TOKUNAGA, AKIRA et al. (26 JAN 1949)

(167716)
PART 1 OF 2

DECLASSIFIED
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ADDRESS REPLY TO

AND REFER TO

NAVY DEPARTMENT
WASHINGTON 25, D. C.

JAG:I:AJD:bem
OO-Tokunaga, Akira, et al/
A17-10 OQ (7-18-49) 167716

26 JUL 1949

The proceedings, findings and sentences in the foregoing military commission case of Akira Tokunaga, former Captain, Imperial Japanese Army, Yoshio Takahashi, former Surgeon second lieutenant, Imperial Japanese Army, and Shigeo Koyama, former leading private, Imperial Japanese Army, and the actions of the convening and reviewing authorities thereon, are approved.

DAN A. KIMBALL
Acting Secretary of the Navy.

167716

FINISHED FILE 29 JUL 1949

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In reply refer to Initials and No.

Op-222/wj
Serial 711P22

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

for PEACE
SAVINGS BONDS

18 JUL 1949

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

Subject: Cases of TOKUNAGA, TAKAHASHI and KOYAMA.

Enclosure: (A) File of proceedings in the cases of TOKUNAGA, TAKAHASHI and KOYAMA.

1. Enclosure (A) is returned with contents noted.

R. G. Hale,
By Direction.

RECEIVED
JUL1949
OFFICE OF JUDGE
ADVOCATE GENERAL
U.C.M. SECTION

00_TOKUNAGA, Akira, et al/
A17-10 OQ AJD:bem 167716

MEMORANDUM IN THE MILITARY COMMISSION CASE OF: Akira TOKUNAGA, former Capt., IJA
Yoshio TAKAHASHI former Surgeon 2ndLt. IJA
Shigeo KOYAMA, former leading pvt. IJA.

Place Tried:	Date of Trial:	Date Received:
Guam, Marianas	26 Jan. 1949	16 May 1949

CHARGE	PLEAS	FINDINGS
VIOLATION OF THE LAW AND CUSTOMS OF WAR	NG	G
Spec 1 - (Tokunaga only) 25 June 1944, in Tatacho area, Rota Is., wilfully and unlawfully and without previous trial, did punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one believed to be Bonifacio Estabes.	NG	Proved
Spec 2 - (Tokunaga, Takahashi and Koyama) On 5 July 1944, in Taruga area of Rota Is., wilfully, unlawfully, and without previous trial, punished and caused to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish National, resident of said Rota Is.	NG	Proved
Spec 3 - (Tokunaga and 2ndLt. Takahashi only) Same time and place, without previous trial, punished and caused to be punished as a spy, by killing, by administering cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name unknown, but believed to be Ignacio de la Cruz.	NG	Proved
Spec 4 - (Tokunaga only) On July 8, 1944, same place, wilfully, unlawfully and without previous trial, punished and caused to be punished ~~and caused to be punished~~ as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description unknown, one unarmed inhabitant of said Rota Is.	NG	Proved

SENTENCES- As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

C.A. ACTION: PF&S approved. In view, however, of the fact that all the accused have been held in confinement for some months, the period of

confinement for TOKUNAGA is reduced to six (6) years and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.

CinC Pac Action: PF&S as mitigated, approved.

FACTS: Prosecution -

As to the incident alleged in specification one the evidence shows that a former warrant officer in the Imperial Japanese Army, Yasui, Yukia, was told by the accused, Tokunaga, late in the afternoon, during the latter part of June 1944, "I have brought two natives who have committed acts of espionage here. You will execute them at your place by shooting." The accused, Tokunaga was the battalion commander during the time of the incidents set out in the specifications. According to the testimony of Yasui, after all preparations for the execution had been made, the accused, Tokunaga brought two natives into the area and "read to them their sentences of execution". After reading the sentence, the accused, Tokunaga, handed the natives over to the witness. He, in turn, had them blindfolded and gave the order to fire to a six-man firing squad. One of the victims appeared to be still alive after the firing and he, (Yasui) personally, "fired to make death certain". This witness testified that the accused, Tokunaga, remained at the scene of the execution until the end.

As to the incident alleged in specification 2, there was evidence that the accused, Tokunaga, as battalion commander, ordered 2ndLt. Takahashi, a surgeon, to administer potassium cyanide to the two natives who were to be executed. The evidence indicates that one native, allegedly the Catholic brother was given a cup of coffee into which potassium cyanide had been added. The native drank some of the liquid and then fell to the ground, writhing in pain. The accused, Takahashi, seeing the native in great pain despatched a messenger to the accused, Tokunaga, to acquaint him with the facts and find out what to do. Tokunaga told the messenger to tell Takahashi to dispose of the native. Takahashi upon receiving this information from Tokunaga ordered the accused, Koyama, who was posted in the immediate area as an air raid look-out to stab the native. Koyama hesitated, and then plunged his bayonet into the native.

As to the incident alleged in specification 3, the evidence indicates that this occurred within a short time of the incident alleged in specification 2. The accused, Takahashi, had been ordered by the accused, Tokunaga, to administer potassium cyanide to this native also. The native concerned in this specification (spec 3), drank enough of the coffee into which the poison had been mixed to cause him to die immediately. There was some evidence that each of the natives concerned in specifications 2 and 3 did not know they were to be executed at the time they were offered the poisoned coffee. This fact is in dispute, however.

As to the incident alleged in specification 4, a former 1st Lt., IJA, testified that he was called to battalion headquarters where he heard a sentence read to a native by the battalion commander (Tokunaga). Then he (the witness), was entrusted with the native with orders to execute him. This witness turned the man over to his platoon commander and the victim was shot.

There was evidence that the five natives concerned had been involved in spy activities; that flares and other signals were observed from U.S. ships and from Rota Is.; that some of the natives had in their possession sketches showing the disposition of Japanese men and supplies on the Island.

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Confessions of the three accused were admitted in evidence over their objections in which the substantial allegations set out in each of the 4 specifications were admitted by each of the accused.

A former major in the Imperial Japanese Army, testified that he heard five natives were executed as spies on Rota Is. He testified that the accused, Tokunaga, discussed the problem of the spies with him and then sent a despatch to Guam, requesting information as to what should be done. The reply from Guam was "in accordance with the article so-and-so of the Army Criminal Code they shall be executed". He testified that none of the natives were given a trial prior to their execution. This latter factor was admitted by the accused, Tokunaga, who gave as a reason for not having a trial "conditions of war did not permit a trial besides we had no legal personnel to carry out trials."

Defense-

Several documents were received in evidence as Defense Exhibits purporting to be excerpts from the Japanese Army Criminal Codes; Regulations Governing Security of Military Secrets; Regulations Governing Security of Military Secrets in the South Sea Islands; Japanese Military Secrets Security Law, etc.

The accused, Koyama and Tokunaga, took the stand in their behalf. The accused, Koyama testified that he stabbed the native (specification 2) after the accused, 2ndLt. Takahashi had said "it is a pitiful sight so stab him with a bayonet." He testified further that he had always been trained to obey the commands of officers.

The accused, Tokunaga testified that the five natives were executed for violating articles in the Criminal Code of Japan, in the Military Secrets Security Law and the Army Criminal Code. According to his testimony, these natives had gathered information on military secrets, disrupted communications, signalled to enemy planes and spread rumors, breaking down morale. All this information was received by him as the result of an investigation which he, himself, had ordered. The accused testified that he discussed all this with Major Imagawa and sent a despatch to the commanding general at Guam, requesting information. The reply from Guam was in substance to inflict capital punishment in accordance with certain articles of the Army Criminal Code. He testified that notes of the investigation were retained in a diary in the headquarters office.

In rebuttal, a senior clerk of the battalion headquarters testified that it had been his duty to keep up the diary and that he knew of no records of an investigation retained at headquarters. He testified that the only entry in the diary relative to spies was an entry to the effect that "natives were executed on suspicion of spy activities".

Briefly stated the prosecution tried and convicted the three accused for killing spies without first giving them a trial in violation of the Fourth Hague Convention of October 18, 1907, to which Japan was a signatory.

The defense was predicated on two principle theories, (1) that the natives were not put to death as spies but as violators of Japanese laws and (2) each of the accused contended that he acted in accord with orders of a superior or senior officer.

LAW AND DISCUSSION:

At the outset of the trial, counsel for the accused made several motions and pleas, i.e.,(1) Motion for separate trials for each of the three accused; (2) motion for a change of Venue; (3) plea to the jurisdiction; (4) plea in bar

of trial; (5) Plea in Abatement; and (6) motion for a Bill of Particulars. The accused also objected to the charge and specifications.

As to(1) The objection was properly overruled. Previous military commission trials would tend to have established the principle of a common trial in war crimes cases. The objections raised at the outset of the trial were made in behalf of each of the accused. Three counsels represented them. Throughout the trial, timely objections were made whenever testimony relative to one accused appeared to prejudice the interests of another accused. The interests of each of the accused were protected by counsel.

As to (2), this motion was properly denied since the place where the alleged offenses occurred was within the jurisdiction of the military commission convened at Guam and sitting on this case.

As to (3). This objection was properly overruled. The five victims were spies and regardless of their nationality should not have been put to death without previous trial. 4th Hague Convention of Oct. 18, 1907. The question of authority on the part of Commander Marianas to convene this commission has been amply covered in previous War Crimes trials as has also the question of extradition and warrants. (Wakabayashi trial, docket # 166096).

As to (4). It has been held in previous military commission cases that in war crimes there is no statute of limitations. This question has been considered in a vast number of War Crimes Trials and in all such, the ruling of the commission has been sustained.

As to (5). This question was considered by the Supreme Court in the Yamashita case, 327 U.S. 1, which held, inter alia, that the accused was not a prisoner of war. Notification to the Swiss government did not have to be given since the Geneva Convention of 27 July 1929 required it only applied to prisoners of war and their offenses.

As to (6), such a bill is not provided for in Naval Courts and Boards, section 404. Further, the wording of the charge and specifications sufficiently informed the accused of the crimes with which they were charged.

Several objections to the charge and specifications thereunder were raised. They were predicated on (1) the fact that the prosecution did not set out the specific provision of law which the accused are alleged to have broken; (2) that the words "assaulting, striking, wounding and killing in specifications 1, 2 and 4 should be merged under the term "killing"; and (3) that the charge and specifications antedate the precept. These objections were properly overruled since, as to (1) the commission is bound to take judicial notice of all treaties involving the United States and it is empowered to take judicial notice of the laws it is to enforce, namely, all International Laws; as to (2) the words are not aggravating but merely descriptive; and as to (3) this commission was empowered to take up and try cases pending before a commission convened by precept dated October 25th. The commission had never been dissolved but, had merely adjourned.

Throughout the trial numerous objections to the admissibility of evidence were raised by the accused. In view of Rule 16(a) of the SCAP Rules which were made applicable to Navy military commission cases by JAG despatch 062125 of March 1946, it is submitted that no evidence could be improperly admitted. The above-mentioned rule reads in part as follows: "The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man." As was pointed out by Mr. Justice Rutledge in his dissenting opinion in re Yamashita, "So far as the admissibility and probative value of evidence was concerned, the directive made the commission a law unto itself. It acted accordingly."

Consequently, in the light of the SCAP Rules and the Supreme Court holding that Constitutional guaranties do not apply to Japanese tried by military commission (Yamashita case, supra), the undersigned recommends that the case be passed as "legal".

CONCLUSION AND RECOMMENDATION:

That the case be passed as "legal" without comment.

A. J. DE VICO
LCDR., USN

I have read the foregoing case and concur.

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.
The accused will be transferred to the custody of the CG of the 8th U.S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

Reviewing Authority Action

The proceedings, findings and sentences as mitigated, and the action of the C.A. are approved.
The record is, in conformity with Appendix D-14, NC&B, 1937, and CMO ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

NAVY DEPARTMENT
Office of the Judge Advocate General

13 JUL 1949

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.

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MILITARY COMMISSION REFERRAL	5-17-49 bem	Case No. 167716
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, KJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		
Trial Held (Place)		Date of Trial
Guam, Marianas Is.		26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 25 June 1944, in the Tatacho area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Bonifacio Estabes.

Spec 2 - (All three accused) On or about 5 July 1944, in the Taruga area of Rota Is., Marianas Is., did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Is.

Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
As to KOYAMA, Shigeo, G (spec 2 proved; specs 1, 3 & 4, not charged)

Sentences

As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5)years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

MILITARY COMMISSION REFERRAL	8-17-49 hm	Case No. 167716
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, IJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		
Trial Held (Place)		Date of Trial
Guam, Marianas Is.		26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 25 June 1944, in the Tatacho area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Bonifacio Estabes.

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Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
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Sentences

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As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years; and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.

The accused will be transferred to the custody of the CG of the 8th U.S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

Reviewing Authority Action

The proceedings, findings and sentences as mitigated, and the action of the C.A. are approved.
The record is, in conformity with Appendix D-14, NCAB, 1937, and CNO ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

NAVY DEPARTMENT
Office of the Judge Advocate General

18 JUL 1949

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.

E. L. RUSSELL
Judge Advocate General of the Navy.

MILITARY COMMISSION REFERRAL	8-17-49 hm	Case No. 16771A
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, IJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		
Trial Held (Place)		Date of Trial
Guam, Marianas Is.		26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 26 June 1944, in the Tatacho area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Bonifacio Estabes.

Spec 2 - (All three accused) On or about 5 July 1944, in the Taruga area of Rota Is., Marianas Is., did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Is.

Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
As to KOYAMA, Shigeo, G (spec 2 proved; specs 1, 3 & 4, not charged)

Sentences

As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years; and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.

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Reviewing Authority Action

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NAVY DEPARTMENT
Office of the Judge Advocate General

13 JUL 1949

To: The Chief of Naval Operations (Op-22)

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Referred for information.

G. L. RUSSELL
Judge Advocate General of the Navy.

MILITARY COMMISSION REFERRAL	8-17-49 bgm	Case No. 167716
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, IJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		

Trial Held (Place)	Date of Trial
Guam, Marianas Is.	26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 25 June 1944, in the Tatacho area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Bonifacio Estabes.

Spec 2 - (All three accused) On or about 5 July 1944, in the Taruga area of Rota Is., Marianas Is., did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Is.

Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
As to KOYAMA, Shigeo, G (spec 2 proved; specs 1, 3 & 4, not charged)

Sentences

As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

1109

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years; and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.
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Reviewing Authority Action

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The record is, in conformity with Appendix D-14, NCAB, 1937, and CNO ser. O1P22 of 28 Nov. 1945, transmitted to the JAG.

NAVY DEPARTMENT
Office of the Judge Advocate General 18 JUL 1949

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.

MILITARY COMMISSION REFERRAL	5-17-49 bem	Case No. 167716
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, IJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		

Trial Held (Place)	Date of Trial
Guam, Marianas Is.	26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 26 June 1944, in the Tatacho area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Benifacio Estabes.

Spec 2 - (All three accused) On or about 5 July 1944, in the Taruga area of Rota Is., Marianas Is., did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Is.

Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
As to KOYAMA, Shigeo, G (spec 2 proved; specs 1, 3 & 4, not charged)

Sentences

As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years; and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.
The accused will be transferred to the custody of the CG of the 8th U.S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

Reviewing Authority Action

The proceedings, findings and sentences as mitigated, and the action of the C.A. are approved.
The record is, in conformity with Appendix D-14, NC&B, 1937, and CNO ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

NAVY DEPARTMENT
Office of the Judge Advocate General 13 JUL 1949

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.

MILITARY COMMISSION REFERRAL	8-17-49 hm	Case No. 16771G
Name	Rank or rating	Date received
Akira TOKUNAGA	then a captain, IJA	16 May 1949
Yoshio TAKAHASHI	then a surgeon 2ndLt., IJA	
Shigeo KOYAMA	then a leading pvt., IJA	
(Tried in joinder)		
Trial Held (Place)		Date of Trial
Guam, Marianas Is.		26 Jan. 1949

Offenses

VIOLATION OF THE LAW AND CUSTOMS OF WAR

Spec 1 - (Capt. Tokunaga only) On or about 25 June 1944, in the Tatachu area of Rota Is., at a time when a state of war existed, did wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two unarmed native inhabitants of said Rota Is., exact names to the relator unknown, one of them believed to be Bonifacio Estabes.

Spec 2 - (All three accused) On or about 5 July 1944, in the Taruga area of Rota Is., Marianas Is., did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Is.

Spec 3 - (Capt. Tokunaga and 2ndLt. Takahashi only) At same place and time, did, each and together, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Is., exact name to the relator unknown, but believed to be Ignacio de la Cruz.

Spec 4 - (Capt. Tokunaga only) On or about 8 July 1944, at same place, did, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Is.

Pleas

NG to charge and all 4 specs.

Findings

As to TOKUNAGA, Akira - G (all specs proved)
As to TAKAHASHI, Yoshio, G (specs 2 & 3, proved; 1 & 4, not charged)
As to KOYAMA, Shigeo, G (spec 2 proved; specs 1, 3 & 4, not charged)

Sentences

As to TOKUNAGA, Akira - To be confined for a period of seven (7) years.
As to TAKAHASHI, Yoshio - To be confined for a period of five (5) years.
As to KOYAMA, Shigeo - To be confined for a period of twelve (12) months.

C.A. Action 9 April 1949

Proceedings, findings and sentences, are approved.
In view, however, of the fact that the accused have been held in confinement for some months, the period of confinement for TOKUNAGA is reduced to six (6) years and seven (7) months; for TAKAHASHI, four (4) years and two (2) months; for KOYAMA, five (5) months.
The accused will be transferred to the custody of the CG of the 8th U.S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

Reviewing Authority Action

The proceedings, findings and sentences as mitigated, and the action of the C.A. are approved.
The record is, in conformity with Appendix D-14, NCAB, 1937, and CNO ser. 01P22 of 28 Nov. 1945, transmitted to the JAG.

NAVY DEPARTMENT
Office of the Judge Advocate General

13 JUL 1949

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.

GENERAL COURT MARTIAL DATA SHEET

Tokunaga (Last Name) Tot (First Name) Akio (Middle Initial) Cpt. (Rating) O (Service)

8 (Review Panel No.) A Trin (Reviewing Officer) 168 (Docket No.)

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

	Yes	No.	Remarks
22. Was the accused properly arraigned?	✓		
23. Was the accused warned as to the effect of his pleas of guilty?	—		n/a
24. Was the accused's response recorded?	—		n/a
25. Were the witnesses sworn?	✓		
26. Was the accused afforded opportunity to make a statement?	✓		
27. Was the accused's statement consistent with his pleas? (Applicable only to 'Guilty' plea).	—		
28. Was the accused afforded opportunity to make an argument?	✓		
29. Are the findings properly recorded as prescribed by Naval Courts and Boards?	✓		
30. If the finding includes exceptions and substitutions, does the specification, as amended, support original or lesser included offense?	—		
31. Is the evidence in mitigation consistent with plea of accused? (Applicable only to 'Guilty' plea)	—		
32. Is the evidence of previous convictions admissible?	—		
33. Is the sentence in proper form and not excessive? (NC&B, secs. 451-457)	✓		
34. Was the sentence authenticated by the signature of all members of the court and of the judge advocate?	✓		
35. Was clemency recommended by any members of the court?		✓	
36. Was the record authenticated by the signature of the president of the court and of the judge advocate?	✓		
37. Are all copies of appended documents signed by proper authority or correctly certified by the judge advocate?	✓		
38. Was the accused's receipt for a copy of the proceedings appended to the record?	—		
39. 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?	✓		
40. Was there loss to the government?		✓	
41. Is the GCM card properly made out?	✓		
42. Additional Remarks: Motion for separate trial & for change of Venue & both sustained at outset of trial. Plea to Jurisdiction, Plea in Bar of trial, Plea in abatement Bill of Particulars, all motions for ofmentioned by accused overruled.			

(Date) 6/14/45

(Signature of reviewing officer)

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

7 APR 1949

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

Subject: Review of the Record of Trial by a Military Commission of former Captain TOKUNAGA, Akira, IJA, et al.

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

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

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

2. TRIAL:

a. Offense.

CHARGE - VIOLATION OF THE LAW AND CUSTOMS OF WAR

Specification 1

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving as the commanding officer of the said First Battalion, at Rota Island, Marianas Islands, did, on or about 25 June 1944, in the Tatacho area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, two unarmed native inhabitants of said Rota Island, exact names to the relator unknown, one of them believed to be Bonifacio Estabes, this in violation of the law and customs of war.

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HEADQUARTERS OF THE COMMANDER NAVAL FORCES MARIANAS
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Specification 2

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment, TAKAHASHI, Yoshio, then a surgeon second lieutenant, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, and KOYAMA, Shigeo, then a leading private, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, all attached to the military installations of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving at said military installations, did, each and together, on or about 5 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Island, this in violation of the law and customs of war.

Specification 3

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment, and TAKAHASHI, Yoshio, then a surgeon second lieutenant, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, both attached to the military installations of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving at said military installations, did, each and together, on or about 5 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Island, exact name to the relator unknown, but believed to be Ignacio de la Cruz, this in violation of the law and customs of war.

Specification 4

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving as the

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commanding officer of the said First Battalion, at Rota Island, Marianas Islands, did, on or about 8 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Island, names to the relator unknown, this in violation of the law and customs of war.

b. Pleas to Charge and Specifications by individual accused:

TOKUNAGA, Akira

CHARGE	- Not guilty	(R.p. 9)
Specification 1	- Not guilty	(R.p. 8)
Specification 2	- Not guilty	(R.p. 9)
Specification 3	- Not guilty	(R.p. 9)
Specification 4	- Not guilty	(R.p. 9)

TAKAHASHI, Yoshio

CHARGE	- Not guilty	(R.p. 9)
Specification 2	- Not guilty	(R.p. 9)
Specification 3	- Not guilty	(R.p. 9)

KOYAMA, Shigeo

CHARGE	- Not guilty	(R.p. 9)
Specification 2	- Not guilty	(R.p. 9)

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

TOKUNAGA, Akira

CHARGE	- Guilty	(R.p. 141)
Specification 1	- Proved	(R.p. 141)
Specification 2	- Proved	(R.p. 141)
Specification 3	- Proved	(R.p. 141)
Specification 4	- Proved	(R.p. 141)

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TAKAHASHI, Yoshio

CHARGE	- Guilty	(R.p. 141)
Specification 2	- Proved	(R.p. 141)
Specification 3	- Proved	(R.p. 141)

KOYAMA, Shigeo

CHARGE	- Guilty	(R.p. 141)
Specification 2	- Proved	(R.p. 141)

d. Sentences:

TOKUNAGA, Akira	Seven (7) years confinement	(R.p. 146)
TAKAHASHI, Yoshio	Five (5) years confinement	(R.p. 146)
KOYAMA, Shigeo	Twelve (12) months confinement	(R.p. 146)

e. Maximum Sentence:

Death.

f. Convening Authority:

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

g. Place of Trial:

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

h. Date of Trial:

26 January 1949 to 16 February 1949.
Arraignment: 27 January 1949 (R.p. 8, 9).
Sentence: 16 February 1949 (R.p. 146).

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3. FORMAL MATTERS:

a. Authority for the commission to act.

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

b. All members of the commission were present throughout the trial.

c. All members of the commission, judge advocate, reporters, interpreters, and witnesses were sworn (R.p. 1, 3, 4, 5, 10, 20, 26, 31, 42, 53, 61, 67, 72, 77, 82, 92, 98, 107, 127, 141).

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

e. The charge and specifications were shown to have been served on the accused on December 10, 1948 (R.p. 2).

f. Neither the judge advocate nor the accused objected to any member of the commission (R.p. 1).

g. The accused objected to the charge and specifications (R.p. 2; App. "F", "G", "H") in effect upon the following grounds:

Objection 1: The specifications are defective in that they do not set out the specific law and customs of war which the accused allegedly violated.

Comment: Similar pleading in cases tried before military commissions in this area have been upheld by reviewing authorities (viz. trial of FURUKI, Hidesaku, former major, IJA, Charge II, Specification 5; trial of INOUE, Fumio, former captain, IJA, Charge II, Specifications 1 and 2).

Objection 2: The words "assaulting, striking, wounding" used in Specifications 1, 2, and 4 are improper since the victims were killed and the lesser offenses therefore merged with the greater.

Comment: The gravaman of the offenses is the punishing of the victims as spies without previous trial. The words "assaulting, striking, wounding" are descriptive words used to enable the accused to understand how the prosecution claims the punishment was administered and accomplished.

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Objection 3: The specifications do not allege a war crime.

Comment: The specifications allege the unlawful execution of five (5) individuals as spies without previous trial. Execution of a spy without trial is a violation of the Annex to the Hague Convention No. IV of 18 October 1907, Article 30, which specifically requires a trial before execution in the case of a spy. Thus the specifications do allege a violation of the law and customs of war and a war crime. Similar specifications in the trials of FURUKI, Hidesaku, former major, IJA, and INOUE, Fumio, former captain, IJA, were held on review to be violations of the law and customs of war by the Judge Advocate General of the Navy (OO-FURUKI, Hidesaku/A17-10/OQ I(1-20-48) HTM;bem 158819; OO-INOUE, Fumio/A17-10 OQ(1-22-48) I:HMM:VLL 159116).

Objection 4: The order for trial (charge and specifications) antedate the precept.

Comment: At the time the charge and specifications were signed by the convening authority on December 9, 1948, and served on the accused on December 10, 1948, there was a military commission in existence created by the precept dated October 25, 1948. Paragraph 3 of the precept dated January 19, 1949 specifically authorized and directed the military commission created by the precept of January 19, 1949 to take up such cases as may be pending before the military commission appointed by the precept of October 25, 1948. This instant case was a pending case before the prior commission as the charge and specifications had been served even though the President of the commission had not been advised of the service upon the accused of the order for trial.

h. The commission ruled that the objections to the charge and specifications were not sustained and found the charge and specifications in due form and technically correct (R.p. 2).

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

i. The accused were properly arraigned (R.p. 8, 9).

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4. MOTIONS AND PLEAS:

a. The accused made a motion for a separate trial (R.p. 1; App. "B") in effect upon the ground that it would be improper to try the three accused in joinder.

Comment: There is no provision in Naval Courts and Boards for this motion (N.C. & B., 1937, Sec. 404). The grounds used in the motion should have been used as objections to the charge and specifications. It is true that all of the accused are not included in all the specifications but it should be noted that TOKUNAGA is involved in each specification of the charge. It is the policy of the Navy to try in one trial all the offenses committed by an individual. Section 20 of Naval Courts and Boards provides: "All the charges against the accused should be consolidated into one set of charges, and one trial had upon the consolidated set instead of having two or more trials." In specification 2 each of the accused is alleged to have participated in the offense.

It is submitted that the principle of a common trial in war crimes cases has in practice been adopted by the Allied nations in the International prosecution at Nuremberg and Tokyo, as well as by SCAP in Class B and C war crimes cases and by Commander Marianas Area and Commander in Chief Pacific in cases previously tried in this area (see cases of TACHIBANA, et al; IWANAMI, et al, confirmed by SecNav). To have a separate trial of each accused would have the effect of drawing out the prosecution beyond reasonable limits and also would be violative of the spirit of the Potsdam Declaration which carried in it the implication of a speedy trial of all war criminals. The conduct of the trial and the findings of the commission show that none of the interests of the accused have been materially prejudiced.

The action of the commission in denying the motion was, in my opinion, proper (R.p. 1).

b. The accused made a motion for a change of venue (R.p. 2, App. "D") in effect upon the following grounds:

(1) The alleged crime was committed on Rota Island and that island was not at the time under the command of the convening authority, nor is it now under his command.

(2) For the convenience of witnesses the trial should be held in Japan.

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Comment: The ground stated in (1) above relates to jurisdiction and does not relate to venue. It was raised as an objection to jurisdiction in the case of former Vice Admiral Masashi KOBAYASHI, IJN, and is commented upon in my memorandum on that case dated 9 November 1948 (p. 25).

The action of the commission in not sustaining the motion for a change of venue (R.p. 2) was, in my opinion, proper.

c. The accused made a plea to the jurisdiction (R.p. 7, App. "K", "L") in effect upon the following grounds:

(1) The commission does not have jurisdiction over these accused as they do not fall into any of the classes listed in paragraph 3 of the precept.

(2) The commission does not have jurisdiction over offenses committed against native inhabitants of Rota or Spanish nationals.

(3) The commission does not have jurisdiction for the offenses charged are not war crimes.

(4) The commission does not have jurisdiction as these accused are not legally before the commission.

(5) The commission does not have jurisdiction as United States armed forces were not in occupation of Rota Island where the offenses were committed at the time these offenses were committed.

The plea to the jurisdiction was denied (R.p. 7).

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

d. The accused made a plea in bar of trial (R.p. 7; App. "N") in effect upon the ground that the alleged offenses had taken place more than two years before the charge and specifications were drawn and were, therefore, barred by the statute of limitations.

Comment: In war crimes there is no statute of limitations. "The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or immediately prior to the Mukden Incident of 18 December 1931,"

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(Regulations Governing the Trials of Accused War Criminals, dated 5 Dec. 1945, issued by SCAP file AG 000.5 (5 Dec. 1945); Nazi Conspiracy and Aggression, Vol. 1, p. 5; and Potsdam Declaration, paragraph 10). An indictment for any offense punishable by death may be found at any time without any regard to any any statute of limitations (18 U.S.C.A., Sec. 581a). By the precept dated 19 January 1949, paragraph 5, the commission was empowered to impose upon the accused the death penalty.

e. The accused made a plea in abatement (R.p. 8; App. "P") on the ground that no notice was given to the protecting power of the trial of these accused, as provided for in Article 60 of the Geneva Prisoners of War Convention of July 27, 1929.

Comment: The accused were arrested as suspected war criminals for offenses committed prior to the time they became prisoners of war. The offenses complained of occurred during 1944 prior to the surrender of Rota Island. The Supreme Court of the United States considered this identical question in the Yamashita case (327 U.S. 1) and held "....we conclude that Article 60 of the Geneva Convention....applies only to persons who are subjected to judicial proceedings for offenses committed while prisoners of war."

The plea in abatement was, in my opinion, properly denied (R.p. 8).

f. The accused made a motion for a bill of particulars (R.p. 8; App. "R").

Comment: There is no provision in Naval Courts and Boards for such a motion (N.C. & B., 1937, Sec. 404). The function of the motion for the bill of particulars, as used in civilian courts, is to obtain amplification of the information or indictment, where it does not sufficiently inform the accused of the crime with which he is charged, in order to enable him to prepare properly his defense. In naval courts, the charges and specifications are the indictment and the accused by timely objections to the charges and specifications may accomplish the same end sought in a request for a bill of particulars. The accused had already objected to the charge and specifications on the same ground raised in his motion for a bill of particulars (R.p. 2; App. "G", "H").

The motion was, in my opinion, properly denied (R.p. 8).

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g. At the close of the prosecution's case and before the defense began, the accused made a motion for a directed acquittal on the ground that the evidence had not been sufficient to prove the charge and specifications against the accused.

Comment: There is no specific authorization for a motion for a directed acquittal in Naval Courts and Boards (N.C. & B., 1937, Sec. 404). However, the motion is permitted in the "Regulations Governing the Trials of Accused War Criminals" (paragraph 5 e (5), Letter General Headquarters, Supreme Commander for the Allied Powers, APO 500, 5 December 1945 AG 000.5 (5 Dec 1945)), issued and promulgated by the Supreme Commander for the Allied Powers. The precept convening the commission provides in paragraph 6 that the commission may relax the rules for naval courts and utilize the rules issued by SCAP to meet the necessities for any particular trial. At the time the motion was made there was ample evidence before the commission not only in the form of the confessions by the accused but also in the testimony of witnesses to support the charge and specifications. This evidence is discussed in paragraph 5 below.

The motion was, in my opinion, properly denied (R.p. 88).

h. The accused pleaded "not guilty" to the charge and specifications (R.p. 8, 9).

i. The defense objected (R.p. 10) to the prosecution's request that the commission take judicial notice: "(2) The Fourth Hague Convention of October 18, 1907, and the Annex thereto, particularly, Articles 29 and 30 of the Annex which read:

'Article 29 - A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.....

'Article 30 - A spy taken in the act shall not be punished without previous trial.',

and that Japan ratified and signed this convention."

Comment: The commission announced it would take judicial notice of all items requested by the judge advocate (R.p. 10). The action of the commission was, in my opinion, legal for Section 309, Naval Courts and Boards, 1937,

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provides: "Courts shall take judicial notice: (a)....(c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties...."

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

a. For the prosecution.

During the summer of 1944, five men were arrested for spy and subversive activities on Rota Island (R.p. 79; Exh. 5). A despatch was sent to the Commanding General on Guam requesting instructions concerning these five men (R.p. 79; Exh. 5). A reply was received ordering the execution of the natives (R.p. 79; Exh. 5). The five were executed (R.p. 79; Exh. 2a, 3a, 5, 12, 27, 33, 44, 45, 62, 63). They were executed without having been given a trial (R.p. 80; Exh. 5).

In June and July of 1944, TOKUNAGA, Akira, captain, IJA, was the commanding officer of the First Battalion, Tenth Independent Mixed Regiment on Rota Island (R.p. 10, 11, 20, 26, 61). In the latter part of June 1944, TOKUNAGA came with two natives who had committed acts of espionage to the YASUI Platoon which was located at TATACHO Village, Rota Island (R.p. 11, 27; Exh. 5). TOKUNAGA ordered Warrant Officer YASUI, Yukio, IJA (R.p. 10) to execute the natives at his installation by shooting (R.p. 11; Exh. 5). YASUI had Sergeant MOMMA assemble the soldiers and bring them to a place picked out by TOKUNAGA (R.p. 11). From the soldiers, YASUI designated a six man firing squad (R.p. 12, 27). When the preparations had been made, TOKUNAGA brought two natives to the scene (R.p. 12). One of these natives was a shoemaker in the TATACHO Area (R.p. 13; Exh. 5(6)). Bonifacio ESTABES was a shoemaker on Rota Island (R.p. 23). From a document TOKUNAGA read a sentence of execution to the two natives (R.p. 12, 27), because they had been involved in spy activities (R.p. 28). YASUI had the natives blindfolded and then shot by the firing squad (R.p. 12, 27, 28). YASUI inspected the bodies and finding one of the natives still alive fired a shot into his head from a rifle borrowed from Sergeant MOMMA (R.p. 12, 28). Then the bodies of the two natives were buried (R.p. 13, 28).

In 1944, there was a bearded Spanish brother on Rota Island named Miguel TIMONER (R.p. 21, 23). He was about fifty years old (R.p. 23). One day Tomas Cruz MANGLONA, Valentino SONGAO and Tomas MENDIOLA were ordered to go to the air raid shelter some distance from Battalion Headquarters at TARUGA and bring Miguel TIMONER and Ignacio de la CRUZ to the Battalion Headquarters (R.p. 22, 23, 31). Ignacio de la CRUZ was an old man about seventy years of age (R.p. 23). In the latter part of June or early July 1944, KATO, Takashi, former corpsman sergeant major, IJA, was told by Surgeon Second Lieutenant TAKAHASHI, Yoshio, IJA, that two natives were going to be executed (R.p. 31, 32). TAKAHASHI asked KATO to attend the execution

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(R.p. 33). The natives were to be executed for spy activities (Exh. 2a). KATO went to the scene which was in the woods near headquarters and found some soldiers, TAKAHASHI and a native (R.p. 33). TAKAHASHI mixed some powder with coffee in a cup and gave it to the native to drink (R.p. 33, 44). The powder was potassium cyanide (R.p. 36; Exh. 2a). The native drank a little from the cup and then fell to the ground in agony (R.p. 33, 44). TAKAHASHI sent a runner to TOKUNAGA to request instructions (R.p. 33; Exh. 2a, 5). TOKUNAGA sent back word to "finish him off" (Exh. 5, 2a; R.p. 34). TAKAHASHI then ordered KOYAMA, Shigeo, superior private, IJA, attached to Battalion Headquarters, to bayonet the native (R.p. 31; Exh. 2a, 3a, 33, 41, 44). KOYAMA stabbed the man with a bayonet fixed to a rifle (R.p. 33; Exh. 3a, 44, 55). The person stabbed by KOYAMA was actually Miguel TIMONER (R.p. 21, 54, 55). A few minutes after this incident happened, the personnel present moved to a scene some distance away where there were chairs and a table (R.p. 35; Exh. 2a, 44). Persons present pretended to be drinking from cups when a native was brought to the scene (R.p. 35; Exh. 2a, 45). This native was Ignacio de la CRUZ. TAKAHASHI again mixed potassium of cyanide with coffee (R.p. 35, 36, 45) and gave it to the native (R.p. 36). He drank and then fell down (R.p. 36,45). The two bodies were buried together (R.p. 36, 45). The first of the two men had a beard (R.p. 52, 56).

In July of 1944, SHIONO, Shuichi, first lieutenant, IJA, was ordered to report to the TOKUNAGA Battalion Headquarters (R.p. 62; Exh. 5). SHIONO went and found a native with TOKUNAGA (R.p. 62). TOKUNAGA told SHIONO that the native had been connected with spy activities and was to be executed by the SHIONO company (R.p. 62) pursuant to the orders of the commanding officer on Guam (R.p. 62). TOKUNAGA then read a sentence of execution to the native (R.p. 62). SHIONO returned to his company in the TARUGA area and ordered his subordinate YOSHIMURA, Suekichi, warrant officer, IJN, to effect the execution (R.p. 62, 67). SHIONO advised YOSHIMURA of the sentence pronounced by TOKUNAGA (R.p. 62, 70). The next morning the native was shot to death in the TARUGA area by a two man firing squad under command of YOSHIMURA (R.p. 62, 63, 68). The body was buried at the scene (R.p. 64, 68).

b. For the defense.

The natives executed had been guilty of treason and subversive acts against the Japanese armed forces (R.p. 109, 110, 116, 117). A lengthy investigation into their activities had been conducted and their guilt established (R.p. 109, 110, 116, 117). Because of battle conditions and the absence of facilities, it was impossible to give the natives a trial (R.p. 108, 117). A despatch, containing detailed information concerning the natives, requesting instructions was sent to the

Divisional Headquarters on Guam as the battalion on Rota was directly subordinate to Guam (R.p. 108, 109, 112, 117; Exh. 16). A reply was received ordering the execution of the natives in accordance with the provisions of the Army Criminal Code (R.p. 118; Exh. 16). The executions were carried out (R.p. 102, 116, 118, 119, 120).

Accused KOYAMA, Shigeo, took the stand as a witness in his own behalf (R.p. 99). He testified that he was connected with the execution of two natives who were executed for alleged spy activities and detection of military secrets (R.p. 100). He went to the execution because he had been assigned as a guard (R.p. 100). After the native had fallen down, he stabbed the native through the chest at the direct order of Surgeon Second Lieutenant TAKAHASHI (R.p. 101, 102). KOYAMA testified that he knew that some natives had committed subversive activities as he had seen signal lights, flares and rockets at night, and a charcoal arrow pointed toward the SHINAPARU air field (R.p. 102).

Accused TOKUNAGA, Akira, took the stand as a witness in his own behalf (R.p. 114). He testified that the headquarters of the Twenty-ninth Division was on Guam and that the commanding general of this division was the immediate superior of the Rota garrison (R.p. 115). Five natives were executed on Rota during June and July 1944 (R.p. 116). Two natives were executed in the TATACHO area and three in the TARUGA area (R.p. 116). These natives were executed for having violated the articles in the Criminal Code of Japan, in the Military Secrets Law and the Army Criminal Code which pertained to subversive acts, acts of treason and obstruction of operational movements (R.p. 116). The actions of the natives had been investigated by Second Lieutenant OKUYAMA and Sergeant TOKUNAGA (R.p. 117). Due to battle conditions, lack of transportation and facilities, the natives could not be given a trial on Rota nor sent to Guam (R.p. 116). After consultation with Major IMAGAWA, Shigeo, IJA, and the investigators, a despatch reciting the acts of the natives and requesting instructions was sent to Guam (R.p. 117). A despatch answer was received ordering capital punishment for the natives in accordance with the provisions of the Army Criminal Code (R.p. 118). Pursuant to these orders, the natives were executed (R.p. 118).

The defense introduced into evidence excerpts from the following Japanese laws: (1) Military Secrets Security Law (Exh. 7); (2) Regulations Governing Security of Military Secrets (Exh. 8); (3) Army Criminal Code (Exh. 10); (4) Army Court Martial Law (Exh. 11); (5) Instructions Relative to Army Judicial Police (Exh. 12). These laws indicated that persons guilty of spying or damaging military installations may be condemned to death and that acts done through military expediency or without criminal intent are not punishable.

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

7 APR 1949

Subject: Review of the Record of Trial by a Military Commission of former Captain TOKUNAGA, Akira, IJA, et al.

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6. DISCUSSION:

a. As to jurisdiction.

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

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

The accused made a plea to the jurisdiction on the grounds set forth in paragraph 4 a. above. The ground of objection set forth in subparagraphs 4 a. (2) and 4 a. (5) are similar to the objections made to jurisdiction in the case of former Vice Admiral HARA, Chuichi, IJN. These objections and the grounds set forth in subparagraph 4 a. (1) above are commented upon in my memorandum in the HARA case dated 2 March 1949. The ground of objection set forth in subparagraph 4 a. (4) was commented upon in my memorandum dated 20 March 1948 in the case of former Captain KOICHI, Hiroe, IJA, et al.

The ground set forth in subparagraph 4 a. (3), namely, that the commission does not have jurisdiction for the offenses charged are not war crimes is not valid. The verbiage of the specifications in the present case follow exactly the verbiage of the specifications under Charge II in the cases of former Major FURUKI, Hidesaku, IJA, and former Captain INOUE, Fumio, IJA. Charge II, in those cases, was Violation of the Law and Customs of War as is the charge in the present case. In the FURUKI and INOUE cases, certain native inhabitants of the Marshall Islands were

executed as spies without previous trial. In these cases, there was a Charge I - Murder - based on the same incidents that formed Charge II. The Judge Advocate General of the Navy in his action on the FURUKI and INOUE cases (OO-FURUKI, Hidesaku/A17-10/0Q I(1-20-48) RTM:bem 158819; OO-INOUE, Fumio/A17-10 0Q(1-22-48) I:HLM:vll 159116) used the same words in paragraphs 6 and 7:

> "6. The definition of spies is contained in the Hague Convention of 1907, Convention IV, Article 29. The limitations set forth in that article do not include any limitation based on the nationality of the spy. Article 30 of the same convention provides that no one shall be punished as a spy without previous trial. Of. International Law by Charles Chaney Hyde, Vol. III, 2nd Revised Edition, sec. 677.
>
> "7. In view of the above, the commission had jurisdiction to try the accused for a violation of Japanese law and for a violation of the laws and customs of war."

Thus there was a holding by the Judge Advocate General of the Navy that the execution of persons without trial as spies is a war crime.

b. As to procedure.

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

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

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

(4) The sentences are legal.

c. As to evidence.

There is sufficient competent evidence to support the commission's findings of "proved" and "guilty" relative to all the accused. It seems clear from the

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testimony of the witnesses for the prosecution and from the confessions of the accused that they did consider the victims spies and that no trial was given them prior to their execution.

