

AFFIDAVIT

March 25, 1949

I, TADA, Tokuchi, swear upon my conscience to tell the truth and depose as follows:

I entered the Military Academy in 1922 and from that time until I was demobilized in 1946, I served in the Imperial Japanese Army.

I was appointed Chief of Staff of the 14th Division in November of 1943 and after April of 1944 was stationed in the Palaus.

During my tour of duty as Chief of Staff of the 14th Division, INOUE, Sadae, as Commanding General of the 14th Division, was my superior officer.

The main duty of a chief of staff is to assist the division commanding general. To perform this duty I always had to be acquainted with the general situation as regards operations and to know the intention of the Commanding General well and to exert all effort to achieve the accomplishment of his intention regarding operational plans in order to make the fighting power of the division complete. Whereas the authority of the Chief of Staff extends to the Staff and the Adjutant's office in that he classifies the main business of the Staff Department and makes each staff officers show his ability and superintends the business of the staff officers and controls the general affairs of the headquarters according to the Divisional Commander's intention, I did not have any command authority over military personnel and units. My authority as a Chief of Staff is set out in regulations pertaining to Higher Headquarters Service in time of war.

After the surrender I was repatriated and demobilized. I was arrested on June 27, 1947 and incarcerated in Sugamo Prison.

I was interrogated by investigation officer YOKOI on several occasions in August 1947 and submitted, I believe, two statements. I was further interrogated by investigation officer Captain Moriarty in September of 1947 and submitted my last statement at his request.

When I wrote these statements I was not shown charge against me and I did not have benefit of counsel. If these statements are admitted into evidence they would, I believe, implicate my co-defendant who was my superior officer, Lieutenant General INOUE, Sadae who was the Commanding General of the 14th Division in the Palaus.

I make this affidavit voluntarily to support my plea for a separate trial.

Respectfully,

TADA, Tokuchi.

Subscribed and sworn to before me this 26th day of March 1949 at Guam.

Witness: *Sadamu Sanagi* (over)

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

Enclosure "B"

0009

VEIDVAIL

口 供 書

私多田督知ハ良心ニ從ヒ眞實ヲ述ヘルコトヲ誓フ
自分ハ大正十一年日本陸軍士官学校入校以來 昭和二十一年復員迄日本陸軍ニ勤務シ
自分ハ昭和十八年十一月第十四師團參謀長トナリ 昭和十九年四月下旬以降パラオニ在リタ
自分ノ第十四師團參謀長在任中 井上貞衛ハ第十四師團長トシテ自分ノ上官デアッタ
參謀長ノ任務ハ師團長ヲ補佐スルコトヲ主トシ之ヲ爲作戰ニ因附シテ諸般ノ状況ヲ知悉シ 常ニ師團長ノ意圖ヲ熟知シ其ノ企圖ノ達成ヲ爲 師團ノ戦力ヲ充實スルヲ爲 作戰計畫樹立ニ全カヲ盡スコトニ在ッタ 參謀長ノ權限ハ幕僚ノ事務分担ヲ指定シ各參謀ノ実力ヲ發揮セシメ參謀事務ヲ管理シ 師團長ノ意圖ニ基キ司令部ノ一般事務ヲ司ルコトニ在ッタ、參謀部 副官部内ニハ及ブガ ソレ以外ノ軍人部隊ニ對シハ何等ノ指揮權ニナカッタ 私ノ參謀長トシテノ權限ハ戰時高等司令部勤務令ニ示サレテイル通りデアル

終戦後自分ハ内地ニ帰還シ復員シタガ 昭和二十二年六月二十七日逮捕サレ巢鴨刑務所ニ收容セラレタ

昭和二十二年八月数回横井調査官ノ訊問ヲ受ケニ通程口供書ヲ呈出シタ 更ニ今年九月末調査官モリアリナー大尉ノ訊問ヲ受ケ 其ノ最後ニ口供書ヲ要求サレタ呈出シタ 其ノ口供書ヲ書ットキハ自分ハ自分ニ對スル起訴ヲ示サス又糸渡人ノ便宜ヲ供與サレルコトヲ知リタ之ヲ書イタアッタ若シ之ガ証拠ニ提出サレ採用サレルナラハ 相被告井上貞衛即私ノ上司、パラオ地區第十四師團長ヲ捲キ込ム

テロウ

自分「自発的」= 本口供書「自分ノ分裁裁判」= 対スル
動議ヲ支持スル爲 = 提出スルモテ「ピル

敬白

多田督知

Subscribed and sworn to before me this 26th day of March
1949 at Guam.

Martin E. Carlson
Martin E. Carlson,
Commander, U.S.N.R.,
Defense Counsel.

Witness: *Sadamu Sanagi*

00 12

REPLY TO MOTION FOR A SEPARATE TRIAL

Delivered by

Lieutenant Commander Joseph A. Regan, U. S. Navy,
Judge Advocate.

As is obvious to the commission this is an unbalanced case. The judge advocate admits this, where there is only one specification involving TADA whereas the remaining nine specifications involve General INOUE alone. Is this a sufficient reason to warrant a separate trial? The commission will note the specification involving INOUE and TADA together is the very first specification under the charge, first because it is the first crime committed in time, and it is clearly set forth in that specification that INOUE and TADA did, each and together, at Babelthuap Island, Palau Islands, on or about September 4, 1944, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by beheading with swords and by shooting with firearms, three unarmed American prisoners of war. The allegation is clear that this killing was done by INOUE and TADA together, and therefore INOUE and TADA together should be tried for their acts. True there is no mention of TADA in the following nine specifications. Section 20, Naval Courts and Boards says, and I quote: "All the charges against the accused should be consolidated into one set of charges, and one trial had upon the consolidated set instead of having two or more trials." It is for this reason that in this trial of INOUE and TADA on the first specification we have also alleged the additional nine specifications which involve INOUE alone in order that he may have but one trial upon the consolidated specifications. If this were a civilian court with a solitary judge trained in the law and a jury more or less unskilled, the judge advocate would be constrained to agree with defense counsel that there should be a severance lest the jury hearing all the evidence not be able to comprehend that only certain of it involved TADA. But this is not the case. The seven members of this commission are all mature men with varying years of military experience. The members of the commission not only are the judges but they are also the jurors and finders of the facts. The defendants are represented by three defense counsel. I am sure that the court will be able to hear all the evidence and grant it its proper evaluation, that the court will be able to ascertain also, especially when it is pointed out by defense counsel just what evidence involves TADA alone and what evidence does not.

The judge advocate disagrees completely with the statement of defense counsel that the defendants have antagonistic defenses or two that importance evidence in favor of one of the defendants which would be admissible on a separate trial would not be allowed on a joint trial. That second statement is completely wrong, not only for such an unbalanced case as this one, but in any court involving any two defendants. The commission will take note that the objection by defense counsel is not sustained by any citations. If this commission were to grant the defense motion then there would have to be two trials even though the issues may so easily and simply be decided in this present case. This precise point has often been raised by defense counsel in previous trials not only on Guam but also before the various army tribunals in Japan and also before the Nuremberg Tribunal in Germany. In the YAMAMOTO case, or rather the missionary incident, there were twenty defendants and again the motion was made there that they had antagonistic defenses and there should have been twenty trials. That motion was denied. In the trial of Captain IWANAMI and eighteen others in this area we had a case exactly in point with the present one. There each of the specifications involved IWANAMI but not all his eighteen co-defendants were mentioned in each specification. A motion for a severance was made in that trial and properly denied by the commission.

In order that the ends of justice might be speedily served, it is requested
that this motion be denied.

Respectfully,

Joseph A. Regan
Joseph A. Regan.

H(2)

0014

Section in Charge
and Specifications in
the case of INOUE ET
AL. -

DEFENCE COUNSEL

TAKANO.

起訴及罪状項目に對する異議の申立。

元日本帝國陸軍第十四師團長兼巴
ラバエ集団司令官當時陸軍中
將井上貞衛 元日本帝國陸軍
第十四師團參謀長當時陸軍大
佐多田龍智の辯護人

高野 紘二郎

被告人等は下記の理由に因り本件の起訴及
罪状項目に對し異議を申立てる。

第一、本件罪状項目十項全部に涉り被告人井上
貞衛は棟梁官主張の本件の事件発生當
時第十四師團長兼巴ラバエ地近集団司令官であつた
ことが明記してある。之に依つて巴ラバエ地近は第
十四師團と同地近集団とが併存してゐたことが了解
出来る。殊に異つた二つの軍の Organizations があ
つた以上は井上の統御監督を服してゐた部下と云ふ
の部類があつたのは當然である。他方又罪状項目
に依つては alleged 事件の被害者も件屬と民間人の二
種の組合の者があつた。之れ故に事件の罪状項目に對
しては當然に次の疑問が生じて来る。即ち

(a) 罪状項目其の一の alleged 事件に對しては井上は
第十四師團長として若しくは地近集団司令官として
多田、管崎、中村、山久保と行動を共にして
戦時軍法規程に慣習法違反行為と云
ふことが明かされた。

(A) 罪状項目其の二乃至其の七及び其の九其の十に記載された井上の部下抑留及び監禁の責任並びに抑留中の俘虜及び民間人の保護責任は第十四師団長とこれの責任が地延集團司令官とこれの責任が明確と欠いてゐる。

(C) 罪状項目其の八の alleged 事件は井上は小市、勝山、小野瀬と折部を共にして戦術法規並に慣習法違反行為を為したと主張せられてゐるがこれらは第十四師団長とこれの行為が或は地延集團司令官とこれの行為が甚だ不明瞭である。

然るに井上が行動を共にしたと主張せらるる部下及びその統御監督下に在った部下が如何に其の軍の organization の下に在るかに依つて井上の軍とこれ職務及び責任を辨し得ないといふのである。随つて又辯護の方法もこれに依つて悪化しざるを得ない。仍し井上の上官とこれの職位に付て斯かる曖昧不明確なる罪状項目は被害人の法律的権利の侵害である。

第二、罪状項目其の二乃至其の七並に其の九及び其の十に在るは井上は第十四師団長及び地延集團司令官とこれの部下統御監督の責任及び俘虜並びに民間人の保護責任を以て訴追せられてゐるのである。然るに此の部下統御監督の責任と俘虜其の地の者の保護責任とは其の責任の主体は唯一個人である。二者は一個のものの裏に過ぎない。よつて決して異つた別個の二つの責任ではない。

(2)

Mosesの十誡第七は「汝盗む勿小」と
所にある。然るに今日吾國の法律も
「汝盗む勿小」とは規定してない。例へば
Naval Courts and Boards, A.G.N. B-10, Article
8には窃盗罪と犯した者は軍法會議の判決
に處する刑罰を處せしむとの趣旨の明文がある。
然し此の法文の裏には「汝盗む勿小」といふ一つ
規範(Norm)が厳然として存在してゐるのを見る。
是に窃盗罪と犯した者は「窃盗罪と犯した者は
何卒の懲役に処す」との法律に違反すると同時に
其の裏の「汝盗む勿小」との法の規範に違反
するとはあつたとしても之は決して二つの別個の
犯罪ではない。唯一つの犯罪である。随つて
此の犯人の刑事上の責任は二つではなく唯一個
である。

而して他の一例を掲げしに二人間の金銭の貸借
關係に於て借主は貸主に対して割金金を辨済すの
義務を負ふ。他方貸主は借主に対して貸
した金に償還権を有つてゐる。此の場合借主が
其の金を辨済しなかつたならば辨済義務を怠り
且借金の償還権を侵害したかのやうに觀へることは
あつたとしても此の借主は此の場合法律上は二つの
別個の法律上の責任を負ふてゐない。彼の責任は
唯一つである。若し此の借主に法律上二個の
責任を負はしむるならば不當と言はねばならぬ。之
は極めて明白な事理である。

1907年10月18日のHague條約第四附屬書
第四條は「---。條約は人道を以て取扱はる
べし」と規定し、1929年7月27日のGeneva條約

條約第二條は「作爲は常に博愛の心を以て取扱はるべき」と規定してゐる。此等の條文は作爲は條約に依り斯の如く取扱はる。國際法上の保護或は一種の權利（私は之を反射權(Reflex Right)の一種と斯の如くしてゐる）を有してゐるものと云ふ。此等條約の條文の反面を以て交戦國は作爲に対し斯の如く取扱を爲す義務を負ふてゐるものと云ふ。此等は交戦國の軍の指揮官の部下と統帥に監督せし職務を以て之に因り其の部下の若者か作爲に対し條約規定の取扱を爲さねかつたことは其の指揮官は此の場合部下統帥監督上の職務怠慢の責任の外に更に作爲の條約の違反せる取扱を爲さねかつたこと即ち保護上の責任と二重の責任を負ふてゐるものと云ふか？此の指揮官に斯の如く二重の責任を負はねばならぬと云ふことは公平に一般してゐるか？上に掲げたる二つの例に於て同様に此の場合も責任は唯一個人と云ふ。斯くて此の指揮官に二つの責任を負はねばならぬと云ふことは公平でない。

更に茲に言はねばならぬことは「第二條約の何れの條文中にも指揮官は部下と夫に統帥監督するに於て統帥監督上の職務を怠るは云ふことか又作爲を保護する義務を怠るは云ふことか」の條文は一つもないことと云ふ。尚ほ私は軍隊のどの部下統帥監督上の職務怠慢は現今の國際法上戦争犯罪と認めらることは云ふことと主張するものとなること併せて作爲の保護に關する軍隊の上官の職務怠慢は結局部下統帥監督上の職務怠慢

に帰するといふ見解を保持しつゝこれを附する。
之を要するに罪状項目其の一と其の二、其の四と
其の五、其の六と其の七、其の九と其の十は被告人井上
に対し不偏に一定の責任を負はしむべき重起訴と
する。斯くの重起訴は Naval Courts and
Boards の訴えとに等しく且被告人の法律権
衡の侵害となる。

第三、(A) 罪状項目其の一は被告人井上又多田は
官海、中村、小久保、と行動と共にして停艦に
襲撃、殴り、殺害したといふのである。罪状項目其の二
は井上は部下の制御監督上の職務怠慢と云ひ
罪状項目其の三は井上は停艦の保護上の職務怠慢
と云ふのである。

然し此の殺害と部下制御監督上の職務怠慢
及び停艦保護上の職務怠慢とは刑法規定上は同格
の場合に於ては併存し難い觀念である。換言す
は“殺害”と云ふ概念の中に上記二種の職務怠
慢の概念が溶け込んでゐるのである。隨つて殺人
罪は此の両職務怠慢を吸収してゐるのである。此
の場合職務怠慢は殺人罪とは別個の独立の犯罪
とは認めない。例へば継母が下婢と共に結紮
して殺した場合には此の継母は殺人罪と共に罪責を問
はる。けれども此の下婢に対する傷害及びその責任
及び継母保護上の責任とも併せ問はる。如くなら
ば此の結紮の責任を全うする者は唯一個人である。

(B) 罪状項目其の八の alleged 殺人罪と其の九の
井上の部下制御監督上の職務怠慢及び其の十の停艦
の保護上の職務怠慢との関係は上記(A)に準へて

と同一の理論に依つて支配せらるべきである。

仍て片方に對し一有殺人罪を以て起訴し、他方同一の alleged の行為に對し其の上は二個の職務怠慢の責任を原はしむるは決して不當とはいへ、斯かの罪状項目は被告人の實體的權利の侵害である。

第四. Naval Courts and Boards § 23 は別果の性質の犯罪は別個の Charge として扱ふべきことを要求せしむる。

本件起訴は戦時法規並に「恩恵法」の違反として、一罪状項目十個を大別すれば殺人罪、部下制御義務上の職務怠慢、及俘虜並に民間人や保護上の職務怠慢である。法律上は殺人罪と職務怠慢とは全く別果の性質の犯罪である。然るに此の兩者を同一の charge として記載するに依り、獨り Naval Courts and Boards の規定に違反するとして起す。

斯かの Naval Courts and Boards の規定は被告人の實體的權利の侵害である。

第五. (A) 罪状項目其の一、其の二、其の三と見ると此等項目の各個に記載せられたる犯罪の客体が同一の人にあることは罪状項目其の一乃至其の三を連して犯罪の客体は三人とせよか假令各項目の犯罪の客体が別人であるとしても三人とせよのである。

(B) 罪状項目其の四と其の五、六及び七の犯罪の客体が同一の人にあるとしても七人であるか別人であるとしても十四人である。

(C) 罪状項目其の八と其の九及び其の十乃至

其の十に於ては未だ被害者が同一の人であると述べては
未だ一人であると述べては未だ別人であると述べては未だ
二人であると述べては未だ。

斯の如く上記(A)に於ては三人對九人、(B)に於ては
七人對十四人、(C)に於ては未だ一人對二人の相違
が生じた結果に於て、斯の相違は被告人と重大な
影響を有する程の重要な事柄である。加
之此等の罪状項目、記載は Naval Counts and
Boards §34 の規定に「犯罪の各件を正確に
記載」し述べたことである。之は又被告人の
地位の権利の侵害である。

第 六. Naval Counts and Boards §32 は事
は正確に記載すべきに相違ない。
其の罪状項目其の一に於ては被告人井上及び多田は
豊崎、中村、小久保と行動を共にし戦争法規並
に慣習法を違反したと主張せしむ、
罪状項目其の二に於ては井上は他の部下に多田、豊
崎、中村、小久保の行動を抑制せず彼等の戦争
法規並に慣習法違反行為を容れしと主張せしむ、
罪状項目其の三に於ては井上は抑留
中の俘虜を保護する義務を拘束するに拘束する之と
主張し、部下に多田、中村、小久保に此等俘虜に對
し戦争法規、並に慣習法違反行為を容れしと
主張せしむのである。

若し罪状項目其の一、其の二、及其の三が同一の
alleged、事件であるとすれば何故被告等は
罪状項目其の三に於てのみ罪状項目其の一及二
中に井上の部下に戦争法規を容れしと主張せしむるに
豊崎有恒と

據此可知...其理由如下...其...
 此項...之...記載...即...
 Naval Courts and Boards § 32 違反之...

仍工本糾起訴及竊賊項目時已都下
此的糾判決相成度。

讀

李卿致 啟

OBJECTION TO THE CHARGE AND SPECIFICATIONS

Delivered by
TAKANO, Junjiro.

Counsel for the accused INOUE, Sadae,
Commanding General Fourteenth Division,
and Army Group Commander Palau Area,
ex-Lieutenant General, Imperial Japanese
Army and TADA, Tokuchi, Chief of Staff,
Fourteenth Division, and former
ex-Colonel, Imperial Japanese Army.

The accused object to the charge and specifications in this case on the following grounds:

1. It is clearly set forth in all ten specifications of the present case that the accused INOUE, Sadae was the Commanding General of the Fourteenth Division and concurrently Army Group Commander, Palau Area at the time of the incidents alleged by the judge advocate. From this we understand that the Fourteenth Division existed concurrently with the Army Group, Palau Area in the Palau Area. Insofar as there were two separate organizations under the control and supervision of the accused INOUE, it is natural that there were two categories of subordinates under him. Again, according to the incidents alleged in the specifications there were two types of victims with differing status, namely prisoners of war and civilians.

The following questions are obviously raised concerning the charge and specifications from the foregoing. In short,

- (a) In the incident alleged in specification 1 of the charge, it is not clear whether INOUE violated the law and customs of war acting with TADA, MIYAZAKI, NAKAMURA, KOKUBO in his capacity as Commanding General of the Fourteenth Division, or in his capacity as Army Group Commander, Palau Area.
- (b) It is not clear whether the responsibility of INOUE to control and supervise his subordinates and to protect prisoners of war and civilians set forth in specifications 2 through 7, and in specifications 9 and 10 was part of his responsibility as Commanding General of the Fourteenth Division or as those of Army Group Commander, Palau Area.
- (c) It is set forth in specification 8 that INOUE acting with KOICHI, KATSUYAMA and ONOSE violated the law and customs of war in the alleged incident of that specification. However it is most obscure whether he acted in his capacity of Commanding General of the Fourteenth Division or in his capacity as Army Group Commander, Palau Area.

The duties and responsibilities of INOUE as a superior officer would of force differ depending on which of the two organizations the subordinates with whom he allegedly acted and who were under his control and supervision, belonged.

Dependent on this, the procedure of defense would differ accordingly. Such ambiguous and indefinite statement of the office of the accused INOUE as a superior officer in the specifications is prejudicial to the substantive rights of the accused.

2. INOUE is charged with failure to discharge his duties to control and supervise his subordinates and to protect prisoners of war and civilians as Commanding General of the Fourteenth Division and Army Group Commander, Palau Area, in specifications 2 through 7 and in specifications 9 and 10. However the duty to control and supervise subordinates is in essence one and the same with the responsibility to protect prisoners of war and civilians. These two duties constitute the front and back of the same duty and are not two separate duties.

It is ordered in the seventh commandment of the decalogue of Moses: "Thou shalt not steal." There is no law in any nation of today which provides "Thou shalt not steal." For example Naval Courts and Boards, A.G.N. B - 10 Article 8 states in effect that a person guilty of the crime of theft shall be inflicted such punishment as a court martial may adjudge (NC&B p 457). However, behind this provision there stands solemnly and authoritatively a norm which reads "Thou shalt not steal." A person who commits a theft violates the law which provides that "A person who commits the crime of theft shall be imprisoned for n years," and at the same time he violates the norm of law which underlies the law, namely the norm "Thou shalt not steal." This does in no way mean that he has committed two offenses. The offense is one. Consequently the offender is criminally responsible not for two offenses but for one. To cite another example. Where two persons stand in relationship of debtor and creditor in monetary matters, the debtor owes the duty under law to repay the creditor. On the other hand the creditor has an obligation in regard to the money loaned to the debtor. In the event the debtor fails to repay the money, it would appear that the debtor failed to fulfill his duty to repay and at the same time infringed the obligation of the creditor. The debtor in this instance however does not owe two legal responsibilities. His responsibility is one. If this debtor is made to owe two responsibilities, the law must be said to be improper. This is a very clear reason.

It is set forth in Article 4 of the Annex of the Hague Convention IV of October 18, 1907, that ".....(prisoners of war) They must be humanely treated." and Article 2 of the Geneva Prisoners of War Convention of July 27, 1929 stipulates that "....They (prisoners of war) must at all times be humanely treated."

Prisoners of war by virtue of these two treaties were granted protection to be treated in such manner or had a right (I call it a reflex right) to be so treated. Through these two treaties belligerent nations owed the duty to treat prisoners of war in this manner. Now if a commander of the armed forces of a belligerent nation neglected his duty to control and supervise his subordinates and if as a result of this neglect on his part his subordinates did not treat prisoners in conformance with the regulations of the above cited treaties, should the commander in that event be held responsible for the fact that the prisoners were not accorded the treatment as set forth in the treaties, that is for their protection besides his neglect of duty to control and supervise his subordinates? Should this dual responsibility be placed on him? Would the placing of such dual responsibility on the commander conform to justice and fairness? As in the two examples cited above, the criminal responsibility here is only one. Hence it is definitely not proper to place two responsibilities on this commander.

I would further state at this point that there is not a single clause in the two treaties quoted above which sets forth that a commander must not neglect his duty to control and supervise his subordinates fully, or that he must not neglect his duty to protect prisoners of war.

I asseverate that under present day international law neglect of duty of a superior in the armed forces to control and supervise subordinates does not constitute a war crime and hold that the neglect of duty of a superior in the armed forces to protect prisoners of war at bottom emanates from his neglect of duty to control and supervise his subordinates.

In short specifications 2, 3, 4, 5, 6, 7, 9 and 10 improperly place this dual responsibility on the accused INOUE and are duplicate charges. Duplication of charges is not only prohibited by Naval Courts and Boards but is prejudicial to the substantive rights of the accused.

3. (a) It is alleged in specification 1 that the accused INOUE and TADK acting with MIYAZAKI, NAKAMURA and KOKUBO assaulted, struck and killed prisoners of war. Specification 2 specifies that the accused INOUE neglected his duty to control and supervise his subordinates. Specification 3 charges that INOUE neglected his duty to protect prisoners of war.

Now it is difficult to conceive that murder, neglect of duty to control and supervise subordinates and neglect of duty to protect prisoners of war can exist concurrently on an equal status from the standpoint of criminal punishment. In short, the concepts of the two neglects of duty must merge into the concept of murder. Consequently as both neglects merge into the crime of murder the neglects of duty are not separate and independent offenses. For example, when a step-mother acting with a maid servant kills a step-child, she will be charged with murder. However she will not be charged with neglect of duty to control her servant as the latter's employer and besides be charged with neglect of duty to protect her step-child. The criminal responsibility that the step-mother in this instance assumes is only one.

(b) The alleged murder of specification 8 and INOUE's neglect of duty to control and supervise subordinates set forth in specification 9 and his neglect of duty to protect prisoners of war alleged in specification 10 are governed by the same reasoning as stated in paragraph (a) above.

It is not proper by any means to charge INOUE with murder on the one hand and on the other to make him assume responsibility for two different types of neglect arising from the one and same alleged offense. Such specifications are prejudicial to the substantive rights of the accused.

4. Paragraph 23 of Naval Courts and Boards stipulates that offenses of a different nature be not laid under the same charge. The charge in the present case is Violation of the Law and Customs of War and the 10 specifications broken down roughly may be classified as murder, neglect of duty to control and supervise subordinates, and neglect of duty to protect prisoners of war and civilians. From the legal standpoint murder and negligence are two offenses completely different in nature. To lay these two offenses under the same charge is in violation of the above cited provisions of Naval Courts and Boards.

Such violation of Naval Courts and Boards is prejudicial to the substantive rights of the accused.

5. (a) Studying the persons against whom the offense was allegedly committed in specifications 1, 2 and 3, it is not clear whether these persons are the same persons or different persons in the three specifications. If the persons against whom the offense was allegedly committed were the same persons in all three specifications, there would be three persons, if different in the three specifications, there would be nine persons.

(b) If the persons against whom the offense was allegedly committed were the same in specifications 4 and 5, these would number 7, whereas if they were different, these would number 14.

(c) If the person or persons against whom the offense was allegedly committed was or were the same in specifications 6 and 7, and in specifications 8 through 10, then there would be one victim for specifications 6 and 7, and one victim for specifications 8, 9 and 10, but if different, there would

be two for one set of specifications, and three for the other set of specifications.

As stated above the result would be a discrepancy of in (a) 3 to 9 persons, in (b) 7 to 14 persons, and in (c) 1 to 2 persons in each group. Such a discrepancy would affect the accused greatly, and is a vital issue. Moreover such specifications would be in violation of Paragraph 34 of Naval Courts and Boards which sets forth the provision for "Certainty as to the person against whom the offense was committed." This is prejudicial to the substantive rights of the accused.

6. Paragraph 32 of Naval Courts and Boards provides that facts must be stated with certainty. It is alleged in specification 1 that the accused INOUE and TADA acting with MIYAZAKI, NAKAMURA and KOKUBO violated the law and customs of war and in specification 2 that INOUE failed to control and supervise TADA, MIYAZAKI, NAKAMURA and KOKUBO permitting them to act in violation of the law and customs of war, and in specification 3 that INOUE failed to discharge his duty to protect prisoners of war held in custody, despite the fact that that duty was incumbent upon him, permitting his subordinates TADA, NAKAMURA, and KOKUBO to act against these prisoners in violation of the law and customs of war.

If the incident alleged in specification 1, 2 and 3 is one and the same incident, why is MIYAZAKI, Aritsune not listed in specification 3, who is named in specifications 1 and 2 as a subordinate of INOUE? The reason for this omission is not clear to counsel. Such specifications do not state the facts with certainty. In short, they are in violation of Section 32 of Naval Courts and Boards.

On the above grounds, the accused request the charge and specifications of the present case be quashed.

Respectfully,

/s/ TAKANO, Junjiro

I certify that the foregoing is a true and complete translation of the original document in Japanese, to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

OBJECTION TO THE CHARGES AND SPECIFICATIONS
IN THE CASE OF
INOUE, Sadae and TADA, Tokuchi

Delivered by
Commander Martin E. Carlson, USNR,
Defense Counsel.

May it please the commission:

The defense further objects to the charge and specifications, Commander Naval Forces Marianas serial 1618 on the grounds of improper joinder of parties.

Section 17 Naval Courts and Boards requires that persons will not be joined in the same charge and specification unless for concert of action in an offense. There must be a joint offense of two or more persons in pursuance of a common unlawful design or concert, other accused persons will not be joined in trial.

In C.M.O. 4-1931, pages 13 and 14, each of the accused objected to these specifications on the ground that a concert of action was not alleged. The J.A.G. of the navy held that "the court erred in refusing to sustain the above objection. Parties to the particular offenses alleged under the charge 'Striking another person in the Navy', may under certain circumstances, namely, where common unlawful design, concerted action, or conspiracy are involved, be properly joined, but a trial in joinder cannot properly be had unless these circumstances are alleged to have obtained."

Specification 1 does not allege that INOUE, Sadae and TADA, Tokuchi committed the act by common unlawful design, concerted action or conspiracy.

In C.M.O. 4-1931 the J.A.G. further held as stated in Naval Courts and Boards "the mere fact that several persons happen to have committed the same offense at the same time does not authorize their being joined in the charge." (See also File 417-9(3) EN4 (211227) July 23, 1928).

We further object to the charge and the ten specifications because TADA and INOUE, the accused, are not included in all specifications. In nine specifications of the charge only one of the accused INOUE, Sadae is charged. This is against all known rules of pleading trial procedure.

In 27 Am. Juris. "Indictments and Informations", Sec. 123, page 683, the rule is laid down: "Different defendants cannot be charged in the same indictment where they are not all included in each count thereof." (Citing McElroy vs U.S.; 164 U.S. 76, 41 L(ed)355, 17 Sct. 31; Guljak vs U.S. (C.C.A. 9th) 53F (2d) 554, 82 A.L.R. 480).

We object to specification 1 of the charge because it does not follow the sample specification in Section 53 of Naval Courts and Boards. In the sample specification the acts are specifically set forth. Note however, that this is not done in the instant case in specification 1. It is only alleged that INOUE, Sadae and TADA, Tokuchi, acting with MIYAZAKI, NAKAMURA and KOKUBO did each and together ... assault, strike, kill and cause to be killed by beheading with swords and by shooting with firearms ... three unarmed American prisoners of war. From reading this specification it is impossible to determine because of vague, ambiguous and faulty sentence structure, whether it is charged that INOUE and TADA did assault, strike, kill and cause to be killed by beheading with swords and by shooting with firearms, or it is only MIYAZAKI, NAKAMURA and KOKUBO who did these acts. If INOUE and TADA

are charged with committing the acts by shooting and beheading it should be made clear in the specification and the prosecution should, of course, be required to prove the facts as thus alleged.

The sample specification further set forth "and did therein and thereby then and there inflict a mortal wound in and upon the neck of said Z____, of which said mortal wound so inflicted, as aforesaid, the said Z____ died at or about 3:00 a.m. on March 29, 19__." No such language is set out in the instant case in specification 1. While it may not be necessary in a war crimes case to frame a specification with the technical precision of a common law indictment, the essential elements of the crime intended to be charged must be set forth. In this specification 1 the gravamen of the charge is that INOUE and TADA did therein and thereby then and there inflict a mortal wound in and upon the three American prisoners of war of which said mortal wound so inflicted as aforesaid the said three American prisoners of war died at or about a specific time and date. Not to follow the sample specification in Section 53 of Naval Courts and Boards is prejudicial to the substantive rights of the accused in that this specification 1 does not set out with sufficient precision the facts necessary to support the charge. Such a deviation is also fatal.

In C.M.O. 237-1919 p 15 (p 487 of Vol. I Compilation of C.M.O.) the Judge Advocate General stated that a specification in support of the charge of murder drawn "In that A.... did on or about April 30, 1918.... while armed with a revolver, wilfully and without justifiable cause, and with malice aforethought, attack and kill by shooting B..., an inhabitant of the Dominion Republic," was not in due form and technically correct.

I quote: "the foregoing specification is not in due form and technically correct in that it does not conform to the sample specifications set forth in Naval Courts and Boards ... which should be used as a guide in such cases. The above specification in order to conform to said sample should allege the felonious infliction of a mortal wound, of which said mortal wound the said B... died."

The J.A.G. in that case held that the specification was correct in substance in that the facts if proven would show that the homicide was felonious.

There may be judicial decisions which permit of a certain looseness in war crimes procedure, but does such a procedure reflect credit upon the Navy administration of military justice in war crimes trials?

We respectfully call your attention to what the Judge Advocate General of the Navy Department said in this C.M.O. No. 7-1932: (2) "While deviations as in this case from the instructions and sample specifications given in Naval Courts and Boards are not necessarily fatal, they should never be encouraged by responsible naval authorities. In promulgating Naval Courts and Boards, the order of the Secretary of the Navy, bearing the approval of the President, expressly stated: 'It is hereby required and directed that all officers and other persons belonging to the Navy, so far as the duties of each are concerned, make themselves acquainted with, observe, and comply with the provisions contained herein.' (3) It follows that in the present case when the convening authority was informed of the courts' decision that a particular specification was not in due form and technically correct, 'in that it does not set out with sufficient precision the facts necessary to support the charge' he should have promptly reframed the said specification so as to allege with precision the facts that he intended to charge. This would have rendered it unnecessary on review to invoke those judicial decisions which permit of a certain looseness in court-martial procedure, the legal sufficiency of which may be sustained but which should nevertheless be sedulously avoided as not reflecting credit upon the administration of military justice."

For the same reasons we object to specification 8. In this specification it is only charged INOUE, Sadae acting with KOICHI, KATSUYAMA and ONOSE did on May 24, 1945 at Koror kill by beheading with a sword an American prisoner of war one Wallace F. KAUFMAN. We are unable to determine if it is Lieutenant General INOUE that beheaded the prisoner with a sword or KOICHI, KATSUYAMA or ONOSE and if it is from the wound caused by the sword that the prisoner died. As we understand the vague ambiguous and faulty sentence structure in this specification 8 it is not alleged that Lieutenant General INOUE feloniously inflicted the mortal wound of which mortal wound KAUFMAN died. For this reason and for the reasons set forth in objection to specification 1, this specification 8 is also not in due form and technically correct.

We specifically object to the common law allegations of murder in specifications 1 and 8 and move that such allegations be stricken from the specifications on the grounds that except for treason there are no common law offenses against the United States. (Citing 14 American Jurisprudence "Criminal Law," Vol. 14; Criminal Law, Sec. 15, p 766 and Peltit vs Walsh, 194 U.S. 205; 18 U.S.C.A. Par. 451 et seq, and U.S. vs. Reese 92 U.S. 214, 23 L(ed). Donnelly vs. U.S. 276, U.S. 505, 72 L(ed) 676, 48 Sct. 400; U.S. vs Gradwell, 243 U.S., 476, 61 L(ed) 857, 37 Sct 407).

Section 15 reads: "Crimes against United States - While there was some uncertainty in the early decisions it is now well settled that except as to treason which is defined by the Federal Constitution, there are no common-law offenses against the United States." (Citing Donnelly vs U.S. 276, U.S. 505, 72 L(ed) 676, 48 Sct 400; U.S. vs Gradwell, 243 U.S. 476, 61 L(ed) 857, 37 Sct 407. Annotation: Ann Cas 1918d, 991).

"In order that an act may be prosecuted as a crime in the courts of the United States, statutory authority therefor must exist."

(14) (Citing U.S. vs Bathgate, 246 U.S. 220, 62 L(ed) 676, 38 Sct 269; U.S. vs Eaton, 144 U.S. 677, 36 L(ed) 591, 12 Sct, 764; U.S. vs Brewer, 139 U.S. 278, 35 L(ed) 190, 11 Sct 538; Manchester vs Mass., 139 U.S. 240, 35 L(ed) 159, 11 Sct 559; Jones vs. U.S. 137 U.S. 202, 34 L(ed) 691, 11 Sct 80; U.S. vs Britton, 108 U.S. 199, 27 L(ed) 698, 2 Sct 531; Cotton vs U.S., 11 How(U.S.) 229, 13 L(ed) 675; U.S. vs Hudson, 7 Cranch(U.S.) 32, 3 L(ed). 259). (Annotation: Ann Cas 1913 E., 1252 s Ann Cas. 1918d, 991). "The courts of the United States in determining what constitutes an offense against the U.S. must resort to the statutes of the U.S. enacted in pursuance of the Constitution. (Kollock 165 U.S. 526, 41 L(ed) 813, 17 Sct 444).

"The courts have no right to treat an act done within a state as a crime against the U.S. unless Congress has declared it to be such. (15) (Citing U.S. vs Reese, 92 U.S. 214, 23 L(ed) 563)".

We maintain there is a presumption that these two accused, Japanese nationals, do not know either our common law or our statutory law.

My colleague Mr. Takano, Junjiro has pointed out that specifications 2 and 3 are but a duplication of specifications insofar as INOUE, Sadae is concerned. Specification 5 is a duplication of 4; specification 7 is a duplication of 6; and specifications 9 and 10 are but a duplication of 8 as far as INOUE, Sadae is concerned. Clearly therefore, this multiplicity or plurality of charges must be justified by some explanation on the part of the judge advocate. I wish to call the commission's attention to the ruling of the J.A.G. in C.M.O. 45-1916, page 2. "The department does not approve of trying an accused on two charges where the identical facts are

made the basis of both. (C.M.O. 5-1914, page 7). Insofar as the record discloses there appears to have been no necessity in this case for resorting to multiplicity or plurality of charges in order to provide every possible contingency in evidence," as explained in C.M.O. 42-1914, page 7, and the offense set forth under Charge III is not distinguished from that under Charge II." ... the department ... has invited attention to the foregoing in order that a recurrence of the irregularities noted herein may be prevented."

We further object because a bare neglect of duty is not a crime. We cite 14 American Jurisprudence "Criminal Law", Section 14, page 764 "In some states no act is to be regarded as a crime unless it is so declared by statute" and particularly footnote 2 citing many cases and which reads in part "Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so prescribes as there is no common law crime in the state." (People vs Knapp; 206 N.Y. 373, 99 NE 841 Ann. Cas. 1914 B. 243).

So in this case we move that the commission quash specifications 2, 3, 4, 5, 6, 7, 9 and 10.

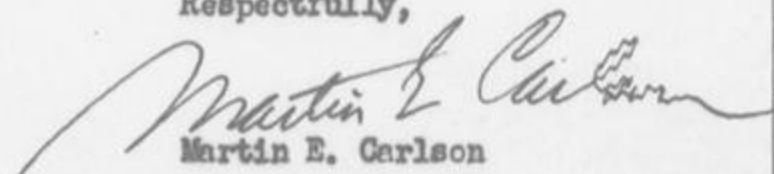
We object to the charge and specifications because they do not show an exception to the statute of limitations. Article 61, Articles for the Government of the Navy provides a statute of limitations of two years. Section 179 Wharton's Criminal Procedure 9th Ed. Vol. I, page 227, lays down the rule "Where a time is limited by general statute for preferring an indictment, the time laid should ordinarily appear to be within the time so limited, or aver that the case falls within statutory exceptions." ((1) Citing Wharton's Crim. Ev. P 105 and many cases including People vs Miller, 12 Cal. 291; Lamkin vs People, 94 Ill. 101; People vs Gregory, 30 Mich. 371; U.S. vs Winslow, 3 Sawy. 337, Fed. Cas. No. 16742; State vs Owen 13 Sawy. 57, 32 Fed. 537; Eng.-R vs Brown, M&M, 163, 22 Eng. C.L. 495.)

Section 369, Wharton's Criminal Procedure, Ibid, again states the rule: "But where a statute exists limiting all prosecutions within fixed periods, the more exact course is to state the time correctly in the indictment, and then aver the exception, and this mode of pleading is now generally required." (Citing many cases in footnote (4)).

Both of these accused while in custody were required to sign written statements, not having been informed as to his privilege against self-incrimination and not having benefit of counsel, which statements were made the basis of the charge and specifications against them and therefore according to the rule laid down in 27 American Jurisprudence Indictments and Informations Section 151, page 705, the charge and specifications should be quashed. (Citing State vs Pence 173 Ind. 99; 89 NE 488, 25 IRa (NS) 818, 140 Am. St. Rep. 240, 20 Ann Cas 1180, Siskle vs Comm 133 Va. 789; State vs Lloyd 152 Wisc. 24, 139 NW 514 Ann Cas, 1914C 415).

For the many objections which we have made to the charge and specifications, we move that they be quashed as against the two accused.

Respectfully,


Martin E. Carlson

REPLY TO THE OBJECTION TO THE CHARGE AND SPECIFICATIONS

Delivered by

Lieutenant Commander Joseph A. Regan, USN
Judge Advocate

The principal objection which the accused make to the charge and specifications is that certain of the specifications are duplicitious. They allege without proving that the specifications claiming a failure to protect prisoners is a duplicate of the second alleging a failure to control the persons responsible for the perpetration of the acts. The court should not be concerned over this objection, for since the inception of war crimes on Guam, defense counsel have always felt it obligatory upon themselves to raise this precise objection. Time after time they have been assured that merely because the same set of facts give rise to the incident and to two specifications, they are necessarily one and the same crime. In each case the objection has been raised and in no case has any commission ever sustained this objection, nor have the convening and reviewing authorities ever concurred with defense counsel. Many of the cases previously tried in which this same objection has been raised because the death sentence has been adjudged, have been reviewed by the office of the Secretary of the Navy. In no case reviewed by the Secretary of the Navy has the objection of defense counsel been sustained.

Failure to control and failure to protect are two separate and distinct offenses. The breach of duty to control and the breach of duty to protect may occur coincidentally and simultaneously, but they nevertheless constitute distinct and separate offenses in violation of the law and customs of war. It may be that for clemency considerations, a convening authority or reviewing authority may, when the circumstances justify, set aside one or two or more offenses growing out of the same transaction or series of transactions or events, but such action on the part of a convening authority is an exercise of clemency, and not a recognition that only one offense was in fact committed. Naval Courts and Boards provides in Section 23: "Different offenses, however, if of the same nature, should be included in separate specifications under the same charge." The fact that the offenses are different and distinct is clearly ascertained when we examine the nature of the duty, whose breach is alleged to constitute a crime. The breach of duty to control subordinates may well constitute an offense without regard to whether or not prisoners of war are in fact injured. Such breach of duty to control may constitute a crime in violation of the law and customs of war where the victims are civilian population and not prisoners of war.

In addition it must be pointed out that the nature of the duty to control arises, even in its crystallized form under international treaties, from different sources than the duty to protect prisoners of war. The duty to control one's subordinates is recognized in Article 1 of the Annex to the Fourth Hague Convention wherein it is laid down as a condition which an armed force must fulfill in order to be accorded the rights of a lawful belligerent that it must be "commanded by a person responsible for his subordinates." (36 Stat. 2295) The nature and existence of his duty is discussed briefly by the United States Supreme Court in the Yamashita case (327 U.S. 1). The duty to protect prisoners of war and others is separate and distinct. It is evidenced in treaty form and may be found under two distinct and separate conventions, as well as under distinct provisions where the duty to protect is provided for in the same convention with a duty to control. In Article 4 of the Annex to the Fourth Hague Convention it is provided that prisoners of war must be humanely treated. (Also see Article 46, Fourth Hague Convention relating to inhabitants of occupied territory.) Similarly Article 1 of the Geneva Prisoners of War Convention of 27 July 1929 provides that "prisoners of war are in the power of

the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited." From the difference in origin of the duty, from the difference in the nature of the duty, it is clear that a different offense results for a breach of these duties.

Defense counsel further objects on the grounds that they are unable to understand from the specifications whether we are alleging a neglect of duty by INOUE in his capacity as Commanding General of the Fourteenth Division or in his capacity as Army Group Commander Palau Area. General INOUE occupied both titles at one and the same time. These titles designate INOUE, who was the senior Army Officer present in the Palau Islands and the man who had direct control, not only of the individuals killed, but also of the personnel who, pursuant to his orders, did the killing. We are holding INOUE responsible as the senior Army Officer present and the titles Commanding General of the Fourteenth Division and Army Group Commander Palau Area serve to identify INOUE as the senior Army Officer in the Palau. Let the commission not be fooled by the statement of defense counsel that unless a precise title is given by the prosecution, they will be hampered in their defense efforts. Let defense counsel pay close attention to the prosecution's evidence, and at the conclusion of the prosecution's case they will be able to ascertain completely whether INOUE was neglectful as Commanding General or neglectful as the Army Group Commander Palau Area.

Defense have further objected that in two of the incidents in the specifications INOUE is charged with having participated in a murder and is also charged with a failure to protect the persons murdered, and a failure to control the persons who committed the crimes. The defense allege that since murder is such an important crime, the failure to protect and the failure to control merge with the murder, and they should be consolidated into one specification. It is the contention of the prosecution that just as there is a distinction between the failure to protect and failure to control, so also is there a distinction between those specifications and the murder specification. Three separate and distinct offenses are alleged. This is not a case of an allegation of a murder and then a separate allegation of an assault, for obviously in that case there would, or rather there should be a merging of specifications, because clearly the assault is a part of the greater crime, the murder. But here, assuming that the murder specification is not proved, could not the court, in all good faith find either or both of the other specifications involving the same state of facts proved? The evidence may show that INOUE was not personally responsible for murder, but that he was responsible for a failure to protect and a failure to control.

Commander Carlson, in his objection complains bitterly because the prosecution has not slavishly followed the sample specification set out in Naval Courts and Boards, yet in his argument on the point, and I quote "while it may not be necessary in a war crimes case to frame a specification with the technical precision of a common law indictment, the elements of the crime intended to be charged must be set forth." He anticipates the precise answer to his contention. There is no obligation in a war crimes case to follow Naval Courts and Boards, nor to frame a specification with the technical precision of a common law indictment. I quote from Cushing's "Trials by court martial (and by court martial is meant military commissions) are governed by the nature of the service which demands intelligible precision of language, but regards the substance of things rather than their forms." (Cushing, 7 opin., 604). The obligation imposed by Naval Courts and Boards is set forth in Section 27 wherein it is stated "a specification should contain allegations of all the essential elements of the offense in simple, accurate, and concise language." It is the belief of the judge advocate that each of these specifications allege an offense in simple, accurate and concise language.

Note in Commander Carlson's objection how aptly he "carries water on both shoulders", to use a weak cliché. First he complains at length of our failure to follow the sample specification in Naval Courts and Boards, then he has the brashness to suggest that this commission quash the specifications which he has complained of, well knowing that the commission has absolutely no power to quash any specifications, for that power rests specifically as stated by Naval Courts and Boards, within the discretion of the convening authority.

The judge advocate does not intend to answer the objection based upon the statute of limitations for that precise objection is the grounds of a separate motion of the defense and will be answered at that time. Nor does the judge advocate intend to again argue the propriety of the joinder of TADA and INQUE in the present trial for the commission has already ruled upon that point. These specifications are simple enough to advise the accused of the crimes with which they are charged and we ask that they be found in due form and technically correct.

Respectfully,

Joseph A. Regan
Joseph A. Regan

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY INOUE, SADAE AND TADA, TOKUCHI, DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR, DEFENSE COUNSEL.

These two accused, INOUE, Sadae and TADA, Tokuchi, object to being tried by this Military Commission and hereby enter their plea to the jurisdiction.

This plea to the jurisdiction is made on the grounds that these two accused, INOUE, Sadae and TADA, Tokuchi are not subject to the courts' jurisdiction and that the offenses are not cognizable by this military commission.

Both of the accused were regularly demobilized in 1946.

The precept for this military commission reads that this commission is ordered to convene "for the trial of such persons as may be legally brought before it." We maintain that these two accused are not legally brought here for trial.

INOUE, Sadae was demobilized about April 1, 1946. TADA, Tokuchi was demobilized around the same time. Not until March 17, 1949 were they served with the charge and specifications for the alleged offenses, murder and neglect of duty as Japanese army officers said to have occurred in September 1944 and December 1944 and May 1945. Now martial law is not retrospective which means that an offender cannot be tried for a crime committed before martial law was proclaimed. (Winthrop's Military Law and Precedents, page 837).

We further hold that the jurisdiction of this Military Commission is limited by the period and territorial extent of the Military Occupation of the Palau Islands by American Naval Forces. In September of 1944 and December of 1944 and May of 1945 Japan was still in possession of and exercised sovereignty over the Palau Islands. So the offenses charged were committed long before the United States Navy occupied Palau or declared either martial law or military law or set up a civil administration on the Palau Islands.

We call the commission's attention to paragraph 273 of the Rules of Land Warfare of the War Department of the United States which provides: "...Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity for maintaining law and order, indispensable to both the inhabitants and to the occupying force." (Basic Field Manual FM 27-10, 1940, 73-74)

So in the case of the Palau Islands, the military occupation of these islands by the United States conferred only the right to exercise control for the period of occupation. The sovereignty of Japan over these islands was not transferred by the mere act of occupation by the United States forces. Only the authority to exercise some of the rights of sovereignty were, because of the necessity for maintaining law and order indispensable to both the inhabitants of the Palau Islands and to the occupying force, the United States, transferred to the United States.

The necessity for maintaining law and order by the United States in the Palau Islands only commences on the date of occupation. It does not go back to September 4, 1944 and to December 29, 1944 and to May 24, 1945. On those dates Japan exercised sovereignty in the Palau Islands. There was no relinquishment or transfer of power until after August 14, 1945 when United States Forces occupied the Palau Islands.

There can be no jurisdiction by this military commission over Japanese nationals long ago demobilized and now civilian citizens of Japan for the offenses said to have been committed in the Palau Islands in September and December 1944 and in May 1945 (See Digest of International Law by Hackworth, Vol. VI, "Military Occupation" Sec. 587, pages 395-414.)

Article 42, Sec. III, Military Authority over the territory of the Hostile States, Annex to the Hague Convention No. IV of 18 October 1907 provides: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Therefore, even the Hague Convention of October 1907 lays down the principle that there is no jurisdiction until occupation and since there was no occupation until after August 14, 1945 there was no jurisdiction in September and December 1944 and in May 1945 and cannot therefore be any jurisdiction now.

So with the Rules of Land Warfare. Read Sec. 275 which lays down the rule distinguishing between subjugation and conquest: Sec. 275 "Military occupation in a foreign war, being based upon the fact of possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. The occupation is essentially provisional.

"On the other hand subjugation or conquest implies a transfer of sovereignty. Ordinarily, however, such transfer is affected by a treaty of peace. When sovereignty passes, military occupation as such must of course cease; although the territory may, and usually does for a period at least continue to be governed through military agencies which have such powers as the President or Congress may prescribe."

Eugene Borel, the arbitrator in the Ottoman Debt Arbitration, Hackworth, *Ibid.* p. 387, held that mere military occupation did not operate as a transfer of sovereignty.

There is the case of Alexandre Kamenyo, *Etat serbe-croate-slovene* holding that an armistice agreement did not have the effect of transferring sovereignty. VIII *Recueil des decisions des Tribunaux Arbitraux Nuxtes* 588; *Annual Digest*, 1927-28, Case No. 374.

In the case of *Navum et Autres c Min Public et Colonie de l'Afrique occidentale francaise* the French court of Cassation, Criminal Chambers in 1919 held that territory under military occupation cannot be held to be part of the National territory. *Annual Digest*, 1919-22, Case No. 312; *Jasette du Palais*, 1920, I 62.

And Winthrop lays down the rule: "Thus, a military commander, in the exercise of military government over enemy's territory occupied by his army cannot, with whatever good intention, legally bring to trial before military commissions ordered by him offenders whose crimes were committed prior to the occupation." (Winthrop, *ibid.* p. 837).

The members of the commission know that the President of the United States terminated the military government in the former mandated islands on July 18, 1947 and that Public Law 204, 80th Congress approved July 18, 1947 Congress authorized the President of the United States to approve the United Nations agreement with respect to United States administration of the Trust Territory of the Pacific Islands and further that on July 21, 1947 the Secretary of the Navy directed the U. S. Naval Military Government of Marshall Caroline and Marianas Islands disestablished as of July 18, 1947 and that the High Commissioner was directed by the Secretary of the Navy to institute civilian administration of the Trust Territory effective July 18, 1947 in accordance with the terms of the Trusteeship Agreement.

Commander Naval Forces Marianas is no longer the civil administrator of the Palaus and therefore has no authority as the civil administrator of the Palaus.

We deny the right of this military commission to try INOUE, Sadae and TADA, Tokuchi because they were illegally brought within the jurisdiction of Commander Naval Forces Marianas from Japan. These two accused were regularly returned to Japan by the United States Navy Department and were then regularly demobilized. Now they come back into custody of U. S. Navy Department and Commander Naval Forces Marianas without proper extradition.

In 14 Am. Jur. Criminal Law, section 217, page 919, states that there are some cases which deny the right of a court to try one who has been illegally brought within the jurisdiction from another state or country. (Annotation: 18 ALR 512; 15 ALR 177).

