

DECLASSIFIED

Authority: NND 760050 (1945-1949)

By: NARA NARA Date: 1976

NAKAMURA, KAZUO et al. (6 JAN 1948)

(162658)
PART 1 OF 2

0775

2N 746

Case of

Nakamura, Kasuo
Kokubo, Chihiro
Nagatome, Yoshimori

January 6, 1948

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

convened at

United States Pacific Fleet

Commander Marianas

Guan, Marianas Islands

by order of

The Commander Marianas Area

RECEIVED

17 MAY 1948

OFFICE OF JUDGE

ADVOCATE GENERAL

G.C.M. SECTION

Case no

162658

0776

CLASSIFICATION
C2:Kokumura, Kasuo, et al/
A17-10/04 (9-12-48) 162988

To: Commander Marianas Area.
Via: Commander in Chief, United States Pacific Fleet.
Subj: Military Commission case of former First Lieutenant
Kasuo Nakamura, Imperial Japanese Army, Chihiro
Kakubo, former sergeant major, Imperial Japanese Army,
and Yoshimori Nagatomo, corporal, Imperial Japanese
Army, tried in jointer by order of the Commander
Marianas Area on 6 January 1948.

1. The Military Commission before which the subject persons were
tried acquitted Yoshimori Nagatomo of Murder; convicted Kasuo Nakamura
of I, Murder (2 specifications), and II, Violation of the Law and Customs
of War (4 specifications); and convicted Chihiro Kakubo of Murder. The
Commission adjudged the following sentences:

"The commission, therefore, sentences him, Nakamura,
Kasuo, to be hanged by the neck until dead, two-
thirds of the members concurring."

"The commission, therefore, sentences him, Kakubo,
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, Kasuo, and Kakubo, 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, find-
ings 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, Kasuo, and Kakubo, Chihiro, be commuted to life imprisonment.

4. In accordance with the provisions of section 8-14, Naval Courts
and Boards, 1927, and the recommendations of the convening and reviewing
authorities, the Secretary of the Navy, on 22 August 1948, commuted to
imprisonment at hard labor for the terms of their natural lives the sen-
tences of death of former First Lieutenant Kasuo Nakamura, Imperial
Japanese Army, and Chihiro Kakubo, former sergeant major, Imperial Japa-
nese Army.

END

FINISHED FILE 27 AUG 1948

Secretary of the Navy.

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JAS:11:81:81:81:81
Ch. Sakuma, Kame, et al/
A17-10/84 (A-11-48) 189338

25 AUG 1948

From: The Secretary of the Navy.
To: Japanese Defense Counsel for Kame Sakuma,
et al, tried by Military Commission on
6 January 1948.
(1) Commander in Chief Pacific and United States
Pacific Fleet.
(2) Commander Marianas Area.

Subj: Former First Lieutenant Kame Sakuma, Imperial
Japanese Army, and Chihito Nakano, former sergeant
major, Imperial Japanese Army - Request for a new
trial.

Ref: (a) Brief of Japanese counsel for the accused dated
2 February 1948.

1. The record of proceedings in the subject military commission
case, tried in Joinder on 6 January 1948, by order of the Commander
Marianas Area dated 24 December 1947, was reviewed by the Commander
Marianas Area, whose action thereon was dated 24 April 1948, by Com-
mander in Chief Pacific and United States Pacific Fleet, whose action
thereon was dated 11 May 1948, and by the Judge Advocate General of the
Navy, who, on 30 July 1948, stated that the proceedings, findings, and
sentences in the subject case, and the action of the convening and re-
viewing authorities thereon, were legal.

2. Your request for a new trial on behalf of subject men, set out
in reference (a), was based on reasons raised at the trial. The Com-
mission considered the question at that time and made rulings thereon.
The reasons and the rulings above mentioned were considered by the re-
viewing authorities and by me. It has been determined that the reasons
advanced do not constitute grounds for a new trial.

3. The request is denied.

John Nicholas Brown

25 AUG 1948

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ADDRESS REPLY TO

AND REFER TO

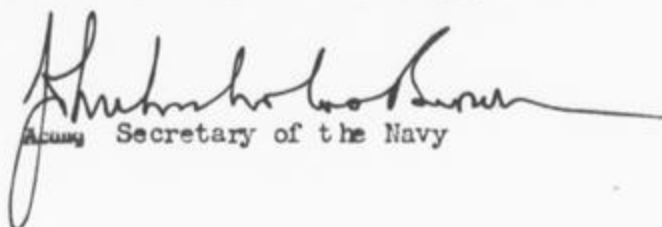
NAVY DEPARTMENT

WASHINGTON 25, D. C.

JAG:l:GLG;eks
OO-Nakamura, Kazuo, et al/
A17-10/OQ (8-16-48) 162658

23 AUG 1948

In accordance with the recommendations of the convening and reviewing authorities in the foregoing trial by Military Commission of former First Lieutenant Kazuo Nakamura, Imperial Japanese Army, Chihiro Kokubo, former sergeant major, Imperial Japanese Army, and Yoshimori Nagatome, former corporal, Imperial Japanese Army, tried in joinder, the sentences of death, to be executed by hanging by the neck until dead, of former First Lieutenant Kazuo Nakamura, Imperial Japanese Army, and Chihiro Kokubo, former sergeant major, Imperial Japanese Army, are hereby commuted to imprisonment at hard labor for the term of their natural lives.


Secretary of the Navy

0779

ADDRESS REPLY TO
OFFICE OF THE JUDGE ADVOCATE GENERAL

AND REFER TO:

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

JAG:I:GIG:ks
OO-NAKAMURA, Kazuo, et al/
A17-10/00 (8-16-48) 162658

17 AUG 1948

MEMORANDUM FOR THE SECRETARY OF THE NAVY:

Subj: Military Commission case of former First Lieutenant Kazuo Nakamura, Imperial Japanese Army, et al, tried in joinder by order of the Commander Marianas Area on 6 January 1948.

1. Attention is invited to brief of Japanese counsel for the accused, dated 2 February 1948, and attached to the record, requesting a new trial in the case of Nakamura and Kokubo. The point is therein raised that timely objection was made at the trial to the seating of three members of the commission, on the ground that they had sat as members of the commission which had tried one Ajioka for the same incident that formed the basis of the specifications in the instant case alleging the killing of one Charlie Smith. They cite Naval Courts and Boards, section 388(e). Their objection was properly overruled by the court, for by paragraph "5" of the precept the commission "is permitted to relax the rules for naval courts to meet the necessities for any particular trial". Each challenged member stated that he could truly try without prejudice or partiality the case then pending, according to the evidence adduced before the commission, the rules prescribed for that trial, the customs of war in like cases, and his own conscience. SCAP rule 4 (c) is also deemed applicable, in which it is provided as follows: "The convening authority may specify particular offenders to be tried before any commission appointed by him".

2. The letter prepared for your signature addressed to Japanese counsel denies the request for a new trial.

3. Attention is further invited to the recommendation of the convening authority in his action on the subject case and to the petitions for clemency submitted on behalf of the accused who were sentenced to death. The convening authority recommended that the Secretary of the Navy commute the death sentences of Nakamura, Kazuo, and Kokubo, Chihiro, to that of life imprisonment. The reviewing authority concurred in that recommendation.

4. The action prepared for your signature commutes the sentences of death of Nakamura, Kazuo, and Kokubo, Chihiro, to that of life imprisonment at hard labor, and is submitted herewith together with the letter of promulgation prepared in accordance therewith.

E. E. Woods
E. E. WOODS

Acting Judge Advocate General of the Navy

0780

In reply refer to Initials
and No.

Op22p/r1f
Serial 884P22

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



8 AUG 1948

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RECEIVED
8 AUG 1948
OFFICE OF JUDGE
ADVOCATE GENERAL

FIRST ENDORSEMENT on
JAG Record of Proceedings
OO-HAKAMURA, Kazuo, et al/A17-10
I (7-15-48) GLG:glg 162658 dated
30 July 1948.

From: Chief of Naval Operations.
To: Judge Advocate General.

Subject: Record of Proceedings of Military Commission at
Guam in the case of Kazuo Nakamura et al.

1. Returned, contents noted.

J. C. Hammock
J. C. Hammock,
By direction.

RECEIVED
8 AUG 1948
OFFICE OF JUDGE
ADVOCATE GENERAL
O.C.M. SECTION

0781

OO-NAKAMURA, Kasuo, et Al./Al7-10
I (7-13948) GLG:glg 162658

MEMORANDUM IN THE MILITARY COMMISSION CASE OF: Nakamura, Kasuo, former First Lieutenant,
I.J.A.;
KOKUBO, Chihiro, former Sergeant Major,
I.J.A.;
NAGATOME, Yoshimori, former Corporal,
I.J.A..

Place of Trial:
Guam, Marianas Islands

Date Tried:
6 January 1948

Date Received:
8 June 1948

1. The record of trial in the case of the above named persons has been examined by GCM Panel # 2, and found to contain no substantial error.

2. The record of the case is as follows:

CHARGES:

I - MURDER.

1944,

Spec 1 - September 4, Babelthup Is., Palau Is., the three accused and other members of the armed forces of Japan, names to the relator unknown, when a state of war existed between the U.S. and the I.J.E., killed, by beheading with swords and shooting with firearms, three unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, in violation of the law and customs of war.

(Note: all except the 1st spec of I apply to Nakamura only.)

Spec 2 - Nakamura, December 29, 1944, at Babelthup Is., Palau Is., when a state of war existed between the U.S. and the I.J.E., killed, by shooting, 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.

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR.

Spec 1 - Nakamura, September 4, 1944, at Babelthup Is., Palau Is., while serving as Commanding Officer of First Detachment, South Seas Military Police, when a state of war existed between the U.S. and the I.J.E., did disregard and fail to discharge his duties as C.O. of said 1st Det., to control the operations of members of his detachment, permitting said Kokubo and said Nagatome, and others, to kill, 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.

Spec 2 - Nakamura, September 4, 1944, at Babelthup Is., Palau Is., while serving as Commanding Officer of First Detachment, South Seas Military Police, when a state of war existed between the U.S. and the I.J.E., did disregard and fail to discharge his duty as C.O. of said 1st Det., to take such measures as were within his power and appropriate in the circumstances to protect three unarmed American prisoners of war, names to the relator unknown, then and there held captive by the armed forces of Japan, as it was his duty to do, in that he permitted the unlawful killing of said prisoners of war by beheading with swords and shooting with firearms by said Kokubo and Nagatome, and other members of the armed forces of Japan, this in violation of the law and customs of war.

Spec 3 - Nakamura, December 29, 1944, at Babelthup Is., Palau Is., while serving as Commanding Officer of First Detachment, South Seas Military Police, when a state of war existed between the U.S. and the I.J.E., did disregard and fail to discharge his duty as C.O. of said 1st Det., to control the operation of members of his detachment and persons subject to his control and supervision, permitting named warrant officer and sergeant, I.J.A., to kill,

0782

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.

Spec 4- Nakamura, December 29, 1944, at Babelthwap Is., Palau Is., while serving as Commanding Officer of First Detachment, South Seas Military Police, when a state of war existed between the U.S. and the I.J.M., did disregard and fail to discharge his duty as C.O. of said 1st Det. 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, by permitting his killing, by shooting with firearms, by by named warrant officer and sergeant and others, names to the relator unknown., this in violation of the law and customs of war.

PLEAS: I - Not Guilty; II - Not Guilty.

FINDINGS: As to Nakamura: I- Guilty (Spec 1 proved in part); II- Guilty (Specs 1 and 2 not proved).
As to Kokubo: I- Guilty (Spec 1 only, proved in part).
As to Nagatome: I-Not Guilty (Spec 1), Acquitted.

SENTENCE: As to Nakamura and Kokubo: to be hanged by the neck until dead, two-thirds of the members concurring.

CA ACTION: Recommends to SecNav that death sentence be commuted to life imprisonment, because accused were acting under orders.
Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kokubo approved.

REVIEWING AUTHORITY: P.F. & S., & action of CA approved; concurs in CA's recommendation.

3. FACTS:-- Late in August 1944, an American B-24 airplane was shot down in a raid over the Palaus, and three U.S. Army fliers parachuted. The three were captured by men of the 14th Division, which was then under the command of Lieutenant General Inoue. His chief of staff, Colonel Tada, ordered Colonel Miyazaki, the officer in charge of the Japanese military police, the South Seas Kempeitai, to dispose of these three prisoners. On September 4, 1944, Miyazaki led a party which took the three prisoners to a spot in the jungle where graves had already been prepared. The execution party consisted of Nakamura, then a first lieutenant, Sergeant Kokubo, and several other members of the Kempeitai, including Nagatome, then a corporal. Guards from division headquarters accompanied the prisoners.

Miyazaki gave one of the prisoners a cigarette, and as he puffed it, Miyazaki shot him in the back of the head. He then ordered Nakamura to behead the second prisoner, which he did. He then ordered, and Nakamura relayed, that Kokubo cut the third prisoner. The evidence is conflicting as to whether Kokubo cut the prisoner's collar, or cut his neck to the degree of the width of the sword, but, in any event, Miyazaki then fired several shots into the prisoner, so that he was definitely killed.

A witness testified that Kokubo had brought with him a box containing the ashes of a friend recently killed in an air raid, and that he handed the box to Nagatome before striking with the sword, and said that he was taking revenge for his friend. Kokubo, in his unsworn statement, admitted taking the ashes with him, but stated that his motive was thereby to gain strength and protection. Nagatome denied holding the ashes, and stated that his only reason for being there was that by chance he was summoned by Nakamura at the last minute to put on a sword belt and go along with the party. He understood that he was a guard during the truck ride to the scene of the execution, but claimed that his sole function after that was that of a spectator.

Each of the accused claimed in their unsworn statements to have been prompted solely by the necessity of obeying orders from a superior.

In December of 1944, Miyazaki, by order of the commanding officer of headquarters, ordered Nakamura, who was Chief of Police Affairs and Commanding Officer of the First Detachment of the South Seas Kempeitai, located at Gasupan, Palau Islands, to execute an Englishman named Charlie Smith, Alias James. On the 28th or 29th of

0783

of December, 1944, Nakamura ordered other members of his detachment of the Kempeitai, including Sergeant Major Ajioaka and Sergeant Yamada, to form a party to take Smith into the jungle. There he ordered Yamada to shoot Smith, which he did.

In August of 1945, Nakamura led one Iwamoto to a spot at Gasupan, and there ordered him to dig until he exhumed the remains of Smith. The corpses of Smith and others were then cremated, and the remains were again buried.

4. APPLICABLE LAW AND DISCUSSION:-- There was ample evidence, plus their confessions, to sustain the findings of the court as to Nakamura and Kokubo.

At the outset of the trial, counsel for the accused objected to three members of the court, viz., Lieutenant Colonel Victor J. Garbarino, CAC, USA, Lieutenant Colonel Henry K. Roscoe, CAC, USA, and Rear Admiral Arthur G. Robinson, USN, on the ground that they had sat as members of the commission which had tried Ajioaka for the same incident that formed the basis of the specifications alleging the killing of Charlie Smith, citing Naval Courts and Boards, section 388(e). By brief dated the 2nd day of February, 1948, by the Japanese counsel for the accused, attached to the record, a new trial was requested for Nakamura and Kokubo for the same reason. This objection to the challenged members was properly overruled, for by paragraph "5" of the precept the commission "is permitted to relax the rules for naval courts to meet the necessities for any particular trial". Moreover, each challenged member stated that he could truly try without prejudice or partiality the case then pending, according to the evidence adduced before the commission, the rules prescribed for that trial, the customs of war in like cases, and his own conscience." SCAP rule 4(c) is also deemed applicable, in which it is provided as follows: "The convening authority may specify particular offenders to be tried before any commission appointed by him."

5. CONCLUSION AND RECOMMENDATION:-- Accordingly, it is recommended as follows:

- (A) That the case be passed as legal without comment; and
- (B) That the request for a new trial, contained in the aforesaid letter dated the 2nd day of February, 1948, on behalf of Nakamura and Kokubo, be denied, for the reasons hereinabove given; and
- (C) That a letter denying said request for a new trial be prepared at such time as the case is submitted to SecNav for approval.

gkr

H.T. Marshall
H.T. MARSHALL
Major, USMC

G.E. Goulette
G.E. GOULETTE
Lieut., USN

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Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kokubo approved. 24 April 1948.

Nakamura and Kokubo being held in confinement at the War Criminal Stockade, U.S. Marine Barracks, Guam, pending instructions from higher authority.

Nagatome released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Kokubo, app'd. Concurs in CA's recommendation that death sentences be commuted to life impris. Record, in conformity with App. D-14, N.C. & B., 1937, and CNO ser. OLP22 of 28 Nov. 1945, referred to SecNav.

NAVY DEPARTMENT

Office of the Judge Advocate General

30 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.


G.L. RUSSELL

Judge Advocate General of the Navy

GCM REFERRAL (7-15-48) slg General Court Martial Case No. 162658

Name:	Rank or Rating:	Date Received:
Kasuo NAKAMURA	then a first lieut., IJA	17 May 1948
Chihiro KOKUBO	then a sergeant major, IJA	
Yoshimori NAGATOME	then a corporal, IJA	
(Tried in joinder)		

Trial Held (Place):	Date of Trial:
Guam, Marianas Islands	6 January 1948

OFFENSES:

I - MURDER.

Spec 1 - September 4, 1944, Babelthup Is., killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Babelthup Is., killed by shooting named unarmed British national held captive by armed forces of Japan. (Nakamura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Nakamura only)

Spec 1 - September 4, 1944, Babelthup Is., failed to control persons under his command, and allowed them to kill one unnamed American prisoner of war.

Spec 2 - September 4, 1944, Babelthup Is., failed to protect three unnamed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Babelthup Is., allowed persons under his command to kill named unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Babelthup Is., failed to protect named unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Pleas:

Not Guilty to all.

Findings:

As to Nakamura: I - Guilty (Spec 1 proved in part); II - Guilty (Specs 1 and 2 not proved).

As to Kokubo: I - Guilty (Spec 1 only, proved in part).

As to Nagatome: I - Not Guilty (Spec 1), Acquitted.

Sentences:

As to Nakamura and Kokubo: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommends to SecNav that death sentences be commuted to life imprisonment, because accused were acting under orders.

0786

Case No. 10000 (7-12-48) etc. General Court Martial Case No. 10000

Name:	Rank or Rating:	Date Received:
Kameo HAKAMURA	then a first lieutenant, IJA	17 May 1945
Chikara HAKAMURA	then a sergeant major, IJA	
Yoshinori HAKAMURA	then a corporal, IJA	
(Wired in Joliner)		

Trial Held (Place):	Date of Trial:
Guam, Marianas Islands	6 January 1948

CHARGES:

I - MURDER.

Spec 1 - September 4, 1944, Rabaul Island, killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Rabaul Island, killed by shooting and unarmed British national held captive by armed forces of Japan. (Hakamura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Hakamura only)

Spec 1 - September 4, 1944, Rabaul Island, failed to control persons under his command, and allowed them to kill one unarmed American prisoner of war.

Spec 2 - September 4, 1944, Rabaul Island, failed to protect three unarmed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Rabaul Island, allowed persons under his command to kill and unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Rabaul Island, failed to protect and unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Verdict:

Not Guilty to all.

Findings:

As to Hakamura: I - Guilty (Spec 1 proved in part); II - Guilty (Specs 1 and 2 not proved).

As to Hakeba: I - Guilty (Spec 1 only, proved in part).

As to Hagatani: I - Not Guilty (Spec 1). Acquitted.

Sentences:

As to Hakamura and Hakeba: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommend to Secretary that death sentences be commuted to life imprisonment, because accused were acting under orders.

0787

Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kohabe approved. 24 April 1946.
Nakamura and Kohabe being held in confinement at the War Criminal Detention, U.S. Marine Barracks, Guam, pending instructions from higher authority.
Kagawa released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Kohabe, app'd. ensure in GA's recommendation that death sentences be commuted to life terms. Record, in conformity with App. B-14, H.C. & R., 1937, and CDR ver. 01222 of 20 Nov. 1945, referred to SecNav.

NAVY DEPARTMENT

Office of the Judge Advocate General

20 JUL 1946

From: The Judge Advocate General.
Re: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

C. J. WHEELER
Judge Advocate General of the Navy

0788

COM JUDGE (7-15-48) etc

General Court Martial Case No. 14888

Name:	Rank or Rating:	Date Received:
Kazuo KAKIMURA	then a first lieutenant, IJA	17 May 1948
Chihito KOBAYASHI	then a sergeant major, IJA	
Yoshimori KAKIMURA (Tried in joinder)	then a corporal, IJA	

Trial Held (Place):

Date of Trial:

Camp, Marianas Islands

6 January 1948

OFFENSES:

I - MURDER.

Spec 1 - September 4, 1944, Rabaulthump Is., killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Rabaulthump Is., killed by shooting named unarmed British national held captive by armed forces of Japan. (Kakimura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Kakimura only)

Spec 1 - September 4, 1944, Rabaulthump Is., failed to control persons under his command, and allowed them to kill one unarmed American prisoner of war.

Spec 2 - September 4, 1944, Rabaulthump Is., failed to protect three unarmed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Rabaulthump Is., allowed persons under his command to kill named unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Rabaulthump Is., failed to protect named unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Pleas:

Not Guilty to all.

Findings:

As to Kakimura: I - Guilty (Spec 1 proved in part); II - Guilty (Specs 1 and 2 not proved).

As to Kobayashi: I - Guilty (Spec 1 only, proved in part).

As to Kakimura: I - Not Guilty (Spec 1), Acquitted.

Sentences:

As to Kakimura and Kobayashi: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommend to Secretary that death sentences be commuted to life imprisonment, because accused were acting under orders.

0789

Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Katoke approved. 24 April 1948.

Nakamura and Katoke being held in confinement at the War Criminal Detachment, U.S. Marine Barracks, Guam, pending instructions from higher authority. Negatives released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Katoke, app'd. Commr in GA's recommendation that death sentences be commuted to life imprisonment, in conformity with App. B-14, H.C. & R., 1957, and CMO ser. 01722 of 28 Nov. 1945, referred to Secretary.

NAVY DEPARTMENT

Office of the Judge Advocate General

20 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

C.L. HUGHES
Judge Advocate General of the Navy

0790

COM JEWELL (7-15-48) g/c General Court Martial Case No. 140000

Name:	Rank or Rating:	Date Received:
Kazuo HAKAMURA	then a first lieutenant, IJA	17 May 1948
Chihiro KOKUBO	then a sergeant major, IJA	
Yoshinori HAGAUCHI (Tried in jeinder)	then a corporal, IJA	

Trial Held (Place):	Date of Trial:
Guam, Marianas Islands	6 January 1948

OFFENSES:

I - MURDER.

Spec 1 - September 4, 1944, Rabelthup Is., killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Rabelthup Is., killed by shooting named unarmed British national held captive by armed forces of Japan. (Hakamura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Hakamura only)

Spec 1 - September 4, 1944, Rabelthup Is., failed to control persons under his command, and allowed them to kill one unarmed American prisoner of war.

Spec 2 - September 4, 1944, Rabelthup Is., failed to protect three unarmed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Rabelthup Is., allowed persons under his command to kill named unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Rabelthup Is., failed to protect named unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Pleas:

Not Guilty to all.

Findings:

As to Hakamura: I - Guilty (Spec 1 proved in part); II - Guilty (Specs 1 and 2 not proved).

As to Kokubo: I - Guilty (Spec 1 only, proved in part).

As to Hagauchi: I - Not Guilty (Spec 1), Acquitted.

Sentences:

As to Hakamura and Kokubo: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommends to SecNav that death sentences be commuted to life imprisonment, because accused were acting under orders.

Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kikubo approved. 24 April 1948.

Nakamura and Kikubo being held in confinement at the War Criminal Stockade, U.S. Marine Barracks, Guam, pending instructions from higher authority.
Nagatani released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Kikubo, app'd. concurs in GA's recommendation that death sentences be commuted to life imprisonment, in conformity with App. B-14, W.C. & N., 1947, and CNO ser. 01P22 of 28 Nov. 1945, referred to SecNav.

NAVY DEPARTMENT

Office of the Judge Advocate General

30 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-22)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G.L. RUSSELL
Judge Advocate General of the Navy

0792

GENERAL (7-15-48) s/c **General Court Martial Case No. 16222**

Name:	Rank or Rating:	Date Received:
Kazuo HAKAMURA	then a first lieut., IJA	17 May 1948
Chihiro KOKUBO	then a sergeant major, IJA	
Yoshimori HIGASHI	then a corporal, IJA	
(Tried in joinder)		

Trial Held (Place):	Date of Trial:
Guam, Marianas Islands	6 January 1948

OFFENSES:

I - MURDER.

Spec 1 - September 4, 1944, Rabelthump Is., killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Rabelthump Is., killed by shooting named unarmed British national held captive by armed forces of Japan. (Hakamura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Hakamura only)

Spec 1 - September 4, 1944, Rabelthump Is., failed to control persons under his command, and allowed them to kill one unarmed American prisoner of war.

Spec 2 - September 4, 1944, Rabelthump Is., failed to protect three unarmed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Rabelthump Is., allowed persons under his command to kill named unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Rabelthump Is., failed to protect named unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Pleas:

Not Guilty to all.

Findings:

As to Hakamura: I - Guilty (Spec 1 proved in part); II- Guilty (Specs 1 and 2 not proved).

As to Kokubo: I- Guilty (Spec 1 only, proved in part).

As to Higashi: I- Not Guilty (Spec 1), Acquitted.

Sentences:

As to Hakamura and Kokubo: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommend to SecNav that death sentences be commuted to life imprisonment, because accused were acting under orders.

0793

Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kakebe approved. 24 April 1948.

Nakamura and Kakebe being held in confinement at the War Criminal Stockade, U.S. Marine Barracks, Guam, pending instructions from higher authority.

Nagatani released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Kakebe, app'd. Encure in GA's recommendation that death sentences be commuted to life impris. Record, in conformity with App. B-14, H.C. & E., 1937, and GHO ser. 01723 of 20 Nov. 1945, referred to SecNav.

NAVY DEPARTMENT

Office of the Judge Advocate General

30 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-32)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G.L. HUSKILL
Judge Advocate General of the Navy

0794

NAME	Rank or Rating	Date Received
Kazuo HAKAMURA	then a first lieut., IJA	17 May 1943
Chihiro KOKUBO	then a sergeant major, IJA	
Yoshimori HASEGAWA (Tried in joinder)	then a corporal, IJA	

Trial Held (Place):	Date of Trial:
Camp, Marianas Islands	6 January 1945

OFFENSES:

I - MURDER.

Spec 1 - September 4, 1944, Rabelthump Is., killed by beheading with swords and shooting with firearms three unarmed American prisoners of war, unknown.

Spec 2 - December 29, 1944, Rabelthump Is., killed by shooting named unarmed British national held captive by armed forces of Japan. (Hakamura only)

II - VIOLATION OF THE LAW AND CUSTOMS OF WAR. (Hakamura only)

Spec 1 - September 4, 1944, Rabelthump Is., failed to control persons under his command, and allowed them to kill one unnamed American prisoner of war.

Spec 2 - September 4, 1944, Rabelthump Is., failed to protect three unnamed American prisoners of war, and allowed members of the armed forces of Japan to kill them.

Spec 3 - December 29, 1944, Rabelthump Is., allowed persons under his command to kill named unarmed British national held captive by armed forces.

Spec 4 - December 29, 1944, Rabelthump Is., failed to protect named unarmed British national held captive by armed forces of Japan, and allowed members of said armed forces to kill him.

Pleas:

Not Guilty to all.

Findings:

As to Hakamura: I - Guilty (Spec 1 proved in part); II - Guilty (Specs 1 and 2 not proved).

As to Kokubo: I - Guilty (Spec 1 only, proved in part).

As to Hasegawa: I - Not Guilty (Spec 1), Acquitted.

Sentences:

As to Hakamura and Kokubo: to be hanged by the neck until dead, two-thirds of the members concurring.

C.A. Action:

Recommends to SecNav that death sentences be commuted to life imprisonment, because accused were acting under orders.

0795

Subject to remarks, proceedings approved, findings of guilty and sentences as to Nakamura and Kelmbo approved. 24 April 1948.
Nakamura and Kelmbo being held in confinement at the War Criminal Stockade, U.S. Marine Barracks, Guam, pending instructions from higher authority.
Nagatomo released from arrest and returned to Japan.

Reviewing Authority Action:

Proceedings, findings of guilty and sentences as to Nakamura and Kelmbo, app'd. concurs in GA's recommendation that death sentences be commuted to life imprisonment, in conformity with App. B-14, W.C. & N., 1937, and GNO ser. OLP22 of 28 Nov. 1945, referred to SecNav.

NAVY DEPARTMENT

Office of the Judge Advocate General

30 JUL 1948

From: The Judge Advocate General.
To: The Chief of Naval Operations (Op-32)

The proceedings, findings and sentences in the foregoing military commission case, and the actions of the convening and reviewing authorities thereon, in the opinion of the Judge Advocate General, are legal.

Referred for information.

G.L. RUSSELL
Judge Advocate General of the Navy

15 March 1948-2000

Nakamura, Kazuo
Kopuho, Chikara
Yoshinori

GENERAL COURT MARTIAL DATA SHEET

former Capt, I.J.M.
sup. maj.
corporal

(Last Name) (First Name) Middle Initial (Rating) (Classification)

Fuller
(Reviewing Officer)

Docket No. *167658*

	Yes	No	Remarks
1. Was the court convened by proper authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. Are the precept and any modifications thereof in letter form certified as true copies by the judge advocate?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3. If there have been modifications by despatch and no confirming letters attached to the record, are the despatches signed by the convening authority (not the judge advocate)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
4. Does the record show place and date the court met?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5. Did the court have jurisdiction of the person of the accused?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6. Did the court have jurisdiction of the offenses charged?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
7. Were the members and judge advocate shown to be present named in the precept or its modification?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. Were there five members or more present at every meeting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Were any "members" present who were not legally assigned?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Were any members legally assigned not present or accounted for?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Was the accused asked whether he desired counsel?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. Was the accused extended the right of challenge as to members?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. Were the judge advocate, the members, the reporter and the interpreter sworn?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Did the accused acknowledge receipt of a copy of the charges and specifications?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
15. Was the accused asked if he had any objection to the charges and specifications?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Did the accused object to the charges and specifications or any of them?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Does each specification state an offense?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
18. Does each specification support the charge under which laid?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
19. Is the Statute of Limitations involved?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
20. Was the accused asked if he was ready for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

APPROVED AND FORWARDED: *[Signature]*
Review Panel No. *11*

0797

	Yes	No	Remarks
21. Does the record show that no witnesses not otherwise connected with the trial were present?	<input checked="" type="checkbox"/>		
22. Was the accused properly arraigned?	<input checked="" type="checkbox"/>		
23. Was the accused warned as to the effect of his pleas of guilty?	<input checked="" type="checkbox"/>		
24. Was the accused's response, if any, recorded?	<input checked="" type="checkbox"/>		
25. Were the witnesses, if any, sworn?	<input checked="" type="checkbox"/>		
26. Was the accused afforded opportunity to make a statement?	<input checked="" type="checkbox"/>		
27. Was the accused's statement consistent with his pleas? (applies only to pleas of "guilty")	<input checked="" type="checkbox"/>		
28. Was the accused afforded opportunity to make an argument?	<input checked="" type="checkbox"/>		
29. Are the findings properly recorded as prescribed by Naval Courts and Boards?	<input checked="" type="checkbox"/>		
30. If the finding includes exceptions and substitutions, does the specification as amended support original or lesser included offense?	<input checked="" type="checkbox"/>		
31. Is the evidence, if any, of previous convictions admissible?	<input checked="" type="checkbox"/>		
32. Is the sentence legal, not excessive (NC&B, 457), and in proper form?	<input checked="" type="checkbox"/>		
33. Was the sentence authenticated by the signatures of all members of the court and of the judge advocate?	<input checked="" type="checkbox"/>		
34. Was the record authenticated by the signature of the president of the court and of the judge advocate?	<input checked="" type="checkbox"/>		
35. Was clemency recommended by any members of the court?	<input checked="" type="checkbox"/>		
36. Was the accused's receipt for a copy of the proceedings appended to the record?	<input checked="" type="checkbox"/>		
37. Does the action of the convening authority? (a) Have a date and signature? (b) Expressly approve the proceedings, findings and sentence? (c) Is the action otherwise legal?	<input checked="" type="checkbox"/>		
38. Was there loss to the Government?	<input checked="" type="checkbox"/>		
39. Is the general court martial card properly made out?	<input checked="" type="checkbox"/>		
40. Additional Remarks.			

7/15/48
(Date)

[Signature]
(Signature of reviewing officer)

0798

FF12/P13-10(3)
02-MEC-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS



Serial: 11030

8 JUN 1948

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG).
Subject: NAKAMURA, Kazuo, former first lieutenant, IJA and
KOKUBO, Chihiro, former sergeant major, IJA - petitions
and documents for clemency.
Reference: (a) ComMarianas Area action, file FF12/Al7-10(2) over
O2-JDM-ro, serial 4542, dtd 24 Apr. 1948, in the case
of NAKAMURA, Kazuo, et al.
(b) CinCPacFlt action, file Al7-25, serial 2212, dtd 11
May 1948, in the case of NAKAMURA, Kazuo, et al.
Enclosures: (A) Seven petitions from ISHIMITSU, Shikaichi and eleven
others, in behalf of NAKAMURA, Kazuo, in English,
dated 29 Feb. 1948.
(B) Four petitions from SAITO, Hideichi and eleven others,
in behalf of KOKUBO, Chihiro, in Japanese with English
translation, dated 27 Feb. 1948.

1. A military commission convened by this command on Guam tried
subject named Japanese in the case of NAKAMURA, Kazuo, former first lieutenant,
IJA, et al for war crimes committed against three American prisoners of war.
NAKAMURA, Kazuo and KOKUBO, Chihiro were convicted and sentenced to be hanged.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 24 April 1948 and forwarded to the Commander in Chief,
Pacific and U.S. Pacific Fleet, the reviewing authority. By reference (b), it
was referred to the Secretary of the Navy.

3. Enclosures (A) and (B) were received by Commander Marianas
subsequent to the trial of subject war criminals and are forwarded for such
action as may be considered appropriate.


C.H. WRIGHT

cc: CinCPacFlt

0799

Yamaguchi, Feb. 29, 1948

CHARACTER
OF
KAZUO NAKAMURA (War Criminal Suspect)

Home Address: Keikoya, Kagawa, Yamaguchi City,
Yamaguchi Prefecture, Japan.
Born : July 7, 1906.

Stated by: Shikaichi Ishimitsu,
Nakamura's elder brother;
Teacher at Yamaguchi Middle School.

Address: 2,305 Hirai Yamaguchi City.
Born : July 16, 1901.

(A) I should state at first that his character is exceedingly affectionate towards his families and relatives, the fact of which is due to his sincere belief in Buddhism. Following items, I hope, would explain the fact more clearly.

(1) On October 7, 1932, his father died at his native home: his mother had been dead since December previous year. Indeed he, being the youngest, had been much loved by our late parents, but he mourned his parents' death more bitterly than any other of his brothers. And he, despite being the youngest, suggested to us brothers that he, together with other brothers, would furnish our house with a fine Buddhist altar and set up tomb-stones for the late parents as a memorial service. He sponsored this service and finished it at last. Although such a deed as his might seem to be a superficial, yet the deed was chiefly due to his keen affection for parents. We have got much satisfied with this memorial service.

(2) On August 3, 1938, when his nephew, (my eldest son) past away on a sudden attack of illness, I burst into tears. He, then, was in Tokyo, and being very busy, was not able to come home to mourn, but I received a mourning letter from him which, I cannot forget to this day, deeply impressed my heart with his kindness and sympathy. He was one of the most sincere mourners of all of my relatives, I believe.

0800

(3) On May 13, 1943, when his second-eldest daughter died in Matsuyama where his then official post required to live, there was a period of great grief. Since then, devoting himself to the faith in Buddhism, he would recite the Buddhist Scriptures every anniversary of his daughter's death. It has been reiterated to this day, I believe. Some kinds of the holy sūtra, he has recited so often as to know them by heart, I think.

(B) Although the circumstances compelled him to remain in army after finishing his compulsory service, he was rather fitted, in his character, for trade or manufacturing than any sort of official profession, civil or military, and, when young, he really intended to be engaged in manufacturing or trade. You will observe the fact in following.

(1) Having finished primary school, he intended to be a man of business and was apprenticed to a tradesman in Shimonoseki, Yamaguchi Pref. During his apprenticeship he was praised by the master for his diligence and honesty.

(2) Again, he was apprenticed to a footwear-maker. In this sphere of trade, he showed remarkable skillfulness, having mastered the arts so soon.

