified. The Japanese law counterpart of legal justification of self-defense, etc., is set forth in the Japanese Criminal Code in Articles 36 and 37 of Chapter VII, which relate to "unavoidable acts." The accused, in an intricate argument has attempted to show that in view of war conditions on Jaluit, there was a military necessity of self-defense which required and justified the execution of the natives. Articles 36 and 37 of the Japanese Criminal Code do not support this argument of defense or necessity. These provisions require, first that the act be unavoidable, and secondly, as in all self-defense provisions, the danger against which one is seeking to protect oneself must be imminent and caused by the person one injures in such defense.

Article 36 reads: "Unavoidable acts done in order to protect the right of oneself or another person against imminent and unjust violation are not punishable. According to circumstances, punishments may be mitigated or remitted for acts exceeding the limits of defense." Article 37 reads: "Unavoidable acts done in order to avert present danger to life, person, liberty or property of oneself or another person are not punishable, provided the injury occasioned by such acts does not exceed in degree the injury endeavored to be averted. According to circumstances however, punishment may be mitigated or remitted for acts exceeding such limit....."

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It is clear that both these provisions of Japanese law require first that the acts be unavoidable, and secondly that they be in defense against imminent and unjustifiable danger. We have proved, and the defense have by their silence admitted, that the natives were unarmed. Any imminent danger to the Japanese was not caused by these natives. They were unarmed, bound prisoners of the Japanese. The American Armed forces, and not these poor frightened natives and children, were responsible for the danger to the Japanese; and even the activity of the American forces was not an unjust violation of the rights of the Japanese; it was just retribution.

In addition, it should be noted that the Japanese requirement of unavoidability is similar to our theory that even in self-defense one must not go beyond the absolute necessities of that self-defense as required by the immediate conditions at the time of the act of self-defense.

William Sebald of Kobe, Japan, in his book, "The Criminal Code of Japan," illustrates this concept of unavoidability and shows that even if danger is imminent from an unjust aggression, the extent of force used must be clearly unavoidable. He cites in regard to Article 36 the following decision of the Supreme Court of Japan:

"When a person is attempting to restrain another who, under the influence of liquor, was violently behaving himself was grappled by the latter and in consequence thereof, struck him on the head with a porcelain bowl in order to push him aside, the act was done in order to protect himself against an imminent unjust aggression, but it cannot be said to have been unavoidable. Furthermore, if he struck the drunkard on the head with a candlestick to stop him, because in consequence of the blow the latter was more intoxicated than before and shouted 'come out, old fellow!' and pulled him by the sleeve, his act was done to protect himself against an imminent unjust aggression, but cannot be said to have been done unavoidably." (11 S.C.N.S. 1804, Daishinin Hanreishu.)

Striking the drunkard who was grappling with him, first with a porcelain bowl, and then later with a candlestick, was conceded by the court to have been done "to protect himself against an imminent unjust aggression", but nevertheless the court held that the acts "cannot be said to have been done unavoidably." The Japanese Supreme Court has thus declared not only that the danger must come from the person who is injured, not only that the danger must be imminent, not only that the danger must be caused by an unjust aggression, but also that the means and extent of repelling such danger must be "unavoidable."

The natives could have been confined, they could have been released, or they could have been put to work as Shintome suggested. Perhaps Masuda ordered them executed in order to terrify and intimidate his own natives into not trying to escape from Jaluit. It may have been expedient, but it was not necessary or "unavoidable"; and the execution of the children was clearly callous, deliberate, inhuman cruelty.

The execution of these natives was not legally justifiable or excusable under Articles 36 or 37 of the Japanese Criminal Code.

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Under our law - indicated in Wharton's Criminal Evidence, Vol. 1, p. 328, there are four essential conditions to make out a case of self-defense: "First the party assaulted or seriously threatened must be free from fault in bringing about the difficulty; second, he must believe at the time and under the circumstances that the danger of death or of serious bodily harm at the hands of his assailant is such as to render it necessary to take his assailant's life to save his own life or to prevent serious bodily harm; third, the circumstances must be such as to warrant such belief in the mind of an ordinarily prudent person; fourth, there must exist a necessity to take life, of which necessity the jury are the judges."

Since the natives were unarmed, bound prisoners of the accused at the time of the homicide, it is clear that they were not assailants of the accused, that the accused was not in imminent danger of bodily harm from them, and that there was no necessity to take the life of these natives. Finally, it must be noted that the Japanese were not free from fault in bringing about the difficulty. Obviously therefore, this argument of self-defense, or necessity, like the argument of "unavoidable acts" under the Japanese code is not sustained by the facts in the instant case.

Similarly under international law, the alleged justification is not sustained. It is true that the principle of military necessity is recognized in international law as justifying certain acts which would otherwise be illegal - such as the killing of enemy soldiers during the heat of battle. But the nature and extent of these excused or justified acts, is definitely limited in international as it is in domestic law. Glueck, War Criminals, Their Prosecution and Punishment, pg. 42. All is not fair in war. Lawrence, Principles in International Law, which I quoted earlier clearly points out the fact that international law does not authorize violation of the rules of international law because of the exigencies of the moment. Also note that under international law the concept of military necessity is limited by the doctrine of humanity which prohibits employment of such kind or degree of violence as is not strictly necessary for the purpose of war. Glueck, op.cit. pg. 42.

It is apparent from what has been said before, the killing of these unarmed natives was not strictly necessary for the purpose of war. There was no imminent danger which necessitated their being killed without a trial, and even if there had been such danger, the alleged necessity of taking their lives would not have constituted a legal justification or excuse. Cardozo (What Medicine Can Do For Law, 1928, in Law and Literature 1930, p. 113) speaking of the decision in United States v. Holmes, 1 Wall p. 142, said "There is no rule of human jettison."

b. Coercion or Compulsion.

The argument of coercion or compulsion is implicit in the defense argument of superior orders. The inference is that Inoue as a Japanese officer had to obey his superior; if he did not do so he would himself have been punished by Masuda. Note that such alleged coercion was not an imminent or expressed compulsion, but even if such compulsion had actually currently existed, the law does clearly reject this argument. To permit this excuse would open up a broad avenue for the defeat of justice, and would permit organized criminals and criminal societies, national and international, to evade punishment by claiming that they would have been killed by their boss or fellow members if they refused to obey the order to kill.

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The rule is expressed succintly in 26 American Jurisprudence 206 as follows:

"While generally one may excuse the commission of various crimes by showing that he was acting under coercion or compulsion, one cannot excuse the taking of a human life, under the plea of compulsion."

Part of the reason for this rule of law is ably expressed in 2 Stephen History of the Criminal Law (1883) pp. 107-108, as follows: "Criminal Law is itself a system of compulsion on the widest scale. It is a collection of threats of injury to life, liberty and property if people do commit crimes. Are such threats to be withdrawn as soon as they are encountered by opposing threats? The law says to a man intending to commit murder, if you do it I will hang you. Is the law to withdraw its threat if someone else says, "If you do not do it I will shoot you?"

"Surely it is at the moment when temptation to commit crime is strongest that the law should speak most clearly and emphatically to the contrary. It is of course a misfortune for a man that he should be placed between two fires, but it would be a much greater misfortune for society at large if criminals could confer impunity upon their agents by threatening them with death of violence if they refused to execute their commands. If impunity could be so secured a wide door would be open to collusion, and encouragement would be given to associations of malefactors, secret or otherwise. No doubt the moral guilt of a person who commits a crime under compulsion is less than that of a person who commits it freely, but any effect which is thought proper may be given to this circumstance by a proportional mitigation of the offender's punishment.

"These reasons lead me to think that compulsion by threats ought in no case whatever to be admitted as an excuse for crime, though it may and ought to operate in mitigation of punishment in most though not in all cases. If a man chooses to expose, and still more if he chooses to submit himself to illegal compulsion, it may not operate even in mitigation of punishment. It would surely be monstrous to mitigate the punishment of a murderer on the ground that he was a member of a secret society by which he would have been assassinated if he had not committed murder."

c. Superior Orders.

For the same social reasons the argument of superior orders must be rejected. There was a time when the text writers and others, including the authors of the 1914-Rules of Land Warfare, argued that superior orders could be a defense for certain criminal actions. It never was a defense in an otherwise illegal or unjustified homicide.

Commander Carlson has cited on the subject, some language from Winthrop, op.cit. and dicta from certain decisions which speak in terms of superior orders as a defense. Careful analysis will show I believe that not the alleged superior orders, but other well recognized legal grounds formed the essential basis for the decisions of the court. Among the common so-called cases of defense of superior orders, are those cases which involve acts by military guards who fired upon persons who entered restricted military zones, or who failed to halt when properly challenged at such zones, or who resisted arrest during rebellion or martial law, etc. There is nothing in any of these cases

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which requires the invocation of any rule of superior orders to constitute justification for the acts of the military guards or military police. The same acts performed by any policeman while acting in his official duty as a guard, or in a riot squad, or in the apprehension of criminals as part of his normal duties, would be similarly justified. The same standards are used, namely whether under the circumstances the acts were reasonable and the force used not excessive. It is not the fact that they are military personnel under superior orders - but the fact of their functions as guards or police etc., which justify their actions. Commander Carlson cites from C.M.O. 4-1935, the "rule" of United States v. Clark 31 Fed. 710 "this rule being that a homicide would be excusable if committed by a military guard, without malice, and in the performance of his supposed duty as a soldier, unless it was manifestly beyond the scope of his authority, or was such that a man of ordinary sense and understanding would know that it was illegal."

Similarly, note the following language from that portion of Winthrop, Military Law and Precedents, p. 296, cited by defense counsel Commander Carlson. "The act, however must have been duly done, must not have been either wanton, or in excess of the authority or discretion conferred by the order. Thus an officer or soldier ordered to suppress a mutiny or disorder or to make an arrest, a guard ordered to keep in custody a prisoner, or a sentinel ordered to prevent persons from passing his post, will not be justified in taking life or in resorting to extreme violence, where the object of the order can be effectually accomplished by more moderate and customary means: otherwise where the forcible resistance of the party, his persistence in disregarding warnings, his sudden flight, etc. render it impracticable to seize or stop him without extreme violence or the use of a deadly weapon. Further the order to constitute a defense must be a legal one. It must emanate from a proper officer - a superior authorized to give it - and it must command a thing not in itself unlawful or prohibited by law."

I am in complete agreement with this much of the language as cited from Winthrop, but other cited portions speak in generalities which are broad, but relatively meaningless until we examine their application to specific cases, and specific types of crimes. In application to criminal acts, and more particularly serious crimes such as homicide, it is clear that legal justification or excuse is not found in the obedience to superior orders, but on the basis of otherwise socially and legally excusable or justifiable grounds.

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Even the political socially vicious decision of the Amakasu case did not argue that Superior Orders was a defense. They argued, as indicated by defense counsel's and Makino's interpretation, that ignorance of the "fact" that it was a crime negatived criminal intent, and that the law required a subjective criminal intent. Makino in his Study of Criminal Law - Vol. 3, pp. 114-125, specifically notes, in the portion cited by defense counsel Mr. Suzuki, that the fact that Article 35 was not applied to the acquittal means "This presumes that the order of the superior is not absolute even among military personnel. That means, if the accused had a proper knowledge of the law, it would have been their duty to disobey the order." Similarly further on in the same quotation he states "In these two considerations this judgment presumes that the order of the superior is not absolute even among military personnel." Note Makino is the very authority cited by defense for their subjective theory of criminal intent.

Defense counsel have contended that in the Furuki case, the judge advocate's argument did not contain reference to superior orders as interpreted under Japanese law. It was unnecessary, because the Japanese law is not different from our law, and because under any valid interpretation of the Japanese law of superior orders, the accused cannot escape his criminal responsibility.

Even under the theory of law that the inferior does not have the authority to examine into the substance of the order, as evidenced by the Treatise of Niikuma Motoji, Book II, Para. 5, pp. 343-345, Horitzu Gaku Jiten - still "if an inferior offficer knows of criminal intent and the use of himself by the commanding officer for the purpose of commission of a crime, he must refuse to follow the orders." It is obvious that if he should have known of the illegality of the order - the law either presumes as a matter of proof that he did know of its illegality, or holds him to the social norm - and he is equally required by the law to refuse to follow the order.

The compulsion of an actual threat of death cannot justify a homicide; and therefore, even the fact that the commanding officer might have the power to kill his inferior, does not in the eyes of the law, excuse a homicide performed in obedience to his order or even his expressed threat.

In almost every war crime's case, the accused has contended that his illegal acts were the result of the orders of a superior officer. The argument has been universally rejected. Superior orders can be argued in mitigation, but they cannot be accepted as a substantive defense in determining whether the accused is guilty of the crime charged. The accused had had due warning that superior orders would not be considered a defense. The Joint Declaration on Punishment of War Crimes, of the Inter-Allied Conference in January 1942, announced to the world that they placed "among their principal war aims the punishment through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them."

The SCAP Regulations (Basic ltr. SCAP 000.5, 5 Dec 45) which this Commission is authorized to use, provide "The official position of the accused shall not absolve him from responsibility.....Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires."

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The logical basis for this rule is apparent. As Glueck points out, War Criminals, Their Prosecution and Punishment, page 140, "A little reflection will show that this provision (superior orders and governmental immunity) if followed liberally would give almost the entire band of Axis war criminals a valid defense." The position of the courts on this subject is ably and briefly expressed in the decision of the famous International Tribunal at Nuremberg, in the summary of the judgment released at Nuremberg, September 30, 1946, the Tribunal states: "The defense of 'Superior Orders' has never been recognized as a defense to a crime, but is considered in mitigation as the charter here provides." In view of this case, and the numerous other cases on the same subject, the matter is clearly so well settled that it is unnecessary to burden the commission with further argument on this point. One point should be briefly noted in passing. Defense counsel have referred to Masuda who was Inoue's superior officer, and have erroneously inferred that Inoue is being compelled to take Masuda's place and Masuda's responsibility because Masuda is dead. Defense counsel know that this is specious. Inoue is being tried for his own responsibility and his own participation in these crimes. Inoue's guilt is clear regardless of whether or not in fact Masuda ordered Inoue to execute these natives. If Masuda were alive we would still try Inoue on the identical charges and specifications; and the identical crimes he has clearly committed. The judge advocate has not attempted to contest the story by the accused of the alleged existence of superior orders from Masuda; and proof of these orders would not vindicate and would not exculpate Inoue. For if in fact Masuda ordered Inoue to execute these natives, then this fact merely makes Masuda a participant, but it does not excuse Inoue for his participation in the crime of murder. Masuda and Inoue would both be tried. The alleged superior orders of Masuda may be considered in mitigation, but Inoue must be found guilty as charged.

d. Legal Execution.

Having already disposed of the question of criminal intent or motive, we are not concerned now with what Inoue thought in regard to a trial. The only question remaining to be considered by the Commission is, was this in fact a legal execution.

In this connection the defense have cited Article 35 of the Japanese Criminal Code which provides "Acts done in accordance with laws and ordinances or in pursuance of a legitimate business or occupation are not punishable." This provision is a common one applied in all systems of criminal law - but it does not mean that the mere fact that an act is done in the course of legitimate business or occupation or within the apparent framework of the law, will make the act legal. The alleged criminal act must be judged on its own merits, and not in terms merely of whether it purports to be in the course of a legitimate order, busines, or occupation. Inoue's acts are purported to have been done in the course of lawful occupation as a judge advocate, in pursuance of the regular duty to supervise the execution of the sentence. Inoue's acts must be judged on their own merits, and not in terms of his alleged lawful occupation. If the act is illegal, the fact that he is an official is not an excuse under any legal theory. Officials who perform illegal acts - who exceed or abuse their authority or power, are held criminally responsible in every civilized country of the world and under every system of criminal justice. In the narcotics case which I cited earlier in my argument, the Supreme Court of Japan held that even though the act of importing the narcotics

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was carried on in the course of the accused's legitimate customary business as a drug merchant, he was still guilty of the crime, despite the fact that he did not know his acts were illegal, and did not intend to violate the law or do anything morally wrong.

The defense of the accused must rest on the argument that the homicides were legally excused because they were legal executions.

If proved, this excuse would constitute a complete defense, and it would be your duty to find the accused not guilty of murder. But a legal execution must be based upon a legal sentence properly determined and pronounced at a legal trial. The requirements are strictly applied, because the law does not readily or carelessly justify the taking of human life. How rigidly these requirements are applied is apparent in the following excerpt from 26 American Jurisprudence, 230.

"If however, judgment of death is given by a judge not authorized by lawful commission, and execution is done accordingly, the judge is guilty of murder.

"Such judgment where legal, must be executed by the proper officer or his duly appointed deputy, and if another person does it of his own head, it is murder, even though it is the judge himself.

"So too, the execution must pursue the sentence of the court, the substitution by the officer charged with the duty of execution of one method of killing for another being murder." See 2. LRA (NS) 76 and 67 LRA 293.

(1) Whether natives committed crimes is immaterial if no trial given.

Defense, throughout their presentation of their case, and in their arguments, have sought to persuade the commission that the execution was legal, for in fact the natives had committed serious crimes. We have had presented before this Commission only the testimony of the Japanese military personnel, the testimony and recorded testimony of the accused and his friends. These witnesses testify that the natives committed murder, desertion, and spying. The natives are dead. They cannot appear and testify for themselves; and it is my firm belief that we will never know what actually happened to these natives either at Millo, on the boat, or at Jaluit. Was Tanaka actually with the natives in their boat? Was he hit in the head and thrown overboard in a struggle? Or was he drunk and did he fall overboard? If he was attacked in the boat what was he doing? Was the attack on him justified? If Tanaka fell or jumped overboard during the struggle how did the natives get his short pants that Furuki in question 58, testified the natives had? These are only a few of the unanswered questions raised by the testimony of the accused and his friends.

The accused claims that the natives confessed. If they did confess who confessed, what they confessed to, and what means were used to extract confessions from them, will never be known. The story that the child Niebet, confined in prison with her parents, would welcome an enemy stranger into her confidence in the course of his two visits in the same day, and on the second visit would confess because of some candy that her parents had murdered Tanaka, is an incredible fantastic story. Only rivalled by the equally incredible story that the adults faced with the confession of this small child, then opened up and proceeded to verify the entire story. No, the story of how these alleged confessions were obtained does not ring true; and the

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question arises were these alleged confession obtained volunterily - for confessions obtained under duress are no evidence of guilt, even under the laws of Japan.

It is unnecessary to consider whether the American armed forces could have induced these natives to take their children with them and go on a dangerous spying mission. It is equally unnecessary to consider whether the American armed forces would have induced them to go on a spying mission with such young children.

We do not know what acts each of the natives committed. All we know is that they were executed; that some of them are alleged to have confessed to murder, desertion, and spying but actually no murder was committed and no overt acts of spying occurred because the natives were picked up and confined immediately; that clearly there is serious doubt as to the criminal guilt of some of the natives; particularly two young children whom the Japanese criminal law specifically provides cannot be punished. No, we do not know whether the natives were guilty or innocent of crime, and their guilt or innocence is totally immaterial to the issue now before this commission.

The accused Inoue is on trial here because no trial was given these natives and they had no fair judicial opportunity to prove their innocence. Surely the defense will not argue that we must again convict these natives in absentia and without a trial. Learned defense counsel argues the executed natives were guilty of serious crimes. The law does not permit the accused to argue that if he had in fact tried the natives he would have been able to prove that all 8 of them were guilty. Two years after the event we cannot, nor is it our province to try these dead natives. They cannot testify, and they cannot defend themselves. And even if we did now find that they were then guilty, the accused must still be convicted of murder if in fact at the time that he committed the execution it was not legal because no trial was held. The law requires that to constitute a legal execution the trial must be held prior to the execution. It is obvious why society cannot permit men to be executed first and tried later.

Learned defense counsel Mr. Akimoto has previously said that in Japan, Germany, England, and the United States the doctrine of legal executions is the same. Defense counsel has cited Section 640 of Wharton's Criminal Law. This section clearly establishes that there must be a prior trial or the execution is illegal.

Section 640 reads: "Section 640 - killing under mandate of law is justifiable. The execution of malefactors, by the person whose office obliges him, in the performance of public justice, to put those to death who have forfeited their lives by the laws and verdict of their country, is an act of necessity, where the law requires it. <u>But the act must be under the immediate precept of the law, or else it is not justifiable; and, therefore, wantonly to kill the greatest of malefactors without special warrant would be murder. And a subaltern can only justify killing another on the ground of orders from his superior in cases where the orders were lawful. As we have seen, a warrant that is without authority is no defense;</u> though it is otherwise when the defects are merely formal." (Italics supplied.)

It is apparent from the Section of Wharton cited by defense counsel, that it is totally immaterial to the question of Inoue's guilt of murder, whether or not in fact the executed natives had committed

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criminal acts. For as Wharton states "Wantonly to kill the greatest of malefactors without special warrant would be murder."

(2) No trial, ergo no legal execution.

It is elementary that to have a legal execution there must have been a legal sentence properly derived at a legal trial held in accordance with a legal procedure.

The Japanese Constitution, provides in Chapter II, Article 23, "No Japanese subject shall be arrested, detained, tried, or punished except according to law." Article 24, "No Japanese subject shall be deprived of his right of being tried by the judges determined by law."

The judge advocate will briefly point out the evidence establishes beyond any reasonable doubt that these eight natives did not receive any type of legal trial, and therefore the eight homicides were not legal executions.

It is unnecessary to consider certain clear proof which establishes that the formal requirements of a proper trial, judgment paper, sentence, and order of execution were not conformed to. I refer to such obvious technical defects as - the lack of any written order appointing judges or convening the court, the lack of any organized method of recording the proceedings, the fact that the alleged judge advocate was present during all the "deliberations" of the alleged judges, the fact that according to Inoue all three judges were witnesses at the alleged trial. These are only a few of the very obvious defects in the alleged proceedings. But we need not concern ourselves with these perhaps formal defects, because the evidence of fundamental substantive defects is so clear that it incontrovertibly establishes that in fact there was no trial.

Defense counsel should be reminded that the judge advocate has not claimed that these alleged examinations and consultations were not a trial because of minor variances between the procedure applied and the trial procedure provisions of the court martial law or the law of criminal procedure. It is not because of any minor technical variations or relaxation in the rules of procedure or evidence, such as the SCAP rules that the judge advocate "insists" that the examination and consultation of the Mille natives is not a trial. It is because of the fact that even if we assume that there were these examination and consultation meetings, each and every fundamental right and elementary requirement of a trial under any civilized concept of law was denied these natives. Even if we believe that there were judges and they were instructed to act impartially, and even if we forget that their opinions were not followed, we cannot forget that no witnesses were called for the defense, that no defense counsel were permitted, no right of defense was given the natives, no sworn testimony was required, and finally even the accused natives were not present during this alleged trial. In short every right of trial was denied these natives - everything was denied them - except the death sentence. This in brief is what we will prove - these defects are not minor changes or variations - they vitiate the entire concept of trial.

Defense counsel have argued that the executions were legal because the natives were convicted and sentenced at a legal trial, a special judicial proceeding of examinations and consultations held in Rear Admiral Masuda's air raid shelter.

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The judge advocate in discussing the question of criminal intent established that Inoue knew and should have known that the executions were illegal. In proving this obvious fact, the judge advocate in considerable detail established that this whole story of an alleged judicial proceeding consisting of numerous examinations and consultations was so full of holes, obvious fallacies, and clear contradictions, that it was revealed as a clearly imperfect fabrication. The judge advocate established that there were no judicial examinations and consultations; and that at best there was a very imperfect investigation and a hasty, unfair and illegal execution.

In dealing with the question of criminal intent so much detailed evidence was considered that the judge advocate will only briefly discuss the fact that Inoue's testimony shows, that there was no trial, that he was not a judge advocate and Shintome was not a judge. Similarly Morikawa's testimony shows that there was no trial and that he was never a witness at any examination and consultation. Similarly Shintome's testimony shows that there was no trial, he was not a judge, and that there were no judicial examinations and consultations, but only one meeting at which he attended and with Masuda, Furuki and Inoue discussed the question of whether the natives should be executed.

The defense attempted to persuade the commission that they can explain the contradictions in Inoue's recent testimony and his previous statements at the Furuki trial and the War Crimes Investigation. They have feebly and only half-heartedly attempted to persuade the commission that Shintome and Morikawa were lying when they indicated that there were no trials; and that Shintome was actually a judge at the proceedings and Morikawa was a witness at the trial by examinations and consultations.

The evidence is so clear that there is no need to further discuss this dessicated defense. But it should be noted that even if Shintome and Morikawa had never appeared; even from the testimony of the accused himself, it is clearly and unequivocally established that there was no trial and no semblance of any judicial procedure. On cross-examination, Inoue admitted that the accused natives were never present at the alleged trials, no sworn testimony was presented against them, no counsel was present to represent or defend them. Under what system of law, under what conceivable legal procedure could such meetings constitute trials?

(a) No trial under Japanese civil laws of Criminal Procedure.

The defense has contended that due to war conditions the natives lost their right to trial by the Local Court of Ponape. The judge advocate has previously argued that the authority given Masuda by the alleged dispatches did not give him any power of any governmental agency outside of Jaluit, and therefore, did not deprive the Ponape court of its jurisdiction over all serious criminal cases on Jaluit Atoll. But even if Masuda by means of war conditions derived judicial criminal jurisdiction over these natives, it does not follow that he had the power to subject them to court martial law, rather than the Japanese Code of Criminal Procedure which is the normally applied code of criminal procedure for Japanese civilians.

If the natives were entitled to the protection set forth in the Japanese Code of Criminal Procedure, it is apparent that the proceedings at these alleged meetings was in complete violation of all their rights, and were not trials in accordance with that code.

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Defense counsel Mr. Suzuki in his argument has noted that the articles from the Japanese Code of Criminal Procedure which were cited by the judge advocate in his argument in the Furuki case, were the articles from the former code, which has since been modified. Unfortunately the staff of interpreters has not been adequate to translate the new code. But the important thing to be noted is not what Mr. Suzuki said in this regard, but what he did not say. Mr. Suzuki did not say that any specific provision of that code of criminal procedure as cited by the judge advocate had been changed in substance by the new code. If there had been any substantial change in these provisions, if any such change aided the accused or in any way showed that the procedure held on Jaluit was legal, Mr. Suzuki would clearly have pointed out that change. The fact that he did not do so is clear indication that the right of trial and the safeguards of trial set down in the earlier Japanese code of criminal procedure were basic and minimum standards which have not been decreased. Under the provisions of the newer code of Criminal Procedure, as well as within the provisions of the former code, the accused natives were not given a trial.

The judge advocate has examined many provisions of the new code and finds them identical with the former code provisions. He has consulted with authorities who assure him that the new code provides the same protections and has not decreased the minimum standards and safeguards of a criminal trial. These minimum standards as set forth in the pertinent provisions of the former Japanese Code of Criminal Procedure are briefly as follows: Book I-V Public Trial, Chapter 1, General Provisions, Section 176, Public trial shall be held in court where shall be present the judges, the public procurator, and the clerk of the court. Sec. 177 - the accused shall appear in the court free of personal restraint, but may be placed under guard. Sec. 179 - the accused may employ counsel to plead for him. Sec. 181, the legal representative of the accused may participate in the proceedings as his assistant. Section 183. If the accused cannot appear at the hearing by reason of mental derangement or sickness, the proceedings shall be suspended until his recovery. Section 189, Witnesses who have been examined, or experts who have given their opinions at the preliminary examination, may be summoned anew. Section 193, Witness shall not communicate with each other nor shall they be present at the proceedings until they give their testimony. Section 194. The presiding judge shall interrogate the witnesses and accused. The parties interested in the case may require the presiding judge to put to the witness questions for the elucidation of such matters as they may deem essential to the pleadings."

This is but a brief thumbnail sketch of some of the pertinent provisions. It is readily noted that while some of the procedure is slightly different from our procedure, essential rights are carefully safeguarded. The alleged meetings in Masuda's office were certainly not trials in accordance with these provisions.

(b) No trial under Japanese naval court martial law or any civilized concept of trial.

In his direct testimony the accused Inoue attempted to establish that the natives were in the status of Gunzokus. This was done because under the Japanese naval court martial law, the gunzokus are made subject to naval court martial law, and the accused wanted to try

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to persuade the commission that the alleged examinations and consultations were a special "temporary Court Martial". In cross-examination the judge advocate established by question 179, that the natives were not attached to the army or navy, and by question 180, established that therefore the natives definitely were not gunzokus. As a result of this damaging cross-examination the defense had to try to find some other way of attempting to apply naval court martial law, because it was obvious that even the alleged proceedings concerning the natives could not be considered to even resemble a trial under any system of civil judicial procedure.

Defense counsel therefore argued that because of dire battle conditions and because this area was isolated Admiral Masuda could in accordance with martial law try these natives by "Temporary Court Martial, a kind of specially established court martial." Since defense witnesses have admitted that martial law was never established in Jaluit, the judge advocate will not concede that Naval Court Martial Law could legally be applied to these natives.

But even if it could be so applied, and even if the natives were legally deprived of their right to be tried in accordance with the Japanese Code of Criminal Procedure, they still retained their right to a trial, the right to trial under the Japanese naval court martial law; and even defense counsel admits this fact, and tries to establish that in substance, the natives were accorded this right. Let us examine the defense argument in the light of the facts and see whether the Japanese Naval Court Martial Law authorizes as a trial, the procedures alleged to have been held in Masuda's office.

(1) Right to defense counsel.