The defense made by TOKUNAGA, namely, that he considered the victims as subversive agitators and persons guilty of treason raised as a question of fact the status of the victims in the mind of the Japanese at the time of the execution. The members of the commission in their capacity as jurors weighed the evidence and made their findings as it was their duty to do (Sec. 304, N.C. & B., 1937). There is nothing contained in the record to establish that any member failed to apply the recognized rules governing the weighing of evidence (Secs. 304 and following, N.C. & B., 1937), or exceeded their allowed discretion in this matter.

d. As to sentence.

The accused were sentenced to confinement for various periods: TOKUNAGA for a period of seven (7) years; TAKAHASHI for a period of five (5) years; and KOYAMA for a period of twelve (12) months. The sentences are legal.

In the absence of an established policy by higher authority as to the appropriate schedule of punishments, the commission must rely upon its own judgement in determining what is a just punishment in a particular case. The accused TOKUNAGA was convicted of a violation of the law and customs of war on the basis of incidents involving the execution of four (4) native inhabitants of Rota and one (1) Spanish national. The accused TAKAHASHI and KOYAMA were convicted of the same charge on the basis of the execution of the Spanish national. The accused TAKAHASHI was also involved in the execution of a native and this execution was proved against him.

In view of all the circumstances surrounding the incidents, particularly the prevailing war time conditions, the youth of TOKUNAGA, and the subordinate positions of TAKAHASHI and KOYAMA, it cannot be said that the sentences are improper.

TAKAHASHI was confined in Sugamo Prison, Tokyo, on May 3, 1948. KOYAMA was confined there on August 2, 1948, and TOKUNAGA was placed there on October 2, 1948. These three were then placed aboard a ship and brought to Guam. They arrived on Guam on November 17, 1948 and were confined in the War Criminal Stockade awaiting their trial, which began on January 26, 1949. It is my opinion that the various periods of confinement served by the accused while under investigation and awaiting

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trial justifies reduction of the sentence by the convening authority, and that the action of the convening authority should affirmatively evidence that such reduction is based upon the period of confinement served by each accused while awaiting trial.

e. Generally.

During the trial the accused and also the judge advocate 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 interests of the accused. By the precept the commission was authorized to use the rules of evidence and procedure contained in SCAP Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, as necessary to obtain justice.

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 "proved" and "guilty" as to all the accused;

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

e. The sentences are legal.

8. RECOMMENDATIONS:

It is recommended: (1) that the proceedings, findings and sentences be approved by the convening and reviewing authorities; (2) that in view of the fact that the accused have been confined under investigation and awaiting trial since May 3, 1948 in the case of TAKAHASHI; August 2, 1948 in the case of KOYAMA; and October 2, 1948 in the case of TOKUNAGA; the convening authority accordingly reduce the sentences of the accused a period equal to the time already served in confinement; (3) that the record, in conformity with Appendix D-14, Naval Courts and Boards, 1937, be transmitted to the Judge Advocate General of the Navy for revision and record.

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9. ACTION:

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

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

cc: JAG, USN.

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

The military commission, composed of Army, Navy, and Marine Corps officers, in the foregoing case, by precept dated 19 January 1949, was ordered convened January 24, 1949, or as soon thereafter as practicable by the Commander Naval Forces, Marianas pursuant to his inherent authority as a military commander and the specific authorization of the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U.S. PacFlt Serial 0556 of 8 Mar. '46; ComMarianas Desp. 292336Z Sept. '47; CinCPacFlt Desp. 020103Z Oct. '47; SecNav Desp. 071946Z Oct. '47; CinCPacFlt Desp. 092353Z Oct. '47; CinCPac and CinCPacFlt ltr. dtd 1 Aug. 1948, CinCPac Serial 2955 and CinCPacFlt Serial 3490), and by the Judge Advocate General of the Navy (JAG Desp. 311730Z July '47). The commission was authorized to try this case as indicated in the precept. The order for trial (charge and specifications) was issued 9 December 1948 and served on the accused 10 December 1948. The trial was held under authority of Naval Courts and Boards except that the commission was authorized by the precept to relax the rules of naval courts to meet the necessities of the trial and to use the rules of evidence and procedure promulgated 5 December 1945 by the Supreme Commander for the Allied Powers in his Regulations Governing the Trials of Accused War Criminals and modifications thereof, as necessary to obtain justice.

The proceedings, findings, and sentence in the foregoing case of TOKUNAGA, Akira, former captain, IJA, TAKAHASHI, Yoshio, former surgeon second lieutenant, IJA, and KOYAMA, Shigeo, former leading private, IJA, are approved. In view, however, of the fact that the accused have been held in confinement under investigation and awaiting trial for some months, the period of confinement for TOKUNAGA is reduced to six (6) years and seven (7) months; the period of confinement for TAKAHASHI is reduced to four (4) years and two (2) months; and the period of confinement for KOYAMA is reduced to five (5) months.

TOKUNAGA, Akira, former captain, IJA, TAKAHASHI, Yoshio, former surgeon second lieutenant, IJA, and KOYAMA, Shigeo, former leading private, IJA, will be transferred to the custody of the Commanding General of the 8th U. S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan.

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

ENCLOSURE (B)

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

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

The proceedings, findings and sentences as mitigated in the foregoing case of TOKUNAGA, Akira, former captain, IJA, TAKAHASHI, Yoshio, former surgeon second lieutenant, IJA, and KOYAMA, Shigeo, former leading private, IJA, and the action of the convening authority are approved.

The record is, in conformity with Appendix D-14, Naval Courts and Boards, 1937, and Chief of Naval Operations serial 01P22 of 26 November 1945, transmitted to the Judge Advocate General of the Navy.

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

(ENCLOSURE (C))

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THE PACIFIC FLEET
AND UNITED STATES PACIFIC FLEET

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

48
4 MAY 1949
OFFICE OF JUDGE ADVOCATE GENERAL

Serial: 2157

MILITARY COMMISSION ORDER NO. 49

(In the case of former Captain TOKUNAGA, Akira, IJA;
former Surgeon Second Lieutenant TAKAHASHI, Yoshio, IJA;
and former Leading Private KOYAMA, Shigeo, IJA.)

1. During period 26 January 1949 to 16 February 1949, TOKUNAGA, Akira, former captain, Imperial Japanese Army; TAKAHASHI, Yoshio, former surgeon second lieutenant, Imperial Japanese Army; and KOYAMA, Shigeo, former leading private, Imperial Japanese Army, were tried by a United States Military Commission, convened by order of the Commander Naval Forces, Marianas, dated 19 January 1949, at the Headquarters, Commander Naval Forces, Marianas, on the below listed charge and specifications.

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

Spec.	Nature of Offense	Place and Date of Offenses	Name of Accused
1.	Punish as spies without previous trial, by killing, by shooting with fire-arms, exact description unknown, two unarmed natives, one of them believed to be Bonifacio Estabes.	Rota Island, Marianas Islands, 25 June 1944	TOKUNAGA
2.	Punish as a spy without previous trial, by killing by bayoneting with a fixed bayonet, one resident Catholic brother, Miguel Timoner, Spanish national.	Rota Island, Marianas Islands, 5 July 1944	TOKUNAGA TAKAHASHI KOYAMA
3.	Punish as a spy without previous trial, by killing, by administering cyanide of potassium, an unarmed native, believed to be Ignacio de la Cruz.	Rota Island, Marianas Islands, 5 July 1944	TOKUNAGA TAKAHASHI
4.	Punish as a spy without previous trial, by killing, by shooting with fire-arms, exact description unknown, one unarmed native, name to the relator unknown.	Rota Island, Marianas Islands, 8 July 1944	TOKUNAGA

FINDINGS: The commission on 15 February 1949 made the following findings:

"As to the accused Tokunaga, Akira:

"The first specification of the charge proved.
The second specification of the charge proved.
The third specification of the charge proved.
The fourth specification of the charge proved.
And that the accused, Tokunaga, Akira, is of the charge guilty.

"As to the accused Takahashi, Yoshio:

"The second specification of the charge proved.
The third specification of the charge proved.
And that the accused, Takahashi, Yoshio, is of the charge guilty.

"As to the accused Koyama, Shigeo:

"The second specification of the charge proved.
And that the accused, Koyama, Shigeo, is of the charge guilty."

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FF12/A17-10(2)
02-JDM-hn

Serial: 2157

9 APR 1949

MILITARY COMMISSION ORDER NO. 49

(In the case of former Captain TOKUNAGA, Akira, IJA;
former Surgeon Second Lieutenant TAKAHASHI, Yoshio, IJA;
and former Leading Private KOYAMA, Shigeo, IJA.

SENTENCES: The commission on 16 February 1949 sentenced the accused as follows:

"The commission, therefore, sentences him, Tokunaga, Akira, to be confined for a period of seven (7) years."

"The commission, therefore, sentences him, Takahashi, Yoshio, to be confined for a period of five (5) years."

"The commission, therefore, sentences him, Koyama, Shigeo, to be confined for a period of twelve (12) months."

2. On 9 April 1949 the convening authority (Commander Naval Forces Marianas), subject to certain remarks not herein quoted, took the following action:

"The proceedings, findings, and sentences in the foregoing case of TOKUNAGA, Akira, former captain, IJA, TAKAHASHI, Yoshio, former surgeon second lieutenant, IJA, and KOYAMA, Shigeo, former leading private, IJA, are approved. In view, however, of the fact that the accused have been held in confinement under investigation and awaiting trial for some months, the period of confinement for TOKUNAGA is reduced to six (6) years and seven (7) months; the period of confinement for TAKAHASHI is reduced to four (4) years and two (2) months; and the period of confinement for KOYAMA is reduced to five (5) months.

"TOKUNAGA, Akira, former captain, IJA, TAKAHASHI, Yoshio, former surgeon second lieutenant, IJA, and KOYAMA, Shigeo, former leading private, IJA, will be transferred to the custody of the Commanding General of the 8th U.S. Army via the first available transportation to serve their respective sentences of confinement in Sugamo Prison, Tokyo, Japan."

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

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

AUTHENTICATED:

H. D. VANSTON,
Flag Secretary.

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Case of

TOKUNAGA, Akira
TAKAHASHI, Yoshio
KOYAMA, Shigeo

January 26, 1949

RECORD OF PROCEEDINGS

of a

MILITARY COMMISSION

convened at

United States Pacific Fleet

Commander Naval Forces, Marianas

Guam, Marianas Islands,

by order of

The Commander Naval Forces, Marianas

TOKUNAGA, Akira
TAKAHASHI, Yoshio
KOYAMA, Shigeo

Trial by military commission at the Headquarters,
Commander Naval Forces, Marianas
January 26, 1949

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Yoshimura, Suekichi, eng. warrant officer; IJN	67	68	
Joseph A. Regan, judge advocate	72,76	73	
Imagawa, Shigeo, major, IJA	77,82	80	
Maurice E. Currie, commander, USNR	82,87	84	
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Tokunaga, Akira, accused	3,114,125	4,122,125	
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FF12/A17-10(1)
02-JDM-ga

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 380 19 JAN 1949

From: The Commander Naval Forces, Marianas.
To: Rear Admiral Arthur G. ROBINSON, U. S. Navy.

Subject: Precept for a military commission.

1. Pursuant to the authority vested in me by virtue of my office as the Commander Naval Forces, Marianas and further by the specific authority vested in me by the Commander in Chief, Pacific and U. S. Pacific Fleet, and High Commissioner of the Trust Territory of the Pacific Islands (CinC U. S. PacFlt Serial 0558 of 8 Mar. '46; ComMarianas Despatch 292336Z Sept. '47; CinC-PacFlt Despatch 020103Z Oct. '47; SecNav Despatch 081946Z Oct. '47; CinCPacFlt Despatch 092353Z Oct. '47; CinCPac and CinCPacFlt ltr. dtd. 1 Aug. '48, CinCPac Serial 2955 and CinCPacFlt Serial 3490), and by the Judge Advocate General of the Navy (JAG Despatch 3117302 July '46), a military commission is hereby ordered to convene at the Headquarters, Commander Naval Forces, Marianas on Guam, Marianas Islands at 10 o'clock a.m., on Monday, January 24, 1949, or as soon thereafter as practicable, at the call of the president, for the trial of such persons as may be legally brought before it.

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

Rear Admiral Arthur G. ROBINSON, U. S. Navy, President,
Lieutenant Colonel Harry W. McCORMICK, Quartermaster Corps, United States Army,
Major John H. LOTT, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. BJORLO, Supply Corps, U. S. Navy,
Lieutenant Henry E. WAHL, U. S. Navy,
Captain Kermit H. SHELLY, U. S. Marine Corps, and of Lieutenant Commander Joseph A. REGAN, U. S. Navy, and Lieutenant David BOLTON, U. S. Navy, as judge advocates, either of whom is authorized to act as such.

TAKANO, Junjiro, furnished by the Japanese Government, and Commander Martin E. CARLSON, U. S. Naval Reserve, both of whom are lawyers, and SAWAGI, 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.

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

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 380 19 JAN 1949

Subject: Precept for a military commission.

3. This military commission is hereby authorized and directed to take up such cases, if any, as may be now pending before the military commission of which Rear Admiral Arthur G. ROBINSON, U. S. Navy, is president appointed by Commander Naval Forces, Marianas precept of October 25, 1948 except such cases the trial of which may have been commenced.

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

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

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

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

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

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

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

A true copy. Attest.

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

A (2)

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

THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET

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

Serial: 07431

9 DEC 1948

From: Commander Naval Forces, Marianas.
To: Lieutenant Commander Joseph A. Regan, USN and/or
Lieutenant David Bolton, USN and/or
your successors in office as Judge Advocate, Military
Commission, Commander Naval Forces, Marianas.

Subject: Charge and Specifications in the case of:

TOKUNAGA, Akira
TAKAHASHI, Yoshio
KOYAMA, Shigeo

1. The above named persons will be tried before the military commission of which you are judge advocate upon the following charge and specifications. You will notify the president of the commission accordingly, inform the accused of the date set for trial, and summon all witnesses, both for the prosecution and for the defense.

T(1)

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On 10 day of December 1948 received a copy of the Charge and Specifications in English and Japanese.

Tokunaga Akira.
TOKUNAGA, Akira

高橋義雄.
TAKAHASHI, Yoshio

小山茂雄
KOYAMA, Shigeo

The above was duly translated to the accused. Frederick A. Savory.

1145

CHARGE

VIOLATION OF THE LAW AND CUSTOMS OF WAR

27-231 Specification 1 9 DEC 1948

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving as the commanding officer of the said First Battalion, at Rota Island, Marianas Islands, did, on or about 25 June 1944, in the Tatacho area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, two unarmed native inhabitants of said Rota Island, exact names to the relator unknown, one of them believed to be Bonifacio Estabes, this in violation of the law and customs of war.

Specification 2

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment, TAKAHASHI, Yoshio, then a surgeon second lieutenant, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, and KOYAMA, Shigeo, then a leading private, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, all attached to the military installations of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving at said military installations, did, each and together, on or about 5 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national, resident of said Rota Island, this in violation of the law and customs of war.

Specification 3

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment, and TAKAHASHI, Yoshio, then a surgeon second lieutenant, Imperial Japanese Army, attached to Battalion Headquarters, First Battalion, Tenth Independent Mixed Regiment, both attached to the military installations of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving at said military installations, did, each and together, on or about 5 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, to wit, cyanide of potassium, an unarmed native inhabitant of said Rota Island, exact name to the relator unknown, but believed to be Ignacio de la Cruz, this in violation of the law and customs of war.

1146

7431

9 DEC 1948

Specification 4

In that TOKUNAGA, Akira, then a captain, Imperial Japanese Army, and commanding officer of the First Battalion, Tenth Independent Mixed Regiment of the Imperial Japanese armed forces, Rota Island, Marianas Islands, and while so serving as the commanding officer of the said First Battalion, at Rota Island, Marianas Islands, did, on or about 8 July 1944, in the Taruga area of Rota Island, Marianas 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, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by shooting with firearms, exact description to the relator unknown, one unarmed native inhabitant of said Rota Island, name 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 Naval Forces Marianas.

cc: JAG, USN

T(3)

1147

太平洋方面部隊
及合衆国太平洋艦隊
マリアナ方面海軍部隊マーシャルカロリン方面海
軍部隊及マーシャルカロリン方面司令部

第一七四三一号
昭和二十三年十二月九日

殺
宛 マリアナ方面海軍部隊司令官
合衆国海軍中佐 ジョセフ A リーガン 及、又は
合衆国海軍大尉 デビッド ボルトン 及、又は
マリアナ方面海軍部隊司令部軍法委員會附
檢事との貴官の後任者

記

徳永 明
高橋喜雄
小山茂雄
の訴訟に於ける起訴及非狀項目

一、必別記の人々は貴官が檢事たる軍法委員會に於て左記の起訴及非狀項目に付き裁判せられるであらう。依て貴官は其の日時を軍法委員長に通報し裁判の日時を被告に通知し檢事側及弁護側の全証人を召喚せよ。

(二)

起訴一

戦争法規並に慣習の違反

罪状項目一

マリアナ諸島ロタ島日本帝国軍隊第十独立混成聯隊第一大隊長当時日本帝国陸軍大尉徳永明は前記第一大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つた昭和十九年六月二十五日頃マリアナ諸島ロタ島タ、チョ地域に於て、故意に、不法に、予め裁判を行ふことなしに、当局には姓名不明なるも内一名はホニタシオ エスタベスと思はれる前記ロタ島の二名の武装せざる島民を当局には詳細不詳の兇器により襲撃攻撃傷害殺害し以てスパイとして処罰し又は処罰せしめた。之は戦争法規並に慣習に違反するものである。

罪状項目二

マリアナ諸島ロタ島の日本帝国軍事施設に配属せられてゐた第十独立混成聯隊第一大隊長当時日本帝国陸軍大尉徳永明、第十独立混成聯隊第一大隊大隊本部附当時日本帝国陸軍軍医少尉高橋言嘉雅、第十独立混成聯隊第一大隊大隊本部附当時日本帝国陸軍上等兵小山茂雄は前記軍事施設に勤務中、各個又は同時に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七月五日頃マリアナ諸島ロタ島に於て故意に不法に予め裁判を行ふことなしに前記ロタ島の居住民スペイン人旧教宣教師ミグエル チモネを着けた銃剣の刺突により襲撃攻撃傷害殺害し以てスパイとして処罰し又は処罰せしめた。之は戦争法規並に慣習に違反するものである。

罪状項目三

マリアナ諸島ロタ島の日本帝国重事施設ニ配属セられてゐた第十独立混成聯隊第一大隊長当時日本帝国陸軍大尉徳永明ハ第十独立混成聯隊第一大隊本部附当時日本帝国陸軍軍医ヲ射高橋嘉雄ハ前記軍事施設に於て勤務中各個又は団体ニ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七月五日頃ロタ島の島民を危険ある一名の武装せざる前記ロタ島に於て故意に不法に且つ確かな性名不詳おるもイグナシオデラクルスと呼ばれる一名の武装せざる前記ロタ島の島民を危険ある薬品印ち青化加里の使用に依て処罰し又は処罰せしめた。之は戦争法規並に慣習に違反するものである。

罪状項目四

マリアナ諸島ロタ島の日本帝国重隊第十独立混成聯隊第一大隊長当時日本帝国陸軍大尉徳永明は前記第一大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つた昭和十九年七月八日頃マリアナ諸島ロタ島ヲんがセ域に於て故意に不法に且つ確かな性名不詳の一名の武装せざる島民を殴打し又は処罰せしめた。之は戦争法規並に慣習違反するものである。

CAホーネル
合衆国海軍少将
マリアナ方面海軍部隊
司令官

(13)

FIRST DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, January 26, 1949.

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.

Private first class Theodore J. Ferdinand, U. S. Marine Corps, entered with the accused and reported as provost marshal.

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

The judge advocate introduced Lieutenant (junior grade) Eugene F. Clark, U. S. Navy, George Kumai, Kimio Tsuji, Kan Akatani, Yoshio Akatani, and Frederick A. Savory, as interpreters, and they were duly sworn.

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

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

An interpreter read a Japanese translation of the precept.

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

The judge advocate and each member were duly sworn.

Commander Martin E. Carlson, a counsel for the accused, read a written motion for a separate trial, supported by affidavits which were offered and received, appended marked "B".

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

The judge advocate read a written reply to the motion of Commander Carlson, appended marked "C".

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

The commission was cleared.

The commission was opened and all parties to the trial entered. The commission announced that the motion for a separate trial was not sustained.

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

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

The judge advocate read a written reply to the motion of Commander Carlson, appended marked "E".

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

The commission announced that the motion for a change of venue was not sustained.

The accused stated that they had received two copies of the charge and specifications preferred against them, one in English and one in Japanese, on December 10, 1948.

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

The accused replied in the affirmative.

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

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

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

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

The judge advocate read a written reply to the objections to the charge and specifications, appended marked "I".

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

The commission was cleared.

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

The accused stated that they were ready for trial.

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

Examined by the judge advocate:

1. Q. State your name and former rank.
A. Tokunaga, Akira, former major, I.J.A.

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2. Q. Are you an accused in this case?
A. Yes, I am.

Examined by the accused:

3. Q. Did you ever serve in the Japanese Army? If so, state the period.
A. I graduated from the Military Academy in 1939 and since then I have served until I was demobilized.

4. Q. When were you demobilized?
A. I was demobilized at the end of October 1946.

5. Q. Subsequent to your demobilization, where did you live and what did you do?
A. I went home to Yatushiro, Kumamoto Prefecture, Kyushu, where I was employed in a construction company.

6. Q. Did the Japanese authorities know your address in Kyushu?
A. When I was demobilized I informed them.

7. Q. Were you arrested and if so, state by whom and when you were arrested?
A. On the 25th of September 1948, two policemen came to my lodgings. I was then taken to the Yatushiro Police Station and there told that there were orders for my arrest, and there confined. I was then taken to Tokyo and confined at the Metropolitan Police Station on the 30th of September, and then incarcerated at Sugamo Prison on October 2nd.

8. Q. From the time you were arrested and until you were confined at Sugamo Prison, were you ever shown a warrant of arrest?
A. I was not shown.

9. Q. When you were confined in Sugamo were you served with charges?
A. When I was arrested and subsequent to that date, I was not served with any charges.

10. Q. When and how were you sent to Guam?
A. On the 12th of November 1948 under the protection of two armed guards, I was sent to Guam by a transport ship.

11. Q. When did you arrive on Guam?
A. I arrived on Guam on the 17th of November 1948.

12. Q. What happened after you arrived on Guam?
A. I was confined in a solitary cell at the War Criminals Stockade.

13. Q. From the time you were taken from Sugamo Prison until you were confined on Guam were you ever shown extradition papers?
A. I was not.

14. Q. After you were confined at the War Criminals Stockade were you formally served with charges?
A. I was not.

15. Q. When were you served with the charges?
A. I saw the charges for the first time on the 10th of December 1948.

16. Q. When were you first given opportunity to see the defense counsel?
A. I recall it was around December 20, 1948.

Cross-examined by the judge advocate:

17. Q. Between the 10th of December 1948 and the 20th of December 1948, do you know why the defense counsel did not visit you?
A. I do not know.

The accused 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 resumed his status as one of the accused.

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

Examined by the judge advocate:

1. Q. Will you state your name and former rank?
A. Takahashi, Yoshio, former surgeon first lieutenant, I.J.A.

2. Q. Are you an accused in this case?
A. Yes, I am.

Examined by the accused:

3. Q. Did you ever serve in the Japanese Army? If so, state the period.
A. I entered the Army in the beginning of May 1941 and served there until I was demobilized.

4. Q. When were you demobilized?
A. I was demobilized in the latter part of October 1946.

5. Q. After you were demobilized where did you live and what did you do?
A. I lived in Tokyo and was employed in the Public Health Center.

6. Q. Did you inform the Japanese authorities of your address?
A. Yes, I informed them.

7. Q. Were you arrested? If so, state when and by whom.
A. Yes, I was arrested on May 2, 1948 when one policeman came to my house and I was taken to the police station. At the police station I was told that I was arrested by orders from the occupation forces, and I was detained there for a day and on the next day, that is, the 3rd of May, I was incarcerated at Sugamo Prison.

8. Q. From the time you were arrested until you were confined at Sugamo Prison were you ever shown a warrant of arrest?
A. I was not.

9. Q. Were you served with any charges when you were confined in Sugamo?
A. I was not.

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10. Q. When and how were you sent to Guam?
A. I was taken from the Sugamo Prison on the 12th of November 1948 and via transport arrived on Guam 17 November 1948.

11. Q. What happened subsequent to your arrival on Guam?
A. I was confined in the solitary cell at the War Criminal Stockade.

12. Q. From the time you were taken from Sugamo Prison until you were confined at the War Criminal Stockade were you ever shown extradition papers?
A. I was not shown.

13. Q. After you were confined at the War Criminal Stockade on Guam were you formally served with charges?
A. I was not served with charges.

14. Q. When were you served with charges?
A. I was served with charges on December 10, 1948.

15. Q. When were you first given opportunity to see a defense counsel?
A. I recall it was around December 20, 1948.

Cross-examined by the judge advocate:

16. Q. Do you know why defense counsel waited until December 20, 1948 to visit you?
A. I do not know.

17. Q. Do you know why they did not visit you on December 10th immediately after you received your charge and specifications?
A. I do not know.

The accused 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 resumed his status as one of the accused.

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

Examined by the judge advocate:

1. Q. Will you state your name and former rate?
A. Koyama, Shigeo, former leading private.

2. Q. Are you an accused in this case?
A. Yes, I am.

Examined by the accused:

3. Q. Did you ever serve in the Japanese Army? If so, state the period.
A. I was conscripted in the Army on the 10th of January 1942 and served in the Army until I was demobilized.

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4. Q. When were you demobilized?
A. I was demobilized in the latter part of October 1946.

5. Q. After you were demobilized where did you live and what did you do?
A. I lived in the suburbs of Tokyo in Hachioji and assisted my family on the farm.

6. Q. Was your address known to the Japanese authorities?
A. With my demobilization I informed them.

7. Q. Were you arrested, and if so, state when and by whom.
A. Policemen came to me from the Hachioji Police Station and said that they wanted me at the police station, and I was taken there on the 31st of July 1948. Without any reason they confined me at the police station for two days. On August 2, 1948 I was taken to Sugamo Prison and confined there.

8. Q. From the time you were arrested and until you were confined in Sugamo Prison were you ever shown a warrant of arrest?
A. I was not shown.

9. Q. Subsequent to your confinement at Sugamo Prison were you served with charges?
A. I was not.

10. Q. When and how were you sent to Guam?
A. I was taken from Sugamo Prison on November 12, 1948 and under the protection of two armed guards, was sent to Guam by transport and arrived on November 17, 1948.

11. Q. From the time you left Sugamo Prison and until you were confined on Guam were you ever shown extradition papers?
A. I was not shown.

12. Q. When you were confined at the Stockade on Guam were you served with charges?
A. I was not served with charges immediately on my arrival, but I was served with charges on December 10, 1948.

13. Q. When were you first given an opportunity to see your defense counsel?
A. I recall it was around December 20, 1948.

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 resumed his status as one of the accused.

The commission then, at 11:40 a.m., adjourned until 9 a.m., tomorrow, Thursday, January 27, 1949.

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SECOND DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, January 27, 1949

The commission met at 9:20 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
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.

Mr. Takano, Junjiro, a counsel for the accused, read his written plea to the jurisdiction, in Japanese, appended marked "J".

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

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

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

The judge advocate read a written reply to the pleas to the jurisdiction, appended marked "M".

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

The commission was cleared.

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

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

The commission announced that the plea to the jurisdiction was not sustained.

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

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

The judge advocate read a written reply to the plea of Commander Carlson, appended marked "O".

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

The commission announced that the plea in bar of trial was not sustained.

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

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

The judge advocate read a written reply to the plea of Commander Carlson, appended marked "Q".

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

The commission announced that the plea in abatement was not sustained.

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

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

The judge advocate read a written reply to the motion of Commander Carlson, appended marked "S".

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

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

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

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

An interpreter read a Japanese translation of the charge and specifications, prefixed marked "U".

The judge advocate arraigned each of the accused as follows:

Q. Tokunaga, Akira, you have heard the charge and specifications preferred against you; how say you to the first specification of the charge, guilty or not guilty?

A. Not guilty.

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

Q. To the third specification of the charge, guilty or not guilty?
A. Not guilty.

Q. To the fourth specification of the charge, guilty or not guilty?
A. Not guilty.

Q. To the charge, guilty or not guilty?
A. Not guilty.

Q. Takahashi, Yoshio, you have heard the charge and specifications preferred against you; how say you to the second specification of the charge, guilty or not guilty?
A. Not guilty.

Q. To the third specification of the charge, guilty or not guilty?
A. Not guilty.

Q. To the charge, guilty or not guilty?
A. Not guilty.

Q. Koyama, Shigeo, you have heard the charge and specification preferred against you; how say you to the second specification of the charge, guilty or not guilty?
A. Not guilty.

Q. To the charge, guilty or not guilty?
A. Not guilty.

The prosecution began.

The judge advocate read his written opening statement for the prosecution, appended marked "V".

An interpreter read a Japanese translation of the judge advocate's opening statement.

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

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

(2) The Fourth Hague Convention of October 18, 1907, and the Annex thereto, particularly Articles 29 and 30 of the Annex, which read:

"Article 29. - A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party..."

"Article 30. - A spy taken in the act shall not be punished without previous trial."

and that Japan ratified and signed this Convention.

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The accused objected to the commission taking judicial notice of the second item in the judge advocate's request for judicial notice on the ground that it was irrelevant and immaterial; that as it was written in French it was a foreign law; that although Japan signed the convention, Bulgaria and Italy did not, thus not binding Japan to the provisions of the convention as all parties did not sign it; that this commission is not authorized to enforce the provisions of the convention; that the provisions of the convention are not a real or enforceable law; and that no penalty was set forth for violations of the convention.

The judge advocate replied.

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

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. Former Warrant Officer Yasui, Yukio, Imperial Japanese Army.

2. Q. If you recognize the accused, will you tell us their names and former ranks?
A. From left to right, Tokunaga, Akira, former captain, Imperial Japanese Army; surgeon lieutenant Takahashi, Yoshio; Koyama, Shigeo - I do not know his rank.

3. Q. Have you ever served with the Imperial Japanese Army?
A. Yes.

4. Q. Have you ever served on the island of Rota?
A. Yes.

5. Q. Between what dates were you on Rota?
A. From the latter part of March 1944 until the latter part of August 1945.

6. Q. To what unit did you belong when you were on Rota Island?
A. What designation do you want?

7. Q. If you belonged to a battalion or a regiment.
A. I was attached to the third company of the First Independent Mixed Regiment.

8. Q. Was there a Tenth Independent Mixed Regiment on Rota?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It may have been the Tenth, I do not recall clearly.

9. Q. In any event, who was the commanding officer of this regiment in June of 1944?
A. I do not know the name of the regimental commander.

10. Q. Who was the officer in charge of the battalion?
A. Captain Imperial Japanese Army, Tokunaga, Akira.

11. Q. And what were your duties at that time in June of 1944?
A. At that time I was a platoon commander.

12. Q. And in June 1944, where exactly was your platoon located?
A. It was stationed at Tatacho Village, Rota Island.

13. Q. Do you know whether or not any natives were executed on Rota Island?
A. I do.

14. Q. How many natives were executed to your knowledge?
A. There were two natives executed at my platoon.

15. Q. Do you know when this was?
A. As I recall it was in the latter part of June 1944.

16. Q. Tell us about this execution.
A. In the afternoon of a certain day in the latter part of June 1944 I was away from my platoon. While I was away from the platoon, a soldier attached to the platoon came to where I was, which was some distance away from the platoon. This soldier reported orally to me as follows: "to return immediately to the platoon as the battalion commander is calling for you". I returned immediately to the platoon from where I then was. On the way back to the platoon I met the battalion commander Captain Tokunaga, Akira, and at the place where I met the battalion commander he said "I have brought two natives who have committed acts of espionage here. You will execute them at your place by shooting". As I had no experience in executions by firing squads, I requested the battalion commander on receipt of this order, that he, the battalion commander take the natives elsewhere. The battalion commander said that the execution had to be hurried and as there may be air raids, he could not take the natives elsewhere, to other units. And as the battalion commander spoke in this manner, I resolved to carry out the execution and replied that I would execute his order. Next I asked of the battalion commander concerning the number of troops to be used for the firing squad and of their equipment. He replied "the troops to be used is your platoon. The troops will carry rifles and each member will have ten rounds of ammunition". While we were exchanging these questions and answers, Captain Odanaka, Kesateshi approached us and while we were thus engaged in conversation, Sergeant Momma came to where we were with approximately ten soldiers. I thereupon took these men under my command and began to plan the execution. As I thought it necessary to blindfold the victims, I ordered Sergeant Momma to get the cloths to bind the eyes of the victims. As I was not at that time armed, I ordered Sergeant Momma to bring my sword and water flask. The battalion commander said that he would select the scene of the execution. Next I ordered Sergeant Momma to take command of the soldiers and following the battalion commander, I went to a place about three hundred meters away. Upon arriving at this place, the battalion commander selected the place, and I had an area of ten meters by five meters cleared.

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

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

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No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

17. Q. Will you continue please?
A. I was ordered by the battalion commander to decrease the number of troops - as there were too many - to six. I ordered six men to be members of the firing squad. Ordering the six to remain at the scene of the execution, I ordered the others to stay aside. After the preparations had been completed at the scene of the execution the battalion commander brought two natives to the scene and read to them their sentences of execution.

18. Q. And what happened then?
A. After reading this sentence he handed the two natives over to me. I received the two prisoners and blindfolding them I stood them in front of the hole, ordering the three men on the firing squad on the right-hand side to aim at the victim on the right side and the three on the left to aim at the victim on the left side, I gave the order to fire.

19. Q. Then there were six men in this firing squad; is that correct?
A. Yes.

20. Q. After you gave these orders what happened?
A. As the bullets hit the natives the natives fell down.

21. Q. Did you order the firing squad to shoot?
A. Yes.

22. Q. Were the natives killed by these shots?

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

The judge advocate withdrew the question.

23. Q. Did the firing squad actually shoot the natives?
A. The six fired.

24. Q. Were the natives hit?
A. Three bullets hit the victim on the right and three bullets the victim on the left.

25. Q. What happened then?
A. I went to see the bodies of the victims. One of them was still alive and taking the rifle from Sergeant Momma I fired to make death certain.

26. Q. What happened next?
A. After that I inspected the corpses to make sure that they were corpses and I buried them.

27. Q. Did Tokunaga leave before the execution was completed?

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

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The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. The battalion commander remained to the end.

28. Q. What was done with the bodies of these two natives?
A. They were buried.

29. Q. Do you know the names of either of these two natives?
A. No, I do not.

30. Q. Do you know the occupation of either of these two natives?
A. I heard that one of them was a shoemaker on Rota.

The accused moved to strike out this answer on the ground that it was hearsay and an opinion of the witness.

The judge advocate replied.

The commission announced that the motion was not sustained.

31. Q. From whom did you hear this?
A. I heard it from the battalion commander.

32. Q. Is the battalion commander Captain Tokunaga?
A. Yes.

33. Q. You told us that the battalion commander read a sentence of execution to these two natives. Do you remember just what he said?
A. I do not recall.

34. Q. How do you know it was a sentence of execution then?
A. As it was written on this document "Sentence" at the top of this document I recall that this was the sentence that was read.

35. Q. Did you read the document?
A. I did not.

36. Q. You heard it read; is that correct?
A. Yes, I heard it read.

37. Q. Will you tell us what you remember hearing read?
A. At the present time I do not have a recollection.

Cross-examined by the accused:

38. Q. You testified that there were two natives executed on Rota Island. Were there any other persons executed besides these two natives?
A. I do not know.

39. Q. You testified that you were stationed on Rota Island. Was there a church on Rota Island?
A. There was.

40. Q. Was there a priest at this church?
A. I do not know.

41. Q. During your tour of duty on Rota were there any ecclesiastical ceremonies such as funerals or marriages performed? Do you know?
A. I do not have such a recollection.

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42. Q. You testified that when the two natives were brought to your place you were absent. Do you recall the reason for your absence from the platoon?
A. I was away from the platoon because I was examining the topography.

43. Q. You testified to the effect that these two natives were executed for spy activities. Do you know concretely in what spy activities they were involved?
A. I do not know whether the natives whom I executed had been guilty of spy activities.

44. Q. You testified that you did not know of spy activities of these two natives. Do you then know of spy activities of natives other than these two?
A. No, I do not.

45. Q. You testified that the battalion commander said that he was hurrying the execution. Do you know the reason for this urgency?
A. I do not know.

46. Q. Was Rota Island at that time being subjected to American air raids?
A. After the air raid on June 11, Rota was raided by American planes every day. The most numerous occasion being twelve times in one day.

47. Q. About this time, by which I mean around June 11, and after, were American surface craft or submarines sighted off Rota Island?
A. I saw a large task force circling Rota Island around the thirteenth or fourteenth of June. I do not recall the number of ships comprising the task force. And after that almost nightly I saw red and green lights blinking off shore.

48. Q. At that time when the air raids by American forces were intensive, did the Japanese order the natives to take shelter?
A. I do not recall if there were any such orders around the latter part of June.

49. Q. During the air raids did all the Japanese service men take shelter? By this I mean to avoid being wounded or killed by the air raid?
A. Yes, the Japanese did take shelter.

50. Q. Do you know for a fact whether the natives took shelter?
A. As far as I observed, as I did not see any natives about me, I do not know.

51. Q. Do you know for a fact whether natives stayed where they were without taking shelter?

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

The accused withdrew the question.

52. Q. In what area of Rota Island were you stationed?
A. In the Tatacho Area.

53. Q. Do you know if there were natives in the Tatacho Area who did not take shelter during the air raids but remained where they were?
A. I do not.

54. Q. During the intensive air raids was the Tatacho Area attacked?
A. In the first phase of the attacks the Tatacho Area was not severely attacked compared to the other areas.

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55. Q. From which area did these two natives who were executed come?
A. Concerning one native, I do not know, but I heard that the other was a native of the Tatacho Area.

56. Q. You testified that the Tatacho Area was, comparatively speaking, not so severely damaged in the first phase of the attack. What do you mean by the first phase?
A. As I recall the first phase continued until the latter part of July.

57. Q. Did the battalion commander tell you what acts of espionage these two natives had committed?
A. No, he did not.

58. Q. What did you understand the battalion commander to mean when he said "Two natives who ~~had~~ have committed acts of espionage"?
A. Because I saw two natives standing behind where I met the battalion commander, I did not know.

59. Q. Were either of these two natives Japanese?
A. I do not know.

60. Q. Did they speak Japanese?
A. One of them did speak Japanese.

61. Q. Was he the one that was from your area?
A. Yes.

62. Q. Who was this Lieutenant Odanaka you testified approached you and the battalion commander when you were talking?
A. He was the unit commander of that area.

63. Q. Was he your immediate superior?
A. In matters concerning operations he was my immediate superior.

64. Q. You testified that Sergeant Momma came with ten soldiers. Do you know who ordered him to bring up these ten soldiers?
A. I do not.

65. Q. Were all these soldiers armed and, if so, with what were they armed?
A. Yes, they were armed. They had rifles, bayonets, service bags, water flasks and ammunition.

66. Q. Did you or who did order this area that you say was ten by five meters cleared?
A. I ordered the area cleared.

67. Q. Who were the six persons that you selected and ordered to be members of the firing squad? What were their names?
A. I will give you the names of the six: Momma, Iwao; Kase, Yoshiji; Tezuka, Mitsutaro; Kawahara, Seiichi; Hoseya, Kenichi; Sato, Yoshimaro. I do not recall the names of the others.

68. Q. How many other persons did you order to stay aside?
A. I do not recall the number of men I ordered aside.

69. Q. Do you recall how many men were present at this execution?
A. Six enlisted men, myself, First Lieutenant Odanaka, and Captain Tokunaga.

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70. Q. Only the six enlisted men that you ordered to act as a firing squad and you yourself actually fired at these natives; is that correct?
A. Yes.

71. Q. Did you inspect the rifles of all these six men to see that they all had ammunition and bullets in the chambers of their rifles before you ordered them to fire?
A. After inspecting the rifles, I ordered "ready arms" and then I ordered them to fire.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Friday, January 28, 1949.

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THIRD DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Friday, January 28, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Cross-examination continued.)

72. Q. You testified that you completed certain preparations for this execution. What preparations did you make at this time or complete prior to the execution?
A. By preparations I meant the cutting down of weeds in an area five meters by ten meters.

73. Q. Who dug this hole in which you placed the two natives to be executed and when was it dug?
A. It was a natural hole in the ground.

74. Q. You testified that the commanding officer read a sentence from a paper to these natives. In what language did he read this sentence to the two natives?
A. He read it in Japanese.

75. Q. Then both of the natives understood Japanese and not just one of them, is that correct?
A. One of them did not understand it.

76. Q. When you saw this document and heard the commanding officer read from this document, was it your opinion that this was a legal paper that the commanding officer was reading from?

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

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The accused replied.

The commission announced that the objection was sustained.

77. Q. Will you describe this paper from which the commanding officer read the sentence of execution to these two natives?
A. As I recall it was a piece of paper about the size of this sheet. (Witness indicated a piece of paper eight by ten inches in size.)

78. Q. Do you recall what was written on it?
A. No, I do not recall.

79. Q. Do you know a person by the name of Okiyama?
A. I do.

80. Q. Do you know if Okiyama investigated these two persons as persons who had participated in spy activities and the gathering of military information of the Japanese installations?

This question was objected to by the judge advocate on the ground that it went beyond the scope of the direct examination.

The accused replied.

The commission announced that the objection was sustained.

81. Q. Did you personally blindfold these two natives?
A. I did.

82. Q. Can you describe these two natives then?
A. One of them was a largish man and on the thin side. The other was of medium build and of medium height.

83. Q. Had you ever seen these two persons before?
A. No.

84. Q. What three men of the six did you order to fire at the native that was placed on the right?
A. I do not recall.

85. Q. How far away from the natives was this firging squad of six men when they fired at the natives?
A. As I recall seven or eight meters away.

86. Q. Where were you standing in relation to the firing squad and the natives?
A. I was at the extreme right of the firing squad.

87. Q. Were the natives tied?
A. They were handcuffed.

88. Q. Who put the handcuffs on these natives?
A. I do not know.

89. Q. Are you sure that three bullets struck each of the natives?
A. I am.

90. Q. Now, you said that you took a rifle from Sergeant Momma and fired at one of the natives. Did you take this rifle and fire at this native in order to kill him?
A. As he was in pain and as I had pity on him, I fired to put him out of his suffering.

91. Q. How far away from this native were you when you fired this rifle?
A. About one meter.

92. Q. Captain Tokunaga didn't order you to fire at this native, did he?
A. Captain Tokunaga did not issue such order.

93. Q. Did he issue any orders at this scene of execution?
A. The only order that he gave was after he had handed the natives over to me and after I had completed my preparations when he said "Carry it out".

94. Q. When you first saw Captain Tokunaga that day were the prisoners with him?
A. They were standing about fifteen meters behind Captain Tokunaga close to a building.

95. Q. This building was one of the buildings of your unit?
A. No.

96. Q. Were there any guards with these two natives and if so who were the guards?
A. There were guards and as I recall one of them was named Ito, Nobuo.

97. Q. And was this Ito from your unit?
A. No.

98. Q. Do you know what unit he was from?
A. I know Ito, Nobuo personally but I did not know to which unit he was attached at that time.