In re. Robinson, 29 Neb. 135, 45 N.W. 267, 8 LRA 398, 26 Am. St. Rep. 378, a person accused of committing a crime in Nebraska was arrested in Kansas by the order of a Kansas justice of the peace and delivered to a Nebraska constable, who forcibly, and against the will of the accused and without any warrant, requisition, or other legal process conveyed the accused out of the state of Kansas into Nebraska. Holding that the Nebraska court was without jurisdiction, the court said, "In principle there is no difference between the case at bar and where a person is held for an offense other than the one he was extradited for. In either case it is an abuse of judicial process, which the law does not allow. Ample provisions are made for the arrest and return of a person accused of crime, who has fled into a sister state, by extradition warrants issued by the executives of these states. There is no excuse for a citizen or officer arresting, without authority of law, a fugitive, and taking him forcibly and against his will into the jurisdiction of the state for the purpose of prosecution. We cannot sanction the method adopted to bring the petitioner into the jurisdiction of this state. He did not come into the state voluntarily, but because he could not avoid it. The district court, therefore, did not acquire jurisdiction of the person of the petitioner, and his detention is unlawful."

The two accused, INOUE, Sadae, and TADA, Tokuchi also object to the jurisdiction of this commission on the grounds that they were illegally extradited from Japan.

Both of these accused persons states that he never saw a warrant of arrest. They were told by the Japanese police to come along with them; then they were taken to a Japanese police station and from there taken to Sugamo Prison, Tokyo, Japan.

In this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these two persons that they decide the validity of the extradition proceedings by which the two accused were removed from Japan to Guam. To do so it is necessary that the judge advocate produce the extradition papers in the case of these two persons. We ask that such papers be made available to defense counsel in order that we may properly point out to the commission our grounds for objection. Not to produce these extradition papers at this time is most prejudicial to the substantive rights of these two accused.

In footnote 9 page 249 of volume 22 of American Jurisprudence: "Extradition proceedings being based upon an act of Congress and the Federal Courts having decided that such act must be strictly construed and that all of its requirements must be respected courts are without the power or auth-

oritv to construe such act liberally, but will be compelled to follow the rule laid down by the Federal Court and require that all of the provisions of the Federal law relating to requisitions must be strictly observed and respected. Ex parte Owen, 10 Okla. Crim. Rep. 284; 136 P. 197, Ann. Cas. 1916 A. 682. See also Courts, Vol. 14, p 337, para. 117."

We call the commission's attention that these two persons were released as prisoners of war by the United States and sent to Japan where they were demobilized from the Japanese Army. Clearly therefore they are not fugitives from justice nor did they flee from the custody of the United States or were they personally present at the time the crime was committed within the demanding state, the United States.

We continue to quote from 22 Am. Jurisprudence page 255: "The language of the Federal statutes seems to contemplate that the crime shall have been committed by one, who, at the time, was personally present within the demanding state. Thus, it refers to a demand by the executive of a state for the surrender of a person as a fugitive from justice to the executive of a state "to which such person has fled," and it required the production of a copy of the indictment found, or the affidavit made, before a magistrate, containing the necessary charges and properly certified by the executive of the state or territory 'from which the person so charged has fled,'..."

It is a universal rule that a person to be extradited must be charged with a crime against the laws of the state from whose justice he is alleged to have fled. These two persons did not flee; they were demobilized. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war.

Until we see the extradition papers we cannot know for what offense these two persons were extradited. The rule is now well settled that a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in the treaty and for the offense with which he is charged in the proceedings for his extradition until a reasonable time and opportunity have been given him after his release or trial on such charge to return to the country from which he was taken for the purpose alone of trial for the offense specified in the demand for his surrender. Both English and Canadian cases are in accord with the modern American view, the rule being that they limit the prosecution to the crime of which the fugitive was extradited. citing Buck v. Rex, 55 Can. S.C. 133, 38 D.L.R. 548, Ann. Cas. 1918 D 1023. See page 299 of volume 22 American Jurisprudence.

In 14 American Jurisprudence Criminal Law, Section 14, page 764, we find the rule that "In some states no act is to be regarded as a crime unless it is so declared by statute." citing Bradley v. State, 79 Fla. 651; Soper v. State, 169 Ind. 177; Steward v. Jessup 51 Ind. 413; State v. Campbell 217 Iowa 848; State v. Koontz, 124 Kansas 216; State v. Shaw, 79 Kan. 396; Kennan v. State, 86 Neb. 234; People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001, writ of certiorari denied in 289 U.S. 709, 77 LEd 1464, 53 Sct 786;; People v. Knapp 206 NY 373, 99 N.E. 841, Ann. Cas. 1914 B. 243; Toledo Disposal Co. v. State, 89 Ohio St. 230, 106, N.E. 6, L.R.A. 1915 B. 1207; Johnson v. State, 66 Ohio St., 59; State v. Ayers 49 Ohio 61; Ex parte Lingenfelter, 64 Tex. Crim. Rep. 30, 142 S.W. 55, Ann. Gas. 1914 C. 765; Annotation: Ann. Cas. 1913 E. 252; ann. cas. 1918 A. 998.

In this same footnote we find the rule "What is known as the higher law has no place in the jurisprudence of Oklahoma." Lickfield v. State, 8 Okla. Crim. Rep. 164, 126 P. 707, 45 LRA (NS) 153.

And what does the state of New York say about this question of neglect of duty? This same footnote (2) sets forth the New York rule of law "Under the New York Penal Law a bare neglect of a legal duty is not a crime unless a statute so prescribes, as there is no common law crime in the state." (People v. Knapp, 206 N.Y. 373, 99 N.E. 841, Ann. Cas. 1914 B. 243.)

What does the International Law have to say about neglect of duty?

There were dissenting opinions by two members of the Supreme Court of the United States in the YAMASHITA Case.

Mr. Justice Rutledge said of the Yamashita case "Much less have we condemned one for failing to take action ... I have not been able to find precedent for the proceeding in the system of any nation founded on the basic principles of our Constitutional democracy, in the laws of war or in other internationally binding authority or usage."

Mr. Justice Murphy of the U. S. Supreme Court in his dissenting opinion said "International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, varying according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations are usually highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander, objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victors' judgment is an unfortunate but unescapable fact. So great is the probability that international law refused to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct."

The accused pray of judgment of the charge and specifications and pray that the charges and specifications be quashed.

Respectfully,

Martin E. Carlson
Martin E. Carlson.

M(5)

0038

REPLY TO THE PLEA TO THE JURISDICTION

Delivered by

Lieutenant Commander Joseph A. Regan, USN
Judge Advocate

The objections of defense counsel to the jurisdiction when stripped of all excess verbiage may be briefly summarized as follows:

The first objection: defense counsel contends that the jurisdiction of this military commission is limited by the period and territorial extent of the United States Military Occupation for the Palau Islands. The second objection is that the commission does not have jurisdiction because these accused are not legally before this commission as they have not been properly extradited. The third objection is that neglect of duty is not a crime, and therefore this commission has not jurisdiction to try the accused for neglect of duty.

The argument that jurisdiction is limited by territorial extent and by the period of occupancy would be applicable if the accused were being tried for a violation of domestic law, but in the instant case there is no such charge. These accused are specifically charged with a violation of the law and customs of war and the material cited with regard to martial law is therefore inapplicable. In regard to crimes in violation of the laws and customs of war, it is well established that traditional concepts of territorial jurisdiction are not applicable. War criminals have been tried and convicted by military commissions and international tribunals for war crimes committed within their own country, as well as for crimes committed in occupied neutral or enemy territories. The commission knows this from the nature of the charges at the trials in Nuremberg and at the trial by the International Commission for the Far East in Tokyo. There are many, many additional cases. The very nature and essence of war crimes is such that the majority of war crimes occurred at the time and in places where the forces committing the war crime are in control. It is clear, therefore, why jurisdiction of such war crimes, such international offenses, does not rest upon the territorial control over the places and at the time when the offenses occurred. Note the jurisdiction over offenses charged in violation of the law and customs of war is not even limited to offenses rising during the course of the war, for, as evidenced by SCAP Regulations Governing the Trials of Accused War Criminals, AG 000.5, 5 December 1945 2(b), "the offenses need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931."

The contention of the accused that they are not legally before the commission as they were not properly extradited cannot be maintained for the laws of the respective nations relative to the extradition of criminals generally are not applicable in the case of war criminals. This is covered in a report of State-War-Navy Coordinating Subcommittee for the Far East dated 12 September 1945 and subsequently issued instructions by the Joint Chiefs of Staff to SCAP. The relative instructions to SCAP were implemented in his Legal Section Memorandum dated 22 June 1946 which in effect provides that any command outside of the Far East Theater may obtain suspected war criminals by submitting a request therefor, including in the request: (a) the name and address of suspected war criminals; (b) the name of command making the request; (c) information which constitutes basis for request; and (d) place where suspected war criminal is to be tried. In the instant case the obligations imposed by the State-War-Navy Coordinating Subcommittee for the Far East has been met and it is the belief of the judge advocate that these accused are legally before this commission.

0039

The third and last contention of the accused is that neglect of duty is not a crime and to bolster this contention defense counsel have cited at length from the minority opinion in the Yamashita Case. Commander Carlson has been strangely loathe to advise the commission that the statement of Mr. Justice Rutledge and Mr. Justice Murphy do not reflect the prevailing law because the other seven members of the commission did not agree with them and did, in fact, hold that the charge against Yamashita was a proper one. Defense counsel has failed to point out that the charge against Yamashita was that "while commander of armed forces of Japan at war with the United States of America and allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies dependencies particularly in the Philippines; and he ... thereby violated the laws of war." He failed to point out the fact that the majority opinion of the Supreme Court of the United States clearly recognized the validity of the charge, as well as the jurisdiction of the military commission to try the accused for the offenses charged. The court stated "it is plain that the charge on which petitioner was tried charged him with a breach of his duty to control the operations of members of his command, by permitting them to commit the specified atrocities. This was enough to require the commission to hear evidence tending to establish the culpable failure of petitioner to perform the duty imposed on him by the law of war and to pass upon its sufficiency to establish guilt." Footnote 4 thereof reads ".... the charge sufficiently states a violation against the law of war, and that the commission, upon the facts found, could properly find petitioner guilty of such a violation." Thus the commission can understand that it is a clear decision of the Supreme Court of the United States that neglect of duty, depending upon the facts, can be a crime in violation of the law and customs of war. It is the request of the judge advocate that defense's objections be overruled and that the commission maintain that it does have jurisdiction.

Respectfully,

Joseph A. Regan
Joseph A. Regan

PLEA IN BAR OF TRIAL
of
INOUE, SADAE AND TADA, TOKUCHI

Delivered by
Commander Martin E. Carlson, USNR,
Defense Counsel

May it please the commission.

The accused, INOUE, Sadae and TADA, Tokuchi makes this plea in bar of trial on the grounds of the statute of limitations.

The offense neglect of duty and failure to discharge his duty is alleged to have been committed during the period from 4 September 1944 to 24 May 1945. The charges and specifications are dated 17 March 1949, four years after the offenses were committed.

Appendix B, Naval Courts and Boards, has this to say regarding the laws governing the administration of justice in the Navy:

"The laws governing the administration of justice in the Navy are codified in section 1200, title 34 of the United States Code under the title of 'Articles for the Government of the Navy'.

"On June 30, 1926, Congress enacted the Code of Laws of the United States of America, referred to as the U. S. Code and cited as 'U.S.C.'. The present code is the 1934 edition of the United States Code and is the official restatement in convenient form of the general and permanent laws of the United States in force January 3, 1935. It is composed of 50 titles. Title 34 contains the laws relating to the Navy and section 1200 of that title contains the Articles for the Government of the Navy. In enacting the U. S. Code, Congress did not enact any new laws, nor was any law repealed. To provide for any errors that might be made, the enacting clause contains the following:

"The matter set forth in the code ... shall establish prima facie the laws of the United States, general and permanent in their nature, in force...; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the code. In case of any inconsistency arising through omission or otherwise between the provision of any section of this code and the corresponding portion of the legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments."

"...The code is presumed to be the law.

"...Articles established.--The Navy of the United States shall be governed by the following articles (R.S., sec. 1624):

"Article 61. Limitation of trials: offenses in general.-- No person shall be tried by court martial or otherwise punished for any offense, except as provided in the following article which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself or of some other manifest impediment he shall not have been amenable to justice within that period (R.S. sec. 1624, Art. 61; Feb. 25, 1895, c. 128, 28 Stat. 680.)"

This we maintain is the statute of limitations which is applicable in this present case.

Section 582 of the Criminal Code of the United States sets a three year limitation on criminal offenses not capital.

Title 18 Criminal Code and Criminal Procedure, United States Code 1946
Section 582.

"No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed." (R.S. paragraph 1044; April 13, 1876, c 56, 19 Stat. 32; Nov 17, 1921, c 124 paragraph 1, 42 Stat. 220; Dec. 27, 1927, ch. 6, 45 Stat. 51.)"

Even under this section the offenses which Lieutenant General Inoue and Tada is being tried for are barred by this Federal Statute of Limitations.

— The case of U.S. v. White (CC Dist. Col. 1836) Fed. Cas. Nos. 16675, 16676, holds: "The statute of limitations runs in favor of an offender, although it was not known that he was the person who committed the offense. (See page 138 U.S.C. Annotated, Title 18 Criminal Code and Criminal Procedure.)"

The criminal charge in this case was not made until the formal written accusation was made on March 17, 1949 of charges and specifications dated March 17, 1949.

"In the eyes of the law a person is charged with crime only when he is called upon in a legal proceeding to answer to such a charge. Mere investigation by prosecution officers or even inquiry and consideration by examination magistrates of the propriety of instituting a prosecution do not of themselves create a criminal charge." (Citing U.S. v. Patterson, 150 U.S. 65, 37 L.Ed. 999, 14 S.Ct. 20. 14 American Jurisprudence, Criminal Law, Sec. 7, page 758.)

"This statute of limitation is regarded with favor by the courts and it is the consensus of the authorities that the defense of the statute of limitations stands on the same plane as any other legal defense." (citing Wheeler v. Castor, 11 N.D. 347, 92 N.W. 381, 61 L.R.A. 620.) "and is one to which, in proper circumstances, all men are entitled as a right." (citing Anaconda Min. Co. v. Saile, 16 Mont. 8, 39 P. 909, 50 Am.St.Rep. 472; Carter v. Collins, 174 Okla. 4, 50 P.(2nd) 203.

In 34 Am.Jur. "Limitation of Actions" Sec. 12, p. 23, it is stated:

"The defense is not technical (citing U.S. v. Oregon Lumber Co., 260 U.S. 290, 67 L.Ed. 261, 43 S.Ct. 100) but is deemed to be legitimate (citing O'Walley v. Sims, 51 Ariz. 155, 75 P (2nd) 50, 115 ALR 634) substantial, and meritorious." (Citing Guaranty Trust Co. v. U.S., 304 U.S. 126, 82 L.Ed. 1224, 58 S.Ct. 785; Dupree v. Mansur, 214 U.S. 161, 53 L.Ed. 950, 29 S.Ct. 548; McCluny v. Silliman, 3 Pet (US) 270, 7 LEd 676; Lilly-Brackett Co. v. Sonnemann, 157 Cal. 192, 106 P. 715, 21 Ann.Cas. 1279; Wheratt v. Worth, 108 Wisc. 291, 84 N.W. 441, 81 Am.St.Rep. 899, and many more cases. Ekel v. Snevily, 320, 3 Watts and S. (Pa.) 272, 38 Am.Dec. 758.

In 15 American Jurisprudence, Criminal Law, Section 342, page 32, it is stated:

"Statutes of limitation in criminal cases differ from those in civil cases. In civil cases they are statutes of repose, while in criminal cases they create a bar to the prosecution." (citing State v. Steensland, 33 Idaho 529, 195 P. 1080, 13 ALR 1442; People ex rel. Reibman v. Warden, 242 App. Div. 282, 275 NYS 59, citing R.C.L.)

A judgment for the defendant on a plea of the statute is necessarily an acquittal of the charge and not a mere abatement of the action. Therefore, it has been universally classed as a plea in bar and not in abatement. (citing U.S. v. Oppenheimer 242 U.S. 85, 61 L.Ed. 161, 37 S.Ct. 68, 3 ALR 516; U.S. v. Farber, 219 U.S. 72, 55 L.Ed. 99, 31 St.Ct. 209. 15 Am.Jur. Criminal Law, pp. 342, p. 32.)

Since we have raised the issue of the statute of limitation in this case it is incumbent upon the judge advocate to affirmatively prove the commission of the offense charged within the statutory period.

We cite from 15 Am. Jur. "Criminal Law" section 343, page 32:

"Where the issue of the statute of limitation is raised, the state must affirmatively prove the commission of the offense within the statutory period. In many jurisdictions, if the state relies upon an exception to remove the bar of the statute, it is incumbent upon the state to prove the exception."

The case of *Hogoboom v. State*, 120 Neb. 525, 234 N.W. 422, 79 ALR 1171, holds that Statutes of Limitation as applied to criminal procedure, are to be liberally construed in favor of the defendant.

Wharton says this same thing in speaking about statutes of limitation in criminal cases as being different than in civil cases. Yet we know that even at common law pleas of limitation were allowed long before there was any statute on the subject. (See 34 Am. Jur. "Limitation of Actions", Section 2, page 14.)

But let us hear what Wharton says: In Wharton's "Criminal Procedure, Volume I, section 367, is headed: "Statute of Limitations construction to be liberal to defendant."

On page 45 we read this regarding such statutes in criminal cases:

"But it is otherwise when a statute of limitation is granted by the state. Here the State is the grantor, surrendering by act of grace its right to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned it positive periods in which it destroys proofs of guilt."

In other words, the defense of the statute of limitations is one not merely of technical process, to be grudgingly applied, but of right and wise reason, and, therefore, to be generously dispensed.

Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained.

In U. S. Code Annotated Title 18 Sec. 582, page 138 in note 6, the case of *U. S. v. Watkins* (cc Dist. Col. 1829) Fed. Cas. No. 16649 is cited and the rule set forth:

"The time of finding the indictment will appear by the caption, and, where it appears therefrom that the offense was committed beyond the time limited, judgment will be rendered for defendant."

"It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charges with the specifications." (36 Am. Jur. Military, section 98. Citing United States v. Smith, 197 U.S. 386, 49 L.Ed. 801, 25 S.Ct. 489; Bishop v. United States, 197 U.S. 334, 49 L.Ed. 780, 25 S.Ct. 440; Johnson v. Sayre, 158 U.S. 109, 39 L.Ed. 914, 15 S.Ct. 773; Dynes v. Hoover, 20 How (U.S.) 65, 15 L.Ed. 838.)

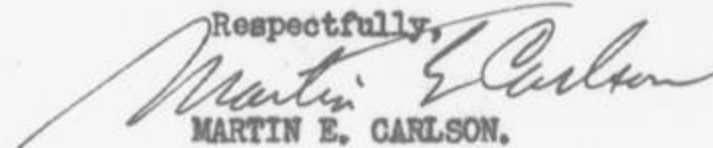
Lieutenant General INOUE, Sadac was arrested on May 7, 1947 and TADA, Tokuchi was arrested on June 26, 1948 and not until March 17, 1949 were they charged.

The statute of limitations has run in this instance because the prosecution deliberately refrained from bringing the accused to trial. We ask that the law be applied.

The accused, INOUE, Sadac and TADA, Tokuchi, plead the statute of limitations as a bar to trial for the alleged offenses committed during the period from September 4, 1944 to May 24, 1945 and charged under date of March 17, 1949.

The accused, INOUE, Sadac and TADA, Tokuchi pray of judgment of the charge and specifications and pray that the charge and specifications be quashed.

Respectfully,


MARTIN E. CARLSON.

REPLY TO THE PLEA IN BAR

Delivered by

Joseph A. Regan,
Lieutenant Commander, U. S. Navy,
Judge Advocate.

In War Crimes Trials there is no statute of limitations. The Regulations Governing the Trial of Accused War Criminals, dated 5 December 1945 provide "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since, or immediately prior to the Mukden Incident of 18 December 1931."

An indictment for any offense punishable by death may be found at any time without regard to any statute of limitations (18 U.S.C.A. Sec. 581a). By the precept dated 19 January, paragraph 5, the commission was empowered to impose upon the accused the death penalty.

Counsel for the accused have quoted Article 61 of the Articles for the Government of the Navy which provides "No person shall be tried by court martial or otherwise punished for any offense except as provided in the following article which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself or for some other manifest impediment he shall not have been amenable to justice within that period." As we have pointed out previously, there is no statute of limitations in war crimes cases, but there is further reason why this plea should be denied. True, these offenses occurred in 1944 and 1945, and it is now 1949. But there has been no neglect on the part of the prosecution which the defense has reason to complain of. While the crimes were committed in 1944 and 1945, it was not until late in 1945 that the Palau Islands were surrendered by the Japanese, and it was not for some time after the surrender that the limited number of investigators available to the office of the Director of War Crimes, Pacific Fleet could turn their attention to the crimes committed in the Palau Islands. As some members of this commission know, this court has been sitting almost continuously since 1946 with one trial closely following another. In the discretion of the office of the Director of War Crimes, certain investigations and trials were given precedence over others. There is no other forum here for the trial of war criminals, and these men could not have been brought to trial prior to this date because of the other cases which were being tried. We ask that the plea in bar of trial be denied.

Respectfully,

Joseph A. Regan
JOSEPH A. REGAN.

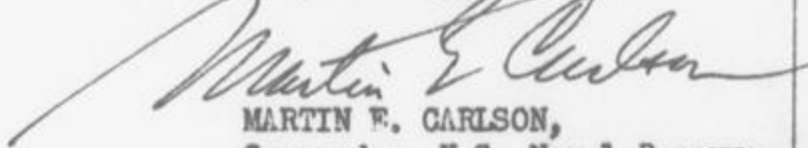
PLEA IN ABATEMENT

The accused INOUE, Sadae and TADA, Tokuchi interpose this plea in abatement on the ground that there has not been any notice of the opening of this judicial proceeding against these accused, Japanese nationals as required by Article 60 Geneva Prisoners of War Convention.

Article 60, Geneva (Prisoners of war) Convention of July 27, 1929, provides: "At the opening of a judicial proceeding directed against a prisoner of war, the detaining Power shall advise the representative of the protecting power thereof as soon as possible, and always before the date set for the opening of the trial."

The accused prays that Article 60, Geneva Prisoners of War Convention of July 27, 1929 be complied with before this trial proceeds and before issue is joined.

Respectfully,


MARTIN E. CARLSON,
Commander, U.S. Naval Reserve,
Counsel for Accused.

REPLY TO PLEA IN ABATEMENT

Delivered by
Lieutenant Commander Joseph A. Regan, USN,
Judge Advocate.

The very verbiage of Article 60 informs the commission that it does not apply to these accused. Article 60 talks of judicial proceedings directed against "a prisoner of war" and requires that notification be given the protecting power before the opening of a trial against a prisoner of war. These men are not prisoners of war. All the offenses presently charged against them were committed in 1944 and early 1945, prior to the surrender of Japan. These men never reached the status of prisoners of war for they were sent back from the Palaus immediately upon the surrender and were demobilized from the Japanese Army. When they were arrested, they were arrested after the war as war criminal suspects and they are charged now with war crimes.

This precise point, the failure to comply with Article 60 and notify the Swiss Government prior to trial was raised in the appeal of General Yamashita to the Supreme Court of the United States. The court answered the objection by stating that it was not necessary to give any notification as the convention requiring it applied only to prisoners of war and the offenses committed by them while prisoners of war in the custody of their captors.

The reason behind the convention is that one warring nation before punishing a prisoner of war for offenses committed in captivity would fear reprisal against its own troops in enemy hands unless it were made plain that the punishment was proper. And the only way to assure this would be to notify the protecting power so that it could affirm the propriety of the proceedings. Thus the court can see that the reason is not valid with respect to war criminals. The Japanese Government is in existence and the war is over. Switzerland is no longer a protecting power for the Japanese are well able to handle their own affairs.

The Japanese Government is aware of the trial of its nationals before this court for it has sent interpreters to aid this court. And the Japanese Government is also keeping itself informed of the propriety of the proceedings through the Japanese defense attorneys which it has sent to defend the accused.

Thus since judicial precedent holds that Article 60 does not apply and since there is valid reason why it shouldn't, the judge advocate requests that the plea in abatement be denied.

Respectfully,

Joseph A. Regan
JOSEPH A. REGAN.

R

0047

MOTION FOR A BILL OF PARTICULARS

Delivered by
MARTIN E. CARLSON,
Commander, USNR,
Defense Counsel.

The accused, INOUE, Sadae and TADA, Tokuchi make this motion for a more definite statement of the charge and for a bill of particulars in order to enable the accused to properly prepare for trial. (Rule 12 (E) Federal Rules of Civil Procedure for the District Courts of the United States).

The accused prays that all specifications be amended to show what law and what customs of war the accused is alleged to have violated and thereby committed a war crime.

The accused does respectfully ask for particulars as to the recognized law which made the alleged acts to be war crimes and punishable by a military commission.

In specifications 1, 2, and 3 the accused asks that the names of the victims be set out in the specifications and the victims be otherwise described.

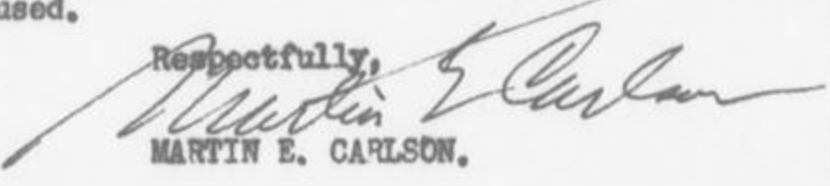
In specifications 1 and 8 it is requested that the specific acts of Inoue, Sadae and Tada, Tokuchi be set out clearly and without any ambiguity and that the wounds inflicted by these two accused in specification 1 and by Inoue, Sadae in specification 8 be set out with particularity. In specification 8 it is requested that the accused Inoue be informed if he is charged with having committed the alleged acts at Koror Island.

In specifications 2, 3, 4, 5, 6, 7, 9, and 10 it is requested that the duty be described with particularity both as a Division Commander and as the Army Group Commander, Palau Area which Lieutenant General Inoue, Sadae unlawfully disregarded and what measures were within his power and appropriate in the circumstances and what law or customs imposed such duties upon Lieutenant General Inoue, Sadae.

I have read the specifications and it is my belief that there is good ground to support this motion.

This motion is not interposed for delay but to make the charge and specifications more definite and certain and to effectuate justice and to insure a fair trial to the accused.

Respectfully,


MARTIN E. CARLSON.

OPENING STATEMENT

Delivered by

Lieutenant Commander Joseph A. Regan, USN
Judge Advocate

If it please the commission:

The charge in this case, violation of the law and customs of war is supported by ten specifications, one of which involves Lieutenant General INOUE and Colonel TADA together, and the other nine of which involve Lieutenant General INOUE alone.

For the purpose of convenience these ten specifications can be broken down into four incidents. Incident 1 - the three aviators case which is the basis of Specifications 1, 2 and 3. Incident 2 - the missionary case which forms Specifications 4 and 5. Incident 3 - the Charlie SMITH alias JAMES case, Specifications 6 and 7. Incident 4 - the KAUFMAN case which forms Specifications 8, 9 and 10. The three aviators case and the case of KAUFMAN are more important than the missionary case and the Charlie SMITH alias JAMES incidents. The first two mentioned are more important because there, there is a direct connection between INOUE and TADA and the execution, whereas in the latter two incidents we are just one step removed in the method of proof from the general, although in reality there can be little doubt that the general was responsible for all the incidents.

Sometime in September of 1944, three American aviators were taken prisoners in the Palau Islands. The unit which captured them forwarded them to the headquarters of the Fourteenth Division, which division was under Lieutenant General INOUE, for INOUE had long been in charge of the Fourteenth Division, and in fact had brought the division in tact from Manchuria to the Palau Islands. Upon the arrival of these prisoners at headquarters, they were interrogated by Lieutenant Colonel Yajima, who was the staff intelligence officer of the Fourteenth Division. Yajima, through an interpreter questioned the prisoners and ascertained that they were Americans and that they were aviators. Yajima reported the results of his interrogation to Colonel TADA who was the chief of staff of the Fourteen Division. TADA pointed out certain things not completely covered by Yajima and told him to again question the prisoners. It is not known just how long these aviators were in the custody of the Fourteenth Division, but one day while they were in the custody of the Fourteenth Division, Colonel TADA visited General INOUE who, at that time was suffering from some sort of sickness, but was still well enough to remain in active command, not only of his division, but also of all other army activities on the Palau Islands. TADA spoke to the general of the recently increased American air raids, which according to the Japanese were a prelude to an early invasion. TADA reminded the general of the presence of these three prisoners and asked the general for orders concerning their disposal. General INOUE told Colonel TADA to dispose of the prisoners - to execute them in order that the Japanese would not be embarrassed by their presence, if in truth, the bombings were a prelude to an invasion. Why the general issued these orders is a matter which we will leave to the general himself to explain, if he desires, but in any event, the orders were issued. Colonel TADA then visited an air raid shelter in which he found Lieutenant Colonel Yajima and the three American prisoners. Yajima was again interrogating these prisoners pursuant to the colonel's order. Present also in that air raid shelter was Lieutenant Colonel Aritsune Miyazaki, who was the commanding officer of the Japanese Kempeitai - Japanese Kempeitai being the military police. TADA asked Yajima what he was doing and upon being informed that he was interrogating the prisoners pursuant to the colonel's order, TADA instructed him to cease his

efforts as it had already been decided to execute the prisoners. TADA at that time turned to Miyazaki and requested Miyazaki to handle the execution at the kempeitai. Miyazaki indicated his acquiescence and TADA then instructed Yajima to arrange for the transportation of the prisoners from the division headquarters to the kempeitai. Miyazaki returned to his headquarters to there await the arrival of the prisoners. He held a conference with Lieutenant Sano who was an officer of the kempeitai and he told Sano that the kempeitai would shortly receive three American aviators whose executions he would bring about pursuant to the request of Colonel TADA. While Miyazaki and Sano were conferring, the prisoners arrived, bound, blindfolded, and borne in a truck, guarded by certain members of the Fourteenth Division. Miyazaki, Sano and Captain Nakamura, also an officer of the kempeitai went to the scene of the execution in Miyazaki's car, the scene being some distance away from Miyazaki's headquarters. There the execution was carried out by Miyazaki, Captain Nakamura and Sergeant Major Kokubo of the kempeitai. Miyazaki shot one of the Americans with his pistol, Nakamura beheaded one with his sword, and the third was killed by a shot from Miyazaki's pistol after Kokubo had unsuccessfully attempted to cut off his head. For this execution, both General INOUE and Colonel TADA are being held responsible. True enough it was the general himself who issued the orders, but these orders were issued to TADA who very successfully carried them out and as a result of his aid, the execution was planned and accomplished.

It might be well at this point to indicate that Lieutenant General INOUE while on duty in the Palau Islands acted in a dual capacity. He was not only the Commanding General of the Fourteenth Division, but he was also the possessor of the title "shudan shireikan", which we have translated as "Army Group Commander Palau Islands". The general succeeded to this title shortly after his arrival in the Palau Islands in April of 1944. Besides the Fourteenth Division there were present other units of the Japanese Army, including the kempeitai under Colonel Miyazaki, and it is a contention of the prosecution that INOUE, as shudan shireikan was in charge of these additional units and thus in charge of the kempeitai. The second incident involving the missionaries came about in the following manner: There were present on the various islands in the Palaus certain Catholic missionaries, four Catholic priests and two Catholic brothers. Five of them were Spaniards, one of them was a Colombian national. There was also present in the Palau Islands, an individual by the name of Agapito C. Hondonero, a native of the United States who was in charge of the American Weather Station on Yap. At the outbreak of the war, although we do not know the exact date, the missionaries and Hondonero were taken into custody by the Japanese South Seas Government. Some time in '44 when the Japanese South Seas Government ceased to function, they requested General INOUE to take charge of these interned civilians. INOUE delegated the kempeitai to have custody of them and the kempeitai kept them all together in a house on Babelthup Island, the house being located only a short distance from the kempeitai headquarters. Sometime around September 18, 1944 Miyazaki conferred with General INOUE at division headquarters and upon his return to his own headquarters at the kempeitai held a conference with his officers. Present at that conference were Lieutenant Sano, Captain Nakamura, and Lieutenant Ichikawa, the adjutant of the kempeitai. Miyazaki at this conference advised his officers that the missionaries and Hondonero were to be executed upon the orders of division headquarters. He issued instructions concerning the preparations to be made and that evening the individuals just mentioned plus all available men at the kempeitai went to the home of the missionaries and took them and the Hondonero's to a spot in the jungle, and there executed them beside an open grave. After the execution a complete report of it was made to the general. For this execution INOUE is being held responsible for failing to control the individuals who participated in the execution, and also for failing to protect the individuals who were the victims in the execution.

0050

Later in December of 1944 the kempeitai was advised by staff officer Yajima that the general desired to have taken into custody an individual by the name of Charlie Smith, alias James. Charlie Smith was a British national married to a native woman from the Palaus. Miyazaki ordered Lieutenant Sano to arrest Charlie Smith and also two German missionaries, a man and his wife who were still at freedom and living in the Palaus. Sano, taking Sergeant Yamada of the kempeitai, and several other members, effected the arrest of Charlie Smith and also the Germans and brought them to a kempeitai post then in charge of Warrant Officer Ajioke. Sano returned to kempeitai headquarters after turning over these prisoners of Ajioke and also after having left the Sergeant Yamada with Ajioke. Some days later Miyazaki sent for Captain Nakamura and told Nakamura that Charlie Smith was to be executed upon the orders of division headquarters. That same day Nakamura went to the Ajioke post and told Ajioke of the orders. Nakamura and Ajioke accompanied by Yamada and several other members of the kempeitai took Charlie Smith, alias James into the forest and there Yamada executed him with a pistol. For this execution INOUE is being held for failure to control the individuals who perpetrated it, and also for a failure to protect Charlie Smith.

The last incident involves the execution of Second Lieutenant Wallace F. Kaufman. Kaufman was a member of an American B-24 which was shot down over the Palau Islands on a bombing mission. After the plane had been hit by anti-aircraft fire only one man managed to parachute from that plane. That man was Kaufman who was taken prisoner by members of the Doi Unit, and who was sent as a prisoner to division headquarters. We know that that individual was Kaufman because he was interrogated by intelligence officer Yajima. At this time, namely May of 1945 bombing raids were not uncommon in the Palau Islands, and one of the anti-aircraft units, the Koichi Unit had been recently severely damaged by a bomb hit. General INOUE decided that if this prisoner was executed at the Koichi Unit that had so recently been damaged, that the morale of the members of this unit would be raised. He therefore gave Yajima orders to arrange the execution of Kaufman at the Koichi Unit. Yajima attempted to carry out these orders by telephoning Colonel Doi as the Koichi Unit was a subordinate command of Colonel Doi. Colonel Doi refused to have anything to do with the execution and so informed Yajima. When Yajima told the general of Doi's refusal, the general told him to cease his efforts as Captain Koichi had been personally ordered by the general to arrange the execution at his unit. It seems Captain Koichi had come to headquarters to report the battle damage done to his guns and when the general was advised of his presence, summoned Captain Koichi and specifically gave him orders to execute this prisoner at his unit. The general told Yajima to arrange the transportation of the prisoner Kaufman, who was then being held at the kempeitai, only a short distance from division headquarters, to the Koichi Unit, which was then located on a different island. Yajima delegated this task to Lieutenant Onose who also was an intelligence officer on the division staff. Before Onose went to carry out his orders he reported to the general personally and the general told Onose to take Kaufman from the kempeitai to the Koichi Unit and to confirm the execution, not only confirm it, but in the event that any officer of the Koichi Unit failed to perform the execution, Onose himself was to behead Kaufman. Onose went to the kempeitai and there Kaufman was turned over to him by Miyazaki in the presence of Sano. Onose accompanied by a photographer and some enlisted men took Kaufman to a boat where they were joined by Captain Koichi, who was on his way back to his own unit. The party arrived at the Koichi Unit late at night and the following morning in the presence of the assembled unit, Lieutenant Katsuyama, a subordinate of Koichi, beheaded the prisoner pursuant to the orders. At the completion of the execution a report of it was made to the general. For this execution INOUE is being held not only for failing to control the perpetrators and not only for failing to protect the individual victim, but also for being the person ultimately responsible for the execution.

To prove this case the judge advocate will introduce eye witnesses to each execution, but in the missionary case and the Charlie Smith incident, there will also be introduced documentary evidence of previous trials. Unfortunately, there is missing in this case a most important witness - a man whose name has been mentioned several times in this statement by the judge advocate - Lieutenant Colonel Artisune Miyazaki, who committed suicide on the eve of his apprehension by the Japanese as a suspected war criminal.

Let me make plain to the commission that if the ordinary rules of evidence involving hearsay are strictly adhered to, the judge advocate will not be able to show the direct line between INOUE and the executions in the case of Charlie Smith, the missionaries and Hondonero. There is no missing line in the Kaufman case and in the three aviators incident. The judge advocate at this time is going to request the commission to utilize the rules of evidence promulgated by the Supreme Commander for the Allied Powers with respect to the rule concerning hearsay. Let the commission hear all the evidence, and then let them make their decision.

Respectfully,

Joseph A. Regan
Joseph A. Regan

OBJECTION TO THE RECEIPT IN EVIDENCE OF THE STATEMENT OF FORMER
Lieutenant General INOUE, Sadae and former Colonel TADA, Tokushi,

Delivered by

Commander Martin E. Carlson, USNR,
Counsel for the Accused.

We object to both of these documents being accepted into evidence on the ground that they are both illegal. The Supreme Court of the United States of America did not forego to mark with absolute precision the limits of admission and exclusion when they in a recent case laid down the rule that a confession obtained from a person after he had been held under arrest for more than thirty hours was illegally obtained. (Andrew Upshaw v. U.S. No. 98 Oct. term, 1948 Supreme Court United States.) The evidence in this case conclusively proves that both Colonel Tada and Lieutenant General Inoue had been held under close confinement for many months, yes, perhaps more than a year in the case of General Inoue before the confessions here offered into evidence were obtained. Isn't the time element most important then in all cases where confessions are obtained from persons held in close confinement, yes, solitary confinement. If the Supreme Court of the United States says a confession obtained from a person held in confinement more than thirty hours is illegal, doesn't it follow that the preferred confessions obtained from Colonel Tada and Lieutenant General Inoue after months of being held in close confinement are illegal. Section 722, Wharton's Criminal Evidence reads as follows: "The confessions or admissions made by a co-conspirator or codefendant after the termination of the conspiracy, and in the absence of the defendant, are not admissible against the defendant as substantive evidence to prove his guilt. His confession, therefore, subsequently made, even though by the plea of guilty, is not admissible in evidence as such, against any but himself, and even the most solemn admission made by him after the conspiracy is at an end is not evidence against accomplices. Accordingly, an admission or confession by one paramour is not admissible against another charged with adultery. The admissibility of an accomplice's confession is not affected by the fact that it was made under promise of immunity, but such promise of immunity may be admitted as bearing on the credibility of the testimony of the accomplice. And the confession of a thief, out of court, that he stole property and sold it to the defendant is not admissible against the defendant on trial for receiving stolen property, although such evidence may be admitted to show that the confessor is a thief. The jury should be instructed that such confessions or admissions are admissible against the maker only. One who makes no confession must be found guilty, if at all, only upon proof independent of a confession by a codefendant. On the other hand, the confession of a codefendant not on trial to the effect that he had committed the charge is not admissible in evidence to prove the innocence of the defendant on trial for the offense. The reason for this rule of inadmissibility is that a confession or admission made after the termination of a conspiracy is not in furtherance of the conspiracy. And the joint responsibility and liability for the acts and declarations of a co-conspirator ceases with the conspiracy, and does not exist at all for acts and declarations outside its scope." Since both these documents contain evidence of an incriminating nature that can be used against the other co-defendant, these documents should not be admitted into evidence according to the rule in Wharton's Criminal Evidence. The cross-examination of the witnesses brought forth elements which prove that these documents should not be admitted into evidence. From this cross-examination, and the evidence obtained, we further object to these documents being received into evidence.

Respectfully,

Martin E. Carlson
Martin E. Carlson,
Commander, U.S.N.R.,
Counsel for Accused.

0053

OBJECTION TO RECEIPT IN EVIDENCE OF EXCERPTS FROM TRIALS OF
NAKAMURA ET AL, YAMAMOTO ET AL, AJIOKA ET AL, AND KOICHI ET AL

Delivered by

Commander Martin E. Carlson, USNR,
Counsel for the Accused.

We object to the documents that are here offered into evidence. First, the document serial 3100 and the other documents in that particular group. This serial 3100 contains opinions instead of facts. The second paragraph of this serial 3100 states that "Kaufman was captured at Koror Island in the spring of 1944 by members of a Japanese anti-aircraft unit stationed at that place. He was delivered by his captors to the Kempeitai (Military Police) unit of the 14th Japanese Army Division Headquarters on Babelthup Island."

The facts in this case are that the kempeitai was not a unit of the Fourteenth Japanese Army Division Headquarters. Further it states that "Subsequently and without legal justification the Commanding General of the 14th Division ordered his execution by the Koichi Anti-aircraft Unit on Koror for the purpose of improving the morale of Japanese personnel in that area." Now this is what is in issue in this trial and to allow such opinion as set forth in serial 3100 signed by C. A. Pownall, the Commander Marianas Area who also signed the precept in this case and the charge and specifications in this case as Commander Naval Forces Marianas is against the rules of evidence and prejudicial to the substantive rights of the accused. It is like having the judge advocate read the charge and specifications in this case and put a certified copy into evidence as proof of the charge and specifications (See CMO 133-1920).

The judge advocate may be able to justify such opinion as evidence in a war crimes case to the commission on the grounds that because he says it is evidence, it is evidence, or because of ex post facto SCAP rules, but we know of no courts that will accept such opinions as evidence. We ask that the judge advocate be required to produce a single case other than a Guam war crimes trial at which such opinion was admitted as evidence to prove the question in issue. As a matter of fact, this may be not even the opinion of Rear Admiral Pownall, but the opinion of some person in the office of the Director War Crimes office. Tsuchiya, Naohiko was found not guilty and the charge and specifications not proved against him. Let the commission take note of what the judge advocate would have you admit into evidence in this case: "The convening authority does not concur in the commission's findings of 'not guilty' and 'not proved' on Charge I and the specification thereunder as to accused Tsuchida (Sec. 472, N.C.&B.), because he believes, for the reasons hereinafter stated, that a prima facie case was established against Tsuchida, which was not overthrown by rebutting evidence adduced by him (Sec. 156, N.C.&B.). Certainly such opinion should not be admitted to prove the case against the two accused, Lieutenant General Inoue and Colonel Tada.

The next paragraph in this serial is only opinion, not fact and I quote "which took Kaufman from the Kempeitai, 14th Division Headquarters, on Babelthup to Koror for execution." Two paragraphs later and I again quote "The very nature of a war crime is such that participation either involves the accused as a principal or not at all. The extent of participation is not an element to be considered in the findings but rather in the quantum of sentence (Rev. in case of 1st Lt. M. Taneichi, et al, 21 Nov. 1946)." This is just opinion quoting from some Chinese case and highly irrelevant as evidence - rather it should be put into an argument by the judge advocate in summing up the case and certainly has no place in this court. If it is not a Chinese war crimes case, the judge advocate should so inform us. We are trying these two accused for murder and the judge advocate asks to have admitted into evidence such

X (1)

0054

opinions as "everyone is a party to an offense who... and one who has committed the offense, knowing that he has committed it, for the purpose of preventing his apprehension or conviction." Where in Anglo-Saxon or American law do we find such a definition of murder? Such matter should be in the judge advocate's argument. Two paragraphs later and I quote "It is, in my opinion, clearly intended by the Potsdam Declaration..." then follows a long opinion referring to miscreants and their agents. If such opinion is to be admitted as evidence in a court of law of the United States of America?

The next to the last paragraph of the serial 3100 dated 20 March 1948 which the judge advocate asks you to admit into evidence reads "Koichi, Hiroe, Katsuyama, Tetsuji, and Onose, Ichiro will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan." This isn't a statement of fact and even if it were a fact, it would be immaterial and irrelevant. It is most interesting to read the comments of the Commander in Chief Pacific and United States Pacific Fleet serial 1048 dated 18 April 1948. I quote only in part therefrom "Cincpacflt does not concur with the convening authority in his comments on the acquittal of Tsuchiya....." "Inasmuch as Tsuchiya himself by word or deed committed no act which made him a participant in the actual murder, it is not considered that presentation of the personal effects to the deceased at the scene of the execution makes Tsuchiya an accessory, any more than the cameraman who took a picture of the presentation." We object particularly to the Commander Marianas Area serial 3100 dated March 20, 1948 as evidence and most strongly in view of what Cincpacflt says in his serial 1048.

We further object because the documents are but fragmentary parts of the trial and proceedings of Koichi, Hiroe, Katsuyama, Tetsuji, Onose, Ichiro and Tsuchiya, Naohiko. There isn't even offered the action of the Judge Advocate General of the Navy Department. Is that because the whole proceedings were set aside or what is the reason the action of the Judge Advocate General Navy Department is not included in the offer into evidence?

It is not the best evidence (Sec. 194 N.C.&B.).

It is not duly authenticated or under official seal. The mere fact that it is an official report does not of itself make it admissible in evidence (Sec. 196 N.C.&B.).

The documents are not properly introduced into evidence (Sec. 198 N.C.&B.).

The documents are not authenticated (Sec. 199 N.C.&B.).

The document must be offered in full in evidence (Sec. 200 N.C.&B.).

The documents offered and the manner in which offered violates the hearsay rule (Sec. 201 N.C.&B.).

We object to the annexed excerpts taken from the records of Commander Naval Forces Marianas because these excerpts do not show that the final approving authority, the Judge Advocate General Navy Department ever approved the proceedings, findings of guilty and sentences.

In conclusion I quote from CMO 133-1920 "Held the letter of Chief of Bureau of Navigation was clearly inadmissible into evidence. It contained the information upon which the charges and specifications upon which the accused was tried were based. It would have been equally proper for the judge advocate of the court to have introduced into evidence a certified copy of the charges and specifications themselves in order to prove them later."

So with documents excerpted from Ajioa, et al case and Yamamoto et al for the reasons set forth above we object to them being offered into and accepted into evidence. We would much prefer that such voluminous documents as even these excerpts were offered simply so that our objections could be more pointed and particularized as to each document. Under the circumstances however our objections are to all documents hereby offered into evidence.

Respectfully,

Martin E. Carlson
Martin E. Carlson,
Commander, USNR,
Counsel for Accused.

Opening Statement
by Sanagi

辯護側冒頭陳述

辯護人 佐 雅 毅

被告井比貞衛が本裁判、起訴罪状項目に於て訴追されて居る所を類別すると被告第十四師團長及パラオ地区集團司令官トシ花田中二少将、(1)ニ塔東兵事件(Spec 1)及びカマレサ村事件(Spec 8)ニ関して殺人罪ヲ犯シ、(2)此ノ外、第14(Spec 2及9)及宣教師事件(Spec 4)及美人スミス事件(Spec 6)ニ関して部下ノ行動ヲ監督抑制スルニ後、義務ヲ怠リ、(3)後、各スルニ事項デモ、俘虜及市民住民保護ノ義務ヲ怠リ、(Spec. 3, 5, 7, 10)トシ主眼ヲ置ケル。

被告多田督知、被告第十四師團參謀長トシ花田中二少将ニ塔東兵事件、関して殺人罪ヲ犯シトシ訴追されて居る(Spec 1)。

斯かる状況デモ、辯護側が証拠ヲ提出スルニ當リ、特ニ叙じ、(1)ニ兵、重兵ヲ遣、斯かる至る事、即ち、殺人罪、部下監督懈怠、及俘虜者ヲ保護スルニ戦責懈怠ノ存在シ、(2)ハ、明瞭ニシタト思フ。以下、辯護側が提出セル証拠ニ関して若干、豫備的説明ヲ行ハウト思フ。

一、又、塔東兵俘虜及カマレサ村殺人事件ニ関シ。

ニ塔東兵事件ハ昭和十九年九月半、パラオ島陸作戦ノ直前ニ起ルシ、(1)ニ塔東兵事件、数日前ニ被告井比、米軍、パラオ島陸作戦、開始ガ切迫シト判断シテ、當時師團司令部ニ收容されて居る三人ノ俘虜、措置ニ就テ慎重ニ考慮シ、然レ、被告が當ニ直屬トシ、第十四師團司令部中畑中將ガ直接指示セラル所ノ従フ以外ニ方法ガ無ク、結論ニ達シテ參謀長多田ニ俘虜ヲ處断スルニ意圖ヲ表示シ。

參謀長多田ニ之ニ同意セシ司令部ト異ニ意見ヲ持ツ所、司令部ノ意圖ヲ実行スルヲ欲シカコトデ、之ヲ傳達スルヲ実行シテ居る。其ノ後、二回ニ亘ル井比中將ト、会谈ニ於テ多田ノ俘虜處刑ニ就テ反對ノ意見ヲ述べ、之ヲ如何ニシテ井比中將ノ意圖ヲ實現スルヲ欲シ、傳ヘザルヲ得ナク、ソノ多田ノ意圖ヲ如何ニシテ井比中將ノ意圖ヲ傳ヘ、院所長、著意ヲ要望シ。

1. 証人、被告井上が並列し、中田が得た後、指示、井上が多田を指示し、
後、意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上
1. 意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上

昭和二十五年五月一日起、カマエノ村、被告井上、カマエ
取板、意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上
1. 意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上

被告井上、2. 意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上
1. 意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上

二. 部下、行部監督抑判責任：就テ (Spec. 2. 4. 6. 9)

被告井上が並列し、中田が得た後、指示、井上が多田を指示し、
後、意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上

抑：日本、憲兵、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上
1. 意図、其、同、中田井上多田、意見、報酬、及び多田が中田を呼ぶ、井上

憲兵隊が昭和二十年三月電告、他、一ツ、種族デール軍令憲兵(軍令ニ
備成ルタ憲兵)ニ改編セリ十四師團ニ直屬シテ役、姑メテ十四師團長
ノ指揮ヲ受ケルニ至リデアル

一、報告井ヒハ、パラオ集團司令官ト云フ職ヲ兼ネテ居タカ、彼ガコ
ノ資格ニ於テ南洋憲兵隊ヲ含メ、パラオ所在、全陸軍部隊ヲ指揮シテ居
ポート云、親密ガ持タル然レテ、實際ニ、南洋憲兵隊ハ、依地トシテ、パラオ
集團ニハ、編入サレズ、特殊ノ独立機關トシテ存在シテ居デアル。唯、昭和十九
年中期、戦況逼迫ニ伴ヒ、敵ト陸、場合、陸ニ戦フニ當リ、南洋憲兵隊
ハ、パラオ地区集團司令官、迅速ヲ受ケルニ至リデアル。換言スルハ、陸
戦、場合以外ニ、パラオ集團司令官ハ、昭和二十年三月迄、南洋憲兵隊ヲ
指揮シ、又、憲兵隊、行動ヲ監督抑制スル義務ヲ持テ居タカ、デアル。

是等ノ事ニ就テハ、南洋日本陸軍法規、日本政府、Deposition 或ハ
公的文書、証人、証言ニ列立証スルデポ。

三、俘虜及市民住民、保護責任ニ就テ(Spec. 3. 5. 7 & 10).

俘虜保護ニ關シ報告井ヒ、犯意ガアリ、彼ガ刑事的義務怠慢ニ
リ或ハルベキデアルカニ就テハ、辯論、機会ニ與ルニ至リ。并、護例段階ニ
於テハ、市民住民、保護責任、所在ニ關聯シ、證據ヲ提出シ、ト思フ

宣教師、保護ヲ憲兵隊ガ把持スル以前ニ、南洋片ガ把持シテ居
タハ、既ニ、檢事例証人ニ依リテ證據ヲ提出シ、茲ニ、我々、指摘シ、イハ
憲兵隊ニ、此、職責、中ニ、外事警察ト云フ項目ガ、入リ、外國人ヲ監視取
締ルト云フ本業、任務ヲ持テ居タ。及ビ、南洋憲兵隊、行政警察ニ關シ
ハ、南洋片長官、指示ヲ受ケルニ至リ、又、パラオニ、宣教師等、南洋
片カ、南洋憲兵隊、保護收容ニ務メ、コノ任務系統カラ生ジ、自
然、結果、デアル。單ニ、野戦軍ニ過ギズ、行政ニ干渉スル權限、無
カ、ワタ、パラオ集團司令官ニ、何モ、關係、無カ、ワタ、事柄、アリ。換言スルハ
パラオ集團司令官ニ、民間市民ヲ保護スル責任ガ、入リ、デアル。彼、行政
ニ、陸軍、米軍カラ、パラオヲ守ルニ、至リ、デアル。

是等、其、就、其、崗、傷、日本陸軍法規、人、証言、之、之、立証、に、ト
思、。

實際問題、に、官、叙、師、達、が、憲、兵、隊、に、収、容、サ、レ、タ、結、算、に、就、テ、
被、告、井、ヒ、何、モ、知、ラ、ス、況、シ、テ、其、處、刑、サ、レ、タ、ト、モ、知、ラ、カ、リ、タ、デ、
英、人、ス、シ、ス、に、就、テ、其、家、族、に、逃、避、事、件、に、同、報、の、受、ケ、タ、ガ、憲、兵、隊、に、保、
護、収、容、サ、レ、タ、ト、モ、知、ラ、ス、況、シ、テ、彼、方、處、刑、サ、レ、タ、ト、モ、就、テ、何、モ、知、ラ、カ、
タ、デ、
又、イ、デ、
是、に、就、テ、被、告、井、ヒ、自、身、が、証、言、ス、ル、デ、
ラ、ウ、。

最後、被、告、井、ヒ、人、格、に、對、シ、一、般、的、評、判、ヲ、証、據、に、提、出、シ、
テ、其、他、の、証、據、に、對、シ、提、出、ス、ル、デ、
ラ、ウ、。

敬 白

OPENING STATEMENT FOR THE DEFENSE

Delivered by Mr. SANAGI, SADAMU,
Defense Counsel.