Section 369, cited by defense counsel, merely means that even if the accused does not want defense counsel, he must be required to have one, unless sentence is pronounced in open court. Under Article 372, it would appear that in a special court martial, the accused may waive his right to counsel and be sentenced in camera.

Defense counsel Mr. Akimoto, argued that Section 93, which provides that the "preceding six articles" shall not be applied to a special court martial, explains why the accused had no legal representative or advisor at the trial. But he fails to mention that article 94, which does not precede article 93, provides: "Legal representative.....of the accused can at any time after the indictment has been lodged, become a legal advisor to the accused....." It would appear, therefore, that Section 93, was designed not to destroy, even in special courts martial, the right to counsel or legal representative, but was merely designed to permit under special war conditions a relaxation of certain related technicalities with regard to the selection of the number and the duties of defense counsel.

It may be that under dire battle conditions a system of justice would relax compliance with certain rights of the accused, and even might permit an accused to be tried for minor crimes and imprisoned without benefit of counsel. But the entire argument of Mr. Akimoto and his colleagues overlooks one fundamental and all important fact, the fact that these accused natives were allegedly being tried for the crimes of murder and spying which carry the death penalty. No civilized system of law or justice would tolerate an alleged trial with death penalty where the accused was denied the right to defense counsel.

The lack of defense counsel is one of the fatal defects which establishes from Inoue's own testimony that these natives were not given a trial.

(2) No sworn testimony.

The uncontradicted evidence establishes that neither Inoue, nor any of the judges were sworn. Inoue testified that he, Masuda, Furuki, Shintome, and Morikawa testified at these alleged examinations and consultations.

The testimony of Inoue establishes that no sworn testimony was submitted or considered during the course of the alleged examinations and consultations. There were no sworn documents, and as Inoue testified in answer to question 420, "The witnesses were not sworn."

Defense counsel Mr. Suzuki has attempted to persuade the Commission that under Japanese law the protection of sworn testimony is not considered important. He cited Article 201 of the Japanese law of criminal procedure which provides that no oath is required of an accused under 16 years of age, those who cannot understand the meaning of an oath - such provisions are also common in American procedural law. Article 201 also provides that accomplices, relatives, employees, and lodgers of the accused may also take the stand without an oath. The fact that this group of individuals need not take an oath does not mean that an accused may be convicted by unsworn testimony. These provisions, these exceptions to the rule requiring oaths, are designed, not to permit convictions; they are designed to permit defense by unsworn testimony. The group of persons who need not be sworn include the accused, relatives of the accused, accomplices, employees, and lodgers. These are exceptions to the general rule requiring sworn testimony - and do not mean that under the Japanese law of criminal procedure sworn testimony is unnecessary or unimportant as a basis of conviction.

Similarly defense counsel argued that under Japanese law an oath is unnecessary in questioning of a witness by the judge advocate, and he cited Article 267 of the Naval court martial law. This section clearly relates to a preliminary investigation and not a trial - and it indicates merely that a judicial police officer need not or is not authorized to, administer an oath. This article reads: "In case prosecuting officer is about to make an inquiry of a witness, he may let the witness take an oath. A naval judicial police officer or judicial police officer might not ask witness to make an oath." It is obvious from its context that this provision does not relate to a witness at a trial. The Japanese naval court martial law in sections 247 et seq. deals with the question of trial and specifically provides in part as follows: "Art. 247. Witness should make an oath unless there is any stipulation contrary to it. Art. 248. An oath should be made by witness before questioning begins.... Art. 249. An oath should be made on 'the book of oath.' In this book of oath a statement 'I hereby swear that I shall tell the truth. I shall neither hide anything nor add anything!..... Art. 250. A fact that there is a punishment for person who makes false testimony should be told beforehand to a witness who is to make an oath."

From these citations from the Japanese Naval Court Martial Law, it is obvious that sworn testimony is considered a fundamental aspect of a proper trial procedure in accordance with Japanese naval court martial law. Lack of such evidence, and failure to provide even this

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elementary safeguard is another fatal defect which establishes from Inoue's own testimony that these natives were not given a trial.

(3) Absence of the accused.

Inoue admits that the accused natives were not present during the alleged trial, these examinations and consultations. Defense counsel Mr. Akimoto admits that failure to have the accused present was in violation of proper trial procedure, but he argues that this mere formality was lacking. Mr. Akimoto is a master at floccinaucinihilipilification. He takes the most fundamental right of criminal procedure, the right of the accused to be present in order to defend himself, and he says that this fundamental right is a mere formality, a procedural cloud which can drift away without jeopardizing any valuable aspect of a legal trial.

The right of the accused to be present at his trial, and to be confronted with the evidence against him is a fundamental right of every system of jurisprudence in every civilized country of the world. This right to a defense at trial is fundamental in military as well as civil courts. See Winthrop, Military Law and Precedents, pp. 836-842, 1920 Reprint; Oppenheim International Law, Lauterpacht's 6th Ed. p.458; Glueck War Criminals.

Learned counsel Mr. Suzuki in attempting to explain the failure to have the accused present at the alleged meetings, sought to justify it by reference to a simplified procedure in minor cases in Japan wherein a fine can be levied in absentia. Similarly in our law we have such a simplified procedure and many police courts accept traffic fines in the absence of the accused. This does not mean that such procedure is a trial, it merely means that as admitted by Mr. Suzuki, in certain minor cases, the accused need not be present, but can accept a penalty by default. It means merely that in trivial cases the accused may waive his right to trial, and accept a fine. But defense counsel have cited no case precedent, no provision of law which permits trial of an accused on a death penalty charge, when the accused is not afforded the right to be present throughout the proceedings in order to defend himself against the charges. They have cited no case, and no precedent because there is no such precedent in law. The Japanese law like our own requires that this fundamental right be accorded in trial of an accused criminal.

Mr. Akimoto attempts to mislead us by saying that the judges went to see the accused. The alleged judges did not go to see the accused. Even Inoue himself does not claim that either Furuki or Shintome, two of the alleged judges, went to see the accused. And Masuda's alleged visits to the accused natives were not part of any judicial examination and consultation procedure. None of these visits to the natives were even alleged by Inoue to be part of the procedure of examination and consultation. On some visits no interpreter was even taken, and the accused has never even claimed that any formal testimony was taken during these alleged visits by Masuda to the natives. As no testimony was recorded, as two of the alleged judges were not present, as the accused natives never had an opportunity to see or hear the alleged evidence presented against them, it is obvious that such visits as Masuda may have made to the natives did not remedy the fundamental fatal defect, of having alleged trials by examination and consultation, at which the accused were not permitted to be present to hear the evidence against them and defend themselves.

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The attempted explanation of why the natives were not present is almost as naive as their contention that this was a "mere formality." Defense counsel Suzuki states, "they did not question the accused natives at the office of Masuda but questioned them at their place of confinement which was comparatively safe against air raid." This is advanced as a serious explanation of why the accused natives were denied the most fundamental right of criminal jurisprudence. Does the accused want us to believe that numerous examinations and consultations were held? Does he then want us to believe that there were continuous and terrible bombings and strafings but that the four leading officers at Jaluit, namely Admiral Masuda, Major Furuki, Shintome and Inoue held these numerous meetings in an unsafe place - does he then want us to believe that the natives were not present because the Japanese officers feared for the lives of the natives and did not wish to take them from their safe air raid shelter and expose them to the dangers of bombing in Admiral Masuda's air raid shelter? What a pity that these solicitous officers did not exercise this same solicitude for the natives when on April 9th the accused took them into a jungle, and in front of an open pit shot the men, then the two women, and then the two young children.

Mr. Akimoto implied that a mere formality was lacking - due to the absence of the accused and he asked "practically speaking can a very careless procedure be deemed a complete trial if only it is complete in form." The answer to that question is no, absolutely not. Even if a trial is perfect in form, if it lacks the fundamental substative requirement of a fair impartial judicial proceeding it is not a trial. In the case of the Mille natives every fundamental requirement of substance and form which is embodied in a proper criminal procedure and in every basic concept of trial was denied.

Even if we accept verbatim the obviously fabricated story of the accused that there were examinations and consultations held, it is clear that the natives were denied every substantive right of trial, this alleged procedure has no conceivable semblance to any kind of a trial - and certainly does not conform to any concept of fair trial.

(4) Alleged judges and alleged meetings.

The accused told an elaborate story about how Masuda called Furuki, Shintome, and Inoue in and informed them that they were judges and judge advocate respectively and should perform their duties accordingly. We have pointed out from Furuki's own testimony that he never attempted to ascertain what the duties of a judge were. Inoue's testimony that he was ordered to be a judge advocate was similarly discredited when it was shown that he testified during the Furuki case that he did not know this procedure was a trial until after the war. Obviously therefore he did not know he was a judge. Direct and clear contradiction of the entire story came from Shintome who testified that he was never ordered to act as a judge, and was never present when anyone was ordered to act as judge or a judge advocate.

Obviously Shintome's statement was true. Even Morikawa the intelligence officer had never heard of any trials, and while performing adjutant duties had never prepared any document indicating that the natives had been given a trial.

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Obvious corroboration of this fact is implicit even in the testimony of Inoue which showed that the participants at these meetings did not function as judges. The most obvious proof of this fact was brought out in cross-examination when the judge advocate got Inoue to testify as to who the witnesses against the accused natives were at this alleged examination and consultation. In his answers to questions 421 and 422, Inoue stated that besides himself, the other witnesses were Morikawa, Masuda, Shintome, and Furuki. Incidentally, Morikawa denied that he was ever a witness before any examination and consultation. But the important thing is that according to Inoue the alleged 5 witnesses against the accused included the alleged judges of the court. What a travesty on justice this is. Clearly, even if meetings were held, Masuda, Furuki and Shintome were not judges.

This is also obvious from Inoue's testimony that Furuki and Shintome gave their opinion that the children should not be executed. Clearly if they were judges it was required that decision be made by the majority. This is specifically provided in Article 98 of the Naval Court Martial Law. Mr. Akimoto has referred to a provision which states that the announcement of decision shall be made by the President of the Court. This provision does not mean that he can defy the decision of the majority, it merely means that as a matter of procedure it is the President who makes the announcement. This practice is common, and is applied in this very Military Commission. But the decisions, even though they are announced by the President of the court, must be made by the majority. Article 98 of the Japanese Naval Court Martial Law provides: "A decision of the court is determined by the majority. When opinions of judges differ in three parts and none of them reach to a majority, then opinions unfavorable to the accused shall be added up to the favorable one gradually, until it reaches a majority number." Clearly therefore, in Japanese Naval Court Martial Law, a decision of the court is determined by the majority. And the fact that the decision of Masuda was made contrary to the expressed opinions of Furuki and Shintome is further indication that they were not judges and this was not a judicial procedure.

(5) Summary.

The evidence that there was no trial is so clear that it seems hardly necessary to summarize it. The testimony of the accused was shown not to be credible, not only because of the fact that the accused is not a credible witness, but also because his testimony is so full of obvious falsehoods and contradictions. The accused testified that on every day from the 3rd to the 9th these judicial proceedings of examination and consultation were held, and they included some proceedings which lasted only ten minutes. He testified that Masuda, Furuki, and Shintome were judges. Masuda is dead, and cannot testify. Furuki who testified for the defense, admitted on cross-examination that he did not ascertain the duties of a judge. Shintome directly denied that he was ever appointed a judge or that he ever heard Masuda appoint Furuki as a judge or Inoue as a judge advocate. Inoue himself, during the Furuki trial admitted that he did not know that such alleged proceedings were a trial until after the war, thus clearly denying the testimony that he had heard Masuda appoint Furuki and Shintome to act as judges. The testimony of Inoue at the War Crimes Investigation in October 1945 was put in evidence in contradiction of his current testimony and clearly points out that at the Investigation he stated that no trial was held for these natives. The fact that no trial was held, and that everyone knew that no trial was held is clear

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from the testimony of Shintome, and of Morikawa who both clearly were in the position to know whether or not any trial had been held. Finally, even if we accept the clearly false story of the accused concerning the alleged meetings, it is obvious that they did not constitute a judicial proceeding, a court martial, or any semblance of a trial. At these alleged examinations and consultations, there were no defense counsel, there was no sworn testimony, the alleged judges did not perform the functions of judges, and the accused were not even present. There can be no doubt as to the truth. There was no trial, and therefore there was no legal excuse.

(c) No trial - no legal excuse.

The defense anticipated the fact that we would establish that there was no trial, and therefore as an alternative they tried to meet this contingency with whatever specious argument they could muster. They tried to manufacture a legal excuse in the dire battle conditions at Jaluit. They tried to indicate that a condition similar to martial law existed. It should be noted that martial law may suspend certain civil rights; and it may, as was done during our Civil War, permit trial by military rather than civil courts. But it does not under any system of law, give the legal right to punish by death without a trial.

If the accused had alleged that Masuda, as legal head of Jaluit, had himself attempted to make new laws empowering him to sentence to death without a trial it would only be necessary to point out that the Japanese constitution guarantees its subjects the right of trial, and that in the field of international crimes, similar attempts by the Nazis to escape responsibility for their lawless acts by resorting to subterfuge of passing alleged new laws has been unequivocally rejected. It is a fundamental principle of international law that acts must be legal, not only under domestic, but also under international law, and where they conflict, international law must prevail.

The defense have sought to argue that even if it was not a trial, it was the best possible procedure they could apply under the condition at Jaluit. Even if Masuda or the others believed it to be the best possible procedure, this could not make the executions legal. The human life which the Japanese militarists so wantonly destroyed, is very precious in the eyes of the law. The law does not compromise and it requires that to be legally excusable, there must in fact be not only a fair legal trial, and a lawful sentence, but even requires the strictest compliance with the statutes authorizing the executions. Thus, the courts have shown that even where sentence of death was legal, it is murder to substitute a different method of execution. 26 American Jurisprudence 230. I cite this to show how zealously the law guards human life and how strictly it requires fullest compliance with the requirements of a legal execution before it is considered an excuse for homicide. The law clearly rejects this contention of the accused that even the "best possible procedure under the circumstances" could constitute a legal excuse for the homicide.

When we examine the defense contention a little closer, regardless of the law, the alleged facts do not support them. What was done may have been the most effective procedure from the standpoint of the Japanese, but it clearly was not the best possible procedure from the standpoint of the accused or of justice. At the alleged trials in Masuda's office it is clear that at least the accused could have been present, and the witnesses who were already in custody could have been

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called, and the accused could have been given an opportunity to deny the charges and try to prove his innocence. All these rights, at least the right to be present, could certainly have been afforded the accused. Clearly, the alleged proceedings could not under any guise be believed to have been the "best possible procedure" for the natives under the circumstances.

Finally, it must be realized that it was not necessary for any judicial reasons to kill the natives without a trial merely because it was inconvenient or even impossible at the time to hold a regular trial. It was possible to imprison them, even if they were guilty, until some future time when trial was possible. Failure to give them a trial or any semblance of a trial prior to execution, could not be justified under any legal or moral standards.

Justice requires not merely a semblance of a trial, it requires a real trial, a fair trial. But the facts are clear that in the instant case not even a semblance of a trial was held. The military clique under Masuda, Furuki, and Inoue exercised absolute, dictatorial, and despotic power, without regard to law, without regard to justice, and clearly in the execution of these natives and these children, without regard to humanity. I do not know what motive Inoue or Masuda had in killing these natives. Whether the motive was revenge, whether it was a personal or military desire for prestige, whether it was sadism, whether it was a warning to the other natives and their families not to desert, is totally immaterial. The fact remains that whatever the motive, whatever the reason, there was not a trial, no legal execution and no legal excuse.

Inoue killed the 8 natives; he intended to kill them; and he killed them without legal justification or legal excuse. Inoue, as charged in Charge I, Specifications 1 and 2 is guilty of MURDER.

4. Argument in Mitigation should be made after findings.

The accused Inoue has introduced evidence as to his good character, and his compassion for the children. This is not the time for such an argument which is clearly an argument in mitigation, along with the argument of superior orders. But when the commission considers this argument it must also consider the age of the children, and whether Inoue could honestly and reasonably believe these children and these natives were given a legal execution after a fair judicial trial.

C. VIOLATION OF THE LAWS AND CUSTOMS OF WAR.

Charge II, charges violation of the laws and customs of war, and specifications 1 and 2 allege that wilfully, unlawfully, and without previous trial, Inoue punished these natives as spies. It has been proved that the accused Inoue punished these natives - he killed these natives. Similarly, his wilfullness, unlawfullness, and the absence of a previous trial, have been briefly discussed in connection with the charge of MURDER. To establish Inoue's guilt under Charge II, it is merely necessary to establish that these natives were punished as spies.

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The defense have not sought to deny that the natives were punished as spies. On the contrary, in an effort to justify the brutal murder of these natives, and particularly the two children, the accused has definitely in his own testimony and that of Furuki, established the fact that the natives were killed as spies.

Inoue's reasoning is apparent. He thought that if he could establish the fact that they were spies and that they were executed as spies, it would justify his acts of murder. Inoue was mistaken, for even a spy is entitled to trial before punishment, and international law specifically guarantees a right of trial, even to the spy who is caught in the very act of spying.

To escape this clear international rule of law, the defense have argued that there is a distinction between foreign and domestic spies; and that International law, as reflected in the Hague Convention, can only be applied in the case of foreign spies.

This argument is clearly fallacious. In the first place, the Hague Convention makes no such distinction. The offense of spying has always been considered an international one, and the protection which the Hague Convention sought to give to one accused of spying was not limited to "foreign spies." If such a distinction had been made by the Hague Convention, the commission would be compelled to decide whether or not these natives of the mandated islands were "foreign" or "domestic" to Japan. It is unnecessary to make this distinction for Article 30 of the Annex to the Fourth Hague Convention of 18 October 1907, merely provides: "A spy taken in the act shall not be punished without previous trial," and in Article 29, "A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party." There is no portion of this provision which distinguishes between a "foreign" and a "domestic" spy, and the entire argument of such distinction in application of International Law is one which has no foundation.

Similarly, their argument that because the natives were not caught in the actual act they could be punished without a trial, is patently fallacious. The Hague Convention does not purport to restrict or limit the application of basic accepted international law with regard to the rights of persons accused as spies. It merely reflects part of that basic law and states that even when caught in the very act of spying, one cannot be punished as a spy without a trial. A fortiori, if the natives were not caught in the very act, they were guaranteed by international law the right to a trial before being punished as spies.

1. Right of trial under international law.

It should first be noted that Japanese law could not legalize the killing of these natives or their punishment without a trial. For the act of Inoue to be legally excusable, it not only had to be lawful under domestic law, but also under international law. It is a fundamental principle that no country can evade the basic principles of international law and society by the passage of domestic legislation which purports to legalize violation of international law.

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Glueck, on cit., pp. 44-45, reviews some of the attempts by Nazis to create a fiction of legality to their uncivilized and brutal atrocities. He concludes that murders are murders, despite the instructions of the government. "No unilateral 'legalization' of such acts is possible; because no member of the Family of Nations can be permitted to make its own rules of warfare justifying mass-murder when committed upon its own governmental order only and as an exclusive instrument of its national policy.....It is not the paranoid decrees of a lawless state that determine the criminal or non-criminal quality of the acts in question, but rather the general principles of law or civilized nations....."

Therefore regardless of any attempt by Masuda to set in force his own laws in contradiction to the laws and customs of war, he was powerless to destroy those fundamental rights guaranteed under international law and carefully protected against such unilateral dictatorship. The defense has conceded this to be the law for they have not even argued that Masuda could punish those natives without a trial.

Since in fact, there was no trial, as we have painstakingly established, it is unnecessary to separately consider whether a fair trial was held as required by basic international law and every principle of civilized humanity. This requirement of a fair trial, is not only a moral, but a legal requirement. It is clearly set forth in numerous decisions in international law, in the expressed opinion of able international jurists and scholars, and in the provisions of various international agreements.

Hackworth, Digest of International Law, Vol 5, p. 589, quotes United States v. Mexico, William T. Way, Opinions of the Commissioners, (1929) 94, 106, as follows: "However, there are certain other broad principles with respect to personal rights which appear applicable to the instant case. These principles are recognized by the laws of Mexico, the laws of the United States and under the laws of civilized countries generally, and also under international law..... Gross mistreatment in connection with arrest and imprisonment is not tolerated, and it has been condemned by international tribunals."

Hackworth on cit., on page 590 reference to Margaret Roper (United States v. Mexico) Opinions of the Commissioners (1927) 205, 210, cites the following language of the International Commission: "The conclusions of the Judge at Tampico with respect to the investigation conducted by him were treated in oral and in written arguments advanced in behalf of the Mexican Government as the judgment of a judicial tribunal. And the well known declarations of international tribunals and of authorities on international law with regard to the respect that is due a nation's judiciary were invoked to support the argument that the Commission could not, in the light of the record in the case, question the propriety of the Judge's finding. In considering that contention we believe that we should look to matters of substance rather than form. We do not consider the functions exercised by a judge in making an investigation whether there should be a prosecution as judicial functions in the sense in which the term judicial is generally used in opinions of tribunals or in writings dealing with denial of justice growing out of judicial proceedings."

The right to trial is stated in the "Draft Convention on Jurisdiction with Respect to Crime," Article 12: (The Research in International Law, Harvard Law School) 29 A.J.I.L. Supp. (1935) 596-597, in

part as follows: "....No State shall.....subject an alien held for prosecution or punishment to other than just and humane treatment, prosecute an alien otherwise than by fair trial before an impartial tribunal...."

Commissioner Nielsen, in his opinion in the Levin Case, (United States v. Turkey), Nielsen's Opinions and Report (1937) 683, 704-705, cited in Hackworth op cit. Vol. 5, p. 598, states:

"Complaints have often been made with respect to improper arrests and mistreatment pending trials. International law requires that, in connection with the execution of criminal laws, an alien must be accorded rights such as are granted under the laws of civilized countries generally both to aliens and nationals. Most important among these are the requirements that there must be some grounds for arrest and trial or, as is said in domestic law, probable cause. A person is entitled to be informed of the charge against him. He must be given a reasonably prompt opportunity to defend himself. He must not be mistreated during his period of imprisonment."

The Geneva Convention of 1929 in dealing with prisoners of war, at considerable length, describes the fundamental requirements of a fair trial. In the case of Rex v. Bosig (Ontario Court of Appeals) 2 D.L.R. 232 (1945) the court summarized these provisions (of parts two and three) as follows: "This provides rules and requirements relating to judicial hearings of charges against prisoners of war, for notice being given of the name and rank of the prisoner; the place of detention, and statement of the charges to the protecting power; that no prisoner should be compelled to admit his guilt, and he has a right to a qualified advocate of his own choice, and if necessary, to a competent interpreter, and various other provisions aimed at safeguarding the rights of a prisoner of war in judicial proceedings."

The right to counsel, the right to make special pleas, the right to a fair trial, etc. are also noted in Winthrop, Military Law and Precedents, pp. 836-842, 1920 Reprint; Oppenheim's International Law, Lauterpachts 6th Ed. p. 458; also see Yamashita v. Styer 327 U.S. 1, 66 Sup.Ct.Rep. 340-352, to the effect that "independent of the Geneva Convention, it is a violation of the law of war, on which there could be a conviction if supported by the evidence, to inflict capital punishment on prisoners of war without affording them the opportunity to make a defense." (352)

Moore, Digest of International Law, Vol. 2, p. 233, in discussing the famous Cutting's Case, refers to the dispatch from the Consul of the United States dated 17 July 1886, in which he demanded the release of Cutting, first on the ground that there was no jurisdiction in the Mexican court, and secondly on the ground "that by the law of nations, no punishment can be inflicted by a sovereign on citizens of other countries 'unless in conformity with those sanctions of justice which all civilized nations hold in common.' 'Among these sanctions,' it was stated, 'are the right of having the facts on which the charge of guilt was made examined by an impartial court; the explanation to the accused of these facts, the opportunity granted to him of counsel; such delay as is necessary to prepare his case, permission in all cases, not capital, to go at large on bail till trial; the due production, under oath, of all evidence prejudicing the accused; giving him the right to cross-examination; the right to produce his own evidence in exculpation.....'" (Italics supplied.)

These brief citations of international law clearly illustrate certain of the fundamental requirements of a fair trial.

None of these requirements were met in the handling of the accused natives. In the instant case, not only did the Japanese militarists fail to give the accused a fair trial; but as has been clearly proven in discussing the murder charge, there was absolutely no semblance of a criminal trial for the defense has itself established that even the accused was not present.

Since Inoue wilfully, unlawfully, and without previous trial punished these natives as spies, the accused Inoue is guilty of violation of the laws and customs of war, and is guilty of the specifications and Charge II.

D. CONCLUSION.

The accused Inoue is guilty of Charge I, specifications 1 and 2, Murder. The accused, Inoue, is guilty of Charge II, specifications 1 and 2, Violation of the Laws and Customs of war.

The war is over. The natives are dead. Is it necessary to punish this defendant? The question has been asked many times. There has been only one answer; and there can be only one answer. It is the answer that the law gives to all crime and to all criminals. Society is based upon a system of law - in which the weak as well as the strong - must be protected if life and order is to continue. The individuals who violate the laws of society - whether it is local, state, or international law - must be punished in accordance with the law. Human nature is such that if we did not punish the individual who commits the crime, that individual and other individuals believing that crimes are not punished would cease to respect the law and would violate it without fear of punishment. The results would be violence, disorder and a threat to the very existence of society itself.

We have just finished a war in which at the cost of millions of lives we have reaffirmed our belief in a society of law and order in which the rights of individuals and nations is protected against the depredations of the strong or the ambitious. An ordered civilized society requires that we protect individuals, as well as nations against illegal attack. The accused, Inoue, violated the local as well as the international laws of society. He is guilty; must be found guilty; and must be appropriately punished. Society requires it, justice demands it. Not only Inoue, but this court, and international law and order itself is on trial in this room.

David Bolton

DAVID BOLTON,
Lieutenant, USN,
Judge Advocate.

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INOUE, FUMIO (23 APR 1947) (VOLUME II) (159116)
PART 1 OF 5

024

Case of

Inoue, Fumio,

captain,

Imperial Japanese Army.

April 23, 1947.

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

Convened at

United States Pacific Fleet,

Commander Marianas,

Guam, Marianas Islands,

by order of

Commander Marianas Area.

VOLUME V

159116

0262

No 1

島民犯罪人處刑ニ關スル供述書

小官ワ昭和二十年四月上旬、中旬ノ二回ニ亙リ
"ヤルート"防備部隊指揮官 海軍少將升田仁助
ノ死刑執行命令ニ據リ左記犯罪人
"マーシャル"群島"ミレ"島、島民八名ヲ銃殺
ニヨリ死刑ヲ執行ス

記

一、死刑執行命令 左
昭和二十年四月八日頃 "ヤルート"防備部隊指
揮官 海軍少將升田仁助ヨリ
"ヤルート"防備部隊特務班長 陸軍大尉井上文夫
ニ命令セラル

二、死刑執行ノ時期
昭和二十年四月八日頃及ビ 昭和二十年四月十三日
頃ノ二回

三、死刑ヲ執行セシ島民ノ氏名

A、四月八日頃 死刑執行者
ラリージャップ(男) 四〇才位
ラリージャップノ妻(女) 三〇才位
ネーベット (女) 十才位
アンチョウ (男) 二十七才位
オチラ (女) 二十五才位
シロー (男) 十才位
ラコビリック (男) 二十三、四才位

B、四月十三日頃 死刑執行サレシ者
ラリメ (男) 三十五才位

四、死刑執行場所
"マーシャル"群島"ヤルート"環礁"イミエジ"本島
"アイネマン"送信所南方地區

Statement 1(2)

五. 死刑執行ノ方法
拳銃ニヨリ銃殺ス

六. 死刑執行官
「ヤルート」防備部隊 特務班長陸軍大尉井上文夫

七. 死刑執行ノ多ノ護送時 警戒任務ニ服セシ者
A. 四月八日
陸軍 神野大尉 陸軍深津曹長
海軍 若松矢曹 海軍井上矢曹
海軍 森浦矢曹 海軍井井矢長
B 四月十三日
陸軍深津曹長

右七名 護送時ノ警戒ニ従事セシノミニシテ
死刑執行ニ従事セズ 尚現場ニ立会ハセズ
又死刑執行ノ事実ヲ承知セザル者ナリ

八. 死刑執行後 死体ノ処置
三回共 現場ニ叮重ニ埋葬シ草花ヲ供ヘ
該島民 酋ノ冥福ヲ祈レリ

九. 死刑ヲ執行セシ島民八名ハ日本人ニシテ犯
罪ヲ犯シ「ヤルート」島ニ於ケル最高審議ノ
結果 井田少将ヨリ死刑ノ宣告ヲ受ヘラレ
シ死刑囚人ナリ.

十. 當時小官ハ「ヤルート」防備部隊 特務班長トシテ
犯罪ノ取調並ニ處罰ノ実施ヲナス 任務
ヲ命ゼラレ居リ
井田少将ノ死刑執行命令ニヨリ 正シイ事
ト信ジ一点ノ疑ヒモナク 自己ノ正當ナ
業務トシテ處刑ヲ實施セリ

(2).

no 3

土. 死刑執行ノ発表

該島民死刑ノ発表ハ死刑執行終了ノ翌日
所備部隊指揮官井田少将ヨリ書類
ヲ以テ指揮下全部隊ニ発表セラレタリ

右ノ通リ供述ス

昭和二十一年十二月二十八日

元"ヤルート"所備部隊特務班長
陸軍大尉 井上文夫

"Exhibit 1(3)"

三枚ノ内

0285

"Exhibit 2"

Affidavit Concerning the Execution of Native Criminals.