99. Q. This order to execute the natives, did you object to the execution?
A. As I had no experience in executions and as I felt no confidence in myself, I requested that the executions be conducted at some other unit.

100. Q. Were you the unit commander or was Lieutenant Odanaka the unit commander?
A. What unit are you referring to?

101. Q. The unit that you belonged to.
A. At that time I was the platoon commander and Lieutenant Odanaka was the area unit commander.

102. Q. Were there any other platoons in that area?
A. Yes, there were.

103. Q. The only reason you objected to carrying out the execution was because you were not confident you could carry it out, is that true?

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.

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104. Q. Did you believe this execution was a legal execution?

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

The accused replied.

The commission announced that the objection was sustained.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness made the following statement: Right at the beginning of my testimony I testified that the unit I was attached to was the First Independent Mixed Regiment. I desire to alter that to read the Tenth Independent Mixed Regiment.

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 tell us your name?
A. Tomas Cruz Manglona.

2. Q. Where do you live?
A. Barrigada.

3. Q. If you recognize any of these three men sitting here (indicating the accused), will you tell us their names?
A. The man sitting at the extreme right is Leading Private Koyama.

4. Q. Do you know the names of the other two?
A. The third man from the right is Major Tokunaga.

5. Q. Have you ever lived on Rota Island?
A. Yes, I have.

6. Q. About how many years did you live on Rota Island?
A. I have lived on Rota Island from when I was born until the end of the war.

7. Q. Were there any priests or brothers on Rota Island while you were there?
A. Yes, there were.

8. Q. Do you know whether or not there were any priests or brothers on Rota Island the year before the war ended?
A. Yes, there was.

9. Q. How many priests were there and how many brothers, if you know?
A. There was one priest and one brother.

10. Q. Have you talked to either the priest or the brother?
A. Yes, I have.

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11. Q. Do you remember what they looked like?
A. Yes, I know what they looked like.

12. Q. Do you know the name of the brother that was on Rota Island the year before the war ended?
A. I do.

13. Q. What was his name?
A. His name was Miguel Timoner.

14. Q. I show you a picture and ask you if you can identify the picture.
(The judge advocate handed a photograph to the witness.)
A. I do.

15. Q. Do you know the name of the man who appears in that picture?
A. I do.

16. Q. What is his name?
A. Miguel Timoner.

The photograph of Miguel Timoner, identified by the witness, was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

The accused objected to the receipt in evidence of this photograph on the ground that no groundwork had been laid for it, that its authenticity had not been proved, and that the custodian of the photograph had not been examined concerning the making of the photograph.

The judge advocate replied.

The commission was cleared.

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

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

The commission announced that the objection was not sustained, and that it would accord the photograph its proper weight with the stipulation that the name at the bottom would be covered. There being no further objection, it was so received and is appended marked "Exhibit 1".

17. Q. Do you know where Miguel Timoner is now?
A. I do.

18. Q. Where is he?
A. He is on Rota Island. At the headquarters on Rota Island.

19. Q. Do you know whether he is alive or dead?

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

The judge advocate withdrew the question.

20. Q. Do you know whether he is still alive?
A. No, he is not alive.

The accused moved to strike out this answer on the ground that it was merely an opinion of the witness and not good evidence.

The judge advocate replied.

The commission announced that the motion was not sustained.

21. Q. When was the last time that you saw Miguel Timoner?
A. I saw him last at the Taruga Headquarters.

22. Q. Was that before or after the war ended?
A. It was during the war.

23. Q. When you saw Miguel Timoner at the headquarters, was there anyone with you at that time?
A. Yes, there was.

24. Q. Who were they?
A. Ignacio de la Cruz.

25. Q. And was there anyone else?
A. There were besides these two, myself and two other persons who were helping me.

26. Q. Do you remember the names of the two persons who were helping you?
A. I do.

27. Q. Who were they?
A. Miguel Timoner and Ignacio de la Cruz.

28. Q. What were the names of the men who were helping you?
A. Miguel Timoner, Ignacio de la Cruz, Tomas Cruz Manglona myself, and Valentino Songao and Tomas Mendiola.

29. Q. Do you know how Miguel Timoner and Ignacio de la Cruz got to the headquarters that day?
A. They were conducted to headquarters by orders.

30. Q. Who did the conducting?
A. Tomas Cruz Manglona and Valentino Songao conducted Miguel Timoner and Ignacio de la Cruz to headquarters.

31. Q. Where had you brought them from?
A. We brought them from the top of a hill where the air raid shelter was located.

32. Q. About how far from headquarters was this air raid shelter, approximately?
A. The distance from here to Agana, about.

33. Q. Why did you, Tomas Cruz Manglona and this Valentino go to this air raid shelter?
A. We went by orders.

34. Q. Who gave you these orders?
A. Tomas Mendiola gave me a piece of paper which I showed to Miguel Timoner and Ignacio de la Cruz and I conducted them from the place where they were above the air raid shelter to headquarters.

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35. Q. And who told you and Tomas Mendiola and Valentino to go and get them?
A. I do not know who issued the order. I believe Sergeant Tokunaga of the kempeitai and Tomas Mendiola went to the shelter.

36. Q. Do you know why you were to bring these men to the battalion headquarters?
A. I do not know - they were thought to be spies.

37. Q. Where was the battalion headquarters located?
A. In what area?

38. Q. On Rota.
A. In the Taruga area.

39. Q. When you got Miguel Timoner and Ignacio de la Cruz to this battalion cave, what happened then?
A. We conducted them to a corporal or sergeant, I do not recall the exact rank, and this person told us to go back.

40. Q. Did you ever see Miguel Timoner or Ignacio de la Cruz again?
A. No.

41. Q. About how old a man was Ignacio de la Cruz?
A. He was an old man about seventy years of age. That is what I estimate.

42. Q. And the brother, Miguel Timoner; about how old a man would you say he was?
A. As he was energetic, I believe he was about fifty years of age.

43. Q. Were there any shoemakers on Rota Island that you know of?
A. Yes, there was.

44. Q. Do you know the names of any of these shoemakers?
A. Yes, I do.

45. Q. What are their names?
A. Bonifacio Estabes.

46. Q. Do you know the names of any other shoemakers?
A. There was only one shoemaker.

47. Q. Do you know the nationality of the brother, Miguel Timoner?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I do not know where he came from, but the natives of Rota said he was Spanish, and he also spoke the Spanish language which was different from the natives' language.

The accused moved to strike out this answer on the ground that it was an opinion of the witness and hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

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Cross-examined by the accused:

48. Q. What was your occupation on Rota?
A. I was engaged only in field labor, and later I was employed at the Tokunaga Battalion Headquarters.

49. Q. Where was this person Miguel Timoner living on Rota Island?
A. He was living in Tatacho Village.

50. Q. Do you know how long Miguel Timoner had been residing on Rota?
A. I do not know how long he had been residing on Rota, but he was there from the time I was born until before the end of the war.

51. Q. What was the occupation of Miguel Timoner?
A. He was the first assistant to the priest.

52. Q. How many times had you met Miguel Timoner?
A. I met him frequently before the end of the war as I saw him every time I went to church.

53. Q. Whenever you saw Miguel Timoner, was he dressed in this habit?
(The witness was shown Exhibit 1.)
A. He was always dressed in that habit.

54. Q. What was the complexion of this man?
A. It was on the whole, white. Spaniards have white faces.

55. Q. Can you state approximately when you last saw Miguel Timoner?
A. The last time I saw him was at Taruga Headquarters. After that I never saw him.

56. Q. Do you recall in what period of the war, or under what battle conditions at the time you saw Miguel Timoner at the battalion headquarters?
A. When I saw him last it was when the bombings were taking place.

57. Q. When you and your two companions went to get Miguel Timoner and Ignacio de la Cruz, did you have a piece of paper with you?
A. I gave a piece of paper to Miguel Timoner. I do not know whether Miguel Timoner took that piece of paper with him to headquarters.

58. Q. Did you read the writing on that paper?
A. I did not.

59. Q. In what language was this written?
A. I do not know in what language it was written.

60. Q. Did Kempeitai Sergeant Tokunaga also go with you to conduct Miguel Timoner and Ignacio de la Cruz?
A. Kempeitai Sergeant Tokunaga was at Sakaza and myself, Tomas Cruz Manglona and Valentino Songao went to conduct the two.

61. Q. Where was Ignacio de la Cruz residing on Rota Island?
A. In the Tatacho area.

62. Q. What was the occupation of Ignacio de la Cruz?
A. He was a man capable of many trades. He could make shoes and he could also make rings.

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63. Q. You testified that you went to conduct these men because of spy activities; do you know what spy activities these men were involved in?
A. I do not.

64. Q. Did the kempei think Timoner and Ignacio de la Cruz to be spies?
A. Yes.

65. Q. What kempei thought them to be spies?
A. I do not know what kempei thought them to be spies, but Tokunaga was there at the kempeitai. Sergeant Tokunaga was at the Sakaza Safety Zone.

66. Q. This Kempeitai Tokunaga is not the accused Major Tokunaga that you have identified here in the court there, is he?
A. They are different persons.

67. Q. Was this Taruga Headquarters the kempeitai headquarters?
A. I do not know where the kempeitai headquarters were. At Sakaza or at Taruga.

68. Q. But when you testified and said that you brought them to Taruga Headquarters, did you mean that you brought them to the kempeitai headquarters at Taruga?
A. I do not know but it was the Battalion Headquarters.

69. Q. At the time you went to arrest Timoner and Cruz were you working for the kempeitai?
A. At that time the kempeitai was at Sakaza and I believe it was by their orders that I went.

70. Q. But you were working for them as a policeman?
A. No, I was not. I was working at the Safety Zone for the villagers who were there.

71. Q. Were you a native policeman?
A. No. The people without education cannot become policemen.

72. Q. Do you speak Spanish?
A. I don't speak it.

73. Q. How do you know then, that Father Miguel Timoner spoke Spanish?
A. I used to help at the church and I served Mass and I knew these men (T. N. - the priests and the brothers) because they were talking Spanish between themselves as they were Spaniards.

74. Q. Did he also speak Japanese?
A. He did not understand Japanese; he knew Chamorran.

The judge advocate did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness made the following statement: I took Miguel Timoner and Ignacio de la Cruz to headquarters, and that was where I saw them last.

The witness was duly warned and withdrew.

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

Present: All the members, the judge advocate, 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. Will you state your name and former rank?
A. Former Sergeant, Imperial Japanese Army, Momma, Iwao.

2. Q. If you recognize these accused, will you tell us their names and former ranks?
A. Reading from the right, Koyama, Shigeo. I do not recall his rank exactly but I believe he was a superior private. Seated center is Takahashi, Yoshio. As I recall, his rank was Surgeon Second Lieutenant. Seated extreme left Tokunaga, Akira. As I recall, Captain, Imperial Japanese Army.

3. Q. Have you ever served with the Imperial Japanese Army on Rota Island?
A. Yes.

4. Q. Between what dates were you on Rota Island?
A. I served on Rota from the latter part of March 1944 until August 1945.

5. Q. During this time were you always attached to one unit?
A. Yes.

6. Q. What was the name of this unit?
A. It was the Tokunaga Battalion.

7. Q. Was this Tokunaga Battalion a part of a particular regiment?
A. Yes.

8. Q. Do you know the name of the regiment?
A. I do.

9. Q. What was it?
A. The Independent Mixed Tenth Regiment and the battalion was the First Battalion of that regiment.

10. Q. Did you belong to a particular platoon?
A. Yes, I was attached to the Yasui Platoon.

11. Q. Do you know whether any natives were executed on the island of Rota?
A. I do.

12. Q. How many natives do you know about?
A. I have heard that five natives were executed.

13. Q. Were you present at any of these executions?
A. I was.

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14. Q. At how many executions were you present?
A. I participated in the execution of two natives at Tatacho.

15. Q. Do you remember in what month of what year this execution occurred?
A. As I recall it was in the latter part of June 1944.

16. Q. In detail tell us everything that you know about this execution.
A. It occurred in the latter part of June 1944. I do not recall the date. In the afternoon of that day I was engaged in various duties in the quarters within the position of the platoon. At that time the battalion commander Tokunaga, Akira arrived in front of the platoon building by car and he asked me if Warrant Officer Yasui was present. As the platoon commander was at that moment absent I reported to the battalion commander of his absence. A short while afterwards the battalion commander issued the following order to me. The order was to the effect that I lead twelve men with rifles to the sea shore close to Uguisu Valley. As I had received this order from the battalion commander I sent to the Kase and Sato units to procure the men to form the party. Each squad leader called their men together and fell in in front of the quarters. I led these men who had assembled to the place to which I had been ordered to lead them. On the way I met platoon commander Yasui. I reported the orders that I had received from the battalion commander and reported my detail to him. The platoon commander then took over the command and lead us close to the scene.

17. Q. At the time you reported to Yasui did he say anything to you?
A. As I recall he did not say anything in particular.

18. Q. At this time did you know why you were leading these twelve men to the sea shore?
A. As the battalion commander had ordered me to lead these men to the pine forest close by the shore line in Uguisu Valley I was merely carrying out his orders and leading them there.

19. Q. Tell us what happened after you got there.
A. The platoon commander led us into the pine forest. Soon thereafter two natives came into the pine forest.

20. Q. Did they come by themselves?
A. As I recall platoon commander Yasui brought these two men.

21. Q. Go ahead.
A. The battalion commander, Tokunaga, Akira read a sentence to these two natives, calling them before him. After the sentence had been read the platoon commander, Yasui, ordered myself and five others to be the members of the firing squad.

22. Q. What happened then?
A. The platoon commander Yasui ordered us to take up our positions. As soon as we had assumed our firing positions, the platoon commander made the natives take up their positions. The platoon commander at that time placed blindfolds on the eyes of the natives. The platoon commander then returned to where we were standing and issued the first command which was "load arms". At that each enlisted man placed one round in his rifle. At the command of the platoon commander we assumed a standing position for firing. At the third command of the platoon commander the rifles were raised to the shoulder.

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At the fourth command which was "fire" of the platoon commander each man fired one round. When the shots were fired the native on the left side facing the two men was killed instantly. The native on the right was still breathing. The platoon commander ordered me to pass my rifle to him. I loaned my rifle to him and the platoon commander fired one round at the native who was still breathing.

The accused moved to strike the words "the native on the left side facing the two men was killed instantly" out of the answer on the ground that they were an opinion of the witness.

The judge advocate concurred.

The commission directed that the words be stricken out.

23. Q. After the shooting, what was done with the bodies?
A. They were buried by several men including the platoon commander.

24. Q. Did you witness the burial?
A. I did witness the burial.

25. Q. After these men were shot was there anything done to them before they were buried? By that I mean were they stabbed, shot again, or beheaded?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. No such thing was done to them.

26. Q. You said that the battalion commander read out a sentence. What was this sentence?
A. I do not recall the substance of the sentence in detail but as I recall it stated that the men had been involved in spying and that they were to be executed because of connection with spy activities

Cross-examined by the accused:

27. Q. Did you see this sentence document? Did you take it in your hand and see it?
A. I never saw the document, taking it in my hand.

28. Q. You testified that the sentence read that they were to be executed for spy incidents. Do you know what these spy incidents were?
A. I know them because of having heard rumors about them.

29. Q. What do you know?
A. For example spy incidents such as signals by torch and by lights at night and during the day time pieces of cloth stretched out in very obvious places during the air raids for the airplanes to see.

30. Q. Is that all you know about spy incidents?
A. That is all that I heard in rumors.

31. Q. From whom did you hear this?
A. I do not recall the person from whom I heard these things.

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32. Q. Did you hear of this from one person or from numerous persons?
A. From several persons.

33. Q. Was this before or after the execution that you heard of these matters?
A. It was before the execution.

34. Q. You testified that battalion commander Tokunaga read the sentence to these men. Do you know what preceded the reading of the sentence?
A. No, I do not know what took place prior to the reading of the sentence.

35. Q. Where were your quarters?
A. They were at Tatacho.

36. Q. Were there air raids about that time? That is, around the time the execution took place.
A. Are you asking whether the air raids were intensive?

37. Q. No, just whether there were air raids about that time?
A. Yes, there were.

38. Q. Were they intense?
A. Yes, they were.

39. Q. Was Tatacho the area where you were residing hit by the air raids?

This line of questioning was objected to by the judge advocate on the ground that it went beyond the scope of the direct examination.

The accused withdrew the question.

40. Q. Is this the first time that you have talked about what you have testified here in court today?
A. The matter to which I have testified today was investigated by the judge advocate.

41. Q. Were you promised that if you testified as you have today that you would not be tried for killing these natives?
A. I did not make such a promise.

42. Q. Were you promised that?
A. He did not.

43. Q. Who was this platoon commander that led you to the scene and into the pine forest?
A. His name was Yasui, Yukio.

44. Q. Who was with platoon commander Yasui when he brought the two men to the scene?
A. I do not recall.

45. Q. Do you recall that he was the only one with the two prisoners?
A. When platoon commander brought the two natives into the pine forest for them to be executed there were within the pine forest Battalion Commander Tokunaga and his adjutant, First Lieutenant Odanaka.

46. Q. There weren't any guards with the two natives?
A. I do not know.

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47. Q. Do you know whether the natives' hands were tied or their feet tied?
A. As I recall there were handcuffs on the hands of the natives.

48. Q. What did platoon commander Yasui say on ordering you to take up the firing position?
A. He said something to the effect that "We are about to execute these men and therefore take up positions."

49. Q. Did he say why they were about to execute the men?
A. He stated that they were to be executed for spy activities.

50. Q. What did he say when ordering the natives to take up their positions and how far was this position from the firing squad?

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

The accused made no reply.

The commission announced that the objection was sustained.

51. Q. What did platoon commander Yasui say in ordering the natives to take their positions?
A. He led these two men to their positions.

52. Q. How far away from the firing squad did he lead them?
A. As I recall about six meters away.

53. Q. Did you hear Yasui say anything to these natives at this time?
A. As I recall he was telling them something.

54. Q. Was he telling them that they were to be executed because they were spies?
A. Of that I do not know.

55. Q. When Yasui ordered you and the other members to load arms how many shells did you put into your rifle?
A. One round.

56. Q. What firing position did you take up in relation to the other six men in the firing squad?
A. I was at the extreme right.

57. Q. How was the firing squad lined up?
A. The two natives were placed before the firing squad and three members of the firing squad were assigned to one native and the other three to the other native.

58. Q. To what native were you assigned?
A. I was assigned to the native on the right facing the natives.

59. Q. After you had fired did you see how many bullets there were that had entered the bodies of the natives?
A. I did not.

60. Q. You said that you loaned your rifle to platoon commander Yasui. For what purpose did you loan him your rifle?
A. I handed the rifle to the platoon commander because I was ordered to hand the rifle over to him.

61. Q. Did you load the rifle before you handed it over to him?
A. I did not.

62. Q. Did he load it?
A. Yes. Taking a round from me he loaded the rifle.

63. Q. Did you help bury these two persons?
A. Yes, I did.

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. State your name and former rank.
A. Kato, Takashi, former corpsman sergeant major, Imperial Japanese Army.

2. Q. Have you ever been a warrant officer in the Japanese Army?
A. No.

3. Q. If you recognize these accused will you tell us their names and their former ranks?
A. From the left Tokunaga, Akira, captain, Imperial Japanese Army; next Takahashi, Yoshio, surgeon second lieutenant, Imperial Japanese Army; and Koyama, Yoshio, superior private, Imperial Japanese Army.

4. Q. Have you ever served with the Japanese Army on Rota Island?
A. Yes.

5. Q. Between what dates were you on Rota Island?
A. I arrived on Rota in the latter part of March 1944 and stayed until the end of the war around September 1945.

6. Q. To what unit were you attached while you were on Rota Island?
A. Headquarters, Tokunaga Battalion.

7. Q. ~~What~~ Was this battalion headquarters always in the same place?
A. At first it was at Shinaparu.

8. Q. Was it moved from there?
A. It was moved to Taruga.

9. Q. Do you remember approximately when the headquarters was moved to Taruga?
A. I believe it was around 15 June 1944.

10. Q. Was this battalion headquarters in a large cave?
A. Yes.

11. Q. Was there any sort of a dispensary near this cave?
A. I believe the dispensary was made around November 1944.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

12. Q. When headquarters was moved to the cave at Taruga where was the dispensary then?
A. We used part of the cave.

13. Q. Did you work in this cave?
A. Yes, I did work there.

14. Q. And who was your superior officer?
A. Concerning medical affairs, it was Surgeon Second Lieutenant Takahashi, and the battalion commander was Tokunaga.

15. Q. What was Tokunaga's rank at that time?
A. Captain.

16. Q. Were any of the natives of Rota Island executed by the Japanese to your knowledge?
A. Yes, there were.

17. Q. How many do you know of?
A. I know of two persons executed.

18. Q. Were you present at that execution?
A. I saw this execution at the scene.

19. Q. Tell us about it.
A. I recall it was the latter part of June or beginning of July. I have forgotten the time, but I believe it was around nine o'clock in the morning. I saw two natives in the yard of the headquarters. At that time I was working at the desk and I saw Kempei Tokunaga walking here and there in the yard of the headquarters. In a little while I heard that the natives were going to be executed today.

20. Q. Who did you hear this from?
A. At that time I heard but I do not know from whom I heard it.

21. Q. Did you hear this information about the execution from any one of the three accused?
A. I heard about the execution from Second Lieutenant Takahashi just before the execution.

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22. Q. After you had seen the natives in the yard what happened?
A. I believe it was near noon that I saw several soldiers pass in front of the cave of the headquarters and go into the woods. In a little while Second Lieutenant Takahashi came to where I was working and he asked me whether I would not go and watch the execution. I left my work and went to the scene of the execution. There were one native and several soldiers. The native was made to sit down and Second Lieutenant Takahashi was saying something to him. In a little while some coffee was poured in a cup and a small portion of some kind of powder was put into the coffee and mixed.

23. Q. Who did this mixing?
A. I do not recall.

24. Q. Who poured the coffee into the cup?
A. Takahashi.

25. Q. Who put the powder into the cup?
A. Takahashi.

26. Q. After the powder was put into the cup what happened?
A. This cup was handed to the native.

27. Q. Who handed the cup to the native?
A. Takahashi.

28. Q. What happened then?
A. This native drank this coffee but he spilled some from his mouth and he didn't drink very much. The native who drank this coffee pressed his stomach with his hand and fell backwards. In a little while this native who fell down got up and seemed to be in agony and the native was in this condition for a little while. I was watching this. Then Takahashi ordered the Guard Koyama who was near to stab the native.

29. Q. When you say Takahashi do you mean the man who is here in court today?
A. Yes.

30. Q. And this Koyama you mentioned is the Koyama who is here in court today?
A. Yes.

31. Q. After Koyama got this order what did he do?
A. He seemed to hesitate a little, but he stabbed the native on the left breast.

32. Q. What did he stab him with?
A. A rifle with fixed bayonet.

33. Q. What happened next?
A. Takahashi saw the native in agony so he sent a runner to the battalion commander and this runner informed Tokunaga of this condition and Tokunaga said that this native was going to die anyway and if he is in agony it would be better to stab him, so after this runner came back and relayed this, Takahashi ordered Koyama to stab.

The accused moved to strike the words "Tokunaga said that this native was going to die anyway and if he is in agony it would be better to stab him" out of this answer on the ground that they were hearsay and speculative.

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The judge advocate replied.

The commission announced that it would withhold its ruling subject to clarification.

34. Q. What did you hear Takahashi say to this runner?
A. I do not know what was said.

35. Q. If you did not hear what was said how do you know the runner received instructions to go to Tokunaga?
A. I heard this from Takahashi.

36. Q. When did you hear this from Takahashi?
A. Soon after the execution - on the same day.

37. Q. In other words you did not hear what Takahashi told the runner, but at a later date Takahashi told you about this, is that correct?
A. It is not at a later date; but it was on the same date.

The accused moved to strike out all this witness' testimony pertaining to what Tokunaga told the runner on the ground that it was not part of the res gestae.

The judge advocate replied.

The commission announced that the original motion by the accused was sustained and directed that all testimony pertaining to what Tokunaga told the runner be stricken out.

38. Q. When did you have this conversation with Takahashi that you just told us about?
A. I recall Takahashi told me about this soon after the execution.

39. Q. How soon after the execution? Was it the same day?
A. Yes, on the same day.

40. Q. What exactly did Takahashi tell you?
A. Takahashi told me that after he saw the native in agony he did not know what to do, so he informed a runner as to this and requested some instructions from the battalion commander, and to this Tokunaga said that as the native has already drunk the drug and was going to die and he also said the longer he suffers the more pitiful it is for him, so to stab him. This is what Tokunaga told the runner and after the runner came back with this information Takahashi ordered Koyama to stab.

The accused moved to strike out all this answer pertaining to anything Takahashi said the runner told him that Tokunaga had told the runner on the ground that it was hearsay.

The judge advocate replied.

The commission announced that the motion was not sustained.

41. Q. Did you actually see Koyama stab this native?
A. Yes.

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42. Q. After the stabbing what happened then?
A. The bayonet pierced clean and after the bayonet was pulled out, the native fell down and died quietly.

The accused moved to strike the words "and died quietly" out of this answer on the ground that they were an opinion of the witness.

The commission directed that the words be stricken out.

43. Q. After this native had been killed what happened then?
A. The second native was to be executed.

44. Q. Tell us about that execution.
A. The scene where the second native was executed was about 100 meters nearer the headquarters.

45. Q. The scene of the second execution was closer to the headquarters than the scene of the first execution, is that what you are saying?
A. Yes.

46. Q. About how long after the first execution did the second execution occur?
A. I recall it was about five or ten minutes.

47. Q. Tell us about it?
A. An old native was brought and there was a table there, and this native was made to sit at the table.

48. Q. Was there anyone else sitting at this table before the native sat down?
A. There were several persons and some guards who were at the scene of the first execution were near the table.

49. Q. Was there anyone else other than the native sitting at this table?
A. These persons were standing around the table watching.

50. Q. Were any of them drinking?
A. I do not recall.

51. Q. Did the native drink 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 sustained.

52. Q. After the native sat down what happened?
A. It was the same as before. Takahashi poured some coffee in a cup and he put some drug in it and Takahashi said something to the native and gave him this cup of coffee.

53. Q. At this time was the native the only one with a cup of coffee?
A. I recall there were two or three other cups but the native was the only person having a cup in his hand.

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54. Q. What did the native do with the cup?
A. He received the cup from Takahashi and the native drank it all.

55. Q. What happened after he drank it?
A. Right after he finished drinking the native held his stomach and fell backwards. There was a fighter plane raid about two minutes after this native fell down. This air raid was very furious and so Takahashi and the others who were there took shelter in the nearby air raid shelters. I do not know how long this air raid lasted, but after the air raid was over and we came out this native was just as he was when he fell down. He was dead and he was in the same position as when he fell down.

56. Q. What was done with the bodies?
A. The two bodies were buried together.

57. Q. Who did the burying?
A. I helped in burying the bodies and also there were some gunzokus attached to the headquarters.

58. Q. Did you ever learn what this powder was that Takahashi put in the two coffee cups?
A. When I saw this drug being put in the cup at the scene I thought it may be potassium cyanide.

The accused moved to strike out this answer on the ground that it was an opinion of the witness.

The commission directed that the answer be stricken out.

59. Q. Did you ever learn what that powder was that you saw Takahashi putting in the two cups?
A. Yes.

60. Q. What was it?
A. Potassium cyanide.

The accused moved to strike out this answer on the ground that it was an opinion of the witness.

The judge advocate replied.

The commission announced that it would withhold its ruling until after the judge advocate asked the witness from whom he learned this.

61. Q. Who did you learn this from?
A. I heard it from Second Lieutenant Takahashi.

The commission announced that the motion was not sustained.

62. Q. What clothing was the first person killed wearing?
A. I have no recollection as to the clothing right now.

63. Q. I show you a picture and ask you if you can identify that picture.
(The judge advocate handed the witness Exhibit 1.)
A. I do not know this person.

64. Q. What clothing was the second person killed wearing?
A. I recall that he was wearing the ordinary clothing that the natives wore.

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65. Q. Do you know whether or not the first person killed was actually a native?
A. I thought he was a native.

66. Q. Do you know why these two people were executed?
A. I heard that they were spies.

67. Q. Who did you hear this from?
A. I heard this from Second Lieutenant Takahashi.

The witness was duly warned.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Saturday, January 29, 1949.

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FOURTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, January 29, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, ~~his~~ their counsel, and the interpreters.

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.

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

Cross-examined by the accused:

68. Q. Around June or July 1944, what was your position and duties at battalion headquarters at Taruga?
A. I was performing medical duties.

69. Q. At Taruga Battalion Headquarters, were you next in rank to Surgeon Takahashi concerning medical affairs?
A. I was next in rank.

70. Q. You testified that on the morning that two natives were executed you saw Tokunaga, a kempei, go to and fro at headquarters combine, but do you know whether Tokunaga, a kempei, had anything to do with the two natives who were at the headquarters then?
A. I do not know.

71. Q. Yesterday you testified that at the first execution after the native was made to sit down, Surgeon Second Lieutenant Takahashi said something to this native, but if you recall what Takahashi said to this native please state it.
A. I do not recall.

72. Q. This Koyama who stabbed the native, was he attached to the medical department?
A. No.

73. Q. During that time what was Koyama's position and duty at the headquarters?
A. He had line duties. Sometimes he had duty as guard and other times, farm produce duties.

74. Q. Was Koyama at the scene of the execution with some particular duties, or was he just there to observe?
A. I recall that he was a guard on that day.

75. Q. Please state clearly what Takahashi told Koyama when Takahashi ordered Koyama to stab.
A. I have forgotten the exact words spoken at that time, but I do recall that he ordered to stab.

76. Q. You testified that you believed the first person who was executed was a native, but please give the reason why you thought that this person was a native.
A. My first impression when I saw him was that he appeared to be a native, and I believe that he was a native.

77. Q. Was Captain Tokunaga present at either the first or the second execution?
A. At the scene I did not see Captain Tokunaga.

78. Q. Do you know when and who prepared the hole in which the victims were buried?
A. I do not know.

79. Q. You said yesterday that you recognized one of the accused as Koyama, Yoshio; is that the name you knew him by at Rota also?
A. He was known as Koyama.

80. Q. Koyama, Yoshio?
A. I testified yesterday that one of the accused was Koyama, Yoshio, but I believe that was by mistake and I believe his name is Koyama, Shigeo.

81. Q. Was this Kempei Tokunaga a different person than the Tokunaga that is in court today?
A. They are different persons.

82. Q. When Surgeon Takahashi was speaking to the native, was he speaking to him in Japanese?
A. It was Japanese.

83. Q. How far away were you from Takahashi when you say that he put powder in a cup?
A. About five meters.

84. Q. Could you see what color this powder was?
A. I could not see very well.

85. Q. Then you couldn't see what color the power was he put in the cup?
A. I recall the powder did not have any special color.

86. Q. What color is potassium cyanide?
A. I believe it is white.

87. Q. What kind of a drug is potassium cyanide?
A. It is a poison.

88. Q. How much of the drug is necessary in order that it becomes poison?
A. I do not know.

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89. Q. Do you know how much powder Surgeon Takahashi poured in this cup that day?
A. I do not know.

90. Q. How many persons besides you and Takahashi and Koyama were present at the first execution?
A. I recall it was around six or seven persons.

91. Q. Do you know who this runner was who you said Takahashi dispatched to headquarters?
A. I do not know.

92. Q. Do you know how long he was gone before he came back?
A. It appeared to be six or seven minutes.

93. Q. What happened to the native while this runner was gone?
A. He was in agony.

94. Q. Did you ever see this runner that was dispatched before he left or when he came back?
A. At that time I was shocked and was watching the native and I do not recall anything else.

95. Q. So that you really don't know then, that there was a runner dispatched or not?
A. I did not see a runner dispatched.

96. Q. Why then, did you say that there was a runner dispatched?

This question was objected to by the judge advocate on the ground that the accused was misquoting the testimony of the witness.

The accused withdrew the question.

97. Q. Your testimony regarding the runner then, was only what someone else had told you?
A. No.

98. Q. Did you see these six or seven other persons at this scene of the first execution?
A. Yes, I did.

99. Q. Do you know the names of any of them?
A. Yoshizaki, Koyama, Toyoda and Itagaki. The rest I have forgotten.

100. Q. After this first native was stabbed, did you see blood appear on his clothes?
A. I do not recall.

101. Q. You said there were persons standing around watching the second execution; how many persons were standing around watching the second execution and who were they?
A. After the first native was executed, the persons moved to the scene of the second execution and I believe there was no change in personnel.

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102. Q. Did they take the second native with them when they moved from the scene of the first execution to the scene of the second execution?
A. No.

103. Q. Where did the second native come from then, if you know?
A. This native came to the scene of the execution from the direction of the headquarters separately.

104. Q. Did the kempei bring him?
A. I do not recall.

105. Q. Do you recall what Takahashi said to this second native?
A. I do not recall.

106. Q. You said this second native was an old native; can you describe him in any way other than by saying that he was a native and old?
A. Other than that my recollection is that the native who was executed first was taller in height and the second native was shorter.

107. Q. When you came back from the air raid, did you examine the bodies of these two natives?
A. No.

108. Q. Then you didn't see if there was blood on either of the bodies?
A. The native who was executed first had blood on him when I saw him later, but the native who was executed the second time did not have any blood on him.

109. Q. Were the two bodies side by side when you saw them after the air raid?
A. No.

110. Q. Where were they then?
A. The scene of the executions were about one hundred meters apart and the body at the scene of the second execution was moved to where the body of the first execution was after we came out of the air raid shelter.

111. Q. Did you see any person move this second body?
A. I recall that there were Korean Gunzokus who moved the bodies.

112. Q. But you didn't see them?
A. I saw them.

113. Q. You saw them move the body after you came out of the air raid shelter or before?
A. After the air raid.

114. Q. Then it was the Korean Gunzokus that buried the bodies and not you?
A. I helped to bury them.

Reexamined by the judge advocate:

115. Q. Do you know to what unit Koyama was attached?
A. I do not know.

116. Q. To what unit was he attached?
A. Battalion Headquarters.

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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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and former rate?
A. Yoshizaki, Tokuichi, former surgeon sergeant, IJA.

2. Q. If you recognize the accused, will you tell us their names and their ranks?
A. From the left Captain Tokunaga, Akira, IJA; Takahashi, Yoshio, surgeon second lieutenant, IJA; Koyama, Shigeo, superior private, IJA.

3. Q. Have you ever served with the Japanese armed forces on Rota Island?
A. I have.

4. Between what dates were you there?
A. I was there from the latter part of March 1944 till the cessation of the war.

5. Q. And to what unit were you attached when you were there?
A. I was attached to the Tokunaga Battalion.

6. Q. To what particular section of the Tokunaga Battalion were you attached?
A. At the battalion headquarters.

7. Q. To what particular portion of the Tokunaga Battalion were you attached?
A. Taruga.

8. Q. You were in the medical department, were you not?
A. Yes, I was.

9. Q. What was the name of this medical outfit, or did it have a name?
A. There was no special name for it.

10. Q. Where was it located in June and July of 1944?
A. At the beginning it was located at Shinapara.

11. Q. Was it moved from there?
A. Yes, it was.

12. Q. To where was it moved?
A. Gumpapa.

13. Q. Is that a Japanese word?
A. It is a native word spelled "Gumpapa".

14. Q. Was it ever moved to Taruga?
A. After that it was moved to Taruga.

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15. Q. Was it at Taruga in June and July of 1944?
A. Yes, it was.

16. Q. Who was your superior officer in the medical unit?
A. It was Surgeon Lieutenant Takahashi.

17. Q. And who was the commanding officer of the battalion?
A. Captain Tokunaga.

18. Q. Do you know whether there were any natives executed on Rota Island while you were there?
A. Yes, there were.

19. Q. How many executions do you know of?
A. Three executions.

20. Q. Were you present at any of these executions?
A. Yes, I was.

21. Q. And how many executions were you present at?
A. Once.

22. Q. And at that execution, how many people were executed?
A. Two were executed.

23. Q. Do you know the names of these two persons who were executed?
A. I do not know.

24. Q. Can you identify them in any way?
A. I do not recall their features.

25. Q. Do you know their occupations?
A. I do not know.

26. Q. Do you know in what year these executions occurred?
A. Around the middle part of July 1944 I recall.

27. Q. Where did this execution take place?
A. At the battalion headquarters at Taruga.

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

Present: All the members, the judge advocate, 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.

Yoshizaki, Tokuichi, 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.

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(Examination continued.)

28. Q. Tell us about this execution that you attended.
A. Around the middle of July 1944, I don't recall the date clearly, in the morning two natives were brought to the battalion headquarters. After a lapse of time it was decided that the natives would be executed. I found out that the scene of the executions would be about one hundred fifty meters apart from the battalion headquarters. When I arrived at the scene of the execution Surgeon Second Lieutenant Takahashi was just administering a cup to the native. That native received the cup and he drank from it. It seemed that this cup contained some poison and as soon as he drank he fell down. For a time this native was in a state of agony and he was not able to die. I recall that Surgeon Second Lieutenant Takahashi ordered a runner to go to the battalion headquarters. After a time the runner came back. I was not aware of the content of the orders, but it seems that they had decided to stab him and thereupon Surgeon Second Lieutenant Takahashi ordered Koyama to stab the native.

The accused moved to strike out the words "It seemed that this cup contained some poison" and "it seems that they had decided to stab him" on the ground that they were speculative.

The judge advocate made no reply.

The commission announced that the motion was not sustained.

29. Q. Go ahead.
A. It appeared that Koyama hesitated awhile, but because it was orders he gave one stab.

The commission instructed the witness to give direct answers to the questions and to confine his answers to what he saw and what he heard.

30. Q. You say that after Koyama received this order from Takahashi he hesitated. Is that correct?
A. Yes, that is correct.

31. Q. After Koyama had received this order from Takahashi did Koyama say anything?
A. I recall that he did not say anything.

32. Q. How many times did Koyama bayonet this man?
A. I recall that it was once.

33. Q. Do you recall just where he bayoneted him?
A. I recall that it was around the portion of the heart.

34. Q. Was this bayonet attached to anything?
A. It was attached to the rifle.

35. Q. What happened after Koyama bayoneted the man?
A. The native died.

36. Q. What happened after this?
A. Then they proceeded to the second execution.

37. Q. Who went to the second execution?
A. What do you mean by who? Their names?

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38. Q. The number of people. Did everyone go to the second execution who was present at the first execution?
A. I recall that it was so.

39. Q. Did you go to the second execution?
A. I did.

40. Q. Tell us what you saw there.
A. I recall that it was located about fifty meters away from the Battalion headquarters. It was an establishment previously occupied by some unit and chairs and tables were there. Those who were present at the first execution came around to the place where the chairs and tables were located.

41. Q. Did they sit down?
A. I recall that some did sit down.

42. Q. Go ahead.
A. After a time a native was brought to the place. Surgeon Second Lieutenant Takahashi put the drug into some liquid.

43. Q. How do you know it was a drug?
A. I knew it because it was the same drug that was used in the first execution and I also knew that it was potassium cyanide when we proceeded from the place of the first execution to the place of the second execution.

44. Q. How did you know it was potassium cyanide?
A. I recall that I heard it from Surgeon Second Lieutenant Takahashi.

45. Q. After Takahashi put this potassium cyanide in a cup what did he do with the cup?
A. He gave it to the native.

46. Q. Did anyone else at that scene have a cup in their hands other than the native?
A. I recall that there was, but I am not sure of it.

47. Q. About how many people had cups, if you remember?
A. I recall that it was perhaps one or two.

48. Q. Do you know why they had these cups?
A. I did not know.

49. Q. Did the native drink from the cup?
A. Yes, he did.

50. Q. What happened after he drank from the cup?
A. After a moment he fell on his back and died.

The accused moved to strike out this answer on the ground that it was an opinion of the witness.

The judge advocate stated that he concurred, but only as to the words "and died".

The commission directed that these words be stricken out.

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51. Q. Did you examine this man after he fell down?
A. Soon after he fell down there was an air raid and everyone took to the air raid shelter.

52. Q. Did you go to the air raid shelter?
A. Yes, I did.

53. Q. Did you return to the scene after the air raid had ceased?
A. Yes, I did.

54. Q. When you got back there what did you find?
A. I saw this native in the same position as when he fell down.

55. Q. What was done with this native?
A. I recall that with the help of the conscripted Koreans he was buried.

56. Q. Was this native the only one that was buried in that grave?
A. I recall that two natives were both buried.

57. Q. Was the other native the native who had been killed at the first execution?
A. That is correct.

58. Q. Going back to the first execution, you said that it was decided that these natives would be executed. What do you mean by that?
A. By what I mean that the runner sent by Takahashi to the battalion headquarters came back with orders from the headquarters that the native should be stabbed.

59. Q. How do you know this?
A. I witnessed it.

60. Q. Did you actually hear what the runner told Takahashi?
A. I did not actually hear. That is why I do not know the contents of the order.

61. Q. Did you know before you went to the scene that these two natives were going to be executed?
A. Yes, I did know.

62. Q. How did you learn this?
A. On the morning of that day I heard it from rumors among the soldiers.

The accused moved to strike out this answer on the ground that it was hearsay.

The judge advocate stated that he concurred.

The commission directed that the answer be stricken out.

63. Q. Did you hear this from any of the accused?

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

The judge advocate made no reply.

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The commission announced that the objection was not sustained.

A. I do not recall hearing from any of the accused.

64. Q. How many people were present at the scene of the first execution when you arrived there?
A. I recall there were twelve or thirteen people.

65. Q. Did you arrive on the scene of the first execution before the native arrived or after he arrived?
A. Just a little after the native was brought to the scene of the execution.

66. Q. Did you actually see this drug put in the coffee?
A. At the first execution I did not see.

67. Q. How do you know anything was put in the coffee at all?
A. I knew about it when I saw this native drink from the cup and when he fell down.

68. Q. How did you learn about it?
A. When I saw this native fall down I knew that it was not an ordinary drug.

69. Q. At any time at either the first or second execution did you hear anyone read a sentence of execution to the natives?
A. Due to the fact that I was a little late in coming for the first execution I do not know whether they read or not, but I do not recall the reading of a sentence at the second execution.

70. Q. I show you a picture which is Exhibit 1 in this trial and ask if you can identify this picture.
A. I do not recall this picture.

71. Q. Do you recall how the first person who was executed was dressed?
A. I do not recall.

72. Q. Do you recall how the second person who was executed was dressed?
A. I also do not recall that.

Cross-examined by the accused:

73. Q. Do you recall who brought these natives to the battalion headquarters?
A. I heard it later that it was Kempei Tokunaga.

74. Q. Who did you hear it from?
A. I do not at present recall from whom.

75. Q. How did you come to be present at the executions?
A. I recall that Surgeon Second Lieutenant Takahashi said to me "How about going" and I felt that I should like to go to the execution and I did.

76. Q. At the first execution do you know who Surgeon Second Lieutenant Takahashi sent as a runner to battalion commander Tokunaga?
A. At present I do not recall.

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77. Q. Do you remember what Takahashi said to the runner?
A. I do not know.

78. Q. You testified that there were sixteen or seventeen people present at the scene of the first execution. Were they in proximity of the natives?
A. I recall that they were about five meters away from the native.