The Charge and Specifications with which the accused INOUE, Sadae is charged in the present trial may be grouped as follows. During his tour of duty as Commanding General of the 14th Division and Army Group Commander, Palau Area, he is alleged to have (i) committed murder of the three flyers (Specification 1) and of 2nd Lieutenant Kaufman (Specification 8), (ii) failed to discharge his duty to control and supervise his subordinates in respect to these two incidents (Specification 2 and 9) and the missionary incident (Specification 4) and the incident of the Englishman Smith (Specification 6), (iii) failed to protect, as it was his duty to do, prisoners of war and civilian residents. (Specifications 3, 5, 7 and 10).

The accused TADA, Tokuchi is charged with having committed murder of the three flyers during his tour of duty as Chief of Staff of the 14th Division. (Specification 1).

Such being the case, the defense will, in presenting the evidence, lay special stress on the three points mentioned above and will make clear whether such alleged facts as murder, neglect of duty in failure to control subordinates and to protect the victims of the alleged murder actually did occur as regards Lieutenant General INOUE and Colonel TADA.

I shall now go into some preparatory explanation of the evidence which the defense will introduce.

1. Concerning the murder of the three prisoners of war, names unknown, and of 2nd Lieutenant Kaufman.

The incident of the three flyers took place immediately prior to the landing operations of the United States forces in the Palaus in September of 1944. Several days before the incident, the accused INOUE judged that an invasion of the Palaus by United States forces was very close at hand, and gave serious thought on what to do with the three prisoners of war,

who were then confined at 14th Division Headquarters. He arrived at the conclusion that there was no alternative but to follow the instructions directly given him only recently by Lieutenant General OBATA, the Commanding General of the 31st Army his immediate superior in command. Lieutenant General INOUE conveyed his intention to Chief of Staff TADA, to have the prisoners of war executed.

Chief of Staff TADA did not concur and had opinions which were different from those of the General concerning this matter and did not desire to carry out the Commanding General's intention, said so at that time and consequently did not relay any such intention at this time. In two subsequent conversations with the General, Colonel TADA expressed his opposition to the idea of the execution of the prisoners of war but he was finally placed in a position where he had to relay Lieutenant General INOUE's intention to Kampeitai Commanding Officer MIYAZAKI. Colonel TADA thereupon relayed General INOUE's intention to Colonel MIYAZAKI and requested Kampeitai Commanding Officer MIYAZAKI's appropriate disposal of the matter.

The accused General INOUE and Colonel TADA will testify concerning the instructions that the accused General INOUE received Lieutenant General OBATA, the immediate superior of General INOUE, the intention that General INOUE made known to Colonel TADA, the exchange of opinions between General INOUE and Colonel TADA on this subject in the interim period, the circumstances under which Colonel TADA called MIYAZAKI and relayed to MIYAZAKI the intention of General INOUE to carry out the orders of Lieutenant General OBATA.

The Kaufman execution incident which occurred in May 1945 was completely contrary in its result from the accused INOUE's intended treatment of Kaufman.

The accused INOUE's intention was to send Kaufman to Koror Island which was a healthy island and with air raid shelter facilities. Kaufman was then staying in a swampy jungle area, where there were no adequate air raid shelters. General INOUE learned that there were persons among his subordinates who desired the execution of Kaufman and he had had to reprimand them saying that the execution was not to be performed. We

are unable to produce evidence sufficient to explain how results opposite to the accused INOUE's intention came to materialize. However, if the words used by the accused General INOUE to Captain KOICHI when the latter came to make a report on some other matter, are weighed carefully, a partial understanding may be reached. The accused General INOUE will testify to the words he used in his conversations with Captain KOICHI and Lieutenant ONOSE.

2. Concerning Responsibility to control and supervise subordinates.
(Specifications 2, 4, 6, 9.)

With the exception of the Kaufman incident, all the incidents with which the accused General INOUE is charged were carried out by the South Seas Kempeitai. There arises the question, did the accused General INOUE have the responsibility to control and supervise members of the South Seas Kempeitai? To clarify this point it is necessary to know the Kempeitai organization.

There were two types of Kempei in Japan which were completely different in character. One was commonly known as Chokurei Kempei. (Kempei established by Imperial Ordinance). This was an organ peculiar only to Japan. Its duties included, besides military police, administrative and judicial police duties. Its duties far transcended military matters and embraced supervision and control of every sphere of social activity. The South Seas Kempeitai was a Chokurei Kempeitai until March of 1945, and was directly subordinate to the Kempei Commandant in Tokyo. In its performance of duties it was subordinate to the command authority of the War, Navy and Greater East Asia Ministers. There was no command relationship between the South Seas Kempeitai and the Commanding General of the 14th Division, whose division was a combat division. In March 1945 the South Seas Kempeitai was reorganized into the other type of Kempei, namely the Gunrei Kempei. (Kempei established by Military Ordinance). It then became directly subordinate to the 14th Division and for the first time was placed under the command of the Commanding General of that Division.

There may be some doubt whether the accused Lieutenant General INOUE in his concurrent capacity as Army Group Commander, Palau Area did not possess command authority over all army units in the Palau area including the South Seas Kempeitai. However, in actual fact, the South Seas Kempeitai was never integrated with the Palau Army Group, and remained a special independent organ. This with one exception, that in the middle part of 1944, with the war situation becoming more difficult, it was decided in the event of land fighting following an invasion, to place the South Seas Kempeitai under the restricted command authority of the Army Group Commander, Palau Area. Thus, except in the event of land fighting, the Army Group Commander, Palau Area did not have any command authority over the South Seas Kempeitai, nor have the duty to supervise and control the actions of its members until March 1945. Not until then did he have or exercise command authority over the Kempeitai.

We will show these points through pertinent regulations of the Imperial Japanese Army, depositions or official documents of the Japanese Government and through the testimony of witnesses.

3. Concerning the responsibility to protect prisoners of war and civilian residents. (Specifications 3, 5, 7 and 10.)

I will leave the question of whether the accused General INOUE had criminal intent and should be tried for criminal neglect of duty for failure to protect prisoners of war until the argument, and in the case for the defense present evidence relative to his responsibility to protect civilian residents, and where such responsibility lay.

It has already been shown by the testimony of prosecution witnesses that, before the Kempeitai assumed the protection of the missionaries, this responsibility rested with the South Sea Government Office. What we here wish to point out is that among the duties of the Kempeitai was one known as external security police, which was to supervise and control foreigners. This was an original function of the Kempeitai. We also wish to have the fact noted that it was determined by regulations that in matters of administrative police, the South Seas Kempeitai received

instructions from the Governor of the South Seas Government Office. The moving of the missionaries from the South Sea Government Office to the protective custody of the South Seas Kempeitai was a logical result of this assignment of duties. The matter had no connection with the Army Group Commander, Palau Area who was the commander of a purely operational field unit or combat unit and who had no authority to interfere in administrative matters concerning the civilian populace. In other words, the Army Group Commander, Palau Area had no responsibility to protect civilian residents. His duty was to protect the Palaus from the invading Americans.

The above points will be shown through relevant regulations of the Imperial Japanese Army and through the testimony of witnesses.

In actual fact, the accused Lieutenant General INOUF knew nothing of the circumstances of the internment of the missionaries at the Kempeitai. Needless to say he did not know of their execution by the Kempeitai. Concerning the alleged Englishman, Smith, General INOUF had received information concerning the flight of his family, but did not know of his confinement at the Kempeitai. Needless to mention he knew nothing of Smith's execution.

To these matters the accused, General INOUF, will testify on the witness stand.

In conclusion the defense will then introduce evidence as to the character and general reputation of the accused, and rest its case.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

陳述書

余は記者として、余の立場を説く機会も、
不在の事、時に、異議を蒙る位に思ふが、感ずる
事多し。余の如く。

余は既に人に知られて、余を以て、余の個人としての陳述
は、極端に、同様のことを行ふこと。然るも余は、
余の素行、余の事件、余の立場、余の心算に
こゝに、余の陳述を行はんとするもの。

余は、余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に

余は、余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に

余は、余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に
余の素行、余の事件、余の立場、余の心算に

犯されぬ。余は彼等の上官として彼等に対し刑事責任
を有する責任はもとより余は知るに非らずといふ言ひ余
指揮官としての道義的責任を一身に負ふべきを敢
て承知するに非ざるべし。

而して彼等は余の直接指揮下にはおらず。然
れども彼等は陸軍隊の場合に余の指揮下に入り
最後の一歩を戦ふ立場にあり。従て彼等は既
に服したるを見逃しに於ける陸軍隊長
と見做すことには余の全責
を負ふ。

然れども余は裁判に於て余の記憶する限る事實
を事實として証言せしむ。何等余の希望を著
しはるべき事實を事実として証言せしむる
余は敢て思ふべきに非ず。

「恥者重き」とは日本、武士道に重視せられた美德
なり。既に日本に在り、余は責任を上司又は
部下に轉嫁せず、恥知するの行爲を行へ、武
道的美徳を汚さんと思ふなり。

又日本に在るは如き、鏡又水、如く清澄なる
心境を表はす言葉として「明鏡止水」と表現あり。
余は之に余の道徳的健全性を圖るものと、
眞実性を証言したれば余の心境は明鏡止水
の如く清澄なり。

甲午同部隊と共に勤務し、何等政異政に
深知することから、將軍たる余、余を指揮
せしむる不偏に起りたる事件に對する感懐を貴
官等可理解せられんことを乞ふ。

敬に貴方の方には如何なる人にとりても尤も不

に利用せしむるは余の生存態度に非らずば、吾
等、於て余の指揮下の日本軍隊は全戦同海軍
隊と決死の戦闘を継続し、あらば米軍の戦
能力及大膽不敵あることは余の熟知するところ
なり。

余は今や戦争犯罪人として起訴せしむる罪に、被
害に過ぎざるは当然とを、吾等、余の指揮下の第1師
團は日露戦争以来の傳統を有し、敵と如何に戦
ひたるかを知らず、敵ありし事を敵と断言すること
は、あり。

吾等は刀に生きたるも、刀に死ねることを能ふ然
らば、余の師團は兵に生きたるも、敵を倒すことは死
すという術を常に堅持せし。

かゝる世界観又は條件は無力なる生存態度に利

十二日、是れを以て非ず。此れは其の故に、
彼等は武士道に非ずして、余の言葉を以て其の故に
也。此れこそ也。

第一、是れは戦いの只中に、過失を犯されたり。余は余
ちと証言せし如く、余は三人の未修者、其の一人を
令せし為、裁判を受くるに至れり。これは余の過失
を、何等の過失の趨勢を在せしめたり。余は余の
過失を率直に認むるものなり。

恥づかしく、其の過失の裁断を仰ぐ

井上貞新

STATEMENT OF INOUE, SADAЕ

I would like to express my sincere gratitude to the President and Members of this Commission for affording me this opportunity to comment on the incidents with which I have been charged.

Inasmuch as I have already testified on the witness stand, this, my personal statement, will be very brief and limited to my beliefs and state of mind at the time the incidents occurred.

I was born to the family of a warrior, and strictly trained to the Moral Code of Japanese Chivalry - contained in which were the precepts of righteousness, benevolence, and sincerity. This was my basic moral code throughout forty years service as a Japanese Army Officer. Greatly impressed upon me also was the heavy command responsibility attached to my generalship, this attitude being one of the creeds of ancient Japanese Bushido, and I had tried to be equal to and meet this grave responsibility.

Incidents occurred involving my direct subordinates during my tour of duty in the Palau Islands. Although I do not know whether I, as their commanding general, am criminally responsible for those acts, I am most willing to take the entire moral responsibility involved.

The personnel of the South Seas Kempeitai were not my direct subordinates. However, in the event of an enemy invasion the kempeitai were to come under my command - and I expected them to fight to the last man. I cannot overlook the fact that some of them have already been convicted and are serving their sentences, nor can I evade my moral responsibility as their senior army officer in the Palau Islands.

Because I believe it is my duty to state the facts truthfully, as they were, and not as I would now like them to be, I have testified in this court to the best of my recollection.

"To be sensible to shame" was a virtue honored by Japanese Bushido. I have lived for sixty years, and I have no intention now of disgracing the virtue of warriors by shamefully attempting to shift my responsibility to my superiors or subordinates. From the Ancient Days in Japan the phrase "Stainless mirror and clear water" has been a metaphoric expression illustrating a state of mind; contemplating a mind as bright and clean as a stainless mirror or as clear as water. Such, now, is my state of mind, having resolved to assume full moral responsibility, and having testified to the true state of affairs.

I urge you to an understanding of how I, a field general of forty years service with troops, completely ignorant in the arts of intrigue and politics, feel about the Palau incidents while I was there as commanding general.

It has never been my way of life to seek unfair advantage of any man, be he friend or foe. In the Palaus at this time the Japanese troops under my command were engaging in mortal combat with the United States Marines. I had heard much of the fighting ability and fearlessness of American troops. May I say with a certain feeling of just pride, humble as I am now because of having been charged with a war crime, that my Fourteenth Division had a tradition of continuous service dating from the Russian War, and also knew how to fight. We all know that "He who lives by the sword shall die by the sword", but the Division had always prided itself that no one died until after

BB(1)

he had taken a toll of the enemy. In that philosophy, or creed, gentlemen, was no place for a principle supporting the execution of helpless prisoners of war. I entreat you to believe me when I say that it has never been the way of a warrior to kill an unarmed adversary.

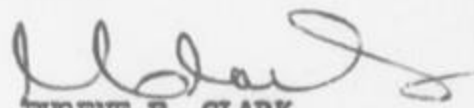
Under the fierce pressure of battle mistakes were made and for the mistake of ordering three American prisoners of war executed, as I have testified I so ordered - I have stood trial. This was my mistake. It did not change the trend of battle. I must admit it was a mistake on my part.

In deepest humility, I await your judgment.

Respectfully,

/s/ Inoue, Sadao

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

BB(2)

0071

陳述書 多田督知

私は 自己の爲と 相被告井上將軍の爲に 証人台に立つて 証言しましたので” 私が起訴されてゐる事件に就いては 此の上何も去ふことはありません。私は又 如何なる言ひ抜けを しようと思ひません。当時私は 參謀長といふ重要な地位に居り 師団長を補佐する重責を 持つてゐましたので” 此の事件を考へるにつけ 寔に慚愧に堪へません。

さて私は 御親切にも 更に個人的陳述をなす 機會を與へられたので” 貴男方に私の心境を知つて戴く爲に 私の哲学 私の背景 パラオに於ける戦況に就いて 些か陳述しないと 存じます

私は 「我々日本人として 天皇陛下の御徳を體して 行動する 限りは 世界に於ける立派な國民の一員として 高い倫理生活を 爲し得るものである」といふ 信念を持って居りました。私は 子供の 時以來 中学校 士官学校 大学に於て 皇族のお一方である 閑院宮殿下と 机を並べて 教育を受けました。大尉少佐の期間 數年間 私は 天皇の御弟君の御一人にわたらせらるゝ秩父宮 殿下と 參謀本部の同じ室で 御一緒に勤務しました。従つて 上に述べました私の信念は 單なる机上の空論で 作られたものでは ありませんでした。

私は 斯かる信念を 心に體して 大尉の時以來 戦争哲学の研究を 始めました。そして 天皇の御徳を地盤とした「日本戦争論」と名付 くる 一々の哲学體系を 樹立しました。当時私は 一大尉にしか過ぎ ませんでした。が 陸軍大学に於て 「戦争論」と呼ばれる 重要講座が 開設せられ 私は同校に於て 戦略の教官に 任命されました。爾來 私は 約五ヶ年間 此の「戦争論」を 講義致しました。

私の戦争論研究は 其の当初に於て ソヴェート・ロシアの 戦略の 構想に 大きな刺激を受けました。彼等の戦略の特質は 「敵の 陣營内に味方を送り 敵の戦闘員を味方に變じ そして 彼等をして 進んで” ロシア自身の勝利のために 戦はしむる」といふこと

にありました。ロシアも古代東洋も「敵を味方に変へる」ことを目的とすることに於て共に同じ考へを持って居りました。

私の戦争哲学の體系に於ては「俘虜も抑留敵国民も之を安全に保持する為には状況が如何に困難にならうとも決して之を殺してはならぬ」といふのが私の考へてありました。尚更に私の理論の重きが「一矢に至るまで天皇陛下の御徳を心に體て正義と愛の精神を以て俘虜を取扱ひ俘虜達が眞に我々に感謝しそして遂には全く彼等自身の自由意志によつて我々の味方となる様にしなければならぬ」といふ事にあつたのは申すまでもありません。

併し乍ら私が主張し愛好した此の哲学にも拘らず1944年9月から翌年5月に至る間にパラオに於て俘虜に関する事件が起り司令官井上中將と其の參謀長であつた私がこれ等の事件の爲にお裁きを受けることになりました。私と致しましては其等の如き事件が私のこれを防止せんとする努力にも拘らず起つて仕舞ひましたので深甚な憂慮と大いなる恥辱を感ずるものであります。私は實際最善を盡して其等の事件に反対したのであります。

私が參謀長として仕へた井上中將は傑出した武將でありました。將軍は日本陸軍中に於て最上級の武將でありましたので選ばれてパラオの防禦と確保に當つたのであります。私の陸軍に於ける全歴が學究調査を主としたのに反して將軍は常に指揮官として戦場に於ける軍隊を指揮して来られました。將軍は「指揮の嚴肅」をその最高方針として掲げられました。

ペリリウ島内外を主とするパラオに於ける激烈極みな各戦闘はこの嚴格なる方針に基いて永い間訓練された部隊によつて戦はれました。我々陸軍部隊は無數のアメリカ軍艦の完全包囲下にあつてこれ等絶海の孤島に最も困難な戦略を実施しなければならませんでした。アメリカ側は自由自在に軍隊武器其の他の補給を増強し攻撃の爲に断えず新鋭兵力を投入することが出来たのに反して我々の側には戦略に協力する一機一艦すへもありませんでした。

我々は絶対絶命の状況にありました。パラオ諸島に於て増加してゆく夥しい軍隊の死傷者や弾薬の消耗を前にして我々には兵力増援の爲一兵一弾をも得るの途がありませんでした。併し乍ら全部隊は將軍の不斷の訓練によつてその戦力を最高度に發揮致しました。私は1948年2月発行の「合衆国海兵隊雜誌」中に Fletcher-Pratt氏によつて書かれた「太平洋戦争に於ける海兵隊」第20章「最も困難なりしペリリウ戦」といふ一文を読み、ペリリウに於ける我々の必死の戦斗に高友の賛辞が寄せられてゐるのを見て、非常な感動を受けました。戦斗作戦に關する限り私は私自身病氣中の將軍を輔けて出来る限りの最善を盡したことを誇りとして居ります。

私は忠実に將軍に服従しました。熱誠以て將軍の方針を具現しました。私としては將軍の意圖に反して敢て公勢を遂行することは殆んどありませんでした。

併し乍ら私は參謀長としての全服務期間中に二回に亘つて決定的に將軍の意志に反対し従はなかつたことがあるのを容認せねばなりません。最初の場合は1944年9月2日から5日に至る期間に、そうしたのであり。他の場合は日本軍降伏の時でありました。私は、此等の各場合に私の意見を表明し、將軍に反対致しました。私は貴男方の言によれば「殺人の爲に裁判されて居りますけれども私は決して殺人をやってはおりません。私は既に証言致しました様に俘虜を殺すことに反対しました。私は此等の反対をした爲に將軍の尊信を失つたとは決して信じません。何故かと云へば、將軍は私が反対した事柄について私が如何に感じたかを知られたからであります。

私には妻と二男二女があります。1947年6月私が巢鴨刑務所に監禁されて以來日本の社會及經濟状態は大きな変化を遂げました。家族の主なる支持者である私も失つて妻や幼い子供達がインフレーションの逆境の中に如何に暮してゐるか想像することが出来ます。家族達の困難に較べれば「ストッケード」に於ける

私の監禁は 私には 何等苦痛ではありません 又 共産主義の恐ろしい波が 祖國日本の 岸辺を 洗つてゐることを 私は 想像することが出来ます 私は 若し自由の身と なり得ました なら 將來の日本の有用な市民となり得る様 子供達の 養育に 献身致します 若し状況が許すならば 私の微力で 出来る最善を 盡して 社會の慈善事業に 努力したいと思つております

私は 眞実且 卒直に 心境を 述べました。私の論理と道義とは 貴男方 委員各位には 東洋人に特殊な 奇妙な哲学に見えるかもしれませんが 併し乍ら 私は 公正なる 委員各位が 同情と思慮とを以て 了解に努められん ことを お願ひ致します

何卒 井上將軍竝に 絶望的な 当時の状況に 就いて 御理解を願ひます 將軍は 日本陸軍中第一級の名將と考へられます そして 直上上官に 従ふ外に 他に方法がないと考へたのでした

謹みて

多田 督知

Statement of Tada, Tokuchi

As I have taken the witness stand and testified in my own behalf and that of my co-defendant, General Inoue, I have nothing further to add concerning the incident with which I am charged. Also, I do not wish to offer excuses. I am deeply mortified when I think of this incident for I then held an important post as a Chief of Staff with the grave responsibility of assisting the commanding general.

Now that I have through your kindness been given an opportunity to make this personal declaration, I wish to relate something of my philosophy, background, and the battle condition in the Palaus in order that you may picture my state of mind.

I held a belief that "so long as we, the Japanese people, conduct ourselves with the virtue of His Imperial Majesty, we will live a high moral life as one of the fine nations of the world." From boyhood, I attended high school and the Military Academy and College with Prince Kanin, a member of the Imperial family, sitting next to him. For several years, during the period I was captain and major, I served at Army General Headquarters in the same office together with Prince Chichibu, one of the younger brothers of the Emperor. Therefore, my belief which I have mentioned was not a mere fiction.

With such a belief in my mind, I began studying war philosophy since I was a captain, and built up a system of philosophy called "The Japanese Theory on War" which was based upon the virtues of the Emperor. Although I was only a captain at that time, I was appointed to the post of a lecturer of strategy at the War College, an important lecture called "War Theory" being opened there. From that time on, I held the lectureship of "War Theory" for about five years.

My study of theory on war was, at its beginning, greatly stimulated by the idea of the strategy of Soviet Russia. The characteristics of their strategy was "to send an ally into the enemy camp, to convert the enemy into their allies, and make them willing to fight for the victory of Russia itself." Both the Russians and the ancient Orientals hold the same idea in that they aimed to "convert the enemy into an ally". In my system of war philosophy, it was my idea that "prisoners of war and interned enemy aliens must never be killed no matter how difficult the situations became to keep them safely in custody." Furthermore, the main point of my theory is, needless to say, that every single soldier must bear in mind the virtues of the Emperor and treat prisoners of war with the spirit of righteousness and love, so that the prisoners will really feel grateful to us and will finally become our allies, entirely by their own volition.

However, despite my philosophy which I asserted and loved, incidents happened to prisoners of war on the Palaus during the period from September 1944 to May 1945, and the commanding general, Lieutenant General Inoue, and I, his chief of staff, have come to stand trial for these incidents. I feel a grave concern and am greatly humiliated because such an incident did take place in spite of my efforts to prevent it. I did the best I could to oppose it.

Lieutenant General Inoue, under whom I served as chief of staff, was an outstanding combatant general. He was selected to defend and hold the Palaus because he was the best combatant general in the Japanese Army. While my career in the Army was mainly that of study and research, the general had always been the commanding officer of troops in the field. He declared that

DD(1)

0076

the "solemnity of command" was his supreme policy.

The severest battles on the Palaus, mainly on and around the island of Peleliu, were conducted by units which had long been trained in accordance with this strict policy. Being completely besieged by tremendous numbers of American warships, we, the army units, had to conduct the most difficult strategy on these small islands in the vast ocean. The Americans could freely reinforce their troops, armaments, and supplies constantly throwing in fresh troops, while we had not even a plane or a ship to co-ordinate our strategy. We were in a desperate situation. In the face of increasing casualties of our units and the shortage of ammunitions on the Palaus, we had no means of obtaining a single soldier or a bullet to reinforce our strength. However, the constant training of the troops by the general displayed our fighting power to its full extent. I was greatly moved when I read in a magazine, the U. S. Marine Corps Gazette, published in February 1948, an article by Fletcher Pratt, "Marines in the Pacific War", chapter 20, Peleliu the Hardest Battle, in which our fearless fight in the battle of the Palaus was paid a high tribute. As far as the battle operations are concerned, I pride myself that I did the best I could assisting the sick general.

I faithfully obeyed the general, earnestly carrying out his policy, and I seldom dared to execute official affairs against the intentions of the general.

However, I must admit that, during my tour of duty as his Chief of Staff, I had on two occasions definitely opposed the general's will and disobeyed him. First I did so during the period between the 2nd and the 5th of September 1944; the other occasion was at the time of surrender of the Japanese forces. I expressed my opinion and opposed him on each of these occasions. I am being tried for murder, but I never committed murder. I was opposed, as I have testified, to killing the prisoners. I believe I never lost the general's respect and confidence on account of these objections, because the general knew how I felt about the matters on which I opposed him.

I have a wife, two boys and two girls. After I was incarcerated in the Sugamo Prison in June of 1947, the social and economic condition of Japan has made a great change. Having lost me, the main support of the family, I can imagine how my wife and young children are getting along amid the adversaries of inflation. My confinement in the stockade is not painful to me compared with the hardships of my family. I can imagine that the furious waves of communism are washing the shores of the Japanese homeland. If I can become a free man, I will devote myself to the education of my children so that they will become helpful citizens for the future Japan. If the circumstances may permit, I wish to participate in the charity works of society to the best of my feeble ability.

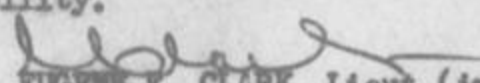
Truthfully and frankly, I have described my state of mind. My logic and morality might appear to you to be a queer philosophy and peculiar to the people of the Orient. However, I beg you, gentlemen of the commission, with your sympathy and consideration to try to understand me.

Please also understand General Inoue, and the desperate situation at that time. He is deemed to be the best commanding general in the Japanese Army, and he thought that he had no alternative but to obey his immediate superiors.

Respectfully,

Tada, Tokuchi.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE W. CLARK, Lieut.(jg), USN,
Interpreter.

DD(2)

0077

OPENING ARGUMENT FOR THE PROSECUTION

Delivered by
Lieutenant Commander Joseph A. Regan, USN
Judge Advocate

If it please the commission, the charge, in this case is violation of the law and customs of war. The charge is supported by ten specifications, all of which involve the accused Lieutenant General Inoue, and one of which involves the accused Colonel Tada. Specifications one and eight allege the murder of four American prisoners of war. For the murder of three of them, Tada and Inoue are both charged. For the murder of Kaufman set out in specification eight, only Inoue himself, is accused. Specifications two, four, six and nine allege a failure to control on the part of Inoue. In specification two he is alleged to have failed to control Tada, who was his direct subordinate and three members of the kempeitai, headed by the commanding officer of the kempeitai, Lieutenant Colonel Aritsune Miyazaki. In specifications four and six there is alleged a failure to control certain other members of the kempeitai. Specification nine alleges a failure to control men who actually were General Inoue's direct subordinates. Specifications three, five, seven and ten allege a failure on the part of General Inoue to protect various prisoners held in the Palau. Specification three alleges a failure to protect the three unarmed American prisoners who were executed in September of 1944. Specification five alleges a failure to protect seven civilians, of whom six were missionaries, killed in the Palau later in the month of September 1944. Specification seven alleges a failure to protect an English national killed in the Palau in December of 1944, and specification ten alleges a failure to protect Second Lieutenant Wallace F. Kaufman, killed in the Palau in May of 1945.

I'm sure defense counsel in their arguments will pretend a complete lack of understanding of the law that applies to this particular case. Concerning specifications one and eight the law applicable is the international common law prohibiting the murder of prisoners of war. This law is well recognized and is acknowledged by every civilized nation. It does not spring from the Hague Convention but its prior existence is recognized and codified in that act. That prisoners of war are to be protected is also set out in the Geneva Prisoners of War Convention of 1929. The Hague Convention of 1907 provides in Article 23(c) "It is especially forbidden to kill or wound an enemy, who, having laid down his arms or having no longer any means of defense, has surrendered at discretion." The Geneva Prisoners of War Convention of July 1929 provides in Article of Title I "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited." The Geneva Prisoners of War Convention is also a codification of the existing duties of the commanding officer of troops who have captured prisoners of war. They are to be protected, and this duty is not only implicitly set forth in that convention, but is well recognized as one of the rules of warfare. No doubt defense counsel in their arguments will again contend the specifications alleging a failure to control are duplicitous of the specifications alleging a failure to protect. This point has already been raised in the objection to the charge and specifications and it was ruled upon at that time by the commission. The duty to control one's subordinates is recognized in Article 1 of the Annex to the Fourth Hague Convention wherein it is laid down as a condition which an armed force must fulfill

EE (1)

0078

in order to be accorded the rights of a lawful ^{belligerent} ~~belligerent~~, that it must be SR
"commanded by a person responsible for his subordinates". The nature and
existence of this duty is discussed by the United States Supreme Court in the
Yamashita case (327 U.S. 1) wherein the court said in the majority opinion:

"It is evident that the conduct of military operations by troops whose
excesses are unrestrained by the orders or efforts of their commander
would almost certainly result in violations which it is the purpose of
the law of war to prevent. Its purpose to protect prisoners of war
from brutality would largely be defeated if the commander could with
impunity neglect to take reasonable measures for their protection.
Hence the law of war presupposes that its violation is to be avoided
through the control of subordinates ... These provisions plainly
imposed an affirmative duty to take such measures as were within
his power and appropriate in the circumstances to protect prisoners
of war..."

The principles expounded above apply equally to interned civilians, for
the Japanese Government agreed that it would apply the provisions of the
Geneva Prisoners of War Convention not only to prisoners of war, but also as
far as practicable, to interned civilians.

In most cases there is usually not much quarrel with the applicable
law. The differences between the defense counsel and the judge advocate are
usually on the application of the law to the facts shown in the record. Con-
trary to the belief of defense counsel, it has never been the contention of
the prosecution that on paper there was any command relationship between
General Inoue in either his capacity as Commanding General of the Fourteenth
Division, or as Army Group Commander Palau Area, and the kempeitai. The
judge advocate knew before this case was brought to trial that so far as the
organization of the Japanese armed forces in the Palaus was concerned, that
the kempeitai on paper, was separate and distinct from the "Shudan Shireikan".
It is still the contention of the judge advocate however, that because of the
actions of Miyazaki and General Inoue, that for all practical purposes, the
kempeitai was under the control and command of General Inoue. It has been
shown through the testimony of witnesses in this courtroom that Miyazaki was
a lieutenant colonel while Inoue was a lieutenant general. It has been shown
that Miyazaki was a frequent visitor to General Inoue's headquarters and often
conferred, not only with the general, but also with his chief of staff and
various staff officers. Miyazaki was the liaison officer between the kempei-
tai and General Inoue's headquarters. Miyazaki frequently made reports to
headquarters and these reports were brought to the personal attention of Gen-
eral Inoue. In each of the four execution incidents a formal written report
was submitted by Miyazaki to General Inoue and it is the testimony of Yajima
who was the intelligence officer on General Inoue's staff that these reports
first came to him, and that he had them signed by the general. It is the
testimony of the officers of the kempeitai produced here in court as witnesses
that prior to each execution, they were advised that the execution was on the
orders of division headquarters, with the exception, of course, of the very SR
first execution wherein they were advised that that execution was on the orders
of Colonel Tada, the chief of staff. It was the belief of the prosecution
that if, in fact, Miyazaki, a lieutenant colonel, never took any independent
action without first consulting the general, and then making a formal report
at the conclusion of the action, that the general was responsible for the SR
colonel's deeds, even though the colonel, on paper, was not a member of his
organization. With respect to the civilians, the missionaries, Charlie

Smith, the Englishman, and the Filipino, it was the contention of the prosecution that Inoue had the duty to protect these men because his headquarters undertook to have them held by the kempeitai. There is testimony in the record that the missionaries were living with one of Inoue's units, and it was upon his command expressed through Yajima they were transferred for custody to the kempeitai. There is further testimony in the record that the initial request for the apprehension of Charlie Smith was made by General Inoue as expressed by Colonel Tada and that therefore since Inoue had arranged for the internment of these civilians by the kempeitai, he therefore became responsible for their protection - it therefore became his duty to see that they were not mistreated, and in any event, not murdered by the kempeitai. It may well be that the commission, after listening to defense arguments will not feel that the connection between Inoue and the kempeitai has been proved beyond a reasonable doubt, and in that event four specifications of the charge, namely specifications four, five, six and seven would fail of proof. Those specifications specifically involve the kempeitai and the civilians executed by them. Even assuming that a clear line of responsibility between Inoue and the kempeitai has not been shown, it is the contention of the prosecution that the commission should find proved specification two, which also involves Inoue and the kempeitai, but which in fact involves a different set of circumstances. Specification two alleges a failure to control Tada, Miyazaki and his subordinates Nakamura and Kokubo, permitting them to kill three unarmed American prisoners of war. The commission well remembers the facts that have been brought out in this case with respect to the three American aviators, the testimony is clear that there were three American aviators and that they were confined at General Inoue's headquarters on Babelthup Island. The prosecution testimony is clear that Colonel Tada requested Colonel Miyazaki to handle the execution of these three unfortunate prisoners. We know from Yajima's testimony that the request was definitely made. We know from Sano's testimony and the testimony of Nakamura that Miyazaki had received the request from Colonel Tada and we know from the testimony of Sano, Nakamura and Kokubo that that request was carried out. Three prisoners were killed with swords and bullets after Tada had made the request to Colonel Miyazaki. Inoue himself, admits as does Tada as shown by their respective confessions that the initial orders for the executions were given by the general and that Tada reluctantly conveyed these orders to Colonel Miyazaki, but it suits the purpose of both the general and the colonel to also contend that Inoue's words were not an order, but rather a request. That contention goes hand in hand with the defense's contention that Lieutenant General Inoue, Commanding Officer in the Palaus with over 35,000 troops under his command, was merely in fact an equal to the lieutenant colonel who had, shall we say, less than 500 men. The testimony is clear that the orders or the requests make little difference as expressed to Miyazaki by Tada. There can be no doubt in the commission's minds on this point, even though the defense will attack the credibility of Yajima, who actually overheard the conversation between Miyazaki and Tada. I'm sure the defense is going to make much of the few minor inconsistencies in Yajima's testimony, for Yajima's memory on events which occurred five years ago is not perfect, and there have been minor discrepancies in his previous testimony in other trials and in his testimony in this trial. Fortunately, however, the prosecution need not rely solely on the credibility of Yajima. The judge advocate urges the commission to believe Yajima however, for the judge advocate believes that he is a credible witness. Tada himself not only in his confession which has been introduced into evidence, but also on the stand has admitted that he relayed to Colonel Miyazaki the intentions of General Inoue that the three prisoners were to be executed, and executed by the kempeitai. I'll not discuss Tada's involved explanation of his conversation with Miyazaki nor will I discuss his curious explanation of the phrase "I'll handle it in my stomach". It is sufficient to point out to the commission that General Inoue himself gave the lie to Tada when Inoue tes-

tified as a witness in his own behalf that on the afternoon of Tada's conversation with Miyazaki, Tada came to him and told him that Miyazaki had accepted his command and that the execution would be carried out. Because of the circumstances of this relationship between Inoue and Miyazaki their being linked by the chief of staff, it is a contention of the judge advocate that specifications two should be found proved because Miyazaki accepting the orders of the general for that particular execution, put himself under the general so that Inoue became responsible, certainly for Tada's actions, and also for the actions of Miyazaki and his subordinates. The general gave his orders to the ~~Kempeitai~~ on this execution and Miyazaki accepted these orders. *SR* Whether or not Miyazaki had to accept these orders is a point not relevant to the commission's finding on this specification number two, because you know in fact, he did accept the orders, and he did, in this instance place himself under the command of Inoue, thereby making Inoue responsible for the kempeitai's action in carrying out Inoue's orders.

But why, the defense will want to know, is Tada brought to trial in this case. Why is Tada charged in specification one when he is not even mentioned in any of the nine specifications that form the basis for this trial? What did Tada do and how can he possibly be guilty of the killing of these three prisoners? Tada is just as guilty of the death of those three prisoners in September of 1944 as though he himself, solely and personally used the swords wielded by Nakamura and Kokubo, or fired the pistol that was in the hand of Miyazaki. Tada is guilty because he had a connection with the murder of the three aviators. Tada is guilty for murder because he was a principal in the murder of the three American aviators in September. Tada played a large part in that execution for the testimony is clear that he was the direct link between Inoue, who gave the orders, and Miyazaki who had them carried out. Note the testimony of Tada and Inoue in this case. The general proposes the execution because of his fear of atrocities. Tada is hesitant - that is the first conversation. The second conversation the general again proposes the execution and Tada requested time to think it over. Then in a third conversation, the general again proposes the execution and Tada ceases to protest. Tada went to Miyazaki in an air raid shelter and made the request in the presence and hearing of Yajima and then he returned to Inoue to report Miyazaki's compliance. On the day of the first conversation the prisoners *SR* were alive. They stayed alive for the second conversation. They are still alive at the time of the third conversation and when Tada finally carries out the general's instructions they die under the pistol of Miyazaki and the swords of Nakamura and Kokubo. Section 550 of the United States Criminal Code, Title 18 gives a definition of principals and it says "Whoever directly commits any act, constructing an offense, defined in any law in the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal." This is the applicable definition of principal which has been followed in all the war crimes trials here on Guam. For murder is not only an offense against the United States, but murder is always an offense against international law and anyone who has anything to do with it is a principal. There are no accessories before the fact and there are no longer any accessories after the fact. Those distinctions had been done away with. If you play with murder, in any way whatsoever, you become a principal. Do Tada's actions fit any of the statements of the definition? Did he aid in the murder? Did he abet? Did he procure? The facts show that the murder did not come about until after he had relayed the general's orders, instructions, or intentions to Miyazaki, and these orders, instructions or intentions were that the three prisoners were to be killed, and there can be no doubt but that they were killed.

There is not much point in discussing Inoue's connection with the execution of the three prisoners in September. We know from his statement that he actually ordered the execution. We also know from his testimony on

the stand that this was done, and he has himself explained why it was necessary. According to the general's sworn testimony it was necessary to kill these three prisoners lest they be killed. If the commission can make some sense out of that, it is more than lies within the powers of the judge advocate, but in any event there can be no doubt that Inoue is guilty of the murder of the three prisoners in September.

On the Kaufman case which forms the basis of specifications eight, nine and ten, it is the contention of the judge advocate that Inoue is guilty. In this connection it has been proved beyond any reasonable doubt, and this is in spite of the general's statement from the stand that it all came about through a misunderstanding. Inoue admits that he himself ordered the execution of three prisoners in September of 1944 but he is very loathe to make the same admission with respect to the execution of Kaufman in May of 1945. His explanation now is that the sole responsibility lies with his subordinate Yajima. Yajima is his intelligence officer, is the man who organized this execution, but he gives no reason why it is so. Koichi has come into this court and has told this commission that he was sentenced to twenty-five years imprisonment for relaying the orders of the general, and what were those orders? Koichi tells us that the orders were directly from the general that the Katsuyama outfit should execute Kaufman. The general insists that because Koichi's ears were bandaged, he misunderstood the instructions. The defense was careful not to ask Nakagawa if his ears were bandaged, even though Nakagawa testified directly that he had heard Inoue give Koichi the order to execute Kaufman. Assuming that is not sufficient proof to establish his guilt beyond a reasonable doubt, we have the further testimony of Lieutenant Onose, who after receiving instructions from Yajima, reported directly to the general and was told by the general that in the event that any of the officers of the Katsuyama unit failed to perform the execution, he, Onose, was to carry it out according to the rites of Bushido, the way of the Samurai. The general insists he gave no orders to transfer Kaufman from Babelthup to Koror. All he did was tell Koichi that he was going to send Kaufman to his unit because the air raid shelters there were deeper and because the climate was more healthful. Strangely enough, even in the absence of orders, Onose came to report that he was taking Kaufman to Koror. The general also admits that it wasn't customary at the headquarters for a direct subordinate of a staff officer to check with the general personally each time the subordinate received an order from the staff officer. Does the commission seriously consider that there is even a slightest grain of truth in any of Inoue's testimony on the Kaufman incident? Koichi and Onose have already been tried and sentenced for their participation in Kaufman's execution. Yajima has not been tried. Both Koichi and Onose know that Yajima has not been tried or even accused by the prosecution of participation in the actual execution of Kaufman. Yet Koichi and Onose come to this courtroom and tell this commission that their orders were from Inoue and not from Yajima. If there had been a conspiracy on Yajima's part to bring about the death of the prisoners in spite of the general, does this commission believe that Onose and Koichi would undergo their punishment without attempting to see that Yajima, the principal conspirator was brought to trial for his unauthorized actions? Koichi, Onose and the witness Nakagawa tell us that it was the order of Inoue himself, that Kaufman be executed, and from the testimony of Koichi, Onose and Katsuyama, the commission knows that Kaufman was executed.

During the trial there has been made mention on several occasions of the activities of Colonel Tada with respect to specifications other than specification one of the charge. It is the request of the judge advocate that the commission dismiss from its minds any testimony concerning Tada with relation to any of the actions subsequent to September 4, 1944, but it is also the request of the judge advocate that the commission find proved the relevant specifications one, two, three, eight, nine and ten.

There has been conflicting testimony in this case, but the greatest conflict has been in the testimony connecting Inoue and the kempeitai. There may be some reasonable doubt on that score, but there cannot be any reasonable doubt that Inoue and Tada were responsible as principals in the death of the three aviators in September 1944 and that Inoue alone originated and had carried out the execution of Kaufman.

Respectfully,

Joseph A. Regan
Joseph A. Regan.

最終辯論

元日本帝國陸軍 Palau 地区
集團司令官兼第十四師團長
陸軍中將 井上貞衛 氏
元日本帝國陸軍 Palau 地
区集團參謀長兼第十四
師團參謀長 陸軍大佐
多田智知 氏の辯護人
佐 野 毅
高 野 純二郎

軍法會議會委員長 並に委員各位、

私は、被告人 井上貞衛 氏と多田智知 氏の辯護
人として、最終辯論を行います。當り、本件の審
理が、開始から今日、東京に於けることにな
り、深甚の感謝の意を表すのであります。

第一部 総論

第一、緒言

本件起訴の罪状項目は十項目とあるが、

(1)

この極緊官主張の根拠的事件は四箇の事件
である。即ち第一は三名の搭乗員事件、第二は
宣教師等事件、第三は Smith 事件、而して第四
は Kaufman 事件である。

第一の三名の搭乗員事件に於ては極緊官の主
張は被告人井上貞衛は當時 Palau 地は集團司
令官兼第十四師団長として及木田督知は當時
同師団参謀長として南洋憲兵隊長宮崎有恒、
同憲兵隊附中村敦夫、及小久保牛爵と行動を
共にして三名のアメリカ人搭乗員作原七殺害、又
殺害せしめたといふに在りて被告人井上及木田を
殺人罪を以て起訴せられたのである。(罪状
項目其の一)

此の事件に牽連し井上は集團司令官兼師
団長として部下制御及監督上の職務を怠り且以
搭乗員の保護義務を全うしなかったとして
其の責任と同はれられたのである。(罪状項
目其の二及其の三)

第二の宣教師等事件に於ては當時 Palau
諸島に居住したる宣教師及其他の者合計七
名が同し憲兵隊の捕縛に依りて殺害せられたこ
とに付井上は集團司令官兼師団長として部下の制
御監督の義務を怠り併し其等外国居留民を
保護する職務を怠らなかつた。よつて井上の
責任を問ふといふ極緊官の主張である。(罪状
項目其の四及其の五)

第三の Smith 事件は、既に検察官の主張する
ように、当時 Palau 諸島に居住していた
英国人 Charlie Smith を、日本軍部隊が捕
獲し、殺害したことは、既に集団司令官兼師団
長としての井上の統御及監督上の職務を
果たすと同時に、他の英国人居留民を保護する
べき義務があったにもかかわらず、これを履行しなかつた
といわれる。(罪状項目其の六又其の七。)

第四の Kaufman 事件は、既に検察官の
主張するように、既に集団司令官兼師団長たる井上は
小笠原、勝山、指原、小野瀬、一平等と
部隊を率いて収容中の1名のアメリカ人俘虜 Kaufman
を殺害し、又殺害せしめたといわれる。(罪状
項目其の八。)

尚ほ此の事件に関連して井上は、集団司令官兼
師団長としての部下の抑制及監督上の義務を懈怠し、
且収容中の俘虜を保護するべき職務を全うしなかつ
たとして、其の責任を問はれるのである。(罪状
項目其の九又其の十。)

以上の四箇の検察官の主張する事件について、被告人
井上の責任及被告人多田については、罪状項目其の一
に対する責任を問ふに當つては、下記の諸点を究明
することは、被告人等の実体的権利に重大なる害
害を有する最も緊要なことにあることを私は主
張するものである。

第一事件(3名の搭乗員事件)について:

(3)

FF(3)

0086

1. 井上は自己の自由意思に依って其等搭乗員の知令を多田と因に南洋軍兵隊長官崎に依頼したか否か。
 2. 上記依頼を受けた同軍兵隊長と井上との間に當時指揮命令の關係があつたか否か。
 3. 其の知令の受領者たる軍兵隊附・中村及小久保と井上との間に該命令に付て教唆補助の關係があつたか否か。
 4. 多田の上掲の井上の依頼を官崎に傳達するに當り其の知令に付自己の意思(許可するにこの意思又は賛同の意思)を表明したか否か。換言すれば多田は井上と常時と對する依頼の單に傳達者たるに過ぎなかつたか否か。
 5. 多田は其の命令に付井上に對し反對の意見を表明したか否か。
- 第二事件(虐殺師等事件)及
第三事件(Smith事件)に付て:
6. 事件發生當時南洋軍兵隊は集團司令官兼第十四師團長や井上の部下部隊であつたか否か。
 7. 井上は當時果して同軍兵隊又は其の他の部隊に對し此等虐殺師等並に Smith と知らしめるにこの命令、指示又は依頼を發したか否か。
 8. 當時 Palau 諸島に居住して居た外國人を保護することは集團司令官兼第十四師團長井上の直接又は間接の任務であつたか否か。

9. 若し井上が斯かる外国居留民の保護義務を直接もつたか又間接も負つてゐたかといふことは其の保護責任を負ふて居た露商若し井上との間に指揮監督の關係が存して居たか否か。

10. 井上と何等の指揮命令の關係に在りて若し井上とは直接も間接も全然關係がなかつたか否か。又井上が其の制御及監督上の職務又は保護義務のない、其の犯罪の被害者の保護の任務を負つてゐたか否か。之に利便上の責任を負はしむる規定が戦時法規及び慣習法に存するか否か。

第四事件 (Kaufman事件) は次の如し:

11. Kaufmanの處分は付し井上は小市広深、勝山哲朗及小野瀬一郎と行動を共にして處分執行を行つたか否か。

12. 井上は Kaufmanの處分は付し小市、勝山、小野瀬に之を命令したか否か。換言すれば井上は Kaufman 處分の犯意があつたか否か。

13. Kaufmanに關する井上の命令が之を受くる者は誤解を起したか否か。又若し其の誤解を起したとすんば其の誤解を起した原因が事前に且客觀的に存在したか否か。

第二. 第十四師團は Palau 地区
集團と其の上級司令官部

被告人井上は第十四師団長であったと同時に Palau 地区集団司令官であった関係上、前記の便宜上、被告を同列し、以下論ずることにする。

Palau 地区集団の5級司令部は時期によって異なった。即ち1944年4月末から同年8月末頃までは第31軍司令部であり、其の司令官は小幡陸軍中将であった。即ち1944年8月末頃から第31軍司令部が Guam に移り、以後は蘭後南方総軍司令部の司令官は井上大將であった。(辯護人側証人 中川、多田、井上の証言。)

井上は小幡司令官の指揮下の司令官として、小幡中将より作戰上の指揮その他、の命令及指示を受けつゝおつたのである。1944年6月上旬頃、小幡第31軍司令部が Palau に来着いた際、小幡軍司令部は井上に對し「米軍の5級司令部の確立といたした場合、これは鉄の線と鐵道の連絡が遮断された今日の如くは作戦と處断せよ」との指示を与へた。更に小幡司令官は之に附し加へて「是は中央當局の方針である」と井上に指示したのである。此の時井上は小幡軍司令部に對し作戦處分の不法なることを述べ、一應は小幡の指示に對して反對の意見を陳言したのである。(公判第14日 井上の証言。)

他方、小幡司令官は其の頃 (Palau 滞在中) 別の機会に多田及中川に對しても「我々井上に対すると同様命令の指示を與へたのは要諦である。(公判第10日 中川の証言 Q. 45. 公判第12日 多田の証言。)

第一事件の搭乗員の處分を井上が宮崎憲兵隊長に依頼したのは井上の自由意思より出たものではなく全く小幡第31軍司令官の上記の命令指示に従って為されたものである。

此の依頼が井上の自由意思に基いたものではないことは井上が多田に対し此の依頼を命じたとき多田が之に強硬な反対意見を具申した事に対し井上は多田に「各謀長が之を言ふに言ふは司令部でやることも部隊でやることも此の如く。併し自分としては萬一おを得ずして此の決意をいたしたのである。---」と言ったこと（公判第12日多田の証言。）並に井上自身の証言として「--- 其の時私は多田の意見は認めざるが之は已むに可からぬ事情がある。之故憲兵隊に依頼した他はない。---」と言つたことに徴して疑のないところである。（公判第13日井上の証言 Q & A. 27.）

第三. 師団参謀長又は集團参謀長.

被告人多田は第14師団参謀長であつたと同時に Palau 地区集團参謀長の職も兼職していたのであるから茲では便宜上同列に置き強んとい性質のものが之を論ずることにする。

多田の師団参謀長としての任務の主要なるものは師団長を補佐し併し作戰諸計畫を立案することであつた。（多田の証言及証拠第11號証） 随つて第一事件に於て多田が搭乗員の處分を憲兵隊長宮崎に自ら命令指示すること

の如き事はないことは勿論自己の意思に依り之を依頼するに止る。彼の任務外の事項であり又事實上多田は自己の自由意思に依り之を依頼したのではない。唯上管たる井上の依頼を官嶺に傳達したに過ぎないのである。即ちそれより更に多田は此の處分には反對なる旨の意見を井上に進言し次に官嶺に対する井上の依頼の單なる傳達さへも躊躇したに過ぎないのである。(多田及井上の談話)。此の事實を徴するも多田は措意復命の意思又は斯かる意思を以て依頼を傳達する意思の発露なかつたことは明かである。

第四. 南洋憲兵隊.