I performed the executions by shooting the below named native criminals from Mille Atoll, Marshall Islands, in accordance with the orders of Rear Admiral Nisuke MASUDA, Commanding Officer of the Jaluit Defense Garrison, to perform it. These executions were two in number, one in the early part of April 1945 and the other about the middle of the same month.

Details of the Execution.

1. Orders to perform the execution.

The orders from Rear Admiral Nisuke MASUDA, Commanding Officer of the Jaluit Defense Garrison were given to Captain Fumio INOUE, Commander of Military Police, Jaluit Defense Garrison, on or about April 8, 1945.

2. Date of the execution.

The first execution was performed on or about April 8, 1945 and the second on or about April 13, 1945.

3. Names of the natives who were executed.

A. Persons who were executed on or about April 8, 1945.

RALIEJAP	-	male sex	- about 40 years old.
WIFE OF RALIEJAP	-	female sex	- about 30 years old.
NEIBET	-	female sex	- about 10 years old.
ANCHIO	-	male sex	- about 27 years old.
OCHIRA	-	female sex	- about 25 years old.
SIRO	-	male sex	- about 10 years old.
LACOJIRIK	-	male sex	- about 23 years old.

B. Person executed on or about April 13, 1945.

RALIME	-	male sex	- about 35 years old.

4. Place of execution.

Area south of the Aineman Transmitting Station, Emidj Island, Jaluit Atoll, Marshall Islands.

5. Method of execution.

They were shot with a pistol.

6. Officer who performed the execution.

Captain Fumio INOUE, IJA, Commander of Military Police, Jaluit Defense Garrison.

7. Men on guard detail while prisoners were being escorted for the execution.

A. April 8, 1945:

Captain JINNA, IJA.
Sergeant Major FUKATSU, IJA.
Petty Officer INOUE, IJN.

"Exhibit 2(1)

0266

Petty Officer WAKAMATSU, IJN.
Petty Officer NISHIDA, IJN.
Petty Officer MORIURA, IJN.
Leading Seaman II, IJN.

B. April 13, 1945:

Sergeant Major FUKATSU, IJA.

The above seven men only carried out their duties as guards during the escorting of the prisoners and did not take part in the execution. Moreover, they were not present at the scene of the execution nor do they know the facts concerning the performance of the execution.

8. Disposal of the bodies after the executions.

In both instances the bodies were buried with due courtesy, flowers were given and prayers for the repose of the souls of these natives were offered.

9. The eight natives who were executed were Japanese subjects and had committed crimes, as a result of the highest deliberation had received sentence to be executed from Rear Admiral MASUDA and had become prisoners awaiting execution.

10. At that time, as Commander of the Military Police of the Jaluit Defense Garrison I was under orders to perform the duties of investigating crimes and effecting their punishment.

I performed the execution in accordance with the orders of Rear Admiral MASUDA to perform it without any doubt in my mind, believing it was the correct thing to do and properly expected of my office.

11. Announcement of the Execution.

Announcement of the execution of these natives was made in a report by Rear Admiral MASUDA, Commanding Officer of the Defense Garrison, to all units under his command on the day following the completion of the executions.

The above is my affidavit.

December 28, 1946.

Captain Fumio INOUE, IJA.

Former Commander of Military Police, Jaluit Defense Garrison.

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

Frederick F. Tremayne
FREDERICK F. TREMAYNE,
Lieutenant (jg), USNR.
Interpreter.

"Exhibit 2(2)"

0267

INTERROGATORIES

IN THE CASE OF INOUE, Fumio,
CAPTAIN, IMPERIAL JAPANESE ARMY,

The following interrogatories are to be propounded to defense witness Tanaka, Masaharu (or Masaji) and will be offered in evidence in the case of INOUE, Fumio, Captain, Imperial Japanese Army, now pending before the Military Commission convened by authority of Commander Marianas by precept dated 21 February 1947, as modified, in accordance with the authority of Paragraph 5 of said precept, and the authority contained therein to use rules of evidence promulgated by the Supreme Commander for the Allied Powers, SCAP ltr. A.G. 000.5 (5 December 45) LS, Subject "Regulations Governing the Trials of Accused War Criminals", especially Section 4d.(1) (c) thereof which authorizes the use in evidence of affidavits, depositions or other signed statements.

First interrogatory: State your name and present address.

Second interrogatory: Have you ever had duty with the Japanese Navy?

Third interrogatory: If you had, what was your rank?

Fourth interrogatory: Did you ever have duty with the Japanese Navy at Mille Atoll?

Fifth interrogatory: If so, on what islands and during what period of time did you serve on Mille Atoll?

Sixth interrogatory: Do you know Lieutenant Fusta, Kiyoshi?

Seventh interrogatory: What was your military relationship to him?

Eighth interrogatory: Do you know Chief Petty Officer Manako, Tatsuichi?

Ninth interrogatory: What was your military relationship to him?

Tenth interrogatory: On what island of Mille Atoll, if any, were you stationed during the period from March to May 1945?

Eleventh interrogatory: What were your duties at this time?

Twelfth interrogatory: Do you recall any incident between natives and yourself which occurred about March 1945, on a boat in Mille Lagoon?

Thirteenth interrogatory: If so, what was the approximate date?

Fourteenth interrogatory: If so what were all the details of what happened to you, stating what you actually saw, and what you actually heard?

Fifteenth interrogatory: If you know, will you state who owned the boat and its contents, and what happened to the boat and its contents?

Sixteenth interrogatory: If you know their names, will you state the names of the natives involved?

"Exhibit 3(1)"

0269

Seventeenth interrogatory: Will you describe these natives, giving their sex, age, occupation, physical appearance, etc?

Eighteenth interrogatory: If you know, will you give the names, age, and job at this time of the members of their immediate family?

Nineteenth interrogatory: Do you know what happened to the natives after this incident? if You do - will you state what you know?

Twentieth interrogatory: Did anything happen to the natives and their families after this incident? If so - tell us what you know?

Twenty-first interrogatory: Do you know if these natives committed any crimes against the Japanese, or the Japanese armed forces, at this time? If so - what crimes did these natives commit? Will you give the details?

Twenty-second interrogatory: If any crimes were committed, do you know what attempts if any were made to capture these natives?

Twenty-third interrogatory: If no attempts were made do you know why they were not made? If so, will you state what you know?

Twenty-fourth interrogatory: If the witness answered any prior question with information which he has not obtained from his own personal knowledge, will the witness state the source on which he bases his answer to said question and on which he believes the answer to be true?

Twenty-fifth interrogatory: Do you know the accused, INOUE, Fumio, Captain, Imperial Japanese Army? If so, how long did you know him? What is your relationship with him?

Dated in Guam, Marianas Island, 10 May 1947.

Y. Akimoto
Ryuichiro Akimoto,
Defense Counsel.

Saizo Suzuki
Saizo Suzuki,
Defense Counsel.

David Bolton.
David Bolton, Lieut. USN
Judge Advocate.

"Exhibit 3(2)"

0270

DEPOSITION

IN THE CASE OF INOUE, Fumio,
CAPTAIN, IMPERIAL JAPANESE ARMY.

TANAKA, Masaharu, the witness above named, having been duly sworn by me, Captain James A. Moriarty, U. S. Marine Corps, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the first interrogatory: Tanaka, Masaharu. Kagoshima-ken, Kimotsuki-gun, Kushira-cho, Okasaki, 4161 banchi.

To the second interrogatory: Yes, I have had duty with the Japanese Navy.

To the third interrogatory: I was a Chief Petty Officer in the Japanese Navy.

To the fourth interrogatory: Yes, I had duty with the Japanese Navy at Mille Atoll.

To the fifth interrogatory: I served on Mille Island, Naru Island, Gari Island and Takaiwa Island. I served on Mille Atoll from June 1943 until October 1945.

To the sixth interrogatory: Yes, I do.

To the seventh interrogatory: I served temporarily under Lieutenant Fueta, Kiyoshi at Takaiwa Island. I went there in the middle of June 1945 to recuperate from a wound which I had received and became group leader of a group of two canoes in the early part of July 1945. These two canoes were attached to the Takaiwa Unit which was under the command of Lieutenant Fueta, Kiyoshi. We were engaged in fishing and carrying food from Takaiwa Island to the headquarters. Although I was still attached to headquarters I remained on temporary duty with the Takaiwa Unit until I was demobilized.

To the eighth interrogatory: Yes, I do.

To the ninth interrogatory: Chief Petty Officer Manako, Tatsuichi was the senior petty officer of the Takaiwa Unit and as same I came under his command.

To the tenth interrogatory: I believe I was attached to the headquarters on Mille Island itself during this period.

"Exhibit 3(3)"

To the eleventh interrogatory: I was in charge of the officers' quarters of the Shiga Unit of which the commanding officer was Captain Shiga, Masanari, IJN. In this capacity I was in charge of the officers' mess and supervised the seamen who were on duty at the officers' quarters.

To the twelfth interrogatory: Yes, I do.

To the thirteenth interrogatory: I do not remember the approximate date but it was sometime in March or April.

To the fourteenth interrogatory: This happened during the time when I was doing liaison duty between Takaiwa Island and headquarters on Mille Island. I went back and forth in a canoe. The incident occurred when we were unable to steer the canoe and used some natives to help us get the canoe from Takaiwa to headquarters on Mille Island. We were going to Mille Island during the evening because it was dangerous to travel in the day time as air-planes were constantly flying over head. The natives said that we could not make it because the sea was too rough. Inspite of this we departed for Mille Island. Between Mille Island and Takaiwa were Bardu and Gari Island. Just a little way off Gari Island one of the natives who was paddling us along hit me on the head from behind. I turned around to see what was happening and the same native hit me on the head again. I started to stand up on the edge of the canoe and slipped into the water. The native continued to beat me when I tried to get back into the canoe so I swam along behind the canoe, swimming under the water and coming up for air when necessary. In this fashion I swam to Baru Island. When I got to Baru Island some of the enlisted soldiers picked me up and I was given treatment by some soldiers for my head wounds. I then returned to headquarters. After I fell into the water the natives escaped in another canoe. I heard later that they had gone back to Takaiwa Island.

To the fifteenth interrogatory: The canoe was owned by the natives of Takaiwa Island and was being used by the Takaiwa Unit stationed there. After I was beaten and fell into the water the natives took the canoe along with them and escaped back to the island. 2

To the sixteenth interrogatory: I do not remember the names of the natives exactly but I think one of them was called either Kerumen or Arumen. The other one was a young boy and I do not remember his native name, however, the Japanese called him by the Japanese name "Goro". 3

To the seventeenth interrogatory: Both the natives were of the male sex. Kerumen (or Arumen) was about 35 or 36 years old and Goro was about 15 years old. They were both engaged in operating canoes. Kerumen (or Arumen) was a tall lean man with a long face. He was also a little bit lame in one leg. Goro was about medium height, chubby, and had a round face. Goro had long hair. He also had a rash on his chest and around his throat. 4

"Exhibit 3(4)"

0272

To the eighteenth interrogatory: The native called Kerumen (Or Arumen) had a wife and one child but I do not remember their names. The child was a boy. His wife was a tall slender girl whose face resembled a Japanese girls face. She had a very good figure. She was about 22 or 23 years old. The child was about 6 years old, very small and quite thin. His wife baked bread and prepared coconuts for the seamen. I do not know anything about the family of Goro.

To the nineteenth interrogatory: They got away and I do not know what happened after that.

To the twentieth interrogatory: Their families escaped with the two natives and I know nothing of what happened to them after that.

To the twenty-first interrogatory: I did not hear of the natives committing any crimes but after these two families left we had no more bread or coconuts and food became very scarce so the rest of the natives were told that they would not be allowed to gather any coconuts or bake any bread without reporting it and the naval personnel were made to conform to the same regulations. Thereafter, the natives gathered food and gave it to the naval personnel who distributed it among the natives.

To the twenty-second interrogatory: I do not know if any crimes were committed.

To the twenty-third interrogatory: (See the twenty-second interrogatory.)

To the twenty-fourth interrogatory: In reference to the fourteenth interrogatory I heard from some one who came to headquarters from Takaiwa Island while I was still in the sick bay that the natives escaped back to the Island of Takaiwa and ran away. I do not remember who it was.

To the twenty-fifth interrogatory: I do not know the accused, Captain INOUE, Fumio, Imperial Japanese Army.

田 中 正 治

Masaharu TANAKA

Subscribed and sworn to before me this 21st day of May 1947, at Tokyo, Japan.

James A. Moriarty

JAMES A. MORIARTY,
Captain, U.S. Marine Corps.

"Exhibit 3(5)"

0273

ALLIED OCCUPATION FORCES)
TOKYO, JAPAN.)

I, Masaharu TANAKA, being duly sworn on oath, state that I had read to me and understood the translation of the foregoing transcription of my deposition consisting of three (3) pages, and that it is true to the best of my knowledge and belief.

田 中 正治

Masaharu TANAKA

Subscribed and sworn to before me this 21st day of May 1947.

James A. Moriarty

JAMES A. MORIARTY,
Captain, U.S. Marine Corps.

"Exhibit 3(6)"

ALLIED OCCUPATION FORCES)
TOKYO, JAPAN)

I, Lieutenant, junior grade, Frederick F. TREMAYNE, USNR, being duly sworn on oath state that I truly translated the questions and answers given from English to Japanese and from Japanese to English respectively, and that after being transcribed, I truly translated the foregoing deposition containing three (3) pages, to the witness, and that the witness thereupon in my presence affixed his signature thereto.

Frederick F. Tremayne
Frederick F. TREMAYNE
Lieutenant, junior grade, USNR.

Subscribed and sworn to before me this 21st day of May 1947.

James A. Moriarty
James A. MORIARTY,
Captain, U.S. Marine Corps.

C E R T I F I C A T E

We, James A. MORIARTY, Captain, U. S. Marine Corps; Robert OLDHAM, Yeoman Third Class, U. S. Navy, certify that on the 21st day of May 1947, personally appeared before us, Masaharu TANAKA, and according to Lieutenant, junior grade, Frederick F. TREMAYNE, USNR, gave the foregoing answers to the several questions set forth therein; that after his deposition had been transcribed, the said Masaharu TANAKA had read to him the same by Lieutenant, junior grade, Frederick F. TREMAYNE, USNR, and the said Masaharu TANAKA affixed his signature thereto in our presence.

James A. Moriarty
James A. MORIARTY,
Captain, U. S. Marine Corps.

Robert Oldham
Robert OLDHAM,
Yeoman Third Class, U. S. Navy.

TOKYO, JAPAN.
21 May 1947.

"Exhibit 3(7)"

EXCERPT FROM TESTIMONY OF MARCH 28, 1947, OF INOUE, FUMIO, FORMER CAPTAIN, IMPERIAL JAPANESE ARMY, IN THE CASE OF FURUKI, HIDESAKU, MAJOR, IMPERIAL JAPANESE ARMY, BEFORE A MILITARY COMMISSION CONVENED BY COMMANDER MARIANAS, AT GUAM, MARIANAS ISLANDS.

167. Q. During the two years that you were on Jaluit, were there any trials held of Japanese personnel for violating Japanese Army law or Japanese Naval law?

This question was objected to by the accused on the ground that it was irrelevant, immaterial, and beyond the scope of the direct examination.

The judge advocate replied.

The commission announced that the objection was not sustained.

The question was repeated.

A. I do.

168. Q. Were there any trials held?
A. Disciplinary crimes were punished by the same procedure as the natives were.

169. Q. You were asked whether or not any trials were held. Did you believe that this disciplinary procedure constituted a trial?
A. Yes.

170. Q. Have you always, since November, 1943, believed that such procedure constituted a trial?
A. No.

171. Q. When did you decide that this procedure constituted a trial?
A. From the time I was confined at Jaluit as a suspect.

172. Q. Was this after the war?
A. Yes.

Certified to be a true copy:
James P. Kenny
James P. Kenny,
Lieutenant, U. S. Navy,
Judge Advocate.

"Exhibit 4"

LL20

2nd

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"Exhibit 5"

0278

PETITION

To: The members of the Military Commission.

Isn't it the former military persons who will reconstruct devastated Japan into a fine nation? There are many bad persons but it is the duty of the young men to reform these bad ones.

INOUE, Fumio, is a war criminal who has been left behind to be confined, but we have always deeply respected him. He was the model of the young men. He was a pattern which we should always take after. Hearing that he is now being held I could not suppress my feelings.

He is an honest and gentle man. His conduct is always sincere and solemn. His acts are always fair, his discipline is good. His thoughts are sound. On graduating from school he was eighth among the sixty-three graduating students. During his four years of school he was only absent from school three days. He was indeed the model student and a person of humanity.

During his confinement he has read many poems, and I cannot believe that he is a person to commit a crime.

INOUE and his friends said that they firmly believe that his acts in no way violated any crime. He had only faithfully obedied the orders of their superior. I am not only of this believe but all the people who know him believe this.

He has at home a mother, wife, a daughter who was born after he left, and sister. A family without a man to help out as can ye imagined has many difficulties. They are lost without him. Please look into his diary and personal belongings and see this. I believe in him.

Japan shall be able to revuild herself into a fine nation with the help of such persons as INOUE.

I beg your lenient judgment and please send him back soon.

KAMEYAMA, Miyeko,
Ehime-ken, Yawatahama City,
Nishi-Omi-cho.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

"EXHIBIT 5 (a)"

0279

歎願書

元陸軍大尉 井上文夫

右者ハ現在戦争犯罪容疑者トシテ
グアム島収容所ニ在ル事ヲ聴キ驚嘆
致スト共ニ其ノ容疑ノ零大タラン事ヲ
願ツテ已ヌモノテアリマス

惟イマスルニ氏ハ性来温厚篤實ニシ
テ人ニ接スルニ情ヲ以テシ他ヲ師スル
ニ愛幸ノ念ヲ惜マサルノミナラズ
高潔文瞻ニシテ氏ガ二十幾年
間ノ交情ヲ顧ルトキ其ノ教訓ノ

0280

深酷ナルニ轉タ感服セサルヲ得ナイ
ノテアリマス斯ル氏ノ性格ヨリ推
シテ氏カ犯罪容疑者トシテ拘留
サレアルハ夢現ノ想ニシテ部落民一同
深ク氏ノ人格ヲ惜ムト共ニ氏カ懸ル
非人道的行爲ヲ敢行スヘキ人物

テナキ事ヲ誓ッテヤマヌ者テアリマス
然ニ氏ノ留守宅ハ老母ヲ中心ニ
氏カ愛妹ハ母ヲ助ケテ氏ノ應召以
来他ヲ顧ルコトナク農業婦人トシテ
家計ヲ扶ケ氏ノ愛妻亦母ニ孝シ

妹ナ慰リ稚子ノ養育ニ餘念ナキ
態ハ村民斉シク情涙ナソヽキ
居ル次第テアリマス之等總テハ唯
母ハ子ナ　妻ハ夫ナ惟フノ情ニ
外ナラス吾子ナ信シ我カ夫ナ念

ニ兄ナ想慕フ事ノミニ依リ生ス
ル眞誠ニ帰一スルモノト信スルモノ
テアリマス
以上、狀情ナ深ク酌量ノ上
尊官ノ慈恵ナル裁ナ以テ無罪

釋放相成様我等三民一同茲
ニ歎願書ヲ以テ御願ヒ致
候次第ニテアリマス　以上

昭和二十年十二月三日

愛媛県西宇和郡喜木村市喜木部落代表者
愛媛県西宇和郡喜木国民学校内国民義勇隊
井上勝

マリアナ方面
米國軍事參議會殿

E02080

"Exhibit 6"

0284

PETITION

For: INOUE, Fumio, Former Captain, IJA.

To : President of the Commission; Marianas Area.

I was surprised to hear that the above-mentioned person is now being confined in the Guam Stockade as a war crime suspect. I hope he will be cleared from all guilt.

His character is gentle and sincere. He is kind toward all people who come in contact with him and guides others with love. He is a man of noble character and gifted ability. When I look back at the twenty odd years of our friendship, I cannot help but admire his deep teaching.

Judging from these characteristics I cannot dream of thinking that he is now being confined as a war crime suspect. We, the people of the community, have great regard for his character and believe that he is not a man to do inhuman acts.

At home his aged mother is taking over the family. His dear sister is helping her and since he was called out to war, she has been working to support the family. His wife also, dutiful to mother and loving, to sister, is busily taking care of the child. The people of the village have great sympathy for them. This I believe is the true love of a mother for the child and wife for her husband. This sincerity I believe enhances the belief of mother, the love of his wife and the respect of his sister.

Taking the above extenuating circumstances into consideration we place this petition before your Honor and beg your merciful judgment and ask for his release.

INOUE, Masaru,
Head of Fukigawa Community
Head of 1st Division of Fukigawa
KEIBUDAN (Fireman's organization,
Futaiwa-mura, Nishi-uwa-gun,
Ehime-Ken.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

"EXHIBIT 6 (a)"

0285

マニラ方面米国軍事
裁判会御中

〒

"Exhibit 7"

0287

To the Members of the American Military Commission, Marianas Area.

PETITION FOR INOUE, FUMIO.

One year and four months have passed since the end of the war.

When INOUE, Fumio's aged mother and when his beloved wife who with her loving daughter embraced in her arms and when his gentle sister who had been working in order to support the family, heard after longing and waiting for his return that he was now being held as a war crime suspect, I can imagine their surprise.

In his school days he excelled in his studies and was respected as a gentle sincere and friendly man. What crime should such a fine man commit? A person who came back from the Marianas told me that Captain INOUE had executed in accordance with the orders of the C.O., some countrymen who had secretly communicated with the enemy. No matter how the military cheated the nation, we had been taught and believed that our enemy was America. Would anyone say that this act of secretly communicating with the hostile opponent was not espionage. It is a punishable and disgraceful act. Are there any countries where spying is allowed. Moreover the execution was done in accordance with superior orders - a superior order must be obeyed in the Japanese forces even at the cost of ones own life, and this was an act of faithful obedience, and in no way was this act of Captain INOUE of his own will. How can he prefer to do such a cruel act. Never in any way did Captain INOUE commit this atrocity.

I read with tears his diary which was presumably his will. I can see that he had the same feeling when he cited the poem of YOSHIDA, shown "The love of my parents is far greater than my love for them, I wonder how my parents will receive this message." There were other numerous poems which he had written down showing his deep love for his mother.

There is not anyone who is not moved by the sacrificial efforts my friend, the sister of INOUE, is exerting, in the vortex of the present economical crisis.

The only way to save the four women and child of his family from misery and distress is to exonerate him as soon as possible. I humbly beg this merciful commission. Please mitigate his sentence. Taking into your consideration the extenuating facts - the situation of his family, that he had done it in accordance with superior order. I beg your lenient judgment. I am praying that my humble request be granted.

TATSUNO, Terumi
EHime-ken, Yawatahoma City
Daikoku-cho. 4

I certify that the above is a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

Exhibit 7a

0288

歎願書

マリアナ方面米国軍事委員会殿

昭和二十一年十二月十日

愛媛縣周桑郡丹原町大字三津屋一一三番ア

三好廣幸 ㊞

私ハ目下「ヤルート」島々民事件被疑者トシテ「グアム」島収容所ニ在ル元陸軍大尉井上文夫殿ノ旧部下タリシ者デアリマス「ヤルート」島ヨリ復員以来既ニ一星霜井上氏ノ其ノ後消息ニツキ日夜心ヲ痛メテ居リマシタガ此度

「グアム」島ニ於テ近日裁判ニ附サルル旨ノ風ノ便リニ接シ驚愕恩顧ヲ受ケタル私トシテハ黙止シ難ク貴委員会ノ皆様ノ御心情ニ縋ラズハ此ノ窮境ヲ救フ途ナシト考ヘマシテ茲ニ謹シミテ歎願書ヲ奉呈スル次第デアリマス

井上大尉氏ハ私ノ入隊当初ヨリノ隊長タリシ人デアリマシテ其ノ人格ハ極メテ高潔自ラ持スルニハ至厳常ニ部下ニ訓ルニ「誠」ノ一字ヲ以テナシ戦陣ニ在ル間寧ロ部下ニ人道上ノ非違行為アランカ私財ヲ以テ之ニ臨マレ常ニ部下ノ過誤ナカラシメント日夜肝腸ヲ砕キテ誘掖指導ニ力メテ居ラレタノデアリマス故ニ其ノ徳性ハ部隊将校団ノ中デモ一般ト抜ン出ラレ一隊景仰ノ的デアリマシタ、サレバ私達昨年「ヤルート」ヨリ復員ノ際氏ガ犯罪被疑者トシテ残留セラレタルニ就イテハ一隊有志シテ真ニ涙デアリマス

今此處ニ氏、犯罪、無實ナル一例ヲ擧ゲマスナラバ
昭和十八年末頃ヨリ中部太平洋方面ニ於ケル戰況擴ク我方ニ不利トナリ
十九年ニ入リテヨリハ内地ト交通全ク杜絶、不毛砂礫、珊瑚
一環礁「ヤルート」ハ忽チニシテ糧食、欠乏ヲ來シ、在「ヤルート」部隊三千、
島民二千數百、命マサニ旦夕ニ迫ラントシテアリマス、此ノ危急ニ際ミ
之ヲ自活ニ依ッテ救ッベク敢然的努力ヲナサレタ人ッガ實ニ井上文夫氏
其ノ人デアリマス、
氏ハ此ノ危機際シテモ常ニ奉ゼル「誠」ヲ以テ處シ、軍人ダカラ、島民
ダカラ等ト區別ハ一切セズ一視同仁、島民ヲ還スルニ同胞ヲ以テセル
ノデアリマス、島民ノ、郷ル密增産、指導ニ奬獲法ノ濾改良ニ
野菜ノ栽培ニ食用トナル草木ノ採取、調理方法ノ指導等ニ或ハ晴夜ヲ
問ハズ私風忘寢ノ衛サテ島民住居区域ヲ巡回シテ眞ニ身心
ヲナゲウッテ島民ノ爲ニ食糧確保ニ努力セラルルト同時ニ外方全環礁、

ニワタル十數万本ノ食糧源ニ給シ得ル樹木ヲ一本殘ラズ算ヘコレヲ
得ラル、食糧、量ヲ算定シ之ヲ部隊島民、全人員數ニ按分シ
食糧消費規正ヲ斷行セラレタノデアリマス、之ハ食生活ノ本能ノ
極メテ旺盛ナル島民ニハ相當苦痛ダッタニ相違アリマセン、然シ此ノ
艱劇ノ勵行ニ眞ニ氏ニ人類愛、精神ガアレバコソ施行セラレタノデアリ
マス、假ニ井上文夫氏ニ斯カル眞、大愛獻身的努力ガナカッタラ
ドウナッテヰタデアリマセウカ、本能ニノミ走ル、無智無計画ナル島民
ガアノ木モ、小鳥ニ二千數百人モガ長期間生命ヲ繼ギ得タデセウカ、
パン、實、熟サザル數ヶ月間ヲ如何ニシテ過シ得タデセウカ、兵隊、中ニ
榮養失調ヲ倒レル者ガアッテモ無數島民間ニハ斯カル者ハ一名モ出
シテ居ナイ此ノ事實ハ果シテ何ヲ物語ルモノデアリマセウカ、
之等、數々ノ事實コソ、井上文夫氏、業績、實ニ偉大ナルコトヲ裏書
スルモノデナクテ何デアリマセウカ、

斯ク観ジ来レバ井上氏ハ「ヤルート」島民ヲ思ヒトシテ永遠ニ欽慕サルベキ人デコソアレ、犯罪構成、無根ナルコトハ明白ノ理デアリマス、

尚、井上氏ノ帰郷ニハ年老ヒルル御母堂、ヤ奥様ガ我身ニ換ヘテモト氏ノ帰国ノ一日モ早カランコトヲ日夜神ニ祈リ居リ、甚ク心痛ノ様ハ外コトニ見ルニ堪ヘザルモノガアリマス、井上氏居ラズシテ年老ヒル御母堂、奥様方、御婦人ノミノ家庭デ、如何ニシテ此ノ物価高、荒波ヲ切抜ケテ生活シテ行カレル事ガ出来マセウカ、委員会ノ皆様方、何卒右ノ諸事情御斟酌ノ上、井上文夫氏ノ帰国ノ日ノ一日モ早キヤウ、宜シク御取計ヒ下サランコトヲ伏シテ御願ヒ申上ゲマス、

以上

2b20

"Ex1b1t 8"

To the United States Military Commission of the Marianas Area

PETITION

10 December 1946

/s/ Miyoshi, Hiroyuki
133 Oaza-Mitsuya, Mibugawa-machi,
Shuyo-gun, Ehime-ken.

I was formerly the subordinate of Inoue, Fumio, Captain, IJA, who is now confined in the Guam stockade as a criminal suspect in the Jaluit natives' case. One year has already elasped since I was demobilized from Jaluit Atoll, and during that time, I was worried about how he was getting along. I have just heard that he will soon be tried. As I owe much instruction and benevolence to him I cannot stand it as it is. I have thought that the only thing I could do for him is to ask your clemency, and I respectfully place this petition before you.

Inoue Fumio had been my commanding officer since I entered the Army. He was of noble character. He strictly held himself and always taught his subordinates "faith". When he was on the front, he strictly regulated any inhuman acts of his subordinates and led his men as best he could in order to prevent them from committing evil deeds. So he was of noblest virtue among officers of our unit, and he was admired by the members of our unit. That is the reason we wondered why he had to remain as a criminal suspect when we were repatriated from Jaluit last year.