(3) After finishing his compulsory service in army, he should have been back into the world of trade, the arts of which he had learned so completely, but he was persuaded to remain in army thereafter, perhaps driven by the condition of the world in that time. After enlisted, he did his best to carry his duties with exceedingly keen sense of responsibility, I believe. During his service, sometimes he felt inclined for being a civilian again. When I went up to Tokyo, where his new post had called him shortly before (maybe, towards the end of 1935 thereabouts), then I saw him and heard him telling me that he would rather be resigned from his post for being back into civil trade. Thereat, as I didn't like to see him giving up his post I persuaded him to remain what he was then, I remember. Later on he was tossed about by the waves of wartime, and was not allowed to pay attention of his own future. .

(C) Being of keen sense of responsibility, he treated his men with great affection. He was willing to do everything that might do good for others, while he was precise, thoughtful and intellectual in actions. Although I am not aware how he actually carried his official duties, I believe as follows, considering from his character:

- (a) He carried his duties with responsibility.
- (b) He treated his men with great affection.
- (c) He behaved himself according to justice.

I have described his character hereinbefore so far as I know. His case is now on investigation as war criminal suspect, I suppose.

I, with other relatives and friends of his, really hope that he would come home again as a civilian, and become able to contribute himself to the development of our society.

Signed: Shikaichi Ishimitsu,

0802

TO:

Kagawa, Yamaguchi City, Feb. 28, 1948

PETITION
ON
KAZUO NAKAMURA'S WAR CRIMINAL CASE

Petitioner:

Keisuke ^{Kami} Nakamura ,	Kagawa, Yamaguchi City.
Shuichi Munehisa,	"
Yasutaro Watanabe,	"
Yashio Watanabe,	"
Kuraichi Watanabe,	"

Sir,

We hereby beg your kind consideration over
Kazuo Nakamura's war criminal case.

His character is as follows:

- (1) Good in nature, considerate, kind to others.
- (2) Wise and intellectual, full of originality
in everything.
- (3) Respects his superiors, kind to comrades,
and treats his men with greatest affection.
- (4) Kind to his parents since he was young,
Respects his elder brothers and sisters,
while harmonious with neighbors, and
Spoken well of by many a neighbor.
- (5) Precise in everything, full of keensense of
responsibility.
- (6) Full of justice, behaving himself always
according to it.

Signed: Keisuke. Kamimura.

Shuichi. Munehisa

Yasutaro. Watanabe

Yashio. Watanabe.

Kuraichi. Watanabe.

0803

Yamaguchi, Feb. 28, 1948

CHARACTER
OF
KAZUO NAKAMURA (42 years old)

Stated by:

Zenichi Tanaka, Kazuo's brother.
~~Seki~~ Kazuo Nakamura, "

We hereby state that Kazuo Nakamura,

- (1) is mild tempered, thoughtful, and kind to his parents,
- (2) of delicate constitution, not able to stand hard work.
- (3) Unselfish, never made his own fortune to this day,
- (4) respected by neighbors since demobilized, and working as a farmer, retired from any kind of official post, and
- (5) ~~has been~~ never been punished on any kind of offence.

Signed: Zenichi Tanaka.

Seki Nakamura.

0804

Keikoya, Kagawa, Yamaguchi City, Feb. 28, 1948

CHARACTER
OF
KAZUO NAKAMURA

Stated by: Eiichi Fujitsu,
Chief of Keikoya Farmers' Association,
Kagawa, Yamaguchi City.

I hereby state that;

Kazuo Nakamura

- (1) is considerate and good-tempered,
- (2) since demobilized, has been an honest farmer,
devoting himself to agriculture in this village,
- (3) is respected by neighbors.
- (4) His wife and four children are now staying in
his brother Kanzo Nakamura's,
not having any fortune,
being exceedingly poor, pitiable.

cf.

- (1) Our village consists of farmers, (52 households).
- (2) Kanzo Nakamura, Sen-ichi Tanaka
(both being his brother) are good farmers
deserving respect.
- (3) Shikaichi Ishimitsu (his brother),
teacher at Yamaguchi Middle School,
is highly virtuous, and one of the
best teachers over this prefecture.

Signed: Eiichi Fujitsu

0805

95, Ezaki, Yamaguchi City, Feb. 28, 1948.

CHARACTER
OF
KAZUO NAKAMURA

Stated by: Michihiro Okamura,
95, Ezaki, Yamaguchi City.

In 1926, when I was in service at 42nd. Infantry Regiment, Yamaguchi, as a second Lieutenant, then Kazuo Nakamura, ex-provost captain was recruited into 9th. company thereof as a private.

As I come from the same village as his, I was somewhat surprised to see him enlisted. Therefore, I, being a recruits' trainer, payed special attention to him.

So far as I remember, he was good-tempered, somewhat shy, and thoughtful in actions. Consequently he was wavering in decision, and short of spontaneity, I believe.

Signed: Michihiro Okamura.

0806

Keikoya, Kagawa, Yamaguchi City, Feb. 28, 1948

CHARACTER
OF
KAZUO NAKAMURA

Stated by: Fujiko Nakamura,
Kazuo's wife.

I hereby state that;

Kazuo Nakamura

- (1) is mild in temper, full of affection and justice,
- (2) is loved by neighbors, and everybody that becomes acquainted with him,
- (3) is especially affectionate towards his families,
- (4) has been an honest and earnest farmer after demobilized, and
- (5) is rather delicate in constitution.

Signed: Fujiko Nakamura

0807

Kagawa, Yamaguchi City, Feb. 28, 1948

CHARACTER
OF
KAZUO NAKAMURA

Stated by: Rika Watanabe,
Nakamura's elder sister.
(Born on Apr. 22, 1881)

I hereby state that;

Kazuo Nakamura

- (1) has been precise in actions since his childhood,
 - (2) has been good and full of affection towards families,
 - (3) has been frank and sincere towards his brothers, sisters and other relatives,
 - (4) has been friendly in social relations and
 - (5) has been of justice and free from selfish actions, very severe towards any breach of justice.
- Thereinbefore I have stated what he has been. What he is now I cannot be aware of, because we (Nakamura and I) are not living together today.

Signed: Rika Watanabe

0808

27 February 1948

To whom it may concern:

Mr. Chichiro Kokubo graduated from the Hokkaido Prefectural Sapporo First middle School with us in 1932, and has long been highly esteemed by us for his honorable every day speech and deed. That is, he is really worthy to be esteemed by his friends.

Because:

1. He is gentle by nature and true to his friends.
2. He is benevolent thanks to Christian education his childhood.
3. and last but not least, he has a strong sense of righteousness.

We hear that he is now being tried as a war criminal suspect. However, judging from his character, we can readily swear before God that he is not such a man to do an inhuman act.

Graduates in 1932 of the Hokkaido Prefectural Sapporo First Middle School.

Hideoichi Saito (No. 1345, South 6, West 17, Sapporo)

Ryozo Iguchi (No. 1288, South 5, West 11, Sapporo)

Shigeatsu Kadooka (South 12, West 18, Sapporo)

Shunpei Mochida (North 3, West 22, Sapporo)

Yuzo Ise, (No. 46, Main Street, West 20, Sapporo)

Shosuke Asanuma (South 19, West 12, Sapporo)

Takuzo Muraya (South 1, West 17, Sapporo)

Kengo Hagashi (South Main Street, West 10, Sapporo)

人格證明書

北海道廳立學校

(第41)

小久保千尋

右ノ者ハ本校第三十六回卒業生ニテ在學中資性強
厚志操確實教師並ビニ生徒間ノ信望厚ク且ツ
各種ノ運動競技ヲ好ミスポーツマンシップヲ遺
憾ナク發揮シタ人物デアリマス

昭和二十三年二月二十四日

北海道立札幌第一中學校長北浦延治郎



24 February 1948.

To whom it may concern:

Mr. Chihiro Kokubo graduated from this school in 1932 (7th year of Showa). While in school, he was mild-mannered and a boy of principle, too, and enjoyed the utmost confidence of both teachers and classmates. Besides, he was a great lover of sports and always proved himself to be a good sportman in any game.

Enjiro Kitaura,
Principal of the Hokkaido Prefectural
Sapporo First Middle School .

0811

24 February 1948.

To whom it may concern:

Mr. Chihiro Kokuho graduated from this school in 1932. (7th year of Showa). While in school, he was mild-mannered and a boy of Principle, too, and enjoyed the utmost confidence of both teachers and classmates. Besides, he was a great lover of sports and always ~~and~~ proved himself to be a good sportman in any game.

Enjiro Kitaura,
Principal of the Hokkaido Prefectural
Sapporo First Middle School.

人格証明書

小久保千尋

大正三年三月六日生

右、若、私等が実弟デアリシテ幼少、砌、
小久保家ニ轉籍シテ者デアリマス其、人格ニツキ
ミシラハ九記ノ通リデアリマス

記

一、愛直デアリテ正義ト責任感、強イ者デス

二、飢寒ニ對シテモ絶大愛ヲモツテ弱者特ニ無抵抗

抗者ニ對シテハ同情ヲ以テアラフコトヲ神條ト

トシテ居リマシタ

三、親ニハ孝、兄弟、友人ニハ信義、厚イ者デシタ

四、家庭ニアツテハ、良キ夫デアリ、良キ父デアリマ

シタガ家庭生活ハ極メテ短イモノデアリマス

五、女スルニ及ビ之哥姉的ニ表シテ居リ特長ガ

円熟サヲ賜フテ人間トナシ居マシタ

右、通り人格證明致シマス

昭和二十三年三月四日

北條北五郎西三自筆地

長兄

五十嵐有一

次兄

五十嵐寛治

4 March 1948.

To whom it may concern:

Chihiro Kokubo (Born on March 6, 1913) is our own younger brother, and when a child, he was adopted into the Kokubo family. As for his character, we can say with confidence as follows:

1. He is simple and honest and has a strong sense of righteousness and responsibility.
2. He has a tender feeling even towards birds and animals, and makes it a principle to take sides with the weak, especially non-resistant.
3. He is obedient to his parents and faithful to his brothers and friends.
4. In his home, he was a good husband and father, but his home life was very short.
5. With his years, these traits of his have become more and more matured and have been blended into a mild character.

Seiichi Igarashi, and
Kanji Igarashi,
No. 1, North 5, West 11, Sapporo.

0814

4. March 1948.

To whom it may concern:

Chihiro Kokubo (Born on March 6, 1913) is our own younger brother, and when a child, he was adopted into the Kokubo family. As for his character, we can say with confidence as follows:

1. He is simple and honest and has a strong sense of righteousness and responsibility.
2. He has a tender feeling even towards birds and animals, and makes it a principle to take sides with the weak, especially non-resistant.
3. He is obedient to his parents and faithful to his brothers and friends.
4. In his home, he was a good husband and father, but his home life was very short.
5. With his years, these traits of his have become more and more matured and have been blended into a mild character.

Seiichi Igarashi, and Kanji
Igarashi,
No. 1, North 5, West 11, Sapporo.

人格證明書

小久保千尋

大正二年三月六日生

有者昭和二十一年九月六日當社營業局廣告部員トシテ入社昭和二十二年八月十六日退職トシテ起訴サレタルタメ休職昭和二十二年十二月十六日退職セリ
在職中ニ於ケル同人ハ性質溫厚篤實品行方正ニシテ不行狀ノ最實ナク精勵格勸責任感強ク能力亦優秀ナリ
從ツテ同僚間ノ信望モ厚ク他ノ模範トスルニ足ルモノナリ
右證明ス

昭和二十三年二月二十六日

北海道新聞社

社長 阿部 謙



26 February 1948.

To whom it may concern:

Mr. Chihiro Kokubo (Born on March 6, 1913) joined this company on September 6, 1946 and was a member of the staff of the Advertisement Section of the Business Department, and retired on December 16, 1947 on account of having been prosecuted for war crime on August 16, 1947. While in Office, he was mild-mannered and well-behaved, diligent and hard-working and had a strong sense of responsibility, and his ability was very excellent. Therefore he enjoyed the utmost confidence of his colleagues.

Shizuo Abe.
President of the Hokkaido Shinbun Sha.

0817

26. February 1948.

To whom it concern:

Mr. Chihiro Kokubo (Born on March 6, 1913) joined this company on September 6, 1946 and was a member of the staff of the Advertisement Section of the Business Department, and retired on December 16, 1947 on account of having been prosecuted for war crime on August 16, 1947. While in office, he was mild-mannered and well-behaved, diligent and hard-working and had a strong sense of responsibility, and his ability was very excellent. Therefore he enjoyed the utmost confidence of his

colleagues.

Shiguo Abe.
President of the Hokkaido
Shinkun Sha.

FF12/P13-10(3)
02-100-fsk

Serial: 11030

8 JUN 1948

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG).

Subject: NAKAMURA, Kazuo, former first lieutenant, IJA and
KOKUBO, Chihiro, former sergeant major, IJA - petitions
and documents for clemency.

Reference: (a) ComMarianas Area action, file FF12/A17-10(2) over
02-JDM-ro, serial 4542, dtd 24 Apr. 1948, in the case
of NAKAMURA, Kazuo, et al.
(b) CinCPacFlt action, file A17-25, serial 2212, dtd 11
May 1948, in the case of NAKAMURA, Kazuo, et al.

Enclosures: (A) Seven petitions from ISHIMITSU, Shikaichi and eleven
others, in behalf of NAKAMURA, Kazuo, in English,
dated 29 Feb. 1948.
(B) Four petitions from SAITO, Hideichi and eleven others,
in behalf of KOKUBO, Chihiro, in Japanese with English
translation, dated 27 Feb. 1948.

1. A military commission convened by this command on Guam tried
subject named Japanese in the case of NAKAMURA, Kazuo, former first lieutenant,
IJA, et al for war crimes committed against three American prisoners of war.
NAKAMURA, Kazuo and KOKUBO, Chihiro were convicted and sentenced to be hanged.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 24 April 1948 and forwarded to the Commander in Chief,
Pacific and U.S. Pacific Fleet, the reviewing authority. By reference (b), it
was referred to the Secretary of the Navy.

3. Enclosures (A) and (B) were received by Commander Marianas
subsequent to the trial of subject war criminals and are forwarded for such
action as may be considered appropriate.

C.H. WRIGHT

cc: CinCPacFlt

08 19

BEST COPY AVAILABLE

FF12/P13-10(3)
02-MEC-fsk

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS



Serial: 10565

25 MAY 1948

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG).

#162658
Panel IV

Subject: KOKUBO, Chihiro, former sergeant major, IJA -
petition for clemency.

Reference: (a) ComMarianas Area action, file FF12/A17-10(2) over
02-JDM-ro, serial 4542 dtd 24 Apr. 1948, in the
case of NAKAMURA, Kazuo, et al.
(b) CinCPacFlt action, file A17-25, serial 2212, dtd 11
May 1948, in the case of NAKAMURA, Kazuo, et al.

qur

Enclosure: (A) Petition from MATSUKI, Hiroshi, brother-in-law, dated
December 20, 1947, in behalf of KOKUBO, Chihiro, in
Japanese with English translation.

1. A military commission convened by this command on Guam tried
subject named Japanese in the case of NAKAMURA, Kazuo, et al for war crimes
committed against three American prisoners of war. KOKUBO, Chihiro was con-
victed and sentenced to be hanged.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 24 April 1948 and forwarded to the Commander in
Chief, Pacific and U.S. Pacific Fleet. By reference (b) it was referred to
the Secretary of the Navy.

3. Enclosure (A) was received by Commander Marianas subsequent
to the trial of subject named war criminal and is forwarded for such action
as may be considered appropriate.

C.H. Wright
C.H. WRIGHT

cc: CinCPacFlt



0820

嘆 願 書

私はパラオ本島に於ける戦犯容疑者としてガム島に送られました元日本
大佐 小久保 千尋の事実子の兄松本博であります。

閣下の御寛容にあまえて妹一家を養育するの命り兄として小久保を辯護する
の自由を少しくお与へ願ひ閣下の御明察を仰ぎ奉ります。

小久保は昭和二十二年七月七日私の宅より参考人としてG.H.Q.法務部カー
ペンター大佐殿のもとに出頭致しました。

私は彼を知る者の一人として誤れる犠牲的精神が潜存してはゐるなりかを特

に恐れて居ります。若し今回の事件についても他の者の責任に帰すべき事
実に対して元上官又は部下をかばひ自己の犠牲によつて解決を計るべく申
立に不充分の事なれども裁きに誤りを見た場合裁きの眞実性を失ひ、独り
本人の誤るる犠牲感の満足と諦観のみにて罪を憎み人を憎まぬ公正なる
神の裁きを冒瀆するものであると存じます。

パラオ本島に於ける三名の貴国軍人の処刑事件は憲兵隊長宮崎大佐並に上
官中村教夫大尉の命令を小久保が受け担当者立場に立つたことによつて
小久保が罪に問われました。

296
Enclosure to O. No. (344.5)

当時の状況より見て上官の命令を拒否することが可能であつたがどうかについで御考察をお願い致したいと存じます。

私も軍隊の生活を終戦一年前三ヶ月の短い期間でしかが貴国の人には理解するさへ困難なごんたの中で冷やかに批判する機会が与えられましたが命令は絶対的であり星一つの差が總てを支配し盡し個人の自由はトイレットの中以外は形の上に現すことも出来ないといふ事実を体験して来たのであります。上官の命令は天皇の命令であり天皇は絶対神聖にして犯すべからざるものであつたことは日本の憲法であり國民の寧しく尊重せられて怪

しなかつた事実であります。上官の命令は事の如何を問はず服従すべしの一項で整然たる組織がなされて居たのも実は嚴密に梱包せられて居た荷物に過ぎませんでした。

かうした環境の中に小久保は受命者として死の担当を尊重される立場に堅定されたのであります。此の不幸なる受命者が他の者であつても命令を場合には本人の意志の如何に拘らず担当者の立場に置かれたこと、存じます。

次に小久保が斬つた時中村大尉が禁帯に属く叱つて居合せに兵二名に命じ

て銃を撃たせて居る事実によつて小久保に殺人をさせ得ない神の御意志が
仰いにこと、

通常此の様な場合に於て相手が無抵抗である時は斬り損いし云ふことは考
えられないのでありますが、此の事實は不幸なる命令を強要せられた時
憲兵としての小久保の立場とクリスチャンとしての信念とのギャップを僅
かな詩句に如何に描き通したかを明確に出来る証書であり私は日本軍隊の
命令を神の御意志によつて中絶させて頂いた事を感謝するものであります。
彼が私と同じ札幌第一中学校に学ぶ一級下でいたがニッケネームに「聖人

と呼ばれたクリスチャンでした。その彼が外地での様な生活をして来た
かも今回の事件後南洋に居った人々を訪ねて記しましたところ私生活に
於ても恥ずるところの無いまれに見る立派なものであったことを聞くこと
が出来ました。彼の専攻であり私の妹である美子は私達一家の住んで居る札
幌の家の近所のセブンスデーの末人宣教師ジエックス大専に非常な愛され、
師米の際に養女として望まれたことなほ思いおこれます。又小久保の居な
い妹一家の苦難の道も神の試練として身走ひし母と共に祈る居る姿を重く
離れて思ひ存する時私自身精進心を押えて小久保に正しく神の裁きを受け

と呉れる様祈るのみであります。

何卒事度と余すところなく御取調への上当時の本人の立場及び小久保の無
い悲惨なる家庭の事情並に老母の切なる祈りを御汲み取り頂き情状を御酌
量下され小久保の家庭に夫と父をお与え下さる日の一日も早き様御願ひ申
上げます。

昭和二十二年十二月二十日

東京都港區芝三田北寺の、番地

松 木 博 雄

統合軍總司令部

ダグラス・マッカーサー閣下

0824

P E T I T I O N

To His Excellency General of the Army Douglas MacArthur,
Supreme Commander for the Allied Powers.

Sir,

I, the undersigned, MATSUKI Hiroshi by name, beg to present this petition to Your Excellency on behalf of Aiko, my sister and wife of KOKUBO Chihiro, formerly a warrant officer of the Japanese Army.

Your Excellency will graciously permit me the liberty to plead for KOKUBO, ~~was~~ for the sake of truth and out of anxiety for his family.

He was summoned, as a witness, by Colonel Carpenter, Legal Section, GHQ, 7 July, 1947. As his brother-in-law, I know him personally well, and I am extremely afraid that his erroneous sense of sacrifice has led into unnecessary trouble. If, out of this mistaken idea, he took upon himself the responsibility of others, his superiors or subordinates, he may have satisfied his own sense of sacrifice and resignation, but in such a case, the trial must suffer in respect of truth.

KOKUBO was indicted for having carried out the order of Colonel MIYAZAKI, commander of the Gendarmerie Unit, and Captain NAKAMURA Kazuo, a superior, to execute three U.S. soldiers on the Island of Palao.

In the situation in which he was placed, refusal to obey the order, I need hardly say, was out of the question, ^{even} if he so desired.

0825

I myself served as a conscript before cessation of hostilities, though for a short period of three months. From direct experience, I know that a superior's command was absolute, and a slight deviation in fulfilment was instantly visited by a slap on the ear, if not by anything worse. There was no liberty, except in sleep. The command of a superior, said the Rescript to the Defense Forces, is the Emperor's command, and the Emperor, declared the Constitution, is sacred and inviolable. This stringent system of subordination nobody was permitted to question. Under this system, orders of the superiors had to be carried out, whatever their nature.

Under such condition, KOKUBO was commanded to carry out the order of execution. If another warrant officer had been the recipient of the command, he would have had to carry out the command, regardless of his own will.

KOKUBO was ordered to kill the unfortunate soldiers with his sword. When he failed in the attempt, Captain NAKAMURA was furious, and ordered two of the Japanese soldiers on the spot to shoot them.

As they were absolutely defenceless, his failure must be incomprehensible, unless his Christian conscience held him back in spite of the stringent order he had received as a gendarme. For his failure, he certainly thanked God for His guidance.

KOKUBO was a school-mate of mine at the Sapporo Middle School, where he was known by the nickname of "saint", for he was a Christian. I have talked with several men, who returned from the south after the event above referred to, and all of them have assured me that he was perfectly blameless in private life.

Reverend Jenks, a Seventh-Day missionary, and his wife, who lived in Sapporo, near the house of my family, liked Ai-ko, and when they were going back to the United States, they said they might take her with them as an adopted child.

Ai-ko married KOKUBO since. She and his old mother are now praying day and night for his return, taking the hardships of life as a trial of God.

I humbly present this petition to Your Excellency praying that after a full inquiry, with account taken of the position in which he had been placed, and out of commiseration for his family he may still be permitted to return to Sapporo.

December 20, 1947.

MATSUMOTO Hiroshi,
Petitioner,
8 Kitatera-machi,
Mita, Minato-ku, Tokyo.

FF12/P13-10(3)
02-MEC-fsk

Serial: 10565

25 MAY 1948

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG).

Subject: KOKUBO, Chihiro, former sergeant major, IJA -
petition for clemency.

Reference: (a) ComMarianas Area action, file FF12/Al7-10(2) over
02-JDM-re, serial 4542 dtd 24 Apr. 1948, in the
case of HAKAMURA, Kazuo, et al.
(b) CinCPacFlt action, file Al7-25, serial 2212, dtd 11
May 1948, in the case of HAKAMURA, Kazuo, et al.

Enclosure: (A) Petition from MATSUKI, Hiroshi, brother-in-law, dated
December 20, 1947, in behalf of KOKUBO, Chihiro, in
Japanese with English translation.

1. A military commission convened by this command on Guam tried
subject named Japanese in the case of HAKAMURA, Kazuo, et al for war crimes
committed against three American prisoners of war. KOKUBO, Chihiro was con-
victed and sentenced to be hanged.

2. The record of proceedings in this case was acted upon by The
Commander Marianas Area on 24 April 1948 and forwarded to the Commander in
Chief, Pacific and U.S. Pacific Fleet. By reference (b) it was referred to
the Secretary of the Navy.

3. Enclosure (A) was received by Commander Marianas subsequent
to the trial of subject named war criminal and is forwarded for such action
as may be considered appropriate.

C.H. WRIGHT

cc: CinCPacFlt

0828

Cinepacft File

A17-11

Serial 2228

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

SECOND ENDORSEMENT on
Japanese Defense Counsel
letter dated 2 February
1948.

12 MAY 1948

#162658

Panel IV

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate
General).
Subject: MAKAMURA, Kasuo, former first lieutenant, IJA, and KOKUBO,
Chihiro, former sergeant major, IJA - request for new trial.

1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet con-
curs in paragraph 4 of the first endorsement.

Paul Jackson

PAUL JACKSON
Assistant Chief of Staff
for Administration

Copy to: (2nd end. only)
ComMarianas (2)

RECEIVED

18 MAY 1948

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

0829

[Redacted]

[Redacted]

ALV-11
Serial 3223

12 MAY 1946
3223
Serial IV

RECORD INFORMATION on
Japanese Defense Counsel
letter dated 2 February
1946.

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate General).

Subject: KAZUAKI, Kameo, former first lieutenant, IJA, and KOKORO, Gisho, former captain major, IJA - request for new trial.

1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet con-
curs in paragraph 4 of the first endorsement.

[Signature]
JAMES JACKSON
Assistant Secretary of the Navy
for Administration

Copy to: (2nd and only)
Comptroller (2)

RECEIVED
15 MAY 1946
OFFICE OF THE
JUDGE ADVOCATE
GENERAL
NAVY DEPT.

0830

CINCPAC FLT.

FIRST ENDORSEMENT on UNITED STATES PACIFIC FLEET
Japanese Defense Counsel COMMANDER MARIANAS
ltr., dtd 2 Feb. '48.

MAY 9 8 24 AM 1948

FF12/A17-13(1)
02-JDM-ro

5 MAY 1948

Serial:

4892

RECEIVED

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG)
Via : The Commander in Chief, U. S. Pacific Fleet.

Subject: NAKAMURA, Kazuo, former first lieutenant, IJA, and
KOKUBO, Chihiro, former sergeant major, IJA - request
for new trial.

Reference: (a) Commander Marianas action, serial 4542, dated 24 April 1948.
(b) JAG (War Crimes Division) confidential despatch #62125 of
March 1946 to Commander Marianas.
(c) Commander Marianas confidential despatch #42355Z of July
1946 to SecNav (JAG).
(d) JAG confidential despatch 101635Z of July 1946 to Commander
Marianas.

1. Forwarded readdressed via Commander in Chief, U. S. Pacific Fleet.
2. Subject named Japanese, together with HAGATOME, Yoshimori, former corporal, IJA, were tried by a military commission on Guam. NAKAMURA and KOKUBO were convicted. Action on the basic request has been delayed by The Commander Marianas Area until after completion of his action, dated 24 April 1948, which approved the record of proceedings and forwarded it to the Commander in Chief, U. S. Pacific Fleet.
3. The basis of the request for a new trial contained in the basic letter was the refusal of the military commission to sustain the challenges made to three members under Section 383(e) of Naval Courts and Boards. Each challenged member replied that he could truly try without prejudice or partiality the case now depending according to the evidence adduced before the commission, the rules prescribed for this trial, the customs of war in like cases and his own conscience.
4. As outlined in Appendix D-14 of Naval Courts and Boards, 1937, it is not mandatory for military commissions to conduct their proceedings in the manner provided for naval courts martial, and in view of the specific authority granted by references (b) and (d), The Commander Marianas Area does not consider the reason given for the request sufficient to warrant the granting of a new trial.
5. The basic request is forwarded for such action as may be considered appropriate.

C. A. Pownall
C. A. POWNALL

cc: Japanese Defense Counsel.

0831

Guam, February 2, 1948.

From: Japanese Defense Counsel for the accused war criminals on Guam.
To: Your Honor, Secretary of the Navy of the United States.
Via: (1) The Commander Marianas Area.
(2) The Judge Advocate General, U.S. Navy Department.

Subject: New trial in the case of NAKAMURA, Kazuo and KOKUBO, Chihiro, request for.

May it please Your Honor:

In the joint trial of the accused NAKAMURA, Kazuo charged with murder and violation of the law and customs of war, and the accused KOKUBO, Chihiro charged with murder, the accused NAKAMURA, Kazuo by counsel challenged three members of the commission, namely, Rear Admiral Arthur G. Robinson, U.S. Navy, Lieutenant Colonel Henry K. Roscoe, U.S. Army, Lieutenant Colonel Victor J. Garbarino, U.S. Army, for the following reason.

In Specification 2 of Charge I and in Specifications 3 and 4 of Charge II, the accused is charged with the responsibility for the incident in which an alleged English national, Charlie Smith, alias, James, was shot to death on Babelthuap Island, Palau Islands on or about 29 December 1944, but this is exactly the same incident as in the Ajioaka case (Serial 22331 dated 6 Dec. 1947) which was tried previously December 15 to December 24, 1947 by the commission in which the said three persons sat as members. In this Ajioaka trial, the accused NAKAMURA was summoned as a witness for the prosecution and testified. Thus this comes under the clause in Naval Courts and Boards, Section 388 (e):

ss - (e) That he sat as a member of a court which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

The Judge Advocate replied to the challenge made by the accused that the challenge should not be sustained, because the regulations governing the challenge as set forth in Naval Courts and Boards have been relaxed in this court.

The said accused members admitted the facts on which the challenges were based, but the challenges made by the accused were not sustained.

In Section 388 of Naval Courts and Boards, however, it is set forth that a challenge made upon the above ground, if admitted by the member, shall be sustained despite any declaration the challenged member may make.

Navy regulations Article 74 states no bureau or office can change Naval Courts and Boards.

In accordance with Section 477, Naval Courts and Boards, the accused NAKAMURA, Kazuo and KOKUBO, Chihiro request a new trial.

The following two cases are cited from Court Martial Orders as precedents in which a new trial was granted for the reason of improper denial of the challenge: C.M.O. 2-1924 and C.M.O. 151-1919.

(1)

0832

For the reasons set forth above, in view of the objections made, the motions and pleas entered and of what was set forth in the closing arguments of the defense counsel, the accused NAKAMURA and KOKUBOZpray that they be granted a new trial.

Respectfully,

Sanagi, Sadamu
SAMAGI, Sadamu.

Kuwata Hideo
KUWATA, Hideo.

Karasawa Takami
KARASAWA, Takami.

A17-11

Serial 2228

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

SECOND ENDORSEMENT on
Japanese Defense Counsel
letter dated 2 February
1948.

12 MAY 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate
General).
Subject: HAKAMURA, Kameo, former first lieutenant, IJA, and KOKUBO,
Chihiro, former sergeant major, IJA - request for new trial.
1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet con-
curs in paragraph 4 of the first endorsement.

PAUL JACKSON
Assistant Chief of Staff
for Administration

Copy to: (2nd and only)
ComWarrens (2)

0834

FINAL RECOMMENDATION on
Japanese Defense Council
ltr., dtd 2 Feb. '48.

FF12/A17-13(1)
OS-JHB-90

4892

5 MAY 1948

Serial:

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG)
Via : The Commander in Chief, U. S. Pacific Fleet.

Subject: HAHAMURA, Kameo, former first lieutenant, IJA, and
HOKURO, Chihiro, former sergeant major, IJA - request
for new trial.

References: (a) Commander Marianas action, serial 4542, dated 24 April 1948.
(b) JAG (War Crimes Division) confidential despatch #42125 of
March 1946 to Commander Marianas.
(c) Commander Marianas confidential despatch #42355E of July
1946 to Seelhor (JAG).
(d) JAG confidential despatch 181435E of July 1946 to Commander
Marianas.

1. Forwarded readressed via Commander in Chief, U. S. Pacific Fleet.
2. Subject named Japanese, together with HIGATOME, Yochisuei,
former corporal, IJA, were tried by a military commission on Guam. HAHAMURA
and HOKURO were convicted. Action on the basic request has been delayed by
The Commander Marianas Area until after completion of his action, dated 24
April 1948, which approved the record of proceedings and forwarded it to the
Commander in Chief, U. S. Pacific Fleet.
3. The basis of the request for a new trial contained in the basic
letter was the refusal of the military commission to sustain the challenges
made to three members under Section 380(c) of Naval Courts and Boards. Each
challenged member replied that he could truly try without prejudice or partiality
the case now depending according to the evidence adduced before the commission,
the rules prescribed for this trial, the customs of war in like cases and his own
conscience.
4. As outlined in Appendix D-14 of Naval Courts and Boards, 1937,
it is not mandatory for military commissions to conduct their proceedings in
the manner provided for naval courts martial, and in view of the specific
authority granted by references (b) and (d), The Commander Marianas Area does
not consider the reason given for the request sufficient to warrant the granting
of a new trial.
5. The basic request is forwarded for such action as may be
considered appropriate.

C. A. POWNALL

cc: Japanese Defense Council.

0835

Gasm, February 2, 1948.

From: Japanese Defense Counsel for the accused war criminals
on Gasm.
To: Your Honor, Secretary of the Navy of the United States.
Via: (1) The Commander Marianas Area.
(2) The Judge Advocate General, U. S. Navy Department.

Subject: New trial in the case of NAKAMURA, Kameo and HOKUDO,
Chihiro, request for.

May it please Your Honor:

In the joint trial of the accused NAKAMURA, Kameo charged with murder and violation of the law and customs of war, and the accused HOKUDO, Chihiro charged with murder, the accused NAKAMURA, Kameo by counsel challenged three members of the commission, namely, Rear Admiral Arthur G. Robinson, U. S. Navy, Lieutenant Colonel Henry E. Roscoe, U. S. Army, Lieutenant Colonel Victor J. Garbarino, U. S. Army, for the following reason.

In Specification 2 of Charge I and in Specifications 3 and 4 of Charge II, the accused is charged with the responsibility for the incident in which an alleged English national, Charlie Smith, alias, James, was shot to death on Rabelthmap Island, Palau Islands on or about 29 December 1944, but this is exactly the same incident as in the Ajika case (Serial 22331 dated 6 Dec. 1947) which was tried previously December 15 to December 24, 1947 by the commission in which the said three persons sat as members. In this Ajika trial, the accused NAKAMURA was summoned as a witness for the prosecution and testified. Thus this comes under the clause in Naval Courts and Boards, Section 388 (g):

as - (e) That he sat as a member of a court which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

The Judge Advocate replied to the challenge made by the accused that the challenge should not be sustained, because the regulations governing the challenge as set forth in Naval Courts and Boards have been relaxed in this court.

The said accused members admitted the facts on which the challenges were based, but the challenges made by the accused were not sustained.

In Section 388 of Naval Courts and Boards, however, it is set forth that a challenge made upon the above grounds, if admitted by the member, shall be sustained despite any declaration the challenged member may make.

Navy Regulations Article 74 states no bureau or office can change Naval Courts and Boards.

In accordance with Section 477, Naval Courts and Boards, the accused NAKAMURA, Kameo and HOKUDO, Chihiro request a new trial.

The following two cases are cited from Court Martial Orders as precedents in which a new trial was granted for the reason of improper denial of the challenge: C.M.O. 2-1924 and C.M.O. 151-1919.

For the reasons set forth above, in view of the objections made, the motions and pleas entered and of what was set forth in the closing arguments of the defense counsel, the accused NAKAMURA and KUKIMO pray that they be granted a new trial.

Respectfully,

SANOY, Sadami.

KUNATA, Hideo.

KARASAWA, Takemi.

Cleopoffn File

A17-11

Serial # 2228

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

SECOND ENDORSEMENT on
Japanese Defense Counsel
letter dated 2 February
1948.

12 MAY 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate
General).

Subject: HAYANURA, Kazuo, former first lieutenant, IJA, and KOKUBO,
Chihiro, former sergeant major, IJA - request for new trial.

1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet con-
curs in paragraph 4 of the first endorsement.

PAUL JACKSON
Assistant Chief of Staff
for Administration

Copy to: (2nd end. only)
ComMarianas (2)

0838

FINAL RECOMMENDATION on
Japanese Defense Council
149., dtd 2 Feb. '48.

WP12/17-19(1)
CS-300-00

Serial:

4892

5 MAY 1948

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG)
Via : The Commander in Chief, U. S. Pacific Fleet.

Subject: **SHIMURA, Shun, former first lieutenant, 12A, and**
YUNO, Chikuro, former sergeant major, 12A - request
for new trial.

References: (a) Commander Marianas action, serial 4845, dated 24 April 1948.
(b) JAG (War Crimes Division) confidential despatch #21123 of March 1948 to Commander Marianas.
(c) Commander Marianas confidential despatch #12395 of July 1946 to Sealer (JAG).
(d) JAG confidential despatch 124595 of July 1946 to Commander Marianas.

1. Forwarded readressed via Commander in Chief, U. S. Pacific Fleet.
2. Subject named Japanese, together with SHIMURA, Yoshinori, former corporal, 12A, were tried by a military commission on Guam. SHIMURA and YUNO were convicted. Action on the basic request has been delayed by The Commander Marianas Area until after completion of his action, dated 24 April 1948, which approved the record of proceedings and forwarded it to the Commander in Chief, U. S. Pacific Fleet.
3. The basis of the request for a new trial contained in the basic letter was the refusal of the military commission to sustain the challenges made to three members under Section 305(a) of Naval Courts and Boards. Each challenged member replied that he could truly try without prejudice or partiality the case now depending according to the evidence adduced before the commission, the rules prescribed for this trial, the customs of war in like cases and his own conscience.
4. As outlined in Appendix B-14 of Naval Courts and Boards, 1937, it is not mandatory for military commissions to conduct their proceedings in the manner provided for naval courts martial, and in view of the specific authority granted by references (b) and (d), The Commander Marianas Area does not consider the reason given for the request sufficient to warrant the granting of a new trial.
5. The basic request is forwarded for such action as may be considered appropriate.