79. Q. Do you know how Koyama came to be present at the execution?
A. It was because Koyama was a guard.

80. Q. Did Koyama have a rifle with him when he was at the scene of the execution?
A. Yes. He had a rifle with him. It is customary that a guard has a rifle with bayonet attached to it.

81. Q. At that time how many guards with rifles were there at the scene?
A. I recall there were two or three.

82. Q. If you remember what orders Takahashi gave to Koyama, please state.
A. At that time I did not know, but later I heard that Takahashi said that he was to be stabbed by orders from the battalion commander.

83. Q. Who did you later hear this from?
A. At present I do not recall from whom I heard it.

84. Q. You testified that before the first execution a runner was dispatched from Takahashi to Tokunaga. Do you recall who the runner was?
A. I do not recall who he was.

85. Q. Do you recall whether the runner was Koyama or not?
A. I recall that it was not Koyama.

The witness was duly warned.

The commission then, at 11:20 a.m., adjourned until 10 a.m., Monday, January 31, 1949.

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FIFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, January 31, 1949.

The commission met at 10:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Elvin G. Gluba, 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.

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

(Cross-examination continued.)

86. Q. Now, when you arrived for duty on Rota, how long had you been in the Japanese Army?
A. Three years.

87. Q. Now, you said that when the doctor asked you to go to the execution you went because you felt you wanted to go to the execution. Is that because you wanted to see a spy executed?
A. Yes, that is so.

88. Q. Did you know who this spy that was going to be executed was before you went?
A. I did not know his name.

89. Q. At this execution was Kempei Tokunaga present at the execution?
A. I have no recollection.

90. Q. Although you have no recollection as to who this runner was that was sent to the headquarters, do you recollect if this runner was a kempei?
A. I recall that it was not a kempei.

91. Q. Was he a Japanese soldier?
A. Yes, he was.

92. Q. When he came back did he come back alone?
A. I recall that he was alone.

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93. Q. Now, when he came back did he report to anybody and if so, to whom did he report and what did he say?

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

The accused reframed the question.

94. Q. Did the runner report to anyone when he came back?
A. I remember that he reported to Surgeon Second Lieutenant Takahashi.

95. Q. What did he report to the surgeon?
A. I was not nearby and I did not directly hear the contents of the order.

96. Q. Do you recall what Doctor Takahashi did immediately after the runner had reported to him?
A. Yes, I do. Takahashi ordered Koyama to stab.

97. Q. Now, you said that Koyama hesitated before he stabbed. Did Doctor Takahashi say anything to him when he hesitated?
A. I do not recall.

98. Q. Now, you said that "it seems that they decided to stab him". Who did you mean by "they" and do you know why they decided to stab him?
A. By "they" I meant Second Lieutenant Takahashi who received the report from the runner. I do not know why they decided to stab him.

99. Q. You did not actually see any poison in this cup that the first native drank, did you?
A. No, I did not directly see it.

100. Q. When did you hear it from Takahashi that it was potassium cyanide?
A. I recall that it was in between the time when we proceeded to the second execution after the first execution.

101. Q. You said that you were a surgeon sergeant. Had you ever had any experience with people drinking potassium cyanide before this?
A. I was a corpsman sergeant instead of a surgeon sergeant.

102. Q. Do you know what a lethal dose of potassium cyanide is?
A. I do not know.

103. Q. Did Surgeon Takahashi tell you how much potassium cyanide he had put in the cup?
A. I did not hear.

104. Q. Was potassium cyanide kept at the dispensary?
A. At the beginning it was not kept there.

105. Q. Do you know where the doctor got the potassium cyanide that day?
A. The drug that was used on that day was obtained from Songsong Village a considerable time prior to the execution.

106. Q. Do you know for what purpose it had been secured a considerable time prior to the execution?
A. I do not know.

107. Q. Did you have charge of this drug after it had been procured from this village?
A. The drug was in the custody of Second Lieutenant Takahashi.

1200

108. Q. After the native had finished drinking the cup you say he was in agony. Did anybody examine the native after he had drunk the cup containing the potassium cyanide?
A. I recall that no one examined.

109. Q. Did anyone examine the body after Koyama had stabbed him?
A. I do not remember.

110. Q. Was the body buried immediately after Koyama had stabbed him?
A. No, it was not buried.

111. Q. Was the native wearing any clothes that day?
A. Yes, he was.

112. Q. When Koyama stabbed him this one time you said that it was in the vicinity of the heart. Did he stab right through his clothes?
A. Yes, he did stab right through his clothes.

113. Q. How soon after Koyama stabbed him was there an air raid?
A. I do not know definitely but I recall it was about fifteen to twenty minutes.

114. Q. Do you recall why this native was not buried during this fifteen to twenty minutes?
A. That is because the execution proceeded to the next scene.

115. Q. Did anyone order a guard to remain with this native when you proceeded to the second execution?
A. I do not recall.

116. Q. Do you recall who gave the doctor the potassium cyanide at the second execution so that he had it to mix in the cup?
A. I recall that the drug was in the possession of Second Lieutenant Takahashi.

117. Q. Do you recall how much of the drug he had?
A. I do not recall the amount he had in his possession.

118. Q. Do you recall how much of the liquid the second native drank?
A. I recall that it was one ordinary cupful.

119. Q. And it was after this second native drank that there was an air raid, is that correct?
A. Yes, that is so.

120. Q. And after the air raid all the persons that were present at the scene of the first and second executions returned, is that correct?
A. Do you mean that they went to the air raid shelter?

121. Q. Yes, did they all go to the air raid shelter?
A. Yes, I recall that all the personnel went to the air raid shelter.

122. Q. After the air raid was over did all the personnel return to the scene of the execution?
A. I am not certain whether all those who were present at the execution returned.

1201

123. Q. Do you recall the names of any of them that did return?
A. Surgeon Second Lieutenant Takahashi, Master Sergeant Kato, myself, and the rest I do not recall.

Reexamined by the judge advocate:

124. Q. Now, you said that you attended this execution because you wanted to see the execution of a spy, is that correct?
A. That is so.

125. Q. Do you know whether or not the persons executed were actually spies?
A. Yes, I heard that they were spies.

126. Q. Who did you hear it from?
A. I cannot say definitely from whom I heard it.

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

Examined by the commission:

127. Q. Do you remember whether or not either one of the victims in these two executions wore a beard?
A. I recall that the one who was executed first wore a beard.

128. Q. And the other one did not, is that correct?
A. I recall that the other did not.

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

The witness made the following statement: In my testimony the day before yesterday I said that I did not know the profession of those natives executed, but I recall that a considerable time after the execution I heard that one of them was a servant working at the church and the other a shoemaker. That is all.

The witness was duly warned and withdrew.

The commission then, at 10:50 a.m., adjourned until 9 a.m., tomorrow, Tuesday, February 1, 1949.

SIXTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, February 1, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and present address?
A. Ramon B. Blanco residing on Tinian.

2. Q. If you recognize these accused, will you tell us their names and former ranks if you know them?
A. Koyama.

3. Q. Which one is Koyama?
A. The person on the extreme end.

4. Q. Do you know the names of the other two?
A. I know only the battalion commander Tokunaga.

5. Q. Which one is he?
A. The one on the extreme left hand side.

6. Q. Have you ever lived on Rota Island?
A. Yes, I lived there.

7. Q. For how many years did you live on Rota Island?
A. Twenty-four years.

8. Q. Were you living on Rota Island during the war?
A. I did live on Rota during the war.

1203

9. Q. When did you leave Rota Island?
A. I left Rota in 1924.

10. Q. Well did you ever return there?
A. Yes, I did return to Rota.

11. Q. All right, were you on Rota Island in 1944?
A. Yes, I was.

12. Q. I show you a picture which is Exhibit 1 in this trial and ask you if you can identify this picture.
A. Yes, I know him by face.

13. Q. Do you know his name?
A. I learned of his name later.

14. Q. What is his name?
A. Miguel Timoner.

15. Q. Who told you his name; when did you learn his name?
A. From people.

16. Q. From people on Rota Island?
A. Yes, that is so.

17. Q. When in time did you learn his name?
A. I learned of his name after he was killed.

The accused moved to strike out this answer and all testimony of the witness concerning the identity of the person on the picture on the ground that it was hearsay.

The judge advocate replied.

The commission directed that the testimony of the witness concerning the name of Miguel Timoner be stricken out.

18. Q. Do you know who this man was? (The witness was shown Exhibit 1.)
A. He was a servant of the priest.

19. Q. Do you know how long he had been on Rota Island?
A. I do not know. He was residing on Rota for a long time, but I do not know the period.

20. Q. When was the last time you ever saw this individual?
A. Around the middle period during which we were subjected to air raids.

21. Q. Do you know in what year it was? Was it before or after the war?
A. I saw him before the end of the war.

22. Q. Where did you see him for the last time?
A. At the battalion headquarters.

23. Q. Tell us about it. What were you doing there?
A. I was digging up trenches.

24. Q. Where were you digging the trenches?
A. Behind the air raid shelter.

1204

25. Q. When you say air raid shelter, do you mean the battalion headquarters?
A. Yes, that is so.

26. Q. About what time of the day did you see this man?
A. I saw him in the afternoon.

27. Q. Was it early in the afternoon around lunch time, or late in the afternoon around evening?
A. Around evening I saw him after we had our noon meal.

28. Q. About what time did you have your meal?
A. Around eleven o'clock.

29. Q. Was it shortly after eleven that you saw him then?
A. About two o'clock.

30. Q. When you saw this man, was he with anyone?
A. Yes, he was with someone.

31. Q. Who was he with?
A. Ignacio de la Cruz.

32. Q. How long had you known Ignacio de la Cruz?
A. I knew him from childhood.

33. Q. Did you see anything happen to this servant of the priest?
A. Yes.

34. Q. What did you see happen?
A. I saw what was done to this man.

35. Q. What was done to him?
A. He was stabbed with a bayonet.

36. Q. Do you know who stabbed him with a bayonet?
A. Koyama.

37. Q. When you say Koyama, do you mean the man who is in court here today?
A. Yes, that is so.

38. Q. About how far away were you from Koyama when you saw him stab the man with the bayonet?
A. Approximately twenty-five meters away.

39. Q. Was there anyone else with the servant of the priest when he was stabbed by Koyama?
A. Yes, there was.

40. Q. How many people were there, do you remember?
A. There were about twelve persons.

41. Q. What were they; were they natives or Japanese?
A. They were Japanese and soldiers.

42. Q. How many times did you see Koyama stab this man?
A. Two or three times.

1205

43. Q. Was the man standing up or lying down when he was stabbed?
A. He was standing when he was stabbed.

44. Q. On the day that this man was stabbed, what kind of clothes was he wearing? Do you remember?
A. He had on a black kimono.

45. Q. Do you know whether or not he had a beard?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. Yes, he wore a beard.

46. Q. Do you know the names of any shoemakers on Rota Island?
A. Yes, I do know.

47. Q. Tell us all the names of shoemakers that you know of.
A. Benefacio Estabes.

48. Q. Was he on Rota Island during the war?
A. Yes he was during the first air raids, but afterwards he was taken somewhere.

Cross-examined by the accused:

49. Q. In what village were you living on Rota Island?
A. I was in Tatacho area on Rota Island.

50. Q. What were you doing on Rota Island; what was your profession on Rota Island during the war?
A. I was doing farm work.

51. Q. You testified that you recognized battalion commander Tokunaga and Koyama, but how do you come to recognize them?
A. I was employed at battalion headquarters and that is why I recognize them.

52. Q. When were you employed at the battalion headquarters?
A. I do not recall the month, but it was during the air raids.

53. Q. Was it before or after the servant of the priest was stabbed?
A. It was before.

54. Q. How long before?
A. About the middle of the air raids period.

55. Q. Did you meet this man frequently?
A. Yes, I did.

56. Q. For how long did you see this man?
A. I saw him for a long time.

1206

57. Q. About how many years?
A. For about twenty-four years.

58. Q. You were seeing him for twenty-four years and you say that you still did not know his name; is that correct?
A. I did not know his name.

59. Q. Where did Ignacio de la Cruz live on Rota Island?
A. He was living on Rota Island.

60. Q. In what village on Rota was he living?
A. He was living in the Tatacho village.

61. Q. What was the occupation of Ignacio de la Cruz?
A. I do not know.

62. Q. You testified that you saw the servant of the priest stabbed, but what were you doing at that time?
A. I was digging trenches.

63. Q. Were you alone then at that time?
A. Yes, I was alone.

64. Q. Do you mean that you were the only person who was digging the trenches?
A. No, there were two persons who were digging, but I was the only person who ran to the air raid shelter when the air raid came.

65. Q. Who was the other person?
A. Francisco.

66. Q. You testified that there were twelve or thirteen persons when the stabbing of the servant of the priest took place, but do you recall the names of any of them?
A. I recall only one person.

67. Q. And who is that?
A. Koyama.

68. Q. How is it that you remember Koyama's name?
A. When I went to the air raid shelter, I met Koyama.

69. Q. Was it Koyama alone that you met at the air raid shelter?
A. There were two or three soldiers with him.

70. Q. When you saw Koyama stab the servant of the priest, did you know it was Koyama or did you learn of his name afterwards?
A. I knew him previously.

71. Q. What you observed on that day was just the stabbing of the servant of the priest, or did you see something else?
A. I saw it before I entered the air raid shelter.

72. Q. State what you saw; did you ~~saw~~ see anything else other than the stabbing of the priest by Koyama; if so, please state?

The witness stated that counsel was speaking too fast and asked him to speak more slowly.

1207

The accused reframed the question.

73. Q. Did you see anything happen to the servant of the priest before he was stabbed by Koyama?
A. Nothing happened to him.

74. Q. Was it immediately after the servant of the priest was stabbed that you entered the air raid shelter?
A. I entered the air raid shelter after the servant of the priest was stabbed.

75. Q. How many years had you known this de la Cruz?
A. About five years.

76. Q. And how old a man was this de la Cruz?
A. I do not know.

77. Q. Can you describe him?
A. How do you mean by describe?

78. Q. Tell what he looked like.
A. Yes, I can tell.

79. Q. Will you tell what he looked like?
A. He was thin.

80. Q. Anything else?
A. And a short person, he was not big.

81. Q. Did he also wear a beard?
A. I do not recall that he wore a beard.

82. Q. Did you see him at the same time that you saw the man in the picture?

This question was objected to by the judge advocate on the ground that it was vague and not definite.

The accused reframed the question.

83. Q. Did you see de la Cruz at battalion headquarters at the same time that you saw the man that you identified in the picture?
A. Yes, I did see him.

84. Q. What was the color of the skin of de la Cruz?
A. Black. He was not too black though.

85. Q. What was the color of the skin of this man? (Exhibit 1 was shown to the witness.)
A. He was white.

86. Q. What was the color of his beard?
A. It was a mixture of black and white.

1208

87. Q. Did he have any hair on the top of his head?
A. Yes, he had.

88. Q. Was that also streaked with white?
A. Yes, it was white.

89. Q. Have you ever seen this picture (Exhibit 1) before you came into court today?
A. I never saw this photograph.

90. Q. You never saw it when you were on Rota?
A. No, I did not see it on Rota; I saw it when I came here.

91. Q. (The witness was shown Exhibit 1) Is this the way the man was dressed? Is this the way he looked that day you saw him at battalion headquarters?
A. Yes, he was dressed that way.

92. Q. How far away did you run, that is what was the distance from the trench to the air raid shelter?
A. About fifteen meters.

93. Q. Between the air raid shelter and the place you saw this man, was there a clearing?
A. Yes, there was a clearing.

94. Q. When you were working at the trench, you could not see this man, is that right?
A. No, I could not see him.

95. Q. Did you see him for the first time when you were entering the air raid shelter?
A. I saw him once before I started to work on the trenches.

96. Q. Where did you see him?
A. I saw him at the battalion headquarters. I saw him before breakfast.

97. Q. Who was with him?
A. He came together with Ignacio de la Cruz.

98. Q. Was there anyone else with him?
A. Yes, there was.

99. Q. Who?
A. A Chamorroan was with him.

100. Q. Do you know the name of this Chamorroan?
A. I do not know his name.

101. Q. Were you the first one that entered the air raid shelter that day?
A. I was the last to enter the air raid shelter.

102. Q. Did you talk to Koyama when you were in the air raid shelter?
A. I did not speak to him. I was afraid, and I did not.

103. Q. Did Koyama have his bayonet with him when he was in the air raid shelter?
A. Yes, he had the bayonet. He was removing the blood from his bayonet.

1209

104. Q. He was already in the air raid shelter when you got there, is that what you said?
A. Yes, he was in the air raid shelter.

105. Q. Were you the last one to leave the air raid shelter also?
A. I was the first to come out of the air raid shelter.

106. Q. Did you see this man (Exhibit 1) after you came out of the air raid shelter?
A. I did not see him afterwards.

107. Q. Did you see de la Cruz afterwards?
A. I did not see him.

108. Q. Did you see Koyama leave the air raid shelter after you left it?
A. I did not see him because I came out of the air raid shelter first.

109. Q. While you were in the air raid shelter, did anyone tell you that Koyama had stabbed a man?
A. Nobody spoke to me about it.

110. Q. But you saw him stab the man before you went into the air raid shelter, is that right?
A. Yes, I saw him stabbed.

111. Q. Where did you go after you left the air raid shelter?
A. After I left the air raid shelter I resumed work.

112. Q. Did you see the rest of the people that were in the air raid shelter that day?

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.

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

Present: All the members, the judge advocate, the accused, 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. Shiono, Shuichi, former first lieutenant, Imperial Japanese Army.

2. Q. Are you also known as Iwasawa, Shuichi?
A. Yes.

3. Q. Have you changed your name since the end of the war?
A. Yes.

4. Q. If you recognize these accused, tell us their names and former ranks?
A. Reading from the left, Tokunaga, Akira, former captain, Imperial Japanexe Army, Takahashi, Yoshio, surgeon second lieutenant, Imperial Japanese Army, and Superior Private Koyama, Shigeo.

5. Q. Have you ever served with the Japanese armed forces on Rota Island?
A. Yes.

6. Q. Between what dates were you on Rota Island?
A. From the latter part of March 1944 until the early part of September 1945.

7. Q. Were you a company commander on Rota?
A. Yes.

8. Q. What was the name of your company?
A. First Company.

9. Q. What was the name of the Battalion to which you belonged?
A. First battalion.

10. Q. What was the name of the battalion commander?
A. Tokunaga, Akira.

11. Q. To your knowledge were there any natives executed on Rota Island?
A. Yes.

12. Q. How many natives were executed?
A. As I recall four or five natives.

13. Q. Did you ever take part in the execution of any natives?
A. Yes.

14. Q. How many executions did you take part in?
A. Once.

15. Q. When was that, if you remember?
A. I do not recall.

16. Q. Approximately when?
A. As I recall it was around September, but I am not certain of the date.

17. Q. September of what year?
A. 1944.

18. Q. How many natives were executed in this execution?
A. Onge.

19. Q. Tell us about it.
A. As I recall it was around September of 1944. There was a telephone call from battalion headquarters to report to battalion headquarters. I therefore went to battalion headquarters where the battalion commander read the sentence to a native and stated that he had been connected with spy activities and that there was an order from commanding officer on Guam that he was to be executed and that he was to be executed at my company.

20. Q. What kind of a sentence was this?
A. You are referring to the substance of the sentence?

21. Q. Yes.

A. As I recall the sentence included the crime and also stated that in accordance with the order of the commanding officer on Guam and in conformance to the Japanese Army Criminal Code that this person was to be executed.

22. Q. Did he read this from a piece of paper?
A. Yes.

23. Q. What happened after this?
A. As I received this order I took this native back to my company and arriving at the company I ordered platoon commander Yoshimura to execute this prisoner as he had been connected with spy activities and as there had been an order for his execution issued by the commanding general on Guam and as an order had been issued by the battalion commander that the execution take place at my company.

24. Q. Did you tell Yoshimura about the sentence?
A. I did.

25. Q. What happened then?
A. The execution was performed on the following day under the direction of platoon commander Yoshimura.

26. Q. Were you present at this execution?
A. I was.

27. Q. Who actually executed this man?
A. I do not recall.

28. Q. Do you know how he was executed?
A. He was shot to death by a command issued by platoon commander Yoshimura.

The accused moved to strike out the words "to death" from this answer on the ground that they were an opinion of the witness.

The judge advocate made no reply.

The commission announced that the motion was not sustained.

29. Q. How many men shot this individual?
A. As I recall, two men.

30. Q. What was done with the body?
A. Under the direction of platoon commander Yoshimura it was buried.

31. Q. Do you know the name of this native?
A. I do not recall.

32. Q. Do you know whether or not this native was actually a spy?
A. Yes, I know from what I heard and from reports received.

33. Q. What did you hear?
A. I had heard rumors to the effect that flare bombs and light signals had been seen from prior to the American air raids and I had on hand reports from my soldiers that flares had been observed by them.

34. Q. Did you ever hear that this particular native had shot off any of those flares?
A. No.

35. Q. Do you know whether or not this particular native was given a trial before he was executed?
A. I did not know.

36. Q. In what area was this execution carried out?
A. In the Taruga district.

Cross-examined by the accused:

37. Q. You testified that you recalled the executions of five or six natives, however you further testified that you were present at the execution of only one native. How do you account for the recollection of the other executions?
A. I heard of them.

38. Q. From whom did you hear them?
A. I do not recall.

39. Q. Do you know for what reasons they were executed?
A. I heard that they were executed for their connection with spy activities.

40. Q. Were all the others natives who were executed?
A. I heard they were all natives.

41. Q. At what time of the day did this execution take place at which you were present?
A. As I recall it took place in the afternoon.

42. Q. About what time in the afternoon?
A. I do not clearly recollect the time.

43. Q. Was it still light or was it after dusk?
A. It was still light.

1213

44. Q. Did you determine the time of the execution?
A. Platoon commander Yoshimura decided the time.

45. Q. Do you know the reason why he chose the time of day when it was still light for the execution?
A. I do not.

46. Q. For what reason was the execution postponed until the following day after you had received the battalion commander's order?
A. As platoon commander Yoshimura requested that the execution be postponed until the following day so that he may have time to make his preparations, I granted the request.

47. Q. In what area was the company located?
A. In the Taruga area.

48. Q. You testified that you knew of the spy activities of this one native who was executed through reports. From whose reports did you know this?
A. As I recall it was a report made by a soldier of the first platoon, however I do not recall his name.

49. Q. Do you know if any persons were assigned to investigate spy activities?
A. I heard later that Second Lieutenant Okuyama who was in the Tatacho District was engaged in this work.

50. Q. You testified definitely concerning flares and other types of signals. Did you in person see any flares or other signals?
A. I did not see any signals in person, however I do not recall the period but when I was phoning battalion headquarters and conversations of other parties on the line were heard during our conversation and I was warned at that time by battalion commander Tokunaga to be careful in conversing over the phone.

51. Q. Had you heard of any spy activities other than the flares and signals to which you have testified?
A. I do not recall.

52. Q. Do you know from what period of time this native who was executed was interned and where he was interned?
A. I have a recollection to the effect that he had been interned at Song Song Village.

53. Q. You testified that at the scene of the execution shots were fired at the command of Yoshimura? How many shots were fired?
A. As I recall, one round per person.

54. Q. After that was an examination made of the body to certify death?
A. As I left the scene when the soldiers under the direction of the platoon commander began to bury the body, I do not have a recollection.

55. Q. You were there at the scene until the burial commenced. Is that correct?
A. Yes, until the burial commenced.

56. Q. And there was no examination made to certify death. Is that correct?
A. I myself did not examine him.

12 14

57. Q. Did you object to the orders to execute this native at your company?

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. No.

58. Q. Did you see what was written on this paper that the battalion commander read from?
A. No, I did not see.

59. Q. Could you see whether it was a judgement form paper?
A. I was not acquainted with judgement form papers but I was convinced that it was such a document.

60. Q. Where did you hold this person after you had taken him back to your company?
A. I placed him in front of the company headquarters squad.

61. Q. Under guard?
A. Yes.

62. Q. Was he mistreated before you executed him?
A. No.

63. Q. What two men shot this person?
A. I do not recall their names.

64. Q. Were they members of your company?
A. As I recall they were naval enlisted men attached to my company.

65. Q. Had you been told to use naval enlisted personnel to execute this native?
A. No, I was not so ordered.

66. Q. Before you executed this person did you tell him why he was being executed?
A. I did.

67. Q. Did he admit that he had taken part in spy activities?
A. I heard that he did.

68. Q. Who was present at the execution beside yourself?
A. I seem to recollect certain other persons being present but I do not recall their names.

69. Q. Were there any other naval personnel present except the two persons who shot the victim?
A. I am not clear on that point.

70. Q. Did you take care of and order all the details of this execution as to who was to shoot the person, the place and the time, or did you leave this to someone else?
A. These things were done by platoon commander Yoshimura.

71. Q. Before the execution did you publish a notice that you were to execute a spy?
A. I did not.

72. Q. After the spy had been executed was a notice issued to your own troops and to the native population that a spy had been executed?

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. I did not.

73. Q. Did you report to the battalion commander that you had carried out his orders to execute this spy?
A. I did.

74. Q. Who selected the place of burial and who ordered the body buried?
A. Platoon commander Yoshimura.

75. Q. Did you order the place of burial to be marked with a marker?

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.

76. Q. Was the grave of this victim marked in any way?

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. I did not.

Reexamined by the judge advocate:

77. Q. A few minutes ago you were asked a question "Did the native admit that he had taken part in spy activities?" and you answered "I heard that he did." From whom did you hear that?
A. I heard from battalion commander Tokunaga.

78. Q. You didn't hear it from the native himself, did you?
A. I did not.

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.

The commission then, at 11:30 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

Elvin G. Gluba, 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. Yoshimura, Suekichi, former engineering warrant officer, Imperial Japanese Navy.

2. Q. If you recognize the accused, state as whom.
A. From the left Tokunaga, Akira, captain, Imperial Japanese Army; Surgeon Takahashi, and I do not know the third person.

3. Q. Were you ever stationed on Rota Island?
A. Yes.

4. Q. Between what dates did you serve on Rota Island?
A. From 10 June 1944 until the end of the war.

5. Q. And to what units were you attached while you were on Rota?
A. I was attached to the Shiono company of the Tokunaga battalion.

6. Q. What was your specific job? Were you a platoon commander?
A. I was a platoon commander.

7. Q. Were the men in your platoon members of the Army or the Navy?
A. They were members of the Navy.

8. Q. Who was your immediate commanding officer?
A. My immediate superior officer was Shiono, Shuichi, first lieutenant, Imperial Japanese Army.

9. Q. To your knowledge how many natives were executed on Rota Island?
A. As I heard four or five natives.

10. Q. Did you ever take part in an execution yourself?
A. Yes.

11. Q. Can you tell us when that was?
A. As I recall it was around the middle of July 1944.

12. Q. How many natives were executed in this incident?
A. One.

13. Q. Do you know the name of this native?
A. I do not know.

14. Q. Tell us the details of the execution.
A. Around the middle of July of 1944 I was ordered to execute a native by the company commander. At that time I was told by the company commander that he had been ordered to execute this native by orders of the battalion commander, and that this native had been guilty of spy activities, further that reports had been submitted to the supreme commander on Guam for the execution and that the execution had been ordered by him. Further that a sentence had been read to this native. I took two enlisted men to where the company commander was to receive this native and as it was late in the day I asked permission that the execution be postponed to the following day to which permission was granted by the company commander.

15. Q. What happened the next day?
A. I ordered a hole dug on that day and on the following day I ordered two enlisted men to form a firing squad and I had the native shot.

16. Q. Did you have the native blindfolded?
A. I did.

17. Q. How many people shot him?
A. Two men shot him.

18. Q. What were the names of these two men?
A. Hamada, Matsushige; Seike, Kiyokazu.

19. Q. Did you tell these two enlisted men that the native had been sentenced to death?
A. I did.

20. Q. After he was shot what was done with the body?
A. It was buried.

21. Q. Who buried it?
A. Under my direction Hamada and Seike buried the body.

22. Q. Now, in what area on Rota did this execution take place?
A. In the Taruga district.

Cross-examined by the accused:

23. Q. You testified that you were attached to the Shiono unit on 10 June 1944, did you arrive on Rota before that date?
A. I was not on Rota prior to that date.

24. Q. You testified that this native was executed for spy activities. Do you know of any concrete instances of his spy activities?
A. Strict orders had been issued from battalion commander Tokunaga to be on the alert for spy activities and to arrest spies and at our company there were double guards posted and this order was strictly carried out, and I recall that I witnessed on two or three occasions flares at night and also red and green signal lights over the sea, and I heard that at night light signals were being constantly used and that during the daytime signals were made to the enemy by use of pieces of cloth, et cetera.

25. Q. What activities did you actually witness?
A. As I recall what I witnessed was the shooting of red and green flares on two or three occasions at night.

26. Q. Were these flares seen rising from Rota Island or out at sea?
A. I saw these flares rising both from Rota and from the sea.

27. Q. These spy activities of which you know are what you have just mentioned, is that correct?
A. Yes, that is so.

28. Q. Do you know what relationship existed between the native who was executed and these spy activities?
A. No, I do not.

29. Q. Were you present when the sentence of execution was read to the native?
A. I was not present.

30. Q. Who were present at the scene of the execution when the execution took place?
A. Myself, Hamada, Seike.

31. Q. Were not the company commander and the battalion commander present?
A. No, they were not.

32. Q. In what part of the body of the native did the shots fired by the two men strike?
A. They struck the native on his chest.

33. Q. How many rounds did these two men fire?
A. Each man fired one round.

34. Q. Do you mean, then, that the two shots scored hits on his chest, is that correct?
A. Yes.

35. Q. Did you immediately bury the body?
A. Yes, immediately.

63. Q. Did you make certain that the victim was dead?
A. I did.

37. Q. Did you report the conclusion of the execution to the company commander?
A. After the execution was over I reported to the company commander.

38. Q. You testified previously that four or five natives had been executed. Do you know for what reasons they were executed?
A. I heard that they were executed because they had acted as spies.

39. Q. From whom did you hear this?
A. I do not recall.

40. Q. Was this native executed by you in the jungle?
A. There was a clearing in the jungle area and the execution was performed there.

41. Q. And the only persons present at this execution were you and these two sailors, is that correct?
A. Yes.

42. Q. What time of day did this execution take place?
A. As I recall in the morning.

43. Q. How do you recall the time of the execution as being the middle of July 1944?
A. I reported for duty on Rota on the 10th of June 1944 and on the 14th of June I was attached to an Army unit and was stationed at a gun position, and to the best of my recollection, it was about a month after my arrival on Rota that this incident took place.

44. Q. Did you also execute a native in September of that year?
A. I did not.

45. Q. Do you recall the words that the company commander used in ordering you to execute this native?
A. The order of the company commander was as follows: "This native is guilty of spy activities and orders have been received from the commanding general on Guam to execute him. The battalion commander has read the sentence of execution to him and I have received this native from him, the battalion commander, and you will execute this native at your unit."

46. Q. Was this unit the unit you said you were attached to on the 14th of June?
A. In the last answer the word "unit" was used to mean my platoon.

47. Q. Was your platoon attached to this Army company?
A. Yes.

48. Q. Who was the company commander of that Army company?
A. First Lieutenant Shiono.

49. Q. Who ordered your platoon attached to this Army company and for what purposes were you attached to this Army company?
A. I was detached from my original unit and attached to this Army company by orders of Lieutenant Motokawa, Imperial Japanese Navy, the commanding officer of my original unit.

50. Q. Were you ordered attached to this Army company just for the purpose of executing this spy?
A. No, that is not so.

51. Q. It was your duty to execute this spy though, is that right?

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.

52. Q. Now, you said that the supreme commander on Guam had ordered this execution. Isn't it true that when you executed this native that the supreme commander on Guam was an American?
A. The execution took place around the middle of July and the Japanese officer was in occupation of Guam.

53. Q. Why did you request permission to postpone the execution?

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

The accused withdrew the question.

54. Q. You testified that you told these executioners, these two sailors of yours, that this native had already been sentenced to be executed. Did you tell these sailors who had sentenced this native to be executed?
A. I told the two enlisted men that it was an order from the company commander, that the company commander had received his orders from the battalion commander, that in turn the battalion commander had received orders for the execution from the commanding general.

55. Q. Did they object to carrying out your order to execute this native?

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.

56. Q. Did you hear the battalion commander order your company commander to execute this native?

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.

57. Q. Did your company commander tell you how to execute this person?
A. The order was to execute the native.

58. Q. He didn't tell you to shoot this native, did he?
A. He merely told me to execute the native.

59. Q. And after he turned this native over to you he never saw the native again, did he?

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

The accused replied.

The commission announced that the objection was sustained.

60. Q. Are you sure that the company commander Shiono was not present when you executed this native?
A. Yes, I am certain.

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61. Q. And are you sure that he did not see you bury this native?

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

The accused made no reply.

The commission announced that the objection was sustained.

62. Q. Did you see your commanding officer Shiono at the time you buried this native?
A. I did not.

63. Q. Do you know where your commanding officer Shiono was when you executed and buried this native?
A. No, I do not.

64. Q. When did you report to your company commander that you had carried out his orders to execute this person?
A. Either in the evening or the night of the same day.

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

Examined by the judge advocate:

1. Q. State your name, rank, and present duty station.
A. Joseph A. Regan, lieutenant commander, judge advocate of this military commission.

2. Q. If you recognize the accused, state as whom.
A. I recognize the accused as Tokunaga, Takahashi, and Koyama.

3. Q. Are you the legal custodian of certain documents which you desire to introduce into evidence?
A. I am.

4. Q. How many documents are there?
A. There are three documents.

5. Q. What documents are they?
A. Two of the documents are statements by the accused Koyama and the third document is a statement by the accused Takahashi.

6. Q. Are the documents in the handwriting of the accused?
A. They are.

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7. Q. Where were they written?
A. Two of the statements were written in Japan and the third was written at the War Crimes Stockade here on Guam.

8. Q. Do you know under what circumstances the accused wrote out their statements in Japan?
A. I do not.

9. Q. How did you receive the documents?
A. They were forwarded to me by the Liaison Officer of the Director War Crimes, Pacific from Tokyo.

10. Q. What did you do with the documents when you received them?
A. One statement by Takahashi was received sometime in June or early July of 1948. The statement by Koyama was received sometime in July of 1948. In December of 1948 I took both documents to the stockade and exhibited them to the accused. I interviewed the accused Koyama first. I showed him the statement and asked him if it was a statement made out in his own handwriting. He said that it was. I asked him if the statement was true and he said that it was. I had the interpreter read to him from the English translation that we had made of Koyama's statement. The interpreter read the English into Japanese while Koyama had his own statement before him and followed the translation to check it against the Japanese contained in his own statement. After this procedure had been completed I asked Koyama if he would swear that he had had read to him the translation of his statement and whether he would swear that the statement was the truth to the best of his knowledge and belief. He said that he would and in my presence he did. On the second document from Koyama, the second document was taken at the same time as the certification of the first document I mentioned. I questioned him about a certain phase of the execution of the native and asked him to write out a short statement concerning this native and what he had done and in my presence he wrote out this statement which I have had translated. In the case of Takahashi who was interviewed after I had finished talking to Koyama, I exhibited to him his statement and asked him if it was in his own handwriting. I asked him to read over the statement and to tell me whether or not it was correct. He read over this statement and made certain corrections in it. The original statement was written in pencil and the corrections which he made on December 7th were in ink. When he finished correcting it he swore that the statement as corrected was true.

11. Q. Did you make either of the accused any promises or threaten them in any way to have them swear to their statements?
A. I did not.

The statements of Koyama and the statement of Takahashi were submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused:

12. Q. When you received these documents in what language were they written?
A. I received both of the statements written in the handwriting of the accused in Japanese and also a translation of these documents made by Lieutenant Tremayne at the same time.

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13. Q. When you met Takahashi and Koyama on Guam was there anybody else present other than you?
A. Yes, I had an interpreter, Mr. Frederick Savory, and a yeoman from our office by the name of Gluba, yeoman first class, with me.

14. Q. These documents when you received them from Japan were not sworn to, is that correct?
A. That is true.

15. Q. When you interviewed Koyama and he swore to this statement did he swear to the Japanese original or to the English translation?
A. From a reading of this I cannot honestly say what the "it" refers to in the certification. However I would say he swore to the translation of his statement.

16. Q. Do you know whether Koyama understands English?
A. I do not believe that he does.

17. Q. When Takahashi read over again the statement, did he correct the Japanese statement or the English translation?
A. Takahashi corrected the Japanese.

18. Q. He swore that the statement was correct but to which statement did he swear to be correct, the English or the Japanese?
A. Takahashi was swearing to the truth of his corrected statement in Japanese.

19. Q. When these statements were made by Koyama and Takahashi in Japan, did they write that they were voluntarily made?
A. No, they did not.

20. Q. When Koyama made the additional statement on Guam did Koyama voluntarily make it or did you order him to make it?
A. I did not order him to make any statement. I requested him to make a statement.

21. Q. What was the heading of Koyama's statement, for instance, statement, affidavit, or such?
A. On his original statement there is nothing about its being an affidavit, it is merely an account of his activities. The other statement which he swore to is an affidavit.

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Joseph A. Regan, the judge advocate, the witness under examination when the recess was taken resumed the stand as a witness for the prosecution. He was warned that the oath previously taken by him was still binding, and continued his testimony.

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(Cross-examination continued.)

22. Q. Did you question Koyama and Takahashi on the same day, December 7, 1948?
A. I did.

23. Q. Was this the first time that you questioned them since they arrived on Guam?
A. I believe it was, yes.

24. Q. Now at the time you interviewed them on December 7, 1948, you knew, didn't you, that they had both been held in close confinement in Sugamo Prison and in solitary confinement on Guam since they arrived?
A. I did.

25. Q. And had the charge and specifications which is dated December 9, 1948 already been prepared, naming these two people as accused at the time you interviewed them?

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

The accused replied.

The commission announced that the objection was sustained.

26. Q. When did you deliver the charge and the specifications to Koyama and Takahashi?
A. On the tenth of December 1948.

27. Q. On December 7 when you interviewed them, didn't you know that they were to be charged for the crime which you asked them to make a atatement or affidavit?

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.

28. Q. Are you authorized to administer an oath for judicial purposes other than here in court simply as judge advocate by virtue of your rank as a Navy officer?
A. Possibly not a formal oath, no.

29. Q. Then would you say that this oath that you administered to these two persons was an oath that you were not authorized to administer?
A. I merely asked them if they swore to the truth of the statement without their raising their hand or any other solemnity - merely to say whether it was the truth.

30. Q. When you secured these purported confessions, affidavits, or statements from Koyama and Takahashi on December 7, 1948, did they have benefit of counsel?
A. They did not.

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The accused objected to the receipt in evidence of the statements of Koyama and the statement of Takahashi on the ground that they were not made voluntarily, that they were taken illegally, and on the further ground that they were not in accordance with Section 174, Naval Courts and Boards.

The judge advocate replied.

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

The commission announced that the objections were not sustained. There being no further objections, they were so received and are appended marked "Exhibit 2", "Exhibit 3", and "Exhibit 4".

Reexamined by the judge advocate:

31. Q. Will you read the statement of Takahashi?

(The witness read Exhibit 2.)

32. Q. Will you read Exhibit 3?

(The witness read Exhibit 3.)

33. Q. Will you read Exhibit 4?

(The witness read Exhibit 4.)

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

The commission did not desire to examine this witness.

The witness resumed his seat as judge advocate.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Wednesday, February 2, 1949.

SEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, February 2, 1949.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

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. Imagawa, Shigeo, former major, Imperial Japanese Army.

2. Q. If you recognize the accused tell us their names and former ranks.
A. By former rank do you mean at the time of cessation of the war?

3. Q. Yes.
A. From the right Tokunaga, Akira, former major, Imperial Japanese Army, Takahashi, Yoshio, former surgeon first lieutenant, Imperial Japanese Army, and Koyama whose first name I do not know and whose rank I am not sure, but I believe was leading private.

4. Q. Have you ever served with the Japanese Army on Rota Island?
A. Yes.

5. Q. When did you go to Rota Island?
A. I went to Rota Island 10 June 1944.

6. Q. And what was your rank in June 1944?
A. I was major, Imperial Japanese Army.

7. Q. Who was the commanding officer of the troops on Rota Island when you arrived?
A. Tokunaga, Akira, captain, Imperial Japanese Army.

8. Q. Did you relieve Tokunaga of his command when you went to Rota Island?
A. No, I did not.

9. Q. Did you take command of these troops when you went there by virtue of your seniority?
A. I took command from around July 20, 1944.

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10. Q. Who was in command until July of 1944?
A. It was Captain Tokunaga.

11. Q. What were you doing on Rota Island before you took command of the troops?
A. The purpose for my going to Rota Island was for a two day scheduled inspection of Rota Island from Guam, but due to air raids I was unable to return after the inspection. Four or five days later orders came from the division headquarters telling me that I should supervise and direct operations on Rota.

12. Q. Did these orders place you in command of the troops on Rota Island?
A. That is not so.

13. Q. While you were present on Rota Island were there any natives executed there?
A. Yes, there were.

14. Q. How many natives were executed?
A. There were approximately five persons.

15. Q. Were you present at any of these executions?
A. I was not present.

16. Q. How do you know five individuals were executed?
A. I heard about it.

17. Q. Who did you hear it from?
A. I recall it was from Captain Tokunaga, but I am not certain because I had information from various sources.

18. Q. Do you know why these people were executed?
A. They were executed for spy and subversive activities and commission of acts favorable to the enemy.

19. Q. Was there a Catholic brother on Rota when you got there?

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

The judge advocate withdrew the question.

20. Q. Were there any missionaries on Rota when you got there?
A. I do not know.

21. Q. Were there any churches on Rota when you got there?
A. After some time after my arrival I found out that there was a church.

22. Q. Were there any individuals there in charge of that church?
A. I do not know.

23. Q. Was there a Catholic brother on Rota Island when you ~~did~~ there?
A. I do not know.

24. Q. Was there a servant of a missionary on Rota Island while you were there?
A. I heard that there was a servant of a missionary.

25. Q. Do you know what happened to him?
A. I heard that he was executed for spy and subversive activities.

The accused moved to strike out this answer on the ground that it was hearsay and speculative.

The judge advocate replied to the motion of the accused.

The commission directed that the answer be stricken out.

26. Q. From whom did you hear this?
A. I do not recall definitely from whom I heard it.

The judge advocate requested a recess.

The commission then, at 9:30 a.m., took a recess until 9:40 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the reporter, the accused, their counsel, and the interpreters.

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

27. Q. Had these five men that were executed been arrested before they were executed?
A. Yes.

28. Q. Do you know whether or not Captain Tokunaga sent a dispatch to Guam concerning these people?
A. Yes, I know.

29. Q. Did he discuss this dispatch with you before he sent it?
A. Yes, he did.

30. Q. Do you know whether or not he received an answer to his dispatch?
A. Yes, I do know.

31. Q. Do you know what the answer was?
A. I do not recall the contents definitely but it was in accordance with the article so-and-so of the Army Criminal Code they shall be executed.

32. Q. Do you know whether or not they were executed?
A. Yes, I do know.

33. Q. Who told you that they were executed?
A. Captain Tokunaga.

34. Q. What was Takahashi's rank in 1944, if you know?
A. I do not know exactly when he became first lieutenant, but he was either second lieutenant or first lieutenant.