I would like to show you some instances which show that he was not a man who committed a crime.

Toward the end of 1943, the battle conditions in the Middle Pacific Area turned against us. In 1944, we had no transportation to and from Japan. Since Jaluit was nothing but a sandy sterile island, the provisions on Jaluit became suddenly short. And the 3000 military men and 2000 natives on Jaluit began to starve. It was Inoue Fumio who, in such an emergency condition, drove himself hard to rescue the situation by self support.

He always believed in "faith" even in such an emergency. He never made any distinction between military men and natives. He treated everybody impartially and received natives in the same way as the Japanese. He earnestly endeavored for the production of cocoanut toddy, instruction, improvement of fishing method, cultivation of vegetables, collection of edible herbs, betterment of cooking or the inspection of natives residence area even in a dark stormy night. Thus he devoted himself to the production of food for the sake of the natives, and at the same time he counted every single cocoanuts tree of about 100-odd thousand and calculated the amount of food obtainable from these trees. He then divided them into the number of all men on Jaluit, military men and natives, and put the economy of consumption into effect. It would be pretty painful for the natives who had strong appetites. But this regulation could be carried out because he had a true love of humanity. What would have happen unless we had not had Inoue who had such a great love and devotion? Could the twenty odd hundred natives live for such a long time who acted only by instinct, had no intelligence and could not plan? How could they live for several months when the bread fruit was not ripe? Although we had some soldiers die from malnutrition, there was no such men among the natives. What does this mean? These

Exhibit 8(1)

0293

PETITION - INOUE, fumio

- -

numerous facts are the very proof that Inoue Fumio is not guilty.

When we think in this way, it is evident that Inoue Fumio is the man who should be respected as the benefactor of the natives of Jaluit and that there is no reason why he should be accused for crime.

In the native village of Inoue, his mother and wife are praying to the Gods that he will be back soon even if their lives are made shorter on account of it. We feel very sorry when we see their misery. The members of his family are all female except him. How can they cut their way through the high waves of inflation.

Gentlemen of the Commission, I beg your sympathy for these circumstances and that you will have kind consideration so that he will beback soon.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

Exhibit (2)

0294

歎願書

裁判長閣下始メ各判士殿ノ労苦ヲ衷心ヨリ深謝致シマス

井上大尉ハ第三大隊先任将校トシテメルート防衛部隊ニ着任以来常ニ井田少将、古木少佐ノ手足トモ信頼サレ又手足トナリテ心身ヲ捧ゲ至誠ヲ盡シ終戦時ニデ防備指揮官及大隊長古木少佐ノ補佐当ヲ人ハ井上大尉デアリマシタ井上大尉ハ温厚従順ナ人格者デアリマス又公ノ事ニ就テハ厳正堅実デアリ何事ヲモ綿密周到ニ当ラレ心身ヲモ労セズ黙ラセトシテ事ヲ運ベレソノ上責任観ノ旺盛ナ人デモアリ深神ナ人デアリマシタ又井上大尉ハ上下ヲ問ハズ礼節ニ努メラレル人デ本部ニ勤務シテヲリマシタ私ハ井上大尉所ニ毎日ノ様ニ書類等ヲ持ッテ行ク度ニ井上大尉ノ言語態度ニ常ニ恐縮致シテヲリマシタ又一方私ハ斯ク様ナ人ガメルート防備部隊ノ最高幹部ノ一人デアルト知ル時私ハコノ井上大尉ニ対スル人徳ニ肺天ナ信頼ヲ持ズニハ居レナイ感ニ打タレマシタ終戦後米軍ニ収容サレテヨリ最早一ヶ年半ニモナリマスガ収容所生活ニ於ケル井上大尉ノ持ッテ生レタ性質ハ何等変ルコトハアリマセンデシタ斯ク様ニメルートニ着任中ニ於ケル収容所生活ニ於テモ一ノ者カラハ恐親ノ如ク信頼懐慕サレ又一ノ者ニ対シテハ無心ヲ持ッテ接セラレタ井上大尉ガ当時メルート部隊ガ餓死ヲ脱ノ辺リニ於ケル窮迫状態デアッタメルートニ於ケル何一ツノ闘争ヲモ生ゼズ円滑ニ最後マデ維持スルコトガ出来マシタハ井田少将、古木少佐ノ密ナル計画ト努力ニモ依リマスガ是等ノ人ヲ積極的ニ補佐シ心身ヲ粉ニシテ挙公ノ誠ヲ盡シタ井上大尉ノ血ノ出ル様ナ努力ノ賜ト確信スルノデアリマス古人ノ句ニ「至誠動人」ト云フコトガアリマスガ私ハ井上大尉ノ様ナ人ヲ指シテ云フノデハナイカト信ズルモノデアリマス

E-9

9

0209

私達ガ生地獄ノ様ナマルートニ於テ餓死ヲ免ガレテ今日マデ生来ヘタ
ラトハ一重ニ井上大尉始メ各幹部ノ努力ニ依ルモノデ私ハ今デモ当時ノ
命ノ親デアッタト深ク感謝致シテ居リマス ソノ命ノ親ト思フ井
上大尉ガ近ク裁判ニ附セラレ刑ヲ受ケントスルニ当リマシテ私ハ悲歎
ニ堪ヘナイ次第デアリマス 井上大尉ノ御上ハ私ノ近村デアリ家ニ衰
老ノ母ト妻子ガ我子ノ帰リ我夫ノ帰リヲ如何ノ程待
チ憧レテ夢見テ居ラルコトデショウ
裁判長閣下ドウカ井上大尉ノ人徳ヲ御取入下サレ尚衰老ノ母及
妻子ヲモ憫察サレ母ト妻子ノ再会ノ日ヲ興ヘテ下サイ
世界唯一ノ文化国人道国トシテノ公正寛大ナル御裁断ヲモフ
次第デアリマス

昭和二十二年四月三日

田中満

裁判長閣下

"Exhibit 9"

0297

PETITION

Your Honor, the President and the Members of the Commission.

I would like to take this opportunity to express my deepest thanks for your toil.

From the time Captain Inoue was attached to the Jaluit Defense Garrison as a senior officer of the Second Battalion, he was much trusted by Rear-Admiral Masuda and Major Furuki, and worked as earnestly as he could as if he had been their right hands, and assisted Masuda, the commanding officer of the Garrison, and Furuki, the commanding officer of the Battalion. He was a man of mild and obedient character. When he dealt with official matters, he was strict and firm, careful and deliberate in everything, and worked earnestly without minding his pains. Besides he was full of a sense of responsibility and was a man of integrity. When he received others, he was polite whether they were his superiors or his subordinates. As I was serving at the headquarters, I met him everyday when I offered documents to him. Everytime I met him, I was struck with admiration at his words and behavior. When I was conscious that such a man was one of the senior members of the Jaluit Defense Garrison, I could not help placing much confidence upon the virtue of Captain Inoue. It is about one and a half years since we were confined by the US Forces. But his God-gifted character has never changed since his confinement. Both when he was on Jaluit and when he was in the stockade, he was relied and loved by his subordinates as if he had been their father, and he was also benevolent to his subordinates. Although the members of the Jaluit Defense Garrison were at that time on the verge of starvation, we had no conflict among us and we were able to maintain our unity until the last. Of course, this was because Rear-Admiral Masuda and Major Furuki did their best to overcome the difficulties. But at the same time, I believe, we owe much to the earnest exertions of Captain Inoue who positively assisted them and did as best he could. "Sincereity moves men." These are the words of an old sage. I think these words indicates a man like Inoue.

In the living hell of Jaluit, that we were able to escape from starvation and be here today, I think we owe to the efforts of the senior members, not to speak of Captain Inoue. I am thankful even now that he was the benefactor of our lives. I feel very sorry to hear that Captain Inoue, our benefactor, is to be tried and punished. Inoue's home is near my village. How eagerly his old mother, wife and child are waiting for his return!

Your Honor, the President, I beg you that you will take the virtues of Captain Inoue into your consideration, that you will have sympathy for his aged mother, wife and child, and that you will give him chance to meet them again.

I beg your fair and lenient judgement as the most civilized and humane state of the world.

3 April 1947

/s/ Tanaka, Mitsuru

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

EUGENE E. KERRICK, JR.,
Lieutenant, U.S.N.R.,
Interpreter.

"Exhibit 9(a)"

0298

歎願書

裁判長閣下ニハ長期ニ亘リ文化國家ノ進義ニ基キ公正ナル裁キヲ致サレ吾々一同感謝シテオル次第デアリマス。　私「マルート」島ニ於テ井上大尉ノ部下トシテ働イテオタ者デアリマス。被告陸軍井上大尉ハ研究心旺盛且任務ニ対スル責任観ハ熾列デ上官ハ勿論部下ヨリモ尊敬サレテオタ方デアリマス。「マルート」ノ昭和一九年以来右方連絡ハ遮断サレ糧食ハ皆無トナリ之レカ為日々体力ハ減退シ歩行スルコトスラ容易ノ業デナカッタ。　又毎日吾々ノ耳ニ入ル「ニュース」ハ敗戦ニ次ゲ敗戦此レガ為軍紀ハ頽廃シ飢餓ニ苦ミ絶望ノ「ドン底」ニ落チ入リツヽアッタ隊員ヲ激励シツヽ終戦迄団結ヲ保持シ得タノハ井ロ少将ノ人格ガナサシメタルモ常ニ司令ヨリ信頼サレ井上大尉ノ賜ニヨルモノト確信シテオリマス。軍人軍属島民ノ区別ナク皆自分ノ弟ノ如ク又子ノ如ク愛シテオリマシタ。彼ガ離島視察ノ際島民癩病患者ガ引島ニ収容サレ食料ノ不足ニ泣ミヰルヲ見兼ネテ幾度モ移動スル如ク意見具申シ患者ヲシテ食ノ事ニ心配ナク療養スルコトノ出来タノハ井上大尉ノオ陰デアリマス。

又珊瑚礁ノ砂島ニ農園ヲ開墾シ漸ク作物ガ出来ル食糧ニ充ル様ニナッタ時彼ハ私ニ「島民ノ農園ヲ開墾スル際援助シテ呉レ且人肥モ提供シテオル収穫シタ作物ハ島民ニモ吾々ト同様ニ分配セヨ」ト言ワレ係長ノ者ニ依リ農園長ニ指示ヲ出シタコトヲ知ッテオル。

次ニ述ベタル事柄ハ井上大尉ノ島民ニ対スル情愛ノ表レノ一部ニ過ギナイノデアリマス。

「マルート」ハ他ノ基地ヨリモ先ニ現地自活ヲ始メタルヲ種々ノ障

碍ニヨリ計画通リ進マズ右往左往シテ十二月ニ飢餓ニ耐ヘカネ食糧泥棒ガ相次ギ起リ氏レガ取締リノ為非上大尉ヲ班長トスル特務班ガ編成サレタノデス

徹底的ナル責任観念ノ旺盛ナル彼ハ寝食ヲ忘レ此レガ取締リニ当タリ原地島ニアリシレト南ノ上官対部下ト対立斗争ヲ試ミ食ヲ巡ッテノ戦友相牛ト云ッガ如キ無秩序ヲ生ゼズ終戦迄司令ヲ中心ニ団結シ得タコトハ彼ノ努力ニ依ルモノト信ジテ下リマス

「マルート」ノ吉々数十名ノ者ガ餓死ヨリ免レタルハ外ナラヌ井上大尉ノ適キニ出タル施策ノ御陰デアリマス

モシ両氏ガ十ケレバ我等数十名ノ生命ハ無カッタコトハ明カデアリマス

井上大尉ハ生命ノ親デアリマス

「マルート」ノ数十ノ者ガ等シク宣シトミル此ノ主張十人格者ガ何故ニ犯罪ガ行ハルタロウカ、有リトスレバ何カノ間違ニ違ヒナク、公正ナル裁判長閣下ノ洞察眼デ慎重ナル御審査ヲ御願ヒ致シマス

尚彼ノ故郷ニハ数年間彼ノ帰ヲ待チ侘ビレアル老母ト妻子ノ身上ヲ思フトキ裁判長閣下ハ被告ノ直実ノ人格ヲ洞察サレ温情溢ル、御裁断ヲ御願ヒスル次第デアリマス

昭和二十二年四月三日

神野茂

E.10

"Exhibit 10"

0301

PETITION

Your Honor, the President,

We would like to express our deepest gratitude in that you are continuing fair trials for long days according to the moral standards of civilized state. I am one who worked under the command of Captain Inoue on Jaluit Atoll. The accused, Captain Inoue, IJA, had an earnest spirit of inquiry and a strong sense of responsibility toward his duties, and he was admired not only by his superiors but also his subordinates.

From 1944 on, Jaluit Atoll was cut off as far as transportation to the rear bases, and we came to the end of our provisions. Our physical strength was poor, and it was hard for us even to walk. News we heard everyday only told us of our continuous defeat, and the air raids were intense.

On account of such conditions, our military discipline decayed, and we suffered from starvation and were in a desperate condition. We owe what we could maintain of our unity until the end of the war to the personality of Rear-admiral Masuda who encouraged us. But I think, we owe it at the same time to Captain Inoue who was trusted by Masuda and who sincerely and earnestly assisted Masuda as if he had been the hands and legs of Masuda. Captain Inoue was a benevolent man. He loved military personnel, gunzoku and natives without distinction as if they had been his younger brothers or children.

When he made an inspection of the outlying islands he saw a leprous patient who was received on a small island was suffering from the shortage of food. He adviced Rear-admiral Masuda to move him to the island where food was more abundant, and where the patient could recuperate without worrying about food.

We cultivated a farm on a sandy island of the Atoll, and we could harvest our crops and eat them at our meals. Then he said to me, "Natives cooperated with us in the cultivation of our farm and gave us fertilizer. Give some of our crops to them as well as keeping part for us." And he gave directions to the chief of the farm as the officer in charge of it.

What I have mentioned above was an only part of the benevolence of Captain Inoue toward the natives.

Men on Jaluit began self-support earlier than other bases. But on account of various disturbances, it did not progress as we had planned. In the course of time, thefts of food became frequent as the men were unable to bear the shortage of foods. The Special Police Section was organized to control these thefts and Captain Inoue was appointed chief of the Section. As he had a strong sense of responsibility, he took the duty even forgetful of his sleep and other comforts, so we had no confliction between superiors and subordinates which were said to be frequent on other islands, and we had no such disorder as the quarrel of comrades in order to obtain food. We were able to keep our unity under the command of Masuda till the end of the war. I think we owe much to his efforts.

Thousands of men on Jaluit owe what they are today and the fact they did not starve, to the proper disposition of Rear-admiral Masuda and Captain Inoue.

Exhibit 10(1)

0302

If it had not been for them, thousands of us would have been dead.

Captain Inoue is the benefactor of our lives.

Can this man of character whom thousands of men on Jaluit unanimously said to be a good man commit a crime? If so, it must be a mistake. Your Honor, the President, I beg you that you will try him carefully with your fair insight.

At his native village, his old mother, wife and child have been looking forward to his return for several years. Your Honor the President, I beg you that you will penetrate into the true character of the accused and that you will deal leniently with him.

3 April 1947

/s/ Jinno, Shigeru.

I certify that the above is a true anc complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, JR.
Lieutenant, U.S.NR.
Interpreter.

"Exhibit 19(a)(12)"

0303

No. 1.

歎願書

私は一九四四年一月九日海軍徴用工本荻師としてヤルート島の第百十一設営隊ヤルート派遣隊に着任し終戦後昨年十一月故國復員を許された者であります

ヤルート島駐屯当時良く面倒みあり交誼の間柄にありまし たら元陸軍大尉井上丈夫君が唯今ヤルート島民事件の被疑者として貴官所轄正グアム島収容所に拘置せられる事を今始めて承知いたし本人の気質人格等をよく知る私は事の意外に全く驚愕するる次第であります

井上君は性質誠に温厚であり全く高潔な人格の持主であり ました尚一般同僚の気受けも良く人間愛に充ちた態度は接するものとして自ら親しみを感ぜさせられるものがあ りました

誰でも彼井上を知るものは罪を犯すなどと言う事は到底

0304

信じ得られない事であります　人道を愛好し自由平等と
信條とする彼井上には大それた犯罪などは疑いたくも断じて
為し得ないと望く信じてゐます
銀子又夫を最後まで信じ無事復員の日を一日も早からん
んと再會を待ち詫びてゐる彼井上の妻子家族の心情は
察するに余りあります　夫を信じきったやさしい妻の態度
英夫を慕かう女の童姿には只同情の涙を絞らざるばか
りであります　今の故國の世相に於て彼の歸國なくしては到底
生きて行く事の出来ない妻子家族の現況を考へれば一日も
も甲く彼井上の晴れて帰國する日を待つや洵に切なるものが
あります　彼の温情な人となり自由と平等と愛する人道的
な性格そして彼の歸還を一日千秋の思ひで待つ留守宅の事
を考へれば居ても立ってもゐられない気持であります
何卒貴官右情狀を御賢察下さいまして彼井上の復員の

0305

No.3.

一日ル早くなります様 特別の御祈願ひ申上げる次第であります

切に〈

右伏して歎願いたします

マリアナ方面米國軍事委員會殿

昭和四六年十二月二十六日

大阪府堺市中三國丘町

中村敦

1103

0306

Exhibit 11

0307

To the US Military Commission of the Marianas Area.

PETITION

I arrived at Jaluit on 9 January 1944, was attached to the Jaluit Detachment of the 101th Construction Corps as a civil engineer called to service on the same date, and was repatriated in November last year, after the termination of the war.

I met Captain Inoue Fumio very often when I was stationed on Jaluit, and was very friendly with him. I have just heard that he is now confined in the Guam stockade in your jurisdiction as a criminal suspect in the Jaluit natives' case. Since I know his nature and character very well, I was entirely astonished to hear this unexpected news.

Mr. Inoue was very mild in nature and had a noble character. He had a good reputation among his comrades, and anyone who once came in contact with his humane attitude will feel intimacy with him.

Anyone who knows Inoue can not believe that he committed a crime. He loved humanity; his belief was in liberty and equality. So I believe that he can not commit a crime.

It is very pitiable to think how his family, his wife and child, are feeling who are absolutely believing in him and are looking forward to the day when they shall be able to meet him again. I am moved to tears when I see the gentle attitude of his wife who is entirely believing her husband and the figure of his daughter who is yearning after her benevolent father. In the present condition of Japan, it is hard for them to live unless he comes back. I eagerly hope that he will be back soon when I think of how his family is getting along. I am very worried when I think of his mild nature, his humane character, a man who loves liberty and equality, and his family who are looking forward to his return.

I beg from all my heart that you will sympathize these circumstances and that you will have special consideration so that he will be back soon.

26 December 1946

Nakamura, Tsuyoshi
Nakamikunioka-machi, Sakai-shi,
Osaka-fu.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S. Naval Reserve,
Interpreter.

Exhibit 11a

0308

何卒右御考慮上 刑ノ免除方取計ヲハレマス様
歎願致シマス
併セテ 今新シイ民主日本再建ノ途上氏ノ
如キ誠心ヲ以テ事ニ當リ 決断力・富ミ實行力
ニ富マレル人材ヲソ世ノ最モ要求スルモノナルヲ附記シ
刑ノ免除方 重ネテ歎願致スモノデアリマス

昭和二十一年十二月

愛媛縣東宇和郡 高成村
若宮則義

歎願書

井上文夫殿ハ通信隊長トシテ、私達ト共ニ比島ニ赴任致シタル処、其後マーシャル方面ニ転進、爾来四年ノ長キヲ共ニ行動シ、我々部下トシテ最モ尊敬セラレタル隊長殿デシタ。

想ヘバ昨年十月、復員帰還前現地ニ於テ抱留ノ身トナラレマシタ私達部下ハ日頃優シイ隊長殿ト（当時本部附）共ニ懐シイ祖国ヘノ第一歩ヲ踏ム事ノ出来ヌヲ如何ニ残念ニ思ヒマシタデショウ

隊長殿ハ担当業務ノ関係上、島民事件被疑者トシテ抱留サレタノデアル事ヲ信ジマス

日頃隊長殿ノ精神訓話ハ特ニ誠心トイフ事ニ就イテ教育セラレマシタ。其ノ度毎ニ我々部下一同、身モ心モ洗ヒ清メラレル感ガ致シマシタ

嘗テ比島北部呂宋警備中隊長殿ノ周囲ニハ慕ヒ寄ル住民達ガ何時モ賑ヤカデアリマシタ其ノ当時ノ様ガ今新シイ記憶トナッテ蘇ッテキマス

隊長殿ハ常ニ誠心ヲ以テ部下ノ辛イ誠心ヲ以テ人ニ接シテヲラレマシタ

此ノ様ナル潔白ナル心ノ持主デアル隊長殿ニ限ッテ決シテ非人道的行為アリトハ考ヘラレマセン

E12

Exhibit 12

PETITION

Inoue, Fumio went with us to the front in the Phillipine Islands as a commanding officer of the communication unit. He then went to the Marshalls Area, served there for 4 years and was most admired by us, his subordinates. I recall he was confined just before our repatriation in October last year. And we were very sorry that we could not go home with our affectionate commanding officer (at that time hewas an officer attached to headquarters.)

I believe that the reason why he was confined at a criminal suspect in the natives' case was that he had a duty in connection with it.

In the spiritual lecture of my commanding officer (TN-Inoue) he told us especially about faith. Whenever we heard it, we, his subordinates, felt as if our mind and body had been cleansed.

Once he took charge of guard of northern Luzon Island in the Philippines as a company commander. Many natives came around him as they were attached to him. I can recall now clearly the scene of the time.

My commanding officer commanded his subordinates with faith and received people with faith.

My commanding officer had such a pure mind that I can not think that he violated humanity.

I beg your kind consideration concerning what I have mentioned above and that you will mitigate his sentence.

Besides, such a man as he who does anything faithfully and who is a man of decisive and executive character is very necessary for the reconstructionof democratic Japan. So I again beg you that you will mitigate his sentence.

December 1946

Wakamiya Noriyoshi
Upnarimura, Higashiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreters.

"Exhibit 12 (a)"

0312

歎願書

私は元陸軍大尉村上文夫の義姉であります。

先日、私の姉、村上喜美子から、村上文夫が十八ノート島民事件の被疑者として拘置されている旨を聞きました。

大変驚いて帰りました。

私の知る限りの彼は、常にやさしい思いやりのある孝行の人であり、老母に対しては、やさしい兄であり、姉に対しても本当に頼りになる良い兄であります。

次男を連れて、一九四一年の夏に私は長男と共に、村上文夫の許に行き暫く滞在しましたが、私の長男は村上文夫の人格を、子供ながらにも直感したようです。村上文夫の子供になりたいと申す位彼になつきやすかつたのであります。

やさしい立派な人であると信じて、すべて寛大なる御取計いをお願い申し上げます。

No 2

私一家は僕が昭和七年の秋ホノルー島復員船に
乗るまで、その帰還を非常に悲しみました。
僕の帰還を待つ事と胸のつまる思いがします。僕井上文夫は井
上家の支柱であり、経済的にも精神的にも文夫なくし
ては生きてゆけません。
井上文夫は断じて非人道なその出来る人ではありません。
自由平等と博愛を信条としみた彼ほど人道
主義者はありますまい。
信じ疑うことを知らぬ。私達は彼の清浄潔白を
信ずる事を。
行平事情の一日も早く井上文夫の復
員出来るよう法益カ下さらん事を伏して切願
申上ます。
僕の上に神の庇護の多からん事を祈りつ

13.2

0314

No 3.

こゝに謹んで哀悼の意を表します。

一九四七年一月七日

大阪府泉北郡南池田村私田

鉄 魁

マリアナ方面米国軍事委員会皆々様

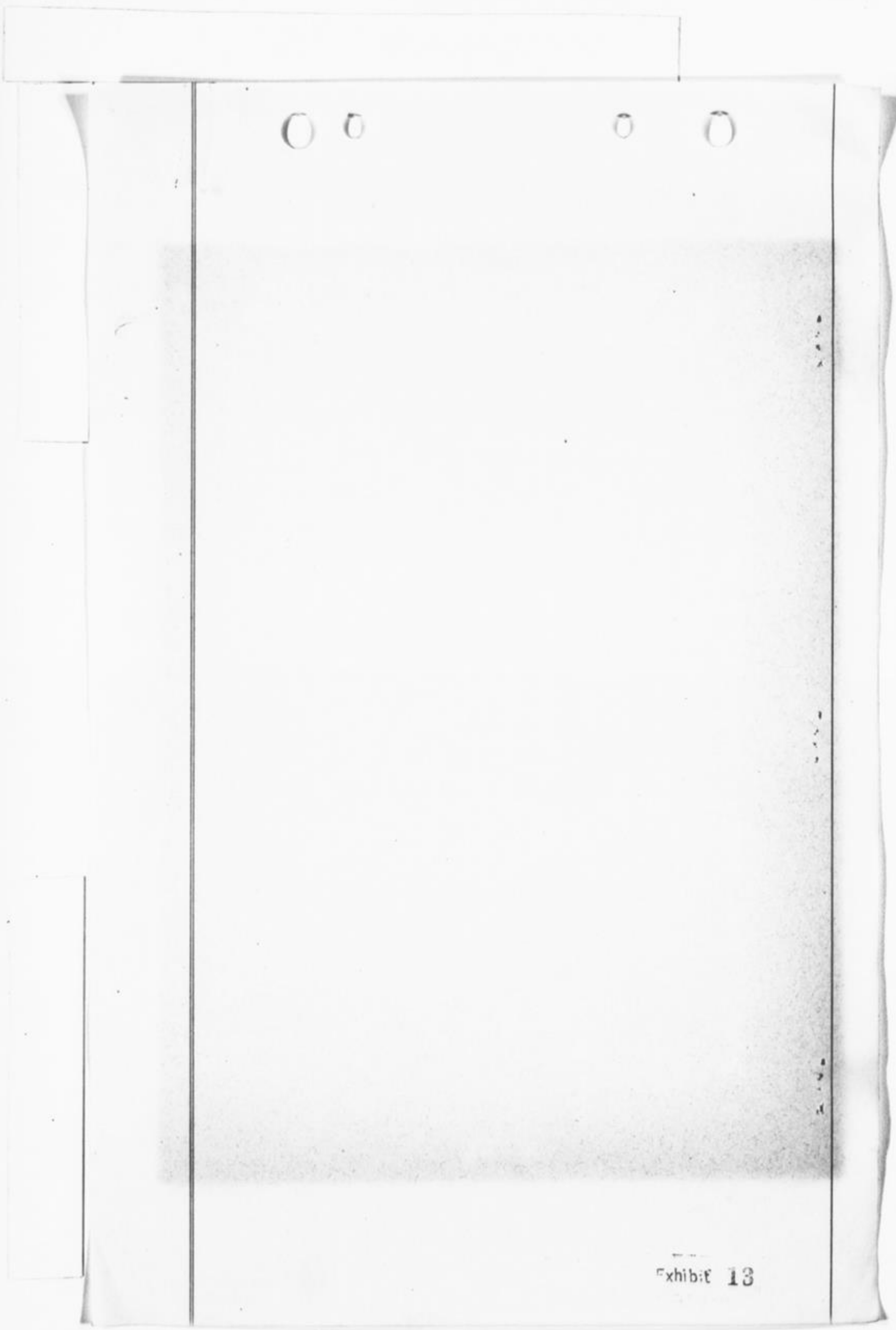


Exhibit 13

To: Gentlemen of the US Military Commission of the Marianas Area.

PETITION.

I am the sister-in-law of Inoue Fumio, Captain, IJA. I have heard lately from Inoue Kimiko that Inoue Fumio is confined as a criminal suspect in the Jaluit natives' case, and I was very much astonished. Did he do anything wrong? So far as I know, he was always an affectionate husband, was a filial son to his old mother, and was a reliable brother to his sister. I recall it was in the Summer of 1941 when I went to his house with my eldest and second son and stayed there for some days. It seemed to me that my eldest son, although he was a mere child, divined the character of Inoue Fumio. He was so intimate with him that he said to me, "I wish I could be his son." Still now, my eldest son believes that his Uncle Fumio is a kind, fine man, and is wondering why he is not yet demobilized.

Our family lamented much that he could not get aboard the repatriation ship which left Jaluit in the Autumn of 1945.

I feel as if my heart were torn when I think of his old mother, his wife, his loving daughter and his sister who are looking forward to his return. Inoue Fumio is the main support of his family, they can not live both economically and spiritually if he does not be back.

Inoue Fumio is not a man who can do inhumane things. His creed was liberty, equality and charity; then what mistake can he make? We never doubt his pure integrity.

I beg you respectfully that you will have consideration for these circumstances and that you will make an effort so that he will be back soon.

I hereby place this petition from all my heart praying that God will have mercy on him.

7 January 1947

Tetsu, Satoko
Wada, Minamiikedamura, Senboku-gun,
Osaka-fu.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 13(a)"

歎願書

謹みて 元陸軍大尉井上文夫殿に関する歎願書を捧呈致します

同氏は目下戦争犯罪容疑者として御取調中と拝聞致しますが萬事御詮議の上左記事情御賢察下され何卒罪の減刑若しくば御免除方を御高配下さる様切にお願ひ申上げます

左記

一、同氏の人格は高尚で潔白な方であります

二、同氏は徳義を重んずる律儀な方で郷に在りては徳望の高い決して罪を犯す事などは爲し得ない所謂人格者であります

三、同氏の家庭は妻、女児、老母、妹の四人が極く円満に暮して居ますけれども経済的にも豊なる男子の居ない不幸な家庭であります

以上

昭和三十年十二月十日

愛媛縣八幡濱市

井上喜八 ㊞

マリアナ方面米國軍事委員會御中

E-14

Exhibit 16

To the United States Military Commission of the Marianas Area.