C. A. POWNALL

cc: Japanese Defense Council.

0839

Gunn, February 2, 1948.

From: Japanese Defense Counsel for the accused war criminals
on Gunn.
To: Your Honor, Secretary of the Navy of the United States.
Via: (1) The Commander Marianas Area.
(2) The Judge Advocate General, U. S. Navy Department.

Subject: New trial in the case of NAKAMURA, Kameo and KUROKO,
Chihiro, request for.

May it please Your Honor:

In the joint trial of the accused NAKAMURA, Kameo charged with murder and violation of the law and customs of war, and the accused KUROKO, Chihiro charged with murder, the accused NAKAMURA, Kameo by counsel challenged three members of the commission, namely, Rear Admiral Arthur G. Robinson, U. S. Navy, Lieutenant Colonel Henry K. Roscoe, U. S. Army, Lieutenant Colonel Victor J. Carterino, U. S. Army, for the following reason:

In Specification 2 of Charge I and in Specifications 3 and 4 of Charge II, the accused is charged with the responsibility for the incident in which an alleged English national, Charlie Smith, alias, James, was shot to death on Rabelthump Island, Palau Islands on or about 29 December 1944, but this is exactly the same incident as in the Ajicha case (Serial 22331 dated 6 Dec. 1947) which was tried previously December 15 to December 24, 1947 by the commission in which the said three persons sat as members. In this Ajicha trial, the accused NAKAMURA was summoned as a witness for the prosecution and testified. Thus this comes under the clause in Naval Courts and Boards, Section 308 (a):

as - (a) That he sat as a member of a court which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

The Judge Advocate replied to the challenge made by the accused that the challenge should not be sustained, because the regulations governing the challenge as set forth in Naval Courts and Boards have been relaxed in this court.

The said accused members admitted the facts on which the challenges were based, but the challenges made by the accused were not sustained.

In Section 308 of Naval Courts and Boards, however, it is set forth that a challenge made upon the above grounds, if admitted by the member, shall be sustained despite any declaration the challenged member may make.

Navy Regulations Article 74 states no bureau or office can change Naval Courts and Boards.

In accordance with Section 477, Naval Courts and Boards, the accused NAKAMURA, Kameo and KUROKO, Chihiro request a new trial.

The following two cases are cited from Court Martial Orders as precedents in which a new trial was granted for the reason of improper denial of the challenge: C.M.O. 2-1924 and C.M.O. 151-1939.

(1)

0840

BEST COPY AVAILABLE

For the reasons set forth above, in view of the objections made, the motions and pleas entered and of what was set forth in the closing arguments of the defense counsel, the accused NAKAMURA and KORIYAMA pray that they be granted a new trial.

Respectfully,

SABAGY, Sadamu.

KUNATA, Hideo.

KARASAWA, Takami.

Cinepacft File

A17-11

Serial 2228

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

SECOND ENDORSEMENT on
Japanese Defense Counsel
letter dated 2 February
1948.

12 MAY 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet.
To: Secretary of the Navy (Office of the Judge Advocate
General).
Subject: NAKAMURA, Kasuo, former first lieutenant, IJA, and KOKUBO,
Shihiro, former sergeant major, IJA - request for new trial.
1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet con-
curs in paragraph 4 of the first endorsement.

PAUL JACKSON
Assistant Chief of Staff
for Administration

Copy to: (2nd end. only)
ComMarianas (2)

Form No. Cinepacft-24

0848

BEST COPY AVAILABLE

FIRST INCLOSURE on
Japanese Defense Counsel
ltr., dtd 2 Feb. '48.

FF12/A17-13(1)
02-JDM-ro

1892

5 MAY 1948

Serial:

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG)
Via : The Commander in Chief, U. S. Pacific Fleet.

Subject: HAKAHARA, Kazuo, former first lieutenant, IJA, and
HOKUBO, Chihito, former sergeant major, IJA - request
for new trial.

Reference: (a) Commander Marianas action, serial 4542, dated 24 April 1948.
(b) JAG (War Crimes Division) confidential despatch #42125 of
March 1946 to Commander Marianas.
(c) Commander Marianas confidential despatch #42355Z of July
1946 to SecNav (JAG).
(d) JAG confidential despatch 181635Z of July 1946 to Commander
Marianas.

1. Forwarded readressed via Commander in Chief, U. S. Pacific Fleet.

2. Subject named Japanese, together with HIGATONE, Yoshinori,
former corporal, IJA, were tried by a military commission on Guam. HAKAHARA
and HOKUBO were convicted. Action on the basis request has been delayed by
The Commander Marianas Area until after completion of his action, dated 24
April 1948, which approved the record of proceedings and forwarded it to the
Commander in Chief, U. S. Pacific Fleet.

3. The basis of the request for a new trial contained in the basic
letter was the refusal of the military commission to sustain the challenges
made to three members under Section 383(c) of Naval Courts and Boards. Each
challenged member replied that he could truly try without prejudice or partiality
the case now depending according to the evidence adduced before the commission,
the rules prescribed for this trial, the customs of war in like cases and his own
conscience.

4. As outlined in Appendix B-14 of Naval Courts and Boards, 1937,
it is not mandatory for military commissions to conduct their proceedings in
the manner provided for naval courts martial, and in view of the specific
authority granted by references (b) and (d), The Commander Marianas Area does
not consider the reason given for the request sufficient to warrant the granting
of a new trial.

5. The basis request is forwarded for such action as may be
considered appropriate.

C. A. FOWNALL

cc: Japanese Defense Counsel. ✓

0043

BEST COPY AVAILABLE

Ozawa, February 2, 1948.

From: Japanese Defense Counsel for the accused war criminals
on Ozawa.
To: Your Honor, Secretary of the Navy of the United States.
Via: (1) The Commander Marianas Area.
(2) The Judge Advocate General, U. S. Navy Department.

Subject: New trial in the case of HAHAMURA, Kazuo and KOBAYASHI,
Chihiro, request for.

May it please Your Honor:

In the joint trial of the accused HAHAMURA, Kazuo charged with murder and violation of the law and customs of war, and the accused KOBAYASHI, Chihiro charged with murder, the accused HAHAMURA, Kazuo by counsel challenged three members of the commission, namely, Rear Admiral Arthur G. Robinson, U. S. Navy, Lieutenant Colonel Henry K. Roscoe, U. S. Army, Lieutenant Colonel Victor J. Garbarino, U. S. Army, for the following reason.

In Specification 2 of Charge I and in Specifications 3 and 4 of Charge II, the accused is charged with the responsibility for the incident in which an alleged English national, Charlie Smith, alias, James, was shot to death on Rabelthump Island, Irian Islands on or about 29 December 1944, but this is exactly the same incident as in the Ajicha case (Serial 22331 dated 6 Dec. 1947) which was tried previously December 15 to December 24, 1947 by the commission in which the said three persons sat as members. In this Ajicha trial, the accused HAHAMURA was summoned as a witness for the prosecution and testified. Thus this comes under the clause in Naval Courts and Boards, Section 306 (d):

as - (e) That he sat as a member of a court which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

The Judge Advocate replied to the challenge made by the accused that the challenge should not be sustained, because the regulations governing the challenge as set forth in Naval Courts and Boards have been relaxed in this court.

The said accused members admitted the facts on which the challenges were based, but the challenges made by the accused were not sustained.

In Section 306 of Naval Courts and Boards, however, it is set forth that a challenge made upon the above grounds, if admitted by the member, shall be sustained despite any declaration the challenged member may make.

Navy Regulations Article 74 states no bureau or office can change Naval Courts and Boards.

In accordance with Section 477, Naval Courts and Boards, the accused HAHAMURA, Kazuo and KOBAYASHI, Chihiro request a new trial.

The following two cases are cited from Court Martial Orders as precedents in which a new trial was granted for the reason of improper denial of the challenge: C.M.O. 2-1924 and C.M.O. 151-1929.

For the reasons set forth above, in view of the objections made, the motions and pleas entered and of what was set forth in the closing arguments of the defense counsel, the accused NAKAMURA and KIMURA pray that they be granted a new trial.

Respectfully,

NAKAMURA, Sakae.

KIMURA, Kideo.

NAKAMURA, Takao.

Cincpacft File

A17-11

Serial 2228

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

SECOND ENDORSEMENT on
Japanese Defense Council
letter dated 2 February
1948.

12 MAY 1948

From: Commander in Chief Pacific and U. S. Pacific Fleet,
To: Secretary of the Navy (Office of the Judge Advocate
General).

Subject: HAKAMURA, Katsuo, former first lieutenant, IJA, and KOKUBO,
Chihiro, former sergeant major, IJA - request for new trial.

1. Forwarded for such action as may be considered appropriate.
2. The Commander in Chief Pacific and U. S. Pacific Fleet concurs in paragraph 4 of the first endorsement.

PAUL JACKSON
Assistant Chief of Staff
for Administration

Copy to: (2nd end. only)
ComMarianas (2)

Form No. Cincpacft-26

0846

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FIRST MESSAGES on
Japanese Defense Council
ltr., dtd 2 Feb. '48.

FF12/A17-13(1)
02-JDS-ro

5 MAY 1948

Serial:

4892

From: The Commander Marianas Area.
To : The Secretary of the Navy (JAG)
Via : The Commander in Chief, U. S. Pacific Fleet.

Subject: NAKAMURA, Kameo, former first lieutenant, IJA, and
KOHNO, Chihiro, former sergeant major, IJA - request
for new trial.

Reference: (a) Commander Marianas action, serial 4542, dated 24 April 1948.
(b) JAG (War Crimes Division) confidential despatch #42125 of
March 1946 to Commander Marianas.
(c) Commander Marianas confidential despatch #42395 of July
1946 to Seattle (JAG).
(d) JAG confidential despatch 1814952 of July 1946 to Commander
Marianas.

1. Forwarded readressed via Commander in Chief, U. S. Pacific Fleet.

2. Subject named Japanese, together with HIGATONE, Yoshinari,
former corporal, IJA, were tried by a military commission on Guam. NAKAMURA
and KOHNO were convicted. Action on the basic request has been delayed by
The Commander Marianas Area until after completion of his action, dated 24
April 1948, which approved the record of proceedings and forwarded it to the
Commander in Chief, U. S. Pacific Fleet.

3. The basis of the request for a new trial contained in the basic
letter was the refusal of the military commission to sustain the challenges
made to three members under Section 308(a) of Naval Courts and Boards. Each
challenged member replied that he could truly try without prejudice or partiality
the case now depending according to the evidence adduced before the commission,
the rules prescribed for this trial, the customs of war in like cases and his own
conscience.

4. As outlined in Appendix D-14 of Naval Courts and Boards, 1937,
it is not mandatory for military commissions to conduct their proceedings in
the manner provided for naval courts martial, and in view of the specific
authority granted by references (b) and (d), The Commander Marianas Area does
not consider the reason given for the request sufficient to warrant the granting
of a new trial.

5. The basic request is forwarded for such action as may be
considered appropriate.

C. A. POWNALL

cc: Japanese Defense Council.

0847

BEST COPY AVAILABLE

Gunn, February 2, 1942.

From: Japanese Defense Counsel for the accused war criminals
on Gunn.
To: Your Honor, Secretary of the Navy of the United States.
Via: (1) The Commander Marianas Area.
(2) The Judge Advocate General, U. S. Navy Department.

Subject: New trial in the case of HAHAMURA, Kameo and KUNIO,
Chihiro, request for.

May it please Your Honor:

In the joint trial of the accused HAHAMURA, Kameo charged with murder and violation of the law and customs of war, and the accused KUNIO, Chihiro charged with murder, the accused HAHAMURA, Kameo by counsel challenged three members of the commission, namely, Rear Admiral Arthur G. Robinson, U. S. Navy, Lieutenant Colonel Harry H. Brown, U. S. Army, Lieutenant Colonel Victor J. Carter, U. S. Army, for the following reason.

In Specification 2 of Charge I and in Specifications 3 and 4 of Charge II, the accused is charged with the responsibility for the incident in which an alleged English national, Charlie Smith, alias, James, was shot to death on Rabaul Island, New Hebrides on or about 29 December 1941, but this is exactly the same incident as in the Ajikah case (Serial 22321 dated 6 Dec. 1947) which was tried previously December 15 to December 24, 1947 by the commission in which the said three persons sat as members. In this Ajikah trial, the accused HAHAMURA was examined as a witness for the prosecution and testified. Thus this case under the clause in Naval Courts and Boards, Section 386 (a):

as - (a) That he sat as a member of a court which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial.

The Judge Advocate replied to the challenge made by the accused that the challenge should not be sustained, because the regulations governing the challenge as set forth in Naval Courts and Boards have been relaxed in this court.

The said accused members admitted the facts on which the challenges were based, but the challenges made by the accused were not sustained.

In Section 386 of Naval Courts and Boards, however, it is set forth that a challenge made upon the above grounds, if admitted by the member, shall be sustained despite any declaration the challenged member may make.

Navy Regulations Article 74 states no bureau or office can change Naval Courts and Boards.

In accordance with Section 477, Naval Courts and Boards, the accused HAHAMURA, Kameo and KUNIO, Chihiro request a new trial.

The following two cases are cited from Court Martial Orders as precedents in which a new trial was granted for the reason of improper denial of the challenge: C.M.O. 2-1224 and C.M.O. 151-1919.

For the reasons set forth above, in view of the objections made, the motions and plans entered and of what was set forth in the closing arguments of the defense counsel, the accused HANAKURA and KIMURA pray that they be granted a new trial.

Respectfully,

HARUY, Sakam.

KIMURA, Hideo.

HANAKURA, Takemi.

(2)

0849

BEST COPY AVAILABLE

FF12/117-19
02-JUN-48



24 APR 1948

MEMORANDUM TO: Commander in Chief Pacific and United States Pacific Fleet.
Commander Marianas Area.

Subject: Review of the Record of Trial by a Military Commission of
former First Lieutenant Kameo NAKAMURA, I.J.A., et al.

References: (a) CinCPac/POA Restricted Desp. 170150 Dec. 1945.
(b) CinCPac and U.S. PacFt Staff Instructions 1947,
paragraph 2 H 3 (c).

Enclosures: (A) Record of subject case (original and three copies; one
copy for CinCPacFt, one copy for SecNav for delivery to
United Nations War Crimes Commission, and one copy for
Commander Marianas).
(B) Proposed action to be taken by ComMarianas on subject case.
(C) Proposed action to be taken by CinCPacFt on subject case.

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

2. TRIAL:

a. Offenses.

CHARGE I - MURDER

Specification 1

In that NAKAMURA, Kameo, 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, Arisane, 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.

FF12/117-19
02-JDM-fak

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kasuo NAKAMURA, I.J.A., et al.

Specification 2

In that NAKAMURA, Kasuo, 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 Babelthrap 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 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, 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, Kasuo, 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 Babelthrap 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 Babelthrap 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.

FF12/117-19
02-JDM-fek

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kameo NAKAMURA, I.J.A., et al.

Specification 2

In that NAKAMURA, Kameo, 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 Babelthusa 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, NAGATOMI, Yoshimori, then a corporal, IJA, and other members of the armed forces of Japan, this in violation of the law and customs of war.

Specification 1

In that NAKAMURA, Kameo, 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 Babelthusa 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, Miso, then a warrant officer, IJA, YAMADA, Kiyochi, then a sergeant, IJA, and others, names to the relator unknown, permitting them the aforesaid persons, on or about December 29, 1944, at Babelthusa 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.

FF12/117-19
02-JDM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kasuo NAKAMURA, I.J.A., et al.

Specification A

In that NAKAMURA, Kasuo, 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 Babelthlap 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, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, this in violation of the law and customs of war.

b. Pleas, to Charges and Specifications by individual accused:

NAKAMURA, Kasuo

CHARGE I	- Not guilty	(R.p. 21)
Specification 1	- Not guilty	(R.p. 21)
Specification 2	- Not guilty	(R.p. 21)
CHARGE II	- Not guilty	(R.p. 21)
Specification 1	- Not guilty	(R.p. 21)
Specification 2	- Not guilty	(R.p. 21)
Specification 3	- Not guilty	(R.p. 21)
Specification 4	- Not guilty	(R.p. 21)

KOKUBO, Chiharu

CHARGE I	- Not guilty	(R.p. 22)
Specification 1	- Not guilty	(R.p. 21)

NAGATSUMI, Yoshinari

CHARGE I	- Not guilty	(R.p. 22)
Specification 1	- Not guilty	(R.p. 22)

FF12/AL7-19
02-JUN-68

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

c. Findings, on Charges and Specifications with
reference to each accused:

NAKAMURA, Kazuo

CHARGE I	- Guilty	(R.p. 93)
Specification 1	- Proved in part	(R.p. 93)
	Proved except the words "NAGATOME, Yoshimori, then a corporal, IJA," which words are not proved.	
Specification 2	- Proved	(R.p. 93)
CHARGE II	- Guilty	(R.p. 93)
Specification 1	- Not proved	(R.p. 93)
Specification 2	- Not proved	(R.p. 93)
Specification 3	- Proved	(R.p. 93)
Specification 4	- Proved	(R.p. 93)

KOKUBO, Chihiro

CHARGE I	- Guilty	(R.p. 93)
Specification 1	- Proved in part	(R.p. 93)
	Proved except the words "NAGATOME, Yoshimori, then a corporal, IJA," which words are not proved.	

NAGATOME, Yoshimori

CHARGE I	- Not guilty	(R.p. 93)
Specification 1	- Not proved	(R.p. 93)

d. Sentences:

NAKAMURA, Kazuo	Death by hanging	(R.p. 94)
KOKUBO, Chihiro	Death by hanging	(R.p. 94)

e. Maximum Sentences:

Death

FF12/A17-19
CH-JHM-fak

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo HAKAMURA, I.J.A., et al.
.....

f. Convening Authority:

Rear Admiral G. A. FOWELL,
United States Navy,
The Commander Marianas Area.

g. Place of Trial:

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

h. Date of Trial:

6 January 1948 to 27 January 1948.
Arraignments: 15 January 1948 (R.p. 21,22)
Sentences: 27 January 1948 (R.p. 94)

3. FINAL MATTERS:

a. Authority for the commission to act.

By precept dated 8 November 1947, the commission was ordered convened 20 November 1947, or as soon thereafter as practicable by the Commander Marianas Area pursuant to authority inherent in a Military Commander and as authorized by the Commander in Chief, Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt serial 0558 of 8 March 1946; ComMarianas Dep. 292356Z of Sept. 1947; CinCPacFlt Dep. 020103Z of Oct. 1947; Seclav Dep. 081946Z of Oct. 1947; CinCPacFlt Dep. 092353Z of Oct. 1947). The trial was held under authority of Naval Courts and Boards, except that the commission was permitted to relax the rules of naval courts to meet the necessities of the trial and use the rules of evidence and procedure promulgated by the Supreme Commander for the Allied Powers in his Regulations Concerning the Trials of Accused War Criminals, dated 5 December 1945, and modifications thereof, as necessary to obtain justice.

b. All members of the commission with the exception of Lieutenant Commander Bradner W. Lee, Jr., U.S. Naval Reserve, were present throughout the trial. Lieutenant Commander Bradner W. Lee, Jr. was absent for the first three days of the trial on duly authorized emergency leave (Prefix "B"). On the fourth day of the trial he resumed his seat as a member after having read the record of proceedings of the previous days and was sworn (R.p. 24).

0855

FF12/117-19
02-JUN-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kasuo HAKAHURA, I.J.A., et al.

c. All members of the commission, judge advocates, reporters, interpreters and witnesses were sworn (R.p. 1, 5, 7, 9, 11, 14, 24, 26, 43, 49, 61, 64, 66, 82, 83).

d. The charges and specifications were shown to have been served on the accused HAKAHURA and KOKUBO on 24 December 1947 and on the accused NAGATOME 31 December 1947 (R.p. 5).

e. The accused were represented by counsel of their own choice (R.p. 1).

f. The accused challenged three members of the commission, Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U. S. Army, Lieutenant Colonel Henry E. Roscoe, Coast Artillery Corps, U. S. Army, and Rear Admiral Arthur G. Robinson, U. S. Navy, President of the commission, on the grounds that each member had sat on the previous trial of AJIOKA, Nisao wherein the accused was tried for the murder of Charlie SMITH, alias JAMES, on BABELTHUAF Island, PALAU Islands on 29 December 1944 and that the same incident forms the basis for Specification 2 of Charge I and of Specifications 3 and 4 of Charge II. The accused argued that this was in violation of Section 386 (e) of Naval Courts and Boards and further that as HAKAHURA, one of the accused in the present trial, had testified in the AJIOKA trial as a prosecution witness, each challenged member entertained a definite opinion of the guilt of the accused, HAKAHURA (R.p. 3, 4, 5).

Each challenged member answered that he could truly try without prejudice or partiality the case now depending according to the evidence adduced before the commission, the rules prescribed for the trial, the customs of war in like cases and his own conscience (R.p. 3,4,5).

The commission properly denied the challenges (Sec. 386, H.C. & B., 1937 and JAG's Desp. 101695 July 1946).

g. The accused made a motion for a bill of particulars (R.p. 5; Prefix "I"), requesting that the specifications show the specific law and custom of war violated.

Summary: The specifications, in my opinion, meet the requirements of Section 27, Naval Courts and Boards and they follow the form of war crimes specifications used in this area since the beginning of war crimes trials. It has been consistently held that the commission is empowered to take judicial notice of treaty provisions such as are contained in the Hague Convention. Matters of which courts

FF12/117-19
02-JOM-fek

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

may take judicial notice need neither be charged nor proved" (Sec. 309, M.C. & B.).

The action of the commission in denying the motion for a bill of particulars was, in my opinion, proper.

b. The accused objected to the charges and specifications (R.p. 5, Prefix "I", "K") in effect on the following grounds:

Objection 1: That it is improper to join the accused with "other members of the armed forces of Japan, names to the relator unknown."

Objection 2: Specification 2 of Charge II is duplicative of Specification 1 of Charge I as is also Specification 4 of Charge II with respect to Specification 2 of Charge I.

Objection 3: The mere allegation "this in violation of the law and customs of war" does not fully inform the accused of the nature and cause of the accusation against them.

Comment: The above three objections are respectively similar to Objections 5, 4 and 1 made to the specifications in the case of former Captain Hiroo KOICHI, I.J.A., et al, and are commented on in my memorandum on that case dated 20 March 1948.

Objection 4: Specifications 1 and 2 of Charge II charge NAKAMURA with a neglect of duty arising out of the same set of circumstances forming Specification 1 of Charge I. As Specification 1 of Charge I alleges the participation of MIYAZAKI, who was a lieutenant colonel and the direct superior of NAKAMURA, then Specifications 1 and 2 of Charge II should concern MIYAZAKI rather than NAKAMURA and therefore should be quashed.

Comment: This objection amounted to a request for a halla mura with respect to Specifications 1 and 2 of Charge II. After charges have been formally referred by competent authority to a military commission for trial, the commission is not authorized, at its discretion, to strike out specifications or to enter a halla mura to them (Sec. 18, M.C. & B.).

The action of the commission in overruling all objections to the charges and specifications was, in my opinion, correct.

FF12/A17-19
02-JDM-fek

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kasuo NAKAMURA, I.J.A., et al.

i. The commission found the charges and specifications in due form and technically correct (R.p. 6).

j. The accused were properly arraigned (R.p. 21, 22).

4. MOTIONS AND PLEAS:

a. The accused made a motion, in the nature of a plea in bar, to quash the charges and specifications against accused NAKAMURA, Kasuo on the grounds of former jeopardy (R.p. 6, Prefix "L").

Comment: There was no evidence, in support of this motion, submitted by accused NAKAMURA to establish that he had previously been acquitted or convicted on a former trial. The statement of his counsel in support of the motion shows that NAKAMURA had not previously been tried. Without going into the question of whether the safeguards of the Fifth Amendment to the U. S. Constitution would, in a proper case, be afforded an accused war criminal, it is clear that even if the provisions of the Fifth Amendment were applicable an accused in order to be given the benefit thereof before a military commission would have to have been actually acquitted or convicted on a former trial (Sec. 408, N.C. & B.).

The motion to quash was properly overruled by the commission.

b. The accused made a motion on behalf of accused NAKAMURA, Kasuo, to suppress the use of any evidence of the trial of AJIOKA, Kiso, et al, against him (R.p. 6, Prefix "M").

Comment: At the time this motion was made no evidence of the AJIOKA trial had been offered, and there was nothing to indicate such evidence would be offered. Objections to the introduction of evidence in a case like this where there is no question of returning to the accused illegally obtained evidence should be made by the party concerned at the time such evidence is presented. Any question, relative to the rejection of evidence which the defense presumes a judge advocate may intend to later introduce, would be hypothetical in nature, and a decision by the commission rejecting such evidence would be a useless act. As for instance, in this case no evidence from the AJIOKA record was ever offered for introduction by the prosecution.

The commission's action in denying the motion was proper.

FF12/117-19
02-JDM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

c. The accused made a plea in bar of trial on behalf of the accused NAKAMURA, Kazuo on the ground of insanity (R.p. 6, Prefix "H").

Comment: The commission, upon the receipt of the plea of insanity, allowed the accused NAKAMURA to introduce evidence as to his sanity. Following the receipt of such evidence the provisions of Section 415, Naval Courts and Boards, were complied with (R.p. 13). The Convening Authority directed a post-ponement of the trial and NAKAMURA was placed under the observation of medical officers. Subsequently a medical officer who observed NAKAMURA was called as a witness and testified as to findings made as a result of the medical observation. The question of NAKAMURA's sanity resolved itself to one of fact which was within the province of the members of the commission, in their capacity as jurors, to pass upon (Secs. 304 and 305, R.C. & B.). From the evidence (R.pp. 7 to 21; Sub. 1) it appears that the commission's action in not sustaining the plea in bar of trial was warranted.

The plea in bar of trial was, in my opinion, properly not sustained (R.p. 20).

d. The accused made a plea in bar of trial on the ground of the statute of limitations (R.p. 20, Prefix "H").

Comment: In war crimes there is no statute of limitations. "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden Incident of September 18, 1931" (Regulations Governing the Trials of Accused War Criminals, AG OGD-5 (5 Dec 45), paragraph 2b(2); Nazi Conspiracy and Aggression, Vol. 1, p. 5; and Potsdam Declaration, 26 July 1945, paragraph 10). There is no statute of limitations for wilful murder under Federal law (18 U.S.C.A., Sec. 581). An indictment for any offense punishable by death may be found at any time without any regard to any statute of limitations (18 U.S.C.A., Sec. 581a).

The plea was not sustained (R.p. 20). This action was proper.

FF12/117-19
02-JDM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

8. The accused made a plea to the jurisdiction (R.p. 20, Prefix "S" and "U") in effect on the following grounds:

1. Jurisdiction of the military commission is limited to the trial of offenses committed subsequent to the occupation of Palau by the United States.
2. The accused, having been demobilized, were not properly extradited from Japan and were therefore not "legally brought before" the commission.
3. All crimes against the United States are statutory. There is no allegation that any statute of the United States has been violated.
4. Neglect of duty as alleged under Charge II is not a crime.
5. The victim named in Specification 2 of Charge I and Specifications 3 and 4 of Charge II was a civilian resident of Japanese mandated territory and his murder by Japanese nationals was not a war crime.

The grounds stated are in effect similar to those which formed the bases of pleas to the jurisdiction in the cases of former Warrant Officer AJIOKA, Misao, I.J.A., et al, and former Captain KOICHI, Hiroe, I.J.A., et al (see paragraph 6 a below).

The plea to the jurisdiction was, in my opinion, properly denied.

f. The accused all pleaded "not guilty" to all charges and specifications (R.p. 21, 22).

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

a. For the prosecution,

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

About the end of August 1944 three prisoners of war were landed on the coast of MIZUNO, (PALAU) (R.p. 27). They were pilots of a B-24 (R.p. 27) which had been shot down (R.p. 43). On the way to the 14th Division Headquarters, they were stopped at the Kempei headquarters and were interrogated (R.p. 27). At the interrogation, they gave their nationality as American (R.p. 27). After the prisoners had been interrogated, they were brought to Division Headquarters (R.p. 27, 43). They were interrogated at Division Headquarters by Lieutenant Colonel YAJIMA, Toshihiko, staff officer for Intelligence and Supply (R.p. 43). And they again said that they were Americans (R.p. 44). In the first part of September, on the day when PALAU was first attacked by the American task force, one of the prisoners was again being interrogated by YAJIMA (R.p. 44). The prisoners were led to an air raid shelter by YAJIMA which was also occupied by Colonel TADA, Chief of Staff of the 14th Division (R.p. 44, 27), and the Commanding Officer of the Kempeitai, MIYAZAKI (R.p. 28, 44). YAJIMA informed TADA that he was investigating the prisoners and of the substance of what he had investigated up to that time (R.p. 44). TADA told YAJIMA to suspend the investigation of the three aviators and to deliver them to the Kempeitai (R.p. 44). TADA then told MIYAZAKI to execute the prisoners (R.p. 28, 48). YAJIMA relayed TADA's orders to Major KAWAMATA who was the Chief of the Administration Section and who had the duty of guarding these prisoners (R.p. 44). As TADA had also said for one officer of the Intelligence Section to go along and deliver these prisoners, YAJIMA relayed these orders to Lieutenant KIYOMINE, Kazuo (R.p. 44). Later, YAJIMA learned from a report of Lieutenant SANDO and also from a report submitted by Lieutenant Colonel MIYAZAKI that the prisoners were executed by the Kempeitai (R.p. 45). The prisoners were sent to the Kempeitai in a truck (R.p. 28) and were guarded by four or five men from Division Headquarters and a non-commissioned officer (R.p. 28, 50). They were bound and blindfolded (R.p. 28, 50). Accused Sergeant Major KOKUBO and accused Sergeant NAGATOME got in the truck (R.p. 30, 50). SANDO was told by MIYAZAKI that TADA had ordered him (MIYAZAKI) to execute the prisoners and that as they were going to be executed right away SANDO was to come along (R.p. 28). The prisoners SANDO saw in the truck were the same prisoners he had seen being interrogated at the Kempeitai (R.p. 30). SANDO got into the Commanding Officer's private car along with MIYAZAKI and accused Captain NAKAMURA, the Commanding Officer of the First Detachment (R.p. 30, 32). They went to the scene of the execution GASUPAN DALJO (R.p. 30). There a hole had already been dug (R.p. 30, 86, Exh. 6). The prisoners got out of the truck (R.p. 30). MIYAZAKI ordered one of the prisoners brought to the hole and the prisoner was made to sit in front of it (R.p. 30). MIYAZAKI shot the prisoner in the back of the head with a pistol (R.p. 30, Exh. 6). Then MIYAZAKI ordered accused NAKAMURA to cut the next one and NAKAMURA beheaded him with a sword (R.p. 30, 86, Exh. 6). MIYAZAKI ordered accused KOKUBO to cut and NAKAMURA relayed this order (R.p. 30). MIYAZAKI gave the order saying "Sergeant, take revenge for

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al

Sergeant IKUSHIMA" (R.p. 31) and accused KOKUBO, saying this was for the revenge of IKUSHIMA (R.p. 30), swung his sword against the neck of the prisoner (R.p. 30, Exh. 6) but he only cut about the width of the sword (R.p. 30). MIYAZAKI then shot this prisoner two or three times and killed him (R.p. 30). Either Sergeant NAGATOME or Sergeant Major KOKUBO had brought the ashes of IKUSHIMA to the scene (R.p. 31, Exh. 6). They were wrapped in a white bandage (R.p. 31) and when accused KOKUBO cut, accused NAGATOME was holding the ashes in front of him suspended from the neck (R.p. 31). Both accused NAGATOME and accused KOKUBO were members of the First Detachment which was commanded by accused NAKAMURA (R.p. 32). Accused NAGATOME had accompanied the prisoners as a guard having been given that duty by accused NAKAMURA (R.p. 85) and NAKAMURA never released him from that duty (R.p. 86). After the execution the bodies were buried together in the hole (R.p. 31). This execution took place on September 4, 1944 (R.p. 28, 37).

In December of 1944, SANO was told by MIYAZAKI to move an Englishman and a German couple from GARASHAO to GASUPAN (R.p. 51). The name of the Englishman was "Charlie SMITH or something JAMES" (R.p. 52, 56). SANO took Sergeant Major TAMAMOTO, Sergeant YAMADA and two or three assistant Kempei and went to GARASHAO (R.p. 52). Charlie SMITH was an Englishman (R.p. 52). SANO told YAMADA to take SMITH on a truck to GASUPAN (R.p. 52). Sergeant YAMADA belonged to the Palau Kempeitai First Detachment, which was under the command of First Lieutenant NAKAMURA (R.p. 52, 62). SMITH and the German couple were taken to GASUPAN and kept under guard there (R.p. 52, 62). Warrant Officer AJIOKA, Nisao was at GASUPAN (R.p. 62). His immediate superior in command was accused NAKAMURA (R.p. 62). On the 28th or 29th of December 1944, NAKAMURA came from SHISUY-ZAN and told AJIOKA that SMITH was to be executed by orders of the commanding officer of the headquarters (R.p. 63, Exh. 4). NAKAMURA, YAMADA, AJIOKA, UENURA, and an assistant Kempei whom NAKAMURA had brought with him took SMITH about one kilometer from the barracks at GASUPAN (R.p. 63). Accused NAKAMURA ordered YAMADA to shoot and YAMADA shot SMITH in the back of the neck with a pistol (R.p. 63, Exh. 4). SMITH's body was put in an old antiaircraft shelter (R.p. 63, Exh. 4). In August of 1945, the body was dug up and cremated (R.p. 57, 58).

b. For the defense.

NAGATOME, Yoshinori, one of the accused, took the stand in his own defense (R.p. 83). He testified that he was attached to the First Detachment of the South Seas Kempeitai (R.p. 83). In September of 1944, he saw three prisoners on a truck in front of the administration building of the Kempeitai (R.p. 83). They were tied by their hands and there were three Japanese enlisted

PT12/117-19
02-JDM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kanuo NAKAMURA, I.J.A., et al.

men guarding them, "each holding the end of a rope of a prisoner" (R.p. 83). On this day he was suffering from jaundice and exempt from duty (R.p. 83). He was walking around the unit when he was called by First Lieutenant NAKAMURA and told to come at once (R.p. 83). He put on his coat and went to him (R.p. 83). Then NAKAMURA told him to put on a sword belt (R.p. 83) which he did. There was no sword in the sword belt (R.p. 83). He went to the truck and got on it but he had no weapon with him (R.p. 84). He went to the scene but he didn't know that the prisoners were to be executed (R.p. 84). He saw Sergeant Major KOKUBO bring the ashes of Sergeant IKUSHIMA to the scene (R.p. 84). The ashes were about the size of an American cigarette package. About three inches high and three inches wide (R.p. 84). The ashes were in a small box covered with a white cloth and were suspended from KOKUBO's neck (R.p. 87). KOKUBO was wearing the ashes at the time he swung his sword against the prisoner (R.p. 87). NAGATOME testified that he had never held up the ashes (R.p. 87). He also testified that while NAKAMURA had ordered him to "guard them" (R.p. 85) that he did not guard after he got off the truck (R.p. 85) and that he did not know they were to be executed until that time when he saw the hole in which they were to be buried (R.p. 88).

6. DISCUSSION:

a. As to jurisdiction.

Express authority to appoint military commissions to try war criminals was delegated to the Commander Marianas Area by the Commander-in-Chief, United States Pacific Fleet, in his confidential letter, serial 0558, dated 8 March 1946. Further, it appears that such authority is inherent in a military commander (Appendix D, H.C. & B.); *Yamashita v. Styer*, 327 U.S. 1).

The accused made a plea to the jurisdiction as indicated in paragraph 4(e) above. It is well established that a military commission convened by authority of the Commander-in-Chief, Pacific and U.S. Pacific Fleet, and/or any military commander has jurisdiction to try war crimes and accused war criminals (*Yamashita v. Styer*, 327 U.S. 1; Appendix D, H.C. & B., 1937; SecNav ltr re War Crimes, dated 13 Jan. 1945; and CinC U.S. Pacific Fleet ltr serial 2812, dated 6 Apr. 1945).

The murder, which was committed prior to occupation, of unarmed prisoners of war as alleged in Specification 1 of Charge I of this case is well recognized as a war crime (see all previous cases tried in this area).

FF12/AL7-19
02-JUN-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kasuo NAKAMURA, I.J.A., et al.