35. Q. Do you know what Koyama's rate was in 1944?
A. I did not.

36. Q. Was there a legal officer on Rota Island to your knowledge?
A. There were none.

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37. Q. Do you know whether or not these natives who were executed were given a trial before they were executed?
A. They were not given a trial.

Cross-examined by the accused:

38. Q. What was Tokunaga, Akira rank around June and July of 1944?
A. He was Captain, Imperial Japanese Army.

39. Q. You testified that you went to Rota Island on an inspection tour, but to what unit were you attached?
A. When I went to Rota Island I was attached to the Army Infantry School as an instructor and I had orders from the Inspector-General of Military Training to be dispatched to the South Seas and to be temporarily attached to the units at which I was to instruct.

40. Q. You testified that four or five days after your arrival on Rota the division headquarters gave orders for you to supervise and direct operations there. Will you state the name of the division headquarters and its location?
A. The name of the division was the Twenty-ninth Division and it was located on Guam.

41. Q. Who was the commanding general?
A. Lieutenant General Takashina.

42. Q. After you received from the division headquarters orders to direct and supervise operations, what did you actually do then?
A. Captain Tokunaga used to confer with me regarding the construction of positions and because there were frequent air raids and the air raids destroyed the supplies, I was engaged in collecting supplies. For instance, if I found a supply of sulphuric acid, I would try and transfer it to some safer place.

43. Q. According to your testimony then, is it correct to say that Tokunaga was mainly engaged in the construction of positions and matters concerning positions?
A. Not only construction of positions, Captain Tokunaga had command over operational matters.

44. Q. You testified regarding this spy and subversive activities of the natives, but from the standpoint of supervision and direction of operations, were you not also concerned with the investigation and control?
A. Yes, to a certain extent I had an interest in them.

45. Q. Is it not a fact that because Captain Tokunaga was busily engaged in the operational matters that you were actually in charge of civil matters and intelligence?
A. Regarding intelligence I saw those dispatches sent from Tokunaga as well as those sent to Tokunaga from division headquarters, but as I was a newcomer to the island and not well informed regarding the island, I was not concerned with civil matters.

46. Q. Did you know what sort of investigations were being carried out regarding spy and subversive activities on the part of the natives?

This question was objected to by the judge advocate on the ground that it was beyond the scope of the direct examination.

1230

The accused withdrew the question.

47. Q. You testified that Tokunaga conferred with you before he sent a dispatch regarding the execution of the natives. What did Tokunaga discuss with you?
A. I do not recall very well, but what Tokunaga told me was that as there were no legal officers and that after one week from arrest material events had been brought up through investigation and Tokunaga himself could do nothing except to ask for direction from division headquarters and that he decided to send a dispatch to that effect.

48. Q. Did you see the contents of the dispatch sent by Tokunaga?
A. I recall that I did see it.

49. Q. Please state the contents of that dispatch to the best of your recollection.
A. First, the facts regarding spy and subversive activities were listed and then there was a request of what to do with these natives who had committed them. This was written on two or three pages of the dispatch form in code.

50. Q. Around June or July of 1944 where was this legal officer in the Marianas?
A. To the best of my knowledge, the only legal officer in the Central Pacific Area was on Saipan under the Thirty-first Army.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Imagawa, Shigeo, 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.)

51. Q. Although you said that you had orders from the Inspector-General, Military Training and reported to Rota, isn't it true that you first reported to the Commanding General on Guam and that he gave you orders to report to Rota?
A. Yes, that is so.

52. Q. When did you report to the Commanding General on Guam?
A. June 6, 1944.

53. Q. What orders did the Commanding General on Guam give you whereby you reported to Rota?
A. When I reported to the Twenty-ninth Division Headquarters on June 6th, I thereupon made a training plan for the Twenty-ninth Division and received permission to tour for that purpose and I scheduled a two day inspection tour for Rota from June 10th to 11th.

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54. Q. Were you on Rota from June 10th until July 20, 1944?
A. Yes, I was.

55. Q. Now, by what authority and by whose orders did you take command at Rota on July 20, 1944?
A. I assumed command by a wireless order from the Commanding General of the Twenty-ninth Division to which I was temporarily attached.

56. Q. When you originally reported on Rota on June 10, 1944 did you show your orders to Captain Tokunaga?

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. I recall that I showed him the training plan, and there were no orders.

57. Q. Isn't it true that the reason that Captain Tokunaga discussed these spy matters with you was because they were operational matters?
A. That is so.

Reexamined by the judge advocate:

58. Q. Were these executions completed before you took command on Rota Island?
A. Yes.

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.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name, rank, and present duty station?
A. Maurice E. Currie, commander, USNR, I am in the office Director War Crimes, Pacific Fleet.

2. Q. If you recognize the accused, will you tell us their names and former ranks?
A. I only recognize Major Tokunaga.

3. Q. Which one of the three is Tokunaga?
A. The one on my left.

4. Q. Have you ever had occasion to talk to Tokunaga?
A. I have.

5. Q. I show you a document and ask you if you recognize the document. (The judge advocate handed the witness a document.)
A. I do.

6. Q. What is that document?
A. These are the questions that I propounded to Major Tokunaga in Sugamo Prison and the answers he gave thereto.

7. Q. When did you talk to Tokunaga in Sugamo Prison?
A. I took this statement from him on October 28th and November 1st, 1948.

8. Q. Is that statement in English?
A. It is.

9. Q. To your knowledge does Tokunaga speak English?
A. Not to my knowledge.

10. Q. Will you tell us the details of how you took that statement?
A. Tokunaga was in Sugamo Prison. I went out to interview him and I told him that the War Crimes office had some information relative to the execution of a Catholic priest and others on Rota Island and that I wanted to ask him some questions relative to this case.

11. Q. Did you have an interpreter with you?
A. I did.

12. Q. Who was the interpreter?
A. Yoshio Yasui.

13. Q. Have you used this interpreter on prior occasions?
A. Many times.

14. Q. Did you have a yeoman with you?
A. I did.

15. Q. Who was the yeoman?
A. Joseph Kase, junior, yeoman first class, U. S. Navy.

16. Q. When you told Tokunaga you wanted to ask him some questions, what did he say?
A. He told me that he would answer to the best of his knowledge.

17. Q. Did you put the questions to Tokunaga?
A. I did.

18. Q. Did the interpreter translate your questions into Japanese?
A. He did.

19. Q. Were the answers then translated into English by the interpreter?
A. Tokunaga answered and the interpreter translated them back into English.

20. Q. Did Kase make a record of your questions in English and Tokunaga's answers as interpreted?
A. Right at the same time.

21. Q. Did Kase transcribe his notes?
A. He did. He went back to our office and transcribed his notes.

22. Q. Is that the document which he typed?
A. It is.

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23. Q. At a subsequent time did you with that document again visit Sugamo Prison?
A. I went back to go over the answers with Tokunaga to see if he still maintained what he had given was the truth to the questions I had asked.

24. Q. Did you again have an interpreter with you?
A. I did.

25. Q. Did the interpreter read to Tokunaga a translation of the English of that statement?
A. He read directly from this particular affidavit.

26. Q. Did Tokunaga have any fault to find with that document?
A. He had no fault to find with the contents, however he did add one thought.

27. Q. What do you mean by that?
A. In question 100 I asked "Did you give any of the suspected spies a trial before having them executed?" His answer when I first interviewed him was just the statement "No." When this question was repeated to him he said he wanted to make one addition to that answer which he did at that time adding "Conditions of war did not permit a trial, besides we had no legal personnel." I wrote this down in my own handwriting on this document, and I signed it. I passed it in to Tokunaga by the guard. He initialed it and returned it to me.

28. Q. Did you have your interpreter interpret into Japanese the addition which you wrote on that document?
A. I did, several times to be sure that it was the exact addition he wanted in the statement.

29. Q. Did Tokunaga sign that document?
A. He did.

30. Q. Did you at any time on the first or second occasion make Tokunaga any promises or threaten him in any way to answer your questions or to sign the document?
A. Never.

The statement of Tokunaga, Akira was submitted to the accused and to the commission, and by the judge advocate offered in evidence.

Cross-examined by the accused:

31. Q. You have no Japanese document as regards the document you testified to?
A. This document was not translated into Japanese by the War Crimes office at the time it was taken.

32. Q. When was this document dated, I mean was it at the time of the first interview or the second interview?
A. I saw Tokunaga on the 28th of October, the 1st of November, and also on the 5th of November.

33. Q. What is the date of the document which you are going to introduce into evidence?
A. The date of this document are the questions which were propounded to Tokunaga on the 28th of October and on November 1st.

34. Q. What is the date of execution of this document?
A. Tokunaga affixed his signature on the fifth day of November 1948.

35. Q. When the interpreter made the translation to Tokunaga did he translate it word by word or just the meaning of these questions and answers?
A. The interpreter had instructions from me to translate this word by word both from Tokunaga and myself.

36. Q. Did Tokunaga see the document in English?
A. He did.

37. Q. Did he seem to read the entire English document?
A. I don't remember the exact length of time Tokunaga kept this in his possession and I could not answer the question as to whether he did or not.

38. Q. You testified that you asked questions to Tokunaga concerning a Catholic priest. Did you use the word "priest" at that time?
A. I did.

39. Q. And did the interpreter translate it into Japanese?
A. The interpreter interpreted it into Japanese.

40. Q. Was the interpreter an enlisted man in the U. S. Army and working for the U. S. Army and for the Director War Crimes at the time he interpreted these questions and answers?
A. He was a sergeant in the Army with the Translation Section of SCAP who was assigned to our office on a full time basis for the purpose of being an interpreter for the Navy War Crimes office in Tokyo.

41. Q. Was Kase, the reporter, an enlisted man in the Navy and working for and attached to Director War Crimes, Pacific office at the time these questions and answers were recorded?
A. He was.

42. Q. Do you understand Japanese so that you can speak, read, and write it?
A. I do not.

43. Q. Then you really do not know what the interpreter translated nor what Tokunaga said during this interview or these series of interviews?
A. I have used this interpreter many times and he had always proved entirely trustworthy and I had instructed him on this case to translate verbatim what I said and what Tokunaga said.

44. Q. But you really don't know whether he did or not as you had ordered him to do?
A. Due to the fact that I do not understand the Japanese language I could not positively say that he did; I can only say I am sure that he did because of his past performance.

45. Q. Now, was Tokunaga in a cell as you say you passed the document into him for his signature?
A. In Sugamo Prison there are interview rooms that are set up for the very purpose of interviewing prisoners. These are small rooms and the interrogator is separated from the prisoner by a wire screen and the interrogator cannot in any way hand anything to the prisoner or can he touch him. Anything that goes to the prisoner must be passed by hand by the guards who are standing there behind the prisoner.

46. Q. Did Tokunaga have the benefit of counsel at any of these interviews?
A. No, he did not.

47. Q. Do you know how long Tokunaga had been held in Sugamo Prison before you started to interview him and before he signed this question and answer affidavit?
A. I would have to refer to the record before I can answer that question.

48. Q. You know it was for more than a year, do you not?
A. I could not answer that question; I do not remember that.

49. Q. Do you know if it was for more than thirty hours?
A. I know it was more than thirty hours.

50. Q. Now, how did you administer the oath to Tokunaga that day?
A. I explained to Tokunaga the reason for these questions and answers and told him it would be a sworn statement and if he would swear that the questions and answers he was about to give was the truth to the best of his knowledge.

Mr. Takano, Junjiro, a counsel for the accused, objected to the receipt in evidence of this document on the following grounds: The counsel objects to this document for the following two reasons: First, according to the witness, Tokunaga does not understand English and these questions and answers were written in the English language which is not Tokunaga's mother tongue, so that is very dangerous to write these questions and answers in English; second, when the witness asked Tokunaga these questions he told Tokunaga about the alleged crime and this way of asking questions is away from fairness, and on the above two grounds the accused objects to this document.

Commander Martin E. Carlson, a counsel for the accused, read a written objection to the receipt in evidence of this document, appended marked "W".

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

The judge advocate replied.

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

The commission announced that the objections were not sustained. There being no further objections, the document was so received, and is appended marked "Exhibit 5".

The witness was duly warned.

The commission then, at 11:30 a.m., adjourned until 9 a.m., tomorrow, Thursday, February 3, 1949.

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EIGHTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Thursday, February 3, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Maurice E. Currie, the witness under examination when the adjournment was taken, entered. He was warned that the oath previously taken was still binding, and continued his testimony.

Reexamined by the judge advocate:

51. Q. Will the witness please read Exhibit 5?

(The witness read Exhibit 5.)

An interpreter read a Japanese translation of Exhibit 5, appended marked "Exhibit 5(a)".

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.

The accused moved to strike out Exhibit 5 on the grounds that the taking of the confession as shown by the reading of it was an illegal violation of the rights of one accused of a crime, and a usurpation of judicial process by a Navy officer not a member of a court or empowered or authorized to conduct a judicial proceedings. The reading of the confession showed that the accused was required to answer incriminating questions and was not warned or cautioned that he need not answer incriminating questions and that what he did say would be used against him at his trial.

The judge advocate made no reply.

The commission announced that the motion was not sustained.

The prosecution rested.

Each of the accused made a motion for a directed acquittal on the ground that the judge advocate had not presented sufficient evidence to prove the charge and specifications.

The judge advocate made no reply.

The commission announced that the motion was not sustained.

The accused requested an adjournment until 9 a.m., Monday, February 7, 1949 in order to prepare their defense.

The commission announced that the request for the adjournment was granted.

The commission then, at 9:50 a.m., adjourned until 9 a.m., Monday, February 7, 1949.

NINTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, February 7, 1949.

The commission met at 9 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The defense began.

Mr. Sanagi, Sadamu, a counsel for the accused, read a written opening statement for the defense, appended marked "X".

An interpreter read an English translation of Mr. Sanagi's statement, appended marked "Y".

The accused requested the commission to take judicial notice of the following:

1. Civil Affairs Handbook Mandated Marianas Islands OpNav-P22-8 office of the Chief of Naval Operations, Navy Department, U. S. Navy, dated 15 April 1944, particularly page 26 which reads in part as follows:

"Japanese Rule (since 1914). In October 1914, a Japanese naval squadron took military possession of the German Marianas Islands, ... On July 1, 1918, the Japanese established a Civil Administration Department, ... By a secret agreement in March 1917, Great Britain recognized the claim of Japan to all the former German possessions in the Pacific north of the equator, and the approval of France and Russia was also obtained. When the peace conference met at Versailles, therefore, it was faced with the fact of virtual annexation. ... on these terms Japan was confirmed, in 1920, in her possession of the Caroline, Marshall, and Marianas Islands as a mandatory under the League of Nations, and in 1922 the United States accepted the arrangement in a special agreement with Japan. ... When Japan actually did withdraw from the League of Nations in March 1935, she kept the mandated territory, defining it as 'an integral part of the Japanese

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Empire, ...' After that year (1938) all pretense of international supervision vanished, and the islands were increasingly treated as a closed military area."

2. The terms of the Class C mandate under which Japan was given Rota Island and the islands of the Marianas (except Guam) set forth on page 66 of the Civil Affairs Handbook, Ibid., p. 66 especially article 2 which reads in part as follows:

"Article 2. The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Empire of Japan and may apply the laws of the Empire of Japan to the territory, subject to such local modifications as circumstances may require."

3. That the natives living on Rota in 1944 did not possess the status of Japanese subjects but had a special civil status. We quote from page 78 of the Civil Affairs Handbook, Ibid.,

"The natives living in the territory under Japanese mandate do not possess the status of Japanese subjects. They are called 'Tomin' (inhabitants of the islands) a name designating their special civil status."

4. The laws of Japan which are specifically stated to apply to the mandated islands including Rota as set forth on pages 85 and 86 of the Civil Affairs Handbook, Ibid., particularly the following:

(a) An Ordinance for the Treatment of Judicial Affairs in the South Seas Islands enacted in 1923 and revised in 1933 which defines the laws and regulations which apply to the mandated islands.

(b) Criminal Code.

(c) Law relating to the Application of the Criminal Code.

(d) Law for Criminal Procedure.

5. Public Law 204, 80th Congress, United States approved July 18, 1947 whereby Congress authorized the President of the United States to approve the United Nations Agreement with respect to United States administration of the Trust Territory of the Pacific Islands, comprising the islands of the Marshall, Caroline, and Marianas groups formerly mandated to Japan including the island of Rota.

6. The executive order issued by President Truman on July 18, 1947, by virtue of the authority vested in him by Article 2 of the Constitution of the United States, terminating the military government in the former Japanese mandated islands including Rota Island.

7. The directive issued by the Secretary of the Navy (United States) on July 21, 1947 whereby it was directed that the U. S. naval military government of Marshall, Caroline, and Marianas Islands including Rota Island be disestablished as of July 18, 1947 and that the United States High Commissioner of the Trust Territory of the Pacific Islands was directed to institute civilian administration of the Trust Territory effective July 18, 1947 in accordance with the terms of Trusteeship Agreement and the authorization of the High Commissioner to appoint a Deputy High Commissioner and such sub-area and island governors and administrators as the High Commissioner deemed necessary for the proper conduct of government.

8. Proclamation No. 1 of the High Commissioner of the Trust Territory of the Pacific Islands dated July 18, 1947 particularly article 1 which reads:

"All powers of the government and jurisdiction in the Trust Territory of the Pacific Islands, and over the inhabitants thereof, and final administrative responsibility are vested in me as High Commissioner of the Trust Territory of the Pacific Islands, and will be exercised through subordinate administrators by my direction."

9. Rule 5 (a) of the Federal Rules of Criminal Procedure which provides that (a):

"(a) An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall without unnecessary delay take the person arrested before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

10. That on June 11, 1944 the preliminary United States offensive against the Marianas commenced and on June 15, 1944 United States forces landed on Saipan and shortly thereafter secured the island and on July 21, 1944 United States forces landed on Guam and on July 24, 1944 Guam was secured and once more in possession of the United States and on July 25, 1944 the United States forces landed on Tinian and secured the island a few days later.

11. Rota Island is situated between Saipan and Guam only 32 miles north of Guam.

The judge advocate objected to the commission taking judicial notice of Item 4 on the ground that it would be contrary to Section 309, Naval Courts and Boards, in that if the commission took judicial notice of this item that they would be taking judicial notice of foreign law. The judge advocate stated that he had no objection to the commission taking judicial notice of Items 5, 6, 7, and 8, but would like to point out that he could see no relevancy of these items to the issues in this case. The judge advocate further stated that he had no objection to Item 9, but that this item had been argued in the pleas to the jurisdiction and that it had been overruled at that time.

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

The accused replied.

The commission was cleared. The commission was opened and all parties to the trial entered. The commission announced that it would take judicial notice of all items listed with the exception of Items 4, 5, 6, 7, 8, and 9.

Sanagi, Sadamu, a counsel for the accused, was called as a witness for the defense and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and are you a counsel for the accused?
A. My name is Sanagi, Sadamu, counsel for the accused in this case.

Examined by the accused:

2. Q. Do you have in your possession a letter showing from where you acquired certain documents which you are going to introduce into evidence?
A. I have.

3. Q. What is that document?
A. This document is a certificate which we acquired when these documents were received by us and it certifies that these documents were effective during the war in the Japanese Army.

4. Q. Who is the Japanese authority that certified the statement you said before?
A. Miyama, Yozo, Chief of the General Affairs Section, Demobilization Bureau, Repatriation Relief Agency. This document only shows that this Miyama, Yozo is attached to the Demobilization Bureau but this bureau is divided into two sections, the First Demobilization Bureau and the Second Demobilization Bureau and he was attached to the First Demobilization Bureau. I know this because I know him personally and also these documents which I received were received from the First Demobilization Bureau.

5. Q. Is this document signed and sealed by Miyama?
A. This document bears an official seal of Miyama.

6. Q. In Japanese official documents does it make any difference between a document signed and sealed and when a document only bears an official seal?
A. In the Japanese official documents it doesn't make any difference whether they are signed and sealed by the person that makes it or if it just bears an official seal. Just the official seal of a person is sufficient for a Japanese official document.

7. Q. In what language is this document written?
A. Japanese.

8. Q. Have you prepared a translation?
A. I have.

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The document produced by the witness was submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, it was so received and is appended marked "Exhibit 6".

9. Q. Will the witness read this document?

(The witness read Exhibit 6.)

10. Q. Do you have in your possession defense document number 2?
A. I have.

11. Q. What kind of document is this?
A. This is an excerpt from the Japanese Military Secrets Security Law.

12. Q. What portion of Exhibit 6 corresponds to the Military Secrets Law?
A. This Military Secrets Security Law is a part of Volume V, Army Regulations, which is listed as number 1 on this list.

13. Q. In what language is the original of this document written?
A. Japanese.

14. Q. Have you prepared an English translation?
A. I have.

15. Q. Is this excerpt a part of the Military Secrets Security Law?
A. It is. I excerpted certain portions which are relevant to the issues of this case.

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

The judge advocate objected to the receipt in evidence of this document on the ground that it was irrelevant and immaterial to the issues of this case.

The accused requested permission to propound one more question to the witness prior to answering the objection of the judge advocate.

The commission announced that permission was granted.

16. Q. To what matters is the excerpt related?
A. This excerpt contains article one of this Military Secrets Security Law which is a general explanation for this law and also articles which state that those who disclose military secrets to the enemy will suffer certain punishments.

The accused replied to the objection by the judge advocate.

The commission was cleared.

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

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

The commission announced that the objection was not sustained and that it would accord the document its proper weight. There being no further objection, it was so received and is appended marked "Exhibit 7".

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17. Q. Will the witness read Exhibit 7?

(The witness read Exhibit 7.)

18. Q. Do you have in your possession defense document number 3?
A. I have.

19. Q. What kind of document is it?
A. The document is Regulations Governing Security of Military Secrets.

20. Q. Are you going to introduce the entire part of the Regulations or just a part of it?
A. I am going to introduce an excerpt from the Regulations.

21. Q. In what part of the list of Exhibit 6 is this document listed?
A. This document is from Volume V of Army Regulations which is listed as number 1 of the table and I made an excerpt from the Regulations.

22. Q. Is the original of this document in Japanese?
A. It is.

23. Q. Have you prepared an English translation?
A. I have.

24. Q. To what matters is the excerpt pertaining?
A. The excerpt is a portion of Article I of the Regulations in which the War Minister showed classified matters, and I made an excerpt from these classified matters certain portions which are relevant to the issues of this case.

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

The judge advocate stated that he had no objection to the document but desired to point out to the commission that his failure to object to the document did not mean that he considered it in any way relevant to the issues of this case.

The commission announced that it would receive the document subject to the same remarks made in its receipt of Exhibit 7.

There being no objection, it was so received and is appended marked "Exhibit 8".

25. Q. Will you read Exhibit 8?

(The witness read Exhibit 8.)

26. Q. Do you have in your possession defense document number 4?
A. I have.

27. Q. What kind of document is this?
A. The document is Regulations Governing Security of Military Secrets in the South Sea Islands.

28. Q. Is it the entire Regulations or an excerpt from the Regulations?
A. It is the entire Regulations.

29. Q. In what part of the list in Exhibit 6 are these Regulations listed?
A. This document is included in the Army Regulations, Volume V, listed as number 1 of the table.

30. Q. In what language is the document written?
A. In Japanese.

31. Q. Have you prepared an English translation?
A. I have.

32. Q. What matters are the Regulations relating to?
A. These Regulations show that Exhibit 8, namely, Regulations Governing Security of Military Secrets, is enforced in the South Sea Islands.

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

There being no objection, it was so received and is appended marked "Exhibit 9".

33. Q. Will you read Exhibit 9?

(The witness read Exhibit 9.)

34. Q. Do you have defense document number 5?
A. I have.

35. Q. What kind of document is this?
A. This is an excerpt from the Japanese Army Criminal Code.

36. Q. Where is the original of this Army Criminal Code?
A. The original is listed as number 5 of the table of Exhibit 6, namely, the certification of the documents.

37. Q. In what language is this document written?
A. In Japanese.

38. Q. Have you prepared an English translation?
A. I have.

39. Q. What matters is the excerpt relating to?
A. The excerpt consists of necessary articles of the Japanese Army Criminal Code of the chapter of general rules and also such articles as relate to punishment of spy activities under the chapter of crimes.

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

There being no objection, it was so received and is appended marked "Exhibit 10".

40. Q. Will you read Exhibit 10?

(The witness read Exhibit 10.)

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41. Q. Do you have defense document number 6?
A. I have.

42. Q. What kind of document is this?
A. It is an excerpt from the Japanese Army Court-Martial Law.

43. Q. From where did you make this excerpt?
A. This excerpt was made from the original which is listed as number 4 of the table of Exhibit 6.

44. Q. Is the document written in Japanese?
A. It is.

45. Q. Have you prepared an English translation?
A. I have.

46. Q. What portions did you excerpt?
A. I excerpted necessary articles from such portions as relate to jurisdiction, judicial power, and prosecution of court-martial.

47. Q. Does the excerpted provisions concern judicial police or those who are acting as judicial military police?
A. It does.

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

There being no objection, it was so received and is appended marked "Exhibit 11".

48. Q. Will you read Exhibit 11?

(The witness read Exhibit 11.)

Cross-examined by the judge advocate:

49. Q. Has this entire Court-Martial Law from which these excerpts have been read been translated into English?
A. I have a translation of the entire Army Court-Martial Law.

Reexamined by the accused:

50. Q. Do you have defense document number 7?
A. I have.

51. Q. What kind of document is this?
A. The document is an excerpt from Instructions Relative to the Duties of Army Judicial Police.

52. Q. From where did you make this excerpt?
A. I made this excerpt from Army Regulations, Volume VI, which is listed in paragraph 1 of the table in Exhibit 6.

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53. Q. In what language is this document written?
A. In Japanese.

54. Q. Have you prepared an English translation?
A. I have.

55. Q. To what matters is the excerpt relating?
A. I made excerpts of the necessary articles from general provisions and investigations and conducting of investigations and disposal of incidents under investigation.

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

There being no objection, it was so received and is appended marked "Exhibit 12".

56. Q. Will you read Exhibit 12?

(The witness read Exhibit 12.)

The judge advocate requested the commission to direct the witness to make available to him the English translation of the Japanese Army Court-Martial Law.

The witness was so directed.

The commission then, at 11:30 a.m., took a recess until 2:10 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Sanagi, Sadamu, the witness under examination when the recess was taken, resumed the stand as a witness for the defense. He was warned that the oath previously taken was still binding.

The judge advocate stated that he would like to have the witness read certain articles from Exhibit 11, but in reading over the English translation with the official interpreter, it was noted that there may be discrepancies in the English translation. The judge advocate requested that he be allowed to delay cross-examining this witness until tomorrow, during which time a corrected translation of Exhibit 11 would be made.

The accused stated that they had no objection to the request of the judge advocate.

The commission announced that the request was granted.

The witness resumed his seat as counsel for the accused.

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Maurice E. Currie, a witness for the prosecution, was recalled as a witness for the defense. He was warned that the oath previously taken by him was still binding.

Examined by the judge advocate:

1. Q. Will you state your name?
A. Maurice E. Currie.

2. Q. State your rank and present duty station.
A. Commander, USNR, attached to the Director of War Crimes, U. S. Pacific Fleet.

Examined by the accused:

3. Q. Does the witness have in his possession, defense documents numbered 11, 12, 13, and 14?
A. I do.

4. Q. What kind of documents are they?
A. These documents were prepared to be propounded to individuals who are presently in Japan and they were prepared by the defense and they were signed by both the judge advocate and the defense counsel. They were forwarded to the Supreme Commander for the Allied Powers in Japan to be propounded to the individuals concerned. They were completed and returned.

5. Q. Are those interrogatories and depositions relevant to the case in issue at this present trial?
A. They are.

6. Q. In what language are the interrogatories written?
A. The interrogatories are written in English, but there is a Japanese translation to them which is not signed.

7. Q. In what language are the depositions written?
A. The depositions are written in both Japanese and in English, both being sworn to and signed.

8. Q. Are the signatures of those concerned affixed on these interrogatories and these depositions?
A. Yes, they are.

The documents produced by the witness were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, they were so received and are appended marked "Exhibit 13", "Exhibit 14", "Exhibit 15", and "Exhibit 16".

9. Q. Please read Exhibit 13.

(The witness read Exhibit 13.)

10. Q. Please read Exhibit 14.

(The witness read Exhibit 14.)

11. Q. Please read Exhibit 15.

(The witness read Exhibit 15.)

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12. Q. Will you please read Exhibit 16?

(The witness read Exhibit 16.)

Mr. Sanagi, Sadamu, a counsel for the accused, requested that the official interpreter retranslate the answer to the seventh interrogatory of Exhibit 16 because he believed the words "Army Penal Code" should read "Army Criminal Code".

The official interpreter concurred with Mr. Sanagi.

The commission directed the official interpreter to correct the seventh interrogatory of Exhibit 16 as requested by Mr. Sanagi.

13. Q. Are there any interrogatories which the defense counsel submitted, to which there has not been an answer?
A. Yes, defense did submit an interrogatory to be propounded to a Military Sergeant Tokunaga, who was attached to the armed forces on Rota, and that document was sent along to Japan with these others. It has not been returned.

14. Q. If you know the circumstances why these interrogatories have not been returned, will you please explain?
A. I am not positive why they have not been returned, however, there is information in the office of Director War Crimes that Sergeant Tokunaga is not completely mentally competent.

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

Present: All the members, the judge advocate, 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.

The accused, Koyama, Shigeo, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Will you state your name and former rate?
A. Koyama, Shigeo, former superior private, Imperial Japanese Army.

2. Q. Are you an accused in this case?
A. Yes, I am.

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Examined by the accused:

3. Q. Did you ever serve at the Japanese military installations on Rota Island, Marianas?
A. I did.

4. Q. During what period did you serve on Rota Island?
A. From the latter part of March 1944 until the early part of September 1945.

5. Q. What was the unit you were attached to during the period you were on Rota Island?
A. At the battalion headquarters of the First Battalion, Tenth Independent Mixed Regiment.

6. Q. What was your position while you were serving in the First Battalion headquarters?
A. When I landed on Rota I was an orderly, but I mainly had guard details.

7. Q. What was your rate around June or July 1944?
A. Superior Private.

8. Q. Who was your immediate superior?
A. My immediate superior was Sergeant Major Yanegazawa who was in charge of personnel matters and above him was the battalion adjutant.

9. Q. Who was this battalion adjutant?
A. Second Lieutenant Ogura.

10. Q. Who was the battalion commander at that time?
A. Tokunaga, Akira, captain, Imperial Japanese Army.

11. Q. By Tokunaga you mean the Tokunaga who is here in court?
A. Yes, that is so.

12. Q. Where were you on Rota Island around the early part of July 1944?
A. At the Battalion Headquarters at Taruga.

13. Q. Around the early part of July 1944 was there any incident involving natives at the battalion headquarters at Taruga?
A. There was.

14. Q. What incident was it?
A. Two natives were executed for alleged spy activities and detection of military secrets.

15. Q. Did you have any connection with this execution of the natives?
A. With orders from my superior I was connected with this execution having been assigned as guard.

16. Q. Tell us how you came to participate in this execution of the natives as a guard being ordered by your superior.
A. On that day I was assigned to a guard detail. In those days, four men used to be assigned to this guard detail. One of them stood at the gate as a sentry and a telephone receiver, another was on a high tree on lookout duty for sea and air and the remaining two were in the guard house awaiting assignment. It was about ten o'clock in the morning, just after I finished my duty as a lookout and came back to the guardhouse. The non-commissioned officer of the day came to me in the guard house and told me that I and Itagaki who were in the guard house were to report to Surgeon Second Lieutenant Takahashi at once.

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17. Q. On what duty were you until ten o'clock?
A. I was up on a tree top on a lookout duty of the sea and air.

18. Q. When you said Surgeon Second Lieutenant Takahashi do you mean the Takahashi here in court?
A. Yes, that is so.

19. Q. Describe what clothing and arms you had when you went to report to Surgeon Second Lieutenant Takahashi by orders of the non-commissioned officer of the day.
A. There was no specific order regarding clothing and arms but as guards we always carried a bayonet and when we left the guard house it was determined by regulations that a guard would always carry a rifle with him and therefore Itagaki and myself left the guard house in the regular uniform, with rifle and bayonet.

20. Q. What happened after you went to Surgeon Second Lieutenant Takahashi?
A. I reported to him that Itagaki and myself were told by the non-commissioned officer of the day to report at once to Surgeon Second Lieutenant Takahashi. Takahashi told us that an execution was to be performed and ordered that Itagaki and myself should be on duty as land and air lookouts.

21. Q. What happened then?
A. After a lapse of time we took the native who was near the vicinity of the dispensary and escorted him to the scene of the execution followed by Surgeon Second Lieutenant Takahashi.

22. Q. What did you do when you arrived at the scene of the execution?
A. Arriving at the scene of the execution we were told our positions to stand on guard for land and air lookouts by Surgeon Second Lieutenant Takahashi and Itagaki went in the opposite direction to myself and we took up our guard duties.

23. Q. Where were you standing in relation to the native?
A. I took up my assigned duties as lookout about seven or eight meters away from the native.

24. Q. What happened to the native?
A. As I had my lookout duties to take care of and because from that position Takahashi stood between myself and the native I could not observe the execution in detail. I recall the point where he fell down.

25. Q. What happened then?
A. After a few minutes Takahashi ordered me to come to where he was and I immediately obeyed him. When I went to where he was it was just after Takahashi had finished a conversation with Kurihara and Surgeon Second Lieutenant Takahashi ordered "It is a pitiful sight so stab him with a bayonet."

One of the defense counsel, on behalf of the accused Takahashi, moved to strike out the words "Surgeon Second Lieutenant Takahashi ordered 'It is a pitiful sight so stab him with a bayonet'" on the ground that the witness was testifying against a co-defendant.

The judge advocate replied and requested that the motion to strike be denied.

The accused examining made no reply.

The commission announced that the motion was not sustained.

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(The witness continued.)

I did not know what to do and hesitated but as it was an order from a superior officer I had no choice but to obey and I stabbed the native around the left part of his chest.

26. Q. What happened to the native after you stabbed him?
A. He fell down but I felt so sick that I could not continue to look at the body and returned to my assigned post as lookout and I saw Surgeon Second Lieutenant Takahashi looking over the body examining it.

27. Q. What did you do after the execution was carried out?
A. After this execution I was not relieved and I still stood at my post when Takahashi told me that there was going to be a second execution and that I was assigned to the same duties of land and air lookout. I recall that the scene of the second execution was forty or fifty meters nearer to battalion headquarters than the scene of the first execution. Those who were present at the first execution then proceeded to the second scene of execution and I was told where to stand on guard and there I took up my position. Immediately after the second execution a group of American planes came over us and bombarded and strafed the jungle area around the Taruga battalion headquarters. Because the strafing had become dangerous we were told to go to the air raid shelter and we took shelter there. After the air raid when we came out of the air raid shelter Surgeon Second Lieutenant Takahashi ordered us that we should resume duties as guards so Itagaki and myself left for the guardhouse.

28. Q. Do you know the reason why the two natives were executed?
A. I heard that it was because they committed spy activities.

29. Q. When did you hear this?
A. At the scene of the first execution I heard Surgeon Second Lieutenant Takahashi telling this to someone.

30. Q. About that time were you yourself aware of any subversive activities on the part of the natives?
A. Yes, I knew.

31. Q. State what you yourself actually know.

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

The accused replied.

The commission announced that the objection was sustained.

32. Q. State what you yourself actually know about the battle conditions prevalent at that time.
A. When I was on lookout duty from eleven o'clock in the night till three in the morning I frequently witnessed flash signals which seemed to be from a flash light. I also frequently saw signal lights which went alternately from green to red. When a signal flare would go up from the land then rocket flares could be seen out at sea and it seemed as though they were signaling with each other. When I was not on guard I was sometimes ordered to arrest those persons committing spy activities and one time when I went as a patrol to Gumpapa I witnessed a burning charcoal laid out in the form of an arrow pointing toward the Shimaparu air field in the day and when I saw this again it was all white in ashes and the charcoal turned into white ashes and I was able to observe that this form of signal could be used both in the day and night. There are other instances but the ones I directly witnessed are the above.

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Cross-examined by the judge advocate:

33. Q. What did you stab this native with?
A. With a bayonet.

34. Q. Was the bayonet attached to a rifle?
A. Yes, it was. When I was ordered to go on guard I was ordered to affix it on the rifle.

35. Q. Do you remember whether or not that this man that you stabbed had a beard?
A. I recall that he had an inch long beard but I do not recall anything else.

36. Q. Do you recall whether or not he had on a black robe?
A. He was wearing something like a rain coat which came down to his knees.

37. Q. Do you remember its color? Was it black?
A. I do not recall.

38. Q. I show you a picture and ask you if you identify the man in that picture.
A. I do not recall.

39. Q. Is that a picture of the man that you stabbed?
A. It was not this man.

40. Q. How many executions did you attend that day, one or two?
A. Just one.

41. Q. Did you return immediately to the guard house after the first execution or did you go to see the second execution?
A. What I meant by one was that those executions were performed in one day.

42. Q. Well, on this one day and at this one execution, how many people were killed?
A. It was in two parts, the first and the second execution.

43. Q. Were you at both parts of this execution?
A. Yes, I was there as lookout.

44. Q. Do you recall writing out in your statement "I do not know about the other native (I do not know the details). As the order was given at that time, 'Guards will return and carry on their duties,' I returned and took up my guard duties"? Do you remember writing that?
A. Yes, I recall that I wrote that.

45. Q. Well, were you at one execution or at two executions?
A. I was told to take up duties as lookout for the first and the ~~ex~~second executions so I did so.

Reexamined by the accused:

46. Q. Had you ever seen this man who you stabbed previously?
A. No, I had never seen him before.

The judge advocate 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 resumed his status as an accused.

The commission then, at 4:30 p.m., adjourned until 9 a.m., tomorrow, Tuesday, February 8, 1949

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TENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, February 8, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Elvin G. Glubba, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, a witness for the defense, was recalled and was warned that the oath previously taken was still binding and continued his testimony.

Recross-examined by the judge advocate:

57. Q. Will the witness read Article 47 from the Army Court-Martial Law?

The witness read as follows:

"Chapter 4. Machinery of the Trial.

"Article 47. A trial will be conducted by a court composed of five judges. The judges and legal officers shall be members of the court and the senior member of the court shall be the presiding judge.
"In specially established courts-martial it is permissible to decrease the number of judges by two, excluding the senior member of the court and the legal officer.
"In wartime or in an incident, the same applies to permanent courts-martial with the exception of the Supreme Court Martial."

58. Q. Will the witness read Article 49?

The witness read as follows:

"Article 49. In courts-martial, with the exception of the Supreme Court Martial, the judges will be composed of four members and one legal officer.

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"The members of the court mentioned in the previous paragraph will be as follows:
"1. When the accused is a non-commissioned officer or enlisted man, one officer of field rank and three officers of company grade, or two officers of field rank and two officers of company grade.
"2. When the accused is an officer of company grade or a warrant officer, two officers of field rank and two officers of company grade.
"3. When the accused is an officer of field rank, one general officer and three officers of field rank, or two general officers and two officers of field rank.
"4. When the accused is a general officer, four general officers.

"The members of the court above mentioned will not be lower in rank or grade to the accused.

"In courts-martial in places to and from which transportation has been severed, it is permissible for the judges to be of equal status with or above the accused."

59. Q. Will the witness read Article 54?

The witness read as follows:

"Article 54. When the accused is not a person who is mentioned in Articles 49, 51, and 53, the judges will be determined according to the division (of judges) for non-commissioned officers and enlisted men.

"In the event of the application of the preceding paragraph, the Director may alter the division of judges according to the circumstances."

60. Q. Will the witness read Article 87 and also the heading under which it appears, namely, Section 2?

The witness read as follows:

"Section 2. The Defense and Legal Assistance.

"Article 87. The accused may nominate (his) counsel at any time after prosecution is instituted.

"The legal representative, patron or husband of the accused may nominate a counsel (for the accused) independently (of the accused)."

61. Q. Will the witness read Article 88?

The witness read as follows:

"Article 88. Counsel (for the accused) shall be nominated from among those persons listed below.

"1. Army officers.
"2. Higher civilian officials of the War Ministry, and probationary higher civilian officials of the War Ministry.
"3. Counsel nominated by the War Minister."

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The accused 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 resumed his seat as counsel for the accused.

Imagawa, Shigeo, a witness for the prosecution, was recalled as a witness for the defense and warned that the oath previously taken by him was still binding.

Examined by the judge advocate:

1. Q. State your name.
A. Imagawa, Shigeo.

Examined by the accused:

2. Q. State your former rank in the Army?
A. Major, Imperial Japanese Army.

3. Q. Did you testify at this trial as a prosecution witness?
A. I did.

4. Q. Is it correct that you landed on Rota Island on June 10, 1944 for the purpose of training the Army units?
A. Yes, that is so.

5. Q. When you landed on Rota Island what was the organization that exercised civil administration?
A. The Branch Office of the North District Bureau of the South Seas Government Office.

6. Q. After you landed on Rota did this Branch Office exercise judicial authority?
A. At the Rota Branch Office there were no judges and I recall that there were only six policemen. On June 14th due to the emergency conscription most of the policemen were inducted in the Army and around June 15th, there was an air raid and the Branch Office building was bombed and most of the papers were destroyed. Therefore, the Branch Office itself could not function independently and it had to depend on the Army with which it cooperated.

7. Q. Please explain the command relationship between the Army units on Rota with the Army Headquarters on Guam and Saipan.
A. The Thirty-first Army was on Saipan and the Twenty-ninth Division, which was its subordinate unit, was on Guam, and the First Battalion of the Tenth Independent Mixed Regiment, which was a subordinate unit of the Twenty-ninth Division, was on Rota.

8. Q. Who was the supreme commander on Guam around the middle part of June 1944 and after?
A. Prior to the commencement of the air raids on Saipan it was the Commanding General of the Twenty-ninth Division, Lieutenant General Takashina. After the air raids it was the Commanding General of the Thirty-first Army, Lieutenant General Obata.

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9. Q. How did you know that Lieutenant General Obata was on Guam?
A. Prior to my coming to Guam and Rota I went around May to Palau on the same mission of training and I recall it was June 1st that I met Lieutenant General Obata there, and on that occasion I was told that he would be on Palau for some time. Thirty-first Army Headquarters was on Saipan, but during the absence of the Commanding General, the Americans landed on Saipan and he tried to return with his staff officers to Saipan. As Saipan was subjected to air raids as well as American landings, he could not return, and he landed on Guam where he exercised command over the Pacific area, and that was around the end of the middle part of June. From that time until his death he was on Guam. He announced this fact by wireless dispatch that he had assumed command from Guam over the Central Pacific Area and that is why I know of this fact.

10. Q. After you landed on Rota were there any Navy units on Rota?
A. There were.

11. Q. Please give me the general strength of the Navy units on Rota.
A. The naval guard unit had 500 men, three air base units totalled 900, the construction corps had 4 to 500 and there were other, seventeen or eighteen, small units. The aggregate was approximately 2000 Navy personnel.

12. Q. Who was the senior naval commanding officer on Rota Island from the latter part of June 1944 to the early part of July 1944?
A. There was no definite naval commanding officer on Rota Island of the naval forces, and Lieutenant Onizuka, who was a unit commander took over all command. Lieutenant Commander Abe, who made a forced landing on Rota around August or September took command from then on.