PETITION

I would like to submit this petition respectfully in behalf of Inoue Fumio, ex-captain, IJA.

I hear that he is to be investigated as a war criminal suspect. I beg with all my heart that you will consider the following circumstances after your deliberate consultation and that you will mitigate his punishment or pardon him.

1) His character is noble and upright.

2) He is a moral, honest man. When he was in our village, he had a good reputation, so he is a man of character who can not commit a crime.

3) His family is composed of his wife, his daughter, his old mother and his sister. Although they live together in good harmony, their economical condition is very poor. They are an unhappy family without a man to work for them.

10 December 1946

Inoue, Yoshitada
Yawatahamashi, Ehime-ken.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 14 (a)"

歎願書

元陸軍大尉 井上文夫

私共は右の者が戦争犯罪人として近く裁判に
付せられると云ふ事を聞き驚きました。
同人が通人としての人格言行よりして決して大罪
を犯すと云ふ事は信ぜられぬ程であります。
同人が平素の言動及び家庭の事情より同人の
減刑をお願のするものであります。
軍人は上官の命には絶対服従せねばならぬ
同人の行為が人道上許すべからざる行為であり同人の意思
にそぐわぬ絶対服従すべき上官の命であつた
遺族の如何にして生活するかをも考慮する事が出来るであ
於て人の模範とする人格者であると共にその家庭の事情を
御考慮の上減刑せられます事を歎願する物であります。
昭和二十二年十二月十六日

宮内村里
福田恭枝 (福田)

コリア十方面米国軍事委員会御中

E-15

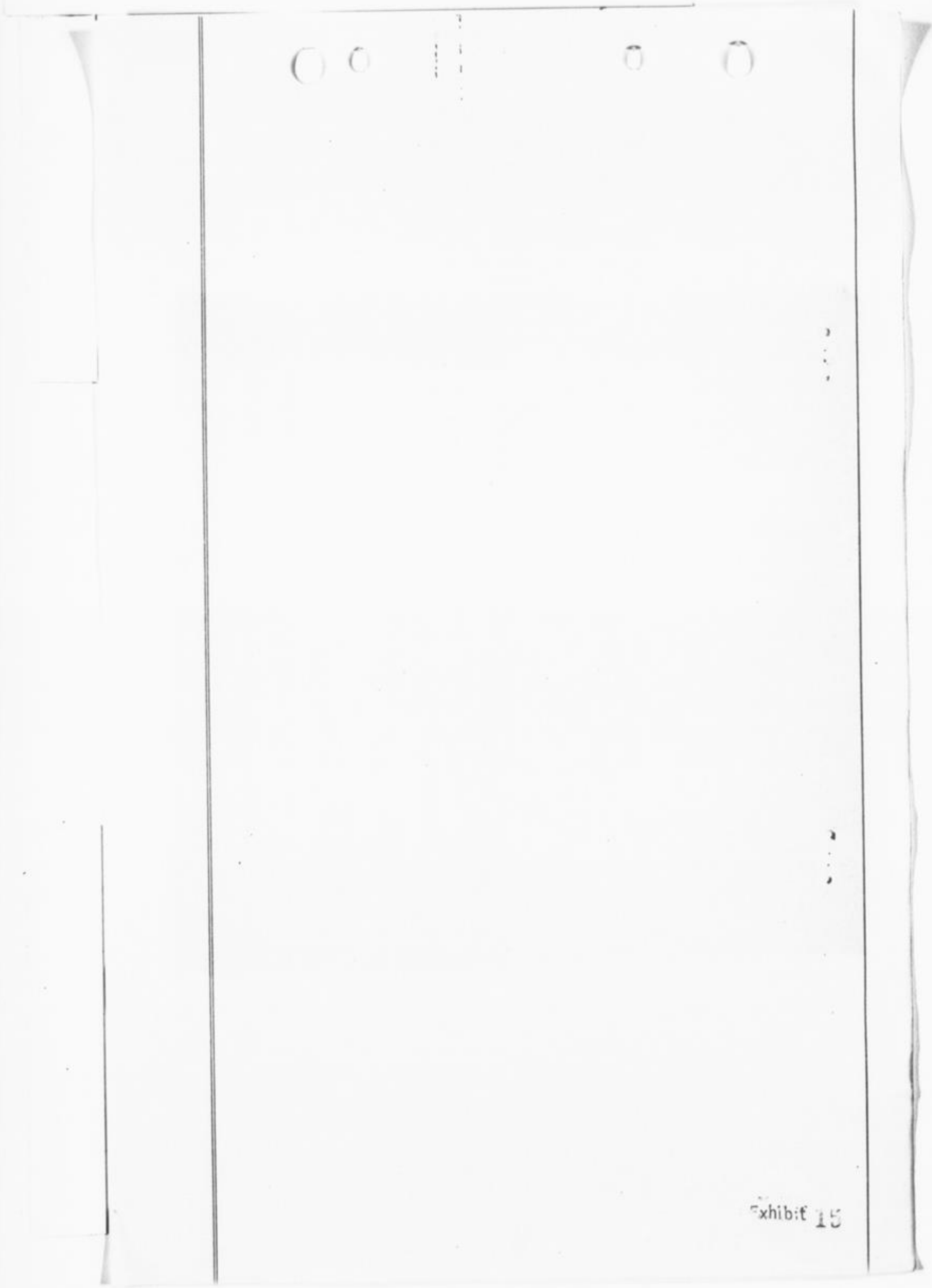


Exhibit 15

0322

PETITION

To: The American Military Commission, Marianas Area.

For: INOUE, Fumio, former Army Captain.

I was much surprised to hear that the above person shall be tried as a war criminal. I cannot believe, judging from his character and conduct, that he should commit such a grave crime. Considering his character and his family situation I respectfully beg your lenient judgment.

A military person must implicitly obey his superior's order. If his acts were unpermissable from the view of humanity, it was not his will to do it but he was constrained by the principle of implicit obedience.

His family is composed only of woman, his mother, sister, wife and daughter. They are not a well-to-do family. If he should be convicted and given a long sentence how would his family survive?

Taking into account his noble character and the condition of his home, I beg your most lenient judgment.

FUKUDA, Yasue.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

"EXHIBIT 15 (a)"

0323

嘆願書　元陸軍大尉　井上文夫

現今マリアナ方面に於て犯罪人として裁判致されて居られます井上文夫元陸軍大尉につきましては、その方の心術と誠に純正温良を持まであらうとや、またその挙動につきましてもあくまでも謹厳真摯で行為は一際方正であらうとやまた人と個事も有らずして死刑に處すると言つた様な事をする方では決してございません。況んや軍人規律に於ては誠に整肅のうでございます。當地方に於ても人々皆殺されたと言ふ事につきましては此の上無い罪悪ではございますがそれはたゞ――上官の命令をお果たしたと言ふに過ぎ無いのでございまして井上文夫元陸軍大尉自身から施行された分では決して無くこの方に於ては何の罪も無いのでございまして、どうかその点誤解され無き様切に――お願い申し上げます。

何卒格別のお計らいを以て文夫氏の母様の井上ヨサ子様を中心に妻喜美子様、長女洋子様、妹浦子様達せめてもの慰めに働らいてこそ、またお若き文夫氏に於ては帰国不可能とされればこの家庭は今後どうなるでございましょう。前途絶望……私達は願わの言葉もございません。

罪ある文夫氏を一日も早く一時も早く帰国をお許しくださいます様重ねて切に切に御願い申し上げます。

愛媛県八幡浜市大字川之内

マリアナ方面米国軍事

員会御中

田津見愛子

Exhibit 16

0324

PETITION

To: The American Military Commission, Marianas.

I wi h to state a few points about INOUE, Fumio, who is now being held and tried as a criminal in the Marianas. He is a man of sincerity, gentleness and righteouness. His conduct has always been solemn, sincere and impartial. He is a man of discipline and cannot perform any exeuction without having justifiable cause for it. As to his acts which he had committed, I am firmly of the belief that he did not do it of his own accord but did it only in accordance with superior order. He did not perform it. He did not commit any crime. I beg your wise understanding.

At home there is his mother, wife, sister and daughter all working hard and praying and working for his return. If he should not be able to return what would become of them---only distress. I have no words to console them. Please make it possible that he may be able to return home soon.

TATSUMI, Aiko,
Ehime-Ken, Yawatahama City,
Kawani-uchi.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

"EXHIBIT 16 (a)"

0325

歎願書

元陸軍大尉　井上文夫

此度戰犯ニ問ハレ抑留サレテ居リマス同君ハ資性溫順行動方正ニ思想堅固實言語明朗以テ模範トスルニ足ル人格者デアリマシテ此度戰犯ニ問ハレマシタ事ハ本人ノ意志ハ全ク無ク命ニ對シテ忠實ニ從テ責ヲ致シマシタマデデアリマス家族ノ生活ト云フモノハ全ク同君ニ依テノミ營マレテ居タノデアリマス年老イタ母兒幼イ娘弱イ妻妹彼等ハ何ウシテ此ノ敗戰國ノ苦難ノ生活ヲ切リ抜ケテ行ク事ガ出來ルデセウ

斯ノ樣ナ數々ノ事情御クミトリノ上刑ヲ減シテ平和國民ノ國ノ一員トシテ再生ノ出來ル機會ヲオ與ヘ下サイマス樣切ニ御願申シ上ケル次第デ御座イマス

愛媛縣八幡濱市裁判所通

高橋長理子

マリアナ方面
米軍事委員會
御中

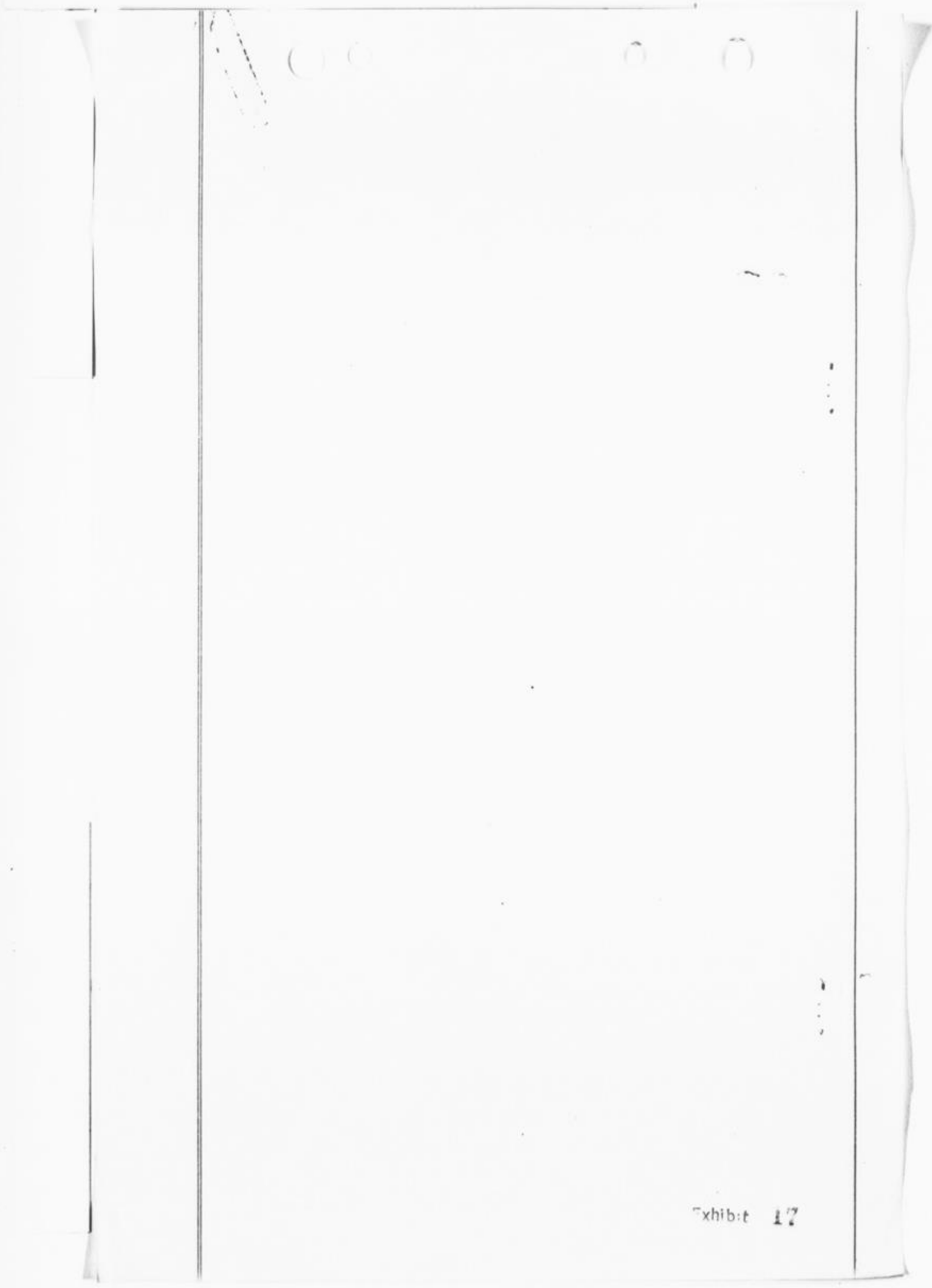


Exhibit 17

To the Members of the American Military Commission, Marianas Area.

PETITION FOR INOUE, Famio, former Captain, IJA.

The above person who is now being held as a war criminal, is a man of gentleness, fairness, soundness of thought and clearness of speach; a model to all. The act which he had done was merely in faithful pursuit of his superior order and has nothing to do with his own will. Moreover, without him, his family is in a complete lost. I wonder how his aged mother, weak wife, his little daughter and sister will strive through the hardship which defeat has brought about.

I beg your consideration of the above facts and request your leniency for him. I beg your clemency in giving him another chance to be as a member of a peaceful country in its reconstruction.

TAKAHASHI, Mariko
Ehime-ken, Yawatahama City,
Saiban-dori.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

Exhibit 17a(

0328

歎願書

閉ノ所ニ依リます井上文夫君は
日下グアム島收容所ニ於テ抑留セ
ラルてゐると閉きます
一、同君は日頃資性極めて温順で女性的性格
であつて激しい闘争心をもくて野球、搶艇
等をスポーツをもしキャプテンとして
クラブ試合に衆望を得ラれた高人格者
一、家庭は老母と妹妻子があつて一家の支柱で
同君がなかつたら経済的にも精神的にも一家は
破滅に陷る状態なり
一、山村に生育之ン小たる純朴な同君は義俠
心があつて人の責任まで探ラんとする高潔な
人物であります
學友として傍觀するに忍びず同君の安泰
であることを希望すること切であつて謹んで
歎願書を呈します
西辛和地方事務所勤務
地方事務官 木村他一郎
エリアナ方面米国軍事委員會
中

Exhib-t 18

To the US Military Commission of the Marianas Area.

PETITION.

I heard that INOUE, Fumio is now confined in the Guam stockade. He was always as mild as a woman in nature, and had no violent fighting spirit. But he was good at sports such as baseball or rowing and as a captain of our team, he enjoyed a good reputation in the matches of our club. He had a very good character.

At his home, he has his old mother, sister, wife and child and he is the supporter of his family. If he will not come back, his family will be ruined both economically and mentally.

He was brought up in a hillside village to be plain and chivalrous. He is a man of noble character and sometimes takes the responsibility of other people.

As one of his comrades at school, I can not bear seeing his miseries without doing something about it. I sincerely hope that he will be happy and hereby place this petition respectfully.

KIMURA, Saichiro,
District Official,
at the Nishiuwa District Office.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 18 (a)"

0331

22/ Suffish already inside

歎願書

歎願書

本籍地　愛媛縣西宇和郡双岩村
元陸軍大尉　井上文夫

右ノ者ハ「グアム島」收容所ニ於テ拘留セラレオルト聞ク。
吾等ハ同級生トシテヨク同君ヲ知ル者デアル
一、同君ハ農家ニ生レ幼少ヨリ父ヲ失ヒ母ノ手一ツニテ育チ
信仰心ニ厚ク、常ニ平和ヲ愛シ女性的ナ人物デアツタ
一、長ジテ商業學校ニ入學、在學中性質温順ニシテ他人
ト鬪爭シタルコトナク円満ナ性格ノ保持者デ運動ニ趣味
ヲ持チ、特ニ野球ニ「ポートレース」ニ長ジ常ニ衆望ヲニナヒ運動衆
デアツタ卒業後、當地唯一ノ生糸工場ニ(輸出絹糸工場)ニ事務
員ニ入社、精励ナレ非常ニ人ニ氣ガアツタ
一、家庭ハ老イタル母ト妹ガアリ妻ト小ノサナ女兒ガアツテ
留守ヲシ、同君ナクバ經濟上モ又精神上モ一家ハ破滅ニ
陷ル狀態デアリマス
吾等同君ヲ識ル者傍觀スルニ忍ズ茲ニ歎願書ヲ作成シテ
同君ノ安養ナランコトヲ希望スル事柄メテ切デアリマス

1903

1904

謹ミテ歎願申シ上ケマス

昭和三十年十二月三日

愛媛縣立八幡濱商業學校

同級生一同

マリアナ方面米國軍事委員會殿

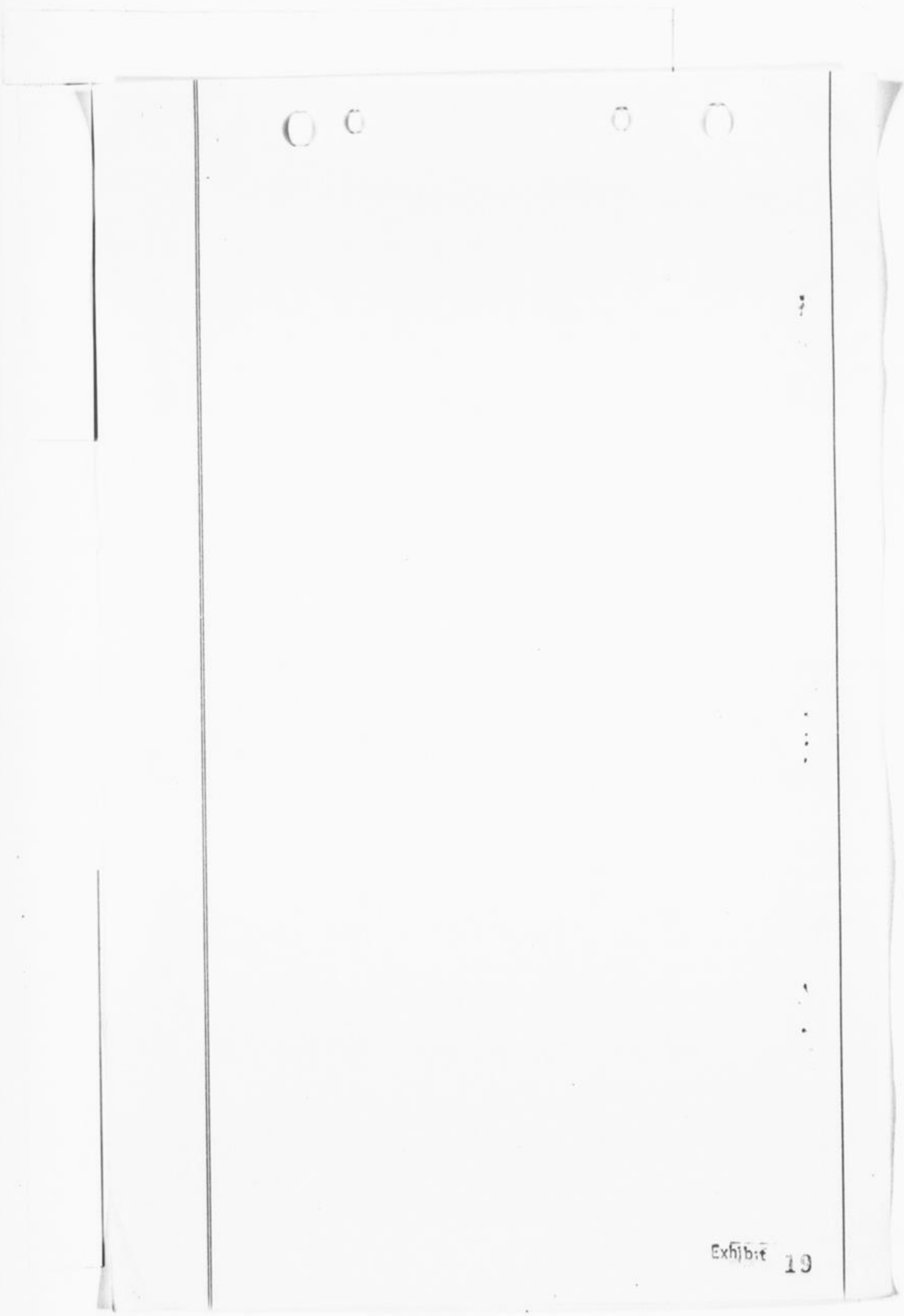


Exhibit 19

To the Committee of U. S. Military Affairs.
Malians.

Dec. 3rd, 1946.

A Letter of Petition.

Formerly Rank: Formerly the captain of the Japanese Army.
Name: Fumio Inoue.
Permanent domicile: Futaiwa-mura, Nishiuwa-gun, Ehime-ken, Japan.

The above mentioned Mr. Fumio Inoue is reported to have been put into prison at "Guam Island" as a war criminal, and we, as his friends, know him well from his childhood, and ~~so bebow~~ as to send in the petition ~~for his life~~ in behalf of him.

1. He was born ~~on~~ a farm, ~~house~~, lost his father in his childhood and has grown up under the care of his mother.

He ~~believes in Christianity~~ is religious, and loves ~~humanity~~ peace at all times, and has made up himself as a man of kind heart.

1. He entered the commercial school in his native town. At school he was so gentle that he ~~he~~ never quarreled with his friends. He was interested in sports, especially good at baseball ~~and~~ or at boating, ~~and he~~ he was such a good sportsman that he was spoken highly of his schoolmates. After completing his whole school course, he entered into business as a clerk in the biggest silk mill (manufacturing silk goods for export) in his city, and worked so hard, so diligently, that he was respected by every one.

1. In his family, now there are left mother, sister, wife, and a little ~~child~~ children. Without him, they cannot maintain his family at all and, in consequence, they are sure to be ruined ~~in~~ economically and spiritually, ~~expects~~.

We, as his friends, cannot assume an attitude of on-lookers, and hereby cannot but make up a letter of petition for his life and hope with heart and soul that he will be

safe and sound through the kindness of Your Honour.

We, the classmates of the Yawatahama Commercial school, Ehime-Ken, Japan.

Representative.

Keizaburo Echizen

19 · 2

同級生の名前 — 署名

The names of his classmates as follows. — Signatures

同級生 宇都宮 [illegible]
M. Utsunomiya

同級生 小下 [illegible]
S. Yamashita

同級生 [illegible]
T. Ichinchi

同級生 [illegible]
Y. Ichinchi

[illegible] 子 [illegible]
H. Ichinchi.

同級生 渡邊 [illegible]
K. Watanabe

同級生 [illegible] 義光
Y. Iwase.

宇都宮 [illegible]
S. Utsunomiya

同級生 [illegible]
T. Hamada

同級生 [illegible]
K. Ebisuya

同級生 小笠原 [illegible]

Class mate K. Ogasawara.

同級生 山口 [illegible]

Class Mate. M. Yamaguchi

同級生 阿部 [illegible]

Class mate. M. Abe.

同級生 菊池 [illegible]

class mate K. Kikuchi.

元八幡浜商業学校教諭 [illegible]

木村 [illegible]

Formerly the teacher of the Yawatahama Commercial School.

M. Kimura.

同級生 西川 [illegible]

Y. Nishikawa

同級生 [illegible]

Minoru Tokua

0339

同盟者　松本靜夫
Seizo Matsumoto.

同盟者　増井傳次
Denzo Masui

同盟者　田中義俊
Yoshitoshi Tanaka.

同盟者　三原明雄
Akio-Mihara.

同盟者　菊地久二
Kyuji Kikuchi

同盟者　上田富雄
Tomio Ueda

19 5

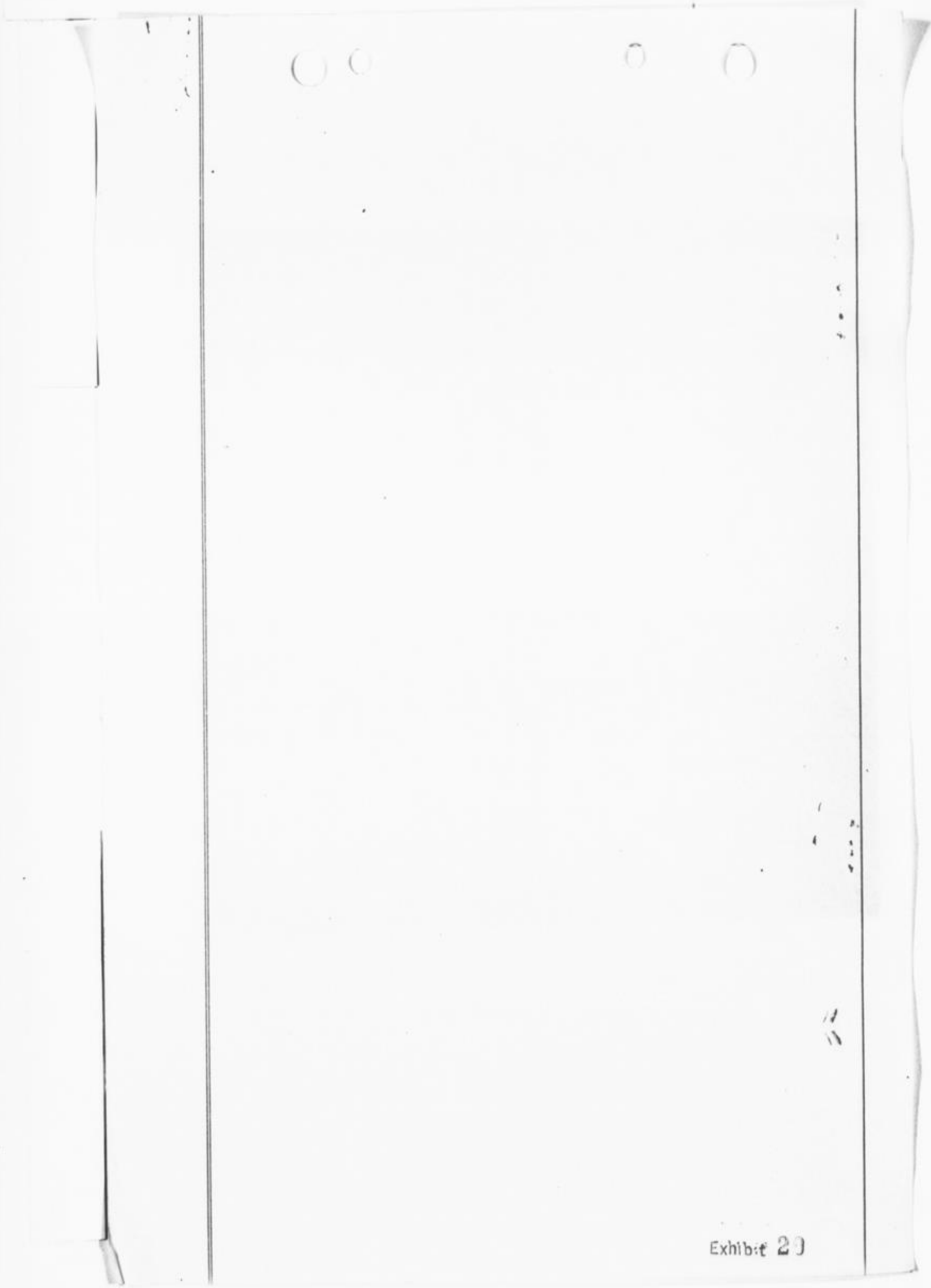
0340

IHEO

歎願書

只上官の命令の如何良しきも悪しきも服従して実行して今は抑留の身と化せられてゐる元陸軍大尉井上丈夫殿の悲惨な身の上につきて歎願いたします。

此の元大尉こそ在間の模範人物で当地方の商業学校六十三人中八番と言ふ好成績で御卒業せられ又性りも心掛と言ふ点からは純正温良で挙動は謹厳直撃で才幹は守成時勤怠は勤此の柄ふ性格をお持ちの方で規律は整肅思想は強固言語は明瞭りも残虐な女房ばかりとたよりとも頼みの大尉がどうして残虐な女房ばかりとたよりとも頼みの大尉がどうして残虐な女房ばかりとたよりとも頼みの大尉がどうして



0343

PETITION

To : The American Military Commission Marianas Area.

I beg to place this petition in behalf of the unfortunate INOUE, Fumio who is now being held merely because he unquestioningly obliged the orders of his superior.

INOUE, Fumio is our model character. He graduated from the Commercial School as eighth among the class of 63 pupils. His conduct is gentle and honest, his manners sincere and solemn, his acts inpartial, his discipline, regular; thoughts, sound; speech, clear; attitude, passive; and he was always diligent. How can a man who possesses such a noble character as INOUE, Fumio plan to commit such a cruel act, I cannot possibly think of such a thing.