1944年4月頃より1945年3月頃に至る迄の間 Palau に駐在した南洋憲兵隊は所謂勅令憲兵隊であつて、1945年4月頃以後は所謂軍令憲兵であつた。此の点から後者は本裁判には直接の關係がないが之を言及することなく前者に付して其の要旨を簡単に述べて置けり。

勅令憲兵たる南洋憲兵隊は憲兵令(詔敕第8號)の規定するところであつて陸軍大臣の管轄に属し直接は東京の憲兵司令官に依り統轄せられてゐるのである。南洋憲兵は主として軍事警察を擔ひ兼ねて行政警察及司法警察を擔つてゐた。即ち其の職務の執行に付ては軍事警察に係るものは陸軍大臣及海軍大臣の指

押し、兼行政警察及司法警察に係るものは大
東亜大臣の指揮を承けられたのである。又南洋
憲兵は行政警察、司法警察に係る事件については
南洋庁長官及南洋庁検事の指示を承けられた
ことも憲兵令の規定するところである。

憲兵取締規程(詔令第9號)には外事
警察事項及防諜に関する事項も憲兵隊の職務
の一部であることが明規とされている。更に同規
程第22條は「憲兵は、常駐軍隊に關係する
社会、状況、網際、軍隊に不良、影響、又は不
慮、又は認めらるる事項、速に關係部隊官庁等に
通報し之を警戒せしむ」と規定し、第25
條は「憲兵は、地方、状況、知悉し必要と認めら
るる事項、之を軍司令官、即団長、師長、旅長
及び、他の關係官に通報せしむ」と規定す。

以上述べたところから明かになる如く Palau
諸島の居留に在る外國人に關する警察事項は南
洋憲兵隊の南洋庁長官及南洋庁検事の指示
を承け、處理せられたことは明かである。(公判第11
の辯護人側中川の証言、多田及井上の証言)。
併し此等外國居留民の保護は南洋庁長官の担
任にわたる任務であった。このことは下部)第七に
述べられてゐる。

第五、南洋憲兵隊(勅令憲兵)と
第十四師團又は Palau 地境集團

南洋軍兵隊が軍政機関であったことは上に述べた軍兵隊の職務の性質より観ても明かである。加之南洋軍兵隊は東京に設置された軍司令部の司令官の統轄の下に在ったことも上記の通りである。然るに第十四師団は Palau 地区集団の純然たる作戦部隊であった。それであるから南洋軍兵隊長と第十四師団長又は集団司令官との間には何等の指揮命令関係は存在しなかったのである。随て南洋軍兵隊長及其部下諸兵の一切の行動については井上は統帥監督の権限もなく又其の責任を負はなかつたのである。然しながら 1944 年 9 月頃以後は南洋軍兵隊長は陸上戦本に因りては集団司令官の「画題」と受くることはなつたのである。(横濱官側証人矢島の反対証言に対する証言、辯護人側証人中川の証言の A. 28. 皇田の公判第 12 日の証言、井上の公判第 14 日の証言、証人第 10 師団及び第 11 師団)。然し實際には南洋軍兵隊長は集団司令官井上の此の「画題」をへて受くることはなかつたのである。

第六、「画題する」又は「画題権」

「画題する」といふことは指揮命令権を有する者が自己の権限外の或る特定事項に付て自己の指揮命令の権限外の者に指揮命令することであつて此の指揮命令の権能を「画題権」と謂ふ。それであるから此の「画題権」を行使する指揮者は已知権の対象となる其の特定事項に付て處理の権限を

有つておられけしはたゞふいのてなる。

第十四師団長兼集團司令官たる井上は Palau 諸島に在ける外國居留民の保護及之に關連する警察事項については統制何等の處理の任務の指揮命令権も有つてゐなかつたのであるから此の事項を因に南洋警務隊長の許にても亦南洋庁長官の許にても画一する権能は有つて居なかつたことは言を俟たないからである。

第七. Palau 諸島に在る外國人の保護.

Palau 諸島は日本の南洋委任統治領の一部であつた。1944年9月乃至12月までの間に於ては上記地域は敵令は布かれてゐたから軍政は施行されてゐた。その間地域の行政事務及司法事務は總括的に南洋庁長官兼大東亜大臣の指揮監督下に之を處理し、直接の責任は南洋庁西都支庁長にあつた。外國居留民の保護は同編行政事務の一部であつたから南洋庁長官が此等外國人の保護の責任と任務を負つてゐたのである。

上にも述べた如く第十四師団も Palau 地区集團も作戰部隊であつたから其の間の行政事務は担任しなかつたことは明かであつて隨つて師団長兼集團司令官たる井上は南洋庁長官の許には何等の指揮命令権もなかつたのである。

井上は自己の権限外の事柄である外国人保護の事項については南洋庁長官に対しては区處する権能をへもなかったのである。

それと第二事件の宣教師等及第三事件の英人 (Charlie Smith) の保護の責任は井上にはなかったことが茲に明かにされた。(多田の井上の公判第12日の証言; 辯護人側^中平川の証言。Q24 A2. 31 and 32.)

第八、戦争法規と戦争犯罪の責任の帰属。

何れ人の行為が犯罪として刑事上の責任を負ふかは、それはその行為が社会の安全なる存在と相容れぬものであると認められるものであるといふことが法規の上では明白とされては居る。これは国内法及国際法を通じて刑罰法規上の原則である。

(A) 今次戦争の終末に至るまでの戦争法規並に慣習法のため、つたの新令とも軍隊の指揮官が自己の部下にあつては即ち自己の統御及監督下にある者の犯したる戦争法規並に慣習法違反行為に付其の責任を負ふべきであるとして規定した法文は存在して居ないのである。本件の宣教師等事件及 Smith 事件が其の例である。即ち井上の部下であつた南洋憲兵隊附の将校が犯した戦争法規並に慣習法違反行為に付井上が其の責任を執るべきか否かとする国際法規は存在しないのである。

(B) 軍隊の指揮官が自らの任務と全然関係のない権限外の事項について自己の部下におよぼした若しくは国際法違反行為に対して責任を負ふべきであるという規定は国際法のいつの部分にも存在しないのである。本件の宣教師等及び Smith 事件が其の例として南洋軍艦隊の将兵が外国居留民保護と無関係に戦争法規並に慣習法違反行為について其の責任を負ふべきであると定めた国際法規は見当たらないのである。

よって故に若しくは(イ)第二事件即ち宣教師等事件及び(ロ)第三事件即ち Smith 事件について部下の抑圧及監禁上の職務怠慢といふ戦争法規並に慣習法違反の責任を負はしめることは是れに反すると公認に反するところである。

上記(A)及び(B)の国際法上の規定の存在を前提として本件の起訴と被告の抗辯は斯かる国際法上の規定の存在を主張する責任があることを私は茲に主張する。

第九 意

犯意が犯罪の成立に必要要件であることは言ふまでもない。「犯意のふいこう犯罪」といふことは普通刑法及び制定法と通じての原則である」とは Clark and Marshall の其の著書「犯罪法論」に述べられてゐるのである。(Clark and Marshall's A Treatise on the

Law of Crimes, 4th Ed. § 38, p 56.)

犯意の犯罪の成立には要するところを要
素とし、このことは第一級主犯者 (a principle in
the first degree) と付し、~~第二級主犯者~~
の次に、又第二級主犯者 (a principle in
the second degree) と付し、適用せしむべき規則
である。或る人と幫助者 (aider) 又は教唆
者 (abettor) と共に犯罪を犯すことは其の人に犯
意の存在を必要とするのである。Clark and
Marshall の「第二級主犯者と共に犯罪を犯すは
犯意を必要とする」と説明する (Ibid § 168,
p. 214.)

Wharton の共犯者とも犯意のあることを
必要とし、次の通り説明する。

「共犯者とは、他人と同様の犯罪意思を
以て情を知り、任意に犯罪の遂行に
他人と協力同行為を為す者である」と。
(Wharton's Criminal Law, 12th Ed. Vol.
I, § 245, footnote, p. 328.)

第一事件 (三搭乗員事件) 2 国は井上は小
幡第 31 軍司令官の命令或は指示に従って官崎憲
兵隊長に依頼したことを、小幡軍司令官の
此の命令又は指示に対し井上は裏に反対の意見
を述べていた事実から、

第一事件 (犯罪項目其の一) 2 国は多田は金
然る犯意をなしたことは明かである。即ち多田は

井上の依頼を官邸に傳達したと認めない。其の井上の依頼を傳達するに當り自己の意思は平頭表明しなかったとある。加之多田は搭乗員の命令には自己の固く持つ理念に反する理由を以て井上は反対意見を呈申し且井上が常崎に対する依頼傳達の実行を屬々追巡、要巡したことは事実とある。

多田の持った井上の依頼の單純の傳達行為は aiding and abetting とはならぬといつてゐる。

第二事件(原敬師事事件)(罪状項目其の四及其の五)と付して井上は何等の犯意も持たないことは抗辯の趣意とある。

第三事件(Smith事件)(罪状項目其の六及其の七)と付しても第二事件と同様井上は此等の犯意のなかつたことも疑のないといつてゐる。

第四事件(Kaufman事件)(罪状項目其の八、其の九、及其の十)と付して井上の命令の之を要する部下の者によつて誤解された形跡があるといふ。井上はKaufmanをKorov 殿に解き命令を部下へ下す前に矢張り謀り、部下將校の中より二の候補を命令することを希望する者があつた事を其の不心得を嚴重に戒めた事蹟がある。井上はKaufmanをKorovに解きしといふ理由として其の戒解の事蹟を綜合して解へつて井上に犯意の有たことは疑ふことは出来ぬといふ。

第十 忠紀関係

第一事件に於て井上及多田は富崎、中村、小久保と“行動と告上り”戦年度規程に
慣習に従い、発行物とされたこの根拠官の主張に
従った。然し、井上、多田と軍部の依頼
の偽造、概、因に其の度、所存在依頼に
のは富崎憲兵隊長に於てであった。中村
及小久保は富崎の部下では無かったが井上の
部下ではなかった。而して中村及小久保に其の
度、所存在依頼には富崎に於て中村及小
久保は富崎の部下に於て所部として
ある。井上は決して中村及小久保には依頼
をしておらず、即ち井上(及多田)と中村及小
久保の間には何等の忠紀の関係連は存在
しないのである。

根拠官は第一事件に於て井上(及多田)と
中村及小久保との間に忠紀の関係連性の存
在したことを明確に主張する責任がある。

第十一 誤解された所及と忠紀関係

忠紀関係に於て忠紀若各自の忠紀の
あることが必要條件であることは上述に述
べてある。

第四事件に於て井上は其の作属を Korol に
送る意思を以て部下に其の趣旨の命令を与へ
た。然るに其の命令を承けた部下は之を

誤解した結果、此の事件が発生するに至った。
井上が其の命令を誤へる以前に既に部下の
間に此の修飾其の意旨の意旨が醸成され
ていた事象があり、且井上が之を知得するに至
つたとして其の心得違ひたることを厳に戒めた
事象があった。前に部下が其の間に上記の
意旨が既に流れておつたとして之が部校等の
先入念とあつたものと考へておつた。随
つて此の先入念が井上の命令誤解の誘因と
なつたのである。更に此の命令の誤解を誘
致した他の原因は其の命令として井上の用いた
日本語が部下に依つて誤解され、命令の本
意と似ておつたといふ事象であつたことも井
上を責めらるゝ。

斯くして井上の部下達は誤解され、
井上の命令に基づいて行動したのである。
井上は其の元頭無かつたのであるが井上
と山下、藤山、中野瀬との間には告発の関連
性は存しなかつたのである。

本事件の経緯には現はれぬ事象に付ては次
に相辯人佐藤義典氏から之を論ずるであらう。

敬 白

高橋 武 三郎

第=部 証書=是リ事実、検討

第=部=是リ私ハ茲ニ本軍法委員会ニ提出セリシ証書ヲ
検討シテ起訴罪状項目ニ主眼セラルル事実ガ正當ニ認メテ立
証セラルカ否カニ決テ辨シ度イト思フ

本軍法委員会ニ提出セリシ証書ノ中ニ相違ハ存シタモハ
可成リ明ニ特ニ重要ト部分ニ就テ相違點ガアツタノデ証書ノ
検討ニ當リテハ何レガ合理的ナリ何レガ信頼性大テアツカヲ慎
重ニ比較考察スル外カ肝要ナル之ヲ為ニ要ル部分ニ決テハ補
綴シテ検討ヲシタイト考ヘル

第一章 三橋栗事件 (Spec 1.2.3)

第=節 二橋栗兵、殺害 (Spec 1.)

昭和十九年九月ニ向テ南洋軍兵隊員ニ依リテ處刑サレタニシテ、米
國橋栗兵俘虜ガ當時役所ノ收容サレタ後、和四師團司令部カラ遺失
隊ニ渡レル迄ノ経緯ニ就テハ、報告井ヒ及多田ノ詳細ニ証言シ又檢事側
証人失向ニ基、一即ニ決テ証言シ

報告井ヒ、証言ニ依リテ九月初頭謀情報ニ依リ米軍、パシ
ヒ陸カハ必至アリ且、期日ガ一兩日後ニ迫ツタト判断シタ。ソレヲニシテ、
俘虜ヲ如何ニスベキカニ就テ熟慮シタ結果、第一軍司令部ト畑中特
ニ當テ直接役ニ及ヌ指示ニ從フ外ガ、俘虜ヲ下級兵員、横濱シ
強行爲ラヌ取テモテアリ且ツハ本武士道ノ精神カラ見ハ、寧ロ悲
悲的ニ措置アリト、結論ニ達シタナル

報告井ヒガコノ役、意圖ヲ參謀長多田ニ表示シタ時、多田ハ之ニ同
意セズ何等ノ措置ヲ執ラナかつ然レモ報告井ヒトシテハ、小畑軍司令官カラ指

示ヲ弁ヘラレタ特井ヒガ反対、意見ヲ述ベタガ之ニ対シ中畑カウ之ガ中央
ノ意圖ヲアルヲ述ベラレタ。又ハラオ上院ニ対スル米軍ノ攻奪、序幕
戦ガ既ニ展開サレタヲ見テ、兵員、資材、激昂シタ。處刑ヲ実施スル
以外ニ方法ガナト考ヘテ、其、處刑、実施ヲ尾崎憲兵隊長ニ依頼スルヲ
ヲ參謀長多田ニ話シテアル。

米軍、ハラオニ対スル上院、報告井ヒ、判断シタ期日ト實際ト
ノ間ニ、約十日、開キハマツカ現実。ハラオ端島、一部ニ対シテ行ハレタ
テアル。コノ井ヒ、判断ニ誤リカキツカ如ク、米軍ノ役方ニ安全地帯無イ
カラ島ニ上院ノ場合、俘虜ヲ司令官參謀長、眼、屈ノ所。常時置キ得
タイ状況ニ於テ、是等俘虜ガ興奮憤激シ兵員達ニ依リ残酷ト苦シメ
與ヘラレタ役屠殺サレルテポート云フ後、判断ニ戦場心理カラ考案スル
トラバカヲ誤リカキツカセト云ヒ得ルテポー。

此、井ヒ、考ヘテ、即チ將軍、眼、屈ノ所、其、命令、下ニ、特
校ガ監督ニ處刑スルヲ屠殺ヲ救フ道アリ又日本武士道、精神カラ
云フニ慈悲的ナルト云フ考ヘテ、東洋的、或ハ日本武士的ト考ヘテ、
或ハ委員各位ガ充分ニ之ヲ理解シ得ルタイカニ知ラシ。然レニ激烈ト
戦局、経験ヲ有セラル、委員各位、其、戦場心理ヲ幾分ナリトモ即理
解能ハルモト思フ

免ビアル。報告井ヒ、三橋未次、處刑ニ対スル東京、罪状項目第一
ニ主告サレタル如ク“…… feloniously, with … malice aforethought,
……”ト云フ範疇ニ入ラナイモト考ヘテ、報告井ヒ、該罪状項目審
議セラル、ニ出テ、コノ英ヲ充分ニ考慮セラレト云フ語、次ギアル。

報告多田、井ヒ中畑カラ校部ニ云フ、橋未次俘虜處刑、意圖ヲ
示セタ以後、後ガ將軍、意圖ヲ尾崎憲兵隊長ニ傳ヘラレタ、尚、ニ、三回
ニ出テ反対、意見ヲ述ベテ、其、実行ヲ差控ヘテ云フ、テアル。之ニ相報
告井ヒニ充分ニ之ヲ説キテ片ハ行テアル

報告多田、後ガ俘虜處刑ニ反対アリ之理由ハ、之ニ後、抱
戦術學上、見解又、法律學上、見解ニ著シキアリテト報告シ

彼、東京帝国大学・学シタガアル又飯村稔院軍大將、多田=対スル人証
言中ニ多田ハ日本戦争論ヲ著シタガモ、彼、思想ハ日本軍隊ハ天皇、徳ニ従
仁義ト正義、軍隊トシテ人道的ニ行動セヌバトラヌレデアルト記載セラル
(E1 15) 斯カル思想、持テテ報告多田ガ井ヒ中將、意圖ニ反対意見ヲ
述べ、実行ヲ差控メテ居タコトハ至極当然、コトデアリ。彼ハ司令官、補佐役ト
シテ、参謀長、トスベキ職責ヲ充分ナシテアル

多田ガ特軍、意圖ヲ宮崎憲兵隊長ニ傳達スルコトヲ承知シ理由ヲ。
彼、証言中カラ摘録スルヲバ、夫レハ当時病氣デアルヲ將軍ヲ煩ハセルコトナリ
又、彼、必テ反対理由ヲ宮崎ニ示シテ解セシメ宮崎ヲ自由ニ立場カラ善處スルコトヲ
要望スルニシツタデアル。之モ多田トシテ至極当然、措置デアリ。彼ガ特軍ト憲兵隊
長ト中間ニ介在シテ苦心シテ状況ヲ理解スルコトガ出来ル

一方報告多田ガ宮崎憲兵隊長ニ將軍、意圖ヲ傳ヘタ当時、状況ニ求
テハ彼、証言ト、検事側証人矢島、証言トニ可成リ相違アル。然レモ矢島ハ本
談ニ於ケル証言中ニ「信頼出来ナイ哉、其ノ中ノコトハ要員各位ガ既ニ充
分ニ認メテラレタコトト思フ、コトニ係ル事ハ、於テハ矢島ハ防空隊ニ退
避シタモ其後ニ偶然ニ宮崎ト多田、会ワセ共、会テ、一部ヲ聞イタコトアリデ
アル。矢島ハ僚屬、主務参謀デアリ宮崎ト憲兵隊長ト屢、会ワセ居タコトハ、憲
兵隊作野ヲ尉其他、証人ニ依ツテ証言セラル。多田ガ矢島情報参謀
ヲシテ終始宮崎憲兵隊長ト、会テ立会ニセタコト云フ彼、証言ハ極メテ
合理的デアリ。矢島、偶然ニ会ワセタコト云フ証言ハ信頼ガ置キナシ。斯カル状況
デアルカラ、報告多田ガ宮崎ニ述べタ会テ、内容、換言スルバ多田ガ處刑ヲ欲
シイ氣持ヲ述べタコトトモ充分信頼出来ルセデアル。

以上ヲ以テ、報告多田ガ特軍、意圖ヲ宮崎ニ傳ヘタルヲ將ナリナツタ
状況、証據ニ基キテ、検討ヲ終ル。

尚茲ニ若干、本事件ニ関係シテ証據、中ガ考慮ニ入ルベキ事項ヲ指
摘シテ置キタイ。

第一ニ、敵、公法ガ必要ナツタ場合、僚屬處分ニ關スルハ烟中
ニ一軍司令官、指示ニ決テハ証據書類第一、第二、被告井ヒ及多田、陳
述書ニ記載セラル。ミナラス弁護側証人中川康ハ之ヲ追証シテ居ルト

云々云々

第=三 橋本英次事件、憲兵隊から文書報告或ハ口頭報告=南
洋、矢島、証言が、憲兵隊=於ける報告責任者=アツタ佐野少尉、証言=依
り、否定され居るト及ビ矢島が九月下旬から、ブルック、戦中司令部=行ッ
タト云フ証言が、井上及多田=依り否定され居るトデアル。今迄=於ける証人、
証言、價値ヲ評價スルニ=於て考慮セラルベキ事項デアル

第=節 三橋本英次事件=於ける部下監督、責任 (Spec 2)

果敢項目其=に於て報告せし、彼、参謀長多田、智知及宮崎憲兵
隊長以下憲兵隊員、行動ヲ監督抑制スベキ職責、意外にアテられ居る
前節=検討せし如ク多田が本事件=於て執ツタ行動、特筆、責備=
反對に或ハ之ヲ実行=移リザラント=留メタリテアツタ参謀長トシ、遺憾ヲ行
動ヲ執ツタコトカ明カデアル。從テ報告せし、多田、監督ヲ怠ツト云フ
トハ有り得ナイデアル

次=報告せし、宮崎以下、南洋憲兵隊員、行動ヲ監督抑制
スベキ責任ハアツタカ否カト云フコトガ、大キク論争点デアル。大故茲テ
之ヲ報告せし南洋憲兵隊ト、同、指揮関係=就キ、証據=見キ
検討ヲシユト思フ

南洋憲兵隊が昭和二十年三月迄(証人中川、証言=依り、二月六
日迄)陸軍大臣、管轄=属シ東京憲兵司令官、指揮下=アツタコトハ、多ク
ノ証人、証言、一致スルミナラス証據甚多ト一、復英方、Deposition
ハ追証人アリデアル。大故報告せし南洋憲兵隊ト、同ハ昭和二十年
三月迄ハ直接、指揮関係カ無かつタト=決テハ何、疑義ガナシ。問題ト
ナレハ、報告せしがパラオ地軍司令部司令官ト云フ職=アリツカス。其、資格=
於て南洋憲兵隊ヲ管シパラオ所駐、陸軍ヲ指揮シテ居タリハナシカ
ト云フコトデアル。之=決テハ并護例証人中川、E210、復英方長到(送
付ル)パラオ地軍司令部編制表が最も正確ニ明瞭ニ説明シテ居ル

パライ地区集団司令部が編制を相当に足す証人の中、証言は依りハ
パライ地区の全地軍部隊、必スモ パライ地区集団に編入され居た事、
ナリ。第二、初方面軍、初八軍等、ユキニモ其他の地域に進出、途中、パ
ライ地区の部隊をパライ地区集団に編入されたいモガアツタ。是等ノ
部隊ハ其、右逐次大本営カラ命令ニ依リ パライ地区集団、戦斗序列
ニ入ツタ。然レ南洋軍兵隊ノミハ昭和二十年二月迄、パライ集団に入
カッタト認メテアル。

証人書類ナリ、パライ地区集団編制表ニ本証言ヲ追証シテ居
ル尚、全編制表、備考ニアル如ク、南洋軍兵隊ハ陸上戦斗ニ當リテモ、
パライ地区集団司令部、指揮ヲ受ケルコトナリ。コノ事ハ中リ。多田、
証人及証人書類ナリ、中部太平洋方面部隊、陸上戦斗ニ當リ命令
ニ依リテ立証セリ。何等、疑念、ナリ事項ナリ。尚、証人の中、
實際問題トシテ井ヒ中將カ南洋軍兵隊ニ對シ命令ヲ出スコトハ起ラ
カッタト証シテ居ル。

「行動ヲ監視抑制スル」ト云フコトハ指揮關係ガアツテ始メテ生
ルモノデアルコトハ言フ迄ナリ。實際、陸上戦斗以外ハ南洋軍兵隊ニ對
シ指揮ヲ持ツナカッタ。報告井ヒハ南洋軍兵隊員、行動ヲ監視抑
制スベキ職責ヲ持ツナカッタ、デアル。

叙ヒ、根據ニ依リ弁護人ハ罪狀項目ヲ「正当ナル起
テ立証セリ」カッタモノト主張スルモノデアル。

第三章 三橋東支隊ニ於ケル俘虜保護、卷II (Spec 3)

報告井ヒハ反証訊問ニ於テ、俘虜ヲ得ル場合、訊問調査ヲス
ル間、自分ノ所ヲ保護收容スル。以後ハ陸軍隊ガ收容スルガ當然デ
アルト証言シ、更ニ彼ハ日本陸軍ニ於テハ、俘虜取扱ハ軍政事項デ
アルヲ適當ナ軍政機關ガ之ヲ保護スル。パライテハ外事要務ヲ取
扱フ本務ヲ持ツ居ル南洋軍兵隊ガ當然保護ノ任務ヲ持ツ居ル

趣旨、その証言の但し本は搭乗員事件、場合、未だ証言中である。浮
屠の師団司令部は、被害者である。証言は、依り、師団衛兵
1長である。川又大尉が保護を担任して居る。である。

浮屠保護、直接、責任者である。川又大尉に被害者井ヒト、関係が
何等立証されかつ状況は、於て、川又大尉が差掛いて被害者井ヒトが浮屠
保護、刑事的責任を負う。合理的な権利を我々の主張する。である。

第二章 宣教師事件 (Spec 4.5)

第四節 宣教師事件は、於て、部下監督、責任 (Spec 4)

昭和十九年九月中旬、南洋軍兵隊、保護被害者下は、リ、南洋軍
砲台社、社宅に居住して居る宣教師其他、市長住宅七名、官舎軍兵隊
長立会、下は、送刑される。此、送刑は、参加して、軍兵隊中、当道者ト
病人を除く、全員ト、自衛軍隊、住田部隊、司令部、山本大尉外、三名、である。

南洋軍兵隊ト被害者井ヒト、指揮関係は、決て、既に、第二章は、
述べる通りである。被害者井ヒトは、南洋軍兵隊長、行動を監督抑制すべ
く何等、責任は、かつ、である。

自衛軍隊、住田部隊、パラオ地、区集団、一部隊である。然し
下は、宣教師送刑事件は、参加して、少数、住田部隊、者が如何なる事情
で本送刑は、参加するに至るか。又、是、間は、被害者井ヒト、間は、如何なる関係
性が、あるか。決て、検査、何等之を立証し、かつ、約三万人、部下を擁
して居る被害者井ヒト、部下中、偶、三、四名、者が、軍兵隊長、官舎中、居る頭ト、
一行中、加つて居る外、である。此、三、四名、行動監督抑制を、
云つて、外は、被害者井ヒト、刑事責任を、構成、する、が、当然である。

本事件当時、戦況及被害者井ヒトが病床に居ることを併せて考慮
せらるゝである。

尚、補足として、宣教師事件、命令が被害者井ヒトより発せらるゝ

否か。米テ、又之ハ正成ニ報告セリガ否カニ決テ証拠ヲ検討シ見タイ
報告井ヒハ当時病氣デマノ官端中ホト会ワタオハタイ。推ニ対シ
ニ宣教師ニ関シ指示ヲ求メタコトモナク。指示ヲ求メタコトモナク。何トナレバ、
外人ノ事ハ全ク自己ノ職權外ノコトデマツカラデアルト証言シ又宣教師ノ
受刑セリトナリ南洋ハ終戦後デマノ文書報告ヲ見タオハ全然ナイト証言
シ。検事側証人矢島ハ宣教師受刑ニ関スル憲兵隊カラノ文書報告
ニ参考最多田又井ヒ中尉ノ署名ヲ貰ッタト証言シガ。多田、井ヒトモ
斯ナルモノヲ見タオガナイト証言シ又憲兵隊佐野少尉ハ直接訊問ニ於
テモ反詰訊問ニ於テモ文書報告カナリシコトヲ証言シテ居ル。宣教
師事ハ関シテ事前ニ於テモ事柄ニ於テモ。報告井ヒハ毫モ関知シ
居ナイコトガ是ヲ、証拠ニ依ツテ明瞭デアル

第五節 宣教師事柄ニ於ケル市民住民保護ノ責任(Spec 5)

罪狀項目第五ニ於テ報告井ヒハ市民住民ヲ保護スルコトガ
彼ノ職責デマツタニ拘ラス之ヲ怠ラシメタトシテ問題ナリト居ル。夫故斯ナル
職責ガ報告井ヒニマツタカ否カニ決テサシテ検討シ見タイ。

報告井ヒハ昭和十九年四月下旬ニハラオニヒラシメテ居ルガ
被害者タリニ宣教師達ハ戦前ヨリハラオ又ハヤワラニ居住シテ居タ
デアル。夫故南洋群島ニ於テハ外人ノ保護ニ関スルコトガ南洋庁ノ職
責デマツタトニ決テ論議ノ余地ナシ。實際問題トシテ昭和十九年六月末
又ハ七月頃迄是等ノ外人ガ南洋庁ノ保護下ニマツタトハ検事側証人
佐野又矢島ガ明瞭ニ証言シ又是ヲ宣教師達ガ南洋拓社定ニ収
容セリトハ南洋庁ノ事ニ依ツテナリタリデアルト佐野ハ証言シテ居ル

昭和十九年六月末又ハ七月頃以降是等ノ宣教師達ハ南洋庁憲兵
隊ノ保護收容下ニ移サレタリ至ツテ終戦ニ決テ。憲兵隊ノ中村数次大尉
又佐野少尉ハ司令部ノ命令ニ依ツタモノデアルト証言シ然レ作ヲ。
報告井ヒハ外人ノ事ハ自分ノ職權外ノコトデマツテ何等指示ヲ出シタ

がナイト証言の被告多田と検事側証人矢野と憲兵隊＝保護收容、命令を出したの証言に在り。

此處で法規上、パオ＝於て外国人、保護取締が誰、職責がどうなつて検討するに及ぶ、如くである。

(1) 外人、保護取締の行政事項がどうあるか、職責がどうあるか、外に論議、余地がない。

(2) E2.9. 憲兵服務規程中＝、憲兵、職責中＝外事警察と云ふ項目、ル外が示されて居る。

(3) E2.8. 憲兵令中＝、憲兵、行政警察＝當にその南洋庁長官、指示を受ける外に規定されて居る。

叙へ、法規＝見る如く南洋憲兵隊の行政警察、一部が外事警察＝當に當然南洋庁長官、指示を受ける立場に在つたのである。作戦の性質上、任務上の行政権を當然附與されかつその師團長又はパオ軍団司令官＝、斯かる行政事項＝當に介在する指揮の道理がたゞである。

茲に注意を喚起したいのは、被告井比と南洋憲兵隊との間＝紙上又は規則上、指揮關係がどうあるか、實際問題上、階級が中將の中佐、差違があるに復する。前者、指示を受ける、パオと云ふ疑問が持たれる。然し此、問題、E2.9. 憲兵服務規程 22. 24. 25條を見れば明瞭である。前記三關係＝、憲兵、軍＝關係の社会事情が如何に、此地、情況＝通曉して、軍司令官、師團長甚だ關係部隊＝通報すべき外に規定されて居る。本規程＝依り南洋憲兵隊の階級＝關係が井比、司令部＝又他、パオ所在、關係部隊＝全權＝情報、提供に或る連絡がとれる外に、任務がどうな階級、上下＝依つて指示を受けること決定して起るに及ぶのである。

もう一つ疑問は、南洋庁の機能の停止に南洋庁、機能はパオ地と軍団司令官＝取つて代つた、パオと云ふ疑問が、被告井比と多田と南洋庁、機能、低下したと認められ、パオ＝當に限り機能、停止したとナイト証言の、被告井比、南洋庁、行政権の受と復と移管された外にナイト証言は、依り、疑問を氷解する。――

叙し、諸証拠を綜合すれば、被告井比は、未だ嘗て市民住民を保護し、職責が課せられたことが明瞭である。従つて我々の罪状項目第五の主張される事実の立証は、かかることを主張するに足りない。

第三章 英人スミス事件 (Spec b.7)

第六節 英人スミス事件に於ける部下監督、責任 (Spec b)

被告井比は、罪状項目第六に於て昭和十九年十二月二十九日の英人スミス殺害の事件に中村敦夫、味岡操、山田清基、人々、行動を監督抑制すべき彼、職責を負つたことについて訴追されている。然し本事件に参加した人々が南樺太軍隊員であったことは、中村及山田に依り認められている。

昭和十九年十二月頃、被告井比は、南樺太軍隊員、行動を監督抑制すべき職責が課せられたことは、第六節で論述したところがある。被告井比は、第六罪状項目に依り問責される所を、根拠を以て否認する。

尚補足的に、被告、証拠を挙げる。被告井比は、英人スミスが、南樺太軍隊員に保護收容されたこと、又彼が處刑されたこと、かかる外証を以て否認する。南樺太軍隊、情報主任であり且スミスを逮捕し、行つた作戦に参与した。スミスが處刑されたことが知られた終戦後の資料外証を以て。

スミス、處刑に關する文書報告が軍司令部に受領されたこと、矢野の証言に於て被告井比は、斯かる一切見解を以て否認する。軍司令部が斯かる事柄、文書報告、責任を以て否認する。スミス處刑、報告の作られた外証を以て否認する。被告井比は、証言、之に依り追証される。次第である。

第七節 英人スミス事件に於ける市民住民保護、責任 (Spec 7)

本項、宣叙即事件ニ於ル市民住民保護委員 (Spec 5) - 生
バット全ク全一ノ理由ニ依リ報告井ヒシ。其、責任ナク、南洋庁ト南洋軍兵
隊ノ員バヤ市況ヲアツタテアル。夫故我々、本罪状項目、検事ニ依リ
正ガル証ヲ起シ、之ヲ立証セシメカ。ソト主張スルモノアル

第四章 カフマニヤ尉 事件 (Spec 8, 9, 10)

第八節 カフマニヤ尉、殺害 (Spec 8)

昭和二十年五月下旬カフマニヤ尉がエール島高射砲隊ヲ殺害シ
タ事件ニ於テ報告井ヒカ、處刑、命令ヲ出シカ否カニ就テ、検事何人
豫トテ論例、証據トハ相反シテ居ル。夫故両者、証據中重要ナル其
シテカニ詳細、検討シテ見エシ。

(1) カフマニヤ尉、数日前、矢野情報参謀ニ報告井ヒカ、カフマ
ニヤ尉ヲエール島高射砲隊ノ手ヲ処刑セシメウト思フカ、土井部隊長、
意旨ヲ聞ク様、云ハレシ。ソレヲ土井大佐ト電話ヲ連絡シテ証言シ。
報告井ヒハ、彼ノ部下ニ意見ヲ求メル必要、ル場合ハ、参謀長、
意見、ミテ聞ク。彼ノ命令ヲ出ス前ニ、彼ノ部下部隊長ニ意見ヲ求メ
ルハ、絶対ニシテ。又本報中ニ聞シテ土井大佐ニ意見ヲ求メタハ、ナ
シト証言シタ。軍隊ニ於テ、至極尤モノアル。

矢野参謀ガカフマニヤ尉、数日前ニ土井大佐ト電話連絡ヲシ
ト、小市及腰山ノ証言ニ明、事實ヲアツタテポ。然レテ、報告井
上カカフマニヤ尉ニ聞シ土井大佐カ意見ヲ求メタト云フハ、甚ダ定ハシ。

(2) 小市ノ証言ニ依リハ、カフマニヤ尉前、土井大佐ト矢野参謀ト
同、電話連絡ニ、三、四回行ハレテ居ル。ソレヲ彼ノ司令部ニ出頭スル
以前ニ、司令部中ニカフマニヤ尉、意旨、ルニテ充分ニ知テ居
テアル。Rebuttalニ証人ガ、立シテ検事何人、中川、藤、反、討、訊、問

＝於て小市が司令部＝出頭の日、二、三日＝矢島がカフマレが受刑レ
ル云フオア聞行品、オア想ヒ起シト証言シ。

一方、被告井ヒ、証言＝依レバ矢島が「井ヒ」対シカフマレ風
結果＝氷ヲ報告ヲシタトテ、士気昂揚、カフマレ受刑シテ希望が都
下、中＝プル脱走、オア申出デタオアオデアル（但シ矢島、彼＝対シ反
対訊問＝於テ此、事ヲ否定シ居ルカ彼、元來信頼出来ヌ証人デアル）

是等、証言ヲ綜合スルハ小市大尉が司令部＝出頭：テ被告
井ヒト會、此等、幕僚及部下、將校、尚＝カフマレ受刑、オア度々會
話レテ居テ、小市大尉、中川參謀、勿論矢島、直接、部下テ彼ト全
體ヲ勤務シ居テ、小野瀬少尉、頭、中＝カフマレ受刑、トガ既＝
先入主ニテ入ワテ居テオハ、疑ハシ事實デアル。

(3) 小市大尉及中川參謀が被告井ヒ＝對シテ高特砲陣地＝決
テ報告ヲシタトテ、カフマレ少尉＝尚スル會話が交ハケル。此ノ時小市＝
膽山隊ヲ俘虜、受刑セシト將軍カラ命令レタト証言シ。然レ彼、
反對訊問＝於テ、彼ハ當時情勢＝依リ耳ヲ負傷シ居リ、縫帶ヲシ
居テ、及ビ將軍ノ言ワタ言葉、中＝判ワナク分ラナイ矣カワタオア
認メテ居ル。

Rebuttal＝於テ中川參謀ハ被告井ヒハ小市＝對シカフマレ
「受刑セシ」ト云フ言葉ヲ使ツタ記憶ハナイカ「膽山隊＝ヤラセ」ト
云フ言葉ヲ使ツタ。然レ此、言葉、意味＝「受分サセル意味」デアルト解
シト証言シ。

被告井ヒ自身、証言＝依レバ彼ハ小市＝對シテ使ツタ正確ナ
言葉「俘虜ヲオ前ノ所＝ヤラセ」デアル事、意味、俘虜ヲ「送
ス」カ「移ス」意味デアル事、御里テ常ニ使ハル言葉デアルト云フデアル。

小市及中川ニ井ヒ、毫ニ行ク以前＝カフマレ受刑＝尚スル先入主
ヲ持テ居テ居ルカラ、井ヒガ此時＝使ツタ言葉、意味ヲ正シ理解シ
得テカツトオエ有リ得ル、デアル從テ小市、中川、証言＝係ラス被告井
上ガカフマレ受刑ヲ命ジタトハ、是ヲ疑問、余地ガアル。

(4) 小野瀬少尉ハカフマレ復送シ出奔スル以前＝矢島參謀

カラ命ぜられ被告井比、所=申者。行つた時、小野地、若く高野隊
1番がカマエリ斬り損えたら、小野地が斬り損えたら井比中將カラ云ハレ
ト彼ハ証言シ。

之=対シ、被告井比、小野地、カマエリヲ護送シ行ク=ト、ミ中將
シタケ、P.O. カマエリ=處刑シカマエリ所持品=同スルヲ何モ
ハツカッタ。彼井比、唯、氣ヲ付ケ行ケト云フヲ申シタゲデハト証言シ。

小野地、証言中=、彼が1947年8月4日=第13陳述書デアツテ
小市裁判ノ時=Ex. 6. トニテ提出サレシ陳述書ノ内容ト相違スル英ガニ
三冊PT. 2. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000. 1001. 1002. 1003. 1004. 1005. 1006. 1007. 1008. 1009. 1010. 1011. 1012. 1013. 1014. 1015. 1016. 1017. 1018. 1019. 1020. 1021. 1022. 1023. 1024. 1025. 1026. 1027. 1028. 1029. 1030. 1031. 1032. 1033. 1034. 1035. 1036. 1037. 1038. 1039. 1040. 1041. 1042. 1043. 1044. 1045. 1046. 1047. 1048. 1049. 1050. 1051. 1052. 1053. 1054. 1055. 1056. 1057. 1058. 1059. 1060. 1061. 1062. 1063. 1064. 1065. 1066. 1067. 1068. 1069. 1070. 1071. 1072. 1073. 1074. 1075. 1076. 1077. 1078. 1079. 1080. 1081. 1082. 1083. 1084. 1085. 1086. 1087. 1088. 1089. 1090. 1091. 1092. 1093. 1094. 1095. 1096. 1097. 1098. 1099. 1100. 1101. 1102. 1103. 1104. 1105. 1106. 1107. 1108. 1109. 1110. 1111. 1112. 1113. 1114. 1115. 1116. 1117. 1118. 1119. 1120. 1121. 1122. 1123. 1124. 1125. 1126. 1127. 1128. 1129. 1130. 1131. 1132. 1133. 1134. 1135. 1136. 1137. 1138. 1139. 1140. 1141. 1142. 1143. 1144. 1145. 1146. 1147. 1148. 1149. 1150. 1151. 1152. 1153. 1154. 1155. 1156. 1157. 1158. 1159. 1160. 1161. 1162. 1163. 1164. 1165. 1166. 1167. 1168. 1169. 1170. 1171. 1172. 1173. 1174. 1175. 1176. 1177. 1178. 1179. 1180. 1181. 1182. 1183. 1184. 1185. 1186. 1187. 1188. 1189. 1190. 1191. 1192. 1193. 1194. 1195. 1196. 1197. 1198. 1199. 1200. 1201. 1202. 1203. 1204. 1205. 1206. 1207. 1208. 1209. 1210. 1211. 1212. 1213. 1214. 1215. 1216. 1217. 1218. 1219. 1220. 1221. 1222. 1223. 1224. 1225. 1226. 1227. 1228. 1229. 1230. 1231. 1232. 1233. 1234. 1235. 1236. 1237. 1238. 1239. 1240. 1241. 1242. 1243. 1244. 1245. 1246. 1247. 1248. 1249. 1250. 1251. 1252. 1253. 1254. 1255. 1256. 1257. 1258. 1259. 1260. 1261. 1262. 1263. 1264. 1265. 1266. 1267. 1268. 1269. 1270. 1271. 1272. 1273. 1274. 1275. 1276. 1277. 1278. 1279. 1280. 1281. 1282. 1283. 1284. 1285. 1286. 1287. 1288. 1289. 1290. 1291. 1292. 1293. 1294. 1295. 1296. 1297. 1298. 1299. 1300. 1301. 1302. 1303. 1304. 1305. 1306. 1307. 1308. 1309. 1310. 1311. 1312. 1313. 1314. 1315. 1316. 1317. 1318. 1319. 1320. 1321. 1322. 1323. 1324. 1325. 1326. 1327. 1328. 1329. 1330. 1331. 1332. 1333. 1334. 1335. 1336. 1337. 1338. 1339. 1340. 1341. 1342. 1343. 1344. 1345. 1346. 1347. 1348. 1349. 1350. 1351. 1352. 1353. 1354. 1355. 1356. 1357. 1358. 1359. 1360. 1361. 1362. 1363. 1364. 1365. 1366. 1367. 1368. 1369. 1370. 1371. 1372. 1373. 1374. 1375. 1376. 1377. 1378. 1379. 1380. 1381. 1382. 1383. 1384. 1385. 1386. 1387. 1388. 1389. 1390. 1391. 1392. 1393. 1394. 1395. 1396. 1397. 1398. 1399. 1400. 1401. 1402. 1403. 1404. 1405. 1406. 1407. 1408. 1409. 1410. 1411. 1412. 1413. 1414. 1415. 1416. 1417. 1418. 1419. 1420. 1421. 1422. 1423. 1424. 1425. 1426. 1427. 1428. 1429. 1430. 1431. 1432. 1433. 1434. 1435. 1436. 1437. 1438. 1439. 1440. 1441. 1442. 1443. 1444. 1445. 1446. 1447. 1448. 1449. 1450. 1451. 1452. 1453. 1454. 1455. 1456. 1457. 1458. 1459. 1460. 1461. 1462. 1463. 1464. 1465. 1466. 1467. 1468. 1469. 1470. 1471. 1472. 1473. 1474. 1475. 1476. 1477. 1478. 1479. 1480. 1481. 1482. 1483. 1484. 1485. 1486. 1487. 1488. 1489. 1490. 1491. 1492. 1493. 1494. 1495. 1496. 1497. 1498. 1499. 1500. 1501. 1502. 1503. 1504. 1505. 1506. 1507. 1508. 1509. 1510. 1511. 1512. 1513. 1514. 1515. 1516. 1517. 1518. 1519. 1520. 1521. 1522. 1523. 1524. 1525. 1526. 1527. 1528. 1529. 1530. 1531. 1532. 1533. 1534. 1535. 1536. 1537. 1538. 1539. 1540. 1541. 1542. 1543. 1544. 1545. 1546. 1547. 1548. 1549. 1550. 1551. 1552. 1553. 1554. 1555. 1556. 1557. 1558. 1559. 1560. 1561. 1562. 1563. 1564. 1565. 1566. 1567. 1568. 1569. 1570. 1571. 1572. 1573. 1574. 1575. 1576. 1577. 1578. 1579. 1580. 1581. 1582. 1583. 1584. 1585. 1586. 1587. 1588. 1589. 1590. 1591. 1592. 1593. 1594. 1595. 1596. 1597. 1598. 1599. 1600. 1601. 1602. 1603. 1604. 1605. 1606. 1607. 1608. 1609. 1610. 1611. 1612. 1613. 1614. 1615. 1616. 1617. 1618. 1619. 1620. 1621. 1622. 1623. 1624. 1625. 1626. 1627. 1628. 1629. 1630. 1631. 1632. 1633. 1634. 1635. 1636. 1637. 1638. 1639. 1640. 1641. 1642. 1643. 1644. 1645. 1646. 1647. 1648. 1649. 1650. 1651. 1652. 1653. 1654. 1655. 1656. 1657. 1658. 1659. 1660. 1661. 1662. 1663. 1664. 1665. 1666. 1667. 1668. 1669. 1670. 1671. 1672. 1673. 1674. 1675. 1676. 1677. 1678. 1679. 1680. 1681. 1682. 1683. 1684. 1685. 1686. 1687. 1688. 1689. 1690. 1691. 1692. 1693. 1694. 1695. 1696. 1697. 1698. 1699. 1700. 1701. 1702. 1703. 1704. 1705. 1706. 1707. 1708. 1709. 1710. 1711. 1712. 1713. 1714. 1715. 1716. 1717. 1718. 1719. 1720. 1721. 1722. 1723. 1724. 1725. 1726. 1727. 1728. 1729. 1730. 1731. 1732. 1733. 1734. 1735. 1736. 1737. 1738. 1739. 1740. 1741. 1742. 1743. 1744. 1745. 1746. 1747. 1748. 1749. 1750. 1751. 1752. 1753. 1754. 1755. 1756. 1757. 1758. 1759. 1760. 1761. 1762. 1763. 1764. 1765. 1766. 1767. 1768. 1769. 1770. 1771. 1772. 1773. 1774. 1775. 1776. 1777. 1778. 1779. 1780. 1781. 1782. 1783. 1784. 1785. 1786. 1787. 1788. 1789. 1790. 1791. 1792. 1793. 1794. 1795. 1796. 1797. 1798. 1799. 1800. 1801. 1802. 1803. 1804. 1805. 1806. 1807. 1808. 1809. 1810. 1811. 1812. 1813. 1814. 1815. 1816. 1817. 1818. 1819. 1820. 1821. 1822. 1823. 1824. 1825. 1826. 1827. 1828. 1829. 1830. 1831. 1832. 1833. 1834. 1835. 1836. 1837. 1838. 1839. 1840. 1841. 1842. 1843. 1844. 1845. 1846. 1847. 1848. 1849. 1850. 1851. 1852. 1853. 1854. 1855. 1856. 1857. 1858. 1859. 1860. 1861. 1862. 1863. 1864. 1865. 1866. 1867. 1868. 1869. 1870. 1871. 1872. 1873. 1874. 1875. 1876. 1877. 1878. 1879. 1880. 1881. 1882. 1883. 1884. 1885. 1886. 1887. 1888. 1889. 1890. 1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900. 1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910. 1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194.

即ち、被告井上が力マレ受刑、命令書が出たと云、矢島、証言、数多、反証に依り悉く覆されて居る

(6) 被告井上は、健康に、通地デパート及通地ト防壁壕施設ヲ有すと云、理由デ力マレヤ時ヲコロル為、移ストノ意圖シ、彼、其、意圖ヲ以前ニ表シタトヲ証言シ、又、小市ト、合流ノ際ニハ、中川、参考ガ立会ヲ居タリ、参考ニ指示スルヲ、又、充分デプル、外、証言シ

(7) 以上ヒ力マレ受刑事件ニ於ケル事實ニ関スル主要ノ証拠、検討ヲ終リタリ、我々が是等ノ対立シテ証拠ヲ比較考慮スルニ當リ、第一次ニ是、充分ニ考慮、入レル必要ガ有ル。

(a) 被告井上ハニ橋乗負事件ニ於テハ参考長多田カラ反証ノ意見、申ガフツ、拘ラス、自己、意圖ヲ果シスルヲ主眼ニシテ、意圖ニ依リテ、証言シ居ル。

(b) 被告井上ハ証人ガニ於ケル最終陳述ニ於テ、彼、参考、及、大、他人ニ、責任ヲ転嫁シテ、恥カシ、自己ノ、自分ハ、其、満、下部、監督ニ、失敗シタトヲ痛感シテ、自、陳述シタト。

(8) 以上、第(1)地力及第(6)地検討シテ証拠、及、第(7)地ヲ綜合スルニ、被告井上ハ力マレヤ時、受刑ヲ命じタト云、検書例、主眼(Spec 8)ニ、合理的疑念ヲ残サバ、是ニハ立証セシカ、我々ハ茲ニ、多分、合理的疑念ガ残レテ居ルニ、主眼スルニ、デプル。

第九節 力マレ事件ニ於ケル部下監督、責任(Spec 9)

罪状項目第9ニ列挙セリ、力マレ事件内、傷害ガ被告井上、部下、P、後、行動監督抑、部下ニ、付タ、人々、デプル、ハ、事實、デプル、被告井上ハ証人ガニ於ケル最終陳述ニ於テ、彼、部下ガ力マレ事件ヲ判決ヲ受テ、服役中、デプル、ニ、"道義的責任"ヲ、成、ジ、テ、居ルヲ、述、ベ、ク、也、之、ハ、刑事的責任、ヲ、認、メ、テ、居、タリ、爾、等、ハ、法律、倫、理、範、疇、ニ、屬、ス、ル、デ、之、ヲ、有、ル、ニ、

第4節 カマエ事件ニ於ケル俘虜保護ノ責任 (Spec 10)

被告井上ハ彼ガカマエ少尉ヲコル島ニ移入意圖ハ當時ニシテ
ケル地帯ニ傳染病ハ又防空壕施設ニ貧弱デシタ大故健康地
アリ防空壕施設、整ツタコル島ニ移サウト云フニ在リタ証言シ。
換言スルニ、彼ノ意圖ハカマエヲ利良ク保護セリタルニ在リタアリ
是刑トハ凡ソ正反對トモアリ得タリ。コノ後ノ意圖ガ彼ノ一部ノ部
ニ依リ誤リ度理ケル場合ニ於テ、彼ハ俘虜保護ノ責任ヲ負ツタモ
トシテ其ノ刑事的責任ヲ辯護サルベキモトハ考ヘテ得ル

第五章 被告ノ人格ニ就テ

本法庭ニ提出サレシ概布例証拠ト被告井上ノ証言トノ間ニ重
要ナルニ於テ齟齬ニテ居ル點ガ此ノ対立シテ証拠ヲ比較考
量スルニ當リテハ被告井上ハ多田ノ人格ヲ充分ニ考慮入レル要ガアル

被告井上ハ彼ガ如特軍ト云フ評判、高イ人デアツタトハ証人
多田久中川、証言中ニアツタガ之ハ獨リ日本軍隊ノミナラス比較的短
期間(約五ヶ月半)接觸シ米軍特校ニ之ヲ送リテ居ル Ex 14. ペリ
ー島半軍司令官 F.O. Rogers ヲ特ノ被告井上ニ就テタ statement
中ニ之ガ坎ハテ居ルガ全ク特ニ被告井上ノ Personal sincerity
ヲ贊物シテ居ル 被告井上ニ關聯シテ証拠ヲ検討スルニ當リ彼ノ人
格ニ充分ニ考慮ヲ拂ハレントテ懸念スル次第デアル

被告多田ヲ知ル、人格及思想ニ就テハ元殿下關陸軍に (Ex
15) ノ飯村稔陸軍大將 (Ex 16) 21、人格証言者ニ依リテ充分ニ
之ヲ知レル外ガ無キ。彼ガ學識ニ富ミ又仁義ニ立脚シ戦争指導原
理、主唱者デアツタトハ罪狀控申第一ノ事件ニ於ケル彼ノ行爲ヲ裁
断セラルニ當リテ充分考慮セラルベキ事項デアルト確信スル

結 論

最後=一言ニメイト思フ.

被告井上貞術が訴追せられた品々四つの事件で、宣教師事件と
莫人スミス事件と求むる検事と強く論争した品々1つ、是れに両事件
と求むる述べたい。

第一、三路乘兵馬隊は在り、報告井に復、自由意志=依り
遂に、建兵隊=依頼スルニ付、考案長多用=命じタ、テハナク。(1)
小畑中將、指ホ (2) 緊迫ニシテ實際、戦況ヲ實ヲ存房=對ニ
強行爲ヲ、未然ニ防止スルヲメニハ、之以外ニ方法ヲ思ハ、結滿
ニ達ニ付ザルニ付、

第四、内々少尉市井、信房が到着、保護せられ
被害者、景岡の一部、部下、過失=依り、正対、結果が生じたり
叙じ、其に=被害者、人物が、信房=入、寛大に
劉、快く、その、懇願、次、第、に

報告多由得知。停廢死刑=反対、意見ヲ有シテ居リ之ヲ
將軍ニ表示シテ、実行遲延ニ却メタリテハ唯最後、餓死ニ於テ
病中、將軍ヲ煩ハサザラカシ。止ムナリ將軍ノ意向ヲ密端ニ傳達
シテ之ニ教唆スル契助ナリト判明ナリ。

本單據要查核光字田 = 計之 無罪 1 到快 1942-7 想飲
以此 歌者 1 11

敬日 作雅 致

FINAL ARGUMENT IN BEHALF OF INOUE, SADAЕ AND TADA, TOKUCHI.

Delivered by Mr. Sanagi, Sadamu,
and by Mr. Takano, Junjiro,
Counsel for the accused,
INOUE, Sadae, former Lieut. General,
Imperial Japanese Army,
Army Group Commander, Palau Area,
Commanding General, 14th Division,
and TADA, Tokuchi, former Colonel,
Imperial Japanese Army,
Chief of Staff of the above Army
Group and above Division.

The Honorable President and Members of the Commission,

We have the honor to deliver our closing arguments before this learned Commission in defense of the accused INOUE, Sadae and TADA, Tokuchi. We desire to express our deep gratitude for the fair and sincere manner in which this trial has been conducted.

PART I GENERAL REMARKS

Section 1 Introduction

Although there are ten specifications to the present charge the basic incidents alleged by the judge advocate are four. They are namely, first, the incident of the three flyers, second, the incident of the missionaries, third, the Smith Incident, and fourth, the Kaufman incident.