13. Q. Who was the senior officer, Lieutenant Onizuka or Captain Tokunaga?
A. The seniority between the two was not made clear until the end, but according to the operational order number one of the Combined Fleet, all defense operations would come under the command of the Army supreme commander of that island. As the seniority between Captain Tokunaga and Lieutenant Onizuka was not clear the command relationship was not established and did not run smoothly and that is why Captain Tokunaga always used to refer to the division commander on Guam for instructions.

14. Q. Do you know the reason why this seniority was not made clear?

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

The accused replied.

The commission announced that the objection was sustained. JAR

15. Q. Explain briefly the battle conditions that existed on Rota Island from June 10, 1944 to the middle of July.
A. On June 11, 1944, there was a large scale bombing which started from that day and continued daily and nightly until in a few days all houses were destroyed, and from June 13th, U. S. warships appeared on the seas and they numbered a total of a hundred. Around June 15th there were frequent naval bombardments. After the U. S. forces landed on Saipan on June 15th, what affected the Japanese Army and residents on Rota Island was the approaching JAR

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of U. S. ships and there were frequent false reports which were spread around the island saying that the United States forces had landed on Rota and this resulted in confusions. Judging from this the landing by the United States forces was imminent and we anticipated that they would do so within a month.

16. Q. You testified that natives were executed for committing spy activities when you were a witness for the prosecution. What measures, if you know, were taken to investigate these crimes?
A. Insofar as I know investigations were conducted on two lines. The first was led by Second Lieutenant Okuyama, who utilized the Army personnel in search, arrest and interrogations. The other by Sergeant Major Tokunaga, who used the natives for investigations.

The commission then, at 10:15 a.m., took a recess until 10:40 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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

(Examination continued.)

17. Q. Please continue your answer.
A. The investigation conducted by the branch office police under Tokunaga was conducted on a parallel line with the investigations by Okuyama, and it was from Okuyama's investigation that the arrests of the shoemaker and the servant of the priest were made.

18. Q. Do you know what acts were committed by the natives who were executed? If so, please state.
A. I recall that one of the natives who was executed had in his possession a notebook in which was drawn the location of Army positions. According to testimony by natives, several of the natives who were executed entered restricted areas without permission and against the prohibition of the authorities, and despite the discussion by the other natives, and also according to the testimony by natives, those natives who were executed used to say that in the event of a landing by the United States forces, they would at once run over to them and ask for their protection, by disclosing informations of the Japanese units, and persuade and incite others to follow them. I recall that local Army units also confirmed that they had seen these natives who were executed waving flags at planes or spreading cloths on the ground during daytime in an attempt to signal to the American planes.

19. Q. How do you know of these facts?
A. I recall that Captain Tokunaga and other persons concerned reported this to me. Moreover I also recall that Captain Tokunaga, before he sent out the dispatch requesting information for the disposition of the natives, showed me the investigation record in which these crimes were listed. That is why I know these facts.

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20. Q. Do you know what Japanese law, of these acts on the part of the natives, was applicable?

This question was objected to by the judge advocate on the ground that it called for a legal opinion of the witness, which the witness was not qualified to make.

The accused replied.

The commission announced that the objection was sustained.

21. Q. You testified that these natives committed spy activities. What did you mean by the word "spy"?
A. The word spy in the sense I used it means a person detecting military secrets and disclosing them to the enemy, and who commits subversive activities.

22. Q. When you used the word "spy", are there any other conditions attached?
A. Outside of what I have said, there are no other conditions.

Cross-examined by the judge advocate:

23. Q. Did you yourself ever see this notebook you have told us about?
A. I did not actually see it myself.

24. Q. Then how do you know that such a notebook existed?
A. As I have testified, I knew of it from the investigation record.

25. Q. What was this investigation record?
A. As I recall it was a set of interrogatories written on stationery used by the branch office of the South Sea Islands.

26. Q. Do you mean it was a set of questions that were put to natives and the answers that they made?
A. Yes, that is so.

27. Q. And how many of these papers were there?
A. Do you mean pages?

28. Q. Yes.
A. I am not definite but it was eight or ten pages.

29. Q. Was there a set of questions and answers for each of the five natives who had been executed?
A. I cannot recall clearly whether there were a set of interrogatories for each native.

30. Q. Did you actually see these papers?
A. Yes, I did.

31. Q. Who had them when you saw them?
A. It was Captain Tokunaga.

32. Q. Is that all the investigation papers that you know of?
A. That is all that I can remember.

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33. Q. Now you've told us that these natives that were executed said that they intended to go over to the Americans with all the military information that they possessed; who told you that?
A. It was perhaps from Sergeant Tokunaga that I heard.

34. Q. As a matter of fact, you, yourself, were in direct charge of this investigation, weren't you?
A. That is not so.

35. Q. Didn't you direct the activity of the chief of police Sakane and policeman Ichimura?
A. I did not direct them. I recall that I had not much connection with Sakane.

36. Q. Did you have any connection with Ichimura?
A. I recall that I received reports from Tokunaga and Ichimura.

37. Q. Why did they report to you since you were not the commanding officer of this establishment?
A. I do not know clearly why Tokunaga and Ichimura reported to me, but at that time Captain Tokunaga was not always in Songsong, but was out on tour most of the time and so was I, but when Tokunaga or Ichimura happened to find me they reported, not for a very special reason except the fact that I was a major.

38. Q. Did Policeman Tokunaga or Ichimura report to you that these natives were spies?
A. I do not recall clearly which one reported to me, but I seem to remember that it was Tokunaga.

39. Q. Did they report to you that the natives were gathering military information?
A. I believe they did not.

40. Q. Did the First Battalion or the Tenth Independent Mixed Regiment keep a war diary?
A. Yes, they did keep it.

41. Q. Did you ever see it?
A. I saw it.

42. Q. Was there anything in it about this spy investigation?
A. I do not recall it clearly.

43. Q. When you took over command of this outfit, was there any permanent record of this spy investigation?
A. When I took up command I made up all the records anew, and I left whatever records there were previously in the First Battalion Headquarters.

The commission announced that the answer did not appear to be responsive to the question and directed the witness to be more responsive.

A. I don't know the meaning of this "permanent record."

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44. Q. (The judge advocate showed the witness a piece of typewritten paper.) Do you see this piece of paper? If you file it away in a file room, it is a permanent record. That is what I mean.
A. I was not briefed on this document, but I am convinced that this was kept in the First Battalion Headquarters.

45. Q. Was a copy of the dispatch that Tokunaga sent to Guam kept?
A. Yes, it was kept in the battle diary.

46. Q. Did you yourself actually see this dispatch?
A. Yes, I saw it.

47. Q. Was it a long dispatch or a short dispatch?
A. It was a short dispatch.

48. Q. Did it contain all the details, or did it contain many details concerning the investigation?
A. The one sent from Rota to Guam?

49. Q. That is right.
A. I said it was short. I will correct my last answer - it was a long dispatch.

50. Q. Did it contain many details of the investigation?
A. There was no mention about the method used at the investigation, but I recall it contained the results of the investigation as I have testified previously, namely what crimes were committed.

51. Q. Tell us to the best of your knowledge, the contents of this dispatch?
A. As I have testified previously, it contained what the natives did so-and-so, and requesting for disposition of the natives. It was written on two or three dispatch blanks.

52. Q. How many dispatch blanks do you remember?
A. Two or three.

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 advocate, 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.

Imagawa, Shigeo, 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.

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Reexamined by the accused:

53. Q. What did Policeman Tokunaga and Ichimura report to you?
A. I do not recall Ichimura reporting to me. Policeman Tokunaga reported to me some portion of the reports that I mentioned previously, but I do not recall which portion.

54. Q. Did policeman Tokunaga report to you that these persons had committed offenses upon the field of battle or the theater of war?

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

The accused withdrew the question.

55. Q. Did policeman Tokunaga report to you where these persons had committed these offenses?
A. I recall that policeman Tokunaga said that it was in the vicinity of the Tatacho area.

56. Q. Was this the area that was being bombed by the Americans?
A. Yes, it was.

57. Q. What did you do after you had heard or received these reports from Policeman Tokunaga?
A. What do you mean by that?

58. Q. What did you do as regards these reports were concerned?
A. Whenever I received reports I reported to Captain Tokunaga.

59. Q. Did you do so in this case?
A. I do not recall clearly.

60. Q. Do you recall clearly whether you advised Tokunaga as to what to do with regard to these reports received from policeman Tokunaga?
A. I do not recall advising Tokunaga about the method of investigation. I advised Tokunaga to warn the natives and I offered, as Tokunaga was very busy at that time, to assist him in this respect and I recall gathering the natives to give them warning but just at that time there was a false report of an American landing and the assembly broke up in a state of confusion. But I was able to warn the leaders of the natives.

61. Q. Do you recall if this was before any of the persons were executed on Rota?
A. It was just after the commencement of air raids and around 14 June.

62. Q. Do you recall if any of the persons at this gathering were later executed?
A. I do not know.

The judge advocate did not desire to recross-examine this witness.

Examined by the commission:

63. Q. Do you recall whether after these executions took place the fact of these executions was made public to the native population?
A. I do not recall.

64. Q. You do not recall that it was, though?
A. I do not.

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

The witness made the following statement:

I would like to clarify a certain point. I did not come to relieve Captain Tokunaga nor was I briefed when I came to Rota and on the basis of the dispatch I set up a headquarters superior to Tokunaga's. The word of this First Battalion headquarters still continued to exist and the work that I had was entirely new and independent from the First Battalion headquarters and I was not briefed in any way from Tokunaga regarding documents in the possession of the First Battalion.

The witness was duly warned and withdrew.

Tokunaga, Akira, an accused, was, at his own request, duly sworn as a witness in his own behalf.

Examined by the judge advocate:

1. Q. Will you state your name and former rank?
A. Tokunaga, Akira, former major, Imperial Japanese Army.

2. Q. Are you an accused in this case?
A. Yes.

Examined by the accused:

3. Q. Please outline briefly your career in the Japanese army?
A. Entered military academy 1936; graduated from military academy 1939; attached to First Regiment, First Division, in Songo, Manchuria, 1939; dispatched to Guam as Battalion Commander of the Tokunaga Battalion of the Shigematsu Mixed Brigade 1944 and placed under command of Twenty-ninth Division. At the same time detached from the Twenty-ninth Division and ordered to Rota Island.

4. Q. Between what dates did you serve on Rota Island?
A. From the latter part of March 1944 until the early part of December 1945. I was commanding officer of the First Battalion, First Infantry regiment, Twenty-ninth Division. From the middle of May 1944 until early part of September 1945 I was Battalion Commander of the First Battalion, Tenth Independent Mixed Regiment.

5. Q. Were you Battalion Commander until the early part of 1944?
A. Yes, I was Battalion Commander until the early part of September 1945. However in the middle of July 1944, by virtue of an order from the Twenty-ninth Division, Major Imagawa was appointed Garrison Commander on Rota and the First Battalion of the Tenth Independent Mixed Regiment was placed under his command.

6. Q. How old were you when you arrived on Rota Island in March of 1944?
A. According to the Japanese way of counting I was twenty-six years old. According to your way of assessing age I was twenty-four years old.

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7. Q. Where was the headquarters of the Rota Defense Garrison?
A. The headquarters of the Twenty-ninth Division which was the immediate superior headquarters of the defense garrison was located on Guam.

8. Q. Who was the Commanding General of the Twenty-ninth Division on Guam?
A. Takashina, Hyo, lieutenant general, was the commanding general.

9. Q. In what relationship did the Tokunaga Battalion on Rota stand to the headquarters of the Twenty-ninth Division on Guam?
A. On the arrival of my battalion on Guam I received orders directly from the commanding general of the division to go to Rota Island as a detached unit of the division. This took place in the latter part of March 1944. In the middle of May 1944 the arrival of a new division brought about a change in the disposition of troops and in the early part of June 1944 preparations were made for our battalion to return to Guam and on Guam in the early part of June 1944 there was an advanced unit of the Fiftieth Regiment from Tinian already on Guam which regiment was to proceed to Rota to replace us.

10. Q. Were you the senior army commanding officer on Rota Island?
A. I was the senior officer on Rota Island from the latter part of March 1944 until the middle of July of the same year and in the middle of July 1944 by virtue of the last dispatch order from the commanding general of the Twenty-ninth Division, Major Imagawa assumed command on Rota Island and I was placed under his command and remained under his command until the end of the war.

11. Q. During your tour of duty on Rota Island were there any navy units besides army units on Rota Island?
A. Yes, they were.

12. Q. Were there any organizations which could conduct trials on Rota Island?
A. No, there were none.

13. Q. Were there any emergency measures instituted around the middle of June 1944 for natives and residents of Rota Island?
A. There were.

14. Q. Please state briefly concerning these measures.
A. On the eleventh of June 1944 the United States offensive on the Marianas began and with the naval bombardment and bombing, Rota was turned into a field of battle. On the fourteenth or fifteenth of June 1944 I convened a conference and called the persons connected with the South Seas Government Office and the village heads of Rota Island. Major Imagawa and myself attended this conference. The battle conditions in the Marianas were explained to those present and the following instructions were issued to those present in connection with their cooperation with the military: 1 - Preparations to be made for the carrying into effect of the conscription and induction order of the commanding general of the Thirty-first Army; 2 - Village heads will take control of natives in the safety zones and establish peace and order among them. Institution of blackout measures and the prohibition of natives to leave the areas assigned to them as safety zones after eight o'clock in the evening. Further those present were cautioned to be on the alert for subversive acts and acts of treason and spreading rumors, because such acts were prevalent.

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15. Q. During your tour of duty were natives executed on Rota Island?
A. Yes.

16. Q. Where and when did these executions take place?
A. In the latter part of June 1944 two natives were executed in the Tatacho area and in the early or middle part of July of 1944 three more were executed in the Taruga area.

17. Q. For what reasons and on what charges were these natives executed?
A. These natives were executed for having violated the articles in the Criminal Code of Japan in the Military Secrets Security Law and the Army Criminal Code which pertained to subversive acts, acts of treason and obstruction of operational movements.

18. Q. Please state concretely what these acts were on the part of the natives?
A. First, these five had conspired in their efforts to detect and gather military secrets, the conditions of the air field, the disposition of troops and armaments of the military forces, and had passed this information on to the enemy and these five had constantly been engaged in this work. They cut telephone wires and thereby obstructed operational movements. They signalled to enemy planes and ships by various methods and disclosed the position of the airdrome and of troop concentrations and guided the enemy in bombing and naval bombardment. They spread unfounded rumors and worked to break down the morale behind the lines and they planned to contact and to guide the American forces in the event of an invasion.

19. Q. How did you come to know about the five persons executed committing these acts?
A. The facts to which I testified were brought to light through the reports submitted to me by Ensign Okuyama and his subordinates whom I had ordered to investigate and through the investigation and reports of investigation made by Sergeant Tokunaga.

20. Q. Did you order any other persons besides those you mentioned to conduct investigations?
A. Yes, I did. I ordered the first line area units to make searches and to be on the alert and also to institute lookouts, patrols, and scouting parties at night.

21. Q. Were there any other data other than the invesitgation and reports made by Okuyama, Tokunaga, and Ichimura and the investigations and search reports of the first line area units to establish the facts of the offenses of these five executed men?
A. Besides the reports on the investigations and search made by Okuyama there were exhibits which were submitted to me confirming the cases of two or three of the five persons executed.

The commission then, at 3:15 p.m., took a recess until 3:45 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

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Tokunaga, Akira, an accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

22. Q. What were these exhibits that you refer to?
A. These exhibits were secret notebooks, letters, cloths for signaling purposes, and bottles for signaling purposes.

23. Q. And approximately how many exhibits were there?
A. As I recall there was one secret notebook, ten odd letters, two or three pieces of cloth for signaling, and one bottle used for signaling.

24. Q. Was there any other material which went to establish the guilt of the persons executed other than the reports and the exhibits to which you have testified?
A. There were confessions and admissions made by these natives in the course of the interrogations conducted by Okuyama and policeman Tokunaga.

25. Q. What measures did you take when you discovered the subversive acts and acts of treason on the part of these five natives?
A. After receiving the reports on the investigation and search conducted by Okuyama and Tokunaga and after receiving the exhibits from them, I asked Second Lieutenant Okuyama and Sergeant Tokunaga, who had actually conducted the investigations, for their opinions on the matter, and I thereby confirmed the facts of these actions. After discussing the matter with Major Imagawa I referred to the military regulations. By regulations I mean the documents which were taken from the South Seas Government Office to my cave during the air raids which were, as I recall, the Army Regulations. The attacks by the United States Forces were intense and first line units were at their battle stations. Air and surface transportation were completely severed. At my battalion there were no facilities for conducting a trial and suspects could not be sent to Guam. Further we did not have the time to spare to conduct a trial under the then existing battle conditions, and I was greatly disturbed as to what to do with these five natives, and so I sent a dispatch to the headquarters of the Twenty-ninth Division located on Guam, which headquarters was immediately superior to me, and which headquarters was the only headquarters with which I still could get in touch by wireless, stating the actions of these five natives and requesting instruction for the disposition of these natives of the Commanding General.

26. Q. Was it by your own decision that you determined to send this dispatch to the headquarters of the Twenty-ninth Division requesting instruction for the disposition of the natives?
A. This decision was not arrived at by myself alone. As I testified previously I asked Major Imagawa his opinion on the matter as I was somewhat at a loss and it was a result of discussion with the major that I decided on the best course to be followed and the reason why I asked Major Imagawa for his opinion was because he was graduated from the Military Academy before me and he was an instructor at the Infantry School and had a much wider experience and knowledge than myself.

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Tokunaga, Akira, an accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf, was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

22. Q. What were these exhibits that you refer to?
A. These exhibits were secret notebooks, letters, cloths for signaling purposes, and bottles for signaling purposes.

23. Q. And approximately how many exhibits were there?
A. As I recall there was one secret notebook, ten odd letters, two or three pieces of cloth for signaling, and one bottle used for signaling.

24. Q. Was there any other material which went to establish the guilt of the persons executed other than the reports and the exhibits to which you have testified?
A. There were confessions and admissions made by these natives in the course of the interrogations conducted by Okuyama and policeman Tokunaga.

25. Q. What measures did you take when you discovered the subversive acts and acts of treason on the part of these five natives?
A. After receiving the reports on the investigation and search conducted by Okuyama and Tokunaga and after receiving the exhibits from them, I asked Second Lieutenant Okuyama and Sergeant Tokunaga, who had actually conducted the investigations, for their opinions on the matter, and I thereby confirmed the facts of these actions. After discussing the matter with Major Imagawa I referred to the military regulations. By regulations I mean the documents which were taken from the South Seas Government Office to my cave during the air raids which were, as I recall, the Army Regulations. The attacks by the United States Forces were intense and first line units were at their battle stations. Air and surface transportation were completely severed. At my battalion there were no facilities for conducting a trial and suspects could not be sent to Guam. Further we did not have the time to spare to conduct a trial under the then existing battle conditions, and I was greatly disturbed as to what to do with these five natives, and so I sent a dispatch to the headquarters of the Twenty-ninth Division located on Guam, which headquarters was immediately superior to me, and which headquarters was the only headquarters with which I still could get in touch by wireless, stating the actions of these five natives and requesting instruction for the disposition of these natives of the Commanding General.

26. Q. Was it by your own decision that you determined to send this dispatch to the headquarters of the Twenty-ninth Division requesting instruction for the disposition of the natives?
A. This decision was not arrived at by myself alone. As I testified previously I asked Major Imagawa his opinion on the matter as I was somewhat at a loss and it was a result of discussion with the major that I decided on the best course to be followed and the reason why I asked Major Imagawa for his opinion was because he was graduated from the Military Academy before me and he was an instructor at the Infantry School and had a much wider experience and knowledge than myself.

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27. Q. Were these the only reasons why you asked Major Imagawa for his opinion?
A. Major Imagawa was attached to the headquarters of the Twenty-ninth Division and his duty on Rota Island was to direct operations and the actions of the natives were obstruction of operational movement and therefore pertained directly to operations and that is why I asked Major Imagawa.

28. Q. Were there orders from Division Headquarters in reply?
A. As I recall a reply by dispatch was received on the following day.

29. Q. Please state as accurately as possible the content of this dispatch?
A. As I recall the text of that dispatch read that these natives were to be given the capital punishment in accordance with article so-and-so of the Army Criminal Code. I have today forgotten what article of the Criminal Code the content of the short dispatch referred to.

30. Q. You testified that you sent a dispatch requesting instruction for the disposition of the natives. Prior to your sending the dispatch did you know what law or regulation applied to the actions of these natives?
A. As I recall when I referred to the documents prior to the sending of the dispatch I saw in articles contained in the Military Secrets Security Law, the Army Criminal Code, and the Criminal Code of Japan certain articles which stated that capital punishment would be meted out for the offenses committed by these men.

31. Q. What measures did you take on the basis of the order received from Division Headquarters?
A. I put in effect the executions of two persons in the Tatacho area in the latter part of June 1944 and in the early or middle part of July 1944 the executions of three persons in the Taruga area.

32. Q. Where in the Tatacho area was the first execution conducted?
A. The first execution took place in the cliff area of the Tatacho district close to Songsong.

33. Q. What type of persons were executed in the first execution?
A. I do not recall clearly who the persons were who were executed that day. However, I recall that one of them was a shoemaker living in the Tatacho area about fifty years of age. The other, as I recall, was a man between thirty and thirty-five years of age.

34. Q. Will you please state briefly how the first execution was conducted?
A. It was on a certain day in the latter part of June 1944, a day or two after the order was received from Division Headquarters. I instructed First Lieutenant Odanaka, who was in the Tatacho area in the morning of that day, by telephone to the effect that two natives would be executed at the Yasui unit. Early in the afternoon utilising the lulls between the air raids, I went by car to the Tatacho area taking the two natives and guards with me. In the cliff area of the Tatacho District I read the execution sentence to the two natives in the presence of First Lieutenant Odanaka and Warrant Officer Yasui, and ordered Yasui to perform the execution. As I recall Yasui gave the two natives cigarettes to smoke. After they had smoked Yasui executed them by use of a firing squad consisting of six men. The six men were dressed in uniform worn at ceremonies. After the execution expressions of condolence were offered and the execution party was dismissed. First Lieutenant Odanaka was present at the execution by my orders and he was in the Tatacho area because he was constructing positions in that area.

The commission then, at 4:20 p.m., adjourned until 9 a.m., tomorrow, Wednesday, February 9, 1949.

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ELEVENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, February 9, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Tokunaga, Akira, the accused, the witness under examination when the adjournment was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

35. Q. What persons were executed at the second execution?
A. I do not clearly recall, but one of them was a man of about fifty years of age who was a servant working at the Church, and the second man was older than the first, but I do not clearly recall his age or matters concerning him.

36. Q. Please state briefly concerning the second execution?
A. On a day in the early part or the middle part of July 1944 Sergeant Tokunaga brought the two persons to whom I referred previously to my place, and I read the sentence of execution to these two men in front of my office in the presence of Sergeant Tokunaga. I then told Sergeant Tokunaga to hand these two men over to Second Lieutenant Takahashi and I returned to my work which was the planning of defenses. An hour or two hours later a messenger came in a very excited state of mind to my office and reported that one of the natives had taken poison but had not died and was suffering and that Second Lieutenant Takahashi desired instructions on what to do. I told the messenger that as the native had taken poison and was suffering it was pitiful to leave him as he was and to put an end to his life. At the noon meal that day Lieutenant Takahashi reported the completion of the execution of the two natives. I received the impression that Lieutenant Takahashi was feeling a very heavy sense of responsibility for the execution.

37. Q. Is that all?
A. Yes.

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38. Q. Was there an official report of the completion of the execution?
A. The report made by Lieutenant Takahashi was that the ordered execution had been carried out.

39. Q. You testified that the third execution took place at Taruga. Where in Taruga did this execution take place?
A. It took place at the Shiono Unit in the Taruga Area.

40. Q. What persons were executed at the third execution; please explain?
A. I do not clearly recall the native who was executed at this time except for the fact that he was a man around thirty years of age.

41. Q. Please state the main points in the third execution.
A. I recall the date of the execution as having been a day or two days after the execution at Battalion Headquarters. I read the sentence of execution to the native in my office in the presence of Lieutenant Shiono and I ordered the execution to take place at Shiono's Unit. On the following day or the day following that one, I do not recall which, I received a report from Lieutenant Shiono stating that the execution had been carried out. This report was made over the telephone.

42. Q. Is that all?
A. Yes.

43. Q. What was the general concept of the sentences of execution which were read at the second and third executions prior to the first, second and third executions?
A. I do not clearly recall but these sentences were written by myself and they were written on one sheet of ordinary white paper. As to the content, each document listed the actions of that individual and also the order of the Commanding General of the Twenty-ninth Division which stated that he would be executed in accordance with the Army Criminal Code. I do not recall the wording of these documents but that was the contents.

44. Q. Is it correct then, that the actions of each individual was written out clearly in each document?
A. As I recall that was how they were.

45. Q. How did you learn that certain of the individuals had committed certain of the actions?
A. I learned these facts from the reports on the searches and investigations made by Ensign Okuyama and Sergeant Tokunaga and also through the confessions and admissions of the natives, and through the testimony of refugee natives.

46. Q. I would have you clarify this point a little more. Did the records on the investigations stating for example, that a certain individual; let us say the shoemaker, was guilty of such-and-such actions. Did the records go into such concrete matter? J.A.R.
A. Yes, that is so.

47. Q. Please state briefly and clearly the battle conditions existing on J.A.R. Rota around June and July 1944?
A. In the latter part of May 1944 the battalion was preparing for its departure from Rota Island. In the early part of June 1944 the advance units of the Fiftieth Regiment which was to replace our battalion had already arrived from Tinian on Rota. On June 11, 1944 a large scope offensive by the Americans against the Marianas began and in a very short time the whole island was subjected to intense bombing and bombardment. The battalion was forced to J.A.R.

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assume the defensive and I began to plan the defense. Judging the battle conditions and the pattern of American attacks, I judged that an American invasion was imminent. My judgment of the battle conditions was based on that of the Commanding General of the Twenty-ninth Division and the judgment was that the United States Forces would land on Rota Island, therefore all measures were taken to cover an invasion. There was one complete air strip on Rota Island and it was being used by the Japanese aircraft in the fighting in the Marianas. That, I believe, was the reason why the Americans directed their attacks on Rota. I will explain the battle conditions chronologically: In the middle of June 1944 the objectives of the American attacks were the air strip, the barracks and the Japanese ships lying off shore. From the latter part of June and after we entered the month of July, the Americans shifted their objectives to first line positions, and the number of planes participating in the attacks rose to over a hundred planes. Further there was a bombardment conducted by a United States fleet which had a cruiser for its flagship, and submarines began to appear in the seas, and at night small seagoing craft approached the shores of the island. The landing of the American forces on Rota Island was judged by these activities. And on the basis of this judgment referred to above all the first line positions were reinforced as far as possible, and all officers and men determined to fight to the last and watches were kept throughout the night so as not to be surprised. These measures were taken on the basis of my judgment.

48. Q. Is that all?
A. That is all.

49. Q. You testified that the executions were carried out in accordance with instructions from division headquarters; were there any express clauses in the regulations of the Japanese Army in regard to obedience to superior orders?
A. I recall the following from the operational field manual which states that military commands are based on the Imperial prerogative of the Supreme Commander (T.N. The Emperor). Commanding Officers of all ranks shall execute all commands implicitly, and in the Army Administrative Manual in that portion of the manual which relates to obedience it says that subordinates in obeying their commanding officers shall obey them implicitly under all circumstances. Further it states that orders of superior officers shall be received with respect and they shall be carried out immediately. Never shall its appropriateness or inappropriateness be questioned nor the reason or cause of the orders, and it shall not be permitted for one to question the reason or cause of the order.

50. Q. Is that all?
A. That is all.

51. Q. You stated that during your tour of duty on Rota there was no organization on Rota which conducted trials. How then were the civil laws and the military orders and regulations enforced during your tour of duty?

The first part of this question dealing with civil laws was objected to by the judge advocate on the ground that it was irrelevant to the case at hand.

The accused replied.

The commission announced that the objection was sustained.

The accused reframed the question.

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52. Q. How then, were the military orders and regulations enforced during your tour of duty?
A. I do not fully grasp the meaning of the question. Are you referring to how they were enforced towards civilians or towards military personnel?

53. Q. Toward both civilian and military personnel.
A. The military regulations applied in their entirety to all military personnel. As to civilians, until the middle of June 1944 the branch office of the South Seas Islands Government Office of Saipan on Rota was in charge. However, with regard to maintenance of peace and order, that was an assignment for the army. However after the middle part of June 1944, that is, after Rota had become a field of battle, there was no other way but for the army to take over the maintenance of peace and order of the civilians because Saipan Branch Office of the South Seas Government Office had ceased to function and the branch office on Rota had been demolished by bombing and it was almost impossible for it to function.

The commission then, at 10:15 a.m., took a recess until 10:30 a.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, 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.

Tokunaga, Akira, the accused, the witness under examination when the recess was taken, resumed the stand as a witness in his own behalf. He was warned that the oath previously taken was still binding, and continued his testimony.

(Examination continued.)

54. Q. After the June 14, 1944 convention you said you made preparations for the carrying into effect of the conscription and induction orders of the Commanding General Thirty-first Army. What was this order?
A. The content of this dispatch of the Commanding General, Twenty-ninth Division was "I hereby put into effect the regulation of the Thirty-first Army concerning induction and conscription". In April or May of 1944 the Commanding General of the Division came over on a tour of inspection of Rota Island and on that occasion I asked him whether the induction and conscription regulation would apply to the natives of Rota Island. He said that they would and therefore when I received the dispatch order from the Commanding General of the Twenty-ninth Division I immediately put into effect the induction and conscription regulation of the Commanding General of the Thirty-first Army.

55. Q. You stated in your answer to the eighteenth question that these five persons detected and gathered military secrets and passed this information on to the Americans. Did the reports of investigation show with what intent these persons gathered this information and passed it to the Americans?
A. In the reports it was stated to the effect that these men had submitted information to the Americans with the intent of committing treason against Japan and of aiding the enemy.

Cross-examined by the judge advocate:

56. Q. You have talked of Rota being a battlefield. Do you mean the entire Island of Rota?
A. Yes.

57. Q. You have told us how these five men conspired to get all this information. Did they set out to get this information openly or secretly?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. In secret.

58. Q. You have told us about these reports that Okuyama and the others made to you. Were any of these reports in writing?
A. Yes, they were.

59. Q. Did you keep these reports in your files after the executions?
A. Yes.

60. Q. How about these exhibits. Did you keep these exhibits in your files too?
A. Concerning the exhibits, I kept in my possession the note book and the documents. I do not know what happened to the other exhibits.

61. Q. Were any of these confessions made by these five men in writing?
A. I believe there were confessions in the documents mentioned.

62. Q. What became of all these documents?
A. I had them in my possession.

63. Q. Where are they now?
A. I had them until the termination of the war. After the surrender when we were moved to Guam they became lost.

64. Q. Did your battalion or regiment keep a war diary?
A. Yes.

65. Q. Was an account of these spies and their activities, their investigation, and their executions put down in the war diary?

This question was objected to by the accused on the ground that the judge advocate was assuming a point in conflict, i.e., that the victims were spies.

The judge advocate withdrew the question.

66. Q. Was an account of the activities of these five individuals, their activities, investigation, and their executions put down in the war diary?
A. I do not clearly recall this matter but I do not believe that they were entered in this diary. We started to keep this battle diary from the latter part of July or early part of August, therefore I do not believe it was registered. The reason why the battle diary was commenced only at that late date was because our hands were full because of the air raids and the actual battles in progress.

67. Q. This dispatch that you sent to Guam. In the dispatch did you refer to these individuals by name?
A. I do not think that their names were on the dispatch.

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68. Q. Were the number of people involved on that dispatch?
A. As I recall I wrote five persons in the dispatch.

69. Q. Was the dispatch a long dispatch or a short one?
A. The one that I drafted, I recall, as having been of quite some length.

70. Q. In this dispatch did you refer to these people as spies?
A. I did not. As I recall the words that I used were "tsuteki" (T.N. persons who are in communication with the enemy) and "riteki" (T.N. persons who work for the advantage of the enemy).

71. Q. Do you recall having made a statement in your own handwriting on the fifth of February?
A. What year?

72. Q. 1948.
A. I did write a statement.

73. Q. Do you recall having written in that statement "As it was impossible to send the suspects to headquarters there was nothing else to do but inquire by dispatch to the effect 'Five natives have been apprehended who have been clearly proven to be spies. Request disposition'."?

This question was objected to by the accused on the ground that it was unfair to ask the witness a question in English concerning a statement that he had made in Japanese.

The judge advocate replied.

The commission announced that the objection was not sustained.

The commission instructed the interpreter to check the English given by the judge advocate against the Japanese original of this statement.

The interpreter stated that there was an error in the English translation in that instead of the Japanese word for "spy" appearing in the Japanese original, the word "tsuteki" (T.N. persons who are in communication with the enemy) appears.

The judge advocate withdrew the question.

74. Q. Did you study Japanese military law when you were in the Academy?
A. I did.

75. Q. In all your reading and in all your experience in the Japanese Army do you know of a single instance where any member of the Japanese Army was executed without a trial?

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

The judge advocate made no reply.

The commission announced that the objection was not sustained.

A. I do not.

76. Q. Were you of the opinion that it was possible to execute a person without a court martial?

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

The judge advocate withdrew the question.

Reexamined by the accused:

77. Q. During your tour of duty on Rota did you ever sentence a Japanese soldier to be executed without trial?
A. I did not personally sentence a man to death without trial, but I know of an instance which took place on Rota.

78. Q. Please state briefly the circumstances surrounding this case.

This question was objected to by the judge advocate on behalf of the accused Tokunaga on the ground that it was prejudicial to the rights of the accused.

The accused replied.

The commission announced that if counsel persisted, commission would permit the question.

Defense counsel stated that he desired the question be answered.

A. It was towards the end of 1944 or the beginning of 1945. A certain soldier of the Sapper Company attached to the battalion deserted time and time again from his company after Rota Island had become a field of battle. The company commander exorted him not to desert but without much effect. His action in deserting was damaging to the morale of the company. The reports of this case were reported to Major Imagawa who was then in command and myself. I believe that Major Imagawa sent a dispatch to the acting commanding general of the Thirty-first Army, Lieutenant General Mugikura stationed at Truk, requesting permission to establish a special court martial. As I recall, the answer which came by dispatch stated "permission not granted to establish special court martial. Supreme commander on spot dispose of case." Major Imagawa thereupon ordered the company commander of this deserter to give moral instructions to him covering a period of several months and to correct his habit of deserting. However, as the deserter continued repeatedly to desert and as this report was sent up to Major Imagawa, Major Imagawa ordered the company commander to execute this deserter by a firing squad. As I recall the company commander had a firing squad lined up before this deserter and had them fire but this deserter very cunningly escaped and ran off to a native village by a canoe. This I recall.

Recross-examined by the judge advocate:

79. Q. And this happened after the execution of the five natives by yourself. Is that correct?
A. Yes.

The accused did not desire to reexamine this witness.

The commission did not desire to examine this witness.

The witness made the following statement: I would like to add this to that part of my testimony where I explained the battle conditions around the middle of June 1944. In accordance with the order issued by the commanding general of the division, I assumed command of naval units on Rota Island and assigned them to the first line army units in groups.

The witness resumed his status as an accused.

The defense stated that they were prepared to rest on condition that if answers were received to interrogatories which were propounded to Kempei Tokunaga prior to the completion of the trial they would be allowed to reopen the defense and to introduce such a deposition.

The commission stated that such procedure would be permitted.

The defense rested.

The judge advocate requested that the commission adjourn until Saturday morning to await the arrival of rebuttal witnesses.

The commission announced that the request was granted.

The commission then, at 11:30 a.m., adjourned until 9 a.m., Saturday, February 12, 1949.

0012

TWELFTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Saturday, February 12, 1949.

The commission met at 9:15 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The rebuttal began.

A witness for the prosecution entered and was duly sworn.

Examined by the judge advocate:

1. Q. Will you state your name and your former rank?
A. Yanagisawa, Taiichi, former master sergeant, IJA.

2. Q. If you recognize the accused, will you tell us their names and former ranks?
A. Tokunaga, Akira, captain, IJA; Takahashi, Yoshio, surgeon second lieutenant, IJA; Koyama, Shigeo, superior private, IJA.

3. Q. Were you ever stationed with the Japanese forces on Rota Island?
A. I was.

4. Q. Between what dates were you on Rota Island?
A. From March 1944 to the termination of war.

5. Q. And to what unit were you attached while you were on Rota Island?
A. To the Tokunaga battalion.

6. Q. In June or July 1944 what were your duties?
A. I was a clerk at the headquarters.

7. Q. Were you a junior clerk or senior clerk?
A. Senior clerk.

8. Q. And as senior clerk of headquarters, what exactly were your duties?
A. My duties were in connection with the records.

9. Q. Were there any diaries kept at battalion headquarters?
A. Yes.

10. Q. How many diaries were kept that you know of?
A. One.

11. Q. And what was the name of that diary?
A. The diary kept in the camp - in the battle field.

12. Q. Was it the official diary of the Tokunaga battalion?

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

The judge advocate replied.

The commission announced that the objection was not sustained.

A. It was.

13. Q. Did you have any duties in connection with this diary?
A. Yes, I had duties connected with this diary.

14. Q. What were they?
A. To write the diary.

15. Q. When did you start keeping this diary?
A. In the latter part of February 1944.

16. Q. Was the diary in existence prior to the first air raids?
A. Yes, it was.

17. Q. Were there any entries in this diary concerning the execution of natives on Rota Island?
A. Yes, it was entered.

18. Q. How many entries were made concerning them?
A. "Two natives were executed on suspicion of spy activities".

19. Q. Was that the only entry relating to executions that was in that diary?
A. That is so.

20. Q. Did it say where the execution took place?
A. Yes, it was written.

21. Q. Where did the execution take place?
A. At Taruga.

22. Q. Did you yourself see the persons that were executed?
A. Yes, I did see.

23. Q. Do you know where that diary is at the present time?
A. It is not in existence.

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24. Q. How do you know this?
A. It was burned at the time of the cessation of war.

25. Q. Who burned it?
A. I burned it.

26. Q. Can you tell us what clothing these two persons were wearing that you saw at headquarters?

The accused moved to strike out all this witness' testimony pertaining to the diary on the ground that it was not part of the res gestae.

The judge advocate replied.

The commission announced that the motion was not sustained.

A. I recall that one of the natives was wearing black apparel.

27. Q. What was the other one wearing?
A. I do not recall.

28. Q. To your knowledge other than the entries in this camp diary were there any records concerning the execution of natives kept at headquarters?
A. It was not kept.

29. Q. To your knowledge was there any records kept at headquarters of an investigation of spies?
A. No such thing was kept at my place.

Cross-examined by the accused:

30. Q. You testified that you were the senior clerk in the Tokunaga battalion headquarters, but did you also hold a post involving personnel matters?
A. Yes, I held that post concurrently.

31. Q. You testified that you knew that the execution took place at Taruga. In what part of Taruga was this execution?
A. It was at the Tokunaga unit headquarters at Taruga.

32. Q. Were you keeping the diary every day from about the middle part of June until the latter part of July 1944?
A. Yes, I was daily keeping the diary.

33. Q. During the period from the middle part of June until the latter part of July 1944 while you were keeping the diary did you show this every day to Captain Tokunaga?
A. I did not show it to him every day.

34. Q. Did you ever show this diary during that period?
A. I recall that I did not show him the diary during that period because the bombing was so intense and we were all determined to die.

35. Q. Do you know if there were any official documents of the battalion which you did not keep but which were kept by the accused Tokunaga?
A. I do not recall.

0015

36. Q. You testified that you did not keep any records on the spy investigation, but did you see any record on spy investigations at the battalion headquarters around June and July of 1944?
A. I did not see.

37. Q. What kind of a diary was this that you wrote entries in?
A. What do you mean by "what kind"?

38. Q. Was it a book or just sheets of paper?
A. It is what the Japanese call a "chobo" which is a pad of paper and we used that because there was a shortage of paper at that time and we were not able to use the official forms.

39. Q. What did you do with this pad of paper after you wrote entries on it?
A. I burned it at the cessation of war.

40. Q. When, that is, on what day did you make the entry regarding the execution at Taruga?
A. On that same day.

41. Q. On what day was that?
A. I do not recall the date.

42. Q. Was it immediately after you had returned from the execution?
A. That is not so.

43. Q. When then?
A. In the evening of that day.

44. Q. Do you remember at what time of the day the execution took place?
A. I do not recall.

45. Q. Did anyone order you to make an entry regarding the execution in this diary?
A. Nobody told me.

46. Q. Do you remember just what entry you did make that day?
A. Regarding the execution?

47. Q. Yes.
A. "Two natives were executed on suspicion of spy activities".

48. Q. Since no one told you what entry to make the entry which you made was only what you thought should be entered there, is that correct?
A. That is correct.

49. Q. Did you always write in this diary what you thought should go into it?
A. Instructions as to the method of writing in this diary were stipulated in the Field Manual of the Army.

50. Q. Were entries made in this diary only of events of which you had personal knowledge?
A. That is so.

51. Q. And this execution of two natives was the only execution you had personal knowledge of?
A. That is so.

0016

52. Q. Did this Field Manual have instructions that only entries of which you had personal knowledge as the keeper of the diary should go into the diary?
A. I do not recall that it provided such a thing.

53. Q. How did you decide what was to be entered in this diary?
A. I made entries whenever the matters were applicable to the stipulations of the Field Manual.

54. Q. Did you consult the Field Manual before you made this entry regarding the execution?
A. I do not recall clearly.

55. Q. Did your entry regarding this execution state what these persons were guilty of?
A. I wrote "on suspicion of spy activities".

56. Q. Was there also an entry at the time these persons were arrested?
A. I do not recall that I did.

57. Q. Where did you actually keep this diary?
A. In the office room at the headquarters.

58. Q. Didn't the Field Manual specify that this diary which was an important document should be kept in the custody of the commanding officer?
A. I recall that it did not specify that.

59. Q. Do you know by what authority this document was made an official document as you testified it was?
A. It is provided in the Field Manual.

Reexamined by the judge advocate:

60. Q. Were any of the entries that you have ever made in this diary supplied to you by the officers of the battalion?
A. No, they were not supplied by the officers.

61. Q. Do you mean to say that the only information that was in this diary was the information which you yourself dug up?
A. I made entries in conformance with the provisions set forth in the Field Manual.

62. Q. Do you say now that you had personal knowledge of every incident that was written in that camp diary?
A. Yes, that is so.

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

The commission did not desire to examine this witness.

The witness made the following statement: I testified that matters to be entered in the diary were those which I considered necessary from an individual point of view, but that is incorrect, and it should be matters which are specified in the Field Manual.

The witness was duly warned and withdrew.

The rebuttal ended.

The accused did not desire to offer any evidence in surrebuttal.

The accused requested an adjournment until Monday, February 14, 1949 in order to await the receipt of a deposition from Japan and to prepare the statements of the accused and to prepare final arguments.

The judge advocate objected to this request on the ground that the statements of the accused had been written and translated.

The accused replied stating that the statement of the accused Tokunaga, Akira had not been translated.

The commission announced that the request was granted.

The commission then, at 10:05 a.m., adjourned until 9 a.m., Monday, February 14, 1949.

THIRTEENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Monday, February 14, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Paul F. Coste, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, stated that new evidence had been received from Japan which consisted of a document, and requested permission of the commission to reopen the defense.

The commission announced that the request was granted.

The defense reopened.

Mr. Sanagi, Sadamu, a counsel for the accused was recalled as a witness for the defense. He was warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. State your name.
A. Sanagi, Sadamu.

2. Q. Are you one of the defense counsel in this case?
A. I am.

3. Q. Do you know if the following laws and regulations were in effect on Rota Island around June and July 1944: Criminal Code, Law Governing Application of Criminal Code, Military Secrets Security Law, Army Criminal Code, Laws Governing Application of Army Criminal Code, Navy Criminal Code, Laws Governing Application of Navy Criminal Code?
A. I know that they were effective on Rota Island at that time.

4. Q. On what grounds do you make such statement?
A. It is stipulated in Article 1 of the Regulations for the Court Proceedings in the South Seas which Wajima Eiji, Director of Control Bureau, Ministry of Foreign Affairs, Japanese Government, certified that they were in effect around June and July 1944 on Rota Island.

5. Q. Is a certificate attached to this document?
A. What do you mean by the document?

6. Q. What kind of document is it which you testified as being the basis for your statement?
A. A true copy of the Regulations for the Court Proceedings in the South Seas sent from the Ministry of Foreign Affairs.

7. Q. Is the document signed by a person who prepared it?
A. It is signed by Wajima Eiji of the Control Bureau Ministry of Foreign Affairs, and also a witness who was there when this document was signed.

8. Q. In what language is this document written?
A. These regulations are written in Japanese and the certificate is written both in English and Japanese.

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

The judge advocate objected to the receipt in evidence of this document on the grounds that it was irrelevant to the issues of this case.

The accused made no reply.

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

The commission announced that the objection was sustained.

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 resumed his seat as a counsel for the accused.

The defense rested.

Tokunaga, Akira, an accused, read a written statement in his defense, appended, marked "Z".

An interpreter read an English translation of Tokunaga's statement, appended, marked "AA".

Takahashi, Yoshio, an accused, read a written statement in his defense, appended, marked "BB".

An interpreter read an English translation of Takahashi's statement, appended, marked "CC".

Koyama, Shigeo, an accused, read a written statement in his defense, appended, marked "DD".

An interpreter read an English translation of Koyama's statement, appended, marked "EE".

The commission then, at 10:35 a.m., took a recess until 10:55 a.m., at which time it reconvened.

0020

Present: All the members, the judge advocate, 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.

The judge advocate called the commission's attention to Section 419, Naval Courts and Boards, with respect to the statements made by the accused.

The commission announced that it would take cognizance of this article.

The judge advocate read his written opening argument, appended marked "FF".

An interpreter read a Japanese translation of the judge advocate's opening argument.

The commission then, at 11:30 a.m., took a recess until 2:05 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Takano, Junjiro, a counsel for the accused, read his written argument, in Japanese, appended marked "GG".

An interpreter commenced reading an English translation of Mr. Takano's argument, appended marked "HH".

The commission then, at 3:15 p.m., took a recess until 3:35 p.m., at which time it reconvened.

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

An interpreter concluded the reading of the English translation of Mr. Takano's argument, appended marked "HH".

The commission then, at 4 p.m., adjourned until 9 a.m., tomorrow, Tuesday, February 15, 1949.

0021

FOURTEENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Tuesday, February 15, 1949.

The commission met at 9:10 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Archie L. Haden, junior, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Mr. Sanagi, Sadamu, a counsel for the accused, read his written argument in Japanese, appended marked "II".

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

Commander Martin E. Carlson, a counsel for the accused, commenced the reading of his written argument, appended marked "KK".

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

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

Commander Martin E. Carlson, a counsel for the accused, concluded the reading of his written argument, appended marked "KK".

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

0022

The judge advocate made the following closing argument:

If it please the Commission:

Commander Carlson has made an able speech, but Commander Carlson, as usual has blown hot and cold on all angles of this case. He first starts off by informing the commission of his inability to find the unwritten law that is involved in the present case, and that it is a shame in this atomic age that the law has not been codified. The specific law that is involved is not unwritten. It is written very plainly in Article 30 of the Hague Convention. "A spy taken in the act shall not be punished without previous trial." That is all this case involves; it is as simple as that. Even if you catch a spy in the very act you cannot execute him without going through the formality of a trial, and the evidence in this case is clear that there was no trial. I say as I did before that if the trial had been good, bad, or indifferent, it would make no difference, the judge advocate could not stand here and ask that these men be found guilty. If they had given them any kind of a trial at all, not a mere agreement among themselves to execute them, but a trial in accordance with their own particular laws, whether it was their civil law, or criminal law, or court martial procedure, they could not be found guilty.

I agree with Commander Carlson that what has happened to the Hungarian cardinal is unfortunate, but it has nothing at all to do with this case and I will advise the court of my own personal opinion, which does not agree with the United States' stand. The United States is going to have to remedy its present position because the Hungarians were extremely careful to give the cardinal a trial, whether it was good, bad, or indifferent, he had one, and that is the one element that is not present in this particular case.

Mr. Takano in his argument read a great deal of Japanese law which is applicable, but the difficulty is it is only applicable in the case of Japanese nationals. If the individuals who were victims in this case were nationals of Japan, it would be very difficult to argue that even though under Japanese law there would be no punishment for an execution without a trial, the United States could bring them to trial. We cannot prove that because we have a higher standard of justice we could be able to interfere, but they are not nationals of Japan. Take first the case of Miguel Timoner. Is there any doubt in your mind that Miguel Timoner was the man who was stabbed by Koyama? He was a Spanish national; he was not a national of Japan. That ruins their argument right at the start. These three accused, all three of them, are charged in one specification for being responsible for the death of Miguel Timoner. Even if the commission were to accept the argument that these men who lived on Rota, these natives, were Japanese nationals, they still could find one of these specifications proven because it involves all three of the accused. But what is the status of a native of a mandated island? I don't know, nor does Mr. Takano know. He tells us they are "quasi-Japanese subjects" whatever that means, but we certainly can look to what the Judge Advocate General of the Navy decided in a case which is on all fours with the present one. In the trial of Major Furuki which was had before a military commission here on Guam, Major Furuki was charged under two charges, one of them was murder under Japanese law; the second was violation of the law and customs of war in that he executed certain natives of the Marshall Islands as spies without going through the formality of a

0023

trial. Here is the action of the Judge Advocate General of the Navy in which he states this, and I quote from paragraph four:

> "The accused made a plea to the jurisdiction of the commission to try him for murder, because the offense was charged as a violation of the Criminal Code of Japan, contending that as a United States court it had no jurisdiction to try persons for offenses against 'foreign' (Japanese) law. The accused also made a plea to the jurisdiction of the commission to try him for a violation of the laws and customs of war. The contention of the accused was that the Marshallese natives had been under the dominion of Japan as inhabitants of territory mandated to Japan..." exactly what you have here with the Rota natives ...."and, therefore, they were not within the class of spies protected by the Hague Convention of 1907." which is the applicable law in this case.

The Judge Advocate General said this in paragraph six:

> "The definition of spies is contained in the Hague Convention of 1907, Convention IV, Article 29. The limitations set forth in that Article do not include any limitation based on the nationality of the spy. Article 30 of the same convention provides that no one shall be punished as a spy without previous trial."

He says in paragraph seven:

> "In view of the above, the commission had jurisdiction to try the accused for a violation of Japanese law and for a violation of the laws and customs of war."

It is true, although it wasn't mentioned by the defense, that in paragraph eight he set aside the conviction of Furuki on the charge of violation of the law and customs of war, but his action has no application here because the reason he set it aside was that Furuki was charged with two charges both growing out of the same set of circumstances. He was found guilty of both charges both growing out of the same set of circumstances and so that the man would not stand convicted of two crimes growing out of one set of circumstances, the Judge Advocate General chose to set aside the conviction of the violation of the law and customs of war. By the reasoning that he used he could have set aside the first charge, namely murder, but he did not choose to do it, and decided in spite of specific objection of defense counsel that because they were natives of a mandated island Furuki could not be tried, that the Japanese who killed them could be tried for a violation of Article 30. The Judge Advocate General specifically answered they could. "The commission had jurisdiction to try the accused....for a violation of the laws and customs of war." As a matter of fact the language the Judge Advocate General uses is much too broad and the judge advocate doesn't agree with him when he says there is no limitation based on nationality. It is the personal opinion of the judge advocate along with Mr. Takano that had these individuals been nationals of Japan, the judge advocate could not get up and argue that they had not been properly executed regardless of how they had been treated.

0024

I am not going into the argument by the defense about the Shinohara case and the case here. Shinohara was a Japanese who came to Guam and lived on Guam for many years. I know that Shinohara was tried for treason, or for acts which were called treason, back in about July 1945. They are not the same as the acts that are alleged to have been committed by the natives and by the Spanish national, Miguel Timoner. There was no question in the Shinohara case of his having gathered any information for the Japanese. All Shinohara did was to open a restaurant for Japanese naval officers here on the island. He took a girl from some village and brought her to live with the Flag Lieutenant of the Japanese Governor. He stole some naval officer's automobile; he stole a generator belonging to the Naval Government; he stole some money belonging to Naval Government here on Guam. If there had been any evidence that Shinohara had gathered any information from the Americans after they had occupied the island and attempted to pass it to the Japanese, it would not have been treason, he would have been shot as a spy. He would not have been tried for treason, but the Shinohara case does not compare with the present one because here you have natives who presumably actively engaged in the business of spying. Let me say this, it is no part of the prosecution's case to prove that these men were in fact spies. All we have to show, and I am sure we have shown it, is that the Japanese who had the handling of them believed them to be spies. We don't know nor can any of us know whether Miguel Timoner, fifty some odd years old, or Ignacio de la Cruz, in his late seventies, went sneaking around Rota seeking information to pass along to the Americans. We'll never know that, but we do know from the evidence before this court that Tokunaga thought they did these things and thought they were spies.

Commander Carlson has quoted, as have the Japanese attorneys, what Tokunaga himself says about these individuals. "First, these five had conspired in their efforts to detect and gather military secrets, the conditions of the air field, the disposition of troops and armament of the military forces, and had passed this information on to the enemy and these five had constantly been engaged in this work." That is Tokunaga's opinion of what they had done, and if you read Article 29 of the Hague Convention which defines a spy "A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of opperations of a belligerent, with the intention of communicating it to the hostile party." When you put that paragraph along with Tokunaga's answer, what do you think Tokunaga considered these men? Men guilty of treason or men who were actually spies? It was no secret what Tokunaga's opinion of these people was and it is important what Tokunaga thought because he is the man that started this whole game. Here's what the witnesses say: Yasui reported what Tokunaga told him; Tokunaga said: "I have brought two natives who have committed acts of espionage here. You will execute them at your place by shooting." Momma testified: "I do not recall the substance of the sentence in detail but as I recall it stated that the men had been involved in spying and that they were to be executed because of connection with spy activities." Kato is asked the question: "Do you know why these two people were executed?" and his answer "I heard that they were spies. I heard this from Second Lieutenant Takahashi." Yoshizaki said that he went to the execution because he wanted to see the execution of a spy and he says "I heard that they were spies." Shiono testified: "I therefore went to battalion headquarters where the battalion commander read the sentence to a native and stated that he had been connected with spy activities...."

This idea of treason makes an excellent argument but it wasn't a question of treason in 1944, it was a question of spies. Since they thought they were spies, they should have given them a trial and a good, bad, or indifferent trial would have been sufficient as long as it was in conformity with applicable law.

0025

Koyama indicated in his statement, as defense counsel indicated in their arguments, that they are unable to see why Koyama is being tried here when we are not trying Yasui. In the first place there is a great difference between the actions of Yasui and the actions of Koyama, but even assuming there was no difference at all the commission must make a finding on the facts. Merely because we possibly did not try everyone who had some connection with this case does not excuse people who are presently being tried for having executed these natives. Consequently I maintain that with respect to the sentence of execution Kato being an officer possibly knew there had been no trial, but we would have had a long and unnecessarily involved trial if all these people involved had been tried. Yasui and Momma are perfect examples of what I mean. How could we ever prove that they did not know there was no trial?

We are not expecting a conscripted private on the firing squad to question the legality of an order, but there is no question here of Koyama being a private on a firing squad. The only connection he has with that statement is that he was conscripted. The only reason that Takahashi acted and the only reason Koyama acted was because they were told to do so by someone superior to themselves.

Now, we have the long argument about superior orders. I can only answer just as they have anticipated by referring the commission to SCAP. The Supreme Commander for the Allied Powers in his regulations says: "The official position of the accused shall not absolve him from responsibility... further, action pursuant to the order of an accused's superior or of his government shall not constitute a defense but may be considered in mitigation of punishment if the commission determines that justice so requires." From the Nuremberg Tribunal, the charter specifically provides in Article 8: "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment." These accused individually may not have been warned and may not have known themselves that the defense of superior orders was not going to be acceptable, but certainly Japan knew it because the Joint Declaration on Punishment of War Crimes of the Inter-Allied Conference in January 1942, two years before this crime, says: "...among their principal war aims the punishment through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them." There is a very real reason why superior orders isn't going to be acceptable and it is applicable to this trial. Look at the facts: Koyama isn't responsible because he got the order from Takahashi; Takahashi cannot be held responsible because Tokunaga told him what to do; and Tokunaga surely cannot be held because the Chief of Staff is responsible, and the Chief of Staff is dead. Even if the Chief of Staff were alive, he could not be held responsible because the Commanding General told him what to do and the Commanding General is dead.

This case isn't an important case, but nevertheless it has been seen fit by the persons who have charge of war crimes that the case should come to trial, and the trial is finished, and the facts require a finding. Everyone is entitled to their day in court. These men have had their day in court and I ask that they now be found guilty.

The accused waived the translation of the judge advocate's closing argument in Japanese in open court.

The commission then, at 11:10 a.m., took a recess until 2:05 p.m., at which time it reconvened.

0026

Present: All the members, the judge advocate, the accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The trial was finished.

The commission was cleared.

The judge advocate was recalled and directed to record the following findings:

As to the accused, Tokunaga, Akira:

The first specification of the charge proved.
The second specification of the charge proved.
The third specification of the charge proved.
The fourth specification of the charge proved.
And that the accused, Tokunaga, Akira, is of the charge guilty.

As to the accused, Takahashi, Yoshio:

The second specification of the charge proved.
The third specification of the charge proved.
And that the accused, Takahashi, Yoshio, is of the charge guilty.

As to the accused, Koyama, Shigeo:

The second specification of the charge proved.
And that the accused, Koyama, Shigeo, is of the charge guilty.

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

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

The commission announced its findings to the accused in open court.

Yanagisawa, Taiichi, a witness for the prosecution, was recalled as a witness for the defense as to matters in mitigation, and was warned that the oath previously taken by him was still binding.

Examined by the accused:

1. Q. Please state your name and former rank.
A. Yanagisawa, Taiichi, former sergeant major.

2. Q. For what period of time have you known the accused Tokunaga?
A. From February 1944 until November 1946 I knew the accused.

0027

3. Q. Please state briefly, if you know, anything concerning the character of the accused Tokunaga.
A. Tokunaga was very strict when it came to training and education. On the other hand he was very warmhearted in his attitude towards his subordinates. Even in the maneuvers held in the cold plains of North Manchuria he lived with his troops in the tents and gladly partook of the frugal meals served to the troops. During his tour of duty on Rota Island and after the commencement of the air raids, Tokunaga immediately evacuated the civilian and native population of that island to safety zones and the very small casualty among this population of Rota Island was due to the most appropriate precautionary measures taken by Tokunaga and it is believed that all persons concerned are aware of this fact. When Tokunaga learned of the food shortage on the island he prohibited the military personnel to take indiscriminately fruits from such trees as the banana and breadfruit trees and gave the civilian and native population priority with such food. When it came to that stage when sweet potatoes were being eaten by the population of Rota Island Tokunaga saw to it that the civilians were allotted grounds to cultivate on the same basis as the military and he supervised the production and distribution of sweet potatoes on the same basis for the military and civilian population. The fact that under such circumstances the population of Rota Island carried through for a year until the termination of the war without raising complaints of any kind is, I believe, owing to the high character of Tokunaga and his fairness in all matters.

4. Q. For what period of time have you known the accused Takahashi?
A. I was with him from May of 1943 until November of 1946.

5. Q. Please state briefly concerning Takahashi's character.
A. He was a warm and kindhearted man. Once when there was an epidemic of endemic fever during our tour of duty in Manchuria, Takahashi made his rounds of the barracks late into the night and by his action prevented the spreading of this epidemic. During his tour of duty on Rota Island he examined and diagnosed the civilians as well as the military. During the air raids he treated the civilians and natives when they were brought in without discriminating them in any way from the military and thereby fulfilled his mission as a surgeon.

6. Q. How long have you known Koyama?
A. I was with him from May of 1943 until November 1946.

7. Q. If you know anything concerning the character of the accused Koyama, please state it briefly.
A. Koyama was a cheerful person and in all matters he was very enthusiastic. His earnestness and sincerity in all matters was recognized by his superiors and he stood very high among the privates who were inducted in the same year. Moreover he associated with his contemporaries very closely and his subordinates and the persons with whom he associated were very numerous. In the execution of his daily duties he used to do the chores which were disliked by others without complaints and willingly. His actions under intense fire and bombing were highly extolled by everyone. The above facts prove the sincerity and earnestness with which Koyama did all things.

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.

0028

The witness was duly warned and withdrew.

Sanagi, Sadamu, a counsel for the accused, a witness for the defense, was recalled as a witness for the defense as to matters in mitigation, and was warned that the oath previously taken was still binding.

Examined by the accused:

1. Q. Please state your name.
A. Sanagi, Sadamu.

2. Q. Are you one of the counsel for the accused in the present case?
A. Yes.

3. Q. Do you have in your possession petitions in mitigation for the accused in this case?
A. I do. I have one petition in behalf of Tokunaga, three in behalf of Takahashi and one in behalf of Koyama.

4. Q. From whom is the petition in behalf of Tokunaga?
A. It is a petition from the village head of Yoshimura village and eighty-eight other persons.

5. Q. In what language is the petition written?
A. The original is in Japanese but there is an English translation.

6. Q. From whom are the three petitions in behalf of the accused Takahashi?
A. The first is from his wife, the second from his father-in-law, and the third from one of his friends during his days in the Japanese Army.

7. Q. In what language are these petitions written?
A. Two of them were originally written in Japanese but I have English translations. The third was originally written in English.

8. Q. From whom is the petition in behalf of Koyama?
A. The petition in behalf of Koyama was written by his family comprised of twelve persons.

9. Q. In what language was it written?
A. The original is in Japanese and there is a translation attached.

The documents produced by the witness were submitted to the judge advocate and to the commission and by the accused offered in evidence. There being no objection, they were so received and are appended marked "Exhibit 17", "Exhibit 18", "Exhibit 19", "Exhibit 20", and "Exhibit 21".

The accused stated that since all of the accused had seen these petitions that the reading of them in Japanese in open court was waived.

10. Q. Will the witness read Exhibits 17, 18, 19, 20, and 21?

(The witness read Exhibits 17, 18, 19, 20, and 21.)

The judge advocate did not desire to cross-examine this witness.

The commission did not desire to examine this witness.

0029

The witness said that he had nothing further to state.

The witness resumed his seat as counsel for the accused.

The commission then, at 4:25 p.m., adjourned until 9 a.m., tomorrow, Wednesday, February 16, 1949.

FIFTEENTH DAY

United States Pacific Fleet,
Commander Naval Forces, Marianas,
Guam, Marianas Islands,
Wednesday, February 16, 1949.

The commission met at 9:05 a.m.

Present:

Rear Admiral Arthur G. Robinson, U. S. Navy,
Lieutenant Colonel Harry W. McCormick, Quartermaster Corps, United States Army,
Major John H. Lott, Corps of Military Police, United States Army,
Lieutenant Commander Loyd S. Bjorlo, Supply Corps, U. S. Navy,
Lieutenant Henry E. Wahl, U. S. Navy,
Captain Kermit H. Shelly, U. S. Marine Corps, members, and
Lieutenant Commander Joseph A. Regan, U. S. Navy, judge advocate.
Elvin G. Gluba, yeoman first class, U. S. Navy, reporter.
The accused, their counsel, and the interpreters.

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

No witnesses not otherwise connected with the trial were present.

The commission was cleared.

0031

The judge advocate was recalled, and directed to record the sentences of the commission as follows:

The commission, therefore, sentences him, Tokunaga, Akira, to be confined for a period of seven (7) years.

The commission, therefore, sentences him, Takahashi, Yoshio, to be confined for a period of five (5) years.

The commission, therefore, sentences him, Koyama, Shigeo, to be confined for a period of twelve (12) months.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

HARRY W. McCORMICK,
Lieutenant Colonel, Quartermaster Corps, United States Army, Member.

JOHN H. LOTT,
Major, Corps of Military Police, United States Army, Member.

LOYD S. BJORLO,
Lieutenant Commander, Supply Corps, U. S. Navy, Member.

HENRY E. WAHL,
Lieutenant, U. S. Navy, Member.

KERMIT H. SHELLY,
Captain, U. S. Marine Corps, Member.

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

0032

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

The commission then read and pronounced the sentence to each of the accused.

The commission adjourned to await the action of the convening authority.

ARTHUR G. ROBINSON,
Rear Admiral, U. S. Navy, President.

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

MOTION FOR SEPARATE TRIAL FOR EACH OF THE ACCUSED, TOKUNAGA, AKIRA; TAKAHASHI, YOSHIO; AND KOYAMA, SHIGEO.

Delivered by

Martin E. Carlson,
Commander, U. S. Naval Reserve,
Counsel for the Accused.

Each of the accused, Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo makes this motion for a separate trial.

This motion for a separate trial is based upon the following legal grounds: (1) that the defendants have antagonistic defenses; (2) that important evidence in favor of one of the defendants which would be admissible on a separate trial would not be allowed on a joint trial; (3) that evidence incompetent as to one defendant and introducible against another would work prejudicially to the former; (4) that a confession by one defendant if introduced and proved, would be calculated to prejudice the commission against the others.

The circumstances under which the alleged offenses took place, that is a state of war existing, and Tokunaga, Akira being the commanding officer of the First Battalion, Tenth Independent Mixed Regiment, Imperial Japanese Army, and Takahashi, Yoshio, a surgeon second lieutenant attached to the headquarters of this Battalion, and Koyama, Shigeo, a leading private attached to the First Battalion, Tenth Independent Mixed Regiment, Imperial Japanese Army, are sufficient in and of themselves to deprive any or all of the defendants of a fair trial if tried jointly with any one of or all of the other defendants and is sufficient grounds to require a separate trial. We cite the case People vs. Braune, 363 Illinois 551, 2 N.E. (2d) 839, 104 A.L.R. 1513.

The case of People vs. Braune, 363 Ill. 551, 2 N.E. (2d) 839 held it was an abuse of discretion to deny a separate trial where instructions cannot protect the defendants against their own hostility. (See 53 Am. Jur. "Trial" Sec. 60)

There is authority to the effect that where a confession by one of several defendants tends to implicate others, a severance should be ordered. Unless the prosecution declares that it will not offer into evidence at the trial the purported and alleged confessions of Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo, a severance should be ordered. (53 Am. Jr. "Trial" Sec. 62) Since this is a trial without jury such a confession cannot therefore be offered with appropriate instructions. Therefore it would be an abuse of discretion to deny separate trials because no instructions are possible, there being no jury to which instructions could be given which would remove the prejudicial effect of the alleged confessions on the defendants implicated.

We do not waive any rights to a demand for a separate trial by reason of the fact that this motion may be untimely in that it is made otherwise than required by Federal Statute or too late as required by common law because this is a military commission and this commission was not convened or empowered to hear this case at the time the charge and specifications were approved by the convening authority on December 9, 1948 and served upon the three accused. Until the members of the Commission are sworn they have no authority to act and exercise the powers of a court. We submit therefore that this the motion for a separate trial is both timely and well taken.

B(1)

0034

There is submitted in support of this motion the affidavits of the three accused. If the commission does not consider these affidavits sufficient to support this motion for a separate trial each and all of the three accused hereby desire to testify in open court on voir dire as to the military relationship of the three accused at the time of the alleged offenses on Rota and to the fact that they have each made statements implicating each other at the request of American naval officers while held under arrest.

The three accused pray therefore for a severance and make this motion for a separate trial.

Respectfully,

MARTIN E. CARLSON.

B(2)

0035

TAKAHASHI

宣誓供述書

余高橋嘉雄は自己の良心に従ひ、次の事を誓述す.

即ち余は1941年3月京都大學醫學部を卒業し、今年5月短期現役軍醫候補生として陸軍に入隊した.今年8月陸軍軍醫中尉に任官した.

余は上官の一切の命令に服従することを承諾し且宣誓したのである.

余は軍隊の職務を命ぜられ、第松混成旅團德永大隊本部付軍醫としてグアム島に派遣せられた.次いで余はロタ島の配置を命ぜられ、同島に於いて軍醫として任務を遂行してゐた.

終戰後余は正式に復員した.1948年5月2日余は令狀なくして逮捕せられ、翌3日東京巢鴨拘置所に收容せられた.1948年5月29日頃余はソリメイン大尉の訊問を受け且宣誓供述書を提出することを要求せられ此を提出した.其後10月にカリー中佐の訊問を受け更に11月カリー中佐、ソリメイン大尉の訊問を受けた.此の宣誓供述書は檢察官の手中に在りと余は思考する.此の宣誓供述書は起訴狀を余に交付せずして余が拘禁せられてゐた間に且つ辯護人との接見の特典を與へられずして米國海軍將校の要求に依つて作成したものであるから若し此が証據として提出せられ且つ此が受理せられて立証せらるゝならば、余の上官並びに下級者、乃至其同被告人を連累者ならしむる虞あるものである.

余は茲に自己の自由意志に依り審理分離の動議を支持する爲此の宣誓供述書を裁判所に提出する.

敬白.

1949年1月19日　高橋嘉雄

B(3)

0036

Affidavit.

I, Takahashi, Yoshio do swear by my conscience and depose as follows.

I graduated from the Medical Department of the Kyoto Imperial University in March, 1941 and May of the same year entered the army as Probationary Surgeon Cadet. I was commissioned a 1st Surgeon Lieutenant in August of the same year. I was [redacted] ordered to report for military duty and was despatched to Guam as the Surgeon attached to the Tokunaga Battalion Headquarters of the Shigematsu Mixed Brigade. Subsequently I was ordered to Rota Island. At this duty station I served as a Surgeon.

After the termination of the war I was regularly demobilized. On 2nd May, 1948 I was arrested without warrant and on the 3rd, interned at Sugamo Prison, Tokyo.

Around the 29th of May, 1948 I was interrogated by Lieutenant Tremayne and by him requested to submit an affidavit, which I accordingly did. Subsequently to this I was interrogated by Commander Currie and Lieutenant Tremayne. These affidavits I presume to be in the possession of the Prosecution. Those affidavits made at the request of American Naval Officers while I was being held in confinement without charge being preferred against me and without benefit of Counsel, if offered into evidence and proved, will if accepted, tend to implicate my co-defendants, one of whom was my superior and the other a subordinate.

I voluntarily submit this affidavit to the court in support of my motion for a severance and spparate trial.

Respectfully,

TAKAHASHI, Yoshio.

January 19, 1949

B(3)(a)

GUAM

宣誓供述書

私小山茂雄ハ自己ノ良心ニ從ヒ次ノ事ヲ宣誓述スル
即チ私ハ昭和十七年一月十日日本帝國陸軍ヲ一師團第一聯
隊ニ入隊兵役ニツイタノデアル入隊ニ當リ上官ノ一切ノ
命令ニ服從スル事ヲ宣誓シタ、私ハ昭和十九年三月廿五日
臺拔混成旅團德永大隊ニ配屬セラレグワム島ニ
派遣セラレタ 次デ私ハ德永大隊ノ一員トシテ右島
ニオモムキ同島ノ守備ニ付ク當時私ハ上等兵ニシテ
右島ニ於テハ傳令並ニ衛兵トシテ勤務シテ居タ

終戰後私ハ正式ニ復員シタ昭和二十三年七月
廿一日私ハ令狀ニ依ラナイデ逮捕セラレ同年八月ニ日
東京巢鴨拘置所ニ收容セラレタ

昭和二十三年九月十日頃私ハカリー中佐ヨリ訊問
ヲ受ケ且宣誓口述書ヲ提出センコトヲ要求セラレ
同月二十三日頃コレヲ提出シタ サラニ同年十月二十七日
頃カリー中佐ニ訊問セラレ宣誓口述書ノ提出ヲ
要求セラレテ提出シタ
コレラノ宣誓口述書ハ檢事ノ手中ニ在リト私ハ考エル
此等ノ宣誓口述書ハ起訴狀ヲ私ニ交付シナイデ私
ガ拘禁セラレテ居タ間ニ且辨護人ト接見ノ特典ヲ
與エラレナイデ米國海軍將校ノ要求ニ依ツテ
作成シタモノデアルカラ若シコレガ証コトシテ提出セ
ラレ且之ガ受理セラレテ之証セラルルナラバ私ノ
直上ノ上官又ハ上官デアツタ其同被告人ヲ連

B(4)

0038

Affidavit.

I, Koyama, Shigeo do swear by my conscience and depose as follows.

I was conscripted on January 10, 1942 and entered the 1st Regiment, 1st Division, Imperial Japanese Army. On my enrollment I was sworn to that I would obey all orders from my superiors. On March 25, 1944, I was attached to the Tokunaga Battalion of the Shigematsu Mixed Brigade and despatched to Guam. Later as a member of the Tokunaga Battalion we were sent to Rota, where we were stationed to defend that island. I was then a leading private and held duties as an orderly and medical corpsman on Rota.

After the termination of the war I was regularly demobilized. On July 31, 1948 I was arrested without warrant and on August 12, 1948 interned at Sugamo Prison, Tokyo.

Around September 10, 1948, I was interrogated by Commander Currie and was requested by him to submit an affidavit, which I accordingly did around September 23. Around October 27, 1948 I was further interrogated by Commander Currie and he requested me to submit an affidavit which I did.

These affidavits I presume to be in the possession of the Prosecution. Those affidavits made at the request of American Naval Officers while I was being held in confinement without charge preferred against me and without benefit of Counsel, if offered into evidence and will if accepted and proved, tend to implicate my direct superior and ~~direct~~ superior officer who are my co-defendants.

I voluntarily submit this affidavit to the court in support of my motion for a severance and separate trial.

Respectfully,

KOYAMA, Shigeo

January 20, 1949.

B(4)(a)

0039

LOKUNAGA

宣誓供述書

余 徳永明は自己の良心に遵ひ次の事を宣誓述誓する 即ち余は昭和千九百三十九年八月 日本帝國陸軍士官學校を卒業と日本帝國陸軍に見習士官として赴任軍務に服した 余は上官の一七カの命令に服従する事を承諾し且宣誓したのである 余は軍隊の職務を命ぜられ第松混成旅團徳永大隊の指揮官としてグアム島に派遣せられた. 次で余は口タ島の配置を命ぜられ同島に於て任務を遂行してゐた

余の口タ島に於ける指揮官としての任務はグアム島守備第十九師團長指揮の下に在島陸海軍を作戦に関し指揮し同島を守備するにあり、

茲に指揮の要領は歩兵四ヶ中隊 機関銃.又兵 山砲各一ヶ中隊 連射砲一ヶ隊及び配島海軍部隊を上陸予想地点に配備し直接上陸を排撃最後迄同島の守備せんとするにありたり.

終戦後余は正式に復員した 千九百四十六年九月二十五日余は逮捕令状なくして逮捕せられた同年十月二日東京巣鴨刑務所に収容せられた 千九百四十八年一月下旬余はトレメイン大尉の訊問を受け且宣誓供述書を提出せん事を要求せられた. 其後二回に渉りトレメイン大尉より宣誓供述書を提出すべき事を要求せられ更にカリー中佐よりも宣誓供述書を提出する様二回要求せられた 仍て余は前后を通じ宣誓供述書四通を作成の上提出した 此等の宣誓供述書は検察官の手中に在りと余は思考する 此等の宣誓供述書は起訴状を余に交付せずして余が拘禁せられてゐた間に且弁護人との接見の特典を與えられずして米軍海軍將校の要求に依て作成したものである 若し之が証拠として提出せられ且之が受理せられて云云せらるゝならば余の部下たり共同被告人を連累者たらしむる虞あるものである

余は茲に自己の自由意志に依り審理分離の動議を支持する為此の宣誓供述書を裁判所に提出する

千九百四十九年 一月十九日

徳永 明

B(5)(1)

果者タラシムルオソレアル者デアル

私ハ此處ニ自己ノ自由意志ニ依リ審理
分離ノ動議ヲ支持スルタメ此ノ宣誓口述
書ヲ裁判所ニ提出スル

敬具

昭和二十四年一月二十日

小山茂雄

0041

Affidavit January 19, 1949

I, Tokunaga, Akira do swear by my conscience and depose as follows.

I was graduated from the Imperial Japanese Military Academy in August 1939 and sworn into military service as a cadet officer. I did agree and swear to obey all orders of superior officers.

I was ordered military duty and reported on Guam as Commanding Officer of the Tokunaga Battalion, of the Shigematsu Mixed Brigade. Subsequently I was ordered to duty at Rota and did perform duty on Rota.

My duties as Commanding Officer on Rota Island were to direct operations of army and navy forces on Rota and to defend that island under the command of the Commanding General of the 29th Division which defended Guam Island. The gist of my command was to dispose 4 infantry companies one Machine Gun Company, one sapper company, one field artillery company and one quick-firing gun platoon and naval units on the island at points where landings were anticipated and to dispel direct landings and to defend the island to the last.

After the termination of the war I was regularly demobilized. On September 25th, 1946 I was arrested without warrant and on October 2, 1946 I was interned at Sugamo Prison, Tokyo.

In the latter part of Januray 1948 I was interrogated by Lieutenant Tremayne and by him requested to submit an affidavit. On two subsequent occasions I was requested to submit affidavits by Lieutenant Tremayne and on two other occasions by Commander Currie. Thus I executed and submitted four affidavits in all. I presume these affidavits are in the possession of the Prosecution. These affidavits, made at the request of American Naval Officers while I was being held in confinement without charge being preferred against me and without benefit of counsel, if offered into evidence and proved, will if accepted tend to implicate my co-defendants who were my subordinates.

I voluntarily submit this affidavit to the court in support of my motion for a severance and separate trial.

Respectfully,
TOKUNAGA, Akira.

B(5)(a)

REPLY TO THE MOTION FOR SEPARATE TRIALS

Delivered by

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

It is true that all of the accused are not included in all the specifications, but it should be noted that all three are included in specification two of the charge wherein it is alleged that Tokunaga, Takahashi and Koyama did, each and together, wilfully, unlawfully, and without previous trial, punish and cause to be punished as a spy by assaulting, striking, wounding and killing by bayoneting, with a fixed bayonet, one Miguel Timoner, Catholic brother, Spanish national. In each of the specifications, Tokunaga is involved. It is the policy of the Navy to try with one trial all the offenses committed by individuals. Section 20, Naval Courts and Boards, provides "All the charges against the accused should be consolidated into one set of the charges, and one trial had upon the consolidated set instead of having two or more trials." In the second specification wherein the three are accused of having killed Miguel Timoner, a concert of action is alleged, for each of the individuals participated actively in that killing.

It is submitted that the principle of a common trial in war crimes cases has in practice been adopted by the Allied Nations in the international prosecution at Nurnberg and Tokyo, as well as by SCAP in class B and C war crimes cases, and by Commander Naval Forces Marianas, and Commander in Chief Pacific in cases tried in this area. For in the trial of Captain Iwanami, there were nineteen defendants in all, and in the trial of First Lieutenant Yamamoto, there were twenty defendants in all. To have done other than to try these cases and these three accused in a common trial would have the effect of drawing out the prosecution beyond reasonable limits, as well as being costly and unnecessary. It is respectfully requested the motion for a separate trial be denied.

Joseph A. Regan.
JOSEPH A. REGAN.

C

0043

MOTION FOR A CHANGE OF VENUE

Delivered by:

Commander Martin E. Carlson, USNR.
In behalf of TOKUNAGA, Akira;
TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

May it please the Commission:

The accused Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo hereby make this motion for a change of venue on the grounds that the action is brought in the wrong place or district, and because a military court here on Guam cannot legally try them for the offenses charged and alleged to have been committed on Rota Island.

Venue is the particular country or city in which a court with jurisdiction may hear and determine the case. In criminal cases the proper venue at common law is the country where the crime was committed. (The Sixth Amendment also guarantees an accused the right of a trial by jury of the State and district wherein the crime was committed.)

The crimes alleged in the specifications are said to have taken place on Rota Island. This was not within the command of the Commander Naval Forces Marianas during the period from June 25, 1944 to July 8, 1944, nor is it now in Commander Naval Forces Marianas area of jurisdiction or authority.

Rota was one of the Marianas Islands mandated to Japan in 1922. Since the prosecution do not state what the law and the customs of war are which the accused violated we are at a loss to know what these vague and indefinite laws are, if any, and particularly as to what venue is provided by such laws for the offenses charged.

Commander Naval Forces Marianas is a military command exercised by a navy officer over naval forces only in the Marianas. He has no inherent military or legal authority over army personnel or civilians, natives or otherwise, in these former mandated islands. Our conclusion is that such authority is in the military commander of the Marianas-Bonins Command or the High Commissioner of the Trust Territories. The Sixth Amendment guarantees an accused a right to a public trial by an impartial jury of the State and district wherein the crime shall have been committed.

It is true that the accused is in the custody of the convening authority but we strongly maintain that all three of the accused, all Japanese nationals, are not legally in the custody of the convening authority of this military commission.

It is also true that the three accused are charged with the commission of offenses against a Spanish national and of natives of Rota, but this does not make them guilty of a war crime or any crime. We maintain that the offenses alleged in the specifications are not war crimes.

We are of the opinion that Rota Island is not a part of the military command of Commander Naval Forces Marianas. There is no inherent authority in the convening authority, a commander of naval forces only, to appoint this military commission to try three Japanese civilians for alleged

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offenses said to have been committed on Rota Island during the period from June 25, 1944 to July 8, 1944. Such statements as appear in the precept regarding jurisdiction of offenses are without factual basis, and are put in issue by this motion for a change of venue to Tokyo, Japan, Rota Island, or Honolulu, Territory of Hawaii. For the convenience of witnesses and that the ends of justice may be better served the accused pray for this change of venue from this military commission on Guam.

Respectfully,

MARTIN E. CARLSON.

0045

REPLY TO THE MOTION FOR A CHANGE IN VENUE.

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

Prior to the close of the war when it was definitely decided that all war criminals would be brought to trial, agreements were made between the Army and the Navy as to the jurisdiction to be utilized by each in war crimes cases. It was given to the Army to set up war crimes tribunals in the Philippines and in Japan proper to try war criminals who had committed crimes in either the Philippines, Japan, or on the Asiatic mainland. It was given to the Navy to try war criminals for crimes committed on all the islands in the Pacific, with the exception of the Philippines, and thus tribunals were set up for the Navy here on Guam, and for the Army in the Philippines and in Tokyo. There are no war crimes tribunals sitting either on Rota or on Hawaii.

Does the commission believe that counsel for the defense is serious in this objection to trial before this commission? What possible benefit could there be for witnesses or for anyone else, to try the case on Rota? As the judge advocate understands it, one vessel every two weeks reaches that island. And air planes land there only when they have special missions. Why Honolulu? It is even further away from Japan than is Guam and there is no war crimes tribunal there. As this court is presently in session, and as the prosecution witnesses have already been brought from Japan, there would be little or no point in moving the trial from here to Japan. We ask that the commission deny this motion and that the trial proceed.

Respectfully,

Joseph A. Regan.

Joseph A. Regan.

0046

Objecti[redacted]onge TAKANO

F

起訴及罪状項目に対する署誌の申立

被告人徳永明、高橋喜雄
小山茂雄弁護人
高野秋二郎

被告人徳永明、高橋喜雄、小山茂雄は下記の理由に因り本件起訴及罪状項目に対し異議を申立てる。

第一、本件罪状項目其の一は当時日本軍隊の指揮官であった徳永明は1944年6月25日頃ロタ島おいて二名のロタ島島民を銃殺することに依り同議と云う不法な虐殺と同虐殺せしめ以て戦争法規慣習法違反；罪状項目其の二は当時日本軍隊の指揮官であった徳永明及当時日本軍隊の軍人であった高橋喜雄並に小山茂雄は1944年7月5日頃ロタ島に於て各自に且共同して一名のロタ島住民であった一名の面識なき人を銃剣を以て刺殺することに依り同議と云う不法に虐殺と且虐殺せしめ以て戦争法規並に慣習法に違反；罪状項目其の三は当時日本軍隊の指揮官であった徳永明及当時日本軍隊の軍人であった高橋喜雄は1944年7月5日頃ロタ島に於て各自に且共同して一名のロタ島島民を殴殺することに依り同議と云う不法な虐殺と且虐殺せしめ以て戦争法規並に慣習法に違反；罪状項目其の四は当時日本軍隊の指揮官であった徳永明は1944年7月8日頃ロタ島に於て一名のロタ島島民を銃殺することに依り同議と云う不法に虐殺と且虐殺せしめ以て戦争法規並に慣習法に違反したと言うのである。

然しながら被告人等が違反したと検察官の主張する戦争法規並に慣習法とは果して如何なる法規並

(1.)

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慣習法と指すのか其の具体的の時記はふいのである。
検察官は被告人等の為たる検察官主張の外為が
1944年7月8日以前に有效に存續いたした戦争法
規面に慣習法の何かの根拠に違反いたかと
明示する要旨がある。　被告人等は之を明確に知り
うらないうちは適當に且充分なる辯護を準備する
ことは出来ない。
仍て被告人等が違反したと主張せらる、戦争法規
並に慣習法の明記されない本件起訴は海事律の
根原に違反し同時に被告人等の実体的権利を侵害
するものである。

第貳。罪状項目其の一、其の二、其の四の各事件
は「--- assault し、殴打し、傷害し、且殺害すること
及び---」と主張せられている。仍し一個の事件と
称て assaulting, striking, wounding and
killing の外為がある場合とは Killing 以外の
lesser offences は常に Killing の中に吸收されて
了って独立の offence とは為做されないとするのが刑事
訴訟の手續上の原則である。此のことに付て Amer-
ican Jurisprudence の述べところを援用する：
「一の犯罪行為が他の犯罪行為の中に吸收
されるという一般原則は Assault and
Battery の事迫にも適用されるべきである。
其の一般原則竟は同等の等級の犯罪は一方が
他方を吸收されるということはないが一の軽い
犯罪が他の重い犯罪の構成要件となっている
ときは其の軽い犯罪が重い犯罪の中に吸
收されるとすることである。」（同書、Vol. 4,
Assault, &c. Criminal Prosecution, §96,

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-Mergers of Lesser Offences in Greater, pp. 177-8.)

之小故罪状項目其の一、其の二、其の四の事件と
於て assaulting, striking, wounding は當然
killing の中に吸收せらるべきものであって此等の事件
とは訴劇すべからざる筈である。斯の如き訴
劇は被告人等の実体的権利を侵害するものである

仍て茲に異議を申立てる。

陳　言

高野弁護人

0049

OBJECTION TO THE CHARGE AND SPECIFICATIONS

Delivered by TAKANO, Junjiro
Counsel for the accused,
TOKUNAGA, Akira; TAKAHASHI, Yoshio;
and KOYAMA, Shigeo.