At home, there is no man to help so the women are doing what ever they can. How can they lead a satisfactory life. They are farmers who with the first light of dawn go out into the fields to work and come home when the stars are bright in the sky. When I think of their situation I cannot help but feel deep sympathy. If only they had a man to help, out how cheerful it would be. It would be like spring with the birds singing and the flowers blooming.

When I think that all the soldiers have now been repatriated and all the one's who had died in action have returned to repose at there native place and still INOUE cannot return because he is being held far away on an Island. I cannot help but make this petition to you. I beg that he will be able to return.

IWAMOTO, Chitose
Ehime-ken, Yaroata-hama City
Furu-machi.

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

EUGENE E. KERRICK, JR.,
Lieutenant, U.S.N.R.,
Interpreter.

"Exhibit 20 (a)"

0344

歎願書

裁判長閣下

承る所によりますと井上大尉は公判に附せられると知って驚きました
温和で正直な井上大尉は何故裁かれるのでせうか 井上大尉は國
家に対して忠節心旺盛で上官の命であれば火の中へでも
飛び込む様な事でした 自分で最も恐れた事は無法的に遂行
する人です 又部下を愛する心は深く部下は入院或は負傷して
も闘ったは陸海軍を問はず病舎に行き激励の言葉を掛けてゐま
した ナウルー島の総ての軍人軍属 島民の差別なく同く共同の生
活をなし得ましたのは食糧の乏しいながら現在迄生命を保ってゐる
のは井上大尉の努力の賜と思って居ります 又井上大尉は日ごろ
に島民はナウルー島の宝であると言って居りました 私は何故生命
の恩人が裁かれるのでせうか ナウルー島で井上大尉のとった行為は
絶対に不正ではないと信じます 井上大尉は正しい人ですから 私は
法の正義を疑ひます 井上大尉には父母妻子が有ります 如何に
井上大尉の帰國するのを一日千秋の思ひで待って居る事でせう
又ナウルー島より帰國した戦友達も今か今かと生命の恩人の帰る
のを待って居る事でせう
判士閣下には井上大尉の人格を信頼されると共に私の衷心をお
了解されまして 又此國家として公正なる裁断をお願ひ
する次第であります

一九四七年四月十一日　元ナウルー島守備部隊

海軍[illegible]　[illegible]

Exhibit 21

0346

PETITION

Your Honor, the President.

I would like to express my thanks for your everyday toil. I am surprised to hear that Captain Inoue is to be tried. Why is Captain Inoue, a mild and honest man to be tried? Captain Inoue was loyal to his father land, and would have gone through shell and fire if it had been the order of his superior to do so. He is a man who thoroughly carries out what he thinks right. He was affectionate to his subordinates; when he heard that his subordinates had entered the dispensary or got injured, he never failed to call on them and enccurage them whether they were in the Army or Navy. Although ammunition and provisions were short on Jaluit, that we could live till now without any distinction among military men, gunzoku and natives, I think we owe to the efforts of Captain Inoue. Captain Inoue used to say that natives were the treasure of Jaluit. I wonder why the benefactor of our lives has to be tried? What Captain Inoue did on Jaluit was not wrong at all. If he is punished, I shall become doubtful about what is the right of law. Captain Inoue has a parent, wife and child. How eagerly they are looking forward to his return! Also his comrades who were already repatriated from Jaluit must be waiting for the return of their benefactor.

I beg that you will trust the personality of Captain Inoue and that you will have kind consideration for what I have just said. I beg you that you will give him a fiir judgment as representatives of a civilized state of the world.

MIYAZAKI, Yutaka,
Petty Officer 2/c, IJN,
Ex-Jaluit Defense Garrison.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.SN.R.,
Interpreter.

"EXHIBIT 21(a)"

0347

歎願書

ナーも御願を知らない連合国のうに私の様な者の様な人を護んで戴く事になつたのには実深いわけが御存ます。
前陸軍大尉井上文夫は今スパイを虐殺したり罪を負はされて当地に存留してゐますので御存ます
此の前陸軍大尉は当地の出身で私達市民の多くも
すべき性質穏当又優秀な人で御存ました。人を殺
す事と云ふ残虐心の有る者では御存ません。
日本の秘密をスパイして居た人達を殺したと云ふのは、
其の当時の軍国的な教育に従ひ自分の感情を少しも
入れず、ただ上官の命令のみを守り通したので有ります。
其の時大尉はどんなにつらかつたでせう。上官の命令の為
自分の心を折まげて命令に服したので有ります。
此の罪を負ふべき命令発布はどこで有りませう。それは
たゞ私達を軍国的に養つた軍閥達ではないでせうか。
私の此の不束な筆ではございますが閣下の御心で
私のたゞ一つの願である井上大尉を早く故郷へ帰らし
て下さい。大尉は当地へ帰へれば必ず平和日本再
建の一部である当市に役立つ大切な人物になると断言
出来ると思ひます。

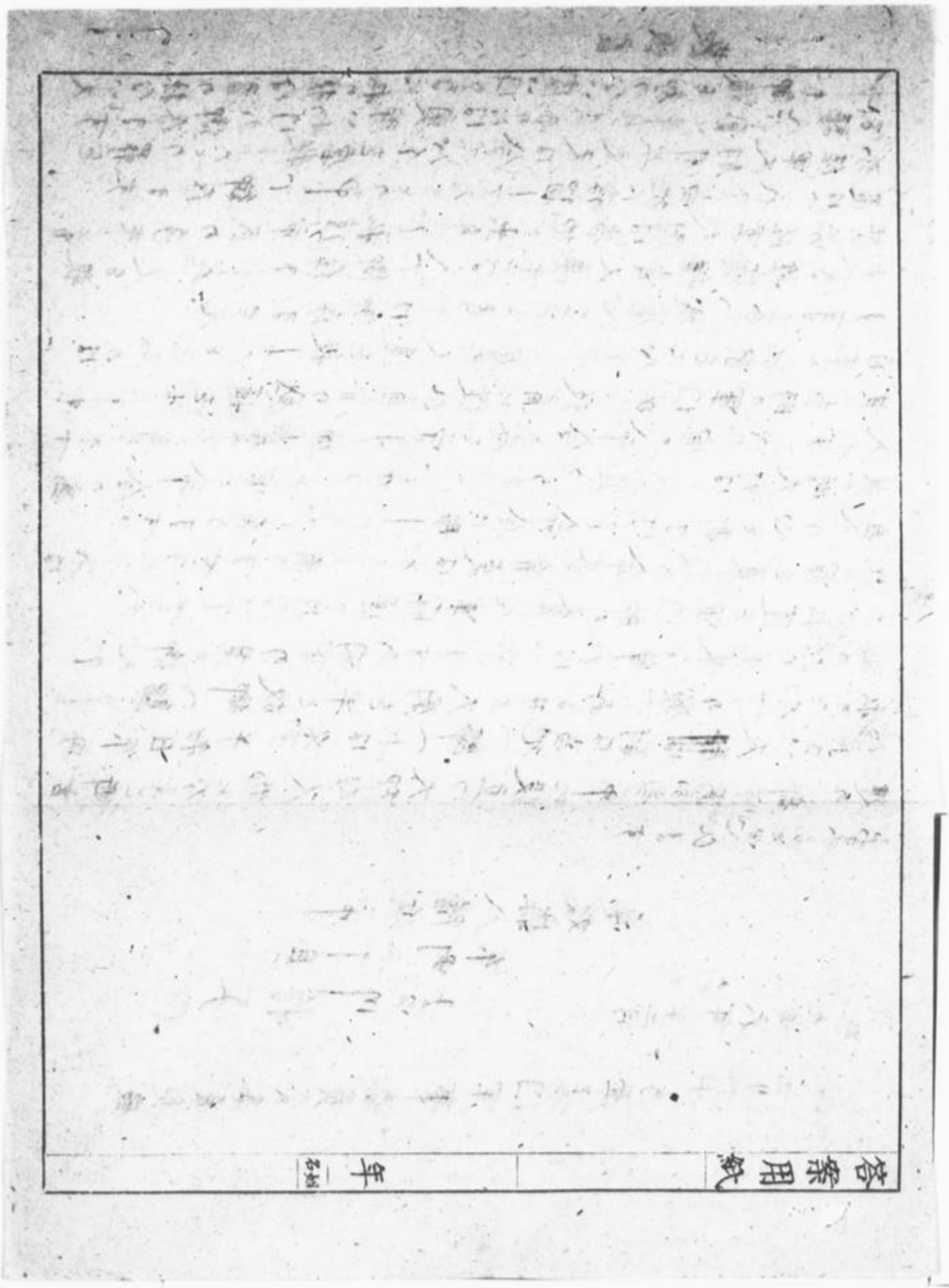
一九四六年十二月

愛媛県八幡浜市
本町二丁目
十日川悠子

コリアナ号面栄口軍事委員会委員長殿

E22

bhE0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会签用纸

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PETITION

December, 1946.

To: The President of the American Military Commission, Marianas Area.

There is a duplicate reason for my submitting this humble petition to you whom I have not met before. I have learned that INOUE, Fumio is now being held because he is accused of killing spies.

He was born here, and has always been our model. He is a gentle, mild and excellent man. He is not a man to commit any cruel acts. When he killed the persons who had spied, he was only obeying a superior order in accordance with his militaristic teaching. It was not his intention at all. How hard it was for him to do it. In order to perform his superior order he had to subdue his own feelings. Who is really responsible for this except that military clique which has trained us.

I cannot express myself well, but I beg you will send him home soon. I am sure he will be a great help in the rehabilitation of a new and peaceful Japan.

YOSHIKAWA, Toshiko,
Ehime-ken, Yawatahama City,
Honcho, 2 chome.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U.S.N.R.,
Interpreter.

"EXHIBIT 22 (a)"

0351

歎願書

前大尉井上文夫氏は品行方正學術優等にして何ら殺虐を敢てし行ふ性質は微塵もふく唯温良の精神に基づくものにて上官の命令を謹嚴ふ態度で受けたにすぎふいのであります。戦犯者の身として居られる事を御聞きこした六・オ近き年老いた母はどんふでせう又妻キミ子さん浦子さんと女のみなめがために根限り振てをつれて農業をは長女五オの洋子さんをつれて又妹のとこの文夫氏の居うふい井上家はどんふにふる事でせう　男手一つてふいこの一家は苦しく〳〵　牧態にこの罪のふい井上氏を一日も早く母の喜び給れたそうて感謝に満ちた満足の顔に会ふ事の出来る事を信じて心から御願ひ致します

マリア十字面米國軍事委員会御中

愛媛縣西宇和郡　町見村加周

高田笑子

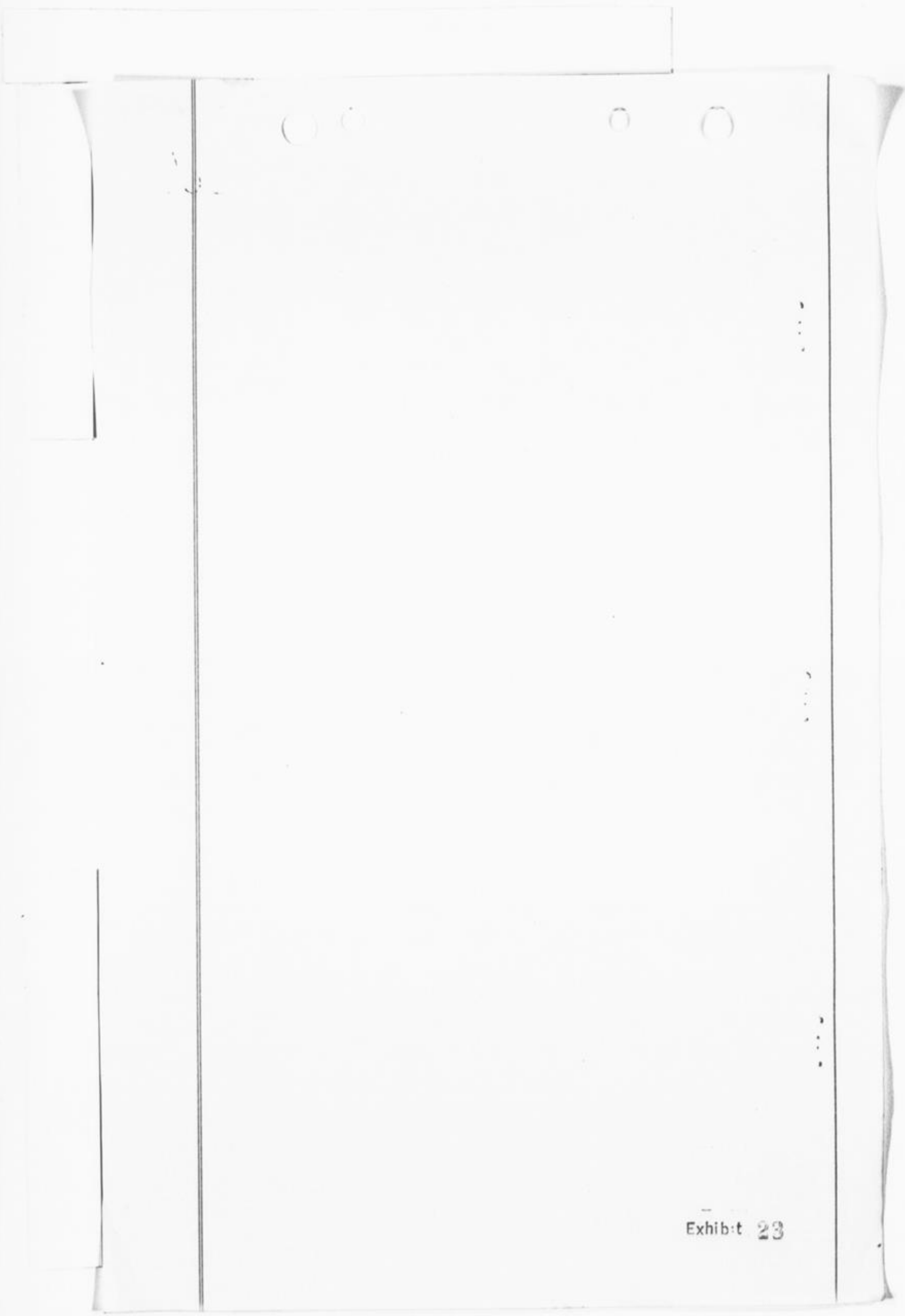


Exhibit 23

0353

To the Members of the Military Commission, Marianas Area.

PETITION FOR INOUE, FUMIO

INOUE, Fumio, former Captain IJA, is a man of good conduct and he received excellent grades in studies at school. There is not the slightest spot in his nature to commit any atrocious acts. His acts are merely due to his moderate nature under which he could only but solemnly obey the orders of his superior.

I have great sympathy for his 60 year old mother who has learned he is held as a war criminal. His wife, taking care of the 5 years old daughter is working in the farm. His sister VRAKO, is working as hard as possible and trying to help while her brother is away. I often think what would become of his family if he were not to come back. Without any man to help them out their situation is most pressing.

I beg and hope that he will be able to see his mother's face, thankful and contented on his return home.

TAKAMI, Emiko
Ehime-ken, Nishi-uwa-gun,
Machimi-mura, Kashu.

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

EUGENE E. KERRICK, Jr.,
Lieutenant, U. S. Naval Reserve,
Interpreter.

Exhibit 23a

0354

歎願書

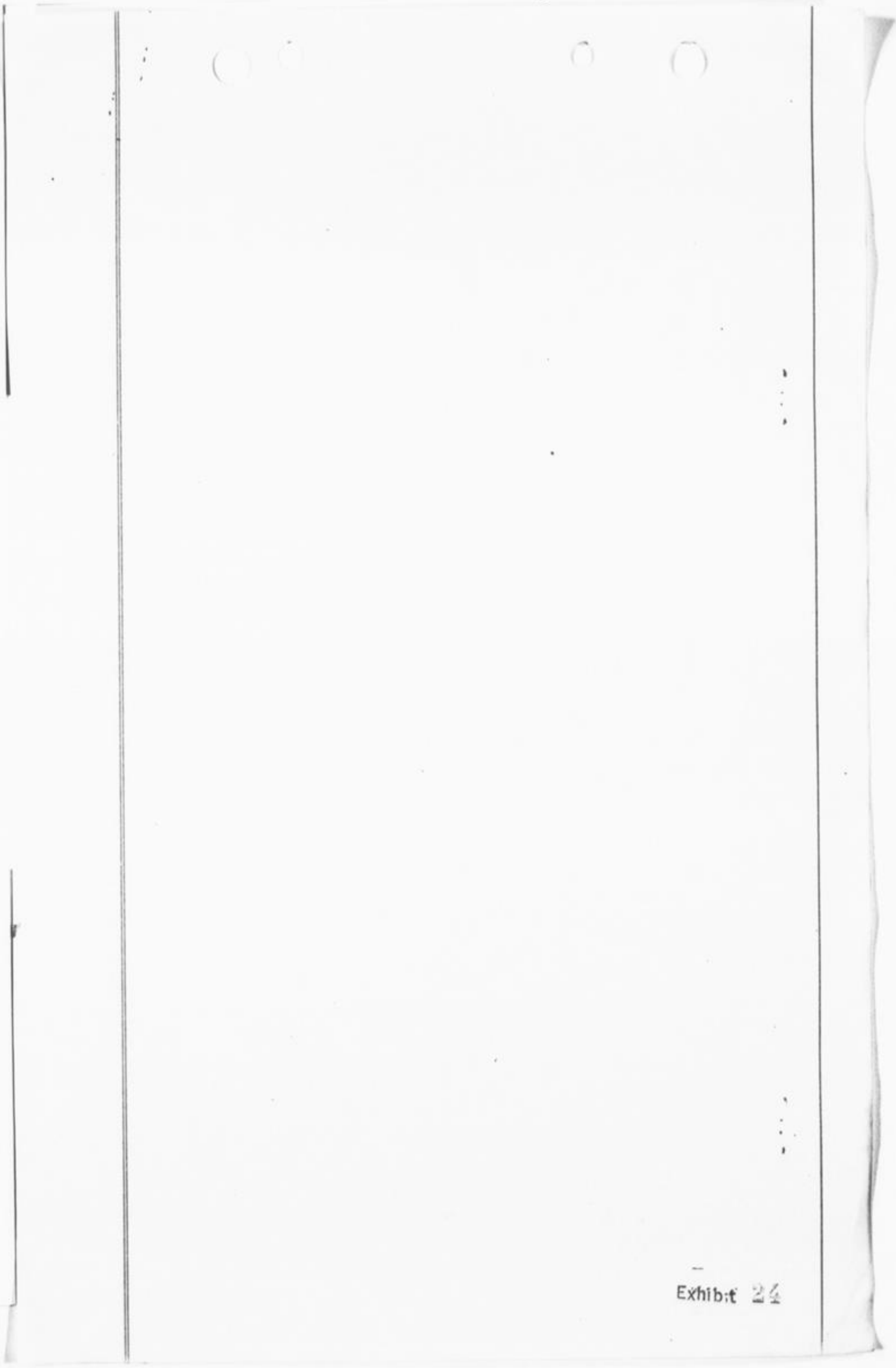
元陸軍大尉　井上文夫

右ノ者性質温厚人格高潔
私達ハ彼ヲ愛シ一日モ速や
カニ、歸ル日ヲ待ツテ居ルモノ
デアリマス。
又年老イタ母ハ
トウナルノデモアロウカ、ト
一日モ早ク歸ルノヲ祈ツテ居リマス。

昭和二十一年十二月五日

梶谷　滿彰

マリアナ方面
米軍軍事委員會殿



0356

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

He was mild in nature, of noble character and loved by us. We are looking forward to the day when he will return.

Without him it is hard for his old mother to live; really, he is indispensable to her. I am praying for his return.

KAJITANI, Mitsue.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 24(a)"

0357

歎願書

元陸軍大尉 井上文夫

今般右の者不幸にして戰爭犯罪容疑者として現地に收容されて居ります由傳へきゝまして本人を知る私達は寢耳に水の如く驚いて居ります 本人は幼い頃より殊に情深く孝心に厚く 村民が等しく感歎するところでありましたあの人が人道にそむくやうな行爲をするとは何ふりかへられましても考へられません これに家庭では年老ひた母と妹が本人の歸りを一日千秋の思ひで待つております

私はこの年老ひたお母様の心持
を推察致しまして ぢつと
居られず こゝに本人の無事
釋放されますことを心からお
願ひする次第で御座居ます
何卒御寛大の御處置の
上一日も早く歸國が出來ます
やう御取計ひ下さいますことを
伏して御依頼申し上げます

昭和二十一年十二月一日

愛媛縣西宇和郡双岩國民學校
教官 和家貴美子

マリアナ方面米國軍事委員會殿

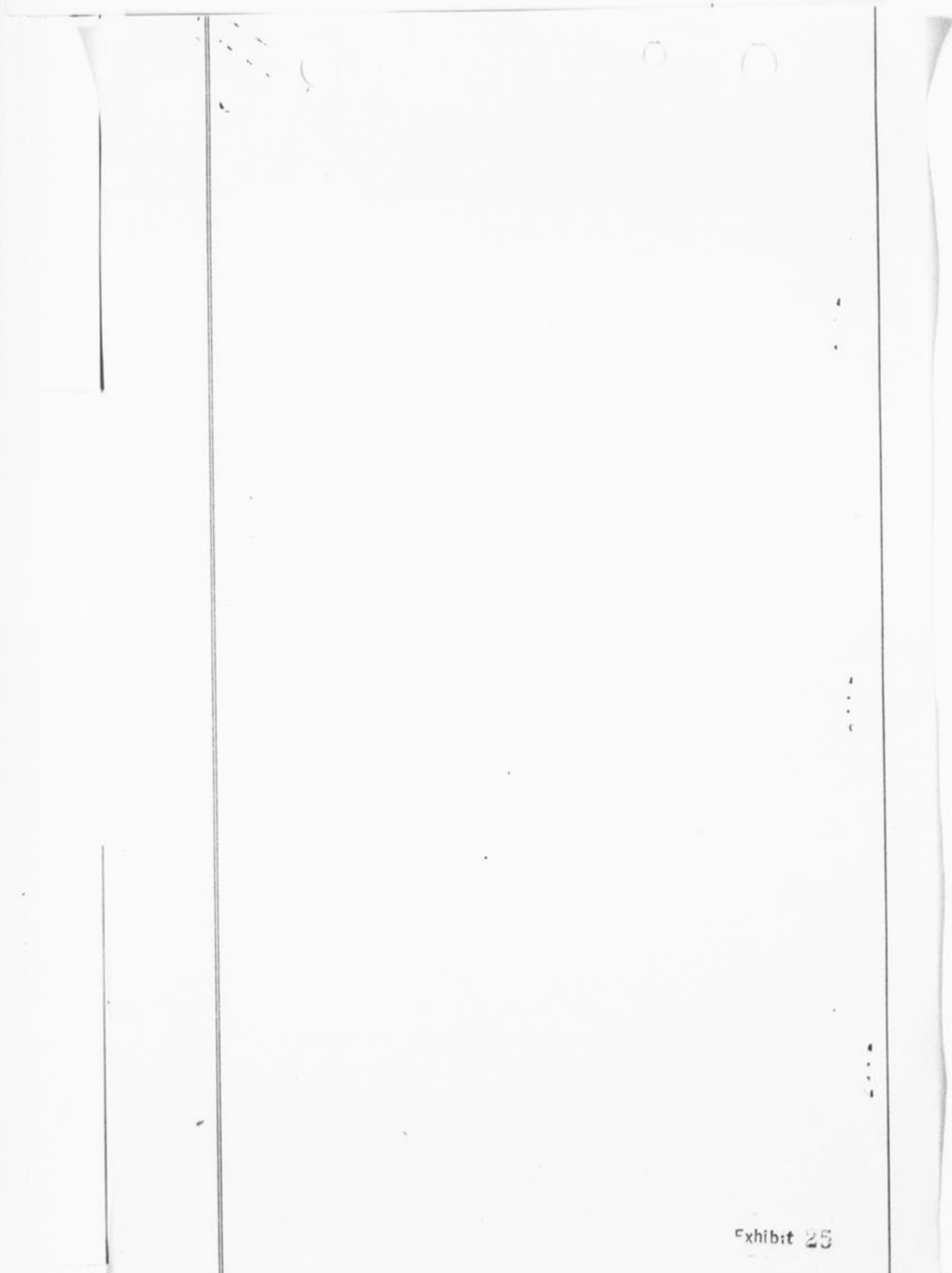


Exhibit 25

0360

PETITION

For: INOUE, Fumio.
To : The Members of the American Military Commission, Marianas Area.

It was a great surprise for us who know him to learn that he has been unfortunately confined as a war crime suspect. Since childhood he has been kind and obedienct, for which the people of the village admire him very much. I cannot think such a man would do any act against humanity.

At home his aged mother is waiting impatiently for his return. When I thought of the feelings of this mother I could not stand still. So, I beg from the bottom of my heart for his acquittal. Please deal leniently with him and send him home soon.

WAKA, Kimiko
Teach of Futaiwa Primary School,
Nishi-uwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 25 (a)"

0361

「井上文夫氏」ノ刑免除歎願書

井上氏ハ常ニ温厚デ人格高傑ナ人デ一般ノ人ヨリ尊敬サレタ人デ有マスカラ一日モ早ク御許ニ御歸還ヲ祈ツテ井マス

愛媛縣西宇和郡吉野村若山

中井政男㊞

司令官閣下

軍事委員會御中

0362

0363

To the US Military Commission of the Marianas Area.

PETITION FOR CLEMENCY IN BEHALF OF INOUE, FUMIO.

INOUE was mild, of noble character and loved by people, so I beg you that you will release him and send him back as soon as possible.

NAKAI, Masao
Wakayama, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 26 (a)"

0364

5-45-03

歎願書

六、陸軍大尉 井上文吉

右の者性質温厚人格高潔
各等作彼を愛し速やかに帰
還せらるゝ日を一日も早く待つて
居ります

昭和三年
十二月五日 愛知郡岩
名川
堀岩 忠

りアナ六方面
米国軍艦長殿

Exhibit 27

0366

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

He is mild in nature and of noble character, and is loved by us. We are looking forward to the day when he will be back.

5 December 1946

KAJITANI, Sadamu,
Kukikawa, Futaiwamura, Nishiuga-gun.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 27(a)"

0367

歎願書

元陸軍大尉　井上文雄

叔父サンハ、立派ナ心掛ケノ持主デス。伯父、叔母ノ多イ中ニ一番良イ方デシタ。今度ノ戦争ニハ南方方面ヘ行ッテ働ライテオラレマシタガ、良イ叔父サンガ罪ヲオカス様ナ方デハ有マセン。内デハ祖母、叔母、洋子チャン達ガ一日モ早ク歸國スル日ヲ待ッテオリマス。

叔母サンハ毎日KMKモアル所ヲ通ッテオラレマス。此レモ叔父様ノカワリダト銀行ヘ行ッテ働ライテオラレマス。家内中皆ガ今マ念ジテイル事ハ叔父様ノ一日モ早ク歸ッテコラレル事此レ一ツデス。

ドウカ寛大ノオ恵ニヨリテ一日モ早ク歸ラシテ下サイマス事ヲオ願イシマス。

大日本愛媛縣西宇和郡双岩村布喜川　浮田宏

マリヤナ方面米軍軍事委員會殿

E-28

Exhibit 28

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

My uncle has a fine heart. I have many uncles and aunts, but he is the best person among them. During the war, he was serving in the south. My uncle is not a man who commits a crime, because he is such a good man. At his home, my aunt and Yoko are looking forward to his return.

My aunt goes on foot to the bank everyday which is about 6 kms. away from her house. She says to me that she is working for my uncle. The only thing for which his family is praying is that my uncle will return soon. I beg you will deal leniently with him and you will repatriate him as soon as you can.

UKITA, Hiroshi
Fukikawa, Futaiwamura, Nishiuwa-gun,
Ehime-ken, Japan.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 28 (a)"

0370

「井上文夫氏」ノ刑免除歎願書

氏ハ昭和四年愛媛縣立八幡浜商業学校
第二十六回卒業生デアリマス
在学中成績優秀ニシテ人格亦勤勉温良
常ニ平敗生カラヒ親シマレテ斗ノ人デアリ敢テ
犯罪ヲ犯スガ如キ人物デハアリマセン
加フルニ五十九才ノ老母ガ吾子ノ帰国ヲ待
チ彼ガ妻子ハセノスラニ夫・父ヲ待チワビテ
茲ニ氏ノ人柄ト彼ノ家族ニ関シテノ實情
ヲ申シ上ゲ、井上氏ノ刑ノ免除ヲ切願スル
次第デアリマス

愛媛縣八幡浜市松柏町
池田浩一

マリヤナ方面米国軍事委員會
御中

Exhibit 29

0372

To: The Members of the U. S. Military Commission, Marianas Area.

Petition for the Acquittal of Inoue, Fumio's case.

The above person graduated with the 26th graduating class from the Ehime-ken Yawatahama Commercial School in 1929. While a student he had a very high scholastic standing, good character, was gentle, and industrious, and he was always liked and made friends with younger students. He is not a person who can commit a crime.

Furthermore his aged mother (age 59) wife, and a child are all waiting for his return to Japan.

I hereby have stated his character and the true condition of his family and for this I beg from the bottom of my heart for his acquittal.