Jurisdiction for such offenses and for perpetrators thereof is well established, particularly by the Potsdam Declaration of 26 July 1945 which states, "....stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners." Further, the murder, as alleged in Specification 2 of Charge I, by armed forces of a country at war of a civilian enemy alien who has been interned is a violation of the law and customs of war if such interned person is to be accorded the treatment of a prisoner of war. Such interned person is under the American and English practice as well as by the weight of authority under international law treated as a prisoner of war (Law of Land Warfare, JAG's Text No. 7, p. 48). The United States and enemy governments, namely, Germany, Italy, and Japan agreed through the Swiss government to treat interned civilian alien enemies, on a reciprocal basis, at least as favorably as a prisoner of war (U.S. Dept. of State Bull., Vol. VI, No. 152, p. 446, May 1942).

The matter of jurisdiction relative to the murder of the victim (Charlie SMITH) named in Specification 2 of Charge I was, prior to trial, referred to the Navy Department by the Commander-in-Chief, U.S. Pacific Fleet, in his communication of 2 October 1947, which passed for action Commander Marianas despatch 292336, September 1947. The Secretary of the Navy in his reply of 8 October 1947 to Commander-in-Chief in effect held that a military commission convened by Commander Marianas Area would have jurisdiction to try former Japanese nationals for the murder of foreign nationals, such as Charlie SMITH, who were residents of the former Japanese mandated islands during Japanese control of such islands. This was confirmed by the Acting Secretary of the Navy's approval of the Judge Advocate General's opinions in the cases of FURUKI, Hideakazu and INOUE, Fumio, dated 12 February 1948.

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

It is my opinion that other grounds listed in sub-paragraph 4 c supporting the accused's plea to the jurisdiction, are, in view of the above, without merit.

b. As to procedure,

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

(2) The proceedings of the commission, as authorized in the

FF12/17-19
02-JDM-fak

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kazuo NAKAMURA, I.J.A., et al.

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

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

(4) The sentences are legal.

c. As to evidence.

Referring to Charge I and the specifications thereunder, there is sufficient competent evidence to support the commission's findings of guilty relative to defendants NAKAMURA and KOKUBO. The commission's finding of "proved in part" on Specification 1 was based on the acquittal of NAGATOME. This does not affect the legality of the commission's findings of "Guilty" on the charge (Sec. 429, H.C. & S.).

Referring to Charge II and the specifications thereunder, there is sufficient competent evidence to support the commission's findings of "proved" and "guilty" relative to NAKAMURA on Specifications 3 and 4 and on Charge II. The commission's findings of "not proved" with respect to Specifications 1 and 2 is supportable for the reason that the accused NAKAMURA was not the senior officer present at the time of the illegal offenses and the question presented by the evidence resolved itself into one of fact which was within the province of the commission to decide.

Referring to the acquittal of accused NAGATOME on Charge I and Specification 1 thereunder, the question presented is, did NAGATOME knowingly commit an overt act in connection with the illegal murder of the three unknown American prisoners of war alleged in the specification? What constitutes an overt act was fully discussed in my memorandum of 20 March 1948 on the case of former Captain Hiroo KOICHI, I.J.A., et al.

Briefly stated the evidence which tended to incriminate NAGATOME was that he was assigned as a guard while the victims were being transported in a truck to the place of their execution. This evidence was given by himself while a witness on the stand in his own behalf. He was present at the

FF12/117-19
02-JDM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kanuo NAKAMURA, I.J.A., et al.

execution. There was conflicting evidence to the effect that he held the ashes of a cremated Japanese, IKUSHIMA, at the time of the execution.

Contradicting the evidence which tended to incriminate NAGATOME was testimony to the effect that he did nothing, except observe, at the execution and performed no duties as a guard after the arrival of the truck at the place of execution and that prior to this time he had no knowledge that the victims were to be executed.

In view of the evidence it is my opinion that the question of whether NAGATOME knowingly committed an overt act resolved itself to one of fact which members of the commission were required to decide in their capacity as jurors (Sec. 304, H.C. & B., 1937) by weighing the evidence. If the members of the commission believed that NAGATOME did not know that the three American prisoners of war were to be executed at the time he acted as a guard while they were being transported in a truck to the place of execution and that he did not hold the ashes of IKUSHIMA or do any other act, except witness the execution, in furtherance of the execution after he found out that the American prisoners of war were to be executed, it was their duty to acquit.

Sufficiency of the evidence to sustain the finding of the commission should always be considered by the reviewing authority, keeping in mind the duties of the commission in weighing the evidence before it (Sec. 472, H.C. & B., 1937). The general rule is, when there is any evidence at all to support the commission's finding, that finding should be accepted by the convening authority even though, from the record he arrives at an opposite conclusion (C.M.C.'s 12, 1927, 14-17 and 9, 1936, 9).

No action should be taken by a reviewing authority which purports to approve or disapprove an acquittal. However, if he does not concur in the finding of the commission, he may so state in his action upon the record (Sec. 472, H.C. & B., 1937).

d. As to sentence.

The defendants NAKAMURA and KOKUBO were each sentenced to death by hanging. While the sentences are legal, "All war crimes are subject to the death penalty although a lesser penalty may be imposed..." (Para. 357, War Dept. Basic Field Manual, FM 27-10), nevertheless in light of the circumstances of this case they seem excessive. It is clear from the prosecution's case that both

FF12/A17-19
02-JHM-fsk

Subject: Review of the Record of Trial by a Military Commission
of former First Lieutenant Kaguo NAKANURA, I.J.A., et al.

NAKANURA and KOKUBO were acting under superior orders when they participated in the illegal executions. There is nothing in the record to indicate that the conduct of either of them was aggravated, that is, there is no indication that either of them held any personal malice toward the prisoners executed, or that in performing their respective parts in the executions unduly tormented, abused or maltreated the prisoners. There is no evidence that either of them volunteered to perform the executions.

In my review of the record of trial by a military commission of former Rear Admiral Shimpai ASANO, I.J.N., et al, dated 17 February 1948, paragraph 6 d, there is contained a tabulation of sentences adjudged by commissions in this area in similar murder cases involving inferior officers and men, together with the Secretary of the Navy's action thereon. From this tabulation, it will be seen that no person, convicted of murder (not aggravated), who was at the time of the offense acting in obedience to superior orders or under the supervision of a superior, has been sentenced to death as finally approved.

With a view to establishing, insofar as practicable, uniformity of punishments for similar war crimes offenses, it is my belief that the death sentences of NAKANURA and KOKUBO should be commuted to life imprisonment.

Since the power to commute sentences of a court martial is not vested in any officer of the Navy but lies within the power of the Secretary of the Navy (N.C. & B., Sec. 451, App. D-18; A.G.N., Art. 34), I believe the convening authority and reviewing authority should recommend to the Secretary of the Navy the commutation of the death sentences to life imprisonment in the cases of NAKANURA and KOKUBO.

c. Generally.

(1) Specifications 3 and 4 of Charge II concerned the accused NAKANURA alone and they were found "proved." These specifications alleged distinct offenses but were based on the same circumstances as Specification 2 of Charge I which was also found proved against NAKANURA.

In accordance with the Judge Advocate General's action (CG-TACHIBANA, Yoshio, et al/A17-20 I(3-19-47 RHNmas 154978) approved by the Secretary of the Navy 18 July 1947 (JAG:IRAS:fld A17-20/00 (6-25-47) 154978), the findings on Specifications 3 and 4 of Charge II and the findings on Charge II as to the accused NAKANURA could be set aside. However, such action is not required as the conviction on this charge and the two specifications are legal. It is my opinion

Subject:

Review of the Record of Trial by a Military Commission
of former First Lieutenant Kaguo HAKAMURA, I.J.A., et al.

that any action with a view to setting aside the findings on Charge II and on Specifications 3 and 4 should be taken by the final reviewing authority if such action is considered warranted by that authority, and not by the Commander Marianas Area or the Commander-in-Chief, U. S. Pacific Fleet.

(2) During the trial, the accused made certain pleas, motions and requests as indicated on page 24, 72, and 95 of the record and also the judge advocate and accused made various objections to the admissibility of certain evidence. Each of these objections, and the rulings of the commission have been considered. Based on the authorized procedure for the commission and the rules of evidence, which were properly adopted, (JAG Desp. 062125 March 1946), it is my opinion that the commission's rulings were in all instances legal and without material prejudice to the interest of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

(3) The commission approved a stipulation made by the judge advocate and defense counsel prior to the members having been sworn (R.p. 1). This was improper (Sections 394-5, Naval Courts and Boards; see also C.M.O. 2-1943, p. 183. When stipulation is made, "should be followed by an affirmative statement in the record to the effect that the accused acquiesced in the agreements when they have been made by his counsel..." (C.M.O. 1-1942, p. 290). However, while the commission erred in accepting the stipulation before the members were sworn, and also in not seeing that the accused acquiesced in the agreement, it is my opinion that the substantial rights of the accused were not prejudiced. The stipulation was obviously entered into for the purpose of cryptographic security and the stipulation did not involve the issues of the case, nor did it constitute an admission unfavorable to the accused.

7.

OPINION:

It is the opinion of the undersigned that:

- (a) The military commission was legally constituted.
- (b) The commission had jurisdiction of the persons and offenses.
- (c) The evidence supports the findings of "guilty" as to the accused HAKAMURA and KOKUBO.
- (d) The record discloses no errors prejudicial to the accused.
- (e) The sentences are legal.

FF12/117-19
02-JUN-68

Subject: Review of the Record of Trial by a Military Commission.
of former First Lieutenant Kame NAKAMURA, I.J.A., et al.

8. RECOMMENDATIONS:

It is recommended (1) that the convening authority and reviewing authority approve the proceedings, the findings and the sentences of guilty in the case of NAKAMURA and KOKUBO; (2) that the convening and reviewing authorities recommend that the Secretary of the Navy commute the death sentences of NAKAMURA, Kame and KOKUBO, Ohihiro to life imprisonment; (3) that the record, in conformity with Appendix D-14, H.C. & B., be transmitted to the Secretary of the Navy (Judge Advocate General of the Navy) for revision, record and confirmation or commutation of the death sentences as to the accused NAKAMURA and KOKUBO.

9. ACTIONS:

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

JOHN D. MURPHY,
Rear Admiral, U.S. Navy (Ret.),
Director War Crimes, U.S. Pacific Fleet.

cc: JAG, USN ✓

FW12/117-10(1)
CS-308-90

Serials

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; CofMarianas Dep. 2923342 Sept. 1947; CinCPacFlt Dep. 0821031 Oct. 1947; Seclav Dep. 0819461 Oct. 1947; CinCPacFlt 0943031 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 HAKAMURA and HUNDO on the same day; on the accused HIGUCHI 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 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.

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." (Sec. 394, U.C.M.). 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 (CMB 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. (CMB 2-1943, p. 163).

The record shows that the accused HAKAMURA was convicted on two specifications of murder and that the accused HUNDO was convicted on one specification of murder. HAKAMURA and HUNDO, 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.

7732/217-20(2)
02-JUN-60

Serial:

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. 145.1, 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 KUKUDO 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.

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, Kaseo, and KUKUDO, Chikire, to that of life imprisonment (Sec. 451, U.C.M. refers).

Subject to the above remarks, the proceedings in the foregoing case of NAKAMURA, Kaseo, KUKUDO, Chikire, and NAGATOME, Yoshimori are approved. The findings of guilty and sentences as to the accused NAKAMURA and KUKUDO are approved.

NAKAMURA, Kaseo and KUKUDO, Chikire 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.

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

ENCLOSURE (2)

0071

BEST COPY AVAILABLE

**THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
Headquarters of the Commander in Chief**

CinCPac/10 File

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

Serials

The proceedings in the foregoing case of **NAKAMURA, Kameo, KUKUDO, Chihiro, and MATSUME, Yoshinori** are approved. The findings of guilty and sentences as to **NAKAMURA** and **KUKUDO** are approved. The action of the convening authority is approved.

The reviewing authority concurs in the convening authority's recommendation to the effect that the death sentences of the accused **NAKAMURA, Kameo** and **KUKUDO, Chihiro** be commuted from death to life imprisonment.

Prior to the execution of the death sentence adjudged in the cases of **NAKAMURA, Kameo** and **KUKUDO, Chihiro** the record is in conformity with Appendix D-14, Naval Courts and Boards and Chief of Naval Operations serial **CLP22** of 28 November 1945 referred via the Judge Advocate General of the Navy to the Secretary of the Navy.

**Delitt C. Ramsey,
Admiral, U. S. Navy,
Commander in Chief Pacific
and United States Pacific Fleet.**

REMARKS (a)

0872

BEST COPY AVAILABLE

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.

11 MAY 1948

Serial 2212

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 OLP22 of 28 November 1945, referred to the Secretary of the Navy.

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

0873

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.

11 MAY 1948

Serial 2212

The proceedings, findings of guilty and sentences as to NAKAMURA and KOKUBO in the foregoing case of NAKAMURA, Kasuo, KOKUBO, Chihiro, and HAGATOME, 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, Kasuo and KOKUBO, Chihiro be commuted from death to life imprisonment.

Prior to the execution of the death sentence adjudged in the cases of NAKAMURA, Kasuo and KOKUBO, Chihiro, the record is, in conformity with Appendix B-14, Naval Courts and Boards and Chief of Naval Operations serial OLP23 of 28 November 1945, referred to the Secretary of the Navy.

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, Kasuo, KOKUBO, Chihiro and HAGATOME, Yoshimori.

Copies to:
ComMarianas
Cincpacflt War Crimes Officer, Guam

0874

Nakamura, Kazuo
Kokubo, Chihiro
Nagatome, Yoshinori

Trial by Military Commission

at Guam,

Marianas Islands

January 6, 1948

INDEX

Organization of commission.	1, 24
Introduction of counsel.	1
Reporters and interpreters sworn.	1
Challenge.	2, 3, 4, 5
Judge advocates and members sworn.	5, 24
Arraignment.	21, 22
Pleas.	21, 22
Adjournments.	13, 22, 23, 39, 60, 79, 89, 91, 95
Prosecution rests.	71
Defense rests.	89
Findings.	93
Sentence.	94

TESTIMONY

Name of witness	Direct and Redirect	Cross and Recross	Commission
Prosecution			
Switzer, Robert E., lt, (MC) U.S.N.	14	15	- - -
Sano, Giichi, 1st lt., IJA	24, 51, 55	32, 52	- - -
Yajima, Toshihiko, lt.col, IJA	43	46	- - -
Iwanoto, Harukichi, sup.vt., IJA	49, 51, 56	50, 53	- - -
Ajima, Kiso, w/c, IJA	61	63	64
Kenny, James P., lt., U.S.N.	64	- - -	- - -
Ogden, Herbert L., cdr, U.S.N.	66, 70, 71	67, 70	- - -
Defense			
Kuwata, Hideo, civilian (Japanese).	7	8	- - -
Iwanami, Hiroshi, capt, IJN	9	- - -	- - -
Weno, Chisato, cdr, IJN	11	- - -	- - -
Miyamine, Kazuo, 1st lt., IJA	82	- - -	- - -
Nagatome, Yoshinori, s.t, IJA	83, 88	84	- - -

0875

EXHIBITS

Exhibit	Character of -	Admitted in Evidence
		<u>Page</u>
1	Report of Psychiatric Examination of Nakamura, Kazuo . .	15
2	Report of Hirai, Kyoshi, in Japanese.	65
3	Report of Hirai, Kyoshi, in English	65
4	Statement of Nakamura, Kazuo, in English.	70
5	Statement of Nakamura, Kazuo, in Japanese	70
6	Statement of Kokubo, Chihiro, in English.	70
7	Statement of Kokubo, Chihiro, in Japanese	70

FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

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

1. Pursuant to the authority vested in me by virtue of my office as The Commander Marianas Area and further by the specific authority vested in me by the Commander-in-Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. Pac. Flt. 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), military commission is hereby ordered to convene at the Headquarters Commander Marianas on Guam, Marianas Islands at 10 o'clock a.m. on Thursday, November 20, 1947, or as soon thereafter as practicable, at the call of the President, for the trial of such persons as may be legally brought before it.

2. The military commission is composed of the following members, viz:

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President.
Lieutenant Colonel Henry K. ROSCOE, Coast Artillery Corps,
United States Army.
Lieutenant Colonel Victor J. GARBARINO, Coast Artillery Corps,
United States Army.
Lieutenant Commander Bradner W. LEE, junior, U. S. Naval Reserve.
Major Andrew I. LYMAN, U. S. Marine Corps, and of Lieutenant Commander Joseph A. REGAN, U. S. Navy, Lieutenant James P. KENNY, U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, any of whom is authorized to act as such.

KUWATA, Hideo, and KARASAWA, Takami, both furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, all of whom are lawyers, and SANAGI, Sadamu, a former captain, Imperial Japanese Navy, furnished by the Japanese Government, are available and authorized to act as defense counsel. This authorization does not preclude as defense counsel others who are available and are desired by the accused.

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

3. The military commission shall be competent to try all offenses within the jurisdiction of exceptional military courts, including offenses referred to in the Commander Marianas despatch cited in paragraph 1 above. It shall have jurisdiction over all Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, in the custody of the convening authority at the time of trial, charged with offenses committed against United States nationals, persons referred to in the Commander Marianas despatch cited in paragraph 1 above and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority. Nothing herein limits the jurisdiction of the military commission as to persons and offenses which may be otherwise properly established.

"A (1)"

0877

FF12/A17-10
02-JDM-rhj

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Nov 8 1947

Serial: 20971

Subject: Precept for a military commission.

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

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

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

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

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

Copies to:

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

A true copy. Attest:

Joseph A. Regan
Joseph A. Regan, LCDR, USN.
Judge Advocate.

"A (2)"

0878

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

Serial 22660

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

From: The Commander Marianas Area.
To: Rear Admiral Arthur G. Robinson, U. S. Navy -
President, Military Commission, Guam.
Subject: Temporary relief of member of commission.

1. Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve, is hereby temporarily relieved as a member of the military commission convened by my precept of November 8, 1947, during the period of his authorized emergency leave granted by my orders of December 11, 1947.

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

cc: Lieutenant Commander Bradner W. Lee, junior,
Judge Advocate, Military Commission,
Judge Advocate General, U. S. Navy.

A true copy. Attest:

J. A. Regan
J. A. REGAN,
Lieutenant Commander, U. S. Navy,
Judge Advocate.

"B"

0879

FF12/A17-10(1)

02-JDM-hn

Serial: 22661

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

12 DEC 1947

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

Subject: Appointment of member of commission.

1. Lieutenant Commander John S. Cheredos, Medical Corps, U. S. Navy, is hereby appointed a member of the military commission of which you are president convened by my precept of November 8, 1947.

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

cc: Lieutenant Commander John S. Cheredos, Medical Corps, U. S. Navy,
Judge Advocate, Military Commission,
Judge Advocate General, U. S. Navy,
Commanding Officer, U. S. Naval Air Station, Orote.

A true copy. Attest:

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

"C"

0880

AL7-20/FF12
#2-JDM-hn

UNITED STATES PACIFIC FLEET
COMFINDER MARIANAS

Serial: 85

3 JAN 1948

From: The Commander Marianas Area.
To: Rear Admiral Arthur G. ROBINSON, U. S. Navy,
President, Military Commission.
Subject: Change in Membership of Military Commission.

1. Major Donald B. COOLEY, junior, U. S. Marine Corps, is hereby appointed a member of the military commission of which you are president, convened by my precept of 8 November 1947, vice Major Andrew I. Lyman, U. S. Marine Corps, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

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

Copy to:
Major Donald B. Cooley, junior, USMC.
Major Andrew I. Lyman, USMC.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.

A true copy. Attest:

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

"D"

0881

FF12/117-20
02-JDI-gh

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 136

6 JAN 1948

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

Subject: Change in Membership of Military Commission.

1. Lieutenant Commander Edwin M. KOOS, U. S. Navy, is hereby appointed a member of the military commission of which you are president, convened by my precept of 8 November 1947, vice Lieutenant Commander John S. CHEREDES, Medical Corps, U. S. Navy, hereby relieved, upon the completion of trials already begun, and except in event of revision of cases already tried.

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

Copy to:
LCDR Edwin M. KOOS, USN.
LCDR John S. CHEREDES, MC, USN.
CO, NAS, Orote.
Judge Advocate, Military Commission.
Judge Advocate General, U. S. Navy.
CO, NAS, Agaña.

A true copy. Attest:

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

"E"

0882

委員怠避の申立

昭和二十三年一月六日

兼 護 人 鎌田日出夫

被告中村数夫は以下述べる理由に因り Lieutenant Colonel Victor J. Garbarino が同被告の事件を審理する軍法委員会の一員たることに對し怠避を申立てる。

本件第一起訴第二罪状項目註に第二起訴第三、第四罪状項目は孰も昭和十九年十二月二十九日頃パラオ諸島バベルタフ島に於て英國人 Charlie Smith 別名 James を射殺したと云ふ事實に付き被告の責任を問うてゐるのであるが、之は Lieutenant Colonel Victor J. Garbarino が委員の一人として審理された義の味岡事件と全く同一の事件である。隨て Naval Courts & Boards § 388 (1) That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial. なる條項に該する。

加之被告中村は右味岡事件の審理中検事側証人として

"P(2)"

0883

喚問され、自分は宮崎隊長から集團司令部で死刑に処せられた英人
Smith の死刑をガスパン憲兵分遣隊に実施せしめよ、全部分遣隊
にせよとお前も現場へ行って直接指導せよとの命令を受けたので
其の日ガスパン分遣隊に行き味岡や山田等と共に Smith を死刑の
現場に伴ひそこで山田に命じて Smith をピストルで射死せよと云ふ
趣旨の証言をしてゐる。委員の一人として中村の此の証言や中村に言及
した他の証人の多くの証言を聴かした Lieutenant Colonel Victor
J. Garbarino は被告中村が Smith 射殺事件に付て味岡や山田
と無犯者であり、随て今回の起訴罪状項目中かくも Smith 射殺
事件に關する部分に付ては中村が有罪なることに付き決定的な意見
を懷いて居られると信ずべき十分の理由がある。之は Naval Courts
& Boards § 388(b) ... or that he has formed a positive
and definite opinion as to the guilt or innocent of
the accused. なる條項に該當するものである。

故に被告中村教夫は Lieutenant Colonel Victor J.
Garbarino が本軍法委員会の一員たることを忌避する次第
である。(終)

鎌田日夫夫

"F(2)"

"F"

委員忌避の申立

昭和二十三年一月六日

弁護人 鎌田日出夫

被告中村教夫は以下述べる理由に因り Lieutenant Colonel Henry K. Rosco が同被告の事件を審理する軍法委員会の一員たることに對し忌避を申立てる。

本件第一起訴第二罪状項目註に第一起訴第三、第四罪状項目は孰も昭和十九年十二月二十九日頃パラオ諸島バベルタフツ島に於て英人 Charlie Smith 別名 James を射殺したと云ふ事実に付き被告の責任を問うてゐるものであるが之は Lieutenant Colonel Henry K. Rosco が委員の一人として審理したる義の味岡事件と全く同一の事件である。随て Naval Courts & Boards §388 (c) That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial. なる條項に該當する。

加之被告中村は右味岡事件の審理中検事副証人として喚問

"G(1)"

"G(2)"

"G"

され、自分は宮崎隊長から集團司令部で死刑に処せられた英人 Smith
の処刑をガスパン憲兵分遣隊に実施せよ。全部分遣隊に委せられ
お前も現場へ行って直接指導せよとの命令を受けたので、其の日ガス
パン分遣隊に行き味岡や山田等と共に Smith を処刑の現場に伴
ひ、そこで山田に命じて Smith をピストルで射たせたと云ふ趣旨の証
言をしてゐる。委員の一人として中村の此の証言もや中村に言及して
他の証人の多くの証言を聴かれた Lieutenant Colonel Henry
K. Rosco は被告中村が Smith 射殺事件に付て味岡や山田
と共に共犯者であり、随て今回の起訴罪状項目中少くも Smith 射殺
事件に關する部分に付ては中村が有罪なることに付き決定的な意
見を懷いて居られると信ずべき十分の理由がある。之は Naval Courts
と Boards § 388 (b) ---- or that he has formed a positive
and definite opinion as to the guilt or innocent of
the accused. なる條項に該するものである。

故に被告中村教夫は委員 Lieutenant Colonel Henry
K. Rosco の本軍法委員會の一員たることを忌避する次第である。

鐵田日出夫

"B(2)"

"C"

委員忌避の申立

昭和二十三年一月六日

弁護人 欽田日出夫

被告中村教夫は以下述べる理由に因り Rear Admiral
Arthur G. Robinson が同被告の事件を審理する軍法委員会
の一員たることに對し忌避を申立てる。

本件第一起訴才二罪状項目註に才二起訴才三罪状項目及び
才四罪状項目は孰も昭和十九年十二月二十九日頃パラオ諸島バベル
タフ島に於て英国人 Charlie Smith 別名 James を射殺した
と言ふ事實に付き被告の責任を問うてゐるものであるが、之は Rear
Admiral Arthur G. Robinson が委員長として審理され
た叢の味岡事件と全く同一の事件である。随て Naval Courts
& Boards § 388 (c) That he sat as a member of a
court or board which tried or investigated
another person upon charges based on the same
transaction concerning which the accused is
on trial. の三條項に該當する。

"H(1)"

"H(2)"

"H"

加之被告中村は右味岡事件の審理中検事側証人として喚問され、自分は宮崎隊長から集團司令部で死刑に処せられた英人 Smith の死刑をガスパン憲兵分遣隊に実施せよ、全部分遣隊に委せずにお前も現場へ行って直接指導せよとの命令を受けたので、其の日ガスパン分遣隊に行き味岡や山田等と共に Smith を死刑の現場に伴ひ、そこで山田に命じて Smith をピストルで射たせたと云ふ趣旨の証言をしてゐる。

委員長として中村の此の証言や中村に言及した他の証人の多くの証言を聴かれた Rear Admiral Arthur J. Robinson は被告中村が Smith 射殺事件に於て味岡や山田と共に共犯者であり、随つて今回の起訴罪状項目中すくも Smith 射殺事件に關する部分に於ては中村が有罪なることに付き決定的な意見を抱いて居られると信すべき十分の理由がある。之は Naval Courts & Boards §388 (b) ... or that he has formed a positive and definite opinion as to the guilt or innocence of the accused. なる條項に該するものである。故に被告は委員長 Rear Admiral Arthur J. Robinson を回避する。

銀田日出夫

"H(2)"

"H"

0888

MOTION FOR A BILL OF PARTICULARS

By

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

May it please the Commission:

In behalf of all three accused we make this motion for a more definite statement of the charges and for a bill of particulars in order to enable the accused to prepare for trial. (See Rule 12(e), Federal Rules of Civil Procedure for the District Courts of the United States and *Herman v Mutual Life Insurance Company* (CCA 3d) 108 F(2d) 676, 127 ALR 1458. We pray that specifications 1 and 2 of Charge I set out the law and customs of war specifically which it is alleged was violated. In specifications 1, 2, 3, and 4 of Charge II which allege neglect of duty and failure to protect we pray the law and customs of war which it is alleged were violated be set out specifically. The object of this motion is to make more definite and certain the charges. See *Felton v Beecher*, 59 N.Y., 176, 17 Am.Rep. 337 and 41 Am.Jur., "Pleading", section 276.

It is necessary that the accused definitely know with a certainty just what law and what customs they are charged with having violated particularly as to Charge II, neglect of duty. We know of no international law or customs of war or anything in all history which justifies such a charge against Nakamura as set forth in Charge II. "International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liabilities under such circumstances for failure to meet the ordinary responsibilities of command. ---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 deviation from duty" - From the dissenting opinion by Mr. Justice Murphy in the case of General Tomoyuki Yamashita, Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands, cited as *Yamashita v Styer* 327 U.S. 1.

The accused cannot properly prepare a defense to charges based upon vague and indefinite references in certain of the Hague Conventions and Geneva Red Cross Convention No. IV of October 18, 1907. We cite the case of *Gross v Big Creek Development Co.*, 75 W.Va. 719, 84 G.E. 75, LRA, 1915 E 1057. In 41 Am.Jur. "Pleading", Section 271, the general rule as to when a bill of particulars will be ordered is as follows: "As a general rule bills of particulars will be ordered in every case in which the party can satisfy the court that it is necessary to a fair trial that he should be apprised beforehand of the particulars of the charge which he is expected to meet." Citing *May v Ill. C.R. Co.*, 129 Tenn. 521, 167 S.W. 477, LRA, 1915 : 781, Am. Cas. 1916 L. 213.

"I(1)"

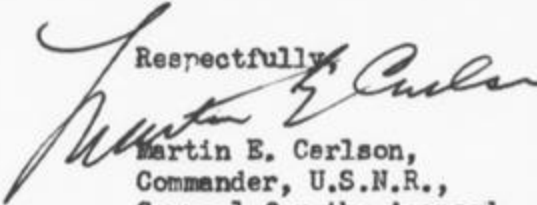
0889

A bill of particulars should be granted in furtherance of justice citing the following cases: Tilton v Beecher 59 N.Y. 176, 17 Am.Rep. 337; Hawkins v Lassell, 43 S.D., 191, 178 N.W. 731 citing R.C.L.; May v Ill. C.R.Co., 129 Tenn. 521, 167 S.W. 477, IRA 1915 A 781, Am. Cas. 1916 A 213; Richmond and D.R. Co. v Payne, 86 Va. 481, 10 S.E. 749, 6 IRA 849; Turner v Great Northern R. Co., 15 Wash. 213, 46 P 243, 55 Am.St. Rep. 883.

A bill of particulars should be granted for purposes of effectuating justice and in order not to impose an undue burden upon the accused, citing the cases of Williams v Chattanooga Iron Works, 131 Tenn 683, 176 S.W. 1031, Am.Cas. 1916 B 101; and May v Ill. C. R. Co., 129 Tenn 521, 167 S.W. 477, IRA 1915 A 781, Am.Cas. 1916 A 216.

As is required by Rule 11, Federal Rules of Civil Procedure, I have read the charges and 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 charges and specifications more definite and certain and in order to effectuate justice and to insure a fair trial for these three accused.

Respectfully,


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

"I(2)"

0890

中村数夫外二名の起訴及び罪状項目に対する異議

昭和二十三年一月六日

弁護人 鎌田日出夫

被告等は以下述べる理由に因り本件起訴及び罪状項目に対して異議を申立てる。

1. 被告等は互に利害の衝突あるに拘らず合同起訴の不利益を受け
てゐるのみならず、第一起訴第一罪状項目に於て「其の他當局には姓名
不詳の日本軍隊の人々」と合同されてゐる。抑、被告等には起訴の性質及び
原因を十分に知らしめて、適當な弁護を準備せしめよことが起訴状の
不可欠の要件である。然るに此の姓名不詳者の中に誰が包含されてゐ
るかを知らずしては、被告等は適當な弁護を準備し得ないから、姓名
不詳者との合同起訴は被告等の重大なる権利を侵害するものである。
故に姓名不詳者が何人であるかを明示すべきである。然らざれば、姓
名不詳者なる語は起訴状から抹消すべきものである。

2. 第一起訴第一罪状項目の殺人と第二起訴第二罪状項目の
職務怠慢並びに第一起訴第二罪状項目の殺人と第二起訴第
四罪状項目の職務怠慢とは夫々明らかに二重起訴である。

"J(1)"

何となれば、全く同一の事實に対して作爲、不作爲の両面から起訴に
あるからである。既に味岡事件の起訴及び罪状項目に対する異議や
最終弁論に於て詳述した様に、同一事實に關する限り、作爲は不作爲
より其の違法性の程を大であるから、此の起訴の方法は明らかに
Naval Courts & Boards §19の規定に違反してゐる。即ち同節には
"Where the offense falls apparently equally within
the scope of two or more charges articles of the Arti-
cles for the Government of the Navy, or where the
legal character of the offense cannot be precisely
known or defined until developed by the proof,
it is quite proper to specify the offense under
two or more charges; but there is, of course, no
reason for doing this, if one charge is lesser
than and included in the other. In such case
the specification should be laid under more
serious charge."と規定されてゐる。

検事は "The law permits as many charges to be
preferred as may be necessary to provide for

"J(2)"

for every possible contingency in the evidence."と云ふ原則に依つて、是等兩起訴を維持しようと努めるかも知れない。然し本件オ一起訴殺人とオ二起訴オ二及びオ四罪状項目の職務怠慢との関係が、此の原則に対する前記例外に該する以上 "necessary to provide for every possible contingency in the evidence" は是等兩起訴を維持する理由とはならぬ。故にオ二起訴オ二及びオ四罪状項目は二重起訴として取消するべきものである。

3. オ二起訴オ二罪状項目及びオ四罪状項目には "as it was his duty to do" と云ふ言葉がある。此等の罪状項目の眼目は unlawfully disregard and fail to discharge his duty である。disregard と云ひ fail to discharge と云ひ孰れも不作為を其の本質とするものである。然るに單なる不作為は犯罪を構成するものではない。作為義務あるもの、不作為にて始めて犯罪を構成するものである。随て本罪状項目に "as it was his duty to do" と書いたのは正しい。然し其の違反に対して法律上の制裁を伴ふ此の義務は道德上の義務ではなくて、法律上の義務でなければならぬ。然らば此の法律上の義務は

"J(3)"

如何なる法規、如何なる慣習から発生するかを明示せねばならぬ。
それを明示して単に「是は戦争の法規並に慣習に違反するものである」と言放しただけでは不十分である。American Jurisprudence
vol. 26 / Homicide §205 には "Is a general rule, where
one person owes to another either a legal or contrac-
tual duty, an omission to perform that duty re-
sulting in the death of the person whom the duty
was owing renders the person charged with
the performance of such duty guilty of a cul-
pable homicide. ... The duty, ^{imposed} however, must be
a plain duty. It must be one on which different
minds must agree, or generally agree, and which
does not admit of any discussion as to its obli-
gatory force." とある様に不作為に依つて刑事責任を
生ずる義務は明白なるものでなければならぬ。然るに如何なる
法規、如何なる慣習から俘虜の保護義務が生ずるかを明示せ
ずしては此の法律上の義務は明白とはならぬ。故に單に「是は
戦争の法規並に慣習に違反するものである」と云ふ主張は被告に

"J(4)"

0894

起訴の性質及び原因を十分に知らしめないので、起訴状の最も重要な要件を欠き且又被告の重大なる権利を毀損するものであって、不適当である。

又、オニ起訴オ一罪状項目は被告中村の部下に対する監督義務を問責し、同オニ罪状項目は同被告の俘虜に対する保護義務違反を問うてゐる。然るに是等の罪状項目に言及せられた責任はオ一起訴オ一罪状項目に於て主張された三人の末人、俘虜殺害の事實に由来するものである。而して此の事件は当時陸軍中佐宮崎有恒も参加してゐることはオ一起訴オ一罪状項目の文言に徴し明白である。果して然らば部下の監督義務や俘虜の保護義務は被告中村にはなくて寧ろ中村の直屬上官たる宮崎有恒にこそある筈である。一見して存在せざることも明白な義務に対する違反につき起訴にゐるオニ起訴オ一罪状項目及び同オニ罪状項目は当然取消すべきものであると思ふ。

(終)

秋田日出夫

OBJECTIONS TO THE CHARGES AND SPECIFICATIONS IN THE CASE OF NAKAMURA, KAZUO,
ET AL, DELIVERED BY MR. KUNATA, HIDEO.

May it please the commission.

All of the accused object to the charges and specifications for the following reasons:

1. Despite the clash of interests, not only are these accused joined in trial to the prejudice of each one individually but they are joined with "other members of the armed forces of Japan, names to the relator unknown" in Specification 1 of Charge I. It is an essential requisite of an indictment to inform the accused fully of the nature and cause of the accusation against them so that they may be able to prepare proper defense. Therefore, this joinder is most prejudicial to the substantive rights of the accused because none of these accused can properly prepare his defense without knowing who are included in the term "other members of the armed forces of Japan, names to the relator unknown." Therefore, it should be clearly specified who these "other members...., names to the relator unknown"; are; otherwise the term should be stricken out of the specification.

2. Specification 1 of Charge I, Murder, and Specification 2 of Charge II Neglect of Duty, and also Specification 2 of Charge I, Murder, and Specification 4 of Charge II, Neglect of Duty, are clearly duplication, because utterly identical facts are alleged in them from two different points of view, namely, commission and omission. As I explained in detail in my objections to the charges and specifications and my final argument in the Ajioke case, omission is lesser in the degree of its unlawfulness than commission so far as they concern the same fact, so this way of indictment is in violation of Section 19 of Naval Courts and Boards which reads: "Where the offense falls apparently equally within the scope of two or more articles of the Articles of the Government of the Navy, or where the legal character can not be precisely known or obtained until developed by the proof, it is quite proper to specify the offense under two or more charges; but there is, of course, no reason for doing this if one charge is lesser than and included in the other. In such cases the specification should be laid under more serious charge."