The accused, TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo object to the charge and specifications in this case for the following reasons:

1. In specification 1 of the charge the accused TOKUNAGA, Akira is charged with violating the law and customs of war in that, on or about 25 June 1944 on Rota Island, when he was a commanding officer in the armed forces of Japan, he unlawfully punished as spies two native inhabitants of Rota Island by shooting with firearms;

Specification 2 charges that TOKUNAGA, Akira then a commanding officer in the armed forces of Japan, and TAKAHASHI, Yoshio and KOYAMA, Shigeo both serving with the armed forces of Japan, on or about 5 July 1944 on Rota Island, violated the law and customs of war in that they, each and together, punished or caused to be punished as a spy one Spanish national, a resident of Rota Island by bayoneting him;

Specification 3 charges that TOKUNAGA, Akira, then a commanding officer in the armed forces of Japan, and TAKAHASHI, Yoshio, then an officer of the armed forces of Japan, on or about July 5, 1944, on Rota Island, violated the law and customs of war in that they, each and together, unlawfully punished or caused to be punished as a spy one native inhabitant of Rota Island by administering a deadly poison;

And Specification 4 charges that TOKUNAGA, Akira, then a commanding officer in the armed forces of Japan, on or about 8 July 1944, on Rota Island violated the law and customs of war, in that he unlawfully punished or caused to be punished one native inhabitant of Rota Island by shooting with firearms.

Although it is alleged by the judge advocate that the accused violated the law and customs of war, it has not been stated specifically and clearly what law and customs of war the accused violated.

It is incumbent on the judge advocate to show clearly which provision of the law and customs of war which were effective prior to July 8, 1944, the accused violated in committing the acts alleged by the judge advocate.

The accused cannot properly or fully prepare his defense unless such applicable provisions are clearly and definitely set out.

The charge in the present case, however, does not clearly show which of the laws and customs of war the accused allegedly violated. This failure on the part of the judge advocate itself is contrary to the provisions of Naval Courts and Boards, and at the same time prejudicial to the substantive rights of the accused.

2. Specifications 1, 2, and 4 alleges the following: "By assaulting, striking, wounding and killing."

C(1)

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It is a principle of legal procedure in criminal cases that when acts of assault, striking, wounding and killing occur in one incident, the lesser offenses other than killing naturally be merged under the offense of killing, and that they not be viewed as independent offenses. I quote from American Jurisprudence on this subject:

> "Merger of lesser offense in greater. - The general rules governing the doctrine of the merger of one crime in another are applicable to a prosecution for assault and battery. The general principle is that crimes of the same degree do not merge, while a crime of a lesser degree will merge in a greater crime of which the lesser is an ingredient."
> (American Jurisprudence, Vol. 4, ASSAULT, V. Criminal Prosecution, para. 96 - Merger of lesser offense in greater, pp. 177-8.)

Hence, the offenses of assaulting, striking, and wounding of Specifications 1, 2, and 4 should accordingly be merged with the "killing" alleged in these specifications, and should be omitted from these specifications. Such an improper description of these incidents is prejudicial to the substantive rights of the accused.

On the foregoing grounds, the accused objects to the charge and specifications of the present case.

Respectfully,

TAKANO, Junjiro.

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

EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

G(2)

0051

OBJECTION TO THE CHARGE AND SPECIFICATIONS IN THE CASE OF TOKUNAGA, AKIRA; TAKAHASHI, YOSHIO; AND KOYAMA, SHIGEO.

Delivered by:

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

All three of the accused Tokunaga, Akira; Takahashi, Yoshio; and Koyama, Shigeo object to the charge and specifications on the ground that they are vague and indefinite, that they do not allege a war crime; and that they do not show the circumstances conferring jurisdiction on the face of the charge and specifications.

The phrase "in violation of the law and customs of war" does not fully apprise the accused of the law and customs of war he is charged with having violated. Naval Courts and Boards, Section 27, requires that the law violated be set forth verbatim and proved like any other fact. We quote the pertinent part of Section 27:

> "...but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other fact."

Since the phrase in violation of the law and customs of war refers to international conventions, these conventions are clearly foreign laws. The text of the Hague Conventions and the Geneva (Prisoners of War) Convention of July 27, 1929 is originally in French and the French text is the only official text so far as international relations of states are concerned. This court cannot take judicial notice of a treaty written in a foreign language, French, and it must be proved that the United States and Japan are both bound by these Conventions and that these Conventions were in effect and binding upon the accused during the period from June 25, 1944 to July 8, 1944 when the alleged offenses are said to have taken place.

Each of the Conventions signed at the Hague in 1907 save that relative to the opening of hostilities contains a provision that it shall be binding upon any of the belligerents in a war only if all the belligerents in that war are parties to it. As neither Italy nor Bulgaria has ratified the 1907 Conventions neither the United States nor Japan are bound by them. Japan did not formally ratify the Geneva (Prisoners of War) Convention. The Commission should take judicial notice of these facts as they are common knowledge.

The specifications do not allege a war crime. The Hague Convention Article 24 states:

> "Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible."

Article 29 defines a spy as:

> "A person can only be considered a spy when acting clandestinely or on false pretenses, he obtains or endeavors to obtain information

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in the zone of operations of a belligerent, with the intention of communicating it to the hostile party."

The same Hague Convention does not forbid punishment of spies in fact it permits punishment of spies and it has long been the custom that the proper and legal punishment for a spy is the death penalty. The vague and indefinite reference to these international conventions does not state or allege a war crime. Some specific law must be alleged by the prosecution which makes the acts alleged illegal and a war crime.

Since there are no common law offenses against the United States (5 Corpus Juris "Assault and Battery", Section 175; U. S. v. Barnaby, 51 Fed. 20, and U. S. v. Williams, 2 Fed. 61, 6 Garvy 244). Assaults committed in territory under the exclusive jurisdiction of the United States are punishable only where a punishment is provided by statute. This rule of law is set forth in 5 Corpus Juris, Ibid.

The laws of war recognize that the penalty for a spy is death.

The authority of a court-martial is statutory. (Runkle v. U. S., 122 U.S. 543, 30 L. ed. 1167, 7 S. Ct. 1141) According to Article D-13, Appendix D, Naval Courts and Boards, the "specification should show on its face the circumstances conferring jurisdiction". The charge and specifications serial 17431 dated December 9, 1948 do not show on the fact of them the circumstances conferring jurisdiction and are therefore objectionable. It is no answer to state that the precept authorizes and confers jurisdiction on this commission to try these accused.

We further object to the charge and specifications dated December 9, 1948, serial 17431, because the charge and specifications are dated December 9, 1948 and the precept is dated January 19, 1949.

It is a navy rule of long standing and substantiated by Court Martial Orders that the precept must be drawn before the order for trial and the reference of the charges and specifications. (Section 345, Naval Courts and Boards; C.M.O. 114-1918, pages 260-261, Compilation of Court-Martial Orders, 1916-1937.)

Why the precept must be drawn before the order for the trial and the reference of the charges and specifications is clearly stated in C.M.O. 114-1918 and I quote from that order:

"The record in a recent case disclosed that the order to the judge advocate directing the trial of an accused was dated June 4, 1918, whereas the precept convening the court before which the case was tried and appointing the judge advocate thereof was dated June 18, 1918. The jurisdiction for the trial of a person is acquired by reason of the convening authority referring the case to a specific court convened by him. It is usually accomplished by said authority referring to the judge advocate thereof the original of the charges and specifications, informing him of the jurisdiction conferred, and directing him to notify the president of the court and to inform the accused of the

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date set for his trial and empowering him to summon the necessary witnesses. Such action presupposes that the precept convening the court has been issued, otherwise there would be no court or judge advocate. The precept is the order of appointment of the members and judge advocate of a general court-martial and is the only authority for them to act as such during the trial."

An attempt is here being made to authorize this Commission appointed by precept dated January 19, 1949 to take up cases pending before another commission. But the Commission appointed by precept of October 25, 1948 had no cases pending because on Tuesday, January 11, 1949 the last day of the trial of Hara, Chuichi adjourned and I quote from the record of that case:

"The commission having no more cases before it, adjourned to await the action of the convening authority."

For the above reasons all three of the accused to object to the charge and specifications dated December 9, 1948, Commander Naval Forces Marianas serial 17431.

Respectfully,

MARTIN E. CARLSON.

H(3)

0054

REPLY TO OBJECTIONS TO THE CHARGE AND SPECIFICATIONS

Delivered by

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

1. The obligation of the prosecution according to Naval Courts and Boards concerning charges and specifications is set out in Section 12:

> "...that a specification set forth in simple and concise language facts sufficient to constitute the particular offense charged and in such manner as to enable a person of common understanding to know what is intended."

Naval Courts and Boards also says in Section 309:

> "(c) Matters which the court is bound to know as a part of its own special duty and function, such as the United States Constitution, treaties and statutes...."

In the same section it is provided:

> "Matters of which courts may take judicial notice need neither be charged nor proved." (Sec. 309, N.C.&B.)

In the present case, the specific law violated is in Article 30 of the Annex to the Fourth Hague Convention - a treaty which the United States ratified and is bound by. A treaty which the Japanese Government also ratified - and a treaty which only codified the existing international law on the subject.

This present commission is sitting to try War Crimes Offenses - which invariably, and particularly in this case, involve the breach of an International Law.

Thus the prosecution need not set out the specific provision of law which the accused are alleged to have broken for the court may take judicial notice of the law under either one of two theories. (1) As a commission set up to try cases under International Law, it is empowered to take judicial notice of the laws it is to enforce, namely all International Laws, or (2) as a United States Military Commission it is bound to take judicial notice of all treaties involving the United States of which the Annex to the Fourth Hague Convention is one.

Thus, the charge and specifications are not defective in not setting out the specific law violated as the court may take judicial notice of it, as it will be requested to do at a later time.

The second objection made by Mr. Takano concerns the words "assaulting, striking, wounding and killing" used in Specifications 1, 2 and 4. Mr. Takano claims that these words should not be used as they are all features of the killing and therefore should be merged under the term "killing". The words

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complained of are not put in the pleading to aggravate the offense - they are descriptive words used to enable the accused to prepare a defense to the charge. Here the gravamen of the charge is the "punishing by killing" - and the words assaulting, striking and wounding are words used to show the accused how the prosecution claims it was done. Were the specification merely to say "killing" then the accused would be claiming they were defective in that they did not contain sufficient information to show the defense how the killing was accomplished. We assure the defense we are not here charging the accused with a mere assault - we are plainly charging them with having illegally punished the victims as spies without a trial by killing them.

Much of what Commander Carlson says in his objection to the charge and specifications might better be used as an objection to a request by the prosecution concerning judicial notice. Whether or not the original Hague Convention and its Annex is in French has absolutely nothing to do with the present charge and specifications. However, we do strongly take issue with him concerning his statement that the present trial does not involve a war crime. The killings were done in 1944 by Japanese at a time when the United States and Japan were at war. The only reason for the killings was because the Japanese who did them believed that the victims were spies in contact with the American Armed Forces. The mere fact that the victims were not nationals of the United States does not prevent their killing from being a war crime. One has only to remember the International Trial at Nuremberg where as a specific war crime the accused were charged with having killed large numbers of German nationals merely because they were members of the Jewish race - and the times alleged for those killings even antedated the war. We have other precedents for this trial and for the fact that killing of natives because the Japanese considered them spies is a war crime. The trial of Captain Inoue and the trial of Major Furuki, both of whom were tried and convicted on Guam for the same offense as these accused are charged with are precedents for our statements.

On the last objection made by the defense, namely that the charge and specifications in the present case antedate the precept. The commission knows merely by consulting the precept that it is empowered to take up and try cases pending before the last Military Commission which was convened by the precept dated October 25th. At the time the charge and specifications were prepared and served namely on December 9, 1948 - the commission brought into being by the precept of October 25th was still in existence. True, the President had not been advised of the fact that this charge and the specifications had been prepared and thus closed the last trial with the exact same closing words used in all previous trials. Note though that the words were "The commission adjourned..." not that the commission was dissolved - as so the commission continued in existence and it did have a case to be tried even though the President had inadvertently not been advised.

The judge advocate asks that the charge and specifications be found in due form and technically correct.

Respectfully,

Joseph A. Regan.
JOSEPH A. REGAN.

0056

Plea[illegible]ection TAKANO J

裁判管轄権に対する抗辯.

別日本帝國陸軍軍人德永昇,
高橋嘉雄,小山茂雄の辯護人
高野統二郎.

被告人德永昇,高橋嘉雄,小山茂雄は下記の理由に因り本軍法委員会の裁判管轄権に対し抗辯を申立てる.

第一. 本件起訴狀に依れば德永昇は(a) 1944年6月25日頃ロタ島に於ける大隊長として勤務中二名のロタ島民を事前に裁判を行はずして之を襲撃,殴打,傷害,銃殺しスパイとして不法に處刑し且處罰せんとせり以て戰爭法規並に慣習法を違反し(第一罪狀項目);(b)德永昇,高橋嘉雄,小山茂雄は1944年7月5日頃ロタ島に於て軍隊に勤務中單独に且共同して一名のロタ島住民であつた西班牙人カトリック教徒を事前に裁判を行はずして之を襲撃,殴打,傷害,銃剣に依つて刺殺しスパイとして不法に處刑し且處罰せんとせり以て戰爭法規並に慣習法を違反し(第二罪狀項目);(c)德永昇,高橋嘉雄は1944年7月5日頃ロタ島に於て軍隊に勤務中單独に且共同して一名のロタ島民を事前に裁判を行はずして之を殴打的第器を以て殺害しスパイとして不法に處刑し且處罰せんとせり以て戰爭法規並に慣習法を違反し(第三罪狀項目);(d)德永昇は1944年7月8日頃ロタ島に於ける大隊長として勤務中一名のロタ島民を事前に裁判を行はずして之を襲撃,殴打,傷害,銃殺しスパイと

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これ不法な侵害に対し自己の財産を守るために戦争法規並に慣習法を違反したと言うのである。

本軍法委員会に対するPrecisは、敵するに本軍法委員会は、各占領軍事裁判所の管轄権内の一切の犯罪を裁判する権限を有するとするが、これは戦争法規並に慣習法の違反即ち戦争犯罪の裁判管轄権を指すことは疑がない。

1907年の陸戦法規慣例に関する條約附属書「陸戦の法規」慣例に関する規則第24條の解釋より依れば、間諜とは交戦者の作戦地帯において敵軍又は敵国に通報するの意思をもって隠密に又は虚偽の口実の下に行動して情報を蒐集又は蒐集せんとする者である。

HALLECKの国際法には間諜を定義して「間諜とは敵の情況を発見し敵の計画を密かに窺知し或いは探索して得たる情報を自己の使用者側に通報する為業務上又は虚偽の口実の下に敵側に潜入する人を謂う」とある。(HALLECK HACKWORTH, Digest of International Law, Vol. VI, Ch. XX, III, § 581, p. 308).

然るに本件の検察官主張の被害者は日本臣民である。尤も其の中の一名は検察官の主張によれば西班牙人たる日本臣民である。而して日本は本件の検察官主張の事実発生当時は日本の委任統治領であって委任国たる日本の領土の一部と観做され、其の臣民は凡て日本が法律の下に統治せられているのである。(国際聯盟規約第22條)。日本の住民は同国の臣民ではないが法律上の取扱上それは大体に於て臣民と準ずべきものである。然るから此等の日本臣民又は住民の犯した

と解せよ、同講条約は上掲 Hague 條約の解釋為に國際法學者の同講の定義に照らし見るに明かに國際法上のスパイ行為に該當せず、尾門之は純粋たる日本の國内法の問題であって國際法上のスパイの問題ではない。此の点に関しアメリカ合衆國陸軍省の Rules of Land Warfare of 1914 は「占領地よりたる敵國との通報に関する犯罪は占領軍より後日反逆罪として處罰せらるべき者之が本國よりたる外はかかる場合には該事項を関する法律即ち國内法が適用せらるべし」(同書, Chap. VI, Section III, § 201, p. 64). 更に上記 Rules of Land Warfare の 1940 版よりは「…… Spies は戰争法規の違反者として處罰せらるるのではないが其の情報獲得の方法を敵より考えて未だなき危険、困難且無效果なによる物である。」(同書 Chap. 6, § 203, p. 58.) 「…… 並びにかつアメリカ合衆國より於て犯したる間諜行為の廉を以て訴追せられたる者は陸軍軍律會議裁判権外にあっては間諜防止法を以て通常裁判所より後日裁判せらるる處罰せらるるのである。[Unified States Code, title 50, Ch. VI]」(同書, Chap. 6, § 204, p. 59.)

尚ほ Hackworth の國際法もまた同趣旨のことを説いてゐる(同書, p. 308.) 從って本件被告人等が果して單に、項目列擧の檢察官主張の犯罪行為を為したかまたは日本の國内法に依って之を判断すべきものであって之は日本の國内法上の問題(事項)であるとの日本の裁判所が之を裁判すべきことである。檢言すれば本件被告人等の為したる行為が犯罪となるや否やは國内法上の

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犯罪であって国際法違反行為即ち戦争犯罪ではないのであるから戦争犯罪を裁判する管轄権を有する本軍法委員会は本起訴事件の裁判管轄権はないのである。

第貳、本軍法委員会に対するPrecept第4項は紀罪の客体を引渡ジャパアメリカ合衆国国民、同Precept第一項に引用せられたマリアナ方面司令官dispatchの中に言及せられた人に及裁判召集命令召集当時に国籍の有無確知せられない白人とせられている。

尚本件に於ける検察官主張の犯罪の客体として掲げられている者は第一、第三、第四罪状、項目に於ては総て日本島民である。唯第二罪状、項目記載の被害者のみは日本住民である西班牙人である。

以前一に述べた如く日本島民は日本の国民と法律上取扱はれていたのである。それであるから此等の島民は上掲Preceptに規定せられた犯罪の客体のカテゴリーには属さないのである。随って第一、第三、第四、罪状、項目掲引渡の検察官主張犯罪事実は本軍法委員会の裁判管轄外の事項である。

以上の理由に因って本件起訴は之を却下せられんことを謹んで要請する次第である。

謹言

(4.)

J (4)

PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shiego.

Delivered by TAKANO, Junjiro,
Counsel for the Accused,
TOKUNAGA, Akira; TAKAHASHI, Yoshio;
KOYAMA, Shigeo, formerly of the
Imperial Japanese Army.

May it please the Commission,

The accused TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo object to the jurisdiction of this military commission on the following grounds and hereby enter their plea to the jurisdiction.

1. (a) According to the Charge in the present case, the accused TOKUNAGA, Akira, while serving as Battalion Commander on Rota, did, on or about 25 June 1944, without previous trial, unlawfully punish and cause to be punished as spies, by assaulting, striking, wounding and killing, by shooting with firearms, two native inhabitants of Rota Island, in violation of the law and customs of war. (Specification 1);

(b) The accused TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo while serving with the armed forces of Japan on Rota Island, did, on or about 5 July 1944, each and together, unlawfully and without previous trial punish and cause to be punished as a spy, by assaulting, striking, wounding and killing, by bayoneting with a fixed bayonet, a Catholic brother, a Spanish national, who was a resident of Rota Island, in violation of the law and customs of war (Specification 2);

(c) The accused TOKUNAGA, Akira and TAKAHASHI, Yoshio on Rota Island, did, each and together, on or about 5 July 1944 unlawfully, without previous trial, punish and cause to be punished as a spy, by killing, by administering a deadly drug, a native inhabitant of Rota Island, in violation of the law and customs of war (Specification 3);

(d) TOKUNAGA, Akira, while serving as Battalion Commander on Rota Island, on or about 8 July 1944, did, unlawfully and without previous trial, punish and cause to be punished as a spy by assautling, striking, wounding and killing, by shooting with firearms, one native inhabitant of Rota Island, in violation of the law and customs of war (Specification 4).

From the precept to this military commission, it is "competent to try all offenses within the jurisdiction of exceptional military courts". There is no doubt, therefore, that this commission possesses the jurisdiction to try all violations of the law and customs of war; namely, war crimes.

According to the interpretation of Article 29 of the Regulations pertaining to the Laws and Usages of War on Land annexed to the Convention "Concerning the Laws and Customs of War on Land", a person who acts clandestinely or under false pretences, and obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party, is considered a spy.

Halleck, in his International Law, defines spies as follows: "Spies are persons who, in disguise or under false pretences, insinuate themselves on the enemy in order to discover the state of his affairs, to pry into his designs, and then to communicate to their employers the information thus obtained." Halleck's International Law, Vol. 2, pp. 30 - 31. (Hackworth, Digest of International Law, Vol. VI, Chapter XX, Para. 581, p. 308)

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However the alleged victims in this case are native inhabitants of Rota Island. One of the alleged victims is, according to the allegation of the judge advocate, a Spanish national who was a resident of Rota Island. Now Rota Island at the time of the occurrence of the incidents alleged by the judge advocate was territory mandated to Japan, and was looked upon as constituting an integral portion of the territory of Japan, its Mandatory. The native inhabitants of that island were all administered under the laws of the Mandatory. (Article 22 of the Covenant of the League of Nations) The residents of Rota Island are not native inhabitants of the same island, but in their legal administration they would generally be administered in the same manner as the native inhabitants.

The alleged acts of espionage on the part of native inhabitants and residents of Rota Island, in view of the interpretation of the Hague Convention given above and the definition of spies by a scholar of international law, are clearly not to be classified as acts of espionage in the sense of international law. They are purely questions of municipal law and not an espionage question under international law. On this subject, Rules of Land Warfare of 1914 of the War Department of the United States of America states as follows:

> "In occupied territory offenses relating to communication with the enemy will be punished as treason by the occupying forces. If committed in the home country, the laws relating to that subject or internal laws will govern. Land Warfare, Opp., par. 167 and note."
> (Chapter VI, Section III, Para. 201, p. 64)

The 1940 Edition of the Rules of Land Warfare further states:

> "Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as dangerous, difficult, and ineffective as possible for the enemy."
> (Ibid., Chapter 6, Para. 203, p. 58)

and:

> "Persons charged with espionage committed in the United States, outside military jurisdiction, are nevertheless liable to trial and punishment by the civil courts under the espionage laws."
> (United States Code, Title 50, Ch. IV) (Ibid. Chapter 6, Para. 204, p. 59)

Hence, whether or not the accused in this trial committed the crimes alleged by the judge advocate in the Specifications is a question which should be judged in accordance with the municipal law of Japan. And, insofar as it concerns a matter of Japanese municipal law, it should be tried by a Japanese court of law. Thus, even presuming that the acts committed by the accused in this trial constitute crimes, they are crimes from the standpoint of municipal laws and are not violations of international law; that is, war crimes.

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It follows then thht this Military Commission, which possesses the jurisdiction to try all war crimes, does not possess jurisdiction to try the present case.

2. In paragraph 3 of the precept addressed to this Military Commission the persons against whom criminal offenses may be committed (for which the Commission has jurisdiction to try the offenders) are stated as being: 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.

In the present case, however, the persons against whom offenses were allegedly committed in Specifications 1, 3, and 4 are native inhabitants of Rota Island, and the sole exception is Specification 2 where the victim is allegedly a Spanish national who was resident on Rota Island.

As stated in paragraph 1 above, the native inhabitants of Rota Island were to be treated in the same manner as Japanese nationals. Hence these native inhabitants do not fall into the category of persons who may be the victims of crimes provided in the above mentioned precept.

Therefore the incidents alleged by the judge advocate in Specifications 1, 3 and 4 are matters without the jurisdiction of this Military Commission.

For the above reasons, the accused respectfully request that the charge and specifications be quashed.

Respectfully,

TAKAHO, Junjiro.

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

EUGENE F. CLARK,
Lieutenant (junior grade),
U. S. Navy,
Interpreter.

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PLEA TO THE JURISDICTION OF THE MILITARY COMMISSION TO TRY TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo.

Delivered by
Commander Martin E. Carlson, USNR,
A Counsel for the Accused.

All three of the accused, Tokunaga, Akira; Takahashi, Yoshio and Koyama, Shigeo, citizens of Japan 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 they, Tokunaga, Takahashi and Koyama civilian citizens are not subject to this military court's jurisdiction and that the offense is not one cognizable by this Military Commission.

All three of these accused were regularly demobilized and are now civilians. Since all three of these accused were regularly demobilized, this military commission thereby lost what jurisdiction it might have had over these accused.

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 of the accused, now civilians, are not legally brought here for trial.

Tokunaga, Akira; Takahashi, Yoshio and Koyama, Shigeo, citizens of Japan were living as civilians in Japan. Their addresses were known to all the necessary governmental authorities. When the police came to arrest them, they went directly to their homes and without any warrant of arrest took them to a police station. They were held at a police station without charges until they were taken to Sugamo Prison, Tokyo.

During the time they were being held in confinement at Sugamo Prison they were questioned by various U. S. Navy officers.

On November 12, 1948 they left Sugamo Prison, Tokyo and were put aboard a U. S. Navy Ship and on November 17, 1948 they arrived on Guam. On Guam they were immediately placed in solitary confinement. Not until December 9, 1948, were they told why they were to be tried as war criminals. At the time they were served with the charge and specifications on December 9, 1948 they were told that they would be assigned defense counsel.

> "It is provided by statute that at the time of arrest the person accused must be furnished with a true copy of the charge with the specifications. (36 Am. Jur. Sect. 98 "Military" citing the case of: U.S. v. Smith, 197 U.S. 396, 49 L.Ed. 801, 25 S.Ct. 489; Johonson v. Sayre, 158 U.S. 109, 39 L.Ed. 914, 15 S.Ct. 773; Daynes v. Hoover, 20 How (U.S.) 65, 15 L.Ed. 838).
>
> "The rule now prevails in most if not all the States that an accused is entitled, as a matter of Constitutional Rights, to the service of counsel upon his preliminary examination." (14 Am. Jur. Cumm. Supp. "Criminal Law" Sec. 16 p 74).

These things were not done in their case.

We hold that the jurisdiction of this Military Commission is limited by the period and territorial extent of the Military Occupation of Rota

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Island, by the American Naval Forces. (Winthrop, page 837, Ibid. and footnote 95). On July 8, 1944 Japan was still in possession of Rota Island. So the offenses charged against these accused were committed long before the United States Navy occupied the island of Rota.

Winthrop, "Military Law and Precedents," page 836, sets forth the rule as to jurisdiction of a Military Commission and we know of no statute changing this rule.

> "A Military Commission, (except where otherwise authorized by statute can legally assume jurisdiction only of offenses committed within the field of the command of the convening commander. Thus a commission ordered by a commander exercising military government by virtue of his occupation, by his army, of territory of the enemy, cannot take cognizance of an offense committed without such territory." (Footnote (88) citing Finalson, Repression of Riot and Rebellion. 106; Franklyn, Outlines of Mar. Law; Pratt, 216; G.O. 125 Second Mil. Dist. 1867; G.O. 20, 1847 (Gen. Scott) from Winthrop, Military Law, and Precedents page 836).
>
> "The place must be the theater of war or a place where military government or martial law may be legally exercised, otherwise a military commission (unless specifically empowered by statute) will have no jurisdiction of offenses committed there. (footnote 89 citing Clode, M.L. 189.")

Thus the United States of America had no jurisdiction of or on Rota Island during the period from June 25, 1944 to July 8, 1944.

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 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).

The necessity for maintaining law and order by the United States Navy at Rota Island only commenced on the date of the re-occupation of Rota by the United States Navy. It does not go back to the period from June 25, 1944 to July 8, 1944. Crimes committed on Rota Island are not now tried in military courts, but are being tried by courts established by the High Commissioner of the Trust Territory of the Pacific Islands.

The acts of the accused, Japanese Nationals were not directly injurious to the United States, for the offense of punishing any of the victims named in the specifications was no breach of the peach, as far as the United States was concerned. It was done by Japanese Military to control their own people.

We hold that Commander Naval Forces Marianas cannot legally assume jurisdiction because Rota Island was not within the field of command of the convening authority at the time the offenses were committed. The precept, serial 380 dated 19 January 1949, states: "Pursuant to the authority vested in me by virtue of my office as the Commander Naval Forces Marianas

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and further by the specific authority vested in me by the Commander in Chief, Pacific and United States Pacific Fleet and High Commissioner of the Trust Territory of the Pacific Islands (CinC US PacFlt Serial 0558 of 8 March 1946; Commander Marianas despatch 292336Z Sept. 1947; CinCPacFlt despatch 020103Z Oct. 1947; SecNav despatch 081946Z Oct. 1947; CinCPacFlt despatch 092353Z Oct. 1947) and CinCPacFlt ltr dated 1 Aug. '48, CinCPac Serial 2955 and CinCPacFlt serial 3490) and by JAG of Navy (JAG desp. 311730Z July '46). The specifications of the charge allege the assaults were committed during the period from June 25, 1944 to July 8, 1944. During this period Commander Naval Forces Marianas did not have jurisdiction of Rota Island either as the Commander Naval Forces Marianas or by special authority. The convening authority is only Commander Naval Forces Marianas and Rota Island is not included in his command. If the High Commissioner has any authority over Rota it is as civilian administrator over Trust Territories and not as a military commander.

The Commander Naval Forces Marianas is no longer the civil administrator of Rota Island and therefore has no authority as the civil administrator of Rota Island. We ask that the prosecution prove the authority of Commander Naval Forces Marianas over civilians upon Rota Island or over military personnel on Rota Island. If there is a military overall command in the Marianas Bonin Area and it is not the Commander Naval Forces Marianas because his command is limited to naval personnel.

The commission members should all know that the President of the United States by virtue of the authority vested in him by Article 2 of the Constitution of the United States terminated the Military Government in the former Japanese Mandated Islands including Rota on July 18, 194____.

The members of the commission should also know that by joint resolution (Public Law 204, 80th Congress) approved July 18, 1947 the Congress, authorized the President to approve the United Nations Agreement with respect to United States Administration of the Trust Territory of the Pacific Islands including Rota.

The members of this commission should further know that on July 21, 1947 the Secretary of the Navy directed the U. S. Naval Military Government of Marshall, Caroline and Marianas Islands disestablished as of July 18, 1947, and that the High Commissioner was directed by the Secretary of the Navy to institute civilian administration of the Trust Territory effective July 18, 1947 in accordance with the terms of the Trusteeship Agreement.

The Secretary of the Navy authorized the High Commissioner to appoint a Deputy High Commissioner and such sub area and island governors and administrators as the High Commissioner deemed necessary for the proper conduct of government.

The members of the commission know this was done and that Commander Naval Forces Marianas is not the Deputy High Commissioner nor the sub area governor or the governor or island administrator of Rota.

We deny the right of this Military Commission to try these three accused, all civilians, because they were illegally brought within the jurisdiction of the Commander Naval Forces Marianas from Japan. How these civilians came into the custody of the United States Navy Department and the Commander Naval Forces Marianas is important because it was highly irregular and goes to the jurisdiction of the commission to try these three accused.

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Their arrest as civilians without warrants, their confinement for long periods without charges being preferred against them and their extradition from Japan to Guam without proper extradition papers are all highly irregular and an abuse of judicial process.

In 14 American Jurisprudence "Criminal Law" Section 217, page 919, the rule is that there are cases which deny the right of a court to try one who has been illegally brought within the jurisdiction from another state or country.

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

Simply because these three accused, civilians, are not citizens of the United States does not put them outside the protection of the Constitution of the United States of America, when the military takes them into custody to try them in a military court. Article IV, the Fourth Amendment to the Constitution of the United States 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, and particularly describing the place to be searched, and the persons or things to be seized."

This Amendment was the result of the practice of the British Military breaking into the homes of the American Colonists and by military force seizing civilians. Such seizures were not allowed then but the military did not respect the law and seized persons without warrent. Since the adoption of the United States Constitution the people of the United States have however been secure and the 4th Amendment has been respected.

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Are the safeguards which all citizens of America enjoy to be denied to the poeple of defeated Japan? It is not enough to say that these three accused, civilians, were extradited and are now in the custody of the convening authority. It is clear that there was no <u>proper</u> extradition. International Extradition is governed by considerations of comity and the provisions of treaties with foreign nations. In footnote one, para. 1, on page 243, Vol. 22, American Jurisprudence, "Extradition" 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, para. 4; See 4 Moore, International Law Digest, p. 246, P. 580.")

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

In footnote 9, page 249 of Vol. 12 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 Courts and require that all 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, Am. Cas. 1916 A. 682; See also Courts Vol. IV p. 337, par. 117).
>
> "The persons against whom extradition proceedings are directed must, of course, be fugitives from justice." (Citing Jones v. Tobin, 240 U.S. 127, L.Ed. 562, 368 S.Ct. 290; Tenn. v. Jackson (D.C.) 36 Fed. 258, 1 LRA 370, and others)

We continue to quote from 22 American Jurisprudence "Extradition" Section 17, 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 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,'..."

It is a universal rule that a person to be extradited must be charged with a crime against the law of the state from whose justice he is alleged to have fled. The accused did not flee, they were living as civilian citizens in Japan. Even now they are not charged with crimes against the United States but are charged with violations of the law and customs of war in that they punished spies unlawfully.

Page 265, Vol. 22, American Jurisprudence "Extradition" section 26 reads:

> "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. It 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. 885, 29 S.Ct. 605, 16 Ann. Cas. 1098, and many more).

According to CMO 12-1917, p. 9, "The authority to convene the above mentioned exceptional military courts vests only in the military commander or military governor of an occupied territory, and all such courts may be ordered only in the name of such commander or Governor...Insofar as practicable, the employment of exceptional military courts should, as a general rule, be restricted to the trial of offenses in breach of the peace, in violation of military orders or regulations, or otherwise in interference with the exercise of military authority."

We prefer to look to United States Navy Court Martial Orders and United States rules and regulations, for the law on military commissions convened by the Navy, rather than to ex post facto rules promulgated by SCAP on December 5, 1945, addressed to Commander in Chief, United States Army Forces Pacific, Commanding General Sixth Army, Commanding General Eighth Army, and Commanding General XXIV Corps. Such rules as SCAP ordered do not rise to the dignity of the fundamental law of the land.

We also maintain that the offense of punishing spies as alleged in the charge is one not cognizable by this commission as a war crime.

Since there are no common law offenses against the United States, the crime of assault by unlawfully punishing as spies must be statutory crime. In 14 American Jurisprudence "Criminal Law" Section 15, p. 766, the rule is clear and uncontradicted. It reads "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. United States, 276 U.S. 505, 72 L.Ed. 676, 48 S.Ct. 400; U.S. v. Gradwell, 243 U.S. 476, 61 L.Ed. 857, 37 S.Ct. 407. Annotation: Ann. Cas. 1918 A 991).

> "In order that an act be prosecuted as a crime in the courts of the United States, statutory authority therefore must exist." (Citing 144 U.S. 677, L.Ed. 581, 13 S.Ct. 764; U.S. v. Brewster, 139 U.S. 240, 35 L.Ed. 190, 11 S.Ct. 538).
>
> "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." (U.S. v. Reese, 92 U.S. 214, 23 L.Ed. 563).

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In 14 American Jurisprudence "Criminal Law" Section 14, page 764 we find the rule that "in some states no act is to be regarded as a crime unless it is so declared by statute." (Citing Bradley v. State, 79 Fla. 651; Soper v. State, 169 Ind. 177; Steward v. Jessup, 51 Ind. 413, and many many more such cases.)

In this same footnote we find the rule:

> "What is known as the higher law has no place in the jurisprudence of Oklahoma." (Citing Lichfield v. State, 8 Okla. Crim. Rep. 164, 126 P. 707, 45 LRA (N.S.) 153.)

These three accused TOKUNAGA, Akira; TAKAHASHI, Yoshio; and KOYAMA, Shigeo pray judgment of the charge and specifications and pray that the charge and specifications be quashed.

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

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REPLY TO THE PLEA TO THE JURISDICTION

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

In every trial held on Guam involving war criminals before the Military Commission, defense counsel have always and at length contended that the Commission possessed no jurisdiction either over the accused or over the crime alleged to have been committed by them. This present trial is no different, for once again, jurisdiction has been assailed.

In every case, jurisdiction has been accepted by the commission and its acceptance confirmed not only by the Commander-in-Chief Pacific Fleet - the Reviewing Authority on these trials but also by the Judge Advocate General of the Navy, and the Secretary of the Navy - the Final Authority.

In the instant trial, this commission is not sitting as a Local Court but rather as an Exceptional Military Court charged with the responsibility of judging Suspected War Criminals and the present three accused before this court are Suspected War Criminals.

The defense contends that as the natives and the Spanish brother who were the victims of the accused, were not nationals of the United States, the United States should have no interest in what was done to them. True, as the victims were not nationals possibly the United States would not be criticized for ignoring their plight - but the mere fact that they are not nationals does not mean that their being killed was not a War Crime.

Why were these particular five victims chosen from among the several hundred persons present on Rota in 1944 and put to death? The subsequent evidence will show as the specifications indicate that they were killed because the accused believed them to be spies and deliberately killed them because of this belief.

Is such an action a War Crime? We have two precedents for believing so. In the case of Major Furuki tried here on Guam from 1 March 1947 to 18 April 1947 Furuki was charged with: (1) Murder and (2) Violation of the Law and Customs of War. In the second charge there were 5 specifications each alleging that Furuki punished and caused to be punished as spies by killing certain natives on Jaluit Atoll. The charges were found proved after the commission had accepted jurisdiction. In the Furuki case, it was argued as it is in the present case that the killing of the natives was no concern of the United States - they were not nationals of the United States and therefore no war crime had been committed.

The Judge Advocate General of the Navy in his action on the case said "The definition of spies is contained in the Hague Convention of 1907, Convention IV, Article 29. The limitations set forth in that Article do not include any limitation based on the nationality of the spy. Article 30 of the same convention provides that no one shall be punished as a spy without previous trial. In view of the above, the commission had jurisdiction to try the accused for a violation of Japanese law and for a violation of the laws and customs of war."

Captain INOUE, Fumio, IJA was tried before a Military Commission here on Guam from 23 April 1947 to 5 June 1947 on two charges: (1) Murder and (2) Violation of the Law and Customs of War. Charge II - which exactly the same as the charge in the present case alleged INOUE punished as spies by killing

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certain natives of the Marshall Islands on Jaluit Atoll. The commission accepted jurisdiction and INOUE was convicted. In taking action on his case, the Judge Advocate General repeated the words used in his action on the Furuki case: "The definition of spies is contained in the Hague Convention of 1907, Convention IV, Article 29. The limitations set forth in that Article do not include any limitation based on the nationality of the spy. Article 30 of the same convention provides that no one shall be punished as a spy without previous trial. In view of the above, the commission had jurisdiction to try the accused for a violation of Japanese law and for a violation of the laws and customs of war."

Both Rota, the scene of the crime in this case, and Jaluit Atoll, Marshall Islands, the scene of the crimes in the Furuki and Inoue cases are islands which were occupied and held by the Japanese long before the recent war. Thus the commission can understand that punishing individuals by killing them without trial because of a belief that they are spies is a War Crime and one that the commission has jurisdiction of.

But the defense will say these cases cited concern natives, where is the jurisdiction over the killing of the Spanish Brother?

Again without going into long arguments, I'll merely cite additional precedents established by Military Commissions here on Guam. In the trial of Lt. Tomita, IJA, held here on Guam from 21 November to 16 December 1946, the commission accepted jurisdiction. In that case Tomita was charged with killing in violation of the laws and customs of war one Father Louis Durand, Catholic Priest, French National on Mille Atoll, Marshall Islands. In the trial of Yamamoto, Kazuharu and 19 others, all members of the Japanese Army, held here on Guam from 16 February 1948 to 25 March 1948 the commission accepted jurisdiction where the charge was Violation of the Law and Customs of War and the victims were six priests, 5 Spanish and 1 Colombian National, all killed in the Palau Islands.

Thus the commission can see that by precedent this commission has jurisdiction where the charge is a violation of the law and customs of war and regardless of the nationality of the victims.

The defense claims at length that the Commander Naval Forces, Marianas has no authority to convene this commission. The judge advocate believes that he possesses that authority by virtue of his office alone but does not intend to argue it. He certainly possesses the authority to convene military commission by derivative powers from the Commander in Chief Pacific and U. S. Pacific Fleet, who by his letter of 1 August 1948 CinCPacFlt file A17-10, Serial 3490, provided "all authority in connection with war crimes and crimes occurring during the course of the war charged against Japanese nationals and others who worked with, were employed by or served in connection with the former Japanese Imperial Government, heretofore vested in the Commander Marianas Area, by virtue of my authority as Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas, and now as Commander in Chief Pacific and U. S. Pacific Fleet, is vested in Commander Naval Forces, Marianas." Thus the argument whether or not Commander Naval Forces, Marianas can convene commission by virtue of his own inherent authority is purely academic because he has specifically been given this authority as the representative of the Commander in Chief.

The defense has contended and I quote "Their arrest as civilians without warrants, their confinement for long periods without charges being preferred against them and their extradition from Japan to Guam without proper extradition papers are all highly irregular and an abuse of judicial process."

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War Crimes is a serious business. It is not a game - and merely getting home without being tagged by an arrest does not make an accused safe.

In the Potsdam Declaration the Allied Powers announced that perpetrators of War Crimes would be punished, and it made no exceptions.

What has the fact that these men were demobilized have to do with their liability as to punishment? True, the United States could have insisted that all Japanese remain on the islands held by them until the United States had finished all War Crimes Trials. But few out of the thousands of soldiers employed by the Japanese Empire in the Pacific were war criminals. Does the commission, or even the defense for that matter, seriously believe that merely because the United States was humane and immediately upon the cessation of hostilities permitted the repatriation of homesick soldiers it divested itself of the power to bring war criminals to justice? Demobilization conferred no immunity.

No warrants were used - what difference does it make. The War Crimes Office in Tokyo requested the apprehension of these individuals and the Japanese Government arrested them.

There are no extradition papers - we could answer as has been answered each time that the objection has been made that the State-War-Navy Sub-committee for the Far East set up a procedure in lieu of extradition. A procedure to be followed by commands outside of Japan desiring to secure custody of suspected war criminals in Japan. We could answer it by saying that we have complied with the procedure set up and used so frequently in the past. We could answer in this regularly used manner, but we don't.

There are no extradition papers - we grant it - and why should there be? In the cases of ordinary criminals, unless there is a specific Treaty of Extradition between two nations, one nation will not surrender a national from its own land upon the request of another nation. Here there was no request, there was a demand.

As I said before, war crimes is not a game, it is a serious business. Persons committing war crimes gain no safety merely because they reach without apprehension a certain geographic location. What a mockery that would be. The United States Government has set up Tribunals to try War Criminals as have other nations. The location of these Tribunals is at the discretion of the Government and suspected war criminals are required to attend to answer charges. No injustice is thereby done them - they are assured of counsel - they are assured of a fair trial, and they are assured that if they are found guiltless they will be returned from whence they came, regardless of the absence of any papers.

Held for a long period of time without charges being preferred - the judge advocate assures the commission that they were arrested in order to prevent their fleeing and in order that they might be present in court on the day set for their trial. As soon as the investigation had been completed, the charges were preferred - there was no undue delay.

Respectfully,

Joseph A. Regan.
Joseph A. Regan.

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