In regard to the first incident of the three flyers, the allegation of the judge advocate is that the accused INOUE, Sadae, then the Army Group Commander, Palau Area and Commanding General of the 14th Division and TADA, Tokuchi, then Chief of Staff of the 14th Division, both on duty in the Palau, acting with MIYAZAKI, Aritsune, Commanding Officer of the South Seas Kempetai, NAKANURA, Kasuo and KOKUBO, Chihiro, members of the same Kempetai did kill and cause to be killed three American prisoners of war who were flyers. INOUE and TADA are charged with murder in this Specification. (Specification 1)

INOUE is charged in connection with this incident, with neglect of duty as Army Group Commander and Division Commander to control and supervise subordinates and failure to protect prisoners of war held in custody. (Specifications 2 and 3)

It is the contention of the judge advocate that in the second incident of murder of the missionaries and others totalling seven who were residing in the Palau, by members of the Kempetai, INOUE in his capacity as Army Group Commander and Division Commander failed to discharge his duty to supervise and control his subordinates as well as his duty to protect these foreign residents. (Specifications 4 and 5)

In the third incident of Smith, the judge advocate alleges that INOUE in his capacity of Army Group Commander and Division Commander failed to discharge his duty to control and supervise his subordinates and protect the resident Englishman, because the Englishman

Charlie Smith who was then residing in the Palau was killed by members of the South Seas Kempeitai. (Specifications 6 and 7)

In the fourth incident of Kaufman, the judge advocate alleges that INOUE, Sadae who was Army Group Commander and Division Commander, acting with KOICHI, Hiroshi, KATSUYAMA, Tetsuji and ONOSE, Ichiro killed and cause to be killed one American prisoner of war named Kaufman who was then held in custody. (Specification 8)

In connection with this incident INOUE is charged with neglect of duty as Army Group Commander and Division Commander, to control and supervise subordinates and failure to protect the prisoner of war then held in custody. (Specifications 9 and 10)

In examining the duty of the accused INOUE in regard to the four above mentioned incidents alleged by the judge advocate, and the duty of the accused TADA in regard to Specification 1, I contend that a close study of the following points will have a most important bearing on the substantial rights of the accused.

Concerning the 1st Incident (Incident of the three flyers):

1. Whether INOUE, of his own free will, requested the disposal of these flyers of Commanding Officer of the South Seas Kempeitai, MIYAZAKI, through TADA.
2. Whether there existed at the time a command relationship between the above Commanding Officer of the Kempeitai and INOUE.
3. Whether there existed the relationship of aider and abettor between INOUE and the active principals in this case, NAKAMURA, Kazuo and KOKUBO, Chihiro, both attached to the Kempeitai.
4. Whether TADA, in relaying the above mentioned request of INOUE to MIYAZAKI, expressed his own will (will to dispose of the prisoners) and consent to this disposal. In other words, whether TADA was a mere relayer of the request of INOUE to MIYAZAKI.
5. Whether TADA expressed opinions opposing the disposal to INOUE.

Concerning the 2nd Incident (Missionaries Incident) and 3rd Incident (Smith Incident).

6. Whether the South Seas Kempeitai, at the time of the incidents was a subordinate unit of INOUE, the Army Group Commander and Commanding General of the 14th Division.
7. Whether INOUE issued any orders, instructions, or requests concerning the disposal of these missionaries and Smith to the South Seas Kempeitai, or to any other unit.
8. Whether the protection of foreigners residing in the Palau at that time was a duty, direct or indirect, of the Army Group and Division Commander, INOUE.
9. Whether there existed any relationship of command and supervision between the person responsible for foreign residents and INOUE - if INOUE was not directly or indirectly responsible for the protection of such foreign residents.
10. Whether there exists, in the laws and customs of war, a regulation which places criminal responsibility on INOUE for neglect of duty to control and supervise persons, who were in

no way related to INOUE through chain of command, for offenses committed without direct or indirect relation to INOUE, and neglect of duty to protect the victims of these offenses.

Concerning the 4th Incident (Kaufman Incident)

11. Whether in the disposal of Kaufman, INOUE acted with KOICHI, Hiroshi, KATSUYAMA, Tetsuji and ONOSE, Ichiro in that act.
12. Whether INOUE issued orders to KOICHI, KATSUYAMA and ONOSE concerning the disposal of Kaufman. In other words, whether there was criminal intent on the part of INOUE in regard to the disposal of Kaufman.
13. Whether or not INOUE's order concerning Kaufman was misinterpreted by persons receiving the order. If such misunderstanding actually existed, whether the cause of the misunderstanding was objectively present prior to the fact.

Section 2. The 14th Division and the Army Group, Palau Area and their Superior Headquarters.

As the accused INOUE was Commanding General of the 14th Division and concurrently Army Group Commander, Palau Area, I shall for purposes of convenience, consider these offices on the same level in my argument.

The superior headquarters of the Palau Area Army Group differed in point of time. From the end of April 1944 until the end of August 1944 or thereabouts, it was the Headquarters of the 31st Army under the command of Lieutenant General OBATA. Around August of 1944, the 31st Army Headquarters of OBATA was annihilated on Guam. After this time the superior headquarters of the Army Group was the General Headquarters of the Southern General Army under Generalissimo, Colonel General TERAUCHI. (Testimony of defense witnesses NAKAGAWA, TADA and INOUE)

INOUE as a commanding general under the command of Army Commanding General OBATA, received operational directives and orders and instructions pertaining to other matters, from Lieutenant General OBATA. In the early part of June 1944, when General OBATA, Commanding General of the 31st Army arrived in the Palau, he issued the following instructions to INOUE: In the event an invasion by American Forces becomes definite, and if passage to the rear is severed, execute prisoners of war. He further instructed INOUE that "such was the policy of the Central Authorities in Tokyo". At this time INOUE expressed an opposing view stating to Army Commanding General OBATA that execution of prisoners of war was illegal. (Testimony of INOUE on the 14th day of trial).

Again, it is a fact that Army Commanding General OBATA gave instructions to TADA and NAKAGAWA along the same lines about this time but on another occasion (during his stay in the Palau) (Testimony of NAKAGAWA Q. & A. 45, on the 10th day of trial, and TADA's testimony on the 12th day of trial.)

The request made by INOUE to Kempeitai Commanding Officer MIYAZAKI to dispose of the flyers in the 1st Incident did not express his free will but the order and instructions of OBATA, Commanding General OBATA, Commanding General of the 31st Army. That this request of INOUE was not made on his own free will may be seen from the answer he gave to TADA,

when the latter strenuously objected to the General's order to relay the request. He said to TADA in effect that "if the Chief of Staff so completely objected to the execution, that he would abandon the execution at headquarters and also at the units, but that he had arrived at this decision as a general because there was no alternative". (Testimony of TADA on the 12th day of the trial, Q. & A. 49) INOUE himself testified as follows: "---- I told TADA that I recognized his opinion but that in my case there were certain factors which could not be reconciled and I told him ----" (Testimony of INOUE on the 13th day, Q. & A. 27).

Section 3. Chief of Staff of the Division and the Army Group.

As the accused TADA held the office of Chief of Staff of the 14th Division and concurrently that of the Army Group, Palau Area, I shall, for purposes of convenience, consider them as being of almost identical nature, in my argument.

The main duty of TADA, as Chief of Staff of the Division, was to assist the Commanding General and to draft various operational plans. (Testimony of TADA and Exhibit No. 11). Consequently, TADA in the 1st Incident could not himself, issue orders or instructions to Kempeitai Commanding Officer MIYAZAKI regarding the disposal of prisoners of war and it was without the scope of his duties voluntarily to request such disposition. In actual fact, TADA did not, of his own volition make the request, but merely relayed INOUE's request to MIYAZAKI. Moreover, prior to this, TADA had expressed his opposition to such disposition to INOUE and hesitated even to relay INOUE's request to MIYAZAKI. (Testimony of TADA and INOUE)

In view of these facts, it is clear that TADA did not have the slightest intention to dispose of the flyers, or to relay the request.

Section 4. The South Seas Kempeitai.

The South Seas Kempeitai which was stationed in the Palaus from around April of 1944 until March of 1945 was an Imperial Ordinance Kempeitai which after April of 1945 became a military ordinance Kempeitai. However, as the latter has no direct connection with this trial, it will not here be discussed, stress being laid on the first phase of its status.

The South Seas Kempeitai, which was an Imperial Ordinance Kempeitai, was subordinate to the War Minister, and directly under the command of the Kempei Commandant in Tokyo in accordance with the regulations set forth in the Ordinance Governing Kempei (Exhibit No. 8). The main duty of the South Seas Kempeitai was military police duties and they, concurrently, performed administrative and judicial police work. In the performance of their military police duties, they received directives from the War and Navy Ministers; and in discharging their administrative and judicial police duties received direction from the Minister for Greater East Asia. Again, in matters of administrative and judicial police, the South Seas Kempeitai received instructions from the Governor of the South Seas Government Office and the Prosecutors of that Office. These regulations are set forth in the Ordinance Governing Kempei.

The Service Regulations for Kempei (Exhibit No. 9) clearly set forth that matters pertaining to external police affairs, and matters pertaining to the security of military secrets constituted an external police duty of the Kempeitai.

Article 22 of this regulation reads as follows:

"Kempeis shall study the social conditions which affect the Army, and in case where an influence may be detrimental, shall immediately notify the units and authorities concerned."

And Article 23 of the same regulation sets forth:

"Kempeis must keep themselves well informed concerning the conditions of local areas and, if required, shall notify the Commanding General of the Army, Commanding General of the Division, Commanding Officer of a Besieged Area, and other appropriate officials."

It is clear from the foregoing that police affairs concerning foreigners residing in the Palau were handled by the South Seas Kempeitai under the instructions of the Governor and Prosecutors of the South Seas Government Office. (Testimony of defense witness NAKAGAWA on the 11th day of the trial and Testimony of INOUE and TADA.) The duty to protect these foreign residents was incumbent upon the Governor of the South Seas Government Office. I shall discuss this in Section 7 later.

Section 5. The South Seas Kempeitai (Imperial Ordinance Kempeitai), the 14th Division and the Army Group, Palau Area.

That the South Seas Kempeitai was an organ of military administration is clear from studying the nature of its duties as set out above. Furthermore, the South Seas Kempeitai was subordinate to the Kempei Commandant resident in Tokyo as has been illustrated. Now both the 14th Division and the Palau Area Army Group were purely operational units. Hence there existed no command relationship between the South Seas Kempeitai and the 14th Division, or between the South Seas Kempeitai and the Army Group, Palau Area. Consequently, INOUE had no authority to supervise and control the actions of the Commanding Officer, and officers and men of the Kempeitai, and he owed no duty so to do. However about September of 1944, it was determined that the Commanding Officer of the South Seas Kempeitai be placed under the restricted command authority of the Army Group Commander in matters relating to land warfare. (Testimony of prosecution witness IAJIMA on cross-examination; testimony of defense witness NAKAGAWA D. & A. 28; TADA, 12th day of trial; INOUE, 14th day of trial; Exhibits 11 and 12). As a matter of fact, however, the Commanding Officer of the South Seas Kempeitai at no time received commands as a result of this restricted command authority from Army Group Commander INOUE.

Section 6. "To issue commands under restricted command authority" and Restricted Command Authority.

"To issue commands under restricted command authority" means for a person with command authority to issue commands or orders pertaining to certain matters within his authority to persons outside his command. This authority is known as restricted command authority. Hence, the commander exercising such authority must perforce, possess authority to issue commands concerning these matters.

As the accused, INOUE, in his capacity as Commanding General of the 14th Division and Army Group Commander, Palau Area, never had the duty, nor command authority, to protect foreign residents in the Palau or to dispose of police affairs connected with such duty, it is needless to say that he had no restricted command authority over the Commanding Officer of the South Seas Kempeitai, or the Governor of the South Seas Government Office, concerning these matters.

Section 7 Protection of foreigners resident in the Palaus.

The Palaus were part of the Japanese South Seas Mandated Territory. As Martial Law was not declared in that area between September 1944 and December 1944, military administration was not in effect in that area. Therefore the administrative and judicial affairs of that area were administered as a whole by the Governor of the South Seas Government Office, under the direction and supervision of the Minister for Greater East Asia. The direct official in charge was the District Governor of The Western Branch of the South Seas Government Office. As protection of resident foreigners is, without doubt, a matter of administration, the Governor of the South Seas Government Office owed the duty and the responsibility to protect these foreigners.

It is clear that neither the 14th Division nor the Army Group, Palau Area was in charge of such matters of civilian administration, as they were purely operational units. Hence, INOUE, who was the Commanding General of the Division and Army Group Commander not only had no authority over the Governor of the South Seas Government Office, but did not possess restricted command authority over the Governor of the South Seas Government Office in the matter of protection of foreigners, which matter was without the scope of his authority.

It is clear therefore that INOUE did not have the duty to protect the missionaries in the 2nd Incident and the Englishman Charlie Smith in the 3rd Incident. (TADA's testimony in behalf of INOUE on the 12th day of trial; testimony of defense witness NAKAGAWA, O. & A. 31 and 32).

Section 8 The Laws of War and the Placing of Responsibility of War Crimes.

If the action of a man is to be punished as a crime and criminal responsibility revert to his action, the regulations must clearly set forth why that action compromises the continued safe existence of society and must therefore be punished. This is a principle of the law of criminal procedure valid both in domestic and in international law.

- (a) There was no written regulation in the laws and customs of war until the termination of the last war, when the responsibility for acts in violation of the laws and customs of war, committed by persons who were not subordinates, (i.e. by persons not under a commander's supervision and control) was placed on the commander of an armed force. The Missionaries and Smith incidents are examples of such an attempt, for the acts in violation of the laws and customs of war were committed by officers and men of the South Seas Kempetai, a unit not subordinate to INOUE. There is no international law or regulation which places such responsibility on INOUE.
- (b) In no place in international law can a regulation be found by which responsibility could be made to revert to the commander of an armed force for acts in violation of international law committed by persons not his subordinates and concerning matters not relevant to his duties and lying without the scope of his authority. The present Missionaries and Smith incidents are examples of such an attempt to revert responsibility. There is no international regulation which provides that INOUE must assume responsibility for acts in violation of the laws and customs of war committed by officers and men of the South Seas Kempetai who failed to observe the protection of resident foreigners.

It would act in contravention of justice and fairness to impose responsibility for violations of laws and customs of war on INOUE for neglect of duty to control and supervise subordinates and protect resident foreigners in the Missionaries and Smith incidents.

I hold that the judge advocate, who predicated the charge in the instant case on the assumption that there were such regulations as (a) and (b) in international law, has the burden affirmatively to prove that such regulations do exist in international law.

Section 9 Criminal Intent.

Needless to say, criminal intent is an indispensable element of crime. Clark and Marshall states:

"It is a general rule, applicable both to common-law and to statutory crimes, that there is no crime unless there is so-called criminal intent, often referred to as mensa rea."
(Clark and Marshall's "A Treatise on the Law of Crimes, 4th Edition, Para. 38, p. 56)

The principle that criminal intent is an indispensable element of a crime is applicable not only to principals in the first degree but also to principals in the second degree. To find a person guilty of aiding and abetting it is necessary to show that he had a criminal intent. Clark and Marshall also point this out.

"To be guilty as a principal in the second degree, a criminal intent is necessary." (Ibid., Para. 168, p. 214).

Wharton holds also that criminal intent is necessary in an accomplice, thus:

"An 'accomplice' is one who knowingly and voluntarily, with the like malicious intent of the offender, unites with him in the commission of a crime." (Wharton's Criminal Law, 12th Edition, Vol. I Para. 245, Footnote, p. 328.)

In the 1st Incident (Incident of the three flyers) INOUE made a request on Kempeitai Commanding Officer MIYAZAKI following the order or instructions of OBATA, Commanding General of the 31st Army. There is the fact that INOUE expressed an opposing opinion to this order or instruction of Commanding General OBATA.

It is clear that there was no criminal intent on the part of TADA in regard to the 1st Incident (Specification 1), for TADA merely relayed the request of INOUE to MIYAZAKI. In the relaying of INOUE's request TADA in no way expressed his own volition. TADA, on the contrary expressed to INOUE his opposition to the proposed disposition of the flyers as a result of his own firm convictions in this matter and several times actually postponed the relaying of INOUE's request to MIYAZAKI to dispose of the flyers.

The mere act of TADA's relaying INOUE's request cannot be considered as an act of aiding and abetting.

That INOUE had no criminal intent whatsoever in regard to the 2nd Incident cannot be contraverted. (Missionary Incident) (Specifications 4 and 5).

Likewise there can be not the slightest doubt that INOUE had

any criminal intent in the 3rd Incident (Smith Incident) (Specifications 6 and 7).

There is reason to believe that the subordinates who received INOUE's order misconstrued that order in the 4th Incident (Kaufman Incident) (Specifications 8, 9 and 10). Before INOUE issued the order for Kaufman's transfer to Koror, he had heard from Staff Officer YAJIMA that of his subordinates some wished to execute the prisoner of war. It will be recalled that INOUE had severely reprimanded such imprudence. In the light of INOUE's reasons in having Kaufman transferred to Koror, and the fact of the reprimand noted above, it is difficult to conceive of any criminal intent on the part of INOUE in regard to this incident.

Section 10 Complicity.

The judge advocate alleges that in regard to the 1st Incident, INOUE and TADA "acting with" MIYAZAKI, NAKAMURA and KOKUBO "violated the laws and customs of war". Here, INOUE used TADA merely as a machine to relay his request as to the execution to Kempeitai Commanding Officer MIYAZAKI. Both NAKAMURA and KOKUBO were subordinates of MIYAZAKI. They were not the subordinates of INOUE. The person who actually gave the order for the disposal to NAKAMURA and KOKUBO was MIYAZAKI, and it was in compliance with this order that NAKAMURA and proceeded. Never did INOUE request the action of NAKAMURA or KOKUBO. Thus there was no complicity between INOUE (and TADA) and NAKAMURA and KOKUBO.

The burden of proving that there was complicity between INOUE (and TADA) and NAKAMURA or KOKUBO is incumbent on the judge advocate.

Section 11. The misconstrued order, and complicity.

As has been related above, a showing of criminal intent as to each individual accomplice is an essential prerequisite to the constitution of a crime.

In the 4th Incident, INOUE issued an order to his subordinate with the intention of having the prisoner of war transferred to Koror, and as a result of his subordinates' misconstruing the order, this incident occurred. Prior to INOUE's issuing the order, there had long been a desire among his subordinates to dispose of this prisoner of war.

Thus it was that when INOUE became aware of this he strongly reprimanded such imprudence. It may be reasoned that as such an atmosphere existed among his subordinates this idea had become implanted in the minds of his officers. Consequently this prepossession lead to a misconstruction of INOUE's order. It is also a fact that another cause for this misunderstanding was the language used by INOUE, and which was nearly synonymous with the word which his subordinates took it to be.

Thus INOUE's subordinates acted on a misconception of his order. As there was no criminal intent whatsoever on INOUE's part, there can be no complicity between INOUE and KOICHI, KATSUYAMA or ONOSE.

Co-counsel for the accused, Mr. Sanagi, Sadamu will argue on the basis of the evidence produced in this court.

Respectfully,

Takano, Junjiro.

PART II ARGUMENT ON THE BASIS OF THE EVIDENCE.

In Part II I shall argue on whether the acts alleged in the specifications have been proved beyond a reasonable doubt, by examining the evidence which has been presented to this military commission.

There has been quite an amount of conflicting evidence presented to this military commission. As there were discrepancies in some especially important portions of the evidence it is of the essence that in examining the evidence serious consideration be given when comparing the conflicting theories and when determining which to be the more rational and credible. For the achievement of this end, the more important portions of the evidence will be studied in somewhat greater detail.

CHAPTER I The Incident of the Three Flyers (Specifications 1, 2 and 3).

Section 1. The Murder of the Three Flyers. (Specification 1)

Concerning the circumstances of the transfer of the three American aviator prisoners of war who were executed by members of the South Seas Kempeitai in the early part of September 1944 from the 14th Division Headquarters, where they were interned, to the Kempeitai, the accused INOUE and TADA testified in detail. Prosecution witness YAJIMA testified to part of these circumstances.

According to the testimony of the accused INOUE, an American landing in the Palaus was certain from the intelligence reports received in the early part of September, and he judged the date of landing to be one or two days off. (Testimony of INOUE on the 13th day of trial.)

He therefore gave serious thought to the problem of what to do with the three prisoners of war. Finally he arrived at the conclusion that to follow the instructions directly given to him by Lieutenant General OBATA, Commanding General of the 31st Army, namely to save them from the atrocious acts of incensed lower ranking officers and men, was if anything a merciful act seen from the standpoint of the Way of the Samurai, or Code of the Samurai. (Testimony of INOUE on the 13th day of trial.)

When the accused INOUE expressed this intention of his to Chief of Staff TADA, the latter did not agree with it and took no steps towards its realization. But as to the accused INOUE, when he had expressed a dissenting opinion to Commanding General OBATA on receiving instructions from the Commanding General, he had been told that such was the policy of the Central Authorities in Tokyo; and he was actually witnessing the prelude of an American offensive and landing in the Palaus; and thinking that there was no alternative but to carry out the execution before the sentiment of his troops were roused, he told his Chief of Staff TADA to request the Commanding Officer of the Kempeitai, MIYAZAKI to perform the execution. (Testimony of INOUE on the 14th day of trial.)

Although there was a difference of about ten days between the day on which the accused INOUE judged the Americans would commence landings in the Palaus and the actual day of landing - an invasion of part of the Palaus actually did materialize. In the same way that this judgment of INOUE was not mistaken, it may also be said that he was not greatly mistaken when he judged that in the event of an American landing on a small island where there was no safety zone to the rear, under circumstances where it would be impossible to have prisoners of war under the surveillance of the Commanding General or the Chief of Staff at all times, that such prisoners of war after suffering atrociously from incensed and outraged troops would probably be lynched in the end, when we consider psychology on the field of battle.

It may be that the members of this commission would not fully understand this way of thinking of INOUE, namely that to execute prisoners of war under the surveillance and orders of the General and under the supervision of officers would be a means of saving the prisoners from atrocities and an act of mercy from the standpoint of the spirit of the Code of the Samurai, for this is Oriental or Japanese philosophy of Bushido. However, I believe that the members of this commission who all have experience of fierce battle will understand this war psychology in some measure.

Be it as it may, I do not believe from what INOUE testified in court, that the intention of the accused INOUE to execute the three flyers was such that it can be qualified as having been "felonious --- with malice aforethought" conceived, as alleged by the judge advocate in the specification. We hope that the commission in adjudging the accused INOUE in regard to Specification 1 will give full consideration to this point.

The accused TADA, from the time that he was first told of the intention of Lieutenant General INOUE to execute the three prisoners of war until the time he relayed this intention of the General to Kempeitai Commanding Officer MIYAZAKI, two or three times expressed opposing views to the General and postponed the execution of this intention. This fact is fully recognized by his co-defendant INOUE. The accused TADA testified that the reason of his opposition to the execution of the prisoners of war was based on his philosophy of war and of law. The accused TADA had at one time studied at the Tokyo Imperial University. In the character testimony of Colonel General IMURA, Joo, the General states that TADA had written a book entitled "Japanese Theory of War" wherein he expressed his ideology which was that the Japanese Armed Forces, in accordance with the benevolence of His Majesty the Emperor, must act humanely as merciful and just armed forces. (Exhibit 15)

It may very readily be seen that the accused TADA who subscribed to such ideas opposed the Commanding General's intention and postponed its fulfillment, and that as Chief of Staff he fully performed his duties to his commanding general.

If the reason for TADA's acquiescence in relaying the intention of the General to Kempeitai Commanding Officer MIYAZAKI is sought for in TADA's testimony, that reason is this, that he desired MIYAZAKI to understand his reasons for opposing the execution and desired MIYAZAKI to take appropriate steps from his free standpoint and at the same time not to cause worry to the General who was ill at that time. This also is very natural conduct on the part of TADA. The situation of TADA, placed between the General and the Kempeitai Commanding Officer and his efforts in his difficult position may readily be understood.

There is quite a wide discrepancy between the testimony of the accused TADA and the testimony of prosecution witness YAJIMA concerning the circumstances surrounding the relaying of the General's intention to Kempeitai Commanding Officer MIYAZAKI by TADA. It is believed that the Commission is fully aware of the fact that there have been incredible points in the testimony of the witness YAJIMA in this court room. The testimony of the witness YAJIMA concerning this incident of the three flyers is as follows: He had gone to an air raid shelter where he unexpectedly met MIYAZAKI and TADA and overheard part of a conversation between them. The witness Kempei 2nd Lieutenant SANO and other witnesses have testified to the fact that YAJIMA as the Staff Officer in charge of prisoners of war frequently met Kempeitai Commanding Officer MIYAZAKI. TADA's testimony that he had Intelligence Staff Officer YAJIMA present

throughout his conversation with Kempeitai Commanding Officer MIYAZAKI is extremely logical. Credibility cannot be placed on YAJIMA's testimony of a chance meeting. Under these circumstances, we may place full reliance on the credibility of the witness TADA concerning the substance of the conversation he had with MIYAZAKI, namely that TADA expressed his unwillingness for the execution.

The above concludes the examination of the evidence regarding the circumstances under which the accused TADA had no alternative but to relay the intention of the General to MIYAZAKI.

I wish at this point to focus attention on a few matters which are part of the evidence and which are related to this incident, which should be given consideration.

First, in regard to the instructions of the Commanding General of the 31st Army, OBATA relating to the disposal of prisoners of war in the event enemy landings become certain, not only do Exhibits 1 and 2, the statements of the accused INOUE and TADA bear this out, but defense witness NAKAGAWA, Kiyoshi corroborated this fact.

Secondly, the testimony of YAJIMA concerning the written report submitted by the Kempeitai after the execution of the three flyers was categorically denied by the testimony of Kempei 2nd Lieutenant SANO, who was the officer in charge of reports at the Kempeitai. Further YAJIMA's testimony that he was at the Arukoku Battle Command Post from the early part of September was denied by both INOUE and TADA. The above should be given consideration when weighing the testimony of witnesses.

Section 2 Duty to control subordinates in the incident of the Three Flyers.

In Specification 2, the accused INOUE is alleged to have neglected his duty to supervise and control the operations of his Chief of Staff, TADA, Tokuchi, Kempeitai Commanding Officer MIYAZAKI, and members of the Kempeitai. As was seen in the examination in the last section, the action taken by Chief of Staff TADA in this incident was to attempt to oppose the intention of the General and not to carry it out. It is clear that as to the Chief of Staff, TADA's action, it is beyond reproach. Consequently, there could not have been neglect on the part of the accused INOUE to control and supervise TADA.

Next, it is a major point at issue whether the accused INOUE owed the duty to supervise and control members of the Kempeitai under and including MIYAZAKI. I therefore wish to examine the command relationship between the accused INOUE and members of the South Seas Kempeitai on the basis of the evidence at this time.

Not only does the testimony of numerous witnesses agree on the fact that until March of 1945 (according to the witness NAKAGAWA until the 16th of March, 1945) the South Seas Kempeitai was under the jurisdiction of the War Minister and under the command of the Commandant of the Kempeitai in Tokyo, but also Exhibit No. 11, the Deposition of the Director of the Demobilization Bureau corroborates this fact. Hence there is no doubt whatsoever that there existed no direct command relationship between the accused INOUE and the South Seas Kempeitai until March of 1945. It was inferred that as the accused INOUE was Army Group Commander, Palau Area, that he in that capacity commanded all army units in the Palau including

the South Seas Kempetai. The most accurate and clear explanation was given by defense witness NAKAGAWA, Kiyoshi and by Exhibit No. 10, the Chart of Organization of the Army Group, Palau Area forwarded by the Demobilization Bureau. According to the testimony of NAKAGAWA, who was the officer in charge of organization at the Headquarters of the Army Group, Palau Area, not all army units in the Palaus were necessarily integrated into the organization of the Army Group, Palau Area; there were numerous units which had been stranded in the Palaus on their way to join the 2nd, and 8th Front Armies and the 18th Army in New Guinea which were not in the organization of the Army Group, Palau Area; these units were one after the other incorporated in the Battle Order of the Army Group, Palau Area by orders from Imperial General Headquarters; but that, however, the South Seas Kempetai was not included in the organization of the Army Group until March of 1945.

Exhibit No. 10, the Chart of Organization of the Army Group, Palau Area corroborates this testimony. As noted in the remarks column of the charts the South Seas Kempetai was to be placed under the restricted command authority of the Army Group Commander, Palau Area in the event of land warfare. There is no doubt concerning this matter, as it has been testified to by witnesses NAKAGAWA and TADA and established by Exhibit No. 13, the order pertaining to land warfare of the Central Pacific Area Fleet. Furthermore, the witness NAKAGAWA testified that there arose no occasion for Lieutenant General INOUE to issue orders to the South Seas Kempetai.

Needless to say, "control and supervision of operations" arise only where there exists a command relationship. The accused INOUE, who had no command authority over the South Seas Kempetai except in the event of actual land warfare, had no responsibility to control and supervise the operations of members of the South Seas Kempetai.

On the basis of the foregoing, defense counsel holds that Specification 2 has not been proved beyond a reasonable doubt.

Section 3. The duty to protect prisoners of war in the incident of the three flyers. (Specification 3)

In his cross-examination, the accused INOUE testified that in the event prisoners of war are captured he would protect and hold them in custody until interrogation was completed, but that after the interrogation the Kempetai would naturally assume custody of the prisoners. He further testified in effect that matters pertaining to prisoners of war were matters of administration in the Imperial Japanese Army, and prisoners of war would be protected by appropriate military administrative organs; and that in the Palaus this duty to protect naturally fell to the South Seas Kempetai one of whose functions was external police.

Now in the present case of the incident of the three flyers, the prisoners were being held at Division Headquarters as they were in the midst of being interrogated. According to the testimony of Staff Officer YAJIMA, Captain KAWAMATA, the Captain of the Division Guards, was the officer in charge of protection of prisoners of war.

Under the present circumstances where the relationship between Captain KAWAMATA, the officer directly responsible for

the protection of prisoners of war and the accused INOUE is in no way established, it is not rational to place criminal responsibility for the protection of prisoners of war on INOUE, by-passing Captain KANAMATA.

CHAPTER II The Incident of the Missionaries
(Specifications 4 and 5)

Section 4. Duty to control and supervise subordinates in the incident of the missionaries.

In the middle of September 1944, seven missionaries and native residents who were under the protective custody of the South Seas Kempeitai and who were living in the residential compound of the South Seas Development Company were executed in the presence of Kempeitai Commanding Officer MIYAZAKI. The persons who participated in this execution included the complete personnel of the South Seas Kempeitai excluding those on duty and sick personnel, the Adjutant of the Sumida Unit, Captain YAMAMOTO and two or three others.

The command relationship between the accused INOUE and the South Seas Kempeitai has already been covered in Section 2. The accused INOUE had no responsibility whatsoever to control and supervise the operations of members of the South Seas Kempeitai.

The Sumida Unit was a unit of the Army Group, Palau Area. The judge advocate did not however establish what connection there existed between the circumstances which led a few members of the Sumida Unit to participate in the incident of the missionaries and the accused INOUE.

Is it proper to charge the accused INOUE with criminal responsibility for neglecting to control and supervise the actions of three or four subordinates out of some 30,000 troops he commanded, because these three or four happened to join the party headed by Kempei Lieutenant Colonel MIYAZAKI, the Commanding Officer of the Kempeitai?

The battle conditions at the time of the incident and the fact that the accused INOUE was ill at this time should also be considered.

I further wish, by way of supplement, to examine the evidence relative to the matter of whether the accused INOUE issued the order as to the incident of the missionaries, and whether an official report of the incident was submitted to him.

The accused INOUE testified that he was ill at this time and that he did not meet or see Kempei Lieutenant Colonel MIYAZAKI; that he never issued instructions concerning this missionary incident and that he was never requested by anyone to do so, because matters pertaining to foreigners was completely outside the scope of his official authority. He further testified that it was only after the termination of the war that he heard of the missionary incident and that he never saw a written report on this incident.

Although prosecution witness YAJIMA testified concerning the missionary incident, that he had received the signature of both Chief of Staff TADA and Lieutenant General INOUE on this written report from the Kempeitai, both INOUE and TADA testified that they did not see any such document. Furthermore, Kempei 2nd Lieutenant SANO of the Kempeitai testified both in direct and cross-examination that there was no written report drafted. It is clear from the foregoing evidence that the accused INOUE did not know anything concerning the missionary incident, before or after its occurrence.

Section 5. Duty to protect civilian residents in the missionary incident.

It is alleged in Specification 5 that INOUE neglected his duty to protect civilian residents. Let us therefore examine whether such duty was incumbent upon the accused INOUE.

The accused INOUE landed in the Palau in the latter part of April, 1944. These missionaries who were the victims in this incident had been residing in the Palau and on Yap since before the war. Therefore there can be no room for doubt that protection of foreigners was one of the duties of the South Seas Government Office. Prosecution witness SANO and YAJIMA clearly testified that these foreigners were under the protection of the South Seas Government Office until the end of June or early July, 1944. And SANO further testified that these missionaries were held at the residential compound of the South Seas Development Company through an arrangement of the South Seas Government.

Kempei Captain NAKAMURA, Kazuo and Kempei 2nd Lieutenant SANO testified concerning the transfer of these missionaries to the protective custody of the South Seas Kempeitai at the end of June or beginning of July of 1944 and testified that this transfer was carried out by orders from Headquarters. The accused INOUE testified however that matters relating to foreigners were outside his authority and that he issued no instructions whatsoever. Neither the accused TADA nor the prosecution witness YAJIMA testified that the order was issued to place persons under protective custody at the Kempeitai.

In examining the evidence to determine who was responsible from the standpoint of regulations, for the protective supervision of foreigners in the Palau, we arrive at the following conclusions:

- (a) There is no room for doubt that protective control of foreigners was an administrative matter and was primarily the duty of the South Seas Government Office.
- (b) It is shown in Exhibit No. 9, the Service Regulations for Kempei, that external police is one of the duties of the Kempei.
- (c) It is set forth in the Ordinance Governing Kempei, Exhibit No. 8, that in matters of administrative police, the Kempei received instructions from the Governor of the South Seas Government Office.

As may be clearly seen from the above regulations the South Seas Kempeitai in conducting external police duty as a part of its administrative police work would most properly receive instructions directly from the Governor of the South Seas Government Office.

There is no reason for the Commanding General of the 14th Division or the Army Group Commander, whose sole duty was operations and who had no administrative authority vested in him, to interfere with or issue instructions on such affairs of administration.

We wish to call attention to the following. Although there was no command relationship between the accused and the Commanding Officer of the Kempeitai on paper or according to regulations, doubt may be raised that as one was a lieutenant general and the other a lieutenant colonel that the latter in actual fact received instructions from the former. This point is very explicitly explained if reference is made to Articles 22, 24 and 25 of the Service Regulations for Kempeitai, which is entered in the record as Exhibit No. 9. It is set forth in these three regulations that the Kempeitai will be well acquainted with social conditions relating to the army and be well informed concerning local conditions and shall inform the local Commanding General of the Army or Commanding General of the Division and other appropriate officials on these matters. According to these regulations the South Seas Kempeitai, without any question of seniority being involved, submitted information to and maintained liaison with INOUE's Headquarters as well as with other related units in the Palau, and to do this was its duty.

No occasion ever arose for the Kempeitai to receive instructions as a result of seniority in rank.

Another doubt raised is whether the South Seas Government Office ceased its functions and whether such functions of the South Seas Government Office were taken over by the Army Group Commander, Palau Area. Both the accused INOUE and TADA recognize a deterioration in certain functional duties of the South Seas Government Office, but both testified that, in so far as the Palau were concerned, that office did not cease to function. Any doubt may be dissipated by the testimony of the accused INOUE to the effect that he was not delegated an iota of the administrative authority of the South Seas Government Office.

A review of the foregoing evidence clearly indicates that the accused INOUE was never vested with the duty to protect civilian residents. Therefore I hold that the acts alleged in Specification 5 were not proved.

CHAPTER III The Incident of the Englishman Smith. (Specifications 6 and 7).

Section 6. Duty to supervise subordinates in the incident of the Englishman Smith. (Specification 6)

The accused INOUE is charged in Specification 6 with neglect of duty in that he failed to control the operations of NAKAJIMA, Kazuo, AJIOKA, Misao, YAMADA, Kiyoshi and others, who murdered the Englishman Smith on or about the 29th of December, 1944. However it has been established beyond doubt by the testimony of NAKAMURA and YAMADA that the persons who participated in this incident were members of the Kempeitai.

As I have already argued in Section 2 concerning the fact that around December of 1944 the accused INOUE did not have the duty to control and supervise the operations of members of the Kempeitai, I shall shorten that argument here. There are no grounds for charging the accused INOUE with Specification 6.

As supplementary evidence the following are cited:

The accused INOUE testified that he did not know of the Englishman Smith being held in protective custody by the South Seas Kempeitai nor of his execution.

Even Kempei 2nd Lieutenant SANO, who was the officer in charge of intelligence at the South Seas Kempeitai and who went to arrest Smith, testified that he learned of Smith's execution only after the termination of the war.

Although YAJIMA testified that a written report concerning the execution of Smith was received from the Kempeitai, the accused INOUE testified that he never saw any such report.

As the officer in charge of the written reports on such matters at the Kempeitai, SANO, testified that he did not draft a report on the execution of Smith. The testimony of INOUE is thus corroborated by SANO.

Section 7. The duty to protect civilian residents in the incident of the Englishman Smith.
(Specification 7).

For the identical reasons as were given in the section on the duty to protect civilian residents in the missionary incident, the accused INOUE did not have the duty to protect civilian residents in this case, and this duty rested with the South Seas Kempeitai. We therefore hold that this Specification was not proved beyond a reasonable doubt by the judge advocate.

CHAPTER IV The Incident of 2nd Lieutenant Kaufman.
(Specifications 8, 9, and 10).

Section 8. The Murder of 2nd Lieutenant Kaufman.
(Specification 8).

The evidence submitted by the prosecution and by the defense is diametrically opposed in regard to whether the accused INOUE issued the order for the execution in the incident of 2nd Lieutenant Kaufman at the Anti-aircraft Unit on Koror in late May of 1945. Therefore I will examine the important points in the evidence submitted by both parties in somewhat greater detail.

(1) Staff Intelligence Officer YAJIMA testified that several days prior to the Kaufman execution he was told by the accused INOUE that he was thinking of having 2nd Lieutenant Kaufman executed at the Koror Anti-aircraft Unit and that he, YAJIMA, was to contact Commanding Officer DOI on the telephone and ask his opinion as to the execution.

The accused INOUE testified that in the event it was necessary for him to ask the opinion of a subordinate, he would solicit only the opinion of the Chief of Staff and that he would never ask a subordinate commanding officer for his opinion prior to issuing orders. He testified also that in regard to this incident he did not ask the opinion of Colonel DOI. This is most natural in the armed forces.

Both KOICHI and KATSUYAMA testified to liaison by telephone between Staff Officer YAJIMA and Colonel DOI several days before Kaufman's execution, and this liaison was probably a fact. It is highly dubious, however, that the accused INOUE had someone ask the Colonel for his opinion as to the execution of Kaufman.

(2) According to the testimony of KOICHI, telephone contact between Colonel DOI and Staff Officer YAJIMA was made two or three times prior to the execution of Kaufman, and he was fully aware of the intention at headquarters to execute Kaufman before he reported at headquarters. Prosecution witness-in-rebuttal NAKAGAWA, Kiyoshi, testified in cross-examination that he recalled hearing from YAJIMA two or three days before KOICHI reported at headquarters, that Kaufman was to be executed.

On the other hand, according to the testimony of the accused INOUE, when Staff Officer YAJIMA came to report the results of the interrogation of Kaufman, after he had made the report, stated that there were some among the subordinates who desired to execute the prisoner of war to raise morale. (This circumstance was denied by YAJIMA when he was cross-examined. However, YAJIMA is not a credible witness.)

Reviewing this evidence, it is beyond any doubt a fact that prior to Captain KOICHI's reporting at headquarters and meeting with the accused INOUE, Kaufman's execution was often discussed by Staff and subordinate officers and that Kaufman's execution had become a prepossession or a form of idee fixe with KOICHI and Staff Officer NAKAGAWA as well as with 2nd Lieutenant ONOSE, a direct subordinate of YAJIMA who worked in the same office as YAJIMA.

(3) After Captain KOICHI and Staff Officer NAKAGAWA had reported to the accused INOUE concerning the anti-aircraft positions the conversation changed to 2nd Lieutenant Kaufman.

KOICHI testified that he was at this time ordered by the General to have the prisoner executed at the Katsuyama Unit. On cross-examination, however, he testified that at that time his ears were bandaged due to wounds received in air raids and that he did not clearly hear certain words spoken by the General.

In the rebuttal NAKAGAWA, Kiyoshi testified that he did not recall the accused INOUE having used the words to have Kaufman "shokei" (TN/ executed) but that he recalled the words used to have been "Katsuyamatai ni yaraseru" (TN/ Have the Katsuyama Unit do it.) and that he had understood these words to mean to dispose of the prisoner.

According to the testimony of the accused INOUE himself, the exact words he used in his conversation with KOICHI were "Furyo o omae ni yatte shimauso" meaning that he would "transfer" or "dispatch" the prisoner of war to him. INOUE testified that the phrase "yatte shimauso" was frequently used in his native province.

It is possible that both KOICHI and NAKAGAWA failed correctly to understand the meaning of the words used by the General at this time as they both had the preconceived idea of an execution prior to entering INOUE's office.

Therefore despite the testimony of KOICHI and NAKAGAWA there is much room for doubt whether the accused INOUE ordered the execution of Kaufman.

(4) 2nd Lieutenant ONOSE was ordered by Staff Officer YAJIMA to report to the accused INOUE before starting on his mission to escort 2nd Lieutenant Kaufman, and accordingly went to report. ONOSE testified that he was told at this time by Lieutenant General INOUE that in the event a member of the Anti-aircraft Unit failed to execute Kaufman that he was to execute him.

Opposed to this, the accused INOUE testified that ONOSE merely reported that he was to escort Kaufman to Koror, and that he, ONOSE did not mention anything concerning Kaufman's execution or belongings. INOUE testified that he only told ONOSE to take care of himself on the way.

It was shown on cross-examination that there were two or three points in ONOSE's testimony which conflicted with the substance of a statement which he executed on 4 August 1947 and which was introduced into evidence in the trial of KOICHI et al as Exhibit No. 6. It was also made clear that there were two places in his testimony where he mentioned matters concerning which he had acquired knowledge from the testimony of other witnesses at his trial. In short, there is matter in his testimony which is not of his own knowledge, but knowledge acquired later from other persons and which is hearsay. There can therefore be no doubt that his testimony contains matter which cannot be considered credible.

(5) Prosecution witness YAJIMA testified that the accused INOUE signed the documentary order for the execution of Kaufman, that he showed the original Japanese text of this order to ONOSE, and that the original of this order was filed by one of his subordinates, a Captain WATANABE, Toshio and kept in his custody, and that he had the documentary report printed. He also testified that this documentary order in Japanese was translated by a 2nd Lieutenant HAMANO.

The accused INOUE testified that he never issued a written order concerning the execution of Kaufman. 2nd Lieutenant ONOSE also testified that he did not see the Japanese text of this documentary order. Captain WATANABE, Toshio in his deposition, (Exhibit No. 12) testified that he neither saw such an order nor ever had such an order in his custody in his files, and did not know whether it was printed. Captain KOICHI also testified that he never received a printed copy of this documentary order.

According to the testimony of YAJIMA, the substance of the order signed by the accused INOUE read as follows: "Unit Commander KOICHI will execute the American prisoner of war 2nd Lieutenant Kaufman at Koror", and this text was translated into English by 2nd Lieutenant HAMANO. ONOSE under cross-examination recognized having written the following in his statement of 4 August 1947 (Exhibit No. 6 in the trial of KOICHI et al.) "I --- read to him the English which I had received from our colleague, 2nd lieutenant HAMANO, before we started out (words which meant, 'we are sorry but according to the order of the commanding officer you have been sentenced to be executed.')"

In short, YAJIMA's testimony that the accused INOUE issued a documentary order concerning Kaufman's execution has been categorically denied by numerous witnesses.

(6) The accused INOUE testified that his intention in moving 2nd Lieutenant Kaufman to Koror Island was for the reason that Koror was a healthy place with adequate air raid shelter facilities. He testified that he had previously expressed this

and so did not think it necessary further to instruct his other staff officers as Staff Officer NAKAGAWA had been present at the time he spoke with Captain KOICHI.

(7) The above concludes the examination of the important evidence in relation to the Incident of 2nd Lieutenant Kaufman. The following two points should however be considered when the conflicting evidence is compared and weighed.

(a) The accused INOUE has frankly recognized the fact that despite the expression of an opposing opinion by Chief of Staff TADA in the case of the three flyers, he insisted on the carrying out of his intention.

(b) The accused INOUE on the witness stand stated in conclusion that there was an officer among his staff officers who was not ashamed to shift his responsibility to others and that he deeply felt his failure to meet his responsibility to control and supervise his subordinates in that respect.

(8) In coordinating the examination of the evidence in paragraphs (1) through (6) and paragraph (7), it has not been proved beyond a reasonable doubt that the accused INOUE ordered the execution of 2nd Lieutenant Kaufman as charged by the prosecution. (Specification 8). We hold that there remains a reasonable doubt.

Section 9. Duty to supervise subordinates in the Kaufman Incident. (Specification 8)

It is true that the persons involved in the Kaufman Incident who are named in Specification 9 were subordinates of the accused INOUE and that they were under the control and supervision of the accused.

The accused INOUE stated on the witness stand in conclusion that he felt a "moral responsibility" for the fact that his subordinates had been sentenced for the Kaufman Incident and were serving their sentences. However he did not recognize a "criminal responsibility". As further discussion would enter the sphere of legal argument, I will be brief.

Section 10. Duty to protect prisoners of war in the Kaufman Incident. (Specification 10).

The accused INOUE testified that his reasons for his intention to transfer 2nd Lieutenant Kaufman to Koror were because there were epidemics in the jungle area at that time, the air-raid shelter facilities were inadequate, and because Koror was a healthy place with adequate air raid shelter facilities. In short it was his intention to afford Kaufman better protection, and his execution was something quite contrary to what he had intended. It is believed that he should not be charged with criminal responsibility for neglect of duty to protect the prisoner of war when his intention miscarried by reason of the mistaken interpretation of his intention by some of his subordinates.

CHAPTER V On the Character of the accused.

There have been differences on important points in the evidence presented to this court by the prosecution and the testimony of the accused INOUE. Hence in weighing these conflicting evidences by comparing them, it is believed that full consideration must be given the character of the accused INOUE and TADA.

Both the witnesses TADA and NAKAGAWA testified that the accused INOUE, Sadae was a brilliant soldier and stood in high repute. This tribute was not restricted to the Japanese armed forces. An American officer who associated with him for only a short period of time (approximately 5½ months) has recognized the fact. Major General F. O. Rogers, Commanding General of the United States Forces on Peleliu, in his statement addressed to the accused INOUE (Exhibit 14) mentions this fact, and lays special stress in his praise of the personal sincerity of the accused INOUE. We respectfully request that full consideration be given the character of the accused INOUE in the commission's examination of the various evidence.

The character and ideology of the accused TADA, Tokuchi may be sufficiently understood from the character testimony submitted by former Prince KANIN, Haruhito (Exhibit 15) and former Colonel General IIMURA, Joo (Exhibit 16). It is firmly believed that his wide learning and the fact that he was an advocate of the principle of war guidance based on humanity and mercy, will be fully considered in the judgment of his action in the incident of Specification 1.

CONCLUSION

I wish to say a few words in conclusion.

Inasmuch as the judge advocate makes no strong contention as to proof of the incidents involving the missionaries and of the Englishman, SMITH, two of the four incidents with which the accused INOUE is charged, I will not consider these at this time.

Concerning the first incident - that of the three fliers, the accused, INOUE, did not of his own volition order his chief of staff TADA to request the kempeitai to perform the execution, but only arrived at this decision as a result of (1) the instructions of Lieutenant General Obata, and (2) his own conclusion that in viewing the critical war situation then actually existing, there was no other means by which atrocities to the prisoners of war could be circumvented.

The fourth incident - that of Second Lieutenant Kaufman - was the result of a miscarriage, by some of INOUE's subordinates, of his intention to afford greater protection to the prisoner of war, the result of which being quite the opposite of what he intended.

We pray that a lenient judgment be granted the accused INOUE and that the above mentioned matters, together with his character, be taken into consideration.

GG(2)

The accused, TADA, Tokuchi, was opposed to the execution of the prisoners and had expressed this opposition and attempted to postpone the carrying out of the execution. In the end, only so as not to cause concern to the ailing general, did TADA relay the general's intention to MIYAZAKI. This cannot be considered "aiding and abetting" on the part of TADA.

I pray the military commission return a verdict of not guilty for the accused, TADA, Tokuchi.

Respectfully,

/s/ Sanagi, Sadamu.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

GG(21)

0136

THE SUMMING UP
of
the trial of

Inoue, Sadae, former Lt. General, IJA

and

Tada, Tokuchi, former Colonel, IJA

by

Commander Martin Emilius Carlson, USNR

Defense Counsel

at

Guam, Marianas Islands on April 27, 1949

HH(1)

0137

Gentlemen of the Commission:

Introduction

The United States of America, victorious in the war with Japan which ended on August 15, 1945 has brought to trial here on Guam a fallen commander of the Imperial Japanese Army, Lieutenant General Inoue, and his chief of staff, Colonel Tada, charging them with the crime of inefficiency in controlling the troops in the Palaus when those troops were under constant and overwhelming assault by the United States Marines, the United States Navy, and the United States Army.

We are concerned with justice to a fallen commander. You first of all must define the duties of a commander of an army under constant and overwhelming assault and then decide if the law which you are to administer as members of this Navy convened Military Commission, imposes a liability under such circumstances for failure to meet the ordinary responsibilities of command.

I quote from the dissenting opinion of Mr. Justice Murphy in the Yamashita case: "To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations, become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance. It is this consideration that undermines the charge against the petitioner in this case. The indictment permits, indeed compels, the military commission of a victorious nation to sit in judgment upon the military strategy and actions of the defeated enemy and to use its conclusions to determine the criminal liability of an enemy commander. Life and liberty are made to depend upon the biased will of the victor rather than upon objective standards of conduct." (From the dissenting opinion by Mr. Justice Murphy of the United States Supreme Court in Application of Yamashita 66 S.Ct 340 at 357). It is true that this is from the dissenting opinion, but it is the opinion of a justice of the Supreme Court of the United States.

Your task of justice in this case is made more difficult by the great barrier between the Japanese and the Americans, which Kipling so aptly describes in his Ballad of East and West, but as Kepling says: "Oh East is East, and West is West, and never the twain shall meet,
Till Earth and Sky stand presently at God's great Judgment Seat;
But there is neither East nor West, Border nor Breed, nor Birth,
When two strong men stand face to face, tho' they come from the ends
of the earth!"

It was less than a hundred years ago in 1854 when Commodore Perry negotiated a treaty of peace and amity with Japan thereby opening Japan to the civilization of the Western world and our way of life. It was as late as December 24, 1871 that feudalism was abolished by edict in Japan and the samurai obeying the edict ceased to wear their swords in Japan.

During the war with Russia there was formed in 1904 in Japan a fighting division known as the Fourteenth Division. With a tradition of

HH(2)

0138

continuous service since that time and now commanded by General Inoue, Sadae, one of the best Japanese generals. It was the Fourteenth Division that was selected to defend the Palaus, the most likely objective of the next major American attack in 1944. Lieutenant General Inoue in command of the Fourteenth Division arrived in the Palaus in April 1944.

The mission of General Inoue and of the Fourteenth Division in the Palaus must be clearly determined in order to decide the issues in this case.

The judge advocate asked the commission to take judicial notice of the Geneva Prisoners of War Convention of 1929 although Japan never formally ratified this convention, and he also asked the commission to take judicial notice of the Hague Convention of October 18, 1907 which convention was not ratified by either Italy or Bulgaria, both belligerents in this war. In accordance with the terms of these conventions, this Hague Convention is not binding upon any of the belligerents. The commission must decide if these two conventions set forth the duties and responsibilities of Lieutenant General Inoue, Sadae and his chief of staff Colonel Tada, Tokuchi and if these conventions are binding upon these two accused and what penalties the two conventions impose upon Lieutenant General Inoue, Sadae, and Colonel Tada, Tokuchi.

The case now depending must be decided according to the evidence, the rules for the government of the navy and your own conscience. It is no easy task as you well know.

II FACTS IN THE CASE

What are the facts in this case?

The facts in this case are complicated and will require great understanding on the part of the commission in order that they might arrive at the real facts in the case. The facts in this case are complicated because the judge advocate has introduced so much hearsay testimony and hearsay evidence in order to try to prove all the things he said in his opening statement. Even the alleged death of Miyazaki, Aritsune, Commanding Officer of the South Seas Kempetai, was only evidenced by a document in which an affiant stated that someone had informed him that Miyazaki was dead and by an excerpt from what purported to be entries from a family register.