The judge advocate may try to maintain these duplicate charges by referring to the rule: "The law permits as many charges to be preferred as may be necessary to provide for every possible contingency in the evidence." But so far as the relation between Charge I, Murder and Specifications 2 and 4 of Charge II, Neglect of Duty falls under the above cited exception of this rule, necessity to provide for every possible contingency in the evidence it can not be the proper ground to sustain these duplicate charges. Specifications 2 and 4 of Charge II should, therefore, be quashed as duplication.

3. In Specifications 2 and 4 of Charge II, there is the term, "as it was his duty to do". The main point of these specifications is "unlawfully disregard and fail to discharge his duty". Either "disregard his duty" or "fail to discharge his duty" is essentially composed of omission, while mere omission does not constitute a crime. If a man who has a duty to do a certain act does not do it, then the omission constitutes a crime. Therefore, it is right that this specification alleges "as it was his duty to do." But this duty, so far as it requires legal punishment against its violation, is not a moral duty but should be a legal duty. Then it should be clearly shown from what this legal duty is derived. It is insufficient only to state, "This

"K (1)"


in violation of the law and customs of war" without clearly showing what the derivation of this legal duty is. Section 205, American Jurisprudence, Vol. 26, "Homicide", reads: "As a general rule, where one person owes to another either a legal or a contractual duty, an omission to perform that duty resulting in the death of persons to whom the duty was owing renders the person charged with the performance of each duty guilty of a culpable homicide. ...The duty imposed, however, must be a plain duty. It must be one on which different minds must agree, or generally agree, and which does not admit of any discussion as to its obligatory force." As shown in this section, the duty, omission of which causes criminal liability, should be plain. But how can this legal duty be clarified without showing from what law and what customs the duty of protection of prisoners is derived? Since the mere allegation "this in violation of the law and customs of war" does not fully inform the accused of the nature and cause of the accusation against them, it is lacking in the essential requisite of an indictment and is most prejudicial to the substantive rights of the accused. Therefore, the allegation is improper.

4. Specification 1 of Charge II charges the accused Nakamura with neglect of duty in supervising his subordinates, while Specification 2 of the same charges his neglect of duty in protecting the prisoners. The alleged liability in these specifications comes from the fact of murdering three American prisoners alleged in Specification 1 of Charge I. However, it is clear, as alleged in Specification 1 of Charge I, Miyazaki, Aritsune, then an army lieutenant colonel, participated in this incident. If so, it is not the accused Nakamura, but Miyazaki, Aritsune, direct superior of Nakamura, who is liable for the supervision of the subordinates and protection of the prisoners. Specifications 1 and 2 of Charge II allege neglect of duty which clearly does not exist. Therefore, I maintain that these specifications should properly be quashed.

Respectfully,

KUWATA, Hideo.

I certify the foregoing to be a true and complete translation of the original objection, to the best of my ability.


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

"X (2)"

0897

PLEA TO QUASH CHARGES AND SPECIFICATIONS ON GROUND OF FORMER JEOPARDY IN
CASE OF NAKAMURA, KAZUO, DELIVERED BY COMMANDER M.E. CARLSON, USNR.

The accused, Nakamura, Kazuo, makes this special plea of former jeopardy. On Monday, December 15, 1947, this present commission composed of Rear Admiral Arthur G. Robinson, U.S.N., Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, U. S. Army, Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, U. S. Army, Major Andrew I. Lyman, U. S. Marine Corps, and Lieutenant Commander John S. Cheredes, Medical Corps, U. S. Navy, was convened for the trial of Ajioka, Misao and Yamada, Kiyoshi and their trial commenced on Monday, December 15, 1947. On the first day of the trial, Nakamura, Kazuo, the accused in this case appeared as a prosecution witness. He testified regarding the murder of Charlie Smith, alias James, alleged to have been committed in that case by Ajioka, Misao and Yamada, Kiyoshi.

In this present case he is now charged with not only the murder of Charlie Smith but also with neglect of duty in failing to control Ajioka, Misao and Yamada, Kiyoshi, and with failing to protect Charlie Smith in that he permitted the unlawful killing of said Charlie Smith by shooting with firearms by Ajioka, Misao and Yamada, Kiyoshi.

Nakamura was on the witness stand the first day of that trial, the second day, and the third day. During that time Nakamura testified as a prosecution witness he testified in part as follows:

Answer to Q. 14, "The Englishman at the Gasupan Kempeitai Detachment is to be executed. This is an order of division headquarters to First Lieutenant Nakamura. Go to the Gasupan Detachment right away and have the Gasupan Detachment carry out the execution. ...Do not leave everything up to the head of the detachment, but you, too, go along to the scene and directly supervise the execution..." Answer to Q. "...so I relayed the orders of Commanding Officer Miyazaki by saying to Yamada, 'Do it!'" Question 188, "But you still insisted in carrying out the killing even if it was pitiful?" Answer to Q. 188, "This was an order received from the commanding officer, Yamada, Ajioka, and myself, we all had this pitiful feeling. I, as an officer, was sent to see that this was carried out. I could not have refused to carry out this order." Question 189, "Instead of carrying it out yourself you got a poor little sergeant to do the job. Is that right?" Answer to Q. 189, "That is not true. I was told by the commanding officer and I ordered him." Question 190, "So you forced him to do it even though he didn't want to do it?" Answer to Q. 190, "We all were reluctant, Ajioka and I, too, were reluctant but as I relayed that this was an order of the commanding officer, we carried it out." Question 197, "When did you tell Miyazaki that you had killed Smith?" Answer to Q. 197, "I said it right after I got back." Answer to Q. 233, "To Yamada I said, 'Yamada do it,' and I relayed the orders of the commanding officer to Ajioka." Question 256, "So that you never examined the body to see whether he was dead or not?" Answer to Q. 256, "I did not inspect the body. I just looked at the body with my eyes for a little while." Question 257, "Then you ordered people to begin shoveling dirt over him?" Answer, "Yes." Answer to Q. 282, "...I did not have the authority to give Ajioka any orders." Question 289, "Did you see that Miyazaki's orders were carried out that day?" Answer to Q. 289, "Yes I did." Answer to Q. 292, "I was told to supervise the execution so I supervised it and I was not ordered to direct the execution."

"L (1)"

0898

The record of the trial of Ajioke and Yamada does not show that Nakamura was warned that he did not have to answer incriminating questions nor was he warned that he did not have to answer incriminating questions. The answers to the above questions made by Nakamura, Kazuo, did incriminate him. Nakamura should have known this. The judge advocates did know it.

We maintain that the testimony of Nakamura, Kazuo, given by him during the first, second and third day of the trial of Ajioke, Misao and Yamada, Kiyoshi, was the testimony of a person mentally unbalanced. However, Nakamura, Kazuo did testify according to the record of the trial of Ajioke, Misao and Yamada, Kiyoshi.

The testimony of Nakamura, Kazuo, as shown by the record of the trial of Ajioke, Misao and Yamada, Kiyoshi, did constitute former jeopardy as a matter of fact.

"The test in each case is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense." citing 131 U.S. 176, 195 U.S. 100, from CMO 10-1921, page 13.

We maintain that, as a matter of fact, Nakamura, Kazuo, was specifically the person in mind and included in the specification of charge one which reads as follows: "In that Ajioke, 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 Babelthuan 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."

We point out to the judge advocates that the proper way to have had Nakamura, Kazuo, testify as a witness would have been to have charged him with the crime of murder and then entered a nolle prosequi as against Nakamura, Kazuo, in order to use him as a witness.

The accused therefore prays that the charges and specifications against him be quashed.

Respectfully,

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

"L (2)"

0899

MOTION TO SUPPRESS THE USE OF EVIDENCE OF THE TRIAL OF AJIOKA, MISAO AND YAMADA, KIYOSHI, ON BEHALF OF NAKAMURA, KAZUO, DELIVERED BY COMMANDER MARTIN E. CARLSON.

In behalf of the accused, Nakamura, Kazuo, we make a motion that all evidence introduced at the trial of Ajioka, Misao and Yamada, Kiyoshi and any reference to such evidence and any information gleaned therefrom be suppressed.

Nakamura, Kazuo, was regularly demobilized on January 10, 1946. On January 20, 1947, he was arrested without warrant. On March 24, 1947, he was confined in Sugano Prison, Tokyo, Japan and there kept in solitary confinement. On October 3, 1947, he was sent to Guam where he was placed in solitary confinement and held incommunicado.

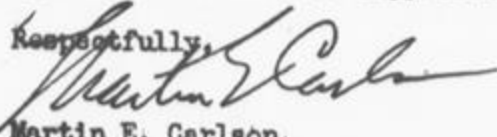
Although the judge advocate knew that Nakamura, Kazuo, participated in the killing of Charlie Smith, they did not charge him by name but charged him under the phrase, "and others, names to the relator unknown."

Nakamura, Kazuo, was never given the benefit of counsel but was required to testify at the trial of Ajioka, Misao, and Yamada, Kiyoshi. Without the benefit of counsel and without any warning he was required to answer incriminating questions. He did answer incriminating questions.

Such procedure is in violation of Articles V, VI, and XIV of the Constitution of the United States of America.

We move, therefore, that all such testimony as was given by Nakamura, Kazuo at the trial of Ajioka, Misao, and Yamada, Kiyoshi, and any reference to such testimony and any information gleaned therefrom be suppressed.

Respectfully,


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

0900

SPECIAL PLEA IN BAR OF TRIAL ON BEHALF OF
NAKAMURA, KAZUO

by

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

Gentlemen of the Commission:

On behalf of the accused NAKAMURA, Kazuo, we hereby make this plea in bar of trial and for the arrest of further proceedings as to NAKAMURA, Kazuo.

We shall show by witnesses that NAKAMURA, Kazuo was insane at the time of the alleged offenses, September 4, 1944, and December 29, 1944, and that he is still insane.

At the time of the alleged offenses the mind and personality of NAKAMURA was so diseased by general paresis and his mental and emotional processes so deranged and his intelligence weakened and perverted so that his mind was so unsound that he was incapable of distinguishing between right and wrong.

Due to the fact that NAKAMURA, Kazuo was at the time of the alleged incidents afflicted with syphilis which gave rise to a disturbed mental condition combined with the physical disease, NAKAMURA, Kazuo was unable to distinguish between right and wrong at that time.

The general physical condition of NAKAMURA, Kazuo is today poor. He cannot sleep; he has no appetite; he has a continuous ringing noise in his ears and he feels as if his head were burning up on the inside.

As to his mental condition, he is depressed, sad, anxious and perplexed. He is slow of speech. His train of thought is disconnected and fragmentary.

In view of the present physical and mental condition of NAKAMURA, Kazuo, we move that if there is any doubt on the part of the Commission as to his present insanity that NAKAMURA, Kazuo be examined by two qualified examiners.

On the information available there is good ground to support this plea and it is not interposed for delay but in furtherance of justice.

We pray therefore that the charges and specifications be quashed as to NAKAMURA, Kazuo.

Respectfully,

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

"N"

0901

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

6 January 1948.

From: President, Military Commission, Headquarters, Commander
Marianas.
To: The Commander Marianas Area.
Subject: Plea in bar, insanity, case of NAKAMURA, Kazuo.
Reference: (a) Section 415, Naval Courts and Boards.

1. This commission convened this date, for the trial of the
above-named accused.

2. The accused, NAKAMURA, at the time of the arraignment, pleaded
insanity as a bar to further proceedings.

3. In accordance with the provisions of reference (a), the
Convening Authority is hereby requested to postpone the trial, and that
the accused be placed under observation of medical officers to determine
his sanity.

Arthur G. Robinson
ARTHUR G. ROBINSON,
Rear Admiral, U.S. Navy.

"C"

0902

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 207

7 JAN 1948

From: The Commander Marianas Area.
To: President, Military Commission, Headquarters, Commander Marianas.
Subject: Plea in bar, insanity, case of NAKAMURA, Kazuo.
Reference: (a) President, Military Commission ltr. dated 6 January 1948.
1. The authority requested in paragraph 3 of reference (a) is hereby granted.
2. By separate correspondence it has been directed that the subject named accused be placed under observation of medical officers.

C. H. Wright
C. H. WRIGHT,
Rear Admiral, U. S. Navy,
The Commander Marianas Area, Acting.

0903

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 206

7 JAN 1948

From: The Commander Marianas Area.
To: Medical Officer in Command, U. S. Naval Hospital, Guam.
Subject: Examination of NAKAMURA, Kazuo.
Reference: (a) Naval Courts and Boards, section 415.

1. In accordance with reference (a) the President of the war crime military commission convened by my precept of 8 November 1947 has this date informed me that the subject accused has entered a plea of insanity as a bar to further proceedings against him.
2. You are directed to place the subject accused under observation and following adequate examination submit a report to this command at the earliest possible date relative to his mental status.
3. The necessary interpreters will be supplied by this command.

/s/ C. H. Wright
C. H. WRIGHT,
Rear Admiral, U. S. Navy,
The Commander Marianas Area, Acting.

A true copy. Attest:

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

"Q"

0904

PLEA IN BAR OF TRIAL

of

NAKAMURA, Kazuo
KOKUBO, Chihiro
NAGATOME, Yoshimori

Delivered by Commander Martin E. Carlson, U.S.N.R., at Guam,
Marianas Islands, on January 15, 1948.

May it please the Commission:

These three accused, Nakamura, Kazuo; Kokubo, Chihiro; and Nagatome, Yoshimori, make this plea in bar of trial on the grounds of the statute of limitations.

All offenses are alleged to have been committed on September 4, 1944 and December 29, 1944. The charges and specifications are dated December 24, 1947, more than three years after the first offense was committed and almost three years after the second offense was 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 provisions of any section of this code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

The code is presumed to be the law.

"R (1)"

0905

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.

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 & Criminal Procedure.)"

The criminal charge in this case was not made until the formal written accusation was made on December 24, 1947.

"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. More 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. 4, page 758.)"

This statute of limitation is like all other statutes of limitation 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. 746, Miller & Co. v. Melone 11 Okla. 241, 67, P. 479 56, L.R.A. 620.) And is one to which, in proper circumstances, all men are entitled as a right. (citing Anaconda Mon. Co. v. Saile, 16 Mont. 8, 39, P. 909, 50 Am. St. Rep. 472; Carter v. Collins, 174, Okla., 4, 50 p. (2d) 203 34 American Jurisprudence page 23 also states:

"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'Malley v. Sums, 51 Ariz. 155, 75 F. (2d) 50, 115, A.L.R. 634) substantial, and moritorious." (citing Guaranty Trust Co. v. U.S., 304 U.S. 126, 82 Led 1224, 58 S. Ct. 785; Dupree v. Mensur, 214, U.S. 161, 53 Led 950, 29 S. Ct. 548; McClary v. Silliman, 3 Pot (US) 270, 7 Led 676; Lilly-Breckett Co. v. Sonnemenn, 157, Cal., 192, 106 P. 715, 21 Am. Cas. 1279; Pherett v. Worth, 108 Wisc., 291, 84, N.W. 441, 81 Am. St. Rep. 899.

"R (2)"

0906

In 15 Am. Jr. 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 A.L.R. 1442; People ex rel. Reibman v. Warden, 242, App. Div. 282, 275, N.Y.S. 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 Fed. 161, 37, S. Ct. 68, 3 A.L.R. 516; U.S. v. Barber, 219 U.S. 72, 55 Fed. 99, 31 S. Ct. 209.

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

We cite from 15 Am. Jur. "Criminal Law" section 343, page 32: "Where the issue of the statute of limitations 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, A.L.R. 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 rights 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

"R (3)"

0907

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 fixed and positive periods in which it destroys proofs of guilt.(2)" Footnote (2): "This is well exhibited in a famous metaphor by Lord Plunkett of which it is said by Lord Broughman (Works, etc., Edinb. ed. of 1872, IV 341) that "it can not be too much admired for the perfect appropriateness of the figure, its striking and complete resemblance as well as its raising before us an image previously familiar to the mind in all particulars, except its connection with the subject for which it is so unexpectedly but naturally introduced." "Time" so runs this celebrated passage, "with his scythe in his hand, is ever mowing down the evidence of title; wherefore the wisdom of the law plants in his other hand the hour glass, by which he metes out the periods of that possession that shall supply the place of the monuments his scythe has destroyed."

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. The same thought is to be found in another great orator, Demosthenes, pro Phorm. ed. Reiske, p. 952.

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."

These three accused plead the statutes of limitations as a bar to their trial for the offenses committed September 4, 1944 and December 29, 1944, and charged under date of December 24, 1947.

All three of the accused pray of judgment of the charges and specifications and pray that the charges and specifications be quashed.

Respectfully,


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

"R (4)"

0908

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY NAKAMURA, KAZUO, KOKUBO, CHIHIRO, AND NAGATOME, YOSHIMORI. DELIVERED BY COMMANDER MARTIN E. CARLSON, USNR, A COUNSEL FOR THE ACCUSED.

These three accused object to being tried by this Military Commission and hereby enter this plea to the jurisdiction.

This plea to the jurisdiction is made on the grounds that these three accused, Nakamura, Kazuo; Kokubo, Chihiro; and Nagatome, Yoshimori are not subject to the courts' jurisdiction and that the offense is not one cognizable by this military commission.

All three accused were regularly demobilized.

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 all three accused are not legally brought here for trial.

Nakamura was demobilized January 10, 1946. Kokubo was demobilized around the same time and Nagatome was demobilized at about the same time. Not until December 1947 were they served with the charges and specifications for offenses and neglect of duty as a Japanese army officer said to have occurred September 4, 1944 and December 29, 1944. Now martial law is not retrospective which only means that an offender cannot be tried for a crime committed before martial law was proclaimed. Our authority for this is found in Winthrop's Military Law and Precedents page 837, wherein he cites footnote 75 Furlson, Corns on Mar. Law., 53; Glode, M. L. 189, Thring, Crim. Law of Navy, 42-3; Wols on Jurisdiction 577; 12 Opins. At. Gen., 200; G.O. 26 of 1866; Do. 12 Dept. of the South, 1868; Do 9. First Mil. Dist. 1878; Digest 507.

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 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 on the Palau Islands. See Winthrop page 837, *ibid*, and footnote 95.

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.

"S (1)"

The necessity for maintaining law and order by the United States in the Palau Island only commences on the date of occupation. It does not go back to September 4, 1944 and to December 29, 1944. 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.

It is believed that the government of the United States should recognize the principle that occupation by the United States of the Palau Islands carries with it the responsibility for any occurrences which may fairly be regarded as being contrary to international law.

There can be no jurisdiction by this military commission over Japanese nationals long ago demobilized and now civilian citizens of Japan for offenses said to have been committed in the Palau Islands in September and December 1944. (See Digest of International Law by Hackworth, Vol. VI, "Military Occupation" Sec. 587, pages 385-414.)

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 relied on by the prosecution to convict these accused of offenses 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 cannot therefore be any jurisdiction now.

If this commission is to take judicial notice of the Hague Convention they should read all the articles of the Hague Convention.

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 effected 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."

We move that the judge advocates inform us if these accused are being tried by Commander Marianas as head of a military occupation force on the Palau Islands or because the U. S. Navy has by military force conquered and subjugated the people of the Palau Islands. If there has been a transfer of sovereignty from Japan to the United States as regards the Palau Islands, we should be so informed.

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.

"S (2)"

There is the case of Alexandre Kemenyc, 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; Jazette du Palais, 1920, I 62.

In a case decided on November 17, 1924 the German Reichsgericht held valid a marriage contracted by a German subject, a member of army of occupation in Russian Poland in 1917. The German subject petitioned for a declaration that marriage was null, not in accordance with German law. Court held occupied territory was to be regarded as foreign territory where German marriage law did not apply.

This military commission has no jurisdiction over Nakamura, Kokubo, and Nagatome, for an offense committed by them September 4, 1944 and December 29, 1944, or for neglect of duty as a Japanese Army Officer. It has no jurisdiction over any of the three accused.

Commander Marianas, cannot in his exercise of military government over Palau legally bring to trial before this military commission Nakamura or the other three accused. In footnote 95 on page 837 of Winthrop *ibid* we read the rule of law "Martial law is not retrospective. An offender cannot be tried for a crime committed before martial law was proclaimed." Pratt 216. And see Jones 12. The jurisdiction of such a tribunal is "determined and limited by the period (and territorial extent) of the military occupation." C.O. 125, Second Mil. Dist. 1867."

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.

We hold that Commander Marianas cannot legally assume jurisdiction because the Palaus were not within the field of command of the convening authority at the time the offense committed. The precept, serial 20971, dated November 8, 1947 states: "Pursuant to the authority vested in me by virtue of my office as Commander Marianas Area and by the specific authority vested in me by the Commander in Chief Pacific and U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt Serial 558 of 8 March 1946, Com Marianas despatch 29236Z Sept. 1947; CinCPacFlt despatch 020103Z October 1947; SecNav Despatch 081946Z October 1947; CinCPac Flt despatch 092353Z October 1947.)" The specifications of both charges one and two allege the crimes were committed September 4, 1944 and December 29, 1944. On those dates Commander Marianas did not have jurisdiction of Palau either as Commander Marianas or by special authority. The precept further states: "by the specific authority vested in me by the Commander in Chief U. S. Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinCPacFlt serial 0558 of March 8, 1946...)" But the confidential serial 0558 is dated March 8, 1946 and the offenses were committed September 4, 1944 and December 29, 1944. Thus neither by virtue of his office or by authority of the confidential serial 0558 dated March 8, 1946 did the Commander Marianas Area have authority legally to assume jurisdiction of Palau Islands on September 4, 1944 and December 29, 1944. Neither did Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas legally have jurisdiction of the Palau Islands on these dates. Neither did the Secretary of the U. S. Navy have jurisdiction on these dates.

"S (3)"

That holds for all the accused who were all demobilized and are now civilians. Commander Marianas is no longer the civil administrator of the Palau and therefore has no authority as the civil administrator of the Palau.

We deny the right of this military commission to try Nakamura, Kokubo, and Nagatome because they were illegally brought within the jurisdiction of Commander Marianas from Japan. All of these three accused were regularly returned to Japan by the United States Navy Department and were then regularly demobilized. Now they came back into custody of U. S. Navy Department and Commander Marianas is highly irregular.

Nakamura, Kazuo, was returned to Japan and regularly demobilized on January 10, 1946. On October 3, 1946 he came to Guam as an involuntary witness. He was placed in solitary confinement. Thus we have a Japanese national, a civilian, who on the supposition that he is to be a witness at a war crime trial here on Guam is for that reason brought here to Guam and then placed in solitary confinement and served with charges and specifications accused as a war criminal after he testified as a prosecution witness at the trial of Ajioke and Yamada on December 15, 16, and 17, 1947. Now he is accused of the same defense.

Kokubo was regularly demobilized on January 10, 1946. He was arrested without warrant on July 7, 1947 and on the same day he was confined in Sugamo Prison, Tokyo. Later he was sent to Guam where he was placed in solitary confinement.

Nagatome was regularly demobilized on February 27, 1946. He was arrested without warrant on October 23, 1947 and on October 25, 1947 confined in Sugamo Prison, Tokyo. On January 3, 1948 he was sent to Guam where he was placed in solitary confinement.

In 14 Am. Jur. Criminal Law section 217, page 919, the rule is 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 A.L.R. 512; 15 A.L.R. 177.

In the footnote 4 supporting this rule we have the rule that:

"One seized under a mistake as to identity by the United States soldiers in the country of his residence, and carried into the United States, not having been kidnapped, cannot be tried there for offenses committed other than that for which he was seized, until he has voluntarily submitted himself to the jurisdiction or consent to his trial by the country of his residence, has been secured. *Dominquez v. State*, 90 Tex. Crim. Rep. 92, 234 S.W. 79, 18 A.L.R. 503.

In *re. Robinson*, 29 Neb. 135, 45 N.W. 267, 8 L.R.A. 398, 26 Am. St. Rp. 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.

"S (2)"

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."

Nakamura, Kazuo came to Guam as an involuntary witness and then without any legal process whatsoever was placed in solitary confinement and then on December 24, 1947, served with the charges and specifications and today finds himself in court charged with murder. He objects to the jurisdiction of this commission to try him.

The two other accused, Kokubo, Chihiro and Nagatone, Yoshimori, also object to the jurisdiction of this commission the grounds that they were illegally extradited from Japan.

Simply because these persons are not citizens of the United States does not put them outside the protection of the Constitution of the United States of America when we take them into custody to try them in our courts. Article IV Amendment to the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, all particularly describing the place to be searched, and the persons or things to be seized."

Each of these three accused persons states that no warrant was ever served upon them. They were told by the Japanese police to come along with them; then were taken to a Japanese police station and from there taken to the United States Army Prison, Sugamo, Tokyo, Japan.

How did these three persons get to Guam? Is it enough to merely say that they were properly extradited? We hold that there was no proper extradition. International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one par. 1 on page 243 of Volume 22, American Jurisprudence, we read: "Since the United States cannot as a matter of comity, surrender to a foreign government a citizen of the United States whose extradition is sought it does not seek the extradition, as a matter of comity, of citizens of other nations. See *infra*, par. 4. sec. 4. Moore, International Law Digest, p. 246P. 580."

In this case we hold that it is necessary for this commission in deciding whether they have jurisdiction to try these three persons that they decide the validity of the extradition proceedings by which the three 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 three 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 three accused.

In Vol. 22, American Jurisprudence page 245: "In the United States the early cases indicated that extradition was generally declined in the absence of a conventional or legislative provision citing *Valentine v. U.S.* 299 U.S. 5., 81 L(ed) 5, 57 S. Ct. 100; *Factor v. Laubenheimer*, 290 U.S. 276, 78 Led

"S (5)"

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315, 54 S.Ct. 101; *Terlunden v. Ames*, 184 U.S. 270, 46 Led. 534, 22 S.Ct. 484; *U.S. v. Raushnor*, 119 U.S. 407, 30 Led 425, 7 S.Ct. 234.

Later cases, however, have made it clear that in the absence of such conventional or legislative provision, the Executive has no power to surrender the fugitive criminal to a foreign government. Citing *Valentine v. U.S.* 299 U.S. 5, 81 Led. 5, S.Ct. 100. See also *Factor v. Laubenheimer*, 290 U.S. 276, 78 Led. 315, 54 S.Ct. 191."

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 authority 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, 44 Am. Cas. 1916 A. 682. See also *Courts*, Vol. 14, p. 337, par. 117."

It is well that we consider who may be extradited. On page 235 of Vol. 22 of American Jurisprudence we read: "The persons against whom extradition proceedings are directed must, of course, be fugitives from justice." citing *Jones v. Tobin*, 240 U.S. 127, 60 Led. 562, 36 S.Ct. 290; *Tennessee v. Jackson (D.C.)* 36 Fed. 258, 1 LRA 370; *Jones v. Leonard*, 50 Iowa 106, 32 Am. Rep. 116; *Keller v. Butter*, 246 N.Y. 240, 158 N.E. 510, 55 A.L.R. 394; *State ex rel. Lea v. Brown*, 166 Tenn. 669, 64 S.W. (2d) 841, 91 A.L.R. 1246, writ of certiorari denied in 292 U.S. 638, 78 L.ed. 1491, 54 S.Ct. 717; *Ex parte McDaniel*, 76, Tex. Crim. Rep. 184, 173 S.W. 1018, 44 Am. Cas. 1917 B. 335.

Annotation: 7 Ann. Cas. 1076; 13 Ann. Cas. 907.

The surrender of a person in one state for removal to another as a fugitive is expressly or by necessary implication prohibited by U.S. Rev. Sta. Par. 5278, 18 U.S.C.A. Para 662, where it clearly appears that the person was not and could not have been, a fugitive from justice of the demanding state. *Jones v. Tobin*, 240 U.S. 127, 60 Led 562, 36 S.Ct. 290.

We call the commission's attention that these three persons were released as prisoners of war by the United States and returned 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 requires 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,'..."

Can it be said that any of those three persons were personally present within the United States or the territories over which the United States claimed jurisdiction at the time the crime was committed, September 4 and December 29, 1944? This seems to be one of the requirements of the Federal statute.

"S (6)"

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 three persons did not flee; they were demobilized after having been turned over as released prisoners of war to the Japanese authorities. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war.

Page 265, volume 22, American Jurisprudence:

"It is the universal rule that it must appear to the governor of the asylum state to whom a demand for an alleged fugitive from justice is presented, before he can lawfully comply with the demand, that the person demanded is substantially charged with a crime against the laws of the state from whose justice he is alleged to have fled, by an indictment or an affidavit certified as authentic by the governor making the demand is thus not only the right but the duty of the governor to determine whether a crime against the laws of the demanding state has been substantially charged," citing many cases such as: *Marbles v. Creecy*, 215 U.S. 63, 54 L. ed 92, 30 S.Ct. 32; *Compton v. Alabama*, 214 U.S. 1, 53 L. ed 92, 30 S.Ct. 32; *Pierce v. Creecy*, 210 U.S. 387, 52 L. ed 1113, 28 S.Ct. 714 (rule recognized); *Illinois ex rel McNicholas v. Pease*, 207 U.S. 100, 52 L. ed 121, 28 S.Ct. 58 (dictum); *Appleyard v. Mass*, 203 U.S. 222, 51 L. ed. 161, 27 S.Ct. 122, 7 Ann. Cas. 1073. Annotation: 81 A.L.R. 555; 1. L.R. 801; 11 L.R. (N.S.) 426).

Persons cannot be extradited for political crimes and most treaties expressly so provide. There is no question but that all crimes associated with actual conflict of armed forces are of a political character and that the perpetrators of them cannot be extradited. All the specifications allege that these three persons were all attached to the military installations of the Imperial Japanese Army at Palau Islands, ... at a time when a state of war existed between the United States of America, its allies and dependencies, and the Imperial Japanese Empire, ... These three persons are charged with a political crime.

I would like to read to you what is said in Volume 22, American Jurisprudence on page 271:

EXTRADITION

"31. Political Crimes. - The development of extradition has evolved the principle that there shall be no international extradition for political crimes and offenses. 20 (Cite: "Annotation: 112 Am.St.Rep. 127. See 1 Moore, Extradition, p. 303, 205; 4 Moore, International Law Digest, p. 332, 604.") In keeping with this tenet of International Law, most extradition treaties with foreign governments expressly provide that they do not apply to charges of political crimes. 1 (Cite: "Annotation: 41 L. ed 1047. See 1 Moore, Extradition, p. 206, 207.") Many of the treaties, however, between the United States and foreign countries expressly provide for extradition of persons charged as assassins or murderers of the heads of the various governments where, although such murder may be classes as one in furtherance of a political move, it is accomplished when there is no state of open revolt or war in existence. 2. (Cite: "See 1 Moore, Extradition, p. 310, 208; 4 Moore, International Law Digest, p. 332, 604.") While the question of what constitutes a crime of a political character has not as yet been fully determined by judicial authority, yet fugitive criminals are not to be surrendered for crimes specified in the treaty as extraditable, if such crimes are incidental and formed a part of political disturbances. 3 (Cite Annotation: 12 AmStRep 126.") Accordingly, during the progress of a revolution crimes of an atrocious and inhuman character may be committed by the contending forces, and

"S (7)"

still the perpetrators of such crimes may escape punishment as fugitives beyond the reach of extradition. It does not devolve on the courts in extradition proceedings to determine what acts are, or are not, within the rules of civilized warfare; and, while men in heated blood often do things which are against and contrary to reason, none the less, acts of this description may be done for the purpose of furthering a political rising even though the acts may be deplored as cruel and against all reason. Hence, all crimes associated with the actual conflict of armed forces are of a political character and the perpetrators of them cannot be extradited, 4 (Cite: "Annotations 112 Am/StRep 126). An extradition magistrate has the jurisdiction and it is his duty to decide, with competent legal evidence before him, whether an offense charged is political crime. 5. (Cite: "Ornelas v. Ruiz 161 US 502, 40 Led 787, 16 Sct 689.") And a decision by a commissioner in favor of the extradition of persons charged with murder and other crimes during a raid into an adjoining country, even though there is some evidence that their purpose was to fight against the foreign government, cannot be reviewed on the weight of the evidence and is final for purpose of the preliminary examination unless palpably erroneous in law. 6 (Cite: Ibid.)"

Since these three persons are charged with political crimes and extradition is expressly forbidden of persons charged with political crimes we maintain their extradition is illegal and therefore this commission has no jurisdiction of these three persons. Since we object to the jurisdiction on these grounds we insist that the judge advocate produce the extradition papers so that we may inspect them. We feel that this commission cannot legally decide this question without seeing the extradition papers. Unless such extradition papers and warrants are produced by the judge advocate for our inspection we hold that the burden of proof is upon the judge advocate to prove that these three persons are legally before this commission.

We have pointed out to the commission and the judge advocates have alleged it in the specifications that these three persons were in the Palau Islands on September 4, 1944 and December 29, 1944 and that the Japanese government still held control of Palau Islands on that date. These three persons were not within the United States when the crimes were committed and this commission should discharge these three persons.

I again cite for you the ruling in volume 22 in American Jurisprudence on page 294:

"Although if it is clearly shown that he was not within the demanding state when the crime was alleged to have been committed, and his extradition is sought on the ground of constructive presence only, the court will ordinarily discharge him."

Until we see the extradition papers we cannot know for what offense these three 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, Am.Cas. 1918. D. 1023. See page 299 of volume 22 American Jurisprudence.

"S (8)"

What is the crime for which these three persons were extradited? Unless we have the opportunity to see the extradition papers we cannot know. Not to produce the extradition papers is prejudicial to the substantive rights of these three accused.

Once having been demobilized, these three persons are no longer individuals of the enemy's army or navy. They are therefore not subject to the jurisdiction of this commission.

We ask that the commission take judicial notice that the Palau Islands was a possession of Japan in 1944 and the military and naval forces of Japan were in full possession and control of the Palau Islands notwithstanding our many bombings all during the time these crimes were alleged to have been committed that is September 4, 1944 and December 29, 1944, and that the United States did not take over or assume any jurisdiction as to Palau until after August 14, 1945, and that Palau was not actually surrendered to the United States until After August 14, 1945.

The commission can therefore have no jurisdiction of any of these accused for crimes committed on Palau Islands September 4 and December 29, 1944.

We also maintain that the offense of murder alleged in Charge I is one not cognizable by this commission.

Since there are no common law offenses against the United States the crime of murder must be statutory murder. In 14 Am. Jr. Criminal Law, Section 15, page 766, the rule is clear and uncontradicted. "...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 v. US 276 US 505, 72 LEd 676, 48 Sct 400; U.S. v. Gradwell, 243 US 476, 61 LEd 857, 37 Sct 407. Annotation: Ann. Cas. 1918, 991.)

In order that an act may be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist. (citing U.S. v. Bathgate, 246 US 220, 62 LEd 676, 388 Sct 269; U.S. v. Eaton, 144 US 677, 36 LEd 591, 12 Sct 764; U.S. v. Brewster 139, US 278; 35 LEd 190, 11 Sct 538; Manchester v. Mass. 139 US 240, 35 LEd 190, 11 Sct 538.

The courts of the United States in determining what constitutes an offense against the United States must resort to the statutes of the United States enacted in pursuance of the constitution. Re. Kollock, 165 US 526, 41 LEd 813, 17 Sct 444.

The courts have no right to treat an act done within a state as a crime against the United States unless Congress has declared it to be such, citing U.S. v. Reese, 92 US 214, 23 LEd 563."

So to punish these accused we must look to the 6th Article for the Government of the Navy, before it was amended.. Clearly these accused are not punishable for murder under the 6th AGN before it was amended. It was amended December 4, 1945.

Specification 1 and 2 of Charge II does not set forth a crime. Again since there are no common law crimes against the United States it cannot be cognizable by this commission if it alleges a common law offense.

If it is a statutory offense we ask what is the statute and does the statute define it as a misdemeanor or a felony. What punishment does the statute provide and what courts have cognizance of the offense?

As to specifications 1, 2, 3, and 4 of Charge II, we hold that neglect of duty is no crime.

"S (9)"

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. 187; 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. Cas. 1914 C. 765; Annotation: Ann. Cas. 1913 E. 1252; 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: QUnder 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

"S (10)"

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."