IKEDA, Koichi,
Ehime-ken, Yawatahama-shi
Shohaku-cho

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 29 (a)"

0373

井上文夫ノ刑免除歎願書

自分ハ井上文夫氏トハ同ジ村ニ住ム一学生デアリマス。今度不幸ニシテ文夫氏ハ島民虐殺事件ニヨリ戦争犯罪人トシテ罪ヲ負フコトニナリマシタガシカシ文夫氏ハ学生時代ニ於テ品行方正学業優秀ニシテ自分等ノ最モ憧ク尊敬スベキ人物デアリマス。此ノ様ナ立派ナ人格者ガ罪ヲ犯スコトハナイト固ク信ズル者デアリマス。又故郷ニ於テ生活苦シク一家ノ土台トナルベキ夫ヲ家族ノ者ハ日ヲ指折数ヘテ御待シテ居ルデアリマス。ドオカ此ノ歎願ヲ充分ニ御認ヒサイマシテ出来ルダケノ力ヲ以テ御免トサレンコトヲ節ニ節ニ御願申シ上マス。

愛媛縣西宇和郡吉田町大字中津川

山田孝一

マリヤナ方面米國軍事参賓會御中

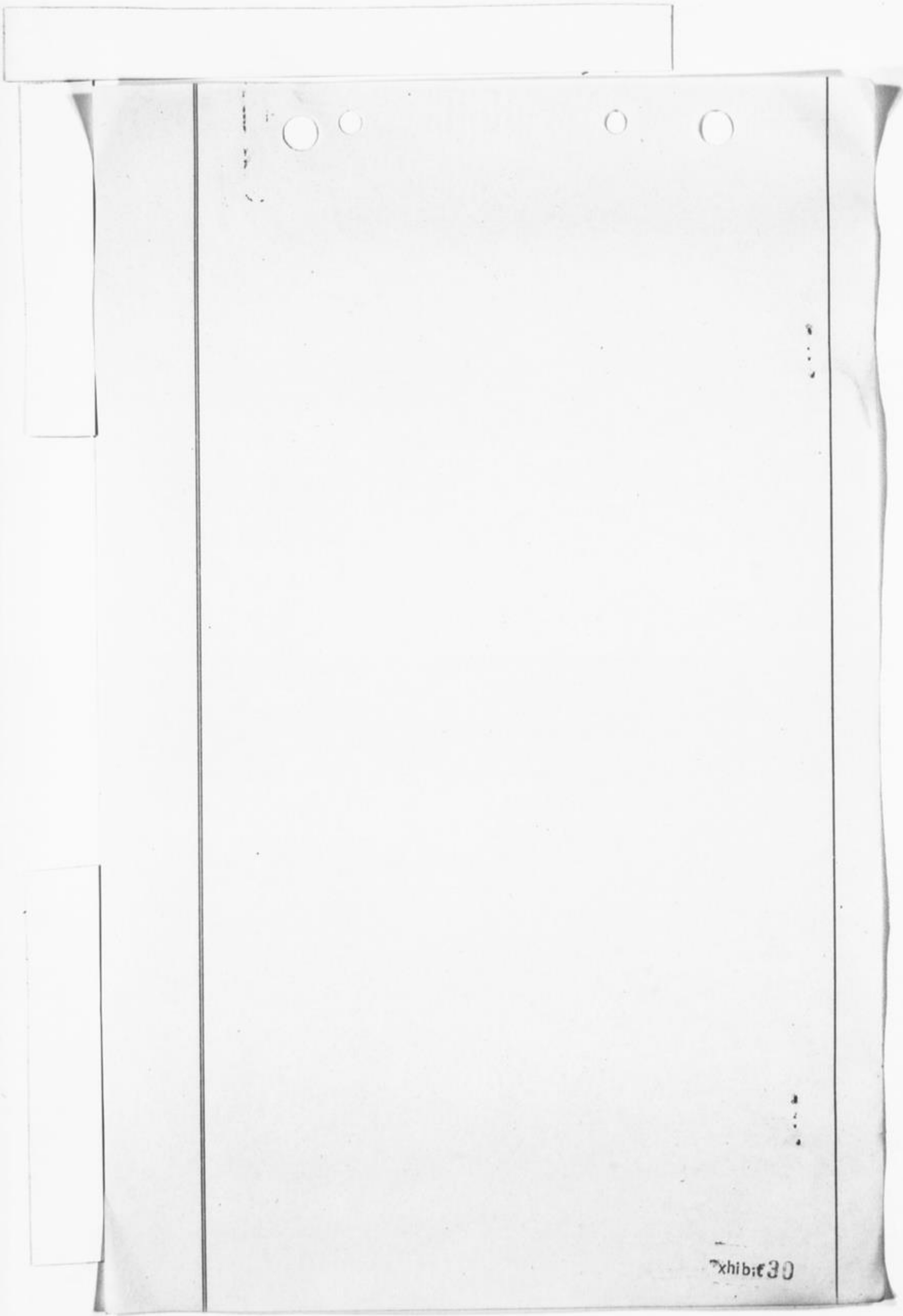


Exhibit 30

0375

To: The Members of the U. S. Military Commission, Marianas Area.

Petition for the Acquittal of Fumio Inoue's Case.

I am a student who lives in the same village as Inoue, Fumio. Unfortunately Fumio is held as a war crimes suspect in the incident in which the natives were killed, but during his school days he had a very good scholastic and conduct record, and he was the person whom we respected the most. I firmly believe that a person with such high character could not commit a crime.

At home his family is leading a very hard life and are waiting for his return as the foundation of their lives.

Please take these points into consideration and I beg and beg of you from the bottom of my heart to do all you can for his acquittal.

YAMADA, Koichi,
Ehime-ken, Nishiuwa-gun,
Futaiwa-Mura, Aza-Nakatsugawa.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 30 (a)"

0376

歎願書

元陸軍大尉　井上文夫

右本人は唯今戦争犯罪容疑者として
収容所におられることを聞き驚くばかり
ではございますが本人はもともと温順で非人道的な
行為は決してされない方と信じております
殊に留守宅には老母や子供女ばかりで男手のない農家
にとっては不自由をきわめております唯一人の息子を
一日も早く帰り度く存じております何卒御慈悲の御しょうもありまして
以上御拝察の上一日も早く無罪釋放なさるやう歎
願する次第でございます

愛媛縣西宇和郡岩村布喜川在住
井上ヒサエ

E-31

0377

マリアナ方面
米国軍事委員會廢

bLED

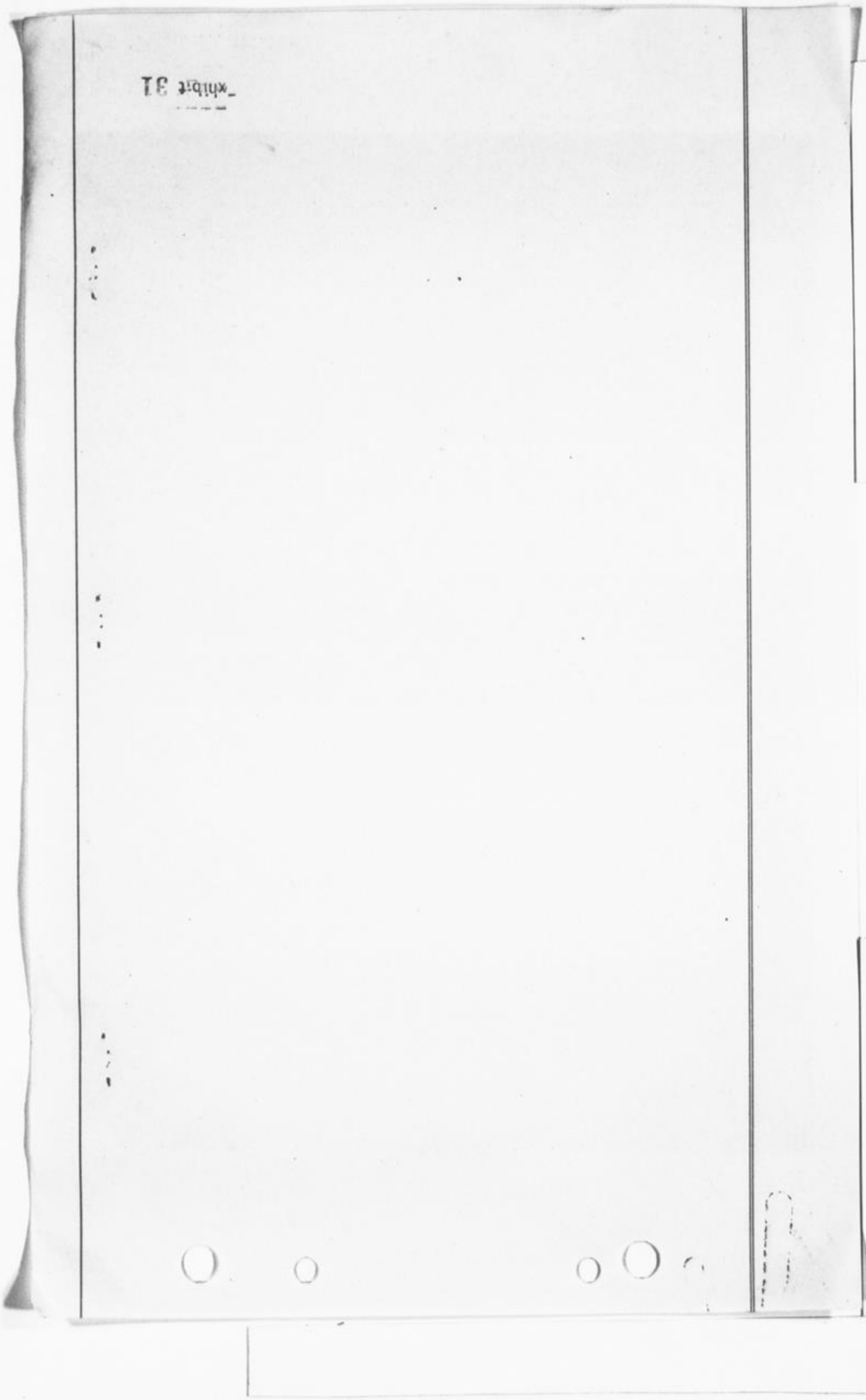


Exhibit 31

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

I am very much astonished to hear that he is now confined in the Guam stockade as a war criminal suspect. I believe that he is mild in nature and that he never does inhumane acts.

Especially at his home he has only an old mother, child and women. For a farming family who need men to work, it is very inconvenient. I really do not know what to say to console his mother who is waiting for her son's return and to other members of his family.

I beg you will have kind consideration for what I have mentioned above, that you will hold a benevolent trial and that you will release him as soon as possible.

INOUE, Hisae
Nebata, Fukikawa, Futaiwamura,
Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 31 (a)"

0380

歎願書

元陸軍大尉井上文夫
吾等は彼を愛し速やかに
右の者性温厚人格高潔
歸還の日を祈つて止まず

昭和二十一年十二月五日

伊豫合同銀行双岩出張所
職員代表 井上 直

マリヤナ方面
米國軍事委員會
御中

Exhibit 32

0382

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

He is mild in nature and of a gentle character, and is loved by us. We hope that he will be repatriated soon.

INOUE, Tadashi,
Representative of the employee of the Iyo United Bank, Futaiwa Branch Office.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 32 (a)"

0383

No.＿＿＿＿　　年　月　日

歎願書

元陸軍大尉　井上文夫

石川十勇民事件の被疑者として公判廷に召喚されました。氏は性質も温和しい方で
公判廷中も常に紀律を重んじ決して思想的な
お家庭は婦女子ばかりで見るに忍びない状態で
ありますから格別の御仁慈を以て
昭和二十一年十二月六日

受付印　石井和印

司令官　千田貞敬　殿

米国軍事委員会殿

E-33

Exhibit 33

0384

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

I hear that he is confined in the Guam stockade as a criminal suspect in the Jaluit natives' case. He was mild in nature, and I think that he is not a man who can commit a crime. Only women and a child remain at his home in a miserable condition. I beg you will forgive him.

KIKUCHI, Chizuko
Futaiwamura, Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 33 (a)"

0385

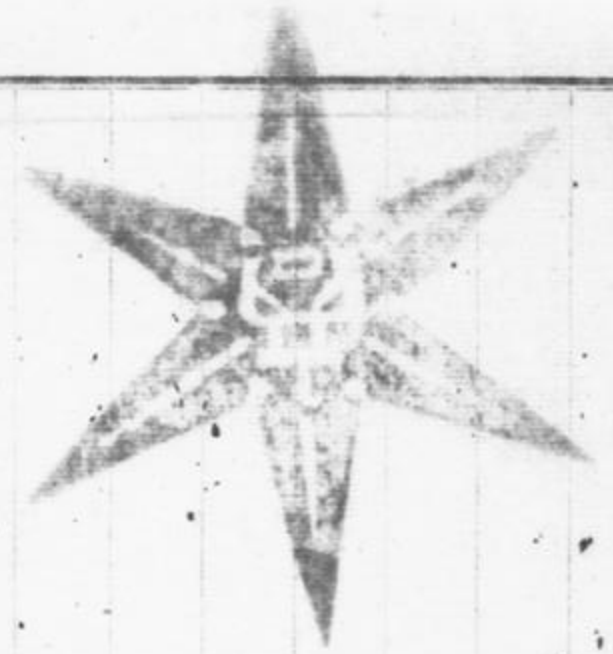


Exhibit 34

0804

To the US Military Commission of the Marianas Area.

PETITION

INOUE, Fumio who is now being tried by you was a mild man when he was at home. I can not think that he should commit atrocities. I beg you will deal leniently with him.

OROKU, Teisoku
Kamakara, Futaiwamura, Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

Exhibit 34a

0387

嘆願書

愛媛縣山宮村牧野部落會

大三小校子

井上文夫氏は資性温順にして人格高潔で神に見る
有能全て多く又孝心に厚く老
齢ある母に良く奉養を盡され地方
でしも氏が戰爭犯罪人として指定に立つねばふら
ぬ事を聞いて驚かるるを得ません。
氏は決して残虐行為等される方ではありません
ませんで實大ふる御處置を賜はん事を

嘆願致します

マリヤナ方面米國軍事委員会御中

Exhibit 35

To the US Military Commission of the Marianas Area.

PETITION

INOUE, Fumio is mild in nature and noble in character. He is a man of great ability and also a man of great exertion. When he was at home he was very filial to his aged mother and was benevolent. I can not help being astonished to hear that he has to attend to court as a war criminal.

He is not a man who commits atrocities, so I beg you will deal leniently with him.

OROKU, Saieko
Kamakura, Futaiwamura, Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 35(a)"

0389

歎願書

元陸軍大尉井上文夫

右井上文夫君ノ溫情ナル人格ハ私達萬人ノ尊敬スル所ニテアリマス

前文御推察ノ上御哀憐ヲ垂レ寛大ナル御裁キヲ

懇願致シマス家族ノ方々始私達井上様ノ御帰還ヲ祈ツテヰマス

愛媛縣西宇和郡吉村若山

富田清太郎

マリヤナ方面

米国軍事委員會殿

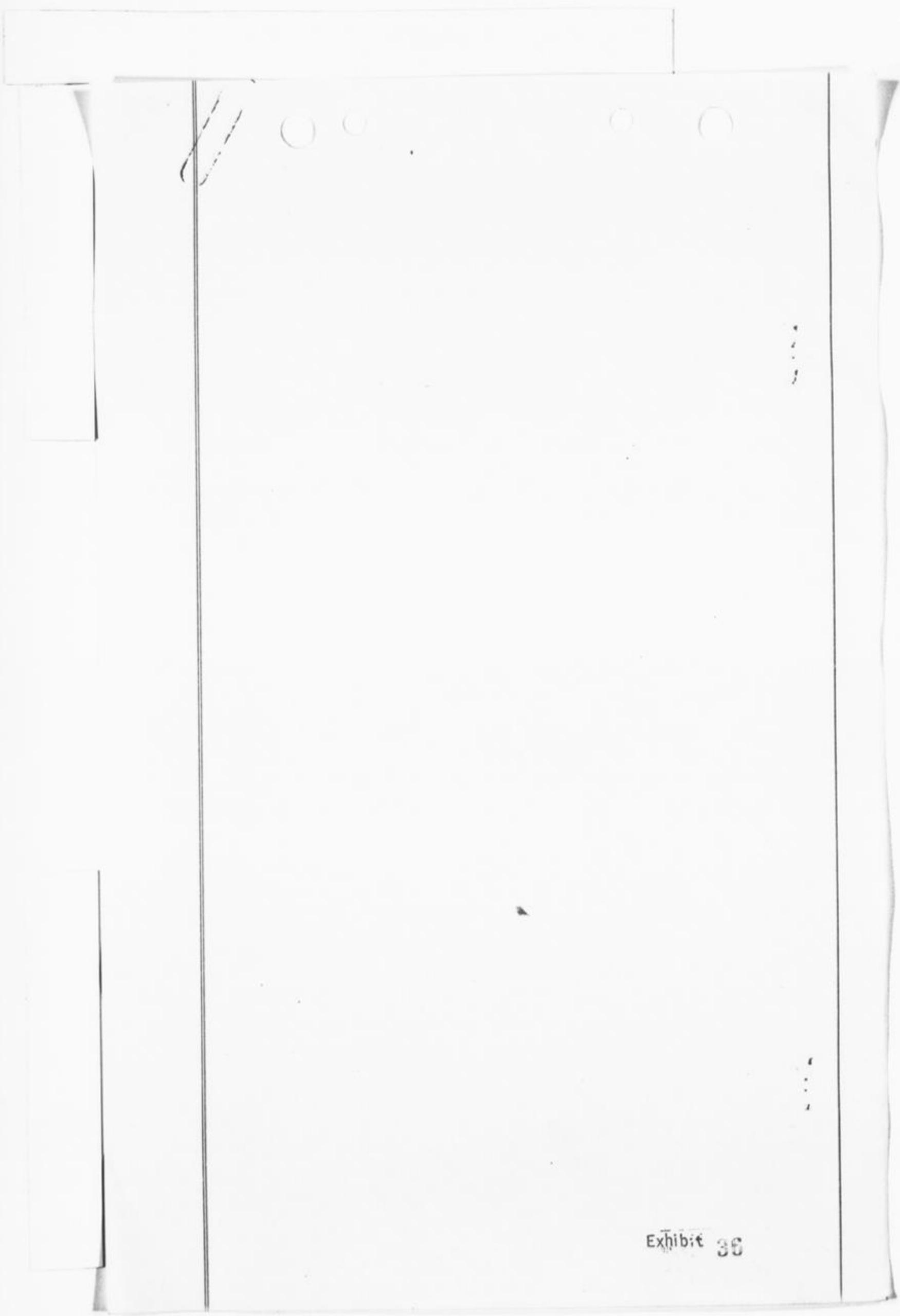


Exhibit 36

0391

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

INOUE, Fumio was of mild character and we all respected him. I beg your kind consideration for this and hope you will deal leniently with him. Not to speak of his family but also we too are all waiting for his return.

TOMITA, Seitaro.
Wakayama, Futaiwamura, Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 33(a)"

0392

數願書

元陸軍大尉　井上文雄

右ヤルート島民事件被告ニシテグアム島收容所ニ拘留中ノ事ニ付本人ハ人格高潔性質温良ニシテ犯罪等行ヒ得ザル人物ト思ハレ本人ノ家庭ハ即妻女子ノミニテ御承知ノ如キ状態ニ有之候ニ付何卒御斟酌ノ上御釈放相成度此段数願申上候也

昭和二十一年十二月十日

愛媛縣西宇和郡明治村和泉

井上武四郎

マリヤナ方面　米國軍事委員會殿

(637)

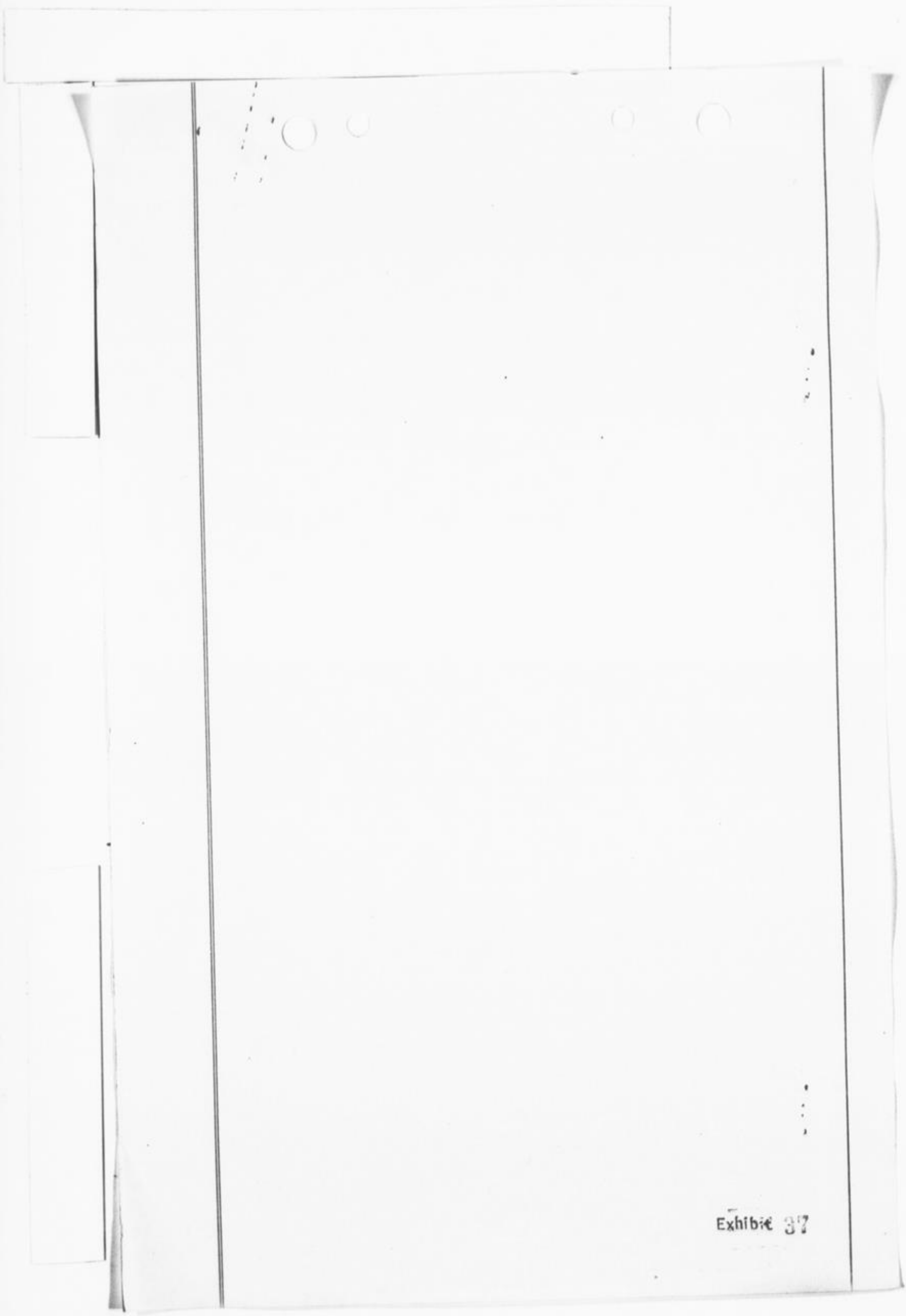


Exhibit 37

0394

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

I hear that he is confined in the Guam stockade as a criminal suspect in the Jaluit natives's case. But he was of noble character and mile in nature, so I can not think that he should commit a murder. Only women and a child are remaining in his family and they are in a miserable condition. I petition you that you will forgive him.

10 December 1946

INOUE, Takeshiro
Izumi, Futaiwamura, Nishiuwa-gun, Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 37(a)"

0395

歎願書

元陸軍大尉 井上文雄

右ノ者性温厚篤実ニシテ村民ノ信望厚シ今般帰還ヲ祈ツテ止マズ茲ニ謹ンデ歎願申上グ

昭和廿一年十二月十二日

愛媛縣西宇和郡双岩村若山

井上留吉郎

マリヤナ方面
米軍事委員会殿

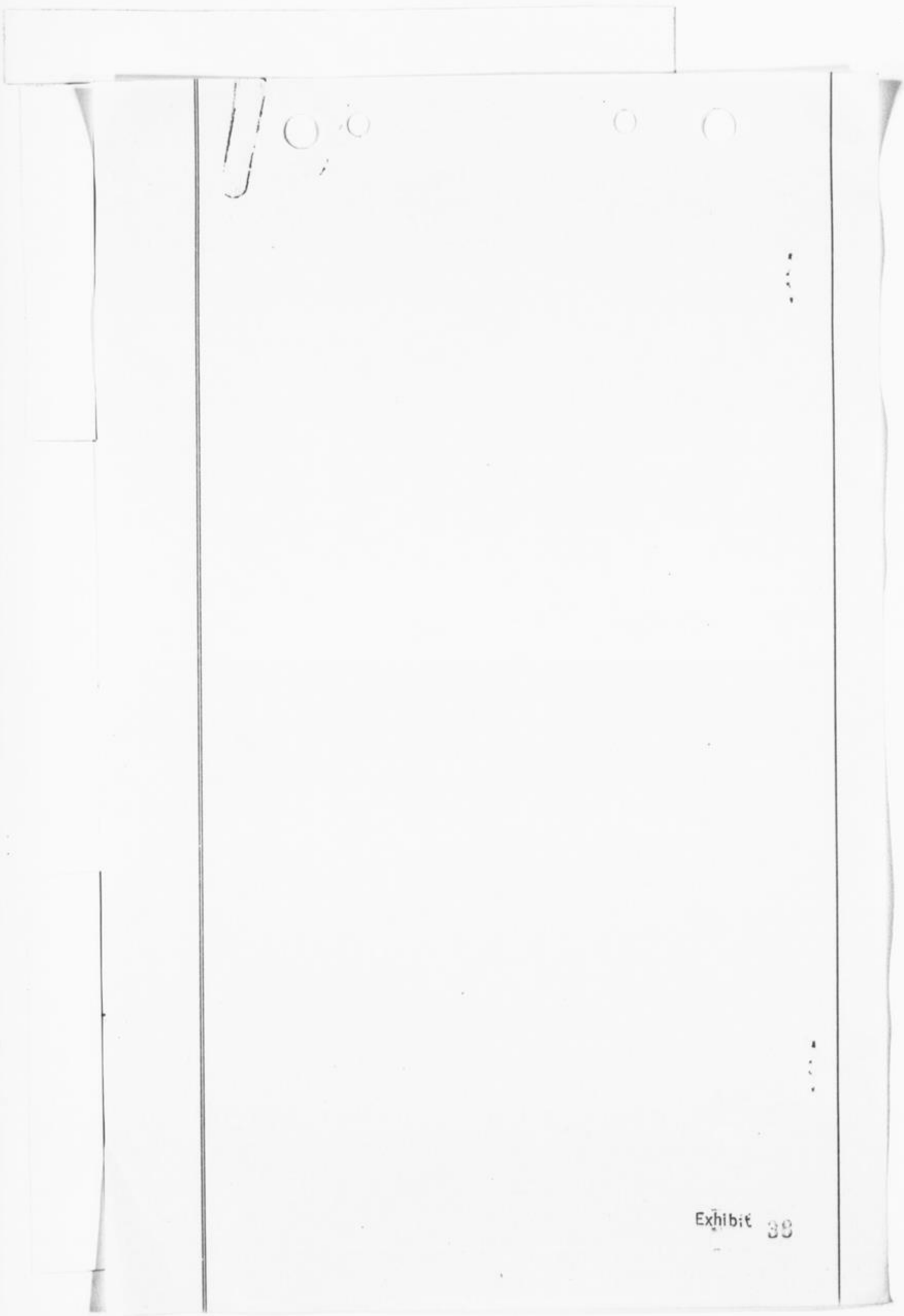


Exhibit 38

0397

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

He is of mild and honest character and is trusted by high village men. We eagerly hope that he will be back soon and hereby place this petition before you.