Not only is the record of the proceedings filled with hearsay evidence but the judge advocate has stated that the language used in the specifications, particularly specification one and eight is not used in the ordinary meaning of the words. So when in specification one it is alleged that "Inoue, Sadae ... and Tada, Tokuchi, ... did, each and together at Babelthup ... wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed by beheading with swords and by shooting with firearms, exact description to the relator unknown, three unarmed American prisoners of war, names to the relator unknown," the words do not mean what they say at all. So in specification eight when it is alleged that "Inoue, Sadae, ... did at Forer Island ... wilfully, feloniously, with premeditation and malice aforethought and without justifiable cause, assault, strike, kill, and cause to be killed by beheading with a sword one Wallace F. Kaufman..." those words do not mean what they ordinarily mean. Are we free to read into the words of the charge and the specifications any meaning we see fit, or no meaning at all? Or must the judge advocate prove every word in the specifications in order that the case may be proved against the accused. The facts as I here state them will not be agreed upon by the judge advocate I'm sure because I shall state the

HR(3)

facts as they are proved by competent evidence and then show how these facts are sustained by the legal evidence. Such facts will be quite different than set out in the judge advocate's opening statement.

Here are the facts stated briefly, clearly, and without exaggeration. Lieutenant General Inoue, Sadao, having been specially selected was sent to the Palaus about the middle of April 1944 as the Commanding General of the Fourteenth Division, a crack division with a record of continuous service since the Russo Japanese War. The mission of the Fourteenth Division was to defend and hold the Palaus against the expected American invasion.

Three American prisoners of war were captured late in August of 1944 and interrogated by the Division Intelligence Officer Yajima. While they were being interrogated the American invasion of Peleliu started and the general being sick had to turn over some of his operational duties, even in the face of the enemy to his chief of staff Colonel Tada. Colonel Tada left to take over the actual command of the defenses of the Palaus from a jungle command post, the Arukoku Battle Command Post on Arukoku mountain, some four or five hours distant from administrative headquarters at Babelthuap (in answer to Q. 60 to Sano on the 8th day).

Just prior to Colonel Tada leaving for this command post together with Colonel Nakagawa and Lieutenant Colonel Izumi, General Inoue talked to him about the three prisoners of war and ordered Colonel Tada to quickly dispose of these three prisoners before the troops became murderous prior to imminent invasion by the Americans. This execution was to be carried out in accordance with the orders of Lieutenant General Obata, Inoue's immediate superior in command who had so instructed Lieutenant General Inoue sometime in July when Lieutenant General Obata was making an official inspection of the defenses of the Palaus. Furthermore Lieutenant General Obata had told General Inoue that this was the policy of Central Headquarters in Tokyo. General Inoue being a hardbitten combatant general who had spent his entire army career in the field with troops objected to such measures but was overruled by Lieutenant General Obata.

Then Lieutenant General Inoue passed on the orders of General Obata to Colonel Tada in September, Colonel Tada, who had since the days he was a captain advocated a policy of winning over the enemy and particularly prisoners in order that such persons when released might be returned to their own lines and serve as a fifth column, opposed the execution of the prisoners as being against the Geneva Prisoners of War Convention and Tada's own policy as set forth in his book, Japanese Theory of War. On at least three occasions Colonel Tada opposed this policy and the execution of these three prisoners (Q. 102 and 103) and then after the general told Tada to call the head of the kempeitai Lieutenant Colonel Miyazaki, and he the general would personally ask Miyazaki to carry out the execution, Colonel Tada could no longer oppose the policy and, he, Colonel Tada called Lieutenant Colonel Miyazaki to his office and in the presence of Staff Officer Yajima told him of the general's intentions regarding these three prisoners of war. Lieutenant Colonel Miyazaki agreed to carry out the execution and Colonel Tada so reported to General Inoue. Colonel Tada then started out for the Battle Command Post on Arukoku Mountain some four or five hours distant in the jungle where he remained until sometime in October directing the defense of the Palaus. All Colonel Tada did was to relay the orders of General Inoue which in turn were only the orders of Lieutenant General Obata and the higher headquarters at Tokyo. When, how and where the three prisoners were executed Colonel Tada or General Inoue did not know.

HH(4)

Both however are charged with actually beheading and shooting these three prisoners acting with Miyazaki, Nakamura and Kokubo.

Colonel Tada is charged with the murder of these three prisoners. In nine other specifications Lieutenant General Inoue is charged with other criminal offenses said to be in violation of the laws and customs of war, yet both are joined in trial.

In specifications four and five General Inoue is charged with criminal neglect of duty and failure to protect certain persons long residents of the Palau. Lieutenant General Inoue was the Commanding General of the Fourteenth Division which had been assigned to defend and hold the Palau against the invasion of the Americans. The South Seas Kempetai commanded by Lieutenant Colonel Miyazaki was the military police organization in the Palau and between that organization and the South Seas Government Office headed by the Minister of the Greater East Asia Ministry had the duty of external security police, intelligence and espionage as it relates to civilians. Martial law was never declared in the Palau and the civilian government continued to function. There was a difference in the duty which the Fourteenth Division had, to defend the Palau from the American invasion, and the protection of the civilian population. Civil government was functioning in the Palau in September of 1944 and the execution by the South Seas Kempetai of seven civilians was entirely an affair of the kempetai and the South Seas Government. It isn't enough therefore to show that seven civilians were executed by the members of the kempetai on or about September 18, 1944. The Fourteenth Division commanded by General Inoue were busy trying to stem the invasion of Peleliu by the United States Marines, and shoot down Navy bombers. We shall later show how the facts fully sustain these statements.

On or about December 29, 1944 the South Seas Government still had the duty of protecting civilians and yet the South Seas Kempetai executed another civilian known as Charlie Smith, or was it Schmidt? We shall set forth the evidence which clearly proves that it was the South Seas Government and the South Seas Kempetai which had the duty to protect the civilian population and that it was members of the kempetai who executed the person called Smith and that the South Seas Kempetai was a separate command in the Palau - not a part of the command of Lieutenant General Inoue, but that the South Seas Kempetai were administered and operated from the Kempetai Headquarters in Tokyo.

The facts as to Second Lieutenant Kaufman are that General Inoue knowing his headquarters was still vulnerable to attack by the Americans in May of 1945 told Captain Koichi Hiroe that he would transfer Kaufman to his unit at Koror. However someone had other ideas and Yajima testified he had an order written up ordering the prisoner executed and sent one of his subordinates, second lieutenant Onose, Ichiro, along with the prisoner. Onose was to see that the execution was carried out. A photographer was ordered to go along and bring back pictures of the execution. General Inoue has never seen any written orders as to the execution nor did the general ever see the pictures which the photographer took showing the execution. General Inoue did not find out about this execution until after it had taken place.

General Inoue admits he failed to control certain members of his command who were present at the scene of the execution on the nearby island of Koror and the staff officer, who without the least compunction has shifted what responsibility rested rightly with him to other people.

HH(5)

The general has said he deeply feels his failure to supervise his subordinates in that respect.

The fact is that Kaufman was executed at Koror, a nearby coral atoll in the Palau district. Palau proper consists of eight large islands, eighteen smaller ones, and a large number of minute islets, all enclosed in a single reef system. The major islands from North to South are Babelthup, Arakabesan, Koror, Aurapushekuru, Malakal, Urukthapel, Eil Malk and Peleliu. Peleliu alone is flat. General Inoue's headquarters were on Babelthup and Kaufman was executed on Koror. The evidence in the case proves that Kaufman was executed on Koror and Lieutenant General Inoue was not present. He did not aid or abet the persons who did the homicidal act nor did the general have the criminal intent to commit murder.

III Evidence which sustains the above stated facts.

On the twelfth day of the trial Tada, Tokuchi took the stand as a witness in his own behalf. Tada was first commissioned a second lieutenant in 1924 and on March 1, 1944 was promoted to a colonel after serving continuously on active duty since he graduated from the Japanese Military Academy in 1924 (See answers to Q. 3). Tada was the chief of staff to General Inoue (Q. 8 and 24). His duty as a chief of staff was as all military men know, to assist the commanding general (Q. 9). He had no command responsibility in his position but only carried out the general's orders and intentions by relaying such orders as a staff officer, the chief of staff (See answers to eleventh interrogatory of deposition marked Exhibit 11).

Colonel Tada, chief of staff testified he received orders from the commanding general regarding three prisoners of war on two occasions and on both of these occasions he, Colonel Tada, chief of staff, opposed the general's intention to formally execute the three prisoners in case an invasion of the American Forces was considered imminent (Q. 41, 45, 48 and 49).

I would like to read what Colonel Tada said in his answer to question 48 which answer shows how Colonel Tada opposed the general and that he, Colonel Tada wanted no part in even an execution ordered by the general as a necessity in case of the imminent invasion of the Palau by the Americans. Colonel Tada said "I first of all told him that I could not agree to the prisoners being executed at headquarters. I further stated that if the prisoners were to be executed at units other than headquarters orders would have to be issued and I could not draft orders which were in violation of international law. I further stated that I did not think it advisable that such order should be issued in the name of the Army Group Commander. If the execution were conducted unofficially it would cause great harm and might even come to effect the prestige and command of the general himself."

The general's reply to Colonel Tada's opposition to the execution of the three prisoners was allowed to stand in the record notwithstanding my motion to strike it. We feel it is incumbent upon the judge advocate to cite cases which hold it is in accordance with all the rules of evidence to allow one co-defendant to testify against a co-defendant when each of the co-defendants has objected to trial in joinder but are being tried nevertheless in joinder.

HH (6)

The question and answer we objected to is as follows: Q. 49 "What did Lieutenant General Inoue say to you in answer to all that you spoke to him?" A. "He said that as the chief of staff so completely objected to the execution that he would abandon the execution at headquarters and also at the units. He stated that he had arrived at this decision as a general because there was no alternative and therefore to call the commanding officer of the kempeitai to relay to him his intention and to request him to execute the prisoners of war. He said that if I, the chief of staff, cannot do this for him then to call the commanding officer of the kempeitai to him and he would request him personally." Colonel Tada as the chief of staff could no longer oppose the general so he, Tada, as chief of staff called Lieutenant Colonel Miyazaki the commanding officer of the kempeitai, the military police, to his room and in the presence of Staff Officer Yajima relayed the general's intention that the prisoners be formally executed by the kempeitai (Q. 50).

During the conversation which lasted about thirty minutes, Colonel Tada testified "In the first place I relayed General Inoue's intention and request to Miyazaki. I explained the circumstances between September 2 and September 5 and the reasons for my continued objections throughout that period of time. One of the reasons stemmed from my war philosophy and the other from my legal philosophy. I explained to Miyazaki in language which he could understand, my view of this matter which was, I am referring to my legal philosophy, that international law in every case transcended anything determined by national or domestic law. That any orders issued on the basis of national or domestic laws was subject to international law." (Q. 51).

"....when I spoke to Kempei Lieutenant Colonel Miyazaki I told him that he was not in a position to receive orders and instructions from Lieutenant General Inoue and therefore to decide on this matter independently and freely." (Q. 53). Colonel Miyazaki said he would deal with the matter in his abdomen which means that he would perform the matter at his own discretion and without letting third persons know about the matter (Q. 57).

Colonel Tada understood that Colonel Miyazaki would keep the matter secret from the general and protect the prisoners of war (Q. 58).

Colonel Tada did not desire the execution; Colonel Tada was opposed to the execution. All that Colonel Tada did was tell Miyazaki that the general desired the execution (Q. 62).

This we presume the judge advocate will insist makes Colonel Tada, chief of staff to General Inoue, guilty of murder. We hold it does not and later on will point out the law regarding murder. We cannot know at this time when we are writing our argument what the prosecution of the judge advocate is because he has as yet not stated it. We shall refute any argument of the judge advocate that the mere relaying of the general's intention to an officer not even in the chain of command by the general's chief of staff constitutes murder on the part of the chief of staff, particularly when it has been clearly shown there was opposition to the execution of the prisoners and therefore a lack of the necessary criminal intent to commit murder as shown at each of the conversations with General Inoue (Q. 41, 45, 48, 49, 51, 53, 61, 62, 63, 64, 72, 103, 120, 128 answered by Colonel Tada).

HH(7)

On the thirteenth day of the trial Lieutenant General Inoue took the stand as a witness in his own behalf. In answer to Q. 22 General Inoue testified that he spoke to Colonel Tada about the three prisoners of war and "I told him then that in the event an invasion by United States forces became definite that the prisoners would have to be disposed of before the shallow minded became murderous in their intentions."

At the time of his second conversation two days later with Colonel Tada concerning these three prisoners of war, Lieutenant General Inoue testified as follows in answer to question 24: "On the basis of my judgment and on the basis of instructions which I had received from Lieutenant General Obata, the Commanding General of the Thirty-first Army, I explained the reasons why the prisoners had to be disposed of. The gist of this was as follows: In the event American forces landed on Saipan, Guam, or the Palau which were small islands, there would be no safety zones in the rear to which prisoners could be transferred. And once the fighting becomes intense on any of such small islands the war psychology of the low-ranking officers and of the troops would be beyond our recognition and they would be very prone to commit atrocities. However on a field of battle a headquarters cannot remain stationary in one place, but would have to move from place to place and at such times prisoners cannot be held at all times in places where the commanding general or the chief of staff can supervise them. In such cases prisoners of war would be exposed to hardships over long periods of time and possibly meet with atrocious deaths. Therefore, if the prisoners of war were disposed of under the supervision of the commanding general while the troops were not yet filled with hate for the enemy that such procedure would save the prisoners of war from atrocities and this would be following the memory of Bushida or the way of the Samurai and this I stated to my chief of staff. The foregoing was what the commanding general told me when I objected to the instructions which General Obata gave me concerning prisoners of war. When I became certain that an invasion by American forces would take place I gave further thought in regard to the disposal of prisoners of war. The battle conditions about that time were such that American submarines were in sight of Peleliu and Babelthup and air raids were conducted daily by United States Forces. I judged from these signs that they were the prelude to an American invasion. Under these circumstances I thought of what to do with the prisoners of war and how to save them from atrocities and there was no alternative other than to follow the instructions of General Obata." (Q. 24)

Colonel Tada did not agree with the general and he requested time to study the matter (Q. 25). During the third conversation General Inoue asked Colonel Tada what had been done with the prisoners and the colonel answered that he had not yet taken any steps. The general said to Colonel Tada "I told that the execution of the prisoners of war could not be postponed any longer with an American invasion as imminent as it was. I told Tada that under the inexorable conditions the prisoners of war should be executed at headquarters. Tada stated in answer that he could not bring himself to the mind to execute the prisoners at headquarters and further that he was absolutely opposed to the execution of the prisoners of war at the subordinate units of the headquarters from the standpoint of international law. I told Tada that I recognized his opinions but that in my case there were certain factors which could not be reconciled and I told him to call Kempei Lieutenant Colonel Miyazaki and to request Kempei Lieutenant Colonel Miyazaki concerning the execution of the prisoners of war. It seemed to me that Tada at that time was very hesitant in his attitude. I told Tada that if he was reluctant about the matter to call

HH(8)

Kempei Commanding Officer Miyasaki to me and I personally would explain the circumstances and make the request." (Q. 27)

General Inoue then testified how he had received instructions from Lieutenant General Obata that "In the event of invasion by American forces became definite if passage to the rear was covered, execute prisoners of war." (Q. 29)

General Inoue did not agree with these orders and said to Lieutenant General Obata "This order is not only contrary to international law but if prisoners of war are executed my strict command policy will be adversely affected and may even be brought down." (Q. 29)

Commanding General Obata was insistent however and Lieutenant General Inoue testified further "At this time commanding general Obata said that this was the policy of the authorities in Tokyo and I add this to my order which I personally gave you." (Q. 29)

Lieutenant General Inoue did not agree because he testified "I thought to myself 'There is no alternative and when faced with the situation something may be done' and retired from the general's presence." (Q. 29)

The United States Marines landed on Peleliu and from Peleliu continued to harass the Japanese. The battles in the Palaus were probably the most costly battles as far as loss of American lives are concerned. Needless to say the Japanese losses were even heavier than the American losses.

General Inoue never received any written reports concerning the execution of these three prisoners and not until May 1945 did he hear from his adjutant that the three prisoners had been executed (Q. 31).

Colonel Nakagawa, Kiyoshi testifying as a defense witness on the eleventh day of the trial in answer to question 45 said that after a conference held with Lieutenant General Obata that Lieutenant General Obata told chief of staff Tada that in the event where an enemy landing was inevitable, that steps should be taken to dispose of the prisoners. (Q. 45)

Of Colonel Tada, Colonel Nakagawa testified "He was a man with a strong sense of righteousness and an outstanding man." (Q. 47)

Colonel Nakagawa testified that "Lieutenant General Inoue was an experienced man in actual warfare and a good fighter. Although outwardly he was strict and stringent as an old warrior, in his inner feelings he was a warm hearted man and was very popular among his subordinates. He had a strong sense of justice and abhorred all evils."

All of the above is in our opinion the relevant evidence relating to specification one under which both Lieutenant General Inoue and Colonel Tada are charged with having killed three American prisoners of war by beheading them and by shooting the prisoners with firearms.

In specification two Lieutenant General Inoue is charged with failure to control Colonel Tada. We have pointed out the evidence which shows how Colonel Tada strenuously objected to the execution and yet was forced to relay on to Colonel Miyasaki the general's intention. Miyasaki, Nakamura, and Kokubo were not subject to the control and supervision of Lieutenant

HH(9)

General Inoue so the specification must fail. (See exhibits 8, 9, 10 and 11 and Q. 28, 30 answered by Nakagawa, Kiyoshi on the eleventh day of trial and Q. 32, 34, 35, 36 answered by Colonel Tada, Tokuchi on the twelfth day of the trial and Q. 56 which was answered by Lieutenant General Inoue on the thirteenth day of the trial).

The evidence in the case as has been pointed out by co-counsel proves there was no command relationship between the commanding general of the Fourteenth Division, the Army Group Commander Palau Area and the South Seas Kempetai (See exhibits 8, 9, 10 and 11) and (Testimony of Nakagawa, Kiyoshi on the eleventh day of trial Q. 28 and 30) and the testimony of Colonel Tada on the twelfth day of the trial Q. 32, 34, 35 and 36) and the testimony of Lieutenant General Inoue on the thirteenth day of the trial Q. 56).

The evidence further shows there was no command relationship between the Commanding General of the Fourteenth Division, the Army Group Commander Palau Area and The South Seas Government and that there was no duty or responsibility on the part of Lieutenant General Inoue as Commanding General of the Fourteenth Division or as the Army Group Commander Palau Area to protect the civilian population and particularly persons enumerated in specifications 4, 5, 6 and 7. (See Q. 31, 32, 38, 39, 40, 41 answered by Nakagawa, Kiyoshi on the eleventh day of the trial) and (Q. 150, 151, 153, 154, 155, 157, 158, 159, 160, 161 and 164 answered by Colonel Tada, Tokuchi on the twelfth day of the trial) and (Q. 36, 37, 56, 96, 97, 98, 99, 101, 102, 103, 104 and 105 answered by Lieutenant General Inoue on the thirteenth day of the trial).

Co-counsel have explained the circumstances and how it was that Captain Koichi misunderstood General Inoue as to the general's intention in sending Second Lieutenant Kaufman to the Koichi Unit at Koror. General Inoue testified regarding his conversation with Koichi and also with Yajima. In answer to Q. 68 on the fourteenth day of the trial Yajima told the general that there were subordinates who desired to execute the prisoner Kaufman (See also Q. 69, 70 and 71). General Inoue cautioned Yajima in regard to this and said it was a mistake to think morale of troops is raised by the execution of prisoners of war. (See Q. 71)

Four or five days later Captain Koichi and Colonel Nakagawa came to the general to report concerning new gun positions. Just what the conversation was, i.e. what the general said to Captain Koichi is evidenced by his answers to questions 76, 77 and 78 and what he said to Onose in questions 80, 81, 82, 83 and 84.

The judge advocate has said that what the general said is better evidenced by the testimony of Captain Koichi, Second Lieutenant Onose and Colonel Nakagawa. We call the commission's attention to the long time which has elapsed since the conversation took place and the well known facts evidenced by common experience that people see and hear things quite differently than the things actually happen and hear different words than are actually spoken. Illustration of the unreliability of the testimony of people is set forth in most books on evidence. So in the present case it isn't so unusual that Onose, Nakagawa and General Inoue do not agree on what was said by General Inoue. It would be very unusual if all three agreed, particularly after five years has elapsed. With this thought in mind the commission is asked to consider carefully the evidence regarding the conversations between General Inoue and Captain Koichi and with Lieutenant Onose.

HH(10)

IV Refutation of the Prosecution's Position

We have not been furnished with a copy of the judge advocate's argument but understand that his position is as follows:

First, that specifications one and eight are the international common law of murder which has been codified in the Hague Convention and in the Geneva Prisoners of War Convention. If this be so then we must look to these conventions for the authority of this commission, its jurisdiction to try the accused, for the offenses set forth in the two conventions. There is no such authority in these two conventions.

The Hague Convention contains provisions that it shall be binding upon any of the belligerents in a war only if all the belligerents in that war are parties to it. As neither Italy nor Bulgaria has ratified the 1907 convention given herein, the United States might have declined to be bound by them. (Foreword to War Dept. Technical Manual TM27-251 Treaties governing Land Warfare.) We know that the United States of America did not observe the Hague Declaration Number XIV, October 18, 1907. The War Dept. issuing circular No. 136, May 7, 1942 the pertinent parts of this circular being set forth in the Foreword of Technical Manual 27-251.

We thought it was common knowledge that Japan never ratified or formally adhered to the Geneva Prisoners of War Convention. If Japan agreed to apply the provisions thereof to prisoners of war under its control and also so far as practicable, to interned civilians then the judge advocate should introduce such an agreement into evidence. It is a well known fact that there were many atrocities committed on prisoners of war and upon interned civilians while being held in custody by the armed forces of Japan.

Why Japan did not sign the Geneva Prisoners of War Convention would be very interesting because Japan has had an excellent reputation for adhering to the terms of all treaties and conventions which Japan signed and was a party to.

The judge advocate evidently is not too sure that the law under which Inoue and Tada are being tried in specifications one and eight is codified in the Hague Convention and the Geneva Prisoners of War Convention because he says that both Inoue and Tada are guilty of murder even if they didn't do the acts charged because they are both principals and then quotes United States Criminal Code Section 550. Here again we will get into the question of jurisdiction of the accused if they are here being tried for violation of the United States Criminal Code.

The judge advocate only quoted a part of this paragraph 550 Criminal Code, section 332 "Principals" defined. On page 1939 of the 1946 edition Titles 16-26 United States Code I will read you in full the section "Principals" defined. "Section 550 (Criminal Code, Sec. 332 reads as follows:) "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." (March 4, 1909, ch. 321 #332, 35 Stat. 1152).

This section rightfully defines "Principals" as relating to United States statutory law. First we have a principal as "whoever directly commits any act constituting an offense defined in any law of the United States." Then there is the principal as defined by the United States

HH(11)

Criminal Code whoever "aids, abets, counsels, commands, induces, or procures its commission is a principal." Clearly the offense must be one defined in any law of the United States and not international common law codified by the Hague Convention.

Since it was the judge advocate who attempted to bring into issue the question of a principal we believe he must prove his case by citing applicable law. We shall quote only a few excerpts from 26 American Jurisprudence Homicide: From Section 56: "As a general proposition, a person is responsible only for the acts committed directly and immediately by himself."

There are exceptions to this rule founded upon the principles of agency. Quoting again from Section 56, Ibid. "Applying these principles, if several individuals, acting independently, do acts which are calculated to produce the death of another, they are criminally responsible only for consequences of their own acts, and may not be punished for the acts of the others, if, however, they voluntarily unite to combine in the commission of a homicide, each is responsible for the killing."

Under such a principle these must be voluntarily combination. Certainly the evidence shows as we have pointed out that Tada never voluntarily joined Miyazaki or the others named in specification one, nor did he directly commit the act complained of or did he do the things set forth in Section 550 whereby he could under United States Criminal Law be considered a principal.

In Section 60, Ibid we find a definition of "What Constitutes Participation in Offenses." "In order that a person may be regarded as a participant in a homicide, he must have aided, abetted, assisted, encouraged, or advised the killing, with the intention of encouraging and abetting the commission thereof. (Hicks v. U.S., 150 U.S. 442, 37 L.ed 1137, 14 S.Ct. 144)"

We continue to quote from Sect. 60 Ibid: "In order to be present, aiding and abetting in the commission of the offense, the accused must be so situated as to render some aid to him who directly perpetrates the homicidal act." (Citing Commonwealth v Knapp, 9 Pick. Mass 496, 20 Am. Dec. 491).

Colonel Tada we maintain did not directly commit the act complained of nor did he aid or abet the persons directly perpetrating the homicidal act, Nakamura and Kokubo and Miyazaki (Q. 27, 28, 29 answered by Kokubo, Chihiro on the fifth day of the trial).

Section 3 Ibid states the rule that "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..."

P. 452 (Criminal Code section 273) found under Title 18 Criminal Code and Criminal Procedure on page 1926 of the 1946 edition Titles 16-26 United States Code defines murder: "Murder is the unlawful killing of a human being with malice aforethought." Then follows a definition of first degree murder and second degree murder.

The commission will note that the United States Criminal Code also requires criminal intent, the malice aforethought. The evidence as we have pointed out conclusively proves there was no malice aforethought & Colonel Tada had no criminal intent.

HH(12)

Colonel Tada should be found not guilty. Colonel Tada should be acquitted.

So in the case of General Inoue as regards specification eight. General Inoue had no connection with the murder. He was at Babelthuap whereas the killing took place at Koror. General Inoue was in no sense a principal. He did not directly commit the act complained of nor did he aid or abet Katsuyama, the person alleged to have directly perpetrated the homicidal act. General Inoue had no malice aforethought nor did he have a deliberate intent or formed design to execute Second Lieutenant Kaufman. He had already cautioned Yajima about this as to the treatment to be accorded prisoners of war.

By inference the judge advocate in his argument admits that there is a failure of proof as to specifications 4, 5, 6 and 7. Co-counsel have, as we have also shown the lack of command relationship and that there was no duty or responsibility to protect the civilians named in the above specifications or a duty to control or supervise the members of the kempeitai who are alleged to have committed certain offenses.

CONCLUSION

We are here concerned with justice to a defeated enemy commander. Your responsibility as members of this military commission is both lofty and difficult. As members of the military commission of a victorious nation you are sitting in judgment upon the military strategy and actions of the defeated enemy and by your conclusions you are to determine the criminal liability of the enemy commander, Lieutenant General Inoue, Sadao, Commanding General of the Fourteenth Division, Imperial Japanese Army and Army Group Commander Palau Area and his chief of staff Colonel Tada, Tokuchi. Even as these two accused realize, so you members of the commission realize full well that the life and liberty of Lieutenant General Inoue, Sadao and Colonel Tada, Tokuchi depend upon your will.

I am sure that you will use objective and realistic norms of conduct in forming your judgment as to deviations from duty and as to the offenses complained of.

I know that this military commission is greatly concerned with the legal rights of the two accused and that this military commission is a stable guarantee that the individuals interests of these two accused, Lieutenant General Inoue, Sadao and Colonel Tada, Tokuchi will be safeguarded. For the principles of justice are substantial and eternal and nowhere else in all the world is there such a great concern as there is in the United States of America that justice be done in the trial and punishment of men, yes of all men who are brought to trial in our American courts, be they citizens of the United States of America or not for our philosophy is one of universal law.

Respectfully

Martin Emilius Carlson
Martin Emilius Carlson,
Commander, USNR,
Defense Counsel.

HH(13)

0149

CLOSING ARGUMENT FOR THE PROSECUTION

Delivered by
Lieutenant Commander Joseph A. Regan, USN,
Judge Advocate.

If it please the commission, today is the seventeenth day of this trial, and according to the defense, all the prosecution has managed to do is waste time. The prosecution in its opening speech admitted the possibility that four of the ten specifications had not been proved beyond a reasonable doubt. None of the defense attorneys have been willing to concede that any one of the specifications has been proved to any degree whatsoever. According to Commander Carlson, we don't know the law that is applicable to the case, although we told them frankly that we weren't holding these accused merely on the provisions of the Geneva Prisoners of War Convention or the Hague Convention. We were holding them on the basis of international common law, with those principles being codified in those acts. The commission does not have jurisdiction over these accused. I will not argue this point again because it was argued in the very beginning, but even assuming the court does have jurisdiction, then the rules of evidence have been vastly improper. The commission well knows that the prosecution's case was based somewhat on hearsay evidence but not to any great extent. The specifications dealing with the three aviators and Kaufman are supported by the testimony of witnesses and there is direct testimony on the other incidents. In some instances the witnesses to the particular acts involved were eye witnesses. The defense concedes that there is a great deal of confusion in the testimony. There is confusion between the testimony of the prosecution witnesses and the testimony of Inoue and Tada, the two accused in this case. It is natural that they take advantage of having listened to the prosecution testimony presented through translators for their exclusive benefit. It is not surprising that day by day after listening to the prosecution witnesses that they should take notes on the points that they should make and the things they should tell.

I'm not going into the overwhelming battle conditions or the fact that the Marines actually landed in the Palau because that matter has little or no importance in this particular case. It is quite true that prisoners of war could be embarrassing if there were several thousands as there were in Africa and Europe. With respect to specification one in this particular case there were three prisoners of war among 35,000 Japanese troops. The general was so befuddled by their presence that the only thing he could do was to have them executed. There was much talk about the headquarters being moved from place to place, but we know as a matter of fact that during the time the general was ill, the headquarters didn't shift during the entire month of September and specification one concerns an execution that took place in September.

I'll admit frankly that it is a little too much to expect the commanding general of an army to physically take care of prisoners of war himself. I don't think he has the obligation of taking them every place he goes, but he could have delegated a lieutenant or a captain from among his officers to take them into custody and keep these men alive, and he definitely has the obligation to refrain from actually and personally ordering their execution which is the fact with relation to specification one.

Inoue doesn't deny that he ordered these three prisoners killed, but he tells us he was forced to do so by the Commanding General Ohta. The four incidents which make up this case have all been tried before. Each one of them, the Kaufman incident, the aviators incident, the missionaries incident, and the Charlie Smith incident, have all been tried in previous separate cases by themselves, and in every single one of those cases, the persons tried stated "it wasn't my fault, but the fault of the commanding officer, it was the fault of my superiors", and now when we finally try the commanding officer

"He states it was the fault of the Commanding General Obata" Lieutenant General Obata told me I had to do this - I opposed him. I point out this conversation with Obata occurred some time prior to August 1944, and in August 1944, Obata was on Guam which was assaulted and taken and Obata was there killed. Inoue had such a tremendous admiration for Obata that in September, a good month after the death of Obata, Inoue finds himself compelled to carry out Obata's orders and three American prisoners of war die. It was necessary to kill these prisoners, yet in the same speeches of defense counsel they speak of "this grand and glorious army, the Fourteenth Division", with its glorious tradition. Presumably if the division had such a glorious tradition it must have been a disciplined army. Instead the commanding general is so afraid that they will be undisciplined and murderous that he sees no alternative but to execute the three prisoners. He never thought to take any particular officer, a lieutenant or a captain and give him these three prisoners, making that officer responsible for the prisoner's care. This wasn't done in this case and the three prisoners were killed. What did Colonel Tada have to do with this particular incident? It is the prosecution's contention that there was in existence a direct link between General Inoue and the reluctant Miyazaki. I shouldn't have used reluctant with respect to Miyazaki for there is no evidence that he was. The term should have been the reluctant Tada, who in the first conversation didn't do anything about the execution. In the second conversation he talked about international law and in the third he left himself he persuaded. If he had continued to oppose the general he wouldn't be present today in this court. On three different days he protests and then finally he permits himself to be persuaded. Captain Koichi was tried for the murder of Kaufman. Captain Koichi received personally from General Inoue the orders to carry out the execution. Because of his position as a captain, Koichi could hardly oppose the general. Tada was the only man in the army who could say no, at least to some extent. He says "I was against it, but I did it, and merely because I opposed it, I should be exonerated."

It is the contention of the prosecution that the legal principles given you are applicable to this case. Commander Carlson has read you Section 550 which says "Principals defined. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." I will read from Black's Law Dictionary on abet "Abet. To encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure, or counsel him to commit it." In this particular case we have the testimony of Inoue that Tada passed the word to Miyazaki. We have Tada's testimony that he actually passed the word. He not only aided and abetted, but he also procured, and "procure" is defined in Black's Law Dictionary as follows "In criminal law, and in analogous uses elsewhere, to 'procure' is to initiate a proceeding to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause." General Inoue is sick in his headquarters. He has one visitor and that is Tada who directly conveys the word of the general to Miyazaki and the result is the death of the three prisoners of war.

We have Yajima's testimony that Tada did more than just convey the intentions to Miyazaki for he told Yajima to transport these prisoners to the Miyazaki unit and Miyazaki carried out the execution. Another point which the defense has made has absolutely no relevance to the case. You needn't be present at the execution to be held responsible. Any participation in a murder is culpable. General Inoue gave the word for the execution, but he didn't go personally to Koror. Whether he did or didn't go makes no difference. I'll not talk about the other incidents, but just let me mention for a moment the Kaufman case. Does the commission believe that because Koichi's ears were

bound, does the commission believe that merely because five years are passed, that Koichi's memory has failed him on what was told him? Nakagawa from that stand testified that he heard the general tell Koichi to execute the prisoner. Not Koichi, but Koichi should have Katsuyama execute the prisoner. We have the testimony of Onose that the general gave the order. The defense would have you believe that he was such a loyal subordinate of Yajima, he even up to today when Onose has been sentenced, would not tell you that Yajima is responsible rather than the general.

Remember how in their arguments defense makes much of this glorious Fourteenth Division with its long and honored service. A staff officer, a mere lieutenant colonel who would first come to the commanding general and say "your subordinates would like to execute this prisoner." The lieutenant colonel would be rebuked. The lieutenant colonel would go out and on his own initiative defy the general and issue orders for an execution. Commander Carlson states that it is one of the loftiest and most difficult responsibilities of your lives to make your decision. I'll concede that the responsibility is lofty, but I will not concede that it is difficult. Specifications one and three have been proved beyond a reasonable doubt and all the other specifications that have to do with specifications one and eight should be found proved. In a like manner there can be somewhat of a doubt of the relationship between Inoue and the kenpeitai which is the basis for specifications four, five, six and seven. We haven't been able to show that on paper there was any connection, but we have shown beyond a reasonable doubt that Inoue ordered Tada to convey his order to Miyasaki, and Inoue himself gave the orders for Kaufman's execution and the judge advocate asks that the relevant specifications be found proved.

Respectfully,

Joseph A. Regan
Joseph A. Regan.

INOUE, SADAE and TADA, TOKUCHI (28 MAR 1949)

(VOL. III)

(168346)
PART 1 OF 3

0153

Case of
IWADE, Sadae
and
TADA, Tokuchi

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

RECEIVED
5 JUL 1949
OFFICE OF JUDGE
ADVOCATE GENERAL
G.C.M. SECTION
VOLUME III

168346

A-N

0154

陣地書昭和廿三年五月廿一日

(工)

陸軍中將 井上貞續

「ハロオ」本島 寛島陽にテ捕虜ヲ処分セン件

~~二人ト思ヒマス~~

昭和十九年九月カ或ハ十月頃(年月ハ推定ニテ不確定ナリ)

當時捕虜二人ト思ヒマス(確)

又當時ノ状況

「パロエ」戦開始セラレ米軍機動部隊ハ續々

近迫シ後方トノ連絡ヲ完全ニ遮断セラレ

米軍航空隊ハ連日「ハロオ」本島ヲ攻撃ス

故ニ戦死司令部ヲ海面ノ見ユル「コントロール」方面ニ

テ出レテテ情報ヲ蒐集セリ

(當時私ハ盲腸炎ヲ患テ兵站病院ニ入院中ナリ)

兵站病院カ「ハロオ」本島「ジャングル」内ニ移動シ戦務

中ナリシタメ司令部ヲ休ムニテ治療シ而モ時時會

集セラレリ故ニ各課長多田大佐ヲ以テ遣アリ)

然レ米軍「ハロオ」近迫シ状況ハ急ニ劣クルニ

至レリ以上ノ報告ヲ受ル(各課長ヨリ)

各課長ハ利勢ト私ハ利勢カ完全ニ一致シ

マシテ米軍ハノカス迄日中「ハロオ」本島ニ上陸ス

ルモノト判断セリ

以上ノ状況ニヨリマシテ問題ハ捕虜ヲ如何

ニ処スルヤ

IV

上記ノ如ク後方ニ送ル程ハ渡断セラシ今日迄
保護ヲ加ヘテ兵リマシタカ最早他ノ方法ハアリマ
セヌカラ若キ豫長ニ対シテ「セムヲ得ヌ知分スル外
ナシ」ト申シマシタ

元ノヨリ前 昭和十九年七月頃 第二十一軍司令部
小畑中将が「サイパン」戦に際して「コロール」に
攻撃スル時「コロール」司令部ニテ我々ニ対シテ捕虜
ハ既ニ後送スルヲ得サルニ至リ米軍上陸セル
ト判明セハ処分セヨ
ト我々ニ示サレタ

其ノ時ナリト云ハ中史部ノ竟先ナリト云カニシテ
レマシタ

以上ノ理由ニヨリ 余ハ 貴ノ父田澤日金氏ノ命ヲ
遵行セシマシタ

3 結 鈴

障子及び、窓の裏に貼る紙の責任は
私＝アトリマス

何卒部下=間違ヒカアリマス✓ハ！書寛大
取組様ヒ=御預申上チマス

又既に所刊セラレタル者カプリマスレハ法ノ許サレ
範圍ニオキマルテ一日モ軍ク立派ナキ平和的國民
トシテ出發カ出ルマシキ本義ヲ知ルベシ歟

(III)

其他(参考)

富山隊一隊報知致すにタコトハ 札ハ病氣
中テアリマシカラ 電報報知ガ詳シ知テオリヌ

Exhibit 1

0157

Exhibit
(1)

21 May 1948

Statement of Lt. Gen. INOUE, Sadae - pertaining to the Disposal of Prisoners of war at the Kempei Unit, Babelthuap.

1. I think there were two prisoners around September or October 1944. (This date is surmise and uncertain).

2. Circumstances at that time. The Battle of the Pelelieu commenced. American Task Forces approached one after another. Our transportation and communications to the rear were entirely severed. American Air Forces bombed Babelthuap every day. I therefore moved the Command Post to the vicinity of Koror from where we could observe the sea and ordered the collection of intelligence. (At that time I was in the Field Hospital suffering from appendicitis). However, since the preparations to equip the Hospital was underway - after it had been removed to the jungle on Babelthuap - I received medical treatment in the vicinity of Headquarters. No person was permitted to visit me, and because of this I sent Colonel TADA, my Chief of Staff, to the Command Post.

Meanwhile the American forces approached nearer than ever to Palau and the situation became more pressing. It was at this time that I received the report from the Chief of Staff pertaining to what I have mentioned above. (T.N. para. 1 and 2).

The Chief of Staff and I were in complete agreement regarding our judgment that the American forces would land on Babelthuap in a few days.

Under the above mentioned circumstances, there was a problem of what should be done with the prisoners.

As I mentioned above we had no means of sending them to the rear. We were keeping them under our protection up to that time since we no longer had any other way and since I said to the Chief of Staff, "There is no other way and I am obliged to dispose of them".

Before this time, around July 1944, Lieutenant General Obata Commanding General of the 31st Army left Koror to take part in the battle of Saipan. At his departure, he told me at our quarters that we could not send prisoners to the rear and that we should dispose of them in case of American landing. He also remarked that this was especially the intention of the central authorities.

On the foregoing grounds, I had the orders of Commanding General Obata carried out.

3. Conclusion. The responsibility of carrying out the orders of the Commanding General of the Army rests upon me.

If my subordinates committed any faults on account of that, I beg that you will deal leniently with them.

As to my subordinates who were already sentenced, I hope you will give them a chance within the limits of the law to enable them to start their lives anew as fine peaceful citizens.

Other references. As to the assignment made to the Kempeitai, Chief of Staff Tada knows well because I was ill at that time.

/s/ Inoue, Sadae

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.

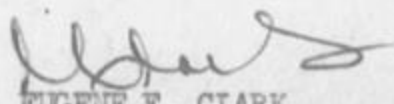

EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

Exhibit 1(a)

0158

一九四七年九月二十五日

報

告

中華民國
年
月
日

0159

一、多分一九四四年九月始メ頃ノコトデアツタと思フ。

バベルダオブ島(パラオ本島)ノ熱帯産業研究所ニ位置シテ
 本ノ集團司令部ノ私ノ宿舍デ、私ト宮崎中佐ト矢島少佐
 トノ三人ガ要談中ニ、突如米軍機ガ来襲シ、私等ハ各自
 ニ夫々防空壕ニ退避シタコトガアル。

其ノ頃コロール島及パラオ本島ハ殆ンド連日米軍⁸²⁴ノ空襲ヲ
 受ケ、司令部ノ事務所ノ建物モ焼ケ落チ、一般ニ米軍大部隊
 ノパラオ諸島ヘノ上陸ハ必至デアリ、其ノ寸前デアルト豫見サレ
 テタタ。事實九月六日カラハ、ペリリウ上陸ノ爲ノ熾烈ナル大
 空襲ガパラオノ各島々ニ対シテ始マツタノデアツタ。

此ノ時ノ三人ノ間ノ談話中ニ、私ハ現ニ捕獲サレテナル米軍ノ捕虜ガ
 ラ如何ニ處置スヘキヤニ就イテ、既ニ明ラカニ示サレテタタ井上
 司令官ノ意圖ヲ傳ヘタ。

(私)

此ノ時迄ニ示サレテキタ井上司令官ノ意圖ハ日米軍ノパラオ諸
島ヘノ上陸ハ、イヨク、眞逆ニ切迫シテ来タノデ、アノ捕虜ハ早
ク殺シテシマヘ、トイフ決定的ナモノデアリ、且私ハ司令官カラ
督促サレテキタノデアツタ。

私ハ司令官ノ此ノ意圖ヲ傳ヘルコトヲ、敢テ遷延シテキタノデアツタガ、
私が最も知り悉シテキル司令官ノ主義、性格ト各般ノ狀況ト
ヲ合セ考ヘ、最早コレ以上司令官ノ意圖ニ反スルコトハ、不可能
デアルノミナラス、却ツテ大害ヲ残スニ至ルトノ結論ニ達シ、止ムナク
之ヲ宮崎憲兵隊長ニ傳ヘタ。

此ノ時ノ宮崎憲兵隊長答ヘハ至極ハツキリシタモノデアツタ。「ハア、
ヨシウゴサイマス、私ノ肚デアリマセウ」トイフノデアツタ。

註　コノ返事ノ意味ハ日本人特有ノ心理カラ、男ト男トノ間ノ誓約ノ時、
用ヒラレル「肚」デアツテ英譯ハ仲々六ツカシイモノデスガ、私ノ食

シイ英驛カヲ以テスレバ結局次ノ様ニナルモト考ヘル。

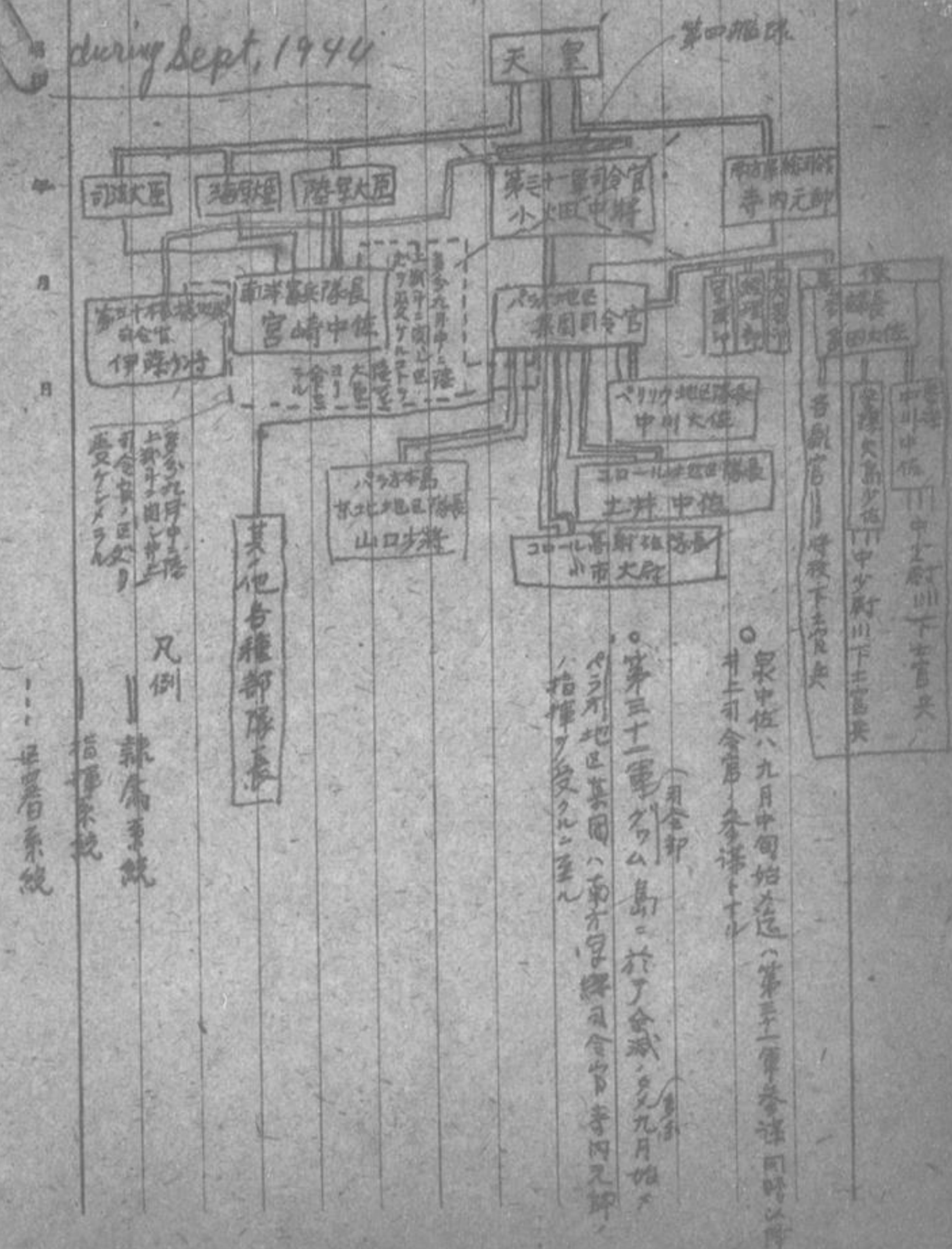
"Okay. Entrust it to me." デアリ、要ジ結メレバ、

"Okay. I will be responsible for it, sir." トイフ意味トナセウ。

智ニ第三十一軍司令官小畑中將ガ、我々ニ対シ、^コ敵ノ上陸ヲ豫期スルニ
至ツタトキハ、捕虜ハ速カニ處置セヨ（殺シテ仕舞ヘトイフ意）ト明確ニ
意圖ヲ示シテ居リ、井上司令官ハ之ニ関スル決心モ牢固タルモバデア
ツタガ、井上司令官ノ命令又ハ參謀長ノ指示トシテ宮崎憲兵隊
長ニ傳ヘタモノデハナク、井上司令官ノ意圖ヲ傳ヘタノデアルコトヲ更
ニ茲ニ確言スル。
尚此ノ時ニ於ケル命令指揮ノ系統ヲ表示スレバ次ノ如キモノデア
ツタト記憶スル。

附
生
草

during Sept, 1944



0163

ニ宣教師が殺サレタハ、米軍がペリリウ島ニ上陸シター一九四四年九月十五日ノ直後一両日ノコトデアルト、私ハ近頃聞イタ。

私ハ米軍ノ本格的空襲ノ始マツタ九月六日ノ夕方、中川參謀、泉參謀(数日間ハ尚第三十軍參謀デアッタ)山田軍醫部長其ノ他少数ノ人員ヲ隨ヘテ、然研司令部ヲ出發シ、其ノ夜ノ夜中過ギニ漸クアル、コック山上ニ達シ、同所ニ集團ノ我聞司令所ヲ開設シ、其後十月始メ迄同所ニ在ツテ、ペリリウ戦・パラオ戦ノ戦闘指導ニ熱中シタ。從ツテ宣教師等ガ、ドウニテ殺害セラルニ至ツタカノ経緯ニ就イテハ、私ハ関知シテナナイ。

三、パラオ地区集團軍法會議ハ、昔同法ノ修正案カ議會ヲ通過(一九四四年十二月カ翌年一二月頃ナラシ)シテ、我々ノ集團ヲモ之ヲ設置スルコトガ出来ル様ニナツテカラ、急速ニ設置セラ

コノ軍法會議デ 多数ノインドネシヤ人ノ兵補(軍属ノ一種)
 ガ、ペリリウニ向ツテ逃セシ、ウルクタブルマデ達シタ所ヲ捕ヘラレ
 タ事件ガ裁判セラレ、我ガ軍属トシテ陸軍刑法ノ適用ヲ受ケ、
 死刑ガ宣告セラレ、且執行セラレタ。軍法會議ノ長官ハ集團
 司令官井上中將デアリ、コノ時ノ判士長ニハ多分集團ノ築
 城班長角谷少佐ガ任ゼラレ、又法務官ノ職務ハ檢察官、
 職務カニハ夫々集團司令部ノ高尾主計中尉、中村中尉ガ
 任ゼラレタ。他ノ判士数名ガ誰デアツタカハ、今憶ヒ出スコト
 ガ出来ヌ。コノ時ノナイ。裁判庭ニ死刑ノ時期ハ、ハツキリ想
 起出来ナイガ、多分一九四五年二月カラ四月迄ノ間デアツ
 タト思フ。

リノ外ニモ此ノ軍法會議ニ依ッテ陸海軍人軍属ノ多数
 ガ各種事件デ裁判セラレ、陸海軍刑法其ノ他處俣法

規ノ適用ヲ受ケテ、各種ノ處刑ヲ受ケタ。ソノ中、多分海軍
々屬デアル一人ノ日本人がインドネシア人同様、敵前奔敵
未遂、海軍刑法ノ適用ヲ受ケ、死刑ノ宣告ト其ノ執行ヲ
受ケタ。

此ノ軍法會議ノ長官、法務官ノ職務、檢察官ノ職務、
他ノ者ト交代スルストハナカッタガ、判士長ト判士ハ其ノ都度
任命サレタ。副官、參謀、參謀長ハ一度モ軍法會議ノ
職員ニハ任命セラレナカッタ。

四、老英人ニ就イテハ、彼ガ島民ヲ妻トシ豊カデナイ生活ヲミテ
居リ、無カデナリ、無害ナ存在デアルトイフ通知ヲ受ケテ
中タハ憶エテナル。ソノ通知ヲ受ケタノハ、何時デアッタカハ
ハッキリ憶エテナイガ、多分島民ガ多数ペリリウニ逃ゲタ
時デアッタヤウナ氣ガスル。此ノ英人ヲ殺害シタトイフ報告

No. 2

ヲ終戦迄ニ受ケタフトハナイ。
五集團高射砲隊ヲ捕虜ノ米軍一將校ガ殺害サレタノハ
一九四五年五月末ト推定サレル。私ハ今ヲ井上司令官ガ自
身デ口達ノ命令ヲ與ヘ（命令ノ手續キニ多少ノ不備ハアル
カ）之カ遂行セラレタモノト認メサルヲ得ナイ。私ハ病氣
ノ為、當時長イ間司令官以外ノモノトノ面會日ヲ禁止サレ
執務ハ勿論中絶シタキタ為事件ノ経緯ニ就イテハ関知
シナイ。

以上

一九四七年九月二十五日

前パラオ地区集團參謀長

多田督知

Exhibit 2

0167

REPORT

25 September 1947.

1. I think it was probably around the beginning of September, 1944.

While Lieutenant Colonel MIYAZAKI, Major YAJIMA and myself were in the midst of important conversation in my quarters at army group headquarters which was located in the Tropical Industries Research Laboratory on Babelthup Island (main island of Palau), American planes attacked unexpectedly and we each withdrew to the air raid shelter.

At that time Koror Island and the main island of Palau received air attacks by American B-24's almost every day; the office buildings of the headquarters were burned to the ground; from the overall situation a landing of a large American force on the Palau Islands was inevitable and we were anticipating it any moment. As a matter of fact, on the sixth of September intense air raids began over every island of Palau for the purpose of making a landing on Peleliu.

During the conversation between the three of us at this time I informed them of the intention of Commanding Officer INOUE which had been clearly indicated to me concerning how we should dispose of the American prisoners whom we held in custody.

Up to that time the intention of Commanding Officer INOUE, which had been indicated was definitely, "As the landing of the American forces on the Palau Islands is drawing nearer and nearer, kill the prisoners quickly", and this was urged upon me by the commanding officer.

I risked delaying to relay these intentions of the commanding officer but I concluded that more than this it was not only impossible to oppose the intentions of the commanding officer but also would cause great damage, considering the doctrines of the commanding officer which I knew very thoroughly, his character and all the circumstances. There was no other choice but to inform Kempeitai Commander MIYAZAKI of this.