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

Respectfully,


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

"S (11)"

09 19

に属する犯罪を列挙してゐるが、本委員会の審理し得べき戦争犯罪も亦同
條所定の犯罪と同一でなければならぬ。何となれば、日本の降伏條件実施
に因ては联合国最高司令官 *General Douglas MacArthur* が最高の権限
者であるから、同司令官の制定公布した右條例は日本の戦争犯罪人の處罰に
同する限り、ポツダム宣言に基く根本法規であるのみならず、若し然らざれば本
軍法委員會が如き戦争犯罪の~~地~~地方的裁判所か、右條例才五條所定
犯罪以外の犯罪をも處罰し得べきものとせば、其所で裁判される被告は同じ
日本の戦争犯罪人であり、又東京の國際軍事裁判所で裁判を受ける被告等
よりも不利益を受けることゝなつて、其の不公平なることを論を俟たぬ所であるから。

右條例才五條才二項は單に「通例の戦争犯罪即ち戦争法規又は戦争
慣例の違反」と規定してゐるに過ぎないが、曩の味岡事件に於ける管轄權の
拮据や最終弁論に於て評述した様に、此の規定はドイツの戦争犯罪人の裁判
の爲に制定された國際軍事裁判所條例中の并等條文たる同例才六條才二項
の規定と全く同一に解釈せらるべきものである。それには「戦時犯罪即ち
戦争の法規や慣例の違反である。此の違反は占領地、または占領地にある
一般人民に対して行はれた殺害、虐待、奴隸労働や其の他の目的の爲の強制
的移動、捕虜と公海上の人民の殺害、虐待、人質の殺害、公私財産の掠奪、
都市町村の恣意的な破壊、軍事的必要によりに合理化されない荒廢を包含、

する。但し之に限るのではない」と規定されてゐる。此の規定に依つて明らか
如く、通例の戦争犯罪とは俘虜に対するものを除き、占領地或は公海上に於て
行はれた犯罪に限るのである。

又 *Smith* 射殺事件が行はれたと云ふ昭和十九年十二月二十九日當時
その行はれたと云ふパラオ諸島バベルタフア島が米軍の占領地ではなくて、日本
の領土の一部であつたことは明白な事實であり、又 *Charlie Smith* は日本軍に
捕獲された俘虜ではなかつた。検事も起訴罪状項目に於て *Charlie Smith*
が俘虜であつたとは主張してゐない。

尤も之に対しては、日本は其の管理下に在る俘虜及び抑留された一般人
に対しても亦出来る限りは1927年7月27日の「俘虜の待遇ニ関スル赤十字條約」
の規定を適用すべき旨瑞西政府を通じて承諾したから、假令 *Charlie*
Smith が俘虜でないにしても、一旦之を抑留した以上之に対して俘虜に対
する同一の取扱を為すべきであると云ふ議論が亦並豫想される。然し
乍ら俘虜とは畢竟専ら軍事的理由に基き自由を剝奪された敵国人の謂であ
るから、戦争中交戦国の領土内に在る敵国私人にして抑留された者を俘虜と
して取扱ふ場合に於ても、それは全く軍事上の理由に基いて抑留されたものと
限らるゝのであつて、犯罪捜査等軍事的以外の目的の爲に抑留されたものを
包含する趣旨ではない。

成程 *Charlie Smith* が南洋憲兵隊がスパン分駐所に抑留され入こゑは
事実であるが、曩の味同事件に於ける証人佐野義一の証言に依れば、彼は当時
頻りに末薩に末軍飛行機に信号を送つて日本軍の情報を提供する等の
間諜的行爲があつたと云ふ嫌疑で抑留され入つてゐる。而して間諜行爲は
現今如何なる国の刑法に於ても犯罪とせられる所であるから、假令 *Charlie
Smith* がスパン憲兵分駐所に移される以前軟禁されて居り、俘虜と同一
の待遇を与へられてゐたとしても、一たび犯罪捜査の対象となると同時に彼は
俘虜たるの待遇を享受し得ないものである。斯様に *Charlie Smith* は俘虜
ではなく、又俘虜と同様の待遇を受くべきものでもないものであるから之に対し
て殺害行爲が加へられたいとしても、それが日本領土の一部に於て行はれた限り、
通例の戦争犯罪即ち戦争の法規並に慣習に対する違反ではない。即ち東軍
法委員会が裁判し得べき戦争犯罪ではないのである。

1914年の米英 *Rules of Land Warfare* の第71條には "Crimes
committed before capture - a prisoner of war remains
answerable for his crimes committed against the captor's
army or people, committed before he was captured,
and for which he has not been punished by his own
army." と規定されて居り、此の規定が表明された原則の適用に付ては、

犯罪の行はれた土地が捕獲国の領土たるを、俘虜の所属国の領土たるを問はざらざるが、米国の實際の取扱振うであるところである。されば検事は此の規定に依據して假令 *Charlie Smith* が俘虜若しくは俘虜の待遇を受くべきものでなく、又彼にならざる射殺行為當時其の場所が日本の領土の一部であつても、依此本件は戦争犯罪であると主張するかも知れない。然し *Rules of Land Warfare* は専ら米軍が戦争に従軍するに當り、遵守すべき規定を定めたものであり、被告等の如き日本人に適用すべきものではない。又此の規定に表はれた原則は専ら米国の採用する材料であつて、国際社会に普く認められた法規や慣習ではない。加之此の *Rules of Land Warfare* の規定中にはオ366條の如く、本法廷に於て之を亦適用せしめなかつたし、又今後決して適用せしめることのないものがあるのである。陸戦法規中被告の處罰上有利な規定は之を適用するが不利な規定は之を適用しないと云ふ様な偏頗な態度では到底正義の實現は望み得べくもない。故に1914年の *Rules of Land Warfare* オ71條の規定は本法廷に適用すべきものと信ずる。

検事は軍法委員会の方の命令書オニ項中の *It shall have jurisdiction over all Japanese Nationals... charged with offenses committed against United States*

Nationals ... and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority." 11条2項に基づいて本軍法委員会に本事件を審理する権限ありと主張するであらう。然し乍ら日本国民はポツダム宣言の範囲内に於てのみ外国の法廷や国際法廷の裁判に服するものである。即ち同宣言に所謂戦争犯罪人たる戦争犯罪人なるが故にこそ、法廷の裁判を受けるのであって、戦争犯罪に非ざる *Smith* 殺害事件に付ては法廷の裁きを受けねばならぬ理由はもたないと思ふ。

要之俘虜若しくは俘虜の待遇を受くべきものに非ざる *Charlie Smith* に対し、当時日本領土の一部であつたパラオ諸島バベルタフ島に於て為された殺害行為は通常の殺人罪であつて、所謂戦争犯罪ではない。随て之が處罰は全く日本の国内問題であつて、国際法の干渉すべき限りではないのである。故に本件は本軍法委員会の管轄に属しないと主張するものである。

秋田日出夫

中村教夫の犯罪に対する管轄権の抗弁

昭和二十三年一月十五日

弁護人 秋田日出夫

被告中村教夫は東軍法委員会が彼を審理することに對し異議を有するが、茲に管轄権に關する抗弁を提出する。

此の抗弁は本件犯罪は東軍事委員会の認識し得べき犯罪ではないと云ふ理由に基くものである。詳言すれば、一、起訴書ニ罪状項目註に「一、起訴書ニ罪状項目及び二、罪状項目は昭和十九年十二月二十九日頃パラオ諸島バベルタフ島に於て英國人 Charlie Smith 別名 James を射殺した」と云ふ事実に付いて被告中村の責任を問うてゐるのであるが、Charlie Smith なる者は俘虜若しくは俘虜の待遇を受け得べきものではない。又本件犯罪の行はれた昭和十九年十二月二十九日当時パラオ諸島バベルタフ島は日本の領土の一部であつた。随て本件は戦争犯罪ではなく、通常殺人罪なるに過ぎないから、東軍法委員会の管轄に属するものではないと主張するものである。

「吾等、俘虜の虐待せしむる者を含む一切の戦争犯罪人ニ對シテハ嚴重ナル處罰ヲ加ヘラルベシ」と云ふポツダム宣言第十條の規定に基き、聯合國最高司令官の制定公布した極東國際軍事裁判所條例第五條は同裁判所の管轄

0925

PLEA TO THE JURISDICTION OF THE COMMISSION

On behalf of NAKAMURA, Kazuo

by

Mr. Kuwata, Hideo, Counsel for Defense

May it Please the Commission:

The accused Nakamura, Kazuo, objects to the jurisdiction of this Commission to try him and hereby enters his plea to the jurisdiction.

This plea is based on the ground that the offense is not one cognizable by this Military Commission. In other words, although Specifications 3 and 4 of Charge II charge Nakamura with the responsibility of killing a British national, Charlie Smith, alias James, by shooting on Bebelthup Island, Palau Islands, on or about 29 December 1944, Charlie Smith was neither a prisoner of war nor a person who should have been treated as a prisoner of war, and at the time of the commission of this crime, namely, on or about 29 December 1944, Bebelthup Island, Palau Islands, was a part of the sovereign territory of Japan. This alleged crime is not a war crime but a common murder. Therefore, we hold that the alleged crime does not come under the jurisdiction of this Military Commission.

In accordance with paragraph 10 of the Potsdam Declaration, namely, "...stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners", Article 5 of the Charter of the International Military Tribunal for the Far East issued and promulgated by the Supreme Commander for the Allied Powers enumerates the crimes which come under jurisdiction of the Tribunal. Then the war crimes which can be tried by this Military Commission should be the same as provided in that article. Since General Douglas MacArthur, Supreme Commander for the Allied Powers, holds the highest authority to effectuate the terms of surrender by Japan, the charter issued and promulgated by him is, so far as it concerns the punishment of the Japanese War Criminals, the fundamental rule which comes next to the Potsdam Declaration. Whereas, if such a local court (in the sense of a war crimes tribunal) as this military commission can punish crimes other than those provided in Article 5 of the charter, the defendants who are tried by this Commission, although they are likewise Japanese war criminals, must be placed in a much more unfavorable position than those who are tried at the International Tribunal. Needless to say, this is prejudicial to the defendants.

Paragraph 2b, Article 5 of the charter only provides: "Conventional war crimes: Namely, violations of the laws and customs of war." But as I stated in detail in my plea to the jurisdiction and final argument in the Ajioke case, this provision should be interpreted like the corresponding paragraph of the "Charter of the International Military Tribunal" concerning the trial of German war criminals, namely, paragraph 2b, Article 6 thereof which reads: "Far crimes. Namely, violations of the laws and customs of

"U (1)"

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war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of, or in, occupied territory, murder, ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity." As you will understand by this stipulation, war crimes are crimes committed in occupied territories or on the seas except those against prisoners of war.

It is clear that, on or about 29 December 1944, at the time when the incident of the shooting of Smith happened, Babelthusa Island, Palau Islands, was not an occupied territory of the American forces but a part of the domain of the Japanese Empire, and Charlie Smith was not a prisoner of war held captive by the armed forces of Japan. The judge advocate himself did not allege in the charges and specifications that Charlie Smith was a prisoner of war.

The judge advocate will hold, however, that Charlie Smith should have been treated like a prisoner of war so far as he was interned, even if he was not a prisoner of war, because Japan agreed through the Swiss Government to apply the provisions of the Geneva Prisoners of War Convention of July 27, 1927 to prisoners of war under its control and also as far as practicable to interned civilians. But as a prisoner of war is an enemy person who is deprived of his liberty for strategic reasons, an enemy civilian internee in the territory of a belligerent in time of war will not be treated as a prisoner of war unless he is interned for strategic reasons. A civilian who is interned for the investigation of a crime or other non-strategic reasons is not treated as a prisoner of war whatsoever.

It is true that Charlie Smith was detained at the Gasupan Detachment of the South Seas Kempetai. But witness Sano testified that Smith was detained because he was suspected of having committed an act of spying, namely offering intelligence of the Japanese forces by signal to American planes which then attacked the island in rapid succession. An act of spying will be deemed a crime within the criminal law of any country of today. Even if he was kept in custody and was treated as a prisoner of war before he was sent to the M.P. Detachment, after he became an object of investigation, he could no longer enjoy treatment like that accorded a prisoner of war. As I have mentioned, Charlie Smith was neither a prisoner of war nor a person who should have been treated as a prisoner of war. So, if murder was committed against Smith, it is not a conventional war crime, namely, violation of the laws and customs of war, so long as the crime was committed within a portion of the sovereign territory of Japan. In other words, this is not a war crime which may be tried by this commission.

Article 71 of American "Rules of Land Warfare, 1914" provides: "Crime committed before capture - A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own army." As to the application of the principle shown in this provision, American practice makes no territorial distinction; that is, it is immaterial whether

"U (2)"

0927

the territory in which the crime was committed was under the sovereignty of the captor's or of the prisoner's state. The judge advocate, by relying upon this provision, may hold that the crime in this case is still a war crime, though Smith was neither a prisoner of war nor a person who should have been treated as a prisoner of war, and though the shooting of Smith was committed within the sovereign territory of Japan. But "Rules of Land Warfare" sets forth the provisions which should be observed only by the personnel of the American forces in time of war, and it is not applicable to Japanese such as the accused in this case. The principle shown in this provision is only applied by the United States, and it is neither the law nor custom universally recognized in international society. Besides, there are such provisions in "Rules of Land Warfare" as Article 366 which has never been and will never be applied in this court. If provisions which are favorable for the punishment of the accused apply while unfavorable ones do not, how can justice be realized? Therefore, I hold that Article 71, "Rules of Land Warfare, 1914" should not be applied in this court.


The judge advocate may insist that this military commission is authorized to try this case by relying upon paragraph 3 of the precept for this military commission which reads: "It shall have jurisdiction over all Japanese nationals ... charged with offenses committed against United States nationals ... and white persons whose nationality has not prior to ordering of the trial been established to the satisfaction of the convening authority." However, Japanese nationals are subject to trial in foreign or international courts only within the limit provided in the Potsdam Declaration. As the Declaration states, this court may try persons who are war criminals who committed war crimes. The killing of Smith is not a war crime, so I am convinced that there is no reason that it should be tried by this commission.

The killing of Smith who was neither a prisoner of war nor a person who should have been treated as a prisoner of war and which was committed on Babelthusp Island, Palau Islands, which was then a portion of the sovereign territory of Japan, is a common murder, not a war crime. The punishment of the crime is entirely a domestic affair of Japan and should not be interfered with by international law. Therefore, I hold that this case is not subject to the jurisdiction of this military commission.

Respectfully,

/s/ KUNITA, Hideo.

I certify the foregoing, consisting of three (3) typewritten pages, to be a true and complete translation of the original document in Japanese, to the best of my ability.


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

"U (3)"

0928

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-

"V (1)"

0929

Received true and correct copies, both in English and Japanese, of Charges I and II, and specifications thereunder, on the 24th day of December, 1947.

中村 數夫

Nakamura, Kazuo

小久保 千尋

Kokubo, Chihiro

Nagatome, Yoshimori

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

Eugene E. Kerrick, Jr.
Eugene E. Kerrick, Junior,
Lieutenant, U.S. Naval Reserve,
Interpreter.

SUBJECT: 32113

OT-12-12
SAS/VIS-13(3)

COMMUNICATIONS SECTION
NAVY DEPARTMENT
WASHINGTON, D.C.

0930

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, Kasuo, 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, Kasuo, 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.

"V (2)"

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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 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, 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, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, permitting them the aforesaid persons, on or about December 29, 1944, at Babelthuap 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 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, 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, Kiyoshi, then a sergeant, IJA, and others, names to the relator unknown, this in violation of the law and customs of war.

C. A. Pownall

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

アメリカ合衆国太平洋艦隊
マリアナ方面司令官

奔マリアナ方面司令官

宛マリアナ方面司令官刑事法委員

アメリカ合衆国海軍少佐ニミエ・エリッ

記中村數夫

小久保千尋

永田義盛

の裁判に於ける起訴及罪状項目

ニ前記の人々由貴官が検察官たる軍法委員令に
於いて記の起訴及罪状項目に於て裁判される
であらう。上つて貴官の軍法委員長に其の旨を
通告し被告に裁判の日時を通知し検事側及び
被告側の全証人を召集せよ。

第一起訴 殺人

罪状項目一

パナマ諸島の日本軍事施設に配属されていた当時
陸軍中尉中村數夫、当時陸軍曹長小久保正壽
当時陸軍佐長永留義盛及其他、小當局に姓名
不詳の日本軍隊の人々、小同軍事施設に勤務中
当時陸軍中佐故宮崎百恒と共同して、各國又ハ
同時にアメリカ合衆国連合諸國及其の属領ハ日本
帝國と戦争状態に在った昭和十九年九月四日頃
パナマ諸島バベルタフ島に於て意思的に違法的に
企圖と悪意とを以て正当な理由もなく同時同処に
於て日本軍隊に抑留されていた小當局には姓名
不詳の三名のアメリカ人俘虜を軍刀による斬首
と小當局には詳細不詳の火器による射撃により
殺害し、殺害し殺し又殺させた。之は戦争法
規並に慣習に違反している。

罪状 珍目二

パラオ諸島の日本帝国軍事施設に配属され、
いふ当時陸軍中尉中村敦夫は同軍事施設に
勤務中他の日本軍隊の人々と共同してアメリカ
合衆国連合諸国及其の属領が日本帝国と
戦争状態に在った昭和十九年十二月二十九日頃
パラオ諸島バベルタグ島に於て意図的に違
法的に企図と悪意音意をも以て正当な理由もなく
同時同処に於て日本軍隊に抑留されていた
武装してゐない英人チャールリスミス別名
ジェームスを当局にお詳細不詳の火器による
射害により襲害し、攻害し、殺し、又殺させた
之れ戦争法規並に慣習に違反してゐる

第三起訴 戦争法規並に慣習の違反
罪状項目一

パラオ諸島の日本帝国軍事施設に配属されていた当時陸軍中尉中村數夫は同軍事施設に於て南洋憲兵隊第一分隊長として勤務中アメリカ合衆国連合諸国及其の属領が日本帝国と戦争状態に入った昭和十九年九月四日頃パラオ諸島ベニタップ島に於て彼の分隊員及彼を抑制監督下にあつた人々即ち当時陸軍曹長小久保千尋當時陸軍伍長永留義盛及其他日本軍隊の人々の行動を抑制する南洋憲兵隊第一分隊長としての彼の職務を違法的に無視し遂行せず前記の人々が昭和十九年九月四日頃パラオ諸島ベニタップ島に於て同時に同地に於て日本軍隊により抑留されてゐた一名の当局にお姓名不詳のアメリカ人俘虜を軍刀による斬首と大砲による射撃により違法的に殺し又殺させることを許可した之は戦争法規並に慣習の違反としてある

罪状項目二

パラオ諸島、日本帝国軍事施設に配属されていた
当時陸軍中尉中村敦夫は同軍事施設に於て
南洋憲兵隊第一分隊長として勤務中アメリカ
合衆国連合諸国及其の属領が日本帝国と
戦争状態に在った昭和十九年九月四日頃パラオ
諸島バビタップ島に於て南洋憲兵隊第一分
隊長としての自己の職務を違法的に無視し遂
行せず同時同処に於て日本軍隊に抑留されてい
た当局には姓名不詳の三名のアメリカ人作業者
を自己の職務上保護し彼の权限内に於て且
当時の状況下適当な処置を講ずべきであ
るにも拘らず之を行はず当時陸軍曹長小久
保千三郎や当時陸軍軍曹永田義盛及其他
の日本軍隊の人々が軍刀による斬首と大馬刀による
射殺により上記作業者を違法的に殺し又殺さ
せることを許可したことは戦争法規並に慣習
に違反している。

四 肆 狀 項 目 三

パラオ諸島の日本帝国軍事施設に配属され
いた当時陸軍中尉中村數夫は同軍事施設
に於て南洋憲兵隊第一分隊長及南洋憲兵
隊司令部警務課長として勤務中アメリカ合
衆国連合諸国及其の属領が日本帝国と戦
争状態に在つた昭和十九年十二月二十九日頃パ
ラオ諸島バベルタプ島に於て彼の指揮下にあ
り且彼の抑制監督下にゐた人々即ち当時陸
軍准尉味岡操当時陸軍軍曹山田清其
他当局には姓名不詳の人々を抑制するに南
洋憲兵隊第一分隊長及南洋憲兵隊司令
部警務課長としての職務を違法的に無視
し遂行せず前記の人々が昭和十九年十二月二十九日
頃パラオ諸島バベルタプ島に於て同時同処に
於て日本軍隊に抑留されてゐた武装してゐた
英國人等一リスミス別名ジェームスと火器に
よる射撃により違法的に殺し又殺させることを
許可しゐたは戦争法規並に慣習に違反
してゐる

罪状項目四

パラオ諸島の日本帝国陸軍軍事施設に配属
 され、いゝん当時陸軍中尉中村敦史は同軍事施
 設に於て南洋憲兵隊第一分隊長及南洋憲兵
 兵隊司令部警務課長として勤務中アメリカ合
 衆国連合諸国及其の属領が日本帝国と戦
 争状態に在った昭和十九年十二月二十九日頃パラオ
 諸島バベルタプ島に於て南洋憲兵隊第一分隊
 長及南洋憲兵隊司令部警務課長としての
 自己の職務を違法的に無視し遂行せず同時同
 地に於て日本軍隊により抑留され、いゝん武裝し
 ていない英国人名「リースミス」別名「ジェームス」も
 自己の職務上保護し且彼の権限内にて当時
 の状況下適当な処置を講ずべきであつたにも拘
 りず之を行はず当時陸軍中尉味岡操当時
 陸軍軍曹山田清が大量の「リースミス」より前記
 「リースミス」を違法的に殺し殺させることを許
 可した之は戦争法規並に慣習に違反している

ニエホーネ

アメリカ合衆国海軍少将
 マリアナ方面司令官

Certified to be a true translation to
 the best of my ability

Agnes S. Fumole
 A. W. N. P.

FIRST DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, January 6, 1948.

The commission met at 9:30 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.

Corporal Raymond E. Gardner, U. S. Marine Corps, entered with the accused
and reported as provost marshal.

The judge advocate introduced Stewart R. Smith, yeoman first class,
U. S. Navy, and Archie L. Haden, junior, yeoman first class, U. S. Navy, as
reporters, and they were duly sworn.

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

Each of the accused requested that Commander Martin E. Carlson, U. S.
Naval Reserve; Mr. Sanagi, Sadamu; Mr. Karasawa, Takami, and Mr. Kuwata,
Hideo, act as his counsel. Commander Carlson, Mr. Sanagi, Mr. Karasawa, and
Mr. Kuwata took seat as counsel for the accused.

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

An interpreter read the precept and modifications thereof in Japanese.

The judge advocate informed the commission that an oral stipulation had
been entered into by the defense counsel and the judge advocate under the
terms of which, when classified dispatches are referred to during the course
of the proceedings of this commission, reference only to the content and sub-
stance of these dispatches will be made in open court. No reference to the
date-time group, or other means of identification of classified matter will
be made, but defense counsel represented by Commander Carlson, U. S. Naval
Reserve, will be given full opportunity to verify the accuracy and the
authenticity of any statement regarding the content of such dispatches. The
reason for this stipulation is primarily one of cryptographic and communication
security. Counsel for the defense have all, individually and jointly, agreed
to this procedure.

The commission announced that the above was approved.

The judge advocate did not object to any member.

Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United States Army, on behalf of the accused Nakamura, Kazuo, in Japanese, prefixed marked "F."

An interpreter read an English translation of the accused's objection as follows:

For the following reasons the accused Nakamura, Kazuo, challenges Lieutenant Colonel Victor J. Garbarino as a member of the military commission which is to try the case of the said accused. In specification 1 of Charge I and in specifications 3 and 4 of Charge II the accused is charged with the responsibility for the incident in which an English national, Charlie Smith, alias James, was shot to death on Babelthuap Island, Palau Islands, on or about 29 December 1944, but this is exactly the same incident as in the Ajioka case which was tried previously by the commission in which Lieutenant Colonel Victor J. Garbarino sat as a member. Thus, this comes under the clause in Naval Courts and Boards, Section 388(e): "That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial." Furthermore, the accused Nakamura in the above mentioned Ajioka trial was summoned as a witness for the prosecution and testified to the effect that he was ordered by Commanding Officer Miyazaki to have the Gasupen Detachment perform the execution of an Englishman, Smith, who was sentenced to death by the division headquarters; also that he received orders not to leave everything up to the detachment, but to go to the scene and directly supervise the execution, and that he went to the Gasupen Detachment on that day and with Ajioka and Yamada brought Smith to the scene of the execution and there he ordered Yamada to shoot Smith with a pistol. Therefore, there are sufficient reasons to believe that Lieutenant Colonel Victor J. Garbarino, who has heard as a member of the commission this testimony of Nakamura and testimony of other witnesses adverting to Nakamura, entertains a definite opinion that the accused Nakamura is an accomplice with Ajioka and Yamada in regard to the execution of Charlie Smith, and he is guilty at least of the Smith incident in the present charges and specifications. This comes under the clause of Naval Courts and Boards, section 388(e), which reads in part: "...or that he has formed a positive and definite opinion as to the guilt or innocence of the accused." Therefore, the accused Nakamura hereby challenges the member of the commission, Lieutenant Colonel Victor J. Garbarino.

The judge advocate replied as follows:

If it please the Commission:

Before the challenged member replies, the judge advocate wishes to make it known that he has two dispatches relating to the challenge of members of this commission. Since it has been stipulated that such classified material will not be read in open court, it will suffice to state that the first dispatch is from Commander Marianas to SecNav, JAG, requesting permission to relax, in these war crimes trials, the rule stated in Section 388(e) of Naval Courts and Boards and the second is a reply in the affirmative. It is desired that the commission consider these dispatches in deciding upon the challenge of any member of this commission.

The certified true copies of the two dispatches were presented to Commander Carlson, counsel for the accused, and to the commission.

The challenged member replied as follows:

I, Victor J. Garbarino, acknowledge that the statements of the defense counsel, with the exception of the contention that I have formed an opinion as to the guilt or innocence of the accused Nakamura, are substantially correct; however I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the cases now depending, according to the evidence adduced before this commission, the rules prescribed for this trial and the customs of war in like cases and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission was cleared. The challenged member withdrawing.

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

Mr. Kuwate, Hideo, a counsel for the accused, read a written objection to Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States Army, on behalf of the accused Nakamura, Kazuo, in Japanese, prefixed marked "G."

An interpreter read an English translation of the accused's objection as follows:

For the following reasons the accused Nakamura, Kazuo, challenges Lieutenant Colonel Henry K. Roscoe as a member of the military commission which is to try the case of the said accused. In specification 1 of Charge I and in specifications 3 and 4 of Charge II the accused is charged with the responsibility for the incident in which an English national, Charlie Smith, alias James, was shot to death on Babelthup Island, Palau Islands, on or about 29 December 1944, but this is exactly the same incident as in the Ajioka case which was tried previously by the commission in which Lieutenant Colonel Roscoe sat as a member. Thus, this comes under the clause in Naval Courts and Boards, Section 388(e): "That he sat as a member of a court or board which tried or investigated another person upon charges based upon the same transaction concerning which the accused is on trial." Furthermore, the accused Nakamura in the above mentioned Ajioka trial was summoned as a witness for the prosecution and testified to the effect that he was ordered by Commanding officer Miyazaki to have the Gasupan Detachment perform the execution of an Englishman, Smith, who was sentenced to death by the division headquarters; also that he received orders not to leave everything up to the detachment, but to go to the scene and directly supervise the execution, and that he went to the Gasupan Detachment on that day and with Ajioka and Yamada brought Smith to the scene of the Execution and there he ordered Yamada to shoot Smith with a pistol. Therefore, there are sufficient reasons to believe that Lieutenant Colonel Henry K. Roscoe, who has heard as a member of the commission this testimony of Nakamura and testimony of other witnesses adverting to Nakamura, entertains a definite opinion that the accused Nakamura is an accomplice with Ajioka and Yamada in regard to the execution of Charlie Smith, and he is guilty at least of the Smith incident in the present charges and specifications. This comes under the clause of Naval Courts and Boards, Section 388(e), which reads in part: "...or that he has formed a positive and definite opinion as to the guilt or innocence of the accused. We call

the commission's attention to the fact that the sixth member of this commission, Lieutenant Commander Bradner W. Lee, is on authorized leave. We also call the attention of the commission to the date of the dispatches. Surely conditions are not the same as at the time the dispatches were sent and received. Therefore, the accused Nakamura hereby challenges the member of the commission, Lieutenant Colonel Henry K. Roscoe.

The challenged member replied as follows:

I, Henry K. Roscoe, acknowledge having participated as a member of the military commission in the trial of Ajioke and Yamada; I can, however, truly try without prejudice or partiality the cases now pending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission announced that in view of the fact that the reasons for this challenge were practically identical with the first objection, the objection was likewise not sustained.

Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to Rear Admiral Arthur G. Robinson, U. S. Navy, on behalf of the accused Nakamura, Kazuo, in Japanese, prefixed marked "H."

An interpreter read an English translation of the accused's objection as follows:

For the following reasons the accused Nakamura, Kazuo, challenges Rear Admiral Arthur G. Robinson as a member of the military commission which is to try the case of the said accused. In specification 2 of Charge I and in specifications 3 and 4 of Charge II the accused is charged with the responsibility for the incident in which an English national, Charlie Smith, alias James, was shot to death on Babelthuap Island, Palau Islands, on or about 29 December 1944, but this is exactly the same incident as in the Ajioke case which was tried previously by the commission in which Rear Admiral Arthur G. Robinson sat as the president. Thus, this comes under the clause in Naval Courts and Boards, Section 368(e): "That he sat as a member of a court or board which tried or investigated another person upon charges based on the same transaction concerning which the accused is on trial." Furthermore, the accused Nakamura in the above-mentioned Ajioke trial was summoned as a witness for the prosecution and testified to the effect that he was ordered by Commanding Officer Miyazaki to have the Gasupan Detachment perform the execution of an Englishman, Smith, who was sentenced to death by division headquarters; also that he received orders not to leave everything up to the detachment, but to go to the scene and directly supervise the execution and that he went to the Gasupan Detachment on that day and with Ajioke and Yamada brought Smith to the scene of the execution and there he ordered Yamada to shoot Smith with a pistol. Therefore, there are sufficient reasons to believe that Rear Admiral Arthur G. Robinson, who has heard as president of the commission this testimony of Nakamura and testimony of other witnesses adverting to Nakamura, entertains a definite opinion that the accused Nakamura is an accomplice with Ajioke and Yamada in regard to the execution of Charlie Smith and he is guilty at least of the Smith incident in the present

charges and specifications. This comes under the clause of Naval Courts and Boards, Section 388(e) which reads in part: "...or that he has formed a positive and definite opinion as to the guilt or innocence of the accused." We call the commission's attention to the fact that the sixth member of this commission, Lieutenant Commander Bradner W. Lee, is on authorized leave. We also call the attention of the commission to the date of the dispatches. Surely conditions are not the same as at the time the dispatches were sent and received. Therefore, the accused Nakamura hereby challenges the president of the commission, Rear Admiral Arthur G. Robinson. gx

The challenged member replied as follows:

It is true that I, Arthur G. Robinson, sat in the previous trial mentioned by defense counsel; however, I wish to assure all parties to this trial of my belief that I can truly try without prejudice or partiality the cases now depending, according to the evidence adduced before this commission, the rules prescribed for this trial, the customs of war in like cases, and my own conscience.

An interpreter read this reply of the challenged member in Japanese.

The commission announced that the objection was not sustained.

The accused did not object to any other member.

The judge advocates and each member were duly sworn.

The accused Nakamura, Kazuo, and Kokubo, Chichiro, stated that they had received a copy of the charges and specifications preferred against them, both in English and in Japanese, on December 24, 1947. The accused Nagatome, Yoshimori, stated that he had received a copy of the charges and specifications preferred against him, both in English and in Japanese, on December 31, 1947.

The judge advocate asked the accused if they had any objections to make to the charges and specifications.

The accused replied in the affirmative. Commander Martin E. Carlson, a counsel for the accused, read a written motion for a bill of particulars, prefixed marked "I."

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

The judge advocate replied.

The commission announced that the motion was denied.

Mr. Kuwata, Hideo, a counsel for the accused, read a written objection to the charges and specifications, in Japanese, prefixed marked "J."

An interpreter read an English translation of this objection, prefixed marked "K."

The judge advocate replied.

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

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that it found the charges and specifications in due form and technically correct.

Commander Martin E. Carlson, a counsel for the accused, read a written plea to quash the charges and specifications against the accused Nakamura, Kazuo, on the ground of former jeopardy, prefixed marked "L."

An interpreter read a Japanese translation of the plea of Commander Carlson.

The judge advocate replied.

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

The commission announced that the motion was denied.

Commander Martin E. Carlson, a counsel for the accused, read a written motion in behalf of the accused Nakamura, Kazuo, to suppress the use of any evidence of the trial of Ajioaka, Misao and Yamada, Kiyoshi, against him, prefixed marked "M."

An interpreter read a Japanese translation of the motion of Commander Carlson.

The judge advocate replied.

The accused waived the reading in Japanese of the judge advocate's reply.

The commission announced that the motion was denied.

The accused read a written plea in bar of trial of Nakamura, Kazuo, on the ground of insanity, prefixed marked "N."

An interpreter read a Japanese translation of the plea.

The judge advocate replied.

The accused waived the reading in Japanese of the judge advocate's reply.

The commission announced that the accused would be allowed to introduce evidence on the question of the sanity of the accused but that no evidence could be allowed at the present time on the question of sanity at the time of the alleged offenses.

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

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Kuwata, Hideo, a counsel for the accused, was called as a witness in behalf of the accused Nakamura, Kazuo, and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.
- A. Kuwata, Hideo.

Examined by the accused:

2. Q. Do you know the accused Nakamura, Kazuo?
- A. Yes, I do.
3. Q. Did you ever meet Nakamura and talk to him?
- A. Yes, I have.
4. Q. When did you meet him?
- A. I first met him on December 27, 1947.
5. Q. Since then about how many times have you met him?
- A. I believe seven or eight times.
6. Q. Did you notice anything out of the ordinary in regard to Nakamura while you were conversing with him?
- A. Yes. I thought he was inferior in understanding and thinking power.
7. Q. When did you first notice that Nakamura's mind was not ordinary or unsound?

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

The accused withdrew the question.

8. Q. When did you first notice that Nakamura's mentality was different from the ordinary person?
- A. I answered in the last question that he couldn't understand very well and this I noticed when I first met him. And I believe this presumption of mine was confirmed by the actual fact the next day.
9. Q. Please explain by what actual fact your presumption was confirmed.
- A. The next day while I was talking to Nakamura in the hut in front of the guard house at the stockade I couldn't see from where I was but from where Nakamura was he saw the doctor and right away, in the middle of the conversation, he stated that he wanted to be examined by the doctor once more. Therefore I asked Nakamura, "What is wrong?" Then he said that he couldn't sleep at night and he had no appetite and there was always a ringing in his ear and his head was hot and particularly during the daytime it is hot and so he had a wet towel on top of his head. By this, what I had presumed before

became clear. To very simple questions he would give answers but to more complicated questions he would not answer clearly and very often his answer was not responsive to the question and I thought that this was due to his feeble-mindedness.

10. Q. Did you ask Nakamura why he was the way he was?

A. The next day I talked to Nakamura about what he was charged with and after I finished with this I asked him about his family. At this time Nakamura said he had four children. The eldest and the next were boys and these two boys stuttered, especially the eldest son who was around fourteen years old, but he was an imbecile and only had the mind of a seven or eight year old child. He went to school but he couldn't take the examination so he had just been advanced through the grades without taking examinations. He also said he had another child and also one of them died and one who was born after he was demobilized was born dead. Japanese usually feel very ashamed to talk about venereal disease so it was not very easy to ask Nakamura but I pushed away this ashamedness and as I knew a little about syphilis having something to do with the mentality of humans, I asked Nakamura if he was infected with syphilis.

The judge advocate requested that the commission direct the witness to be more responsive to the questions of counsel.

The commission announced that the remarks of the judge advocate were concurred in and directed that the witness stay within the scope of the questions asked when replying.

A. (Continued) Then I will answer directly to the question. I asked him whether he had syphilis. He answered that at the age of twenty-four he was infected by syphilis. gmk

11. Q. Then from your observation did you feel that Nakamura's inferiority was due to syphilis?

This question was objected to by the judge advocate on the ground that it called for an opinion the witness was not qualified to give.

The accused made no reply.

The commission announced that the objection was sustained.

Cross-examined by the judge advocate:

12. Q. From your observation and talking with the accused Nakamura, is it true that the only conclusion that you came to was that his intelligence was not what you consider average intelligence?

A. I observed that we expect so much from an army officer and Nakamura is an army officer but his degree of expectation is lower than average.

13. Q. Other than reaching the conclusion that his intelligence was below what you consider average, did you reach any other conclusion?

A. What do you mean by other? Do you mean was he insane?

14. Q. I mean any other conclusion other than the one you have stated; namely, that Nakamura's intelligence was below what you consider normal or average.

A. I felt that his judgment wasn't quick or precise.

15. Q. Is that all you concluded?

A. I was watching Doctor Iwanami give Nakamura a mental test and at this test I felt that Nakamura was poor in calculation and also his coordination wasn't good.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness resumed his status as a counsel for the accused.

A witness in behalf of the accused Nakamura, Kazuo, entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.

A. Iwanami, Hiroshi.

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

A. Nakamura, that is all.

Examined by the accused:

3. Q. Are you a licensed physician?

A. Yes.

4. Q. Have you had any experience in psychiatry?

A. Yes, a little.

5. Q. Have you had an opportunity to observe the mental status of Nakamura?

A. I didn't have any special opportunity. It was just merely that I conversed with him.

6. Q. Are you not able to give an opinion as to the mental status of Nakamura?

A. As I have not had a chance to observe him thoroughly, I am unable to give an opinion.

7. Q. When you talked with Nakamura did you not have any doubt as to his mental condition?

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

The accused withdrew the question.