12 December 1946

INOUE, Kojiro,
Wakayama, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 32 (a)"

0398

歎願書

元陸軍大尉 井上文雄

在者今般戦犯容疑者として收容
引に拘留中と承り事実の意外
驚きの外ありません。右、本人は生来
模範的な人物にして
気意によって
し得る性格者ではなく
其の上家庭の事情は
立ち行かぬ同情に餘りある現状にあり
まして、何卒一日も
早く釋放せられ
諸官に代って
昭和二十二年十二月十三日

宮城縣西宇和郡
双岩村大字長月 井上 十一

マリアナ方面軍司令官 公設

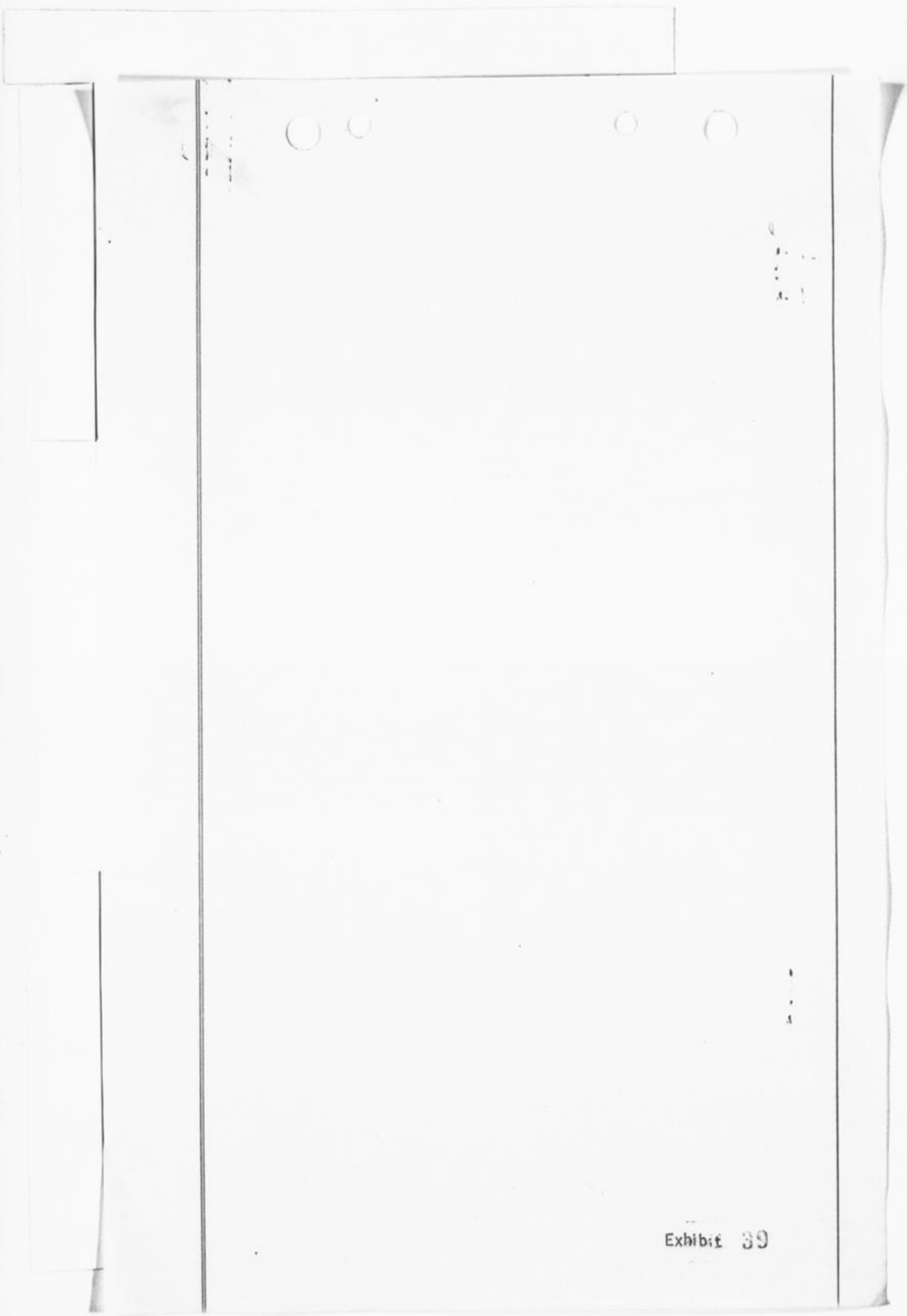


Exhibit 39

0400

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

I am surprised that he is unexpectedly confined as a war criminal suspect. He was a model good man in nature. I think he is not a man who would commit a crime against humanity of his own accord. Besides, it is hard for his family to maintain their living without him. I am very sorry for them. I beg your kind consideration for these circumstances and petition you that you will deal leniently with him.

13 December 1946

INOUE, Juichi
Fukikawa, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

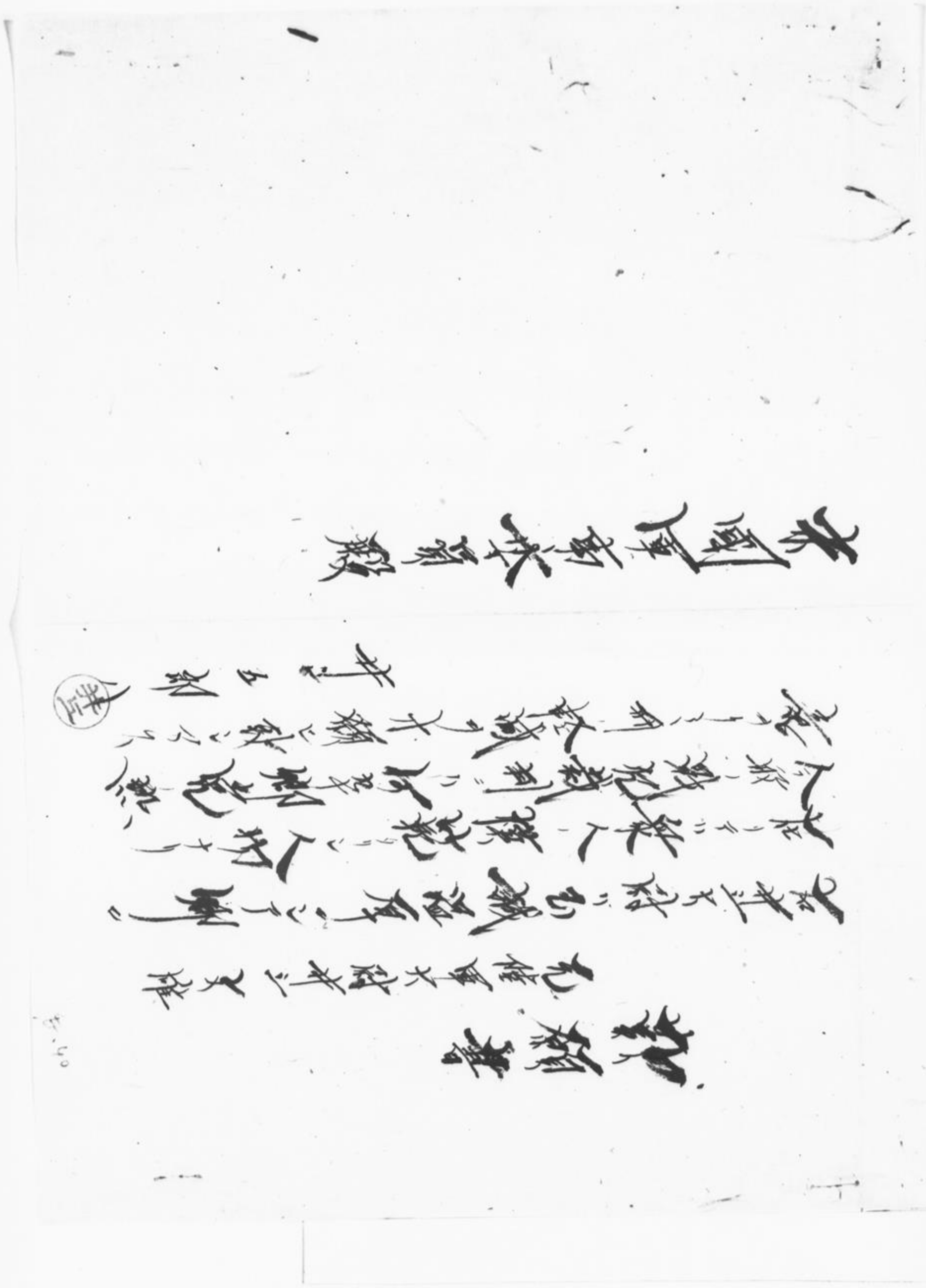
I certify the above to be a true and complete translation of the original petition to the best of my ability.

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 39 (a)"

0401

20h0



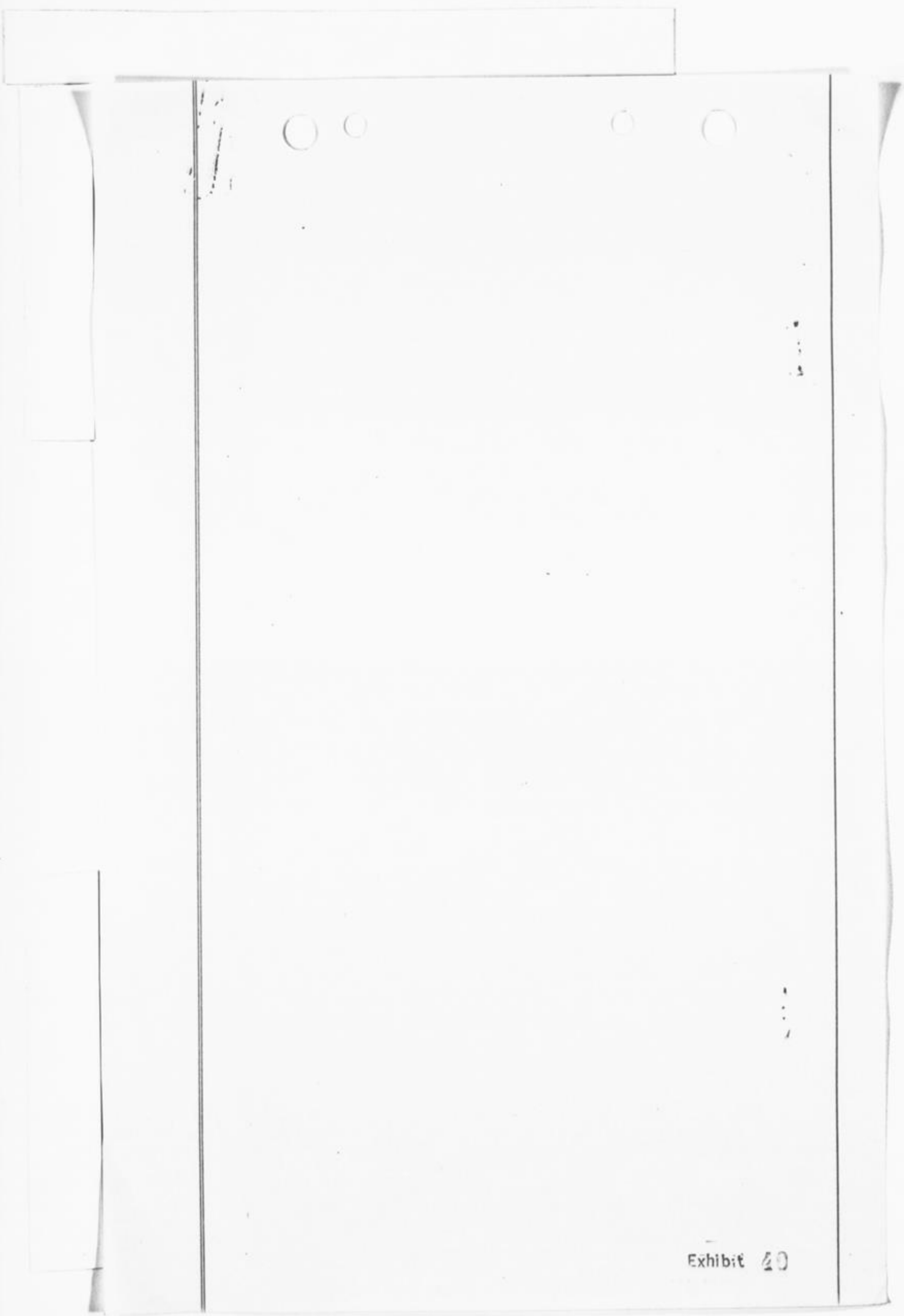


Exhibit 40

0403

To the US Military Commission.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

Captain INOUE was sincere and mild, and when he was in our village he was the model of the people. I beg you will consider our anxiety about this war crimes trial, and that you will deal leniently with him.

INOUE, Gorohachi

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 40 (a)"

0404

勲願書

元陸軍大尉井上文夫

右井上氏ノ遺情豊ナル人格ヘ
私達凡人ノ尊敬スル所ニ
アリマス
前記御推挙ノ上御賞大サル
御成キヲ懇願致シマス
茲ニ謹ンデ勲願申シマス

愛媛県平民 双岩村巻
田中長一 ㊞

マツヤナ方
米国軍事委員会殿

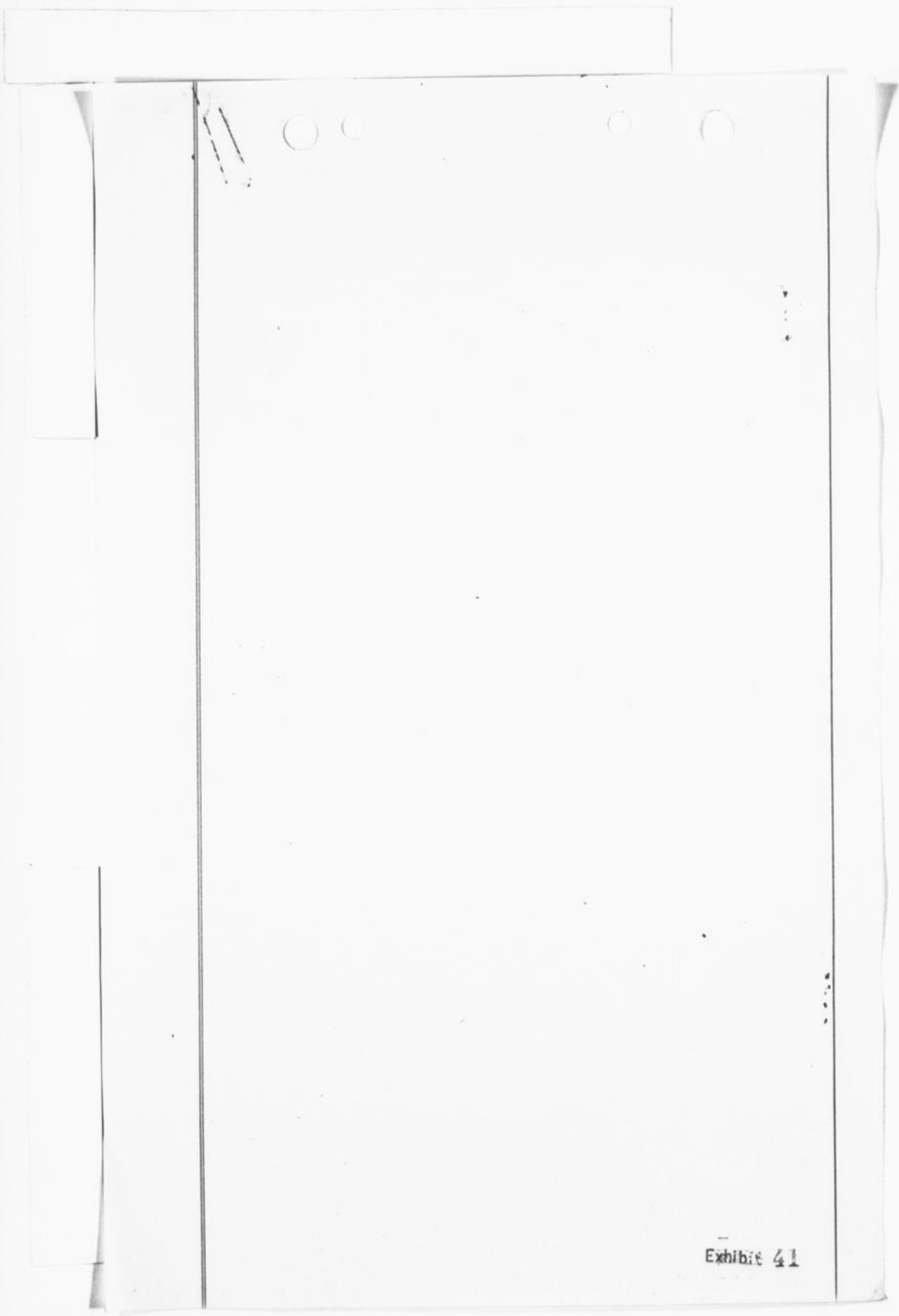


Exhibit 41

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

He was mild and benevolent and we all respected him. I beg your kind consideration and that you will deal leniently with him. I hereby respectfully place this petition before you.

TANAKA, Ryuichi,
Wakayama, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 41 (a)"

0407

80H0

歎願書

元陸軍大尉 井上丈夫

井上氏 温厚ナル人ニシテ又軍ニ入リテモ
部下ニ大ニシテ
音ヲ聞ク私事ニ
タト聞ク私事ニ
還ラザリシ者ニ
該ニ謹ンデ歎願
愛嬢 曾和利登枝 殿
井上養助 殿

マリヤ十六才面

米兵軍事裁判官殿

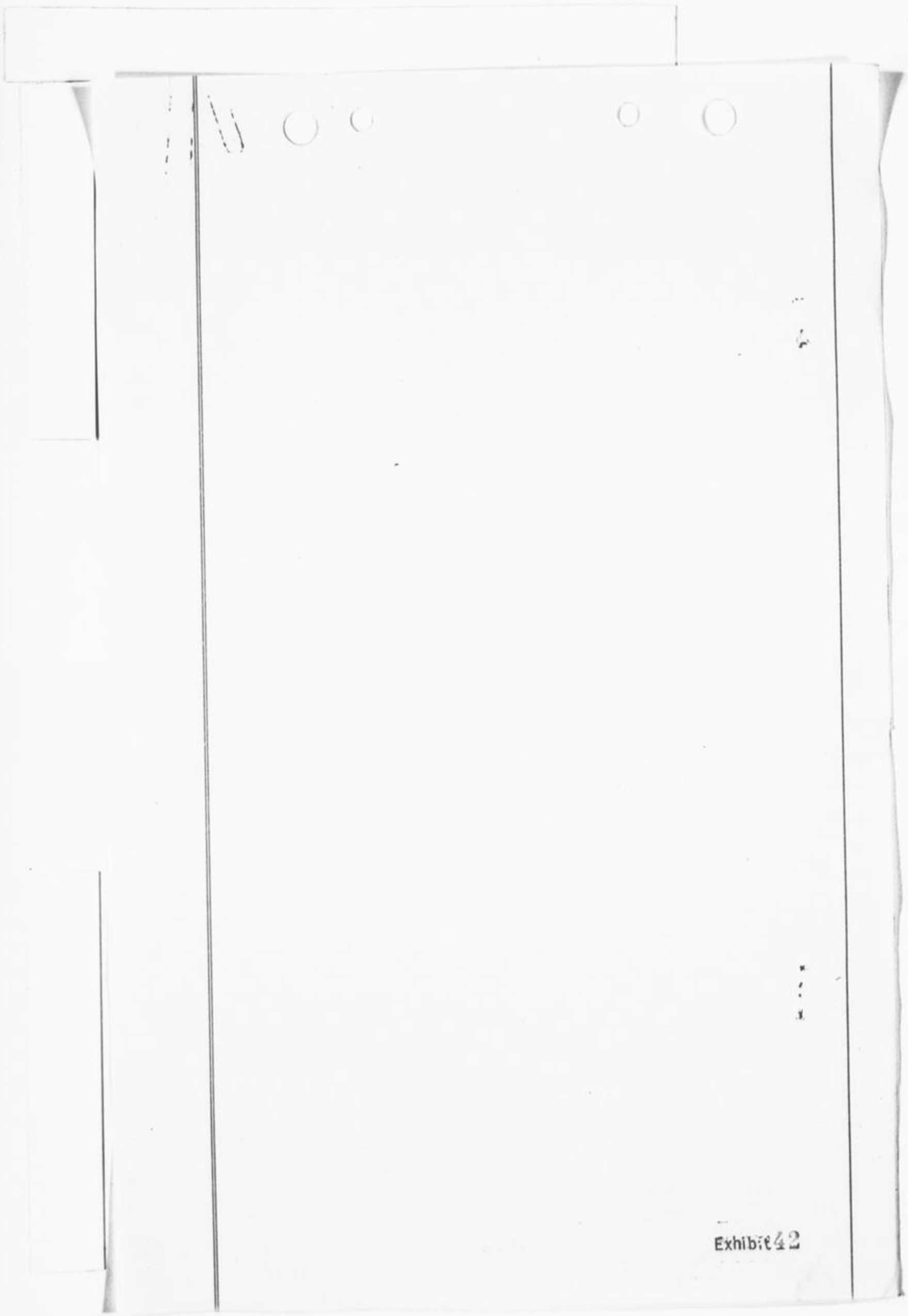


Exhibit 42

0409

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

INOUE, Fumio is a mild man. I heard that he was benevolent to his subordinates when he was in the Army. Wer are praying that he will be back soon. I hereby respectfully place this petition before you.

INOUE, Yomeisai,
Wakayama, Futaimura, Nishiuwa, gun,
Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 42(a)"

0410

歎願書

元陸軍大尉井上丈夫

右井上氏温情豊十人格ハ和達萬人ノ尊敬スル所ニアリマス

前記御推察ノ上御寛大ナル御裁キヲ翹心願致シマス

茲ニ謹ンデ歎願申上ゲマス

愛媛縣西宇和郡
双岩村若山
富田テイ

アリヤ十方面
米國軍事委員会殿

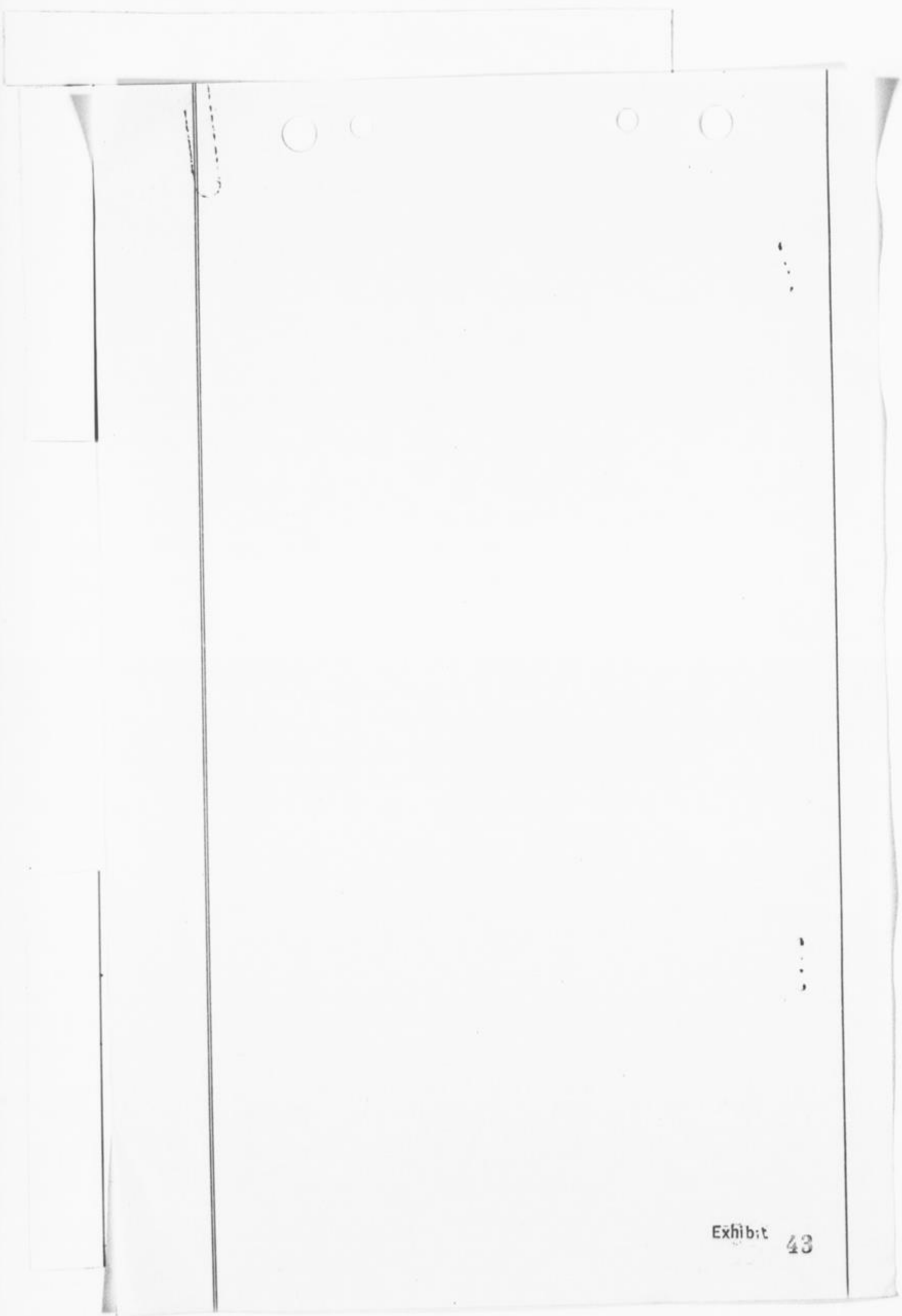


Exhibit 43

0412

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIO, EX-CAPTAIN, IJA.

We all admire the mild and benevolent character of INOUE. I beg your kind consideration for this and that you will deal leniently with him. I hereby place this petition before you.

TOMITA, Tei,
Wakayama, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

43
"Exhibit _____(a)"

0413

嘆願書

一、井上文雄氏ハ温厚篤実ニシテ犯罪行動ヲ成ス人格デ無イ事

一、本人無クシテハ廃家モ同様ニシテ又現在ノ村政ニ困却スル公平威刑ヲ依頼ス

マリアナ方面
米國軍事委員会殿

井上嘉一

E.44

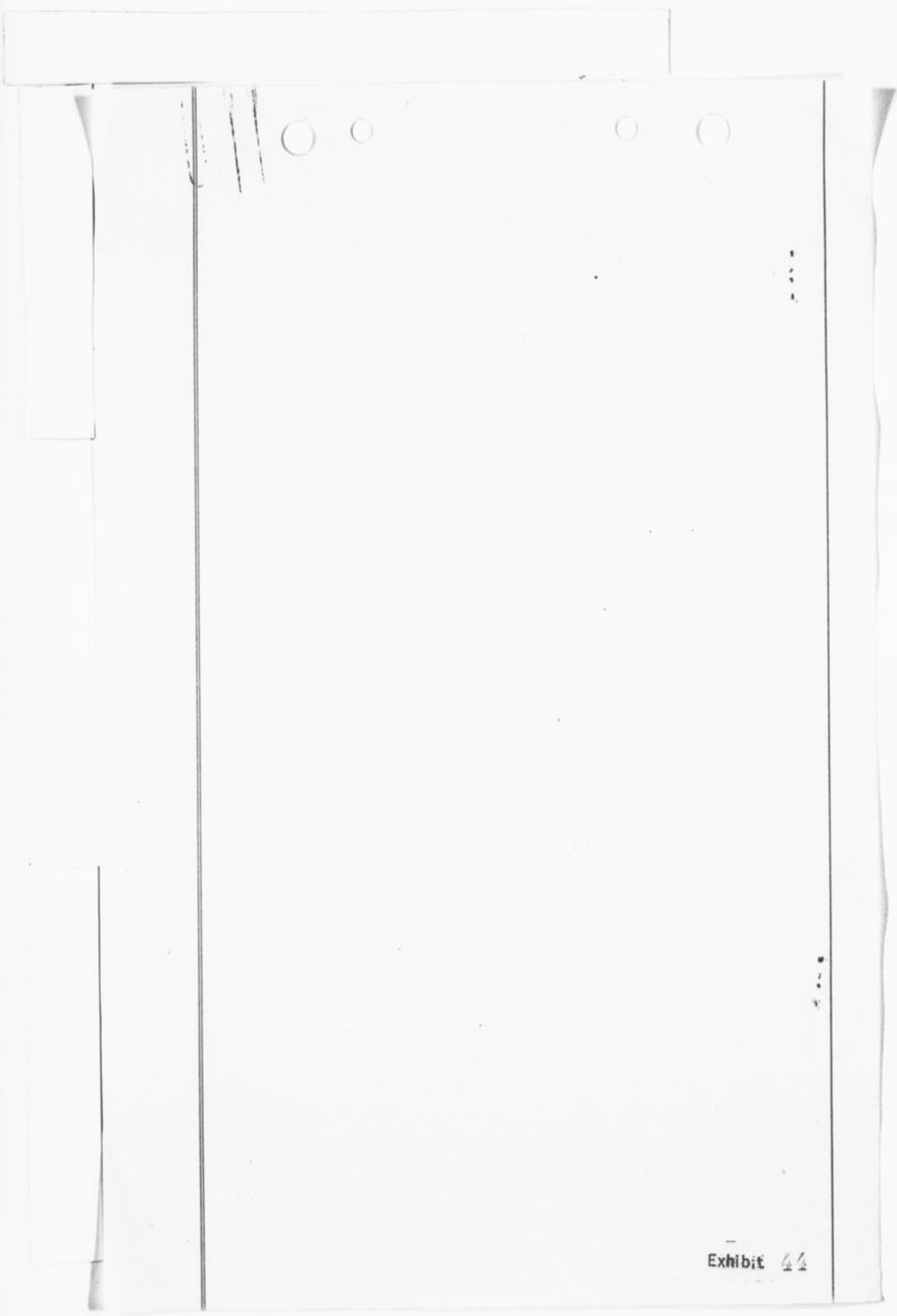


Exhibit 44

0415

To the US Military Commission of the Marianas Area.

PETITION

1. INOUE, Fumio is mild and sincere and is not a man who commits a crime.

2. Without him, it is hard for his family to maintain their living and it is also hard for us to keep our village administration.

I beg you will give him a fair mitigation of his sentence.

INOUE, Kaichi.

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

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 44 (a)"

0416

歎願書

元軍大尉　井上文夫

井上氏ハ常ニ温厚ナル人格者デ

一般人ヨリ尊敬サレタル人デ有之

一日モ早ク御歸還ヲ祈ッテ

イマス

愛媛縣警察官有志

三瀬　重

イヤサカ本部

来ル軍事委員會殿

81 h0

To the US Military Commission of the Marianas Area.

PETITION FOR INOUE, FUMIOK EX-CAPTAIN, IJA.

INOUE was always of mild character and was respected by people. I bag you will release him and send him back as soon as possible.

MITSUSE, Yo,
Wakayama, Futaiwamura, Nishiuwa-gun,
Ehime-ken.

I certify the abofe to be a true and complete translation of the original petition to the best of my abilityl

EUGENE E. KERRICK, jr.,
Lieutenant, USNR,
Interpreter.

"Exhibit 45 (a)"

0419