The reply of Kempeitai Commander MIYAZAKI at this time was quite definite. He said, "All right, I will be responsible for it." (*)

Note: As for the meaning of this reply from the psychology, which is peculiar to the Japanese people, this is the word "stomach" which is used when an oath is taken between one man and another. Its translation into English is very difficult, but if with my poor ability to translate into English I were to translate it, I think it would be as follows: "O. Kay. Entrust it to me," which boils down to mean, "O. Kay. I will be responsible for it, sir." (#)

Previously Lieutenant General OBATA, commanding officer, 31st Army, clearly indicated his intention to us: "When you expect a landing to be made by the enemy, dispose of prisoners in a hurry," (which meant: "Put them to

(*) In Japanese this expression is in colloquial form. TADA follows it with interpretation of its meaning in the next sentence.

(#) Quoted matter, "O. Kay. Entrust it to me" and "O. Kay. I will be responsible for it, sir." written in English in the original document in Japanese.

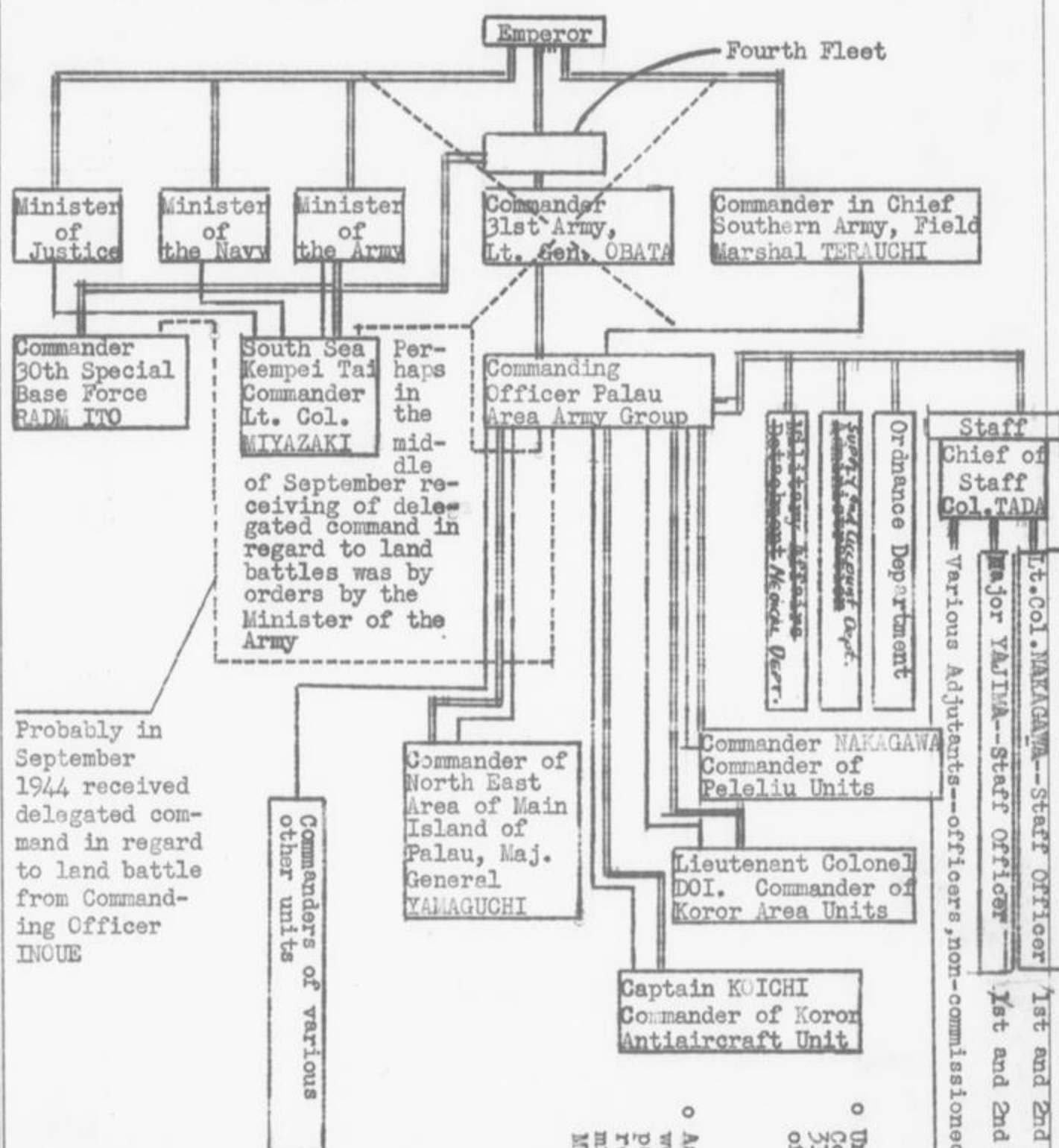
death.") Commanding Officer INOUE's determination concerning this was very strong. However, I did not inform the Kempeitai Commander MIYAZAKI of this as being an order of Commanding Officer INOUE or as being a directive of the chief of staff. I again assert here the fact that it was passing on the policy of the commanding officer.

If, for reference purposes, I am to show the chain of command for orders and directives, I remember that they were as follows:

Attached chart:

Table of Chain of Command

during Sept. 1944 [*]



Legend:

- Chain of Command
- Direct Command
- Delegated Command

[* As it appears on the original.]

o As the headquarters of the 31st Army on Guam were completely destroyed perhaps in the first part of September, the Palau Army Group received its directives from the supreme military commander of the South Seas, Field Marshal TERAUCHI.

o Until the middle of September Lieutenant Colonel INAMI was a staff officer of the 1st Army and after that time was a staff officer of Commanding Officer INOUE.

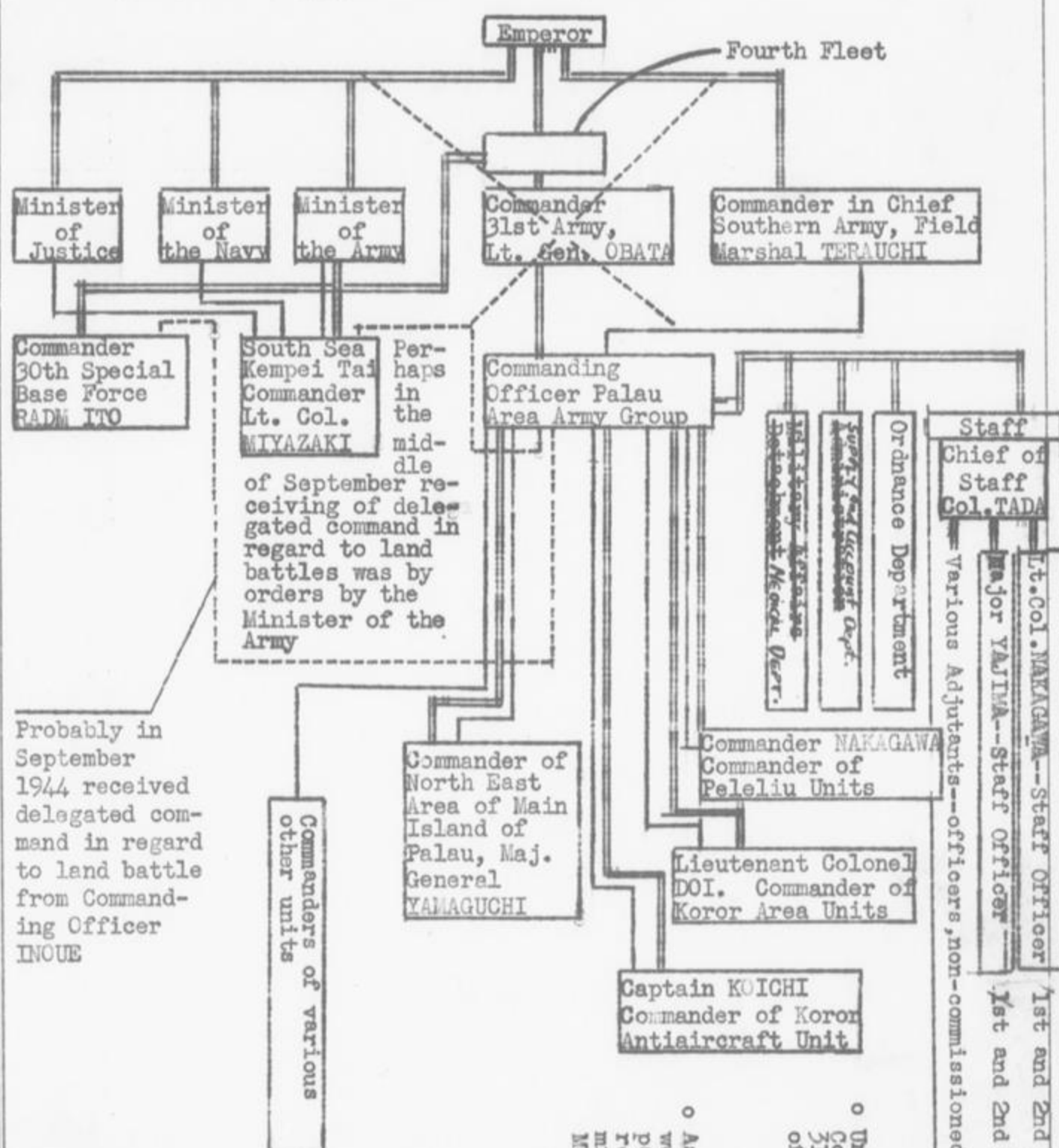
Lt. Col. MAKAGAWA--Staff Officer	1st and 2nd Lts., non-com. officers and enlisted men
Major YAJIMA--Staff Officer	1st and 2nd Lts., non-com. officers and enlisted men

Various Adjutants--officers, non-commissioned officers and enlisted men.

Attached chart:

Table of Chain of Command

during Sept. 1944 [*]



Legend:

- Chain of Command
- Direct Command
- Delegated Command

[* As it appears on the original.]

o As the headquarters of the 31st Army on Guam were completely destroyed perhaps in the first part of September, the Palau Army Group received its directives from the supreme military commander of the South Seas, Field Marshal TERACHI.

o Until the middle of September Lieutenant Colonel INOUE was a staff officer of the 1st Army and after that time was a staff officer of Commanding Officer INOUE.

Major YAMAGUCHI--Staff Officer	1st and 2nd Lts., non-com. officers and enlisted men
Major YAMAGUCHI--Staff Officer	1st and 2nd Lts., non-com. officers and enlisted men
Various Adjutants--officers, non-commissioned officers and enlisted men.	

2. I recently heard that the killing of the missionaries was within a day or two after the American forces landed on Peleliu on 15 September 1944.

In the evening of 6 September when the constant and intense regular air raids by the American forces began, accompanied by Staff Officer NAKAGAWA, Staff Officer IZUMI (also staff officer of the 31st Army for a few days), Chief Medical Officer YAMADA and a few other personnel, I left the headquarters in the Tropical Research Laboratories, reached the top of Arurukokku Hill a little after midnight that night and set up battle headquarters for the army group. After that until the early part of October we remained in the same place and were completely engrossed in the supervision of the battle of Peleliu and the battle of Palau. Consequently, I know absolutely nothing about the circumstances under which the missionaries came to be put to death.

3. As for the Palau Area Army Group Court Martial, after the amendment to the old law pertaining to same had passed the Diet (December 1944 or about January or February of the following year) and our army group was also able to set one up, one was promptly set up. A case was tried by this commission in which a large number of Indonesian auxiliary troops (a type of gonzoku) fled to Peleliu and were captured upon reaching Urukthapel. The army penal code was applied to them as our gonzoku; they were sentenced to death, and the sentence was executed. The convening authority of the court martial was Army Group Commander INOUE. Major KADOYA, fortifications section leader of the army group, was probably appointed chief magistrate at this time. To the functions of judge advocate and investigating officer were appointed First Lieutenant TAKAO, paymaster at Army Group Headquarters, and First Lieutenant NAKAMURA, respectively. There were a number of other judges at that time, but now I cannot recall who they were. I do not recall the exact time of the trials and the executions, but I think they were probably between February and April of 1945.

Besides these a large number of army and navy personnel and gonzoku were tried by this court martial for various incidents and army and navy penal codes and other pertinent laws and regulations were applied, and they received various types of executions. Among these the naval penal code was probably applied to one Japanese who was a navy gonzoku for the same offense as the Indonesians committed, ("Attempting to flee to the side of the enemy,") and he received the sentence of death and the execution of that sentence.

The functions of the convening authority, judge advocate, and the functions of investigation officer never rotated to other persons but the chief magistrate and the judges were appointed every time. The adjutant, staff officers or the chief of staff were never appointed as court martial personnel.

4. As for the aged Englishman, he took a native wife, led a meagre existence and was not strong. I remember receiving the information that his was a harmless existence. I do not remember exactly when I received this information, but I have a feeling that it was probably the time when a large number of natives fled to Peleliu. I did not receive any reports that this Englishman had been put to death until the end of the war.

5. I presume that the killing of one prisoner, an American officer, at antiaircraft unit of the army group was at the end of May, 1945. Now I cannot help but recognize that it was an affair in which Commanding Officer INOUE himself gave verbal orders (there was something missing in the procedure of these orders) and it was carried out. As I was ill for quite a while at that

*"Attempted desertion in the face of the enemy."

time visits by persons besides the commanding officer were forbidden and as my official duties were suspended I know nothing of the circumstances of the affair.

The end.

25 September 1947.

Formerly Chief of Staff
Palau Area Army Group;
TADA, Tokuchi.

I hereby certify that the foregoing is a true and complete translation, to the best of my ability of the original document in Japanese.

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

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

I hereby certify that the annexed are true excerpts taken from the official records of Commander Naval Forces, Marianas in the case of N. KAMURA, Kazuo, et al, and consist of the following:

1. Charges and specifications dated 24 December 1947.
2. Findings of the military commission.
3. Action of the convening authority, The Commander Marianas Area, dated 24 April 1948.
4. Action of the reviewing authority, The Commander in Chief, Pacific and United States Pacific Fleet, dated 11 May 1948.
5. Action of the Secretary of the Navy dated 23 August 1948 with endorsement thereon.


H. L. OGDEN,
Commander, U. S. Navy.

Exhibit 3 (1)

0173

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 23113

24 DEC 1947

From: The Commander Marianas Area.
To : Lieutenant Commander Joseph A. REGAN, USN,
Military Commission, Commander Marianas.

Subject: Charges and Specifications in the case of:

NAKAMURA, Kazuo
KOKUBO, Chihiro
NAGATOME, Yoshimori

1 The above named persons will be tried before the Military Commission of which you are judge advocate upon the following charges and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE I

MURDER

Specification 1

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, KOKUBO, Chihiro, then a sergeant major, IJA, NAGATOME, Yoshimori, then a corporal, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, at Babelthuap Island, Palau Islands, on or about September 4, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with swords and by shooting with firearms, exact description to the relator unknown, three unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, acting with other members of the armed forces of Japan, did, at Babelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, willfully, feloniously, with premeditation and malice afore-

Exhibit 3 (2)

0174

thought, and without justifiable cause, assault, strike, kill and cause to be killed, by shooting with firearms, exact description to the relator unknown, one Charlie SMITH, alias JAMES, an unarmed British national, then and there, held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations as Commanding Officer of the First Detachment, South Seas Military Police, did, at Babelthuap Island, Palau Islands, on or about September 4, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as Commanding Officer of said First Detachment, South Seas Military Police, to control the operations of members of his detachment and persons subject to his control and supervision, namely, KOKUBO, Chihiro, then a sergeant major, IJA, NAGATOME, Yoshimori, then a corporal, IJA, and other members of the armed forces of Japan, permitting them the aforesaid persons, on or about September 4, 1944, at Babelthuap Island, Palau Islands, to kill unlawfully and cause to be killed unlawfully, by beheading with a sword and shooting with firearms, one unarmed American prisoner of war, name to the relator unknown, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations as Commanding Officer of the First Detachment, South Seas Military Police, did, at Babelthuap Island, Palau Islands, on or about September 4, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as Commanding Officer of the said First Detachment, South Seas Military Police, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, three unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, in that he permitted the unlawful killing of said prisoners of war by beheading with swords and by shooting with firearms, by KOKUBO, Chihiro, then a sergeant major, IJA, NAGATOME, Yoshimori, then a corporal, IJA, and other members of the armed forces of Japan, this in violation of the law and customs of war.

Exhibit 3 (3)

0175

Specification 3

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations as Commanding Officer of the First Detachment, South Seas Military Police, and as Chief of the Police Section, Headquarters, South Seas Military Police, did, at Babelthup Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as Commanding Officer of the First Detachment, South Seas Military Police, and as Chief of the Police Section, Headquarters, South Seas Military Police, to control the operations of members of his command and persons subject to his control and supervision, namely, AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Miyoshi, then a sergeant, IJA, and others, names to the relator unknown, permitting them the aforesaid persons, on or about December 29, 1944, at Babelthup Island, Palau Islands, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, one Charlie SMITH, alias JAMES, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 4

In that NAKAMURA, Kazuo, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations as Commanding Officer of the First Detachment, South Seas Military Police, and as Chief of the Police Section, Headquarters, South Seas Military Police, did, at Babelthup Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as Commanding Officer of the First Detachment, South Seas Military Police, and as Chief of the Police Section, Headquarters, South Seas Military Police, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, one Charlie SMITH, alias JAMES, an unarmed British national, then and there held captive by the armed forces of Japan, in that he permitted the unlawful killing of said Charlie SMITH, by shooting with firearms, by AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Miyoshi, then a sergeant, IJA, and others, names to the relator unknown, this in violation of the law and customs of war.

/s/ C. E. POWNALL
C. E. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

Exhibit 3 (4)

0176

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

As to the accused Nakamura, Kazuo:

The first specification of the first charge proved in part, proved except the words "NAGATOME, Yoshimori, then a corporal, IJA," which words are not proved.

The second specification of the first charge proved.

And that the accused Nakamura, Kazuo, is of the first charge, guilty.

The first specification of the second charge not proved.

The second specification of the second charge not proved.

The third specification of the second charge proved.

The fourth specification of the second charge proved.

And that the accused Nakamura, Kazuo, is of the second charge, guilty.

As to the accused Kokubo, Chihiro:

The first specification of the first charge proved in part, proved except the words "NAGATOME, Yoshimori, then a corporal, IJA," which words are not proved.

And that the accused Kokubo, Chihiro, is of the first charge, guilty.

As to the accused Nagatome, Yoshimori:

The first specification of the first charge not proved.

And that the accused Nagatome, Yoshimori, is of the first charge, not guilty; and the commission does therefore acquit the said Nagatome, Yoshimori, of the first charge.

Exhibit 3 (5)

FF12/417-10(2)
02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 4542

24 APR 1948

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt serial 0558 of 8 Mar. 1946; ComMarianas Desp. 292336Z Sept. 1947; CinCPacFlt Desp. 020103Z Oct. 1947; SecNav Desp. 081946Z Oct. 1947; CinCPacFlt Desp. 092353Z Oct. 1947). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued December 24, 1947 and served on the accused NAKAMURA and KOKUBO on the same day; on the accused NAGATOME on 31 December 1947. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, as necessary to obtain justice.

On page 1 of the record it is noted that the commission, before its members were sworn, approved a stipulation, concerning the security of classified matter, entered into by the judge advocate and the defense counsel. It does not appear from the record that the stipulation was made with the specific consent of the accused. "Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members." (Sect. 394, N.C.&B). Accordingly the action of the commission in approving the stipulation was erroneous. Further when a stipulation is made it should be followed by an affirmative statement in the record to the effect that the accused acquiesced in the agreement made by his counsel (CMO 1-1942 p. 290). However, here the stipulation accepted related only to matters pertaining to the security of classified material and did in no way involve the issues of the case. It is the opinion of the convening authority that the substantial rights of the accused were not prejudiced. (CMO 2-1943, p. 183).

The record shows that the accused NAKAMURA was convicted on two specifications of murder and that the accused KOKUBO was convicted on one specification of murder. NAKAMURA and KOKUBO, in my opinion, performed their acts in obedience to superior orders. While their acts were brutal, unwarranted and unauthorized in law, it does not appear that their conduct in carrying out their orders was more severe or aggravated than the nature of their acts and orders required.

The command of a superior neither excuses nor justifies an unlawful act but may be given consideration in determining the culpability of an accused (Para. 345.1, War Dept. Basic Field Manual, FM27-10). In view of all the circumstances as indicated in the record, the convening authority does not believe the culpability of NAKAMURA and KOKUBO equal to that of their superiors who issued the orders. In this connection a review of all previous trials in this area reveals that no person has been sentenced to death, as finally approved, who was convicted of murder which he committed without aggravation while acting in obedience to superior orders.

Exhibit 3 (6)

0178

FF12/417-10(2)
02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 4542

24 APR 1948

In view of the above two paragraphs and because the convening authority believes that the punishment for similar war crimes should, insofar as practicable, be uniform, it is recommended that the Secretary of the Navy commute the death sentences of NAKAMURA, Kazuo, and KOKUBO, Chihiro, to that of life imprisonment (Sec. 481, N.C.&B. refers).

Subject to the above remarks, the proceedings in the foregoing case of NAKAMURA, Kazuo, KOKUBO, Chihiro, and NAGATOME, Yoshimori are approved. The findings of guilty and sentences as to the accused NAKAMURA and KOKUBO are approved.

NAKAMURA, Kazuo and KOKUBO, Chihiro will be retained in confinement at the War Criminal Stockade, U. S. Marine Barracks, Guam, pending instructions from higher authority.

NAGATOME, Yoshimori, who was acquitted, was released from arrest and returned to Japan.

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

Exhibit 3 (7)

0179

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
417-25

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

Serial: 2212

11 MAY 1948

The proceedings, findings of guilty and sentences as to NAKAMURA and KOKUBO in the foregoing case of NAKAMURA, Kazuo, KOKUBO, Chihiro, and NAGATOME, Yoshimori, and the action of the convening authority thereon are approved.

The reviewing authority concurs in the convening authority's recommendation to the effect that the death sentences of the accused NAKAMURA, Kazuo and KOKUBO, Chihiro be commuted from death to life imprisonment.

Prior to the execution of the death sentence adjudged in the cases of NAKAMURA, Kazuo and KOKUBO, Chihiro, the record is in conformity with Appendix D-14, Naval Courts and Boards and Chief of Naval Operations serial 01F22 of 28 November 1945 referred to the Secretary of the Navy.

/s/ DeWitt C. Ramsey
DeWITT C. RAMSEY
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of Proceedings of a Military Commission in the case of NAKAMURA, Kazuo, KOKUBO, Chihiro and NAGATOME, Yoshimori.

Copies to:
ComMarianas
Cincpacflt War Crimes Officer, Guam

Exhibit 3 (8)

0180

NAVY DEPARTMENT
WASHINGTON 25, D. C.

JIG:I:GIG:bem
OO-Nakamura, Kazuo, et al/
A17-10/OQ (8-12-48) 162658

23 AUG 1948

To: Commander Marianas Area.
Via: Commander in Chief, United States Pacific Fleet.
Subj: Military Commission case of former First Lieutenant
Kazuo Nakamura, Imperial Japanese Army, Chihiro
Kokubo, former sergeant major, Imperial Japanese Army,
and Yoshimori Nagatome, corporal, Imperial Japanese
Army, tried in joinder by order of the Commander
Marianas Area on 6 January 1948.

1. The Military Commission before which the subject persons were tried acquitted Yoshimori Nagatome of Murder; convicted Kazuo Nakamura of I, Murder (2 specifications), and II, Violation of the Law and Customs of War (4 specifications); and convicted Chihiro Kokubo of Murder. The Commission adjudged the following sentences:

"The commission, therefore, sentences him, Nakamura, Kazuo, to be hanged by the neck until dead, two-thirds of the members concurring."

"The commission, therefore, sentences him, Kokubo, Chihiro, to be hanged by the neck until dead two-thirds of the members concurring."

2. The Commander Marianas Area, the convening authority, on 24 April 1948, subject to remarks, approved the proceedings, findings of guilty, and the sentences. It was recommended that the Secretary of the Navy commute the death sentence of Nakamura, Kazuo, and Kokubo, Chihiro, to that of life imprisonment.

3. The Commander in Chief Pacific and United States Pacific Fleet, the reviewing authority, on 11 May 1948, approved the proceedings, findings of guilty, and sentences, and the action of the convening authority thereon, and concurred in the recommendation contained in the convening authority's action to the effect that the death sentences of the accused Nakamura, Kazuo, and Kokubo, Chihiro, be commuted to life imprisonment.

4. In accordance with the provisions of section D-14, Naval Courts and Boards, 1937, and the recommendations of the convening and reviewing authorities, the Secretary of the Navy, on 23 AUG 1948 commuted to imprisonment at hard labor for the terms of their natural lives the sentences of death of former First Lieutenant Kazuo Nakamura, Imperial Japanese Army, and Chihiro Kokubo, former sergeant major, Imperial Japanese Army.

/s/ John Nicholas Brown
Acting Secretary of the Navy.

Exhibit 3 (9)

0181

417-10(1)

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Serial 3828

8 SEP 1948

FIRST ENDORSEMENT on
SecNav ltr JAG:I:GIG:
bem OO-Nakamura, Kazuo,
ot al/417-10/OQ (S-12-
48) 162658 of 23 August
1948.

From: Commander in Chief U. S. Pacific Fleet.
To: Commander Naval Forces, Marianas.

Subject: Military Commission case of former First Lieutenant
Kazuo Nakamura, Imperial Japanese Army, Chihiro
Kokubo, former sergeant major, Imperial Japanese Army,
and Yoshimori Nagatome, corporal, Imperial Japanese
Army, tried in joinder by order of the Commander
Marianas Area on 6 January 1948.

1. Forwarded for execution of the sentences as commuted,
namely imprisonment at hard labor for life, in the cases of former
First Lieutenant Kazuo NAKAMURA, I.J.A., and Chihiro KOKUBO, former
sergeant major, I.J.A.

/s/ J. I. McCrea
JOHN L. MCCREA,
Deputy Cincpacflt.

Copies to: (1st end. only)
SecNav
CNO

Exhibit 3 (10)

0182

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

I hereby certify that the annexed are true excerpts taken from the official records of Commander Naval Forces, Marianas in the case of YAMAMOTO, Kazuharu, et al, and consist of the following:

1. Charges and specifications dated 31 January 1948.
2. Findings of Military Commission.
3. Action of the convening authority, The Commander Marianas Area, dated 13 May 1948.
4. Action of the reviewing authority, The Commander in Chief - Pacific and United States Pacific Fleet, dated 17 June 1948.

H. L. Ogden
H. L. OGDEN,
Commander, U. S. Navy.

EXHIBIT 4 (1)

0183

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 1290

31 January 1948.

From: The Commander Marianas Area.
To: Lieutenant Commander Joseph A. REGAN, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charges and Specifications in the case of:

YAMAMOTO, Kazuharu
ICHIKAWA, Yokichi
ISHIYAMA, Zenzo
SUGIMOTO, Takeji
ICHIMIYA, Masao
OZAKI, Katsutoshi
TAMAMOTO, Tadashi
YOKOYAMA, Kyohisa
EZURE, Shigeru
FUJITANI, Yoshio
KAWAGUCHI, Wahai
ANDO, Fukuichi
HAYASHI, Umeji
HIDAKA, Kinnosuke
ITO, Mitsuyuki
IWAMOTO, Harukichi
NAKAMURA, Jiro
OKAMURA, Gintaro
SAGARA, Masashiro
UCHIDA, Fumio

1. The above named persons will be tried before the Military Commission of which you are judge advocate upon the following charges and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE I

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahai, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA,

EXHIBIT 4 (2)

UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthaup Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, one Agapito C. HONDONERO, a national of The United States of America, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, on Babelthaup Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill, and cause to be killed, by shooting with firearms, exact description to the relator unknown, six civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Maria DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALES, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, and Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, this in violation of the law and customs of war.

EXHIBIT 4 (3)

Specification 3

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthaup Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty as officer in charge of personnel from said unit and as senior officer present from said unit, to control the operations of members of said unit and persons subject to his control and supervision, namely, KAWAGUCHI, Wahei, then a leading private, IJA, NAMEKAWA, Genzo, deceased, then a superior private, IJA, and other members of said unit, names to the relator unknown, all members of the armed forces of Japan, as it was his duty to do, permitting them the aforesaid persons, on or about September 18, 1944, at Babelthaup Island, Palau Islands, to kill unlawfully and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, seven civilians, then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALES, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, this in violation of the law and customs of war.

Specification 4

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, did, at Babelthaup Island, Palau Islands, on or about September 18, 1944, at a time when a state of war existed between The United States of America, its allies and dependencies, and the Imperial Japanese Empire, while officer in charge of Sumida Unit personnel at the scene of execution, and while senior officer present from the Sumida Unit at said scene of execution, unlawfully disregard and fail to discharge his duty, to take such measures as were within his power and appropriate in the circumstances to protect, as it was his duty to do, seven civilians then and there held captive by the armed forces of Japan, namely, Luis BLANCO Y SUAREZ, Catholic priest, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Catholic priest, Colombian national, resident of Yap Island, Marino DE LA HOZ, Catholic priest, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALES, Catholic priest, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Catholic brother, Spanish national, resident of Yap Island, Emilio VILLAR, Catholic brother, Spanish national, resident of Koror Island, and Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, in that he permitted the unlawful killing of said persons by shooting with firearms, exact description to the relator unknown, by members of the armed forces of Japan, this in violation of the law and customs of war.

EXHIBIT⁴ (4)

0186

CHARGE II

MURDER

Specification

In that YAMAMOTO, Kazuharu, then a first lieutenant, IJA, ICHIKAWA, Yokichi, then a second lieutenant, IJA, ISHIYAMA, Zenzo, then a sergeant major, IJA, SUGIMOTO, Takeji, then a sergeant major, IJA, ICHIMIYA, Masao, then a sergeant, IJA, OZAKI, Katsutoshi, then a sergeant, IJA, TAMAMOTO, Tadashi, then a sergeant, IJA, YOKOYAMA, Kyohisa, then a sergeant, IJA, EZURE, Shigeru, then a leading private, IJA, FUJITANI, Yoshio, then a leading private, IJA, KAWAGUCHI, Wahei, then a leading private, IJA, ANDO, Fukuichi, then a superior private, IJA, HAYASHI, Umeji, then a superior private, IJA, HIDAKA, Kinnosuke, then a superior private, IJA, ITO, Mitsuyuki, then a superior private, IJA, IWAMOTO, Harukichi, then a superior private, IJA, NAKAMURA, Jiro, then a superior private, IJA, OKAMURA, Gintaro, then a superior private, IJA, SAGARA, Masashiro, then a superior private, IJA, UCHIDA, Fumio, then a private first class, IJA, and other members of the armed forces of Japan, names to the relator unknown, all attached to the military installations of the Imperial Japanese armed forces, Palau Islands, and while so serving at said military installations, acting with MIYAZAKI, Aritsune, deceased, then a lieutenant colonel, IJA, did, each and together, at Babelthaupt Island, Palau Islands, on or about September 18, 1944, unlawfully kill and cause to be killed unlawfully, by shooting with firearms, exact description to the relator unknown, ten persons, namely, Luis BLANCO Y SUAREZ, Spanish national, resident of Yap Island, Bernardo DE LA ESPRIELLA, Colombian national, resident of Yap Island, Marino DE LA HOZ, Spanish national, resident of Koror Island, Elias FERNANDEZ GONZALES, Spanish national, resident of Koror Island, Francisco HERNANDEZ Y ESCUDERO, Spanish national, resident of Yap Island, Emilio VILLAR, Spanish national, resident of Koror Island, Agapito C. HONDONERO, a national of The United States of America, resident of Yap Island, Filimina Untalan HONDONERO, wife of the said Agapito C. HONDONERO, resident of Yap Island, Baltazar Untalan HONDONERO, son of the said Agapito and Filimina HONDONERO, resident of Yap Island, and Caroline Untalan HONDONERO, daughter of the said Agapito and Filimina HONDONERO, resident of Yap Island, this in violation of effective law, especially Article 199 of the Criminal Code of Japan, which reads in tenor as follows: "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."

/s/ C. A. Pownall

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

EXHIBIT 4 (5)

0187

The judge advocates were recalled and directed to record the findings of the commission as follows:

As to the accused, Yamamoto, Kazuharu:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The third specification of the first charge proved.

The fourth specification of the first charge not proved.

And that the accused, Yamamoto, Kazuharu, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Yamamoto, Kazuharu, is of the second charge guilty.

As to the accused, Ichikawa, Yokichi:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ichikawa, Yokichi, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ichikawa, Yokichi, is of the second charge guilty.

As to the accused, Ishiyama, Zenzo:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ishiyama, Zenzo, is of the first charge guilty.

EXHIBIT 4 (6)

0188

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ishiyama, Zenzo, is of the second charge guilty.

As to the accused, Sugimoto, Takeji:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Sugimoto, Takeji, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Sugimoto, Takeji, is of the second charge guilty.

As to the accused, Ichimiya, Masao:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ichimiya, Masao, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ichimiya, Masao, is of the second charge guilty.

As to the accused, Ozaki, Katsutoshi:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ozaki, Katsutoshi, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

EXHIBIT 4 (7)

And that the accused, Ozaki, Katsutoshi, is of the second charge guilty.

As to the accused, Tamamoto, Tadashi:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Tamamoto, Tadashi, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Tamamoto, Tadashi, is of the second charge guilty.

As to the accused, Yokoyama, Kyohisa:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Yokoyama, Kyohisa, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Yokoyama, Kyohisa, is of the second charge guilty.

As to the accused, Ezure, Shigeru:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ezure, Shigeru, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ezure, Shigeru, is of the second charge guilty.

EXHIBIT 4 (8)

As to the accused, Fujitani, Yoshio:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Fujitani, Yoshio, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Fujitani, Yoshio, is of the second charge guilty.

As to the accused, Kawaguchi, Wahei:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Kawaguchi, Wahei, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Kawaguchi, Wahei, is of the second charge guilty.

As to the accused, Ando, Fukuichi:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ando, Fukuichi, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ando, Fukuichi, is of the second charge guilty.

As to the accused, Hayashi, Umeji:

The first specification of the first charge not proved.

The second specification of the first charge not proved.

And that the accused, Hayashi, Umeji, is of the first charge not guilty; and the commission does therefore acquit the said Hayashi, Umeji, of the first charge.

The specification of the second charge not proved.

And that the accused, Hayashi, Umeji, is of the second charge not guilty; and the commission does therefore acquit the said Hayashi, Umeji, of the second charge.

As to the accused, Hidaka, Kinnosuke:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Hidaka, Kinnosuke, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Hidaka, Kinnosuke, is of the second charge guilty.

As to the accused, Ito, Mitsuyuki:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ito, Mitsuyuki, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Ito Mitsuyuki, is of the second charge guilty.

As to the accused, Iwamoto, Harukichi:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

EXHIBIT 4 (10)

0192

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Iwamoto, Harukichi, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Iwamoto, Harukichi, is of the second charge guilty.

As to the accused, Nakamura, Jiro:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Nakamura, Jiro, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Nakamura, Jiro, is of the second charge guilty.

As to the accused, Okamura, Gintaro:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Okamura, Gintaro, is of the first charge guilty.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Okamura, Gintaro, is of the second charge guilty.

As to the accused, Sagara, Masashiro:

The first specification of the first charge not proved.

The second specification of the first charge not proved.

And that the accused, Sagara, Masashiro, is of the first charge not guilty; and the commission does therefore acquit the said Sagara, Masashiro, of the first charge.

The specification of the second charge not proved.

And that the accused, Sagara, Masashiro, is of the second charge not guilty; and the commission does therefore acquit him the said Sagara, Masashiro, of the second charge.

As to the accused, Uchida, Fumio:

The first specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

The second specification of the first charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Uchida, Fumio, is of the first charge proved.

The specification of the second charge proved in part, proved except the words "HAYASHI, Umeji, then a superior private, IJA," and the words "SAGARA, Masashiro, then a superior private, IJA," which words are not proved.

And that the accused, Uchida, Fumio, is of the second charge guilty.

EXHIBIT 4 (12)

0194

FF12/A17-10(2)
02-JDM-ro

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 10124

13 MAY 1948

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued January 31, 1948 and served on the accused on February 2, 1948. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

On page 1 of the record it is noted that the commission, before its members were sworn, approved a procedure, which was in effect a stipulation concerning the security of classified matter. "Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members" (Sect. 394, N.C. &B). Accordingly the action of the commission in approving the procedure was erroneous. However, here the procedure related only to matters pertaining to the security of classified material and did in no way involve the issues of the case. It is the opinion of the convening authority that the substantial rights of the accused were not prejudiced (CWO 2-1943, p. 183).

Subject to the above remarks, the proceedings in the foregoing case of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HAYASHI, Umeji, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, SAGARA, Masashiro, and UCHIDA, Fumio are approved. The findings of guilty and sentences as to the accused YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio are approved.

YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wahei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States

EXHIBIT 4 (13)

0195

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

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial:

ship, to serve their respective sentences of confinement in Sugamo Prison,
Tokyo, Japan.

HAYASHI, Umeji and SAGARA, Masashiro, who were acquitted, were released
from arrest and returned to Japan.

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

EXHIBIT 4 (14)

0196

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
A17-25

c/o Fleet Post Office,
San Francisco, California

17 JUN 1948

Serial 2769

In the foregoing case the military commission was convened by the Commander Marianas Area pursuant to his authority as a military commander and to his specific authorization by the Commander in Chief, U. S. Pacific Fleet, (Cincpacflt Desp. 020103Z OCT 1947; Secnav Desp. 081945 OCT 1947; Cincpacflt Desp. 092353Z OCT 1947).

With respect to the accused ANDO, Fukuichi, then superior private, Imperial Japanese Army, there is no direct evidence in the record to support his conviction. He made no confession. No prosecution witness remembered him as present at the execution and two prosecution witnesses excluded him from their lists of persons present. The only direct evidence connecting him in any way with the events which culminated in the murders is testimony that he was present at an assembly of soldiers on the evening of the shooting, that at this assembly some soldiers procured shovels, that the Commanding Officer MIYAZAKI informed the assembly that since the hour was still early they would wait a while, and that the soldiers thereupon dispersed. While the only circumstantial evidence suggesting that he may have participated in the execution is TAKAHASHI's testimony that he (TAKAHASHI) received an order, source not named, that all soldiers were to attend the execution except duty men, air raid wardens, road lookouts, and sick personnel, the exact number and identity of these excluded categories appearing nowhere in the testimony.

No evidence was offered, with regard to the order in question, which excluded the possibility that:

- (a) This order may never have reached ANDO.
- (b) He may have fallen within its exceptions.
- (c) He may have been prevented from carrying it out.
- (d) He may have intentionally disobeyed it.
- (e) It may have been withdrawn or superseded by other orders.

No direct evidence of ANDO's participation being available, his conviction by such circumstantial evidence cannot stand. "In a case depending on circumstantial evidence, the court, in order to convict, must find the circumstances to be satisfactorily proved as facts and must also find that these facts clearly and unequivocally imply the guilt of the accused and cannot reasonably be reconciled with any hypothesis of his innocence." Naval Courts and Board (1937) Sec. 144.

Accordingly the court erred in denying ANDO's motion for acquittal, authorized by Regulations Governing the Trials of Accused War Criminals promulgated December 5, 1945 by the Supreme Commander for the Allied Powers; and with respect to ANDO, Fukuichi solely, the findings, the sentence, and the convening authority's action thereon are disapproved.

EXHIBIT 4 (15)

0197

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
A17-25

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

17 JUN 1948

Serial 2769

In accordance with the Judge Advocate General's action (OO-TACHIBANA, Yoshio, et al/A17-20 I(3-19-47) HJH:mas 154578) approved by the Secretary of the Navy 18 July 1947 (JAG:I:RAS:fld A17-20/CO(6-25-47) 154578) and the Judge Advocate General's action (OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:RMM:vee 159116) approved by the Acting Secretary of the Navy 12 February 1948 (JAG:I:RAS:bem OO-INOUE, Fumio/A17-10/OQ (2-20-48) 159116), it is believed the finding on specification 3 of Charge I (failure to discharge his, YAMAMOTO's, duty to control his subordinates, permitting them to murder seven civilians) could be set aside, but it is considered more appropriate that such action, if taken, be taken by the final reviewing authority if considered warranted by that authority.

Subject to the above, the proceedings in the foregoing cases of HAYASHI, Umeji and SAGARA, Masashiro, the proceedings, findings, and sentences, and the action of the convening authority thereon in the foregoing cases of YAMAMOTO, Kazuharu, ICHIKAWA, Yokichi, ISHIYAMA, Zenzo, SUGIMOTO, Takeji, ICHIMIYA, Masao, OZAKI, Katsutoshi, TAMAMOTO, Tadashi, YOKOYAMA, Kyohisa, EZURE, Shigeru, FUJITANI, Yoshio, KAWAGUCHI, Wabei, ANDO, Fukuichi, HIDAKA, Kinnosuke, ITO, Mitsuyuki, IWAMOTO, Harukichi, NAKAMURA, Jiro, OKAMURA, Gintaro, and UCHIDA, Fumio, are approved.

/s/ DeWitt C. Ramsey
DeWITT C. RAMSEY
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of Proceedings of a Military Commission in the case of former
First Lieutenant YAMAMOTO, Kazuharu, I.J.A., et al.

Copies to:
ComMarianas
Cincpacflt War Crimes Officer, Guam

EXHIBIT 4 (16)

0198

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

I hereby certify that the annexed are true excerpts taken from the official records of Commander Naval Forces, Marianas in the case of AJIOKA, Misao, et al, and consist of the following:

1. Charges and Specifications dated 6 December 1947.
2. Findings of the Military Commission.
3. Action of the convening authority, The Commander Marianas Area, dated 31 March 1948.
4. Action of the reviewing authority, The Commander in Chief Pacific and United States Pacific Fleet, dated 18 April 1948.


H. L. OGDEN,
Commander, U. S. Navy.

Exhibit 5 (1)

0199

FF12/A17-13(2)
O2-JDM-fsk

UNITED STATES PACIFIC FLEET
COM'ANDER MARIANAS

Serial: 22331

6 DEC 1947

From: The Commander Marianas Area.
To : Lieutenant Commander Joseph A. REGAN, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charge and Specifications in the case of:

AJIOKA, Misao
YAMADA, Kiyoshi

1. The above named persons will be tried before the Military Commission of which you are judge advocates upon the following charges and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE I

MURDER

Specification

In that AJIOKA, Misao, then a warrant officer, IJA, YAMADA, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Bebelthuap Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed by shooting with firearms, exact description to the relator unknown, one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

CHARGE II

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasapon

Exhibit 5 (2)

0200

Serial: 22331

6 DEC 1947

Military Police Detachment, did, at Babelthusp Island, Palau Islands, on or about 29 December, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to control the operations of a member of his detachment and subject to his control and supervision, namely YAMADA, Kiyoshi, then a sergeant, IJA, permitting him the said YAMADA, Kiyoshi, to kill unlawfully and cause to be killed unlawfully, on or about December 29, 1944, at Babelthusp Island, Palau Islands, by shooting with firearms, one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that AJIOKA, Misao, then a warrant officer, IJA, attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations in charge of the Gasupan Military Police Detachment, did, at Babelthusp Island, Palau Islands, on or about December 29, 1944, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as officer in charge of the Gasupan Military Police Detachment, to take such measures as were within his power and appropriate in the circumstances to protect one Charlie SMITH, alias James SALLY, an unarmed British national, then and there held captive by the armed forces of Japan, namely, the said Gasupan Military Police Detachment, as it was his duty to do, in that he permitted the unlawful killing of the said Charlie SMITH, alias James SALLY, by shooting with firearms, by members of the armed forces of Japan, this in violation of the law and customs of war.

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

Exhibit 5 (3)

0201

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

As to the accused, Ajioka, Misao:

The specification of the first charge proved in part, proved except the word "Sally", which word is not proved.

And that the accused, Ajioka, Misao, is of the first charge guilty.

The first specification of the second charge not proved.

The second specification of the second charge not proved.

And that the accused, Ajioka, Misao, is of the second charge not guilty; and the commission does therefore acquit the said Ajioka, Misao, of the second charge.

As to the accused, Yamada, Kiyoshi:

The specification of the first charge proved in part, proved except the word "Sally", which word is not proved.

And that the accused, Yamada, Kiyoshi, is of the first charge guilty.

Exhibit 5 (4)

0202

FF12/417-10(2)
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3546(a)

31 March 1948

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued 6 December 1947 and served on the accused on 9 December 1947. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated 5 December 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

On page 1 of the record it is noted that the commission, before its members were sworn, approved a stipulation, concerning the security of classified matter, entered into by the judge advocate and the defense counsel. It does not appear from the record that the stipulation was made with the specific consent of the accused. "Until a court is duly sworn (organized) according to law, it is incompetent to perform any judicial act except to hear and determine challenges against its members." (Sect. 394, N.C.&B.). Accordingly the action of the commission in approving the stipulation was erroneous. Further when a stipulation is made it should be followed by an affirmative statement in the record to the effect that the accused acquiesced in the agreement made by his counsel (CMO 1-1942 p. 290). However, here the stipulation accepted related only to matters pertaining to the security of classified material and did in no way involve the issues of the case. It is the opinion of the convening authority that the substantial rights of the accused were not prejudiced. (CMO 2-1943, p. 183).

The attached certified copy of death certificate in the case of AJIOKA, Misao is hereby made a part of this action. AJIOKA now being deceased, the sentence as to him can not be executed.

Subject to the above remarks, the proceedings, findings on Charge I and the specification thereunder and sentences in the foregoing case of AJIOKA, Misao and YAMADA, Kiyoshi are approved.

YAMADA, Kiyoshi will be transferred to the custody of the Commanding General of the 8th U. S. Army, via the first available United States ship, to serve his sentence of confinement in Sugamo Prison.

The remains of AJIOKA, Misao are buried in plot #45, lot 426 of the Japanese cemetery, Asan, Guam.

/s/ C. L. Pownall
C. L. POWNALL,
Rear Admiral, U. S. Navy,
The Commander Marianas Area.

Exhibit 5 (5)

0203

DEATH CERTIFICATE

SURNAME		FIRST NAME
1. AJIOKA		Misao
BIRTH, PLACE OF		BIRTH, DATE OF
2. Japan		15 January 1912
DEATH, PLACE OF		DEATH, DATE OF
3. U.S. Naval Hospital, Guam, M.I.		29 January 1948
UNIT (Corps, Regiment, Battalion, Company)		NUMBER OF REGISTRATION (Inscriptions on Identification tags)
4. Convicted War Criminal		Civilian
FAMILY'S ADDRESS, IF KNOWN		
5. Nara Ken Nara Shi Nishishnzaike Cho		
IF MARRIED, DATE AND PLACE THEREOF, IF KNOWN (Information required for Germans only)		
6. Married. Wife's name: Kimie - Dates unknown.		
CAPTURE, DATE		CAPTURE, WHERE
7. Arrived on Guam, 9 December, 1947 from Sugamo Prison, Japan		
CAUSE OF DEATH		
8. Lacerations of left jugular veins. Contributory: Hemorrhage.		
BURIAL	PLACE OF	BURIAL, DATE OF
9. Japanese Cemetery	Asan, Guam, M.I.	13 February 1948
LOCATION AND IDENTIFICATION OF GRAVE		
10. Plot #45. Lot 426		
DISPOSITION OF PERSONAL EFFECTS BELONGING TO DECEASED		
11. Held in ProvMar's Office - Will be shipped to Japan on order of ComMarianas.		
WILL PERSONAL EFFECTS BE SENT, TOGETHER WITH DEATH CERTIFICATE BY THE WAR DEPARTMENT		
12. No		
BRIEF DETAILS OF DEATH AND BURIAL FOR TRANSMITTAL BY INTERNATIONAL RED CROSS TO FAMILY OF DECEDENT		
13. Patient found lying in a pool of blood at approximately 1400, on 29 January, 1948, with severe lacerations of throat. The patient was in shock when first seen, and, in spite of all therapy expired at 1530 on 29 January, 1948. Wounds were self-inflicted with a rusted pocket knife.		

SEAL
OFFICE OF THE
PROVOST MARSHAL
GENERAL

/s/ John S. Fifer
(Signature of medical officer)

Certified True Copy

/s/ J. A. Regan

J. A. REGAN,
ICDR, U.S.N.

Col. W. C. Hall

Commanding.

Exhibit 5 (6)

0204

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

CinCPacFLT File
117-25

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

Serial: 1047

18 APR 1948

The proceedings, findings on Charge I and the specification thereunder, and sentences in the foregoing case of AJIOKA, Misao, and YAMADA, Kiyoshi, and the action of the convening authority thereon, are approved.

As the accused AJIOKA, Misao, is now deceased, the sentence as to him cannot be executed.

The record is in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operation serial OLP22 of 28 November 1945, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

/s/ DeWitt C. Ramsey
DeWITT C. RAMSEY,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of Proceedings of a Trial by a Military Commission of former
Warrant Officer AJIOKA, Misao, I.J.A., et al.

Copies to:
ComMarianas
CinCPacFLT War Crimes Officer, Guam

Exhibit 5 (7)

0205

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

I hereby certify that the annexed are true excerpts taken from the official records of Commander Naval Forces, Marianas in the case of KOTCHU, Hiroe, et al, and consist of the following:

1. Charges and specifications dated 10 November 1947.
2. Findings of the military commission.
3. Action of the convening authority, The Commander Marianas Area, dated 20 March 1948.
4. Action of the reviewing authority, The Commander in Chief, Pacific and United States Pacific Fleet, dated 18 April 1948.


H. L. OGDEN,
Commander, U. S. Navy.

Exhibit 6 (1)

0206

WF12/A16-2
02-JD^M-hn

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 2104P

NOV 10 1947

From: The Commander Marianas Area.
To: Lieutenant Commander Joseph A. REGAN, USN, and/or
Lieutenant James P. KENNY, USN, and/or
your successors in office as Judge Advocates,
Military Commission, Commander Marianas.

Subject: Charges and specifications in the case of:

KOICHI, Hiroe
KATSUYAMA, Tetsuji
ONOSE, Ichiro
TSUCHIDA, Naohiko

1. The above named persons will be tried before the Military Commission of which you are judge advocate upon the following charges and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

CHARGE I

MURDER

Specification

In that KOICHI, Hiroe, then a captain, IJA, KATSUYAMA, Tetsuji, then a first lieutenant, IJA, ONOSE, Ichiro, then a second lieutenant, IJA, and TSUCHIDA, Naohiko, then a sergeant major, IJA, all attached to the military installations of the Imperial Japanese Army, Palau Islands, and while so serving at said military installations, did, each and together, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, wilfully, feloniously, with premeditation and malice aforethought, and without justifiable cause, assault, strike, kill and cause to be killed, by beheading with a sword, one Wallace T. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

- 1 -

Exhibit 6 (2)

0207

CHARGE II

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to control the operations of members of his command and persons subject to his control and supervision, namely, KATSUYAMA, Totsuji, then a first lieutenant, IJA, attached to and serving at said anti-aircraft unit, ONOSE, Ichiro, then a second lieutenant, IJA, TSUCHIYA, Naohiko, then a sergeant major, IJA, and others unknown, permitting them, the aforesaid persons, and persons unknown, to kill unlawfully and cause to be killed unlawfully on or about May 24, 1945, at Koror Island, Palau Islands, by beheading with a sword, one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan, this in violation of the law and customs of war.

Specification 2

In that KOICHI, Hiroe, then a captain, IJA, commanding officer of the Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, attached to the military installations of the Imperial Japanese Army, Koror Island, Palau Islands, and while so serving at said anti-aircraft unit, did, at Koror Island, Palau Islands, on or about May 24, 1945, at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, unlawfully disregard and fail to discharge his duty as the commanding officer of the said Provisional Anti-aircraft Unit, otherwise known as the Koror and Koichi Anti-aircraft Unit, to take such measures as were within his power and appropriate in the circumstances to protect one Wallace F. Kaufman, second lieutenant, United States Army, an American prisoner of war, then and there held captive by the armed forces of Japan at Koror Island, Palau Islands, as it was his duty to do, in that he permitted the unlawful killing by beheading with a sword, by members of his command and persons subject to his control and supervision of the said prisoner of war, in violation of the law and customs of war.

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

Exhibit 6 (3)

0208

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

As to the accused, Koichi, Hiroe:

The specification of the first charge proved in part, proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Koichi, Hiroe, is of the first charge guilty.

The first specification of the second charge proved in part, proved except the words "TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

The second specification of the second charge proved.

And that the accused, Koichi, Hiroe, is of the second charge guilty.

As to the accused, Katsuyama, Tetsuji:

The specification of the first charge proved in part, proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Katsuyama, Tetsuji, is of the first charge guilty.

As to the accused, Onose, Ichiro:

The specification of the first charge proved in part, proved except the words "and TSUCHIYA, Naohiko, then a sergeant major, IJA," which words are not proved.

And that the accused, Onose, Ichiro, is of the first charge guilty.

As to the accused, Tsuchiya, Naohiko:

The specification of the first charge not proved.