8. Q. You have stated that you talked with Nakamura. During this conversation did you feel that there was anything wrong with the mental status of Nakamura?

A. In minor things such as calculation, recollection, diseases he had caught before, judgment, and perception, I had a doubt that he was normal.

9. Q. What does this mean to an ordinary human being?

A. I believe one would have to take special care to have such a person mingle among ordinary humans.

10. Q. Why would such a person have to be specially cared for?

A. Because such a person's judgment power or thinking, perception, etc., and idea, is different from the ordinary person, in conversation or otherwise, or in other doings he might have wrong judgment or wrong feeling so one must guard against this.

11. Q. Then in regard to Nakamura did you distinctly discover such signs of insanity?

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

The accused withdrew the question.

12. Q. Then by conversing with Nakamura did you come to have any opinion as to his mental state, other than you have previously testified to?

A. To determine the mental condition of Nakamura it must be done by at least two qualified doctors with clinical and experimental facilities.

The commission directed the witness to answer the question.

A. (Continued) My opinion is that it is necessary to make various examinations of him.

13. Q. Does Nakamura exhibit any mental or psychoneurotic symptoms?

A. I cannot say definitely.

14. Q. Do you recommend that Nakamura be examined by qualified examiners who have the proper facilities to examine him?

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

The accused made no reply.

The commission announced that the objection was sustained.

15. Q. In talking to Nakamura, could he do simple arithmetic and addition? OK

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

The accused made no reply.

The commission announced that the objection was sustained.

16. Q. Isn't it true that since Nakamura could not do simple arithmetic and subtraction this was a mental and psychoneurotic symptom?

A. It would require various examinations performed on him before this could be answered.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness on behalf of the accused Nakamura, Kazuo, entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name.
A. Ueno, Chisato.
2. Q. If you recognize these accused, state who they are.
A. Nakamura.
3. Q. Do you recognize any of the others?
A. No, I do not.

Examined by the accused:

4. Q. Have you had any experience in psychiatry?
A. I am not a specialist in that line but I have dealt with the patients.
5. Q. You are a licensed physician?
A. Yes.
6. Q. If you have had a chance to observe Nakamura, will you state if you have noticed any malformations of his eyes or face, his tongue or palate, his nose or ears?

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

The accused made no reply.

The commission announced that the objection was sustained.

7. Q. Have you had a chance to talk to or observe Nakamura?
A. Yes, I had an opportunity to give him a simple test and also ask him simple questions.
8. Q. What did you observe as to Nakamura?

A. First, as a matter of routine, I asked Nakamura about the history of his family. What I learned from this was that Nakamura's father died at the age of seventy-one before which his mental condition was such that his mind was very hazy for three years. Nakamura did not know the reason for this. Next, in regard to Nakamura's own close relatives and his wife and his wife's mother and father there was nothing wrong with them but his children are unusual. He has six children up to this time. On January of last year one child was born dead after nine months. Before this child there was one who was born but died after living three months. He has four living, the oldest being a boy sixteen years old, I judge is an imbecile. The second son, age fourteen, stutters and all the other children when born weighed only five pounds and this is a very low average in Japan. It is about one pound less than the average. I found out that all the children were under weight. His wife's health was not very good after they were married. I asked him about his former sickness and he stated that he contracted syphilis at the age of twenty-four and for several years he felt an acute pain like rheumatism in both of his legs. Only by looking at Nakamura's face I was able to ascertain that his ears kept ringing, therefore I asked him if his ears rang. He told me that his ears had rung for a long time. At present, that is two days ago, in the back center of his penis I was able to see that he had small skin disease. These were his main previous illnesses. From his family health condition and his present case history, I judge that he still has syphilis therefore I gave him two or three tests. His present health condition was that he has the same symptoms when a person has syphilis for a long period. His lymphatic glands are swollen exceptionally as syphilis has been in the body for a long period. His field of vision is very narrow. I compared his with Mr. Karasawa's and Nakamura's was only one-fourth of that of Mr. Karasawa. I judged from this that there is something wrong with his nervous system. In regard to the condition of Nakamura, I gave Nakamura movement coordination tests such as finger and finger test, finger and nose test, and leg and knee test. We class this as strong, average, and weak and Nakamura was classed as average. This is a symptom of ataxia. When the anterior angulus of the spinal cord is attacked by syphilis or other diseases the coordination becomes this way. Other than this, I tested his knee reflexes and both his knees show symptoms of deterioration. I did not have a stethoscope so with my ear I listened to his heart beat. By listening to his heart beat I judged that his vena cava was deteriorating but this is only an inter degree. When there is syphilis in the vena cava, the vena cava always deteriorates. Other than this when I questioned him, what I noticed was that his eyeballs always moved right to left. At first I thought this was tremor of his eyeball but later I found out that the tremor of the eyeball could be stopped by drawing his attention to a particular thing. I observed the above from him.

9. Q. Is there any basis for belief that Nakamura has general paresis?

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

The accused replied.

The commission announced that the objection was sustained.

10. Q. Is it your opinion that Nakamura has general paresis?

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

The accused made no reply.

The commission announced that the objection was sustained.

11. Q. Do you consider Nakamura of normal mental standard?

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

The accused made no reply.

The commission announced that the objection was sustained.

12. Q. Is lues indubitably the cause of paresis?

A. There are times when it is the cause.

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

Commander ^CVerlson, a counsel for the accused, renewed his request for a psychiatric examination of the accused Nakamura, Kazuo. gx

The judge advocate stated that he had no objection to such examination.

The commission sent a communication to the convening authority, copy prefixed marked "O", requesting a postponement of the trial and that the accused Nakamura, Kazuo, be placed under observation of medical officers. gx

The commission then, at 4:45 p.m., adjourned to await the action of the convening authority.

SECOND DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Thursday, January 15, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The judge advocate read a letter from the convening authority to the
president of the military commission authorizing postponement of the trial,
prefixed marked "P."

The accused waived the reading of this letter in Japanese.

The judge advocate read a letter from the convening authority to the
Medical Officer in Command, U. S. Naval Hospital, Guam, Marianas Islands,
directing a psychiatric examination of the accused Nakamura, Kazuo, copy
prefixed marked "Q."

The accused waived the reading of this letter in Japanese.

A witness in behalf of the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name, rank and present station.
A. Robert Edmund Switzer, lieutenant, Medical Corps, United States Navy,
stationed at the United States Naval Hospital, Guam, Marianas Islands.
2. Q. If you recognize any of these accused, state as whom.
A. Nakamura.
3. Q. Are you a practicing physician?
A. Yes sir.
4. Q. In what field of medicine, if any, do you specialize, doctor?
A. Neuropsychiatry.

5. Q. At the request of Commander Marianas and by direction of the Medical Officer in Command of the Naval Hospital, Guam, did you examine the accused Nakamura, Kazuo?

A. Yes sir.

6. Q. What was the purpose of that examination?

A. To determine the sanity of the accused.

7. Q. As a result of that examination, doctor, did you submit a report to Commander Marianas?

A. Yes, sir.

8. Q. I show you a four-page report, doctor, and ask you if that is a certified copy of the report submitted by you?

A. Yes, sir.

9. Q. Does this report contain the history you received from Nakamura, the examinations performed on Nakamura, and your findings?

A. Yes, sir.

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

The receipt of this report into evidence was objected to by the accused on the ground that it was not the best evidence since the doctor was now on the stand and his testimony would be the best evidence.

The judge advocate replied.

The commission announced that the objection was not sustained. There being no further objection the report was so received, appended marked "Exhibit 1."

10. Q. Will you please read your report, doctor?

The witness read "Exhibit 1."

An interpreter read a Japanese translation of "Exhibit 1."

11. Q. Doctor, what is your opinion as to the sanity of the accused Nakamura, Kazuo?

A. It is my opinion that he is sane.

Cross-examined by the accused:

12. Q. Are you the only psychiatrist on Guam, doctor?

A. No, I think the army hospital has one or perhaps two.

13. Q. This report is numbered 2143. What does that mean?

A. All diagnoses in the naval medical service carry a number.

14. Q. Is this number the number of psychiatric diagnoses that have been performed out there?

A. No, each specific diagnosis has its own number. For instance, cat fever has one number, appendicitis has one number. No disease has the number of 2143.

15. Q. Is this report which was put into evidence and read by you prepared entirely on your own examinations and findings?

A. Other than the X-ray findings and laboratory findings and the impression of the EENT consultant, all the other was either by direct examination or examination through an interpreter.

16. Q. Shouldn't this report show that there were nine siblings instead of eight and that Nakamura was the youngest?

A. The report shows whatever answer I got.

17. Q. How long did you question Nakamura and how many times?

A. For the most part most of the material was gotten through two long interviews because of the fact that we had to have the interpreter present and I think there were two or three shorter interviews in addition to the time when the spinal tap was done, for it was necessary to have someone talk to him so he would cooperate. In addition a recheck on the neurological. The examination need be no longer than it takes to come to some conclusion. In this case there were no positive findings so far as the individual's mental condition was concerned. There was no need for any prolonged rehashing of the interviews.

18. Q. In your report on Nakamura it states that Nakamura stated that his father was an alcoholic. What do you mean by an alcoholic?

A. Perhaps I should have said chronic alcoholic. A person who is addicted to alcohol. A pathological addiction to alcohol. This has no particular bearing except that it is a statement that came out in the interview.

19. Q. Isn't it true that at birth each individual is provided with his own defense against development of mental disease?

A. I think you mean is not provided with and I think that is one of the theories of Ronk who was one of the original followers of Freud and who does not have much of a following anymore. If I am thinking about what you are it is a theoretical thing and not something that is tangible. JK

20. Q. Can we go as far as to say that the amount or the thickness of this resistance is controlled by inheritance from the parents?

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

The accused replied.

The commission announced that the objection was sustained.

21. Q. Isn't the fact that Nakamura's father was a chronic alcoholic of importance as far as his psychiatric or pathological inheritance is concerned?

A. His father's chronic drinking is something which the accused certainly could have overlooked. In the individual's personality at any particular time is a residue, so to speak, of past experiences and their interrelationship in addition to inherited potentialities.

The commission then, at 10:15 a.m., took a recess until 10:30 a.m. at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

22. Q. You spoke of personality. What do you, as a psychiatrist, mean by personality?

A. Personality is not a tangible thing. I have already answered what the personality reflects. Personality is what the individual is, what he does, how he responds to a situation, how he thinks, how he responds to personal relations and all these things are a part of what I said personality was composed of in the last answer. How an individual reacts to a situation or to another individual is based on the reasons I gave in the last answer.

23. Q. Would you say that Nakamura's temperature was normal on January 7, 1948?

A. Upon admission note, that is admission routine, immediately after he came to the ward it was 99.2. On the physical examination it was normal. We are in the habit of calling 98.6 a normal temperature and we often fall into the fallacy that anything that varies with 98.6 is abnormal. It is not unusual to run between 98.6 and 99.2 out here.

24. Q. Isn't it true that a 70 pulse and a 20 respiration is not normal, either?

A. There are generalities on pulse and respiration. A particular individual's pulse is normal unless it goes extremely out of the generally accepted normal, when it takes care of its needs. 70 is not abnormal and 20 is not abnormal. A 70 pulse is a rather slow pulse. In regard to a 20 respiration, 18 is usually called normal. In taking any pulse or respiration the human element comes in. You keep track of the watch and you keep track of the conditions, and any true variation of it.

25. Q. Isn't it true that in order to induce sleep it was necessary to administer drugs to Nakamura every night during the time he was at the hospital under examination and observation?

A. I think that Nakamura received 1 1/2 nembutal every night while he was there so that he would have adequate rest and so that there would be no trouble in sleeping. It was given at bedtime. I don't think at any time it was felt that he was given it because he had to have it to induce sleep. He had the status of a patient in strange surroundings, unable to communicate with other individuals present, at least at will, but through a very crude system that we had arranged by having a simple request he had made in Japanese read in English. It seemed only natural to give him a little nembutal at night to give him rest in his strange surroundings.

26. Q. And yet, notwithstanding the fact that drugs were administered to him, isn't it true that he still couldn't sleep at night?

A. If you mean did he not sleep at all, the answer is no. He did sleep. The chart at times showed that he would wake up at night a time or two but I would say that considering his situation it would not be considered abnormal to be a somewhat restless sleeper, though he had had a very small amount of sedative. I am sure I would not sleep soundly under similar circumstances.

27. Q. Isn't his extremely low blood pressure of 100 over 60 symptomatic of a mental condition and indicates a possible nervous breakdown?

A. 100 over 60 is not extremely low. I would say that it is a low normal value. The relation between the two is the important thing. We say that around 120 over 80 is the accepted normal value which we use as a yardstick, so to speak. His systolic pressure is 20 points under 120 and 60 is 20 points lower than 80. As to an individual's blood pressure indicating the evidence of a nervous breakdown, I don't think we can make any generalities. "Nervous breakdown" is not a medical term and anyone who uses it in a specific case is trodding on dangerous territory. In regard to nervous breakdown as indicating that the individual has or is on the verge of some severe mental illness, the blood pressure in relation to that would usually go the other way. This individual may show the physiological response that he shows to actual fear under such a condition which would mean that his pulse rate would increase, respirations would increase, and his whole physiology would mobilize just as though he had faced an actual tangible fear object and in a situation of that sort we would expect a transient increase in blood pressure rather than a decrease. In some mental illnesses where the individual shows a marked withdrawal from his environment the metabolic processes show some slowing and we might see a decreased blood pressure, but we don't have that clinical picture here.

28. Q. Isn't the 45 milligrams of protines per 100 cc of spinal fluid too much and not normal?

A. In our laboratory the normal range is considered to be 25 to 60.

29. Q. Isn't the blood sedimentation rate too high?

A. Normal is considered 8 or 9 or 10, in that range.

30. Q. Isn't the white blood corpuscle count of 9,200 about twice as high as in the normal Japanese?

A. As far as I know the normal white count for Japanese is the same as for anyone else. The normal values vary from laboratory to laboratory. Ordinarily we say 5 to 8 thousand is the limit of normal. This was 9,200. That is above normal but not anything extremely pathological. The total count doesn't mean anything without the differential. The differential is anything to be eliminated. Then 6 eosinophiles is something of interest but not in any direct connection with this case. This report was submitted as soon as I felt that we had adequate material to give a conscientious answer which would satisfy the court and both sides of the case. During the work-up a stool specimen was taken. I didn't think a stool would have any direct bearing but it was done just for a matter of completeness. The report wasn't back yet and I was anxious not to hold the court up any longer. And when I saw 6 eosinophiles I suspected the stool specimen would show something, which it did. The medical officer at the Marine Barracks has been notified so that he can take care of that. The man has hookworm and *E. Histolytica* was demonstrated and that explains the 6 eosinophiles count, which is 0 or 1 normally. I brought it in so it would be complete and not withholding any information. OK

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

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

31. Q. What kind of cells were found in the blood in your examination of January eighth?

A. Do you mean the differential white count?

32. Q. Doesn't the examination of January eighth show that there were certain cells in the blood?

A. Two bands, fifty-nine segmented. Which means the adult type of the granular. Ordinarily there are two types of white blood cells, the band cells are young granular. Segmented are the adult granular. In addition to the adult granular cells there may or may not be eosinophiles. Eosinophiles are usually not present at all or there are one or two. If there are more than one or two then you look for some reason for it. The usual reason for a small number of eosinophiles--say ten or less--is some sort of bowel infection. You can have other sorts of disease that cause eosinophilia, but in the other diseases they are more numerous than this small number.

33. Q. The report states that the skull examination is negative. Did the skull examination reveal any abnormalities?

A. The X-ray film was read by the X-ray department and not by me and was reported as negative.

34. Q. The colloidal gold curve you say is considered normal if not accompanied by other symptoms. Accompanied with other symptoms this gold curve that you did get would be highly abnormal, would it not? OK

A. Colloidal gold curve of three ones and seven zeros would not be highly indicative of anything in any examination. It would be cause for consideration in any examination. None of these laboratory tests are absolutely infallible. Even a Kahn test can show a false positive. Colloidal gold curve is an examination which actually is performed on the protein in the spinal fluid. In this particular case there was a history of syphilis twelve years ago and the man was brought in for an examination concerning sanity, so the immediate question is if there are any mental or neurological abnormalities. Does he have some syphilitic inflammation of his central nervous system--either general paresis or tabes dorsalis? In either case, if the diagnosis were made, there would have been clinical findings as well as laboratory findings. Taken together they would be clear proof. In either case we would have expected to have a positive Kahn and we have two negative Kahns and we would have expected to have a positive Pandy test. A Pandy test is a test for globulin which is a type of protein. If we had found general paresis we would have had fives in our colloidal gold curve--four or five fives in the beginning of the curve and it would taper down to zero. If we had found tabes dorsalis we would have started off at zero or one and come up to fives and leveled off or gone up and down to zero, building a pyramid. In the absence of a positive Pandy and the absence of a positive Kahn then the presence of two or three ones in the beginning are not particularly significant, particularly in the absence of clinical findings which do not involve the central nervous system. OK

35. Q. What is Nakamura's I.Q. by a standardized psychiatric test?

A. I am not able to answer that. There is no standardized test available on Guam and no one who has had enough experience to administer one that would be of value, particularly in this case, because of the cultural difficulties and the difficulty of interpretation. I would say from an estimate that his I.Q. would fall within the range of normal. His intelligence, in the form of his climb in military life, would indicate that he had normal intelligence.

36. Q. Is there any indication at all that the spirochaeta has invaded the brain of Nakamura?

A. The only way we can definitely prove the presence of spirochaeta pallida or treponema pallidum is by direct visual means under a microscope. From my examination I am of the opinion that he does not have any syphilitic disease at this time.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

The commission announced that the plea in bar of trial was not sustained.

Each of the accused stated that he was ready for trial.

Commander Martin E. Carlson, a counsel for the accused, read a plea in bar of trial on the ground of the statute of limitations, prefixed marked "R."

The judge advocate replied.

The accused waived the reading of the plea and reply in Japanese.

The commission announced that the plea was not sustained.

Commander Martin E. Carlson, a counsel for the accused, read a plea to the jurisdiction, prefixed marked "S."

The commission then, at 3:25 p.m., took a recess until 3:40 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

The accused waived the reading in Japanese of Commander Carlson's plea to the jurisdiction.

Mr. Kuwata, Hideo, a counsel for the accused, read a written plea in Japanese to the jurisdiction, prefixed marked "T."

An interpreter read an English translation of the plea of Mr. Kuwata to the jurisdiction, prefixed marked "U."

The judge advocate replied and called the attention of the commission to paragraphs one and three of the precept which refer to the jurisdiction in the instant case. The judge advocate presented certified copies of the referenced dispatches to Commander Carlson of defense counsel and to the commission.

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

The commission announced that the plea to the jurisdiction was not sustained.

The judge advocate read the letter containing the charges and specifications, original prefixed marked "V."

An interpreter read the charges and specifications in Japanese, prefixed marked "W."

The judge advocate arraigned the accused as follows:

Q. Nakamura, Kazuo, you have heard the charges and specifications preferred against you; how say you to the first specification of the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

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

A. Not guilty.

Q. To the first charge, guilty or not guilty?
A. Not guilty.

Q. Nagatome, Yoshimori, you have heard the charge and specification preferred against you; how say you to the first specification of the first charge, guilty or not guilty?
A. Not guilty.

Q. To the first charge, guilty or not guilty?
A. Not guilty.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, January 16, 1948.

THIRD DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Friday, January 16, 1948.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Kocs, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
Counsel for the accused and the interpreters.

No witnesses not otherwise connected with the trial were present.

The judge advocate announced that he had been advised by the officer in charge of the war crimes stockade that the accused Nakamura, Kazuo, is ill this morning. The judge advocate stated that the medical officer of the United States Navy on duty at the war crimes stockade had examined this accused and was of the opinion that his attendance would be inadvisable. In view of the foregoing, the judge advocate requested that the commission adjourn until further notice.

The commission announced that the judge advocate's request was granted.

The commission then, at 9:20 a.m., adjourned until further notice.

FOURTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Monday, January 19, 1948.

The commission met at 9:35 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Stewart R. Smith, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

Corporal John W. Goar, U. S. Marine Corps, entered and reported as
provost marshal relieving Corporal Raymond E. Gardner, U. S. Marine Corps.

The judge advocate announced that Lieutenant Commander Bradner W. Lee,
junior, U. S. Naval Reserve, had returned from authorized emergency leave and
had resumed his seat as a member of the commission. The president of the
commission informed the judge advocates and the accused that Lieutenant
Commander Bradner W. Lee, junior, had read the record of proceedings to date.

The accused did not object to this member.

The returned member, Lieutenant Commander Bradner W. Lee, junior, U. S.
Naval Reserve, was duly sworn.

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

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

No witnesses not otherwise connected with the trial were present.

Mr. Shigeo Yamanouchi, an interpreter, was introduced and duly sworn.

The accused made a motion for severance in behalf of Nakamura, Kazuo
on the ground of misjoinder of parties.

The judge advocate replied and called the attention of the commission to
Section 404 of Naval Courts and Boards.

The commission announced that the motion was denied.

The prosecution began.

The judge advocate read a written opening statement, appended marked "X."

An interpreter read a Japanese translation of the opening statement of the judge advocate.

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

1. That a state of war existed between the United States, her allies, including the United Kingdom of Great Britain, her dependencies, and the Imperial Japanese Empire during 1944.
2. The Potsdam Declaration of July 26, 1945, particularly paragraph 10, which reads in part as follows: "We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners."
3. The Geneva Prisoner of War Convention of July 27, 1929, and of the fact that although Japan has not formally ratified this convention, it agreed through the Swiss Government to apply the provisions thereof to prisoners of war under its control, and also, as far as practicable to interned civilians; particularly Article 2 of Title I of that convention which reads as follows: "Prisoners of war are in the power of the hostile power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited."
4. That Babelthup Island, Palau Islands, is part of the Commander Marianas area.
5. The Hague Convention of October 18, 1907, and especially Article 23(c) which reads as follows: "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."
6. Of the fact that, "The United States and the enemy governments, namely, Germany, Italy and Japan, have agreed through the Swiss government to treat interned civilian alien enemies, on a reciprocal basis, at least as favorably as prisoners of war." (Law of Land Warfare, Judge Advocate General's School Text No. 7, Chapter IV).

An interpreter read a Japanese translation of this request.

The accused waived the reading in Japanese of an objection to the request for judicial notice by Mr. Karasawa, Takami, a counsel for the accused, original document in Japanese appended marked "Y."

An interpreter read an English translation of this written objection to the request for judicial notice by Mr. Karasawa, Takami, a counsel for the accused, appended marked "Z."

Commander Martin E. Carlson, U. S. Naval Reserve, a counsel for the accused, read a further written objection to the request of the judge advocate on judicial notice, appended marked "AA."

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

The judge advocate replied.

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

The commission then, at 10:35 a.m., took a recess until 10:50 a.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. My name is Sano, Giichi, former rank is Kempei first lieutenant.

(Translator's Note: Kempeitai is a military police unit and a Kempei is a member of such a unit.)

2. Q. If you recognize the accused will you tell us their names and former ranks?

A. From the left is Captain Nakamura, Warrant Officer Kokubo and Sergeant Nagatome.

3. Q. Did you ever serve with the Japanese forces in the Palau Islands?

A. I did.

4. Q. Between what dates did you serve there?

A. I arrived on Palau Island on March 18, 1944 and I left Palau on February 14, 1946.

5. Q. In September of 1944 what were your duties?

A. I had duty as an officer attached to the South Seas Kempeitai.

6. Q. Who was the commanding officer of that unit?

A. Kempei Lieutenant Colonel Miyazaki, Aritsune.

7. Q. And where was that unit stationed?

A. Around the first of September, 1944, this unit was near Otaki in Gasupan Village on Babelthuap.

8. Q. Did that unit ever move from Gasupan?

A. Yes.

9. Q. When was that?

A. I believe it was around the beginning of December of 1944 when this unit moved from near Otaki to Miszu Bridge which was also on Babelthuap. I would like to make a correction. I said it was the beginning of December but I believe it was the middle of September.

10. Q. Who was the commanding officer of the Fourteenth Division?

A. Lieutenant General Inoue.

11. Q. Do you know the name and rank of his Chief of Staff?

A. I do.

12. Q. What was his name and rank?

A. Colonel Tada.

13. Q. In September of 1944 where was General Inoue's headquarters?

A. It was situated in Nekken (T.N. Japanese abbreviation for Institute of Tropical Research) at Gasupan on Babelthuap Island.

14. Q. What was the approximate distance between the headquarters of Lieutenant General Inoue and the headquarters of Lieutenant Colonel Miyazaki?

A. I recall that by walking it took about twenty minutes.

15. Q. In September of 1944 did you see any prisoners of war in the Palaus?

A. I did.

16. Q. How many prisoners of war did you see?

A. Three.

17. Q. Do you know the nationality of these prisoners of war?

A. Yes, I do.

18. Q. Tell the commission how you happen to know the nationality of these men.

A. I recall that it was around the end of August, 1944. At this time these prisoners were landed on the coast of Mizuho. They were pilots of the B-24. On the way to division headquarters they stopped over at the Kempei headquarters and Staff Officer Yajima came to question them and at this questioning I was present, so I know.

The accused moved to strike the words "At this time these prisoners were landed on the coast of Mizuho" out of the answer on the ground that they were hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

19. Q. Was this the first time that you had seen these prisoners?

A. Yes.

20. Q. Were the prisoners sent any place after Yajima finished interrogating them?

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

The judge advocate withdrew the question.

21. Q. After the interrogation had been completed, what became of the prisoners?

A. They were brought to the division headquarters.

22. Q. After these prisoners had been sent to division headquarters did you ever see them again?

A. Yes.

23. Q. How long a time elapsed between the first time you saw these prisoners and the second time you saw them?

A. I recall that it was about one week.

24. Q. Going back for a moment to the interrogation of these prisoners by Yajima, did the prisoners say what their nationality was?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I recall that I heard them say that their nationality was American.

The accused moved that the answer be stricken on the ground that it was hearsay.

The commission announced that the motion was denied.

25. Q. Where did you see these Americans for the second time?

A. I recall that it was September 4, 1944 when I saw them the second time. I saw them on a truck on the road in front of the commanding officer of the Gasupan Kempei's quarters.

26. Q. Were they tied up?

A. I recall that all three of them were bound and blindfolded.

27. Q. Other than the three prisoners, were there any other men in the truck?

A. On the truck I recall that there were four or five men from the division headquarters. There was one soldier to each prisoner and there was one non-commissioned officer, so I believe there were four or five.

28. Q. Did you have a conversation concerning these prisoners with anyone at the Kempei at that time?

A. Yes.

29. Q. With whom did you have this conversation?

A. I heard it from Commanding Officer Miyazaki.

30. Q. What did Miyazaki say to you?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I was told as follows: "Today I went to the division headquarters and met the Chief of Staff and I was ordered by him to execute the three prisoners of war at the division headquarters by the Kempeitai. At present they are brought to the First Detachment. We are going to execute them right away so you come along, too."

The accused moved that this answer be stricken on the ground that it was irrelevant and immaterial.

The judge advocate replied.

The commission announced that the motion was not sustained.

31. Q. Where was the First Detachment located?

A. At that time it was situated at the South Seas Development Company office which was at Otaki at Gasupan.

32. Q. Who was the commanding officer of the First Detachment?

A. Captain Nakamura.

33. Q. Do you mean the Nakamura you have identified as an accused in this case?

A. Yes.

34. Q. What was his rank at that time?

A. Kempei first lieutenant.

35. Q. What happened after you had this conversation with Lieutenant Colonel Miyazaki?

A. I was told by the commanding officer that these prisoners were brought here and was told to come along. I followed the commanding officer. When the truck came to the front of the commanding officer's quarters I saw there were three prisoners on the truck. I also recall that Sergeant Major Kokubo and Sergeant Nagatome were with the number. Captain Nakamura was also present. I got in the commanding officer's private car and we entered the place called Gasupan Daijo.

The witness was duly warned.

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

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

(Direct examination continued:)

36. Q. At the time you first saw this truck in front of the commanding officer's quarters, how many trucks did you see?

A. One.

37. Q. Were the prisoners that you saw in that truck the same prisoners that you had seen Colonel Yajima interrogating?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. I felt that they were. The first time I saw them it was only for a short while but I thought that they were the same prisoners.

38. Q. Other than Sergeant Major Kokubo and Sergeant Nagatome, what other individuals got into that truck, if any?

A. I don't recall very distinctly but there may have been one or two assistant Kempeis who got on the truck.

39. Q. And when you got into the commanding officer's private car, did anyone else get into that car with you?

A. I recall that Commanding Officer Miyazaki, Captain Nakamura, myself, and I believe it was Second Lieutenant Tamanoi who was then the Intendence Officer, got in the car.

40. Q. And where did you go in this automobile?

A. As I have stated before, we went to the scene of the execution at Gasupan Daijo.

41. Q. Tell us what happened when you got there?

A. We got off the car. There was a jungle near the road and in this jungle the hole had already been dug. The prisoners also got out of the truck and I believe one of them was definitely an officer. Commanding Officer Miyazaki stood near the hole and said, "Bring him here!" He was brought there and was made to sit in front of the hole. Commanding Officer Miyazaki shot him in the back of his head with the pistol he had, from the back, and killed him with one shot. JX

The accused moved to strike the words "and I believe one of them was definitely an officer" and "killed him with one shot" out of the answer on the ground that they were the mere opinion of the witness.

The judge advocate replied.

The commission directed that the words "killed him with one shot" be stricken out.

A. (Continued) Commanding Officer Miyazaki ordered Captain Nakamura, who was at the scene, to cut the next one, by saying, "Captain Nakamura, cut!" Therefore, Captain Nakamura with his sword beheaded him. Commanding Officer Miyazaki ordered Sergeant Major Kokubo who was at the scene, "Sergeant Major Kokubo, cut!" I recall at this time Captain Nakamura also relayed the orders of Commanding Officer Miyazaki to Kokubo by saying, "Kokubo, cut!" Sergeant Major Kokubo, with his type 95 sword which he had, cut at the neck but it did not cut well. From what I saw he cut only about the width of the sword, therefore, Commanding Officer Miyazaki said, "Kokubo, it hasn't been cut." And then Commanding Officer Miyazaki with his pistol shot this third prisoner two or three times and killed him, as I recall.

42. Q. When Kokubo swung his sword on this prisoner, did he say anything?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. When Commanding Officer Miyazaki ordered Sergeant Major Kokubo to cut, Commanding Officer Miyazaki shouted in a loud voice, "Sergeant, take revenge for Sergeant Ikushima!" Therefore, when Sergeant Major Kokubo swung his sword I recall him saying that it was for the revenge of Ikushima. At this time Ikushima's ashes were brought to the scene and when Sergeant Major Kokubo cut I recall that Sergeant Nagatome was holding them.

43. Q. Are you sure that it was Colonel Miyazaki who said, "take revenge for Corporal Ikushima"?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. Commanding Officer Miyazaki shouted.

44. Q. You say the ashes of Ikushima had been brought to the scene. Who brought these ashes there?

A. When I followed Commanding Officer Miyazaki and went out of his room to the road, as I have stated before I saw Sergeant Major Kokubo and Sergeant Nagatome on the truck. At this time I saw someone holding the ashes but I do not recall whether it was Kokubo or Nagatome.

45. Q. What was done with these bodies?

A. There was a big hole dug and these bodies were beheaded in front of the hole and the prisoners were buried together in this hole. Dirt was covered on top and we came back.

46. Q. Now, concerning this first prisoner that was shot by Miyazaki, you said Miyazaki ordered him brought to the edge of the hole. To whom did he give this order?

A. There was one Division Headquarters soldier guarding each prisoner and these guards brought the prisoners to the scene, to a place about four or five meters from the hole, and when the Commanding Officer Miyazaki ordered one of them brought the guard who was watching that particular man brought the prisoner to the hole and made him sit down.

47. Q. Did anyone else along with the guard lead the prisoner to the hole?

A. I do not recall.

48. Q. Do you recall whether Nakamura, Kokubo or Nagatome led any of these prisoners to the hole?

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

The judge advocate replied.

The commission announced that the objection was sustained.

49. Q. When Kokubo swung his sword, did you actually see it strike into the neck of one of the prisoners?

A. I did.

50. Q. How was Nagatome holding these ashes?

A. I recall that these ashes were wrapped in white bandages and I recall that he was holding the ashes in front of him suspended from the neck.

51. Q. Do you know why these ashes had been brought to the scene of this execution?

A. I do not know.

52. Q. Do you know who had the ashes brought to the scene of the execution?

A. I do not know who said to.

53. Q. Do you know the rank of Kokubo at the time of this execution?

A. At that time Kokubo was a sergeant major.

54. Q. Do you know the rank of Nagatome at that time?

A. Yes. At that time he was corporal.

55. Q. Do you know the rank of Miyazaki at that time?

A. Lieutenant Colonel Miyazaki.

56. Q. Who was the commanding officer of Kokubo and Nagatome?

A. The commanding officer of the Kempeitai was Miyazaki. At that time in this unit there was a First Detachment. The commanding officer of this First Detachment was Captain Nakamura, and Nagatome and Kokubo were members of this First Detachment and were working as members of this division.

57. Q. Were Kokubo and Nagatome members of the First Detachment?

A. Yes.

58. Q. And who was the commanding officer of the First Detachment?

A. At that time, First Lieutenant Nakamura.

Cross-examined by the accused:

59. Q. You have testified that around September, 1944, you were attached to the South Seas Kempeitai. What were your duties at the South Seas Kempeitai?

A. Officially I was attached to the South Seas Kempeitai, but I was ordered by the commanding officer to be the chief of the Special Higher Section, and my work was chiefly to collect information regarding public order.

60. Q. Then was it your duty within the South Seas Kempeitai to collect information in regard to foreigners?

A. Yes. My duty was in collecting information regarding foreigners.

61. Q. The three prisoners which you saw around September, 1944, were they ever held in custody inside the Kempeitai?

A. No.

62. Q. From the time you first saw these three prisoners until you saw them the second time, where were these three prisoners confined?

A. At the division headquarters.

63. Q. When you were told about this execution of these prisoners from Commanding Officer Miyazaki, was there anyone other than yourself there?

A. No.

64. Q. Around this time did you not see Commanding Officer Miyazaki call First Lieutenant Nakamura and talk to him?

A. No.

65. Q. When Commanding Officer Miyazaki talked to you about the execution of these prisoners did he give any reason for the execution?

A. He did not give any reason but I heard at this time from Commanding Officer Miyazaki that day he went to the Division Headquarters and met the Chief of Staff and the Chief of Staff ordered the three prisoners who were at the Division Headquarters to be executed by the Kempeitai.

66. Q. What is the distance from Commanding Officer Miyazaki's quarters to where the First Detachment was situated?

A. I believe it was about five hundred meters.

67. Q. Standing at the quarters of Commanding Officer Miyazaki, was the First Detachment barracks toward Division Headquarters or in the opposite direction?

A. It was situated toward Division Headquarters.

68. Q. At that time was First Lieutenant Nakamura's office at the First Detachment or at the Headquarters of the Kempeitai?

A. At the First Detachment.

69. Q. You have stated that in front of the commanding officer's barracks you saw several soldiers and NCO's from the Division Headquarters on the truck, but did you not see a warrant officer or officer on the truck from Division Headquarters at that time?

A. I only recall this one NCO and several soldiers.

70. Q. At the scene of the execution did not Commanding Officer Miyazaki directly order Kokubo to cut?

A. Commanding Officer Miyazaki directly ordered Kokubo to cut, but ordinarily orders given to a member of the First Detachment were given from the commanding officer of the Kempeitai to the commanding officer of the First Detachment, then to the members of the First Detachment. But Commanding Officer Miyazaki's order to Kokubo was an order which named Kokubo and First Detachment Commanding Officer, First Lieutenant Nakamura, only relayed the orders of the commanding officer of the Kempeitai. JK

71. Q. At this time, is it correct that First Lieutenant Nakamura relayed the orders of the Commanding Officer Miyazaki?

A. It is correct that Nakamura relayed the orders of Commanding Officer Miyazaki.

72. Q. You have testified that you do not recall whether it was Kokubo or Nagatome who was holding the ashes of Ikushima on the truck in front of the commanding officer's quarters, but wasn't it Kokubo who was holding these ashes?

A. I do not recall clearly.

73. Q. How big were these ashes?

A. The witness indicated a space of about 6 inches square with his hands) It is about six inches square. JK

74. Q. Is it correct that it was Nagatome who was holding the ashes at the scene? JK

A. It is correct. Kokubo was holding these ashes at first but Kokubo was ordered by the commanding officer to cut so I recall that he handed them over to Nagatome.