And that the accused, Tsuchiya, Naohiko, is of the first charge not guilty; and the commission does therefore acquit the said Tsuchiya, Naohiko, of the first charge.

Exhibit 6 (4)

0209

FF12/A17-10(2)
02-JDM-fsk

UNITED STATES PACIFIC FLEET

Serial: 3100

20 MAR 1948

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated November 8, 1947, was ordered convened November 20, 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt serial 0558 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 081946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47). The commission was authorized to take up this case as indicated in the precept. The order for trial (charges and specifications) was issued November 10, 1947 and served on the accused on the same day. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules for naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated December 5, 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals, and modifications thereof, as necessary to obtain justice.

Briefly stated the evidence in this case, as relates to the respective accused named in the specification of Charge I, is to the following effect. An American aviator, Second Lieutenant Wallace F. KAUFMAN, USA, was captured at KOROR Island in the spring of 1944 by members of a Japanese anti-aircraft unit stationed at that place. He was delivered by his captors to the Kempeitai (Military Police) unit of the 14th Japanese Army Division Headquarters on BABELTHUAP Island. Subsequently and without legal justification the Commanding General of the 14th Division ordered his execution by the KOICHI Anti-aircraft Unit on KOROR, for the purpose of improving the morale of Japanese personnel in that area. A party including ONOSE, TSUCHIYA, SHIMOJO and an enlisted man from the 14th Division Kempeitai, name unknown, with ONOSE in charge was ordered to take KAUFMAN from BABELTHUAP to KOROR for execution by KOICHI and other designated members of his command. ONOSE's orders directed him to return KAUFMAN's personal belongings to him and to personally execute KAUFMAN should the other persons designated fail to do so - he was to see that the execution of KAUFMAN did not fail. All members of this party knew before leaving BABELTHUAP that KAUFMAN was to be executed. They escorted him to KOROR. After arrival in KOROR a conference, attended by KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others was held. At this conference the time and place of KAUFMAN's execution was discussed. The next morning at or about 0700 the 24th of May 1944 at a graveyard on KOROR where a grave had been dug KOICHI, ONOSE, KATSUYAMA, TSUCHIYA and others assembled with KAUFMAN in custody, in the presence of about thirty to fifty other members of KOICHI's command. KOICHI was in general charge. ONOSE informed KAUFMAN that he was to be executed. TSUCHIYA, who had assisted in escorting KAUFMAN from BABELTHUAP to KOROR, was present to render such assistance and perform such acts as ONOSE might require and in accordance with ONOSE's orders did in fact immediately prior to the execution deliver to KAUFMAN his personal belongings, being photographed by the execution party photograph while so doing. KAUFMAN was then placed near the grave for execution. ONOSE instructed KATSUYAMA relative to the technique of execution. KATSUYAMA beheaded KAUFMAN with his sword on the order of KOICHI.

On the above facts the commission found the specification of the first charge "proved in part, proved except the words 'TSUCHIYA, Naohiko, then a sergeant major, 'JA,' which words are not proved," as to accused KOICHI, KATSUYAMA, and ONOSE. The commission found the specification "not proved"

Exhibit 6 (5)

02 10

FW12/A17-10(2)
02-JDM-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3100

20 MAR 1948

as to accused TSUCHIYA. It is obvious that the commission's findings of "proved in part" as to KOICHI, KATSUYAMA and ONOSE were based on the commission's acquittal of TSUCHIYA. The findings in this respect do not affect the legality of the commission's findings of "Guilty" as to Charge I as the exceptions made by the commission leaves the specification still supporting the charge (Sec. 429, U.C. & R.).

The convening authority does not concur in the commission's findings of "not guilty" and "not proved" on Charge I and the specification thereunder as to accused TSUCHIYA (Sec. 472, U.C. & R.), because he believes, for the reasons hereinafter stated, that a prima facie case was established against TSUCHIYA, which was not overthrown by rebutting evidence adduced by him (Sec. 156, U.C. & R.).

As stated above accused TSUCHIYA was a member of an escorting party of four persons commanded by accused ONOSE which took KAUFMAN from the Kempeitai, 14th Division Headquarters, on BABELTHUAP to KOROR for execution. TSUCHIYA knew KAUFMAN was to be executed at the time he was taken into custody by the escorting party. He was an assistant of ONOSE whose mission it was from the outset to assure KAUFMAN's execution. He attended ONOSE every step of the way from the time KAUFMAN was taken into custody until he was executed on KOROR, and performed such duties as were ordered by ONOSE. He attended the conference with ONOSE the night before the execution at which the time and place of the execution was discussed and announced. He went with ONOSE the next morning and was present at the execution. Immediately prior to the execution he delivered to KAUFMAN his personal effects in compliance with ONOSE's orders, and had his picture taken with KAUFMAN while doing this. All of these facts were admitted by TSUCHIYA and testified to by other witnesses.

There was no contradictory evidence unless TSUCHIYA's statements, to the effect that (1) he had no malice towards KAUFMAN and that he did not wish him executed; (2) he went in the escort party with ONOSE in obedience to orders and (3) he did not perform the act of execution, could be considered such evidence. These statements of TSUCHIYA are simply a statement of his opinion to the effect that because he did not commit the actual act of execution, he did not murder KAUFMAN. They do not explain away or overthrow the facts that he escorted KAUFMAN from BABELTHUAP to KOROR for execution and assisted ONOSE as necessary until KAUFMAN's execution was accomplished by KATSUYAMA in his presence.

The very nature of a war crime is such that participation either involves the accused as a principal or not at all. The extent of participation is not an element to be considered in the findings but rather in the quantum of sentence (Rev. in case of 1st Lt. M. TANEICHI, et al, 21 Nov. 1946). Section 550, Title 18 of the United States Code defines principals as follows:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

This definition has in practice been made applicable in war crimes cases tried throughout the world. It varies from the general legal concept of who is a principal only to the extent that it makes all persons who are in contemplation of law parties to a crime principals. It has always been true, generally speaking, "....every one is a party to an offense who either

Exhibit 6 (6)

0211

FF12/A17-10(2)
02-JD"-f'sk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3100

20 MAR 1948

actually commits the offense or does some act which forms part of the offense or assists in the actual commission of the offense or of any act which forms part thereof, or directly or indirectly counsels or procures any person to commit the offense or to do any act forming a part thereof or who aids one who has committed the offense, knowing that he has committed it, for the purpose of preventing his apprehension or conviction" (Sec. 72, Miller on Crim. Law).

In the instant case it is clear that TSUCHIYA did not counsel, procure or command anyone to commit the murder of KAUFMAN or himself strike the blow that killed KAUFMAN. He was present at the execution but his mere acquiescence or approval would not be sufficient to constitute him an accessory before the fact (a principal) (Rev. of case U. S. YOSHIOKA, et al, dated 20 Mar. 1946). The remaining status, which he might occupy making him a responsible party to the murder of KAUFMAN, is that of an aider and abettor. This he unquestionably was. He had assisted in escorting KAUFMAN from BAPET-THUAP to KORO for execution. He was present at the execution. His presence and non-interference was designed as an encouragement to the perpetrators of the crime. He was, with the knowledge of the perpetrators, near enough to give assistance and, as shown by his past performance in escorting KAUFMAN to KORO and carrying out orders of ONOSE at the scene of execution, intended to do so if it became necessary (see generally, Wharton's Crim. Law (12th Ed.) pp. 327 - 364). He was a party to the community of unlawful purpose at the time the act was committed. In such circumstances it is unnecessary to show that he expressly authorized the others to do the act (Sec. 75(c), Mil. Crim. Law, p. 233).

- It is, in my opinion, clearly intended by the Potsdam Declaration of 26 July 1945 wherein it states, ".....stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners," that all aiders and abettors in the murder of our prisoners of war should be punished. In this connection many pronouncements have been made by Allied statesmen as to whom would be punished for war crimes (War Criminals - Their Prosecution and Punishment by Sheldon Glueck, p. 191). Both President Roosevelt and Prime Minister Churchill on 24 March 1944 repeated themselves in proclaiming punishment for war criminals. Churchill included not only the miscreants but also their agents, and Roosevelt promised the subordinates and functionaries as well as the leaders having a part in war crime acts would be punished. But even before this the United States Senate unanimously adopted the concurrent resolution presented by Senator Barkley to the effect that "the dictates of humanity and honorable conduct in war demand that this inexcusable slaughter and mistreatment shall cease and that it is the sense of this Congress that these guilty, directly or indirectly, of these criminal acts shall be held accountable and punished in a manner commensurate with the offenses for which they are responsible" (Cong. Rec. Senate 9 Mar. 1943, p. 1773).

Exhibit 6 (7)

02 12

FF12/A17-10(2)
02-JD"-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 3100

20 MAR 1948

Subject to the above remarks the proceedings, in the foregoing case of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko are approved. The findings of guilty and sentences as to the accused KOICHI, KATSUYAMA and ONOSE are approved.

KOICHI, Hiroe, KATSUYAMA, Tetsuji, and ONOSE, Ichiro, will be transferred to the custody of the Commanding General of the 8th Army, via the first available United States ship, to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

TSUCHIYA, Naohiko, who was acquitted, was released from arrest and returned to Japan.

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

Exhibit 6 (8)

0213

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
A17-25

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

Serial 1048

18 APR 1948

Cincpacflt does not concur with the convening authority in his comments on the acquittal of TSUCHIYA. It is the prerogative and duty of the court to which the evidence presented to it (Naval Courts and Boards, Sections 304, 305). The Navy Department has repeatedly held in effect that the court itself having personally heard the witnesses testify, is ordinarily more competent to arrive at the facts than is the reviewing authority (Court Martial Order 10, 1931, 15, 16.) After a court, acting as the judge of facts has arrived at a finding as a result of its determination of the facts established by the evidence, the question for the reviewing authority is whether there is sufficient evidence to support such a finding, not whether an opposite finding would have been justified (Court Martial Order 4, 1930, 7). Where, as in this case, the evidence is sufficient when "weighed" to support the findings of the court, no error is committed even though the conclusions reached by the court are erroneous in the mind of the convening authority (Court Martial Orders 4, 1937, 17; 4, 1935, 5, 6; 3, 1944, 436). In the instant case, it is considered that while under orders to accompany the execution party, TSUCHIYA's position as an enlisted man in a party of officers precluded a positive refusal to proceed with the party. In as much as TSUCHIYA himself by word or deed committed no act which made him a participant in the actual murder, it is not considered that presentation of the personal effects to the deceased at the scene of the execution makes TSUCHIYA an accessory, any more than the cameraman who took a picture of the presentation.

Upon the face of the pleadings, the offense alleged under Charge II and specifications 1 and 2 thereunder were preferred to provide for the exigencies of proof (Naval Courts and Boards, Section 19). In accordance with the Judge Advocate General's action (O-TACHIPAWA, Yoshio, et al/A17-20 I(3-19-47 HJH: was 154578) approved by the Secretary of the Navy 18 July 1947, (JAG:I:RAS: dtd A17-20/00(4-25-47) 154578), the findings on Charge II and specifications 1 and 2 thereunder as to the accused KOICHI might be set aside. However, as the conviction on this charge and the specifications thereunder are legal, it is considered that any action to set them aside should be taken by the final reviewing authority.

Subject to the foregoing, the proceedings, findings of guilty and sentences in the foregoing case of KOICHI, Hiroe, KATSUYA'A, Tetsuji, ONOSE, Ichiro, and TSUCHIYA, Naohiko, and the action of the convening authority thereon, are approved.

Exhibit 6 (9)

02 14

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief

Cincpacflt File
417-25

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

Serial 1848

28 APR 1948

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial OIP22 of 26 November 1945, transmitted to the Judge Advocate General of the Navy to be revised and recorded.

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

To: Secretary of the Navy (Office of the Judge Advocate General).
Re: Record of proceedings of a Military Commission in the cases of KOICHI, Hiroe, KATSUYAMA, Tetsuji, ONOSE, Ichiro and TSUCHIYA, Naohiko.

Copies to:
Com'arionas
Cincpacflt War Crimes Officer, Guam.

Exhibit 6 (10)

02 15

法規の配布に関する証明

左記書類は戦争中日本陸軍に於て使用し
たるものであつてガム島解護團に配布した
ことを証明する

昭和三十三年七月三日

ガム島解護團長

廣島隊長 美山 要藏



左記

- 一 成規類聚 一乃至六巻
- 二 修彦に關する法規類集
- 三 戦時高等司令部勤務令
- 四 陸軍刑法 同軍法會議法
- 五 陸軍懲罰令
- 六 作戰要務令 一乃至二部
- 七 憲兵令
- 八 憲兵服務規定 同綱則
- 九 憲兵隊内務規定
- 一〇 陸軍司法警察官執行心得
- 一一 憲兵隊經理事務通則

備考 印刷した書類は成規類聚になつたもの或は成規類聚にあ
つたもの後改正されたものである

Exhibit 7

02 17

TRANSMITTAL OF CERTAIN LAWS, ORDINANCES AND REGULATIONS OF
THE JAPANESE ARMED FORCES.

I certify that the below listed documents were in force in the
Japanese Army during the War and that these documents are forwarded
to the Defense Counsel on Guam.

July 30, 1948

MIYAMA, Yozo (seal)

Chief of General Affairs Section,
Demobilization Bureau,
Repatriation Relief Agency.

List of Documents

1. Army Regulations, Vol. I through Vol. VI.
2. Certain Laws and Regulations concerning Prisoners of War.
3. Ordinance governing Superior Headquarters in Time of War.
4. Army Criminal Code and Army Court Martial Law.
5. Ordinance governing Army Disciplinary Punishment.
6. Army Field Manual, Vol. I and Vol. II.
7. Ordinance governing Kempei.
8. Kempei Service Regulations (comprehensive).
9. Administrative Manual of the Kempeitai.
10. Instructions relative to the Duties of Army Judicial Police.
11. Regulations governing the Kempeitai intendant office.

Note. The mimeographed documents are laws and regulations which are not
included in the Army Regulations, or which are included in the Army
Regulations, but which were later revised.

I hereby certify the above to be a true and correct copy of the
original.

April 15, 1949

Sadamu Sanagi
SANAGI, Sadamu,
Defense Counsel.

I hereby certify that the above is a true and complete translation
of the original document in Japanese to the best of my ability.

Eugene F. Clark
Eugene F. Clark,
Lieutenant (jg), USN,
Interpreter.

Exhibit 7 (a)

0218

憲兵令 (明三三三九)
(勅令三三七)

朕憲兵條例、改正ヲ裁可シ茲ニ之ヲ公布セシム

憲兵令

第一章 總則

第一条 憲兵、陸軍大臣、管轄ニ属シ主トシテ軍事警察ヲ掌リ兼テ行政警察、司法警察ヲ掌ル。

第二条 憲兵、其職務、執行ニ付軍事警察ニ係ルモ、陸軍大臣及海軍大臣、行政警察ニ係ルモ、内務大臣、司法警察ニ係ルモ、司法大臣、指揮ヲ承ク朝鮮ニ在ケル軍事警察ニ係ルモ、朝鮮軍司令官、台湾ニ在ケル軍事警察ニ係ルモ、台湾軍司令官、関東州ニ在ケル軍事警察ニ係ルモ、関東軍司令官、行政警察、司法警察ニ係ルモ、朝鮮ニ在リテハ朝鮮総督、台湾ニ在リテハ台湾総督、関東州ニ在リテハ滿洲国駐劄特命全權大使、南洋群島ニ在リテハ大東亞大臣、指揮ヲ受ク。

第三条 憲兵、行政警察、司法警察ニ係ル事件ニ付テハ警視總監、北海道廳長官、府縣知事、検事、朝鮮総督、府道知事、朝鮮総督府検事、台湾総督府、州知事、同廳長、同法院檢察官、関東州廳長官、関東法院檢察官、樺太廳長官、南洋廳長官及南洋廳検事、指示ヲ承ク。

憲兵、要塞地帯及関東州防衛管造物地帯、關之
法令、施行ニ付テ、要塞司令官又、其、職務ヲ行フ官廳
陸軍輸送港域軍事取締法、施行ニ付テ、陸軍運輸
部長、軍港要港規則及旅順港規則、施行ニ付テ、鎮守府
司令長官若、警備府司令長官又、鎮守府司令長官
若、警備府司令長官、職務ヲ行フ官廳、又處ヲ受ク
憲兵、地所衛關之軍事警察ニ付テ、又地ニ在リテ、軍
司令官又、師團長、朝鮮ニ在リテ、師團長、台灣ニ在リテ、
台灣守備隊長、樺太ニ在リテ、其、地所在、高級軍隊
長、又處ヲ受ク
孤之、要塞所在地ニシテ、前項、規定ニ依リ、難ヤモ、關
シテ、陸軍大臣之ヲ定ム

カ四條
カ五條

略
略

カ二章 配置 職負

カ六條 憲兵司令部、之ヲ東京ニ、北部憲兵隊司令部
ニ之ヲ札幌ニ、朝鮮憲兵隊司令部、之ヲ京城ニ、台灣
憲兵隊司令部、之ヲ台北ニ置ク
各憲兵隊管區ニ、憲兵隊ヲ配置ス
憲兵隊管區、陸軍大臣之ヲ定ム

カ六條、二 憲兵司令部ニ所要、課ヲ置ク
各課、事務、分掌、陸大臣之ヲ定ム

才七條
才八條
才九條

略略略

才三章

職務

才十條 憲兵司令官、憲兵諸部隊ヲ統轄シ、憲兵司令部
事務ヲ総理ス

才十條、二 北部憲兵隊司令官、憲兵司令官ニ隷シ、北部
軍管區ニ於ケル憲兵隊ヲ統轄シ、北部憲兵隊司令部
事務ヲ総理ス

才十一條
才十二條
才十三條
才十四條
才十五條
才十六條
才十七條
才十八條

略略略略略略略

才十九條 憲兵、服務ニ係ル規定ハ各主管大臣之ヲ定ム、但シ
朝鮮ニ於ケル軍事警察ニ係ルモ、朝鮮軍司令官、台灣ニ
於ケル軍事警察ニ係ルモ、台灣軍司令官、閩東州ニ於
ケル軍事警察ニ係ルモ、閩東軍司令官、行政警察、
司法警察ニ係ルモ、朝鮮ニ在リテ、朝鮮統督、台灣ニ
在リテ、台灣統督、閩東州ニ在リテ、大使之ヲ定ム

右條項ハ第一復復局庶務課長美山要藏ハ戦争中
日本陸軍ニ在テ有効ナリ又カム島辯護団ニ配布シ
タト証明サレタ日本陸軍成規類聚ハ一卷カラ過リナイ
正確ナル坂本デアレトヲ証明シマス

辯護人 依 薙 毅

昭和二十四年四月十五日

#

2

4.

Exhibit 8 (4)

0222

ORDINANCE GOVERNING KEMPEI.

(Imperial Ordinance No. 337
29 November 1898)

We, the Emperor of Japan, sanction the ordinance pertaining to Kempei, and herewith cause it to be promulgated.

ORDINANCE RELATING TO KEMPEI

CHAPTER I - GENERAL RULES.

Article 1 - The Kempei shall be under the jurisdiction of the War Minister and shall primarily assume charge of military police affairs. They shall concurrently perform administrative and judicial police duties.

Article 2 - The Kempei, in discharging their duties shall, in affairs of military police, receive directions from the War or Navy Minister; in administrative police affairs from the Home Minister; and, in matters of judicial police from the Justice Minister. In matters relating to military police in Korea they shall receive directions from the Commanding General of the Army of Korea; in matters relating to military police in Formosa, from the Commanding General of the Army of Formosa; and, in matters relating to military police in the Province of Kwantung, from the Commanding General of the Kwantung Army. In matters pertaining to administrative and judicial police in Korea, they shall receive direction from the Governor General of Korea; for similar matters in Formosa, from the Governor General of Formosa; for similar matters in the Province of Kwantung from the Envoy Extraordinary and Ambassador Plenipotentiary stationed in Manchukuo; and, for similar matters in the South Sea Islands, from the Minister of Greater East Asia.

Article 3 - In matters relating to administrative and judicial police, they (the Kempei) shall receive directions from the Commissioner of the Metropolitan Police Bureau, the Governor of Hokkaido, Governors of Prefectures and City-Prefectures, District Attorneys, Prefectural Governors and District Attorneys of the Government of Korea, Prefectural Governors, Chiefs of Sub-Prefectural Offices and Prosecutors of the Formosan Courts of Justice of the Government of Formosa, the Chief of the Kwantung Provincial Government, Prosecutors of the Kwantung Courts of Justice, the Chief of the Saghalien Government, and the Governor of the South Seas Islands Government Office and the Prosecutors of the South Seas Government Office.

In enforcing regulations in fortified zones and in zones of defense and installations in Kwantung Province, the Kempei shall be placed under the restricted command authority of the commandant of the fortress or of the office which discharges the function of the commandant. In enforcing regulations governing military affairs in port areas where military transportation is conducted, the Kempei shall be placed under the restricted command authority of the Chief of the Military Transportation Department. In enforcing regulations concerning naval and strategic ports and regulations of Port Arthur, they shall be placed under the restricted command authority of the Commanders in Chief of Naval Stations, Commanders in Chief of Minor Naval Stations, or offices fulfilling the functions of the Commanders in Chief of Naval Stations or Commanders in Chief of Minor Naval Stations.

In matters relating to military police connected with local defense, the Kempei in Japan Proper are subject to the restricted command authority of Commanding Generals of Armies or Commanding Generals of Divisions. In Korea they are subject to the restricted command authority of Commanding Generals of Divisions, in Formosa under the restricted command authority of

Commander of the Formosa Defense Unit and, in Saghalien, subordinate to the restricted command authority of the highest ranking local unit commander.

In the cases of remote and isolated fortified places where the foregoing regulations would be difficult of application, the War Minister shall set forth regulations.

Article 4 - (Omitted)

Article 5 - (Omitted)

CHAPTER II - ALLOCATION AND PERSONNEL

Article 6 - The Kempei Headquarters shall be established in Tokyo, the Northern Kempei Headquarters at Sapporo, the Korea Kempei Headquarters at Seoul, and the Formosa Kempei Headquarters at Taihoku.

To each Kempeitai Sector, a Kempeitai will be allocated.
The War Minister shall determine Kempeitai Sectors.

Article 6-2 - Kempei General Headquarters

Requisite sections shall be established at Kempei General Headquarters. The War Minister shall determine the duties of each section.

Article 7 - (Omitted)

Article 8 - (Omitted)

Article 9 - (Omitted)

CHAPTER III - DUTIES

Article 10 - The Kempei Commandant shall control all Kempei Units and supervise the affairs of the Kempei Headquarters.

Article 10-2 - The Commandant of the Northern Kempeitai shall be subordinate to the Kempei Commandant and shall control the Kempeitai in the Northern Army Area and supervise the affairs of the Northern Kempeitai Headquarters.

Article 11 - (Omitted)

Article 12 - (Omitted)

Article 13 - (Omitted)

Article 14 - (Omitted)

Article 15 - (Omitted)

Article 16 - (Omitted)

Article 17 - (Omitted)

Article 18 - (Omitted)

Article 19 - The service regulations of the Kempei shall be issued by the component ministers concerned. However, in regard to military police matters in Korea, these shall be set forth by the Commanding General of the Army of Korea; in regard to matters of military police in Formosa, by the Commanding General of the Army of Formosa; and, in regard to military police matters in Kwangtung Province, by the Commanding General of the Kwangtung Army. And in matters of administrative and judicial police in Korea; they shall be issued by the Governor General of Korea; in Formosa by the Governor General of Formosa; and, in Kwangtung Province, by the Ambassador.

I hereby certify that the foregoing articles are true and correct excerpts taken from the Japanese Army Regulations Vol. I, which the Chief of the General Affairs Section, First Demobilization Bureau, MIYAMA, Yozo certified to have been in effect in the Japanese Army during the war and which he forwarded to Defense Counsel on Guam.

April 15, 1949

/s/ Sanagi, Sadamu
SANAGI, Sadamu,
Defense Counsel.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

憲兵服務規程 (昭四四・三)

憲兵服務規程左、通改正ス

廿一條 憲兵司令部、各課ニ於テ分掌スベキ事務左、如シ

庶務課 略 (人事、會計、經理、衛生、他)

才一課

- 一 編制、配置及補充ニ関スル事項
- 二 防衛、計画並ニ動員及召集ニ関スル事項
- 三 教育ニ関スル事項 (各課所掌事項ヲ除ク)
- 四 調査及研究ニ関スル事項

才二課

- 一 警衛ニ関スル事項
- 二 軍事警察ニ関スル事項 (才三課所掌事項ヲ除ク)
- 三 行政警察ニ関スル事項 (才三課所掌事項ヲ除ク)
- 四 司法警察ニ関スル事項 (才三課所掌事項ヲ除ク)

才三課

- 一 軍機保護ニ関スル事項
- 二 外事警察ニ関スル事項
- 三 前二号以外、防諜ニ関スル事項
- 四 著作物検閲ニ関スル事項

廿二條 略 (憲兵隊及同分遣隊内、指揮関係)

- 才三條 略 (北部憲兵司令部、朝鮮憲兵司令部、台灣
 憲兵司令部及憲兵本部隊、介課、件)
 才四條 略 (憲兵司令官其他憲兵隊長が部下に致す權限)
 才五條 略 (隊附准士官以下配屬變更、件)
 才六條 略 (憲兵司令官、憲兵分隊及分遣隊、人員數
 及担任區域ヲ定メル)
 才七條 略 (憲兵司令官、憲兵隊又、分遣隊ヨリ時所要
 人員ヲ一地ヲニ分駐セシムルコトヲ得)
 才八條 略 (憲兵司令部本部長、任務)
 才九條 略 (憲兵隊長部下准士官以下配屬變更、權限)
 才十條 憲兵隊長及憲兵分隊長、其、隊、軍紀、風紀
 ヲ維持シ、部下、訓練、教育ニ任シ、內務、經理、衛生事
 務ヲ掌ル
 才十一條及才十二條 廢止
 才十三條 略 (憲兵分隊長分遣隊長管内巡視、件)
 才十四條 略 (副官、任務)

- 第十九條 略 (書記, 任務)
 第二十條 略 (經理部將校, 任務)
 第二十一條 略 (衛生部將校, 任務)
 第二十二條 略 (獸醫部將校, 任務)
 第二十三條 略 (憲兵分隊長部下, 配買ヲ決定スル件)
 第二十四條 略 (憲兵分遣隊長, 任務)
 第二十五條 略 (小笠原及鹿兒島縣大島郡憲兵, 件)
 第二十六條 憲兵ニ當リ軍隊關係アル社会、状況ヲ觀察
 之軍隊ニ不良ノ影響ヲ及ボス虞アリト認メタル事項、
 速ニ關係部隊官廳等ニ通報シ之ヲ警戒セラルヘシ
 第二十七條 略 (憲兵軍人軍庫、非行ヲ発見シタルトキ
 處置)
 第二十八條 憲兵ニ在郷軍人及未入營壯丁状態ヲ
 觀察調査スルコトニ努メ必要ト認メタル事項、之ヲ關係
 軍司令官、師團長、聯隊区司令官又ハ部隊長ニ通報
 スヘシ

第二十五條 憲兵：地方、状況ヲ知悉シ必要ト認メタル
事項ハ之ヲ軍司令官、師団長、衛戍司令官及其、
他関係諸官ニ通報スヘシ

第二十六條 憲兵司令官：憲兵服務細則ヲ定メ陸軍
大臣、認可ヲ承ケヘシ

右條項ハ、第一復員局庶務課長美山要藏ハ戦争中
日本陸軍ニ於テ有効デアリ又ガム島辯護団ニ配布シタ
証明サレタ日本陸成規類聚オ一卷ウラ、過リナイ正確
ト拔萃デアルコトヲ証明シマス

昭和二十四年四月十六日

竊道人

佐 井 雅 毅

SERVICE REGULATIONS FOR KEMPEIS.

(April 7, 1929,
War Ministry No. 13.)

Service Regulations for Kempeis, as amended, are as follows:

Article 1 - The duties assigned to each section in the Kempeitai Headquarters shall be as follows:

General Affairs Section - (Omitted) (personnel, accounting, intendants, health, miscellaneous)

1st Section.

1. Matters pertaining to organization, assignment and recruiting.
2. Matters pertaining to defense plans, mobilization, and induction.
3. Matters pertaining to education, excluding that assigned to other sections.
4. Matters pertaining to investigations and research.

2nd Section.

1. Matters pertaining to guard duty.
2. Matters pertaining to military police, except those matters assigned to the 3rd Section.
3. Matters pertaining to administrative police, except those matters assigned to the 3rd Section.
4. Matters pertaining to judicial police, except those matters assigned to the 3rd Section.

3rd Section.

1. Matters pertaining to security of military secrets.
2. Matters pertaining to external police affairs (resident aliens and alien matters).
3. Matters pertaining to prevention of espionage without scope of the foregoing.
4. Matters pertaining to censorship of literary works.

Article 2 - (Omitted) (Command relationship between the Kempei Units and its Kempei Detachments).

Article 3 - (Omitted) (Matters concerning the organization of sections in the Northern, Korean and Formosan Kempeitai Headquarters, and the Kempeitai Headquarters).

Article 4 - (Omitted) (The authority of the Kempei Commandant and other Kempeitai Commanding Officers to summon their subordinates).

Article 5 - (Omitted) (Concerning the transfer of those attached to units whose rank are lower than that of non-commissioned officers).

Article 6 - (Omitted) (The determination of the number of personnel and horses and the area of jurisdiction of Kempei detachments and detached units by the Kempei Commandant.)

Article 7 - (Omitted) (The authority of the Kempei Commandant to order necessary personnel from Kempeitai or Kempei detachments, to another station on a temporary basis).

Article 8 - (Omitted) (The duties of the Chief of the Headquarters of the Kempei General Headquarters.)

Article 9 - (Omitted) (The authority of the Kempeitai Commanding Officer to transfer those of his subordinate ranks are not higher than that of the non-commissioned officer).

Article 10 - The Kempeitai Commanding Officer or the Commanding Officer of a Kempei detachment shall promote strict military discipline and morale, direct the training and education of his unit and control matters concerning accounts and health.

Article 11 and 12 - Abrogated.

Article 13 - (Omitted) (Concerning the inspection tour by the Kempeitai Commanding Officer or the Commanding Officer of the Kempei detachment of the area under his control).

Article 14 - (Omitted) (Duties of the adjutant).

Article 15 - (Omitted) (Duties of the secretary).

Article 16 - (Omitted) (Duties of the paymaster).

Article 17 - (Omitted) (Duties of the medical officer).

Article 18 - (Omitted) (Duties of the veterinary officer).

Article 19 - (Omitted) (Concerning the determination of the Commanding Officer of a Kempei detachment regarding the assignment of his subordinates.)

Article 20 - (Omitted) (Duties of the Commanding Officer of a Detached Kempei Unit.)

Article 21 - (Omitted) (Concerning the Kempeis on the Bonin Islands, and Oshima-gun Kagoshima Prefecture).

Article 22 - Kempeis shall study the social conditions which affect the Army and, in a case where an influence may be detrimental, shall immediately notify the units and authorities concerned.

Article 23 - (Omitted) (Measures to be taken on discovery of illegal acts committed by military personnel and gunsokus).

Article 24 - Kempeis shall investigate and determine the situation of the Army reserves and those persons subject to recruitment and where indicated, keep the Commanding General of the Army, Commanding General of the Division, Commander of the Regimental Area, or the Unit Commander notified accordingly.

Article 25 - Kempeis must keep themselves well informed concerning the conditions in local areas, and if required shall notify the Commanding General of the Army, Commanding General of the Division, Commanding Officer of a Besieged Area, and other appropriate officials.

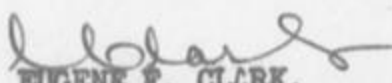
Article 26 - The Kempei Commandant shall draw up detailed service regulations for Kempeis, obtaining the approval of the Minister of War.

I hereby certify that the above articles are true and correct excerpts taken from the Japanese Army Regulations, Vol. I, which the Chief of the General Affairs Section, First Demobilization Bureau, MIYAMA, Yozo certified to have been in effect in the Japanese Army during the war and which he forwarded to Defense Counsel on Guam.

April 15, 1949

/s/ Sanagi, Sadamu
SANAGI, Sadamu,
Defense Counsel.

I certify that the foregoing is a true and complete translation of the original in Japanese to the best of my ability.


EUGENE F. CLARK,
Lieutenant (jg), USN,
Interpreter.

CM

JAPANESE GOVERNMENT
CENTRAL LIAISON AND COORDINATION OFFICE

HQ. SCAP
APR 12 1949
AGORRECHERS

TO : GENERAL HEADQUARTERS OF THE SUPREME COMMANDER
FOR THE ALLIED POWERS.

FROM : Central Liaison and Coordination Office, Tokyo.

SUBJECT: Charts Showing Units Stationed in Palau Area.

C.L.C.O. No. 982(3.I.)

11 April 1949

1. Reference is made to Legal Section's Check Sheet No. 21003 LS-Z dated 30 March 1949, subject: Request for Information.

2. The Demobilization Bureau of the Repatriation Relief Agency reports that the charts requested by reference Check Sheet were directly submitted to the Legal Section on April 8 of this year.

FOR THE DIRECTOR-GENERAL:

T. Yoshioka
(T. Yoshioka)
Chief of Liaison Section,
Central Liaison and
Coordination Office.



0232

JAPANESE GOVERNMENT
CENTRAL LIAISON AND COORDINATION OFFICE

TO : GENERAL HEADQUARTERS OF THE SUPREME COMMANDER
FROM : Central Liaison and Coordination Office, Tokyo.
SUBJECT: Charts Showing Units Stationed in Taiwan Area.
O.L.C.O. No. 282(2.I.)
11 April 1949

1. Reference is made to Legal Section's Check Sheet No. 21003 IS-2 dated 30 March 1949, subject: Request for Information.

2. The Demobilization Bureau of the Rehabilitation Relief Agency reports that the charts requested by reference Check Sheet were directly submitted to the Legal Section on April 8 of this year.

FOR THE DIRECTOR-GENERAL.

(T. Yoshioke)
Chief of Liaison Section,
Central Liaison and
Coordination Office.



0233

證 明 書

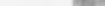
自分美山要蔵は厚生省引揚券復員部庶務課の職に居る者なる
處斯に添付せる五枚より成る表は當部保管の資料・第二復員部
事務課部保管の資料並に關係者の書を綜合し作成したものであるこ
とを證明する

昭和二十四年四月八日

厚生省引揚券復員部庶務課長 美山 要蔵



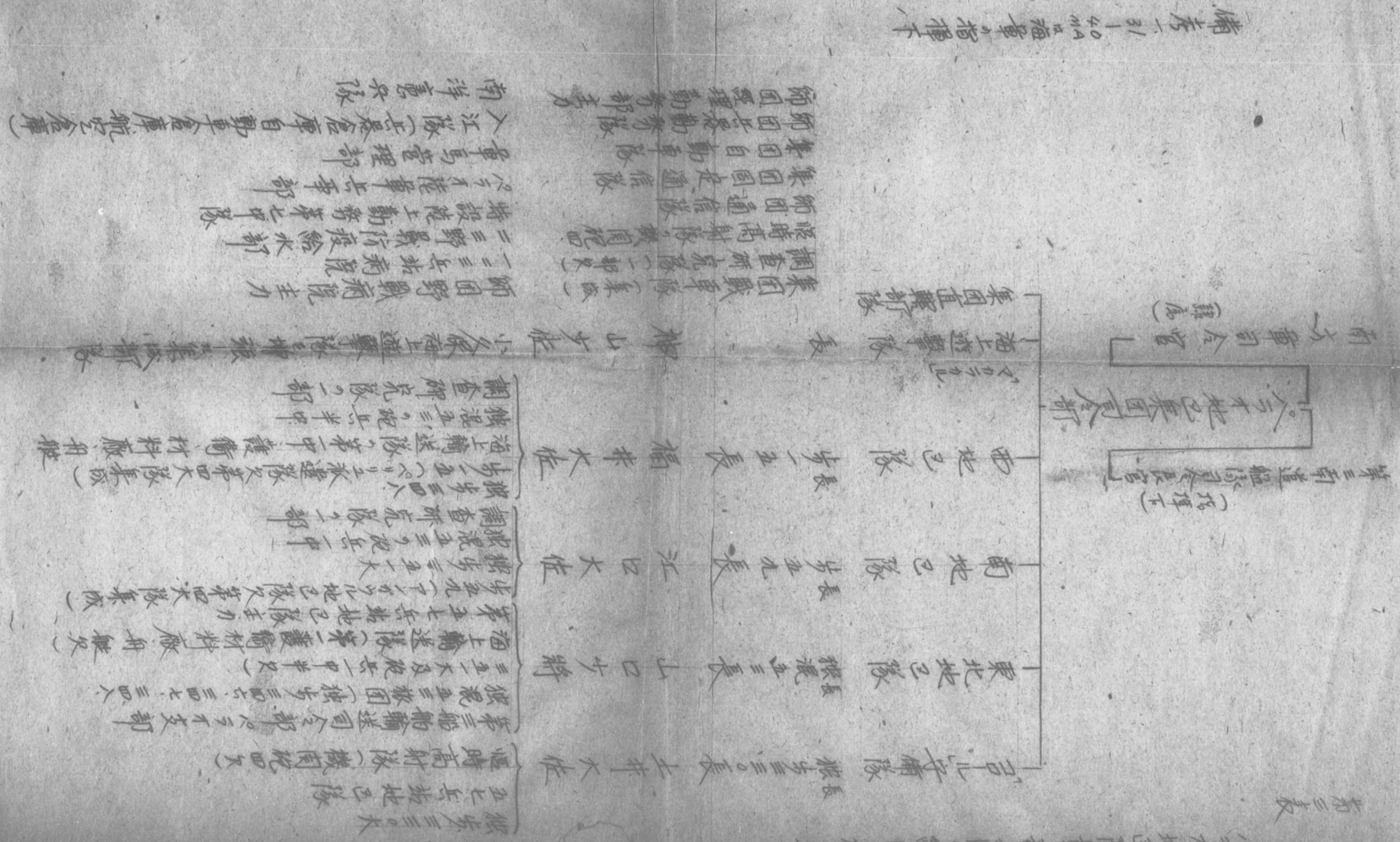
陸 軍



一九四五年五月二十四日頃

八分不地已陸軍部隊、編成、概要

第三表



備考 31-40 海軍指揮下

原田 敬

二。パナ地区に於て、パナ地区集團の編成に含まれてゐる泰ガク陸軍部隊はない

パナ地區に於ける海軍部隊は全部陸軍に關してのみパナ地區集團の指揮を受けてゐるものとあり、同集團の編成には入つてゐない

た、其の海軍部隊とは次の通りである

一。自一九四四年九月四日至同年閏月十六日

第三十根據地隊

第四十五警備隊

第四十六警備隊

第三通信隊

第三十港務部

第六特別輸送隊

第二百五設警隊

第二百十四設警隊

西ガク航空一隊

第三十海軍建設部

第三十海軍工作部

南西方面海軍航空廠、パナ分工場

第三海軍經理部、パナ支部

第三海軍病院、パナ分院

二。一九四四年十二月二十九日頃

第三十根據地隊

第四十五警備隊

第四十六警備隊

第三通信隊

第三十港務部

第六特別輸送隊

第二高五設警隊

第三章西ガク警隊

西ガク航空一隊

3. 一九四五年五月二十四日頃

第三十海軍建設部
第三十海軍工作部
南西方面海軍航空廠。三才分工場
第三海軍經理部。三才支部
第三海軍病院。三才分院

第三十根據地隊

第四十五警備隊

第四十六警備隊

第三通信隊

第三十港務部

第六特別輸送隊

西力ロ一航空隊

第二五四設艦隊

第三五四設艦隊

第三十海軍建設部

第三十海軍工作部

南西方面海軍航空廠。三才分工場

第三海軍經理部。三才支部

第三海軍病院。三才分院

JAPANESE GOVERNMENT
CENTRAL LIAISON AND COORDINATION OFFICE

TO: GENERAL HEADQUARTERS OF THE SUPREME COMMANDER
FOR THE ALLIED POWERS.

FROM: Central Liaison and Coordination Office, Tokyo.

SUBJECT: Charts Showing Units Stationed in Palau Area.

C.L.C.O. No. 982(3.I.)

11 April 1949

1. Reference is made to Legal Section's Check Sheet No. 21003 LS-Z dated 30 March 1949, subject: Request for Information.

2. The Demobilization Bureau of the Repatriation Relief Agency reports that the charts requested by reference Check Sheet were directly submitted to the Legal Section on April 8 of this year.

FOR THE DIRECTOR-GENERAL

signed H. Yokota
for (T. Yoshioka)

Chief of Liaison Section,
Central Liaison and
Coordination Office.

Exhibit 10(a)(1)

0240

CERTIFICATE

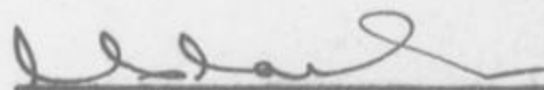
I, MIYAMA, Yozo, Chief of the General Affairs Section of the Demobilization Bureau, Repatriation and Relief Agency, Welfare Ministry, hereby certify that the charts hereto annexed, consisting of five (5) pages have been drafted from data kept in custody by this Bureau, the data in the custody of the Liquidation Department of the Second Demobilization Bureau and the testimony of persons concerned.

8 April, 1949

MIYAMA, Yozo. (Seal of Office)

Chief of General Affairs Section,
Demobilization Bureau of the
Repatriation and Relief Agency,
Welfare Ministry,
Japanese Government.

I hereby certify the above to be a true and correct copy of the original in Japanese, to the best of my ability.



Eugene F. Clark,
Lieutenant (j.g.), USN,
Interpreter.

Exhibit 10(a)(2)

0241

CHART 1

The following units were detached from the Battle Order of the 31st Army on 1st September, 1944 and integrated into the Battle Order of the Southern (General) Army and placed under the command of the Commander-in-Chief of the 3rd Southern Expeditionary Fleet.

Unit Designation	Commanding Officer	Sub-units
FIELD ART AREA UNIT	Commanding Officer, 2nd Infantry Regiment Colonel MAKAGAWA	2nd Infantry Regiment Part of the Division Communications Unit. 1 Platoon of the Transportation Unit of the 14th Division. Part of the Intendance Department of the 14th Division. 1/3 of the Field Hospital Unit of the 14th Division. 366th Independent Infantry Battalion. 2nd, 3rd Battalions of 15th Infantry Regiment. Tank Unit of the 14th Division.
ENGINEER AREA UNIT	Battalion Commander, 1st Battalion. 50th Infantry Regiment Major GOTO.	1 Infantry Battalion. The following units from the 50th Infantry Regiment: 1 Company Artillery 1 Platoon supports Part of Communications Unit of Regiment Part of Transportation Unit of Regiment. Sanitation Corps. Part of Communications Unit of Division. Part of Arms Service Unit of 14th Division One third of Field Hospital Unit of 14th Division.
YAP DETACHED UNIT	Brigadier, 49th Independent Mixed Brigade Colonel ENO	49th Independent Mixed Brigade.

Exhibit 10(a)(3)

PALAU AREA UNIT —	Brigadier, 53rd Independent Mixed Brigade Major General YAMAGUCHI.	53rd Independent Mixed Brigade. (346th Independent Infantry Battalion. 347th Independent Infantry Battalion. 348th Independent Infantry Battalion. 351st Independent Infantry Battalion. 1 Company Artillery) (N.B. 348th Independent Infantry Battalion was missing)
-------------------	---	--

AIRAI AREA UNIT —	Commanding Officer. 50th Infantry Regiment Colonel EGUCHI.	50th Infantry Regiment. (Anguar Area Unit). 351st Independent Infantry Battalion. 1 Company Artillery of the 53rd Independent Mixed Brigade Transportation Unit of the 1st Surface Mobile Brigade
-------------------	--	---

KOROR AREA UNIT —	Commanding Officer. 57th Supply Area Unit Colonel HASEGAWA.	330th Independent Infantry Battalion. Headquarters, 57th Supply Area Unit. 57th Company, Supply Service. 42nd Independent Motor Vehicle Battalion. Palau Branch, 3rd Surface Transportation Reg Provisional Anti-aircraft Unit.
-------------------	---	--

UNITS IMMEDIATELY SUBORDINATE TO THE ARMY GROUP	Main Force of 15th Infantry Regiment. Investigation and Research Unit. Division Communications Unit. Division Transportation Unit. Main Force of Division Arms Service Unit. Main Force of Division Intendance Service Department Provisional Minor Caliber Anti-aircraft gun Unit of the Army Group.
---	---

W.F.

- 1 (31 - 40 MA Units) were under the command of the 40th Naval Base Force (NAVY)
- 2 The Army Group had restricted command authority over the South Seas Kommandos only in matters of defense on land in the event of invasion

Field Hospital of the 14th Division.
12th Clearing Hospital.
2nd Anti-Epidemic Water Supply Department
7th Speciality Established Shore Duty Company
Palau Army Personnel Department.
Department for supervision of horses.

Exhibit 10(a)(5)

0244

OUTLINE OF ORGANIZATION OF ARMY UNITS IN THE PALAU AREA AROUND 29 DECEMBER, 1944

CHART 2

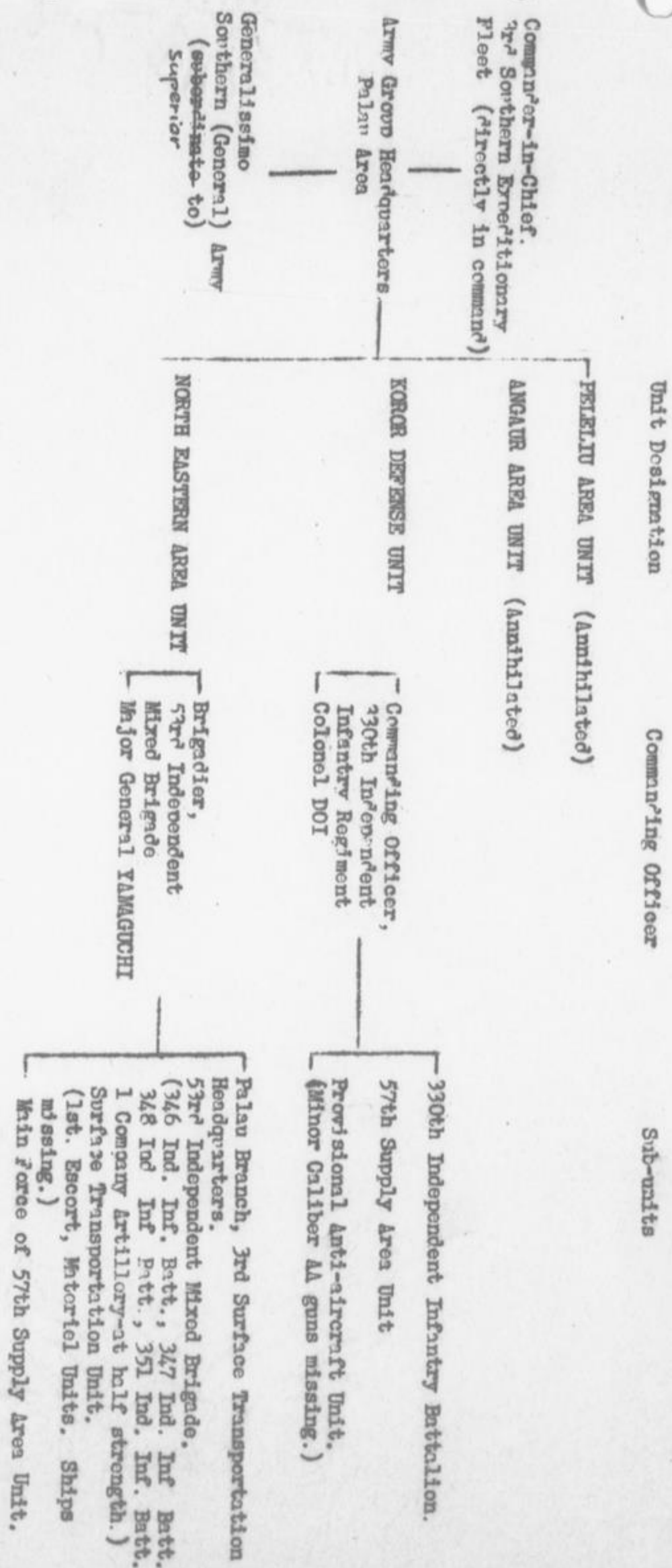


Exhibit 10(a)(6)

5420

SOUTHERN AREA UNIT

Commanding Officer,
50th Infantry Regiment
Colonel EGUCHI

59th Infantry Regiment. (Amper Area Unit missing
4th Battalion organization to supplement vacancy)
351st Independent Infantry Battalion.
1 Artillery Company from the 53rd Independent
Mixed Brigade
Part of Investigation and Research Unit.

WESTERN AREA UNIT

Commanding Officer,
15th Infantry Regiment
Colonel FUKUI

15th Infantry Regiment (Pelatu Detached Unit
missing 4th Battalion organized to fill vacancy)
1st Company, Escort, Material and ship companies
of the Surface Transportation Unit.
348th Independent Infantry Battalion.
Half an Artillery Company of the 53rd
Independent Mixed Brigade
Part of Investigation and Research Unit.

MAKARAKA SURFACE
ATTACK UNIT

Captain KOKUBO, IJA

Nucleus of this unit formed of approximately
200 troops of the 15th Infantry Regiment.

UNITS IMMEDIATELY SUBORDINATE
TO THE ARMY GROUP

Paras Unit of the Army Group (organized)
Investigation and Research Unit (part missing.)
4 Minor Caliber AA guns of the Provisional
Anti-aircraft Unit.
Division Communications Unit.
Fired Communications Unit of the Army Group.
Motor Vehicle Unit of the Army Group.
Arms Service Unit of Division.
Main Force of Division Intendence Service Dept.
Main Force of Division Field Hospital.

Exhibit 10(a)(7)

12th Clearing Hospital
23rd Anti-Epidemic Water Supply Department.
7th Specially Established Shore Duty Company.
Palau Army Personnel Department.
Department for supervision of horses.
IPB Unit (Arms Depot, Motor Vehicle Depot
Air Material Depot)

Exhibit 10(a)(8)

N.B.

- 1 31 - 40 MA were under the command of the Navy
- 2 The South Seas Kempeitai was placed under the coordinated operational command of the Army Group Commander, Palau Area in matters pertaining to defense in regard to land operations

OUTLINE OF ORGANIZATION OF ARMY UNITS IN THE PALAU AREA AROUND 24 MAY, 1945

CHART 3

Unit Designation	Commanding Officer
KOROR DEFENSE UNIT	Commanding Officer. 330th Independent Infantry Regiment Colonel DOI
Palau Area Army Group Headquarters	Brigadier, 53rd Independent Mixed Brigade Major General YAMAGUCHI
Generalissimo. Southern (General) Army (subordinate to) Superior	Commanding Officer, 50th Infantry Regiment Colonel EGUCHI.

Sub-units

330th Independent Infantry Battalion.

57th Supply Area Unit

Provisional Anti-Aircraft Unit
(4 Minor Caliber AA guns missing.)

Palau Branch, 3rd Surface Transportation
Headquarters.

53rd Independent Mixed Brigade.

(346th, 347th, 348th, 351st Independent
Infantry Battalions, 1 company of Artillery,
with half complement.)

Surface Transportation Unit.

(1st, Escort and Materiel Companies. Ship
company missing.)

Main Force of 57th Supply Area Unit.

59th Infantry Regiment (Anguar Area Unit
missing. 4th Battalion organized to
supplement vacancy.)

351st Independent Infantry Battalion.

1 Artillery Company from the 53rd
Independent Mixed Brigade.
Part of Investigation and Research Unit.

WESTERN AREA UNIT

Commanding Officer,
15th Infantry Regiment
Colonel FUKUJI.

MAKARAKAR SURFACE
ATTACK UNIT

Major KAMITAMA

UNITS IMMEDIATELY SUBORDINATE
TO THE ARMY GROUP

348th Independent Infantry Battalion.
15th Infantry Regiment. (Peleliu Detached Unit
missing. 4th Battalion organized to fill vacancy)
The 1st, Escort, Material and ship companies of
the Surface Transportation Unit
Half company of Artillery of the 53rd Independent
Mixed Brigade.
Part of Investigation and Research Unit.

The KOKUBU Surface Attack Unit reinforced and
reorganized.

Panzer Unit of the Army Group (organized)
Investigation and Research Unit. (part missing.)
4 Minor Caliber AA guns of the Provisional
Anti-aircraft Unit.
Division Communications Unit
Fixed Communications Unit of the Army Group.
Motor Vehicle Unit of the Army Group.
Division Arms Service Unit.
Main Force of Division Intendance Service Dept.
Main Force of Division Field Hospital.
123rd Clearance Hospital.
23rd Field Anti-Epidemic Water Supply Dept.
7th Specially Established Shore Duty Company.
Palau Army Personnel Department.
Department for supervision of horses.
IRIE Unit (Arms Depot, Motor Vehicle Depot,
Air Material Depot.)
South Seas Hospital.

N. B. 31 - 40 MA were under the command of the Navy