75. Q. You have just testified that Kokubo handed over these ashes to Nagatome at the scene. Then wasn't it Kokubo who had these ashes when you first saw them on the truck in front of the commanding officer's quarters?
A. I do not recall clearly.

The commission then, at 3:15 p.m., took a recess until 3:30 p.m., at which time it reconvened.

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued).

76. Q. At the scene did you see Nagatome do anything else other than holding the ashes?

A. I do not recall him doing any other special thing.

77. Q. Who was commanding at the scene?

A. Commanding Officer Miyazaki was at the scene and he himself was giving the orders and other things.

78. Q. Up until just before the execution was it the members of the Division Headquarters who were guarding the prisoners?

A. Yes.

79. Q. When did Miyazaki assume command of the Kempeitai in the Palaus?

A. I do not know exactly but when I went to Palau he was commanding officer of the Kempeitai and I believe he arrived in Palau around November of 1943.

80. Q. Did you ever see any orders ordering him to command of the Kempeitai?

A. The Kempeitai was already established there before I went there and when I went there there was no reason for me to look into this. But when I was in Japan I saw and found out that the South Seas Kempeitai had been made up of the First, Second, Third and Fourth Detachments. gx

The judge advocate moved that this answer be stricken on the ground that it was not responsive.

The commission directed that the answer be stricken out.

81. Q. Was Miyazaki still in command of the Kempeitai in September and December of 1944?

A. Yes.

82. Q. When you say prisoner of war, do you mean that you took them prisoner?

A. No.

83. Q. Do you know who did take them prisoner?

A. These aviators came down in a parachute on the coast near Mizuho Village on Babelthuap and I think that the unit near there captured them and brought them to the division headquarters.

84. Q. Did you see them come down in the parachute?

A. No.

85. Q. Then what you said was only hearsay?

A. I just heard it.

86. Q. When you say they were pilots of the B-24, that's hearsay, too?

A. Yes.

87. Q. Did you bring these three prisoners to the division headquarters?

A. No.

88. Q. That is hearsay also that they were sent to division headquarters, then? OK
A. They were on the way to the division headquarters when they stopped at the Kempeitai and they stayed there for one or two hours and Staff Officer Yajima came and questioned them and then they were again put on the truck and sent to division headquarters, so I know about it.

89. Q. How long were they there at the Kempeitai before Colonel Yajima came and talked to them?

A. I recall that Staff Officer Yajima was already at the Kempeitai and these prisoners were taken from the truck and questioned at the Kempeitai for awhile and then went off to division headquarters and Staff Officer Yajima was at the Kempeitai before the prisoners came.

90. Q. Did you have the prisoners taken off the truck?

A. That was done by the non-commissioned officer or the member of the unit which brought the prisoners to the Kempeitai.

91. Q. Didn't you even question the prisoners?

A. No.

92. Q. Then when you said that they were Americans that is hearsay, too? OK

A. I heard it because I was present when Staff Officer Yajima was questioning them.

93. Q. What was done with the prisoners' identification insignia? OK

A. What do you mean by identification insignia? Is it something that they wear?

94. Q. You know that all American pilots had identification tags on them. Why don't you tell what you did with them?

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

The accused replied.

The commission announced that the objection was sustained.

95. Q. What were the names of these three prisoners who were brought to the Kempeitai that day?

A. I do not recall their names.

96. Q. Did you ever know what their names were?
A. No.

97. Q. Didn't Yajima find out what the names of these prisoners were?
A. He questioned these prisoners and brought them right away to the division headquarters so I believe he could know it very well.

98. Q. Then you weren't there all the time he was questioning them?
A. I wasn't there all the time. I was told by Commanding Officer Miyazaki that Yajima was there, so I went there only for his convenience. I just prepared the place for interrogation and as I was not an investigator I wasn't there all the time.

99. Q. You didn't even see the prisoners while they were being interrogated, did you?
A. I saw them.

100. Q. For how long a time?
A. I do not recall how long I saw them for I wasn't just sitting there calmly. I went out to do work for the commanding officer and I wasn't there all the time so I don't know how long I saw them.

101. Q. How close were you to them in the truck that day?
A. The truck was on the road and I just looked up on the truck and I believe they were six or seven meters away.

102. Q. But you did see that they were blindfolded, did you?
A. Yes.

103. Q. And the blindfold covered all their face?
A. No, it was just like folding a towel in four and putting it over their eyes.

104. Q. Did you ask anybody if these were the same three prisoners that were interrogated before?
A. No. GX

105. Q. Then you don't know that they were the same three prisoners. What you testified to was just your imagination?
A. They all wore a uniform and one of them was wearing a leather jacket and I believe this was an officer and the second time I saw them one was wearing a leather jacket so I immediately thought they were the same three.

106. Q. How many soldiers from division headquarters were with them?
A. There was one soldier to each prisoner and there was one non-commissioned officer and I do not recall if there was one other person but I recall that there were four or five persons.

107. Q. Couldn't you identify any of them?
A. No.

108. Q. Then how could you identify these three prisoners as being the same prisoners you saw for a few minutes at a previous questioning?

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

The accused made no reply.

The commission announced that the objection was sustained.

109. Q. You said you had a conversation with Miyazaki on September 4, 1944. Are you sure you had a conversation on that date?

A. Yes, I did.

110. Q. How do you remember you had such a conversation in September 1944 with Miyazaki?

A. In the Japanese army there is a diary called the Field Diary. I was ordered by the commanding officer to write in this diary so I, myself, wrote in it that three prisoners of war were executed on September 4. I also know that fourth was a bad day so I remembered September 4 very well. That day I went to Aimiriiki and encountered a task force. This attack of the task force was on September 4. That evening they were executed so I remember this clearly.

111. Q. This diary in which you entered the fact that these prisoners were executed. You also burned that diary, didn't you?

A. Yes. By orders of the commanding officer I burned it after the war.

112. Q. You testified that Nakamura was the commanding officer of the First Detachment. When did he take command of that detachment?

A. I arrived at the Kempeitai on 18 March 1944 and at that time Nakamura was the First Detachment commander.

113. Q. Was he the commanding officer in September of 1944?

A. Yes.

114. Q. And he also was the commanding officer in December of 1944?

A. Yes.

115. Q. You said that you recalled that Kokubo and Nagatome got into the truck. Did you order them to get in the truck that day?

A. No.

116. Q. Who did?

A. I'm attached to headquarters. Kokubo and Nagatome are members of the First Detachment. If the commanding officer of the First Detachment did not order them, I have no authority to give orders to them.

117. Q. Why were you out in front of the commanding officer's quarters that day when this truck drove up?

A. On that day I went to the Military Affairs Section at Aimiriiki and I recall that I came back around 1600 and so I went to report to the commanding officer that I had gone and come back from the Military Affairs Section. At this time, as I have stated before, the commanding officer told me what I said before.

118. Q. Isn't this whole testimony of yours just a planned story that all of you down there got together and told to put the blame on Miyazaki, knowing that Miyazaki was already dead in September of 1944?

This question was objected to by the judge advocate on the ground that there had been no evidence that Miyazaki was dead in September, 1944. 9X

The accused replied.

The commission announced that the objection was sustained.

119. Q. Are you sure that Colonel Miyazaki wasn't dead on September 2, 1944?
A. I am definitely sure because I met him.

120. Q. What is a "Type 9⁵" sword?
A. It is an authorized army sword which the non-commissioned officer Kempei's carry. gx

121. Q. Who authorized them to carry this sword?
A. This is in the articles in the Uniform Regulations of the army. gx

122. Q. So that it was the usual thing that Kokubo had his sword there at the execution that day?
A. Not only the Kempei non-commissioned officers but all non-commissioned officers when they go out to do their work they all belt their swords.

123. Q. How many officers were present at the execution that day?
A. From my reflection there were Commanding Officer Miyazaki, First Lieutenant Nakamura, Second Lieutenant Tamanoi. I think Second Lieutenant Kiyomine of division headquarters was there, too. gx

124. Q. How close to Kokubo were you when he cut?
A. Four or five meters I recall.

125. Q. You were close enough to stop him from cutting if you wanted to, weren't you?

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

The accused made no reply.

The commission announced that the objection was sustained.

126. Q. Did you ever actually see the ashes that you say you saw Nagatome hold or did you just see the package?
A. The box.

127. Q. How far from Nagatome were you standing at this execution?
A. The same. About three or four meters I believe.

128. Q. Were Nagatome and Kokubo the only enlisted personnel that were present from the Kempeitai?
A. From my memory, only these two.

129. Q. And you don't recall that there was another enlisted man there from the Kempeitai that day?
A. I recall, as I have testified, that other than Kokubo and Nagatome, there were one or two assistant Kempei who got on the truck.

130. Q. So, since you can't recall who these were you just assume it was Nagatome who held the ashes, is that right?
A. No, I recall that Nagatome was holding it.

131. Q. Did you receive any orders to do anything that day at the execution?
A. No, I did not receive any orders.

132. Q. Did Nagatome receive any orders?

A. I do not recall.

133. Q. You said that Nakamura relayed Miyazaki's orders. What did he say in relaying Miyazaki's orders?

A. Captain Nakamura said, "Sergeant Major Kokubo, cut!"

134. Q. Were you senior in rank to Nakamura?

A. I was not his senior. I was his junior.

135. Q. The reason that Nakamura relayed the order was because he was the next senior officer. Is that right?

A. This question was objected to by the judge advocate on the ground that it called for an opinion of the witness. OK

The accused replied.

The commission announced that the objection was sustained.

136. Q. Who was the next senior officer to Miyazaki there?

A. Captain Nakamura.

137. Q. Was Nakamura in charge of this execution?

A. Yes.

138. Q. Was Nakamura in charge of it?

A. I think the commanding officer ordered Captain Nakamura.

139. Q. Weren't you all under the orders of Miyazaki that day?

A. At the scene Commanding Officer Miyazaki ordered the prisoner brought to the hole and he shot the first one. Next he ordered Captain Nakamura to behead the next one, then he ordered Sergeant Major Kokubo to behead the third one. After that, in covering up the hole and clearing the aftermath Captain Nakamura was in charge because Nagatome and others were covering up the hole and I believe Captain Nakamura was in charge of this execution.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, January 20, 1948.

FIFTH DAY

United States Pacific Fleet,
Commander Marianas,
Guam, Marianas Islands.
Tuesday, January 20, 1948.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Henry K. Roscoe, Coast Artillery Corps, United States
Army,
Lieutenant Colonel Victor J. Garbarino, Coast Artillery Corps, United
States Army,
Lieutenant Commander Bradner W. Lee, junior, U. S. Naval Reserve,
Major Donald B. Cooley, junior, U. S. Marine Corps,
Lieutenant Commander Edwin M. Koos, U. S. Navy, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, and
Lieutenant James P. Kenny, U. S. Navy, judge advocates.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Sano, Giichi, the witness under examination when the commission last ad-
journed, entered. He was warned that the oath previously taken was still
binding and continued his testimony.

(Cross-examination continued.)

140. Q. As head of the Special Services Unit at the Kempeitai, wasn't it your
duty to gather information?

A. Yes.

141. Q. So that when these three prisoners were brought to the Kempeitai,
wasn't it your duty to question them?

A. These prisoners were brought over to be delivered to the Division Head-
quarters and were not brought over for the Kempeitai so the Kempeitai did not
have any authority to question them.

142. Q. How did you find that out?

A. When the Kempeitai gathered its intelligence it gathered it from the
division headquarters so the Kempeitai could not directly question and get
information.

143. Q. How did you find out that Colonel Yajima was there at the Kempeitai
that day?

A. It is because I remember that Colonel Yajima was there.

144. Q. Didn't you tell him to come and question these three people because
you had three prisoners in your office?

A. No.

145. Q. Who did?

A. I have no recollection of directly phoning him to come.

146. Q. Did he tell you that day that the prisoners were to be executed?

A. No, he did not say it.

147. Q. When was the first time that you found out they were to be executed?

A. It was on the fourth of September, 1944.

148. Q. Are you sure that it wasn't a Kempeitai execution rather than a division execution?

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

The accused replied.

The commission announced that the objection was sustained.

149. Q. This execution that day, was it an execution that had been ordered by General Inoue?

A. I think it was by orders of General Inoue.

150. Q. You know it was by orders of General Inoue, don't you?

A. That day Colonel Miyazaki went over to headquarters and met the Chief of Staff and Miyazaki was told that the execution would be done by the Kempeitai so I know.

151. Q. Did you go with him?

A. No, I did not.

152. Q. Then you don't know what he was told, do you?

A. I just repeated what I heard from the commanding officer.

153. Q. When you say "commanding officer," do you mean Colonel Miyazaki?

A. Yes.

154. Q. When you first saw these three prisoners who was present there with you?

A. I do not recall.

155. Q. During the time that you were on the Palau Islands did you ever meet General Inoue?

A. Yes.

156. Q. In your testimony you said that the Chief of Staff said that these people were to be executed. You didn't hear him say that?

A. I did not hear this directly from the Chief of Staff. I heard it through Colonel Miyazaki.

157. Q. Did Colonel Miyazaki tell you who was present when this was said?

A. No. I did not hear that.

158. Q. You testified that you burned this record that you made about the execution. Did you write up this record according to the instructions of Colonel Miyazaki or did you write it according to what you had actually seen at the execution?

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

The accused withdrew the question.

159. Q. The entry that you made in that official log describing this execution, was it what you actually saw at the execution?

A. No. The things that I entered in this diary were what Commanding Officer Miyazaki had told me to write in it.

160. Q. Can you remember if you wrote in there that this was an execution ordered by division headquarters.

A. No. That is not entered in it.

161. Q. Can you remember just what you did enter in it?

A. Yes, I do.

162. Q. Will you tell us what you did enter in it?

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

The accused replied.

The commission announced that the objection was not sustained.

A. "Three American aviators were ordered by the division headquarters to be executed by the Kempeitai. This was performed." The entry that was made in this diary was as I have stated in a very brief manner.

163. Q. Did the entry show who actually executed these three prisoners?

A. No.

164. Q. Did it show who was present at the execution?

A. No.

165. Q. What was the purpose of this diary?

A. The condition of the air raid that we had every day at that time and the matters which the Kempeitai entered. Only those which were very important. These were written in the diary and a draft was made and it was shown to Miyazaki and after Miyazaki sanctioned it was entered into the diary.

166. Q. Did division headquarters sanction this entry?

A. No. It was only done at the Kempeitai so division headquarters did not sanction it.

167. Q. Who were Lieutenant Tamanoi and Lieutenant Kiyomine that you state were present at the execution?

A. Tamanoi was an intelligence officer of the Kempeitai and Kiyomine was an intelligence officer at Division Headquarters.

168. Q. Did Lieutenant Kiyomine arrive with the prisoners from Division Headquarters that day?

A. I do not know about that point.

169. Q. Do you know why he was at the execution?

A. I saw Second Lieutenant Kiyomine at the scene of the execution so I said he was there.

170. Q. Wasn't he there to represent General Inoue at the execution?
A. I do not know.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and former rank?
A. Yajima, Toshihiko, former lieutenant colonel.
2. Q. If you recognize the accused, will you state their names and former ranks?
A. First Lieutenant Hakanura, Sergeant Major Kokubo and Corporal Nagatome.
3. Q. Did you ever serve with the Japanese army in the Palau Islands?
A. Yes.
4. Q. To what division did you belong?
A. The Fourteenth Division commanded by Division Commander Inoue.
5. Q. And in September of 1944, who was the Chief of Staff of this division?
A. The Chief of Staff was Colonel Tada.
6. Q. Between what dates were you attached to this division?
A. I was attached to this division from the first part of May, 1944, until the war ended.
7. Q. In August and September of 1944, what were your duties?
A. I was staff officer for Intelligence and Supply. OK
8. Q. In August or September of 1944 did you see any prisoners of war at Palau?
A. Yes, I did.
9. Q. How many prisoners of war were there?
A. In the latter part of August there were seven prisoners who were brought from Yap and were taken into custody by the naval unit on Palau and there were three prisoners who were captured at Palau by the army when a B-24 was shot down.
10. Q. Where did you first see these three prisoners that came from a B-24?
A. I saw them at Division Headquarters inside of the Tropical Research Institute at Gasupan.
11. Q. Had you ever seen these prisoners before at any other place?
A. I first saw these prisoners at the Division Headquarters.
12. Q. Did you interrogate these prisoners?
A. Yes.

13. Q. Did you learn from them their nationality?

A. Yes, I did.

14. Q. And what was their nationality?

A. They were Americans.

15. Q. What else did you learn from them?

A. One of the prisoners among these three was an officer and the other two were non-commissioned officers. I forget their names but I believe one was called John Walker. Their airplane had come from Wakude to bomb Palau. Other than this I learned about the organization of the airport and also the intention of the bombing forces.

16. Q. What became of these prisoners if you know?

A. Four or five days after I had questioned them, these three aviators were executed at the Kempeitai.

17. Q. Did you have a conversation with anyone concerning these prisoners?

A. Yes.

18. Q. With whom did you have this conversation?

A. I do not recall the exact date but I think it was in the first part of September. It was the day when Palau was first attacked by the American task force. On that day I was in one of the rooms of the Tropical Research Institute investigating one of the prisoners. Just at this time we encountered this first raid so I led the prisoners down to the air raid shelter. There I met Chief of Staff Tada and the commanding officer of the Kempeitai, Miyazaki, so I reported to Tada that I was investigating the prisoner and the substance of what I had investigated up to that time.

19. Q. What did Tada say to you?

A. He said to me, "Suspend the investigation of the three aviators and deliver them to the Kempeitai."

20. Q. At the time that you had this conversation with Colonel Tada was there anyone else present?

A. I am sure that the commanding officer of the Kempeitai, Lieutenant Colonel Miyazaki, was there.

21. Q. Did Tada say anything to Miyazaki about the prisoners?

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

The judge advocate withdrew the question.

22. Q. As a result of the orders of Colonel Tada, what did you do?

A. Either I phoned or I had a messenger go over but I relayed what I was told to Major Kawamata who was the Chief of the Administrative Section and who had the duty of guarding these prisoners.

23. Q. What instructions did you give this officer?

A. I said to him, "Deliver the prisoners to the Kempeitai."

24. Q. Did you do anything else as a result of Colonel Tada's orders?

A. At the time Chief of Staff Tada also said to have one officer from the Intelligence Section to go along and Miyazaki said that he would like to have measures taken so that the prisoners would be delivered after this air raid was over so I added this and relayed the orders of Tada to Kiyomine.

25. Q. Do you know whether Kiyomine took the prisoners to the Kempeitai?
A. I do not know about that.

26. Q. You said you know that these prisoners were executed by the Kempeitai. How did you know about that?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate replied.

The commission announced that the objection was not sustained.

A. For the first part of September I was having duty at the battle command post located at Arukoku Mountain. At this time I received a report from First Lieutenant Sano of the Kempeitai.

27. Q. What did he tell you?

This question was objected to by the accused on the ground that it called for hearsay.

The judge advocate withdrew the question.

28. Q. Other than this report from Lieutenant Sano did you see any other reports on this execution?

A. I did.

29. Q. What report was that?

A. I saw the report submitted by the commanding officer of the Kempeitai, Lieutenant Colonel Miyazaki, to Division Commander Inoue.

30. Q. What did that report say?

This question was objected to by the accused unless it were shown that the report was not available.

The judge advocate withdrew the question.

31. Q. Do you know what became of that report?

A. I showed this report to the staff officers and Colonel Tada who were at the battle command station at that time but General Inoue was not there so I could not show it to him.

The question was repeated.

A. (Continued.) This report was burned after the end of the war.

32. Q. Do you know what was in that report?

A. It was a very brief report. It stated that the execution of the three aviators had been done.

The commission then, at 10:15 a.m., took a recess until 10:30 a.m., at which time it reconvened. *JK*

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

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

Cross-examined by the accused:

33. Q. Besides yourself, who were the staff officers at the Fourteenth Division during September of 1944?

A. Officially Colonel Nakagawa and myself were the staff officers, but at that time Staff Officer Izumi, a lieutenant colonel attached to the 31st Army Group of Saipan, was at Palau but after Saipan had been occupied Staff Officer Izumi helped us out at the division.

34. Q. When did you first learn about the aviators from the B-24?

A. I think it was around the latter part of August or the beginning of September, 1944, that I first learned about them. gk

35. Q. How many times did you interrogate these prisoners?

A. I think I investigated them for three days before sending them to the Kempeitai.

36. Q. Did you ever investigate these prisoners at the Kempeitai?

A. No, I did not.

37. Q. Isn't it that you investigated these prisoners when you were bringing these prisoners to the division and on the way you stopped by the Kempeitai and investigated them there?

A. Whether these prisoners were investigated prior to their arrival at the Tropical Research Institute I do not know, but the first time I saw them was at this Tropical Research Institute.

38. Q. What time of day was it that this first American task force made its raid?

A. I recall it being 10 a.m. of that day.

39. Q. When was this raid over?

A. A wave was from about thirty minutes to an hour.

40. Q. Then what time was the raid over?

A. I think it was already about 4 p.m. when it was over.

41. Q. When you took shelter in this air raid shelter were not General Inoue, Staff Officer Tada, Staff Officer Izumi and Staff Officer Nakagawa there?

A. Staff Officer Nakagawa, Staff Officer Izumi and Staff Officer Tada were in there. General Inoue was not there because he was still in bed.

42. Q. Prior to Staff Officer Tada ordering you to suspend your investigation and to deliver the prisoners to the Kempeitai, did he not say anything to you?

A. Immediately after I entered the air raid shelter I told Staff Officer Tada about the substance of what I had investigated up to that time and where I had the prisoners take shelter.

43. Q. What did Staff Officer Tada say to this report of yours?

A. Tada said to me, as I have testified before, to suspend the investigation and deliver the prisoners over to the Kempeitai.

44. Q. For what reason were the prisoners being sent to the Kempeitai?

A. Before I made this report of mine it was very clear that there was a conversation between Chief of Staff Tada and the commanding officer of the Kempeitai, Miyazaki, concerning these three prisoners. And in their conversation I heard Tada say, "Then I request the three prisoners be executed," and Miyazaki replied to this, "I acknowledge."

45. Q. Then you understood it that the prisoners were being sent to the Kempeitai to be executed. Is that right?

A. Yes. I understood it to be so.

46. Q. Did you hear why they were being executed?

A. No.

47. Q. Where at the division headquarters were these prisoners being held?

A. They were being guarded by the division guards which was inside of the administrative section. *gk*

48. Q. Was this inside of the building of the division?

A. Yes.

49. Q. Did you ever investigate prisoners at the Kempeitai?

A. I did.

50. Q. When was this?

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

The accused made no reply.

The commission announced that the objection was sustained.

51. Q. Did you learn the nationality of these three prisoners by asking if they were Americans? *gk*

A. Yes.

52. Q. Did their identification tags also show that they were in the U. S. Army?

A. Yes.

53. Q. When you asked if they were Americans or not, did this questioning take place at the Kempeitai?

A. No.

54. Q. Lieutenant Sano wasn't present at that time was he?
A. He was not there.

55. Q. Are you sure that there is no truth in it then that Lieutenant Sano could have heard you ask the prisoners if they were Americans and they replied that they were?

This question was objected to by the judge advocate on the ground that it invaded the province of the commission.

The accused replied.

The commission announced that the objection was sustained.

56. Q. What was done with these identification tags that these three prisoners had?

A. I do not know what became of them but while I was investigating them they had them on them.

57. Q. You said that Major Kawamata had the duty of guarding these prisoners. Who ordered him to guard and be responsible for these three prisoners?

A. This is set forth in the regulations concerning a higher duty.

58. Q. Did you tell this major to deliver these three prisoners to the Kempeitai?

A. Major Kawamata was the head of the administrative section and he was also the higher adjutant and he was also one of the members of the staff, so I could not order him. I only relayed the order of Colonel Tada to him. I could not go beyond that.

59. Q. These orders of Colonel Tada, weren't they orders to deliver these three prisoners to Colonel Miyazaki for the purpose of executing them?

A. I gathered this idea from the conversation they had but the actual order that he gave me was to send the prisoners over to the Kempeitai.

60. Q. For what purpose?

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

The accused replied.

The commission announced that the objection was sustained.

61. Q. When these prisoners were delivered to Colonel Miyazaki, didn't he have orders from the division headquarters to execute them?

A. I understand it to be as this: Prior to the three prisoners being sent down to the Kempeitai, Miyazaki and Tada had a conversation and in this conversation Miyazaki was told by Tada to execute the prisoners.

62. Q. So that Miyazaki had a duty to perform to execute the prisoners. Is that true?

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

The accused replied.

The commission announced that the objection was not sustained.

A. That is how I think.

63. Q. Did General Inoue order this report of Miyazaki's to be burned?

A. Yes.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

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

Present: All the members, the judge advocates, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. State your name and former rank.

A. Iwamoto, Harukichi, former superior private.

2. Q. If you recognize the accused state their names and former ranks.

A. First Lieutenant Nakamura, Sergeant Major Kokubo and Corporal Nagatome.

3. Q. During the year 1944 were you stationed with the forces of the Imperial Japanese Army on Palau?

A. Yes.

4. Q. To what unit were you attached?

A. The Fifty-Ninth Regiment.

5. Q. Where was their headquarters?

A. First the headquarters was on Koror and then it moved to Babelthuap.

6. Q. Were you stationed on Babelthuap about August and September of 1944?

A. Yes.

7. Q. About that time did you see any prisoners of war?

A. Yes.

8. Q. How many prisoners did you see?

A. I saw three prisoners.

9. Q. Where did you see them?

A. I saw them in front of the entrance of the Kempeitai office in Gasupan.

10. Q. Describe in detail for the commission just what you observed about these prisoners and what you saw done with them.

A. It was around the middle of August, 1944. I was in the office of the Kempeitai when a truck came from the headquarters and on it were three prisoners. This truck stopped right in front of the entrance of the office. Then First Lieutenant Nakamura, Sergeant Major Kokubo and Corporal Nagatome got on this truck and they left and I don't know where they went but later on I heard that these prisoners were killed.

The accused moved to strike the words "but later on I heard that these prisoners were killed" out of the answer on the ground that they were hearsay.

The commission directed that the words be stricken out.

11. Q. The Captain Nakamura, Sergeant Major Kokubo and Corporal Nagatome you say you saw get on that truck -- are they the same people you have identified as accused in this case?

A. Yes.

Cross-examined by the accused:

12. Q. In September of 1944 were you attached to the Fifty-Ninth Regiment?

A. At that time I was having duty at the Kempeitai.

13. Q. What was your post in the Kempeitai?

A. I was an auxiliary Kempei of the First Detachment.

14. Q. The place that you testified as the truck from division headquarters having been stopped--was this place in front of the Kempeitai headquarters?

A. The office and this headquarters were in the same building and the road was right in front of it and this truck stopped right in front of this office.

15. Q. By office do you mean the office where Commanding Officer Miyazaki stayed? JK

A. The commanding officer did not stay there.

16. Q. What was the distance between the headquarters and the First Detachment?

A. The First Detachment and the headquarters were in the same place.

17. Q. Are you sure that Nakamura got on the truck?

A. Yes.

18. Q. At that time did you not see Commanding Officer Miyazaki or Sano beside the prisoners?

A. No, I did not.

19. Q. Did you see any sedan beside this truck?

A. No, I did not.

20. Q. Were the prisoners on the truck?

A. Yes.

21. Q. Please describe how the prisoners were on the truck.

A. The prisoners were on the truck and they were blindfolded. I do not remember what kind of clothes they were wearing but they were in a squatting position and other than the prisoners there were some soldiers from Division Headquarters on the truck.

22. Q. Were these prisoners tied when you saw them?

A. I do not know.

23. Q. How do you know they were prisoners of war, then?

A. Because they were blindfolded and they were sitting down so I could see from the hip above.

24. Q. Were they being guarded by the Kempeitai?

A. No, they were not guarded by the Kempeitai but were guarded by the soldiers from Division Headquarters.

25. Q. Were these three prisoners on their way to be executed?

A. Yes.

26. Q. You said you saw Kokubo get into the truck. Was he carrying any ashes?

A. I do not recall.

Reexamined by the judge advocate:

27. Q. You say that you could tell that these three men were prisoners of war by what you observed from their hips up. What was it that allowed you to tell?

A. I do not recall as to their clothes but I only recall that they were blindfolded.

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

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

Sano, Giichi, a witness for the prosecution, was recalled and was warned that the oath previously taken was still binding.

Examined by the judge advocate:

1. Q. In December of 1944 did you receive any instructions concerning an Englishman?

A. Yes, I did.

2. Q. From whom did you receive these instructions?

A. I received them from Commanding Officer Miyazaki.

3. Q. What did Miyazaki tell you?

A. Miyazaki instructed me to take an Englishman and a German couple from Garasmao to Gasupan. At that time the Englishman and German couple were moved from Division Headquarters to Garasmao and at that time Miyazaki told me to move them from Garasmao to Gasupan.

4. Q. Do you know the name of this Englishman?

A. Yes.

5. Q. What was his name?

A. His name was Charlie Smith or "something" James and I usually referred to him as Englishman James and in preparing documents we had him down as James.

6. Q. Did you do anything as a result of the instructions of Commanding Officer Miyazaki?

A. Yes, I did.

7. Q. What did you do?

A. According to the orders of Miyazaki I took along with me Sergeant Major Tamamoto, Sergeant Yamada, and two or three assistant Kempei and went to Garasmao. There I ordered Sergeant Yamada to take this Englishman James to the Gasupan Detachment and a truck was going toward Gasupan from Garasmao so I had Yamada and the prisoner get on the truck and go to Gasupan.

8. Q. This Sergeant Yamada you talk about. To what unit did he belong?

A. He belonged to the Palau Kempeitai First Detachment.

9. Q. And who was the commanding officer of this detachment?

A. The commanding officer was First Lieutenant Nakamura.

10. Q. Do you know what happened to James?

A. I do.

11. Q. What happened to him?

A. I heard from Miyazaki that the Englishman James was executed at the Gasupan Detachment.

The accused moved that this answer be stricken on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion was denied.

12. Q. Do you know the nationality of Charlie Smith, alias James?

A. I do.

13. Q. What was his nationality?

A. He was an Englishman.

Cross-examined by the accused:

14. Q. Did you testify about this incident at the trial of Ajioke and Yamada?

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

The accused replied.

The commission announced that the objection was sustained.

15. Q. Why did you take so many men with you to go over and get an old man and his wife and another very old man at this unit?

A. At that time there was an incident where natives who were residing at Garasmao had escaped and it was said that the German who was at Garasmao was involved in some spying incidents so Miyazaki ordered me to take along Tamamoto and Yamada to investigate the matter and besides investigating to have them sent. So I took along Sergeant Major Tamamoto, Sergeant Yamada and two or three assistant Kempei.

16. Q. What did you do with the German and his wife?

A. The next morning Sergeant Major Tamamoto, an auxiliary Kempei and myself took this German and his wife to Gasupan Detachment on a truck but as I had to report this to Commanding Officer Miyazaki I got off the truck on the way and had Tamamoto and the auxiliary Kempei deliver the couple to Gasupan Detachment.

17. Q. You said this Englishman's name was Charlie Smith. How do you know his name was Charlie Smith?

A. When I assumed duty at the Palau Kempeitai there was a roster and by it I learned his name.

18. Q. Did the roster show that his name was Charlie Smith?

A. Yes.

19. Q. Did the roster also show his name was James?

A. Yes.

20. Q. Did you testify to this same effect in a previous trial?

A. I do not recall.

21. Q. Have you ever testified before regarding this Charlie Smith?

A. Yes.

22. Q. You said you know his nationality was English. What do you mean by nationality?

A. By nationality I mean a person residing in that country and registered in that country.

23. Q. This Charlie Smith. Was he residing in England?

A. I don't know.

24. Q. Don't you know that he was residing in the Palau Islands?

A. Yes, I know he was residing in Palau.

25. Q. Don't you know that he was married to a native woman?

A. Yes, I know that.

26. Q. That he had children by this native woman?

A. Yes.

27. Q. And that none of these children were English?

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

The accused made no reply.

The commission announced that the objection was sustained.

28. Q. When you went to Garasmao, what were the living conditions of this Englishman?

A. When I went there he was living in a native hut.

29. Q. Was he under guard?

A. I think he was not particularly being guarded.

30. Q. When you were ordered by the commanding officer to take this Englishman, were you told the reason for this?

A. I heard the reason.

31. Q. What did you hear?

A. Miyazaki said that he had talked with Division Headquarters and Division Headquarters had told him that at that time the natives that were residing in Garasmao had escaped and that the older son of Charlie Smith had also escaped and furthermore that the German was signalling the Americans and doing spy acts. The unit at Garasmao had made a report to Division Headquarters and the unit at Garasmao was very much disturbed by these affairs. The Garasmao Detachment had asked for an investigation to be made by the Kempeitai so according to this I received an order to look into the matter and first of all Miyazaki said to have the German couple and the Englishman taken to Gasupan.

32. Q. Isn't it that the Englishman himself made some signal and did some spy acts?

A. There was no definite proof about this.

33. Q. Was there a great doubt that he had done this act?

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

The accused made no reply.

The commission announced that the objection was sustained.

34. Q. When you first saw James how was James dressed?

A. When I first saw him at Garasmao he was wearing short pants and he had a shirt on and he had a very large brimmed hat.

Reexamined by the judge advocate:

35. Q. In December of 1944 who was the Chief of the Police Section, Headquarters, South Seas Military Police?

A. Captain Nakamura.

36. Q. When you say Captain Nakamura do you mean the Nakamura that is here in this courtroom?

A. Yes.

37. Q. Now, this incident concerning Charlie Smith alias James. What month of what year did that occur if you remember?

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

The judge advocate withdrew the question.

38. Q. This conversation that you had with Miyazaki concerning Charlie Smith. In what month and what year did that occur?

A. It was around December 20 of 1944.

Recross-examined by the accused:

39. Q. How did you happen to have this conversation with Colonel Miyazaki around December 20 of 1944?

A. It was because Miyazaki said that it was because he had received orders as I said previously from Yajima of Division Headquarters and that he wanted to have these affairs investigated.

40. Q. At that time he didn't tell you that he was ordering this Englishman to be executed?

A. I didn't hear that.

41. Q. Then you never heard from Miyazaki that he executed the Englishman?

A. After they were taken I heard it from Miyazaki.

42. Q. You heard that he had executed the Englishman?

A. Miyazaki told me that he ordered Commanding Officer Nakamura to perform the execution.

43. Q. Did he tell you why he had ordered Nakamura to do it?

A. I do not know.

44. Q. Were you present when this Englishman was executed?

A. No, I was not at the scene.

45. Q. Do you know if Colonel Miyazaki was there?

A. I do not know.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness said that he had nothing further to state.

The witness was duly warned and withdrew.

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

Present: All the members, the judge advocates, the accused, their counsel and the interpreters.

Stewart R. Smith, yeoman first class, U. S. Navy, reporter.

No witnesses not otherwise connected with the trial were present.

Iwamoto, Harukichi, a witness for the prosecution, was recalled and warned that the oath previously taken by him was still binding.

Examined by the judge advocate:

1. Q. In December of 1944, did you receive an assignment in connection with a prisoner of the Japanese forces on Palau?
A. No, I did not receive any assignment.
2. Q. Who was your commanding officer in December of 1944?
A. Lieutenant Colonel Miyazaki. My detachment commander was First Lieutenant Nakamura.
3. Q. In December of 1944 were you given an assignment in connection with a prisoner who was at the Asahi Village Detachment?
A. I did not receive any assignment.
4. Q. At any time did you receive an assignment in connection with an Englishman and two Germans?
A. Yes, I did.
5. Q. From whom did you receive that assignment?
A. I received it from Warrant Officer Ajioka.
6. Q. And when was this?
A. It was in December of 1944.
7. Q. Do you recall in what part of the month of December that this took place?
A. Latter part of December.
8. Q. Tell us what instructions you received from Ajioka.
A. Warrant Officer Ajioka told me that two Germans and one Englishman were to come to Asahi Village, "So you will go and meet them."
9. Q. What did you do as a result of these instructions?
A. When I went to Asahi Village the three were already there. I put up for the night at the Asahi Village and the next day in the afternoon an auxiliary Kempei and I guarded these three persons and that evening myself and two other auxiliary Kempeis took the Englishman and the two Germans on a truck and went to Gasupan.
10. Q. After arriving at Gasupan, did you perform any further duties in connection with these prisoners?
A. After taking them over to Gasupan, auxiliary Kempei Hayashi and myself guarded these three prisoners. During the afternoon we put them in an air raid shelter and guarded them and in the night we had them put in the quarters of the auxiliary Kempei and guarded them.
11. Q. For how long a period did you guard them?
A. I recall that we guarded them about two or three days.
12. Q. During that period did you learn the name of the prisoner who was referred to as "the Englishman"?
A. Yes, I did.
13. Q. What did you learn his name to be?
A. I heard that his name was Smith.